

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGIONAL LAND OFFICE

Amended Regional Manager's Decision

ADL 234005

Nushagak Electric and Telephone Cooperative, Inc.
Public Utility Easement

REQUESTED ACTION

On August 4, 2023, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Regional Land Office (SCRO) issued a decision for approval of a Public Utility Easement and awarded a seven-year Entry Authorization (EA), expiring August 3, 2030, to Nushagak Electric and Telephone Cooperative, Inc. serialized as ADL 234005. The purpose is for construction, operation and maintenance of a fiber optic broadband system to provide internet and telecommunication services to the region. The infrastructure consists of a below grade fiber optic telecommunication cable and buried manholes at 20,000-foot intervals on State-owned, DMLW-managed land near Dillingham, Aleknagik, Ekwok, and Levelock, Alaska.

On December 6, 2024, DNR DMLW SCRO received an application from Nushagak Electric and Telephone Cooperative, Inc. for the amendment of public utility easement ADL 234005 currently in Interim Authorization status. The requested amendment will incorporate both an addition onto state-owned land that was not previously noticed and incorporated into the originally authorized 2023 decision document and a reroute of a previously authorized alignment. The addition will occur in Sections 1, 2, and 11, Township 11 South, Range 55 West, Seward Meridian. The reroute is located in Sections 33, 34, and 35, Township 10 South, Range 54 West, Seward Meridian.

RECOMMENDED ACTION

Approve an amendment to ADL 234005 that includes the following characteristics:

Western addition onto state land:

Width: 30 feet

Length: Approximately 11,325 total feet

Acreage: Approximately 7.8 acres

Term: Indefinite

Grantee: Nushagak Electric and Telephone Cooperative, Inc.

Type of easement: Public Utility

Eastern reroute:

Width: 30 feet

Length: A reduction from the original application total of 16,106 feet to approximately 13,309 feet

Acreage: A reduction from the original application total of 9.16 acres to approximately 11.09 acres.

Term: Indefinite

Grantee: Nushagak Electric and Telephone Cooperative, Inc.

Type of easement: Public Utility

The sum total of additional state land use authorized by this amendment is approximately 14,122 feet in length, 30 feet in width, for an estimated total of 9.73 acres.

SCOPE OF DECISION

The scope of this decision is to determine if it is in the State's interest to create an easement for the proposed use. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

STATUTORY AUTHORITY

This easement application is being adjudicated pursuant to AS 38.05.850 and the Alaska Land Act as amended.

ADMINISTRATIVE RECORD

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 2013 Bristol Bay Area Plan, other classification references described herein, and the casefile for the application serialized by DNR as ADL 234005.

LOCATION INFORMATION

The applicant has applied to use additional sections of State-owned, DMLW-managed upland and tide lands for the extension and reroute of the previously authorized fiber optic cable described in ADL 234005. The legal description for the additional area authorized per this amendment is as follows:

Western addition onto state land:

- Township 11 South, Range 55 West, Seward Meridian
 - Sections 1, 2, and 11

Eastern reroute:

