

Buffers, Easements, and Setbacks Pertaining to State Owned Waterbodies

As with other areas of Alaska, rivers and other waterbodies become important highways for local residents and visitors to the area. They provide access to subsistence fishing and hunting areas and access to traditional harvesting areas. For residents and visitors to the area, lakes, rivers, and other waterbodies offer places to hunt, fish, camp, view wildlife, and travel through the area. For moose, the river corridors provide important habitat particularly for over-wintering. Muskox concentration areas are often associated with rivers and riparian areas as well. A variety of waterbird and landbird species are seasonally concentrated along stream corridors, lakes and wetlands. The Goals, Objectives, and Management Guidelines that follow apply to all state waters throughout the planning area. Buffers, easements, and setbacks may be required on Navigable and Public waters in this plan. Typically, they will not be applied to Ancillary waters as defined in this plan as they receive very little use compared to Navigable and Public waters.¹

Goals

Water Quality. Protect water quality to support domestic, commercial and industrial uses, fish and wildlife production, and recreational activities.

Water-Dependent and Water-Related Uses. Provide for needed water-dependent and water-related uses.

Habitat Protection. Protect fish and wildlife habitats along lakeshores, stream corridors and wetlands.

Recreation. Provide opportunities for a variety of recreational activities within publicly owned stream corridors.

Objectives and Management Guidelines

Objective A. Protect high value waterbodies or waterbodies that supply drinking water in a way that protects and enhances water quality and fish and wildlife habitats along stream corridors, shorelines, and waterbodies to the maximum extent practicable.

- **Guideline A-1.** *Alaska Clean Water Actions (ACWA).* In accordance with the ACWA process, ADNR will work with ADF&G and ADEC to protect and improve water quality, water quantity and fish habitat. Any development that impacts

¹ Navigable and Public waters are defined in the Glossary found at Appendix A.

- anadromous fish bearing waters or resident fish streams will require a permit from ADF&G.
- **Guideline A-2.** *Protection of Land Adjacent to High Value Waterbodies.* When the management intent for state land adjacent to waterbodies (including rivers, streams, or lakes) is to protect wildlife habitat, anadromous or high value resident fish streams, or provide for intensive recreation uses associated with fishing, picnicking, hunting, camping, or other similar uses, the state should retain ownership of the adjacent uplands. Alternatively, to minimize on-going management responsibilities or for some other public purpose, a riparian buffer should be imposed either through an easement or setback. See Table 2-1 for requirements related to riparian buffers. In instances involving a land disposal, the area of a riparian buffer may be reserved as public open space to be maintained by a common interest association. Whichever method is chosen, they should be designed to minimize negative impacts on visual character, habitat value, water quality, and ensure public access. Public use sites may also be reserved during the land disposal process, along high value waterbodies to provide public access and use of the waterbody. State-owned buffers or riparian buffers may be retained along the full length of the waterbody or on segments of the waterbody determined to have high current or future use, public use, or to require habitat protection.
 - **Guideline A-3.** ADF&G, ADEC, and the ADNR Water Resources Section should be consulted when issuing or approving permits or authorizations within the planning area.
 - **Guideline A-4.** *Public Trust Doctrine.* All activities and authorizations should take into consideration and comply with the Public Trust Doctrine. For information on the Public Trust Doctrine, see Appendix C.

Objective B. Protect and preserve public use and public access to waterbodies to the maximum extent practicable without restricting resource development and as required by statute and regulation.

- **Guideline B-1.** *Priority of Public Uses in Stream Corridors.* ADNR will place a higher priority on protecting public use values in stream corridors than on providing opportunities for private ownership or development of land. Prior to the disposal of stream corridor lands, ADNR, in consultation with other affected agencies and the public, will assess existing and projected public use needs associated with the stream corridor. Disposals near streams that have important fish or wildlife habitat, or wildlife value, will be designed to ensure the protection of fish and wildlife and the habitat through the imposition of measures to ensure riparian protection.
- **Guideline B-2.** In making determinations as to whether a riparian area should be protected and the manner of such protection, adjudicators shall consult ADF&G. These procedures emphasize retaining such areas where a significant public interest or value exists, which is often common in riparian areas. Other methods may be used depending on the specific context, including setbacks and easements.

