



# Wetlands Compensatory Mitigation

Department of Natural Resources  
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# WHY IS COMPENSATORY MITIGATION REQUIRED?

## **33 C.F.R. Part 332.3(a)(1) General compensatory mitigation requirements.**

*The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by DA (Dept. of Army) permits. The district engineer must determine the compensatory mitigation to be required in a DA permit, based on what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity. When evaluating compensatory mitigation options, the district engineer will consider what would be environmentally preferable. In making this determination, the district engineer must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project. In many cases, the environmentally preferable compensatory mitigation may be provided through mitigation banks or in-lieu fee programs because they usually involve consolidating compensatory mitigation projects where ecologically appropriate, consolidating resources, providing financial planning and scientific expertise (which often is not practical for permittee responsible compensatory mitigation projects), reducing temporal losses of functions, and reducing uncertainty over project success. Compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular DA permit. Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts."*

# COMPENSATORY MITIGATION OVERVIEW

- The US Army Corps of Engineers (USACE) is responsible for administering the wetlands compensatory mitigation requirements as described in Section 404 of the Clean Water Act.
- The Environmental Protection Agency (EPA) also develops regulations
- The USACE uses Aquatic Site Assessments (ASA) to determine the appropriate category of wetland impacts for purposes of assigning a mitigation ratio that can be translated into an in-lieu mitigation fee if needed

# COMPENSATORY MITIGATION TYPES & PROVIDER OPTIONS

## **Three provider options:**

1. Mitigation bank credits
2. In-lieu fee (ILF) program credits
3. Permittee-responsible mitigation

## **Mitigation Types:**

1. Restoration
2. Enhancement
3. Creation
4. Preservation



# TYPES OF MITIGATION PROVIDERS

**Mitigation Bank:** a wetlands area that has been restored, established, enhanced or preserved and is approved by the USACE to offset unavoidable impacts to waters of the US. Mitigation bank sponsors are responsible for the long term requirements of a mitigation site. Mitigation project is approved and completed before permitted impacts occur

**In-lieu Fee Program (ILF):** permittee provides funds to an in-lieu fee mitigation sponsor (non-profit or public agency), funds are used to develop and maintain a mitigation site. In-lieu fee provider is responsible for the long term requirements of a mitigation site. Mitigation project typically occurs and is approved after permitted impacts occur

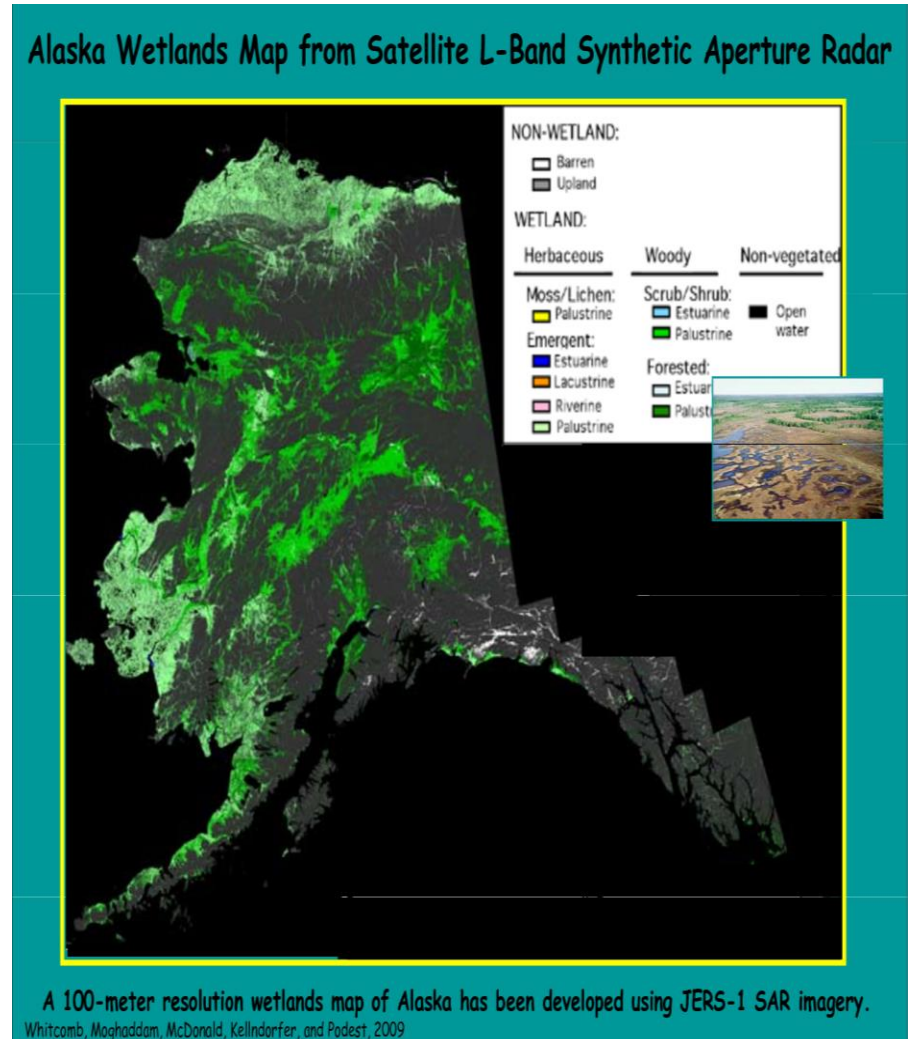
**Permittee-responsible:** applicant is responsible for development and long term management of mitigation projects

# COMPENSATORY MITIGATION IN ALASKA

- Current federal “no net loss” policy - Alaska’s wetlands are ubiquitous and were not rapidly declining as was the case with wetlands in the Lower 48 states.
- In 1994, federal regulators proposed the “Alaska Initiative” describing the unique nature of Alaska’s wetlands
- It was concluded that a flexible regulatory framework was necessary, emphasizing the “practicability” and “flexibility” of the regulatory program to reflect circumstances in Alaska - this initiative is not currently in effect.

# COMPENSATORY MITIGATION IN ALASKA

- Alaska's wetlands cover approximately 174 million acres, 43% of Alaska's surface area.
- There are limited available lands eligible for compensatory mitigation, due to the pristine nature of wetlands and small inventory of previously disturbed and privately owned wetlands in Alaska.



# COMPENSATORY MITIGATION IN ALASKA

- Only one provider of a federally approved in-lieu fee compensatory mitigation program for projects on the Arctic Slope of Alaska.
- In-lieu fee program instruments, estimated cost per acre could range from \$44,000 per acre to \$125,000 per acre on the North Slope
- Limited available resources and mitigation options in the private sector (i.e. wetlands, rivers, streams, lakes)
  - In most cases the State (or Feds) retained the rights to these resources



# Who Owns/Manages Alaska?

**Private Ownership - 12.1%**  
45.2 million acres

**State of Alaska - 24.1%**  
89.8 million acres

**U.S. Government - 63.8%**  
237.8 million acres



Russian traders arrived in Alaska in the mid-1700's and established small, scattered trading posts and settlements. Alaska Natives (the Eskimo, Indian, and Aleut peoples) continued as the primary landowners during this period of Russian occupation. On October 18, 1867, Russia sold Alaska to the United States government. As a result, the federal government owned the Alaska Territory, approximately 373 million acres - about one-fifth the size of the rest of the U.S.



**State of Alaska - 89.8 million acres**

Under the terms of the Alaska Statehood Act of 1959, the federal government granted the new state 28% ownership of its total area. Approximately 103,350,000 acres were to be elected under three types of grants:

- 1) Community - 400,000 acres
- 2) National Forest Community - 400,000 acres
- 3) General - 102,550,000 acres

Additional territorial grants for schools, university and mental health trust lands, totaling 1.2 million acres were confirmed with statehood.

All grants combined gave the State of Alaska approximately 105 million acres. To date, 89.9 million acres has been granted with the balance expected to be granted by 2009.

**ANCSA Native Corporation (Private)**  
39.3 million acres

On December 18, 1971, P.L. 92-203, the Alaska Native Claims Settlement Act was signed into law. The purpose of ANCSA was to legislate the terms by which Alaska Natives could acquire title to their lands. This claim had been unresolved for more than 100 years since the United States purchased Alaska from Russia in 1867.

Native lands are private lands. ANCSA mandated the creation of regional and village Native corporations to manage 44 million acres and payment of one billion dollars. Thirteen regional corporations were created for the distribution of ANCSA land and money. Twelve of those shared in selection of 16 million acres, the thirteenth corporation, based in Seattle, received a cash settlement only. 224 village corporations, of 25 or more residents, shared 26 million acres. The remaining acres, which include historical sites and existing Native-owned lands, went into a land pool to provide land to small villages of less than 25 people. To date, 39.3 million acres have been transferred to ANCSA corporations.

**Non-ANCSA Private & Local Government - 5.9 million acres**

Land in private ownership (other than Native land) comprises less than one percent of the total land in Alaska. Much of the best land for development around Alaska's communities is, or will be, privately owned. Private land development meets people's needs by providing places to live, work, shop and recreate. It also provides a tax base for cities and communities to help support public services.

Because local governments in Alaska have individual methods of transferring land into private ownership, land currently owned by them is grouped into this category.

Alaska is one-fifth the size of the conterminous 48 states.



**Bureau of Land Management - 82.5 million acres**

In Alaska, BLM's focus is conveying land, wildlife fire management, overseeing the Joint Pipeline Office (a partnership with the state and other federal agencies with oversight responsibility of the Trans-Alaska Pipeline), and responding to the public demand for use of the land they manage.

**U.S. Fish & Wildlife Service - 78.8 million acres**

The USFWS manages 16 wildlife refuges in Alaska. The two largest are the Yukon Delta National Wildlife Refuge and much smaller Arctic National Wildlife Refuge (ANWR), both of which are approximately 19 million acres.

**National Park Service - 52.4 million acres**

There are eight national parks in Alaska, including the five largest in the national park system:

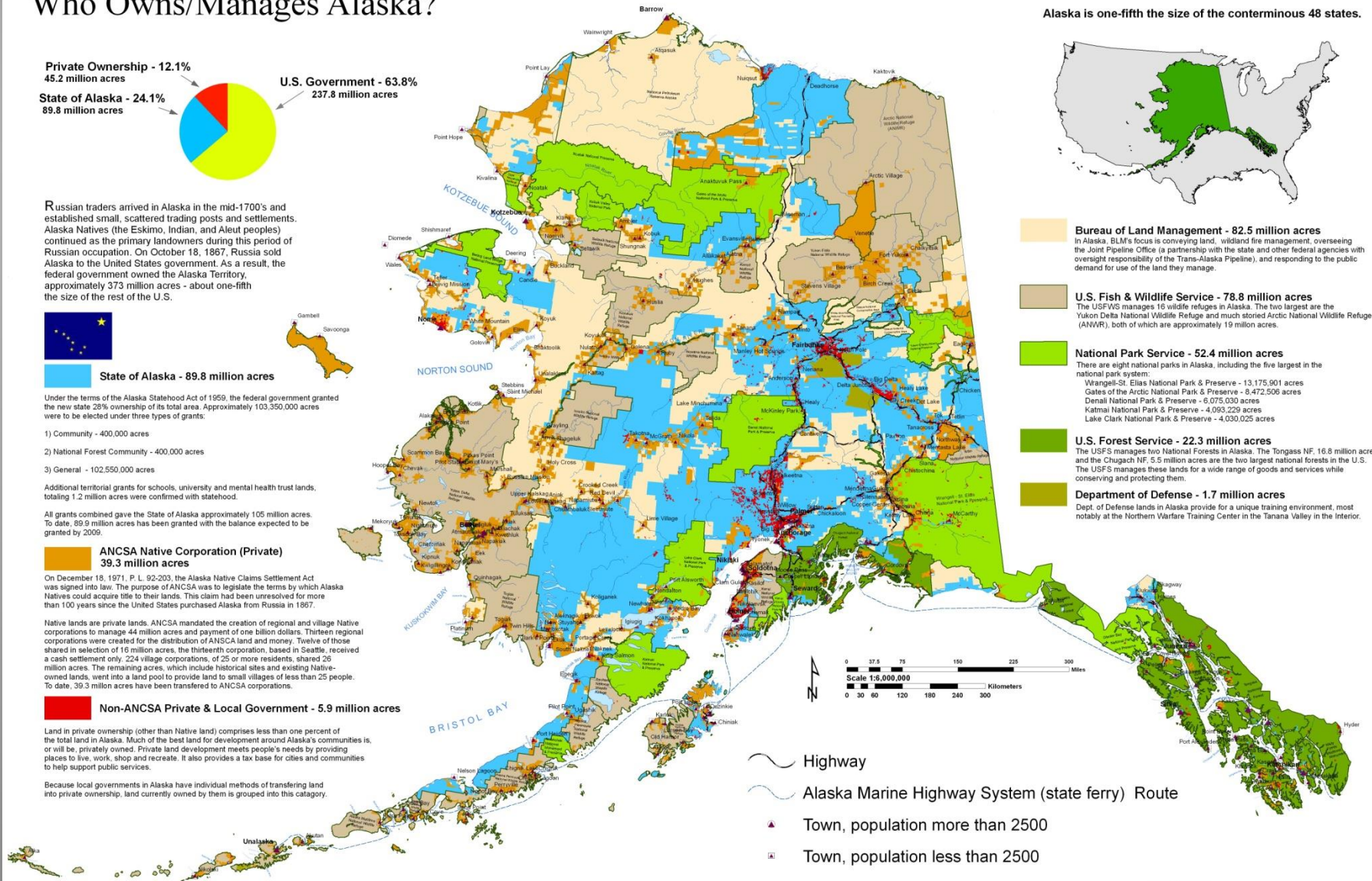
- Wrangell-St. Elias National Park & Preserve - 13,175,901 acres
- Gates of the Arctic National Park & Preserve - 8,472,506 acres
- Denali National Park & Preserve - 6,075,030 acres
- Katmai National Park & Preserve - 4,093,229 acres
- Lake Clark National Park & Preserve - 4,030,025 acres

**U.S. Forest Service - 22.3 million acres**

The USFS manages two National Forests in Alaska. The Tongass NF, 16.8 million acres, and the Chugach NF, 5.5 million acres are the two largest national forests in the U.S. The USFS manages these lands for a wide range of goods and services while conserving and protecting them.

**Department of Defense - 1.7 million acres**

Dept. of Defense lands in Alaska provide for a unique training environment, most notably at the Northern Warfare Training Center in the Tanana Valley in the Interior.



Maps produced by the  
**Alaska Dept of Natural Resources**  
**Division of Forestry**

# COMPENSATORY MITIGATION IN ALASKA

- Current and past mitigation needs
  - How have projects been mitigated in the past
- Future mitigation needs
  - Cost
  - Potential to have limited or no mitigation providers depending on region of the State
  - Limited resources available for compensatory mitigation projects
  - Definition of “threat” in Alaska

# 2008 MITIGATION RULE

- What changed
  - More detailed guidelines on the process to become a mitigation provider or to get a mitigation project approved (required contents for submittal, timelines, etc.)
  - Defined the hierarchy of mitigation options and providers
  - More detail on performance standards, long term management requirements, and reporting protocols
- Opportunity for program to fit Alaska's unique needs
  - How the rule is applied and interpreted here in Alaska resides with the USACE's District Engineer.
    - (i.e. when mitigation is required, what mitigation is acceptable, location and type of mitigation)

# GOALS OF A DNR RUN MITIGATION PROGRAM

- Develop a statewide In-Lieu Fee program
- Program would fill mitigation gaps, where there are not viable mitigation options/projects
- Offer a new suite of aquatic resources available for compensatory mitigation projects as required by the USACE/the Clean Water Act
- Reduce the need to encumber private lands with federally required conservation easements
- Assure that current and future development is not jeopardized by lack of available compensatory mitigation options

# OTHER STATE RUN COMPENSATORY MITIGATION PROGRAMS

- 31 Lower 48 states have a compensatory mitigation program: 25 run mitigation banks, 12 In-Lieu Fee programs
  - Some State's have a mitigation bank and an In-Lieu Fee program
  - Programs are generally administered by DNR and DOT



# QUESTIONS AND CONTACT

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