

(Record in the county record deeds office in which the land lies.)

Return To:

Attorney for owner of property
Address

Cross reference to that certain deed dated _____ and recorded in Deed Book _____, Pages _____,
County, Georgia Records.

CONSERVATION LAND USE AGREEMENT

BETWEEN
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,
THE GEORGIA LAND CONSERVATION CENTER,
(Other Named Agencies, Land Owners, Land Trust)

ARTICLE I. PURPOSE AND AUTHORITY

This Conservation Land Use Agreement ("Agreement") is entered into by and between the U.S. Army Corps of Engineers, Savannah District, Savannah, Georgia ("Corps of Engineers"), The Georgia Land Conservation Center ("Land Trust"), _____ and _____, for the purpose of establishing a mutual framework governing the agreement of the parties.

The Corps of Engineers is charged with carrying out the permitting authority under Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers & Harbors Act of 1899 (33 U.S.C. 403). (Also see 33 C.F.R. 320-330) Under its permitting authority, the Corps of Engineers may decide to perform what is known as "compensatory mitigation" in return for unavoidable impacts to waters of the United States, including wetlands, due to the activities of dredge and discharge of fill. One method of compensatory mitigation involves payment of funds by holders of Section 404 or Section 10 permits, to the Georgia Land Conservation Center, Athens, Georgia ("GLCC").

The GLCC is a special project of the Georgia Environmental Policy Institute. It is a private non-profit environmental organization which has been determined to be exempt

from federal income tax under section 501 (c) (3) of the Internal Revenue Code. The mission of the GLCC is to increase the capacity of land trusts to effectively and efficiently protect significant open space in Georgia for present and future generations. Funds approved through the Corps of Engineers permit process are placed in the Georgia Wetland or Streams Trust Fund ("GWSTF"). A copy of the Agreement between the Corps of Engineers, Savannah District, and the GLCC is attached hereto as **Exhibit A** and incorporated by reference.

(Land Trust) is a private non-profit organization which has been determined to be exempt from federal income tax under section 501 (c) (3) of the Internal Revenue Code with a central mission to preserve plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. _____ home office is located in _____ and the Georgia Chapter of _____, which was formed in _____, is located in _____, Georgia. _____'s Georgia Chapter has assisted in the protection of over _____ acres of land and currently owns and manages _____ preserves. The Georgia Chapter focuses on strategic sites which are located within _____ eco-regions of the state, and works to conserve these lands through both public and private partnerships.

(Insert relevant information about such other parties as are part of the agreement)

It is the intent of the parties: (a) that funds from the Georgia Wetland/Stream Trust Fund paid to _____ be used by _____ for the acquisition costs of the Property (as defined in Article II below) in the State of Georgia; (b) that _____ transfer the acquired Property to the _____ in accordance with the terms and conditions of this Agreement; and (c) that the Property be protected in perpetuity for its conservation values.

ARTICLE II. ACQUISITION OF LAND BY _____

Upon written direction by the Corps of Engineers, the GLCC will forward funds in the amount of _____ to _____. The funds shall be made payable to _____ and shall be forwarded by certified check to the address listed in Article IX.

_____ agrees to apply the funds from the Georgia Wetland/Stream Trust Fund to acquisition expenses incurred by _____ with respect to a specific tract of land, said land being more particularly described in **Exhibit B**, the legal description, and incorporated by reference. The tract is referenced as the _____ tract and is defined for purposes of this Letter Agreement as the "Property."

_____ agrees to furnish the Corps of Engineers and the GLCC with a letter stating that the funds forwarded by the GLCC have been applied by _____ to the acquisition of the stated Property. (Land Trust) shall furnish the Corps of Engineers with a copy of the Deed of Title.

ARTICLE III. SURVEY

A plat of the Property dated _____ is attached to this Letter Agreement as **Exhibit “C”**

The funds from the GWSTF will apply toward the acquisition of the entire tract as referenced in Exhibit B. However, the funds from the GWTF will specifically protect _____ linear feet of a perpetually flowing unnamed tributary to the _____ River and approximately _____ acre/s of wetland. The approximate location of the tributary will be shown on the map attached as Exhibit “C”.

The survey shows any easements of records and identify with reference to their recorded location. There is currently _____ easement of record on the property which reads as follows: Easement for _____ dated _____ in favor of the _____ recorded at Deed Book __, page __, _____ County Records.

