

# Chapter Two: Introduction

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The Alaska Department of Natural Resources is proposing to offer all available state-owned acreage in the North Slope Foothills Areawide in oil and gas lease sales to be held from 2011-2020. The North Slope Foothills Areawide is located between NPR-A on the west, and ANWR on the east, south of the Umiat Baseline and north of the Gates of the Arctic National Park and Preserve (Map 1.1). The gross acreage is in excess of 7.2 million acres; however, approximately 3.2 million of these acres are either Native-owned or Native-selected, and will not be included in the lease sales. Only those free and unencumbered state-owned oil and gas mineral estates within the tracts will be included in any leases issued.

## A. Authorities

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 VII, §1 and 2). To comply with this provision, the legislature enacted Title 38 of the Alaska Statutes and directed ADNR to implement the statutes.

The legislature found that the people of Alaska have an interest in the development of the state’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)). The legislature also found that it is in the best interests of the state to encourage an assessment of its oil and gas resources and to allow the maximum flexibility in the methods of issuing leases and to offer acreage for oil and gas leases or for gas only leases (AS 38.05.180(a)(2)).

## B. Matters Considered and Discussed in Best Interest Findings (“g-list”)

Alaska statutes govern the disposal of state-owned mineral interests. AS 38.05.035(e) states that upon a written finding that the interests of the state will be best served, the Director may, with the consent of the ADNR Commissioner (Commissioner) approve contracts for the sale, lease, or disposal of available land, resources, property, or interests in them. The written finding is known as a best interest finding and describes the lease sale area, considers and discusses the potential effects of the sales, describes measures to mitigate those effects, and constitutes the Director’s determination that the interests of the state will be best served by the disposal. DO&G makes available both a preliminary and a final written finding and provides opportunity for public comment. The final written finding also discusses material issues that were raised during the public comment period.

AS 38.05.035(e) prescribes what, at a minimum, must be in these findings. AS 38.05.035(g) lists the following matters that DO&G must consider and discuss in its written finding:

- i. property descriptions and locations;
- ii. the petroleum potential of the sale area, in general terms;
- iii. fish and wildlife species and their habitats in the area;
- iv. the current and projected uses in the area, including uses and value of fish and wildlife;
- v. the governmental powers to regulate the exploration, development, production, and the transportation of oil and gas or of gas only;

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- vi. the reasonably foreseeable cumulative effect of exploration, development, production, and transportation for oil and gas or for gas only on the sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;
- vii. lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;
- viii. the method or methods most likely to be used to transport oil or gas from the lease sale area and the advantages, disadvantages, and relative risks of each;
- ix. the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;
- x. the reasonably foreseeable effects of exploration, development, production, and transportation involving oil and gas or gas only on municipalities and communities within or adjacent to the lease sale area; and,
- xi. the bidding method or methods adopted by the commissioner under AS 38.05.180.

To aid those interested in reviewing and commenting on the preliminary best interest finding, this document is organized for ease of reading and reviewing, and therefore does not necessarily follow the order of the “g-list”. The locations of “g-list” items in this document are listed in Table 2.1.

**Table 2.1. Locations of topics required by AS 38.05.035(g)(1)(B) – “g-list” – in this best interest finding.**

“g-list” Number	“g-list” Description	Location in Best Interest Finding
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 transport	Chapter Six
ix	Reasonably foreseeable fiscal effects	Chapter Eight
x	Reasonably foreseeable effects on municipalities and communities	Chapter Eight
xi	Bidding method	Chapter Two

A compilation of other laws and regulations applicable to oil and gas activities in Alaska can be found in Appendix B. If the proposed activity occurs in the coastal zone, AS 46.40 requires that the activity be consistent with the ACMP and any approved coastal district plan in effect. For purposes of the lease sale phase itself, an ACMP consistency analysis will be released concurrently with the preliminary best interest finding. It will be followed by a proposed consistency determination and a final consistency determination.

