

## § 83.19

### § 83.19 Land control.

The State must control lands or waters on which capital improvements are made with Federal Aid funds. Control may be exercised through fee title, lease, easement, or agreement. Control must be adequate for protection, maintenance, and use of the improvement throughout its useful life.

### § 83.20 Assurances.

The State must agree to and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds under the Act. The Secretary shall have the right to review or inspect for compliance at any time. Upon determination of noncompliance, the Secretary may terminate or suspend any actions or projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.

### § 83.21 Audits.

The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P of OMB Circular A-102. Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.

[49 FR 30074, July 26, 1984]

## PART 84—NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM

### Subpart A—General Background

Sec.

- 84.10 What is the purpose and scope of this rule?
- 84.11 How does the Service define the terms used in this rule?
- 84.12 What are the information collection, record keeping, and reporting requirements?

### Subpart B—Applying for Grants

- 84.20 What are the grant eligibility requirements?
- 84.21 How do I apply for a National Coastal Wetlands Conservation Grant?

## 50 CFR Ch. I (10-1-08 Edition)

- 84.22 What needs to be included in grant proposals?

### Subpart C—Project Selection

- 84.30 How are projects selected for grants?
- 84.31 An overview of the ranking criteria.
- 84.32 What are the ranking criteria?

### Subpart D—Conditions on Acceptance/Use of Federal Money

- 84.40 What conditions must I follow to accept Federal grant money?
- 84.41 Who prepares a grant agreement? What needs to be included?
- 84.42 What if a grant agreement is not signed?
- 84.43 How do States get the grant monies?
- 84.44 What is the timetable for the use of grant money?
- 84.45 How do I amend a proposal?
- 84.46 What are the cost-sharing requirements?
- 84.47 What are allowable costs?
- 84.48 What are the procedures for acquiring, maintaining, and disposing of real property?
- 84.49 What if the project costs more or less than originally expected?
- 84.50 How does a State certify compliance with Federal laws, regulations, and policies?

AUTHORITY: 16 U.S.C. 3951-3956.

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### Subpart A—General Background

#### § 84.10 What is the purpose and scope of this rule?

The regulations in this part establish the requirements for coastal State participation in the National Coastal Wetlands Conservation Grant Program authorized by Section 305 of the Coastal Wetlands Planning, Protection and Restoration Act (Pub L. 101-646, title III; 16 U.S.C. 3954). The primary goal of the National Coastal Wetlands Conservation Grant Program is the long-term conservation of coastal wetlands ecosystems. It accomplishes this by helping States protect, restore, and enhance their coastal habitats through a competitive grants program. Results are measured in acres protected, restored, and enhanced.

#### § 84.11 How does the Service define the terms used in this rule?

Terms used have the following meaning in this part:

*Coastal barrier.* A depositional geologic feature that is subject to wave, tidal, and wind energies; protects landward aquatic habitats from direct wave attack; and includes all associated aquatic habitats such as adjacent wetlands, marshes, estuaries, inlets, and nearshore waters. These can include islands; spits of land connected to a mainland at one end; sand bars that connect two headlands and enclose aquatic habitat; broad, sandy, dune beaches; or fringing mangroves. Coastal barriers are found on coastlines including major embayments and the Great Lakes of the United States and its territories.

*Coastal Barrier Resources System.* A defined set of undeveloped coastal areas, designated by the Coastal Barrier Resources Act of 1982 (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591). Within these defined units of the System, Federal expenditures are restricted to discourage development of coastal barriers.

*Coastal States.* States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin); States bordering the Atlantic, Gulf (except Louisiana), and Pacific coasts (Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington); and American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. (Louisiana is not included because it has its own wetlands conservation program authorized by the Coastal Wetlands Planning, Protection and Restoration Act and implemented by the Corps of Engineers with assistance from the State of Louisiana, the Environmental Protection Agency, and the Departments of the Interior, Agriculture, and Commerce.)

