

State of Alaska  
Department of Natural Resources  
Division of Forestry  
Southeast Area - Haines State Forest



Forest Land Use Plan

BABY BROWN TIMBER SALE

NSE – 1549

**January 2017**

## Table of Contents

I. Introduction .....	4
A. Legal Description .....	5
B. Operational Period: .....	5
C. Timber Disposal .....	5
D. Objectives and Summary.....	5
II. Affected Land Owners/Jurisdictions.....	6
A. State .....	6
B. Other Land Ownership .....	6
III. Harvest Methods, Silvicultural Actions, and Management of Non-timber Resources .....	6
A. Timber Stand Description and History .....	6
B. Timber Harvest Activities .....	7
C. Site Preparation .....	7
D. Reforestation.....	7
E. Slash Abatement.....	7
F. Timber Harvest—Surface Water Protection.....	7
G. Wildlife Habitat.....	8
H. Cultural and Historical Resource Protection.....	8
I. Other Resources Affected by Timber Harvest and Management .....	8
IV. Roads and Crossing Structures.....	8
A. Road Design, Construction, and Maintenance.....	8
B. Side Slopes / Mass Wasting.....	9
C. Crossing Structures.....	9
D. Road Closure .....	10
E. Material Extraction: .....	10
F. Other Resources Affected by Roads or Material Extraction.....	11

V. Approvals .....	12
Appendix A1: Timber Sale Area Map.....	13
Appendix A2: Unit 1 Harvest System Map.....	14
Appendix A2: Unit 2 Harvest System Map.....	15
Appendix B Supporting Information:.....	16
B1 Silvicultural/ Timber Stand Information.....	16
B2 DOF Standards .....	18
B3 Required Permits .....	18
Appendix C: Appeal Statutes and Regulations.....	19
Appendix D: Public and Agency Comments and Responses .....	25

## **I. Introduction**

Project File Number: NSE - 1549

Division of Forestry Office: Haines

Haines Forester: Gregory J Palmieri

Forest Practices Geographic Region (AS 41.17.950): One

This Forest Land Use Plan (FLUP) covers forest operations for the first operational period of the Baby Brown Timber Sale. The Baby Brown Timber Sale will harvest approximately 20 MMBF of Sitka Spruce and Western Hemlock timber in ten harvest units from 855 acres within the timber sale area. This FLUP describes the two harvest units that will be available for harvest following successful contract award in the 2017 operational season. These two harvest units are located on 137 acres adjacent to Glacier Creek approximately 37 miles northwest of Haines. Additional FLUP documents will be developed for the remaining proposed harvest units in this timber sale and they will be distributed for agency and public review. This FLUP, and all subsequent FLUPs for this sale, are intended to provide the best available information regarding the proposed harvest of timber, and management of other non-timber resources in compliance with AS 38.05.112 and AS 41.17.060, and must be adopted by the Department of Natural Resources (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 38.05.945; FBIF, Baby Brown Timber Sale/NSE – 1549, March 15, 2015. 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 15, 2015 Best Interest Finding (BIF) and are not appealable under this FLUP. The Final Best Interest Finding and Decision for the Baby Brown Timber Sale may be found at:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=176038>.

The BIF was administratively appealed to the Commissioner of Natural Resources on April 6, 2015. The decision was reviewed by the Commissioner and affirmed on October 6, 2015.

This Forest Land Use Plan was made available for public comments; the review period ended on January 5, 2017. After public and agency review of the draft FLUP, the Division of Forestry (DOF) reviewed comments, made changes as appropriate, and has issued this final FLUP. This Forest Land Use Plan has been adopted by the Department of Natural Resources. Site specific compliance with the Alaska Forest Resources and Practices Act and the Regulations, as well as the Final Finding for this proposed project are reflected in this Forest Land Use Plan and will be implemented in the Timber Sale Contract.

A person affected by the final decision who provided timely written comment or public hearing testimony on the draft FLUP may appeal it, in accordance with 11 AAC 02. Any appeal request must be received by February 27, 2017 and may be mailed or delivered to Andrew Mack, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to: <mailto:dnr.appeals@alaska.gov>. If appeal is not requested by that date, this decision goes into effect as a final order and decision on March 9, 2017. Failure of the commissioner to act on a

request for appeal within 30 days after issuance of this decision is a denial of appeal and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request appeal of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 is in Appendix C.

This timber sale is designed to be consistent with the management intent of the following documents:

Haines State Forest Management Plan (Rev. 2002)

Chilkat Bald Eagle Preserve Management Plan (Rev. 2002)

Northern Southeast Area Plan (2002)

The administrative record for this sale is maintained at the Division of Forestry Southeast Area, Haines State Forest Office filed as NSE - 1549.

***A. Legal Description*** (see also map in Appendix A): This FLUP addresses the first two units of the Baby Brown Timber Sale offered in the first operational period for the sale of timber on approximately 137 acres located within a portion of Sections 25 and 36, T28S R53E and Section 30, T28S R54E, C.R.M.

***B. Operational Period:*** May 1, 2017 – December 1, 2017

### ***C. Timber Disposal***

Timber sold will have a contract administered by the State.

