

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



FAIRBANKS-DELTA AREA FORESTRY

**FINAL BEST INTEREST FINDING AND
DECISION FOR**

**Cummings Road East Timber Sales
NC-1677-D, NC-1869-D, NC-1894-D,
NC-1899-D, NC-1906-D, NC-1914-D**

SEPTEMBER 2024

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Abbreviations

AAC	Alaska Administrative Code
ADEC	Alaska Department of Environmental Conservation
ADF&G	Alaska Department of Fish and Game
ADNR	Alaska Department of Natural Resources
AS	Alaska Statute
BIF	Best interest finding
CCF	100 cubic feet (timber volume)
DBH	Diameter at breast height (4.5 feet above ground)
DMLW	Division of Mining, Land and Water
DOF	Division of Forestry & Fire Protection
FLUP	Forest Land Use Plan
FRPA	Alaska Forest Resources and Practices Act
FYSTS	Five-Year Schedule of Timber Sales
MBF	Thousand board feet
OHA	Office of History and Archeology
ROW	Right-of-way
TVSF	Tanana Valley State Forest

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I. PROPOSED ACTION

DOF is proposing to offer for sale over the next five years approximately 127 acres of mixed birch and spruce forest from state lands in the Cummings Road East area of near the Alaska Highway. The cumulative volume to be offered for the next 5 years totals at least 1,373 Cords (1,236 CCF) of mixed fuelwood and 431 MBF (1,104 CCF) of spruce sawlogs in at least 6 separate sales. Some of the larger proposed areas may be divided into smaller units, and some small units < 10 acres may be added within the provided legal description should market demand exceed the 6 planned sale areas. DOF would sell the timber as a combination of competitive bid timber sales (AS 38.05.120) and small negotiated timber sales (AS 38.05.115) for commercial use. For this timber sale, the PBIF and Draft FLUP were issued for review at the same time. The land covered by this BIF appeared in the 2024 Fairbanks-Delta Five Year Schedule of Timber Sales (FYSTS).

The management objectives for the proposed timber sales are:

- Provide raw material for the forest industry to produce timber products that provide 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 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-1677-D, NC-1869-D, NC-1894-D, NC-1899-D, NC-1906-D, and NC-1914-D.

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 127 acres of mixed birch and spruce forest from state land within the Cummings Road East area depicted in the attached maps (see Appendix A). The following list summarizes the overall process:

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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 BIF is covered by the Tanana Valley State Forest Management Plan, and the BIF is consistent with this 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 2024 Fairbanks-Delta FYSTS.

Step 3: Best Interest Finding. DOF must adopt a final BIF before selling timber. 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 on 7/19/24 covering the decision to sell approximately 127 acres of mixed birch and spruce forest from state lands within the Cummings Road East area in a combination of competitive and negotiated sales for commercial use. DOF considered all written comments received during the 36-day review period. Responses to the comments are listed in Appendix A.

This document is the final BIF for Cummings Road East Timber Sales. 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. FLUPs are based on additional field work, agency and community consultation, and site-specific analyses by the DOF, and are subject to public and agency review.

Step 5: Timber sales and contracts. Following adoption of the final BIF, and completion of the FLUP, DOF will offer the timber for sale by auctioning competitive sales and/or negotiating

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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 will administer the timber sales and conduct field inspections to ensure compliance with the final BIF, 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 sales are located approximately 32 miles southeast of the Delta Area Forestry office in the Cummings Road area north of the Alaska Highway at milepost 1392. The proposed sales are accessed via the Newby Mill Forest Road from the east side of Cummings Road 2.1 miles from the Alaska Highway.

- **NC-1677-D** is within Sections 21, 22, 28, T12S, R15E, Fairbanks Meridian
- **NC-1869-D** is within Section 33, T12S, R15E and Section 3, T13S, R15E, F.M.
- **NC-1894-D** is within Section 28, T12S, R15E, F.M.
- **NC-1899-D** is within Section 28, T12S, R15E, F.M.
- **NC-1906-D** is within Section 28, T12S, R15E, F.M.
- **NC-1914-D** is within Section 28, T12S, R15E, F.M.