## C. Scope of Review

The Director, in the written finding, shall establish the scope of the administrative review on which the Director's determination that the disposal will best serve the interest of the state is based and the scope of the written finding supporting that determination. The scope of the administrative review and finding may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal (AS 38.05.035(e)(1)(A)). For an effect to be "reasonably foreseeable": (1) there must be some cause/result connection between the proposed disposal and the effect to be evaluated; (2) there is a reasonable probability that the effect will occur as a result of the disposal; and (3) the effect will occur within a predictable time after the disposal. Therefore, the finding does not speculate about potential but improbable future effects, but instead reviews reasonably foreseeable effects of the proposed disposal.

A reasonably foreseeable effect must also be "significant." Significant means a known and noticeable impact on or within a reasonable proximity to the area involved in the disposal.

Further, the Director may limit the scope of an administrative review and finding for a proposed disposal to:

- (i) applicable statutes and regulations;
- (ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and
- (iii) issues that, based on the statutes and regulations, on the facts as described, and on the nature of the uses sought to be authorized by the disposal, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state. (AS 38.05.035(e)(1)(B).)

Therefore, the scope of review in this finding addresses the reasonably foreseeable, significant effects of the uses to be authorized by the lease sale and is limited to the applicable statutes and regulations, the material facts and issues known to the Director that pertain to the lease sale phase, and issues that the Director finds are material to the determination of whether the lease sale will best serve the interests of the state. This includes consideration and discussion of facts that are material to issues raised during the period allowed for public comments, facts that are material to the matters listed in AS 38.05.035(g)(B)(i)-(xi), and the basis for the Director's final finding, that, on balance, holding oil and gas lease sales in the area would be in the state's best interest.

## D. Phased Review

Phased review recognizes that some disposals of oil and gas, or of gas only, may result in future development that cannot be predicted or planned with any certainty or specificity at the initial lease sale phase, and that any future development will be subject to detailed review before it takes place. In the case of oil and gas, DO&G cannot determine with any specificity or definition at the lease sale phase if, when, where, how, or what kind of exploration, development or production might ultimately occur as the result of a lease sale. Although advances in technology, unpredictable market

changes, and specific infrastructure requirements for possible production cannot be foreseen, new developments or improvements in any or all of these areas may occur.

Phasing allows the review and finding for a lease sale to focus only on the issues pertaining to the lease sale phase and reasonably foreseeable, significant effects of a lease sale. Additional authorizations are required for exploration, development, production, and other phases. When a project is multi-phased, review of issues that would require speculation about future factors may be deferred until permit authorization is sought at the exploration, development, and production phases. A discussion of governmental and public involvement at these later phases can be found in Chapter Seven.

Under AS 38.05.035(e)(1)(C), the Director may, if the project for which the proposed disposal is sought is a multiphased 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 when:

- (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 unless the project is subject to a consistency review under AS 46.40 and public notice and the opportunity to comment are provided under AS 46.40.096(c);
- (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.

The conditions under which phasing may occur have been met in this best interest finding for the North Slope Foothills areawide oil and gas lease sales. Accordingly, the review of activities in the lease sale area is of a multi-phased development. The Director, in making this finding, has limited the scope of the finding to the applicable statutes and regulations, facts, and issues that pertain solely to the lease sale phase of oil and gas activities and the reasonably foreseeable significant effects of a lease sale.

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 and the 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 lease sale is of oil and gas or gas only, and before the next phase of the project may proceed, ADNR provides public notice and the opportunity to comment on proposed plans of operations in the lease sale area. Additionally, any plan of operations in the lease sale area that is within the coastal zone is subject to consistency with the ACMP standards, including public notice and opportunity to comment under AS 46.40.

Condition (iii) is met because ADNR's approval is required before the next phase (in this case exploration) may proceed. See Chapter Six for a discussion of post-leasing phases. Before exploration activities can occur on leased lands, the lessee must secure all applicable authorizations. Additional authorizations must also be secured for any subsequent development or production on the lease.

The plans of operation must identify the specific measures, design criteria, construction methods, and standards that will be employed to meet the provisions of the lease. A plan of operations is subject to extensive technical review by a number of local, state, and federal agencies. Oil and gas

exploration, development, or production-related activities will be permitted only if proposed operations comply with all local, state, and federal laws and the provisions of the lease.

Condition (iv) is met because ADNR describes above the reasons for its decision to phase.

