

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



FAIRBANKS-DELTA AREA FORESTRY

**FINAL BEST INTEREST FINDING AND
DECISION FOR**

**PAGH ROAD SPRUCE #2 and #3
NC-1827-F, NC-1847-F
DECEMBER 15, 2022**

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I. PROPOSED ACTION

DOF is proposing to offer for sale approximately 70.1 acres of white spruce sawtimber from state lands in the Rosie Creek area. The volume to be offered totals approximately 651 MBF or 1,589 CCF. DOF would sell the timber as two separate competitive bid contracts for commercial use. For the Pagh Road #2 (NC-1827-F) timber sale, the BIF and FLUP were issued for review at the same time. For Pagh Road #3 (NC-1847-F) timber sale, the FLUP will be issued for review at a later date.. The land covered by this BIF appeared in the 2022 Northern Region Five Year Schedule of Timber Sales.

The management objectives for the proposed timber sales are:

- Provide the raw material for the industry to produce timber products providing benefits to the state and local economy through employment opportunities.
- Harvest the commercial sawtimber and fuelwood before a significant decrease in fire salvaged wood merchantability occurs and return the site to a young productive mixed stand forest.
- Provide firewood for the residential heating needs of interior Alaska communities.
- Promote multiple use management that provides for the production, utilization, and replenishment of timber resources while perpetuating personal, commercial, and other beneficial non-timber uses of the forest resources.

II. 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 Office filed as NC-1827-F and NC-1847-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. 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

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with the area plans. The area in this BIF is covered by the 2001 Tanana Valley State Forest (TVSF) Management Plan. The finding also considers the Interagency Wildland Fire Management Plan. There is one Community Wildfire Protection Plan (CWPP) in this area, the Fairbanks North Star Borough CWPP. The proposed area is within the Fairbanks North Star Borough (FNSB) and considers the FNSB Regional Comprehensive Plan.

Step 2: Five-year Schedule of Timber Sales (AS 38.05.113). A proposed timber sale must appear in at least one of the two Five-year Schedule of Timber Sales (FYSTS) preceding the sale. The land covered by this BIF appeared in the 2022 Northern Region FYSTS document.

Step 3: Best Interest Finding. 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 covering the decision to sell approximately 70 acres of timber from state lands in the Rosie Creek Road area in two competitive bid sales for commercial use on 11/10/2022. DOF considered all written comments received during the 30-day review period. Responses to the comments are listed in Section VII.

This document is the final BIF for the NC-1827-F Pagh Road Spruce #2 and NC-1847-F Pagh Road Spruce #3 timber sales. An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02.

Step 4: Forest Land Use Plans (AS 38.05.112). Prior to authorizing harvest of timber on any area greater than 10 acres, the DOF must adopt a site-specific Forest Land Use Plan (FLUP) for the harvest area. DOF issued a FLUP for concurrent review with the preliminary BIF, and a final FLUP has been adopted for the lands covered by this BIF. FLUPs specify the site, size, timing, and harvest methods for harvest units 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 will be subject to public and agency review.

Step 5: Timber sales and contracts. Following adoption of the final best interest finding, 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 administers timber sales and conducts field inspections to ensure compliance with the final best interest finding, FLUP, timber sale contract, and applicable laws, including the Alaska Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95), and forest management statutes and regulations in AS 38.05 and 11 AAC 71.

V. PROJECT LOCATION, LAND STATUS, AND DESCRIPTION

A. Location

The proposed sale is located approximately 10 miles west of Fairbanks and just to the southeast of the Parks Highway/Rosie Creek Road intersection at roughly MP 342.5. The unit is within the Fairbanks North Star Borough and within the boundaries of the Doyon Region. The proposed sales are located within the Sections 33 and 34 Township 1 South Range 3 West, Fairbanks Meridian. The sale area is shown on the attached map and is within the United States Geological Survey 1:63,360 Quadrangle map titled Fairbanks D-3. The existing all season roads lead to the harvest areas.

B. Title status

The acquisition for the land upon which the sale is proposed is based on General Selection GS 541 and MH 9 & 126. The title was transferred by Patent 50-68-0010. There are no title restrictions on the area. The primary land classification for the area is Forestry per Classification Order CL NC-10-004. The proposed sale area is within the Tanana Valley State Forest (TVSF).