### ***D. Objectives and Summary***

1. To follow the Department of Natural Resources (DNR) constitutional mandate to encourage the development of the State's renewable resources, making them available for maximum use consistent with the public interest. Sustain and promote a healthy, long-term timber industry in the state, through providing a secure source of timber for harvest while protecting other resources such as fish and wildlife.
2. To help the State's economy by providing royalties to the state in the form of stumpage receipts, as well as contributions to local economies through wages, purchases, jobs and business.
3. To improve forest growth and vigor by harvesting and replacing mature or over mature forest stands with regenerating stands, while protecting and maintaining other resource values. The actions authorized under this decision will follow the constitutional mandate of sustained yield and shall adhere to multiple use management as described in the Haines State Forest Management Plan (HSFMP).

## **II. Affected Land Owners/Jurisdictions**

	Activity on ownership:	Access	Harvest	Written Representative Approval
<b>A. State</b>				
<input checked="" type="checkbox"/> Haines 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 checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> University of Alaska		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Mental Health Trust		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> School Trust		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B. Other Land Ownership</b>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Land Owner: \_\_\_\_\_

Land Owner Representative: \_\_\_\_\_

## **III. Harvest Methods, Silvicultural Actions, and Management of Non-timber Resources**

**Forest operations will be designed to:**

- Protect fish habitat and water quality in compliance with the best management practices in 11 AAC 95.260-.370,
- Manage for the other land uses and activities identified in AS 41.17.060 and the Best Interest Finding for this timber sale, and
- Result in the sustained yield of timber and maintenance of site productivity in compliance with AS 41.17.060(c) and 11 AAC 95 .375-.390.

Harvest and Silvicultural Methods:

The harvest and silvicultural methods are attached to this document in Appendix B.

### ***A. Timber Stand Description and History***

The timber is predominately composed of mature and over mature Hemlock/Spruce stands on high productive sites within the Haines State Forest. The acres in this sale area have been identified as available for timber harvest as a primary use in the Haines State Forest Management Plan. Historically, some stands between Glacier and Porcupine Creeks in the sale area have been harvested in the early 1900's as a result of development to support mining activity in that area.

The two harvest units addressed in this FLUP include timber ranging from 100 to 250 years old (HSF Inventories, 1965/1985/2012).

## ***B. Timber Harvest Activities***

Timber Harvest Activities are displayed in Table 1.

**Table 1. Timber Harvest Activities**

<b>Unit ID</b>	<b>Acres</b>	<b>Topography</b>	<b>Silvicultural Action</b>	<b>Logging Method</b>
01	52	Broken Hillside/Flat Areas	Partial Cut	Ground-based/Cable
02	85	Broken Hillside	Partial Cut	Ground-based/Cable

## ***C. Site Preparation***

Site preparation will not be necessary in areas with sufficient residual stocking and areas with sufficient soil disturbance by logging during the summer. If logging activity continues into winter months when more than 12 inches of snow coverage occurs across a harvest unit, subsequent seasonal scarification is required according to the timber sale contract.

## ***D. Reforestation***

Reforestation requirements for these harvest units will be met through natural regeneration of Sitka Spruce and Western Hemlock. Based on prior harvest experience in the adjacent area, reforestation is projected to naturally occur under the prescription proposed.

## ***E. Slash Abatement***

Potential for insect infestations caused by slash accumulations exists as these harvest debris piles will provide available hosting material for Spruce bark beetles (*Dendroctonus rufipennis*) identified as damaging to live trees when present in high numbers. Slash abatement for controlling infestations will be implemented as required by 11AAC 95.370.

Lop and scatter slash; accumulations will be kept to less than 3 feet in height.

## ***F. Timber Harvest—Surface Water Protection***

There are no known anadromous classified streams in the harvest units or within 300 feet of the harvest units addressed in this FLUP.

Surface waters were reviewed by the Department of Fish and Game:

- [X] During the timber sale planning process
- [X] During the agency review conducted for the Best Interest Finding for this sale
- [X] 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 were reviewed by the Department of Environmental Conservation:

- [X] During the timber sale planning process
- [X] During the agency review conducted for the Best Interest Finding for this sale
- [X] During the drafting of this Forest Land Use Plan

Non-classified surface waters are subject to applicable BMPs in 11 AAC 95.

### ***G. Wildlife Habitat***

[ ] Wildlife species and allowances for their important habitats were addressed in writing by the Department of Fish & Game during the Best Interest Finding review.

[X] 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:

[X] Timber retention - concentrations of timber surrounding harvest units, or interspersed within harvest units will provide cover.

[X] 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***

No artifacts have been reported within the Harvest Units or road locations in the project area(s).

### ***I. Other Resources Affected by Timber Harvest and Management***

During the Public Review Process of the Baby Brown timber sale BIF the DOF received comments referring to the possible view of harvest areas from the Haines Highway.

**Table 2. Other Affected Resources/ Areas of Concern.**

Impacted Resource	Reviewing Agency	Impact/ Mitigation Actions
Scenic	DOF	Retention of standing trees in units and distribution of remaining timber around designated units.
	.	

