

SB

411



FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: SB411 Use of firearms in  
state parks  
Sponsor: Fanning  
Requestor: Senate Resource Committee

Agency Affected: DNR - Parks  
BRU: Natural Resources

Components: Park Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		5.0	5.0	5.0	5.0	5.0
TRAVEL		1.5	1.5	1.5	1.5	1.5
CONTRACTUAL		12.0	12.0	12.0	12.0	12.0
SUPPLIES		40.0	40.0	40.0	40.0	40.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		58.5	58.5	58.5	58.5	58.5

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		58.5	58.5	58.5	58.5	58.5
FEDERAL FUNDS						
OTHER						
TOTAL		58.5	58.5	58.5	58.5	58.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SB411 requires that developed park facilities be posted to inform the public of the restriction against the discharge of firearms within  $\frac{1}{4}$  mile of a park facility for the purpose of public safety.

Prepared by: Jack Wiles Phone: 762-2600  
Division: Parks Date: 3/3/88

Approved by Commissioner: Judith M. [Signature] Date: 3/3/88  
Agency: Natural Resources

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

SB411 FISCAL NOTE

SB411 requires the posting of developed park facilities within state parks, marine parks and recreation areas. SB411 would apply to 50 of 115 park units. State parks manages over 55 campgrounds, 32 picnic areas, 60 trail-heads, 5 visitor centers and numerous other developments.

SB411 will necessitate replacing signs, installing new signs, and maintaining signs for over 200 park facilities. The cost will be significantly higher if signs must be posted around the perimeter of the  $\frac{1}{4}$  mile posted area.

100 Personnel .....	\$	5.0
4 hrs/park unit for sign replacement installation, vandalism repair 4hrs. x 50 units x \$25/hr		
200 Travel .....		1.5
vehicle rental, mileage, per diem		
300 Contractural .....		12.0
purchase signs 200+ facilities x 4 signs/facility x \$15/sign		
400 Supplies .....		40.0
purchase metal telspar sign posts with sign base support and cement 800 signs x \$50/sign		

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: "An act relating to the use of fire-arms in state parks..." BRU: Fish & Wildlife Prot.  
 Sponsor: Fanning, Faiks, et al  
 Requestor: Senate Resources Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

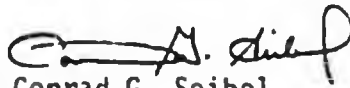
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

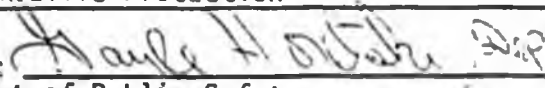


Captain Conrad G. Seibel

Prepared by: \_\_\_\_\_  
 Division: Fish & Wildlife Protection

Phone: 269-5509

Date: 2/22/88

Approved by Commissioner:   
 Agency: Department of Public Safety

Date: 2-29-88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

1 IN THE SENATE

BY FANNING, FAIKS, FAHRENKAMP,  
FISCHER, ABOOD, KELLY, RODEY  
AND COGHILL

2

SENATE BILL NO. 411

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the use of firearms in state  
7 parks, state marine parks, state wildlife preserves,  
8 and state recreation areas." *refuges*

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that lawful  
11 hunting activities, when conducted safely, are compatible with other public  
12 uses in state parks, state marine parks, state wildlife preserves, and  
13 state recreation areas. The legislature further recognizes that because of  
14 the wild and remote nature of many state parks and recreation areas, the  
15 possession and use of a firearm may be necessary to personal safety. The  
16 legislature therefore finds that a statewide policy regarding the use of  
17 firearms in state parks, state marine parks, state wildlife refuges, and  
18 state recreation areas is in the public interest.

19 \* Sec. 2. AS 41.21.022 is repealed and reenacted to read:

20 Sec. 41.21.022. DISCHARGE OF FIREARMS. (a) The discharge of  
21 firearms during lawful hunting, trapping, and fishing is permitted  
22 within the boundaries of a state park, state marine park, state wild-  
23 life ~~preserve~~ *refuge*, or state recreation area except that the commissioner  
24 may regulate the use of a firearm or other weapon for reasons of  
25 public safety within <sup>1/2</sup> ~~one~~ quarter mile of the following areas if the  
26 areas are posted:

- 27 (1) a trail head;  
28 (2) a boat launch;  
29 (3) an improved camp site;

- 1           (4) a visitor center;
- 2           (5) a picnic area;
- 3           (6) a public use cabin;
- 4           (7) a highway wayside;
- 5           (8) a lookout on an established trail system; or
- 6           (9) a parking area.

7           (b) This section does not prohibit the use of a firearm or other  
8           legally possessed weapon in defense of life anywhere within a state  
9           park, state marine park, state wildlife preserve, or state recreation  
10          area.

