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

FAIRBANKS-DELTA AREA FORESTRY

FINAL BEST INTEREST FINDING AND DECISION FOR ANDERSON WEST TIMBER SALES

NC- NC-1448-F, NC-1449-F, NC-1504-F, NC-1615-F, NC-1616-F, NC-1617-F, and NC-1981-F

November 2024

Abbreviations

ADEC	Alaska Department of Environmental Conservation
ADF&G	Alaska Department of Fish and Game
ADNR	Alaska Department of Natural Resources
BIF	Best interest finding
CCF	100 cubic feet
DMLW	Division of Mining, Land and Water
DOF	Division of Forestry & Fire Protection
FLUP	Forest Land Use Plan
FRPA	Alaska Forest Resources and Practices Act
FYSTS	Five-Year Schedule of Timber Sales
MBF	Thousand board feet
OHA	Office of History and Archeology
ROW	Right-of-way
TVSF	Tanana Valley State Forest

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I. PROPOSED ACTION

Alaska Division of Forestry (DOF) is proposing to offer multiple timber sales on State owned lands identified in DNR's Yukon Tanana Area Plan (YTAP) as management unit P-48. Estimates based on field reconnaissance, digital imagery and forest inventory data indicate there may be approximately 3,000 acres of white spruce sawtimber from state lands throughout the flood plain along the west bank of the Nenana River, near the communities of Anderson and Nenana. Work is currently underway to determine specific volumes and sale boundaries DOF will offer. DOF would sell the timber as either short or long term negotiated commercial timber sales, contracts awarded through a competitive bid process or some combination of those. Some of the land covered by this Best Interest Finding (PBIF) appeared in the 2024 Fairbanks-Delta Five Year Schedule of Timber Sales (FYSTS) as Nenana Spruce timber harvests NC-1448-F, NC-1449-F, NC-1504-F, NC-1615-F, NC-1616-F, NC-1617-F, and NC-1981-F. In addition, DOF has previously issued final decisions on other nearby timber sales and maintains copies of those documents and the timber harvest contracts that followed.

The management objectives for the proposed timber sales are:

- Provide raw material for the forest industry to produce timber products that provide benefits to the state and local economy through employment opportunities.
- Harvest the commercial sawtimber and fuelwood before a significant decrease in vigor occurs and return the site to a young, productive mixed 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 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 to proceed with the action as proposed. This record will be maintained at DOF's Fairbanks Office filed as Anderson West Timber Sales, NC-1448-F, NC-1449-F, NC-1504-F, NC-1615-F, NC-1616-F, NC-1617-F, and NC-1981-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 with the area plans. The area in this BIF is covered by the Yukon Tanana Area Plan (YTAP), and the BIF is consistent with this 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 Schedules preceding the sale. The land covered by this BIF appeared in the 2024 Fairbanks-Delta Area FYSTS.

Step 3: Best Interest Finding. DOF must adopt a final BIF before selling timber. A best interest finding is the decision document that:

- Ensures that the best interest of the State will be served by this proposed action,
- Establishes the overall area within which the timber sale may occur,
- Determines the amount of timber that will be offered for sale and the duration of the sale,
- Sets the overall harvest and reforestation strategy for the sale area,
- Determines whether the sale proposal complies with the Constitutional requirement to manage for sustained yield by evaluating the amount of timber in the sale and the annual allowable cut for the affected area,
- Selects the appropriate method of sale (i.e., competitive or negotiated sale), and
- Determines the appraisal method that will be used to determine the sale price.

DOF issued a Preliminary BIF covering the decision to sell approximately 3,000 acres of spruce sawlogs from state lands within the Anderson West area in a combination of negotiated and competitive bid timber sales for commercial use on October 21st, 2024. DOF considered all written comments received during the 30-day review period. Responses to the comments are listed in Section VII below.