C. Land use planning, classification, and management intent

The proposed area is within the Tanana Valley State Forest Management Plan in subunit 5A. There are no specific restrictions stated in the TVSF management plan that are applicable to this proposed project. Guidelines for special management zones do apply for the Tanana River and Goldstream Creek including side channels, sloughs, and backwaters, but the proposed sale areas are not near these water bodies. The management intent is that “Subunit 5A will be managed for timber production, habitat and recreation while retaining scenic values along the Parks Highway by using silvicultural methods described in Management Guideline E, Management of Commercial Forest Types, and Guideline M, Silviculture and Harvest Practices, in the Timber Management section in Chapter 2.” The proposed harvest units are designed to be consistent with the management intent of the plan. The area is closed to subsurface use and mineral entry by Mineral Order 1045.

The Interagency Fire Management Plan includes Pagh Road Spruce #3 (NC-1847-F) in the “Full” protection category and Pagh Road Spruce #2 (NC-1827-F) in the “Critical” protection category.

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The Fairbanks North Star Borough Regional Comprehensive Plan supports forest development activities while minimizing land use conflicts.

D. Current access and land use:

The sale areas are both accessed via Rosie Creek Road off the Parks Highway. Pagh Road intersects Rosie Creek Road approximately 2.5 miles from the highway and continues eastward. NC-1847-F can be accessed via the Rosie Creek Road at approximately 2 miles, while NC-1827-F is located near mile 2 of Pagh Road. **Existing and inactive spur roads access both units and will require some level of reestablishment to support commercial harvest trucks and equipment.**

The Rosie Creek logging roads are heavily used by recreationists, hunters and trappers. Activities such as mountain biking, hiking, nordic skiing, dog mushing and many others are popular in this area.

E. Background and description of proposal

1. **Background:** According to the Tanana Valley State Forest Management Plan, the forested areas accessed via Rosie Creek Road system fall within Subunit 5A, and regarding timber sales, are to be “managed for commercial and personal use timber production in accordance with other policies stated in this plan.” DOF is offering these timber sales while also recognizing other uses of the State Forest. The intent is to manage for multiple uses while still maintaining a productive “working forest.” These sales fall in line with the guidance provided in the TVSF Management Plan.
2. **Timber volume and sustained yield:** The proposed project area has an estimated volume of 697 MBF or 1,660 CCF of white spruce saw and pole class timber on approximately 70.1 acres of land. Final harvest unit boundaries and timber volume estimates will be determined once DOF staff has completed all pre-sale field measurements. The Fairbanks Area Annual Allowable Cut (AAC) is calculated at approximately 4,606 acres of harvest annually. This action (Pagh Road Spruce #2 and #3) alone and in combination with timber sales that are sold will be within the allowable cut and comply with sustained yield requirements.
3. **Harvest unit design:** Both units are designed to follow the topography of the hillside; NC-1827-F is approximately 54.6 acres, and NC-1847 is approximately 15.5 acres. The timber will be harvested as a heavy partial cut. All spruce 6” DBH or larger will be targeted for removal. Any birch, aspen and white spruce smaller than 6” will not be cut. Large snags valuable for wildlife habitat will be retained to the extent practical. The logging operations will follow all applicable Best Management Practices and residual trees will be protected from damage during harvest operations. 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).

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Natural regeneration will be utilized initially for regeneration in both units, with the goal of re-establishing white spruce. It is expected that the harvest method (heavy partial cut) will open sites and increase light and soil warmth. Adjacent spruce stands will provide seed to these units along with residual trees within the units. However, Pagh Road Spruce #2 is large enough to allow economical planting, and Forestry intends to plant white spruce seedlings to accelerate the return of the white spruce component and shorten the stand rotation. Reforestation will be assessed within five years post-harvest, and a regeneration survey will be conducted if regeneration appears marginal or patchy. If the survey indicates inadequately stocked areas, then hand planting of white spruce seedlings will be performed on non-stocked areas. The goal for regeneration is to achieve a minimum of 450 evenly distributed trees per acre at the end of the regeneration survey period (any commercial tree species).

