

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

FINAL FINDING AND DECISION

of a
Land Offering in the Unorganized Borough
Nenana-Totchaket Agriculture Phase One Subdivision – ADL 233703
AS 38.05.035(e), AS 38.05.045

and its

RELATED ACTION:
Mineral Order 1255 (Closing)
AS 38.05.185 and AS 38.05.300

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) dated April 8, 2021. The PD (attached) and related action has had the required public review.

I. Recommended Action(s)

The State of Alaska, Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends offering for sale State-owned land for private ownership within the Nenana-Totchaket Agriculture Phase One project area (ADL 233703), as described in the PD. Surveyed parcels will be offered for future sale by a method under *AS 38.05.045 Generally*.

For the purposes of providing land for agriculture in the Nenana-Totchaket Agriculture Phase One project area, LCS may develop no more than 1000 parcels varying in size from 5 acres to 640 acres. This project area is located within the Unorganized Borough and therefore survey, platting, and access to and within the project area will be subject to the State of Alaska subdivision standards. The project may be subdivided and offered in multiple stages.

There is one related action with this proposal:

Mineral Order: DNR proposes to close the project area to new mineral entry through Mineral Order (MO) 1255.

Public notice for this related action was conducted concurrently with the notice for the primary action's PD.

II. Authority

DNR has the authority under *AS 38.05.045 Generally* to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by *AS 38.05.035(e) Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska provides: "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest." Pursuant to *AS 38.05.055 Auction Sale or Sealed Bid*

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Procedures, bidders for commercial or agriculture land are not required to have been an Alaska resident for one year preceding the date of the sale. In addition, if it is deemed appropriate, DNR has the authority to develop and offer parcels larger than 5 acres under the allowances listed in *AS 38.04.020(h) Land Disposal Bank*. *AS 38.05.321 Restrictions on Sale, Lease, or Other Disposal of Agricultural Land* provides the authority for selling land subject to agricultural covenants.

For related actions, *AS 38.05.300 Classification of Land*, and *AS 38.05.185 Generally* allow for mineral orders.

III. Public Participation and Input

Pursuant to *AS 38.05.945 Notice*, public notice inviting comment on the PD for the proposed primary action and drafts of the related action were published and distributed in the following manner:

- Posted on DNR Land Sales website from (April 9, 2021) to (May 26, 2021).
- Mailed to postmasters in Anderson, Nenana, Clear, and Minto with a request to post for 30 days, per *AS 38.05.945(c)(4)*.
- Mailed to the library in Nenana with a request to post for 30 days.
- Mailed to the Doyon Limited regional corporation per *AS 38.05.945(c)(2)-(3)*.
- Mailed to local Native corporation (Toghotthele (Nenana) Corporation), Native Village (Nenana Native Association) and Native Council (Nenana Traditional Council) in the vicinity of the offering.
- Mailed to City of Nenana.
- Sent notification to area state legislators and to multiple state agencies.
- Notified parties via the DNR Land Sales subscribers lists by email and the DNR Land Sales Twitter and Facebook accounts.

The public notice stated that written comments were to be received by 5:00PM, May 26, 2021 in order to ensure consideration and eligibility to appeal. For more information, refer to the PD.

Should this project move forward, final subdivision design and survey will be completed by an Alaska licensed surveyor. The Nenana-Totchaket Agriculture Phase One project is within the Unorganized Borough and outside of any local platting authority. Within an organized borough or local platting authority, platting ordinances typically provide for an additional opportunity for review and comment on proposed platting actions. The scope of such a review is limited and specific to review of the project's adherence to the local platting ordinance, and is the sole prerogative of a political subdivision of the State which establishes platting authority and the applicable ordinances governing such actions.

DMLW conducted a public meeting in Fairbanks and via live stream on April 20, 2021 and in-person only meeting Nenana on April 21, 2021, to share and receive information about the proposed Nenana-Totchaket Agriculture Phase One Subdivision.

