



# FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Noah Valenstein**  
Secretary

## Solid Waste Declaration of Restrictive Covenant for On-Site Soils Guidance

February 2019

Find the latest version online at [\[Insert Link Here\]](#)

## **Solid Waste Financial Assurance Declaration of Restrictive Covenant and Access Easement Agreement for On-Site Soils Document Requirements**

This document provides guidance to Solid Waste Facility Owners and Operators (hereinafter "Applicant") for the preparation of a Declaration of Restrictive Covenant and Access Easement Agreement for use in calculating closure costs under Rule 62-701.630, F.A.C. Several pieces of information, listed out below, should be evaluated. Once these documents have been gathered and reviewed, and approved by DEP Technical Staff, Applicant will prepare a draft Declaration of Restrictive Covenant which should be approved and acceptable to the recorded property owner. The Department suggests that the Declaration of Restrictive Covenant process be completed prior to the initiation of a permit renewal or modification. Once the draft package has been reviewed and the Declaration of Restrictive Covenant is executed by the property owner and the Department, the Applicant should record the Declaration of Restrictive Covenant in the public records of the Clerk of Court in the county where the restricted property is located. After providing the Department with proof of recordation the Applicant may initiate a timely permit renewal or modification to address financial assurance.

Please provide a copy of all the following documents to the Department's Project Manager to begin the review process for Declaration of Restrictive Covenant for maintaining On-Site Soils.

1. **Certification.** Professional Engineer certification that the designated on-site soils are of a sufficient quantity and have been determined to have suitable properties for their proposed use.

Please provide the supporting documentation used by the professional engineer to make this certification so that the Departments Project Manager or other designated Department Staff will be able to review and provide concurrence.

2. **Title Report.** Please pull a title report on the property to be encumbered by the potential Declaration of Restrictive Covenant and Access Easement Agreement. The title report will ensure that (1) Applicant or the Owner who has given Applicant authority holds clear title to the landfill property to be closed and the property upon which the designated fill is to be maintained in storage and (2) there are no materially conflicting interests or encumbrances on the property to be restricted that would be in conflict with the proposed restrictions (examples of these would include Conservation Easements promising to keep the property in a natural vegetative state or utility easements that would preclude digging).

A Title Report (which may be in the form of an Ownership and Encumbrance Report, a title insurance commitment or title insurance policy, so long as it provides all of the information described below) that reflects all parties having a recorded interest in the property, including owners, tenants under recorded leases, lienors, mortgage holders and easement holders, among others, should be submitted with the RC package to be reviewed. The search commences with the instrument constituting the root of title under the Marketable Record Title Act (MRTA) (i.e., evidence of title, such as a deed, that is at least 30 years old) and includes a review of all subsequently recorded instruments, a review of prior recorded instruments (to the extent required by MRTA), and a review of prior recorded instruments that are not eliminated by MRTA. If the Title Report was issued more than six (6) months prior to delivery to FDEP, or if it will be more than six (6) months old by the time the RC is to be executed, then the Applicant or the Owner who has given Applicant authority should provide an update. The Title Report helps to determine whether any encumbrance holders on the property are entitled to notice of the proposed RC prior to execution or whether there are

## Solid Waste Financial Assurance Declaration of Restrictive Covenant and Access Easement Agreement for On-Site Soils Document Requirements

any encumbrances that could potentially conflict with the proposed covenant and would therefore require subrogation (in the case of a mortgage) or joinder and consent (in the case of an easement) in order to record a robust covenant. The following documents should also be developed informed by the Title Report:

- a. **Map of Encumbrances and Restricted Area and/or List of Encumbrances.** The Applicant's representative should provide a list of recorded encumbrances, in addition to the copies of the recorded encumbrances, for the reviewing FDEP lawyer. This may be provided as part of the Title Report. The list of encumbrances should identify whether each encumbrance intersects with the restricted area and what right(s) the encumbrance grants to the holder. It may be easier to depict this using a map of the encumbrances.
  - b. **Owner's Notice to Existing Encumbrance Holders, or subrogation or joinder and consent.** The property owner should review the recorded encumbrances on the property to make a determination of whether it is appropriate to seek subordination of joinder and consent from holders of recorded encumbrances, or merely provide them with notice. If it is determined that they are entitled to notice, copies of the notice and proof of delivery should be furnished to OGC for the file. Only in some situations, when the restriction could affect or be affected by the encumbrance holder's rights in such a way as to constitute a "material conflict" with the proposed RC, the owner should acquire a subordination of encumbrance (for mortgages or easements) or a joinder and consent (easements only) to the RC. OGC can help if this is necessary, but joinder and consent and subrogation are not expected to be commonly necessary with these solid waste RCs.
3. **Deed.** A copy of the recorded deed should be provided that identifies the current real property owner. The owner of the property shown on the deed should match the name of the person agreeing to restrict the property (the Grantor). If the names do not match, additional information should be provided to clarify ownership.<sup>1</sup> In some very limited situations (such as rights of way established by statute or plat map) ownership of a piece of property to be restricted may be established through an instrument other than a deed.
  4. **Draft Restrictive Covenant.** Once Applicant or Applicant with Owner's Authorization has analyzed the title report and believes the encumbrances listed there are not in conflict with the proposed Declaration, or that they can be subordinated or joined appropriately, the draft Restrictive Covenant for the Facility in question may be prepared. The draft Restrictive Covenant should be complete with all exhibits and all details, including the planned signatories, but not yet signed, so that any questions can be worked out before the owners make the effort of gathering signatures. Please use the template that is specific for the solid waste Declaration of Restrictive Covenant and Access Easement Agreement, attached to this document. The draft Restrictive Covenant will include the following elements:
    - a. **Legal Description.** A written legal description of the entire parcel should be provided regardless of whether the entire parcel is being encumbered or only a portion of the parcel will be encumbered. This legal description should be the same as the legal description found in the deed and in the Title Report. If they are not the same in all three places, an explanation should be provided. FDEP staff may send Surveys to the

---

<sup>1</sup> The copy of the recorded deed does not need to be certified.

## **Solid Waste Financial Assurance Declaration of Restrictive Covenant and Access Easement Agreement for On-Site Soils Document Requirements**

FDEP Bureau of Survey & Mapping for confirmation of the legal description. Additionally, since only a portion of the parcel will be encumbered to maintain soil for closure, a legal description of that smaller portion should also be included.

- b. **Survey.** A Specific Purpose Survey, Boundary Survey or Sketch and Description as defined under Chapter 5J-17, F.A.C., and prepared using the minimum technical standards (MTS) as defined therein (collectively referred to as a "Survey") should be attached to the RC as Exhibit B. In addition, the Survey should include four corners of the designated restricted area labeled with the state plane coordinates (SPC) system or geographical coordinates. A specific survey of the area to be held for cover fill should be provided. A more general legal description will suffice for the closure and access purposes. The Survey should be a clearly labeled attachment to the RC and the area to be restricted should also be clearly labeled with a label that corresponds to the terminology used to describe it in the text of the document.

## **Solid Waste Financial Assurance Restrictive Covenant Checklist**

**Project Managers: Please ensure that the Solid Waste Financial Assurance Declaration of Restrictive Package is complete prior to submission to the Agency Clerk. The following checklist should be completed by the Project Manager. NOTE: This is a Solid Waste Financial Assurance Declaration of Restrictive Covenant not to be confused with a Chapter 62-780, F.A.C., closure. As such, this Declaration of Restrictive Covenant will not need to be placed on the Institutional Control Registry.**

1. Declaration of Restrictive Covenant Package submitted as a part of an Application for Permit Modification? Yes \_\_\_ No \_\_\_
2. Does the Site meet rule 62-701.630(3)(d), Florida Administrative Code, requirements to allow use of on-site soils as part of the facility's final cover? Yes \_\_\_ No \_\_\_
3. Size of Restricted Area \_\_\_\_\_ acres
4. Is the size of the restricted area adequate to store the quantity of soil necessary for use at the facility as final cover, as fill, or for other closure construction purposes? Yes \_\_\_ No \_\_\_
5. Has a professional engineer certified that the designated on-site soils are of a sufficient quantity and have been determined to have suitable properties for their proposed use? Yes \_\_\_ No \_\_\_
6. Supporting documentation used by the professional engineer to certify the suitability of the on-site soils. Yes \_\_\_ No \_\_\_
7. Copy of the latest deed or other instrument of title is included. Yes \_\_\_ No \_\_\_
8. Does the name of the owner/grantee on the deed match the name of the person who claims to be the property owner? Yes \_\_\_ No \_\_\_
9. Property ownership confirmed on site's county property appraiser web site & screenshot is included in IC transmittal. Yes \_\_\_ No \_\_\_
10. Exhibit A: Legal description of the entire property is included. Yes \_\_\_ No \_\_\_
11. Exhibit B: A Specific Purpose Survey, Boundary Survey or Sketches to Accompany Descriptions (as defined under Chapter 5J-17, F.A.C.) prepared using the minimum technical standards (MTS)(collectively referred to as a "Survey") is provided, including four corners labeled with the

State Plane Coordinates (SPC) system or geographical coordinates, and labeling the encumbered area on the attachment as “restricted area” or another phrase that tracks the RC language]

Yes \_\_\_ No \_\_\_

12. Title Report is included [Title search commences with instrument constituting root of title under Marketable Record Title Act (MRTA) that is at least 30 years old and includes review of all subsequently recorded instruments, and prior recorded instruments that are not eliminated by MRTA.] Yes \_\_\_ No \_\_\_

a. Tax Lien information – either that lien has been removed or copy of lien—is included.