# Alaska State Legislature

SENATOR KEN FANNING  
PO BOX 80929  
COLLEGE, ALASKA 99708




PO. BOX V—STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3880

March 1, 1988

Senate

MEMORANDUM

To: Senate Resources  
Committee Members

From: Senator Ken Fanning 

Subject: SB 411 - Firearms policy in state parks

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With the enactment of ANILCA and the establishment and/or expansion of Alaska's National Parks, hunters in Alaska now have approximately 32.4 million fewer acres of land on which they can hunt. On the other hand, this means that nearly 10% of all lands in Alaska have been set aside for those who may wish to avoid hunters and their activities.

Because of these huge losses, especially of prime areas for big game, it is vital that we keep our state parks open to hunting so that the overall impact to game species is spread out as much as possible, and conflicts on private lands are kept to a minimum.

However, it seems lately to have become administrative policy, at one level or another, to ease hunting out of our state parks. In Chugach State Park alone, thousands of acres of prime hunting lands have been declared off limits to firearm use through regulations adopted by the division of parks (11 AAC 20.010). In small specific portions of these areas, where there is a high visitor use during summer months, the safety to the public may dictate restrictions on the use of firearms; however, in most of the drainages now entirely closed to the use of firearms (even for personal protection from bears), there is absolutely no legitimate public safety basis for the prohibition, particularly during the fall hunting season.

Department of fish and game records verify that there is a very high density of mature Dall sheep in these areas of Chugach State Park, as well as other big game species. In fact, the carrying capacity in some of the closed areas of the sheep range are at near maximum use. With the division of parks stoppage of annual big game harvest in these areas, the department of fish and game has lost the only tool available to keep populations and sex ratios in balance.

Senate Resources Committee Members  
SB 411 - Firearms in parks policy  
Page 2

Perhaps no other single state park in Alaska more graphically demonstrates the need for a legislative directive regarding firearms policy than Chugach. For decads, hunting and non-consumptive activities co-existed hand in hand with no conflicts. Then what began with modest closures in areas of high use grew into an apparent disregard for Legislative policy (AS 41.21.124), as entire drainages were closed to the use of firearms. Now that this administrative trend is established, in lieu of Legislative directives closures in other state parks are almost sure to follow. With trespass incursions escalating on Native lands, state park hunting closures can only exacerbate the difficulties.

It is, indeed, time for the Legislature to reaffirm public policy in our state parks, and provide for all multiple recreational uses with a firearm safety factor based on reason and fairness.

SYNOPSIS AND ANALYSIS

OF

SB 411 - "An Act relating to the use of firearms in state parks, state marine parks, state wildlife preserves, and state recreation areas"

It is the intent of this legislation that the use of firearms will not be prohibited within the above-listed state park units, except within statutorially-prescribed areas.

Section 1 provides legislative findings that hunting activities are compatible with other uses in the park units; that due to the wild and remote nature of the park areas, use of a firearm may be necessary for personal safety; and that therefore a statewide policy allowing the use of firearms in the park units is in the public interest.

Section 2 repeals and reenacts AS 41.21.022 to say that the discharge of firearms is permitted in the park units except that the commissioner of natural resources may regulate their use within 1/4 mile of certain high traffic areas in the park units, and lists those areas.

Subsection (b) of section 2 allows the use anywhere within a park unit of a legally possessed weapon in defense of life.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

March 2, 1988

The Honorable Jack Coghill  
Chair, Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Coghill:

Subject: SB 411 Use of firearms in state parks, state marine parks, state wildlife preserves, and state recreation areas.

Position: The department developed its regulations based on substantial public comments and feels that revising specific regulations is best achieved through the administrative process. The department would look forward to working with the Legislature with an eye to revising regulations if there were problems with current regulations either in specific areas or in general.

Background: The 1/2 mile public safety closure regulation, currently in effect, is the result of statewide public hearings held in 1984-85. Public comments ranged from seasonal closures of up to 100 yards, 1/4 mile, 1/2 mile, and 1 mile to entire closures except for bow hunting. The predominate public opinion was that the 1/2 mile closure allowed for the greatest degree of public safety while still allowing for legitimate sport hunting. For example, it is conceivable that in park units which have particularly high visitation by groups of school children, a buffer greater than 1/2 mile may be desirable.

Additionally, the department removed from the definition of developed facility the term "road." Thus, firearm discharge adjacent to roads was allowed under existing public safety statutes unless a park road was specifically closed by regulation e.g. the Seward Highway. In response to concerns from Fairbanks park users, the Chena Hot Springs road corridor, except 1/2 mile around park facilities, was opened to firearm discharge.

