

WALTER J. HICKEL, GOVERNOR

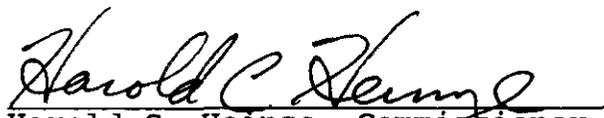
**DEPARTMENT OF NATURAL RESOURCES**

**OFFICE OF THE COMMISSIONER**

P.O. BOX 107005  
ANCHORAGE, ALASKA 99510-7005  
PHONE: (907) 762-2483

The Commissioner of the Department of Natural Resources hereby adopts the guidelines in Chapter III (pages 43-45) of the Togiak National Wildlife Refuge Public Use Management Plan for state-owned shorelands in the Togiak National Wildlife Refuge and lower Goodnews River as a state land use plan under AS 38.04.065 and 11 AAC 55.010-.030. The Department of Natural Resources will manage state shorelands within the Togiak National Wildlife Refuge and lower Goodnews River consistent with these guidelines.

To implement these guidelines, the Commissioner of the Department of Natural Resources designates state-owned shorelands in the Togiak National Wildlife Refuge and the lower Goodnews River as Special Use Land under 11 AAC 96.010(a)(2) and 11 AAC 96.010(b). The Commissioner finds that this designation is consistent with the Department of Natural Resources' management authority and that this action is in the best interest of the state. The activities on land designated Special Use Land for which a permit is required are listed on the attached four pages.

  
Harold C. Heinze, Commissioner  
Department of Natural Resources

5/10/91  
Date

### CHAPTER III: MANAGEMENT OF STATE LAND AND WATER WITHIN THE TOGIK NATIONAL WILDLIFE REFUGE AND LOWER GOODNEWS RIVER

The Alaska Department of Natural Resources has been an active participant in the Togiak Refuge public use management planning process and prepared this chapter.

#### BACKGROUND

The State of Alaska has special duties and management constraints with respect to waters and shorelands (the lands underlying navigable waters). These arise from the Alaska Constitution which embraces the principles commonly known as the public trust doctrine. The public trust doctrine requires the State to exercise authority to insure 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 (AS 38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. The Constitution says "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."

The Alaska Department of Natural Resources is the agency entrusted with responsibility for managing state lands and waters. To meet the intent of the public trust doctrine, the Alaska Department of Natural Resources will manage state shorelands and waters in the Togiak National Wildlife Refuge and on the lower Goodnews River under the guidelines outlined below.

#### GUIDELINES FOR MANAGEMENT OF STATE OWNED SHORELANDS

Management of State shorelands in the Togiak Refuge and on the lower Goodnews River will be directed toward maintaining access and ensuring access is not denied to the navigable or public waters of the State for any citizen of the United States or resident of the State (Article VIII, Section 14 of the Alaska State Constitution). The following guidelines apply to all users.

##### Short-term Uses on State Shorelands

These are uses that take place at one site on state shorelands for three consecutive days or less. Short-term uses are allowed. State permits are not required for short-term uses. Camping, hiking, and fishing are examples of short-term uses.

##### Long-term Uses on State Shorelands

These are uses that take place at one site on state shorelands for longer than three consecutive days. The Alaska Department of Natural Resources may issue permits and leases for permanent camps and lodges, temporary base camps, floating facilities, boat storage sites, primitive tent sites, and other uses

that occur at one site on state land for longer than three consecutive days. Long-term uses require a Department of Natural Resources permit or lease.

Permanent camps and lodges and temporary base camps are prohibited on state shorelands in the Togiak National Wildlife Refuge and on the lower Goodnews River. Shorelands flood periodically. Authorizing facilities in places that are likely to flood can jeopardize public safety and environmental protection. The management intent for shorelands is to protect the opportunity for all users to use these areas and protect their values.

Floating facilities, boat storage sites, and primitive tent camps located at one site on state land for more than three consecutive days may be allowed on a case-by-case basis.

