



# Establishing a Wetland Bank in Minnesota

Updated February 1, 2018

This document provides a general summary of the key steps in establishing 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 steps in the wetland bank site establishment process along with the responsible reviewing entity and typical processing time. The estimated review timelines do not include the time it takes for the applicant to complete the information required for review. 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 lengthen review times.

| Key Step  | Reviewer       | “Typical” Review Time |
|---|----------------|-----------------------|
| <b>Bank Plan Application</b><br>Draft Prospectus (Scoping), Prospectus (Concept Plan), Mitigation Plan (Full Application) | LGU, TEP, BWSR | 120 – 240 days        |
| <b>Legal Boundary Survey</b>  | BWSR           | 10 – 15 days          |
| <b>Title Insurance Commitment</b>   | BWSR           | 30 – 60 days          |
| <b>Recorded Conservation Easement &amp; Final Title Insurance Policy</b>  | BWSR           | 15 – 30 days          |
| <b>Project Construction/Implementation</b>  | None           | Applicant Determines  |
| <b>Construction Certification</b>   | LGU            | 15 – 30 days          |
| <b>Application to Deposit Credits</b>   | LGU, TEP       | 15 – 30 days          |

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.

## Bank Plan Application

To establish a wetland bank in Minnesota, approval of the Mitigation Plan must first be obtained. BWSR recommends that project sponsors follow the three-phase application process described below, which generally aligns with the first three phases of the review process followed by the U.S. Army Corps of Engineers (Corps) in accordance with the Federal Mitigation Rule. The three phases are as follows:

1. Draft Prospectus (Scoping) – *Optional under WCA*
2. Prospectus (Concept Plan) – *Optional under WCA*
3. Mitigation Plan (Full Application) – *Required under WCA*

Applicants must utilize the applicable form or outline for each phase of the review process. The forms and outline are available on the BWSR website.

Draft Prospectus (Scoping) – Bank sponsors may first submit a draft prospectus to the LGU to initiate the review process. This preliminary review will help the project sponsor identify opportunities, issues, and potential problems and will result in findings and recommendations regarding overall suitability of the project site for wetland banking. Early agency review and input allows a bank 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 form and compiling the necessary information. This phase of the process can be initiated by a sponsor without the assistance of professional consultants. The sponsor will receive a copy of the agency findings and recommendations upon review of the draft prospectus. Agency review of this document typically takes 30-60 days.

Prospectus (Concept Plan) – The prospectus provides the reviewing agencies with a conceptual overview of the proposed wetland bank. LGU and TEP review of this document will help identify any potential issues with the project design, proposed easement boundary, credit amount, credit criteria, credit release schedule, and any other issues prior to investing the time and expense necessary to complete a mitigation plan. 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 agency findings and recommendations at the conclusion of the review process. Agency review of this document typically takes 30-60 days.

The applicant may wish to obtain a title opinion at this time to assess potential risks or hurdles they may encounter by participating in the wetland bank program. A title opinion involves hiring a qualified party to search the property's abstract to determine ownership, status of taxes, and any encumbrances (i.e. a burden or claim) that may be on the title of the property. There may or may not be matters of record against the property that a landowner may have to resolve to obtain marketable title to the property as determined by the program. A title opinion is one valuable tool in helping to illuminate those potential issues. Note that a title opinion is a preliminary search. A detailed title insurance commitment and policy must be obtained at a later date as described below in the Easement Acquisition section of this document.

Mitigation Plan (Full Application) – Following prospectus review, submittal of the mitigation plan to the LGU will initiate the formal review and approval process under WCA rules. Only the approval of the mitigation plan by the LGU constitutes approval of a wetland bank plan for WCA purposes. Much of the same information required in the prospectus phase is also required for the full application, but with more detail. Upon receipt of a complete mitigation plan, there will be a formal notice of application issued by the LGU with a comment period specified in the notice. For most projects, preparation of the mitigation plan 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. Agency review of this document typically takes 60-120 days and may require the bank sponsor to respond to review comments, participate in meetings, and, in certain cases, submit additional information or provide a revised mitigation plan.

Please note that the Corps has additional requirements beyond submittal of the mitigation plan. These requirements are not included in this document but are referenced on the BWSR and Corps websites.

## **Easement Acquisition**

Acquiring a conservation easement can be a complex and time consuming process that has the potential to result in unforeseen project delays and expenses. The entire acquisition process typically takes 4-8+ months due to the various required steps and levels of coordination between the applicant, land surveyor, title agent, and BWSR staff. The five major easement acquisition milestones are outlined below and followed by a *Step by Step Wetland Bank Easement Acquisition Guide* which summarizes the required order and estimated timeline for each step of the process. Applicants must complete the entire easement acquisition process before credits can be deposited into the State Wetland Bank.

