

**SAVANNAH DISTRICT, US ARMY CORPS OF ENGINEERS,
GUIDELINES TO ESTABLISH AND OPERATE IN-LIEU FEE PROGRAMS
IN GEORGIA
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**Photo provided by:
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A. Introduction

Key Points

- 2008 Mitigation Rule formalized I-L-F Program
- Any I-L-F Programs approved after July 9, 2008, must comply with the terms of the rule
- Existing I-L-F Programs (those in operation prior to July 9, 2008) must have approved instrument that complies with the rule by July 9, 2010, unless an extension is granted
- I-L-F Program can provide mitigation by restoration, enhancement, establishment, and/or preservation within context of watershed approach
- I-L-F Programs can be sponsored only by government agencies or non-profit natural resource management agencies
- I-L-F Projects can also be sponsored only by government agencies or non-profits but must undergo separate approval process

On April 10, 2008, the Department of the Army (DA) and US Environmental Protection Agency (EPA) published a final rule (herein referred to as the Rule) that included regulations on in-lieu fee mitigation. The Rule requires In-Lieu Fee Programs approved on or after July 9, 2008, to secure approval for their In-Lieu Fee (I-L-F) Instruments under the terms of the Rule. Existing In-Lieu Fee Programs approved before July 9, 2008, may continue to operate under their previous instruments until July 9, 2010, unless an extension is granted. Otherwise, at that time, they must either meet the new requirements or terminate operations.

Sponsors of I-L-F Programs, existing or proposed, are required to work with the US Army Corps of Engineers, Savannah District (USACE) and the Interagency Review Team (IRT) to make sure the I-L-F Program complies with the terms of the Rule. As defined in 33 CFR § 332.2, an I-L-F Program is, “a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits.” An I-L-F Program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the I-L-F Program Sponsor (herein referred to as the Sponsor). The operation and use of an I-L-F Program are governed by an I-L-F Program Instrument, as defined in 33 CFR § 332.2.

Compensatory mitigation may be in one of the following forms:

1. Restoration – Manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. Restoration is divided into two categories: re-establishment and rehabilitation. Re-establishment generally results in a gain in aquatic resource area and functions. Rehabilitation generally results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

2. Enhancement – Manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement generally results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s) and does not result in a gain in aquatic resource area.

3. Establishment (creation) – Manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Wetland establishment may result in a gain in aquatic resource area and functions, though stream establishment is generally not considered a viable mitigation option.

4. Preservation – Removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This may be accomplished through appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions, but generally prevents loss of highest priority aquatic resource areas or functions.

All the aforementioned compensatory mitigation methods as part of an I-L-F Program are appropriate; however, the regulations establish a mitigation type hierarchy that stresses use of restoration over enhancement, establishment, and preservation. Any proposal for mitigation would be reviewed on a case-by-case basis by the USACE and IRT, and only viable mitigation proposals would be approved to provide compensation for impacts from DA permits. Mitigation in general should be based on a watershed approach and should emphasize baseline ecological conditions at the impact site and mitigation site, landscape position, and aquatic resource functions. Baseline conditions include historic and existing plant communities, soil conditions, aquatic resource delineations, and a comparison of historic aquatic resources to current resources and the current threats to aquatic resources by service area. Landscape position includes the distance between the impact site and the mitigation site along with type of aquatic resources at both sites. Aquatic resource functions should include function of aquatic resources at the impact site and gains in aquatic resource function at the mitigation site.

Where authorized, DA permit holders are allowed to impact wetlands and/or streams. Upon approval by the USACE, permittees can meet some or all of their mitigation requirements by payment of a fee to an I-L-F Program Trust Account. The funds are placed in the Trust Account and designated according to U.S. Geologic Survey (USGS) hydrologic subregions, Primary Service Areas (PSAs) and by type of impact (i.e. wetland, stream). The service areas are as shown at: <http://www.sas.usace.army.mil/Banking.htm>. Upon approval by the IRT and the USACE, funds from the Trust Account are transferred to an I-L-F Partner (a government agency or natural resource management entity that meets the requirements associated with compensatory mitigation and/or permanent preservation of property found at 33 CFR § 332) for the purpose of providing compensatory mitigation.

The goal of an I-L-F Program is to identify mitigation sites in the same USGS hydrologic subregions (8-Digit Hydrologic Unit Code) where the impact occurred that are most likely to successfully replace lost functions and services. The service area for application of I-L-F funds will be the PSA. In certain circumstances, and with prior approval of the IRT, funds from one PSA may be pooled with funds from other PSAs to satisfy mitigation requirements. This should

only be done in instances where funds have remained un-used within a specific PSA longer than 3 years due to the lack of suitable projects proposed or due to limited funding available to finance a project. In these circumstances, availability of mitigation bank credits should be investigated first and un-used funds should be used to purchase suitable mitigation credits from a bank. Alternatively, the un-used funds may be allocated to smaller projects, such as EPA 319 projects or NRCS projects, which would result in gains in aquatic function. These projects can also potentially make use of federal matching funds or other sources of revenue to establish suitable funding levels. The time between the collection of funds from DA permit holders and application of funds to a site specific I-L-F mitigation site varies according to the amount of I-L-F mitigation funds paid into the Trust Account in a particular hydrologic subregion, the availability of a suitable site specific project and Partner, and on occasion, the availability of non-I-L-F funds (i.e. Congressionally-authorized, SPLOST, private contributions, etc.) used to leverage the I-L-F funds in order to have sufficient funds to acquire and protect property or finance restoration/enhancement/ establishment activities. However, the Rule specifies that land acquisition and initial physical and biological improvements must be completed by the third full growing season after the first advance credit in a particular service area is secured by a permittee, unless the District Engineer (DE) determines that more or less time is needed. At this time, at the discretion of the DE, funds must be disbursed from the I-L-F account to provide alternative compensatory mitigation.

I-L-F Programs may only be sponsored by governmental agencies or non-profit natural resource management agencies. The IRT reviews documentation for establishment and management of an I-L-F Program Instrument, and also reviews documentation for I-L-F Site Specific Projects. The IRT is composed of the USACE (IRT Chair), EPA, the US Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the Natural Resource Conservation Service (NRCS), along with other federal, state, and tribal agencies with affected interests. The USACE is required to seek to resolve issues by consensus, but within mandated timeframes. Furthermore, the USACE alone has final authority for approval of an I-L-F Program Instrument and the I-L-F Site Specific Project Mitigation Plan.

Specific I-L-F projects may be sponsored by the I-L-F Program Sponsor, or by a Partner that is a governmental agency or a non-profit natural resource management entity. Each proposed I-L-F project must undergo a separate approval process that includes IRT and public review.

This document will provide an overview of the steps necessary to prepare an I-L-F Program Instrument and Prospectus, an explanation of the procedure for submitting a site specific mitigation plan, and the required elements for all these documents.

B. Definitions

1. I-L-F Program Sponsor – The USACE, at its sole discretion, may enter into one or more agreements with I-L-F Program Sponsors. The I-L-F Program Sponsor has responsibilities as set out in a program agreement with the USACE and manages an I-L-F Trust Account providing financial and program accounting and independent financial audits of the I-L-F Trust Account. The I-L-F Program Sponsor provides the USACE with reports as to the receipt of I-L-F funds from permittees and keeps records as required by USACE and the terms of the Program

Instrument. The I-L-F Program Sponsor may receive administrative fees as set out in an I-L-F Agreement with the Program Sponsor. When a permittee pays funds to an I-L-F Trust Account, the I-L-F Program Sponsor assumes legal responsibility for managing and protecting the funds until they are applied to a site specific project. The Program Sponsor will also be responsible for submitting site specific mitigation plans to the USACE for review and approval. The Sponsor retains responsibility for providing the required compensatory mitigation until the Sponsor selects a mitigation site and the site is approved in accordance with 33 CFR § 332.3(d) and 332.8. Upon approval, the USACE, Sponsor, and Partner will execute a multi-party agreement, or other legal document, evidencing the transfer of legal responsibility from the Sponsor to the Partner. If the Sponsor and Partner are the same individual or entity, then the Sponsor retains responsibility for providing the required compensatory mitigation.

