

State of Alaska
Department of Natural Resources
Division of Forestry & Fire Protection



Northern Region – Fairbanks-Delta Area
FOREST LAND USE PLAN
Cummings Road Extension
NC-1668-D

December 2023

Abbreviations

ADEC	Alaska Department of Environmental Conservation
ADF&G	Alaska Department of Fish and Game
ADNR	Alaska Department of Natural Resources
BIF	Best interest finding
DMLW	Division of Mining, Land and Water
DOF	Division of Forestry & Fire Protection
FLUP	Forest Land Use Plan
FRPA	Alaska Forest Resources and Practices Act
FYSTS	Five-Year Schedule of Timber Sales
MBF	Thousand board feet
OHA	Office of History and Archeology
ROW	Right-of-way

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I. Introduction

Project File Number: NC-1668-D

Division of Forestry & Fire Protection Office: Fairbanks-Delta Area
Area Forester: Andrew Allaby (acting)
Forest Practices Geographic Region (AS 41.17.950): Region III

This Forest Land Use Plan (FLUP) covers proposed forest operations on approximately 124 acres of land near Cummings Road. It is intended to provide the best available information regarding the proposed harvest of timber, and management of other non-timber uses in compliance with AS 38.05.112 and AS 41.17.060, and must be adopted by the DNR before the proposed activity can occur.

This Forest Land Use Plan is for timber sale(s) which have been determined to be in the best interest of the state pursuant to AS 38.05.035 (e) and AS 38.05.945; the Cummings Road Extension final BIF includes proposed timber sale NC-1668-D, and is available on DOF's public webpage: <http://forestry.alaska.gov/timber/delta>. This FLUP does not determine whether or not to access and sell timber within the timber sale area, nor the method of sale. Those decisions have been made previously in the Best Interest Finding and are not appealable under this FLUP.

This Forest Land Use Plan is for timber sale(s) for which a Preliminary Best Interest Finding is currently out for review. A final best interest finding must be completed prior to adoption of a FLUP pursuant to AS 38.05.035 (e) and AS 38.05.945; the Cummings Road Extension PBIF includes proposed timber sales NC-1668-D, and is available on DOF's public webpage: <http://forestry.alaska.gov/timber/delta>.

This Forest Land Use Plan is for timber to be harvested that does not require a final finding pursuant to AS 38.05.035 (e) and notification under AS 38.05.945.

This Forest Land Use Plan was made available for public comments; the review period ended on 12/1/2023. After public and agency review of the draft FLUP, the DOF reviewed comments, made changes as appropriate (see Appendix C) and has adopted this FLUP. This Forest Land Use Plan has been adopted by the Department of Natural Resources. Site specific compliance with the Alaska Forest Resources and Practices Act and the Regulations, as well as the Final Finding for this proposed project are reflected in this Forest Land Use Plan and will be implemented in the Timber Sale Contract.

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Comments on the specific requirements for harvest, access, and reforestation operations in the FLUP should be submitted in writing to Andrew Allaby, Area Forester (acting) on or before **12/26/2023**. Address(es) for submitting written comments: 3700 Airport Way, Fairbanks AK 99709, or email andrew.allaby@alaska.gov.

Other Documents are referenced in this FLUP. This timber sale is designed to be consistent with the management intent of the following documents:

Tanana Valley State Forest Management Plan

The administrative record for this sale is maintained at the Division of Forestry & Fire Protection Fairbanks-Delta Office filed as the Cummings Road Extension #1 / NC-1668-D.

A. Legal description

The proposed sale is located within Sections 18 & 19, Township 10 South, Range 14 East, Fairbanks Meridian. See maps in Appendix A.

B. Operational Period

Approximately 3 years from the “Effective Date” on the signed contract. Timber contracts administered by the Fairbanks-Delta office generally have a 3-year operational period terminating on May 31 of the third year.

