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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Frances Leach
Department of Fish & Game

FROM: Scott Meriwether, Office of the Lieutenant Governor 465.4081 

DATE: November 21, 2017

RE: Filed Permanent Regulations: Department of Fish & Game

Department of Fish and Game Regulation re: Div. of Habitat: Dude Creek Critical
Habitat Area Management Plan (5 AAC 95.630 - .632)

Attorney General File:	JU2017200260
Regulation Filed:	11/21/2017
Effective Date:	12/21/2017
Print:	224, January 2018

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF FISH AND GAME

The attached three pages of regulations, dealing with the adoption of the Dude Creek Critical Habitat Area Management Plan and associated regulations for Off-Road Vehicle Use, Aircraft Access, Construction and Use of Structures, Camping, Grazing, and Fuel Storage are adopted and certified to be a correct copy of the regulation changes that the Department of Fish and Game adopts under the authority of AS 16.05.020; AS 16.05.050; AS 16.20.500; AS 16.20.520; AS 16.20.530; and AS 16.20.610 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Department of Fish and Game paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 10-10-2017

SERCAT

Sam Cotten, Commissioner Alaska
Department of Fish and Game

Clare Richards for

FILING CERTIFICATION

I, Bryon Mallott, Lieutenant Governor for the State of Alaska, certify that on

November 21, 2017, at 8:38 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Clare Richards for
Lieutenant Governor

Effective: December 21, 2017

Register: 224, January 2018

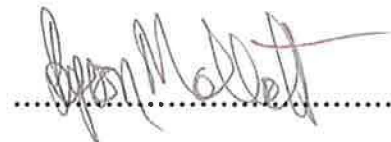
FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, BYRON MALLOTT, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employee to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

Claire Richardson, Special Assistant

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on January 7th 2015.



A handwritten signature in blue ink, appearing to read "Byron Mallott", is written over a horizontal dotted line.

**BYRON MALLOTT
LIEUTENANT GOVERNOR**

Title 5. Fish and Game.

Chapter 95. Fish and Game Habitat.

Article 6. State Critical Habitat Areas.

5 AAC 95 is amended by adding new sections to Article 6 to read:

5 AAC 95.630. Dude Creek Critical Habitat Area Management Plan. The goals and policies stated in the Dude Creek Critical Habitat Area Management Plan dated April 2017 ~~November 2016~~ are adopted by reference. The plan presents management goals and policies for the Dude Creek Critical Habitat Area and its resources that the department will use in determining whether proposed activities in the critical habitat area are compatible with the protection of fish, wildlife, their habitats, and public use of the critical habitat area. Under 5 AAC 95.420, a special area permit is required for certain activities occurring in a designated state critical habitat area. The department will review each special area permit application for consistency with the goals and policies of the management plan adopted by reference in this section. A special area permit for an activity in the Dude Creek Critical Habitat Area will be approved, conditioned, or denied based on the criteria set out in the goals and policies stated in the Dude Creek Critical Habitat Area Management Plan and on the standards contained elsewhere in this chapter.

(Eff. 12 / 21 /2017, Register 224)

Authority:	AS 16.05.020	AS 16.20.500	AS 16.20.530
	AS 16.05.050	AS 16.20.520	AS 16.20.610

Editor's note: Copies of the Dude Creek Critical Habitat Area Management Plan are available at the Douglas office of the Department of Fish and Game, 803 3rd Street, Douglas,

Alaska 99824-5412. In addition, the management plan is available for inspection at the Lieutenant Governor's Office, Juneau Alaska.

5 AAC 95.632. Dude Creek Critical Habitat Area. (a) The following conditions apply to activities in the Dude Creek Critical Habitat Area:

(1) **Off-road use of wheeled, tracked, or other ground-effect motorized vehicles.** The off-road use of a wheeled, tracked, or other ground-effect motorized vehicle is prohibited within the critical habitat area, unless authorized by a special area permit issued before the use begins; the department may issue an individual special area permit for the off-road use on a case-by-case basis.

(2) **Aircraft Access.** A person must obtain a special area permit before landing an aircraft in the critical habitat area.

(3) **Structures.** A person may not construct a structure, including duck blinds, tree stands, or other hardened structure, within the critical habitat area without first obtaining a special area permit.

