

Compatible Use Authorizations (CUA)

PURPOSE

In Wetland Easement deeds (both WRP and WRE), there are a list of PROHIBITED activities that exist for the full length of the easement term (see bottom of document). However, WRP and WRE lands may be used for compatible economic and recreational uses that are listed as prohibited in the deed. All rights not specifically reserved to the landowner under the warranty easement deed require site-specific evaluation and specific authorization from NRCS prior to implementation.

NRCS may, in its sole discretion, authorize the landowner to conduct compatible uses on the easement. Such authorizations are time-limited and may be modified or rescinded at any time by NRCS. CUA's must not adversely affect habitat for migratory birds, at-risk species, and threatened or endangered species. In evaluating and authorizing compatible uses of the easement or contract area, NRCS will:

- Consider whether the use will facilitate the practical administration and management of the land subject to the easement; and
- Ensure that the use furthers the functions and values for which the easement was enrolled, including long-term protection and enhancement of the wetland and other natural values of the enrolled area.

CUA's are required any time a landowner is affecting the hydrology or vegetation of the project, even when the landowner is carrying out management activities determined necessary by NRCS and outlined in the WRPO. Since wetland and biological systems are dynamic and resource conditions change over time, NRCS will not determine that any use is permanently compatible with the project. A landowner will not be assured of any specific level or frequency of such use that extends for the duration of the enrollment period. All CUAs must identify the length of time for which the authorization is valid and an expiration date. No CUA may be granted for more than a 10-year length of time.

Only activities that further both the long-term protection and enhancement of the wetland and other natural values of the project area may be authorized as compatible uses through the CUA process identified below. Economic returns that are realized by the landowner during periods when a CUA is being implemented are retained by the landowner.

HOW TO REQUEST A CUA

All CUAs must be in writing and supported by a technical determination in the case file that clearly documents the basis for the determination that the authorized activities meet compatibility requirements and the guidelines for implementation.

The fee-title landowner must fill out an AD-1160, Compatible Use Authorization and submit through the Field Office. The DC should notify the Area Conservationist (AC), the Area Resource Conservationist (ARC), appropriate Technical Support Team (TST), and Programs staff (Easement Specialist) once a completed AD-1160 is received. A technical determination will be made as to whether the CUA is appropriate for the wetland values and other natural resources on a case-by-case basis. This technical determination will be made by the appropriate technical staff, ranging from the Area Engineer, State or Partner Biologist or Forester, Easement Specialist, and/or Area Resource Conservationist. The Easement Specialist will ensure that CUA is compatible with program policy and process the CUA for approval by the State Conservationist.

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Compatible Use Authorizations are subject to requirements of the National Environmental Policy Act (NEPA). NRCS form NRCS-CPA-052 is required for each CUA requested; however, if a new CUA is comprised of activities that have been previously analyzed in an existing NRCS-CPA-052 for that easement, a separate NRCS-CPA-052 is not required if all of the following are met:

1. The activity as prescribed in the new CUA was analyzed and documented in an existing NRCS-CPA-52
2. The existing NRCS-CPA-52 analyzes the actions specifically described in the new CUA to which it is being applied. If there are any changes a new NRCS-CPA-52 is required for that CUA
3. The existing NRCS-CPA-52 was originally signed by the NRCS responsible Federal official (RFO) no more than 5 years prior to the date any subsequent CUA relying on such Form NRCS-CPA-52 is authorized by NRCS

Items covered by a CUA before submission to the State Office will include:

1. The person requesting the compatible use
2. Activity requested
3. A description of the land to be utilized with maps
4. The conditions of the site when the compatible use was requested
5. A statement of effect and compatibility
6. Method of implementation
7. Frequency of the allowed activity
8. Timing and intensity of implementation
9. Duration of the authorization
10. Statement that NRCS has the right to review, revise, and terminate CUAs at any time to protect the functions and values of the enrollment area
11. Signatures of the landowner and NRCS representative recommending the authorization.

APPROVAL PROCESS FOR A CUA

CUAs are only valid once signed by the State Conservationist. If the CUA is approved by the State Conservationist, the field office will be notified of approval by the Easement Specialist. The field office is then responsible for notifying the landowner and monitoring the CUA progress as described below. The official copy of the CUA will be maintained in the official file records at the State Office. A CUA database will be maintained at the State Office level by the Easement Specialist.