## **IV. Roads and Crossing Structures**

### ***A. Road Design, Construction, and Maintenance***

Roads will be designed, constructed, and maintained to prevent significant adverse impacts on water quality and fish habitat (AS 41.17.060(b) (5)), and site productivity (AS 41.17.060(c) (5)). Roads will comply with the best management practices in the Forest Resources and Practices Regulations (11 AAC 95.285 – 95.335)

Road construction will follow guidelines described in the contract and HSFMP. Region One forest road construction standards will be used (See Appendix B2).



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 3.

**Table 3. Road Construction and Use**

Road ID	Harvest Unit	Road Miles	Road Type	Maximum Grade	Constructed by	Maintained by
Spur 1	Unit 1	0.37	Secondary	10%	Purchaser	Purchaser
Spur 1	Unit 2	0.32	Primary	15%	Purchaser	Purchaser
Spur 2	Unit 2	0.2	Secondary	10%	Purchaser	Purchaser

*\*Note: Roads must be less than 20% grade per 8 AAC 61.1060 Additional Logging Standards*

### ***B. Side Slopes / Mass Wasting***

For slopes over 50%, identify indicators of unstable areas (landslide scars, jack-strawed trees, gullied or dissected slopes, high density of streams or zero-order basins, or evidence of soil creep). Attach location specific road design that potentially mitigates identified areas of unstable soils.

Maximum percent side slopes: 50%

☐ There are no slopes >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.

☐ Full benching will be constructed to help ensure slope stability

☐ Full benching is not required for roads in this project

☐ End hauling will be implemented to help ensure slope stability

☐ End hauling is not necessary for roads in this project.

Are you removing or replacing drainage structures? ☐ YES ☒ NO

General Erosion Control:

☐ grass seeding ☐ erosion control mats ☐ wattle ☒ Other: Water bars

☐ not applicable

### ***C. Crossing Structures***

☐ No crossing structures are needed within the project area.

☒ Crossing structures will be placed along access roads as described in the table below:

**Table 4. Required Drainage and Crossing Structures on Known Surface Waters**

Road	Mile / Station	Diameter/ Length Culvert	Bridge Type: -Log Stringer -Fabricated -Ice	AS 41.17.950 Stream Classification	Fish & Game AWC Number	Duration of crossing structure in place
U – 1 Spur	17+34	18”x30’				Unit Access
U – 2 Main Line	6+44	18”x40’				Permanent
U – 2 Main Line	13+80	18”x40’				Permanent

**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 5. Road Closures**

Road ID	Unit	All Season/Winter	Estimated Closure Date	Projected Road Use after Timber Harvest
Spur 1	One	All season	December 2021	Silviculture
Spur 2	Two	All season	December 2021	Silviculture

**E. Material Extraction:**

[ ] There will be no material extraction sites in the project area.

[X] Material extraction for road construction and associated overburden disposal will be located outside of riparian areas and muskegs. Material extraction and disposal will be located by the purchaser operating plan, in a manner that prevents runoff from entering surface waters. Material extraction will be approved by DOF prior to use. Material sites will be incidental and adjacent to the road construction. Pit sites are projected to be less than one acre and will be stabilized upon completion of road building operations.

[ ] Other:

***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.

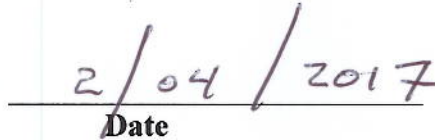
**Table 6. Other Affected Resources**

Impacted Resource	Reviewing Agency	Impact/ Mitigation Actions
Scenic	DOF	Harvest Unit Size and Distribution

