

Su-Knik Mitigation Bank Modification Memorandum

Regarding: Request for Approved Instrument Modification for the Su-Knik Mitigation Bank
(Expansion of the Su-Knik Mitigation Bank Service Area)

Request: This memo is to serve as our official request for modification of the approved Umbrella Mitigation Banking instrument of the Su-Knik Mitigation Bank. We are citing section 332.8(d)(6)(i) of the 2008 Final Rule (EPA 40 CFR Part 230; 4/10/2008) as our guideline for submitting this modification request. The requested modification is to expand our service area.

We have grouped this memo into four discussions. First is the actual service area that we would like to be granted. Second is the regulatory support for this service area. Third is the base ecological support for this service area. Last is the economic support for this service area.

In the attached Exhibit we have provided the draft amendments to the instrument that will facilitate this requested modification.

Service Area, The Matanuska Susitna Borough Political Boundary

We request the political boundary of the Matanuska Susitna Borough, which roughly equate to the 6-digit Hydrologic Unit Code 190205 and one additional 8-digit HUC, the 19020402 HUC, which comprise appropriate portions of the Susitna and Matanuska river watersheds (please see Figure one below).

We are defining our requested service area expansion as the political boundary of the Matanuska Susitna Borough rather than the related HUC codes for two primary reasons.

First, the Great Land Trust's In Lieu Fee Program (GLT ILF) (POA-2006-545) dated July 20, 2011, was granted a service area of the Matanuska Susitna Borough political boundary. The GLT ILF will be sourcing properties from throughout the Matanuska Susitna Borough, as we have done, and we feel that in order to be consistent the IRT should expand our service area to be at least equivalent to that granted to the GLT ILF.

Second, during our certification process we reviewed and selected properties from the approximately 300,000 acres of land held in fee title by the Matanuska Susitna Borough. The roughly 12,000 acres of land we selected for inclusion in the Umbrella Mitigation Bank Instrument of the Su-Knik Mitigation Bank, were the best properties for inclusion based on the highest ecological functionality (as defined in the ecological matrix that was designed with the IRT) and probable threat of future development of those high quality wetlands.

In the future it is probable that more wetlands will be brought into the bank beyond these initial 12,000 acres. These future lands, just as the initial 12,000 acres, will be selected from the entire land holdings within the Matanuska Susitna Borough political boundary.

For these two reasons we feel that the Matanuska Susitna Borough political boundary is most appropriate.

We also request that the IRT consolidate the site-specific bank service areas, so that we can sell the credits generated from any of the parcels anywhere within the umbrella service area. This would mean that any parcels certified under the Umbrella MBI of the Su-Knik Mitigation Bank would be able to provide compensatory mitigation for impacts in the political boundary of the Matanuska Susitna Borough.

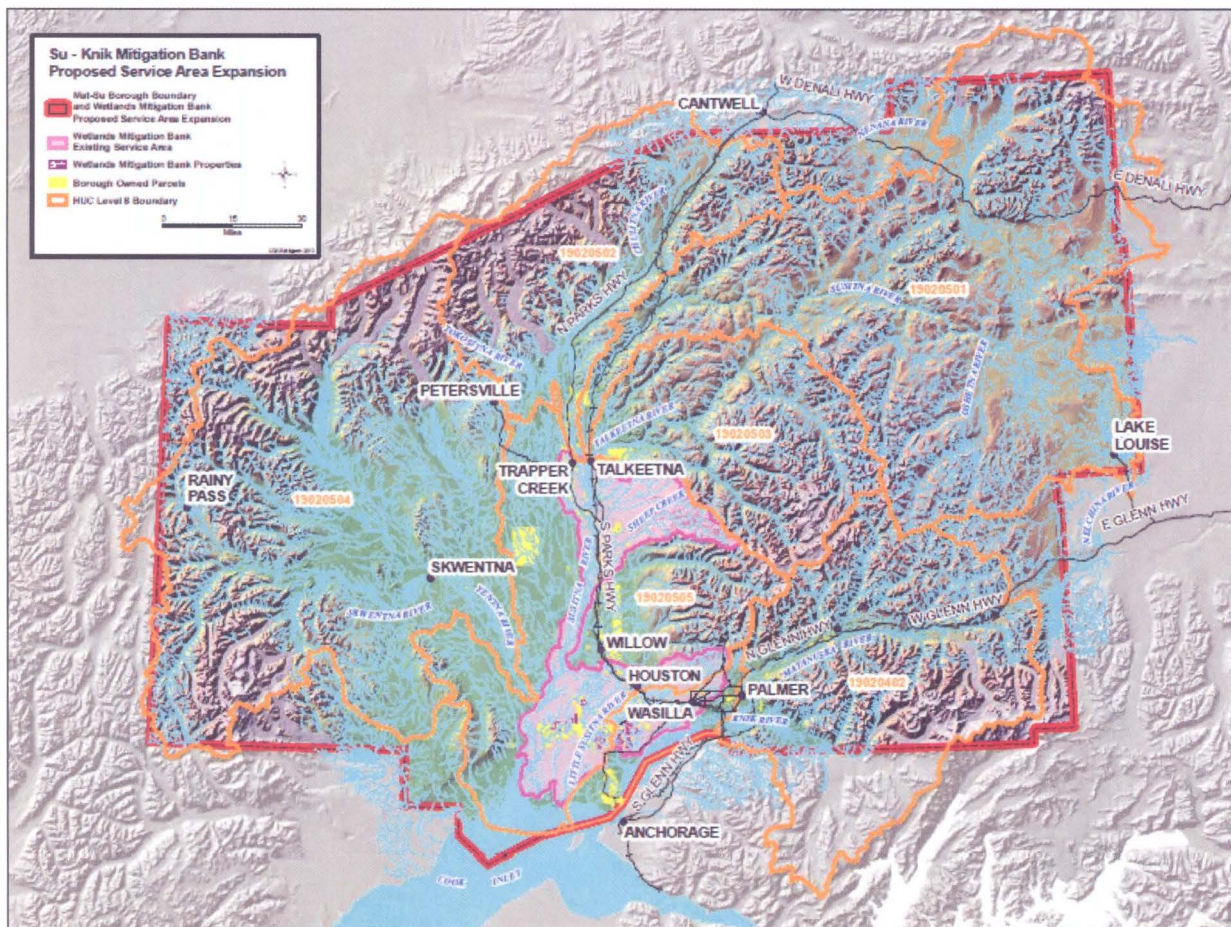


Figure 1. Proposed Su-Knik Mitigation Bank Service Area Boundary, the Matanuska Susitna Borough Political Boundary (in red, and the HUC boundaries in orange)

Regulatory, Ecological, and Economic Justification for Service Area Expansion

Regulatory Support for 6 and 8 Digit HUC Service Area

The Matanuska Susitna Borough political boundary roughly compares with the 6-digit Hydrologic Unit Code 190205 and one additional 8-digit HUC, the 19020402 HUC, boundaries which comprise appropriate portions of the Susitna and Matanuska river watersheds (please see Figure 1 and/or Figure 2). At times we will discuss the appropriateness of these HUC codes rather than the political boundary because the HUC codes will allow for a direct comparison to the rational set out in the 2008 Final Rule (EPA 40 CFR Part 230; 4/10/2008). Therefore, please view the Matanuska Susitna Borough political boundary and the 6-digit Hydrologic Unit Code 190205 and one additional 8-digit HUC, the 19020402 HUC, as interchangeable for the purposes of our rational for the remainder of this memo. The proposed political boundary service area is shown in Figure one and the approximately equivalent HUC-unit-boundary service area is shown in Figure two (it is also shown in Figure 1, but Figure 2 is more clear for the HUC only boundary).

[Figure 2 on next page]

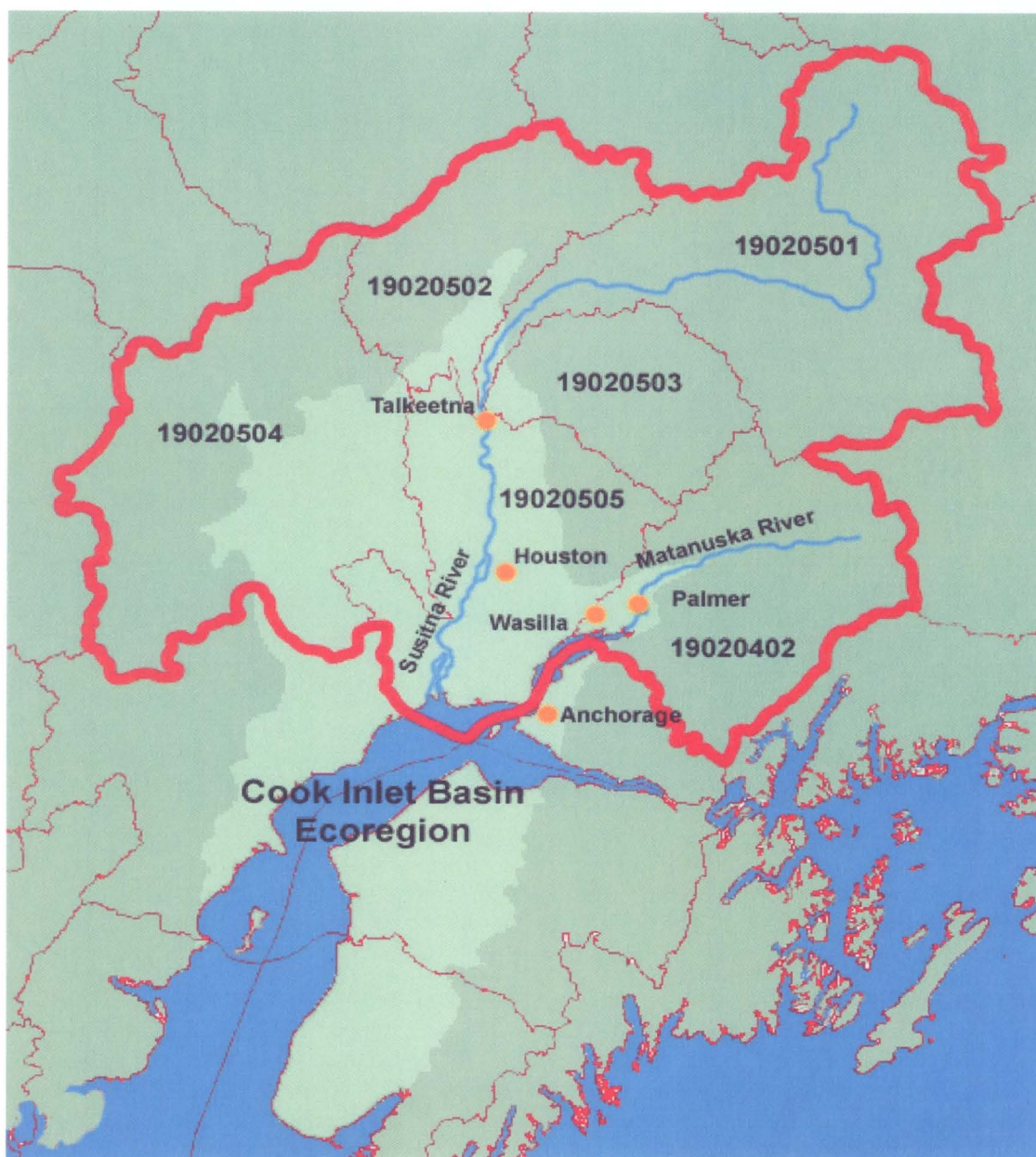


Figure 2. HUC Unit Area Approximately Equivalent to the Borough Service-Area Boundary. This is the 6-digit HUC 190205 comprised of the five 8-digit HUC's plus an additional HUC: 19020402.

This requested service area includes the northern half of the Cook Inlet Ecoregion (north of the Cook Inlet). Specifically, we request that the umbrella service area to be expanded to include entire political boundary of the Matanuska Susitna Borough (the 190205 6-digit HUC plus the 19020402 8-digit HUC).

Although we feel that there is support for our requesting the entire Cook Inlet Ecoregion as our service area, we are not going to request the southern half of the ecoregion and associated

watersheds at this time. The main reason is because we want to avoid competition with the two banks that are in the midst of the certification process in the southern Cook Inlet Ecoregion; by requesting the northern section of the ecoregion, we can enable the banks to maintain distinct service areas.

The authors of the Federal Guidance for establishing wetland mitigation banks carefully considered the ecological context limits that would be appropriate as the service area extent. They support the ecoregion concept. The 1995 Federal Banking Guidance (Federal Register, 1995. *Federal Guidance for the Establishment, Use and Operation of Mitigation Banks* (FR 60(228) 58605) supports the use of ecoregions as service areas for mitigation banks. The Register states that “The geographic extent of a service area should, to the extent environmentally desirable, be guided by the cataloging unit of the Hydrologic Unit map of the United States (USGS, 1980) and the ecoregion of the Ecoregions of the United States (James M. Omernik, EPA, 1986) or section of the Descriptions of the Ecoregions of the United States (Robert G. Bailey, USDA, 1980).” The entire Cook Inlet Basin Ecoregion is a portion of four distinct 6-digit HUC watershed units. This language suggests that the Rule authors (as well as the Nature Conservancy) consider the ecoregion or several 6-digit HUC’s as a reasonable area of comparable ecosystems within which impacts can be compensated by the bank.

We are not requesting the entire Cook Inlet Ecoregion, but merely the northern section of it, north of the Cook Inlet that includes parts of the Susitna and the Matanuska watersheds – the Matanuska Susitna Borough political boundary (the 6-Digit HUC 190205 and one 8-digit HUC 19020402). We want to point out that a significant amount of wetland impacts and anticipated 404 permit activity will occur within the watersheds that subdivide the Ecoregion.

In addition, the authors of the *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule* (EPA 40 CFR Part 230; 4/10/2008) carefully considered the watershed area in determining a service area for a bank. The Rule states that **“In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area.”** We consider the majority of the requested service area to be rural in nature (with the exception of central Wasilla and Palmer, which are already in the current service area), and therefore our request for the HUC areas within the Borough boundary is appropriate and consistent with the Final Rule.

Ecological Support

The Cook Inlet Basin Ecoregion has been identified by R. Bailey in *Descriptions of the Ecoregions of the United States* as an area containing a comparable assemblage of ecosystems that are distinct from surrounding ecoregions. In addition, the Nature Conservancy has recognized the ecological consistency and significance of the Basin. The Cook Inlet Basin ecoregion was the first terrestrial ecoregion assessed by the Conservancy in Alaska. The assessment recognized terrestrial and aquatic areas of biological significance that if managed with an emphasis on biodiversity—will likely conserve the fish and wildlife of the basin over the long term. In an effort to provide compensation where restoration opportunities are limited, it seems logical to use the Su-Knik mitigation bank as ecological compensation for wetland

impacts within the Cook Inlet Basin Ecoregion - the impact sites and the bank site locations would be within the same ecologically contiguous unit or basin.

The main argument that was brought forward during our certification discussions regarding the appropriate service area, was related to functional transfer. It was the fear of function transfer from an urban area which has likely already experienced local cumulative wetland losses to a rural area, and this was why smaller service areas are identified as appropriate for urban areas versus rural in the guidelines. The Final Rule acknowledges the trend by states and local governments to limit compensation in urban areas to within a given municipality or county. Although the Matanuska-Susitna Borough would qualify as 'rural,' many of the historic wetland losses have been localized in a few areas. This is the type of cumulative resource loss that heightens concern for function transfer.

While the use of bank credits as compensation for a particular project may result in function transfer, it may still be the best compensation option, i.e., environmentally preferable. It is also important to keep in mind that function transfer is much less of a concern in the rural areas (that would constitute the expansion of the service area), as these areas have not experienced, and likely will not experience, substantial cumulative loss. There will likely be a few permits issued in these areas, and the use of bank credits would still be a case-specific decision. Since the IRT considers allowing bank credits to be used to compensate for projects outside of the existing service area (e.g., Hatcher Pass or Willow) on a case-by-case basis, the IRT should support expanding the service area to include those areas - this is because the use of bank credits would provide the option without the additional paperwork, but use of the bank would still be decided on a case-by-case basis.

In the area that we request to be included in our service area, the choice would be expanded to become one of using bank credits as well as In Lieu Fee (ILF) or permittee-responsible compensation. The use of mitigation bank credits is generally preferred over the other forms of compensation, but we acknowledge that there are circumstances where either ILF or permittee-responsible projects would be preferred for a specific project (e.g., where an on-site, successful, restoration project with better ecological compensation is possible). However, it is widely understood that permittee-responsible projects will in many cases be impracticable. This is not only because opportunities for restoration or enhancement may be limited, but because applicants and local contractors typically lack the expertise to complete successful compensatory mitigation. Given the issues related to permittee-responsible mitigation, most compensation choices will likely be between using bank credits and paying an ILF. Whatever the case, the service area needs to be expanded in order to make these options available to more developing areas in the Borough.

The high proportion of unaltered wetlands (or the lack of opportunity for restoration) in the Susitna and Matanuska watersheds have precluded opportunities for compensation and for the attainment of no net loss of wetlands in the Section 404 regulatory program. The growth and development of the Susitna and Matanuska region will continue to impact wetlands and continue to create demand for wetland compensation. The Su-Knik Mitigation Bank can provide compensation options for permittees within the existing service area. Expanding the bank's service area would increase compensation options for the permittee. (Currently, much of the MSB is served by a single ILF program sponsor, The Great Land Trust). Providing a broader

service area can resolve the problem of finding practicable compensation and can facilitate implementation of the statutory requirement to compensate. It is anticipated that the Su-Knik Mitigation Bank will be the best option in most circumstances (best as defined by the preferred option based on the hierarchy description in the Final Rule (EPA 40 CFR Part 230; 4/10/2008)).

