

LETTER AGREEMENT
BETWEEN
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,
THE GEORGIA LAND TRUST SERVICE CENTER,
AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

ARTICLE I. PURPOSE AND AUTHORITY

This Letter 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 Trust Service Center ("Land Trust"), and the United States Department of Agriculture, Forest Service (acting by and through the Chattahoochee and Oconee National Forests) (the "USFS"), 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 Trust Service Center, Athens, Georgia ("GLTSC").

The Georgia Land Trust Service Center 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 Service Center 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 Trust Fund ("GWTF"). A copy of the Agreement between the Corps of Engineers, Savannah District, and the GLTSC is attached hereto as Exhibit A and incorporated by reference..

The Chattahoochee-Oconee National Forest is a 865,000 acre forest managed under the auspices of the U.S. Department of Agriculture. The Forest Service is a Federal agency that manages public lands in national forests and grasslands. The Creative Act of 1891 created the forest reserves from land that was public domain. Congress passed the Organic Act of 1897 to improve and protect forests, secure favorable water flows, and to furnish a continuous supply of timber for citizens of the United States. The Act of February 1, 1905 placed the administration of the Nation's forest reserves under the Department of Agriculture. The Weeks Act of 1911 authorized the purchase of private lands to establish National Forests. The Multiple Use-Sustained Yield Act of 1960 provides that National Forests shall be administered for outdoor

recreation, range, timber, watershed, and wildlife and fish purposes. As the lead Federal agency in natural resource conservation, the USDA 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.

It is the intent of the parties: (a) that funds from the Georgia Wetland Trust Fund paid to the USFS be used by the USFS to help acquire the Property (as defined in Article II below) in the State of Georgia; and (b) that the Property be protected in perpetuity for its conservation values.

ARTICLE II. ACQUISITION OF LAND BY THE US FOREST SERVICE

Upon written direction by the Corps of Engineers, the GLTSC will forward funds in the amount of \$61,045.14 to the escrow account of Bill Dodson, closing attorney for the Forest Service. The funds shall be made payable to **William Dodson II – Escrow Agent**, and shall be forwarded by certified check to the address listed in Article VI.

The USFS agrees to apply the funds from the Georgia Wetland Trust Fund as a partial payment of acquisition expenses incurred by USFS with respect to a specific tract of land, said land being more particularly described in Exhibit B and incorporated by reference.

The funds from the GWTF will be applied to help acquire 3,000 linear feet of stream bank along Tickanetly Creek and approximately 181 acres of the Glover/Little Property on the tract identified in Exhibit D. A more specific description of the location of the 3,000 linear feet of stream bank and 181 acres of land (the "Property") paid for by GWTF funds is set out at Exhibit B, attached hereto and incorporated by reference.

The USFS agrees to furnish the Corps of Engineers and the GLTSC with a letter stating that the funds forwarded by the GLTSC have been applied by the USFS to the acquisition of the stated Property and that the USFS has title to the Property. The recording location of the deed of title of the USFS in the Office of the Clerk of the Superior Court in the county in which the land is located by reference to the book and pages of recordation shall be provided in the letter. Once the USFS accepts title to the Property in accordance with Article V below, the USFS will furnish the Corps of Engineers and the GLTSC with a letter indicating the recording reference for the deed of title to the Forest.

The USFS shall at reasonable times and upon notice, allow the Corps of Engineers and the GLTSC, the right of ingress and egress to inspect the Property.

ARTICLE III. SURVEY

A survey of the Property prepared by the USFS is attached to this Letter Agreement as Exhibit "B". The survey shall include the specific metes and bounds, or bearings and distances, of the 181 acres of land acquired with funds paid to USFS from the GWTF. Within sixty days after execution of this Letter Agreement, the Forest Service will provide the Corps of Engineers with a copy of the final survey.