Recommendation: The department would like further opportunity to assess the issue of the 1/2 mile to 1/4 mile closure. Public meetings could be held this fall to

Senator Coghill

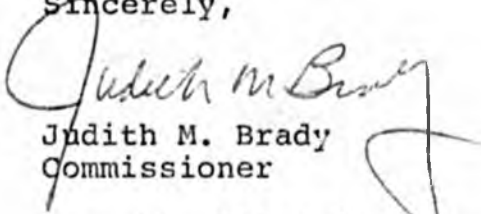
- 2 -

March 2, 1988

determine the public opinion, and new regulations could be drafted specific to park units and the conditions of those units.

The department does not feel a change, by statute, of the 1/2 mile firearm discharge regulation is appropriate state-wide. Rather, this issue is appropriate for regulation because it is best determined on a unit by unit, area by area basis depending on the volume and types of traffic (hunters, school children, etc.)

Sincerely,

A handwritten signature in cursive script that reads "Judith M. Brady". The signature is written in dark ink and is positioned to the left of the typed name and title.

Judith M. Brady  
Commissioner

cc: Committee Members  
Bill Sponsors  
Rod Swope  
Bob Evans

**GREENPEACE U.S.A.**

P. Box 104432  
Anchorage, Alaska 99510

Tel. (907) 277-8234

**GREENPEACE TESTIMONY BEFORE THE SENATE RESOURCES COMMITTEE  
TELECONFERENCE HEARING - MARCH 2, 1988 - Anchorage, Alaska**

SENATE BILL NOS. 411 - RELATING TO THE USE OF FIREARMS IN STATE PARKS, STATE MARINE PARKS, STATE WILDLIFE PRESERVES, AND STATE RECREATION AREAS; 398 - RELATING TO CERTAIN REPORTS AND RECORDS CONCERNING GAME ANIMALS, AND 397 - RELATING TO THE OBSTRUCTION OR HINDRANCE OF LAWFUL HUNTING, FISHING, OR TRAPPING.

My name is Cindy Lowry and I am the Alaska Field Representative for Greenpeace, an international environmental organization with over 600,000 supporters nationwide, including 1900 Alaskans.

As an organization dedicated to protecting the integrity of Alaska's diverse ecosystems and ensuring the future viability of all species in their natural habitats, we are opposed to the above mentioned Senate bills.

One of our biggest concerns with wildlife management in the State of Alaska is the lack of enforcement of game regulations. Senate Bill No. 411 stresses the compatibility of the use of firearms during lawful hunting activities, when conducted safely with other public uses in state parks, marine parks, wildlife preserves, and recreation areas.

The key words here are "during lawful hunting activities when conducted safely." As I mentioned before, the State's enforcement program is seriously deficient in both personnel and funding and I would like to know if the sponsors of this bill are seeking additional appropriations for enforcement.

There are serious ramifications associated with this bill in that it also includes marine parks and preserves. Would the discharging of a firearm be allowed in the Walrus Islands State Game Sanctuary, possibly causing the stampede and deaths of walrus. This bill would also conflict with federal laws which prohibit the shooting and harassing of marine mammals and would make it even more difficult to prosecute violators.

We also seriously question that the discharge of a firearm outside of the discretionary 1/4 mile buffer zone is compatible with the non-consumptive public use of any facility listed in the bill.

February 23, 1988

RE: Confidentiality of harvest reports  
HB82/SB398

Dear Legislator,

Please allow me to point out a very critical issue you will be asked to consider.

This issue, Representative Dick Schultz's HB 82 and other similar bills, such as SB 398 will address the public access to vital information about the harvesting of our resources.

These kinds of legislation are perhaps the most dangerous acts in a democracy such as ours. It would also be very damaging to the principal that this State was founded on. That principal is that the resources of this state belong to all. It also undermines the public right to being involved in the process of allocating these resources through our advisory committees, and the board process which considers public testimony in it's deliberations.

I have lived in Delta Junction for many years and my family has been in Alaska since the turn of the century. I have some experience in This area. Let me tell you my story.

A few winters ago I became interested in methods of harvesting furbearers, and wolf control. This resource plays a vital economic role to many trappers in the area.

It became apparent, listening to the trappers in Delta, that there seemed to be some activities going on around here that were very questionable.

No one really seemed to be looking after these matters so I decided to try to find out about what was going on.

I found that there did seem to be some allegations about our local wildlife protection officer and some related stories about ADF&G involvement.

It appeared that our local biologist had authorized the local protection officer to conduct surveys of radio collared wolves in our area here using the Department of Public Safety aircraft.

At This same time, The local protection officer began to have some success at Harvesting wolves by the method of "land & shoot trapping". Also at this time, I began to hear Local trappers eye-witness accounts of aircraft herding and harrassing wolves.

