

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF GOVERNMENTAL COORDINATION

SOUTHCENTRAL REGIONAL OFFICE  
3601 "C" STREET, SUITE 370  
ANCHORAGE, ALASKA 99503-2798  
PH: (907) 561-6131/FAX: (907) 561-6134

CENTRAL OFFICE  
P.O. BOX 110030  
JUNEAU, ALASKA 99811-0300  
PH: (907) 465-3562/FAX: (907) 465-3075

PIPELINE COORDINATOR'S OFFICE  
411 WEST 4TH AVENUE, SUITE 2C  
ANCHORAGE, ALASKA 99501-2343  
PH: (907) 278-8594/FAX: (907) 272-0690

April 8, 1993

Walter Stieglitz  
Regional Director  
U.S. Fish and Wildlife Service  
1011 East Tudor Road  
Anchorage, AK 99503

Dear Mr. Stieglitz:

The State of Alaska has completed its review of the internal review draft of the Tetlin Refuge Public Use Management Plan. This letter represents the consolidated comments of the State's resource agencies.

As always, the State appreciates the opportunity to review this internal review draft. Such reviews give the State and the Service the chance to identify, and in many cases resolve, issues of importance to both parties. The State is pleased that this second internal review draft of the Tetlin PUMP has incorporated most of our previous comments.

Generally speaking, the State is supportive of most components of this plan, and much of it is well-written. We are concerned, however, by a subtle thread of bias toward nonconsumptive and educational programs at the potential expense of equally legitimate consumptive uses of resources on the refuge. (An example may be found on page 59). The majority of uses occurring on the refuge continue to be for hunting, fishing, and trapping as they have always been. Most of the use by nonconsumptive users is confined to the visitor center and viewing the refuge from the Alaska Highway. More emphasis should be placed upon minimizing impacts of nonconsumptive uses on traditional consumptive uses.

Recognition of State versus Federal Land Management Authorities

We note that in many instances the plan accurately portrays the land management authorities affecting state, federal, and private lands. We commend the writers for making the extra effort to include appropriate discussions. A few sections still need to be corrected:

Page v, paragraph 1 should be carefully rewritten to clarify that state and private lands within the boundaries of the park are not "within the refuge". (This situation is more accurately addressed in paragraph 1 on page 8.)

Page vi, paragraph 6, line 4. The PUMP gives no justification for the prohibition of airboats. Most airboat access within the exterior boundaries of the refuge would begin on navigable waterbodies. The State does not restrict activities on its waters unless resource damage can be proven. The State does not prohibit public uses on waterways based simply on the preferences of some user groups. If documentation of resource damage from airboats can be shown, the Service should approach the State to consider cooperative management decisions affecting access on navigable waterways (e.g. through state land plans, state Boards of Fisheries and Game controlled use areas).

### Water Rights

The plan should acknowledge the role of the State regarding water rights. Please include the following language:

Federal reserved water rights are created when federal lands are withdrawn from entry for federal use. They are created for the minimum amount of water reasonably necessary to satisfy both existing and reasonable foreseeable future uses of water for the primary purposes for which the land is withdrawn. The priority date is the date the land is withdrawn for those primary purposes.

Federal reserved water rights in Alaska can be claimed and adjudicated in basin-wide adjudications in conformance with the McCarran Amendment under state law, AS 46.15.165-169 and 11 AAC 93.400-440, either administratively or judicially. Alternatively, federal water rights may be applied for and granted under state law for either out-of-stream or instream water rights. In any case, water claimed or requested must be quantified.

The FWS will work cooperatively with the State of Alaska to inventory and quantify its federal water rights under state law. Water resources of the Tetlin National Wildlife Refuge will be managed to maintain the primary purposes for which the unit was established.

In addition to federal reserved water rights, the plan should note that a federal agency can apply for water rights through the existing state water rights system. By applying for water rights through the State it will, in many cases, provide the NPS with the senior water rights and save both the State and federal government the cost of a federal reserved water right

adjudication. The issuance of state water rights will not preclude the federal agency from applying for its federal reserved water rights in the future if the need arises. The Alaska Water Use Act also allows public agencies to apply for reservations of water for instream uses including fisheries, recreation, and water quality purposes.

#### Public Involvement

We commend the Service for working closely with local residents most directly affected by the public use management plan prior to making decisions about direction. However, we were unable to locate commitments to further participation by the state and public in subsequent revisions of this plan and in other plans affecting public use. These commitments are reflected on pages 8-9 of the CCP. We request inclusion of such commitments to cooperation in future revisions and amendments on page 2, paragraph 1, immediately preceding "Public Involvement" and on pages 2-3 in the discussions following "Public Involvement".

Pages 20-21. If the survey referenced here is the same as the May 1, 1989 Worksheet materials, the State provided a written response. Yet the numbers of respondents are only characterized as "individuals". If the State is counted the same as a individual, we once again object to numerical compilation of the results. The State represents numerous constituents. We reiterate that nonconsumptive uses should not be expanded to the detriment of existing, traditional, legislatively protected consumptive uses.

#### Traditional Access -- ATVs

Traditional access shall be permitted for subsistence activities (ANILCA Section 811). The front cover and numerous other locations within the plan state that access via all terrain vehicles and airboats is prohibited on refuge lands. We reiterate our objection to these unilateral closures of access which may be traditional (pre-ANILCA) and which otherwise may be allowed under appropriate refuge regulations (as accurately portrayed on pages 28-29). The plan does not discuss whether ATVs (ORVs) are acknowledged as traditional modes of access on routes not yet designated and whether such designations will be expeditiously pursued.

Furthermore, routes and trails traditionally used by ATVs (e.g., track vehicles, 3-wheelers) for access are provided in 43 CFR regulations for Interior managed lands in Alaska. If traditional routes and areas have been used, this use is protected and the Service should pursue the appropriate steps to designate such areas under Executive Order 11644. Closures of such access must

follow appropriate process laid out in ANILCA Section 811 and 1110 and in implementing regulations.

To date, the Service has taken no steps to pursue our request that cooperative, thorough studies be conducted to determine traditional routes or areas used by all terrain vehicles prior to establishment of the refuge. Such uses are protected under federal regulations and provisions of ANILCA. The Service has the authority to designate such routes and areas (as described on pages 28-29), but because studies have not been done, no trail designations have been made.

Such blanket prohibitions without studies is clearly inconsistent with the language and intent of ANILCA. Furthermore, the public interest is not served when users are prohibited from traditional modes of access for traditional activities just because the Service has failed to complete the designation process.

In our previous review of this plan, we have requested the Service give consideration to requests of local residents for designation of all-terrain vehicle trails to facilitate traditional access between the Alaska Highway and Hidden Lake and along the Cheslina River. We urge the Service to designate the existing trail from the Alaska Highway to Hidden Lake. This would require stabilization of the low-lying portions of the trail with corduroy (placement of logs laid crosswise) or other techniques to avoid trail degradation or braiding. Similarly, an ATV access route to the Cheslina River drainage should be designated given the historical and pre-ANILCA use of ATVs in the area.

