



# Wisconsin Mitigation Newsletter

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

Vol.2 | Spring 2020

## 2019 Listening Sessions

The U.S. Army Corps of Engineers (St. Paul District) and Wisconsin Department of Natural Resources (DNR) held a series of workshops in November 2019 to solicit feedback and discussion on the current state and federal mitigation bank processes from mitigation bank sponsors, consultants, and other mitigation professionals.

The agencies will be publishing a report summarizing session results and agency recommendations. This report will be made available upon request through Tom Nedland [Thomas.nedland@wisconsin.gov](mailto:Thomas.nedland@wisconsin.gov) or Leslie Day at [leslie.e.day@usace.army.mil](mailto:leslie.e.day@usace.army.mil).

As a follow-up to this report and the identified action items, the agencies are considering virtual workshop events to discuss mitigation topics, agency updates, and agency procedures. Refer to Upcoming Training and Events for details.



## Mineral Rights

Early identification of mineral rights is crucial for mitigation sponsor planning and efficient agency review. The presence of mineral rights under prospective mitigation sites is a site condition that could ultimately prevent site approval unless severed. The agencies strongly encourage sponsors to complete a title search for the entire mitigation site at the draft Prospectus or Prospectus phase and disclose the results to the agencies during their submittals.

The site protection instrument required for use in Wisconsin for 3rd party mitigation sites (banks and in-lieu fee program sites) is a conservation easement, with limited exceptions. The conservation easement providing long-term protection of the compensatory mitigation site must list incompatible uses that might otherwise jeopardize the objectives of the compensatory mitigation project. Mineral extraction is specifically identified in 33 CFR 332.7 (a)(2) as an incompatible use for a mitigation site.



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St. Paul District



# Innovation in Mitigation

Matt Angerhofer, Heartland Ecological

When it comes to compensatory wetland mitigation, credit release schedules often drive restoration schedules. For example, it is common practice to install woody plant material in shrub or forested wetland restoration projects during the first year of construction. However, planting woody material during year one can lead to elevated long-term management costs, and risks to meeting performance standards, because of the inability to manage annual and biennial weed flushes through mowing and burning, or unanticipated hydrology responses.

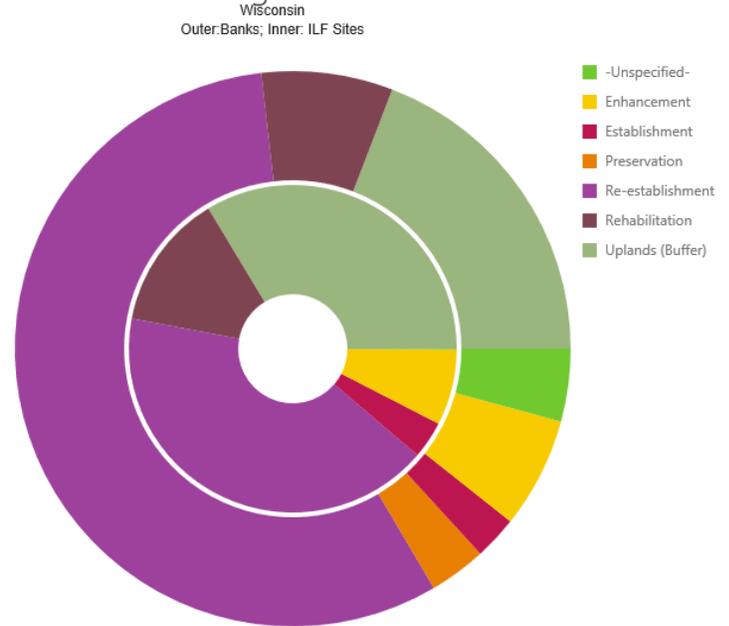
Modifying tree and shrub planting schedules may be a solution to project savings and improved long-term project success. Planting trees or shrubs in year two or year three of the management period may provide multiple benefits, including 1) proper placement of trees and shrubs based upon hydrologic zones; 2) more effective mowing to facilitate native herbaceous species establishment by decreasing or eliminating annual or biannual weeds; 3) allowing for an opportunity to complete a prescribed burn to further facilitate native herbaceous species establishment, and 4) construction cost distribution.