Also other accounts of land & shoot activities by other local ADF&G employees came to my attention. It just so happened that these people were relatives of the local protection officer.

Surely you can appreciate my concern about these events. I became concerned that we might have a private wolf control program here, aided and abetted by the Department of Public Safety and the ADF&G. It became apparent that someone needed to concern themselves about what was really happening here.

One of the ways to confirm or deny these events would be by knowing whether or not there had even been any animals taken. The only sure way is by harvest reports.

Now, Mr. Schultz and others would subvert the public right to oversee the harvesting of the resources that are so vital to the Welfare of every citizen of this State.

Their contention is that the anti-trapping people would use this information to harass the Trappers.

There is no record of an Alaskan trapper being harassed by any anti-trapper faction that I am aware of.

However, I can tell you that there are some unsavory facts revealed by the wolf & wolverine harvest reports.

The harvest reports show that indeed those Employees of the Department of Public Safety and the ADF&G here did have a very high success rate. The protection officer had harvested around 25 wolves. And over a few short years that the total wolves harvested by this small group was around 62 wolves. All this while the conventional trappers in the area had success levels drastically lower. I'll let you draw your own conclusions, but you must see some very questionable activities.

These same reports showed other very surprising facts on my computer. The reports showed out of the large number of licensed trappers in Alaska, less than 20 people, all using the "land and shoot" method, had harvested more than 25% of this furbearing resource taken in the entire State. It also showed they were not usually people who lived in the areas where taken. They were taken, mostly, by Anchorage, Fairbanks and Kenai peninsula residents. People who would travel great distances (sometimes more than 500 miles away from their residence) to pursue their activities.

It was only with this vital information that I was able to introduce proposal #82 at the November '87 game board hearings calling for the end of land and shoot trapping on all furbearers. With these facts I was able to prove the many negative implications of this practice and my proposal was adopted (with some modification) and will be law this July.

I remember when I first started to address these concerns a Mr. Emmen of the ADF&G, said "All these people are able to show us is a diarrhea of emotion and a constipation of fact". I thought it would be more effective to use facts after that comment. And the effects of facts are indeed more positive.

Maybe these facts are the reasons Schultz and his kind don't want these records to be public information.

Ordinarily you would think that either department would be looking out for such seeming abuse.

However both departments seemed to have been compromised by some special interest groups who are bent on keeping wolves at a very low level and are willing to accept any form of taking wolves to achieve their ends.

I was able to curtail some of these activities and was only able to be effective by having access to these reports.

Perhaps My representative, Mr. Schultz, Would do better to call for legislation that would forbid employees of the state from being involved in commercial activities that are directly related to their line of duties and responsibilities during the course of their employment with the State.

I plea for your most careful consideration on these matters and hope you will do the only thing you can and kill this un-democratic legislation.

Sincerely,

Tom Dowling  
2465 Milltan  
Delta Junction, Alaska  
99737

and outdoor recreation, Department of Natural Resources:

(8) "permit" means a written authorization to engage in uses or activities that are otherwise prohibited or restricted;

(9) "state park" means any land or water managed by the division. (Eff. 1/13/73, Reg. 44; am 5/11/85, Reg. 94)

Authority: AS 41.21.020  
AS 41.21.040  
AS 41.21.955

CHAPTER 20.  
STATE PARK LAND AND WATER

Article

1. Chugach State Park  
(11 AAC 20.010-11 AAC 20.050)
2. Kachemak Bay State Park  
(11 AAC 20.100-11 AAC 20.120)
3. Kachemak Bay State Wilderness Park  
(11 AAC 20.200-11 AAC 20.220)
4. Wood-Tikchik State Park  
(11 AAC 20.300-11 AAC 20.390)
5. Denali State Park  
(11 AAC 20.400-11 AAC 20.430)
6. Caines Head State Recreation Area  
(11 AAC 20.440-11 AAC 20.450)
7. Chena River State Recreational Area  
(11 AAC 20.460-11 AAC 20.485)
8. Quartz Lake State Recreation Area  
(11 AAC 20.500-11 AAC 20.520)
9. Nancy Lake State Recreation Area  
(11 AAC 20.540-11 AAC 20.555)
10. Captain Cook State Recreation Area  
(11 AAC 20.600-11 AAC 20.620)
11. Chilkat State Park  
(11 AAC 20.650-11 AAC 20.665)
12. Alaska Marine Parks  
(11 AAC 20.750-11 AAC 20.765)
13. Shuyak Island State Park  
(11 AAC 20.800-11 AAC 20.810)
14. Kenai River Special Management Area  
(11 AAC 20.850-11 AAC 20.870)
15. Special Provisions  
(11 AAC 20.905-11 AAC 20.990)

