

State of Alaska
Department of Natural Resources
Division of Forestry
Southeast Office



Forest Land Use Plan
Edna Bay Parlay One Timber Sale
SSE 1342-K

September, 2019

Contents

I. Introduction	4
A. Legal description:	5
B. Operational Period:.....	5
C. Timber Disposal	5
D. Objectives and Summary.....	5
A. State.....	6
B. Other Land Ownership	6
III. Harvest Methods, Silvicultural Actions, and Management of Non-Timber Resources.....	6
A. Timber Stand Description and History	6
B. Timber Harvest Activities	7
C. Site Preparation	7
D. Reforestation:	7
E. Slash Abatement.....	8
F. Timber Harvest—Surface Water Protection:.....	8
G. Wildlife Habitat:.....	9
H. Cultural and Historical Resource Protection:	9
I. Other Resources Affected by Timber Harvest and Management	10
IV. Roads and Crossing Structures.....	11
A. Road Design, Construction, and Maintenance:.....	11
B. Side Slopes / Mass Wasting:	11
C. Crossing Structures:.....	12
D. Road Closure:	12
E. Material Extraction:.....	13
F. Other Resources Affected by-Roads or Material Extraction:	13
V. Approvals	14
Appendix A: Edna Bay Parlay Timber Sale Maps	15
Appendix A1 Edna Bay Parlay One Area Map (1 page).....	15

Appendix A2 Edna Bay Parlay One Unit Maps (3 pages) 15

Appendix B: Supporting Information..... 16

Appendix C: Appeal Statutes and Regulations..... 17

Appendix D: DRAFT FLUP Public Comment 23

I. Introduction

Project File Number: SSE-1342-K

Division of Forestry Office: Southeast

Area Forester: Greg Staunton

Forest Practices Geographic Region (AS 41.17.950): Region I

This Forest Land Use Plan (FLUP) covers forest operations on approximately 168 acres of land from Southeast State Forest (SESF) lands on Kosciusko Island, approximately 1.5 miles southwest of the Community of Edna Bay. 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.

[X] This 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 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 March 9, 2017 Best Interest Finding and are not appealable under this FLUP.

The Final Best Interest Finding (BIF) and decision for the Edna Bay Parlay Timber Sale may be found at: <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=184901>.

[] This 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 38.05.945;

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

This Forest Land Use Plan is for the old growth timber in Sections 33 and 34 in the SESF. Some incidental young growth timber will also be included in Section 34. Sale layout and planning were performed by DOF staff. The young growth proposed for harvest in the BIF will be covered by a separate FLUP to be issued at a later date. A draft of this plan was distributed to the 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 per AS 38.05.945; the review period ended on September 17, 2019. After public and agency review of the draft FLUP, the Division of Forestry (DOF) reviewed comments (see Appendix D). No changes were requested. 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 on the draft FLUP for the timber harvest may request appeal, in accordance with 11 AAC 02. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 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) and (b). Any appeal request must be received by October 14, 2019 and may be mailed or delivered to Corri A. Feige, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov . If appeal is not requested by that date, this decision goes into effect as a final order and decision on October 24, 2019. Failure of the commissioner to act on a request for appeal within 30 days after issuance of this decision is a denial of appeal and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request appeal of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 is in Appendix C.

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

Alaska Forest Resources & Practices Act	Southeast State Forest Management Plan
Prince of Wales Island Area Plan	

The administrative record for this sale is maintained at the Division of Forestry Southeast Office filed as SSE-1346-K.

A. Legal description:

The timber sale area is found within Sections 33 and 34 of Township 68 South, Range 76 East, Copper River Meridian. (see attached maps titled Appendix A1 and A2, SSE-1342-K Edna Bay Parlay Timber Sale One Maps)

B. Operational Period:

Fall 2019 through Fall 2024

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

1. To follow the Division of Natural Resources' (DNR or Division) constitutional mandate to encourage the development of the State's renewable resources, making them available for maximum use consistent with the public interest;
2. To help the State's economy by providing royalties to the State in the form of stumpage receipts, an infusion to the State's economy through wages, purchases, jobs, and business; and
3. To help the local economy of the communities within southern Southeast Alaska by creating additional jobs in Southeast Alaska due to the combination of road building, logging, trucking and potentially milling.