C. Timber Disposal

- Timber will be sold and will have a contract administered by the State.
- Timber will be available to the public; permits obtained by the public will be issued by the State.
- Other

D. Objectives and Summary

- Provide the raw material for the industry to produce timber products providing benefits to the state and local economy through employment opportunities.
- Harvest the commercial sawtimber and/or fuelwood before a significant decrease in vigor occurs and return the site to a young productive mixed stand forest.
- Provide firewood for the residential heating needs of interior Alaska communities.
- Promote multiple use management that provides for the production, utilization, and replenishment of timber resources while perpetuating personal, commercial, and other beneficial non-timber uses of the forest resources.

II. Affected Land Owners/Jurisdictions

A. State

Activity on ownership:	Access Easement	Harvest	Written Representative Approval
<input checked="" type="checkbox"/> Tanana Valley State Forest	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other state land managed by DNR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> University of Alaska	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Mental Health Trust	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> School Trust	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. Other Land Ownership

Land Owner: n/a

Land Owner Representative: n/a

III. Harvest Methods, Silvicultural Actions, and Management of Non-timber Resources

Forest operations will be designed to:

- Protect fish habitat and water quality in compliance with the best management practices in 11 AAC 95.260-.370,
- Manage for the other land uses and activities identified in AS 41.17.060 and the Best Interest Finding for this timber sale, and
- Ensure prompt reforestation and maintenance of site productivity in compliance with AS 41.17.060(c) and 11 AAC 95 .375-.390.

Harvest and Silvicultural Methods:

- The silvicultural actions are described in this document, and no prescription was written or is necessary.
- A silvicultural prescription has been written and is attached to this document in Appendix B.

A. Timber Stand Description and History

The proposed sale area is primarily a mature spruce forest, with a moderate black spruce component and incidental birch and aspen. These stand contains predominantly white spruce with a mix of saw- and pole-sized timber. Measured spruce in the dominant class were between 9-12 inches DBH and the largest measured tree was 16 inches DBH. The average age of cored spruce was 127 years at breast height. Much of Unit 1 and portions of Unit 2 had a closed canopy with a moss groundcover and little else in the understory. The remainder of the sale was somewhat more open, with tussocks and ericaceous shrubs like Labrador tea and blueberry as the primary understory vegetation. Alder, willow, and rose predominate in canopy openings. The Calamagrostis grass component is very low in this stand and is estimated to cover <2% of the area. There is an estimated 10% defect for spruce in the stand.

B. Timber Harvest Activities

Timber Harvest Activities are displayed in Table 1.

Table 1. Timber Harvest Activities

Unit ID	Acres	Topography	Silvicultural Action	Logging Method
1	64	flat	Heavy partial cut	Whole tree harvest
2	41	flat	Heavy partial cut	Whole tree harvest
3	19	flat	Heavy partial cut	Whole tree harvest

C. Site Preparation

Natural regeneration will be utilized for reforestation. All-season harvest with equipment is anticipated to adequately prepare seedbeds.

- Site preparation will not be necessary. There is either sufficient residual stocking, or because there has been sufficient soil disturbance by logging to forego scarification.
- Site preparation will be implemented and described in Table 2:

Table 2. Site Preparation

Unit ID	Acres	Site Preparation Method	Date of Completion
1	64	Natural regeneration	12 years post-harvest
2	41	Natural regeneration	12 years post-harvest
3	19	Plant white spruce seedlings	3 years post-harvest

Mechanical site preparation should avoid driving heavy equipment over known den sites greater than 12” in diameter (e.g., dens for fox, wolves, and bears).

D. Slash Abatement

- Potential for insect infestations caused by slash accumulations exists. Slash abatement for controlling infestations will be implemented as required by 11 AAC 95.370.
- Lop and scatter slash; accumulations will be kept to less than 2 feet in height.
- Slash will be disposed of by the operator Slash will be disposed of by the State
- Other - method of slash disposal: removal off site crushing or grinding burning
- Burn permits necessary from DOF and DEC to be acquired.
- The operator will contact the DOF local area office prior to ignition of debris.

