

State of Alaska  
Department of Natural Resources  
Division of Forestry  
Region III - Delta



**Forest Land Use Plan**  
**Rowland #1**  
**NC-1512-D**

**June 15, 2018**

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## **Forest Land Use Plan for Rowland #1 Timber Sale**

### **I. Introduction**

This Forest Land Use Plan (FLUP) covers proposed forest operations on approximately 235 acres of land within the Caribou Creek and Glacier Creek drainages of Shaw Creek Flats located near 13 mile of the Pogo Road. The purpose of this sale is to provide spruce sawtimber, fuelwood and other forest products for the local forest industry and community of Delta Junction. New roads will need to be constructed to access the sale. The Alaska Division of Forestry has issued a Preliminary Best Interest Finding and Decision to be reviewed concurrently with this FLUP.

This FLUP 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 DNR before the proposed activity can occur.

The DNR Division of Forestry (DOF) solicited comments from affected agencies and the public to ascertain impacts that may result from proposed timber resource activities detailed in this FLUP. Agency and public comments were solicited simultaneously to expedite the delivery of this timber resource to the forest industry. Agency/ Public comments were solicited to determine if any impacts from the proposed harvest of the timber resource in the described area have been overlooked or should be modified before harvest occurs.

After public and agency review of the draft FLUP, DOF has reviewed the comments, made changes as appropriate, and is issuing the final FLUP document. A person affected by the final decision who provided timely written comment or public hearing testimony on the draft FLUP may appeal it, in accordance with 11 AAC 02 (see Appendix D) To be eligible to appeal this final decision, a person must have provided written comment by June 15, 2018.

The decision to offer timber for sale is being made through the best interest finding process, and is not subject to review under the FLUP.

Following adoption of the final FLUP, DOF will determine when to offer the timber for sale. Site-specific actions required by the FLUP will be incorporated into the timber sale contract.

[X] 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 38.05.945; Caribou-Glacier Preliminary Best Interest Finding Final.

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

[X] Other Documents Referenced: Tanana Basin Area Plan (TBAP), Tanana Valley State Forest Management Plan (TVSFMP)

- Project File Number: NC-1512-D
- Division of Forestry Office: Fairbanks-Delta Area Forestry, 3700 Airport Way, Fairbanks, AK 99709.
- Area Forester: Paul Keech

Forest Practices Geographic Region (AS 41.17.950): Region III Northern

A. Legal description (see Map Appendix A): The sale is located in Section 25 and 26 Township 6 South, Range 9 East; Section 1 and 12, Township 7 South, Range 9 East; Section 6 and 7, Township 7 South, Range 10 East Fairbanks Meridian, Alaska.

B. Operational Period: Starting: Summer 2018  
Estimated completion date: 2023

C. Timber Disposal

- ☒ Timber will be sold and will have a contract administrated 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

The Fairbanks-Delta Area Office of the Division of Forestry has made a preliminary Finding and Decision to offer for commercial sale approximately 3.5 million board feet of white spruce sawtimber. This sale would harvest approximately 235 acres of white spruce sawtimber from 5 harvest units designated on Tanana Valley State Forest and State Forest Classified lands in the uplands on the west side of the Shaw Creek Flats located near 13 mile of the Pogo Road.

The purpose of this sale is to manage the forest in the Delta Area and provide spruce sawtimber, fuelwood and other forest products for the local forest industry and community of Delta Junction. New roads will need to be constructed to access the sale.

Specific forest management guidance or intent for forest management activities covering the prosed sale area can be found in the TVSFMP, subunit 8C, and the TBAP, subunit 7A2, management plans. All activities will be subject to the Alaska Forest Management Statutes and Regulations. All harvest activities will be subject to Alaska Forest Practices and Regulations and Alaska Best Management Practices for Timber Harvest Operations.

II. Other Affected Land Owners/Management

A. State:

Activity on ownership:	Access		Written Representative Approval
	Easement	Harvest	
<input checked="" type="checkbox"/> Department of Natural Resources	<input checked="" type="checkbox"/>	<input checked="" 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: \_\_\_\_\_

Land Owner Representative: \_\_\_\_\_

### III. Harvest and Silvicultural Prescription

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.