II. Affected Land Owners/Jurisdictions

Activity on ownership:	Access		Representative
	Easement	Harvest	Approval
A. State			
<input checked="" type="checkbox"/> Southeast State Forest	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> Other state land managed by DNR (GU)	<input checked="" 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

Harvest units are comprised of mature old growth timber composed of western hemlock, Sitka spruce, and western red cedar. Approximately 70-year-old second growth patches of timber exist in the east side of the harvest area that were originally beach logged. In 2016, the mainline road (1520354) was constructed through the Southeast State Forest to provide access to the log transfer facility (LTF) from University of Alaska Lands as well as to connect the island's existing road system to the LTF.

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
Unit 1	130	Irregular Complex Slopes	Clearcut	Short Span Cable and Ground Based
Unit 2	38	Irregular Complex Slopes	Clearcut	Ground Based

Note: Cable systems will be used on slopes >40% unless topography facilitates shovel access within 132 FT. of timber.

C. Site Preparation

Site preparation will not be necessary. There is either sufficient residual stocking, or because there will be sufficient soil disturbance by logging to forego scarification.

Site preparation will be implemented and described in Table 2:

Table 2. Site Preparation

Unit	Acres	Site Preparation Method	Date of Completion

D. Reforestation:

Clearcut

Partial Harvest:

Region I: leaving more than 50% live basal area (11 AAC 95(b)(3))

Region II/III: 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 subject to the methods below:

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"		200	%
Total Residual Stocking			%

Seedlings Required:

Percentage Under stocked = 100 – Total Residual Stocking %

Percentage Under stocked = 100 – _____ % = _____ %

Seedlings/ Acre Required = Percentage Understocked/100 x 450

Seedlings/ Acre Required = _____ % /100 x 450 = _____

Natural regeneration

List species: western hemlock, Sitka spruce, western red cedar.

Coppice

List species:

Artificial regeneration

Seeding-source of seed (general vicinity location of seed source)

Planting: Date of proposed planting: _____

Source of seedlings (location of seed source): _____

E. Slash Abatement

Potential for insect infestations caused by slash accumulations exists. Slash abatement for controlling infestations will be implemented as required by 11AAC 95.370.

Lop and scatter slash; accumulations will be kept to less than 2 feet in height.

Slash will be scattered 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 Division of Forestry 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 waters.
Unit 1&2	Unnamed	Type I-A	103-90-10550	100ft Timber Retention	Implement FRPA and Reg., Retain timber to break to promote wind firmness and drainage pattern.
Unit 2	Unnamed	Type I-C	N/A	No in stream or crossing activity w/o prior approval of DOF	Implement FRPA and Reg./ Maintain bank integrity.
Unit 1	North Tributaries	Type I-C	N/A	No in stream or crossing activity w/o prior approval of DOF	Implement FRPA and Reg./ Maintain bank integrity.

Unit 1	South Unnamed Tributaries	Surface/Water Quality	N/A	No in stream or crossing activity w/o prior approval of DOF	Implement FRPA and Reg./ Maintain bank integrity.
Unit 1	South Unnamed Tributaries	Non-Anadromous Resident Fish	N/A	No in stream or crossing activity w/o prior approval of DOF	Implement FRPA and Reg./ Maintain bank integrity.

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 Best Management Practices in 11 AAC 95.

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.
Note: The retention area on 103-90-10550 was set at the break (an average distance of 300ft.) to provide wildlife corridor from tide water to north side of peninsula.
- 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- A 132ft. no-harvest area was retained around an ADF&G documented bear den site.

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

[X] 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
Visual	DOF/ DMLW	Change in vegetation, no mitigation
Geological-Karst	DOF	Change in sediment loading, site specific protection.

Note: Karst Features-

1. The entire timber sale area exhibited topography that can be described as karst. Karst are areas of bedrock limestone that have been eroded by dissolution forming ridges, fissures, and underground drainage systems with caves and sinkholes.
2. In general, bedrock limestone was visible in most areas of the proposed harvest; notably visible under overturned stumps in areas of windthrow and topographic breaks. Soils are generally shallow, and the stands of timber have significant evidence of windthrow dispersed throughout the area indicating shallow but well-drained soils. Timber consequently is varied in age, size, and quality due to the relatively high natural turnover rate.
3. Two notable karst sinkholes were identified within the proposed harvest Unit 1. Logging activities will avoid disturbing karst features. Trees will be felled away from karst and care will be taken to not allow slash and debris from entering karst features. Soil disturbance surrounding karst features will be minimized through retaining stumps and existing debris in place within 66ft of these areas to minimize erosion of fines into the karst features.

