



# Clean Water Act News

## In-Lieu Fee Guidelines

**Local practices released to ensure that proposals in the State of Georgia comply with National Mitigation Rule.**

**DRAFT GUIDELINES TO ESTABLISH AND OPERATE IN-LIEU FEE PROGRAMS IN GEORGIA**



Courtesy of photo: Rebecca Rowden

In keeping with the recent initiative to provide guidance on mitigation in Georgia, the US Army Corps of Engineers (USACE), Savannah District (SAS), Regulatory Division released new guidelines in May.

“The purpose of this document is threefold: (1) to aid potential in lieu fee program and project sponsors in the development of successful instruments; (2) to present the roles of the interagency team in the approval process; and (3) to lay out the operational considerations in managing approved projects,” said Russell Kaiser, Chief, Regulatory Division, SAS, USACE .

See “Guidelines” on page 5.

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## Georgia and In-Lieu Fee

In the mid 1990s, the concept of compensatory mitigation was under intense scrutiny. The belief that on-site and in-kind replacement would sustain the aquatic functional losses that had occurred in the past as a result of unavoidable impacts from Department of the Army permits was not coming to fruition. The on-site option, where mitigation was completed, was simply producing numerous small wetland replacement projects, most of which were classified as “establishment.” Many of the people who were responsible for the regulatory program were questioning whether these small projects were successful from a biological/functional perspective. They asked themselves: “Is there a better way to mitigate?”

As it happened, Hans Neuhauser of the Georgia Land Trust Service Center (GLTSC) opened discussions with Savannah District staff regarding possible alternatives to the strict mandate of on-site and in-kind requirements. The concept involved the collection of funds from numerous permittees for the purchase and protection of pristine aquatic resources. In 1997, agreements were drafted and signed by USACE, SAS and GLTSC, where GLTSC could collect mitigation funds to purchase and protect sites that contained aquatic resources of exceptional value. The proposed land had to meet certain criteria; (1) the property has high value aquatic resources onsite, (2) the resources are under a threat of logging or development, (3) the land is available, and/or (4) there is a government entity or conservation group that would partner with the GLTSC for the acquisition of the property. According to David Crosby, Deputy Chief, Regulatory Division, “This effort resulted in the initiation of the Savannah District’s in-lieu fee compensatory mitigation program.”

In 2001, it all came together with the purchase of the Moody Tract in Appling County, Georgia, a 24-acre wetland in the Altamaha River drainage. Since then, the GLTSC has purchased 4,797.5 acres of land for preservation. Of this total, there are 1,479.93 acres of wetlands and 31.2 miles of stream channel, with 200 foot wide riparian buffers. Additional projects covered under the program are presented on page 2.

This new approach further set the stage for other districts nationally. For example, the Alaska District used the SAS model agreement almost as is, as did the state of New Hampshire. According to David Olson, from USACE Headquarters Regulatory Community of Practice, this allowed for the development of a new area for accommodating mitigation requirements. He further indicated that the SAS In-Lieu Fee program has had some very beneficial projects.

Additional information is at: <https://data.georgiaspatial.org/login.asp> (Under a layer called “State Land Conservation” one can find a GIS file titled “Georgia Wetland Trust Fund”).

