



WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

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DOCUMENT TITLE WISCONSIN WETLAND CONSERVATION TRUST ADMINISTRATIVE GUIDANCE

PROGRAM/BUREAU WATERWAYS PROGRAM

STATUTORY AUTHORITY OR LEGAL CITATION WIS STAT CH 281

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DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

A handwritten signature in black ink, appearing to read 'Michael C. [unclear]'.

10/11/19

Signature

Date



BUREAU OF WATERSHED MANAGEMENT PROGRAM GUIDANCE

Waterway and Wetland Protection

Wisconsin Wetland Conservation Trust Administrative Guidance

Effective Date: 6/5/2019
Guidance #: 3500-2019-01

Notice: This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

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Michael Thompson, Director
Bureau of Watershed Management

5/29/19
Date

Introduction

This document is intended to explain the operations of the Wisconsin Wetland Conservation Trust (WWCT) for mitigation project proponents concerning topics not addressed by the [WWCT Program Instrument](#) or state statute. This document outlines the in-lieu fee (ILF) program's procedures, including:

- [Chapter 1 – WWCT Purpose and Administration](#)
- [Chapter 2 – Project Selection](#)
- [Chapter 3 – Project Development](#)
- [Chapter 4 – Project Funding and Contracting](#)
- [Chapter 5 – Real Estate](#)

This document is not intended to provide guidance on the mechanics of credit sales. See the [WWCT Program website](#) for a description of the credit sale process and supporting documents. This guidance is also not intended to discuss other types of wetland compensatory mitigation. For more information about other mitigation options visit <https://dnr.wi.gov/topic/wetlands/mitigation/>. This Program Guidance was revised in October 2018.

Chapter 1 – WWCT Purpose and Administration

WWCT Purpose

In-lieu fee (ILF) mitigation is a mitigation option by which the permitting authorities allow a permittee to purchase mitigation credits from the Wisconsin DNR instead of either completing [project-specific mitigation](#) or purchasing credits from a [mitigation bank](#). The WWCT then funds wetland compensatory mitigation projects focusing on the greatest watershed need. The WWCT is an ILF mitigation program authorized by the U.S. Army Corps of Engineers-St. Paul District (Corps) and administered by the Wisconsin Department of Natural Resources (Department) in the State of Wisconsin. The WWCT program and all wetland mitigation sites developed by the program must be reviewed and approved by the Corps and are subject to the Corps' regulations.

The overall goal of the WWCT is to offset lost wetland functions on a watershed scale. The program provides a streamlined compensatory mitigation process as the Department takes on the legal responsibility for mitigation from permittees when credits are purchased, which satisfies the permittees' mitigation requirements. By combining the required mitigation from many smaller wetland impacts within a [service area](#) into collective mitigation at larger sites, the WWCT can achieve ecological value and functional lift on a greater scale. The program strives to fund high quality, successful wetland restoration projects.

WWCT Program Administration Overview

Wetland compensatory mitigation is required to offset temporary or permanent wetland impacts authorized under wetland permits (as regulated by the Corps and DNR) or wetland exemptions (s. 281.36(3r), Wis. Stats.). If a stakeholder is required to meet their mitigation requirements through the ILF program, they purchase “advanced credits” from the WWCT. The WWCT sells credits in major watersheds, known as service areas, each of which has advanced credits for sale as established by the Corps, revenue generation from credit sales, and available mitigation project funding. All revenue generated through the sale of advanced credits is deposited into a WWCT account and coded according to the service area in which the wetland impact was located. The principles, responsibilities and standards for operation of the WWCT are described in the [WWCT Program Instrument](#). The Instrument is the guiding document of the WWCT; it was approved by the Department, Corps, and the U.S. Environmental Protection Agency in 2014 to meet the requirements of s. 281.36(3r)(e), Wis. Stats.