- **Guideline B-3. *Public Access Adjacent to Waterbodies.*** Pursuant to AS 38.05.127, legal public access will be reserved in order to protect the public's right to travel to and along the ordinary high water (OHW) of a waterbody without encouraging trespass. Permits, leases, and plans of operation for commercial and industrial uses, transportation facilities, pipelines and other water-dependent uses may be authorized on state uplands adjacent to waterbodies if their activities are consistent with the management intent for the area and if they maintain stream bank access, and protect important fish and wildlife habitat, public water supplies, and public recreation. Trails and forms of non-motorized public access are generally considered to be appropriate within these areas, if they meet the conditions listed in 11 AAC 96.025. Certain types of motorized uses may also be appropriate if consistent with 11 AAC 96.020 and 11 AAC 96.025.
- **Guideline B-4.** Where feasible and prudent, there should be setbacks between the activities described above in Guideline B-3 and adjacent waterbodies. The width of this setback may vary depending upon the type and size of the use but must be adequate to maintain public access to and along riparian areas. The amount of impervious surface created within the riparian area should be minimized.
- **Guideline B-5. *Access Easements Adjacent to Waterbodies.*** A public use easement of approximately 50 feet upland of the OHWM is to be imposed on all waterbodies as required by the requirements of AS 38.05.127, 11 AAC 51.035 and 11 AAC 51.045 for all disposals of state land or interests in state land. The public rights retained in an easement shall be identified and noted in the ADNR decision document and plat, if applicable. In areas that may be sensitive to vehicular travel, the easement should be reserved for pedestrian access only. Access easements may be used in combination with state land that is to be retained for public use or for the protection of environmental resources. In these situations, easements may be used to provide access to areas of state retained sensitive land or provide access corridors between lots or parcels within the subdivision.
- **Guideline B-6. *Protection Easements and Setbacks Adjacent to Non-Anadromous Waterbodies.*** Easements or building setbacks may be used in those instances where public recreation use is moderate or where sensitive habitat or other environmental resources exist but are not of the same importance as described under Management Guideline A-2. See the requirements for Sensitive Environmental Features Buffer in Table 2-1 when an easement is to be applied. The purpose of the easement or setback should be noted in the Department decision document and on the subdivision plat. Where a protection easement or setback is to be applied, vehicular use within the area of the easement is inappropriate and should not be authorized. Building setbacks may be used in lieu of a protection easement in those instances where it is not appropriate or necessary for the state to retain any easement rights *or* they may be used in combination with buffers, access easements, and protection easements. Building setbacks used in this fashion provide an added level of protection. See the requirements for 'Building Setback' in Table 2-1.