Input received at the public meeting included emphasis on post sale management of agriculture lands. These concerns are addressed in the **Summary of Public Notice and Comments** below. Additionally, the Division of Agriculture (DAg) and LCS hosted a separate meeting on June 11 in Nenana at the Nenana Agricultural Education Day for the purpose of answering questions regarding the post-sale management of agricultural lands.

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IV. Summary of Comments

DNR DMLW LCS received comments from the State of Alaska, Department of Transportation & Public Facilities (DOT), Department of Natural Resources Division of Oil and Gas, State Pipeline Coordinator's Section (SPCS), and eight private individuals. All comments received during the public comment period are summarized below.

DOT Comment: No Comment

DNR DMLW LCS Response: Thank you for your review

DNR Division of Oil and Gas SPCS Comment: SPCS has no concerns. There is no AS 38.35 activity in the vicinity of the Nenana-Totchaket Agriculture Phase One project. The beginning of the Totchaket Road, ADL 409501 will cross the Alaska Stand Alone Pipeline (ASAP) and the Alaska LNG-Mainline Pipeline (AKLNG) rights-of-way leases. SPCS requests that contact be made with AS 38.35 lessee prior to conveyance to confirm no conflicts of use.

DNR DMLW LCS Response: Thank you for your review. Per conversation with SPCS, no conflicts of use are anticipated. LCS will contact AS 38.35 lessee point of contact as suggested by SPCS.

Comments regarding support and approval: Several comments were received expressing general approval and support of the project. These comments voiced appreciation for agriculture project development as something that is needed and considered as a long time coming. Comments referenced the need for the state's self-reliance, independence, and food security.

DNR DMLW LCS Response: LCS appreciates the support and is working with DAgr to offer agricultural land for private ownership.

Comments regarding lot size: Five comments were received that discussed parcel size. Four requested 640-acre tracts be designed and made available for offering, with one comment recommending parcels double or triple this size, and another recommending up to 2,560-acre parcels. Comments referenced the need for diversified farms (animal and crop production), observations from the lower 48 of effective fire management using grazing and citing studies and reports from "*NRCS Cold Storage Study, Alaska Department of Health and Social Services, Alaska Food Policy Council*" as a need of larger sized farms to meet the needs of retailers. Three of the comments acknowledged large tracts of land may be difficult to obtain financially and suggested staged purchased options or "piggyback" offerings. One comment noted that while upfront costs of large parcels is high, production cost goes down with larger operations. Additionally, two of the four individuals commented on the need and necessity for smaller, 20-80 acres. Four stated that 5 acre lots are too small for agriculture and should not be offered. One comment included that large parcels should be void of interior access easements.

DNR DMLW LCS Response: LCS thanks you for your comments. The Nenana-Totchaket Agriculture Phase One proposes parcel size to be, "varying in size from 5 acres to 640 acres." Having a wide range of parcel sizes permits flexibility in design and allows for multiple diverse offerings in stages over time. The proposed Nenana-Totchaket Agriculture Phase One project is not required to offer parcels of 5 acres. However, offering parcels that vary in size will provide options for all potential buyers and allows for developing smaller

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parcels which are suited to use for agricultural support infrastructure. If there is interest in acquiring large acreage, prospective buyers can bid on multiple parcels to meet their needs. Additionally, Preference Rights authorized under *AS 38.05.069*, is a mechanism that aids prospective buyers who are currently developing agriculture on their existing parcels in acquiring adjoining parcels through multiple offerings over time. DA and LCS are coordinating to develop The Nenana-Totchaket project to create some smaller (approximately 20-acre) parcels in the initial offerings, which if purchased and put into agricultural production, will qualify the purchaser for a preference right to expand their existing farms to adjacent parcels. As the Nenana-Totchaket agricultural project develops, larger parcels in excess of 640-acres may be offered. However, this will require a separate decision and public notice. The initial offering is not expected to design agriculture parcels smaller than 20 acres. All parcels, regardless of size will be subject to a 50-foot-wide section-line easement on each side of surveyed or protracted section-lines on State-owned land in accordance with *AS 19.10.010 Dedication of Land for Public Highways* and *11 AAC 51.025 Section-line Easements*, unless specifically vacated under *AS 19.30.410 Vacation of Rights-of-Way* and *11 AAC 51.065 Vacation of Easements*. Vacation of section-line easements requires a separate public process.

