

Status of Wisconsin's Wetland Compensatory Mitigation Program (2017-2018)

Biennial Report from the Wisconsin Department of Natural Resources to the Wisconsin State Legislature

Purpose of this report

Wis. Stats. 281.36(13m) requires the Wisconsin Department of Natural Resources (department) to submit a report to the legislature that provides “an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299. The department shall include in its report a discussion of proposals and projects under the property development grant program under s. 23.099.”

Introduction

On May 10th, 2000, Governor Thompson signed into law [1999 WI Act 147](#), which created the state's first *wetland compensatory mitigation program*. Wetland mitigation refers to the process of restoring, enhancing, or creating wetlands as compensation for permitted adverse impacts to wetlands. Over the subsequent 18 years, the department has refined its mitigation program according to demand for wetland permits requiring mitigation, legislation, and guidance from the US Army Corps of Engineers. This report will outline the department's mitigation program in the period from 2017-2018.

The department's approach to wetland mitigation is laid out in the [Guidelines for Wetland Compensatory Mitigation in Wisconsin](#), which were finalized in August 2013 as the result of a joint effort between the department, US Army Corps of Engineers, and US Environmental Protection Agency.

Mitigation Requirements

Pursuant to s. 281.36(3r), Wis. Stat., wetland compensatory mitigation is required for individual wetland permits and for projects completed under the nonfederal wetland exemption that affect more than 1.5 acres of wetland in non-urban areas or more than 10,000 square feet of wetlands in urban areas. Mitigation is also required for manufacturing projects impacting wetlands located in an [electronics and information technology manufacturing zone](#) designated under s. 238.396 (1m) (281.36(4m)(a), Wis. Stat.).

Individual Wetland Permits

Wetland individual permits are a small portion of the overall wetland permits issued in the state. In fact, 15% of wetland permits issued are individual permits while the remaining 85% are general permits which do not require mitigation pursuant to s. 281.36(3r), Wis. Stat. As of November 2018, there were 282 individual wetland permits that were requested in this biennium. Of these requests, 267 were approved, 14 were withdrawn, and 1 is currently pending. Approximately 120 acres of wetland were authorized to be disturbed over the past two years. The minimum credit ratio to offset this impact through mitigation is 1.2:1. This means that there have been over 150 mitigation credits sold in Wisconsin during this biennium. A mitigation credit generally equates to one acre of wetland restored.

Visit <https://dnr.wi.gov/topic/Waterways/construction/wetlands.html> for more information about wetland individual permits.

Nonfederal Wetland Exemptions

The nonfederal wetland exemption became effective on July 1, 2018. Wetlands that are not subject to federal jurisdiction under 33 USC 1344 are considered “nonfederal” and may be eligible for this exemption. All federal wetlands are regulated by the U.S. Army Corp of Engineers. As previously stated, wetland compensatory mitigation is required for exempt nonfederal wetland activities that affect between 10,000 sq. ft. and 1 acre of wetlands in an urban area, and between 1.5 acres and 3 acres of wetlands in a non-urban area. Between July 1st and October 31st, 2018, 14 nonfederal exemption requests were submitted to DNR. Of these, 9 have been approved, 1 is awaiting confirmation that the U.S. Army Corp of Engineers does not have jurisdiction for a wetland, and 1 is completing mitigation requirements. No other projects are required to mitigate losses under the nonfederal wetland exemption. The remaining 3 projects are still in review. For more information about this, and other, wetland exemptions visit <https://dnr.wi.gov/topic/wetlands/permitExemptions.html>.

Electronics and Information Technology Manufacturing Zone

Under 2017 Wisconsin Act 58, manufacturing projects in the project area are exempt from Wisconsin state wetland permits and project proponents must mitigate all wetland impacts at a 2:1 ratio. To date, Foxconn has made two payments to the department's in-lieu fee program ([Wisconsin Wetland Conservation Trust](#)) to satisfy this mitigation requirement. For more information about this project visit <https://dnr.wi.gov/Business/Foxconn.html>.

WETLAND MITIGATION BANKING PROGRAM

Banks: Background

Wetland mitigation banks are privately-owned restored, enhanced, or created wetlands, which provide credits to offset unavoidable impacts to existing wetlands. To establish mitigation banks, landowners typically contract with consultants and submit plans to an Interagency Review Team (IRT) for review and approval.