[] 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.

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	Harvest Unit	Stations	Road Type	Max. Grade	Constructed by:	Maintained by:
1520354	Unit 1&2	35+43	Mainline	NA	Existing	Purchaser
15203544	Unit 1	57+97	Spur	15%	Purchaser	Purchaser
152035441	Unit 1	5+95	Spur	15%	Purchaser	Purchaser
152035442	Unit 1	2+90	Spur	15%	Purchaser	Purchaser
152035443	Unit 1	3+94	Spur	15%	Purchaser	Purchaser
15203547	Unit 2	13+39	Spur	15%	Purchaser	Purchaser

**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: 45% (With short steeper pitches.)

There are no slopes >45%.

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 Other: Waterbars
 not applicable

C. Crossing Structures:

- No crossing structures are needed within the project area.
- No existing drainage structures will be replaced.
- 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	Mile / Station	Diameter Culvert	Bridge Type: -Log Stringer -Fabricated -Ice	AS 41.17.950 Stream Classification	Fish & Game AWC Number	Duration of crossing structure in place
15203544	P1014	18" CPP	N/A	Non-classified surface waters	None	Road life
15203544	P1015	18" CPP	N/A	Non-classified surface waters	None	Road life

Note: Additional relief drainage structures may be added to proposed road to minimize erosion potential if ground water or surface waters accumulate near the road.

CPP= High Density Polyethylene Corrugated Plastic Pipe or equivalent.

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	Unit	All Season/Winter	Estimated Closure Date	Projected Road Use after Timber Harvest
15203544	Unit 1	All Season	End of Harvest.	Silviculture
152035441	Unit 1	All Season	End of Harvest.	Silviculture
152035442	Unit 1	All Season	End of harvest.	Silviculture
152035443	Unit 1	All Season	End of harvest.	Silviculture
15203547	Unit 1	All Season	End of Harvest.	Silviculture

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.
- [X] Other: Material extraction and associated overburden disposal will be located outside of riparian areas (NA) and muskegs. Material extraction and disposal locations will be selected by the purchaser and approval will be required by the Division of Forestry. Material sites will generally be on or adjacent to the identified roads.

F. Other Resources Affected by-Roads or Material Extraction:

List resources other than water, habitat or cultural resources potentially impacted by road 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
Karst	DOF	Drainage Pattern/ Pronounced features have been avoided. Road surface drainage concentrations and the length of time the road is open to traffic will be minimized. Roads will be promptly closed at the end of harvest activity.

V. Approvals

This Final Forest Land Use Plan has been reviewed by the Division of Forestry and provides the information necessary for public and agency review of the project described in this document as required by AS 38.05.112.

Gregory D. Staunton
Area Forester

Date

A person affected by the final decision who provided timely written comment on the draft FLUP may request appeal, in accordance with 11 AAC 02. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 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) and (b). Any appeal request must be received October 14, 2019 and may be mailed or delivered to Corrie A. Feige, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov . If appeal is not requested by that date, this decision goes into effect as a final order and decision on October 24, 2019. Failure of the commissioner to act on a request for appeal within 30 days after issuance of this decision is a denial of appeal and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request appeal of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 is in Appendix C

If you have any questions, please contact the Southeast Area Office at (907) 225-3070 or e-mail greg.staunton@alaska.gov.

Appendix A: Edna Bay Parlay Timber Sale Maps

Appendix A1 Edna Bay Parlay One Area Map (1 page)

Appendix A2 Edna Bay Parlay One Unit Maps (3 pages)

Appendix B: Supporting Information

Note: Silvicultural and stand information has been described in the previously published BIF.

Alaska Forest Practices and Regulations.

<http://forestry.alaska.gov/forestpractices>

Forest Road and Bridge Standards.

http://forestry.alaska.gov/Assets/uploads/DNRPublic/forestry/pdfs/resources/forest_road_standard_design_20151231.pdf

http://forestry.alaska.gov/Assets/uploads/DNRPublic/forestry/pdfs/resources/forest_bridge_standard_design_20150128.pdf

No ADFG fish way permits are required.

