

**STATE OF ALASKA**  
**DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION OF FORESTRY & FIRE PROTECTION**



**Northern Region – Fairbanks-Delta Area**

**FINAL BEST INTEREST FINDING AND  
DECISION FOR  
Two Rivers Junction #3  
NC-1806-F**

**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
FNSB	Fairbanks-Northstar Borough
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. PROPOSED ACTION**

DOF is proposing to offer for sale approximately 25 acres of birch fuelwood from state lands in the Two Rivers Road area. The volume to be offered totals approximately 442 CCF. DOF would sell the timber as a competitive bid sale for commercial use, as well as possible small negotiated sales (AS 38.05.115) and for personal use firewood.

The management objectives for the proposed timber sales are:

- Provide the raw material for the forestry industry to produce timber products providing benefits to the state and local economy through employment opportunities.
- Harvest the commercial sawtimber and fuelwood before a significant decrease in vigor occurs and return the site to a young productive mixed 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. STATUTORY AND REGULATORY AUTHORITY**

The Division is taking this action under the authority of

- AS 38.05.035(e) Best Interest Finding;
- AS 38.05.110-120 and 11 AAC 71, Timber Sale Statutes and Regulations; and
- AS 41.17.010-950 and 11 AAC 95 Forest Resources and Practices Statutes and Regulations.

## **III. ADMINISTRATIVE RECORD**

The Division will maintain an administrative record regarding the decision of whether or not to proceed with the action as proposed. This record will be maintained at the DOF's Fairbanks-Delta Area Office filed as NC-1806-F.

## **IV. SCOPE OF DECISION**

This final best interest finding (BIF) completes step three of a six-step process to design, sell, and administer timber sales. This BIF covers the sale of approximately 25 acres of birch fuelwood timber on state land within Section 18, Township 1 North, Range 4 East, and Section 13, Township 1 North, Range 3 East, Fairbanks Meridian, Alaska. The following list summarizes the overall process:

Step 1: Regional planning. The Department of Natural Resources (DNR) develops area plans and state forest management plans to designate appropriate uses for state land, classify the land accordingly, and establish management guidelines for multiple use. These plans determine where timber sales are an allowed use, and what other uses must be considered when designing and implementing sales. Subsequent land use decisions must be consistent with the area plans. The area in this final BIF is covered by the Tanana Valley State Forest Management Plan. The finding also considers the Interagency Wildland Fire Management Plan. There is one Community Wildfire Protection Plan (CWPP) in this area, the Fairbanks North Star Borough

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CWPP. The proposed area is within the Fairbanks North Star Borough (FNSB) and considers the FNSB Regional Comprehensive Plan.

Step 2: Five-Year Schedule of Timber Sales (AS 38.05.113). A proposed timber sale must appear in at least one of the two Five-year Schedules preceding the sale. The land covered by this BIF appeared in the 2022 Northern Region Five Year Schedule of Timber Sales (FYSTS).

Step 3: Best Interest Finding. A best interest finding is the decision document that:

- Ensures that the best interest of the State will be served by this proposed action,
- Establishes the overall area within which the timber sale may occur,
- Determines the amount of timber that will be offered for sale and the duration of the sale,
- Sets the overall harvest and reforestation strategy for the sale area,
- Determines whether the sale proposal complies with the Constitutional requirement to manage for sustained yield by evaluating the amount of timber in the sale and the annual allowable cut for the affected area,
- Selects the appropriate method of sale (i.e., competitive or negotiated sale), and
- Determines the appraisal method that will be used to determine the sale price.

DOF issued a Preliminary BIF covering the decision to sell approximately 25 acres of birch fuelwood from state lands in the Two Rivers Road area for commercial sale on November 1, 2023. DOF considered all written comments received during the 30-day review period. Responses to the comments are listed in Section VII.

This document is the final BIF for the NC-1806-F timber sale area. 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.

Step 4: Forest Land Use Plans (AS 38.05.112). Prior to authorizing harvest of timber on any area greater than 10 acres, the DOF must adopt a site-specific Forest Land Use Plan (FLUP) for the harvest area. DOF issued a draft FLUP concurrently with the PBIF and will adopt the final FLUP following review of comments. FLUPs specify the site, size, timing, and harvest methods for harvest unit within the sale area. FLUPs also address site-specific requirements for access construction and maintenance, reforestation, and multiple use management. Draft FLUPs will be based on additional field work, agency and community consultation, and site-specific analyses by the DOF, and will be subject to public and agency review.

