

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



FAIRBANKS-DELTA AREA FORESTRY
FINAL BEST INTEREST FINDING AND
DECISION FOR
Middle Chena Spruce Timber Sales
NC-1841-F, NC-2052-F, NC-1994-F, NC-1987-F
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 approximately 111 acres of white spruce timber with a small component of birch fuel wood from state lands in the area along the Chena River, south of the community of Pleasant Valley. The volume to be offered totals approximately 1,078 MBF (2,764 CCF). DOF would sell the timber as a negotiated, competitive bid, or value-added timber sales for commercial use. The land covered by this PBIF appeared in the 2024 Fairbanks-Delta Five Year Schedule of Timber Sales (FYSTS) as Chena Islands Spruce #1 (NC-1841-F) & #2 (NC-2052-F) and Pleasant Valley Spruce #1 (NC-1987-F) & #2 (NC-1994-F).

The management objectives for the proposed timber sales are:

- Provide timber products for the industry and the state and local economy.
- Return the site to a young productive mixed stand forest to include balsam poplar, birch, aspen, and white spruce.
- Protect valuable non-timber resources by applying Best Management Practices for Timber Harvest Operations (BMPs) to all timber harvest activities.

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 as Middle Chena Spruce Timber Sales, including NC-1841-F, NC-1987-F, NC-1994-F, and N C-2052-F.

IV. SCOPE OF DECISION

This final best interest finding (BIF) completes step three of a six-step process to design, sell, and administer timber sales. This BIF covers the sale of approximately 111 acres of white spruce timber with a small component of birch fuel wood from state lands in the area along the Chena River depicted in the attached maps (see Appendix A). The following list summarizes the overall process:

Step 1: Regional planning. The Department of Natural Resources (DNR) develops area plans and state forest management plans to designate appropriate uses for state land, classify the land accordingly, and establish management guidelines for multiple use. These plans determine where timber sales are an allowed use, and what other uses must be considered when designing and implementing sales. Subsequent land use decisions must be consistent with the area plans. The area in this BIF is covered by the Tanana Valley State Forest Management Plan, and the BIF is consistent with this plan.

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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 111 acres of white spruce timber with a small component of birch fuel wood from state lands in the area along the Chena River 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 Middle Chena Spruce 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 will prepare FLUP(s) for the harvest area within the overall sale area covered by this BIF. 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 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,

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

V. PROJECT LOCATION, LAND STATUS, AND DESCRIPTION

A. Location

The Proposed sale area is located within Sections 1,2, and 11, Township 1 South Range 4 East, Fairbanks Meridian. The sale area is shown on the attached map and is within United States Geological Survey 1:63,360 Quadrangle map titled Fairbanks C-5. The general location can be accessed via Pleasant Valley Road from Chena Hot Springs Road Mile 23. Proceed south down Pleasant Valley Road roughly a mile. The route then continues 0.6 miles south as a winter-only trail referred to as Pleasant Valley Extension Road. The existing route ends at the Chena River, where proposed access would continue via an ice bridge and then along 0.6-miles of proposed winter road to the sale areas.

B. Title status

The acquisition for the land upon which the sales are proposed is based on MH 28, and patented to the State under PA 50-2009-0112. The land estate is Tentatively Approved; thus the State has management authority. There are no known title restrictions on the area.

C. Land use planning, classification, and management intent

The proposed area is within the Tanana Valley State Forest (TVSF) in Management Unit 6 Chena. The Unit will be managed for dispersed and developed recreation and commercial and personal use timber production. There are no specific restrictions on timber sales within the TVSF Management Plan.

The sale areas are open with respect to mining.

The Interagency Fire Management Plan includes both Pleasant Valley Spruce #1 & #2 in the "Critical" protection category. And Chena Islands Spruce #1 & #2 in the "Full" protection category.

This area falls under the Fairbanks Northstar Borough's Regional Comprehensive Plan (2005), which supports forest development activities while aiming to minimize land use conflicts.

D. Current access and land use:

Access to the proposed sale is planned via an existing winter road north of the Chena River, which will only require snow plowing and no reconstruction. An ice road will be necessary to cross the Chena River, and a Fish Habitat Permit will be required for this crossing. Additionally, a segment of Pleasant Valley Road, used as primary access by private parcels and shared with residential users, will be utilized for access. All access routes will be maintained

according to the winter road standards outlined in the TVSF Management Plan. Upon completion of the sale, any roads utilized by logging traffic will be left in a condition equal to or better than they were before the sale.

