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The Southeast Alaska Watershed Coalition Mitigation Fund

Prospectus

In Lieu Fee Compensatory Mitigation Program

Submitted To:
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1. Introduction:

Permits for activities conducted in jurisdictional waters of the United States, including streams and wetlands, are required by the U.S. Army Corps of Engineers (COE) through Section 404 of the Clean Water Act (CWA) of 1972 and Sections 9 and 10 of the Rivers and Harbors Appropriation Act of 1899. Under the CWA Section 404 program permitting process, the COE requires that unavoidable losses of aquatic resource functions and values through permitted actions be replaced through compensatory mitigation (33 CFR Parts 325 & 332 and 40 CFR Part 230).

The Clean Water Act prohibits the discharge of materials, such as rock, soil or sand, into waters of the United States, unless authorized by a permit issued under Section 404 of that act. The COE, or a state program approved by the U.S. Environmental Protection Agency (EPA), has authority to issue such permits and to decide whether to attach conditions to them in order to achieve no net loss of wetlands within the Section 404 program. Compensatory mitigation requirements for impacts to wetlands and streams in Alaska can be met through permittee-responsible compensatory mitigation, mitigation banks, or in-lieu fee (ILF) programs.

This prospectus refers to the development of an ILF program that will offer third-party compensatory mitigation for unavoidable, regulated impacts. The proposed ILF program name is The Southeast Alaska Watershed Coalition Mitigation Fund. The Southeast Alaska Watershed Coalition (SAWC), an Alaska, non profit community-based natural resource management coalition will sponsor this program.

This prospectus outlines the circumstances and manner in which The Southeast Alaska Watershed Coalition Mitigation Fund will serve to satisfy compensatory mitigation requirements of the COE Regulatory Program.

The COE, Juneau Regulatory Division, Alaska District administers In-Lieu Fees ("Funds") contributed for unavoidable impacts to waters of the United States including streams and wetlands that result from activities authorized under Section 401 and 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act. To establish and operate the SAWC ILF Program, SAWC will work cooperatively with an Interagency Review Team (IRT) that is established and chaired by the COE to ensure the program Instrument meets the requirements of the Final Rule on Compensatory Mitigation: Mitigation for Losses of Aquatic Resources; Final Rule (33 CFR Parts 325 and 332 and 40 CFR Part 230) dated April 10, 2008 (hereinafter referred to as the 2008 Final Rule). Once the Program is certified and operational, the IRT will play an integral role in reviewing proposed mitigation receiving sites and mitigation plans.

The steps required for those seeking approval for an in-lieu fee program have been clearly defined in the 2008 Final Rule. The first step towards seeking program approval is the submission of a prospectus to the IRT for review and comment. It is strongly recommended that potential sponsors submit a draft prospectus to the Corps for initial comment- SAWC did submit

a draft prospectus to the Corps and IRT on March 23, 2012. Based upon the IRT working groups and the consultation SAWC received the coalition has adapted the initial Draft Prospectus and strived to incorporate agency comments and concerns into this Prospectus. One of the new requirements for ILF programs is that they go through two rounds of IRT review and two rounds of public review and comment in the program approval process in order to strengthen the final program Instrument and ensure multiple stakeholder perspectives are taking into consideration and acknowledged within the final Instrument.

The Prospectus for all proposed in-lieu fee programs must include the following:

1. Objectives
2. How the in-lieu fee program will be established and operated
3. Proposed Service Area
4. Need and technical feasibility
5. Ownership arrangements and long-term management
6. Sponsor Qualifications
7. Compensation Planning Framework
8. Description of program account

The remainder of this document makes up the Prospectus for The Southeast Alaska Watershed Coalition Mitigation Fund sponsored by the SAWC. Based on comments and suggestions received from the public and natural resource management agencies SAWC will develop the Draft Instrument and final Instrument. Each document builds upon the last and requires additional information and specification that further details program operation and structure. Again, the purpose of the Prospectus is to provide a broad overview of the program. There are components of an In Lieu Fee program that are significant but are not present in this document because they are not required until the sponsor is developing the draft Instrument. These include, method for determining project specific credit and fees and draft fee schedule, advance credit plan, default and closure provisions and reporting protocols.

2. Program Objectives

The primary objective of The Southeast Alaska Watershed Coalition Mitigation Fund is to replace area lost and/or the functions and values of aquatic resources and associated habitats that have been impacted as a result of permitted activities conducted in compliance or in violation of Section 404 of the Clean Water Act of 1972 and /or Section 10 of the River and Harbor Act of 1899. The program is intended to strive to uphold the national policy goal of "no net loss" to aquatic resources through the establishment and management of restoration, enhancement, creation, and preservation sites within target watersheds within the geographic service area.

The SAWC ILF Program will serve as one option available to permit applicants to provide compensatory mitigation for unavoidable impacts to jurisdictional waters of the U.S. Under this program, public and private applicants for COE permits may be allowed to pay into a mitigation fund instead of- or in addition to- performing permittee responsible mitigation. These funds will be used to carryout mitigation projects that have been identified by the program sponsor and IRT as appropriate compensatory mitigation sites on either private and/or public lands.

Furthermore, the 2008 Final Rule states that mitigation is most successful when it is based upon a "watershed approach" and provides strategies and processes for the district engineer, IRT and program sponsor to follow in mitigation site selection and project prioritization. In order to meet its primary objective of replacing aquatic resources this program will make mitigation decisions utilizing a "watershed approach". The objective of a watershed approach, as defined in the 2008 Final Rule, is to maintain and improve the quality and quantity of wetlands and other aquatic resources in a watershed (additional information on the watershed approach and site selection and prioritization can be found in Section 7 -the Compensatory Planning Framework).

The primary goal of The Southeast Alaska Watershed Coalition Mitigation Fund will be to maintain and improve the quantity and quality of aquatic resources throughout Southeast Alaska. To accomplish this goal SAWC has incorporated the following objectives into the ILF Program:

1. Provide habitat restoration or enhancement as an option to mitigate for unavoidable, site-specific impacts to aquatic resources in Southeast Alaska.
2. Utilize a watershed approach as defined in the 2008 Final Rule to identify the most appropriate off-site mitigation options available.
3. Work in an efficient and transparent manner with the IRT, chaired by the COE, to review, analyze, and implement mitigation projects and enact amendments to the Program Instrument.
4. Utilize scale efficiencies by combining the impacts from individual smaller projects within an each 8-digit HUC watershed into consolidated (larger) mitigation sites with greater ecological value.
5. Develop a program that identifies, prioritizes, and completes mitigation projects that collectively produce a no net resource loss on a watershed scale over time.
6. Provide an effective and transparent accounting structure for collecting in-lieu fees, disbursing project funds, and compliance reporting, as required under the 33 CFR § 332.8.
7. Provide public benefit by applying mitigation resources, deemed appropriate by the IRT, toward the restoration/enhancement of ecologically impaired publicly owned and those privately owned lands, which have important ecological value to the watershed.

3. How the in-lieu fee program will be established and operated

SAWC is incorporating as a private, non-profit Alaska corporation that will operate as a qualified ILF mitigation program sponsor for COE-authorized third-party mitigation services. The Southeast Alaska Watershed Coalition Mitigation Fund will be one of a few compensatory mitigation options available for use after permit applicants in Southeast Alaska have achieved avoidance and minimization of impacts to aquatic resources. The proposed program structure and processes for completing mitigation projects are based largely upon guidance outlined in the 2008 Final Rule issued in April 2008 by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency (EPA) [33 CFR Part 332 and 40 CFR Part 230]. Ultimately it

is the goal of this program and the IRT to carryout compensatory mitigation projects that are commensurate with the amount and type of impact occurring and replace the lost resources at an equal or greater value.

The establishment, use, operation, and management of SAWC's approved ILF Program will be carried out in accordance with the following principal authorities.

A. Federal:

1. Rivers and Harbors Act of 1899 (33 USC § 403)
2. Federal Water Pollution Control Act (33 USCA §§ 1251 to 1387.)
3. Regulatory Programs of the Corps of Engineers, 2008 Final Rule (33 CFR Parts 320- 332)
4. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404(b)(1) Guidelines (February 6, 1990)
5. U.S. Army Corps of Engineers Regulatory Guidance Letter 05-1, Guidance on Use of Financial Assurances, and Suggested Language for Special Conditions for Department of the Army Permits Requiring Performance Bonds, U.S. Army Corps of Engineers, February 14, 2005
6. Guidelines for the Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230, Section 404(b)(1))
7. National Environmental Policy Act (42 USC §§ 4321 et seq.)
8. Council on Environmental Quality Procedures for Implementing the National Environmental Policy Act (40 CFR Parts 1500-1508)
9. Executive Order 11990 (Protection of Wetlands)
10. Executive Order 11988 (Floodplains Management)
11. Executive Order 13112 (Invasive Species)
12. Fish and Wildlife Coordination Act (16 USC §§ 661 et seq.)
13. Fish and Wildlife Service Mitigation Policy (46 FR 7644-7663, 1981)
14. Endangered Species Act (16 USC §§ 1531 et seq.)
15. Magnuson-Stevens Fishery Conservation and Management Act (16 USC §§ 1801 et seq.)
16. National Historic Preservation Act, as amended (16 USC § 470)

It is the intent of the sponsor that this program be established and operated in a collaborative manner with the IRT members (as described below) and potential mitigation site project partners.

The proposed IRT is the group of representatives from Federal and State regulatory and resource agencies that will provide guidance regarding the establishment and management of the Program pursuant to the provisions of the programs final Instrument. The IRT consists of:

1. Chair: COE, Alaska District, Juneau Regulatory Office
2. EPA, Region 10
3. National Oceanographic and Atmospheric Administration, National Marine Fisheries Service Habitat Conservation Division (NOAA/NMFS)
4. U. S. Fish and Wildlife Service (USFWS), Conservation Planning Assistance Program
5. Alaska Department of Environmental Conservation (DEC)
6. Other relevant parties as invited by the Chair and/or the Sponsor on a project-by-project basis.

The role of the IRT is to:

- Assist the COE in their role as chair of the IRT;
- Review of the *Draft Prospectus*, Prospectus, and Draft Instrument and Instrument of ILF Program;
- Evaluate mitigation plans;
- Review monitoring reports;
- Recommend adaptive management measures;
- Approve credit releases to agreed-upon projects.

As sponsor of the program, SAWC will be responsible for all roles required of a program sponsor in 33 CFR Part 332.8, including:

- Ensuring the success of compensatory mitigation for which fees have been collected (*performance standards will be defined in project mitigation plans and will support the measured success of each project).*
- Maintaining accounting ledgers, tracking all fees collected and expenditures *(this system will be further defined in the Draft Instrument).*
- Monitoring and maintaining mitigation projects developed under the program.
- Attaining IRT approval for mitigation plans and expenditures from the ILF account.
- Maintaining sufficient funds for the long-term management (as defined in the project mitigation plan) of mitigation projects *(this system will be further defined in the Draft Instrument)*.
- Annually reporting on the progress and status of the program including financial accounting reports, credit transaction reports, mitigation receiving site monitoring and progress toward success, status of long term management endowment account, amount of mitigation provided for authorized impacts/fees collected, and any changes in land ownership or transfers of long term management responsibilities.

The ILF Instrument will provide authorization for the ILF program to provide credits and receive funds from applicants to satisfy compensatory mitigation requirements for Clean Water Act permits (§404 (B)(1) Guidelines (40 CFR 230.10(c)) and other regulated activities. The ILF Instrument will describe the program elements required by 33 CFR §§ 332.8 (6)(ii) & 332.8 (6) (iv), specifically:

1. Credit and debit accounting procedures

2. Provisions stating legal responsibility to provide compensatory mitigation
3. Default and closure provisions
4. Reporting requirements and protocols
5. Project selection criteria through a compensation planning framework (see section 7- *Compensation Planning Framework*)
6. Advance credits
7. Method for determining project-specific credits and fees and fee schedule
8. Description of the ILF program account (see section 8- *Description of Program Account*)

As projects are identified, SAWC will submit site-specific mitigation plans to the COE for review and approval. This is a separate review process for each proposed in-lieu fee project. Any time SAWC would like to implement a new mitigation project or add new acreage to an existing projects, it must submit a project mitigation plan, go through a public review and comment phase, and go through formal IRT review. Mitigation plans will include the following information required by 33 CFR §§ 332.4 (c)(I)(iii) & 332.8 (i)(e). This process ensures each mitigation site is well planned in advance with specific ecological performance standards and have a long-term management plan.