Step 5: Timber sales and contracts. Following adoption of the final best interest finding, and completion of the FLUP, DOF will offer the timber for sale by auctioning competitive sales and/or negotiating some sales with purchasers. The Division will sign a contract with the winning bidder for each sale. The contract will include stipulations to ensure compliance with the best interest finding, FLUP, and statutory requirements.

Step 6: Sale administration. DOF administers timber sales and conducts field inspections to ensure compliance with the final best interest finding, FLUP, timber sale contract, and applicable

laws, including the Alaska Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95), and forest management statutes and regulations in AS 38.05 and 11 AAC 71.

## **V. PROJECT LOCATION, LAND STATUS, AND DESCRIPTION**

### **A. Location**

The proposed sale is located approximately 24 miles east of the Fairbanks Forestry office in the Two Rivers Area north of Chena Hot Springs Road Mile 18.3. The unit lies east of the Two Rivers Forest Road near mile 3.0. The unit is within the Fairbanks North Star Borough. The proposed sale is located within Section 18, Township 1 North, Range 4 East, and Section 13, Township 1 North, Range 3 East, Fairbanks Meridian. The sale area is shown on the attached map and is within the United States Geological Survey 1:63,360 Quadrangle map titled Fairbanks D-1. The proposed sale area is just north of Fairbanks Northstar Borough (FNSB) property, and may be accessed either by agreement with FNSB or within the State Forest. State Forest access involves constructing a 1.0 mile winter road from a spur road within the State Forest that intersects Two Rivers Forest Road at mile 4.6.

### **B. Title status**

The proposed sale area is owned and managed by the State of Alaska Department of Natural Resources. The acquisition for the land upon which the sale is proposed is based on General Selection 12. The title was transferred by Patent 50-65-0294. There are no known title restrictions on the area.

### **C. Land use planning, classification, and management intent**

The proposed sale area is legislatively designated as part of Unit 6 of the Tanana Valley State Forest (AS 41.17.400), and is managed according to the Tanana Valley State Forest Management Plan, 2001 Update. All of this unit will remain open to mineral location and leasing. There are no specific restrictions on timber sales within the TVSF Management Plan.

The Interagency Fire Management Plan includes these lands in the 'Full' protection category.

This area is within the Fairbanks Northstar Borough's Regional Comprehensive Plan (2005), and nearby adjacent FNSB-owned parcels are zoned for General Use (GU-1), some parcels of which are managed by the Borough's Parks & Recreation Department. The sale boundary shall be buffered a minimum of 50 feet from the property boundary. FNSB's Plan supports forest development activities while minimizing land use conflicts.

### **D. Current access and land use:**

The sale is in the Two Rivers Forest Road system, but does not currently have direct access. The Two Rivers Forest Road is an easement through FNSB property and comes with 1/4 mile of the sale boundary. This mainline forest road extends 12 miles into the State Forest with multiple spurs.

Planned access is winter-only from within the State Forest. From the main Two Rivers Forest Road at 4.6 mile, a spur road heads east toward closed timber sales. At 0.2 miles on this spur road, a new winter road approximately 1.1 miles long must be constructed heading downhill and crossing a valley bottom that drains to Jenny M Creek.

Alternate all-season access may be arranged from Two Rivers Road Mile 3.0 by contacting FNSB and requesting a Temporary Access License (TAL) to build 0.25 miles of temporary road across Borough property.

Existing nearby land uses consist mostly of recreational access by ATV, snowmachine, and dog-mushing, hunting and trapping, and personal use and commercial timber harvest. A residential neighborhood is located approximately 1.4 miles south of the timber sale and an elementary school 2.1 miles south, both of which share access along the Two Rivers Road.