#### A. Timber Stand History and Topography:

The forest stand within Units 1-5 is predominantly mature white spruce sawtimber. There is approximately 15-20% mixed species of aspen, birch and poplar in the sale area but white spruce is the predominate species. Portions of the sale area have white spruce saplings and pole-sized trees beneath the canopy.

The forested stands surrounding the sale areas are comprised of a variety of stand mixtures including mature white spruce, black spruce, birch, and aspen. The proposed sale is on hilly topography above and below the Pogo Road. The elevation of the sale boundaries extends from 1150 feet to 1,600 feet. Slopes within the sale vary from 5% to 50% with the average being about 25%. Soils are anticipated to be sandy loess over fractured rock. The loess is estimated to be 3 to 10 feet in thickness.

#### B. Forest Products:

Typical solid wood forest products are expected to be produced from this timber sale. Manufactures' of value-added forest products may also be able to utilize the timber from this sale due to the high quality of the timber proposed for sale. The probability of this timber being sold for its value as firewood should not be underestimated, due to the high residential heating costs being observed in the Alaska interior.

Estimated unit volumes are detailed in Table 1. These volumes are estimates based on DOF inventory cruises (2007-08) and field reconnaissance; the stated harvest volumes are mutually exclusive; i.e. stated volume available includes all material in the unit that meets the unit utilization specification. Volume estimates are made using variable radius plot cruising techniques. Unit acreages were developed using recreational grade GPS units.

**Table 1 – Estimated Harvest Unit Volumes**

Unit #	Acre	Species	Gross CCF	Net CCF	Gross MBF	Net MBF
1	78.3	W. Spruce	2,789.92	2,371.43	1,164.29	989.64
2	77.6	W. Spruce	2,586.60	2,198.61	1,048.36	891.11
3	23.5	W. Spruce	807.35	686.25	334.49	284.31
4	32.6	W. Spruce	1,066.68	906.68	449.09	381.73
5	35.2	W. Spruce	1,255.18	1,066.90	507.96	431.76
<b>Total</b>			<b>8,825.48</b>	<b>7,501.66</b>	<b>3,641.05</b>	<b>3,094.88</b>

C. Harvest and Silvicultural Methods:

- a. Harvest Unit Design: The harvest area consists of 5 units with a total of ~250 acres. Unit sizes range between 23 acres and 78 acres. The boundaries of units 1-5 are located along naturally occurring vegetative type changes. Mature aspen, birch and spruce will be left around the sale periphery to serve as future seed tree sources. These proposed sale areas will be partially harvested or clearcut.

The sale will allow the contractor to harvest spruce over 6" DBH+ in units 3-5 and clearcut in units 1 and 2. Mature sized balsam poplars will be protected from damage during harvest to serve as cavity nesting trees and woody debris in the future. Mature white spruce will be left around the perimeters of the harvest units to provide seed sources for regeneration.

A combination of environmental and economic factors has influenced the Fairbanks-Delta Area to favor heavy partial harvests in combination with natural seeding. Partial harvests can result in a wide range of the number of sapling to pole-sized trees per acre. The average harvest area has about 20 saplings and pole-sized mixed species trees left per acre. Some acres have no trees left and other sites have up to 100 saplings and pole-sized trees per acre left after harvest. The strong winds in the Delta Area combined with summer drought which typically occurs during the summer solstice period, cause a very high mortality of white spruce seedlings that germinate in May or early June. Partial harvesting allows some shading during the 20+ hour sunlight period and slows wind velocities to moderate the effect of desiccation of germinates and increases their survival rate.

- b. Harvest Operations: Typical interior ground based harvesting systems (tracked and/or rubber tire equipment) will be utilized to harvest the timber sale units. No cable skidding is anticipated to occur. Timber stand densities and tree size and orientation (standing or blown down) will likely determine the harvest equipment/method used. Soil compaction from ground based operations is not anticipated to be a concern. Table 2 details unit specific harvest activities.
- c. Areas of Concern: All road and landing excavation will be the minimum necessary to minimize possible impacts to unknown cultural resources which may exist. Commercial harvests adjacent to or in close proximity to the riparian buffer area of Caribou Creek shall be monitored closely by DOF staff to ensure that harvest impacts do not occur to this water body.

