

STATE DEP Guidelines for ENCUMBRANCE of PROPERTY

Mitigation Bank Rule, Section 62-342.650, F.A.C.

Preservation mechanisms for mitigation banks. Mitigation banks are important areas because they will be used to offset impacts to numerous projects. They are also required to be managed in perpetuity. Therefore, all mitigation banks must be placed into a permanent form of preservation.

Before Mitigation Credits may be used from any Mitigation Bank, or any phase of a Mitigation Bank, the banker must either (62-342.650(1)):

1. cause a fee interest to be conveyed to the Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees"), or
2. cause a conservation easement to be conveyed to both the Department and the District. This is discussed below.

Real Property Conveyances (62-342.650(1)(a)):

The rule allows for the conveyance of the fee simple interest in the land from the landowner to the Board of Trustees, so that the Trustees become the landowner.

1. All real property conveyances shall be (62-342.650(3)):
 - a. in fee simple,
 - b. by statutory warranty deed (aka statutory general warranty deed), special warranty deed, or other deed, and
 - c. without encumbrances that adversely affect the integrity of the bank and that are acceptable to the Board of Trustees.

The Board of Trustees will accept a quit claim deed to aid in clearing minor title defects or otherwise resolve a boundary question in the Mitigation Bank. Realize that the Board will act on each case individually and that this rule cannot *require* the Board to accept a quitclaim deed.

2. If a fee simple interest is being conveyed, the following audits (assessments) must be performed:
 - a. a Phase I environmental audit (assessment) (Attachment 10) identifying any environmental problems which may affect the liability of the Department or Board of Trustees, and
 - b. any additional audits (assessments) that the Phase I audit reveals as necessary to ensure that the Department or the Board of Trustees will not be liable for those environmental problems.

Review of real property conveyances.

The Department (for the Board of Trustees of the Internal Improvement Trust Fund- BTITF) only accepts conveyances that it will have the capability of managing. Generally, this means that if the parcel would expand an existing parcel of managed state land, further the acquisition efforts in an identified acquisition program, expand the boundaries of lands owned by other agencies, it may be an acceptable site.

When an applicant indicates that they want to donate land to the BTITF you must contact the BLA. *For your information*, copy of the initial form sent from the BLA to the donor is attached as Attachment 11. This will familiarize you with the issues that BLA is concerned with. **BLA needs to provide information to prospective donors and process the actual donation of land.** The SLERP project manager should be copied on all correspondence between the applicant and the BLA.

Contact persons in the Bureau of Land Acquisition.

For proposed land donations: Ed Cederholm, 488-2351
For environmental audits on land donations: Kathleen Greenwood, 488-2351

Conservation Easements (62-342.650(1)(b)):

1. The conservation easement must be deeded to both the DEP and the appropriate WMD (62-342.650(1)(b)), however, there may be instances where a higher degree of protection is desirable. If the banker agrees, another (or multiple) grantee can be added to the easement deed. (62-342.650(1))

Example. The Walker Ranch property was placed into an easement by Walt Disney World with the following grantees: FDEP, FGFWFC, SFWMD, The Nature Conservancy, and the ACOE (for enforcement purposes only).

Other environmental agencies of land trusts are potentially appropriate as additional grantees. Before approving their placement on the deed, it is wise to ensure that their objectives regarding the easement are compatible with the Department's.

2. Mitigation Banks on Federally owned land shall be encumbered in perpetuity by conservation easements or other mechanisms ensuring preservation in accordance with the Mitigation Bank permit. (62-342.650(1))

Example. The distinction has to do with the actual and intended land use of the site. The ownership of land by the National Park Service provides a higher degree of assurance that the mitigation bank will remain in the intended preserved condition than if the land were owned by the U.S. Forest Service, because one of their primary missions is to provide timber cutting. Unless the land owned by the Forest Service is in a wilderness designation it should be placed into an easement.

3. All conservation easements must:
 - a. be granted in perpetuity. (62-342.650(2))
 - b. be granted without encumbrances, unless the encumbrances do not adversely affect the ecological viability of the Mitigation Bank. (62-342.650(2))
 - c. be of a form and content sufficient to ensure preservation of the Mitigation Bank according to the permit. (62-342.650(2))
 - d. at a minimum, be consistent with all the requirements and restrictions of Section 704.06, F.S. (Attachment 7), except as provided in subsection 62-342.650(9). (62-342.650(2))
 - e. provide the banker and the Department access to the property to perform all acts necessary to ensure compliance with the Mitigation Bank Permit and other permits issued under pursuant to Chapters 373 and 403, F.S. (62-342.650(9))

All Conveyances:

1. The grantor needs to provide a series of things unless the Department decides that these items are not necessary to ensure preservation of the Mitigation Bank (62-342.650(4)):

(a) A boundary survey of the property or the area within the conservation easement.

The survey must be certified (62-342.650(4)):

1. by a land surveyor registered in the State of Florida,
2. to meet the requirements of the Department, and
3. to meet the minimum technical standards set forth by the Florida Board of Professional Land Surveyors in Chapter 21 HH-6, Florida Administrative Code, pursuant to Section 472.027, F.S. **Note: Chapter 21 HH-6 has been renumbered to Chapter 61G17, F.A.C. and is included as Attachment 6.**

(b) A certified appraisal of the market value of the property or interest to be conveyed to determine the appropriate amount of title insurance (62-342.650(4)). The bureau of land acquisition does not require appraisals for donations of land, although title insurance is required. BLA will be processing the donation, so this point is for your information.

(c) Assurance of the marketability of the interest in real property being acquired (62-342.650(4)):

1. in the form of a marketable title commitment and owner's title policy (ALTA Form B)

2. in an amount at least equal to the fair market value, as established in subsection 62-342.650(4)(b), of the real property.

The coverage, form and exceptions of the title insurance policy shall ensure that the Mitigation Bank will be preserved according to the Mitigation Bank permit.

2. The Department can require additional documentation or actions from the grantor of the conservation easement or fee interest if it would be necessary to ensure that the Mitigation Bank will be preserved according to the Mitigation Bank permit. (62-342.650(5))

Example: If a cattle dip site is found on the property, the toxicity of the site would need to be evaluated. It may be decided that the site needs to be cleaned up, excised from the property that will be conveyed, or treated in some other manner.

3. The grantor shall pay:
 1. the documentary revenue stamp tax (62-342.650(6)),
 2. other costs associated with the conveyance (62-342.650(6)), and
 3. all real estate taxes and assessments. (62-342.650(7))
4. The grantor has to remove all abandoned personal property and solid waste from the property. (62-342.650(8))
5. The banker has to record the easement or deed and submit a certified copy to the Department. The permit will specify the time frame for these actions. (62-342.650(10))