- b. Access design and construction: Access design, construction, and maintenance will comply with the Alaska Forest Resources and Practices Act (AFRPA) regulations (11 AAC 95.285-.355). The planned access to the proposed sale is by the Pagh Road (all-season road) extending from the existing Rosie Creek Road located south of the Parks Highway. The units are reached by exiting the Parks Highway between mile markers 342 and 343 on the East Rosie Creek Road, then traveling 2.5 miles on Rosie Creek Road to Pagh Road. No new road construction is required to access the units. The existing road will be maintained to the all-season secondary road standards set out in the AFRPA and the DOF Road Standards. No stream crossings will be required.
- 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: The timber stands of commercial value throughout this subunit of the State Forest, including the proposed harvest units in this PBIF, consist primarily of saw timber size class closed white spruce stands. These stands contain spruce predominantly between 14-18" DBH but the largest measured trees were 30" DBH. Ages of the larger diameter spruce have been measured as 120+ years old. Pockets of spruce regeneration, birch/aspens (mostly on the west and northwest edges of NC-1827-F), and alder-filled swales exist. The moss depth is relatively shallow and ranges between 0-6 inches. The grass component is moderate in this stand and is estimated to cover 10 - 20% of the area. There is an estimated 10% defect in the stand.
- b. Stand silvics: The normally merchantable species of trees on the TVSF are white spruce and birch. Data and research on regeneration and growth characteristics of

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these species are compiled within the Resource Analysis of the Tanana Valley State Forest (TVSF) Management Plan. The harvest and reforestation systems available in Interior Alaska are also reviewed and listed in the Resource Analysis. The results of the public and agency discussions for harvest and reforestation are discussed in the TVSF Management Plan. Silvicultural harvest systems that facilitate even-aged (natural) management are generally preferred. They mimic the ecological impact of wildfire and other disturbances and result in the greatest increase in site productivity. Even-aged management is normally accomplished through clear cuts, patch cuts and heavy partial cuts (such as seed tree or shelterwood systems), which open up the site to maximum solar gain. This results in the greatest production of both young hardwood that is important to wildlife and the spruce understory valuable years later as timber. Even-aged management techniques are utilized to provide young, vigorously growing stands in juxtaposition to older, undisturbed stands. Such placement of harvest units can optimize natural seeding and the edge effect. Regeneration of white spruce occurs only from seeds. White spruce trees generally produce some level of seed crop every three to five years and large seed crops every five to seven years. The proposed sale is a heavy partial cut to remove the spruce component of the stand and promote spruce regeneration.

- c. Topography and Soils: The harvest units are across mostly south facing moderately sloping hill above a tributary of Rosie Creek. Elevation ranges from 800 feet to about 1,200 feet with a generally south-facing aspect. The terrain is interspersed with hogbacks of varying directions with an average grade of 20 percent or more. Pagh Road Spruce #2 is located on Fairbanks silt loam 12-20% slopes (NRCS soil series 31FA03), and Pagh Road Spruce #3 is located on Steese silt loam 30-45% slopes (NRCS soil series 31ST05). Both soil types are well-drained and considered free of permafrost, with bedrock generally within 40” of the surface on steeper slopes and silt deposits exceeding 80” on slopes < 20%. 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)).
2. Agriculture. The proposed sale is not anticipated to have any impact on current or future agricultural activity in the area, and any effects of any timber sale operations for agricultural uses will be minimal.
3. Wildlife habitat and harvest. Wildlife typical of the Interior are found on this site. Signs of moose and squirrel were observed. There are no known raptor nests within the proposed sale area. Should an eagle nest tree be discovered in the sale area, the nest tree will be marked on the ground and a 330 foot no-harvest radius will be established to protect the tree. No critical wildlife habitat has been identified for this area (TVSF Management Plan), nor has any become apparent during ground reconnaissance.

Treatments proposed for this stand are projected to enhance habitat conditions for moose, voles, hares, and ultimately, lynx, marten and fox. In the past, Alaska

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Department of Fish and Game, Division of Wildlife Conservation has recommended managing for as much diversity as possible when prescribing harvest unit size, shape and position to mimic the results of wildfire or other stand replacement phases such as insect outbreaks or flood events. To accomplish these objectives snags will be retained to provide late-successional wildlife habitat for hole nesting birds, woodpeckers, small mammals, and other species requiring perching habitat. The units will be laid out with an uneven edge, along and between timber types. This will create varied edge effect beneficial to many wildlife species.

4. Fish Habitat, water resources, and water quality. There are no fish-bearing waters in the sale area. 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). DOF will ensure Best Management Practices are being adhered to by requiring a complete logging plan prior to the start of any harvesting, conducting on-site inspections during logging operations and a final inspection prior to terminating the timber sale.
5. Recreation, tourism, and scenic resources. During the winter months skiing, dog mushing, snowmachining and many other activities are common. The logging road system provides an excellent infrastructure for recreationists to access trails and waterways. Organized local races have also been held with the course traversing through this subunit. Scenic views are best from the Parks Highway and a Bluff overlooking the Tanana River lower on the southern slopes, though there may be portions of the upland road system that have viewpoints as a result of tree clearing. These proposed harvests may be visible from portions of the Tanana River, but should be largely obscured from the Parks Highway.
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. The proposed harvest areas are closed to mineral entry and leasing by Mineral Order 1045. Mineral potential in this unit has been rated moderate to low.

G. Costs and benefits

Local mill operators will benefit from the influx of the raw timber into the market. In addition to generating royalties to the State's general fund, the proposed sales will create economic benefits to the Fairbanks North Star Borough and to other locations in Alaska. The Borough business community will receive direct economic benefits from providing support services for the operators through sales of fuel, food, housing, medical and miscellaneous supplies. The residents of the Borough will receive an indirect benefit

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through any local taxes paid by the operator and employees during the timber harvest operations.

The sales are also expected to benefit the local economy by providing jobs. It will have a positive impact on local employment by generating numerous man-hours of work associated with the harvest and transportation of wood products from this sale.

Additionally, the public may benefit from access to additional personal use fuelwood areas. High fuelwood prices will also make merchandising the tops worthwhile. Home heating continues to be expensive in interior Alaska.

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, physically posted in Area offices and both physical and electronic notices were mailed to previous timber sale bidders as well as any property owners or business interests known to DOF in the proposed sale area. Notice was also posted on the DOF public webpage and DOF social media outlets.

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VII. PUBLIC COMMENT AND RESPONSE

Comment Period for preliminary BIF November 10 – December 9, 2022

Committer	Received	Comment	Action
ADF&G, Division of Habitat Todd 'Nik' Nichols	12/8/22 email	No issue of concern.	Received and recorded.
ADNR, Division of Mining, Land, & Water Jaclyn Cheek	12/8/22 email	Ensure public access along RS-2477 routes are maintained, no obstruction to public access on existing trails or easements.	DOF Timber Sale Contract, Exhibit C, Section 19 obliges operators to keep trails clear. DOF staff will inspect regularly for compliance.
USFWS, Northern Alaska Field Office Robert Henszey	12/2/22 email	Migratory birds' breeding cycles are sensitive to land disturbance like timber harvest and road building; in sensitive areas defer harvest operations outside of the May 1 – July 15 breeding season.	If confirmed locations of any protected species' nesting area are noted, harvest operations may be paused. DOF will inspect the area with ADF&G colleagues to identify the species and appropriate mitigation.
		Bald and Golden Eagles are common throughout the Tanana Valley, and are protected by the Federal Bald and Golden Eagle Protection Act. Harvest operations should be 660' distant from known nesting sites during breeding season (Mar 1 – Aug 31), and 330' at other times.	The confirmed location of any protected species' nesting area will immediately necessitate a non-harvested buffer to achieve statutory protections. DOF Timber Sale Contract Section 8 'Compliance with Laws...' affirms Contractor's obligations to comply with any and all applicable laws.
		When establishing erosion control, wildlife may be harmed by synthetic materials. Use plastic-free products to achieve erosion control objectives.	No synthetic erosion control material is anticipated as part of these sales. Should DOF require erosion control material, it will first seek non-synthetic sources.
		Include measures for maintaining floodplain integrity up and down stream of all floodplain crossings. Floodplain connectivity can be enhanced at crossings by having the least impedance to flow.	All crossings are accomplished on existing all-season roads. Road construction and maintenance will follow Alaska Forest Practices Act regulations and DOF BMP standards. DOF staff will inspect regularly for compliance.
		Implement BMPs to minimize the introduction and transport of invasive species in and out of a project area.	DOF staff will familiarize themselves with the referenced invasive species and BMPs. DOF staff will monitor and observe for invasive species during and after harvest operations.

