



BRIEFING PAPER: HB 219/SB 160

Forest Land Use Plans & Appeals; Negotiated Timber Sales

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DEPARTMENT OF NATURAL RESOURCES

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DIVISION OF FORESTRY

Issue 1: Negotiated Timber Sales. Under current law, negotiated timber sales are authorized under three different statutes, which is unnecessarily complicated and confusing. In addition, the Division lacks authority to offer long-term negotiated sales for out-of-state markets, and to offer more than one negotiated sale per year to a purchaser, which the industry currently requires.

Issue 2: Forest Land Use Plans & Appeals. For certain timber sales, especially large acreage and long-term sales, the Division of Forestry (DOF) may issue a Best Interest Finding (BIF) and award the sale before all the Forest Land Use Plans (FLUPs) for the sale area are completed. In these cases, the BIF and FLUPs may be appealed at different times, delaying the actual sale and interrupting harvest operations. This creates uncertainty in executing the sale.

Background: Negotiated Timber Sales.

Timber sale statutes currently provide for the following types of sales.

AS 38.05.115 authorizes negotiated sales without advertisement of no more than 500 MBM per year to the same purchaser. These are small-scale sales.

AS 38.05.118 authorizes negotiated sales of timber

- to a local manufacturer of wood products or a user of wood fiber,¹
- for a period not to exceed 25 years,
- and requires that the appraised value of the timber remaining to be harvested is re-determined every five years.

AS 38.05.120 authorizes sales by sealed bids or public auction. The conditions, limitations, and terms of the sale are determined by the commissioner. This is the Division of Forestry's basic timber sale authority.

AS 38.05.123 authorizes negotiated sales

- for use in the local manufacture of high value-added wood products
- of up to 10 million board feet per year
- for a term of up to 10 years.

Background: Forest Land Use Plans & Appeals

Timber Sale Process: The state timber sale process is governed by AS 38.05, AS 41.17, and 11 AAC 71. Four steps are required before a timber sale may be offered. Steps 3 and 4 may be done simultaneously for certain sales.

Step 1: Regional planning. The Department of Natural Resources (DNR) develops area plans (AS 38.04.065) and state forest management plans (AS 41.17.230) to designate appropriate uses for state land. These plans determine where timber sales are an allowed use and what other uses must be considered when designing and implementing sales.

¹ A "user of wood fiber" is typically an entity who uses biomass as an energy source for heating or electricity generation.

Step 2: Five-Year Schedule of Timber Sales (FYSTS) (AS 38.05.113). The DOF area offices prepare a FYSTS every other year. The FYSTS identifies proposed sales, including their location, volume, and main access routes. The FYSTS are scoping documents that provide an opportunity for the public, agencies, and industry to identify potential issues and areas of interest for further consideration in the BIF and FLUP. A proposed timber sale must appear in at least one of the two FYSTS preceding the sale. FYSTSs are not appealable.

Step 3: Best Interest Finding (AS 38.05.035(e)). A BIF is the decision document that:

- Establishes the overall area within which the timber sale may occur,
- Determines the amount of timber that may be offered for sale, and the sale duration,
- Sets the overall harvest and reforestation strategy for the sale area,
- Determines whether the sale proposal complies with the Alaska 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 (e.g., competitive or negotiated sale), and
- Determines the appraisal method that will be used to determine the sale price.

A Preliminary Best Interest Finding (PBIF) is intended to document that the best interest of the State will be served by the proposed action and satisfies the public notice requirement for disposals of state resources in article VIII, section 10 of the Alaska Constitution. After public and agency review of the PBIF, DOF reviews comments, makes changes as appropriate, and issues a final best interest finding. DOF must adopt a final BIF before selling timber. Final BIFs are decision documents and may be appealed to the commissioner (if originally signed at the director level) or superior court (if originally signed by the commissioner).

Step 4: Forest Land Use Plans (AS 38.05.112). Prior to authorizing harvest of timber on any area greater than 10 acres, DOF must adopt a site-specific FLUP for each harvest unit within the sale area covered by the BIF. A FLUP may be adopted before or after the timber is sold, but it must be completed prior to harvest. A FLUP specifies the site, size, timing, and harvest methods for harvest units within the sale area, as well as addressing site-specific requirements for access construction and maintenance, reforestation, and multiple use management. Draft FLUPs are based on additional field work, agency and community consultation, and site-specific analyses by DOF, and are subject to public and agency review. FLUPs are required by statute, but the format and contents of the FLUP are subject to DNR's discretion.