1. Objectives
2. Site selection rationale § 332.2(d)
3. Site protection instrument § 332.7(a)
4. Baseline information
5. Determination of credits § 332.2(f)
6. Mitigation work plan
7. Maintenance plan
8. Performance standards § 332.5
9. Monitoring requirements § 332.6
10. Long-term management plan §§ 332.7 & 332.8(u)
11. Adaptive management plan § 332.7(c)
12. Financial assurances § 332.3 (n)
13. Credit Calculation

Once the program is approved to provide compensatory mitigation for unavoidable impacts to the waters of the United States, credits will be sold to Section 404 permittees. The funds received from permittees will be consolidated and used to implement identified and prioritized mitigation projects. In Southeast Alaska regulated activities are often dispersed across large areas and over time. Therefore achieving compensatory mitigation may sometimes benefit from combining funds from several permit applicants. At the IRT's discretion project funds may be disbursed among adjacent or disparate watersheds to ensure timely delivery of mitigation commitments as required in the final rule.

Compensatory mitigation projects will be selected based on an analysis of their ability to mitigate for impacts and provide measureable ecological benefits. The over-reaching goal is to maintain and restore the quantity and quality of aquatic resources within the service area.

To ensure successful operation of the ILF program SAWC will value fee amounts by setting credit prices that will allow the sponsor to meet all of the requirements of the 2008 Final Rule. Much criticism has been levied against in-lieu fee programs over the years for setting credit prices too low and failing to cover all of the costs necessary to deliver the promised mitigation.

The rule states that the cost per credit must be based on "full cost accounting" – all the costs associated with the restoration, establishment, enhancement, and/or preservation of aquatic resources. The rule lists the specific activities that may be considered in setting credit fees. These are:

- Land acquisition
- Project planning and design, including site selection

  Permitting
- Construction and inspection
- Plant materials
- Legal fees
- Monitoring
- Maintenance and or adaptive management activities
- Program administration
- Contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses
- The resources necessary for the long- term management and protection of

  the in-lieu fee project, including compliance inspection.
- Financial assurances that are necessary to ensure successful completion of in-lieu fee projects

Additionally, the rule states third party mitigation programs will use funds generated from credits sale for program administration. The program administration for this ILF programs are describe in part as follows:

(1) A percentage of funds generated (not to exceed 15% of total fees collected) will defray administrative costs associated with operation of the ILF program. Examples of administrative costs include: staff time; planning and project identification costs; landowner contacts; contaminants investigations; meetings with the IRT, watershed representatives, and project partners; developing conservation easements and other legal protections for project sites; reporting; accounting; and others.

(2) In addition to this 15% administrative cost, the sponsor will also create two separate contingency accounts. The first will represent a contingency held separately for each project to

defray unanticipated costs associated with maintaining the long-term success of the project. The second will be a general contingency that will be deposited into a program-wide contingency account to ensure long-term viability of the ILF program. This general contingency account will provide financial assurances for unexpected costs such as easement defense or others that may arise affecting several projects, or the ILF program as a whole. SAWC will work with the IRT- during the Draft Instrument phase- to determine a standard percentage of a total project site cost to be deposited into these two contingency accounts. All other fees collected will be used by SAWC for project implementation, which will include, but may not be limited to: design, construction, construction oversight, site monitoring up to the time of credit release (do we anticipate calling SAWC ILF fees credits?), and perpetual protection of mitigation sites which may include easement or fee title purchase, project site fencing, and others.

Once the COE has required the permitee to pay an appropriate credit amount, SAWC and/or SAWC partners will agree to accept legal responsibility for satisfying the mitigation requirements for all COE, for which mitigation fees from a permittee have been accepted under the terms of the program's instrument. Any transfer of mitigation responsibility is contingent upon the prior approval of the Corps.

Based on the 2008 Final Rule SAWC assumes the following responsibilities of the COE – as Chair of the IRT- in establishing and operating the program

A. The COE agrees to provide appropriate oversight in carrying out their responsibilities under the provisions of the 2008 Final Rule and any special considerations written into the Programs final Instrument.

B. The COE agrees to review and provide comments on project plans, monitoring reports, contingency and remediation proposals, and similar submittals from the SAWC in a timely manner.

C. As IRT Chair, the COE will coordinate their review with the other members of the IRT.

D. The COE agrees to review requests to provide guidance in the development of the SAWC ILF Program Prospectus, Draft Instrument and Final Instrument. As well as, once the program is approved, the COE agrees to review requests to modify the terms of the Instrument, to transfer title or interest in any real estate subject to the program, to determine achievement of performance standards in order to evaluate the award of credits for each phase of the Program's mitigation projects, or to approve the Long-Term Management Plans. As Chairs, the COE will coordinate review with the members of the IRT so that a decision is rendered or comments detailing deficiencies are provided in a timely manner. The COE agrees to not unreasonably withhold or delay action on such requests.

E. The COE agrees to act in good faith when rendering decisions about acceptability of financial assurances, requiring corrective or remedial actions, requiring long-term management and maintenance actions, and releasing credits. The COE shall exercise good judgment in accessing financial assurances, and will utilize those monies only to the extent they reasonably and in good faith conclude that such remedial or corrective actions are an effective and efficient expenditure of resources. In implementing this process the COE will act in good faith in determining the scope and nature of corrective actions to be undertaken, shall act in good faith in conducting monitoring, developing reports, and assessing compliance with performance

standards; and will not unreasonably limit options available as corrective action activities or otherwise apply their discretion so as to unduly prejudice the Sponsor regarding the timing or number of credits released. Approval by the COE of the identity of any assignee responsible for executing the Long Term Management Plan, and approval of the terms of any long-term management assignment agreement, will not be unreasonably withheld.

F. The COE will periodically inspect the mitigation sites as necessary to evaluate, in consultation with the other members of the IRT, the achievement of performance standards, to assess the results of any corrective measures taken, to monitor implementation of Long Term Management Plans, and, in general, to verify SAWC's compliance with the provisions of the programs approved Instrument.

Upon satisfaction of the requirements of any mitigation site phase under the approved Instrument, the COE will certify, following consultation with the SAWC and the other members of the IRT, that the establishment period of a mitigation site has terminated, all credits associated with the site have been released, and that the site has entered the long-term management phase. Certification will occur upon the SAWC's receipt of a letter issued by the COE to the Sponsor confirming that all credits are released.

The 2008 Final Rule, requires all ILF programs to have a Compensation Planning Framework as part of the program's prospectus and final instrument (§332.8(d)(2)(vii). The compensation planning framework is a detailed and extensive section of the prospectus and instrument that is "used to select, secure, and implement aquatic resource restoration, establishment, enhancement, and/or preservation activities."[1] This element of the in-lieu fee program instrument was added to the 2008 Final Rule to improve the practice's "accountability and performance" of ILF programs. Please refer to the compensation-planning framework in this prospectus for information, including site selection, prioritization, and implementation of the SE Alaska Mitigation Fund,

4. The proposed service area.

(*The ILF program service area is described in more detail in the Compensation Planning Framework section)*

The service area for the SAWC ILF Program is the organization's existing area of focus servicing municipalities, tribes and local organizations throughout Southeast Alaska. Common usage describes Southeast Alaska as a coastal ecosystem located between 55 and 60 degrees latitude, extending about 500 miles from the Canadian border (south of Ketchikan) northwest to Yakutat Bay and roughly 120 miles in width. Southeast Alaska encompasses about 22 million acres. Within this vast region, SAWC is relying on established USGS Hydrologic Unit Code (HUC) delineations, which are defined by watersheds for program management purposes. These identifications of watersheds assist in framing a regional analysis that complements the 2008 Final Rule's focus on compensatory mitigation on a watershed basis.

Existing delineations define the SE Alaska service area watersheds and organize available aquatic resource data and management information, as follows:

[1] 2008 Final Rule (§332.8(c)(1)

- The U.S. Geological Service identifies four 6-digit and eleven 8-digit Hydrologic Unit 26 Codes: 19010101 – 19010401 covering the watersheds in the Service Area. (Natural Resources Conservation Service; www.ak.nrcs.usds.gov/technical/southeasternhucs.html)
- The U.S. Forest Service identifies 22 Biogeographic Provinces comprised of groups of watersheds, with further delineation of 926 "Value Comparison Units" (VCU) within the provinces. Each VCU generally encompasses a drainage basin (watershed) with one or more large stream system and includes estuaries and adjacent marine habitats associated with the terrestrial drainage system (*Tongass National Forest Land and Resource Management Plan*, 1997; 2008).
- The Nature Conservancy and Audubon Alaska further combine the Forest Service's 22 biogeographic provinces into five sub-regional groupings based on climate, physiography, and plant distribution and provide watershed-scale information in a GIS format (*The Coastal Forests & Mountains Ecoregion in Southeastern Alaska and the Tongass National Forest*, 2007).

SAWC will rely on these watershed delineations in mitigation project identification and will maintain records using both the 8-digit USGS HUC and the biogeographic province nomenclature. SAWC will attempt, to the extent workable, to match mitigation projects within and/or near the watershed that received the unavoidable permitted impact.

The fees for jurisdictional impacts in each of the eleven 8 digit HUCs in Southeast Alaska will be collected and combined to fund mitigation projects in that HUC. In situations, deemed appropriate by the IRT and Sponsor, the SAWC's ILF program funds may be used to compensate for an impact that occurs outside of the 8-digit HUC impacted. If the COE determines that SAWC has sold, used, or transferred credits at any time to provide compensatory mitigation for loss of aquatic resources outside of the HUC where the impact occurred without prior approval under the terms of this instrument, the COE, in consultation with other applicable members of the IRT, may direct that the sale, use, or other transfer of credits immediately cease. The COE will determine, in consultation with the IRT, SAWC, and the appropriate regulatory authority, what remedial actions are necessary to correct the situation.

5. The general need for and technical feasibility of the proposed in-lieu fee program.

Commercial, urban and rural development, road and utility infrastructure, industrial sites, historic logging practices, and other human actions have altered aquatic habitat in Southeast Alaska. Valuable freshwater wetlands and estuarine habitat have been filled and/or isolated; stream channels have been blocked, straightened and disconnected from their floodplains; forests and riparian areas have been degraded by legacy issues; sections of the coast line have been degraded or lost due to habitat modifications and water pollution; and abandoned crab pots,

fishing nets and other gear litter the bottom of the ocean floor near and around Southeast communities.[2]

Studies of compensatory wetland mitigation across the country generally demonstrate that less than 50 percent of mitigation sites are successful ecologically in achieving their performance standards and intended goals. Furthermore, they fail to effectively replace lost or damaged resources, habitats, and functions. These studies identify several common flaws, including inappropriate site selection, project design without a landscape or watershed context, poor planning and implementation of projects, lack of oversight, maintenance, and follow-through, and insufficient long-term management and monitoring.[3]

Despite a nationwide goal of no-net-loss of wetlands, Southeast Alaska and the State continue to experience losses to the functions and values of wetlands, streams, riparian areas and other aquatic resources. Based on a gap analysis conducted by the SAWC three central factors have been identified as contributing to these losses: 1. Actions being permitted under the Clean Water Act Section 404 program without credible mitigation plans and projects that meets the requirements of the 2008 Final Rule, 2. A lack of identified and prioritized mitigation projects and, 3. A lack of third party mitigation programs operating in Southeast Alaska and the State that offer restoration and enhancement opportunities.

Currently there is one ILF program in Southeast Alaska that offer preservation opportunities to Section 404 permit applicants. There are no active third party mitigation programs (mitigation banks and/or In lieu Fee Programs) that carryout restoration, enhancement and/or creation to offset unavoidable permitted impacts to aquatic resources in Southeast Alaska.

Federal regulations have identified in-lieu fee programs as one potential option to correct some of the shortcomings in existing mitigation techniques. A regulatory program that includes an ILF program provides the opportunity for consolidating compensatory mitigation projects and resources to target more ecologically significant functions, provide financial planning, provide scientific expertise, reduce temporal loss of function, and reduce uncertainty about project success. By consolidating resources and utilizing scientific expertise, this program will provide applicants an appropriate mitigation option for offsetting unavoidable impacts in a timely manner.