- Township 10 South, Range 54 West, Seward Meridian
 - Sections 33, 34, and 35

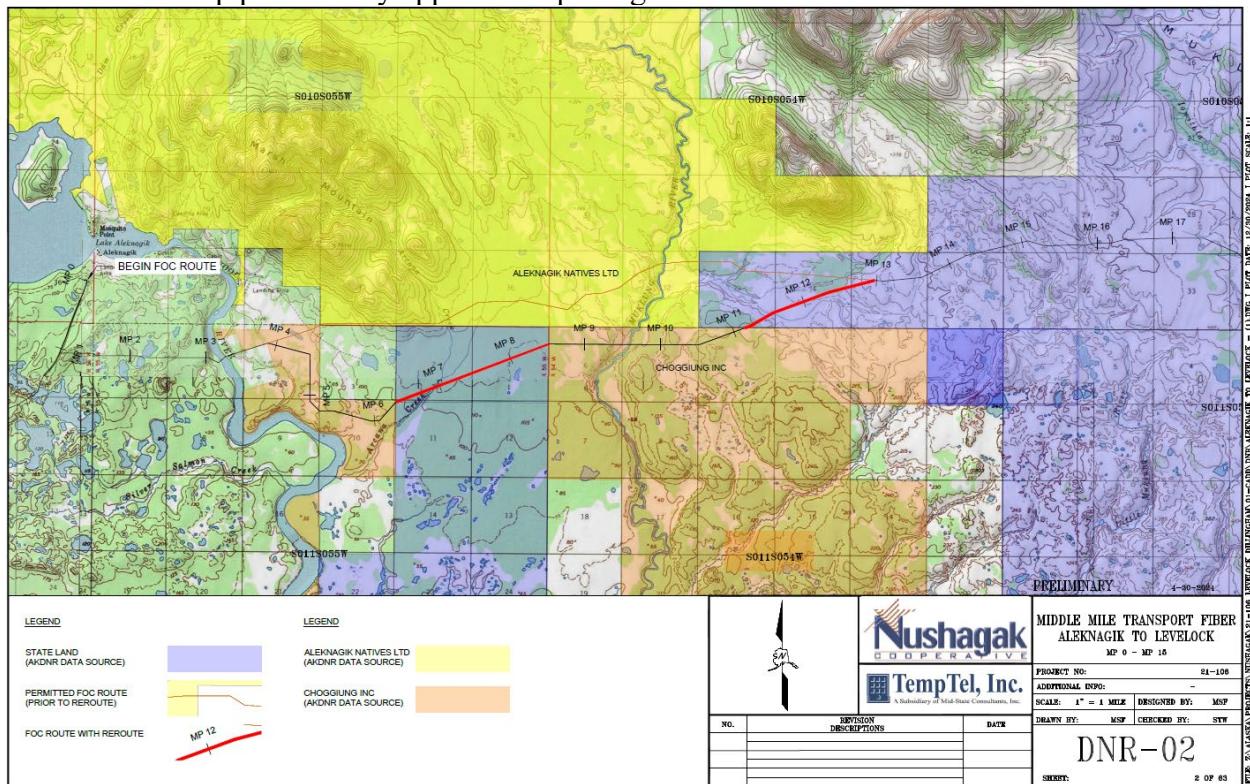
Other Land Information

Municipality: City of Aleknagik, Dillingham Census Area of the Unorganized Borough

Regional Corporation: Bristol Bay Native Corporation

Federally recognized: Native Village of Aleknagik

FIGURE 1: Map provided by applicant depicting the western addition and eastern reroute



TITLE

The State of Alaska holds title to the lands underlying portions of ADL 234005; specifically: Western addition onto state land:

- Applicable portions of Township 11 South, Range 55 West, Seward Meridian, per US Patent 50-2024-0013 recorded at Bristol Bay Recording District. The associated DNR land acquisition casfile is GS 597.

Eastern reroute:

- Applicable portions of Township 10 South, Range 54 West, Seward Meridian, per US Patent 50-2020-0087 recorded at Bristol Bay Recording District. The associated DNR land acquisition casfile is GS 3161.

The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying the sections referenced above, on the basis of the Equal Footing Doctrine, the Submerged Lands Act of 1953, and AS 38.04.062 (Identification of State Submerged Lands).

Arcana Creek is public water at the crossing location as defined in AS 38.05.965(21).

Any State-owned, DMLW-managed lands, or State-selected lands that may be managed by DMLW in the future that are crossed by the authorization considered herein at the time of this decision, which are omitted from this list, and are subsequently identified, are included in this decision. Navigable and public water determinations are subject to change pursuant to future findings.

THIRD PARTY INTERESTS

There are no third-party interests within the boundaries of the proposed easement.

PLANNING & CLASSIFICATION

The requested easement is located within state-owned uplands within the boundaries of the 2023 Bristol Bay Area Plan (BBAP), Region 5 Dillingham, Snake Lake, Nushagak Bay – subunit 5-12 and Region 6 Nushagak, Mulchatna – subunit 6-48.

Region 5: Dillingham, Snake Lake, Nushagak Bay, Unit R05-12: Wood River – Aleknagik Road. According to the “Resource Allocation Table for Upland Management Units – Region 5,” (pg. 3-80) lands within subunit 5-12 are designated as “Settlement” (Se). This designation converts to the classification “Settlement Lands” according to BBAP Table 4.2(A) (pg.4-7). Per 11 AAC 55.202 (pg.4-3), this classification is applied to:

“An upland area classified settlement is land that is, by reason of its physical qualities and location, suitable for year-round or seasonal residential or private recreational use or for commercial or industrial development. Tideland, submerged land, or shoreland classified settlement is land that is suitable for floathomes, or land that is immediately adjacent to upland areas with existing or proposed settlement and that will be managed to support those existing or proposed upland settlement uses.”

