
Chapter Two: Introduction

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Chapter Two: Introduction

The Alaska Constitution provides that the state’s policy is “to encourage....the development of its resources by making them available for maximum use consistent with the public interest” and that the “legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State... for the maximum benefit of its people” (Alaska Constitution, article VIII, §§1 and 2). To comply with this provision, the legislature enacted Title 38 of the Alaska Statutes and directed DNR to implement the statutes.

The legislature found the people of Alaska have an interest in the development of Alaska’s oil and gas resources to maximize the economic and physical recovery of the resources; maximize competition among parties seeking to explore and develop the resources; and maximize use of Alaska’s human resources in the development of the resources (AS 38.05.180(a)(1)).

AS 38.05.180(a)(2) further states it is in the state’s best interest to encourage an assessment of its oil and gas resources, allow the maximum flexibility in the methods of issuing leases, and to offer acreage for oil and gas leases or gas only leases. DNR has identified five areas of moderate to high potential for oil and gas development and designated these areas for leasing through competitive bid sales.

The State of Alaska is proposing to offer all available state-owned acreage in the Alaska Peninsula Areawide oil and gas lease sales to be held from 2015-2024. The lease disposal area is located on the north side of the Alaska Peninsula. It stretches from the Nushagak Peninsula in the north, then south and west to the vicinity of Cold Bay (Map 2.1). The gross acreage is about 5 million acres (3.5 million onshore and 1.75 million offshore within state waters). Only free and unencumbered state-owned oil and gas mineral estates will be included in any leases issued.

This is the director’s final finding and decision, under AS 38.05.035(e), which discusses whether the interests of the state will best be served through the disposal of leases in the Alaska Peninsula areawide lease sale. Because it is understood that the lease sale is a disposal and for ease of reading, the lease disposal area will be called the “sale area” throughout the best interest finding.

A. Written Findings

Alaska statutes govern the disposal of state-owned mineral interests. Under AS 38.05.035(e), the DNR director may, with the consent of the commissioner, dispose of state land, resources, property, or interests after determining in a written finding that such action will serve the best interests of the state. As required by AS 38.05.035(e)(1)(A)(B)and(C), these written findings:

- establish the scope of the administrative review and the scope of the written finding supporting that determination;
- address the reasonably foreseeable, significant effects of the uses proposed by the disposal; and,
- limit the scope to a review of applicable statutes and regulations, facts and issues material to the determination, and known or available to the director during the administrative review.

1. Matters Considered and Discussed

The director must also consider and discuss in the written finding the matters set forth in AS 38.05.035(g). For ease of reading, reviewing, and commenting upon, this document does not necessarily follow the order as found in AS 38.05.035(g)(1)(B) (Table 2.1).

Table 2.1 Locations of topics required by AS 38.05.035(g)(1)(B)

AS 38.05.035(g)(1)(B) subsection number	Description	Location in this document
i	Property descriptions and locations	Chapter Three
ii	Petroleum potential	Chapter Six
iii	Fish, wildlife, and habitat	Chapter Four
iv	Current and projected uses; uses and value of fish and wildlife	Chapter Five
v	Governmental powers	Chapter Seven
vi	Reasonably foreseeable effects on subsistence; fish, wildlife, and habitat and their uses; and historic and cultural resources	Chapter Eight
vii	Mitigation measures	Chapter Nine
viii	Oil or gas transportation	Chapter Six
ix	Reasonably foreseeable fiscal effects	Chapter Eight
x	Reasonably foreseeable effects on municipalities and communities	Chapter Eight
xi	Bidding method	Chapter Two

2. Scope of Administrative Review

The scope of this administrative review and finding addresses only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal (AS 38.05.035(e)(1)(A)). The director does not speculate about possible future effects that are subject to AS 38.05.035(h).

The director interprets “reasonably foreseeable” to mean there must be:

- some cause/result connection between the lease sales and the effect to be evaluated;
- a reasonable probability that the effect will occur as a result of the lease sale; and
- the effect will occur within a predictable time after the lease sale.