[X] The Silvicultural actions are adequately 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 \_\_\_\_

**Table 2 -Timber Harvest Activity**

<b>Unit ID</b>	<b>Acres</b>	<b>Topography</b> <i>(Relatively Flat Uniform Hillside Irregular/Comple x Slopes</i>	<b>Silvicultural Action:</b> <i>Clearcut partial cut, salvage precommercial thinning Site preparation Chemical application Commercial thinning</i>	<b>Logging Method:</b> <i>(Ground-based Cable Helicopter)</i>	<b>Stand History</b>
1, 2	159.9	Uniform Hillside	Clear Cut, Scarification as needed	Ground	Over-mature White Spruce
3-5	91.3	Uniform Hillside	Partial Cut (6" DBH+), Scarification as needed	Ground	Over-mature White Spruce

**D. Surface Water Protection:**

- ☒ [X] There are no streams or lakes abutting or within a harvest unit.  
☐ [ ] Surface waters, classifications and protection measures are described in the table below.  
*Locations are included in the operational map in the Appendices*

**E. Agency Review:**

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

- ☒ [X] During the timber sale planning process  
☒ [X] During the agency review conducted for the Best Interest Finding for this sale  
☒ [X] 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

**F. Wildlife Habitat:**

- ☒ [X] Wildlife species and allowances for their important habitats will be addressed in writing by the Department of Fish & Game during the Best Interest Finding review.  
☒ [X] Wildlife species and allowances for their important habitats Will be addressed in writing by the Department of Fish & Game during the drafting of this Forest Land Use Plan.

Silvicultural practices necessary for minimizing impacts to wildlife habitat or wildlife management:

- ☒ [X] Timber retention - concentrations of timber surrounding harvest units, or interspersed within harvest units to provide cover.  
☒ [X] Snag Retention- snags or isolated trees left for cavity nesting species.  
☒ [X] Large Woody Debris – concentrations of downed timber or logging debris interspersed within harvest units to provide cover left on site.  
☐ [NA] Other affected resources. List resources other than water, fish and wildlife potentially impacted

**G. Slash Abatement:**

- ☒ [X] Potential for insect infestations caused by slash accumulations exists. Slash abatement for controlling infestations will be implemented as required by 11AAC 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 Division of Forestry local area office prior to ignition of debris.

**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.) Road and landing construction will be positioned, to the extent possible, away from terrain features where high probabilities for archaeological sites may exist, i.e. high promontories overlooking lowlands.

**I. Other Affected Resources:**

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

**Table 3 – Other Affected Resources.**

<b>Impacted Resource</b>	<b>Reviewing Agency</b>	<b>Impact/ Mitigation Actions</b>
Survey Monuments	Division of Mining, Land, and Water.	Identify existing locations and Flag/Stake

**J. Reforestation:**

The Fairbanks-Delta Area goal for this area involves regenerating harvest areas that are predominantly mature white spruce or birch is to establish a mixed species forest of hardwoods and white spruce, with white spruce being the predominate species. Old stands are to be rejuvenated to a fully stocked mixed stand of young healthy trees while retaining some residual trees resulting from leave trees left in the unit. Young forests provide future crop trees and food for wildlife. Residual leave trees provide some seed sources, nesting sites, and other benefits.

Portions of the sale may be scarified to aid in warming the soil and improving regeneration of white spruce. Scarification can also improve the regeneration of woody shrubs and deciduous trees for wildlife browse and cover. The forester will make a final determination for the need to scarify any particular area within the sale after the harvest is completed. Any areas that are expected to be deficient in meeting the Forest Practices Act standard of 450 trees established by the 7th year will be planted with white spruce seedlings, specifically landings, skid trails or permanently closed roads.