Wisconsin currently has 18 approved mitigation banks, and 12 proposed mitigation banks.

Figure 1. Wetland Mitigation Banks in Wisconsin – Location and Status

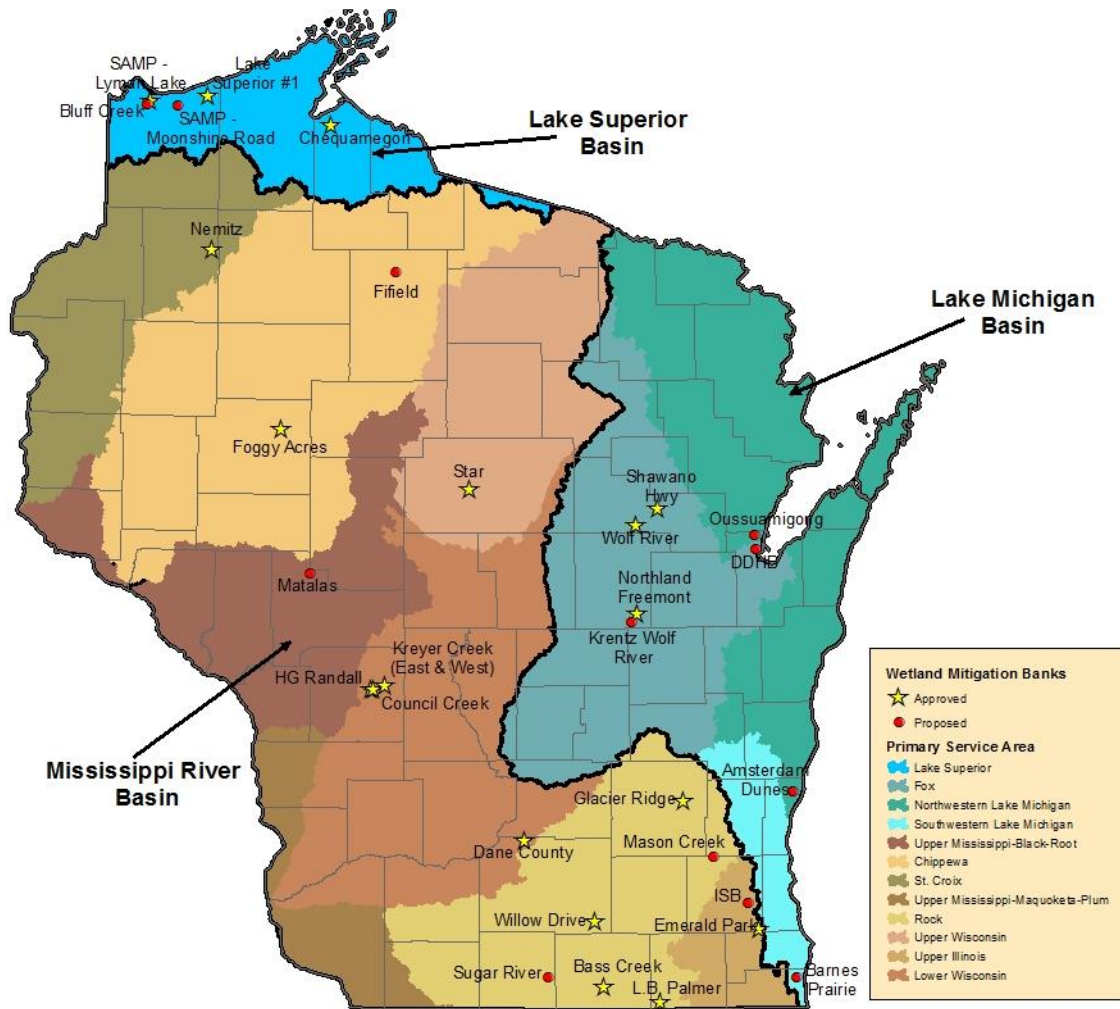


Table 1. 2017 and 2018 IRT- approved Mitigation Banks

Bank	Service Area
Nemitz	St. Croix
LB Palmer	Rock

Table 2. 2017 and 2018 Credit releases

Bank (Service Area)	Deep Marsh	Fresh Wet Meadow	Floodplain Forest	Sedge Meadow	Shallow Marsh	Shrub Swamp	Wet to Wet Mesic Prairie	Wooded Swamp	Total
Bass Creek		0.48	12.27						12.75
Chequamegon	0.03	2.72			0.24				2.99
Council Creek		1.05	1.51	0.67		0.36	0.44		4.03
Foggy Acres		7.13		6.4	4.4			0.68	18.61
HG Randall							6.06		6.06
Kreyer Creek East		0.01					4.04	0.04	4.09
Kreyer Creek West		1.12				2.73	0.38	1.52	5.75
Lake Superior #1						0.6			0.6
LB Palmer		0.43		0.1			2.94		3.47
Nemitz					0.03	1.2			1.23
Northland Freemont		4.42				0.63		0.3	5.35
Shawano County Highway		1.8			0.04				1.84
Star		3.99							3.99
Willow Drive						3.38	4.51	5.79	13.68
Wolf River		8.23							8.23
Total									92.67

WISCONSIN WETLAND CONSERVATION TRUST IN LIEU FEE MITIGATION PROGRAM

ILF: Program Overview

The ability for the department to establish a wetland mitigation in-lieu fee (ILF) program was first authorized in s. 281.36(3r)(a)(2), Wis. Stats., as a result of 2011 Wisconsin Act 118. This statute outlines what types of mitigation are approvable for state permits and exemptions; ILF and private wetland mitigation banking are considered equally preferred types of mitigation.

The WI Wetland Conservation Trust in lieu fee mitigation program (herein, “WWCT”) was established on November 19, 2014, through a legal agreement referred to as the Program Instrument, which was executed by signatories from the U.S. Army Corps of Engineers St. Paul District (USACE), U.S. Environmental Protection Agency (USEPA), and WI Department of Natural Resources. The WWCT Program is regulated primarily by the USACE in consultation with the Interagency Review Team (primarily made up of the USEPA).

