

Southeast Alaska Land Trust In-Lieu Fee Compensatory Mitigation Program Instrument

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Acronyms and Abbreviations

ADCDM	Alaska District Credit Debit Methodology
CFR	Code of Federal Regulations
CPF	Compensation Planning Framework
CWA	Clean Water Act

DA	Department of the Army
DE	District Engineer or their Representative, U. S. Army Corps of Engineers
FA	Financial Assurance
GAAP	Generally Accepted Accounting Principles
FDIC	Federal Deposit Insurance Corporation
ILF	In-Lieu Fee
IRT	Interagency Review Team
NEPA	National Environmental Policy Act
SEALT	Southeast Alaska Land Trust
Section 10	Section 10 of the Rivers and Harbors Act of 1899
Section 404	Section 404 of the Clean Water Act
TNC	The Nature Conservancy
USACE	U. S. Army Corps of Engineers
USDA	U. S. Department of Agriculture
USFS	U. S. Forest Service

Introduction

The Southeast Alaska Land Trust (SEALT) is a 501(c)3 nonprofit organization with the purpose of land conservation in Southeast Alaska. SEALT collaborates with communities, individuals, and organizations throughout Southeast Alaska to help ensure that highly valued habitat, recreation, open space, and cultural and historic areas continue to thrive for the well-being of each generation.

This document, the SEALT In-Lieu Fee Compensatory Mitigation Program Instrument, establishes the function and operation of the SEALT In-Lieu Fee Program, which provides third-party compensatory mitigation for permitted impacts regulated under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

SEALT has sponsored an In-Lieu Fee (ILF) Program with the U. S. Army Corps of Engineers (USACE) since 1998, with conforming Instruments signed in 1998 and in 2011. This In-Lieu Fee Compensatory Mitigation Program Instrument supersedes all previous Instruments, and conforms to all applicable laws, rules, and standards. In contrast with previous Instruments, this Instrument subdivides our broader program service area (Southeast Alaska) into four smaller service areas, documented in four extensively detailed compensation planning frameworks.

USACE approval of this Instrument constitutes the regulatory approval required for the SEALT ILF Program to be used to provide compensatory mitigation for Department of the Army (DA) permits pursuant to 33 CFR 332.8. This Instrument is not a contract between SEALT and USACE or any other agency of the federal government. Any dispute that may arise under this Instrument will not be used to form a separate claim for monetary damages.

Program Goal

The goal of the SEALT ILF Program is to provide compensatory mitigation for unavoidable impacts to jurisdictional waters for which the USACE requires compensatory mitigation. This may include preservation, restoration, enhancement, and/or establishment of wetlands, streams, and other aquatic resources on either private and/or public land. The SEALT ILF Program is governed by the requirements of in-lieu fee programs under 33 CFR 332, and is subject to the review and oversight of the USACE.

In-Lieu Fee Program Instrument Components

1. Program Service Area – §332.8(d)(6)(ii)(A)

This section will provide the basis for and description of SEALT's four service areas. Each service area is further described in a corresponding compensation planning framework (CPF). See Exhibits A, B, C, and D for the four CPFs associated with each service area.

Basis for Service Areas

The Southeast Alaska Land Trust (SEALT) In-Lieu Fee Program has four distinct service areas. The service areas, collectively known as Southeast Alaska, make up a coastal temperate rainforest ecosystem of about 22 million acres located between 55°N and 60°N, extending about 500 miles from the Canadian border on the southern tip northwest to Yakutat Bay, and roughly 120 miles wide. The region is physically diverse with the rugged coastal mountain range bordering the mainland to the east, and the islands of the Alexander Archipelago off the coast to the west. About one-third of the region is covered by rock, water, and ice. The coastal mountain range supports the region's extensive icefields and numerous glaciers, while the islands of the rainforest archipelago remain relatively ice free.

Southeast Alaska is a complex mix of forest, wetlands, and coastal habitats. Forests are dominated by Western hemlock and Sitka spruce, with red cedar, Alaska yellow cedar, mountain hemlock, and lodgepole pine occurring on less productive sites. Wet meadows and sedge and peat bogs can be found in low-lying, poorly drained areas. Along the coast, highly productive estuaries thrive due to marine waters mixing with nutrient-rich freshwater inputs fed by rain, glacial processes, and snowpack from the mountains. Important estuarine habitats in the region include algal beds, salt marshes, tidal flats, and eelgrass beds. Together, these habitats support a variety of fish and wildlife. Southeast Alaska is home to 82 species and 116 subspecies of mammals including brown and black bear, Sitka black-tailed deer, moose, and gray wolves. Located along the Pacific Flyway, the region hosts 40 percent of North America's bird species while they seek foraging and breeding grounds during seasonal migrations. The region's freshwater systems support nine anadromous fish species, providing spawning habitat for: chum, pink, coho, sockeye, and king salmon; steelhead/rainbow and coastal cutthroat trout; Dolly Varden; and eulachon (hooligan). Intertidal and nearshore waters support a variety of fish, shellfish, and invertebrate species. Humpback whales, killer whales, Steller sealions, harbor seals, and sea otters are often spotted in marine waters throughout the region.

The U.S. Forest Service (USFS) developed the *Tongass Land and Resource Management Plan* (1997; 2008; 2016), in which the USFS divided Southeast Alaska into 22 biogeographic provinces based on natural variability in climate, physiography, and species distribution for the purposes of assessing biodiversity and conservation strategies on the Tongass National Forest. Within these large-scale landscape delineations, the USFS further divided the region into 947 Value Comparison Units (VCUs) which are distinct geographic areas that generally encompass a drainage basin (watershed) with one or more large stream system. The VCUs include estuaries and adjacent marine habitats associated with the terrestrial drainage systems.