The management intent for subunit 5-12 designated as Settlement (Se), aligns with and is suitable for the expansion of the public facilities. The intent also speaks to specific management requirements for caribou calving areas and states that ADF&G should be consulted (pg. 2-14). ADF&G was consulted and provided a comment during the agency review. Additionally, the “Bristol Bay transportation corridor transects the unit; the actual position of the road alignment has yet to be determined” and authorization should not be considered without ADOT&PF consultation. DOT&PF has been consulted. The unit has good access along the rivers, is near the road system, and has high recreation values. The Alaska Heritage Resources Survey (AHRS) reports several heritage sites in or near this unit. The unit is affected in part by Mineral Closing Order 443.

Region 6: Nushagak, Mulchatna, Unit R06-48: Iowithla River.

According to the “Resource Allocation Table for Upland Management Units – Region 6,” (pg. 3-112) lands within subunit 6-48 are designated “Habitat” (Ha) and “Public Recreation and Tourism – Dispersed” (Rd)

Lands designated as Habitat (Ha) are converted to the classification “Wildlife Habitat Land” according to the BBAP Table 4.2 (A) (pg. 4-7). Per 11 AAC 55.230 (pg. 4-3), this classification is applied to land which is primarily valuable for:

- 1) “Fish and wildlife resource production, whether existing or through habitat manipulation, to supply sufficient numbers or diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or

- 2) a unique or rare assemblage of a single or multiple species of regional, state, or national significance.”

Lands designated as Public Recreation and Tourism – Dispersed (Rd) are converted to the classification “Public Recreation Land” according to BBAP Table 4.2(A) (pg.4-7). Per 11AAC 55.160 (pg.4-2), this classification applies to:

“Land that is suitable for recreation uses, waysides, parks, campsites, scenic overlooks, hunting, fishing or boating access sites, trail corridors, or greenbelts along bodies of water or roadways.”

The management intent for subunit 6-48, designated Habitat (Ha) and Public Recreation (Rd), states that it “is to be managed for the protection of fish and wildlife habitat and recreation resources” (pg. 3-112). Though development authorizations may be appropriate while subject to the protection of these resources. The management intent explains that this area is considered low priority state selection.

The proposed easement is to facilitate laying fiber optic lines and is considered a telecommunication utility. As the authorization does not conflict with the management guidelines outlined by the BBAP, SCRO has determined that issuing this authorization is consistent with the management intent and goals of the plan by developing the utility line.

ACCESS

The western addition onto state land is to be accessed via various DOT&PF managed rights-of-way from Aleknagik. The applicant will be required to obtain authorization from DOT&PF for activities within the right-of-way.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from January 28, 2025, to February 26, 2025. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Aleknagik post office for display on their notice board.

Public Notice Comment and Response

No comments were received during the public notice period.

Agency Review Summary

Agency Review of the application was conducted from January 28, 2025, to February 26, 2025. The notice was sent to the following recipients:

State Agencies

- DNR – Division of Parks and Outdoor Recreation (DPOR), and Office of History and Archeology (OHA)
- DNR – DPOR Special Use Permits
- DNR – Division of Oil and Gas (DOG), State Pipeline Coordinator Services (SPCS)
- DNR – Division of Geological and Geophysical Surveys (DGGS)

- DNR – Alaska Mental Health Trust Land Office (MHTLO)
- Alaska Department of Environmental Conservation (DEC) – Division of Water (DOW), Alaska Pollutant Discharge Elimination System Program
- DEC – Environmental Health, Drinking Water Program and Solid Waste Program
- DEC – Spill Prevention, Contaminated Sites
- Department of Fish and Game (ADF&G) – Habitat, Southcentral
- ADF&G – Wildlife Conservation, Access Defense
- Department of Transportation and Public Facilities (DOT&PF) – Statewide Right of Way

Federal Agencies

- U.S. Geologic Service
- U.S. Bureau of Land Management (BLM)
- U.S. Fish and Wildlife Service
- U.S. Army Core of Engineers (USACE)
- U.S. Department of Interior, Indian Affairs

Local Entities

- Bristol Bay Native Cooperation
- Bristol Bay Native Association, Inc.
- City of Aleknagik
- Aleknagik Natives Limited
- Aleknagik City Office
- Aleknagik Traditional Council

A total of 4 comments were received during the agency review and are summarized below:

Comment: On January 29, 2025, SCRO received a comment from DEC Contaminated Sites Program stating, “no comment” to the request, but “If the scope of the project changes, update your research and contact CSP as needed.”

Response: SCRO acknowledges the comment.

Comment: On February 5, 2025, ADF&G submitted a comment requesting verification on if the proposed easement is an after-the-fact easement request and that the applicant has already completed the work.