The purpose of establishing the WWCT was to provide an additional method of compensatory mitigation to offset unavoidable adverse impacts to wetland resources focusing on the greatest watershed need. The overall objective of the WWCT is to complete compensatory wetland mitigation projects selected through a watershed approach. Through the sale of WWCT credits, the Sponsor accepts the legal responsibility to satisfy wetland compensatory mitigation requirements specified by US Army Corps of Engineers-St. Paul District permits authorized under Section 404 of the Clean Water Act, Section 10 of the River and Harbors Act and Wisconsin DNR Wetland Individual Permits pursuant to Chapter 281.36, Wis. Stats. The Sponsor may also collect separate non-credit related funds including, but not limited to those resulting from supplemental environmental projects, donations and Wisconsin wetland General Permit surcharge fees.

Wisconsin Act 183 (2017) requires the WWCT to create a subprogram to encourage establishment of ILF mitigation projects on department owned- or eased-land by 501(c)(3) organizations. The department has named this subprogram the WWCT State Lands Grant. To-date, the WWCT program has not approved any projects that meet the State Lands Grant criteria, nor has the department received any requests for funding under the related Property Development Grant Program (s. 23.099, Wis. Stats).

ILF: Scope

As previously indicated, the WWCT Program is primarily regulated by the USACE in consultation with the Interagency Review Team (primarily made up of the USEPA). The WWCT Program uses the same regulatory framework and process for all ILF projects and credit sales. There is no distinction between federally jurisdictional vs. state jurisdictional projects. Modifications to the instrument and statutory changes would be necessary to implement a state ILF program.

ILF: Current Status of Credit Sales

The WWCT Program has been a successful way for permit applicants and exemption applicants to satisfy their wetland compensatory mitigation obligations, enabling projects to move forward. Credit costs range in price from \$59,000 to \$62,000 per credit. Credit dollars are split into three accounts – 10% is put into an administrative fund, 5% into a contingency fund, and the remaining 85% is put into an account to fund wetland restoration projects ‘on-the-ground.’ In calendar years 2017 and 2018, the

program has sold \$7,171,500 in 42 transactions. Credits were sold in seven of the twelve service areas (Fox, Lake Superior, Lower Wisconsin, Northwestern Lake Michigan, Southwestern Lake Michigan, Upper Mississippi-Black Root, and Upper Illinois).

