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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Trevor Fulton, Department of Natural Resources
FROM: April Simpson, Office of the Lieutenant Governor 
465.4081
DATE: June 19, 2024
RE: Filed Permanent Regulations: Department of Natural Resources

Department of Natural Resources regulations re: Carbon Offset Program Implementing
Senate Bill 48 (2023) (11 AAC 78.010 - 990)

Attorney General File:	2024200007
Regulation Filed:	6/19/2024
Effective Date:	7/19/2024
Print:	251, October 2024

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis

Department of Law

CIVIL DIVISION

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THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

June 19, 2024

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: *11 AAC 78.010-990: DNR - Carbon Offset Program Implementing SB 48
(2023)*
Our file: 2024200007

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Natural Resources against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Commissioner of the Department of Natural Resources after the close of the public comment period.

The regulations concern management of carbon offset projects on state land and were prompted by enactment of Senate Bill 48 (SLA 2023, Chapter 2).

The March 28, 2024 public notice and the June 18, 2024 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.060. The corrections are incorporated into the attached copy of the regulations.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto**
Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

Digitally signed by
Rebecca C. Polizzotto
Date: 2024.06.19
09:18:19 -08'00'

RCP/ahr

CC w/enclosure: Trevor Fulton, Carbon Offset Program Manager
Department of Natural Resources

Christopher F. Orman, Assistant Attorney General
Department of Law

Amy H. Robinson, Assistant Attorney General
Department of Law

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF NATURAL RESOURCES

The attached seven pages of regulations, dealing with Carbon Offset Projects on State Land, are adopted and certified to be a correct copy of the regulation changes that the Department of Natural Resources adopts under the authority of AS 38.95.400 - 38.95.499 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Natural Resources paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 6/18/2024



John Boyle, Commissioner
Department of Natural Resources

Karl Simpson for
↓

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on June 19, 2024, at 3:46 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for 

Lieutenant Governor *Nancy Dahlstrom*

Effective: July 19, 2024.
Register: 251, October 2024

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

11 AAC is amended by adding a new chapter to read:

Chapter 78. Carbon Offset Projects on State Land.

Section

- 10. Applicability.
- 20. Identification of potential carbon offset projects.
- 30. Feasibility evaluation of a potential carbon offset project; evaluation criteria.
- 40. Land use planning and classification.
- 50. Best interest finding.
- 60. Application, registration, and management of carbon offset projects.
- 70. Contracts.
- 990. Definitions.

11 AAC 78.010. Applicability. (a) This chapter applies to carbon offset projects that the department undertakes on state land under AS 38.95.400 - 38.95.499.

(b) This chapter does not apply to a lease of state land for carbon management purposes under AS 38.05.081. (Eff. 7 / 19 / 2024, Register 251)

Authority: AS 38.95.400 AS 38.95.410

11 AAC 78.020. Identification of potential carbon offset projects. (a) To identify potential carbon offset projects the department may solicit recommendations from

(1) department staff;

(2) a state agency, including the University of Alaska, the Alaska Mental Health

Trust Authority, and state public corporations;

- (3) a municipality, borough, or city organized under AS 29;
- (4) non-profit organizations;
- (5) a tribal entity, federally recognized tribe, or Native corporation in the state;
- (6) the public;
- (7) industry representatives;
- (8) private companies; or
- (9) service providers the department has contracted with under 11 AAC 78.070.

(b) A person may submit an unsolicited recommendation for a potential carbon offset project to the department. An unsolicited recommendation for a potential carbon offset project must be submitted to the department in writing. The department is not required to review every unsolicited recommendation it receives.

(c) A person that submits a recommendation for a potential carbon offset project to the department is not entitled to compensation from the department unless the recommendation and compensation is part of a contract between the person and the department.

(d) A contract for services under AS 38.95.440 between a person that submits a recommendation for a potential carbon offset project and the department must be consistent with AS 36.30 and 2 AAC 12.010 - 2 AAC 12.990.

(e) After identification of a potential carbon offset project under (a) or (b) of this section, the department may elect to evaluate the feasibility of the potential carbon offset project under 11 AAC 78.030. (Eff. 7 / 19 / 2024, Register 251)

Authority: AS 38.95.400 AS 38.95.410 AS 38.95.440

11 AAC 78.030. Feasibility evaluation of a potential carbon offset project; evaluation criteria. (a) If the department performs a feasibility evaluation of a potential carbon offset project, that evaluation consists of gathering information relevant to the potential carbon offset project; and using that information to consider the criteria in (c) of this section.

(b) Gathering information for a feasibility evaluation under this section may include, and is not limited to, soliciting information from the Department of Fish and Game, the Department of Environmental Conservation, other state agencies, state boards and commissions, industry experts, and service providers the department has contracted with under 11 AAC 78.070.

