

**COOPERATIVE SAFE HARBOR MANAGEMENT AGREEMENT
(2005 UPDATED VERSION)**

NO. 28

for

**RED-COCKADED WOODPECKERS (*Picoides borealis*) AND THEIR HABITAT
ON PRIVATE LAND IN GEORGIA**

The Georgia Department of Natural Resources Wildlife Resources Division (WRD) (Administrator) and Georgia Power and Southern Nuclear (Cooperator) have entered into this Cooperative Agreement (Agreement) in order to maintain and enhance habitat for the red-cockaded woodpecker (RCW) on lands owned by the Cooperator.

The Cooperator agrees to undertake, for the duration of this Agreement, activities and procedures for the benefit of the RCW on the Cooperator's property delineated on the map labeled Exhibit A.

In consideration of the foregoing, the United States Fish and Wildlife Service (Service) has issued to the Administrator an Incidental Take Permit pursuant to the provisions of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended; and the Administrator has issued to the Cooperator a Certificate of Inclusion under the Permit. Upon issuance, this Certificate authorizes the Cooperator and the Cooperator's successors or assigns to carry out any activity subject to the constraints of federal, state, and local laws on the Cooperator's property delineated in Exhibit A that will or may result in the incidental taking¹ of RCWs or their habitat above the established baseline responsibilities at the time this Agreement is executed, subject to the following: (1) The Cooperator agrees to maintain the baseline responsibilities/constraints specified in the Agreement; (2) The Cooperator agrees to provide for habitat enhancement activities also specified in the Agreement; (3) The Cooperator will give the Administrator 60-days notice prior to commencing any activities that may result in the taking of RCWs; and (4) The Cooperator will provide the Administrator the opportunity to translocate affected non-baseline RCWs.

A. Responsibilities/Constraints for Baseline RCW Groups

The baseline responsibilities/constraints of the Cooperator are to provide all the overstory necessary to maintain the cavity trees and the foraging area for all groups of RCWs as discovered by a baseline RCW survey of the Cooperator's property. Baseline responsibilities may include providing foraging areas for known RCW groups on neighboring lands as described in Section E and set forth in Attachment B. If no RCW groups are discovered during the baseline RCW survey and there are no known RCW groups on neighboring lands, there are no baseline responsibilities/constraints.

¹ An incidental take is the "take" of any federally listed wildlife species that is incidental to, but not the purpose of, otherwise lawful activities (see definition of "take") [ESA section 10(a)(1)(B)]. For example, deliberately shooting or wounding a listed species would not be considered an incidental take, conversely, the destruction of endangered species habitat for development generally would be construed as incidental and would be authorized by an Incidental Take Permit.

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Specifically the baseline responsibilities/constraints, as derived from the Service's proposed RCW guidelines for private lands², are to:

1. Protect all active and inactive cavities and start trees, within active baseline clusters³, from harvesting. The Administrator can provide assistance in locating and marking all cavity and start trees.
2. Provide at least 50 ft² of basal area per acre in pine trees greater than 10 inches in diameter at breast height (DBH) in active baseline clusters if the trees are currently present on the Cooperator's land.
3. Provide at least 3000 ft² of basal area in pine trees (including the trees in the cluster) greater than 10 inches DBH for foraging habitat over at least 75 acres⁴ if the trees are currently present on the Cooperator's land.
4. Conduct timber harvesting within the active baseline clusters only between August 1 and February 28, or as otherwise approved by WRD. If there is a need to harvest timber within an active cluster outside the previously described window of time, the Cooperator should notify the WRD 30 days in advance of the desired starting harvest date. WRD will determine the stage of nesting activity within the cluster and advise Cooperator of appropriate precautions. Timber harvesting will not be permitted during nest initiation, while the female is in the process of laying eggs, while the nesting cavity contains viable eggs or young, or until fledglings are capable of sustained flight.
5. Construct no new roads within active baseline clusters.
6. Provide reasonable protection for RCWs in active baseline groups from human activities that may incidentally cause injury or death.
7. Take reasonable precautions⁵ when conducting silvicultural or other activities within active baseline clusters to avoid injury to cavity trees and start trees.