Comments regarding perspective bidders and offerings: Two comments were received that cited U.S. Department of Agriculture (USDA) statistics and National Conference of State Legislatures notices, which described scenarios and stated reasons to exclude industry, organizations and businesses, non-farming investors, and non-residents from being eligible to bid. One comment recommends that the bidding be limited to Alaska residents who are currently involved in agricultural production. Concerns were raised that the land would not be used for agriculture and bidders that have no background or understanding of agriculture practices would eventually fail, resulting in the land being sold for a better profit. In addition, one comment requests a secondary agriculture land sale be conducted exclusively for “socially disadvantaged agricultural producers.” The commentor noted that this could allow more funding for infrastructure development and agricultural production opportunities.

DNR DMLW LCS Response: LCS thanks you for your comments and recognizes your concerns. DNR does not have the legal authority to offer land for disposal outside of *AS 38.05.045*. The Nenana-Totchaket Agriculture Phase One will have multiple offerings over time. This will limit large quantities of land from being purchased on a wholesale scale and deter large industry over-competition. DNR is not authorized to limit or exclude potential bidders of agriculture land offered at auction, nor is DNR authorized to sell land to only specific groups. Any conveyance of land into private ownership, such as an additional land sale, must follow *AS 38.05.045*. It is possible that some purchasers will be unsuccessful in attempting commercial agricultural production. This is no different from any other commercial enterprise or entrepreneurial endeavor. Agricultural land sales are subject to perpetual covenants that restricts or limits the use of the land for agricultural purposes. These covenants are carried forward through subsequent ownership transfer, protecting the agricultural use of the land for the future. Additionally, patent to the land will not be issued unless the development requirements have been met and maintained, and the land may not be resold until patented. Any transfer of the land while under contract must be approved by DNR and is subject to the same provisions of a State Farm Conservation Plan (SFCP) and agricultural covenants.

Comments regarding easements: Two comments were received requesting a wider easement along the Commissioner’s Line Trail of at least 500 feet, to allow for future development of roads

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and other infrastructure, and retain the current use by snowmachine, ATV, and dogsled. Both comments expressed the need for continued access on the trail for travel to remote cabins or trapping, noting that other routes are longer, less reliable, and potentially dangerous.

DNR DMLW LCS Response: LCS appreciates your comments and recognizes the importance of the Commissioner's Line Trail for travel, access, and other uses. LCS intends to dedicate, in fee, a minimum 200-foot Right of Way (ROW) along the general route of the Commissioner's Line Trail corridor, portions of which may be re-routed as necessary to ensure developable access, avoid conflicts, or accommodate subdivision design. To this end, LCS intends to dedicate legal access from the Totchaket Road to the Commissioner's line trail around the University parcels. The additional width of the ROW will allow greater opportunity for multiple use and access within the ROW. Additionally, by dedicating the ROW in fee, the land within the ROW will be owned by the public and managed by the platting authority, as opposed to creating an easement over potentially privately owned land. DNR is the platting authority in the Unorganized Borough. Until an organized borough or platting authority is formed encompassing this area, or unless another agency accepts management of the ROW, DNR will retain management of the ROW. Dedication will occur in multiple stages as surveys and plats are developed. Other methods of access and uses of land within the ROW are allowable, such as the use of ATV's, snowmachines, or dogsleds, provided that the non-access uses do not conflict with travel along the ROW. The minimum 200-foot dedication will provide sufficient width to accommodate multiple means of access and infrastructure, without creating an unnecessarily large corridor retained in State ownership/management, and will avoid unnecessarily long driveways connecting to any subsequently developed road.

