

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



FAIRBANKS-DELTA AREA
Forest Land Use Plan
KEYSTONE BLUFF BIRCH #1
NC-1741-D
DECEMBER 15, 2022

Abbreviations

ADEC	Alaska Department of Environmental Conservation
ADF&G	Alaska Department of Fish and Game
ADNR	Alaska Department of Natural Resources
BIF	Best interest finding
CCF	Hundred cubic feet
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
TVSFMP	Tanana Valley State Forest Management Plan
UA	University of Alaska
USFS	United States Forest Service

Contents

- I. Introduction4
 - A. Legal description 5
 - B. Operational Period..... 5
 - C. Timber Disposal 5
 - D. Objectives and Summary..... 5
- II. Affected Land Owners/Jurisdictions6
 - A. State 6
 - B. Other Land Ownership 6
- III. Harvest Methods, Silvicultural Actions, and Management of Non-timber Resources6
 - A. Timber Stand Description and History 7
 - B. Timber Harvest Activities 7
 - C. Site Preparation 7
 - D. Reforestation..... 8
 - E. Slash Abatement..... 10
 - F. Timber Harvest—Surface Water Protection..... 10
 - G. Wildlife Habitat 11
 - H. Cultural and Historical Resource Protection..... 11
 - I. Other Resources Affected by Timber Harvest and Management 11
- IV. Roads and Crossing Structures.....12
 - A. Road Design, Construction, and Maintenance..... 12
 - B. Side Slopes / Mass Wasting..... 12
 - C. Crossing Structures..... 13
 - D. Road Closure 13

Forest Land Use Plan for NC-1741-D Keystone Bluff Birch #1

E. Material Extraction.....	13
F. Other Resources Affected by Roads or Material Extraction.....	13
V. Approvals.....	15
VI. Appendix A: Timber Sale Maps.....	16
VII. Appendix B: Comment Matrix.....	18
VIII. Appendix C: Appeals and Regulations.....	19

I. Introduction

Project File Number: Keystone Bluff Birch #1 NC-1741-D

Division of Forestry & Fire Protection Office: Fairbanks-Delta Area

Area Forester: Kevin Meany

Forest Practices Geographic Region (AS 41.17.950): Region III

This Forest Land Use Plan (FLUP) covers proposed forest operations on approximately 20 acres of land near Pogo Mine Road. It is intended to provide the best available information regarding the proposed harvest of timber, and management of other non-timber uses in compliance with AS 38.05.112 and AS 41.17.060, and must be adopted by the DNR before the proposed activity can occur.

This FINAL Forest Land Use Plan is for timber sale(s) which have been determined to be in the best interest of the state pursuant to AS 38.05.035 (e) and AS 38.05.945; This FLUP does not determine whether or not to access and sell timber within the timber sale area, nor the method of sale. Those decisions have been made previously in the 12/15/22 Keystone Bluff Birch Best Interest Finding and are not appealable under this FLUP.

This FINAL Forest Land Use Plan is for timber sale(s) for which a Preliminary Best Interest Finding is currently out for review. A final best interest finding must be completed prior to adoptions of a final FLUP pursuant to AS 38.05.035 (e) and AS 38.05.945; the NC-1741-D Keystone Bluff Birch BIF includes the sale this FLUP addresses, and is available on DOF's public webpage: <http://forestry.alaska.gov/timber/delta>

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

A draft of this plan was distributed to the Alaska Department of Fish & Game (ADF&G) and the Department of Environmental Conservation (DEC) for their review and comments relevant to the consistency of this proposed project with the statutes governing forest land use plans (AS 38.05.112) and the requirements of the Alaska Forest Resources & Practices Act (AS 41.17) and its Regulations (11 AAC 95).