This document is the final BIF for the Anderson West Timber Sales Area. 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 draft FLUP concurrently with the PBIF and will adopt the final FLUP following review of comments. FLUPs specify the site, size, timing, and harvest methods for harvest unit within the sale area. FLUPs also address site-specific requirements for access construction and maintenance, reforestation, and multiple use management. FLUPs are based on additional field work, agency and community consultation, and site-specific analyses by the DOF, and are subject to public and agency review.

Step 5: Timber sales and contracts. Following adoption of the final BIF, and completion of the FLUP, DOF will offer the timber for sale by auctioning competitive sales and/or negotiating

some sales with purchasers. The Division will sign a contract with the winning bidder for each sale. The contract will include stipulations to ensure compliance with the best interest finding, FLUP, and statutory requirements.

Step 6: Sale administration. DOF will administer the timber sales and conduct field inspections to ensure compliance with the final BIF, FLUP, timber sale contract, and applicable laws, including the Alaska Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95), and forest management statutes and regulations in AS 38.05 and 11 AAC 71.

V. PROJECT LOCATION, LAND STATUS, AND DESCRIPTION

A. Location

The proposed sale area is located within the bounds of management unit P-48 of the Yukon Tanana Area Plan developed by DNR MLW staff. These are identified on the maps included in this document and are within Townships F005S008W, F006S008W, F006S009W, F007S008W, F007S009W, F005S008W, F006S008W, F006S009W, F007S008W and F007S009W.

B. Title status

The acquisition for the land upon which the sale is proposed is based on General Selection 20. The land estate is Tentatively Approved; thus the State has management authority.

C. Land use planning, classification, and management intent

The primary land classifications for the area are Forestry and Wildlife Habitat per Classification Order NC-90-002. The proposed sale area is within Unit P-48 of the Yukon Tanana Area Plan (YTAP). There are no other special conditions noted in the plan for this area. A Native allotment is located adjacent to the proposed road route and a second allotment is located south of the Teklanika River ½ mile south of the proposed secondary winter road route.

The sale areas are open with respect to mining.

The Interagency Fire Management Plan includes these lands in the “Full” protection category.

This area is not within a municipality; no municipal plans apply.

D. Current access and land use:

The access to the proposed sale is by constructing a secondary winter road north from the Kobe Ag area. It can be accessed from the north via a winter road from Nenana. This existing road will not require reconstruction other than snow plowing. An ice bridge will be required to cross the Teklanika River and a Fish Habitat Permit for the river crossing

will be required to access the area. Access routes will be maintained to the secondary winter road standards set out in the TVSF Management Plan and in the AFRPA.

E. Background and description of proposal

1. Background: Recent harvest activity as well as the completion of a bridge over the Nenana River has led to some renewed interest in timber stands along the Teklanika and Nenana Rivers. To continue to supply the local industry here in Fairbanks, logs are being transported longer distances than they have in the past, with logs already being hauled as far away as Delta Junction, Fairbanks, and Wasilla.

   DOF is implementing "geographic area" Best Interest Findings in some areas, which allows a broader geographic area management opportunity. Specific and detailed management actions will be detailed in successive FLUP(s), written in areas where a BIF has been completed.

2. Timber volume and sustained yield: The Annual Allowable Cut (AAC) is the amount that can be harvested from forest land managed for forestry purposes in a year under sustained yield management. The AAC in the Fairbanks Area is outlined in the publication Timber Inventory of State Forest Lands in the Tanana Valley (Hanson, 2013). This sale complies with sustained yield/allowable cut principles outlined in the Fairbanks Area Five-Year Schedule of Timber Sales for FY 2024-2028. The AAC for the Fairbanks Management Area is approximately 4,606 acres, and this proposed sale area would see approximately 200 acres sold and harvested annually. This action alone and in combination with other timber sales that are sold will be within the allowable cut and comply with sustained yield requirements.