These concepts were expanded upon in *A Conservation Assessment and Resource Synthesis for the Coastal Forests & Mountains Ecoregion in Southeastern Alaska and the Tongass National Forest* (Schoen and Dovichin 2007) under the auspices of The Nature Conservancy (TNC) and Audubon Alaska. This effort reorganized the USFS boundaries into 22 biogeographic provinces and 1,030 watersheds. This work was later updated and condensed into the *Ecological Atlas of Southeast Alaska* (Smith 2016).

The SEALT ILF Program has four distinct service areas, which are groupings of the 22 biogeographic provinces of Southeast Alaska represented in the *Ecological Atlas of Southeast Alaska* (Smith 2016). SEALT chose this work to help define its service area boundaries because it is one of the best regional tools available to assess watershed conditions in the ecologically similar subregions of Southeast Alaska.

In the *Ecological Atlas*, the 22 biogeographic provinces are organized into five subregions: the Northern Mainland, the Northern Islands, the Southern Mainland, the Southern Inside Islands, and the Prince of Wales Island Complex. These five subregions were delineated based on natural variability in climate, physiography, and species distribution. This provides a common format and geographic extent to communicate the many types of spatial data sets for Southeast Alaska. SEALT's four service areas are based on these five subregions. Due to low and unpredictable demand for compensatory mitigation in the Southern Mainland, SEALT grouped the Southern Mainland with the Southern Inside Islands subregion – thus using a total of four service areas instead of five.

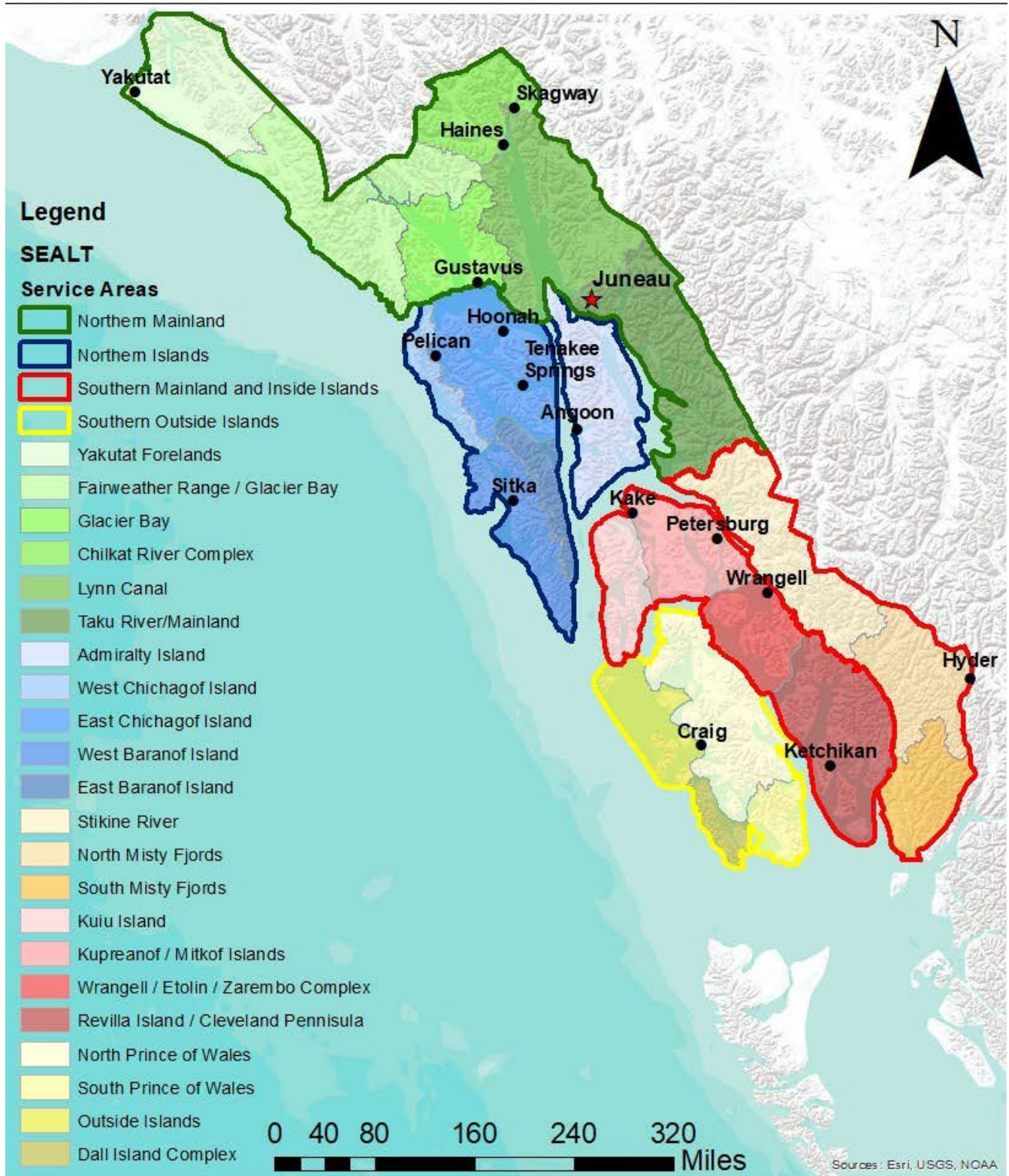
Description of Service Areas

In configuring service areas, SEALT analyzed historical data related to the demand for compensatory mitigation in the remote areas of Southeast Alaska since 1998. The Southern Mainland area of Southeast Alaska has not had any credit sales for compensatory mitigation since SEALT became an ILF program sponsor. It is not financially feasible to operate an ILF program service area in a region that sees little to no permitted impacts. For this reason, the Southern Mainland biogeographic region is grouped with the Southern Inside Islands region, which enables timely, appropriate, and economically-sound compensatory mitigation projects in the combined service area.