TERMS OF CUA'S

Since resource conditions change over time, NRCS cannot determine that any use is permanently compatible with the project. Therefore, the landowner will not be assured of any specific level or frequency of such use that extends for the duration of the enrollment period, but rather compatible uses will be authorized for a specific period of time. All CUAs will be incorporated into the restoration plan and will stipulate that NRCS retains the right to modify or cancel the use at any time NRCS determines the use to be in conflict with the protection and enhancement goals of the project. Although the term of a CUA may vary, wetland systems are dynamic and therefore no CUA should be granted for more than 10 years at a time. Maintenance and management practices are typically approved for 10 years, while timber harvesting, grazing, and other high impact activities may only be approved for 1 year terms.

CUAs are subject to routine revisions and **are not** recorded with the warranty easement deed. CUAs do not vest any right of any kind with the landowner. If multiple-year CUAs are issued, annual onsite visits

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are required for the first 2 years to determine if the agreements are being followed and are still appropriate. After the first 2 years of a multiple-year CUA, monitoring will be done in accordance with section Georgia's Easement Monitoring Policy.

TYPICAL CUA PRACTICES

The types of practices, components, activities or measures that MAY BE allowed through the compatible use process include but are not limited to—

1. Installation and maintenance of acceptable structures
 - a. Such as: Semipermanent hunting blinds, <80 ft² and 8 feet in height
2. Mowing under certain conditions
 - a. Only between July 15 and September 1, limited to mowing for access
3. Grazing to establish or maintain wildlife habitat or wetland functions and values
4. Forest management activities including timber harvest, for the specific purpose of restoring, protecting and enhancing optimum wildlife habitat and wetland functions and values, especially for migratory birds and at-risk species.
5. Wildlife food plots under certain conditions
 - a. No more than 5% of easement area
6. Managing water levels.
 - a. NRCS will provide management guidelines to persons receiving CUA to manage water levels. Manipulating water levels outside of the compatible use process is prohibited.
7. Applying pest management activities.
8. Managing for carbon sequestration.
9. Maintenance of existing access roads (NOT NEW CONSTRUCTION)

In Georgia, a typical maintenance/management CUA consists of approval of access road maintenance (to mow and daylight roads for property access for restoration and monitoring), firebreak construction, burning for enhancement of wildlife habitat in the buffer of the wetland, and wildlife openings to serve as additional food sources for wildlife. NRCS will set strict guidelines on burning regimes and restrictions on types of plants that may be utilized in a wildlife opening.

Any type of timber harvesting activity must further the wildlife habitat and wetland values and functions of the easement including habitat for migratory birds, at-risk species, and threatened or endangered species. Before any timber harvesting may be authorized, a forest management plan must be developed by a registered forester and submitted to NRCS to review.

INTER-AGENCY COORDINATION

NRCS may provide the USFWS, USACE, Georgia Forestry Commission, and Georgia Department of Natural resources the opportunity to provide input into any CUA. The details of CUAs are determined by NRCS at its sole discretion. The decision to authorize a compatible use is subject to requirements of all applicable laws and regulations

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528.156 Prohibited and Noncompatible Uses

Prohibited and noncompatible uses include those activities that NRCS determines will not further the protection and enhancement of the functions and values of the enrolled area. When determining if a use would be noncompatible, evaluate the impact on the present functions and values, and any potential impact, constraint, or limitation that the use would have on subsequent efforts to achieve maximum wildlife benefits and wetland value and functions. Such activities are not limited to, but may include

- Placing prohibited structures on the enrollment area
- Planting and harvesting crops for human or domestic animal consumption
- Grazing or Forest Management Activities, outside of a valid CUA
- Surface mining, including mining for peat and other organic materials.
- Water supply, waste treatment, and incompatible water conveyance systems (e.g., irrigation withdrawal or return flow of contaminated water).
- Crayfish, catfish, and baitfish production where the intensity of management would undermine the functions and values of the wetland.
- Hunting and fishing where the intensity would undermine the functions and values of the wetland.
- Commercial seed production or harvest.
- Biomass production.
- Commercial wild rice or cranberry production.
- Development of road or other transportation systems that fragment the easement area, alter surface hydrology patterns, modify topography, or otherwise diminish the wetland functions and values or constrain restoration or enhancement efforts.
- Drainage development or maintenance that would adversely affect wetland functions and values on the site.
- Any activity performed outside the parameters of an authorized, valid CUA including manipulation of water levels.
- Any activities to be carried out on the land owned or operated by the fee title landowner of the enrolled area that is immediately adjacent to and functionally related to the land subject to the ACEP-WRE enrollment if such activities alter, degrade, or otherwise diminish wildlife habitat benefits or wetland functions and values of the enrolled land.
- The installation or use of fences that have the effect of preventing wildlife use and access onto or off of the enrolled area are prohibited on the enrolled area, the boundary of the enrolled area, or on the landowner's land that is immediately adjacent to, and functionally related to, the enrolled area.