

State of Alaska
Department of Natural Resources
Division of Forestry
Southern Southeast Area, Coastal Region

Forest Land Use Plan Final Decision and Alaska Coastal Management Program Consistency Determination

for the

South Thorne Bay #2 Timber Sale

SSE-1282-K

Spring 2009



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I. INTRODUCTION

A. Purpose

The purpose of this Forest Land Use Plan (FLUP) is to provide sufficient information for reviewers to ensure that the best interest of the State will be served by the Department of Natural Resources (DNR), Division of Forestry (DOF), Coastal Region, which is offering for sale an estimated 2,300 thousand board feet (MBF) of merchantable timber. This volume will be sold under provisions of AS 38.05.118, in the form of a single sale and is configured in one unit that composes a total of one hundred and fifteen (115) acres. This sale will require in-state manufacture and will be a negotiated contract. The State will utilize a request for proposal (RFP) process to determine the party with whom to negotiate and sell the timber. The State maintains a public list of mills in Southeast Alaska that have expressed interest in timber sales and will market the sale based on this list.

The total estimated sawlog volume for this sale consist of approximately 1,300 MBF of Western Red Cedar sawlogs; 500 MBF of Western Hemlock sawlogs; 100 MBF of Sitka Spruce sawlogs, and 300 MBF of Yellow Cedar. Another 100 MBF of mixed species cull utility logs is estimated to exist within the unit. The contract will require 100% in-state manufacture of all marketable sawlogs. Approximately 2 miles of new road will be constructed for this sale. The contract period will last for two years.

B. Alaska Coastal Management Program (ACMP) Consistency

The Division of Forestry has determined that the activity described in this Forest Land Use Plan is consistent with the ACMP.

C. Five-Year Sale Schedule

The area that this sale occupies has been shown as a potential sale area in the previous two Five-Year Schedule of Timber Sales (FYSTS); Calendar Years 2005 - 2009 and Calendar Years 2007 - 2011.

D. Location

This timber sale is located on Prince of Wales Island (POW), approximately 4 miles southeast of Thorne Bay, Alaska (see Attachment 1, Sale Area Map). The legal description of the sale area is in portions of Sections 12 and 13 in T.72S., R.84E., Copper River Meridian (CRM).

The regional native corporation is Sealaska Corporation; Kavilco is the nearest village corporation. Adjacent landowners are Sealaska Corporation and Alaska Mental Health Trust (AMHT).

E. Title, Classification and Other Active or Pending Interests

These lands are classified "General Use" [GU] in the *Prince of Wales Island Area Plan*

(1998). The area plan is the first step in the state's public planning process to determine what activities are allowed on specific units of state land. The area plan was adopted after consideration of comments received from other agencies, organizations, and the local community, the process included public meetings and a public comment period. By law, State forest land must provide for multiple uses [AS 41.17.060 and 38.04.065]. In accordance with the Prince of Wales Island Area Plan, commercial timber harvest is an appropriate use of lands classified "General Use".

F. Planning Framework

The decision to offer the South Thorne Bay #2 timber sale is the outcome of a multi-staged planning process requiring public and agency input through out. This document, the Forest Land Use Plan (FLUP) for the timber sale, is one of the final steps in this planning process. The planning for where timber harvest is appropriate, and where it is not appropriate, is done at a much broader scale than the FLUP. The framework for how management decisions are made for timber sales in Southern Southeast is as follows:

1. Area plans and land use plans (in this case, the *Prince of Wales Island Area Plan*) determine where timber harvesting is allowed and set out the overall management issues of a geographic area.
2. The Five-Year Schedule of Timber Sales proposes when timber sales will be offered, and approximately where and how big each sale will be.
3. The Forest Resources and Practices Act determines how timber will be managed within areas where harvesting is allowed by the area plan.
4. A Forest Land Use Plan is written for each individual sale which contains detailed decisions about each sale.

Land management decisions begin in the formulation of an area plan. The Area Plans are designed to balance the various activities which occur and will occur in a given area. The decision to potentially offer an area for harvest begins with the land designations as outlined in the Prince of Wales Island Area Plan Subunit 11c, Thorne Bay. The Thorne Bay subunit lists the following management intents: Aquatic Farming, Cultural Resources, Fish & Wildlife, Float homes, Forestry, Minerals, Recreation, and Settlement. The DOF is limited to utilizing area designated "GU" which list timber harvest as an activity.