Appeals: Both the BIF and FLUPs are subject to appeal under AS 38.05.035 and AS 44.37.011.

- For BIFs, which are signed by the commissioner, AS 38.05.035(e) and AS 44.37.011(c) allow an aggrieved person to request a reconsideration of the commissioner's decision. AS 38.095.035(i) details the public notice and appeal process.
- FLUPs are signed by Area Foresters, and are decision documents under 11 AAC 02.900(4), defined as "a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken." FLUPs therefore are appealable to the commissioner under AS 44.37.011(b) and 11 AAC 02.
- DOF provides public notice and a minimum 30-day public comment period on proposed FLUPs because doing so enables DOF to restrict eligibility to appeal or request reconsideration to those who submitted comments. See AS 38.05.035(i).

Current Situation: Forest Land Use Plans & Appeals. Purchasers often desire large and/or long-term sales to provide a steady supply of timber over several years. However, DOF does not have sufficient staff to do the in-depth fieldwork and research necessary to prepare the multiple FLUPs required for large acreage sales or sales lasting more than three years before offering the entire sale. Long-term sales also require intermediate recalculations of the total allowable cut. As a result, timber harvest on a long-term sale may be interrupted by administrative (and potentially judicial) appeals of FLUPs that are prepared after award of the contract.

Appeals of a BIF are limited in scope to decisions made in the BIF (whether and how much timber will be sold), while appeals of a FLUP are limited to the scope of that document (site-specific details of how the harvest will be conducted). In practice, however, appellants sometimes challenge aspects of the BIF in the context of a FLUP appeal. While these appeals may be dismissed on procedural grounds, processing them diverts staff and interrupts timber harvest. Even when the appropriate issues are identified in an appeal, the fact that BIFs and FLUPs are often adopted at separate times provides two opportunities for administrative, and potentially, judicial, appeals to interrupt sale execution.

Current Situation: Negotiated Timber Sales. Industry interest recently has focused on long-term, negotiated sales for out-of-state markets. Current statutory authorities reflect prior policy to encourage development of in-state use of the state's timber resources, and do not clearly authorize this type of sale.

Action Needed: The Division of Forestry proposes statute changes (primarily to AS 38.05) that:

1. Consolidate small-scale negotiated sales (now under AS 38.05.115) into the large-scale negotiated timber sales statute (AS 38.05.118) and delete the requirements that negotiated sales must be for local manufacture, and that only one per year may be offered to a purchaser. These revisions will provide the commissioner of the Department of Natural Resources with the flexibility to negotiate timber sales that balance the evolving economics of the timber industry with the Alaska Constitution's mandate for resource development in the public interest; and
2. Protect forest land use plans from being subject to appeal or reconsideration, while keeping a best interest finding concerning a timber sale appealable under the same statute. This will result in more efficient forest management planning and more predictable timber harvests, while retaining robust public and agency participation in the process.

The proposed statute changes:

1. Make forest land use plans non-appealable or subject to reconsideration under AS 44.37.011(B), while leaving intact other significant public process protections, including:
 - the right to appeal a commissioner's best interest finding concerning a timber sale under AS 44.37.011(B);
 - the public notice and written best interest finding requirements in as 38.05.035(E)(6)(a);
 - public notice requirements for negotiated sales of 500,000 board feet of timber or less in 38.05.945; and

- the requirement for public notice of disposal of state interests in Article VIII, Section 10 of the Alaska Constitution.
2. Clarify the steps of a timber sale, stating clearly that a timber sale contract may be awarded before a forest land use plan is prepared, but harvest of timber may not occur before a site-specific forest land use plan is adopted.
 3. Clarify the factors that must be considered before deciding under which provision a timber sale will be offered (e.g., competitive or negotiated sale).
 4. Consolidate small-scale negotiated sale authorities from AS 38.05.115 into AS 38.05.118 and remove the limitation of only one negotiated sale per year to the same purchaser.
 5. Preserve the exemption for negotiated sales of less than 500,000 board feet of timber from the written best interest finding requirement under AS 38.05.035(e)(6)(A).
 6. Leave intact AS 38.05.123, which deals with negotiated timber sales for local manufacture of wood products, to assure domestic manufacturers that they have an authority tailored to their specific needs.

These proposed statute changes would also require adopting updated forest management regulations for negotiated sales, including 11 AAC 71.010, .015, .020(d), .035, .045, .050, .055, .070, .092, .094, .096, .098, and .910.

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