The population of Southeast Alaska region is expected to grow in coming years. In addition to pressures on Southeast Alaska's biogeographical regions from general population growth in certain communities, existing industry and land uses will continue to expand. This expected growth and development does and will continue to require more effective mitigation.

[2] Alaska Region Step-down Plan 2007-2011; Partners for Fish and Wildlife and http://www.fs.fed.us/r10/tongass/projects/tlmp/2003_monitoring_report/17.5_wetlands.pdf
[3] Hood Canal In Lieu Fee Program

At this time- there are no processes, structures or strategies that support third party mitigation programs in Southeast Alaska. There are limited natural resource managers and professional in the region who have are well informed and have an in depth understanding of the 2008 Final Rule. The COE regulatory office in Juneau has a staff of two, which means COE regulatory staff located in Anchorage are approving permit applications for impacts occurring in Southeast Alaska. This results in significant permitting inconsistencies between the COE offices in Anchorage and Juneau. In addition, SAWC is the only natural resource organization that is addressing and building awareness about aquatic resource mitigation- in the form of restoration/enhancement/creation in the region. SAWC believes that the technical capacities of one entity to effectively carryout mitigation projects and manage the sites associated with an In Lieu Fee program does not currently exist in Southeast Alaska. After a review of past restoration projects carried out in Southeast Alaska it is obvious that the majority of projects require partnerships between various organizations as well as the landowner(s) in order to develop project designs, construct project, monitor project over the long-term, and secure a site projection mechanism.

Therefore SAWC is proposing to create strategic restoration partnerships- for each mitigation project- with the agencies/organizations/contractors/landowner(s) that are addressing aquatic resource management issues and carrying out restoration projects near and around the program's proposed site. SAWC is confident that the technical needs required to meet the objectives of the proposed ILF program are feasible. SAWC with oversight from the IRT will undertake specific mitigation plans that compliment the organizational capacity of SAWC, as well as the technical expertise of the partnering organizations.

Communities, scientists, government, tribes, natural resource managers, contractors and conservation groups are ripe with interest to utilize Section 404 mitigation programs funds to restore, enhance and create aquatic habitat in Southeast Alaska. Acting as a coalition, SAWC has access to extensive resources and potential partners to support its mitigation activities. Drawing from its network of natural resource professionals and managers that represent diverse stakeholder groups, including resource agencies, tribes, municipalities, industry, non-profit organizations, the Alaska State Legislature and environmental consultants and contractors SAWC will be able to respond to the technical requirements of this ILF program. Technical needs and requirements include, mitigation site selection and prioritization, mitigation project design and construction, long-term monitoring of project site, data collection and storage and financial management.

6. The proposed ownership arrangements and long-term management strategy for the in-lieu fee project sites.

SAWC will consider mitigation projects on public or private lands based on site-selection criteria within a watershed, which will be detailed in the ILF Instrument. Private properties with existing conservation easements or equivalent protections as well as lands held and protected by state,

federal, tribal, or other entities in the public trust present opportunities to optimize mitigation on a watershed scale as land costs may represent one of the largest component costs of a mitigation project. Mitigation sites on private land will be protected by permanent conservation easement, deed restrictions, or other legal instruments as provided in the 2008 Final Rule. SAWC intends to partner with statewide and regional land trust entities that can hold a conservation easement or fee title to property on which mitigation is conducted, as well as other land owners both public and private who have the authority to hold legal instruments that dictate land and resource use.

Long-term stewardship and management of in-lieu fee project sites can take many different shapes. In some cases, the in- lieu fee sponsor is a government agency or non-profit conservation organization with land conservation as a mission and the sponsor fully intends to retain ownership and management responsibilities for project sites. In other cases, the in-lieu fee sponsor may intend to transfer the project sites to another entity for ownership or long-term management. In these cases, mitigation project sponsors may have difficulty securing a long-term steward until after the project is further along and the risks are clearer (i.e., the site is completed and meeting performance standards). As a result, the in- lieu fee instrument and project-specific mitigation plan(s) generally identify the sponsor as the long-term steward (the "default" long-term steward). Long-term management and funding then can be transferred to another party with the approval of the district engineer and IRT at some later point. This, presumably, holds true for the portion of the long- term management plan that describes long-term management needs (e.g., annual cost estimates for these needs) and how those needs will be financed.

SAWC will work with the IRT to develop a Final Instrument and mitigation plans under the proposed program that addresses the several different aspects of long-term management of mitigation sites, such as the long-term site protection duration and instrument, the long-term management activities themselves, the party responsible for long-term management, the mechanism(s) for financing long- term management activities, and if and how the responsibility and funding for long-term management will be transferred to another entity.

Following the project performance period (process of implementing mitigation project and carryout project tasks), mitigation projects will be managed in accordance with long-term stewardship guidelines. Credit pricing will include costs associated with long-term management and monitoring of ILF mitigation receiving sites. In addition to long-term monitoring and management specified in the ILF program instrument, the ILF sponsor will protect ILF sites used for mitigation in perpetuity. SAWC has several legal mechanisms whereby its approved ILF Program compensatory mitigation properties could receive long-term protection and management:

1. SAWC can partner with a land trust to execute and hold a conservation easement on certain properties with willing public or private landowners.
2. SAWC can partner with a property owner that holds a conservation easement.
3. SAWC can partner with an appropriate public agency and place deed restrictions (per 2008 Mitigation Rule 33 CFR 332.7(a)).

Under the ILF Program, the specific project mitigation plan or terms of a project-specific conservation easement would clearly describe the conservation values being protected and the permitted/prohibited uses/activities for each project site. In accordance with 33 CFR 332.6, the mitigation plan for each mitigation site identifies the specific monitoring required for that specific site. The ILF Program legal instrument between the COE and SAWC will require reporting of all monitoring actions.

For projects on private lands, the ILF sponsor must require that a site protection mechanism, such as a conservation easement or restrictive covenant, be placed on the land. The site protection mechanism must grant the sponsor access for monitoring and enforcement, and stipulate long-term protection obligations.

Regardless of the legal mechanism protecting the mitigation site, SAWC or an identified partner 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:

1. Specific needs for long-term success of the project including a general discussion of watershed and functional benefits that will be considered. Generally, the long-term management strategy for a project will consider long-term sustainability of the project where restoration and enhancement activities provide self-sustaining processes to produce and maintain aquatic resource benefits.

2. Each ILF project will meet the COE's long-term protection requirements. Agreements will require that project sites be protected from adverse future land uses with a permanent conservation easement, deed restriction, or other legal mechanism. SAWC will submit a proposal for permanent conservation easement, deed restriction, or other legal mechanism to the COE and the IRT for review and approval prior to release of credits. Enactment of protection may serve as the basis for release of advance credits as identified in the credit release schedule.

3. Mitigation projects may be conducted by SAWC on lands protected by easements held by a separate land trust entity. SAWC may either continue to assume responsibility for long-term management or delegate monitoring and/or management responsibilities to that land trust entity. However, it may be most advantageous or necessary to transfer responsibility for long-term management to a third party; e.g. where property owners request that a single entity hold the easement and provide long-term management. Where long-term management becomes the responsibility of a third party, a Stewardship Management Agreement may be presented to the COE for approval that describes how the third party will implement the strategy. In either case, the responsible party will maintain long-term management funds sufficient to ensure long-term protection of the site.

4. Monitoring of mitigation sites will be required for a minimum five-year period. However, the COE may release credits prior to completion of the five years if it believes it is warranted. The COE may require longer periods of monitoring when necessary; e.g. where an ILF project involves restoring forested wetlands, to ensure performance standards are met.

5. Mitigation projects will involve deposits to both a project-specific and a general, program-wide contingency account. SAWC or a SAWC partner- that has agreed to assume monitoring

and/or long-term management responsibilities for a project- may hold these long-term management funds.

Accomplishment of Sponsor Responsibilities; Transfer of Ownership of a Mitigation Site: SAWC will remain responsible for complying with the provisions of the final 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. The SAWC is not required to, but may transfer ownership of all or a portion of the mitigation sites' real property interest to another party, provided the COE, following consultation with the other members of the IRT, expressly approves the transfer in writing. The SAWC will provide no less than 60 days written notice to the IRT of any transfer of fee title or any portion of the ownership interest in the Program real property interest to another party.

Transfer of Long Term Management Responsibilities: The Sponsor may assign its long-term management responsibilities to a third party assignee, which will then serve as Long-Term Steward in place of the Sponsor. The identity of the assignee and the terms of the long-term management and maintenance agreement between the SAWC and the assignee must be approved by the COE following consultation with the IRT, in advance of assignment.

Upon execution of a long-term management assignment agreement and the transfer of the contents of the Long-Term Management Account, and upon satisfaction of the remaining requirements for termination of the establishment phase of the Program, SAWC shall be relieved of all further long-term management responsibilities under this Instrument, which are associated with the site for which responsibilities have been transferred.

Funding for ownership agreements and long-term management:

Mitigation Fees will comprise of two fees: a Credit Fee and a Land Fee. The Credit Fee price will reflect average costs for implementing all components of a mitigation project. Once in operation for a few years SAWC will strive to adapt an average Credit Fee for each 8 digit HUC based on cost analyses of recent projects completed by The Southeast Alaska Watershed Coalition Mitigation Fund.[4]

The Land Fee prices will be based on an analysis of average cost of recent land acquisitions made by various stakeholders including the Southeast Alaska Land Trust ILF program within different areas and zoning categories.

As the 2008 Final Rule requires, the Mitigation Fee prices will thus be formulated to reflect full-cost accounting for establishment and management of mitigation sites, which includes: costs associated with site selection, permitting and design, construction, monitoring and maintenance, **long-term management**, program administration, **contingencies and property right acquisition**.[5]

[4] King County In Lieu Fee Program
[5] 33 CFR 332.8(o)(5)(ii)

7. The qualifications of the sponsor:

SAWC is a natural resources management coalition and is committed to the strategic conservation and promotion of the aquatic, natural, economic and cultural resources in communities throughout Southeast Alaska. The mission of SAWC is to inspire Southeast Alaskan's and support community organizations to wisely manage our watersheds. SAWC does this by, facilitating a professional network for watershed practitioners, offering trainings to build local watershed management capacities and providing aquatic resource mitigation services to municipalities, tribes, landowners, resource management agencies, industry, and the private sector throughout Southeast Alaska.

Throughout SE Alaska, community-based watershed initiatives identify, plan, and execute watershed protection, stewardship, restoration and enhancement projects that meet salmon recovery, ecosystem conservation, water quality improvement and other federally and state mandated and community-based watershed management objectives. These groups have a successful track record of facilitating partnerships on the local, regional, state and federal level in order to mitigate the impacts both rural and urban communities have on watersheds. The main objective of The Southeast Alaska Watershed Coalition Mitigation Fund is to support and bolster these local efforts. SAWC intends to initiate and partner on mitigation projects that result in functional lift of aquatic habitat to offset permitted impacts elsewhere.

SAWC coordinates a regional network of locally based watershed councils and groups, field practitioners, technical experts, natural resources professionals, municipalities, tribes, industry, private consultants, and agency staffers. These individuals and organizations work together to build the capacity of communities throughout Southeast Alaska to implement local approaches to the management, development and stewardship of the regions watersheds.

SAWC will rely on the input from the Board of Directors, Advisory Council, member groups, partnering natural resource agency staffers, municipalities, tribes, private industry and sector, and Native Corporation stakeholders in selecting, implementing, managing and monitoring restoration projects in their communities.

To meet the needs of each mitigation project, the best available science will be incorporated along with an appropriate monitoring program to evaluate the effectiveness of the implemented strategies and inform adaptive management. The IRT and other relevant experts will review the mitigation and monitoring plans of each project site to ensure the greatest chance of success.

The Southeast Alaska Watershed Coalition Mitigation Fund will serve the critical need for identifying mitigation opportunities and establishing mitigation projects where private mitigation banks do not exist, lack available credits, or are not expected to begin operating in the foreseeable future. The ILF program can strengthen SE Alaska's ability to conserve its aquatic resources. Additionally, the ILF Program may collaborate, by contributing mitigation –based restoration elements to projects with other entities, including public agencies, watershed groups, conservation organizations, land trusts, and others. Partnering with other restoration ventures is in the public interest. The ILF program can mobilize mitigation funds for larger-scale restoration projects, including those where mitigation funds alone may be insufficient to implement restoration at an effective watershed scale.

