



## **JOINT STATEMENT CAMPBELL LAKE WITHIN THE MUNICIPALITY OF ANCHORAGE OWNERSHIP, USE AND ACCESS**

*December 6, 2019*

Both the Alaska Department of Natural Resources (DNR) and the Municipality of Anchorage (MOA) have received inquiries regarding Campbell Lake, its ownership, its use and public access. The following statement has been prepared to answer many of the frequently asked questions and to identify points-of-contact at both entities for future questions and concerns. The following is not, and should not be, deemed legal advice. Anyone who has specific questions concerning legal rights and obligations and legally permissible conduct should consult with an attorney.

### **Campbell Lake**

Campbell Lake, located within the boundaries of the Municipality of Anchorage, is a waterbody that was created when land developers in approximately 1957-58 used heavy machinery to dam flowing waters of Campbell Creek. DNR has not located any records that demonstrate whether the dam builders sought or obtained permission for this construction, but the absence of such permitting records from territorial times is not uncommon. The dam is now jointly owned and managed by Campbell Lake Owners, Inc. (CLO) and the Municipality of Anchorage. The dam is a Class III (low) hazard dam and must be inspected every five years to qualify for a Certificate of Approval to Operate a Dam. The dam was inspected and certified in 1989, 1994, 2002, 2007, 2008 and 2014. The 2014 certificate expired on September 6, 2019, and DNR is not aware of any inspection that has been performed in 2019.

### **Regulation of the Waters of Campbell Lake**

The waters of Campbell Lake are held by the State of Alaska pursuant to the public trust doctrine for the benefit of the people. These waters fall within the state statutory definitions of

navigable or public waters for purposes of the public trust doctrine, and the fact that the pooling of the waters was the result of a man-made dam is irrelevant from a public trust doctrine position. The use of these waters, moreover, has not been limited by any express legislative or executive action. The general public can use the waters of Campbell Lake, including the lands underlying Campbell Lake, for any generally allowable and lawful use consistent with the public trust—including boating and all forms of permissible recreation (*fishing in Campbell Lake is prohibited at all times*). Public use of the water and the land below the ordinary high-water mark in connection with such use is not considered trespassing. In certain circumstances, it can be a criminal offense (Class B misdemeanor) for someone to “obstruct or interfere with the free passage or use by a person of any navigable water.” AS 38.05.128.

### *Public Access to the Waters of Campbell Lake*

As discussed above, the SOA manages the waters of Campbell Lake pursuant to the public trust doctrine. Citizens are therefore entitled to use the water for recreation or any other lawful purpose. Landowners abutting the shores of Campbell Lake and CLO cannot lawfully restrict the public’s rights of use pursuant to Alaska law. But on the other hand, landowners and CLO do enjoy property rights to the quiet enjoyment of their uplands and are entitled to bar trespassers from the uplands, not burdened by any public access easement, that they own and/or that are controlled by CLO—except as prohibited by AS 38.05.128 and elsewhere. This begs the very pertinent question of how may the public access the water of Campbell Lake.

There are four ways the public can lawfully access the water of Campbell Lake. The public can: (1) traverse private uplands with the permission of the concerned landowner; (2) land on the surface of Campbell Lake by aircraft without permission as long as such activity complies with all appropriate federal aviation laws and regulations; (3) access Campbell Lake via Campbell Creek without permission by boat or by other means when the water is frozen; or (4) use either of two public-access easements that provide overland access to reach Campbell Lake without permission.

The first public-access easement that links West 100<sup>th</sup> Avenue to the lake shore that consists of a dedicated public pedestrian access easement across one private parcel (EV-2-861 on Plat 2007-85) and an unvacated section line easement across a second private parcel (*a photocopy of the relevant platting document is attached hereto*). See AS 19.10.010; AS 38.05.127; 11 AAC 51.065. The “hybrid” nature of this public access easement is the result of 2007 proceedings in which one affected private property owner requested, and DNR authorized, vacation of a portion of the section line easement—preserving (*as required by law*) a 25-foot public pedestrian easement. These proceedings did not affect other portions of the section line easement—particularly a neighboring parcel where the section line easement has not been vacated. Pursuant to state law, no private property owner or other party may prohibit the public from using this valid public

access easement; and no DNR Commissioner has ever authorized any obstruction or interference with public access to Campbell Lake along this route. See Dillingham Commercial Co. v. City of Dillingham, 705 P.2d 410, 414–15 (Alaska 1985) (property owners cannot block access to a public right-of-way or easement). The State of Alaska Department of Natural Resources exercises management authority over the section line easement. The Municipality of Anchorage accepted management authority for the dedicated public pedestrian access easement through the relevant plat.

Second, there is a section line easement running from the north shore of Campbell Lake to Jewel Lake Road. This 66-foot unvacated easement provides an additional means for members of the public to reach the public waters of Campbell Lake. No DNR Commissioner has ever authorized any obstruction or interference with public access to Campbell Lake along this section line easement. The State of Alaska Department of Natural Resources exercises management authority over the section line easement.

#### *Points of Contact*

Questions about use of the public pedestrian easement extending from West 100<sup>th</sup> Avenue should be directed to:

Municipal Attorney's Office  
632 W. 6<sup>th</sup> Avenue, Suite 730  
Anchorage, Alaska 99501  
907-343-4545

Questions regarding the use of the waters of Campbell Lake and public access via section-line easements:

Public Information Center  
Alaska Department of Natural Resources  
550 West Seventh Avenue, Suite 1360  
Anchorage, Alaska 99501  
907-269-8400  
Fax: (907) 269-8901  
TTY: 711 for Alaska Relay  
or 1-800-770-8973  
dnr.picl@alaska.gov

**STATEMENT PREPARED BY:**



Marty Parsons, Director  
Division of Mining, Lands and Water  
Alaska Department of Natural Resources



William D. Falsey, Municipal Manager  
Municipality of Anchorage