To access the Prince of Wales Area Plan visit the web site below.

<http://www.dnr.state.ak.us/mlw/planning/areaplans/wales/index.cfm>

Next, the Division of Forestry prepares a Five-Year Schedule of Timber Sales (FYSTS) every other year. The FYSTS give the public, timber industry, and other agencies an overview of the division's plans for timber sales. They summarize information on proposed timber harvest areas, timber sale access, and reforestation plans. Five-Year Schedule of Timber Sales are subject to public and agency review. The review helps identify issues that must be addressed in detailed timber sale planning. After review and

revision, DOF uses the schedules to decide how and where to proceed with timber sale planning.

The South Thorne Bay #2 timber sale was included in the DOF's Southern Southeast Area Five Year Schedule of Timber Sales, 2007-2011. The Schedule was published and noticed for public comment in May 2007. The notice was posted in all local post offices and on the State of Alaska Public Notice and the DOF web sites. The notice was also sent to agencies, community councils, tribal councils, Native corporations, planning commissions, Legislative offices, conservation groups, small mill operators, timber industry representatives, and private citizens. The schedule and maps are available for download from the DOF's web site. Public comments were used to identify issues that would be addressed in the Forest Land Use Plans.

Finally the Forest Land Use Plan (FLUP) is the culmination of this lengthy planning process. The FLUP presents detailed information on the location, access, harvest methods, duration, and proposed reforestation for each sale. The development of the specifics of the sale is guided by the Alaska Forest Resources and Practices Act. The public is asked to comment at this stage, as well. By getting the best available data, combined with a series of public processes that helps us gather information from the public and other agencies we make well-informed decisions about uses of resources on state land.

G. Objectives

1. To follow the DNR's constitutional mandate to encourage the development of the State's renewable resources, making them available for maximum use consistent with the public interest. Sustain and promote a healthy, long-term timber industry within the State, through providing a secure source of timber for harvest that produces raw materials (logs) for local manufacturing plants (e.g., mills) while protecting other resources such as fish and wildlife.
2. To help the State's economy by providing royalties to the State in the form of stumpage receipts, an infusion to the State's economy through wages, purchases, jobs and business.
3. To help the local economy of the communities on Prince of Wales Island and other communities in southern Southeast Alaska.
4. To improve forest growth and vigor by harvesting and replacing mature stands with new healthy stands of regrowth, while protecting and maintaining other resource values. The actions authorized under this decision will adhere to multiple-use management principle.

II. LEGAL AUTHORITY

The Division is taking this action under the authority of AS 38.05.035(e) (Best Interest Finding); AS 38.05.110-123 and 11 AAC 71 (Timber Sale Statutes and Regulations); AS 41.17.010-.950 and 11 AAC 95 (Forest Resources and Practices Statutes and Regulations); AS 46.40 and 11 AAC 110 (Alaska Coastal Management Statutes and Regulations).

III. ADMINISTRATIVE RECORD

The unit is identified as SSE-1282-K constitutes the collective administrative record for this finding.

IV. DISCUSSION OF ISSUES

A. Physical characteristics of the sale area

Topography. The timber sale occupies an area of gradual hills with varied topography ranging from gentle to moderate slopes with elevations ranging from 100 to 400 feet. The majority of the sale area has slopes of less than 40%.

Stand Conditions. The proposed sale area has the characteristics of an old growth forest with a mature overstory composed primarily of red cedar, western hemlock, Sitka spruce and yellow cedar.

B. Current land Use

The State lands encompassed by and surrounding the sale area are classified “General Use” in the Prince of Wales Island Area Plan. Northwest of the current sale area, one hundred and twenty eight (128) acres of this General Use land was logged in 2008. Land to the west of the State tract is under private residential ownership. The land to the south of the State tract is owned by the Alaska Mental Health Trust (AMHT) and has been managed for timber production, the initial harvest occurred approximately eight years ago. Lands to the east of the State tract are owned by Sealaska Corporation and have been selectively harvested by helicopter in the past.

