

# STATE OF ALASKA

**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF THE COMMISSIONER**

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May 25, 2011

**TO:** See Mailing List

**SUBJECT: COMMISSIONER'S DECISION on Requests for Reconsideration of the November 17, 2010, Adoption of the Hatcher Pass Management Plan**

On November 17, 2010, the former Commissioner of the Department of Natural Resources (DNR), Tom Irwin, adopted the Hatcher Pass Management Plan. The Land Classification Order No. SC-09-003 and Mineral (Closing) Order No. 1107, which implement the plan, were also adopted.

The 2010 Hatcher Pass Management Plan (HPMP) is a revision of the 1986 Hatcher Pass Management Plan and provides the basis for state land and resource management in the Hatcher Pass area. The HPMP is the result of a two-year planning process that included public participation through public meetings, submission of written comments, and the opportunity to comment on the March 2010 Public Review Draft of the plan.

The HPMP is also based on extensive resource analyses, land status research, review of recreation patterns, assessments of state land management practices, and statutory and administrative considerations. DNR worked extensively with the Matanuska-Susitna Borough on the joint management of the Government Peak management unit, as well as with other resources agencies, particularly the Alaska Department of Fish and Game, on other parts of the planning area. Agency review of the draft plan preceded the Public Review Draft.

The public planning process is summarized in two attachments to the Issue Response Summary: Attachment E, Public Review Draft Process Summary, March 1, 2010-May 5, 2010, and Attachment F, Public Scoping Process Summary, March 1, 2009-February 28, 2010. Both attachments list the public meetings held and number of written comments received. DNR responded to the written comments that were received on the Public Review Draft in the 67-page November 2010 Issue Response Summary. That document provided recommendations for revising the plan as a result of public and agency input, where appropriate. Those changes and revisions are contained in the 29-page November 2010 List of Approved Revisions. The HPMP adopted on November 17, 2010, consists of the Public Review Draft and the List of Approved Revisions (the Adopted Plan).

Pursuant to AS 38.05.945, DNR provided public notice of the 20-day period to submit a request for reconsideration of Commissioner Irwin's decision to adopt the 2010 HPMP. The notice stated that

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requests for reconsideration were due by December 28, 2010. The public notice also stated that the Public Review Draft, Issue Response Summary, and List of Approved Revisions were available online at DNR's webpage and that a paper copy of these documents was available upon request.

During the 20-day reconsideration period, emails were received from 45 individuals, who are copied on this letter. In my January 6, 2011, letter, I acknowledged receipt of these emails and ordered reconsideration. Adoption of the 2010 Hatcher Pass Management Plan was automatically stayed under 11 AAC 02.060(a) during my reconsideration.

### **DECISION:**

After careful consideration of the valid requests for reconsideration, I decided to grant some requests and deny others. The administrative record upon which I based my decision consists of the project file, applicable Alaska Statutes, and department regulations.

**A. Invalid requests for reconsideration which are ineligible for review.** During my review, I determined that some of the 45 emails received during the reconsideration period could not be accepted as valid requests for reconsideration. Department regulations require that a request for reconsideration must include the specific basis on which the decision is being challenged and any material facts in dispute, and must also request a remedy. 11 AAC 02.030(a).

The emails I received from the following thirteen individuals lacked one or more of the elements mandated by 11 AAC 02.030 (listed in order of date received): Jonnie Gunther, Orville W. Johnson, Richard Benson, Kneeland Taylor, Marcin Ksok, Greg Bragiel, Sally A. Balchin, Karen P. Harvey, Colby Coombs, Matt Green, Stan Olsen, Garth Lenz, and Dave Rausby. These emails were in the nature of comments that raised general concerns, not specific issues, and so they cannot be accepted as valid requests for reconsideration.

Also, two emails, the January 3, 2011, email from Jim Turner on behalf of the Anchorage Snowmobile Club and the February 14, 2011, email from Mimi Peabody, could not be accepted because they were received after the reconsideration period had closed. 11 AAC 02.040(b).

**B. Valid requests for reconsideration I am denying.** Valid requests for reconsideration that I am denying were received from the following individuals: Chris Wilson, Mark Miraglia, James F. Barker, Lonnie McKechnie on behalf of Mat-Su Borough Assembly, Forrest McCarthy on behalf of Winter Wildlands Alliance, Donna Ford, Wayne L. Todd, Eric Goldwarg, Carrie Wang, Susan Olsen on behalf of Alaska Quiet Rights Coalition, Valerie Connor on behalf of Alaska Center for the Environment, Scott Bailey, Stuart H. Grenier, Joe Nolting, Kimbrough Mauney, Becky J. Myrvold, Kathy Wells on behalf of Friends of Mat-Su, Jessica Winnestaffer, Cindi Squire, Carol Montgomery, Jill Valerius, Nancy Moore, Robin Turk, Ken Zafren and Darin Markwardt.