The current Great Land Trust ILF program, as noted above, already has the Matanuska Susitna Borough political boundary as their service area. **Matching the GLT ILF Matanuska Susitna service area as the Su-Knik Mitigation Bank's service area would level the playing field between banks and ILF program.** There is no inherent reason why banks and the ILF program should have service areas of substantially different sizes. The issue of function transfer is one that applies equally to banks and the ILF program. The Final Rule acknowledges that it may occur, and in fact may be unavoidable in some cases. Banks and ILFs partially address this because the provided compensation is intended to protect the most important aquatic resources within the service area, even if that results in the loss of local function. **Since the selection of parcels for the Su-Knik umbrella bank involved an evaluation of the entire Matanuska Susitna Borough (6-digit HUC), we know that all of the bank parcels represent some of the most valuable and vulnerable wetlands within the proposed larger service area. For example, the Big Lake South (BLS) parcels are important to the 6-digit HUC, not just to the current site-specific BLS service area. This is important.**

Economic Support

The Final Rule also states that "The economic viability of the mitigation bank may also be considered in determining the size of the service area." (EPA 40 CFR Part 332.8 (6)(ii)(A)). Impacts are taking place outside of the existing service area boundaries that are ecologically appropriate to be mitigated via the Su-Knik Mitigation Bank, and we need to get economic support for the bank, which will enable us to fund the long term management account as soon as possible. The greater the service area, the greater the demand for credits - which will result in the addition of property that we incorporate into the bank.

In the past three years the Corps has allowed a number of projects (the Hatcher Pass Ski Project, the Port MacKenzie Bulk Facilities Project, POA-2012-326 Wasilla Creek and the southern portions of the Port MacKenzie Rail Spur) that have been, strictly speaking, outside of the service but have been allowed to use credits from the bank for their compensatory mitigation. We know of other projects that are outside of our current service area that, under current Final Rule guidelines, should be able to mitigate with credits from the Big Lake South parcel that are within the service area we are requesting. We feel that it is time to officially expand the service area so that it is not necessary for permittees to go through the extended process of having to make this request.

In addition, the certification took much longer than anticipated, mostly due to work we did that was not strictly for the certification, but rather for the groundwork required for a mitigation bank to function appropriately in the larger context of the regulatory framework of which it is just one part. For example, from the July 2008 Public Notice, it took nearly 16 months for final certification to be granted. Most of this was time taken to ensure signature of the MBI. This is much longer than called for in the Final Rule. Because of this, we need to recoup funds as soon as feasible and ecologically appropriate. Essentially if it is desirable to see these large tracts set

aside, protected and the funds set aside for their long term maintenance, then there must be the demand to support these parcels.

Conclusion

We are requesting the Su-Knik Mitigation Bank Interagency Review Team to expand the service area of the Su-Knik Mitigation Bank to include the entire political boundary of the Matanuska Susitna Borough (6-Digit HUC 190205 and one 8-digit HUC 19020402). This request is supported by the regulations put in place to oversee the determination of service areas, as well as ecological and economic reasons. The redefined service area will also bring the mitigation bank on par with the Great Land Trust ILF bank in the Matanuska Borough, and the other banks in the state. We ask that the redefined service area be granted and become effective immediately.

We also request that the IRT consolidate the site-specific bank service areas, so that we can sell the credits generated from any of the parcels anywhere within the umbrella service area. This would mean that any parcels certified under the Umbrella MBI of the Su-Knik Mitigation Bank would be able to provide compensatory mitigation for impacts in the political boundary of the Matanuska Susitna Borough.

The expansion of the service area does not preclude that any required compensatory mitigation within the expanded service area will automatically utilize the Su-Knik Mitigation Bank as the source for providing mitigation - it simply allows for the potential use of the bank. As with all projects that require compensatory mitigation, the project manager and the permittee will work together to determine what the best and most appropriate form of compensatory mitigation will be, and in some cases that may not be the Su-Knik Mitigation Bank. But by not expanding the service area, the IRT would be making a preliminary determination that the Su-Knik Mitigation Bank should not be allowed to be considered as an option when determining the most appropriate form of compensatory mitigation in these areas.

Thank you for considering our request.