**[X] Partial Harvest:**

- ☐ Region I: leaving more than 50% live basal area (11 AAC 95(b) (3))
- ☒ Region II/III: 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 subject to the methods below:

#### SEEDLINGS REQUIRED

Percentage Under stocked = 100 – Total Residual Stocking %

Percentage Under stocked = 100 – \_\_\_\_\_% = \_\_\_\_\_%

Seedlings/ Acre Required = Percentage Understocked/100 x 450

Seedlings/ Acre Required = \_\_\_\_\_% /100 x 450 = \_\_\_\_\_

**Table 4 – Stocking Level Requirements**

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

☒ Natural regeneration

List species: Birch, White Spruce, Aspen

☒ Coppice

List species: Aspen, Birch

☐ Artificial regeneration

☐ Seeding-source of seed (general vicinity location of seed source)

\_\_\_\_\_

☐ Planting: Date of proposed planting: \_\_\_\_\_

Source of seedlings (location of seed source) \_\_\_\_\_

#### K. Site Preparation:

Minimal site preparation is expected. Site preparation on landings, skid trails or roads will be performed using dozer w/ ripper if needed.

When will site preparation be accomplished? Site preparation will occur upon completion of unit harvest activities prior to seasonal closure of operations.

#### IV. Roads and Crossing Structures

##### A. Road Construction:

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), and follow the Northern Region forest

road standards in Appendix F of the Tanana Valley State Forest Management Plan. Division of Forestry monitoring and inspections will be ongoing during harvest activities.

Roads will be constructed by removing the trees, vegetative mat, and constructing the road using cuts and fills with earth-moving equipment. Roads will initially be constructed to a 12 to 16 foot width. Some roads are located on side slopes that vary from 5 to 35%. Road grades vary from 0 to 10% with an average of 5%. Debris from the road construction will be placed below the road.

Some proposed roads have potential to erode after construction due to the road grades. Water bars will be placed in the road to prevent erosion. The contract will require gravel to be placed on the approaches to the Pogo Road. The new road is not expected to have erosion that could not be mitigated and will be left open after the sale to facilitate additional forest management of the area. DOF will be responsible for erosion control after the sale is terminated.

Access to the harvest units is via the Pogo Mine Road. All logging contractors shall comply with the road use requirements for the Pogo road. Specific requirements regarding Pogo road use will be incorporated into the timber harvest contract(s).

List the roads or other means required for the access and removal of this timber from the harvest area(s) or unit(s): See Table 5.

Road Designation: ☒ Permanent ☒ Temporary ☐ Other

☐ Road will be constructed by the State ☒ Road will be constructed by the Operator

☐ Road will be maintained by the State ☒ Road will be maintained by the Operator

☐ New Construction ☐ Reconstruction ☐ Closure

☐ Modified natural sub-grade with rock fill overlay.

☒ Modified natural sub-grade with mineral soil overlay.

☐ Winter Road: ☐ One winter only ☐ More than one winter

☒ Unmodified natural sub-grade, natural running surface.

☐ Reconstruction of one of the above methods.

**B. Grades:**

Maximum percent road grade: Adverse (<12%) 5% Favorable (<18%) 8%

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

**C. Side Slopes / Mass Wasting:**

For slopes over 50%, identify indicators of unstable areas (landslide scars, jack-strawed trees, gullied or dissected slopes, high density of streams or zero-order basins, or evidence of soil creep). Attach location specific road design that potentially mitigates identified areas of unstable soils.

☒ 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.

Are you removing or replacing drainage structures? ☐ YES ☒ NO

General Erosion Control:

☐ grass seeding ☐ erosion control mats ☐ wattle ☒ Other: Waterbars

Maximum percent side slopes: 30%

☐ Full benching will be constructed to help ensure slope stability

☒ Full benching is not required for roads in this project

☐ End hauling will be implemented to help ensure slope stability

☒ End hauling is not necessary for roads in this project.

