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June 21, 2017

To: Environmental Quality council
From: Jameson Walker, Staff Attorney
Re: EQC Administrative Rule Review June 2017

This letter constitutes a review of current rules under the authority of the Environmental Quality Council (EQC).[1]

Department of Environmental Quality

There are no pending rules.

Department of Fish, Wildlife, and Parks

MAR Notice Number: 12-473
Subject: Adoption of a rule pertaining to permits for dog training in upland game bird nesting areas.
Summary: The proposed rule creates a permit for any person who wants to train dogs in open fields. The proposed rule defines "open fields" as any area of natural surroundings where wildlife may naturally occur and may include bird nesting areas, management areas, or game preserves. The proposed rule furthermore defines "bird nesting area", "management area", and "open fields". The department states that its authority to enact the rule is under 87-4-913 and 87-4-915, MCA.
Notes/Hearing: The department did not contemplate the need to hold a public hearing and set the deadline for public comment for May 26, 2017. However, it is understood that the department has received an unanticipated amount of public comment and has not taken action yet.

Upon review, the proposed rule potentially exceeds its statutory authority in that it provides definitions beyond the scope of the statute. Specifically, the definition of "bird nesting area" is defined as any area where a game bird "could make a reasonable attempt to successfully produce

[1] The EQC is responsible for reviewing administrative rules from the following agencies and the entities that are attached to these agencies for administrative purposes: (1) the Department of Environmental Quality (DEQ); (2) the Department of Fish, Wildlife, and Parks (FWP); and (3) the Department of Natural Resources and Conservation (DNRC).

a nest." The issue is whether the Legislature intended a "bird nesting area" to include places that *could* successfully produce a nest.

The EQC may take any action described in the attached rule memo, including objecting to the rule and considering it at the next meeting.

Department of Natural Resources and Conservation

There are no pending rules.

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