

**Southeast Alaska Land Trust  
In-Lieu Fee Program Account**

**Public Review Draft**

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Prepared by the  
Southeast Alaska Land Trust

## **Introduction**

Under the 2008 Compensatory Mitigation Rule (33 CFR 332.8(i)), Southeast Alaska Land Trust (SEAL Trust) must demonstrate that it meets certain requirements governing the management of compensatory mitigation fees received from permittees in order for the Trust to continue operating an In-lieu Fee (ILF) Program. In general, SEAL Trust has practices already in place that meet these 2008 requirements because it has had an ILF Program with the Corps of Engineers (Corps) since 1998. This document describes how SEAL Trust will manage its ILF Program Account under the 2008 Mitigation Rule.

### **A Program Account at FDIC-member Financial Institution [33 CFR 332.8(i)(1)]**

The SEAL Trust has an account at a financial institution that is a member of the Federal Deposit Insurance Institution. In-lieu fees SEAL Trust has received under its current ILF program are professionally managed in an account that is separate from all other monies of the organization. The ILF fees are professionally invested in FDIC-insured Certificates of Deposit (CDs) with relatively short-term maturities. As CDs mature, the interest earned accrues directly to the ILF account and all ILF funds are reinvested, with the exception of monies used for compensatory mitigation project-specific costs on an as-need basis. SEAL Trust's current ILF program account practices have worked well and we propose to continue this financial arrangement under its modified ILF Program.

### **Restrictions on the Use of ILF Program Account Funds [33 CFR 332.8(i)(1)-(2)]**

The ILF Program account monies are only used for the selection, design, acquisition, implementation, and management of ILF compensatory mitigation projects, with a small percentage (2%) that SEAL Trust can use for administrative costs. SEAL Trust will record its routine expenses on a project-specific basis (e.g., mitigation plan preparation, surveying, staff time, appraisal, environmental field assessments and cleanup as needed, legal work, real estate transaction costs, documentation and recording fees, and the long-term property stewardship/management endowment fee). In addition, SEAL Trust will expense staff time and related costs for 1) permittee services to the ILF Program Account when the Trust is responding to a permit applicant's inquiry about SEAL Trust's estimated in-lieu fees for the compensatory mitigation required for their specific development project, and 2) initial staff investigation and screening of potential mitigation site/s. The SEAL Trust maintains a dedicated fund (Conservation Easement Stewardship Fund) where the stewardship/management endowment fees for all properties protected by the Trust are deposited, conservatively invested, and disbursed for stewardship expenses.

In accordance with federal rules, SEAL Trust also segregates a small percentage (2%) of each in-lieu fee when it is originally received. These monies are aggregated and placed in an unrestricted funds account and used for SEAL Trust's administrative costs to operate the overall ILF Program. The distinction between overall ILP Program activities and compensatory mitigation project activities by SEAL Trust and the allocation of costs are summarized in Table 1.

In order to account for its ILF Program expenditures in a properly sequenced and timely manner, SEAL Trust will routinely undertake a two-step process. First, we will seek timely, informal non-objection advice from the IRT and Corps to pursue a potential mitigation project site/s and will bill the associated in-depth mitigation plan preparation costs to the ILF Program Account on a project-specific basis. Secondly, we will seek the formal approval of a mitigation project as a modification to SEAL Trust's ILF Instrument prior to billing major project-specific expenditures for acquisition (surveying, appraisals, stewardship endowment, etc.) in accordance with 33 CFR 332.8(i)(2)). These steps are illustrated in Table 1.

### **Annual Report on ILF Program Account [33CFR 332.8(i)(3)]**

The SEAL Trust internally manages its ILF program expenditures, recordkeeping, and bill paying on a monthly basis through a Certified Public Accountant/bookkeeper. Records are maintained monthly and reported quarterly to the SEAL Trust Board of Directors. The Board has fiduciary responsibility for SEAL Trust and approves ILF compensatory mitigation project expenditures by staff. Under the organization's 501(c) (3) nonprofit status, SEAL Trust also reports annually to the federal Internal Revenue Service.