For more about compensatory wetland mitigation that Heartland Ecological is working on, please call or email.

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The Corps and DNR are supportive of delayed tree and shrub planting when this option may likely lead to more ecologically successful outcomes. Prospective mitigation sponsors are encouraged to consider whether delaying tree and shrub plantings would be appropriate for their project and discuss this option with the agencies.

## Wetland Mitigation Methods



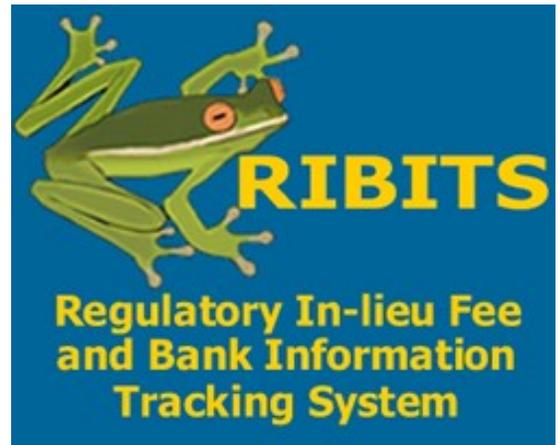
## 2019 RIBITS Statistics!

- St. Paul District approved 2 mitigation banks and 7 in-lieu fee (ILF) sites in 2019, involving permanent protection of 827.64 acres in Wisconsin.
- St. Paul District released 216.01 credits to banks in Wisconsin in 2019.
- Since 1994, a total of 3,496 acres have been permanently protected by mitigation banks, with nearly 57% of this acreage involving re-establishment of wetlands.
- Since its establishment in 2013, 370 acres have been permanently protected through the ILF, with nearly 42% of this acreage involving re-establishment of wetlands.

|                             | Year        |             |             |
|-----------------------------|-------------|-------------|-------------|
|                             | 2017        | 2018        | 2019        |
| ILF sites approved          | 0           | 0           | 7           |
| MBIs Executed               | 2           | 2           | 3           |
| Credit Releases (# credits) | 11 (115.07) | 14 (139.08) | 11 (216.01) |

# RIBITS Withdrawals

Bank and ILF Sponsors: Please remember to submit withdrawal affidavits to the Corps for ALL projects, including those that require compensation under the Corps or DNR's requirements. The Corps is working to ensure efficient processing of all withdrawal affidavits and will keep sponsors advised of any process improvements.



## Upcoming Training & Events

- ◆ **Spring 2020 Mitigation Bank Workshops:** The workshop originally scheduled for April 7, 2020 was cancelled due to COVID-19. DNR and the Corps are considering conducting several one hour virtual events to cover the material that was planned for the one day workshop. Information on agenda items and date/time of session(s) will be provided when available.
- ◆ **2020 National Mitigation and Ecosystem Banking Conference** has been postponed at this time to August 2020 in Boise, Idaho
- **Stream Mechanics** offers workshops on the Stream Functions Pyramid. For more information on future workshop opportunities visit [stream-mechanics.com/workshops/](http://stream-mechanics.com/workshops/)



## Forthcoming Procedures!

Credits generated on a site are typically released over a period of time as performance standards are achieved. Both performance standards and credit release schedules may vary by project depending on the functional goals of the project, baseline conditions, and location.

The Corps and DNR are drafting Procedures for Developing Mitigation Plan Credit Release Schedules and Performance Standards. This document will provide direction on developing these required components of a complete Mitigation Plan under both Federal and State rules (33 CFR Part 332.4(c), Section 281.36 of Wisconsin Statutes and Chapter NR 350 of Wisconsin Administrative Code). These procedures will be discussed during upcoming workshop sessions.

Next up: The agencies are also developing procedures for stream mitigation, preservation eligibility, vegetative performance standards, vegetative monitoring, and a site selection criteria checklist.

