



Wisconsin Mitigation Newsletter

U.S. Army Corps of Engineers & WI Department of Natural Resources

Vol.3 | Fall 2020

2020 Mitigation Banking Webinars

Thank you to everyone who participated in the spring/summer 2020 virtual webinar series hosted by the U.S. Army Corps of Engineers St. Paul District (Corps) and Wisconsin Department of Natural Resources (DNR). Topics included agency updates, performance standards and credit release schedules, and mitigation site selection and fatal flaws. The agencies are developing future webinars for fall 2020 and beyond and we have set dates for sessions in November, December and January (see page 3 for more information). Please send suggested topics for future sessions to leslie.e.day@usace.army.mil or Thomas.nedland@wisconsin.gov.

The agencies are providing ongoing webinars as a follow-up to the November 2019 listening sessions. Please see the report summarizing session results and agency recommendations on our websites.

Do I Need a Wetland Delineation for my Compensatory Mitigation Project?

Yes. Sponsors should submit wetland delineation reports to the Corps Project Manager and DNR for approval prior to submitting a draft MBI. Sponsors should identify the approved aquatic resource boundaries on plans and figures prepared for the draft MBI.

Sponsors should talk with the Corps and DNR prior to deciding what type of delineation is appropriate for a particular site. Offsite delineation methods can be completed at any time of the year and this method may be appropriate for sponsors to use in agricultural settings or when crediting is unaffected by wetland location. Agencies may determine a field visit is needed to verify preliminary offsite results and will look for wetland hydrology indicators in questionable areas. Sponsors may need to complete a **comprehensive onsite delineation** for some proposed compensatory mitigation sites.

NRCS certified wetland determinations are completed for USDA farm program compliance purposes and are not an acceptable substitute for use on compensatory mitigation sites.



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Last minute MBI Revisions

In several recent bank submittals, the IRT has been surprised by last minute changes to critical components of the MBI, such as:

1. Credit release schedules
2. Credit ratios
3. Performance standards

All significant changes to the details in the draft MBI that were not addressed in the Corps status update letter must be coordinated with the IRT, not just the Corps Project Manager, ahead of FMBI submittal. In addition, a clear explanation and justification of the revisions must be included in the FMBI once that coordinate has occurred.

For the Corps to determine that it intends to approve a FMBI, the FMBI must be approvable as submitted, without revision. This means that the Corps, and the IRT, can never be surprised by its contents or the way a sponsor addressed a Corps comment from the status update letter. When the sponsor fails to coordinate new concepts or revisions to the MBI's contents with the IRT ahead of submittal, the Corps will not sign the MBI until that coordination has concluded.

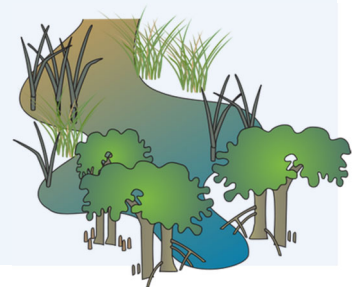
Have an idea for a topic? Submit it via email to Tom Nedland at WDNR or Leslie Day at the St. Paul District.

When Should Adjustments to Acreages be Made?

Plant community boundaries and bank credit generation described in approved Mitigation Banks Instruments (MBI) and mitigation plans are best estimates, and the agencies expect estimates will not always be 100% accurate. When a field survey shows estimated acres were inaccurate, when and how should the sponsor make corrections?

Changing credit allocations and plant community maps right after plan approval or in the monitoring period can be confusing for both sponsors and agencies. **In most cases, sponsors should make adjustments after the final wetland delineation and in the final deposit.**

Using areas and credit amounts approved in the Mitigation Bank Instrument throughout the monitoring period maintains predictability and simplifies the review of credit release requests. Bank sponsors, working cooperatively with the Interagency Review Team (IRT), should monitor the development of the site to assess performance against the release schedule in the approved plan. The agencies may require earlier adjustment or modification of the MBI if a significant deviation is identified during the monitoring period.



WDNR NR350 Update

Wisconsin DNR is in the process of updating NR 350, the Administrative Code that directs DNR on mitigation procedures. DNR is updating the Code to account for statutory language changes and to bring the Code into compliance with current practices and standards. Public hearings related to the proposed changes are anticipated for early winter, 2020. DNR encourages all stakeholders to provide comments during the public comment period following the public hearings.

Upcoming Training & Events

WDNR and the Corps will conduct Fall/Winter Compensatory Mitigation Webinars on November 16 and December 14, 2020 and January 26, 2021. Please contact Leslie Day or Thomas Nedland for registration information. The agencies will encourage questions and participant interaction from bankers, consultants and agency staff. We will include the option to use video during the sessions and look forward to seeing you soon!

Prospectus Letters

Following the IRT's review of a Prospectus, the Corps makes a decision on whether the proposed site has potential to generate wetland or stream compensatory mitigation credits. When the Corps determines that a project does not have potential, we will provide the basis for this determination. A decision that the site has no potential at Prospectus means that the sponsor cannot submit a draft MBI for that proposal. Instead, the sponsor has the opportunity to provide any additional information not available to the Corps in making this determination or to submit a revised prospectus addressing the concerns identified in the Corps' decision.

Site selection is one of the most important factors that influences whether a project will have potential as a compensatory mitigation project. The federal compensatory mitigation rule addresses factors the sponsor should consider during site selection (33 CFR 332.3(d)). To further aid sponsors in successful site selection, the Corps is developing a checklist of wetland and stream compensatory mitigation site selection criteria. This checklist will help project sponsors identify sites that are ecologically suitable, meet the needs of the watershed, meet minimum regulatory requirements and avoid common "fatal flaws" that can prevent site approval. The Corps will post the checklist on our website when completed and we will discuss it at a future webinar. We will apply this tool when evaluating site potential and refer to it when making decisions that sites do not have potential.