E. Soil Stability / Erosion / Mass Wasting

- Maximum percent side slopes are $\leq 50\%$
- Maximum percent side slopes are $> 50\%$

Percentage of sale area with slopes $> 50\%$: 1%

Maximum percent slopes: 50% on short side slope pitches above old sloughs

- There are no indicators of unstable areas.
- Indicators of unstable areas were identified and will be mitigated by actions indicated below.

F. Timber Harvest—Surface Water Protection

- There are no streams or lakes abutting or within a harvest unit.
- Known surface waters and protection measures are described in Table 3 below. *Locations are included in the operational map in the Appendices.*

Table 3. Protection for Known Surface Waters

Unit	Waterbody Name	AS 41.17.950 Classification	ADF&G AWC #	Required Riparian Protection	Site-specific actions to minimize impacts on riparian area

Surface waters listed above were reviewed by the Department of Fish and Game:

- During the timber sale planning process
- During the agency review conducted for the Best Interest Finding for this sale
- During the drafting of this Forest Land Use Plan
- Stream Crossings (Title 16) Permits are needed per ADF&G Division of Habitat

Surface waters listed above were reviewed by the Department of Environmental Conservation:

- During the timber sale planning process
- During the agency review conducted for the Best Interest Finding for this sale
- During the drafting of this Forest Land Use Plan

Non-classified surface waters are subject to applicable BMPs in 11 AAC 95.

Notes:

G. Wildlife Habitat

- Wildlife species and allowances for their important habitats were addressed in writing by the Department of Fish & Game during the Best Interest Finding review.
- Wildlife species and allowances for their important habitats were addressed in writing by the Department of Fish & Game during the drafting of this Forest Land Use Plan.

Silvicultural practices to be applied to minimize impacts to wildlife habitat or wildlife management:

- Timber retention - concentrations of timber surrounding harvest units, or interspersed within harvest units to provide cover.
- Snag Retention- snags or isolated trees left for cavity nesting species.
- Large Woody Debris – concentrations of downed timber or logging debris interspersed within harvest units to provide cover left on site.
- Other actions

Notes:

H. Cultural and Historical Resource Protection

- This project was reviewed by the State Historic and Preservation Office (SHPO).
- No artifacts have been reported within the project area(s).
- Known or likely sites have been identified and a mitigation plan is in place. (Describe the mitigation actions.)

I. Other Resources Affected by Timber Harvest and Management

- There are other resources and areas of concern besides surface water, fish habitat, and wildlife habitat that may be affected. Mitigations actions were addressed in the Best Interest Finding.

Table 4. Other Affected Resources / Areas of Concern

Impacted Resource	Reviewing Agency	Impact/ Mitigation Actions

- There are no affected resources or areas of concern other than surface water, fish habitat, and wildlife habitat, which are addressed in this Forest Land Use Plan.

Notes:

J. Reforestation

The sale area will be reforested in compliance with the Forest Resources and Practices regulations (11 AAC 95.375-.390) Natural regeneration will be utilized initially for reforestation. The sale has been laid out so that areas adjacent to the boundary include mature, robust spruce trees to provide seed to this unit, and some residual trees may contribute to the seedbank as well. Reforestation will be assessed within five years post-harvest, and a regeneration survey will be conducted if regeneration appears marginal or patchy. If the survey indicates inadequately stocked areas, then planting may be performed on non-stocked areas. The goal for regeneration is to achieve a minimum of 450 evenly distributed trees per acre at the end of the regeneration survey period (any commercial tree species).

Harvest type as it relates to reforestation requirement:

- Clearcut
- Region I: Partial Harvest leaving more than 50% live basal area (11 AAC 95.375(b)(3))
- Region II or III: Partial Harvest relying on residual trees to result in a stocking level that meets standards of 11 AAC 95.375(b)(4).

