

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



Coastal Region—Southeast Area Office
Forest Land Use Plan

Edna Bay Parlay Three Timber Sale
SSE-1342-3

April 2025

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
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
POG	Productive old growth
POW	Prince of Wales
POWIAP	Prince of Wales Island Area Plan
ROW	Right-of-way
SESF	Southeast State Forest
SESFMP	Southeast State Forest Management Plan
UA	University of Alaska
USFS	United States Forest Service

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I. Introduction

Project File Number: SSE-1342-3

Division of Forestry & Fire Protection Office: Southeast

Area Forester: Greg Staunton

Forest Practices Geographic Region (AS 41.17.950): Region I

This Forest Land Use Plan (FLUP) covers proposed forest operations on approximately 166 acres of land on Kosciusko Island, approximately 2.0 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, and must be adopted by the DNR before the proposed activity can occur.

☒ 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 AS 38.05.945; Best Interest Finding and Decision For Edna Bay Parlay Timber Sale, SSE-1342-K adopted on March 9, 2017, available at:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=184901>

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 draft FLUP was issued on February 6, 2025. The draft was amended on February 21, 2025 to reflect updated information on the unit configuration and roads; the public comment period was extended, and the review period ended on **March 24, 2025**. After public and agency review of the draft FLUP, the DOF reviewed comments (see Appendix C), made changes as appropriate and adopted this FLUP. No significant changes were made during the review.

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 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.

An eligible person affected by this decision, and who provided timely written comment to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02.

Forest Land Use Plan for Edna Bay Parlay Three, SSE-1342-3

☒ 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

Prince of Wales Island Area Plan

Southeast State Forest Management Plan

Edna Bay Parlay Timber Sale Final Best Interest Finding, SSE-1342-K

The administrative record for this sale is maintained at the Division of Forestry & Fire Protection Southeast Area Office filed as Edna Bay Parlay Timber Sale, SSE-1342 K. A FLUP was previously adopted covering the eastern old growth portion of the sale area and is labeled Edna Bay Parlay One; it was sold and has been harvested. The Edna Bay Parlay Two Timber Sale, SSE-1342-2 K covers the young growth portion of the sale area in the center; it has been sold and harvested. The Edna Bay Parlay Three Timber Sale, SSE-1342-3 K is a mixed age timber in the southern end of the SESF parcel adjacent to Parlay Two and University of Alaska (UA) ownership.

A. Legal description

The timber sale area is found within Sections 1 and 2 of Township 69 South, Range 76 East in the Copper River Meridian. (See attached maps titled Appendix A1 and A2, SSE-1342-3 Edna Bay Parlay #3 Timber Sale Maps).

B. Operational Period

Calendar years 2025 to 2026.

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

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

A. State

Activity on ownership:	Access Easement	Harvest	Written Representative Approval
<input checked="" type="checkbox"/> Southeast 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 checked="" type="checkbox"/> University of Alaska	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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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 harvest unit is primarily a mix of young growth hemlock-spruce and old growth residual hemlock. Portions of the unit were selectively logged for Sitka spruce during World War II in the 1940's. The older decadent western hemlock is exhibiting signs of defect related to fruiting bodies/conks and wind damage. A very small component of old growth Sitka Spruce of similar condition was noted with broken tops, windthrow, and frost cracks. Most of the old growth residual trees average two 32-foot saw logs per tree. The young growth hemlock-spruce appears to be vigorous and lacking any apparent defect with much of the unit composed of pole timber with some sawtimber throughout. The dominant young growth trees have an average of one and a half 32-foot saw logs per tree, with heights of 65-100 feet to a 6 inch top. Crooks and sweeps are fairly common in the young growth, with approximately 10% of trees having these characteristics.

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
1	152	Irregular Complex Slopes	Clearcut	Ground Based (Shovel) Logging
2	14	Irregular Complex Slopes	Clearcut	Ground Based (Shovel) Logging
Total	166			

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
--	--	Not Applicable	--

D. 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.
- ☒ 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.

Notes:

1. Slash is desired to be distributed in the unit. At the discretion of the DOF, slash accumulated at the landing areas associated with whole tree yarding may be piled by the operator a workman like manner minimizing the pile's footprint.
2. Utility logs and short saw logs not meeting merchantable sawlog standards of the contract shall be decked roadside in an orderly manner.

