

**WI WETLAND CONSERVATION TRUST:**  
demystifying this new in-lieu fee mitigation program



Prepared for:  
**Critical Methods Training 2015**

March 11<sup>th</sup>, 2015      Prepared by:  
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**Agenda Topics**



- Mitigation Progression
- Who administers / sponsors the program?
- What is an in-lieu fee program?
- When was it approved?
- Where is the program operating?
- Why is the program needed?
- How is it operated?
- Where can I learn more?




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**Mitigation Sequence**



- 1972 - Clean Water Act Section 404
- 1980 – §404(b)(1) guidelines, established by EPA
  - ▣ Practicable Alternative Analysis, before issuing 404 permit
  - ▣ “No Net Loss” of wetlands
- 1990 Corps & EPA clarified goal as:
  - ▣ “No overall net loss of values and functions”
  - ▣ MOA between EPA and Army Corps
    - establishes a three-part sequencing process:
      - First Avoid, then Minimize, lastly Compensate (i.e. Mitigate)

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### WI Timeline Highlights



- 1990 - WI DOT mitigation
- 1993 - WI DOT Technical Guidelines
- 2002 DNR Mitigation Banking (NR 350)
- 2002 DNR Mitigation Guidelines
- 2008 Federal Mitigation Rule 33 CFR 332
- 2012 WI Compensatory Mitigation Required
- 2014 WI Wetland Conservation Trust Signed




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### WI Basis for In-Lieu Fee



- March 2012 Act 118 signed –
  - Under the Act, the DNR may establish an “in-lieu fee subprogram”; in consultation with the Corps...
- July 1<sup>st</sup>, 2012 took effect –
  - 281.36(3n)(d) Wis. Stats. – **Mitigation required** for wetland individual permits. Does not entitle applicant to a permit.
  - 281.36(3r)(e) Wis. Stats. –Mitigation; in lieu fee subprogram:
    - ...the department may establish an in lieu fee subprogram...The subprogram must be approved by the U.S. Army Corps of Engineers and be consistent with federal regulations.




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### What is In-Lieu Fee?



**In-lieu fee:** a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor.




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## Program Establishment



- **Applicable to:**
  - WI Individual Wetland Permits approved under 281.36 Wis. Stats.
  - Federal wetland Permits under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899.
- **Program Funding:**
  - Credit Fees & accept additional other money:
    - such as donations, enforcement actions & Surcharge Fee under 281.36(11)
- **Program Creation:**
  - Governed by a written document subject to public notice & **approved by the US Army Corps in consultation with Interagency Review Team** (EPA, USFW, NRCS).




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## Corps Approval Process



- **Phase I**
  - Draft Prospectus: not required, but provides a general overview and introduction.
- **Phase II**
  - Prospectus
  - Public comment period
- **Phase III**
  - Draft Instrument
- **Phase IV**
  - Final Instrument



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## Program Establishment Recap



- Draft Prospectus submitted – 3/15/2013
- Final Approvals obtained – 11/19/2014

- **Process took:**
- 614 days
- 20 months
- 1.68 years




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### Key Program Elements

- Objectives
- Mitigation Process
- Service Areas
- Advanced vs. Released Credits
- Credit Fee
- Compensation Planning Frameworks
- Request for Proposal Process
- Ownership & Long Term Maintenance



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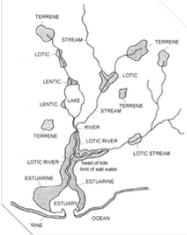
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### Watershed Approach

- an analytical process for making mitigation decisions that support sustainability or improvement of wetland resources
- Considers watershed scale needs
  - How location & type address needs
- Landscape perspective
  - Identify location & type of mitigation
- Historic & potential resource condition
- Past & projected resource impacts
- Terrestrial connections between resources



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### Objectives

- Provide an additional method of mitigation
- Focus on the greatest watershed needs
- Complete projects on the ground selected through a watershed approach



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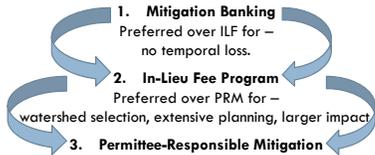
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## Mitigation Process



- WWCT does not change the requirement to **First Avoid, then Minimize and lastly mitigate.**
- Follow general hierarchy in the 2008 Federal Rule



- New Process Forms:
  - [Mitigation Summary Sheet](#) & [IP Wetland Mitigation Process](#)

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## Service Areas



- Statewide program
- Divided into 12 service areas
- Based on modified HUC-6
- Consistent with Banking & Permittee Responsible
- If credit sales are too small
  - Possibility to combine adjacent
  - Purchase Bank credits
  - Cannot cross HUC-4 basins




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## Advanced vs. Released Credits



- **Advanced:** available for sale prior to being fulfilled with an approved mitigation project.
- **Released:** generated from a Corps approved project as performance standards are met, released per a credit release schedule.



- All Released Credits must 1<sup>st</sup> be used to replenish or “payback” previous Advanced Credit sales.
  - Similar to a credit card or revolving account concept.