*Coastal wetland ecosystems.* Ecosystems that consist of multiple, interrelated coastal land features. They include wetlands in drainage basins of estuaries or coastal waters that contain saline, brackish, and nearshore waters; coastlines and adjacent lands; adjacent

freshwater and intermediate wetlands that interact as an ecological unit; and river mouths and those portions of major river systems affected by tidal influence—all of which interact as an integrated ecological unit. Shorelands, dunes, nearshore islands, barrier islands and associated headlands, and freshwater wetlands within estuarine drainages are included in the definition since these interrelated features are critical to coastal fish, wildlife, and their habitats.

The definition of a coastal wetland ecosystem also applies to the Great Lakes and their watersheds, where freshwater plays a similar hydrologic role. The Great Lakes coastal wetland ecosystem is made up of multiple interrelated coastal landscape features along the Great Lakes. The Great Lakes coastal wetland ecosystem includes wetlands located adjacent to any of the Great Lakes including Lake St. Clair and connecting waters, and mouths of river or stream systems draining directly into the Great Lakes. Shorelands, dunes, offshore islands, and barrier islands and associated headlands are included in the definition since these interrelated features are critical to Great Lakes fish, wildlife, and their habitats.

*Coastal Wetlands Act or Act.* The Coastal Wetlands Planning, Protection and Restoration Act of 1990 (16 U.S.C. 3951-3956).

*Eligible applicant.* Any agency or agencies of a coastal State designated by the Governor. It is usually a State natural resource or fish and wildlife agency.

*Enhancement.* The manipulation of the physical, chemical, or biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.

*Fund.* A fund established and used by a coastal State for acquiring coastal wetlands, other natural areas, or open spaces. The fund can be a trust fund from which the principal is not spent, or a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees

or taxes, cigarette taxes, tax checkoffs, or motor vehicle license plate fees.

*Grant.* An award of financial assistance by the Federal Government to an eligible applicant.

*Long-term conservation.* Protecting and restoring terrestrial and aquatic environments for at least 20 years. This includes the hydrology, water quality, and fish and wildlife that depend on these environments.

*Maintenance.* (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration, enhancement, and management.) Maintenance includes those activities necessary for upkeep of a facility or habitat. These activities include routine, recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is nonroutine cyclical maintenance to keep facilities or habitat improvements fully functional. Cyclical maintenance is major maintenance or renovation activities conducted at intervals normally greater than 1 year.

*Management.* (Includes habitat management only.) Habitat management includes vegetation manipulation and restoration of habitat to support fish and wildlife populations. Creation of wetlands where they did not previously exist is not included in the definition of management.

*Maritime forest.* Maritime forests are defined, for the purposes of this regulation, as broad-leaved forests that occur on barrier islands and along the mainland coast from Delaware to Texas. Examples are primarily characterized by a closed canopy of various combinations of live oak (*Quercus virginiana*), upland laurel oak (*Quercus hemisphaerica*), pignut hickory (*Carya glabra*), southern magnolia (*Magnolia grandiflora*), sugarberry (*Celtis laevigata*), and cabbage palm (*Sabal palmetto*). Shrubs and smaller trees typical of the understory include live oak, upland laurel oak, pignut hickory, red mulberry (*Morus rubra*), wild olive (*Osmanthus americanus*), American holly (*Ilex opaca*), yaupon (*Ilex vomitoria*), beautyberry (*Callicarpa americana*), bumelia (*Sideroxylon* spp.),

and small-flowered pawpaw (*Asimina parviflora*). The herb layer is generally rich and diverse, typically including partridgeberry (*Mitchella repens*), coralbean (*Erythrina herbacea*), small-leaved milk pea (*Galactia microphylla*), tick trefoils (*Desmodium* spp.), and spikegrass (*Chasmanthium sessiliflorum*). Vines are represented by muscadine grape (*Vitis rotundifolia*), Virginia creeper (*Parrhenocissus quinquefolia*), and various briars (*Smilax* spp.).

This natural community type becomes established on old coastal dunes that have been stabilized long enough to sustain forests. In time, the accumulation of humus contributes to moisture retention of soils, while the canopy minimizes temperature fluctuations by reducing soil warming during the day and heat loss at night. Because of the underlying deep sands, maritime forests are generally well-drained.