E. Soil Stability / Erosion / Mass Wasting

- ☐ Maximum percent side slopes are $\leq 50\%$
- ☒ Maximum percent side slopes are $> 50\%$

Percentage of sale area with slopes $> 50\%$: 2%Maximum percent slopes: 100%

- ☒ There are no indicators of unstable areas.
- ☐ Indicators of unstable areas were identified and will be mitigated by actions indicated below.

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 3 below.

Table 3. 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: Topography is associated with karst bedrock; very little surface water was observed in the unit.

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

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.

☐ 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.

Table 4. Other Affected Resources / Areas of Concern

Impacted Resource	Reviewing Agency	Impact/ Mitigation Actions
Karst Geology	DOF	Changes in subsurface sediment loading/ site specific protection.

Karst Notes:

1. The entire timber sale area exhibited topography that can be described as karst. Karst topography are areas of bedrock limestone that have been eroded by dissolution forming ridges, fissures, and underground drainage systems with caves and sinkholes. In general, bedrock limestone was visible in most areas of the proposed harvest; notably visible under overturned stumps in areas of wind throw and topographic breaks. Soils are generally shallow, and the stands of timber have significant evidence of wind throw 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.
2. Karst solution sinkholes were identified in proposed harvest Unit 1 and caution should be taken when operating in their vicinity; a sink hole to the southeast of Unit 2 was avoided altogether in the layout of the unit.
3. Logging activities will avoid disturbing karst features. Trees will be felled away from and care will be taken to minimize soil, slash and debris from entering karst drainage features. Soil disturbance surrounding karst features will be minimized through retaining stumps and existing debris in place within tree length of these areas to minimize erosion of fines into the karst features.

J. Reforestation

Harvest type as it relates to reforestation requirement:

- ☒ Clearcut (Even-Aged Management)
- ☐ Region I: Partial Harvest leaving more than 50% live basal area (11 AAC 95.375(b)(3))
- ☐ Region II or III: Partial Harvest relying on residual trees to result in a stocking level that meets standards of 11 AAC 95.375(b)(4).

Season of harvest:

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

Regeneration type:

- ☒ Natural regeneration

List species: Western hemlock (*Tsuga heterophylla*), Sitka Spruce (*Picea sitchensis*), western redcedar (*Thuja plicata*).

- ☐ Coppice
- ☐ 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): _____

IV. Roads and Crossing Structures

A. Road Design, Construction, Reconditioning, 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 5A and 5B.

Table 5A. Road Reconstruction or Recondition and Use

Road ID	Harvest Unit	Mile **	Road Class	Maximum Grade %*	Constructed By	Maintained By
1520200 to DNR Log Transfer Facility (LTF)	1	4.25	Primary	12	Existing	Purchaser
1520201	1	0.39	Spur	12	Existing	Purchaser
Total		4.64				

Table 5B. New Road Construction and Use

Road ID	Harvest Unit	Mile **	Road Class	Maximum Grade %	Constructed By	Maintained By
1520201	1	0.40	Spur	10	Purchaser	Purchaser
1520201-100	1	0.22	Spur	12	Purchaser	Purchaser
1520200-105	1	0.24	Spur	8	Purchaser	Purchaser
Total		0.86				

*Road Class is as defined in the DOF Road Standards. *Note: Roads must be less than 20% grade per 8 AAC 61.1060 Additional Logging Standards. ** One station equals 100 feet. One mile equals 5,280 feet.*

B. Soil Erosion / Mass Wasting

Maximum percent side slopes: 15

☒ 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:

Table 6. Road Erosion Control Risk and Mitigation

Road ID	Segment	Mile/ Station or Point Label	Identified Erosion Risk	Risk Level	Mitigation
All	--	--	None	Low	Standard FRPA Best Management Practices (BMPs)

General Timber Sale Erosion Control:

☐ Grass seeding
and cross drains

☐ Erosion control mats

☐ Wattle

☒ Water bars

☐ 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 in 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 [ex. Corrugated Plastic Pipe, Log Stringer, Fabricated, Ice]	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
1520200	All	1	All Season	N/A	Silviculture, firewood
1520201	All	1	All Season	End of Harvest	Silviculture, firewood
1520201-100	All	1	All Season	End of Harvest	Silviculture, firewood
1520200-105	All	1	All Season	End of Harvest	Silviculture, firewood

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: Depending on suitable material availability, a rock pit will be developed for construction of the road. The development of a pit will be part of the timber purchaser's operating plan prior to commencing operations and subject to DOF approval.