On February 25, 2025, SCRO received a follow up comment from ADF&G stating they were made aware that *“this is an after-the-fact easement review request; construction was completed in May/April of 2024 without consultation with resource agencies.”*

Fortunately, the applicant contacted the ADF&G Habitat Section last fall to discuss the route modification, resulting in the issuance of a revised Fish Habitat Permit. However, we remind the applicant that, in addition to issuing Fish Habitat Permits, ADF&G reviews and coordinates comments across all divisions and sections on state land use authorizations and land planning efforts to help reduce impacts to fish and wildlife while accommodating a variety of projects. For example, for this project, we would have proposed a timing window outside of the fall hunting season, as the construction area is

utilized by local residents for subsistence hunting of large land animals. Additionally, we would have directed the applicant to utilize the Information for Planning and Consultation (IPaC) tool (<https://ipac.ecosphere.fws.gov/>) to identify US Fish and Wildlife Service (USFWS) trust resources that may be present, such as migratory birds, within the project boundary, including determining the probability of presence during project activities.”

Response: SCRO acknowledges the comment and confirmed that the proposed easement is an after-the-fact easement request and that the construction was complete in April/May 2024.

Comment: On February 26, 2025, SCRO received a comment from the Division of Geologic and Geophysical Surveys (DGGS), which provided technical information related to hydrology and surficial geology and geologic hazards present within the project area.

Response: SCRO acknowledges the comment. Specific technical information provided by DGGS is contained within the casefile serialized as ADL 234005 and is available upon request.

Comment: On November 24, 2025, SCRO solicited a comment from DOT&PF after the agency review period. On November 25, 2025, DOT&PF replied that their general comments from the 2023 signed decision would still apply and the applicant would need to bring application(s) to our Regional office(s). Multiple applications may be required.

- *State right of way (ROW) has more strict requirements (such as minimum depths) for trenching than general State use agreements for undeveloped areas. Applicant must obtain utility permits from DOT&PF where DOT&PF-managed lands and facilities are impacted and where new activities may modify existing permits.*
- *DOT&PF Utility and ROW Permits would be required within State ROW. This applies to any use of the ROW, including any crossing, bore, trench, directional drilling or parallel work. Applicant must apply to the DOT&PF Regional Utilities Groups for each location.*
- *DOT&PF Lane Closure, Driveway/Access Road, and other Permits may also be required. Consult with the appropriate Regional office for locations crossing, using, or impacting DOT&PF-managed lands or infrastructure (including bridges, culverts, crossings, airports, trenches, drainages, etc.).*
- *Airports require additional review and easements are prohibited. Most State Airports have received federal grants for projects or land acquisition and are thus beholden to the FAA Grant Assurances, which prohibit “taking or permitting any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances” in the grant agreement. Further, DOT&PF may not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property. Instead, DOT&PF permits would be required, with approval of FAA. Applicant must apply to DOT&PF Regional Utilities Groups and work with Statewide Aviation Leasing Group and local airport managers for each location. No construction on State Airports is permitted without an approved Utilities Permit*

and FAA Form 7460-1 (Notice of Proposed Construction of Alteration) airspace determination, including for construction equipment. Any permanent changes to the airport will need to be reflected on an ALP update. Any new boundary crossing permits or through-the-fence agreements will also need to be updated on the Exhibit A for the airports. Pending the outcome of the permit application processes and FAA reviews, the proposed route for the fiber optic cable may or may not need to be altered.

Response: SCRO acknowledges the comment.

ENVIRONMENTAL CONSIDERATIONS

Environmental contamination risk associated with this proposed easement is minimal. Staff recommend that fuel, lubricants, and other hazardous materials be restricted to those necessary and be contained within tools and vehicles when equipment is necessary for construction and maintenance activities. Staff further recommend that no fuel or other hazardous materials are authorized to be stored on site. There are no other known environmental considerations or constraints in this location.

ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES

The economic benefit and development of state resources considerations for the subject amendment of easement ADL 234005 remains as first written in the Regional Managers Decision authorized on August 4, 2023.

DISCUSSION

The applicant requested an amendment to ADL 234005 due to a section of the originally approved development that fell out of alignment from what was authorized, and a new alignment not previously considered in the Regional Manager's Decision signed on August 4, 2023. Both alignments are presently constructed, and no additional development is anticipated.