**Department's Response:** As mentioned above, the planning process provided several opportunities for public input. Members of the public took advantage of this process. As shown in the discussion and recommendations in the Issue Response Summary, DNR responded to public comments and then made some changes to the proposed plan based on the comments received.

Those changes were compiled in the List of Approved Revisions and became part of the Adopted Plan. However, not all differences between DNR's position and members of the public can be resolved. Where differences occur, DNR must rely on its experience and judgment when developing policies, goals, and management guidelines that are consistent with the state's best interests and the purposes expressed in state statutes.

Because these requests for reconsideration raised concerns that were previously addressed by DNR, and since they did not provide new information or a basis that would justify a reconsideration of the original decision, the requests for reconsideration on these issues are **denied**.

Nonetheless, I would like to respond to two concerns that were repeatedly raised in many of these reconsideration requests.

The first concern focused on not closing the High Glacier Peaks unit to winter motorized use. The High Glacier Peaks area is one of two new areas added to the Hatcher Pass planning area because of the recreational activity occurring in this area. (See pages 4-5, Issue Response Summary and pages 3-25 and 3-26, Public Review Draft.) The concern about winter motorized use in this area was addressed on page 45 of the Issue Response Summary. DNR explained, "A pattern of regular winter recreation use has been established in the High Glacier Peaks unit, and, under AS 38.04.200, DNR is constrained from closing this area to a traditional means of transportation when such a use has been established." (Alaska Statute 38.04.200 was enacted by the legislature in 1997 to impose limits on DNR's ability to restrict "traditional means of access for traditional outdoor activities" on state land and water.) In response to public input and recognition of the fragile environment in this area, DNR changed the plan to implement closure of this area to summer motorized use (see page 17, List of Approved Revisions) and will seek to revise DNR's generally allowed use regulation.

Another concern raised repeatedly in these requests was opening the 885 acres in the Reed Lakes/Little Susitna unit to motorized use. Again, this concern was addressed in the Issue Response Summary in the discussion on the "Alternative Winter Use Option" on pages 34 and 35 and pages 12 and 13 of the List of Approved Revisions. See also my response to request #3.

**C. Valid requests for reconsideration I am granting in part and denying in part.** Valid requests for reconsideration that I am granting in part and denying in part were received from the following seven individuals: Jeff Moore, Steve Buchta, James Hoylman, Darell Schurman, Kent Blaylock, Jim Turner on behalf of Alaska Outdoor Access Alliance, Alaska Outdoor Council, Alaska State Snowmobile Association, Mat-Su Trails Council, and Mary Vollendorf.

**Request 1. Government Creek Bowl Access.** "In the Government Peak Unit, the western half of the Government Creek Bowl (portions of Sections 17, 18, 19, and 20), DNR has allowed motorized access and multiple use. But the only feasible access to this area is through the northwest quadrant, west of Government Creek, of Section 29. However, Section 29 is closed to motorized access. While the Matanuska-Susitna Borough (MSB) owns this section, DNR needs to recognize the necessity of and provide for this corridor in the Management Plan. Without reconsideration to establish a motorized corridor through these lands designated as non-motorized, this region will become a de facto non-motorized area regardless of the intent of the HPMP. Our recommendation

is similar to the modification previously made by DNR to recognize the potential need for and development of an East-West corridor immediately west of areas owned by the MSB in the Government Peak unit. We request the Commissioner reconsider and establish this motorized corridor.”

**Department’s Response:** I concur that such a change is appropriate in order to **provide a connecting route on state land** in the event the MSB decides to develop an east-west motorized corridor. Providing this connecting route will allow the borough to remain consistent with the management plan and avoid the need for a plan amendment to accommodate a motorized corridor. Accordingly, this request is **granted** and the plan text and map are **amended** to indicate the following:

- The Adopted Plan Map is amended to depict a winter motorized route extending from the edge of state/borough land in Section 29, following the drainage of Government Creek and terminating on state land at the approximate center of Government Peak Bowl in Section 19 of S019N002E.

- The Adopted Plan text is amended to include the following:

“A winter motorized corridor extends from the edge of state/borough land in Section 29 of S019N002E and terminates at the approximate center of the Government Peak Bowl in Section 19. The purpose of the corridor is to allow the borough to be consistent with the management plan and avoid the need for a plan amendment to include this route should the borough choose to develop a motorized route of this type at a later date.”