A reasonably foreseeable effect must also be “significant.” The director interprets “significant” to mean a known and noticeable impact on or within a reasonable proximity to the sale area.

The director shall establish and may limit the scope of an administrative review and finding for a proposed disposal (AS 38.05.035(e)(1)(A)(B)). The director cannot determine with specificity at the disposal phase if, when, where, how, or what kind of exploration, development and production, or

transportation will ultimately occur as the result of a lease sale and exploration (AS 38.05.035(h)). Therefore, the director established the scope of review in this finding to address the reasonably foreseeable, significant effects of the uses to be authorized by the lease sale, the applicable statutes and regulations, the material facts and issues known to the director that pertain to the lease sale, and issues that the director finds are material to the determination of whether the lease sales will best serve the state's interest.

3. Phased Review

The director may, if the project for which the proposed disposal is sought is a multi-phased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified above that pertain solely to the disposal phase of the project (AS 38.05.035(e)(1)(C)) under the following conditions:

- (i) the only uses to be authorized by the disposal are part of that phase;
- (ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided under regulations adopted by the department;
- (iii) the department's approval is required before the next phase may proceed; and
- (iv) the department describes its reasons for a decision to phase.

This best interest finding satisfies these requirements for phased review.

Condition (i) is met because the only uses authorized are part of the lease sale phase. The lease gives the lessee, subject to the provisions of the lease, the right to conduct geological and geophysical exploration for oil, gas, and associated substances within the leased area. It also gives the lessee the conditional right to drill for, extract, remove, clean, process, and dispose of any oil, gas, or associated substances that may underlie the lands described by the lease. While the lease gives the lessee the right to conduct these activities, the lease itself does not authorize any exploration or development activities by the lessee on leased tracts.

Condition (ii) is met because the proposed lease sale is of oil and gas or gas only, and before the next phase may proceed, public notice and the opportunity to comment will be provided. Condition (iii) is met because DNR's approval is required before the next phase may proceed.

Condition (iv) is met because at this time specific information is unavailable as explained in Chapter One numbered findings 16, 17, and 18.

Therefore, this document includes the director's approval of the disposal phase.

4. Process

The process of developing a best interest finding includes opportunities for input from a broad range of participants, including: the public; state, federal and local government agencies; Alaska Native organizations; resource user groups; non-government organizations (NGOs); and any other interested parties.

a. Request for Agency Information and Preliminary Finding

The process for receiving public input begins with a request for information from state resource agencies, local governments, and Alaska Native corporations. DO&G requests information and data about the region's property ownership status, peoples, economy, current uses, subsistence, historic and cultural resources, fish and wildlife, and other natural resource values. Using this information and other relevant information that becomes available, DO&G develops a preliminary best interest finding and releases it for public comment (AS 38.05.035(e)(7)(A)).

On January 26, 2011, DO&G issued a Request for Agency Information to initiate the process of gathering information on the proposed lease disposals. DO&G received responses from four agencies: ADNOR Office of History and Archaeology (OHA), Aleutians East Borough, US Fish and Wildlife Service (USFWS), and Alaska Department of Fish & Game, Division of Habitat (Habitat). See Appendix B for a summary of the comments received and the DO&G response to each (AS 38.05.035(e)(7)(A)).

On June 19, 2014, DO&G issued a Preliminary Best Interest Finding and released it for public comment.

b. Request for Public Comments

Once a preliminary best interest finding is issued, DO&G follows AS 38.05.945(a)(3)(A) to obtain public comments on the preliminary best interest finding. This statute includes specific provisions for public notice for written findings for oil and gas lease sales under AS 38.05.035(e)(5)(A).

Public comments assist in developing information for the final best interest finding. Information provided by agencies and the public assists the director in determining which facts and issues are material to the decision of whether the proposed lease sales are in the state's best interest, and in determining the reasonably foreseeable, significant effects of the proposed lease sale. Summaries of these comments and the director's responses are published in the final best interest finding (AS 38.05.035(e)(7)(B)).