Maritime forests have become prime resort and residential property because of their relatively protected locations along the coast. Although this community type originally occurred in virtually continuous strips along the Atlantic and Gulf Coasts, residential developments and infrastructure encroachments have severely fragmented most occurrences.

*National Wetlands Inventory.* A Service program that produces information on the characteristics, extent, and status of the Nation's wetlands and deep-water habitat. The program's strongest mandates come from the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901), which directs the Service to map wetlands, conduct wetlands status and trends studies, and disseminate the information produced.

*National Wetlands Priority Conservation Plan.* A plan developed by the Service for the U.S. Department of the Interior at the direction of Congress through the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901). The plan provides the criteria and guidance for identifying wetlands that warrant attention for Federal and State acquisition using Land and Water Conservation Fund appropriations.

*Operations.* (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration,

enhancement, and management.) Operations include activities necessary for the functioning of a facility or habitat to produce desired results. These include public use management and facility management.

*Program.* The National Coastal Wetlands Conservation Grant Program. A program administered by the Service that awards Federal grants through a competitive process to State agencies for projects to acquire, restore, manage, or enhance coastal wetlands.

*Project.* One or more related activities necessary to fulfill a stated objective to provide for the long-term conservation of coastal wetlands including the lands and waters, hydrology, water quality, and wetland-dependent wildlife. These activities can include acquisition, restoration, enhancement, or management of coastal wetlands.

*Restoration.* The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded wetland.

**§ 84.12 What are the information collection, record keeping, and reporting requirements?**

(a) Information collection requirements include:

(1) An Application for Federal Assistance (Standard Form 424);

(2) A proposal, following the guidance of OMB Circular A-102 and the Federal Aid Grant Application Booklet (OMB Control Number 1018-0109), that includes statements of need and objective(s); a description of expected results or benefits; the approach to be used, such as procedures, schedules, key personnel and cooperators, location of the proposed action, and estimated costs to accomplish the objective(s); identification of any other actions that may relate to the grant; and a description of public involvement and interagency coordination;

(3) Discussion of ranking criteria, including a completed summary information form (USFWS Form 3-2179);

(4) Assurances of compliance with all applicable Federal laws, regulations, and policies (SF 424B or SF 424D); and

(5) Documents, as appropriate, supporting the proposal; for example, environmental assessments (including the

NEPA compliance checklist, USFWS Form 3-2185) and evaluations of effects on threatened and endangered species.

(6) A grant agreement form if the proposal is selected for an award (USFWS Form 3-1552); and

(7) A grant amendment form if the agreement is modified (USFWS Form 3-1591).

(b) Record-keeping requirements include the tracking of costs and accomplishments related to the grant as required by 43 CFR 12.60, monitoring and reporting program performance (43 CFR 12.80), and financial reporting (43 CFR 12.81). The project report should include information about the acres conserved, with a breakdown by conservation method (for example, acquired, restored, or both) and type of habitat (list habitat types and include the acreage of each). Are the results of the project being monitored? Is there evidence that the resources targeted in the proposal (for example, anadromous fish, threatened and endangered species, and migratory birds) have benefited?

(c) Reporting requirements include retention and access requirements as specified in 43 CFR 12.82 and authorized by OMB through the Federal Aid Grant Application Booklet (OMB Control Number 1018-0109).

**Subpart B—Applying for Grants**

**§ 84.20 What are the grant eligibility requirements?**

(a) Eligible grant activities include:

(1) Acquisition of a real property interest in coastal lands or waters from willing sellers or partners (coastal wetlands ecosystems), providing that the terms and conditions will ensure the real property will be administered for long-term conservation.

(2) The restoration, enhancement, or management of coastal wetlands ecosystems, providing restoration, enhancement, or management will be administered for long-term conservation.

(b) Ineligible activities include but are not limited to:

(1) Projects that primarily benefit navigation, irrigation, flood control, or mariculture;