#### **E. Background and description of proposal**

1. Background: According to the Tanana Valley State Forest Management Plan, the forested areas accessed via Two Rivers Forest Road system falls within Unit 6 and are to be “managed for commercial and personal use timber production in accordance with other policies stated in this plan”. DOF is offering these timber sales while also recognizing other users of the State Forest. The intent is to manage for multiple users while still maintaining a productive “working forest”. These sales fall in line with the guidance provided in the TVSF Management Plan.
2. Timber volume and sustained yield: The proposed project area has an estimated volume of 442 CCF of birch fuel wood timber on approximately 25 acres. Final harvest unit boundaries and timber volume estimates will be determined once DOF staff has completed all pre-sale field measurements. The Fairbanks Area Annual Allowable Cut (AAC) is calculated at approximately 4,606 acres of harvest annually. The volumes proposed in this harvest and in combination with timber volumes from other proposed timber sales that are offered will be within the allowable cut and comply with sustained yield requirements.
3. Harvest unit design: The timber will be harvested as a heavy partial cut for birch and follow the topography of the hillside, with upslope fingers of unharvested trees retained to aid in reforestation. All birch 6” DBH or larger will be included for harvest. Any white spruce and aspen, as well as any birch smaller than 6”, will not be cut. The logging operations will follow all applicable Best Management Practices and residual trees will be protected from damage during harvest operations. Harvesting will be by the whole tree yarding system using a ground-based skidding method. Slash disposal at the landings will be by burning or by salvage for fuelwood use.
  - a. Reforestation and site preparation: 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 birch trees to provide seed to this unit, and the retention of upslope 'fingers' is expected to provide a seed source to the center of the stand. 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 scarification 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).

- b. Access design and construction: Access design, construction, and maintenance will comply with the Forest Resources and Practices regulations (11 AAC 95.285-.355).
- Primary access will involve new construction of a 1.1-mile winter road from the existing Two Rivers Forest Road system and reach the sale from the west. The winter road would cross the upper reaches of a tributary drainage to Jenny M Creek. The winter-only portion of the road involves crossing a valley bottom approximately 1,200 wide. The drainage to be crossed has a perennial flow, but drains a relatively small area (< 500 acre) and has a visible channel that continues approximately 3/4 mile upstream from the proposed crossing.
  - DOF will require the Operator to contact ADF&G to determine if a Fish Habitat Permit is needed for a winter stream crossing (AS 16.05.871 (b)). Regardless of ADF&G's determination, any incipient drainages will be crossed perpendicular to the direction of surface flow, the total length of the route shall be minimized so as to limit impacted area, and the winter-only access will reduce the possibility of sedimentation or vertical thermal erosion by retaining the existing vegetation mat.
  - Between individual sale harvests any secondary winter roads or spurs will be inactive and maintained in accordance with 11 AAC 95.315 (f), specifically that portion of the new winter road that crosses the valley bottom. The first 3/4 mile of the new road may be upgraded to all-season standards and maintained in active status for personal use firewood harvest or other timber harvest.
  - Generally DOF applies for public easement right of ways for its long-term routes; this proposed winter access would not qualify as one of these long term routes.
- c. Appraisal method: Commercial sales will be based on transactional evidence and market demand and DOF will apply a value for those products. DOF will appraise the timber value in compliance with 11 AAC 71.092.

## **F. Resources and management**

### **1. Timber.**



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- a. Timber stand composition and structure: The stand to be harvested is primarily a mature closed canopy birch forest, with small components of aspen, white spruce, and black spruce. This stand contains predominantly birch between 8-12" DBH and the largest measured trees were 14" DBH. Ages of birch trees in this stand are approximately 60-70 years at DBH. Moss is generally not found in this stand due to leaf litter accumulation. The grass component is moderate in this stand and is estimated to cover < 10% of the area. There is an estimated 15% defect in the stand.
  - b. Stand silvics: The normally merchantable species of trees on the TVSF are white spruce and birch. Regeneration of birch occurs principally from seedfall spread by wind, and secondarily from root-collar sprouting. Data and research on regeneration and growth characteristics of these species are compiled within the Resource Analysis of the Tanana Valley State Forest (TVSF) Management Plan. The harvest and reforestation systems available in Interior Alaska are also reviewed and listed in the Resource Analysis. The results of the public and agency discussions for harvest and reforestation are discussed in the TVSF Management Plan. Silvicultural harvest systems that facilitate even-aged (natural) management are generally preferred. They mimic the ecological impact of wildfire and other disturbances and result in the greatest increase in site productivity. Even-aged management is normally accomplished through clear cuts, patch cuts and heavy partial cuts (such as seed tree or shelterwood systems), which opens up the site to maximum solar gain. This results in the greatest production of both young hardwood that is important to wildlife and the spruce understory valuable years later as timber. Even-aged management techniques are utilized to provide young, vigorously growing stands in juxtaposition to older, undisturbed stands. Such placement of harvest units can optimize natural seedling and the edge effect. The proposed sale is a heavy partial cut to remove the birch component of the stand.
  - c. Topography and Soils: The harvest unit extends from near the ridgeline to the toe slope of an east-facing hillside above a poorly drained valley bottom. Elevation ranges from 950 feet to about 1,250 feet with an average grade of 25 percent. The sale area and the first 3/4 mile of proposed road are underlain by the silt-loam Steese-Gilmore complex 10-45% slope. This soil type is well-drained and weathered bedrock may be present within 72 inches of the surface. The valley bottom crossed by the winter road is underlain by soil type Saulich Peat 7-12% slope, which is rated as very poorly drained and has permafrost within 24 inches of the surface. The proposed sale will be designed and managed to prevent significant impairment of the land and water with respect to renewable resources (AS 41.17.060(c)(5)).
2. Agriculture. The proposed sales are not anticipated to have any impact on current or future agricultural activity in the area, and any effects of any timber sale operations for agricultural uses will be minimal.

