

**STATE OF ALASKA**  
**DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION OF FORESTRY**



**SOUTHEAST AREA**

**BEST INTEREST FINDING AND  
DECISION FOR  
WHALE PASS TIMBER SALE  
SSE-1378-K**

**May 2022**

## Abbreviations

ADEC	Alaska Department of Environmental Conservation
ADF&G	Alaska Department of Fish and Game
ADNR	Alaska Department of Natural Resources
BIF	Best interest finding
DMLW	Division of Mining, Land and Water
DOF	Division of Forestry
FLUP	Forest Land Use Plan
FRPA	Alaska Forest Resources and Practices Act
FYSTS	Five-year Schedule of Timber Sales
MBF	Thousand board feet
POG	Productive old growth
POW	Prince of Wales
POWIAP	Prince of Wales Island Area Plan
ROW	Right-of-way
SESF	Southeast State Forest
SESFMP	Southeast State Forest Management Plan
SHPO	State Historic Preservation Office
UA	University of Alaska
USFS	United States Forest Service

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## **I. PROPOSED ACTION**

The Division of Forestry (DOF) is proposing to offer for sale approximately 290 acres of mature old growth timber composed of western hemlock, Sitka spruce, western red cedar and Alaska yellow cedar from state lands on Prince of Wales (POW) Island, adjacent to the City of Whale Pass (see Appendix 1A, Timber Sale Area Map). The volume to be offered totals approximately 7,100 thousand board feet (MBF). The DOF proposes to sell the commercial timber in one or more negotiated sales under provisions of AS 38.05.115 or AS 38.05.118. The sale will be noticed as required by sale type authority and AS 38.05.945 prior to being sold. The land covered by this PBIF appeared in the 2011-2015; the 2015-2019; the 2018-2022; and the 2021-2025 Five-Year Schedules of Timber Sales (FYSTS).

The management objectives for the proposed timber sales are:

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

## **II. STATUTORY AND REGULATORY AUTHORITY**

The Division is taking this action under the authority of

- AS 38.05.035(e) Best Interest Finding;
- AS 38.05.110-120 and 11 AAC 71, Timber Sale Statutes and Regulations; and
- AS 41.17.010-950 and 11 AAC 95, Forest Resources and Practices Statutes and Regulations.

## **III. ADMINISTRATIVE RECORD**

The Division will maintain an administrative record regarding the decision of whether or not to proceed with the action as proposed. This record will be maintained at the DOF's Southern Southeast Area Office filed as SSE-1378-K.

## **IV. SCOPE OF DECISION**

This best interest finding (BIF) completes step three of a six-part process to design, sell, and administer timber sales. This BIF covers the sale of approximately 290 acres of mature old growth forest composed of western hemlock, Sitka spruce, western red cedar and Alaska yellow cedar on state land within the perimeter of the project area (see Appendix A1, Timber Sale Area Map). The following list summarizes the overall process:

Part 1: Regional Planning. The Department of Natural Resources 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 timber sales. Subsequent land use decisions must be consistent with provisions contained within the applicable area and/or forest plans. The project area in this BIF is covered by both the East and West Whale Pass Units of the Southeast State Forest Management Plan (SESFMP) and the Whale Pass Subunit 5 of the Prince of Wales Island Area Plan (POWIAP).

Part 2: Five-year Schedule of Timber Sales (AS 38.05.113). The Southern Southeast Area Office prepares a Five-Year Schedule of Timber Sales (FYSTS) every other year. The FYSTS identifies proposed sales, including their location, estimated timber volume, and main access routes. The FYSTS is a scoping document that provides an opportunity for public, agency, and industry to identify potential issues and areas of interest for further consideration in the BIF and Forest Land Use Plan. Under AS 38.05.113, proposed timber sales within the area covered by this BIF must appear in at least one of the two FYSTS preceding the sale. The proposed timber sale area was included in the 2011-2015; the 2015-2019; the 2018-2022; and the 2021-2025 FYSTS.

As the result of the 2021-25 FYSTS the DOF participated in a public information meeting via Zoom on August 27, 2020 hosted by the City of Whale Pass. Comment from that meeting aided the DOF in developing this plan. A summary of topics discussed during that meeting is shown below:

1. Adequacy of the infrastructure in the community (road and bridges).
2. Traffic and pedestrian safety.
3. Air quality with a focus on road dust.
4. Harvest operation noise.
5. Personal safety risk from displaced rocks and trees.
6. Risks from fuel and oil spills.
7. The desire to retain timber next to the subdivision.
8. Tree disturbance on private land associated with wind turbulence from the creation of adjacent timber harvest openings.
9. Categorical preservation of “old growth forest”.
10. Residential property values and tourism income are based on the community setting.
11. Wildlife habitat is desirable.
13. The deer habitat on POW island should not be decreased.
14. Soil stability is important relative to public safety and other resources values.
15. Preserve anadromous fish streams and maintain water quality for fisheries and private drinking water sources.
16. Recognize and protect karst features.
18. Long term costs to the community should be considered and the timber should economically benefit the community of Whale Pass.

Part 3: Best Interest Finding (AS 38.05.035(e)). DOF must adopt a BIF before selling timber. A best interest finding is the decision document that:

- 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.

Part 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 will prepare a FLUP(s) for harvest areas within the overall sale area covered by this best interest finding. FLUPs specify the site, size, timing, and harvest methods for harvest units within the sale area. FLUPs also address site-specific requirements for access construction and maintenance, reforestation, and multiple use management. Draft FLUPs will be based on additional field work, agency and community consultation, and site-specific analyses by the DOF, and will be subject to public and agency review. Appropriate regulatory agencies are consulted, and the plan is subject to public review. The timber sale FLUP will consider the cumulative impacts in the project area.