SEALT ILF Program Service Areas

Service Area	Biogeographic Subregion and Provinces	Description
Northern Mainland	Northern Islands Subregion Yakutat Forelands, Fairweather Range, Glacier Bay, Chilkat River Complex, Lynn Canal/Mainland, Taku River/Mainland	Southeast Alaska mainland from Yakutat Bay to Cape Fanshaw at the entrance to Stephens Passage, approximately 12,899 square miles (8.26 million acres)
Northern Islands	Northern Island Subregion West Chichagof Island, East Chichagof Island, West Baranof Island, East Baranof Island, and Admiralty Island	Northern Islands biogeographical subregion, approximately 5,696 square miles (3.65 million acres)
Southern Mainland and Inside Islands	Southern Mainland and Southern Inside Islands Subregions Stikine River, North Misty Fjords, South Misty Fjords; Kuiu Island, Kupreanof/Mitkof Islands, Wrangell/Etolin/Zarembo Complex, Revilla Island/Cleveland Peninsula	Southeast Alaska Mainland south of Cape Fanshaw to the Dixon Entrance at the Canadian border, approximately 11,057 square miles (7 million acres)
Southern Outside Islands	Prince of Wales Island Complex Subregion North Prince of Wales, South Prince of Wales, Dall Island Complex, Outside Islands	Prince of Wales Island Complex biogeographical subregion, includes many smaller satellite islands, approximately 3,595 square miles (2.3 million acres)

Southeast Alaska Land Trust (SEALT) In-Lieu Fee (ILF) Program Service Areas



Service Area Modifications

As a standard, SEALT will seek mitigation projects in the same service area as the permitted impacts. In Section 7 of this Instrument, the complete timeline of advance credit fulfillment is specified as three full growing seasons (332.8(n)(4)). If, within any of the service areas, the total sale of credits is too small to result in a viable project, or no acceptable opportunities are found, SEALT may submit a proposal to the district engineer (DE) to satisfy the mitigation obligation liability with mitigation projects from an adjacent service area, by deferring the mitigation liability to a future year, or by pursuing other mitigation options as approved by the USACE DE. The DE may adjust the mitigation obligation if SEALT proposes satisfying the liability in an adjacent service area.

If SEALT proposes satisfying the mitigation obligation through projects in an adjacent service area, SEALT will justify the proposal through evaluation of existing mitigation opportunities in that service area and selection of a mitigation project that is similar in aquatic resource type to the permitted impact. The mitigation project will be selected based on a watershed approach. Furthermore, upon request from SEALT, the DE may simultaneously extend the project implementation timeline (332.8(n)(4)) to a future year in order to provide three full growing seasons in the adjacent service area to satisfy the mitigation liability.

Additionally, on a case by case basis, SEALT may identify a custom-configured service area within Southeast Alaska, other than the four listed in this Instrument, if such an approach is warranted by the scope or unique characteristics of a specific mitigation project. An example of this would be if SEALT identified a potential mitigation site consisting of a very large parcel or a parcel with unique, rare, or particularly important aquatic values that are not otherwise easily replaced. The DE can determine whether that larger service area boundary is appropriate for these types of projects and approve a different service area in the site-specific mitigation plan. This approach will broaden the area of consideration for siting more successful, feasible projects that benefit wetland functions while still maintaining an overall watershed approach.

2. Accounting Procedures – §332.8(d)(6)(ii)(B)

Compliance with §332.8(i) and GAAP

Though the term “accounting procedures” is not explicitly defined in the regulation, accounting procedures generally consist of both a system of tracking mitigation credits and debits as well as fiscal accounting procedures that have been developed to comply with §332.8(i)(1) Complete details on the tracking of mitigation credits and debits are found in Section 8 of this Instrument.

Funds will be managed according to generally accepted accounting principles (GAAP).

Credit Ledgers

Under this ILF Instrument, SEALT will maintain ledgers to track credits sold to permittees (which then become “debits”) as well as the credits that are released when ILF mitigation projects are completed. As described in Section 8, SEALT will track credits and financial transactions not only on a programmatic basis, but also for each individual project per 332.8(p)(2).

Accounts

Under this ILF Instrument, SEALT will maintain three accounts to support the ILF Program.

1. *Program Account* – The ILF Program Account will be held with a financial institution that is a member of the Federal Deposit Insurance Corporation (FDIC). The ILF payments received will be deposited in the ILF Program Account and interest earned is regularly deposited into the account. The ILF Program Account is used for expenses such as selection, design, acquisition, implementation, and management of ILF compensatory mitigation projects, except for a small percentage, specified in Section 9 of this Instrument, that can be used for administrative costs.
2. *Administrative Account* – A small percentage of ILF compensatory mitigation payments will be directed to the Administrative Account, to be used for administrative costs associated with the management of the ILF program.
3. *Long-Term Management Account* – All stewardship and long-term management fees for ILF mitigation properties will be deposited, conservatively invested, and used to cover expenses for long-term management (including monitoring, enforcement, litigation, and property maintenance).

Per §332.8(i)(3), SEALT will provide annual reports to the DE. Section 5 of this Instrument provides specific details for reporting protocols. Section 9 of this Instrument includes further detail on the issuance, tracking, and reporting of credits and financial transactions within the SEALT ILF Program. Exhibit H provides an allocation of program activities by program account.

3. Provision Stating Legal Responsibility for Compensatory Mitigation – §332.8(d)(6)(ii)(C)

As the ILF program sponsor, SEALT accepts legal responsibility for providing the compensatory mitigation once the permittee has procured its credits from SEALT. The procurement process is described below.

Upon receiving full payment for advance credits, SEALT will issue documentation to both the permittee and USACE acknowledging acceptance of payment. This documentation will be in the form of a Credit Receipt, and will include the service area, permit number, permittee name, impact site location, type of credit, number of credits sold, and any other required information (Exhibit G). The transfer of mitigation liability from the permittee to SEALT to satisfy compensatory mitigation for the Section 404 or Section 10 permit occurs upon delivery of this receipt to the USACE. Once the final credits have been released, the mitigation liability is fulfilled. Any violations at the site will be managed through the long-term management plan.