- **Guideline B-7. Lakeshore Public Access.** Despite the remote nature of many waterbodies within this planning area, a portion of the lakefront on lakes greater than 10 acres that have or may be expected to have public recreation and all inlets and outlets of lakes of this size shall remain in public ownership for habitat protection and public recreation. Adequate public access to these lakes shall also remain in public ownership or is to be provided through section line, 'to-and-along' easements or other types of public access easements. The amount of public ownership may vary on a site-specific basis, but, at a minimum, some portion of these lakes shall remain public. The size of the public reservation shall be appropriate to its expected long-range recreational use and relative to the size of the lake. A width of 150 feet or more measured from OHW is to be retained or protected through an easement along inlet and outlet streams.² Public use sites, created through the land disposal program, on lakes of 10-20 acres shall have at least 4 contiguous acres reserved for public access. For lakes larger than 20 acres, a public use site of at least 6 acres shall be provided.
- **Guideline B-8. Buffer, Easement, and Building Setback Widths.**
 1. The width of state retained land, access and protection easements, and building setbacks adjacent to waterbodies (lakes and streams) will vary, depending on whether the area is a retained parcel or imposed easement, and according to management intent and the specifics of the parcel under consideration. In addition, this width may vary along the area of the stream or lake that is to be protected. Establishing widths, especially for publicly retained lands, will be based on the following considerations: recreational activities to be accommodated, floodway and floodplain widths, habitat protection and management objectives, visual quality, use compatibility, prevention of erosion, or retention of a significant hydraulic resource (like a wetland).
 2. Although these widths may vary, the following criteria are provided to establish the minimum width that can be expected on various types of buffers, easements, and setbacks. They are specified here in order to establish some consistency in application and ensure a minimum level of resource and habitat protection or public access. Distances are measured horizontally landward from ordinary high water along streams and other inland waterbodies and from the line of mean high water adjacent to coastal waters. Because of the linear nature of streams and certain other habitat or hydraulic features, these minimum dimensions will apply to both sides of the feature that is to be protected. For example, the total protected area along a stream with a 100-foot setback would be 200 feet (100 feet each side). If state land is to be retained, it may be preferable to retain a larger width, often 200 feet on each side. Widths greater than 200 feet may also be warranted, depending on the specific site characteristics and the importance of the habitat or resources to be protected.
 - a) Riparian buffers along anadromous and high value resident fish streams and waters: 100 feet along each side of the anadromous waterbody or high value

² As measured from each bank of the inlet/outlet stream. This requirement applies whether or not the stream is anadromous.

resident fish stream. Widths greater than this amount, up to 300 feet, may be authorized if, after consultation with ADF&G, it is determined that larger widths are necessary to protect fisheries, wildlife, or habitat.

- b) Buffers on other freshwater waterbodies on retained public land: 50 feet along each side of the stream or 50 feet along the shoreline of lakes.
 - c) Easements used in areas of sensitive environmental features:³ 50 feet on each side of important environmental features. Distances greater than 50 feet (up to 100 feet) may be appropriate if the feature being protected is considered to be especially sensitive to disturbance and is considered a particularly high value resource; such features might include lacustrine and riverine wetlands, springs, salt licks, or geologic hazards requiring additional distance separation for public safety. Consult ADF&G if there is a question as to whether a width greater than 50 feet should be considered.
 - d) Public access easements, including ‘to and along’ easements required under AS 38.05.127, or utility easements adjacent to lakes and streams: 50 feet.⁴
 - e) Building setbacks: 100 feet adjacent to anadromous and high value waterbodies and 50 feet adjacent to all other waterbodies. The use of a building setback is usually not required if a riparian buffer is being imposed in an authorization. Riparian buffers preclude principal and most accessory structures within the riparian area; only water-dependent uses are authorized in these areas. For more detail see ‘riparian buffer’ in Table 2-1.
- **Guideline B-9.** *Application Requirements for Easements and Buffers Along Waterbodies and Related Environmental Features.* Table 2-1 specifies widths and other requirements for easements, buffers and public access in order to ensure consistency between authorizations along waterbodies and related environmental features. The table captures the information provided in Management Guideline B-8 but also provides guidance on when these requirements are to be applied as well as aspects related to types of uses that may be appropriate. On a case-by-case basis, widths may be wider, in order to accommodate floodplain width, bank characteristics, size of the waterbody, extent of present or expected future public use, the need to protect important environmental features, or other relevant factors. Similarly, widths can be narrower on a case-by-case basis if it is determined that the harm intended to be avoided by the requirement is not likely to occur because of site-specific circumstances. However, the strip of land must be of sufficient width to allow for public access as well as to screen the waterbody from development, where possible, with an undisturbed strip of vegetation. In all instances, requirements for easements shall be noted on the lease, patent or subdivision plat. This requirement also applies to easements described in Management Guideline B-8.