As stated SAWC does not intend to identify, carryout, and monitor Southeast Alaska Mitigation Fund sites in isolation. It is the intention of this program and those entities supporting the development of this program to develop strategic partnerships in order to ensure effective, credible, and meaningful projects. Mitigation plans for each project will be developed with the identified partners for the specific project. Zone of Agreements, Memorandum of Understandings, Partnership Agreements and/or Contracts will be developed between SAWC and project partners. These Zone of Agreements will be discussed in mitigation plans and approved by the IRT prior to the release of credits.

Potential Project Partners include but are not limited to:

1. Yakutat City and Borough
2. Taiya Inlet Watershed Council
3. Takshanuk Watershed Council
4. Juneau Watershed Partnership
5. Sitka Conservation Society
6. Prince of Wales Watershed Association
7. Southeast Alaska Land Trust
8. The Nature Conservancy
9. Tout Unlimited, Juneau Chapter
10. The National Forest Foundation
11. Ecological Land Services
12. Southeast Alaska Region Department of Transportation
13. The United States Fish and Wildlife Service, Juneau Field Office Restoration Program
14. The United States Forest Service, Tongass National Forest

SAWC anticipates this list to grow as the entities addressing aquatic resource restoration throughout Southeast Alaska become aware of The Southeast Alaska Watershed Coalition Mitigation Fund and interested in supporting the specific projects under the program.

8. The Compensation Planning Framework:

The *Compensation Planning Framework for The Southeast Alaska Watershed Coalition Mitigation Fund* presents the condition of aquatic resources, and the historic losses and potential threats to those resources (due to urbanization, local and regional transportation infrastructure, hydropower development and transmission, resource development, etc.) as best possible considering aquatic resource impacts have not been tracked in a systematic way that is available to the public and third party mitigation programs in Alaska. The compensation planning framework explains how the ILF Sponsor will use permittee-provided fees to mitigate aquatic resources on land parcels to offset impacts to aquatic functions and services throughout the service area. Further, the Framework identifies the ILF Program goals and objectives, a strategy for prioritizing the selection and implementation of mitigation projects

a. The geographic service area(s), including a watershed-based rationale for the delineation of each service area;

The service area for the SAWC ILF Program is the organization's existing area of focus servicing municipalities, tribes and local organizations throughout Southeast Alaska. Common usage describes Southeast Alaska as a coastal ecosystem located between 55 and 60 degrees latitude, extending about 500 miles from the Canadian border (south of Ketchikan) northwest to Yakutat Bay and roughly 120 miles in width. Southeast Alaska encompasses about 22 million acres. Within this vast region, SAWC is relying on established USGS Hydrologic Unit Code (HUC) delineations, which are defined by watersheds (8 digit HUC) for program management purposes. These identifications of watersheds assist in framing a regional analysis that complements the 2008 Final Rule's focus on compensatory mitigation on a watershed basis.

Existing delineations define the SE Alaska service area watersheds and organize available aquatic resource data and management information, as follows:

- The U.S. Geological Service identifies four 6-digit and eleven 8-digit Hydrologic Unit 26 Codes: 19010101 – 19010401 covering the watersheds in the Service Area. (Natural Resources Conservation Service; www.ak.nrcs.usds.gov/technical/southeasternhucs.html)
- The U.S. Forest Service Watershed Condition Framework for Southeast Alaska: http://apps.fs.usda.gov/WCFmapviewer/
- The U.S. Forest Service identifies 22 Biogeographic Provinces comprised of groups of watersheds, with further delineation of 926 "Value Comparison Units" (VCU) within the provinces. Each VCU generally encompasses a drainage basin (watershed) with one or more large stream system and includes estuaries and adjacent marine habitats associated with the terrestrial drainage system (*Tongass National Forest Land and Resource Management Plan*, 1997; 2008).
- The Nature Conservancy and Audubon Alaska further combine the Forest Service's 22 biogeographic provinces into five sub-regional groupings based on climate, physiography, and plant distribution and provide watershed-scale information in a GIS format (*The Coastal Forests & Mountains Ecoregion in Southeastern Alaska and the Tongass National Forest*, 2007).
- The Alaska Department of Environmental Conservation list of Impaired Waterbodies

SAWC will rely on these regional delineations and assessments in mitigation project identification and will maintain records using both the 8-digit USGS HUC and the biogeographic province nomenclature. SAWC will attempt, to the extent workable, to match mitigation projects within and/or near the watershed that received the unavoidable permitted impact.

The fees for jurisdictional impacts in each of the twelve 8 digit HUCs in Southeast Alaska will be collected and combined to fund mitigation projects in that HUC. In situations, deemed appropriate by the IRT and Sponsor, the SAWC's ILF program funds may be used to compensate for an impact that occurs outside of the 8 digit HUC impacted. If the COE determines that SAWC has sold, used, or transferred credits at any time to provide compensatory mitigation for loss of aquatic resources outside of the HUC where the impact occurred without prior approval under the terms of this instrument, the COE, in consultation with other applicable

members of the IRT, may direct that the sale, use, or other transfer of credits immediately cease. The COE will determine, in consultation with the IRT, SAWC, and the appropriate regulatory authority, what remedial actions are necessary to correct the situation.

To meet its primary objective of maintaining and improving the quantity and quality of aquatic resources in Southeast Alaska SAWC and the IRT will make mitigation decisions utilizing a "watershed approach". The 2008 Final Rule states that mitigation is most successful when it is based upon a "watershed approach" and provides strategies and processes for the district engineer, IRT and program sponsor to follow in mitigation site selection and project prioritization. Making mitigation decisions according to a "watershed approach" is an important requirement of the Final rule, and is a guiding principle for The Southeast Alaska Watershed Coalition Mitigation Fund. The 2008 Final Rule states:

> "*Watershed approach* means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed and offset losses of aquatic resource functions and services caused by activities authorized by DA permits. The watershed approach may involve consideration of landscape scale, historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining compensatory mitigation requirements for DA permits." [33 CFR 332.2]

Though not as comprehensive and coordinated as states - such as Washington and Oregon- that have been developing aquatic resource mitigation policy and strategies- over the past twenty years- to support third party mitigation programs various stakeholder groups in Southeast Alaska have developed a wealth of information and data about the ecological conditions of Southeast Alaska watersheds to use in making decisions about implementing mitigation according to a *watershed approach* as required in the 2008 Final Rule.

For example, the following regional resources provide a great deal of information that will enable mitigation decisions to be made according to a watershed approach. The Nature Conservancy in partnership with the Audubon Society developed *"A Conservation Assessment and Resource Synthesis for the Coastal Forests and Mountains Ecoregion in Southeastern Alaska and the Tongass National Forest."* This assessment identified the core watersheds of high biological value of both intact and impacted watersheds throughout Southeast Alaska. In addition the Forest Service has recently completed its Watershed Condition Framework, which has helped set restoration priorities for the next 5 years in watersheds located in the Tongass Forest. Both of these assessments provide regionally appropriate and meaningful information regarding aquatic resource needs within watershed in Southeast Alaska.

In addition to information related to regional assessment of watershed conditions, there are also resources available regarding conditions within a particular watershed based on a smaller scale.

These natural resource management plans and land use plans will also help guide the process for making decisions using a watershed approach. Examples of these types of resources and plans include but are not limited to: The Pullen Creek Action Plan completed by the Taiya Inlet Watershed Council and the United States Fish and Wildlife Service, Auke Lake Watershed Assessment completed by the Juneau Watershed Partnerships, the Hoonah Community Forest Project sponsored by the Southeast Alaska Conservation Council and the Staney Community Forest Project sponsored by The Nature Conservancy.

Collectively, these reports, plans and analyses (and many more) provide a more complete picture of how the ecological conditions in watersheds throughout Southeast Alaska have changed through time in the face of development, and which aquatic functions within a watershed are most important to protect and/or restore; this body of work will provide a solid scientific basis (as well as information about societal value of resources) for making decisions about how to implement mitigation that will achieve "no net loss" policies, and have the greatest benefit to aquatic resources in Southeast Alaska.

Depending on which 8 digit HUC is receiving impacts and therefore needs mitigation sites SAWC will do a thorough aggregation of plans, reports, and documents in order to ensure mitigation site identification and prioritization process is being carried-out utilizing existing scientific information and a watershed approach.

The information available to guide mitigation decisions is by no means static. Scientists and planners in SE Alaska continue to collect new data, perform new analyses and employ innovative methods in examining the ecological systems across the region landscape. As new reports and analyses become available, they will be added to the resources informing mitigation decisions through the SAWC and be incorporated by reference into this instrument.

b. A description of the threats to aquatic resources in the service area(s), including how the in-lieu fee program will help offset impacts resulting from those threats;

This analysis of the current conditions of aquatic resources and the potential threats to these resources in Southeast Alaska is based on a review of region-wide or local publications and online information sources including, but not limited to Alaska Department of Fish and Game Anadramous Waterbodies, DEC Total Maximum Daily Load reports, EPA/DEC list of impaired Waterbodies, TNC and Audubon Conservation Assessment for Southeast Alaska, the Forest Service's Tongass Watershed Framework, the National Wetland Inventory and Juneau Watershed Partnership Resource Library. Given the size of the service area, SAWC did not perform site-specific field documentation for this Compensation Planning Framework. As a result site-specific field documentation will accompany all Project Mitigation Plans. Examples of site-specific mitigation information will be presented in the Draft Instrument.

From a regional perspective, the potential future threats that aquatic resources face depend on the extent that resource development (timber harvest, mining, energy, and small-scale activities), intraregional highway and power transmission, and community redevelopment or expansion occur. In general, future community and resource developments in Southeast Alaska -- and the associated, unavoidable impacts to aquatic resources -- are likely to be similar to those that have

occurred in the past. We do not anticipate unfamiliar development activities to occur that would have unique or unusual impacts on aquatic resources not already experienced in Southeast Alaska. Thus, the types of historic impacts to aquatic resources discussed below are also those that may occur in the future, although the extent, severity and duration of future impacts may be minimized as a result of improved scientific knowledge, enhanced developer cooperation, increased community land use planning, and targeted regulatory actions. One exception to this might be the future development of one or more ocean kinetics (tidal) projects in Southeast Alaska, which could lead to potential impacts to submarine, near shore aquatic resources heretofore not experienced in Southeast Alaska.

Urbanization

Because of the relative remoteness of Southeast communities and the high proportion of federal and state public lands throughout the region, the effects of urbanization in Southeast Alaska will likely remain localized.

In the region as a whole and at the individual community level, future public funding is likely to focus primarily on the rehabilitation and maintenance of existing roads, streets, water/sewer utilities, docks/harbors, airports and public buildings, rather than substantial new construction of public infrastructure as occurred in past decades. The economic vitality of communities will largely determine the amount of private capital invested in new homes, commercial buildings, etc. in the future. Looking forward, fairly stable government and fishing employment provide the regional economy some insulation from external events affecting the other two engines of the Southeast economy – tourism and mining.

To the extent Southeast communities expand or are renewed in the future, there is likely to be an increase in impervious surfaces (new/rehabilitated roads, building roofs, bridges, and parking lots) and continued loss of riparian, wetland and shoreline habitat and vegetation. In addition to the unavoidable impacts to aquatic resources, other valuable functions (open space, recreation, drinking water protection) may be compromised and diminish a community's aesthetics or livability.

Timber Harvest

New timber road construction is currently anticipated to be less than 30 miles per year on average (USFS TLMP 2008 Revision EIS). Prince of Wales Island, the Petersburg and Wrangell areas, and northeastern Chichagof Island are currently at greatest risk of potential threats to aquatic resources from continued logging activities.

Community infrastructure and road development

As communities develop they face additional infrastructure demands and/or need to replace old infrastructure with new infrastructure. This is true for the development and/or repair of roads, as well as, schools, fire halls, hydroelectric faculties, clinics, business etc. In many communities throughout southern southeast it is nearly impossible to build without impacting aquatic resources.