#### Public Use Sites on State Shorelands

Public use sites are any sites identified on state shorelands that are important for public access (including important float and wheeled plane landing areas), camping, hunting, fishing, or other recreation or public uses.

The management intent for these sites is to protect the opportunity for people to use the sites, and to protect the public values of the sites. Short-term uses are allowed at public use sites. The following long-term uses are prohibited at public use sites: permanent camps and lodges, temporary base camps, floating facilities, boat storage sites, and primitive tent camps.

The Alaska Department of Natural Resources will work with the Fish and Wildlife Service to identify public use sites. Sites will be added to this plan as an amendment.

#### Coordination with Adjacent Upland Owners

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 Alaska Department of Natural Resources lease or permit should not be longer than the term of the 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.

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

#### Siting Floating Facilities

Floating facilities will be sited so as not to block narrow waterways or impede the free passage of waterborne traffic. Floating facilities will be sited to minimize visual evidence of the facilities from main river channels.

## DESIGNATION OF SHORELANDS AS SPECIAL USE LAND

In order to implement the guidelines identified above, the Alaska Department of Natural Resources has designated state-owned shorelands in the Togiak National Wildlife Refuge and lower Goodnews River as "Special Use Land" under Alaska Administrative Code 96.010(a)(2).

## MODIFICATION AND AMENDMENT OF GUIDELINES

Management guidelines for state land may be changed if conditions warrant. The guidelines will be updated periodically as new data and new technologies become available, and as changing social or economic conditions place different demands on state land.

### Periodic Review

The guidelines will be reviewed at least once every five years to determine if revisions are necessary. The review may include public meetings open to all interested parties and individuals.

### Changes to Guidelines

There are three types of changes to guidelines: amendments, special exceptions, and minor changes. Amendments and special exceptions are revisions subject to the planning process requirements of Alaska Statute 38.04.065; minor changes are not. The Director of the Department of Natural Resources, Division of Land and Water (Land and Water) determines if a proposed change constitutes an amendment, a special exception, or a minor change. Changes may be proposed by agencies, municipalities or members of the public. Requests for changes should be submitted to the Southcentral Regional Office of the Department of Natural Resources, Division of Land and Water in Anchorage.

### Amendments

Amendments permanently add to or modify the basic intent of guidelines. Changes in allowed or prohibited uses, or the guidelines themselves, constitute amendments. Amendments must be approved by the Commissioner of the Department of Natural Resources. An example of a change that would require an amendment would be allowing a use in a location where the use is currently prohibited.

### Special Exceptions

Special exceptions do not permanently change the provisions of guidelines. They allow one-time, limited purpose variances from the guidelines, without changing the guidelines general management intent. Special exceptions might be made if complying with the guidelines would be excessively difficult or impractical, or if compliance would be inequitable to a third party, and if the purposes and spirit of the guidelines can be achieved despite the exception. Special exceptions must be approved by the regional manager of the Division of Land and Water. The regional manager's decision may be appealed

to the Director of the Division of Land and Water and the Director's decision may be appealed to the Commissioner of the Department of Natural Resources.

Amendments and special exceptions must be accompanied by written findings that explain the new information or new conditions that warrant change, describe the alternative courses of action and the reasons for them, and include interagency review and public notice of the proposed changes. These findings may be incorporated under Alaska Statute 38.05.035. Revisions may require public meetings if the Commissioner decides that the level of controversy warrants it.

#### Minor Changes

Minor changes do not modify or change the basic intent of a guideline. Minor changes may be necessary for clarification, accuracy, technical correction, consistency, or to facilitate implementation of guidelines. Minor changes are made at the discretion of the Director of the Division of Land and Water and do not require public review.

The Director will notify other state agencies when minor changes are made. Affected agencies will have the opportunity to comment on minor changes following notification; the comment period may be provided through existing interagency review processes for associated actions. If any agency disagrees with the regional manager's decision, the decision may be appealed to the Director of the Division of Land and Water, and the Director's decision may be appealed to the Commissioner of the Department of Natural Resources.