

Mitigation Newsletter

Wisconsin and Minnesota

U.S. Army Corps of Engineers
Wisconsin Department of Natural Resources
Environmental Protection Agency



Reference Wells

Ideally, sponsors determine the target hydrology for a compensation site by collecting and applying data from a **reference wetland**. Installing a monitoring well in a reference wetland can also help sponsors justify credit releases in drier than normal periods.

What should sponsors consider when identifying a good reference wetland?

- * Reasonably close proximity to the compensation site
- * Similar landscape positions
- * Similar Community types
- * Similar soil types
- * Hydrologically undisturbed, natural wetland system.

What if there is no suitable reference wetland for the mitigation site?

- * Sponsors should use baseline hydrology monitoring and/or surface water runoff calculations

What can reference wells tell the Corps and the Interagency Review Team (IRT)?

- * Reference well data can be a key factor to establish performance standards, help agencies determine if a site is eligible for a credit release, and provide supporting information for delineations.

2022 Mitigation Webinars!

- ◆ April 26 —Deep-dive into wetland rehabilitation proposals
- ◆ November 1—Vegetation Performance Standards

Wisconsin DNR Wetland Mitigation Administrative Code (NR350) Updates:

- ◆ Review fee requirement for mitigation bank reviews (\$800)
- ◆ Updated Terminology
- ◆ Considerations for determining appropriate mitigation options and the amount of mitigation required
- ◆ Considerations for mitigation banks, such as credit generation, the review process, submittal requirements, and operational procedures
- ◆ The operation of ILF programs
- ◆ Procedures for establishment of permittee responsible sites

You may find more details here: https://docs.legis.wisconsin.gov/code/admin_code/nr/300/350/

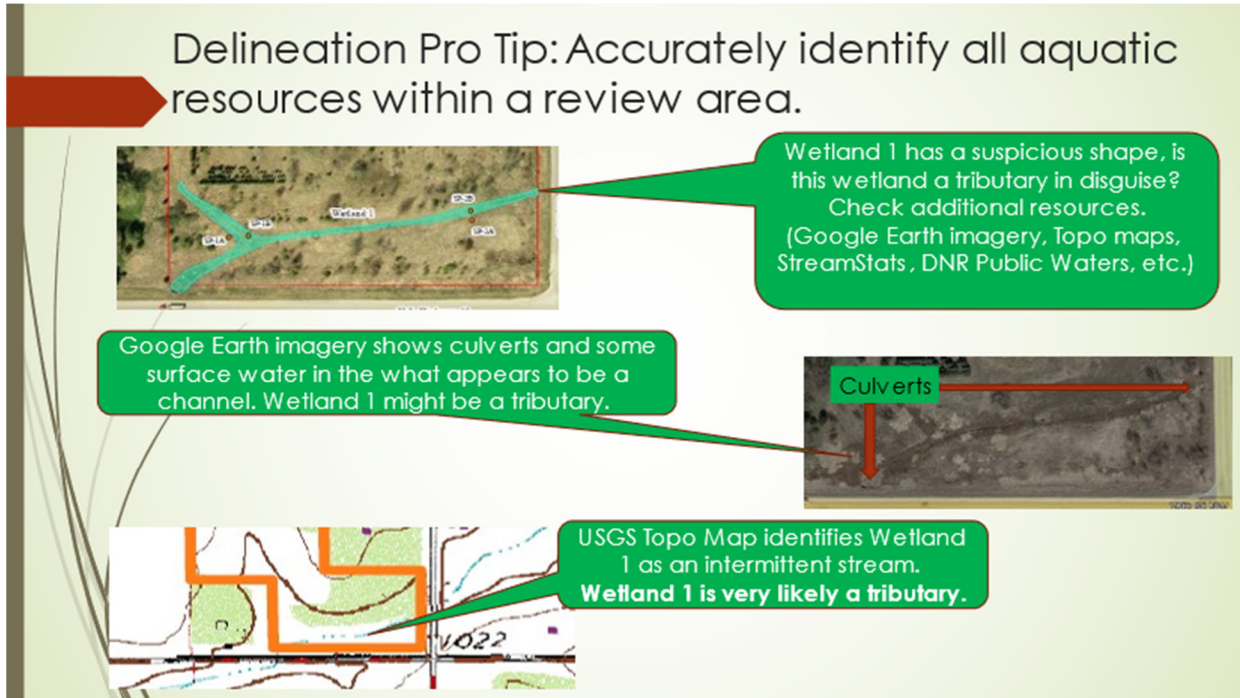


Delineations of Waters Onsite Must Include all Aquatic Resources

Joint guidance issued in Minnesota and Wisconsin state the importance of accurately identifying all the aquatic resources within a review area of a delineation. Delineation reports should reflect the entire hydrologic landscape of the review area including wetlands, lakes, rivers, streams, springs, ditches, and ponds. We encourage delineators to identify any on-site hydrologic connection to downstream waters (i.e., culverts, swales, etc.). Misidentifying or excluding aquatic resources can delay timely review of the delineation and provide an inaccurate portrayal of the hydrology on-site. An accurate delineation of waters onsite is crucial to describing baseline conditions and is needed to support crediting determinations and restoration potential of a site.

Find our delineation guides here: <https://www.mvp.usace.army.mil/Missions/Regulatory/Delineation/>

Delineation Pro Tip: Accurately identify all aquatic resources within a review area.



