



# Establishing an Individual Wetland Bank Site in Minnesota

July 2, 2015

This document provides a general summary of the key steps in establishing a an individual wetland bank site within the state wetland banking system. Wetland Conservation Act (WCA) Rules 8420.0700 to 8420.0755 provide the standards for wetland bank establishment and administration. The wetland banking system is administered by the Board of Water and Soil Resources (BWSR). A Local Government Unit (LGU) is responsible for approving wetland bank plan applications. A local Technical Evaluation Panel (TEP) provides technical recommendations to the LGU.

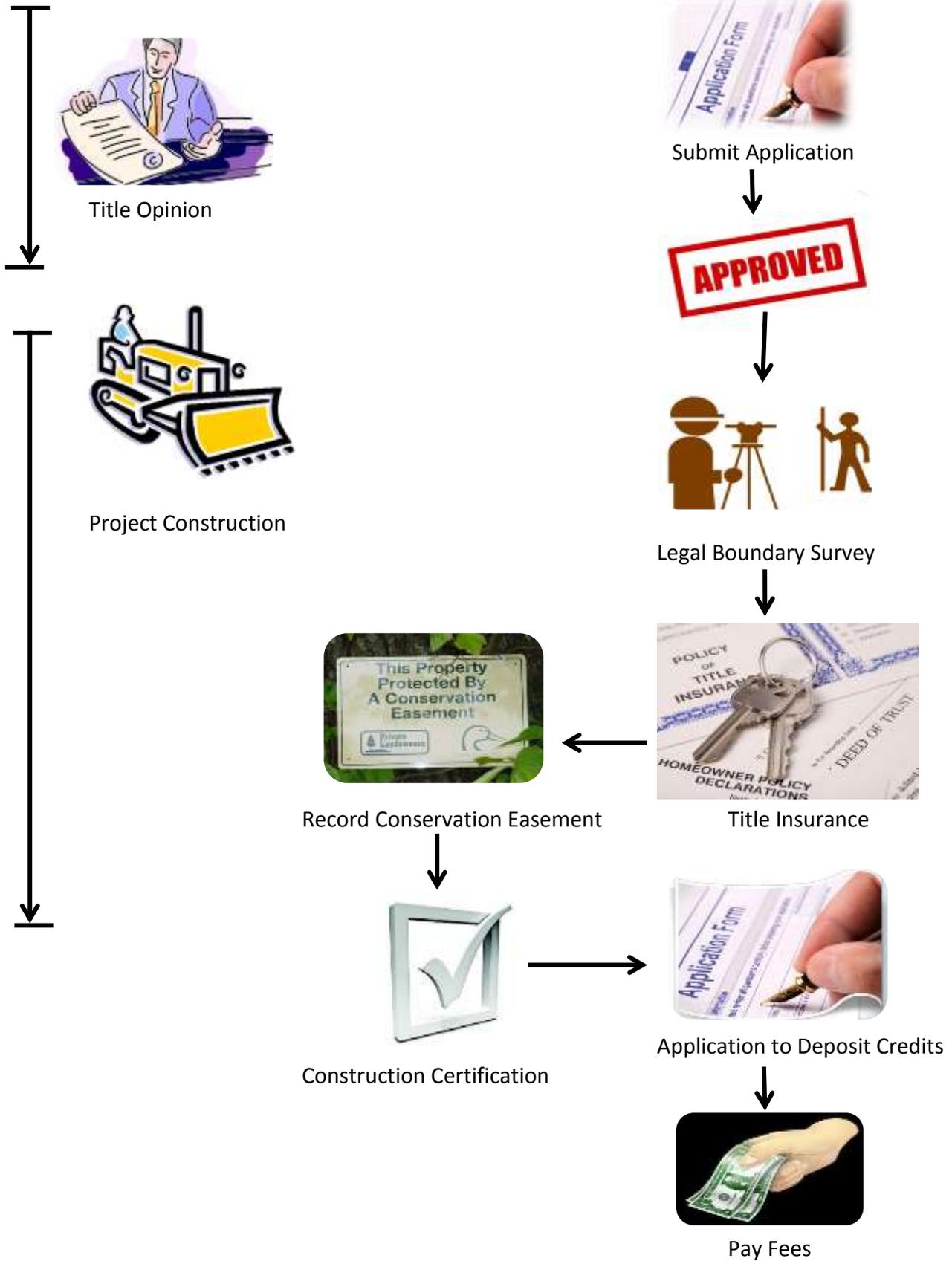
**A Conservation Easement is required for all wetland banks in Minnesota.**

The following table identifies key required steps in the wetland bank site establishment process along with the responsible reviewing entity and typical processing time. Actual processing times vary depending on the complexity of the project as well as the nature of legal encumbrances on the property. Incomplete or poor quality submittals will tend to lengthen processing times.