Comments regarding post-sale administration: One comment suggested that the land be used for agricultural development only with allowance for the habitation of the farmers, ranchers, and workers. The commenter suggested that the land not be allowed to sit as property investments as witnessed in the past, and that it should remain in active agricultural status. The commenter suggested that as part of the SFCP, requiring agriculture use within a set time or void the purchase, but the buyer and receives 5% return on purchase if they fulfill the conditions in the SFCP. The comment also suggested the SFCP address proper agricultural land stewardship, conservation of the land, and banning the use of certain chemicals.

DNR DMLW LCS Response: LCS appreciates your comments and recognizes that agricultural land offerings have provisions placed on them in the form of covenants that dictate management of agriculture parcels. Changes or amendments to *AS 38.05.321 Restriction on Sale Lease or Other Disposal of Agricultural Land* require legislative action, DNR does not have authority to change statute. Agricultural covenants dictate that "The construction of housing for landowners or farm laborers, or improvements that are reasonably required for or related to agriculture use" are allowed. Additionally, agricultural covenants and the approved SFCP include a requirement to clear and prepare a percentage of cropland soils within a specific interval. Each required SFCP is unique to the individual parcel it is created for and insures site-specific soil and water conservation planning occurs. The goal of the SFCP is to insure that the appropriate site-specific soil and water conservation planning occurs prior to the purchaser assuming management of the land. Although there is a requirement to improve the land to a farmable condition, DNR does not have the authority to require purchasers to engage in farming. The SFCP adopts land stewardship and conservation best practices, however there are some things that are

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beyond the scope of authority, such as banning chemicals that are that have been deemed as acceptable by governing agencies.

Comments regarding timber harvest: One comment described that silviculture is a type of agriculture, and recommended allowing the farmers to harvest and sell the trees in order to recuperate a portion of the cost to clear the land. Another comment referenced the Willer-Kash agricultural offering and the sale of the trees as a necessity for making development possible.

DNR DMLW LCS Response: LCS appreciates your review and comments. Harvesting and selling the timber in conjunction with parcel development is a common practice. Authorization and management of this is typically dealt with in the SFCP. Most of the Nenana-Totchaket project area was burned in 2009. Although many parcels may have a limited amount of marketable timber, purchasers may, as appropriate, sell timber or salvaged wood in accordance with their approved SFCP. Additionally, DNR may issue authorizations in advance of sale for timber harvest, salvage, or personal use firewood harvest.

Comments regarding funding and grant programs: Two comments were received that cited and requested opportunities for funding and assistance. A comment citing a USDA grant within the 2021 American Rescue Plan that helps to improve land access for socially disadvantaged agriculture producers, proposes that it could allow for additional funding opportunities. Another comment asked for consideration for providing micro-grants for agriculture operations.

DNR DMLW LCS Response: LCS appreciates these comments and acknowledges there are numerous and varied programs and grants available. Many of the grants and programs are offered and managed at the federal, not state level and are designed for current agriculture producers, not prospective buyers. This decision authorizes the sale of agricultural land within the Nenana-Totchaket Agriculture Phase One project area. Grants and funding sources are beyond the scope of this decision. For more information on grant programs or the Agricultural Revolving Loan Fund, please visit the Division of Agriculture website at: <http://dnr.alaska.gov/ag>, or the USDA Grants and Loans page at: <https://www.usda.gov/topics/farming/grants-and-loans>.

Comments regarding appraisals: Two comments were received with questions about the appraisal process, DNR Standards, and how value is determined. Comments listed concerns of fair market value being subjective. Comments referenced past offerings including Willer-Kash, Delta Junction, and Mat-Su area agriculture sales, and current comparables as evidence of subjectivity. One comment noted the difference between “farmland” and “agriculture land,” and that the appraisals should account for the land not being farmland under production.

