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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Tammy Massie, Department of Fish and Game

**FROM:** April Simpson, Office of the Lieutenant Governor   
465.4081

**DATE:** August 9, 2023

**RE:** Filed Permanent Regulations: Department of Fish and Game

Department of Fish and Game regulations re: Habitat Section - Willow Mountain  
Critical Habitat Area (CHA) Management Plan (5 AAC 95)

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Attorney General File:	2021200558
Regulation Filed:	8/9/2023
Effective Date:	9/8/2023
Print:	247, October 2023

cc with enclosures: Colleen Bailey, Department of Law  
Judy Herndon, LexisNexis



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Law**

CIVIL DIVISION

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August 7, 2023

The Honorable Nancy Dahlstrom  
Lieutenant Governor  
State of Alaska  
P.O. Box 110015  
Juneau, AK 99811-0015

Re: *5 AAC 95: Habitat Section - Willow Mountain Critical Habitat Area (CHA)  
Management Plan*

Our file: 2021200558

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Fish and Game against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Department of Fish and Game after the close of the public comment period.

The regulations concern the Willow Mountain Critical Habitat Area management plan prepared under AS 16.20.620(b).

The May 19, 2022 public notice and the August 7, 2023 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.060. The corrections are incorporated into the attached copy of the regulations.

Sincerely,

TREG TAYLOR  
ATTORNEY GENERAL

By: Rebecca C. Polizzotto  
Digitally signed by  
Rebecca C. Polizzotto  
Date: 2023.08.07  
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Rebecca C. Polizzotto  
Chief Assistant Attorney General  
Legislation, Regulations, and  
Legislative Research Section

RCP/scw

CC w/enclosure: Tammy Massie, Regulations Contact  
Department of Fish and Game

Vanessa Lamantia, Assistant Attorney General  
Department of Law

Steven C. Weaver, Assistant Attorney General  
Department of Law

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

The attached five pages of regulations, dealing with the adoption of the Willow Mountain Critical Habitat Area Management Plan and associated regulations for Off-Road Vehicle Use, Aircraft Access, Construction and Use of Structures, Camping, Mining, and Fuel Storage, are adopted and certified to be a correct copy of the regulation changes that the Alaska 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 16.20.620 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 Alaska 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: 8/7/2023

DocuSigned by:  


939866571A4J4A5  
Benjamin Mulligan, Deputy Commissioner  
Alaska Department of Fish and Game

*April Simpson for*

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on August 9, 2023, at 12:43 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

  
for Lieutenant Governor Nancy Dahlstrom

Effective: September 8, 2023.

Register: 247, October 2023.

**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

**I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:**

**April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.**



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM  
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 95.640. Willow Mountain Critical Habitat Area Management Plan.** (a) The goals and policies stated in the Willow Mountain Critical Habitat Area Management Plan dated July 2023 are adopted by reference. The plan presents management goals and policies for the Willow Mountain 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.

(b) 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. A special area permit for an activity in the Willow Critical Habitat Area will be approved, conditioned, or denied based on the criteria set out in the goals and policies stated in the Willow Mountain Critical Habitat Area Management Plan and on the standards contained elsewhere in this chapter.

(Eff. 9 / 8 / 2023, Register 247)

**Authority:** AS 16.05.020 AS 16.20.500 AS 16.20.530  
AS 16.05.050 AS 16.20.520 AS 16.20.620

**Editor's note:** Copies of the Willow Mountain Critical Habitat Area Management Plan are available at the Palmer office of the Department of Fish and Game, Habitat Section, 1801 S. Margaret Drive, Suite 6, Palmer, AK 99645-6736.

**5 AAC 95.642. Willow Mountain Critical Habitat Area.** (a) The following conditions apply to activities in the Willow Mountain 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, except that

(A) a general permit may be issued under 5 AAC 95.770 for

(i) the off-road use of a wheeled, tracked, or other ground-effect motorized vehicle on designated trails in the critical habitat area; or

(ii) off-road vehicle use throughout the critical habitat area when there is sufficient snow cover and ground frost to prevent the penetration of or disturbance to the soil surface or plant roots, as indicated in the general permit; and

(B) the commissioner may issue an individual special area permit, on a case-by-case basis, for the off-trail use of a wheeled, tracked, or other ground-effect motorized vehicle within the critical habitat area in association with an authorized habitat enhancement or trail improvement activity;

**(2) aircraft access;** a person must obtain a special area permit before landing an aircraft in the critical habitat area, except that ski-mounted, fixed-wing aircraft may land and takeoff in the critical habitat area without a permit when sufficient snow cover is present;

**(3) structures;** the following restrictions apply to the placement and construction of structures in the critical habitat area:

(A) permanent commercial or private structures, including cabins, are prohibited;

(B) a person may not construct or place a temporary structure, including a bear bait station, tree stand, tent platform or other hardened structure, 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, or at a location within a two-mile radius of the original location, unless authorized by a special area permit issued before the camping activity begins;

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

(C) a person must store all food and garbage in a manner that does not attract bears or other wildlife;

(D) a person must remove all camping equipment and associated materials at the time the camping activity ends;

(E) a person may not cut a live, standing tree for a campfire or other camping purpose;

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



(G) a campsite must be marked with the responsible party's full name and date of arrival, if people are not present in the campsite;

**(5) mining;** a person must obtain a special area permit before conducting any mining activity, except that gold panning and other non-mechanized, minimally invasive mining activities are generally allowed in;

**(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;

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

(i) fuel contained in fuel tanks in vehicles or aircraft;

(ii) 10 gallons or less of fuel properly contained in an occupied camp;

(iii) 10 gallons or less of fuel stored in appropriate containers in an authorized off-road vehicle or trailer;

(C) a person may not store a hazardous substance as defined in AS 46.09.900.

(b) In this section,

(1) "designated trail" means a trail identified on a map included in a special area permit or identified by department trail markers in the Willow Mountain Critical Habitat Area;

(2) "commercial camping services" means any activity that is associated with the provision of assistance for compensation, or with the intent to receive compensation, to a person who camps in the critical habitat area;

(3) "off-road vehicle" means a wheeled, tracked, or other ground effect motorized vehicles, including

(A) an all-terrain vehicle, including a

(i) four wheeler;

(ii) dirt bike;

(iii) dune buggy; or

(iv) side-by-side;

(B) a full sized vehicle, including a truck or jeep;

(C) a utility vehicle with wheels, tracks, or a combination of both; or

(D) wheeled aircraft;

(4) "solid waste" means garbage, refuse, or abandoned or otherwise discarded solid or semi-solid materials, regardless of source or level of decomposition. (Eff.

9 / 8 / 2023, Register 247)

<b>Authority:</b>	AS 16.05.020	AS 16.20.500	AS 16.20.530
	AS 16.05.050	AS 16.20.520	AS 16.20.620