ARTICLE 1.  
CHUGACH STATE PARK

Section

10. Use of weapons
20. Off-highway vehicles
20. Aircraft
25. Power boats
30. Horses
35. Campfires
40. Snow vehicles
45. Recreational gold panning
50. Bicycles

\* { 11 AAC 20.010. USE OF WEAPONS. (a)  
Except as provided by (b) of this section, the  
use and discharge of a weapon for the purpose  
of lawful hunting or trapping is allowed in

Chugach State Park, except within one-half mile of a developed facility.

practice landing is prohibited. (Eff. 5/11/85, Reg. 94)

Authority: AS 41.21.020  
AS 41.21.040  
AS 41.21.121

(b) The use and discharge of a firearm is prohibited within the following drainages:

(1) Eklutna River excluding the east fork of Eklutna River and Thunderbird Creek above Thunderbird Falls;

11 AAC 20.025. POWER BOATS. The use of power boats is allowed in Chugach State Park on Eklutna Lake. (Eff. 5/11/85, Reg. 94)

Authority: AS 41.21.020  
AS 41.21.040  
AS 41.21.121

(2) Eagle River and all tributary drainages downstream from the gorge located at the southwest corner of Section 24, T13N, R1E, S.M.;

11 AAC 20.030. HORSES. (a) The use of horses, mules, and burros is allowed in Chugach State Park, except for

(1) designated campgrounds, swim beaches, and picnic areas;

(3) all forks of Campbell Creek;

(4) Rabbit Creek;

(5) McHugh Creek; and

(2) the Eagle River Valley from Crow Pass to the Eagle River Visitor Center, except by permit from the director under 11 AAC 18.010;

(3) Meadow Creek Drainage;

(4) the Old Johnson Trail from Potter to Indian;

(5) Section 29, T12N, R2W, S.M., west of the powerline easement, except that one trail between the powerline easement and the Glen Alps parking lot will be designated for summer use of horses;

(6) Flattop Mountain Trails; and

(7) all trails in the Hillside Trail System (North Fork of Campbell Creek to and including Rabbit Creek), which may be closed seasonally to horse use to control break-up problems and use conflicts with ski trails.

(b) The use of horses, mules, and burros is subject to the following conditions:

(1) groups using 10 or more animals must obtain authorization from the director under 11 AAC 18.010 before entering the state park;

(2) tethering horses, mules, or burros within 100 feet of fresh water is prohibited;

(6) Rainbow Creek. (Eff. 1/16/74, Reg. 48; am 8/11/80, Reg. 75; am 5/11/85, Reg. 94)

Authority: AS 41.21.020 AS 41.21.040  
AS 41.21.022 AS 41.21.121

11 AAC 20.015. OFF-HIGHWAY VEHICLES.

(a) The use of off-highway vehicles is allowed in Chugach State Park only on Eklutna Lake Road and logging trails in Bird Creek Valley.

(b) No person may operate an off-highway vehicle from 12:01 a.m. Thursday through 11:59 p.m. Saturday on Eklutna Lake Road. (Eff. 5/11/85, Reg. 94)

Authority: AS 41.21.020  
AS 41.21.040  
AS 41.21.121

11 AAC 20.020. AIRCRAFT. (a) Except as provided by (b) of this section, the use of aircraft is allowed in Chugach State Park on

(1) Bold airstrip located at the inlet of Eklutna Lake;

(2) Mirror Lake; and

(3) Eklutna Lake.

(b) The use of aircraft for the purpose of

(10) "state park land" means the state land managed by the division and designated for use as public recreation land and includes waysides, recreation areas, parks and historic sites;

(11) "state park" means any land or water managed by the division;

(12) "vehicle" means any device for carrying persons or objects over land, water, or through the air, including automobiles, snow-machines, bicycles, off-road vehicles, motorized boats, and aircraft;

(13) "firearm" includes a pistol, rifle, shotgun, revolver, mechanical, gas, or air-operated gun;

\* { (14) "weapon" includes a bow and arrow, slingshot, crossbow, or firearm;

(15) "developed facility" includes a boat ramp, campground, picnic area, rest area, visitor information center, swim beach, trailhead, road, parking area, or developed ski area;

(16) "stationary gear" means gear set from or retrieved to the shore above mean low tide, or operated on the shore between mean low and high tide, including set gill nets and beach seines. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44; am 5/11/85, Reg. 94; am 8/10/86, Reg. 99)

Authority: AS 41.21.020  
AS 41.21.040  
AS 41.21.955

# MEMORANDUM

State of Alaska

TO Judith E. Marquez, Director  
Division of Parks  
DNK - Anchorage

DATE: November 19, 1982

FILE NO: A66-379-82

TELEPHONE NO:

FROM Wilson L. Condon  
Attorney General  
By: *Claire Steffens/stf*  
Claire Steffens  
Assistant Attorney General  
AGO-Anchorage

SUBJECT: Regulation of  
Firearms Discharge in  
State Parks

The Division of Parks has requested our advice respecting its authority to regulate the discharge of firearms in state parks.

