

# "Alaska's New Wetlands Rules"

Most often a policy or actionable item has a basis for its existence.  
Quite often that basis is applicable in more instances than was initially intended.  
Sometimes that basis has a general use across a broad spectrum of areas.  
However,

***The broad use of the US EPA Wetlands Rule is not effective in Alaska.***

## ***Alaska is wetlands.***

- ✓ If the intent of the Rule is to destroy property rights, then it is being used as intended.
- ✓ If the intent of the Rule was to prevent development in Alaska, then it is being used as intended.
- ✓ If the intent of the Rule was a transfer of wealth from producers to consumers, then the rule is being used as intended.
- ✓ If the intent of the Rule was to ensure that Alaskans remain wards of the state and serfs to the environmental movement, then the rule is being used as intended.

## ***Alaska is not a United States park.***

- ✓ Alaska is my State.
- ✓ Alaska is where I and my neighbors came to build our dreams.
- ✓ Alaska is where I built my home.
- ✓ Alaska is where I work for a living.
- ✓ Alaska is where I will protect my family.
- ✓ Alaska is where I hope my children and my children's children will build their own homes, live their own dreams, and provide for their families.

We believe that the true intent of the Wetland Rules was to protect the few remaining ponds, marshes, and estuaries in areas of the lower 48 where those lands had been abused by unbridled development that ignored the environmental impacts. However, in Alaska, these rules have the unintended consequence of completely stifling nascent development by inflating the cost of real estate. Since nearly all of Alaska is classified as wetlands, mitigation payments, land conservation, and other wealth transfers make the underlying cost of real estate skyrocket. Often, up to 50% or more of the value of the real estate is consumed by mitigation costs.

We propose that modern technology coupled with local planning provides the means to responsibly develop Alaska while protecting the environment and maintaining abundant wildlife and habitat. Alaskans value the wild nature of our lands, but also must provide a means for the citizens of our *Great State* to earn a livelihood and live their lives without excessive and unnecessary regulatory intrusion.

The new wetland rules shall apply only to developments that are managed and developed within an organized borough and strictly adhere to the planning and zoning guidelines of that borough that have been adopted in accordance with state regulations promulgated by the Alaska Department of Natural Resources (ADNR).

Those lands outside of organized boroughs may be developed under the direct guidance of ADNR on an individual basis once the program guidelines are developed by the Alaska legislature and approved by the governor of Alaska.

Alaska asserts sovereignty over all wetlands within the state. Except for agencies of the state of Alaska, no organization or governmental body, or any local affiliate of them, resident outside the state of Alaska, or whose members reside or conduct any activities, fund raising, lobbying, recruitment or advertising outside of the state of Alaska, shall have any legal standing to intervene in, exert any influence over, or commence any challenge, legal or otherwise, regarding management of wetlands within the state of Alaska.

Further, except for agencies of the state of Alaska, within any organized Alaskan borough, no outside organization or governmental body, or any local affiliate of them, where more than 25% of whose members reside or conduct any activities, fund raising, lobbying, recruitment or advertising outside of the organized borough, shall have any legal standing to intervene in, exert any influence over, or commence any challenge, legal or otherwise, regarding management of wetlands within said organized borough.

## **ALASKA WETLANDS MITIGATION RULES:**

- If, after any contemplated development has been completed, the total substantially altered (developed) area of land within a five mile radius surrounding the proposed development would be less than 10% of the total land within that radius, then the following applies:
  - If the total proposed substantially altered land is less than five acres and is being developed for residential use, then that land shall be required to be developed under the guidelines and standards as written and approved by either the applicable borough planning department or ADNR, if the land is not within an organized borough. No additional requirements shall apply.
  - A commercial or agricultural development with less than five acres of proposed substantially altered land shall be required to be developed under the guidelines and standards as written and approved by either the applicable borough planning department or ADNR, if the land is not within an organized borough. In either case, notice of the proposed development shall be posted on the state website for 10 days prior to construction.
  - Any development between five and ten acres of proposed substantially altered land shall require a wetlands review and approval by either the local borough assembly or, in the case of lands not within an organized borough, ADNR, and shall be posted on the state website for 30 days prior to construction.
  - Any development with a proposed substantial disturbance of greater than ten acres shall require a review and approval by both the borough assembly and ADNR, and shall be posted on the state website for 30 days prior to construction.
- If after the contemplated development has been completed, the total substantially altered (developed) area of land within a five mile radius surrounding the development would be greater than 10% of total land within that radius, then the following applies:
  - If the total proposed substantially altered land is less than five acres and is being developed for residential use, then that land shall be required to be developed under the guidelines and standards as written and approved by either the applicable borough planning department or ADNR, if the land is not within an

organized borough, and shall be posted on the state website for 10 days prior to construction.

- A commercial or agricultural development with less than five acres of proposed substantially altered land shall be required to be developed under the guidelines and standards as written and approved by either the applicable borough planning department or ADNR, if the land is not within an organized borough. In either case, notice of the proposed development shall be posted on the state website for 30 days prior to construction.
- Any development between five and ten acres of proposed substantially altered land shall require a wetlands review and approval by both the local borough assembly and ADNR, and shall be posted on the state website for 30 days prior to construction.
- Any development with a proposed substantial disturbance of greater than ten acres shall require a review and approval by both the borough assembly and ADNR, and shall be posted on the state website for 60 days prior to construction.

The governor of the State of Alaska shall propose the creation of the Alaska Development Posting Agency (ADPA) within ADNR. The Alaska legislature shall fund the ADPA and create a set of rules under which the ADNR shall administer the ADPA. The purpose of the ADPA and the posting of the proposed developments on the state website is to track the total substantially altered lands within the state so as to manage future development under the proposed guidelines, as well as provide a central clearing house for review by interested persons, regulatory agencies, and developers.

During the required posting period on the ADPA website, any state agency or the United States Corp of Engineers may physically view the property and render an opinion as to whether they believe that substantial harm is likely to occur to the surrounding area or the inventory of Alaska wetlands if the development were to be completed as planned. The specific site must be physically reviewed by an actual human being of that agency and specific harm must be documented by that individual acting in their official capacity. The notice of substantial harm must be presented to ADNR within 5 days of the end of any required posting period. If notice of substantial harm is not timely issued, the project can proceed without further review for wetlands mitigation.

Upon receipt of a notice of substantial harm, ADNR shall have 10 days to issue a regulatory hold for an up to an additional 60 days. This regulatory hold may be authorized by ADNR to determine if, solely in ADNR's opinion, substantial harm is likely to occur to irreplaceable wetlands. If ADNR determines that substantial harm is not likely to occur by failing to issue a cease and desist order within 60 days, then the project can proceed as proposed. If ADNR determines that substantial harm is likely to occur, then ADNR will issue a cease and desist order whereupon the project will be referred to an independent review body made up of a seven member board for final disposition and adjudication. The board's decision in wetlands mitigation issues shall be rendered in a timely manner. Decisions of the board are considered final. Only persons granted standing under these wetlands rules may seek redress in Alaska Superior court.

The board shall consist of four members representing the State of Alaska, two members representing organized boroughs (one of which must be from a rural borough), and one member representing the US Army Corps of Engineers or other federal government agency as applicable.

In the case of a regulated development, such as, a mine site or the construction of a dam, no part of this rule shall reduce the requirements of those regulatory bodies, except as it pertains to federal wetland rules.