Part 5: Timber Sales and Contracts. Following adoption of the final BIF and completion of the FLUP, DOF offers the timber for sale by either 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 and regulatory requirements.

Part 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 (FRPA) 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**

This final best interest finding and decision supplements the preliminary best interest finding and decision issued February 16, 2022 for the proposed action. The preliminary finding and decision are incorporated herein, except as amended, changed, or deleted by this final finding and decision. Amendments or changes to the preliminary finding and decision follow.

1. The Sale Area maps have been updated to reflect refinement of field design and mapping accuracy obtained by DOF since the preliminary decision's publish date.
2. Adjustment of the property line and unit configuration for Unit 6 was made based on land ownership research.
3. Comment was received and replied to in Appendix D.

## **VI. PUBLIC NOTICE**

The preliminary best interest finding, and decision was publicly noticed in compliance with AS 38.05.945. Notice was posted on the Alaska Online Public Notice System on February 16, 2022. Notices were posted at the Ketchikan, Craig, Wrangell, Petersburg Public Libraries. Mailed notices

were distributed to a mailing list maintained by the Southeast Area Office and public notices were sent to the post offices of Ketchikan, Ward Cove, Craig, Klawock, Thorne Bay, Edna Bay, Coffman Cove, Naukati, Metlakatla, Wrangell and Petersburg and the City Offices of Whale Pass. A legal notice was also provided in the Ketchikan Daily News on February 19 and 26, 2022; the Island Post on March 2 and 16, 2022; and the Petersburg and Wrangell papers on February 23 and March 2, 2022. The DOF presented the project and answered questions at a work session at the end of the regular meeting of the City of Whale Pass Council on March 15, 2022.

## **VII. PUBLIC COMMENT**

DOF received comments on the preliminary best interest finding noticed in 2022 for this proposed timber sale from one individual (represented as being on behalf of eight lot owners in the Whale Pass area), the Alaska Forest Association and Viking Lumber Company Inc. in a timely manner; the Alaska Department of Fish & Game, Division of Habitat also affirmed their previous scoping comments. The comments are summarized in Appendix D. The comments referenced general input on the sale, soil characteristics/observations, noise pollution, subsistence hunting, traffic safety, harvest systems, road construction, landslides, erosion, streams/fisheries, and wildlife. No changes were made in response to comments. Concerns regarding noise and traffic safety during operations may be addressed in the Forest Land Use Plan and the purchaser's operating plan.

**VIII. DISCUSSION AND FINAL FINDING AND DECISION**

After due consideration of all pertinent information, the ADNR has reached the following Decision: To offer for sale approximately 290 acres of old growth timber composed of western hemlock, Sitka spruce, western red cedar and Alaska yellow cedar from State Forest land and Settlement classified land on Prince of Wales Island as described in the PBIF and amended in this document. Harvest activities on the State Forest lands will follow the management intent of the Southeast State Forest Land Management Plan. Activities on other state land will follow the management intent of the Prince of Wales Island Area Plan. Public notice has been accomplished in accordance with AS 38.05.945. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. The DOF finds that this decision satisfies the objectives stated in this document and it is in the best interest of the State to proceed with this action under its authority of AS 38.05.035(e) (Powers and Duties of the Director) and 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**



\_\_\_\_\_  
Corri Feige  
Commissioner  
Alaska Department of Natural Resources

5/2/22  
Date



## X. REQUESTS FOR RECONSIDERATION

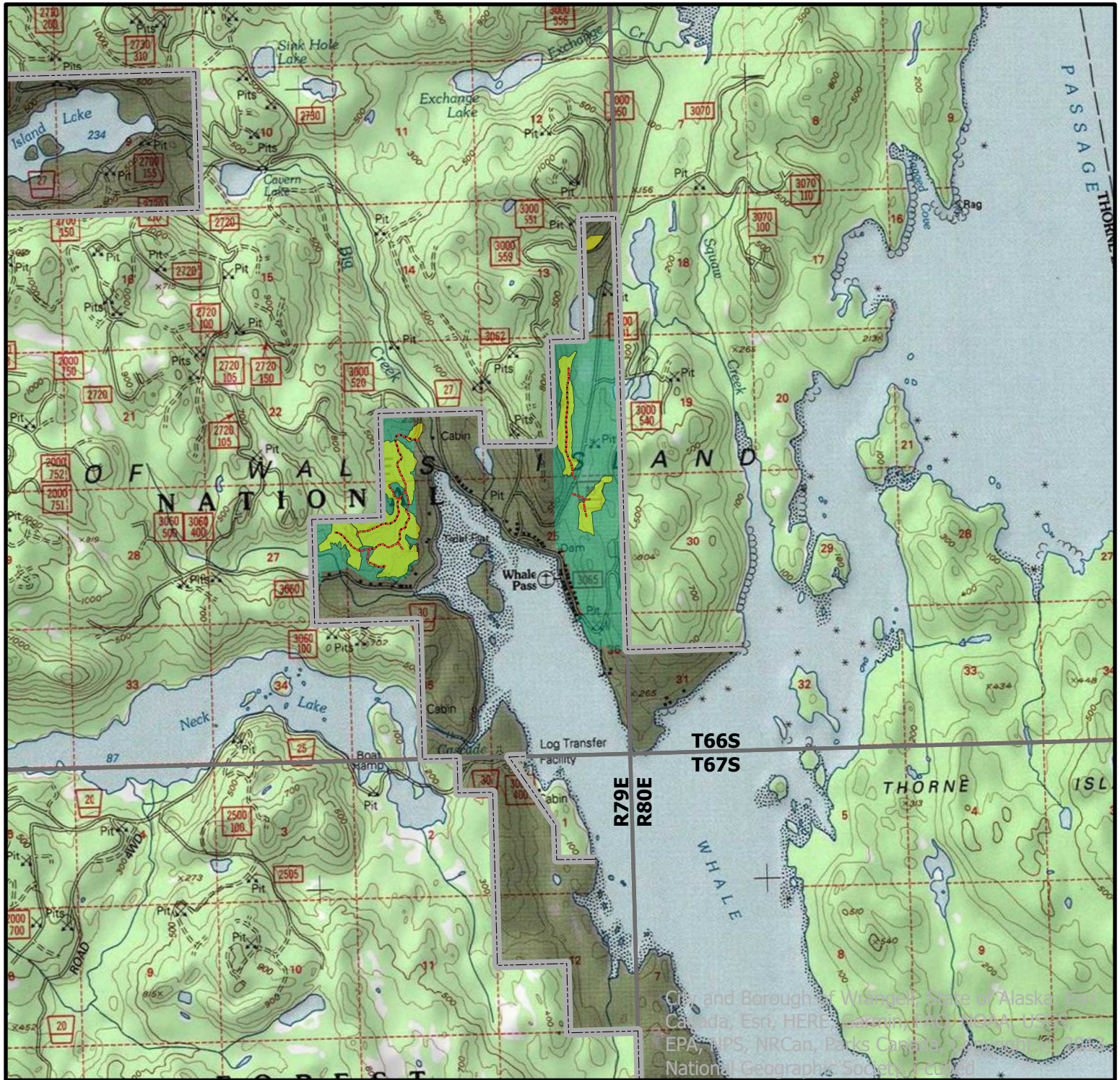
A person who has standing under Alaska law may request reconsideration in accordance with 11 AAC 02. Any reconsideration request must be received within **twenty (20) days** of issuance of this decision. The request may be mailed or delivered to Corri Feige, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). A copy of 11 AAC 02 is provided in Appendix C.