VIII. DISCUSSION, FINAL FINDING, AND DECISION

After due consideration of all pertinent information and alternatives, DOF has reached the following Decision: To offer for sale approximately 70 acres of white spruce to provide sawlogs as proposed in Alternative 1 and described in this BIF. Public notice has been accomplished in accordance with AS 38.05.945. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. The DOF finds that this 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

Date

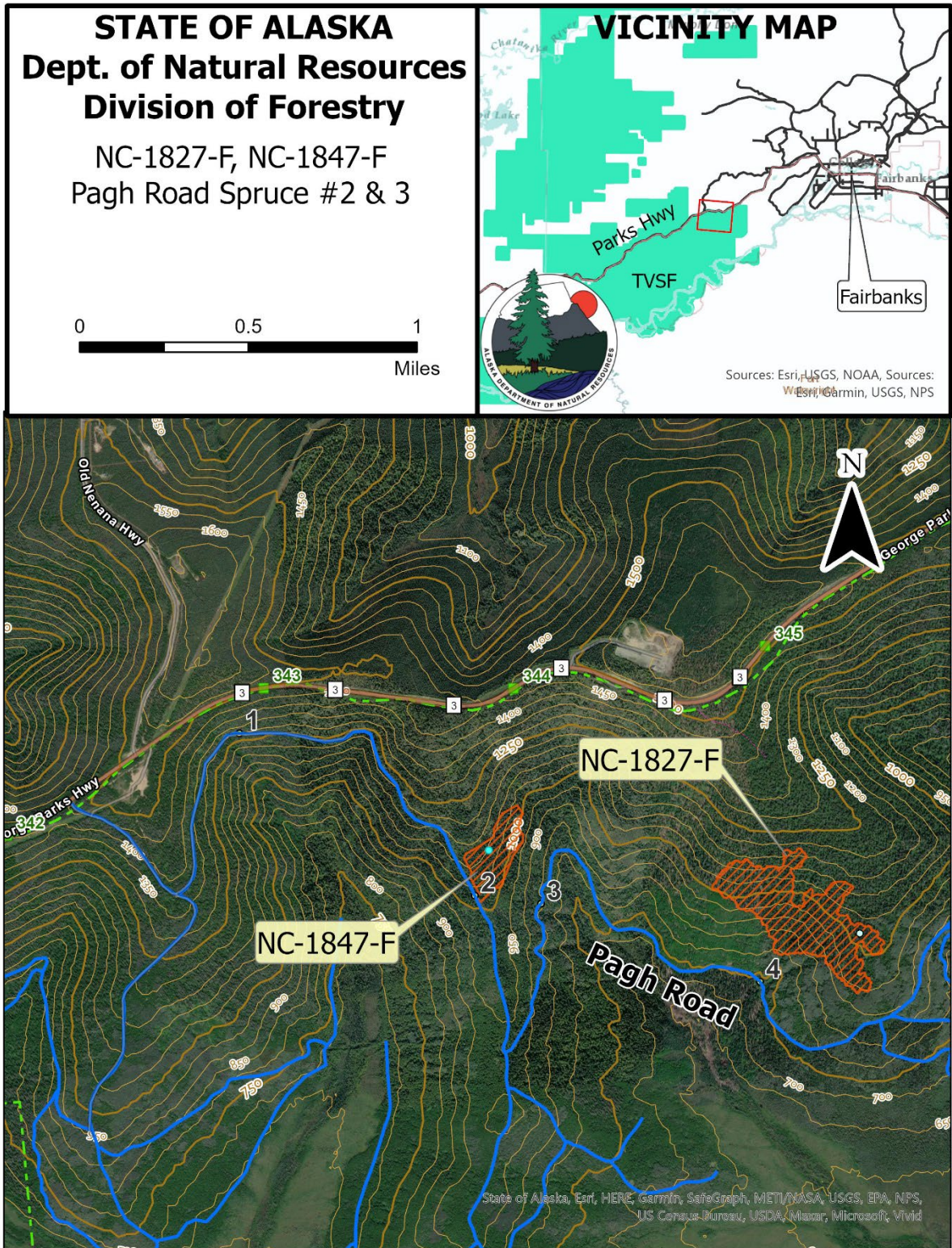
Fairbanks-Delta Area Forester
Alaska Division of Forestry & Fire Protection

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).]

XI. APPENDIX A: MAP



XII. APPENDIX B: APPEAL REGULATIONS

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.

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(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.

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(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.