

# General State/Federal Application/Mitigation Bank Review Process in Minnesota

2015 BWSR/St. Paul District  
Wetland Bank Training

May 28, 2015



US Army Corps of Engineers  
**BUILDING STRONG**®



# Presentation Outline

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- State/Federal Bank Review Process Overview
- Benefits of a Phased Process
- Benefit of a Parallel State/Federal Bank Review Process



# State/Federal Bank Review Process Overview

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**State:** 1991 Wetland Conservation Act (WCA)  
administered by Board of Water and Soil Resources  
(BWSR)

**Federal:** 33 CFR 332 (2008 Mitigation Rule) administered  
by U.S. Army Corps of Engineers (St. Paul District)



# State/Federal Bank Review Process Overview

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- Parallel State & Federal Review Processes
  - State: 3 step review process + easement acquisition
  - Federal: 4 phase review process
- Steps/Phases 1-3 require roughly the same information and all result in a decision or recommendation by the TEP & St. Paul District
- BWSR banking forms generally acceptable for both federal and state review



**Compensatory Mitigation Rule  
Timeline for Bank or ILF Instrument Approval\***

		Event	# of Days**	
Phase I		Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days. ← Scoping
	<b>Sponsor Prepares and Submits Prospectus</b> ~DE must notify sponsor of completeness w/in 30 days of submission~			
Day 1** Complete Prospectus Received by DE				
Phase II	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30	
	Day 60	30-Day Public Comment Period	30	← Concept Plan
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15 DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
<b>Sponsor Considers Comments, Prepares and Submits Draft Instrument</b> ~DE must notify sponsor of completeness w/in 30 days of submission~				
Day 1 Complete Draft Instrument Received by IRT Members				
Phase III	Day 30	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	90 Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review. ← Full Application
<b>Sponsor Prepares Final Instrument</b> ~Sponsor provides copies to DE and all IRT members~				
Day 1 Final Instrument Received by DE & IRT				
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45 IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
		Remainder of time for initiation of dispute resolution process by IRT members	15	
Day 45 INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED				

**\*\*No comparable WCA phase. Typically at this time Sponsor works to acquire conservation easement.**

# State/Federal Bank Review Process Overview

Total Required Federal Review (Phases II-IV): ≤225 Days

\*Timeline also applies to amendments

\*\*The timeline in this column uses the maximum number of days allowed for each phase.

EPA/Corps draft 4/02/08



# Phase I Draft Prospectus/ Scoping Document

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- Optional for the WCA & 2008 Mitigation Rule
- Opportunity to get agency input on a site's potential before putting in too much \$\$\$
- There is no set of required information for the Corps
  - Need the who, what, when, where, why, how of the project with maps and drawings
- WCA requires use of Scoping Document found on BWSR website



# Phase II Prospectus/ Concept Plan

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- Corps
  - Project Manager determines whether Prospectus is complete
  - Results in an Initial Evaluation Letter determining whether project has potential
- WCA
  - TEP evaluates the Concept Plan
  - Results in a TEP findings identifying potential issues



# Phase III Draft Mitigation Banking Instrument/Full Application

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- Corps DMBI must include:
  - Must also include a draft Mitigation Plan
  - Mitigation Plan - Full Application form is an accepted medium (requires specific info)
    - Resulting letter notifying Sponsor of the status of our review
- WCA
  - Approval of the Full Application by LGU constitutes approval of the wetland bank plan



# Phase IV Final Mitigation Banking Instrument (MBI)

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- Executed final MBI signed by the Sponsor and the Corps is our legal instrument directing the construction, use and maintenance of the bank and the responsibilities of all parties involved
- Mitigation Plan (full application form) is part of (Appendix to) the MBI



# Conservation Easement

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- Easement Process is a Process Completed with BWSR
- Protection of the site in perpetuity is a requirement under the Federal bank review process as well
- Conservation Easement language was agreed to by both agencies to serve for both programs
- Easement process results in final numbers for both the WCA & the Corps



# Interpreting TEP Findings & Corps Letters

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- TEP Findings Letters & End of Phase letters from the Corps are the official comments under each program signaling the end of a Phase's review
- Recommends how, or whether, to move forward with the bank review process
- All comments/requirements in that letter should be incorporated into or addressed in the next submittal



# Interpreting TEP Findings & IRT Comments

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- Comments made by the IRT & TEP are based on the information provided with the current submittal for that Phase
- Just because no comments were made on a topic during previous phases does NOT mean that the IRT & TEP cannot comment during future phases



# Benefits of a Phased Process

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- Reduced Risk
- Reduced upfront cost
- Better Product Developed for the Next Phase
- Project evolves throughout the process based on comments



# Benefits of Parallel State & Federal Review Processes

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- Streamlined Planning and Application Process
- Matching Projected Credit Yields and Credit Releases
- A well planned & implemented project can result in consistent timelines & decisions for both programs



# Questions??

