

In-Lieu Fee Program in Georgia

William Rutlin

Regulatory Specialist

Morrow, Georgia

March 31, 2010



US Army Corps of Engineers
BUILDING STRONG®



What is In-Lieu Fee?

- “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 Section 404 Clean Water Act permits.
- Similar to mitigation banking. I-L-F program sells credits to permittee, transferring mitigation obligation to I-L-F program.
- Operation of I-L-F program governed by an I-L-F program instrument.



2008 Mitigation Rule

- Included regulations on In-Lieu Fee Mitigation.
- I-L-F Programs approved on or after July 9, 2008 must comply with rule.
- I-L-F Programs approved before July 9, 2008 may continue to operate under previous instruments until July 9, 2010.
- Currently 1 operational I-L-F program in Georgia: Georgia Land Conservation Center
- I-L-F Programs can be sponsored ONLY by governmental agencies or non-profit natural resource management agencies



2008 Mitigation Rule

- In-Lieu Fee programs must now undergo similar approval process to mitigation banks: prospectus, draft instrument, instrument
- All subject to Interagency Review Team and Public Review
- IRT = Corps (Chair), EPA, USFWS, NMFS, NRCS, and any other interested federal, state, or tribal agencies with affected interests
- Approval process NTE 225 days of federal review
- I-L-F program will be going out for public notice shortly
- Corps is also preparing an I-L-F Program guidance document, similar to the mitigation banking guidelines



I-L-F Projects

- Sponsoring an I-L-F Project: Projects can be sponsored by governments or non-profits.
- Mitigation plan must be submitted under an I-L-F Program Instrument.
- Plan receives public and IRT review.
- Mitigation Plan is consistent with Mitigation Banking Instrument!



I-L-F Projects

- Mitigation Plan Required Elements:
 - ▶ Objectives
 - ▶ Site Selection (watershed approach)
 - ▶ Site Protection Instrument
 - ▶ Baseline Information
 - ▶ Determination of Credits (per current SOP)
 - ▶ Mitigation Work Plan
 - ▶ Maintenance Plan
 - ▶ Performance Standards
 - ▶ Monitoring Requirements
 - ▶ Long-term Management Plan
 - ▶ Adaptive Management Plan
 - ▶ Financial Assurances
 - ▶ -AND- Additional required information that will be in I-L-F guidance document



I-L-F Projects

- An example of additional information:
- For preservation, must demonstrate:
 - ▶ Resource provides important physical, chemical, or biological functions for the watershed.
 - ▶ Resource must contribute significantly to ecological sustainability of the watershed (look at watershed plans).
 - ▶ Preservation is determined to be appropriate and applicable.
 - ▶ Resource is under threat of destruction or adverse modification.
 - ▶ Preserved site will be permanently protected.



I-L-F Projects

- Example of I-L-F project: Municipal greenway wants to sell land to GLCC for preservation. This is one instance where consultants can be involved in the I-L-F program.

DRAFT



I-L-F Tracking

- RIBITS will be used to track I-L-F credits available and project money available by PSA.
- This allows interested parties to propose projects based on money available within a PSA.
- There is I-L-F money available. Again, consultant involvement - work with governments/non-profits/GLCC to identify potential projects for I-L-F funds and prepare mitigation plan.
- Emphasize watershed approach-as much as possible, match I-L-F projects to aquatic resource functions lost.



Using I-L-F for Mitigation

- This is another instance where consultants can be involved in I-L-F Program. You are the agent for a project requiring mitigation.
- Mitigation Hierarchy (according to 2008 rule):
 - ▶ Mitigation bank credits (primary and secondary service areas, as appropriate)
 - ▶ In-Lieu Fee program credits
 - ▶ Permittee-responsible mitigation under a watershed approach
 - ▶ Permittee-responsible mitigation through on-site and in-kind mitigation
 - ▶ Permittee-responsible mitigation through off-site and/or out-of-kind mitigation
- To Use I-L-F for mitigation:
 - ▶ Provide USACE with a statement that no mitigation bank services the project site
 - ▶ Provide name(s) of mitigation bank(s) contacted, date of contact, and a statement that the banker(s) confirmed that no suitable credits were available



Questions?

DRAFT



BUILDING STRONG®