Wetland 1 has a suspicious shape, is this wetland a tributary in disguise? Check additional resources. (Google Earth imagery, Topo maps, StreamStats, DNR Public Waters, etc.)

Google Earth imagery shows culverts and some surface water in the what appears to be a channel. Wetland 1 might be a tributary.

Culverts

USGS Topo Map identifies Wetland 1 as an intermittent stream. Wetland 1 is very likely a tributary.

A Reminder on Stream Compensatory Mitigation

Are you interested in generating stream credit at mitigation sites? The Interagency Review Team is here to help sponsors navigate the process for including stream restoration in mitigation plans. Sponsors should let us know as soon as possible if they're considering adding a stream restoration component to a project. Sponsors should note in the Draft Prospectus whether they are considering stream restoration. If a sponsor adds a stream restoration component to a mitigation plan later in the review process (after the Prospectus phase), they will need to submit a revised prospectus with a completed catchment assessment worksheet and site selection criteria checklist for the IRT to assess stream mitigation potential.

Check out the Summer 2021 Stream Mitigation Newsletter for more information on when the Corps will require compensatory stream mitigation and how to generate stream credits: <https://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation/>

Sponsorship and Property Interest Responsibilities

To sign the mitigation bank instrument as sponsor, you must demonstrate to the IRT that you have full control and responsibility over the site. If you don't hold the in-fee title over all parcels/areas under the MBI and conservation easement, you must obtain an interest in the unowned parcels. Commonly this is accomplished by purchasing the property or acquiring an easement. A state's conservation easement over the project area is not sufficient.

When the sponsor is not an individual, such as a limited liability corporation (LLC), trust or other entity, they should include the following information in the bank submittal:

1. The Articles of Organization;
2. Documentation of who may legally sign the MBI;
3. The Operating Agreement if one exists; and,
4. Proof that the LLC, trust or other entity holds an interest in the property over the entire site. If you propose to accomplish this through acquisition of an easement, you must provide a copy of the draft to the Corps for review. You must execute and record the easement prior to initial credit release and ensure the easement does not conflict with the state's conservation easement. (Note: In Minnesota, you would record this easement after recording the state's conservation easement.)

Credit Release Flexibility for Banks and In-Lieu Fee Sites

The IRT recognizes that hydrologic restoration is a substantial component of some compensatory mitigation projects, and the Corps can provide higher credit releases for these projects once hydrologic performance standards are met. The following table illustrates the latest in developing flexible credit release schedules for three categories of hydrologic restoration:

Credit Action	Minnesota Hydrology Credit Release	Wisconsin Hydrology Credit Release
Site is predominantly re-establishment	45%	40%
Site is a combination of generally equal proportions of both rehabilitation and reestablishment	35%	30%
Site is predominantly rehabilitation	20%	20%

Remember that hydrology drives the success of overall wetland functional lift including vegetation establishment. Therefore, the site must meet hydrology performance standards before the Corps will approve any interim vegetation credit release.

Check out the December 2021 Informational Public Notice for details! <https://www.mvp.usace.army.mil/Missions/Regulatory/Special-Notices/>

Long-Term Management

The Spring 2021 Newsletter highlighted the differences between conservation easements, financial assurances and long-term management. This edition sheds more light on long term management (LTM), specifically when the Corps may require sponsors to provide LTM funding and what sponsors should minimally include in their Mitigation Plan and Mitigation Banking Instrument regarding LTM needs.

The Federal Mitigation Rule requires long-term monitoring and long-term maintenance of compensatory mitigation sites, and the Corps determines on a case-by-case basis when we will require funding. LTM funding ensures the sponsor is able to sustain functional gains at the site after meeting performance standards and after the Corps has released all credits. We will consider whether LTM funding is necessary in every case, and generally we are more likely to require LTM funding on sites with the following characteristics:

- ◆ Enhancement-only sites requiring vegetation management
- ◆ Sites with necessary prescribed burns
- ◆ Stream restoration sites
- ◆ Sites with high risk of encroachment from adjacent incompatible uses

Sponsors must include sufficient information related to the site's anticipated LTM needs in any Mitigation Plan, regardless of fund requirement, including activities necessary to ensure functional gains at the site are maintained in the long-term and the costs associated with these activities. Examples of the type of information that must be provided include:

- ◆ Field visits/surveys and their frequency (e.g. meander surveys annually, at the height of the growing season).
- ◆ Assessment of engineered features on the site, if applicable (e.g. berms, tile outlets, water control structures).
- ◆ Comparison of survey results with performance standards and coordination with the IRT.
- ◆ Management options if performance standards are not being met (e.g. invasive species management).
- ◆ Management of timber or other woody species, if applicable.
- ◆ Anticipated costs of the monitoring and maintenance activities necessary to ensure functional gains at the site are maintained in the long-term.

Note that the States of Minnesota and Wisconsin typically hold conservation easements for compensatory mitigation sites and monitor their conservation easements for enforcement purposes and to ensure adequate protection. The Corps considers LTM under the Federal Mitigation Rule as different from protection under a conservation easement, and sponsors (or another entity if the sponsor transfers LTM responsibilities) must ensure sites are managed and maintained in perpetuity in accordance with the LTM provisions in the MBI.