

U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
REGULATORY PROGRAM

QUALIFIED CONSERVATION EASEMENT HOLDER STANDARDS

**Conservation Easements Following Recordation of Restrictive Covenants**

The Corps of Engineers, Savannah District, Regulatory Division (the "Corps") generally requires that real property associated with compensatory mitigation pursuant to a banking instrument, in-lieu fee program instrument, or permit under the Clean Water Act, Section 404 or Section 10 of the River and Harbors Act of 1899 be protected in perpetuity and restricted by the owner of the property, utilizing the Corp's Model Declaration of Covenants and Restrictions (the "DCCR"). The DCCR is recorded with the Clerk of the Superior Court in the county in which the land is located.

Following recordation of the DCCR, the Corps will generally require the granting of a conservation easement by the owner of the property to a qualified third party for purposes of long-term management, monitoring and/or stewardship. The Corps requires review of the conservation easement prior to the recording to determine continuity with the intent and purpose of the DCCR. The Corps has established the following criteria for charitable land trusts desiring to qualify as potential conservation easement holders associated with the compensatory mitigation process.

**Land Trust Criteria**

For the purposes of a conservation easement, the landowner will be the grantor and the land trust will be the grantee. To be considered qualified, all land trust organizations that intend to hold a conservation easement on a Corps-approved compensatory mitigation bank must meet and provide documentation of compliance with the following criteria:

1. Grantee must be a tax-exempt qualified organization under Section 501(c)(3) of the Internal Revenue Code and be registered with the Georgia Secretary of State's Office.
2. Grantee must be authorized by the laws of the state of Georgia to accept, and be willing to accept, a conservation easement under the terms of the easement, and be a "qualified organization" and an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code.
3. Grantee must be a qualified holder pursuant to the Georgia Uniform Conservation Easement Act, O.C.G.A. §44-10-1 et seq.

4. Grantee organization's Board of Directors should have in its corporate resolutions, the adoption of the Land Trust Alliance's Statement of Land Trust Standards and Practices (the "LTA Statement") as guiding the practices of the organization. The Statement is available from the Land Trust Alliance ("LTA") 1250 H Street, NW, Suite 600, Washington, DC 20005, telephone (202) 638-4725 or from its website at [landtrustalliance.org](http://landtrustalliance.org). If the land trust has not adopted the LTA Statement, the land trust must provide written explanation of why it has not been adopted or that the land trust has substantially similar standards and practices notwithstanding the adoption of the LTA Statement.
5. Grantee organization's Board of Directors, officers, and staff must not have a conflict of interest regarding the mitigation bank, in-lieu fee mitigation site, or permit issued by the Corps. The land trust must provide a copy of its Conflict of Interest Policy along with written certification that the land trust board of directors, officers, and staff, as holders of conservation easements, will not receive benefit, financial or otherwise, from the issuance by the Corps of the underlying banking instrument, in-lieu fee program instrument, or permit.
6. The Grantee must be willing to accept the conservation easement, which must adhere to the "Criteria for an Approved Conservation Easement" set forth below.
7. Grantees may be asked to provide a copy of the articles of incorporation, bylaws, a tax-exempt status document and other documents as may be required. The list of qualified land trusts will be made available and provided to applicants and bank sponsors as requested.
8. The grantee should be willing to use the Corps' provided model conservation easement as a starting point of drafting the conservation easement for the mitigation bank at issue.

### **Governmental Holders of Conservation Easements**

Federal, state, and local governments may agree to be a holder of a conservation easement in Georgia. The following requirements pertain to governmental holders of conservation easements for purposes of credit toward compensatory mitigation.

1. The property owner, after recording a DCCR, may contact a governmental entity to determine interest regarding the granting of a conservation easement by the owner.
2. The governmental entity must qualify as a "holder" pursuant to the Georgia Uniform Conservation Easement Act, O.C.G.A. 44-10-1 et seq. The Corps may require governmental entities to provide additional information regarding potential conflicts of interest, the phone number, titles, and qualifications of personnel who will

monitor and enforce the terms of the conservation easement, and any other information deemed necessary.

3. The conservation easement must adhere to the “Criteria for an Approved Conservation Easement” set forth below.

4. The conservation easement may not conflict with the terms and conditions set forth in the recorded DCCR granted in accordance with the Section 404/Section 10 Corps of Engineers permit, mitigation banking instrument, and/or in-lieu fee program instrument.

5. If the governmental entity holding the conservation easement is a branch or division of a county or municipality, the governing body of the county or municipality shall pass a resolution adopting the terms and conditions set forth in the conservation easement and attach said resolution to the conservation easement.

### **Criteria for an Approved Conservation Easement**

A conservation easement generally means an interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for open space use, and protecting its natural resources (See O.C.G.A § 44-10-2). For purposes of use with the Corps’ permitting program, including banking and in-lieu fee program instruments, a conservation easement also means an interest in real property the purpose of which includes the long-term protection, preservation, maintenance, and enhancement of the waters of the United States including wetlands, streams, streamside buffers and the natural habitat.

An approved conservation easement must meet the following criteria:

1. **Recordation.** The conservation easement references the location by book and page numbers in the county of record the DCCR recorded by the permit holder or bank sponsor as a condition of the mitigation plan and provide that the restrictions set out in the DCCR shall be incorporated into the conservation easement by reference. A copy of the DCCR may also be an attachment to the conservation easement.
2. **Funding.** In order for the conservation easement holder to provide long-term management, monitoring and/or stewardship of the real property, obligations must be funded. Grantee must receive from the Grantor, or must allocate, funds sufficient for the purpose of stewardship, monitoring, management, and legal defense. The use of these funds is restricted to these purposes and shall be deposited in a fund separate from the Grantee's operational funds or as a line item separate from other budgetary categories. Governmental entities should place funds in a special revenue account.