The sale areas are shown on the attached map and are within the United States Geological Survey 1:63,360 Quadrangle map titled Mount Hayes D-2.

B. Title status

The proposed sale areas are owned and managed by the State of Alaska Department of Natural Resources. The acquisition for the land upon which the sale areas are proposed is based on General Selection 809, the title transferred by Patent 50-2019-0015, except the southern half of NC-1869-D is based on General Selection 811 with the title transferred by Patent 50-93-0125. There are no known title restrictions in these areas.

C. Land use planning, classification, and management intent

The proposed area is legislatively designated as part of Subunit 10C of the Tanana Valley State Forest (AS 41.17.400), and is managed according to the Tanana Valley State Forest Management Plan, 2001 Update. Subunit 10C will be managed “for commercial and personal use timber production while protecting fish and wildlife habitat and recreation use near the Tanana and Volkmar Rivers and other waterbodies.” Subunit 10C will remain open to mineral location and leasing.

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

D. Current access and land use:

The proposed sales are located east of Cummings Road, which is accessed north of the Alaska Highway at milepost 1392. The proposed sales are accessed via the Newby Mill Forest Road from the east side of Cummings Road 2.1 miles from the Alaska Highway.

Two large parcels of privately owned agricultural land abut the project area. To the north is the 1,672-acre parcel was first conveyed from State to private ownership as ADL 407927 in 1982, and the most recent conveyance appears to be State Patent 20087. To the south the 865-acre parcel was first conveyed from State to private ownership as ADL 407928 in 1982, and the most recent conveyance appears to be Agricultural Land Patent 23731. These areas are used for agriculture and private residences.

Existing land uses within this part of the TVSF consist of motorized recreational access, hunting, trapping, and personal use and commercial timber harvest.

E. Background and description of proposal

1. Background: The proposed timber sales are within the Legislatively-designated Tanana Valley State Forest. According to the TVSF Management Plan, 2001 Update, Subunit 10C will be managed “for commercial and personal use timber production while protecting fish and wildlife habitat and recreation use near the Tanana and Volkmar Rivers and other water-bodies.” The Division of Forestry is offering these sales with the intent to maintain a productive working forest while continuing to provide opportunities for dispersed recreation and maintaining habitat quality.
2. Timber volume and sustained yield: The proposed project area has an estimated 1,373 Cords (1,236 CCF) of mixed fuelwood and 431 MBF (1,104 CCF) of spruce sawlog on approximately 127 acres to be offered over the next 5 years. Final harvest unit boundaries and timber volume estimates will be determined upon completion of sale preparation activities. The Delta Area Annual Allowable Cut (AAC) is calculated at approximately 3,948 acres of harvest annually. The volumes proposed in these harvests alone, and in combination with timber volumes from other proposed timber sales, will be within the Annual Allowable Cut and comply with sustained yield requirements.
3. Harvest unit design: The 127 acres to be offered is proposed to be split between at least six individual sales which may be divided into multiple cutting units per sale. Cutting units buffer stand type boundaries and existing harvest units to retain an adequate seed source of mature birch or mixed birch and spruce. Cutting units will be designed to incorporate buffers of at least 50 feet from private property boundaries to protect public safety from direct harvest activities.
 - 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). The preferred reforestation method for rotational harvest is via natural seeding from

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adjacent trees. The harvest unit design described above retains adjacent mature forest to provide an adequate seed source. Mechanical ground scarification may be utilized on those portions of sales where birch is the dominant tree, in order to expose mineral soil microsites for birch seedling establishment and limit competition from grasses. Reforestation will be assessed five years post-harvest with a regeneration survey if the site appears to have marginal seedling establishment. If surveys indicate inadequately stocked areas (less than a minimum of 450 evenly distributed trees per acre of commercial species), additional silvicultural actions may be performed to intervene and improve stocking.