The effects of future exploration, development, and production will be considered at each subsequent phase, when various government agencies and the public review applications for specific proposed activities at specific locations. However, this finding does discuss, in general terms, the potential effects that may occur with oil and gas exploration, development, production, and transportation within the lease area as well as proposed measures to be imposed as terms of the lease, subsequent permits, and plan of operations to mitigate possible adverse effects.

## **E. Areawide Lease Sales**

Before 1996, industry nominated particular, limited areas for oil and gas lease sales, ADNR evaluated those specific areas, and then offered them in lease sales. The areas nominated were frequently noncontiguous, and formed a patchwork of relatively small areas across a region. For subsequent lease sales, ADNR would repeat the evaluation for other patchwork portions of the area, often directly adjacent to those just evaluated. ADNR faced repeated and costly evaluations of similar resources and issues, and the public faced repeated requests to comment on areas with similar resources and issues or concerns. Furthermore, areas that were nominated for an oil and gas lease sale did not always receive bids, causing ADNR staff to spend time evaluating land that would never be leased.

Alaska statutes now allow ADNR to hold annual, areawide lease sales for areas that are included in a current, 10-year best interest finding (AS 38.05.180(d) and AS 38.05.035(e)(6)(F)). The areawide lease sale program currently includes five geographical regions: the Alaska Peninsula, Cook Inlet, Beaufort Sea, North Slope, and North Slope Foothills. Before conducting an annual lease sale, ADNR must determine whether or not substantial new information has become available that justifies a supplement to the current best interest finding. A supplement is an official addendum to the best interest finding, and usually adds, changes, or removes mitigation measures with which lessees must comply.

The areawide lease sale program provides several significant benefits. Every 10 years, it allows a thorough consideration and discussion of topics required by AS 38.05.035(g) for an entire area. It reduces redundant requests to the public for comments on similar geographic areas, improves government efficiency, and allows ADNR and the public to focus on substantial new information that has become available for each lease sale area since the previous lease sale. By conducting areawide lease sales at a set time each year, companies are provided with a stable, predictable schedule that allows them to plan and develop their exploration strategies and budgets years in advance. The public is also afforded a consistent process and timeline by which to provide new information that might affect mitigation measures. The result is more efficient exploration, earlier development, government efficiency, and mitigation measures that reflect current information.

The last best interest finding for the North Slope Foothills Areawide was issued on February 7, 2001, and was valid for lease sales held through 2010. Supplements were issued on January 30, 2002, and July 8, 2010, that made changes to three mitigation measures of the 2001 finding. The 2010 supplement also included supplemental information about the Deepwater Horizon incident that occurred in the Gulf of Mexico in 2010.

This best interest finding addresses North Slope Foothills Areawide oil and gas lease sales from 2011 through 2020.

## 1. Process

The process of developing a best interest finding includes many opportunities for participation, from the public, government agencies, Native organizations, resource user groups, environmental organizations, and others (Figure 2.1).

### **a. Request for Agency Information**

The process of developing a best interest finding begins with a request for information from agencies, local governments, and 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, as well as other relevant information that becomes available, DO&G develops a preliminary best interest finding and releases it for public comment.

On September 10, 2009, DO&G issued a Request for Agency Information to initiate the process of gathering information on the lease sales. The division received two responses from the DMLW, Mining Section, and ADF&G, Division of Habitat.

Comments from DMLW, Mining Section discussed a coal mining prospecting permit application under review for an area located within the lease sale area. The proposed permitting area, called Nanushuk, lies along the northern foothills of the Brooks Range, in an east-west belt extending from approximately five miles west of Toolik Lake to Banded Mountain, just west of the Anaktuvuk River. The DMLW review is ongoing, and more details about this project are provided in Section B(2) of Chapter Five.

Comments from ADF&G, Division of Habitat provided updates and current information for the fish and wildlife populations within the Game Management Units (GMU) in the lease sale area. The information provided by these agencies, as well as other relevant information, was incorporated into the best interest finding.