2. I-L-F Trust Account – The I-L-F Trust Account is an account set up at a financial institution that is a member of the Federal Deposit Insurance Corporation (FDIC). The account is set up after a Program Instrument is approved by the USACE and is used to accept funds from permittees as mitigation for impacts from DA permits. Any funds received for purposes other than mitigation for DA authorized impacts must be kept in a separate account. All interest from permittee funds earned by the account must remain in the account for the purpose of providing compensatory mitigation. The account may only be used for the selection, design, acquisition, implementation, and management of in-lieu fee compensatory mitigation projects along with a pre-determined amount that can be used for administrative costs. The USACE, at its sole discretion, may approve one or more I-L-F Trust Accounts managed by the I-L-F Program Sponsor. Funds paid into I-L-F Trust Accounts, as approved by the USACE in consultation with the IRT, will remain in the Trust Account until applied to a site specific mitigation project.

3. I-L-F Program Prospectus/Instrument – The I-L-F Program Prospectus and Instrument are two separate documents that set out the overall management, operation and use of an I-L-F Program. The I-L-F Program Sponsor shall carry out the requirements of the I-L-F Program as set out in the I-L-F Program Prospectus/Instrument. In addition to the I-L-F Program Prospectus/Instrument, the USACE will enter into a written agreement with the I-L-F Program Sponsor addressing the specifics of the administration of the I-L-F Trust Account and duties.

4. I-L-F Partner – An I-L-F Partner is a governmental agency or non-profit natural resource management entity (including qualified land trusts) that proposes one or more site specific mitigation projects. A qualified non-profit land trust is one that: (a) has been determined to be exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; (b) includes in its mission and/or statement of purpose the protection of the environment in its natural state including aquatic resources; (c) by action of the organization's board of trustees, agrees to adhere to the most current "Statement of Land Trust Standards and Practices," as published by the Land Trust Alliance; (d) as a site specific project Partner, agrees to accept I-L-F funds for application of restoration, enhancement and/or preservation of wetlands and streams and their buffers; (e) agrees to enter into a contractual agreement with the USACE as to the terms and provisions of the I-L-F project; (f) provides long term management and monitoring of protected sites; and (g) is qualified to hold a conservation easement pursuant to the Georgia Uniform Conservation Easement Act. In addition, potential Partners may wish to apply for I-L-F funds as a site specific project Partner for mitigation of wetlands and streams. Again, once

a mitigation site is obtained and approved, a multi-party agreement will be executed, transferring responsibility to provide compensatory mitigation from the program Sponsor to the project Partner.

An I-L-F Site Specific Project Mitigation Plan will be submitted for consideration as mitigation by the Partner. The I-L-F Partner shall comply with the regulations for a site specific project mitigation plan, as provided in 33 CFR § 332.4 (c). An I-L-F Partner may employ or contract for services with environmental consultants, biologists, foresters, engineers, attorneys, or others as needed to develop and carry out the I-L-F Site Specific Project Mitigation Plan. The USACE determines the mitigation credit calculation for each site specific mitigation project. The I-L-F Partner estimates the costs of the site specific project and recommends a mitigation credit cost to be paid by Sponsor from the I-L-F Trust Account for that project. If the site specific project mitigation plan is approved, the Sponsor will provide funds from the Trust Account for compensatory mitigation as approved, based on the cost of the approved project per credit. At such time as sufficient funds are available to carry out the project or some approved phase of the project (acquisition of the property, site protection, restoration, enhancement, payment for services rendered by governmental or land trust consultants, engineers, attorneys, biologists, foresters etc.), the USACE may approve the application of I-L-F Trust Funds to the specific costs of the site specific project; however, a Conservation Land Use Agreement and legal documents protecting the site must be executed prior to application of funds to a site specific project. When funds are conveyed from the I-L-F Trust Account to a Partner for application to a site specific project, the legal responsibility for application of the funds for compensatory mitigation shifts to the Partner. The USACE shall at all times determine the sufficiency and appropriate use of I-L-F funds with a particular project site in compliance with the Clean Water Act (CWA) and mitigation regulations.

5. I-L-F Site-Specific Mitigation Plan – The I-L-F Partner shall submit an I-L-F Site Specific Mitigation Plan for each I-L-F project proposed and shall include all information as required by the USACE (see 33 CFR § 332.4 (c)). When a site specific mitigation plan is approved by the USACE in consultation with the IRT, I-L-F funds from the I-L-F Trust Account may be applied to the project.

C. I-L-F Program Prospectus

Key Points

- I-L-F Program Prospectus must provide 8 required items to be considered complete: I-L-F program objectives, establishment and operation, service area, need and technical feasibility, ownership and long-term management, sponsor qualifications, Compensation Planning Framework, and description of I-L-F program account
- Prospectus undergoes public and IRT review

Although the Rule does not require the submission of a draft prospectus, the proposed Sponsor may voluntarily submit a draft prospectus for review and comment by the IRT. If a proposed Sponsor submits a Draft Prospectus, the USACE and the IRT must provide the proposed Sponsor with comments within 30 days. After receiving a complete I-L-F Program Prospectus, the USACE has 30 days to issue a public notice. The public comment period for an I-L-F Program Prospectus is 30 days. Once this comment period ends, the USACE has 15 days to distribute copies of all comments received to the IRT and the Sponsor. The USACE and the IRT may also provide comments during the comment period and these should be distributed to all IRT members and the Sponsor. The USACE is required by the Rule to review all comments received and provide the Sponsor-applicant an initial evaluation within 30 days of the end of the public notice comment period. This evaluation will either state that the I-L-F Program proposed Sponsor may proceed with submittal of a Draft Instrument or that the Prospectus does not have the potential to provide suitable mitigation for DA permits. If the USACE rules that the Prospectus does not have merit, the proposed Sponsor has the option to revise and re-submit the Prospectus for public review. The overall approval process and required elements for an I-L-F Program Prospectus and Instrument are summarized in Appendix A.

An I-L-F Program Prospectus must contain the following eight items:

1. Objectives of the I-L-F Program - The objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by DA permits. The Program Prospectus should identify the resource type(s) that will be provided, the method of compensation (i.e., restoration, enhancement, establishment, and/or preservation), and the manner in which the resource functions of the compensatory mitigation program will address the needs of the watershed.

2. Establishment and Operation - The authority for the I-L-F Program is 33 CFR § 332 and 40 CFR § 230 "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule ("Rule") published in the Federal Register on April 10, 2008.

Information on establishment and operation of an I-L-F Program should include discussion of the qualifications of the Sponsor; information on potential mitigation sites or types of mitigation projects planned; schedule(s) for implementation; financial, technical, and legal mechanisms to ensure long-term mitigation success (including contingency funds and trust funds for long-term management and maintenance); accounting procedures (setup of the I-L-F Program account); performance standards; reporting protocols and monitoring plans; and contingency plans for default and closure.

The USACE will provide oversight to this I-L-F Program, with input from the IRT. The DE will establish an IRT to review documentation for the site specific projects associated with this I-L-F Program. The DE, or his designated representative, serves as Chair of the IRT. In cases where an I-L-F site specific project is proposed to satisfy the requirements of another federal, tribal, state, or local program, in addition to compensatory mitigation requirements of DA permits, it may be appropriate for the other administering agency to serve as co-Chair of the IRT, as specified at 33 CFR § 332.8(b)(1). The DE will give full consideration to any timely comments and advice of the IRT. However, the DE alone retains final authority for approval of the

proposal in cases where the I-L-F Program is used to satisfy compensatory mitigation requirements of DA permits.

The primary role of the IRT is to review the I-L-F Program Instrument and Prospectus and site specific project mitigation plans and provide comments to the DE. The DE and the IRT shall use a watershed approach to the extent practicable in reviewing I-L-F Program and project documents. The IRT will also advise the DE in assessing monitoring reports and recommending remedial or adaptive management measures. In order to ensure timely processing of Program Instruments, Project Mitigation Plans, and other documentation, comments from IRT members must be received by the DE within the time limits specified by the the USACE and the 2008 Rule. Comments received after these deadlines will only be considered at the discretion of the DE, to the extent that doing so does not jeopardize the deadlines for the USACE action.