DNR DMLW LCS Response: LCS appreciates these comments. The appraised value of parcels available in an offering are done in accordance with *AS 38.05.840 Appraisal*. Each appraisal report is reviewed by the Review Appraiser for technical compliance with specific DNR Appraisal Instructions, and the Uniform Standards of Professional Appraisal Practice. Appraisals include consideration of economic factors utilizing market data compiled by DNR DMLW staff. Although the appraised value is the appraiser’s opinion of market value, it is not subjective. The appraiser’s opinion of value is derived by extracting and analyzing market data. Although selecting comparable sales from the immediate market area is ideal, sometimes it is necessary to analyze sales from an expanded market area in order to provide credible results. *AS 38.05.840 Appraisal* ensures the current market conditions are

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addressed in order to obtain a realistic minimum bid or purchase price for the sale of State land. The fair market value is calculated using many factors and addresses the entire parcel, not just portions of it, such as a percentage of desirable soils or favorable farmland. The price paid for a piece of real estate is a fact which may, or may not, be equal to fair market value. For example, a price based on speculation, an estate sale, local supply and demand, or use value may be above or below the market value.

Comments regarding settlement parcels: Two comments proposed that some of the land within the project area be re-classified or re-designated as settlement, not subject to agricultural covenants, and that the location of settlement parcels be located adjacent to or near one another. One comment spoke of a need for land for home and business development, noting that housing and property is limited in Nenana. One of the comments also provided that renewable energy on settlement lands would be another viable alternative.

DNR DMLW LCS Response: LCS appreciates your review and comments. In order for land to be re-designated or re-classified an additional decision and public notice is required. The proposed Nenana-Totchaket Agriculture Phase One project is being offered in multiple stages. Future offerings may integrate settlement and/or commercial land. Settlement land would be targeted for areas that have less desirable soils for agriculture and in areas where larger lot sizes are impractical to design. Additionally, agricultural covenants do allow for farm improvements and construction of housing.

Comment regarding leased lands: One comment expressed the desire for large acreage for rotational agricultural grazing leases. The commentor recommended a particular area for this purpose at the far west end of the Agriculture-designated unit.

DNR DMLW LCS Response: LCS appreciates your review and comments. DAg and LCS have considered large areas within the Nenana-Totchaket area for grazing purposes. However, DAg and LCS are hoping to develop this into the agricultural project over time. The Nenana-Totchaket Phase One subdivision is just the initial development of this agricultural project, and it is intended to expand over time and include future grazing areas. However, grazing leases are beyond the scope of this decision. Should grazing leases be authorized in the future, they will require separate authorization and notice. The area the commentor recommended for this particular use, although within the larger Yukon-Tanana Area Plan K-32 Agriculture-designated unit, is outside of the boundaries of the Nenana-Totchaket Phase One project area. DAg and LCS expect to include the proposed area in future developments, for which there will be a separate decision, public notice and opportunity for public comment.

Individual Comment: Commentor has concerns about future development outside of the project boundary, specifically south-east, toward the commentor's cabin on the Teklanika River. The concerns mention increased access and increased hunting access, increased hunting pressure, erosion and degradation of the land, anadromous stream damage from uncontrolled off-road traffic, and the process of water rights conveyance, specifically public comment.

DNR DMLW LCS Response: LCS appreciates your comment and recognizes your concerns. The area in question is outside of the project area, and beyond the scope of this decision to authorize or restrict any uses within that area. While it is possible that there could be an increase in use or activity, it is also possible that use or activity would be limited or decreased by the conveyance of public land into private ownership. The area described is

