

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

STANDARDS FOR QUALIFIED CONSERVATION EASEMENTS

Conservation Easements Following Recordation of Restrictive Covenants

The Corps of Engineers, Savannah District, Regulatory Branch generally requires that real property associated with compensatory mitigation pursuant to a permit or a banking instrument 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 Corps of Engineers, Savannah District's Model Declaration of Covenants and Restrictions. The Savannah District web site is <http://www.sas.usace.army.mil>. Select the "Permitting Info" box to access the publications. Select the Declaration of Covenants and Restrictions. The restrictive covenant is recorded with the Clerk of the Superior Court in the county in which the land is located.

Following recordation of the restrictive covenant, and as additional credit toward compensatory mitigation, the Regulatory Branch may consider 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. In cases where the owner of the property is seeking additional compensatory mitigation credit, the Corps requires review of the conservation easement prior to the recording of the easement, in order to determine continuity with the intent and purpose of the Declaration of Covenants and Restrictions. The Corps has established the following criteria for charitable land trusts and for governmental entities desiring to qualify as potential conservation easement holders associated with the compensatory mitigation process.

Land Trust Criteria

The land trust must meet the following criteria in order to be considered qualified:

1. Grantee must be a tax-exempt qualified organization under Section 501(c) (3) (description of certain types of organizations exempt from taxation), 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 is willing to accept a Conservation Easement under the terms of the easement and is 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 land trust group 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 National Land Trust Alliance's *Statement of Land Trust Standards and*

Practices as guiding the practices of the organization. The Statement is available from the Land Trust Alliance ("LTA") 1331 H Street, NW, Suite 400, Washington, DC 20005-4725; telephone 202-638-4725; web site is www.lta.org.

5. Grantee Board of Directors, officers and staff may not have a conflict of interest in regard to the wetland or streamside mitigation bank or permit issued by the Corps of Engineers. The Corps may require 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 permit or banking instrument.

6. There shall be compliance with the "Criteria for an Approved Conservation Easement" set forth below.

7. Non-profit land trusts desiring to qualify as holders of conservation easements for purposes of compensatory mitigation pursuant to the Corps' permits and bank mitigation program, and who are willing to accept the terms and conditions set out in the Declaration of Covenants and Restrictions, should apply to the Georgia Land Trust Service Center, 380 Meigs Street, Athens, Georgia 30601; attention Hans Neuhauser, Executive Director; telephone 706-546-7507. 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 by the GLTSC and provided to applicants and bank sponsors as requested.

8. The Georgia Land Trust Service Center web site has a general environmental model conservation easement that can be referenced as needed by land trusts.

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 owner of the property (permit holder or bank sponsor) after recording a restrictive covenant, may contact a governmental entity to determine interest regarding the granting of a conservation easement by the owner/permit holder/bank sponsor.

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. and amendments thereto.

3. In order to be acceptable to the Corps of Engineers, the conservation easement should adhere to the criteria set out below.

4. The conservation easement may not enlarge upon, nor conflict with, the terms and conditions set forth in the recorded Declaration of Covenants and Restrictions pursuant to the Section 404/Section 10 Corps of Engineers permit.

5. 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. For purposes of use with the Corps' permitting program including banking instruments, a conservation easement also means an interest in real property the purpose of which includes protecting, preserving, maintaining and enhancing waters of the United States including wetlands, streams, streamside buffers and the natural habitat.

An approved conservation easement must meet the following criteria:

1. The conservation easement should reference the location by book and page numbers in the county of record, of the Declaration of Covenants and Restrictions recorded by the permit holder or bank sponsor during the Section 404 process, and provide that the restrictions set out in the restrictive covenant shall be incorporated into the conservation easement by reference. A copy of the restrictive covenant 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 are to 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. Government entities should place funds in a special revenue account.

3. The conservation easement must provide the following language:

A. Extinguishment. If circumstances arise in the future such as to render the purpose of this indenture impossible to accomplish, the Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant to O.C.G.A. 44-10-4(c).

B. Assignment. The Conservation Easement is transferable only with written consent of the Grantor, which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Indenture only to an organization that is a "qualified organization" at the time of transfer under Section 107(h) of the Code or a Federal, state or local governmental agency or other entity, and the applicable regulations promulgated

thereunder, and also authorized to acquire, hold and enforce conservation easements under O.C.G.A. 44-10-2, 4-10-3 and 44-10-4. As a condition precedent to any such transfer, Grantee and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Indenture from each transferee hereunder, which assumption shall state that the purposes that the Conservation Easement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

C. Successors and Assigns; Covenants, Etc. Run With Land. The covenants, terms, conditions and restrictions of this Indenture shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall continue as an easement and servitude running with the Protected Property in perpetuity and enforceable against Grantor and all present and future owners, tenants and other holders of interest in the Protected Property.

D. No Extinguishment Through Merger. Grantor and Grantee agree that should Grantee, or any successor in interest to Grantee, come to own all or a portion of the fee interest in the Protected Property subject to this Conservation Easement, (i) said owner shall observe and be bound by the obligations and the restrictions imposed upon the Protected Property by this Conservation Easement, (ii) this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (iii) said owner as promptly as possible shall assign the Grantee interest in the Conservation Easement of record to another holder in conformity with the requirements of a "qualified organization" under Section 170(h) of the Code or a Federal, state or local governmental agency or other entity, and in compliance with O.C.G.A. 44-10-2, 44-10-3 and 44-10-4.