The I-L-F Program Sponsor should stay in active consultation with qualified non-profit land trusts, natural resource agencies and governmental entities for partnering opportunities in order to promote selection of I-L-F site specific proposals when there are sufficient funds in the I-L-F Trust Account for application in a particular service area. Federal, state, county, municipal governmental agencies, natural resource departments, or greenway authorities may wish to apply for I-L-F funds as a site specific project Partner for restoration, enhancement, establishment, and/or preservation of wetlands and streams. The USACE shall at all times determine the sufficiency and appropriate use of I-L-F funds with a particular project site in compliance with the Clean Water Act (CWA) and mitigation regulations.

I-L-F trust funds may be used in conjunction with federal matching funds where needed to acquire and/or permanently protect land. For example, I-L-F funds can be pooled with funds authorized by the US Congress to pay for acquisition of additional tracts of land where the owner would not sell less than the total acreage in the tract or where funds are needed in addition to the I-L-F trust funds.

Subject to the requirements set out at 33 CFR § 332.3(j), I-L-F compensatory mitigation may also be used to satisfy the environmental requirements of other programs, such as tribal, state or local wetland/stream regulatory programs, USACE civil works projects and Department of Defense military construction projects, consistent with the terms and requirements of these programs. Under no circumstances will the same credits be used to provide mitigation for more than one permitted or authorized activity.

3. Proposed Service Area(s) - The overall I-L-F Program will be applicable in a service area up to the entire State of Georgia. However, in most cases the funds generated from the sale of I-L-F credits shall be used to provide compensatory mitigation in the same Primary Service Area (PSA) in which the impacts that are being compensated for have occurred.

While an I-L-F Program service area may be regional or state-wide, any proposed use of the I-L-F Program for compensatory mitigation must use a watershed approach that emphasizes in-kind replacement of lost function. This includes establishing the PSA and 8-digit Hydrologic Unit Code (HUC) location of any permitted impacts to waters of the U.S. and I-L-F Program mitigation projects that will be used to offset impacts. Functional loss of aquatic resources due

to a permitted impact, distance of I-L-F projects to impact sites, and credit type(s) available must also be determined. For a project PSA that includes multiple 8-digit HUCs, preference for mitigation will be given for similar resources at I-L-F projects within the same 8-digit HUC versus within the same PSA. Additionally, proposed impacts and I-L-F project sites should have 12-digit HUCs identified. Further preference will be given for mitigation within the same 12-digit HUC as impacts occur.

In general, the required I-L-F compensatory mitigation shall be located within the same PSA as the impact site, and should be located where it is most likely to 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. The service areas are as shown at: <http://www.sas.usace.army.mil/Banking.htm>.

The Prospectus should: (a) include information on areas of the state in which the I-L-F Program will operate (i.e., entire state, coastal tier counties, north Georgia mountains); (b) clearly identify PSAs within the areas where the I-L-F Program will operate; and (c) identify situations where these PSAs may not apply (e.g., funds remain in a PSA account for over 3 years without an acceptable mitigation site within the PSA being available/nominated).

4. Need and Technical Feasibility - The Prospectus must include information on the need and technical feasibility of the I-L-F Program. All activities authorized by DA permits issued by the USACE are eligible, at the discretion of the DE, to use an I-L-F Program to fulfill compensatory mitigation requirements of the permits. Options for compensatory mitigation should be considered in the following order:

- a. Mitigation bank credits;
- b. In-lieu fee program credits;
- c. Permittee-responsible mitigation under a watershed approach;
- d. Permittee-responsible mitigation through on-site and in-kind mitigation;
- e. Permittee-responsible mitigation through off-site and/or out-of-kind mitigation.

Where permitted impacts are not located in the service area of a USACE approved mitigation bank, or the approved mitigation bank does not have the appropriate number and resource type of credits available to offset those impacts, I-L-F mitigation can be used and is preferable to permittee-responsible mitigation efforts. In these cases, the permit applicant must provide the USACE with either: (1) a statement that no bank services the project site; or (2) the name(s) of the mitigation bank(s) contacted, the date of contact, and a statement that the banker(s) confirmed that no credits were available. The DE shall review the permit applicant's compensatory mitigation plan and notify the applicant of his/her determination regarding the acceptability of using an I-L-F Program. The available I-L-F credits must also be in-kind and/or allow replacement of functions lost due to permitted impacts, unless waived by the DE. This

need to provide compensatory mitigation for permitted impacts to waters of the US where credits are not available from a commercial mitigation bank is the primary purpose of an I-L-F Program.

The most current version of the USACE Savannah District Standard Operating Procedure for Compensatory Mitigation (SOP) should be used for determining required mitigation. The SOP is undergoing revision where functional classifications will likely be used for determining required mitigation (e.g. impacts to an urban perennial stream should be mitigated by restoration/enhancement/preservation of an urban perennial stream or impacts to cypress wetlands should be mitigated by restoration/enhancement/establishment/ preservation of cypress wetlands). This revision will allow for further emphasis on replacement of functional loss when meeting mitigation requirements.

In general, restoration is the preferred method of providing compensatory mitigation. Restoration has a higher likelihood of success and the impacts to potentially ecologically important uplands are reduced compared to establishment. Potential gains in terms of aquatic resource functions are greater compared to enhancement and preservation. Because preservation does not result in a gain in aquatic resource function or area, its use as a mitigation tool is subject to additional requirements as discussed below in Section C. 7. f. and g. To the maximum extent practicable, mitigation should be planned and designed to be self-sustaining over time. Techniques for restoring, enhancing, or establishing aquatic resources must be carefully selected to increase likelihood of success. The technical aspect of this program is further enhanced by the use of the Compensation Planning Framework. All proposals submitted must include a Compensation Planning Framework that will be used to select and secure aquatic resource mitigation activities. The elements of a Compensation Planning Framework are discussed below in Section C. 7.

5. Ownership and Long-Term Management - The I-L-F Program Prospectus must have language stating that each I-L-F Site Specific Mitigation Plan approved under the Program Instrument must include information on the proposed ownership arrangements and long-term management strategy for the I-L-F project. Mitigation Partners identified in specific I-L-F Project Mitigation Plans will, in most cases, be required to own all mitigation property. The Partner must have the authority to enter into a Conservation Land Use Agreement addressing all relevant legal, management and monitoring requirements, and have authorization to address site protection requirements. A description of the legal arrangements and instrument, including site ownership, which will be used to ensure the long-term protection of the compensatory mitigation project site shall be provided to and approved by the USACE.

6. Sponsor Qualifications - Sponsor must detail their experience and qualifications with respect to providing compensatory mitigation. In addition to meeting general Sponsor qualifications for a mitigation program (being a governmental agency or qualified non-profit natural resource management agency), the Program Sponsor and Project Partner will be responsible for screening the qualifications of proposed mitigation project teams and providing recommendations for credit release schedules and financial assurances to the USACE and the IRT. This screening should be consistent with the “Savannah District US Army Corps of Engineers, Draft Guidelines to Establish and Operate Mitigation Banks in Georgia,” or most current mitigation banking guidelines.

7. Compensation Planning Framework - The Compensation Planning Framework is the section of the Prospectus and Instrument that is “used to select, secure, and implement aquatic resource restoration, establishment, enhancement, and/or preservation activities.” For an I-L-F Program that has a state-wide or regional service area, general (i.e. state-wide or regional) language should be used for each required item in the Compensation Planning Framework of the I-L-F Program Prospectus/Instrument. Specific details of service area, threats to aquatic resources, analysis of historic aquatic resource loss, analysis of current aquatic resource conditions, and aquatic resource goals and objectives by PSA/8-digit HUC/12-digit HUC will be required for any project specific mitigation plans submitted under a general I-L-F Program Prospectus/Instrument. The Compensation Planning Framework must support a watershed approach to compensatory mitigation, and all specific projects used to provide compensation for DA permits must also be supported by and consistent with the approved Compensation Planning Framework.