Key Step	Reviewer	“Typical” Review Time
<b>Application</b> Scoping, Concept Plan, Full Application	<b>LGU, TEP, BWSR</b>	<b>90 – 120 days</b>
<b>Legal Boundary Survey</b>	<b>BWSR</b>	<b>10 – 15 days</b>
<b>Title Insurance</b>	<b>BWSR</b>	<b>30 – 60 days</b>
<b>Conservation Easement Recording</b>	<b>BWSR</b>	<b>15 – 30 days</b>
<b>Project Construction/Implementation</b>	<b>None</b>	<b>Applicant Determines</b>
<b>Construction Certification</b>	<b>LGU</b>	<b>15 – 30 days</b>
<b>Application to Deposit Credits</b>	<b>LGU, TEP</b>	<b>15 – 30 days</b>

The steps identified in the above table can be and are often overlapping. For example, project construction can occur concurrent with title insurance review and conservation easement recording. Construction certification and the application to deposit credits are often processed simultaneously by the LGU. The following diagram is a graphic representation of the process.

# Establishing a Wetland Bank



## **Bank Plan Application**

To establish a wetland bank in Minnesota, approval of a wetland bank plan must first be obtained. There is a three-step process for obtaining approval of a wetland bank plan under WCA program requirements. The three steps are as follows:

1. Wetland Bank Plan Scoping Document
2. Wetland Bank Plan Concept Document
3. Wetland Bank Plan Full Application

Scoping – Potential bank plan applicants must first submit a scoping document to the LGU to initiate the bank plan review process. This scoping document review will help the project sponsor identify project opportunities, issues, and potential problems, and will result in findings and recommendations regarding overall suitability of the project site for wetland banking. Early review and input as part of this scoping review allows a potential project sponsor to make an informed decision on the suitability of the site and whether to continue with the application process prior to a substantial investment of time and resources. LGU staff and other TEP members can provide assistance in completing this document and compiling the necessary information. This step in the process can be initiated by a landowner without the assistance of professional consultants. The project sponsor will receive a copy of the findings and recommendations that result from this scoping review.

Concept Plan – After completing scoping, a concept bank plan must be developed and a concept plan document completed and submitted to the LGU for review. Review of this document will help identify any potential issues with the project design, proposed easement, credit amount, credit criteria, credit release schedule, and any other issues prior to investing the time and expense necessary to complete a final plan and full application. This step in the process generally requires the assistance of professional consultants and/or others with expertise in wetland science, engineering, and vegetation restoration depending on the nature of the project. The project sponsor will receive a copy of the findings and recommendations that result from this concept plan review.

Full Application – After the concept plan review, submittal of a full application to the LGU will initiate the formal wetland bank plan review and approval process under WCA rules. Only the approval of a full application by the LGU constitutes approval of a wetland bank plan for WCA purposes. Much of the same information required in the Concept Plan is also required for the full application, but with more detail. Upon receipt of a complete application, there will be a formal notice of application issued by the LGU with a comment period specified in the notice. For most projects, the requirements of a full application require the assistance of professional consultants and/or others with expertise in wetland science, engineering, and vegetation restoration depending on the nature of the project.

## **Title Opinion**

Because establishing a wetland bank involves a form of real estate transaction (recording of a conservation easement), obtaining a title opinion early in the bank plan approval process is highly recommended. A title opinion involves searching the records of the recorder's offices and making a determination of who owns the title and to what interests it is subject to. Identifying entities with easements or other interests in the property is important as they may need to consent and subordinate to the conservation easement. Obtaining a title opinion early in the process (prior to or during the application phase) can reduce the applicant's risk by identifying potential legal issues prior to a significant investment of time and resources in the application and implementation phases of a wetland bank project. BWSR will provide assistance by reviewing and interpreting title opinions for conservation easement recording purposes.

## **Legal Boundary Survey**

A legal boundary survey is required to locate and describe the wetland bank area on which the required conservation easement will be recorded. This requires the services of a registered land surveyor. If the conservation easement is not adjacent to a public road, then a legal access easement from a public road for the State to monitor the easement must also be conveyed and recorded. BWSR staff will review the submitted legal description and incorporate it into the draft easement document that is prepared for the landowner to sign (see *Legal Survey and Signage Requirements* document on the BWSR website)

## **Title Insurance**

A title insurance policy naming the State of Minnesota as the insured is required for a wetland bank site. Title insurance protects the state's interest in the land by providing financial insurance against a title later found to be invalid or fraudulent. It insures that the title is free from all defects, liens, and encumbrances (except those specifically listed as exceptions in the policy). It is the responsibility of the landowner to hire a title agent and obtain a title insurance policy acceptable to the State. The insured amount (\$) of the policy is based on the number of anticipated credits identified in the approved banking plan. A title agent representing the landowner will need to provide the following services:

- Conduct an abstract search.
- Prepare a commitment to insure title that identifies all exceptions (i.e. exclusions from the scope of the policy's coverage).
- Work with BWSR to prepare a final policy that satisfies State requirements.
- Issue final title policy (ALTA Owners Policy 1987 (6-17-06)).