## QUESTIONS PRESENTED

To what extent may the Division of Parks regulate the discharge of firearms within areas under its jurisdiction? Subsumed in this inquiry are the additional questions of whether legislative repeal of AS 11.55.050 invalidated regulation 11 AAC 12.190 1/ which prohibits the discharge of "mechanical or air-operated guns" in all state parks; and whether the term "firearms" is included within the meaning of "mechanical or air-operated guns" in 11 AAC 12.190.

## CONCLUSIONS

The State legislature has delegated to the Department of Natural Resources the authority to regulate the discharge of firearms within all areas under the jurisdiction of the division of parks to the extent necessary to accomplish the purposes for

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1/ It has been brought to our attention that a staff member of the Office of the Ombudsman has suggested, in connection with certain hunting incidents in Denali State Park, that 11 AAC 12.190 is invalid as lacking statutory foundation and, in any event, as not applying to the discharge of "firearms". For the reasons set forth in this memorandum of advice, we disagree with these views.

which state parks and recreational areas have been created. AS 41.20.010 - .040.

Legislative repeal of AS 11.55.050 did not invalidate 11 AAC 12.190. The statutory foundation for 11 AAC 12.190 exists in AS 41.20.010-.020 which mandates the creation and development of a system of parks fostered, inter alia, for the general health, welfare and enjoyment of Alaskans and for the attraction of visitors to the state.

The prohibition against discharging "mechanical or air-operated guns" in 11 AAC 12.190 includes the discharge of "firearms".

#### ANALYSIS

A. Authority of the Division of Parks to Regulate the Discharge of Firearms in State Parks

The general provisions granting authority to the Department of Natural Resources 2/ to acquire, develop and maintain state parks and recreational areas are contained in AS 41, Chapter 20. 3/

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2/ AS 41.20.040 authorizes the Department of Natural Resources to establish a separate division to perform functions related to parks and recreational facilities, thus giving rise to the division of parks.

3/ Article VIII, Section 7 of the Constitution of Alaska provides:

Special Purpose Sites. The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

1. Legislative Authority.

The legislatively declared purpose of the provisions of Chapter 20 is:

[t]o foster the growth and development of a system of parks and recreational facilities and opportunities in the state, for the general health, welfare, education and welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state.

AS 41.20.010.

In pertinent part, AS 41.20.020 provides:

The Department of Natural Resources shall ...

(2) plan for and develop a system of state parks and recreational facilities, to be established as the Legislature authorizes and directs; ...

(4) control, develop and maintain state parks and recreational areas;

(5) provide for the acquisition, care, and control, supervision, improvement, development, extension and maintenance of public recreational lands, and make necessary arrangements, contracts or commitments for the improvement and development of lands acquired under §§10-40 of this chapter; ....

The broad language of these provisions supplies the division of parks with ample authority to regulate the discharge of firearms on lands and waters under its jurisdiction.<sup>4/</sup> Moreover, the expressly stated purpose of establishing state parks and recreational facilities "for the general health, welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state" compels this conclusion as the purpose of establishing state parks and recreational areas would be thwarted were the authority to regulate firearms discharge absent. In addition to the statutory provisions cited, there exists implied authority to do what is reasonably necessary to achieve the general purposes for which these areas are reserved.<sup>5/</sup>

Except where limited by other statutes dealing with specific state parks or recreational areas, the legislative mandates of AS 41.20.020 apply to all areas within the jurisdiction of the division of parks. Where the legislature has enacted statutes concerning specific state parks or recreational areas, the further purposes and authority expressed within those statutes also may authorize the division to regulate the discharge of firearms within those parks or recreational areas.

2. Some Limitations on the Division's Authority.

It is important to note that the division of parks does not have authority directly to prohibit hunting in areas within its jurisdiction. However, the division does have the authority to prohibit all discharge of firearms or to restrict the circumstances of their discharge, whether the discharge of the

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4/ Additional authority for the regulation of the discharge of firearms in state parks and recreational areas may be contained in AS 41.20.020(1), (7) and (11).

5/ See generally 3 Sands, Sutherland Statutory Construction §55.03, §§65.02-.03 (4th ed. 1973).

firearms is related to hunting or to any other activity,<sup>6/</sup> provided that the prohibition or restriction is reasonably necessary to accomplish the purposes<sup>7/</sup> for which the park or recreational area was created. Similarly, the division may regulate indirectly other aspects of hunting in state parks such as vehicle or airplane access.