A Compensation Planning Framework must include the following ten elements:

- a. Geographic Service Area - A watershed-based rationale for the delineation of each service area provided in Section C. 3. above.
- b. Threats to Aquatic Resources - The Sponsor must describe threats to aquatic resources within service area(s). These threats should be supported by information on development trends (population, transportation and infrastructure planning, and energy development), flood risk, water quality, and at-risk species. The Sponsor also should provide a description of how the I-L-F Program will help offset impacts resulting from those threats.
- c. Analysis of Historic Aquatic Resource Loss - The Sponsor must analyze historic aquatic resources lost within service area(s). Resources can be discussed by Cowardin class or by function. Discussion of resource loss should be consistent with the most current version of the USACE Savannah District Mitigation SOP. The SOP is currently being revised to more specifically address functional classification.
- d. Analysis of Current Aquatic Resource Conditions - The Sponsor must analyze current aquatic resource conditions in the service areas. This discussion can be supported by the same information as under Item b.
- e. Aquatic Resource Goals and Objectives - Refer to Section C. 1. for discussion of program objectives. The Sponsor should provide a statement of aquatic resource goals and objectives, including a description of the general amounts, types, and locations of aquatic resources the program will provide.

f. Prioritization Strategy for Selecting and Implementing Compensatory Mitigation Activities - The 2008 Rule places considerable emphasis on proper site selection. Six factors, in particular, should be considered when selecting ecologically suitable sites. These are:

- (1) Hydrological conditions, soils characteristics, and other physical and chemical characteristics;
- (2) Watershed scale features, such as aquatic habitat diversity, habitat connectivity, and other landscape scale functions;
- (3) The size and location of the compensatory mitigation site relative to hydrologic sources (including the availability of water rights) and other ecological features;
- (4) Compatibility with adjacent land uses and watershed management plans;
- (5) Reasonably foreseeable effects the compensatory mitigation project will have on ecologically important aquatic or terrestrial resources, cultural sites, or habitat for federally or state listed threatened and endangered species; and
- (6) Other relevant factors including, but not limited to, development trends, anticipated land use changes, habitat status and trends, the relative locations of the impact and mitigations sites in the stream network, local or regional goals for the restoration or protection of particular habitat types or functions, water quality goals, floodplain management goals, and the relative potential for chemical contamination of the aquatic resources.

Preservation land should contain high function, service, and value wetlands and streams/creeks/rivers that are not already subject to conservation protection. Properties for preservation will not generally be considered if the aquatic resources have been extensively modified or altered by construction of buildings, paved roads, concrete walkways, utility lines or piping, where the native canopy is altered (e.g., ongoing timber removal), or where the natural vegetation has been cut and grassed over or ditched or extensively invaded by exotics, where there is grazing of animals that have access to the streams, or where the environmental functions, services and values of the wetlands and/or streams have been significantly degraded. Ephemeral streams (streams that occur only when it rains) will not be considered. Undeveloped land is preferred. If the land also contains an archeological and/or historic artifact or federally-listed species, it may be considered. The Partner may combine a proposal for preservation in connection with restoration and enhancement of wetlands/streams. Permanent protection usually involves acquisition of fee title to property but can also employ the use of a conservation easement held by a qualified third party. A Conservation Land Use Letter Agreement is recorded setting out the terms and conditions of the agreement.

All property submitted as a mitigation proposal for I-L-F Trust Funds must contain either perennial or a combination of perennial and intermittent streams and/or wetlands and buffers, except in cases of establishment or possibly restoration. If the property is adjacent to the main stem of a tributary, then it may be considered for one side only. However, preference is for protection of both sides. Small 3-15 foot wide, high quality, perennial streams with good flow

and sinuosity are preferred. The Trust Funds may include payment for upland property on a mitigation tract where the upland provides corridors necessary for the ecological functioning of aquatic resources and where those resources are essential to maintaining the ecological viability of adjoining aquatic resources. The Sponsor must demonstrate that the uplands contribute to stream or wetland functions.

The general discussion provided above would be sufficient for an I-L-F Program that has a state-wide or regional service area encompassing multiple PSAs. Specific discussion of site selection should be included with the mitigation plan submitted for each proposed I-L-F project. Site selection for specific I-L-F projects should be consistent with the most current mitigation banking guidelines.

g. Explanation of How Preservation Objectives Satisfy the Criteria for Use of Preservation - Preservation may be used to provide compensatory mitigation for activities authorized by DA permits when all the following criteria are met:

(1) The resources to be preserved provide important physical, chemical, or biological functions for the watershed;

(2) The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the DE may use appropriate quantitative assessment tools, where available;

(3) Preservation is determined by the DE to be appropriate and practicable;

(4) The resources are under threat of destruction or adverse modifications; and

(5) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

The Program Sponsor is responsible for screening each I-L-F project to determine whether it meets the criteria for use of preservation. The USACE has final approval of whether criteria are met on a project-by-project basis.

h. Public and Private Stakeholder Involvement - The I-L-F Program Sponsor agrees to stay in active consultation with potential Partners to select I-L-F Program priorities when there are sufficient funds in the I-L-F trust account for application in a particular service area. The Sponsor should provide a discussion of strategy for stakeholder involvement in the Prospectus.

i. Long Term Protection and Management Strategies - An I-L-F Site Specific Project Mitigation Plan must:

(1) Identify the party responsible for ownership and all long-term management of the compensatory mitigation project(s);

(2) Include a description of long-term management needs, annual cost estimates for these needs, and identify the funding mechanism that will be used to meet those needs; and

(3) Specify what long-term financing mechanisms will be used, such as non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial instruments consistent with requirements in the most current mitigation banking guidelines.

The Program Prospectus should provide general statements that these items will be addressed in each project mitigation plan produced under the Program Instrument.

j. Strategy for Evaluation and Reporting - The I-L-F Program Sponsor, as well as the site specific Partner, must submit the following information to the DE and the IRT:

(1) Monitoring reports - Monitoring, including collection of baseline data as appropriate, is required of all compensatory mitigation projects to determine if the project is meeting its performance standards and if additional measures are necessary to ensure that the compensatory mitigation project is accomplishing its objectives. If the I-L-F Program Sponsor or project Partner fails to submit reports within the deadlines outlined in the mitigation plan(s), the USACE may take appropriate compliance action, possibly including suspension of I-L-F credit sales on a program or project specific basis.

Project specific mitigation plans will detail the parameters to be monitored, the length of the monitoring period, the dates that the reports must be submitted, the party responsible for conducting the monitoring, the frequency for submitting monitoring reports to the USACE, and the party responsible for submitting those monitoring reports to the USACE and IRT. The level of detail and substance of the reports must be commensurate with the scale and scope of the compensatory mitigation project and should be consistent with the requirements in the most current mitigation banking guidelines. The USACE is required to provide monitoring reports to interested federal, tribal, state, and local resource agencies, and the public, upon request.

(2) Credit transaction notifications - Upon payment by the permittee, the I-L-F Program Sponsor will submit a credit sale form/letter/certificate to the USACE. Submission of a credit sale form/letter/certificate to the USACE constitutes the Sponsor's assumption of legal responsibility for the permittee's compensation requirements. The document will be signed and dated by the Sponsor and the permittee. The credit transaction form/letter/certificate will include the permit number(s) for which the Sponsor is accepting fees, the number of credits being satisfied, as authorized by the DA permit, and resource type(s) (e.g., Cowardin class or functional classification consistent with the most current USACE Savannah District Mitigation SOP, see <http://www.npwrc.usgs.gov/resource/wetlands/classwet/index.htm> or <http://el.erdc.usace.army.mil/wetlands/guidebooks.html> for some functional approaches) of credits being purchased. The Sponsor will submit the signed and dated credit transaction form/letter/certificate within 10 days of receiving the fees from the permittee. A copy of each credit transaction form/letter/certificate will be retained in both the USACE's and the Sponsor's administrative and accounting records.