The easement for both the western addition and eastern reroute will be issued at a 30-foot width as described in 11 AAC 51.015(d)(1)(A) and issued for an indefinite term as the need for this easement can be expected to exist as long as the region requires broadband service.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization and easement. It also provides a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, appraisal, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. There is currently \$140,000 Corporate Surety Bond on file with DMLW and will remain on file for the remainder of this amendment process. These funds will also serve as a survey deposit (per AS 38.05.860) and may be reduced one time during the term of the entry authorization by an amount equal to payments made by the applicant to a licensed surveyor under contract for completion of an as-built survey in accordance with survey instructions issued by the DMLW Survey Section, as described herein. This performance guaranty shall remain in place during the term of the entry authorization and will be subject to release upon the acceptance of a DMLW-approved as-built survey and the fulfillment of all terms, conditions and stipulations of this decision and the entry authorization. The performance guaranty may also be

adjusted to reflect updates and changes in the associated project, and the applicant may be required to provide an additional performance guaranty if DMLW determines there is additional risk to the State. The performance guaranty may be utilized by DMLW to cover actual costs incurred by the State to pay for necessary corrective actions in the event the applicant does not comply with site utilization and restoration requirements and other stipulations contained in the entry authorization. An additional performance guaranty may be required for an extension of the entry authorization beyond the initial term proposed under this decision.

History of Compliance

DNR Land Administration System records indicate that the applicant is in a state of compliance with the terms of other DMLW-issued authorizations.

INSURANCE

In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, staff recommend that insurance not be required at this time. DMLW reserves the right to require insurance during the term of the easement.

SURVEY

A DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. The applicant will be required to request survey instructions prior to issuance of the entry authorization. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska.

A final easement will not be issued until the as-built survey has been approved by DMLW.

FEES

Staff find that the following fees are applicable to this request. These fees may be adjusted if regulation(s) or department fee schedule pertaining to the fee(s) change during the term of the entry authorization and/or easement and will be subject to non-sufficient fund and late payment penalty fees. All fees shall accrue from the effective date of the decision.

- The applicant shall pay an annual interim land use fee of \$120 per acre rounded up to the nearest acre, with a \$240 minimum, totaling \$1,200.00, per 11 AAC 05.070 (d)(2)(I) for the term of this EA. This fee is charged concurrently with any other land use fees that may be described herein.
- The applicant shall pay a one-time fee of 56 cents per linear foot, totaling \$13,795.00, per 11 AAC (d)(2)(B), following the final survey.
- The applicant shall pay back fees representing the annual interim fee from the date of their occupancy of DMLW managed lands, per 11 AAC 05.070(e), for the use of state lands authorized by this amendment. Staff have documented that occupancy of DMLW land began on or before May 2024, representing a total fee of \$1,200.00.
- Annual interim land use fees for the remainder of the project, as outlined by the Regional Manager's Decision dated August 4, 2023, remain in effect and are unchanged by this amendment.

Additionally, the applicant shall pay applicable document recording fees prior to DMLW's execution and recordation of the easement document.

ENTRY AUTHORIZATION

An amended entry authorization shall be issued for the same term authorized in the prior Regional Manager's Decision, which expires on August 3, 2030. This entry authorization is granted for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW's issuance of a public utility easement. The entry authorization may be revoked if the applicant has not submitted DMLW with a draft as-built survey one year prior to the expiration of the entry authorization. An extension of the entry authorization may be granted at the written request of the applicant if granting the extension is deemed appropriate by DMLW and may be subject to applicable fees. If an extension is required, the applicant should contact DMLW at least 30 days prior to the expiration of the entry authorization and certify there have been no changes to the approved development plan.

- Land use fees.
- Evidence of having made request for survey instructions to the DMLW Survey Section.

RECOMMENDATION

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, it is the recommendation of staff to issue an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.

Savannah Lilyhorn

Savannah Lilyhorn, Natural Resource Specialist 3
DMLW Southcentral Regional Land Office

1/22/2026

Date

REGIONAL MANAGER'S DECISION

When adjudicating an easement authorization pursuant to AS 38.05.850, DMLW seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with public interest. In consideration of all events and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DMLW's mission, that this project is consistent with the overall classification and management intent for this land, and that issuance of an authorization as described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the authorization. Additional time may be allotted to complete these requirements; however, this will not extend the total term of the authorizations issued under this decision. This decision goes into effect and becomes a final administrative order and decision of the department on the first business day after the twentieth calendar day after signature.

Brent Reynolds

Brent Reynolds, Natural Resource Manager 2
DMLW Southcentral Regional Land Office

1/22/2026

Date

ATTACHMENTS

- Entry authorization, unsigned
- Draft easement document

APPEAL

An eligible person affected by this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the 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. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at \$200.00 under the provisions of 11 AAC 05.160(a) and (b).

This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision goes into effect and becomes a final administrative order and decision of the department on the first business day after the twentieth calendar day after signature. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.