## **V. Approvals**

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

  
Area Forester

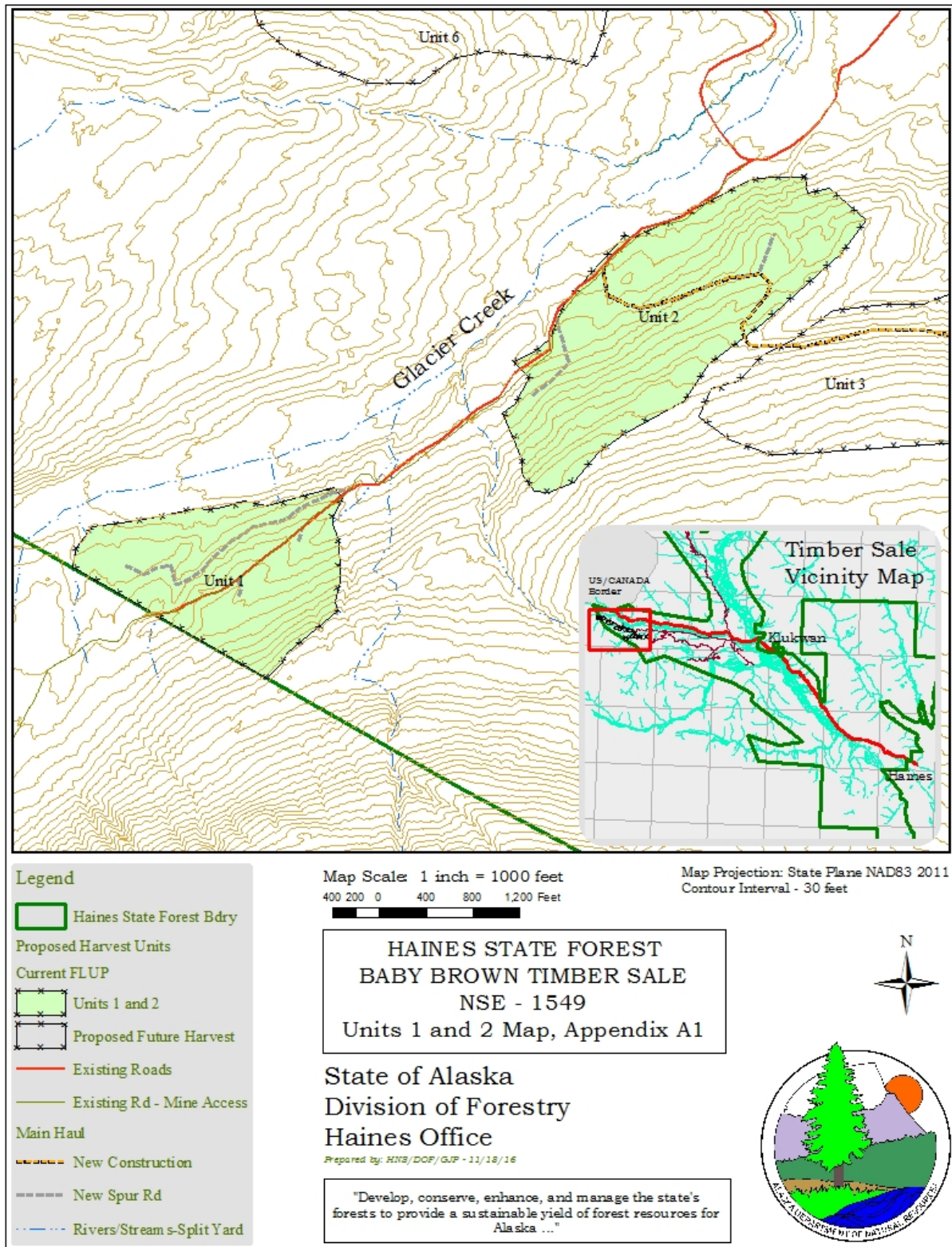
  
Date

A person affected by the final decision who provided timely written comment on the draft FLUP may request appeal, in accordance with 11 AAC 02. Any appeal request must be received by **February 27, 2017** and may be mailed or delivered to Andrew Mack, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to <mailto:dnr.appeals@alaska.gov> . If appeal is not requested by that date, this decision goes into effect as a final order and decision on **March 9, 2017**. Failure of the commissioner to act on a request for appeal within 30 days after issuance of this decision is a denial of appeal and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request appeal of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 is in Appendix C

If you have any questions, please contact Greg Palmieri, Haines Resource Forester at (907) 766-2120 or e-mail: [greg.palmieri@alaska.gov](mailto:greg.palmieri@alaska.gov).