E. Background and description of proposal

1. Background: According to the Tanana Valley State Forest Management Plan, Unit 6 shall be “managed for dispersed and developed recreation and commercial and personal-use timber production”. The Division of Forestry is offering these sales with the intent to maintain a productive working forest while continuing to provide opportunities for dispersed and developed recreation.

Recent harvest activity as well as the management objectives outlined in the TVSF management plan has led to continued interest in timber stands along the Chena River. To continue to supply the local industry here in Fairbanks, logs are being transported longer distances than they have in the past, with logs already being hauled as far away as Delta Junction and Nenana.

2. Timber volume and sustained yield: The Annual Allowable Cut (AAC) is the amount that can be harvested from forest land managed for forestry purposes in a year under sustained yield management. The AAC in the Fairbanks Area is outlined in the publication Timber Inventory of State Forest Lands in the Tanana Valley (Hanson, 2013). This sale complies with sustained yield/allowable cut principles outlined in the Fairbanks Area Five-Year Schedule of Timber Sales for FY 2024-2028. The AAC for the Fairbanks Management Area is approximately 4,606 acres, and these sales total 111 acres. This action alone and in combination with other timber sales that are sold will be within the allowable cut and comply with sustained yield requirements.
3. Harvest unit design: Harvest units were designed along natural timber type changes and other natural features, incorporating a minimum 100-foot timber retention buffer along the Chena River and active sloughs. The sale areas will be harvested by the clearcut silvicultural system. Patches of nonmerchantable advanced regeneration and significant snags important for wildlife habitat will be preserved as much as possible. Residual trees will be protected from damage during harvest operations although over mature birch may be used as bumper trees to protect patches of advanced spruce regeneration. Harvesting will be by the whole tree yarding system. Slash disposal at the landings will be by burning or by salvage for fuelwood use.
 - a. Reforestation and site preparation: The sale area will be reforested in compliance with the Forest Resources and Practices regulations (11 AAC 95.375-.390) Natural regeneration will be utilized initially for regeneration. Opening the site will cause a large vegetative release especially in the more productive sites closer to the watercourses. Residual and adjacent birch and spruce will provide a seed source. Under this harvesting system natural regeneration of spruce and hardwoods should be increased due to increased light and soil warmth. Further inland where moss depths are thicker, hand planting of white spruce may be required. A

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regeneration survey will be conducted after any harvest. Inadequately stocked areas may need further management actions, such as planting spruce, to achieve proper stocking levels.

- b. Access design and construction: Access design, construction, and maintenance will comply with the Forest Resources and Practices regulations (11 AAC 95.285-.355). The general access point is located at mile post 23 on Chena Hot Springs Road, with access continuing south on Pleasant Valley Road for approximately one mile. From there, proceed approximately 0.6 miles south on Pleasant Valley Extension Road to reach the start of the proposed 0.6-mile winter road. These existing roads require only snow plowing and will not need reconstruction. Crossing the Chena River will necessitate an ice bridge and a Fish Habitat Permit. Access routes will adhere to the winter road standards outlined in the TVSF Management Plan.

Increased traffic on local roads used by loggers may be observed by residents. Road wear will be addressed through regular road maintenance conducted by logging operations, ensuring the road remains in comparable or improved condition at the close of the sale.

- c. Appraisal method: DOF will appraise the timber value in compliance with 11 AAC 71.092. Results from past auctions will provide a basis for the appraisal. DOF uses a transaction evidence appraisal system which will be used to determine base stumpage rates.

F. Resources and management

1. Timber.

- a. Timber stand composition and structure: This is a mixed species river bottom stand containing both white spruce and birch and widely scattered Balsam poplar. The spruce trees are exhibiting strong health and vitality, with robust growth patterns, healthy foliage, and minimal signs of disease or pest infestation.. Birch occupies less than 10% of the site and is mostly over mature although within some of the natural openings more vigorous birch of a younger age class is present. The understory vegetation in the logging area is moderately dense, including species such as alder, willow, high bush cranberry, and rose. These plants contribute to the biodiversity and ecological health of the site, supporting wildlife and aiding in the stability of the forest ecosystem. There is an estimated 10% defect in the white spruce with most of the defect in the form of broken tops, sweep and butt rot.
- b. Stand silvics: The common merchantable tree species in the Tanana Valley include white spruce, birch, aspen, and balsam poplar. Data and research on the regeneration and growth characteristics of these species are compiled in the Resource Analysis of the Tanana Valley State Forest (TVSF) Management Plan.

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This analysis also reviews and lists the harvest and reforestation systems available in Interior Alaska. The outcomes of public and agency discussions on harvest and reforestation are included in the TVSF Management Plan.