Chapter 2, page 13, of the *POW Area Plan* states that “Harvest units may not exceed 160 acres in size unless approved in a FLUP after consultation with DEC and ADF&G, and public review.” The proposed timber harvest unit for South Thorne Bay #2 is less than 160; however, combined with the 2008 South Thorne Bay #1 sale, the total acreage exceeds 160 acres. This FLUP process serves as the required agency consultation and public review.

C. Wildlife habitat

The Division of Forestry believes the timber sale described in this FLUP is consistent with the guidelines and management intent of the Prince of Wales Island Area Plan and

the Alaska Forest Practices Act. The affected area of State land has not been identified as critical habitat in the Prince of Wales Island Area Plan nor has it been identified as important wildlife habitat during or since the FYSTS process. The majority of activity and game trails observed during the timber sale design process were general in nature.

It is expected that harvesting operations will cause a temporary displacement of some individual wildlife species; however, the sale by itself is not expected to cause significant adverse impacts on the wildlife populations of Prince of Wales Island. To provide variety of habitat structure while meeting the General Use management intent for this parcel, the harvest unit has been designed so that areas of predominately non-commercial timber were excluded from harvesting.

Hunting pressure in the immediate area may temporarily increase as a result of easier access. The added hunting pressure is not expected to be significant in nature relative to the size and balance of hunting opportunities on Prince of Wales Island. The Alaska Department of Fish and Game is responsible for setting hunting regulations, including closing areas that have increased activity if it is warranted.

Based on existing eagle nest tree maps and field observations, there are no known eagle nest trees in the sale area. Should an eagle nest tree be discovered in the sale area, DOF will notify the U.S. Fish and Wildlife Service with the location of the nest tree. The eagle nest tree will be marked on the ground and a 330 foot radius no harvest area surrounding the nest tree will be established.

D. Fisheries and water quality

The *Atlas to the Catalog of Waters Important for Spawning, Rearing, and Migration of Anadromous Fishes* was used as a reference guide to indicate the potential for fish habitat issues in the timber sale area. There are no cataloged anadromous fish streams identified in the Atlas within or adjacent to the sale area. Additionally, ADF&G has documented that there are no other anadromous streams within or adjacent to the timber sale. Some surface water from the sale area flows into cataloged stream #102-70-10430; a documented blockage to anadromous fish occurs approximately 3,000 feet south of the southern edge of the sale unit. To protect water quality of non-fish bearing water bodies a combination of retention areas, directional felling, partial suspension of logs, split-yarding, and removal of logging debris from stream channels will be required

The sale area has been laid out and operations will be conducted in a manner which is in compliance with the Alaska Forest Resources and Practices Act (FRPA). Due to the location of the unit and the topography in relation to significant surface water bodies, the timber sale is anticipated to have minimal adverse impact on water quality and there are no foreseeable obstacles which would prevent implementation of the Alaska Forest Practices Act (FRPA) Best Management Practices. To maintain water quality during road construction and harvest operations, DOF will mandate implementation of FRPA's Best Management Practices.

The Alaska Forest Resources and Practices Act best management practices have been determined to provide adequate protection from potential water degradation. Information from field inspections, compliance monitoring, and the state's Alaska Clean Water Actions database indicate that FRPA is effective in protecting water quality. The annual report from the Department of Environmental Conservation (DEC) on the effectiveness of FRPA concluded that, "when properly implemented, the BMPs are effective at protecting water quality." No streams have been identified or listed for violation of water quality standards as a result of forest operations subject to the FRPA best management practices.

E. Subsistence

The subject State land area has not been designated as an important community harvest area in the Prince of Wales Island Area Plan. However, the following incidental uses may occur within the sale area: trapping, hunting, gathering of berries, and other similar activities. This action is anticipated to have no significant deleterious effects on the above activities for Prince of Wales Island.

F. Recreation

This timber sale is expected to result in no adverse changes to recreational use of the area. Past timber sales have provided road accessible dispersed recreational opportunities. None of the pre-existing roads will be closed as a result of this action, DOF will require closure of the roads within the unit at end of operations as per agreement with the Division of Mining, Land, and Water.

