

Stream Corridors, Shorelands, and Instream Flow

Goals

Recreation and Tourism. Protect and enhance a variety of public recreation and tourism opportunities along waterbodies including developed and undeveloped recreational and tourism activities.

Habitat. Protect riparian fish and wildlife habitats. Maintain fish and wildlife habitat and harvest opportunities.

Private Ownership of Land. Provide opportunities for private ownership of land near streams.

Water Quality. Maintain water quality to achieve and protect state water quality standards, and to protect streambeds and wetlands from degradation. Also, protect watersheds that supply community drinking water.

Scenic Qualities. Protect the visual quality of waterbodies and wetland habitats.

Access. Provide public access to and along state-owned waterbodies. Access across streams will be provided on a case-by-case basis.

Resource and Economic Opportunities. Contribute positively to other uses of natural resources and economic opportunities.

Shorelands. Provide for needed water-dependent and water-related uses.

Management Guidelines - General

A. Alaska Clean Water Actions (ACWA). In accordance with the ACWA program, DNR will work with the Departments of Fish and Game and Environmental Conservation to protect and improve water quality, water quantity and fish habitat.

Management Guidelines - Stream Corridors

A. Priority of Public Uses in Stream Corridors. Along most streams, DNR will set a higher priority on protecting public use values in stream corridors than on providing opportunities for private ownership of land. However, the department recognizes the strong demand for property along streams and will provide land for private purchase in some stream corridors. Prior to the disposal of stream corridor lands, DNR, in consultation with other affected agencies and the public, will assess existing and projected public use needs associated with the stream corridor. State land sales programs near streams having important recreation value will be designed to protect access to and along the stream for fishing, hiking, camping,

and other recreational activities.

B. Retain Public Access Adjacent to Waterbodies.

- 1. Public Access Adjacent to Waterbodies.** Pursuant to AS 38.05.127, some form of legal public access will be reserved in order to protect the public's right to travel to and along the shore of a waterbody without encouraging trespass. Some uses on access routes may be limited on a case-by-case basis. On an individual basis, the state may reserve specific rights (for example, the right to fish or to picnic) to protect the public interest.
- 2. State Land Sales.** In state subdivision sales, when it has been determined that access to waterbodies should be preserved (see *criteria in B-1*, above), land adjacent to waterbodies will either be retained in state ownership or dedicated for public access through establishment of an easement or right of way.
- 3. Length of Stream Buffers.** Publicly owned buffers adjacent to a stream may be retained along the full length of the stream or on the segments determined to have high current or future use and habitat values.

C. Retention of Access Easements.

- 1. Easements for Travel.** An easement rather than a publicly owned stream corridor may be reserved where the primary management intent is to protect the public's right to travel along or across a stream rather than to retain an area for public use. An easement should state the rights that it reserves. State access easements should reserve the rights of ingress and egress plus associated or incidental uses of the public resources of the water body, such as resting, loading and unloading boats, and fishing. Boat storage and camping are not considered incidental uses of the water body and usually should not be reserved. On a case-by-case basis, the state should decide which rights are appropriate for individual easements and may reserve more or fewer rights than are listed above. Easements established before adoption of this plan are not affected by this guideline.
- 2. Type of Travel in the Easement.** Easements along streams should establish the right to travel by foot, dogsled, horseback, and snowmobile. On a case-by-case basis the right to travel by all terrain vehicles and wheeled vehicles may be reserved, where doing so is in the public interest. Easements should be reserved for roads or railroads only if they are likely to be built.
- 3. Easements in Combination With Buffers.** Easements and publicly owned buffers may both be used on a waterbody to provide opportunities for private ownership near the waterbody while protecting public use or habitat values on other portions of the stream. Therefore, although easements should not be used where significant public use is to be encouraged, they may be used on portions of a stream with important public recreation and habitat values when most land adjacent to the stream is retained for public use.

