PRO 490-f: Coordinate the Wetland/Stream Mitigation Right-of-Way Plan Submittal

See also: [Environmental Manual – Chapter 490](#) Effective May 2019

**Start procedure:** U.S. Corps of Engineers issues WSDOT a 404 permit that requires site protection via a real estate instrument (see example text below).

**End procedure:** The WSDOT region sends the updated ROW or Sundry Site Plan to the necessary permitting agencies and to the [WSDOT HQ Wetland Monitoring Manager](#).

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<th>Actor:</th>
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| Environmental Coordinator | **1. Reviews** newly issued permit for potential environmental commitments.  
2. **Recognizes** the following text as an environmental commitment: 
   “…In addition, a description of the mitigation areas identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions, will be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records to or interest in real property. Proof of this recorded documentation must be provided to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch within 60 days from the date of permit issuance.”
3. **Records** this commitment in the Commitment Tracking System (CTS).  
4. **Obtains** CADD files for the mitigation site that show the mitigation site boundary. Use the As-Built if available. For design-build, it is important to obtain these files while the design team is still available.  
5. **Meets** with the Project Engineer (or designee) to discuss ROW submittal requirements for the mitigation site.  
6. Transmits ROW plan update request to Region ROW Plans Office. |
| Region ROW Engineer       | **7. Develops** draft ROW plan update including text that shows the permit number and Mitigation Site name.                                                                                           |
| Environmental Coordinator | **8. Reviews** draft ROW plan draft for accuracy.  
9. **Submits** draft plan to GeoMetrix Office                                                                                                         |
| GeoMetrix Office          | **10. Prepares** the ROW map in accordance with the permit conditions.  
11. **Sends** the finished ROW map to the Environmental Coordinator.                                                                                            |
Environmental Coordinator

12. **Verifies** the ROW submittal contains all of the necessary information to satisfy the permit condition.

13. **Uploads** plans and communication into CTS for access by Wetlands Program.

**BACKGROUND:**

According to our liaisons with the Corps and Ecology, **we have an opportunity to do better in complying with the following permit text:**

“...In addition, a description of the mitigation areas identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions, will be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records to or interest in real property. Proof of this recorded documentation must be provided to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch within 60 days from the date of permit issuance.”

This non-compliance issue may result from thinking that this requirement is a real estate task, and not a project office environmental commitment task. Or, it may be skipped over because WSDOT does not typically record property with the Registrar of Deeds.

The above requirement is included in the permit to protect mitigation site from future development. **From WSDOT, the Corps and Ecology will accept a certified ROW plan that identifies the Wetland Mitigation site in lieu of recording anything with the Registrar of Deeds.** The understanding is that the updated ROW plan will protect the mitigation site from use by future projects. For WSDOT, this task does not require any interaction with Real Estate staff.

From our perspective, **submitting an updated ROW plan for mitigation sites is an environmental commitment that should be completed by environmental coordinators.** This task should be tracked in the CTS and/or included in the Environmental Compliance Binder or Notebook. As the updated ROW plan is submitted to the agencies, it should also be forwarded to the Wetland Monitoring Manager, currently Doug Littauer.

**If your wetland permits do not contain this or similar language** about site protection, projects are still required to update the ROW plan. The Corps of Engineers and Wa. State Dept of Ecology’s Joint Guidance Part 2, p. 25, 3.3.2.2 requires legal long-term site protection on all mitigation sites, but does not provide a timeframe.

The Corps does not require this protection for mitigation sites if they are adjacent to the roadway. They also typically do not require it if the impacts are only temporary, and mitigation includes replanting and some monitoring (3-5 years of monitoring is common). For some older sites, the Corps did not always add the requirement for mitigation site protection.

**DURING PERMIT NEGOTIATIONS:**
Given a good reason, the ROW due date may be negotiable before the permit is issued. The 2008 Federal Mitigation Rule and it states under 332.7(a)(5):

*A real estate instrument, management plan, or other long-term protection mechanism used for site protection of permittee-responsible mitigation must be approved by the district engineer in advance of, or concurrent with, the activity causing the authorized impacts.*

The Corps has written special conditions that the site protection mechanism must be submitted within 60 days of permit issuance or prior to the start of construction of the mitigation site. And then there is a special condition that states the mitigation site construction must be constructed concurrent with project impacts (i.e., within one year of the start of project impacts).