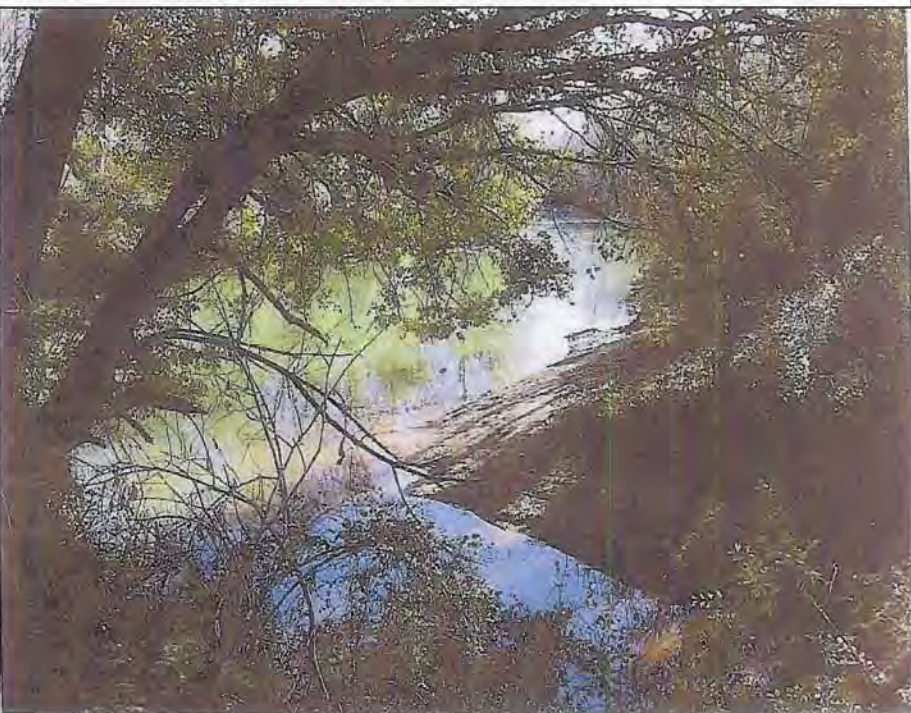
**REGULATORY WORKSHOPS:** Stakeholder workshops will be held in Savannah on September 28, 2010, at the Coastal Georgia Center, and in the Atlanta area on October 14, 2010, at the Maloof Auditorium, in Decatur. These sessions will focus on the contents of an application for a Standard Individual Permit and how the consultants can aid the Regulatory Division in drafting the permit decision document. More to follow in the days ahead.



Georgia and In-Lieu Fee Examples

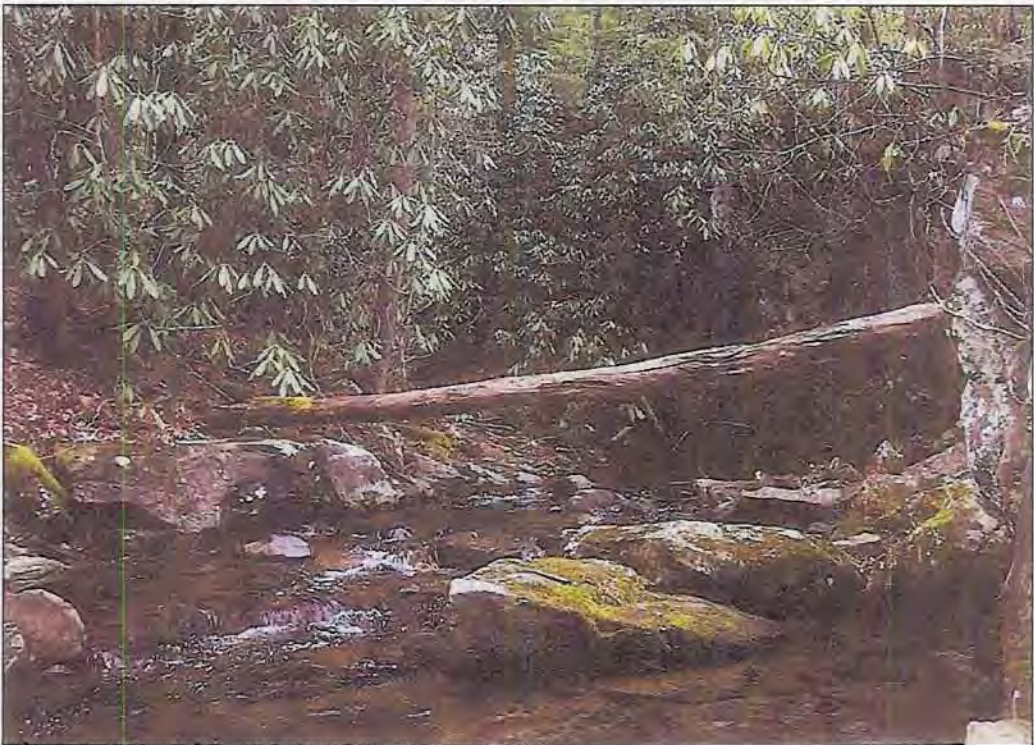
1. Baldwin County— The Georgia Wetlands and Streams Trust Fund provided \$122,601.90 to the Oconee River Land Trust in 2003 to assist them in preserving the Battle Tract next to downtown Milledgeville. A 22-acre tract with 3,200 linear feet of stream (the main stem of the Oconee River) was acquired with Trust Fund monies. The tract was subsequently transferred to the Oconee River Greenway Authority with the Oconee River Land Trust holding a conservation easement. Alice Lawrence, of the US Fish and Wildlife Service (USFWS) states: "Permanent preservation of this site helps to protect water quality for the Oconee River population of an imperiled species of fish, the robust red horse. The protection of this parcel, in combination with several other proposed and existing mitigation banks, mitigation sites, and state-protected lands in the vicinity, is creating a corridor of preserved lands along the Oconee River that will only benefit the robust red horse."