The WWCT operates two subprograms for funding wetland mitigation projects. Launched in 2014, any public, private, or nonprofit individual or organization may apply to the WWCT Standard Subprogram to conduct a wetland mitigation project on any public or private land in Wisconsin. Created in 2018, the WWCT State Lands Grant Subprogram specifically targets mitigation project proposals on Department lands by nonprofit organizations (s. 281.37, Wis. Stats.). The Standard Subprogram and the State Lands Grant Subprogram use the same funding source and the same RFP process. Applicants seeking to apply for funds through the State Lands Grant Subprogram must provide documentation showing that their proposed project is located on Department land (as defined in s. 23.09(2)(d), Wis. Stats.), and has been endorsed by the local DNR property manager. Applicants must also provide proof of their 501(c)(3) status. A map of state lands potentially suitable for WWCT mitigation projects can be viewed on the [DNR Surface Water Data Viewer](#).

Projects under both subprograms are selected through a rolling quarterly RFP process. Project proponents carry out wetland mitigation projects with funding from the WWCT within the same service area in which the permitted wetland impacts occurred. The Corps, in consultation with the Interagency Review Team (IRT), authorizes the use of advanced credit sale revenue for the completion of mitigation projects that restore, enhance, create, and/or preserve wetland resources to compensate for the loss of wetlands and their ecological function. WWCT can provide funds for all mitigation project activities, from site planning to long-term management. Projects are required to meet vegetative and hydrologic performance standards, are monitored over 5 to 10 years, and include endowment funds for long-term management.



Figure 1: Basic WWCT program operation

Chapter 2 – Project Selection

The WWCT identifies and selects projects through a public Request for Proposals (RFP) open to all eligible applicants and through an internal search process.

Eligible Project Proponents

Eligible project proponents for the WWCT Standard Subprogram include public agencies, nonprofit organizations, Wisconsin tribes, environmental consultants, municipalities, Wisconsin businesses, or any Wisconsin landowner. Applicants may submit a complete application to the WWCT seeking funding to implement a wetland mitigation project. The primary applicant must provide a Statement of Qualifications with their application to verify their experience.

Eligible project proponents for the WWCT State Lands Grant Subprogram must also provide proof of their 501(c)(3) status. The applicant must be a nonprofit but may choose to subcontract with for-profit organizations as needed.

Request for Proposals (RFP)

When the WWCT has sold enough advanced credits in a service area to adequately fund a new project, it will publish an RFP at the beginning of each quarter announcing available funding. The RFP process will be identical for the Standard Subprogram and the State Lands Grant Subprogram. At the beginning of each quarter, the RFP will be posted on the [WWCT RFP website](#), including the current quarter’s eligible service areas, credits needed, funds available, and due dates. Project proposals should ideally include a single, contiguous project area, and must take place on land that can be protected in perpetuity via a conservation easement or Department ownership in fee-simple title accompanied by a restrictive covenant.

Under a typical review timeline, complete applications must be submitted to the WWCT no later than 30 days before the end of the quarter for the application to be reviewed in that quarter. Therefore, applications must be submitted by March 1, May 31, August 31, and December 1 to ensure review during the respective quarter. If applicants do not apply by the quarterly deadline, then their application will generally not be reviewed until the next quarter when credits are again available in that service area. The WWCT highly encourages applicants to contact program staff with questions regarding their application. If a service area falls behind in project development, an alternative timeline may be implemented from this standard process to ensure that WWCT complies with applicable regulatory timelines.

It is important to note that adequate acres and credit potential for a project are dependent on the WWCT's credit need and are determined on a case by case basis. For example, if 35 credits are needed in a service area, the WWCT prefers to pursue one project that generates 37-40 credits. If one project generating 37-40 credits is not possible, the WWCT prefers to pursue two projects that generate 18-20 credits each rather than one project that generates 30 credits and one that generates 5 credits. Projects on sites less than 15-20 acres can be difficult to implement due to budget constraints.