### **b. Preliminary Best Interest Finding and Request for Public Comments**

To obtain public comments on the preliminary best interest finding, DO&G follows the public notice statute, AS 38.05.945. This statute includes specific provisions for noticing best interest findings, as required under AS 38.05.035(e). These include: publication of both a legal notice and a notice in display advertising in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action; public service announcements on the electronic media serving the area to be affected by the proposed action; and one or more of the following methods: posting in a conspicuous location in the vicinity of the proposed action; notification of parties known or likely to be affected by the action; or another method calculated to reach affected parties. Notice must also be given to a municipality if the land is within the boundaries of the municipality; to a coordinating body or a community council if requested in writing; to a regional corporation if the boundaries of the corporation established by the Alaska Native Claims Settlement Act (ANCSA) encompass the land and the land is outside a municipality; to a village corporation organized under ANCSA if the land is within 25 miles of the village for which the corporation was established and the land is located outside of a municipality; to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location; and to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.

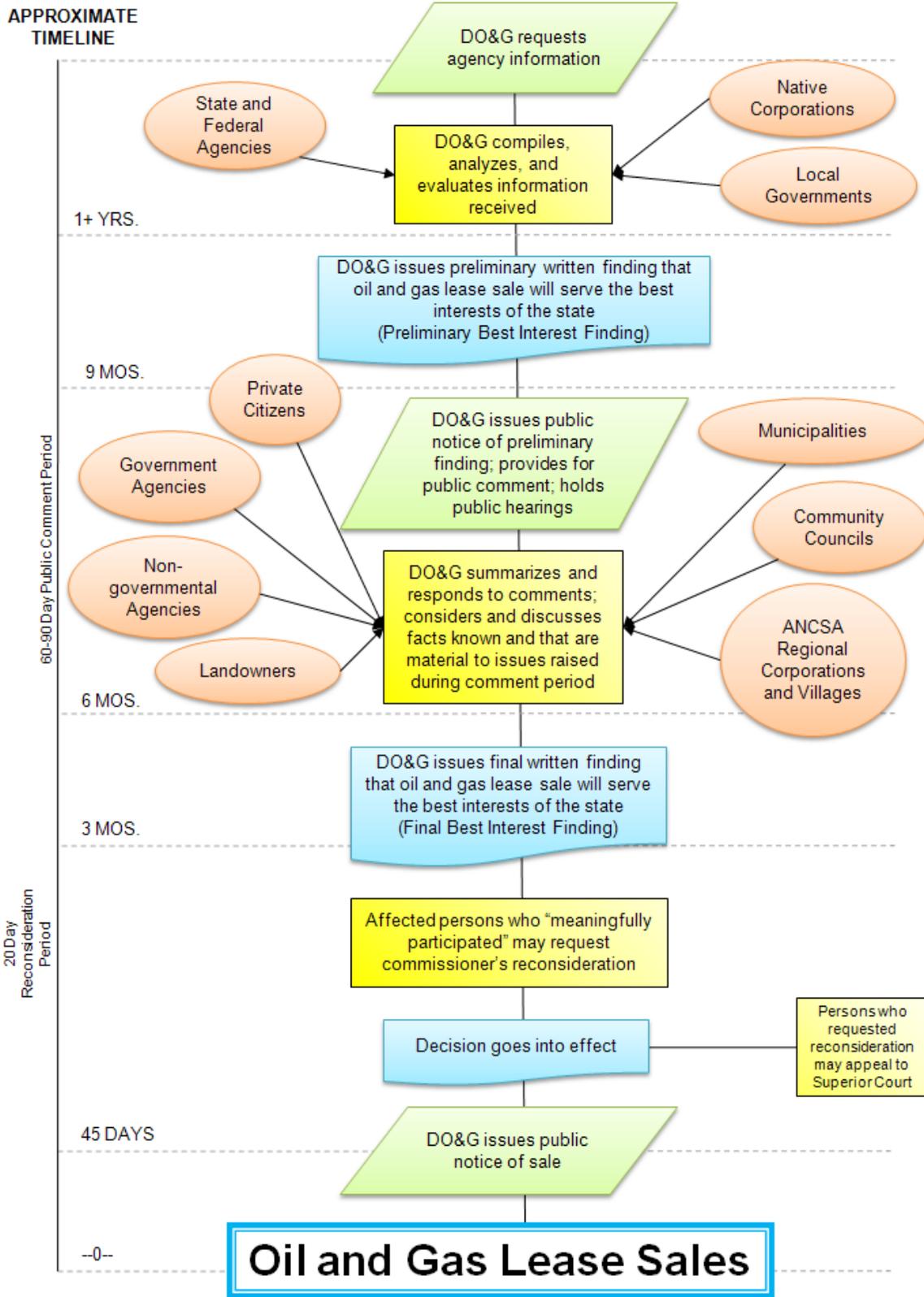


Figure 2.1. Public process for developing best interest findings for areawide oil and gas lease sales. Note that timeline is not to scale.

In addition, AS 38.05.946 provides that a municipality, an ANCSA corporation, or nonprofit community organization may hold a hearing within 30 days after receipt of the notice, which the Commissioner or his/her representative shall attend. The Commissioner has discretion to hold a public hearing.