Mining

The current high price of gold is encouraging additional mineral exploration, at existing mines (Kensington and Greens Creek), as well as reopening historic mining sites (AJ and Niblack). Future mining activity in the Southeast region is largely contingent on worldwide demand and the pricing of gold or base metal commodities. While not subject to COE mitigation, some Canadian mine prospects along the Taku River (Tulsequah Chief), Stikine River (Galore Mine) and Unuk River (Kerr-Sulphurets-Mitchell) could have downstream water quality impacts in Southeast Alaska.

Tourism

New remote tourism lodges or developments to satisfy potential demand for ecotourism niche markets in the future could cause localized impacts to aquatic resources. For example, Sealaska Native Corporation is seeking federal legislation to complete its Alaska Native Claims Settlement Act lands selections, including some remote coastal sites for small and large-scale tourism operations.

Aquaculture

Aquaculture is the breeding, rearing, and harvesting of plants and animals in all aquatic environments, including ponds, rivers, lakes, and near- and off-shore ocean areas. Currently, salmon hatcheries for fish stock enhancement dominate the aquaculture industry in Southeast Alaska, and the footprint of this coastal infrastructure has been in place for decades. No new fish hatcheries are slated for Southeast Alaska. Freshwater aquaculture and the farming of marine finfish are prohibited in Alaska state waters. Although offshore fish farming has received some attention at the federal level in recent years, no current efforts are underway off Alaska.

Shellfish aquaculture projects potentially could occur anywhere in Southeast Alaska where growing, tending, and harvesting conditions are favorable. Marine shellfish operations culturing oysters and clams are likely to increase as technology improves, shellfish farms become more profitable, and people are drawn to the remote lifestyle where few other economic opportunities exist. The State has identified 42 sites in coastal Southeast Alaska that are available as potential shellfish farm locations through its over-the-counter lease program. Shellfish operations have the potential to harbor and spread marine invasive species, and the first documented occurrence of an invasive sea squirt Didemnum vexcillum is in Whiting Harbor, Sitka.

SAWC and its member watershed councils have been working within individual Southeast communities to help develop solutions that restore functioning aquatic resources as well as protect these less tangible but important community values. As a regional in-lieu fee program sponsor, SAWC will continue to focus first at the community level to identify compensatory mitigation projects that ameliorate local aquatic resource losses from a community's renewal or expansion. If local restoration opportunities are not available in a timely manner, SAWC intends to look farther afield in adjacent biogeographic provinces for projects that will restore important aquatic resources.

c. An analysis of historic aquatic resource loss in the service area(s);

As of August 2012, the COE Alaska District regulatory division has not yet developed a system to track the acres and/or functions of aquatic resource habitat being lost to permitted impacts in Southeast Alaska and the State that is accessible to third party mitigation programs. In addition,

the COE Alaska District does not consistently require Section 404 permit applicants to state the type and/or function(s) of wetland being impacted. Therefore, an in-depth analysis of aquatic resource loss in Southeast Alaska is difficult to summarize. At this time SAWC is able to make broad statements based off of scientific reports, natural resource agency management reports, best professional judgment, and local and traditional knowledge regarding the loss of aquatic habitat in Southeast Alaska

The high precipitation of the temperate rainforest and flat coastal topography yield productive forested and emergent estuarine wetlands that have inevitably experienced some losses because people and their activities are also found along the coastline of Southeast Alaska. In general, impacts to aquatic resources in Southeast Alaska are locally concentrated in towns, along roads radiating from the towns, and also where timber harvest, transfer or milling has occurred. To a lesser extent, impacts occurred at isolated cannery or mine sites occupied along the coast in the early decades of the 20th century and at modern-day seafood processing, mining, and a few tourism-related sites found in the region. Hydropower sites with associated transmission lines have also impacted aquatic resources in locations throughout the region. Human activities and impacts historically occurred primarily along the coastline where flat and buildable land, fish-bearing marine and freshwaters, and access to relatively inexpensive marine transportation are found.

In Southeast Alaska towns, miles of marine shoreline are developed and stabilized; forested and scrub-shrub wetlands are replaced by roads, buildings, and other impervious surfaces; streams are channelized and impacted by road crossings, fill and runoff; and floodplains and wetlands are developed for residences and commercial sites. Urban shoreline alteration may disrupt nearshore primary productivity by blocking sunlight, altering water circulation patterns, and converting fine sediment shallows to rocky deep-water shoreline, as in the case of riprap fill. While not regulated under the COE authority and not a primary focus of this Framework, additional human activities impact aquatic resources through storm water runoff leading to chemical and biological pollutants, stream bank erosion, increased sediment loads, and water temperature changes; the disposal of poorly treated wastewater (sewage, detergents, chlorine, etc.) into the groundwater and the near shore marine waters; and the introduction of invasive plants or aquatic organisms.

In general, aquatic resource functions have been affected most intensively within and around the larger communities of Southeast Alaska and at heavily utilized areas of timber production and mineral extraction. The landscapes around many medium or small-sized Southeast communities are dominated by altered habitat resulting from past timber harvest, impacted by roads built primarily to facilitate that timber harvest, and community infrastructure. Away from urban centers and timber production areas, long reaches of wild shoreline and large areas of pristine rainforest, alpine tundra, and ice fields occur.

The Southeast Alaska Watershed Coalition Mitigation Fund intends to mitigate for unavoidable impacts to aquatic resources that are most likely to occur primarily in the areas of concentrated

human development and at the occasional remote site development for hydropower, mining, tourism activities, and intra-region hydropower sites, power transmission lines and highways.

d. An analysis of current aquatic resource conditions in the service area(s), supported by an appropriate level of field documentation;

Southeast Alaska is a collection of over 2000 islands and is framed by a narrow band of mountainous mainland. The archipelago lies between the coastal mountain ranges of western North America and the North Pacific Ocean and contains the world's largest temperate rainforest. The region is characterized by a maritime climate, moderated by warm ocean currents from the south, and is dominated by heavy precipitation and cool, overcast conditions year-round. At lower elevations in the southern end of the region, nearly all of the 50 to 200 inches of annual precipitation falls as rain, whereas in the north and at higher elevations snow is typical in winter. This abundant precipitation maintains vast rainforests, extensive wetlands, innumerable streams, rivers, lakes, ponds, estuaries, and large ice fields and glaciers. Southeast Alaska encompasses an astounding 1,030 watersheds (Schoen and Dovichin 2007).

Southeast Alaska Land Cover

The Tongass National Forest, which covers approximately 78 percent of the service area, supports approximately 4,000,000 acres of wetlands (USFS 2008, p. 3-43); other landowners may support another 880,000 acres of wetlands (assuming similar ratios of uplands and wetlands). The terrestrial landscape is dominated by rainforest and muskegs (*Sphagnum* bogs) in the lower elevations, with alpine meadows, tundra, and glaciers at higher elevations. In some areas along the mainland, glaciated landscapes extend from sea level to the mountaintops, which reach to 18,000 feet at Mount St. Elias at the northwestern edge of the service area.

Vegetation and land cover statistics for Southeast Alaska are shown in Table 1. In summary, forests cover just over half of the landscape of Southeast Alaska (51 percent), ice/glaciers and rock about one-third (30 percent), non-forested upland (non-wetland) vegetation about one-seventh (15 percent), and non-forested waters of the U.S. (wetlands/meadows, lakes, stream, rivers, and marine shorelines) cover the remaining 4 percent. Clearly, the non-forested freshwater and coastal wetlands that provide important ecological functions are not abundant in Southeast Alaska and are worthy of restoration and mitigation.

Table 1. Vegetation and Land Cover Classes for Southeast Alaska across all Land

Ownerships (Albert and Schoen 2007)

Land Cover	Acres	Percent
Forest (including forested wetlands)		
Productive Old Growth	5,807,155	26.5

Clear-cut and 2nd growth	786,285	3.6
Other Forests	4,498,746	20.5
Non-forest Upland		
Alpine tundra	544,293	2.5
Slide zone	808,010	3.7
Shrub land	961,977	4.4
Herbaceous meadow	22,280	0.1
Other nonforest	1,059,347	4.8
Freshwater wetlands		
Muskeg meadow	261,579	1.2
Emergent wetlands	47,630	0.2
Lake	204,547	0.9
River bars and channels	199,082	0.9
Coastal Cover/Wetlands		
Algal bed (marine)	82,370	0.4
Rocky shore	38,703	0.2
Salt marsh	33,458	0.2
Sand/gravel beach	5,795	0.0
Tide flat	12,577	0.1
Unconsolidated sediments	111,824	0.5
Unvegetated		
Ice and snow	3,596,244	16.4
Unvegetated	2,999,016	13.7
Urban	9,831	0.0
Total	**21,891,885**	**100.0**

Freshwater Wetland Types, Functions and Services

Ecological and societal services provided by forested wetlands include water storage, filtration, and release; wildlife habitat; timber production; recreation; and carbon sequestration. *Sphagnum*-dominated bogs store, release, and filter water, store carbon, and provide wildlife habitat. Sedge-dominated fens typically have higher rates of photosynthesis than bogs, and therefore store more carbon while storing, filtering, and releasing water. The fens also provide feeding and nesting habitat for many wildlife species. Streams, lakes and ponds provide fish and wildlife habitat and water supply for human and wildlife needs. The Tongass National Forest encompasses 45,000 miles of known streams and more than 20,000 lakes and ponds. Of this vast freshwater habitat, about 10,800 miles (25%) of streams and 4,100 (21%) of lakes and ponds are documented anadromous fish habitat (Schoen and Dovichin 2007, Ch 9.5). The Alaska Department of Fish and Game's Catalog of Waters Important for the Spawning, Rearing, and Migration of Anadromous Fishes identifies numerous salmon streams throughout Southeast Alaska, and the Forest Service identifies these as Class 1 anadromous and high-value resident fish streams.

Local, intact aquatic resources also provide valuable services as open space, recreation sites, (drinking) water quality protection, and flood control that enhance the human use and aesthetics of a community. The functions and services are subject to unavoidable impacts when the Corps issues permits for projects that clear, drain, and fill wetlands as communities grow or redevelop and transportation or resource developments occur throughout Southeast Alaska.

Coastal Marine Habitats

Southeast Alaska has approximately 30,000 km (18,000 mi) of marine shoreline that supports abundant populations of shellfish, fish, and wildlife in a complex mosaic of geophysical and biological features where uplands, freshwater, estuarine, and marine environments interface (Schoen and Dovochin 2007). These combined features support primary productivity from plankton, algae, kelps, eelgrasses and marsh grasses; shellfish production from Dungeness crab, clams and shrimp; fish production from herring, flatfish, rockfish and salmon; and a diverse ecosystem that includes many species of marine birds and marine mammals. The communities of Southeast Alaska rely on these coastal resources to support significant components of their economies dependent on subsistence, sport and commercial fishing, hatcheries, tourism, recreation, and wildlife viewing.

The ShoreZone coastal habitat mapping and classification system, consisting of geo-referenced aerial imagery collected for the interpretation and integration of geological and biological features, characterizes the intertidal and nearshore environments of Southeast Alaska. About one-third (13,536 km) of Southeast Alaska was mapped by ShoreZone through 2008, with most of the remaining shoreline imaged and additional mapping underway. The shorelines mapped to date are generally located in northern Southeast (Yakutat to Icy Strait, Lynn Canal to Tracy Arm, northern Chichagof Island to Sitka) and southern Southeast (Revillagigedo Is., Misty Fjords, to Canadian border, southeastern and western Prince of Wales Island).

The ShoreZone system maps the occurrence of common organisms as distinct biological features along the shoreline and nearshore areas. Some features, such as eelgrass and kelp beds, are considered high value because of the primary productivity, structure and spawning/rearing habitat these provide for shellfish, fish and wildlife of ecological, subsistence, sport, commercial and cultural importance. These high-value habitats occur in estimated 50% (25% -eelgrass- and less than 33% -kelp beds) of the shoreline mapped to date.

The ShoreZone project also classifies larger scale features such as mudflats, estuaries and man-modified shoreline (i.e., shoreline altered by bridges, docks, fill, etc.). Mudflats and estuaries are considered high-value habitat, while man-modified shorelines offer less valuable habitat. Mudflats are important for many species of shellfish and flatfish and are critical to migrating shorebirds. Estuaries are nursery areas for many fish species, including juvenile salmon out-migrating from freshwater to the ocean. These high-value coastal habitats are relatively rare: mudflats being less than 1% and estuaries less than 15% of the shoreline mapped to date. Human modifications occupy less than 1% of the mapped shoreline. Man-modified shorelines in the northern Southeast 2004-05 survey areas occupy slightly more linear kilometers than mudflats, whereas comparatively less man-modified shoreline is evident in the southern Southeast 2006 survey area (Table 4).