Silvicultural harvest systems that promote even-aged (natural) management are generally preferred. These systems mimic the ecological effects of wildfire and other disturbances, leading to the greatest increase in site productivity. Even-aged management is typically achieved through clear-cuts, patch cuts, and heavy partial cuts (such as seed tree or shelterwood systems), which open the site to maximum solar exposure. This approach results in the highest production of young hardwoods important for wildlife and spruce understory valuable for future timber. These techniques create young, vigorously growing stands next to older, undisturbed stands, optimizing natural seeding and enhancing the edge effect.

- c. Topography and Soils: The proposed sale will be designed and managed to prevent significant impairment of the land and water with respect to renewable resources (AS 41.17.060(c) (5)). The site is on a level ground within the flood plains of the Chena River. The elevation is approximately 570 feet. The area contains numerous terrace features, potholes, and abandoned slough channels. Soils in the sale area are classified as the Jarvis-Stratify and Jarvis-Salchaket Complex. Jarvis-Stratify soils are well-drained alluvial soils characterized by distinct layers of loamy material. These nearly level soils typically form on terraces from mixed alluvial sources, resulting in varying textures and compositions within the soil profile. Generally deep with moderate to high permeability, they are highly suitable for supporting forest vegetation and other plant communities. Found in areas with periodic flooding, these soils have a diverse structure that enhances productivity and ecological diversity. The Jarvis-Salchaket Complex combines Jarvis and Salchaket soils, often found on floodplains and terraces. Jarvis soils are well-drained and formed in loamy alluvium, supporting robust plant growth. In contrast, Salchaket soils are somewhat poorly drained, forming in fine-silty alluvium on nearly level bottomlands. They exhibit stratified silty and sandy material over water-deposited gravel and sand, with substratum depths ranging from less than a foot to over six feet. The productivity of Salchaket soils, combined with the diversity of the Jarvis soils, supports varied plant communities. This complex is prevalent in areas influenced by past and present watercourses, contributing to a mosaic of ecological conditions that enhance biodiversity and productivity in the landscape.
2. Agriculture: No known or anticipated future agricultural activity is expected in the proposed harvest areas.
3. Wildlife habitat and harvest. Wildlife typical of the Interior are found here, and during ground reconnaissance, signs of moose, fox, and beaver were observed. There are no known raptor nests within the proposed sale area. If an eagle nest tree is discovered in the sale area, it will be marked on the ground, and a 330-foot no-harvest radius will be established to protect the tree. Large portions of this unit offer excellent

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habitat for moose, black bear, and furbearing animals. Its accessibility from Fairbanks and nearby population centers has led to significant hunting, trapping, and wildlife viewing activities.

The proposed treatments for this stand are expected to enhance habitat conditions for ruffed grouse, moose, voles, hares, and, ultimately, lynx, marten, and fox. The Alaska Department of Fish and Game, Division of Wildlife Conservation (ADFG), have historically 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 achieve these objectives, snags will be retained to provide late-successional wildlife habitat for hole-nesting birds, woodpeckers, small mammals, and other species requiring perching habitat. The units will be laid out with uneven edges along and between timber types where possible, creating a varied edge effect beneficial to many wildlife species.

4. Fish Habitat, water resources, and water quality. The proposed sale will be designed and managed to protect fish habitat and water quality in compliance with the Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95). The Chena River is classified as a salmon-bearing stream ADF&G (Anadromous Waters Catalog # 334-40-11000-2490-3301). The Chena River is also classified as a Type III-A stream (non-glacial with resident fish, > 3 ft wide) under the Alaska Forest Resources and Practices Act (FRPA). FRPA allows for sustainable timber harvesting while ensuring the protection of its high-value resident fish habitats, particularly with winter access. The Chena River system provides critical spawning and rearing habitat for salmon and supports the most heavily used sport fishery in the Tanana Basin. A key requirement is maintaining a 100-foot buffer zone on each side of the river, which helps preserve water quality, provide shade, and stabilize banks to prevent erosion and sediment runoff.

Winter access to the timber sale area offers a significant advantage, as the frozen ground minimizes soil disturbance and erosion. Properly designed and maintained logging roads, equipped with drainage structures like culverts and water bars, will further reduce any potential environmental impact. Stream crossings can be constructed more effectively in winter conditions, ensuring minimal disturbance to banks and channels. Operating in winter allows logging activities to take place when fish spawning and rearing habitats are less active, reducing the risk of sedimentation and erosion. The frozen conditions provide a stable environment for machinery and transport, enhancing the efficiency and safety of logging operations.