It is the intent of the Corps of Engineers to have specific Property acquired with funds from the GWTF. It is further the intent of the Corps of Engineers that the Property set aside as compensatory mitigation, 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 Tickanetly Creek streambank paid for by funds from the GWTF, Glover/Little Estate as Grantor, shall reference the surveyed Tickanetly Creek streambank property as compensatory mitigation property pursuant to Section 404 of the Clean Water Act and shall reference this Agreement.

ARTICLE IV. SPECIFICATION OF ECOLOGICAL FUNCTIONS

The values and ecological functions of the Property shall be set forth in an attachment to this Agreement, as Exhibit C, and shall be incorporated by reference. The document shall provide a description of the aquatic, vegetative, forested, wildlife habitat, hydrological and/or riparian system. It shall 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 report shall reference any pictures, slides, topography maps, soil maps, habitat lists, endangered species lists, or other data used in the report.

ARTICLE V. TRANSFER OF TITLE OF STREAMBANK

The parties acknowledge and agree that the USFS intends to purchase the Property from the Glover/Little Estate in the future. Upon acquisition, the USFS agrees that:

(a) the Property will be administered and managed as "National Forest System lands subject to all the laws, rules, and regulations applicable thereto," 43 U.S.C. § 1715(d);

(b) the Property will be administered and managed in accordance with all applicable Executive Orders, including Exec. Order Nos. 11988, 11990.

(c) the Property will be administered and managed as part of the Chattahoochee National Forest, which is administered for multiple uses, including "watershed, and wildlife and fish purposes," 16 U.S.C. § 528;

(d) the Property will be administered and managed consistent with the Forest's Land and Resource Management Plan, 2004, Management Prescriptions, riparian Corridors, which, inter alia: (see exhibit "E")

- provides for coordination of watersheds, wildlife and fish," 16 U.S.C. §

1604(e)(1);

- insures consideration of watersheds, wildlife, and fish, 16 U.S.C. §

1604(g)(3)(A);

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

- 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); and

(e) in the event that the Property is conveyed, through exchange, sale, or any other means, to any non-federal entity, it will be conveyed subject to a permanent conservation easement in a form acceptable to the Corps of Engineers (which easement shall include the language in this Article VI), and that the USFS, at its sole option and in its exclusive discretion, can either retain this permanent conservation easement or convey it to a non-profit land conservation organization or a state agency, such as the Georgia Department of Natural Resources, for the purpose of preserving the Property's conservation values.

ARTICLE VI. POINTS OF CONTACT

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

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

The POC for the Georgia Land Trust Service Center is:

Hans Neuhauser, Executive Director
Georgia Land Trust Service Center
380 Meigs St.
Athens, Ga. 30601
(706 - 546-7507)

The POC for the Forest is:

Larry M. Lockett
Recreation, Engineering, Archaeology, and Lands Staff Officer
Chattahoochee-Oconee National Forests
1755 Cleveland Highway
Gainesville, Georgia 30501
(770-297-3033: Fax: 770-297-2939)

The POC for the closing Attorney is:

Mr. Bill Dodson, II LLC
6000 Lake Forest Drive, N.W.
Suite 300
Atlanta, Georgia 30328

ARTICLE VII. OPEN COMMUNICATION AND COOPERATION

The Corps of Engineers, and the USFS 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 Tickanetly streambank for perpetual protection, the parties agree to make themselves available to resolve the issue in a timely fashion.

ARTICLE VIII. 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.

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 so as to assure no net loss of wetlands.

Mirian J. Magwood
Print Name: _____

Print Name: _____

U.S. ARMY CORPS OF ENGINEERS

By: Mirian J. Magwood
Miriam Magwood, Chief, Regulatory Branch

Date: 4/13/04

Print Name: _____

Print Name: _____

GEORGIA LAND TRUST SERVICE
CENTER

By: Hans Neuhauser
Hans Neuhauser
Executive Director

Date: April 5, 2004

Print Name: _____

Print Name: _____

UNITED STATES DEPARTMENT OF
AGRICULTURE, FOREST SERVICE

By: Kathleen Atkinson
Kathleen Atkinson, Forest Supervisor
(Chattahoochee and Oconee National Forests)

Date: 3/29/04