3. Harvest unit design: Harvest units for white spruce were designed along natural timber type changes and followed other natural features. The sale will be harvested by the seed tree silvicultural system. White spruce trees 9 inches DBH and larger will be removed. Snags, residual white spruce and all birch will not be cut. Residual trees will be protected from damage during harvest operations although over mature birch may be used as bumper trees to protect patches of advanced spruce regeneration. Harvesting will be by the whole tree yarding system. Slash disposal at the landings will be by burning or by salvage for fuelwood use.

   a. Reforestation and site preparation: The sale area will be reforested in compliance with the Forest Resources and Practices regulations (11 AAC 95.375-.390) Natural regeneration will be utilized initially for regeneration. Opening the site will cause a large vegetative release especially in the more productive sites closer to the watercourses. Residual and adjacent birch and spruce will provide a seed source. Under this harvesting system natural regeneration of spruce and hardwoods should be increased due to increased light and soil warmth. Further inland where moss depths are thicker, hand planting of white spruce may be required. A regeneration survey will be conducted three years after any harvest. 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 stems per acre of mixed timber species.

b. Access design and construction: Access design, construction, and maintenance will comply with the Forest Resources and Practices regulations (11 AAC 95.285-.355). The planned access to the proposed sale is by constructing a new secondary winter road extending from a section line near the Kobe Ag area but there is also access from an existing winter road north of the Teklanika River. This existing road will not require reconstruction other than snow plowing. An ice bridge will be required to cross the Teklanika River and a Fish Habitat Permit for the river crossing will be required to access the area. All access routes will be maintained to the secondary winter road standards set out in the TVSF Management Plan and in the AFRPA.

c. Appraisal method: DOF will appraise the timber value in compliance with 11 AAC 71.092. Based on transactional evidence and market demand for saw logs/ cabin logs and fuelwood volume, DOF will apply a likely value for those delivered products. The State will be compensated based on that market rate minus the estimated total harvest cost. DOF will factor in local demand, timber type, amount of decay, and economies of scale in its decision to differentiate the cordwood from the sawlog volumes in the FLUP(s). The method of payment will be determined by DOF as either lump sum or possibly multiple payment units.

F. Resources and management

1. Timber

a. Timber stand composition and structure: This is a mixed species river bottom area containing both white spruce and birch and widely scattered balsam poplar. Spruce vigor is good near the perennial channels and sloughs of the Nenana River. The stand volume and vigor decreases with distance from active watercourses and becomes more defective with increased moss depth and permafrost incursion. There is an accumulation of slash from windthrow and broken tops due to wind and snow load nearest to the west bank of the Nenana River. Birch occupies less than 20% of the site and is mostly over mature although within some of the natural openings more vigorous birch of a younger age class is present. Understory vegetation is thick and includes alder, willow, high bush cranberry and rose. There is an estimated 15% defect in the white spruce with most of the defect in the form of broken tops, sweep and butt rot. Based on older nearby timber cruises, the white spruce component of the stand $\geq$ 9" diameter breast height (dbh) is fairly even aged of 120 years and has about 100 trees/acre, an average dbh of 15 inches and an average height of 79 feet. Basal area per acre is 105 square feet/acre. Budworm is light in this stand. Only small amounts of spruce are present that are less than 9 inches in diameter. This stand

component including advanced spruce regeneration averages about 20 trees per acre. DOF is currently re-cruising the area to get more current stand specifics.

b. Stand silvics: The normally merchantable species of trees in the Tanana Valley are white spruce, birch, aspen and balsam poplar. Data and research on regeneration and growth characteristics of 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 opens 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.

