

Short-term financial assurances

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What are Financial Assurances?

- Mechanism to ensure that:
 - ▶ Project is completed
 - ▶ Resources are available to correct or replace unsuccessful projects
- Long-standing practice in other contexts
 - ▶ Construction
 - ▶ Mining reclamation
 - ▶ Hazardous waste facilities
 - ▶ Landfill closure



Why Financial Assurances?

- Mitigation projects can be complex and results may be uncertain
- Responsible parties can fail or walk away
 - ▶ Bankruptcy
 - ▶ Dissolution
- To ensure compensation obligations can be secured on the ground
- Risk Management



Requirement for Financial Assurances

- “The DE shall require sufficient financial assurances to ensure a **high level of confidence** that the mitigation project will be **successfully completed**, in accordance with applicable performance standards.”

33 CFR 332.3(n)(1)

- DE MUST receive notification **120 days prior to** expiration/termination

33 CFR 332.3(n)(5)



Financial Assurances vs. Long-Term Management funding

- Financial Assurances help guarantee
 - ▶ Project is constructed
 - ▶ Project meets performance standards
- Long-term management funding
 - ▶ Resources for management AFTER performance standards are met
 - ▶ Help ensure project is sustainable



When Must Assurances be Posted?

- Permittee-Responsible
 - ▶ Prior to commencing permitted activity
- Mitigation Banks
 - ▶ Prior to initial release of credits
- ILF Programs
 - ▶ Contingencies reflected in advance credit prices
 - ▶ Allocating resources prior to project implementation
- Alternative mechanisms:
 - ▶ Formal commitment by government or public authority
 - ▶ State or other agency requirements



How are assurances established?

- Single assurance for the entire project

OR

- Multiple assurances/phases
 1. Construction assurances
 2. Performance assurances
 3. Interim assurances



Amount of Financial Assurances must

- Be determined in consultation with the responsible party
- Reflect:
 - ▶ Size and complexity of project
 - ▶ Degree of completion of project
 - ▶ Likelihood of success
 - ▶ Past performance of mitigation provider
 - ▶ Other appropriate factors



Amount of Financial Assurances

- Based on full cost of providing mitigation
- Could include costs for:
 - ▶ Land
 - ▶ Planning, design, and engineering
 - ▶ Construction & planting
 - ▶ Monitoring & maintenance
 - ▶ Reasonably foreseeable remedial work
 - ▶ Contingencies
 - ▶ Legal & administrative



Sample Construction Assurance Estimate

REAM AND WETLAND RESTORATION SITE ENGINEER'S ESTIMATE				Engineer's Estimate	
Description	Quantity	Unit Measure	Pay Unit	Unit Price	Total Fee
Construction Survey	1	LS	LS	\$3,500.00	\$3,500.00
As-Built Survey	1	LS	LS	\$2,500.00	\$2,500.00
Temporary Construction Entrance	2	LS	LS	\$1,500.00	\$3,000.00
Grading	1	LS	LS	\$45,000.00	\$45,000.00
Invasive Species Control	1	LS	LS	\$5,000.00	\$5,000.00
Woody Debris Structure	13	EA	EA	\$500.00	\$6,500.00
Surface Water Diversion	1	LS	LS	\$12,500.00	\$12,500.00
Sediment Bags	4	EA	EA	\$200.00	\$800.00
Impervious Dikes	5	EA	EA	\$500.00	\$2,500.00
Silt Fence	3200	LF	LF	\$2.00	\$6,400.00
Wattles	100	LF	LF	\$5.50	\$550.00
Temporary Seeding	36	AC	AC	\$750.00	\$27,000.00
Permanent Seeding Wet/Sunny	0.9	AC	AC	\$1,200.00	\$1,080.00
Permanent Seeding Dry/Sunny	2.6	AC	AC	\$1,200.00	\$3,120.00
Bare Root Seedlings	2380	Stem	Stem	\$2.25	\$5,355.00
Fencing	1200	LF	LF	\$4.00	\$4,800.00
Clearing and Grubbing	33	AC	AC	\$1,500.00	\$49,500.00
Clearing Only	3	AC	AC	\$1,500.00	\$4,500.00
Incidental Stone	2	Ton	TON	\$50.00	\$100.00
SUBTOTAL					
Mobilization	1	LS	LS	\$9,185.25	\$9,185.25
TOTAL FEE				Total (Calculated)	\$192,890.25



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Determining Assurance Amounts for ON-SITE Remediation

- Cost to complete work & meet performance standards
- Does **NOT** include **LAND COSTS**
- Presumes high likelihood of meeting performance standards
- Responsible party provides component cost estimates
- Information sources used to verify estimates include
 - ▶ Agency in-house engineering estimates
 - ▶ Independent third party estimates
 - ▶ Similar project costs in same area
 - ▶ Software applications



Assurances based upon ON-SITE Remediation

ONLY if there are **NO** concerns regarding:

- ▶ Quality of the site & surrounding landscape
- ▶ Site ownership/access issues
- ▶ Willingness of suitable third-party to complete work at the site



Determining Assurance Amounts for OFF-SITE Replacement

- Costs of compensation at alternative site by a third party
- **INCLUDES LAND COSTS** in addition to other project costs
 - ▶ IF current site does **NOT** have high potential for successfully meeting mitigation objectives
- Similar sources of information to verify costs as for ON-SITE replacement



Financial Assurances for ILF Programs



- Conventional assurances (bonds, LOCs)
- Self Assurance – setting aside funds
- Alternate mechanism
 - Letter of commitment
 - No financial assurances required for mitigation projects



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Miscellaneous Receipts Statute

- Corps cannot be the beneficiary (direct or indirect)
- Assurances must be payable to a 3rd party ***designee*** who agrees to complete approved mitigation project, ***or*** to a ***standby trust***
- Risk of “constructive” receipt