³ See table 2-1, page 2-14.

⁴ Other types of utility easements may be less than this width, depending on the purposes of the easement.

Objective C. *Other Guidelines affecting Shorelands and Stream Corridors.* Nearly all the resource guidelines found within Chapter 2 either directly or indirectly affect water resources in the planning area. The most commonly affected resource sections include Public Access, Fish and Wildlife, Transportation and Infrastructure, Subsurface Resources, and Recreation and Tourism; however other resources addressed in this chapter's sections should also be considered.

Table 2-1: Application Requirements for Easements and Buffers Along Waterbodies and Related Environmental Features

Guideline/ Application	Minimum Width/ Measured from	Where it Applies	Primary Purpose	Guidelines
<p>1. Public Access (To and Along Easement) Adjacent to all waters as required under 11 AAC 51.035.⁵</p>	<p>50' * Landward from ordinary high water line.</p>	<p>Along: * Lakes * Streams</p>	<p>Provide public access to and along waterbodies.</p>	<ul style="list-style-type: none"> • Prohibited: Water Dependent⁶ or Water Related⁷ uses or structures that would obstruct passage by the public within the area of the easement. Alternate upland access needs to be provided if access is blocked. • Allowed: Water Dependent or Water Related structures that would not significantly obstruct passage by the public within the area of the easement. • 'Along' easement is to be continuous unless topography or land status prevents a continuous easement. See 11 AAC 51.045. • The 'To' easement has a minimum width of 50 feet but may be increased to 60 feet or more if ADNR determines that the need for increased public access to waters may justify construction of a road along an easement. • A section line easement can function as a 'To' easement if it provides a practical route to the shore or a river. See 11 AAC 51.045.
<p>2. Riparian Buffers Adjacent to anadromous waterbodies and high value fish streams.</p>	<p>100' * Landward from ordinary high water line.</p>	<p>Along: * Anadromous and high value resident fish streams and lakes.</p>	<p>Protect riparian areas adjacent to anadromous and high value fish streams.</p>	<ul style="list-style-type: none"> • Allowed: Water Dependent uses or structures that do not require extensive de-vegetation and/or land clearing. This requirement applies to the first 60' measured from OHW. 'Extensive' means more than 20% of affected area within the project site. Water related uses or structures that do not de-vegetate more than 40% of the affected area are allowed in areas greater than 60' measured from OHW. • Prohibited: Water related uses within the first 60 feet measured from OHW. • The width of riparian buffers may be increased along waterbodies if recreation use is heavy, a wildlife corridor needs to be provided, or if increased protection of a riparian area is warranted. Consult with ADF&G on decisions to increase buffer width. <p>Note: the requirements for an 'along' easement also apply within the 50' upland of OHW.</p>
<p>3. Freshwater Waterbodies Buffer Adjacent to waterbodies that are not protected under #2 but where a significant public use or resource is determined to exist.</p>	<p>100' * Landward from ordinary high water line along streams and lakes that are not covered in item #2 but are considered to have public significance or from the edge of the waterbodies, including wetlands, that are to be protected.</p>	<p>Along freshwater waterbodies that are determined to have public significance but where the requirements of #2 do not apply.</p>	<p>Protect areas adjacent to freshwater waterbodies that are important riparian areas or may be important for other public purposes.</p>	<ul style="list-style-type: none"> • Allowed: Water Dependent uses or structures that do not require extensive de-vegetation and/or land clearing. This requirement applies to the first 60' measured from OHW. 'Extensive' means not more than 20% of affected area within the project site. Water related uses or structures that do not de-vegetate more than 40% of the affected area are allowed in areas greater than 60' measured from OHW. • Prohibited: Water related uses within the first 60 feet measured from OHW.

⁵ See 11 AAC 51.035 for determination of Navigable and Public Water. See also 11 AAC 51.045 for easements 'To and Along Navigable and Public Water'. Other waters may be considered on a case-by-case basis.