² The Administrator will not require the Cooperator to abide by more strict habitat requirements for baseline groups of RCWs should the Service revise the guidelines for managing RCWs on private lands. Should the habitat requirements be reduced, this agreement will be modified to reflect the new guidelines.

³ Clusters are aggregates of cavity trees and start trees associated with a group of RCWs.

⁴ Foraging habitat for each RCW group should be within 0.25 mile of the cluster, but can be up to 0.5 mile from the cluster, with no gaps between foraging stands exceeding 200 feet.

⁵ Reasonable precautions would include, but not be limited to, directional felling away from cavity trees, logging during dry conditions to minimize soil compaction, careful log removal to avoid scraping or otherwise damaging residual trees, careful prescribed burning to minimize the risk of igniting cavity trees and avoidance of fire line plowing around cavity trees.

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There may be circumstances, through no fault of the Cooperator, where one or more active clusters, that gave rise to the Cooperator's baseline responsibilities, becomes inactive after the Cooperator signs this agreement. In such cases, the Cooperator's baseline responsibilities for the inactive site(s) will cease, subject to the following procedure: 1) If a Cooperator suspects that a baseline cluster has become inactive, the Cooperator will request that the Administrator determine if the cluster is inactive⁶. 2) The Administrator will advise the landowner of its determination within one year of a request by the Cooperator for a determination and furnish the Cooperator with a revised assessment of baseline responsibilities.

B. Enhancement Activities for Baseline RCW Groups

The Cooperator agrees to undertake activities to maintain and enhance the habitat (foraging habitat, cavity trees, potential cavity trees) of all active baseline RCW groups indicated on the map labeled Exhibit A.

Specifically the Cooperator agrees to:

1. Mark all active and inactive cavity trees and start trees. The Administrator will assist with marking of cavity trees and start trees as necessary and at the Administrator's discretion.
2. Manage active baseline clusters as follows:
 - a. Each cluster will be managed as a timber stand comprising at least 10 contiguous acres with the purpose of retaining potential cavity trees.
 - b. Overstory stocking in a cluster will be maintained between 50 and 80 ft² of basal area per acre if the trees are currently present or when they become available. However, small areas of regenerating trees that exceed 50 to 80 ft² of basal area per acre may be retained within a cluster provided RCW cavity tree entrances are not obstructed by the regenerating trees.
 - c. Cluster boundaries will be at least 200 feet from a cavity tree.
 - d. Hardwood basal area in a cluster will be maintained below 20 ft² of basal area per acre.
 - e. Twenty to 25 feet should be maintained between trees within the cluster, except where closer spacing already exists.
 - f. Midstory vegetation will be maintained in an "open" condition by prescribed burning, precommercial thinning, or other means⁷.
 - g. Cavity trees will be protected from fire during prescribed burning⁸.

⁶ Generally, a cluster will be determined to be inactive if it has been unoccupied by RCWs for five consecutive years.

⁷ Prescribed burning and other activities to reduce brush and understory competition will be required no more frequently than once every three years.

⁸ Precautions should be taken to minimize the risk of igniting cavity trees, examples include: raking litter away from the base of cavity trees, limiting burning to high moisture conditions, or back-firing away from cavity trees.

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3. Maintain at least minimum foraging habitat of 3000 ft² of basal area in 10-inch DBH and greater pine trees on at least 75 acres (including the cluster stand) for each active baseline cluster as follows:

- a. Overstory stocking for foraging habitat will be maintained between 40 and 80 ft² of basal area per acre. However, stands managed on an uneven-aged basis may have patches of regenerating trees or residual stands of older trees that contain more than 80 ft² of basal area per acre.
- b. Hardwood basal area in foraging habitat will be maintained below 20 ft² of basal area per acre.
- c. Midstory vegetation will be maintained in an “open” condition by prescribed burning, precommercial thinning, or other means⁹.