G. Scenic resources.

Visual impact from the sale will be moderate relative to other activity which previously occurred in this area. The sale will be visible from the Kasaan Road. The sale may also be visible from the South Arm of Thorne Bay and Tolstoi Bay.

H. Cultural resources

There was no evidence of cultural or historic features in the general area during the course of layout. Areas identified as historic, archaeological, or paleontological sites are protected as outlined in the Prince of Wales Island Area Plan. The records of the Office of History and Archaeology do not identify any cultural or historical features within or adjacent to the sale area. During the course of activities associated with this timber sale, cultural and/or paleontological resources may be inadvertently discovered. Should such discovery occur, the site shall be protected from any disturbance and the Office of History and Archaeology will be contacted immediately so that compliance with State laws governing cultural resources may occur.

Under the Alaska Historic Preservation Act (41.35.200), all burials on State land are protected. If burials or human remains are found, all land altering activities that would

disturb the burial or remains shall cease and measures will be taken to protect it in place. The Office of History and Archaeology and a law enforcement officer will be notified immediately to ensure that proper procedures for dealing with human remains are followed.

I. Sustained yield and allowable cut

The Alaska Forest Resources and Practices Act (AS 41.17.060(c)) and Article VIII Sec. 4 of the State Constitution require that State forest land be managed on a sustained yield basis. Sustained yield as defined in the Alaska Forest Resources and Practices Act (AS 41.17.950(27)) states:

"Sustained Yield" means the achievement and maintenance in perpetuity of a high level of annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water, but does not require that timber be harvested in a non-declining yield basis over a rotation period".

The annual allowable cut for the Southern Southeast Area is set at 12,818 thousand board feet (MBF). The allowable cut is managed on a decadal basis – that means that the Southern Southeast Area can harvest up to 128.18 MBF over 10 years. The amount harvested each year can vary as long as the total over 10 years stays within this limit. From fiscal year 1998 through fiscal year 2008, Southern Southeast timber sales have been less than the allowable cut. This has allowed DOF to increase sales to provide more timber to local mills for a few years, while staying within the allowable cut. This proposed sale will not exceed the AAC for the period of time it will be offered. In calendar year 2008, the DOF sold approximately 6,348 MBF of timber, no timber has yet been sold in 2009.

J. Regeneration

Previously clear-cut harvested areas in southern Southeast Alaska have satisfactorily regenerated by natural seed and have met or exceeded the FRPA reforestation standards for coastal forests, which is 200 well established seedlings per acre within five years after harvest (11 AAC 95.375(d)(1)). Natural regeneration is the preferred regeneration method for this sale and it is anticipated that adequate stocking levels will be achieved within five years after harvest.

K. Harvest methods

The silviculture prescription includes clear cut harvest with yarding by cable system and log shovel. Shovel logging will only be allowed in areas of the sale where soil disturbance can be effectively managed or mitigated with limited entry by heavy equipment. Areas adjacent to proposed roads that are under 30% slope are typically suited to this style of yarding. FRPA best management practices for timber harvesting will be followed for both cable and shovel harvest areas. DOF maintains control over

logging methods utilized on all of its sales through operation plans submitted by the purchaser and by performing field inspections for contract administration.

L. Transportation

The main access route to this timber sale area is the Kasaan Road. From the Kasaan Road, the sale utilizes approximately 0.5 mile of existing roads on AMHT lands and 0.8 miles of existing road on State lands. The sale will require the construction of an additional 2.02 miles of road to access the timber. Roads will be maintained to the standards set out in FRPA. Under direction from the Department of Mining, Land, and Water, all roads constructed for this sale will be closed at end of operations; the roads will be closed to the standards outlined in FRPA under 11 AAC 95.320. Road closure involves removing culverts, installing water bars, and taking any other appropriate action to leave the road in a condition not conducive to erosion.

M. Erosion

Traditionally there are two soil erosion concerns: surface erosion and mass wasting of soil and debris. To keep the potential for soil erosion to a minimum, the amount of road construction has been minimized and none of the roads are located on steep slopes. The roads have been designed to follow the natural contours and benches in the area and are located on flat or moderate slopes. Keeping roads off steeper slopes and located on flat benches not only minimizes soil erosion from road construction, but also minimizes erosion due to cable logging. DOF will require full or partial suspension for any cable logging that occurs in this harvest unit. The location of the road optimizes lift and deflection and will provide adequate landing areas. Shovel yarding will only be permitted on slopes less than 30 percent and where soil disturbance can be kept to a minimum, operations will be suspended during times of saturated soil conditions.