Table 3. 2017 and 2018 ILF Credit Sales

Service Area	Number of Permits	Invoice Totals
Fox	11	\$898,380.00
Lake Superior	1	\$48,380.00
Lower Wisconsin	1	\$190,320.00
Northwestern Lake Michigan	5	\$331,700.00
Southwestern Lake Michigan	18	\$2,296,480.00
Upper Mississippi-Black Root	1	\$779,580.00
Upper Illinois	5	\$2,626,660.00

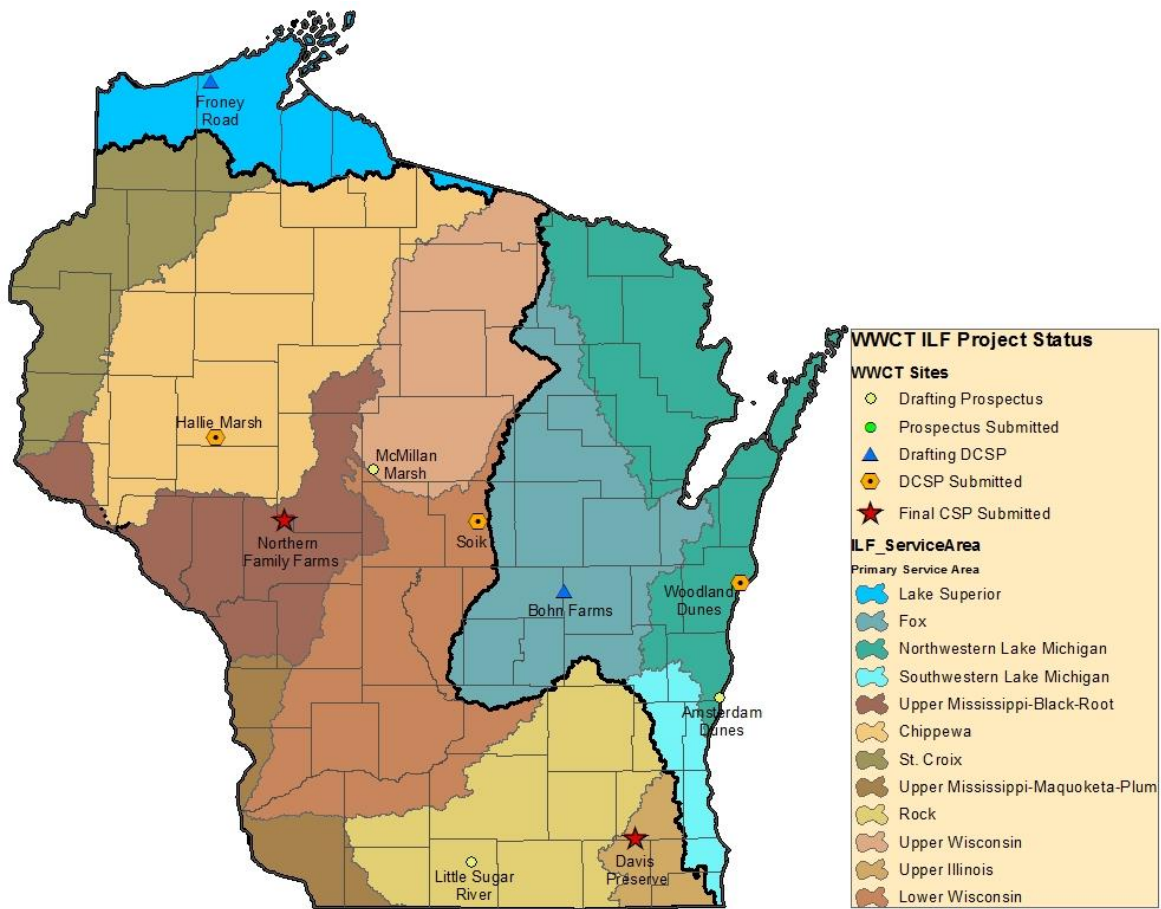
ILF: Current Status of Project Development

With the accumulated credit sale dollars from each service area, the WWCT Program finds and helps to develop wetland restoration projects in the service area where the original wetland impacts were incurred. As a first step, the WWCT publishes a request for proposals announcing how many credits are needed and how much funding is available in each service area. Any individual, agency, municipality, business, or any other person or group may apply for funding.

The WWCT works with a project proponent on each project to develop a mitigation plan to be reviewed by the Corps of Engineers. A typical project will take 2-3 years to develop before it is constructed. See Figure 2 for a location of the current projects and their status.