4. Allow the Administrator to translocate juvenile RCWs off the property.

C. Other Enhancement Activities

1. On one or more mutually agreeable areas, the Cooperator agrees to enhance habitat for RCWs by allowing or providing for one or more of the following activities:

- a. Installing artificial RCW cavities in baseline and/or recruitment clusters.
- b. Providing additional midstory control with prescribed burning.
- c. Providing additional hardwood midstory control with herbicides or machinery.
- d. Allowing translocation of juvenile RCWs to unoccupied clusters or recruitment clusters.
- e. Implementing forest management practices that enhance habitat for existing baseline groups or provide habitat for additional groups of RCWs (thinning, longer rotations, regeneration that favors pine species).
- f. Providing or allowing other activities beneficial to RCWs.

See Attachment A for specific activities that the Cooperator agrees to undertake.

2. In addition the Cooperator agrees to make a reasonable effort to ascertain if new RCW groups have been established since the baseline survey and to provide the Administrator with a reasonable opportunity to translocate non-baseline RCWs.

⁹ See footnote 7.

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Specifically the Cooperator agrees to:

- a. Have a supplemental RCW survey¹⁰ conducted immediately (no more than 180 days but no less than 30 days) prior¹¹ to any activity which may result in the incidental taking of non-baseline RCWs and provide the Administrator with the results of that survey.
- b. Give the Administrator reasonable notice, at least 60 days¹² prior to commencing any activity which may result in the incidental taking of non-baseline RCWs. After the 60 day notice period, the Cooperator may proceed with the activity unless there are eggs or nestlings in the affected cluster or the Cooperator has given the Administrator an extension period to capture and relocate RCWs.
- c. Grant the Administrator access to the property to capture and translocate RCWs prior to the start¹³ of an activity which may result in the incidental taking of non-baseline RCWs.

D. Neighboring Landowners' Responsibilities

The responsibilities for protecting RCWs or any other species for which a baseline has been established will not necessarily be increased for other landowners as a result of this Agreement, but will be determined based on the provisions of the Conservation Plan. The Cooperator is responsible, to the extent practical, for providing all habitat requirements for baseline RCW groups on the Cooperator's property delineated on the map labeled Exhibit A. Neighboring landowners will not be obligated to provide any habitat requirements for above-baseline RCW groups on the Cooperator's land.

¹⁰ Only the specific area that will be treated requires a supplemental RCW survey. No surveys are required within one year of the baseline survey, unless artificial recruitment clusters have been established in the area that will be affected by the activity. Supplemental surveys should be submitted to the Administrator at least 30 days before commencing an activity which may result in the incidental taking of non-baseline RCWs.

¹¹ Emergency situations that require salvage or sanitation harvesting, such as natural disasters or insect infestations, may preclude an RCW survey. The Cooperator will notify the Administrator within 10 days of discovering that an emergency harvest is necessary and will make reasonable accommodations to survey for RCWs and allow for translocations prior to the harvest.

¹² Emergency situations that require salvage or sanitation harvesting, such as natural disasters or insect infestations, may require that harvesting begin with less than 60 days of notice.

¹³ All translocation activities should be accomplished during the notification period required prior to commencing an activity which may result in the incidental taking of RCWs except in emergency situations. Extensions of the 60 day time limit will be given at the discretion of the Cooperator.

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E. Foraging Habitat for Clusters on Neighboring Lands

The Service's proposed RCW guidelines for private lands acknowledge that although "it is not uncommon for the territory of a RCW group to 'occupy' more than one landowner's property ...it is impossible to have one set of 'rules' for all possible scenarios." Accordingly, the map labeled Exhibit A identifies known RCW groups not on the Cooperator's property for which the Cooperator agrees to provide habitat as part of the baseline responsibilities. Attachment B sets forth the Cooperator's responsibilities with respect to providing foraging habitat for such RCW groups.

F. Successors in Interest

Successors and assigns will incur the responsibilities and benefits of this Agreement until the date of termination unless canceled in writing as specified in the Life of the Agreement (Section L). The Cooperator will inform the Administrators in the event all, or part of, the Cooperator's property delineated on the map labeled Exhibit A is transferred to another owner.