Similar corrections need to be made where blanket access prohibitions are listed on page vii, paragraph 1: "Off-road-vehicles, airboats, and air-cushion vehicles are prohibited on refuge lands." (Note the inconsistent listings of "ATVs", "Off-road-vehicles", "all terrain vehicles", air-cushion, and airboats.)

Page 27, item 4. "Maintaining traditional access...as well as non-motorized means for subsistence users" is not technically consistent with ANILCA Section 811, which protects "and other means of surface transportation"--including motorized.

Page 29, "Off-Road Vehicles". The statement that the fragile nature of the environment makes ORV access via "few, if, any, routes feasible", is premature. The first ANILCA test is whether such activity was traditional (pre-ANILCA) and then whether resource damage is occurring, prior to closure.

We are frustrated that the Service took time and expense to survey local residents and refuge users regarding their "feelings" about what methods and means of access should be

allowed on the refuge (pages 23-25) when basic baseline data on pre-ANILCA uses has not been collected. This survey could have been used to initiate this type of study. Furthermore, survey respondents' "feelings" are not relevant in light of legislatively protected access which was part of the congressional intent designed especially for Alaska. We also question the appropriateness of the Service placing so much emphasis on public responses to a 3 year old survey of which only 3 dozen participants at workshops were included.

#### Issues Resolved in the CCP

Contrary to the plan's claim that it "**serves to implement issues which were resolved in the Tetlin refuge comprehensive conservation plan**" (inside cover page), numerous unresolved CCP issues remained which the Service agreed would subsequently be evaluated in implementation plans or CCP amendments. This agreement is subtly reflected by the inconsistent references in this plan as to what the CCP actually decided in terms of public uses. For example:

page v paragraph 2. "[CCP] established the **general direction** for management . . . including **specific aspects** of public use"

page v paragraph 3. "Some **public use issues needed a more thorough investigation** [than in CCP] and they are the focus of this Public Use Management Plan"

page v paragraph 4. "This document serves two purposes; 1) to implement the **general public use management strategies** decided in the [CCP]"

page vi paragraph 5. "This plan implements the **general management philosophy** as determined in the CCP"

page 1 paragraph 3. "This PUMP . . . implements the **general management scenarios** selected in the CCP and **proposes the resolution of certain public use issues which were identified as needing a more thorough investigation.**"

page 20 paragraph 2. "Although public use issues had been identified earlier, **the Service wanted the public's opinion as to the direction the refuge should follow in their public use planning.**"

(emphasis added in these examples)

Contrary to assertions in the CCP (page v para 2, and page 1 para 2), the CCP did not specifically resolve issues of subsistence

management, big game guiding, trapping, etc. as those were under management of the state and have subsequently been assumed by the federal agencies in several instances. In particular, access issues remained open to further study, but cooperative studies to determine pre-ANILCA access locations and methods have still not been done. For example, the CCP stated that the Chisana River ATV access trail was impassable in some locations, but this assessment was not made with the State or formally with local representatives.

### Management of Fish and Wildlife in Alaska

We appreciate inclusion of one of the most forthright and accurate discussions of our respective roles of the Service and the State regarding fish and wildlife (pages 3-4). We request the planning team make other teams aware of this language and suggest its adoption in all future public use management plans (with one minor exception regarding trapping as noted below).

Unfortunately, references to state and federal responsibilities are inaccurately described in other locations in the plan. We request these be corrected as detailed below:

Page vi, "ALTERNATIVES" paragraph 2. The first sentence should reflect that management of hunting is the authority of the State of Alaska. The paragraph should also clarify that the federal government *has assumed regulatory responsibility* to assure a subsistence preference among consumptive uses of the resources. It would also be helpful to the public to clarify that the State and federal government are in litigation as to the extent of authorities of the federal government to actually regulate fisheries and wildlife.

The second sentence should be rewritten (as should the inside cover page) as follows: "trapping, fishing, and sport hunting". This reorder will reflect the following facts. Trapping is not categorized as a type of activity; e.g, it is not distinguished as a *subsistence* versus *recreational* activity. This is reflected in congressional discussions prior to passage of ANILCA. Fishing (commercial, subsistence, and recreational) primarily occurs in navigable waters which are under the management of the State. In fact, in several court cases, the federal government is asserting that it does not regulate fisheries in navigable waters (e.g., Katie John). The reorder in wording suggested above avoids these technical misrepresentations.

Page 4, paragraph 2. We request the third sentence be rewritten to read: "The Federal Subsistence Board now has assumed responsibility...". As described above, the State asserts that the federal government is not authorized to regulate harvests in Alaska.

The draft plan does not include a bibliography, although references are made to data that were not available when the refuge Comprehensive Conservation Plan (CCP) was published in 1987. The State's review of the fish and wildlife-related information would have benefitted from knowing which data sources were used. We request inclusion of citations and a bibliography in the public review draft.

### Trapping

Congress specifically considered categorizing trapping and determined that trapping would not be categorized (i.e. subsistence, recreational). Congress only placed one limitation on trapping--that "commercial trapping", defined as that which involves the employment of additional persons, would be prohibited in parks. Consequently, statements in the plan should similarly not infer that trapping on the refuge is either subsistence or recreational. The following details the location of necessary corrections:

Page 1, paragraph 2. In the first sentence, delete the word "recreational" in association with the word "trapping".

Page 33, paragraph 1. Delete first sentence which states "all trapping occurring on the refuge is for subsistence." Is this intended to mean that all known trapping on the refuge is currently conducted by Alaskan residents?

Page 48, paragraph 3; and page 53 paragraph 2. Trapping is incorrectly categorized as consumptive recreation.

### Subsistence

Although the introduction to discussions on subsistence use of the refuge (page 17) clarifies that the definition is "in part", we urge insertion the entire ANILCA definition. The plan will be used as a current reference document by local and nonlocal users of the refuge as well as managers, and the entire definition should be readily available to readers.

The discussion of subsistence uses by Tok residents (page 18) includes specifics which are not source cited, e.g. the estimated numbers of game and waterfowl harvested from the refuge by Tok residents.

The plan says "No information was available for Tanacross residents" (page 19 paragraph 4). We request clarification that, although no study has been done which focuses on subsistence uses of the refuge by Tanacross, two published reports describe subsistence activities in Tanacross and other refuge area

communities. These also provide at least a general picture of subsistence uses of the refuge:

Marcotte, James R. 1991. *Wild Fish and Game Use by Residents of Five Upper Tanana Communities, Alaska, 1987-88*. Alaska Dept. Fish and Game, Div. of Subsistence. Technical Paper No. 168. Juneau.

McMillan, Patricia O. and Sal V. Cuccarese. 1988. *Alaska Over-the-Horizon Backscatter Radar System: Characteristics of Contemporary Subsistence Use Patterns in the Copper River Basin and Upper Tanana Area*. Vols. I & II. Anchorage: Arctic Environmental Information and Data Center.

The discussion of subsistence use (page 19 "Other communities") should also acknowledge that there probably is some use of the refuge by residents of the Copper River Basin, who conduct subsistence activities with friends and relatives from the Upper Tanana region. Similarly, Tetlin and Northway residents may engage in subsistence activities with friends and relatives in the Copper River Basin. The extent of this use has not been documented but was alluded to in the following report which we request be appropriately reviewed and referenced:

Haynes, Terry L. et al. 1984. *The Use of Copper River Salmon and Other Wild Resources by Upper Tanana Communities, 1983-1984*. Alaska Dept. Fish and Game, Div. of Subsistence. Technical paper No. 115. Fairbanks.