This Forest Land Use Plan was made available for public comments; the review period ended on 12/9/22. After public and agency review of the draft FLUP, the DOF reviewed comments, made changes as appropriate (see Appendix B), and has issued this final FLUP. This Forest Land Use Plan has been adopted by the Department of Natural Resources. Site specific compliance with the Alaska Forest Resources and Practices Act and the Regulations, as well as the Final Finding for this proposed project are reflected in this Forest Land Use Plan and will be implemented in the Timber Sale Contract. A person affected by the final decision who provided timely written comment or public hearing testimony on the draft FLUP may appeal it, in accordance with 11 AAC 02. Comments on the specific requirements for harvest, access, and reforestation operations in the FLUP should be submitted in writing to Kevin Meany, Fairbanks-Delta Area Forester on or before 4:30 PM AKST, Tuesday, December 27th. Address(s) for submitting written comments:

Forest Land Use Plan for NC-1741-D Keystone Bluff Birch #1

3700 Airport Way, Fairbanks AK 99709, or email: kevin.meany@alaska.gov.

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

2001 Tanana Valley State Forest (TVSF) Management Plan
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The administrative record for this sale is maintained at the Division of Forestry & Fire Protection Fairbanks-Delta Office filed as Keystone Bluff Birch #1, NC-1741-D.

A. Legal description

Township 7 South, Range 9 East, Section 8; See also maps in Appendix A.

B. Operational Period

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

C. Timber Disposal

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

D. Objectives and Summary

- | |
|--|
| <ul style="list-style-type: none">• Provide the raw material for the industry to produce timber products providing benefits to the state and local economy through employment opportunities.• Harvest the commercial sawtimber and/or fuelwood before a significant decrease in vigor occurs and return the site to a young productive mixed stand forest.• Provide firewood for the residential heating needs of interior Alaska communities.• Promote multiple use management that provides for the production, utilization, and replenishment of timber resources while perpetuating personal, commercial, and other beneficial non-timber uses of the forest resources. |
|--|

II. Affected Land Owners/Jurisdictions

A. State

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

B. Other Land Ownership

Land Owner:

Land Owner Representative:

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

Forest operations will be designed to:

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

Harvest and Silvicultural Methods:

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

A. Timber Stand Description and History

The proposed harvest unit consists primarily of mature birch and aspen. A white spruce sawtimber component is present within the south and east portions of the sale, and along the access spur for both sales, but white spruce overall comprises a minor component of the stand. Birch trees in the target cohort were primarily between 9-13” DBH, with the largest measured tree at 21” DBH. The birch in this stand is apparently senescing, with large diameters but also complex crowns and occasional signs of fungal fruiting bodies. Moss is generally not found in this stand due to leaf litter accumulation. The grass component is moderate in this stand and is estimated to cover 10 - 20% of the area. There is an estimated 20% defect in the stand.

B. Timber Harvest Activities

Timber Harvest Activities are displayed in Table 1.

Table 1. Timber Harvest Activities

Unit ID	Acres	Topography	Silvicultural Action	Logging Method
NC-1741-D	20	Slopes >25%	Heavy partial cut for birch	Whole tree harvest

C. Site Preparation

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

Table 2. Site Preparation

Unit ID	Acres	Site Preparation Method	Date of Completion
NC-1741-D	20	Scarification – 25% mineral soil exposed	By contract termination

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

D. Reforestation

Season of harvest:

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

Clearcut

Partial Harvest relying on residual trees to result in a stocking level that meets standards of 11 AAC 95.375 (b)(4). Stocking levels will be calculated using data for the number of residual trees collected during DOF regeneration surveys and populate the following Table 3:

Table 3. Stocking Level Requirements

Average DBH (Diameter at breast height)	Residual Trees (Trees/acre)	Minimum Stocking Standard (Trees/acre)	Percent Stocking
≥ 9"		120	%
6" to 8"		170	%
1" to 5"	50	200	25%
Total Residual Stocking			25%

Seedlings Required:

Percentage Under stocked = 100 – Total Residual Stocking %

Percentage Under stocked = 100 – 25% = 75%

Seedlings/ Acre Required = Percentage Understocked/100 x 450

Seedlings/ Acre Required = 75% /100 x 450 = 338

Artificial regeneration

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

Planting: Species: _____ Date of proposed planting: _____

Source of seedlings (location of seed source): _____

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

Yes No N/A Unknown

Seedbed and soil conditions suitable for natural regeneration

 Moss layers are shallow (≤4”) or absent

Forest Land Use Plan for NC-1741-D Keystone Bluff Birch #1

- | | | | | |
|-------------------------------------|--------------------------|--------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Where birch or spruce regeneration is targeted, exposed mineral soil will exist on at least 25% of the harvest area and is well-distributed across the unit |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Where aspen regeneration from suckering is targeted, root damage will be minimal and soil exposure will encourage warming. |

Yes No N/A Unknown

Seed/vegetative reproduction sources available

- | | | | | |
|-------------------------------------|--------------------------|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Exposure to prevailing winds, if known |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Adequate seed trees exist within 3 tree heights of the reforestation site for spruce or within 2 tree heights for birch |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Where spruce regeneration is targeted, large seed crop in year prior to harvest or current year |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Where vegetative reproduction is targeted the harvest area contains sufficient, well-distributed paper birch, aspen, balsam poplar, western black cottonwood, red alder, or other species known to regenerate vegetatively as approved by the Division. |

Yes No N/A Unknown

Competition and infestation risk

- | | | | | |
|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <i>Calamagrostis</i> (bluejoint grass) is not visually evident. If <i>Calamagrostis</i> is visually evident, describe abundance and distribution. <u>Note:</u> <i>Calamagrostis</i> coverage of more than 1-2% distributed across the site indicates that grass coverage may expand rapidly after harvest without treatment.
<i>Explanation: scarification is expected to provide high-quality seedbed micro-sites and reduce grass competition during the seedling establishment stage.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <i>Equisetum</i> (horsetail) is present prior to harvest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | The site is not currently subject to intense herbivory due to peaks in the hare cycle, dense moose populations, or scarcity of browse in the surrounding landscape. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Existing stands are not infested with bark beetles (<i>Dendroctonus</i> or <i>Ips</i>) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Where spruce regeneration is targeted, harvest areas are free of known incidence of <i>Onnia tomentosus</i> root rot. <u>Note:</u> <i>tomentosus</i> can kill regeneration of spruce and, to a lesser degree, pine and larch. If <i>tomentosus</i> is present, describe the extent of the problem in the notes box below. Design reforestation to minimize continuation or spread of the disease |

Landowner requests an extended period for natural regeneration under 11 AAC 95.375(d)(6)

E. Slash Abatement

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

F. Timber Harvest—Surface Water Protection

- There are no streams or lakes abutting or within a harvest unit.
- Known surface waters and protection measures are described in Table 4 below. *Locations are included in the operational map in the Appendices.*

Table 4. Protection for Known Surface Waters

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

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

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

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

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

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

Notes: Shaw Creek is the nearest catalogued anadromous stream, and is approximately 3.5 miles south of the proposed sale area.

G. Wildlife Habitat

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

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

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

Notes: Birch snags – as well as unharvested large white spruce and aspen – will be retained to provide late-successional wildlife habitat for hole-nesting birds, woodpeckers, small mammals, and other species requiring perching habitat. Buffers of unharvested forest (generally 100’ or more) will be retained between these sales as well as with regard to previous harvest units.

H. Cultural and Historical Resource Protection

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

I. Other Resources Affected by Timber Harvest and Management

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

Table 5. Other Affected Resources / Areas of Concern

Impacted Resource	Reviewing Agency	Impact/ Mitigation Actions

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

Notes:

IV. Roads and Crossing Structures

A. Road Design, Construction, and Maintenance

Roads will be designed, constructed, and maintained to prevent significant adverse impacts on water quality and fish habitat (AS 41.17.060(b)(5)), and site productivity (AS 41.17.060(c)(5)). Roads will comply with the best management practices in the Forest Resources and Practices Regulations (11 AAC 95.285 – 95.335).