### **1. Preliminary Ownership Review**

To initiate easement acquisition, applicants must submit a specific set of BWSR forms and ownership documentation (Section 1 documents), as described on the BWSR website under the “Wetland Banking” section. Applicants must also submit the initial easement acquisition fee of \$1,000 at this time. See the *2017 Wetland Mitigation Fee Policy* on the BWSR website for additional details regarding easement acquisition fees.

### **2. Legal Boundary Survey**

A legal boundary survey is required to locate and describe the boundary of the wetland bank area on which the required conservation easement will be recorded. This requires the services of a registered land surveyor whom the applicant is responsible for hiring. 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. The surveyor must also prepare a certificate of survey in the specific format required by BWSR (see *Legal Survey and Signage Requirements* document on the BWSR website). BWSR easement staff will review the submitted certificate of survey, request revisions as needed, and incorporate the final approved version into the easement document, which BWSR will prepare for the landowner to sign.

### **3. Title Insurance Commitment**

A title insurance policy naming the State of Minnesota as the insured is required for all conservation easements. Title insurance is purchased by the State to ensure that the property being proposed for a conservation easement has marketable title. The company issuing the policy defends and/or compensates the State if any title problem not excepted from coverage arises that affects the State’s ability to enforce the terms of the easement. It is the responsibility of the landowner to hire a title agent and obtain a title insurance policy acceptable to the State. Note that the applicant must wait to obtain title insurance until after BWSR gives explicit instructions to do so. The insured amount (\$) of the policy is based on the number of anticipated credits identified in the approved bank plan and will be provided by BWSR. A title agent representing the landowner will need to provide the following services:

- A. Update the property abstract to the current date of request
- B. Prepare a title commitment that includes the BWSR approved certificate of survey and identifies all exceptions (i.e. items that are too great a risk for the company to insure)
- C. Work with BWSR to tailor the title commitment to meet State requirements (this task typically requires back and forth coordination between the title agent and BWSR easement staff)

- D. Perform a gap check to confirm no changes to the title between the commitment date and the date the easement is to be recorded
- E. Record the easement document with the county in which the easement is located
- F. Issue a final title insurance policy (ALTA Owners Policy 1987 (6-17-06))

BWSR will send out an instructional letter and Specimen Title Insurance Policy 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 help to ensure that the State's required format is followed, although agents may still need additional guidance from BWSR.

Prior to recording the easement, the applicant is responsible for clearing certain property encumbrances that appear on the title commitment, if any. Inability or unwillingness to clear encumbrances could prohibit the State from accepting the easement and prevent establishment of a wetland bank. The following are examples of potential encumbrances and the typical actions required by BWSR:

- **Existing Mortgages:** Mortgage holders must sign a mortgage consent form (prepared by BWSR) to be recorded with the county in conjunction with the easement. Certain lenders or mortgage holders may not be willing to consent to the conservation easement and the landowner may be required to refinance with a lender that is willing to consent.
- **Utility Easements:** Landowners must request confinement of blanket utility easements (gas, electric, telephone, wind, etc.) that conflict with the approved bank plan or easement language.
- **Tax Liens:** All property taxes must be paid to date.
- **Severed Mineral Rights:** Landowners must attempt to purchase severed mineral rights (i.e. another party's right to mine) if they are currently under different private ownership. If purchase is not possible the landowner must obtain a non-disturbance agreement with the current mineral right owner.

#### 4. Easement Execution

Once the title is cleared to the State's satisfaction and the title commitment has been received, reviewed and approved by BWSR and the State Attorney General office (AG), BWSR will prepare the conservation easement and send it to the landowner for signature. The landowner then returns the signed easement to BWSR in conjunction with the balance of the easement acquisition fee (\$2,400).

#### 5. Easement Recording & Final Title Insurance Policy

Upon receipt of the signed easement and \$2,400 fee, BWSR will countersign the easement and send the fully executed document to the title agent to check for any new encumbrances (gap check), record the easement, and prepare the final title insurance policy. BWSR and the AG will review and approve all final documents. Note that 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 may be addressed through the mitigation plan referenced in the easement.

The following page contains a step by step description of the typical easement acquisition process. The remaining items required beyond easement acquisition are outlined on page 6.