BWSR will send out an instruction letter and Specimen Title Insurance Commitment to help guide the title agent when they begin to draft the title commitment (see *Wetland Banking Title Insurance Requirements* document on the BWSR website). This will ensure that the State's required format is followed.

## **Conservation Easement**

Once a title commitment with an approved certificate of survey attached has been received, reviewed and approved by BWSR and the State's Attorney General, BWSR will prepare the conservation easement and send it to the landowner for signature. The landowner then returns the signed easement to BWSR for State

signature. BWSR will then send the fully executed easement to the title agent to check for any new encumbrances (gap check), completion of the final title insurance policy and recording of the easement. BWSR and the State's Attorney General will review and approve all final documents. The language of the conservation easement is standardized and cannot be altered or adapted to fit an individual project. If the landowner has special site/project circumstances, they can be addressed through the bank plan referenced in the easement.

There may be entities with easements or other interests in the property that may need to consent and subordinate to the conservation easement. These interests may include mineral leases, drainage agreements, utility easements, mortgage holders, co-owners, etc. A consent and subordination form (standard BWSR form) must be used to facilitate any required subordination. This form must be signed and provided to BWSR before the conservation easement is prepared. Inability to acquire the required consent will prohibit the State from accepting the easement and will prevent establishment of a wetland bank. Certain lenders or mortgage holders may not consent to the conservation easement, and the landowner may be required to refinance with a lender that is willing to consent. These circumstances can be detected early in the process by obtaining a title opinion before a significant investment in the project is made.

## **Construction Certification**

For projects involving construction and/or vegetation establishment/manipulation, the applicant must provide evidence that initial construction activities were completed per the approved plan. This typically involves an as-built survey of construction features (berms, control structures, etc.) and seed tags confirming native seeding. The applicant is notified when the LGU confirms that the construction and vegetation establishment activities are in conformance with the plan.

## **Request to Deposit Wetland Credits**

Establishment of a wetland bank account occurs with a request to deposit wetland credits. Construction certification typically provides the basis for the first deposit of up to 15% of the anticipated credits (this may vary). A "Request to Deposit Wetland Credits Form" is completed by the applicant and provided to the LGU for appropriate signatures. Once signatures are obtained, the form is sent to the BWSR wetland bank coordinator for wetland bank account establishment and deposit.

## **Fees**

All wetland credit deposits require the payment of a deposit fee to BWSR to fund program administration. This fee is equal to 6.5% of the credit value, but cannot exceed \$1000. Credit values and the associated 6.5% fee are periodically determined by BWSR on a County-basis. To determine the deposit fee, locate the fee cost per credit associated with the County the bank is located in and multiply that amount by the number of credits proposed to be deposited. For example, if the fee cost per credit is \$500 and you are depositing 10 credits, the calculated fee would be \$500 x 10 which equals \$5000. Because the amount in this example exceeds \$1000, the fee is capped at \$1000.

An annual account maintenance fee of 1% of the credit value with a cap of \$500 is assessed at the time of the first deposit. This fee is *in addition to* the deposit fee. This annual fee is due at the time of the first account transaction in each calendar. It is not required if there are no transactions within a calendar year.

There are fees associated with the use/withdrawal of deposited wetland credits (withdrawal fees), but these are assessed at the time of withdrawal and are typically passed on to the user of the credits rather than the bank sponsor.

## Costs and Timelines

The following table summarizes typical costs with the administrative processes discussed in this document. Actual costs vary depending on the size and complexity of the project as well as the number and nature of legal encumbrances on the property.

Administrative Requirement	Typical Cost
<b>Legal Boundary Survey</b> Registered Land Surveyor Fee	<b>\$3000 - \$6000</b>
<b>Title Insurance</b> Title Agent Fee	<b>\$1500 - \$3000</b>
<b>Easement Preparation and Recording</b> Recording Fees	<b>\$50 - \$100</b>
<b>Bank Fees<sup>1</sup></b>	<b>\$1500</b>

<sup>1</sup>Initial deposit and first annual maintenance fee.

BWSR Guidance – July 2, 2015. The primary author of this guidance document is Ken Powell, State Wetland Banking Coordinator. This document is available on the BWSR website and may be revised periodically. Check the BWSR website for the most current version ([www.bwsr.state.mn.us/wetlands](http://www.bwsr.state.mn.us/wetlands)).