⁶ Water Dependent: means a use or an activity that can be carried out only on, in, or adjacent to a waterbody because the use requires access to the waterbody.

⁷ Water Related: means a use or activity that is not directly dependent upon access to a waterbody, but which provides goods or services that are directly associated with water-dependent and which, if not located adjacent to a waterbody, would result in a public loss of quality in the goods or services offered.

Guideline/ Application	Minimum Width/ Measured from	Where it Applies	Primary Purpose	Guidelines
				<ul style="list-style-type: none"> The width of riparian buffers may be increased along waterbodies if recreation use is heavy, a wildlife corridor needs to be provided, or if increased protection of a riparian area is warranted. Consult with ADF&G on decisions to increase buffer width.
<p>4. Sensitive Environmental Features Buffer</p>	<p>50' *** Measured from edge of sensitive environmental feature.</p>	<p>Areas of important environmental features. These may include hydrologic features (wetlands, marshes), sensitive habitat areas, or areas subject to geotechnical constraints.</p>	<p>Protect sensitive environmental features not otherwise protected under Public Access, Riparian Buffers, or Freshwater Waterbodies.</p>	<ul style="list-style-type: none"> Sensitive environmental features may include wetlands, important upland habitat, prominent scenic features, and the like. The imposition of this requirement is discretionary and depends on the type and value of the area or resource that is to be protected. Prohibited: Residential (or other) structures and associated out buildings but not including utilities or minor accessory structures. Buffers can be created through the use of easements or building setbacks, or both. Where this easement is imposed as part of a municipal entitlement action, this width is also 50 feet. Areas greater than 50 feet (up to 100') may be imposed on a case-by-case basis. Consult with ADF&G.
<p>5. Building Setback Adjacent to all public or navigable waters <u>except</u> anadromous and high-value resident fish waters (see guideline 6 below).</p>	<p>50' * Landward from ordinary high water.</p>	<p>Non-anadromous and non-high-value resident fish: * Lakes * Streams</p>	<p>Protect riparian habitat including access, recreation, and water quality along all waterbodies.</p>	<ul style="list-style-type: none"> This requirement is imposed where feasible and prudent, and necessary to protect public values along the stream. Does not apply to exceptions listed at bottom of table. The imposition of this requirement is discretionary and depends on the type and value of the area or resource that is to be protected. It is intended that the area of the setback remain vegetated to maintain habitat values or protect riparian areas. Areas greater than 100 feet may be imposed on a case-by-case basis. Consult with ADF&G.
<p>6. Building Setback Adjacent to anadromous and high-value resident fish waters.</p>	<p>100' * Landward from ordinary high water.</p>	<p>Anadromous and high-value resident fish: * Lakes * Streams</p>	<p>Protect riparian fish habitat, water quality, and recreation values along anadromous and high-value resident fish waters.</p>	<ul style="list-style-type: none"> This requirement may be imposed if necessary to achieve or protect riparian areas or other sensitive environmental features. The imposition of this requirement is discretionary and depends on the type and value of the area or resource that is to be protected. Does not apply to exceptions listed at bottom of table. It is preferred that the area of the setback remain vegetated to maintain habitat values or protect riparian areas. Areas greater than 100 feet may be imposed on a case-by-case basis. Consult with ADF&G.

Where widths apply: * Freshwater areas ** Tidally-influenced areas *** Sensitive Environmental Features

For the definition of *anadromous waters* and *high-value resident fish waters* (derived from AS 41.17.950) see the Glossary in Appendix A. Exceptions that apply to items 5 and 6 above: a) Structures such as docks, bridges, and culverts whose purpose is access to or across the stream or lake; b) Water-dependent or water-related uses such as placer mining, fish culturing, and water supply intakes will be evaluated for exception on a case specific basis in consultation with ADF&G.