5. Recreation, tourism, and scenic resources. This area is host to multiple recreational users. Activities such as fishing, snowmachining, trapping, personal firewood harvesting, and boating. The Chena River, which surrounds the site, is a frequent location for anglers and guided fishing tours, contributing to local tourism. Winter months see the area active with snowmachine enthusiasts, while trapping remains a traditional and economically activity. The river's boat launches facilitate recreational boating, providing access for fishing and leisure. Additionally, local residents engage in

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personal firewood harvesting, relying on the forest for their heating needs during the cold months.

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. There are no known developed subsurface resources in the sale area. No adverse impacts are anticipated for these mining leases. All location or staking monuments found within the sale areas will be protected and preserved.

G. Costs and benefits

In addition to generating royalties for the State's general fund, the proposed sale will create economic benefits for the Fairbanks North Star Borough and other locations in Alaska, including the Pleasant Valley and Two Rivers communities. The business community will directly benefit economically by providing support services for the operators, such as sales of fuel, food, housing, medical, and miscellaneous supplies. The sale is expected to boost the local economy by creating jobs, resulting in significant man-hours of work related to the harvest and transportation of wood products. Additionally, the public may benefit from access to additional personal-use fuelwood areas.

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 111 acres of white spruce timber with a small component of birch fuel wood from state lands in the area along the Chena River to provide sawtimber 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

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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.

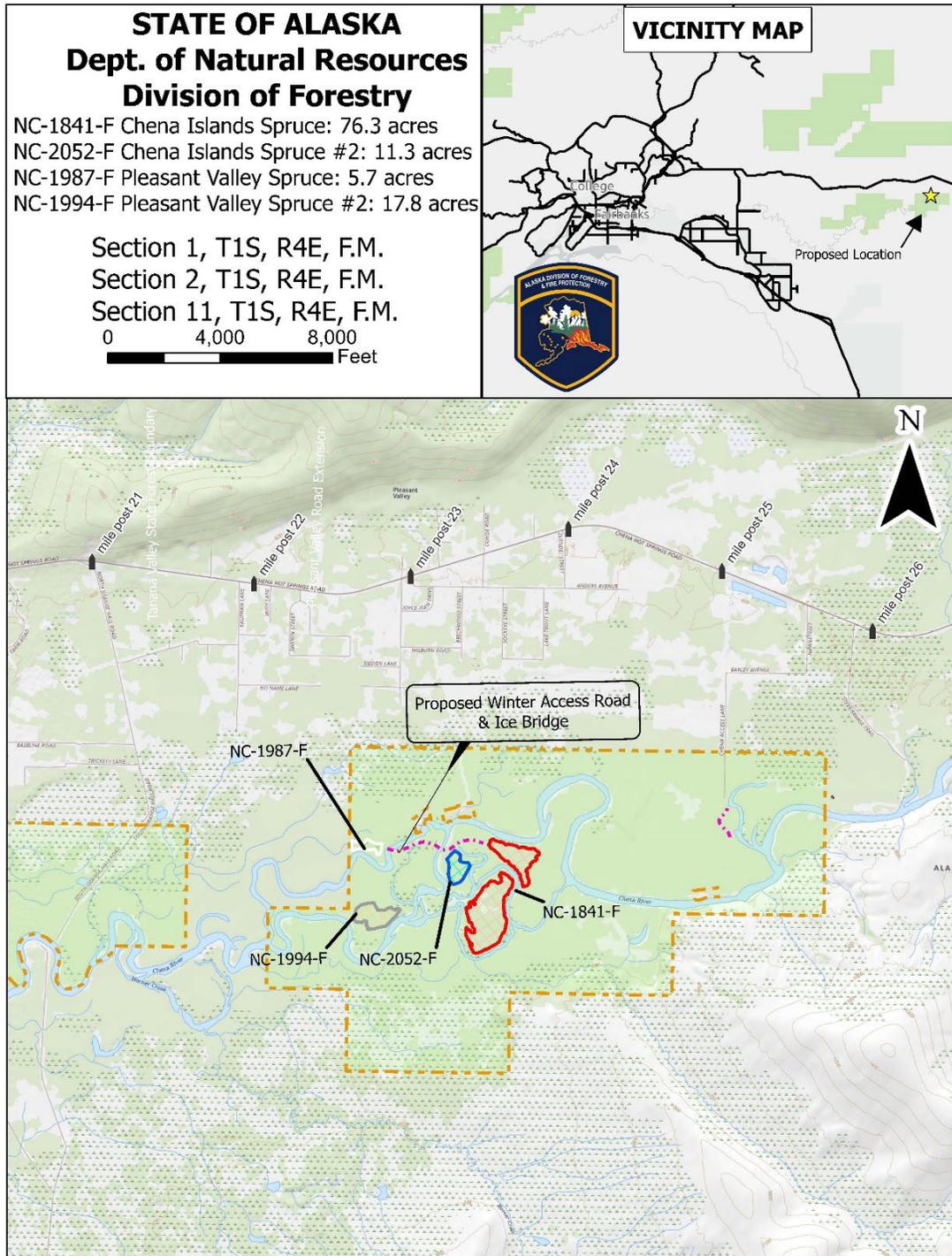
A copy of 11 AAC 02 is enclosed and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

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.

