

Site Protection



Site Protection

“...mitigation project must be provided long-term protection through real estate instruments or other available mechanisms, as appropriate.”

33 CFR 332.7(a)(1)/40 CFR 230.97(a)(1)



Site protection may be provided through:

- Conservation easements
- Other restrictive covenants
- Title transfer F/S/T/L or non profit conservation organizations
- Federal facility management plans or integrated natural resources management plans on government property



Rule Language

- **“ ...consider relevant legal constraints on the use of conservation easements and/or restrictive covenants in determining whether such mechanisms provide sufficient site protection... ”**

33 CFR 332.7(a)(1)/40 CFR 230.97(a)(1)



Site Protection Considerations

- State laws may result in termination of legal restrictions on deed
- Prohibition on incompatible uses of mitigation lands
- Other recorded easements, liens, & restrictions



Site Protection Requirements

- 60-day notification of Corps before voiding or modifying *any* site protection mechanism
- When alternate mechanism is used & changes in need result in incompatible use, agency must provide alternative mitigation acceptable to Corps



Requirements

- PRM: site protection mechanism must be approved by Corps before or concurrent with, permitted impacts.
- Banks: site protection instrument must be finalized *before* any credits can be released
- ILFs: site protection instrument must be finalized before advance credits *become* released credits



Advantages of conservation easements

- Holder responsible for monitoring & maintenance;
- More secure form of land protection than other restrictive covenants;
 - In some states landowner can petition courts to remove deed restrictions;
 - Some County Recorders resist recordation of deed restrictions;
 - Can be difficult to remove.
- Many third party conservation easements include long-term stewardship requirements;



Potential holder may NOT accept a conservation easement because:

- Site is too small for expense associated with long-term management and maintenance;
- Site may not fit into conservation objectives of holder;
- Lack of dedicated funding for long-term management/maintenance of the easement.



Title transfer is often acceptable for site protection

- Problem:
 - Some agencies have converted mitigation sites to other purposes (e.g. wildlife food plots or other wetland habitats).
- One solution:
 - Reversionary clause so that mitigation land reverts to original landowner if land is not managed for intended use.



Useful approaches

- Coordination with Counsel
- SOPs
- Checklists
- Title search
- Templates
- Permit conditions



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MODEL DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

The following "Model Declaration of Conservation Covenants and Restrictions" document is provided for drafting purposes. Please check the Savannah District, Regulatory Division web site in order to view and access the most current draft restrictive covenant language and instructions.

The web site is located at: <http://www.sas.usace.army.mil>. Select the file entitled, "Permit/Regulatory Information" or "Obtaining a Permit." Scroll down under "Savannah District Regulatory Guidance and Publications" or until you see the files on: (1) Declaration of Conservation Covenants and Restrictions and (2) Amendments to the Declaration of Conservation Covenants and Restrictions.