*Battle Tract Provides Riparian Zone for Robust Red Horse Spawning Habitat*



*Photo Courtesy of Georgia Land Conservation Center*

*Vestal Tract in Fannin County Provides Buffer to the Cohutta Wilderness*



*Photo Courtesy of Georgia Land Conservation Center*

2. Fannin County - The Georgia Wetlands and Streams Trust Fund provided \$102,423.00 to the US Forest Service in 2003 to acquire the Vestal Tract (Forest Service Tract #c-2306) to be part of the Chattahoochee-Oconee National Forest. A 10-acre tract with 1,200 linear feet of stream (tributary to the Jacks River, a State Scenic River) was acquired with Trust Fund monies. Dr Rick Whiteside, of Wetland & Ecological Consultants states: "The acquisition and preservation of such habitats is essential for the long-term sustainability of these valuable waters and critical protected species habitat."



Georgia and In-Lieu Fee Examples

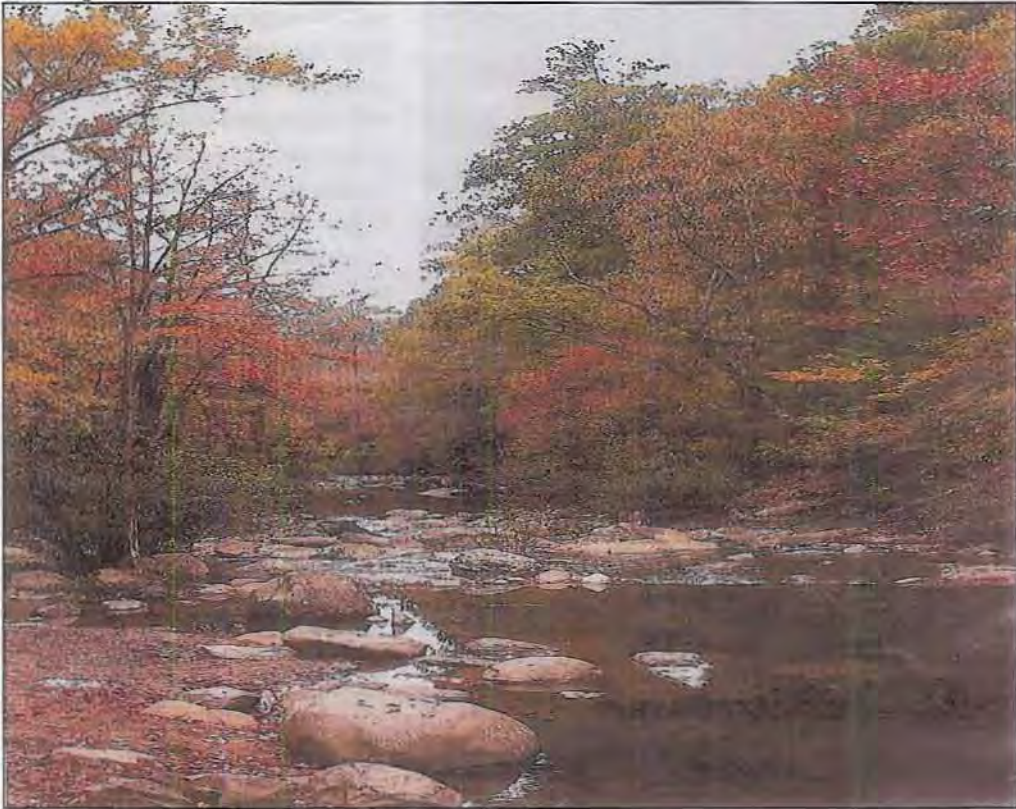
3. Gilmer County - The Georgia Wetlands and Streams Trust Fund provided \$61,045.14 to the U S Forest Service in 2004 to assist in acquiring the Glover/Little Tracts (Forest Service Tract #C-2289), to be part of the Chattahoochee-Oconee National Forest. Two tracts totaling 181 acres with 3,000 linear feet of stream (Tickanetley Creek) was acquired with Trust Fund monies. The site protects the scenic vista from Springer Mountain, the southern end of the Appalachian Trail. Catherine Samay, of GA—Environmental Protection Division (EPD) states: "Buffer preservation is valuable in protecting land and water resources by ensuring hydrologic protection, water quality protection, and aquatic/buffer habitat protection."