Table 4. Coastal Feature Occurrence in Southeast Alaska 2004-2005 and 2006 ShoreZone Project Areas (NMFS 2006, 2008)

Coastal Feature	Data Year	Total Km Mapped	Percent of Project Area Mapped	Percent of Total Km Mapped to Date
Mudflats	2004-2005	58	0.9	0.8
	2006	50	0.7	
Estuaries	2004-2005	1,194	19.1	14.6
	2006	789	10.8	
Man-Modified	2004-2005	61	1.0	0.7
	2006	36	0.5	

The mudflats and estuarine habitats provide accessible, low-gradient shorelines, and many Southeast Alaska communities are located near these valuable habitats. The ShoreZone project

provides SAWC with enhanced and readily accessible information about high-value coastal habitats and a tool to help identify opportunities for coastal restoration sites throughout the service area.

Throughout Southeast Alaska, coastal watersheds that could experience future COE permitted impacts contain the freshwater and marine features described above. Estimates of the acreage in these types were previously provided in Table 1. Further, Table 2 provides estimates of the extent of high-value mudflats and estuaries found along the coastline of Southeast Alaska.

e. A statement of aquatic resource goals and objectives for each service area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide;

Considering the lack of watershed plans that have been developed for the purpose of mitigation in Southeast Alaska there are few defined aquatic resources goals and objectives set for each of the 8 digit HUC's in the program service area. However, during the first few years of operation as The Southeast Alaska Watershed Coalition Mitigation Fund carries-out the process to build its list of Roster sites (See section 7 part f. for detailed description of Roster site selection strategy) SAWC, the IRT and partners will begin to develop a more comprehensive understanding of the broader watershed needs and accompanied mitigation goals and objectives for each sub basin.

The overall aquatic resource goals for The Southeast Alaska Watershed Coalition Mitigation Fund are to:

a) Substantially increase the extent and quality of restoration, enhancement, creation, and protection of natural resources for activities that impact wetlands, and other waters of the state, which includes waters of the U.S.;

b) Achieve ecological improvements in the service areas by directing ILF funds to restore, enhance, create aquatic resource types and functions that are appropriate to the geographic service area, and by integrating ILF projects with other conservation activities whenever possible;

c) Identify wetland systems and other aquatic resources of watershed significance that should be protected through fee acquisition, conservation easements, or other tools for permanent conservation;

d) Facilitate effective and responsible levels of mitigation of Alaska's aquatic resources that will support an efficient regulatory program; and

e) Improve coordination among and between agencies with respect to wetland policies and regulatory programs to ensure efficiency in effort, consensus in outcome, and consideration of wetlands at the landscape scale

After, completing an initial analysis of potential restoration sites throughout Southeast Alaska it has become obvious to regulatory staff and SAWC that in many watersheds there are few

mitigation opportunities. In those watersheds where mitigation opportunities do exist the necessary techniques to maintain and improve the condition of the aquatic resource vary significantly throughout the region. This is why, under this program, SAWC will develop site specific partnerships with the entities that have the technical expertise and experience to support the type of mitigation technique necessary for any given project.

Under The Southeast Alaska Watershed Coalition Mitigation Fund SAWC will look to mitigate all types of aquatic resources, including wetlands, streams, shorelines, upland buffers, and riparian zones in Southeast Alaska and in locations that have been identified using the watershed approach outlined in this Prospectus. SAWC and mitigation site project partners will carryout a wide spectrum of mitigation techniques and methods to maintain and improve the quantity and quality of aquatic resources in the programs services area, including but not limited to:

1. Stream bank rehabilitation,
2. Fish passage improvements,
3. Silva culture practices,
4. Toxic/solid waste removal,
5. Storm water management,
6. Wetland creation,
7. Wetland enhancement,
8. Invasive weed management,
9. Riparian reclamation and enhancement
10. Reclamation of historic abandoned mining sites

As stated on page 6 of this prospectus, each mitigation site will have a detailed mitigation plan. These mitigation plans will outline specifically the techniques that will be used to carry out each type of mitigation. In this way, the IRT, other agencies, interested and/or concerned stakeholders and members of the general public will be able to provide input, as well as, information and scientific reports to SAWC on project site design, implantation, ecological performance standards, etc.

f. A prioritization strategy for selecting and implementing compensatory mitigation activities;

SAWC will work with the IRT, community- based watershed councils and groups, municipalities, tribes, Alaska native corporations, natural resource agencies, non-profit organizations, industry, environmental consultants, landowners and land management organizations to identify potential projects that will provide compensatory mitigation for COE permitted activities in their communities.

This section provides an overview of how the SAWC will prioritize selection of mitigation receiving sites to meet watershed needs.

The development and rational of this section is based off of the *King County Mitigation Reserves Program In Lieu Fee Program Instrument,* King County WA.

The King County Mitigation reserves Program was approved in 2011 by the COE, Seattle District Office. SAWC staff worked with the staff of the King County Department of Natural Resources and Parks who developed the instrument for this program. SAWC is greatly appreciative for the information, resources and technical expertise offered to us by the King County Department of Natural Resources and Parks. SAWC is confident that this site prioritization strategy is rigorous and if followed will support the ecological lift of aquatic habitat; as well as meet the requirements of the 2008 Federal Rule. Once in operation this site prioritization strategy can and will be adapted to meet the unique ecological, economic, and social characteristics of Southeast Alaska. However, in the interim the outlined strategy is

appropriate for The Southeast Alaska Watershed Coalition Mitigation Fund.

The first two steps in the mitigation decision-making process apply to all impact projects as required by federal, state, and local rules:

1. **AVOID** and **MINIMIZE** impacts as required by federal Clean Water Act, state policies, etc., and
2. Exhaust all ecologically appropriate **ONSITE** mitigation options.

When unavoidable impacts to aquatic areas are allowed and mitigation fees are collected to enable offsite mitigation, decisions will be made according to the following stepwise approach:

Step 1. Document Impacts

a. SAWC staff completes impact site assessment and data collection, and provides data to Southeast Alaska Mitigation Fund Program Manager *(the specific information collected during this process will appear in the Draft Instrument and Instrument).*

b. Southeast Alaska Mitigation Fund program manager enters impact description and data into the Mitigation Fund Site Database.

The Mitigation Fund database will support accounting functions, map production, compliance reporting and efficient program implementation. The database will include information about mitigation sites and any related credit fulfillment projects that have been undertaken on them. In addition, SAWC will strive to collect information about impact sites that has been recorded during application process in the database. This attribute will allow SAWC to analyze over time how the type of impacts within the service area relate to the nature and type of mitigation performed. The database will be regularly updated as additional sites are identified and are determined to be suitable according to program criteria.

Step 2. Determine watershed needs in a watershed context working from the sub watershed (12 digit HUC) where impact(s) occur(s) out to the larger sub basin (8 digit HUC) watershed boundary.

a. The Mitigation Fund program manager, staff and partners will review best available science and document watershed needs. The program manager will consider all available watershed plans, analyses, watershed characterization efforts, staff expertise, partnership expertise etc. in a manner consistent with how watershed needs have been determined for each 8 Digit HUC and or biogeographic region. Any other special factors or attributes of the particular sub basin will be considered as well, including presence of fish enhancement facilities, existing or planned major restoration projects, existing or planned major development projects, timber sales etc.

b. The Mitigation Fund program manager will present and discuss watershed needs analysis to the IRT. The IRT and program sponsor will identify the type and location of potential mitigation sites to mitigate for the impact(s) for which fees have been collected.

c. Documentation of watershed needs with identified potential mitigation sites will be presented to the IRT as impacts accrue and mitigation site selections are proposed, not in advance.

Step 3. Determine if area of impact and/or functions lost at impact sites are critical to the ecological needs of the watershed (choose (a) or (b) below)

a. If impacts are to an area of aquatic resource and/or functions that are of critical importance to the watersheds, determined by the Chair and IRT the Mitigation Fund program manager will **look for a mitigation receiving site within the 8 digit HUC where the impact(s) occurred** that mitigates the area and/or functions lost at the impact site(s).

Due to the requirement to acquire land and complete initial physical and biological improvements by the end of the third growing season after an applicant purchases a mitigation credit (33 CFR 332.8(n)(4)), if a 8 digit HUC mitigation sites/projects cannot be identified within 18 months, the Mitigation Fund program director shall seek a site for out-of-watershed mitigation. This mitigation at the selected site should address watershed needs and any new information available at the time the decision is being made. This 18-month time frame is intended to be a general guideline to ensure mitigation occurs according to the timeline outlined in the Final rule. (*Go to Step 4)*

-OR-

b. If Mitigation Fund program manager determines the area and/or functions lost at impact site(s) are not of critical importance to the watershed:

Look for a mitigation site in the service area that meets watershed needs

Step 4. **Consider type, amount, and location of impacts to aquatic habitat area and/or functions** and **consider needs of watershed** (if arriving at Step 4 from 3a) **or service area** (if arriving from step 3b)

a. Program Manager review impact site(s) data and reviews map of available Roster sites and Roster site data.

b. Program Manager selects one or more Roster site(s) addressing watershed needs for recommendation to the IRT.

c. Program Manager presents to the IRT the site selection recommendations and rationale for the site selection, including documentation of sub basin and/or watershed needs.

Following review and approval by the IRT of the selected site(s) and associated concept plans SAWC staff will develop a Mitigation Plan for IRT review. Upon IRT approval of the Mitigation Plan, The Southeast Alaska Watershed Coalition Mitigation Fund program manager will begin implementation of the mitigation project(s) according to the credit fulfillment steps that will be outlined in the Draft Instrument and Final Instrument. In all cases, "Land acquisition and initial physical and biological improvements must be completed by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer determines that more or less time is needed to plan and implement an in lieu fee project." (33 CFR 332.8(n)(4))

In the event of failure to meet this schedule without appropriate justification and approval by the COE following consultation with the IRT, SAWC shall be subject to non-compliance provisions that will be described in the program instrument. Additionally, "if the sponsor fails to provide the required compensatory mitigation, the district engineer may pursue measures against the sponsor to ensure compliance." (33 CFR 332.3(l)(3)). These measures will be discussed with the sponsor and/or other responsible parties and, "may include site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The measures must be designed to ensure that the modified compensatory mitigation project provides aquatic resource functions comparable to those described in the mitigation plan objectives." (33 CFR 332.7(c)(2),(3))

This section describes The Southeast Alaska Watershed Coalition Mitigation Fund Receiving Sites:

Mitigation Fund Receiving Sites

The SAWC Mitigation Fund will maintain two lists of potential mitigation receiving sites: (1) the "Roster": a list of sites that have been reviewed and do not have any known insurmountable barriers preventing use as a mitigation receiving site, and (2) a list of "candidate receiving sites" which may be appropriate as Roster sites. The process by which properties will be added as a candidate-receiving site is outlined above.

When considering the location of mitigation receiving sites and mitigation projects, SAWC will take steps to identify all potential receiving sites in the service area that provide benefits in a watershed context – sites in both public and private ownership. Special consideration should be given to lands that are (1) at greater risk of conversion from an undeveloped to developed state (e.g., privately-owned vacant lands with mitigation project potential), (2) areas that are currently developed that could be returned to a natural state, and (3) areas which were formerly wetlands that have been filled.

If no sites enrolled on the Roster provide suitable mitigation opportunities for a given impact, candidate-receiving sites will provide a pool of potential mitigation sites that may offer an opportunity to implement better mitigation. The best possible receiving site will be selected to meet mitigation needs.

Enrolled Roster Sites (The Roster)

Within each 8 Digit HUC, one or more Roster sites will be identified as potential mitigation receiving sites. These sites will be chosen based on a number of factors:

- Identification of the site as a priority for ecological enhancement within published plans or other watershed planning documents and/or internal analyses related to ecological needs for a given subbasin,
- Development pressure in the same basin as the site as indicated by recent permit volume, and
- Availability of the site for use as a mitigation receiving site, considering multiple factors including ownership and funding source(s).