G. RCW Surveys

A baseline survey will be made immediately (within 6 months) prior to the Agreement to inventory all existing RCW groups to establish baseline responsibilities. The survey will only include RCWs, unless other species are specifically requested to be surveyed by the Cooperator. The Cooperator can have additional species surveyed and incorporated into the Agreement at anytime. Surveys (baseline or supplemental) can be done by either the Administrator (or the Administrator's contractor) or a firm mutually agreeable to both the Cooperator and the Administrator at the Cooperator's discretion. If the Administrator (or the Administrator's contractor) does a survey, it will bear all costs. If a mutually agreeable firm does a survey, the Cooperator will bear all costs. The results of the baseline survey done by a mutually agreeable firm shall be the property of the Cooperator and shall be used only at the Cooperator's discretion. However, no agreement will be signed until the baseline survey is reviewed and approved by the Administrator. Supplemental surveys as specified in "Other Voluntary Enhancement Activities" (Section C) that are required prior to activities that may result in an incidental take must be submitted to the Administrator at least 60 days prior to commencing such activities. Supplemental RCW surveys conducted by the Administrator (or the Administrator's contractor) must be completed within 60 days of a written request for a supplemental RCW survey by the Cooperator. Supplemental surveys are not required for any activity for one year after the baseline survey, unless artificial recruitment clusters have been established in the area that will be affected by the activity.

H. Geographic Scope

This Agreement will extend only to those lands of the Cooperator delineated on the map labeled Exhibit A.

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I. Access to the Property

The Cooperator shall grant access to the Administrator at least annually to verify that the conditions of the Agreement are being upheld, to assess the condition of the baseline groups and any new groups of RCWs that have been discovered, and to measure, monitor, and tag/band individual RCWs as appropriate. The Cooperator shall also grant access to the Administrator at any time the Administrator can show reason to believe that an RCW is in jeopardy and may need to be captured and/or translocated for its safety. The Administrator shall give the Cooperator reasonable notice (generally 30 days) of these visits and may be accompanied by the Cooperator or an agent of the Cooperator. The scope of the visit will be agreed to in advance.

The Administrator agrees under current Georgia law the Cooperator is not responsible for the natural conditions of rural property but must advise the Administrator's agents of any hazardous conditions known to the Cooperator at the time.

J. Notification of Activities

The Cooperator will provide the Administrator with reasonable notice of any activities that may result in the incidental take of RCWs. Activities that may result in an "incidental take" include: any timber harvesting within a cluster, any timber harvesting within foraging habitat that reduces basal area in pine trees greater than 10 inches DBH below 3000 ft², application of forest chemicals within a cluster, new road construction within or near a cluster, and any new building construction within or near a cluster. All other silvicultural activities should not affect the RCWs and will not require notification.

In addition, the Cooperator will complete and submit a brief annual report of RCW related activities to the Administrator on a form provided by the Administrator that summarizes the activities that may result in the incidental take of RCWs and summarizes compliance with baseline requirements.

K. Shifting Baseline Groups

A baseline group can be replaced in the baseline responsibilities. If the Cooperator and the Administrator agree, a new in-kind group¹⁴ can be substituted for a baseline group to satisfy the Cooperator's baseline responsibilities. A map showing the location of both the new and old clusters and foraging habitats will be made by the Cooperator and added to the Agreement.

L. Financial Assistance

If funds become available for managing RCWs on private land, the Administrator shall seek to give the Cooperator priority access to those funds to help offset the costs of undertaking enhancement activities. Any financial assistance given to the Cooperator must be used for current or future

¹⁴ A new group must be of a similar nature to the group it is replacing, i.e. a breeding pair group must be replaced with a breeding pair group.

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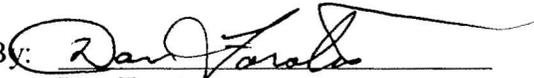
activities and not applied to past activities. Activities including, but not limited to, midstory control, precommercial thinning, and prescribed burning should be considered for financial assistance.