(c) When conducting a feasibility evaluation, the department will consider the criteria outlined in AS 38.95.410(a) and

(1) whether the identified state land is classified in a manner that is appropriate for the potential carbon offset project;

(2) whether the potential carbon offset project would be incompatible with existing use of the land by a state agency;

(3) the anticipated revenue of the potential carbon offset project;

(4) any indirect benefit to the state derived from the potential carbon offset project;

(5) if two or more potential carbon offset projects are suggested for the same state land, which project, if either, warrants continued evaluation;

(6) whether the potential carbon offset project complies with state law and this chapter;

(7) whether the potential carbon offset project would impede public access, resource development, or other uses under AS 38.95.410(f); and

(8) any other information useful to the department's feasibility evaluation.

(d) The department will evaluate a potential carbon offset project's baseline and predicted additionality under AS 38.95.410(a)(1) by assessing the best available data it has obtained from industry representatives, the public, private companies, and service providers the department has contracted with under 11 AAC 78.070.

(e) A feasibility evaluation under this section does not constitute a best interest finding under 11 AAC 78.050. A feasibility evaluation under this section does not need to be in writing and is not a final, appealable decision under AS 44.37.011. The department may discontinue a feasibility evaluation at any time.

(f) The department will conclude a feasibility evaluation of a potential project under this section before it proceeds with a best interest finding under 11 AAC 78.050 and AS 38.95.410(d). (Eff. 7 / 19 / 2024, Register 251)

Authority: AS 38.95.400 AS 38.95.410

11 AAC 78.040. Land use planning and classification. (a) If a potential carbon offset project is incompatible with the classification or land use plan applicable to the state land identified for a potential carbon offset project, the department may seek to reclassify the land or revise the land use plan identified for the potential project consistent with AS 38.04.065 and AS 38.05.300.

(b) If the department seeks to reclassify the land or revise the land use plan identified for a potential project, the department will complete the reclassification or land use plan revision before it completes a best interest finding for a potential carbon offset project. (Eff.

7 / 19 / 2024, Register 251)

Authority: AS 38.95.400 AS 38.95.410

11 AAC 78.050. Best interest finding. (a) A best interest finding for a carbon offset project must comply with AS 38.95.410(d) and this chapter. A best interest finding constitutes a formal evaluation of a potential carbon offset project under AS 38.95.410(a).

(b) A best interest finding will consider the evaluation criteria under AS 38.95.410(a) and 11 AAC 78.030(d). When the department evaluates a potential carbon offset project's potential baseline and predicted additionality under AS 38.95.410(a)(1), the department will consider the best available data it has obtained from industry representatives, the public, private companies, or service providers the department has contracted with under 11 AAC 78.070. (Eff.

7 / 19 / 2024, Register 251)

Authority: AS 38.95.400 AS 38.95.410

11 AAC 78.060. Application, registration, and management of carbon offset projects.

(a) After a best interest finding is completed for a potential carbon offset project under AS 38.95.410(d), the department may submit an application for the carbon offset project to a registry to earn carbon offset credits.

(b) The department will manage a carbon offset project on state land in a manner consistent with a registry's standards, protocols, and methodologies. (Eff. 7 / 19 / 2024,

Register 251)

Authority: AS 38.95.400 AS 38.95.420

11 AAC 78.070. Contracts. (a) The department may contract for services under AS 38.95.440 for a person to provide

(1) carbon offset project-related services to carry out the purposes of AS 38.95.400 - .499, including

(A) evaluation of the financial viability of a potential carbon offset project;

(B) potential carbon offset project inventory and modeling;

(C) developing and registering a carbon offset project;

(D) verification of a carbon offset project;

(E) marketing carbon offset credits;

(F) selling carbon offset credits; and

(G) monitoring, reporting, auditing, carbon reinventory and modeling, and baseline reevaluations of registered projects.

(2) consultation with the department regarding implementation of the potential carbon offset project;

(3) recommendations for potential carbon offset projects; and

(4) data or research services necessary to complete a feasibility evaluation under 11 AAC 78.030 or a best interest finding under 11 AAC 78.050.

(b) A contract between a registry and the department under AS 38.95.400 - AS 38.95.499 does not need to comply with AS 36.30.

(c) A commission contract that involves in-kind payment of carbon offset credits must comply with AS 38.95.440(c).

(d) Except as provided in (b) of this section, a contract under this section must be consistent with AS 36.30 and 2 AAC 12.010 - 2 AAC 12.990. (Eff. 7 / 19 / 2024, Register 251)

Authority: AS 36.30.850 AS 38.95.400 AS 38.95.440

11 AAC 78.990. Definitions. In this chapter,

(1) "department" has the meaning provided in AS 38.95.499;

(2) "potential carbon offset project" means a carbon offset project the department is evaluating under this chapter;

(3) "register" means a process whereby a registry reviews a carbon offset project and determines whether the carbon offset project complies with that registry's standards, protocols, and methodologies. (Eff. 7 / 19 / 2024, Register 251)

Authority: AS 38.95.400 AS 38.95.430 AS 38.95.499
AS 38.95.410 AS 38.95.440
AS 38.95.420 AS 38.95.450