c. Topography and Soils: The proposed sale will be designed and managed to prevent significant impairment of the land and water with respect to renewable resources (AS 41.17.060(c) (5)). The site is on a level ground within the flood plains of the Teklanika and Nenana Rivers. The elevation is approximately 350 feet. There are numerous terrace features, potholes, and abandoned slough channels across the area. Soils in the sale area are classified as the Salchaket Series and the Tanana Series. Salchaket soils are productive bottomland alluvial soils consisting of nearly level, stratified silty and sandy material over a substratum of water-deposited gravel and sand. Depth to substratum ranges from less than a foot, to over six feet. They are well drained soils that originated from water-deposited material along the Nenana and Teklanika Rivers. Tanana soils consist of nearly level, somewhat poorly drained soils that form in silty and sandy sediments on flood plains. These soils are perennially frozen at a depth of 30 inches or more, though this depth varies greatly, depending upon the thickness of the organic mat on the surface (i.e. moss layer) and the frequency of flooding. These soils typically occur in various depressions across the floodplain and depending on the amount of permafrost can support commercial tree species. They are prevalent more distant from the active water courses and occur in the northwest portions of the sale area.

2. Agriculture. Though there is an Ag project nearby (Totchacket Road area, Kobe Road area), no known or anticipated future agricultural activity is expected within the proposed harvest areas.

3. Wildlife habitat and harvest. Wildlife typical of the Interior are found here and during ground reconnaissance moose, fox and beaver sign 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. The Yukon Tanana Area Plan identifies the area as important to moose and furbearers. Habitat retention zones will be a part of the harvest unit layouts where ever feasible and at the discretion of the Forester in charge.

   Treatments proposed for this stand are projected to enhance habitat conditions for ruffed grouse, moose, voles, hares, and ultimately, lynx, marten and fox. In the past, Alaska Department of Fish and Game, Division of Habitat have 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. 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 uneven edges, along and between timber types. This will create varied edge effect beneficial to many wildlife species.

4. Fish Habitat, water resources, and water quality. The proposed sale will be designed and managed to protect fish habitat and water quality in compliance with the Forest Resources and Practices Act and regulations (AS 41.17 and 11 AAC 95). Best management practices will be implemented to ensure water quality standards in all water courses. Multiple channels of the Seventeen Mile Slough/Nenana River system are extensively used by Chinook, chum and coho salmon and include some coho spawning areas. Closely related to the salmon presence is the fact that the area provides critical black bear fall feeding habitat, where the bears utilize the spawned out salmon carcasses along the banks and gravel bars. The presence of riparian buffers along the flowing waterbodies should minimize adverse effects to fisheries. Game trails along the watercourses are contained within the riparian buffers and will not be disturbed. While fish populations are always a consideration, there is no reasonable expectation that operations on this level will have deleterious effects on fish habitat in the Nenana River or its tributaries. There is no reasonable expectation that operations on this level will have deleterious effects on fish habitat downstream in the Tanana River or its tributaries.

5. Recreation, tourism, and scenic resources. Recreation use of this particular area has been fairly limited. Primarily it consists of hunting and trapping activity, but on the particular site is limited due to access limitations. A wood cutting trail is present within portions of the sale area and scattered firewood and possibly houselogs have been removed over a period of about 30 years. This removal has taken place in the winter when the Nenana River is able to be crossed. Recreational use of the Nenana River itself occurs in the summer through boat use and occasional river rafting and canoeing float trips. Due to its position off a side channel, this sale will not be visible from the Nenana River. It will also not be visible from the Parks Highway.

Leave trees of smaller white spruce and birch will somewhat obscure the harvest area and help blend the cut border with existing landscape.

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 salvage areas. If additional archaeological sites are identified, proposed salvage 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. The YTAP does not list any historic cultural or archaeological sites in the vicinity of the proposed harvest. The State Office of History and Archaeology (OHA) do not list any sites on its inventory.

   Under the Alaska Historic Preservation Act (AS 41.35), all burials on state land are protected. If burials or human remains are found, all land altering activities that would disturb the burial or remains shall cease and measures taken to protect it in place. OHA and a law enforcement officer will be notified immediately to ensure that proper procedures for dealing with human remains are followed.

7. Subsurface Resources. State status plats show mining claims throughout the area. There are no known developed subsurface resources in the sale area. No adverse impacts are expected to occur to these mining leases. All location or staking monuments found within the sale areas will be protected and preserved.