Public comment assists in providing a body of information for the best interest finding review and analysis that is as complete as possible. Information provided by agencies and the public assists the Director in reviewing all of the facts and issues; determining which facts and issues are material to the decision of whether the lease sale is in the best interests of the state; and determining the reasonably foreseeable, significant effects of the proposed lease sale.

### **c. Final Best Interest 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. The Director strikes a balance of interests, determines if the lease sale is in the best interest of the state, and makes a final finding. The final best interest finding for the North Slope Foothills will be issued at least 90 days before the lease sale.

### **d. Request for Reconsideration and Appeal to Superior Court**

A person who is eligible to file a request for reconsideration and who is aggrieved by the final written finding may, within 20 days after issuance of the final written finding, file a request for reconsideration of the decision by the Commissioner. A person is eligible to file a request for reconsideration if the person “meaningfully participated” in the process set out for receipt of public comment and is affected by the final written finding. “Meaningfully participated” means submitting written comment during the period for receipt of public comment or presenting oral testimony at a public hearing, if a public hearing was held (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. The points on appeal are limited to those presented to the Commissioner in the person’s 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 concerns 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)).

## **2. 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. As noted above, 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.

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 lease sale area was issued (Figure 2.2). This request is public noticed, and provides opportunity for public comment for a period of not less than 30 days. Based on information received, the Commissioner determines whether it is necessary to supplement the finding. Based on that determination, the Commissioner 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.