If you have any questions, please contact: Greg Staunton at (907) 225-3070 or email [greg.staunton@alaska.gov](mailto:greg.staunton@alaska.gov).

**XI. APPENDICES**

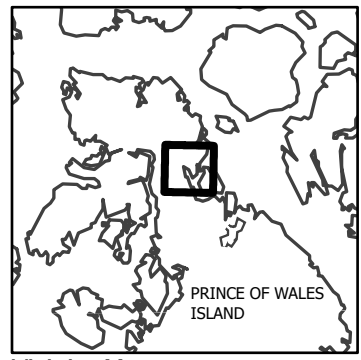
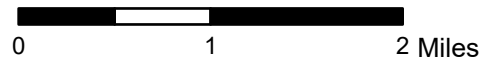
<b>Appendix A</b>	SSE-1378-K Whale Pass Timber Sale Area Maps (4 pages)
<b>Appendix B</b>	References
<b>Appendix C</b>	Reserved for Appeal Regulations
<b>Appendix D</b>	Whale Pass Timber Sale Comments & Responses

**Appendix A SSE-1378-K Whale Pass Timber Sale Area Maps**



City and Borough of Whittier, State of Alaska, Esri, HERE, Garmin, IGN, Intermap, iPC, NITEL, NOAA, NPS, NRCAN, Parks Canada, Swire, The Mapbox Contributors, United States Geological Survey, and National Geographic Society, Inc.

Copper River Meridian



Vicinity Map  
1 inch equals 32 miles

**Legend**

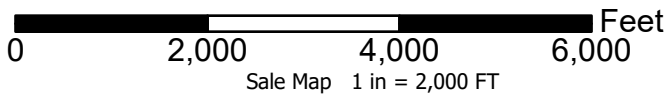
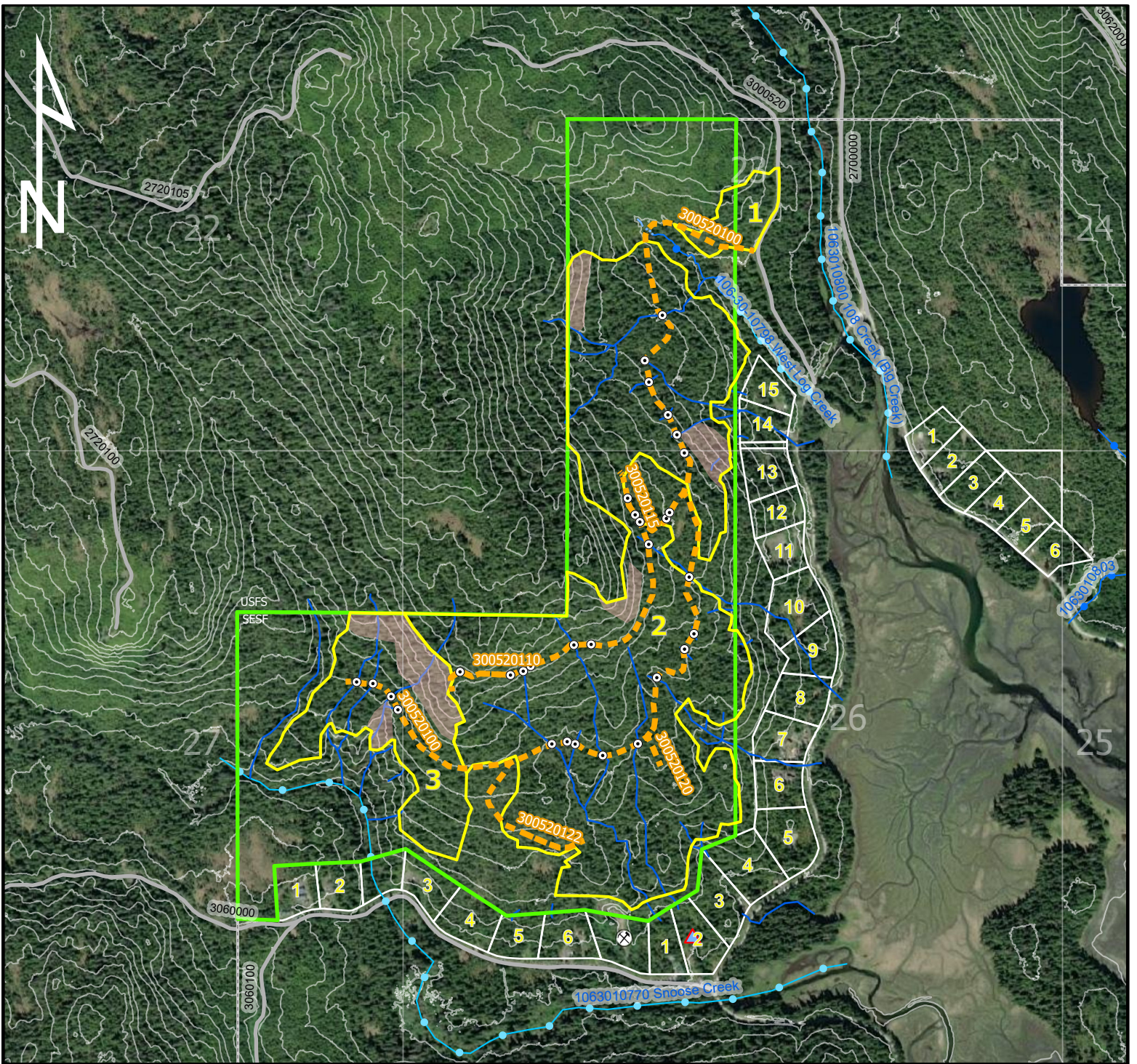
- Proposed Harvest Unit
- State Forest
- Proposed Road
- Public Property Lines

