

THE GEORGIA WETLANDS TRUST FUND: AN IN-LIEU FEE PROGRAM FOR WETLANDS MITIGATION

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Abstract. The Georgia Wetlands Trust Fund (GWTF) provides an alternative strategy for meeting wetlands mitigation requirements under Section 404 of the Clean Water Act. Upon approval by the U.S. Army Corps of Engineers, permittees can meet some or all of their mitigation requirements by contributing a fee to the GWTF. The fee is used to help local partners, either a land trust or government entity, acquire and permanently protect wetlands with high conservation value. For the developer, use of the GWTF simplifies the task of meeting mitigation requirements imposed by the Corps of Engineers, and depending on circumstances, may also be more cost-effective than on-site mitigation or the purchase of credits from a mitigation bank. For the regulatory agency, the GWTF increases regulatory flexibility and simplifies the Corps' administrative oversight. For the conservation community, the GWTF allows land trusts or natural resources agencies to permanently protect wetlands with high conservation value. The GWTF may also be used for Settlement Agreements. The GWTF is administered by the Georgia Land Trust Service Center, a private, non-profit organization headquartered in Athens, Georgia. The agreement that established the GWTF, the first such agreement of its kind in the United States, was signed by representatives of the Georgia Land Trust Service Center and the Savannah District of the U.S. Army Corps of Engineers in July, 1997.

INTRODUCTION

The Clean Water Act (33 U.S.C. 1344) provides in Section 404 for the issuance of permits for the discharge of dredged or fill materials into waters of the United States including wetlands. The administration of the permit program is the responsibility of the Secretary of the Army. The Secretary has delegated the authority to grant or deny permits to the Regulatory Branch of the U.S. Army Corps of Engineers ("the Corps"). The Corps' decisions to grant or deny permits are based on criteria set out in 33 CFR Part 320-330. The guidelines for review under the provisions of

the National Environmental Policy Act are set out in 33 CFR 230. The purpose of the guidelines is to restore and maintain the integrity of the waters of the United States. To accomplish this goal, the guidelines require permit applicants to demonstrate that there are no practicable alternatives to discharge into waters of the United States. Applicants must first find ways to avoid discharge into these waters, and if waters must be altered, the degree or magnitude of the disturbance must be minimized. Any unavoidable degradation or loss must be mitigated through the restoration, creation, enhancement or preservation of other waters of the U.S.

On December 13, 1996, the Corps issued a Final Notice of Issuance, Re-issuance, and Modification of Nationwide Permits (Federal Register 61 (241)) that included a provision to the effect that the Corps would consider as appropriate mitigation for wetland loss the payment of fees to wetlands trust funds where such fees contribute to the restoration, creation, enhancement or preservation of wetlands. The effective date for the Final Notice was February 11, 1997. In July 1997, the Savannah District of the Corps and the Georgia Land Trust Service Center ("the Service Center"), a private non-profit organization, entered into an agreement to create an in-lieu fee mitigation fund called the Georgia Wetlands Trust Fund (GWTF). The agreement, the first of its kind in the nation, covers topics including purpose, authority, qualifications of land trusts, program operation, financial accountability, recordkeeping, procedures for selection, administrative costs, communications, amendments and termination. (A copy of the agreement is posted on the Savannah District Regulatory Branch's web site:

<http://www.sas.usace.army.mil/permit.htm>)

BENEFITS OF THE GEORGIA WETLANDS TRUST FUND

For Permit Applicants: The GWTF provides greater flexibility to developers and other applicants by providing an additional option for meeting wetland mitigation

requirements. With the payment of the agreed-upon fee, some or all of the permittee's responsibilities for wetlands mitigation shift to the Georgia Wetlands Trust Fund. The permittee is not responsible for wetland acquisition, stewardship and monitoring, and can concentrate on the project at hand. Long-term liability is also reduced. Depending on circumstances including local conditions, the payment of a fee to the GWTF may also be more cost-effective than on-site mitigation or the purchase of credits from a commercial mitigation bank.

For the Corps: The GWTF increases regulatory flexibility by providing an additional option for wetland mitigation. The use of GWTF funds also guarantees the permanent protection of wetlands. It also simplifies the Corps' administrative oversight and reduces the need for on-site monitoring and enforcement. The Georgia Land Trust Service Center provides periodic and annual reports to the Corps on the status of the fund and its use for wetlands mitigation.