Application Scoring

All submitted complete applications for a service area with funding will be reviewed using the WWCT Project Application Scoring Criteria (Table 1). The scoring criteria includes 100 possible points with 50 for Proposal Evaluation and 50 for Site Evaluation. Any projects that score less than 70 points may not be considered for funding/selection. If multiple applications are submitted for one service area, the project(s) that is highest scoring and best-suited to improve wetland functional values will be pursued.

After an application is scored, WWCT may request additional information from applicants and/or arrange a field visit to the proposal site to determine and confirm the viability of a project. Any additional information gathered will be used in the final determination of qualified proposals.

At the end of each quarter, the WWCT will notify all applicants of the status of their application. The WWCT may submit each qualified proposal as a Draft Prospectus to the Corps/IRT. Selected proposals receive support from WWCT staff for project development and implementation. The Department will enter into a contract for Prospectus development for a selected proposal according to consideration of land protection and regulatory timelines. The WWCT reserves the right to pursue multiple qualified projects in a single Service Area.

Table 1. WWCT Project Application Scoring Criteria

WWCT Project Application Scoring Criteria	Maximum Score
Proposal Evaluation	
The proposal demonstrates the ability to result in a successful and sustainable net gain and preservation of wetland functional values and area according to WWCT project timelines	15
The proposal targets the goals and objectives identified in the Compensation Planning Framework for the Service Area and HUC-8 watersheds, including Advanced Watershed Plans (where applicable).	15
The proposal adequately describes site conditions, site suitability, and reasoning to support restoration planning decisions.	10
The project budget and restoration plan are cost efficient and appropriate.	5
The project applicant(s) shows experience, breadth of knowledge, and a demonstrated ability to complete successful wetland restoration projects.	5
Site Evaluation	
The site contains drained hydric soils and/or a high proportion of mapped Potentially Restorable Wetlands.	15
The site is of adequate size to either satisfy WWCT's legal responsibility taken on through Advanced Credit sales OR can satisfy this responsibility in combination with other projects.	10
The site is not likely to receive continual inputs of undesirable vegetative species (invasive and/or non-native species).	10
Artificial drainage features which impact hydrology can be disabled without negatively impacting neighboring properties.	5
The site will require minimum maintenance of structures to sustain targeted community types, functions, and services.	5
The site is in close proximity to existing conservation lands. Priority will be given to sites near important conservation lands and/or sites that satisfy important conservation actions.	5
TOTAL MAXIMUM SCORE = 100 POINTS	

At any time, the WWCT retains the rights to:

- Not pursue a project for grant funding
- Publish the same available credits in the next RFP cycle
- Pursue a project on Department-managed property
- Pursue another project from an external party
- Pursue a project from a portfolio of potential projects not previously pursued

Funding Considerations for Proposals

Non-federal funds supplied by the project proponent for land acquisition or other project tasks will not likely reduce credit generation of a mitigation site. Matching funds for mitigation projects will be considered during the application review and may make a proposal more cost efficient to WWCT, and potentially more competitive.

Lands intended for use in a WWCT project acquired with federal funds may result in a proportional credit reduction. For example, if 20% of the total funding for a project comes from federal funds for land acquisition, the total eligible credits will be reduced by 20%. This includes, but is not restricted to, land or easements purchased with WRP, NRDA, or LAWCON funds. Any credit reductions should be calculated in the project application. It is important to ensure that an additional funding source has no restrictions if used in conjunction with WWCT projects. Some funds such as NAWCA funding may not be viable funding partnerships based on restrictions of that source. Project applicants are encouraged to contact the relevant agency to determine the restrictions for specific funding sources.

The revenue generated from the sale of advanced credits is limited to activities that directly support wetland compensatory mitigation. Funding is available for all project-related costs such as land purchase, site planning, construction, monitoring and maintenance, and endowment funding for long-term management. Prohibited funding uses include: research, education and outreach, and upland preservation (besides eligible upland buffers).