4. Amendment, Default, and Closure – §332.8(g) & §332.8(d)(6)(ii)(D)

Amendment

Both the USACE and SEALT can seek to amend the terms of this Instrument. To the extent appropriate, amendments to this Instrument will be processed under the streamlined review process in §332.8(g).

Default

Compliance: SEALT is responsible for complying with the terms of this Instrument. If the DE determines, upon review of annual reports or inspections of the operation of the SEALT ILF program, that it is not performing in compliance with this Instrument, the DE will initiate a discussion with SEALT to take appropriate action to achieve compliance with this Instrument.

Compensatory Mitigation Deficit: If the DE determines that there is a compensatory mitigation deficit in a specific service area by the third growing season after the first advance credit in that service area is sold, and SEALT has not proposed alternative compensatory mitigation options (as outlined in Section 1), and the DE determines that it would not be in the public interest to allow the sponsor (i.e., SEALT) additional time to plan and implement an in-lieu fee project, the DE may direct the sponsor to disburse funds from the in-lieu fee program accounts to provide alternative compensatory mitigation to fulfill those obligations.

Suspension and Termination: If the DE determines that this program is not meeting performance standards or complying with the terms of this Instrument, the DE will initiate a discussion with SEALT to take appropriate action. Such actions may include, but are not limited to, suspending credit sales, adaptive management, decreasing available credits, utilizing financial assurances, making minor modifications to mitigation plans or this Instrument, or terminating the Instrument.

In no event shall SEALT be responsible or liable for any delay or failure in the performance of SEALT's obligations hereunder arising out of or caused by, directly or indirectly, forces, acts, events, or conditions beyond its control. Such forces, acts, events, or conditions may include, without limitation: any act of God, earthquake, fire, flood, drought, disease, landslide, avalanche, tsunami, or other natural disaster; civil, military, or governmental disturbance; shortage, strike, epidemic, man-made catastrophe, or infrastructure failure; condemnation or other conveyance by any governmental body or corporate entity with eminent domain authority (or voluntary sale under threat of eminent domain); or change in applicable federal or state law, regulation, or court decision affecting USACE jurisdiction, which affects compensation for permitted impacts to waters of the U.S. and state waters. If the performance of, and compliance with, the terms of this Instrument or any mitigation project are affected to a material extent by any such force, act, event, or condition, SEALT will provide written notice to the DE as soon as is reasonably practicable.

Closure

SEALT or the USACE, acting independently or in concert, may force closure or terminate this Instrument within 60 days of written notification to the other party. In the event that the SEALT ILF Program is terminated, SEALT is responsible for providing to the USACE reports detailing credit/debit and fee ledger balances, as well as status reports for all compensatory mitigation projects. SEALT will remain responsible for fulfilling any outstanding or pre-existing project obligations including the successful completion of ongoing compensatory mitigation projects, relevant maintenance and monitoring, reporting, and long-term management requirements. SEALT must remain responsible, with funding from SEALT ILF Program accounts, for the fulfillment of these obligations, or must ensure the transfer of the obligations to a separate party approved by the USACE.

Funds remaining in the program accounts after the above obligations are satisfied must continue to be used for the restoration, enhancement, and/or establishment of aquatic resources and associated upland buffers. Any expenditure of these remaining funds requires IRT review and USACE approval. If the SEALT ILF Program has outstanding mitigation obligations at the time of closure which it is unable to fulfill, the USACE, in consultation with the IRT, will direct SEALT to 1) use these funds to provide further preservation, restoration, enhancement and/or establishment activities; 2) secure credits from another source of third party mitigation; or 3) disburse funds to another entity such as a governmental or non-profit natural resource management entity willing to undertake further compensation activities.

5. Reporting Protocols – §332.8(d)(6)(ii)(E)

SEALT is required to submit the following reports:

- Annual Program Reports, accounting for all financial and credit activity;
- Notice of credit sales;
- Monitoring reports; and
- Financial assurance and long-term management funding reports.

Annual Program Reports

SEALT will submit an Annual Program Report to the USACE that includes both financial activity and credit activity within the SEALT ILF Program, as required by §332.8(i)(3) and §332.8(q)(1). This report will be submitted no later than 90 days following the end of each calendar year.

The Annual Program Report will include the following information per §332.8(i)(3):

- All income received, disbursements, and interest earned by the account;
- A list of permits for which ILF funds were accepted, with details as follow;
 - USACE permit number
 - Service areas in which the authorized impacts are located
 - Amount of authorized impacts
 - Amount of compensatory mitigation

- Amount paid to the SEALT ILF Program
- Date the funds were received from the permittee
- A description of SEALT ILF Program expenditures from the account, such as the costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration;
- A credit ledger report showing the balance of advance credits and released credits at the end of the report period for each service area; and
- Any other information required by the DE.

The credit ledger report included in the Annual Program Report will be compiled by SEALT as required by §332.8(q)(1). The ledger will show:

- The beginning and ending balance of available credits;
- The permitted impacts for each resource type;
- All additions and subtractions of credits; and
- Any other changes in credit availability.

The Annual Program Report will be retained in SEALT's administrative records.

Notice of Credit Sales

Section 3 of this Instrument establishes the terms by which the legal responsibility for compensatory mitigation is transferred from the permittee to SEALT. These terms require SEALT to submit a Credit Receipt to the USACE. Upon acceptance of full payment from a permittee, SEALT will submit the completed Credit Receipt to the USACE within 60 days. The process for inquiring about, reserving, purchasing, and verifying a credit sale is outlined in Section 8 of this Instrument. A copy of each Credit Receipt will be retained in SEALT's administrative records.

Monitoring Reports

In accordance with §332.8(q)(2), SEALT is responsible for monitoring ILF project sites in accordance with the approved monitoring requirements to determine the level of success and identify problems requiring remedial action or adaptive management measures. Monitoring will be conducted in accordance with the requirements in §332.6, and at time intervals appropriate for the particular project. Project-specific mitigation plans will detail the attributes to be monitored.

