

CONSERVATION LAND USE AGREEMENT

BETWEEN

U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
AND
THE U.S. DEPARTMENT OF AGRICULTURE
U. S. FOREST SERVICE

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"), and the Department of Agriculture, U.S. Forest Service ("Forest Service"), for the purpose of establishing a mutual framework whereby compensatory mitigation funds available under section 404 of the Clean Water Act may be used to purchase certain lands to be incorporated within the National Forest System. The Forest Service and the Corps of Engineers are collectively referred to as 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 Wetland Trust Fund administered by the Georgia Land Trust Service Center, Athens, Georgia ("GLTSC"). The GLTSC in turn provides those funds for the purchase of lands with wetland values.

The Forest Service is charged with the administration of lands and interests in lands comprising the National Forest System, which is defined by law as follows:

Congress declares that the National Forest System consists of units of federally owned forest, range, and related lands throughout the United States and its territories, united into a nationally significant system dedicated to the long-term benefit for present and future generations, and that it is the purpose of this section to include all such areas into one integral system. The "National Forest System" shall include all national forest lands reserved or withdrawn from the public domain of the United States, all national forest lands acquired through purchase, exchange, donation, or other means, the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act, and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system. Notwithstanding the provisions of the Act of June 4, 1897, no land now or hereafter reserved or withdrawn from the public domain as national forests pursuant to the Act of March 3, 1891, or any act supplementary to

and amendatory thereof, shall be returned to the public domain except by an act of Congress. 16 U.S.C. § 1609(a).

Components of the National Forest System are subject to various laws and regulations further defined herein. As a lead Federal agency in natural resource conservation, the Forest Service provides leadership in the protection, management, and use of the Nation's forest, rangeland, and aquatic ecosystems. Through implementation of land and resource management plans, the Forest Service ensures sustainable ecosystems by restoring and maintaining species diversity and ecological productivity that helps provide recreation, water, timber, minerals, fish, wildlife, wilderness and aesthetic values for current and future generations of people.

ARTICLE II - ACQUISITION OF LAND BY COOPERATING THIRD PARTIES AND RECONVEYANCE TO THE FOREST SERVICE.

Compensatory mitigation funds from the Georgia Wetland Trust Fund may be used by cooperating third parties for the acquisition by such parties of suitable lands within or adjacent to the boundaries of units of the National Forest System. Such suitable lands are referred to herein as "Properties".

The Forest Service has an active land acquisition program for the purpose of acquiring lands and interests in lands within and adjacent to National Forest boundaries. Such lands are acquired by purchase or donation, using appropriated or donated funds. The purpose of acquisition is to acquire lands for national forest purposes which will contribute to the scenic and natural values of the national forests, provide for public recreation, and will preserve and protect wildlife species and habitats. Properties may be donated, or sold in whole or part, to the Forest Service under existing Forest Service land acquisition authorities including: the Weeks Act of 1911 (16 U.S.C. § 515); the Wilderness Act of 1964 (16 U.S.C. § 1134); the Wild and Scenic Rivers Act (16 U.S.C. §1277); the National Trails System Act (16 U.S.C. § 1246); and the Act of August 3, 1956 (7 U.S.C. § 428a).

The Parties agree that the Forest Service is an appropriate recipient of Properties acquired in whole or part with compensatory mitigation funds available under section 404 of the Clean Water Act. The Parties also agree that the conveyance of such Properties to the Forest Service satisfies the mitigation goals of the Corps of Engineers. It is understood that in any land acquisition, the Forest Service will utilize its existing laws, regulations and policies regarding land valuation, acceptable title, survey and land descriptions, and closing and financing procedures. Nothing in this Agreement is intended to affect normal Forest Service acquisition policies and procedures.

ARTICLE III – PROPERTIES IDENTIFIED AS CLEAN WATER ACT SECTION 404 MITIGATION PROPERTY.

The Corps of Engineers intends that Properties acquired and set aside as compensatory mitigation pursuant to compliance with the Clean Water Act, Section 404 shall be managed for

the purposes of preserving streams, creeks, wetlands and their buffers. Further, that upon acquisition, they shall not be utilized again as mitigation by any future Clean Water Act Section 404 permit applicant.