**Table 5 – Road Construction and Use**

Road Miles	Road Name	Road Type	Drainage Type	Max. % Grade	Const. Type	Maint.
12.5	Pogo Mine	P. All-season			Existing	Pogo Mine
1.2	Units 3 & 5	S. All-season	Outslope	2F/5A	Existing	Operator
<b>13.7</b>	<b>Existing Road used</b>					
	Unit 1					
1.2	East/West	P. Winter	Outslope	2F/2A	New	Operator
0.2	Caribou Cr.	S. All-season	CMP	8F/5A	New	Operator
0.2	Unit 2 West	S. All-season	Outslope	3F/2A	New	Operator
0.2	Unit 2 East	S. All-season	Outslope	3F/2A	New	Operator
0.1	13.2 Driveway	S. All-season	Outslope	5F/5A	New	Operator
0.8	Unit 5 Lwr Spur	S. All-season	Outslope	5F/5A	New	Operator
0.4	Unit 4 Spur	S. All-season	Outslope	5F/5A	New	Operator
0.4	Unit 5 Up. Spur	S. All-season	Outslope	5F/5A	New	Operator
<b>~3.3</b>	<b>New Construction</b>					

\*P: Primary road

S: Seasonal road

CMP: Corrugated metal pipe (culvert)

D. Crossing Structures:

☒ No crossing structures are needed within the project area.

☐ Crossing structures will be placed along access roads as described in the table below:

**Table 6 – Required Drainage and Crossing Structures**

Road	Mile / Station	Dia. Culvert	Bridge Type: -Log Stringer -Fabricated -Ice	AS 41.17.950 Stream Classification	Fish & Game AWC Number	Duration
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## V. Other Affected Resources

### A. Roads:

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.

**B. Material Extraction:**

[ ] There will be no material extraction sites in the project area.

[X] 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.

**Table 7 – Other Affected Resources**

Impacted Resource	Reviewing Agency	Impact/ Mitigation Actions
Mining Claim Access	Division of Mining, Lands & Water	May Provide Access to Mining Claim Leases

**C. Road Use Restrictions:**

Depending on resource needs and considerations; roads will remain open and converted to public use, subject to maintenance standards under 11 AAC 95.315 or will be closed, subject to standards under 11 AAC 95.320. Table 10- Road Closures delineates anticipated post-harvest road conditions.

**Table 8 – Road Use Restrictions**

Road Miles	Road Name	Road Type	Drainage Type	Max. % Grade	Post Harvest Road Use	Maint.
12.5	Pogo Mine	P. All-season			No Change	Pogo Mine
1.2	Units 3 & 5	S. All-season	Outslope	2F/5A	Close	----
<b>13.7</b>	<b>Existing Road used</b>					
	<b>Unit 1</b>					
1.2	East/West	S. All-season	Outslope	2F/2A	Keep Open	----
0.2	Unit 2 West	S. All-season	Outslope	3F/2A	Close	----
0.2	Unit 2 East	S. All-season	Outslope	3F/2A	Close	----
0.1	13.2 Driveway	S. All-season	Outslope	5F/5A	Keep Open	DOF
0.8	Unit 5 Lwr Spur	S. All-season	Outslope	5F/5A	Close	----
0.4	Unit 4 Spur	S. All-season	Outslope	5F/5A	Close	----
0.4	Unit 5 Up. Spur	S. All-season	Outslope	5F/5A	Close	-----
<b>~3.3</b>	<b>New Construction</b>					

## VI. Appeals

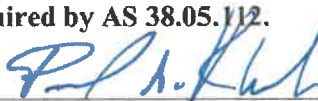



A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received by June 15, 2018 and may be mailed or delivered to Andrew T. Mack, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to <mailto:dnr.appeals@alaska.gov>. If no appeal is filed by that date, this decision goes into effect as a final order and decision on **6/30/2018**. 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 is enclosed.

If you have any questions, please contact Paul Keech of the Fairbanks-Delta Area Office at (907) 451-

2601 or e-mail [paul.keeck@alaska.gov](mailto:paul.keeck@alaska.gov).