**APPENDIX A1  
SSE-1378 K  
WHALE PASS TIMBER SALE  
AREA MAP**



**DIVISION OF FORESTRY**

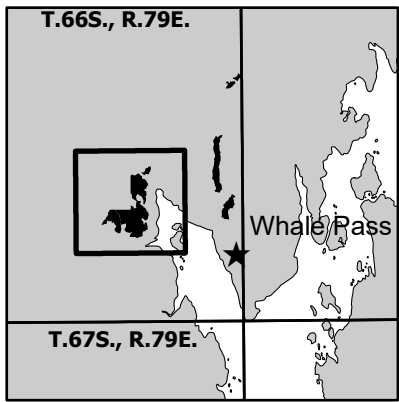




T66S, R79E, Section(s) 23, 26, 27  
Copper River Meridian

Contour Interval = 40 FT  
Source: USFS LiDAR 2018

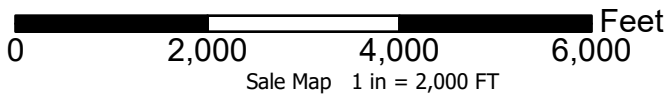
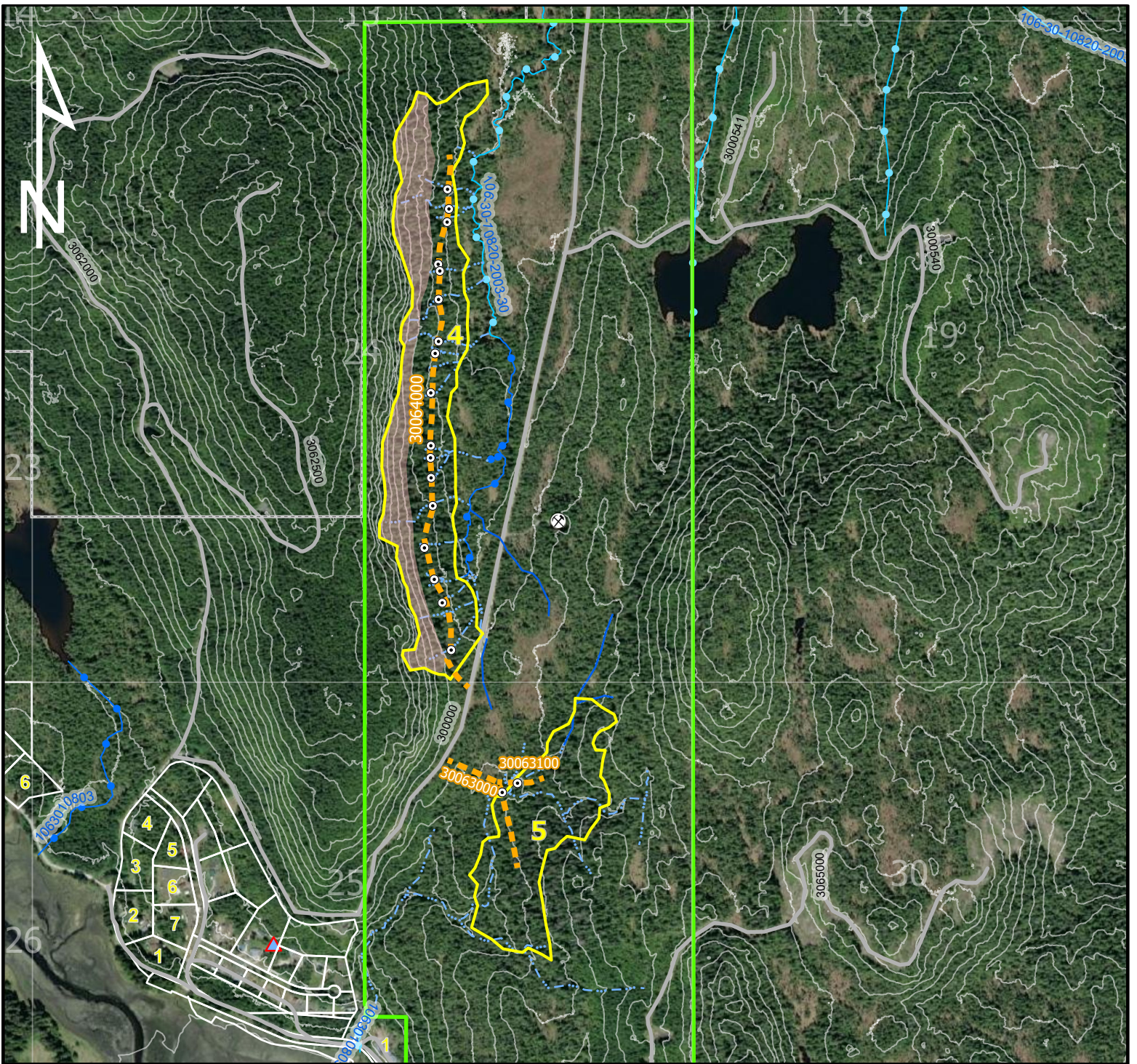
**APPENDIX A2**  
**SSE-1378 K**  
**WHALE PASS TIMBER SALE**  
**MAP 1 UNITS 1, 2, 3**