The SEALT ILF Program generally performs third-party compensatory mitigation through the preservation of wetlands and streams. As such, the completion of a preservation project would be marked by the successful acquisition of a conservation easement on a property, or a fee-simple acquisition of an approved mitigation site and successful attainment of the performance standards. Performance standards, the monitoring period, and the monitoring procedures will be outlined in each site-specific mitigation plan. The monitoring period will range from zero to five years to demonstrate that the performance standards have been met per §332.6(b).

Project-specific mitigation plans will detail the attributes to be monitored, the length of the monitoring period, the dates that the reports must be submitted, the party responsible for

conducting the monitoring, and the frequency of submitting monitoring reports to the USACE. The level of detail and the substance of reports will be commensurate with the scale and scope of the compensatory mitigation project. SEALT is responsible for submitting reports in accordance with any special conditions within the DA permit. SEALT understands that the DE may provide these reports to interested federal, tribal, state, and local resource agencies, and the public as required by §332.6(c)(3).

Financial Assurance and Long-Term Management Report

When required by the DE, SEALT will provide an annual report on financial assurances and long-term management funding per §332.8(q)(3).

Financial Assurances

Financial assurances (FA) for each project will be specified in individual mitigation plans. The amount of FA will be determined by the DE in consultation with SEALT, and will be based on:

- The size and complexity of the compensatory mitigation project;
- The degree of completion of the project at the time of project approval;
- The likelihood of success;
- The past performance of the SEALT ILF Program; and
- Any other factors the DE deems appropriate.

SEALT will estimate and assess risks to the successful completion of a compensatory mitigation project, in accordance with applicable performance standards, and provide an estimate for a project's FA to the DE for consideration.

Financial assurances will account for potential loss of wetland function prior to attainment of the performance standards, and be calculated using the probability of likely violations and the costs of violation negotiation, restoration, and legal defense. The performance of the SEALT ILF Program from its inception in 1998 to 2022 has never included a loss of wetland function or an event that would otherwise have triggered the use of FA. Along with known risks to a given project, this past performance will be used to establish the likelihood of project failure when calculating FA.

SEALT will designate and restrict FA funds at the time of signing the legal conservation document (e.g., warranty deed or conservation easement). After the successful completion of the compensatory mitigation project (i.e., the performance standards are met), the FA funds will be released back into the corpus of the ILF Account.

Long-Term Management Funding

Funding is set aside to support the long-term management and stewardship activities described in Section 10. Long-term management funding ensures resources are available for management after performance standards are met and help ensure the project is sustainable.

Reporting Components

When an annual report on financial assurances and long-term management funding is required under §332.8(q)(3), the report will include:

- Beginning and ending balances of financial assurances and long-term management funding;
- Deposits and withdrawals for financial assurance and long-term management funding;
- Information related to active financial assurances, and the status of those assurances, including their potential expiration for each project.

In accordance with 332.3(n)(5), SEALT, or the bonding company or financial institution providing financial assurances for SEALT, shall notify the USACE at least 120 days in advance of any planned termination or revocation of financial assurances.

6. Compensation Planning Frameworks – §332.8(d)(6)(iv)(A)

The Southeast Alaska Land Trust In-Lieu Fee Program is comprised of four service areas: Northern Mainland, Northern Islands, Southern Mainland and Inside Islands, and Southern Outside Islands. These service areas are groupings of the 22 biogeographic provinces as identified and described by the Tongass National Forest Land and Resource Management Plan, The Nature Conservancy, and Audubon Alaska.

Each Compensation Planning Framework (CPF) included with this Instrument defines the aquatic resources, historic loss of aquatic resources, potential threats to aquatic resources, goals and strategies for implementing compensatory mitigation activities, preservation objectives, stakeholder involvement, long-term management strategies, and other detailed information associated with each service area. The following exhibits are CPFs:

- Exhibit A: Northern Mainland CPF
- Exhibit B: Northern Islands CPF
- Exhibit C: Southern Mainland and Inside Islands CPF
- Exhibit D: Southern Outside Islands CPF

7. Initial Allocation and Rationale of Advance Credit Release and Credit Release Schedule – §332.8(d)(6)(iv)(B)

Advance Credits

As of the effective date of this Instrument, SEALT has a total pool of 140 wetland advance credits and 4,500 stream advance credits (4,500 functional linear feet) that float between the combined four service areas. Up to the total pool of advance credits could be sold in one service area, or the total pool of advance credits could be sold in a combination of sales across multiple service areas.

Wetland credits include tidal, non-tidal and intertidal aquatic resources. SEALT used historical information, crediting data from past compensatory mitigation sites, and project capacity modeling to determine the number of advance credits to include in this Instrument. Mitigation site

availability within all service areas is extensive and does not constrain the number of SEALT's ILF program advance credits. The following data points were analyzed: (1) the number of compensatory mitigation projects SEALT has implemented in a year; (2) the average number of functional credits generated by compensatory mitigation projects; and (3) the resources necessary to identify, implement, monitor and manage in-lieu fee compensatory mitigation sites.

The location where impacts occur and the number of potential compensatory mitigation sites within a service area will determine which service area advance credits are sold from at any given time. If SEALT sells all of its advance credits, no more advance credits will be sold until credits have been released in accordance with project-specific credit release schedules and mitigation plans. The decision to sell advance credits is based on an internal SEALT evaluation, and SEALT may decide not to sell advance credits at any time based on program capacity.

When SEALT has met all mitigation obligations of advance credit sales, any remaining funds that were paid into SEALT through those sales may be used to establish additional mitigation sites in advance of a mitigation liability. These credits will be sold as released credits and will receive the same preference under the 2008 Final Rule as released credits sold at mitigation banks.