## VII. Approvals

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

	
Area Forester	Date
	
Regional Forester	Date

**STATE OF ALASKA**

**Department of Natural Resources  
Division of Forestry**

**NC-1512-D**

**Rowland #1**

**Section 1 T7S R9E**

**Sections 6 and 7 T7S R10E**

**VICINITY MAP**

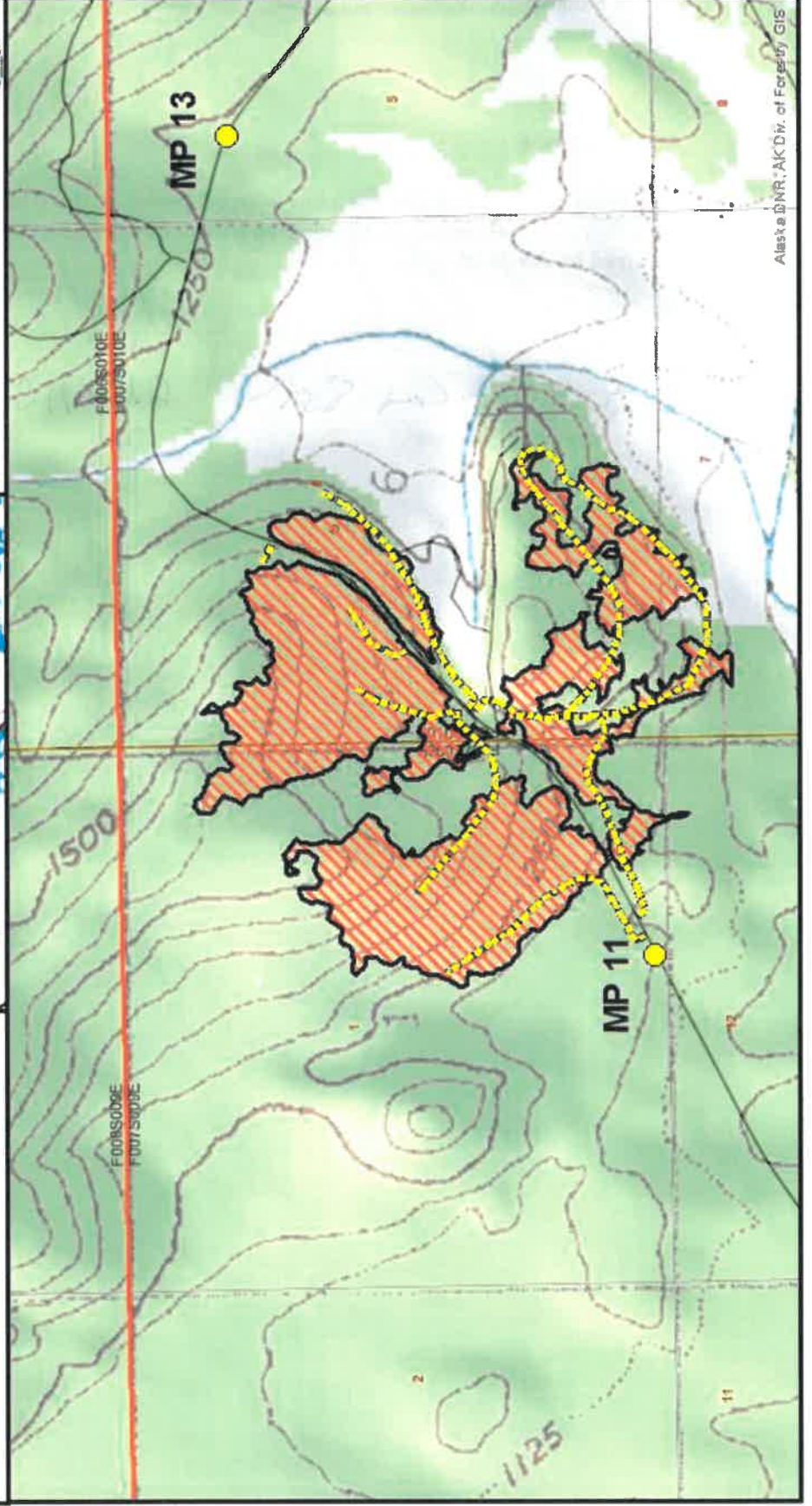


**Legend**

- Access Routes
- Harvest Units
- Tanana Valley State Forest
- Forest Classified State Lands