Vicinity Map 1 in = 3 miles

Legend					
	Proposed Harvest Unit		Property Line		Cataloged Anadromous
	Cable Harvest		Rock Pit		Non-Cataloged Anadromous
	Southeast State Forest		Drainage Structures		Resident Fish
	Subdivision		Water Rights		Tributary Anadromous <12%
	Proposed Road				Tributary Anadromous >12%
	Existing Roads				General Water Quality

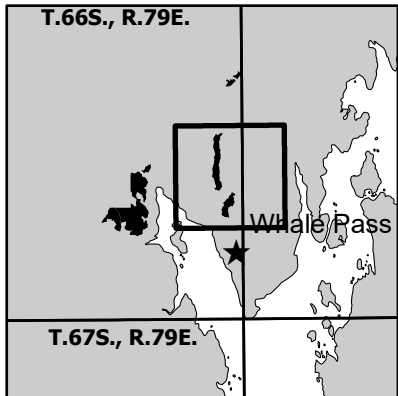




T66S, R79E, Section(s) 24, 25  
Copper River Meridian

Contour Interval = 40 FT  
Source: USFS LiDAR 2018

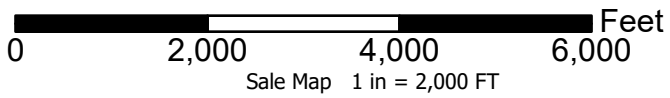
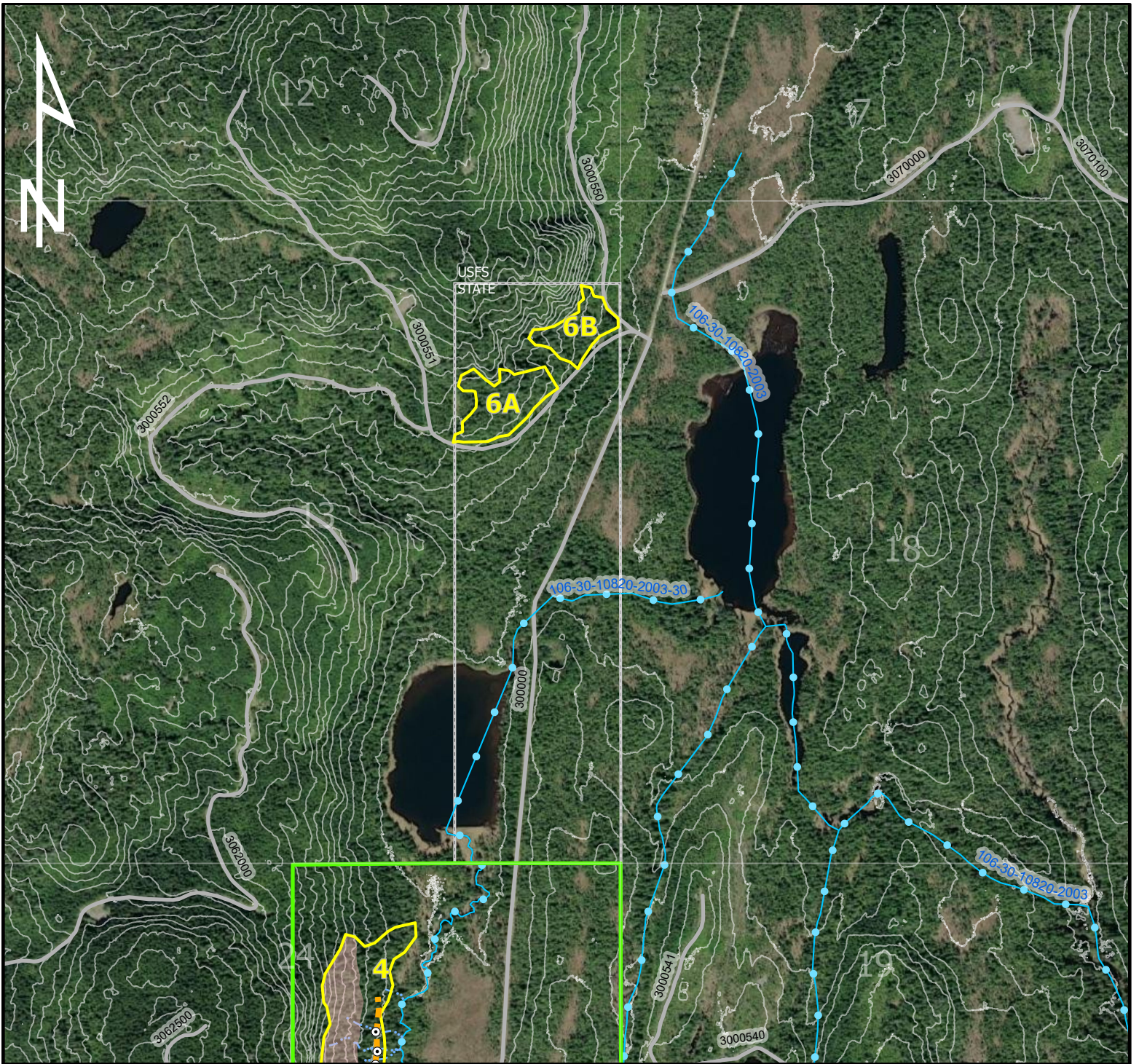
**APPENDIX A2**  
**SSE-1378 K**  
**WHALE PASS TIMBER SALE**  
**MAP 2 UNITS 4, 5**