Steep slopes are generally considered as being at higher risk for mass wasting; the *Prince of Wales Area Plan* states that “forest management activities may not be conducted on slopes consistently greater than 67 percent, on an unstable slope, or in a slide-prone area unless approved in a FLUP. The Division of Forestry has determined that the mass wasting potential for this sale unit is minimal because the slopes are generally mild and timber harvest areas are not on slopes consistently greater than 67 percent.

To minimize the potential for erosion, FRPA slope stability standards and yarding BMPs will be adhered to at all times, as well as the BMPs for road construction and maintenance. The DOF timber sale administrator will ensure, with frequent field inspections, compliance with the timber sale contract and FRPA.

N. Mining

There is little known current mining activity in this area. Other than sharing some of the same access roads, this sale will have no impact on the potential mining resources or mining activity in this area.

O. Materials

The main source of rock for road construction will come from the development of rock quarries within the sale area and adjacent to the proposed roads. Existing pits on adjacent State lands will be used when possible to minimize the requirement for pit development. All decisions for quarry development will be made by the timber purchaser with the DOF's approval and will be based on FRPA's Best Management Practices for road construction and material extraction (11 AAC 95.290 and 11 AAC 95.325). Due to the topography and the quantity of rock needed, pit development should not be readily visible from salt water or be a dominant feature of the topography.

P. Economics

The sale will be sold under AS 38.05.118 and will require that the timber be manufactured into value-added and/or high value-added products. The purpose of AS 38.05.118 sale is to provide employment benefits to local communities from an underutilized resource and mill capacity.

The DOF will use a Request for Proposal process to select purchasers of the timber sales; this process will provide the most benefit to the State in the form of stumpage, jobs, local economy, and added area infrastructure.

The proposed sale will create economic benefits on Prince of Wales Island and other areas of southern Southeast Alaska. The business communities will receive direct economic benefits by providing support services for the operators such as fuel, food, housing, medical and miscellaneous supplies. The residents of the communities in southern Southeast Alaska will receive a direct benefit through employment opportunities and wages paid by the operator during the course of the timber harvest and milling operations.

V. MARKET CONDITIONS

Timber demand in Southeast Alaska varies dramatically on an annual basis. The level of demand is difficult to predict with precision. Various factors influence the demand for Southeast Alaska timber, including interest rates, housing, value of the dollar with respect to changes in import tariffs, export policies locally and abroad, business cycles in the United States and overseas, installed mill capacity, regional and world timber markets, and timber availability and cost. The timber industry in the past has been dependent on the USFS land base for its timber supply, but federal land management policies and uncertainties have made the fiber supplies from federal lands to the local mills erratic for the past decade. Demand for alternative timber supplies, including State timber, has increased dramatically in the last five years.

To help stabilize the local wood products industry, the DOF has been directed by the Governor and Legislature to make a consistent and sustainable timber supply available to the local markets. The Southern Southeast Area has sold all timber sales of this size that have been prepared in the past ten years at or above appraised value. Local interest and demand has been generally high, generating multiple bids for most sales offered.

VI. ALTERNATIVE ACTIONS

There are five possible alternatives to consider for this sale. A discussion of each of the five alternatives follows:

1. TO CONTINUE THE SALE AS PROPOSED

This alternative meets the objectives of the Five-Year Schedule of Timber Sales and DNR's constitutional mandate. It also meets the silviculture objective of improving forest vigor, provides for a value-added end product and creates additional jobs in Southeast Alaska due to the combination of road building, logging, and trucking. Additional employment opportunities in southern Southeast Alaska are likely to exist as associated with local milling and value-added wood products.