Credit Release Schedule

Each mitigation site will have a credit release schedule that outlines the timing and amount of credits released upon meeting certain milestones. Credit release schedules and associated milestones will vary by project. Unless otherwise determined by the DE, SEALT will secure mitigation sites by the end of the third full growing season after the corresponding advance credits are sold.

The number of credits available for release will be identified in a site-specific mitigation plan. In order for credits to be released, the sponsor will follow the procedure as described in §332.8(o)(9). As a general guidance, credit release for preservation projects will occur as follows:

- 90% of credits are released when the following criteria are met: 1) the legal protection mechanism (e.g., conservation easement, restrictive covenant, deed restriction, etc.) is executed; 2) the financial assurance is secured; and 3) the mitigation plan is approved.
- 10% of credits are released after a successful monitoring period demonstrates that the performance standards have been met and the long-term management account has been funded.

8. Methodology for Determining Credits and Fees – §332.8(d)(6)(iv)(C)

The SEALT ILF program generates functional wetland (non-tidal and tidal) and intertidal credits, and stream credits through the preservation and/or restoration of aquatic resource functions. SEALT utilizes the USACE Alaska District Credit Debit Methodology (ADCDM) to calculate credits and debits. This methodology was developed by the USACE Alaska District in consultation with the

Alaska Statewide Interagency Review Team and offered in 2016 as an option for ILF programs, mitigation banks, and permittees to utilize as a credit debit method.

The 2008 Final Rule and the USACE Alaska District encourage the calculation of credits using a functional assessment. The ADCDM requires an output from a functional or conditional assessment in order to generate a final credit score. The SEALT ILF Program utilizes functional assessments for wetlands (tidal and nontidal), intertidal habitats, and streams. At this time, the functional assessments listed below are the only regionally specific assessment tools and datasets in Southeast Alaska. These wetland and stream functional assessments and tools utilize the best available science and best practices, and incorporate USACE and IRT guidance. The functional assessments and stream crediting tools have been accepted by the USACE Alaska District for use by mitigation sponsors that are operating in Southeast Alaska.

Functional assessment methods that are regionally specific to Southeast Alaska and will be utilized to generate SEALT wetland and stream credits:

- [Nontidal Wetlands: *Wetland Ecological Services Protocol for Alaska-Southeast \(WESPAK-SE\) Version 2.1 \(v2.1\)*](#).
- [Tidal Wetlands \(salt marshes and vegetated tidal wetlands\): *Wetland Ecological Services Protocol for Alaska-Southeast \(WESPAK-SE\) Version 2.1 \(v2.1\)*](#).
- [Intertidal Aquatic Resources: *Nearshore Assessment Tool for Alaska- Southeast \(NATAK-SE\)*](#).
- [Streams: *Southeast Alaska Watershed Coalition's ILF Program Instrument: Stream Credit Debit Method \(SCDM\)*](#).

The functional assessment tools (e.g., WESPAK-SE) generate a “score” for each wetland that is used as the input for the ADCDM. Descriptions of each functional assessment method can be found in the corresponding method’s manual.

Wetland (Non-Tidal and Tidal) or Intertidal Credits

As described in the ADCDM, a wetland (non-tidal and tidal) or intertidal credit is a functional unit of measure that represents the preservation, accrual, or attainment of aquatic functions at a compensatory mitigation site. The credit generation process involves using WESPAK-SE and/or NATAK-SE functional assessment calculations to assess individual functions for both existing conditions and anticipated conditions at a mitigation site, and then applying the factors of time lag, risk, areal extent and the preservation adjustment factor as defined in the ADCDM.

The following steps outline the process to calculate wetland or intertidal aquatic resource credits.

1. Conduct a WESPAK-SE or NATAK-SE assessment of existing conditions on the mitigation site. This is the “With Preservation Score”.
2. Conduct a WESPAK-SE assessment of conditions at the mitigation site without preservation. This is the “Without Preservation Score”.
3. Normalize each score to a 0.0 - 1.0 scale. In this case, divide each score by 10.
4. Apply the ADCDM to calculate the difference between the anticipated condition if the project site were preserved (With Preservation) and the anticipated condition if the project

site were not preserved (Without Preservation) and apply the factors of the Preservation Adjustment Factor, Time Lag and Risk.

Stream Credits

As described in the ADCDM, a wetland (non-tidal and tidal) or intertidal credit is a functional unit of measure that represents the accrual or attainment of aquatic functions at a compensatory mitigation site. The stream credit generation process utilizes the region-specific Southeast Alaska Watershed Coalition ILF Program's Stream Credit Debit Method (SCDM). The SCDM is primarily drawn from *A Function-Based Framework for Stream Assessment and Restoration Projects* (Harman et al. 2012) and amended to utilize aspects of the USDA Forest Service Tier II Stream Survey Protocol (USFS 2001).

In the context of the SCDM, the Harman method provides a framework to calculate a quantitative difference – functional gain for mitigation or functional loss for permitted impact – between an existing stream condition (with mitigation) and a projected future stream condition (without mitigation). The projected stream condition is based on the future condition after the permitted impact (functional loss) or mitigation action occurs.

The SCDM only assesses conditions for the three function levels of hydraulic, geomorphologic, and biologic, where regionally-relevant assessment tools already exist or can be reasonably developed. However, the SCDM provides enough flexibility to incorporate additional tools in the future. This methodology targets low- to moderate-gradient, forested streams and rivers that are susceptible to development impacts, and typically have the highest value riparian and aquatic resources.

The following steps outline the process to calculate stream credits:

1. Assess stream metrics for the existing conditions on the mitigation site.
2. Calculate existing group function parameter scores.
3. Assess stream metrics for the projected conditions without preservation.
4. Calculate projected group function parameter scores.
5. Calculate net functional difference based upon the differences between projected and existing group function parameter scores.
6. Apply the ADCDM factors of Time Lag, Risk, and Linear Extent to calculate credits.