The State appreciates the refuge's commitment to cooperating with the Alaska Department of Fish and Game in subsistence monitoring and in determining whether proposed actions will significantly restrict subsistence uses (pages 30-31). However, the Division of Subsistence has had no contact from the refuge in either of these programs in recent years. We urge the refuge management to communicate with the Division of Subsistence as well as the divisions of Wildlife Conservation and Commercial Fisheries regarding subsistence harvest monitoring.

#### Additional Page-Specific Comments

Page vi, paragraph 7, line 2. Add: "...provided in Appendix A, and in the Alaska Department of Natural Resources' "Tanana Basin Area Plan for State Lands."

Page 1, Scope of the PUMP, paragraph 1. This paragraph is confusing to the reader. The Service has no authority to manage activities on land that is not a part of the refuge, even if public use associated with the refuge occurs there. The State will continue to work with the Service to coordinate management.



Page 2, paragraph 3, number 1). Add: "management of public use on Native-owned lands, state-owned lands and watercolumns, and other private...."

Page 7. We commend the Service for accurately portraying the refuge purposes, but we suggest that the section be clarified as a quote from ANILCA.

Page 8, Refuge Uplands and Non-Navigable Waters. Reword: " The Service manages federal lands within the refuge." The State owns and manages the water.

Page 8, Shorelands and Water Columns. Reword: "...owns the lands under many waterbodies and owns all watercolumns." State ownership of water columns is not related to navigability.

Pages 10-11 refer to management categories, some of which were modified by the Record of Decision. We request that all references to the CCP in the text state "CCP and ROD". This not only clarifies that (significant) changes were made in the ROD, but informs the public that the CCP is not the final administrative word on allowed uses in the refuge.

Page 13. If they do not already do so, the interpretive signs should clarify that the refuge is not immediately adjacent to the highway and that the State manages fish and wildlife. Paragraph 3 describes sign topics, which include "trapping of furbearer species"; this topic does not reflect a limitation to only address habitat types as stated on page 11.

Page 16-17. We request that the plan include a clarification that Regional Director Stieglitz recently committed to returning management of guide-outfitters to the state as soon as state commercial services regulations are adopted.

Page 17 paragraph 2 "Subsistence Use of the Refuge". The paragraph is so general that it does not clarify that subsistence eligibility plays a role in who harvests which resources. For example, subsistence use determinations presently render Tok residents ineligible for federal hunts on federal lands. We recommend contacting Terry Haynes, Division of Subsistence, to aid in rewriting this section.

The third sentence lists furbearers as a resource harvested on the refuge for "local consumption". We suspect the authors may be viewing trapping in too narrow a definition, consistent with the failure to recognize that trapping is not categorized to one type of harvest.

Page 23, Access, paragraph 1. Some corridor land not under refuge jurisdiction is state land. This does not "complicate" access to the refuge, since generally allowed uses may occur on

all state land. To say the corridor complicates in the framework of limiting access is untrue and misleading. Given the history and purposes of this refuge, the plan should reflect the value of the highway and the cooperative relationship with the State Department of Transportation and Public Facilities regarding pullouts and interpretive signs.

Page 25. The CCP plan states that the refuge will be pursuing a final cabin management policy and implementing regulations, and commits to further assessment for refuge management when those are completed. Page 25 indicates a high level of interest was expressed by the public in provisions for cabins, but the public use management plan does not address specifics. We request that the plan clarify what current information is being provided in response to the public inquiries about cabins, particularly regarding new construction.

Page 25. We suggest the plan recognize the extent of public concern identified in Tok and Northway regarding current ORV prohibitions and the public's desire that the Service proceed with designating traditional trails as represented in the public comments.

Page 26, paragraph 1. We appreciate the importance of the general guidance provided by the Refuge Manual; however, the plan should recognize that management of refuges in Alaska is dramatically modified by provisions of ANILCA. Furthermore, ANILCA objectives and mandates supersede administrative, national objectives.

Page 26, paragraph 2. Discussion of the "five purposes" should be revised to reflect that ANILCA Section 302 clearly recognizes that the listed purposes are not all-inclusive. For example, in sentences 1 and 2, the Service could delete "five".

Page 27, item 5. We remind the Service that ANILCA Section 1316 requires that temporary facilities (e.g., meat caches, tent platforms) necessary for the taking of fish and wildlife "shall be permitted". We were under the understanding that this activity would be addressed in the public use management plan.

Page 28 paragraph 2, last sentence. We remind the Service that regulations specific to federal conservation system units are not applicable to nonfederal lands within or adjacent to those units (ANILCA Section 103(c)). Furthermore, while the State will cooperate with the Service on management of state land and waters, such activities are not subject to the Service's compatibility determinations.

Page 28, last paragraph continuing to page 29. This section should be re-written to reflect the following corrected information: The width of the highway corridor totals 300 feet,

or 150 either side of centerline. The refuge boundary is 300 feet from centerline based on the location of the right-of-way in 1980 when the refuge was created, leaving a 150 foot-wide strip of non-refuge land between the refuge and the right-of-way. Since 1980, several sections of the highway have been realigned, so that in many places this non-refuge strip is greater than or less than the original 150 feet. The non-privately-owned portion of this strip is under the jurisdiction of the Bureau of Land Management (BLM), although it has been selected by the State. Such state selected areas are managed by BLM, although actions requiring permits must have the concurrence of the State. (The status of the north side of the highway is not relevant to this plan).

Page 29, lines 2-3. A "permit" is not the only way to achieve access -- cooperative agreements and other management options exist.

Page 29, Transportation and Utility Systems. The fact that the refuge boundary is set back along the highway is not relevant to any Title IX process for corridor development across the refuge.

Page 31, Commercial Use. Add to this section: "The State Department of Natural Resources requires commercial operators using state land to have a permit (see Appendix A)."

Page 32, paragraph 2. The last sentence should be corrected to reflect the full process required in Section 1110(a) to close access--first there must be a finding of resource damage.

Page 34. The discussions of foot trail developments is too general to ascertain the level of potential impact on local users. Trails should be kept to a minimum around campgrounds and the visitor center and carefully located to avoid competition with subsistence activities.

Page 42. We question the calculation that "the level of public use generated by refuge programs would increase by 30% under this alternative." Is this a 30 percent increase of the highway pullouts, leased state lands, adjoining trails? Or, is this an increase in use of the refuge? It appears the plan intended the former but it is not clear. If it is the latter, there will be major impacts to uses of the refuge by local residents.

Efforts to increase boat access to the Chisana River and Scotty-Desper Creek areas will likely impact local consumptive uses of the refuge, contrary to the plan's conclusions. Local users have already been impacted by nonlocal competition for moose and waterfowl as a result of the Service's information program and upgrading of the Desper Creek canoe launch site. While this access always existed, its new visibility has attracted more users.