Phased Projects

It is possible that some eligible projects may generate more advanced credits and/or exceed the available budget given the size or scope of the project. Large projects may be implemented in phases as needs and budgets become available. Large-scale projects may be advantageous to create significant function lift and long-term credit availability. It is recommended that stakeholders with potentially phased projects contact WWCT to discuss opportunities and submittal requirements.

Chapter 3 – Project Development

For all selected proposals, WWCT will assist project proponents throughout the Corps/IRT review process and ensure that federal mitigation requirements are met. The project development and review phase typically last between 1.5 and 3 years, and consists of Draft Prospectus (optional), Final Prospectus, Draft Compensation Site Plan, and Final Compensation Site Plan (CSP) submittal and approval. WWCT will lead in communication with and document submittal to the IRT.

Depending on the content in the original application, WWCT assists project proponents to add any required information for submittal of a Draft Prospectus and Final Prospectus to the Corps/IRT. After a positive Initial Evaluation Letter (IEL) from the Corps/IRT is received (following Final Prospectus review), WWCT may enter into a preconstruction contract with the project proponent through CSP approval.

Baseline data for the project site must be collected to define starting conditions. Baseline data allows WWCT and the Corps/IRT to understand potential wetland functional lift and determine probable credit ratios based on mitigation type. Baseline data is likely to include a wetland delineation, vegetative quality surveys, a soil survey, topography, hydrology wells, and tile surveys. Project proponents will receive funding for the necessary ecological and engineering studies to collect baseline data. WWCT will assist in planning and writing results into a mitigation plan narrative.

Site visits with the WWCT and the Corps/IRT will be scheduled as needed throughout the project design, construction, and monitoring phases. Information gained during site visits will allow the Corps/IRT to better evaluate restoration possibility and progress. Once the Final CSP is approved by the Corps/IRT, construction of the project may begin.

Standard Project Review Timeline

See Appendix D of the [Guidelines for Wetland Compensatory Mitigation in Wisconsin](#) for a detailed breakdown of the IRT project review timeline.

Project Design

1) Project Selection

- a. Project applications received by WWCT.
- b. Project(s) are selected and announced at the end of the quarter.
- c. The WWCT forwards application to the Corps/IRT as a Draft Prospectus (optional).
- d. The Corps/IRT has up to 30 days to provide initial comments on the Draft Prospectus. *

2) Prospectus

- a. The WWCT may enter into a Prospectus development contract with the project proponent.
- b. The WWCT works with project proponent to develop Final Prospectus to submit to the Corps/IRT.
- c. The Corps/IRT has up to 90 days to determine that the Final Prospectus is complete, send out public notice for the prospectus, and provide comments to the WWCT. *
- d. Upon receipt of a positive Initial Evaluation Letter, the WWCT will enter into a contract for project development costs.

3) Draft Compensation Site Plan (Draft Instrument Modification)

- a. The WWCT works with project proponent to develop a Draft CSP to send to the Corps/IRT.
- b. The Corps/IRT has up to 90 days to determine that the Draft CSP is complete and provide comments to the WWCT. *

4) Final Compensation Site Plan (Final Instrument Modification)

- a. The WWCT works with the project proponent to develop a Final CSP to send to the Corps/IRT.
- b. The Corps/IRT has up to 45 days to approve or deny the Final CSP. *
- c. Upon Corps/IRT execution of the Instrument Modification, a conservation easement will be recorded, and site construction may proceed.

Construction, Monitoring, Long-Term Management

1) Construction

- a. Site construction completed.
- b. Project proponent sends the as-built plans to the WWCT within 30 days after construction completion.
- c. The WWCT forwards as-built plans to the Corps/IRT.

- d. The WWCT will complete payment to the endowment held by Natural Resources Foundation for long-term site management.

2) *Monitoring and Management*

- a. Typical monitoring and active management for restored wetland communities and upland buffers is at least 5 consecutive years for herbaceous communities, 8 years for shrubby communities, and 10 years for forested communities.
- b. The first year of monitoring and management is the first full growing season after construction completion.
- c. Typically, the WWCT requires at least 5 monitoring reports over the 5-10-year project duration. Monitoring reports are due to the WWCT by November 1 of each monitoring year. The WWCT will forward reports to the Corps/IRT by December 15 of the monitoring year.