Calculating Debits

In order to provide effective compensatory mitigation for impacts to aquatic resources, permittees should calculate the debits incurred by the permitted project using the same functional assessments as SEALT and the ADCDM, outlined in Section 8 of this Instrument. The WESPAK-SE non-tidal and tidal calculators, as well as the NATAK-SE intertidal calculator, are hosted on the SEALT website at southeastalaskalandtrust.org.

Adaptive Approach

The calculation of credits using functional assessments is a new practice in Alaska. It is expected that the current assessments and tools will be modified and refined over time, and that the USACE Alaska District will accept additional assessments and tools not addressed in this Instrument. To accommodate these anticipated improvements, SEALT will implement an adaptive approach to its credit and debit calculations. If the USACE Alaska District accepts other functional assessments, credit-debit methodologies, and/or credit types in the future, SEALT may use them. If SEALT develops a different credit-debit method, SEALT will seek to amend this section through a streamlined modification of this Instrument.

Credits will be tracked by USACE RIBITS and in the ILF program's credit ledger by aquatic resource type and area and/or linear footage of the mitigation site. Each credit type has an associated fee. SEALT credit fees are discussed in the Instrument's fee schedule, below.

Fee Schedule, Credit Availability, and Cost

SEALT will set the fee schedule in accordance with the requirements listed in §332.8 (o)(ii).

Credit fees for SEALT projects are determined using full cost accounting. Determining the credit fee includes an analysis of the expected costs associated with the protection of aquatic resources and associated riparian areas and upland buffers at a compensatory mitigation site. SEALT uses a credit cost calculation tool to evaluate credit costs for each mitigation liability. Each mitigation site has unique costs depending upon its type, location, site variables, and regulatory considerations including the assessment of ecological significance and threat.

The credit fee includes five core components:

1. *Real Estate*: cost to purchase the fee simple title or conservation easement for a property, or group of properties, to fulfill the obligation for compensatory mitigation, based on Southeast Alaska real estate markets and comparable land sales
2. *Due Diligence*: per-transaction cost to execute the purchase that covers the costs of staff work on the project site, site assessment, survey, appraisal, environmental review, baseline report (documenting the site's condition, conservation/aquatic resource values, and intended uses), legal review, closing costs, and any other costs associated with due diligence
3. *Long-Term Management*: fee set aside for long-term management of the mitigation site, invested conservatively to generate sufficient income to cover annual monitoring and management costs and to address any violations and/or legal defense costs
4. *Financial Assurance*: estimated for a typical mitigation site
5. *Administration*: small percentage to cover SEALT's costs of long-term ILF program management, recordkeeping, accounting, and annual reporting obligations

Fees will vary between service areas, and over time as costs to preserve, restore, enhance, or establish mitigation sites change. Therefore, it will be necessary for permittees to contact SEALT to receive a credit estimate when they are interested in purchasing credits. SEALT will calculate a

credit estimate based on full-cost accounting for a permittee's mitigation requirement using region-specific, periodically-updated costs and national standards for preservation land practices.

The USACE and SEALT recognize that an estimate provided to a permittee is a good-faith estimate of the costs that SEALT will incur to execute one or more mitigation projects that fulfill that permittee's mitigation requirement assumed by SEALT as a mitigation "debit". At times, the length of the permittee's planning or permitting process may be protracted, and SEALT may issue a new estimate reflecting the updated costs prior to the completion of a credit transaction. When the permittee makes payment in full according to the final estimate, and SEALT notifies the USACE of the credit transaction, the permittee has met their mitigation requirement and SEALT has full control of and responsibility for mitigation. In the event that a portion of a specific in-lieu fee remains after the specific mitigation debt is fully satisfied by SEALT, the remaining funds will remain in the ILF Program Account for use on other ILF mitigation projects. Over time, it is anticipated that the in-lieu fee payments, collectively, will be sufficient to fulfill the compensatory mitigation debits that SEALT assumes.

Credit Reservations

A permittee may request to reserve credits from SEALT's pool of advance credits. If credits are available for sale, SEALT will provide a Credit Reservation to set aside credits for that permittee. Credit Reservations are valid for up to 180 days, and the permittee may request successive Credit Reservations for the same project following expiration of the 180-day period. SEALT will determine whether an updated Credit Reservation also requires an updated estimate.

The Credit Reservation will be provided in writing to the permittee, who may share the reservation with the USACE or other agencies as part of their permitting process. Due to changes made during permitting, the final number of credits sold may differ from the number listed on the Credit Reservation. See Exhibit F: Sample Credit Reservation.

Credit Receipts

Upon approval by the USACE, a permittee may purchase credits from SEALT's pool of available credits. This payment will be documented in a Credit Receipt. SEALT will provide a copy of the Credit Receipt to the USACE within 60 days of the transaction. See Exhibit G: Sample Credit Receipt.

9. Description of In-Lieu Fee Program Accounts – §332.8(d)(6)(iv)(D) & §332.8(i)

SEALT will maintain an ILF Program Account, Administrative Account, and Long-term Management Account. The ILF Program Account will be maintained at a financial institution that is a member of the Federal Deposit Insurance Corporation (FDIC). Only fees accepted from permittees and any interest earned from those fees will be kept in the ILF Program Account; funds accepted by SEALT from entities other than permittees will be kept in separate accounts. All interest and earnings accruing to the program account will remain in the ILF Program Account for use by SEALT for the purposes of providing compensatory mitigation for DA permits. The ILF Program Account will only

be used for the selection, design, acquisition, implementation, and management of ILF compensatory mitigation projects, except for allowable SEALT administrative costs associated with the administration of the ILF program. Administrative fees are directed to SEALT's ILF Administrative Account and tracked by income and expense. See Exhibit H: Allocation of Program Activities for a visual supplement to the program activities associated with each account.

Program Account – 332.8(i)

The ILF Program Account funds the selection, design, acquisition, implementation, and management of ILF compensatory mitigation projects. SEALT will track staff time and other routine expenses to specific ILF Program activities as SEALT evaluates, selects, acquires, and establishes long-term management of preservation properties.