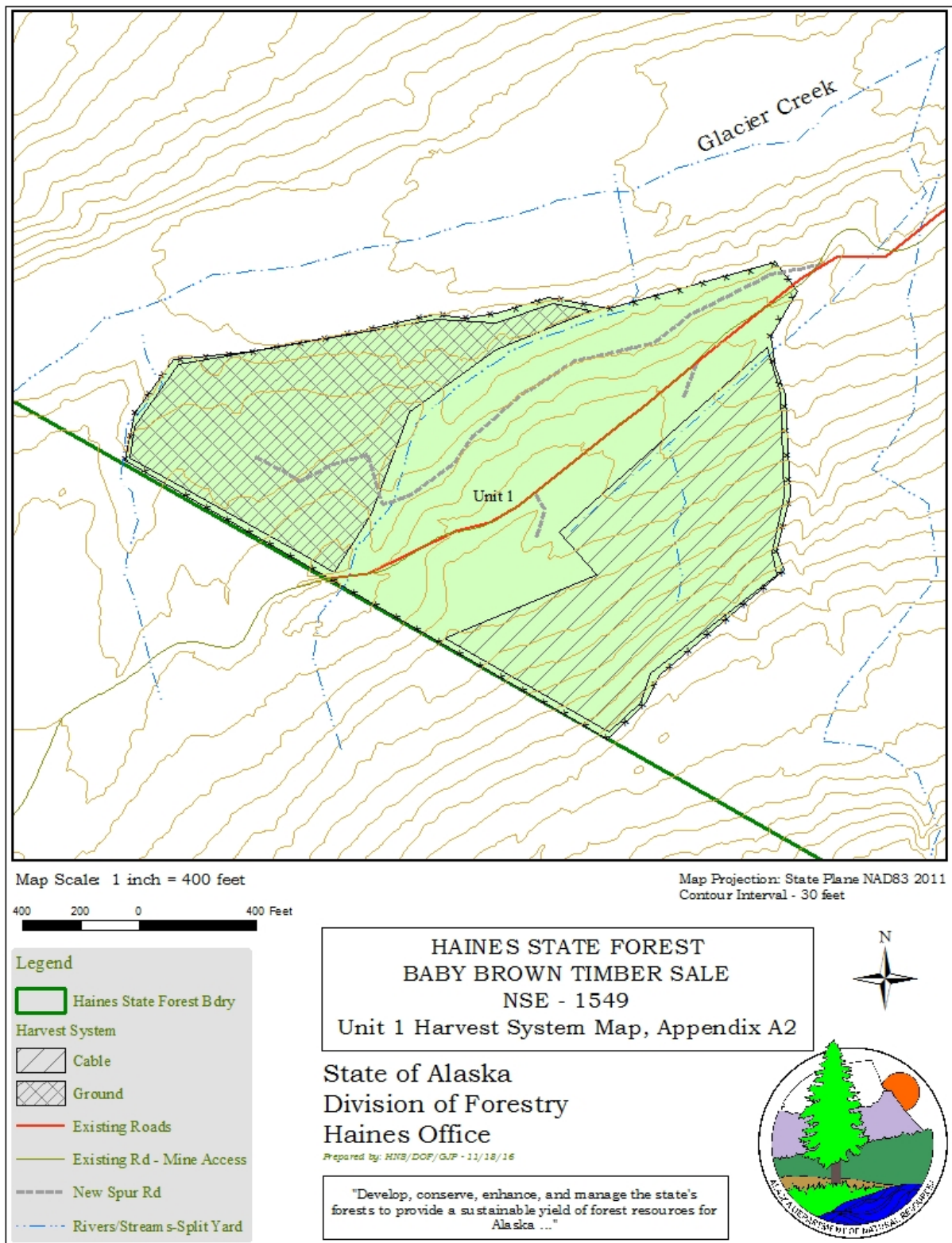
## Appendix A1: Timber Sale Area Map

Legal Description: Sections 25 and 36 T28S R53E, Section 30 T28S R554E

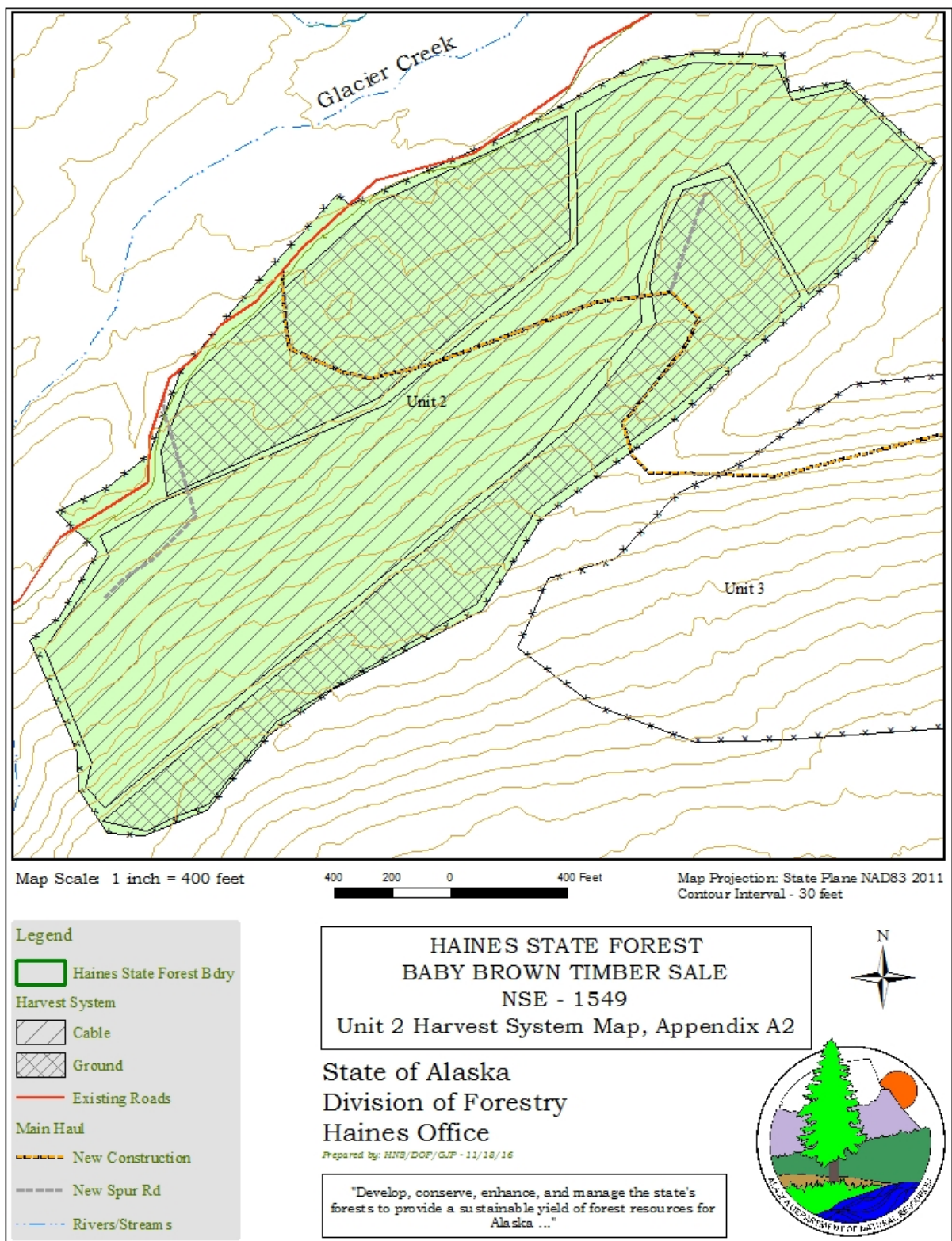




**Appendix A2: Unit 1 Harvest System Map**



**Appendix A2: Unit 2 Harvest System Map**



## **Appendix B Supporting Information:**

### **B1 Silvicultural/ Timber Stand Information**

#### **HARVEST AND SILVICULTURE METHODS**

The silvicultural design for this sale will be a partial cut method retaining standing timber in groups and selectively dispersed across areas within or adjacent to clear cut areas. This approach is intended to produce smaller clear cut openings and structural diversity within the harvest unit. The design application of this method will be applied within each harvest unit under the administration of the State.

#### **Harvest Design Goals**

1. Standing Timber in small groups and timber selectively dispersed within areas of a unit.
  - a. Provide visual structural diversity of larger clear cut areas.
  - b. Provide habitat diversity within units by retention of large over mature trees exhibiting clear signs of significant decay.
  - c. Improve economic viability of the timber sale.
  - d. Provide soil retention and stability by reducing the change in hydrological flow through the harvest area immediately following harvest.
2. Standing Timber selectively dispersed within areas of a unit.
  - a. Provide visual structural diversity of larger clear cut areas.
  - b. Provide soil stability by reducing initial water flow impacts resulting from timber removal.
3. Clear Cut areas within unit.
  - a. Provide openings within units rather than clearing the entire unit to reduce visual impacts of timber harvest.
  - b. Provide beneficial even age management characteristics on the harvest unit such as:
    1. solar penetration to the forest floor enhancing natural regeneration and
    2. soil disturbance that increases the volume of seedling, orb and browse species development.

#### **Harvest Design Objectives**

1. Standing Timber in groups.
  - a. Minimize the visual impact of harvest areas to the highway.
  - b. Mitigates habitat removal in areas suitable for small mammals and birds (presence of decay trees provide cavity potential) and protection from heavy snow accumulation for larger mammals within harvest areas.
  - c. Reduce soil instability immediately following harvest activities.
  - d. Reduce initial excess water flow impacts resulting from timber removal.
2. Standing Timber selectively dispersed within areas of a unit.



- a. Address visual impacts.
  - b. Reduce potential soil instability immediately following harvest activities.
  - c. Reduce initial excess water flow impacts resulting from timber removal.
- 3. Clear Cut areas within unit.
  - a. Addresses visual impact of harvest activities by reducing the size of clear cut areas from the entire unit to portions of the unit.
  - b. Enhance the quality and quantity of natural regeneration for the next forest rotation.
  - c. Increase the square foot leaf mass of small forbs and brush components across the area during the stand initiation phase of development following harvest.

**Appendix B Supporting Information (cont):**

**B2 DOF Standards**

**Alaska Forest Practices and Regulations.**

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

**Forest Road and Bridge Standards.**

[http://forestry.alaska.gov/Assets/uploads/DNRPublic/forestry/pdfs/resources/forest\\_road\\_standard\\_design\\_20151231.pdf](http://forestry.alaska.gov/Assets/uploads/DNRPublic/forestry/pdfs/resources/forest_road_standard_design_20151231.pdf)

[http://forestry.alaska.gov/Assets/uploads/DNRPublic/forestry/pdfs/resources/forest\\_bridge\\_standard\\_design\\_20150128.pdf](http://forestry.alaska.gov/Assets/uploads/DNRPublic/forestry/pdfs/resources/forest_bridge_standard_design_20150128.pdf)