D. Establishing Widths of Buffers, Easements, and Setbacks.

1. **Reasons for Varying Widths.** Width of easements, setbacks, and publicly owned buffers along a stream will vary according to management intent for the stream and adjacent uplands. In addition, the buffer width for any given stream may vary along the stream course depending on topography, vegetation, and land ownership. Establishing buffer widths for particular streams will be based, at a minimum, on the following: recreational activities to be accommodated, habitat protection and management, noise abatement, visual quality, water quality, prevention of riverbank erosion (in which case the buffer should be widened to compensate), retention of a significant hydraulic feature (such as a wetland), and land disposal.
2. **Guidelines for Establishing Widths.** Although buffer, easement, and setback widths may vary from stream to stream, a basic level of consistency is necessary to avoid confusion about the width of public use and access areas along the state's many streams; also fieldwork and site analysis to establish separate buffer widths for each stream corridor would be prohibitively expensive. The following guidelines are intended to establish a reasonable degree of consistency in buffer, easement, and setback widths used by the department when disposing of an interest in state land.
 - a. **Standard Buffer Width.** To provide separation between uses or to protect a sensitive environment or habitat zone, 100 to 300 feet. When it is determined that a publicly owned buffer is appropriate, a standard minimum buffer width of 100 feet should generally be established landward from the ordinary high watermark on each bank unless the use or activity is water-dependent or water-related. This width may be reduced to a minimum of 100 feet on each bank in individual cases when consistent with the management objectives for the stream corridor. The width of the setback may be increased to 300 feet on each bank if necessary, to maintain public access to riparian areas and protect water quality in accordance with water quality standards established by the Department of Environmental Conservation and the Forest Practices Act (see *Guideline F*).
 - b. **Standard Easement Widths.** 50-foot minimum. When it is determined that a public access easement will be reserved on land adjacent to a stream, a minimum easement of 50 feet landward from the ordinary high water mark on each bank will be reserved.²
 - c. **Building Setbacks in Land Sale Areas.** When state land is conveyed through a land sales program, including subdivisions, or if leased for a period greater than five years, a minimum building setback of 100 feet landward from the ordinary high watermark on each bank will be established.³ The width may be reduced when land adjacent to the stream is stable and development or use does not pose a risk to water quality or other values, such as wildlife or recreation. In some cases stream buffers

² Note: A public use easement of 50 feet must be established whenever state interests in land are transferred. This includes disposals or transfer of land.

³ A minimum setback of 100 feet applies to all high value resident fish streams or cataloged anadromous fish streams. A minimum setback of 50 feet applies to all streams that are 10 feet or greater in width.

Table 2.1 Minimum widths for reserved public access and building setbacks

Guideline/ Description	Minimum Width	Where It Applies	Primary Purpose	Guidelines
1. Public access Adjacent to all navigable waters ⁴	<u>50 feet</u> Landward from ordinary high water	Along: Lakes Streams	Provide public access along navigable and other waterbodies.	<ul style="list-style-type: none"> Prohibited: Residential structures, fences, and other non-water-dependent structures that will obstruct passage.
2. Building setback Adjacent to all waters <u>except</u> anadromous and high-value resident fish waters (see <i>guideline 3</i> below)	<u>50 feet</u> Landward from ordinary high water	Non-anadromous and non-high-value resident fish: Lakes Streams	Protect public values, including public access, recreation, and water quality along all waterbodies.	<ul style="list-style-type: none"> Where feasible and prudent, and necessary to protect public values along the stream. Does not apply to exceptions listed at bottom of table.
3. Building setback Adjacent to anadromous and high-value resident fish waters	<u>100 feet</u> Landward from ordinary high water	Anadromous and high-value resident fish: Lakes Streams	Protect fish habitat, water quality, and recreation values along anadromous and high-value resident fish.	<ul style="list-style-type: none"> Where feasible and prudent. Applies only to non-water-dependent uses. Does not apply to exceptions listed at bottom of table. The setback shall be vegetated or revegetated to maximize shade on the stream. Incorporate measures to prevent adverse changes including erosion, turbidity, sedimentation, and temperature differences within the waterbody or adjacent wetlands.
4. State Retention areas Adjacent to anadromous and high-value resident fish waters	<u>200 feet</u> Landward from ordinary high water	Anadromous and high-value resident fish: Streams and lakes	Maintain or enhance anadromous and high-value resident fish habitat, recreation, and water quality values.	<ul style="list-style-type: none"> The state will retain these corridors in conveyances to private owners, municipalities, and other entities. Alternately, land conveyed will be subject to a conservation easement or other management tool that meets the principal purposes of this buffer.

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 Sections 2 and 3 above: a) Structures such as docks, bridges, and culverts whose purpose is access to or across the stream or lake; b) Uses that must be in or adjacent to the waterbody in order to function, such as placer mining activities, fish culturing, water supply intakes, and similar uses.

⁴ Other waters may be considered on a case-by-case basis.

may be reduced to allow for an adequate publicly owned buffer or setback on a nearby, more valuable wetland or lake.

