

## CEDR Executive Summary

### **Background:**

The EPA and the U.S. Army Corps of Engineers jointly implement the Clean Water Act (“CWA”) Section 404 program, 33 U.S.C. §1344 regulating discharges of fill material to waters of the United States, including wetlands. Section 404 requires a permit be issued by the U.S. Army Corps of Engineers before dredged or fill material are discharged into waters of the United States. An overview of Section 404 can be found [here](#). In 2008, EPA and USACE jointly promulgated the Final Rule for Compensatory Mitigation for Losses of Aquatic Resources, 33 CFR part 332/40 CFR part 230, Subpart J ([Compensatory Mitigation Factsheet](#)). The purpose of compensatory mitigation is to offset unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. This can include preservation, restoration or enhancement of stream or wetland resources. One element of this rule formalized and encouraged the use of site protection instruments in providing long-term protection to compensatory mitigation sites. A site protection instrument is a description of the legal arrangements and instruments, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project site (*See* §332.7(a)). Two common types of site protection instruments include *conservation easements* and *deed restrictions*.

#### *Conservation Easements (“CE”)*

A conservation easement is an interest in real property that precludes the property owner from using the land in ways that would adversely impact the natural resources on the property. The property owner (“Grantor”) makes a written conveyance of an easement (real estate instrument) which protects the natural resources and restricts the activities that can be conducted on the property. The party receiving the conservation easement is referred to as the “Holder” (or “Grantee”) and is usually a non-profit, land trust or governmental entity. The Holder does not gain ownership rights to or possession of the land but does hold a real property interest. The conservation easement may also grant oversight and enforcement rights to a third party, typically in return for some benefit to the Grantor or property owner (such as issuance of a permit, mitigation bank approval, etc.).<sup>1</sup>

#### *Deed Restrictions (“DR”)*

A deed restriction (also called a restrictive covenant) is a condition in a deed limiting or prohibiting certain uses of real property. Deed restrictions “run with the land”, meaning that they are enforceable by and against later owners or occupiers of the land. For compensatory mitigation sites, the recorded restrictive covenant should be written so that it runs with the land. The compensatory mitigation project site and its aquatic resources are protected as a benefit to the owner, subsequent owners and to the public.<sup>2</sup>

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<sup>1</sup> [https://www.epa.gov/sites/default/files/2017-01/documents/site\\_protection\\_instrument\\_handbook\\_august\\_2016.pdf](https://www.epa.gov/sites/default/files/2017-01/documents/site_protection_instrument_handbook_august_2016.pdf)

<sup>2</sup> [https://www.epa.gov/sites/default/files/2017-01/documents/site\\_protection\\_instrument\\_handbook\\_august\\_2016.pdf](https://www.epa.gov/sites/default/files/2017-01/documents/site_protection_instrument_handbook_august_2016.pdf)

While the bulk of these site protection instruments, implemented as part of compliance with the CWA 404 program, are recorded for uses associated with programmatic requirements for compensatory mitigation projects such as permits or mitigation banking instruments, site protection instruments can also be used as part of an injunctive relief package necessary for resolving CWA Section 404 enforcement actions. In keeping with the intent and regulations of the CWA 404 program, adding a deed restriction or conservation easement to the CWA Section 404 settlement package ensures long-term protection of the aquatic resource. Site protection instruments may also be able to provide a respondent consideration towards monitoring requirement years.

### **Project Description:**

Over the last several decades, EPA Region 3 has entered into judicial and administrative settlements to resolve Clean Water Act (“CWA”) Section 404 violations that include the use of site protection instruments such as conservation easements (“CE”) or deed restrictions (“DR”) (hereinafter “CEDR”) to protect preservation, enhancement, and/or restoration of waters of the United States provided as part of injunctive relief packages. The use of CEDRs as protective instruments is encouraged to support the goal of “No Net Loss” for aquatic resources. EPA has created CEDR, a geo-spatial application and document repository, to memorialize and track those legal instruments, ensuring the Agency and the public have the most up-to-date information on these instruments by making them available for local title recording offices, regulatory programs, title search companies and other public individuals or entities whose work may be impacted by the existence of such site protection instruments while also increasing their transparency, supporting, the CWA Section 404 program’s objective of ensuring long-term protection of the restored sites/aquatic resources.<sup>3</sup>

CEDR incorporates a geospatial mapping tool that displays the metes and bounds of the conserved or deed restricted area, including the aquatic resources (streams and wetlands) and associated buffer zones. These conserved or deed restricted areas are displayed as polygons on the map. The individual site polygons provide pop-up attribute tables that include a link to the associated legal documents supporting the site protection instrument, such as the instrument itself and the precipitating EPA enforcement action.

The sites covered by CEDR are listed by State, County, type of associated legal site protection instrument (i.e., whether a deed restriction or a conservation easement), the court term and number of the associated settlement document, either a judicial Consent Decree or Administrative Order, and the date the legal site protection instrument was recorded with the county.

### **How to Use this Website:**

If starting with the geo-spatial mapping application, the application defaults to a map extent of EPA Region 3 with flags demarking mapped CEDR locations. Zooming in on a flag will allow

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<sup>3</sup> While CEDR can be used for both judicial and administrative settlements as a long-term protection tool, it is not to be used under the mitigation banking scheme which has its own set of rules for establishing long-term protection. See <https://ribits.ops.usace.army.mil/ords/f?p=107:2:::>

the polygons for the conservation easements and deed restrictions areas to appear. They can also be searched by name, specific location, state and county, or zip code via the search function. Clicking on a polygon will provide a pop-up with more information, including a link that will take you to the various documents that support that polygon representing the CEDR. More detailed information about the actual functioning of the mapping application can be found here:

<https://experience.arcgis.com/experience/9674d6d1ec9041f0888bd4a9b01b2ea9>

### **Description of how the naming system works:**

Each naming convention begins with CEDR – an acronym for conservation easement and deed restriction followed by the state where the CEDR is located, then the county, whether it is a conservation easement or deed restriction, the court term and number (which will indicate whether it is an administrative case or a judicial case), and the date of filing of the CEDR.

For example, if you have the following link of CEDR\_VA\_Chesapeake\_DR\_206-cv-624\_20100720, each individual portion breaks down as follows:

CEDR\_VA\_Chesapeake\_DR\_206-cv-624\_20100720

CEDR – conservation easement and deed restriction;

VA – Virginia;

DR – this particular filing is a deed restriction;

206-cv-624 – indicative of this being a judicial matter; if the court term and number begins with R3-CWA- then it is an administrative matter in Region 3;

20100720 – indicates a date formatted as year/month/day.

Types of documents found linked to the mapping page can include an Administrative Order or Consent Decree; the deed restriction or conservation easement; a metes and bounds description; a plat map; and any other documents relating to the resolution of the property, including, for example, but not limited to, a release from monitoring letter.

**Legal disclaimer:** This is not an exclusive or comprehensive list of associated legal instruments and documents. Content provided is subject to change without notice. The Environmental Protection Agency makes no warranty, express or implied, as to the accuracy, completeness, or utility of the mapping information provided. The GIS polygons and other mapping tools created in support of this website are for informational purposes only and are not to be relied upon in any legal or other formal proceedings. Accuracy in polygon mapping and other documentation is for illustrative purposes only and not guaranteed. Please consult other sources if you are doing a title search or other legal research to confirm exact boundaries. The user understands and acknowledges that the map data may contain errors or omissions. The user assumes full responsibility for any risks or damages resulting from this tool.