**B3 Required Permits**

**Note: None required.**

## **Appendix C: Appeal Statutes and Regulations**

### Title 11.02 Appeals

## TITLE 11. NATURAL RESOURCES.

### CHAPTER 02. APPEALS.

#### **Section**

10. Applicability and eligibility

15. Combined decisions

20. Finality of a decision for purposes of appeal to court

30. Filing an appeal or request for reconsideration

40. Timely filing; issuance of decision

#### **Section**

50. Hearings

60. Stays; exceptions

70. Waiver of procedural violations

80. (Repealed)

900. Definitions

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

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

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

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

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

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

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

Authority:	AS 03.05.010	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 44.37.011
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.15.020

AS 29.65.120      AS 38.05.035      AS 38.50.160      AS 41.21.020      AS 46.17.030

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

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

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

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

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

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

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

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

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

(1) be in writing;

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

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

- (4) be correctly addressed;
- (5) be timely filed in accordance with 11 AAC 02.040;
- (6) specify the case reference number used by the department, if any;
- (7) specify the decision being appealed or for which reconsideration is being requested;
- (8) specify the basis upon which the decision is challenged;
- (9) specify any material facts disputed by the appellant;
- (10) specify the remedy requested by the appellant;

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

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a). (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

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

**11 AAC 02.050. HEARINGS.** (a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030(a)(13), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

(1) formal rules of evidence need not apply; and

(2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript. (Eff. 11/7/90, Register 116)

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

**11 AAC 02.060. STAYS; EXCEPTIONS.** (a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001.

(c) Unless otherwise provided, in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

(1) issue a permit, that is revocable at will;

(2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or

(3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

## Forest Land Use Plan for Baby Brown/NSE - 1549

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

**11 AAC 02.070. WAIVER OF PROCEDURAL VIOLATIONS.** The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 29.65.120	AS 38.05.035	AS 38.50.160	AS 41.21.020
	AS 03.10.020	AS 38.04.900	AS 38.08.110	AS 41.15.020	AS 46.15.020
	AS 29.65.050	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 46.17.030

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

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

**11 AAC 02.900. DEFINITIONS.** In this chapter,

(1) "appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign;

(2) "appellant" means a person who files an appeal or a request for reconsideration.