(3) Annual program report - The I-L-F Program Sponsor will submit an annual ledger report (“annual report”) to the USACE. The annual report will be available to the public and IRT members on the Regional Internet Bank Information Tracking System (RIBITS). The annual report shall include the following information:

(a) Program Account (financial) reporting:

(i) All income received and interest earned by the program account. The annual report should identify the income received and interest earned by service area, and by project;

(ii) A list of all permits for which I-L-F Program funds were accepted. This list must include the USACE permit number, the service area in which the mitigation is performed, the service area in which the authorized impacts are located, the amount of authorized impacts (in credits), the amount of required compensatory mitigation (in credits), the amount paid to the I-L-F Program, and the date the funds were received from the permittee;

(iii) A description of I-L-F Program expenditures/disbursements from the account (i.e., the cost of land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration) for the program and by service area; and

(b) Ledger (credit) reporting:

(i) The balance of funds at the end of the report period for the program, by service area, and by 8-digit and 12-digit HUC;

(ii) The permitted impacts for each resource type (e.g. by Cowardin or SOP functional classification);

(iii) All additions and subtractions of funds; and

(iv) Other changes in fund availability (e.g., additional funds released).

The aforementioned information will be tracked in RIBITS by PSA, 8-digit HUC, and 12-digit HUC. For all the project-specific reporting requirements, the Program Prospectus should provide general statements that these items will be addressed in each project mitigation plan produced under the Program Instrument.

8. Description of In-Lieu Fee Program Trust Account - The I-L-F Program Trust Account is established by the Sponsor to track the fees accepted and disbursed. The Sponsor shall not commingle funds received from permittees with funds received for purposes other than mitigation for DA authorized impacts. Funds received for purposes other than mitigation for DA authorized impacts must be kept in a separate account. The funds must be held at a financial institution that is a member of the Federal Deposit Insurance Corporation (FDIC). Any interest accruing from the account must remain in the account and be used to provide compensatory mitigation. This section of the Prospectus and Instrument should state specifically how the funds can be used. According to the 2008 Rule, this is for the “selection, design, acquisition,

implementation, and management of in-lieu fee compensatory mitigation projects.”
Administrative costs are also allowed.

The I-L-F Program Sponsor agrees to assume responsibility for the I-L-F compensatory mitigation funds in the Trust Account until such time as they are transferred to a Partner for a site specific project. Upon transferring the funds to a Partner for a site specific project, the Partner assumes responsibility pursuant to the terms of the Project Mitigation Plan and Conservation Land Use Agreement, or other appropriate legal document.

The funds paid by permittees into an I-L-F account are not characterized as federal funds although the USACE has the authority to direct that they be applied for compensatory mitigation pursuant to the CWA and RHA.

The I-L-F Program Sponsor shall provide the USACE with a year-end bank statement and an independent annual audit of the I-L-F Trust Account applying generally accepted accounting principles. The accounting shall include direct and administrative costs. The accounting will be based on a calendar year and be provided to the USACE within 60 days following the end of the calendar year. The Sponsor shall make the accounting available for inspection and audit by the DE or his designated representative.

In addition to the annual accounting of the I-L-F Trust Account, the I-L-F Program Sponsor shall provide the USACE with a monthly and yearly report and accounting of funds forwarded from the I-L-F funds to any participating Partner for specific projects as authorized by the USACE.

D. I-L-F Program Instrument

Key Points

- I-L-F Program Sponsor must provide 8 required items for a draft instrument/instrument to be considered complete: proposed service area, accounting procedures, provision stating legal responsibility to provide compensatory mitigation, default and closure procedures, reporting protocols, Compensation Planning Framework, method for determining project specific credits and fees and draft fee schedule, and I-L-F program account
- Instrument undergoes IRT review

Once a Sponsor has received approval to proceed, they must submit a Draft Instrument. Once a Draft Instrument is submitted, the USACE has 30 days to review a Draft Instrument for completeness. The overall approval process and required elements for an I-L-F Program Prospectus and Instrument are summarized in Appendix A. In Georgia, an I-L-F Program Instrument must contain these eight elements:

1. Proposed Service Area - Refer to Section C. 3. for discussion of proposed service area.
2. Accounting Procedures - Refer to Sections C. 7. j. and C. 8. for discussion of accounting procedures.
3. Provision Stating Legal Responsibility to Provide Compensatory Mitigation - The Sponsor should include distinct provisions that clearly state that the legal responsibility for ensuring mitigation terms are satisfied fully rests with the organization accepting in-lieu fees.
4. Default and Closure Procedures - Either party giving ninety days written notice to the other party may terminate this agreement. Prior to termination, the I-L-F Program Sponsor shall provide an accounting of funds in the I-L-F Trust Account and shall complete payments on site specific projects approved by the USACE. Upon termination, should funds remain in the I-L-F Trust Account, the USACE shall direct that payment be made from that account to another Sponsor or to another designated management entity (including mitigation bank(s) that serve the PSAs of any non-allocated funds) for the application of funds for the purpose intended by the I-L-F Program.
5. Reporting Protocols - Refer to Sections C. 7. j. and C. 8. for discussion of reporting protocols.
6. Compensation Planning Framework - Refer to Section C. 7. for discussion of the Compensation Planning Framework.
7. Method for Determining Project-specific Credits and Fees and Draft Fee Schedule - The most current version of the USACE Savannah District SOP will be used to determine the amount of credits needed to offset a permitted impact. The SOP is currently being revised towards a functional classification of waters of the US.

For purposes of the I-L-F Program, the cost per unit of credit for mitigation shall be determined by the Sponsor to include the expected costs associated with the restoration, enhancement, establishment, and/or preservation of aquatic resources in a specific 8-Digit Hydrologic Unit Code. These costs are based on full cost accounting, and include, as appropriate, expenses such as land value appraisal, land acquisition, project planning, legal fees, consultant fees, monitoring, and remediation or adaptive management activities, as well as administrative costs of the I-L-F Program. The cost per unit of credit shall also take into account the resources necessary for the long-term management and protection of the I-L-F project.

8. In-Lieu Fee Program Account - Refer to Section C. 8. for discussion of the I-L-F Program Account.

Once a Sponsor has received notice from the USACE that their Draft Instrument is acceptable and complete, the Sponsor will be directed to submit copies of the complete Draft Instrument to the IRT for a 30-day comment period. The 30-day comment period begins 5 days after the copies of the Draft Instrument are distributed to the IRT. Within 90 days of receipt of the complete Draft Instrument by the IRT members, the USACE must notify the Sponsor of the

status of the IRT review, including whether the Draft Instrument is acceptable and what changes, if any, are needed. The sponsor may then submit a Final Instrument. The Final Instrument must include information addressing comments received on the Draft Instrument. Within 30 days of receiving the Final Instrument, the DE must notify the IRT members whether or not he intends to approve the Final Instrument. If any IRT members object to the DE's decision, they have 45 days from receipt of the Final Instrument to make a formal objection through the dispute resolution process, 33 CFR § 332.8(e). Following this 45-day period, the USACE must notify the Sponsor of its final decision. Once the Final Instrument is signed by the Program Sponsor and the DE, the program can be used to provide compensatory mitigation. Other IRT members may choose to sign the Instrument or submit letters of concurrence. The overall approval process and required elements for an I-L-F Program Prospectus and Instrument are summarized in Appendix A.

E. I-L-F Program Instrument Modification

The DE may require modifications to an Instrument, as deemed necessary. If a modification to an Instrument is proposed, the DE shall review comments provided by the public and the IRT and shall make a final determination as to the modification of the I-L-F Program Instrument. If the DE determines that the proposed modification to the I-L-F Program Instrument or the site specific mitigation plan has potential for providing appropriate compensatory mitigation for activities authorized by DA permits, the DE will inform the Sponsor and/or the Partner and the agreement will be modified and executed in compliance with the provisions of the 2008 mitigation rules. The agreement may be amended in writing by either party or by mutual consent of the USACE and the Sponsor. Amendments require the written approval by both the USACE and the Sponsor.