Page 57, "Non-consumptive recreation". The third sentence refers to the canoe trail in the Scottie-Desper Creek area. This area is a popular fishing and hunting area, supporting a small pike fishery. While we support providing additional opportunities for floating, fishing, and canoeing, we believe that a major increase in these uses (brought about by the refuge's "advertising") will create significant competition for this area's resources. The refuge should monitor increases in use and work with the Department of Fish and Game in managing this use to insure that refuge fish and wildlife resources are maintained.

Page 65-66, "Summary of 810 Evaluations"; and page 67. It may be premature to conclude that Alternative C will not impact subsistence activities on the refuge. It is difficult to measure ahead of time the effects of improved access and visitor facilities on subsistence activities by local residents.

Page 66. We do not believe the plan has justified its claim that the status quo alternative would "hinder attempts to fully meet the refuge purpose which states, 'to provide, ...opportunities for interpretation and environmental education'" when the Service has adopted an "environmental education plan" (page 2, paragraph 2). Was that plan developed in cooperation with the State and affected organizations consistent with commitments of the CCP? The plan is primarily a detailed public education plan, with some specific decisions regarding area upgrades addressed in the CCP. The status quo is a major improvement over earlier years in providing information and cooperating in public education. We suggest rewriting this rather thin justification.

Page 68, Appendix A. Please replace Appendix A with the attached DNR management items (Director's Policy File 91-03, Interim Fee Schedule; Adding Short-term Commercial Recreation Camps to List of Generally Allowed Uses/Registration). In fairness to the public, do not excerpt these materials.

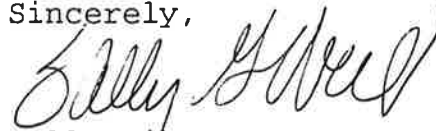
Page 73, Appendix B, last paragraph, line 2. Add: "... Tetlin Refuge is the Alaska Department of Natural Resources' Tanana Basin Area Plan...."

Page 73, "Tetlin Comprehensive..." and pages 74-75. We request the changes made to the CCP by the Record of Decision also be addressed.

Page 76, "Public Comments". Were the questions posed by the public answered by the Service? If so, the State requests to be informed of any responses since several of these questions affect State interests and constituents.

Thank you for the opportunity to review this document. We hope that you or your staff will contact us to discuss any of these comments that may be unclear, do not appear justified, or need further supporting information.

Sincerely,



Sally Gibert  
State CSU Coordinator

cc:

Steve Breeser, Refuge Manager, Tetlin National Wildlife Refuge  
Carl Rosier, Commissioner, Department of Fish and Game  
Glenn Olds, Commissioner, Department of Natural Resources  
John Sandor, Commissioner, Department of Environmental  
Conservation  
Bruce Campbell, Commissioner, Department of Transportation and  
Public Facilities  
Richard Burton, Commissioner, Department of Public Safety  
John Katz, Governor's Office, Washington, D.C.

**CSU Distribution List  
Tetlin PUMP IRD  
April 9, 1993**

*Tina Cuning, Department of Fish & Game, Anchorage*

*Terry Haynes, Department of Fish & Game, Fairbanks*

*Priscilla Wohl, Department of Environmental Conservation, Anchorage*

*Alice Iliff, Department of Natural Resources, Anchorage*

*Jeff Otteson, Department of Transportation/Public Facilities, Juneau*

*Paul Rusanowski, Division of Governmental Coordination, Juneau*

*Stan Leaphart, CACFA, Fairbanks*

*Mikel Haas, U.S. Fish and Wildlife Service, Anchorage*

# MEMORANDUM

Department of Natural Resources

State of Alaska  
Division of Land

TO: Director's Policy File  
DPF.93-05

DATE: December 31, 1992

THRU:

FILE NO:

FROM: Ron Swanson  
Director

TELEPHONE NO.: 762-2692

SUBJECT: Adding Short-Term  
Commercial Recrea-  
tion Camps to List  
of Generally Allowed  
Uses; Registration

The division's list of generally allowed uses lets people establish personal recreational camps for up to 14 days without any permit. In April, 1992, this exemption ceased to apply to commercial recreation camps. That change meant that hunting guides, fishing guides, raft outfitters, etc., were required to get land use permits for their spike camps and other short-term camps, just as they did for their base camps.

Permits for short-term commercial recreation camps had several advantages. They proved that guides and other commercial operators were authorized to use state land (hunting guides cannot "knowingly enter or remain" on anyone's land, whether for camping or day use, without prior authorization); they helped the division keep track of who was operating where; and they produced some rent from a profitable economic use of state-owned land. But the expense of reviewing applications is hard to justify, considering the minimal impacts of properly run short-term camps. The division faces further budget cuts, and staff time is better spent on field monitoring and enforcement than on paperwork. Therefore I am replacing the permit requirement with a simple registration system that will do the same job at lower cost. The list of generally allowed uses is hereby amended by adding:

Operating a short-term camp for commercial recreation purposes, including associated entry onto state land for guided or outfitted hunting, fishing, rafting, hiking, touring, or other recreational activity operated as a business, if before entry each year the camp operator or guide registers the entry's general location (such as a game management unit or river drainage) with the Division of Land; pays the annual registration fee for the camp's full period of operations; and agrees to comply with written conditions, including agreeing that each campsite will be at least two miles from the previous campsite, will be used no longer than 14 days (or a shorter period set by an applicable land use plan or special use land designation), and will be left vacant and clean after use. A short-term camp is a spike camp or overnight camp, or a series of such camps, using tents or other portable facilities that can easily be moved from the site, and that remains at each site no more than 14 days.

**Relationship to base camp permits** This registration system applies only to short-term camps and does not eliminate the permit requirement for base camps or longer-term facilities. Instead of using the registration system, a guide or other commercial recreation operator applying for a base camp permit on state land may include associated short-term camps in the permit application. If a permit is granted for the base camp, it will authorize up to two associated short-term camps at no extra charge, with each additional short-term camp charged at the fee-schedule rate. This fee structure is intended to reward honest reporting and reduce permit compliance problems. (In the past, some guides have claimed that their base facilities were short-term camps.)

**Camp operator's responsibility to check land status** The registration form is not a permit application and will not be adjudicated, sent through interagency review, or checked for detailed land status. Therefore it is the camp operator's responsibility to determine that the area he or she plans to use is indeed state-owned. However, to give commercial recreation operators a place to start their own land status research, DNR is trying to obtain digitized boundaries that have already been prepared by the Department of Fish and Game showing game management units and guide-outfitter use areas. These boundaries could then be portrayed on our Map E base of land remaining in federal ownership (including conservation system units), land conveyed to the state (including legislatively designated areas), and land conveyed to Native corporations.

**Registration/user agreement** The registration form requires the operator to state the type, area, and period of operation and is combined with the user agreement. A camp is duly registered if the operator submits the completed and signed form, accompanied by the required fee. The operator receives a copy of the user agreement; the original goes to the region.

**Fees** The registration is not a permit, so no permit application fee is necessary. However, the registration fee (user fee) is the same as the fee-schedule rate for a permit for commercial use. That rate is currently \$350, unless the camp will operate over a period of six months or longer (see DPF 93-06). The fee is charged per camp, not per campsite. As an example, a raft outfitter may offer two three-day river trips each week all summer long. If the river trips overlap, the outfitter pays for a total of two camps. If only one river trip is underway at any one time, the outfitter pays for one camp only.

