

**State of Alaska  
Department of Natural Resources  
Division of Parks and Outdoor Recreation**

**Director's Determination  
Special Park Use Permit – LAS 28479  
Nuvista Light and Electric Cooperative, Inc.  
Chikuminuk Lake/Allen River – Wood-Tikchik State Park**

**Proposed Action**

Nuvista Light and Electric Cooperative, Inc. (Nuvista) has applied to the Division of Parks and Outdoor Recreation (DPOR) for permission to perform field studies at Chikuminuk Lake and the Allen River in Wood-Tikchik State Park in support of the Chikuminuk Lake Hydroelectric Project.

**Scope of Activity**

As proposed, the nature and scope of activity Nuvista is seeking authorization to perform is complex and involves the following types of studies and work: geophysical (seismic refraction), geotechnical (drilling and installation of stand pipes), survey and mapping (installation of survey monuments), hydrology and water quality (installation of stream gages), terrestrial and aquatic biology, cultural and archaeological investigations, and evaluation of recreational uses. Not all, but many of these proposed studies will require the routine use of helicopters, not just for transporting staff to and from the project site, but also for the transport and use of portable drill rigs used to perform geotechnical evaluations. Studies will also necessitate ground disturbance, such as geotechnical drilling and seismic refraction, and digging pits for archaeological investigation. Other study requirements include installation of stand pipes, survey monuments, and stream gages which are scheduled to remain on site for several years. These studies will also require the need for overnight storage of equipment and gear.

**Adjudication Process**

Nuvista submitted a Special Park Use Permit application to DPOR on March 30, 2012:

- April 10, 2012 – DPOR met with Nuvista to seek more information on the proposed scope of work;
- April 13, 2012 – Nuvista submitted an addendum to their permit application;
- April 13, 2012 – DPOR initiated a 30 day public comment period, and placed a public notice on the DNR and DPOR web page; the notice was distributed to members of the park management council, commercial operators, and state, federal, and local government agency staff in the area.
- May 14, 2012 – Close of comment period; DPOR extended the public comment period for an additional 14 days; noticed additional members of the public, as well as state, federal, and local government agency staff.
- May 29, 2012 – Close of extended comment period.

Over the course of the 45 day comment period DPOR received a combined total of 36 comments. Most comments were received during the initial 30 day comment period. The bulk

of comments received were in opposition to Nuvista's field study proposal. Many of the comments cited the enabling legislation, the Wood-Tikchik State Park Management Plan, and potential impacts to recreation. All 36 comments are provided in Attachment A.

### **Legal Authority**

Nuvista's request to DPOR for a Special Park Use Permit is being adjudicated pursuant to the following statutes and regulations:

- AS 41.21.160 – 41.21.167
- 11 AAC 12.170
- 11 AAC 12.175
- 11 AAC 18.010
- 11 AAC 18.025
- 11 AAC 20.365
- 11 AAC 20.375
- 11 AAC 20.380

### **Enabling Legislation**

Established in 1978, the park's enabling legislation (AS 41.21.160 – 41.21.167) states, "The primary purposes of creating the Wood-Tikchik State Park are to protect the area's fish and wildlife breeding and support systems and to preserve the continued use of the area for subsistence and recreational activities. The state park is also created to protect the area's recreational and scenic resources. AS 41.21.160 – 41.21.167 are intended to close the described land and water to multiple-purpose use in conformity with AS 38.05.300 and to dedicate it as a special purpose site in accordance with art. VIII, §7 of the Constitution of the State of Alaska."

Park uses listed as "Incompatible" are found in section AS 41.21.167. Part (c) of this section considers two lakes, Lake Elva and Grant Lake, as not being incompatible for the development and operation of a hydroelectric facility within the park.

### **Analysis**

The scope of activity that Nuvista is requesting to perform in Wood-Tikchik State Park is not consistent with the purposes and provisions of the enabling legislation AS 41.21.160 – 41.21.167. The proposed activities conflict with the type of uses allowed in the unit specific management guidelines listed in the Wood-Tikchik State Park Management Plan, which designates Chikuminuk Lake as wilderness. Furthermore, the proposed activities are prohibited by state park regulations and park specific regulations that have been adopted by reference.

### **Recommendation**

Nuvista seeks authorization to perform field studies in support of hydroelectric development at Chikuminuk Lake in Wood-Tikchik State Park. The purpose of the proposed field studies is to evaluate the feasibility of hydroelectric development on a lake which under current statutory framework is considered to be incompatible. According to the Wood-Tikchik State Park Management Plan, Management Intent and Guidelines for this Management Unit 2 – Chikuminuk Lake, page 9-9, which are adopted by reference as regulation, "Hydropower development is incompatible with park purposes. The Division of Parks and Outdoor Recreation therefore does not have the authority to approve hydroelectric development at Chikuminuk Lake.

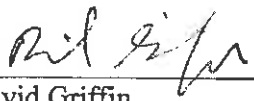
Before Chikuminuk Lake can be considered for hydropower development, the enabling legislation must be amended." Based on a thorough review of the purposes and provisions of the statutes that established the park, the unit specific management intent of the management plan, and the regulations prohibiting incompatible uses, it is the decision of the director to deny issuance of a Special Park Use Permit to Nuvista. Furthermore, Nuvista's proposed field studies have generated a significant amount of opposition to the project as demonstrated in Attachment A.

#### Appeals

All appeals must be in accordance with 11 AAC 02. To be eligible to appeal a person must be affected by this decision. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02(c) and (d). If no appeal is filed within the 20 days of "issuance" this decision goes into effect as a final order and decision 31 days after "issuance". An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

Appeals should be directed to:

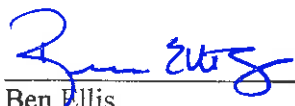
Dan Sullivan, Commissioner  
Department of Natural Resources  
550 W. 7<sup>th</sup> Avenue, Suite 1400  
Anchorage, AK 99501  
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David Griffin  
Natural Resource Specialist III

7/11/12  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
I concur

\_\_\_\_\_  
I do not concur

  
\_\_\_\_\_  
Ben Ellis  
Director  
Division of Parks and Outdoor Recreation

7/17/2012  
\_\_\_\_\_  
Date