Yes \_\_\_ No \_\_\_ N/A \_\_\_

b. Easements are included (list of any easements & copies of recorded easements.)

Yes \_\_\_ No \_\_\_ N/A \_\_\_

c. A Diagram of the location of the easements in relation to the restricted area is included.

Yes \_\_\_ No \_\_\_ N/A \_\_\_

d. Leases – copies of all recorded leases, subleases and assigned leases are included.

Yes \_\_\_ No \_\_\_ N/A \_\_\_

e. UCC Liens – copies of and releases from any liens are included.

Yes \_\_\_ No \_\_\_ N/A \_\_\_

f. Reservation of oil, gas, or mineral rights – copies of all deed, assignments, and/or reservation of rights are included.

Yes \_\_\_ No \_\_\_ N/A \_\_\_

13. A completed and signed Subordination or Joinder and Consent is included only for any liens, leases, easements or other encumbrances that are in material conflict with the provisions of the RC. Yes \_\_\_ No \_\_\_ N/A \_\_\_

14. A completed and signed Subordination of Mortgage is included only for each financial institution or lender of existing mortgages for which a material conflict exists with the provisions of the RC.

Yes \_\_\_ No \_\_\_ N/A \_\_\_

**SOLID WASTE FINANCIAL ASSURANCE**  
**INSTITUTIONAL CONTROL TRANSMITTAL PACKAGE**

DECLARATION OF RESTRICTIVE COVENANT AND ACCESS EASEMENT AGREEMENT

The following information is required to open a case in OGC:

TODAY'S DATE: \_\_\_\_\_

PARTY/CLIENT NAME: \_\_\_\_\_  
(this is the name of the PROPERTY OWNER **executing** the document)

WACS FACILITY ID: \_\_\_\_\_  
(WACS Facility Identification Number)

SITE NAME: \_\_\_\_\_  
(if referred to by a specific project or the prior owner reference, i.e.: Former Joe's Junk Shop)

SITE ADDRESS: \_\_\_\_\_  
(should be the physical address or location for these matters)

DISTRICT: \_\_\_\_\_

COUNTY: \_\_\_\_\_

PROJECT/SITE MANAGER: \_\_\_\_\_  
(DEP staff)

CONTACT INFO: \_\_\_\_\_  
(Phone) (Email)

PROJECT/SITE MANAGER: \_\_\_\_\_  
(DELEGATED Program staff, if any)

CONTACT INFO: \_\_\_\_\_  
(Phone) (Email)

RELATED CASE(s) #: \_\_\_\_\_  
(if any – may be enforcement matter, or prior DRC)

PARCEL ID # if KNOWN: \_\_\_\_\_



PROPERTY OWNER NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
EMAIL: \_\_\_\_\_  
PHONE: \_\_\_\_\_

PROPERTY REP NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
EMAIL: \_\_\_\_\_  
PHONE: \_\_\_\_\_

CONSULTANT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
EMAIL: \_\_\_\_\_  
PHONE: \_\_\_\_\_

THE DRC PACKAGE DOCUMENTS: The IC Package should be scanned into Oculus as a single document. The email to the Agency Clerk requesting OGC Review of the IC Package should contain the link to the IC Package to be reviewed.

**EMAIL completed form and link to: LEA CRANDALL, AGENCY CLERK**  
[Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us)

**Solid Waste Financial Assurance Declaration of Restrictive Covenant for On-Site Soils**

The (*Division/District/Program*) has reviewed documentation related to a Declaration of Restrictive Covenant for On-Site Soils for the above-referenced facility. The request contains the information required in the FDEP Solid Waste Financial Assurance Declaration of Restrictive Covenant for On-Site Soils Document Requirements.

It is the (*Division/District/Program*) opinion that the Restricted Property proposed in the Draft Declaration of Restrictive Covenant is of an adequate size to hold on-site soils for use as part of the facility's final cover, as fill, or for other closure construction purposes.

You will find the checklist, proof of property ownership (screenshot from county property appraiser website) and the draft Declaration of Restrictive Covenant at the following link to Oculus: