

Chapter 736 Parks and Recreation Department

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736-201-0060	Items Prohibited on Property
736-201-0065	Inspections During State Fair and Other Controlled Events
736-201-0070	Activities Prohibited on Property
736-201-0075	Conducting Business on or Near Grounds of Fair
736-201-0080	Admission to Fairs Except through Special Gates Prohibited
736-201-0085	Returned Checks
736-201-0090	Credit Card Returns
736-201-0095	Late Payments
736-201-0100	Photocopying Charges
736-201-0105	Facsimile Machine Usage
736-201-0110	Shipping and Mailing Charges
736-201-0115	Additional Services and Support Charges
736-201-0120	Storage of Items left on Grounds
736-201-0125	State Fair Advisory Committee
736-201-0130	Oregon State Fair Established
736-201-0135	State Fair Purposes; Use and Management of Property
736-201-0140	Location of State Fair, Acquisitions of Adjacent Lands, Repair of Facilities
736-201-0145	Acceptance and Disposition of Gifts, Grants and Donations
736-201-0150	Cooperating Non-Profit Organizations
736-201-0155	Buildings and Facilities for 4-H and FFA Programs, Exhibits and Contests
736-201-0160	Armory on Grounds of Oregon State Fair
736-201-0165	Horse Barn Facilities on Grounds
736-201-0170	County Exhibits at State Fair
736-201-0175	Protest Procedures
736-201-0180	Sanctions

DIVISION 1

PROCEDURAL RULES

736-001-0000

Notice of Proposed Rules

Prior to the adoption, amendment or repeal of any permanent rule, the Oregon Parks and Recreation Commission shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(2) By mailing a copy of the notice to persons on the Oregon Parks and Recreation Commission's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule; and

(3) By mailing or furnishing a copy of the notice to:

(a) The Associated Press;

(b) Associated Oregon Industries; and

(c) Associated General Contractors.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(4)

Hist.: 1 OTC 67, f. & ef. 1-9-76; PR 2-1990, f. & cert. ef. 7-10-90; PR 7-1992, f. & cert. ef. 11-12-92; PR 12-1994, f. & cert. ef. 12-5-94; PRD 2-2004, f. & cert. ef. 1-15-04

736-001-0005

Model Rules of Procedure

The Oregon Parks and Recreation Commission hereby adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective October 3, 2001.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or State Parks & Recreation Department.]

Stat. Auth.: ORS 390.124

Stat. Implemented: ORS 183.341(1)

Hist.: HC 1207, f. 10-9-69; HC 1245, f. 2-12-71; HC 1276, f. 3-3-72, ef. 3-15-72; 1 OTC 1973(Temp), f. & ef. 7-18-73; 1 OTC 2, f. 9-26-73; 1 OTC 3, f. 10-15-73, ef. 11-25-73; 1 OTC 68, f. & ef. 1-23-76; 1 OTC 3-1978, f. & ef. 3-29-78; 1 OTC 3-1980(Temp), f. & ef. 1-16-80; 1 OTC 7-1980, f. & ef. 3-28-80; PR 16-1981, f. & ef. 11-24-81; PR 1-1984, f. & ef. 1-6-84; PR 4-1986, f. & ef. 4-28-86; PR 4-1988, f. & cert. ef. 8-22-88; PR 7-1992, f. & cert. ef. 11-12-92; PR 12-1994, f. & cert. ef. 12-5-94; PR 2-1996, f. & cert. ef. 1-30-96; PRD 6-1998, f. & cert. ef. 4-17-98; PRD 1-2000, f. & cert. ef. 1-14-00; PRD 1-2002, f. & cert. ef. 1-15-02

736-001-0030

Fees for Public Records

Fees to recover costs in making public records available for inspection may be charged by the Oregon State Parks and Recreation Department:

(1) Fees, based on personnel, equipment usage and costs for materials, shall be as follows:

(a) Photocopies — 25 cents per page;

(b) Facsimiles — 35 cents per page;

(c) Tape recordings — \$20 per tape;

(d) Photographs — \$15 minimum service charge, plus actual cost of reproducing prints, transparencies or negatives;

(e) Mailing lists and other data base records:

(A) four cents per address or record on printed pages, plus \$9 service charge;

(B) three cents per address or record for electronic transfers onto diskettes provided by the customer, plus \$9 service charge.

(2) Mailing or shipping costs incurred by the Department in providing copies of public records may be added on to the charges specified in subsections (1)(a) through (d) of this rule.

(3) A \$3 service charge will be added on to any charges that are invoiced.

(4) A service charge for lengthy file searches, research, or other staff assistance to persons inspecting public records (based on average hourly salary rates of Department personnel involved) may be charged as follows:

(a) \$9 for up to 30 minutes and \$18 per hour, or any portion of an hour, of support services time;

(b) \$15 for up to 30 minutes and \$30 per hour, or any portion of an hour, of professional services time.

(5) Copies may be furnished without charge or at a reduced fee if it is determined that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

Stat. Auth.: ORS 192.410 - 192.495 & 390.124

Stats. Implemented: ORS 194.440

Hist.: PR 12-1993, f. 7-12-93, cert. ef. 8-2-93

DIVISION 2

ADMINISTRATIVE ACTIVITIES

736-002-0010

State Park Cooperating Associations

(1) Pursuant to ORS 390.121 to 390.150, the director of the Oregon State Parks and Recreation Department is authorized to enter into agreements with cooperating associations, which are private, non-profit scientific, historic or educational associations organized solely for the purpose of providing interpretive services to recreational facilities in Oregon. Recreation facility includes but is not limited to state parks, state recreation areas, and all recreational, historical and scenic attractions owned or under the control of the State of Oregon and administered by the Parks and Recreation Department.

(2) The following rules are established to carry out the purposes of this program. Agreement form 73410-1602 will be entered into by the cooperating association and the director of the state parks department:

(a) The activities of cooperating associations shall enhance park or facility interpretive and educational functions. Association activities at a recreation facility may not conflict with park or facility resources or objectives and shall be subject to prior approval by the district park manager;

(b) Cooperating associations may be formed to assist Oregon State Parks at a local, regional or statewide level provided that no more than one cooperating association shall be created to undertake activities in a single park or facility. Associations shall be separate entities, but are encouraged to work together as appropriate. Cooperating associations may sponsor interpretive or educational events or functions, as approved by the district park manager;

(c) Each association shall determine the number of directors to comprise the governing board. A state park representative, designated by the director, shall be an ex-officio member of the board. If the board desires, Oregon State Parks in its discretion may provide assistance to the board on an incidental basis. It will be the responsibility of each cooperating association to secure appropriate charter(s) and non-profit, tax-exempt status under provisions of Section 501(c)3 of the federal Internal Revenue Service Tax Code. Cooperating association membership fees may be allowed at the direction of the cooperating association board of directors;

(d) The cooperating association may:

(A) Provide educational or interpretive material for sale at a recreation facility;

(B) Acquire display materials and equipment for exhibits at a recreation facility;

(C) Provide support for special recreation facility interpretive programs or environmental education programs;

(D) Support recreation facility libraries; or

(E) Provide support for other interpretive projects related to a specific recreation facility.

(e) The Oregon State Parks and Recreation Department may:

(A) Provide incidental personnel services to the organization's interpretive program; and

(B) Provide space at a state park facility for the interpretive materials provided by the organization.

(f) Any money received from the sale of publications or other materials provided by an organization pursuant to an agreement entered into under this section shall be retained by the organization

for use in the interpretive or educational services of the recreation facility for which the organization provides services. In the event that the cooperative association disbands or dissolves, remaining funds shall be donated to Oregon State Parks and earmarked for interpretive and educational purposes within the Oregon State Park system. An annual fiscal report of the cooperating association shall be presented to the state parks director;

(g) Associations may make available for sale theme-related objects which, in the judgment of the director or designee, can effectively contribute to the success of the park or facility interpretive program. Critical evaluation of proposed sales objects to insure that they are theme-related is extremely important to both Oregon State Parks and non-profit status of the cooperating association. Decisions made by the director are final;

(h) An agreement between a cooperating association and the director may be terminated upon thirty (30) days written notification by either party to the other.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.545, 183.550, 184 & 390.124

Stats. Implemented: ORS 390.143 - 390.144

Hist.: PR 10-1986, f. & ef. 7-9-86; PR 2-1993, f. & cert. ef. 1-29-93; PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0015

Working with Donor Organizations

Authority and Purpose

(1) Oregon Laws 2013, chapter 299, section 2 authorizes the director of the Oregon State Parks and Recreation Department to enter into agreements with private, nonprofit organizations by which the organizations shall solicit gifts, grants and donations for the benefit of the department or donate goods and services to the department.

(2) The purpose of these rules is to provide procedures for soliciting and accepting proposals, reaching agreements, depositing funds, evaluating agreements and renewing or dissolving agreements.

Definitions

(3) As used in these rules and forms to be prepared by the Oregon Parks and Recreation Department, the following definitions apply:

(a) "Agreement" means a written agreement entered into between a donor organization and the department for the purposes identified in Oregon Laws 2013, chapter 299, section 2, subsection 1.

(b) "Department" means the Oregon Parks and Recreation Department or its staff.

(c) "Director" means the director of the Oregon Parks and Recreation Department.

(d) "Donation" means gifts, grants, cash donations, goods or services.

(e) "Donor proposal" means a written proposal submitted by a donor organization in a format as required by the department, and which requests to enter into an agreement with the department according to Oregon Laws 2013, ch. 299, section 2, subsection 1.

(f) "Donor organization" or "donor" means a federally tax exempt nonprofit organization registered with the Oregon Secretary of State.

Donor Organization Eligibility

(4) To be eligible to submit a donor proposal, a private nonprofit organization must:

(a) Meet the definition of a donor organization under subsection (3)(e); and

(b) Have an organizational mission that is consistent with the department's mission and strategic priorities.

Soliciting and Accepting Donor Proposals

(5) The department may request donor proposals as needed or on a biennial basis by posting a notice on the department's website and on the electronic procurement system the department uses to advertise contracting opportunities. The department may use additional notification means when necessary.

(6) To submit an unsolicited donor proposal, eligible donor organizations may contact the director's office at any time to obtain

information on the process for submitting such a proposal, including required forms.

(7) The department's goal is to respond to proposals submitted under sections (5) and (6) within 30 days of receipt. If the department has not responded within such time, the applicant organization may contact the director's office and inquire about the proposal status. Failure to receive a response from the department shall not be interpreted as department acceptance of a proposal.

Evaluating Donor Proposals

(8) When evaluating a donor proposal, the department shall consider the following:

(a) Whether the proposal furthers the department's strategic priorities;

(b) Whether the proposal will produce financial or public service benefits to the department in excess of the department's cost to fulfill the agreements;

(c) Whether the proposal demonstrates that the donor organization has the ability to successfully carry out the proposed agreement terms;

(d) Whether the department can successfully meet its obligations as specified or anticipated by the proposal; and

(e) Other factors the department deems appropriate.

(9) The department has sole discretion to accept or deny donor proposals. The department will communicate its decisions to applicants in writing. Acceptance of a donor proposal only means that the department will attempt to reach an agreement with the donor organization as provided in sections (10) to (13), and does not otherwise create an obligation on the department.

Reaching Agreement

(10) The department has 90 days from the date it accepts a donor proposal to negotiate the terms and conditions of an agreement with the selected donor organization. If an agreement is not reached in 90 days, the department may extend the negotiation period at its discretion or may rescind the acceptance.

(11) Each agreement must contain provisions that address the following:

(a) The agreement scope, dates or general timeframe, and projects to be completed by the donor or the process by which individual projects will be agreed upon and implemented;

(b) What the donor organization will provide to the department, the anticipated value and schedule of donations, the manner in which they will be provided, the ownership of each item, if applicable, the records to be kept by the donor organization, and the detail and timing of required reporting concerning the cost of department resources or services made available to donor organizations and the corresponding donations given to the department;

(c) What the department will provide to the donor organization, the schedule and cost for any state resources or services anticipated to be provided, and the manner in which the organization will request and the department will provide resources or services.

(d) Compliance with the terms of relevant statutes, administrative rules and department requirements, including use of the state seal and the department shield;

(e) Representation of the donor organization's relationship with the department and the requirement that the donor organization must report any political lobbying activities related to the agreement to the department within seven calendar days of undertaking the activity;

(f) Provisions for amending, renewing, and terminating the donor agreement; and

(g) The right of the department to refuse any donations.

(12) All agreements must be in writing and approved by the director or designee in accordance with the department's authority delegation policy.

(13) At least 30 days prior to the director signing an agreement, the department must:

(a) Post a notice on the department's website and on the electronic procurement system the department uses to advertise contracting opportunities announcing the proposed agreement with information about its purpose, content, and a link to its online location.

(b) Submit a copy of an executive summary of the content of the proposed agreement to every member of the Legislative Assembly by electronic mail that includes a link to the online location of the proposed agreement; and

(c) Submit a copy of the proposed agreement to the Legislative Administrator.

Management of Funds

(14) The department must deposit all funds received from agreements in subaccounts of the State Parks and Recreation Department Fund as established by ORS 390.134.

Monitoring and Evaluating Agreements

(15) The department must monitor agreements while in progress to determine whether they are properly executed and remain beneficial to the department.

(16) Within the 60 day period prior to the expiration of an agreement, the department must determine whether:

(a) The agreement delivered the benefits outlined;

(b) The donor organization complied with the agreement terms and conditions;

(c) The benefits received provided significant value to the department relative to the costs of the state resources or services expended to secure the benefits;

(d) The department was able to fulfill its obligations under the terms of the agreement; and

(e) The department would consider new agreements with the same donor organization in the future.

Ending or Renewing Agreements

(17) During the course of an agreement, each party may terminate the agreement at any time without cause by providing 30 days written notice to the other party.

(18) Prior to the expiration of an agreement, the department may consider two options based on the results of the agreement evaluation in section (16):

(a) Allow the agreement to expire; or

(b) Renew the agreement by extending or altering the existing agreement scope, conditions and terms, subject to the notice requirements in section (13).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.134

Hist.: PRD 5-2013, f. & cert. ef. 10-4-13

736-002-0020**Criminal Records Checks, Statement of Purpose and Applicability, Statutory Authority**

(1) Purpose. These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, contractor, or licensee in a position identified in OAR 736-002-0032. The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee or status as a Department volunteer, contractor, or licensee.

(2) Authority. These rules are authorized under ORS 181.534, 390.124, 390.131, 390.140, 565.060, and 565.071.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04; PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0030**Definitions**

The following definitions are used for the purposes of these Oregon Administrative Rules pertaining to criminal records checks.

(1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 736-002-0050 or a final fitness determination under OAR 736-002-0058, an authorized designee has determined that the subject individual is fit to be an employee, contractor, licensee or volunteer in a position covered by OAR 736-002-0032.

(2) "Authorized Designee" means a Department employee authorized to obtain, review or process criminal offender information

and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Contact Person" means a person who is authorized by the Department to receive and process criminal records check request forms signed by subject individuals and is authorized to receive criminal records information. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(4) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(5) "Criminal Offender Information" includes records and related data as to physical description and vital statistics received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrest, and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(6) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 736-002-0070.

(7) "Criminal Records Check" or "CRC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) "LEDS Criminal Records Check" means a name-based check of Oregon criminal offender information conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police in accordance with the rules adopted and procedures established by the Oregon Department of State Police.

(b) "Oregon Criminal Records Check" means a check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request.

(c) "Nationwide Criminal Records Check" means a nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request.

(8) "Criminal Records Check and Fitness Determination Rules" or "these rules" means Oregon Administrative Rules (OAR) chapter 736, division 2, except OAR 736-002-0010.

(9) "Department" means the Oregon Parks and Recreation Department and any division or office thereof.

(10) "False Statement" means a subject individual either (a) provided the Department with materially false information about his or her criminal history, or (b) failed to provide to the Department information material to determining his or her criminal history.

(11) "Family Member" means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(12) "Fitness Determination" means a determination made by an authorized designee or a contact person pursuant to the process established in OAR 736-002-0050 or by an authorized designee pursuant to the process established in 736-002-0058, that a subject individual is or is not fit to be a Department employee, contractor, licensee or volunteer in a position covered by 736-002-0032.

(13) "Oregon State Fair" means a division of the Oregon Parks and Recreation Department responsible for holding the annual Oregon State Fair and managing, scheduling, renting, and maintaining the facilities of the Oregon State Fair.

(14) "Subject Individual" means an individual identified in OAR 736-002-0032 as someone from whom the Department may

require statements about identity and criminal history and fingerprints for the purpose of conducting a criminal records check.

(15) "Unfit" means that, pursuant to a preliminary fitness determination under OAR 736-002-0050 or a final fitness determination under OAR 736-002-0058, an authorized designee or contact person has determined that the subject individual is unfit to be an employee, contractor, licensee or volunteer in a position covered by OAR 736-002-0032.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04; PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0032

Subject Individual

The Department may require a subject individual to provide statements about personal identity, criminal history or to provide fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Is employed by or applying for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a contractor, or volunteer; or

(c) Is a licensee of the Oregon State Fair or is applying for a license or renewal of a license that is issued by the Oregon State Fair division of OPRD; and

(2) Is or will be working or providing services in a position with the Department:

(a) In which the person has direct access to persons under 18 years of age, elderly persons, or persons with disabilities;

(b) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(c) In which the person has payroll functions, or in which the person has responsibility for receiving, receipting, or depositing money or negotiable instruments, billing, collections, or other financial transactions;

(d) In which the person has access to personal information about employees or members of the public, including Social Security numbers, dates of birth, driver's license numbers, medical information, personal financial information, or criminal history information;

(e) In which the person provides security, design, or construction services for government buildings, grounds, or facilities;

(3)(a) Is employed or applying for employment with the Department exclusive of the Oregon State Fair; or

(b) Provides services or seeks to provide services to the Department exclusive of the Oregon State Fair as a contractor or volunteer; and

(4) Is or will be working or providing services in a position with the Department exclusive of the Oregon State Fair,

(a) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules, or regulations, or information that is defined as confidential under state or federal laws, rules or regulations;

(b) In which the person is responsible for purchasing or selling property, or has access to property held in trust or private property in the temporary custody of the state;

(c) In which the person has responsibility for auditing agency financial transactions;

(d) In which the person has access to tax or financial information of individuals or business entities;

(e) In which the person may issue citations under ORS 390.050.

(5)(a) Is employed or applying for employment with the Oregon State Fair division of OPRD; or

(b) Provides services or seeks to provide services to the Oregon State Fair division of OPRD as a contractor or volunteer; or

(c) Is a licensee of the Oregon State Fair or is applying for a license or renewal of a license that is issued by the Oregon State Fair division of OPRD; and

(6) Is or will be working or providing services in a position with the Oregon State Fair division of OPRD:

(a) In which the person has responsibility for sales or distribution of tickets or other instruments that can be exchanged for good, services, or access to events held on Oregon State Fair property;

(b) In which the person has key access to Oregon State Fair buildings and grounds that contain private property belonging or entrusted to exhibitors, promoters, licensees and event coordinators.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, 390.200, 565.071

Stats. Implemented: ORS 181.534.

Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0038

Designated Positions: Authorized Designee and Contact Person

(1) Appointment.

(a) The Department Director or the Director's designee shall designate the positions that include the responsibilities of an authorized designee and /or contact person.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.

(c) Appointments shall be made by the Department Director or the Director's designee at his or her sole discretion.

(2) The Department Director or the Director's designee may also serve as an authorized designee or contact person, contingent on being approved under the Department's criminal records check and fitness determination process.

(3) Conflict of Interests. Authorized designees and contact persons shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee or contact person is a family member of the subject individual; or

(b) The authorized designee or contact person has a financial or close personal relationship with the subject individual. If an authorized designee or contact person is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this paragraph (b), the authorized designee or contact person shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee or Contact Person Status.

(a) When an authorized designee's or contact person's employment in a designated position ends, his or her status as an authorized designee or contact person is automatically terminated.

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position, and thereby suspend or terminate his or her status as an authorized designee or contact person, if the employee fails to comply with OAR 736-002-0010 through 736-002-0160 in conducting criminal records checks and fitness determinations.

(c) An authorized designee or contact person shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 736-002-0070. Failure to make the required report is grounds for termination of the individual's appointment to a designated position and thereby termination of his or her status as an authorized designee.

(d) The Department will review and update an authorized designee's and contact person's eligibility for service in a designated position, at which time a new criminal records check and fitness determination may be required. This review can occur at any time the Department has reason to believe the authorized designee or contact person has violated these rules or is no longer eligible to serve in his or her current position.

(5) A determination of being unfit under OAR 736-002-0058 (3) related to a designated position is subject to the appeal rights provided under OAR 736-002-0102.

Stat. Auth.: ORS 181.534, 184.340, 184.365.
Stats. Implemented: ORS 181.534(9).
Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0042

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual shall complete and sign the OPRD Criminal Records Request (form 63400-2053HR), and, if requested by the Department, a fingerprint card. The Criminal Records Request form shall require the following information: name, birth date, Social Security number, driver's license or identification card number, current address, prior residences in other states, and any other information deemed necessary by the authorized designee. The OPRD Criminal Records Request form may also require details concerning any circumstance listed in OAR 736-002-0050(3)(a)-(h)

(b) A subject individual shall complete and submit to the Department the OPRD Criminal Records Request (form #63400-2053HR), and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(c) The Department may not request a fingerprint card from a subject individual under the age of 18 years unless the Department also requests the written consent of a parent or legal guardian.

(d) Within a reasonable period of time, as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve any issue hindering the completion of a criminal records check.

(2) When A Criminal Records Check Is Conducted. An authorized designee may conduct or request the Oregon Department of State Police to conduct a criminal records check when:

(a) An individual meets the definition of "subject individual"; or

(b) Required by federal law or regulation, by state law or administrative rule, by contract or written agreement with the Department, or by Department policy.

(3) The Type of Criminal Records Check to Conduct. When an authorized designee determines under section 2 of this rule that a criminal records check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee may conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject.

(b) Oregon Criminal Records Check. The authorized designee may request the Oregon Department of State Police to conduct an Oregon criminal records check (fingerprints required) when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or other criminal records information; or

(B) The subject individual's job duties require a fingerprint criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee may request the Oregon Department of State Police to conduct a nationwide criminal records check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of or information provided by a subject individual. Reasonable grounds to question the information provided by a subject individual include, but are not limited to: the subject individual discloses a Social Security Number that appears to be invalid; or the subject individual does not have an Oregon driver's license or identification card;

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department;

(E) An Executive Service or Management Service employee seeks to serve as an authorized designee; or

(F) A subject individual is an OPRD employee working in, moving to, or applying for a position designated by the Department Director or the Director's designee as including the responsibilities of an authorized designee or contact person.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0050

Preliminary Fitness Determination.

(1) An authorized designee may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) If an authorized designee elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the authorized designee shall make that preliminary fitness determination about a subject individual based on information disclosed by the subject individual under OAR 736-002-0042(1) and a LEDS criminal records check.

(3) The authorized designee may approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has pled nolo contendere (or no contest to), been convicted of, found guilty of, or has a pending indictment for a crime listed under OAR 736-002-0070;

(b) Has been arrested for or charged with a crime listed under OAR 736-002-0070;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 736-002-0070;

(d) Is currently on probation, parole, or post-prison supervision for a crime listed under OAR 736-002-0070;

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 736-002-0070;

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 736-002-0070 if committed by an adult; or

(g) Is determined to be a sex offender and required to report under ORS 181.595, 181.596, or 181.597, or is determined to be a predatory sex offender under 181.585.

(h) Only for jobs where driving is an essential function, has a felony driving conviction or other driving crime convictions that indicate a pattern of high-risk driving behavior.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section 3, the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is determined to be fit or unfit to work/volunteer on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a final fitness determination under OAR 736-002-0058.

(6) A subject individual may not appeal a preliminary fitness determination under the process provided under OAR 736-002-0102 or otherwise.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0052

Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 736-002-0050.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under OAR 736-002-0058, may not appeal the termination under the process provided under 736-002-0102.

(4) If a subject individual hired or appointed on a preliminary basis is determined to be unfit upon completion of a final fitness determination, as provided under OAR 736-002-0058(3)(c), then the Department shall immediately terminate the subject individual's employment or appointment.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0058

Final Fitness Determination

(1) If the Department elects to conduct a criminal records check, an authorized designee shall make a final fitness determination about a subject individual based on information provided by the subject individual under OAR 736-002-0042(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a final fitness determination about a subject individual, an authorized designee shall consider the factors in paragraphs a-f of this section 2 in relation to information provided by the subject individual under OAR 736-002-0042(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest to), convicted of, found guilty of, or has a pending indictment for a crime listed in OAR 736-002-0070;

(b) The nature of any crime conviction identified under paragraph a of this section 2;

(c) The facts that support the arrest, conviction, finding of guilty, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under paragraph a of this section 2 or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the final fitness determination is being made, including, but not limited to:

(A) The passage of time since the commission or alleged commission of a crime identified under paragraph a of this section 2;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under paragraph a of this section 2;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime identified under OAR 736-002-0070;

(E) Whether a conviction identified under paragraph a has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of a current or recent employer;

(3) Possible Outcomes of a Final Fitness Determination.

(a) Automatic Approval. An authorized designee shall approve a subject individual if the information reviewed as described in paragraphs 1 and 2 of this rule shows none of the following:

(A) Evidence that the subject individual has been convicted of, or found guilty of a crime listed in OAR 736-002-0070;

(B) Evidence that the subject individual has a pending indictment for a crime listed in OAR 736-002-0070;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 736-002-0070;

(D) Evidence of the subject individual having made a false statement; and

(E) Any discrepancies between the criminal offender information and information obtained from the subject individual.

(b) Restricted Approval.

(A) If an authorized designee approves a subject individual under paragraph 3.b of this rule, the authorized designee may restrict the approval to specific activities or locations.

(B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual prior to removing a restriction.

(c) Unfit for Employment/Appointment.

(A) If a final fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs 3, a, A-E, of this rule and, after evaluating the information described in paragraphs 1 and 2 of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall determine the subject individual to be unfit for the position.

(B) If a subject individual is determined to be unfit, then the subject individual may not be employed by or provide services as a contractor, licensee, or volunteer to the Department in a position covered by OAR 736-002-0032.

(C) Under no circumstances shall a subject individual be determined to be unfit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(d) Refusal to Consent: If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall close the fitness determination file in accordance with OAR 736-002-0082 without further assessment under the fitness determination process.

(4) Final Fitness Determination. A final fitness determination becomes final unless the affected subject individual appeals by requesting either a contested case hearing or an alternative appeals process as described in OAR 736-002-0102.

(5) Reapplication. A new application received from a subject individual, who has received a final fitness determination and been determined to be unfit for an OPRD position or appointment, will not be considered during the same open recruitment period for the same position or volunteer appointment. The final fitness determination will stand pending the outcome of any appeal. No other recourse is available to the subject individual.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0070

Crimes Relevant to a Fitness Determination

(1) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(2) Crimes Relevant to A Fitness Determination

- (a) All felonies;
- (b) All misdemeanors.
- (c) Any federal crime;
- (d) Any United States Military crime or international crime;
- (e) Any crime of attempt, solicitation, or conspiracy to commit any crime listed in this rule pursuant to ORS 161.405, 161.435, or 161.450.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04; PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0082

Closed Fitness Determination File

(1) The Department will close a fitness determination file when:

- (a) Circumstances change so that a person no longer meets the definition of a subject individual;
- (b) The subject individual refuses to sign and/or complete a Criminal Records Request form and/or does not provide materials or information under OAR 736-002-0042 within the timeframes established under that rule;
- (c) An authorized designee cannot locate or contact the subject individual;
- (d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other relevant information under OAR 736-002-0058(2);
- (e) The Department determines that the subject individual is not eligible or not qualified for the position of employee or volunteer for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 736-002-0102 to challenge the closing of an incomplete fitness determination file.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04; PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0092

Notice to Subject Individual of Fitness Determination or File Closure

(1) An authorized designee shall provide written notice to a subject individual (form 63400-2055HR) of:

- (a) A preliminary fitness determination;
- (b) A final fitness determination;
- (c) Closure of a fitness determination file.

(2) The written notice shall include:

(a) The date on which the fitness determination was completed or the fitness determination file was closed;

(b) In the case of a final fitness determination, a separate notice addressing the subject individual's right to request a contested case hearing to appeal the final fitness determination and containing the information required by OAR 137-003-0505 (form 63400-2056HR) shall also be provided.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0102

Appealing a Fitness Determination

(1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a final fitness determination made under OAR 736-002-0058 that he or she is not fit to hold a position with or provide services to the Department as an employee, contractor, licensee, or volunteer.

(2) Process.

(a) A subject individual may appeal a final fitness determination by submitting a written request for a contested case hearing on OPRD Hearing Request (form 63400-2057HR) to the address specified in the notice provided under OAR 736-002-0092(2)(b)

within 14 calendar days of the date appearing on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under paragraph 2, a of this rule, a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings," OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Department or an administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order.

(b) Exceptions. The subject individual or the subject individual's legal counsel or the Department's representative may file written exceptions with the Department within 14 calendar days after service of the proposed order. Exceptions will be considered as set forth in OAR 137-003-0650 and 137-003-0655.

(c) Default. A final fitness determination made under OAR 736-002-0058 becomes final:

(A) Unless the subject individual makes a timely request for a hearing; or

(B) When a party withdraws a hearing request, notifies the department or the administrative law judge that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by OPRD may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable human resource rules, policies and collective bargaining provisions. A subject individual's decision to appeal a final fitness determination through applicable human resource rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 736-002-0058.

(8) Challenging Criminal Offender Information.

(a) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(b) To challenge information as identified in this section 8, a subject individual may use any process made available by the providing agency.

(9) Hiring Not Postponed or Delayed. Appealing a fitness determination under section 2 or section 6 of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section 8 of this rule, will not delay or postpone the Department's hiring process or employment decisions except when the authorized designee, in consultation with the Human Resources Division, decides that a delay or postponement should occur.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04; PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0150

Recordkeeping, Confidentiality, and Retention

(1) Recordkeeping:

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(a) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination file in writing (OPRD form 63400-2055HR).

(b) Written documentation of preliminary or final fitness determination and closing of a fitness determination file (OPRD form 63400-2055HR) shall be retained in the applicant file for two years after the date of notice.

(2) Confidentiality:

(a) Records Received from Oregon Department of State Police:

(A) Records the Department receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15) and federal laws and regulations.

(B) Within the Department, only authorized designees and contact persons shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.

(C) An authorized designee or contact person shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if there is a demonstrated and legitimate need to know the information contained in the records.

(D) Authorized designees and contact persons shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.

(E) Only if a fingerprint-based criminal records check was conducted with regard to a subject individual, and only upon receiving a signed written request/authorization to review from the subject individual, shall the Department permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(F) If a subject individual, with a right to inspect criminal offender information under paragraph 2, a, E, of this rule, requests a copy of the individual's own state and federal criminal offender information, the Department, only upon receiving from the subject individual a signed written request and authorization to release the subject individual's criminal records, shall provide the subject individual with a copy, unless prohibited by federal law. The Department shall require sufficient identification from the subject individual to determine his or her identity before providing the criminal offender information to him or her.

(b) Other Records.

(A) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, including OPRD Criminal Record Disclosure & Request Authorization (form 63400-2053HR) and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(B) Within the Department, only authorized designees and contact persons may have access to the records identified under paragraph 2, a, if this rule.

(C) An authorized designee and/or contact person shall have access to records identified under paragraph 2, a, of this rule only if they have a demonstrated and legitimate need to know the information contained in the records.

(D) A subject individual shall have access to records identified under section 2 of this rule pursuant to and only to the extent required by the terms of the Public Records Law.

(3) Retention: Criminal records check records may exist in a variety of forms and shall be retained in accordance with the Secretary of State, Archives Division, OAR 166-300-0040.

Stat. Auth.: ORS 390.124, 390.131, 390.140, 181.534, HB 2157 (2005 Legislative Session)

Stats. Implemented: ORS 181.534

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04; PRD 3-2008, f. & cert. ef. 2-15-08

736-002-0160

Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department shall not charge a fee if the subject individual is a Department employee, a Department volunteer, or an applicant for employment or a volunteer position with the Department.

Stat. Auth.: ORS 181.534, 180.267.

Stats. Implemented: ORS 181.534(9).

Hist.: PRD 3-2008, f. & cert. ef. 2-15-08

DIVISION 3

WILLAMETTE RIVER GREENWAY PLAN

736-003-0005

Willamette River Greenway Plan

(1) On June 30, 1975, the Oregon Transportation Commission approved the Willamette River Greenway Plan for submission to the Land Conservation and Development Commission. This action constitutes the adoption of an administrative rule by the Commission. This rule is effective upon final approval by the Land Conservation and Development Commission. (See OAR 660-020-0010.)

(2) Pursuant to ORS 390.318(2) the plan shows the boundaries of the Willamette River Greenway, the boundaries of lands acquired or to be acquired as state parks and recreation areas within the Greenway, the lands and interests acquired or to be acquired by units of local government, lands within the Greenway for which the acquisition of a scenic easement is sufficient for the purposes of such Greenway, the location of all known subsurface mineral aggregate deposits situated on lands within the Greenway. The segment of the Willamette River covered by the plan is that portion, including all channels, from the confluence with the Columbia River upstream to Dexter Dam and the Coast Fork of the river upstream to Cottage Grove Dam.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.318 & 390.322

Hist.: 1 OTC 58, f. 7-3-75, ef. 12-24-75

DIVISION 4

DISTRIBUTION OF ALL-TERRAIN VEHICLE FUNDS TO PUBLIC AND PRIVATELY OWNED LAND MANAGERS, ATV CLUBS AND ORGANIZATIONS

736-004-0005

Purpose of Rule

This rule establishes the procedures and requirements used by the Oregon Parks and Recreation Department (OPRD) when allocating ATV Account monies to public and privately-owned land managers, ATV clubs and organizations; procedures for All-Terrain Vehicle (ATV) off-road operating permit; and implementation of safety and education requirements for Class I, III, and IV off-highway vehicles.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0010

Statutory Authority

(1) ORS 390.585 authorizes the Oregon Parks and Recreation Department to adopt rules and establish procedures to be used

when OPRD allocates ATV Account money to public and private-ly-owned land managers, ATV clubs and organizations.

(2) OAR 736-004-0045 through 736-004-0070 are adopted pursuant to ORS 390.580, 390.585, and 390.590 which direct the Oregon Parks and Recreation Department to issue Class I, III, and IV Operating Permits to persons who satisfy the statutory requirements to ride on public property.

(3) OAR 736-004-0080 through 736-004-0130 are adopted pursuant to ORS 390.570 and 390.575 which direct the Oregon Parks and Recreation Department to issue or provide for issuance of Class I, III, and IV ATV operator permits to any person who has taken a Class I, III or IV OPRD-approved ATV safety education course and has been found qualified to operate a Class I, III, or IV all-terrain vehicle. These statutes require OPRD to provide safety education course instruction through public or private local and state organizations meeting qualifications established by the Department.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0015

Definitions

For purposes of this division, the following definitions shall apply:

(1) "Acquisition" means the gaining of real property rights for public use by donation or purchase including, but not limited to, fee title or easements.

(2) "Approved Course Provider" is any individual or organization who instructs or provides an OPRD-approved Class I, III or IV ATV safety course.

(3) "ATV" or "All-Terrain Vehicle" means:

(a) Class I ATV, as defined in ORS 801.190: a motorized, off-highway recreational vehicle that:

(A) Is 50 inches or less in width;

(B) Has a dry weight of 1,200 pounds or less;

(C) Travels on three or more pneumatic tires that are six inches or more in width and designed for use on wheels with a rim diameter of 14 inches or less;

(D) Uses handlebars for steering;

(E) Has a seat designed to be straddled for the operator; and

(F) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain.

(G) Class I ATV's can also be known as quads, three-wheelers, or four wheelers.

(b) Class II ATV, as defined in ORS 801.193: any motor vehicle that:

(A) Weighs more than or is wider than a Class I all-terrain vehicle;

(B) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;

(C) Is actually being operated off a highway or is being operated on a highway for agricultural purposes under ORS 821.191 and;

(D) Is not a Class IV all-terrain vehicle.

(E) Class II ATV's include, but are not limited to vehicles that can also be known as four-by-fours, pickups, jeep, sand rails, dune buggies, and SUV's.

(c) Class III ATV, as defined in ORS 801.194: a motorcycle that travels on two tires and that is actually being operated off highway. Also known as dual sport bikes, enduro, dirt bikes.

(d) Class IV ATV, as defined in ORS 801.xxx means any motorized vehicle that:

(A) Travels on four or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less;

(B) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;

(C) Has nonstraddle seating;

(D) Has a steering wheel for steering controls;

(E) Has a dry weight of 1,800 pounds or less; and

(F) Is 65 inches wide or less at its widest point.

(G) Class IV may also be known as side-by-sides, recreational off-highway vehicle (ROHV), utility vehicle (UTV).

(e) May also be referred to as an OHV or Off-Highway Vehicle.

(4) "ATV-AC" means the fifteen-member All-Terrain Vehicle Advisory Committee established by ORS 390.565 and appointed by the commission.

(5) "ATV Account" means those moneys described in ORS 390.555 and deposited in a separate account in the State Parks and Recreation Department Fund. Moneys in the ATV Account may also be called "ATV grant funds."

(6) "ATV Grant Instruction Manual" means a manual prepared by OPRD containing state and federal policies, procedures, guidelines, and instructions to assist current and potential project sponsors.

(7) "ATV Grant Subcommittee" means the seven-member subcommittee established by ORS 390.565(5)(a).

(8) "ATV Operating Permit" means a permit (decal) issued through OPRD and which is permanently affixed to the vehicle. The permit authorizes the use of ATV's on trails and within designated areas authorized by the appropriate authorities.

(9) "ATV Operating Permit Agent" means a person, business or government agency to whom OPRD consigns ATV operating permits and decals for sale as a service to the general public.

(10) "ATV Operator Permit" means the ATV Safety Education Card issued upon completion of an OPRD-approved ATV Safety Education course and passage of the minimum standards test of ATV Safety Education competency as established by OPRD.

(11) "ATV Safety Checklist" is a document provided to a dealer, guide service, rental, or livery agent by OPRD that consists of selected facts about Oregon ATV laws.

(12) "ATV Safety Course" is any OPRD-approved course of instruction that is offered by an approved course provider and concludes with an examination.

(13) "ATV Safety Education" means those grant projects that include but are not limited to training programs, media with information for the public, safe riding practices, environmental ethics, or any combination thereof.

(14) "All-Terrain Vehicle Safety Education Card" is the ATV Operator's Permit required by ORS 390.570, 390.575, and XXX.XXX.

(15) "Certificate of Completion" is a certificate generated by OPRD indicating completion of the internet ATV Safety Course.

(16) "Commission" means the State Parks and Recreation Commission.

(17) "Conversion" means any real property acquisition or development that is later wholly or in part converted to another use other than its intended and stated use as described in the grant application and the grant agreement.

(18) "Correspondence Course and Self-Test" means a Class I, III or IV ATV safety course and examination provided by the OPRD that is taken at home without a proctor. This correspondence course and self-test will satisfy minimum standard of ATV safety education competency only for those individuals who have qualified for hardship status.

(19) "Dealer" means any person or business duly certified under ORS 822.020 and 822.040 to sell Class I, III, or IV ATVs.

(20) "Development" means the planning, design, construction and improvement of ATV recreational facilities, trails, and riding areas.

(21) "Director" means the director of the Oregon Parks and Recreation Department.

(22) "Dry Weight" means the unloaded weight, absent of all fluids, passengers, and any materials such as ice, snow or mud.

(23) “Emergency Medical Services” means medical services performed by certified personnel and the necessary items to perform their duties.

(24) “Endorsement Code” means an identifying color, text or mark on the ATV Safety Education Card that indicates the operator meets or exceeds OPRD’s minimum standards in an approved hands-on ATV evaluation program.

(25) “Equivalency Exam” means a comprehensive written examination created by OPRD to provide either Class I or Class III operators, who are at least 16 years of age and have five or more years operating a Class I or a Class III vehicle, the opportunity to meet the minimum standard of ATV safety education competency.

(26) “Evaluation Course” means a course that measures the ATV operator’s ability to demonstrate control of an ATV.

(27) “Grant Agreement” means an agreement between OPRD and a project sponsor describing the terms and conditions of a project and its associated grant of funds.

(28) “Grant Application” means the form and its format as developed by OPRD that the project sponsor uses to request ATV grant funds.

(29) “Hands-on Training” means any OPRD-approved evaluation course offered by an OPRD-approved course provider.

(30) “Hardship Status” means a situation or condition that prevents an individual from taking the ATV safety internet course. A hardship situation may allow an individual to use a correspondence course and self-test provided by OPRD. An individual must submit a written request for hardship status. The OPRD Director or designee has the authority to grant or deny hardship status.

(31) “Instruction Permit” is a provisional permit issued by OPRD to youth under the age of 16 upon successful completion of the OPRD internet course.

(32) “Internet Course” means an OPRD-approved course of instruction that is offered through the internet.

(33) “Law Enforcement Services” means law enforcement services performed by certified personnel and the necessary items to perform their duties.

(34) “Minimum Standards of ATV Safety Education Competency” means a standard of proficiency established by OPRD that determines whether an applicant for a Class I, III, or IV ATV Safety Education Card has met or exceeded the requirements of an ATV safety course.

(35) “Notice to Proceed” means the notification from OPRD that the Director or designee and the project sponsor have signed the grant agreement authorizing the project.

(36) “OHV” means Off Highway Vehicle, also called ATV.

(37) “Operations and Maintenance” means the preservation, rehabilitation, restoration, operation and upkeep of the facilities, riding areas, and equipment, including the purchase of equipment necessary to perform these functions.

(38) “OPRD” means the Oregon Parks and Recreation Department.

(39) “Personal Property” means tangible property other than land: movable property including but not limited to items such as an ATV, trail repair equipment, or other movable property purchased through the ATV Grant Program.

(40) “Planning” means the research, design, engineering, environmental, and site survey of ATV recreation areas, trails, or facilities.

(41) “Project Sponsor” means the recipient of the grant funds and the responsible party for implementation of the project.

(42) “Public Lands” includes publicly and privately-owned land that is open to the general public for the use of all-terrain vehicles.

(43) “Real Property” means immovable property: land together with all the property on it that cannot be moved, together with any attached rights.

(44) “Rider Fit” means the minimum physical size requirements that a Class I ATV operator under 16 years of age must meet in relationship to the vehicle to be operated as established by OPRD and described in OAR 736-004-0115.

(45) “Successor” means a governmental entity that has agreed to accept the terms and conditions of the project sponsor’s responsibilities as contained in the project sponsor’s grant agreement and grant application should the project sponsor cease to exist; for example, if a club or non-profit organization should dissolve or disband. The successor shall agree to operate the project continuously for the public benefit and recreational purposes identified in the grant agreement and the grant application. If OPRD is a successor under OAR 736-004-0025(1)(c), OPRD may operate, sell, or qualify another successor to the project.

(46) “Sustainability” means using, developing, protecting, and managing the resource in a manner that enables people to meet current and future generation needs from the multiple perspective of environmental, economic, and community objectives.

(47) “Temporary ATV Safety Education Card” is a document issued by OPRD or an approved course provider allowing the bearer to operate a Class I, III, or IV ATV in Oregon for a period of time not to exceed 30 days.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

ATV Grant Program

736-004-0020

Apportionment of Monies

Monies in the All-Terrain Vehicle Account shall be used for the following purposes:

(1) Planning, promoting and implementing a statewide all-terrain vehicle program including the acquisition, development and maintenance of all-terrain vehicle recreation areas;

(2) Education and safety training for all-terrain vehicle operators;

(3) Provision of first-aid and police services related to all-terrain vehicle recreation;

(4) Paying the costs of instigating, developing, or promoting new programs for all-terrain vehicle users and of advising people of possible usage areas available for all-terrain vehicles;

(5) Paying the costs of coordinating between all-terrain vehicle user groups and the managers of public lands;

(6) Paying the costs of providing consultation and guidance to all-terrain vehicle user programs;

(7) Paying the costs of administration of the all-terrain vehicle programs including staff support provided under ORS 390.565 as requested by the ATV-AC;

(8) Paying the cost of law enforcement activities related to the operation of all-terrain vehicles; and

(9) Control and eradication of invasive species related to all-terrain vehicle recreation.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180 & 390.560

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0025

Grant Application Eligibility and Requirements

(1) Eligibility for funding assistance:

(a) Public agencies: Federal land managers, state agencies, and local governments that have the responsibility, or are capable of, providing a service to ATV users;

(b) Private land owners or managers: Private land owners or managers who offer public OHV recreation opportunities and will provide open public ATV recreation for a minimum prescribed period of daily or seasonal time and who will maintain the opportunity for a prescribed period of time as determined by OPRD;

(c) Clubs and non-profit organizations: ATV clubs and non-profit organizations registered with the State of Oregon for a minimum of three consecutive years;

(A) Clubs and non-profit organizations shall have in place, prior to receipt of any funding, a written agreement with a successor in which the successor agrees to operate the facility as

described in the grant agreement and the grant application should the club or non-profit organization cease to exist, for example, due to disbanding or dissolution; or

(B) OPRD shall be listed on the title as successor to the property;

(i) OPRD may sell the property and shall deposit the net revenue from the sale into the ATV Account;

(ii) OPRD may operate the project; or

(iii) OPRD may qualify and assign another successor to the project.

(2) ATV projects or components not eligible for funding:

(a) Overtime is generally not eligible for funding except for an identified emergency situation;

(b) Overhead items such as office or building rent, insurance, depreciation and other fixed costs associated with the normal everyday operation of a business, agency or group;

(c) ATV projects that have no way to measure completion or specific intent are not eligible;

(d) Portions of projects completed prior to an ATV agreement or after the expiration of an ATV agreement;

(e) ATV projects that do not meet the goals of the ATV Grant Program, OAR 736-004-0020 to 736-004-0030, or are not in the best interest of ATV recreation;

(f) Vehicle or other personal property usage unrelated to the scope of the ATV project.

(3) Requirements for Match:

(a) The minimum match required for eligible ATV projects is 20 percent of the total project cost except for land acquisitions;

(b) For land acquisitions and when unusual circumstances exist, public agencies may request a partial or full waiver of the 20 percent match requirement. Consideration for the waiver will be based upon the following criteria:

(A) The public agency is able to demonstrate due diligence was exercised in obtaining other funds and that the following limitations, among others, are present:

(i) Budget authority does not exist;

(ii) Budget appropriations cannot be obtained in a reasonable time yet public support does exist; and

(iii) No saleable assets, such as conservation easements, exist from which to generate the full cash match requirement.

(B) The public agency is able to demonstrate their ability to operate and maintain the project property for ATV recreational purposes:

(i) By having budgeted funds in place; or

(ii) Having identified other resources such as volunteers or contracted services.

(C) The public agency is able to demonstrate that time is of the essence:

(i) The seller of the real property has placed time limits in which the public agency can affect a purchase, such as the expiration of an Option to Purchase or a First Right of Refusal; or

(ii) The public agency can identify the possible loss of other existing matching funds such as grants from other entities that may have an expiration date.

(D) If a waiver to the required partial or full match is approved, the public agency shall be limited in all future grant requests to receiving ATV grant funds in an amount of 50 percent or less of the total costs for any development projects located on the acquired property.

(c) Match may include, but is not limited to, cash funds, labor, either force account or volunteer, materials, and equipment;

(d) Grants from other sources may be used as match provided the sponsor can certify the funds will be available within 120 days from the beginning date of the grant agreement;

(e) Eligible volunteer labor will require a log that includes the volunteer's name, date volunteer performed work, location volunteer performed work, the hours worked, and the hourly rate of compensation used for their contribution of labor.

(4) Conversions:

(a) It is the intent of the ATV Grant Program that all real property acquisitions or easements shall be retained and used for the project's intended and stated use as described in both the grant application and the grant agreement;

(b) The director has authority to disapprove conversion requests, reject proposed substitutions, or both;

(c) The project sponsor shall submit requests for conversions to OPRD in writing. OPRD may consider the request if the following prerequisites are met:

(A) All practical alternatives to a conversion have been evaluated and rejected on a sound basis;

(B) The project sponsor has established the fair market value of the property to be converted and the property proposed for substitution is of at least equal fair market value as established by a state-approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not directly enhance its ATV recreation utility;

(C) The project sponsor proposes a replacement property that is of reasonably equivalent usefulness and location as that being converted.

(d) If the project sponsor is unable to provide replacement property within 24 months of either the approved request for conversion or after the fact of conversion, the project sponsor shall pay OPRD a current amount equal to OPRD's original percentage of contribution to the project. As an example, if the OPRD provided an original grant of 80 percent for the project's acquisition costs, the project sponsor shall reimburse OPRD 80 percent of the real property's value at the time of conversion or discovery of conversion, whichever is later;

(e) In the case of development, rehabilitation, and equipment purchases, the project sponsor shall operate the improvements or equipment for its established useful life. Guidelines established by the IRS will be used by the project sponsor to define useful life per each item. If the facility is closed, service is terminated and the facility or equipment has not reached its useful life, it will be made available to other agencies or organizations. If a facility is closed, service is terminated, or land is closed, or the facility or equipment has not reached its useful life, the project sponsor will return a percentage of the allocated funds to OPRD equal to the percentage of useful life remaining in the funded facility or equipment.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0030

Project Administration

(1) Applications:

(a) A current ATV grant application is required for consideration of ATV funding;

(b) OPRD will provide information regarding application deadlines and public meetings through available media sources and on the OPRD — ATV website;

(c) Applicants must submit applications by published deadlines;

(d) OPRD and the ATV-Grant Subcommittee will review applications;

(e) The ATV-Grant Subcommittee will recommend ATV project funding to the commission.

(2) Agreements:

(a) To authorize an ATV Project, OPRD requires a signed ATV Grant Agreement.

(b) A project sponsor may not begin work on an ATV project without a Notice to Proceed.

(c) OPRD, upon written request by the project sponsor, may approve, in writing, that some match may be considered and allowed prior to commencement of the project.

(3) If funds are not available to fully fund a project, or the ATV-Grant Subcommittee has recommended partial funding, the project sponsor may be given the option of reducing the scope of the project.

(4) If the project sponsor anticipates the project will not be completed by the expiration date of the ATV grant agreement, the project sponsor must make a timely written request for an extension of the ATV grant agreement prior to the expiration date of the project agreement. The time extension request shall include any

reasons for delay of project completion and a new projected completion date.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0035

Establishment of the ATV Advisory Committee

(1) The commission shall appoint the ATV-AC and the ATV-Grant Subcommittee established by ORS 390.565. In appointing the first members to the ATV-AC, the commission shall specify the end of the term of office for each member consistent with Oregon Laws 2009, chapter 812, section 4(2).

(2) The Director shall appoint the ATV-AC Chair and Vice Chair upon consideration of the committee's recommendations.

(3) The Director shall appoint the ATV-Grant Subcommittee Chair and Vice Chair upon consideration of the subcommittee's recommendations.

Stat. Auth.: ORS 390.180, 390.565

Stats. Implemented: ORS 390.180, 390.565

Hist.: PRD 20-2009, f. & cert. ef. 12-8-09

ATV Operating Permit Agents

736-004-0045

ATV Operating Permit Agent Application and Privileges

(1) To become an ATV Operating Permit Agent an applicant shall:

(a) Submit an application in a form provided by OPRD to become an ATV Operating Permit Agent;

(b) OPRD may require the Operating Permit Agent to obtain a bond in an amount determined by OPRD if there is historical evidence of substandard performance by the Operating Permit Agent.

(c) Enter into an OPRD agreement to be designated as an ATV Operating Permit Agent.

(2) OPRD may consign ATV operating permits to an ATV Operating Permit Agent without prepayment.

(3) OPRD will establish by policy an amount the ATV Operating Permit Agent may retain for each permit issued in addition to the regular costs of the permit, to cover the agent's costs to handle the permits.

(4) ATV Operating Permit Agents shall legibly complete each ATV operating permit with the required information.

(5) OPRD may cancel an agent's authority to act as an ATV Operating Permit Agent at any time.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 1-2012, f. & cert. ef. 2-15-12

ATV Operating Permits

736-004-0060

ATV Operating Permit

(1) An ATV operating permit and decal shall be valid for a two-year period from the date of issue. The decal shall be placed on the vehicle as determined in OAR 736-004-0065. All ATV decals shall include:

(a) The distinctive number or characters assigned by OPRD to the vehicle;

(b) The word "Oregon"; and

(c) The expiration date.

(2) The application for an ATV operating permit shall be in a form as prescribed by OPRD and shall include:

(a) The name and address of the owner of the ATV; and

(b) The make and body style of the ATV for which application is made.

(3) To replace a permit or decal that is lost, destroyed, or mutilated, the owner must:

(a) Apply for a new permit in the same manner as for an original permit; and

(b) Pay the fee for a replacement ATV Operating Permit.

(4) The fee for an original or replacement ATV Operating Permit is \$10.00.

(5) OPRD may replace an ATV operating permit free of charge if legibility, adhesiveness, or other material effectiveness is lost due to production or manufacturer's defects.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0062

Ocean Shores ATV Operating Permit (Permit to operate a Class I ATV on the Ocean Shore)

(1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the person obtains an Ocean Shores ATV Operating Permit from OPRD.

(2) The operator must have, in addition to the Ocean Shores ATV Operating Permit, a current ATV Safety Education Card issued under ORS 390.570 and the vehicle must have a current ATV operating permit (ATV decal affixed to the vehicle) issued under 390.580.

(3) The Ocean Shores ATV Operating Permit is to be used only to meet the access needs of:

(a) Persons with disabilities, as defined by ORS 174.107; or who have proof of motor vehicle disabled placard, or both;

(b) Emergency response or emergency aid workers during the course of their work; or

(c) Biologists, wildlife monitors, or other natural resources workers during the course of their work.

(4) Ocean Shores ATV Operating Permits issued under subsection (3)(a) will allow use in those areas open to motorized vehicle use. However, upon request from an individual with a disability, OPRD may issue such a permit for areas closed to motorized use if the Director or his designee determines that such use:

(a) Is a reasonable accommodation of the individual's access needs; and

(b) Does not significantly impact environmentally or culturally sensitive areas or create a safety hazard to the public.

(5) Permits issued under this section shall specify length of time, area of operation and access points.

(6) Class I ATV's shall not be operated in a careless manner on the Ocean Shore Recreation Area.

(7) Unless otherwise posted, Class I ATV's shall not be operated on the Ocean Shore in excess of 25 mph in open areas and 10 mph in closed areas.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.729

Hist.: PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 10-2008, f. & cert. ef. 12-15-08; PRD 10-2009, f. & cert. ef. 6-18-09; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0065

Placement of ATV Off-Road Operating Permit

(1) An ATV operating permit shall be in the form of a decal to be permanently affixed to the vehicle for which it is issued, and must be clearly visible.

(2) Placement of the permit shall be as follows:

(a) For quads, three-wheelers, or vehicles of a similar design, the permit shall be displayed on the right-hand side of the vehicle in a visible location;

(b) For jeeps, pickups, passenger cars and similar vehicles, the permit shall be displayed in a manner that makes it visible from the rear of the vehicle, such as on the bumper or in the rear window;

(c) On sandrail vehicles (dune buggies) the permit shall be displayed in the middle of the rear rollbar and be visible from the rear of the vehicle; and

(d) For vehicles that are similar in design to motorcycles and where it is not possible to display the permit as required in sections (2) or (3) of this rule, the permit shall be displayed:

(A) On the front fork tube, on the opposite side of the vehicle from the brake, or in a location that is visible while the rider is on the vehicle; and

(B) Be positioned either horizontally or vertically.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0070

Reciprocity for Out-of-State ATV Operating Permits

(1) An ATV operating permit issued by another state shall be honored in the State of Oregon if the issuing state also honors an Oregon ATV operating permit.

(2) The ATV must have a resident state ATV operating permit; or

(3) If an ATV operating permit is not required in the owner's home state, the operator must purchase a State of Oregon ATV operating permit to operate the ATV on designated ATV areas in Oregon.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08

736-004-0085

ATV Safety Education Card (ATV Operator Permits)

(1) To operate a Class I or Class III ATV on public lands in Oregon, a person must obtain an ATV Safety Education Card (ATV operator permit).

(2) To operate a Class IV ATV on public lands in Oregon, a person under 16 years of age must obtain an ATV Safety Education Card (ATV operator permit).

(3) The criteria for obtaining an ATV Safety Education Card are:

(a) Attain a test score of at least 80 percent on an OPRD-approved internet safety course;

(b) Attain a test score of at least 80 percent on a correspondence course and self-test provided by OPRD; or

(c) Be at least 16 years of age and have five or more years of experience operating a Class I or Class III all-terrain vehicle and successfully pass an equivalency examination with a score of at least 80 percent.

(d) Effective January 1, 2012, operators under 16 years of age must:

(A) Successfully demonstrate ATV proficiency, and

(B) Pass either an OPRD-approved:

(i) Hands-on training course, or

(ii) Evaluation course.

(e) Effective January 1, 2012, a person under 16 years of age will receive a Certificate of Completion upon passing the ATV internet safety course. The certificate of completion will also be an Instruction Permit which shall be valid for 180 days.

(4) To obtain an ATV Safety Education Card, the applicant must provide to the OPRD a completed application on a form provided by the OPRD with the following information: the applicant's name, address, date of birth, hair color, eye color, and gender. The applicant must also sign a statement declaring that the information is true and correct.

(5) ATV Safety Education Cards are not transferable.

(6) ATV Safety Education Cards shall contain a unique number and endorsement code that corresponds to the individual named on the permit.

(7) A person is considered in violation of the provisions of ORS 821.170, 821.172, and 821.176 and subject to penalties prescribed by law when they:

(a) Provide a false statement or information or assist another person in giving a false statement or information on any application, affidavit, document or statement used to obtain an ATV Safety Education Card or replacement ATV Safety Education Card;

(b) Exhibit to a law enforcement officer an altered Oregon ATV Safety Education Card or any ATV Safety Education Card other than the one issued to them;

(c) Alter an ATV Safety Education Card or replacement card issued by the OPRD or its authorized agent;

(d) Produce or possess an unauthorized replica of an ATV Safety Education Card or replacement card;

(e) Operate a Class I or Class III ATV on public lands without a valid ATV Safety Education Card in their possession; or

(f) If under the age of 16, operate a Class IV ATV on public lands without a valid ATV Safety Education Card in their possession.

(8) In addition to any penalties that may result from a violation of ORS 821.170, 821.172, and 821.176, the ATV Safety Education Card is null and void for any person who provides a false statement or information or obtains a permit to which the person is not entitled.

(9) In accordance with ORS 821.174, when a person's driving privileges are suspended or revoked, the person may not operate a Class I, III, or IV all-terrain vehicle.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 2-2001, f. & cert. ef. 2-23-01; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0090

Replacement ATV Safety Education Card

(1) A person may apply for a replacement ATV Safety Education Card from OPRD if:

(a) They legally change their name;

(b) The card is lost, stolen or destroyed;

(c) Misinformation is printed on the card; or

(d) The card has a printing error or physical defect.

(2) To obtain a replacement card, an applicant must provide OPRD with a completed application form provided by OPRD which includes an affidavit signed by the applicant stating the circumstances that led to the need for replacement of the original card.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0095

Temporary ATV Safety Education Card

(1) A person who successfully passes the OPRD internet safety education course may print from their computer a temporary ATV safety education card and may operate an ATV for no more than 30 days from date of issue provided the temporary ATV safety education card is in the possession of the operator.

(2) A person residing in Oregon who is required to possess an ATV Safety Education Card and is in possession of a certificate issued by another state or nation that is equivalent to Oregon's ATV Safety Education Card may use that certificate as a temporary Safety Education Card and may operate an ATV in Oregon for no more than 30 days from date of residency provided the document is in the possession of the operator.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0100

ATV Safety Checklist

(1) Any person who provides a Class I, Class III, or Class IV ATV for rent in Oregon or offers guided tours for a client must require that:

(a) The operator(s) of the rental ATV show proof of possession of an ATV Safety Education Card before renting the person an ATV; or

(b) If the operator does not possess an ATV Safety Education Card, the rental or tour agent must provide the operator with an ATV Safety Checklist provided by OPRD;

(c) The operator must review and mark the ATV Safety Checklist in the presence of the rental or tour agent before they may operate the ATV; and

(d) The operator must retain the ATV Safety Checklist in their possession while operating the ATV.

(e) This section does not apply if the operator of a Class IV ATV is 16 years of age or older.

(2) A person who legally rents an ATV and is otherwise required to possess an ATV Safety Education Card may use the required ATV Safety Checklist as a temporary ATV Safety Education Card and may operate the rental ATV in Oregon for the term of the rental agreement but not longer than 30 days.

(3) Any dealer who sells Class I, III, or IV vehicles may offer to the buyer/operator a non-renewable ATV Safety Checklist provided by OPRD.

(a) The operator must review and mark the ATV Safety Checklist in the presence of the dealer before they operate the vehicle; and

(b) The operator must retain the ATV Safety Checklist in their possession when operating the ATV.

(c) A person who purchases an ATV and is otherwise required to possess an ATV Safety Education Card may use the ATV Safety Checklist as a temporary ATV Safety Education Card and may operate the ATV in Oregon for not longer than 30 days from the date of purchase of the ATV.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0105

Exemptions

(1) Non-residents riding in Oregon are exempt from possessing a State of Oregon ATV Safety Education Card if they possess an ATV Safety Education Card or equivalent issued by their resident state or nation.

(a) An ATV Safety Education Card issued in another state or nation shall be honored in the State of Oregon if the issuing state or nation also honors an Oregon ATV Safety Education Card.

(b) The operator must have a State of Oregon ATV Safety Education Card if mandatory education is not required in their home state or nation to operate an ATV on public lands.

(2) A person operating a Class I, III, or IV in a sanctioned competitive ATV event is not required to possess an ATV Safety Education Card.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0110

Fees

(1) There is no fee for issuance of the original ATV Safety Education Card.

(2) There is no fee for issuance of an ATV Safety Education Card that adds an endorsement code.

(3) The replacement fee for an ATV Safety Education Card is \$8.00.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0115

Rider Fit

(1) A Class I ATV operator under 16 years of age must meet all the following minimum physical size requirements in relationship to the vehicle:

(a) Brake Reach: With hands placed in the normal operating position and fingers straight out, the first joint (from the tip) of the middle finger will extend beyond the brake lever and clutch;

(b) Leg Length: While sitting and with their feet on the pegs, the knee must be bent at least 45 degrees;

(c) Grip Reach: While sitting upright on the ATV with hands on the handlebars and not leaning forward, there must be a distinct angle between the upper arm and the forearm; and

(d) The rider must be able to turn the handlebars from lock to lock while maintaining grip on the handlebars and maintaining the throttle and brake control.

(2) A Class IV ATV operator under 16 years of age must meet all the following minimal physical size requirements in relationship to the vehicle:

(a) Leg Length: While sitting in the normal operating position and the safety restraints securely fastened around the operator, the operator's feet must be able to fully operate all foot controls.

(b) Arm Length: While sitting in the normal operating position and the safety restraints securely fastened around the operator, the operator's hands must be able to fully operate all hand controls.

(3) Disabled riders are allowed to use prosthetic devices or modified or adaptive equipment to achieve rider fit.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0120

Minimum Training Standards

(1) Providers of a Class I, III, or IV ATV evaluation or training course must evaluate ATV operators in their ability to control an ATV at or above OPRD minimum training standards under section (2) of this rule.

(2) OPRD will provide minimum ATV training or evaluation standards that will include:

(a) Prerequisite training requirements;

(b) Rider fit under OAR 736-004-0115;

(c) Familiarization of controls;

(d) Internet safety course review;

(e) Starting and stopping;

(f) Turns and weaves; and

(g) Navigating over and around obstacles.

(3) Participants in an ATV evaluation or training course must meet the following requirements:

(a) Rider must provide the eleven-digit card number from either their ATV Safety Education Card or their certificate of completion issued by OPRD;

(b) Rider under 16 years of age must be accompanied throughout the training by an adult at least 18 years of age; and

(c) Rider must have a Class I, III, or IV ATV. Three-wheeled vehicles are not allowed.

(4) Rider must wear the following while operating an ATV during evaluation or training:

(a) DOT (Department of Transportation) approved motorcycle helmet;

(b) Goggles (or helmet with face shield);

(c) Gloves;

(d) Sturdy over-the-ankle shoes or boots;

(e) Long-sleeved shirt or jacket; and

(f) Long pants.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570 & 390.575

Hist.: PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0125

ATV Training Course Approval by OPRD

(1) An ATV course provider shall submit a course approval request on an application form provided by OPRD.

(2) OPRD will evaluate the course application under section (3) of this rule within 90 days of receipt of a complete application.

(3) OPRD shall evaluate the sufficiency of the course to train or evaluate to OPRD's minimum ATV training standards under OAR 736-004-0120(2) and meet the participation and equipment requirements of OAR 736-004-0120(3) and (4).

(4) OPRD course approval is valid for three years. An ATV course provider may submit a course approval renewal request on an application form provided by OPRD. OPRD will evaluate the course application renewal within 90 days of receipt of a completed application.

(5) OPRD may periodically audit courses or contact students for the purposes of evaluation for adherence to OPRD ATV minimum training standards under OAR 736-004-0120(2) through (4).

(6) If OPRD determines a course provider does not meet the ATV minimum training standards under OAR 736-004-0120(2) through (4), or if OPRD determines that any element of a course poses a significant risk to any individual, OPRD may take one or more of the following actions:

(a) Notify the course provider in writing of course deficiencies and allow the course provider until the next scheduled course, or 30 days (whichever is later) to enact changes to comply with OAR 736-004-0120(2) through (4);

(b) Notify the course provider in writing that effective immediately no further courses are authorized by OPRD until required changes are made and determined to be in compliance with OAR 736-004-0120(2) through (4) by OPRD; or

(c) Notify the course provider in writing that effective immediately no further courses are authorized by OPRD until a new application for approval has been made under section (1) and approved under section (3) of this rule.

(7) Course providers are solely responsible for the oversight and management of course instructors.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570 & 390.575

Hist.: PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0130

Approved Internet Course Providers

(1) OPRD may regulate, approve, and limit the number of all-terrain vehicle safety internet courses provided for public use.

(2) Individuals and organizations may apply to OPRD to provide an ATV safety course as an internet course. An internet course provider applicant must submit a written request for course review and approval to OPRD.

(3) OPRD will review the applicant's internet course submittal to determine whether the proposed course:

(a) Meets the Oregon Internet Approval Standards provided by OPRD;

(b) Maintains Oregon-specific ATV safety information. An internet hyperlink to the OPRD website alone will not satisfy this requirement;

(c) Includes a final exam that has at least 14 Oregon-specific questions;

(d) Includes a final exam that has at least 50 total questions; and

(e) Requires a passing score of at least 80 percent correct answers on the final exam.

(4) An internet course provider approved to offer the public the opportunity to obtain an All-Terrain Vehicle Safety Education Card online must:

(a) Submit any proposed internet course changes to OPRD for approval;

(b) Provide OPRD compatible electronic data files as specified by OPRD, containing all OPRD required data regarding individuals who are eligible to receive an All-Terrain Vehicle Safety Education Card. OPRD will specify the form and method that an internet course provider will transmit files to OPRD;

(c) Provide OPRD weekly deposits, if applicable, on a deposit day and to an account number specified by OPRD;

(d) Provide OPRD accounting section weekly reports indicating the total fee charged for each All-Terrain Vehicle Safety Education Card application and the total amount the internet course provider must pay OPRD; and

(e) Before personal information is exchanged online, provide each All-Terrain Vehicle Safety Education Card applicant information regarding security measures the internet course provider employs for financial transactions. All transactions must follow industry security standards.

(5) An internet course provider may not publish, promote or distribute to the public any materials or products that include the OPRD shield, logo, or name until OPRD has provided written approval to do so.

(6) An internet course provider may establish and charge its own All-Terrain Vehicle Safety Education Card testing fee. An internet course provider must clearly communicate the testing fee

amount to each All-Terrain Vehicle Safety Education Card applicant prior to accepting an application.

(7) OPRD may place any approved internet course provider on probation for a period of up to 24 months or revoke an approved internet course if OPRD determines that the internet course provider:

(a) Made false statements or misrepresentations to OPRD;

(b) Made false statements or misrepresentations about, or otherwise misused, OPRD policies, OPRD procedures or OPRD;

(c) Failed to comply in any manner with federal or state law, including the rules of this division,

(d) Misinformed the public in advertising, marketing, or publishing efforts; or

(e) Generated or provided an All-Terrain Vehicle Safety Education Card for the State of Oregon.

Stat. Auth.: ORS 183 & 390.124

Stats. Implemented: ORS 390.124(1)

Hist.: PRD 1-2012, f. & cert. ef. 2-15-12

DIVISION 5

STATEWIDE PLANNING STANDARDS FOR PUBLIC OUTDOOR RECREATION

736-005-0005

Purpose of Rule

This rule establishes the standards the State Parks and Recreation Department, Office of the State Liaison Officer, shall use when performing statewide comprehensive outdoor recreation planning.

Stat. Auth.: ORS 183.545, 183.550 & 390.180

Stats. Implemented: ORS 390.180

Hist.: PR 5-1981, f. & ef. 4-1-81; PR 3-1993, f. & cert. ef. 1-29-93

736-005-0010

Statutory Authority and Procedure

ORS 390.180 requires the Director to adopt rules establishing standards the State Parks and Recreation Department shall use when the Department performs statewide comprehensive outdoor recreation planning.

Stat. Auth.: ORS 183.545, 183.550 & 390.180

Stats. Implemented: ORS 390.180

Hist.: PR 5-1981, f. & ef. 4-1-81; PR 3-1993, f. & cert. ef. 1-29-93

736-005-0015

Statewide Comprehensive Outdoor Recreation Planning Process

(1) This process is defined as a continuous statewide comprehensive five-year cycle of outdoor recreation planning events that result in: Policy and issue determination; annual action programs to address salient issues; and monitoring devices for the implementation of these actions. The base for the process is found in the periodic update of the state's recreation supply inventory, demand assessment and needs analysis. The **Statewide Comprehensive Outdoor Recreation Plan (SCORP)** is the product of this process. "**Oregon SCORP — 1983**" was endorsed and approved by the Governor of the State of Oregon on August 19, 1983.

(2) The primary guidelines for performing this planning process will be **Parts 630 and 635 of the U.S. Department of the Interior, Heritage Conservation and Recreation Service Manual.**

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.180

Hist.: PR 5-1981, f. & ef. 4-1-81; PR 6-1984, f. & ef. 10-29-84

736-005-0020

Standards

Whereas the State Parks Director has been designated by the Governor as the State Liaison Officer (SLO) to the Federal Department of the Interior and is charged with the responsibility to administer the Statewide Comprehensive Outdoor Recreation Planning process, the following standards shall apply:

(1) Problem Identification. In order to identify problems or potential recreational planning issues, the Department shall:

(a) Maintain continuous contacts with citizen and professional organizations, and special interest groups.

(b) Periodically review Oregon comprehensive land use planning processes and documents; state, legislative and national directives.

(2) Citizen Participation. In order to ensure maximum citizen participation, the Department shall:

(a) Use workshops, news releases, public hearing notices, surveys, questionnaires and/or other means to inform citizens and solicit participation on statewide planning issues, and shall document in writing those activities and the extent of participation by the public;

(b) Maintain a mailing list of citizens, agencies, handicapped and minority persons, by which it shall notify and solicit citizen ideas and participation;

(c) Notify the news media at least two weeks before any official public hearings, workshops or other public meetings;

(d) Utilize the citizen participation activities conducted by other agencies or units of government if those actions would eliminate duplications of effort and/or supplement the Department's efforts, if it relates specifically to the planning issue being considered, and if it can be documented in writing.

(3) Development of Documents. Before any action or decision affecting statewide recreation planning, the Department shall:

(a) Take into account all input received and prepare a draft document for review;

(b) Circulate the draft document to constituent groups, make the document available to any citizen upon request, and have the document available for public viewing at the State Parks Office in Salem, Oregon and the region State Parks Offices in Portland, Tillamook, Coos Bay, Bend, and La Grande;

(c) Prepare a final document based upon all input received, including comments received from the draft document.

(4) Outreach Programs. In all cases the Department shall: Develop special outreach programs, determined on a case-by-case basis, if the above-mentioned standards are not sufficient to provide adequate participation and information by minority or special populations.

(5) Planning Advisory Committee for SCORP:

(a) The SLO will appoint a nine-member Advisory Committee comprised of one member from each of the following sectors:

- (A) County Parks Departments;
- (B) City Parks Departments;
- (C) Park and Recreation Districts;
- (D) Citizen at large;
- (E) Private sector;
- (F) Federal and state agency representatives;
- (G) Minority representative;
- (H) Handicapped representative.

(b) This committee will meet as necessary to review and establish recommendations for alternative actions and formulation of draft proposals.

Stat. Auth.: ORS 183.545, 183.550 & 390.180

Stats. Implemented: ORS 390.180

Hist.: PR 5-1981, f. & ef. 4-1-81; PR 6-1984, f. & ef. 10-29-84; PR 3-1993, f. & cert. ef. 1-29-93

DIVISION 6

DISTRIBUTION OF STATE FUNDING ASSISTANCE TO UNITS OF LOCAL GOVERNMENT FOR PUBLIC PARKS AND RECREATION

736-006-0100

Purpose of Rule

This division establishes the procedures and standards used by the Oregon Parks and Recreation Department when distributing state monies to eligible local governments for outdoor park and recreation areas and facilities, acquisition of property for park purposes, trails, bicycle recreation opportunities, non-motorized water-based recreation, and the process for establishing the priority order in which projects shall be funded.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99; PRD 6-2004, f. & cert. ef. 5-5-04; PRD 4-2008, f. 2-15-08, cert. ef. 3-1-08

736-006-0105

Statutory Authority and Procedure

ORS 390.180 requires the Director of the Oregon Parks and Recreation Department to adopt rules establishing procedures the Oregon Parks and Recreation Department shall use when the Department disburses money to local governments.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99; PRD 6-2004, f. & cert. ef. 5-5-04

736-006-0110

Definitions

As used in this division, unless the context requires otherwise:

(1) "Acquisition" — Means the gaining of property rights, including but not limited to fee title or easements, for public use.

(2) "Bicycle Recreation" — Means the use of bicycles for enjoyment, social interaction, education, or physical well-being while on recreational trails or paths that are not along or adjacent to public roads or streets, and that are primarily recreational rather than transportation in nature.

(3) "Commission" — Means the Oregon Parks and Recreation Commission.

(4) "Committee" — Means the Local Government Grant Advisory Committee appointed by the Director to prioritize local government project applications.

(5) "Conversion" — Means the act of utilizing property acquired or developed using either Local Government Grant Program funds or Land and Water Conservation Funds for purposes other than public outdoor recreation uses.

(6) "Current Master Plan" — Means a site-specific resource-based plan guiding recreational site acquisition, development, protection, and management of park areas and facilities.

(7) "Department" — Means the Oregon Parks and Recreation Department (OPRD).

(8) "Development" — Means the construction or rehabilitation of facilities necessary for the use and enjoyment of public outdoor recreation resources.

(9) "Director" — Means the Director of the Oregon Parks and Recreation Department.

(10) "Eligible Project" — Means an acquisition, development, major rehabilitation undertaking, or planning or feasibility studies which satisfies the requirements of the Local Government Grant Program.

(11) "Force Account" — Means the governmental entity's own work force performing project work rather than contracting out for the services.

(12) "LWCF or Land and Water Conservation Fund" — Means those funds made available to the state through the Land and Water Conservation Fund Act of 1965 (Public Law 88-578).

(13) "Local Comprehensive Plan" — Means the acknowledged comprehensive land use plan prepared by each local jurisdiction within the state, as required by ORS chapter 197.

(14) "Local Governments" — Means cities, municipal corporations, counties, political subdivisions, park and recreation districts, port districts, and metropolitan service districts.

(15) "Local Government Grant Policies and Procedures Manual" — Means a manual prepared by the Department containing state and federal policies, procedures and instructions to assist local government agencies wishing to participate in the Local Government Grant Program.

(16) "Local Government Grant Program" — Means the program and process for distributing state monies to eligible local governments for outdoor park and recreation areas and facilities located on properties controlled or managed by the eligible local government.

(17) "Major Rehabilitation" — Means the repair, restoration, or reconstruction of facilities, which is necessitated by obsolescence,

building code changes, or normal wear and tear not attributed to lack of maintenance.

(18) "OPRD" — Means the Oregon Parks and Recreation Department.

(19) "Outdoor Recreation" — Means structured and unstructured leisure and fitness activities that occur in open air and are not provided in a roofed and enclosed facility.

(20) "Project" — Means the planning or feasibility study documents or the site and associated improvements where acquisition, development, or major rehabilitation will occur.

(21) "Project Authorization" — Means the State/Local Agreement that authorizes the project to begin effective on or after the date signed by both the Director and Project Sponsor or their designee.

(22) "Project Sponsor" — Means the recipient of the grant funds and the entity responsible for implementation of the project and the maintenance and operation of the site.

(23) "SCORP" — Means the Statewide Comprehensive Outdoor Recreation Plan that is Oregon's basic five-year plan for outdoor recreation and that provides the state with an up-to-date regional information and planning tool serving as the basis by which all Oregon recreation providers (state, federal, local, and private) catalogue and rank their recreation needs, obtain funding through partnerships and grants, and affirm their respective roles.

(24) "State/Local Agreement" — Means the signed agreement between the Department and Project Sponsor, which authorizes the project to begin on, or after the date signed by both the Director and the Project Sponsor and that describes the contractual relationship and responsibilities of the parties to the Project.

(25) "Sustainability" — Means using, developing, protecting, and managing the resource in a manner that enables people to meet current and future generation needs from the multiple perspective of environmental, economic, and community objectives.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99; PRD 6-2004, f. & cert. ef. 5-5-04; PRD 1-2008(Temp), f. 2-15-08, cert. ef. 3-1-08 thru 8-1-08; PRD 5-2008, f. & cert. ef. 5-15-08; PRD 3-2012, f. & cert. ef. 5-11-12

736-006-0115

Apportionment of Monies Between Small and Large Grants

(1) Up to 15 percent of available funds shall be set aside for small grants. Small grants are projects with a maximum \$75,000 grant request.

(2) Other than for land acquisitions, the remainder of available funds shall be for large projects with a maximum \$750,000 grant request.

(3) A Project Sponsor may request grant funding for land acquisitions in an amount not to exceed \$1,000,000.

(4) In consultation with the Committee, the Commission and the Director may set the maximum at less than that above amounts based upon the availability of funds.

(5) Based on the quality and quantity of Eligible Projects, the Committee, with concurrence of the Director, may dedicate a portion of the funds for projects expected to be completed within 12 months of grant award.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99; PRD 6-2004, f. & cert. ef. 5-5-04; PRD 4-2008, f. 2-15-08, cert. ef. 3-1-08; PRD 3-2012, f. & cert. ef. 5-11-12

736-006-0125

Application Procedure

The purpose of this rule is to set forth requirements that must be met by local government applicants in submitting an application for Local Government Grant Program funding assistance.

(1) Eligibility for Funding Assistance. Public agencies eligible for state funding assistance are:

- (a) Cities, Municipal Corporations;
- (b) Counties, Political Subdivisions;
- (c) Park and Recreation Districts;
- (d) Port Districts;
- (e) Metropolitan Service Districts.

(2) Matching Requirements:

(a) Cities and districts with a population greater than 25,000 and counties with a population greater than 50,000 must provide a match of at least 50 percent of total project costs.

(b) Cities and districts with a population between 5,000 and 25,000 and counties with a population between 30,000 and 50,000 must provide a match of at least 40 percent of total project costs.

(c) Cities and districts with a population of less than 5,000 and counties with a population of less than 30,000 must provide a match of at least 20 percent of total project costs.

(d) If an applicant established that a situation of extreme economic hardship impacts a project, the applicant may request that the Director authorize a reduced match down to a minimum of 20 percent of total project costs. The Director has sole discretion to authorize a reduced match under this subsection based on consideration of the applicant's request, the project, and the project's eligible match; the availability of funds; the scope and need of projects available for funding; and the urgency and statewide importance of prospective projects.

(e) The eligible match by the Project Sponsor may include local budgeted funds, local agency labor or equipment, federal revenue sharing, other eligible grants, state and county inmate labor, donated funds, the value of private donated property, equipment, materials, labor, the value of land acquired within the past six year period, cost of appraisals, pre-development costs within the past two year period or any combination thereof. Engineering and administration costs and costs incurred prior to the State/Local Agreement cannot exceed 15 percent of the total project costs.

(3) Eligible Projects:

(a) Acquisition, development, major rehabilitation, planning, or feasibility study projects that are consistent with the outdoor recreation goals and objectives contained in the SCORP, the recreation elements of local comprehensive plans and local master plans or both. Projects may support traditional outdoor recreation settings such as parks, or funds may be provided for: projects that ensure natural and cultural resource protection while maintaining public access for recreation; projects that protect public open space; bicycle recreation; non-motorized water recreation; trails for non-motorized recreation; or emerging new outdoor recreation trends. Only outdoor park and recreation areas and facilities are eligible.

(b) Water based outdoor recreation facilities such as short-term transient moorages and non-motorized boat and watercraft projects, trails, support facilities for non-motorized water recreation, and water access.

(4) Planning Requirements. Project Sponsors participating in the funding assistance program must show that:

(a) There is a current master plan in effect and that the project is consistent with the local comprehensive land use plan and SCORP,

(b) There is not a current master plan in effect, but the project is consistent with the local comprehensive land use plan and SCORP, or

(c) The project request is for planning assistance.

(5) Application Form. All applications for funding assistance for outdoor park and recreation program projects must be submitted on forms as prescribed and supplied by the Department. All applications must be consistent with the Local Government Grant Policies and Procedures Manual and contain the following information:

- (a) Program narrative;
- (b) Environmental assessment;
- (c) Vicinity map;
- (d) Project boundary map;
- (e) Civil Rights compliance;
- (f) Copy of property deed or lease or formal and binding control and tenure agreement showing cooperation with the landowner to ensure long-term use, generally not less than 25 years, of facilities for public recreation;
- (g) Preliminary plans and specifications for construction projects;

(h) Estimate of development costs and project construction schedule;

(i) Copy of property Purchase Agreement (for acquisitions only);

(j) Local/County Planning Department Certification/Review;

(k) All required permits and certifications as identified in the Local Government Grant Policies and Procedure Manual;

(l) Government-to-Government Inquiries (Tribal) — Certification to the Department that the Project Sponsor has communicated their grant proposal to the appropriate federally recognized tribe for the review and determination of tribal interest or concern for those areas of known or suspected tribal archeological resources.

(m) Other documentation that may be required by the Department.

(6) Project Award Procedure:

(a) Upon receipt of the application by the Department, the Grants Program staff shall perform a technical review of all applications and forward eligible large grant applications to the Committee. The Committee will meet to evaluate the applications and make recommendations to the Director for Commission approval. The Commission may deny any or all recommendations of the Committee.

(b) Project Sponsors with large project grant requests may be expected to provide a presentation to the Committee under a procedure established by the Department.

(c) Project Sponsors whose projects have been approved by the Commission and are scheduled for funding assistance must submit to the Department the following project information:

(A) Certification by project sponsor of availability of local match;

(B) Preliminary plans and specifications (for construction projects);

(C) Appraisal for acquisition projects. Appraisals must conform to the Uniform Appraisal Standards for Federal Land Acquisitions;

(D) Preliminary title report for acquisitions;

(E) Verification that the applicant has a Compliance Plan that meets the requirements of the Americans with Disabilities Act of 1990 and its 2010 regulations.

(d) The Department will remove those project applications from the Commission approved list that are unable to provide the required documentation required in subsection (c) of this section.

(e) In the event that the funding assistance available cannot fully fund the last priority project, a Project Sponsor may be given the option of reducing the scope of the project. The Department, at its discretion, may pass the available funds to another priority project or hold the remaining funds and combine them with the next planned distribution of funds.

(f) Projects that do not receive funding assistance for the fiscal year submitted will be returned to the applicant without prejudice.

(7) Project Agreement:

(a) A signed State/Local Agreement shall constitute project authorization. No grant funds may be disbursed without a signed State/Local Agreement from the Department.

(b) The Project Sponsor shall have six months from the date of authorization to begin substantial work (e.g. the award of contracts or completion of at least 25 percent of the work, if done by force account). The Department may cancel a grant when the Project not conforming to this schedule, unless the Project Sponsor provides substantial justification to warrant an extension.

(c) The Project Sponsor shall complete and bill all projects by the dates as specified in the State/Local Agreement.

(d) The Department may inspect all projects.

(e) Partial payments up to 90 percent of the grant amount may be billed during the project for work completed. Final payment will be made upon certification of project completion by the Project Sponsor. Real property acquisitions may receive the full grant amount if the funds are to be dispersed in escrow for the closing of a property acquisition.

(f) The Department may provide the Project sponsor partial payments of up to 25 percent of the grant amount after the Department issues the Notice to Proceed and in advance of work

completed if a general contractor requires advanced funding prior to construction/development work or ordering materials/supplies.

(g) Project amendments that increase the Local Government Grant award amount will generally not be allowed.

(h) The Project Sponsor must submit requests for time extensions to complete work to the Department in writing and must be approved prior to the expiration of the approved project period as set forth in the State/Local Agreement.

(8) The Project Sponsor shall install and maintain throughout the life of the agreement appropriate signage for each project indicating the Oregon Parks and Recreation Department Grant Program's assistance and shall certify that signage is in place prior to requesting final payment.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99; PRD 6-2004, f. & cert. ef. 5-5-04; PRD 4-2008, f. 2-15-08, cert. ef. 3-1-08; PRD 3-2012, f. & cert. ef. 5-11-12

736-006-0140

Conversion Requirements

(1) Park and recreation areas and facilities must be dedicated for a minimum of 25 years for park and recreation purposes. Leases for federally owned property must be at least 25 years. If the current lease is within 5 years of termination, a letter of intent to renew the lease will be required from the federal agency. Project sponsors must insure that the land within the project boundary will be used only for park and recreational purposes, Project Sponsor controls or will control the land, and that the Project Sponsor will not change the use of, sell, or otherwise dispose of land within the project boundary, except upon written State approval. If the Project Sponsor converts land within the project boundary to use for other than outdoor park and recreation purposes or disposes of such land by sale or otherwise, applicant must provide replacement property within 24 months of either the conversion or the discovery of the conversion.

(2) If replacement property cannot be obtained within the 24 months, the Project Sponsor will provide payment of the grant program's prorated share of the current fair market value to OPRD. The prorated share is that percentage of the original grant (plus any amendments) as compared to the original project cost(s). The replacement property must be equal to the current fair market value of the converted property, as determined by an appraisal. The recreation utility of the replacement property must also be equal to that of the lands converted or disposed.

(3) If conversion should occur through processes outside of the Project Sponsor's control such as condemnation or road placement or realignment, the Project Sponsor will be required to pass through to OPRD the prorated share of whatever consideration is provided to the Project Sponsor by the entity that caused the conversion. The monetary value of whatever consideration provided by the taking entity will normally consist of the fair market value of the property established by an appraisal.

(4) Project Sponsors that have not addressed or submitted documentation to the Department or National Park Service (NPS) for review and approval of an active conversion through the Land and Water Conservation Fund Program or the Local Government Grant Program are not eligible to apply for Local Government Grant Program assistance.

(5) Project Sponsors who have addressed a conversion at the local level and have submitted documentation to the Department and/or NPS for review and approval of the conversion through the Land and Water Conservation Fund Program or the Local Government Grant Program may apply for funding assistance.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 6-2004, f. & cert. ef. 5-5-04; PRD 4-2008, f. 2-15-08, cert. ef. 3-1-08

736-006-0145

Local Government Grant Advisory Committee

(1) The Committee shall be composed of ten (10) members appointed by the Director to four-year terms and shall represent the following interests:

- (a) Counties east of the Cascade Mountains;
 - (b) Counties west of the Cascade Mountains;
 - (c) Cities under 15,000 people;
 - (d) Cities over 15,000 people;
 - (e) Park and Recreation Districts, Metropolitan Service Districts or Port Districts;
 - (f) Oregon Parks and Recreation Department;
 - (g) People with Disabilities; and
 - (h) Three members of the public at large, with at least one member who represents the ethnic diversity of the state's population;
- (i) The chair shall be appointed by the Director from the Committee membership, considering the recommendations of the Committee.

(2) Committee members shall be selected for each position by:

(a) County representation shall be from lists supplied by the Oregon Parks Association and the Association of Oregon Counties;

(b) City representation shall be from lists supplied by the Oregon Recreation and Park Association and the League of Oregon Cities;

(c) Park and Recreation Districts, Port Districts, or Metropolitan Service Districts representation shall be from a list supplied by the Special Districts Association of Oregon;

(d) Representatives for Public at Large, People with Disabilities, and the Department shall be selected by the Director.

(3) The travel, meals and lodging expenses of all members of the Committee will be reimbursed by the Department according to the rates established by the Department of Administrative Services and approved by the Director.

(4) Function of Local Government Grant Advisory Committee:

(a) The Committee shall meet upon the call of the Director. The Committee will establish a priority order of eligible local government projects for state funding assistance and provide other assistance as requested by the Department. The meeting will assure full and open project selection processes that will include an outreach to citizens of the state.

(b) The Department will provide public notice of all projects to be presented to the Committee at least 30 days prior to their meeting.

(5) Priority Selection Criteria. Large projects shall be prioritized by the Committee based on at least the following:

(a) Department review and recommendations, including a technical review of each project to confirm eligibility of the local government and the proposed project.

(b) The Committee shall score all applications using project selection criteria, including but not limited to the following:

(A) Extent the project demonstrates user benefits, public interest and support;

(B) Extent the project demonstrates conformance with local and state planning guidelines, the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and local Park Master Plans; all projects must be identified in local comprehensive plans and current master plans;

(C) Financial considerations, including cost/benefit ratio;

(D) Environmental assessment as defined in the Local Government Grant Procedure Manual;

(E) Extent the project increases outdoor recreation opportunity in the service area;

(F) Extent the Project Sponsor employs the principles of sustainability in their project(s);

(G) How well the project's design accommodates people with disabilities.

(c) Small project requests will be scored and prioritized for funding by a committee appointed by the Director using the above criteria in subsection (b) of this section.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99 ; Renumbered from 736-006-0130, PRD 6-2004, f. & cert. ef. 5-5-04; PRD 3-2012, f. & cert. ef. 5-11-12

736-006-0150

Emergency Procedure

(1) Under certain conditions such as, but not limited to, reduction or increase of these funds, an emergency procedure for awarding or canceling grants may be initiated at the discretion of the Director.

(2) In implementing the emergency procedure, the Director shall consider the availability of funds; the scope and need of projects available for funding; the urgency and statewide importance of prospective projects; and the need to expend additional funds that may become available in a timely manner. The Director may propose projects to the Commission for funding under this section and the Commission may waive other requirements of this rule for the purpose of obligating funds in a timely manner.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99 ; Renumbered from 736-006-0135, PRD 6-2004, f. & cert. ef. 5-5-04; PRD 4-2008, f. 2-15-08, cert. ef. 3-1-08; PRD 3-2012, f. & cert. ef. 5-11-12

DIVISION 7

DISTRIBUTION OF RECREATION VEHICLE LICENSE FEE REVENUES TO COUNTIES

736-007-0000

Purpose of Program and Rule

(1) The purpose of the distribution of recreation vehicle license fee revenues to counties is to increase the resources available for acquiring, developing, maintaining, rehabilitating and operating county parks and recreation sites and programs. New revenues available to county governing bodies under this program should, to the extent possible, be used to supplement, rather than supplant, moneys currently appropriated for county parks and recreation purposes.

(2) These rules establish the procedures and requirements used by the Oregon Parks and Recreation Department when distributing recreation vehicle license fee revenues to counties, and the process for establishing priority order in which county grant projects shall be funded.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 3-1994, f. & cert. ef. 4-22-94

736-007-0005

Definitions

For purposes of OAR 736-007-0000 to 736-007-0040, the following definitions shall apply:

(1) "Department" — The Oregon Parks and Recreation Department.

(2) "Director" — The Director of the Oregon Parks and Recreation Department or designate.

(3) "RV" or "Recreation Vehicle" — Travel trailers, campers and motorhomes.

(4) "RV Registrations" — The total number of travel trailers, campers and motor homes registered at the time the distribution formula is computed, as detailed in the most current "Oregon Motor Vehicles Registration by Counties" compiled by the Motor Vehicles Division.

(5) "County RV Registration Fee Revenues" or "Revenues" — That portion of the total revenues from the registration and licensing of recreational vehicles that is set aside in a sub-account of the Oregon Parks and Recreation Department's account within the State Treasury for the acquisition, development, maintenance, care and use of county park and recreation areas in accordance with ORS 366.512(2).

(6) "County Park and Recreation Area" — An area designated by the governing body under ORS 275.320 as a county park and recreational area in which the primary function is to provide recreational opportunities for the public such as overnight camp facilities, day use parks, community open spaces, and park waysides. Areas under county management in which recreation is a

secondary function, such as Courthouse grounds, fairgrounds, ports, and museum grounds, are excluded unless the following criteria are met:

(a) The county has a population of 30,000 or less; and
(b) The county does not have an “established park system” as defined in these rules.

(7) “Campsite” — A site within a designated County Park and Recreation Area that is specifically designed for overnight occupancy, is open to the public a minimum of five months per year, and that contains a designated parking spur, picnic table, fireplace or stove and access to potable water and sanitary facilities. Campsites within areas where recreation is a secondary function, such as courthouse grounds, fairgrounds, ports, and museum grounds, shall not be factored into the formula that allocates the distribution of RV registration fees among the county parks statewide.

(8) “Population” — The latest annual estimate of population of Oregon cities and counties as compiled by the Center of Population Research and Census.

(9) “County Park Assistance Program” or “Assistance Program” — A program funded by county RV registration fee revenues to provide regular allocation of moneys to the counties for the acquisition, development, maintenance, care and use of the county park and recreation areas as defined in section (6) of this rule.

(10) “County Park Assistance Allocation” or “County Allocation” — That portion of estimated county RV registration fee revenues available for distribution to the counties under the county park assistance program.

(11) “Certified County Park Assistance Allocation” or “Certified Allocation” — That portion of the county park assistance allocation certified for use by the counties during a given fiscal year.

(12) “County Opportunity Grant Program” or “Grant Program” — A program funded by county RV registration fee revenues to provide grants on a project basis for the acquisition, development, rehabilitation and planning of county park and recreation areas, as defined in section (6) of this rule, that provide camping facilities.

(13) “County Opportunity Grant Funds” or “Grant Funds” — That portion of county RV registration fee revenues available for the County Opportunity Grant Program.

(14) “Fiscal Year” — The 12-month period beginning July 1 of any year and ending June 30 of the next year.

(15) “Biennium” — The 24-month period beginning July 1 of each odd-numbered year and ending June 30 of the next odd-numbered year.

(16) “Waiver of Retroactivity” — An exception that allows costs to be incurred prior to formal project approval.

(17) “County Parks Assistance Advisory Committee” or “Advisory Committee” — The committee that reviews and prioritizes grant proposals for funding under the County Opportunity Grant Program.

(18) “State Comprehensive Outdoor Recreation Plan” — Otherwise known as SCORP, the document used to identify and assess Oregon outdoor recreation needs.

(19) “Established Park System” — A county shall be considered as having an established park system if it has at least one park designated under ORS 275.320, and has allocated a budget for parks.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94; PR 5-1995, f. & cert. ef. 7-2-96

736-007-0010

Eligibility

All counties are eligible to receive county RV registration fee revenues; however, use of these moneys is restricted to the acquisition, development, rehabilitation, maintenance, care and use of county park and recreation areas. At areas in which recreation is a secondary function, the funds shall be used only for parks and recreational facility purposes.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94; PR 5-1995, f. & cert. ef. 7-2-96

736-007-0015

Distribution Formula

The following distribution formula shall be used for the distribution of revenues in accordance with the provisions of these rules:

(1) County Park Assistance Program — Ninety percent of the estimated revenues to be received during each fiscal year shall be allocated to the counties in accordance with the following formula:

(a) Fifty percent based on the proportion of the number of campsites each county provides to the total number of such campsites provided by all the counties;

(b) Twenty percent based on the proportion of the number of RV registrations in each county to the state total of RV registrations;

(c) Thirty percent based on the proportion of each county’s population to the total state population;

(d) For the purposes of implementing this section the effective date shall be November 4, 1993.

(2) County Opportunity Grant Program — Ten percent of the estimated revenues to be received during each fiscal year shall be distributed through the Grant Program.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94

736-007-0020

Campsite Survey

(1) The Department shall ask each county to submit an inventory of its park and recreation areas containing campsites every two years to determine the number of campsites provided by each county.

(2) For purposes of the inventory described in subsection (1) of this rule, a campsite is “provided by” a county if:

(a) The county owns, operates and manages the site; or

(b) The county operates and manages the site; and the county possesses the site pursuant to a fixed term lease of not less than 20 years, with a fixed payment schedule and no profit-sharing between the county and the lessor; or

(c) The county owns the site or holds possession pursuant to a long-term lease as described in subsection (b) of this section; the county leases or subleases it to another public entity whose purposes include the provision of park and recreation opportunities; and the other public entity manages the site in accordance with the county’s written policy on parks and recreation; or

(d) The county owns the site or holds possession pursuant to a long-term lease as described in subsection (b) of this section; the county contracts with a concessionaire for the operation of less than all aspects of the park or campground; the county selects the concessionaire through an open, competitive process; and the county retains control of management and the right to possession of the site.

(3) Group campsites that do not meet the definition of a campsite shall not be included in the inventory.

(4) Campsites which have not been eligible for inclusion in the inventory prior to January 1, 1996, shall not be considered eligible to be added unless they meet building code standards for recreational parks per ORS 446 and OAR 918-650.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94; PR 5-1995, f. & cert. ef. 7-2-96

736-007-0025

Distribution of Moneys — County Park Assistance Program

(1) On or about January 1 of each year the Department shall estimate the total revenues available for use in the County Park Assistance Program for the next fiscal year. The Department shall use the distribution formula in OAR 736-007-0015 to estimate each county’s allocation, and shall notify each county of the estimate.

(2) By July 15 of each year, each county governing body shall certify to the Department, on forms supplied by the Department, that it will comply with the administrative rules governing the County Park Assistance Program. The certification shall include a statement of the county's intended use of the revenues:

- (a) The county has budgeted its allocation for expenditure in the next fiscal year; or
- (b) The county will place its allocation in a dedicated parks and recreation fund for future expenditure; or
- (c) A combination of subsections (a) and (b) of this section; or
- (d) The county waives the use of its allocated revenues;
- (e) A county may elect to receive less than its allocated revenues in any given fiscal year.

(3) Any county that does not certify by July 15 shall be deemed to have certified in accordance with subsection (2)(d) of this rule.

(4) The Department shall calculate the proportion of total certified allocations to total estimated revenues. This proportion will be used in determining the amount of actual revenues to be distributed to counties each month during the fiscal year.

(5) The distribution to counties that certified acceptance of revenues shall be made within 45 days after the end of each month. The amount shall be determined as follows:

$$\frac{\text{Total actual revenues for month } x}{\text{Total Certified Allocations}} \times \frac{\text{Total Estimated Revenues } x}{\text{County Certified Allocation}} = \text{Distribution}$$

However, the amount distributed each month to Gilliam, Harney, Jefferson, Lake, Sherman, and Wallowa counties shall be at least \$834. The effective date for implementing this rule shall be retroactive to July 1, 1994.

(6) Revenues allocated for the Assistance Program, but not distributed by this section, shall become available to the Grant Program.

(7) By September 1 of each year, the Department may ask each county to provide a report on the uses of the RV revenue for the prior fiscal year. The report form will be provided by the Department, along with an explanation of the need for the report.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94; PR 4-1995, f. & cert. ef. 5-3-95

736-007-0030

County Opportunity Grant Program

The County Opportunity Grant Program shall be administered as follows:

(1) Eligible projects — Grant funds are to be used specifically for the acquisition, development, rehabilitation, and planning of county park and recreation areas that provide camping facilities.

(2) Matching requirements — Grants from counties 30,000 population and under shall require a 25 percent local match. Grants from counties over 30,000 population shall require a 50 percent local match. Matching funds for specific projects may be reduced or eliminated as determined by the Director, based on demonstrated need for the project, lack of local funding, and upon recommendation by the Advisory Committee. Local funds may include local budget funds, federal revenue sharing funds, local agency labor or equipment, other grants, donations of land, labor, equipment, or any combination of the above.

(3) Application procedure:

(a) On or about July 1 of the first year of each biennium, the Department shall make an estimate of revenues available to be distributed through the Grant Program during the biennium and shall notify each county of the estimate. Estimate shall include unassigned moneys from previous bienniums and project cancellations and underruns.

(b) By October 1 of the first year of each biennium, grant applications shall be sent to the Department on forms supplied by the Department and shall contain:

(A) Program Narrative — including all information necessary to determine the criteria under section (4) of this rule or other items as the Department requires;

(B) Vicinity Map;

(C) Park Master Plan/Project Boundary Map;

(D) Ownership Statement;

(E) Cost Estimates;

(F) Preliminary Title Report (if applicable);

(G) Environmental Assessment;

(H) Local Project Timeline;

(I) Other documentation that may be required by the Department.

(c) The Department shall perform a technical review of all applications. Eligible applications shall be forwarded to the Advisory Committee. Ineligible applications shall be returned to project sponsor.

(4) Grants Prioritization Process:

(a) The Advisory Committee will meet during November of the first year of each biennium. Each project sponsor shall be allowed a presentation under a procedure established by the Committee. The Committee shall review all applications using project selection criteria, including, but not limited to, the following:

(A) Extent the project meets the recreation needs identified in SCORP;

(B) Extent the project meets the recreation needs identified in the local comprehensive land use plan;

(C) Extent the project satisfies the following:

(i) Demonstrates user benefit, public interest and support;

(ii) Increases outdoor recreation opportunity in the service area;

(iii) Financial considerations, including cost/benefit ratio;

(iv) How well the project's design accommodates people with disabilities.

(D) Extent the county demonstrates exceptional need, such as a limited parks operating budget, the lack of public overnight camping opportunities within the county, or the overall lack of county parks and recreation areas and facilities;

(E) Analysis of sponsor's past performance in completing and billing projects and maintaining existing facilities.

(b) The Committee will recommend funding priorities to the Director for all eligible projects submitted. The Director shall establish the funding priorities taking into consideration the Committee's recommendation;

(c) A signed state/local agreement shall constitute project authorization. It shall be executed by January 31 of the first year of each biennium. No project may begin without authorization from the Department unless a waiver of retroactivity has been issued by the Department. Projects not authorized within this time frame will be cancelled. Funds recovered from cancellations shall be reassigned to other projects on the priority list.

(5) Project Administration:

(a) Sponsors shall have one year from the date of authorization to begin substantial work (e.g., the award of contracts or completion of at least 25 percent of the work, if done by force account). Projects not conforming with this provision will be cancelled;

(b) All projects shall be completed and billed within two years from the authorization date. Projects will be inspected and audited by the Department or its designate prior to final grant payment. Partial payments up to 90 percent of the grant amount may be billed during the project for work completed;

(c) Project amendments that increase the project cost will generally not be allowed; however, amendment requests based on extraordinary circumstances will be reviewed on a case-by-case basis.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94; PR 5-1995, f. & cert. ef. 7-2-96

736-007-0035

County Parks Assistance Advisory Committee

(1) The Advisory Committee shall be composed of seven members appointed by the Director. The committee membership,

to serve nonconcurrent four-year terms, shall represent the following interests:

- (a) Two representatives of recreational vehicle owners;
 - (b) Three county representatives including one from a county under 20,000 population, and one from a county parks department;
 - (c) One representative for people with disabilities;
 - (d) One citizen representative;
 - (e) The chair shall be appointed by the Director from the committee membership, considering, when possible, the recommendation of the Advisory Committee.
- (2) Selection of committee representatives may be from a list of not less than two candidates for each position to be supplied by:
- (a) The Association of Oregon Counties shall recommend candidates for the county representatives;
 - (b) The Good Sam Club or other recreation vehicle clubs shall recommend candidates to represent recreation vehicle owners;
 - (c) The Oregon Disabilities Commission shall recommend candidates to represent people with disabilities;
 - (d) Candidates for citizens representative may be requested from the Association of Oregon Counties, the Oregon Parks Association or other sources.
 - (3) The Advisory Committee shall meet during November of the first year of each biennium, and at other times upon the call of the Director. It will establish a priority order of eligible projects for the Grants Program; will review the biennial campsite survey, and the Assistance Program distribution.
 - (4) The travel, meals and lodging expenses of all members of the committee will be reimbursed by the Department according to rates established by the Department of Administrative Services and approved by the Director.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94

736-007-0040

Assessment for Services

(1) The Department will be incurring costs in the financial and programmatic administration and operation of the Assistance Program, Grant Program, and the Advisory Committee. Reimbursement of the Department's actual direct and identifiable costs shall be made from the county RV registration fee revenues in the sub-account of the Parks and Recreation Department's account in the State Treasury. Such moneys shall be transferred to the Department account at the end of each month.

(2) At no time shall the amount transferred exceed the actual and identifiable costs.

(3) For the purposes of implementing this section, the effective date shall be November 4, 1993.

Stat. Auth.: ORS 390.117, 390.124 & 390.134

Stats. Implemented: ORS 390.134

Hist.: PR 2-1984, f. & ef. 1-20-84; PR 3-1994, f. & cert. ef. 4-22-94

DIVISION 8

DISTRIBUTION OF LAND AND WATER CONSERVATION FUNDING ASSISTANCE TO UNITS OF LOCAL GOVERNMENT FOR PUBLIC OUTDOOR RECREATION

736-008-0005

Purpose of Rule

This rule establishes the procedures and requirements used by the Oregon Parks and Recreation Department, State Liaison Officer, when distributing federal Land and Water Conservation Fund monies to state agencies and eligible local governments, and the process for establishing the priority order in which projects shall be funded.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 7-1995, f. & cert. ef. 7-19-95

736-008-0010

Statutory Authority and Procedure

ORS 390.180 requires the Director of the State Parks and Recreation Department to adopt rules establishing procedures the State Parks and Recreation Department shall use when the Department allocates money to local governments or other state agencies.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 7-1995, f. & cert. ef. 7-19-95

736-008-0015

Federal Requirements

The Land and Water Conservation Fund Act of 1965, as amended, provides matching grants to states and local units of government for acquisition and development of public outdoor recreation areas and facilities. Funds for the program are derived from entrance or admission fees to federal recreation areas, Outer Continental Shelf revenues from leasing oil and gas sites in coastal waters, federal surplus real property sales and a small portion of federal motorboat fuel taxes. All applicants for federal funding assistance must also satisfy the requirements delineated in the "National Park Service's Land and Water Conservation Fund Grants Manual," Parts 600 through 685.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 7-1995, f. & cert. ef. 7-19-95

736-008-0020

Definitions

For purposes of OAR 736-008-0005 through 736-008-0055 the following definitions shall apply:

(1) "Acquisition" — The gaining of property rights, including but not limited to fee title or easements, for public use by donation or purchase.

(2) "Conversion" — Property acquired and/or developed with L&WCF assistance that has been converted to other than public outdoor recreation uses.

(3) "Current Park Master Plan" — A site-specific resource based plan guiding park acquisition, development, protection and management of park areas and facilities.

(4) "Department" — The State Parks and Recreation Department.

(5) "Development" — The construction or rehabilitation of facilities necessary for the use and enjoyment of public outdoor recreation resources.

(6) "Director" — The Director of the State Parks and Recreation Department.

(7) "Eligible Project" — An acquisition, development, or major rehabilitation undertaking which satisfies the requirements of the federal Land and Water Conservation Fund Program.

(8) "Implementation Program" — A requirement of SCORP which identifies salient recreation issues to be addressed over a two-year period.

(9) "Land and Water Conservation Fund (L&WCF)" — Those funds made available to the state through the Land and Water Conservation Fund Act of 1965 (Public Law 88-578).

(10) "Local Comprehensive Plan" — The comprehensive land use plan prepared by each local jurisdiction within the state, as required by ORS Chapter 197.

(11) "Major Rehabilitation" — The repair, restoration, or reconstruction of eligible facilities which is necessitated by obsolescence, building code changes, or normal wear and tear not attributed to lack of maintenance.

(12) "Oregon Application Procedures Manual" — A manual prepared by the Department containing state and federal policies, procedures and instructions to assist local government agencies wishing to participate in L&WCF assistance.

(13) "Oregon Outdoor Recreation Committee (OORC)" — The committee appointed by the Director to prioritize L&WCF project applications.

(14) "Project Authorization" — State/local agreement which authorizes the project, as signed by both the Department and project sponsor.

(15) "Project Sponsor" — The recipient of the grant funds and the agency responsible for implementation of the project and the maintenance and operation of the site.

(16) "Reapportionment Account" — Those monies derived from project underruns, cancellations and reduction in project scope. Separate accounts will be kept for both state and local sponsors.

(17) "State Comprehensive Outdoor Recreation Plan" — Otherwise known as SCORP, the document used to identify and assess Oregon outdoor recreation needs.

(18) "State Liaison Officer (SLO)" — Designated by the Governor, the State Parks and Recreation Department Director and his designees who have the responsibility to administer the stateside L&WCF.

(19) "State/Local Agreement" — Agreement between the state and project sponsor which authorizes the project to begin.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 1-1983, f. & ef. 2-18-83; PR 7-1995, f. & cert. ef. 7-19-95

736-008-0025

Apportionment of Monies Between State and Local Agencies

(1) Monies apportioned annually by the Department of Interior to the state from the federal Land and Water Conservation Fund shall be divided into three shares:

(a) An amount equal to one-half of the annual anticipated administrative costs of the office of the State Liaison Officer to operate the program;

(b) Not less than 60 percent of the remainder to units of local government; and

(c) Up to 40 percent of the remainder to eligible state agencies.

(2) Monies derived from project underruns, project cancellations, reduction in project scope will be made available to the Director to redistribute to state or local projects.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 1-1983, f. & ef. 2-18-83; PR 7-1995, f. & cert. ef. 7-19-95; PR 2-1997, f. 10-31-97, cert. ef. 11-4-97

736-008-0030

Assessment for Services

(1) Each local government project sponsor shall be assessed a percentage of the total final project cost for services provided by the Department. This percentage assessment shall be established in the state/local agreement. The assessment shall be reviewed by the Department annually to insure that income does not exceed 50 percent of the administrative costs for grant distribution to units of local government. This assessment shall be made at the time of any project billing with the fee being withheld from the amount paid to the sponsor.

(2) Any project sponsor requesting a conversion will be required to pay an advance deposit. The deposit would cover staff salary and OPE, and administrative fees to process the conversion. The advance deposit amount will be based on the appraised value of the property to be converted. If the advance deposit does not cover all costs, the project sponsor will be billed for the balance due. If the total costs are less than the deposit, the Department will reimburse the project sponsor for the unused deposit amount.

(a) Converted property appraised up to \$50,000 will require a \$1000 deposit;

(b) Converted property appraised from \$50,001 to \$100,000 will require a \$2000 deposit;

(c) Converted property appraised above \$100,000 will require a \$3000 deposit.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 7-1995, f. & cert. ef. 7-19-95; PR 2-1997, f. 10-31-97, cert. ef. 11-4-97

736-008-0045

Application Procedure

The purpose of this section is to set forth requirements that must be met by local government applicants in submitting an application for Land and Water Conservation Fund assistance.

(1) Eligibility for Funding Assistance. Public agencies eligible for L&WCF funding assistance are:

(a) Local Governments:

(A) City Park and Recreation Departments;

(B) County Park and Recreation Departments;

(C) Park and Recreation Districts;

(D) Port Districts;

(E) Indian Tribes;

(F) Metropolitan Service District.

(b) State Agencies:

(A) Oregon State Parks and Recreation Department;

(B) Oregon Department of Fish and Wildlife;

(C) Oregon Department of Forestry;

(D) Oregon Division of State Lands.

(2) Matching Requirements. The Land and Water Conservation Fund provides for up to 50 percent funding assistance. The eligible agency match may include local budgeted funds, donated funds, and value of private donated property, equipment, materials, labor, or any combination thereof. The minimum federal share shall be no less than \$12,500 (\$25,000 total project costs). Section 6f of the L&WCF Act prohibits the use of other federal funds as matching share of a L&WCF grant.

(3) Projects Eligible for Funding:

(a) Projects eligible are acquisition, development and rehabilitation projects that are consistent with the outdoor recreation goals and objectives contained in the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and the Implementation Program, and recreation elements of local comprehensive plans.

(b) Marine facility development requests are eligible for funding. Project which use federal Dingle-Johnson funds may not be used as match with L&WCF.

(4) Local Agency Requirements. Local agencies participating in the funding assistance program must show that there is a current park master plan in effect and that the project is consistent with the local comprehensive land use plan.

(5) State Agency Requirements. State agencies participating in the fund assistance program must show that the project is in their legislatively approved biennial budgets or is mandated by legislation.

(6) Application Form. All applications for funding assistance for outdoor recreation projects must be submitted on forms supplied by the Department. All applications must be consistent with the Oregon Application Procedures Manual and contain the following information:

(a) Program narrative;

(b) Environmental assessment;

(c) Vicinity map;

(d) Project boundary map;

(e) Park master plan;

(f) Civil Rights compliance;

(g) Local Council of Governments review;

(h) State agency review;

(i) Property deed or lease;

(j) Estimate of development costs and schedule;

(k) Preliminary title report (acquisitions only);

(l) Documented Americans with Disabilities Act Compliance Plan specific to projects;

(m) Other documentation that may be required by the Department.

(7) Local Project Time Line:

(a) All applications for funding must be submitted to the State Parks and Recreation Department in a completed form consistent with section (6) of this rule, no later than January 1 for funding in the next federal fiscal year which begins October 1. Incomplete applications will not be considered for funding assistance. The Department Grants Program staff shall perform a technical review of all applications and forward eligible applications to the Oregon

Outdoor Recreation Committee (OORC). Project sponsors will be contacted about missing documentation, which must be submitted to the Department within 10 days. On or about April 1, OORC will meet to recommend funding priorities to the Director for all eligible projects submitted.

(b) By October 1 of each year, sponsors whose projects have been prioritized and are scheduled for funding assistance must submit to the Department the following project information:

(A) Certification by project sponsor of availability of local match;

(B) All required permits and certifications as identified in the Department Procedural Manual;

(C) Preliminary plans and specifications (for construction projects);

(D) Appraisal for acquisition projects. Appraisals must conform to the Uniform Appraisal Standards for Federal Land Acquisitions.

(c) The Department will remove those project applications from the priority list (as outlined in subsection (b) of this section) that are unable to provide the required documentation.

(d) The amount of federal funding assistance available within the federal fiscal year (October 1 to September 30), will determine the projects to be funded;

(e) If additional federal monies become available throughout the current funding year, projects on the priority list will be funded in priority order;

(f) Reapportionment account will be requested on or about March 31 of each year to assure that the State does not lose the availability of those funds. All reapportionment monies received will be allocated to the current funding cycle.

(8) Project administration:

(a) A signed state/local agreement shall constitute project authorization. It shall be executed 30 days after federal approval. Projects not authorized within this time frame will be cancelled. Funds recovered from cancellations will be reassigned to other projects on the priority list. No project may begin without a signed state/local agreement from the Department;

(b) Final documentation (permits, plans and specifications) must be submitted to the Department prior to project authorization;

(c) In the event that the funding assistance available cannot fully fund the last priority project, the sponsor will be given the option of reducing the scope of the project or the Department will pass the available funds to the next priority project;

(d) The sponsor shall have one year from the date of authorization to begin substantial work (i.e., the award of contracts or to complete at least 25 percent of the work, if done by force account). Force account work is work on a development project with the forces and resources of the project sponsor. Projects not conforming to this schedule will be cancelled, unless substantial justification warrants an extension. Extensions in such cases will be made for a six month period only. In no situation will further extensions be granted.

(e) Projects that do not receive funding assistance for the federal fiscal year submitted will be returned to the applicant without prejudice;

(f) All projects shall be completed and billed within two years from the authorization date. Projects will be inspected and audited by the Department, or its designee prior to final grant payment. Partial payments up to 90 percent of the grant amount may be billed during the project for work completed.

(g) Project amendments that increase the federal share will generally not be allowed. Project amendment requests based on extraordinary circumstances will, however, be reviewed on a case-by-case basis. Requests for time extensions must be approved prior to expiration of the approved project period as set forth in the state/local agreement.

(h) Time Line Summary:

(A) January 1 — Complete application due;

(B) April 1 — Priority selection by OORC;

(C) September 30 — Project certification;

(D) October 10 — Revise list;

(E) October 10 — Formal application submitted for federal obligation.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 1-1983, f. & ef. 2-18-83; PR 4-1984, f. & ef. 4-5-84; PR 7-1995, f. & cert. ef. 7-19-95

736-008-0050

Oregon Outdoor Recreation Committee

(1) The Oregon Outdoor Recreation Committee (OORC) shall be composed of nine members appointed by the State Parks and Recreation Department Director. The Committee membership, to serve nonconcurrent four-year terms, shall represent the following interests:

(a) Counties east of the Cascade Mountains;

(b) Counties west of the Cascade Mountains;

(c) Cities under 15,000 people;

(d) Cities over 15,000 people;

(e) Park and Recreation Districts, Metropolitan Service District or Port Districts;

(f) State Parks and Recreation Department;

(g) People with Disabilities;

(h) Minorities; or Representatives from Tribal Governments; and

(i) The public at large;

(j) The chair shall be appointed by the Director from the committee membership, considering the recommendations of the committee.

(2) Selection of committee members shall be from a list of not less than two candidates for each position to be supplied by:

(a) County representation shall be from lists supplied by the Oregon Parks Association and the Association of Oregon Counties;

(b) City representation shall be from lists supplied by the Oregon Recreation and Park Association and the League of Oregon Cities;

(c) Park and Recreation District, Port District or Metropolitan Service District representation shall be from a list supplied by the Special Districts Association of Oregon;

(d) Representatives for People with Disabilities, Tribal Governments, Minorities, Public at Large, and Parks Department shall be selected by the Director.

(3) The travel, meals and lodging expenses of all members of the Committee will be reimbursed by the Department according to the rates established by the Department of Administrative Services and approved by the Director.

(4) Function of OORC:

(a) The Committee shall meet in April of every even year, starting in 1996, and at other times upon the call of the Director. The committee will establish a priority order of eligible local government projects for Land and Water Conservation Funding assistance or provide other assistance as requested by the Department. The meeting will assure full and open project selection processes that will include an outreach to all citizens of the state.

(b) In order to assure full citizen participation in the selection of local projects to be prioritized for funding, all projects submitted must be consistent with the recreation element of the local comprehensive land use plan. The prioritization process will provide the opportunity for the citizens of the state to address the degree to which each project meets the outdoor recreation needs of the state and local community. The Department will provide public notice of all projects to be presented to the OORC at least 30 days prior to their meeting.

(c) Each sponsor shall be allowed to make a presentation under a procedure established by the Department.

(5) Priority Selection Criteria. Projects shall be prioritized by OORC based on at least the following:

(a) Department review and recommendations, including a technical scoring of each project that will include the extent to which projects satisfy basic outdoor recreation needs and/or urgent needs identified in SCORP, the extent the project meets the recreation needs identified in the local comprehensive land use plan, and sponsor's past performance in their ability to complete

and bill projects, maintain existing facilities, and whether there are any outstanding conversions;

(b) The committee shall review all applications using project selection criteria, including but not limited to the following:

(A) Extent the project demonstrates user benefits, public interest and support;

(B) Extent the project demonstrates conformance with local and state planning guidelines, the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and local Park Master Plans; all projects must be identified in local comprehensive plans and current master plans;

(C) Financial considerations, including cost/benefit ratio;

(D) Environmental assessment as defined in Oregon Application Procedures Manual.

(E) Extent the project increases outdoor recreation opportunity in the service area.

(F) How well the project's design accommodates people with disabilities.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: 1 OTC 45, f. 11-27-74, ef. 1-1-75; PR 4-1981, f. & ef. 4-1-81; PR 1-1983, f. & ef. 2-18-83; PR 7-1995, f. & cert. ef. 7-19-95

736-008-0055

Emergency Procedure

(1) Under extreme conditions such as severe cut backs of federal funds or complete elimination of these funds an emergency procedure may be initiated at the discretion of the State Parks and Recreation Department Director.

(2) The emergency procedure will establish new time lines and funding strategies to coincide with the time delay created at the federal level. The Director may delay or abolish time lines, and fund projects on the existing priority list with underruns and cancellations until either projects or money is exhausted.

(3) Under the emergency procedure the Director will notify prospective sponsors of any anticipated time changes and assure sponsors of adequate lead time in developing new time lines.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PR 4-1982, f. & ef. 3-26-82; PR 1-1983, f. & ef. 2-18-83; PR 7-1995, f. & cert. ef. 7-19-95

DIVISION 9

OREGON RECREATION TRAILS

736-009-0006

Oregon Recreation Trails

(1) The purpose of OAR 735-009-0005 to 735-009-0030 is to establish the procedures and criteria that the Oregon Recreation Trails Advisory Council will use in recommending to the department the establishment and designation of Oregon Recreation Trails. Pursuant to the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995, the following categories are established:

(a) "Oregon Scenic Trails" may be comprised of routes that provide access to national, state, or regional resources of superlative quality and scenic splendor.

(b) "Oregon Regional Trails" may be comprised of routes that provide connections to communities, recreation sites or trail systems, and close-to-home recreational opportunities.

(c) "Oregon Scenic Bikeways" may be comprised of bicycle paths, designated transportation corridors, or a combination thereof. Oregon Scenic Bikeways may include route sections that are located in or near existing rights of way for roads or highways.

(2) The goals and objectives of the Oregon Recreation Trails Program are to:

(a) Provide recreation trails of superlative quality for the enjoyment and health of Oregonians and visitors;

(b) Showcase a standard for excellence in the routing, construction, maintenance, and marking consistent with each trail's character and purpose;

(c) Preserve and enhance Oregon Recreation Trails;

(d) Provide links to recreation sites and scenic, historic, natural, cultural resources along Oregon Recreation Trails; and

(e) Preserve and protect the natural landscape, scenic features, historic character, and recreation opportunities within the trail corridor.

(3) In furtherance of the goals and objectives established in section (2) of this rule, the department will:

(a) Follow the process and criteria established in this division for evaluating, designating, updating and maintaining Oregon Recreation Trails;

(b) Develop management strategies to preserve and enhance Oregon Recreation Trails;

(c) Create and provide public information resource materials on Oregon Recreation Trails, and

(d) Promote interest and support from local communities for creation, enhancement, and publicizing of local trails and recreation opportunities adjacent to or in close proximity to any Oregon Recreation Trails.

Stat. Auth.: ORS 390.971(8)

Stats. Implemented: ORS 390.956, 390.959 - 390.962, 390.968, 390.971

Hist.: PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0020

Definitions

For purposes of this division, unless the context requires otherwise:

(1) "Agriculture/Forestry" means crops, wineries, vineyards, ranches, fisheries, orchards, nurseries, old-growth and reforested lands.

(2) "Amenities" may include potable water, lodging, camping, restrooms, bike shops, equipment storage, restaurants and grocery stores.

(3) "Commission" means the Oregon Parks and Recreation Commission.

(4) "Committee" means the eleven-member Scenic Bikeway Committee appointed by the director to recommend the establishment and designation of Oregon Scenic Bikeways to the department.

(5) "Council" means the Oregon Recreation Trails Advisory Council.

(6) "Department" means the Oregon Parks and Recreation Department.

(7) "Director" means the Oregon Parks and Recreation Director appointed under ORS 390.127.

(8) "Landform" means topography that becomes more interesting as it gets steeper or more massive, or more severely sculptured. Outstanding landforms may be monumental or artistic and subtle.

(9) "Landscape" means a combination of outdoor, manmade, natural, and agricultural features within a view shed.

(10) "Linear Route" means a route that progresses from a starting to an ending point. The beginning and end of a linear route do not meet, but may connect to another route or a destination point.

(11) "Loop Route" means a route that starts and ends at the same location or connects to another cycling route that returns to the starting point.

(12) "Natural Features" means non-manmade attractions including geologic formations, wildlife sites, waterfalls, lake basins, old-growth stands, and mountain meadows.

(13) "Oregon Recreation Trail" means any trail established and designated by the department pursuant to the Oregon Recreation Trails System Act.

(14) "Oregon Regional Trail" means any trail that connects communities, recreation sites or other trail systems and provides close-to-home recreational opportunities.

(15) "Oregon Scenic Bikeway" means a route designated for bicyclists under ORS 390.962.

(16) "Oregon Scenic Trail" means trails that provide access to and enjoyment of significant scenic natural views and features.

(17) "Bicycle Path" means a paved trail along a road or an independent right-of-way used by bicyclists, pedestrians, joggers, skaters, and other non-motorized travelers.

(18) "Paved" means a hard surface such as concrete, asphalt cement concrete (A/C) or other stable bituminous surface.

(19) "Proponent" means a group, organization, or individual who proposes the designation of an Oregon Recreation Trail.

(20) "Public Land" means any lands owned or leased by the federal government, this state or any political subdivision thereof.

(21) "Route" means a combination of streets and paths used to travel to destinations or in corridors for transportation or recreation.

(22) "Scenic" means an abundance and variety of aesthetically-pleasing manmade or natural elements along the route.

(23) "Trail Corridor" means the land associated with the use agreement, easement or right-of-way upon which the trail lies.

(24) "Unique" means relatively rare or unusual as applied to a resource or combination of features within a geographic region.

(25) "Vegetation" means forest, prairies, orchards, active farm cropland and tree farms with a variety of patterns, form and textures created by plant life, and small scale vegetation features that add striking and intriguing detail elements to the landscape.

(26) "Water" means ocean, rivers, lakes, streams, waterfalls, rapids, marshes, estuaries, bays, canals and harbors that add movement or serenity to a scene, or the degree to which water dominates the scene.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.950 – 390.989

Hist.: PRD 7-2008, f. & cert. ef. 9-15-08; PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0021

Establishing Oregon Scenic Trails

Pursuant to ORS 390.962(1), the department prescribes the criteria for the designation of Oregon Scenic Trails in this rule in addition to those provided in the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(1) Oregon Scenic Trails will be comprised of routes that provide access to national, state, or regional resources of superlative quality and scenic splendor.

(2) Oregon Scenic Trails may be linear, loop, or a combination of linear and loop routes and shall generally meet these criteria:

(a) Scenic Trails will connect to other trails to the extent possible.

(b) Scenic Trails should be a minimum of one (1) mile in length.

(3) Pursuant to ORS 390.962(1), an Oregon Scenic Trail may be located:

(a) Over public land with the consent of each governmental entity having jurisdiction over the lands designated; or

(b) Over privately-owned lands in the manner of and subject to the limitations provided in ORS 390.950 to 390.989 and 390.995(2).

(4) Evaluation of Applications

(a) To be considered as an Oregon Scenic Trail, a proponent must submit to the department a complete Oregon Scenic Trail Application form in the format specified by the department, including a detailed Trail Management Plan.

(b) The department will review each Oregon Scenic Trail application for completeness and eligibility, including whether the application adequately addresses the considerations provided in ORS 390.965(2). The department will provide all complete, eligible applications to the council. Incomplete or ineligible applications will be returned to the proponents with an explanation of the deficiencies.

(c) The council will consider trails for designation based on the criteria provided in sections (1) to (3) of this rule and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(d) The council or designee shall conduct a field review of the proposed trail.

(e) The council shall score the trail against criteria established in the Oregon Recreation Trails System Act, ORS 390.950 through 390.989 and 390.995, and in this rule, including but not limited to:

(A) Emphasis on use of public lands,

(B) Minimizing adverse effects on adjacent landowners,

(C) Harmony with and complement to established forest, agricultural, or other use plans, and

(D) Any natural features, agriculture, forest, unusual or unique landforms, vegetation, water components, scenic beauty and interest, as well as amenities available to the route.

(f) Based on the application, field review, and scoring, the council shall determine if the trail qualifies to be recommended for designation as an Oregon Scenic Trail.

(g) If the council does not recommend designating the route as an Oregon Scenic Trail, it shall provide comments and recommendations to the proponent. The proponent may reapply to the council only after fully addressing the recommendations of the council.

(5) Designation Process:

(a) The council shall provide each recommendation for designation as an Oregon Scenic Trail to the director.

(b) The department shall hold public meetings on the recommended designation as provided in ORS 390.965(1).

(c) After the public meetings required in subsection (b), the director shall either:

(A) Submit the council's recommendation to the commission for approval or denial of the proposed Oregon Scenic Trail; or

(B) Request that the council provide further consideration of issues presented in the public meeting.

(6) Trail Management:

(a) The department will enter into written cooperative agreements with landowners, federal agencies, other state agencies, local governments, private organizations and individuals as necessary to ensure that the development, signing, operation, maintenance, location or relocation of the trail meet the Oregon Scenic Trail standards.

(b) The department shall evaluate each Oregon Scenic Trail at least once every five years. The department will provide the council an evaluation and inventory of the trail features. Upon review, the council may recommend:

(A) The trail be improved to meet the standards of state designation; or

(B) Removal of Oregon Scenic Trails designation when or if the trail no longer meets the criteria.

(c) Signing and Publication of Oregon Scenic Trails.

(A) Consistent with the requirements of ORS 390.959, the department will establish sign standards and coordinate sign placement for each trail the commission designates as an Oregon Scenic Trail.

(B) The department will publish on its web page and make available standardized route maps for all Oregon Scenic Trails.

Stat. Auth.: ORS 390.971(8)

Stat. Implemented: ORS 390.956, 390.959, 390.962, 390.968, 390.971

Hist.: PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0022

Establishing Oregon Regional Trails

Pursuant to ORS 390.962(1), the department prescribes the criteria in this rule in addition to those provided in the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2), for the designation of Oregon Regional Trails.

(1) Oregon Regional Trails may be comprised of recreational trails that provide connections to communities, recreation sites or trail systems, and close-to-home recreational opportunities.

(2) Oregon Regional Trails may be linear, loop, or a combination of linear and loop routes that connect communities or recreation sites and shall generally meet these criteria:

(a) Regional Trails connect communities or recreation resources to the extent possible.

(b) Regional Trails should be a minimum of five (5) miles in length.

(3) Pursuant to ORS 390.962(1), an Oregon Regional Trail may be located:

(a) Over public land with the consent of each governmental entity having jurisdiction over the lands designated; or

(b) Over privately-owned lands in the manner of and subject to the limitations provided in ORS 390.950 to 390.989 and 390.995(2).

(4) Evaluation of Applications

(a) To be considered as an Oregon Regional Trail, a proponent must submit to the department a complete Oregon Regional Trail Application form in the format specified by the department, including a detailed Trail Management Plan.

(b) The department will review each Oregon Regional Trail proposal for completeness, including whether the application adequately addresses the considerations provided in ORS 390.965(2). The department will provide all complete, eligible applications to the council. Incomplete or ineligible applications will be returned to the proponents with an explanation of the deficiencies.

(c) The council will consider trails for designation based on the criteria provided in sections (1) to (3) of this rule and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(d) The council or designee shall conduct a field review of the proposed routetrail.

(e) The council shall score the trail against criteria established in the Oregon Recreation Trails System Act, ORS 390.950 through 390.989 and 390.995, and this rule, including but not limited to:

(A) Emphasis on use of public lands,

(B) Minimizing adverse effects on adjacent landowners,

(C) Harmony with and complement to established forest, agricultural, or other use plans, and

(D) Emphasis on connections to communities, recreation sites, or trail systems, and close-to-home recreational opportunities.

(f) Based on the application, field review, and scoring, the council shall determine if the trail qualifies to be recommended for designation as an Oregon Regional Trail.

(5) Designation Process:

(a) The council shall provide each recommendation for designation as an Oregon Regional Trail to the director.

(b) The department shall hold public meetings on the recommended designation as provided in ORS 390.965(1).

(c) After the public meetings required in subsection (b), the director shall either submit the council's recommendation to the commission for approval or denial of the proposed Oregon Regional Trail or request that the council provide further consideration of issues presented in the public meeting.

(6) Trail Management:

(a) The department will enter into written cooperative agreements with landowners, federal agencies, other state agencies, local governments, private organizations and individuals as necessary to ensure that the development, signing, operation, maintenance, location or relocation of the trail meet the Oregon Regional Trail standards.

(b) The department shall evaluate each Oregon Regional Trail at least once every five years. The department will provide the council an evaluation and inventory of the trail features. Upon review, the council may recommend:

(A) The trail be improved to meet the standards of state designation; or

(B) Removal of Oregon Regional Trail designation when or if the trail no longer meets the criteria.

(c) Signing and Publication of Oregon Regional Trails.

(A) Consistent with the requirements of ORS 390.959, the department will establish sign standards and coordinate sign placement for each trail the commission designates as an Oregon Regional Trail.

(B) The department will publish on its web page and make available standardized route maps for all Oregon Regional Trails.

Stat. Auth.: ORS 390.971(8)

Stats. Implemented: ORS 390.956, 390.959, 390.962, 390.968, 390.971

Hist.: PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0025

Oregon Scenic Bikeways Committee

(1) The director shall appoint a Scenic Bikeways Committee composed of 11 members. The committee shall include one representative each from:

(a) The department;

(b) Oregon Tourism Commission (dba Travel Oregon)

(c) Oregon Department of Transportation

(d) A Federal Lands Manager (U.S. Forest Service or Bureau of Land Management)

(e) Oregon Association of Convention and Visitors Bureaus;

(f) Oregon Recreation Trails Advisory Council established pursuant to ORS 390.977;

(g) Oregon Bicycle and Pedestrian Advisory Committee established pursuant to ORS 366.112;

(h) Association of Oregon Counties;

(i) League of Oregon Cities;

(j) Representative of bicycle advocacy organization; and

(k) Citizen Representative.

(2) Members may serve two consecutive four-year terms on the committee. However, the director shall appoint the first committee members following the effective date of this rule to serve a two, three, or four-year term.

(3) The director shall appoint the chair from the committee membership, considering the recommendations of the committee.

(4) The committee shall meet at times and places specified by the call of the director.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) Function and Duties of Scenic Bikeways Committee:

(a) The committee shall evaluate proposed Oregon Scenic Bikeways against the criteria provided in OAR 736-009-0030 and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2). The committee shall make a recommendation to the director on each application for a proposed Oregon Scenic Bikeway.

(b) The committee shall evaluate each Oregon Scenic Bikeway route at least once every five years. The department and Oregon Department of Transportation will provide the committee an inventory of the features of the route determined by riding a bike along the route. The committee may recommend that the department improve, remove, or reroute portions of a route no longer meeting the criteria for an Oregon Scenic Bikeway.

Stat. Auth.: ORS 390.971(8)

Stats. Implemented: ORS 390.956, 390.959, 390.962, 390.968 & 390.971

Hist.: PRD 7-2008, f. & cert. ef. 9-15-08; PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0030

Establishing Oregon Scenic Bikeways

Pursuant to ORS 390.962(1), the department prescribes the criteria in this rule in addition to those provided in the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2), for the designation of Oregon Scenic Bikeways.

(1) Oregon Scenic Bikeways may be comprised of bicycle paths, designated transportation corridors or a combination thereof. Oregon Scenic Bikeways may include route sections located in or near existing rights-of-way for roads or highways.

(2) Oregon Scenic Bikeways may be linear, loop, or a combination of linear and loop routes that encompass national, state, or regional scenic resources and shall generally meet these criteria:

(a) Linear routes connect to each other and other designated routes to the extent possible.

(b) Linear routes should be a minimum of 40 miles in length.

(c) Loop routes encompass regional or local scenic, cultural or historic features.

(d) Scenic loop routes should be a minimum of five miles in length and should return the cyclist to the point of origin.

(e) Scenic loop routes may be established as connections to existing linear Oregon Scenic Bikeways or may be established as Oregon Scenic Bikeways in and of themselves.

(3) Pursuant to ORS 390.962(1), an Oregon Scenic Bikeway may be located:

(a) Over public land with the consent of each governmental entity having jurisdiction over the lands designated; or

(b) Over privately-owned lands in the manner and subject to the limitations provided in ORS 390.950 to 390.989 and 390.995(2).

(4) Evaluation of Applications

(a) To be considered as an Oregon Scenic Bikeway, a proponent must submit to the department a completed Oregon Scenic Bikeway Application form in the format specified by the department, including a detailed Trail Management Plan.

(b) The department will review each Oregon Scenic Bikeway proposal for completeness, including whether the application adequately addresses the considerations provided in ORS 390.965(2). The department will provide all complete, eligible applications to the committee. Incomplete or ineligible applications will be returned to the proponents with an explanation of the deficiencies.

(c) The committee will consider routes for designation based on the criteria provided in sections (1)–(3) of this rule and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(d) The committee shall conduct a field review of the proposed route, to include a review conducted on bicycles by no less than three (3) members of the committee.

(e) The committee shall score the route against criteria established in the Oregon Recreation Trails System Act, ORS 390.950 through 390.989 and 390.995, and this rule, including but not limited to:

(A) Emphasis on use of public lands,

(B) Minimizing adverse effects on adjacent landowners,

(C) Harmony with and complement to established forest, agricultural, or other use plans, and

(D) Any natural features, agriculture, forest, unusual or unique landforms, vegetation, water components, scenic beauty and interest, as well as amenities available to the route.

(e) Based on the application, field review and scoring the committee shall determine if the route qualifies to be recommended for designation as an Oregon Scenic Bikeway.

(f) If the committee does not recommend designating the route as an Oregon Scenic Bikeway, it shall provide comments and recommendations to the proponent. The proponent may reapply to the committee only after fully addressing the recommendations of the committee.

(5) Designation Process:

(a) The committee shall provide each recommendation for designation as an Oregon Scenic Bikeway to the director.

(b) The department shall hold public meetings on the recommended designation as provided in ORS 390.965(1).

(c) The department will consult with the Oregon Recreational Trails Advisory Council as provided in ORS 390.977.

(d) After the public meetings required in subsection (b), and in consultation with the council, the director shall either:

(A) Submit the committee's recommendation to the commission for approval or denial of the proposed Oregon Scenic Bikeway; or

(B) Request that the committee provide further consideration of issues presented in the public meeting.

(6) Scenic Bikeway Management

(a) The department will enter into written cooperative agreements with landowners, federal agencies, other state agencies, local governments, private organizations and individuals as necessary to ensure that the development, signing, operation, maintenance, location or relocation of the trail meet the Oregon Scenic Bikeway Standards.

(b) The department shall evaluate each Oregon Scenic Bikeway at least once every five (5) years. The department will provide the committee an evaluation and inventory of the trail features. Upon review, the committee may recommend:

(A) The trail be improved to meet the standards of state designation; or

(B) Removal of Oregon Scenic Bikeway designation when or if the trail no longer meets the criteria.

(c) Signing and Publication of Oregon Scenic Bikeway.

(A) Consistent with the requirements of ORS 390.959, the department will establish sign standards and coordinate sign placement for all routes that the commission designates as an Oregon Scenic Bikeway.

(B) The department will publish on its web page and make available standardized route maps for all Oregon Scenic Bikeways.

Stat. Auth.: ORS 390.971(8)

Stats. Implemented: ORS 390.956, 390.959, 390.962, 390.968 & 390.971

Hist.: PRD 7-2008, f. & cert. ef. 9-15-08; PRD 21-2009, f. & cert. ef. 12-8-09

DIVISION 10

GENERAL PARK AREA RULES

736-010-0005

Purpose and Scope of Rules, Statutory Authority

(1) The purpose of this division is to guide and govern the public use of park properties that are provided by the department pursuant to ORS 390.111 and 390.121, in a manner that upholds their scenic, historic, natural, cultural and recreational values. Additional information about the use of park properties is available on the state park website.

(2) This division is adopted pursuant to the commission's authority to manage, operate and maintain park properties per ORS 390.121; the commission's authority to adopt rules necessary for the use and administration of park properties per ORS 390.124; and the authority of the director and park employees specifically designated by the director to enforce state park rules per ORS 390.050.

(3) This division is based on an assessment of public uses currently allowed on park properties and does not, and is not intended to, create any obligation or liability on the part of the department to supervise or ensure the safety of park property visitors. The department does not assume any liability for the recreational use of park properties by the public beyond those specified in ORS 105.682.

Stat. Auth.: ORS 390.050, 390.111, 390.121, & 390.124

Stats. Implemented: ORS 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0010

Statutory Authority and Procedures

The text of this rule, 736-010-0010, was combined with rule 736-010-0005 above.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.050, 390.111, 390.121, 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0015

Definitions

As used in this division, unless the context requires otherwise:

(1) "Day Use Area" is a park property or portion of a park property that the department has designated for day use only.

(2) "District Manager" means the immediate supervisor of park managers within a specified geographic region of the state.

(3) "Closed Area" means a park or portion of a park that the public is prohibited from entering. Closures will be identified by signs in the park and notices placed on the state park website.

(4) "Commission" means the Oregon State Parks and Recreation Commission.

(5) "Dawn" means 30 minutes prior to sunrise as calculated by the U.S. Naval Observatory.

(6) "Department" means the Oregon State Parks and Recreation Department.

(7) "Director" means the department director.

(8) "Domestic Animals" are those animals whose food and shelter are provided by a human custodian.

(9) "Dusk" means 30 minutes after sunset as calculated by the U.S. Naval Observatory.

(10) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported state park rule violations and to issue oral or written warnings or citations to enforce state park rules.

(11) "Handler" means any person who either brings a domestic animal into a park property or keeps a domestic animal at a park property.

(12) "Motorized Vehicle" means any vehicle being powered by an engine or motor which is capable of transporting a person.

(13) "Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning defined in section (26) below.

(14) "Park Property" means any state park, natural area, way-side, corridor, scenic area, monument, historic structure or area, trail, or recreation area under the jurisdiction of the department.

(15) "Park Employee" means an employee of the department while on duty.

(16) "Park Manager" means the supervisor or designated employee in charge of a park property.

(17) "Park Resource" means any natural feature, wildlife, vegetation, water, cultural artifact, archaeological remains, or human-made structure or feature of a park area.

(18) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(19) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality, or a non-profit entity.

(20) "Public" includes all persons visiting or intending to visit a park property that are not park employees.

(21) "Service Animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

(22) "State Park Rules" mean the rules, regulations, restrictions, prohibitions, or limitations established by this division for the use or protection of park properties.

(23) "State Park Website" means the internet resource with the host name <http://www.oregon.gov/OPRD/Parks/> and its associated links.

(24) "Violate" includes failure to comply.

(25) "Visitor" means any member of the public who arrives at or is present at a park property.

(26) "Wheelchair" means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.050, 390.111 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11; SSP 23-2011(Temp), f. & cert. ef. 8-1-11 thru 1-27-12; PRD 4-2011, f. & cert. ef. 8-1-11; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0020

General Regulations

(1) The director may establish seasons, overnight lengths of stay, camper checkout times and procedures to adjust daily park property opening and closing times, and portions of a park property that are permanently closed or limited to specific uses or activities by the public. These may differ from park property to park property and from time to time, but shall be indicated on the state park website, published maps, brochures, the current state parks guide booklet, or on posted signs at the park property.

(2) Unless otherwise specifically established by the director the following apply:

(a) The maximum length of stay for campers is 14 consecutive nights in a 17 night span. After three nights out of the park, campers may return to start a new stay.

(b) The maximum length of stay for hiker/biker sites is three consecutive nights in a seven night period per park.

(c) Unless otherwise posted or specifically open for an event or activity, the hours of operation for a day use area are dawn to dusk.

(3) The director, by written agreement, may cooperatively exercise jurisdiction and authority over a park property with a county, city, or political subdivision thereof for the purposes of enforcing state park rules, and applicable state, county or city laws.

(4) A person shall observe and abide by all instructions, warnings, restrictions, and prohibitions on posted signs and notices and from park employees.

(5) A park manager or park employee may seek compliance from the public with any state park rule.

(6) A park manager or department enforcement officer may order any person that violates any state park rule to leave a park property.

(7) A park manager or a department enforcement officer may exclude a person that violates any state park rule from the park property or multiple park properties for a specified period of time.

(8) A peace officer may seek compliance from the public with any state park rule and may order a person who violates one or more state park rules to leave a park property.

(9) A peace officer may exclude or recommend that the park manager exclude a person who violates any state park rule; federal, state, county, or city law; or court order from a park property or multiple park properties for a specified period of time.

(10) A park manager or designated park employee may protect the safety or health of the public or protect park resources. This authority includes actions that may temporarily:

(a) Permit or limit specific activities or uses in designated portions of a park property;

(b) Designate a location within a park for a single use to avoid conflicts between users;

(c) Restrict access to or close an entire park property;

(d) Restrict access to or close a portion of a park property; or

(e) Exclude a person from a park property.

(11) A person excluded from a park property may contest the exclusion notice by filing a written appeal within seven days of the exclusion date. The person excluded must submit the appeal to the District Manager responsible for the park where the notice of exclusion was issued.

(12) The following situations are criminal trespass in the second degree, a Class C misdemeanor, per ORS 164.245:

(a) A person ordered to leave a park property that remains present as a visitor;

(b) A person excluded from a park property that enters or remains present as a visitor;

(c) A person enters a closed or restricted portion of a park property; and

(d) A person engages in an activity that has been specifically prohibited or restricted at a park property or a portion of a park property.

Stat. Auth.: ORS 390.050, 390.121, 390.124

Stats. Implemented: ORS 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-

1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 9-1982(Temp), f. & ef. 6-28-82; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 1-1998, f. 1-15-98, cert. ef. 1-20-98; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0022

Violations and Fines

(1) Violation of a state park rule is a Class D violation unless otherwise specified in this division.

(2) Vehicular violations in a park property are classified per the Oregon Vehicle Code, ORS chapters 801 to 826, unless further specified in this division.

(3) Violations that disturb or damage park resources are Class A violations.

(4) Violations that constitute criminal trespass per OAR 736-010-0020 are Class C violations.

(5) Each occurrence of a violation of a state park rule shall be considered a separate offense.

(6) Violations of state park rules are punishable, upon conviction, by a fine as provided in ORS chapter 153 with the exception of the following specific violations:

(a) Violations of OAR 736-015-0030(3)(a), parking without displaying a valid parking permit when required, are Class D violations with a specific fine of \$60;

(b) Violations of OAR 736-010-0026(1)(b), failure of persons under 16 years to wear protective headgear, are Class D violations with a specific fine of \$60;

(7) With the exception of those specific fines set forth in section (6), enforcement officers shall cite on the presumptive fine amounts established by ORS chapter 153.

Stat. Auth.: ORS 153 & 390

Stats. Implemented: ORS 153.018, 390.050, 390.111 & 390.990

Hist.: PR 5-1983, f. & ef. 3-30-83; PRD 2-2000(Temp), f. & cert. ef. 1-14-00 thru 7-12-00; PRD 6-2000, f. & cert. ef. 5-9-00; PRD 1-2004(Temp), f. & cert. ef. 1-15-04 thru 3-31-04; PRD 4-2004, f. 3-15-04 cert. ef. 4-15-04; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0025

Motor Vehicles

(1) All park area roadways are considered public roadways and all provisions of the Oregon Vehicle Code, ORS chapters 801 to 826 are applicable and enforceable on such roadways.

(2) Motorists must comply with motor vehicle regulatory signs posted on park properties.

(3) Motor vehicles, trailers, or other vehicles shall be operated only on public roadways and in other portions of park properties designated for motor vehicle use by signs or park employees.

(4) Where not otherwise posted, motor vehicles may not be operated within a park property at speeds in excess of 25 miles per hour. Violation of this rule is a Class B violation.

(5) Motor vehicles, trailers, or other vehicles shall be parked only in designated parking areas.

(6) The department may have a vehicle towed at the owner's expense if a vehicle is parked in a fire lane, roadway, campsite, entry way, driveway, closed area, or other location in a manner that threatens park resources, impedes park operations, or safety, or any combination thereof.

(7) Abandoning a vehicle or leaving a vehicle unattended for 72 hours or more at a park property without permission from the park manager is prohibited and is a Class B violation. Vehicles abandoned for 72 hours or more or vehicles owned by a person who has been excluded from the park property or who is in violation of criminal trespass may be towed at the owner's expense.

(8) Parking a motor vehicle or a trailer overnight in a day use area is prohibited without written permission of the park manager or designated park employee and such vehicles are subject to towing at the owner's expense.

(9) Unlicensed motorized vehicles, except department service vehicles, may not be operated in park properties unless otherwise posted, with the exception of other power-driven mobility devices operated within the constraints established in section 11.

(10) A person may only operate an Off-Highway Vehicle (OHV) on park property:

(a) In designated off-highway riding areas or on park roadways which are signed for OHV use.

(b) During those seasons and hours of operation which are established by the park manager.

(c) Below the maximum permissible decibel level as published on the state park website on July 1, 2013.

(11) The park manager or a park employee designated by the manager will allow the use of other power-driven mobility devices by individuals with mobility disabilities, in areas open to the public unless it is determined that the device cannot be operated in accordance with legitimate safety concerns for the operator, park visitors, park resources and park facilities. In determining if the device can be operated in a safe manner the manager or designee will consider the following criteria:

(a) The type, size, weight, dimensions, and speed of the device;

(b) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(c) The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(d) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility or area; and

(e) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with applicable state laws and regulations.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.330, 819.110, 819.120, 811 et seq., 814.500, 814.516, 814.550 & 814.554

Hist.: 1 OTC 17, 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 1-1994, f. & cert. ef. 2-9-94; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11; PRD 4-2011, f. & cert. ef. 8-1-11; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0026

Non-Motorized Vehicles, Cycles or Similar Devices

(1) A person operating a bicycle, skateboard, scooter, roller- or inline skate, or other wheeled, operator-propelled equipment that transports the operator on land must comply with the following:

(a) Motor vehicle and bicycle regulatory signs posted in park properties,

(b) Persons under 16 years of age are required to wear protective headgear,

(A) In the event that a person under 11 years of age violates this subsection, the notice of violation shall be issued to the person's parent, legal guardian or person with legal responsibility.

(B) In the event that a person between 11 and 16 years of age violates this subsection, the notice of violation may be issued to the violator or that person's parent, legal guardian or person with legal responsibility.

(c) Restrict speed and manner of operation to a reasonable and prudent practice relative to terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other park users. This includes:

(A) Yielding the right-of-way to pedestrians and animals;

(B) Dismounting and walking in congested areas and posted walk zones;

(C) Slowing down and making presence well known in advance and using caution when overtaking other persons or animals;

(D) Displaying adequate lighting during the hours of darkness, in compliance with ORS chapters 814 to 816;

(E) Using caution when approaching turns or areas of limited sight distance;

(F) Not disturbing or harassing wildlife as provided in OAR 736-010-0055; and

(G) Operating in compliance with any additional requirements identified in ORS 814.488 when on public roads accessible by motor vehicles.

(2) A person may operate non-motorized cycles or similar devices on roads and trails at any park property, except where posted to specifically prohibit or conditionally restrict such activity.

(3) The director or designee may open or close roads and trails to the operation of non-motorized cycles or similar devices, based on an evaluation of factors related to the use of these devices including, but not limited to, the degree of conflict with other users, public safety, or damage to park resources.

(4) A person may not operate non-motorized cycles, scooters, or similar devices in those portions of a park property listed below, except where authorized by the director and posted specifically or conditionally to allow such activities:

(a) Off roads or off trails;

(b) Within designated natural areas, natural forest areas, or natural area preserves except on roads open for motor vehicles;

(c) On docks, piers, floats and connecting ramps; and

(d) In areas specifically designated as free from this use.

(5) Individuals with mobility disabilities can use wheelchairs and manually-powered mobility aids, designed for use by individuals with mobility disabilities, to access any areas open to pedestrian use.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 814.400 - 814.489 & 814.600

Hist.: PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11; PRD 4-2011, f. & cert. ef. 8-1-11; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0027

Boats and Moorage

(1) The park manager may post restrictions or prohibitions on the use of motorboats or other watercraft at park properties.

(2) Boaters must comply with regulatory signs posted in boat launching, moorage and beach areas.

(3) Boaters shall moor or secure their boat in a manner that will not cause personal injury or damage to private property or park resources.

(4) Boaters shall vacate moorages by the designated checkout time on the last day of the rental date unless otherwise posted.

(5) If a person has failed to pay moorage rental rates for two consecutive days, has exceeded the moorage stay limit, or is occupying a moorage slip reserved by another, the department may have all possessions, including the watercraft, removed at the owner's expense. The department is not responsible for any loss or damage to possessions or watercraft.

(6) The park manager may permit or restrict fishing from boat moorage docks.

(7) A person may not swim or water ski within 200 feet of boat moorage docks or facilities.

(8) Motorized boats and all other watercraft are prohibited from entering established swimming areas except for the protection or rescue of human life.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 830.912 & 830.914

Hist.: PR 5-1983, f. & ef. 3-30-83; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0030

Domestic Animals

(1) A handler is responsible for the behavior of their domestic animal and shall either confine their domestic animal or keep it under physical control on a leash not more than six feet long at all times except in designated off leash areas.

(2) In designated off leash areas a handler shall keep their domestic animal under control at all times such that it is within the unobstructed sight of the handler, remains responsive to voice commands, or other methods of control.

(3) Handlers shall carry a leash or restraining device at all times while in designated off leash areas and must promptly leash animals at the request or order of a park employee.

(4) Handlers must prevent their domestic animal from harassing or intimidating people, wildlife, and other domestic animals.

(5) Domestic animals shall only be hitched or confined in a manner that does not cause damage to any park resources.

(6) A handler shall pick up and properly dispose of their domestic animal's waste while at the park property.

(7) With the exception of service animals and miniature horses as described in section (12) below, domestic animals are prohibited in the following locations:

(a) Park property buildings and structures, except for up to a total of two dogs or cats in any combination in yurts and cabins that have been designated as pet friendly by the park manager;

(b) Bodies of water, except hunting dogs are allowed in those areas described in OAR 736-010-0055;

(c) Beaches adjacent to designated for swimming areas; and

(d) Other areas where posted.

(8) The park manager or an enforcement officer may take any measure deemed necessary (including the removal of the animal from the park property) to protect park resources or to prevent interference by the animal with the safety, comfort, or well-being of any person at the park property.

(9) Park employees may seize any domestic animal running at large in a park area and release it to an animal pound or animal control officer or shelter.

(10) The park manager may designate a portion of a park property to be open to dogs off leash for the purposes of training dogs, conducting open field trials, or exercising dogs under the control of the handler.

(11) With the exception of miniature horses as described in section (12) below, a person may not ride, drive, lead, or keep a horse or other large animal at any park property, except on such roads, trails, or areas designated for that purpose. A handler may not hitch or confine a horse or other large animal in a manner that may cause damage to any tree, shrub, improvement or structure.

(12) The park manager or designated park employee will allow the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability and if, in the park manager or designee's assessment, the miniature horse can reasonably be allowed in a specific facility based on consideration of the following:

(a) The type, size and weight of the miniature horse and whether the facility can accommodate these features;

(b) Whether the handler has sufficient control of the miniature horse;

(c) Whether the miniature horse is housebroken; and

(d) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

Stat. Auth. ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; Renumbered from 736-015-0050, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11; PRD 4-2011, f. & cert. ef. 8-1-11; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0035

Livestock and Farming

(1) A person may not harass livestock or interfere with lawfully permitted farming activities or facilities, including fencing, at park properties.

(2) A person may conduct farming activities at park properties only with written permission of the park manager or designated park employee.

Stat. Auth: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0040

Visitor Conduct

(1) A person shall cause, build, maintain, or accelerate a fire at a park property only in:

(a) Park camp stoves or fireplaces provided for such purpose;
(b) Portions of beach areas designated as permissible for campfires; or

(c) Portable stoves used at established campsites, picnic areas, or beach areas where fires are designated as permissible.

(2) A person who has caused, built, or maintained an allowed fire shall:

(a) Burn only paper products and untreated natural wood free of attached metal, nails, glass or plastic objects;

(b) Burn wood no longer than 24 inches in length;

(c) Attend the fire at all times, breaking it apart and extinguishing it completely with water before leaving the immediate area;

(d) Use no gasoline, diesel or any other petroleum-based products to start or maintain a fire; and

(e) Ensure that any fire that they set does not cause personal injury or damage to private property or park resources.

(3) The park manager may temporarily restrict or prohibit fires in otherwise allowed situations due to high fire hazard conditions, and all persons shall observe such restrictions.

(4) A person may not injure, mutilate, deface, damage, harass, or remove any park resource, property, structure or facility of any kind at a park property, except as provided in OAR 736-010-0055.

(5) A person shall in no manner cause any rubbish, garbage, refuse, organic or inorganic waste, diseased or dead animals, or other offensive matter or any abandoned property or material to be placed or left at a park property, except for:

(a) Recreational vehicle sewage and gray water holding tank contents that are disposed of in designated dump stations;

(b) Garbage, trash, and recyclables generated while using a park property and disposed of in the designated containers provided.

(6) A person may not remove items from containers designated for recyclables, garbage, sewage or waste without authorization of the park manager.

(7) A person may not leave personal property or possessions overnight in a day use area without written permission from the park manager or designated park staff.

(8) While many activities are allowed on park property, the following activities are specifically prohibited at park properties, and a person may not engage in:

(a) Using or operating any noise producing machine, vehicle, device or instrument in a manner that disturbs or may disturb other park visitors except as allowed in section 10 below;

(b) Using a public address system or similar device without written permission of the park manager;

(c) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other similar materials or substances without the written permission of the park manager or designated park employee;

(d) Using a metal detector or similar device without written permission of the park manager or designated employee at any park property or portion of a park property not listed on the "Detecting Allowed" list, published on the state park website;

(e) Obstructing, harassing or interfering with a park employee or peace officer in the performance of their duties;

(f) Entering or occupying any building, facility or portion of a park property that has been closed to public access; punishable as a Class C misdemeanor pursuant to ORS 164.245;

(g) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway,

pathway or common area; punishable as a Class C misdemeanor pursuant to ORS 164.245;

(h) Occupying or interfering with access to any structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility; punishable as a Class C misdemeanor pursuant to ORS 164.245;

(i) Fighting; or promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well-being of any person at the park property;

(j) Smoking tobacco products except:

(A) In vehicles and personal camping units in accordance with all applicable laws governing smoking in vehicles;

(B) In designated campsites in developed overnight camping areas, unless temporarily suspended by the park manager due to high fire hazard conditions;

(C) In day use areas managed as Safety Rest Areas through agreements with the Oregon Department of Transportation; and

(D) Where allowed by the park manager for personal use by a member of a federally recognized Oregon tribe as part of their traditional religious, medicinal, or other customary cultural heritage practices;

(k) Activities or conduct which constitutes a public nuisance or hazard;

(l) Public indecency as defined in ORS 163.465;

(m) Base-jumping, hang gliding, paragliding or similar activities without written permission from the park manager except that the use of hang gliders is allowed at Cape Kiwanda State Natural Area;

(n) Discharging any firearm, bow and arrow, slingshot, pellet gun, or other weapon capable of injuring humans or wildlife or damaging property, except at those park property locations and for those purposes specified in OAR 736-010-0055(7);

(o) Placing a sign, marker or inscription of any kind, except in designated areas within a park property, without written permission from the park manager;

(9) A person may only distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park property after they have first obtained permission from the park manager and reported their name, address and number of leaflets to be distributed.

(10) A person must obtain a special use permit from the department for any activity or use as described in OAR 736-016-0005(1), including but not limited to an activity or use within a park property that:

(a) Is an organized group activity or event attended by over 50 people;

(b) Uses a portion of a park property to the exclusion of other persons or the department;

(c) Modifies or embellishes the park property, or places structures, such as tents, chairs, arches, and similar structures on the park property in a manner outside of normal recreational use, as determined by the park manager or enforcement officer;

(d) Uses public-address, amplification or lighting systems, other than those designed for personal use;

(e) Charges money for participation or admission;

(f) Involves the sale of products or services;

(g) Could disturb the natural, cultural, scenic and recreational resources in the park property or adjacent areas;

(h) Could pose a safety or access concern for other park users or for those involved in the event or activity.

(11) A person who obtains a special use permit under OAR chapter 736, division 16 must comply with all the provisions of division 16, special use permit conditions, and with instructions from the department.

(12) All money or goods, having a value of \$100 or more and found by the public at park properties, must be turned over to the park manager or a park employee. All found money or goods will be disposed of according to department policy adopted in accordance with ORS 98.005.

(13) The director or designee may close rock formations and cliffs within a park property to descending, scaling or technical

rock climbing. A person that engages in such activities at such locations commits a Class C misdemeanor as provided in section (8)(f).

(14) The director or designee may close park access to lakes, streams or waterfalls for kayaking, boating, diving, swimming, or other water recreation activities when the park manager has determined the activity to be a danger to participants. Persons accessing through closed areas to engage in such activities commit a Class C misdemeanor as provided in section (8)(f).

(15) A person using a park property shall pay rates and comply with procedures and restrictions as established in OAR chapter 736, division 15 for use of designated facilities or the purchase of services or products.

Stat. Auth.: OAR 390.124

Stats. Implemented: ORS 390.111, 163.465, 433.835 - 433.875 & 498.006

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 8-1993, f. & cert. ef. 5-11-93; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1996, f. 8-14-96, cert. ef. 8-15-96; PRD 4-2000, f. & cert. ef. 4-5-00; Renumbered from 736-010-0045, 736-010-0070, 736-010-0125, 736-015-0045 & 736-015-0067, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 11-2008, f. & cert. ef. 12-15-08; PRD 11-2009, f. & cert. ef. 6-18-09; PRD 2-2013, f. & cert. ef. 7-19-13; PRD 1-2014, f. & cert. ef. 3-6-14

736-010-0050

Overnight Use

(1) Overnight use is prohibited on the ocean shore abutting park properties and in any park property or portion of a park property not specifically designated for camping.

(2) A person must comply with seasons, overnight lengths of stay, and camper checkout times as provided in OAR 736-010-0020.

(3) Overnight facilities shall be occupied only by persons and allowed visitors who have paid overnight use fees as established and required in OAR chapter 736, division 15.

(4) Owners of vehicles in a campground later than 10:00 PM are subject to overnight use fees and must comply with OAR chapter 736, division 15.

(5) A park employee may authorize more than one vehicle to occupy an individual campsite, subject to OAR chapter 736, division 15, but individual campsites shall not be occupied by more than one recreational vehicle at the same time, unless authorized by the park manager.

(6) A maximum of eight individuals may occupy one campsite unless otherwise specified by the park manager.

(7) Quiet hours at park property campgrounds are 10:00 P.M. to 7:00 A.M., and a person may not make, cause, or allow to be made loud noise in a manner that disturbs or may disturb park visitors during these times.

(8) Campsites must be occupied the first night after any belongings are left in the site and must remain occupied each night during the entire length of stay unless other arrangements have been made with the park manager or designated park employee. If a person has failed to pay camping rental rates for two consecutive days or has exceeded the length of stay time limit the department may have all possessions removed from the campsite at the owner's expense. The department will not be responsible for any loss or damage to possessions.

(9) A person must be 18 years of age or older to reserve and register for campsites, cabins, yurts, and other overnight facilities in parks areas.

(10) The registered camper shall be present in the campsite each night of the stay or they shall provide park staff a means of contacting them if they will not be in the campsite overnight.

(11) The registered camper shall be responsible for the activities of all users of the site.

(12) The park manager or designated park employee may require that all food, garbage and equipment used to cook or store food, when not attended, be placed in a vehicle or hard sided camping unit.

Stat. Auth: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 1-1990, f. & cert. ef. 5-14-90; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 4-2001, f. 2-28-01, cert. ef. 3-1-01; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 4-2011, f. & cert. ef. 8-1-11; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0055

Park Resources

(1) A person may not excavate, injure, disturb, destroy, alter or remove any archaeological, cultural, or historical site, object, or material from a park property, unless authorized by the director as defined in ORS 390.235 and OAR 736-051-0060 to 736-051-0080.

(2) A visitor may only conduct the following activities with the written permission of the director, manager, or designated park employee unless the activity is specifically allowed by other sections of this rule:

(a) Dig up, or remove any sand, soil, rock, historical, or fossil materials;

(b) Place, remove, roll, or move any stones, logs or other objects that may endanger a person or damage park resources;

(c) Pick, cut, mutilate, trim, uproot, or remove any living vegetation;

(d) Harass, disturb, pursue, injure or kill wildlife; or

(e) Introduce or release animals onto the park property.

(3) A person may remove small quantities of natural materials from a park property for personal use without written permission of the department, but only if done in accordance with the following provisions:

(a) Collection is done at a park property or portion of a park property at which the department has not specifically prohibited the removal of natural products either by location or time of year through the posting of signs, publishing of maps or brochures, or indicating on the state park website; and

(b) Collection is for souvenirs that may serve as a reminder of a person's park visit and includes only a small quantity of agates and other rocks, driftwood, or similar non-living items collected for non-commercial, personal use.

(4) Notwithstanding section (2) or (3), a person must comply with existing state and federal rules and regulations concerning mining or the protection of public archeological features or artifacts on state and federal lands.

(5) Unless otherwise posted a person may gather for personal consumption berries, fruits, mushrooms, or similar edibles in quantities not to exceed five gallons per person per day.

(6) A person may not uproot living plants or collect roots, tubers, flowers, and stems except with written permission of the park manager or designated park employee and only for scientific collection or research purposes, or by a member of a federally recognized Oregon tribe for personal consumption as part of their traditional religious, medicinal, or other customary cultural heritage practices. Driftwood may be taken in small amounts in accordance with OAR 736-026-0010.

(7) A person may only give or offer food items to wildlife within a park property when authorized by the park manager.

(8) A person or handler may only hunt, pursue, trap, kill, injure, molest, or remove any wildlife or disturb their habitats within a park property under the following provisions:

(a) In those park properties where hunting and trapping is specifically allowed by this rule, but only in compliance with the rules and regulations of the Oregon Department of Fish and Wildlife.

(b) In those park areas where hunting is allowed, dogs being used for hunting game birds or unprotected wildlife or being trained for hunting or tracking shall be in the handler's control at all times.

(c) While seasonally hunting waterfowl at the following park properties:

(A) Bowers Rock State Park;

(B) That portion of Elijah Bristow State Park located north of the main channel of the Middle Fork of the Willamette River;

(C) Portions of Fort Stevens State Park adjacent to Trestle Bay as posted;

(D) That portion of Willamette Mission State Park located on Grand Island in Yamhill County;

(E) That portion of Government Island State Recreation Area including the perimeter of both Government and Lemon Islands, not above the mean high water mark as posted;

(F) That portion of Rooster Rock State Park which includes Sand Island as well as the bank which runs parallel to the south of the island, except during the special waterfowl hunting season which starts in September, as posted;

(G) That portion of Benson State Recreation Area at Dalton Point, north of I-84, starting 300' east of the boat ramp running to the eastern most tip of the property at river mile 134 as posted;

(H) That portion of Starvation Creek State Park, north of I-84, river mile 159.6 to 160.2 as posted;

(I) That portion of Mayer State Park including the entire Salisbury Slough area and the pond 800' Northwest of the boat ramp as posted.

(d) Seasonal hunting of game wildlife is allowed within Deschutes River State Recreational Area south of the stream gauge cable crossing line and parallel extensions of the cable crossing line to the east and west park boundaries.

(e) Seasonal hunting of deer is allowed in portions of La Pine State Recreation Area north of the east-west power line road, approximately one mile north of the campground booth.

(f) Seasonal hunting of game wildlife and upland game birds is allowed on department property at Cottonwood Canyon State Park except:

(A) Hunting is not allowed within the 200 yard area surrounding the boat launch at the J.S. Burres site at Cottonwood Bridge, and

(B) Hunting is not allowed in any area closed by the director or designee for public safety or park resource protection purposes. The department will post such closures at designated park entrances.

(g) Seasonal hunting of upland game birds is allowed in Succor Creek State Park, except within 500 feet of camping areas located near the Succor Creek Bridge and posted Safety Zones.

(h) Trapping is allowed only by special permit from the department in Bowers Rock State Park, Deschutes State Recreation Area, Elijah Bristow State Park, and Willamette Mission State Park.

(i) Hunting is allowed with shotguns or bows and arrows only, during authorized seasons in all Willamette River Greenway Corridor parcels, except in those parcels described below, where all hunting is prohibited:

(A) Wapato Access (Virginia Lake), River Mile 17.0–18.0, Multnomah Channel, Right bank when facing downstream;

(B) Crown Zellerbach, River Mile 21.3, Main Channel, Left Bank when facing downstream;

(C) Merrell (Mary S. Young State Park), River Mile 23.6, Main Channel, Left Bank when facing downstream;

(D) Willamette Shores, Inc. (Mary S. Young State Park), Main Channel, River Mile 24.0, Main Channel, Left Bank when facing downstream;

(E) Meldrum Bar Park (City of Gladstone) River Mile 24.2–24.4, Main Channel, Right Bank when facing downstream;

(F) Hattan-Fisher, River Mile 24.3, Main Channel, Left Bank when facing downstream;

(G) Dahl Park (City of Gladstone) River Mile 24.7, Main Channel, Right Bank when facing downstream;

(H) Coalca Landing, River Mile 30.7, Main Channel, Right Bank when facing downstream;

(I) Lang, River Mile 30.7, Main Channel, Left Bank when facing downstream;

(J) Pete's Mountain Landing, River Mile 30.8, Main Channel, Left Bank when facing downstream;

(K) Peach Cove Landing, River Mile 31.5, Main Channel, Left Bank when facing downstream;

(L) Brandborg, River Mile 32.0, Main Channel, Left Bank when facing downstream;

(M) Asche, River Mile 34.1, Main Channel, Left Bank when facing downstream;

(N) Molalla River State Park, River mile 34.6–36.1, Main Channel, Right Bank when facing downstream NOTE: hunting is not allowed along the Molalla River within the park property.

(O) Willamette Meridian Landing, River Mile 37, Main Channel, Left Bank when facing downstream;

(P) French Prairie Access, River Mile 41.0, Main Channel, Right Bank when facing downstream;

(Q) Parrett Mountain Access, River Mile 45.5–46.0, Main Channel, Left Bank when facing downstream;

(R) Hess Creek Landing, River Mile 53, Main Channel, Left Bank when facing downstream;

(S) Lincoln Access, River Mile 76.2–77.0, Main Channel, Left Bank when facing downstream;

(T) Lincoln Access (Doak's Ferry) River Mile 77.6, Main Channel, Left Bank when facing downstream;

(U) Darrow Rocks Access, River Mile 78.1, Main Channel, Left Bank when facing downstream;

(V) Ross Island Sand & Gravel (Salem Waterfront), River Mile 82.8, Main Channel, Right Bank when facing downstream;

(W) Hall's Ferry Access, River Mile 91.3, Main Channel, Right Bank when facing downstream;

(X) Springfill Access, River Mile 113.8, Main Channel, Left Bank when facing downstream;

(Y) Takenah Landing (City of Albany), River Mile 118.5, Main Channel, Left Bank when facing downstream (Closed only for 500 feet west of parking area);

(Z) Jasper Bridge, River Mile 195.2, Middle Fork, Right Bank when facing downstream;

(AA) Minshall, Eller, River Mile 119.9, Main Channel, Left Bank when facing downstream;

(BB) Jones, Lanham, River Mile 120.1, Main Channel, Left Bank when facing downstream;

(CC) F. Schmidt, P. Schmidt, River Mile 120.3, Main Channel, Left Bank when facing downstream;

(DD) Browns Landing, River Mile 167.25, Main Channel, Left Bank when facing downstream;

(EE) Truax Island Access, River Mile 168.7, Main Channel, Left Bank when facing downstream (closed only for 500 feet west of parking area);

(FF) Marshall Island Access (Banton), River Mile 168.7, Main Channel, Left Bank when facing downstream;

(GG) Log Jam Access, River Mile 194.4–194.8, Middle Fork, Left Bank when facing downstream;

(HH) Pengra Access, River Mile 195.2, Middle Fork, Right Bank when facing downstream;

(II) Cougar Mountain Access, River Mile 15.5, Coast Fork, Right Bank when facing downstream; and

(JJ) Lynx Hollow Access, River Mile 16.5, Coast Fork, Left Bank when facing downstream;

(j) Trapping is allowed only with written authorization from the department in the Willamette River Greenway Corridor parcels closed to hunting, as listed above. Trapping is allowed in all other Willamette River Greenway Corridor parcels.

(k) When hunting on those properties allowed by this rule hunters may not erect structures or blinds with the exception of portable blinds and tree stands that must be removed daily.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 498.002 & 498.006

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 10-1991, f. & cert. ef. 6-18-91; Renumbered from 736-015-0065, 736-015-0072, 736-015-0080, 736-015-0090, 736-015-0095, 736-015-0100, 736-015-0130, 736-015-0135, 736-015-0150 & 736-015-0160, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 11-2008, f. & cert. ef. 12-15-08; PRD 11-2009, f. & cert. ef. 6-18-09; PRD 2-2010(Temp), f. & cert. ef. 2-3-10 thru 7-30-10; PRD 7-2010, f. & cert. ef. 6-15-10; PRD 10-2010, f. & cert. ef. 10-13-10; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0060

Alcoholic Beverages

(1) A person under 21 years of age may not possess or use alcoholic beverage(s) at any park property.

(2) A person may only possess or use alcoholic beverages in the following areas with written permission from the park manager:

(a) That portion of Dabney State Recreation Area downstream from the Stark Street bridge;

(b) Lewis and Clark State Recreation Site between the east bank river frontage road and the Sandy River from I-84 upstream to the park boundary;

(c) TouVelle State Recreation Site;

(d) Tumalo State Park day use area;

(e) Bonnie Lure State Recreation Area;

(f) Warm Springs boat launch access, Deschutes River, Jefferson County;

(g) Iwetemlaykin State Heritage Site;

(h) State Capitol State Park;

(i) Cline Falls State Scenic Viewpoint; and

(j) Other park properties as signed.

(3) A person may not use an Oregon Liquor Control Commission licensed server to dispense any alcoholic beverage including malt beverages from kegs without a permit from the park manager.

Stat. Auth: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 34(Temp), f. & ef. 8-7-74; 1 OTC 39, f. 10-1-74; 1 OTC 40, f. 11-1-74; OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1990(Temp), f. & cert. ef. 8-1-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91PR 16-1992, f. & cert. ef. 12-1-92; PR 8-1996, f. 8-14-96, cert. ef. 8-15-96; Renumbered from 736-015-0058, 736-015-0063, 736-015-0070, 736-015-0097, 736-015-0144, 736-015-0146 & 736-015-0148, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2012, f. & cert. ef. 11-16-12; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0065

Rooster Rock State Park — Nudity

(1) A person of post-pubescent age or over 12 years of age is prohibited from engaging in nudity, as defined in ORS 167.060, in any part of the park property west of the established boundary running north and south 100 yards east of the easternmost beach access stairway and east above the approximate high water mark of the Columbia River in Rooster Rock State Park.

(2) Section (1) applies only where the person engaging in nudity is in public view. Section (1) does not apply to nudity in a public bathhouse, lavatory, or within tents, campers or other enclosures which are screened so that the nudity cannot be viewed by the public.

Stat. Auth: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 34(Temp), f. & ef. 8-7-74; 1 OTC 39, f. 10-1-74; 1 OTC 40, f. 11-1-74; OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1990(Temp), f. & cert. ef. 8-1-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91PR 16-1992, f. & cert. ef. 12-1-92; PR 8-1996, f. 8-14-96, cert. ef. 8-15-96; Renumbered from 736-015-0110, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2013, f. & cert. ef. 7-19-13

736-010-0066

State Capitol State Park — Recognitions and Honorary Features

(1) Purpose. The purpose of this rule is to provide guidance for honoring individuals, groups, or events that are of exceptional significance to Oregon or to the history of the nation, while respecting existing features and aesthetics of the State Capitol State Park and the Capitol Mall area, as well as the values of Oregonians, in general.

(2) Recognitions and honorary features may include installations of plantings, traditional park amenities, or features that are consistent with the department's State Capitol State Park Comprehensive Plan.

(3) Application and Approval Process.

(a) Persons interested in sponsoring recognitions or honorary feature shall make application to the director in a manner prescribed by the department.

(b) The application shall indicate how the proposal meets the criteria listed in section (4).

(c) The department will review and evaluate the application and coordinate with the applicant to obtain any additional information that the department may require to adequately review the proposal.

(d) The director shall determine whether the department deems a proposal significant or minor, taking into consideration the design, size, scope, location, construction process, and infrastructure needs of the proposal.

(e) The department will appoint a department liaison to the applicant for significant proposals. The liaison will assist the applicant with preliminary design and the review process.

(f) The application shall provide an identified estimate of costs and funding sources for design, construction, regular maintenance, and repair of the proposed feature.

(g) For significant proposals, the Assistant Director, Heritage Programs will convene a review committee that may be comprised of a representative of the State Capitol Foundation, Governor's Office, Legislative Administrative Committee, Capitol Planning Commission, City of Salem, a citizen at large, and at least one representative of an agency whose offices are located on the Capitol Mall. The review committee shall provide an opportunity to consider input from the public. It will review significant proposals to assess their compliance with criteria and objectives prescribed in this rule and make a recommendation to the director for further action that may include suggestions for changes to the design or location.

(h) Upon receiving a positive recommendation from the review committee, the director will present the proposal to the State Parks and Recreation Commission for consideration and possible approval.

(i) The department accepts no responsibility for any expenditure incurred by the applicant prior to approval by the Commission or subsequently. Construction or installation may not begin until the Commission grants approval and the applicant has obtained all necessary state and local permits.

(j) For minor proposals to place recognitions or honorary features consisting of small plantings, benches and other small installations that are consistent with the State Capitol State Park Comprehensive Plan, the director may consider and approve or deny such requests without further review or approval.

(4) Criteria for Recognitions and Honorary Features.

(a) The subject of the recognition shall be widely known and appreciated for great contributions and significance to the state of Oregon, the history of the nation, or both;

(b) The subject of the recognition, if a person, shall have been deceased for at least ten years, and if an event, shall have occurred at least ten years prior;

(c) The proposed feature shall enhance the aesthetics of the park and shall be consistent with the adopted State Capitol State Park Comprehensive Plan;

(d) The proposed feature shall not:

(A) Be located in the open, grassy areas of the Central Mall and Willson Park ovals;

(B) Disturb major trees and plantings;

(C) interfere with traffic flows or sightlines; or

(D) Disturb other installations and structures;

(e) There shall be demonstrated, statewide, public support for the recognition or honorary feature;

(f) There shall be specific, valid reasons why other venues, that have been carefully explored, were not a suitable alternative location.

(g) The proposed feature shall not create unmitigated or significant additional liability; repair and maintenance cost; or safety and security concern, for the department;

(5) Costs. All expenses for design, fabrication, and installation shall be borne by the applicant. The department shall assist the

applicant to determine the requirements for installation. Prior to installation, the applicant shall provide for deposit in the Recognition and Honorary Feature Maintenance Trust Fund an amount equal to 15 percent of the project replacement value to be expended for maintenance and repair of recognitions and honorary features in the State Capitol State Park.

(6) Design Approval and Installation.

(a) The department must approve the final design of the project. The proposed feature must meet all applicable codes and standards.

(b) For projects constructed and installed by the applicant, the department will assign a project manager to provide construction inspection and oversight. The applicant is responsible for acquiring all necessary permits prior to construction.

(c) For projects constructed and installed by the department on behalf of the applicant, the applicant shall reimburse the department for the costs of bid preparation, contracting services, permits, construction inspection and project management oversight.

(d) The applicant shall remain responsible and liable for the project until it is accepted in writing by the department.

(7) Recognitions and honorary features shall become the sole property of the department.

(8) The department shall maintain a registry of existing and future recognitions and honorary features in the agency's asset records.

(9) Maintenance.

(a) The department shall establish a Recognition and Honorary Feature Trust Fund from funds provided by applicants and donations. The fund shall be used to defray the costs of maintenance and repair of recognitions and honorary features in the State Capitol State Park.

(b) The department may relocate or remove existing recognitions or honorary features, if determined necessary. The department will consult a review committee prior to relocation or removal.

(c) If living recognitions or honorary features such as trees or plantings die, are damaged, or present a hazard to the public or adjacent buildings or structures, the department may remove or replace them at its discretion. If plaques or recognition items are associated with the removed trees or plantings, they will be offered first if possible to the family of the individual recognized, or secondarily, to the State Capitol Foundation for archiving.

Stat. Auth.: ORS 390.050, 390.121 & 390.124

Stats. Implemented: ORS 390.111

Hist.: PRD 1-2011, f. 2-14-11, cert. ef. 2-15-11

DIVISION 15

RATES

736-015-0006

Definitions

As used in this division, unless the context requires otherwise:

(1) "Adoptive Foster Families" means one or more persons who have adopted one or more foster children pursuant to ORS 418.285. At least one of the children must currently be under 18 years of age and living with the Adoptive Foster Family.

(2) "Commission" means the Oregon State Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "Director" means the director of the department.

(5) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations, and to issue oral or written warnings or citations to enforce park area rules.

(6) "Foster Families" means persons with their foster children, who currently maintain:

(a) A Foster Home, a Relative Home for Children or a Foster Home for Children with Developmental Disabilities, as described in ORS 418.625 or 443.830;

(b) A Foster Home certified by the Oregon youth Authority under OAR chapter 416, division 530;

(c) A Foster Home certified by any of the nine federally-recognized tribal governments as listed in ORS 172.110; or

(d) A therapeutic Foster Home for Children with Developmental Disabilities provided through a third party provider that has been certified by the Department of Human Services.

(7) "In Kind Services" means a group or person who provides, at the direction of park staff, materials or services whose value to the park area equals or is greater than the normal fees.

(8) "Marketing and Promotion" generally are agency-sponsored events that are of regional or statewide significance promoting tourism or partnerships with local communities, other agencies or economic development.

(9) "Motor Vehicle" as defined in ORS 801.360 means a vehicle that is self-propelled or designed for self-propulsion. ORS 801.590 further defines "vehicle" as "any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means."

(10) "Non-Profit Entity" means a group having a 501(c)(3) exempt status filed with the US Department of Internal Revenue Service.

(11) "Park Area" means any state park, wayside, corridor, monument, historic, or recreation area, except portions of ocean shore recreation areas not abutting a state park or wayside, under the jurisdiction of the department.

(12) "Park Employee" means an employee of the department.

(13) "Park Facility" includes but is not limited to individual and group campsites, day use areas and shelters, cabins, yurts, tepees, camper wagons, meeting halls, lodges, pavilions, and other amenities of the department.

(14) "Park Manager" means the supervisor or designated park employee in charge of a park area.

(15) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(16) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(17) "Reduced Service Level" means a reduction in the normal level of service that a person may reasonably expect due to the department's action/inaction or park facility failure lasting longer than 24 hours.

(18) "Reservation Cancellation" means the person requests an existing reservation be ended without the creation of a new reservation.

(19) "Reservation Change" means a modification to an existing reservation by a person that changes the arrival or departure dates, a complete change to reservation dates, or changes the type of site from the original request.

(20) "Special Events" may be an activity sponsored or co-sponsored by the department, an event that provides entertainment to park visitors, or other activities that promote the mission of the department or Oregon tourism.

(21) "Split Reservation" means a stay at a park area for one person for one continuous date range that requires a mid-stay move from one site to another.

(22) "Traditional Tribal Activities" generally means traditional, spiritual, natural and cultural resource practices that would have been or which still are conducted by a federally recognized tribe or its members.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.050, 390.111, 390.121 & 390.124

Hist.: PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 5-2011, f. & cert. ef. 8-1-11; PRD 5-2012(Temp), f. & cert. ef. 6-26-12 thru 12-20-12; PRD 9-2012, f. & cert. ef. 11-16-12

736-015-0010

General Regulations

(1) The commission shall establish fees through rule to promote department financial self-sufficiency and based on the following criteria:

- (a) Prevailing rates for comparable facilities;
- (b) Day of week;
- (c) Season of year;
- (d) Amenities of the park area and site;
- (e) Marketing opportunities to encourage use and revenues.

(2) Unless posted otherwise, a person shall pay established rates prior to use.

(3) The director may establish rates and rental charges for services, facilities and products that are optional, nonessential or complement the basic services described in this division. The director shall establish rates that take into consideration comparable services by other providers and marketing opportunities to encourage use and revenues.

(4) Pursuant to ORS 105.672 to 105.696, fees charges under this division are for use of the assigned area or park facility of the state park land for camping, picnicking, or boating and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 10-1983(Temp), f. & ef. 12-28-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1994, f. & cert. ef. 7-11-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0098, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11

736-015-0015

Reservations

(1) Purpose: Based on the department's goal to promote outdoor recreation in Oregon, the department established a reservation program to increase use of park areas and facilities. The director may designate specific park facilities to offer for reservation through a centralized call center and through the Internet.

(2) General Regulations:

(a) Reservations will be accepted and processed for designated park facilities through the Oregon State Parks Reservation Center and the Internet.

(b) A person may make a reservation a minimum of one day and a maximum of nine months prior to the arrival date.

(c) A person must be 18 years of age or older to make a reservation.

(d) A person who qualifies under the Americans with Disabilities Act (ADA) may reserve accessible campsites.

(e) A person may not make reservations for multiple park areas for the same date range.

(f) A person reserving a boat slip (where available) must also reserve another facility at the same park area.

(g) Reservations and registrations for horse camping sites shall be made only for people camping with their horses or similar large animals unless otherwise specified by the park manager.

(h) Split reservations are allowed to accommodate persons. Only one split reservation shall be allowed per reservation.

(i) Only the person whose name appears on the original reservation or their designee (as documented in the reservation records) may change or cancel an existing reservation or access information associated with a reservation.

(j) Customer information may be made available upon written request in compliance with ORS Chapter 192 and department policy.

(k) Specific information regarding a confirmed reservation will not be released to the public as provided in ORS 192.501 and 192.502.

(3) Transaction Fees and Deposits:

(a) The department will charge a \$8 non-refundable transaction fee for each reservation made through the centralized call center or the Internet.

(b) Reservations require a facility deposit equal to the full amount charged for use of the facility during the reservation period.

(c) All fees are due at the time the person makes the reservation.

(4) Payment Methods:

(a) A person may use a valid credit card (VISA or MasterCard) or bank debit card with a VISA or MasterCard logo.

(b) A person may pay by personal check, money order, certified check, department issued gift certificates or travelers check (in U.S. funds).

(c) The department must receive payment within five calendar days of the date the person makes the reservation. If payment is not received within this time frame, the department will cancel the reservation. The person remains responsible for the \$8 transaction fee for each reservation request.

(d) If a banking institution returns a check to the department for any reason or if a credit or debit card is declined, the department will attempt to contact the person. Inability to resolve the payment dispute will result in a reservation cancellation. The person will remain responsible for the \$8 transaction fee for each reservation.

(e) Government agencies and non-profit entities may request to be invoiced for services. Reservations should be made at least 30 days prior to arrival. The department must receive payment within 25 days of the date the reservation is made. If payment is not received the department will cancel the reservation. The department will bill for the \$8 transaction fee for each reservation.

(f) A person must pay all outstanding account balances prior to making future reservations.

(5) Reservation Cancellations:

(a) A person may cancel their reservation prior to the day of arrival by calling the Oregon State Parks Reservation Center. An automated reservation cancellation voice mail system is available seven days a week, 24 hours a day.

(b) A person may also cancel their reservation prior to the day of arrival using Internet or E-mail. The department will post detailed instructions for cancelling a reservation on the department's web site which is available seven days a week, 24 hours a day.

(c) A person must contact the specific park where their reservation is held to cancel reservations on the scheduled day of arrival.

(d) In order to receive a refund of all use fees, a person must cancel the reservation for individual campsites, deluxe and rustic cabins, deluxe and rustic yurts, horse camps, tepees, and boat moorages three or more days prior to the arrival date. If the cancellation is received less than three days in advance of the arrival date, a fee equal to one night's or one day's rental for the facility will be forfeited.

(e) In order to receive a refund of all use fees for group camps, day use areas, meeting halls, lodges, Silver Falls Youth Camp, Silver Falls Ranch, Shore Acres Garden House, Pavilions, RV Group Areas and other special facilities as designated by the department, a person must cancel the reservation at least one month prior to arrival. If the cancellation request is received less than one month in advance of the arrival date, a fee equal to one night's or one day's rental for the facility will be forfeited.

(6) Reservation Changes:

(a) The department will charge an \$8 non-refundable transaction fee for each reservation change.

(b) A person may request to change a confirmed reservation by calling the Oregon State Parks Reservation Center during normal business hours Monday through Friday.

(c) A person may also request to change a reservation through Email by accessing the department's web site and following the posted reservation change procedures. The web site is available seven days a week, 24 hours a day.

(d) A person may not make any date changes to reservations more than eight months in advance of the arrival date.

(e) Reservations made for six or more consecutive nights that are later shortened will be charged the nightly rate for each night removed in addition to an \$8 transaction fee for the change.

(f) A person must request a reservation change for campsites, deluxe and rustic cabins, deluxe and rustic yurts, tepees, and boat moorages three or more days in advance of the arrival date. Changes are not permitted within three days of the arrival date.

(g) A person requesting a reservation change for group camps, day use areas, meeting halls, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas, and other special facilities as designated by the department must request the change at least one month prior to arrival date. Changes are not permitted within one month of the arrival date.

(7) Claiming Reservations

(a) Customers with confirmed reservations must arrive before 1:00 p.m. the day following the first scheduled day of their reservation.

(b) The reserved site must remain occupied each night during the entire length of stay.

(c) In emergency situations, customers may request Park Manager approval for late arrivals not to exceed 6:00 p.m. of the second day of the reservation. Site fees for the first night will be charged regardless of the arrival time.

(d) Customers, including those that have pre-registered, who do not check in at the park or notify park staff that they will be delayed prior to 1:00 p.m. of the second day of the reservation will be considered a "no show" and the entire reservation will be cancelled. The first night fee and any transaction fees previously collected for the reservation will be retained. Any remaining nightly fees paid to confirm the reservation will be refunded.

(8) Reservations to Accommodate Organized Groups:

(a) General: To accommodate group use in campgrounds designed primarily for individual camping and to bring efficiencies to the group reservation process, the director may offer group camping to persons reserving multiple individual camping sites.

(b) The department will require full payment for all sites at the time the reservation is made.

(c) A person must reserve a minimum of 20 individual overnight campsites for their group to qualify for group camping reservations.

(d) The department will charge a non-refundable reservation fee of \$8 for each site. An \$8 non-refundable transaction fee will be charged for any date or site change made to a reservation included in the group.

(e) Reservations made on the Internet for a group of 20 or more sites are not eligible for group camping.

(f) A person may reserve a meeting hall (where available) for one day's free use when the minimum number of sites are reserved and used. The person may reserve the meeting hall for additional days at the normal rental rate.

(g) Special facilities such as lodges, Silver Falls Youth Camp, Silver Falls Ranches, and other special facilities as designated by the department are not included in the group camping program.

(h) A person must make reservations at least two months prior to arrival date to qualify for group camping benefits.

(9) When only a portion of a specific type of facility in a park is designated as ADA compliant, the department will hold the facility designated as ADA compliant for use by individuals with disabilities until all other facilities of that type have been reserved and the accessible facility is the only remaining facility of that type available in the park.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f.

& ef. 2-9-79; 1 OTC 22-1979(Temp), f. & ef. 9-9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 2-1994, f. & cert. ef. 2-9-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 10-2003, f. & cert. ef. 10-17-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0099, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2009, f. 6-2-09, cert. ef. 8-1-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 5-2011, f. & cert. ef. 8-1-11; PRD 9-2012, f. & cert. ef. 11-16-12; PRD 1-2015, f. & cert. ef. 9-28-15

736-015-0020

Overnight Rentals

The director may designate a Type I campsite rental schedule at selected high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The director is authorized by the commission to include transient lodging taxes in the nightly rental rate and to increase the rental rate to the nearest whole dollar. The department shall retain the additional revenue. Campsite Rental rates (per night per site before tax):

(1) Full Hookup Campsite: Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

(a) Type I: \$28.

(b) Type II: \$24.

(2) Electrical Hookup Campsite: Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

(a) Type I: \$26.

(b) Type II: \$22.

(3) Tent Campsite: Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

(a) Type I: \$19.

(b) Type II: \$17.

(4) Primitive Campsite: Provides campsite with table and stove; water and sanitary facilities may be some distance away. All primitive campsites: \$10.

(5) Yurt: Rustic units provide a temporary tent structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Deluxe units add kitchen facilities, bathrooms and showers.

(a) Rustic: \$40.

(b) Deluxe: \$79.

(6) Cabin: Rustic units provide a hard-walled wooden structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Totem units are primitive log units. Deluxe 1 units add kitchen facilities, bathrooms and showers.

(a) Totem: \$24.

(b) Rustic: \$40.

(c) Deluxe 1: \$79.

(7) Tepee: Tepee replica units vary in diameter from 18' to 26' and provide heat, lights and beds along with outdoor picnic facilities. All tepees: \$40.

(8) Hiker/Boater/Bicyclist Campsite: Provides cleared area for campers without motor vehicles; water and sanitary facilities may be some distance away. All hiker/boater/bicyclist campsites: \$5 per camper per night.

(9) Extra Vehicle in Campground: An additional rental rate of \$7 per vehicle is charged when an extra vehicle is driven into the campground and remains overnight.

(10) Extra Motorcycle in Campground: If the initial campsite rental is to a person riding a motorcycle, and the first extra vehicle is a motorcycle, the second motorcycle will not be charged. Additional motorcycles in the site will be charged \$7 as an extra vehicle. The \$7 extra vehicle charge will allow up to two motorcycles per extra vehicle charge.

(11) Pre-Registration (where available): The department may allow a person with a reservation for individual tent, electrical or full hook-up campsites to expedite the check-in process by registering on-line prior to or upon arrival at the park area.

(12) Pursuant to ORS 105.672 to 105.696, overnight rental charges under this rule are for use of the assigned area or park facility of the state park land for camping and not for any other recreational purpose or area of state park land. The immunities pro-

vided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124 & 2010 HB 3673

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23(Temp), f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 86(Temp), f. 7-21-77, ef. 7-25-77; 1 OTC 90, f. & ef. 9-26-77; 1 OTC 1-1978, f. & ef. 2-23-78; 1 OTC 4-1979, f. & ef. 2-9-79; 1 OTC 6-1979, f. & ef. 3-29-79; 1 OTC 8-1979 (Temp), f. & ef. 5-17-79; 1 OTC 14-1979(Temp), f. & ef. 6-21-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 1-1981(Temp), f. 1-8-81, ef. 1-12-81; PR 9-1981, f. & ef. 4-6-81; PR 14-1981, f. & ef. 10-23-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 2-1987, f. & ef. 3-27-87; PR 1-1988, f. & cert. ef. 3-25-88; PR 6-1989(Temp), f. 12-29-89, cert. ef. 1-8-90; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 16-1992, f. & cert. ef. 12-1-92; PR 2-1994, f. & cert. 2-9-94; PR 6-1995, f. & cert. ef. 7-14-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0100, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11; PRD 4-2013, f. & cert. ef. 10-1-13

736-015-0026

Group Day Use

(1) At designated park areas, a person may reserve a group picnic area(s) by calling Reservations Northwest during normal business hours. The park manager will determine the maximum group size for each park facility.

(2) The department will charge group picnic rental rates to offset additional park administration and maintenance costs:

(a) Base rate (0–50 people) — \$50;

(b) Charges for persons in excess of the 50 person base rate will be \$1 per person

(3) The park manager may make advance arrangements with the group leader for parking, supervision, cleanup, checkout time, and other pertinent details.

(4) Upon arrival, the group leader will check in with the park manager who will direct the group to the reserved area.

(5) The group must have adult supervision at all times.

(6) Pursuant to ORS 105.672 to 105.696, group day use rental charges under this rule are for use of the assigned area or park facility of the state park land for picnicking and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124 & HB 3673 (2010)

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 83(Temp), f. 5-19-77, ef. 6-1-77; 1 OTC 85, f. & ef. 7-20-77; 1 OTC 3-1979, f. & ef. 2-9-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1992, f. & cert. ef. 2-14-92; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0115, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11

736-015-0030

Day Use Parking Permit

(1) Purpose: Based on the department's goal to manage increased use of park areas, the director may require a motor vehicle day use parking permit at selected park areas. This charge is a parking fee and not a charge for recreational purposes under ORS 105.672 to ORS 105.696. The immunities provided under ORS 105.682 apply to use of state park land for recreational purpose.

(2) General Regulations:

(a) Parking permits are to be clearly displayed through the windshield of motor vehicles with the expiration date visible;

(b) Persons with motorcycles or other motor vehicles, such as convertibles, where the permits could be subject to theft, may keep the permit with them and must show it to an enforcement officer or park employee upon request.

(3) Day Use Parking Permit Fees:

(a) Daily Motor Vehicle — \$5;

(b) 12-month Permit — \$30;

(c) 24-month Permit — \$50;

(4) The department may enter into a written agreement with privately owned commercial vendors and non-profit cooperative associations affiliated with the department under ORS 390.143 to sell 12-month and 24-month permits:

(a) The director shall establish a minimum allowable fee of \$1 for vendors who sell the 12-month and 24-month permits;

(b) Non-profit cooperative associations affiliated with the department may by agreement retain fees in excess of the minimum vendor fee for use in funding interpretive programs in park areas;

(c) The vendor's fee will be included in the price of the permit;

(d) Only a park employee may issue replacement permits in the event an original permit is lost, stolen, or mutilated.

(5) Daily Access Exceptions: The director may grant exceptions to the day-use permit requirement under the following circumstances:

(a) Emergency vehicles;

(b) Government vehicles on official business;

(c) Business and delivery vehicles on official business;

(d) A person who is currently a registered camper at a park area and clearly displays the overnight rental receipt;

(e) Park concessionaires and their employees;

(f) A person entering the park to engage in specially permitted non-recreation activities;

(g) Park volunteers on duty in the park;

(h) A person with a permit issued by another entity with which the department has a written agreement to honor their passes;

(i) Other persons as designated by the director.

(6) Park Areas Subject to Day-Use Fees: Park areas at which a day use fee shall be charged include: Fort Stevens State Park, Cape Lookout State Park, Ecola State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), L.L. "Stub" Stewart Memorial State Park, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoege State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Area (Winberry), Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & HB 3673 (2010)

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10; Administrative correction 10-26-10; PRD 7-2011, f. & cert. ef. 11-28-11

736-015-0035

Fee Waivers and Refunds

(1) The director, at the direction of the commission, may waive, reduce or exempt fees established in this division under the following conditions:

(a) A person or group provides in-kind services or materials equal to or greater than the value of the applicable rate, as determined by criteria approved by the director;

(b) Marketing or promotional considerations, including but not limited to special events and commercial filming, that promote the use of park areas and Oregon tourism;

(c) Traditional tribal activities in accordance with policy adopted by the Commission;

(d) Reduced service levels at a park, campsite or other facility as determined by the Park Manager.

(2) Reservation Facility Deposit Fee Waivers for individual primitive, tent, electric, full hook-up or horse camp campsites only:

(a) The facility deposit fee is waived for all persons with reservations commencing on State Parks Day (first Saturday of June). All other fees apply.

(b) The facility deposit fee is waived for foster families and adoptive foster families as defined in OAR 736-015-0006. The fee waiver is limited to the first two campsites, and an adult care provider must be present with the foster children. All other fees apply.

(c) The facility deposit fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel as provided in ORS 390.124. All other fees apply.

(d) The person making the reservation must pay the \$8 non-refundable transaction fee at the time the reservation is made. This fee is not included in the fee waiver.

(e) Reservations made on the Internet are not eligible for fee waivers.

(3) Overnight Rental Fee Waivers for individual primitive, tent, electric, full hook-up or horse camp campsites only:

(a) The overnight rental fee, including any extra vehicle fees, is waived for all persons on the night of State Parks Day (first Saturday of June). All other fees apply.

(b) The overnight rental fee is waived for foster families as defined in OAR 736-015-0006. The fee waiver is limited to the first two campsites, and an adult care provider with one or more foster children must be present. The fee waiver is limited to a total of fourteen days per calendar month. All other fees and rules apply.

(c) The overnight rental fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel on leave as provided in ORS 390.124. The waiver of individual campsite fees shall be limited to no more than five consecutive days per stay and no more than ten days total in a calendar month. The qualifying veteran or active duty military personnel on leave must be present in the site to qualify for the waiver. All other fees and rules apply.

(d) The director may waive the overnight rental fee for volunteer hosts traveling to an assignment at a park area.

(4) Day Use Parking Fee Waivers:

(a) The day use parking fee is waived for all persons on State Parks Day (first Saturday of June).

(b) The day use parking fee is waived for U.S. veterans with a service connected disability or active duty U.S. military personnel on leave as provided in ORS 390.124.

(c) The day use parking fee is waived for an adoptive foster family, as defined in OAR 736-015-0006, with an adopted foster child under 18 years of age or a foster family, as defined in 736-015-0006, if the foster care provider has a valid Certificate of Approval to Provide Foster Care in Oregon issued by the Oregon Department of Human Services. The waiver shall be valid until the expiration date of the Certificate of Approval to Provide Foster Care or the adopted foster child turns 18 years of age.

(d) All other fees apply.

(5) Proof of Eligibility for Fee Waivers

(a) The department will issue Veterans and Foster families who have provided the department valid proof of eligibility an OPRD Special Access Pass. Pass holders must use the pass to identify themselves as a qualified recipient of fee waivers at state park campgrounds and day use areas. Proof of eligibility must be provided through an application process outlined on the OPRD web site at www.oregonstateparks.org or by calling the OPRD Information Center at 1-800-551-6949 for instructions.

(b) The department will accept the following forms of proof to qualify for fee waivers as a U.S. veteran with a service connected disability:

(A) Disabled Veteran's license plate issued by the Oregon DMV;

(B) A current Disabled Veteran Permanent Hunting/Angling License issued by the Oregon Department of Fish and Wildlife;

(C) A Washington State Parks Disabled Veteran's ID card;

(D) Any VA photo identification card bearing the words "service connected";

(E) Any letter issued by the United States Department of Veterans Affairs (VA) stating eligibility for any of the above programs, or bearing the words "service-connected disability."

(c) The department will accept the following forms of proof to qualify for fee waivers as an adoptive foster family, as defined in OAR 736-015-0006, with an adopted foster child under 18 years of age or a foster family, as defined in 736-015-0006:

(A) Certificate of Approval to Maintain a Foster Home for Children with Developmental Disabilities;

(B) Certificate of Approval to Maintain a Foster Home for Children;

(C) Certificate of Approval to Maintain a Relative Home for Children;

(D) Written certification from Department of Human Services identifying the applicant as an adoptive or guardian foster family.

(d) The department will not issue an Active Duty Military on official leave a Special Access Pass. Such customers must pay any applicable fee and after their visit may request a refund by sending a letter from their commanding officer on official letterhead stating they were on leave for the dates they camped and their camping receipt to Reservations Northwest within 30 days after departure date of the stay. A refund of applicable fees will be sent within three weeks of the receipt of their request.

(6) The department may revoke an OPRD Special Access Pass issued under section (5) if:

(a) The pass is used to waive fees beyond the monthly allowable limits;

(b) The pass holder does not occupy a site when fees have been waived under authority of their pass; or

(c) The pass holder transfers their pass to another person to use.

(7) A person may request a refund under the following circumstances.

(a) Reservations Northwest may refund a reservation fee when the department has made a reservation error.

(b) Reservations Northwest may refund a facility deposit and may waive the cancellation or change rules when requested by the person due to the following emergency situations:

(A) Emergency vehicle repair creates a late arrival or complete reservation cancellation;

(B) A medical emergency or death of a family member creates a late arrival or complete reservation cancellation;

(C) Acts of Nature create dangerous travel conditions; or

(D) Deployment of military or emergency service personnel creates a late arrival or complete reservation cancellation.

(c) The director or his/her designee may approve a refund under other special circumstances.

(d) All requests for refunds listed above must be sent in writing to Reservations Northwest via email, fax or surface mail to be considered for a refund.

(e) The department will issue refunds for specific site or park area closures and no written request is required.

(f) The park manager may only issue a refund at the park due to the person leaving earlier than expected, and while the person is present and has signed for the refund. Once the person has left the park, refund requests must be sent to Reservations Northwest for processing.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 7-2002, f. & cert. ef. 7-1-02; PRD 6-2003, f. 10-3-03 cert. ef. 11-1-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0120, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 5-2005(Temp), f. 10-14-05, cert. ef. 11-11-05 thru 4-30-06; PRD 1-2006, f. & cert. ef. 2-14-06; PRD 8-2009, f. & cert. ef. 6-2-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10; PRD 5-2011, f. & cert. ef. 8-1-11; PRD 4-2013, f. & cert. ef. 10-1-13

736-015-0040

Miscellaneous Rentals and Products

(1) Firewood: Where conditions permit, firewood will be sold.

(2) Boat Moorage Facilities — \$10 per day per boat: Where boat moorage facilities are provided they may only be reserved with other campsite reservations.

(3) Showers — \$2 per person: Charged where showers are available to non-campers in a campground.

(4) Horse Camping Area:

(a) Type I non-hookup site: \$19 per night per camper unit;

(b) Type II non-hookup site: \$17 per night per camper unit;

(c) Type I hookup site: \$28 per night per camper unit;

(d) Type II hookup site: \$24 per night per camper unit;

(e) Type I group site (accommodates 3-5 units): \$57 per night;

(f) Type II group site (accommodates 3-5 units): \$51 per night;

(g) Type I double site: \$47 per night per two camper units;

(h) Type II double site: \$41 per night per two camper units;

(i) A camper unit consists of a motor home, trailer, tent or camper.

(5) Group Tent Camps: Small group tent areas available in some parks which are designed to accommodate approximately 25 people. Water and toilet facilities are provided nearby, but shower facilities may be some distance away.

(a) Base rate (0-25 people): \$70 per night;

(b) Charges for persons in excess of the 25 person base rate will be \$3 per person per night.

(6) Group RV Camp: Special camp area designed to accommodate RV's requiring hookups in a group setting. The camp has electrical hookups available, water, table, stove, and access to a restroom.

(a) Base rate (up to 10 units): \$100 per night;

(b) Charges for units in excess of the 10-unit base rate: \$10 per unit per night.

(7) Pets Staying Overnight in Facilities (Yurts, Cabins, Tepees): Not more than two pets (cat or dog only) staying overnight in facilities: \$10 per night.

(8) Ranch/Bunkhouse: Large communal type bunkhouse facility which includes kitchen and restroom facilities. Minimum fee of \$200 per night for up to 25 persons and \$8 per person per night thereafter up to the maximum occupancy.

(9) Youth Camp (Silver Falls): Large capacity group camp facility with cabins, commercial kitchen facilities, dining hall, showers, meeting halls and swimming facilities. Minimum fee of \$800 per night for up to 80 persons and \$10 per person per night thereafter up to a maximum occupancy of 250 persons.

(10) Lodge/Community Hall: Large meeting facility with kitchen and restroom facilities which may be reserved overnight: \$200 per night.

(11) Meeting Hall: Small meeting facility, generally associated with a campground, which may have limited kitchen facilities and restrooms: \$75 per day.

(12) Pavilion: A large, covered day-use facility for group use: Minimum fee of \$100 per event for up to 50 people, and \$1 per person thereafter up to the maximum occupancy of the facility.

(13) Shore Acres Garden: All facility prices, no matter which facility or combination of facilities are booked, start with a minimum of 50 persons per event. Additional people beyond the minimum of 50 are \$1 per person up to a maximum of 100 people per event.

(a) Event Site: A lawn area outside the formal garden or a section of the formal garden (NOTE: sites in the garden must be booked in conjunction with another facility): \$100 per event.

(b) Pavilion (inside the formal garden and must be booked with an event site or the garden house): \$100 per event.

(c) Garden House (inside the formal garden and must be booked with the Pavilion): \$200 per event.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77;

1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0125, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10; PRD 4-2013, f. & cert. ef. 10-1-13

736-015-0043

Effective Dates

Amendments to this division adopted at the September 24, 2013 OPRD Commission meeting become effective upon filing except rate increases in OAR 736-015-0020 and 736-015-0040 which become effective on May 1, 2014. Amendments to this division adopted at the September 29, 2009 OPRD Commission meeting become effective upon filing except:

(1) OAR 736-015-0030 becomes effective January 1, 2010;

(2) OAR 736-015-0020 and 736-015-0040 become effective May 1, 2010.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist: PRD 15-2009, f. & cert. ef. 9-29-09; PRD 4-2013, f. & cert. ef. 10-1-13

DIVISION 16

NON-TRADITIONAL PARK ACTIVITIES

736-016-0005

Purpose and Applicability

This division is intended to secure public health and safety, protect park resources and facilities and assist in maintaining facilities and services in instances where a person requests to use state park land or facilities for a non-traditional park use. These special use permit rules:

(1) Allow access to park land for a wide variety of non-traditional park uses by requiring a special use permit if the event or activity, including commercial filming:

(a) Is an organized group activity or event attended by over 50 people; however, groups larger than 50 people that reserve overnight or day use facilities do not require a special use permit under this division unless one or more of the conditions listed in subsections (b) through (i) also exist;

(b) Is an activity associated with a construction project that is not specifically provided for under contract with the department, including contracts related to natural resource projects, placement of utilities, access roads and structures on park land;

(c) Uses park lands, structures or facilities in a manner not expressly provided for under OAR chapter 736, divisions 10, 15, 20 and 21;

(d) Substantially restricts department or public access to or use of park lands, structures or facilities;

(e) Requires placement of structures, facilities, or both, other than those normally used in recreational activities the department traditionally allows on the site;

(f) Could disturb the natural, cultural, scenic or recreational resources on park land;

(g) Could pose a safety concern for other park users or for those involved in the event or activity;

(h) Includes temporary, short-term and non-exclusive vending, advertising or sales activities; or

(i) Includes non-exclusive commercial uses when financial transactions are conducted on park land.

(2) Establish department procedures for considering applications for authorizing non-traditional park uses by special use permit; and

(3) Pertain to all non-traditional park uses as described in section (1) unless otherwise authorized by a contract or other agreement between the department and the person conducting the activity or use.

Stat. Auth.: ORS 184 & 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PR 11-1981(Temp), f. & ef. 6-26-81; PR 15-1981, f. & ef. 11-20-81; PR 11-1986, f. & ef. 7-9-86; PR 5-1992, f. & cert. ef. 9-24-92; PRD 7-2012, f. & cert. ef. 10-17-12

736-016-0010

Policies

(1) Pursuant to ORS 390.635 and 390.660 the department has jurisdiction and regulatory authority to manage the Ocean Shore State Recreation area for outdoor recreational purposes consistent with ORS 390.010.

(2) Pursuant to ORS 390.111, the department has jurisdiction and regulatory authority to manage park lands for outdoor recreational purposes consistent with ORS 390.010.

(3) All non-traditional park uses shall conform to applicable local, state, and federal laws.

(4) The department will evaluate a special use permit application under this division using the following criteria:

(a) Whether the activity or use is consistent with local, state, and federal laws;

(b) Whether the activity or use complies with the requirements of this division;

(c) Whether the activity or use, in both nature and timing, will substantially disrupt traditional public park use or unduly inconvenience park neighbors or the general public;

(d) Whether the activity or use will have an adverse impact on public health, safety or welfare, or natural and cultural resource values;

(e) Whether the activity or use is consistent with any natural or cultural resource management plans, policies, or procedures of the department;

(f) Whether the applicant has established their ability to finance, plan and manage the activity in accordance with sanitation, safety, medical care, fire control, security, crowd, noise, and traffic control requirements, and consistent with the protection of park resources;

(g) Whether the applicant has demonstrated experience in performing similar activities in the past or has previously done the event at the proposed location;

(h) Whether the measures planned to mitigate changes in customary park usage or damage to park resources caused by the activity or use will offset the negative impact of the activity;

(i) Whether the applicant has demonstrated an ability to fully meet the terms and conditions of the permit; and

(j) Whether the activity will have a positive impact on the local community, environment, or park land or facilities.

(5) The department will consider applications in the order they are received, however applicants who have conducted the same event at the same location for at least five continuous years may reserve their event's traditional location and date by delivering a letter of intent to the department no less than nine months in advance of the planned event date. The applicant must obtain a permit pursuant to this division.

(6) The department shall administer this division with the objective that persons applying for and holding a special use permit to use park land receive consistent, predictable and fair treatment and that the department's mission is supported.

(7) A person may not sponsor, promote or conduct a non-traditional park activity on park land without having first obtained a special use permit from the department.

Stat. Auth.: ORS 184 & 390

Stats. Implemented: ORS 390.111 & 390.121

Hist.: PR 11-1981(Temp), f. & ef. 6-26-81; PR 15-1981, f. & ef. 11-20-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PRD 7-2012, f. & cert. ef. 10-17-12

736-016-0012

Definitions

As used in this division unless the context requires otherwise:

(1) "Applicant" means a person applying for a special use permit for an activity on or use of park land.

(2) "Application Fee" means the amount of non-refundable money an applicant pays to the department when submitting a special use permit application.

(3) "Assign" means a transfer by the permittee intended to allow another person the use of special use permit.

(4) "Commercial Filming" means any still or video filming venture which involves equipment such as props, sets, lighting, or sound, and is of such a scale that it falls under OAR 736-016-0005(1).

(5) "Contract" means a legally executed document signed by the department as defined in OAR 137-046-0110(8).

(6) "Department" means the Oregon Parks and Recreation Department

(7) "Director" means the Director of the Oregon Parks and Recreation Department.

(8) "Non-Traditional Park Use" means any organized activity, gathering or use conducted in whole or in part on park land, that is not a recreational use allowed by the posted park regulations or permitted under the provisions of OAR chapter 736, divisions 10, 15, 20 and 21 and which requires a special use permit under this division.

(9) "Park Land" means any land that is leased, owned or managed by the department including state parks, waysides and scenic, historic or state recreation areas, including the Ocean Shore State Recreation area, recreational grounds or places acquired by the state for scenic, historic, natural, cultural or recreational purposes except as otherwise provided by law.

(10) "Person" means an individual at least 18 years of age, a political subdivision or public agency; any corporation, association, firm, partnership, limited liability company, joint stock company; or quasi-public corporation registered to do business in the State of Oregon.

(11) "Public Agency" means an agency of the federal government, the State of Oregon or any political subdivision thereof, or county, city, special district or other public or municipal corporation, and any instrumentality thereof.

(12) "Special Use Permit" allows uses defined in this division on a specific area of park land for a specific activity or use under specific terms and conditions defined in the permit. The permit consists of an approved permit application form, signed by the park manager or designee and the applicant, and any attachments required by the department.

(13) "Structure" means anything placed, constructed, or erected on park land.

(14) "Traditional Park Use" means a recreational use that park lands or structures were designed to accommodate in compliance with the posted park regulations or other provisions of OAR chapter 736, divisions 10, 15, 20 and 21.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111 & 390.121, 390.124

Hist.: PRD 7-2012, f. & cert. ef. 10-17-12

736-016-0015

Special Use Permit Application Form and Requirements

(1) A person proposing an activity or use on park land subject to a special use permit under this division must apply to the department on a form provided by the department. The form will provide:

(a) Space to fill in the information required under section (5); and

(b) A current rate sheet listing overnight, day use and group rates from OAR chapter 736, division 15;

(c) A list of insurance requirements including the activities or uses considered as high risk for purposes of insurance limits and the department criteria for evaluation of insurance adjustments; and

(d) An explanation of the process and criteria used by the department in evaluating a special use permit application under this division; and

(e) Examples of activities that are allowed without a special use permit, activities that will require a special use permit and activities that will not be allowed, to assist applicants in determining if they need a special use permit.

(2) An application for a special use permit must fully complete the form described in section (1) and be accompanied by an application fee in the amount of \$100 unless the department waives such fee under OAR 736-016-0025.

(3) The department will not accept applications more than nine months in advance of the activity or use commencement date.

(4) Unless an exception is approved by the park manager or designee, the department will not consider a special use permit application received less than 30 days prior to the commencement date of the activity or use.

(5) To be accepted by the park manager or designee for consideration, an application must include the following information or an explanation why the information is not applicable to the proposed activity or use:

- (a) Date of application;
- (b) Name of park, ocean shore or other recreation area where the activity or use on park land is proposed;
- (c) Name and address of applicant;
- (d) Name, address and phone number of the person who will be on site and responsible for the permit compliance during the activity or use;
- (e) Purpose for which the permit is being requested;
- (f) Date(s) and hour(s) of activity, including setup and cleanup times;
- (g) Description of the activities to be performed on park land;
- (h) The number of participants involved;
- (i) A site plan indicating the location of activities and construction of all facilities, structures and utilities, including staging areas;
- (j) Description of parking and security arrangements;
- (k) Description of plans for use of amplified sound, alcohol, participant entry/ticket fees and sale of food, beverages, souvenirs, goods or other services;
- (l) A plan for timely cleanup and restoration of park area;
- (m) Subsections (a) through (l) are not an exclusive list of the elements required for a permit. The applicant shall anticipate other measures necessary to ensure public safety and protect park resources, depending upon the character of the park area and conditions existing at the time.

(6) Any activity or use shall comply with applicable state and local codes, rules and ordinances. The applicant will obtain any additional state and local permits required for the activity or use prior to the beginning of the activity or use. The applicant must provide the park manager proof that all required permits have been obtained upon request.

(7) Within 14 calendar days of receiving a complete application, the park manager or designee, based on an evaluation of the criteria in OAR 736-016-0010 (4), will approve, approve with conditions, request additional information, or deny the permit application consistent with the policies set forth in this division.

(8) If the department determines the application will not meet evaluation criteria provided in OAR 736-016-0010 (4) the applicant may modify and resubmit the application.

(9) The department will return a denied application to the applicant with an explanation listing one or more reasons for denial.

(10) An applicant may appeal a permit application denied by a department manager to that manager's supervisor for reconsideration.

(11) The department will not require an additional application fee if an application is resubmitted to the department within 120 days from the date the department returned the application.

Stat. Auth.: ORS 184 & 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PR 11-1981(Temp), f. & ef. 6-26-81; PR 15-1981, f. & ef. 11-20-81; PR 11-1986, f. & ef. 7-9-86; PR 5-1992, f. & cert. ef. 9-24-92; PR 7-1994, f. & cert. ef. 7-11-94; PRD 7-2012, f. & cert. ef. 10-17-12

736-016-0020

Special Use Permit Conditions and Requirements

(1) Upon the approval of the permit application, the department will issue a special use permit with the terms of permit to be strictly observed by the applicant. The permit shall at a minimum require that:

(a) The applicant assumes full responsibility and liability for damages or injury to any member of the public arising out of the

activity or use, including personal injury and property damage, and for any damage to park property, including natural and cultural resources;

(b) The applicant shall indemnify and hold harmless the State of Oregon, its Parks and Recreation Commission and members thereof, the Oregon Parks and Recreation Department, and its officers, agents and employees against any and all damages, claims or causes of action arising from or in connection with the activity or use;

(c) Prior to the permit being issued, the applicant shall provide the department proof of current liability insurance coverage which names the State of Oregon, its Parks and Recreation Department, its Parks and Recreation Commission, and the officers, agents and employees thereof as additional insureds. The insurance coverage shall have limits of not less than \$1,000,000. For activities or uses that are assessed as having high risk exposure (e.g. public fire works displays), insurance of \$4,000,000 shall be required, per the maximum level of the State's Tort Claim Limits, in ORS 30.271. The department safety and risk manager may reduce or waive insurance limits if one or more of the following apply:

(A) Insurance is not required if the applicant is a Cooperative Association with a current agreement under OAR 736-002-0010 and the activity or use being permitted has been listed on their annual plan for the current year;

(B) Insurance is not required if the activity or use being permitted is being conducted in partnership with OPRD through an agreement with the applicant;

(C) Commercial insurance is not required if the applicant is a public agency; or

(D) Insurance requirements may be reduced if approved by the OPRD Safety & Risk Manager based on a risk assessment considering the level of risk and measures that will be put in place to reduce risk;

(d) If required as a condition of the special use permit, the applicant shall deposit with the department a cash deposit, bond or savings certificate in an amount as specified in the approved permit at least 72 hours prior to the planned activity or use. This deposit, bond or savings certificate shall be security for the applicant's faithful performance of all permit conditions and to cover any damages sustained by the department as a result of breach. The department shall determine the amount of security based on exposure and potential for damages from the activity or use.

(2) The department will not consider an application for a special use permit unless:

(a) The applicant or its principal representative is at least 18 years of age, or 21 years of age if alcohol is to be served at the activity or use; and

(b) The applicant has satisfied all outstanding liabilities and requirements due to the department and arising out of any prior activity or use involving park land.

(3) A person may not assign a special use permit to any other person.

(4) The department may, in its discretion, cancel a special use permit effective immediately on notice to the applicant in the event of any emergency, significant law enforcement problem, or substantial threat to public welfare, safety or property arising from or affecting the activity. The department may cancel a special use permit effective immediately upon any breach of other permit conditions.

(5) The department may stop the activity or use, and require the applicant to clear the activity or use area of visitors, in the event of any emergency, significant law enforcement problem, substantial threat to public safety or park resources or a violation of park rules arising out of or related to the activity or use.

(6) The applicant shall terminate the activity or use immediately upon receipt of notice from the department that the permit has been cancelled and shall thereupon be responsible for the immediate cleanup and restoration of the park area.

(7) The department retains the right to enter onto any park land at any time for purposes of inspection or management.

(8) The permittee shall dispose of all solid and liquid waste in manner approved by the department and shall not permit debris, garbage or other refuse to accumulate or be discharged into any waterway or ocean shore area.

(9) The permittee shall not cut, destroy, remove, or permit to be cut, destroyed or removed any vegetation on park land except with the written permission of the department.

(10) The permittee shall conduct all operations within the permit area in a manner which protects natural and cultural resources, protects water quality, and does not contribute to soil erosion or growth of noxious weeds.

Stat. Auth.: ORS 184 & 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PR 11-1981(Temp), f. & ef. 6-26-81; PR 15-1981, f. & ef. 11-20-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 5-1992, f. & cert. ef. 9-24-92; PRD 7-2012, f. & cert. ef. 10-17-12; PRD 7-2012, f. & cert. ef. 10-17-12

736-016-0023

Fees and Charges

(1) In addition to the use fees in section (2), an applicant must submit a non-refundable permit application fee of \$100. The application fee is waived if the department charges the applicant a monthly or annual rental lease or access fee.

(2) The applicant shall pay to the department in advance of the event the following daily use fees plus any camping and lodging fees established for persons authorized to stay overnight in connection with the event based on the attendance estimate on the permit application:

(a) Commercial Film Use: Number of Participants — Daily Use Rate

(A) 1–5 — \$100;

(B) 6–30 — \$150;

(C) 31–60 — \$300;

(D) 61 or more — \$400.

(b) Daily Use Fee: Daily group use rate established in OAR 736-015-0026.

(c) Overnight Use Fee

(A) Fees for the use of designated overnight facilities are the standard rate established in OAR chapter 736, division 15.

(B) Fees for overnight use of an area not normally designated for overnight use are calculated at the standard group camp rate established in OAR 736-015-0040.

(3) The department may increase or decrease fees in section (2) after the event when:

(a) The applicant requests an adjustment and provides documentation of attendance showing that the attendance varies more than 10 percent from the estimated attendance; or

(b) The department has documentation of attendance that varies more than 10 percent from the estimated attendance.

(4) Special uses conducted in partnership with the department may have a negotiated fee.

(5) The department will assess an hourly rate of \$20 (minimum four hours) for each department employee that the department requires to be on site to monitor or assist in the activity or use.

(6) Annual or monthly rental, lease and access fees may be assessed and paid to the department.

Stat. Auth.: ORS 184 & 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PR 5-1992, f. & cert. ef. 9-24-92; PR 7-1994, f. & cert. ef. 7-11-94; PRD 7-2012, f. & cert. ef. 10-17-12

736-016-0025

Fee Waivers, Reductions and Exemptions

(1) The department may exempt public agencies from special use permit requirements upon the department's determination that an exemption will not create significant risk to the health and safety of the public or damage to park resources.

(2) In lieu of the fees charged under OAR 736-016-0023, the department may allow the applicant to provide in-kind services or other value in accordance with OAR 736-015-0035.

(3) Special uses conducted in partnership with the department may have a negotiated fee.

Stat. Auth.: ORS 183 & 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PR 11-1981(Temp), f. & ef. 6-26-81; PR 15-1981, f. & ef. 11-20-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. 5-14-90; PR 5-1992, f. & cert. ef. 9-24-92; PRD 7-2012, f. & cert. ef. 10-17-12

DIVISION 17

VETERANS AND WAR MEMORIAL GRANTS

736-017-0000

Purpose

The purpose of this division is to establish the procedures and criteria that the Oregon Parks and Recreation Department (OPRD) will use in recommending Veterans and War Memorial Grants for funding to the commission pursuant to ORS 390.180(1)(d).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0005

Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means the formal contract between OPRD and the Project Sponsor describing the terms and conditions associated with any granting of funds. Also called "Grant Agreement."

(2) "Commission" means the Oregon Parks and Recreation Commission.

(3) "Committee" means the Veterans and War Memorial Grant Review Committee described in OAR 736-017-0010.

(4) "Department" means the Oregon Parks and Recreation Department (OPRD).

(5) "Construction" means the creation of a new memorial on public property.

(6) "Director" means the director of the Oregon Parks and Recreation Department.

(7) "Eligible Project" means a construction or restoration undertaking which satisfies the requirements of the Veterans and War Memorial Grant Program.

(8) "Governmental Entity" means a body of government, whether district, local, regional, state, federal or tribal.

(9) "Grant" means an award from the Veterans and War Memorial Grant Program.

(10) "Grant Application" means the form and its format as developed by the OPRD that an applicant uses to request a grant.

(11) "Match" means project sponsor's budgeted funds, donated funds, value of equipment, materials, labor, planning, or any combination thereof.

(12) "Maintenance" means the continuation or preservation of a memorial. It includes the routine maintenance of or around a memorial such as landscaping, power washing, general cleaning, dusting, or removal of trash.

(13) "Memorial" means a monument or place designed to commemorate or preserve the memory of wars involving the United States of America or to honor veterans of the Armed Forces of the United States of America.

(14) "Nonprofit Veterans' Organization" means a group that:

(a) Is a nonprofit group that represents veterans of the Armed Forces of the United States, or is established for the purpose of supporting or recognizing such veterans;

(b) Has an established membership, that includes officers, and bylaws; and

(c) Is physically located in Oregon or has a chapter that is physically located in Oregon.

(d) Is also called a "Veterans' Nonprofit Organization".

(e) Is recognized as an existing non-profit status by the Internal Revenue Service.

(15) "OPRD" means the Oregon Parks and Recreation Department.

(16) “Planning” means the research, design, engineering, environmental, and site survey of any Memorial construction or restoration project.

(17) “Project Completion” means satisfaction of all requirements of a grant agreement as determined after review or inspection by OPRD.

(18) “Project Authorization” means the Agreement that authorizes the project as signed by the director and the Project Sponsor.

(19) “Project Sponsor” means the recipient of the grant funds and the responsible party for implementation of the project. A Project Sponsor must be a local or regional government.

(20) “Public Property” means public lands, premises and buildings, including but not limited to any building used in connection with the transaction of public business or any lands, premises or buildings owned or leased by a government entity.

(21) “Restoration” means the improvement, rehabilitation, repair, or reconstruction of an existing memorial. It does not include routine maintenance.

(22) “Veterans and War Memorial Grant Instruction Manual” means a manual prepared by the OPRD containing state policies, procedures, instructions and grant criteria to assist applicants and Project Sponsors wishing to participate in the Veterans and War Memorial Grant Program.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06; PRD 4-2012, f. & cert. ef. 5-11-12; PRD 2-2015, f. & cert. ef. 10-1-15

736-017-0010

Veterans and War Memorial Grant Review Committee

(1) The Veterans and War Memorial Grant Review Committee shall be composed of five members selected by the department for their interest or expertise in veteran or military issues, at least two of which represent either a veterans organization or a governmental agency responsible for the administration of law relating to veterans or for their knowledge of memorial construction or preservation.

(2) The Veterans and War Memorial Grant Review Committee shall follow grant application review procedures as provided in this division.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06; PRD 4-2012, f. & cert. ef. 5-11-12; PRD 2-2015, f. & cert. ef. 10-1-15

736-017-0015

Director Authority

(1) In addition to those considered by the committee, the director may recommend eligible projects to the commission for grant funding. The director may recommend grants for construction and restoration.

(2) The director may recommend funding eligible projects either in whole or in part.

(3) The director may establish minimum or maximum grant award amounts each funding cycle.

(4) The director may establish funding priorities or other criteria for each funding cycle.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0020

Eligibility

(1) The applicant and project sponsor must be either a local or regional government.

(2) Site. To be eligible for a grant, a memorial must be placed on public property. If the property is not owned or controlled by the project sponsor, there must be an agreement in place between the project sponsor and the public property owner stating that the memorial will remain in place for at least 25 years.

(3) The project sponsor must agree in writing to keep in place and maintain the memorial for at least 25 years from completion of the project. If the property is not owned or controlled by the project sponsor, there must be an agreement in place between the project

sponsor and the public property owner stating that the memorial will remain in place for at least 25 years.

(4) Matching Requirements. The Veterans and War Memorial Grant program provides, subject to the availability of funds, for up to 80 percent funding assistance with a minimum of 10 percent cash match. The project sponsor shall provide a minimum 10 percent cash match. The project sponsor may provide the remaining match by planning, construction, or restoration work performed following project authorization.

(5) Ineligible costs for grant:

(a) Overhead — The regular operating expenses of either the applicant or the governmental entity receiving the memorial such as rent, building upkeep, utilities, and all fixed costs associated with the daily operations of a business, agency or group;

(b) Overtime;

(c) Expenses for equipment or materials used outside the scope of this project.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06; PRD 4-2012, f. & cert. ef. 5-11-12; PRD 2-2015, f. & cert. ef. 10-1-15

736-017-0025

Application Process

(1) When the commission has Veterans and War Memorial Grant Program funds to award, the director will announce through a variety of media the availability of, application procedures for, deadlines and other information for applying for a grant, including whether the director has established funding priorities for that funding cycle.

(2) Applicants must submit a grant application to the department. Applicants may use the “*Veterans and War Memorial Grant Instruction Manual*” for guidance in preparing and submitting a grant application to the department.

(3) A grant application that contains multiple work items must be structured so that the commission may award partial funding to a specific work item proposed in the grant application.

[ED. NOTE: Forms referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0030

Evaluation of Applications

(1) The department will review eligible applications that the department receives by the announced deadline for completeness. The department will provide all complete, eligible applications to the committee.

(2) The committee will rank applications based on the following criteria:

(a) Whether the application meets the director’s funding priorities for that funding cycle;

(b) Whether the application has demonstrated the need for the project;

(c) Whether the applicant has demonstrated that adequate budget and financial controls are in place to properly administer the grant; and

(d) Any other criteria determined by the director prior to the announcement of the availability of grant funding, and which are contained in that announcement.

(3) The committee recommends funding grants up to the amount of funds that may be available in the program that biennium. The committee may also rank several alternates in priority order that may be funded if any of the recommended grants are not awarded.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0035

Award of Grants

(1) Grants will be subject to binding grant agreements between the OPRD and the Project Sponsor. The grant agreement will specify the terms and conditions of the grant, generally including:

- (a) The total project costs, the match to be provided by the Project Sponsor, and the amount of the grant;
- (b) A statement of the work to be accomplished;
- (c) When the grant-assisted project may begin and a schedule for accomplishing work, reporting on progress, delivering products, and project completion.

(2) If grant funds remain or become unobligated, the department may reallocate such funds to other department grant programs.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06; PRD 4-2012, f. & cert. ef. 5-11-12

736-017-0040

Disbursement of Grant Funds

(1) All grant funds shall be disbursed to project sponsors on a reimbursable basis after submission of billings on approved schedules specified in grant agreements. Project sponsor shall supply information substantiating billings if requested by the department.

(2) Under certain conditions such as reduction or increase of these funds an emergency procedure for awarding or canceling grants may be initiated at the discretion of the director.

(3) In implementing the emergency procedure, the director shall consider the availability of funds; the scope and need of projects available for funding; and the urgency and statewide importance of prospective projects. The director may propose projects to the commission for funding under this section and the commission may waive other requirements of these rules for the purpose of obligating funds in a timely manner.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0050

Recovery of Grant Funds

(1) Project sponsors that fail to complete approved projects to the department's satisfaction shall return all unexpended grant funds.

(2) Project sponsors shall maintain records adequate for audit purposes for a period of not less than five years after project completion and shall reimburse the department for any costs questioned in audit findings.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

DIVISION 18

STATE PARK MASTER PLANNING

736-018-0000

Purpose

The purpose of OAR 736-018-0000 through 736-018-0045 is to implement provisions of ORS 390.180 which require the Director of the State Parks and Recreation Department to adopt rules that:

(1) Establish a process for the development of a master plan for each state park, including public participation and coordination with affected local governments; and

(2) Establish a master plan for each state park, including an assessment of resources and a determination of capacity for public use and enjoyment of each park.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PR 10-1981, f. & ef. 4-24-81; PR 5-1982, f. & ef. 4-23-82; PR 10-1982, f. & ef. 8-30-82, PR 11-1982, f. & ef. 9-23-82; PR 13-1982, f. & ef. 10-11-82; PR 9-1983, f. & ef. 8-18-83; PR 8-1986, f. & ef. 5-28-86; PR 1-1987, f. & ef. 3-2-87; PR 6-1988, f. & cert. ef. 12-16-88; PR 2-1991, f. & cert. ef. 3-5-91; PR 7-1991, f. & cert. ef. 6-13-91; PR 9-1991, f. & cert. ef. 6-14-91; PR 9-1993, f. &

cert. ef. 6-3-93; PR 5-1995, f. & cert. ef. 7-7-95; PR 8-1995, f. 10-4-95, cert. ef. 10-13-95; PR 6-1996, f. 8-8-96, cert. ef. 8-12-96; PRD 4-1998, f. & cert. ef. 3-23-98; PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0005

Definitions

The following definitions, and the definitions in OAR 736-018-0020(1), apply to 736-018-0000 through 736-018-0045 unless the context requires otherwise.

(1) "Administrative Site": Property owned or managed by the Department that is used solely for state park administration and/or maintenance facilities. An administrative site has no known outstanding resources or recreational values that would support the state park system mission and role, and is not within or contiguous to a state park.

(2) "Affected Local Government": A city or county having land use jurisdiction where a state park master plan or park use is proposed.

(3) "Commission": The Oregon State Parks and Recreation Commission.

(4) "Department": The Oregon State Parks and Recreation Department.

(5) "Director": The director of the Oregon State Parks and Recreation Department.

(6) "Endowment Property": Department-owned property which has no known outstanding resources or recreational values which would support the state park system mission and role, and which is intended for sale, trade, lease or donation to a different entity or for management for a purpose which does not directly support the state park system mission and role.

(7) "Master Plan": State park master plan.

(8) "Park Use Area": An area of a state park designated as one of the following: General Camping Area, Group Camping Area, Day Use Area, Park Interpretation/Information Area, Park Lodging Area, Park Retreat Area, Boating/Fishing Area, Swimming Beach Area, or Management/Maintenance Area. These park use areas are defined in the Department's "Traditional State Park Uses" list. Each park use area definition includes a description of the park facilities that may be provided within the park use area.

(9) "Park Visitor": Any member of the public who enters a state park for the primary purpose of enjoying or learning about the natural, historic or prehistoric, or scenic resources associated with the park setting.

(10) "SCORP": The State Comprehensive Outdoor Recreation Plan, which is the document used by the Department to identify and assess Oregon outdoor recreation needs.

(11) "State Park": Any property owned or managed by the Department that has been determined by the Department to have outstanding natural, cultural, scenic and/or recreational resource values that support the state park system mission and role. Endowment properties and administrative sites are not state parks for purposes of this division.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0010

Purpose of State Park Master Plans

The purpose of state park master plans is to plan for protection and public enjoyment of state park resources. Master plans identify and provide for protection of important natural, cultural and scenic resources within state parks, and provide for the most appropriate recreation-related uses for the parks based on resource opportunities and constraints, development opportunities and constraints, public recreational needs and the Department's role as a public recreation provider. Master plans also set forth natural, cultural and scenic resource management goals, objectives and guidelines for the parks. The master planning process provides a forum for public and agency participation in the completion of each master plan. State park master plans and master plan amendments are completed on a priority basis to address impacts on resources and resource management needs, to address critical and current recreational use levels and to plan for future use based on assessments of future

recreation needs. The master planning process may include the identification of lands desired by the Department for acquisition in relation to the park being master planned, and identification of any potential new endowment properties within the parks.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0015

State Park Master Planning Process

This rule describes the process the Department follows in completing new state park master plans and amending existing master plans. In the master planning process, the Department shall provide reports and maps as appropriate for each step of the process for agency and public examination. The Department shall:

(1) Assess the occurrence and importance of the natural and cultural resources in the park.

(2) Determine the suitability of areas of the park for recreational use and development based on the natural and cultural resource assessments and the Department's composite suitability assessment process as defined in OAR 736-018-0020(1)(c).

(3) Assess the recreational aspects of the park including:

(a) Current and future demand for outdoor recreational activities and related facilities in the vicinity of the park, and the statewide, regional and local supply of recreational opportunities and facilities related to demanded activities;

(b) The existing recreational opportunities and facilities in the park; and

(c) The recreational activities and facilities that could potentially be provided in the park.

(4) Assess the natural, cultural, and scenic resource management and interpretive needs of the park.

(5) Assess lands adjacent to the park for potential impacts on park resources and for opportunities to provide additional park resource protection or recreational opportunities.

(6) Convene a steering committee to review master planning work in progress. In forming the steering committee, the Department shall invite representatives of interested local, state and federal agencies, neighborhood interests, resource advocacy interests, and recreation advocacy interests relevant to the park. Department staff shall meet with, and solicit recommendations from the committee at key times in the process.

(7) Compile a preliminary list of issues including but not limited to the problems, constraints, needs and opportunities related to the use, development and interpretation of the park, protection and management of park resources, and the need and potential for park expansion through acquisition.

(8) Present the issues and other information and solicit comments in the following forums:

(a) At least one meeting of the steering committee;

(b) At least one public meeting held in the vicinity of the park and at least one other public meeting in a location that encourages broad participation, each followed by a public comment period of at least 21 days to provide for submittal of written comments;

(c) Informal meetings with Department staff and other agencies and interest groups as needed; and

(d) At least one public meeting of the Commission.

(9) Formulate goals for the use, development and interpretation of the park and management of its resources and for any potential park expansion.

(10) Prepare preliminary use and development proposals for the park. Include descriptions of the uses or facility types, intensities, sizes, site designs and locations and identification of any alternative sites based on the assessments completed in sections (1) through (6) of this rule, and considering information collected through the activities described in sections (7) through (10) of this rule. Adjust the preliminary proposals as needed after completion of the assessments described in sections (13) through (15) of this rule.

(11) Prepare preliminary natural, cultural and scenic resource management guidelines as described in OAR 736-018-0020(2)(d) through (f).

(12) Assess local and regional transportation system needs in relation to preliminary proposed park uses or facilities and resource management guidelines, in consultation with local and regional transportation agencies. Present solutions intended to address transportation system needs related to the park.

(13) Assess the potential impacts of proposed park uses and facilities and resource management guidelines on local and regional public services, in consultation with local and regional public service providers. Present solutions intended to address significant impacts.

(14) Assess the potential impacts of preliminary proposed park uses and facilities and resource management guidelines on adjacent land uses, in consultation with local governments and others. Present solutions intended to address potentially significant impacts.

(15) Assess the compatibility of preliminary proposals for the park with the statewide land use goals, ORS 215.296, and local planning and zoning. Identify land use actions needed to achieve compatibility with local comprehensive plans.

(16) Produce the draft master plan. Decisions about the master plan shall be consistent with the state park master planning criteria described under OAR 736-018-0020. The master plan shall include:

(a) A summary of the resource and recreation assessments;

(b) A summary of the compiled issues;

(c) Goals for future park use, development, interpretation, expansion, resource protection and management, and for potential partnerships.

(d) Park facility development proposals in concept, including the descriptions provided under section (10) of this rule.

(e) Natural, cultural and scenic resource management and interpretive guidelines for the park;

(f) Findings describing the compliance of the master plan with the state land use goals, ORS 215.296, compatibility with applicable local comprehensive plans, and other findings as needed for local comprehensive plan amendments;

(g) A summary of anticipated land use permitting requirements for master plan proposals;

(h) A summary of anticipated state and federal permit requirements for master plan proposals;

(i) Supportive maps and drawings; and

(j) References to any background material on file with the Department.

(17) Provide periodic updates to the Commission and Director on the development of the master plan and comments received.

(18) Distribute the draft master plan for public review and solicit comments in the following forums:

(a) At least one meeting of the steering committee;

(b) At least one public meeting held in the vicinity of the park and at least one other public meeting in a location that encourages broad participation, each followed by a public comment period of at least 30 days to provide for submittal of written comments. The draft master plan shall be offered to the public by media advertisement and mailed to all those on the master plan mailing list who request a copy; and

(c) Informal meetings with Department staff and other agencies and interest groups as needed.

(19) Following the public comment period for the draft master plan, assess the comments received and make appropriate changes based on direction from the Director.

(20) Present the master plan to the Commission at their public meeting, and ask for their concurrence and permission to initiate the rule-making process. Include in the presentation a summary of the public involvement process and comments. The draft master plan, recommended changes, and notice of presentation to the Commission shall be mailed to all those on the master plan mailing list who request a copy.

(21) Make appropriate changes to the draft master plan based on direction from the Commission and Director.

(22) Coordinate with affected local governments in the development, review and adoption of the master plan as described in OAR 736-018-0028 and OAR 660 division 34.

(23) Complete the rule-making process with related hearings and final edits.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0020

State Park Master Planning Criteria

The state park master planning criteria described in section (2) of this rule shall be the basis for decisions on new and amended state park master plans, including decisions on the uses that are appropriate for each state park, the sizes, intensities and locations of uses, and other matters involving park design and resource management. The Department shall address these criteria, using the best available information, in formulating and adopting state park master plans. These criteria shall also be the basis for raising and resolving disputes between the Department and affected local governments regarding proposed state park master plans. The Department shall consult with the appropriate expert agencies, groups and individuals, including but not limited to those listed for each criterion.

(1) The following definitions apply to this rule:

(a) "Natural resources": Wetlands, riparian areas, water features, geological features, plant communities, wildlife habitats and protected and candidate plant and animal species.

(b) "Important natural resource": A natural resource which has one or more of the following characteristics: high quality including generally undisturbed by historic or current human activities, of good vigor or condition, having a native species composition, protected under state or federal Endangered Species law, or constitutes a flooding or soil stability hazard which cannot easily be overcome through site engineering.

(c) "Composite Suitability Assessment": The Department's process of assessing the suitability of areas of the park for development and use and designating areas for 1 of 4 levels of suitability and related development intensity.

(d) "Level 1 or 2 development intensity": Refers to two of the four Composite Suitability Assessment designations. Generally, Levels 1 and 2 allow very limited development such as trails, small trailheads and trail use and related interpretation structures. Level 1 generally incorporates more specific natural resource protection regulations for such things as trail placement and seasonal trail closures.

(e) "Cultural resources": Archeological sites or features; and historic sites, districts, landscapes, features, structures, buildings and objects.

(f) "Important cultural resource": A cultural resource which is of statewide or regional historic significance, retains its historic appearance, and is in good condition; or if the resource is only of local historic significance, it must also be somehow important to the interpretation of the park, region or state.

(g) "Important Cultural Resources designated as Level 1 development intensity": Refers to a special application of one of the Composite Suitability Assessment designations which recognizes the need for strict protection of the significance and condition or integrity of the important cultural resource, while allowing any proposed development that can be shown to be compatible with cultural resource protection.

(h) "Natural Resource Maintenance": Any action needed to sustain a natural resource in its current condition and composition, or to provide visitor and staff safety or recreational access.

(i) "Natural Resource Enhancement": Any action needed to improve the condition or composition of a natural resource.

(j) "Natural Resource Restoration": Any action needed to re-establish an important natural resource to the park that has been destroyed or lost.

(k) "Cultural Resource Preservation": Management or maintenance actions needed to keep the cultural resource in its current condition and appearance, primarily for interpretive purposes.

(l) "Cultural Resource Restoration": Actions for returning a cultural resource to its appearance at a selected time in its past, primarily for interpretive purposes.

(m) "Cultural Resource Rehabilitation": Actions for returning a cultural resource to its appearance at a selected time in its past, which may include altering it somewhat for some type of modern use other than interpretation without affecting its condition. Moving a cultural resource to a new site is also a form of rehabilitation.

(n) "Cultural Resource Reconstruction": Building a replica of a lost cultural resource to represent the resource at a selected time in its past, either for interpretive or other uses. Reconstruction may include building some, all, or a suggestion of, the original resource.

(o) "Cultural Resource Management as ruins": Providing only those management or maintenance actions needed to keep viewers of the cultural resource safe while allowing the gradual deterioration of the resource. Photo or other documentation is often included.

(p) "Cultural Resource Removal": Taking the cultural resource down or moving it out of the park.

(q) "Important views": Existing or proposed viewing locations for public access, which are key to viewing scenic features, interpretive features or beautiful landscapes associated with the park.

(r) "Themes": Major interpretive or educational stories or topics.

(s) "Areas of Concern": Lands and land uses adjacent to a park which have potential negative or positive impacts on park uses, facilities or resources.

(2) New and amended state park master plans shall provide for park uses, facilities and activities as appropriate to:

(a) Protect areas of important natural resources in the park from inappropriate park use and development. Areas of the park with important natural resources shall only be designated for Level 1 or 2 development intensity. The Department shall consult with: The Oregon Natural Heritage Program, Oregon Fish and Wildlife Department, U.S. Fish and Wildlife Service, and the Oregon Department of Agriculture — Native Plant Conservation Program.

(b) Protect areas of important cultural resources in the park from inappropriate park use and development. Areas of the park with important cultural resources shall be designated as Level 1 development intensity with the proviso that any development that is compatible with protecting the historic significance and condition or integrity of the cultural resource is allowed. The Department shall consult with The Oregon State Historic Preservation Office.

(c) Provide public recreation opportunities and facilities, including interpretive opportunities and facilities. Recreational and interpretive uses and facilities shall be sited, sized and designed to meet the following conditions:

(A) The uses and facilities support recreational activities identified in the State Comprehensive Outdoor Recreation Plan (SCORP), or other sources, as being in short supply in relation to demand projections for the region of the park for the 10 to 20 years following master plan adoption;

(B) The uses and facilities are consistent with the Department's role as a recreation provider in the region of the park;

(C) The uses and facilities do not significantly conflict with other park uses;

(D) The uses and facilities only serve park visitors;

(E) The uses and facilities are appropriate for the Composite Suitability Assessment level designated for the site; and

(F) The uses and facilities are compatible with the other criteria in this rule.

(d) Manage the natural resources in the park. The Department shall prepare natural resource management guidelines which shall include desired future conditions for the resources and actions needed to achieve those conditions. This shall include guidelines for natural resource maintenance, enhancement or restoration.

(A) Criteria for determining the appropriate natural resource management guidelines for a park include:

(i) Providing for ecosystems, plant communities, habitats and species occurrences needed to enhance the larger ecological condition of the park or area of the park;

(ii) Protecting recreational and interpretive uses and facilities for future use;

(iii) Protecting important cultural resources in the park;

(iv) Compliance with local, state and federal natural resource management regulations and agreements; and

(v) Preventing conflicts between natural resource maintenance and planned natural resource restorations and enhancements.

(B) The Department shall consult with the Oregon Natural Heritage Program, Oregon Fish and Wildlife Department, U.S. Fish and Wildlife Service, and Oregon Department of Agriculture — Natural Resource Conservation Program.

(e) Manage the cultural resources in the park. The Department shall prepare cultural resource management guidelines which shall include desired future conditions for the resources and actions needed to achieve those conditions. This shall include management direction on the type and degree of cultural resource management needed for the park, including preservation, restoration, rehabilitation, reconstruction, management as ruins, or removal of cultural resources in the park, and other measures needed for visitor and staff safety.

(A) Criteria for determining the appropriate type and degree of cultural resource management include:

(i) Historic or prehistoric significance;

(ii) Condition and appearance;

(iii) Importance for interpretation;

(iv) Degree of public access needed for interpretation;

(v) Current and potential safety problems; and

(vi) Compliance with any regulations or agreements related to the proposed cultural resource management guideline.

(B) The Department shall consult with The State Historic Preservation Office.

(f) Manage the scenic resources in the park. The Department shall prepare scenic resource management guidelines for the park which shall include desired future conditions for the resources and actions needed to achieve those conditions. This shall include but not be limited to vegetation removal or pruning, replanting with less intrusive species, changing earthforms and removing man-made barriers to views.

(A) Criteria for determining appropriate scenic resource management guidelines include:

(i) Keeping views open from important viewpoints to important features;

(ii) Providing for visitor and staff safety in viewpoints and view corridors;

(iii) Avoiding major impacts on important natural or cultural resources;

(iv) Enhancing interpretation of the park or area; and

(v) Compliance with any related regulations and special scenic area agreements.

(B) The Department shall consult with any agencies which have special scenic or visual jurisdictions which apply to the park, or which the Department has scenic or visual agreements with.

(g) Interpret natural and cultural resources in the park and the area of the park, and provide information on recreational opportunities. The Department shall identify appropriate interpretive themes and needed interpretive facilities. Criteria for identifying appropriate interpretive themes for the park include:

(A) Representing the natural and cultural resources and recreational opportunities found in the park or the area of the park;

(B) The role of the Department in the area of the park, in relation to other recreation or interpretive providers, for interpreting identified themes; and

(C) Protection of important natural and cultural resources.

(h) Avoid or mitigate significant impacts from adjacent land uses on park uses, facilities and resources. Options for addressing potential impacts shall be included in the master plan. Mechanisms such as, but not limited to, the following shall be proposed as appropriate to limit, avoid or mitigate impacts:

(A) Identification of Areas of Concern adjacent to the park;

(B) Careful placement and design of park facilities and park use areas;

(C) Willing seller conservation easements or property acquisition;

(D) Department statements of no contest with certain adjacent land uses; and

(E) Agreements between the neighbors and the Department regarding factors such as harvesting or burning dates, unauthorized access, noise and visual intrusions.

(i) Avoid or mitigate significant impacts from park uses and facilities on local public services and local and state transportation systems. Options for addressing significant impacts shall be included with master plan proposals. Mechanisms such as, but not limited to, the following shall be proposed to avoid, limit or mitigate impacts:

(A) Careful placement and design of park facilities and park use areas;

(B) Agreements with local and state agencies regarding future road improvements and service arrangements needed prior to new facility development, and who will provide the improvements and services.

(j) Avoid or mitigate significant impacts from park uses on adjacent land uses. Some examples of potential impacts include excessive noise, potential trespass, traffic and access problems, and visual intrusions. For parks that are adjacent to Exclusive Farm Use zones, the master plans shall include findings that address potential impacts on accepted farm and forest practices on surrounding lands, as required by ORS 215.296. Options for addressing potential impacts shall be included with master plan proposals. Mechanisms such as, but not limited to, the following shall be proposed to avoid, limit or mitigate impacts:

(A) Identification of Areas of Concern which could be impacted by park uses or facilities;

(B) Careful placement and design of park facilities and park use areas;

(C) Agreements with neighbors on such things as event schedules and supervision; and

(D) Willing seller easements or property acquisition.

(k) Comply with the state land use goals. Each master plan shall include findings that address compliance of master plan proposals with the statewide goals.

(l) Achieve compatibility with the comprehensive plans of affected local governments. Each master plan shall include findings that describe the compatibility of the master plan with applicable local plans and actions needed to achieve compatibility.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 10-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0025

State Park Uses

The Department may propose any uses for a state park which are consistent with the state park master planning criteria described in OAR 736-018-0020.

(1) The Commission and Department recognize that certain state park uses are traditional in Oregon's state parks. These traditional uses are described in the Department's "Traditional State Park Uses" list. Traditional state park uses are consistent with the Commission and Department's role as a public recreation provider.

(2) As provided by ORS 195.120, when considering a local comprehensive plan amendment as required for local adoption of a master plan, a local government is not required to adopt an exception to Statewide Planning Goals 3 or 4 for park uses listed under OAR 660-034-0035, provided the uses meet all other statewide goals and are provided for in a master plan adopted by the Department.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0028

Local Government Coordination

Notwithstanding OAR 736 division 70, this rule describes the process the Department follows in coordinating with affected local governments in a master planning process as described in OAR 736-018-0015. This rule is intended to be used in conjunction with the provisions of OAR 660 division 34, which sets forth local government procedures for considering a proposed state park master plan for local adoption.

(1) The Department shall invite the planning official of each affected local government to participate, or be represented, as a member of the steering committee.

(2) The Department shall include the planning official and all members of the local planning commission and governing body on the mailing list.

(3) The Department shall encourage the local government to adopt a park zone ordinance to help facilitate local approval of park uses.

(4) The Department shall work with the planning official to determine what local planning approvals will be needed to implement the master plan.

(5) The Department shall consider opportunities for the local government to host one or more public meeting in the vicinity of the park.

(6) Prior to or concurrent with the initiation of the state rule-making process for the master plan, the Department shall submit the proposed master plan to the Department of Land Conservation and Development (DLCD) and all affected local governments. The Department shall consult with the planning official of each affected local government regarding the compatibility of the proposed master plan with the adopted local comprehensive plan.

(a) If all of the proposed master plan provisions are compatible with the local comprehensive plan, the Department may proceed with state rule adoption of the master plan. The Department shall request written confirmation from the planning official that the master plan is compatible with the local comprehensive plan. The Department may submit the master plan for local adoption during the local government's periodic review.

(b) If any of the proposed master plan provisions are not compatible with the adopted local comprehensive plan, the Department shall submit an application for an amendment to the local comprehensive plan prior to or concurrently with the state rule-making process.

(7) If a local comprehensive plan amendment application is needed as described in section (6)(b) of this rule, the Department shall coordinate with the affected local government on the schedule for the local comprehensive plan amendment process including public notices, hearings, and the local government's resulting recommendations regarding adoption of the master plan as described in OAR 660-034-0020. The Department shall consider opportunities to combine state rule-making hearings with local government hearings, including the public notices for the hearings.

(8) Within 60 days following receipt of a local government's recommendations regarding adoption of a proposed master plan as described in OAR 660-034-0020, the Department shall respond in writing to the local government. In responding, the Department shall:

(a) Address any changes recommended by the local government, and describe any changes to the proposed master plan that the Department proposes in response to the local government's recommendations. Any changes to the proposed master plan shall be consistent with the state park master planning criteria described in OAR 736-018-0020; and

(b) Provide a comment period of at least 30 days to allow the local government to concur with or object to the Department's proposed action on the master plan.

(9) If no objections are raised by an affected local government during the comment period described in section (8)(b) of this rule, the Department may proceed with adoption of the master plan as a state rule. If a timely objection is received, and if the objection meets the requirements of OAR 736-018-0030(2)(a) and (b), the

Department shall delay adoption of the master plan in order to engage in formal or informal dispute resolution with the objecting local government. The delay of adoption shall continue for at least 60 days following receipt of the objection, or until the issues in the objection are resolved and the objection is withdrawn, whichever occurs first. At the end of the 60 day delay period, the Department may proceed with adoption of the master plan as a state rule.

(10) Within 60 days following the effective date of the master plan administrative rule, unless an appeal of the rule is filed, the Department shall submit the adopted master plan to all affected local governments. The submittal shall include a request that each local government take final action on the local comprehensive plan amendment application previously filed pursuant to section (6)(b) of this rule in a manner consistent with OAR 660-034-0030.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0030

Dispute Resolution

Notwithstanding OAR 736 division 70, this rule sets forth the Department's requirements for resolving objections that may be raised by affected local governments in the master planning process as described in OAR 736-018-0028(9). This rule is intended to be used in conjunction with OAR 660-034-0025, which provides direction to local governments regarding dispute resolution in a state park master planning process.

(1) Upon receiving an objection that meets the requirements in section (2)(a) and (b) of this rule, the Department shall attempt to resolve the objection during the 60 day delay period described in OAR 736-018-0028(9), either through informal discussions with the local government or through formal mediation.

(2) The Department may choose to engage in dispute resolution for any issues raised by an objection. However, the 60 day delay period described in OAR 736-018-0028(9) is only required if:

(a) The objection is raised by a letter from the governing body of the affected local government to the Director within the comment period described in OAR 736-018-0028(8)(b); and

(b) The letter from the governing body indicates the reason or reasons why the local government believes the master plan, as proposed by the Department, is or may be inconsistent with the state park master planning criteria described in OAR 736-018-0020.

(3) Depending on the results of the Department's attempts to resolve the objection, the Department shall do one or more of the following as appropriate for the circumstances:

(a) Delay adoption of the master plan until such time as the objection can be resolved through continued discussions or mediation with the local government;

(b) Change the master plan to resolve the objection, provided that the changed master plan is consistent with the state park master planning criteria in OAR 736-018-0020;

(c) Request LCDC mediation services as provided by OAR 660-034-0025;

(d) Request a determination by LCDC regarding compliance of the master plan with the land use statutes, goals or related rules as provided by OAR 660-034-0025; or

(e) Proceed with state rule adoption and submit the master plan to the local government for final action on the local plan amendment as described in OAR 736-018-0028(10).

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0035

State Park Master Plans Previously Adopted as State Rules

Notwithstanding OAR 736-018-0015, 736-018-0028, and 736 division 70, the Department shall follow the process described in sections (1) and (2) of this rule in coordinating with an affected local government for any master plan that was adopted as a state rule but not adopted by the local government prior to the effective date of this rule.

(1) The Department shall consult with the planning official of each affected local government regarding the compatibility of the

master plan with the adopted local comprehensive plan. If all of the master plan provisions are compatible with the adopted local comprehensive plan, the Department may submit the master plan for local adoption during the local government's periodic review. The Department shall request written confirmation from the planning official that the master plan is compatible with the local comprehensive plan.

(2) If any of the master plan provisions are not compatible with the adopted local comprehensive plan, the Department shall do one of the following:

(a) Submit the master plan for adoption through the local comprehensive plan amendment process;

(b) Submit the master plan for adoption during the local government's periodic review; or

(c) Submit the master plan for readoption as a state rule, and follow the local government coordination procedures described in OAR 736-018-0028(7) through (10).

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0040

Minor Variations from Master Plans

The Director may propose park uses or facilities that vary from the provisions of adopted master plans without amending the master plans, provided that such variations are minor. Prior to applying for local government permits for a use or facility that varies from the master plan provisions, the Director shall determine whether the proposed variation is minor or major. Such determinations by the Director are not intended to be directive to local governments. In making the determination, the Director shall review the proposed variation for consistency with the state park master planning criteria described under OAR 736-018-0020. A variation from a master plan may be determined by the Director to be minor if it is consistent with the statewide goals and ORS 215.296 and is not expected to cause significant impacts on adjacent land uses, other uses in the park, local public services, transportation systems or important natural, cultural or scenic resources. Further:

(1) A location change for a planned park facility may be determined by the Director to be minor if it does not cause the facility to serve a different park use area.

(2) The following limitations shall apply to the Director's determinations involving minor expansions of planned park facilities:

(a) A maximum of 20 percent increase in the floor area of any planned permanent building, provided that this limitation shall not apply to the following: toilet and shower buildings; garbage and recycling collection buildings; campground registration and storage buildings; and any other accessory building that does not exceed 120 square feet after expansion;

(b) A maximum of 20 percent increase in the number of planned bedrooms in any lodge, inn, bed and breakfast, barracks or bunkhouse, or group of cabins, or in any park use area;

(c) A maximum of 20 percent increase in the number of planned camp sites in any general or group camping area;

(d) A maximum of 20 percent increase in the number of planned parking spaces in any parking lot or park use area;

(e) A maximum of 20 percent increase in the surface area of any planned road for purposes of improving safety, realignment or widening; and

(f) Extension of a road to provide access to a planned use that is expanded or relocated under the provisions of this rule may be considered minor only to the extent needed to serve the expanded or relocated use.

(3) A proposal for a different kind or location of park use area from those in the adopted master plan shall not be considered a minor variation.

(4) Within an existing or planned park use area, a proposal for a park facility that is different from the kind of park facilities in that park use area in the adopted master plan shall not be considered a minor variation, except that proposals for the following different facilities may be considered minor variations: toilet and shower

buildings; garbage and recycling facilities; campground registration and storage buildings; any other accessory structure not exceeding 120 square feet; alternative camping structures such as yurts, camper cabins, tepees and covered wagons in planned or existing tent and RV sites; picnic shelters in day use areas; and trails.

(5) Outside of existing and planned park use areas, new trails located at least 300 feet from the nearest park boundary may be considered minor variations from adopted master plans.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0043

Existing State Park Uses

As provided by ORS 195.125 and OAR 660-034-0030, state park uses and facilities that existed on July 25, 1997, may be continued subject to the discretion of the Commission and Director, whether or not such uses are part of an adopted master plan, and notwithstanding any other provisions of this division.

(1) Continuance of existing state park uses and facilities may include: the repair and renovation of existing facilities; the replacement of existing facilities, including minor location changes; and the minor expansion of existing uses and facilities. Such minor location changes and expansions are subject to clear and objective siting criteria set forth in local ordinances and relevant state and federal permitting authorities.

(2) Prior to applying for local government permits to change the location of an existing park facility or expand an existing park use or facility pursuant to section (1) of this rule, the Director shall determine whether the proposed location change or expansion is minor or major. Such determinations by the Director are not intended to be directive to local governments. In making the determination, the Director shall review the proposed location change or expansion for consistency with the state park master planning criteria described under OAR 736-018-0020. Location changes or expansions may be determined by the Director to be minor if they are consistent with the statewide goals and ORS 215.296 and are not expected to cause significant impacts on adjacent land uses, other uses in the park, local public services, transportation systems or important natural, cultural, or scenic resources. Further:

(a) A location change for an existing park facility may be determined by the Director to be minor if it does not cause the facility to serve a different park use area.

(b) The following limitations shall apply to the Director's determinations involving minor expansions of existing park uses and facilities:

(A) A maximum of 20 percent increase in the floor area of any permanent building, provided that this limitation shall not apply to the following: toilet and shower buildings; garbage and recycling collection buildings; campground registration and storage buildings; and any other accessory building that does not exceed 120 square feet after expansion;

(B) A maximum of 20 percent increase in the number of bedrooms in any lodge, inn, bed and breakfast, barracks or bunkhouse, or group of cabins, or in any park use area;

(C) A maximum of 20 percent increase in the number of camp sites in any general or group camping area;

(D) A maximum of 20 percent increase in the number of parking spaces in any parking lot or park use area; and

(E) A maximum of 20 percent increase in the surface area of any road for purposes of improving safety, realignment or widening; and

(F) Extension of an existing road to provide access to a use that is expanded or relocated under the provisions of this rule may be considered minor only to the extent needed to serve the expanded or relocated use.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98

736-018-0045

Adopted State Park Master Plan Documents

(1) The following state park master plan documents have been adopted and incorporated by reference into this division:

- (a) Fort Stevens State Park Master Plan, as amended in 2001;
- (b) Cape Lookout State Park, amended in 2012 as Cape Lookout State Park Comprehensive Plan;
- (c) Cape Kiwanda State Park, renamed as Cape Kiwanda State Natural Area;
- (d) Nestucca Spit State Park, renamed as Robert Straub State Park;
- (e) Jessie M. Honeyman Memorial State Park as amended in 2009;
- (f) Columbia Gorge Management Unit Master Plan, including: Rocky Butte State Scenic Corridor, Lewis and Clark State Recreation Site, Dabney State Recreation Area, Portland Womens' Forum State Scenic Viewpoint, Crown Point State Scenic Corridor, Guy W. Talbot State Park, George W. Joseph State Natural Area, Rooster Rock State Park, Shepperd's Dell State Natural Area, Bridal Veil Falls State Scenic Viewpoint, Dalton Point State Recreation Site, Benson State Recreation Area, Ainsworth State Park, McLoughlin State Natural Area, John B. Yeon State Scenic Corridor, Bonneville State Scenic Corridor, Sheridan State Scenic Corridor, Lang Forest State Scenic Corridor, Lindsey Creek State Scenic Corridor, Starvation Creek State Park, Viento State Park, Wygant State Natural Area, Vinzenz Lausman Memorial State Natural Area, Seneca Fouts Memorial State Natural Area, Koberg Beach State Recreation Site, Memaloose State Park, and Mayer State Park;
- (g) Molalla River State Park;
- (h) Champoege State Park;
- (i) Willamette Mission State Park;
- (j) Cascadia State Park;
- (k) Willamette River Middle Fork State Parks Master Plan, 2006, including: Elijah Bristow State Park; Jasper State Recreation Site; Pengra Access; Dexter State Recreation Site; Lowell State Recreation Site; and the parks that comprise the Fall Creek State Recreation Area, including Winberry Park, North Shore Park, Sky Camp, Cascara Campground, Fisherman's Point Group Camp, Free Meadow, Lakeside 1 and Lakeside 2;
- (l) Cove Palisades State Park Master Plan, as amended in 2002;
- (m) Silver Falls State Park Master Plan, as amended in 2009;
- (n) Curry County State Parks Master Plan, including: Floras Lake State Park, renamed as Floras Lake State Natural Area; Cape Blanco State Park; Paradise Point Ocean Wayside, renamed as Paradise Point State Recreation Site; Port Orford Heads Wayside, renamed as Port Orford Heads State Park; Humbug Mountain State Park; Otter Point Wayside, renamed as Otter Point State Recreation Site; Cape Sebastian State Park, renamed as Cape Sebastian State Scenic Corridor; Otter Point Wayside; Port Orford Cedar Forest Wayside, renamed as Port Orford Cedar Forest State Scenic Corridor; and Buena Vista Ocean Wayside; Pistol River State Scenic Viewpoint; Samuel H. Boardman State Scenic Corridor; Harris Beach State Recreation Area; McVay State Recreation Site; Winchuck State Recreation Site; Crissey Field State Recreation Site; Alfred A. Loeb State Park;
- (o) Hat Rock State Park Master Plan, renamed as Hat Rock State Recreation Area;
- (p) Deschutes County State Parks, including: La Pine and Tumalo State Parks; Cline Falls, renamed as Cline Falls State Scenic Viewpoint; and Pilot Butte, renamed as Pilot Butte State Scenic Viewpoint;
- (q) Sunset Bay District Parks, including: Umpqua Lighthouse State Park (this chapter was replaced by the Umpqua Lighthouse State Park Master Plan, 2004); William M. Tugman State Park; Yoakam Point State Park, renamed as Yoakum Point State Natural Site; Sunset Bay State Park; Shore Acres State Park; and Cape Arago State Park;
- (r) Bullards Beach District Parks, including: Seven Devils State Wayside, renamed as Seven Devils State Recreation Site; Bullards Beach State Park; Bandon Ocean Wayside, renamed as

Face Rock State Scenic Viewpoint; and Bandon State Park, renamed as Bandon State Natural Area;

(s) Tillamook County Coastal State Parks, including: Oswald West State Park; Nehalem Bay State Park (this chapter was replaced by the Nehalem Bay State Park Master Plan, 2009); Cape Meares State Park, renamed as Cape Meares State Scenic Viewpoint; Neahkanie-Manzanita State Wayside, renamed as Neahkanie-Manzanita State Recreation Site; Manhattan Beach State Wayside, renamed as Manhattan Beach State Recreation Site; Rockaway Beach State Wayside, renamed as Rockaway Beach State Recreation Site; Twin Rocks State Wayside, renamed as Twin Rocks State Natural Site; Oceanside Beach State Wayside, renamed as Oceanside Beach State Recreation Site; and Neskowin Beach State Wayside, renamed as Neskowin Beach State Recreation Site;

(t) Beverly Beach District Parks South, including: Boiler Bay State Park, renamed as Boiler Bay State Scenic Viewpoint; Rocky Creek State Wayside, renamed as Rocky Creek State Scenic Viewpoint; Otter Crest State Wayside, renamed as Otter Crest State Scenic Viewpoint; Devil's Punchbowl State Park, renamed as Devil's Punchbowl State Natural Area; Beverly Beach State Park; Agate Beach State Wayside, renamed as Agate Beach State Recreation Site; and Ellmaker State Park, renamed as Ellmaker State Wayside;

(u) Smith Rock State Park;

(v) Collier District Parks, including: Booth State Wayside, renamed as Booth State Scenic Corridor; Chandler State Wayside; Collier Memorial State Park; Goose Lake State Recreation Area; Jackson F. Kimball State Park, renamed as Jackson F. Kimball State Recreation Site; and Klamath Falls-Lakeview Forest Wayside, renamed as Klamath Falls-Lakeview Forest State Scenic Corridor;

(w) Banks-Vernonia State Park, renamed as Banks-Vernonia State Trail;

(x) Sumpter Valley Dredge State Park, renamed as Sumpter Valley Dredge State Heritage Area;

(y) Illinois River Forks State Park;

(z) Wallowa County State Parks Master Plan, 2000;

(aa) L.L. "Stub" Stewart Memorial State Park Master Plan, 2005;

(bb) Master Plan for Clay Myers State Natural Area at Whalen Island, 2003;

(cc) South Beach State Park Master Plan, 2003;

(dd) Prineville Reservoir Resource Management Plan/Master Plan, 2003;

(ee) Detroit Lake State Park Master Plan, 2002;

(ff) Umpqua Lighthouse State Park Master Plan, 2004;

(gg) Fort Yamhill State Heritage Area Master Plan, 2004;

(hh) Thompson's Mills State Heritage Site Master Plan, 2006;

(ii) Luckiamute State Natural Area Master Plan, 2009;

(jj) Iwetemlaykin State Heritage Site Master Plan, 2009;

(kk) Kam Wah Chung State Heritage Site Master Plan, 2009;

(ll) Nehalem Bay State Park Master Plan, 2009;

(mm) Bates State Park Master Plan, 2010;

(nn) Cottonwood Canyon State Park Comprehensive Plan, 2012;

(oo) Milo McIver State Park Comprehensive Plan, 2014.

(2) The master plan documents which have been incorporated by reference into this division are available from the State Parks and Recreation Department, 725 Summer Street NE, Suite C, Salem OR 97301.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.180(1)(c)

Stats. Implemented: ORS 390.180(1)(c)

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98; PRD 4-1999, f. & cert. ef. 5-14-99; PRD 9-2000, f. 6-14-00, cert. ef. 7-1-00; PRD 1-2001, f. & cert. ef. 2-1-01; PRD 5-2001, f. & cert. ef. 6-29-01; PRD 6-2001, f. & cert. ef. 9-6-01; PRD 3-2002, f. & cert. ef. 3-22-02; PRD 2-2003, f. & cert. ef. 2-27-03; PRD 3-2003, f. & cert. ef. 2-27-03; PRD 5-2003, f. & cert. ef. 7-8-03; PRD 9-2003, f. & cert. ef. 10-13-03; PRD 11-2003, f. & cert. ef. 11-7-03; PRD 7-2004, f. & cert. ef. 5-14-04; PRD 9-2004, f. & cert. ef. 6-14-04; PRD 1-2005, f. & cert. ef. 2-4-05; PRD 3-2005, f. & cert. ef. 5-4-05; PRD 4-2006, f. 7-14-06, cert. ef. 7-14-06; PRD 5-2006, f. 9-15-06, cert. ef. 10-1-06; PRD 1-2009, f. 1-15-09, cert. ef. 2-1-09; PRD 3-2009, f. 3-12-09, cert. ef. 4-1-09; PRD 4-2009, f. 4-15-09, cert. ef. 5-1-09; PRD 5-2009, f. 4-15-09, cert. ef. 5-1-09; PRD 6-2009, f. 5-14-09, cert. ef. 6-1-09; PRD 12-2009, f. & cert. ef. 9-3-09; PRD 13-2009, f. 9-15-09 cert. ef. 10-1-09; PRD 9-2010, f. 9-15-10, cert. ef. 10-1-10; PRD 6-2012, f. 9-13-12,

cert. ef. 9-14-12; PRD 11-2012, f. 12-13-12, cert. ef. 12-31-12; PRD 3-2014, f. 8-6-14, cert. ef. 8-31-14

Management of State Parks Forests

736-018-0050

Policy

The State Parks and Recreation Division shall manage forest resources to provide for the public's enjoyment and to protect the natural resources. The Division shall determine the sensitivity of a forest where management needs are identified, and use the least disruptive practice feasible to accomplish management objectives. The Division shall involve the public in significant forest management programs. In emergencies, the Division may take the appropriate action and follow up with necessary evaluation after the action.

Stat. Auth.: ORS 390
Stats. Implemented: ORS 390.121
Hist.: PR 12-1986, f. & ef. 7-29-86

736-018-0060

Objectives

- (1) Protect the natural qualities of sensitive forest resources.
- (2) Manage forests to control fire and destructive pests, improve growth and vigor, rehabilitate damaged areas, and create desirable conditions.
- (3) Manage forests for safe, attractive, and compatible recreation opportunities.
- (4) Revenue generation is not an objective of park forest management, except in areas designated through publicized processes as being surplus to park needs.

Stat. Auth.: ORS 390
Stats. Implemented: ORS 390.121
Hist.: PR 12-1986, f. & ef. 7-29-86

736-018-0070

Planning, Coordination, and Cooperation

The Division shall:

- (1) Incorporate forest management in park master plans. For parks without master plans, plans for significant programs shall be prepared and publicized as set forth in these rules.
- (2) Make management programs consistent with Forest Practices Act, local comprehensive plans, statewide land use planning goals, and comprehensive outdoor recreation plans to the extent possible.
- (3) Coordinate programs with owners or managers of adjacent forest lands to minimize conflict and duplication, when appropriate.
- (4) Cooperate with forest research agencies, organizations, and institutions of higher learning by allowing scientific studies, field learning exercises, and demonstrations of practice or activity alternatives.
- (5) Consult and contract with state, federal, or local agencies and private firms or organizations to carry out management programs and fire protection in park forests, as appropriate.

Stat. Auth.: ORS 390
Stats. Implemented: ORS 390.121
Hist.: PR 12-1986, f. & ef. 7-29-86

736-018-0080

Definitions

- (1) "Division" means the Parks and Recreation Division of the Oregon Department of Transportation.
- (2) "Administrator" means the administrator of the Division.
- (3) "Forest" means an area characterized by native trees outside developed areas of a park.
- (4) "Forest Management" means the application of scientific, economic, and social principles to forests for specified objectives.
- (5) "Practices" means those "applications of principles" subject to the Forest Practices Act, ORS 527.610 et seq. except those associated with park developments.
- (6) "Activities" mean those applications typically associated with new or existing park developments even though the specific action is subject to the Forest Practices Act.

(7) "Program" means planned forest management involving activities or practices.

(8) "Sensitivity" means the relative potential for scientific, historical, archeological, ecological, fish and wildlife, aesthetic, or social values of a specific forest to be adversely affected by a practice.

(9) "Impact" means the potential for a specific program to cause long-term or cumulative effects on a forest.

(10) "Significant" means a situation in which high impact practices affect highly sensitive forests.

(11) "Emergency" means unforeseen circumstances that threaten immediate harm to public health and safety, park resources, or other public or private property.

(12) "Emergency Action" means activities or practices undertaken in response to an emergency.

Stat. Auth.: ORS 390
Stats. Implemented: ORS 390.121
Hist.: PR 12-1986, f. & ef. 7-29-86

736-018-0090

Determination of Significance

The Division shall determine significance levels by evaluating the sensitivity of forests and potential impacts of practices:

(1) Sensitivity: Sensitivity of forests in parks for which there is no master plan shall be rated as high, unless:

- (a) The forest has been identified as surplus to park needs by a process that provides public review and opportunity for comment;
- (b) The forest has been assessed in the State Parks Natural Resources Inventory and is found not to contain important natural features, rare or endangered species, or potential natural heritage cells; or
- (c) The Division's instrument of title to the forest requires certain forms of timber management or reserves timber harvest rights to the grantor.

(2) In parks for which master plans have been adopted, sensitivity rating shall depend on the following land use classifications, contained in the master plans:

(a) Pre-1985 Land Use/Forest Management Classifications:

(A) Low Sensitivity: Second-growth forests and residual or previously disturbed mature tree stands in "Secondary Protection Areas," "Major Development Areas," "Limited Development Areas." Areas without deed restrictions that are designated for disposal shall also be rated as having low sensitivity;

(B) High Sensitivity: Forests located in "Primary Protection Areas," and undisturbed forests in "Secondary Protection Areas."

(b) 1985 Land Use Classifications:

(A) Low Sensitivity: Second-growth forest and residual or previously disturbed mature tree stands in "Management Areas," "Development Areas," and "Surplus Areas";

(B) High Sensitivity: Forests located in "Protection Areas," and undisturbed forests in Management Areas.

(3) Significance: Forest management programs shall be rated, documented, and public notice given according to the identified level of significance:

(a) Non-significant programs are those which involve low impact in low sensitivity forests. The public will be notified if the program or situation will cause abnormal closure of facilities or significantly affect public use of the park. In such instances, appropriate news releases and posting of notices will be recommended;

(b) Possibly significant programs are those which involve low impact in high sensitivity forests, or high impact in low sensitivity forests. Upon review, the Administrator will determine the level of significance. If it is determined that the program is non-significant, that decision shall be documented. If it is determined that the program is significant, public notice and opportunity for comment shall be provided;

(c) Significant programs are those which involve high impact in high sensitivity forests. Public notice and opportunity for comment shall be provided as follows:

(A) A notice shall be published at least once a week for two consecutive weeks in a daily newspaper of general circulation in the vicinity of the proposed program, as well as the nearest large

city and/or Portland. Written notice shall be sent to affected government agencies, interested members of the public, and adjoining landowners;

(B) The public will have 15 days to request a hearing and 30 days to submit written comment, following the last published notice;

(C) If sufficient requests are received, the Division shall provide notice of public hearing and conduct the hearing in substantial compliance with the procedures set forth in OAR 137-001-0015 and 137-001-0030;

(D) The administrator shall fully consider all written and oral submissions and shall issue a decision, with findings, allowing, modifying, or not allowing the proposed program.

(4) Emergency Actions: When an emergency situation is declared the Administrator may authorize immediate action as necessary. Appropriate documentation or evaluation will be done following the action.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.121

Hist.: PR 12-1986, f. & ef. 7-29-86

Log Export Rules

736-018-0105

Definitions

(1) "Export" means that unprocessed timber is loaded on a vessel or other conveyance with a foreign destination or is present at a facility such as a port or dock with intent to load it on a vessel or other conveyance with a foreign destination.

(2) "Performance Bond" means the security required by a state timber sale contract which ensures satisfactory performance of contract requirements by the timber sale purchaser. A performance bond may be in the form of a surety bond, cash, negotiable securities, irrevocable letter of credit, or an assignment of surety.

(3) "Person" means an individual, a partnership, a public or private corporation, an unincorporated association, or any other legal entity. The term includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(4) "Private Lands" means lands within the State of Oregon owned by a person. The term does not include federal lands or non-federal public lands, or any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(c) Held by any Native Corporation as defined in Section 3 of the Alaska Native Claims Settlement Act (**43 U.S.C. 1602**).

(5) "Department" means Oregon State Parks and Recreation Department.

(6) "Purchaser" means person who has entered into a state timber sale contract with the Department.

(7) "State Lands" means lands owned or managed by the Department.

(8) "State Timber" means timber owned or managed by the Department.

(9) "State Timber Sale Contract" means any timber under contract with the Oregon State Parks and Recreation Department which is owned by the Department under ORS Chapter 390 or any timber under contract with another state or federal agency, including timber which is harvested under tree service contracts, right-of-way agreements and other agreements in which timber is traded for other values, but excluding land sales and exchanges.

(10) "Unprocessed Timber" or "Unprocessed State Timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term does not include timber processed into any one of the following:

(a) Lumber or construction timbers meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau

Export R or N list grades, sawn on four sides, not intended for remanufacture;

(b) Lumber construction timbers, or cants for remanufacture, meeting current American Lumber Standard Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on four sides, not to exceed 12 inches (nominal) in thickness;

(c) Lumber, construction timbers, or cants for remanufacture, that do not meet the grades referred to in subsection (b) of this section and are sawn on four sides, with wane less than 1/4 of any face not exceeding 8-3/4 inches in thickness;

(d) Chips, pulp, or pulp products;

(e) Veneer or plywood;

(f) Poles, posts, or piling cut or treated with preservatives for use as such;

(g) Shakes or shingles;

(h) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;

(i) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips; or

(j) Firewood cut in pieces 48 inches or less in length.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0110

Criteria Regarding Log Export of Eligibility to Bid on Department Timber Sale Contracts

(1) In addition to all other requirements of law, any person submitting a bid for the purchase of state timber between the time this rule takes effect and June 10, 1991 must certify, in the form and manner specified by the Department, that:

(a) The person will not export directly or indirectly unprocessed state timber; and

(b) The person:

(A) Has not exported directly or indirectly unprocessed timber originating from private lands in Oregon since September 10, 1990 except to meet contractual obligations made prior to September 10, 1990;

(B) Will not export directly or indirectly unprocessed timber originating from private lands in Oregon other than as permitted pursuant to paragraph (A) of this subsection; and

(C) Will complete on or before June 10, 1991 any pre-September 10, 1990 contractual obligations to export unprocessed timber originating from private lands in Oregon.

(c) The person will not sell, transfer, exchange or otherwise convey unprocessed state timber to any other person without obtaining a certification from the person that meets the requirements of OAR 736-018-0130.

(2) In addition to all other requirements of law, after June 10, 1991 a person previously not eligible to bid for state timber under section (1) of this rule may bid for state timber if the person certifies in a form and manner specified by the Department that:

(a) The person will not directly or indirectly export unprocessed state timber;

(b) Unless exempted by section (3) of this rule, the person has not exported unprocessed timber from private lands in Oregon for a period of not less than 24 months prior to the date of submission of the bid; and

(c) The person will not sell, transfer, exchange or otherwise convey unprocessed state timber to any other person without obtaining a certification from the person that meets the requirements of OAR 736-018-0130.

(3) The Department may waive the 24 month requirement contained in subsection (2)(b) of this rule if:

(a) Prior to June 10, 1991 the person certifies to the Department they will cease exporting unprocessed timber originating from private lands in Oregon no later than one year from the date of said certification;

(b) They cease all exporting of unprocessed timber originating from private lands in Oregon within the one-year period stated in the certification; and

(c) If the person ceases exporting activities as stated in their certification, the person will then become eligible to submit a bid for the purchase of state timber provided they complete the certification required by section (2) of this rule.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0115

Prohibition Against Indirect Substitution

In addition to all other requirements of law, no person who is prohibited from purchasing timber directly from the Department may purchase state timber from any other person. Acquisitions of Western Red Cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this rule.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0120

Applicable State Timber

All unprocessed timber, as defined in OAR 736-018-0105, which originates from state lands is prohibited from export.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0125

Surplus Timber

The prohibitions against export contained in OAR 736-018-0105 to 736-018-0145 shall not apply to specific quantities of grades and species of unprocessed timber originating from state land which the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0130

Reporting Requirements

(1) Before the Department will issue final acceptance of timber sale contract requirements, a purchaser of state timber must:

(a) Notify the Department of the delivery destination of all timber purchased under that contract. Notification will be made in a form and manner prescribed by the Department;

(b) Prior to selling trading, exchanging, or otherwise conveying state timber to any other person, the purchaser of state timber shall obtain a certification of the person's eligibility to purchase state timber, and their intent to comply with the terms and conditions contained in this section. Certification will be made in form and manner as prescribed by the Department and shall be forwarded to the Department upon completion of the transaction. Obtaining certification shall not relieve the purchaser's responsibility to provide the Department with an accounting of the final delivery destination of that timber.

(2) Any performance bond required by a state timber sale contract may be retained by the Department, until satisfactory notification of state timber delivery destination has been received by the Department.

(3) Failure to provide the Department with a final accounting of the delivery destination of state timber will be considered in violation of these export regulations. Violators will be subject to the penalties contained in OAR 736-018-0135.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0135

Purchaser Disqualification and Termination of Contracts

(1) The Department shall keep a record of any person who violates the requirements of OAR 736-018-0105 to 736-018-0140. In addition, the Department shall subscribe to and keep lists or

records of persons who violate the requirements of export rules of other Oregon state agencies.

(2) A person whose name appears on the records for violations as stated in section (1) of this rule, and who again violates the requirements of OAR 736-018-0105 to 736-019-0140 or any other Oregon state agency's log export rules shall be disqualified from bidding on or purchasing state timber for a period of five years following the date of the violation. Any appeals of disqualification shall be handled as provided in ORS 279.045.

(3) The Department may suspend operations and/or terminate any state timber sale contract entered into with a person who has violated the requirements of OAR 736-018-0105 to 736-018-0140, and assess damages according to the following formula:

D = (OSV+AC) - (PR+RSV), where:

D = Damages and Expenses

OSV = Original Sale Value (timber only — does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales.

AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law.

PR = Payments Received

RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the Department's estimate of remaining volume, multiplied by the dollar values stated in the contract.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0140

Log Branding and Marking Requirements

(1) All state timber originating from state timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of wood, both ends of all logs originating from state timber sales shall be hammer branded and both ends shall be painted with a paint type and color to be determined by the Department. In making this determination, the Department shall coordinate with other state agencies to avoid possible confusion.

(2) If properly marked state timber is sub-divided into smaller pieces for any other purpose than immediate processing, each piece must be branded with a state brand specifically used for this purpose and signifying the unprocessed timber is state timber ineligible for export. The Department's export restriction branding hammers can be obtained from the Department at cost upon request.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

736-018-0145

Enforcement

Investigation of suspected violations of these rules and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the Department, or contracted by the Department to other state or federal agencies. Any alleged violations of the export prohibition provisions of this section will be referred by the Department to the appropriate federal or state agency for prosecution or other legal action.

Stat. Auth.: ORS 390.121(3)

Stats. Implemented: ORS 390.121

Hist.: PR 1-1991(Temp), f. & cert. ef. 1-2-91; PR 6-1991, f. & cert. ef. 5-29-91

DIVISION 19

LAND ACQUISITION AND EXCHANGE

736-019-0000

Scope and Purpose

This division implements the statutory mandate in ORS 390.112 to describe criteria for the acquisition and development of new historic sites, parks and recreation areas. The purpose of this division is to establish a methodology for consideration of land

acquisition and land exchange that will allow the Parks and Recreation Department to:

(1) Identify and acquire the best representative landscapes and most significant sites in Oregon for the purpose of protecting the State's most valuable natural, scenic, cultural, historic, and recreational resources;

(2) Ensure the general public's access to and enjoyment of these sites as compatible with OPRD cultural and sustainability policies;

(3) Ensure that the themes of Oregon's natural and human history are woven into the master development plans of new and existing properties; and

(4) Foster appreciation and enjoyment of outdoor recreation resources by conserving, developing and maintaining waterways, scenic roads, highway corridors, trails and State recreation areas.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0020

Definitions

As used in this division, unless the context requires otherwise:

(1) "Acquisition" means obtaining title to real property or any right or interest therein, or an interest in timber or other assets, by purchase, agreement, donation, exchange, gift, devise, or by exercise of eminent domain.

(2) "Commission" means the State Parks and Recreation Commission.

(3) "Department" means the State Parks and Recreation Department.

(4) "Director" means the State Parks and Recreation Department Director.

(5) "Exchange" means the simultaneous, mutual transfer between willing parties of one or more interests in land, timber, other assets of equal value, or any combination thereof.

(6) "Other assets" means cash or forms of consideration other than land or an interest in timber, including but not limited to access rights, mineral rights, and water rights.

(7) "Third party" means any person other than the Department or the owner(s) of property that is the subject of an acquisition or exchange.

(8) "Overwhelming public benefit" means a Commission determination in the approval of a property exchange that accounts for the natural, scenic, cultural, historic, recreational, and operational benefits of a proposal that are likely to be above and beyond the monetary value of the exchange.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0040

Policy

The Department shall use sound principles of real estate acquisition when acquiring or exchanging real property, comply with all federal and state laws pertaining to real property acquisition, and ensure the prudent use of public monies in its real property transactions. The Department aspires to:

(1) Ensure that the discharge of its fiduciary responsibility for the use of public funds receives the highest priority.

(2) Seek to preserve the public's confidence in our business practices and stewardship of real estate assets.

(3) Conduct real estate transactions in an atmosphere of openness, honesty and integrity with land owners and the public, and maintain the confidentiality of such transactions to the extent allowed by law when it serves the public interest or to avoid harm to private citizens' interests.

(4) Balance the need for and benefits of public open space with impacts on local tax revenue and private economic opportunity.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0060

Criteria for Acquisition

(1) The Department will:

(a) Establish and maintain a list of properties and areas of interest. The Department may acquire properties on that list as they become available, subject to approval and the availability of funds.

(b) Consider park master plans adopted pursuant to ORS 195.120, the State Trails Plan, the Willamette Greenway Plan or other plans adopted by the Commission that identify certain land acquisitions as desired and needed.

(c) Acquire properties as specifically directed by Acts of the Oregon Legislature.

(d) Acquire other properties that contribute to the established goals of the Department but were not previously included on a list of properties of interest or identified in a Department plan.

(2) The purpose of the Department and the public's interests are served when an acquisition satisfies one or more of the following objectives:

(a) Protects areas of outstanding natural, scenic, cultural, historic and recreational significance for the enjoyment and education of present and future generations.

(b) Consolidates state park parcels, trail systems or greenways so that more efficient management and administration of the state park system is made possible.

(c) Provides a buffer to adjacent or nearby development that may diminish the recreation or conservation values of a state park parcel.

(d) Provides access to recreation areas for management or protection of state park parcels, and

(e) Addresses opportunities that may be lost to the Department if acquisition is delayed.

(3) The acquisition or exchange of all real property shall be consistent with the Department's purpose and its long-range planning goals, and shall be prioritized through a rating system. The rating system will evaluate an acquisition or exchange's significance as it relates to the Department's mission, development and operational costs, geographic distribution, diversity of values, public demand, and other factors connected to its feasibility as a state park. The Commission will periodically review the rating system.

(4) The Department will look favorably at opportunities for acquisitions and exchanges that enhance the overall management of existing park lands.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0070

Criteria for Exchange

(1) In considering an acquisition that includes a sale or exchange of real property owned by the Department, the Department will:

(a) Apply all elements of the "Criteria for Acquisition" provided in OAR 736-019-0060, and

(b) Apply the provisions of sections (2) or (3) of this rule.

(2) For exchanges that it initiates, the Department will:

(a) Identify for the Commission the reasoning and justification for an exchange based on the Department's mission, strategies, objectives, and work plan, and

(b) Undertake exchanges only if there is a significant benefit to the Department. Examples of a significant benefit to the Department include, but are not limited to:

(A) Adding properties that adjoin properties owned by the Department,

(B) Improving the Department's access to one or more properties owned or operated by the Department,

(C) Resolving in-holdings,

(D) Property line adjustments that facilitate operations or management, and

(E) Acquiring identified property needs.

(3) For exchanges that a party other than the Department initiates, the Department will:

(a) Determine whether the exchange aligns with the Department's mission, strategies, objectives, and work plan,

(b) Inquire whether the local county and local communities support the exchange,

(c) Determine whether the exchange will accommodate public use and access, and be in the best interest of the Department,

(d) Submit an Agency Surplus Real Property Notification to the Department of Administrative Services and request the notification of adjacent cities, appropriate counties and all state agencies for the sale, transfer, or exchange of any real property right from Department ownership.

(e) Require the proponent provide the Department a written environmental review for all lands the Department is to receive in the exchange. The Department may determine that an environmental report provides information that further requires that the proponent to provide additional environmental assessment, and

(f) Require that all proposals made to the Department be in writing with adequate detail for the Department to evaluate the transaction for:

(A) Natural resource impacts and protection,

(B) Cultural resource impacts and protection, and

(C) Overwhelming public benefit to the parks system.

(4) To approve an exchange that a party other than the Department initiates, the Commission shall determine that the proposed exchange provides an overwhelming public benefit to the Oregon State Park system, its visitors, and the citizens of Oregon. The Commission has sole discretion to determine whether a proposal provides an overwhelming public benefit to the Oregon State Park system, its visitors, and citizens, which is resounding, clear and obvious. An overwhelming public benefit to the Oregon State Park system, may include, but is not limited to, an exchange in which the Department receives:

(a) One or more properties in areas of interest listed pursuant to OAR 736-019-0060(1)(a),

(b) An endowment for long-term stewardship that provides significant and meaningful stewardship resources to the Department, or

(c) Other contributions to the Oregon State Park system, beyond the property to be received, which the Commission determines when combined with the property to be received by the Department, and when weighed against the property to be transferred out of the Oregon State Park system, along with all of the Department's transaction costs, will result in an overwhelming public benefit to the Oregon State Park system.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0080

Sources of Funding

The Department will:

(1) Purchase lands with appropriations granted by the Legislature.

(2) Use proceeds from land sales to purchase other lands pursuant to ORS 390.121(3).

(3) Accept donated private funds and donated lands.

(4) Seek state, federal and private grants for land purchases when appropriate.

(5) Employ land exchanges when the land traded away is less suitable for open space and recreation than the land received.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0100

Acquisition Practices

(1) The Department will:

(a) Engage in land purchases and land sales in which the value of the land is established by an up-to-date appraisal prepared by an independent professional appraiser or a qualified government employee.

(b) Obtain an independent review of appraisals when the appraised value exceeds \$250,000.00.

(c) Consult with local taxing entities of government when a land purchase has potential to cause a significant loss of property tax revenue.

(d) Seek to purchase from willing sellers as the preferred method of buying land.

(e) Exercise the greatest of restraint in using the power of eminent domain consistent with the spirit and intent of the laws authorizing such power.

(f) Acquisitions and exchanges shall be made only with approval of the Commission.

(g) The Director may pay up to \$10,000.00 for an option or earnest money agreement if there is a high degree of certainty, without committing a future Legislature, that the funds to complete the subject purchase will be forthcoming. Option payments in excess of \$10,000.00 shall only be made if approved by the Commission.

(h) The Department will utilize sound business principles in securing appraisals and conducting negotiations, and shall complete its due diligence in connection with all real property acquisitions and exchanges, including the request for and review of title searches, hazardous material assessments, agreements with third parties intended to facilitate an acquisition by the Department, and any other documents necessary to make the best decision regarding a land purchase or exchange.

(i) Appraisals upon which the Department makes an offer must be dated as close in time to the expected closing as possible, and not be older than one year.

(j) The Department will require the appraiser to consider the new, anticipated, or intended use, income, or zone, if the Grantee proposing an exchange or sale intends, or is likely to pursue, a different highest and best use than the Department's current use or zone.

(k) Submit an Agency Surplus Real Property Notification to the Department of Administrative Services and request the notification of adjacent cities, appropriate counties and all state agencies for the sale, transfer, or exchange of any real property right from Department ownership.

(l) Conduct a visual inspection and check the records for historical uses of any land considered for acquisition. If either the visual inspection or historic records provide information the Department determines merits further investigation of environmental issues, the Department will engage in additional environmental review.

(2) In addition to the practices describe in section (1) of this rule, when acquiring ownership of or interests in lands abutting, adjacent or contiguous to the ocean shore for state recreation areas or access where such lands are held in private ownership, the department will also consider the criteria provided in ORS 390.630.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0120

Working with Other Parties

The Department may collaborate on land acquisitions with other parties, including county governments, state and federal agencies, non-profit organizations, private corporations, landowners, and private land trusts. It is the policy of the Department to seek out and engage in land acquisition collaborations when they are of mutual benefit and further the attainment of shared values and goals. In general, in addition to compliance with the rest of this division, the Department considers the following elements to be important to successful collaboration on land acquisitions:

(1) Acquisition opportunities must align with the goals, strategies, and priorities for land acquisition established by the Commission;

(2) The potential partner engages with the Department early in the process, and frequently throughout, including full disclosure and transparency on all of the details of the proposal. The Department commits to treat partners in the same way, both for projects brought to it, and where the Department seeks out a collaborator;

(3) An understanding by the potential partner that discussions with the Department staff are preliminary and that only the Commission may approve a land acquisition;

(4) The Department is very willing to give attention and publicity to projects and the accomplishments of partners and believes its participation in a deal can add to that;

(5) A demonstration that the county, local community, interested state and federal agencies support the acquisition, and that the acquisition accommodates public use and access;

(6) An understanding by the potential partner that the Department must undertake real estate transactions in a transparent manner and involve willing sellers who are paid fair market value and only after due diligence has been done, and risks adequately addressed; and

(7) A recognition that the Department is subject to specific and extensive state statutes, rules, and public accountability.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 390.117(5) & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

DIVISION 20

BEACH CONSTRUCTION/ALTERATION STANDARDS

736-020-0001

Scope and Purpose

These rules implement the statutory mandates in ORS 390.605 to 390.660 and 390.690 to 390.770 to protect and preserve the scenic and recreational values and public rights in the ocean shore, permit certain types of development according to standards of review and grant emergency permits where property is in imminent peril of destruction by the Pacific Ocean or natural forces. The purpose of these rules is to describe the permitting requirements, fees, review standards, permit conditions, enforcement measures and administrative relief opportunities that apply to applicants for permits to make improvements on the ocean shore, construct pipelines, cables or conduits across the ocean shore, or to remove products along the ocean shore.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0002

Definitions

(1) "Alteration" — means "improvement" as that term is defined by statute, ORS 390.605(1), and included in these definitions at OAR 736-020-0002(9).

(2) "Commission" — means the Oregon Parks and Recreation Commission.

(3) "Construction Value" — means the costs of labor, equipment, materials, and all contractor fees, where those costs are incurred by the applicant or the applicant's agent(s).

(4) "Department" — means the Oregon Parks and Recreation Department.

(5) "Director" — means the Oregon Parks and Recreation Director.

(6) "Emergency Permit" — means a written or oral permit for a new improvement, or the repair, replacement or restoration of an existing or authorized improvement, deemed necessary to protect property or property boundaries in imminent peril of being destroyed or damaged by action of the Pacific Ocean or the waters of a bay or river.

(7) "Fill" — means the total of deposits, by artificial means, of material at any one location within the boundaries of the ocean shore.

(8) "Imminent Peril" — means a situation in which property is likely to be severely damaged or destroyed by action of the Pacific Ocean or waters of a bay or river, or by landslide or other natural forces, and where such damage would be likely to occur prior to the time required for approval of an Ocean Shore Permit.

(9) "Improvement" — means filling a portion of the ocean shore; removal of material from the ocean shore; or a structure,

appurtenance or other addition, modification or alteration constructed, placed or made on or to the land (ORS 390.605(1)). For the purpose of these rules, the term "alteration" shall be used in place of "improvement" except as otherwise specified in these rules.

(10) "Just Compensation" — means payment(s) of cash, or other legally acceptable valuable consideration, as compensation to the State of Oregon for the right to construct or occupy the ocean shore with a pipeline, cable or conduit or gather natural products from the ocean shore for commercial use or private gain.

(11) "Line of Established Upland Shore Vegetation" — means that line along the Pacific Ocean shore where upland vegetation cover becomes continuous; or, where minor gaps, breaks or landward indentations in the line of continuous vegetation occur, the projected line across the gap, break or landward indentation connecting the line of continuous vegetation on either side.

(12) "Material" — means rock, gravel, sand, silt, and other inorganic substances removed from the ocean shore and any materials, organic or inorganic placed within the ocean shore.

(13) "Ocean Shore" — means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in 196.800 (390.605(2)). For purposes of these rules, at the mouth of estuaries, the inland extent of the ocean shore extends only to that point at which the statutory vegetation line crosses the estuary.

(14) "Ocean Shore Permit" — means a permit for a structure, appurtenance or other addition, modification or alteration, including habitat restoration, constructed, placed or made on the ocean shore as required by the provisions of ORS 390.640; a permit for a pipeline, cable line, or conduit placed or made across or under the ocean shore as required by the provisions of 390.715; or a permit for the removal of products from the ocean shore as required by the provisions of 390.725.

(15) "Property" — means an upland building, road, street, highway, sewer or water line, or other infrastructure improvement.

(16) "Public Agencies" — means federal and state agencies, local governments, and municipal and quasi-municipal jurisdictions designated under Oregon law.

(17) "Removal" — means the taking of material from the ocean shore, or the movement, alteration or displacement of material on the ocean shore by artificial means.

(18) "Responsible Party" — means the person(s), including the landowner, applicant or permittee and their contractors or agents, or the company, organization, local, state or federal agency or other entity in violation of the ocean shore statutes, rules, standards, permit conditions or order of the Director, pertaining to an improvement project; pipeline, cable or conduit project; or natural product removal project on the ocean shore.

(19) "State Recreation Area" — means a land or water area, or combination thereof, under the jurisdiction of the State Parks and Recreation Department used by the public for recreational purposes (ORS 390.605(3)).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0003

Ocean Shore Permit Application Review Process

(1) In accordance with ORS 390.640, 390.715, and 390.725, no person shall make an alteration, or construct a pipeline, cable line or conduit or remove any natural product on any property that is within the ocean shore, without first obtaining a permit to do so from the Department in accordance with the provisions of OAR 736-020-0003 through 0032, 736-020-0035, or 736-020-0040 as described in these rules, except as provided by section (9) of this rule.

(2) Any person desiring to construct an ocean shore alteration, under ORS 390.640; or place any pipeline, cable line, or other conduit over, across or under the state recreation area or submerged lands adjoining the ocean shore under 390.715; or remove sand,

rock, mineral or marine growth or other natural product of the ocean shore for trade, sale, resale or for use in the production, manufacture, fabrication or marketing of a commercial product under 390.725, except as provided by section (9) of this rule, shall submit an application to the Department. It shall be in such form as may be prescribed by the Department and shall be signed by the party, parties, or the authorized agent for the party or parties seeking the permit. Such application:

(a) If for an alteration (improvement) under ORS 390.640, shall contain a description of the proposed project, the location thereof and any other information so prescribed on the application form; and

(b) If for an ocean front protective structure, shall be accompanied by an analysis of hazard avoidance alternatives, including relocation of existing buildings or other infrastructure, or increased setbacks for new buildings or infrastructure. Such analysis shall describe why hazard avoidance alternatives are not feasible, or if tried, why they were not successful. Relevant factors may include topographic limitations, limits of area for relocation, or cost. If the cost of moving a building or infrastructure is listed as a factor which makes hazard avoidance unfeasible, then the application shall include cost estimate(s) from licensed contractors specializing in building relocation; and

(c) If for an ocean front protective structure greater than 50 feet in length, shall be accompanied by a report from a registered professional geologist experienced in coastal processes that describes:

(A) The potential impacts from the proposed project on sand source, supply and movement on the affected beach as well as within the same littoral cell;

(B) The bank or bluff stability and erosion rates on the subject property and adjacent properties and the potential impacts of the proposed project on bluff stability and erosion rates on the subject and adjacent properties;

(C) A review of potential non-structural solutions, including, but not limited to, vegetative stabilization, non-structural dynamic revetments and foredune enhancement. The review shall describe reasons why non-structural solutions were unsuccessful, if tried, or why they were considered unfeasible.

(D) The known or suspected geologic and seismic hazards in the project area and how the proposed project may affect or be impacted by those geologic and seismic hazards.

(d) If for a pipeline, cable line or other conduit under ORS 390.715, shall contain proposed plans for the work indicating the location, nature, scope and purpose of the project, the materials and equipment to be used and the estimated time for completion; or

(e) If for natural product removal under ORS 390.725, shall contain a description of the material to be removed, the location thereof, the method of removal (including a description of equipment to be used), the amount thereof, the purpose for which it shall be used and the time and duration of removal.

(f) Shall include the names of all ocean front property owners owning property that abuts the property described in the application.

(3) Upon receipt of a satisfactory and complete permit application, the site of the proposed project will be posted with a public notice for a period of not less than 30 days. The notice shall contain the name of the applicant, a description of the proposed improvement, pipeline, cable line or conduit or natural product removal project and such other details of the project as the Department may deem of interest to the public.

(4) In addition to the notice described in section (3) of this rule, notice of the application shall be provided to adjacent, ocean-front landowners, with property boundaries common to those of the property described in the application.

(5) During the period specified in the public notice described in section (3) of this rule, the applicant or any member of the public may request a hearing on the proposed project. Such requests for hearing shall be in writing, and if filed by persons other than the applicant, shall state the interests in the proposed project of the per-

son making the request. The Department may schedule and hold a public hearing on any application on the Director's initiative.

(6) If timely, written requests for a hearing are received from the applicant, or 10 or more other persons, or the Director decides a hearing is necessary, the Department shall schedule and hold a public hearing prior to acting on the project application.

(7) Following the public hearing on a project application, or, if no public hearing was held, after the time for requesting a public hearing has expired, consideration will be given to determine if the granting of such permit would in any way be detrimental to the interests and safety of the public and to the preservation of the natural resource, scenic, recreational and economic values of the ocean shore.

(8) In addition to the requirements and considerations in sections (1) through (7) of this rule, the Department shall also apply those standards set forth in OAR 736-020-0005 through 736-020-0030.

(9) The Department may waive the permitting requirements described in this rule for those structures and appurtenances or other additions constructed or placed on the ocean shore, or removal or fill activities conducted on the ocean shore, which meet one or more of the following conditions:

(a) The alteration would have no identifiable construction value;

(b) The alteration involves the removal or fill of less than 50 cubic yards of material on the ocean shore;

(c) The alteration is an incident of an individual or group recreational activity; and

(d) The alteration utilizes materials naturally available on the ocean shore.

(e) The alteration consists of returning sand or other natural product to the ocean shore, when necessary to clear public access routes, protect buildings from sand or debris inundation, or protect other public or private infrastructure.

(10) The Department shall give notice of any application for a project under ORS 390.640, 390.715, 390.725, hearing on such an application, or decision to approve or deny such an application, to any person making written request for such notice.

(11) Prior to the issuance of any permit under these rules and regulations, the Department shall send copies of the application to:

(a) The Department of Fish and Wildlife;

(b) The Department of Geology and Mineral Industries;

(c) The Division of State Lands;

(d) The Department of Land Conservation and Development;

(e) The State Historic Preservation Office;

(f) Any Indian tribe identified by the Legislative Commission on Indian services as having a potential interest in the proposed project; and

(g) Any other appropriate agency, for their comments and recommendations.

(12) As part of the applicant's application materials, appropriate information shall be submitted regarding necessary permits, or other necessary authorization from any affected unit of local, state or federal government.

(13) In the event it is determined that the issuance of a permit hereunder will affect property not owned by the applicant, the Department shall withhold the issuance of such permit until such time as the applicant shall have obtained an easement, license, or other written authorization from fee owner of such land. Such easement, license, or other written authority, shall meet the approval of the Department, except as to the compensation to be paid to the private fee owner.

(14) At its option, and prior to the issuance of any permit under ORS 390.715 or 390.725, the Department may require the applicant to obtain liability insurance in an amount prescribed by the Department, insuring against any and all property damage or personal injury which might arise out of the work or project covered by the proposed permit. In the event the same is required by the Department, the applicant shall produce satisfactory evidence of such insurance in the form of a certificate from the insuring company indicating that such insurance is in effect; and further that

such insurance will not be cancelled without first giving ten days prior notice thereof to the Department.

Stat. Auth.: ORS 183.545, 184, 390.605 et seq. & 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PR 12-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0004

Fees

(1) Fees — each application filed under ORS 390.640, for an alteration on the ocean shore shall be accompanied by a processing fee for the purpose of partial recovery to the department of its administrative costs. The fee shall be determined according to the construction value of the project. The application processing fee shall be:

(a) \$400 for projects with a construction value less than \$2,500; and

(b) \$400 plus three percent of the construction value over \$2,500 for projects with a construction value equal to or greater than \$2,500.

(2) In determining the construction value of a proposed project, the Department:

(a) May consider the entire project, not just that portion on the ocean shore. Examples of, but not the only, projects where the entire alteration may be considered in establishing construction value include, ocean shore protective structures such as riprap revetments, concrete seawalls, and other hard structures of wood, metal, rock or concrete; dynamic revetments, log, cobble and sand berms and other non-structural forms of ocean shore protection;

(b) May, in its discretion, consider only that portion of a project on the ocean shore. Examples of, but not the only, projects where only that portion of the alteration on the ocean shore may be considered in establishing construction value include, stairways, ramps and other access and viewing facilities, sand removal, beach nourishment, dune grading and vegetation management;

(c) May assess only the base fee to public agencies proposing projects whose primary purpose is to improve public access to the ocean shore, or maintain, repair or replace existing public infrastructure on the ocean shore regardless of construction value;

(d) May waive the application fee for public agency applications proposing projects that would have the primary purpose of enhancing the natural, resource, scenic, recreational and economic values of the ocean shore, or restoring native beach or dune habitat, contributing to the recovery of sensitive species, including state and federally listed threatened and endangered species or otherwise benefitting the native biological values of the ocean shore.

(3) Evidence the Department may consider in establishing the construction value of a project shall include:

(a) Itemized estimates from licensed, bonded, contractors;

(b) Construction values accepted by the county or city for purposes of issuing local permits;

(c) Itemized costs of equipment rental and other such charges if the project is completed by the property owner;

(d) Estimates that reflect unit costs typically associated with the type, quality and standards of construction proposed in the application; and

(e) Other evidence of costs acceptable to the Department if (a), (b), (c), or (d) of this section are not available.

(4) The Department may require an applicant to provide additional information, supporting evidence or seek additional independent bids for a project if the Department believes the project costs represented by the applicant are not reflective of costs typically associated with the type, quality and standards of construction proposed in the application.

(5) Refunds — if a written request is received to withdraw an application, application fees may be refunded according to the following schedule:

(a) If the application is withdrawn within the first three working days following the date of submittal, the entire application fee shall be refunded;

(b) If the application is withdrawn prior to the close of the 30-day notice posting period described in ORS 390.650(3), one-half of

the amount in excess of the \$400 basic application fee shall be refunded;

(c) No refund shall be made for an application withdrawn more than 30 days after the date of submittal.

(6) No fee reductions shall be allowed for modifications to an application, made after an application is submitted to the Department, that result in a reduced construction value.

(7) The Department may assess such additional fees as it determines necessary to cover increased construction value resulting from modifications to a proposed project made after the application is submitted to the Department. In assessing such additional fees, the Department shall be governed by the provisions of sections (1) through (4) of this rule.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0005

Factors Evaluated

(1) Each site on the ocean shore presents different conditions and applicants have varying project needs. Evaluations point up the relative significance of the general, scenic, recreational, safety, and other interests of the public. In acting on any application for an ocean shore permit under ORS 390.640, 390.715 or 390.725, the Department shall consider:

(a) Provisions necessary to protect the affected area from any use, activity or practice that is not in keeping with the conservation of natural resources or public recreation;

(b) The public need for healthful, safe, esthetic surroundings and conditions; the natural, scenic, recreational, economic and other resources of the area and the present and prospective need for conservation and development of those resources;

(c) The physical characteristics or the changes in the physical characteristics of the area, and the suitability of the area for particular uses and improvements (This may include bank alignments, topography, shoreline materials and stability, width of the beach, past erosion, storm water levels, sand movement, water currents, adjoining structures, beach access, land uses, etc.);

(d) The land uses, including public recreational use; the improvements in the area; the trends in land uses and improvements; the density of development; and the need for access to particular sites in the area.

(e) The need for recreation and other facilities and enterprises in the future development of the area and the need for access to particular sites in the area.

(2) Public opinion in response to public notice or hearings on an application shall be considered in evaluating each proposed ocean shore project.

(3) Considered together, and in accordance with the intent of the Legislature, the factors listed in sections (1) and (2) of this rule assist in the overall decision for granting, an ocean shore permit, or denying, or modifying the ocean shore permit application when the level of impact is determined to be unacceptable.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 6-1999(Temp), f. & cert. ef. 11-10-99 thru 5-8-00; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0010

General Standards

The following general standards shall be applied, where applicable, to each application for an ocean shore permit:

(1) Project Need — There shall be adequate justification for the project to occur on and alter the ocean shore area.

(2) Protection of Public Rights — Public ownership of or use easement rights on the ocean shore shall be adequately protected.

(3) Public Laws — The applicant shall comply with federal, state, and local laws and regulations affecting the project.

(4) Alterations and Project Modifications — There are no reasonable alternatives to the proposed activity or project modifications that would better protect the public rights, reduce or eliminate the detrimental affects on the ocean shore, or avoid long-term cost to the public.

(5) Public Costs — There are no reasonable special measures which might reduce or eliminate significant public costs. Prior to submission of the application, the applicant shall consider alternatives such as nonstructural solutions, provision for ultimate removal responsibility for structures when no longer needed, reclamation of excavation pits, mitigation of project damages to public interests, or a time limit on project life to allow for changes in public interest.

(6) Compliance with LCDC Goals — The proposed project shall be evaluated against the applicable criteria included within Statewide Land Conservation and Development Goals #5: Natural Resources, Scenic and Historic Areas, and Open Spaces, #17: Coastal Shorelands, #18: Beaches and Dunes, and #19: Ocean Resources, and other appropriate statewide planning goals. In accordance with the Statewide Land Conservation and Development Commission Goal #18, permit applications for beachfront protective structures on the ocean shore shall be considered only where development existed on January 1, 1977. The project shall be consistent with local comprehensive plans where such plans have been approved by LCDC. When the application is for a pipeline, cable line or conduit under ORS 390.715, the project shall be consistent with Statewide Planning Goal #19, Ocean Resources, and applicable requirements of the Oregon Territorial Sea Plan.

Stat. Auth.: ORS 184 & 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PR 12-1984, f. & ef. 12-12-84

736-020-0015

Scenic Standards

Projects on the ocean shore shall be designed to minimize damage to the scenic attraction of the ocean shore area. The following scenic standards shall be applied, where applicable, to each application for an ocean shore permit.

(1) Natural Features — The project shall retain the scenic attraction of key natural features, for example, beaches, headlands, cliffs, sea stacks, streams, tide pools, bedrock formations, fossil beds and ancient forest remains.

(2) Shoreline Vegetation — The project shall retain or restore existing vegetation on the ocean shore when vital to scenic values.

(3) View Obstruction — The project shall avoid or minimize obstruction of existing views of the ocean and beaches from adjacent properties.

(4) Compatibility with Surroundings — The project shall blend in with the existing shoreline scenery (type of construction, color, etc.).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0020

Recreation Use Standards

The following recreation use standards shall be applied, where applicable, to each application for an ocean shore permit.

(1) Recreation Use — The project shall not be a detriment to public recreation use opportunities within the ocean shore area except in those cases where it is determined necessary or legally required to protect sensitive biological resources such as state or federally listed species.

(2) Recreation Access — The project shall avoid blocking off or obstructing public access routes within the ocean shore area except in those cases where it is determined necessary or legally required to protect sensitive biological resources such as state or federally listed species.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0025

Safety Standards

The project shall be designed to avoid or minimize safety hazards to the public and shoreline properties. The following safety

standards shall be applied, where applicable, to each application for an ocean shore permit.

(1) Structural Safety — The project shall not be a safety hazard to the public due to inadequate structural foundations, lack of bank stability, or the use of weak materials subject to rapid ocean damage.

(2) Obstruction Hazards — The project shall minimize obstructions to pedestrians or vehicles going onto or along the ocean shore area.

(3) Neighboring Properties — The project shall be designed to avoid or minimize ocean erosion or safety problems for neighboring properties.

(4) Property Protection — Beachfront property protection projects shall be designed to accomplish a reasonable degree of increased safety for the on-shore property to be protected.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0030

Natural and Cultural Resource Standards

(1) Projects on the ocean shore shall avoid or minimize damage to the following natural resources, habitat, or ocean shore conditions, and where applicable, shall not violate state standards:

(a) Fish and wildlife resources including rare, threatened or endangered species and fish and wildlife habitats.

(b) Estuarine values and navigation interests.

(c) Historic, cultural and archeological sites.

(d) Natural areas (vegetation or aquatic features).

(e) Air and water quality of the ocean shore area.

(f) Areas of geologic interest, fossil beds, ancient forest remnants.

(2) When necessary to protect native plant communities or fish and wildlife habitat on the subject or adjacent properties, only native, non-invasive, plant species shall be used for revegetation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0032

Permit Conditions

(1) All permits issued under these division 20 rules may be conditioned to avoid, minimize or mitigate impact to the ocean shore, assure public safety, preserve the natural, scenic, recreational and economic values of the ocean shore and require the applicant to comply with the rules of other federal, state, and local agencies with jurisdiction over the permitted activity.

(2) The following conditions shall apply to any permit for a project authorized by the Department under ORS 390.640, 390.715, or 390.725.

(a) Permittee shall agree to save and hold harmless the State of Oregon, the Commission, and its members, and all officers, agents and employees of the Department, from any claim, suit or action whatsoever for damages to property, or injury or death to any person or persons due to negligence of permittee, its or their officers, agents or employees, and arising out of the performance of any work or project covered by the granting of a permit.

(b) In no event shall the issuance of any permit hereunder be construed as a sale, lease, granting of easement or any form of conveyance of the state recreational area, ocean shore or submerged lands.

(c) As a condition to the granting of a permit hereunder, the Department may, in its discretion, require the permittee to provide a cash or performance bond in an amount sufficient to assure full compliance with the terms of the permit.

(d) The duration of any permit granted hereunder shall be solely within the discretion of the Department. The Director may revoke, suspend or not renew an ocean shore permit only after giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460, and 183.470.

(e) The permittee shall comply with the provisions of ORS 390.235 through 390.240, 358.905 through 358.955, and OAR 736-051-0060 through 736-051-0090 as these statutes and other statutes and rules affect the discovery, excavation, salvage, removal and disposition of archaeological resources and the permitting requirements for these activities as they affect archaeological sites on public and private land.

(f) If, during the period covered by any permit, the permittee shall fail to comply with the conditions provided herein and otherwise imposed by the Department, the Department shall exercise its authority under Oregon Laws 1999, Chapter 373, and the provisions of OAR 736-020-0100 to cease any further activity by the permittee on the ocean shore except as directed by the Department. In such circumstances, the Department may assess a civil penalty according to the provisions of OAR 736-080-0005 through 736-080-0070.

(3) In addition to the permit conditions listed in sections (1) and (2) of this rule, for any permit issued under ORS 390.640, the permittee shall file with the county clerk in the county where the permit applies, a Memorandum of Permit Issued, to be attached to the deed for the property where the permit applies. The permittee shall pay any and all filing and recording costs and shall supply to the Director a copy of the recorded instrument as proof of compliance with this permit condition.

(4) In addition to the permit conditions listed in sections (1) and (2) of this rule, the following conditions shall also apply to permits for projects authorized by the Department under ORS 390.715.

(a) If at any time subsequent to the installation of a pipeline, cable or conduit, the physical characteristics of the state recreation area, ocean shore or submerged lands shall change, whether due to natural or other causes, and by reason thereof the location of such pipeline, cable or conduit shall constitute a hazard to the public or is thereby detrimental to the preservation of the economic, scenic, and recreational value of the ocean shore, the permittee shall, at the request of the Department, make such changes in the location and installation thereof as will eliminate such hazard or detrimental condition. In any event, no permit shall be granted for the construction and installation of any pipeline, cable line, or other conduit, less than 2-1/2 feet below the lowest known surface elevation of the ocean shore, state recreational areas, or submerged lands.

(b) The Department may, where it deems necessary, require the permittee to agree to protect the state from any damages which might result from leaks, breaks or other malfunctions of the subject pipeline, cable or conduit.

(c) The permittee shall submit "as built" drawings following the completion of any pipeline, cable line, or conduit constructed on the ocean shore.

(d) The permittee shall notify the Department in writing at such time as any pipeline, cable line, conduit, or any portion of any pipeline, cable line or conduit authorized by an ocean shore permit and belonging to the permittee shall be sold or otherwise transferred to another party.

Stat. Auth.: ORS 183.545, 184, 390.605 et seq. & 390.124
Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995
Hist.: PR 12-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

Governing the Removal of Sand, Rock, Minerals, and Marine Growth or Other Natural Products of the Ocean Shore

736-020-0035

Natural Product Removal from the Ocean Shore: Exceptions, Compensation

(1) In accordance with ORS 390.725, natural products of the ocean shore, such as agates, small amounts of marine algae, driftwood or souvenirs of the ocean shore, may be taken by any person, for their own, noncommercial use, from the State recreation areas as described by ORS 390.635, without a permit, except that no person shall collect any amount of natural product of the ocean shore where prohibited by state or federal regulation or right of private ownership.

(2) Each natural product removal permit issued by the Department shall specify an amount and/or form of just compensation to be paid by the permittee. At the Department's discretion, just compensation may be comprised of any combination of the following:

(a) A flat fee;

(b) A flat fee plus reporting requirements as specified by the Department;

(c) A percentage, not to exceed three percent, of the applicant's gross revenues resulting from the sale of the ocean shore product;

(d) A fee rate per measure, such as weight or volume, not to exceed three percent of the applicant's gross revenues resulting from the sale of the ocean shore product;

(e) Administrative costs to the State of processing the application, issuing the permit, and monitoring the project for permit compliance.

(3) At its discretion, the Department may schedule payment of just compensation over the life of the permit to reflect changing market values, variations in the volume of natural product removal and the availability of the natural product being harvested. Failure of the permittee to make any scheduled payment of just compensation shall be cause for the Department to revoke the permit.

(4) Just compensation payments made under section (2) of this rule are subject to ORS 273.105(2). In accordance with this statute, just compensation payments in excess of the Department's administrative costs of reviewing and processing the application, issuing and administering the permit, and monitoring the project, shall be deposited into the Common School Fund as provided by ORS 273.105(2).

Stat. Auth.: ORS 183.545, 189, 390.605 et seq. & 390.124
Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995
Hist.: 1 OTC 1215, f. 2-10-1970; PR 11-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

Issuance of Permits to Place Pipelines, Cable Lines or Other Conduits Under the Ocean Shore

736-020-0040

Pipelines or Conduits Under Ocean Shore: Policy, Compensation

(1) Pursuant to ORS 390.610(4), it is the policy of the Department to prohibit the use of the ocean shore as a north-south utility, communication, transshipment or conveyance corridor. This prohibition applies to pipelines, conduits, cables, wires, towers, transmission, relay or booster stations and other continuous or intermittent facilities for moving material or services, or transmitting data, information, energy, or other commodity whether for private or public use or benefit. The Department, in its discretion, may make exceptions to this policy in cases of emergency or when need is demonstrated for the project to occur on and alter the ocean shore. Need is demonstrated when practicable alternatives are not available. Benefit to the citizens of Oregon, as a whole, shall be a primary consideration in any decision by the Department to grant an exception to this policy. Cost shall not be the sole reason that an alternative is determined to be not available. For purposes of this section:

(a) North-south means a geographic orientation along the beach, or in a heading roughly parallel to the ocean, despite localized direction changes, or longitudinally along the beach as opposed to laterally across the beach from surf to land. The intent of the term north-south does not imply an order of travel, transmission or conveyance and is interchangeable with south-north for the purposes of this rule.

(b) Available means any one, or combination, of the following:

(A) The technology, expertise, and equipment exist and are available in the market place, to engineer, design and install a comparable facility in an upland site;

(B) The same, a similar, or comparable facility, has been successfully constructed elsewhere in a non-ocean shore environment;

(C) Per unit costs of an alternative are reasonably comparable with the range of per unit costs of similar facilities constructed in comparable environments elsewhere.

(2) Nothing in section (1) of this rule shall prevent the maintenance, repair or replacement of pipelines, cable lines, conduits or other utility corridor facility legally permitted on the ocean shore as of the effective date of this rule.

(3) For the purpose of this rule, streets, roads and highways are not considered utility corridors.

(4) Any applicant seeking an exception to the policy in section (1) of this rule shall be governed by the provisions of OAR 736-020-0001 through 736-020-0032 and 736-020-0040 through 736-020-0120.

(5) Prior to the issuance of any permit under these rules and regulations, the Department shall receive from the prospective permittee, payment of just compensation for the use of the ocean shore. The amount of just compensation shall be at the discretion of the Department. Factors the Department may consider in setting the amount of just compensation may include:

(a) The length and width of the ocean shore occupied by the proposed pipeline, cable or conduit crossing;

(b) Any surface manifestations of the pipeline, cable or conduit crossing on the ocean shore;

(c) Potential impacts to unusual or scenic land forms;

(d) Potential impacts to fish and wildlife and their habitats;

(e) Potential impacts to recreation use or access to the ocean shore or to public recreation facilities adjacent to the ocean shore that may be affected by the pipeline, cable or conduit crossing;

(f) The safety features and practices to be employed by the applicant during construction, through out the life of the facility, and in the event of a break, rupture, exposure or other hazardous circumstance;

(g) Benefits that will accrue to the public from the proposed project such as sewer, gas, or electric service, phone or other communication service, or beach access mitigation;

(h) Benefits that accrue to private individuals, companies, organizations or corporations from the proposed project; and

(i) Administrative costs to the State of processing the application, issuing the permit, and monitoring the project for permit compliance.

(6) In no case shall just compensation be less than the Department's administrative costs as calculated under the fee provisions in OAR 736-020-0004.

(7) Just compensation payments made under section (2) of this rule are subject to ORS 273.105(2). In accordance with this statute, just compensation payments in excess of the Department's administrative costs of reviewing and processing the application, issuing and administering the permit, and monitoring the project, shall be deposited into the Common School Fund as provided by ORS 273.105(2).

Stat. Auth.: ORS 183.545, 189, 390.605 et seq. & 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: 1 OTC 1215, f. 2-10-70; PR 11-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0050

Eligibility for Emergency Permit

(1) In accordance with ORS 390.650(6), an emergency permit for a new improvement or alteration may be issued, unless otherwise prohibited by law, to provide immediate and temporary protection where property is in imminent peril of being destroyed or damaged by action of the Pacific Ocean or waters of a bay or river, landslide, or other natural disaster. Said permit may be granted by the Department prior to the Ocean Shore Improvement Permit process required under ORS 390.650(1), (2), (3), (4), and (5).

(2) "Property" shall be defined as an upland building, road, street, highway, sewer or water line, or other infrastructure improvement.

(3) "Imminent Peril" shall be defined as a situation in which property is likely to be severely damaged or destroyed by action of the Pacific Ocean or waters of a bay or river, or by landslide or other natural disaster, and where such damage would be likely to occur prior to the time required for approval of an Ocean Shore Improvement Permit.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.124

Hist.: PRD 12-1998, f. & cert. ef. 12-2-98; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0060

Review and Issuance of Emergency Permit

(1) Upon inspection of the site by a Department employee or authorized representative of the Department, an emergency permit may be issued, written or oral, by an employee specifically designated by the Director to issue an Ocean Shore Permit. Any emergency permit granted orally shall be reduced to writing by the Department within 10 days. An emergency permit shall name the property owner of record and the applicant, if other than the property owner, and list required conditions.

(2) In accordance with Statewide Planning Goal #18, Beaches and Dunes, emergency permits for beachfront protective structures may be issued only where development existed on January 1, 1977, or where an exception to this Goal 18 implementation requirement has been approved by the appropriate local jurisdiction.

(3) Prior to issuance of an emergency permit, the Department shall contact the local government to describe the proposed emergency measures and obtain certification that the proposed measures are in compliance with the local comprehensive plan and zoning ordinances. When local government cannot be reached due to the time of day, day of week, or failed communications systems, the Department may issue an emergency permit without local certification of compliance with the local comprehensive plan and zoning ordinances. In such cases, the Department shall advise the permittee that the Department's emergency permit is provisional and may be rescinded if the proposed emergency measures are determined to be not in compliance with the local comprehensive plan and zoning ordinances. The applicant shall be responsible for obtaining any required permits from the local government. The emergency permit issued by the Department shall not be considered valid until all local permits have been obtained.

(4) Prior to issuance of an emergency permit, the Department shall request recommendations from the Oregon Department of Fish and Wildlife on minimizing adverse impacts to wildlife or habitat values, and the Oregon Department of Geology and Mineral Industries, for information on geologic hazards.

(5) Upon issuance of an emergency permit, the Department shall provide notice to the local government, the Department of Land Conservation and Development, the Division of State Lands, Oregon Department of Fish and Wildlife, and the Oregon Department of Geology and Mineral Industries.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 12-1998, f. & cert. ef. 12-2-98; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0070

Terms and Conditions of Permit

(1) Under an emergency permit authorization, material placed on the ocean shore, other than beach sand moved for watercourse alterations, shall be considered temporary and shall be removed within a time specified by the Department, except as specified in section (3) of this rule. At the time of removal, the permittee shall be responsible for restoring to as natural a condition as possible, as determined by the Department, the natural resource, scenic and recreational values of the ocean shore.

(2) The Department may impose conditions on the project size, design, and materials used in order to meet the objectives of the Permit Standards of ORS 390.655 and Beach Construction/Alteration Standards of OAR 736-020-0005 through 736-020-0030.

(3) The permittee shall apply for an ocean shore permit, as specified in ORS 390.650, in order to seek approval to convert the temporary project approved under an emergency permit into a permanent ocean shore alteration. If a permanent permit is not applied for and approved by the Department, then all material placed on the ocean shore shall be removed and the condition of the ocean shore restored, in compliance with the conditions of the emergency permit.

(4) At the Department's discretion, the Department may require a cash bond, or other security acceptable to the Department,

to ensure that the permittee complies with the terms of the permit, including removal of material. Failure of the permittee to comply with the terms and conditions of the permit shall authorize the Department, without further notice, to conduct the work necessary to complete the required terms and conditions and deduct any and all costs and expenses for the work.

(5) The Department shall deduct from the cash bond or other security, all legal costs associated with the emergency permit, including, but not limited to, enforcement of permit conditions, and acquisition of funds from the cash bond or other security. The Department shall pursue all available legal or judicial alternatives to recover costs incurred by the public resulting from non-compliance with the terms and conditions of any emergency permit.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.124

Hist.: PRD 12-1998, f. & cert. ef. 12-2-98; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0100

Powers of Enforcement

Any improvement, addition, modification or alteration made on the ocean shore, or any pipeline, cable line or conduit constructed across or under the ocean shore, or any natural product removed from the ocean shore for commercial use without a permit issued under ORS 390.650, or performed in a manner contrary to, or not in compliance with, the terms and conditions of a permit issued under ORS 390.650, or performed in a manner contrary to, or not in compliance with, ocean shore standards or rules or an order of the Director, shall be subject to enforcement action under this rule and/or the imposition of a civil penalty under OAR 736-080-0005 to 736-080-0070. The Director may use one, or any combination of the following actions, as appropriate, to protect and preserve the ocean shore:

(1) Investigation — on the Director's own initiative, or in response to reports or complaints from other persons or agencies, the Director may investigate improvements, additions, modifications or alterations on the ocean shore, pipelines, cables and conduits constructed across or under the ocean shore or the removal of natural products from the ocean shore for compliance with statutes, rules, standards permits and orders pertaining to these developments and activities. In conducting such investigations, the Director, or his duly authorized staff or agents, may enter upon lands within the ocean shore, including private property within the ocean shore, at such times as are reasonable to detect, evaluate and document the ocean shore violation. The Director, or his duly authorized staff or agents, shall not enter upon private property landward of the ocean shore without the property owner's permission. When landowner permission is not forthcoming and access through the property landward of the ocean shore is necessary to investigate, assess and prescribe remedies for suspected or known ocean shore violations, the Director, his staff or agents, may enter such property when accompanied by appropriate law officers bearing a court issued search warrant or other appropriate authorization;

(2) Public Hearings — the Director may schedule and conduct hearings to gather evidence and other information related to an ocean shore violation;

(3) Policies and Procedures — the Director may develop and publish policies, procedures, findings and recommendations for use in identifying and correcting violations of the ocean shore statutes, rules, standards, permits and orders;

(4) Proposed Orders — the Director may issue proposed orders directing action, setting time lines, or establishing conditions on a responsible party related to an ocean shore violation by:

(a) Giving notice of the proposed order by personal service or registered or certified mail to the responsible party; and

(b) Holding a contested case hearing if any person aggrieved by the proposed order makes written request for a hearing within 20 days of personal service or mailing of the proposed order.

(5) Civil Proceedings — the Director may bring civil abatement proceedings against a responsible party for violations of the ocean shore statutes, rules, standards or a permit or an order of the Director. In bringing such proceedings against a responsible party, the Director:

(a) Shall file with the court, a statement:

(A) Describing the notice given the responsible party and when the notice was issued;

(B) Indicating the date of the contested case hearing and whether or not the responsible party appeared, and if so, a summary or transcript of the hearing;

(C) Specifying the public nuisance arising from the violation;

(D) Indicating the statute(s), rule(s) or standard(s) violated and including a copy of the Director's permit or order, if applicable, and identifying the specific terms and conditions of the permit or order being violated; and

(E) Describing the damages and impacts, if any, to ocean shore resource values including public rights of navigation, fisheries and recreation.

(b) May request the court to order the responsible party to pay to the Department an amount of money necessary to repair any damages or compensate the public for loss or impairment of the public's interest in navigation, fishery or recreation resulting from the violation.

(6) Cease and Desist Order — where a responsible party is violating ocean shore statutes, rules, standards, or a permit or order of the Director, the Director may issue an order to cease and desist if the Director determines that the responsible party's actions risk imminent and substantial injury, loss or damage to ocean shore values. An order to cease and desist:

(a) May be issued without prior notice or hearing;

(b) Shall be served on the responsible party by personal delivery or by registered or certified mail, and if by mail, the service date shall be the date of mailing;

(c) Shall advise the responsible party of the right to a contested case hearing if a written request is received within 10 days of service of the order;

(d) Shall not be stayed during the hearing, if one is requested;

(e) May direct the responsible party to take immediate specific actions to minimize or avoid further injury, loss or damage to the ocean shore;

(f) Shall be entered as the final order if the responsible party does not request a hearing or fails to appear at a scheduled hearing;

(g) Shall not result in any liability to the Commission, Director or the Department from damages to the responsible party arising from the order; and

(h) Shall be enforceable by state and local police without need for further authority or warrant.

(7) Permit Revocation — the Director may revoke, suspend or refuse to renew any permit issued under ORS 390.650 if the Director determines the permittee is in violation of the conditions of the permit. The Director shall state the case for revoking or suspending a permit in a proposed order. The proposed order:

(a) Shall be served on the permittee in person or by registered or certified mail;

(b) Shall advise the permittee of the opportunity to request a contested case hearing within 20 days of service of the proposed order where the service date shall be the date of service in person or the date of mailing;

(c) Shall become the final order if the permittee fails to request a hearing or fails to appear at a scheduled hearing.

(8) Civil Abatement of Public Nuisance — improvements, additions, modifications or alterations made on the ocean shore, or pipelines, cables and conduits constructed across or under the ocean shore or natural products removed from the ocean shore without a permit issued under 390.650, or that do not comply with the conditions in a permit issued under ORS 390.650, are a public nuisance. Under this section:

(a) The Director, or any person, may initiate civil abatement proceedings against the party responsible for a public nuisance except that:

(A) No person may begin such an action if the Director has already begun and is pursuing criminal, civil, or administrative proceedings in the same matter; and

(B) Any person shall give the Director not less than 60 days notice prior to initiating such action.

(b) The Director may seek a temporary restraining order or a preliminary injunction when a public nuisance creates an emergency or threatens the public health, welfare or safety. In seeking a temporary restraining order or preliminary injunction, the Director shall file with the court, a statement:

(A) Describing the notice, if any, given the responsible party and when the notice was issued;

(B) Indicating the date of the contested case hearing, if any, and whether or not the responsible party appeared, and if so, a summary or transcript of the hearing;

(C) Specifying the public nuisance arising from the violation;

(D) Indicating the statute(s), rule(s) or standard(s) violated and including a copy of the Director's permit or order, if applicable, and identifying the specific terms and conditions of the permit or order being violated;

(E) Describing the damages and impacts, if any, to ocean shore resource values including public rights of navigation, fisheries and recreation;

(F) Explaining how the public nuisance arising from the violation constitutes an emergency and threatens the public health, welfare or safety; and

(G) Specifying the particular measures the responsible party shall take immediately to protect the public health, welfare and safety.

(c) No liability shall accrue to the Commission, the Department, or any of its employees or agents for any damages, loss, expense, or inconvenience sustained by a responsible party resulting from a restraining order, injunction or abatement order issued under this section;

(d) Any plaintiff in a public nuisance abatement proceeding may seek from the court a monetary award in an amount necessary to repair any damages and compensate the public for loss or impairment of the public's interest in and right of navigation, fishery or recreation resulting from the public nuisance;

(e) The Director may seek from the court in a civil abatement proceeding where the responsible party is determined to have, through negligence, violated ORS 390.640 requiring permits for improvements on the ocean shore, double the amount of money necessary to compensate the public for any damage, loss, destruction or infringement on the public right of navigation, fishery or recreation;

(f) The Director may seek from the court in a civil abatement proceeding where the responsible party is determined to have intentionally violated ORS 390.640 requiring permits for improvements on the ocean shore, triple the amount of money necessary to compensate the public for any damage, loss, destruction or infringement on the public right of navigation, fishery or recreation;

(g) The award of damages in civil abatement proceedings on an ocean shore violation, shall not preclude the Department from pursuing criminal penalties for the same violation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0110

Disposition of Fees and Penalties

(1) The Department shall establish an account for fees and penalties collected by the Department, or awarded by the court(s), in the administration of the ocean shore statutes. The moneys in this account shall be dedicated to the ocean shore program and shall be continually appropriated to the Department to be used, in priority order, highest to lowest, for:

(a) Administering the Department's ocean shore permitting program;

(b) Preserving and protecting the scenic, recreational and other natural resource values of the ocean shore, including preserving, protecting and restoring native species and habitats including rare, threatened, or endangered species and their habitats;

(c) Providing public education about the ocean shore;

(d) Promoting public safety on the ocean shore;

(e) Providing information and assistance to oceanfront landowners; and

(f) Any other purpose the Director may deem appropriate in promoting the ocean shore policy in ORS 390.610 through 390.635.

(2) The fees and penalties that shall be deposited into the ocean shore account shall include:

(a) Application fees collected in accordance with ORS 390.650(7);

(b) That portion of just compensation fees collected in accordance with ORS 390.715(1) and 390.725(1) necessary to cover the Department's administrative costs, including processing the application, issuing and administering the permit and monitoring the project;

(c) Civil penalties collected in accordance with Oregon Laws 1999, Chapter 373, Sections (9), (10), and (11);

(d) Court awarded settlements in civil abatement proceedings in accordance with Oregon Laws 1999, Chapter 373, Sections (13) and (16); and

(e) Court awarded settlements to any plaintiff in civil abatement proceedings in accordance with Oregon Laws 1999, Chapter 373, Section (15).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0120

Administrative Relief, Appeals, Judicial Review

(1) Where an application for an improvement permit required under ORS 390.640, or a permit for a pipeline, cable or conduit crossing of the ocean shore required under ORS 390.715, or a permit for removal of products from the ocean shore required under ORS 390.725, is denied, the applicant may request a hearing from the Director. Where a permit is issued under ORS 390.650, any person aggrieved by the issuance of the permit or conditions imposed on the permit, may request a hearing from the Director. The application denial or permit approval shall be considered the Director's original order.

(2) Requests for hearing described in section (1) of this rule shall be in writing and shall:

(a) Include a clear statement of the reason(s) for the request;

(b) If the request is being made by a person other than the applicant, include a clear statement of the person's legally protected interest and how that interest is adversely affected by the issuance of the permit; and

(c) Be received by the Director within 30 days of service of the order denying or granting the permit. The date of service shall be the date of delivery of the order in person, or the date of mailing.

(3) A hearing held in response to a request under this rule shall be conducted as a contested case in accordance with the provisions of ORS 183.415 to 183.430, 183.440 to 183.460, and 183.470.

(4) Within 30 days of the receipt of a request for hearing, the Director shall schedule a hearing to be held at such time as is agreeable to the person making the request and such other persons as may be parties to the hearing. The applicant shall be a party to any contested case hearing requested by a person other than the applicant. The Director may enter a written agreement with the applicant and any parties to delay the hearing in order to resolve any matters in dispute through mediation or some other form of alternative dispute resolution.

(5) The Director shall enter a final order within 45 days after the contested case hearing. The final order shall affirm, modify or rescind the Director's original order denying the application or approving the permit.

(6) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. A party may initiate an appeal of a final order in a contested case proceeding by filing a petition in the Court of Appeals within 60 days following the date of the order as provided by ORS 183.482.

(7) A decision applying the standards of OAR 736-020-0010 is not a "land use decision" as defined by ORS 197.015(10) that is subject to the jurisdiction of the Land Use Board of Appeals pursuant to ORS 197.825.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

DIVISION 21

**GENERAL OCEAN SHORE
STATE RECREATION AREA RULES**

736-021-0010

Scope of Rules

This division governs the use of the ocean shore state recreation area, which consists of the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. This division does not govern activities or uses in the sub-tidal zone, which extends below extreme low tide, or in an estuary as defined in ORS 196.800.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0020

Statutory Authority

This division is adopted pursuant to:

(1) ORS 390.050, which authorizes the director and the director's designees to enforce park and ocean shore state recreation area rules by citation authority; and

(2) ORS 390.635 and 390.660, which grant the Oregon State Parks and Recreation Commission the following:

(a) Complete jurisdiction and authority to administer as state recreation areas, all ocean shore areas owned by the state and all other public easements or other rights of access that the state holds on the ocean shore;

(b) Authority to protect and maintain such areas in a manner that will contribute to the general welfare of the public and the natural and cultural resources thereon; and

(c) Authority to make regulations and provisions as it deems necessary for the use and administration of such areas.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0030

Definitions

For purposes of this division, the definitions in ORS 358.905 and ORS 390.605 shall apply. In addition, the following definitions apply, unless the context requires otherwise:

(1) "ATV" means All-Terrain Vehicle as described and defined in OAR 736-004-0015. ATV may also be referred to interchangeably as Off-Highway Vehicle (OHV).

(2) "Cobble" means a rock fragment between about 2.5 inches and 10.2 inches wide, especially one that has been naturally rounded.

(3) "Commission" means the Oregon Parks and Recreation Commission.

(4) "Department" means the Oregon Parks and Recreation Department.

(5) "Director" means the director of the Oregon Parks and Recreation Department.

(6) "Domestic animal" means those animals whose food and shelter are provided by a human custodian.

(7) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations and to issue oral or written warnings or citations to enforce the ocean shore state recreation area rules.

(8) "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is a multi-agency, multi-jurisdictional recovery effort for the Western Snowy Plover. The full text of the "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is available from the State Parks and Recreation Department.

(9) "Handler" means a person who brings a domestic animal onto the ocean shore state recreation area.

(10) "Holdfast" means the part of a seaweed by which it fastens to the surface on which it grows.

(11) "Marine Protected Area" means any area of the marine environment within Oregon's Territorial Sea that has been reserved by the state to provide lasting protection for part or all of the natural and cultural resources in it. A marine protected area is an area established by the State Land Board and identified in OAR chapter 141, division 142.

(12) "Marine Reserve" is an area within Oregon's Territorial Sea or adjacent rocky intertidal area that is protected from all extractive activities, including the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research to evaluate reserve condition, effectiveness, or impact of stressors. A marine reserve is an area established by the State Land Board and identified in OAR chapter 141, division 142.

(13) "Motorized vehicle or device" means any self-propelled means moving on wheels, runners, tracks or the like by which a person could travel or carry something, whether or not designed exclusively to transport or typically used on roads. This definition includes but is not limited to a motor vehicle as defined in ORS 825.005(6), motorized bicycles, motor scooters, ATVs, OHVs, recreational vehicles, trailers and other mobile equipment.

(14) "Natural Product" means living and non-living natural products on the ocean shore, including but not limited to marine plants, minerals, shells, rocks, and sand.

(15) "Non-Traditional Park Use" means any organized activity, gathering or use conducted in whole or in part within the boundaries of the ocean shore state recreational area, that is not a recreational use allowed by the posted park regulations or permitted under the provisions of this rule or divisions 10, 15 and 20 and which requires a special use permit under division 16.

(16) "Occupied site" means a department-owned or leased area, a privately or locally-owned area or an area adjacent to federal lands that has at least one nest or nesting attempt as identified by the department at the beginning of each western snowy plover nesting season in accordance with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(17) "Ocean shore state recreation area" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line or the line of established upland vegetation, whichever is farther inland, under the jurisdiction of the department that is used by the public for recreational purposes per ORS 390.605 (2) and (3).

(18) "Ocean shore resources" means any natural or human-made property, material, product, feature or structure in the ocean shore state recreation area.

(19) "OHV" means Off Highway Vehicle, also called ATV, see definition (1).

(20) "Park Employee" means an employee of the department.

(21) "Park Manager" means the supervisor or designated employee in charge of an ocean shore state recreation area.

(22) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(23) "Person" includes an individual, a public or private corporation, an unincorporated association, a partnership, a government or a governmental unit, or a non-profit entity.

(24) "Personal Use" means use that is directly by the individual for purposes other than monetary reward and not involving sale, barter, resale, or exchange of money.

(25) "Territorial Sea" as defined in ORS 196.405(5) means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

(26) "Unoccupied sites" means actively managed department-owned or leased areas, privately or locally-owned areas or areas adjacent to federal lands that have been identified as potential nesting sites for western snowy plovers in concurrence with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(27) "Upland" means the land lying shoreward or generally easterly of the ocean shore state recreation area.

(28) "Violate" includes failure to comply.

(29) "Wet sand" means the area seaward of symbolic fencing (roping), signs, or both that are placed on the dry sand area.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0040

General Regulations

(1) The director, by written agreement, may cooperatively exercise jurisdiction and authority over the ocean shore state recreation area with a county, city, or political subdivision thereof for the purposes of enforcing this division and applicable state, county or city laws. Local government regulations pertaining to the ocean shore state recreation area are provided in division 30.

(2) A park employee may seek compliance from the public with any ocean shore state recreation area rules. (A person may not obstruct, harass or interfere with a park employee's official duties, including enforcing ocean shore state recreation area rules.

(3) A park manager or designated park employee may order any person who violates any ocean shore state recreation area rule to leave an ocean shore area.

(4) A park manager or an enforcement officer may exclude a person who violates any ocean shore state recreation area rule from the ocean shore area for a specified period of time.

(5) A peace officer, pursuant to a written agreement with the department, may seek compliance from the public with any ocean shore state recreation area rule and may order a person who violates one or more rules to leave the ocean shore area.

(6) A peace officer, pursuant to a written agreement with the department, may exclude a person who violates one or more of the following from an ocean shore state recreation area for a specified period of time:

(a) Ocean shore state recreation area rule;

(b) Federal, state, county, or city law; or

(c) Court order.

(7) The department may take action to protect ocean shore resources, to protect public health and safety, to provide security, to avoid user conflicts, or for other reasons deemed necessary. These actions include but are not limited to the following:

(a) Allowing by permit or limiting specific activities or uses in designated portions of the ocean shore state recreation area;

(b) Designating locations within the ocean shore state recreation area for specific uses, to avoid conflicts between users;

(c) Restricting access to or closing all or a portion of the ocean shore state recreation area; or

(d) Temporarily excluding a person from a portion or all ocean shore state recreation area.

(8) A person excluded from the ocean shore state recreation area under sections (4), (6) or (7) may contest the exclusion notice by filing a written appeal within seven business days of the exclusion date. The person excluded must submit the appeal to the department district manager responsible for the ocean shore state recreation area where the notice of exclusion was issued.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0050

Fines

(1) A person that violates any ocean shore state recreation area rule commits a Class A B, C or D violation punishable, upon conviction, by a fine as provided in ORS chapter 153.

(2) Each occurrence of an ocean shore state recreation area rule violation is considered a separate offense.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.050 & 390.124

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0060

Motor Vehicles and Other Motorized Devices

General Provision:

(1) A person operating a motorized vehicle or device on the ocean shore state recreation area must"

(a) Observe all posted signs, including signs that prohibit the operation of motorized vehicles or devices; and

(b) Restrict speed and manner of operation to reasonable and prudent practice, considering the terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other ocean shore state recreation area users, natural resources, and wildlife.

(2) A person operating a motorized vehicle or device on the ocean shore state recreation area may not:

(a) Disturb or harass wildlife or other natural resources, or

(b) Block access, use, or the safe and uninterrupted passage of others on the ocean shore state recreation area.

Motor Vehicle Provisions:

(3) A person may not use a motor vehicle as defined in ORS 825.005(6) on any area of the ocean shore state recreation area unless the department had posted the area as open. A person may use a motor vehicle on a closed area only pursuant to a permit issued by the department.

(4) On an area of the ocean shore state recreation area that the department has posted as open to motor vehicle use, a person may only operate a motor vehicle that is registered to operate on public highways and roads.

(5) On the ocean shore state recreation area fronting the Oregon Dunes National Recreation Area and Sand Lake Recreation Area, a person may use an ATV or OHV provided that the vehicles is equipped with at least the minimum safety equipment as specified in OAR 735-116-0000.

(6) A person may not operate a Class I ATV on the ocean shore state recreation area, except:

(a) If the person obtains an Ocean Shores ATV Operating Permit from the department as provided in OAR 736-004-0062.

(b) On the ocean shore state recreation area fronting the Oregon Dunes National Recreation Area and Sand Lake Recreation Area. A person may operate a Class I ATV registered in a state other than Oregon under this subsection.

(7) Unless otherwise posted, a person may not operate motorized vehicles or devices within the ocean shore state recreation area at speeds in excess of 25 mph in open sections and 10 mph in closed sections.

(8) A person operating a motorized vehicle or device must comply with regulatory signs in the ocean shore state recreation area. All provisions of motor vehicle laws of the State of Oregon are applicable and enforceable.

(9) The department may have a motorized vehicle or device towed at the owner's expense if left unattended for more than 24 hours or immediately if it meets one or more of the following criteria:

(a) Blocks or restricts a beach access,

(b) Is owned by a person who has been excluded or who is in violation of criminal trespass, or

(c) Poses harm to the beach environment or ocean shore resources, creates a hazard to humans or wildlife, is a nuisance or may become a navigational hazard if washed out to sea.

(10) Vehicle operators must have a valid driver's license in their possession, except at ocean shore state recreation area adjacent to Oregon Dunes National Recreation Area and Sand Lake Recreation Area that are open to ATV use.

(11) A person whose driving privilege has been suspended or revoked may not operate any vehicle on the ocean shore recreation area, including at ocean shore state recreation areas adjacent to the Oregon Dunes National Recreation Area and at Sand Lake Recreation Area.

(12) A person may not use any vehicle in western snowy plover-management areas as provided in OAR 736-021-0090.

ATV-Specific Provisions:

(13) A person operating an ATV on designated portions of the ocean shore state recreation area under this rule must comply with the following equipment requirements:

(a) Flag: All vehicles must display a highly visible red or orange flag when on the sand.

(A) The flag must be displayed vertically and be at least nine feet from the ground level when the vehicle is under power; and

(B) The flag dimensions must be at minimum 8 inches wide and 12 inches long.

(b) Helmet: Operators and passengers younger than 18-years-old in a Class I, III or IV ATV must wear a Department of Transportation-approved helmet with the chin strap fastened while operating an ATV. In addition, operators and passengers younger than 18 years of age must also wear a Department of Transportation-approved helmet with the chin strap fastened while operating a Class II nonregistered vehicle.

(c) Fuel tank: All fuel tanks must meet the following requirements:

(A) Must be securely mounted;

(B) Must be properly constructed of industrial material for carrying fuel;

(C) All connections must be secure and tight; and

(D) All mechanical fluids and fuel must be securely contained to ensure no leakages that may affect the ocean shore state recreation area.

(d) Muffler: All vehicles must be equipped with a muffler that conforms to the current noise level and defect standards of the Department of Environmental Quality for vehicles operated off road.

(14) A person operating an ATV on designated portions of the ocean shore state recreation area is subject to the following conditions:

(a) ATV Operator Permit: Operators of Class I, III and IV ATVs must obtain an ATV Safety Education Card, also known as an ATV operator permit, according to OAR 736-004-0085 and comply with all the provisions in OAR 736-004-0085.

(A) The department shall honor an ATV permit issued by another state, as detailed in OAR 736-004-0070.

(B) A temporary ATV Safety Education Card is valid for operation on the ocean shore state recreation area if the operator meets the provisions of OAR 736-004-0095.

(C) These rules apply to all ATV operators, regardless of state of residence.

(D) Only persons with disabilities and park employees, emergency personnel or natural resources workers on official duty that have obtained an Ocean Shores ATV Operating Permit from the department may operate a Class I ATV on the ocean shore state recreation area.

(b) Placement of ATV Permit: A person must display his or her ATV operating permits as provided in OAR 736-004-0065.

(c) Rider Fit: ATV operators younger than 16 years of age must meet the rider-fit criteria established in OAR 736-004-0115

Other Vehicle Provisions:

(15) A person may take off or land on the ocean shore in a powered aircraft, airborne vehicle or other aircraft:

(a) In an emergency, or

(b) As authorized in a special-use permit from the department as provided in OAR 736-016.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.668 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PR 12-1996, f. 12-23-96, cert. ef. 12-26-96; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0065

Non-Motorized Vehicles, Cycles, Unpowered Aircraft, Sails and Other Similar Devices

(1) A person may operate a bicycle, skateboard, scooter, rollerblades or inline skate, or other wheeled, operator-propelled equipment that transports the operator on land, as provided in section (3).

(2) A person may operate a wind-powered aircraft or vehicle, such as a land sail, kite-buggy or other similar items on the ocean shore state recreation area as provided in section (3).

(3) A person operating any vehicle described in sections (1) or (2) on the ocean shore state recreation area must:

(a) Observe all posted signs, including the signs that restrict the operation of such vehicles, aircrafts and devices, and

(b) Restrict speed and manner of operation to reasonable and prudent practice considering the terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other ocean shore state recreation area users, natural resources, and wildlife.

(4) A person operating any vehicle described in sections (1) or (2) on the ocean shore state recreation area may not:

(a) Disturb or harass wildlife or other natural resources as provided in OAR 736-021-0090; or

(b) Block access, use, or the safe and uninterrupted passage of others on the ocean shore state recreation area.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390

Hist.: PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0070

Pets and Other Animals

(1) Domestic animals, including saddle or pack animals, are allowed in the ocean shore state recreation area except as provided in OAR 736-021-0090, 736-030-0005, 736-030-0010, and as otherwise posted by the department.

(2) The handler of any domestic animal must be responsible for the animal's behavior and must exercise direct control over the animal while in the ocean shore state recreation area.

(a) "Direct control" means that the animal is within the unobstructed sight of the handler and responds to voice commands or other methods of control.

(b) Domestic animal handlers must carry a leash or restraining device at all times while in the ocean shore state recreation area.

(c) Domestic animal handlers must promptly leash animals at the request or order of a park employee.

(d) Handlers must prevent their animals from harassing people, wildlife and other domestic animals.

(e) Animals may not be hitched or confined in a manner that may cause damage to any natural resources on the ocean shore.

(f) Handlers are responsible for the removal of the animal's waste while in the ocean shore state recreation area.

(3) A park manager, ocean shore natural resource specialist or designated park employee may take any necessary measures to protect ocean shore resources and prevent an animal from interfering with the safety, comfort and well-being of visitors. Such measures may include removing the animal from the area.

(4) The department may seize any animal running at large in the ocean shore state recreation area and relinquish the animal to an animal control officer or shelter.

(5) A person may bring animals native to the ocean shore state recreation area for release as part of wildlife rehabilitation efforts pursuant to a valid Wildlife Rehabilitation Permit under ORS 635-044-0200 to 635-044-0310.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0080

Livestock and Farming

(1) A person may not harass livestock or interfere with lawfully permitted farming activities or facilities, including fencing.

(2) A person may not conduct non-permitted farming activities on the ocean shore state recreation area.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0090

Cultural, Historic, Natural and Wildlife Resources

(1) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on the ocean shore state recreation area, unless the department has authorized that activity by a permit issued under ORS 390.235 and OAR 736-051-0060 to 736-051-0080.

(2) Except with the written permission of the department or as allowed by sections (3) or (4) of this rule, a person may not:

(a) Pick, cut, mutilate, trim, uproot, or remove any living vegetation;

(b) Dig up or remove any sand, soil, rock, historical or fossil materials; or

(c) Place, remove, roll, move any stones, logs or other objects to gain access to the ocean shore state recreation area.

(3) A persons who is an enrolled member of an Indian Tribe as defined in ORS 97.740 may collect natural products as part of their traditional cultural heritage, in accordance with procedures established by the department and in state rules. Upon request by a park employee, a person collecting natural products under this section must present tribal enrollment identification or a department-issued Special Tribal Use Permit.

Removal for Personal Use:

(4) A person may remove small quantities of natural products from the ocean shore state recreation area for personal use without a permit as provided in subsections (a) and (b). However, the department may restrict removal of natural products to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) **Souvenirs** that may serve as a reminder of a person's ocean shore visit and may include a small quantity of agates and other rocks, driftwood, and similar non-living items collected for non-commercial, personal use in accordance with ORS 390.705 and 390.725. For items such as agates, sand and cobble, each person collecting must use an individual container and may not combine collections in the same container with another person. Unless otherwise restricted by the department, a person may remove:

(A) Agates and other non-living items such as shells, stones, and fossils loose on the ground, in small quantities, defined as no more than a one-gallon volume container per person per day; up to three gallons per person per calendar year.

(B) Sand: no more than a five-gallon volume container per person per day; up to 20 gallons per person per calendar year.

(C) Cobble: no more than a five-gallon volume container per person per day; up to 10 gallons per person per calendar year.

(D) Driftwood, for non-commercial purposes, as follows:

(i) No more than one cubic yard (3 ft X 3 ft X 3 ft) per person per day; up to three cords per person per calendar year.

(ii) Driftwood removal is restricted to wood that can be loaded by hand only. A person may not use mechanized loading or removal equipment. The department must approve chainsaw use.

(iii) A person may not remove wood embedded in the beach or in dune banks from the ocean shore state recreation area.

(iv) A person may not disturb, cut, mutilate or remove ancient tree stumps, including but not limited to those found on the ocean shore state recreation area at the Neskowin "ghost forest."

(b) **Living or non-living seaweed and marine plant** harvest-ing or collecting for non-commercial, personal consumption is allowed as provided in paragraphs (A) through (H) of this subsection. The department may restrict removal of aquatic vegetation to certain species, areas of the ocean shore state recreation area, quantities, and time of year.

(A) A person may harvest living seaweed and marine plants annually beginning March 1 and ending June 15.

(B) A person may harvest non-living seaweed and marine plants all year. However, in any western snowy plover-managed area, a person may not harvest non-living seaweed and marine plants during seasonal closures beginning March 15 and ending September 15.

(C) A person may not cut or disturb eel grass (*Zostera* spp.), surf grass (*Phyllospadix* spp.) or sea palm (*Postelia* sp.) in any area.

(D) A person may not harvest or collect any species listed on the "Rare, Threatened and Endangered Species of Oregon" published by the Oregon Biodiversity Information Center.

(E) A person may harvest no more than a one-gallon volume container per day; up to three gallons per calendar year.

(F) Each person collecting must use an individual container and may not combine collections in the same container with another person.

(G) A person may harvest only by hand using a knife or similar instrument. A person may only harvest live vegetation by cutting or picking; tearing or using tined instruments, such as rakes or forks, is prohibited. A person may remove loose or drift plants. A person may not remove or disturb a holdfast.

(H) A person may not pick, cut, mutilate, trim, uproot, remove or attempt to take or possess any living or non-living plants in marine reserves, marine protected areas, marine gardens, intertidal research reserves, and wildlife or habitat refuges.

(5) For any area of the ocean shore state recreation area that is also either a marine reserve or marine protected area, regulations pertaining to collection or removal of natural products are provided in division 29, OAR chapter 635, division 12, and OAR chapter 141, division 142.

(6) In order to remove or collect quantities of natural products greater than the limits listed in this rule, a person must obtain a special-use permit from the department.

Removal for Commercial Use:

(7) In order to remove or collect natural products for commercial use, a person must obtain a permit as provided in OAR chapter 736, division 20.

Other Collecting Activities:

(8) **Fishing**, shellfishing, and collecting of other marine invertebrates for personal or commercial use are regulated by the Oregon Department of Fish and Wildlife (ODFW) under rules in OAR chapter 635.

(9) A person may engage in **recreational prospecting** as provided in this section. However, the department may restrict disturbance or removal to specific areas of the ocean shore state recreation area, by quantities of material, and by time of year.

(a) A person may remove sand from the ocean shore state recreation area for personal prospecting use. A person may remove a maximum of one five-gallon volume container per day; for up to 20 gallons per person per calendar year.

(b) Equipment is limited to hand-operated instruments;

(c) A person may not use motorized equipment, including solar, battery operated pumps, or other similar motorized devices;

(d) A person may not use chemicals, heavy metals or other aids to separate metals;

(e) A person may not prospect in waters of the state without written permission from ODFW regarding in-stream work periods. A person may not interrupt or divert water flow or in any way restrict the movement of fish or wildlife;

(f) A person may not disturb, take, or move wildlife, vegetation or other natural resources in the prospecting process;

(g) If a person moves rocks in the prospecting process, the person must return the prospecting area to original condition before leaving the ocean shore state recreation area;

(h) A person may not prospect in any western snowy plover-managed area, during seasonal closures beginning March 15 and ending September 15;

(i) A person may not disturb more than one cubic yard of materials at any individual site, or more than a total of five cubic yards within a one-quarter mile radius; and

(j) A person may not stake or file a mining claim or leasehold location.

(10) **Scientific research:** A person may only engage in scientific research, including product removal for research, pursuant to a written permit from the department's Salem headquarters and any other required state or federal permits. For example, a person who

wishes to capture or handle marine and freshwater fish and shellfish and other marine invertebrates for scientific or educational purposes from the waters of Oregon, including the ocean shore state recreation area, must obtain a valid scientific taking permit from the Oregon Department of Fish and Wildlife, as provided in OAR chapter 635, divisions 7 and 43.

(11) **Metal detecting:** A person may use a metal detector or similar device on the ocean shore state recreation area without a written permit from the department in the areas noted in the "Detecting Allowed" list, published on the OPRD website.

Additional Rules for Natural Resource Protection:

(12) A person may not place items such as logs, rocks, ropes, structural members or other objects; remove, bury, roll stones or other objects; carve, dig caves or sculpt in sand dunes or sea cliffs, in a way that endangers visitors or damages ocean shore resources.

(13) A person may not do any of the following within the ocean shore recreation area:

(a) Hunt, collect, pursue, trap, kill, injure, harass or molest any wildlife, disturb or damage their habitat, disturb tidal pools, gather eggs or other live material, except as allowed in this rule. However, a person may detain or remove injured wildlife for rehabilitation efforts. A person must release injured or orphaned wildlife to a licensed wildlife rehabilitator as soon as feasible and in accordance with OAR chapter 635, divisions 44 and 56.

(b) Feed, give or offer food to wildlife;

(c) Discharge any firearm, pellet gun, bow and arrow, slingshot, paintball gun, or other weapon or device capable of injuring any person or wildlife, except as allowed by section (14).

(14) The director may authorize the use of firearm and other predator control methods by designated individuals for natural resource management purposes.

Rules for Western Snowy Plover Management Areas:

(15) In the western snowy plover management areas the following additional rules apply, which are adopted based on the department's Habitat Conservation Plan for Western (Coastal) Snowy Plover:

(a) **Occupied Sites:** In areas the department designated as occupied sites for western snowy plovers, the following apply:

(A) All recreation is restricted within dry sand demarked areas beginning March 15 and ending September 15. The department may declare restrictions ended on July 15 due to a discontinuation of nesting. The boundaries of "dry sand" areas may be identified with symbolic fencing (roping), signs, or both.

(B) A person may not operate a motorized or non-motorized vehicle or flying apparatus, including but not limited to kites, gliders and air balloons on the wet sand adjacent to demarked dry sand areas, except persons the department has approved to perform administrative, enforcement or scientific duties.

(C) Dogs are prohibited on the wet sand adjacent to demarked dry sand areas.

(D) Other recreational activities, such as camping and recreational fires, that could not typically occur on wet sand due to waves are also prohibited.

(E) Walking and any other passive activity not otherwise mentioned here are allowed on the wet sand.

(F) Horseback riding on the wet sand of beaches with occupied sites is allowed, unless horseback riding is otherwise restricted by special rules that pertain to areas adjacent to coastal cities and detailed in division 30.

(b) **Unoccupied Sites:** In areas the department has designated as unoccupied sites for western snowy plovers:

(A) A handler must leash dogs with a leash length of six feet or less and keep the dog under physical control at all times.

(B) Motorized and non-motorized vehicles are prohibited beginning March 15 and ending September 15. The department may declare the restrictions to end on July 15 due to a lack of nesting. The department may allow a person performing administrative, enforcement or scientific duties to use motorized or non-motorized vehicles when on official duty.

(C) The department will use signs placed at approaches to an unoccupied, actively managed area to convey restricted portions and duration to visitors.

(c) To manage the restoration efforts for the western snowy plover, the department will:

(A) Implement the Habitat Conservation Plan for Western (Coastal) Snowy Plover;

(B) Implement specific site plans designed for each area identified in the Habitat Conservation Plan for Western (Coastal) Snowy Plover;

(C) Implement the rules in this section, which apply to department-owned, leased or managed properties, as well as areas owned privately or by local governments that have been identified in the conservation plan or the site plans, and areas adjacent to occupied or unoccupied federal land; and

(D) Take any other action deemed necessary to the restoration effort.

Stat. Auth.: ORS 390.124, 390.660 & 390.725

Stats. Implemented: ORS 164.775, 358.920, 390.635 & 390.660 & 390.725

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0100

Visitor Conduct

(1) A person may not mutilate, deface, damage, or remove any property, structure or facility of any kind in the ocean shore state recreation area, except as provided in OAR 736-021-0090.

(2) A person may not leave any material not found naturally on the ocean shore, including garbage, recyclables, sewage, or waste, on the ocean shore state recreation area.

(3) A person may not engage in the following activities on the ocean shore state recreation area:

(a) Possessing or using alcoholic beverage(s) if the person is under 21 years of age;

(b) Fighting or promoting, instigating or encouraging fighting or similar violent conduct that would threaten the physical well-being of any person;

(c) Activities or conduct that constitutes a public nuisance or hazard; or

(d) Public indecency as defined in ORS 163.465;

(4) A person may only engage in the following activities on the ocean shore state recreation area as authorized in a special use permit that they obtain from the department pursuant to OAR chapter 736, division 16 or written permission from the park manager:

(a) Use or operation of any noise or light-producing machine, vehicle, device or instrument in a manner that may disturb persons or wildlife;

(b) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, or fireworks or other substances;

(c) Using a metal detector or similar device in any property not listed on the "Detecting Allowed" list, published on the department website;

(d) Blocking, obstructing or interfering with pedestrian or vehicular traffic;

(e) Descending, scaling or technical rock climbing on rock formations and cliffs;

(f) Entering or occupying any portion of the ocean shore state recreation area that has been closed to public access, including fenced areas; and

(g) Constructing a structure or sign.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635, 390.655 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0120

Fires

(1) A person may have a recreational beach fire in the ocean shore state recreation area under the following conditions:

(a) Fires are no larger than three feet by three feet by three feet in dimension. A person may apply for a special use permit under division 16 for larger fires.

(b) Fires must be located as follows:

(A) In the open sand area;

(B) Downwind of any shoreline vegetation and small wood debris or log accumulations;

(C) Never in dunes, small wood debris or beach log accumulations; and

(D) A minimum of 25 feet away from beach access points, shoreline vegetation, log accumulations and seawalls constructed of wood or other combustible material.

(c) Fires must not be left unattended;

(d) Fires must not cause damage to facilities or natural resources;

(e) Fires may not be covered with sand; and

(f) Fires must be extinguished completely with water and be broken apart before its users leave the area.

(2) A person may only burn paper products and untreated natural wood free of attached metal, nails, glass or plastic objects. A person may not use gasoline, diesel or any other petroleum-based products to start a fire.

(3) Notwithstanding section (1), the department may restrict fires to individual beach areas, or temporarily prohibit fires due to high fire hazard conditions.

(4) Beach fires are prohibited in western snowy plover management areas as provided in OAR 736-021-0090.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PR 3-1997, f. 11-5-97, cert. ef. 11-10-97; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0130

Commercial Activities and Non-Traditional Activities

(1) A person may only engage in a commercial activity or non-traditional park use on the ocean shore state recreation area as authorized in a special use permit that they obtain from the department pursuant to OAR chapter 736, division 16.

(2) A person must obtain a special use permit from the department for any activity or use as described in OAR 736-016-0005(1), including but not limited to an activity or use within the ocean shore state recreation area that:

(a) Is an organized group activity or event attended by over 50 persons;

(b) Uses a portion of the ocean shore state recreation area to the exclusion of other persons or the department;

(c) Modifies or embellishes the natural ocean shore state recreation area, or places structures, such as tents, chairs, arches, etc. on the ocean shore state recreation area in a manner outside of normal recreational use, as determined by the department;

(d) Uses public-address, amplification or lighting systems, other than those designed for personal use;

(e) Charges money for participation or admission, or they sell products or services;

(f) Could disturb the natural, cultural, scenic and recreational resources in the ocean shore state recreation area or adjacent areas;

(g) Could pose a safety or access concern for other ocean shore state recreation area users or for those involved in the event or activity.

(3) A person who obtains a special use permit under OAR 736, division 16 must comply with all the provisions of division 16, special use permit conditions, and with instructions from the department.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; Renumbered from 736-020-0033; PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; Renumbered from 736-021-0000; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0140

Signs and Promotional Materials

Unless the department authorizes a person to do so within the ocean shore state recreation area under a special use permit as pro-

vided in OAR chapter 736, division 16, a person may not place or distribute:

(1) Any sign, marker, advertisement, or inscription with the sole purpose of advertising a business or soliciting customers;

(2) Any circulars, notices, leaflets, pamphlets, written or printed information, promotional materials, products or other similar items of any kind.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0150

Lost Articles

(1) Under ORS 164.065 and 98.005, a person who finds money or goods with a perceived value of \$100 or more at the ocean shore state recreation area must try to find the property's rightful owner in one of the following ways:

(a) By directly following the provisions established in ORS 98.005; or

(b) By giving the found property to the department within 10 days of finding it, along with the details of the time and place the property was found.

(2) A person who finds money or goods valued at less than \$100 in the ocean shore recreation may give the property to the department.

(3) Sections (1) and (2) apply to items found by using metal detectors but not to minerals discovered through recreational prospecting.

(4) The department may dispose of unclaimed items in the department's custody in as early as 90 days.

(5) The department must have and follow a property disposition process that complies with applicable state laws and ethics standards.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

736-021-0160

Additional Rules

Additional administrative rules may apply to the ocean shore state recreation area, including but not limited to OAR chapter 736, divisions 4, 20, 22, 30 and 80.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 1-2013, f. 1-15-13, cert. ef. 2-1-13

DIVISION 22

OCEAN SHORE VEHICLE USE ZONES POLICY

736-022-0005

Policy

(1) To assure safe public use, protect scenic and recreation values, and conserve marine life and intertidal resources of the ocean shore, zones shall be established on the ocean beaches where vehicle use will be restricted or prohibited.

(2) Establishment of zones on beaches where vehicle use may be restricted or prohibited will be determined after evaluating the relative significance of public and agency concerns for safety, access, scenic and recreation values, seashore resources, and beach management:

(a) Safety — The following concerns will be considered to promote safety for all beach users:

(A) Beach Use — To assure the safety of beach users, added concern will be given to times and locations of heavy use by the general public;

(B) Beach Space — Beach areas that are too limited in usable space to serve both pedestrian and vehicular uses may be closed to vehicles;

(C) Hazardous Conditions — Beach areas with restricted visibility or hazardous conditions for vehicular use may be closed to vehicles;

(D) On-Shore Residents — Vehicular use on beaches may be restricted or prohibited at times and locations where the safety of on-shore residents or property has been significantly affected by such beach use.

(b) Access Concerns — The public need for vehicular access onto the beaches will be evaluated for each beach and region of the coast:

(A) Need — The need for vehicular use on individual beaches will be considered. The availability and convenience of existing on-shore parking and pedestrian access and facilities will be a factor in determining the need for vehicular parking or recreational travel on the beach itself;

(B) Wood Gathering — Adequate opportunities need to be assured for non-commercial gathering of wood consistent with the State Beach Log Removal Policy;

(C) Disabled Persons — Adequate opportunities need to be assured for disabled persons to have reasonable beach access and use.

(c) Scenic and Recreation Values — Zones will be established to best utilize and protect the outstanding scenic and recreation resources of the coast:

(A) Scenic Values — Consideration will be given to retaining the natural attraction of outstanding scenic features. Vehicle use on beaches immediately adjoining outstanding public viewpoints or scenic areas may be restricted;

(B) Recreation Interests — Evaluation will be made of the public's recreation interests and priorities at each beach and region of the coast. This will assist in accommodating a broad variety of beach use interests at the most logical locations.

(d) Natural Resources — Adequate protection will be afforded to significant natural resources at appropriate times and locations:

(A) Intertidal Marine Life — Protection will be afforded to significant marine garden areas and other marine life which would be vulnerable due to vehicular access;

(B) Clambeds — Protection will be afforded to clam propagation needs at significant areas;

(C) Wildlife Habitats — Protection will be afforded to significant coastal wildlife habitats where protection from vehicles is required;

(D) Coastal Vegetation — Protection needs will be evaluated where significant vegetation requires special protection.

(e) Beach Management — The public services involved in management of the beaches will be considered:

(A) Management Access — Adequate vehicular access will be required at some beaches for ocean shore patrols, law enforcement, control of fires, search and rescue, property protection, and control of litter and sanitation;

(B) Enforcement — The ability to adequately enforce vehicle use regulations at the beach will be considered. Where reasonable control would not be feasible, the beach may be closed to vehicles;

(C) Public Costs — Consideration will be given to the costs involved for government to effectively manage and enforce the beach proposal being evaluated.

(3) Establishment of zones on the ocean shore where vehicle use is restricted or prohibited will be determined by the Department of Parks and Recreation after consideration of public input, consultation with local governments and affected state and federal agencies, consideration of the above standards, and the provisions set forth in ORS 390.668.

(4) The above standards shall not apply to proceedings to establish a zone that were commenced prior to the effective date of this rule.

Stat. Auth.: ORS 183.545 & 390.668

Stats. Implemented: ORS 390.668

Hist.: 1 OTC 1-1979, f. & ef. 2-8-79; PR 9-1992, f. & cert. ef. 11-12-92

Oregon Shore Vehicle Permit Provisions

736-022-0010

Provisions for Obtaining Vehicle Permit

(1) Permits will be issued only from the offices listed below and only during normal working hours.

(2) Permits will be limited to daylight hours only.

(3) Permits will be issued for a specific person, vehicle, use and ocean shore area.

(4) Permittee must have permit in possession during time of use.

(5) Permits are not valid for commercial removal of driftwood.

(6) Granting of a permit by the State Parks Director for use of a vehicle on the ocean shore in no way authorizes the permittee to trespass on private property or to remove materials owned or controlled by others.

(7) Permittee agrees to hold the State of Oregon, it's Parks and Recreation Commission, officers, agents and employees harmless for any damages, claims and suits or action in law or in equity arising from any operation under the permit.

(8) The State Parks and Recreation Commission may, at its discretion, require a certificate of insurance to cover any claims resulting from the activities of the permittee.

(9) Permittee shall not operate the vehicle in a careless manner; while under the influence of intoxicating beverages, narcotics or dangerous drugs; or in excess of 25 MPH, or in excess of a less speed, if so posted.

(10) Permit-issuing offices for firewood gathering, elderly and disabled access:

(a) Salem — State Parks Headquarters;

(b) Astoria/Warrenton — Fort Stevens State Park and State Police;

(c) Cannon Beach — City of Cannon Beach Police Department (for city limits only);

(d) Tillamook — Region II Parks Office and State Police;

(e) Cape Lookout — Cape Lookout State Park;

(f) Newport — Beverly Beach State Park;

(g) South Beach — South Beach State Park;

(h) Florence — Honeyman State Park;

(i) Coos Bay — Region III Parks Office and Sunset Bay State Park;

(j) Bandon — Bullards Beach State Park;

(k) Port Orford — Cape Blanco State Park;

(l) Brookings — Harris Beach State Park.

(11) Permits-issuing offices for ocean shore activities other than firewood gathering, elderly and disabled access:

(a) Columbia River to Lincoln/Lane County line: Region II Parks Office, 3600 E. 3rd Street, Tillamook, OR 97141;

(b) Lincoln/Lane County Line to Oregon/ California border: Region III Parks Office, 365 N. 4th Street, Suite A, Coos Bay, OR 97420.

Stat. Auth.: ORS 183.545 & 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 1283, f. 6-6-72; PR 13-1984, f. & ef. 12-12-84; PR 9-1992, f. & cert. ef. 11-12-92

DIVISION 23

RECOMMENDATIONS TO ADJUST STATUTORY VEGETATION LINE

736-023-0000

Purpose

These rules set forth the criteria and procedure by which the Parks and Recreation Department will periodically review the vegetation line established under ORS 390.770 so that the Parks and Recreation Commission may recommend adjustments to that line to the legislature pursuant to ORS 390.755.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.755

Hist.: PR 10-1994, f. 11-29-94, cert. ef. 12-1-94

736-023-0010

Policy

The Parks and Recreation Commission will hold paramount the public interest and intent of the 1967 Oregon Beach Law as amended and supplemented to (ORS 390.610 and 390.690) in all evaluation of proposals to change the statutory vegetation line.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.610

Hist.: PR 10-1994, f. 11-29-94, cert. ef. 12-1-94

736-023-0020

Definitions

(1) "Department" means the Oregon Parks and Recreation Department.

(2) "Commission" means the Oregon Parks and Recreation Commission.

(3) "Statutory vegetation line" means that line described according to the Oregon Coordinate System and set forth in ORS 390.770 for the purpose of identifying lands subject to the department's authority to regulate improvements on the ocean shore. The line consists of a series of connected line segments.

(4) "Actual vegetation line" means the extreme seaward boundary of natural, non-aquatic vegetation. It is a visible boundary, marking the border between the dry sand beach and the adjoining upland. Seasonal occurrences or isolated patches of vegetation may lie seaward of the actual vegetation line.

(5) "Upland" means that area abutting and lying immediately landward of the statutory vegetation line.

(6) "Ocean shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as established and described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800.

(7) "Natural" means wild, uncultivated vegetation whether native or non-native.

(8) "Littoral Cell" is defined as a shoreline segment or reach that is bounded in a longshore direction by a physical feature such as a jetty or headland. There are 22 littoral cells on the Oregon coast defined as follows:

- (a) Columbia River south jetty to Tillamook Head;
- (b) Tillamook Head to Cape Falcon;
- (c) Cape Falcon to Cape Meares;
- (d) Cape Meares to Cape Lookout;
- (e) Cape Lookout to Cape Kiwanda;
- (f) Cape Kiwanda to Cascade Head;
- (g) Cascade Head to Cape Foulweather;
- (h) Cape Foulweather to Yaquina Head;
- (i) Yaquina Head to Cape Perpetua;
- (j) Cape Perpetua to Heceta Head;
- (k) Heceta Head to Cape Arago;
- (l) Cape Arago to Coquille Point;
- (m) Coquille Point to Blacklock Point;
- (n) Blacklock Point to Cape Blanco;
- (o) Cape Blanco to Port Orford Heads;
- (p) Port Orford Heads to Humbug Mountain;
- (q) Humbug Mountain to Sisters Rocks;
- (r) Sisters Rocks to Hubbard Mound/Otter Point;
- (s) Otter Point to Cape Sebastian;
- (t) Cape Sebastian to Crook Point;
- (u) Crook Point to Cape Ferrello;
- (v) Cape Ferrello to California border.

(9) "Survey(s)" means evidence from aerial and other photographs; engineered examinations, data and other analysis(s).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.124, 390.755 & 390.605

Hist.: PR 10-1994, f. 11-29-94, cert. ef. 12-1-94; PRD 7-2000, f. & cert. ef. 5-10-00

736-023-0030

Periodic Re-Examination of Statutory Vegetation Line

(1) The department will re-examine the statutory vegetation line in littoral cell units. The Department may re-examine the statutory vegetation line:

(a) On its own initiative, or when directed by the Commission;

(b) Upon request from the governing body(s) of a county(s) or city(s) contiguous to the littoral cell in question; or

(c) Upon request from one or more owners of property that is part of, contiguous or in close proximity to the littoral cell in question.

(2) Re-examination described shall include the following:

(a) A description of the littoral cell to be re-examined;

(b) An assertion of the direction and extent, if any, to which the actual vegetation line has moved from the location of the statutory vegetation line described by ORS 390.770;

(c) A statement of the perceived cause of the movement of the actual vegetation line and the likelihood that such movement is continuing and/or permanent;

(d) A description of the harm to the public or private use and enjoyment of the specific area caused by the current location of the statutory vegetation line;

(e) Photographs, affidavits or other documentary evidence supporting the change proposed in the petition;

(f) A history citing changes since 1967 of the littoral cell in question. This shall include but not limited to a current survey, past surveys and aerial surveys at 5-10 year intervals.

(3) In its investigation and review of the actual and statutory vegetation lines, and in formulating its recommendation to the Commission, the department will consider, but is not limited to, the following factors:

(a) The density and location of vegetation at and near to the segment for which a change is requested;

(b) The extent of the shift of the actual vegetation line;

(c) The cause of any change in the location of the actual vegetation line, including accretion, erosion, vegetative stabilization activities, construction of physical structures, such as seawalls and revetments, sudden natural events and non-natural causes;

(d) The likelihood that the present location of the actual vegetation line will remain stable over a period of twenty five years or more, notwithstanding seasonal erosion and accretion patterns. Stability will be based on review of the physical conditions of the beach area in question as evidenced by statutory vegetation line aerial photography taken since 1967;

(e) The line delineating the extreme high tide, at present and in the recent past;

(f) The area commonly identified by the public as public beach and customarily used for recreational purposes;

(g) The fiscal impact to the department of any proposed adjustments to the statutory vegetation line;

(h) Prior recommendations or decisions by the Commission regarding similarly situated segments of the statutory vegetation line;

(i) The length of the statutory vegetation line segment under review, and the relationship of the existing and proposed segments under review to the existing statutory vegetation line segments to the north and south;

(j) The effect of moving or not moving the statutory vegetation line on private landowners' use and enjoyment of the upland;

(k) The effect of moving or not moving the statutory vegetation line on the public's use and enjoyment of the state recreation areas described in ORS 390.610(2) and (3);

(l) Direct and indirect public costs that could be incurred by a change in the statutory vegetation line.

(4) The department may collect and evaluate information from the following sources, among others, to assess the factors described in section (3) of this rule:

(a) On-site inspections;

(b) Photographs including aerial photos and mosaics;

(c) Surveys;

(d) Scientific and historical studies and data;

(e) Consultation with local, state and federal agencies;

(f) Testimony presented at public hearings.

(5) The department, upon undertaking an evaluation of the statutory vegetation line pursuant to section (1) of this rule, shall

conduct one or more public hearings in the vicinity of the affected area. For the convenience of interested parties, the Department in its discretion may hold additional hearings elsewhere. Notice of hearings shall be published in a local newspaper and mailed to owners of property adjacent to the ocean shore and within the littoral cell where the statutory vegetation line is under review.

(6) Upon obtaining all pertinent information and public comment, the department will forward to the Commission a report setting forth data, comments, findings, and a proposed recommendation regarding adjustment of specific segments of the statutory vegetation line.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.124, 390.635 & 390.755

Hist.: PR 10-1994, f. 11-29-94, cert. ef. 12-1-94

DIVISION 24

VEHICLES AND AIRCRAFT RESTRICTIONS ON OCEAN SHORE

Clatsop County

736-024-0005

Restrictions

(1) There shall be no landing of any aircraft on the ocean shore in Clatsop County, except for an emergency.

(2) Except for an emergency or as provided in section (3) of this rule, there shall be no travel by motor vehicles on the ocean shore in Clatsop County in the areas and during the periods of time hereinafter designated by the Oregon coordinate latitude survey lines, north zone, consisting of "Y" numbers as shown on "Exhibit 1" attached hereto and by this reference made a part hereof. The areas where motor vehicle travel is allowed, the periods of time for such use, and the areas on the ocean shore where travel by motor vehicles are prohibited, are further described as follows:

(a) Motor vehicle travel is prohibited on the ocean shore between the hours of 12:01 p.m. and 12:00 midnight, from May 1 through September 15, from the south jetty of the Columbia River, Y 952, 180, southerly to the Peter Iredale Road, Y 934, 673;

(b) Motor vehicle travel is allowed at any time between the Peter Iredale Road, Y 934, 673, southerly to the beach ramp at Gearhart, Y 880, 455;

(c) Motor vehicle travel is prohibited between the beach ramp at Gearhart, Y 880, 455, southerly to the Clatsop County-Tillamook County line, Y 790, 613, except as follows: Operation or parking of motor vehicles used for and engaged in towing dory boat trailers or essential dory boat launchings from Sunset Drive Y 828, 775 in Cannon Beach southerly to Warren Way Y 823, 122 with access from Warren Way only.

(3) The Director of State Parks, or the authorized representative may issue special permits for motor vehicles to travel on the ocean shore within the areas or at times where such travel is otherwise prohibited by this resolution. No charge for such permits will be made. Any special permit or permit identification card shall be in the immediate possession of the operator of the vehicle at all times when driving on that portion of the ocean shore otherwise closed to travel by motor vehicles. The operator shall display the same upon the demand of any peace officer.

(4) The State Parks and Recreation Department is directed to erect conspicuous signs and markers designating the above areas on the ocean shore of Clatsop County, with reference to the Oregon coordinate survey system, as areas where travel by motor vehicles are prohibited, areas where travel by motor vehicles are partially restricted, and areas where travel by motor vehicles are allowed, except as follows: No dory boat launching and landing area signs will be posted on the beach at Cannon Beach.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545, 184 & 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 897, f. 1-27-61, HC 1163, f. 3-12-68; HC 1227, f. 6-24-70; IOTC 51, f. 1-24-75, ef. 2-25-75; IOTC 21-1979, f. & ef. 9-21-79; PR 14-1984, f. & ef. 12-12-84; PR 16-1984, f. & ef. 12-13-84; PR 1-1985, f. & ef. 3-29-85; PR 2-

1986, f. & ef. 2-28-86; PR 5-1986, f. & ef. 5-12-86; PR 10-1992, f. & cert. ef. 11-12-92

736-024-0010

Speed Limit

(1) There is hereby established a 15 MPH maximum speed limit within those areas of the ocean shore where motor vehicle travel is permitted. Said speed limitation shall extend from Ecola Creek to Arch Cape in Clatsop County, Oregon.

(2) The State Parks and Recreation Department is directed to erect conspicuous signs or markers at the roadway entrances to the above-described ocean shore areas affected by this resolution and at such other locations deemed necessary to properly inform the public of the speed restrictions. The said signs shall set forth the restriction as to the travel of motor vehicles as herein provided.

Stat. Auth.: ORS 183.545, 184 & 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 1234, f. 8-27-70; PR 14-1984, f. & ef. 12-12-84; PR 1-1985, f. & ef. 3-29-85; PR 2-1986, f. & ef. 2-28-86; PR 5-1986, f. & ef. 5-12-86; PR 10-1992, f. & cert. ef. 11-12-92

Tillamook County

736-024-0015

Restrictions

(1) There shall be no landing of any aircraft on the ocean shore in Tillamook County, except for an emergency.

(2) Except for an emergency or as provided in section (3) of this rule, there shall be no travel by motor vehicles on the ocean shore in Tillamook County in the areas and during the periods of time hereinafter designated by the Oregon coordinate latitude survey lines, north zone, consisting of "Y" numbers as shown on "Exhibit 2" attached hereto and by this reference made a part hereof. The areas where motor vehicle travel is allowed, the periods of time for such use, and the areas on the ocean shore where travel by motor vehicles is prohibited, are further described as follows:

(a) Motor vehicle travel is prohibited from the Clatsop County-Tillamook County line, Y 790, 613, southerly to the south line of Oswald West State Park, Y 774, 737;

(b) Motor vehicle travel is prohibited from the south line of Oswald West State Park, Y 774, 737, southerly to the north boundary of Nehalem Bay State Park, Y 761, 335, except as follows:

(A) Between the hours of 7:00 a.m. and 12:00 noon, October 1 through April 30;

(B) Motor vehicles essential to and engaged in boat launchings will be allowed any time during the year.

(c) Motor vehicle travel is prohibited from the north boundary of Nehalem Bay State Park, Y 761, 335, southerly to the south boundary of the Boy Scout property north of Sand Lake, Y 618, 468, except as follows: Motor vehicles essential to and engaged in boat launchings will be allowed any time during the year for a distance of 300 feet northwest from point Y 665, 466; XI, 113, 850, near Happy Camp;

(d) Motor vehicle travel is allowed at any time from the south boundary of Boy Scout property north of Sand Lake, Y 618, 468 southerly to the Galloway Road beach access Y 610, 120;

(e) Motor vehicle travel is prohibited from the Galloway Road beach access Y 610, 120 southerly to the mouth of Sand Lake Y 606, 590;

(f) Motor vehicle travel is allowed at any time from the mouth of Sand Lake Y 606, 590 southerly to the base of the headland north of Cape Kiwanda, Y 586, 275, except as follows: From the mouth of Sand Lake, Y 606, 590, southerly to the approximate north boundary of Cape Kiwanda State Park property, Y 595, 111, motor vehicle travel is prohibited May 1 through September 30 and from sunrise to sunset on legal holidays (as defined in ORS Chapter 187) and on Saturdays and Sundays between October 1 and April 30;

(g) Motor vehicle travel is prohibited from the base of the headland north of Cape Kiwanda, Y 586, 275, southerly to a point

north of the beach ramp near Cape Kiwanda, Y 584, 097, except as follows:

(A) From the base of the headland south of Cape Kiwanda, Y 584, 879, southerly approximately 400 feet to Y 584, 688, motor vehicles essential to and engaged in boat launchings, boat recoveries, transferring equipment or supplies onto boats, unloading equipment or catches from boats, or emergency repairs of other vehicles or boats will be allowed at any time during the year;

(B) From Y 584, 688, southerly approximately 700 feet to a line located north of and parallel to the beach ramp near Cape Kiwanda, the point of intersection of said line and the line of vegetation being at Y 584, 097, operation or parking of motor vehicles used for towing boat trailers or essential to boat launchings will be allowed.

(h) Motor vehicle travel and parking is allowed at any time from the line described in subsection (2)(g) of this rule, north of the beach ramp near Cape Kiwanda, southerly approximately 1,300 feet to Y 582, 843, except that in a corridor 100 feet in width, southerly of and contiguous to the line described in subsection (2)(e) of this rule, all parking is prohibited;

(i) Motor vehicle travel is prohibited from Y 582, 843 southerly to near Pacific Avenue at Pacific City, Y 579, 329;

(j) Motor vehicle travel is allowed at any time from near Pacific Avenue at Pacific City, Y 579, 329, southerly to Porter Point, Y 563, 121;

(k) Motor vehicle travel is prohibited from Porter Point, Y 563, 121, southerly to the Tillamook County/Lincoln County line, Y 521, 960.

(3) The State Parks Director or the authorized representative may issue special permits for motor vehicles to travel on the ocean shore within the areas or at times where such travel is otherwise prohibited by this resolution. No charge for such permits will be made. Any special permit or permit identification card shall be in the immediate possession of the operator of the vehicle at all times when driving on that portion of the ocean shore otherwise closed to travel by motor vehicles. The operator shall display the same upon the demand of any peace officer.

(4) The State Parks and Recreation Department is directed to erect conspicuous signs and markers designating the above areas on the ocean shore of Tillamook County, with reference to the Oregon coordinate survey system, as areas where travel by motor vehicles is prohibited, areas where travel by motor vehicles is partially restricted, and areas where travel by motor vehicles is allowed, as herein provided.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545, 184 & 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 746, f. 1-22-59; HC 860, f. 8-25-60; HC 933, f. 9-15-61; HC 940, f. 9-15-61; HC 1012, f. 9-12-63; HC 1155, f. 11-8-67; HC 1166, f. 4-29-68; HC 1173, f. 7-15-68; HC 1227, f. 6-24-70; HC 1259, f. 7-16-71; IOTC 20, f. 1-18-74, ef. 2-11-74; IOTC 4-1980, f. & ef. 3-26-80; IOTC 11-1980, f. & ef. 5-21-80; PR 14-1984, f. & ef. 12-12-84; PR 16-1984, f. & ef. 12-13-84; PR 5-1989, f. & cert. ef. 12-22-89; PR 10-1992, f. & cert. ef. 11-12-92

736-024-0020

Speed Limit

(1) There is hereby established a 15 MPH maximum speed limit within those areas of the ocean shore where motor vehicle travel is permitted pursuant to OAR 736-024-0015 within the city limits of Manzanita, in Tillamook County, Oregon.

(2) The State Parks and Recreation Department is directed to erect conspicuous signs or markers at the roadway entrances to the above-described ocean shore areas affected by this resolution and at such other locations deemed necessary to properly inform the public of the speed restrictions. The said signs shall set forth the restriction as to the travel of motor vehicles as herein provided.

Stat. Auth.: ORS 183.545, 184 & 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 1234, f. 8-27-70; PR 14-1984, f. & ef. 12-12-84; PR 10-1992, f. & cert. ef. 11-12-92

Lincoln County

736-024-0025

Restrictions

(1) There shall be no landing of any aircraft on the ocean shore in Lincoln County, except for an emergency.

(2) Except for an emergency or as provided in section (3) of this rule, there shall be no travel by motor vehicles on the ocean shore in Lincoln County in the areas and during the periods of time hereinafter designated by the Oregon coordinate latitude survey lines, north zone, consisting of "Y" numbers as shown on "Exhibit 3" attached hereto and by this reference made a part hereof. The areas where motor vehicle travel is allowed, the periods of time for such use, and the areas on the ocean shore where travel by motor vehicles is prohibited, are further described as follows:

(a) Motor vehicle travel is prohibited from the Tillamook County-Lincoln County line, Y 521, 960, southerly to Yaquina Bay, Y 367, 056, except for the following locations within the corporate limits of Lincoln City:

(A) A distance of 150 feet on each side of the westerly extension of North 35th Court;

(B) A distance of 150 feet on each side of the westerly extension of North 15th Street.

(b) Motor vehicle travel is prohibited from Yaquina Bay, Y 367, 056, southerly to the Lincoln County-Lane County line, Y 243, 400.

(3) The Director of State Parks or the authorized representative may issue special permits for motor vehicles to travel on the ocean shore within the areas or at times where such travel is otherwise prohibited by this resolution. No charge for such permits will be made. Any special permit or permit identification card shall be in the immediate possession of the operator of the vehicle at all times when driving on that portion of the ocean shore otherwise closed to travel by motor vehicles. The operator shall display the same upon the demand of any peace officer.

(4) The State Parks and Recreation Department is directed to erect conspicuous signs and markers designating the above areas on the ocean shore of Lincoln County, with reference to the Oregon coordinate survey system, as areas where travel by motor vehicles is prohibited, areas where travel by motor vehicles is partially restricted, and areas where travel by motor vehicles is allowed, as herein provided.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545, 184 & 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 1047, f. 9-29-64; HC 1148, f. 8-25-67; HC 1227, f. 6-24-70; IOTC 18-1979, f. & ef. 7-19-79; PR 14-1984, f. & ef. 12-12-84; PR 16-1984, f. & ef. 12-13-84; PR 10-1992, f. & cert. ef. 11-12-92

Lane County

736-024-0030

Restrictions

(1) There shall be no landing of any aircraft on the ocean shore in Lane County, except for an emergency.

(2) Except for an emergency or as provided in section (3) of this rule, there shall be no travel by motor vehicles on the ocean shore in Lane County in the areas and during the periods of time hereinafter designated by the Oregon coordinate latitude survey lines, north and south zones consisting of "Y" numbers as shown on "Exhibit 4" attached hereto and by this reference made a part hereof. The areas where motor vehicle travel is allowed, the periods of time for such use, and the areas on the ocean shore where travel by motor vehicles is prohibited, are further described as follows:

(a) Motor vehicle travel is prohibited from the Lincoln County-Lane County line, Y 243, 400, southerly to the Siuslaw River, Y 877, 060;

(b) Motor vehicle travel is prohibited from May 1 through September 30 from the Siuslaw River, Y 877, 060, southerly to the Oregon Dunes National Recreation Area south parking lot, Y 856, 603 and from sunrise to sunset on legal holidays (as defined in

ORS Chapter 187) and on Saturdays and Sundays between October 1 and April 30;

(c) Non-street legal vehicle travel is prohibited year around from the Siuslaw River, Y 877, 060, southerly to the south end of the South Jetty Road Y 855, 358;

(d) Motor vehicle travel is allowed at any time from the Oregon Dunes National Recreation area south parking lot, Y 856, 603, southerly to approximately 1,500 feet north of the Oregon Dunes National Recreation Area, Siltcoos River, parking lot, Y 830, 336;

(e) Motor vehicle travel is prohibited from approximately 1,500 feet north of the Oregon Dunes National Recreation Area, Siltcoos River, parking lot Y 830, 336, southerly to the Lane County-Douglas County line Y 822, 001.

(3) The Director of the State Parks and Recreation Department or the authorized representative may issue special permits for motor vehicles to travel on the ocean shore within the areas or at times where such travel is otherwise prohibited by this resolution. No charge for such permits will be made. Any special permit or permit identification card shall be in the immediate possession of the operator of the vehicle at all times when driving on that portion of the ocean shore otherwise closed to travel by motor vehicles. The operator shall display the same upon the demand of any peace officer.

(4) The State Parks and Recreation Department is directed to erect conspicuous signs and markers designating the above areas on the ocean shore of Lane County, with reference to the Oregon coordinate survey system, as areas where travel by motor vehicles is prohibited, areas where travel by motor vehicles is partially restricted, and areas where travel by motor vehicles is allowed, as herein provided.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 390.668

Stat. Implemented: ORS 390.668

Hist.: HC 1227, f. 6-24-70; PR 12-1982(Temp), f. & ef. 10-1-82; PR 6-1983, f. & ef. 4-22-83; PR 14-1984, f. & ef. 12-12-84; PR 3-1987, f. & ef. 5-12-87; PR 10-1992, f. & cert. ef. 11-12-92; PR 4-1996, f. 6-3-96, cert. ef. 6-14-96

Douglas County

736-024-0035

Restrictions

(1) There shall be no landing of any aircraft on the ocean shore in Douglas County, except for an emergency.

(2) Except for an emergency or as provided in section (3) of this rule, there shall be no travel by motor vehicles on the ocean shore in Douglas County in the areas and during the periods of time hereinafter designated by the Oregon coordinate latitude survey lines, south zone, consisting of "Y" numbers shown on "Exhibit 5" attached hereto and by this reference made a part hereof. The areas where motor vehicle travel is allowed, the periods of time for such use, and the areas on the ocean shore where travel by motor vehicles is prohibited, are further described as follows:

(a) Motor vehicle travel is prohibited from the Lane County-Douglas County line, Y 822, 001, southerly to approximately one mile south of the mouth of Tahkenitch Creek Y 792, 296;

(b) Motor vehicle travel is allowed from approximately one mile south of the mouth of Tahkenitch Creek Y 792, 296 to the Umpqua River, Y 752, 639;

(c) Motor vehicle travel is prohibited from the south bank at the Umpqua River, Y 751, 067 southerly to the Douglas County-Coos County line, Y 730, 871.

(3) The Director of the State Parks and Recreation Department or the authorized representative may issue special permits for motor vehicles to travel on the ocean shore within the areas or at times where such travel is otherwise prohibited by this resolution. No charge for such permits will be made. Any special permit or permit identification card shall be in the immediate possession of the operator of the vehicle at all times when driving on that portion of the ocean shore otherwise closed to travel by motor vehicles. The operator shall display the same upon the demand of any peace officer.

(4) The State Parks and Recreation Department is directed to erect conspicuous signs and markers designating the above areas on the ocean shore of Douglas County, with reference to the Oregon coordinate survey system as areas where travel by motor vehicles is prohibited, areas where travel by motor vehicles is partially restricted, and areas where travel by motor vehicles is allowed, as herein provided.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 390.668

Stat. Implemented: ORS 390.668

Hist.: HC 1227, f. 6-24-70; PR 6-1983, f. & ef. 4-22-83; PR 14-1984, f. & ef. 12-12-84; PR 4-1987, f. & ef. 5-12-87; PR 10-1992, f. & cert. ef. 11-12-92; PR 4-1996, f. 6-3-96, cert. ef. 6-14-96

Coos County

736-024-0040

Restrictions

(1) There shall be no landing of any aircraft on the ocean shore in Coos County, except for an emergency.

(2) Except for an emergency or as provided in section (3) of this rule, there shall be no travel by motor vehicles on the ocean shore in Coos County in the areas and during the periods of time hereinafter designated by the Oregon coordinate latitude survey lines, south zone, consisting of "Y" numbers as shown on "Exhibit 6" attached hereto and by this reference made a part hereof. The areas where motor vehicle travel is allowed, the periods of time for such use, and the areas on the ocean shore where travel by motor vehicles is prohibited, are further described as follows:

(a) Motor vehicle travel is prohibited from the Douglas County-Coos County line, Y 730, 871, southerly to approximately one mile south of the Tenmile Creek estuary Y 707, 991;

(b) Motor vehicle travel is allowed at any time from approximately one mile south of the Tenmile Creek estuary Y 707, 991, southerly to approximately 500 feet north of Horsfall Beach Access Y 674, 569;

(c) Motor vehicle travel is prohibited from May 1 through September 30 from approximately 500 feet north of Horsfall Beach Access Y 674, 569 southerly to the Dunes NRA boundary Y 667, 825;

(d) Motor vehicle travel is allowed at any time from the Dunes NRA boundary Y 667, 825, southerly to the south jetty at Coos Bay, Y 637, 596;

(e) Motor vehicle travel is prohibited from south jetty at Coos Bay, Y 637, 596 southerly to Five Mile Point, Y 590, 387, except as follows:

(A) Motor vehicles are allowed at any time on the ocean shore at the south jetty of Coos Bay, Y 637, 496, southerly to Y 636, 922, X 978, 633;

(B) Motor vehicles are allowed at any time on the ocean shore at the north end of the Sunset Bay State Park for the purpose of boat launching.

(f) Motor vehicle travel is allowed at any time from Five Mile Point, Y 590, 387, southerly to the northerly beach access parking area at Bullards Beach State Park, Y 564, 675;

(g) Motor vehicle travel is prohibited from the northerly beach access parking area at Bullards Beach State Park, Y 564, 675, southerly to north of China Creek, Y 537, 301, except as follows: Motor vehicles are allowed at any time on the ocean shore at the south jetty of the Coquille River between Y 555, 175 and Y 555, 075;

(h) Motor vehicle travel is allowed at any time from north of China Creek, Y 537, 301 southerly to a point approximately one mile north of the mouth of Twomile Creek Y 530, 895;

(i) Motor vehicle travel is prohibited from a point approximately one mile north of the mouth of Twomile Creek Y 530, 895 to the Coos County-Curry County line, Y 494, 575.

(3) The Director of the State Parks and Recreation Department or the authorized representative may issue special permits for motor vehicles to travel on the ocean shore within the areas or at times where such travel is otherwise prohibited by this resolution. No charge for such permits will be made. Any special permit or permit identification card shall be in the immediate possession of

the operator of the vehicle at all times when driving on that portion of the ocean shore otherwise closed to travel by motor vehicles. The operator shall display the same upon the demand of any peace officer.

(4) The State Parks and Recreation Department is directed to erect conspicuous signs and markers designating the above areas on the ocean shore of Coos County, with reference to the Oregon coordinate survey system, as areas where travel by motor vehicles is prohibited, areas where travel by motor vehicles is partially restricted, and areas where travel by motor vehicles is allowed, as herein provided.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 1227, f. 6-24-70; PR 6-1983, f. & ef. 4-22-83; PR 14-1984, f. & ef. 12-12-84; PR 10-1992, f. & cert. ef. 11-12-92; PR 4-1996, f. 6-3-96, cert. ef. 6-14-96

Curry County

736-024-0045

Restrictions

(1) There shall be no landing of any aircraft on the ocean shore in Curry County, except for an emergency.

(2) Except for an emergency or as provided in section (3) of this rule, there shall be no travel by motor vehicles on the ocean shore in Curry County in the areas and during the periods of time hereinafter designated by the Oregon coordinate latitude survey lines, south zone, consisting of "Y" numbers as shown on "Exhibit 7" attached hereto and by this reference made a part hereof. The areas where motor vehicle travel is allowed, the periods of time for such use, and the areas on the ocean shore where travel by motor vehicles is prohibited, are further described as follows:

(a) Motor vehicle travel is prohibited from the Coos-Curry County line, Y 494, 575, southerly to the north side of Blacklock Point, Y 468, 100;

(b) Motor vehicle is allowed from the south side of Blacklock Point, Y 465, 000, southerly to the mouth of the Sixes River, Y 459, 587;

(c) Motor vehicles are prohibited from the south shore of the Sixes River, Y 458, 345, southerly to the south side of Cape Blanco, Y 452, 300;

(d) Motor vehicles are allowed from the south side of Cape Blanco, Y 452, 300, south to Rocky Point, Y 410, 200;

(e) Motor vehicles are prohibited from Rocky Point, Y 410, 200 southerly to the north end of Arizona Beach, Y 371, 704;

(f) Motor vehicles are allowed on Arizona Beach from Y 371, 704, southerly to the end of Arizona Beach, Y 368, 854;

(g) Motor vehicles are prohibited from the south end of Arizona Beach, Y 368, 854, southerly to the Ophir Rest Area (Oregon State Highway Division), Y 341, 500;

(h) Motor vehicles are allowed from the Ophir Rest Area, Y 341, 500 southerly to the Nesika Beach headland, Y 327, 406;

(i) Motor vehicles are prohibited from the Nesika Beach headland, Y 327, 406, southerly to Y 313, 300, a point approximately one-third mile south of Otter Point;

(j) Motor vehicle travel is allowed from a point approximately one-third mile south of Otter Point, Y 313, 300, southerly to the mouth of Myers Creek, Y 258, 200;

(k) Motor vehicles are prohibited from Meyers Creek, Y 258, 200, southerly to the Oregon-California border, Y 143, 339.

(3) The Director of State Parks or the authorized representative may issue special permits for motor vehicles to travel on the ocean shore within the areas or at times where such travel is otherwise prohibited by this rule. Permits may be issued to handicapped and elderly persons; for drift wood gathering and to ranchers, farmers and fishermen who have an occupational need to use vehicles on the beach. No charge for such permits will be made. Any special permit or permit identification card shall be in the immediate possession of the operator of the vehicle at all times when driving on that portion of the ocean shore otherwise closed to travel by motor vehicles. The operator shall display the same upon the demand of

any peace officer.

(4) The State Parks and Recreation Department is directed to erect conspicuous signs and markers designating the above areas on the ocean shore of Curry County, with reference to the Oregon coordinate survey system, as areas where travel by motor vehicles is prohibited, areas where travel by motor vehicles is partially restricted, and areas where travel by motor vehicles is allowed, as herein provided.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545, 184 & 390.668

Stats. Implemented: ORS 390.668

Hist.: HC 1227, f. 6-24-70; IOTC 1-1980, f. & ef. 1-4-80; PR 14-1984, f. & ef. 12-12-84; PR 16-1984, f. & ef. 12-13-84 PR 2-1986, f. & ef. 2-28-86; PR 5-1986, f. & ef. 5-12-86; PR 10-1992, f. & cert. ef. 11-12-92

DIVISION 25

OCEAN BEACH ACCESS SIGN MAINTENANCE POLICY; FEDERAL, COUNTY AND CITY ACCESS

736-025-0005

Sign Maintenance

State Parks Department personnel will provide, post and maintain ocean shore recreation area rules and coastal safety hazard signs at the following city, county and federal beach access points:

(1) Clatsop County:

(a) Delaura Beach Road;

(b) Del Rey Beach Road;

(c) Gearhart Beach Access Ramp (10th Street);

(d) The Prom "Turnaround," City of Seaside;

(e) The Cove area, City of Seaside;

(f) Ecola Court Ramp, City of Cannon Beach;

(g) Chapman Beach Wayside, City of Cannon Beach.

(2) Tillamook County:

(a) Neahkahnie Beach, Near Neahkahnie/Manzanita Wayside;

(b) Nedonna Beach, Tillamook County, Parking Lot;

(c) Twin Rocks State Wayside Property (undeveloped);

(d) Barview County Park, Tillamook Bay North Jetty;

(e) Bay Ocean Spit, end of Public Access Road;

(f) Cape Meares Village;

(g) Happy Camp;

(h) Galloway Road, Sand Lake, end of Road;

(i) Tierra Del Mar, north end of Cape Kiwanda State Park;

(j) Cape Kiwanda Parking Lot;

(k) Sunset Street, end of Road, Pacific City.

(3) Lincoln City:

(a) N 39th Street;

(b) N 26th Street;

(c) N 15th Street;

(d) N 21st Street;

(e) Canyon Drive;

(f) S 33rd Street;

(g) S 51st Street.

(4) Lincoln County:

(a) Moolack Beach, State Highway Division;

(b) Yaquina Head, BLM Area;

(c) Mouth of Beaver Creek next to Highway 101;

(d) Deer Creek, Lincoln County Beach Access Park;

(e) Tillicum Beach, U.S.F.S. Park;

(f) Cape Perpetua, U.S.F.S., Devil's Churn, Cape Creek.

(5) City of Newport:

(a) Agate Beach, small beach parking lot across from Hotel Newport;

(b) Nye Beach, City of Newport Beach Park;

(c) Yaquina Bay North Jetty;

(d) Yaquina Bay South Jetty.

(6) Lane County:

(a) Rock Creek, U.S.F.S.;

(b) Big Creek, U.S.F.S.;

(c) Conical Rocks, U.S.F.S., Heceta Head;

- (d) Sutton Creek, U.S.F.S.;
 - (e) Heceta Beach Ramp, Lane County;
 - (f) Siuslaw North Jetty.
 - (7) Oregon Dunes NRA:
 - (a) Six Siuslaw South Jetty Road Parking Lots;
 - (b) Siltcoos Beach Parking Lot;
 - (c) Three Umpqua South Jetty Parking Lots;
 - (d) Horsfall Beach parking lot.
 - (8) Coos County:
 - (a) Bastendorff Beach;
 - (b) Whiskey Run;
 - (c) Coquille South Jetty, County Park;
 - (d) Kronenberg Park, City of Bandon;
 - (e) Beach access north of Seabird Drive.
 - (9) Curry County:
 - (a) Battle Rock Wayside, City of Port Orford;
 - (b) Nesika Beach Highway Rest Stop, State Highway Division;
 - (c) Rogue River North Jetty;
 - (d) Rogue River South Jetty, Port of Gold Beach;
 - (e) Curry County Fairgrounds;
 - (f) Hunter Creek Turnout, State Highway Division, south of Gold Beach;
 - (g) Two Meyers Creek Beach Turnouts, State Highway Division, base of Cape Sebastian;
 - (h) Chetco River South Jetty, Port of Brookings.
- Stat. Auth.: ORS 183.545 & 390.660
 Stats. Implemented: ORS 390.660
 Hist.: PR 8-1984, f. & ef. 12-7-84; PR 11-1992, f. & cert. ef. 11-12-92

DIVISION 26

BEACH LOG AND DRIFTWOOD REMOVAL POLICY

736-026-0005

Ocean Shore Management Goal

(1) To assure continuation of scenic and recreational values for public enjoyment at the ocean shore and to protect marine life and intertidal resources, beach logging as a general practice shall be prohibited unless such removal can be shown to provide a significant public benefit.

(2) Proposals for beach log removal shall be considered in light of the following beach management objectives:

(a) Management to protect scenic and recreational use values of driftwood. Enhance recreation by opening access routes where necessary, improving scenic values or providing needed beach use area;

(b) Management to protect the traditional practice of gathering firewood and ornamental driftwood as long as these activities are compatible with the overall recreation and scenic uses of the beach;

(c) Management to provide for the orderly retrieval of branded logs by the legal owner(s);

(d) Management to protect shorelines subject to erosion;

(e) Management to protect clam beds, intertidal marine life and wildlife habitats;

(f) Management to promote public safety by reducing critical fire hazards, reducing critical hazards to shoreline structures or eliminating other public hazards;

(g) Management to assist in fish passage or flood control;

(h) Management to provide opportunities for public participation in decision making on proposed projects;

(i) Management to protect legal interest of upland property owners and the state;

(j) Management to minimize adverse impacts of log loading and hauling operations.

(3) Individual beach areas where log removal would be permitted and the time period allowed for such removal will be determined by the state after evaluation by the State Parks and Recreation Department, consultation with local government, the upland property owner and affected state agencies (Division of State Lands, State Department of Fish and Wildlife, State Geology and Mineral Industries, State Department of Environmental Quality,

State Department of Forestry, State Land Conservation and Development Department) to establish interests to be protected and considered.

(4) Adequate public notice and provision for hearings will be handled in the same manner as beach improvement applications under the State Beach Law, as set forth in ORS 390.650.

(5) The granting of emergency permits necessary to ensure public safety or the emergency retrieval of branded logs or lumber will be handled in the same manner as emergency beach improvements under the State Beach Law, as set forth in ORS 390.650.

(6) Removal permits would be planned and executed to minimize adverse operational impacts and with adequate provisions for public safety, liability insurance and consideration of private property rights. Regulations and supervisory control in this regard will be determined by the state.

Stat. Auth.: ORS 183.545 & 390.660

Stats. Implemented: ORS 390.660

Hist.: 1 OTC 71, f. & ef. 3-30-76; PR 12-1992, f. & cert. ef. 11-12-92

736-026-0010

State Park Beaches

The taking of driftwood in small amounts by visitors for souvenirs, for personal use or as gifts is permitted. The removal of large amounts of driftwood, or any wood with mechanized loading equipment, shall be prohibited except as approved by the park manager. Chainsaws must be approved by the park manager. No wood shall be removed which is imbedded in the beach or in sand dune banks.

Stat. Auth.: ORS 184 & 390

Stats. Implemented: ORS 390.660

Hist.: PR 10-1984, f. & ef. 12-12-84

736-026-0015

Non-State Park Beaches

Driftwood removal for firewood and/or ornamental purposes shall be for personal use and restricted to wood which can be loaded by hand only. No mechanized loading and/or removal equipment shall be permitted. Removal of firewood and/or ornamental wood may be restricted to individual beach areas, quantities of wood, and time of year. Power saws may be restricted in certain beach areas. Periodic moratoriums on the issuance of vehicle permits and quantity limits on firewood gathering may be established for sections of beach where the driftwood supply has been depleted due to human removal activity or by act of God. No wood embedded in the beach or in sand dune banks shall be removed. Upland property owner wishes will be respected when considering vehicle permits for wood gathering. Exceptions to this policy are at the discretion of the State Parks Director.

Stat. Auth.: ORS 183.545, 184 & 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 10-1984, f. & ef. 12-12-84; PR 12-1992, f. & cert. ef. 11-12-92

DIVISION 27

BEACH SALVAGE POLICY

736-027-0005

Policy

This rule is adopted pursuant to ORS 390.660 in order to ensure that salvageable objects and materials which are washed up on Oregon ocean shores do not constitute a hazard to beach users or to the beach environment, and that they shall be returned when possible to their rightful owners.

Stat. Auth.: ORS 184 & 390

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84

736-027-0010

Definitions

For the purposes of this rule, the terms:

(1) "Salvage" or "Salvageable Object" means any object, thing or material, exclusive of driftlogs, which is not in its natural state, and is not a "natural product of the ocean shore" (as used in

ORS 390.705 and 37 Opinion of Attorney General 420 (1975)), which is washed up or deposited upon the regulated area;

(2) "Regulated Area" means any part of the ocean shore lying between the extreme low tide line and the line of vegetation described in ORS 390.770, or the line of established upland shore vegetation, whichever is farther inland, and below 16' elevation on headlands, which is located between the Oregon-California State line and the south jetty at the mouth of the Columbia River;

(3) "Beach Fronting a State Park" means all of the ocean shore from the extreme low tide line to the line of vegetation which lies between the two imaginary lines extending perpendicular to the beach from the boundaries of any state park in the regulated area;

(4) "Remove or Removal" means the transportation of any salvage outside the "regulated area."

Stat. Auth.: ORS 184 & 390

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84; PRD 7-2000, f. & cert. ef. 5-10-00

736-027-0015

Prohibitions

(1) No person shall remove or convert to his own use or possession any salvage from any beach within the regulated area without first having obtained a permit to do so from the Parks and Recreation Department, and no removal shall be permitted, except in strict accordance with the terms of a permit.

(2) These prohibitions do not apply to the collection of common flotsam for personal use, such as glass floats, length of rope or cable of less than 100 feet, and other minor objects commonly picked up by beach users as an incident to their recreational use of the ocean shore. However, when such objects are attached to salvage, such as fixtures on a vessel hull or objects that were apparently packaged or crated in such a manner that they constitute valuable cargo or property of another, the foregoing prohibitions are applicable.

Stat. Auth.: ORS 183.545, 184 & 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84; PR 13-1992, f. & cert. ef. 11-12-92

736-027-0020

Time for Removal

(1) Except as provided in section (4) of this rule, an owner of salvage shall have fifteen (15) days from the date he discovers the salvage in which to obtain a permit and remove the salvage.

(2) When the Parks and Recreation Department discovers, or is notified of the discovery of salvage by a party not the owner of the salvage, the Department will take reasonable efforts to identify and notify the owner of such salvage discovered within the regulated area. In instances in which the owner is identifiable and can reasonably be notified, the fifteen-day period for removal, shall begin to run on the date of the postmark of the letter or telegram sent to the owner, or date owner was notified by telephone of the location of the salvage.

(3) If the salvage owner cannot be identified, the Department, fifteen days from the date of discovery, may remove the salvage.

(4) If, after fifteen days from the date of notification, or after any extension thereof granted the salvage owner by the issuing office, the salvage owner fails to remove the salvage, the Department may remove the salvage.

(5) If any salvage shall be determined by the Parks and Recreation Department to be deleterious to the beach environment, to constitute a hazard to beach users or to public or private property, or to constitute an attractive nuisance, the Department may immediately remove such salvage, and/or may take such action as it deems feasible to protect against the hazard.

Stat. Auth.: ORS 183.545, 184 & 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84; PR 13-1992, f. & cert. ef. 11-12-92

736-027-0025

Preservation of Salvage

The Parks and Recreation Department does not have the

resources to preserve and protect salvage from vandalism, theft and

natural forces. It shall be the responsibility of the salvage owner to

preserve and protect any and all salvage belonging to the owner.

Stat. Auth.: ORS 183.545, 184 & 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84; PR 13-1992, f. & cert. ef. 11-12-92

736-027-0030

Permit

(1) A person who wishes to remove any salvage from the regulated area shall apply for a permit to do so to:

(a) South Coast: (Cape Perpetua to California border), Region Parks Supervisor, 365 N. 4th Street, Coos Bay, OR 97420, Phone: 269-9410.

(b) North Coast: (Cape Perpetua to Columbia River), Region Parks Supervisor, 3600 E. 3rd Street, Tillamook, OR 97141, Phone: 842-5501.

(2) The applicant for a permit to remove salvage from any beach in the regulated area must provide the Department with satisfactory evidence that the applicant is owner of, an agent for the owner of, or has a custodial right to, the salvage.

(3) The applicant for a permit to remove salvage from any beach in the regulated area must provide the Department with the applicant's name, address and telephone number, a designation of the precise beach area on which the applicant wishes to conduct removal operations, the access(es) to and from the beach the applicant wishes to conduct salvage removal operations over, the number and types of equipment to be used, description of the type, quantity, and value of the salvage within the area, and such other information as the issuing office deems necessary to ensure fulfillment of the policies set forth in section (4) of this rule.

(4) The issuing office may in its discretion issue or refuse to issue a permit. In issuing a permit the office may impose such conditions as it deems reasonably necessary to fulfill the following policies. The following criteria shall also be used in determining whether to issue a particular permit:

(a) Protection of scenic and recreational use values of the beaches;

(b) Ensuring orderly retrieval of salvage by the legal owners or custodians;

(c) Protection of shorelines from erosion;

(d) Protection of clam beds, vegetation, intertidal marine life and wildlife habitats;

(e) Protection of public safety by reducing fire hazards, hazards to shoreline structures, and by eliminating other public hazards;

(f) Protection of interests of upland property owners, private and public;

(g) Minimization of adverse impacts of salvage loading and hauling operations.

(5) Permit conditions and restrictions may include, but are not limited to, restrictions on the times and places of removal, the amount and type of equipment used, the provision by the applicant of liability insurance in form and amount satisfactory to the Department, and special restrictions to protect environmentally sensitive areas.

Stat. Auth.: ORS 183.545, 184 & 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84; PR 13-1992, f. & cert. ef. 11-12-92

736-027-0035

Action in Emergencies

When prompt action is necessary to protect the value of the salvage, the salvage owner may act to preserve the salvage without having first obtained a permit, but the salvage owner shall be responsible for any damage to public or private property, or to the beach resulting from such action. The owner shall notify the Department of salvage activity as soon as possible after emergency action.

Stat. Auth.: ORS 183.545, 184 & 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84; PR 13-1992, f. & cert. ef. 11-12-92

736-027-0040

Disposition of Salvage Removed by Parks

(1) In the event that the Parks and Recreation Department exercises its authority to remove salvage under OAR 736-027-0020(3), (4), or (5), the Department may do so with its own forces, or may arrange for others to perform the removal in its behalf.

(2) Where the salvage consists of a boat which is repairable and the hull and keel are substantially intact, and the Department cannot locate the owner, the Department shall notify the county sheriff, and the boat shall be disposed of as provided in ORS 488.650–488.680. If the owner is determined before the sheriff is notified, the owner may take possession of the boat upon payment to the Department of the costs of its removal, any attendant clean-up of beach or facilities, and storage.

(3) Where the salvage consists of any object, thing or material which is not a boat, and the Department cannot locate the owner, the salvage shall be disposed of as provided in ORS 98.005–98.025. If the owner is determined before the county clerk is notified pursuant to ORS 98.005, the owner may take possession of the salvage upon payment to the Department of the costs of its removal, any attendant clean-up of beach or facilities, and storage.

Stat. Auth.: ORS 183.545, 184 & 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84; PR 13-1992, f. & cert. ef. 11-12-92

736-027-0045

Other Provisions

(1) A salvage removal permit does not constitute a license to trespass on private property — Permittees may gain access to the beaches only by way of public accesses or with permission of the access owner.

(2) If title to the beach land on which the salvage rests belongs to private persons, then proof of permission to remove the salvage, satisfactory to the issuing office, must be obtained from the private land owner prior to removal of the salvage.

(3) The permittee is responsible for any damage caused to private or public property or injury to persons resulting from his operations.

Stat. Auth.: ORS 184 & 390

Stats. Implemented: ORS 390.660

Hist.: PR 15-1984, f. & ef. 12-12-84

DIVISION 28

OCEAN BEACH SAFETY AND LIFESAVING PROGRAM

736-028-0005

Purpose

Pursuant to Chapter 673, Oregon Laws 1973 and Chapter 395, Oregon Laws 1985 (ORS 390.270–390.290), the Department of Parks and Recreation shall provide matching fund grants to cities, counties, and Rural Fire Protection Districts (RFPD's) providing lifesaving services on the ocean shore. These grants shall be distributed in the amounts and under the conditions set forth in Chapter 673 and in these rules.

Stat. Auth.: ORS 183.545 & 390.150

Stats. Implemented: ORS 390.280

Hist.: PR 2-1981, f. & ef. 2-25-81; PR 3-1986, f. & ef. 3-14-86; PR 14-1992, f. & cert. ef. 11-12-92

736-028-0010

Definitions

(1) "Act" shall mean Chapter 673 of Oregon Laws 1973, as amended by Chapter 395, Oregon Laws 1985.

(2) "Commission" shall mean the Oregon Parks and Recreation Commission or any authorized agent thereof.

(3) "Costs" shall mean the actual direct costs of lifesaving services borne by a provider agency, including personal services, supplies, transportation, communication, insurance, acquisition or construction of facilities and other related costs. Costs of items which relate to other programs of a provider agency in addition to lifesaving services shall be prorated in cost reports submitted to the Department.

(4) "Department" shall mean the Oregon Department of Parks and Recreation.

(5) "Applicant" shall mean, as applicable, the county court or board of commissioners of any county, the city council of any city or the chief of any coastal RFPD.

(6) "Fiscal year" shall mean the period from July 1 of any calendar year until June 30 of the next succeeding calendar year.

(7) "Lifesaving services" shall mean the provision of personnel, equipment or facilities for the protection of persons using recreational places along the ocean shore.

(8) "Ocean shore" shall mean the land lying between extreme low tide of the Pacific Ocean and the line of vegetation, as established and described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800.

(9) "Subject year" shall mean any fiscal year in which lifesaving services were performed for which a matching fund grant is requested by a provider agency.

Stat. Auth.: ORS 183.545 & 390.150

Stats. Implemented: ORS 390.280 & 390.605

Hist.: PR 2-1981, f. & ef. 2-25-81; PR 3-1986, f. & ef. 3-14-86; PR 14-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

736-028-0015

Eligibility

A provider agency shall be eligible for matching fund grants on account of services and capital acquisitions provided during any subject year if:

(1) Prior to the commencement of the first fiscal year for which a matching fund grant is requested, the provider agency has filed with the Department a report setting forth:

- (a) The services proposed to be provided;
- (b) The methods of operation of such services; and
- (c) The procedures for the accounting of costs.

(2) In the event that in any subsequent fiscal year an applicant proposes to vary the services, methods or procedures set forth under section (1) of this rule, such changes have been set forth in a report filed with the appropriate Region State Parks Supervisor prior to the commencement of the fiscal year in which such charges will be implemented.

(3) The cost of that portion of such services which has been declared eligible for participation by the Department during the subject year is in excess of \$5,000.

(4) An application for a matching fund grant has been properly and timely filed in accordance with OAR 736-028-0025.

(5) The applicant has further complied with applicable regulations relating to provisions of lifesaving services as such regulations are promulgated from time to time by the Commission.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.280

Hist.: PR 2-1981, f. & ef. 2-25-81; PR 3-1986, f. & ef. 3-14-86

736-028-0020

Matching Fund Grants

Provider agencies determined to be eligible for matching fund grants shall receive grants equal to 75% of the cost of approved services in excess of \$5,000, *provided that* in the event that the monies available to the Department for matching fund purposes are less than the total amount needed to satisfy all approved applications according to the above formula, available funds shall be distributed to approved applicants on a pro rata basis. Grants for any subject year shall be made out of funds available to the Department for such purpose in the next succeeding fiscal year.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.290

Hist.: PR 2-1981, f. & ef. 2-25-81

736-028-0025

Applications

(1) Applications for matching grants shall be submitted no later than the first day of February in the fiscal year following any subject year.

(2) Applications and eligibility reports shall be submitted at the following addresses:

(a) Clatsop, Tillamook, Lincoln Counties: Region II Parks Supervisor, 3600 E. 3rd Street, Tillamook, OR 97141;

(b) Lane, Douglas, Coos, Curry Counties: Region III Parks Supervisor, 365 N. 4th Street, Coos Bay, OR 97420.

(3) Applications shall include:

(a) The name and mailing address of applicant;

(b) A report of the services provided, methods of operation and accounting procedures used by applicant during the subject year and any changes in said methods and procedures proposed to be implemented for the next succeeding fiscal year. (Reference may be made to documents on file with the Department);

(c) An account of the costs of services provided during the subject year which have been found eligible for participation in the program pursuant to OAR 736-028-0015. This account shall be certified as accurate by the chief financial officer of applicant or an authorized deputy;

(d) A brief report of important lifesaving activities undertaken during the subject year, including a record of any assists and any drownings that occurred.

Stat. Auth.: ORS 183.545 & 390.150

Stats. Implemented: ORS 390.285

Hist.: PR 2-1981, f. & ef. 2-25-81; PR 3-1986, f. & ef. 3-14-86; PR 14-1992, f. & cert. ef. 11-12-92

Cities and Counties

736-028-0030

Standards

(1) Quality of Overall Performance — A recognized acceptable lifesaving system or an approved adaptation of one of these systems must be employed. Two recognized systems are: The Surf Lifesaving Association of Australia, and the Los Angeles County Ocean Beach Lifesaving Program. Evidence must be produced that a like quality of performance is being achieved.

(2) Individual Proficiencies:

(a) Lifesaving — Lifeguards must have at least a current Water Safety Certificate and be able to demonstrate acceptable proficiency in lifesaving technique;

(b) First Aid — Lifeguards must have a current standard or advanced Red Cross first aid card and be able to demonstrate acceptable proficiency in first aid practices;

(c) In-service training must be an integral part of the lifesaving program;

(d) Proficiency drills and practice sessions also must be an integral part of the program;

(e) A record of practice sessions and rescue attempts is to be submitted to the appropriate Region State Parks Supervisor at the end of each session.

(3) Required Equipment:

(a) There must be at least one guard tower or designated lifesaving post at each designated swim area;

(b) Radio and/or telephones must be available at the tower or station to immediately summon additional lifesaving assistance in the event of an emergency;

(c) A vehicle must be available at or near the tower or station for immediate use.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.280

Hist.: PR 2-1981, f. & ef. 2-25-81; PR 3-1986, f. & ef. 3-14-86

Rural Fire Protection Districts

736-028-0035

Standards

(1) Search and Rescue. Each Rural Fire Protection District must keep an accurate record of individual search and rescue responses on forms provided by the Department. Such records must be submitted with the application for reimbursement.

(2) Capital Acquisitions, Supplies and Services. All RFPD equipment purchased which are submitted for partial reimbursement must be itemized with any and all invoices attached showing name of vendor and date of purchase.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.280

Hist.: PR 3-1986, f. & ef. 3-14-86

DIVISION 29

MARINE RESERVE AND MARINE
PROTECTED AREA RULES

736-029-0010

Purpose

(1) This division governs the use of portions of the ocean shore as well as areas adjacent to state parks that the State Land Board has designated as a Marine Reserve or Marine Protected Area (OAR chapter 141, division 142). The Fish and Wildlife Commission has adopted prohibitions and allowances on harvest of fish and wildlife resources (OAR chapter 635, division 12). The Department of State Lands (DSL) has adopted rules regarding authorized uses within the marine reserves and marine protected areas.

(2) This division shall go into effect on June 30, 2011 to coincide with the effective date of Oregon Department of Fish and Wildlife (ODFW) prohibitions and allowances.

Stat. Auth.: ORS 390.124 & 390.660

Stats. Implemented: ORS 390.635; 390.660 & 2009 OL Ch. 847

Hist.: PRD 3-2010, f. 2-3-10, cert. ef. 6-30-11

736-029-0030

Definitions

For purposes of this division, unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the State Parks and Recreation Commission.

(2) "Department" means the State Parks and Recreation Department, known as Oregon Parks and Recreation Department (OPRD).

(3) "Director" means the State Parks and Recreation Director.

(4) "Marine Reserve" means the area established by the State Land Board and identified in OAR chapter 141, division 142.

(5) "Marine Protected Area" means the area established by the State Land Board and identified in OAR chapter 141, division 142.

(6) "Natural Product" means living or non-living natural products on the ocean shore, including but not limited to marine plants, minerals, shells, rocks, and sand.

(7) "Personal Use" means use that is directly by the individual for purposes other than monetary reward and not involving sale, barter, resale, or exchange for money.

(8) "Ocean Shore" as provided in ORS 390.605(2), means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in 196.800.

(9) "Ocean Shore Permit" means: a permit under ORS 390.640 for a structure, appurtenance or other addition, modification or alteration, including habitat restoration, constructed, placed or made on the ocean shore; a permit under 390.715 for a pipeline, cable line, or conduit placed or made across or under the ocean shore; or a permit under 390.725 for the removal of products from the ocean shore.

(10) "Salvage" or "Salvageable Object" means any object, thing or material, exclusive of drift logs, which is not in its natural state, and is not a "natural product of the ocean shore", which is washed up or deposited on the ocean shore.

(11) "Souvenirs" include a small quantity of agates, driftwood, and similar non-living items collected for non-commercial personal use.

Stat. Auth.: ORS 390.124 & 390.660

Stats. Implemented: ORS 390.635, 390.660, 390.725(4) & 2009 OL Ch. 847

Hist.: PRD 3-2010, f. 2-3-10, cert. ef. 6-30-11

736-029-0040

General Restrictions

(1) In addition to all other regulations pertaining to the ocean shore, within an area designated as a Marine Reserve or Marine Protected Area, a person may not:

(a) Collect, pick, cut, mutilate or remove living or non-living natural products from the ocean shore except as allowed under section (6);

(b) Give or offer food items to any wildlife;

(c) Pursue, injure, or molest any wildlife or disturb their habitats;

(d) Dig up or remove any soil, sand, rock, or fossil materials; or

(e) Disturb or remove any archaeological, cultural, or historical material.

(2) In addition to all other regulations pertaining to the ocean shore, within an area designated as a Marine Protected Area, a person may not engage in any activity prohibited in section (1) except as expressly allowed in the rules establishing and regulating the Marine Protected Area.

(3) The Director may issue a written permit to a person to engage in one or more activities prohibited under section (1) or (2):

(a) If the person seeks to engage in a prohibited activity for scientific research or monitoring purposes that are consistent with the purposes of the Marine Reserve or Marine Protected Area;

(b) If the person seeks to engage in a prohibited activity to enforce prohibitions necessary to the purposes of the Marine Reserve or Marine Protected Area;

(c) If the person seeks to engage in a prohibited activity to provide for public education consistent with the purposes of the Marine Reserve or Marine Protected Area;

(d) If the person is a tribal member of a federally recognized Indian Tribe in Oregon collecting as part of their traditional cultural heritage in accordance with procedures established by the Department and in state rules, including OAR 635-041-0500.

(e) If the person seeks to engage in activity prohibited under subsection (1)(e) that is:

(A) Otherwise consistent with the purposes of the Marine Reserve or Marine Protected Area; and

(B) Authorized by a permit issued by the Department under ORS 390.235.

(4) Pursuant to ORS 390.725(4), the Department will not issue any permits for the collection of natural products within a Marine Reserve or Marine Protected Area for the purpose of trade, sale or resale.

(5) In addition to regulations regarding "salvage" and "salvageable objects," the Department will consider consistency with the purposes of the Marine Reserve or Marine Protected Area in taking any action under OAR chapter 736, division 27 within such area(s).

(6) The Director or designee may allow periodic and emergency removal of driftwood, beached marine mammals, marine and upland debris, and other items; and removal of souvenirs; if the Director determines the removal is:

(a) Necessary to assure the protection of natural resources or the safety of, access to, or recreational use of the ocean shore, and

(b) Otherwise consistent with the scientific research, monitoring, enforcement or protection of the Marine Reserve or Marine Protected Area.

(7) Any valid preexisting Ocean Shore Permit granted by the Department as provided in OAR chapter 736, division 20 within an area designated as a Marine Reserve or Marine Protected Area shall remain in effect if the holder of that permit is and continues to be in full compliance with the terms and conditions of the permit. The Department will consider consistency with the purposes of the Marine Reserve or Marine Protected Area in addition to the standards provided in OAR chapter 736, division 20, in considering an ocean shore permit modification application, including but not limited to repairs and extensions.

(8) The Department will consider consistency with the purposes of the Marine Reserve or Marine Protected Area in addition to the standards under OAR chapter 736, division 20, including but not limited to review by other state and federal agencies under OAR 736-020-0003(11), in reviewing any conditional Ocean Shore Permit within or adjacent to a Marine Reserve or Marine Protected Area.

Stat. Auth.: ORS 390.124 & 390.660

736-029-0050

Penalties

A violation of OAR 736-029-0040 is as an ocean shore violation subject to fines as provided in OAR 736-021-0050.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.050 & 390.124

Hist.: PRD 3-2010, f. 2-3-10, cert. ef. 6-30-11

DIVISION 30

**SPECIAL REGULATIONS AFFECTING OCEAN SHORES
ADJACENT TO COASTAL CITIES**

736-030-0000

Purpose of Rules in Division 30

Regulations in this division apply to ocean shores adjacent to the coastal cities specified in each rule. The named cities may adopt parallel ordinances to regulate activities on the ocean shores and may enforce such ordinances to the extent they are consistent with the rules in this division. Cities will notify the department of all actions taken under these regulations.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 153.110, 390.050, 390.124 & 390.660

Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94

736-030-0005

Prohibition of Horses and Other Livestock

Horses and other livestock are prohibited on the ocean shore between the south city limits of Rockaway and northward to the mouth of the Nehalem River in Tillamook County.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124 & 390.660

Hist.: 1 OTC 9, f. 11-21-73, ef. 12-12-73; PR 11-1994, f. 11-29-94, cert. ef. 12-1-94

736-030-0010

Prohibition of Dogs Off Leash

Dogs are prohibited except on a leash or under voice or signal command on the ocean shore within the city limits of Cannon Beach, Seaside and Rockaway Beach. The owner is responsible for the animal's behavior and physical control while on the beach.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124 & 390.660

Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94; PR 3-1997, f. 11-5-97, cert. ef. 11-10-97; PRD 7-2003, f. & cert. ef. 10-3-03

736-030-0020

Prohibition of Camping

Overnight camping, including overnight sleeping in tents, driftwood shelters, sleeping bags, recreational vehicles, trailers or automobiles, on the ocean shore within the city limits of Cannon Beach, Lincoln City, Seaside, Newport, Bandon, Gold Beach, Rockaway Beach and Manzanita is prohibited.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124 & 390.660

Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94; PR 3-1997, f. 11-5-97, cert. ef. 11-10-97

736-030-0030

Prohibition of Windsailing

No person shall windsail on any beach within the city limits of Cannon Beach and Seaside except by permit from the city. A windsail is a sail propelled 3 or 4 wheeled cart.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124 & 390.660

Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94

736-030-0040

Prohibition of Alcoholic Beverages

Consumption of alcoholic beverages exceeding 14% alcoholic content is prohibited on the ocean shore within the city limits of Seaside except when under OLCC license and State Parks and Recreation Department permit. The consumption of all alcoholic beverages is prohibited on the ocean shore within the city limits of Seaside during Oregon schools spring break.

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.124 & 390.660
Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94

736-030-0050

Prohibition of Fireworks

There shall be no fireworks permitted on the ocean shore within the city limits of Seaside, except by joint permit from the respective city and the Area One Park Manager. The definition of fireworks is found in OAR 837-012-0072(19).

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.124 & 390.660
Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94

736-030-0060

Prohibition of Playing Golf

Playing golf on the ocean shore within the city limits of Seaside is prohibited except by permit from the city.

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.124 & 390.660
Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94

736-030-0070

Prohibition of Launching Boats, Watercraft

The launching of any rigid watercraft such as metal or fiberglass canoes and boats and jet skis on the ocean shore within the city limits of Seaside and Cannon Beach is prohibited except by permit from the city. This does not apply to inflatable rafts and boats, inner tubes or swimmer safety devices. The launching of surfboards from Avenue "U" north in Seaside is also prohibited.

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.124 & 390.660
Hist.: PR 11-1994, f. 11-29-94, cert. ef. 12-1-94

736-030-0080

Prohibition of Rock Climbing

Climbing on Haystack Rock in Cannon Beach is prohibited except by written permission from the U.S. Fish and Wildlife Service.

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.124 & 390.660
Hist.: PR 3-1997, f. 11-5-97, cert. ef. 11-10-97

736-030-0090

Beach Lifeguard Authority

Within the city limits of Cannon Beach, city lifeguards shall have the authority to restrict the launching of inflatable devices by individuals, on a case-by-case basis, when necessary for public safety or the safety of an individual. No person shall disregard a city lifeguard's instructions relating to the launching of inflatable devices within the city limits of Cannon Beach.

Stat. Auth.: ORS 390.660
Stats. Implemented: ORS 390.124 & 390.660
Hist.: PRD 11-1998, f. 7-30-98, cert. ef. 7-31-98

736-030-0095

Prohibition of Camping on Beaches in Clatsop County

Camping on the ocean shore between the Necanicum River and the South Jetty of the Columbia River is prohibited. For the purposes of this rule, camping includes, but is not limited to, erecting a tent or temporary shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle in such a manner as will permit remaining overnight, or for other extended periods.

Stat. Auth.: ORS 390.635 & 390.660
Stats. Implemented: ORS
Hist.: PRD 3-1999, f. & cert. ef. 5-11-99

736-030-0100

Prohibition of Camping on Beaches in Tillamook County

Camping on the ocean shore between the north boundary of the City of Manzanita and the Neahkahnie Mountain headland is prohibited until such time as the adoption of a comprehensive ocean shore management plan may allow camping in the above area. For purposes of this rule, camping includes, but is not limited to, erecting a tent or temporary shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle in such a man-

ner as will permit remaining overnight, or for other extended periods.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.365 & 390.660
Hist.: PRD 11-2000, f. & cert. ef. 9-27-00

DIVISION 40

OREGON SCENIC WATERWAYS

736-040-0005

Rules for Conducting Hearings on Scenic Waterways Regulations

The Commission hereby adopts and promulgates rules and procedures governing hearings on regulations for the management of related adjacent land within scenic waterways as provided in ORS 390.845(2):

(1) The Parks and Recreation Commission hereby delegates to the State Parks and Recreation Director, or his designated representative, the duty of arranging and conducting auditory public hearings, if such are requested, under the provisions of ORS 390.845(2).

(2) The Department shall fully record and transcribe any public rulemaking hearing held pursuant to ORS chapter 183, and the Department will receive and properly mark all exhibits, documents or other statements introduced or received at the hearing. The record of the hearing shall include exhibits, documents or other statements the Commission receives within ten days after the hearing.

(3) The Department rules coordinator shall file in the Commission's records a full copy of the transcript of the hearing as well as a copy of all exhibits, documents or other statements received at the hearing. The Commission will consider the transcript, including exhibits, documents or other statements, in preparing Scenic Waterways rules and regulations.

(4) The procedure under which any hearing will be conducted is as follows:

(a) The comments and exhibits to be received at this hearing will be limited to whether the rules and regulations proposed by the State Parks and Recreation Department are reasonable;

(b) The Department will explain the limits and intent of the proposed rules and regulations;

(c) Except for questions that may be asked by the hearing officer there will be no direct questions to or cross-examination of any individual who is making a statement or introducing exhibits;

(d) Following opening statements by representatives of the Department, the hearing will be open to anyone in attendance who wishes to make a statement or introduce exhibits either for or against the proposed rules and regulations. The hearing officer will recognize anyone in attendance for this purpose;

(e) The hearing will be continued with such recesses as are necessary, as determined by the hearing officer, until all persons wishing to make a statement or introduce exhibits have had an opportunity to do so.

Stat. Auth.: ORS 183.545, 183.550 & 390.805 - 390.925
Stats. Implemented: ORS 390.124 & 390.845
Hist.: HC 1252, f. 5-13-71, ef. 5-12-71; PR 15-1992, f. & cert. ef. 11-12-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0010

Designated Scenic Waterways

These rules apply to those river segments and lakes designated as Oregon Scenic Waterways in ORS 390.826.

Stat. Auth.: ORS 183.545, 183.550, 184 & 390.805 - 390.925
Stats. Implemented: ORS 390.826 & 390.845
Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72; IOTC 6, f. 11-1-73; IOTC 14, f. 12-5-73; PR 7-1985, f. & ef. 10-24-85; PR 6-1986, f. & ef. 5-28-86; PR 7-1986, f. & ef. 5-28-86; PR 2-1988, f. & cert. ef. 3-25-88; PR 15-1992, f. & cert. ef. 11-12-92

736-040-0015

Definition of Terms

As used in these rules and regulations, unless the context requires otherwise:

(1) "The Act" means the Scenic Waterways Act (ORS 390.805 to 390.925).

(2) "Commission" means the Oregon Parks and Recreation Commission or State Parks and Recreation Commission.

(3) "Department" means the Oregon Parks and Recreation Department or State Parks and Recreation Department.

(4) "Director" means the Director of the Oregon Parks and Recreation Department.

(5) "Existing Use" means the use to which related adjacent land was being put on December 3, 1970; or on the date a river segment or lake was designated as a scenic waterway; or any subsequent change in use authorized under the Act or these rules.

(6) "Improvement" means the placing on related adjacent land of any building or structure or modification of existing buildings or structures or the clearing, leveling, filling or excavating of related adjacent land.

(7) "Related Adjacent Land" means all land within one-fourth of one mile (measured horizontally or level, as in usual surveying practice) of the bank on each side of a river within a scenic waterway, except land that, in the Commission's judgment, does not affect the view from the waters within a scenic waterway.

(8) "River Bank." The banks of a river are the boundaries which confine the water to its channel throughout its entire width when the stream is carrying high water at the elevation to which it ordinarily rises annually in season. Generally this will be the line at which the land becomes dominantly influenced by the river and takes on the characteristics of a riverbed and is thereby set apart from the uplands. An evulsion or sudden channel change will not change the boundaries of related adjacent lands.

(9) "Road" means all roads, public and private.

(10) "Scenic Easement" means the acquired right to control the use of related adjacent land, including airspace above such land, for the purpose of protecting the scenic view from waters within a scenic waterway.

(11) "Scenic Waterway" means a river, lake or segment thereof, including related adjacent land and the airspace above, that has been so designated by or in accordance with the Act.

(12) "Seen from the Waters" and "Visible from the River" mean not entirely concealed from view from the river within a scenic waterway by topography. Land beyond the boundaries of "related adjacent land," whether or not visible from the river, is not within the jurisdiction of this Act.

Stat. Auth.: ORS 390.805 - 390.925

Stats. Implemented: ORS 390.845

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72; PR 15-1992, f. & cert. ef. 11-12-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0020

Responsibility and Authority of the Oregon Parks and Recreation Commission

(1) The Commission shall administer the Act in such a manner as to protect and enhance the values which caused a scenic waterway to be included in the system. Primary emphasis shall be given to protecting the scenic beauty, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

(2) The Commission has adopted these regulations governing the management of related adjacent lands, including state highway construction, after due consideration of the responsibilities outlined above and consultation with the Oregon State Department of Forestry, the Department of Agriculture, and other such federal, state, and local agencies as may be involved; and with the concurrence of the Oregon Water Resources Commission.

(3) Agreements entered into and approvals given by the Commission in no way relieve persons or entities affected thereby of requirements established by other governmental agencies, local, state or federal.

Stat. Auth.: ORS 390.805 - 390.925

Stats. Implemented: ORS 390.845

12-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0025

Public Use of Scenic Waterways

(1) These rules apply to all scenic waterways unless more specific rules have been adopted for a particular scenic waterway. All persons using scenic waterways for recreation shall comply with the provisions of the Act and with the rules and regulations adopted by the Commission under the Act:

(a) Private Property: Nothing in the Act or in these rules and regulations affords to any person any right to trespass upon the property of another or in any way alters the rights of private landholders in regard to trespass. The Commission admonishes all persons to respect the rights and sensibilities of those who make their homes and livelihoods within the scenic waterways;

(b) Litter and Pollution: Refuse, scrap, trash and garbage which is not placed in receptacles provided for that purpose at maintained recreation sites shall not be buried or abandoned, but shall be taken out of the scenic waterways for proper disposal. All persons shall avoid pollution of the waters, lands and air within scenic waterways in any manner whatsoever;

(c) Fires: Fires shall be made only in compliance with state law and only when and where there is no possibility of their causing damage. Conditions of wind and weather, proximity of vegetation or flammable materials and other factors as prudence dictates shall be most carefully considered. No open fire shall be made unless a shovel, axe and bucket of water are nearby. No open fire shall be left unattended and all fires shall be completely extinguished with water after use. Permissible fires shall be of the smallest practicable size;

(d) Tree Cutting: Living or standing trees or plants shall not be cut for burning or for any other purpose by persons using the scenic waterways for recreation;

(e) Collecting Souvenirs and Relics: Except as provided by law, antiquities, relics, artifacts, fossils and souvenirs shall not be removed from the site of their discovery or otherwise harmed. Archeological sites and fossil beds shall not be disturbed without proper authority under law;

(f) Livestock: Persons using the scenic waterways for recreation shall not harass or in any way interfere with livestock or domestic animals, whether on private or public land, or damage fences lawfully placed on such lands for their management.

(2) Natural springs shall not be damaged or in any way rendered unusable by persons or animals.

(3) The Commission asks all persons to leave in passing no mark upon the land that might diminish its value to another, for the unspoiled beauty of these waterways, of value to the human spirit, is the common heritage of all.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.845

Hist.: HC 1285, f. 6-27-72; PR 3-1982, f. & ef. 3-26-82

Land Management

736-040-0030

Improvements and Changes in Use of Related Adjacent Lands

(1) Except as provided in section (5) of this rule, OAR 736-040-0035 and 736-040-0045 through 736-040-0075, no person shall make any improvement or change in the existing use of related adjacent land without first giving written notification to the Commission of the intent to make an improvement or change in land use. The proposed improvement or change in land use shall not be made or work started sooner than one year after such notice unless the Commission has given its written approval of the proposal. (See notification procedures in OAR 736-040-0080.)

(2) Upon receipt of such notice, the Commission shall determine if the proposal would impair the natural beauty of the scenic waterway substantially.

(3) If the proposed improvement or change of land use would not impair the natural beauty substantially, the Commission shall give written notice to the owner of the related adjacent land that he may proceed immediately with the proposal as described in his notification to the Commission.

(4) Should the Commission determine that the proposal, if carried out, would impair the natural beauty of the scenic waterway substantially, or otherwise violate the provisions of the Act or these rules and regulations, it will so notify the owner of the related adjacent land in writing. No steps shall be taken by the applicant to carry out such proposal until at least one year after the original notice to the Commission unless agreement with the Commission is sooner reached. (See OAR 736-040-0080.)

(5) In connection with existing use of related adjacent land, farmers, ranchers and residents may modify existing structures or construct or place such subsidiary and lesser structures adjacent thereto, except residences or guest houses, as are usual and necessary to their existing use without prior notice to the Commission, provided that such modification or construction will not violate OAR 736-040-0035(7)(a) and (b) and will be in harmony with the natural beauty of the scenic waterway.

(6) Repair and maintenance of existing facilities and structures in a manner compatible with these rules and regulations do not require notification to the Commission.

Stat. Auth.:

Stats. Implemented: ORS 390.845

Hist.: HC 1285, f. 6-27-72; IOTC 6, f. 11-1-73

736-040-0035

Rules of Land Management

These rules and regulations governing the use of related adjacent lands and improvements made on or to these lands apply to all designated scenic waterways. Land management on scenic waterways includes, but is not limited to, the following examples:

(1) Timber Harvest: The forest cover on related adjacent land is a part of the scenic beauty of the scenic waterway and notification of planned timber harvest operations must be given to the Commission one year prior to commencement. The notification must include a plan specifying timber to be cut, road locations, logging methods, slash cleanup, soil stabilization, revegetation measures and any other details as the Commission may require.

(2) Tree Cutting: No person shall cut any living tree within a scenic waterway without prior written notice except as provided in these rules.

(3) Grazing and Farming: Existing use in the form of grazing or farming of the related adjacent land is a part of the scenic beauty of the waterway. Notification is not required for:

(a) Construction of fences;

(b) Maintenance of farm buildings, fences or appurtenances necessary to existing use;

(c) Laying of irrigation lines;

(d) Pump house construction, if not in violation of OAR 736-040-0030(5);

(e) Additions to farm buildings, if not in violation of OAR 736-040-0030(5);

(f) Crop rotation;

(g) Variations in grazing land management;

(h) Placing of grazing land under cultivation, except within classified natural river areas named in OAR 736-040-0045 through 736-040-0075;

(i) Construction of silos and grain storage facilities, and other structures or buildings as are needed in connection with the existing use of the related adjacent land, if not in violation of OAR 736-040-0030(5), except within classified natural river areas named in OAR 736-040-0045 through 736-040-0075;

(j) Cutting of danger trees. Notification is required for construction of new roads or improvement of existing roads.

(4) Suburban Housing: Notification is not required for:

(a) Maintenance of existing homes in a manner compatible with these rules and regulations;

(b) Modifications to existing single family dwellings, if not in violation of OAR 736-040-0030(5);

(c) Construction of garages necessary to the use of existing homes, if not in violation of OAR 736-040-0030(5);

(d) Changes in or additions to homesite landscaping which do not impair vegetation screening structures from view from the river;

(e) Construction of protective fences necessary to use of the home;

(f) Cutting of firewood for occupant's dwelling;

(g) Cutting of danger trees. Notification is required for construction of new roads or improvement of existing roads.

(5) Prospecting, Mining, Dredging, and Quarrying:

(a) All prospecting, mining, dredging, and quarrying operations, including removal or movement of gravel, rocks and sand within related adjacent lands, require notification to the Commission as prescribed herein;

(b) Such notification shall include plans to ensure that debris, silt, chemicals or other materials, will not be discharged into or allowed to reach the waters within a scenic waterway and that the natural beauty of the scenic waterway will not be impaired substantially.

(6) Transportation Facilities and Utilities:

(a) No roads, railroads or other facilities for transportation or utilities shall be constructed or improved within a scenic waterway without notification to the Commission as prescribed by the Act and herein;

(b) The Commission, whenever practicable, will require the sharing of land and airspace by such facilities and utilities. All permissible transportation facilities and utilities shall be so located as to minimize impairment of the natural beauty of the scenic waterway. For example, it will be desirable to place electrical and telephone lines underground wherever reasonably practicable.

(7) Structures, Buildings, and Other Improvements: Except as provided in OAR 736-040-0030(5), sections (3) and (4) of this rule and OAR 736-040-0045 through 736-040-0075, no structures, buildings, or other improvements shall be made, erected or placed on related adjacent lands without notification to the Commission as prescribed by the Act and herein. Permitted new structures, buildings, or other improvements on related adjacent lands which can be seen from the waters within a scenic waterway shall:

(a) Be of such design and be constructed of such materials as to be unobtrusive and compatible with the scenic qualities of the area. For example, the following shall apply:

(A) All structures shall be finished in muted tones appropriate to their natural surroundings;

(B) No large areas, including roofs, shall be finished with white or bright colors or reflective materials;

(C) No structures shall exceed 30 feet in height from natural grade on a side facing the river;

(D) All structures shall be so designed and constructed that little or no soil is left exposed when construction is completed.

(b) Be located in such a way that topography and natural vegetation make them as inconspicuous as reasonably practicable, and in no case obtruding on the view from the river. The Commission may require that additional vegetative screening be established and maintained. In such event, it shall be evergreen, wherever practicable, and compatible with natural growth in the area.

(8) Mobile homes, modular residential structures, house trailers, campers and similar structures and vehicles. Mobile homes, modular residential structures, house trailers, campers, motor homes and the like shall not be established as dwellings, either permanent, (or) seasonal or temporary, within related adjacent lands unless they are entirely concealed from view from the waters within a scenic waterway by topography, except that those mobile homes, modular residential structures and house trailers, that are at least 20 feet wide, with exterior dimensions, less hitch, of 800 square feet, may be permitted under these rules subject to the same requirements and standards set forth in the previous section relating to criteria for review for structures and improvements that are visible from the waters within a scenic waterway. Additionally, except when a mobile home, modular residential structure, house trailer or the like is not set on a ground-level foundation, full skirting shall be installed which in design, color and texture appears to be an integral part of the exterior of the structure:

(a) For the purposes of this division, a structure is a mobile home, modular residential structure, house trailer, camper or motor

home if it is used, designed or intended to house persons, and is transported to the site in a state of substantial prefabrication. Once a structure fulfills this test, it shall remain subject to the rule regardless of whether the wheels or other temporary assembly have been removed or detached, and regardless of whether the structure is subsequently relocated;

(b) Within public recreation sites and transient public trailer parks where travel trailers, campers, motor homes and similar vehicles are permitted by the public agency, firm or individual maintaining the facility, their transient, short-term use by travelers is allowed, but they shall not be left on the site during their user's absence of more than three day's duration.

(9) Maintenance of Structures and Improvements: Owners and users of existing structures and other improvements shall maintain them and their surroundings in a manner and condition in harmony with the environment, compatible with the objectives set forth in these rules and regulations for the classified river area in which they lie, and without impairing substantially the natural beauty of the scenic waterway. The existing color of such structures may be maintained.

(10) Replacement of Existing Structures and Improvements: The Commission may approve replacement of existing structures and improvements, including those lost by fire, flood or other casualty, provided the new structure or improvement is in compliance with provisions of the Act and this division. Notification procedures set forth in OAR 736-040-0040 are required.

(11) Advertising: No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained. Property protection signs (No Hunting, No Trespassing, etc.) are exempted.

(12) Erosion Protection: The Commission recognizes that erosion protection work and maintenance may be necessary on riverbanks and related adjacent lands along the scenic waterways. Notification, which shall include plans to protect the natural beauty of the scenic waterway, and Commission approval are required.

(13) Submerged and Submersible Lands:

(a) No dam or reservoir or other water impoundment facility shall be constructed or placer mining permitted on waters within scenic waterways. No water diversion facility shall be constructed or used except by right previously established or as permitted by the Oregon Water Resources Department, State Engineer, or Court decree;

(b) No bank protection works or dredging facility shall be constructed or used on such waters, except as permitted by the Director of the Department of State Lands and approved by the State Land Board.

(14) Emergencies:

(a) An owner or their authorized agent may act in emergencies without prior notice when necessary in the interest of public safety, or safety of an owner's property, except that notice of any action taken shall be filed with the Commission not later than seven days following the commencement of the emergency procedures;

(b) An owner or their authorized agent must show that the emergency situation required immediate action to prevent immediate danger or damage. Such emergency procedures shall not be extended beyond the minimum necessary to accomplish the needed protection safely and shall be conducted throughout in such manner as to minimize impairment of the natural beauty of the scenic waterway. For example, car bodies and similar scrap or trash shall not be used as riprap.

(15) Solid Waste, Pollution and Sanitation: Owners, occupants and users of related adjacent land shall comply with the rules and regulations of the Department of Environmental Quality relating to solid waste control, water, air and noise pollution control and sewage disposal.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72; IOTC 6, f. 11-1-73; IOTC 28, f. 6-15-74; PR 12-1981, f. & ef. 7-29-81; PR 11-1996, f. & cert. ef. 12-23-96; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0040

Classification of Scenic Waterways and Segments Thereof

(1) OAR 736-040-0040 through 736-040-0075 supplement, but in no way alter, other provisions of these rules and regulations. Notification procedures set forth in OAR 736-040-0030, 736-040-0035 and 736-040-0080, relating to Land Management, are applicable to these rules. In order to establish varying intensities of protection or development based on special attributes of each area within the scenic waterways, the following classifications are established:

(a) Natural River Areas:

(A) Those designated scenic waterways or segments thereof that are generally inaccessible except by trail or the river, with related adjacent lands and shorelines essentially primitive. These represent vestiges of primitive America;

(B) Natural River Areas may include an occasional lightly traveled road, airstrip, habitation or other kind of improvement already established, provided the effects are limited to the immediate vicinity;

(C) Natural River Areas will be administered to preserve their natural, wild and primitive condition, essentially unaltered by the effects of man, while allowing compatible recreational uses, other compatible existing uses and protection of fish and wildlife habitat.

(b) Scenic River Areas:

(A) Those designated scenic waterways or segments thereof with related adjacent lands and shorelines still largely primitive and largely undeveloped, except for agriculture and grazing, but accessible in places by roads. Scenic River Areas may not include long stretches of conspicuous or well-traveled roads paralleling the river in close proximity, but may include extensive areas in agricultural use;

(B) Scenic Areas will be administered to maintain or enhance their high scenic quality, recreational value, fishery and wildlife habitat, while preserving their largely undeveloped character and allowing continuing agricultural uses.

(c) Recreational River Areas:

(A) Those designated scenic waterways or segments thereof that are readily accessible by road or railroad, that may have some development along their shorelines and related adjacent lands, and that may have undergone some impoundment or diversion in the past;

(B) Recreational River Areas will be administered to allow continuance of compatible existing uses, while allowing a wide range of compatible river-oriented public outdoor recreation opportunities, to the extent that these do not impair substantially the natural beauty of the scenic waterway or diminish its esthetic, fish and wildlife, scientific and recreational values.

(d) Natural Scenic View Areas:

(A) Those designated shorelines and related adjacent lands, lying along only one bank of a river within a scenic waterway, which possess the qualities of a Natural or Scenic River Area except that the opposite shoreline and related adjacent land, by reason of accessibility, or development, qualifies only for a less restrictive classification;

(B) Natural Scenic View Areas will be administered to preserve or enhance their essentially primitive scenic character, while allowing compatible public outdoor recreational use.

(e) Accessible Natural River Areas:

(A) Those designated scenic waterways or segments thereof that are readily accessible by road or railroad but otherwise possess the qualities of a Natural or Scenic River Area;

(B) Accessible Natural River Areas will be administered to protect or enhance their essentially primitive scenic character, while allowing compatible public outdoor recreation use.

(f) River Community Areas — Those designated areas of a scenic waterway, perhaps on only one bank of the river, where density of structures or other developments, already existing or provided for precludes application of a more restrictive classification.

(2)(a) Within the general framework of these classifications, the Commission will further consider the nature and extent of

existing land uses and developments, the scenic qualities and the esthetic, fish and wildlife, scientific and recreational values of each classified area within the scenic waterways in determining whether, in its judgment, proposals for changes of land use or improvements are compatible with the Act;

(b) Because of the individual character of each scenic waterway, administrative criteria within each of the six classifications may vary from one scenic waterway to another.

Stat. Auth.:

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72

736-040-0041

Nestucca River Scenic Waterway

(1) Recreational River Areas:

(a) That segment of the Nestucca River Scenic Waterway extending from the downstream end of the reservoir tailrace below McGuire Dam to its confluence with Ginger Creek (approximately RM 45.5);

(b) The Department will administer the Recreational Area described in subsection (1)(a) consistent with the purposes of OAR 736-040-0040(1)(c)(B). Within this area, the Department may permit mining operations, timber harvesting, other landscape alteration activities, new structures and improvements only when substantially screened from view from the river and from the boundary of Old Meadow Lake Wetland. The boundary of the Old Meadow Lake Wetland extends to the transition area at the edge of the wetland where hydric soils no longer occur. All landscape alteration activities (i.e., timber management) shall be carried out in this river segment in such a manner as to protect hydrological and biological functions of Old Meadow Lake wetlands. Timber harvest shall be conducted as prescribed by the Oregon Forest Practices Act and associated administrative rules. For other landscape alteration proposals, the project applicant shall provide methods by which hydrological and biological functions will be protected. Developments necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but must blend into the natural scene;

(c) For purposes relating to notification of intent within the Nestucca River Scenic Waterway, any maintenance, repair or expansion of McGuire Dam and its appurtenances (including pipes and pumping facilities) is exempt from notification review so long as said activity does not extend westerly of the north/south centerline of Section 15, Township 3 South, Range 6 West, Willamette Meridian, Yamhill County;

(d) That segment of the Nestucca River Scenic Waterway extending from the lower end of the Alder Glen Campground to its confluence with Moon Creek (approximately RM 24.5 in Blaine);

(e) The Department will administer the Recreational Area described in subsection (1)(d) consistent with the purposes of OAR 736-040-0040(1)(c)(B). Within this area, the Department may permit mining operations, timber harvesting and other landscape alteration activities only when substantially screened from view from the river by topography or vegetation. If inadequate topographic or vegetative screening exists on a site, landscape alterations may be permitted if vegetation is established which will provide substantial screening of the affected area in a reasonable time (for example 4–5 years). The condition of “substantial vegetative screening” shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure, or allow only a highly filtered view of, the landscape alteration;

(f) New structures and improvements shall be permitted when partially screened from view from the river by topography or vegetation. If inadequate, topography or vegetative screening exist on a site, the structure or improvement may be permitted if vegetation is established to provide partial screening of the proposed structure or improvement in a reasonable time (for example 4–5 years);

(g) The condition of “partial vegetative screening” shall consist of an ample density and mixture of native evergreen and deciduous vegetation to partially obscure (at least one-half of the viewed improvement or structure), or allow a moderately filtered

view (at least 50 percent filtering) of, the proposed structure or improvement;

(h) Developments necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but must blend into the natural scene.

(2) Scenic River Area:

(a) That segment of the Nestucca River Scenic Waterway extending from the river's confluence with Ginger Creek (approximately RM 45.5) downstream to the lower end of Alder Glen Campground;

(b) The Department will administer the Scenic Area described in subsection (2)(a) consistent with the purposes of OAR 736-040-0040(1)(b)(B). Within this area, the Department may permit new structures and improvements, mining operations and timber harvesting activities only when substantially screened from view from the river by topography or existing vegetation. If proposed structures, improvements, or landscape alterations are not adequately screened by topography or existing vegetation on a site, the Department may permit the project if vegetation is established which will substantially screen the project in a reasonable time (for example, 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements. Developments necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but must blend into the natural scene.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 3-1992, f. & cert. ef. 7-29-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0042

Walker Creek Scenic Waterway

Recreational River Area:

(1) Walker Creek from its source downstream to its confluence with the Nestucca River.

(2) The Department will administer the Recreational Area described in section (1) consistent with the purposes of OAR 736-040-0040(1)(c)(B). Within this area, the Department may permit mining operations, timber harvesting, other landscape alteration activities, new structures and improvements only when substantially screened from view from the creek and from the boundary of the Walker Creek Wetland/Meadow area. The boundary of the Walker Creek Wetland/ Meadow extends to the transition area at the edge of the wetlands where hydric soils no longer occur. All landscape alterations (i.e., timber management) shall be carried out in such a manner as to protect hydrological and biological functions of the Walker Creek Wetland/Meadow. Timber harvest shall be conducted as prescribed by the Oregon Forest Practices Act and administrative rules. For other landscape alteration proposals, the project applicant shall provide methods by which hydrological and biological functions will be protected. Developments necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but must blend into the natural scene.

(3) For the purposes relating to notification of intent within the Walker Creek Scenic Waterway, any maintenance, repair or expansion of McGuire Dam and its appurtenances (including pipes and pumping facilities) is exempt from notification review so long as said activity does not extend westerly of the north/south centerline of Section 15, Township 3 South, Range 6 West, Willamette Meridian, Yamhill County.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 3-1992, f. & cert. ef. 7-29-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0043

Upper McKenzie River Scenic Waterway

(1) Recreational River Areas:

(a) The following river segments from Clear Lake to Deer Creek are classified Recreational River Areas:

(A) Adjacent lands east of the river from Clear Lake to Carmen Reservoir;

(B) Adjacent lands east of the river from Tamolitch Falls to Trail Bridge Reservoir;

(C) Adjacent lands east of the river from Trail Bridge Dam to the confluence of Deer Creek with the McKenzie River.

(b) The Department will administer the Recreational River Areas described in subsection (1)(a) consistent with standards set by OAR 736-040-0035. In addition to the above standards, the Department may permit new mining operations, road construction, and similar improvements only when they are substantially screened from view from the river by topography or native vegetation. If inadequate topographic or vegetative screening exists on a site, activities mentioned above may be permitted if vegetation is established which will provide substantial screening of the affected area. The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure, or allow only a highly filtered view of, the landscape affected by the improvement. New structures and associated improvements shall be permitted when partially screened from view from the river by topography or vegetation. If inadequate topographic or vegetative screening exists on a site, the structure or improvements may be permitted if vegetation is established to provide partial screening of the proposed structure or improvement within a reasonable time (for example 4–5 years). The condition of "partial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to partially obscure view (at least one-half) of the proposed structure or improvement, or to allow a moderately filtered view (at least 50 percent filtering) of the proposed structure or improvement. Improvements needed for public recreation use or resource protection may be visible from the river, but must be designed to blend with the natural character of the landscape;

(c) Land adjacent to both sides of the river from the confluence of Deer Creek to the lower end of Paradise Campground (western boundary of Section 9, Township 16 south, Range 6, East);

(d) The Department will administer the Recreation River Area described in subsection (1)(c) consistent with standards set by OAR 736-040-0035 and the Lane County Land Development Code. In addition to the above standards, timber harvesting and thinning (except for those lands in Willamette National Forest) new mining operations, road construction, and similar improvements shall be permitted only when substantially screened from view from the river by topography or vegetation. If inadequate topographic or native vegetative screening exists on or near the site, activities mentioned above may be permitted if vegetation is established which will provide substantial screening of the affected area within a reasonable period of time (for example 4–5 years);

(e) The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure, or allow only a highly filtered view of the improvement. The Department will review tree harvesting, thinning and other forest management activities on Willamette National Forest lands for conformance with the Willamette National Forest Plan's visual quality objectives associated with the area where the activity is proposed;

(f) New structures and associated improvements shall be permitted when partially screened from view from the river by topography or vegetation. If inadequate, topographic or vegetative screening exist on a site, the structure or improvement may be permitted if vegetation is established to provide partial screening of the affected area within a reasonable period of time (for example 4–5 years). The condition of "partial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to partially obscure (at least one-half) the viewed structure or improvement, or allow a moderately filtered view (at least 50 percent filtering) of the proposed structure or improvement. Improvements needed for public recreation use or resource protection may be visible from the river, but must be designed to blend with the natural character of the landscape;

(g) Wherever the standards of OAR 736-040-0035 and the above rules are more restrictive than the Lane County Land Development Code, the above Oregon Administrative Rules shall apply.

(2) Scenic River Areas:

(a) The following river segments from Clear Lake to Deer Creek are classified as Scenic River Areas:

(A) Adjacent lands west of the river from Clear Lake to Carmen Reservoir;

(B) Adjacent lands west of the river from Tamolitch Falls to Trail Bridge Reservoir;

(C) Adjacent lands west of the river from Trail Bridge Dam to the confluence of Deer Creek with the McKenzie.

(b) The Department will administer the Scenic River Areas described in subsection (2)(a) consistent with standards set by OAR 736-040-0035. In addition to the above standards, new mining operations, road construction, and similar improvements shall be permitted only when they are substantially screened from view from the river by topography or native vegetation. If inadequate topographic or vegetative screening exists on a site, activities mentioned above may be permitted if vegetation is established which will provide substantial screening of the affected area. The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure or allow only a highly filtered view of the landscape affected by the improvement;

(c) New structures and associated improvements shall be permitted when substantially screened from view from the river by topography or vegetation. If inadequate topographic or vegetative screening exists on a site, the structure or improvements may be permitted if vegetation is established to provide substantial screening of the proposed structure or improvement within a reasonable period of time (for example 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure the structure or improvement, or allow a highly filtered view of the proposed structure or improvement. Improvements needed for public recreation use or resource protection may be visible from the river, but must be designed to blend with the natural character of the landscape.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 4-1992, f. & cert. ef. 7-29-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0044

Interim Classification of State Scenic Waterways

The Department will assign those segments of rivers under the scenic waterways program without a management plan an interim river classification until such time as the Commission, with the concurrence of the Oregon Water Resources Commission, adopts a river management plan. Only one interim river classification will be assigned to each scenic waterway as indicated in the following list: River — Classification

(1) Clackamas River:

(a) North Fork of the Clackamas River, that segment from the source to North Fork Reservoir (12 miles) — Scenic;

(b) South Fork of the Clackamas River, that segment from river mile 4 to main stem — Scenic.

(2) Deschutes River: Upper, that segment from Little Lava Lake to Crane Prairie Reservoir (8 miles) — Recreational;

(3) McKenzie River:

(a) South Fork, that segment from the Three Sisters Wilderness boundary to Cougar Reservoir (16.5 miles) — Scenic;

(b) South Fork, that segment from Cougar Dam to mainstem (4.5 miles) — Recreational.

(4) North Santiam River: Little North Fork, that segment from Battle Ax Creek to Willamette National Forest boundary (7 miles) — Scenic.

(5) North Umpqua River: From Mt. Thielsen Wilderness boundary to Lemolo Reservoir (6 miles) — Scenic.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 11-1991, f. & cert. ef. 6-18-91; PR 8-1994, f. & cert. ef. 7-11-94; PR 9-1996, f. & cert. ef. 10-9-96; PRD 9-2002, f. & cert. ef. 10-3-02; PRD 6-2008, f. & cert. ef. 5-15-08

Classifications by River and Segment, with General Administrative Criteria for Each

736-040-0045

Rogue River Scenic Waterway

Within the Rogue River Scenic Waterway, already designated as a component of the National Wild and Scenic Rivers System by Public Law 90-542, the Commission will, insofar as its responsibility and authority under the Act permit, give consideration to the management objectives and directives stated in the Rogue River Plan prepared jointly by the United States Forest Service and the Bureau of Land Management.

(1) Natural River Area:

(a) That segment of the scenic waterway extending from Grave Creek downstream approximately 33 miles to Watson Creek is classified as a Natural River Area;

(b) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new structures or other improvements, except those needed for public outdoor recreation or for resource protection, and no new lodges or commercial public service facilities which are visible from the river will be permitted. Additional boat docks, moorings or "salmon boards" will not be permitted.

(2) Scenic River Area:

(a) That segment of the scenic waterway extending from Blue Jay Creek in Section 11, Township 35 South, Range 12 West, of the Willamette Meridian, (T 3S, R 12W, W.M.), Curry County, downstream approximately 7-1/2 miles to the unnamed creek in Section 36, Township 35 South, Range 13 West, of the Willamette Meridian, (T 35S, R 12W, W.M.), Curry County, is classified as a Scenic River Area;

(b) Commercial public service facilities which are visible from the river will not be permitted in this area;

(c) Permissible structures within this area are single-family dwellings which meet the requirements stated in these rules and regulations. Including those already existing, such structures which are visible from the river will be limited to a total of two on each side of the river within any one mile of river frontage as shown on the plan and profile maps of the Rogue River prepared by the U.S. Geological Survey from survey made in 1923.

(3) Recreational River Areas:

(a) Three segments of the scenic waterway are designated as Recreational River Areas. These are:

(A) Hellgate, extending from the mouth of the Applegate River downstream approximately 26 miles to Grave Creek Bridge, but excluding the Natural River View Area and the River Community Areas therein contained;

(B) Agness, extending from Watson Creek downstream approximately ten miles to Blue Jay Creek, but excluding the River Community Area therein contained;

(C) Skookumhouse, extending from the unnamed creek in Section 36, Township 35 South, Range 13 West, of the Willamette Meridian (T 35S, R 13W, W.M.), Curry County, downstream approximately seven miles to the Lobster Creek Bridge.

(b) Within these areas, permitted uses and structures may include agriculture, single-family dwellings, lodges, resorts and other necessary commercial public service facilities. Including those already existing, structures and improvements which are visible from the river will be limited to a total of four on each side of the river within any one mile of river frontage as shown on the plan and profile maps of the Rogue River prepared by the U.S. Geological Survey from survey made in 1923.

(4) Natural Scenic View Area:

(a) The shoreline and related adjacent land lying along the right bank of the river (as seen when facing downstream) between Hellgate Bridge as located in Section 4, Township 35 South, Range 7 West, of the Willamette Meridian (T 35S, R 7W, W.M.), Josephine County, and the Grave Creek Bridge as located in Section 1, Township 34 South, Range 8 West, of the Willamette Meridian (T 34S, R 8W, W.M.), Josephine County, is classified as a Natural Scenic View Area;

(b) Within this area no new structures or improvements which are visible from the river, except those needed for public outdoor recreation or for resource protection, will be permitted. Roads shall not be extended, or improved substantially.

(5) River Community Areas:

(a) Within the Hellgate Recreational River Area:

(A) Related adjacent lands lying within the boundaries of the following subdivision plats as recorded in the Clerk's office of Josephine County, Oregon;

(B) Galice — Plat of Galice Subdivision, Volume 5, pages 4, 5. (Within the W 1/2 Section 36, T 34S, R 8W, W.M.);

(C) Rogue Riffles — Plat of Rogue Riffles Subdivision, Volume 4, page 49. (Within the SW 1/4 of the NW 1/4, Section 25, T 35S, R 7W, W.M., and SE 1/4 of the NE 1/4, Section 26, T 35S, R 7W, W.M.);

(D) Burnette — Plat of Burnette Estates Subdivision, Volume 7, page 8. (Within the NE 1/4 of the SW 1/4, Section 35, T 35S, R 7W, W.M.);

(E) Ferry Park — Plat of Ferry Park Estates, Volume 7, pages 19, 20. (Within the SE 1/4 of the NE 1/4 and NE 1/4 of the SE 1/4, Section 2, T 36S, R 7W, W.M.);

(F) Peaceful Valley — Plat of Peaceful Valley Acres Subdivision, Volume 3, page 54. (Within the SE 1/4 of the NW 1/4, and SW 1/4 of the NE 1/4, Section 11, T 36S, R 7W, W.M.).

(b) Also:

(A) Cathcart — Those related adjacent lands that are included in a plat of tracts surveyed for Tom Cathcart, which are situated in Sections 23 and 24, Township 35 South, Range 7 West, of the Willamette Meridian (T 35S, R 7W, W.M.), Josephine County, and are filed by Survey No. 111-68 and Survey No. 106-71 in the County Surveyor's Office in Josephine County;

(B) Greentree — Those related adjacent lands included in a Notice of Intention filed with the Real Estate Division, Department of Commerce, on 29 September 1970 by Trenor and Helen Scott and identified by reference number PNI 2798, which are situated in Section 14, Township 35 South, Range 7 West, of the Willamette Meridian (T 35S, R 7W, W.M.), Josephine County;

(C) Within these areas, structures, improvements and uses that are consistent with Josephine County Zoning Ordinances and OAR 736-040-0030 and 736-040-0035 may be permitted.

(c) Within the Agness Recreational River Area:

(A) Agness — A parcel of land that comprises the Southwest Quarter (SW 1/4); West Half of the Southeast Quarter (W 1/4 SE 1/4), Section 7; and the Northwest Quarter (NW 1/4); West Half of the Northeast Quarter (W 1/2 NE 1/4), Section 18; all in Township 35 South, Range 11 West, of the Willamette Meridian (T 35S, R 11W, W.M.), Curry County;

(B) Also a parcel of land that comprises the East Half of the Southeast Quarter (E 1/2 SE 1/4), Section 12; and the East Half of the Northeast Quarter (E 1/2 NE 1/4), Section 13; all in Township 35 South, Range 12 West, of the Willamette Meridian (T 35S, R 12W, W.M.), Curry County;

(C) The Commission recognizes that further development of the Agness area may be necessary in order to provide services for both local residents and the public;

(D) Within the Agness River Community Area, when consistent with Curry County zoning ordinances, permitted uses, structures and improvements may include agriculture, single and multiple family dwellings, churches, lodges, resorts, motels, transient public trailer parks and other necessary commercial public service facilities. Permitted densities of improvements and structures which are visible from the river may be established by the Commission after consultation with the U.S. Forest Service, the Curry County Planning Commission, the Agness Community Council, and such other persons and agencies as the Commission may select.

Stat. Auth.: ORS 390.845

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72

736-040-0046

North Umpqua River Scenic Waterway

(1) Recreation River Areas:

(a) That segment of the North Umpqua River that includes shoreline and related adjacent land on both banks of the River from its intersection with a line forming the East half of the East half of Section 18, Township 26 South, Range 3 East, Willamette Meridian, Douglas County (a line forming E 1/2, E 1/2, Section 18, T26S, R3E, W.M., Douglas County; approximately just below the Soda Springs Powerhouse) downstream to the North Umpqua River Highway 138 bridge in Section 22, Township 26 South, Range 2 East, Willamette Meridian (Section 22, T26S, R2E, W.M., Douglas County);

(b) The Department will administer the Recreation River Area described in subsection (1)(a) consistent with standards set by OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition to the above standards, the Department may permit new mining operations, road construction, and similar improvements only when substantially screened from view from the river by topography or native vegetation. If inadequate topographic or vegetative screening exists on a site, activities mentioned above may be permitted if vegetation is established which will provide substantial screening of the affected area. The condition of "substantial screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure, or allow only a highly filtered view of the landscape affected by the improvement. New structures and associated improvements shall be permitted when partially screened from view from the river by topography or vegetation. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if vegetation is established to provide partial screening of the proposed structure or improvement within a reasonable period of time (for example 4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to partially obscure (at least one-half) the viewed improvement or structure, or allow a moderately filtered view (at least 50 percent filtering) of the proposed structure or improvement. Improvements needed for public recreation use or resource protection may be visible from the river, but must be designed to blend with the natural character of the landscape;

(c) That segment of the North Umpqua River that includes the shoreline and adjacent lands north of the river channel from the North Umpqua River Highway 138 bridge (Marsters Bridge) located in Section 22, Township 26, Range 2E, W.M. and the point at which Rock Creek converges with the North Umpqua River excluding any area classified "River Community Area";

(d) The Department will administer the Recreation River Area described in subsection (1)(c) consistent with standards set by OAR 736-040-0035, 736-040-0040(1)(c)(B) and the Douglas County Land Use and Development Ordinance. In addition to the above standards, the Department may permit new mining operations, road construction, commercial tree harvesting, and similar improvements only when substantially screened from view from the river by topography or native vegetation. If inadequate topographic or vegetative screening exists on a site, activities mentioned above may be permitted if vegetation is established which will provide substantial screening of the affected area. The condition of "substantial screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure, or allow only a highly filtered view of, the landscape affected by the improvement:

(A) New structures and associated improvements shall be permitted when partially screened from view from the river by topography or vegetation. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if vegetation is established to provide partial screening of the proposed structure or improvement within a reasonable period of time (for example 4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to partially obscure (at least one-half) the viewed improvement or structure, or allow a moder-

ately filtered view (at least 50 percent filtering) of the proposed structure or improvement;

(B) Improvements needed for public recreation use or resource protection may be visible from the river, but must be designed to blend with the natural character of the landscape;

(C) Wherever the standards of OAR 736-040-0035 and the above rule are more restrictive than the Douglas County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(2) Scenic River Area:

(a) That segment of the North Umpqua Scenic Waterway that includes the shoreline and adjacent lands south of the river channel from the North Umpqua River Highway 138 bridge (Marsters Bridge) located in Section 22, Township 26, Range 2E, W.M., and the point at which Rock Creek converges with the North Umpqua River excluding any area classified "River Community Area";

(b) The Department will administer the Scenic River Area described in subsection (2)(a) consistent with standards set by OAR 736-040-0035, 736-040-0040(1)(b)(B) and the Douglas County Land Use and Development Ordinance;

(c) In addition to the above standards, the Department may permit new mining operations, road construction, commercial tree harvesting and similar improvements only when substantially screened from view from the river by topography or vegetation. If inadequate topographic or native vegetative screening exists on or near the site, activities mentioned above may be permitted if vegetation is established which will provide substantial screening of the affected area within a reasonable period of time (for example 4–5 years). The condition of "substantial screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure, or allow only a highly filtered view of the improvement;

(d) New structures and associated improvements shall be permitted when substantially screened from view from the river by topography or vegetation. If inadequate, topographic or vegetative screening exist on a site, the structure or improvement may be permitted if vegetation is established to provide substantial screening of the affected area in a reasonable time (for example 4–5 years). The condition of "substantial screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure, or allow only a highly filtered view of the proposed structure or improvement;

(e) Improvements needed for public recreation use or resource protection may be visible from the river, but must be designed to blend with the natural character of the landscape;

(f) Wherever the standards of OAR 736-040-0035 and the above rule are more restrictive than the Douglas County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(3) River Community Areas:

(a) Five areas are designated as River Community Areas:

(A) Rock Creek — All the shoreline and related land east of Rock Creek along the right bank (as seen when facing downstream) within the SW 1/4 of Section 1, T26S, R3W, W.M., which includes tax lots 600, 700, 800, and 900;

(B) Frontier Village — The North Umpqua Village Subdivision (Vol. 7, page 60, approved in March 1948); the plat of North Umpqua Village first addition as recorded in Volume 10, page 52; Tract 37 of Section 16, Township 26S, Range 2W, W.M., Douglas County, Oregon as filed June 25, 1954. In addition to these plats, tax lots 300 and 400 of the SW 1/4 of T26, R2W, Sec 16 (Sec 16C); tax lots 500, 600, 700, 701, and 800, in SE 1/4 of T26S, R2W, Section 17;

(C) Susan Creek Village — The shoreline and related adjacent lands lying along the right bank of the North Umpqua River (as seen facing downstream) and described as follows: The Northwest one-quarter of Section 23, Township 26 South, Range 2 West, Willamette Meridian, Douglas County (NW 1/2, Section 23, T26S, R2W, W.M.);

(D) Steamboat — All shoreline and related adjacent lands lying within the west half of Section 32, Township 25-1/2 South,

Range 1 East, Willamette Meridian (W 1/2, Section 32, T25-1/2S, R1E, W.M.); the northwest one-quarter of Section 5, Township 26 South, Range 1 East, Willamette Meridian (NW 1/4, NW 1/4, Section 4, T26S, R1E, W.M.); the East half of Section 31, Township 25-1/2 South, Range 1 East, Willamette Meridian (E 1/2, Section 31, T25-1/2 S, R1E, W.M.); and the north half of the northeast one-quarter of Section 6, Township 26 South, Range 1 East, Willamette Meridian (N1/2, NE1/4, Section 6, T26S, R1E, W.M.) Douglas County;

(E) Dry Creek — All shoreline and related adjacent lands lying along the right bank (as seen when facing downstream) within the east half of the northwest quarter and the west half of the northeast quarter of Section 20, Township 26 South, Range Two East, Willamette Meridian (E1/2, NW 1/4, and W1/2, NE 1/4, Section 20, T26S, R2E, W.M.), Douglas County.

(b) Within these River Community areas described in OAR 736-040-0041(3)(a)(A)–(E) the Department may not permit new commercial facilities such as resorts, motels, and private recreational vehicle parks unless their plans are consistent with requirements of the Douglas County Land Use and Development Ordinance; and they are not visible from any vantage point on the banks of, or from within, the river;

(c) Any other land uses that may be permitted in the river community areas by the county, such as single family dwellings, will be allowed if their plans are consistent with Douglas County Land Use and Development Ordinance requirements and Scenic Waterway standards OAR 736-040-0035;

(d) Wherever the standards of OAR 736-040-0035 and the above rule are more restrictive than the Douglas County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 6-1992, f. & cert. ef. 10-30-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0047

Grande Ronde River Scenic Waterway

(1) Scenic River Area:

(a) That segment of the Grande Ronde River from Rondowa at the confluence of the Wallowa River with the Grande Ronde River to the Umatilla National Forest boundary;

(b) This Scenic River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition to these standards, all new development in resource zones (i.e., farm and forest related dwellings) shall comply with Wallowa and Union County land use regulations;

(A) New structures and associated improvements (except as provided under OAR 736-040-0030(5)) shall be moderately screened with native vegetation and/or existing topography. If inadequate topography or vegetative screening exists on a site, the structure or improvement may be permitted if vegetation (preferably native) is established to provide moderate screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "moderate screening" shall consist of an ample density and mixture of evergreen and deciduous vegetation to moderately obscure (at least 50 percent) the viewed improvement or structure, or allow a moderately filtered view (at least 50 percent filtering) of the proposed structure or improvement;

(B) Visible tree harvest may be allowed provided that:

(i) The operation complies with the relevant Forest Practices Act rules;

(ii) Harvest methods with low visual impact are used; and

(iii) The effect of the harvest enhances the scenic view within a reasonable time (5–10 years). For the purposes of this rule, "enhance" means to improve timber stand health, including reducing stand density, by emulating the mosaic character of the natural forest landscape (pre-forest management tree density patterns — Prior to 1920).

(C) New mining operations and similar improvements shall be permitted only when they are substantially screened from view from the river by topography and/or native vegetation. If inadequate topographic or vegetative screening exists on a site, mining and

similar forms of development may be permitted if vegetation is established which would provide substantial screening of the affected area. The condition of “substantial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to totally obscure the altered improvement site at all stages of its development;

(D) New roads may be permitted only when fully screened from the river by topography or existing vegetation;

(E) Existing roads may be upgraded when those roads are moderately screened from view from the river by topography or existing vegetation. No side cast which would be visible from the river is permitted. Excess material shall be hauled to locations out of sight from the river. If inadequate screening exists, the road upgrade may be permitted if vegetation (preferably native) is established to provide moderate screening of the road within a reasonable time (4–5 years). The condition of “moderate screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to allow a moderately filtered view (at least 50 percent filtering) of the road;

(F) Proposed utility facilities shall share existing utility corridors, and any vegetation disturbance should be kept to a minimum;

(G) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be designed to blend with the natural character of the landscape;

(H) Whenever the standards of OAR 736-040-0035 and the above rule are more restrictive than the applicable County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(2) Natural River Area:

(a) That segment of the Grande Ronde River from the Umatilla National Forest boundary to Wildcat creek;

(b) This Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(a)(C). In addition to these standards, all new development in resource zones (i.e., farm and forest related dwellings) shall comply with Wallowa and Union County land use regulations:

(A) New structures and associated improvements shall be totally obscured from view from the river except as provided under OAR 736-040-0030(5) and except those minimal facilities needed for public outdoor recreation or resource protection;

(B) Visible tree harvest may be allowed provided that:

(i) The operation complies with the relevant Forest Practices Act rules;

(ii) Harvest methods with low visual impact are used; and

(iii) The effect of the harvest enhances the scenic view within a reasonable time (5–10 years). For the purposes of this rule, “enhance” means to improve timber stand health, including reducing stand density, by emulating the mosaic character of the natural forest landscape (pre-forest management tree density patterns — Prior to 1920).

(C) New roads will be permitted only when fully screened from the river by topography and/or existing vegetation;

(D) Any existing roads, visible from the river, shall not be extended, realigned, or improved substantially. When a road is reggraded, no side cast which would be visible from the river is permitted. Excess material must be hauled to locations out of sight from the river;

(E) New mining operations and similar improvements shall be permitted only when they are substantially screened from the river by topography or existing vegetation. The condition of “substantial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to totally obscure the altered improvement site at all stages of its development;

(F) Proposed utility facilities shall share existing utility corridors, and any vegetation disturbance shall be kept to a minimum;

(G) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape;

(H) Whenever the standards of OAR 736-040-0035 and the above rule are more restrictive than the applicable County Land

Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(3) Recreational River Area:

(a) That segment of the Grande Ronde River from Wildcat Creek to the Oregon State line, except for the community of Troy;

(b) This Recreational River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (i.e., farm and forest related dwellings) shall comply with Wallowa and Union County land use regulations:

(A) New structures and associated improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with existing vegetation and/or topography. If inadequate topography or vegetative screening exists on a site, the structure or improvement may be permitted if vegetation (preferably native) is established to provide partial screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “partial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation to partially obscure (at least 30 percent) the viewed improvement or structure, or allow a partially filtered view (at least 30 percent filtering) of the proposed structure or improvement;

(B) Visible tree harvest may be allowed provided that:

(i) The operation complies with the relevant Forest Practices Act rules;

(ii) Harvest methods with low visual impact are used; and

(iii) The effect of the harvest enhances the scenic view within a reasonable time (5–10 years). For the purposes of this rule, “enhance” means to improve timber stand health, including reducing stand density, by emulating the mosaic character of the natural forest landscape (pre-forest management tree density patterns — Prior to 1920).

(C) New roads constructed for timber harvest, mining or any other purpose shall be moderately screened, with vegetation and/or topography. If inadequate topography or vegetative screening exists, the road may be permitted if vegetation (preferably native) is established to provide moderate screening of the road within a reasonable time (4–5 years). The condition of “moderate screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to allow moderately filtered view (at least 50 percent filtering) of the road;

(D) New mining operations and similar improvements shall be permitted only when they are substantially screened from view from the river by topography and/or existing vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if vegetation is established which would provide substantial screening of the affected area;

(E) The condition of “substantial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to totally obscure the altered improvement site at all stages of its development;

(F) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be designed to blend with the natural character of the landscape;

(G) Whenever the standards of OAR 736-040-0035 and the above rule are more restrictive than the applicable County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(4) Troy River Community Area:

(a) That segment of the Grand Ronde River that includes the area zoned Rural Service by Wallowa County at Troy;

(b) This River Community Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(f). In addition to these standards, all new development shall comply with Wallowa and Union County land use regulations:

(A) New mining operations and similar improvements shall be permitted only when they are substantially screened from view from the river by topography and/or existing vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if vegetation

(preferably native) is established which would provide substantial screening of the affected area. The condition of “substantial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to totally obscure the altered improvement site;

(B) If land is to remain in forest use, visible timber harvest may be allowed provided that:

(i) The operation complies with the relevant Forest Practices Act rules;

(ii) Harvest methods with low visual impact are used; and

(iii) The effect of the harvest enhances the scenic view within a reasonable time (5–10 years). For the purposes of this rule, “enhance” means to improve timber stand health, including reducing stand density, by emulating the mosaic character of the natural forest landscape (pre-forest management tree density patterns — Prior to 1920).

(C) New roads constructed for timber harvest, mining or any other purpose shall be partially screened with vegetation and/or topography. If inadequate topography or vegetative screening exists, the road may be permitted if vegetation (preferably native) is established to provide partial screening of the road within a reasonable time (4–5 years);

(D) The condition of “partial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to allow a partially filtered view (at least 30 percent filtering) of the road;

(E) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be designed to blend with the natural character of the landscape;

(F) Whenever the standards of OAR 736-040-0035 and the above rule are more restrictive than the applicable County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(5) Public use of the Grande Ronde River Scenic Waterway:

(a) Policy: The Oregon Parks and Recreation Commission finds that in order to protect and enhance the Grande Ronde River Scenic Waterway’s unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway’s outstanding scenic beauty and natural features while maintaining the river’s wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, persons using the Grande Ronde River Scenic Waterway for recreation purposes shall comply with the following rules.

(b) Permits: Every boater or boating group shall obtain, prior to launch, a Wallowa-Grande Ronde River use permit. The permit shall be carried by the boater, or group leader, and shall be readily available for inspection upon request by authorized agency and law enforcement personnel. Information requested on the permit shall be completely and accurately filled out and the permit shall be signed by the permit holder prior to launch in order to be valid. Permit holders shall abide by the requirements of the permit and the permit stipulations.

(c) Campfires, Fuel, Firepans:

(A) When not prohibited, fire shall be contained in a fireproof container with sides of a height sufficient to contain all ash and debris;

(B) When fire is prohibited, no open fires, including the use of charcoal, shall be permitted, but commercially manufactured metal camp stoves and lanterns shall be permissible for use when fueled with bottled liquified petroleum gas (e.g., propane) or liquid gas;

(C) No person shall leave a fire unattended;

(D) All fires shall be completely extinguished after use. The extinguished remains, including all ash, wood or charcoal residue, partially consumed briquets, and burned trash shall be taken out of the scenic waterway for disposal in a proper garbage receptacle provided at developed recreation sites or litter collection stations;

(E) Every person or group shall carry and keep reasonably accessible, one bucket of at least one-gallon capacity;

(F) No person shall chop, saw, break, or gather wood or other combustible material from any live or standing tree, shrub or other vegetation.

(d) Litter and Personal Sanitation:

(A) Every person or group shall carry out all their refuse, scrap, trash and garbage and place it in proper receptacles provided for such purpose at developed recreation sites or litter collection stations. No such refuse, litter, scrap or garbage shall be buried or abandoned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway for disposal;

(B) Every person or group shall use developed toilet facilities when provided at public recreation sites. A portable, containerized toilet shall be carried and used at all times when developed toilet facilities are not available. All persons or groups that remain, intend to remain, or display intent to remain overnight in an undeveloped camp site shall set up a portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied. No person shall leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground. Portable toilets shall only be dumped at facilities developed and identified especially for that purpose. For purposes of this paragraph, the following definitions shall apply:

(i) “Remain overnight” means human presence in the Grande Ronde River Scenic Waterway for any period of time from one hour after legal sunset to one hour before legal sunrise;

(ii) “Display intent to remain overnight” includes, but is not limited to, any off-loading on to the river bank or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat;

(iii) “Developed camp site” means a motor vehicle accessible, fee site.

(e) Camping and group size:

(A) No person or group shall camp in any area posted as “Closed” to that use;

(B) No person or group shall stop on, occupy, or camp on private property posted as such or with “No Trespassing” signs;

(C) No group greater than 25 persons, including guides or trip leaders, shall launch, float together, stop or camp together at undeveloped campsites within the river corridor.

(f) Motorized equipment: Except for private property owners using motorized equipment on their own property, and except for small, hand-held, battery operated devices, no person or group shall carry or use any motorized equipment or machinery activated by a non-living power source within the designated state scenic waterway “natural river area” from the Umatilla National Forest boundary about 1.5 miles downstream from the confluence of the Wallowa River, to the confluence of Wildcat Creek.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 - 390.925

Hist.: PR 10-1993, f. & cert. ef. 6-24-93; PRD 8-2002, f. & cert. ef. 8-8-02

736-040-0048

Wallowa River Scenic Waterway

(1) Minam River Community Area:

(a) That segment of the Wallowa River zoned Rural Service by Wallowa County at Minam;

(b) This River Community Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(f). In addition to these standards, all new development shall comply with Wallowa County land use regulations:

(A) New mining operations and similar improvements shall be permitted only when they are substantially screened from view from the river by topography and/or existing vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if vegetation is established which would provide substantial screening of the affected area. The condition of “substantial screening” shall consist of an ample density and mixture of evergreen and deciduous vege-

tation (preferably native) to totally obscure the altered improvement site;

(B) If land is to remain in forest use, visible timber harvest may be allowed provided that:

(i) The operation complies with the relevant Forest Practices Act rules;

(ii) Harvest methods with low visual impact are used; and

(iii) The effect of the harvest enhances the scenic view within a reasonable time (5–10 years). For the purposes of this rule, “enhance” means to improve timber stand health, including reducing stand density, by emulating the mosaic character of the natural forest landscape (pre-forest management tree density patterns — Prior to 1920).

(C) New roads constructed for timber harvest, mining or any other purpose shall be partially screened, either with vegetation or topography. If inadequate topography or vegetative screening exists, the road may be permitted if vegetation (preferably native) is established to provide partial screening of the road within a reasonable time (4–5 years). The condition of “partial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to allow a partially filtered view (at least 30 percent filtering) of the road;

(D) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be designed to blend with the natural character of the landscape;

(E) Whenever the standards of OAR 736-040-0035 and the above rule are more restrictive than the applicable County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(2) Recreational River Area:

(a) That segment of the Wallowa River from the north boundary of the River Community Area to the north boundary of Minam State Park;

(b) This Recreational River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (i.e., farm and forest related dwellings) shall comply with Wallowa and Union County land use regulations:

(A) New structures and associated improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with native vegetation and/or existing topography. If inadequate topography or vegetative screening exists on a site, the structure or improvement may be permitted if vegetation (preferably native) is established to provide partial screening of the proposed structure or improvement within a reasonable time (4–5 years);

(B) The condition of “partial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation to partially obscure (at least 30 percent) the viewed improvement or structure, or allow a partially filtered view (at least 30 percent filtering) of the proposed structure or improvement;

(C) New mining operations and similar improvements shall be permitted only when they are substantially screened from view from the river by topography and/or existing vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if vegetation is established which would provide substantial screening of the affected area. The condition of “substantial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to totally obscure the altered improvement site;

(D) Visible tree harvest may be allowed provided that:

(i) The operation complies with the relevant Forest Practices Act rules;

(ii) Harvest methods with low visual impact are used; and

(iii) The effect of the harvest enhances the scenic view within a reasonable time (5–10 years). For the purposes of this rule, “enhance” means to improve timber stand health, including reducing stand density, by emulating the mosaic character of the natural forest landscape (pre-forest management tree density patterns — Prior to 1920).

(E) New roads constructed for timber harvest, mining or any other purpose shall be moderately screened with vegetation and/or topography. If inadequate topography or vegetative screening exists, the road may be permitted if vegetation (preferably native) is established to provide moderate screening of the road within a reasonable time, (4–5 years);

(F) The condition of “moderate screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to allow moderately filtered view (at least 50 percent filtering) of the road;

(G) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be designed to blend with the natural character of the landscape;

(H) Whenever the standards of OAR 736-040-0035 and the above rule are more restrictive than the applicable County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(3) Accessible Natural River Area:

(a) That segment of the Wallowa River from the north boundary of the Recreational River Area to the Wallowa’s confluence with the Grande Ronde;

(b) This Accessible Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(e)(B). In addition to these standards, all new development in resource zones (i.e., farm and forest related dwellings) shall comply with Wallowa and Union County land use regulations:

(A) New structures and associated improvements shall be totally obscured from view from the river by existing vegetation and/or topography except as provided under OAR 736-040-0030(5) and except minimal facilities needed for public outdoor recreation or resource protection;

(B) New mining operations and similar improvements shall be permitted only when they are substantially screened from view from the river by topography and/or existing vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if vegetation is established which would provide substantial screening of the affected area. The condition of “substantial screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to totally obscure the altered improvement site at all stages of its development;

(C) Visible tree harvest may be allowed provided that:

(i) The operation complies with the relevant Forest Practices Act rules;

(ii) Harvest methods with low visual impact are used; and

(iii) The effect of the harvest enhances the scenic view within a reasonable time (5–10 years). For the purposes of this rule, “enhance” means to improve timber stand health, including reducing stand density, by emulating the mosaic character of the natural forest landscape (pre-forest management tree density patterns — Prior to 1920).

(D) New roads may be permitted only when fully screened from the river by topography or existing vegetation;

(E) Existing visible roads may be upgraded when those roads are moderately screened or moderate screening is established. No side cast which would be visible from the river is permitted. Excess material shall be hauled to locations out of sight from the river. If inadequate screening exists, upgrading the road may be permitted if native vegetation is established to provide moderate screening of the road within a reasonable time (4–5 years). The condition of “moderate screening” shall consist of an ample density and mixture of evergreen and deciduous vegetation (preferably native) to allow a moderately filtered view (at least 50 percent filtering) of the road;

(F) Proposed utility facilities shall share existing utility corridors, and any vegetation disturbance shall be kept to a minimum;

(G) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape;

(H) Whenever the standards of OAR 736-040-0035 and the above rule are more restrictive than the applicable County Land

Use and Development Ordinance, the above Administrative Rules shall apply.

(4) Public use of the Willowa River Scenic Waterway:

(a) Policy: The lower ten miles of the Willowa River is a state scenic waterway designated under ORS 390.805 to 390.925 and a federal wild and scenic river designated in accordance with section 2(a)(ii) of the Wild and Scenic Rivers Act of 1968. The State of Oregon requested section 2(a)(ii) wild and scenic designation for the lower ten miles of the Willowa River and is therefore responsible for its administration. The Oregon Parks and Recreation Commission finds that in order to protect and enhance the Willowa River Scenic Waterway/Wild and Scenic River's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment to be designated by the people of Oregon as a scenic waterway and the Secretary of the Interior as a wild and scenic river, it is necessary to adopt rules for public recreation use of the lands and waters within this wild and scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845 and the Wild and Scenic Rivers Act of 1968, persons using the Willowa River Scenic Waterway/Wild and Scenic River for recreation purposes shall comply with the following rules.

(b) Permits: Every boater or boating group shall obtain, prior to launch, a Willowa-Grande Ronde River use permit. The permit shall be carried by the boater or group leader while within the river corridor and shall be readily available for inspection upon request by authorized agency and law enforcement personnel. Information requested on the permit shall be completely and accurately filled out and the permit shall be signed by the permit holder prior to launch in order to be valid. Permit holders shall abide by the requirements of the permit and the permit stipulations.

(c) Campfires, Fuel, Firepans:

(A) When not prohibited, fire shall be contained in a fireproof container with sides of a height sufficient to contain all ash and debris;

(B) When fire is prohibited, no open fires, including the use of charcoal, shall be permitted, but commercially manufactured metal camp stoves and lanterns shall be permissible for use when fueled with bottled liquified petroleum gas (e.g., propane) or liquid gas;

(C) No person shall leave a fire unattended;

(D) All fires shall be completely extinguished after use. The extinguished remains, including all ash, wood or charcoal residue, partially consumed briquets, and burned trash shall be taken out of the scenic waterway for disposal in a proper garbage receptacle provided at developed recreation sites or litter collection stations;

(E) Every person or group shall carry and keep reasonably accessible, one bucket of at least one-gallon capacity;

(F) No person shall chop, saw, break or gather wood or other combustible material from any live or standing tree, shrub or other vegetation.

(d) Litter and Personal Sanitation:

(A) Every person or group shall carry out all their refuse, scrap, trash and garbage and place it in proper receptacles provided for such purpose at developed recreation sites or litter collection stations. No such refuse, litter, scrap or garbage shall be buried or abandoned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway corridor for disposal;

(B) Every person or group shall use developed toilet facilities when provided at public recreation sites. A portable, containerized toilet shall be carried and used at all times when developed toilet facilities are not available. All persons who remain, intend to remain, or display intent to remain overnight in an undeveloped camp site shall set up a portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied. No person shall leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground. Portable toilets shall only be dumped at facilities developed and identified especially for that

purpose. For purposes of this paragraph, the following definitions shall apply:

(i) "Remain overnight" means human presence in the Willowa River Scenic Waterway for any period of time from one hour after legal sunset to one hour before legal sunrise;

(ii) "Display intent to remain overnight" includes, but is not limited to, any off-loading on to the river bank or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat;

(iii) "Developed camp site" means a motor vehicle accessible, fee site.

(e) Camping and group size: No person or group shall camp in any area posted as "Closed" to that use; No person or group shall stop on, occupy, or camp on private property posted as such or with "No Trespassing" signs; No group greater than 25 persons, including guides or trip leaders, shall launch, float together, stop or camp together at undeveloped campsites within the river corridor.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 - 390.925

Hist.: PR 11-1993, f. & cert. ef. 6-24-93; PRD 8-2002, f. & cert. ef. 8-8-02

736-040-0049

Upper Clackamas River Scenic Waterway

(1) Recreation River Areas:

(a) That segment of the Upper Clackamas River from the Forest Service Road 4690 Bridge, to the junction of Forest Service Road 4690 with Forest Service Road 46 at approximately river mile 75.66;

(b) That segment of the Upper Clackamas River from June Creek Bridge to the confluence of Tar Creek with the River;

(c) That segment of the Upper Clackamas River immediately upstream (south of) Indian Henry Campground at approximately river mile 49.33 to North Fork Reservoir at approximately river mile 34;

(d) Any form of improvement, new development, new structure, change in existing land use and improvement associated with an existing structure shall comply with provisions of OAR 736-040-0035, 736-040-0040(1)(c)(B), and the Clackamas County land use regulations with regard to those lands within the Upper Clackamas Scenic Waterway as described in subsections (1)(a), (b), and (c) of this rule.

(2) Scenic River Areas:

(a) That segment of the Upper Clackamas River from the boundary of the Olallie Lake Scenic Area, as constituted on December 8, 1988, at approximately river mile 82 to the Forest Service Road 4690 Bridge;

(b) That segment of the Upper Clackamas River from the junction of Forest Service Road 4690 with Forest Service Road 46 to the June Creek Bridge;

(c) That segment of the Upper Clackamas River from the confluence of Tar Creek with the river to immediately upstream from (south of) Indian Henry Campgrounds at approximately river mile 49.33;

(d) Any form of improvement, new development, new structures, change in existing land use and improvements associated with existing structures shall comply with provisions of OAR 736-040-0035, 736-040-0040(1)(b)(B) and the Clackamas County land use regulations with regard to those lands within the Upper Clackamas Scenic Waterway as described in subsections (2)(a), (b), and (c) of this rule.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 5-1993, f. & cert. ef. 3-15-93

736-040-0050

Illinois River Scenic Waterway

(1) Accessible Natural River Area:

(a) The segment of the scenic waterway extending from Deer Creek downstream approximately 14 miles to Briggs Creek is classified as an Accessible Natural River Area;

(b) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new structures or improvements which are visible from the river other than those erected or made in connection with a compatible existing use, or those needed for public recreation or for resource protection, will be permitted. Additional dwellings and commercial public service facilities, including resorts and motels, lodges and trailer parks which can be seen from the river, will not be permitted, except for a youth camp constructed and operated by the Boy Scouts of America, after proper notification and Commission approval, on their deeded property, amounting to 105.98 acres, within Township 37 South, Range 9 West, Section 32, Tax Lot 200, Josephine County.

(2) Natural River Area:

(a) The segment of the scenic waterway extending from Briggs Creek downstream approximately 27-1/2 miles to the intersection with the North Boundary Line of Section 32, Township 35 South, Range 11 West, of the Willamette Meridian (T 35S, R 11W, W.M.), Curry County, near Lawson Creek, is classified as a Natural River Area;

(b) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new structures or improvements which are visible from the river other than those erected or made in connection with a compatible existing use, or those needed for public recreation or for resource protection, will be permitted. Additional dwellings and commercial public service facilities, including resorts and motels, lodges and trailer parks which can be seen from the river, will not be permitted.

(3) Recreational River Area:

(a) The segment of the scenic waterway beginning at the intersection with the North Boundary Line of Section 32, Township 35 South, Range 11 West, of the Willamette Meridian (T 35S, R 11W, W.M.), Curry County, near Lawson Creek, downstream approximately 3-1/2 miles to the boundary of the Agness River Community Area, is classified as a Recreational River Area;

(b) Within this area, permitted uses and structures may include agriculture, single-family dwellings, lodges, resorts and other necessary commercial public service facilities. Including those already existing, structures and improvements which are visible from the river will be limited to a total of four on each side of the river within any one mile of river frontage as shown on the plan and profile maps of the Illinois River prepared by the U.S. Geological Survey from survey made in 1923.

(4) River Community Area: The segment of the scenic waterway extending from the boundary of the Agness River Community Area to the Rogue River is classified as part of that area.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72

736-040-0051

Elk River Scenic Waterway

(1) Natural River Areas:

(a) Adjacent lands on the north side of the Elk River from its confluence with Butler Creek on the east side of the Grassy Knob Wilderness downstream to Anvil Creek;

(b) The North Fork Elk River from its intersection with the NW1/4 Sec.17, T33S, R12W downstream to its confluence with the main stem Elk River;

(c) The South Fork Elk River from its intersection with the SW1/4 of Sec. 30, T33S, R12W downstream to its confluence with the main stem Elk River.

(2) Scenic River Areas:

(a) Adjacent lands on the north side of the Elk River from its confluence with Anvil Creek downstream to the Elk River Fish Hatchery;

(b) Adjacent lands on the south side of the Elk River from its confluence with Butler Creek on the east side of the Grassy Knob Wilderness downstream to the Elk River Fish Hatchery;

(c) The main stem Elk River from its confluence with the North Fork Elk River and South Fork Elk River downstream to its confluence with Butler Creek;

(d) The headwaters of the North Fork Elk River downstream to its intersection with the NW1/4 Sec.17, T33S, R12W;

(e) The headwaters of the South Fork Elk River downstream to its intersection with the SW1/4 Sec.30, T33S, R12W.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PRD 7-1998, f. 6-15-98, cert. ef. 6-17-98

736-040-0052

Upper Rogue River Scenic Waterway

(1) Accessible Natural River Areas:

(a) That segment of the Upper Rogue River from the northern boundary of Rogue River National Forest with Crater Lake National Park to the Forest Service Road 6530 Bridge. The USFS Road 6530 Bridge is at approximately river mile 206 upstream from Hamaker Meadows.

(b) That segment of the Upper Rogue River on the west bank of the river from Forest Service Road 6510 Bridge (Stella Bridge) at approximately river mile 190 to the Natural Bridge Interpretive Site footbridge at approximately river mile 184.25. Any form of improvement, new development, new structures, change in existing land use and improvements associated with existing structures shall comply with the provisions of OAR 736-040-0035, 736-040-0040(1)(e)(B) and applicable Jackson County land use regulations with regard to those lands within the Upper Rogue Scenic Waterway as described in subsections (1)(a) and (1)(b) of this rule.

(c) That segment of the Upper Rogue River from the Natural Bridge Interpretive Site footbridge at approximately river mile 184.25 to the southern boundary of Rogue River National Forest near the Prospect Ranger Station at approximately river mile 173.

(A) This Accessible Natural River Area shall be administered consistent with standards set by OAR 736-040-0035, 736-040-0040(1)(e)(B) and applicable Jackson County land use regulations.

(B) In addition to the above standards, timber harvesting and thinning, except for those lands in Rogue River National Forest, new mining operations, road construction, and similar improvements shall be permitted only when totally screened from view from the river by topography and/or existing vegetation. If inadequate topographic or native vegetative screening exists on or near the site, timber harvesting, mining, road construction and similar improvements may be permitted if vegetation is established which will totally screen the affected area within 4-5 years. The condition of "total screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure the improvement from the river.

(C) Tree harvesting, thinning and other forest management activities on Rogue River National Forest lands are subject to review by the State Parks and Recreation Department for conformance with the Rogue River National Forest Land and Resource Management Plan visual quality objectives associated with the area where the activity is proposed.

(D) New structures and associated improvements shall be permitted when totally screened from view from the river by topography or existing vegetation. If inadequate topographic or vegetative screening exist on or near a site of the proposed structure or improvement, it may be permitted if vegetation is established which will totally screen the affected area within a period of 4-5 years. The condition of "total screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure the proposed structure or improvement from the river.

(E) Improvements needed for public recreation use or resource protection may be visible from the river, if designed to blend with the natural character of the landscape.

(F) Wherever the standards of OAR 736-040-0035 and the above rules are more restrictive than the Jackson County land use regulations, the above Oregon Administrative Rules shall apply.

(2) Scenic River Area: That segment of the Upper Rogue River from Forest Service Road 6530 Bridge at approximately river mile 206 to the Forest Service Road 6510 Bridge (Stella Bridge) at approximately river mile 190. Any form of improvement, new development, new structures, change in existing land use and

improvements associated with existing structures shall comply with the provisions of OAR 736-040-0035, 736-040-0040(1)(b)(B), and applicable Jackson County land use regulations with regard to those lands within the Upper Rogue Scenic Waterway as described in subsection (2) of this rule.

(3) Recreation River Area: That segment of the Upper Rogue River on the east bank of the river from Forest Service Road 6510 Bridge (Stella Bridge) at approximately river mile 190 to the Natural Bridge Interpretive Site footbridge at approximately river mile 184.25.

(a) This "Recreation River Area" shall be administered consistent with standards set by OAR 736-040-0035, 736-040-0040(1)(c)(B), and applicable Jackson County land use regulations.

(b) In addition to the above standards, timber harvesting and thinning, except for those lands in Rogue River National Forest, new mining operations, road construction, and similar improvements shall be permitted only when totally screened from view from the river by topography and/or existing vegetation. If inadequate topographic or native vegetative screening exists on or near the site, the proposed timber harvesting, mining, road construction and similar improvements may be permitted if vegetation is established which will totally screen the affected area within 4-5 years. The condition of "total screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure the improvement.

(c) Tree harvesting, thinning and other forest management activities on the Rogue River National Forest lands are subject to review by the State Parks and Recreation Department for conformance with the Rogue River National Forest Land and Resource Management Plan visual quality objectives associated with the area where the activity is proposed.

(d) New structures and associated improvements shall be permitted when moderately screened from view from the river by topography and/or existing vegetation. If inadequate topographic or vegetative screening exist on or near the site of the proposed structure or improvement, it may be permitted if vegetation is established to provide moderate screening of the affected area within a period of 4-5 years. The condition of "moderate screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to moderately obscure (at least 50%) the viewed structure or improvement, or allow a moderately filtered (at least 50% filtering) view of the proposed structure or improvement.

(e) Improvements needed for public recreation use or resource protection may be visible from the river if designed to blend with the natural character of the landscape.

(f) Wherever the standards of OAR 736-040-0035 and the above rules are more restrictive than applicable Jackson County land use regulations, the above Oregon Administrative Rules shall apply.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PRD 8-1998, f. 6-15-98, cert. ef. 6-17-98

736-040-0053

Klamath River Scenic Waterway

Accessible Natural River Area:

(1) That segment of scenic waterway beginning at the J.C. Boyle Dam Powerhouse to the California border (11 miles) is classified as an Accessible Natural River Area.

(2) This Accessible Natural River Area shall be administered consistent with the standards set by Oregon Administrative Rules 736-040-0035 and 736-040-0040(1)(e)(B). In addition to these standards, all new development in resource zones (i.e., forest-related dwellings) shall comply with Klamath County land use regulations.

(3) New structures and associated improvements shall be totally screened from view from the river by topography and/or vegetation, except as provided under Oregon Administrative Rules 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate

topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4-5 years). The condition of "total screening," as used in this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally (100 percent) obscure the improvement.

(4) Commercial public service facilities, including resorts, motels, lodges, and trailer parks that are visible from the river shall not be permitted.

(5) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in Oregon Revised Statutes 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. The condition of "total screening," as used in this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally (100 percent) obscure the new mining operation. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4-5 years).

(6) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. The condition of "total screening," as used in this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally (100 percent) obscure the new road. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created, or road design techniques used, to totally (100 percent) screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4-5 years).

(7) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall be totally screened from view from the river. The condition of "total screening," as used in this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally (100 percent) obscure the subject improvement. Necessary minor road improvements shall be substantially screened from view from the river. The condition of "substantial screening," as used in this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to substantially obscure (at least 75 percent) the minor road improvement. If inadequate topography or vegetation exists to substantially screen the road improvement, it may be permitted if acceptable topography can be created, or road design techniques used, to substantially screen the road at the time of construction; or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4-5 years). When an existing road is reggraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river and placed in a manner that the excess material will not reach the waters of the scenic waterway due to wind, water or other means of erosion or transport.

(8) Visible tree harvest or other vegetation management may be permitted provided that:

(a) The operation complies with relevant Forest Practices Act rules;

(b) Harvest and management methods with low visual impact are used; and

(c) Harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5-10 years). Within this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(9) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(10) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(11) Whenever standards of Oregon Administrative Rules 736-040-0035 and 736-040-0053 section (1), subsections (b) through (j) are more restrictive than Klamath County's land use and development ordinances, scenic waterway regulations shall apply.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.845(2)

Hist.: PRD 9-2002, f. & cert. ef. 10-3-02

736-040-0055

Owyhee River Scenic Waterway

Natural River Area:

(1) The entire Owyhee River Scenic Waterway, in its two segments, is classified as a Natural River Area.

(2) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new structures or improvements which are visible from the river, other than those erected or made in connection with the existing agricultural uses, or those needed for public outdoor recreation or for resource protection will be permitted. Commercial public service facilities, including resorts and motels, lodges and trailer parks, and additional dwellings which are visible from the river will not be permitted.

(3) Public Use of the Owyhee River Scenic Waterway

(a) Policy: The Commission finds that it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area in order to protect and enhance the Owyhee River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused the people of Oregon to designate these river segments as a scenic waterway. The Commission bases this rule upon the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management provisions of ORS 390.845, person using the Owyhee River Scenic Waterway for recreation purposes shall comply with this rule. Where more restrictive or specific than the general rules of this division, this rule will prevail over the general rules.

(b) Definitions: For purposes of this rule, the following definitions apply:

(A) "Approved portable toilet" means any non-biodegradable, reusable, rigid, durable container designed to receive and hold human waste, in any container position without leaking, large enough to service the entire party for the length of the trip, and equipped with a dumping system that allows the container to be emptied and rinsed into a standard receiving or dump system designed for that purpose, without spills, seepage or human exposure to human waste; or at least one WAG bag manufactured by Phillips Environmental Products or other similar approved product, for each person in the boating party, carried in a leak-proof container and disposed of in a trash receptacle according to manufacturer instructions, without spills, seepage or human exposure to human waste.

(B) "Boat" means every watercraft or device used as a means of transport on the water.

(C) "Camping" means erecting a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material, parking a motor vehicle, motor home or trailer, or mooring of a vessel, or other action for the apparent purpose of overnight occupancy.

(D) "Designated Campsite" means a public designated campsite within a developed campground, marked with a visible number painted on a picnic table or mounted on a post or placard.

(E) "Developed Toilet Facility" means a vault type toilet provided by the Bureau of Land Management or the department.

(F) "Display Intent To Remain Overnight" means any off-loading onto the riverbank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(G) "Group" means any number of persons affiliated together with a common goal to recreate with each other in activities such as rafting, eating, camping, or swimming.

(H) "Group Size Limit" means a boating party not to exceed 15 persons between the Idaho state line to Three Forks, and not to exceed 20 persons between Crooked Creek to Birch Creek regardless of the number of persons covered by each boater registration form.

(I) "Owyhee River Scenic Waterway" means that portion of the Owyhee River designated in ORS 390.826(15) as a State Scenic Waterway. The portion of the Owyhee River Scenic Waterway affected by this rule covers the section of the South Fork Owyhee River from the Idaho border downstream to Three Forks, and the mainstem Owyhee River from Crooked Creek downstream to Leslie Gulch. The Owyhee River Scenic Waterway also includes all water and lands within one-quarter mile of the bank on either side of the river.

(J) "Refuse" includes, but is not limited to, wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, remnants of a campfire including charcoal, ash, or burned debris, or other useless or worthless parts of things.

(K) "Remain Overnight" means human presence in the Owyhee River Scenic Waterway on a boat-in basis for any period of time from one hour after legal sunset to one hour before legal sunrise.

(L) "Trip Leader" means a person who completes and signs an Owyhee River Boater Registration Form on behalf of a boating group. By signing the boater registration form, the group leader accepts legal responsibility for the leader's and group members' compliance with all applicable Department, Oregon State Marine Board, and Oregon Liquor Control Commission administrative rules; controlled substance, juvenile and criminal laws; and this rule.

(c) Boating and Registration:

(A) All boats shall carry at least one United States Coast Guard approved personal flotation device in good and serviceable condition for each person on board. Each device shall be of an appropriate size for the person for whom it is intended and shall be readily accessible whenever the boat is in use. As used in this paragraph, a personal flotation device is not "readily accessible" if it is stowed in a locked compartment or locker or is otherwise not immediately, physically available to persons on board the boat in case of an emergency.

(B) Every boater or boating group shall register their party and trip prior to launching. The boater or trip leader must completely and accurately provide all information requested on the registration form and must sign the registration form prior to launch in order to be valid.

(C) Every boater or boating group shall abide by the requirements of the registration form stipulations.

(D) The boater or group leader must carry their valid registration and it must be readily available for inspection upon request by authorized agency and law enforcement personnel.

(d) Campfires, Fuel, Firepans and Smoking:

(A) When fire is not prohibited, a person must contain fire in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) A person may use commercially manufactured metal camp stoves and lanterns for outdoor use only when fueled with bottled liquefied petroleum gas (e.g. propane) or liquid gas. A person must operate such stove or lanterns in a responsible manner at all times.

(C) A person may not chop, saw, break, cut, burn or gather wood or other combustible material from any live or standing tree.

(D) A person must completely extinguish all fires after use. A person must take the extinguished remains, including all ash, wood or charcoal residues, partially consumed briquettes, and burned refuse out of the scenic waterway for disposal or deposit in a proper garbage receptacle provided at recreation sites or litter collection stations.

(E) A person may only smoke in non-public buildings, closed vehicles, while in boats on the water or while standing in the water.

(e) Camping:

(A) Groups occupying any campsite shall not exceed either the maximum number of persons or vehicles allowed for that campsite.

(B) A person may not occupy any campsite or area posted as "Closed" to that use.

(C) A person may not possess or leave refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

(f) Litter and Personal Sanitation:

(A) All persons shall remove refuse or similar materials from of the scenic waterway for proper disposal.

(B) Boating individuals and groups that remain, intend to remain, or display intent to remain overnight within the Owyhee River Scenic Waterway must carry and use an approved portable toilet.

(C) All persons who remain, intend to remain, or display intent to remain overnight in an undeveloped camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied.

(D) A person may not leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground within the Owyhee River Scenic Waterway.

(E) While within the Owyhee River Scenic Waterway, a person may only dump portable toilets at facilities developed and identified especially for that purpose.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72; PRD 8-2010, f. & cert. ef. 6-16-10

736-040-0056

Metolius River Scenic Waterway

(1) Recreational River Areas:

(a) Two river segments are designated as Recreational River Areas:

(A) The segment of the scenic waterway beginning at Metolius Springs at approximately river mile 41.2 extending downstream to the confluence of North Fork of Lake Creek, also known locally as Spring Creek, at approximately river mile 39.4 is classified as a Recreational River Area;

(B) The segment of the scenic waterway beginning at the Camp Sherman Bridge at approximately river mile 39.1 extending downstream to the confluence of Candle Creek at approximately river mile 29 is classified as a Recreational River Area.

(b) Within the Recreational River Area described in subsection (1)(a), all new structures, improvements and development will comply with the Land Management Rules as described in OAR 736-040-0035, with the intent of the classification description in 736-040-0040(1)(c)(B), and be consistent with applicable Jefferson County land use and development regulations;

(c) New structures and improvements shall be set back a minimum of 100 feet from the ordinary high water line of the river and set back a minimum of 35 feet from the edge of the rim rock (where this feature exists). The Department will determine the exact distance for the above setbacks on a case-by-case basis, dependent on existing terrain, existing vegetation, and height of proposed structures. These setbacks shall not apply to additions to or replacement of residences existing on the effective date of these rules provided that such additions or replacement are not proposed to be built closer to the river than the closest point of the original structure;

(d) Notwithstanding the provisions of any other subsection of this section, a 50-foot riparian area will be retained in its natural condition (no cutting, mowing or removal of natural vegetation),

measured from the ordinary high water line in a horizontal direction away from the river;

(e) No building shall exceed 25 feet in height measured from the natural grade on the river side of the building to the tallest point of the structure;

(f) New structures shall be finished in colors and tones that blend with the surrounding landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils, and rock material. All natural evergreen vegetation will be maintained between the structures and improvements and the river. The establishment of additional vegetative screening (native vegetation) may be required to further mitigate the visual impact of the structures and improvements as seen from the river;

(g) Roads, mines and similar forms of development shall be set back from the river consistent with Jefferson County land use and development regulations and be screened from view from the river by topography, or by existing or established evergreen vegetation;

(h) New bridges will not be permitted. Maintenance, repair and replacement of existing bridges shall be consistent with OAR 736-040-0035(6) and (7), Jefferson County land use and development regulations and Oregon Department of State Lands regulations;

(i) New utility facilities shall share land and air space with existing utilities, road rights-of-way and/or river crossings. Upgrades to existing utility facilities will be permitted. New river crossings for new utility facilities will not be permitted;

(j) Timber harvest activities, including thinning, shall be screened by topography or vegetation when seen from the river, developed recreation sites with the scenic waterway, and trails adjacent to the river. Riparian areas shall be protected. Stumps shall be kept low, slash removed promptly and remaining trees and brush protected from damage during harvest. Reforestation shall occur within one year of completion of harvest. The provisions of the Oregon Department of Forestry forest practices rules shall be strictly followed;

(k) Improvements needed for public recreation use or resource protection must be designed to blend with the natural character of the landscape.

(2) River Community Area:

(a) One river segment is designated as a River Community Area;

(b) The segment of scenic waterway beginning at the confluence of North Fork of Lake Creek, also known locally as Spring Creek, at approximately river mile 39.4 extending downstream to the Camp Sherman Bridge at approximately river mile 39.1 is classified as a River Community Area;

(c) Within these areas, all new structures, improvements and development must be in compliance with the Land Management Rules as described in OAR 736-040-0035, with the intent of the classification description in 736-040-0040(1)(f), and be consistent with applicable Jefferson County land use and development regulations;

(d) No structure shall exceed 25 feet in height measured from the natural grade on the river side of the building to the tallest point of the structure;

(e) Notwithstanding the provisions of any other subsection of this section, a 50-foot riparian area will be retained in its natural condition (no cutting, mowing or removal of natural vegetation), measured from the ordinary high water line in a horizontal direction away from the river;

(f) New utility facilities shall share land and air space with existing utilities, road rights-of-way and/or river crossings. Upgrades to existing utility facilities will be permitted. New river crossings for new utility facilities will not be permitted;

(g) Timber harvest activities, including thinning, shall be screened by topography or vegetation when seen from the river, developed recreation sites within scenic waterways, and trails adjacent to the river. Riparian vegetation shall be protected. Stumps shall be kept low, slash cleaned up promptly and remaining trees and brush protected from damage during harvest. Reforestation

shall occur within one year of completion of harvest. The provisions of the Oregon Department of Forestry forest practices rules shall be strictly followed;

(h) Improvements needed for public recreation use or resource protection must be designed to blend with the natural character of the landscape.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.826(1) & 390.845(2)

Hist.: PR 9-1996, f. & cert. ef. 10-9-96; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0060

Minam River Scenic Waterway

(1) Natural River Area:

(a) The segment of the scenic waterway extending from Minam Lake downstream approximately 37 miles to the river's intersection with the Willamette Base Line, which is also the north boundary of Section 4, Township 1 South, Range 41 East, of the Willamette Meridian (T 1S, R 41E, W.M.), Union County, is classified as a Natural River Area;

(b) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new structures or improvements, other than those erected or made, after notification and Commission approval, in connection with existing uses by Red's Horse Ranch and Minam River Lodge, or those needed for public recreation or for resource protection, will be permitted.

(2) Accessible Natural River Area:

(a) The segment of the scenic waterway extending from the river's intersection with the Willamette Base Line which is also the north boundary of Section 4, Township 1 South, Range 41 East, of the Willamette Meridian, (T 1S, R 41E, W.M.), Union County, downstream approximately eight miles to the Wallowa River, is classified as an Accessible Natural River Area;

(b) Additional dwellings and commercial public service facilities, including resorts, motels, lodges and trailer parks which are visible from the river will not be permitted. Roads within the area shall not be extended or improved substantially.

Stat. Auth.: ORS 390.845

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72

736-040-0065

John Day River Scenic Waterway

(1) Natural River Area:

(a) That segment of the scenic waterway beginning at the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, thence downstream approximately 51.7 miles to the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian, (Section 30, T 1S, R 19E, W.M.) at about river mile 43.3, is classified as a Natural River Area;

(b) This Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(a)(C). In addition to these standards, all new development in resource zones (i.e. farm-related dwellings) shall comply with Gilliam County or Sherman County land use regulations.

(c) New structures and associated improvements shall be totally screened from view from the river by topography, vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "total screening," as used in section (1) of this rule, shall consist of adequate topography, density and mixture of native evergreen and deciduous vegetation, or a combination thereof to totally obscure (100 percent) the subject improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(f) New roads may be permitted only when totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition of "substantial screening," as used in section (1) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least 75 percent) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be allowed. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be permitted provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (1), subsections (a) through (j) of this rule, are more restrictive than the Gilliam and Sherman County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

(2) Scenic River Areas: Two segments of the John Day River main stem are designated as Scenic River Areas:

(a) That segment of scenic waterway beginning at the confluence of Service Creek at about river mile 157.4 and extending downstream approximately 62.4 miles to the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, is classified as a Scenic River Area;

(b) That segment of scenic waterway beginning at the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian,

(Section 30, T 1S, R 19E, W.M.) at about river mile 43.3 and extending approximately 33.3 miles downstream to Tumwater Falls, at about river mile 10, is classified as a Scenic River Area.

(c) These Scenic River Areas shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition to these standards, all new development in resource zones (i.e. farm related dwellings) shall comply with Sherman County, Gilliam County, Wasco County, Wheeler County, or Jefferson County land use regulations, whichever applies.

(d) New structures and associated improvements shall be substantially screened by topography, native vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except for those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide substantial screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in section (2) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least 75 percent) the viewed structure or improvement.

(e) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(f) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of “total screening,” as used in section (2) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to totally obscure (100 percent) the subject improvement.

(g) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(h) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when substantially screened from view from the river. If inadequate topography or vegetation exists to provide substantial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the subject improvement within a reasonable time (4–5 years). When an existing road is improved or regraded, no side cast into or visible from the river shall be allowed. Excess material shall be hauled to locations out of view from the river.

(i) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest

stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(j) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(k) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(l) Whenever the standards of OAR 736-040-0035 and section (2), subsections (a) through (k) of this rule are more restrictive than the applicable County Land Use Development Ordinances, the above Oregon Administrative Rules shall apply.

(3) Recreational River Area:

(a) That segment of scenic waterway beginning at the confluence of Parrish Creek, at about river mile 168.7, about one mile west of Spray and extending downstream approximately 11.3 miles to the confluence of Service Creek, at about river mile 157.4, is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Wheeler County land use regulations.

(c) New structures and associated improvements shall be moderately screened from view from the river by topography, vegetation, or a combination thereof, except as provided by OAR 736-040-0030(5) and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide moderate screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “moderate screening,” as used in section (3) of this rule, shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to moderately obscure (at least 50 percent) the viewed improvement or structure.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of “total screening,” as used in section (3) of this rule, shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to totally obscure (100 percent) the altered improvement site.

(f) New roads constructed for agricultural use, mining or residential use shall be moderately screened with vegetation, topography, or a combination thereof. If existing topographic or vegetative screening is inadequate, the road may be permitted if acceptable topography can be created or road design techniques used to moderately screen the road at the time of construction or native vegetation can be established to provide moderate screening of the road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when partially screened from view from the river. If inadequate topography or vegetation exists to provide partial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to partially screen the road at the time of construction or native vegetation can be established to provide partial screening of the subject improvement within a reasonable time (4–5 years). The condition of “partial screening,” as used in section (3) of this rule shall consist of

adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to partially obscure (at least 30 percent) views of the road improvement. When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetative management is designed to enhance the scenic view within a reasonable time (5-10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (3), subsections (c) through (j) of this rule are more restrictive than Wheeler County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

(4) Public Use of the John Day River Scenic Waterway

(a) Policy: The Commission finds that in order to protect and enhance the John Day River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment of river to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, persons using the John Day River Scenic Waterway for recreation purposes shall comply with these rules. These rules are in addition to other rules of the Commission adopted for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the general rules 'except in the instance of private property owners where only OAR 736 -040-0035 (Rules for Land Management) or this rule shall apply.

(b) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Approved portable toilet system" means a non-biodegradable, rigid, durable container designed to receive and hold human waste in any container position without leaking, or human waste bags.

(B) "Boat" means every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

(C) "Camping" means erecting a tent or creating a shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home or trailer, or mooring a boat, or other action for the apparent purpose of overnight occupancy.

(D) "Developed Recreation Area/Developed Recreation Site" means an area or site that contains structures or capital improvements primarily used by the public for recreational purposes. These may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; grills or fire rings; tables; or controlled access.

(E) "Developed Toilet Facility" means a vault type toilet provided by the Bureau of Land Management or the State of Oregon.

(F) "Display Intent To Remain Overnight" means any off-loading onto the riverbank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(G) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and is readily capable of use as a weapon.

(H) "Group" means any number of persons affiliated together with a common goal to recreate with each other in activities such as rafting, eating, camping, or swimming.

(I) "Group Size Limit" means the maximum number of persons a boating group may have with while together within the John Day River Scenic Waterway, regardless of the number of persons covered by each boater registration form or required permit possessed by members of the group.

(J) "Human Waste Bag" means a commercially available sanitary bag designed to securely contain human waste and odor. The bag contains enzymes to break down waste into a deodorized gel and is approved by the Department of Environmental Quality for deposit into a landfill.

(K) "John Day River Scenic Waterway" means that portion of the John Day River designated in ORS 390.826(7) as a State Scenic Waterway. The portion of the John Day River Scenic Waterway that is affected by this rule (OAR 736-040-0065) covers the section from Parrish Creek downstream to Tumwater Falls. The Scenic Waterway also includes all water and lands within 1.4 mile of the bank on either side of the river.

(L) "Personal Watercraft" means a motorboat, less than 16 feet, propelled by machinery which:

(i) Uses an outboard motor or an inboard motor powering a water jet pump as its primary source of power; and

(ii) Is designed to be operated by a person sitting, standing or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

(M) "Refuse" means, but is not limited to, wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, charcoal, ash, cigarette butts, or burned debris.

(N) "Vehicle" means a motor-propelled means of transportation across land usually wheeled meant to carry one or more human being(s) regardless of design, including Off-Road Vehicles.

(d) Permits:

(A) Every boater or boating group shall obtain a John Day River boater permit prior to launching. The permit shall be carried by the boater, or group leader, and shall be readily available for inspection upon request by authorized agency and law enforcement personnel. Information requested on the permit shall be completely and accurately filled out and the form or permit shall be signed by the permit holder in order to be valid. Permit holders shall abide by the requirements of the permit and the permit stipulations.

(B) Every person landing, operating or riding in a boat or engaging in any camping, fishing or other activity in connection with being transported by a boat on any portion of the John Day River Scenic Waterway where a Bureau of Land Management permit is required, shall display his/her individual or group registration permit upon the demand of any law enforcement officer, Bureau of Land Management or department employee who is authorized to enforce these rules.

(e) Campfires, Fuel, Firepans and Smoking:

(A) Building, igniting, maintaining, using, tending a fire, or being within 20 feet of an illegal campfire, charcoal fire, portable propane campfire device or any other type of open flame is prohibited June 1 through September 30. The Oregon Department of

Forestry may extend periods of fire closure if conditions warrant. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns. Are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (e.g. propane) or liquid gas. Such stove or lanterns shall be operated in a responsible manner at all times.

(C) A person may not chop, saw, break, cut, burn or gather wood or other combustible material from any live or standing tree.

(D) All fires shall be completely extinguished after use. The extinguished remains, including all ash, wood or charcoal residue, partially consumed briquettes, and burned refuse shall be taken out of the scenic waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

(E) Smoking shall be limited to non-public buildings, closed vehicles, while in boats on the water or while standing in the water.

(f) Camping:

(A) A person may not leave camping equipment or personal property overnight at or in an unoccupied, public campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(B) A person may not pay for a public campsite, which is not to be occupied by that same person, as a means to claim, hold, reserve or secure the site for subsequent occupancy by their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(C) Groups occupying any campsite may not exceed the maximum number of persons or vehicles allowed for that campsite.

(D) Every person or group occupying a campsite shall display his/her individual or group camping permit upon the demand of any law enforcement officer, Bureau of Land Management or Oregon Parks and Recreation Department employee who is authorized to enforce these rules.

(E) Occupants shall not dig or otherwise level the ground within public campsites.

(F) No person shall possess or leave refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

(g) Firearms: The discharge of firearms is prohibited within the John Day River Scenic Waterway except with a valid Oregon hunting license and tag during authorized hunting seasons. The discharge of firearms is prohibited within the John Day River Scenic Waterway at any time within a developed recreation area.

(h) Litter and Personal Sanitation:

(A) All persons shall place refuse in proper receptacles provided for that purpose at maintained recreation sites or litter collection stations. No such refuse or similar materials shall be buried, abandoned, or burned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway for proper disposal.

(B) All persons shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by boating individuals and groups within the John Day River Scenic Waterway.

(C) All persons shall use either an approved portable toilet, which includes the use of human waste bags, or developed toilet facility to contain all human solid waste.

(D) All persons who remain, intend to remain, or display intent to remain overnight in a boat in camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied.

(E) No person shall leave, deposit, or scatter human waste, toilet paper, or items used at toilet paper, on the ground within the John Day River Scenic Waterway.

(F) While within the John Day River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Used human waste bags must be carried in a leak-proof container and disposed of in a trash receptacle according to manufacturer instructions.

(G) A person may not wash dishes or use soap in the river or any tributaries or less than fifty feet from any natural water source.

(H) Vehicle Restrictions:

(i) a person may not ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bedrails of a pickup truck, or properly secured as above on the bed of a flatbed motor vehicle. A person may not ride on the exterior portion of any motor vehicle within the John Day River Scenic Waterway.

(ii) A person may not operate a vehicle with a load which is unsecured, unsafe, or otherwise presents a hazard to the public.

Stat. Auth.: ORS 390.124 & 390.845(2)

Stats. Implemented: ORS 390.845(2) & 390.826(7)

Hist.: HC 1285, f. 6-27-72; PRD 10-2000, f. & cert. ef. 9-1-00; PRD 2-2014, f. & cert. ef. 7-1-14

736-040-0066

North Fork John Day River Scenic Waterway

(1) Accessible Natural River Areas: two segments of the North Fork John Day River are designated Accessible Natural River Areas:

(a) That segment of scenic waterway beginning at the west boundary of the North Fork John Day Wilderness in the Umatilla National Forest as that boundary was constituted on December 8, 1988, being at about river mile 76.7, where the North Fork John Day River intersects the western section line of Section 18, Township 7 South, Range 34 East, Willamette Meridian, (Section 18, T 7S, R 34E, W.M.) and extending downstream approximately 16.7 miles to the State Highway 395 Bridge crossing, at about river mile 60, is classified as an Accessible Natural River Area;

(b) That segment of scenic waterway beginning at the confluence of Camas Creek, at about river mile 57, and extending downstream approximately 36.7 miles to the intersection with the northern boundary of the south one-half of Section 20, Township 8 South, Range 28 East, Willamette Meridian, (Section 20, T 8S, R 28E, W.M.) at about river mile 20.3, is classified as an Accessible Natural River Area.

(c) These Accessible Natural River Areas shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(e)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant or Umatilla County land use regulations.

(d) New structures and associated improvements shall be totally screened from view from the river by topography and/or vegetation, except as provided under OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4-5 years). The condition of "total screening," as used in section (1) of this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally obscure (100%) the subject improvement.

(e) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(f) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative

screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(g) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(h) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in Section (1) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to substantially obscure (at least 75%) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(i) Visible tree harvest or other vegetation management may be permitted provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(j) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(k) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(l) Whenever the standards of OAR 736-040-0035 and section (1), subsections (c) through (k) of this rule are more restrictive than Grant County’s or Umatilla County’s Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(2) Recreational River Area:

(a) That segment of scenic waterway beginning at the State Highway 395 Bridge crossing, at about river mile 60, and extending downstream approximately three miles to the confluence of Camas Creek, at about river mile 57, is classified as a Recreational River Area.

(b) This Recreational River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant County or Umatilla County land use regulations.

(c) New structures and associated improvements shall be moderately screened from view from the river by topography and/or vegetation, except as provided by OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may

be permitted if native vegetation can be established to provide moderate screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “moderate screening,” as used in Section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to moderately obscure (at least 50%) the viewed improvement or structure.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of “total screening,” as used in section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to totally obscure (100%) the altered improvement site.

(f) New roads constructed for agricultural use, mining or residential use shall be moderately screened with vegetation and/or topography. If inadequate topographic or vegetative screening exists, the road may be permitted if acceptable topography can be created or road design techniques used to moderately screen the road at the time of construction or native vegetation can be established to provide moderate screening of the road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when partially screened from view from the river. If inadequate topography or vegetation exists to provide partial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to partially screen the road at the time of construction or native vegetation can be established to provide partial screening of the subject improvement within a reasonable time (4–5 years). The condition of “partial screening,” as used in section (2) of this rule shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to partially obscure (at least 30%) views of the road improvement. When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public outdoor recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Whenever the standards of OAR 736-040-0035 and section (2), subsections (c) through (i) of this rule are more restrictive than Grant County or Umatilla County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.845(2)

Hist.: PRD 10-2000, f. & cert. ef. 9-1-2000

736-040-0067

Middle Fork John Day River Scenic Waterway

(1) Natural River Area:

(a) That segment of scenic waterway beginning at the intersection of the Middle Fork John Day River with the eastern section line of Section 11, Township 8 South, Range 29 East, Willamette Meridian, (Section 11, T 8S, R 29E, W.M.), at about river mile 11, and extending downstream approximately 11 miles to its confluence with the North Fork John Day River is classified as a Natural River Area.

(b) This Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(a)(C). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant County land use regulations.

(c) New structures and associated improvements shall be totally screened from view from the river by topography and/or vegetation, except as provided under OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “total screening,” as used in section (1) of this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally obscure (100%) the subject improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(f) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in section (1) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to substantially obscure (at least 75%) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be permitted provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public outdoor recreation or resource protection may be visible from the river but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (1), subsections (c) through (j) of this rule are more restrictive than the Grant County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(2) Scenic River Area:

(a) That segment of scenic waterway beginning at the confluence with Crawford Creek at about river mile 71, being in the Northwest 1/4 of Section 25, Township 11 South, Range 35 East, Willamette Meridian, (NW 1/4, Section 25, T 11S, R 35E, W.M.) and extending downstream approximately 60 miles to the intersection of the Middle Fork John Day River with the eastern section line of Section 11, Township 8 South, Range 29 East, Willamette Meridian, (Section 11, T 8S, R 29E, W.M.), at about river mile 11, is classified as a Scenic River Area.

(b) This Scenic River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant County land use regulations.

(c) New structures and associated improvements shall be substantially screened by topography and/or native vegetation, except as provided under OAR 736-040-0030(5), and except for those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide substantial screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to substantially obscure (at least 75%) the viewed structure or improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of “total screening,” as used in section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to totally obscure (100%) the subject improvement.

(f) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when substantially screened from view from the river. If

inadequate topography or vegetation exists to provide substantial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the subject improvement within a reasonable time (4–5 years). When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public outdoor recreation use or resource protection may be visible from the river but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (2), subsections (c) through (j) of this rule are more restrictive than the Grant County Land Use and Development Ordinance, the above Oregon Administrative Rule shall apply.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.845(2)

Hist.: PRD 10-2000, f. & cert. ef. 9-1-00

736-040-0068

South Fork John Day River Scenic Waterway

(1) Accessible Natural River Area:

(a) That segment of scenic waterway beginning at Ellingson Mill at about river mile 30, being at the intersection of the South Fork John Day River with the northern section line of Section 29, Township 16 South, Range 27 East, Willamette Meridian, (Section 29, T 16S, R 27E, W.M.) and extending downstream approximately 24 miles to the north boundary of the Murder’s Creek Wildlife Area as constituted on December 8, 1988, at about river mile six, being in the Southeast 1/4 of Section 24, Township 13 South, Range 26 East, Willamette Meridian, (SE1/4, Section 24, T 13S, R 26E, W.M.) is classified as an Accessible Natural River Area.

(b) This Accessible Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(e)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant County land use regulations.

(c) New structures and associated improvements shall be totally screened from view from the river by topography and/or vegetation, except as provided under OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “total screening,” as used in section (1) of this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally obscure (100%) the subject improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in

ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(f) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in section (1) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to substantially obscure (at least 75%) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public outdoor recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (1), subsections (c) through (j) of this rule are more restrictive than the Grant County Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(2) Scenic River Area:

(a) That segment of scenic waterway beginning at the Post - Paulina Road crossing at about river mile 35, being in the Northwest 1/4 of Section 9, Township 17 South, Range 27 East, Willamette Meridian, (NW1/4, Section 9, T 17S, R 27E, W.M.) and extending downstream approximately five miles to Ellingson Mill at about river mile 30, being at the intersection of the South Fork John Day River with the northern, section line of Section 29, Township 16 South, Range 27 East, Willamette Meridian, (Section 29, T 16S, R 27E, W.M.) is classified as a Scenic River Area.

(b) This Scenic River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant County land use regulations.

(c) New structures and associated improvements shall be substantially screened by topography and/or native vegetation, except as provided under OAR 736-040-0030(5), and except for those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide substantial screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to substantially obscure (at least 75%) the viewed structure or improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of “total screening,” as used in section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to totally obscure (100%) the subject improvement.

(f) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when substantially screened from view from the river. If inadequate topography or vegetation exists to provide substantial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the subject improvement within a reasonable time (4–5 years). When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public outdoor recreation use or resource protection may be visible from the river but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground or vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (2), subsections (c) through (j) of this rule are more

restrictive than the Grant County Land Use and Development Ordinance, the above Oregon Administrative Rule shall apply.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.845(2)

Hist.: PRD 10-2000, f. & cert. ef. 9-1-00

736-040-0070

Deschutes River Scenic Waterway

(1) Deschutes River Scenic Waterway Recreation Area:

(a) ORS 390.932 creates the Deschutes River Scenic Waterway Recreation Area. ORS 390.934 directs the Department to adopt a management plan by rule to administer the Deschutes River Scenic Waterway Recreation Area. ORS 390.124 authorizes the Commission to adopt rules to carry out the duties, functions and powers imposed by law upon the Commission and the Department.

(b) Pursuant to ORS 390.934, the Commission adopts by reference the Lower Deschutes River Management Plan and Environmental Impact Statement, Volume 1 (January 1993), and the Supplement to the Lower Deschutes River Management Plan, Final Decision, Lower Deschutes River Allocation System, (June 1997) as the management plan for the Deschutes River Scenic Waterway Recreation Area. Copies of the Lower Deschutes River Management Plan and the Supplement to the Lower Deschutes River Management Plan, Final Decision, Lower Deschutes River Allocation System are available from the Oregon Parks and Recreation Department, 725 Summer St N.E., Suite C, Salem, OR 97301.

(c) The state managing agencies, including the Department, Department of Fish and Wildlife, Oregon State Marine Board, and Oregon State Police and the local managing agencies, including Sherman, Wasco and Jefferson Counties and the City of Maupin shall perform their management responsibilities relating to the Deschutes River Scenic Waterway Recreation area according to the management plan adopted by this rule and ORS 390.805 to 390.925 and 390.930 to 390.940.

(d) The Confederated Tribes of Warm Springs and the Bureau of Land Management are encouraged to exercise their jurisdiction and to manage their lands in a manner consistent with the management plan adopted by section (3) of this rule and with ORS 390.805 to 390.925 and 390.930 to 390.940.

(2) Recreational River Area:

(a) The segment of the scenic waterway extending from the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian, (T 9S, R 13E, W.M.), Jefferson County, downstream approximately 96 miles to the Columbia River, but excluding the right bank shoreline (as seen when facing downstream) and adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is classified as a Recreational River Area.

(b) Within the Recreation River Area described in subsection (2)(a), the Department may not permit any new structures or improvements which are visible from the river, other than those erected or made in connection with compatible existing uses, or those needed for public outdoor recreation or resource protection.

(c) Additional dwellings, other than those necessary to existing agricultural uses, and commercial public service facilities, including resorts and motels and lodges which are visible from the river, will not be permitted.

(3) River Community Areas:

(a) The segment of the scenic waterway extending from Pelton Re-Regulating Dam downstream approximately four miles to the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian (T 9S, R 13E, W.M.), Jefferson County, is classified as a River Community Area. The shoreline and related adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is likewise classified as a River Community Area.

(b) Within the River Community Areas described in subsection (3)(a), when consistent with Jefferson County and Wasco County zoning ordinances, the Department may permit uses and structures including agriculture, single-family and multiple-family dwellings,

churches, lodges, resorts, motels, transient public trailer parks, and necessary public service facilities. The Commission may establish allowed densities of improvements and structures which are visible from the river after consultation with the appropriate county planning commission, the State Fish and Wildlife Commission, the U.S. Bureau of Land Management, the City of Maupin or the Warm Springs Confederated Tribes and such other persons and agencies as the Commission may select.

(4) Public use of the Deschutes River Scenic Waterway:

(a) Policy: The Commission finds that in order to protect and enhance the Deschutes River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, the following rules shall be adhered to by persons using the Deschutes River Scenic Waterway for recreation purposes. These rules are in addition to other rules of the Commission promulgated for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the general rules except in the instance of private property owners where only OAR 736-040-0035 (Rules for Land Management) or this rule shall apply.

(b) Restricted Areas:

(A) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon have closed all Reservation lands to public use except by permit. This closure, enacted by the Confederated Tribes, also affects all islands west of the middle of the river between the Pelton re-regulating dam and the north boundary of the Reservation near Two Springs Ranch at the power boat deadline.

(B) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon own the east and west banks of the Deschutes River between Sandy Beach and the State Route 16 bridge crossing downstream from Sherars Falls. Sandy Beach shall be the last designated boat take out upstream from Sherars Falls. The banks of the Deschutes River from Sandy Beach downstream to the State Route 16 bridge crossing, including the former take out on the west bank of the Deschutes River immediately upstream from Sherars Falls, shall be closed to boat put in or take out. Plan at page 74.

(C) All persons using the Deschutes River Scenic Waterway shall be advised that the Deschutes River from the upstream end of Rattlesnake Rapids at about river mile 2.5 and extending downstream to the no wake zone at the downstream end of Moody Rapids at about river mile .5 is a pass through zone. All floating craft, except float tubes, shall pass through this segment of river and shall not stop along or tie up to the riverbank except in the event of an emergency. Plan at pages 58-60.

(D) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Camping" means overnight occupation within the Deschutes River Scenic Waterway.

(B) "Day Use" means human presence within the Deschutes River Scenic Waterway between the hours of one hour before sunrise to 10:00 PM.

(C) "Designated Non-Fee Site" means a marked and designated campsite for which no fee is charged. The Deschutes River Managers shall designate river segments or zones where non-fee camping is allowed only in designated sites.

(D) "Fee Sites" means a marked and designated drive-in or developed camp site for which a fee is charged. Any reference in this rule, or OAR 736-040-0071, to drive-in or developed sites shall have the same meaning as Fee Site.

(E) "Group" as used in this rule means a party of two or more persons while present within the Deschutes River Scenic Waterway.

(F) "Group Site" as used in this rule means a fee site, designated non-fee site, or any other site designated by the Managing Agencies as a group site. Group sites shall be designated for use by nine persons or more, up to the maximum site capacity as designated by the Managing Agencies. Where no maximum capacity is designated, the maximum capacity shall be the maximum group size for the river segment.

(G) "Non-Fee Site" means a campsite for which a fee is not charged. As used in this rule, all references to undeveloped campsites or undeveloped sites have the same meaning as non-fee sites.

(H) "Occupied Non-Designated and/or Designated Non-Fee Boat-In Campsite" as used in this rule means the presence of at least one person for each campsite, who, if not physically present within the campsite, prominently displays in a readily legible manner, within the campsite, the person's name and boater pass number, or if the person is covered under a group pass, the person's name and the name and boater pass number of the group leader.

(I) "Overnight Occupation" means human presence between the hours of 10:00 PM and one hour before sunrise.

(J) "Recreation Site" means a marked and designated, general camping or activity area as designated by the Deschutes River Scenic Waterway Managers, or a public agency or political subdivision of the state. A recreation site shall generally contain individual campsites or a day use area.

(K) "Unoccupied" as used in this rule means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(L) "Walk-In Fee Site" means a marked and designated fee site in which the main recreation site is designated to be accessed by vehicle or boat. The individual campsite is generally a satellite campsite accessed on a walk-in basis from the main recreation site. Vehicle access is prohibited.

(d) Camping:

(A) Overnight camping is prohibited on all islands. Plan at page 63.

(B) Overnight camping length of stay shall be limited to:

(i) Four nights in undeveloped sites. Plan at page 63;

(ii) Fourteen nights in developed sites. Plan at page 63;

(iii) Nine nights for motorized boats between May 15 and October 15 in those areas where they are allowed. Plan at page 63.

(iiii) Any camp established through the use of a motorized boat between June 15th and September 30th shall be entirely removed from the river along with the motorized boat during those periods of time that motorized boat use is restricted under OAR 250-030-0030 (See Lower Deschutes River Motor Boat Closure Schedule)

(C) No person shall leave camping equipment or personal property overnight at or in an unoccupied, public, non-fee, campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(D) At the end of a consecutive four night, overnight camping length of stay specified in subparagraph (4)(d)(B)(i) of this rule, all camping equipment and personal property shall be removed from the area and cannot be relocated within 1/4-mile of the same site for a period of at least 14 nights. Plan at page 63.

(E) Between May 15 and October 15, whenever motorized boaters vacate a campsite and it will be unoccupied as that term is defined in paragraph (4)(d)(C) of this rule, all camping and personal property shall be removed from the area and cannot be

relocated within 1/4 mile of the same site for a period of at least 14 nights.

(F) Group size within the Deschutes River Scenic Waterway will be limited to 16 persons in segments 1, 3 and 4, and 24 persons in segment 2.

(G) Overnight camping group size shall be determined by the size and capability of the site. In no case shall group size exceed 16 people per site in Segments 1, 3 or 4 and 24 in Segment 2. Plan at page 63.

(H) Overnight occupancy in vehicle accessible public areas of the Deschutes Scenic Waterway will be allowed within designated fee sites only.

(I) Overnight occupancy within river areas that are managed as designated non-fee camping zones will be permitted only within designated and marked non-fee sites. Non-fee areas of river segment 1 are designated non-fee zones.

(J) Any group occupying fee or designated non-fee sites is required to abide by the designated capacity of the site. No group leader shall allow violation of this rule by any member of his/her group.

(K) Any group occupying fee or designated non-fee sites shall be required to contain all group and personal equipment within the site. Where a site boundary is marked, all group and personal equipment shall be contained within those boundaries. Where no site boundary is provided, all group and personal equipment shall be contained within a line 1/2 the distance between site designation markers. As far as is practical, all camping equipment such as tents and tables shall be erected or used within the most impacted core area of the site.

(L) Groups shall, as far as practical, occupy fee and designated non-fee sites that display a capacity that generally corresponds with the size of the group. As far as practical, small groups shall not occupy large capacity sites.

(M) Groups of eight persons or less, except in an emergency, are prohibited from occupying designated group sites.

(N) All non-designated and designated non-fee boat-in campsites within the Deschutes River Scenic Waterway shall be occupied on a first come first serve basis. Campsites may not be reserved or held for later occupation. One person may occupy and thereby hold only one campsite. Placing group or personal property in a campsite not occupied by at least one person, for the purpose of holding or reserving the site for later occupation is prohibited

(e) Campfires, Fuel, Firepans, Smoking:

(A) Open fires and charcoal are prohibited from June 1 to October 15. The Oregon Department of Forestry may extend periods of fire closure if conditions warrant. Plan at page 77. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (e.g., propane) or liquid gas. Such stoves or lanterns shall be operated in a responsible manner at all times.

(C) Burning of any living, dead or down vegetation within the Lower Deschutes River Management Plan area shall be prohibited. Plan at page 77.

(D) Every overnight camp, overnight hiking party or person using fire or operating a motor driven vehicle or boat within the Deschutes River Scenic Waterway designated by ORS 390.826, shall carry and keep reasonably accessible one bucket of at least one gallon capacity and one spade or shovel.

(E) No person shall leave a fire unattended.

(F) All fires shall be completely extinguished after use. The extinguished remains shall be taken out of the scenic waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

(G) Smoking shall be limited to buildings, closed vehicles, boats on the water or while standing in the water. Plan at page 77.

(f) Firearms: The discharge of firearms is prohibited within the Lower Deschutes River planning area boundaries from the third Saturday in May through August 31 of each year. Plan at page 77.

(g) Water cannons: The use of motorized/mechanized water cannons is prohibited. No person shall use manual water cannons, hydro sticks, water balloons/water balloon launchers, or other water projectile device in any way that creates a hazardous or physically offensive condition or that causes personal or public alarm, nuisance, jeopardy, or violence. Plan at page 59.

(h) Litter and Personal Sanitation:

(A) Persons using the Deschutes River Scenic Waterway for recreational purposes shall place refuse, scrap, trash and garbage in proper receptacles provided for that purpose at maintained recreation sites or litter collection stations. No such refuse, litter, garbage or similar materials shall be buried, abandoned or burned and buried or abandoned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway area for disposal. Plan at page 62.

(B) All persons using the Deschutes River Scenic Waterway for recreational purposes shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by overnight boating groups (1 to 16 persons in segments 1, 3 and 4; 1 to 24 persons in segment 2) that remain, intend to remain, or display intent to remain overnight within the Deschutes River Scenic Waterway, except that this requirement shall not apply to overnight kayak trips that are entirely self-contained and not supported by other craft carrying gear. While present within the Deschutes River Scenic Waterway on an overnight boating basis, all persons shall, whenever practical, use either an approved portable toilet or an agency provided toilet facility for all solid human waste. All persons who remain, intend to remain, or display intent to remain overnight in an undeveloped camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied. No person shall leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground within the Deschutes River Scenic Waterway. While within the Deschutes River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Plan at page 62. Where toilets are not provided, and the situation makes it impractical to use a portable toilet, persons shall bury all human waste and toilet paper, or material used as toilet paper, at least six inches below the surface of the ground in natural soil and at least 50 feet from the edge of the river or any other water source. For purposes of this paragraph, the following definitions shall apply:

(i) "Approved portable toilet" is any non-biodegradable, rigid, durable, container designed to receive and hold human waste, in any container position, without leaking, and equipped with a dumping system that allows the container to be emptied and rinsed into a standard receiving or dump system designed for that purpose, such as a SCAT machine or recreational vehicle dump station, in a sanitary manner, without spills, seepage or human exposure to human waste.

(ii) "Remain overnight" means human presence in the Deschutes River Scenic Waterway on a boat-in basis for any period of time from one hour after legal sunset to one hour before legal sunrise.

(iii) "Display intent to remain overnight" while within the Deschutes River Scenic Waterway on a boat-in basis includes, but is not limited to, any off-loading onto the river bank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(iv) "Developed camp site" means a motor vehicle accessible, fee site.

(i) No person shall use fireworks within the Deschutes River Scenic Waterway: Defined as any combustible or explosive composition or substance or any combination of any such compositions or substances or any other article which was prepared for the purpose of providing a visible or audible effect by combustion,

explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents, or any other article of like construction or any article containing any explosive or inflammable compound or any tablets or other device containing any explosive substance or inflammable compound.

(j) Vehicle restrictions: The limitations set forth in paragraphs (A) through (B) of this subsection shall apply to all vehicles, operators and passengers on the following roads within the Deschutes River Scenic Waterway: Mecca Flat Road; Trout Creek Road; BLM Upper River Access Road-Maupin to Locked Gate; BLM Middle River Access Road-Bakeoven Road to Highway 216; and BLM Lower River Access Road-Highway 216 to Macks Canyon.

(A) No person shall operate a vehicle with a seating capacity greater than 24 passengers (each seat to hold no more than two persons) plus one driver and/or a total vehicle length greater than 28 feet. Plan at page 71.

(B) No person shall ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bed rails of a pickup truck, or properly secured as above on the bed of a flat bed motor vehicle. No person will be allowed to ride on the exterior portion of any motor vehicle within the Deschutes River Scenic Waterway.

(k) Inner tubes, float tubes, boogie boards:

(A) Swimming or floating with or without a floatation device and/or the use of inner tubes, float tubes, boogie boards, surf boards and other similar water toys used for transport of persons or property is prohibited in the Deschutes River channel in Moody Rapids on those days when power boats are allowed, except as provided below. This prohibition is in effect from the upstream end of Moody Rapids down river to the downstream side of the Moody Rapids channel marker from legal sunrise to legal sunset when power boats are allowed under the regulations of the Oregon State Marine Board. Anglers using float tubes may cross the Moody Rapids channel during these times provided they do so in the most direct route possible. Float tube anglers crossing the Moody Rapids channel shall look out for and give right-of-way to any motorized boat, which is in Moody Rapids channel or about to enter the rapids from downstream or upstream, or in any event when motorboats are approaching close enough to create a hazard.

(B) It is unlawful to secure any person(s), inner tube, float tube, boogie board, surf board or other similar water toys used for transport of persons or property, in or on the waters of the Deschutes River, to the river bank or to any tree, fixed object or anchoring device on lands adjacent to the river bank or to any such object or device within the boundaries of the river and river banks of the Deschutes River by any cable, rope, line, bungee cord, or other means except to secure boats to the river bank as a normal and recognized necessity. No person shall hold on to any such line or to any device secured to such line in order to ride or be transported into any channel of the Deschutes River.

(C) It is unlawful to secure any cable, rope, line or bungee cord or any device across the river except as necessary for rescue and/or salvage operations and other necessary uses upon consent of the managing agencies of the Confederated Tribes of Warm Springs, Oregon Parks and Recreation Department, Bureau of Land Management and Oregon State Police.

(D) The cables presently in place across the Deschutes River at Dant and the upstream area (approximately river mile 52) of the City of Maupin are exempt from this rule. Any permanent device, as described in this paragraph, will require approval from the Scenic Waterways Program of the Oregon Parks and Recreation Department in accordance with ORS 390.845 and OAR 736-040-0030 and 736-040-0035.

(E) The rules set forth in this rule shall not be applicable to the Deschutes River State Recreation Area Campground, the use of

which shall instead be governed by general park area rules and the authority and discretion of the park manager.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.934(2) & 390.938(3)

Hist.: HC 1285, f. 6-27-72; PR 3-1982, f. & ef. 3-26-82; PR 4-1983, f. & ef. 3-30-83; PR 3-1985, f. & ef. 6-4-85; PR 5-1985(Temp), f. 7-15-85, ef. 11-1-85; Suspended by PR 6-1985(Temp), f. & ef. 10-1-85; PR 9-1986, f. & ef. 6-12-86; PR 5-1990, f. & cert. ef. 12-18-90; PR 4-1994, f. & cert. ef. 4-22-94; PRD 2-1998, f. & cert. ef. 1-28-98; PRD 5-1999, f. 5-14-99, cert. ef. 6-1-99; PRD 6-2002, f. 5-15-02, cert. ef. 6-1-02; PRD 8-2003f. 7 cert. ef. 10-3-03; PRD 5-2004, f. 4-27-04, cert. ef. 4-30-04; PRD 6-2008, f. & cert. ef. 5-15-08; PRD 2-2014, f. & cert. ef. 7-1-14

736-040-0071

Deschutes River Scenic Waterway Boater Pass System Rules

(1) Policy:

(a) The Commission finds that in order to carry out the intent of Chapter 798, Oregon Laws 1981, monies collected from the sale of the Deschutes River Scenic Waterway Boater Pass shall be used for the following purposes:

(A) For operation of the pass system;

(B) For providing river-user oriented law enforcement services;

(C) For providing river recreation information and education;

(D) For developing and maintaining river oriented recreation facilities; and

(E) For any other purposes the Department considers appropriate for the maintenance, enhancement or protection of the natural and scenic beauty of the Deschutes River Scenic Waterway consistent with ORS 390.805 to 390.925.

(b) As provided by the statute, monies collected from this program shall be used exclusively within the Deschutes River Scenic Waterway;

(c) It shall further be the policy of the Commission that these monies shall be used first, to operate the pass system; and secondly, to provide as directly as possible, education, information and rule enforcement services to those river users who contribute directly to this fund. When in the judgment of the Department Director, these priority needs can be continually met, additional uses of these funds shall be allowed consistent with paragraphs (1)(a)(D) and (E) of this rule;

(d) In determining the future use of these funds for purposes other than those listed in paragraphs (1)(a)(A), (B), and (C) of this rule, the Department Director may consider input from the various local, state, and federal agencies involved with managing resources within the Deschutes River Scenic Waterway, the Confederated Tribes of Warm Springs Reservation of Oregon, and the general public;

(e) The Commission, by adoption of this rule, delegates the administration of this Deschutes River Scenic Waterway Boater Pass program and the funds derived from it as authorized by Chapter 798, Oregon Laws 1981, to the Department Director or the Director's designee;

(f) The Commission encourages all local, state and federal agencies involved in resource management of the Deschutes River Scenic Waterway and the river users themselves, to give their full cooperation to this program;

(g) The Commission recognizes that the Deschutes River Scenic Waterway Boater Pass program is experimental in nature. It will endeavor to annually adjust the program as new information about visitation, river user needs and trends become apparent.

(2) Definitions: For purposes of this rule, the following definitions shall apply:

(a) "Deschutes River Scenic Waterway" — That portion of the Deschutes River designated in ORS 390.826 as a State Scenic Waterway. The portion of the Deschutes River Scenic Waterway that is affected by this rule (736-040-0071) covers approximately 100 miles from Pelton Re-regulating Dam to the Columbia River, excluding the city limits of Maupin as established on October 4, 1977. The Scenic Waterway area includes all water and lands within 1/4 mile of the bank on either side of the river;

(b) "Boat" — Every watercraft or device used as a means of transport on the water of the Deschutes River Scenic Waterway;

(c) “Deschutes River Scenic Waterway Boater Pass” — A receipt for a fee paid pursuant to ORS 390.848;

(d) “In Possession” — Possessed in such a manner as to be readily available, nearby, or in close proximity to the passholder and able to be easily and quickly produced on the site in the event the passholder is requested to do so by an authorized agent or law enforcement officer, or Department employee authorized to issue citations pursuant to ORS 390.050;

(e) “Day” — Any part of a 24-hour period running from 12:01 a.m. to the following midnight;

(f) “Group” — A boating party not to exceed 16 persons in segments 1, 3 and 4 and not to exceed 24 persons in segment 2; the group leader(s) of which possess a properly signed and valid boater pass(es) for not fewer than the total number of persons in the group;

(g) “Group Leader” — A person who obtains and signs a Deschutes boater pass via the Internet application process or an authorized boater pass vendor on behalf of a boating group. By signing the boater pass, the group leader accepts legal responsibility for the leader’s and group members’ compliance with all applicable Department, Oregon State Marine Board, and Oregon Liquor Control Commission administrative rules, controlled substance, juvenile and criminal laws and Deschutes River Scenic Waterway rules;

(h) “Passholder” — Any individual person or person within a group for which the appropriate fee has been paid and that individual or a member of the group is in possession of a Deschutes River Scenic Waterway Boaters Pass;

(i) “Immediate Family” — The spouse and any natural or adopted children of a property owner who reside with the owner of property which immediately abuts the Deschutes River Scenic Waterway.

(j) “Boat Accessed Presence” — A person’s or group’s physical presence in the Deschutes River Scenic Waterway in conjunction with being transported in or on a boat; which presence shall be covered by a valid Deschutes boater pass from the time of initial transport by boat until the person or group leaves the Deschutes River Scenic Waterway by boat regardless of whether or not the person or group uses a boat during each day of their presence in the Deschutes River Scenic Waterway.

(3) When Pass is Required:

(a) No person shall launch, operate or ride in any boat or engage in any camping, fishing or other activity in connection with being transported by a boat on those portions of the Deschutes River designated as scenic waterways under ORS 390.826, during the time period established in section (4) of this rule, without having first obtained a valid Deschutes River Scenic Waterway Boater Pass (hereinafter referred to as “pass”) for the days during which these activities are conducted. A person will be issued, upon payment of the appropriate fee and completion of the pass form, either an individual pass, annual pass, a group pass, or a special pass as specified in section (10) of this rule;

(b) Every person landing, operating or riding in a boat or engaging in any camping, fishing or other activity in connection with being transported by a boat on that portion of the Deschutes River Scenic Waterway specifically described in subsection (2)(a) of this rule, shall display his/her individual, annual, group or special pass upon the demand of any law enforcement officer or employee of the Department who is authorized to enforce these rules.

(4) Time Period of Pass: The time period for which a valid pass is required is year round.

(5) Requirements for Valid Pass:

(a) The pass will consist of the following information to be placed on a form provided by the Department and completed at the time of purchase:

- (A) Calendar date(s) pass will be used;
- (B) Number of days pass will be valid;
- (C) Total fee paid for issuance of the pass;
- (D) Number of persons authorized by pass;
- (E) Signature of passholder or group leader;

(F) A summary of appropriate river use rules;

(G) Driver’s license number;

(H) Date of birth.

(b) In order for a pass to be valid in subsection (a) of this section, the recipient must:

(A) Provide all of the above information as requested;

(B) Have the completed pass in possession while boating within the Deschutes River Scenic Waterway;

(C) Be boating within the Deschutes River Scenic Waterway only on the calendar days authorized for on the recipient’s completed pass; and

(D) Have paid the appropriate fee.

(c) A passholder may also be issued with the pass, informational and educational material designed to encourage an appreciation of the scenic waterway and promote minimum impact recreation use.

(6) Cost of Pass:

(a) The fee for issuance of a pass, either individual or group, shall be \$2 per person per day, except that the fee for individuals or groups using only that portion of the Deschutes River Scenic Waterway from the Heritage Landing launch ramp, or the bank moorage adjacent to Deschutes River State Recreation Area, downstream to the Columbia River solely for boat access to the Columbia River, shall be \$1 per person per day. Use of the \$1 pass, also known as the Heritage to Columbia pass, for boating recreation on or access to the Deschutes River, or access to islands in the Deschutes River is prohibited.

(b) The fee for issuance of an individual annual pass shall be \$15 per person per year. Except as provided in subsection (c) of this section, each annual pass will be valid only for a single calendar year beginning on January 1 and ending on December 31 of each year a pass is required under section (4) of this rule.

(c) An annual pass shall not be valid on Fridays, Saturdays or Sundays from May 15 through September 15 in segments 1, 2 and 3, and from May 15 through October 15 in segment 4. An annual pass shall not be valid within any river segment on any day under a limited entry system. Annual pass holders who engage in boating, or activities involving boating, within the Deschutes Scenic Waterway during these periods, shall be required to obtain a daily boater pass for those days the annual pass is not valid.

(7) Group Pass:

(a) No group shall exceed the number of persons shown on the pass. In the event the number of persons in the group exceeds the number shown on the pass, the group leader shall be in violation of this rule;

(b) Group passes will be issued only for 16 persons or less for segments 1, 3 and 4, and 24 persons or less for segment 2;

(c) The daily pass shall be in the possession of the group leader at all times while within the Deschutes River Scenic Waterway.

(8) Sale of Pass:

(a) With the exception of daily passes for segment 1, daily boater passes will be available for purchase on the Internet, at selected state park offices, certain cooperating businesses and selected public agency locations throughout the state. Daily boater passes for segment 1 will be available for purchase on the Internet only. Selection of vendors will be based on location, days and hours of operation, past performance in similar governmental sales and the ability to provide service to a large number of potential Deschutes River Scenic Waterway boaters;

(b) Private vendors and cooperating agencies must comply fully with the terms of the Department/Vendor agreement and the Department’s policies for vending the Deschutes River Scenic Waterway Boater Pass. Private vendors and cooperating agencies may charge a \$.50 handling fee for dispensing each pass or duplicate pass. Such fee will be in addition to any fee charged under section (6) of this rule;

(c) Passes will be available for purchase year-round. The Department will publish and make available to the public, at no cost, a listing of all vendors of the Deschutes River Scenic Waterway Boater Pass. The list will include location of vendors and days and hours the pass will be available for purchase.

(d) The annual pass shall be available for purchase in person or by mail only from the Department office in Salem and such other outlets as the Department may determine necessary. The Department may require that annual pass holders submit periodic reports detailing the use of their annual pass during any calendar year. The frequency and format of such reports shall be as prescribed by the Department. The Department may require that the issuance of an annual pass to any person be contingent on that person having submitted annual pass use reports for the previous season, if applicable.

(9) Refunds, Replacements:

(a) No cash refunds will be permitted in the event a pass is not used;

(b) The passholder may get a duplicate pass to replace one that is lost or destroyed by applying for a duplicate from the same vendor from which he purchased the original pass. A duplicate pass may only be issued prior to the effective date of the original pass. The passholder must provide to the vendor all information necessary to permit the vendor to confirm the original pass sale.

(10) Special Exceptions:

(a)(A) Pursuant to ORS 390.848(3), the Director shall issue without charge annual passes to comply with the requirements of this rule to persons who own ranch, farm, or residential property immediately abutting those portions of the Deschutes River designated as a Scenic Waterway under ORS 390.826 and more particularly described in subsection (2)(a) of this rule and to members of the immediate family of such persons. This rule does not authorize the issuance, without charge, of passes to persons holding less than a majority interest in a firm, corporation or cooperative organization which owns land immediately abutting the Deschutes River designated as a scenic waterway under ORS 390.826;

(B) Free annual passes shall be issued by the Department to persons who qualify under this section and have contacted the Department or the Department's designated contractor. All passes issued under this section are nontransferable. They are for the sole use of the person(s) to whom they are issued;

(C) Persons who believe they qualify for a free annual pass must contact in person or by mail: River Programs, Oregon Parks and Recreation Department, 725 Summer St N.E., Suite C, Salem, OR 97301, or the Department's designated contractor, and present for the Department's review evidence that substantiates the applicant's claim to a free annual pass. Evidence may consist of property tax information, deeds, birth certificates or similar legal or real estate devices.

(b)(A) The Director may issue a \$5 annual access pass to persons who own, either wholly or in partnership, farm, ranch or residential land within the specific reach of the Deschutes River Scenic Waterway described in subsection (2)(a) of this rule, and whose sole or customary means of access to their farm, ranch or residential facilities is by boat. The purpose of this pass is to permit unrestricted access to private property not reasonably or traditionally accessible by any means other than by boat. Each annual access pass will be valid for up to four persons;

(B) Prior to the issuance of this pass, an individual must submit a written request to the Director or the Department's designated contractor, clearly stating the reasons, factors or circumstances requiring the issuance of the annual access pass.

(c) The Director, or the Department's designated contractor, may issue a \$5 annual occupational pass to persons or employees of farm, ranch or residential property owners and lessees of farm, ranch or residential property. The farm, ranch or residential property must be immediately abutting that portion of the Deschutes River Scenic Waterway more particularly described in subsection (2)(a) of this rule. The annual occupational pass shall be for those persons engaged in boating in order to access, supervise, or maintain property immediately abutting the Deschutes River Scenic Waterway. This pass will not be valid for boating in connection with any recreational activity. The pass is transferable among employees and caretakers of a single property-owner or organization; the pass is also transferable among leaseholders of a particular

parcel of property. Proof of employment or lease agreement will be required prior to the issuance of this pass;

(d) Pursuant to ORS 390.851(2), no Deschutes River Scenic Waterway boater pass will be required of:

(A) Peace officers, members or employees of a governmental body, or their agents, while engaged in the discharge of official duties; or

(B) Any member of the Confederated Tribes of the Warm Springs Indian Reservation.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.124 & 390.848

Stats. Implemented: ORS 390.124, 390.848 & 390.851

Hist.: PR 2-1982, f. 2-3-82, ef. 5-15-82; PR 2-1983, f. & ef. 3-11-83; PR 15-1992, f. & cert. ef. 11-12-92; PR 5-1994, f. 4-22-94, cert. ef. 6-1-94; PRD 2-1999, f. & cert. ef. 4-15-99; PRD 5-1999, f. 5-14-99, cert. ef. 6-1-99; Administrative correction 12-27-99; PRD 6-2002, f. 5-15-02, cert. ef. 6-1-02; PRD 8-2003, f. & cert. ef. 10-3-03; PRD 5-2004, f. 4-27-04, cert. ef. 4-30-04; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0072

Middle Deschutes River Scenic Waterway

(1) North Bend River Community Area:

(a) From Sawyer Park at approximately river mile 164 to the northern Urban Growth Boundary of the City of Bend at approximately river mile 161, the river is classified North Bend River Community Area;

(b) Within this area, all new structures, improvements and development shall be in compliance with the Land Management rules as described in OAR 736-040-0035 and 736-040-0040(1)(f), and be consistent with applicable City of Bend and Deschutes County land use and development regulations. Improvements needed for public recreation use or resource protection shall be designed to blend with the natural character of the landscape.

(2) Crooked River Ranch River Community Area 1:

(a) From approximately river mile 129.9 to 131.5, the residential building lots #1 — 50 within Phase 5 of the Crooked River Ranch subdivision as specified on the Plat Map recorded November 1973, in book 2, Pages 253-258, in the Deschutes County Clerk's Office, the river is classified Crooked River Ranch Community Area 1;

(b) Within this area, all new structures, improvements and development shall be in compliance with the Land Management rules as described in OAR 736-040-0035 and 736-040-0040(1)(f), and be consistent with applicable Deschutes County land use and development regulations. There will be no further partitioning of designated Community Areas for residential development. Improvements needed for public recreation use or resource protection shall be designed to blend with the natural character of the landscape.

(3) Crooked River Ranch River Community Area 2:

(a) From approximately river mile 124.3 to 125.25, the residential building lots #1 — 107 within Phase 12 of the Crooked River Ranch subdivision as specified on the Plat Map recorded June 1978, in book 12, Page 582, in the Jefferson County Clerk's Office; the river is classified Crooked River Ranch River Community Area 2;

(b) Within this area, all new structures, improvements and development shall be in compliance with the Land Management rules as described in OAR 736-040-0035 and 736-040-0040(1)(f), and be consistent with applicable Jefferson County land use and development regulations. There will be no further partitioning of designated Community Areas for residential development. Improvements needed for public recreation use or resource protection shall be designed to blend with the natural character of the landscape.

(4) Recreational River Area:

(a) From the northern Urban Growth Boundary of the City of Bend at approximately river mile 161 downstream to Tumalo State Park at approximately river mile 158, the river is classified Recreational River Area;

(b) Within this area, all new structures, improvements and development shall comply with the Land Management rules as described in OAR 736-040-0035 and 736-040-0040(1)(c)(B), and be consistent with applicable Deschutes County land use and development regulations:

(A) New structures and improvements shall be set back a minimum of 100 feet from the ordinary high water line of the river. A set back of 20 feet or more is required from the edge of the rim rock (where this feature exists). The Department shall determine the exact distance for the above setbacks on a case-by-case basis, dependent on existing terrain, existing vegetation, height of proposed structure, and applicable county setback requirements;

(B) New structures shall be finished in colors and tones that blend with the surrounding landscape. For the purpose of this rule, landscape includes indigenous vegetation, soils and rock material. Natural evergreen vegetation will be maintained between the structures and the river. The establishment of additional vegetative screening (preferably native vegetation) may be required to further mitigate the visual impact of the structure as seen from the river;

(C) Roads, mines and similar forms of development shall be set back from the river consistent with County zoning and land development requirements and be screened from view from the river by topography or by existing or established evergreen vegetation;

(D) Improvements needed for public recreation use or resource protection shall be designed to blend with the natural character of the landscape.

(5) Scenic River Area:

(a) From Deschutes Market Road at approximately river mile 157 downstream to the south boundary of the Wilderness Study Area at approximately river mile 131, excluding the Cline Falls Dam and powerhouse section between the State Highway 126 Bridge and river mile 144 and the Crooked River Ranch River Community Area, the river is classified Scenic River Area;

(b) Within this area all new structures, improvements and development will comply with the Land Management rules as described in OAR 736-040-0035 and 736-040-0040(1)(b)(B) and be consistent with applicable Deschutes County land use and development regulations;

(A) New structures and improvements shall be set back a minimum of 100 feet from the ordinary high water line of the river. A set back of 20 feet or more is required from the edge of the rim rock (where this feature exists). The Department will determine the exact distance for the above setbacks on a case-by-case basis dependent on existing terrain, existing vegetation, height of proposed structure, and applicable county setback requirements;

(B) New structures shall be finished in colors and tones that blend with the surrounding landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils, and rock material. Natural evergreen vegetation shall be maintained between the improvements and the river. The establishment of additional vegetative screening (preferably native vegetation) may be required to further mitigate the visual impact of the structure as seen from the river;

(C) Roads, mines and similar forms of development shall be screened from view from the river by topography. Within this area no new roads or mines shall be allowed below the canyon rim;

(D) Improvements needed for public recreation use or resource protection shall be designed to blend with the natural character of the landscape.

(6) Natural River Area:

(a) From the south boundary of the Wilderness Study Area at approximately river mile 131 to the Lake Billy Chinook stream gauge at approximately river mile 120, excluding the Crooked River Ranch River Community Areas as described in the River Community section, the river is classified Natural River Area;

(b) Within this area all new structures, improvements and developments shall comply with the Land Management rules as described in OAR 736-040-0035 and 736-040-0040(1)(a)(C), and be consistent with applicable local land use and development regulations;

(A) No new structures and improvements shall be allowed within this area unless fully screened from view from the river by topography except those minimal facilities needed for resource protection or public outdoor recreation;

(B) Roads, mines and similar forms of development shall be permitted only when fully screened from view from the river by topography. Any existing roads shall not be extended, realigned or improved substantially unless fully screened by topography. All excess road construction materials (side cast) shall be removed to locations screened from view from the river and where they cannot be transported by gravity to the river;

(C) New structures, improvements and development needed for resource protection or public outdoor recreation use shall be primitive in character and designed to blend with the natural character of the landscape. These structures shall be finished in colors and tones that blend with the surrounding landscape. For purposes of this rule, landscape includes indigenous vegetation, soils and rock materials.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 6-1993, f. & cert. ef. 3-15-93; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0073

Upper Deschutes River Scenic Waterway

(1) Scenic River Areas:

(a) Two river segments are designated as Scenic River Areas:

(A) The segment of the scenic waterway beginning at the Wickiup Dam stream gauge at about river mile 226.4 and extending downstream about 28 miles to the General Patch Bridge (Deschutes County Road — FAS 793) at about river mile 199 with the exception of the Wickiup (about river mile 226.4 to about river mile 224.5), Pringle Falls (about river mile 217.5 to about river mile 216.5) and General Patch Bridge (about river mile 204 to about river mile 199) River Community Areas as described in paragraphs (2)(a)(A), (B), and (C) of this rule is classified as a Scenic River area;

(B) The segment of the scenic waterway extending from the Deschutes National Forest boundary in Section 20, Township 19 South, Range 11 East, of the Willamette Meridian, (Section 20, T 19S, R 11E, W.M.) to the Bend Urban Growth Boundary at River Mile 172 is classified as a Scenic River Area.

(b) Within the Scenic River Areas described in subsection (1)(a), all new structures, improvements and development shall comply with the Land Management Rules as described in OAR 736-040-0035, with the intent of the classification description in 736-040-0040(1)(b)(B) and be consistent with applicable Deschutes County land use and development regulations;

(c) New structures and improvements shall be set back a minimum of 100 feet from the ordinary high water line of the river and a minimum of 20 feet from the edge of the rim rock (where this feature exists). The Department will determine the exact distance for the above setbacks on a case-by-case basis, dependent on existing terrain, existing vegetation, height of proposed structures, and applicable county setback requirements;

(d) New structures shall be finished in colors and tones that blend with the surrounding landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material. Natural evergreen vegetation shall be maintained between the structures and improvements and the river. The establishment of additional vegetative screening (native vegetation) may be required to further mitigate the visual impact of the structures and improvements as seen from the river;

(e) New bridges will not be permitted. Maintenance, repair and replacement of existing bridges shall be consistent with OAR 736-040-0035(6) and (7), Deschutes County land use and development regulations, and Oregon Department of State Lands regulations;

(f) New commercial public service facilities, including but not limited to resorts, hotels, motels, lodges, recreational vehicle parks, convenience stores and gas stations, shall be obscured from view from the river by topography;

(g) New utility facilities shall share land and air space with existing utilities, road rights-of-way and/or river crossings. Upgrades to existing facilities will be permitted. New, above ground river crossings for new utility facilities will not be permitted;

(h) New, above ground river crossings shall not be permitted;

(i) Roads, mines and similar forms of development shall be obscured from view from the river by topography;

(j) Improvements needed for public outdoor recreation use or resource protection shall be designed to blend with the natural character of the landscape;

(k) Timber harvest activities, including thinning, shall not be visually evident after completion of the removal of the trees as viewed from the river, from developed recreation sites, or from trails adjacent to the river. Stumps shall be cut low, slash cleaned up promptly, and the remaining trees and brush protected. Reforestation shall occur within one year of the project's completion. The provisions of the Oregon Department of Forestry forest practices rules shall be strictly followed.

(2) River Community Areas:

(a) Four areas are designated as River Community Areas:

(A) Those related adjacent lands made up of the residential tract of homes, cabins and similar dwellings along the river extending downstream of the Wickiup Dam stream gauge at about river mile 226.4 approximately two miles to about river mile 224.5 is classified as the Wickiup River Community Area;

(B) Those related adjacent lands made up of residential tracts along the river at approximately river mile 217.5 (known as Pringle Falls) within the northeast quarter of Section 23, Township 21 South, Range 9 East, of the Willamette Meridian (NE 1/4 Section 23, T 21S, R 9E, W.M.), extending downstream approximately seven-tenths of a mile (0.7) to approximately river mile 216.8 is classified as the Pringle Falls River Community Area;

(C) Those related adjacent lands within platted residential tracts known as Oregon Water Wonderland Unit 1, River Forest Acres and Deschutes River Homesites, Unit 8 Part 1 and Unit 6 situated along the river extending downstream approximately five miles from about river mile 204 to about river mile 199 or the General Patch Bridge (Deschutes County Road — FAS 793) is classified as the General Patch Bridge River Community Area;

(D) Those related adjacent lands within the City of Bend Urban Growth Boundary beginning at about river mile 172 and extending downstream approximately one mile to the Central Oregon Irrigation diversion at about river mile 171 is classified as the South Bend River Community Area.

(b) Within the River Community Areas described in subsection (2)(a), all new structures, improvements and development shall be in compliance with the Land Management Rules as described in OAR 736-040-0035, with the intent of the classification description in 736-040-0040(1)(f), and be consistent with applicable City of Bend and Deschutes County land use and development regulations;

(c) New structures and improvements shall be set back a minimum of 100 feet from the ordinary high water line of the river and a minimum of 20 feet from the edge of the rim rock (where this feature exists). The Department will determine the exact distance for the above setbacks on a case-by-case basis, dependent on existing terrain, existing vegetation, height of proposed structure, and applicable county setback requirements;

(d) New structures and improvements shall be finished in colors and tones that blend with the surrounding landscape. For the purpose of this rule, landscape includes indigenous vegetation, soils and rock material;

(e) Natural evergreen vegetation shall be maintained between the structures and improvements and the river. Additional vegetative screening may be required to be established and maintained;

(f) New bridges will not be permitted. Maintenance, repair and replacement of existing bridges shall be consistent with OAR 736-040-0035(6) and (7), Deschutes County and City of Bend land use and development regulations, and Oregon Department of State Lands regulations;

(g) New utility facilities shall share land and air space with existing utilities, road rights-of-way and/or river crossings. Upgrades to existing utility facilities will be permitted. New river crossings for new utility facilities will not be permitted;

(h) New, above ground river crossing will not be permitted;

(i) New commercial public service facilities, including but not limited to resorts, hotels, motels, lodges, recreational vehicle parks, convenience stores and gas stations shall be screened from view from the river by topography and/or evergreen vegetation;

(j) Improvements needed for public outdoor recreation use or resource protection shall be designed to blend with the natural character of the landscape;

(k) Timber harvest activities, including thinning, shall be screened by topography or vegetation when seen from the river, developed recreation sites within scenic waterways, and trails adjacent to the river. Riparian vegetation shall be protected. Stumps shall be kept low, slash cleaned up promptly and remaining trees and brush protected from damage during harvest. Reforestation shall occur within one year of completion of harvest.

(3) Recreational River Area:

(a) One river segment shall be designated as a Recreational River Area:

(b) The segment of the scenic waterway beginning at Harper Bridge (Deschutes County Road — FAS 900) at approximately river mile 190.6 and extending downstream approximately five miles to the point at which the river intersects the Deschutes National Forest boundary in Section 20, Township 19 South, Range 11 East, of the Willamette Meridian, (Section 20, T 19S, R 11E, W.M.), at approximately river mile 184.8 is classified as a Recreational River Area;

(c) Within these areas, all new structures, improvements and development shall comply with the Land Management Rules as described in OAR 736-040-0035, with the intent of the classification description in OAR 736-040-0040(1)(c)(B), and be consistent with applicable Deschutes County land use and development regulations;

(d) New structures and improvements shall be set back a minimum of 100 feet from the ordinary high water line of the river and set back a minimum of 20 feet from the edge of the rim rock (where this feature exists). The Department will determine the exact distance for the above setbacks on a case-by-case basis, dependent on existing terrain, existing vegetation, height of proposed structure, and applicable county setback requirements;

(e) New structures shall be finished in colors and tones that blend with the surrounding landscape. For the purpose of this rule, landscape includes indigenous vegetation, soils and rock material;

(f) Natural evergreen vegetation shall be maintained between the structures and improvements and the river. The establishment of additional vegetative screening (native vegetation) may be required to further mitigate the visual impact of the structure as seen from the river;

(g) Roads, mines and similar forms of development shall be set back from the river consistent with county zoning and land development requirements and be screened from view from the river by topography, or by existing or established evergreen vegetation;

(h) New bridges will not be permitted. Maintenance, repair and replacement of existing bridges shall be consistent with OAR 736-040-0035(6) and (7), Deschutes County land use and development regulations and Oregon Department of State Lands regulations;

(i) New commercial public service facilities, including but not limited to resorts, hotels, motels, lodges, recreational vehicle parks, convenience stores and gas stations shall be screened from view from the river by topography;

(j) New utility facilities shall share land and air space with existing utilities, road rights-of-way and/or river crossings. Upgrades to existing utility facilities will be permitted. New river crossings for new utility facilities will not be permitted;

(k) New, above ground river crossings will not be permitted;

(l) Improvements needed for public outdoor recreation use or resource protection shall be designed to blend with the natural character of the landscape;

(m) Timber harvest activities, including thinning, shall be screened by topography or vegetation when seen from the river, developed recreation sites with the scenic waterway, and trails

adjacent to the river. Riparian areas shall be protected. Stumps shall be kept low, slash removed promptly and remaining trees and brush protected from damage during harvest. Reforestation shall occur within one year of completion of harvest. The provisions of the Oregon Department of Forestry forest practices rules shall be strictly followed.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 2-1988, f. & cert. ef. 3-25-88; PR 15-1992, f. & cert. ef. 11-12-92; PR 8-1994, f. & cert. ef. 7-11-94; PR 10-1996, f. & cert. ef. 10-9-96; Renumbered from 736-040-0079; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0075

Sandy River Scenic Waterway

(1) Natural River Area: The segment of the scenic waterway extending from the east boundary line of Section 25 and Section 36, Township 1 South, Range 4 East, of Willamette Meridian, in Clackamas County at Dodge Park, downstream approximately 3.8 miles to the South line of the North Half of the Northeast Quarter of Section 23, Township 1 South, Range 4 East, of Willamette Meridian, in Multnomah County near Indian John Island, is classified as a Natural River Area.

(2) Scenic River Area: The segment of the scenic waterway extending from the South line of the North Half of the Northeast Quarter of Section 23, Township 1 South, Range 4 East, of the Willamette Meridian, in Multnomah County near Indian John Island, downstream approximately 8.7 miles to the West line of the East Half of the Northeast Quarter of Section 6, Township 1 South, Range 4 East, of the Willamette Meridian, in Multnomah County at Dabney State Park, is classified as a Scenic River Area.

(3) In both the Natural River Area and the Scenic River Area of the Sandy River Scenic Waterway:

(a)(A) Within the area of greatest visual effect on the natural river scene, as indicated on the map of the Sandy River Scenic Waterway prepared by the State Parks and Recreation Department and dated September 13, 1972, new structures or other improvements which are visible from the river (see OAR 736-040-0015(10), Definition of Terms), other than those erected or made in connection with compatible existing uses, or those needed for public outdoor recreation or resource protection will not be permitted unless they are so located that their visual effect is primarily on the upland scene (above the rims of the canyon, or "bluff line," usually readily discernible) rather than on the scene as viewed from the river;

(B) Outside that area of greatest visual effect on the natural river scene, uses which are consistent with applicable county zoning ordinances and OAR 736-040-0030 and 736-040-0035 may be permitted. Within the Natural River Area, such permitted uses shall be largely concealed from view from the river by topography or established evergreen vegetation which shall be maintained; within the Scenic River Area such permitted uses may be visible from the river, provided they are consistent with applicable county zoning regulations and OAR 736-040-0030 and 736-040-0035.

(b) Outside the area of greatest visual effect on the natural river scene, as indicated on the map of the Sandy River Scenic Waterway prepared by the State Parks and Recreation Department and dated 13 September 1972, notification is not required for changes of land use, construction of buildings or other improvements or other alterations or activities which:

(A) Are less than 21 feet in height above natural grade on a side facing the river;

(B) Are entirely concealed from view from the river by topography or established evergreen vegetation which shall be maintained;

(C) Do not involve reduction of existing vegetation which is visible from the river;

(D) Are finished in muted tones without large reflective surfaces; and

(E) Meet applicable requirements of other governmental agencies, including county zoning regulations.

Stat. Auth.: ORS 183.545, 183.550 & 390.805 - 390.925

Stats. Implemented: ORS 390.845(2)

Hist.: IOTC 6, f. 11-1-73; PR 15-1992, f. & cert. ef. 11-12-92

736-040-0076

Clackamas River Scenic Waterway

(1) Recreational River Area:

(a) That segment of the Scenic Waterway extending from River Mill Dam downstream approximately 12 miles to Bakers Bridge at Carver is classified as a Recreational River Area;

(b) The Recreational River Area will be administered consistent with the purposes of OAR 736-040-0040(1)(c)(B). Within this area, new structures and improvements, mining operations and timber harvesting activities shall be permitted only when substantially screened from view from the river by topography or vegetation. If no such topographic or vegetative screening exists on a site, the structure or improvement may be permitted if vegetation is established which will provide substantial screening to the proposal in a reasonable time (for example, 2-3 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native evergreen and deciduous vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements. Developments necessary for public outdoor recreation, as provided by public agencies, and resource protection may be visible from the river but must blend into the natural scene as much as possible.

(2) All the Commission's rules for scenic waterway management, OAR 736-040-0025 through 736-040-0035, shall apply to the Clackamas River Scenic Waterway except where this section is more specific.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.845(2)

Hist.: PR 7-1985, f. & ef. 10-24-85

736-040-0078

Waldo Lake and the North Fork of the Middle Fork of the Willamette River

Natural Area: Waldo Lake, the lake shore and adjacent land within 1/4 mile, except for the area described in section (1) of this rule as North Waldo campground, Islet campground, the area between them, and the Shadow Bay campground:

(1) Scenic Area: The Waldo Lake shore and related adjacent land from a point approximately 200 feet northwesterly of the boat ramp at North Waldo campground in a southerly direction to a point approximately 200 feet south of southernmost development at Islet campground, and from a point approximately 200 feet north of the northernmost development at Shadow Bay campground south to a creek at the easternmost head of Shadow Bay.

(2) Natural River Area: The North Fork of the Middle Fork of the Willamette River, from its outlet of Waldo Lake downstream approximately 8-1/2 miles to its intersection with the south section line of Section 36, Township 19S, Range 5-1/2E, of the Willamette Meridian.

(3) Scenic River Area: That segment of the North Fork of the Middle Fork of the Willamette River, from its intersection with the south section line of Section 36, Township 19S, Range 5-1/2E, of the Willamette Meridian, downstream approximately 6-1/2 miles to its intersection with Forest Road 1944.

(4) Recreational River Area: That segment of the North Fork of the Middle Fork of the Willamette River, from its intersection with Forest Road 1944 downstream to the lower boundary of the scenic waterway, one mile upstream from the railroad bridge near Westfir.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.845(2)

Hist.: PR 7-1986, f. & ef. 5-28-86

736-040-0080

Notification Procedures

(1)(a) Notification to the Commission of a proposal for change of existing use of related adjacent land, or improvement thereto, or any other activity for which the Act or these rules and regulations require notification, shall be written and shall contain a detailed description of the proposed change, improvement or activity, and such other information as the Commission may require;

(b) Notifications or request for information or assistance may be made to the nearest Oregon Parks and Recreation Department Region office: or to Headquarters, Oregon Parks and Recreation Department in Salem, addresses and phone numbers available at this web link: <http://www.oregonstateparks.org/searchpark.php>.

(c) The proposed change of use or improvement or activity shall not be carried out or commenced sooner than one year after the Department accepts such notification as complete unless the Commission has sooner given its written approval.

(2) Upon receipt of written notice provided in section (1) of this rule, the Commission shall:

(a) If the proposal will not impair substantially the natural beauty of the scenic waterway or be in violation of either the Act or these rules, give the landowner, or other applicant when that is appropriate, written notification that he/she may immediately proceed;

(b) Notify the owner or applicant in writing if the Commission determines the proposed use would impair the natural beauty of the scenic waterway or otherwise violate either the Act or these rules. The owner or applicant shall not proceed with the proposal until at least one year after the date the Department accepts as complete the original notice to the Commission unless the owner and the Commission sooner reach agreement on an alternate plan.

Stat. Auth.: ORS 390.805 - 390.925

Stats. Implemented: ORS 390.845(3)

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72; PR 15-1992, f. & cert. ef. 11-12-92; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0085

Procedures in Event of Commission Denial

(1) During the period of one year following the original notice to the Commission:

(a) The Commission and the owner of the land involved may agree upon modifications or alterations of the proposal so that implementation thereof would not, in the judgment of the Commission, impair substantially the natural beauty of the scenic waterway or otherwise violate the provisions of the Act or these rules and regulations;

(b) The Commission may acquire by purchase, gift, or exchange, the land involved or interest therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic waterway;

(c) The landowner may make a written request of the Commission to enter into further negotiations regarding use of the land as prescribed in section (2) of this rule.

(2) The Commission, upon receiving a written request from an owner of related adjacent land, shall enter into negotiations and endeavor to reach agreement with such owner establishing for the use of such land a plan that would not impair substantially the natural beauty of the scenic waterway. At the time of such request for negotiations, the owner may submit an alternate plan in writing setting forth in detail his proposed uses. Then:

(a) Three months after the owner makes such a request for negotiations, either the Commission or the owner may give written notice that the negotiations are terminated without agreement;

(b) Nine months after the notice of termination of negotiations, the owner may use his land in conformity with any specific written plan submitted by the owner prior to or during negotiations, in the event the Commission and the owner reach agreement establishing a plan for land use, such agreement is terminable upon at least one year's written notice by either the Commission or the owner;

(c) Twelve months after the Department accepts as complete the original notice to the Commission, the owner may use their land in conformity with the specific written plan submitted as a part of that notice unless the Commission has sooner instituted proceedings to acquire the land involved.

Stat. Auth.: ORS 390.845

Stats. Implemented: ORS 390.845(5)

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0090

Condemnation of Related Adjacent Land

With the concurrence of the Oregon Water Resources Commission, the Commission may institute condemnation proceedings to acquire related adjacent land for the purposes of the Act if:

(1) At any time subsequent to nine months after the receipt of an owner's proposal agreement cannot be reached by the Commission and the landowner; or

(2) At any time related adjacent land is used in a manner violating the Act or the rules and regulations promulgated by the Commission; or

(3) At any time related adjacent land is used in a manner which, in the judgment of the Commission, impairs substantially the natural beauty of a Scenic Waterway, if the Commission has not been given at least one year's advance written notice of such use and if there is not in effect Commission approval of such use.

Stat. Auth.: ORS 390.845

Stats. Implemented: ORS 390.845(6)

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0095

Public Lands Within or Adjacent to a Scenic Waterway

(1) The Commission may enter into agreement with an Indian tribe, the United States, another state agency or local governmental agency for the administration of lands contained in a scenic waterway.

(2) With the consent of the governing body, any public land within or adjacent to a scenic waterway may be transferred to the jurisdiction of the Commission with or without compensation and shall become state recreational land and be administered by the Commission as part of the scenic waterway.

(3) Any land within a scenic waterway not transferred to the jurisdiction of the Commission shall be administered by the public body having jurisdiction thereof in accordance with the provisions of the Act.

Stat. Auth.: ORS 390.845

Stats. Implemented: ORS 390.845(10) & 390.875

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

DIVISION 45

OREGON NATURAL AREAS PROGRAM RULES

General Provisions

736-045-0006

Purpose

The purpose of this division is to provide a central and continuing register of areas in Oregon that contain significant natural heritage resources and special species, and describe the process used to register properties on the Oregon Register of Natural Areas.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0011

Definitions

As used in this division, the definitions in ORS 273.563 and 390.005 apply, unless the context provides otherwise:

(1) "Agency" means a local, state or federal, agency, board, commission, or department.

(2) "Commission" means the State Parks and Recreation Commission.

(3) "Committee" means the Natural Areas Advisory Committee.

(4) "Candidate natural area" means a natural resource area that may be considered for registration or dedication.

(5) "Data bank" means the Natural Areas Program inventory of natural heritage resources classification, data analysis, priority setting, owner and other data maintained by the Institute for Natural Resources under ORS 352.239.

(6) “Dedicate” means the formal recognition and protection of a natural area for conservation purposes.

(7) “Department” means Oregon Parks and Recreation Department.

(8) “Director” means the Oregon Parks and Recreation Department Director.

(9) “Instrument” means any written document intended to convey an interest in real property under ORS 93.710, or an agreement between parties according to the Natural Areas Program or the Oregon Natural Areas Plan.

(10) “Introduced plant species” means exotic or non-native species.

(11) “Managed area” means a registered or dedicated state natural area that, by management agreement between the department and private landowner, or agency, the area and its natural heritage resources are maintained in a manner to protect the natural character.

(12) “Management scheme” means a plan that sets forth in detail the responsibilities for the administration of an individual state natural area.

(13) “Natural area” means a unit of land or water or both that may be considered for dedication under ORS 273.563 to 273.591 and that has substantially retained its natural character, or, if altered in character, shall in addition to its natural heritage resource values, be valuable as habitat for plant and animal species or for the study and appreciation of natural features.

(14) “Natural heritage resources” means the terrestrial ecosystems types, aquatic ecosystems types and unique geologic types as defined in the Oregon Natural Areas Plan or a unit of land or water which contains a natural resource.

(15) “Plan” means the Oregon Natural Areas Plan established under ORS 273.578, which governs the Natural Areas Program in selecting natural areas for conservation.

(16) “Program” means the Natural Areas Program as established in ORS 273.566, which provides for the establishment of a limited system of State Natural Area representing a full range of Oregon’s natural resources and includes special species of plants and animals.

(17) “Register” means the Oregon Register of Natural Areas established under ORS 273.581. The Register contains an official list of areas which have significant natural resources and special species.

(18) “Special species” means those species of plants and animals determined by the department to be of significant value in a state natural area and defined in the Plan.

(19) “State natural area” means an area that an individual, organization or public agency dedicates as a state natural area under ORS 273.586. The department classifies property dedicated as a state natural area under ORS 273.586 and this division and owned by the department as a “State Natural Area Reserve.”

(20) “Wildlife” means any wild or free living vertebrate or invertebrate animal.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 & 390.005

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

Natural Areas Advisory Committee

736-045-0100

Composition and Roles

(1) The director may appoint a Natural Areas Advisory Committee composed of nine members as follows:

(a) Three authorized representatives of state agencies with jurisdiction over a managed areas or natural areas that are appropriate for dedication, including:

- (A) The department;
- (B) Department of State Lands;
- (C) Department of Forestry;
- (D) Department of Fish and Wildlife;
- (E) Department of Education; and
- (F) Oregon Department of Transportation;

(b) Two authorized representatives of federal natural resources management agencies, such as the U.S. Forest Service and Bureau of Land Management; and

(c) Four individuals recognized as experts in the ecology of natural areas. Desirable fields of expertise are botany, zoology, terrestrial ecology, aquatic biology and geology;

(2) Members appointed under subsection (1)(c) may serve two consecutive four-year terms on the committee. However, the director shall appoint the first committee members following the effective date of this rule to serve a two, three, or four-year term.

(3) The director shall appoint the chair from the committee membership, considering the recommendations of the committee.

(4) The committee shall meet at times and places specified by the call of the director.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) Function and duties of the Natural Areas Advisory Committee. Upon the request of the director, the committee may assist the department in:

(a) Development of policy for the Natural Areas Program through the review and approval of the Oregon Areas Plan;

(b) Reviewing nominations for registration and the voluntary dedication of State Natural Area Reserves, and review instruments of dedication for such areas;

(c) Providing recommendations to the commission, State Land Board, State Board of Forestry, State Fish and Wildlife Commission, State Board of Higher Education and Oregon Transportation Commission regarding areas under their respective jurisdictions which are appropriate for dedication; and

(d) Advising the commission in the adoption of rules that may be considered necessary in carrying out ORS 273.563 to 273.591.

(7) Members of the advisory committee are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the department for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.573

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

Schedule of Fees and Charges

736-045-0200

Acceptance of Funds

(1) The department may accept monies for, but not limited to, documents, including records, reports or maps pertaining to Program data, and services under this division.

(2) The department may apply for and accept grants, contributions and assistance from any federal, state or local government agency and any foundation, individual or organization for the purpose of carrying out the provisions of ORS 273.563 to 273.591.

(3) All money received by the department for the purposes of this division shall be paid into the State Treasury and credited to the Natural Areas Program Account.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

Oregon Register of Natural Heritage Resources

736-045-0300

Criteria for Inclusion in or Removal from the Register

The commission must determine criteria for inclusion in the Register to fulfill not only the definition of a natural area but the natural heritage resources and site considerations within the priorities and criteria for conservation in the Plan. The commission, department, the committee upon request pursuant to OAR 736-045-0100(6)(b), and the Institute for Natural Resources pursuant to ORS 352.239(2)(g) will use the following criteria in evaluating a candidate natural area proposed for inclusion in or removal from the Register:

(1) The priority for protection in the Plan of the primary natural heritage resources objective and other natural heritage resources in the candidate natural area;

(2) Whether the natural heritage resource occurrence(s) is an adequate representative of the type;

(3) The extent to which each natural heritage resource has retained its natural character, i.e., a measurement of the degree of human-caused disturbance;

(4) The health and viability of the natural heritage resource occurrence(s), i.e., the ability of each natural heritage resource occurrence to perpetuate itself or its natural sequence of development in the candidate natural area;

(5) The number of natural heritage resources that will be adequately represented in the candidate natural area;

(6) The degree of uniqueness and educational and natural interpretation values of a geologic resource(s);

(7) The priority of protection given in the Plan to each special species of plant or animal;

(8) The contribution the particular candidate natural area will make to the protection of the special species;

(9) Manageability, i.e., the capability of the candidate natural area to be managed to protect and maintain the natural values, as well as to make it available and useful for its designated purposes;

(10) Whether there are alternative methods of accomplishing the same purposes of this division; and

(11) The cost effectiveness of including a candidate natural area in the Register.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0305

Procedures for Registering

The department and the Institute for Natural Resources will review and provide recommendations on proposals for registration and dedication of natural areas for the Register, together with field evaluation, maps and sufficient data to complete the register file. Pursuant to OAR 736-045-0100(6)(b), the director may also request that the committee review a nomination for the Register.

(1) A proposal for the Register of private land shall include the written permission for registration of the landowner.

(2) The commission may place a natural area onto the Register or remove a natural area from the Register. The department will provide recommendation to the commission for its consideration.

(3) A voluntary management agreement may be developed between the department and a private landowner or agency of a natural area on the Register.

(4) The commission may enter onto the Register any candidate natural area that a federal or state agency establishes by public hearing and dedicates under this division.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)(g)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0310

Register File

The Register may include file(s) of registered state natural areas or state natural area reserves:

(1) The card file may include name of a state natural area, location, size, ownership, register category, and principal natural heritage resource(s) and special species. The card file may be cross referenced by county and principal resource.

(2) The data file may include:

(a) Data form — comprehensive information compiled for each state natural area;

(b) Instrument of dedication or other documents certifying official dedication;

(c) Consent form — written permission for registration for a state natural areas on private land;

(d) Supportive data — includes maps, photographs, remote sensing imagery, species lists, field notes, reports, research papers, and references to other information available;

(e) Cross references to the data bank maintained by the Institute for Natural Resources pursuant to ORS 352.239(2)(f) — to data file, computer and manual file consistent with data bank components;

(f) Implementation data — written management agreement pertaining to the state natural area; and

(g) Summary sheet — a map and one page summary of information about each area which can be duplicated and circulated to appropriate authorities.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)(f)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0320

Location and Maintenance of Register

The department will maintain the Oregon Register of Natural Areas at the department's office in Salem, OR.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.581(1)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0330

Register Review

The department may review and update the Register every five years.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0340

Register Withdrawal

The commission may remove natural areas from the Register. The commission will consider ORS 273.586(4) and the factors in OAR 736-045-0300 in removing a state natural area or state natural area reserve from the Register.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.581(4) & 273.586(4).

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

Dedication and Management of a State Natural Area Reserve

736-045-0400

Purpose

The purpose and scope of dedication is to establish and maintain the integrity of the Plan, and the Program, by means of written formal recognition and protection of a natural area of land, water, or both land and water for natural heritage conservation purposes.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0405

Instruments of Dedication

(1) Private dedication — a private individual or organization that is the owner of any registered natural area may voluntarily agree to dedicate that area as a state natural area by executing with the department, an instrument of dedication. Instrument provisions and policies include, but are not limited to, the following:

(a) An agreement that provides each natural heritage resource in the state natural area with the most secure protection obtainable;

(b) An unlimited period of time, or a term sufficiently long to warrant dedication protection;

(c) Permission for conducting scientific research and other activities shall be commensurate with Program objectives; and

(d) Termination of dedication may occur upon written notification to the commission, including specific reasons for termination, and provision by the commission of opportunity for adequate public notice and hearing.

(2) The department shall file an executed instrument of dedication of a state natural area under private ownership under section (1) in the office of the clerk of the county in which any or all of the state natural area is located, and shall be effective upon its recording.

(3) The department shall provide a copy of the dedication and management agreement(s) to the private owner of a state natural area.

(4) Agency dedication — any public agency may dedicate lands under the provisions of ORS 273.563 to 273.591, this division, and the Plan, after providing the opportunity for adequate public notice and hearing.

(5) The Oregon Transportation Commission, the State Fish and Wildlife Commission, the State Board of Forestry, the State Board of Higher Education, and the State Land Board shall, with the advice and assistance of the department, establish procedures for the dedication of state natural areas on land or water, the title of which is held by the State of Oregon, and which is under that agency's management and control.

(6) Instruments of dedication under sections (1) and (4) shall contain any information or provisions as the private owner, organization or agency and department consider necessary to complete the dedication.

(7) Termination of the dedication of a state natural area by a public agency or a state natural area reserve by the department requires that the terminating agency:

(a) Provide an opportunity for adequate public notice and hearing; and

(b) Makes a finding of either:

(A) An imperative and unavoidable necessity due to natural disaster in the site, need of the natural resource during time of declared war, or the need of the natural resource because of extreme economic crisis of the state; or

(B) That the state natural area or state natural area reserve is no longer needed according to the guidelines of the Plan, or has permanently lost its character, subject to the department's approval.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.586

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0410

Publicity

The department and the Institute for Natural Resources may develop and make available to private landowners, researchers, agencies and interested persons information about a state natural area or state natural area reserve and appropriate descriptive material. However, publicity which would tend to encourage the general public to visit a state natural area or state natural area reserve in greater numbers than its carrying capacity will be avoided.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591 & 352.239(2)(f).

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0412

Reports

At regular intervals the department may make or cause to be made a record of management activities and other influences affecting each state natural area and state natural area reserve.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0414

Instruments

The instruments of dedication shall include, but not be limited to, the following:

(1) The size, location, purpose, and resources of the state natural area or state natural area reserve;

(2) A management scheme written for each state natural area or state natural area reserve which describes:

(a) The conservation objective of the area;

(b) Proscribed, allowed and prohibited activities on the area; and

(c) Provisions as consistent as possible with OAR 736-045-0410 through 736-045-0448, which, unless otherwise noted, are a part of each management scheme.

(3) Agreements between the department and any agency necessary to establish the state natural area or state natural area reserve.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0416

State Natural Area Manager

Notwithstanding the instruments of dedication, managers of state natural areas or state natural area reserves shall not take any action or fail to take any action that is in conflict with an applicable statute, rule, regulation or policy relating to an agency having an interest in or responsibility for the state natural area or state natural area reserve.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0418

Fire

Prescribed fire may only be used as a management tool in such areas or situations where fire is needed to maintain or protect a state natural area or state natural area reserve as an ecosystem type specified in the management scheme.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0420

Water Level Control

Agencies shall manage state natural areas and the department shall manage state natural area reserves to maintain their natural water levels. Water levels which have previously been altered by man may be changed if provided for in the management scheme as essential for the restoration of natural conditions.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0422

Disturbance of Natural Features

The management of state natural area and state natural area reserves shall not include the cutting or removal of vegetation or the disturbance of other natural features, except that which is essential to carry out the management scheme enumerated in this division.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0424

Visitor Protection

Guard rails, fences, steps, and bridges may be provided when essential to the safety of a reasonable alert and cautious visitor.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0426

Erosion Control

Erosion and soil deposition due to disturbances of natural conditions by man within or outside a state natural area or state natural area reserve may be controlled as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0428

Scenic or Landscape Management

No measures or actions shall be taken to alter the natural growth or features of a state natural area or state natural area reserve for the purpose of enhancing its neatness, beauty, or amenities.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0430**Control of Succession**

Control of succession may be undertaken only if maintenance or restoration of a particular ecosystem type or preservation of threatened or endangered species is designated in the instruments of dedication as an objective of the state natural area or state natural area reserve. Based on scientific evidence of necessity, successional control measures may be undertaken as provided in the management scheme. Such measures shall be applied with caution and only to that part of the area as is necessary.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0432**Control of Introduced Plant Species**

Control of introduced plant species may be undertaken as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0434**Control of Wildlife Populations**

The control of wildlife populations on state natural areas and state natural area reserves shall be by agreements between the commission and Oregon Department of Fish and Wildlife, or other agency. As far as practical, any control measures shall be to correct those situations where wildlife populations are significantly affecting natural conditions on a state natural area or state natural area reserve.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - ORS 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0436**Introduction and Management of Special Species**

The introduction into or the management of a state natural area or state natural area reserve for special wildlife species shall be by agreement between the commission and the Oregon Department of Fish and Wildlife, Oregon Department of Agriculture or other agency as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0438**Use Tolerance**

The management scheme shall set forth the use tolerance or durability of all or any portion of a state natural area or state natural area reserve and specify the steps to be taken if overuse occurs.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0440**Collecting Permits**

A person wishing to collect material from a site for the purposes of research, education or restoration within a state natural area or state natural area reserve shall secure written permission from:

- (1) The department;
- (2) The owner of the land; and
- (3) The appropriate agency if any, including but not limited to the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0442**Boundary Markers**

When feasible, boundaries of a state natural area or state natural area reserve may be made evident by placing markers at corners or other strategic locations or by boundary signs.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0444**Fences**

Fences and barriers may be installed as provided in the management scheme.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0446**Trails**

The location and specifications of any trails may be established in the management scheme. Trails shall be adequate to provide for permitted use of a state natural area or state natural area reserve, but otherwise kept to a minimum. The use of paving materials, footbridges and elevated walks may be permitted when necessary.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0448**Other Structures and Improvements**

Signs and temporary research installations may be permitted within a state natural area or state natural area reserve. No other structures or facilities shall be located within a state natural area or state natural area reserve except as provided in the management scheme or this division.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0500**Amendments**

The commission may review and approve or disapprove any modification to the Plan submitted by the department.

Stat. Auth.: ORS 390.124(4)

Stats. Implemented: ORS 273.578(2)

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

736-045-0505**Waiver of Rules**

The commission may waive all or any part of this division that would prevent the establishment, management, or protection of a state natural area or state natural area reserve if such rule is in conflict with an applicable statute, rule, regulation, or policy relating to an agency having an interest in or responsibility for the state natural area or the department interest in or responsibility for the state natural area reserve.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 273.563 - 273.591

Hist.: PRD 2-2012, f. & cert. ef. 5-4-12; PRD 10-2012, f. & cert. ef. 12-13-12

DIVISION 50**HISTORIC PRESERVATION OFFICER****Procedural Rules****736-050-0001****Authority, Purpose and Policy**

(1) Authority: The authority for this rule is granted to the State Historic Preservation Officer in accordance with ORS 358.545.

(2) Purpose: These rules clarify the statutory requirement for participation in the Special Assessment of Historic Property program as provided in ORS 358.480 to 358.545.

(3) Policy: One of the goals of the State Historic Preservation Officer is to maintain, preserve and rehabilitate properties of

Oregon historical significance through historic preservation incentive programs, thereby creating a positive partnership between the public good and private property that promotes economic development, tourism, energy and resource conservation, neighborhood, downtown, and rural revitalization, efficient use of public infrastructure, and civic pride in our shared historical and cultural foundations.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.480 - 358.545

Hist.: HPO 2, f. & ef. 9-10-76; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

Special Assessment of Historic Property

736-050-0100

Special Assessment of Historic Property

ORS 358.480 to 358.545 provide the process for applying for a special assessment of historic property.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.487

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

736-050-0105

Definitions

As used in this division, unless the context requires otherwise:

(1) “Continuing Qualification Review” means a review of a property special assessment by SHPO in response to a request by a county assessor, local landmark commission or governing body to determine if the property continues to qualify for a special assessment.

(2) “National Register” means the National Register of Historic Places maintained by the United States Department of the Interior.

(3) “Preservation Plan” is defined in ORS 358.480(16).

(4) “SHPO” means the State Historic Preservation Officer appointed by the Governor pursuant to ORS 358.565 or the State Historic Preservation Office, depending on the context.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.480

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

736-050-0112

Requirement for Owner Expenditure

Under ORS 358.487(2)(a) the 10 percent expenditure requirement can include the value of donated materials, labor and/or services, provided the SHPO is satisfied there is legitimate justification for the values claimed.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.487

Hist.: PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

736-050-0120

Owner and SHPO Responsibilities

(1) An owner of specially-assessed property is responsible for maintaining the property in good condition. Noticeable deterioration of a property, or a failure to complete rehabilitation or other work required in a Preservation Plan during the time period designated, unless otherwise amended, may be sufficient cause for the SHPO to seek mandatory remedial action and/or to initiate removal of the property’s special assessment pursuant to OAR 736-050-0135.

(2) An owner of specially assessed property is responsible for providing the SHPO with a current mailing address and other contact information.

(3) The SHPO shall monitor owner compliance with program requirements by requesting such information from owners as is directly related to matters set forth in ORS 358.475 to 358.545 or in this division. If an owner does not respond to the request by providing the required information within the specified time, the SHPO may seek mandatory remedial action and/or initiate removal of the property’s special assessment pursuant to OAR 736-050-0135.

(4) Participants who entered the program prior to September 28, 2009:

(a) Must submit Preservation Plan updates to the SHPO in the 5th, 10th and 14th year of the 15-year benefit period in lieu of the reporting schedule in ORS 358.500(1); and

(b) Are exempt from the requirement to submit a report by the end of the fifth year demonstrating compliance with the expenditure commitment under the Preservation Plan as described in ORS 358.487(2)(a).

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.480, 358.500, & 358.515

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 2-2007, f. & cert. ef. 2-8-07; PRD 3-2007, f. & cert. ef. 4-13-07; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

736-050-0125

Changes and Alterations to Properties Approved for Special Assessment

(1) Pursuant to ORS 358.565, the SHPO delegates special assessment application and design review approval authority to the Deputy State Historic Preservation Officer (DSHPO). The DSHPO shall rely on the expertise of qualified staff in making program decisions.

(2) Owners shall apply in writing on forms provided by the SHPO or the governing body, whichever is appropriate, for review and written approval before undertaking any work on specially-assessed property.

(3) Additional material may include photos, drawings, as well as product and work descriptions.

(4) A change permissible in one circumstance does not necessarily constitute justification or a precedent for a similar change in another circumstance. The SHPO shall evaluate proposed changes on a case-by-case basis.

(5) Governing bodies approved by the SHPO for conducting historic reviews must have:

(a) A historic preservation ordinance or historic design guidelines based on the historic rehabilitation standards, as defined in ORS 358.480(12); and

(b) Demonstrated expertise interpreting and implementing the historic rehabilitation standards.

(6) Governing bodies shall address in their decision-making process, and in the written record of their decision, any recommendations provided to them by the SHPO as part of its review, including justification for either accepting or rejecting those recommendations.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.487, 358.490 & 358.565

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

736-050-0135

Removal of Special Assessments

(1) The SHPO may investigate a property's continued qualification for special assessment by its own initiative or at the request of other parties as described in ORS 358.509. SHPO may contact the property owner informally to determine the basic merits of the concerns.

(2) If changes to the property have been approved by the local governing body in accordance with ORS 358.500(4) and are part of the approved Preservation Plan, then SHPO cannot disqualify the property, and no further investigation will be pursued.

(3) If, in the opinion of SHPO, further investigation is warranted, SHPO shall contact the property owner in a timely manner by certified letter to request a report as authorized by ORS 358.500(3), and, if deemed appropriate, a site inspection. The letter shall include:

- (a) Property identification;
- (b) Reason for request of information;
- (c) Request for a detailed response; and
- (d) Information on appeal process.

(4) The property owner must submit a written report to SHPO within 30 days of receipt of the letter addressing all of the issues outlined in the letter. Failure to respond or to address all of the issues may be grounds for disqualification of the property from special assessment.

(5) SHPO shall respond to the property owner's report within 30 days with one of the following determinations:

- (a) Continues to qualify;
- (b) Continues to qualify with conditions (if the conditions are not met within the specified time, SHPO may initiate disqualification without further notice); or
- (c) No longer qualifies.

(6) The determination by SHPO shall be in writing and shall be sent to the property owner, the county assessor, and the governing body.

(7) A property owner may appeal the SHPO determination to the Historic Assessment Review Committee (HARC) (ORS 358.511) in accordance with the appeal process described in OAR 736-050-0140.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.500, 358.509, 358.515 & 358.525

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

736-050-0140

Appeal Process

(1) The Historic Assessment Review Committee (HARC) is the appeals body for all decisions made by the SHPO. The HARC will establish procedures for an appeal.

(2) An owner may appeal a ruling by requesting a contested case hearing pursuant to the provisions of ORS 183.411 to 183.425 and 183.440 to 183.470. A contested case hearing request must be filed no later than 30 calendar days after the date a decision is served by the HARC.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.545

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10; PRD 4-2010, f. & cert. ef. 2-3-10

State Advisory Committee on Historic Preservation

736-050-0200

Purpose

These sections of Chapter 736, Oregon Administrative Rules establish:

(1) Organization and duties of the State Advisory Committee on Historic Preservation.

(2) State Historic Preservation Office staff responsibilities to the Committee and procedures for conducting the National Register of Historic Places program.

(3) Procedures for Committee review and approval of nominations to the National Register.

(4) Procedures relating to the Committee and conflict-of-interest.

Stat. Auth.: ORS 358.617

Stats. Implemented: ORS 358.617

Hist.: PR 8-1991, f. & cert. ef. 6-13-91; PR 9-1995, f. 10-12-95, cert. ef. 10-16-95

736-050-0210

Statutory Authority

ORS 358.617 requires the State Historic Preservation Officer to adopt rules to carry out the duties and functions of the officer, including rules governing cultural resource management programs.

Stat. Auth.: ORS 358.617

Stats. Implemented: ORS 358.617

Hist.: PR 8-1991, f. & cert. ef. 6-13-91; PR 9-1995, f. 10-12-95, cert. ef. 10-16-95

736-050-0220

Federal Requirements

The National Historic Preservation Act of 1966, as amended, (**16 U.S.C. 470 et seq.**), specifies basic requirements for approval of state historic preservation programs. The requirements and responsibilities listed in the Act are incorporated into federal rule, **36 CFR Parts 60** (1994 edition), and **36 CFR Part 61** (1999 edition), which are hereby adopted by reference into this administrative rule.

Stat. Auth.: ORS 358.617

Stats. Implemented: ORS 358.605

Hist.: PR 8-1991, f. & cert. ef. 6-13-91; PR 9-1995, f. 10-12-95, cert. ef. 10-16-95; PRD 5-2002, f. & cert. ef. 4-10-02

736-050-0230

Definitions

(1) "Actual conflict of interest" (ORS 244.020(1)) — means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

(2) "Certified Local Government (CLG)" — A city or county that has been certified by the National Park Service, Department of the Interior to carry out the purposes of the National Historic Preservation Act, as amended. The CLG program is administered by the SHPO.

(3) "Committee" — The State Advisory Committee on Historic Preservation, a nine member body appointed by the Governor pursuant to ORS 358.622.

(4) "Criteria for Evaluation" — The National Register Criteria for Evaluation are those published criteria by which every property that is proposed for nomination to the National Register is judged.

(5) "Deputy SHPO" — The Deputy State Historic Preservation Officer, who serves as SHPO staff manager under the delegated authority of the State Historic Preservation Officer.

(6) "Determination of Eligibility" — A decision by the U.S. Department of the Interior that a property meets the National Register criteria for evaluation although the property is not listed in the National Register. A determination of eligibility does not make the property eligible for grants or tax incentives for which listing in the National Register is a prerequisite.

(7) “Handbook” — Compiled by SHPO staff, the guide is a publication on how to prepare nominations to the National Register based on National Register Bulletin 16.

(8) “Historic District” — A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of historic sites, buildings, structures, or objects united by past events or visually by plan or physical development.

(9) “Multiple Property Submission” — Includes all or a portion of the Register-eligible resources identified in a specific rural area, county, town, or section of a town or city, which are related to one another in a clearly distinguishable way. The resources may be of one building type or use, designed by a single architect, of a given archaeological period, or all those remaining which are related to a single historical event.

(10) “National Park Service (NPS)” — The federal agency, housed in the U.S. Department of the Interior, which oversees historic preservation programs enabled by the National Historic Preservation Act of 1966, as amended.

(11) “National Register of Historic Places” — The national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior. The Keeper of the National Register of Historic Places is an official of the National Park Service.

(12) “Potential conflict of interest” (ORS 244.020(7)) — means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person’s official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or person’s relative is associated, is a member or is engaged. The committee may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under Section 501(c) of the Internal Revenue Code.

(13) “SHPO” — The State Historic Preservation Officer appointed by the Governor pursuant to ORS 358.565 and **36 CFR 61.4(a)**. Also used to mean State Historic Preservation Office.

(14) “Special Assessment” — A state-sponsored financial incentive program (**ORS 358.425 et seq.**) which provides for a fifteen year “freeze” in the true cash value of National Register properties.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 358.617
Stats. Implemented: ORS 358.617
Hist.: PR 8-1991, f. & cert. ef. 6-13-91; PR 9-1995, f. 10-12-95, cert. ef. 10-16-95; PRD 5-2002, f. & cert. ef. 4-10-02

736-050-0240

Organization and Duties

(1) Members of the Committee appointed to fill unexpired terms shall serve for the remainder of the term of the vacating member.

(2) Unless the policy is waived by the Governor under extenuating circumstances (e.g., lack of qualified professionals to represent a required discipline), a Committee member may serve no more than two consecutive terms of appointment in his or her own right. If the member’s original appointment fulfilled the unexpired term of another, he or she may be considered for reappointment twice in succession thereafter.

(3) Each member shall sign an affidavit acknowledging that he or she has read applicable conflict-of-interest provisions in state

and federal rules. Affidavits are maintained by the nominations coordinator.

(4) Pursuant to **36 CFR 61.4(f)(6)** and ORS 358.622 the Committee shall:

(a) Review all proposed nominations to the National Register of Historic Places to determine whether or not the property meets the criteria for evaluation;

(b) Participate in the review of appeals to the Keeper of the National Register of nominations rejected by the SHPO, and provide written opinions on the significance of the properties;

(c) Periodically review and make recommendations to the SHPO on amendments to the Oregon State Historic Preservation Plan, and provide advice on comprehensive historic preservation planning process;

(d) Provide advice, guidance, and professional recommendations to the SHPO on matters relating to federal and state historic preservation programs, policies and budgets, including but not limited to grant applications, annual staff work programs, and matters relating to the special assessment of historic property under provisions of ORS 358.475 et seq.

Stat. Auth.: ORS 358.617
Stats. Implemented: ORS 358.622
Hist.: PR 8-1991, f. & cert. ef. 6-13-91; PR 9-1995, f. 10-12-95, cert. ef. 10-16-95; PRD 5-2002, f. & cert. ef. 4-10-02

736-050-0250

Staff Activities Relating to the National Register Program

(1) Pursuant to ORS 358.565, the SHPO appoints the National Register Nominations Coordinator as the staff professional who is qualified to coordinate the state’s National Register nominations program, including serving as staff to the State Advisory Committee on Historic Preservation.

(2) Notification letters must be issued to property owners and affected public officials not less than 30 days nor more than 75 days in advance of the nomination review date.

(3) Individuals, local government officials, landmark commissions, or CLGs may provide comments on the proposed nomination to the SHPO, Deputy SHPO, or nominations coordinator in advance of the meeting. Written or oral comments must be received not later than the announced date of the Committee meeting. The period for public comment shall not be less than 30 days. For properties located in the jurisdiction of a CLG, and for properties in public ownership, the period for public comment shall not be less than 60 days. Objections to listing in the National Register by the owners of private property must be in the form of a notarized written statement certifying the correspondent’s ownership interest and the basis for objection. The coordinator will acknowledge receipt of written comments by form letter. Statements of objection on the part of owners of public property which the Committee finds to meet criteria of the National Register will be forwarded for consideration by the Keeper of the National Register. However, under federal rule, a statement of objection will not automatically preclude listing in the National Register of a property that is in public ownership.

(4) The coordinator shall conduct a substantive review of all proposed nominations and prepare written summary comments for presentation to the Committee. This review shall apply the National Register Criteria for Evaluation to the nomination, focusing on physical characteristics, integrity, the applicable criteria and context for evaluation. The coordinator shall make recommendations concerning the eligibility of properties proposed for nomination. These comments shall be retained in individual nomination files.

(5) Notification letters to property owners/proponents shall be prepared to confirm the action taken by the Committee on the review date. Separate form letters for approval, deferral, or denial shall be used. Approval letters may be accompanied by a list of needed supplemental documentation. Deferral or denial letters shall be accompanied by an explanation of why the action was deferred or denied and what steps might be taken to make a valid re-submission of the nomination, if any.

(6) Once forwarded to the Keeper of the National Register, nominations may be returned to the SHPO for additional informa-

tion, or can be subject to a supplementary listing record that provides for minor technical corrections without return of the registration form.

(7) Formal notification of listing is sent to the affected property owner, with copies to the appropriate public officials and landmarks commissions. Notices are mailed to each owner of property in historic districts or in multiple property submissions.

Stat. Auth.: ORS 358.617

Stats. Implemented: ORS 358.565(3)

Hist.: PR 8-1991, f. & cert. ef. 6-13-91; PR 9-1995, f. 10-12-95, cert. ef. 10-16-95; PRD 5-2002, f. & cert. ef. 4-10-02

736-050-0260

Committee Procedures for Review and Approval of Nominations to the National Register

(1) The Committee shall review all National Register nominations meeting the documentation requirements of the National Park Service and shall recommend to the SHPO whether or not each nomination meets the National Register Criteria for Evaluation.

(2) Due dates for receipt of nominations are not less than 80 days prior to a scheduled meeting and are published in the Handbook.

(3) Neither the SHPO nor the Committee chairman shall entertain a request to add a nomination proposal to a closed agenda unless both the property owner(s) and head of the affected local jurisdiction(s) waive the normal commenting period.

(4) During Committee meetings, the nominations coordinator or other SHPO staff shall present a summary statement to introduce the nomination proposal, using slides for illustration and noting any written comments received prior to the meeting. Staff shall recite the criteria under which the nomination proposal is appropriately evaluated and shall provide recommendations concerning eligibility of the nominated property.

(5) Members of the Committee shall disclose and act upon actual or potential conflicts of interest in accordance with state law, and shall avoid even the appearance of conflict of interest. Conflict of interest is described as any action taken by a Committee member in the course of Committee business that results in, or might result in a direct pecuniary benefit or detriment to the Committee member, to a member of the Committee member's household, or to the Committee member's business as defined by statute (ORS 244). As this relates to meetings of the Committee the following applies:

(a) A member shall publicly announce an actual or potential conflict-of-interest prior to any Committee action on the matter in conflict but need not disclose any monetary value involved. The member shall disclose the nature of the conflict. Each member is responsible for ascertaining and disclosing his or her respective actual or potential conflicts-of-interest, but not conflicts of other members;

(b) In order to avoid even the appearance of conflict-of-interest in the conduct of the Committee's affairs, each member shall publicly announce the existence of any circumstances that might appear to a reasonable person to pose an actual or potential conflict-of-interest as that term is defined in this rule. Upon such disclosure, the remaining members shall determine on a case-by-case basis by a majority vote whether the appearance of a conflict exists;

(c) A member having an actual or potential conflict of interest, as confirmed by vote of the Committee, may not vote concerning the matter in conflict and must absent himself or herself from the meeting during the discussion, review, scoring of, and voting on the matter in apparent conflict. If removal of a member(s) from discussion and voting would result in loss of a quorum, as defined by statute, the members(s) shall not withdraw and shall vote. If a quorum is present, a majority vote of the five-member quorum or a majority vote of the remaining members voting, whichever is greater, shall be required to approve an action;

(d) The nature of any actual, potential, or apparent conflict of interest disclosed by a committee member and the disposition of the matter in conflict by the committee shall be recorded in the meeting's minutes.

(6) In order to avoid even the appearance of conflict-of-interest in the conduct of the Committee's affairs, a member shall not:

(a) State or imply that he or she is able to influence any action by the Committee;

(b) Accept anything of value from any person when the member knows or should know, or that it may be perceived by the public, that it is for the purpose of influencing his or her action as a Committee member;

(7) Failure to observe conflict-of-interest provisions of this rule shall be considered due cause for the State Historic Preservation Officer to recommend the Governor's request for a member's resignation.

(8) In regard to historic district or multiple property submissions, the following applies:

(a) The chairman may, at his or her option, assign a Committee member to monitor the progress of each historic district or multiple property nomination. Members responsibilities in this regard can include: Meeting with the proponents or consultants, inspecting properties (with owner consent) and proposed boundaries, or review of draft nomination documents;

(b) The proponent shall present a draft of the nomination to the Committee at a regularly scheduled meeting of the Committee. At that time, the proponent shall provide the justification for and geographic scope of the proposed nomination and an overview of the contributing and non-contributing resources within the district or property group using slides for illustration. The proponent may report on such other aspects of the work in progress as may be appropriate or called for by the Committee;

(c) The Committee may approve a district or multiple property nomination at its first reading, or choose to hold over the district or multiple property nomination to a subsequent meeting.

(9) Once staff has presented a nomination, the chairman shall call for comments from the proponent, opponent or other interested parties present. The total time allowed for testimony shall be determined by the chair.

(10) The SHPO and DSHPO may participate in discussion of a nomination, but shall not be voting members of the Committee.

(11) Members of the Committee should not abstain from voting except on a matter involving conflict of interest, in which case the reason for abstention will have been disclosed.

(12) A nomination for which approval has been denied may be reconsidered by the Committee at a later meeting if the proponent has resolved the objections or deficiencies in a revised nomination. The reason(s) for the Committee's vote to deny approval can be explained or reviewed for the proponent at the meeting, or relayed to the proponent in writing after the meeting.

(13) Pursuant to **36 CFR 60.12**, a proponent or local government may appeal directly to the Keeper of the National Register to evaluate a nomination for which a recommendation has been denied by vote of the Committee. An appeal to the Keeper also may be made, for any Committee-recommended property which the State Historic Preservation Officer has failed to nominate to the National Register.

(14) If the Committee has recommended nomination of a property and the property owner (or majority of owners of property within a district or multiple property group) has objected to the nomination by notarized statement pursuant to **36 CFR 60.6(s)**, the registration form nonetheless should be forwarded to the Keeper of the National Register for a Determination of Eligibility. A property determined eligible is not listed in the National Register, and the property may not be listed until the Keeper receives a notarized statement from the property owner(s) that he or she (or they) no longer objects to listing.

(15) Nominations of federally-owned property which are submitted to the State Historic Preservation Officer for a signature of concurrence in accordance with federal Executive Order 11593 may be reviewed by the Committee following normal procedures or may be deferred to the next regular meeting. In such cases, the Committee shall vote on whether or not the property meets the cri-

teria of the National Register and the nomination should have the State Historic Preservation Officer's signature of concurrence.

Stat. Auth.: ORS 358.617

Stats. Implemented: ORS 358.622(2)

Hist.: PR 8-1991, f. & cert. ef. 6-13-91; PR 9-1995, f. 10-12-95, cert. ef. 10-16-95; PRD 5-2002, f. & cert. ef. 4-10-02

DIVISION 51

ARCHAEOLOGICAL PERMITS

736-051-0000

Dispute Resolution Process

(1) OAR 736-051-0000 through 736-041-0050 establish procedures the Oregon Parks and Recreation Department shall use in resolving a dispute over:

(a) The issuance of an archaeological permit pursuant to ORS 390.235;

(b) Curation facilities for archaeological objects uncovered pursuant to a permit issued under ORS 390.235;

(c) The disposition of human remains, associated material objects, or funerary objects as identified in ORS 97.750.

(2) It is the policy of the Oregon Parks and Recreation Department and the Oregon State Historic Preservation Office to use best efforts to protect the confidentiality of information pertaining to the location of archaeological sites that may be disclosed during the dispute resolution process.

Stat. Auth.: ORS 390.124 & 390.240

Stats. Implemented: ORS 390.124 & 390.240

Hist.: PR 6-1994, f. & cert. ef. 4-22-94

736-051-0010

Definitions

As used in OAR 736-051-0000 through 736-051-0050, unless the context requires otherwise:

(1) "Arbitration" means a process whereby a neutral third party or panel considers the facts and arguments presented by disputing parties and renders a decision.

(2) "Mediation" means a process in which a third party assists and facilitates two or more parties to a dispute in reaching a mutually acceptable resolution of the dispute.

(3) "Negotiation" means an informal process by which an attempt is made by disputing parties to resolve the dispute without the need for mediation or arbitration.

(4) "Entity with Approval Authority" means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department, an appropriate Indian tribe, the Oregon State Museum of Anthropology, the state agency or local governing body charged with management of the public land in question.

(5) "Applicant" means a person who is applying for an archaeological permit pursuant to ORS 390.235.

(6) "Recognized Curatorial Facility" means the Oregon State Museum of Anthropology (OSMA).

(7) "Alternate Curatorial Facility" can mean one or more of the following:

(a) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued under ORS 390.905 et seq., if approved by OSMA with the concurrence of the appropriate Indian tribe;

(b) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe;

(c) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide an inventory of material to OSMA within six months of collection.

(8) "Human Remains" has the meaning given that term in ORS 358.905.

(9) "Funerary Objects" have the meanings given that term in ORS 358.905.

(10) "Associated Material Objects" has the same meaning as section (9) of this rule.

(11) "Burial Goods" as found in ORS 309.240(1)(b), has the same meaning as section (9) of this rule.

(12) "Sacred Object" has the meaning given that term in ORS 358.905.

(13) "Qualified Archaeologist" has the meaning given that term in ORS 390.235.

(14) "Professional Archaeologist" has the meaning given that term in ORS 97.740(6).

(15) "Archaeological Permit" means the permit issued under ORS 390.235.

(16) "Archaeological Object" has the meaning given that term in ORS 358.905.

(17) "Indian Tribe" has the meaning given in ORS 97.740(4).

(18) "Appropriate Indian Tribe" means the Indian tribe designated by the Commission on Indian Services as having the greatest interest in the subject matter relating to the dispute.

Stat. Auth.: ORS 390.124 & 390.240

Stats. Implemented: ORS 390.124 & 390.240

Hist.: PR 6-1994, f. & cert. ef. 4-22-94

736-051-0020

Disputes Covered by the Dispute Resolution Process

These rules cover disputes among or between: Entities that have statutory authority to approve or disapprove an archaeological permit, or to approve or disapprove a curatorial facility to house archaeological objects, or to approve or disapprove the disposition of human remains, associated material objects, or funerary objects; and applicants for such permits, facilities or dispositions:

(1) Disputes may arise among or between approving entities and applicants over the terms, conditions, provisions or for approval or disapproval of an archaeological permit where:

(a) An entity with approval authority over an application for a permit withholds that approval;

(b) An entity with approval authority disagrees over the terms, conditions or provisions of the permit;

(c) The applicant disagrees with the terms, conditions or provisions of the permit as established by an entity with approval authority.

(2) Disputes may arise over the selection of curatorial facilities to house archaeological objects uncovered on public lands where:

(a) An entity that has approval authority over the choice of a recognized or alternate curatorial facility withholds that approval;

(b) The applicant disagrees with the choice of a recognized or alternate curatorial facility as made by an entity with approval authority.

(3) Disputes may arise over the disposition of human skeletal remains, associated material objects, or funerary objects as described in ORS 97.750 where:

(a) The appropriate Indian tribe has denied consent within 30 days of the mailing of the request for consent;

(b) The professional archaeologist proposing the excavation (or the company or agency the archaeologist represents), disagrees with the terms, conditions or provisions of the Indian tribe's written consent, if any.

Stat. Auth.: ORS 390.124 & 390.240

Stats. Implemented: ORS 97.750 & 390.235

Hist.: PR 6-1994, f. & cert. ef. 4-22-94

736-051-0030

Informal Dispute Resolution (Negotiation)

(1) If the permit applicant or an entity with approval authority over an application for a permit objects to the approval or disapproval of a permit or any of its terms, conditions or provisions, it shall notify the State Historic Preservation Office (SHPO) in writing.

(2) The SHPO shall initiate an informal process by which the disputing parties shall attempt to reach agreement. By mutual agreement, the disputing parties may include the SHPO or other third parties in this process, but they shall not be compensated. It is recommended that the informal dispute resolution process be completed within 30 days.

(3) At any time, a disputing party can terminate the informal dispute resolution process and submit the dispute to mediation.

Stat. Auth.: ORS 390.124 & 390.240
Stats. Implemented: ORS 390.240
Hist.: PR 6-1994, f. & cert. ef. 4-22-94

736-051-0040

Mediation

(1) The entities with approval authority in consultation with the staff of the Dispute Resolution Commission (DRC), shall compile and maintain a list of potential mediators.

(2) Within ten calendar days of receipt of a written request to mediate, the SHPO shall provide the disputing parties with a list of at least three potential mediators, including written credentials of each one.

(3) Within ten calendar days of receipt of the list of potential mediators, each disputing party shall notify the SHPO if one or more of the mediators would be acceptable.

(4) Disputing parties may jointly interview potential mediators. All parties shall agree on the choice of mediator within five working days after the list of acceptable mediators is forwarded to SHPO.

(5) The mediator shall assist the disputing parties in preparing for the negotiation. Such preparations shall include:

- (a) A statement of the issues to be mediated;
- (b) A list of the parties who will participate in the mediation;
- (c) An estimated completion date for the mediation process.

By mutual consent, deadlines may be established for ending or continuing the mediation process;

(d) A statement of what shall constitute agreement. An understanding of what constitutes agreement shall include adequate time for each disputing party's decision-making body to ratify any tentative agreement reached by the mediator and the disputing parties;

(e) Provisions for protecting confidential information about site location, traditional or sacred practices, or other sensitive information associated with archaeological sites and objects;

(f) Provisions for payment of the mediator's services, if the services are not voluntary;

(g) Any other procedural matters the disputing parties determine need resolution before mediation begins on the substantive issues.

Stat. Auth.: ORS 390.124 & 390.240
Stats. Implemented: ORS 390.240
Hist.: PR 6-1994, f. & cert. ef. 4-22-94

736-051-0050

Arbitration

(1) If the mediation does not yield a result satisfactory to all parties, the disputing parties shall notify the SHPO in writing, and the dispute shall proceed to arbitration.

(2) The SHPO shall notify each of the following of the need to designate one representative to serve on an arbitration panel:

- (a) The State Historic Preservation Office;
- (b) The Commission on Indian Services;
- (c) The Oregon State Museum of Anthropology;
- (d) The governing bodies of the federally-recognized Indian tribes;

- (e) The Dispute Resolution Commission.

(3) All panel members shall be designated within ten calendar days of receipt of SHPO's notification.

(4) By consensus, the panel shall:

(a) Choose a chair who shall be responsible for scheduling arbitration sessions, notifying all parties with standing in the dispute, and convening the arbitration session; and

(b) Establish the procedural framework for the arbitration.

(5) The issues to be arbitrated are limited to those which could not be resolved by the mediation process.

(6) Any party that declines to participate in the mediation or arbitration process waives its right to approve the permit application, or to set terms, conditions or provisions on the approval of the permit application.

(7) The decision of the arbitration panel may be appealed pursuant to ORS 36.365.

Stat. Auth.: ORS 390.124 & 390.240
Stats. Implemented: ORS 390.240

Hist.: PR 6-1994, f. & cert. ef. 4-22-94

Archaeological Permits

736-051-0060

Application for Archaeological Permit

(1) OAR 736-051-0060 through 736-051-0090 establish procedures the Director of the Parks and Recreation Department shall use in issuing archaeological permits on public and private lands.

(2) It is the policy of the Oregon Parks and Recreation Department (OPRD) and the Oregon State Historic Preservation Office (SHPO) that information pertaining to the location of archaeological sites, cairns, burials, human remains, funerary objects, sacred objects or objects of cultural patrimony is confidential information that will be disclosed only as required by law.

Stat. Auth.: ORS 390.235(1)(d)
Stats. Implemented: ORS 390.235
Hist.: PR 1-1995, f. & cert. ef. 1-3-95

736-051-0070

Definitions

As used in OAR 736-051-0060 through 736-051-0090 unless the context requires otherwise:

(1) "Alter" means to disturb or remove any part of an archaeological site or a feature within an archaeological site.

(2) "Applicant" means the person who is applying for an archaeological permit pursuant to ORS 390.235.

(3) "Appropriate Indian Tribe" means the Indian tribe designated by the Commission on Indian Services as having the greatest interest in the permit application.

(4) "Archaeological Site" means a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects and the contextual associations of the objects with:

(a) Each other; or

(b) Biotic or geological remains or deposits. Examples of archaeological sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.

(5) "Archaeological Object" means an object that:

(a) Is at least 75 years old;

(b) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and

(c) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.

(6) "Archaeological Permit" means the permit issued under ORS 390.235.

(7) "Artifact" means the same as "Archaeological Object."

(8) "Associated Material Objects" means the same as "Funerary Object."

(9) "Burial Goods," as found in ORS 390.240(1)(b), means the same as "Funerary Objects."

(10) "Curatorial Facility" means either a:

(a) "Recognized" curatorial facility, which is the Oregon State Museum of Anthropology (OSMA); or

(b) "Alternate" curatorial facility, which is defined as follows:

(A) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued, if approved by OSMA with the concurrence of the appropriate Indian tribe; or

(B) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe; or

(C) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide a material inventory to OSMA within six months of collection.

(11) "Excavate" means to break the ground surface to remove any artifact or to remove an embedded artifact, feature or non-arti-

factual material in an archaeological site for the purposes of performing anthropological research.

(12) "Exploratory Excavation" means digging into or otherwise disturbing the earth to determine whether or not an archaeological site exists at the excavation.

(13) "Funerary Objects" means any artifacts or objects that, as part of a death rite or ceremony of a culture, are reasonably believed to have been placed with the individual remains either at the time of death or later.

(14) "Human Remains" means the physical remains of a human body, following death, including, but not limited to bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.

(15) "Object of Cultural Patrimony" means:

(a) An object having ongoing historical, traditional or cultural importance central to the native Indian group or culture itself, rather than property owned by an individual native Indian, and which, therefore, cannot be alienated, appropriated or conveyed by an individual regardless of whether or not the individual is a member of the Indian tribe. The object shall have been considered inalienable by the native Indian group at the time the object was separated from such group;

(b) Does not mean unassociated arrowheads, baskets or stone tools for portions of arrowheads, baskets or stone tools.

(16) "Person" means an individual, a partnership, a public or private corporation, an unincorporated association or any other legal entity. "Person" includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(17) "Private Lands" means lands within the State of Oregon owned by a person, except "Private lands" does not include federal lands or nonfederal public lands, or any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(18) "Public Lands" means any lands owned by the State of Oregon, a city, county, district or municipal or public corporation in Oregon.

(19) "Qualified Archeologist" means a person who has the following qualifications:

(a) A post-graduate degree in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology, or a documented equivalency of such a degree;

(b) Twelve weeks of supervised experience in basic archaeological field research, including both survey and excavation and four weeks of laboratory analysis or curating; and

(c) Has designed and executed an archaeological study, as evidenced by a Master of Arts or Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field research.

(20) "Recognized Educational Institution" means:

(a) An accredited member of a state system of higher education; or

(b) An accredited academic or higher education institution with an accredited program in anthropology.

(21) "Recognized Scientific Institution" means a chartered museum, organization or society with a commitment to the scientific method.

(22) "Removal" means taking any artifact or non-artifactual remains on, imbedded in, or under the surface of the ground.

(23) "Sacred Object" means an archaeological object or other object that:

(a) Is demonstrably revered by any ethnic group, religious group or Indian tribe as holy;

(b) Is used in connection with the religious or spiritual service or worship of a deity or spirit power; or

(c) Was or is needed by traditional native Indian religious leaders for the practice of traditional native Indian religion.

Stat. Auth.: ORS 390.235(1)(d)

Stats. Implemented: ORS 358.920 & 390.235

Hist.: PR 1-1995, f. & cert. ef. 1-3-95; PR 1-1997, f. & cert. ef. 3-31-97; PRD 1-1999, f. 3-2-99, cert. ef. 3-3-99

736-051-0080

Process for Applying for an Archaeological Permit on Public Lands

(1) A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public lands any material of an archaeological, historical, prehistoric or anthropological nature without first obtaining a permit issued by the State Parks and Recreation Department.

(2) A person who is considering a ground-disturbing project on public lands should contact the appropriate Tribe to inquire about the presence of archaeological sites and objects in the project area.

(3) An archaeological permit may be issued to:

(a) A qualified archaeologist in the employ of a person conducting an excavation, examination or gathering of archaeological objects for the benefits of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;

(b) A qualified archaeologist to salvage archaeological objects from unavoidable destruction; or

(c) A qualified archaeologist sponsored by a recognized institution of higher learning, private firm or an Indian tribe as defined in ORS 97.740.

(4) A person who desires an archaeological permit pursuant to ORS 390.235 must submit an application to the Oregon Parks and Recreation Director or his or her designee. The application must be complete and be accompanied by:

(a) A map that clearly shows the location of the proposed work that enables the landowner or land managing agency, SHPO and the appropriate Indian tribe to clearly understand the location of the proposed action;

(b) A resume(s) or vita(s) for the person(s) in direct charge of field work. The resume or vita must demonstrate that the person(s) meets or exceeds the qualifications listed in OAR 736-051-0080(3);

(c) A research design that explicitly develops the rationale behind the proposed research, giving the theoretical orientation, justification for problem selection, logic and procedures for the research strategy. The design must define the universe of study, establish realistic minimal expectations and a realistic schedule of research and provide justified recovery procedures;

(d) The name, address and phone number of the landowner or land managing agency;

(e) A copy of the notice required under ORS 358.950(1), if the excavation is associated with a prehistoric or historic American Indian archaeological site;

(f) A curation facility for archaeological objects uncovered during the project.

(5) Upon receipt of a complete application, the Director or his or her designee shall determine whether public lands, as defined in OAR 736-051-0070(16), are involved.

(6) In consultation with the Commission on Indian Services, the SHPO shall identify the appropriate tribe to be mailed copies of the complete archaeological permit application.

(7) As soon as practicable, but generally not to exceed two working days, the SHPO shall mail copies of the complete application to the appropriate Indian tribe, if any, the land managing agency, Commission on Indian Services, Oregon State Museum of Anthropology, and the applicable local government planning department.

(8)(a) Before issuing a permit, the Director or his or her designee shall contact the appropriate Indian tribe, if any, the landowner or head of the land managing agency, the Director of the Oregon State Museum of Anthropology at the University of Oregon State Museum of Anthropology at the University of

Oregon, the appropriate local planning commission, and the Commission on Indian Services;

(b) Notification shall consist of mailing the complete application and its attachments to appropriate state and local entities and the appropriate Indian tribe. The notification shall solicit comments, recommendations for conditions, or objections to the application. Notification letters shall include a highlighted confidentiality statement. Responses to the solicitation must be received within 30 calendar days of the date of the letter. SHPO shall send copies of all responses to the applicant;

(c) If the archaeological site in question is associated with a prehistoric or historic native Indian culture, the applicant shall consult with the appropriate Indian tribe during the 30 day period. At a minimum, consultation shall consist of meeting(s) satisfactory to the tribal governing body and/or its designee, and shall include discussion of the proposed work, archaeological permit terms or conditions, tribal monitoring of the archaeological and project work, contingency plans for discovery of remains and artifacts during both archaeological work and project development, and curation of artifacts;

(d) If an entity listed in subsection (a) of this section makes any objection or requests a condition to the application, the applicant shall contact the entity and attempt to resolve the issue. If the objection or request for condition is resolved by the applicant and the entity, they shall notify the SHPO in writing of the resolution. If the applicant and the entity cannot resolve the objection or request for condition within the 30 calendar days allowed for comment on the permit application, the Director or his or her designee shall determine what effect, if any, the objection or proposed condition shall have on the permit application.

(9)(a) Notwithstanding the provisions of section (8) of this rule, any person or entity who discovered an archaeological or historic site or burial during construction may request an expedited consultation process. The request may be granted whenever the Director or his or her designee, in consultation with the parties listed in subsection (8)(a) of this rule, determines that the 30 day consultation period provided in subsection (8)(b) of this rule will result in extreme economic hardship to the person or entity making the request, or an undue risk to public health, life or safety, or an undue threat to the site or burial. Examples of situations creating undue risk to public health, life or safety include hazardous material spills, breach of regional flood control facilities, and pipeline failures.

(b) If the Director or his or her designee determines that an expedited consultation process is warranted, the following procedures apply:

(A) The applicant shall contact the Director or his or her designee by telephone and/or facsimile to provide the information described in sections (4) and (7) of this rule;

(B) During the following 48 hours (excluding Saturday, Sunday, and any legal or tribal holidays), the Director or his or her designee shall consult by telephone and/or facsimile with the persons or entities described in section (8) of this rule. If the head of the land managing agency or the tribal governing body of the appropriate Indian tribe objects in writing to an expedited review, the Director or his or her designee will not proceed with the expedited review;

(C) The applicant may proceed with approval from the Director or his or her designee, to be followed by written notice as provided in section (12) of this rule.

(c) For purposes of this section, "extreme economic hardship" means a quantifiable and verifiable expenditure or fiscal loss that is unreasonable for the requestor to bear under the circumstances, including but not limited to the following:

(A) The importance of the project or non-archaeological use that would be delayed during the consultation period;

(B) The additional costs that would be incurred during the consultation period;

(C) The total cost of the project;

(D) The degree to which expedited consultation could achieve the same protection of the site as consultation over the standard 30 day permit application review period;

(E) Whether the requestor reasonably could have avoided the additional costs by anticipating the need for a permit and consultation at an earlier time.

(10) After considering the application, maps, research design, vita and all comments, recommendations for conditions, or objections received by entities with approval authority during consultation, the Director or his or her designee may issue the permit without conditions, issue the permit with conditions or deny the permit. The permit does not relieve the applicant of compliance with other federal or state requirements, including, but not limited to, ORS 97.740 to 97.760, 358.905 to 358.955, and 390.235 to 390.240.

(11) For purposes of this rule, no permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made, and without the approval of the appropriate Indian tribe.

(12) The applicant and all parties defined in ORS 390.235(1)(f) shall be notified of the Director's decision by first class mail.

(13) Disputes among or between applicants and entities with approval authority shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.

(14) The permit issued by the Department shall be reviewed and may be suspended or revoked if human remains, funerary objects or sacred objects are encountered during an excavation.

Stat. Auth.: ORS 390.235 & 390.240

Stats. Implemented: ORS 390.235

Hist.: PR 1-1995, f. & cert. ef. 1-3-95

736-051-0090

Process for Applying for an Archaeological Permit on Private Lands

(1) A person may not knowingly and intentionally excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object from private lands in Oregon unless that activity is authorized by a permit issued pursuant to this rule:

(a) Permits on private lands will not be required for exploratory excavation to determine the presence of an archaeological site;

(b) The provisions of this rule do not apply to a person who unintentionally discovers an archaeological object that has been exposed by the forces of nature and retains the object for personal use, except for sacred objects, human remains, funerary objects or objects of cultural patrimony;

(c) Collection of an arrowhead from the surface of private land is permitted if collection can be accomplished without the use of any tool.

(2)(a) It is strongly recommended that anyone considering a development project on private lands on previously undisturbed ground contact the SHPO and the appropriate Tribe(s) to determine whether archaeological sites and objects are likely to be present in the project area. This contact will reduce the chance that the project will be delayed due to discovery of an archaeological site;

(b) SHPO shall coordinate, along with the governing bodies of the Oregon Tribes and the CIS, joint efforts to create and disseminate informational materials that will be distributed to local governments, federal and state agencies, and permitting authorities on the requirements of ORS Chapters 97, 358 and 390, and these rules.

(3) A person who desires an archaeological permit to excavate or remove objects on private lands pursuant to ORS 358.920(1)(a) and 390.235 must submit a request to the Oregon State Parks and Recreation Director or his or her designee:

(a) The application must be complete and meet the requirements of the public lands rule section OAR 736-051-0080(4). In addition, an application for an archaeological permit on private lands must be accompanied by a copy of the landowner's written permission pursuant to ORS 358.920(5), and a written statement concerning the disposition of any recovered artifacts not covered by 359.920(4)(b);

(b) The archaeological permit process for private lands is the same as that found in OAR 736-051-0080(6), (7), (8), (9), (10), (12) and (14) relating to permits on public lands. The SHPO must be satisfied that reasonable concerns of the appropriate Tribe(s) have been addressed by the applicant.

(4) Upon receipt of an application, the Director or his or her designee may contact the landowner to verify the written permission, location and activities of the proposed activity.

(5) Unless authorized by ORS 97.750, an archaeological permit on private lands shall not be issued if the activity includes burials, funerary objects, or human remains.

(6) If an applicant disputes the permit conditions, or the Director's denial of a permit, the dispute shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.

Stat. Auth.: ORS 390.235 & 390.240

Stats. Implemented: ORS 390.235

Hist.: PR 1-1995, f. & cert. ef. 1-3-95

DIVISION 52

STATE AGENCY TRANSFER OF HISTORIC ARTIFACTS

736-052-0000

Purpose

The department is required to adopt administrative rules by ORS 358.640(4). This division provides the department procedure for considering a request for approval from a state agency to transfer, sell, demolish, substantially alter or otherwise dispose of any historic artifacts pursuant to ORS 358.640(3) and 358.647. This division specifically excludes real property matters governed by ORS 358.653 and archaeological objects provided for in ORS 358.905 to 358.961.

Stat. Auth.: ORS 358.640(4)

Stats. Implemented: ORS 358.640(3) & 358.647

Hist.: PRD 4-2003, f. & cert. ef. 5-16-03

736-052-0001

Definitions

For the purposes of this division the following definitions shall apply:

(1) "Department" means the Oregon Parks and Recreation Department.

(2) "Historic artifacts" means three-dimensional objects including furnishings, art objects and items of personal property which have historic significance. "Historic artifacts" does not include paper, electronic media or other media that are classified as public records. "Historic Artifacts" does not include "archaeological objects" as defined in ORS 358.905(1)(a).

(3) "Historic Significance" as used in the definition of "historic artifacts" connotes a historic artifact that was important, meaningful, or influenced past events, or is famous. Historic significance may be determined by the Oregon Heritage Commission or by the department based on an inventory of historic artifacts, including:

(a) The inventory of historic property prepared by the former Historic Properties Commission;

(b) A local government's acknowledged comprehensive plan inventory of historic resources under Statewide Planning Goal 5; or

(c) The inventory of state-owned cultural properties coordinated by the Oregon Heritage Commission pursuant to ORS 358.595; or

(d) A state agency's inventory of historic artifacts prepared by a professional.

(4) "Indian tribe" as provided in ORS 182.162(2), means a federally recognized Indian tribe in Oregon.

(5) "Museum" as provided in ORS 358.415(1), is an institution located in Oregon and operated by a nonprofit corporation or public agency, primarily educational, scientific or aesthetic in purpose, which owns, borrows or cares for, and studies, archives or exhibits property.

(6) "Oregon Heritage Commission" means the commission charged, along with the department, with identifying and cataloging state-owned historic artifacts.

(7) "Professional" means a person who possesses knowledge, experience, and demonstrable competence in methods and techniques appropriate to evaluate the nature and content of an item or collection of historic artifacts.

(8) "State agency" as provided in ORS 358.635(2), includes all officers, employees, agencies, boards, committees and commissions of the legislative, executive, administrative and judicial branches of state government.

(9) "Surplus Property" as provided in OAR 125-050-0000(11), means all personal property, vehicles and titled equipment excess to the state's needs available for sale to state agencies, political subdivisions of the state and private not-for-profit organizations and/or the general public.

(10) "Temporary transfer or loan" includes all deposits of state-owned historic artifacts with a state or federal agency, a person as defined in ORS 174.100(5), a museum, local government as defined in ORS 174.116(1), or an Indian tribe, which are not accompanied by a transfer of title to the property.

Stat. Auth.: ORS 358.640(4)

Stats. Implemented: ORS 358.640(3) & 358.647

Hist.: PRD 4-2003, f. & cert. ef. 5-16-03

736-052-0010

Request for Department Review

(1) Any state agency shall request approval from the department prior to transferring, selling, demolishing, substantially altering or otherwise disposing of any historic artifact. The approval request shall include a statement from the requesting state agency that the state agency has:

(a) Complied with applicable requirements of Native American Graves Protection and Repatriation Act, 25 USC Chapter 32 and ORS Chapter 97, Indian Graves and Protected Objects. This includes consultation with Indian tribe(s), in coordination with the Legislative Commission on Indian Services.

(b) Complied with the state surplus property provisions of ORS 279.800 to 279.833 and OAR chapter 125, division 25, or other applicable laws, including ORS Chapter 351.

(c) Established a property interest in the historic artifact(s) proposed for transfer that would permit the state agency to dispose of the historic artifact(s). Proof of such a property interest may be made by submitting a copy of written documents providing the state a transferable property interest in the historic artifact(s).

(d) Determined the manner by which the state acquired the property interest in the historic artifact(s). The manners of acquiring title to historic artifacts to be stated include: donation, including property deemed donated to a state museum under ORS 358.420; gift; bequeath; escheat to the state under 112.055; condemnation; eminent domain; and all other means of acquiring a property interest. The statutory authority allowing the state to acquire the property interest in the historic artifact(s) shall be stated.

(e) Inventoried, by a professional, the historic artifacts subject to the request. Such inventory shall detail:

(A) Whether the historic artifact(s) are of Native American origin.

(B) Whether the historic artifact(s) are associated with an Indian tribe.

(f) Made a good faith effort to identify the most appropriate recipient(s) for the historic artifact(s), and has consulted with any heirs, claimants, Indian tribes or others who could reasonably be determined to be appropriate recipients.

(g) Determined that the transferee is an appropriate receiver, capable of curation of the historic artifact(s) according to standards appropriate for the historic artifact(s). In determining that the transferee is capable of curation, consider the requirements and standards provided by federal rules at 36 CFR Part 79 for Curation of Federally Owned and Administered Archaeological Collections. This subsection does not apply to a transfer or sale of the historic artifact(s) to an Indian tribe.

(h) Consulted with professional(s), if demolition or substantial alteration of the historic artifact(s) is proposed, to seek:

(A) Alternatives to demolition, including transfer or sale of the historic artifact(s).

(B) Alternatives to substantial alteration, including transfer and sale of the historic artifact(s).

(i) Determined whether the historic artifact(s) proposed for transfer are included on:

(A) The comprehensive inventory of state-owned cultural properties coordinated by the Oregon Heritage Commission pursuant to ORS 358.595(3); or

(B) A local government's acknowledged comprehensive plan inventory of historic resources pursuant to Statewide Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.

(j) Notified the Oregon Heritage Commission and the Legislative Commission on Indian Services of the proposed transfer.

(2) In addition to the statement required by section (1) of this rule, all requests for approval must be accompanied by the following:

(a) A statement of purpose outlining the proposal, including such history or other information that makes it clear the purpose of, or reasoning behind, the request; and

(b) An inventory of the historic artifact(s) prepared by a professional, and complete or representational photographic images (depending on the number of historic artifacts) of the historic artifact(s).

(c) The department may request that the state agency provide evidence in support of the statement required by section (1) of this rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 358.640(4)

Stats. Implemented: ORS 358.640(3) & 358.647

Hist.: PRD 4-2003, f. & cert. ef. 5-16-03

736-052-0020

Department Determination

(1) The department shall approve, approve with conditions, or deny the request, in whole or in part. The department may approve or approve with conditions a request to transfer if the request complies with applicable state and federal law. The department may approve or approve with conditions the request, in whole or in part, through a Memorandum of Agreement with the requesting state agency. An approval from the department may express conditions of approval that:

(a) Restrict destination of transferred items;

(b) Suggest transfer, loan or sale of specific historic artifacts to individuals, state agencies, organizations, museums or Indian tribes;

(c) In cases of demolition or alteration, require actions to mitigate the effects of the demolition or alteration; or

(d) Require conditions of sale.

(2) Should the requesting state agency object to conditions attached to an approval by the department, the state agency and the department will meet to resolve the dispute.

(3) State agencies that fail to get department approval or that do not agree with conditions imposed by the department for transferring, selling, demolishing, substantially altering or otherwise disposing of any historic artifact are prohibited from transferring, selling, demolishing, substantially altering or otherwise disposing, any historic artifact(s) from their ownership, until such time as agreement can be reached.

Stat. Auth.: ORS 358.640(4)

Stats. Implemented: ORS 358.640(3) & 358.647

Hist.: PRD 4-2003, f. & cert. ef. 5-16-03

736-052-0030

Time for Review by Department

(1) The department shall review a state agency request within 60 days. The department shall inform the state agency of its approval, approval with conditions, or denial, in whole or in part of the state agency request at the earliest practicable time.

(2) If the information required by OAR 736-052-0010 is not included with the state agency request, the department shall notify the state agency that the 60-day review period has not begun, what information required by 736-052-0010 is missing or incomplete,

and that the 60-day review period will begin when the missing or complete information is received by the department.

Stat. Auth.: ORS 358.640(4)

Stats. Implemented: ORS 358.640(3) & 358.647

Hist.: PRD 4-2003, f. & cert. ef. 5-16-03

736-052-0040

Applicability

(1) This division applies to all state agency requests for the department's approval of the transferring, selling, demolishing, substantially altering or otherwise disposing of historic artifact(s) pending before the department or submitted after the effective date of this rule.

(2) This division does not apply to the temporary transfer or loan of state-owned historic artifacts.

(3) Nothing in this division either authorizes or invalidates a state agency action that transferred, sold, demolished, substantially altered or otherwise disposed of any historic artifacts prior to the effective date of this rule.

Stat. Auth.: ORS 358.640(4)

Stats. Implemented: ORS 358.640(3) & 358.647

Hist.: PRD 4-2003, f. & cert. ef. 5-16-03

DIVISION 53

HERITAGE COMMISSION GRANT AND COORDINATION PROGRAMS OREGON MUSEUM GRANT PROGRAM

736-053-0100

Purpose

The purpose of OAR 736-053-0100 to 736-053-0140 is to establish the procedures and criteria that the Oregon Heritage Commission, with the advice of the Oregon Historical Society and the Oregon Museums Association, will use when awarding Museum Grant Funds as provided in ORS 358.583.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.583

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98; PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0105

Definitions

As used in OAR 736-053-0100 to 736-053-0140, unless the context requires otherwise:

(1) "Commission" means the Oregon Heritage Commission.

(2) "Department" means the Oregon Parks and Recreation Department.(3) "Museum" means a public institution or private nonprofit Oregon corporation primarily devoted to the acquisition and public exhibition of specimens, artifacts, articles, documents and other items that relate to history, anthropology, archaeology, science, heritage, or art and that have historical significance.

(4) "Grant" means an award from the Oregon Museum Grant Program.

(5) "Museum Grant Review Committee" means the committee that reviews grant applications and makes funding recommendations to the commission.

(6) "Heritage" means the array of significant things, thoughts, and activities associated with past human experience in Oregon.

(7) "Heritage collections" includes artifacts and other manifestations of material culture, documents, publications, photographs and film, heritage recordings, music and songs gathered for study, comparison or exhibition, and their management.

(8) "Heritage-related tourism" means the practice of traveling for leisure to learn, enjoy or appreciate heritage.

(9) "Heritage aspects of education and interpretation" means the action or process of educating or of being educated about heritage.