B. Repeal of AS 11.55.050

The legislature repealed AS 11.55.050 as part of a general criminal code revision in 1980. This former statutory provision provided:

(a) Unless specifically permitted by law or ordinance, a person who flourishes, points, or discharges a firearms in a city of any class, or on a railway coach, steamboat or steamship, or in or near a park or public grounds, or at a public place, whether public in itself, or made public at the time by an assemblage of persons, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment in a jail for not more than 6 months, or by both.

(b) Notwithstanding the provisions in (a) of this section, firearms may be used in those state parks which are by statute, or by lawful regulation, open to shooting. (§65-12-5 ACLA 1949: am §1 ch 2 SLA 1972; am §1 ch 47 SLA 1972; repealed §21 ch 166 SLA 1978, effective January 1, 1980).

This provision was cited as one of three statutory authorities supporting the adoption of regulation 11 AAC 12.190.

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<sup>6/</sup> Accord Informal Op. Att'y. Gen. (May 25, 1980).

<sup>7/</sup> The purposes for which a state park or recreational area was created may be expressly stated or necessarily implied from the expressly stated purposes. See Sutherland, supra, fn 5.

The repeal of AS 11.55.050 had no effect on the validity of 11 AAC 12.190. Sufficient and independent statutory foundation for this regulation exists in AS 41.20.020. The citation of AS 11.55.050 in support of the regulation was, at best, additional authority and, at worst, no authority at all.<sup>8/</sup> The legislative history of the repeal of AS 11.55.050 evidences no intent to invalidate 11 AAC 12.190. If the legislature had desired to allow unrestricted discharge of firearms in state parks, we believe it would have expressly amended AS 41.20.020.

C. A Firearm is a "Mechanical or Air-Operated Gun".

11 AAC 12.190 prohibits the discharge of "mechanical or air-operated guns" in state parks:

Discharge of explosives, mechanical or air-operated guns, gas-operated explosive devices, fireworks or similar devices in a state park is prohibited except that the Director may authorize use of such items when required for construction or maintenance purposes or for the general public safety or welfare. (Emphasis added.)<sup>9/</sup>

Apparently, in some quarters it is argued that this prohibition against the discharge of mechanical or air-operated guns does not apply to firearms. We disagree.

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<sup>8/</sup> AS 11.55.050(a) was a general criminal law provision prohibiting flourishing, pointing, or discharging of a firearm in a public place. The division of parks was not charged with the affirmative duty to adopt regulations to make this statutory provision operative. If anything, 11.55.050(b) was an express acknowledgement by the Legislature of the authority it granted the division of parks to prohibit the discharge of firearms in state parks.

<sup>9/</sup> The rules and regulations of administrative bodies have the force and effect of law. Pearce v. Director, Office of Workers Comp. Program, U.S. Dep't. of Labor, 647 F.2d 716, 726 (7th Cir. 1981); 1A Sands Sutherland and Statutory Construction §23.19 (4th ed. 1975).

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The regulation clearly intended to encompass the discharge of firearms within the meaning of the terms "mechanical guns".<sup>10/</sup> Words in regulations, as in statutes, should be construed as having their commonly understood meanings unless judicial construction or statutory definition has clad them with other meanings. See Lynch v. McCann, 478 P.2d 835, 837 (Alaska 1970).

The proper test to determine if the words of a statute or regulation are impermissibly vague is whether persons of common intelligence must necessarily guess at its meaning and differ as to its application. Stock v. State, 526 P.2d 3, 8 (Alaska 1974).

It is our view that persons of common intelligence need not necessarily guess at the meaning of 11 AAC 12.190 nor differ as to its application. In common usage, the terms "mechanical guns" clearly includes the mechanism called a "firearm".

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<sup>10/</sup> In Webster's Third New International Dictionary, Unabridged (1971 ed.), "gun" is defined as "a piece of ordnance ... throwing projectiles by the force of some explosive (as gunpowder) usu. with high muzzle velocity and with comparatively flat trajectory .... a portable firearm (as a rifle, shotgun, carbine, pistol) ....; "firearm" is defined as a weapon from which shot is discharged by gunpowder ....; "mechanical" is defined as "of, relative to, or concerned with machinery or tools ... relating to, governed by or in accordance with mechanics ....; "air-operated" is not defined. Since a "mechanical gun" clearly includes a "firearm", we need not determine whether an "air-operated gun" also includes a "firearm".

compatible use within a state park or recreational area. (§ 2 ch 158 SLA 1959; am § 1 ch 233 SLA 1970; am § 3 ch 30 SLA 1981; am §§ 1, 2 ch 78 SLA 1981; am § 1 ch 16 SLA 1984; am § 40 ch 106 SLA 1986)

Editor's notes. — In subsection (b) of this section, the phrase "a compatible use" was substituted for the word "compatible" in 1984 to correct a manifest error of omission.