Season of harvest:

- Winter harvest only
- Non-winter harvest only
- All-season harvest

Regeneration type:

- Natural regeneration

List species: White spruce, Alaska birch, quaking aspen

- Coppice

List species: Alaska birch

- Artificial regeneration
- Seeding: Species and source of seed (general vicinity location of seed source)

Planting: Species: _____ Date of proposed planting: _____

Source of seedlings (location of seed source): _____

See Appendix B: Reforestation for more information.

IV. Roads and Crossing Structures

A. Road Design, Construction, and Maintenance

Roads will be designed, constructed, and maintained to prevent significant adverse impacts on water quality and fish habitat (AS 41.17.060(b)(5)), and site productivity (AS 41.17.060(c)(5)). Roads will comply with the best management practices in the Forest Resources and Practices Regulations (11 AAC 95.285 – 95.335). Roads used for access will also be maintained for multiple users following all applicable guidelines in the Tanana Valley State Forest Management Plan.

Roads or other means required for the access and removal of this timber from the harvest area(s) or unit(s) are listed in Table 5.

Table 5. Road Construction and Use

Road ID	Segment	Harvest Unit	Miles	Road Class	Maximum Grade %*	Constructed By	Maintained By
Cummings Road	1	all	15.2	Active, Primary	5	Landowners	Purchaser
Lower Gerstle Forest Road	2	all	2.2	Active, Secondary	5	DOF	Purchaser
Access Spur	3	Units 2 & 3	1.0	Proposed, Spur	5	Purchaser	Purchaser

Road Class is as defined in the DOF Road Standards.

**Note: Roads must be less than 20% grade per 8 AAC 61.1060 Additional Logging Standards.*

Notes: access within sale to be constructed as required by Operator. Some road reconditioning will be necessary before logging traffic can operate on Lower Gerstle Forest Road. The Purchaser shall be contractually required to contribute to maintenance on Cummings Road.

B. Soil Erosion / Mass Wasting

Maximum percent side slopes: 30%

Maximum percent side slopes are $\leq 50\%$

Maximum percent side slopes are $> 50\%$

There are no indicators of unstable areas where roads will be constructed

Indicators of unstable areas were identified and will be mitigated by actions indicated below:

Table 6. Road Erosion Control Risk and Mitigation

Road ID	Segment	Mile	Identified Erosion Risk	Risk Level	Mitigation
Cummings Road	1	15.2	negligible	Low	Existing road, maintain to DOF Road Standards
Lower Gerstle Forest Road	2	2.2	negligible	Low	Existing road, maintain to DOF Road Standards
Access Spur	3	1.0	negligible	Low	Construct and maintain to DOF Road Standards

General Timber Sale Erosion Control:

- Grass seeding
 Erosion control mats
 Wattle
 Waterbars
 Other: _____
 Not applicable

C. Crossing Structures

- Are you removing or replacing drainage structures? YES NO
 No crossing structures are needed within the project area.
 Crossing structures will be placed in access roads as described in the table below:

Table 7. Required Drainage and Crossing Structures on Known Surface Waters

Road ID	Segment	Mile	Bridge Length (ft.)	Structure Type	AS 41.17.950 Stream Classification	ADF&G AWC Number	Duration of crossing structure in place

D. Road Closure

Roads constructed for the timber sale that are left open will be subject to maintenance standards under 11 AAC 95. 315. Otherwise, roads constructed for the timber sale will be closed, subject to standards under 11 AAC 95.320.

Table 8. Road Closures

Road ID	Segment	Unit	Closure Type All Season/Winter	Estimated Closure Date	Projected Road Use after Timber Harvest
none					

E. Material Extraction

- There will be no material extraction sites in the project area.
 Material extraction and associated overburden disposal will be located outside of riparian

areas and muskegs. Material extraction and disposal will be located as shown on the operation map, in a manner that prevents runoff from entering surface waters.