A site is "enrolled" on the Roster when **all** of the following three conditions are met:

1. The site is owned in-fee by SAWC. Or, if owned by another public entity or private landowner, the site is permanently-protected by a conservation easement or other similarly protective covenant or deed restriction or the landowner has agreed in writing to deed restrictions that will protect the property and any mitigation project on the property in perpetuity.
2. The site has been determined to be eligible to receive mitigation (i.e., there are no known restrictions related to funding sources or site location, zoning, deed restrictions, etc. A final review will need to occur prior to project implementation).
3. The site has been determined to have establishment, restoration, enhancement, or preservation potential or conservation values worthy of protecting (either through a formal planning process or based on professional judgment of resource management staff).

Just because a site is enrolled on the Roster doesn't guarantee a mitigation project will occur at the site (although for mitigation through the SAWC to occur at a receiving site, the site must be enrolled on the Roster).

SAWC Roster Sites

SAWC Roster sites will be properties meeting the criteria above to which SAWC owns the title in-fee or for which SAWC or project partner is the grantee of a conservation easement. Sites owned in-fee by SAWC that are not protected by a conservation easement will need to be protected with a similarly protective covenants prior to implementing mitigation.

Maps and lists of all SAWC Roster sites within each subbasin will be documented in the Mitigation Fund's program database.

The SAWC Roster sites will range in size. These sites will be selected from properties based on their potential for ecological lift on the site, low-risk of project failure and potential for the project to benefit ecological processes and functions in a watershed, i.e., to meet ecological needs and address limiting factors identified in watershed analyses and technical plans. Roster sites will be screened to ensure the source of funds used to acquire the property (in fee or easement) allows use of the site to generate mitigation credit. Sites with existing conservation easements will not be available to generate credit through preservation as defined in the 2008 Final Rule [33 CFR Part 332.3(h)].

Roster Site Selection Criteria

The Mitigation Fund will adopt specific site selection criteria to choose Roster sites in order to be consistent with the 2008 Final Rules. In determining ecological suitability of a Roster site as a mitigation-receiving site, the SAWC will consider the following:

B. Watershed scale characteristics that are important to ecological processes and habitat structure and function, including forest cover, habitat connectivity and diversity, precipitation type/amount, surface storage type/amount (streams and wetlands), areas of recharge and storage, groundwater flow patterns (including discharge areas) and the degree of impairment to these characteristics;

C. Hydrologic conditions, soil characteristics and other physical and chemical characteristics;

D. The size and location of the compensatory mitigation site relative to hydrologic sources (including availability of water rights) and other ecological features;

E. Compatibility with adjacent land uses and watershed management plans;

F. Reasonably foreseeable effects the compensatory mitigation project will have on ecologically important aquatic or terrestrial resources (e.g., shallow sub-tidal habitat, mature forests), cultural sites, or habitat for federally or state listed threatened or endangered species;

G. Sites that can benefit from reversion to previous land uses (i.e., forestry, mining);

H. The extent to which the site has potential to contribute to the protection or restoration of watershed processes;

I. The potential of the site to accommodate timely implementation of a restoration or enhancement project that will succeed in the watershed and ecosystem setting;

J. Availability of projects at the site that do not require "highly engineered solutions," **(**e.g., a pump to provide water to a site).

K. Other relevant factors including but not limited to:

1. Development trends;
2. Anticipated land use changes;
3. Habitat status and trends;
4. The relative locations of the impact and mitigation sites in the stream network;
5. Local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern);
6. Water quality goals;
7. Floodplain management goals; and
8. The relative potential for chemical contamination of the aquatic resources.

SE Alaska Mitigation Fund Roster sites will be selected pursuant to the above criteria. Selecting an actual site on which to perform a mitigation project considers the aforementioned criteria and further considers the conditions that generated the mitigation need, such as the HGM or Crowdian class of the impact site, landscape position, elevation, ecosystem setting and functional condition.

Acquiring New Roster Sites

As SAWC works to build the list of Roster Sites, if in the future existing Roster sites do not offer necessary mitigation opportunities, and/or the list needs to be expanded the SE Alaska Mitigation Fund program manager can use available moneys in the Land Fee Accounts to acquire additional lands. Expenditure of funds from Land Fee Accounts for new Roster sites is subject to IRT review and approval, and such purchase may result in "preservation credits" (this concept will be captured in detail in the program's Draft Instrument and Instruments).

SAWC has identified "candidate" roster sites in the communities of Skagway, Haines and on Prince of Wales Island. Please reference Appendix A for an example of the information SAWC will provide for each candidate and roster project site. Including the project site report, the project map, and site photos.

g. An explanation of how any preservation objectives identified in paragraph (c)(2)(v) of 33 CFR part § 332.8 and addressed in the prioritization strategy in paragraph (c)(2)(vi) satisfy the criteria for use of preservation in 33 CFR part § 332.3(h);

Generally, SAWC does not expect to propose preservation as a mitigation option as its core service. However, SAWC views itself as a cooperating agent and catalyst that can help

developers and agencies identify solutions that meet mitigation goals and development needs. In cooperation with the COE and IRT preservation may be decided upon as a solution or partial solution to maximize the overall ecological health and sustainability of watersheds and aquatic resources in Southeast Alaska.

h. A description of any public and private stakeholder involvement in plan development and implementation, including, where appropriate, coordination with federal, state, tribal and local aquatic resource management and regulatory authorities;

The primary stakeholders involved with the development of this prospectus and the final program Instrument are the IRT members which have a review and advisory role to the COE regarding the approval of SAWC's In-Lieu Fee Program under the 2008 Final Rule. In an effort to explain The Southeast Alaska Watershed Coalition Mitigation Fund and the current review to other potentially interested parties in the Southeast Alaska region, SAWC has been and will continue to conduct outreach to Southeast community land use/planning officials, non-profit organizations, tribes, municipalities, landowners, native corporation land managers, and other resource and real estate professionals. SAWC developed a *Draft* Prospectus, which is not required under the 2008 Final Rule, in order to build knowledge and awareness of SAWC staff, advisory board, board of directors, and IRT members. We have incorporated feedback, concerns, and questions into this Prospectus. In addition, over the past two years, we have organized significant outreach and public education opportunities in order to understand better the diverse spectrum of stakeholder perspectives of aquatic resource mitigation and what strategies and processes a third party mitigation program provider should consider in order to respond to the unique aquatic resource mitigation challenges and opportunities that exist throughout Southeast Alaska. We invite questions or comments and provide a link to the SAWC website (www.alaskawatershedcoalition.org) for the public and agencies alike to review our draft documents and provide comments to the COE Chair and IRT during the public review process.

i. A description of the long-term protection and management strategies for activities conducted by the in-lieu fee program sponsor;

See section 5 of this document.

j. A strategy for periodic evaluation and reporting on the progress of the program in achieving the goals and objectives in paragraph (c)(2)(v) of 33 CFR part § 332.8, including a process for revising the planning framework as necessary;

SAWC will be obligated to provide an annual accounting to the COE and the IRT in the form of a credits-debits ledger to quantify and account for permit-specific aquatic resource losses and SAWC's offsets gained through compensatory mitigation projects.

SAWC anticipates that it will meet regularly with the COE and IRT as the ILF Program matures. Also, SAWC will be obligated to submit an annual report on the in-lieu fees received and disbursed from its ILF Program Account, income generated through investments, and expenditures for compensatory mitigation projects and administrative costs.

As part of these overall evaluations, SAWC would examine its efforts in achieving the previously identified goals and objectives of the SAWC ILF Program. At that time this Framework and other documents associated with this ILF will be reviewed.

8. A description of the in-lieu fee program account

The program sponsor establishes the ILF program account to track the fees accepted and disbursed. The account must track funds accepted from permittees separately from those accepted from other entities and for other purposes (i.e., fees arising out of an enforcement action, "such as supplemental environmental projects," donations, and grants.) The account must be established after the instrument is approved and before any fees are accepted.

SAWC, as the ILF Sponsor, will maintain the SE Alaska Mitigation Fund program account with a financial institution that is a member of the Federal Deposit Insurance Corporation (FDIC). The ILF program account will be professionally managed, funds to be held in FDIC-insured sub-accounts and certificates of deposit, and interest earned is regularly deposited into the account. The ILF payments received will be deposited in the ILF Program Account, with a %15 administrative fee directed to the ILF Sponsor's unrestricted funds account and used for reasonable overhead and the administrative costs to operate and manage the ILF Program.

Funds from the ILF Program Account will be used for the selection, design, acquisition, implementation, monitoring, long-term stewardship or management, and permanent protection of ILF mitigation projects. The ILF Sponsor will track staff time and other routine expenses to specific ILF Program activities as they evaluate, select, acquire and establish long-term stewardship or management of preservation properties. The COE has the authority to audit the ILF Program Account at any time. Any interest accruing from the account must remain in the account for the program to use for the purposes of providing compensatory mitigation.

Fees will only be used for the purposes of directly replacing and managing aquatic resources, such as: identification and selection of appropriate compensation sites, survey and design of mitigation projects, acquisition-related costs (e.g., appraisals, surveys, title insurance, etc.), fees associated with securing a permit for conducting mitigation activities, activities related to the restoration, enhancement, creation, and/or preservation of aquatic resources, maintenance and monitoring of mitigation sites, and the purchase of credits from mitigation banks interesting thought.

SAWC's ILF program Instrument will include a provision that requires SAWC to establish and maintain an annual report ledger and individual ledgers. The credits and financial transactions must be tracked not only on a programmatic basis (i.e., the number of credits available for the entire program and the total amount of funds accepted and expended by the program), but for each individual compensation project undertaken by the program sponsor (i.e., the number of credits generated for each individual project and the amount of funds accepted and expended for each individual project).

SAWC will work with the IRT and establish and maintain an electronic system for tracking the production of credits, credit transactions, and financial transactions between the ILF Sponsor and permittees, as follows:

- **Credits Ledgers** will account for the credit transactions. The ledgers will track credits sold to permittees (that become ILF Sponsor "debits") as well as the credits that are fulfilled (and released) when ILF mitigation projects are completed. The Sponsor will maintain a *routine projects ledger* that tracks credit transactions for projects with smaller-scale wetlands impacts throughout the service area. The running balance of advance credits available for the entire ILF Program will be calculated as routine project credits transactions occur. Individual *large project ledgers* will also be maintained, as needed, for the less frequent, larger-scale project with separate accounting of credit transactions as the credits are sold and subsequently fulfilled when mitigation projects are executed. The production of credits from each ILF mitigation project (i.e., released credits) will also be tracked.

- The **ILF Financials** (i.e., the ILF payments accepted and the ILF funds expended from the ILF Program Account) will be tracked according to standard accounting practices and reported annually.