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designated as habitat and water resources within the Yukon Tanana Area Plan. As such the management intent of these areas is to continue in its natural state and retain in state ownership. There is no intent to construct or develop in the area of concern. However, in accordance with 11AAC 96.020 an individual may brush or cut a trail less than five feet wide using only hand-held tools without a permit, and may use a recreational-type off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, or a highway vehicle with a curb weight of up to 10,000 pounds, on or off an established road easement if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion. Any uses beyond this scope require a permit or other authorization from DNR. There are no listed anadromous waters in the project area and the nearest listed anadromous water is approximately four miles away. Crossing anadromous streams with vehicles or equipment may require a Fish Habitat Permit from the Alaska Department of Fish and Game (ADFG). Refer to ADFG for more information on Fish Habitat Permits. Water rights fall under the *Alaska Water Use Act (AS 46.15)* and are managed by the Water Resources Section of DNR DMLW. Water rights would be issued to the applying landowner on a case-by-case basis, after conveyance of the land and would not occur pre-sale. To obtain water rights a landowner must first submit an application, then the application is processed, finally a permit may be issued. A permit is required for appropriations more than 500 gallons per day (gpd) for more than ten days per calendar year, or for more than 5,000 gallons in a single day. Public Notice is required for appropriation greater than 5,000 gpd. Public Notice may be required for uses of less than 5,000 gpd if the source is an anadromous fish stream or the water source has a high level of competition among water users.

V. Traditional Use Findings

In accordance with *AS 38.05.830 Land Disposal in the Unorganized Borough*, a Traditional Use Finding is required for project areas within the Unorganized Borough. This project area is within the Unorganized Borough. As discussed in the PD, as lands are sold and developed, it will impact traditional uses by removing some of the lands from public use. However, the project area is surrounded by large amounts of State-owned land which will currently remain open to public use. Impacts on existing resource users will be minimized by retaining access routes within and beyond the project area, potentially retaining land in public ownership, and continuing to follow the area plan management guidelines for the area. Additionally, the project area will be developed and offered in phases over multiple years, allowing continued use of the State lands until sold. Public review brought forth no new information indicating traditional use conflicts that were not apparent at the PD stage.

VI. Modifications to Decision and/or Additional Information

Pursuant to public comment, the recommended action has been modified from the original proposed action(s) described in the PD to increase the ROW dedication of the Commissioner's Line Trail from 100 feet to a minimum 200-foot Right of Way (ROW) along the general route of the Commissioner's Line Trail corridor, portions of which may be re-routed as necessary to ensure developable access, avoid conflicts, or accommodate subdivision design.

Recommendation and Approval of the Final Finding and Decision follow.

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VII. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the actions as described in the Preliminary Decision and amended herein. This action is undertaken under relevant authorities. Offering these parcels for sale will help meet the State’s goal to provide land for settlement for sale to the public and raise revenue for the State.

The findings presented above have been reviewed and considered. Public Notice has been accomplished in accordance with *AS 38.05.945 Notice* and comments received were considered. The project file has been found to be complete and the requirements of all applicable statutes have been satisfied. The actions are consistent with constitutional and statutory intent for State-owned land and this action is undertaken under relevant authorities.

/s/ _____	6/29/2021 _____
Recommended by: Timothy Shilling Natural Resource Manager Land Conveyance Section Division of Mining, Land and Water Department of Natural Resources State of Alaska	Date

Under the authority of the applicable statutes, it is hereby found to be in the best interest of the State of Alaska to proceed with the recommended action(s) as described and referenced herein.

/s/ _____	6/30/21 _____
Approved by: Martin W. Parsons Director Division of Mining, Land and Water Department of Natural Resources State of Alaska	Date

/s/ _____	7/1/21 _____
Approved by: Corri A. Feige Commissioner Department of Natural Resources State of Alaska	Date

Reconsideration Provision

A person affected by this decision who provided timely written comment or public hearing testimony on the preliminary decision may request reconsideration, in accordance with *11 AAC 02*. Any reconsideration request 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 Ave., Ste. 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)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160 (a) and (b)*.

If reconsideration is not requested by that date or if the commissioner does not order reconsideration on their own motion, this decision goes into effect as a final order and decision on the 31st calendar day after the date of issuance. Failure of the commissioner to act on a request for reconsideration within 30 calendar days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of 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.