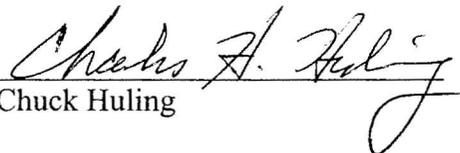
M. Life of Agreement

The Cooperator agrees to conduct the activities and manage the property as indicated in Section B for a period of at least 50 years (the time frame of the agreement is variable subject to mutual agreement by the Administrator and the Cooperator) from the date of signing by both parties. The Cooperator, or the Cooperator's successors or assigns, may terminate the Agreement at any time with 60 days written notification to the Administrator. The Administrator may terminate the Agreement with 60 days written notification to the Cooperator, or the Cooperator's successors or assigns, if it deems adequate progress has not been made in meeting baseline responsibilities and accomplishing the voluntary maintenance and enhancement activities in the Agreement. In the event that the Agreement is terminated, the Cooperator or the Cooperator's successors or assigns shall retain the Incidental Take Permit for non-baseline RCW clusters established during the time the Agreement was in force¹⁵, provided that the Administrators are permitted to relocate RCWs as provided for in Section C. This Agreement can be renewed, extended, or modified at any time subject to both the Cooperator's and the Administrator's approval.

Georgia Department of Natural Resources

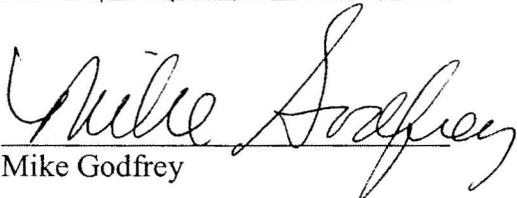
Georgia Power and Southern Nuclear , Cooperator

By: 
Dan Forster

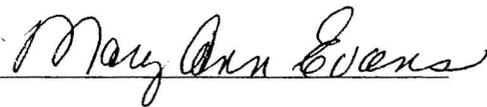
By: 
Chuck Huling

Date: June 29, 2007

Date: 6/27/07

By: 
Mike Godfrey

Date: 6/27/07

Attest: 

¹⁵ Precedent, established in similar agreements, generally limits the Cooperator's rights to an Incidental Take Permit to 99 years from the signing of the Agreement.

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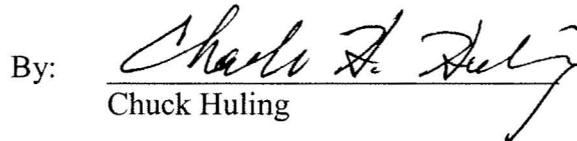
M. Life of Agreement

The Cooperator agrees to conduct the activities and manage the property as indicated in Section B for a period of x years (the time frame of the agreement is variable subject to mutual agreement by the Administrator and the Cooperator) from the date of signing by both parties. The Cooperator, or the Cooperator's successors or assigns, may terminate the Agreement at any time with 60 days written notification to the Administrator. The Administrator may terminate the Agreement with 60 days written notification to the Cooperator, or the Cooperator's successors or assigns, if it deems adequate progress has not been made in meeting baseline responsibilities and accomplishing the voluntary maintenance and enhancement activities in the Agreement. In the event that the Agreement is terminated, the Cooperator or the Cooperator's successors or assigns shall retain the Incidental Take Permit for non-baseline RCW clusters established during the time the Agreement was in force¹⁵, provided that the Administrators are permitted to relocate RCWs as provided for in Section C. This Agreement can be renewed, extended, or modified at any time subject to both the Cooperator's and the Administrator's approval.

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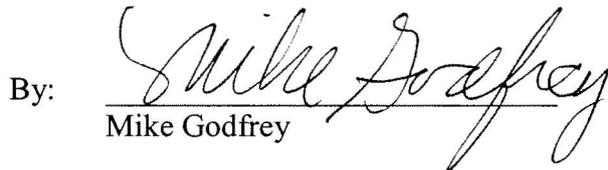
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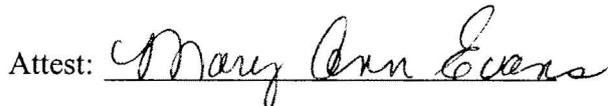
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Exhibit A: Map of enrolled property

Attachment A: Red-cockaded woodpecker (RCW) Enhancement Activities¹⁶

Attachment B: Baseline Responsibilities for Foraging Habitat for Clusters on Neighboring Lands

¹⁶Some of these activities require a permit from the Service. The Cooperator should consult with the Administrator to determine which activities need a permit.