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# Public Notice



US Army Corps  
of Engineers®  
St. Paul District



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## **U.S Army Corps of Engineers and Minnesota Board of Water and Soil Resources Guidance on Evaluating Potential Wetland Preservation Sites for Eligibility to Provide Compensatory Mitigation/Replacement in Minnesota**

1. The U.S. Army Corps of Engineers St. Paul District Regulatory Branch (Corps) and Minnesota Board of Water and Soil Resources (BWSR) have developed joint guidance for wetland preservation mitigation proposals. This guidance applies to a potential site's eligibility for approval under both Section 404 of the Clean Water Act (CWA) and the Minnesota Wetland Conservation Act (WCA) wetland regulatory programs. This is a joint effort between the Corps and BWSR to provide guidance to the public on submitting adequate preservation proposals for both agencies. Adherence to this guidance will help applicants assemble the necessary information and documentation needed by regulatory reviewers to effectively evaluate a site for eligibility.

2. For the Corps, the guidance applies to all future and ongoing compensatory mitigation proposals involving wetland preservation, including mitigation banks and permittee-responsible mitigation. Effective the date of this Public Notice, the guidance replaces all previous Corps guidance concerning preservation as mitigation. This guidance supplements the administrative guidance for replacement credit from wetland preservation issued by BWSR on July 1, 2010. BWSR may incorporate this guidance into its existing administrative guidance at some point in the future when it is revised/updated.

The guidance is available on the Corps website at:

<http://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation/>

The updated guidance are available on the BWSR website at:

<http://www.bwsr.state.mn.us/wetlands/wetlandbanking/forms.html>.

3. The St. Paul District points of contact for the guidance are Leslie Day, the St. Paul District Mitigation Coordinator, at 651-290-5365 and Tim Smith the BWSR Wetland Banking Coordinator at 651-600-7554.

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U.S. Army Corps  
of Engineers  
St. Paul District

U.S. Army Corps of Engineers, St. Paul District Regulatory Branch  
and  
Minnesota Board of Water and Soil Resources



## Guidance on Evaluating Potential Wetland Preservation Sites for Eligibility to Provide Compensatory Mitigation/Replacement in Minnesota

August, 2017

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This joint guidance document was developed by the U.S Army Corps of Engineers, St. Paul District (District) and the Minnesota Board of Water and Soil Resources (BWSR) to specify the type of information and analysis needed for local, state and federal regulatory authorities to evaluate sites being considered for preservation as a means to provide compensatory wetland mitigation/replacement (“mitigation”) in Minnesota. This guidance applies to a potential site’s eligibility for approval under both Section 404 of the Clean Water Act (CWA) and the Minnesota Wetland Conservation Act (WCA) wetland regulatory programs. Each program will determine eligibility on a case-by-case basis using the information provided by the applicant, site-specific conditions, and consistency with the standards of District policy and WCA rule. Although wetlands are the primary focus, other aquatic resources may also be eligible for preservation.

This guidance replaces all previous District guidance concerning preservation as mitigation. This guidance document supplements the administrative guidance for replacement credit from wetland preservation issued by BWSR on July 1, 2010. BWSR may incorporate this guidance into its existing administrative guidance at some point in the future when it is revised/updated.

### Background and Scope

Preservation of existing wetlands (and associated buffer areas) is an action that can be used to provide mitigation under both federal (33 CFR Part 332/40 CFR Part 230) (“Federal Rule”) and State of Minnesota WCA (Minnesota Rules Chapter 8420) wetland regulatory rules. Adherence to this guidance will help applicants assemble the necessary information and documentation needed by regulatory reviewers to effectively evaluate a site for eligibility. Although some program-specific requirements and limitations are referenced in this document, applicants should refer to the District mitigation policy, the Federal Rule, WCA rules and other applicable state guidance documents for a more comprehensive understanding of all program requirements and procedures.

### General Considerations

Preserving a wetland to offset a wetland loss in the short term results in a net loss of wetland area and function. Therefore, restoration and rehabilitation of wetlands is generally preferred over preservation as a means of providing mitigation. However, over a longer period of time

preservation can contribute to meeting the overall goal of no net loss of wetland function by reducing potential future wetland losses through permanent protection. When possible, applicants are encouraged to combine wetland preservation with wetland restoration and enhancement actions as part of an overall mitigation project.