**Request 2. Stronger language about corridors on MSB land.** “While we understand why DNR has deferred to the MSB and has chosen not to designate corridors on borough land, we request stronger language in the HPMP on the critical importance of these [motorized] corridors on MSB land in rational trails development.”

**Department’s Response:** Whether motorized corridors are appropriate on borough land is not a decision for DNR to make. Instead, the HPMP was revised as described in the List of Approved Revisions on page 12 (North/South Corridor on State Land (only) Government Peak) and page 19 (East/West Corridor on State Land). The HPMP is being modified now by this decision in response to request #1 to provide a Northwest-Southeast motorized corridor on state land. This modification suggests that such a connection is important on borough land but leaves the final decision to the borough, where it should remain. This reconsideration request is therefore **denied**.

**Request 3. Upper Glacier Creek/Snowbird Pass Access.** “In Section 13 at the nexus of Reed Creek, Glacier Creek and Good Hope Creek, there is a serious problem in the boundary between motorized use and non-motorized use that requires change. The Snowbird Pass is important for winter motorized access. At the nexus of these three creeks, there is a nub of less than 100 acres closed to winter motorized use that forecloses the natural approach to Snowbird Pass for snowmachines. The solution is to move the boundary slightly northward. The boundary between the

motorized and non-motorized areas would be formed in the Reed Lakes/Little Susitna Unit by Glacier Creek, Reed Creek and Good Hope Creek. That is, the area south of Glacier Creek, west of Reed Creek and south of Good Hope Creek would be opened to motorized use. Reconfigured in this fashion, the revised boundary will provide safe access.”

**Department’s Response:** This concern was addressed on page 34 of the Issue Response Summary as it pertained to the concept of the “Alternative Winter Use Option.” DNR concluded at that time that opening the Reed Lakes area (which would include Glacier Creek) would be inappropriate, as this would effectively open the High Glacier Peaks area. The non-motorized community and the MSB strongly opposed any additional access from the Reed Lakes area into the High Glacier Peaks unit, which has been a traditional non-motorized area during both the summer and winter.

DNR continues to maintain that the approach recommended in the Issue Response Summary on pages 34 and 35 and as depicted on the Adopted Plan Map is appropriate. There is some merit, however, to the argument that opening Snow Bird Pass to snowmachine use would provide desired access for the motorized community and also provide an access route that is significantly safer than what now exists. But DNR also believes that a balance had been reached with the opening of the Reed Creek/Good Hope area to snowmachine use and is reluctant, at this time, to also open Snow Bird Pass to such use. Accordingly, this request is **denied**.

Nevertheless, **on my own motion I have decided** it is appropriate to amend the plan to note the importance of this pass to snowmachine use and to indicate that DNR will reevaluate the opening of this pass approximately two years after the implementation of the revised regulations for the Hatcher Pass area. Accordingly, the Adopted Plan is **amended** to revise the recommendation in the Issue Response Summary on page 35 by adding the following paragraph:

“This plan recognizes that by retaining the closure to Snow Bird Pass to motorized use, we are effectively restricting motorized use to the much larger High Glacier Peaks area. Approximately two years subsequent to the implementation of the revised regulations for the Hatcher Pass Management Plan Area, the department will reassess the appropriateness of opening Snow Bird Pass to snowmachine use. Such a decision, if one is to be considered, will require a public hearing and plan amendment.”

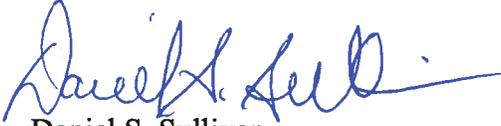
**CONCLUSION:** I believe the 2010 Hatcher Pass Management Plan creates a balance between motorized and non-motorized uses in the planning area. Department staff and the public worked hard to delineate the new motorized/non-motorized zones and I believe we have achieved a reasonable solution. We appreciate the significant public interest and input that went into this process. Achieving the balance we have sought has not been easy. DNR will monitor the plan’s implementation to ensure that our goals are being achieved.

**APPEAL TO COURT:** This Commissioner’s Decision is the final administrative order and decision of DNR for the purpose of an appeal to Superior Court. An appellant affected by this final administrative order and decision—meaning only those who submitted valid requests for

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reconsideration—may appeal to Superior Court within 30 days in accordance with the Alaska Rules of Court and to the extent permitted by applicable law.

Sincerely,



Daniel S. Sullivan  
Commissioner

cc: Wyn Menefee, Acting Director, Division of Mining, Land and Water, DNR  
Bruce Phelps, Chief, Resource Assessment and Development Section, MLW, DNR  
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