Effect of amendments. — The 1984 amendment added subsection (b).

The 1986 amendment, effective January 1, 1988, added "contracting for improvement and development under this paragraph is governed by AS 36.30 (State Procurement Code)" at the end of paragraph (5) of subsection (a).

Editor's notes. — Prior to January 1, 1988, subsection (a) reads as follows: "(a) The Department of Natural Resources shall

"(1) develop a continuing plan for the conservation and maximum use in the public interest of the scenic, historic, archaeological, scientific, biological, and recreational resources of the state;

"(2) plan for and develop a system of state parks and recreational facilities, to be established as the legislature authorizes and directs;

"(3) acquire by gift, purchase, or transfer from state or federal agencies, or from individuals, corporations, partnerships or associations, land necessary, suitable and proper for roadside, picnic, recreational or park purposes;

"(4) control, develop and maintain state parks and recreational areas;

"(5) provide for the acquisition, care, control, supervision, improvement, development, extension and maintenance of public recreational land, and make necessary arrangements, contracts or commitments for the improvement and develop-

ment of land acquired under AS 41.21.010 — 41.21.040;

"(6) adopt, in accordance with this section and the Administrative Procedure Act (AS 44.62), regulations governing the use and designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

"(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas, and secure agreements or contracts for the purpose of AS 41.21.010 — 41.21.040;

"(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

"(9) provide for consulting service designed to develop local park and recreation facilities and programs;

"(10) provide clearing-house services for other state agencies concerned with park and recreation matters; and

"(11) perform other duties as are prescribed by executive order or by law;

"(12) maintain memorials to Alaska veterans located in state parks;

"(13) adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490."

**Sec. 41.21.022. Discharge of firearms.** The discharge of firearms during lawful hunting, trapping, and fishing is permitted within the boundaries of: (1) Caines Head State Recreation Area; (2) Chena River State Recreation Area; (3) Chugach State Park; (4) Denali State Park; (5) Kachemak Bay State Park; (6) Kachemak Bay State Wilderness Park; (7) Marine Parks established in AS 41.21.300 — 41.21.306; (8) Quartz Lake State Recreation Area; and (9) Wood-Tikchik State Park, except that all or part of a state park, marine park, wildlife preserve, or recreation area may be closed to the discharge of firearms by regulations adopted by the department for purposes of public safety or

*anyone*

with the concurrence of the Board of Game, for limited areas of Chugach State Park for public display of local wildlife under AS 41.21.121. (§ 1 ch 126 SLA 1984)

**Sec. 41.21.026. Fees for the use of state park system facilities.**

(a) The department may charge or collect a fee in a park unit for

- (1) rental of public use cabins or other overnight lodgings;
- (2) overnight use of a developed campsite,
- (3) special park use permits;
- (4) competitive and exclusive commercial use permits;
- (5) noncompetitive and nonexclusive commercial use permits;
- (6) use of a sewage holding tank dump station;
- (7) guided tours of historic sites; and
- (8) use of an improved boat ramp in a park facility developed principally for boat launching.

(b) The department may not charge or collect a fee for an ordinary use of a park unit or the use of a restroom in a park unit.

(c) The department shall establish the fees that may be charged or collected under (a) of this section by regulation. Before setting the fees, the department shall consider at public hearings

- (1) the cost to the state of operating the facility or managing the activity;
- (2) the normal fees charged for similar facilities or activities by governmental and nongovernmental entities;
- (3) the cost of administering a fee collection program for the facility or activity; and
- (4) the public interest.

(d) In this section, "developed campsite" means a campsite having access to the following public facilities:

- (1) restrooms;
- (2) a picnic table;
- (3) an outdoor cooking facility; and
- (4) an approved water source. (§ 1 ch 89 SLA 1987)

**Effective dates.** — Section 5, ch. 89, SLA 1987, makes this section effective June 18, 1987, in accordance with AS 01.10.070(c).

**Editor's notes.** — Section 4, ch. 89, SLA 1987 provides that regulations existing on June 18, 1987 that are otherwise applicable to user fees remain in effect until regulations are adopted under (c) of this section.

**Sec. 41.21.027. Concession contracts in the state park system.**

(a) Subject to the restrictions in this section, the state may enter into concession contracts under AS 30 to provide services or construct facilities in a park unit.

(b) The state may not enter into a concession contract under (a) of this section if the proposed contract involves estimated annual gross receipts of more than \$100,000, construction of facilities, a term lon-