Vicinity Map 1 in = 3 miles

Legend					
	Proposed Harvest Unit		Property Line		Cataloged Anadromous
	Cable Harvest		Rock Pit		Non-Cataloged Anadromous
	Southeast State Forest		Drainage Structures		Resident Fish
	Subdivision		Water Rights		Tributary Anadromous <12%
	Proposed Road				Tributary Anadromous >12%
	Existing Roads				General Water Quality

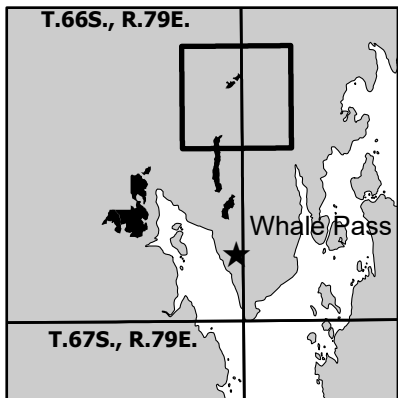




T66S, R79E, Section(s) 13  
Copper River Meridian

Contour Interval = 40 FT  
Source: USFS LiDAR 2018

**APPENDIX A2**  
**SSE-1378 K**  
**WHALE PASS TIMBER SALE**  
**MAP 3 UNITS 6A, 6B**



Vicinity Map 1 in = 3 miles

Legend		
Proposed Harvest Unit	Property Line	Cataloged Anadromous
Cable Harvest	Rock Pit	Non-Cataloged Anadromous
Southeast State Forest	Drainage Structures	Resident Fish
Subdivision	Water Rights	Tributary Anadromous <12%
Proposed Road		Tributary Anadromous >12%
Existing Roads		General Water Quality



## Appendix B References

Alaska Department of Natural Resources, Division of Forestry, Annual Board and Agency Reports on the effectiveness of the Alaska Forest Resources and Practices Act and regulations. Reports retrievable from: <http://forestry.alaska.gov/alaskaboardforestry.htm>

Alaska Department of Natural Resources, Division of Forestry, *Southeast State Forest Management Plan*, Adopted February 29, 2016. Maps and general information retrievable from: <http://forestry.alaska.gov/stateforests.htm>

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Minnillo, Mark, Area Habitat Biologist, Alaska Department of Fish and Game, Division of Habitat, Personal communication.

Reynolds, Nick, Forester, Thorne Bay Ranger District. Personal communication.

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United States Forest Service, Tongass Land Management Plan Amendment, Final E.I.S., June 2016.

United States Forest Service, Big Thorne Project, Final E.I.S. and supplemental documents, ROD June 2013.

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## Appendix C 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.

### TITLE 11. NATURAL RESOURCES.

#### Title 11.02 Appeals

#### CHAPTER 02. APPEALS.

##### Section

##### Section

10. Applicability and eligibility

50. Hearings

15. Combined decisions

60. Stays; exceptions

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

70. Waiver of procedural violations

30. Filing an appeal or request for reconsideration

80. (Repealed)

40. Timely filing; issuance of decision

900. Definitions

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

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

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

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

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

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

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

Authority: AS 03.05.010 AS 38.04.900 AS 38.08.110 AS 41.15.020 AS 44.37.011

AS 29.65.050 AS 38.05.020 AS 38.09.110 AS 41.17.055 AS 46.15.020

AS 29.65.120 AS 38.05.035 AS 38.50.160 AS 41.21.020 AS 46.17.030

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

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

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

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

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

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

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

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

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

(1) be in writing;

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

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

(4) be correctly addressed;

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

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

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

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

(13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing, and

(14) be accompanied by the applicable fee set out in 11AAC 05.160. (Eff 11/7/90, Register 116; am 9/19/2001, Register 159; am 7/01/2018, Register 227).

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

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

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

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

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

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

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

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

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

**Editor's note:** The address for an appeal or request for reconsideration by personal service and by mail is: Department of Natural Resources, Commissioner's Office, 550 W. 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)

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 SSE-1378-K Whale Pass Timber Sale Comments & Responses**



## Appendix D

# SSE-1378-K, Whale Pass Timber Sale Comments & Responses

Department of Natural Resources, Division of Forestry  
April 2022

The following comments were received during the public comment period on the Whale Pass Timber Sale Preliminary Best Interest Finding.

<b>Organization</b>	<b>Author</b>	<b>Location</b>
Alaska Forest Association (AFA)	Tessa Axelson	Ketchikan, AK
Friends of Whale Pass (submitted by Greely Sr. listing parties: James Greely Sr, James Greely Jr, Katie Bode, Forest Baker, Pat Welch, Matt and Pam Beck and Crystal Tomin)	James Greely Sr.	Whale Pass, AK
ADF&G Habitat Division	Mark Minnillo	Craig, Alaska
Viking Lumber Company, Inc.	Steve Grandorff	Craig, AK

Copies of the submitted comments are available upon request.