ARTICLE IV - - MANAGEMENT OF PROPERTIES BY THE FOREST SERVICE

For any Properties conveyed to the United States for administration by the Forest Service, the Forest Service agrees that:

(a) The land will be administered and managed as “National Forest System lands” subject to all the laws, rules, and regulations applicable thereto including, but not limited to: the Weeks Act of 1911, the Multiple Use Sustained Yield Act of 1960, the National Forest Management Act of 1976, the Endangered Species Act, the Clean Water Act, and the National Environmental Policy Act

(b) The land will be administered and managed as an area of multiple use as defined by the Multiple Use Sustained Yield Act of 1960 (16 U.S.C. §§ 528-531), and that Act defines watershed and wildlife and fisheries as among the several National Forest uses.

(c) The land will be administered and managed in accordance with all applicable Executive Orders, including Executive Order 11988 pertaining to floodplain management, and Executive Order 11990 pertaining to protection of wetlands.

(d) The land will be administered and managed pursuant to a National Forest Land and Resource Management Plan, which, among other things:

(1) provides for coordination of watersheds, wildlife and fish,”
16 U.S.C. § 1604(e)(1);

(2) insures consideration of watersheds, wildlife, and fish, 16
U.S.C. § 1604(g)(3)(A);

(3) insures that timber harvests, if any, will not irreversibly
damage soil, slopes, or other watershed conditions, 16 U.S.C. §
1604(g)(3)(E)(i);

(4) provides that streams, streambanks, shorelines, lakes,
wetlands, and other bodies of water will be protected from detrimental
changes in water temperatures, blockages of water courses, and deposits
of sediment due to timber harvests, 16 U.S.C. § 1604(g)(3)(E)(iii).

(e) Regarding access to Properties, because the lands will have National Forest status upon its acquisition by the Forest Service, it is understood that they will be open to the public, and for inspection by the U.S. Army Corps of Engineers and the GLTSC. It is understood that Properties are always subject to Forest Service rules and regulations including the right of the Forest Service to

close the Properties to public access in emergency situations.

ARTICLE V – FUTURE DISPOSITION OF THE PROPERTY BY THE FOREST SERVICE.

It is the expectation of the Forest Service that the Properties acquired pursuant to this Agreement will be perpetually managed for National Forest purposes. The Forest Service currently has no general sale authority, and a very limited authority to sell less than 10 acres under the Small Tracts Act solely to resolve encroachments under color of title (16 USC §§ 521c-521i). The only other authority to dispose of the Properties would be by exchange. For exchanges, the Forest Service would have to determine that the land is suitable for transfer out of federal ownership (43 USC § 1716(b)), and that lands acquired in exchange would become part of the National Forest System. Thereby, the value of any land conveyed by exchange would be offset by lands acquired.

In the unlikely event that any Properties are ever exchanged by the Forest Service, it would do so in conformity with the requirements of the National Environmental Policy Act (NEPA). As part of the NEPA scoping requirements, the Forest Service will provide the U.S. Army Corps of Engineers a notice of any proposed exchange. In addition, the Forest Service must consider the preservation of aquatic resources on the lands or substitution of such resources consistent with Executive Orders 11988 and 11990. These objectives may be accomplished by reservation of a conservation easement, the imposition of restrictive covenants, or acquiring like resources to offset any loss of aquatic resources on the Property.

ARTICLE VI – GENERAL PROVISIONS.

This is an interagency agreement which may be amended or revoked by mutual agreement of the agencies.

Nothing herein shall be construed to obligate the expenditure of funds not already appropriated.

Nothing herein shall be construed as conferring rights or causes of action on any third party.

This agreement shall be effective on the date of the last signatory thereto.

EXECUTED, this _____ day of _____ 20 ____.

**UNITED STATES ARMY
CORPS OF ENGINEERS**

By _____

Date _____

Title _____

**DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE**

By _____

Date _____

Regional Forester, Southern Region