Other:

F. Other Resources Affected by Roads or Material Extraction

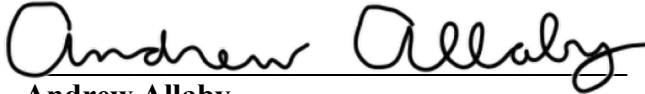
List resources other than water, habitat or cultural resources potentially impacted by road construction, and indicate how impacts will be mitigated. Other affected resources could be, but are not limited to mining claims, scenic areas, recreational trails, etc.

Table 9. Other Affected Resources

Impacted Resource	Reviewing Agency	Impact / Mitigation Actions
Winter trails	DOF	Require in contract that existing trails be kept open and unimpeded

V. Approvals for FLUP

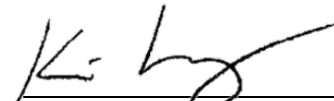
This Forest Land Use Plan has been reviewed by the Division of Forestry & Fire Protection and provides the information necessary to be adopted by the Department of Natural Resources as required by AS 38.05.112.



Andrew Allaby
Fairbanks-Delta Area Forester (acting)

12/5/23

Date



Kevin Meany
Northern Regional Forester (acting)

12/5/23

Date

VI. Appeals

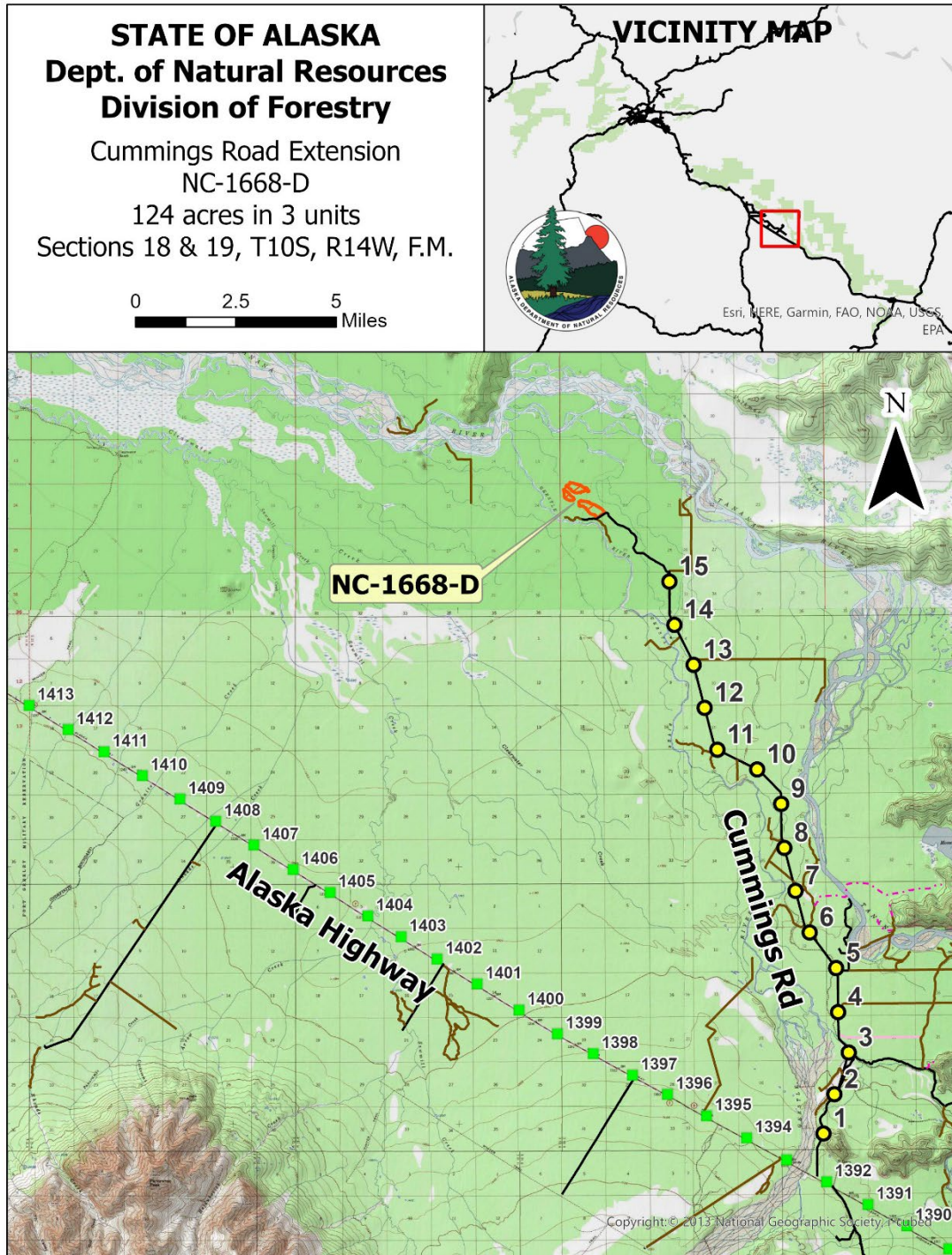
An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska State Courts establish its own rules for timely appealing final administrative orders and decisions of the department.