*Glover/Little Tract at the southern end of the Appalachian Trail*



*Photo Courtesy of Georgia Land Conservation Center*

*Holly Creek Provides Habitat for Three Species of Endangered Mussels and Four Species of Endangered Darters*



*Photo Courtesy of Georgia Land Conservation Center*

4. Murray County - The Georgia Wetlands and Streams Trust Fund provided \$44,000.00 to The Nature Conservancy in 2003 to acquire the Gibson Tract on Holly Creek and donate it to the US Forest Service to be part of the Chattahoochee-Oconee National Forest (Forest Service Tract #C-2300a). The 8.2-acre tract includes 300 linear feet of stream. The scenic tract supports three species of Federally endangered mussels and four species of Federally listed darters. Pete Pattavina, of the USFWS states: "Holly Creek, in the Conasauga River watershed, is one of our agency's highest land protection priorities in the state of Georgia, and represents one of the last great areas of biodiversity in our state's portion of the Conasauga River watershed."



Georgia and In-Lieu Fee Examples

The Broxton Rocks Preserve Contains a Wide Variety of Threatened & Endangered Plants



Photo Courtesy of Georgia Land Conservation Center

**Other In-Lieu Fee sites in Georgia include:** Moody Tract, Appling County, 51.4-acres; Heggie’s Rock, Columbia County, 143-acres; Boy Scout Tract, Dougherty County, 190-acres; Coosa Valley Flatwoods, Floyd County, 22-acres; Nicholson Tract, Gilmer County, 5.5-acre; Moates Branch, Habersham County, 51.6-acres; Fennel Tract, Jackson County, 173.8-acres; L&K (Francis) tract, Lumpkin County, 22.94-acres; Noblin Tract, Lumpkin County, 39.7-acres; Barrington Tract A-1, McIntosh County, 200-acres; Fort Barrington Club, McIntosh County, 1,027-acres; Alcovy River/East End Road tract, Newton County, 16.7-acres, Temco Tracts, Paulding County, 583-acres; Little Grady Creek, Putnam County, 51.57-acres; Sprit Creek Knox Tract, Richmond County, 16-acres; McCrary/Drake/Johnson Tract, Rockdale County, 205-acres; Abernathy Tract, White County, 36.5-acres; Betterton Tract, White County, 22-acres; Beutell Tract, White County, 107.8-acres; Dyer tract, White County, 143-acres; Hamilton Tract, White County, 57-acres.

5. Coffee County .

- a. Broxton Rocks Preserve 1:**  
The Georgia Wetlands and Streams Trust Fund provided \$74,799.00 to The Nature Conservancy in 2002 to assist them in preserving the Broxton Rocks Preserve. A 40-acre tract with 5.83 acres of wetlands and 4,000 linear feet of stream.
- b. Broxton Rocks Preserve 2:**  
The Georgia Wetlands and Streams Trust Fund provided \$11,871.74 to The Nature Conservancy in 2003 to assist them in preserving the Broxton Rocks Preserve. This tract has 5 acres of wetlands and 1,000 linear feet of stream.
- c. Broxton Rocks Preserve 3:**  
The Georgia Wetlands and Streams Trust Fund provided \$198,500.00 to The Nature Conservancy in 2006 to assist them in preserving the Broxton Rocks Preserve. A 48- acre tract with 24 acres of wetlands and 4,000 linear feet of stream was acquired with Trust Fund monies. The site also protects a wide variety of threatened and endangered plants. This site is owned and managed by The Nature Conservancy. Michelle Cable, of The Nature Conservancy states: “ These projects are imbedded in a mosaic of protected lands encompassing one of the most important concentrations of biodiversity in the southeast.”