Roads or other means required for the access and removal of this timber from the harvest area(s) or unit(s) are listed in Table 6:

Table 6. Road Construction and Use

Road ID	Segment	Harvest Unit	Mile/ Station	Road Class	Maximum Grade %	Constructed By	Maintained By
Pogo Mine Road	1	All	6.5	Active	8%	Pogo Mine	Pogo Mine
Access Spur	2	All	0.7	Active	5%	DOF	DOF

Notes:

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

B. Side Slopes / Mass Wasting

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

Maximum percent side slopes: 25%

- Maximum percent side slopes are $\leq 50\%$
- Maximum percent side slopes are $> 50\%$
 - There are no indicators of unstable areas where roads will be constructed
 - Indicators of unstable areas were identified and will be mitigated by actions indicated below.
 - Full benching will be constructed to help ensure slope stability
 - Full benching is not required for roads in this project
 - End hauling will be implemented to help ensure slope stability

End hauling is not necessary for roads in this project.

General Erosion Control:

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

C. Crossing Structures

Are you removing or replacing drainage structures? YES NO

No crossing structures are needed within the project area.

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

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

Road ID	Segment	Mile/ Station or Point Label	Bridge Length (ft.) or Culvert Diameter (in.)	Structure Type	AS 41.17.950 Stream Classification	ADF&G AWC Number	Duration of crossing structure in place

D. Road Closure

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

Table 8. Road Closures

Road ID	Segment	Unit	Closure Type All Season/Winter	Estimated Closure Date	Projected Road Use after Timber Harvest

E. Material Extraction

- There will be no material extraction sites in the project area.
 Material extraction and associated overburden disposal will be located outside of riparian areas and muskegs. Material extraction and disposal will be located as shown on the operation map, in a manner that prevents runoff from entering surface waters.
 Other:

F. Other Resources Affected by Roads or Material Extraction

List resources other than water, habitat or cultural resources potentially impacted by road

Forest Land Use Plan for NC-1741-D Keystone Bluff Birch #1

construction, and indicate how impacts will be mitigated. Other affected resources could be, but are not limited to mining claims, scenic areas, recreational trails, etc.

Table 9. Other Affected Resources

Impacted Resource	Reviewing Agency	Impact / Mitigation Actions
Recreational/Scenic	DOF	Specify in contract and identify in the field any trail crossings, dates and locations of local events, or areas of high traffic by the public