(3) "commissioner" means the commissioner of natural resources;

(4) "decision" means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;

(5) "department" means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;

(6) "request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority:	AS 03.05.010	AS 38.05.020	AS 38.09.110	AS 41.17.055	AS 44.62.540
	AS 29.65.050	AS 38.05.035	AS 38.50.160	AS 41.21.020	AS 46.15.020
	AS 29.65.120	AS 38.08.110	AS 41.15.020	AS 44.37.011	AS 46.17.030
	AS 38.04.900				

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



**Appendix D: Public and Agency Comments and Responses**

Organization	Author	Location
Department of Environmental Conservation	Kevin Hanley	Juneau
Department of Fish and Game, Division of Habitat (ADF&G-Habitat)	Greg Albrecht	Juneau
Department of Natural Resources, OHA	Judith Bittner	Anchorage
Public	Tresham Gregg	Haines
Haines Borough, Assembly Member	Ron Jackson	Haines
NGO, Lynn Canal Conservation	Eric Holle, President	Haines
Public	Cody Salter	Haines
Public	Carolyn Weishahn	Haines
Public	Steve Virgin	Haines
Public	Tom Ely	Haines

Commenter	Comment	Response
<p>Kevin Hanley Department of Environmental Conservation</p>	<p>“According to the legend on the Unit Harvest System Map (Appendix A1), the water quality streams within Unit 1 are proposed to be split-yarded. However, split-line yarding does not appear to be feasible along the northeasterly flowing stream located in the eastern portion of the unit. Since cross-stream yarding will occur on this stream, it is essential that suspension be maximized as much as possible to minimize the potential for impacts to the stream banks during each turn of incoming logs.</p> <p>We have no significant concerns or recommendations to offer regarding Unit 2 as, apparently, no streams or other surface waters occur within or immediately adjacent to it.”</p>	<p>Comments Noted. The DOF updated the FLUP to reflect the yarding conditions. Full suspension will be achieved or logs will be used to protect bank integrity.</p>
<p>Greg Albrecht ADF&amp;G</p>	<p>“Please report goat sightings to ADF&amp;G and consider provisions for reducing or restricting disturbance should they be sighted.”</p> <p>“Disturbance during denning can reduce bear survival, so we recommend maintaining a 1 km buffer around any observed brown bear dens during November through April for human and bear safety.”</p>	<p>Comments noted, no change required.</p>

Commenter	Comment	Response
Greg Albrecht ADF&G	“ADF&G Habitat has surveyed this area and determined no anadromous fish streams are present in Units 1 and 2.”	Comments noted, no change required.

Commenter	Comment	Response
<p>Judith Bittner Department of Natural Resources, Office of History and Archaeology</p>	<p>“Review of the Alaska Heritage Resources Survey (AHRS) database indicated that there are no reported cultural resource sites within the identified timber sale area. However, please note that only a very small portion of the state has been surveyed for cultural resources and therefore the possibility remains that previously unidentified resources may be located within the project areas. Should inadvertent discoveries of previously unidentified cultural resources occur during the duration of the project, work in the area of the discovery should cease, and our office should be notified so that we may evaluate whether the resources should be preserved in the public interest (as specified at Section 41.35.070[d]). Any information provided helps the State better manage Alaska's heritage resources.”</p>	<p>No change required.</p>

Commenter	Comment	Response
Tresham Gregg	“If it costs the state more than it takes in revenue to do the sale, how can we afford, as a state with huge budget deficit, to spend our resources so badly?”	This sale is not a deficit sale. No change required.
Tresham Gregg	<p>“Why is land that is an integral part of the Haines Borough and community, both as a current view shed for our tourism industry, and as a future raw materials resource being taken away from us without our assembly weighing in on the action?”</p> <p>“Why not wait till it is a proven benefit to everyone concerned, not just a logging and shipping company?”</p>	<p>The public review processes for the harvest of this timber included the Haines State Forest Management Plan, Rev.2002, successive Five Year Schedules, and a Finding of Best Interest. Each one of these documents provided for public and agency comment. The appropriateness and conditions of sale were determined in the Best Interest Finding issued on March 15, 2015. The Haines Borough manager has commented on the 2002 revision of the Haines State Forest Management Plan, some of the Five Year Schedules over the last 16 years, and the BIF for this sale.</p>
<p>Ron Jackson</p> <p>Haines Borough, Assembly Member</p>	“I wonder if we can get together with Brad and [DOF] and talk about the sale-specific issues that might exist. Haul route is one, Klehini Bridge limits, critical vehicle weights planned (portions of these units are cable yarding). It just would be good to get a clear picture of how the logging transport might affect borough roads and therefore costs.”	One possible haul route for this sale could be on Borough managed roads. The DOF has agreed to meet with borough management to discuss considerations regarding a <i>Road Use Agreement</i> . The standard State timber sale contract requires a purchaser to enter into road use agreements as required by the land or road owner to equitably pay for road maintenance associated with the timber sale use of a road.
Cody Salter, Public	“No exporting of unprocessed timber, logs or kants”	The sale method was determined in the Best Interest Finding and is not part of the decision process of the FLUP. The sale method was assessed to bring the