Administrative Account

15% of credit fees will be directed to SEALT's administrative account and used for reasonable overhead and the administrative costs to operate and manage the ILF Program.

This account will be used to pay for program administrative duties not directly attributable to individual mitigation projects, including but not limited to:

- Ledger management, including fee and credit accounting
- Reporting and documentation
- Staff and contractor expenses within the program
- Preparation for and response to a program audit by the USACE
- Correspondence and meetings with IRT and other regulatory agencies; including negotiation of modifications to this Instrument
- Office expenses, such as rent, computer and office equipment, and supplies related to program administration, as well as phone, internet, and other communications expenses
- Bank fees associated with operation of the program

Long-Term Management Account – 332.7(d)

SEALT will maintain an ILF Long-Term Management Account where the long-term management fees for mitigation sites protected by SEALT under this 2022 Instrument are deposited, strategically invested for sustained long-term funding, and used to cover expenses for long-term management (including monitoring, enforcement, litigation, and property maintenance). The ILF Long-Term Management Account will cover the expenses of managing mitigation sites after performance standards have been achieved and the site-specific monitoring period has concluded. The ILF Long-Term Management Account will also pay for the management of the funding mechanisms and disbursement procedures.

In accordance with 332.7(d), a long-term management plan will be submitted along with the site-specific mitigation plan and will 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. Long-term financing mechanisms may include non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial Instruments.

Under the ILF Instrument, SEALT will continue to maintain an ILF Program Account and will maintain distinct and separate accounting of revenues and expenses, all financial transactions, and asset management associated with SEALT's ILF program. Only credit fees and any interest earned from those fees will be used to contribute to the ILF Program Account.

10. Long-Term Ownership and Management §332.8(d)(2)(v) & §332.7(d) & §332.8(u)

Legal Protection Mechanisms for Mitigation Sites

SEALT will consider mitigation projects on both private and public lands. The ILF Sponsor will provide long-term protection of mitigation sites through an appropriate real estate or other legal instrument (e.g., conservation easement, restrictive covenant, deed restriction, etc.), through fee simple land ownership by SEALT (i.e., a land trust), or through title transfer to a public resource agency upon agreeing to preserve mitigation sites in accordance with §332.7(a).

In most cases, a long-term management fee is calculated and ILF funds are transferred to a dedicated ILF Long-Term Management Account that is invested to generate sufficient financial resources to conduct long-term protection and management of the mitigation site (see Section 11.0 Financial Arrangements for Long-Term Management).

SEALT will remain responsible for complying with the provisions of this Instrument throughout the operational life of the program, regardless of the ownership status of the underlying real property where mitigation sites are located, unless those responsibilities have been re-assigned by SEALT and approved by the DE.

Long-Term Management Plans

SEALT will develop a long-term management plan for each mitigation site. This plan will be included in the site-specific mitigation plan which is approved by the Corps. Each long-term management plan will address site maintenance and protection, identify the party responsible for long-term management, and describe the mechanism(s) for financing long-term management activities. If necessary, the plan will also describe how the responsibility and funding for long-term management will be transferred to another entity.

SEALT may transfer fee simple title and all the long-term, legal responsibilities for an ILF mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or a private land manager (332.8(u)(2)). SEALT must provide 60-day advance notification to the DE before any action is taken to void or modify the Instrument, management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over, the compensatory mitigation site. The transfer of fee simple property ownership is legally formalized through a Warranty Deed that is recorded at the nearest State of Alaska Recording District. If the transfer is to a public agency, that agency assumes responsibility for providing

alternative compensatory mitigation acceptable to the Corps if the original mitigation site experiences any loss in functions due to the agency's authorization of incompatible uses (332.7(1)(4)).

Regardless of the legal mechanism protecting the mitigation site, SEALT or its assignee in the project mitigation plan will be responsible for long-term management of the site. The long-term management strategy will include the following components:

- A mitigation plan that includes instructions on monitoring and maintaining the site to lead to the achievement of performance standards
- A long-term protection mechanism that aligns with approved plan(s)
- Periodic review of site-specific needs for long-term management, with any proposed adjustments to plans made in writing to the DE

11. Financial Arrangements for Long-Term Management §332.7(d)

SEALT will maintain a dedicated and restricted ILF Long-Term Management Account that is invested to generate sufficient financial resources to support long-term management of mitigation sites after performance standards have been achieved, as well as management of the funding mechanisms.

Funds in the ILF Long-Term Management Account are available for any SEALT mitigation site completed under this 2022 Instrument, unless transferred by SEALT to another approved entity.

SEALT calculates a long-term management fee for each conservation property it acquires and deposits the fee into its professionally managed ILF Long-Term Management Account. A long-term management fee is conservatively estimated to cover routine and occasional management activities and to also address any violations and/or infrequent defense costs in perpetuity. Estimated long-term management costs are then adjusted for long-term inflation and interest rates to reflect anticipated long-term investment earnings by the ILF Long-Term Management Account.

Long-term financing mechanisms may include non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial Instruments. Annual reports will include information about the ILF Long-Term Management Account as stated in Section 5.

List of Exhibits

Exhibit A: Northern Mainland CPF

Exhibit B: Northern Islands CPF

Exhibit C: Southern Mainland and Inside Islands CPF

Exhibit D: Southern Outside Islands CPF

Exhibit E: Citations

Exhibit F: Sample Credit Reservation

Exhibit G: Sample Credit Receipt

Exhibit H: Allocation of SEALT ILF Program Activities

Signature Page

This Instrument is executed by these authorized representatives of the U. S. Army Corps of Engineers, Alaska District, and the Southeast Alaska Land Trust.

Shannon L. Johnson

23 November 2022

District Engineer

Date

U. S. Army Corps of Engineers

Margaret Custer

18 November 2022

Margaret Custer, Executive Director

Date

Southeast Alaska Land Trust