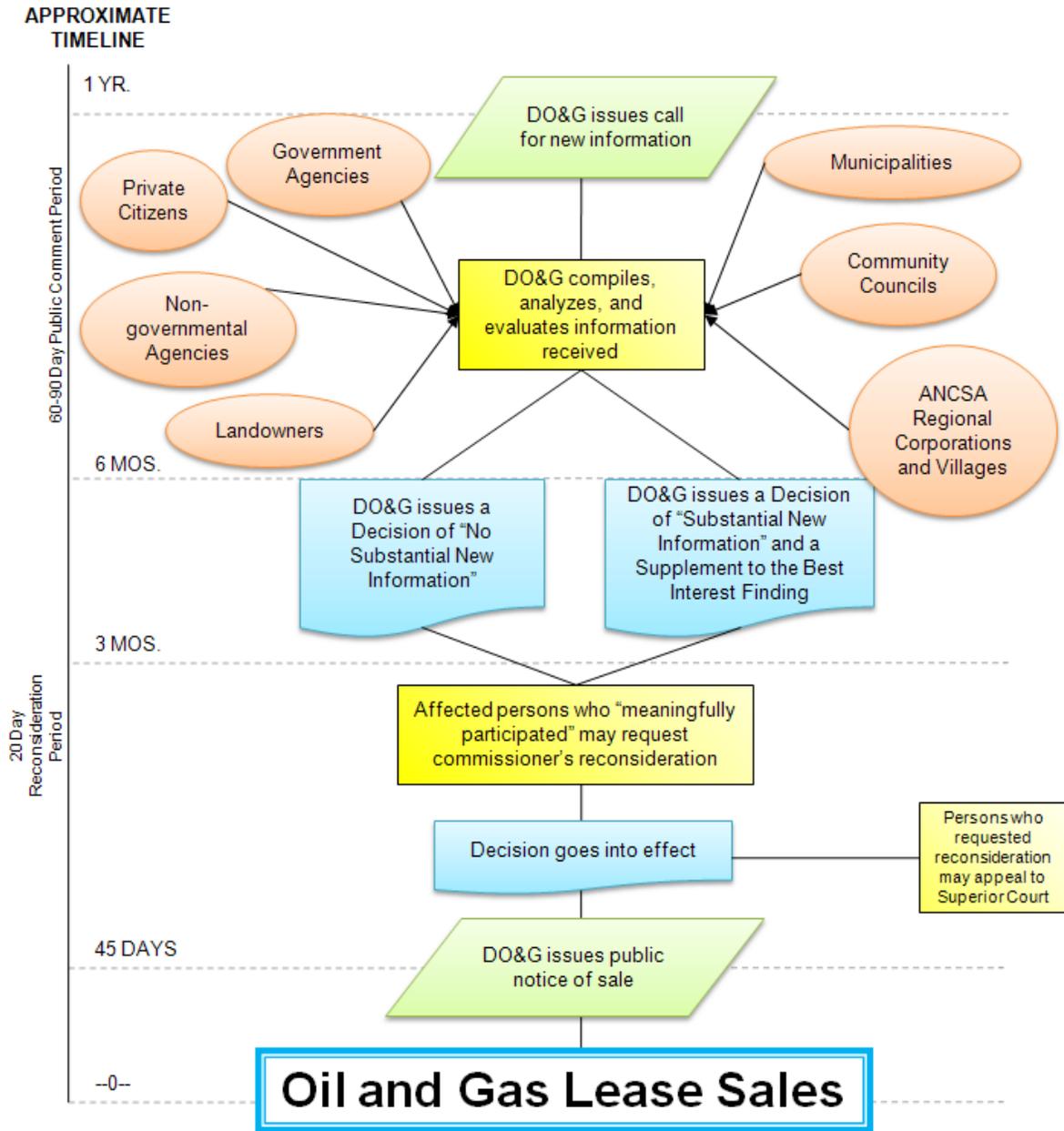


Figure 2.2. Annual public process for determining if a supplement to a best interest finding is necessary. Note that timeline is not to scale

The process for requesting reconsideration by the Commissioner, and process for appealing to Superior Court are the same process as described above in Section E(1)(d).

### 3. 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. AS 38.05.180(f)(3) provides a number of leasing methods for competitive bidding that the Commissioner may adopt for an oil and gas lease sale:

- (A) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease;
- (B) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease and a fixed share of the net profit derived from the lease of not less than 30 percent reserved to the state;
- (C) a fixed cash bonus with a royalty share reserved to the state as the bid variable but no less than 12.5 percent in amount or value of the production removed or sold from the lease;
- (D) a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;
- (E) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;
- (F) a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to the volume of production or other factor but in no event less than 12.5 percent in amount or value of the production removed or sold from the lease;
- (G) a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production or other factor as the bid variable but not less than 12.5 percent in amount or value of the production removed or sold from the lease.

For each lease sale under the 10-year North Slope Foothills Areawide Best Interest Finding, the Commissioner will adopt the bidding method or methods under AS 38.05.180(f) as the Commissioner determines is in the best interests of the state. The bidding method or methods may not be the same for each lease sale over the 10-year term of this best interest finding, but the method for each sale will be adopted from the methods set out in AS 38.05.180(f)(3). The bidding method or methods 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)).

#### **4. Post Sale Title Search**

The North Slope Foothills lease sale area has been divided into tracts that will remain fixed for future lease sales. The extent of the state's ownership interest in these lands will not be determined before the lease sales. Instead, following each lease sale, ADNR will verify title only for tracts receiving bids. Therefore, should a potential bidder require title or land status information for a particular tract before a lease sale, it will be the bidder's responsibility to obtain that information from ADNR's public records. It is possible that a tract included in a lease sale may contain land that the state cannot legally lease because it is subject to an existing oil and gas lease or because the mineral estate is not state owned. Depending on the number of tracts leased and the complexity of the ownership, it could take weeks to months following a lease sale to complete the title work and issue all of the leases.