ARTICLE IV – PROPERTY IDENTIFIED AS CLEAN WATER ACT SECTION 404 MITIGATION PROPERTY AND DOCUMENTED AS SUCH

It is further the intent of the Corps of Engineers that the Property be set aside as compensatory mitigation pursuant to compliance with the Clean Water Act, Section 404 and that these preserved streams, creeks, wetlands and their buffers, not be utilized again as mitigation by any future Clean Water Act Section 404 permit applicant. Therefore, in any transfer of title of property containing the _____ River tributary streams and wetland paid for by funds from the GWSTF, _____ as Grantor (and then the _____ as Grantor, as applicable), shall reference the _____ Tract) as compensatory mitigation property pursuant to Section 404 of the Clean Water Act and shall reference this Agreement.

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ARTICLE V. SPECIFICATION OF ECOLOGICAL FUNCTIONS

The services and ecological functions of the Property shall be set forth in an attachment to this Agreement, as **Exhibit D**, and shall be incorporated by reference.

(Note: The exhibit should provide a description of the aquatic, vegetative, forested, wildlife habitat, hydrological and/or riparian system. It should address the biological integrity of the land in the vicinity and the expected use of the property if not protected in its natural state. The Exhibit D report shall reference any pictures, slides, topography and/or soil maps, habitat lists, endangered species lists, or other data used in the report and furnish a copy to the Corps of Engineers for their file as Collective Exhibit D. Take this language out as it is for instructional purposes only.)

ARTICLE VI – IMPACTS OF JURISDICTIONAL WATERS OF THE UNITED STATES

The GLCC shall provide a list of those Clean Water Act permit numbers and/or enforcement violation file numbers, and/or those violations associated with Environmental Protection Agency penalty assessments that are relevant to the source of funds available for acquisition of this tract. That list shall be referenced as **Exhibit E** and shall be attached to this Letter Agreement.

ARTICLE VII --TRANSFER OF TITLE OF PROPERTY (Use where relevant)

The parties acknowledge and agree that _____ intends to transfer the Property to _____ in the immediate future.

ARTICLE VIII– OWNERSHIP AND MANAGEMENT

(Set out who will be the owner and manager of the property. Provide details regarding how the property will be managed or attach a management plan as an exhibit. If there are any county, state or federal statutes that will be applicable in protecting the property, provide citations.)

ARTICLE IX POINTS OF CONTACT

The Point of Contact ("POC") and address for the U.S. Army Corps of Engineers is:

(NAME)
Chief, Regulatory Division
U.S. Army Corps of Engineers
Savannah District
100 West Oglethorpe Avenue
Savannah, Georgia 31402-0889
(912-652-5768)

The POC and address for (Land Trust or Governmental entity)

The POC for the Georgia Land Conservation Center is:

(Name) Executive Director
Georgia Land Conservation Center
380 Meigs St.
Athens, Ga. 30601
(706 - 546-7507)

Other parties

ARTICLE X. OPEN COMMUNICATION AND COOPERATION

The Corps of Engineers, _____ and _____ all acknowledge that it is their desire to facilitate the process set forth in this agreement by open communication and cooperation. All parties agree to exercise their rights and obligations in good faith as contained in this agreement. If at any time any party has questions regarding the application of the funds to acquire the _____ tract for perpetual protection, the parties agree to make themselves available to resolve the issue in a timely fashion.

ARTICLE XI. AMENDMENTS and TERMINATION

This Agreement may be amended in writing by mutual consent.

This Agreement may not be terminated by either party without ninety (90) days written notice of intent to terminate.

Amendments or dissolution of this Agreement shall provide for the future conservation protection of the property pursuant to the intent of this Agreement. Although the U.S. Army Corps of Engineers is not authorized under the Clean Water Act, Section 404 to hold an interest in mitigation land either in fee or as a holder of an easement, it does have the authority pursuant to The Clean Water Act, Section 404, to enforce the protection of the waters of the United States, and their buffers, on this mitigation property site. Therefore, if the Agreement is terminated, the U.S. Army Corps of Engineers shall approve a new means for perpetual protection of the property.

The statutory requirements for compensatory mitigation pursuant to Section 404 of the Clean Water Act (33 U.S.C.1344) shall be addressed within the context of any amendment or termination consideration by the parties.