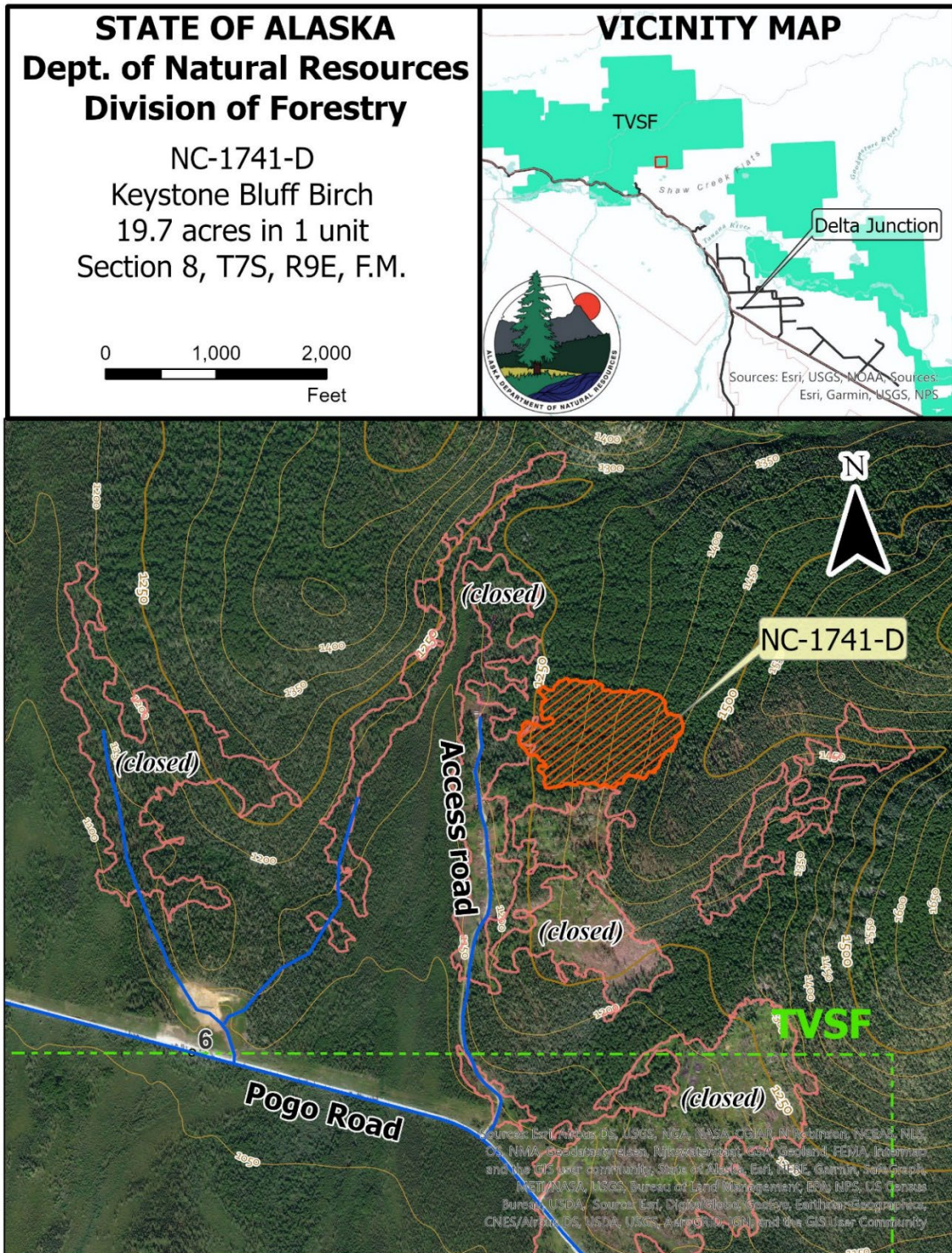
V. Approvals

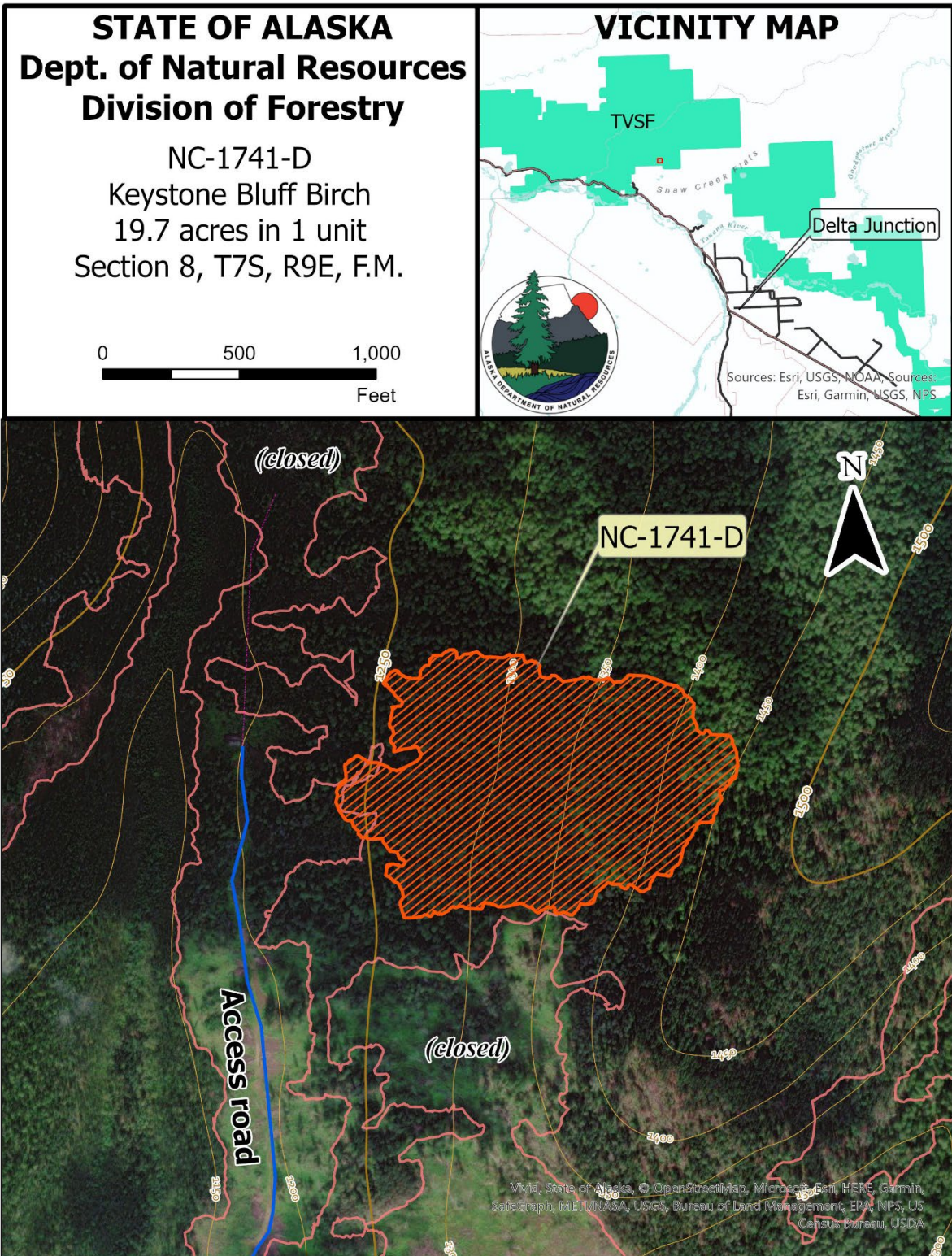
This Draft Forest Land Use Plan has been reviewed by the Division of Forestry & Fire Protection and provides the information necessary for public and agency review of the project described in this document.

_____ 12/14/22 _____
Area Forester **Date**

_____ 12/14/22 _____
Regional Forester **Date**

VI. Appendix A: Timber Sale Maps





VII. Appendix B: Comment Matrix

Comment Period for draft FLUP November 10 – December 9, 2022

Commenter	Received	Comment	Action
ADF&G, Division of Habitat Todd 'Nik' Nichols	12/8/22 email	No issue of concern.	Received and recorded.
ADNR, Division of Mining, Land, & Water Jaclyn Cheek	12/8/22 email	Ensure public access along RS-2477 routes are maintained, no obstruction to public access on existing trails or easements.	DOF Timber Sale Contract, Exhibit C, Section 19 obliges operators to keep trails clear. DOF staff will inspect regularly for compliance.
		Ensure timber harvesters traveling Pogo Road abide by all of Pogo Mine's requirements.	DOF Timber Sale Contract Section 19. 'Valid Existing Rights' provides "The rights granted to PURCHASER under this Contract are subject to all valid existing rights in existence on the Effective Date whether or not made of record, including without limitation, easements, rights-of-way, reservations or other interests in land."
USFWS, Northern Alaska Field Office Robert Henszey	12/2/22 email	Migratory birds' breeding cycles are sensitive to land disturbance like timber harvest and road building; in sensitive areas defer harvest operations outside of the May 1 – July 15 breeding season.	If confirmed locations of any protected species' nesting area are noted, harvest operations may be paused. DOF will inspect the area with ADF&G colleagues to identify the species and appropriate mitigation.