F. I-L-F Project Mitigation Plan

Key Points

- I-L-F Project Partner must provide 12 required items for a mitigation plan to be considered complete: objectives, site selection, site protection instrument, baseline information, determination of credits, mitigation work plan, maintenance plan, performance standards, monitoring requirements, long-term management plan, adaptive management plan, and financial assurances plus information deemed necessary by USACE
- Mitigation plan is considered an I-L-F program instrument modification and must undergo separate approval process that includes public and IRT review

Each proposal for a new mitigation project or to add acreage to an existing mitigation project must include a mitigation plan that goes through IRT and public review. The mitigation plan should be reviewed by the Program Sponsor and submitted by them on behalf of the Project Partner. An I-L-F Site Specific Mitigation Plan must include the following thirteen elements:

1. Objectives - Refer to Section C. 1. for discussion of objectives.
2. Site Selection - Refer to Section C. 7. f. for discussion of site selection criteria.

In addition to the general language provided under service area and the prioritization strategy of the I-L-F Program Instrument, each specific mitigation plan should provide details at the PSA level (8-digit and 12-digit HUC) addressing the watershed approach to site selection. This discussion should include threats to aquatic resources, analysis of historic resource loss, analysis of current aquatic resource conditions, and aquatic resource goals and objectives which are all specific to the proposed project's PSA. This information should support the specific site selection discussion for each proposed mitigation project and should detail how the specific project would be consistent with the general Compensation Planning Framework outlined in the Program Instrument.

3. Site Protection Instrument - A description of the legal arrangements and instrument, including site ownership, which will be used to ensure the long-term protection of the compensatory mitigation project site shall be provided.

If a proposal from a Partner is accepted and the USACE determines, after consultation with the IRT, that funds may be provided to the Partner for a mitigation project, then the Partner will be notified. The below listed items shall then be submitted to the USACE Office of Counsel in preparation for the drafting and execution of the Conservation Land Use Agreement.

- a. Draft Conservation Land Use Agreement with required exhibits;
- b. Draft Conservation Restrictive Covenant and/or Conservation Easement and/or other legally binding protection for site;
- c. Appraisal of fair market value of property;
- d. Survey & Legal Description (Metes and Bounds);
- e. Title search results;
- f. Copy of Title Insurance;
- g. Baseline data and photos for use as an exhibit;
- h. Detailed budget for application of Trust Account monies requested;
- i. Commitment of matching funds information; and
- j. Other real estate and legal information to be determined.

4. Baseline Information - An I-L-F Site Specific Project Mitigation Plan must have site specific baseline information including: description of soils, current vegetation, location of transects for collecting vegetative species data, hydrologic monitoring plan, detailed baseline data collection plan for streams, geomorphic data, stream flows, location of stream gauges, Rosgen classification, Simon Channel Evolution stage, fish and benthos IBI, water conditions (temperature, pH, dissolved oxygen, conductivity, turbidity), location of water quality monitoring stations including parameters to be monitored and frequency and timing of monitoring, lab analysis for contaminants, and riparian vegetation sampling. The baseline information collected should be consistent with the scale of the project and with the most current mitigation banking guidelines.

5. Determination of Credits - The most current USACE Standard Operating Procedure for Compensatory Mitigation shall be used to determine the amount of mitigation credit that can be generated from a specific I-L-F project. Refer to Section D. 7. for additional discussion of project-specific credits and fees and draft fee schedule.

6. Mitigation Work Plan - An I-L-F Site Specific Project Mitigation Plan should include information on construction plans, methods, timing, and sequence; source of native vegetation; methods for establishing desired plant community; plans to control invasive plant species and nuisance animals; grading plans; and soil erosion control measures (consistent with the most current mitigation banking guidelines), unless the proposal is for preservation only.

7. Maintenance Plan - The long-term maintenance plan should address all anticipated regularly scheduled activities that would be required at the project site after active monitoring has been completed. Long-term maintenance might include prescribed burning, invasive species control, fence repair, sign replacement, property inspections, and reporting of encroachments. The plan must include provisions for long-term financing mechanisms (consistent with the most current mitigation banking guidelines).

8. Performance Standards - Performance standards and success criteria must be identified for the project site. A discussion of how these criteria will be used to document annual and final success must be included (consistent with the most current mitigation banking guidelines).

9. Monitoring Requirements - The Partner shall discuss how, when, where, and why specific criteria are to be monitored for the project site (consistent with the most current mitigation banking guidelines). Data collected must be related to project success criteria. Specific reporting protocols should also be established. Monitoring should be consistent with baseline data collection.

10. Long-term Management Plan - Descriptions of how the compensatory mitigation project will be managed, including long-term financing mechanisms and the party responsible for long-term management (consistent with the most current mitigation banking guidelines). The I-L-F site specific Partner is responsible for the long-term management plan. In management plans, federal and state agencies or departments should cite relevant statutory language authorizing the agency/department to protect environmental resources, specifically aquatic riparian, riverine and wetland areas under their authority. Agencies/departments shall state the office or resource

location of the land management plan files. The management plans shall provide for an adaptive management policy that considers the risk, uncertainty and dynamic nature of compensatory mitigation projects and allows for measures to rectify problems that occur.

11. Adaptive Management Plan - A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures (consistent with the most current mitigation banking guidelines). The adaptive management plan will guide decisions for implementing measures to address both foreseeable and unforeseen circumstances that adversely affect the project site.

12. Financial Assurances - Sufficient financial assurances will be required to ensure a high level of confidence that the I-L-F project will be successfully completed in accordance with performance standards (consistent with the most current mitigation banking guidelines). Financial Assurances (FA) may be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments subject to USACE approval. FAs should address construction, maintenance, and annual monitoring costs associated with the project. The USACE may also consider the cost of providing replacement mitigation, including costs for land acquisition, planning and engineering, legal fees, and mobilization. FAs will be phased out as performance standards are met.

13. Additional Information - In addition to the information above, all of the following criteria (Items 13 a. (1)-(5)) must be met for preservation. If all of the following criteria are not met, the preservation portion of a draft proposal will not be accepted for consideration.

a. Preservation Criteria – The draft proposal must provide the following information and documentation that may support it.

(1) The resources (wetlands/streams/buffers) to be preserved provide important physical, chemical or biological functions for the watershed.

(2) The resources to be preserved contribute significantly to the ecological sustainability of the watershed.

(3) The resources are under threat of destruction or adverse modifications.

(4) The owners/parties agree to permanently protect the property through a Conservation Land Use Agreement (model language provided by the USACE) and appropriate real estate documents and other legal instruments.

(5) The property will be monitored in the future with a long-term management plan.

b. Supporting Documentation - If the requirements in 13 a. (1)-(5) can be met for preservation, then proceed with the draft site specific project mitigation plan and provide the

following information for all proposed mitigation types. If not included, state why the information is not relevant or cannot be obtained:

(1) The Partner's point of contact with name, address, telephone number and email address. If there is more than one Partner, list all Partners.

(2) Address items a-e above as requirements for preservation criteria that must be met.

(3) State the amount of funds requested from the I-L-F Trust Account for mitigation activities.

(4) The name of the mitigation tract.

(5) Name the county where the tract is located and the distance and direction from nearest town or city and/or nearest major highway.

(6) Optional: Georgia Atlas and Gazetteer page number and reference grid.

(7) Provide aerial or download Google map aerial with approximate location of site overlaid and a site map.

(8) Name the USGS hydrologic subregion (8-Digit and 12-digit Hydrologic Unit Code) in Georgia in which the tract is located.

(9) State whether the owner is willing to transfer the property in fee simple and/or permanently protect the property through conservation easement, transfer of title or other means.

(10) State whether there are any options to purchase and/or other agreements that have been executed. State whether the property has already been acquired by a land trust and/or governmental entity to keep it off the market and the request is to be reimbursed.

(11) Provide information as to all the parties that would be involved in the transaction (land trusts, governmental entities, county, local administration).

(12) State the size of the tract and whether the entire tract or some portion of the tract would be the subject of the application for permanent protection of wetlands and/or streams and buffers.

(13) State whether there are any existing easements on the site and whether the easements would remain or be extinguished.

(14) State whether the tract is now protected by statute, conservation easement or otherwise.

(15) If applicable, state who the owner/conservation easement holder and or fee owner will be if funded.

(16) State what rights and uses the owner/land trust/agency/department would retain.