**Public land record entry** The short-term, mobile nature of registered camps makes it inappropriate to show them on state status plats, but the division needs to be able to track the camps for management and field enforcement. Because they bring in no application fees, overhead expenses for data management must be kept very low. A minimal tracking system is being set up



on LAS under a new casetype (casetype 901, subtype 9012, is being used in the interim). A set of dummy casefiles will be entered each year representing generic classes of operators in each region,<sup>1</sup> e.g. all hunting guide operations in Southcentral. A dummy legal description (Z Meridian) is used for these casefiles. The new casetype will allow individual registrations to be batch-entered as single transactions under the appropriate casefile, including the operator's name and address, a code for the operating area, and the camp start/stop dates. With this no-frills system, registrants will not appear as customers on LAS, it will not be possible for R&B to do automatic billing, and registered camps will not show up in the land index for any actual township. However, LAS will be able to do basic data sorts such as listing all fishing guides who have registered camps along the Nushagak for the month of July. Hard copies of the registrations will be manually filed in the appropriate casefile.

Guides who have base camps on state land will already be on LAS through their permit file. Their associated short-term camps will be recorded as an LAS transaction under the permit file.

**Receipting** Each camp type and region will be listed on the registration form, along with its associated LAS number and receipt type. The camp operator will circle the item best describing his or her operation. The receipt clerk will enter that LAS number on the Revenue and Billing receipt screen, with the operator's name as the payer. A legend such as "Registered Short-Term Commercial Recreation Camp, Southcentral Region, Hunting Guide 1993" will automatically appear on the receipt because that description has been entered as the customer on the casefile. The only non-standard information the clerk will add is a brief description of the operating area, for example "22-01" for a guide-outfitter use area or "Nushagak R." for a river guide. The computer-generated receipt will serve as the operator's proof that the camp is duly registered for the current year. A copy of the receipt will be sent to the appropriate region, along with the original registration form/user agreement.

---

<sup>1</sup>For 1993, extra casefiles have been set up to allow short-term camp registrations within the six legislatively designated recreation rivers (Susitna Basin). By 1994, we expect to have completed the regulations mandated by the recreation rivers law. Those regulations will include a commercial use permit system that will eliminate the need for camp registrations.

**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND**

Northern Region  
3700 Airport Way  
Fairbanks, AK 99709  
(907) 451-2705

Public Information Center for  
3601 C Street, Suite 200  
Anchorage, AK 99510-7005  
762-2261 or 800-770-2257

Southcentral Region  
PO Box 107005  
Anchorage, AK 99510-7005  
(907) 762-2284

Southeast Region  
400 Willoughby, #400  
Juneau, AK 99801  
(907) 465-3400

**1993 REGISTRATION FOR  
SHORT-TERM COMMERCIAL RECREATION CAMP  
ON STATE LAND**

**Instructions:** This registration form is only for short-term camps for commercial recreation purposes, including associated entry onto state land for guided or outfitted hunting, fishing, rafting, hiking, touring, or other recreational activity operated as a business. A short-term camp is a spike camp or overnight camp, or a series of such camps, using tents or other portable facilities that can easily be moved from the site, and that remains at each site no more than 14 days. Check land status to be sure the land you plan to use is state-owned and eligible for registration!

Name of Guide Service or Camp Operator: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

Circle the one item that best describes the type and region of your guide service or other commercial recreation operation on state land. (The Division of Land's Southcentral Region extends from the lower Yukon Delta and the entire Kuskokwim River drainage on the west to the Copper River Valley on the east.)

Hunting Guide Southcentral Region LAS 13952/Receipt RF	Fishing Guide Southcentral Region LAS 13955/Receipt RF	Hunting/Fishing Guide Southcentral Region LAS 13958/Receipt RF	Miscellaneous Recreation Southcentral Region LAS 13961/Receipt RF
Hunting Guide Susitna Basin Rec. Rivers LAS 13970/Receipt RR	Fishing Guide Susitna Basin Rec. Rivers LAS 13971/Receipt RR	Hunting/Fishing Guide Susitna Basin Rec. Rivers LAS 13972/Receipt RR	Miscellaneous Recreation Susitna Basin Rec. Rivers LAS 13973/Receipt RR
Hunting Guide Southeast Region LAS 13954/Receipt RF	Fishing Guide Southeast Region LAS 13957/Receipt RF	Hunting/Fishing Guide Southeast Region LAS 13960/Receipt RF	Miscellaneous Recreation Southeast Region LAS 13963/Receipt RF
Hunting Guide Northern Region LAS 13953/Receipt RF	Fishing Guide Northern Region LAS 13956/Receipt RF	Hunting/Fishing Guide Northern Region LAS 13959/Receipt RF	Miscellaneous Recr. Northern Region LAS 13962/Receipt RF

If you circled "Miscellaneous Recreation" above, state specific type here: \_\_\_\_\_

State the area in which you plan to camp or guide. (Hunting guides: list the game management unit and guide-outfitter use area. Fishing/boating guides: list the water body.) \_\_\_\_\_

Date your first short-term camp will be set up: \_\_\_\_ / \_\_\_\_ / 93 and last camp taken down: \_\_\_\_ / \_\_\_\_ / 93

Check total period of operation:

- less than six months (fee \$350);
- less than eight and a half months (fee \$650);
- up to a year (fee \$1000).

State the maximum number of short-term camps you will operate simultaneously: \_\_\_\_\_

If this registration covers more than one short-term camp, add up the total fee due. (Example: If a guide service plans to run two short-term camps simultaneously over a period of less than six months, the total fee is \$700.) Make out a check for the total fee, payable to the Alaska Department of Revenue. Sign the registration/user agreement below. Mail or bring your signed registration and payment to one of the offices listed on the first page.

By signing this form, the registrant agrees to comply with the following conditions:

- 1) No campsite may be used longer than the maximum period applicable to the registration area. The registrant is responsible for checking whether the applicable maximum is 14 days or a shorter period. On or before the last day allowed, the camp must be dismantled and moved. The site must be left vacant and clean after use. Moving a camp at least two miles starts a new maximum period. Note: On most state-owned land, the maximum period allowed for short-term camps is 14 days. However, a shorter limit is set by some land use plans or special use land designations, including:
  - At Public Use Sites #6, #9, and #21 designated by the Nushagak and Mulchatna Rivers Recreation Management Plan, the limit is seven days.
  - On state-owned shorelands in the Togiak National Wildlife Refuge and the lower Goodnews River, the limit is three days.
  - On state-owned land subject to the Susitna Basin Recreation Rivers Management Plan, the limit is four days.
- 2) All hazardous or solid waste must be kept at least 100 feet from all waterbodies. All solid waste and food should be kept in bear-proof containers. All hazardous waste must be disposed of at a site approved by the Alaska Department of Environmental Conservation.
- 3) Only down and dead timber may be used. Brush clearing is allowed, but must be kept to the minimum necessary to set up camp.
- 4) If potential cultural, paleontological, or archeological resources are discovered, they must not be disturbed and the DNR Office of History and Archeology must be contacted at (907) 762-2622.
- 5) The short-term camps associated with this registration are subject to inspection by state agency personnel at any time.
- 6) Each campsite must be left vacant and clean after use. No small tents, personal property, solid waste, or hazardous waste may be left or cached on state land longer than the maximum short-term camp period allowed, or after this registration expires.
- 7) The registrant enters state land at his or her own risk and shall indemnify and defend the State of Alaska against and hold it harmless from any claims, suits, loss, liability and expense for injury or death of persons and damages to or loss of property arising out of or in connection with the registrant's entry onto and use of state land.
- 8) This registration is not applicable to state-owned land within the Alaska State Park System or the Kamishak Special Use Area, nor to land managed by the University of Alaska or the Alaska Railroad. This registration does not eliminate the need to obtain necessary federal, state, or other permits. It is the sole responsibility of the registrant to check for and comply with all applicable permit requirements.