		Bald and Golden Eagles are common throughout the Tanana Valley, and are protected by the Federal Bald and Golden Eagle Protection Act. Harvest operations should be 660' distant from known nesting sites during breeding season (Mar 1 – Aug 31), and 330' at other times.	The confirmed location of any protected species' nesting area will immediately necessitate a non-harvested buffer to achieve statutory protections. DOF Timber Sale Contract Section 8 'Compliance with Laws...' affirms Contractor's obligations to comply with any and all applicable laws.
		When establishing erosion control, wildlife may be harmed by synthetic materials. Use plastic-free products to achieve erosion control objectives.	No synthetic erosion control material is anticipated as part of these sales. Should DOF require erosion control material, it will first seek non-synthetic sources.
		Include measures for maintaining floodplain integrity up and down stream of all floodplain crossings. Floodplain connectivity can be enhanced at crossings by having the least impedance to flow.	All crossings are accomplished on existing all-season roads. Road construction and maintenance will follow Alaska Forest Practices Act regulations and DOF BMP standards. DOF staff will inspect regularly for compliance.
		Implement BMPs to minimize the introduction and transport of invasive species in and out of a project area.	DOF staff will familiarize themselves with the referenced invasive species and BMPs. DOF staff will monitor and observe for invasive species during and after harvest operations.