Should the property be condemned through the process of eminent domain, the assessed value of the property shall include the cost of replacement of the property with acquisition of another comparable site in the same watershed having the same conservation functions and values and the same environmental quality of the waters, streams, creeks, wetlands, aquatic habitat and vegetation as provided on the condemned property to assure that there is compliance with The Clean Water Act. The U.S. Army Corps of Engineers, Savannah District, shall be put on notice of any condemnation or adverse actions that would extinguish or reduce the conservation values associated with the property in order to allow the Corps the opportunity to consult with the U.S. Department of Justice who may file a motion to intervene or to remove the action to the U.S. Federal District Court in order to assure that assessed proceeds reflect the amount of funds required to protect properties containing comparable waters of the United States as required by the Clean Water Act.

SIGNATURES:

Each signature should have the name and title printed under the signature line, provide for one witness, and a notary public should notarize the signature and provide the notary's seal. (Follow the signature requirements for real estate transactions in the state in which it is recorded.)

EXHIBITS

Attach Exhibit A, a copy of the Agreement between the U.S. Army Corps of Engineers and the Georgia Land Conservation Center.

Attach Exhibit B, the legal description.

Attach Exhibit C – the platted survey and topographic map. On the survey, the approximate location of the wetlands/streams/creeks and their acreage and/or linear feet of stream should be shown. However, a metes and bounds survey of the stream/creek/wetlands is not required if they are within the larger parcel and the GWSTF funds are applied to acquisition of the entire parcel.

Attach Exhibit D – the environmental functions and services of the site

Attach Exhibit E – the list of permits/enforcement actions from which funds were obtained to acquire this tract

Exhibit D: Services and Ecological Functions

Sample Services and Ecological Functions Exhibit

The Etowah basin is home to some of the most diverse, and at the same time imperiled, biological diversity in the nation. While the watershed is relatively small (3,027 sq. miles) the Etowah historically has been home to 91 native fish species and 51 species of mussels. The Etowah River drainage is outstanding globally in its high level of fish endemism. Four species of fish (Cherokee darter, Etowah darter, and two holiday darter species) are unique to the Etowah, a very high level of endemism for such a small basin. Unfortunately nine fish species are known to have been extirpated from the Etowah basin and six others are suspected to have been extirpated. Several aquatic species in the Etowah have been federally protected including three fish species (Cherokee darter, Etowah darter, Amber darter) and five mussel species (Upland combshell, southern clubshell, ovate clubshell, triangular kidneyshell, Alabama moccasinshell). In addition to the federally protected fish, four fish species have state protections in Georgia (two Holiday darters, the Coosa Frecklebelly madtom, and the Freckled darter,).

The approximately ____-acre _____ tract is located within _____ County. It is an in-holding within the Chattahoochee National Forest and is surrounded by the forest on four sides. It is a beautiful tract with a rich herbaceous layer and mature hardwood forest. An unnamed perpetually flowing tributary flows through the _____ tract and enters the Etowah River within 1,000 feet. This section of the mainstem Etowah currently supports healthy and functional populations of the federally protected Etowah darter and state protected Holiday darters, both upstream and downstream of the property. Further downstream of the tract, the Etowah supports robust populations of Speckled chub and Coosa Frecklebelly madtom .

The tributaries that flow into the Etowah River are critical to its protection. Healthy, stable streams surrounded by natural forest cover along their banks and in the uplands retain natural hydrologic patterns. Not only do they provide stable habitat for small stream aquatic species, they are critical to downstream flows in the Etowah and they help maintain good habitat in the mainstem for aquatic species survival. Because so many streams within the Etowah basin are experiencing greater stormwater flows due to development, it is critical to protect as many small tributaries as possible to ensure good aquatic habitat is maintained in the mainstem of the Etowah.

The approximately ____ acre of wetlands found on the _____ tract is palustrine hardwood forest wetlands with rich layers of herbaceous vegetation. The wetlands are not located in one area, instead they are scattered up the entire tributary within the tract. For this reason it would be very difficult to map each location, but their importance is high. In mountainous areas there is less wetland, so each one provides a key role in the ecology of the property. The scattered wetlands found on the _____ Tract provide flood control and habitat diversity. Many of the wetland areas are critical for salamanders.