3. Wildlife habitat and harvest. Wildlife typical of Interior Alaska are found on this site. Signs of moose were observed. There are no known raptor nests within the proposed sale area. Should an eagle nest tree be discovered in the sale area, the nest tree will be marked on the ground and a 330 foot no-harvest radius will be established to protect the tree. No critical wildlife habitat has been identified for this area (TVSF Management Plan), nor has any become apparent during ground reconnaissance.

Treatments proposed for this stand are projected to enhance habitat conditions for moose, voles, hares, and ultimately, lynx, marten and fox. In the past, Alaska Department of Fish and Game, Division of Wildlife Conservation have recommended managing for as much diversity as possible when prescribing harvest unit size, shape and position to mimic the results of wildfire or other stand replacement phases such as insect outbreaks or flood events. To accomplish these objectives snags will be retained to provide late-successional wildlife habitat for hole nesting birds, woodpeckers, small mammals, and other species requiring perching habitat. The unit will be laid out with an uneven edge, along and between timber types. This will create varied edge effect beneficial to many wildlife species.

4. Fish Habitat, water resources, and water quality. According to the TVSF Management Plan, 2001 Update, "The Chena River system provides critical spawning and rearing habitat for salmon and supports the most heavily used sport fishery in the Tanana Basin". The proposed sale area is above an incipient tributary drainage that connects to Jenny M Creek (1.2 miles down valley) and subsequently the Chena River system. Jenny M Creek is catalogued anadromous south of Chena Hot Springs Road. No harvest will take place within 100 feet of Jenny M Creek or the tributary drainage. The proposed crossing of the Jenny M tributary will be perpendicular to flow and only in winter; operators may only cross the stream in compliance with ADF&G's Fish Habitat determination, which may require a permit issued by ADF&G. A 60-100' buffer of timber has been retained at the toe of the slope where the timber transitions to a dwarf timber type underlain by permafrost to minimize any potential erosion disturbance. The proposed sale will be designed and managed to protect fish habitat and water quality in compliance with the Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95). DOF will ensure Best Management Practices are being adhered to by requiring a complete logging plan prior to the start of any harvesting, conducting on-site inspections during logging operations and a final inspection prior to terminating the timber sale.
5. Recreation, tourism, and scenic resources. The Two Rivers area is used for recreational activities as well as hunting. During the winter months skiing, dog mushing, snowmachining and many other activities are common. The logging road system provides an excellent infrastructure for recreationists to access trails and waterways. The proposed harvest area is not expected to be viewable from Chena Hot Springs Road.
6. Cultural Resources. DOF works with the State Historic Preservation Office (SHPO) to identify and avoid known cultural, historic or prehistoric sites in planning the

proposed access routes and harvest areas. If additional archaeological sites are identified, proposed harvest areas and road locations will be appropriately adjusted to avoid conflicts. If any historic or archaeological sites are encountered during road construction or harvest activities, DOF will immediately inform SHPO and take action to protect the findings.