- b. Access design and construction: Access design, construction, and maintenance will comply with the Forest Resources and Practices regulations (11 AAC 95.285-.355).
- Each sale is accessed via Cummings Road, which connects to the Alaska Highway at Mile 1392. Newby Mill Forest Road is an all-season secondary road that intersects Cummings Road on the east side 2.1 miles from the Alaska Highway. Access for each proposed sale:
 - **NC-1677-D** is 2.5 miles east of Cummings Road on Newby Mill Forest Road, then a 0.3 mile spur must be constructed to the sale boundary.
 - **NC-1869-D** is 3.4 miles east of Cummings Road on Newby Mill Forest Road, then 0.8 miles south on an existing spur road.
 - **NC-1894-D** is 3.1 miles east of Cummings Road on Newby Mill Forest Road.
 - **NC-1899-D** is 4.1 miles east of Cummings Road on Newby Mill Forest Road, then a 0.2 mile spur must be constructed to reach the sale boundary. This sale may be limited to winter-only access if a safe and stable access cannot be constructed economically on the toe of the hillslope to the south.
 - **NC-1906-D** is 3.2 miles east of Cummings Road on Newby Mill Forest Road.
 - **NC-1914-D** is 4.1 miles east of Cummings Road on Newby Mill Forest Road, then a 0.5 mile spur must be constructed to reach the sale boundary. This sale may be limited to winter-only access if a safe and stable access cannot be constructed economically on the toe of the hillslope to the south.
 - The existing road will be maintained to the all-season road standards set out in the AFRPA and the DOF Road Standards.
 - Between individual sale harvests any spurs will be inactive and maintained in accordance with 11 AAC 95.315 (f).
 - Generally, DOF applies for public easement rights-of-way for long-term routes, but access spur roads do not qualify.
- c. Appraisal method: DOF will appraise the timber value in compliance with 11 AAC 71.092. Commercial sales will be based on transactional evidence and market demand and DOF will apply a value for those products.

F. Resources and management

1. Timber.

- a. Timber stand composition and structure: NC-1677-D is a mature closed canopy birch sawtimber type. NC-1894-D and NC-1906-D are primarily a mature spruce forest. NC-1869-D, NC-1899-D, and NC-1914-D are all of a mixed spruce-birch timber type, with the spruce component predominant.
- b. Stand silvics: Regeneration of birch occurs principally from seed-fall 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 seeding and the edge effect.

NC-1677-D is planned as a heavy partial cut to remove the dominant birch overstory that, in conjunction with scarification, should provide a high-light and exposed mineral soil environment favorable for birch to seed and establish. All the other sales, which are spruce or mixed timber types (NC-1869-D, NC-1894-D, NC-1899-D, NC-1906-D, NC-1914-D), are clearcuts to remove the dominant birch and spruce overstory that should provide a high-light and exposed mineral soil environment favorable to release advance regeneration of spruce and for birch to seed and establish.

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- c. Topography and Soils: The proposed sales 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)).
- NC-1667-D is situated along a northwest-facing hillside generally from midslope to ridgeline. The proposed area has elevation between 1,250-1,500 feet and slopes 25-35% except flatter near the ridetop. The proposed sale area is underlain by Typic Eutrocryepts with sandy substratum 10-45% slopes, which is rated as well-drained silt loam on top sand, with lithic bedrock 50-60 inches beneath the surface
 - NC-1869-D is situated on top of a bluff complex overlooking the Tanana River 1,500 feet to the east. The elevation varies between 1,300-1,500 feet. The sale area has a northwest aspect with 10-25% slopes, except where the proposed sale boundary incorporates the bluff edge, which has 30-40% slopes and a southeast aspect. The sale area is underlain by Tetlin silt loam 10-50% slopes, which is a poorly drained silt loam with permafrost 2-20 inches below the surface. The southern portions of the sale area on the bluff edge are rated as Typic Eutrocryepts with bedrock substratum, with silt loams up to 38 inches deep on top of very cobbly sandy loam; this steep soil type is considered well-drained.
 - NC-1894 is situated in a flat area around 1,250 elevation. The proposed sale area is underlain by the Jarvis-Chena complex, which consists of a shallow layer of silt loam on top of a cobbly sand alluvium. It is rated as a well drained soil typical of floodplains
 - NC-1899-D is situated on an east-facing hillside with 20-40% slopes. The sale area is underlain by Tetlin silt loam 10-50% slopes, which is a poorly drained silt loam with permafrost 2-20 inches below the surface. The western portions of the sale area near the hilltop are rated as Typic Eutrocryepts with bedrock substratum, with silt loams up to 38 inches deep on top of very cobbly sandy loam; this steep soil type is considered well-drained.
 - NC-1906 is situated in a flat area around 1,250 elevation. The proposed sale area is underlain by the Jarvis-Chena complex, which consists of a shallow layer of silt loam on top of a cobbly sand alluvium. It is rated as a well-drained soil typical of floodplains
 - NC-1914-D incorporates a flat bowl and toe slope of a ridge complex, and varies from 1,250-1,375 feet elevation. Slope is flat over most of the sale to nearly 40% at the highest elevation section, with a mostly east-northeast aspect. The proposed area is underlain by Tetlin silt loam 10-50% slopes, which is a poorly drained silt loam with permafrost 2-20 inches below the surface. The western portions of the sale area on the toe slope are rated as Typic Eutrocryepts with bedrock substratum, with silt loams up to 38 inches deep on top of very cobbly sandy loam; this steep soil type is considered well-drained.