G. Costs and benefits

In addition to generating royalties to the State's general fund, the proposed sale will create economic benefits to the Denali Borough, City of Nenana, community of Anderson, Residents of Kobe, the Fairbanks North Star Borough and to other communities along the Parks Highway in Alaska. The 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 sale is expected to benefit the local economy by providing jobs. It will have a positive impact on local employment by generating significant 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.

VI. PUBLIC NOTICE

The preliminary best interest finding and decision were publicly noticed in compliance with AS 38.05.945. Notice was posted on the Alaska Online Public Notice System, and both physical and electronic notices were mailed to previous timber sale bidders as well as any property owners or business interests known to the Division in the proposed sale area. Notice was also posted on the Division of Forestry public webpage, https://forestry.alaska.gov/, as well as on the Division of Forestry Facebook Page, https://www.facebook.com/AK.Forestry/.

VII. PUBLIC COMMENT AND RESPONSE

DOF received the following comments from the public and government agencies:

Commenter	Comment	Response
Alaska Dept. of Fish & Game	No issue of concern.	Noted.
Division of Mining, Land, & Water, Alaska Dept. of Natural Resources	Harvests should be conducted to minimize impacts to winter trail users by avoiding plowing trails to dirt and leaving large berms at intersections. Trail access is to be maintained.	Noted.
Office of History and Archeology	Recommend an archeological survey where all-season road construction or ground scarification is planned.	DOF contracts will comply with the Alaska Historic Preservation Act, including prohibitions on the removal or destruction of cultural resources. If, during the course of operations, any physical remains of historic, archaeological, or paleontological nature are discovered, work in that immediate vicinity must cease and the State must be notified.

VIII. DISCUSSION AND FINAL FINDING AND DECISION

After due consideration of all pertinent information and alternatives, the DNR has reached the following decision: To offer for sale approximately 3,000 acres of mature white spruce sawlog as proposed in Alternative One and described in this PBIF. It also meets the silvicultural objective of improving forest vigor, providing for a value-added end product and creating additional jobs in Alaska due to the combination logging and trucking. This alternative complies with the management objectives of the Yukon Tanana Area Plan for Unit P-48. 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 preliminary decision satisfies the objectives stated in this document and it is in the best interest of the State to proceed with this action under its authority of AS 38.05.035(e) (Powers and Duties of the Director) & AS 38.05.110-120; 11 AAC 71 (Timber Sale Statutes and Regulations); and AS 41.17.010-.950 and 11 AAC 95 (Forest Resources and Practices Statutes and Regulations).

IX. SIGNATURE

11/22/24

Kevin Breitenbach
Fairbanks-Delta Forester
Alaska Division of Forestry & Fire Protection

Date

X. APPEALS

An eligible person affected by this decision, and who provided timely written comment or public hearing testimony to the department, may appeal the decision to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska State Courts establish its own rules for timely appealing final administrative orders and decisions of the department. Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907) 269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at $200 under the provisions of 11 AAC 05.160 (a)-(b).]