Appendix C: Appeal Statutes and Regulations

Title 11.02 Appeals

TITLE 11. NATURAL RESOURCES.

CHAPTER 02. APPEALS.

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

11 AAC 02.010. APPLICABILITY AND ELIGIBILITY. (a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.

(g) A person may not both appeal and request reconsideration of a decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

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

11 AAC 02.015. COMBINED DECISIONS. (a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) - (m) and this chapter applies to the combined decision.

(b) A decision of the department may include a statement that a final consistency determination under AS 46.40 (Alaska Coastal Management Program) has been rendered in conjunction with the decision. A person may not, under this chapter, appeal or request reconsideration of the final consistency determination, including a requirement necessary solely to ensure the activity is consistent with the Alaska coastal management program as approved under AS 46.40. (Eff. 9/19/2001, Register 159)

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

11 AAC 02.020. FINALITY OF A DECISION FOR PURPOSES OF APPEAL TO COURT. (a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

(b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.

(c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under 11 AAC 02.040(c)-(e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for purposes of appeal to the superior court.

(d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

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

11 AAC 02.030. FILING AN APPEAL OR REQUEST FOR RECONSIDERATION. (a) An appeal or request for reconsideration under this chapter must

(1) be in writing;

(2) be filed by personal service, mail, fax, or electronic mail;

(3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;

(4) be correctly addressed;

(5) be timely filed in accordance with 11 AAC 02.040;

- (6) specify the case reference number used by the department, if any;
- (7) specify the decision being appealed or for which reconsideration is being requested;
- (8) specify the basis upon which the decision is challenged;
- (9) specify any material facts disputed by the appellant;
- (10) specify the remedy requested by the appellant;

(11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;

(12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any;

(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 11AAC 05.160. (Eff 11/7/90, Register 116; am 9/19/2001, Register 159; am 7/01/2018, Register 227).

(b) At the time an appeal is filed, and up until the deadline set out in 11 AAC 02.040(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.

(c) If public notice announcing a comment period of at least 30 days was given before the decision, an appellant may not submit additional written material after the deadline for filing the appeal, unless the appeal meets the requirement of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;
- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(d) If public notice announcing a comment period of at least 30 days was not given before the decision, an appellant may submit additional written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the deadline for filing the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;

- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.

(f) If the decision is one described in 11 AAC 02.060(c), an appellant who believes a stay of the decision is justified may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 44.37.011
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.15.020
	AS 29.65.120	AS 38.05.035	AS 38.50.160	AS 41.21.020	AS 46.17.030
	AS 37.10.050				

Editor's note: The address for an appeal or request for reconsideration by personal service and by mail is: Department of Natural Resources, Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561. The number for an appeal or request for reconsideration by fax is: 1-907-269-8918. The electronic mailing address for an appeal or request for reconsideration by electronic mail is: dnr_appeals@dnr.state.ak.us

11 AAC 02.040. TIMELY FILING; ISSUANCE OF DECISION. (a) To be timely filed, an appeal or request for reconsideration must be received by the commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is set by statute, regulation, or existing contract. If the 20th day falls on a day when the department is officially closed, the appeal or request for reconsideration must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.030(a)(11).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

(1) when the department gives public notice of the decision; or

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

11 AAC 02.050. 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 38.04.900	AS 38.09.110	AS 41.17.055	AS 46.17.030
	AS 29.65.050	AS 38.05.020	AS 38.50.160	AS 41.21.020	
	AS 29.65.120	AS 38.08.110	AS 41.15.020	AS 46.15.020	

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

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 38.04.900	AS 38.08.110	AS 41.15.020	AS 46.15.020
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.17.030

11 AAC 02.080. DEFINITIONS. Repealed. (Eff. 11/7/90, Register 116; repealed 9/19/2001, Register 159)

Editor's note: The subject matter formerly set out at 11 AAC 02.080 has been moved to 11 AAC 02.900.

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

Editor's note: The subject matter of 11 AAC 02.900 was formerly located at 11 AAC 02.080. The history note for 11 AAC 02.900 does not reflect the history of the earlier section.

Appendix D: DRAFT FLUP Public Comment