DO&G received five public comments on the Preliminary Best Interest Finding. Summaries of the comments and DNR's responses can be found in Appendix B.

c. Final Finding

After receiving public comments on the preliminary best interest finding, DO&G reviews all comments, revises the best interest finding as needed, and incorporates additional relevant information and issues brought up during the public comment period. After considering the facts, laws, comments, and issues before him, the director makes a determination and develops a final written finding. The preliminary finding included a decision approving the explorations phase, however that has been removed from the final finding. The final best interest finding will be issued at least 90 days before the lease sale (AS 38.05.035(e)(5)(B)).

d. Requests for Reconsideration and Appeals

A person who is eligible to file an administrative request for reconsideration may, within 20 days after issuance of the final written finding, file a request for reconsideration of the decision by the commissioner. An eligible person is someone who has meaningfully participated in the process set out for receipt of public comment by either submitting written comments during the comment period or by presenting oral testimony at a public hearing, if a public hearing was held, and is affected by the final written finding (AS 38.05.035(i)).

A person may appeal a final written finding to the superior court, but only if the person was eligible to request, and did request, reconsideration of that finding first at the agency level. The points on appeal are limited to those presented to the commissioner in the request for reconsideration (AS 38.05.035(l)). By requiring a party to exhaust the administrative review and reconsideration process before appealing to the superior court, the agency is given full opportunity to review, analyze, and respond to the points on appeal before litigation. For purposes of appeal, the burden is on the party seeking review to establish the invalidity of the finding (AS 38.05.035(m)).

B. Annual Lease Sales

After a final best interest finding has been issued, DO&G may proceed with oil and gas lease sales in the area. A written finding is not required for a lease sale in an area subject to a best interest finding issued within the previous 10 years unless the commissioner determines that substantial new information has become available that justifies a supplement to the finding (AS 38.05.035(e)(6)(F)).

1. Calls for New Information

Before a lease sale, DO&G issues a Call for New Information requesting substantial new information that has become available since the most recent finding for that sale area was issued. This request is publicly noticed, and provides opportunity for public participation for a period of not less than 30 days. Based on information received, the director determines if it is necessary to supplement the finding. Based on that determination, the director either issues a supplement to the finding or a “Decision of No New Substantial Information” 90 days before the lease sale. The supplement has the status of a final written best interest finding for purposes of filing an administrative appeal or a request for reconsideration.

2. Bidding Method and Lease Terms

Under AS 38.05.180(f) and 11 AAC 83.100(a), the leasing of oil and gas resources must be by competitive bidding. For each lease sale under the proposed 10-year Alaska Peninsula Areawide Best Interest Finding, the commissioner will adopt the bidding method(s) and terms under AS 38.05.180 that the commissioner determines are in the state’s best interest. The bidding method(s) and terms may not be the same for each lease sale over the 10-year term of this best interest finding. The bidding method(s) adopted for a particular lease sale will be published in the pre-sale notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale (AS 38.05.035(e)(6)(F)).

3. Lease Adjudication and Lease Award

The Alaska Peninsula sale area has been divided into lease sale tracts. For each announced lease sale DNR may release a tract map showing tracts available for bidding, lease status, and general mineral estate ownership. The extent of the state’s ownership interest within tracts is generally not determined before a lease sale. Instead, following each lease sale, and before awarding leases, DNR will verify land available for leasing and acreage within tracts receiving bids. Determination of a lease award could take weeks to months following a lease sale depending on the number of tracts receiving bids and the complexity of lease history and ownership within the tract. It is possible that a lease cannot be awarded on a tract included in a lease sale. The state cannot legally award a lease if the mineral estate is not state owned or if all state owned lands within the tract are subject to an existing oil and gas lease. Should a potential bidder require land title, land status, or survey status information for a particular tract before submitting a bid, it will be the bidder’s responsibility to obtain that information from DNR and federal public land records. Further, DNR reserves the right to defer or delete acreage or tracts from sale at any time up to lease award.



Map 2.1 Alaska Peninsula Lease Sale Area