

NORTH CAROLINA WETLANDS RESTORATION PROGRAM

§ 143-214.8. Wetlands Restoration Program: Established.

The Wetlands Restoration Program is established within the Department of Environment and Natural Resources. The Wetlands Restoration Program shall be developed by the Department as a nonregulatory statewide wetlands restoration program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The Wetlands Restoration Program shall consist of the following components:

- (1) Restoration and perpetual maintenance of wetlands.
- (2) Development of restoration plans.
- (3) Landowner contact and land acquisition.
- (4) Evaluation of site plans and engineering studies.
- (5) Oversight of construction and monitoring of restoration sites.
- (6) Land ownership and management.
- (7) Mapping, site identification, and assessment of wetlands functions.
- (8) Oversight of private wetland mitigation banks to facilitate the components of the Wetlands Restoration Program.

(1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a).)

§ 143-214.9. Wetlands Restoration Program: Purposes.

The purposes of the program are as follows:

- (1) To restore wetlands functions and values across the State to replace critical functions lost through historic wetlands conversion and through current and future permitted impacts. It is not the policy of the State to destroy upland habitats unless it would further the purposes of the Wetlands Restoration Program.
- (2) To provide a consistent and simplified approach to address mitigation requirements associated with permits or authorizations issued by the United States Army Corps of engineers under 33 U.S.C. § 1344.
- (3) To streamline the wetlands permitting process, minimize delays in permit decisions, and decrease the burden of permit applicants of planning and performing compensatory mitigation for wetlands losses.
- (4) To increase the ecological effectiveness of compensatory mitigation.
- (5) To achieve a net increase in wetland acres, functions, and values in each major river basin.
- (6) To foster a comprehensive approach to environmental protection.

(1996, 2nd Ex. Sess., c. 18, s. 27.4(a).)

§ 143-214.10. Wetlands Restoration Program: Development and implementation of basinwide restoration plans.

Develop Basinwide Restoration Plans. -- The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17 major river basins in the State. Beginning July 1, 1997, the Department shall develop and begin implementing a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water Quality.

(1996, 2nd Ex. Sess., c. 18, s. 27.4(a).)

§ 143-214.11. Wetlands Restoration Program: Compensatory mitigation.

- (a) *Definition.* -- For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.
- (b) *Department of Environment and Natural Resources to Coordinate Compensatory Mitigation.* -- All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.
- (c) *Mitigation Emphasis on Replacing Ecological Function Within Same River Basin.* -- The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Wetlands Restoration Program.
- (d) *Compensatory Mitigation Options Available to Applicant.* -- An applicant may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United State Army Corps of Engineers:
 - (1) Payment of a fee established by the Department into the Wetlands Restoration Fund established in G.S. 143-214.12.
 - (2) Donation of land to the Wetlands Restoration Program or to other public or private nonprofit conservation organizations as approved by the Department.
 - (3) Participation in a private wetlands mitigation bank.
 - (4) Preparing and implementing a wetlands restoration plan.
- (e) *Payment Schedule.* -- A standardized schedule of per-acre payment amounts shall be established by the Environmental Management Commission. The monetary payment shall be based on the ecological functions and values of wetlands permitted to be lost and on the cost of restoring or creating wetlands capable of performing the same or similar functions, including directly related costs of wetlands restoration planning, long-term monitoring, and maintenance of restored areas.
- (f) *Mitigation Banks.* -- State agencies and private mitigation banking companies shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and a hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a).)

§ 143-214.12. Wetlands Restoration Program: Wetlands Restoration Fund.

- (a) *Wetlands Restoration Fund.* -- The Wetlands Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Wetlands Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10.

- (1) The Department may distribute funds from the Wetlands Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department. The Department may convey real property or an interest in real property that has been acquired under the Wetlands Restoration Program to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.
- (b) *Authorized Methods of Payment.* -- A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344, may contribute to the Wetlands Restoration Program, to comply with conditions to, or terms of, the permit or authorization, if participation in the Wetlands Restoration Program will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the Wetlands Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.
- (c) *Accounting of Payments.* -- The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment.

(1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-496, s. 13; 1999-329, s. 6.1.)

§ 143-214.13. Wetlands Restoration Program: reporting requirement.

- (a) The Department of Environment and Natural Resources shall report each year by November 1 to the Environmental Review Commission regarding its progress in implementing the Wetlands Restoration Program and its use of the funds in the Wetlands Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the Wetlands Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's Wetlands Restoration Program and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.
- (b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the Wetlands Restoration Program. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section.

(1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a); 1999-329, s. 6.2.)