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	Karst features and subsurface drainage/ Pronounced features have been avoided, minimize road surface drainage concentrations and length of time the road is open to traffic.

V. Approvals

This Forest Land Use Plan has been reviewed by the Division of Forestry & Fire Protection and provides the information necessary to be adopted by the Department of Natural Resources as required by AS 38.05.112.

Area Forester

Date

An eligible person affected by this decision, and who provided timely written comment 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 request for reconsideration is filed by that date, this decision goes into effect as a final order.

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>.

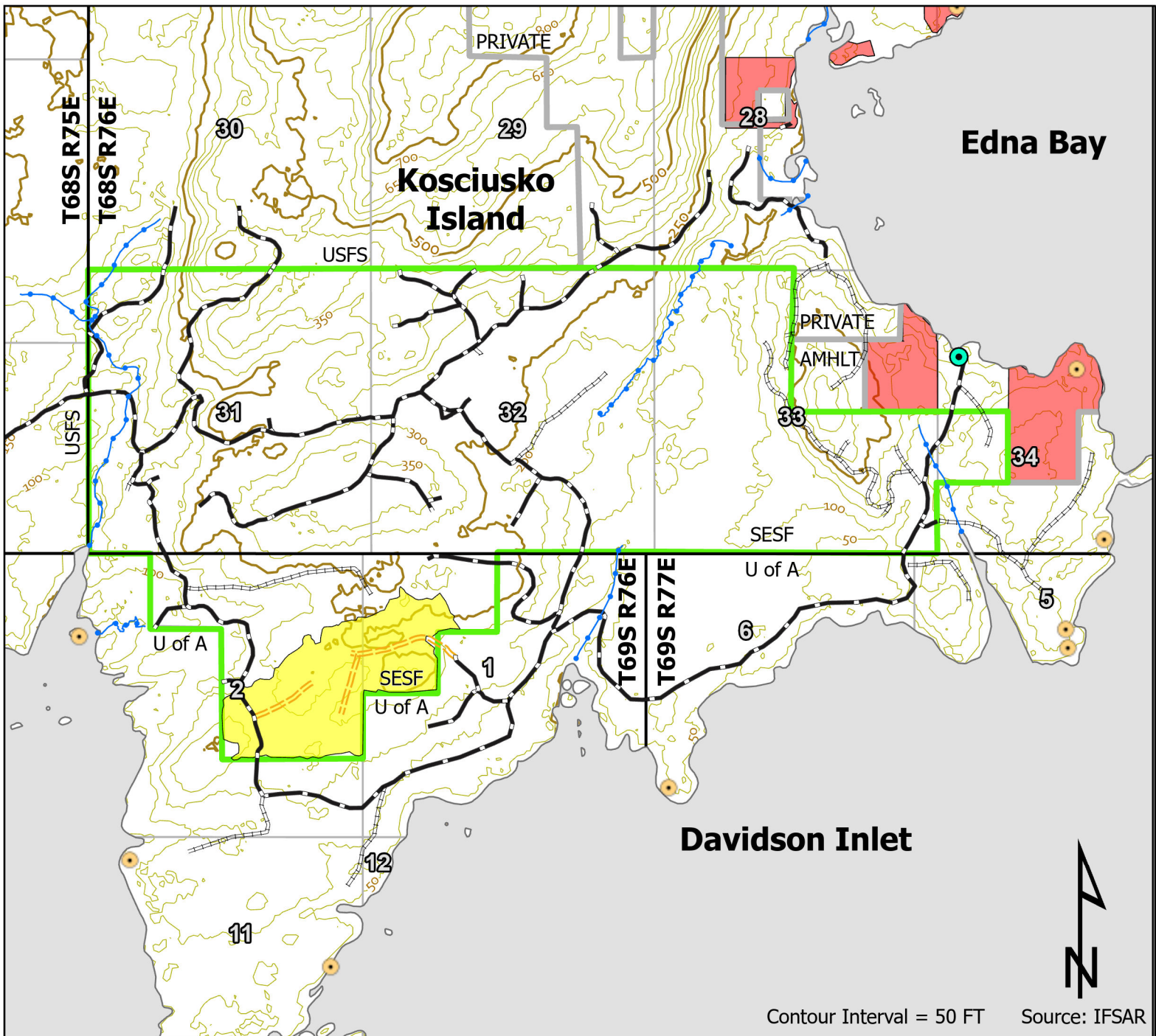
If you have any questions, please contact Greg Staunton of the Southeast Area Office at (907) 225-3070 or e-mail greg.staunton@alaska.gov.