## **Eligibility Requirements**

Preservation is defined in the Federal Rule as the “removal of a threat to, or preventing the decline of, wetland/aquatic functions by an action in or near those resources” (33 CFR 332.2/40 CFR 230.92). It further specifies that a preservation site must: (1) provide important physical, chemical or biological functions for the watershed; (2) contribute significantly to the ecological sustainability of the watershed (33 CFR 332.3(h)), and (3) be under demonstrable threat of destruction or adverse modification.

State rules specify that, to be eligible for preservation, a wetland must have a high probability of being degraded or impacted and have one or more of the following characteristics: (1) contain or benefit an exceptional resource (e.g., habitat for state-listed endangered or threatened species, rare native plant community, special fish and wildlife resource, sensitive waters); (2) is of a type or function that is rare, difficult to replace or of high value in the watershed; (3) contains a rare or declining plant community; (4) is of a type that is not likely to regenerate.

State and federal rules generally convey the same basic eligibility concepts:

- The resource provides important functions in the watershed, and
- The resource contributes significantly to the ecological sustainability of the watershed.
- The resource is under a demonstrable threat

This guidance focuses on providing information related to these three preservation eligibility criteria. Sites affected by hydrologic or vegetative degradation, including drainage ditches, impoundments, tiles, haying, or cropping, that are in need of restoration are generally not appropriate for preservation; other methods for providing mitigation are available and could be considered for these sites.

It is the responsibility of the applicant to provide adequate documentation related to the eligibility criteria for a wetland preservation proposal. The reviewing agencies will then determine whether a site is eligible for preservation credit using the documentation submitted by the applicant, as well as site visits, available watershed plans and other information as appropriate. Early communication and coordination with the federal interagency review team (IRT) and the State’s technical evaluation panel (TEP) regarding potential preservation projects is recommended before extensive effort is put into assembling all of the information needed to determine site eligibility. Submittal of a draft prospectus by an applicant following the standard wetland banking review process is highly recommended as it provides for early agency review of the potential for a site to be eligible for preservation.

## **Information Needed to Support Eligibility**

The following describes the types of information typically needed to determine if a proposed preservation site is eligible for providing mitigation. Information needs and requirements are categorized under each of the three eligibility criteria from the Federal Rule, although some information sources may be relevant to more than one of the criteria.

(1) The wetland provides important physical, chemical or biological functions for the watershed.

The applicant must identify the functions provided by each wetland resource on the site (and associated resources that are part of proposed preservation site), identify important functions in the watershed, and describe how the functions provided by the site are important for the watershed. Consulting and referencing any plans or other water or natural resource-related documents that discuss important functions in the watershed can help strengthen this portion of the assessment.

The following are the assessment methodologies available to document wetland functions and/or wetland condition:

(a) Floristic Quality Assessment (FQA). This assessment method should be conducted using Minnesota specific guidance (Milburn et al. 2007) and may include use of the rapid FQA method (MPCA 2014). This method is a vegetation-based ecological assessment approach to evaluating wetland condition. If FQA is used, the applicant should provide the full FQA report and data collected for agency consideration.

(b) Minnesota Routine Assessment Method (MnRAM). This method is designed to assess functions associated with Minnesota wetlands. The latest version on the BWSR website should be used. If MnRAM is used, score sheet and raw data from which the score was determined must be provided for each wetland resource proposed for preservation.

(c) The Hydrogeomorphic Approach (HGM) allows for the assessment of wetland functions for resources where HGM guidebooks are available. Currently, there are two guidebooks available for application in Minnesota: The Prairie Pothole Region, and Organic Flats, Slopes and Depressional Wetlands in the Northcentral and Northeast Region.

Additional documentation or assessments may be required to document that the resource provides important physical, chemical or biological functions for the watershed. For example, if the primary function provided by a wetland resource is wildlife habitat for a rare, threatened or endangered species, applicants should not only complete an assessment to document general function or condition of the site, but also document the ability of the resource to provide suitable habitat for that species.

(2) The wetland contributes significantly to the ecological sustainability of the watershed.