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2. Agriculture. Cummings Road provides access to numerous agricultural parcels sold by the State since the 1980s. 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. According to the TVSF Management Plan, 2001 Update, wildlife habitat resources within Unit 10 are described as follows: “A substantial number of peregrine falcon nests have been identified along the Tanana River, and many eagles and other raptors are known to nest in bottomlands. Large numbers of sandhill cranes, waterfowl, and other birds migrate through the 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).

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 wherever feasible to provide late-successional wildlife habitat for hole nesting birds, woodpeckers, small mammals, and other species requiring perching habitat. The units will be laid out with an uneven edge, along and between timber types. This will create varied edge effect that is beneficial to many wildlife species.

4. Fish Habitat, water resources, and water quality. The Tanana River is the nearest catalogued anadromous waterbody, and is categorized under FRPA as a Type III.B. waterbody (glacial, with resident fish). The proposed sale areas are at least 1,500 feet from the active channels of the Tanana River, and there are no known perennial streams impacted by the sale areas or the access roads.

The proposed sales 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 Cummings Road area is used for recreational activities year-round, primarily by local residents. During the snow-free months OHV riding and hunting are common uses, and the area provides informal boat launch access to the Tanana River. During the winter months trapping, dog mushing, and snowmachining are common. The bluff-adjacent portion of NC-1869-D (~ 5 acres) and most of NC-1899-D may be visible from the Tanana River. NC-1677-D will be partially visible from the private property to the west, though the nearest permanent structure is approximately 1 mile to the west. Viewshed impacts will be

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lessened by screening methods such as irregular boundaries and retention of mature timber along timber sale edges.

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. Generally, State land is open to mineral entry and is available for leasing subject to Mineral Orders. However, the sale area is subject to Mineral Closing Order 271 (MCO 271, initiated 1982). An MCO closes state land to all forms of mineral entry, making it unavailable for staking mining claims, leasehold locations or prospecting site locations (see AS 38.05.195, 38.05.205 and 38.05.245). Nonetheless, the proposed timber sales are not expected to have any deleterious effects on subsurface activities.

G. Costs and benefits

Local commercial logging operators and their customers will benefit from the inflow of raw timber into the market. In addition to generating royalties to the State's general fund, the proposed sales will create economic benefits for the communities of Fairbanks and Nenana and other locations in Alaska. The local business community will receive direct economic benefit from providing support services for the operators through sales of fuel, food, housing, medical and miscellaneous supplies. Local residents may 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 additional access to personal use fuelwood areas, as home heating costs remain high in Interior Alaska.

Minimal negative effects are expected on fish and wildlife habitat or water quality due to the distance of these sales from the Tanana River and the retention of adjacent seed source which may provide additional travel corridors for wildlife.

VI. PUBLIC NOTICE

The preliminary best interest finding and decision were 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 and social media.

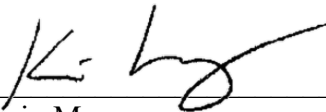
VII. PUBLIC COMMENT AND RESPONSE

DOF received comments from no organizations and no individuals.