For Wetlands Conservation: The GWTF provides funds that allow land trusts or natural resource agencies to acquire and permanently protect wetlands with high conservation value. The selection of wetlands to be preserved is determined on a case-by-case basis by a Site Selection Committee of the Georgia Land Trust Service Center. The Site Selection Committee is comprised of three individuals with extensive experience in regional planning, environmental law and fresh water ecology. The Committee works in cooperation with local partners (a land trust or government entity), the Corps and other Federal and state natural resource agencies. Considerations that the Committee uses in selecting wetlands include the location of the wetlands to be preserved (preference is given to wetlands in the same river basin and physiographic province as the project), its conservation value (particularly in relation to the altered wetlands), its availability from a willing seller for a price at or below fair market value, and the potential for leveraging other funds. Wetlands with high conservation value include (but are not limited to) those with endangered species, or those that link two already-protected natural areas or buffer an existing natural area or those that would be used for environmental education or scientific research. Oversight of the Site Selection Committee's decisions is provided by the Corps.

The GWTF may also be used to help meet the requirements of a Settlement Agreement between the Corps and another party. In these cases, the fee does not go to the U.S. Treasury but remains in and is expended on wetlands in Georgia where the impacts occurred.

HOW THE GEORGIA WETLANDS TRUST FUND OPERATES

The following steps illustrate how the GWTF operates but does not fully describe them; nor do they describe all the steps involved.

A developer whose project requires fill and/or dredging of wetlands applies for a permit from the Corps.

The Corps conducts a public interest review, coordinating with other agencies, and the public submits comments.

The use of the GWTF is not a consideration in the public interest review, and does not influence the Corps' decision to grant or deny the permit.

The Corps reviews alternatives and criteria for avoidance, minimization and then mitigation. The Corps also determines that the preservation of wetlands through the GWTF is an acceptable mitigation measure.

1. The Corps determines the number of acres that must be permanently preserved as acceptable mitigation. The acre figure is determined by the Corps' Project Manager and is based on the calculation of credits contained in the Savannah District's Standard Operating Procedure, Compensatory Mitigation (posted on the Regulatory Branch's web site: <http://www.sas.usace.army.mil/permit.htm>)
2. The permit applicant contacts the Georgia Land Trust Service Center ("Service Center") and provides information on (1) the Corps permit number, (2) the number of acres to be preserved, (3) the location of the altered wetlands and (4) a description of the wetlands that will be lost.
3. The Service Center calculates the necessary fee to be paid. This fee is based on a number of factors, including (1) the cost of the wetland in the vicinity of the project, (2) acquisition costs – title search, due diligence review, closing costs, etc., (3) stewardship costs including regular monitoring and the payment of property taxes, if any, (4) a contribution to a legal defense fund and (5) an administrative fee set by the Service Center's agreement with the Corps. The fee is presented to the permit applicant as a mitigation option.
4. The applicant reviews the fee and compares it with other mitigation options. If the applicant selects the GWTF option, a check is issued to the Service Center.
5. The Service Center notifies the applicant and the Corps upon receipt and deposit of the fee in the GWTF. Assuming that other permit conditions have been met, the applicant may then proceed with the project.
6. The Service Center works with local partner(s), either a local land trust or natural resource agency, to identify

wetlands with high conservation value that might be acquired using the GWTF. Examples of wetlands with high conservation value are described in the benefits section of this paper.

7. Candidate sites are presented to the Site Selection Committee, the Corps and others for review.
8. Approved wetlands are then acquired by the local partner. Their permanent protection is insured by the placement of a conservation easement on the wetland, or in the case of acquisition by the state, by its designation as a Heritage Trust site.
9. Appropriate reports are provided to the Corps and others.

FOR FURTHER INFORMATION

Further information on the Georgia Wetlands Trust Fund may be obtained from Hans Neuhauser, Director, Georgia Land Trust Service Center, 380 Meigs Street, Athens, GA 30601; telephone 706-546-7507; fax 706-613-7775; e-mail: gepi@ix.netcom.com

Information on the Corps' regulatory program may be obtained from Rebecca Rowden, Assistant District Counsel, U.S. Army Corps of Engineers, Savannah District, P. O. Box 889, Savannah, GA 31402-0889; telephone 912-652-5123; fax 912-652-5126; e-mail: Rebecca.A.Rowden@sas02.usace.army.mil Additional information, including a copy of the Service Center – Corps agreement, may also be obtained from the Savannah District Regulatory Branch web site:
<http://www.sas.usace.army.mil/permit.htm>