- 3. Uses Allowed in Easements, Setbacks, and Buffers.** Water-dependent structures, such as docks and boathouses, are allowed within easements, setbacks, and publicly owned buffers. If a structure would block public access, alternative access must be provided. Commercial or industrial uses and activities that are neither water-dependent nor water-related may occur within 100 feet only if there is no feasible and prudent alternative to meet the public need. Where it is not feasible and prudent to maintain a setback adjacent to fish habitat, public water supplies, or recreational waters, other measures will be used to mitigate the impacts.
- 4. Timber Harvest Near Streams.** Timber harvest near streams will be consistent with the Forest Practices Act and regulations (AS 41.17 and 11 AAC 95). See AS 41.17.118(a)(l) for harvest within 100 feet of an anadromous or high value resident fish water body.
- 5. Structures in Fish Habitat.** See *Fish and Wildlife Habitat and Harvest Guideline C*.
- 6. Water Intake Structures.** See *Fish and Wildlife Habitat and Harvest Guideline D*.
- 7. Alteration of the Hydrologic System.** To the extent feasible, channelization, diversion, or damming that will alter natural hydrologic conditions and have a significant adverse impact on important riverine habitat will be avoided.
- 8. Soil Erosion.** Soil erosion will be minimized by restricting the removal of vegetation adjacent to streams and by stabilizing disturbed soil as soon as possible. Projects to stabilize a streambank require an authorization.

Management Guidelines for Shorelands

- A. Public Trust Doctrine.** For information on the Public Trust Doctrine, see the *Management Intent for Navigable Rivers* section at the end of Chapter 3.
- B. Uses on Shorelands Adjacent to Non-State Land⁵.** Permanent facilities and temporary facilities⁶ will be prohibited on shorelands. Floating facilities, boat storage, airstrip development, docks, and other long-term uses⁷, such as trails and waterlines, may be allowed if consistent with management intent and applicable guidelines.
- C. Avoiding Conflicts With Adjacent Upland Owners.** Before DNR issues a land use authorization on shorelands, DNR will require applicants to use areas that will reduce the likelihood of possible land ownership disagreements with upland owners (such as

⁵ See *Director's Policy File 91-03, Shorelands Adjacent to Non-State Land*.

⁶ Camping at one site on state land for longer than 14 consecutive days is considered a temporary facility.

⁷ Use that takes place at one site on state land for longer than 14 consecutive days.

unvegetated gravel bars). DNR will carefully consider comments from private landowners and others before making a decision. DNR will retain the right to issue a land use authorization over the objection of adjacent landowners.

- D. Written Agreements With Upland Owners.** Applications for use of shorelands that require use of adjacent uplands in non-state ownerships 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 authorization 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.
- E. Modification of Authorizations to Protect Other Resources.** Shoreland uses that will result in significant conflicts with habitat, harvest, or historic or archaeological sites should be modified to avoid or mitigate the effects on these resources and uses or be located elsewhere.
- F. Disposal of Land Under Waterbodies.** Shorelands may be made available for lease or less than fee-simple disposal. These lands can also be assigned to other state agencies for management. These lands cannot be sold or conveyed to private entities but can, under certain conditions, be conveyed to municipalities. Under municipal ownership, these lands are still subject to the Public Trust Doctrine.⁸

Management Guidelines for Instream Flow

- A. Streams and Uses to Consider.** Under AS 46.15, reservation of instream flow is possible for four types of uses: (1) protection of fish and wildlife habitat, migration and propagation; (2) recreation and park purposes; (3) navigation and transportation purposes; and (4) sanitary and water quality purposes.
- B. Process for Determining Reservations.** The process for determining instream flow reservations is outlined in 11 AAC 93.141 – 11 AAC 93.147. Before beginning the process to determine instream flow reservations, an applicant should contact the Water Management Section of the Northern Region Office of DNR. If the application will involve fishbearing waters, the applicant should contact ADF&G as well.
- C. Other Guidelines Affecting Stream Corridors, Shorelands, and Instream Flow.** Other guidelines may affect stream corridors, shorelands, and instream flow. Sections in this chapter that should also be referred to include but are not limited to:

Fish and Wildlife Habitat and Harvest
Forestry
Heritage Resources
Materials

⁸ See the *Management Intent for Navigable Waterbodies* section at the end of Chapter 3 for an explanation of the Public Trust Doctrine.

Recreation and Tourism
Subsurface Resources
Trails and Public Access
Transportation
Wetland Management