9. Next Steps

After reviewing this Prospectus and public comments, if the COE determines that SAWC may proceed with submission of a draft instrument, SAWC will develop the following elements required of a complete draft instrument:

1. Service Area
2. Accounting Procedures
3. Provision stating legal responsibility to provide compensatory mitigation
4. Default and closure provisions
5. Reporting protocols
6. Compensation planning framework
7. Advance credits
8. Method for determining project specific credits and fee and draft fee schedule
9. In-Lieu Fee program account

References

(2001) Montana Statewide In-Lieu Fee Program. ***Montana Departmen of Environmental Quality and Trout Unlimited – Montana Waters Project***

(2010) Oregon In-Lieu Fee Program. ***Oregon Department of State Lands***

(2011) Aquatic Resource Mitigation Fund. ***New Hampshire Department of Environmental Services***

(1994) Alaska Wetlands Initiative: Summary Report. ***EPA, COE, USFWS, National Marine Fisheries Service***

(*2009) Alaska District Regulatory Guidance Letter: RGL ID No. 09-01*. COE

(*2008) Compensatory Mitigation for Losses of Aquatic Resources Final Rule: 33 CFR Parts 325 and 332 and 40 CFR Part 230*. EPA, COE

(*2009) In-Lieu Fee Mitigatio: Model Instrument Language and Resources.** ***Environmental Law Institute

(2010) In Lieu Fee Prospectus. ***Puget Sound Partnership***

(2011) Southeast Alaska Land Trust In-Lieu Fee Program. ***Southeast Alaska Land Trust***

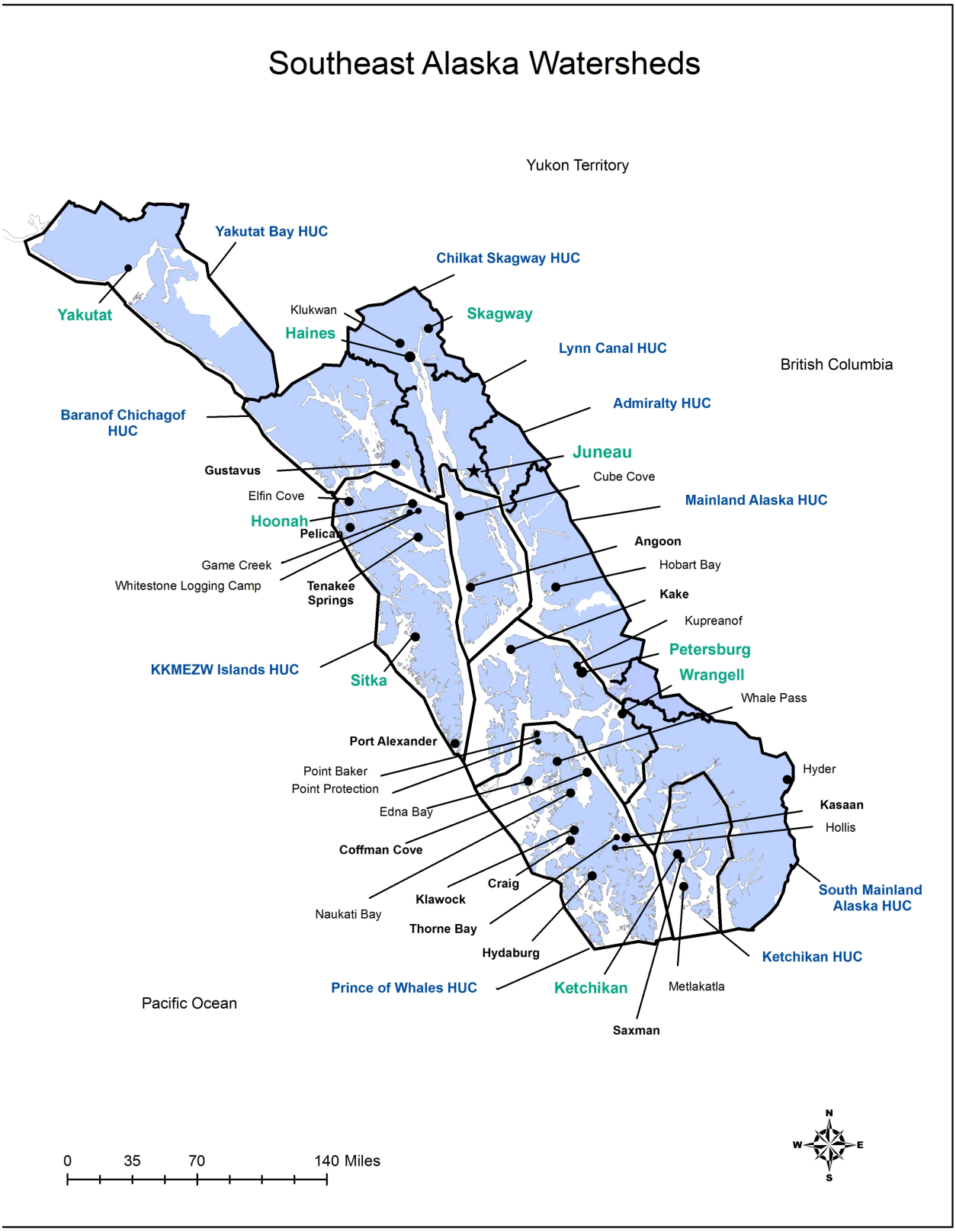
(2009) ***Alaska District Regulatory Guidance Letter: RGL ID No. 09-01*AKCOE**

(2011) King County Mitigation Reserves Program In Lieu Fee Program Instrument. ***King County Department of Natural Resources and Park***

(1994) Alaska Wetlands Initiative; Summary Report. ***EPA, COE, USFWS, NOAA***

(2001) Compensating for Wetland Lossess Under the Clean Water Act. ***The National Academies***

Appendix A: Service Area Map



Appendix B: Example Candidate Site Project Report, Map and Photos

SOUTHEAST ALASKA WATERSHED COALITION
CONNECT - INFORM - PARTICIPATE

PO Box 1203
Haines, AK 99827
alaskawatersheds@gmail.com
alaskawatershedcoaltion.org
907.766.3745

Site Name: Porcupine Bridge Pond Site

Project Location: Located 26 miles north of Haines on Haines Highway across the Porcupine Bridge to the west.

59.411361, -136.002845

Wetland Type: R3USC, Riverine Upper Perennial Unconsolidated Shore Seasonally Flooded

Watershed Name: Klehini

AWC Stream ID: 115-32-10250-2077-3015 (adjacent to the pond)

USGS-HUC: 1901030310

Ownership Type: State (DNR)

Size: 8 acres of open water, 12 acres including pond and buffer

Site Characteristics: This site is a borrow pit formed into a manmade pond used for swimming and other recreational activities. It is surrounded by alders, cottonwoods, spruce and bushes. It is located 85 meters west of the Klehini River. It is speculated that there are rearing fish in this pond.

Background: This borrow pit that is located on state land, which is now part of the Eagle Preserve. Gravel has been used for numerous projects over the years, but this is no longer allowed based on a policy with the Eagle Preserve.

Overall Project Goal(s): Improve rearing habitat for salmonids and maintain productivity of amphibians.

Project Objectives: To contour parts of the bottom of the pond to encourage vegetation and other complexities for rearing fish. Improve fish access to the pond from the Klehini River. Add woody debris to pond margins for cover for fish. Maintain recreational use of the pond.

Type of Mitigation: Restoration and Enhancement

Potential Functions to be restored: fish rearing habitat enhancement, amphibian habitat enhancement.

Project Significance for Mitigation: This is an easily accessed site with high visibility in the Eagle Preserve. As an opportunity within a State of Alaska protected area it should have high *priority*.

Potential Barriers to Project Success: Impacts from recreational activities.

Contact Information: Preston Kroes (Alaska State Parks Ranger)

Ecological Suitability: (refer to 332.2(d) Site Selection of the 2008 Final Rule)

a. **Hydrological conditions:** The pond is approximately 8 acres and is located 85 meters from the Klehini River. This area becomes saturated and fills the pond during cycles of heavy rain.
b. **Watershed scale features:** The Klehini River runs east west next to the pond but they are not connected. There is very little topography within the immediate vicinity of the pond. There is an anadromous fish stream 50 meters to the west of this pond running north-south.
c. **Size and location in relative to other hydrologic sources:** The Klehini River is a large braided, glacially fed river that varies in width from 100-600 meters
d. **Compatibility with adjacent land uses and watershed management plans:** Yes
e. **Foreseeable affects this project with have on aquatic or terrestrial resources:** Improve rearing habitat for salmonids and maintain productivity of amphibians.
f. **Other habitat relevant factors including, habitat trends, stream impact, habitat corridor for wildlife, habitat for state or federally listed threatened and endangered species, etc.;** None
g. **Other human use relevant factors including, land use changes, development trends, local or regional goals for water quality and floodplain management, relative potential for chemical contamination of the aquatic resources:** None

Project Efficacy: (as a potential Compensatory Mitigation Site)

✓ **GREEN:** NO obstacles

YELLOW: Potential obstacles based on private ownership, compliance order, etc.

RED: Major obstacles that may be insurmountable in the mitigation process

- There is a chance that DNR is only granting conservation easements on parcels adjacent to existing State of Alaska special areas or refuges. This site might fit within this criteria.

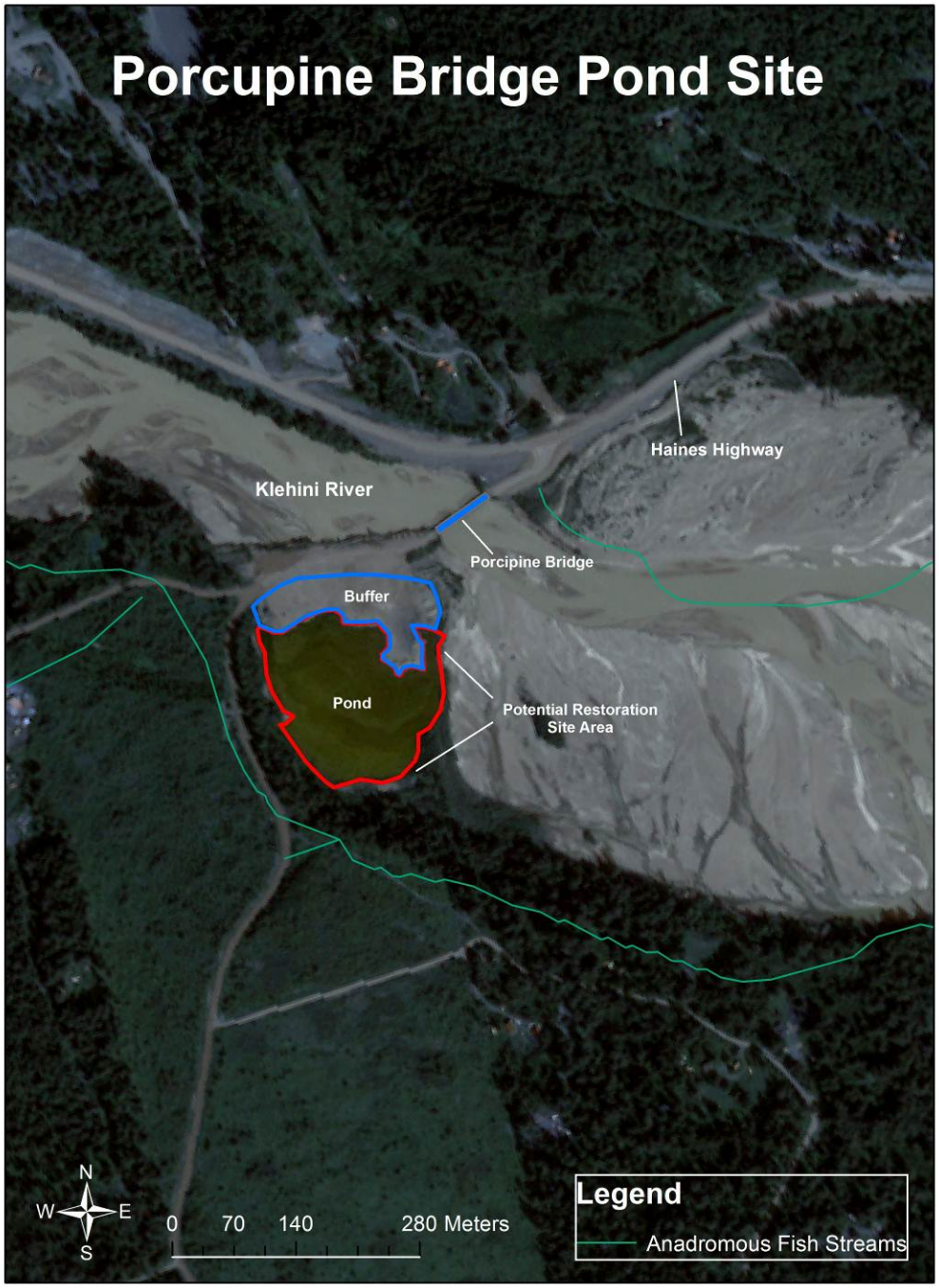


Figure 1. Potential Restoration Site with Buffer

Figure 2. Looking southeast toward pond and fill site. *Photo: Melany/SAWC 7/4/2012*

Figure 3. Looking southwest at pond and fill site. *Photo: Melany/SAWC 7/4/2012*

Figure 4. Looking at pond from the west. *Photo: Melany/SAWC 7/4/2012*

Figure 5. The pond is surrounded by alders cottonwoods, fireweed, willow and spruce. *Photo: Melany/SAWC 7/4/2012*

Figure 6. View of pond from the west.

Photo: Melany/SAWC 7/4/2012

Figure 7. View from west at Porcupine Bridge.

Photo: Melany/SAWC 7/4/2012