



**US Army Corps
of Engineers®**

St. Paul District



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
AND
THE MINNESOTA BOARD OF SOIL AND WATER RESOURCES
REGARDING
COORDINATION OF WETLAND MITIGATION BANKS IN MINNESOTA**

WHEREAS, the St. Paul District, U.S. Army Corps of Engineers (Corps) is responsible for administering Section 404 of the Clean Water Act (33 U.S.C § 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) in the State of Minnesota, including the review, approval, and oversight of wetland mitigation banks to be used as mitigation for impacts authorized under Section 404 and Section 10 permits; and

WHEREAS, the Minnesota Board of Water and Soil Resources (BWSR) has state oversight responsibilities for the Wetland Conservation Act and the rules through which it is implemented (Minnesota Rules Chapter 8420), including an established program for administering wetland mitigation banks in the State of Minnesota; and

WHEREAS, coordinated State and Federal mitigation banking programs provide for greater efficiency and predictability in the process for approving wetland banks, releasing wetland credits and tracking wetland credits;

WHEREAS, wetland banks have greater utility for the public when approved for compensatory mitigation use by both State and Federal wetland regulatory programs;

WHEREAS, the Corps and BWSR support and encourage wetland banking as a means of providing compensatory mitigation for unavoidable wetland impacts;

WHEREAS, the Corps and BWSR support efficient and transparent wetland bank credit tracking in the State of Minnesota;

NOW, THEREFORE, the Corps and BWSR agree that, for the benefit of wetland mitigation bank sponsors seeking State and Federal approval of wetland banks and for the public who utilize the credits from these banks to satisfy compensatory mitigation requirements, the agencies commit to pursuing a coordinated approach for approving mitigation banks, and releasing and tracking bank credits in the State of Minnesota.

Review and Approval of Mitigation Bank Applications

- A. BWSR Wetland Specialists (WS) and Corps Project Managers (PM) will notify each other of discussions and meetings regarding bank applications where sponsors are seeking both State and Federal approval. Joint attendance and participation in any and all discussions and

meetings regarding a wetland bank is preferred and should be pursued to the extent practicable.

- B. All findings and correspondence related to the review of wetland bank applications will be shared between the agencies.
- C. The agencies will encourage wetland bank applicants to follow a coordinated mitigation bank review process consisting of the following phases: draft prospectus (scoping), prospectus (concept plan), and mitigation banking instrument (complete application). To the extent possible within State and Federal program requirements, each agency will attempt to coordinate the timing of comments, findings and approvals during each phase of the review process.
- D. The Corps will include BWSR as a representative on the Federal Interagency Review Team (IRT) except for projects where BWSR is the applicant. In cases where BWSR has an agreement to purchase credits from the proposed bank, they will internally manage any real or perceived conflict of interest identified by the Corps and will provide technical review throughout the bank evaluation process. The BWSR Mitigation Bank Coordinator shall be the designated IRT member. All official agency correspondence and comments shall be provided by the BWSR State Wetland Banking Coordinator unless he/she has informed the Corps PM and/or IRT Chair that BWSR comments will be provided by a specifically-identified alternative BWSR staff member.
- E. BWSR will recognize the Corps as a non-voting member of the State's Technical Evaluation Panel (TEP). The Corps project manager will be kept apprised of the status of the TEP's review and will be notified in advance of meetings and site visits. The Corps PM will provide updates to the TEP on the status of the Corps review, including comments from the IRT.
- F. The PM and WS will, to the extent practicable, coordinate their respective agency review comments during the wetland bank application review process. At a minimum, the PM and WS will coordinate their respective agency positions at the following two points in the bank application review process: (1) preliminary agency position and substantive comments at the prospectus (concept plan) phase; and, (2) the estimates of credit generation from the proposed bank before the Corps approves the Mitigation Bank Instrument (MBI) or the LGU approves the Bank Plan.
- G. The PM and WS will attempt to reconcile differences in the amount, type, timing and criteria for release of credits generated by a wetland bank application. Credits that are expected to be approved as Federal-only or State-only credits must be specifically identified as unique categories in the text or summary table.

Credit Releases

- A. Credit release schedules will generally consist of an initial 15% deposit of potentially available credits after initial construction and seeding have been completed and verified and site protective instruments have been recorded. Subsequent credit releases will be based on

measurable criteria and consist of a percentage of potentially available credits by type as specified in the MBI/bank plan.

- B. The WS and PM shall jointly review credit release requests from bank sponsors and attempt to reconcile any differences in the credit releases with the goal of unified and consistent credit releases for both State and Federal regulatory programs. If permissible under existing guidance or regulation, agencies will consider deferring a final action on a requested credit release to accommodate the other agency's process.
- C. Credit release requests that deviate from the approved bank plan (State) or the approved MBI (Corps) shall be communicated to both agencies and a coordinated process for amending the documents shall be pursued.
- D. The final determination of total credits generated from a bank will generally be determined by a final delineation/determination of wetland boundaries and type. The final credit release will be the difference between the final determination of total credits and the number of credits that have been released to date (unless the final release is further reduced because performance standards have not been achieved).

Bank Ledgers and Transactions

- A. BWSR will maintain a database for tracking all bank activity authorized under the Wetland Conservation Act. The Corps will utilize RIBITS as the official database for tracking authorized bank transactions under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Both agencies will attempt to accommodate the other agency's requirements for credit tracking in their respective databases. Account information will be shared, updated, and reconciled in both systems to provide a unified accounting system to the extent feasible and practicable.
- B. BWSR and the Corps will continue to work cooperatively toward a goal of standardizing credit allocation, performance standards, timelines, credit deposits and withdrawals, and credit tracking.
- C. BWSR and Corps staff will coordinate credit releases prior to either agency depositing the credits into their respective bank databases. To the greatest extent practicable, BWSR and the Corps will attempt to reconcile any differences or discrepancies between the two programs' credit releases before the credits are deposited.

MISCELLANEOUS

I. Applicability

The policies and procedures contained within this Memorandum of Understanding (MOU) are intended solely as guidance to improve the working relationships of the signatory parties. Nothing contained in this MOU creates any rights or obligations, substantive or procedural, enforceable by either party against the other or by any third party against anyone.

II. Dispute Resolution

In the event that a dispute arises between the Corps and BWSR, the agencies will attempt to resolve the issue at the staff level (BWSR WS, Corps PM, and agency banking coordinators). Matters unresolved at the staff level will be referred to the Points of Contact identified in Section VI of this MOU for resolution

III. Funding

This MOU is neither a fiscal nor funds obligation document. It does not obligate, commit or authorize the expenditure of funds. Each party to this MOU is responsible for funding its own actions; the undertaking of any activity described in this MOU is subject to the availability of sufficient, appropriate funding by the party proposing to undertake it.

IV. Modification

The MOU may only be modified by the written agreement of both parties.

V. Termination

This MOU will take effect on the date of the last signature below and will continue in effect until terminated by either agency with a 90 day prior written notice to the other agency.

VI. Points of Contact

The signatories to this MOU will designate points of contact for the implementation of the MOU.

THIS MOU IS EFFECTIVE UPON THE DATE OF THE LAST SIGNATURE BELOW:

U.S. ARMY CORPS OF ENGINEER, ST. PAUL, DISTRICT

By: Tamara Cameron Date: 11/14/13
Ms. Tamara Cameron, Chief, Regulatory Branch

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

By: John Jaschke Date: 11/19/13
Mr. John Jaschke, Executive Director