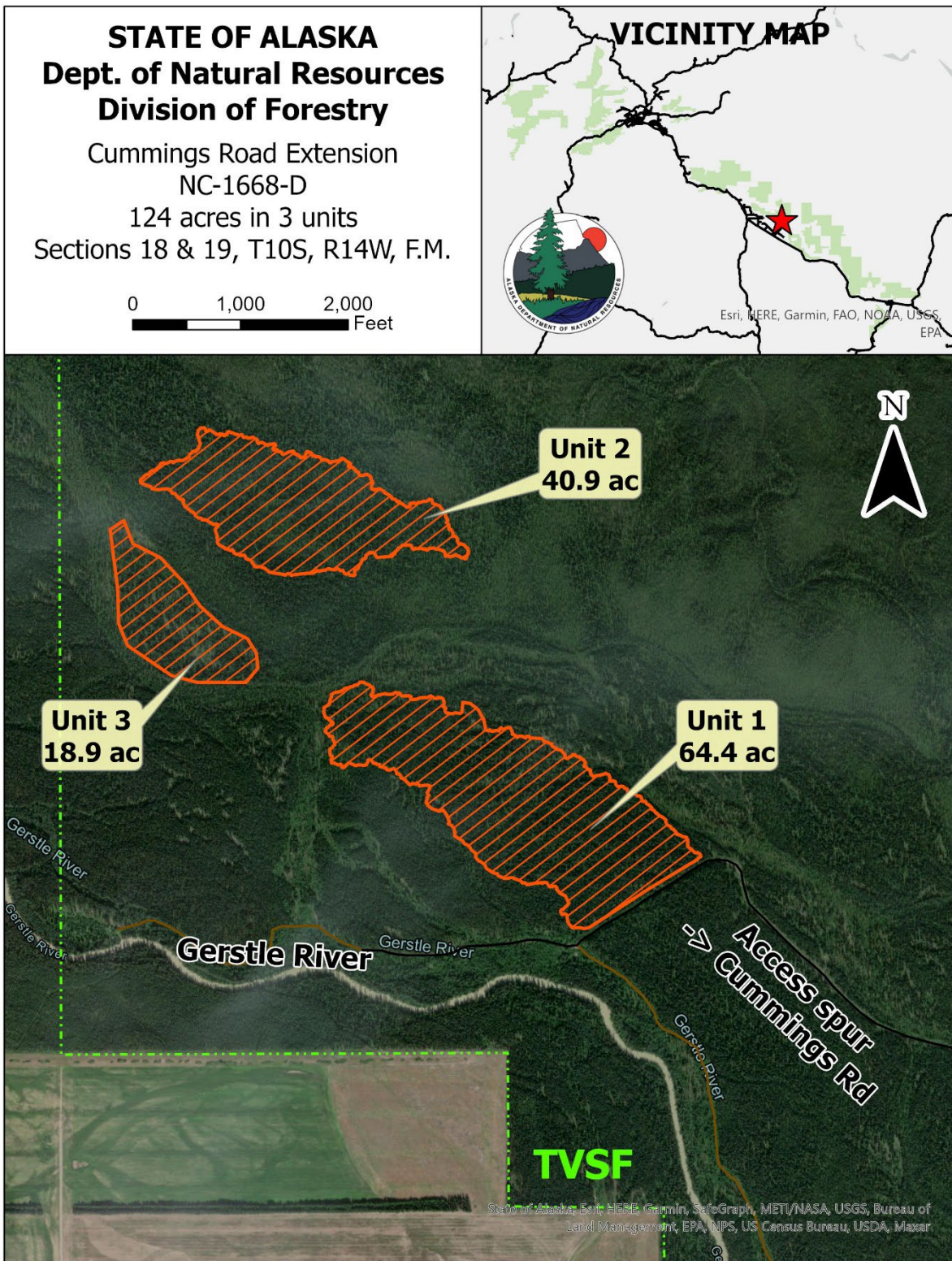
Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b).