7. Subsurface Resources. All of TVSF Unit 6 is open to mineral entry and is available for leasing. Mineral potential in this Unit has been rated moderate to high, but no active mining claims are established within the sale area. No deleterious effects on subsurface activities are anticipated.

## **G. Costs and benefits**

Local commercial logging operations and their customers will benefit from the influx of the raw timber into the market. In addition to generating royalties to the State's general fund, the proposed sales will create economic benefits to the Fairbanks North Star Borough and to other locations in Alaska. The Borough business community will receive direct economic benefits from providing support services for the operators through sales of fuel, food, housing, medical and miscellaneous supplies. The residents of the Borough will receive an indirect benefit through any local taxes paid by the operator and employees during the timber harvest operations.

The sales are also expected to benefit the local economy by providing jobs. It will have a positive impact on local employment by generating numerous man-hours of work associated with the harvest and transportation of wood products from this sale. Additionally, the public may benefit from access to additional personal use fuelwood areas, as home heating continues to be expensive in Interior Alaska.

Minimal negative effects are expected on fish and wildlife habitat or water quality due to the small size, winter harvest, and shape of the sale. Other users of the Two Rivers Road may experience an increase in traffic and road wear, but also derive some benefits from road maintenance and snow-clearing operations.

## **VI. PUBLIC NOTICE**

The preliminary Best Interest Finding was publicly noticed in compliance with AS 38.05.945. Notice was posted on the Alaska Online Public Notice System, and both physical and electronic notices were mailed to previous timber sale bidders as well as any property owners or business interests known to the Division in the proposed sale area. Notice was also posted on the Division of Forestry public webpage.

## **VII. PUBLIC COMMENT AND RESPONSE**

DOF received the following comments:

<b>Commenter</b>	<b>Date</b>	<b>Comment</b>	<b>Response</b>
ADEC	11/2/23	No comments following review.	Thank you for your review.
Joshua Bissette	11/23/23	I support sustainable logging and forestry operations, and I am in favor of local use of forest products in interior Alaska.	Offering these timber sales serves to implement the Legislative intent of utilizing state forest resources while meeting the sustained yield mandate in the Alaska Constitution (Article 8, Section 4).
ADF&G	11/27/23	No issue of concern.	Thank you for your review.

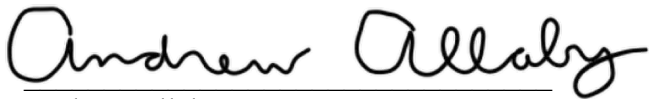
## VIII. DISCUSSION AND FINAL FINDING AND DECISION

### **Alternative 1: To continue the sale(s) as proposed.**

This alternative meets the objectives of the Five-Year Schedule of Timber Sales and DNR's constitutional mandate, and is consistent with the land classification. It also meets the silvicultural objective of improving forest vigor, provides for a value-added end product and creates additional jobs in Alaska due to the combination logging and trucking. This alternative also complies with the management objectives of the TVSF Management Plan for Unit 6.

After due consideration of all pertinent information and alternatives, the DNR has reached the following decision: To offer for sale approximately 25 acres of birch fuelwood as proposed in Alternative 1 and described in the PBIF and reproduced above. Public notice has been accomplished in accordance with AS 38.05.945. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. The DOF finds that this final decision satisfies the objectives stated in this document and it is in the best interest of the State to proceed with this action under its authority of AS 38.05.035(e) (Powers and Duties of the Director) & AS 38.05.110-120; 11 AAC 71 (Timber Sale Statutes and Regulations); and AS 41.17.010-.950 and 11 AAC 95 (Forest Resources and Practices Statutes and Regulations).

## IX. SIGNATURE



Andrew Allaby  
Fairbanks-Delta Area Forester (Acting)  
Alaska Division of Forestry & Fire Protection

12/5/23

Date

## **X. 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](mailto: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.

A copy of 11 AAC 02 is enclosed and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

If you have any questions, please contact Andrew Allaby, Fairbanks-Delta Area Forester (Acting), by mail at Alaska Division of Forestry, 3700 Airport Way, Fairbanks AK 99709, by email at [andrew.allaby@alaska.gov](mailto:andrew.allaby@alaska.gov), or by phone at 907-451-2603.

## **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;

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- (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.

## XI. ATTACHMENTS

Maps of the proposed project area follow.

