

BEFORE THE BOARD OF LAND COMMISSIONERS AND  
THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM        )  
36.11.432 and 36.11.470 regarding            )  
grizzly bear conservation measures on        )  
the Stillwater and Coal Creek State         )  
Forests    )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold a public hearing at 4:00 p.m. on Thursday, January 28, 2016, at the Forestry Division Headquarters, Clark Fork Conference Room, 2705 Spurgin Road, Missoula, Montana, 59804, to consider the amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on Monday, January 25, 2016, to advise the department of the nature of the accommodation that you need. Please contact Gary Frank, DNRC Forest Management Bureau, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4328, fax (406) 542-4217, e-mail gfrank@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.11.432 GRIZZLY BEAR MANAGEMENT ON BLOCKED STILLWATER UNIT LANDS (1) To minimize adverse impacts to grizzly bears when conducting forest management activities within the 90,517 acres of land area known as the Stillwater Block, as referenced in the Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan (DNRC HCP) the department shall:

(a) establish seven security zones totaling 22,007 acres;

(b) comply with the following restrictions within the established seven security zones:

(i) prohibit motorized activities, including public, administrative, or commercial forest management, during the grizzly bear "non-denning period" each year (see ARM 36.11.403(46) for "non-denning" definition);

(ii) permit motorized activities during the grizzly bear "denning period" each year (see ARM 36.11.403(22) for "denning" definition);

(iii) allow commercial forest management activities below 6,300 feet elevation during the denning period of each year;

(iv) prohibit any permanent road construction;

(v) construct and reclaim any temporary roads and/or skid trails in a manner preventing future use by motorized vehicles, including off-road vehicles, during the non-denning period;

(vi) minimize the duration of air- and ground-based harvest activities to the extent practicable when conducting commercial forest management activities near identified security zones during the non-denning period, particularly in known areas of seasonal importance for bears;

(vii) minimize the duration of administrative activities near security zones to the extent practicable;

(viii) make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security zones during the non-denning period, and/or known seasonally secure areas;

(ix) where practicable, design flight paths to occur greater than one mile from potentially affected security zones during the non-denning period, or areas of known seasonal importance;

(x) permit short-term disturbance, subject to (vi) and (vii), in any security zone at any time and for the necessary duration to address road sedimentation issues required by the Aquatic Conservation Strategies in the DNRC HCP and ARM 36.11.421; and

(c) comply with the following measures on the remaining 68,510 acres of blocked lands outside of security zones:

(i) implement access management and seasonal restrictions, and road construction requirements according to the DNRC HCP Transportation Plan measures that apply to Class B Lands as defined in the DNRC HCP; and

(ii) allow motorized public activities, commercial forest management activities, and administrative activities during the denning and non-denning periods, as allowed by the DNRC HCP Transportation Plan.

~~(1) The department shall adhere to the following when conducting forest management activities on blocked Stillwater unit lands (Stillwater and Coal Creek state forests) within the Northern Continental Divide ecosystem (NCDE):~~

~~(a) Use BMU and BMU subunits for analysis purposes where applicable.~~

~~(b) Conduct road density estimates using standardized techniques accepted by the interagency grizzly bear committee, NCDE subcommittee, or other techniques approved by the forest management bureau chief.~~

~~(c) Design projects to result in no net increase in the proportion of each BMU subunit (trust lands only) that exceeds an open road density of one mile per square mile from baseline levels calculated in 1996.~~

~~(i) In the event a road is encountered that is not in the existing baseline, and evidence suggests the road existed prior to 1996, the road would be added to the 1996 baseline data and revised baseline levels would be calculated. This shall apply only during the non-denning period.~~

~~(ii) The department may allow temporary increases in road density above 1996 baseline levels for each BMU subunit upon approval by the forest management bureau chief. In such situations, the department shall apply alternative methods to minimize impacts on grizzly bears to the maximum extent practicable.~~

~~(d) Design projects to result in no net decrease from baseline levels calculated in 1996 in the proportion of each BMU subunit (trust lands only) designated as security core. The department shall map security core areas. Security core areas shall remain intact for periods approximating 10 years, to the extent practicable.~~