2. TO MODIFY THE SALE BY MAKING MULTIPLE SALE OFFERINGS

Designing multiple sales of smaller acreage would increase logging costs or leave timber that would be more difficult to harvest in the future. The sale area as designed consists of a single unit that will accommodate a portion of the supply needed for a medium sized mill operation in southern Southeast Alaska. The unit is a logical series of settings for typical equipment of the region and will provide the purchaser with enough capital return to construct the infrastructure needed to access the timber on the sale. The size of the unit, kept as a single unit, is designed to be large enough to be economically viable for cable logging methods where prescribed and will cover the costs of new road construction and closure, along with the mobilization costs needed to operate on the Prince of Wales road system. The Division of Forestry believes the sale is sized appropriately to balance and maintain other resource values as well as provide economic benefits to southern Southeast Alaska.

3. DEFER THE SALE OF THIS TIMBER TO A LATER DATE.

Deferring harvest to a later date would fail to meet many of the objectives of the sale program. One of the main objectives is to make State-owned timber consistently available to the timber industry in light of federal timber supply uncertainties.

4. NOT OFFER THIS TIMBER FOR SALE.

This alternative would result in not meeting any of the objectives outlined for this management action. Utilization of the forest resource would not be achieved. There would be no significant contribution to the State and local economies.

5. OFFER THIS TIMBER ON A COMPETITIVE BASIS.

This alternative would result in utilization of the forest resource and provide the most revenue to the State's general fund. However this alternative would likely not result in local manufacture or the development of value-added or high value-added end products nor would it provide as much economic boost for the communities in southern Southeast Alaska. Competitive bid timber in southeast Alaska is typically sold on the export market. State law allows the DOF to negotiate for domestic processing of the timber under the AS 38.05.118 process, but not in a competitive basis under AS 38.05.120.

VII. ACMP CONSISTENCY ANALYSIS

This sale occurs within the Thorne Bay Coastal District. There are no known natural hazard areas, or areas of historic or archaeological importance within the proposed sale area. There is no coastal development occurring in the area and the proposed sale will not inhibit coastal access to the public. No energy facility, utility route, or utility facility exists or will be developed as a result of this action. No sand or gravel will be extracted from coastal waters, intertidal areas, barrier islands, or spits. The area has not been identified as a subsistence area under 11 AAC 114.250(g) and any subsistence use is thought to be minimal. Therefore, the sale does not conflict with the standards on coastal development, natural hazard areas, coastal access, energy facilities, utility routes and facilities, sand and gravel extraction, subsistence, and historic, prehistoric and archeological sites.

Road construction and timber harvesting activities will adhere to the Forest Resources and Practices Regulations (FRPA), meeting timber harvest and processing standards.

This offering is consistent with the ACMP habitat standards because 11 AAC 95.185(g) preempts the habitat standards enacted under 11 AAC 112 and 11 AAC 114, and the proposed action has been designed to be consistent with the Forest Practices. The sale area is located outside of any areas designated as important habitat under Thorne Bay Coastal District's enforceable polices.

The laws and regulations regarding timber harvest and the quality of air, land, and water administered by the Department of Environmental Conservation will apply ensuring consistency.

VIII. OBJECTIONS, COMMENTS, AND ALTERNATIVES RECEIVED

After receiving a copy of the preliminary decision for this timber sale, the Department of Environmental Conservation recommended that the project be found consistent provided that stream course protection prescriptions are properly implemented during harvest operations. The Department of Fish & Game recommended that the proposed project be found consistent with the Forest Resources and Practices Act and Regulations. ADF&G made further comment that the streams being crossed by the road be inspected for

resident fish, this will occur once the site is free of snow cover. The recommendations made by DEC and ADF&G are incorporated in the Final Finding. Two letters and one telephone call were received from other State agencies; the State Historical Preservation Office did not identify any areas of interest in their written comment, Alaska Mental Health Trust provided a letter of general support, and the Division of Coastal and Ocean Management notified this office of the change in ACMP regulations. One letter was received from the regional native corporation. The Division of Forestry has included with this final finding a summary of agency and public comments received and the Division's response to those comments.

IX. FINAL FINDING, DECISION, AND ACMP CONSISTENCY DETERMINATION

A. Alaska Coastal Management Program Consistency Determination

The agency reviewers that responded with comments were the Department of Environmental Conservation, the State Historical Preservation Office, and the Department of Fish & Game. The Division of Forestry is required by the Area Plan and State statute to seek input from agencies as to whether the project is consistent with the ACMP. All reviewers recommended or concurred that this project be found consistent or has no adverse effect.