(17) Describe the aquatic resources on site—i.e. a perennial stream about 4' wide and 300 feet of buffer on each side or a major river with buffers and/or approximate number of acres of wetlands.

(18) State the approximate length of perennial stream (flows all year) and approximate width and name of tributary (or state that it is an unnamed tributary to a named tributary and provide the name of the named tributary).

(19) Stream Preservation Function: (Use with stream preservation)

Fully Functional means that the physical geomorphology of the (stream) reach is stable and the biological community likely is diverse. A stream generally will be considered fully functional if it meets one or more of the following five criteria (though these criteria will likely be modified with release of a new SOP):

(i) The reach is not entrenched (entrenchment ratio >2.2 , excluding Rosgen Class A and B streams). See Rosgen Stream Classification System and criteria or other method of classification.

(ii) The reach supports aquatic species listed as endangered, threatened, or rare by the U.S. Fish and Wildlife Service (USFWS) or Georgia Department of Natural Resources (Georgia DNR) (refer to USFWS Georgia Field Office or Georgia DNR web page).

(iii) The stream is a State designated primary trout stream (refer to Georgia DNR web site).

(iv) The reach supports a diverse biological community (Describe).

(v) The stream is a Georgia DNR Stream Team reference reach (refer to Georgia DNR Fisheries).

(20) State which of the categories (i)-(v) are applicable.

(21) Wetland preservation is the permanent perpetual protection of existing wetlands, or other open water aquatic resources. If preservation is proposed, it must be demonstrated that the wetlands or other aquatic resources perform important physical, chemical or biological functions, the protection and maintenance of which is important to the region (watershed) where those aquatic resources are located; and are under demonstrable threat of loss or substantial degradation from human activities. The existence of a demonstrable threat will be based on clear evidence of destructive land use changes that are consistent with local and regional (i.e., watershed) land use trends, and that are not the consequence of actions under the control of the party proposing the preservation. Provide information as to the condition of the wetlands on the site.

- (22) State the approximate acreage of wetlands.
- (23) Provide digital pictures of the streams/wetlands on site via CD or printed out.
- (24) State the approximate number of acres in 100-year floodplain.
- (25) State and/or show the location of the site within the watershed (8-Digit and 12-digit Hydrologic Unit Code) and state whether tributaries are headwaters and how property is located in relation to the watershed.
- (26) State the historical use of the property (silviculture, residential, undeveloped, farming).
- (27) State whether there are sites adjacent or nearby that are protected by statute, serve as a park, greenway, open space, mitigation bank or otherwise, if known.
- (28) State whether the site provides a difficult-to-replace resource in the watershed.
- (29) Provide a general description of improvements on the tract that would be preserved including extent of alterations, development, use, if any, and whether there would be any structures on the tract (or portion of the tract) that would be preserved.
- (30) State how the property will be managed and/or any proposed use by the public.
- (31) State whether the Trust Funds would be applied to: (a) fee title or (b) conservation easement and/or stewardship, (c) both, (d) other.
- (32) State other sources of funds and status (e.g., secured; applied for; potential, funds approved by (a) private source, (b) state funds, (c) federal funds.
- (33) Provide other information that would be helpful for the reviewers to know (e.g., risk of development, anticipated public or private uses, use of adjacent properties etc.).
- (34) State any constraints on funding or timing of the proposal.
- (35) State all entities that would hold an interest in the land. If a conservation easement would be conveyed and recorded prior in time to the Conservation Land Use Letter Agreement required by the USACE, the USACE reserves the right to review the terms of the conservation easement prior to recording and prior to concluding the Conservation Land Use Letter Agreement.

When an initial project mitigation plan is considered complete and the I-L-F Program has adequate funds for implementation of the project, the mitigation plan will be forwarded to the USACE by the I-L-F Program Sponsor for consideration. Within 30 days of receipt of a complete mitigation plan, the USACE will provide public notice of the proposed I-L-F project. The comment period for public notice will be 30 days. Copies of all comments received will be distributed to the IRT, the Program Sponsor, and the project Partner within 15 days of the close

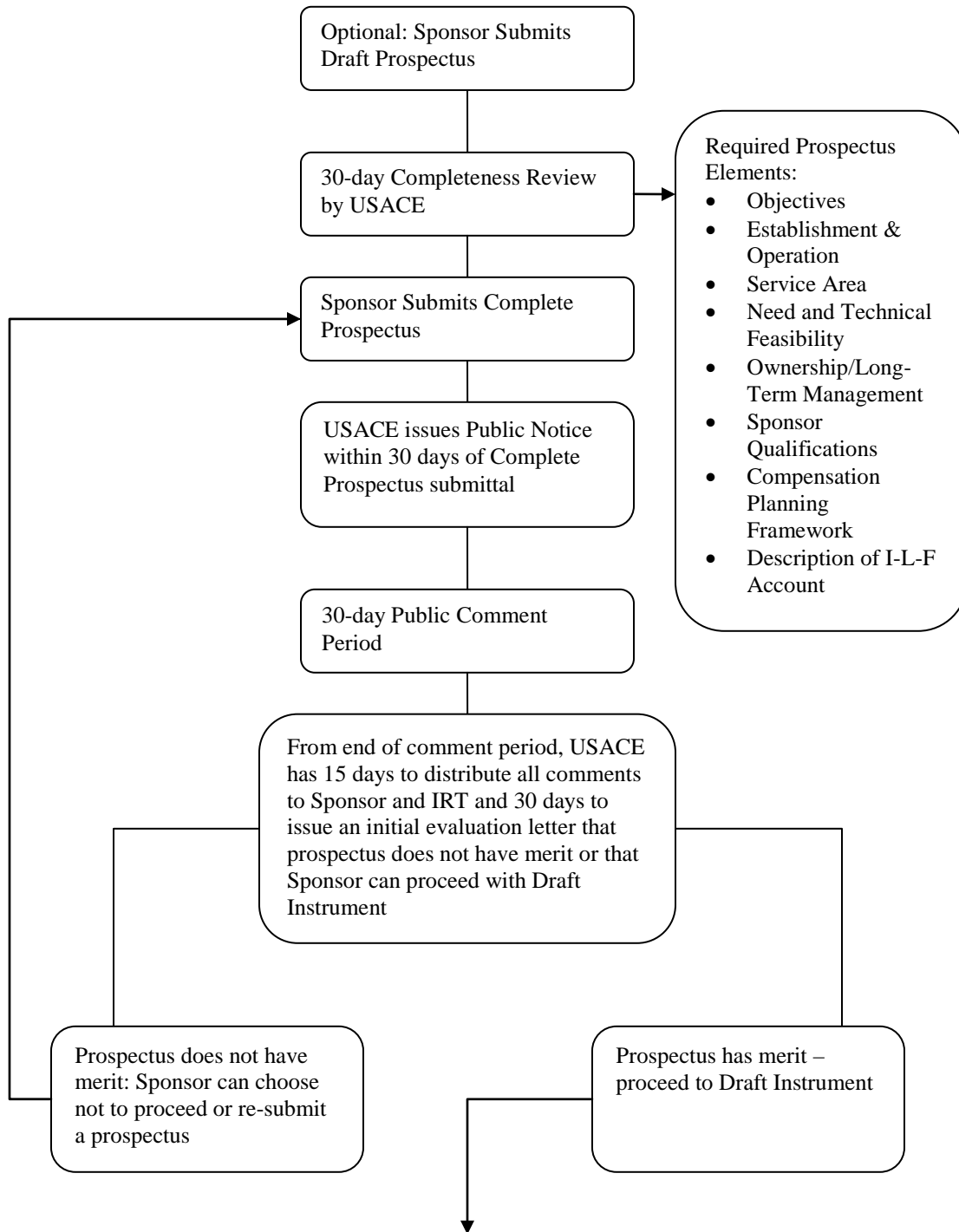
of the public comment period. The Sponsor and Partner may be requested to meet with the IRT at its regularly scheduled monthly meetings alternating between the USACE offices in Morrow and Savannah, Georgia in order to present the mitigation plan and to solicit comments. Site visits to the property may be coordinated by the USACE, in consultation with the I-L-F Program Sponsor and the IRT.