(10) "Grantee" means an eligible applicant museum legally capable of executing and which has executed a grant agreement for project awarded a Museum Grant.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.583

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98; PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0110

Eligible Applicants

In order to be eligible for a grant, museums must meet the following requirements:

- (1) Be in operation for a period of at least two years;
- (2) Provide museum services open to the public at least 120 hours per year at designated and reasonable hours and places;
- (3) Have a responsible, competent attendant on duty when museum services are provided to the public;
- (4) Be organized as a public or private non-profit institution that exists on a permanent basis for primarily educational or aesthetic purposes;
- (5) Care for tangible objects that the museum owns or uses; and
- (6) Exhibit tangible objects to the public on a regular basis through facilities the museum owns or operates.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.583

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98; PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0115

Application Procedure

(1) The Commission shall announce the availability of procedures, and deadlines for applying for Oregon Museum Grants, for at least two weeks prior to the application deadline.

(2) To apply for Oregon Museum Grants, museums must submit their applications by the specified deadline. In addition, applications must meet the format prescribed by the Commission and demonstrate the following:

- (a) The museum is eligible for a grant;
- (b) The proposed project qualifies for a grant;
- (c) The museum is capable of carrying out the proposed project; and
- (d) The proposed project is related to the collection and management of heritage collections, or for heritage-related tourism, or to assist in projects related to the heritage aspects of education and interpretation.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.583

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98; PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0120

Evaluation of Applications

(1) Eligible applications received by announced deadlines shall be evaluated by the department's Museum Grant Review Committee.

(2) The Museum Grant Review Committee shall rank applications in order of priority based on an evaluation of:

- (a) The museum's capability of carrying out the proposed project;
- (b) The anticipated results of the proposed project in the collection and management of heritage collections, the promotion of heritage-related tourism, or the provision of education and other interpretations related to heritage; and
- (c) The commitment of other significant monetary or in-kind support to the goals of the project, or both.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.583

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98; PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0125

Award of Grants

(1) The Commission shall, at a public meeting, consider and approve or disapprove, in part or in full, the recommendations of the Museum Grant Review Committee. The department shall then award grants based on the Commission's decision.

(2) All awards must be the subject of binding grant agreements between the department and grantees.

(3) Grant agreements must specify total project costs, participant's share, department share, work to be accomplished, products to be delivered, and deadlines for accomplishing work and delivering products.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.583

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98; PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0130

Museum Grant Review Committee

(1) Department staff appoints the Museum Grant Review Committee, which must be composed of Commission representatives and museum or heritage professionals.

(a) The committee must have a minimum of five members, and include individuals with professional knowledge related to the type of projects submitted, and individuals with a direct understanding of small museum operations.

(b) The department may consult with appropriate organizations including the Oregon Historical Society and Oregon Museums Association for committee member recommendations.

(2) The Museum Grant Review Committee shall follow current statutory conflict-of-interest provisions.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.583

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98; PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0135

Disbursement of Grant Funds

The department will distribute grant funds to participants on a reimbursable basis after submission of billings on approved schedules specified in grant agreements. Participants will supply information substantiating billings if requested by the Commission. Grant funds may be disbursed in advance if participants can demonstrate a compelling need.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.5830

Hist.: PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0140

Recovery of Grant Funds

(1) Participant museums who fail to complete approved projects to the Commission's satisfaction shall return all unexpended grant funds.

(2) Participant museums must maintain records adequate for audit purposes for a period of not less than five years after project completion and shall reimburse the commission for any costs disallowed through audit findings.

Stat. Auth.: ORS 390.124 & 358.585

Stats. Implemented: ORS 358.5830

Hist.: PRD 2-2006, f. & cert. ef. 2-27-06; PRD 3-2013, f. & cert. ef. 7-19-13

Oregon Heritage Grants

736-053-0200

Purpose

The purpose of OAR 736-053-0200 to 736-053-0235 is to establish the procedures and criteria that the Oregon Heritage Commission will use when awarding Oregon Heritage Grants as provided in ORS 358.590(3)

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0205

Definitions

As used in OAR 736-053-0200 to 736-053-0235, the following terms shall have the following meanings:

- (1) "Commission" means the Oregon Heritage Commission.
- (2) "Department" means the Oregon Parks and Recreation Department.

(3) “Grant” means an award from the Oregon Heritage Grant Program.

(4) “Heritage” means the array of significant things, thoughts, and activities associated with past human experience in Oregon.

(5) “Heritage Resources” means artifacts and other manifestations of material culture, documents, publications, photographs and film, prehistoric and historic sites, historic buildings and other structures, cultural landscapes, heritage celebrations, heritage festivals and fairs, and heritage recordings, music, and songs.

(6) “Heritage Conservation” means activities that preserve or enhance heritage resources.

(7) “Heritage Development” means activities that fulfill the potential of heritage resources to educate Oregonians and their visitors and enrich their lives.

(8) “Grantee” means an eligible applicant legally capable of executing and which has executed a grant agreement for project awarded an Oregon Heritage Grant.

(9) “Eligible Project Costs” means approved costs incurred after execution of a grant agreement.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0210

Eligible Applicants:

(1) In order to be eligible for an Oregon Heritage Grant, applicants must be one of the following:

(a) A non-profit organization incorporated in the State of Oregon with a 501(c)(3) determination from the United States Internal Revenue Service and a legally-constituted board of trustees or directors;

(b) A tribal government of a Native American group recognized by the State of Oregon and the federal government and located in the State or Oregon;

(c) A university or college located in the State of Oregon; or

(d) A local government within the State of Oregon.

(2) The following are not eligible to apply for Oregon Heritage Grants:

(a) Individuals;

(b) Religious organizations;

(c) For-profit organizations such as partnerships, companies, and corporations;

(d) State agencies, except for state supported colleges and universities;

(e) School districts; and

(f) Federal agencies.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0215

Application Procedure

(1) The Commission shall announce the availability of, procedures to apply for, and deadlines for applying for Oregon Heritage Grants, for at least two weeks prior to the application deadline.

(2) To apply for Oregon Heritage Grants, applicants must submit their applications by the specified deadline. In addition, applications must meet the format prescribed by the Commission and demonstrate the following:

(a) The applicant is eligible to apply for an Oregon Heritage Grant;

(b) The proposed project qualifies for an Oregon Heritage Grant;

(c) The applicant is capable of carrying out the proposed project; and

(d) The proposed project to conserves or develops heritage resources.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0220

Evaluation of Applications

(1) Eligible applications received by announced deadlines shall be evaluated by an Oregon Heritage Grants Review Committee appointed by department staff and approved by the Commission Chair.

(2) The Oregon Heritage Grants Review Committee shall rank applications in order of priority based on an evaluation of:

(a) The applicant’s capability of carrying out the proposed project; and

(b) How the proposed project will result in the conservation or development of heritage resources. Priority will be given to projects that preserve or develop heritage resources that are threatened, are of statewide significance, or both.

(3) The Oregon Heritage Grants Review Committee shall follow current statutory conflict-of-interest provisions.

(4) The Commission will, at public meetings, consider and disapprove, approve in part, or approve in full the recommendations of the Oregon Heritage Grant Review Committee.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0225

Award of Grants

(1) When Oregon Heritage Grant Program funds are appropriated by the Legislative Assembly, the Commission shall award these funds based on priorities recommended by the Oregon Heritage Grants Review Committee.

(2) Grants will be made for no more than fifty percent of total project costs. Up to fifty percent of a grantee’s share of project costs may consist of department-approved donated services and materials.

(3) All awards shall be the subject of binding grant agreements between the department and participants.

(4) Grant agreements shall specify total project costs, participants’ share, department share, work to be accomplished, products to be delivered, and deadlines for accomplishing work and delivering products.

(5) Indirect costs (grant processing, but not directly associated with the project) are limited to six percent of the awarded grant funds.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0230

Disbursement of Grant Funds

All Grant funds will be disbursed to participants on a reimbursable basis after submission of billings on approved schedules specified in grant agreements. Participants must supply information substantiating billings when requested by the Commission. Grant funds may be disbursed in advance if participants can demonstrate a compelling need.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0235

Recovery of Grant Funds

(1) Participants who fail to complete approved projects to the Commission’s satisfaction must return all unexpended Grant funds.

(2) Participants shall maintain records adequate for audit purposes for a period of not less than five years after project completion and must reimburse the Commission for any costs disallowed through audit findings.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0300

Purpose

The purpose of OAR 736-053-0300 to 736-053-0325 is to adopt regulations establishing procedures that the Oregon Heritage

Commission shall use when coordinating statewide anniversary celebrations.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.595(2f)

Hist.: PRD 3-2001, f. & cert. ef. 2-23-01; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0305

Definitions

As used in OAR 736-053-0300 to 736-053-0325, the following terms shall have the following meanings:

(1) "Commission" means the Oregon Heritage Commission.

(2) "Statewide anniversary celebrations" means celebrations and other commemorations of anniversaries of events of statewide significance to Oregon's heritage.

(3) "Oregon's heritage" means the array of significant things, thoughts, and activities associated with the human experience in Oregon.

(4) "Coordinate" means serving as a source of information on resources, a source of technical assistance, a source of financial assistance when funds have been appropriated for that purpose by the Legislative Assembly, and as a clearinghouse for information and activities for designated celebrations.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.595(2f)

Hist.: PRD 3-2001, f. & cert. ef. 2-23-01; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0315

Qualification as a Statewide Anniversary Celebration

An event or episode may qualify for designation as a statewide anniversary celebration if its impacts are proven to have significance in Oregon beyond the actual event or episode being celebrated or commemorated. Upon demonstration of significance, the Commission may designate the event or episode a statewide anniversary celebration.

Stat. Auth.: ORS 358.585

Stat. Implemented: ORS 358.595(2f)

Hist.: PRD 3-2001, f. & cert. ef. 2-23-01; PRD 3-2013, f. & cert. ef. 7-19-13

736-053-0325

Commission Coordination of Statewide Anniversary Celebrations

Commission coordination of statewide anniversary celebrations designated under OAR 736-053-0315, may include providing communication, technical and financial assistance to government and non-profit organizations that implement the celebrations.

Stat. Auth.: ORS 358.585

Stat. Implemented: ORS 358.595(2f)

Hist.: PRD 3-2001, f. & cert. ef. 2-23-01; PRD 3-2013, f. & cert. ef. 7-19-13

DIVISION 54

HISTORIC CEMETERY GRANTS

736-054-0000

Purpose

The purpose of this division is to establish the procedures and criteria that the Oregon Commission on Historic Cemeteries will use in recommending Historic Cemetery Grants pursuant to ORS 97.780(3).

Stat. Auth.: ORS 390.124(1) & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

736-054-0005

Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the seven-member body appointed by the Director of the Oregon Parks and Recreation Department (OPRD) to carry out the responsibilities of ORS 97.772 to 97.784.

(2) "Grant" means an award from the Historic Cemetery Grant program.

(3) "Historic Cemetery" means the definition provided in ORS 97.772.

(4) "Project Completion" means satisfaction of all requirements of a grant agreement as determined after review or inspection by OPRD.

Stat. Auth.: ORS 390.124 (1) & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05; PRD 2-2008, f. & cert. ef. 2-15-08

736-054-0010

Intent

(1) The Commission intends to coordinate restoration, renovation, or maintenance of the state's historic cemeteries and to recommend projects and funding that help maintain and improve such historic cemeteries. Grants may be recommended in the following general categories:

(a) Protection and security;

(b) Restoration and preservation; and

(c) Education and training.

(2) The Commission may determine each funding cycle the types of projects, areas of focus, or thematic concentration that will determine what will be considered eligible to be recommended for project funding.

(3) The Commission may consider geographic distribution in reviewing grant applications.

(4) The Commission may recommend funding a grant application either in whole or in part.

(5) The Commission will give preference to applications that include cash or in-kind match. The Commission may nevertheless recommend grant funding for a project that does not include a cash or in-kind match.

(6) The Commission may establish minimum or maximum grant award amounts.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05; PRD 2-2008, f. & cert. ef. 2-15-08

736-054-0015

Eligibility

(1) Site — To be eligible for a Grant, a burial place or cemetery must meet the definition of an historic cemetery as provided in ORS 97.772.

(2) Applicant — The Commission may consider a grant application from any entity that meets the requirements of this section, including, but not limited to: an individual, a non-profit or other public or private organization, schools, state agencies, local governments, and tribal governments.

(a) An applicant for a grant must demonstrate that an auditable fiscal agent will receive and expend the grant funds.

(b) An applicant for a project that will affect property not owned by the applicant must provide the Commission with a copy of written authorization from the fee owner of the site of the project unless the cemetery is not owned or is abandoned.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05; PRD 2-2008, f. & cert. ef. 2-15-08

736-054-0020

Application Process

(1) When the Historic Cemetery Grant program has funds to award, the Commission will announce through a variety of media the availability of, application procedures for, deadlines and other information for applying for Historic Cemetery Grants.

(2) Applicants will submit an application in a format prescribed by the Commission.

(3) An application that contains multiple work items must be structured so that the Commission may award partial funding to a specific work item proposed in the application.

(4) Multiple applications by the same entity are not allowed.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

736-054-0025

Evaluation of Applications

(1) Eligible applications received by the announced deadline will be evaluated by a Historic Cemetery Grants review committee, appointed by the Commission chair and containing at least one member of the Commission.

(2) The review committee will rank applications in order of priority based on the following criteria:

(a) Whether the application meets the Commission's funding priorities for that funding cycle;

(b) Whether the application has demonstrated the need for the project;

(c) Whether the applicant has demonstrated that adequate budget and financial controls are in place to properly administer the grant; and

(d) Any other criteria determined by the Commission prior to the announcement of the availability of grant funding, and which are contained in that announcement.

(3) The review committee shall recommend to the Commission grant funding recommendations up to the amount of funds that may be available in that biennium. The review committee may also rank several alternates in priority order that would be funded if any of the recommended grants are not awarded.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05; PRD 2-2008, f. & cert. ef. 2-15-08

736-054-0030

Award of Grants

(1) The Commission will review the recommendations of the Historic Cemetery Grants review committee and make its recommendations to the OPRD director. The Commission shall act by motion and vote at a public meeting.

(2) Awards will be subject to binding grant agreements between the OPRD and the grant recipients. The grant agreement will specify the terms and conditions of the grant award, generally including:

(a) The total project costs, the match or share to be provided by the grant recipient if any, and the amount of the grant;

(b) A statement of the work to be accomplished;

(c) Products to be delivered; and

(d) When the grant-assisted project may begin and a schedule for accomplishing work, reporting on progress, delivering products, and project completion.

(3) Generally, grants will be awarded at the beginning of the biennium.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

DIVISION 55

**STANDARDS TO BE USED WHEN ALLOCATING
FEDERAL HISTORIC PRESERVATION MONIES**

736-055-0005

Grant Application and Award Procedure

(1) Acquisition and Development Projects:

(a) The State Historic Preservation Office will accept written requests for federal grant assistance for acquisition or development purposes from the owners (or prospective owners for acquisition projects) of properties which are listed in the National Register of Historic Places, or which are in the process of nomination to the National Register. Written guidelines for preparing requests for acquisition or development grant funds are available from the office on request. The office will keep requests for grant assistance on file for at least one year from the date of receipt.

(b) Grant awards will be made only to owners of properties that are actually listed in the National Register. If proponents other than owners of record (except for acquisition projects) wish to request federal grant assistance, the office must be provided with a letter from the owner of record authorizing the proponent to

request grant money as the owner's representative. The letter must also stipulate who may actually receive this money.

(c) When selections for project funding have been made, the office will make a written offer of grant to the property owner or owner's representative. A grant offer may be for all or part of the amount requested in the letter of request. To insure that grant funds are spent in timely fashion, the grant offer may stipulate dates by which certain information identified in the grant offer must be submitted to the office. If these deadlines are not met, grant offers may be cancelled by the office without notice. Proponents should remember that a grant offer is not the award of a grant.

(d) When the office has received the necessary information from the project proponent, the office will make a formal grant application to the federal government in accord with federal regulations and procedures current at the time. If approved by the federal government, the office will then notify the proponent that a grant award has been made. Proponents should remember that the state government selects projects for grant applications, but the federal government makes decisions to grant or deny funds.

(2) Survey and Planning Projects: The State Historic Preservation Office will accept written requests for Survey and Planning funds from state agencies, local governments, public and private institutions, and private individuals. Written guidelines to preparing requests for survey funds are available from the office upon request. The procedure and guidelines for applying for planning funds is the same as that for Acquisition and Development projects explained above. The award procedure for Survey and Planning funds is also the same, except that unlike Acquisition and Development grants, the award of Survey and Planning grants is made by the state government.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 358.612 & 358.617

Hist.: PR 3-1981, f. & ef. 2-26-81

736-055-0010

Standards and Criteria for Project Selection

As federal historic preservation monies subject to state discretion become available for allocation, office staff will review grant requests on file and, using the following standards and criteria, select projects for offers of grant. The criteria will be used to prioritize projects for funding. It is important to understand that projects do not compete with the criteria, but instead compete with each other for available funds. The criteria are used to prioritize project applications for funding. Selected projects may be offered all or part of the federal funds requested.

(1) Acquisition Projects. Because the expense of appraisals and other procurement requirements tends to make projects that result in the acquisition of properties less cost effective than development projects, acquisition projects will only be considered as a means to save properties from loss or destruction. Acquisition projects that result in public or private nonprofit ownership of properties will receive priority consideration over projects that result in private ownership. Staff will also take into account those criteria for development projects which reasonably apply to acquisition projects when selecting acquisition projects.

(2) Development Projects. Staff will take into account the following criteria when selecting projects for the development of historic properties:

(a) Project Readiness — some proposed projects have more highly developed plans, more matching funds available, and are in other ways more ready to proceed than other projects. Staff will review information supplied by project proponents and categorize each project according to readiness as follows:

(A) Primary — includes projects which are well along in the planning stages, have readily available matching funds, and will be able to proceed immediately upon an offer of grant.

(B) Secondary — includes projects which have some planning completed and/or some but not all matching funds available. Projects in this category must be able to proceed in a reasonable amount of time if a grant offer is made.

(C) Possible — includes projects that don't fit into the above two categories. These are projects where a starting date is unsure, matching funds are unsure, etc.

(b) Relative Significance of the Property — though all properties must be listed in the National Register to be eligible for grant funding, some properties are of comparatively greater significance than others. Proposed projects will be compared to each other for level of local, statewide or national significance; rarity of type; and similar criteria of significance when funding selections are made. In historic districts, properties are rated by their significance to the district as primary, secondary, contributing, and noncontributing. Noncontributing properties are not eligible for grant assistance.

(c) Visibility and Educational or Interpretive Potential — the degree to which projects inform, educate, and otherwise lend themselves to public benefit and enjoyment will be considered when funding selections are made. In addition, the following criteria will be applied with regard to archeological development projects:

(A) Project has a clear research design.

(B) Project benefits statewide inventory efforts and site survey files.

(C) Project promotes the preservation of archeological sites.

(D) Project increases data for understanding prehistory, settlement patterns, land use, population, land adaptation, etc.; or project data recovery is applicable to restoration needs.

(E) Project fosters public awareness of archeological values and reduces vandalism.

(F) Project benefits Native Americans by increasing the awareness of their history and culture.

(G) Project perpetuates cultural traditions of Native Americans.

(d) Significance of Work to be Performed — The significance of development work to be performed will be considered in this descending order of priority:

(A) The work is essential to the saving of the property from loss or destruction.

(B) The work preserves or restores the researched and documented historical authenticity and appearance of the property.

(C) The work better the economic viability of the property.

(e) Impact on Other Properties ("Ripple Effect") — the degree to which projects may stimulate improvement to nearby or similar kinds of properties of historical value will be considered. For example, improvements to one property in a neighborhood frequently encourage nearby owners to improve their properties as well. Or, a project that demonstrates ways to retain, enhance, or use a kind of property may encourage owners of similar kinds of properties elsewhere to take similar action.

(f) Ratio of Match — though minimum matching ratios are established for federal grant funds, some project proponents are able to exceed the minimum requirement. Because federal historic preservation funds are limited, and because higher ratios of match enable these funds to accomplish more, the ratio of match available will be considered.

(g) Quality of Previous Work — whether or not previous preservation work performed by or on behalf of the proponent, if any, was performed in accordance with standards of preservation practice such as the "Secretary of the Interior's Standards for Historic Preservation Projects," and was adequately planned and documented, will be considered. If previous work was grant-assisted, the proponent's ability to administer grant funds will also be taken into account.

(h) Geographic Distribution — federal historic preservation monies will be distributed in general proportion to the distribution of identified historical resources statewide and the number of people who may potentially benefit from them. Because an important project in one location may require substantial funding, this does not mean that monies will necessarily be distributed equitably in any one fiscal year, though an effort to do so will be made. If does mean, however, that monies will be reasonably distributed throughout the state over a ten-year period.

(3) Survey and Planning Projects: It is the long-range objective of the State Historic Preservation Office to compile a comprehensive inventory of all properties in the state which may be of historical

significance, and also to complete enough inventory information about prehistoric sites to predict probable location of these sites. Pending availability, federal funds are allocated by the office for surveys to compile these inventories, and also to plan development projects (though it is better to include planning as part of development projects). When allocating these funds, staff will take the following criteria into account:

(a) Survey Projects:

(A) Need — the completeness of previous surveys and the degree to which the proposed survey will expand inventory information will be evaluated.

(B) Probability — the likelihood that the survey area contains prehistoric or significant historic resources will be evaluated. Surveys of areas with potentially greater numbers of higher concentrations of resources will receive higher priority, other factors being equal, than surveys of areas of lesser numbers or concentration of resources.

(C) Scope — the comprehensiveness of the proposed survey will be evaluated. Surveys that include the identification of all historic as well as prehistoric resources in a given area and surveys to identify all of one kind of resource (for example, all wooden barns before 1940) in a large area (such as a large metropolitan center or an entire county) will receive priority over surveys to identify limited kinds of resources in limited areas, if enough grant money is available to undertake the larger project.

(D) Sponsorship — generally, recognition of the proposed survey for land-use planning purposes by the appropriate unit or units of local government will be regarded as a precondition to the award of survey funds. In addition, provision to make the survey results (except archeological site information) available to the public at the local level will always be regarded as a precondition to funding.

(E) Objective and Procedure — the proposed project's research design, methodology, procedure, organization, and duration will be evaluated for clarity, completeness and feasibility. It is important to note that the intent of survey funding is to assist projects with beginning and ending dates and clearly defined statements of purpose, rather than to fund ongoing programs.

(F) Matching Share and Administration — the nature and amount of matching share will be evaluated for accountability and facility of administration. Also, the survey project proponent's ability to keep administrative records will be evaluated. It is preferred that all survey projects be sponsored by and administered through units of local government.

(b) Planning Projects — the criteria which apply to Development Projects above will be applied to the selection of planning projects. Generally, planning funds will be awarded only when an especially important or complex project requires a lengthy planning process before construction can begin, or the nature of the project entails no construction or tangible development. Otherwise, the project planning costs should be included in Acquisition and Development grant costs.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 358.612 & 358.617

Hist.: PR 3-1981, f. & ef. 2-26-81

736-055-0015

Advisory Committee Review and Public Comment

At least once a year, staff will inform the State Advisory Committee on Historic Preservation of projects that have been selected for grant funding at a regular meeting of the Committee. The Committee may review this information and comment or make policy recommendations. Staff will make the date of this review known to the press and to anyone who has asked to be informed of it. Government agencies or the public may comment on allocation policy at this or any other regular meeting of the committee.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 358.622

Hist.: PR 3-1981, f. & ef. 2-26-81

DIVISION 60

INSTREAM WATER RIGHTS

736-060-0000

Purpose

(1) These rules, promulgated in accordance with ORS 537.332 to 537.360, set the policy, procedures, standards, methodology, and definitions for instream water right applications made by the Oregon State Parks and Recreation Department to the Water Resources Department, for the protection of recreational values and scenic attraction.

(2) These rules set out: The methodology for determining flow requirements and water surface elevations for recreational use(s) and scenic attraction, the standard for setting the priority for processing instream water right proposals, the internal procedures for application for and coordination of instream water rights, and the process for assisting with transfers of regular water rights to instream water rights.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360

Stats. Implemented: ORS 390.124, 537.336 & 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0005

Policy

It is the policy of the Parks and Recreation Department to apply to the Water Resources Department for instream water rights on the streams, rivers, lakes, and wetlands of the state to protect scenic attraction and recreational values for the benefit of present and future generations of citizens of this state.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360

Stats. Implemented: ORS 537.336(3)

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0010

Definitions

As used in these rules:

(1) "Application" means the instream water right application form developed by the Water Resources Department as referenced in OAR 690-077-0020(1).

(2) "Commission" means the Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "DEQ" means the Department of Environmental Quality.

(5) "Director" means the director of the Parks and Recreation Department.

(6) "Instream Water Rights Coordinator" or "Coordinator" means the staff person in the Department whose responsibility includes receiving, reviewing, and preparing all material pertinent to filing for and obtaining an instream water right from the Water Resources Department.

(7) "Instream Water Right Study" means a recreation flow requirement proposal developed by the Department or the public-at-large utilizing the Oregon Recreation Methodology.

(8) "ODF&W" means the Oregon Department of Fish and Wildlife.

(9) "Oregon Recreation Methodology" means the methodology developed by the Department to determine the recreation flow or water level requirements for scenic attraction and recreational values of a stream, river, lake or wetland. (See OAR 736-060-0015.) Definitions specific to this methodology are as follows:

(10) "Recreation Flow Requirement" means the amount of water needed to accommodate the predominant recreational use(s) or scenic attraction occurring during any given month. This is determined by the Oregon Recreation Methodology (section (9) of this rule). This requirement may be quantified as:

(a) An amount of flow in cubic feet per second (cfs), such as in a stream or river;

(b) A water surface elevation above mean sea level (feet); or

(c) Acre feet.

(11) "Amount of Recreation Use" means the number of users that participate in each specific recreational use. This is usually

expressed in number of visitors over a certain period of time (e.g., one visitor in a 24 hour period is one visitor day).

(12) "Competing Uses" means all water uses that are perceived to be in competition with recreational uses, including both competing instream recreational uses (for example white water rafting and fishing) and out of stream uses.

(13) "Experience Setting" means a description of the natural surroundings, land, recreation facility developments, and public recreation use conditions encountered by recreational users.

(14) "Location of Recreational Use" means the site or river segment where the recreational activity takes place.

(15) "Time Period of Recreation Use" means the time period, by month, for any given recreation use.

(16) "Type of Recreational Use" means specific recreational use(s) that are stream flow or water-level dependent (for example boating, fishing, white water kayaking).

(17) "Scenic Attraction" means a picturesque natural feature or setting of a stream, river, or lake, including, but not limited to, waterfalls, rapids, pools, springs, wetlands, and islands that may create viewer interest, fascination, admiration, or attention.

(18) "WRD" means the Water Resources Department.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360

Stats. Implemented: ORS 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0015

Recreation Flow Requirement Methodology

(1) Recreation flow requirements requested in Department instream water right applications shall be based on the methodology in this section. According to this methodology, the recreation flow is the flow or water level needed to accommodate the predominant recreational use(s) occurring during any given month. The Department shall make this determination using the following procedure:

(a) Each existing type of recreational use shall be identified and fully described. Each type may have separate, discrete, instream flow requirements and seasons of use. Some stream flow dependent uses may occur on the riverbank including, but not limited to, scenic attraction and wildlife viewing, camping, hiking, boating access, and picnicking;

(b) Each type of recreational use shall be described as follows and according to the definitions (OAR 736-060-0010):

(A) Time period of recreational use;

(B) Stream flow, or range of flows, that support the use depicted by month, or by half-month if appropriate, and quantified in cubic feet per second (cfs), or, if for a lake or other standing water body, in feet above mean sea level or acre feet;

(C) Location(s) of recreational use. Locations may be described in any way that provides sufficient details to identify a common location for the use, including by reference to the Environmental Protection Agency's stream reach numbering system or other such documented system in wide use;

(D) Experience setting. Reference to the "Recreation Opportunity Spectrum" system of the U.S. Forest Service is helpful, but not mandatory. A discussion of current and planned recreation developments and management programs must be included;

(E) Amount of recreational use. The popularity of a stream, river, lake, or wetland, while not the sole basis for instream water rights requests, must be taken into account. The Department will use its best efforts to obtain quantifiable data on actual recreational use. Professional judgment described in relative terms (i.e., low, moderate, or high) may be used when precise data are not available;

(F) Competing use(s), if any;

(G) Institutional constraints. These may include, but are not limited to:

(i) Recreation use permits;

(ii) Fishing regulations;

(iii) Dam releases;

(iv) Minimum perennial streamflows or other instream water rights;

(v) Court decisions;

(vi) Standards contained in OAR 690-077-0045 (WRD);

(vii) Acknowledged comprehensive land use plan of local government.

(c) Depict the flows needed by month to accommodate the predominant recreational use(s), and explain how these flows were established.

(2) The following sources may be consulted for information described in subsections (1)(a) and (b) of this rule and for determining recreation flow requirements. Other appropriate sources may be used:

(a) “**Recreational Values on Oregon Rivers**” prepared for the Northwest Power Planning Council (1987) by State Parks and Recreation Department;

(b) Local, state, and federal managing agency plans, records, and reports;

(c) Professional guide service records (i.e., trip logs, etc.);

(d) River recreation guides and publications;

(e) Professional or expert opinion, i.e., published authors, professional guides, agency staff, etc.;

(f) On-site surveys of recreational users;

(g) Water Resources Department records, basin reports, and water use programs pertinent to recreation flow;

(h) U.S. Geologic Survey and Oregon stream gauge records;

(i) Reports prepared under the National Environmental Policy Act;

(j) “**Nationwide River Inventory**” prepared by the National Park Service;

(k) “**Oregon Outdoor Recreation Plan**” (SCORP) prepared by the Department;

(l) Findings and conclusions of other instream recreation flow studies conducted using generally accepted methods where consistent with goals and policies of the Parks and Recreation Department;

(m) Recreation flow assessments conducted by WRD.

(3) In situations where recreation flow data does not exist, the instream flow requirements of ODFW or DEQ, whichever is higher, may satisfy the recreation flow requirement necessary for recreational value and scenic attraction.

(4) Staff gauges or other generally established river level measuring devices shall be used to report recreation flow requirements only when a stream cross section analysis has been conducted which will allow accurate conversion to cfs. Direct measurement shall be used to determine lake water surface elevations above mean sea level necessary to maintain recreational value or scenic attraction.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360

Stats. Implemented: ORS 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0020

Responsibilities to WRD

(1) The Department shall coordinate with WRD on establishing priorities for monitoring of flows of instream water rights: The Department shall coordinate with WRD watermasters to develop monitoring plans for instream water rights. The location and method of instream flow measurement shall be selected to ensure that the instream water right is adequately monitored throughout the entire reach. Monitoring plans may include:

(a) Use of volunteers and Department personnel to conduct monitoring;

(b) The frequency of monitoring;

(c) A system for reporting and enforcing violations of instream water rights.

(2) In cases where it is known that the request for flows is higher than the estimated average natural flow, as defined by WRD, the Department shall provide in the application justification for additional flow or identify the intended source of water in accordance with OAR 690-077-0045(3)(e) (WRD).

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360

Stats. Implemented: ORS 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0030

Internal Application Process for Instream Water Right

(1) While only Parks, ODF&W, and DEQ may request instream water rights, requests may be initiated by the Department, by other local, state, or federal agencies, or by the public at large.

(2) All requests and studies shall be submitted to the instream water rights Coordinator, using a typewritten or printed format and including the following information:

(a) A description of the location of recreational use, including a description of the existing flow regime by month following the Oregon Recreation Methodology (OAR 736-060-0015);

(b) A summary of the study participants and a list of authors and their qualifications;

(c) The recreation flow requirement recommendation expressed in cubic feet per second, or, if for standing water body, in feet above mean sea level or in acre feet; and

(d) The date and the signature of the submitting authority, organization, or individual.

(3) The instream water rights Coordinator shall review all studies within a reasonable time for compliance with this rule and Department goals, objectives, and policies. The study may be returned to the initiator for amendment, changes, or additional justification.

(4) If the study is found to be consistent with this rule and Department goals, objectives, and policies, the Coordinator may prepare a draft application. If competing instream recreational uses exist, the Director may choose to apply for only the predominant recreational use or uses. The Director shall maintain a record of the reasons for the decision. The draft application shall contain all the information required by OAR 690-077-0020.

(5) The Coordinator shall notify ODF&W and DEQ of the proposed application. Changes or corrections to the draft application suggested by DEQ and ODF&W shall be reviewed and made if they are determined to be consistent with available information, this rule, Department goals, objectives, policies, and the purposes for the instream water right application.

(6) DEQ, or ODF&W, or both, may incorporate the public uses for which they are responsible into a Department application for instream water rights in accordance with OAR 690-077-0020.

(7) To the greatest extent possible, the final application shall accommodate the requests of ODF&W and DEQ, provided such amendments are consistent with available data, this rule, Department goals, objectives, and policies, and the purposes of the instream water right application. In the event the Department withdraws an application of an instream water right that was proposed by anyone other than the Department, it shall endeavor to notify the party of the reasons for withdrawal.

(8) The final application shall be signed by the Director or the Director’s designated representative. If DEQ or ODF&W, or both, are combining their applications for an instream water right with the Department’s application, the application must be signed by designated representatives of the respective agencies.

(9) The Coordinator shall notify affected local governments, pursuant to OAR 690-077-0020(4), and, by request, any other interested parties, of the instream water right application.

(10) The Department at any time in the application process, may withdraw an application on which it is the sole signator. If the Department is a co-applicant with ODF&W or DEQ, or both, any party may withdraw its interest in the application.

(11) The priority of instream water right acquisition shall be for streams:

(a) Designated as a State Scenic Waterway, or National Wild and Scenic River;

(b) With significant statewide recreation opportunities;

(c) With recreation opportunities of regional significance;

(d) With potential of being adversely impacted by continued out of stream appropriation; or

(e) Identified as important recreational resources in comprehensive plans or regional economic strategies.

(12) Amendments, whether for greater or lesser flows than those previously granted, will be processed under the standards contained in OAR 690-077-0080 (WRD).

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360
Stats. Implemented: ORS 537.338
Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0040

Purchase, Lease, or Gift of Water Rights for Instream Water Rights

(1) The Department may purchase, lease, or accept as gifts, water rights for the purpose of transferring the water right to an instream water right for the public uses and purposes set forth in OAR 736-060-0000 through 736-060-0040:

(a) Water rights that may be transferred to instream water rights shall be reviewed for potential benefits and adverse impacts to recreation values and scenic attraction;

(b) Standards set out in this rule shall apply to establish priorities for water rights that are to be bought or leased;

(c) Gifts of water rights shall be accepted regardless of priorities set out in OAR 736-060-0020, if the transfer does not harm recreation or scenic attraction values. Donors of gifts shall be recognized through a formal Commission process.

(2) Instream water rights are held by the Water Resources Department in the public interest in accordance with ORS 537.332 to 537.360.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360
Stats. Implemented: ORS 537.338 & 537.341
Hist.: PR 5-1991, f. & cert. ef. 5-17-91

DIVISION 70

STATE AGENCY COORDINATION

736-070-0010

Purpose

(1) The purpose of these rules is to establish the procedures used by the Parks and Recreation Department in implementing the provisions of its State Agency Coordination Program, as required by ORS 197.180 and OAR 660, division 30 and 31. The State Agency Coordination program will assure that the Department's land use programs comply with the statewide land use planning goals and are compatible with acknowledged city and county comprehensive plans and land use regulations. It is not the intent of these rules to prevent either the Parks and Recreation Commission or the Parks and Recreation Department from carrying out their statutory responsibilities.

(2) Division 70 shall control over any related or inconsistent rule provisions relating to statewide goal compliance and comprehensive plan compatibility in OAR 736, division 2 through 55.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0020

Definitions

As used in these rules:

(1) "Acknowledged Comprehensive Plan" means a city or county comprehensive land use plan and land use regulations or plan or regulation amendment which complies with the goals as provided in ORS 197.251, 197.640 to 197.649 and 197.625.

(2) "Affected Local Government" means a city or county government that has land use planning jurisdiction.

(3) "Commission" means the Parks and Recreation Commission.

(4) "Compatibility" means that the Department has taken actions pursuant to this division, including applicable procedures in the Department's State Agency Coordination Program, and there are no remaining conflicts between the Department's land use action and the affected acknowledged comprehensive plan(s).

(5) "Department" means the Parks and Recreation Department.

(6) "Director" means the Director of the Parks and Recreation Department.

(7) "DLCD" means the Department of Land Conservation and Development.

(8) "Land Use Action" means a Department rule, program or activity which has been determined to have a significant effect on land use as defined by OAR 660-030-0005(2).

(9) "Land Use Dispute" means a difference of opinion between the local government and the Department as to the compatibility of a proposed Department action with the provisions of an acknowledged comprehensive plan.

(10) "Local Government" means an incorporated city or county.

(11) "Major Development Projects and Major Park Facilities" means those Department construction activities that change the existing land use or significantly change the intensification of the existing land use.

(12) "SAC Program Document" means the Department's State Agency Coordination Program document developed pursuant to ORS 197.180.

(13) "Statewide Goals" means Oregon's Statewide Planning Goals adopted by the Land Conservation and Development Commission pursuant to ORS Chapter 197.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0030

Applicability

This division is applicable to the following Department land use actions in accordance with OAR 660-030-0005:

(1) Adoption or amendment of State Park Master Plans.

(2) Construction of major development projects or major park facilities.

(3) Tree removal on Department property within the urban growth boundaries (UGB's).

(4) Awarding of federal Land and Water Conservation (L&WCF) grants for major development projects.

(5) Approval of development proposals within the State Scenic Waterway boundaries.

(6) Adoption or amendment of State Scenic Waterway Management Plans.

(7) Designation of State Recreation Trails.

(8) Construction of Recreation Trails not on Department property.

(9) Issuance of Ocean Shore Improvement Permit.

(10) Issuance of State Archaeological Excavation Permit on, public lands non-federal.

(11) Any other Department program subsequently determined to affect land use pursuant to ORS 197.180 and OAR 660-030-0075.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0040

Compliance with the Statewide Planning Goals and Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations

Prior to undertaking any land use action listed in OAR 736-070-0030, the Department will use the following procedures:

(1) Except where it is necessary for the Department to adopt direct findings of compliance with the statewide planning goals, in the manner set forth in section (4) of this rule, the Department shall achieve goal compliance by acting compatibly with acknowledged comprehensive plans and land use regulations.

(2) An action within a land use program of the Department is considered by the Department to be in compliance with the statewide planning goals, when such action is compatible with the acknowledged comprehensive plan and land use regulations of the applicable local governing body.

(3) The three types of compatibility procedures to be used by the Department and the Department land use actions to which they apply are as follows:

(a) Type I Procedure:

(A) The Department shall apply for and obtain the necessary local land use approvals or compatibility determinations. If more than one local government has jurisdiction related to a Department land use action, an approval or compatibility determination will be requested from each affected local government;

(B) If the Department is informed by a local government that a proposed Department land use action is or will be incompatible with the affected comprehensive plan, the Department may withdraw the proposal, modify the proposal to address the reasons for the incompatibility, or initiate Department dispute resolution procedures as set forth in OAR 736-070-0050;

(C) Department land use actions subject to the Type I procedure are:

(i) Construction of major developments or major park facilities;

(ii) Tree removal on Department property within urban growth boundaries; and

(iii) Construction of Recreation Trails not on Department property.

(b) Type II Procedure:

(A) The Department shall make its own compatibility determination based on information and findings supplied by the applicant(s) confirming that the affected local government(s) has determined that the Department's land use action is compatible with the jurisdiction's acknowledged comprehensive plan and land use regulations;

(B) If the Department is informed by the applicant or the affected local government that the proposed Department land use action is or will be incompatible with the affected comprehensive plan, the Department will not process the application for the requested action;

(C) Department land use actions subject to the Type II procedure are:

(i) Awarding of federal Land and Water Conservation grants for major development projects; and

(ii) Issuance of Ocean Shores Development Permits.

(c) Type III Procedure:

(A) The Department shall provide written notice to the affected local government(s) prior to approving the land use actions subject to this procedure. The Department will presume that the proposed action is compatible with the applicable comprehensive plan if no response is received within the period of review established by the Department's administrative rule governing land use action;

(B) If the Department is informed by a local government that the Department's or applicant's proposed land use action is or will be incompatible with the affected comprehensive plan, the Department may withdraw the proposal, deny the proposed action, modify the proposal to address the reasons for the incompatibility, or initiate Department dispute resolution procedures as set forth in OAR 736-070-0050;

(C) Department land use actions subject to the Type III procedure are:

(i) Adoption or amendment of State Parks Master Plans;

(ii) Designation of State Recreation Trails;

(iii) Adoption or amendment of State Scenic Waterway management plans;

(iv) Issuance of State Archaeological Excavation Permits; and

(v) Review of development proposals within State Scenic Waterway boundaries.

(4) In the event that that Department pursuant to OAR 660-030-0065(3) is required to adopt compliance direct findings to comply with any of the statewide goals, the Department shall:

(a) Identify the specific statewide planning goal(s) or goal requirements the Department must address;

(b) Consult directly with the affected jurisdiction(s);

(c) Request interpretive guidance from DLCD and/or the Attorney General's office;

(d) Rely on any relevant Goal interpretations for state agencies adopted by LCDC under OAR 660; and

(e) Adopt any necessary findings to assure compliance with the statewide planning goals.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.180

Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0050

Dispute Resolution

(1) It is the intent of the Department to achieve compatibility between Department land use actions and acknowledged comprehensive plans and land use regulations whenever possible. However, a situation may occur where the Department believes its statutory mandates may prevent the Department from meeting its land use compatibility responsibility under ORS 197.180.

(2) The Department's preference for resolving a dispute over land use compatibility is to work directly with local government until resolution is accomplished. However, if no agreement can be reached, the following procedures will be used to resolve land use disputes depending upon which of the following two situations exist:

(a) In the event that the Department is informed that a proposed or pending land use action by the Department or an applicant to the Department is incompatible with a local comprehensive plan, the Department will:

(A) Request the local government to identify and/or provide copies of the applicable plan policies and land use regulations;

(B) Cite and explain reasons for the Department's proposed action(s);

(C) Suggest alternatives or modified Department actions; and

(D) Offer to meet and discuss solutions.

(b) As a result of the previous efforts to resolve the dispute the Department will do one or more of the following:

(A) Select an alternative or modified action (may include no action);

(B) Apply for local land use approval or plan amendment;

(C) Request mediation or a compatibility determination from LCDC pursuant to OAR 660-030-0075; and

(D) Proceed with action after adopting appropriate findings (i.e., direct compliance with statewide goals, and any necessary statutory obligation) that the action complies with statewide planning goals.

(c) In the event that the Department determines that a pending local land use approval or action does not conform or conflicts with Department statutes, adopted plans, programs or policies, the Department will:

(A) Notify the appropriate local jurisdiction of the potential conflict;

(B) Cite applicable statutes and rules with which the proposed local land action would conflict;

(C) Suggest possible alternatives or modifications to the proposed local land use approval or action;

(D) Offer to meet and discuss solutions; and

(E) Appeal the local government's decision if adopted.

(3) As a result of the previous actions to resolve the dispute, the Department may pursue local government conformance with Department policies, plans or programs by applying for comprehensive plan amendments, or participating in periodic review.

(4) If the dispute is not resolved through the steps in this rule, the Department may request informal mediation or a compatibility determination from the LCDC in accordance with OAR 660-030-0070.

(5) If the Department's statutory obligation remains in conflict after exhausting the appropriate procedures under sections (1) through (3) of this rule and the Department determines that it must act or the Department determines it cannot delay an action, the Parks and Recreation Commission (or its designated representative) shall adopt findings in writing explaining why it cannot act compatibly with applicable city or county comprehensive plans and

land use regulations and then, adopt goal findings to assure compliance with the statewide goals in accord with OAR 660-030-0065(3).

(6) The Department shall provide a copy of the findings reference in section (4) of this rule to applicable city or county governments and upon request to other interested persons explaining the rationale for its decision.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 183.502
Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0060

Assuring Goal Compliance and Acknowledged Plan Compatibility for New or Amended Land Use Programs That May Have a Significant Effect on Land Use

(1) Except as provided in section (2) of this rule, the Department shall assure that new rules and programs which qualify as land use programs, or amendments to existing land use programs, comply with the statewide planning goals and are compatible with acknowledged comprehensive plans.

(2) The Commission may choose not to apply this rule to the adoption of temporary rules and programs.

(3) The Department shall examine new rules or programs to determine if they qualify as land use programs as defined by OAR 660-030-0005(2).

(4) If new rules or programs are found to be land use programs, the Department or Commission shall amend OAR 736-070-0030, and other sections of existing rule divisions pertinent to the program as needed to assure goal compliance and compatibility with acknowledged comprehensive plans.

(5) Amendments to existing Department programs shall be examined to determine if:

(a) They have a significant affect on land use as determined by the criteria established; and

(b) Provisions of this division are sufficient for assuring that actions allowed by the amendments will comply with the goals and will be compatible with comprehensive plans; or

(c) They modify the program so that it no longer qualifies as a land use program.

(6) If needed as determined after completing the examination prescribed in section (5) of this rule, the Commission shall amend the appropriate administrative rules to assure goal compliance and compatibility with acknowledged comprehensive plans.

(7) The Department shall provide written notice of any new rule or amendment determined to be a new land use program or affect the land use status of an existing land use program to the Department of Land Conservation and Development, persons on any Department mailing lists established for land use coordination purposes, and any local governments relying on the Department for goal compliance as described in OAR 660-030-0085. The notice shall include:

(a) The date, time and location of the Department's proposed action;

(b) The manner in which written and oral comment on the proposed action can be submitted to the Department;

(c) An explanation of how the new rule or amendment qualifies as, or affects the land use status of, a land use program; and

(d) A description of any actions taken, or to be taken, pursuant to sections (3) through (6) of this rule.

(8) If no comment is received from the Department of Land Conservation and Development within the period specified in the notice described in section (7) of this rule, the Department may presume that the Department of Land Conservation and Development finds the new or amended rule or program to have satisfied requirements of ORS 197.180 and OAR 660, divisions 30 and 31.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0070

Coordination with Affected State and Federal Agencies and Special Districts

The Department shall coordinate with state and federal agencies and special districts on Department's projects or actions affecting land use as listed in OAR 736-070-0030 and in Section IV of the Department's State Agency Coordination Program and when determined to be necessary. Additionally, the Department will coordinate with state agencies, federal agencies, and others on land use issues of concern to the Department. Generally, this type of coordination is to provide to state agencies, federal agencies and others, the Department's perspective on the compatibility of programs or actions that others have proposed with the policies and programs of the Department. Department contacts for interagency coordination will be determined by the type of program or action, and may include the involvement of the assistant administrator of Programs and Planning, the outdoor recreation planner, a representative from the affected Department program, and regional supervisor or regional coordinator.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0080

Cooperation and Technical Assistance to Local Governments

(1) Subject to statutory and budgetary limitations, the Department:

(a) Will provide technical assistance and information to local government;

(b) May participate in local land use planning and regulations, including review of applications for development proposals near or adjacent to State Parks resources, periodic review, plan amendments and plan updates; and

(c) May *promote* the adoption of state land use policies and local land use ordinances that consider the land use policies and programs of the Parks and Recreation Commission.

(2) Participation and coordination with local government with regard to the programs herein determined to affect land use will be accomplished by the Department working directly with the responsible local government.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: PR 3-1991, f. & cert. ef. 3-8-91

DIVISION 80

CIVIL PENALTY ASSESSMENT FOR OCEAN SHORE VIOLATIONS

736-080-0005

Scope and Purpose

(1) The purpose of these rules is to describe the procedures for imposing and enforcing civil penalties for violations of state ocean shore statutes, regulations, permits and orders. Definitions, notice requirements, a penalty schedule and hearing process are included in these rules.

(2) These rules are intended to carry out the authority granted to the Director by ORS 390.605 et seq. The civil penalty authority described in these rules is in addition to other authorities and corrective actions available to the Director and the Department regarding violations of ocean shore statutes and regulations.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995
Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-080-0010

Definitions

(1) "Alteration" — means "improvement" as that term is defined by statute, ORS 390.605(1), and included in these definitions at OAR 736-080-0010(8).

(2) "After the Fact Application" — means an application for an alteration permit under ORS 390.640, a permit for a pipeline, cable or conduit crossing of the ocean shore under 390.715, or an

ocean shore product removal permit under 390.725, that is made after the alteration or activity for which the permit is issued has already begun or has been completed.

(3) “Civil Penalty” — means a monetary penalty imposed by the Director for violation of ocean shore statutes, rules, standards, permit conditions or an order of the Director;

(4) “Commission” — means the Oregon Parks and Recreation Commission;

(5) “Continuing Notice” — means that a notice of violation, once issued to a responsible party, continues in effect for a designated period and need not be reissued for the same or similar violation before a notice of civil penalty can be issued.

(6) “Department” — means the Oregon Parks and Recreation Department;

(7) “Director” — means the Oregon Parks and Recreation Director;

(8) “Improvement” — means filling a portion of the ocean shore, removal of material from the ocean shore or a structure, appurtenance or other addition, modification or alteration constructed, placed or made on or to the land (ORS 390.605(1)). For the purpose of these rules, the term “alteration” shall be used in place of “improvement” except as otherwise specified in these rules;

(9) “Ocean Shore” — means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. “Ocean shore” does not include an estuary as defined in 196.800.

(10) “Property” — means an upland building, road, street, highway, sewer or water line, or other infrastructure development.

(11) “Responsible Party” — means the person(s), including the applicant or permittee and their contractors or agents, or the company, organization, local, state or federal agency, or other entity, that is in violation of the ocean shore statutes, rules, standards, permit conditions or order of the Director, pertaining to an alteration on the ocean shore.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-080-0020

Civil Penalty Policy

(1) Upon the Director’s own initiative, or in response to a complaint of an alleged violation of ocean shore statutes, rules, standards, permit conditions, or Director’s order, the Director may investigate, including entering at reasonable times upon lands within the ocean shore, including private property within the ocean shore, to determine if a violation has occurred and to ascertain the nature, extent, severity and other factors of the violation. The Director, or the Director’s agents, shall not enter upon private property landward of the ocean shore without the property owners permission. When landowner permission is not forthcoming and access through the property landward of the ocean shore is necessary to investigate, assess and prescribe remedies for suspected or known ocean shore violations, the Director, his staff or agents, may enter such property when accompanied by appropriate law officers bearing a court issued search warrant or other appropriate authorization;

(2) Upon a determination that a violation has occurred, the Director shall observe the procedures set forth in these rules and may impose a civil penalty against the party responsible for the violation. The Director may waive a civil penalty as provided in section (3) of this rule. The Director bears the burden of proof to establish that a violation has or is occurring. Imposing a civil penalty under these rules for an ocean shore violation shall not preclude the Director from pursuing other regulatory or penalty actions provided by law.

(3) Timely compliance with the ocean shore statutes and regulations and avoidance of long-term or irreversible impacts to the scenic, recreation and natural resources of the ocean shore is the Department’s goal in dealing with violations. At the Director’s discretion, imposition of a civil penalty may be waived where the

responsible party responds with timely compliance or voluntary restitution, where these actions are acceptable to the Department, and where they avoid long-term or irreversible impacts to the public health, safety and welfare, scenic, recreation, natural resource and economic values of the ocean shore.

(4) Civil penalties imposed under this rule apply to violations of ocean shore statutes, rules, orders, and permits included in, implementing, or issued in accordance with ORS 390.610, 390.620 to 390.660, 390.690, and 390.705 to 390.770. This includes ocean shore alteration permits issued under 390.640, permits for pipe, cable, or conduit crossings of the ocean shore issued under 390.715, and permits for removal of products along the ocean shore issued under 390.725.

(5) Where a civil penalty is imposed for alterations made on the ocean shore without a permit, the civil penalty shall be in addition to and not in-lieu of application fees for an after the fact application.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-080-0030

Notice of Violation

(1) The party responsible for an ocean shore violation, or the landowner if the violation occurs on private property within the ocean shore, shall be notified of the violation at such time as the Director determines a violation has occurred. Notice has been given when the notice of violation has been delivered to the responsible party in person or mailed to the responsible party by certified or registered mail.

(2) The notice of violation shall include:

(a) The statute(s), rule(s), permit condition(s), standard(s) or order violated;

(b) A description of the violation;

(c) The date the violation occurred or was observed;

(d) The address, legal description or other locational description of the property where the violation occurred;

(e) The specified time(s) for correction of the violation; and

(f) The specific actions to be taken to correct the violation.

The specific corrective actions set forth in the violation notice may include all or any combination of the following options in addition to any other measures the Director may deem appropriate:

(A) Filing an after the fact application, except in those cases where the proposed project is prohibited by statute or rule;

(B) Removing the ocean shore project in violation; and

(C) Taking initial corrective measures specified in the violation notice as necessary to promote the public health, safety and welfare and avoid, prevent or minimize damage to the ocean shore and its natural, scenic, recreational, and economic values.

(g) The date on which a civil penalty will start accruing if the violation is not corrected as described in subsections (e) and (f) of this rule, except that the Director may decide to impose a civil penalty as described in section (4) of this rule even in cases where appropriate and timely corrective action is taken.

(3) If the responsible party corrects the violation within the required time and as specified in the notice of violation, the Director may waive the imposition of a civil penalty.

(4) If the violation is not corrected in the time specified in the violation notice, or if the Director determines that the violation is willful, flagrant, of substantial or long-term impact, or that the responsible party is a repeat violator, the Director may impose a civil penalty according to the procedures described in these rules.

(5) Each day a violation continues after the time for correction specified in the violation notice, shall be considered a new day for purposes of assessing a civil penalty. The maximum civil penalty is \$10,000 per day of continuing violation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-080-0040

Continuing Notice of Violation and Repeat Violations

A notice of violation shall be considered a continuing notice for a period of three years following the date of the notice. A person or agency commits a repeat violation if they make an alteration on the ocean shore without a permit issued under ORS 390.650, or violate an ocean shore standard or a condition in a permit or order within the three year period following a previous notice of violation. In the case of a repeat violation, a civil penalty may be imposed without providing the opportunity for correction.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-080-0050

Determination of Civil Penalty

Civil penalties shall be computed using the following formula:
 $P = BF \times C \times V \times F \times I$, where:

(1) "P" is the amount of penalty in dollars;

(2) "BF" is the base fine which shall be \$500;

(3) "C" shall indicate the level of cooperation of the responsible party in resolving the violation where:

(a) A value of 1 shall indicate the responsible party is highly cooperative, timely and diligent in applying the corrective measures directed by the Department;

(b) A value of 2 shall indicate the responsible party is moderately cooperative but either failed to meet the time frame for correction or failed to apply the corrective measures directed by the Department; and

(c) A value of 3 shall indicate the responsible party is uncooperative and both failed to meet the time frame or apply the corrective measures directed by the Department;

(4) "V" indicates the number of prior violations, including the extant one, of any of the statutes cited in 736-080-0020(4), or any rule implementing these statutes, or any order or permit arising from the administration of these statutes or rules. "V" shall not exceed a value of 5.

(5) "F" indicates the familiarity or prior experience with or knowledge of the statutes, rules, standards, orders or permits affecting alterations and development on the ocean shore:

(a) A value of 1 shall indicate the responsible party had no prior familiarity, experience or knowledge of the ocean shore statutes, rules, permits or standards; and

(b) A value of 2 shall indicate the responsible party did have prior familiarity, experience or knowledge of ocean shore laws and regulations and knowingly violated those provisions.

(6) "I" indicates the impact of the violation on the public interest in navigation, fisheries, recreation and other ocean shore resources including aesthetic values, scenic landforms, wildlife, wildlife habitat, plant life, threatened and endangered species, combined with the duration or permanency of the impacts of the violation. In determining the impact value, where the resource impact and the duration impact are not the same, the higher value of the two shall be used.

(a) A value of 1 shall indicate the violation has no, or only minor impacts on the ocean shore values and resources listed in section (6) of this rule and that impacts of the violation will be of minor duration (less than one year).

(b) A value of 2 shall indicate the violation has moderate impacts on the ocean shore values and resources listed in section (6) of this rule or that impacts of the violation will have moderate duration (from 1 to 3 years);

(c) A value of 3 shall indicate the violation has major impacts on the ocean shore values and resources listed in section (6) of this rule or that impacts of the violation will last more than three years.

(7) The maximum civil penalty that may be imposed under these rules is \$10,000 per day of continuing violation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-080-0060

Notice of Civil Penalty

(1) Persons or agencies who have received a notice of violation under OAR 736-080-0030, but have not corrected, or have only partially corrected the violation by the time specified in the notice, or who have committed a repeat violation under a continuing notice, may be assessed a civil penalty. Notice of a civil penalty shall be delivered to the responsible party either in person or by registered or certified mail. Where the notice is made by mail, the date of mailing shall be considered the date of service.

(2) The notice of civil penalty shall include:

(a) A reference to the particular section(s) of the statutes, rules, standards, order or permit conditions involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of civil penalty being imposed; and

(d) A statement of the responsible party's right to request a hearing.

(3) If a violation is not corrected by the time specified in the notice of violation, a civil penalty may be imposed each day the violation goes uncorrected.

(4) If the violation is committed under a continuing notice of violation, no additional notice is required prior to the assessment of a civil penalty.

(5) The notice of civil penalty shall be accompanied by a proposed order setting forth the facts of the case and presenting findings and conclusions in support of the civil penalty being assessed. The proposed order shall become final if the responsible party does not request a hearing.

(6) The Director may mitigate the civil penalty if the Director determines that to do so would benefit the public interest and advance the policy of protecting and preserving the scenic and recreational value of the ocean shore. The Director shall specify the terms and conditions incumbent upon a responsible party if a civil penalty is mitigated.

(7) If a responsible party requests the Director reduce or remit the civil penalty for economic or financial reasons, the responsible party has the burden of proof to provide evidence of economic or financial condition that warrants reducing or remitting the civil penalty.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-080-0070

Opportunity for Hearing/Judicial Review

(1) A person or agency receiving a notice of civil penalty may request a hearing by making written application to the Department within 20 days of the service date of the notice. The service date of the notice shall be the date of mailing. If mailed, a request for hearing shall be considered made on the date the request is postmarked. If the postmarked date exceeds 20 days after the service date of the notice, the responsible party's right to a contested case hearing shall be waived.

(2) If a responsible party fails to request a hearing or makes an untimely request, a final order may be issued upon prima facie case made on the record of the Department.

(3) If a hearing is requested timely, it shall be scheduled and conducted according to contested case procedures. Following the hearing, the Director shall enter a proposed order. If no exceptions are filed, the proposed order becomes final.

(4) Judicial review of an order issued under this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases. Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - 390.770 & 390.990 - 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

DIVISION 100

TARGET 2014 — GOALS FOR OREGON PARKS AND RECREATION DEPARTMENT

736-100-0000

Purpose

The mission of the Oregon Parks and Recreation Department is to provide and protect outstanding natural, scenic, cultural, historic and recreational sites for the enjoyment and education of present and future generations. The Department is guided by the Parks and Recreation Commission, which leads by defining and affirming the Department's core values and direction. The Commission adopted Target 2014 on November 30, 2000, setting the Department's direction for the next fifteen years. These rules set forth the goals that comprise Target 2014.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03

736-100-0010

Goal Two — Promote Outdoor Recreation in Oregon

The Oregon Parks and Recreation Department is the state's principal advocate, leader and source of expertise and support for outdoor recreation.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

736-100-0020

Goal Three — Advance the Principles of Conservation and Sustainability in Land Management, Development and Business Practices

The Commission and the Department hold a public trust to protect Oregon's park system, including the Willamette River Greenway, State Scenic Waterways and ocean shores. The Department practices sustainable natural resource management that balances the need to assure future generations enjoy similar benefits.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

736-100-0030

Goal Four — Preserve Oregon's Rich Cultural Heritage and Broaden Public Understanding of Oregon's Historic Places and Events

The cultural history of Oregon — structures, landmarks, and special places — extends beyond the boundaries of park properties. The Heritage Conservation Division safeguards this public trust.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

736-100-0040

Goal One — Acquire Properties that Build Upon the Diversity and Strength of Our Current System

The Oregon state park system is a rich mosaic of Oregon's natural resources, scenic landscapes and history. In 1998, voters sent a clear message of support for the enhancement of that mosaic through the development, conservation and expansion of Oregon's park system for future generations.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

736-100-0050

Goal Five — Deliver World-class Experiences to Park Visitors

World-class experiences create vivid memories that enrich the lives of our visitors, and deepen their understanding of Oregon's natural, historical and cultural resources. Bringing those experiences to life requires a fundamentally strong park system, with varied,

ample and appealing places to visit, enthusiastic, professional staff, and a special commitment to high-quality interpretive experiences.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

736-100-0060

Goal Six — Promote Access to Oregon's Beaches, Trails and Waterways

Oregon's park properties belong to the people. The Commission is entrusted with ensuring reasonable access to park lands for all while simultaneously considering resource protection and local land use goals. In particular, access to Oregon's beaches, scenic waterways, trail corridors and other public open spaces demands consistent advocacy, planning and consensus building to ensure enhancement and growth.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

736-100-0070

Goal Seven — Provide Varied, High-quality Camping and Other Overnight Experiences

Camping is a cornerstone of the Oregon state park experience. Demand for camping and other overnight stays in parks is increasing and becoming more varied, and the Department must respond quickly and creatively to that demand.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

736-100-0080

Goal Eight — Seek Sufficient and Stable Operational and Long-term Funding

While Oregon voters accorded the Department a greater measure of financial stability and sufficiency in 1998 through a dedicated share of the state lottery, the Department's revenue sources are diverse. The Department will not become over-reliant on any one funding source, and the Commission acknowledges need for continued fund-raising, leveraged or shared acquisition partnerships and lean, efficient operations.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.010 & 390.117
Hist.: PRD 1-2003, f. 1-29-03 cert. ef. 2-1-03; PRD 10-2004, f. & cert. ef. 9-10-04

DIVISION 140

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

736-140-0005

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in these rules have the same meaning as given to them in ORS 36.110 and 36.234. In addition, as used in this rule, unless the context requires otherwise:

(a) "Agency" or "the agency" means Oregon Parks and Recreation Department or OPRD.

(b) "Director" means the Director of the Oregon Parks and Recreation Department.

(c) "State agency" may refer to Oregon Parks and Recreation Department or could refer to a state agency other than the Oregon Parks and Recreation Department if more than one state agency is party to the mediation.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure

under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the “mediator” in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency’s employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be either confidential; or non-discoverable and inadmissible; or both confidential and non-discoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties’ agreement to participate in a confidential mediation must be in substantially the format outlined in the OPRD form entitled: “Agreement to Participate in A Confidential Mediation” available from the agency. This form may be used separately or incorporated into an “agreement to mediate.”

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the

substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party’s communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by

Oregon statute, other than ORS 192.410–192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410–192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 36.224 & 390.124

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: PRD 22-2009, f. & cert. ef. 12-8-09

736-140-0015

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234. In addition, as used in this rule, unless the context requires otherwise:

(a) "Agency" or "the agency" means Oregon Parks and Recreation Department or OPRD.

(b) "Director" means the Director of the Oregon Parks and Recreation Department.

(c) "State agency" may refer to Oregon Parks and Recreation Department or could refer to a state agency other than the Oregon Parks and Recreation Department if more than one state agency is party to the mediation.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining

advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, 390.124

Stats. Implemented: ORS 36.230(4)

Hist.: PRD 22-2009, f. & cert. ef. 12-8-09

DIVISION 146

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

736-146-0010

Application

The Oregon Parks and Recreation Department adopts OAR 137-046-0100 through 137-046-0480 (effective January 1, 2008), the Department of Justice Model Rules, General Provisions Related to Public Contracting including the additional provision provided in these rules.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.070 & 279A.065

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0012

Definitions

(1) "Contract Administration" means all functions related to a given contract between OPRD and a contractor from the time the contract is awarded until the work is completed and accepted or the

contract is terminated, payment has been made, and disputes have been resolved.

(2) "Designated Procurement Officer" (DPO) means the individual designated and authorized by the Director of the Oregon Parks and Recreation Department to perform certain procurement functions described in these rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050; 279A.065(5); 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0015

Special Approvals for Public Contracts When Required

(1) When Attorney General legal sufficiency approval is required under ORS 291.047, the Oregon Parks and Recreation Department (OPRD) must seek legal approval.

(2) When OPRD contracts for services normally provided by another contracting agency or for services for which another contracting agency has statutory responsibilities, OPRD is required to seek the other contracting agency's approvals. Examples of these special approvals include, but are not limited to:

(a) Oregon Department of Administrative Services (DAS), State Services Division, Risk Management for providing tort liability coverage;

(b) DAS, State Services Division, Publishing and Distribution for printing services;

(c) DAS, State Data Center for telecommunications services;

(d) Office of the Treasurer, Debt Management Division, for bond counsel and financial advisory services (bond counsel services also require the approval of the Attorney General);

(e) DAS Enterprise Information Strategy and Policy Division for information-system related services.

(3) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in writing on a case-by-case basis only by the Attorney General.

(4) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in writing on a case-by-case basis only by the Secretary of State Audits Division.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0020

Reporting Requirements for Personal Services Contracts

The Department of Administrative Services (DAS) State Procurement Office maintains an electronic reporting system called the Oregon Procurement Information Network (ORPIN) and a report form for reporting personal services contracts. OPRD must submit this report form to the DAS State Procurement Office for each contract and subsequent contract amendment. The report form must include OPRD's name, not-to-exceed amount of the contract, the name of the contractor, the duration of the contract, and its basic purpose. OPRD will use the ORPIN system for reporting personal services contracts, including architectural, engineering and land surveying services contracts and related services contracts pursuant to ORS 729A.140(2)(h)(A)(I) unless directed otherwise by DAS State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(h)(A)

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0050

Contract Administration; General Provisions

(1) OPRD conducts procurements for goods or services, including architectural, engineering, land surveying and related services, and public improvements, pursuant to ORS 279A.050 and 279A.075.

(2) OPRD must appoint, in writing, a contract administrator as an OPRD representative for each contract. The contract administrator may delegate in writing a portion of the contract administrator's

responsibilities to a technical representative for specific day-to-day administrative activities for each contract.

(3) OPRD must maintain a procurement file for procurements exceeding the intermediate procurement threshold for goods or services; the informal selection threshold for architectural, engineering, and land surveying services; and the intermediate procurement threshold for public improvements pursuant to OAR 137-047-0270, 137-048-0210, and 137-049-0160, respectively:

(a) Each procurement file must contain:

(A) Documentation required by law and the DOJ Model Rules;

(B) An executed contract, if awarded;

(b) OPRD must maintain procurement files, including all documentation, for a period not less than six years, except for 10 years beyond each contract's expiration date for architectural, engineering, and land surveying services and related services or for another period in accordance with another provision of law.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08;

PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0060

Payment Authorization of Cost Overruns for Goods or Services including Architectural, Engineering and Land Surveying Services and Related Services Contracts

(1) Payments on contracts that exceed the maximum contract consideration require approval from OPRD's designated procurement officer and may require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq. Approval may be provided if there is compliance with all of the following:

(a) The original contract was duly executed and, if required, approved by the Attorney General.

(b) The original contract has not expired, been terminated, or been reinstated under OAR 736-147-0070 as of the date written approval to increase the contract amount is granted.

(c) The cost overrun is not associated with any change in the statement of work set out in the original contract.

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the original contract or the most recent amendment, if any, was signed. Such circumstances include but are not limited to cost overruns that:

(A) Address emergencies arising in the course of the contract that require prompt action to protect the work already completed.

(B) Comply with official or judicial commands or directives issued during contract performance.

(C) Ensure that the purpose of the contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional work or performance rendered.

(f) Except for the cost overrun, the contract and its objective are within the statutory authority of OPRD and OPRD currently has funds available for payment under the contract.

(g) An officer or employee of OPRD has presented a written report to OPRD's designated procurement officer within 60 days of the discovery of the overrun that states the reasons for the cost overrun and demonstrates to the satisfaction of OPRD's designated procurement officer that the original contract and the circumstances of the overrun satisfy the conditions stated above.

(h) OPRD's designated procurement officer approves in writing the payment of the overrun, or such portion of the overrun amount as OPRD's designated procurement officer determines may be paid consistent with the conditions of this rule. If OPRD's designated procurement officer has signed the contract, or has immediate supervisory responsibility over performance of the contract, that person must designate an alternate delegate to grant or deny written approval of payment.

(2) OPRD must obtain an Attorney General's approval of the contract amendment, if such approval is required by ORS 291.047, before making any overrun payment.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0070

Ethics in Public Contracting — Policy

Oregon public contracting is a public trust. OPRD and contractors involved in public contracting must safeguard this public trust.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0080

Ethics in Selection and Award of Public Contracts

(1) OPRD officers, employees or agents involved in the process of the selection and award of public contracts must carefully review the provisions of ORS 244.040.

(2) OPRD officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) OPRD officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) OPRD officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0090

Ethics in Appointments to Advisory Committees

OPRD's designated procurement officer or a delegate may appoint procurement advisory committees to assist with specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0100

Non-retaliation

Retaliation against anyone who complies with the Public Contracting Code and rules in this division related to ethics is prohibited. Any officer, employee or agent of OPRD or contractor who engages in retaliation action will be subject to penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any contractor who engages in a retaliation action may be debarred.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0110

Ethics in Specification Development

(1) OPRD and contractors must not develop specifications that primarily benefit a contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

(2) OPRD must not develop specifications that inhibit or tend to discourage public contracting with qualified rehabilitation facilities (QRF) under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those specifications inhibit or tend to discourage the acquisition of QRF-produced goods or services without reasonably promoting the satisfaction of bona fide, practical procurement needs of OPRD.

(3) OPRD and contractors must not develop specifications that inhibit or tend to discourage public contracting under other public procurement laws or policies of OPRD.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0120

Ethics in Sole Source

OPRD may not select a sole-source procurement pursuant to ORS 279B.075 and avoid a competitive procurement if the purpose of the selection is to primarily benefit the contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.075 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0130

Fragmentation

A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065, or an intermediate procurement, pursuant to ORS 279B.070.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279B.065

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0140

Ethics in OPRD and Contractor Communications

(1) Research Phase. OPRD is encouraged to conduct research with contractors who can meet the state's needs. This research includes but is not limited to:

(a) Meetings;

(b) Industry presentations; and

(c) Demonstrations with contractors that, in OPRD's discretion, may be able to meet OPRD's needs.

(2) OPRD must document the items discussed during the research phase of solicitation development. The research phase ends the day of a solicitation release or request for a quote pursuant to an intermediate procurement, unless the solicitation or intermediate procurement provides for a different process that permits ongoing research.

(3) Solicitation and Contracting Phase. Any communication between OPRD and contractors regarding a solicitation, that occurs after the solicitation release or request for a quote and before the award of a contract, must only be made within the context of the solicitation document or intermediate procurement requirements.

(4) Communication may allow for discussions, negotiations, addenda, contractor questions, and OPRD's answers to contractor questions about terms and conditions, specifications, amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the procurement file. Written inquiries regarding the solicitation should be responded to by OPRD in writing.

(5) A record of all material communications regarding the solicitation by interested contractors must be made a part of the procurement file pursuant to OAR 736-146-0030.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

DIVISION 147

PUBLIC PROCUREMENT FOR GOODS AND SERVICES GENERAL PROVISIONS

736-147-0010

Application

The Oregon Parks and Recreation Department adopts OAR 137-047-0000 through 137-047-0810 (effective January 1, 2008) with the exception of 137-047-0270(4), the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. ef. 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0030

Emergency Procurements Process

(1) The Director of OPRD or person designated under ORS 279A.075, may authorize OPRD personnel to award a public contract for goods and services as an emergency procurement pursuant to the requirements of 279B.080. Emergency contracts are exempt from Department of Justice legal sufficiency review under OAR 173-045-0070 as set out in subsection (3)(b) of this rule.

(2) Pursuant to the requirements of this rule, OPRD may, in its discretion, enter into a public contract without competitive solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a contract to remedy the condition.

(3) For contracts above \$5,000, when entering into an emergency contract, OPRD must:

(a) Encourage competition that is reasonable and appropriate under the circumstances;

(b) Award contract within sixty (60) days following the event triggering the need for an emergency contract unless an extension has been granted by the Director of OPRD or person designated;

(c) Have a written report prepared and signed by an executive of OPRD who is responsible for oversight of the public contract within ten (10) business days after execution of the public contract, said report to contain:

(A) A concise summary of the circumstances that constitute the emergency and the character of the risk of loss, damage, interruption of services, or threat to public health or safety created or anticipated to be created by the emergency circumstances;

(B) A statement of the reason or reasons why the prompt execution of the proposed public contract was required to deal with the risk created or anticipated to be created by the emergency circumstances;

(C) A brief description of the services or goods to be provided under the public contract, together with its anticipated cost; and

(D) A brief explanation of how the public contract, in terms of duration, services, or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the emergency circumstances.

(d) Maintain a copy of report described in (c) of this rule in OPRD's emergency public contract file and provide a copy of the report to the Attorney in Charge, Business Transactions Section, Department of Justice, within thirty (30) days after preparing the report;

(e) Provide a summary of the contract on the Oregon Procurement Information Network (ORPIN) maintained by the DAS State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. ef. 12-15-08;
PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0040**Price Agreements**

(1) OPRD may create price agreements designed for the exclusive use of OPRD or use DAS multi-agency price agreements. OPRD may create price agreements for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining requirements for volume discounts, standardization among agencies, and reducing lead time for ordering.

(2) If OPRD conducts a purchase of goods or services pursuant to a DAS or OPRD price agreement, OPRD does not need to undertake an additional competitive solicitation.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A

Hist.: PRD 13-2008, f. & cert. ef. 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0050**Mandatory Use Contracts**

(1) For the purposes of this rule, a Mandatory Use Contracts means a public contract, DAS price agreement, or other agreement that OPRD is required to use for the procurement of goods and services.

(2) If DAS State Procurement Office establishes a price agreement that is designated mandatory for state agency use, OPRD must procure applicable goods and services pursuant to the Mandatory Use Contract unless otherwise specified in the contract, allowed by law or these rules.

(3) OPRD is exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Goods or services from another government public agency, provided that a formal written agreement is entered into between the parties;

(b) Goods or services from the federal government pursuant to ORS 279A.180;

(c) Personal property for resale through student stores operated by public educational contracting agencies; and

(d) Emergency purchases declared by a contracting agency pursuant to ORS 279B.080.

(4) If a DAS price agreement is not mandatory, the designated procurement officer or other designated person will decide whether to contract pursuant to the price agreement based on what best meets the business needs of OPRD.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.090

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. ef. 12-15-08;
PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0060**Amendments for Intermediate Goods or Services Procurements**

OPRD may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total contract price to a sum that is greater than 25 percent of the original contract price, except:

(1) OPRD may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800 over the 25 percent cumulative amount but not exceeding the \$150,000 threshold with written approval from the OPRD Designated Procurement Officer based upon a determination of the best interests of the state.

(2) OPRD may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800 over the 25 percent cumulative amount exceeding the \$150,000 threshold with written approval from the OPRD Designated Procurement Officer and Department of Justice based upon a determination of the best interests of the state.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. ef. 12-15-08;
PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0070**Reinstatement of Expired or Terminated Contracts**

(1) If OPRD enters into a contract for goods or services and that contract subsequently expires or is terminated, OPRD may reinstate the contract subject to the following:

(a) The type or aggregated value (including all amendments) of the contract, after reinstatement, falls under OPRD procurement authority in accordance with law, the Department of Justice Model Rules and these rules;

(b) OPRD may reinstate and amend for time only;

(c) The purpose must be for:

(A) Fulfillment of its term, up to the maximum time period provided in the contract; or

(B) Completion of a deliverable, provided:

(i) The deliverable, including but not limited to goods, services, or work, was defined in the contract as having a completion date or event; and

(ii) OPRD documents the uncompleted work as of the date of the reinstatement of the expired contract in the procurement file.

(d) The expired or terminated contract was previously properly executed; and

(e) The failure to extend or renew the contract in a timely manner was due to unforeseen circumstances, unavoidable conditions or any other occurrence outside the reasonable control of OPRD or the contracting party.

(2) If the type or aggregated value (including all amendments) of the contract after reinstatement will exceed OPRD's procurement authority, then OPRD may reinstate and amend for time only, and OPRD must submit a written justification demonstrating the satisfaction of the requirements for reinstatement, as set forth in subsections (1)(a)–(e) of this rule.

(3) OPRD may amend an expired contract for time only in accordance with section (1) of this rule. OPRD may amend the contract purposes other than time in accordance with OAR 137-047-0800.

(4) If OPRD reinstates and amends an expired contract for time, pursuant to this rule, OPRD may compensate the contracting party for work performed in the interim between the expiration of the original contract and the effective date of the reinstatement and amendment.

(5) Once a contract is reinstated, it is in full force and effect as if it had not expired or terminated.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A

Hist.: PRD 13-2008, f. & cert. ef. 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

DIVISION 148**CONSULTANT SELECTION: ARCHITECTURAL,
ENGINEERING, LAND SURVEYING AND
RELATED SERVICES CONTRACTS****736-148-0010****Application**

The Oregon Parks and Recreation Department adopts OAR 137-048-0100 through 137-048-0320 (effective January 1, 2008), the Department of Justice Model Rules, Consultant Selection: Architectural, Engineering, Land Surveying, and Related Services Contracts including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 14-2008, f. & cert. ef. 12-15-08;
PRD 18-2009, f. & cert. ef. 12-4-09

736-148-0020**Price Agreement Selection Process**

Consultants for price agreements must be selected, and Oregon Parks and Recreation Department (OPRD) must obtain architectural, engineering, land surveying and related services by selecting a consultant or consultants in the following manner:

(1) When OPRD selects more than one consultant in accordance with the price agreement solicitation process under OAR 137-048-0130(1), OPRD must identify objective criteria in the solicitation document and the price agreement to be used in assigning particular architectural, engineering land surveying or related services to the most qualified consultant.

(2) Design-Build contracts involve the provision of both design and construction services for public improvements under one contract. Under most circumstances, Design-Build contracts are mixed contracts with the predominate purpose of the contract involving construction of the public improvement. If the predominate purpose of the contract is to obtain architectural, engineering, land surveying and related services, selection may proceed under this division and shall not be considered a Design-Build project.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.110 & 279C.115
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 14-2008, f. & cert. ef. 12-15-08;
PRD 18-2009, f. & cert. ef. 12-4-09

DIVISION 149

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

736-149-0010

Application

The Oregon Parks and Recreation Department adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2008), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services.

Stat. Auth: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 15-2008, f. & cert. ef. 12-15-08;
PRD 19-2009, f. & cert. ef. 12-4-09

DIVISION 201

OREGON STATE FAIR AND EXPOSITION CENTER

736-201-0000

Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any permanent rule relating to the Oregon State Fairgrounds Park District (OSFPD), the Oregon Parks and Recreation Commission shall give notice of the intended action:

(1) In the Secretary of States Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(2) By mailing a copy of the notice to persons on the Oregon Parks and Recreation Commission's mailing list established pursuant to ORS 183.335 at least 28 days before the effective date of the rule; and

(3) By mailing or furnishing a copy of the notice to:

- (a) The Associated Press;
- (b) Associated Oregon Industries;
- (c) Associated General Contractors;
- (d) OSFD interested parties list;

(4) By mailing a copy of the Notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 565.060
Stats. Implemented: ORS 565
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0005

Definitions

(1) "Agent" is an individual volunteer, community service group or paid contractor officially representing OSFD or OPRD and only when performing an official duty assigned by OPRD in writing.

(2) "Assistant Director, with responsibility for OSFD" is the person in charge of the daily business and management of OSFD and appointed by the Director.

(3) "Destructive Device" means:

(a) A projectile containing an explosive or incendiary material or any other chemical substance;

(b) Ammunition, ammunition components including, but not limited to, smokeless powder, black powder, primers and percussion caps;

(c) A bomb, grenade, missile, or similar device or any launching device therefore; or

(d) Any weapon of mass destruction including any device capable of producing injury, death or property damage by way of release or discharge of chemical or biological agents, disease or radiation.

(4) "Director" means the Director of the Oregon Parks and Recreation Department.

(5) "Entry Fee" is the fee that participants pay to participate in certain Fair Department activities and competitions.

(6) "Event" is an activity, meeting, attraction or other occurrence on the OSFD with specific opening and closing dates and specific operating hours.

(7) "Exhibit Area" is an area or zone on the OSFD that is characterized by the type of exhibitors occupying paid exhibit space. Such exhibit areas include but are not limited to commercial exhibit areas, non-profit areas, and other commercial-style attractions.

(8) "Exhibitor" is a person occupying paid exhibit space during the State Fair or during other OSFD-organized and administered events.

(9) "Fair Department(s)" are various sections of State Fair activity that are divided by subject area. OSFD may add or delete Departments as necessary to reflect the interests of its participants.

(10) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon.

(11) "Handbook" is the annual publication which lists the rules, procedures, conditions, provisions, information, and fees for participation in certain State Fair department activities and competitions as well as the awards offered.

(12) "Licensee" is a person that has entered into a written agreement with the OPRD for the use of buildings, facilities, services or equipment for the purpose of conducting business or other transactions.

(13) "Non-profit" is an organization that is recognized by the Internal Revenue Service under Internal Revenue Code Section 501(c)(3).

(14) "Paid Exhibit Space," is a certain location on the OSFPD, during each State Fair or during other OSFD-organized and administered events, that OSFD assigns to an exhibitor for the purpose of contacting patrons through, but not limited to, sales, displays of goods and services, advertising, solicitations, canvassing, or the dissemination of information. The exhibitor must pay a fee to OPRD for the space and agree to abide by the procedures, information, conditions, and provisions described in this division.

(15) "Patron" is an individual attending an OSFD organized and administered event who is not an agent, OPRD staff, exhibitor, permittee, licensee, sponsor or registrant.

(16) "Permittee" is a person that has entered into a written agreement with the OPRD for use of buildings, facilities, services or equipment for a period of time for the purpose of conducting a public or private event, including but not limited to an exposition, meeting, conference, tradeshow, or concert.

(17) "Person" includes an individual, corporation, association, group, firm, partnership, limited liability company, joint stock company, and any governmental entity.

(18) "OPRD" is an acronym for Oregon Parks and Recreation Department.

(19) "OSFD" is an acronym for Oregon State Fair Division, division of OPRD.

(20) "OSFPD" is an acronym for the Oregon State Fairgrounds Park District, which includes but is not limited to the parking lots, campground, traffic lanes, and undeveloped areas outside of the admission gates; and the auditoriums, buildings, arenas, and unde-

veloped areas inside the admission gates at the Oregon State Fairgrounds.

(21) "Registrant" is a person that has notified the OSFD using a form provided by OSFD that a lead individual and up to nine other individuals will solicit, canvass, or otherwise contact patrons on the OSFPD outside of the admission gates during the State Fair or other event organized and administered by the OSFD.

(22) "Schedule of Rates and Fees" are the published fees and charges for facilities, buildings, services, or equipment or for operating a business on the OSFPD that covers a period of time that is also listed in the schedule of rates and fees.

(23) "Sponsor" is a person that has entered a written sponsorship agreement with OPRD that is described in ORS 565.080(4).

(24) "Weapon" includes, but is not limited to, any firearm; any destructive device; any dirk or dagger; any knife with a blade of three inches or more in length, and any snap-blade or spring-blade knife, regardless of the length of the blade; any ice pick or similar sharp stabbing tool; any straight-edge razor or any razor blade fitted to a handle; any device by whatever name known, which is designed to expel a projectile by the action of compressed air, gas, compressed spring or by any chemical action; any dangerous or deadly weapon within the meaning of any law of this state restricting the use thereof; any cutting, stabbing or bludgeoning weapon or any other device capable of inflicting grievous bodily harm.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 11-2010, f. 10-13-10, cert. ef. 10-15-10; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0010

Entry Fees

Entry Fees for participation in some Fair Department activities and competitions maybe established in the Handbook for each particular Fair Department.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07;

736-201-0015

Facilities Available for Rent

(1) Certain facilities located on the OSFPD grounds are available for lease by Permittee(s) or Licensee throughout the calendar year, other than during the days of the annual State Fair. Permittee(s) and Licensees also have the option of renting accessory equipment owned and maintained by OSFD to augment an Event, program or attraction at these facilities.

(2) Fees and charges for facilities, buildings, services and equipment rental shall be according to OSFD current Schedule of Rates and Fees.

(3) Director or the Director's designee may waive, vary or increase, in whole or in part, the established rates and fees when it is determined that:

(a) Marketing opportunities exist to encourage use and increase revenues;

(b) Time frame for use varies from that specified on Schedule of Rates and Fees; or

(c) Rate change would attract business when otherwise there would be none.

(4) OSFD reserves the right to add a surcharge for facilities, buildings, services, and equipment rental for unusual and unexpected direct costs related to cleaning and repair of facilities, buildings or equipment.

(5) Rates and fees published in the Schedule of Rates and Fees cover most ordinary situations involving use of buildings, facilities, services, and equipment. Director, or the Director's designee, shall have authority to establish rates and fees at any time for buildings, facilities, services, activities and equipment that are not specifically listed in the Schedule of Rates and Fees.

(6) Director shall have authority to establish rates and fee categories for various segments of industry and business such as, but not limited to non-profit, volunteer and community organizations,

school and governmental agencies, youth groups and youth organizations for the use of buildings, facilities, services and equipment.

(7) Director may establish written procedures for any regular and returning Permittee or Licensee and shall have authority to enter into on-going rental and lease agreements at any time to attract or increase business.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0020

Food Concessions

(1) All food and beverage concession items provided for sale to the public will be sold by OSFD's food contractor(s). Food contractor(s) does not charge Permittee(s) for this service, nor does Permittee(s) receive revenue from food and beverage sales.

(2) Permittees who rent facilities, buildings or locations on property for Events that are food oriented may request in writing an exemption to provide alternative food and beverage for sale but may pay a concession fee according to the Schedule of Rates and Fees for such privilege. Permittee(s) requesting an exemption shall be required to put such proposal in writing. The Director or the Director's designee shall evaluate the written exemption request. The evaluation of food Events shall be based on whether or not food is an integral part of the Event, type of food proposed or by means in which food is prepared and OSFD's food contractor's ability to provide same service.

(3) The Director has discretion to grant an exemption to any Event to provide food and beverage sales.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0025

Catered Events

(1) Permittees must use the food and alcohol caterer designated and licensed by OSFD. Permittees are responsible for all charges for labor and equipment specifically required for a catered Event at established rates.

(2) Director or the Director's designee may grant an exemption to any Permittee for an Event to provide food and beverage catering.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

736-201-0030

Licenses to do Business

(1) The Director or the Director's designee is authorized to issue one or more licenses that permit the license holder to conduct any business therein named upon the OSFD.

(2) Issuance of licenses shall be in accordance with the rules concerning procurement of such services at OSFD, to the extent those procedures are practicable. The funds arising from issuing licenses shall become a part of the Oregon State Fair Account.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0035

Businesses that may be licensed, Other licenses Required

(1) The Director or the Director's designee may license any lawful business to be conducted at OSFPD, including the sale of malt, vinous or distilled liquor.

(2) The Director or the Director's designee shall establish permitting procedures consistent with ORS 565.130 and shall make these available upon request by interested businesses to be licensed at the OSFPD.

(3) Any business so licensed by the Director or the Director's designee is not required to pay license to any city, county or state,

other than to the OSFD for conducting a business upon the grounds of the Oregon State Fair.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0040

Advertising, Canvassing, Soliciting, and Disseminating of Written Materials Outside Admission Gates

(1) A person may not advertise, canvass solicit, or disseminate written materials in any location outside of the admission gates of the OSFPD, except as provided by this rule.

(2) During and for three days before and two days after the State Fair or any other event organized and administered by the OSFD, only a registrant may advertise, canvass or solicit, or disseminate written materials outside OSFPD's admission gates.

(a) An individual may register by submitting a registration form prepared by OSFD. The individual must submit the form to the OSFD at least 24 hours before beginning any advertisement, canvassing or soliciting, or dissemination of written materials.

(b) If the form is submitted on behalf of a person that is not an individual, the registration form shall identify a lead individual and may identify up to nine other individuals who will participate in advertising, canvassing, soliciting or disseminating of information.

(A) For registration purposes, only the lead individual is considered registered and approved by OSFD.

(B) All other members identified will become registered and approved once they are properly briefed by an authorized OSFD person on the rules for advertising, canvassing, soliciting and disseminating information, and on the expectations regarding behaving in a manner that will ensure the safety, well-being and enjoyment of all people, working, participating or attending OSFD events.

(C) Registration for non-lead individuals can occur before or on the day they are scheduled to engage in advertising, canvassing, soliciting and disseminating information.

(c) All registrants must remain at least 20 feet from any admission or exit gate, any line forming at an admission gate, and any tram or other form of public transportation that is loading or unloading passengers. An agent or OPRD staff may require any registrant to move or maintain a reasonable distance from other registrants if the agent or OPRD staff has a reasonable belief that there may be conflict among or between various registrants or that the registrant is blocking the free movement or endangering the safety of a patron, permittee, licensee, sponsor, exhibitor or anyone providing emergency services.

(d) Each lead registrant may set up one table. The table top must be no longer than six feet. A registrant shall be present at the table at all times. The table may be set up no more than 30 minutes before the State Fair or other event opens for the day and must be removed no later than 30 minutes after the State Fair or other event closes for the night.

(e) A registrant may not use a sound device, including but not limited to a bullhorn or other sound amplifying device that creates sufficient volume to be heard more than 20 feet from the registrant.

(f) A registrant may not use, in any manner, fighting words or obscenities. In addition, all registrants must comply with the provisions of OAR 736-201-0070.

(g) A registrant may not sell, offer to sell or advertise any merchandise or service.

(h) A registrant may not advertise, solicit, canvass or disseminate information to an individual in or on a motor vehicle or at any location within a parking lot.

(3) During events organized by a permittee, the permittee shall be responsible for regulating the advertising, canvassing and soliciting, and disseminating of written materials in locations outside OSFPD's admission gates.

(4) During events organized by a permittee, the permittee is responsible for complying with all applicable provisions of this division. Violations of such provisions are subject to enforcement as provided in OAR 736-201-0180.

(5) If a person objects to an action by OPRD that implements this rule, the person may file a protest as provided in OAR 736-201-0175.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0042

Advertising, Canvassing, Soliciting, and Disseminating of Written Materials Inside Admission Gates

(1) A person may not advertise, canvass, solicit or disseminate written materials in any location inside OSFPD's admission gates, or in any of the airspace above the OSFPD, except from within a commercial exhibit space assigned to an exhibitor by OSFD.

(a) OSFD assigns commercial exhibit spaces within an exhibit area for a fee and on a first-come, first-served basis.

(b) Exhibitors who are assigned a commercial exhibit space are subject to the fees, conditions, rules and other information about exhibiting in a particular Exhibit Area published in the Handbook for each Exhibit Area.

(c) If a person objects to an action by OPRD that implements this rule, the person may file a protest as provided in OAR 736-201-0175.

(2) During events organized by an exhibitor, the exhibitor shall be responsible for regulating the advertising, canvassing, soliciting and disseminating of written materials in locations inside the OSFPD's admission gates and in the airspace above the OSFPD.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0045

Procedures for Obtaining Paid Exhibit Space

Procedures for obtaining exhibit space in a particular Exhibit Area and the associated fees, conditions, rules, and other information about exhibiting in a specific Exhibit Area shall be outlined in the Handbook for each Exhibit or Fair Department Area.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

736-201-0050

Exhibit Space Fees

(1) OSFD shall establish fees for the use of exhibit space and any associated cost for services, including electricity, production, admission, and parking shall be established in the Handbook for each particular Exhibit Area.

(2) Fees, conditions, rules, and other information about exhibiting in a particular Exhibit Area published in the Handbook cover most ordinary situations involving exhibit space at the State Fair. The Director or the Director's designee shall have authority to establish fees, conditions, rules, and other information about exhibiting in a particular Exhibit Area that are not specifically listed in the Handbook.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0055

Exhibitor Compliance Procedures

In the event an Exhibitor, Permittee or Licensee refuses to comply with fees, conditions, rules, or other information as outlined in the Handbook or License to do Business, OPRD may take appropriate action to gain compliance, up to and including requiring Exhibitor to remove furnishings and all property immediately. If not removed, furnishings and property may be stored at a fee of \$100 per day or portion thereof.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

736-201-0060

Items Prohibited on Property

(1) The following items are prohibited on OSFPD property unless specifically authorized in this rule:

(a) Bicycles, skateboards, roller blades, scooters;

(b) Unauthorized vehicles;

(c) Unauthorized animals, reptiles, insects, arachnids and other pets;

(d) Weapons;

(e) Fireworks, explosives or explosive devices, and inflammables;

(f) Alcohol or alcoholic beverages;

(g) Controlled substances;

(h) Any other object or objects which in the opinion of the Director or his/her designee may affect the safety and well-being of persons attending events on OSFPD property; or

(i) Destructive device.

(2) Exceptions to the above prohibitions are limited to:

(a) Weapons of law enforcement officials and those carried by persons authorized by law to carry them when carried in a manner authorized by law;

(b) Alcoholic beverages and alcoholic beverage containers belonging to OPRD, licensed concessionaires or catering services contracting with OPRD;

(c) Prohibited items that have been permitted by OPRD by virtue of a signed agreement;

(d) Fireworks in the custody of any group operating or presenting an officially sanctioned fireworks display;

(e) Bicycles, skateboards, roller blades, scooters are permitted on the property outside the fenced areas unless they are part of an OSFD-approved event or display;

(f) Prescription medications necessary for licensees and contractors to perform their duties, when they possess the authorizing prescriptions;

(g) Employees of OPRD and its licensees, contractors and agents may not carry personal prohibited items that are not necessary for the performance of their official duties;

(h) Prohibited items in the possession of Exhibitors that are necessary for daily care or preparation of animals and for showing and are used only for preparation and showing purposes; and

(i) Such prohibited items expressly permitted in writing by the Director or the Director's designee.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0065

Inspections During State Fair and Other Controlled Events

(1) OPRD employees or agents may request, as a condition of the license or permit, that persons about to enter OSFPD property, allow visual access to all purses, backpacks, briefcases, suitcases, athletic bags, packages, duffel bags, coolers, ice chests, picnic baskets, diaper bags, strollers, carts and other similar items capable of concealing prohibited items ("containers").

(2) OPRD staff or agents requesting such an inspection shall do so outside the fairgrounds gates or such other reasonable places as designated by the Director or his/her designee. The person(s) entering the facility may be asked by OSFD staff or agents to reveal the items in their containers. Staff or agents shall inform person(s) in possession of containers to which the inspection request pertains, are free to decline the inspection and may receive a refund of the price of the ticket and parking (if admission or parking fees were incurred) upon surrender of their tickets. Alternatively, the persons may discard the container or prohibited item(s).

(3) Most searches are visual. At the option of OPRD staff, agents or law enforcement officers, other search measures may be employed, including but not limited to electronic, chemical or physical inspections such as "pat downs."

(4) Possession of weapons or controlled substances at anytime on OSFPD property may be reported to law enforcement officials.

(5) If a person possesses one or more prohibited items inside an OSFPD building or facility, the person shall be considered to have violated the license to enter. The license shall be revoked and an OPRD employee or agent shall request that the person leave the OSFPD. A refusal or failure to leave the property following such a request can cause the person to be in trespass.

(6) If a person requests a refund is requested under the section (2), OPRD shall promptly complete and deliver a bearer coupon that specifies the location, date, and refund to be made. A person may redeem the bearer coupon either at the nearest admission booth or by mail to the OSFD business office within 30 days, along with parking and admission tickets for reimbursement.

(7) Prohibited items which may be seen without inspection are subject to the same consequences as specified in section (5) of this rule.

(8) OSFD shall display signs at entrances to the facility generally identifying prohibited items and providing notification of the request for inspection.

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07; PRD 6-2011, f. 8-10-11, cert. ef. 8-15-11

736-201-0070

Activities Prohibited on Property

Within the OSFPD, no individual shall participate in loud, rude or unreasonable behavior; disturb the public peace; make threatening comments, actions or gestures toward others; obstruct the use and enjoyment of any facility, area or event; act in a disorderly manner; or participate in any behavior or activity which in the opinion of the Director or the Director's designee may affect the safety or well-being of any person attending an Event within the OSFPD.