This final finding also contains the Division of Forestry's ACMP consistency analysis. The Division of Forestry believes this action is consistent with the Alaska Coastal Management Program. The requirements of applicable statutes and regulations have been satisfied. The Division of Forestry therefore is issuing an immediate Final Consistency Determination as allowed under 11 AAC 110.255 (j).

B. Best Interest Decision

The purpose of this decision is to determine if the Department of Natural Resources, Division of Forestry, will make available timber located in the Copper River Meridian (CRM) in portions of Sections 12 and 13 in T. 72 S., R. 84 E. After due consideration of all pertinent information and alternatives, the Division of Forestry has reached the following **Final Decision: To offer the sale as proposed in Alternative 1.** The Division of Forestry finds that this final decision satisfies the objectives as 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) & AS 38.05.118.

A person affected by this Best Interest Decision who provided timely written comment may request reconsideration in accordance with 11 AAC 02. Any appeal must be received by **May 4, 2009**, and must be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; or faxed to (907) 269-8918, or sent by electronic mail to dnr_appeals@dnr.state.ak.us. If reconsideration is not requested by **May 4, 2009**, or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on **May 5, 2009**.

Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

If you have any questions, please contact Patricia Palkovic, acting Area Forester for the Southern Southeast Area Office at (907) 225-3070 or by e-mail pat.palkovic@alaska.gov.

Michael Curran
Coastal Region Forester

Date

STATUTES AND REGULATIONS

AS 38.04.065	Land Use Planning and Classification
AS 38.04.910 (5)	Definitions – Multiple Use
AS 38.05.035	Powers and Duties of the Director [includes best interest findings]
AS 38.05.112	Forest Land Use Plan
AS 38.05.113	Five-year Schedule of Timber Sales
AS 38.05.118	Negotiated Sales
AS 38.05.945	Public Notice
AS 41.17	Alaska Forest Resources and Practices Act
AS 46.40	The Alaska Coastal Management Program
11 AAC 71	Timber and Material Sales
11 AAC 95	Forest Resources and Practices Regulations
11 AAC 110	Alaska Coastal Management Program Implementation
11 AAC 114	District Coastal Management Plan Requirements

33 CFR 323.4(a)(1),(6) Permits for Discharge of Dredged or Fill Material into Waters of the United States. (Discharges not requiring permits)

REFERENCES

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- USDA Fish and Wildlife Service. *Eagle Tree maps*.

Comments & Responses

Department of Natural Resources, Division of Forestry

April 14, 2009

The following comments were received during the public comment period for the South Thorne Bay # 2 Timber Sale.

Organization	Author	Location
Department of Fish and Game, Habitat Division	Mark Minnillo	Craig
Department of Environmental Conservation	Kevin Hanley	Juneau
DNR, Office of History and Archaeology	State Historic Preservation Office	Anchorage
DNR, Division of Coastal and Ocean Management	Erin Allee	Juneau
Alaska Mental Health Trust Land Office	Paul Slenkamp	Ketchikan
Sealaska Corporation	Michele Metz	Juneau