Assessing the relative contribution of each wetland resource to ecological sustainability involves consideration of the wetland's role in the watershed including such aspects as rarity, difficulty to replace and how it interacts with and complements other ecological resources in the watershed. This assessment can include, but is not limited to, documentation of the following considerations:

(a) An evaluation of the wetland's regional scarcity, historical (pre-settlement) prevalence within the watershed, and its significance. For example, the DNR's Field Guides to the Native Plant Communities of Minnesota could be used to determine the Conservation Status Rank of the community (in accordance with DNR-developed

criteria) and to assess the biological significance of the wetland (combination of conditions, conservation status and rare species occurrence) in the watershed (see Department of Natural Resources 2003 and 2005). Other available publications may also be used.

- (b) An assessment of the resource's relative difficulty to be replaced, considering factors such as the successional stage of the plant community, difficulty of regeneration or propagation, specific hydrologic or geomorphic requirements, and difficulty of replacement through traditional mitigation actions. For example, forested wetlands, coastal wetlands, and riparian wetlands are typically difficult to replace. However, simply being forested and wetland does not automatically demonstrate the resource's significant contribution to the sustainability of the watershed or its relative difficulty to replace.
- (c) Evaluation of the resource's location relative to other conserved properties such as public lands or lands under conservation easement with emphasis on the identification of those in close proximity or immediately adjacent to the resource.
- (d) If the wetland is a part of a larger wetland complex, an assessment of the condition of the complex in which the resource exists and how the resource in question contributes to the sustainability of the complex.

(3) The wetland and its associated functions are under demonstrable threat of destruction or adverse modification.

Demonstrable threats may include activities that adversely alter, degrade or destroy wetlands and are exempt, not regulated, or otherwise allowed under Section 404 or WCA. Examples may include, but are not limited to, certain agricultural, silvicultural, development, and excavation activities. The applicant must address how the activity would result in the destruction or adverse modification of the wetland functions. The applicant should also provide examples of how the activity has occurred in the past and why it is likely to occur on or otherwise affect the proposed preservation site. Copies of any plans, permits or existing contracts to conduct the activity onsite or on comparable sites should be provided for agency consideration.

Demonstrable threats may also include case-specific situations where a wetland resource is within areas under intense development pressure. The information provided for agency review should include evaluation and documentation of current and projected land uses or demographic trends indicating that the resource is under demonstrable threat. The applicant may provide examples of how current protections do not prevent the threat. At a minimum, the analysis should include adjacent land use evaluation, which may include prospective land uses, land uses occurring in the area that reasonably could occur on adjacent properties, presence of onsite or offsite drainage systems and the extent of their potential future effect on the resource, and identification of roads, utilities, easements, mineral rights, or other existing land uses present within at least ¼ mile of the site.

### **General Requirements**

Buffers (wetlands or uplands) should be a component of any proposed preservation site. For the purposes of this guidance, buffers are uplands and wetlands that protect or enhance aquatic resource functions from disturbances associated with adjacent land uses (33 CFR Part 332.2). Buffers may also provide habitat or corridors necessary for the ecological functionality of aquatic resources (33 CFR Part 332.3(i)). To be eligible for credit, the applicant must demonstrate that all uplands or wetlands proposed for buffer protect aquatic resource functions from potential disturbances associated with adjacent land uses or enhance the functions of the wetlands at the

mitigation site. This includes identifying the potential environmental stressor on adjacent lands and documenting how the proposed buffer protects the preserved wetland from the stressor. Mitigation proposals that do not contain buffers sufficient to protect the resource from adjacent land uses or enhance the functions of the preserved resource may not be approved.

All preservation proposals for wetland banking must follow the same state and federal review procedures and process as other mitigation banking proposals. Applicants should consult state and federal regulatory rules, policies and guidance for complete information on all program requirements.

### **Crediting**

District policy and WCA Rule allow mitigation credit for preservation at up to 12.5% (a ratio of up to 8:1, where eight acres of eligible preserved wetlands generates one credit). Preservation of uplands or wetlands that protect or enhance the preserved wetland functions within preservation-only mitigation proposals may be credited at up to 12.5% (8 acres of eligible buffer : 1 credit). This credit limitation for buffer is consistent with the credit limitation for the preserved wetland itself, places less emphasis on distinguishing the exact size of upland and wetland areas in mosaic situations and more readily allows regulatory authorities to consider a preservation site as a functional unit of both wetland and upland. Where preservation is merely a component of the larger mitigation proposal, credit ratios for buffer will be evaluated on a case by case basis according to current District policy and WCA rules regarding buffers.

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