VIII. DISCUSSION AND FINAL FINDING AND DECISION

After due consideration of all pertinent information and alternatives, the DNR has reached the following decision: To offer for sale approximately 127 acres of mixed birch and spruce forest from state land within the Cummings Road East area to provide sawtimber & fuelwood as proposed in Alternative 1 and described in this PBIF. 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 preliminary 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



Kevin Meany
Northern Region Forester
Alaska Division of Forestry & Fire Protection

9/12/24
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. 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 October 4, 2024.

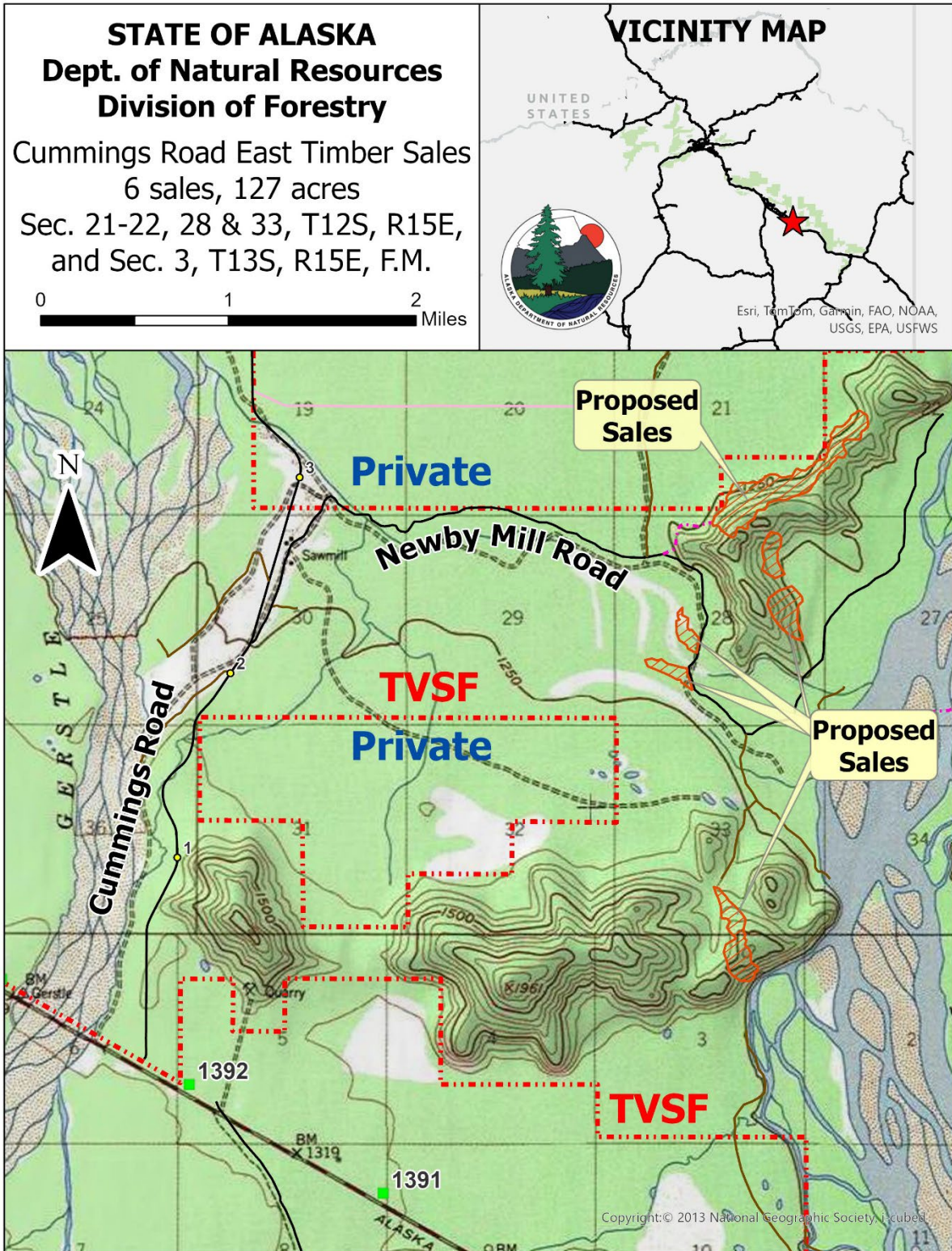
A copy of 11 AAC 02 is enclosed and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

If you have any questions, please contact Andrew Allaby, Fairbanks-Delta Resource Forester, andrew.allaby@alaska.gov, 907-451-2603, 3700 Airport Way, Fairbanks AK 99709.

