

“Residential Encroachment onto Submerged Lands in Alaska”

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The state role in this matter is one of proprietary management. Managing for the public interest remains the primary focus.

Ms. Swinford referenced the state constitution, Article 8 (Natural Resources), Section 1, which says, in essence:

- Encourage resource development, create jobs and economic growth in all regions.
- Ensure that resource development is based on sound science, prudent management, responsive public involvement.
- Ensure resource sustainability and multiple uses.
- Streamline natural resource leasing, sales, and permitting processes.

There are three basic regions of land management across the state: northern, southern, and southeast. The land base managed includes: surface, uplands, tidelands, shore land, and submerged land, as well as some special categories and special use areas.

This is a vast area, and her department manages 60 million acres of surface uplands. There will be 165 million acres of public land statewide, once all current conveyances are completed. (Some of this will revert to local governments.)

Ms. Swinford described management “controls” used as: state constitution, state laws, regulations and policies, and area management plans. In general terms, disputes are settled by a state preliminary decision, followed by a public notice, followed by a final decision. Administrative appeals go to court.

Regarding residential encroachment, the general public generally views economic growth as something that naturally spurs residential growth – a good thing. There exists a certain lack of education, lack of enforcement, and “frontier mentality” across the state.

Economic growth leads to greater need for access, generally met by boats and float planes and a growing phenomenon of residential houses built over water (due to the lack of road access).

In general, the public is not very informed regarding land use regulations, and often questions authority. This is combined with a general lack of enforcement, due to the vast geographic area – 23,000 miles of coastline – and the fact that the state DNR does not have the authority to do so.

Alaska is still known for its “free land.” As a young state, only 48 years of statehood, residents want to maintain a free lifestyle and resist government intrusion.

Development is encouraged with little oversight. There is still a tightly held belief that you can do whatever you want to do here – among the older generation – and the new generation is following suit.

Encroachment into tidal and submerged lands is regulated as:

- Generally allowed uses, adjacent to existing private land
- Anchoring a mooring buoy – no problem!
- Float dock and boat haul-out have been defined; as have boathouse and floating breakwater. But people are going way beyond these accepted definitions (see slides, examples).

When is such encroachment problematic? The state says: if it impedes access to water by an adjacent landowner; if the local community wants management control on the amount of development occurring; and if it is a hazard to navigability.

Authorizations needed? There are no specific authorizations, regulations, or statutes governing private land.

The state has 3 tools for managing submerged lands:

- Permits for short-term use
- Easements for long-term use
- Leases, which are designed for long-term use and interests. This is the only “real” tool to deal with private residential encroachments. A fee is based on acreage used and while it is expensive, it is not a good tool for managing growth.

In summary, how does Alaska handle encroachment issues? Historically, “we ignore them.” In the past, we have created statutes or regulations to authorize a particular type of encroachment within a specific area. Then we repeal the statute so that no more can be authorized (this is a little like a “grandfather” clause). We also create discrete policies, called a “director policy” which is created to deal with a specific problem.

What should we do about the problem in the southeast region over the rising number of float homes? We should develop new regulations that establish: that authorization is easily obtained, at a low cost; that fees are fair, and bonding and insurance requirements are met.

The pressure is on to manage Alaska’s coastal growth. Government assistance is now being sought (by landowners), but apprehension still exists. There remains an inherent lack of trust with government involvement.

From a state perspective, we don’t want docks that are worth more than their houses or a regulatory process that is cost-prohibitive. We want to learn from other states and begin

an education process with people, and encourage them to become more involved in managing state lands. We are currently using “Halibut Cove” as an exercise in the process of the state working with a local community.