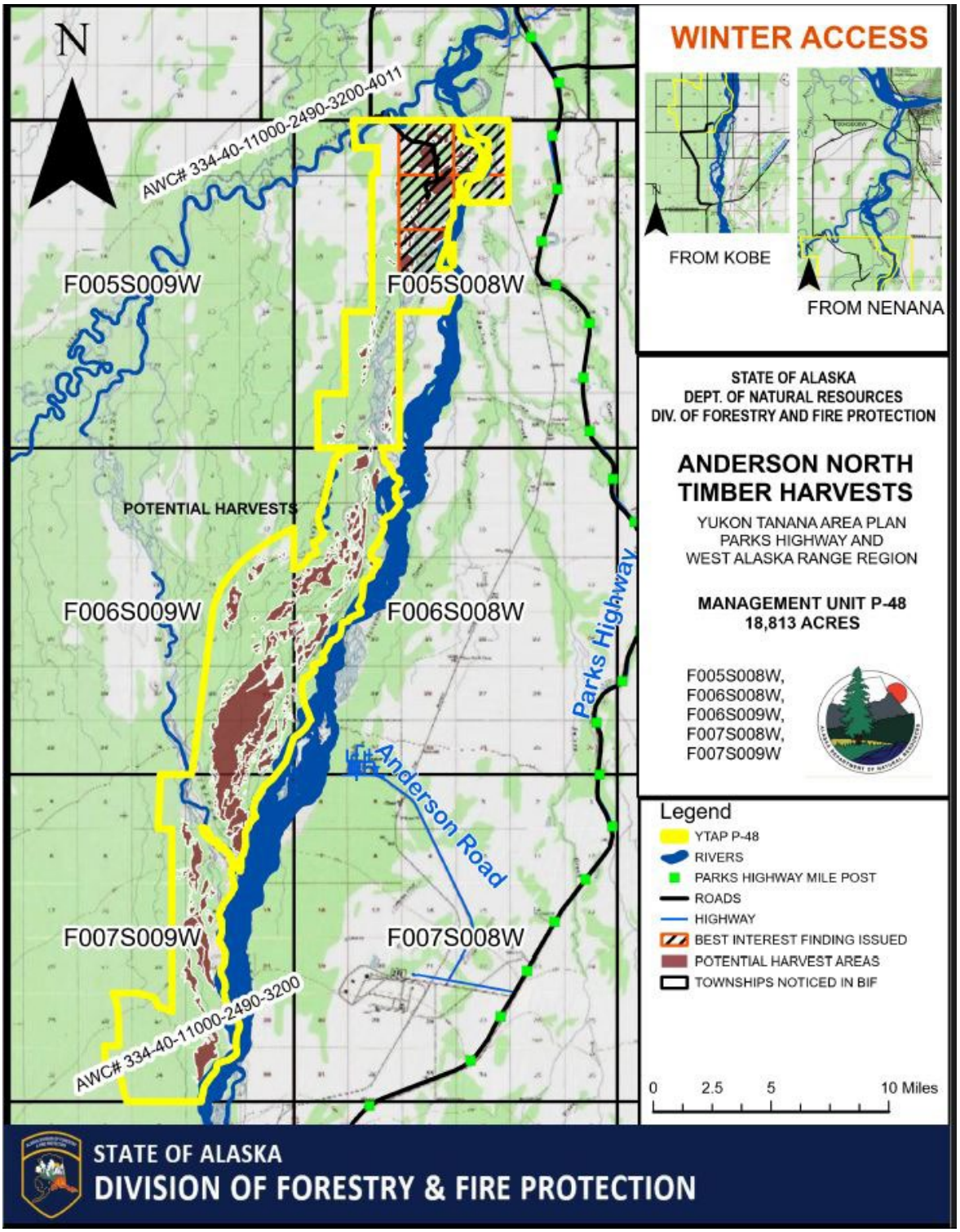
If no appeal is filed by that date, this decision goes into effect as a final order and decision on December 13th, 2024.

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

If you have any questions, please contact Kevin Breitenbach, Fairbanks-Delta Area Forester, kevin.breitenbach@alaska.gov, 907-451-2614, 3700 Airport Way, Fairbanks AK 99709.

XI. APPENDICES

APPENDIX A: MAPS



APPENDIX B. APPEAL AND REQUEST FOR RECONSIDERATION REGULATIONS

Note: "Appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign. "Request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned.

11 AAC 02 Regulations

11 AAC 02.010. Applicability and eligibility.
(a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.
(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.
(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.
(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.
(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.
(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.
(g) A person may not both appeal and request reconsideration of a decision.

11 AAC 02.015. Combined decisions.
(a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) - (m) and this chapter applies to the combined decision.
(b) Repealed 12/27/2012.

11 AAC 02.020. Finality of a decision for purposes of appeal to court.
(a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before

appealing a decision to superior court.
(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.