Commenter	Comment	Response
	<b>General Timber Sale Input</b>	
Alaska Forest Association, Tessa Axelson	“AFA supports the preliminary BIF for the Whale Pass Timber sale and encourages the Division of Forestry to proceed to the next phase in the sale process. AFA operators rely on a dependable supply of timber in the Tongass National Forest (Tongass) to remain in business. Given the lack of supply from federal landowners such as the United States Forest Service (USFS) sales by non-federal landowners such as the State of AK are vital to the continued viability of the industry.”	Response is noted, no change required.
Viking Lumber Co., Inc., Steve Grandorff	“Viking Lumber Co., Inc. supports the Whale Pass Timber Sale as it will continue to provide employment for residents of Prince of Wales Island and develop highly desirable lumber products for the North American market.”	Response is noted, no change required.
Friends of Whale Pass, James Greeley Sr.	“Are there more suitable locations to harvest for your consideration than within the City of Whale Pass?”	Response is noted, no change required. The area proposed for harvest is predominately in the Southeast State Forest. The primary purpose for the legislatively designated Southeast State Forest is timber management (AS 41.17.200).

Commenter	Comment	Response
	<b>Soil Characteristics/Observations</b>	
<p>Friends of Whale Pass, James Greeley Sr.</p>	<p>“This current proposal is putting residential <b><u>homes and lives in danger</u></b>, especially for those that live in the subdivision below the steep slope area in lots 15, 14, 13, 12, 11,10, 9, 8, near the 108 Creek. On page 12 of the report, it states Soils observed to be thin, organic horizons with moderate to poor drainage.” The Preliminary Best Interest Report is vague when addressing these concerns of soil instability and erosion. The report fails to specify the location of this finding. Which private lots were observed? How were the observations made, when and by whom? What were the conditions when this decision was made? Was there an individual/team that walked the ground, or was the observation made just by flying overhead by airplane?”</p>	<p>State contractors Terra Verde Inc. and Stuntzner Engineering identified suitable harvest methods, road alignments, and operational constraints at Whale Pass in May of 2019. The DOF built on this information and conducted additional field reconnaissance and developed preliminary unit designs for the proposed Whale Pass timber sale from July through the end of October 2021. The design was again looked at for suitability and further quantified by DOF employees in March and April of 2022. The Area Forester along with other experienced staff performed the work. Private lots were not entered.</p> <p>The road and unit lines perimeters have all been physically located and identified in the field. Surface drainages and topography represented on the maps were initially identified using light detection and ranging (LiDAR) data developed with the USFS in 2018 for POW with a digital resolution of 1 FT. The data produced a 10 FT contour interval model that when viewed in the field proved to be highly accurate and representative of the topography. Pedestrian observation was used to essentially review the entire footprint of the sale using the LiDAR as control and has been positionally confirmed with geodetic position systems (GPS). All drainage and predominate slope indicators were viewed. Soil depth and indications of its stability were observed based on established soil stability indicators in the Alaska Forest Resources and Practices Regulations that are a product of research and peer review. Areas that received focused attention were in surface drainages, windthrown trees that were encountered and terrain that exceeded 50% slopes. Weather conditions varied from relatively prolonged wet fall conditions to relatively dry spring conditions. Winds were observed at the site associated with storms.</p>

Commenter	Comment	Response
	<b>Noise Pollution</b>	
<p>Friends of Whale Pass, James Greeley Sr.</p>	<p>“This Timber Sale will ultimately bring down our property values. Noise pollution from trucks and equipment day after day will deter visitors who fish near popular spots along the roads and narrow bridges and may lead to a decrease in vacation rentals within the city.”</p>	<p>Noise from the sale will be present and will vary in duration and intensity depending on the activity. Trucks traveling through the community will be expected to abide by state statute to drive at a speed appropriate to the conditions. Both safety and noise can be actively managed through restricting operating hours, applying jake brake restrictions and governing truck speed at locations where we are aware of the conflicting values. These two issues will be developed in the Forest Land Use Plan and in the purchaser’s operating plan which is approved and overseen during implementation by the DOF. The short term of the timber operations also constrains the relative overall impact to the area regarding these subjects.</p>
	<b>Subsistence Hunting</b>	

Commenter	Comment	Response
Friends of Whale Pass, James Greeley Sr.	<p>“The proposed area within the City of Whale Pass is a valuable area for deer habitat and other wildlife habitat. The area from Snoose Creek to 108 serves as a highway for wildlife to cross between second growth stands that are still regenerating. Page 17 of the report states: “A reduction in deer habitat in the immediate area may be expected to result because of the harvest of this timber. Deer numbers are expected to remain approximately the same following harvest and as the stand regenerates but are expected to diminish as the understory is shaded out during mid-rotation; approximately 30 years following harvest.” We live on a remote island. Groceries are expensive and need to be barged in and costs have increased. Subsistence is important to the local residents in Whale Pass, especially to our senior citizens and those with young families. Preserving habitat also helps businesses that rely on visiting hunters and fishermen.”</p>	Response noted no change required. Subsistence opportunities are available on state and federal lands in the area and will continue to occur unimpeded by this timber sale.
<b>Traffic Safety</b>		
Friends of Whale Pass, James Greeley Sr.	<p>“Increased log truck traffic puts pedestrian safety at immense risk.</p>	Log trucks are configured for legal traffic on public roads in the State of Alaska. Standards of commercial traffic will be enforced by all available means. The timber sale contract will also be used to proactively ensure safety and compliance with the law.
<b>Harvest Systems</b>		
Friends of Whale Pass, James Greeley Sr.	<p>“A clear cut in the middle of town will change the natural scenic aesthetic that has drawn visitors and residents alike to this place....Logging by helicopter and selecting only the small percentage of marketable timber on the steep hill above our city is less invasive to residents in the adjacent properties. This type of logging by helicopter and selecting only the small percentage of marketable timber on the</p>	Helicopter logging is an expensive harvest system compared to ground based systems. The feasibility to utilize timber is constrained by this higher cost. Added cost also affects the amount of revenue realized by the State. Spatially, the use of the helicopter system creates opportunity to recover wood in difficult locations that would not otherwise be recovered and potentially with