VI. Appendices

Appendix A: Timber Sale Maps

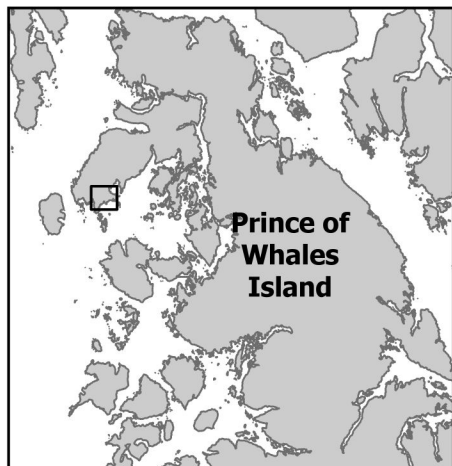
Appendix A1 Edna Bay Parlay Three Area Map (1 page)

Appendix A2 Edna Bay Parlay Three Unit Map (1 page)



0 0.25 0.5 1 Miles

Area Map 1 in = 0.5 Miles



Vicinity Map 1 in = 30 miles

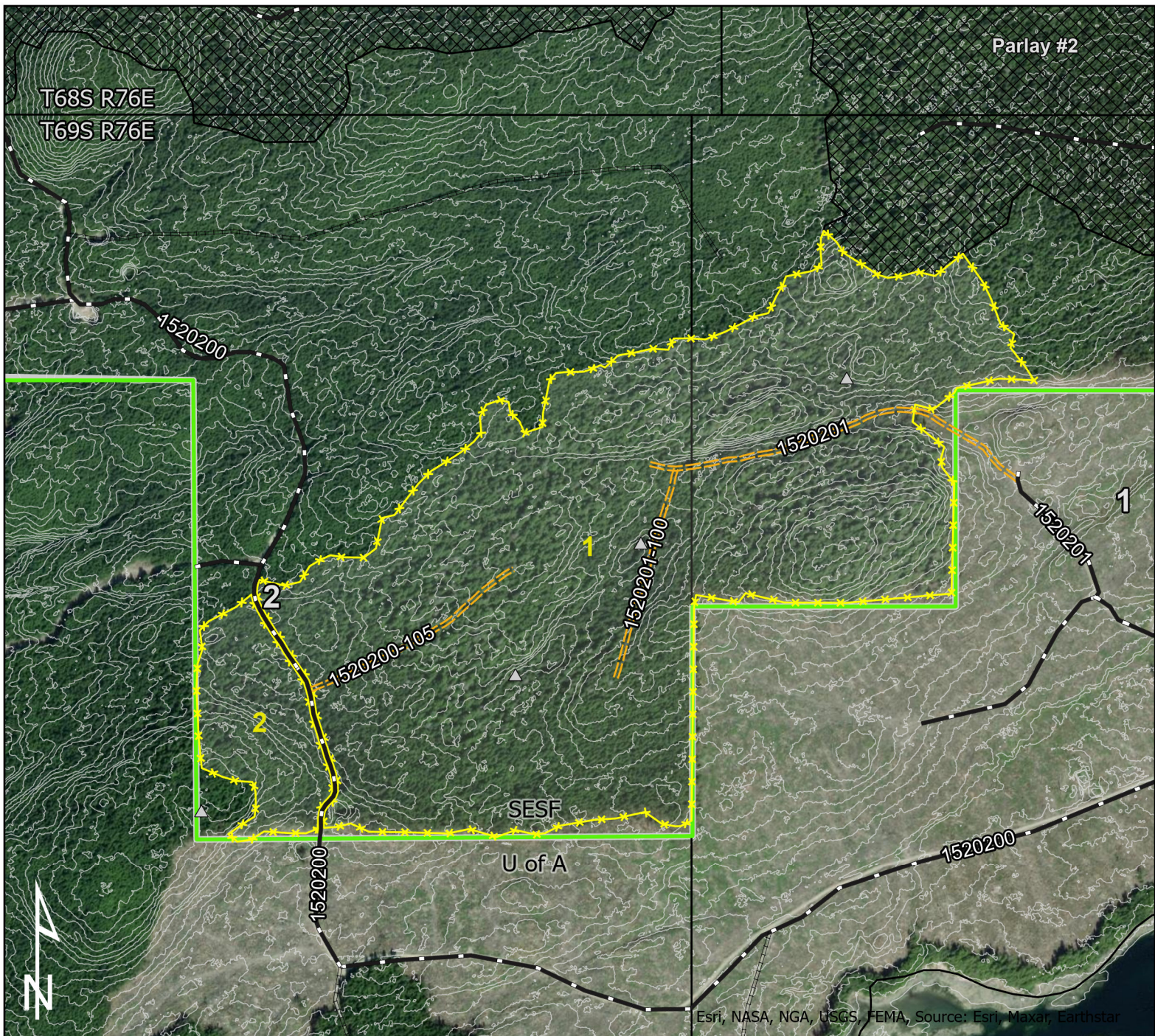
Legend

- Proposed Harvest Unit
- Municipal
- Southeast State Forest (SESF)
- Property Line
- Existing Road
- Closed Road
- Proposed Road
- Anadromous Stream
- Eagle Nest Tree
- Log Transfer Facility (LTF)

APPENDIX A1 SSE-1342-3 PARLAY 3 TIMBER SALE AREA MAP



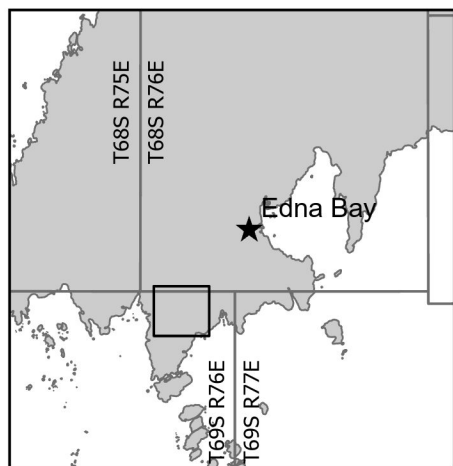
MB 02/19/2025



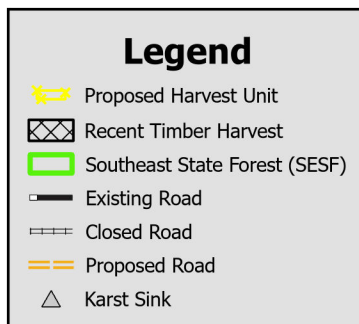
0 500 1,000 2,000 Feet

Unit Map 1 in = 750 FT

Contour Interval = 10 FT
Source: USFS LiDAR 2018



Vicinity Map 1 in = 4 miles



APPENDIX A2 SSE-1342-3 PARLAY 3 TIMBER SALE UNIT MAP



MB 02/19/2025

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

Appendix C: Public and Agency Comments and Responses

Draft Forest Land Use Plan Edna Bay Parlay Three Timber Sale (SSE-1342-3)

Comments

Department of Natural Resources, Division of Forestry & Fire Protection
March 2025

The following comments were received during the public comment period on the Draft Forest Land Use Plan for the Edna Bay Parlay Three Timber Sale (SSE-1342-3)

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Commenter	Comment	DOF Response
	I. Introduction	
	B. Operational Period	
Tessa Axelson, Alaska Forest Association	The operational period listed in the draft FLUP is too short. AFA believes the period of time covered by a FLUP for forest management operations within the SE State Forest (SESF) should include post-harvest management of the area over a rotational period. The FLUP should address pre-commercial thinning and road management and maintenance over the rotation.	Commented noted, no change. The DOF typically lists the operational period to describe the proposed or predictable activity. Forest management activities beyond the timber sale are subject to funding authorization of the legislature.
	General Support of Operations	
Jere and Susan Crew	We appreciate the opportunity to voice our approval of the Parlay 3 Timber sale on Kosciusko Island. We are longtime residents of Edna Bay, and we welcome the revenue and support brought to our remote community by the logging industry; 25% of the Edna Bay workforce is employed by the loggers. We also see the large stands of dying hemlock and are glad to see it used rather than left to rot.	Commented noted, no change.
Tyler M. Poelstra, City of Edna Bay Mayor	The City of Edna Bay is submitting a comment letter regarding the DOF Site Specific Draft Forest Land Use Plan for the Edna Bay Parlay Three Timber (Sale SSE-1384-K). We have no concerns or objections as presented.	Commented noted, no change.

Appendix D. 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.

- (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 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, 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 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.