# Step by Step Wetland Bank Easement Acquisition Guide

| Step   | Applicant Responsibilities   | BWSR Responsibilities  |
|--|--|--|
| <b>1.</b><br><b>Preliminary Ownership Review</b><br><i>(2 weeks)*</i>                | A. Submit initial \$1,000 Easement Acquisition Fee<br>B. Submit Section 1 Documents: <ul style="list-style-type: none"> <li>• Acquisition Checklist</li> <li>• Initiation Form</li> <li>• Assessment Form</li> <li>• Aerial photo with preliminary easement boundary, section corners, road labels, etc.</li> <li>• Deed(s) and other ownership documents as needed</li> </ul> | C. Confirm receipt of \$1,000 Easement Acquisition Fee<br>D. Review Section 1 Documents for completeness; request additional information as needed<br>E. Assign Easement ID Number<br>F. Provide applicant with Contact Information Form<br>G. Notify applicant to obtain a legal survey of the easement boundary to be documented on a certificate of survey in accordance with BWSR survey format requirements   |
| <b>2.</b><br><b>Legal Boundary Survey</b><br><i>(1-2 months)*</i>                    | A. Complete and return the Contact Information Form<br>B. Hire a surveyor to prepare a certificate of survey (map & legal description) that meets BWSR format requirements<br>C. Send certificate of survey and GIS shapefile of boundary to BWSR for review and comment   | D. Review certificate of survey & shapefile; request revisions as needed<br>E. Confirm easement boundary with BWSR Wetland Section<br>F. Provide applicant with instructions for obtaining a title commitment  |
| <b>3.</b><br><b>Title Commitment</b><br><i>(1-2+ months)*</i>                        | A. Provide Title Agent with approved certificate of survey & BWSR instructions for title commitment<br>B. Title agent to prepare commitment in requested format and send to BWSR for review and comment  | C. Review title commitment and request revisions as needed<br><i>(When applicable, landowner is responsible for clearing title as directed by BWSR, prior to recording the Easement)</i><br>D. Prepare easement document & credit acknowledgment form<br>E. Provide title commitment and easement to State Attorney General office (AG) for review, comment, and approval<br>F. Mail easement document & credit acknowledgement form to landowner for signature and notarization |
| <b>4.</b><br><b>Easement Execution</b><br><i>(1 month)*</i>                          | A. Landowner to execute easement document and credit acknowledgment form (both must be notarized) and mail original copies to BWSR<br>B. Submit remaining \$2,400 Easement Acquisition Fee   | C. Confirm receipt of \$2,400 Easement Acquisition Fee<br>D. Obtain BWSR signature on easement document<br>E. Send original executed easement to title agent with instructions for performing a gap check, recording the Easement, and preparing the final title policy  |
| <b>5.</b><br><b>Easement Recording &amp; Title Insurance</b><br><i>(1-2 months)*</i> | A. Title Agent to perform gap check to ensure no changes to title, record easement with the county, and prepare final title policy in requested format<br>B. Title Agent to mail original hard copies of each to BWSR  | C. Review recorded easement and title policy for completeness<br>D. Provide documents to AG for final review and approval<br>E. Notify BWSR Wetland Section that easement process is complete<br>F. Email copy of recorded easement to applicant with instructions for next steps  |

*\*Timeframes are estimates for a typical easement. There are a variety of extenuating circumstances that could delay this process.*

## 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 mitigation plan. This typically involves an as-built survey of construction features (berms, control structures, etc.) and seed tags or receipts confirming that seeding and planting was accomplished as specified in the mitigation plan. The LGU provides notification to the bank sponsor when they determine 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 “Transaction Form to Deposit Credits” is completed by the sponsor and provided to the LGU for approval. Once the required signatures are obtained, the form is sent to the BWSR wetland bank coordinator to establish a wetland bank account and complete the deposit of credits.

## Bank Deposit Fees

At the time of the first deposit of credits, the sponsor will be charged an account establishment fee. The establishment fee is assessed at 6.5% of the value of the credits deposited, not to exceed \$1,000. Credit values are updated annually by BWSR based on land value data from the Minnesota Department of Revenue and provided on wetland bank transaction forms. Subsequent deposits into the account are subject to deposit fees also assessed at 6.5% of the value of the credits deposited, not to exceed \$1,000. An annual account maintenance fee may also be assessed at the time of the deposit if not paid previously during the calendar year.

There are other fees associated with the withdrawal of deposited wetland credits (withdrawal and stewardship fees), but these are assessed at the time of withdrawal and are typically passed on to the user of the credits. A complete description of the fees applicable to wetland banking is provided on the BWSR website under the “Wetland Banking” section.

## 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><br>Registered Land Surveyor Fee | \$3000 - \$6000 |
| <b>Title Insurance</b><br>Title Agent Fee                    | \$1500 - \$3000 |
| <b>Easement Preparation and Recording</b><br>Recording Fees  | \$50 - \$100    |
| <b>Bank Fees<sup>1</sup></b>                                 | \$4400          |

<sup>1</sup> Easement Acquisition and Account Establishment Fees

BWSR Guidance – February 1, 2018. This document is available on the BWSR website and may be revised periodically. Check the BWSR website for the most current version (<http://www.bwsr.state.mn.us/wetlands>).