Commenter	Comment	Response
	General Support / Opposition	
Paul Slenkamp Trust Land Office	“The Trust Land Office (TLO) has reviewed the Forest Land Use Plan for the South Thorne Bay #2 Timber Sale...The TLO recognizes the multi-stage review process which timber sales are analyzed and supports this process.”	Comment noted
Paul Slenkamp Trust Land Office	“Considering the inconsistency of timber provided by the U.S. Forest Service the DOF should continue to provide as much timber to the local markets as feasible”	Comment noted
	Water Quality	
Kevin Hanley Department of Environmental Conservation	“... recommends this sale to be found consistent provided the proposed stream course protection prescriptions (e.g., directional felling, split-line yarding) are properly implemented during unit harvesting. In addition to these practices, to the extent feasible, all low-value and non-merchantable trees should be retained within the riparian areas of the streams within the unit. This is particular important along those streams that provide resident fish habitat.”	DOF concurs. The Alaska Forest Resources and Practices Act best management practices will be followed.
	Fish and Wildlife Habitat	
Mark Minnillo Department of Fish & Game, Division of Habitat	“From examination of the map of the proposed operation submitted by the operator and of the Atlas and Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes it appears that the proposed road construction and timber harvest will not affect any anadromous or high-value resident fish bearing streams.”	Comment noted
Mark Minnillo Department. of Fish & Game, Division of Habitat	“There are several small streams identified in the FLUP as water quality streams which are located within and adjacent to the proposed harvest area. A determination needs to be made whether or not these water quality streams contain resident fish species. Should resident fish species be found in water quality streams that will be crossed by the proposed road, fish passage and Fish Habitat permits may be required.”	DOF will contact ADF&G for a site visit to determine if the water quality streams crossed by the proposed road contain resident fish species. Should a crossing require authorization under 16.05.841, the necessary permit will be obtained prior to start of road construction.
Paul Slenkamp Trust Land Office	“Although the area has sustained considerable timber harvest activities over the past decade there are several large leave areas within this unit. These areas will help mitigate potential adverse	Comment noted

Commenter	Comment	Response
	habitat effects.”	
	Annual Sale Quantity (ASQ)	
Paul Slenkamp Trust Land Office	“The DOF should also continue to inventory and evaluate the sustained yield (ASQ) provided by the lands it administers. New data shows a much higher yield per acre and shorter rotation period than previously thought.”	Comment noted
	Economics	
Michele Metz Sealaska Corporation	“The economy of Southeast Alaska has been suffering recently and 2009 has the prospect of continuing this negative trend. By offering this sale the State of Alaska is promoting employment in communities in Southeast Alaska.”	Comment noted
	Historic, prehistoric, and archeological resources	
State Historic Preservation Office Office of History and Archeology	“No historic properties are affected”	Comment noted
	Alternatives	
Michele Metz Sealaska Corporation	“The size of the sale in one unit makes sense. After harvest is complete management of the new second growth will be efficient and should result in vigorous second growth for the next generation.”	Comment noted
Michele Metz Sealaska Corporation	“Keeping the sale at the recommended size is the correct choice because it will do a better job of attracting those interested in utilizing the harvest for local manufacture.”	DOF concurs
	ACMP Consistency	
Erin Allee Department of Coastal and Ocean Management	(verbal communication) FLUP refers to ACMP regulations and review processes which have been revised or are no longer in effect.	The FLUP has subsequently been internally reviewed against current regulations and it was determined that all applicable standards were considered in the preliminary determination. The text has been changed to reflect current regulations and standards.
Mark Minnillo Department of Fish & Game,	“Pursuant to 11 AAC 110 and 11 AAC 112.300 HABITATS of Alaska Coastal Management Program, ADF&G Division of Habitat recommends this sale be found consistent with the	Comment noted

Commenter	Comment	Response
Division of Habitat	requirements of AS 41.17 and 11 AAC 95.”	
Kevin Hanley Department of Environmental Conservation	“Pursuant to AWS 46.40.096(d) of the Alaska Coastal Management Program and 11 AAC 95 (the Forest Practices Regulations), the Department recommends this sale to be found consistent provided the proposed stream course protection prescriptions (e.g., directional felling, split-line yarding) are properly implemented during unit harvesting.	Comment noted. The Alaska Forest Resources and Practices Act best management practices will be followed.
Michele Metz Sealaska Corporation	“...we have every reason to expect that ACMP regulations and guidelines will be met. The proposed two miles of road and the methods of harvest are appropriate for this sale and its location.”	Comment noted

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 02.900, Definitions, below.]

TITLE 11. NATURAL RESOURCES.

CHAPTER 02. APPEALS.

Section	Section
10. Applicability and eligibility	50. Hearings
15. Combined decisions	60. Stays; exceptions
20. Finality of a decision for purposes of appeal to court	70. Waiver of procedural violations
30. Filing an appeal or request for reconsideration	80. (Repealed)
40. Timely filing; issuance of decision	900. Definitions

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 38.04.900 AS 38.08.110 AS 41.15.020 AS 44.37.011
AS 29.65.050 AS 38.05.020 AS 38.09.110 AS 41.17.055 AS 46.15.020

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

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

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

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