3) *Project Closeout*

- a. Once the monitoring period is completed and all performance standards have been met, a final report and request for the site to be closed out will be prepared by the WWCT with the project proponent for submittal to the Corps/IRT.
- b. After the Corps/IRT has approved the site close out, the project can begin to withdraw funding from the endowment to manage the site long-term.
- c. Responsibility for long-term management of the site will be determined via negotiation between WWCT and the project proponent or a third-party manager.

*Subject to 33 CFR Part 332.8(d) Army Corps of Engineers Federal Compensatory Mitigation Rule

Chapter 4 – Project Funding and Contracting

Source of Program Funds

As indicated in Chapter 2, funding for mitigation projects is generated from the sale of advanced credits from individual permittees and exempted applicants to the WWCT. Funds for contracts with selected applicants are already held by WWCT when the RFP is published.

Total Available Funding

Total available funds for each Service Area will be updated each quarter for the RFP announcement. Total available funds in a Service Area may be adjusted after the release of an RFP if additional credits have been sold in that Service Area.

Project Costs Eligible for Reimbursement

Eligible project costs include all activities necessary to complete the project, including appraisal and land acquisition, site planning and design, data collection, all construction, and monitoring and maintenance (see Table 2 for specific activities).

Contracting

The Department may create a contract for Prospectus development with project proponents of selected proposals. After a positive Initial Evaluation Letter (IEL) from the Corps/IRT is received (following Final Prospectus review), WWCT will create a contract for site plan development. After the Final CSP is approved, the WWCT will create a contract for the remainder of the project including construction, monitoring, and endowment. For projects taking place on non-Department land, a contract in compliance with Ch. 16, Wis. Stats., will be used. For projects taking place on Department-owned land, a contract in compliance with Ch. 23, Wis. Stats., and Chs. NR 734 and NR 736, Wis. Admin. Code, will be used. See contract templates under the Resources Tab at the [WWCT RFP website](#).

The standard contract template language allows the Department to meet its contracting responsibilities and is generally not modified. However, the contractor and the WWCT will work together to agree to project specific supplemental terms and conditions of the contract. After WWCT and the contractor have agreed upon contract language, WWCT will route the contract through the standard Department approval process, including Department signature. A scanned version of the Department-signed signature page will be sent to the contractor for signature and then returned to WWCT.

Payment

WWCT typically pays contractors on a reimbursement basis, as detailed in the contract. Contractors may submit a quarterly invoice of their costs broken down by WWCT activity code. Activity codes consist of typical project tasks such as site plan development, data collection, earthwork, etc. (Table 2). Activity codes allow the WWCT to track specific costs across all of its projects. Also, as part of the invoice submittal, contractors must submit an itemization of their time worked, and any proofs of payment and purchase such as subcontractor invoices and receipts for materials purchased. Per terms of the contract, contractors will be paid within 30 days of the Department receiving a properly completed invoice.

Table 2: Activity Codes for Contractor Invoicing

Preconstruction	Construction	Maintenance & Monitoring
Data Collection	Site Preparation	Monitoring
Land Acquisition	Earthwork	Maintenance
Design & Planning	Seeding and Planting	Project Administration
Site Plan Development	As-built Survey	
Project Administration	Project Administration	

Chapter 5 – Real Estate

Land Acquisition

The WWCT can accommodate several land ownership scenarios as part of a WWCT mitigation project. Non-Department applicants interested in owning a project site can receive funding for fee-simple acquisition as part of the larger WWCT grant award. It is also possible for WWCT to fund fee-simple acquisition by Department programs such as Wildlife, Fisheries, Parks, and Natural Areas.