(4) **Camping.** The following restrictions apply to camping activities within the critical habitat area:

(A) a person may not engage in non-commercial camping on state land within the critical habitat area for more than 14 consecutive days at one location unless authorized by a special area permit issued before the camping activity begins;

(B) a person may not provide commercial camping services within the critical habitat area unless authorized by a special area permit issued before providing the services;

(C) a person may not place, deposit, or leave any solid waste, including garbage and litter within the critical habitat area; all waste must be removed at the time the camping activity ends.

(5) **Grazing.** A person may not engage in grazing activities within the critical habitat area unless authorized by a special area permit before the grazing activity begins.

(6) **Fuel storage and hazardous substances.** The following restrictions apply to fuel storage and the handling of hazardous substances within the critical habitat area:

(A) a person may not release or dispose of a hazardous substance as defined in AS 46.09.900, or petroleum-based fuel in the critical habitat area;

(B) a person may not store fuel in the critical habitat area unless authorized by a special area permit issued before the activity begins; this prohibition does not apply to

(i) fuel contained in fuel tanks on board vessels, vehicles, or aircraft;

(ii) fuel actively used in a camp; and

(iii) fuel contained within permitted structures.

(b) In this section,

(1) "commercial camping service" means the provision of assistance for compensation, or with the intent to receive compensation, to persons who camp in the critical habitat area;

(2) "solid waste" means garbage, refuse, abandoned, or other discarded solid or semisolid material, regardless of whether subject to decomposition, originating from any source.

(Eff. 12 / 21 /2017, Register 224)

Authority: AS 16.05.020 AS 16.20.500 AS 16.20.530

AS 16.05.050 AS 16.20.520 AS 16.20.610

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Byron Mallott
Lieutenant Governor
(hand delivery)

Date: November 20, 2017

File No.: JU2017200260

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Department of Fish and Game
Regulation re: Div. of Habitat:
Dude Creek Critical Habitat Area
Management Plan
(5 AAC 95.630 – .632)

We have reviewed the attached regulations changes from the Department of Fish and Game against the statutory standards of the Administrative Procedure Act. The regulations are regarding the adoption of the Dude Creek Critical Habitat Area Management Plan (April 2017) and associated regulations for activities allowed in the critical habitat area. The department states in the Dude Creek Critical Habitat Area Management Plan adopted by reference that it consulted with the Board of Game and the community of Gustavus under AS 16.20.610.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The April 28, 2017 public notice and the October 10, 2017 adoption order both state that this action is not expected to require an increased appropriation. Further, the department states in the Dude Creek Critical Habitat Area Management Plan Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:ljm
cc w/enc: (via email)

Honorable Sam Cotten, Commissioner, Dept. of Fish and Game
David Rogers, Director, Div. of Habitat, Dept. of Fish and Game
Tammy Massie, Habitat Biologist, Div. of Habitat, Dept. of Fish and Game
Lisa Olson, Deputy Director, Div. of Subsistence, Dept. of Fish and Game
Frances Leach, Fishery Regulations Program Coordinator, AAC Contact, Dept. of Fish and Game
Natalie Weber, Regulations Program Coordinator, Dept. of Fish and Game
Enforcement Commander, Div. of Alaska Wildlife Troopers, Dept. of Public Safety
Vanessa Lamantia, Assistant Attorney General, Natural Resources Section

NOTICE OF PROPOSED CHANGES TO ADOPT
THE DUDE CREEK CRITICAL HABITAT AREA MANAGEMENT PLAN
IN THE REGULATIONS OF THE DEPARTMENT OF FISH AND GAME

The Alaska Department of Fish and Game (ADF&G) proposes to adopt regulation changes in 5 AAC 95 of the Alaska Administrative Code, dealing with the adoption of the Dude Creek Critical Habitat Area (CHA) Management Plan and associated regulations, including the following:

- (1) 5 AAC 95.630 is proposed to be changed as follows: Adopting, by reference, the Goals and Policies contained in the Dude Creek Critical Habitat Area Management Plan, April 2017. These Goals and Policies guide ADF&G land use management activities in the Dude Creek CHA, primarily by providing more specific guidance for the existing Special Area Permitting process. The goals of the management plan address management for sandhill crane and other wildlife habitat, public access and use to the CHA, and government management and research activities. The policies provide guidance to evaluating potential habitat effects of the following land use activities: Compatibility with management goals, Access, Motorized Vehicle Use, Recreational and Harvest Activities, Camping, Timber and Firewood Harvest, Fuel and Hazardous Materials Storage, Commercial and Group Activities, Geological Exploration and Development, Habitat Enhancement / Restoration, Grazing, Fire Management, Cultural Historical and Archeological Resources, Information, Education, and Outreach, and Scientific Research.
- (2) 5 AAC 95.632 is proposed to be changed as follows: In addition to adopting the Management Plan Goals and Policies, ADF&G also proposes to adopt individual regulations specifically addressing Off-Road Vehicle Use, Aircraft Access, Construction and Use of Structures, Camping, Grazing, and Fuel Storage and Hazardous Materials Disposal within the Dude Creek CHA. These regulations restate selected Policies of the Management Plan in a manner that can be easily interpreted by the public and law enforcement.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Habitat Division, 333 Raspberry Road, Anchorage, AK 99518. Additionally, the ADF&G will accept comments by facsimile at 907-267-2499 and by electronic mail at dfg.hab.specialarea@alaska.gov. The comments must be received not later than 5:00 pm on May 30, 2017.

You may submit written questions relevant to the proposed action to Tammy Massie at dfg.hab.specialarea@alaska.gov or 333 Raspberry Road, Anchorage, AK 99518. The questions must be received at least 10 days before the end of the public comment period. The ADF&G will aggregate its response to substantially similar questions and make the questions and responses

available on the Alaska Online Public Notice System and at <http://www.adfg.alaska.gov/index.cfm?adfg=habitatoversight.specialareas>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Tammy Massie at dfg.hab.specialarea@alaska.gov or 907-267-2122, not later than May 15, 2017, to ensure that any necessary accommodation can be provided."

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Tammy Massie at dfg.hab.specialarea@alaska.gov or 907-267-2122.

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System and at <http://www.adfg.alaska.gov/index.cfm?adfg=habitatoversight.specialareas>. A copy of material proposed for adoption by reference may be viewed at the ADF&G office in Douglas 803 3rd Street, Douglas, Alaska 99824-5412, or at the Gustavus Public Library.

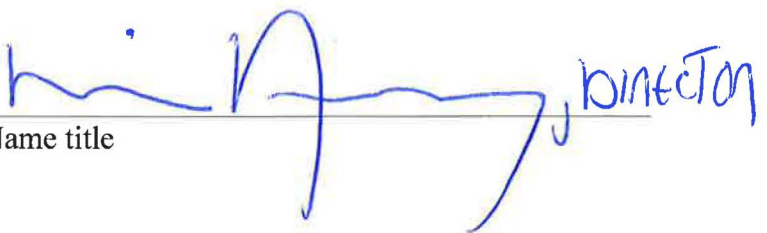
After the public comment period ends, the ADF&G will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS 16.05.020; AS 16.05.050; AS 16.20.500; AS 16.20.520; AS 16.20.530; AS 16.20.610

Statutes being implemented, interpreted, or made specific: AS 16.20.500; AS 16.20.520; AS 16.20.530; AS 16.20.610

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: April 28, 2017


Name title

NOTICE OF PROPOSED CHANGES TO ADOPT
THE DUDE CREEK CRITICAL HABITAT AREA MANAGEMENT PLAN
IN THE REGULATIONS OF THE DEPARTMENT OF FISH AND GAME

BRIEF DESCRIPTION

The Department of Fish and Game proposes changes to regulations to adopt the Dude Creek Critical Habitat Area Management Plan.

The Department of Fish and Game proposes to adopt regulation changes in 5 AAC 95 of the Alaska Administrative Code, dealing with the adoption of the Due Creek Critical Habitat Area (CHA) Management Plan, including the following:

- (1) 5 AAC 95.630 is proposed to be changed as follows: Adopting, by reference, the Goals and Policies contained in the Dude Creek Critical Habitat Area Management Plan, April 2017. These Goals and Policies guide ADF&G land use management activities in the Dude Creek CHA, primarily by providing more specific guidance for the existing Special Area Permitting process. The goals of the management plan address management for sandhill crane and other wildlife habitat, public access and use to the CHA, and government management and research activities. The policies provide guidance to evaluating potential habitat effects of the following land use activities: Compatibility with management goals, Access, Motorized Vehicle Use, Recreational and Harvest Activities, Camping, Timber and Firewood Harvest, Fuel and Hazardous Materials Storage, Commercial and Group Activities, Geological Exploration and Development, Habitat Enhancement / Restoration, Grazing, Fire Management, Cultural Historical and Archeological Resources, Information, Education, and Outreach, and Scientific Research.
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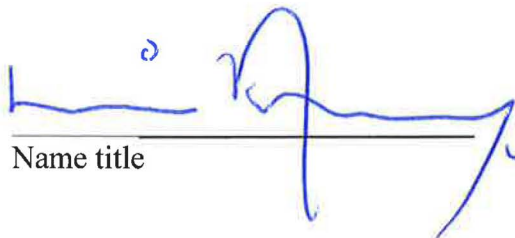
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Statutes being implemented, interpreted, or made specific: AS 16.20.500; AS 16.20.520; AS 16.20.530; AS 16.20.610

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: April 28, 2017


Name title Director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))¹

1. Adopting agency: Alaska Department of Fish and Game
2. General subject of regulation: Adoption of the Dude Creek Critical Habitat Area Management Plan
3. Citation of regulation (may be grouped): 5 AAC 95.630, 5 AAC 95.632
4. Department of Law file number, if any: JU2017200260
5. Reason for the proposed action: Adopt management plan as required in AS 16.20.610(c)

- () Compliance with federal law or action (identify): _____
- () Compliance with new or changed state statute
- () Compliance with federal or state court decision (identify): _____
- (X) Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation: N/A

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0

Another state agency: \$0

A municipality: \$0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY _____	Subsequent Years
Operating Cost	<u>\$ 0</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 0</u>	<u>\$ 0</u>
1005 General fund/ program	<u>\$ 0</u>	<u>\$ 0</u>
Other (identify)	<u>\$ 0</u>	<u>\$ 0</u>

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION


I, Tammy Massie, Habitat Biologist, of Department of Fish and Game, Division of Habitat, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 5 AAC 95.630-.632 to adopt, by reference, the Dude Creek Critical Habitat Area Management Plan and associated activity specific regulations has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Resources Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

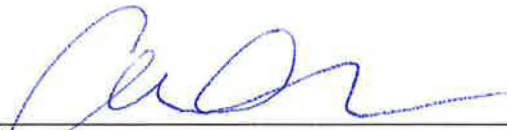
Date: Sept 18 2017



Tammy Massie, Habitat Biologist

Subscribed and sworn to before me at Anchorage, AK on Sept 18, 2017.





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Tammy Massie, Habitat Biologist for the Department of Fish and Game, being duly sworn, state the following:

The Department of Fish and Game did not receive any factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Fish and Game regulations on the adoption of the Dude Creek Critical Habitat Area Management Plan.

Date: Sept 18 2017

Tammy Massie
Tammy Massie, Habitat Biologist

Subscribed and sworn to before me at Anchorage, AK on Sept 18, 2017.

Arthur N. Nelson
Notary Public in and for the State of Alaska



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AFFIDAVIT OF PUBLICATION

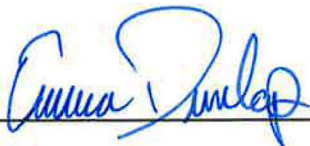
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

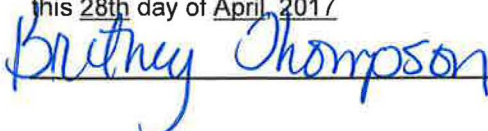
April 28, 2017

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed



Subscribed and sworn to before me
this 28th day of April, 2017



Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

Notary Public
BRITNEY L. THOMPSON
State of Alaska

My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES TO ADOPT THE DUDE CREEK CRITICAL HABITAT AREA MANAGEMENT PLAN IN THE REGULATIONS OF THE DEPARTMENT OF FISH AND GAME

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Statutory authority: AS 16.05.020; AS 16.05.050; AS 16.20.500; AS 16.20.520; AS 16.20.530; AS 16.20.610

Statutes being implemented, interpreted, or made specific: AS 16.20.500; AS 16.20.520; AS 16.20.530; AS 16.20.610

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: April 28, 2017

/Signed/
David Rogers, Director
Division of Habitat