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### Credit Ratios (credits : impact acre)



- In general, WWCT will be a 1.45:1 ratio
  - Meaning a 1 acre impact equals 1.45 credits.
  - Based on state minimum 1.2:1 + 0.25:1 increase for temporal loss.
- WWCT, sells Advanced Credits, prior to having project on the ground.
- Subject to change and addressed on a project case by case basis as some impacts may require additional credits.

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### Compensation Planning Frameworks (CPF)



- Main decision tool specific to each service area guiding selection and implementation of mitigation activities.
- Threats
- Historic Loss
- Current Conditions
- Goals and Objectives
- Priorities
- Preservation
- Stakeholder Involvement
- Protection
- Evaluation and Reporting



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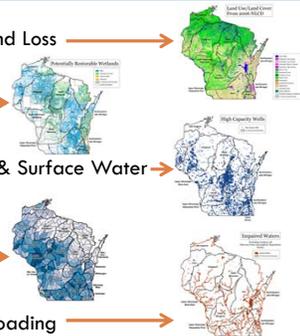
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### CPF – Overall Wetland Threats



- Habitat Segmentation and Loss
- Agricultural Impacts
- Groundwater Depletion & Surface Water Alteration
- Invasive Species
- Nutrient and Sediment Loading



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## CPF – Goals and Objectives



- Overall Service Area goals & objectives
  - Provide comp mitigation based on credit sales
  - Perform comp mitigation in high priority watersheds (high historic loss, high PRW)
  - Replace historic wetland types sustaining high losses, supported by permitted losses.
  - Implement priority actions for SGCN & their associated wetland habitat.
  - Address 303d listed waters capable of remediation through wetland projects.
  - Provide functional buffers around projects to sustain wetland function.
  - Preserve rare & high quality wetlands, critical habitat for T/E species, etc.
- Specific HUC-8 Watershed goals & objectives
  - Discuss specific watershed characteristics
  - Identify the restoration & enhancement of specific wetland cover types
  - Identify the preservation of specific rare wetland types according to the WWAP

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## CPF – Prioritization Strategy for Site Selection & Planning



- **First**, select projects that meet the core requirements
  - Successful & sustainable net gain &/or preservation of function &/or area.
  - Fulfill tenets of existing Advanced Watershed Plans (AWP) or prioritization strategy, preference for AWP.
  - Cost, feasibility, size, proximity to protected areas, corridor connectivity, human use value, efficient maintenance, NRB Boundaries.
- **Second**, select projects based on capacity to provide wetland functions & achieve goals and objectives
- **Third**, select projects located in or adjacent to PRW or other priority conservation areas
- **Fourth**, prioritize projects located in high opportunity HUC-8's (high % historic loss, high quantity PRW)

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## Request for Proposal Process (RFP)



- Two avenues for developing projects:
  1. Solicitation of projects through open RFP process; or
  2. Internal project developed by DNR
    - Preference given to open RFP process
- RFP developed by sponsor (DNR), submit to Corps for approval.
- RFP reviewed and approved by Corps in consultation with IRT.
- Final RFP published seeking projects from the public, non-profits, NGO's, DNR programs, etc.
- Projects received are evaluated by sponsor (DNR) & a selection is made.
- Corps & IRT comment on selected project prior to developing mitigation plan.
- Selected project is prepared into a mitigation plan & submitted to Corps for funding approval in consultation with the IRT.




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## Ownership & Long-Term Mgmt.



- DNR legally responsible
- Perpetual protection
  - Fee simple title or;
  - conservation easements;
  - Other land restrictions
- Possible to transfer ownership
  - non-profit, NGO or another state/local government
- Possible to transfer long term management
  - solicitation of contracts proposals or other mechanism




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## Current Program Status



- Program approved on 11/19/2014
- First transaction completed on 12/22/2014
  - 5.47 advanced credits sold – Upper Illinois Service Area - \$322,328
- Current Credit Availability

Revised 2-11-2015

Service Area	Authorized Advanced Credits	Advanced Credits Sold	Released Credits Fulfilled	Available Advanced Credits
Lake Superior	75	0.00	0.00	75.00
St. Croix	30	0.00	0.00	30.00
Chippewa	50	0.00	0.00	50.00
Upper Mississippi - Black Root	50	10.56	0.00	39.44
Upper Wisconsin	100	0.00	0.00	100.00
Lower Wisconsin	40	0.00	0.00	40.00
Upper Mississippi - Maquoketa Plum	30	0.00	0.00	30.00
Rock	90	0.00	0.00	90.00
Upper Illinois	30	5.47	0.00	24.53
Northwestern Lake Michigan	100	0.00	0.00	100.00
Southwestern Lake Michigan	60	0.00	0.00	60.00
Fox	55	1.91	0.00	53.09

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## Program Account



- Separate appropriation 435
  - Segregated from other funds
  - Interest bearing
  - 10% Administrative Fee
  - Max 10% Contingency Fund
- Annual Ledgers to Corps
- Project Initiation
  - 3 growing seasons after selling first Advanced Credit:
  - Failsafe options - Buy bank credits, combine adjacent service areas with HUC4's, Corps grants extension.




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