Commenter	Comment	Response
	<p>“State and Federal Government bring back sawmills to put Alaskans/Americans to work”</p>	<p>greatest opportunity to the State based on available markets.</p> <p>DNR supports local processing, and most state timber sales are purchased by local operators. DOF will continue to make other timber available for local use. This timber sale will provide access to other timber resources of the Haines State Forest that will benefit the local timber sale program.</p>
<p>Steve Virgin, Public</p>	<p>“You have ALWAYS done an extremely conscientious job so keep at it.”</p>	<p>No change required.</p>

Commenter	Comment	Response
<p>Tom Ely, Tour Business owner (local)</p>	<p>“Selective cutting as described in the plan should minimize the impact of visible clear cuts from the Haines Highway.”</p> <p>“the potential impact from timber harvesting to wildlife in the area and erosion and run off into Glacier Creek needs to be addressed. There should be a 300’ buffer along the creek of retained forest. Corridors of trees crossing the unit to provide for wildlife passage are necessary. Roads that will not be maintained need to be closed after harvest.”</p>	<p>Partial cutting is identified as a goal of the harvest methods in the FLUP.</p> <p>According to the Haines State Forest Management Plan a “300’ Special Management Zone” adjacent to anadromous fish streams is applied throughout the Forest specifically for the protection of wild fish resources. Harvest from 100’ to 300’ in this zone requires approval from ADF&amp;G. Wildlife corridors have not been identified as a habitat requirement however, harvest planning and methods can provide forest tree cover dispersed across units. Also, unit design provides for the retention of existing forest between units which will provide travel corridors while the harvest areas are regenerating. Roads that are not part of the main forest access system associated with this timber harvest are designated for closure upon completion of timber harvest activities.</p>
<p>Eric Holle, President of Lynn Canal Conservation</p> <p>Carolyn Weishahn, Public</p>	<p>“The Division of Forestry improperly put the sale out for bid prior to completing the administrative review process.”</p> <p>“The Draft FLUP is an incomplete document and improperly phases the administrative review.”</p>	<p>**See Response Below.</p>

\*\* The DOF complied with the public notice requirement in Article VIII, Section 10 of the Alaska Constitution and the notification, public comment, and substantive requirements of AS 38.05.035(e) in the course of preparing the Best Interest Finding for this sale. The BIF notifies the public of the proposed disposal of an interest in state timber resources and documents DOF's determination to proceed with the sale. The scope of the review and key issues and resources were identified and examined in this document. The BIF documents DOF's compliance with the constitutional and statutory requirements for disposing of an interest in state land or resources, such as timber. The BIF for this sale was adopted on March 15, 2015 and affirmed on appeal by the Commissioner of Natural Resources on October 6, 2015.

AS 38.05.112 requires that the State adopt a Forest Land Use Plan (FLUP) prior to authorizing the harvest of timber. "Harvest" describes the actual removal of the timber from State land, and does not occur until DOF has adopted a FLUP and the operator has met applicable requirements under the contract and the Forest Resource Practices Act (FRPA). The FLUP addresses site specific issues as information is developed within the overall authorization of the BIF. In the context of the Alaska Land Act and the FRPA the FLUP is the mechanism by which state agencies identify and address impacts on other resources and receive public input on these issues. Multiple FLUPs are being developed for this sale. Each draft FLUP is subject to public comment, and subsequent FLUPs are prepared in the context of the harvest activities authorized by prior FLUPs. Thus, this phased approach to authorizing timber harvest complies with the Alaska Supreme Court's admonishment in *Sullivan v. REDOIL*, 311 P.3d 626 (Alaska 2013) that any cumulative impacts be considered as harvest progresses.

The overall planning effort for this sale has already provided three opportunities for public involvement: 1) adoption of the Haines State Forest Plan; 2) adoption of the Five Year Schedule of Timber Sales; and 3) the Best Interest Finding for the Baby Brown sale. The public also has the opportunity to comment on each draft FLUP.

The DOF moved to offer and sell the timber prior to adoption of a FLUP to manage field work costs relative to revenue, to capture an observed market opportunity, and to facilitate harvest activity within this year's operating season. The BIF documented the adequacy of knowledge of the resources at risk to use this approach. Although a timber purchaser may have the contractual right to purchase State timber within an area, they are not allowed to harvest specific timber until preoperational contract conditions and FRPA requirements have been met. In this instance the adoption of a Forest Land Use Plan is but one of many conditions of the timber sale contract that must be met prior to the start of timber harvesting.