- 1) Projects likely to be constructed in 2019
 - a. Davis Preserve – Waukesha County Land Conservancy (Upper Illinois Service Area)
 - b. Northern Family Farms ILF Project – NFF Wetland Preserve, LLC (Upper Mississippi Black Root Service Area)
- 2) Projects in final planning stages
 - a. Woodland Dunes – Woodland Dunes Nature Center (Northwestern Lake Michigan Service Area)
 - b. Bohn Farms Restoration – Wisconsin DNR (Fox Service Area)
 - c. Hallie Marsh Restoration – Wisconsin DNR (Chippewa Service Area)
 - d. Froney Road – KCI Technologies, Inc (Lake Superior Service Area)
 - e. Soik Wetland Restoration – Village of Plover (Lower Wisconsin Service Area)
- 3) Additional projects in early planning phases (not yet approved by the Corps of Engineers)
 - a. Amsterdam Dunes – Sheboygan County (Northwestern Lake Michigan Service Area)
 - b. McMillan Marsh – Wisconsin DNR (Upper Wisconsin Service Area)
 - c. Little Sugar River Project – Wisconsin DNR (Rock Service Area)

Figure 2. WWCT ILF Projects – Location and Status



ILF: Recent Accomplishments

- 1) Establishment of WWCT State Lands Grant
 2017 Wisconsin Act 183 was signed into law in March of 2018. Since that time, the WWCT Program has identified potential wetland mitigation sites on department land. A map of those parcels has been added to the department’s Surface Water Data Viewer.
- 2) Completion of Three Requests for Proposals (RFP) in 2017-2018
 In the last two calendar years, the WWCT Program has published three RFP rounds. Cumulatively, the department has published an RFP in eight of our twelve service areas for a total of approximately \$12 Million in grant funds.
- 3) Development of Seven Project Proposals
 Out of the twelve service areas in the state, we have sold credits in eleven (no sales in the Upper Mississippi Maquoketa-Plum). As a result, we have started to develop projects within those service areas. To-date, we have received approvals from the U.S. Army Corps of Engineers to proceed with the final planning stages of seven projects (see Figure 2 for locations). We have another three projects in the early planning stages at this time. We are actively working to identify new projects in four additional service areas (some of them second projects for the

watershed) – most of these projects are located in the southeast corner of the state.

We hope to start construction, if conditions allow, on one to two projects in winter 2018-2019 and on another three to five projects by the end of 2019.

4) Updated WWCT Program Guidance

In the fall of 2018, the WWCT Program published updated guidance. This guidance document was developed to increase understanding of WWCT project selection, development, and implementation including details on real estate and contracting.

ILF: Project Showcase

The Mukwonago River wetland restoration project, called the Davis Preserve, is being proposed by the Waukesha County Land Conservancy – a small nonprofit land trust in southeast Wisconsin. Being a smaller group, they partnered with The Nature Conservancy and a handful of other local wetland restoration experts to develop a wonderful mitigation plan. Their team building skills have helped them identify a range of experts, each providing a unique perspective and expertise. The result has been an innovative plan to convert 52 acres of farmland and degraded floodplain forest into a matrix of sedge meadow, wet prairie, native upland buffer, and restored floodplain forest on the banks of the Mukwonago River. Their restoration plan includes filling in large drainage ditches, heavily seeding the farm fields with native wetland seed mixes, and controlling invasive species throughout the site. We expect to break ground on this project site very soon.

ILF: Additional Resources

- 1) Wisconsin Wetland Conservation Trust Instrument
<https://dnr.wi.gov/topic/Wetlands/documents/mitigation/WWCTFinalSignedInstrument.pdf>
- 2) WWCT Annual Report to the Corps of Engineers
2017:
<https://dnr.wi.gov/topic/Wetlands/documents/mitigation/WWCTAnnualReportFY2017.pdf>
2016:
<https://dnr.wi.gov/topic/Wetlands/documents/mitigation/WWCTAnnualReportFY2016.pdf>
- 3) WWCT ILF Program Webpage
<https://dnr.wi.gov/topic/Wetlands/mitigation/WWCT.html>

PERMITTEE RESPONSIBLE MITIGATION PROGRAM

PRM: Overview

As an alternative to purchasing mitigation credits from a wetland bank or the Wisconsin Conservation Trust (WWCT) Wetland Mitigation In-Lieu Fee (ILF) program, in certain circumstances the department allows permit applicants to complete their own mitigation projects. From 2017-2018, the department allowed one permittee-responsible mitigation project.