Under the 2008 Mitigation Rule, SEAL Trust will submit to the Corps – Juneau Office and the Interagency Review Team (IRT) members an annual report that includes the following:

1. The income, disbursements, and interest earned by the ILF Program Account during the calendar year. and a year-end balance in the ILF Program Account.
2. A description of the expenditures from the ILF Program Account for administration, generic permittee services and initial site investigations, as well as mitigation project-specific costs.
3. A list of the Corps permits for which in-lieu fees were received during the calendar year. The list (most likely in an Excel spreadsheet) will identify:
  - the permit number,
  - the amount of authorized impacts,
  - the amount of required compensatory mitigation,
  - the amount of in-lieu fee paid to SEAL Trust,
  - the date the in-lieu fee was received by SEAL Trust,
  - the Southeast Alaska town or city located nearest to the authorized impacts, if appropriate, and
  - the Southeast Alaska biogeographic province within which the authorized impacts are located.
4. An accounting of the year's advance credits obligated and the credits released by the fulfillment of compensatory mitigation projects, with a year-end balance. This is the annual report ledger specified at 33 CFR 332.8(p) (2) and to be provided for in the SEAL Trust ILF Instrument.
5. Other information required by the Corps.

The annual report described above will be submitted via electronic format to the Corps and IRT no later than 60 days following the end of each calendar year.

### **Corps Inspection or Audit of ILF Program Account [33 CFR 332.8(i)(4)]**

The SEAL Trust will maintain its ILF Program accounts, books, records, and files available for Corps inspection and audit, as required under 33 CRF 332.8(i)(4).

**Table 1. Allocation of SEAL Trust In-lieu Fee (ILF) Program Activities and Costs**

<b>ILF Program Activities Expended to SEAL Trust Unrestricted Account (using 2% of in-lieu fees received)</b>	<b>Project Activities Expended to ILF Program Account</b>				
	<i>Permittee Services</i>	<b>SEAL Trust seeks non-objection advice from Corps and IRT on Potential Mitigation Site/s</b>	<i>Potential Mitigation Site Identification and Documentation</i>	<b>SEAL Trust obtains formal approval of a Mitigation Project by Corps, in consultation with the IRT *</b>	<i>Mitigation Project Site Implementation **</i>
1. Periodic ILF Program report preparation and presentation to the Corps and IRT.  2. Preparation for and participation in ILF Program meetings with Corps and IRT.  3. ILF Program Account recordkeeping.  4. General Public Outreach and Response.  5. Proportionate share of SEAL Trust operational overhead.	1. Staff response to ILF inquiries by Corps permit applicants, including: <ul style="list-style-type: none"> <li>• verification thru Corps and IRT of aquatic resource loss and type,</li> <li>• assessment of real estate costs in applicant’s project area, and</li> <li>• Calculation and presentation of estimated in-lieu fees to permit applicants.</li> </ul>		1. Initial staff investigation of potential mitigation project site/s for specific applicant’s permit.*  2. Preparation and presentation of project-specific mitigation plan and credit release schedule to Corps and IRT for review and approval.		1. Once approved, SEAL Trust undertakes: <ul style="list-style-type: none"> <li>• purchase/sale agreement with landowner,</li> <li>• appraisal, survey, environmental/field assessment, legal work,</li> <li>• real estate documentation, transactions, closing and recording,</li> <li>• calculation and establishment of stewardship and management fee endowment,</li> <li>• Long-term monitoring and management.</li> </ul>

\* In recent years, USFWS grants have provided support to SEAL Trust to conduct screening and initial investigation of potential conservation projects. In the future, the Trust may rely on the ILF Program Account for these activities, as needed.

\*\* The expenses of mitigation project implementation can be incurred only after a specific project is formally approved in accordance with 33 CFR 332.8(j). Approval of a project would be treated as a modification to SEAL Trust’s underlying ILF instrument and is proposed to be conducted under the streamlined review process at 33 CFR 332.8(g) (2).