0 0.125 0.25 0.5 Miles

Created by K. Meany  
4/11/2018





**STATE OF ALASKA**

**Department of Natural Resources  
Division of Forestry**

**NC-1512-D  
Rowland #1**

**Section 1 T7S R9E  
Sections 6 and 7 T7S R10E**

**VICINITY MAP**



**Legend**

Access Routes



Harvest Units



Tanana Valley State Forest



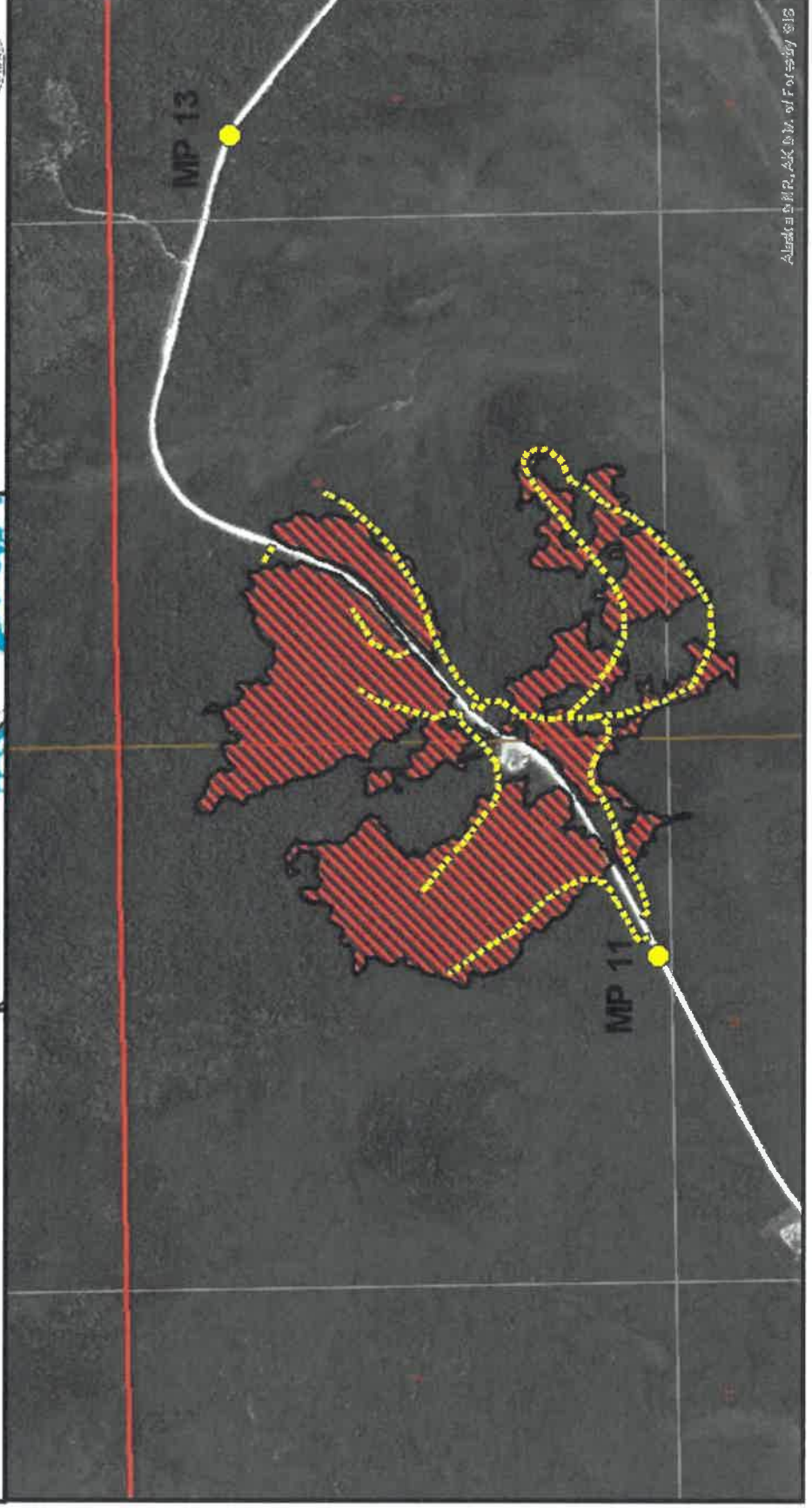
Forest Classified State Lands



0 0.125 0.25 0.5 Miles



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4/11/2018



## **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. This FLUP was not signed by the commissioner, and is therefore subject to appeal.

### **TITLE 11. NATURAL RESOURCES.**

#### **CHAPTER 02. APPEALS.**

**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. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

#### **Authority:**

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 44.37.011
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.15.020
AS 29.65.120	AS 38.08.110	AS 41.17.055	AS 46.17.030
AS 38.04.900	AS 38.09.110	AS 41.21.020	

**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) A decision of the department may include a statement that a final consistency determination under AS 46.40 (Alaska Coastal Management Program) has been rendered in conjunction with the decision. A person may not, under this chapter, appeal or request reconsideration of the final consistency determination, including a requirement necessary solely to ensure the activity is consistent with the Alaska coastal management program as approved under AS 46.40. (Eff. 9/19/2001, Register 159)

**Authority:**

AS 29.65.050	AS 38.04.900	AS 38.05.035	AS 38.09.110
AS 29.65.120	AS 38.05.020	AS 38.08.110	AS 38.50.160

**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. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**Authority:**

AS 03.05.010	AS 44.37.011	AS 38.05.035	AS 41.21.020
AS 38.04.900	AS 29.65.050	AS 38.09.110	AS 46.15.020
AS 38.08.110	AS 29.65.120	AS 38.50.160	AS 46.17.030
AS 41.15.020	AS 38.05.020	AS 41.17.055	

**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, fax, 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; and
- (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.

(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 requirement 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 who believes a stay of the decision is justified 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. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**Authority:**

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 44.37.011
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.15.020
AS 29.65.120	AS 38.08.110	AS 41.17.055	AS 46.17.030
AS 38.04.900	AS 38.09.110	AS 41.21.020	

**Editor's note:** The address for an appeal or request for reconsideration by personal service and by mail is: Department of Natural Resources, Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561. The number for an appeal or request for reconsideration by fax is: 1-907-269-8918. The electronic mailing address for an appeal or request for reconsideration by electronic mail is: [dnr\\_appeals@dnr.state.ak.us](mailto:dnr_appeals@dnr.state.ak.us)

**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). (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**Authority:**

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 44.37.011
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.15.020
AS 29.65.120	AS 38.08.110	AS 41.17.055	AS 46.17.030
AS 38.04.900	AS 38.09.110	AS 41.21.020	

- 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. (Eff. 11/7/90, Register 116)

**Authority:**

AS 03.05.010	AS 38.05.020	AS 41.15.020	AS 46.17.030
AS 29.65.050	AS 38.08.110	AS 41.17.055	
AS 29.65.120	AS 38.09.110	AS 41.21.020	
AS 38.04.900	AS 38.50.160	AS 46.15.020	

**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. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**Authority:**

AS 03.05.010	AS 38.05.020	AS 38.50.160	AS 46.15.020
AS 29.65.050	AS 38.05.035	AS 41.15.020	AS 46.17.030
AS 29.65.120	AS 38.08.110	AS 41.17.055	
AS 38.04.900	AS 38.09.110	AS 41.21.020	

**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. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**Authority:**

AS 03.05.010	AS 41.21.020	AS 38.05.020	AS 41.17.055
AS 29.65.120	AS 03.10.020	AS 38.08.110	AS 46.15.020
AS 38.05.035	AS 29.65.050	AS 38.09.110	AS 46.17.030
AS 38.50.160	AS 38.04.900	AS 41.15.020	

**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. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**Authority:**

AS 03.05.010	AS 29.65.050	AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.05.035	AS 38.08.110	AS 38.09.110
AS 38.50.160	AS 41.15.020	AS 41.17.055	AS 41.21.020
AS 44.37.011	AS 44.62.540	AS 46.15.020	