~~(i) The department may allow temporary decreases in security core below 1996 baseline levels for each BMU subunit upon approval by the forest management bureau chief. In such situations, the department shall apply alternative methods to minimize the impacts on grizzly bears to the maximum extent practicable.~~

~~(e) For project-related activities that would occur within or immediately adjacent to security core areas, make efforts to conduct human activities during the denning period (November 16 to March 31). The department shall construct temporary roads and skid trails to prevent future use by motorized vehicles during the non-denning period after completion of project-related activities.~~

~~(f) When conducting project activities in or near identified security core areas during the non-denning period, minimize the duration of air and ground-based harvest activities to the extent practicable, particularly in known areas of seasonal importance for bears.~~

~~(i) The department shall make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security core areas and/or known seasonally secure areas.~~

~~(ii) Where practicable, the department shall design flight paths to occur greater than one mile from potentially affected core areas or areas of known seasonal importance.~~

~~(g) Where procedures are lacking and to the extent practicable, use published information, professional judgment, and available technology to locate and provide for secure areas of known seasonal importance for displaced bears where displacement risk is deemed high. Where feasible, the department may expand security core areas with additional buffers and/or temporary road restrictions to reduce temporary losses of effective security core area.~~

~~(h) Calculate total road density for analysis purposes and make efforts to reduce total road density to the extent practicable.~~

~~(i) Consider seasonal closures and activity restrictions for mitigating proposed actions.~~

~~(j) Monitor road closures annually for effectiveness and make necessary repairs within one operating season.~~

~~(k) Retain no less than 40 percent of any BMU subunit (trust lands only) in hiding cover. In situations beyond department control where disturbances may temporarily reduce hiding cover within a BMU subunit, the department shall make efforts to minimize further reductions of hiding cover.~~

~~(l) To provide additional security for grizzly bears, retain cover that provides visual screening adjacent to open roads, where practicable.~~

~~(m) Prohibit contractors and purchasers conducting contract operations from carrying firearms while operating.~~

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

36.11.470 LANDS SUBJECT TO A HABITAT CONSERVATION PLAN

(1) For trust land parcels subject to a ~~habitat conservation plan~~ DNRC HCP contractually entered by the department and the United States Fish and Wildlife Service (USFWS) pursuant to Section 10 of the Endangered Species Act (ESA), the department shall implement the terms of the ~~habitat conservation plan~~ DNRC HCP.

(2) If there are conflicts between the conservation strategies in the ~~habitat conservation plan~~ DNRC HCP and the administrative rules for forest management in this subchapter, the department shall implement the terms of the ~~habitat conservation plan~~ DNRC HCP, except for ARM 36.11.432 Grizzly Bear Management on Blocked Stillwater Unit Lands. ARM 36.11.432 shall supersede the DNRC HCP where it conflicts with the DNRC HCP.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: ~~77-1-202, 77-1-203, 77-1-301, 77-5-103, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA~~

REASONABLE NECESSITY: The amendments to these rules are reasonably necessary as a requirement of a settlement agreement approved October 9, 2015, in U.S. District Court, *Friends of the Wild Swan et al. v. U.S. Fish and Wildlife Service et al.*, Case No. CV-13-61-M-DWM. The judge approved a settlement agreement negotiated between the DNRC and the plaintiffs concerning the DNRC HCP. Included in the terms of the settlement agreement and court order was the requirement for DNRC to promulgate the conservation measures set forth in the settlement agreement into DNRC administrative rules within six months of the date of the entry of the order. Implementing these measures establishes security zones to minimize adverse impacts on grizzly bears when conducting forest management activities. As per the settlement agreement, these rules replace commitments GB-ST2, GB-ST3, GB-ST5 (3.) and (4.) in the Department of Natural Resources and Conservation Habitat Conservation Plan.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Gary Frank, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4328; fax (406) 542-4217; or e-mailed to [gfrank@mt.gov](mailto:gfrank@mt.gov), and must be received no later than 5:00 pm on Friday, February 5, 2016.

5. Gary Frank, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this notice of public hearing on proposed adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this notice of public hearing on proposed amendment conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ John E. Tubbs  
JOHN E. TUBBS  
Director  
Natural Resources and Conservation

/s/ Mark Phares  
MARK PHARES  
Rule Reviewer

Certified to the Secretary of State on December 28, 2015