VIII. Appendix C: Appeals and Regulations

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.

TITLE 11. NATURAL RESOURCES. CHAPTER 02. APPEALS.

11 AAC 02.010. APPLICABILITY AND ELIGIBILITY.

- (a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.
- (b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.
- (c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.
- (d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.
- (e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.
- (f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.
- (g) A person may not both appeal and request reconsideration of a decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 29.65.050	AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.05.035	AS 38.08.110	AS 38.09.110

AS 38.50.160	AS 41.15.020	AS 41.17.055	AS 41.21.020
AS 44.37.011	AS 46.15.020	AS 46.17.030	

11AAC 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. (Eff. 9/19/2001, Register 159; am 12/27/2012, Register 204)

Authority:

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

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 29.65.120	AS 38.05.020
AS 38.05.035	AS 38.09.110	AS 38.50.160	AS 41.17.055
AS 41.21.020	AS 46.15.020	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 29.65.050	AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.05.035	AS 38.08.110	AS 38.09.110
AS 38.50.160	AS 41.15.020	AS 41.17.055	AS 41.21.020
AS 44.37.011	AS 46.15.020	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@alaska.gov

11 AAC 02.040. TIMELY FILING; ISSUANCE OF DECISION.

- (a) To be timely filed, an appeal or request for reconsideration must be received by the

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

- (b) An appeal or request for reconsideration will not be accepted if it is not timely filed.
- (c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.030(a)(11).
- (d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs
 - (1) when the department gives public notice of the decision; or
 - (2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.
- (e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a). (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

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

11 AAC 02.050. HEARINGS.

- (a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.
- (b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030(a)(13), any request for special procedures must be included with the request for a hearing.
- (c) In a hearing held under this section
 - (1) formal rules of evidence need not apply; and
 - (2) the hearing will be recorded, and may be transcribed at the request and expense of

the party requesting the transcript. (Eff. 11/7/90, Register 116)

Authority:

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

11 AAC 02.060. STAYS; EXCEPTIONS.

- (a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.
- (b) Repealed 9/19/2001.
- (c) Unless otherwise provided, in a statute or a provision of this title, a decision takes effect immediately if it is a decision to
 - (1) issue a permit, that is revocable at will;
 - (2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or
 - (3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.
- (d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.
- (e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

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

11 AAC 02.070. WAIVER OF PROCEDURAL VIOLATIONS. The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

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

11 AAC 02.900. DEFINITIONS.

In this chapter,

- (1) "appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign;
- (2) "appellant" means a person who files an appeal or a request for reconsideration.
- (3) "commissioner" means the commissioner of natural resources;
- (4) "decision" means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;
- (5) "department" means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;
- (6) "request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:

AS 03.05.010	AS 29.65.050	AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.05.035	AS 38.08.110	AS 38.09.110
AS 38.50.160	AS 41.15.020	AS 41.17.055	AS 41.21.020
AS 44.37.011	AS 44.62.540	AS 46.15.020	AS 46.17.030