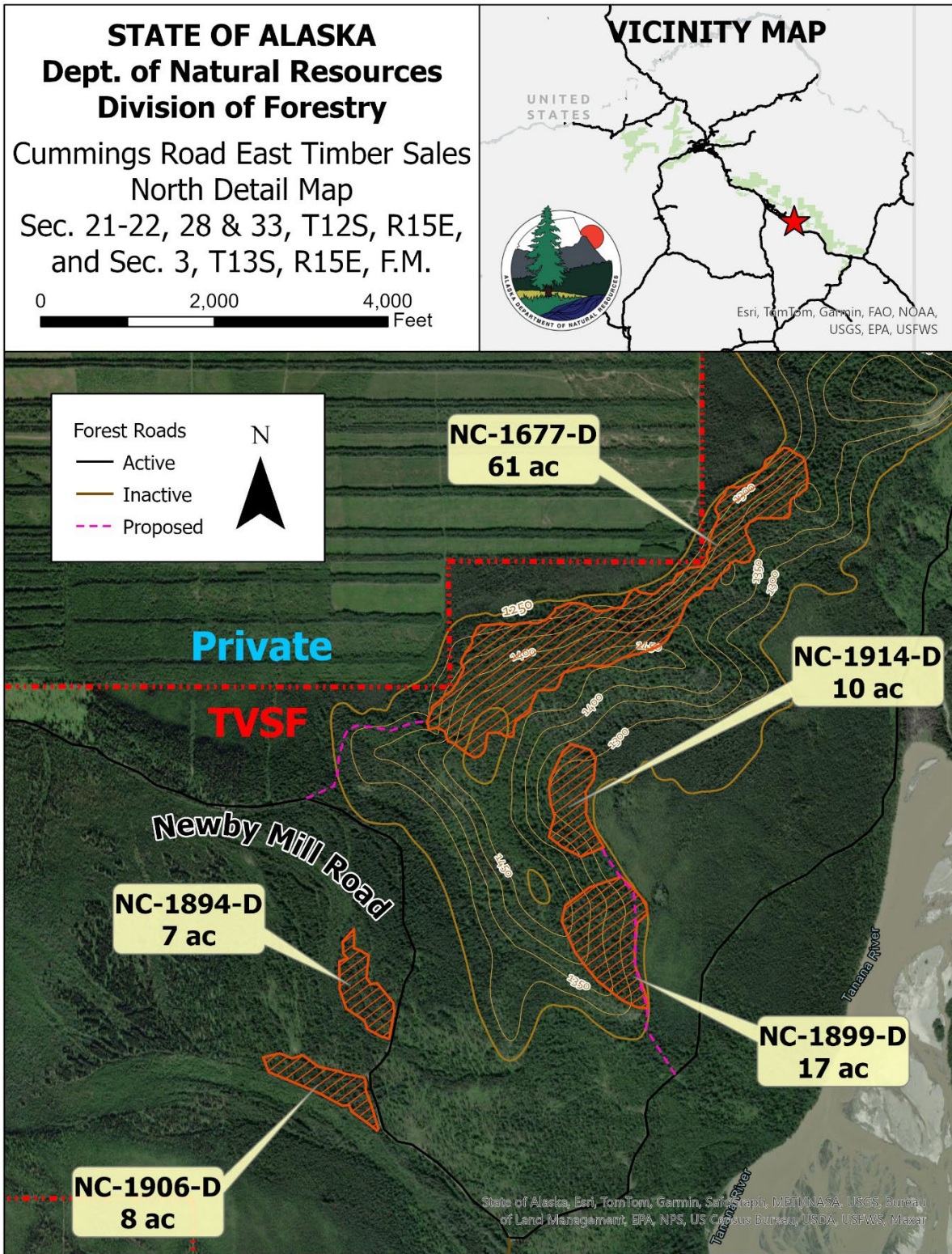
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XI. APPENDICES