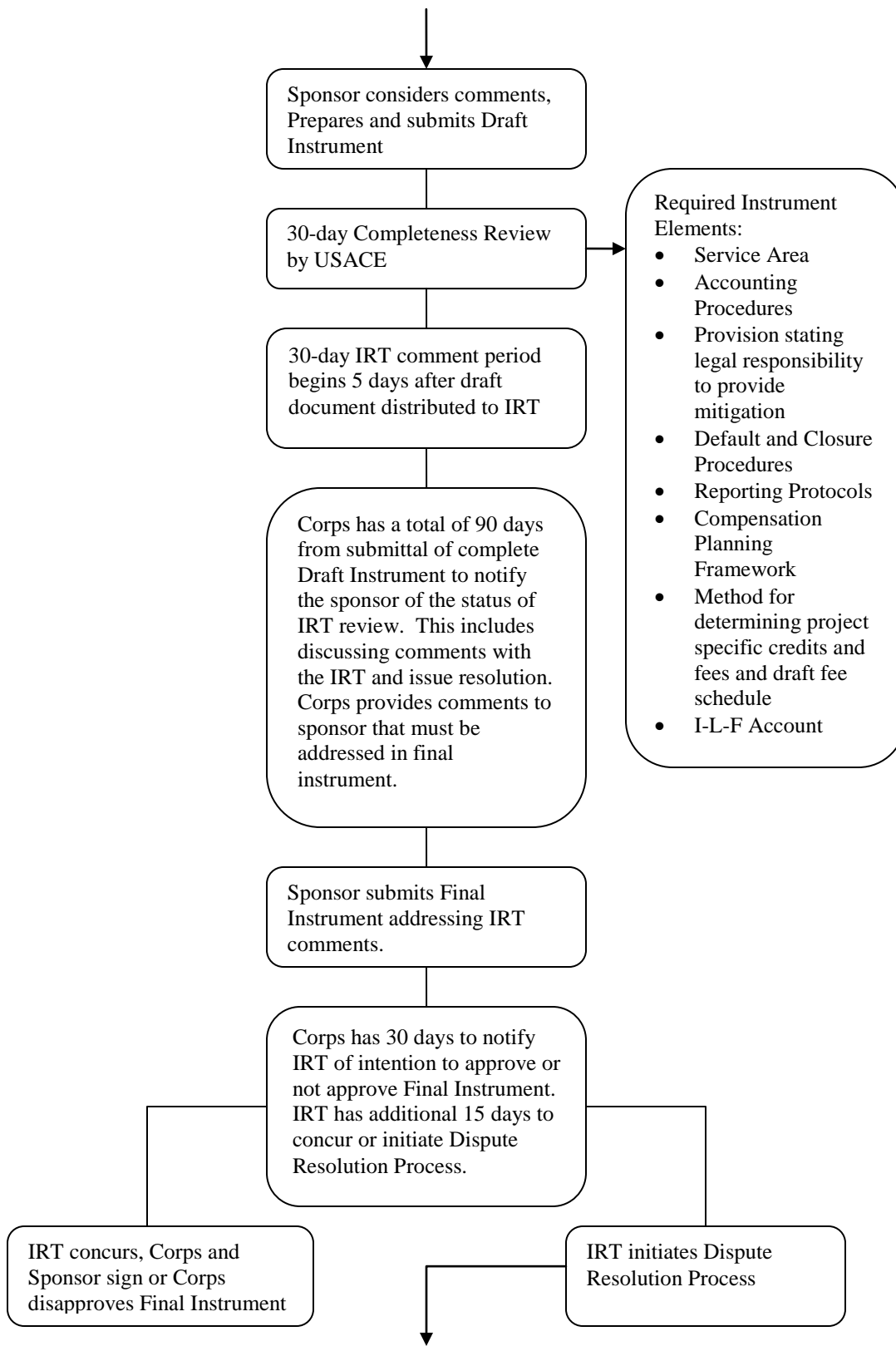
After a site visit and final comments by the IRT members, the Partner may be invited to submit a final mitigation plan with details required by the USACE in consultation with the IRT. The I-L-F Program Sponsor, in consultation with the USACE, will review the mitigation plan and information provided to determine whether or not to authorize the Partner to proceed. The review process will generally result in one of three options: (1) an invitation to proceed with the development of the mitigation proposal; (2) a request for more information; (3) rejection. The USACE will provide the Sponsor and Partner a written determination as to whether the project is approved or denied. If the decision is to proceed with a complete mitigation plan proposal, the I-L-F Program Sponsor will earmark the necessary funds for the project, holding them pending the final determination. On occasion an I-L-F Program Sponsor may designate, and hold in abeyance, funds for a particular site specific project until a final determination is made by the USACE.

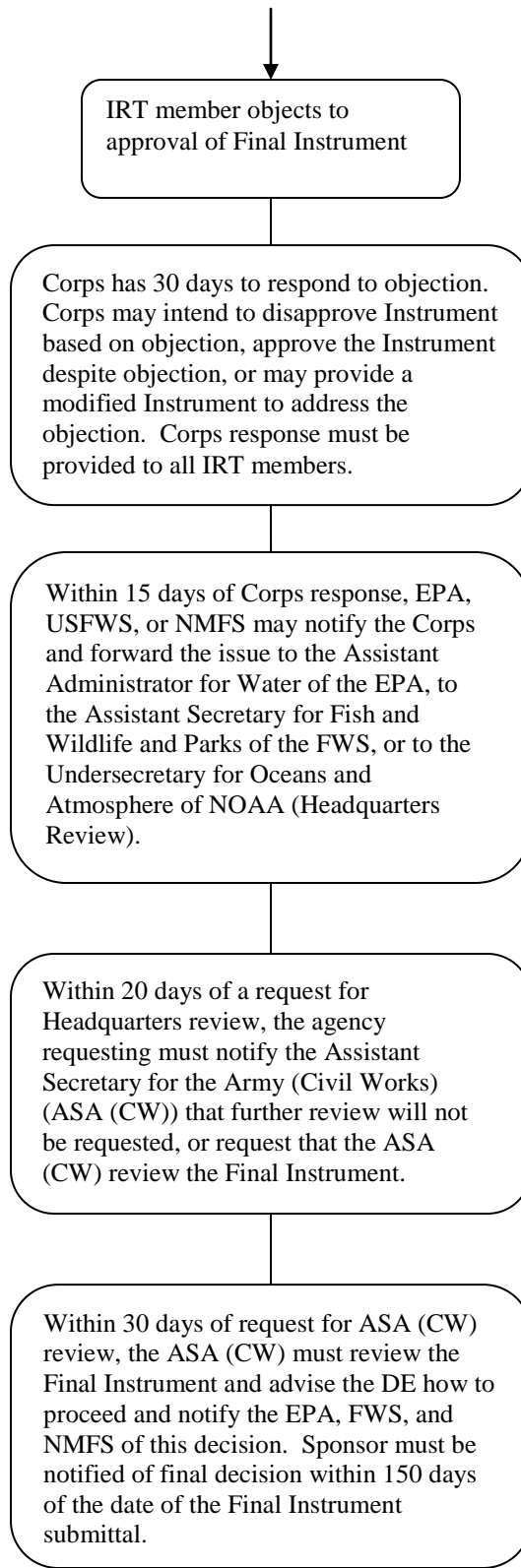
Once all of the comments of the IRT and the USACE are incorporated into the draft mitigation plan, the review will be considered complete. The I-L-F Program Sponsor will notify the Partner of the decision. Should the site specific project be approved for a specified amount of funds, the parties shall execute a Conservation Land Use Agreement and/or such real estate and legal documents necessary for perpetual protection of the property. The USACE has a model Conservation Land Use Agreement for use by counsel for the parties. Long-term management of the property is required.

After the project mitigation plan has been approved by the USACE in consultation with the IRT, sufficient funds to pay for the project may be allocated from the I-L-F Trust Account. The overall approval process and required elements for an I-L-F Project Mitigation Plan are summarized in Appendix B

Appendix A: I-L-F Program Approval Process







Appendix B: I-L-F Project Mitigation Plan Approval Process