Private Party Ownership - Land Acquisition, Appraisals, Purchase

The WWCT can fund the purchase of a mitigation site by the grant applicant or can purchase a perpetual conservation easement from the landowner. Typically, the WWCT can fund up to the fair market value of a property, determined through an appraisal as ordered by the applicant. If the property value is over \$350,000, a second appraisal must be completed. This second appraisal is ordered and paid for by the Department. All appraisals should consider the Department's [Real Estate Contract and Appraisal Report Guidelines](#). Before ordering an appraisal, the applicant should contact the WWCT to ensure that proper appraisal instructions are followed so that the appraisal meets the Department standards. If purchasing a conservation easement, the value of the easement would be determined by an appraisal.

If an appraisal is not completed before application submittal, an applicant may estimate the land acquisition value in the grant application and wait for application selection to order the appraisal, though an appraisal should be ordered as soon as possible. WWCT is only able to pay for appraisals after a contract has been signed to complete the project and the IRT has approved the Final Prospectus for the project. Before a contract has been signed, it is the applicant's responsibility to pay for the appraisal. The WWCT discourages project applications where there is not a willing and informed landowner intending to sell the property for appraised value.

Once an agreed-upon sale price has been determined, WWCT wires funds to the buyer via a title company to complete the land acquisition. Before the closing, the buyer must provide the Department with the title commitment for the subject parcels. A closing date will not be scheduled until a title commitment is received and approved. Department Real Estate staff reviews the closing statement and title commitment. After review, a letter is sent to the buyer's closing agent requesting wiring instructions and stating any necessary deed language required to protect WWCT's interest in the property. Typically, the deed should include language stating that a mitigation easement will be recorded after the Compensation Site Plan is approved. After these steps are completed, a closing date is scheduled. Funds will then be wired to the appropriate escrow account to complete the transaction.

Private Party Ownership – Long term protection

All parcels not owned outright by the Department will be required to grant a perpetual conservation easement to the Department to ensure the site is protected in perpetuity. In accordance with 281.36(3r)(e), Wis. Stats., all WWCT sites will be open to trapping, hunting, fishing, hiking, and cross-country skiing. All WWCT projects require that an easement be recorded to ensure that lands remain wetland mitigation sites and undeveloped in perpetuity. See the Mitigation Easement Template under the Resources Tab at the [WWCT RFP website](#). The mitigation easement acts as a standard

conservation easement, prohibiting most development and running with the deed. The Department holds and enforces this easement with some enforcement rights retained by the U.S. Army Corps of Engineers. Further, the easement states that the landowner must allow access for long-term management after the site monitoring period is complete. Long-term management can consist of spraying, reseeding, and burning, and can be funded by WWCT's long-term management endowment.

DNR Ownership - Land Acquisition, Appraisals, Purchase

For any Department land acquisition or donation, the project must be located within a Natural Resources Board (NRB)-approved acquisition boundary, and the NRB must approve the acquisition. If the DNR purchases land for a WWCT project, it will follow the same appraisal standards as indicated above for private-party purchases, with the Department ordering all appraisals needed.

Grant applicants proposing a project on behalf of the Department should contact WWCT and other appropriate Department staff to discuss land acquisition options and requirements early in the application process.

DNR Ownership – Long term protection

For sites that are currently, or are proposed to be, owned by the Department, a Declaration of Covenants and Restrictions ("Covenant") is required. A Covenant will be used for Department-owned land to protect the site so that it remains a wetland mitigation site in perpetuity. See the Covenant Template under the Resources Tab at the [WWCT RFP website](#). A Covenant on a WWCT project site will be held and enforced by the Corps. A Covenant will be recorded on the deed, and act in similar fashion to a conservation easement, restricting development and ensuring that the site will stay in wetland mitigation in perpetuity.

Public Access

Typically, once plant communities have been adequately restored and protected, WWCT sites are open to the public for five nature-based outdoor activities: trapping, hunting, fishing, hiking, and cross-country skiing (s. 281.36(3r)(e), Wis. Stats.). Please contact the WWCT for more information.