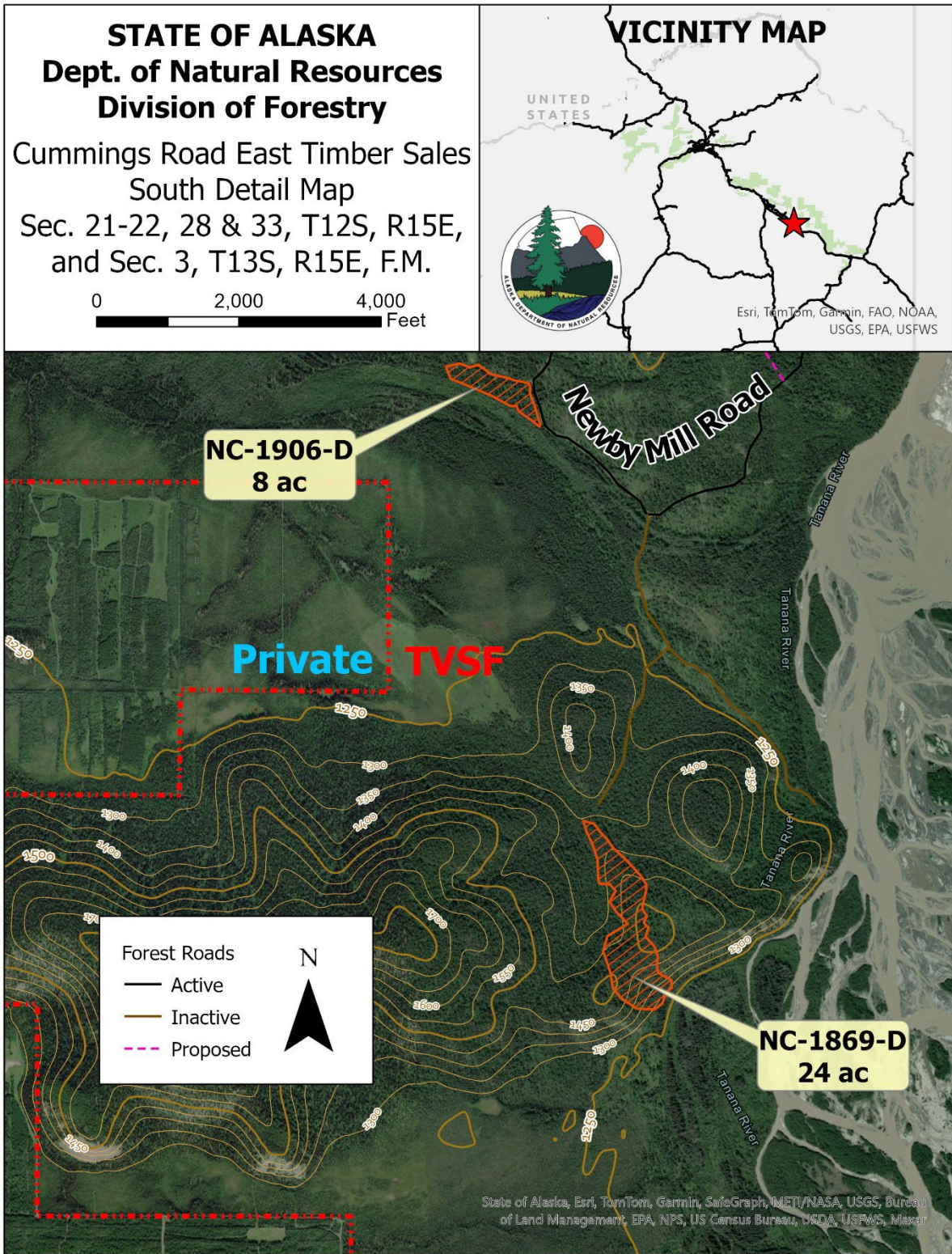
APPENDIX A: MAPS



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APPENDIX B. 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.

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

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

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

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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,

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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

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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.