\_\_\_\_\_  
Signature of Camp Operator

\_\_\_\_\_  
Date

# MEMORANDUM

Department of Natural Resources

# State of Alaska


Division of Land

TO: Director's Policy File  
DPF 93-06

DATE: December 31, 1992

THRU:

FILE NO:

FROM: Ron Swanson   
Director

TELEPHONE NO: 762-2692

SUBJECT: Interim Fee  
Schedule;  
Miscellaneous Fees

AS 38.05.850 requires that a "reasonable rate or fee schedule" be charged for permits, rights-of-way, and easements granted by the Division of Land. Commissioner Olds adopted this fee schedule in November, 1992, as part of a department-wide revision to DNR's fee regulations. However, there could be a long delay before the regulation amendments go into effect.<sup>1</sup> Therefore, in accordance with authorities delegated to me under AS 38.05.850, I am hereby approving the fee schedule for interim use.

This is the first comprehensive updating of the Division of Land's fee schedule in several years. It increases fees for some types of permits, particularly for upland uses, bringing them much closer to the rates charged by other landowners. The revision will help the state obtain a reasonable return for the use of its land, without requiring costly and time-consuming appraisals. It will also be more equitable, giving private landowners a reasonable chance to compete against the state in offering sites for new projects. Better land use decisions on siting and routing should result.

### Fee Schedule Procedures

A fee based on acreage applies to each acre or fractional acre. If a revocable-at-will authorization is revoked without cause (rather than being revoked for breach), the unused portion of the authorization's annual use fee is refundable, prorated on a monthly basis. A fee different from the rate set out in the fee schedule may be charged under the following circumstances:

- The regional manager may require a higher fee if he determines that the location or nature of the use makes a higher fee appropriate to ensure a reasonable return to the state. In that case, the fee will be set by the regional manager or, at the applicant's option and expense, will be based on an appraisal of fair market value.
- A land use fee may be waived or reduced for a federal, state, or municipal agency, but only if the federal, state,

---

<sup>1</sup>The process includes two approvals by the Department of Law, filing by the Lieutenant Governor, and a 30-day waiting period.

or municipal agency demonstrates to the director's satisfaction that the waiver or reduction is in the public interest. A material sale fee may be waived or reduced for a federal, state, or municipal agency, but only if the federal, state, or municipal agency agrees to provide goods, services, or other compensation the director considers sufficient for the materials.

- AS 38.05.850(b) allows the commissioner to waive the fee for certain utility rights-of-way. That waiver authority is delegated to the director and has not been redelegated.

#### Interim Fee Schedule

(1) **Land use permit, certain non-profit fish hatchery facilities.** Land use permit under AS 38.05.850 for floating caretaker housing for a facility whose operator is a non-profit corporation funded by the salmon enhancement tax under AS 16.10.380: an annual fee of \$200.

(2) **Land use permit, other noncommercial use of an occupied facility.** Land use permit under AS 38.05.850, other than under (1) of this fee schedule, for noncommercial use of a structure or facility that is or can be occupied (such as a family's hunting camp, a tent camp used to support a nonprofit scientific research project, a military training camp, use of a floathouse or mobile home as the owner's private residence, or use of a floathouse to provide caretaker housing for a noncommercial or non-profit operation, including a non-profit mariculture operation, that does not qualify for the \$200 rate):

(A) an annual fee of \$250 if the facility is removed after a period of less than six months;

(B) an annual fee of \$500 if the facility remains in place six months or more;

(C) an annual fee set by the director if the occupied site is five or more acres.

(3) **Land use permit, commercial use of an occupied facility.** Land use permit under AS 38.05.850 for commercial use of a structure or facility that is or can be occupied, such as a floating logging camp, caretaker's housing adjacent to a log storage site, a floating lodge, or a guide's or outfitter's camp:

(A) an annual fee of \$350 if the facility is removed after a period of less than six months.

(B) an annual fee of \$650 if the facility remains in place six months or more.

(C) for a commercial recreational use such as a floating lodge or a guide's or outfitter's camp and at the director's discretion, either a variable fee of 2.5 percent of the gross receipts attributable to the use of the permit site, or a flat fee of \$350 if the facility is removed after a period of less than six months, \$650 if the facility is removed after a period of less than eight and a half months, or \$1000 if the facility remains in place for up to a year.

(D) an annual fee set by the director if the occupied site is five or more acres.

(4) **Land use permit, noncommercial use of an unoccupied facility.** Land use permit under AS 38.05.850 for noncommercial use of a structure or facility not subject to (1) or (2) of this fee schedule, such as a private mooring buoy, private float or dock, weir, boat ramp, a loading ramp for snowmachines or horses, or an archery target range operated on a nonprofit basis: an annual fee of \$100.

(5) **Land use permit, commercial use of an unoccupied facility.** Land use permit under AS 38.05.850 for commercial use of a structure or facility not subject to (3) of this fee schedule, such as a commercial mooring buoy, fish holding pen, log storage, A-frame logging, or equipment staging area for a construction project: an annual fee of \$250 for the first acre, plus \$100 for each additional acre.

(6) **Land use permit, "early entry" pending issuance of a lease.** Land use permit under AS 38.05.850 authorizing early entry onto a prospective surface leasehold

(A) for site development, an annual fee equalling the director's estimate of the prospective rental, or

(B) for site analysis that involves alteration to the land (including brushing, clearing, or excavating for percolation tests), an annual fee of \$100 for each acre.

(7) **Land use permit for grazing livestock.** Land use permit under AS 38.05.850 for grazing livestock, a fee per animal unit month that is 70 percent of the animal-unit-month fee most recently published by the U.S. Forest Service for the western states, with a minimum charge of \$100 per year for each permit.

(8) **Land use permit, misc., if use will not hinder public use.** Other land use permit under AS 38.05.850 for a use that does not hinder other public use, such as moving heavy equipment across state land, no fee.

(9) **Land use permit, misc., if use may hinder public use.** Other land use permit under AS 38.05.850 for a use that may interfere

with public use, an annual fee of \$50 per acre with a \$100 minimum.

(10) **Personal use cabin permit.** Personal use cabin permit under 11 AAC 65, an annual rental fee of \$100.