If no appeal is filed by that date, this decision goes into effect as a final order and decision on December 26, 2023.

VII. Appendices

Appendix A: Maps





Appendix B: Supporting Information

Reforestation Supporting Information

For Region II or Region III partial harvest relying on residual trees to result in a stocking level that meets standards of 11 AAC 95.375(b)(4). Stocking levels will be calculated as follows:

Table 1. Stocking Level Requirements

Average DBH (Diameter at breast height)	Residual Trees (Trees/acre)	Minimum Stocking Standard (Trees/acre)	Percent Stocking
≥ 9"	10	120	8%
6" to 8"	10	170	6%
1" to 5"	20	200	10%
Total Residual Stocking			24%

Seedlings Required:

Percentage Under stocked = 100 – Total Residual Stocking %

Percentage Under stocked = 100 – 24% = 76%

Seedlings/ Acre Required = Percentage Understocked/100 x 450

Seedlings/ Acre Required = 76% /100 x 450 = 342

Artificial regeneration

Seeding: Species and source of seed (general vicinity location of seed source)

Planting: Species: _____ Date of proposed planting: _____

Source of seedlings (location of seed source): _____

Natural regeneration: provide known information on the following indicators of suitability for natural regeneration. If a box is checked “no,” please explain/describe the condition. N/A means “not applicable.”

Yes No N/A Unknown

Seedbed and soil conditions suitable for natural regeneration

- | | | | | |
|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Moss layers are shallow (≤4”) or absent
<i>Explanation: all-season harvest is expected to disturb the ground layers sufficiently to expose seedbeds.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Where birch or spruce regeneration is targeted, exposed mineral soil will exist on at least 25% of the harvest area and is well-distributed across the unit. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Where aspen regeneration from suckering is targeted, root |

damage will be minimal and soil exposure will encourage warming.

<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>Unknown</u>	
<u>Seed/vegetative reproduction sources available</u>				
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exposure to prevailing winds, if known
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Adequate seed trees exist within 3 tree heights of the reforestation site for spruce or within 2 tree heights for birch
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Where spruce regeneration is targeted, large seed crop in year prior to harvest or current year <i>Explanation: large seed crops occur every 3-5 years and are expected during or shortly after the harvest cycle.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Where vegetative reproduction is targeted the harvest area contains sufficient, well-distributed paper birch, aspen, balsam poplar, western black cottonwood, red alder, or other species known to regenerate vegetatively as approved by the Division.