In-Lieu Fee Guidelines (continued from page 1)

Continued from page 1 (In-Lieu Fee Guidelines):

Once a final instrument is submitted that includes any requested changes the USACE has 30 days to notify the IRT of their intent to approve or disapprove the final instrument. IRT members have 45 days from submittal of the final instrument to initiate the dispute resolution process, if they disagree with the USACE's intention. If the USACE approves the instrument and there are no IRT objections, the instrument can be signed by the USACE and the sponsor. The in-lieu fee program can then begin providing compensatory mitigation. Once an in lieu fee program is active, it may be used to provide compensatory mitigation for Department of the Army (DA) permitted activities under Section 404 of the Clean Water Act, but only after it is determined that no mitigation banks service the project area.

Any permittee that requests use of in-lieu fee for mitigation must provide the USACE with a statement that no mitigation bank services the project site and must provide the name(s) of mitigation bank(s) contacted, the date of contact, and a statement that the banker(s) confirmed that no suitable credits were available. Once this determination is made, the in-lieu fee program collects funds from the permittee and the mitigation obligation is transferred to the in-lieu fee program. The in-lieu fee program uses funds collected to sponsor mitigation projects in the same watershed (Primary Service Area) as the one in which funds were collected. Mitigation projects can use any combination of restoration, enhancement, establishment, or preservation to restore lost aquatic function, as long as the mitigation conforms to the 2008 Rule. Each proposed project must have a project mitigation plan.

Once a mitigation plan is submitted, it undergoes a 30-day completeness review by the USACE. Once the mitigation plan is determined complete, it is distributed to the IRT for review. Within 30 days of submittal of a complete mitigation plan, the USACE must issue a public notice. Concurrently, the mitigation plan can be placed on the agenda of the next IRT meeting and a field visit can be scheduled. Following a 30-day public comment period (during which time the IRT may also comment), the USACE has 15 days to distribute all comments to the project sponsor and the IRT. The USACE has a total of 30 days from the end of the public comment period to issue an initial evaluation letter that either the project does not have merit or that the sponsor can proceed with the mitigation proposal.

Additional information can be found at:

<http://www.sas.usace.army.mil/>

Final National Mitigation Rule

The Final Mitigation Rule was published on April 10, 2008, and implemented on 9 Jul 2008. The rule required that existing in-lieu fee programs comply with the provisions of the rule by June 9, 2010, unless granted an exemption to continue operating under their existing instrument. Any new in-lieu fee program proposed after July 9, 2008 would be required to comply with the terms of the rule.

The intent of the Final Mitigation Rule was to standardize compensatory mitigation at a national level. *Compensatory Mitigation includes different measures taken to offset unavoidable impacts created by a discharge of dredged and/or fill material in aquatic resources.* In general, mitigation should be located within the same watershed as the impact site, and should be located in the landscape where it will most likely successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, trends in land use, ecological benefits, and compatibility with adjacent land uses. Although permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts, the District Engineer should give preference first to the use of mitigation bank credits where appropriate, second to in-lieu fee programs, and third to permittee-responsible mitigation.

For in-lieu fee programs, the rule requires submittal of a prospectus that includes discussion on: 1) program objectives; 2) program establishment and operation; 3) proposed service area; 4) need and technical feasibility; 5) ownership and long-term management; 6) sponsor qualifications; 7) compensation planning framework; and 8) establishment and operation of in-lieu fee program account. Once a prospectus is approved, the rule requires submittal of an instrument that includes further details regarding the: 1) service area; 2) accounting procedures; 3) provision stating legal responsibility to provide compensatory mitigation; 4) default and closure procedures; 5) reporting protocols; 6) compensation planning framework; 7) method for determining project specific credits and fees and draft fee schedule; and 8) operation of the program account.

Individual in-lieu fee projects sponsored under an in-lieu fee program instrument must have a mitigation plan that further includes: 1) objectives; 2) site selection; 3) site protection instrument; 4) baseline information; 5) determination of credits; 6) mitigation work plan; 7) maintenance plan; 8) performance standards; 9) monitoring requirements; 10) long-term management plan; 11) adaptive management plan; and 12) financial assurances.



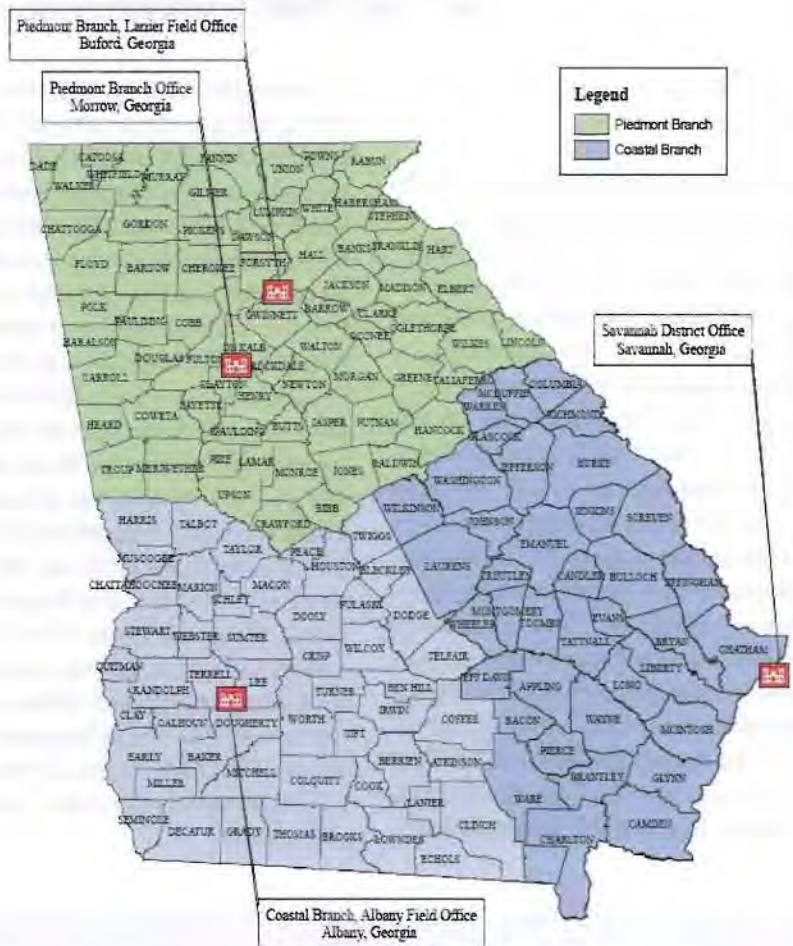
# District Offices

ALBANY FIELD OFFICE  
1104 N. WESTOVER BLVD UNIT 9  
ALBANY, GA 31707  
229-430-8566/67

SAVANNAH DISTRICT OFFICE  
COASTAL BRANCH OFFICE  
ATTN: CESAS-RD-C  
100 W. OGLETHORPE AVE  
SAVANNAH, GA 31401  
800-448-2402

PIEDMONT BRANCH OFFICE  
ATTN: CESAS-RD-P  
1590 ADAMSON PARKWAY, SUITE 200  
MORROW, GEORGIA 30260  
678-422-2735

LANIER FIELD OFFICE  
ATTN: CESAS-RD-P  
P.O. BOX 528  
BUFORD, GA 30515  
770-904-2365



## Do you know your Regulatory Staff?

**Alan Miller** was born in Griffith, IN. Following four years in the US Navy, Alan attended the University of Georgia. He graduated in 1981 with a B.S. in Agronomy. Alan has been with the Savannah District since 1994.



He began his career as a technical representative with Stephenson Chemical Company, a pesticide manufacturer and distributor. With the knowledge he gained on weed control and soil science, he started Vegetation Control Systems. His company prepared and executed prescriptions for industrial weed control, fertilization, and soil amendment programs. In 1989, Alan went to American Industrial and Engineering Corporation (ATEC) where he worked in the identification and remediation of hazardous materials. ATEC then selected Alan to head up their new wetland delineation and Section 404 permitting initiative.

In 1993, Savannah District made the decision to establish a permanent Regulatory Section, in the booming Atlanta area. Alan became one of the staff members in the new field office. During his tenure with the Savannah District, he has handled everything from routine wetland delineations to complex individual permits, such as water supply reservoirs. Alan is now the chief of the Permits Section in the Piedmont Branch. He manages the work load for jurisdictional determinations and routine projects that would fill or impact waters of the United States. He trains and mentors the staff on the regulatory program and provides public outreach through speaking engagements and hands on training. In 2005, and again in 2007,

Alan voluntarily deployed to Iraq to support Operation Iraqi Freedom as an Engineering and Construction Division Project Manager working on the reconstruction of Iraq's infrastructure. Alan loves the outdoors and enjoys hunting and fishing. He spends his spare time watching old movies and reading.