(11) **Private right-of-way or easement, non-exclusive use.** Right-of-way or easement under AS 38.05.850 granted to a private party for a non-exclusive use, an annual fee of \$100 per acre with a minimum payment of \$200.

(12) **Private right-of-way or easement, exclusive use.** Right-of-way or easement under AS 38.05.850 granted to a private party for an exclusive use, the director's estimate of fair market value rental.

(13) **Public right-of-way or easement for road, trail, or airstrip.** Public right-of-way or easement under AS 38.05.850 for a road, trail, or airstrip, a one-time fee of \$50 per acre unless otherwise provided in a reciprocal right-of-way agreement.

(14) **Public utility right-of-way or easement.** Public right-of-way or easement under AS 38.05.850 for a utility, a one-time fee of 10 cents per linear foot.

(15) **Aquatic farmsite permit.** Aquatic farmsite permit under AS 38.05.856, an annual fee of \$250 for the first acre plus \$100 for each additional acre; however, if the permit also authorizes housing of personnel, the fee is at the commercial occupied facilities rate set out in (3) of this fee schedule.

(16) **ILMA.** Interagency land management assignment to a state agency under AS 38.05.030:

(A) for a site that will be fully open to public use and where no significant capital investment will be made, no charge.

(B) for a site other than as described above, a one-time fee of \$3,000 or seven percent of the site's fair market value, whichever is less; however, an additional fee will be charged for an amendment of the assignment's terms or if a field inspection is necessary to determine compliance with the terms of the assignment.

(17) **Material sales for public projects.** Sale of materials to be used in constructing, reconstructing, or maintaining a public project:

(A) for the first 5,000 cubic yards of materials to be used on the project, no charge; for maintenance on an ongoing basis, a project is considered to last one year.

(B) for each cubic yard of materials beyond 5,000 cubic yards, the base fee listed in the annual base price schedule under 11 AAC 71.090.

#### Miscellaneous Fees

**Collateral/security assignments.** The fee for approval of a collateral assignment (for a purchase contract) or a security assignment (for a lease) is the same as for any other type of assignment. Refer to the existing 11 AAC 05.010 for the current fee.

**Inspection fees.** A fee of either \$100 or actual expenses, at the director's discretion, may be charged for inspection of land subject to a Division of Land authorization if inspection is

- (A) required by the authorization;
- (B) necessary to determine whether previous noncompliance with the authorization has been corrected; or
- (C) done to investigate alleged noncompliance and confirms noncompliance.



# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

3601 C STREET  
P.O. BOX 107005  
ANCHORAGE, ALASKA 99510-7005  
PHONE: (907) 561-2020

### MEMORANDUM

TO: Director's Policy File 91-03

FROM: Gary Gustafson *Gus*  
Director

DATE: October 22, 1990

SUBJECT: Shorelands Adjacent to Non-State Land

#### INTRODUCTION

DNR will manage shorelands adjacent to land not in state ownership (i.e. Federal Conservation System Units and ANCSA Corporation land) consistent with the guidelines in this DPF. The purpose of these guidelines is to provide a uniform set of rules for Alaska shorelands, and to provide DNR adjudicator's with consistent guidelines to follow when considering land use authorizations for shorelands.

#### GLOSSARY

This glossary includes definitions of terms used in this document.

**AIRSTRIP DEVELOPMENT.** Construction or maintenance of a landing strip for airplanes that involves levelling the ground or removing or modifying a substantial amount of vegetation.

**BOAT STORAGE.** Storing any type of boat or water-related craft in the same place for longer than 14 consecutive days.

**FLOATING FACILITY.** Includes floathomes, floatcamps, floating lodges, floating caretaker facilities (including mariculture), floating recreational facilities, and other floating residential or commercial facilities located on state shorelands.

**GUIDELINE.** A course of action to be followed by DNR resource managers or required of land users when the manager permits, leases, or otherwise authorizes the use of state land or resources. Guidelines also range in their level of specificity from giving general guidance for decision making or identifying factors that need to be considered, to setting detailed standards for on-the-

ground decisions. Some guidelines state the intent that must be followed and allow flexibility in achieving it.

LAND. All land, including uplands, shorelands, and water, or resources belonging to or acquired by the state.

LEASE. An agreement which gives rise to relationship of landlord and tenant. AS 38.05.070 describes types of leases for state land.

LONG-TERM USE. Use that takes place at one site on state land for longer than 14 consecutive days.

NAVIGABLE. Waterbodies that are capable of transporting people or goods. The land beneath them is owned by the state. These waterbodies extend to the line of the ordinary high water (usually the vegetation line). The adjacent uplands may be in private or federal ownership and not available for use without permission. Federally determined navigable waterbodies are those administratively determined navigable by the federal Bureau of Land Management (BLM). State determined navigable waterbodies are those determined navigable by the state (usually these are waterbodies BLM has not yet determined navigable, or are waterbodies previously determined navigable, but the state disagreed with BLM criteria).

ORDINARY HIGH WATER MARK. The mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics [from 11 AAC 53.900(23)].

PERMANENT FACILITY. Permanent facilities are buildings or tents that do not need to be removed and the site restored to its natural state after each season. Permanent facilities on state land may be authorized by the Department of Natural Resources by lease. Examples of permanent facilities are log or solid wall structures or frame tents. Trapping cabins are considered permanent facilities.

PERMIT. A Department of Natural Resources authorization for use of state land that is revocable at will, usually issued for the term of use, and usually not to exceed one year [11 AAC 96]. Note: As of September 1990, the regulation that limits permits to one year is in effect. It is likely that this regulation will be changed to allow five year permits. This document reflects the five year change.

PUBLIC TRUST. A common law doctrine that requires the state to manage shorelands for the benefit of the people so that they can engage in such things as commerce, navigation, fishing, hunting, swimming, and ecological study.

**PUBLIC USE.** Any human use of state-owned land or water, including commercial and noncommercial uses.

**PUBLIC USE SITE.** Sites on state land that are important for public access (including important float and wheeled plane landing areas), camping, hunting, fishing, or other recreation or public use.

**SHORELANDS.** Land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to the ordinary high water mark as modified by accretion, erosion, or reliction [from AS 38.05.965].

**SHORT-TERM USE.** Generally allowed use that takes place at one site on state land for 14 consecutive days or less. Examples of uses include hiking, backpacking and camping, boating, fishing, and noncommercial or commercial temporary fishing or hunting camps.

**SHOULD.** States intent for a course of action or set of conditions to be achieved. Guidelines modified by the word "should" states intent and allows the manager to use discretion in deciding the specific means for best achieving the intent or whether particular circumstances justify deviation from the intended action or set of conditions.

**TEMPORARY FACILITY.** Temporary facilities are manmade buildings or tents that must be removed and the site restored to its natural state at the end of the term of use for which the activity was authorized. Temporary facilities on state land may be authorized by DNR permits. If authorized, permits are issued for the term of use, not to exceed five years. Examples of a temporary facility are heliports or frame, dome, or pup tents. Floating facilities are not considered temporary facilities and are treated separately.

**UPLANDS.** Land above the ordinary high water line.

**WILL.** Requires a course of action or a set of conditions to be achieved. A guideline modified by the word "will" must be followed by land managers or users. If such a guideline is not complied with, a written decision justifying the noncompliance is required.