Commenter	Comment	Response
	<p>thinning of the forest can create a win-win situation. By providing bigger buffers and selective logging by helicopter, water quality could be preserved, scenic views to be intact, and future profitable timber harvests could occur.”</p>	<p>less disturbance. While there are possible applications where this may be an appropriate tool in the future, it is not warranted in the proposed timber sale footprint. The DOF prefers to manage stands encouraging wood utilization given the overall market demand and our limited footprint for active forest management. We have also found that the availability of the system is not as ubiquitous as it once was in the region. There currently is not a helicopter logging contractor located in Alaska.</p>
	<b>Road Construction</b>	
<p>Friends of Whale Pass, James Greeley Sr.</p>	<p>“Please avoid building roads that could set off dangerous erosion issues to the adjacent property. Please avoid building roads that could set off dangerous erosion issues to the adjacent properties below. A suggestion would be to log via single-tree harvest since the area is so small.”</p>	<p>Minimizing and managing road construction is a key building block of the Alaska Forest Resources and Practices Act. Existing surface drainages crossed by the road are designed to transfer water flow in existing channels. Bank disturbance is avoided in all activity adjacent to surface waters. Roads in this sale have been sited on stable locations. Organic soils have a low migration potential, especially so when left undisturbed, due to their physical properties. Risk of mass wasting is low in the area given the slopes and harvest systems being employed. The road will be an overlay style, constructed of shot rock on vegetated mat. Surface erosion of the road rock fines during use will be managed through grading to minimize surface water accumulation on the road. Roads will be put into a storage state at the conclusion of the sale that may entail water bars and or closure and removal of drainage structures.</p>
	<b>Landslides</b>	

Commenter	Comment	Response
Friends of Whale Pass, James Greeley Sr.	<p>“Landslides/mudslides are common on Prince of Wales Island, with many happening in other communities on the island in the last year (<a href="https://www.ktoo.org/2020/10/26/heavy-rains-bring-multiple-landslides-to-prince-of-wales-island/">https://www.ktoo.org/2020/10/26/heavy-rains-bring-multiple-landslides-to-prince-of-wales-island/</a>). The proposed harvest site, roads, and boundaries are extremely close to property owners and is a cause for serious alarm and danger. Building roads can dam up the natural water runoff from the steep slopes behind adjacent properties. Windthrows/Blow downs will be a greater risk as well to homes and structures to property owners on the boundary lines. Without the existing trees serving as barrier of protection, these homes (and the people inside) are being put at dangerous risk Destruction to property and possibly life leads to expensive litigation if a disaster were to occur as result from this sale.”</p>	<p>The DOF assessment of the site indicates that it is relatively stable with respect to landslide potential. Most landslides occur on sites with sustained slopes greater than 55% with deeper soil conditions. The steeper ground examined in this area is predominately associated with shallow bedrock formations that are inherently stable as well as short in pitch length. Trees that have blown over on these steeper areas were constrained by the typically short pitch of the topography. These wind event trees were typically individual or grouped in nature and have not propagated mass soil or debris movements. Regardless, the deeper soil conditions observed in portions of Units 2 and 3 above Snoose Creek and Big Creek are not adjacent or upslope to the subdivision. These soils appeared to be consolidated and stable as represented in the gullies and where they are exposed in overturned trees. The clay slopes above Snoose Creek are proposed to be avoided in conjunction with the efforts associated with the riparian retention relative to the anadromous stream. The DOF does not plan to disturb the soil in this area. Undisturbed clay has a high bearing capacity and is stable.</p>
	<b>Erosion</b>	
Friends of Whale Pass, James Greeley Sr.	<p>The report states that “it is expected that overall flow in streams will increase post-harvest (Page 20).” This report contradicts its own findings and logic. Please avoid road construction that could set off dangerous erosion issues to the adjacent properties below.</p>	<p>Additional flow referenced in the water quality section described the likely profile of the surface drainage flow conditions post-harvest. While this provides a potential mechanism for erosion, it is unlikely based on significance and the Alaska Forest Resources and Practices Act (FRPA) implementation strategy to be detrimental. The best management practices of the FRPA administered by DOF are a proven method for management of nonpoint water pollution and specifically erosion.</p>
	<b>Streams/ Fisheries</b>	

Commenter	Comment	Response
ADF&G	<p>ADF&amp;G spent considerable time conducting stream surveys throughout the proposed timber sale area identifying anadromous fish habitat. As stated in the PBIF, there are 4 cataloged anadromous streams (106-30-10798, 106-30-10770, 106-30-10805, and 106-30-10820-2003-3009) located within or adjacent to the proposed sale area. As per AS 41.17 retention areas of at least 100 feet on either side of these streams is required. No other anadromous streams have been identified by ADF&amp;G nor by ADNR during sale recognizance. However, ADF&amp;G would be available to conduct inspections during final layout of any additional streams identified as having the potential to contain anadromous fish habitat. This also pertains to road construction. The PBIF mentions that numerous tributaries to the known cataloged streams will be crossed with roads. Although these streams may not provide anadromous fish habitat it is possible that some may provide resident fish habitat. In this case fish passage would be required under AS 16.05.841.</p>	Response is noted, no change required.
	<b>Wildlife</b>	
ADF&G	<p>ADF&amp;G has reviewed the Preliminary Best Interest Finding (PBIF) for the Whale Pass Timber Sale. As mentioned in the PBIF (and in your comments below) we request that the timber sale incorporate a wildlife travel corridor between Snoose Creek and the ridge to the north.</p>	Response is noted, no change required.