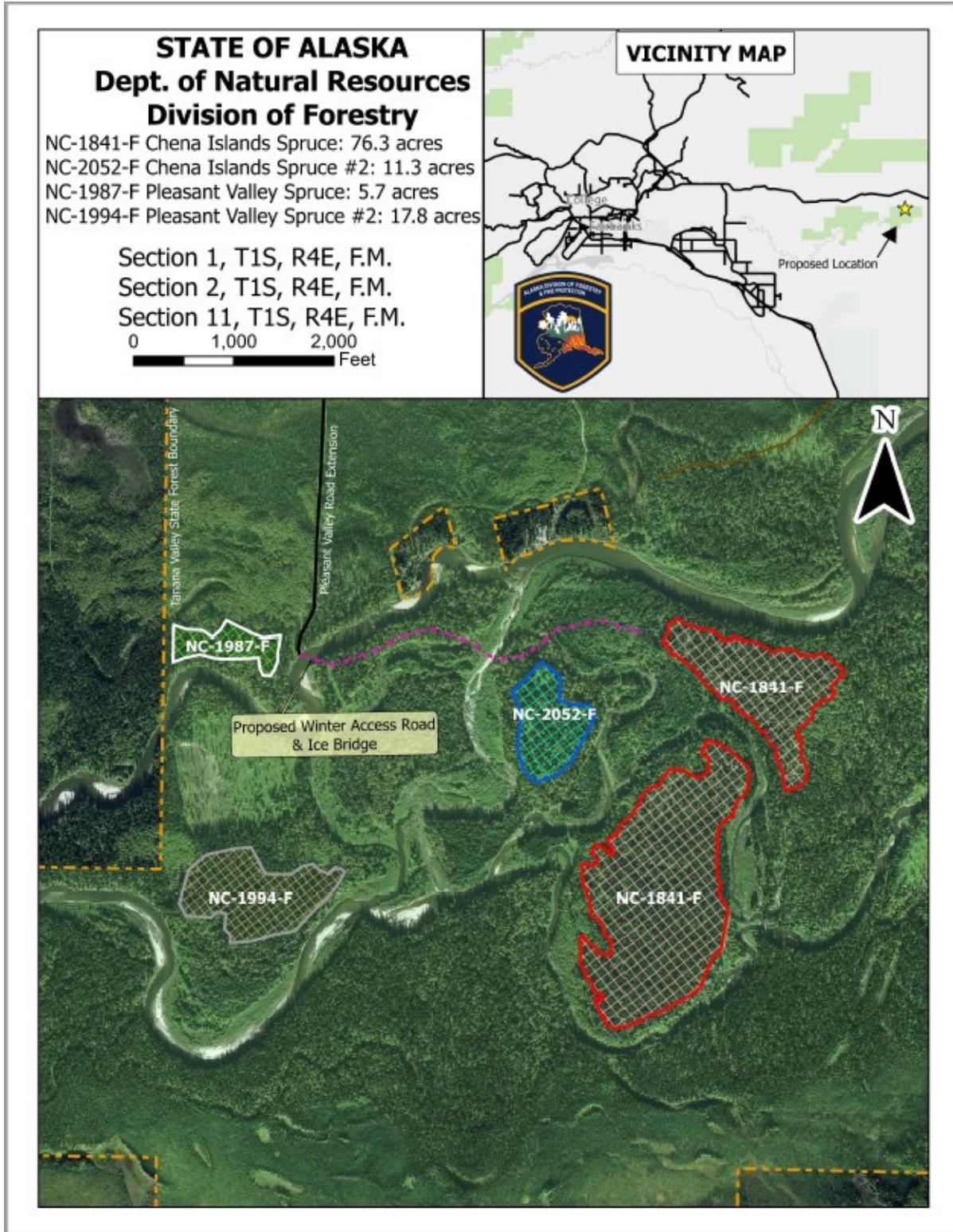
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XI. APPENDICES

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.