#### **PUBLIC TRUST DOCTRINE**

Under the Alaska Constitution the state has special duties and management constraints with respect to state-owned land underlying navigable waters. The Alaska Constitution contains principles commonly known as the public trust doctrine. That doctrine requires the state to exercise authority to ensure that the right of the public to use navigable waters for navigation, commerce, recreation, and related purposes is not substantially impaired.

The Alaska Constitution (Article VIII, sections 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. This doctrine guarantees protection of areas for ecological study and the public right to engage in such things as commerce, navigation, fishing, hunting, swimming.

The Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." Eliminating private upland owners' reasonable access to navigable waters may result in compensation.

Because 99 percent of Alaska was in public ownership at statehood, both federal and state laws providing for the transfer of land to private parties also provide for public access to navigable waters. Implementing the state constitutional guarantee of access to navigable waters under Article VIII, Section 14, AS 38.05.127 requires that the state commissioner of natural resources must "provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or eliminating access is necessary for other beneficial uses or public purposes."

It has never been held that any lands normally subject to the public trust doctrine in Alaska are exempt from it, including land occupied and developed.

These statutes and concepts are considered in this document. Any management actions will be consistent with the public trust doctrine as defined by the Alaska Constitution, statutes, court decisions, and public involvement.

#### GUIDELINES

The following guidelines are specific directives that will be applied to management decisions. DNR will use criteria included in the guidelines when considering permit or lease applications on state shorelands.

#### SHORT-TERM USES (GENERALLY ALLOWED USES)

Short-term (generally allowed) uses are uses that take place at one site on state land for 14 consecutive days or less. These uses do not require a permit or lease. The following are examples of short-term (generally allowed) uses: hiking, backpacking and camping, light plane and helicopter landings, use of boats, rafts, canoes, and hunting, fishing, and trapping (in accordance with fish

and game regulations).

### LONG-TERM USES

Uses that take place at one site on state land for longer than 14 consecutive days require a permit or lease.

### LENGTH OF PERMITS AND LEASES/TYPE OF FACILITY AUTHORIZED

Leases and permits, if issued, will be for the term of use or minimum length of time required by the applicant to carry out the purposes of the intended use.

Issued permits will not exceed five (5) years. See Glossary for "Permit."

### SHORELANDS

Permanent facilities and temporary facilities\* will be prohibited on shorelands. Shorelands flood periodically. Authorizing facilities in places that are likely to flood can jeopardize public safety and environmental protection. Additionally, the management intent for shorelands is to protect the opportunity for all users to use these areas and to protect the public values of these areas.

Floating facilities, boat storage, airstrip development, docks, and other long-term uses (uses that take place at one site on state land for longer than 14 consecutive days), such as trails and waterlines, may be allowed if consistent with management intent and applicable guidelines.

Permit or lease applications for these other uses of shorelands will include a description of all necessary associated uses. If permits from other agencies are required (such as Department of Environmental Conservation permits for fuel storage, food service, or waste disposal), DNR will consider issuing a permit or lease contingent upon issuance of these other permits.

Defining the location of ordinary high water and, therefore, the boundary of state-owned shorelands is often difficult and may require technical expertise. If DNR issues a permit on shorelands, DNR will require applicants to use areas that will reduce the likelihood of possible land ownership disagreements with upland owners (such as unvegetated gravel bars).

-----  
\* Camping at one site on state land for longer than 14 consecutive days is considered a temporary facility. See Temporary Facility in the Glossary.

DNR will consult with the upland owner and use its best professional judgment to determine if a proposed use occurs on state-owned shorelands.

The state constitution requires DNR to ensure that the rights of the public to use state lands and waters for navigation, commerce, recreation, and related purposes are protected. DNR will retain the right to issue a permit or lease for uses that are not prohibited over the objection of adjacent landowners. However, DNR will carefully consider comments from private landowners and others when making a decision.

Applications for shoreland uses that require use of private uplands will not be considered until there is a written agreement between the applicant and the upland owner(s) approving the necessary use. The term of the lease or permit should not be longer than the term of agreement between the applicant and the upland owner. If the applicant has not applied for use of the adjacent uplands, the application must show how all necessary associated uses will be accommodated on the shorelands.

The table below summarizes these guidelines.

<u>Short-term uses</u>	Allowed
<u>Long-term uses</u>	
Permanent facilities	Prohibited
Temporary facilities	Prohibited
Floating facilities	May be allowed (case-by-case)
Boat storage	May be allowed (case-by-case)
Airstrip development	May be allowed (case-by-case)
Docks	May be allowed (case-by-case)
Other long-term uses	May be allowed (case-by-case)

#### PUBLIC USE SITES

Public use sites are sites that are important for public access (including important float and wheeled plane landing areas), camping, hunting, fishing, or other recreation or public use. One of the sources DNR can use to identify public use sites is information received during agency or public review of a permit or lease. Usually, public use sites are sites that are intensively used by the public and are no more than 640 acres in size.

The management intent for public use sites is to protect the opportunity for users to use the sites, and to protect the public values of the sites. The guidelines for public use sites in this section take precedence over guidelines associated with shorelands.

Permanent facilities, temporary facilities\*, floating facilities, and boat storage will be prohibited in public use sites. Airstrip development, docks, and other long-term uses may be allowed on a case-by-case basis if consistent with management intent for the public use site and if there is a demonstrated significant public need.

To address increases in use, DNR may change the number of days that short-term uses (generally permitted uses that take place at one site on state land for 14 consecutive days or less) can occur in public use sites. 11 AAC 96.010 provides for this change by establishing "special use areas."

The table below summarizes the guidelines for public use sites on shorelands:

<u>Short-term uses</u>	Allowed
<u>Long-term uses</u>	
Permanent facilities	Prohibited
Temporary facilities	Prohibited
Floating facilities	Prohibited
Boat storage	Prohibited
Airstrip development	May be allowed (case-by-case)
Docks	May be allowed (case-by-case)
Other long-term uses	May be allowed (case-by-case)

#### AIRSTRIP DEVELOPMENT

Airstrip development may be allowed on shorelands and in a public use site if consistent with management intent and applicable guidelines, and where there is a demonstrated significant public need.

Airstrips developed on public land should be made available for use by the general public.

#### NAVIGATION

Commercial and noncommercial public use will not impede navigation.

-----  
 \* Camping at one site on state land for longer than 14 consecutive days is considered a temporary facility. See Temporary Facility in the Glossary.

## PUBLIC ACCESS

Commercial and noncommercial public use activities will not interfere with the ability of all users to use or access state land or public water. DNR will ensure adequate access exists to adjacent land when authorizing use of shorelands.

## SITING CRITERIA

Boat storage, airstrip development, docks, and other long-term uses (uses that take place at one site on state land for longer than 14 consecutive days) will be sited to minimize environmental impacts and evidence of human use.

Applicants should site facilities to impact the least amount of ground consistent with the purpose of the facility.

Floating facilities will be sited to minimize visual evidence of the facility from main river channels and to minimize hydrological alterations and habitat impacts.

Floating facilities will be sited so as not to block narrow waterways or impede the free passage of waterborne traffic.