<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>Unknown</u>	
<u>Competition and infestation risk</u>				
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Calamagrostis</i> (bluejoint grass) is not visually evident. If <i>Calamagrostis</i> is visually evident, describe abundance and distribution.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Equisetum</i> (horsetail) is present prior to harvest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The site is not currently subject to intense herbivory due to peaks in the hare cycle, dense moose populations, or scarcity of browse in the surrounding landscape.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Existing stands are not infested with bark beetles (<i>Dendroctonus</i> or <i>Ips</i>)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Where spruce regeneration is targeted, harvest areas are free of known incidence of <i>Onnia tomentosus</i> root rot. <u>Note:</u> <i>tomentosus</i> can kill regeneration of spruce and, to a lesser degree, pine and larch. If <i>tomentosus</i> is present, describe the extent of the problem in the notes box below. Design reforestation to minimize continuation or spread of the disease

Appendix C: Public and Agency Comments and Responses

DOF received the following comments:

Commenter	Date	Comment	Response
ADEC	11/2/23	No comments following review.	Thank you for your review.
ADF&G	11/13/23	In Section III.E. Soil Stability, it is indicated that max slopes >50% are 99% of area. Please clarify.	This was meant to be 1% of the sale area has slopes steeper than 50% slope. This error is corrected in the final FLUP.
ADF&G	11/27/23	No issue of concern.	Thank you for your review.

Appendix D. Appeal and Request for Reconsideration Regulations

Note: "Appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign. "Request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned.

11 AAC 02 Regulations

11 AAC 02.010. Applicability and eligibility.

(a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.

(g) A person may not both appeal and request reconsideration of a decision.

11 AAC 02.015. Combined decisions.

(a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) - (m) and this chapter applies to the combined decision.

(b) Repealed 12/27/2012.

11 AAC 02.020. Finality of a decision for purposes of appeal to court.

(a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

- (b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.
- (c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under 11 AAC 02.040(c) - (e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for purposes of appeal to the superior court.
- (d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court.

11 AAC 02.030. Filing an appeal or request for reconsideration.

- (a) An appeal or request for reconsideration under this chapter must
 - (1) be in writing;
 - (2) be filed by personal service, mail, facsimile transmission, or electronic mail;
 - (3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;
 - (4) be correctly addressed;
 - (5) be timely filed in accordance with 11 AAC 02.040;
 - (6) specify the case reference number used by the department, if any;
 - (7) specify the decision being appealed or for which reconsideration is being requested;
 - (8) specify the basis upon which the decision is challenged;
 - (9) specify any material facts disputed by the appellant;
 - (10) specify the remedy requested by the appellant;
 - (11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;
 - (12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any;
 - (13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing; and
 - (14) be accompanied by the applicable fee set out in 11 AAC 05.160.
- (b) At the time an appeal is filed, and up until the deadline set out in 11 AAC 02.040(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.
- (c) If public notice announcing a comment period of at least 30 days was given before the

decision, an appellant may not submit additional written material after the deadline for filing the appeal, unless the appeal meets the requirements of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;
- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(d) If public notice announcing a comment period of at least 30 days was not given before the decision, an appellant may submit additional written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the deadline for filing the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;
- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.

(f) If the decision is one described in 11 AAC 02.060(c), an appellant may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay.

11 AAC 02.040. Timely filing; issuance of decision.

(a) To be timely filed, an appeal or request for reconsideration must be received by the commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is set by statute, regulation, or existing contract. If the 20th day falls on a day when the department is officially closed, the appeal or request for reconsideration must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope,

addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.030(a)(11).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

(1) when the department gives public notice of the decision; or

(2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a).

11 AAC 02.050. Hearings.

(a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030(a)(13), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

(1) formal rules of evidence need not apply; and

(2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript.

11 AAC 02.060. Stays; exceptions.

(a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001.

(c) Unless otherwise provided in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

(1) issue a permit that is revocable at will;

(2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or

(3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision.

11 AAC 02.070. Waiver of procedural violations.

The commissioner may, to the extent allowed by applicable law, waive a requirement of this

chapter if the public interest or the interests of justice so require.

11 AAC 02.900. Definitions.

In this chapter,

- (1) “appeal” means a request to the commissioner to review a decision that the commissioner did not sign or cosign;
- (2) “appellant” means a person who files an appeal or a request for reconsideration;
- (3) “commissioner” means the commissioner of natural resources;
- (4) “decision” means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;
- (5) “department” means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;
- (6) “request for reconsideration” means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned.