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**Bonnie Lure State Park**

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**Bowers Rock State Park**

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**Cape Kiwanda State Park**

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**Elijah Bristow State Park**

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**Fort Stevens State Park (Coffenbury Lake)**

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**Fort Stevens State Park**

<b>736-015-0090</b>	General Regulations
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**Honeyman State Park**

<b>736-015-0093</b>	General Regulations
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**LaPine State Recreation Area**

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<b>736-018-0010</b>	Purpose of State Park Master Plans
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<b>736-040-0010</b>	Designated Scenic Waterways
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<b>736-050-0110</b>	Application for Special Assessment
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<b>736-053-0210</b>	Eligible Applicants
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<b>736-080-0010</b>	Definitions
<b>736-080-0020</b>	Civil Penalty Policy
<b>736-080-0030</b>	Notice of Violation
<b>736-080-0040</b>	Continuing Notice of Violation and Repeat Violations
<b>736-080-0050</b>	Determination of Civil Penalty
<b>736-080-0060</b>	Notice of Civil Penalty
<b>736-080-0070</b>	Opportunity for Hearing/Judicial Review

### DIVISION 1

#### PROCEDURAL RULES

##### 736-001-0000

##### Notice of Proposed Rules

Prior to the adoption, amendment or repeal of any 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(7) 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

##### 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 January 1, 2000.

[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

### 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 - ORS 192.495 & ORS 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 judgement 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: The publication(s) referenced in this rule are available from the agency.]

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

Stats. Implemented: ORS 390.143 - ORS 390.144

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

## DIVISION 3

### WILLAMETTE RIVER GREENWAY PLAN

### 736-003-0005

#### Willamette River Greenway Plan

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.)

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 acqui-

sition 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.

[Publications: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.318 & ORS 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 Director when allocating ATV grant monies to public and privately owned land managers, ATV clubs and organizations.

Stat. Auth.: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Stats. Implemented: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00

#### 736-004-0010

##### Statutory Authority and Procedure

Section 9 of the 1999 Act SB 1216 requires the Director of the Oregon Parks and Recreation Department may adopt rules and establish the procedures the Department will use when money is allocated to public and privately owned land managers, ATV clubs and organizations.

Stat. Auth.: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Stats. Implemented: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00

#### 736-004-0015

##### Definitions

For purposes of OAR 736-004-0005 through 736-004-0030, the following definitions shall apply:

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

(2) "ATV" — All-terrain vehicles.

(3) "ATV-AAC" — All-Terrain Vehicle Account Allocation Committee appointed to advise OPRD on the allocation of ATV funds.

(4) "Certify" — To confirm formally as being complete and accurate as it relates to the scope of work described in the contract.

(5) "Department" — Oregon Parks and Recreation Department (OPRD).

(6) "Development" — Planning, design, physical construction and improvement of all — terrain vehicle recreation areas (design may include trail location and design, engineering site survey, and design for facilities).

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

(8) "Maintenance" — Preservation, rehabilitation, restoration, and upkeep of the facilities and equipment, including the purchase of equipment necessary to perform these functions.

(9) "Education and Safety Training" — Brochures and publications on ATV facilities, their use, operator safety training for proper use and announcement of current laws and regulations.

(10) "First Aid and Police Services" — Services and supplies provided by public agencies and/or districts for the purpose of providing medical attention and law enforcement including the purchase of equipment necessary to perform these functions.

(11) "Project Authorization" — Agreement which authorizes the project as signed by the Department and the project sponsor.

(12) "Project Sponsor" — The recipient of the grant funds and the responsible party for implementation of the project.

Stat. Auth.: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Stats. Implemented: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00

#### 736-004-0020

##### Apportionment of Monies

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

(1) Planning, promotion and implementation of a statewide ATV program including, but not limited to, acquisition, development and maintenance of ATV recreation areas;

(2) Education and safety training for ATV trainers and operators;

(3) Provision of first aid and police services in ATV designated use recreation areas;

(4) Costs of instigating, developing and promoting new programs for ATV users and advising the public of areas available for all-terrain vehicle use;

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

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

(7) Costs of administration of the all-terrain vehicle programs, including staff support provided under Section 5 of this Act of 1999 as requested by the All-Terrain Vehicle Account Allocation Committee.

The biennial budget for the program will be submitted each biennium for review and comment by the ATV-AAC. No funds will be expended without ATV-AAC and Oregon Parks and Recreation Department approval.

Stat. Auth.: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Stats. Implemented: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00

#### 736-004-0025

##### 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 managers: Private land owners who can present the opportunity for ATV use and maintain the opportunity for a prescribed period of time. Opportunities would be available for funding based upon 10-year commitment to the ATV program, is available for public use, and the land owner shows that money obtained from the ATV program goes directly into development and maintenance, education and safety, first aid, and police services of the program.

(c) Clubs and organizations: ATV clubs and organizations that are registered with the State of Oregon.

(2) Matching fund requirements:

(a) The ATV Grant Program provides up to 80% funding assistance. The eligible sponsor match of 20% or greater may include cash funds, services and supplies such as labor, equipment, or materials provided by applicant, volunteer labor, donated funds, the value of private donated property, equipment, materials, labor or any combination thereof. The use of matching funds from grants that reciprocate approval will not be allowed if those funds are not available within 90 days of approving the ATV grant funding. ATV-AAC has the discretion to waive the 90 day requirement if it is found to be beneficial to the program. All project sponsors must certify the availability of their match and demonstrate the use of the match in their reports. Preliminary work needed to prepare for the application, such as design work, cost estimate development, and preconstruction planning, is also eligible as a match.

(3) Projects eligible for funding:

(a) Acquisition, development, maintenance, and operation as well as safety, education, and first aid training, law enforcement. These must be consistent with motorized recreation goals and objectives contained in the land managers' management plan, area



resource plan, comprehensive plan, or other planning document that show a long range dedication to ATV use and its future.

(b) Applications for funding assistance for ATV funds must be submitted on forms supplied by the Department. Applications must be consistent with the ATV Funding Grant Procedures Manual. The ATV-AAC will meet to recommend funding to the Director for all eligible projects submitted.

(4) Projects ineligible for funding:

(a) Projects that include overhead, overtime, wages, vehicles, buildings and equipment that are not associated with specific projects or activities.

(b) Projects that include year-long funding for seasonal use, do not meet long range goals for ATV use, and are not in the best interest of the ATV program.

(c) Projects that have no way to measure completion or intent.

(d) Projects, or those portions of a project that have commenced prior to project authorization, with the exception of preliminary work that has been allowed as match.

Stat. Auth.: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Stats. Implemented: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00

### 736-004-0030

#### Project Administration

(1) An agreement shall be signed by the applicant and parks within 45 days of recommendation by the ATV-AAC. Projects not authorized within this time frame will be canceled. No project may begin without a signed agreement between the applicant and the Department. Permits, plans, and specifications must be received by the Department prior to the expenditure of funds.

(2) If funds are not available to fully fund a project or partial funding has been recommended by the ATV-AAC, the sponsor will be given the option of reducing the scope of the project.

(3) Extensions to project agreements may be granted only upon the recommendation of the ATV-AAC. Requests for extensions must be submitted to the Department and must show a compelling need for the extension.

(4) Project grant applications that do not receive funding assistance will be returned to the applicant without prejudice.

(5) Projects will be inspected by the Department prior to final acceptance. At the discretion of the Department, advances may be made in 25% increments. Project sponsors must demonstrate work completed before the next 25% increment will be advanced. A minimum of 25% of the allocated funds will be withheld until final inspection is complete and certified for payment of remaining funds.

(6) If no progress on a project has been made within 6 months of project authorization, the agreement shall be cancelled.

(7) Status reports will be required.

(a) The Department and ATV-AAC will establish status reporting procedures based upon funding requested. This report must include work completed, allocated and match funds expended and funds remaining.

(B) Financial statements, inspections and final reports shall be completed within 90 days of project completion or expiration of project agreements.

(8) Project Completion:

(a) Projects funded through the ATV grant program must be visibly posted to show the project was funded through the program. Posters, decals and stickers will be furnished by the Department for the posting.

(9) Conversion Requirements:

(a) Private lands that have been acquired using ATV funds shall be made available for ATV use. If ATV use is terminated on lands purchased with ATV funds, the sponsor shall make every reasonable attempt to either replace the land with land that has equal or greater suitability for ATV use and equal or greater fair market value or shall reimburse the ATV fund an amount equal to the fair market value of the property. Fair market value of the converted land and replacement property shall be determined by appraisals.

(b) In the case of development, rehabilitation, and equipment purchases, the sponsor shall operate the improvements or equipment for its established useful life. Guidelines established by the IRS will

be used 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, a percentage of the allocated funds will be returned to the Department equal to the percentage of useful life remaining in the funded facility or equipment.

Stat. Auth.: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Stats. Implemented: ORS 390.180, SB 1216 & Ch. 977, OL 1999

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00

### ATV Operating Permit Agents

#### 736-004-0040

##### Definition of an ATV Operating Permit Agent

As used in OAR 736-004-0045 and 736-004-0050, an ATV Operating Permit Agent is a person, business or government agency who is consigned ATV operating permits and decals by Oregon Parks and Recreation Department for sale as a service to the general public. For the purposes of OAR 736-004-0045 and 736-004-0050, "agent" shall mean an ATV Operating Permit Agent.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00

#### 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 to become an ATV Operating Permit Agent;

(b) Submit a surety bond in an amount determined by OPRD when 250 or more permits are to be ordered at a time.

(c) Enter into an agreement with OPRD to be designated as an agent.

(2) Agents shall be consigned ATV operating permits without prepayment.

(3) Agents may charge and retain \$.50 for each permit issued in addition to the regular costs of the permit, to cover the agent's costs to handle the permits.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00

#### 736-004-0050

##### Requirements of an ATV Operating Permit Agent

(1) ATV Operating Permit Agents shall comply with all of the following requirements:

(a) Legibly complete each ATV operating permit issued with the following information:

(A) The Class of permit being issued, either Class I, Class II, or Class III;

(B) The expiration date, which shall be two years from the date the permit is issued;

(C) A complete vehicle description, including the make, body style and vehicle identification number, if there is one;

(D) The name and complete address of the person owning the vehicle;

(E) The date the permit was issued;

(F) The identifying agent number that has been assigned by OPRD to the agent; and

(G) The written signature of the agent or agent's designee issuing the permit, which shall include at least the person's full first and last name.

(b) Issue an ATV decal with each operating permit. The decal and operating permit shall be issued with the same inventory number. The light equipment (year) sticker number affixed to the decal shall be recorded on the permit; and

(c) Send OPRD the "parks" copy of the permits on or before the 10th of the following month, together with the ATV Operating Permit Agent's Monthly Sales Report and remittance of fees for all permits sold the previous month.

(2) An agent shall not loan ATV operating permits to any other agent or person.



(3) Any alteration of the ATV operating permit information at time of issue shall void the permit. When an ATV operating permit is voided, the agent shall send all copies of the permit, including the decal to OPRD along with an explanation of why the permit was voided. Voided permits shall be submitted with the next monthly report. If copies of the permit are unavailable for submission to OPRD, the explanation shall state why the copies are unavailable.

(4) It is the responsibility of the agent to provide a secure facility to store the permits and to maintain accounting controls for the inventory of permits consigned to the agent. All permits that are not accounted for by the agent are deemed to be the agent's responsibility and the fee for each permit not accounted for shall be charged to the agent.

(5) Agents shall return all unused ATV operating permits and decals to OPRD upon demand or when the agency agreement is terminated.

(6) An agent's failure to comply with the provisions of this rule may result in the cancellation of the agent's authority to issue ATV operating permits and decals.

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

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00

### ATV Operating Permits

#### 736-004-0055

##### Definitions — All-Terrain Vehicles

(1) "ATV" means all-terrain vehicle.

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

(3) "Saddle" means any device attached to the vehicle which is used for seating.

(4) A Class I ATV is less than 50 inches in width, has a dry weight of 800 pounds or less travels on three or more low pressure tires, and has a saddle seat for the operator. It is designed for, or capable of, cross-country travel over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

(5) A Class II ATV weighs more than 800 pounds, but less than 8,000 pounds, is designed for and capable of travel cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain and is operated off a highway.

(6) A Class III ATV has a dry weight of 600 pounds or less and travels on two tires.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00

#### 736-004-0060

##### All-Terrain Vehicle Off-Road Operating Permit

(1) An all-terrain vehicle (ATV) off-road operating permit shall be in the form of a decal to be placed on the vehicle as determined in OAR 736-004-0065. All ATV off-road operating permits shall contain:

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

(b) The word "Oregon"; and

(c) The expiration date, either on the permit or designated by the use of stickers.

(2) The application for an ATV off-road operating permit shall include, but not be limited to the following:

(a) Vehicle description including make, body style and, the vehicle identification number if there is one.

(b) Name and address of the owner; and

(c) An indication of whether the permit is for a Class I, Class II or Class III ATV.

(3) The fee for an original or replacement ATV off-road operating permit shall be \$10.

(4) To replace a permit that is lost, destroyed, mutilated or needs to be replaced for any reason, the owner must:

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

(b) Pay the \$10 fee.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00

#### 736-004-0065

##### Placement of ATV Off-Road Operating Permit

An ATV off-road operating permit shall be in the form of a decal to be permanently affixed to the vehicle for which it is issued, and be clearly visible. Placement of the permit shall be as follows:

(1) 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;

(2) 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;

(3) 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

(4) 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

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00

#### 736-004-0070

##### Reciprocity for Out-of-State Permits

An ATV operating permit that is issued in another state shall be honored in the State of Oregon if the issuing state also honors an Oregon ATV operating permit.

(1) The ATV must have a resident state ATV operating permit or a State of Oregon ATV operating permit to operate the ATV on designated ATV areas.

(a) A State of Oregon ATV operating permit may be issued for all terrain vehicles owned by a resident of another state.

(b) An ATV operating permit is valid in those areas designated for ATV use.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00

## 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, ORS 183.550 & ORS 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, ORS 183.550 & ORS 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: The publication(s) referenced to in this rule 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, ORS 183.550 & ORS 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 rule establishes the procedures and requirements used by the Oregon Parks and Recreation Department, Director, when distributing state monies to 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.: PRD 7-1999, f. & cert. ef. 11-23-99

#### 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 allocates money to local governments.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99

#### 736-006-0110

##### Definitions

For purposes of OAR736-006-0100 through 736-006-0135 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 and Local Government Grant Program 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 Oregon Parks and Recreation Department (OPRD).

(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 Oregon Parks and Recreation Department.

(7) "Eligible Project" — An acquisition, development, or major rehabilitation undertaking which satisfies the requirements of the Local Government Grant Program.

(8) "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).

(9) "Local Comprehensive Plan" — The comprehensive land use plan prepared by each local jurisdiction within the state, as required by ORS Chapter 197.

(10) "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.

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

(12) "Local Government Grant Policies and 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 state assistance.

(13) "Project Authorization" — State/local agreement which authorizes the project, as signed by both the Department and project sponsor.

(14) "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.

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

(16) "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.: PRD 7-1999, f. & cert. ef. 11-23-99

#### 736-006-0115

##### Apportionment of Monies Between Small and Large Grants

(1) 10% of available funds shall be set aside for small grants. Small grants are projects which do not exceed \$50,000 total cost and \$25,000 grant request. Funding cycles for small grant requests shall be on an annual basis.

(2) Remainder of available funds shall be for large projects with a maximum \$250,000 grant request. Funding cycles for large grants shall be on a biennial basis.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99

#### 736-006-0120

##### Assessment for Services

The Department is authorized adequate funding per biennium for financial and programmatic administration and operation of the Local Government Grant Program, the Local Government Advisory Committee support, travel and supplies.

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99

#### 736-006-0125

##### 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 state funding assistance.

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

- (a) City Park and Recreation Departments;
- (b) County Park and Recreation Departments;
- (c) Park and Recreation Districts;
- (d) Port Districts;
- (e) Metropolitan Service District.

(2) Matching Requirements. The Local Government Grant Program provides for up to 50 percent funding assistance, except for cities/districts with a population of less than 5,000 and counties with a population of less than 30,000, the matching requirement is 40 percent. The eligible agency match 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 (cannot exceed 15% of total project costs), or any combination thereof.

(a) Local Government Program funds cannot be matched with County Opportunity Grant Program funds, Marine Board, and other state program funds.

(b) Local Government match must be available at the time application is submitted.

(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/or recreation elements of local com-

prehensive plans and local park master plans. Only outdoor park and recreation areas and facilities are eligible.

(b) Water based outdoor recreation facilities that are not eligible for State Marine Board funding, such as short-term transient moorages, are eligible.

(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/or that the project is consistent with local comprehensive land use plan and SCORP.

(5) Application Form. All applications for funding assistance for outdoor park and recreation program projects must be submitted on forms supplied by the Department. All applications must be consistent with the Local Government Grant 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) State agency review, as needed;
- (g) Property deed or lease;
- (h) Estimate of development costs and schedule;
- (i) Preliminary title report (acquisitions only);
- (j) Documented Americans with Disabilities Act Compliance Plan specific to projects;

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

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

(6) Local Project Time Line:

(a) All applications for funding must be submitted to the Oregon Parks and Recreation Department in a completed form consistent with section (6) of this rule, no later than January 1. Project sponsors will be contacted about missing documentation, which must be submitted to the Department within 10 days. 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 Local Government Grant Advisory Committee. On or about April 1, the Local Government Grant Advisory Committee will meet to recommend funding priorities to the Director for all eligible projects submitted.

(b) By May 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 Local Government Grant Procedure 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 state funding assistance available within the state fiscal year July 1 to June 30, will determine the projects to be funded.

(e) If additional state monies become available throughout the current funding year, projects on the priority list will be funded in priority order.

(7) Project administration:

(a) A signed state/local agreement shall constitute project authorization. It shall be executed within 30 days. 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 (e.g. 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 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 by the Department. The project sponsor's auditor, or its designee must certify and audit project 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 state 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 Local Government Advisory Committee.

(8) Conversion Requirements — Park and recreation areas and facilities must be dedicated for park and recreation purposes. 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 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. The replacement property must be equal to the 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.

(a) Project sponsors that have not addressed or submitted documentation to state or NPS for review and approval of an active conversion through the Land Water Conservation Fund Program or the Local Government Grant Program are not eligible to apply for Local Government Grant Program assistance.

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

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180

Hist.: PRD 7-1999, f. & cert. ef. 11-23-99

### 736-006-0130

#### Local Government Grant Advisory Committee

(1) The Local Government Grant Advisory Committee shall be composed of nine members appointed by the Oregon 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; and

(h) Two public at large;

(i) 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 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 Local Government Grant Advisory Committee:

(a) The Committee shall meet annually in April and at other times upon the call of the Director. The committee will establish a priority order of eligible local government projects for state 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 park master plans, the local comprehensive land use plan and/or SCORP. 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 Local Government Grant Advisory Committee at least 30 days prior to their meeting.

(c) Sponsors with large project requests shall be allowed to make a presentation under a procedure established by the Department.

(5) Priority Selection Criteria. Large projects shall be prioritized by the Local Government Grant Advisory Committee 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 protects natural, scenic and cultural resources, and/or urgent needs identified in SCORP, the extent the project meets the recreation and/or ecological needs identified in the local comprehensive land use plans, and/or watershed, basin-wide or statewide ecoregional restoration, 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 the Local Government Grant Procedure Manual;

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

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

(c) Small project requests will be scored and prioritized for funding by OPRD grants staff. No presentation before the Local Government Grant Advisory Committee will be required.

Stat. Auth.: ORS 390.180



Stats. Implemented: ORS 390.180  
Hist.: PRD 7-1999, f. & cert. ef. 11-23-99

**736-006-0135**

**Emergency Procedure**

(1) Under extreme conditions such as severe cut backs of state funds or complete elimination of these funds an emergency procedure may be initiated at the discretion of the Oregon 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 state 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.: PRD 7-1999, f. & cert. ef. 11-23-99

**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, ORS 390.124 & ORS 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, ORS 390.124 & ORS 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, ORS 390.124 & ORS 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, ORS 390.124 & ORS 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, ORS 390.124 & ORS 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:

**Total actual revenues for month x**

**Total Certified Allocations**

**Total Estimated Revenues x**

**County Certified Allocation**

**Total Certified Allocations = 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, ORS 390.124 & ORS 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 & ORS 390.124 & ORS 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, ORS 390.124 & ORS 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, ORS 390.124 & ORS 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: The publication(s) referenced to in this rule 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 attributable 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 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 versions;

(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

#### 736-009-0005

##### Oregon Recreation Trails — Footpaths Only

The following trails are declared as Oregon Recreation Trails, as footpaths only, pursuant to the Recreation Trails System Act, ORS 390.950 – 390.990:

(1) Saddle Mountain Trail in Saddle Mountain State Park in Clatsop County (from the state park parking lot to the summit of Saddle Mountain, a distance of 3.0 miles).

(2) Ecola Trail in Ecola State Park (from the state park parking lot at the end of West Point Road near Seaside to the south boundary of Ecola Park in four sections, totaling 8.6 miles).

(3) Cape Falcon Trail (2.0 miles between Highway 101 and Cape Falcon); Short Sand Creek — Necarney Creek Loop Trail (0.9 mile between Highway 101 and Short Sands Beach); and Neahkahnie Mountain Trail (1.0 mile to the summit of Neahkahnie Mountain from its south base in Oswald West State Park, a total distance of 3.9 miles).

(4) Cape Lookout Trail in Cape Lookout State Park (from the picnic area to the tip of Cape Lookout in three sections, totaling 5.6 miles).

(5) Cape Sebastian Oregon Recreation Trail in Cape Sebastian State Park in Curry County (one existing trail approximately two miles in length beginning at the parking area at the southern end of the access road from the Oregon Coast Highway to the southern end of the Cape overlooking Hunter Cove).

(6) Humbug Mountain Oregon Recreation Trail in Humbug Mountain State Park in Curry County (approximately seven miles consisting of two segments of existing trail, one segment of the old coast highway and another segment partly on an old logging road and partly to be constructed).

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.950 - ORS 390.962

Hist.: HC 1286, f. 12-19-72, ef. 1-1-73; 1 OTC 30, f. 7-5-74, ef. 7-25-74

#### 736-009-0010

##### Oregon Recreation Trails — Footpath, Bicycle

The following trails are declared as Oregon Recreation Trails as combination footpath and bicycle only, pursuant to the Recreation Trails System Act, ORS 390.950 to 390.990:

(1) The Forty Mile Loop Trail in Portland, Gresham, Milwaukie, Troutdale and unincorporated portions of Multnomah County a distance of approximately 140 miles.

(2) The Willow Canyon Trail in Madras and Jefferson County from Buff School to Lake Simtustus a distance of approximately seven miles.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.950 - ORS 390.962

Hist.: PR 6-1987, f. & ef. 7-8-87; PR 1-1989, f. & cert. ef. 3-1-89

## DIVISION 10

### GENERAL PARK AREA RULES

#### 736-010-0005

##### Purpose and Scope of Rules

(1) These rules govern the operation of all park areas under the jurisdiction of the State Parks and Recreation Department.

(2) These rules also set forth reasonable charges for the use of accommodations provided.

Stat. Auth.: ORS 184, ORS 366, ORS 390 & ORS 498

Stats. Implemented: ORS 243.140, ORS 390.050, ORS 390.111, ORS 390.121, ORS 390.124 & ORS 498.002

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

#### 736-010-0010

##### Statutory Authority and Procedures

These rules are adopted pursuant to ORS 366.111 which gives the State Parks and Recreation Commission complete jurisdiction and authority over all park areas acquired by the state for recreational purposes. ORS 390.010 gives the State Parks and Recreation Commission the authority to develop, construct, improve, operate, and maintain such park areas in a manner which will contribute to the general welfare of the public. ORS 390.124 gives the State Parks and Recreation Commission the authority to make regulations and provisions as it deems necessary for the use and administration of such park areas. ORS 390.050 authorizes the park director and employees specifically designated by the park director to enforce park area rules by citation authority.

Stat. Auth.: ORS 184, ORS 366, ORS 390 & ORS 498

Stats. Implemented: ORS 243.140, ORS 390.050, ORS 390.111, ORS 390.121, ORS 390.124 & ORS 498.002

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

#### 736-010-0015

##### Definitions

(1) "Commission" means the Oregon State Parks and Recreation Commission.

(2) "Department" means the Oregon State Parks and Recreation Department.

(3) "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 Commission.

(4) "Park Resources" means any natural, cultural, or human-made structure or feature of a park area.

(5) "Park Manager" means the supervisor or designated employee in charge of a state park area.

(6) "Park Director" means the director, in charge of the Oregon State Parks and Recreation Department.

(7) "Park Employee" means employees of the Oregon State Parks and Recreation Department.

(8) "Enforcement Officer" means a park employee authorized by the Department to investigate observed or reported violations and to issue oral or written warnings and citations for violations of park area rules.

Stat. Auth.: ORS 184, ORS 366, ORS 390.124 & ORS 498

Stats. Implemented: ORS 390.050, ORS 390.111 & 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 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

#### 736-010-0020

##### General Regulations

(1) The director, by written agreement, may cooperatively exercise jurisdiction and authority over park properties with a county, city, or political subdivision thereof for the purposes of enforcing park rules, and applicable state, county and city laws.

(2) The park manager or designated employee, and any state, county, or city peace officer, pursuant to a written agreement with the department, is authorized to seek compliance from the public with the park area rules, state, county and city laws and can order the person violating these rules or laws to leave the park area and may exclude that person from the park for a specified period of time.

(3) The park manager or designated employee, and state, county, or city peace officers, pursuant to a written agreement with the department, may exercise this exclusionary authority for violations of park rules, state, county, and city laws. Examples of behavior which will render park visitors subject to exclusion includes, but is not limited to:

(a) Behavior judged injurious by the park manager or designated employee, or peace officer. Such injurious behavior includes, but is not limited to: behavior which damages park resources or the quality of other park visitors' recreational experience;

(b) Disobeying a reasonable request from any OPRD employee or peace officer;

(c) Endangering the public safety of a park visitor, park manager, designated employee, or peace officer, or endangering one's own personal safety;

(d) Willfully attempting not to pay park fees;

(e) Violating of a court order to stay out of a state park;

(f) Creating overnight shelters or camps in areas not designated for camping;

(g) Urinating and defecating in park areas not designated as restroom facilities; and

(h) Other prohibited activities as listed in the Park Area Rules and Enforcement Guidelines OAR 736-010-0045.

(4) Except where permissible for overnight camping, no person, other than authorized personnel, shall enter or remain in any park area between the daily closing and opening time as posted at the park area entrance.

(5) No person shall obstruct, harass or interfere with the official duties of park employees in the enforcement of park area rules.

(6) For the protection of park resources, for public health and safety, for the security needs or avoidance of conflict among users, or other reasons, the park manager or designated park employee is authorized:

(a) To limit specific uses or activities to portions of a park designated by the park manager; or

(b) To designate portions of a park to be used solely for specific uses.

(7) For the protection of park resources, for public health and safety, for the security needs or avoidance of conflict among users, or other reasons, the park manager, designated employee, or peace officers is authorized:

(a) To restrict access to or to close all or a portion of a park.

(b) To exclude a person from a park for a specified period of time for violations of park rules; state, county, and city laws; or county court orders.

(8) Individuals are to comply with park signs installed to obtain compliance with said restrictions of park rules.

(9) Exclusionary Appeals Process:

(a) A person excluded from a park may appeal the exclusion notice by filing an appeal within seven days of the exclusion date.

(b) A person may contact the park manager, Monday through Friday during regular business hours, to file an appeal and request an appeal hearing.

(c) Unless the person requests the presence of the issuing person at the appeal hearing, the issuing person's sworn statement will



be used as evidence at the hearing in lieu of that person's testimony.

Stat. Auth.: ORS 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

### 736-010-0022

#### Fines

(1) Any person, firm or corporation violating any park rule commits a Class A, B, C, or D violation punishable, upon conviction, by a fine not to exceed \$600.

(2) Each occurrence of a violation of a park area rule shall be considered a separate offense.

Stat. Auth.: ORS 284 & ORS 390  
Stats. Implemented: ORS 390.050 & ORS 390.111  
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

### 736-010-0025

#### Motor Vehicles

(1) Motorists must comply with motor vehicle regulatory signs posted in park areas.

(2) Motor vehicles shall be operated only on roads and in parking areas constructed or designated for motor vehicle use.

(3) Automobiles, trailers, or other vehicles shall be parked only in designated parking areas.

(4) Where not otherwise posted, motor vehicles shall not be operated within a park area at speeds in excess of 25 MPH.

Stat. Auth.: ORS 390 & ORS 811  
Stats. Implemented: ORS 390.111 & ORS 390.121  
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

### 736-010-0026

#### Bicyclists

Bicyclists, skateboarders and users of similar devices must comply with motor vehicle and bike regulatory signs posted in park areas.

Stat. Auth.: ORS 390.124  
Stats. Implemented: ORS 390.111 & ORS 390.121  
Hist.: PR 4-1991, f. 4-30-91, cert. ef. 5-13-91

### 736-010-0027

#### Boats and Moorages

(1) Boaters must comply with park regulatory signs posted in boat launching, moorage and beach areas.

(2) Boats moored shall be secured in a manner that will not cause personal injury or damage to private property or park resources.

(3) There shall be no swimming or water skiing in the immediate area of or from boat moorage docks or facilities.

(4) Fishing from boat moorage docks may be permitted at the discretion of the park manager.

Stat. Auth.: ORS 184 & ORS 390  
Stats. Implemented: ORS 390.111 & ORS 390.121  
Hist.: PR 5-1983, f. & ef. 3-30-83

### 736-010-0030

#### Pets

(1) Any dog, cat, or other animal brought into or kept in a park area shall be confined in a vehicle or on a leash not more than six feet long and kept under physical control at all times.

(2) The owner is responsible for the animal's behavior and containment and for the removal of the animal's wastes while in the park area.

(3) No animals other than seeing-eye dogs shall be allowed in any building or structure.

(4) No person shall ride, drive, lead, or keep a saddle horse or other animal in any park area, except on such roads, trails, or areas

designated for that purpose. No horse or other animal shall be hitched or confined in a manner that may cause damage to any tree, shrub, improvement or structure.

(5) The park manager or designated park employee has the authority to undertake any measures deemed necessary (including the removal of the animal from the park area) to protect park resources and to prevent interference by the animal with the safety, comfort, and well-being of park visitors.

(6) Park employees may seize a dog or other pet running at large in a park area and release to an animal pound.

(7) The park manager may designate a controlled area of a park as open to dogs off leash for the purpose of training dogs, for open field trials, and for exercising dogs for other purposes, when the dog is in voice control of the owner.

Stat. Auth.: ORS 184, ORS 366, ORS 390.124 & ORS 498  
Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002  
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; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93

### 736-010-0035

#### Livestock and Farming

No person shall harass livestock or interfere with farming activities and facilities, including fencing, lawfully permitted on any park area.

Stat. Auth.: ORS 184, ORS 366, ORS 390 & ORS 498  
Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002  
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

### 736-010-0040

#### Vandalism and Litter

(1) A person may gather berries, fruits, mushrooms, and similar edibles as identified by the park manager for personal consumption, but not for sale or distribution without a permit as described in OAR 736-016-0005. Living plants may not be uprooted; roots, tubers, flowers, and stems may not be collected. Driftwood may be taken in small amounts in accordance with OAR 736-026-0010.

(2) No person shall, except with the written permission of the park director or designated park employee:

(a) Dig up, or remove any soil, rock, historical or fossil materials or Indian artifacts or burials;

(b) Lay or set off any blast;

(c) Roll any stones or other objects that endangers park visitors or damages park resources;

(d) Except as allowed by section (1) of this rule, pick, cut, mutilate or remove plant life or natural resources of any type from any park area.

(3) Persons shall not mutilate, deface, damage, or remove any property, structure or facility of any kind in a park area.

(4) Materials for recycling, garbage, sewage, refuse or waste, including fish parts, if disposed of, shall be left only in the approved containers provided.

(5) Waste containers provided in park areas are solely for the benefit of the park user and shall not be used for the deposit of waste or refuse generated from household, commercial, industrial, construction, county or federal parks, or other non-state park activities.

Stat. Auth.: ORS 184, ORS 366, ORS 390.124 & ORS 498  
Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002  
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

### 736-010-0045

#### Prohibited Activities

The following activities are prohibited on park property:

(1) Use or operation of any noise producing machine, vehicle, device or instrument in a manner that in the judgment of the park manager is disturbing to other park area visitors;



(2) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other substances without the written permission of the park manager;

(3) Use of a public address system or metal detector or similar device without written permission of the park manager;

(4) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway or common area;

(5) 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 by park users or employees;

(6) Engaging in, promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well being of the public, park users or park employees;

(7) Use or possession of any alcoholic beverage(s) by any person under 21 years of age;

(8) Smoking in any areas where smoking is prohibited by the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(9) Public indecency as defined in ORS 163.465;

(10) Except in designated areas, constructing or displaying a structure or sign in a park area without a park permit;

(11) Disturbing or removing cultural, archaeological, or historical material from a state park area, unless authorized by the park director as defined under ORS 390.235; and

(12) Base jumping, hang gliding, paragliding or similar activities shall not be permitted from buildings, bridges, or other structures. These activities are permitted elsewhere on State Parks and Recreation properties except where prohibited by posted notice. The park manager shall have the authority to issue a permit for these activities where they are prohibited by posted notice. The issuance of the permit shall be based on the park managers "special conditions" criteria that:

(a) Consider the safety of the participant;

(b) Consider the safety of the park visitor;

(c) Consider how the natural resources are impacted if these activities are permitted;

(d) Consider the potential rescue cost to the department; transfer cost by permit; and

(e) Other hazardous conditions.

(13) Give or offer food items to any wildlife within a state park property except when authorized by the Parks Director or designee.

(14) When and where deemed necessary by the park manager, all food, garbage and equipment used to cook or store food, when not attended, must be placed in a vehicle or hard sided camping unit so as not to create an attractive nuisance.

Stat. Auth.: ORS 390.124

Stat. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

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 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

### 736-010-0050

#### Overnight Use

(1) Overnight use is not permitted on ocean beaches abutting park areas, or in any other park area not designated for camping.

(2) The director is authorized to establish overnight length of stay and daily checkout times to provide marketing opportunities and assist in managing use.

(3) Unless otherwise posted, overnight facilities may be occupied only as assigned by the park manager.

(4) More than one vehicle may be authorized to occupy an individual campsite when, in the judgment of the park manager, such use will not impair the health and safety of visitors or be detrimental to park resources.

(5) Campsite party size will normally be limited to a maximum of eight individuals. However, the park manager may authorize a greater number or restrict to a lesser number when conditions such as campsite size warrant.

(6) During quiet hours (10 p.m. to 7 a.m.), campers shall respect the rights of other campers to peace and quiet. Campers shall reduce noise levels during quiet hours and other hours when, in the judgment of park employees, such noise levels are disturbing other campers.

(7) Temporary entry permits may be issued to non-camping visitors when, in the opinion of the park manager, such entry will not unnecessarily disrupt the operation of the campground and safety of park visitors.

(8) Park visitors in the campground between the hours of 10 p.m. and 7 a.m. are subject to payment of camping rental rates in accordance with OAR 736-010-0100.

(9) Within a developed campground, a campsite must be occupied the first night after camping equipment was set up or after a vehicle is left parked at the campsite.

(10) If a person has failed to pay camping rental rates for two consecutive days or has exceeded the length of stay time limit and has not corrected the violation after a request from a park employee, the employee may have all possessions removed from the campsite at the owner's expense. Oregon State Parks and Recreation Department will not be responsible for any loss or damage to possessions.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & 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 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

### 736-010-0055

#### Hunting and Firearms

(1) Except under special provisions of the Commission, no person within a park area shall:

(a) Hunt, pursue, trap, kill, injure, or molest any wildlife or disturb their habitats;

(b) Possess any loaded firearm or discharge any firearm, pellet gun, bow and arrow, slingshot, or other weapon capable of injuring any person or wildlife.

(2) When authorized by the Commission, hunting is permitted only under the rules and regulations of the State Department of Fish and Wildlife.

Stat. Auth.: ORS 184, ORS 366, ORS 390 & ORS 498

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

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

### 736-010-0060

#### Fires

(1) Fires in park areas shall be confined to:

(a) Park camp stoves or fireplaces provided for such purpose;

(b) Portions of beach areas designated as permissible for fires;

(c) Portable stoves in established campsites, park picnic areas, and designated beaches where fires are permitted.

(2) No fire shall be left unattended or be permitted to cause damage to park facilities or areas. Every fire shall be extinguished before its users leave the park area.

(3) At the discretion of the park manager, fires normally permitted in park areas may be restricted or prohibited due to high fire hazard conditions.

Stat. Auth.: ORS 184, ORS 366, ORS 390 & ORS 498

Stats. Implemented: ORS 390.111 & ORS 390.121

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

### 736-010-0065

#### Signs and Concessions

(1) Except in designated areas, no sign, marker or inscription of any kind shall be placed within a park area without written permission from the park manager.

(2) No person may distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park area unless they have first obtained permission from the park manager and

reported their name, address and number of leaflets to be distributed.

(3) The following activities are prohibited in a park area without prior authorization from the park director:

(a) Operating a concession, soliciting, selling, or offering for sale, peddling, hawking or vending any goods, wares, merchandise, food, liquids or services;

(b) Advertising any goods or services by any means whatsoever.

Stat. Auth.: ORS 184, ORS 366, ORS 390.124 & ORS 498

Stats. Implemented: ORS 390.111 & ORS 390.121

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; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93

### 736-010-0070

#### Lost Articles

All money or goods found by the public in park areas must be turned over to the park manager. All money or goods will be disposed of according to department policy adopted in accordance with ORS 98.005.

Stat. Auth.: ORS 184, ORS 366, ORS 390.124 & ORS 498

Stats. Implemented: ORS 390.111 & ORS 390.121

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 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93

### 736-010-0075

#### Additional Rules

Additional administrative rules shall be posted in specific park areas to which they pertain. These include, but are not limited to Division 15, Special Group Facilities, Division 16, Non-Traditional Park Activities, and Division 26, Beach Log and Driftwood Removal Policy.

Stat. Auth.: ORS 184, ORS 366, ORS 390.124 & ORS 498

Stats. Implemented: ORS 390.111, ORS 390.121, ORS 390.124 & ORS 498.002

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 13-1993, f. 7-12-93, cert. ef. 8-2-93

### 736-010-0080

#### Equal Opportunity Employer

The State Parks and Recreation Department is an affirmative action/equal opportunity employer.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111

Hist.: PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90

### 736-010-0085

#### Nondiscrimination Statement

Any activity or use of facility that discriminates on the basis of race, sex, color, age, creed, or national origin is prohibited.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 9-1981, f. & ef. 4-6-81

### Rates

### 736-010-0098

#### General Regulations

(1) Established rates shall be paid for use of selected facilities and the purchase of services and products.

(2) Unless posted otherwise, payment shall be made prior to use and refunds or credits prior to departure from the park area.

(3) With proper identification, individual campsite and day use entry rates are exempted for Oregon foster parents described in ORS 243.140 when accompanied by their foster children.

(4) Persons who do not pay the established rates shall be subject to a citation issued by an enforcement officer.

(5) The park director has authority to establish variable rates up to a maximum 50 percent above or below the prices listed in OAR 736-010-0099 through 736-010-0125 based on one or more of the following criteria established by the Commission:

(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.

(6) In lieu of the rates charged in OAR 736-010-0099 through 736-010-0125 the park director may:

(a) Permit sponsors or individuals to provide in-kind services or materials;

(b) Waive rates for other considerations of equal value that benefit the department.

(7) The director is authorized to establish rates and rental charges for services, facilities and products that are optional and/or nonessential or complement the basic facilities described in OAR 736-010-0099 through 736-010-0125 and 736-015-0010. Rates will be established based on comparable services by other providers and marketing opportunities to encourage use and revenues.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 390.124

Hist.: 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 1-1990, f. & cert. ef. 5-14-90; 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

### 736-010-0099

#### Reservations

(1) Reservations will be accepted for use of facilities at select department properties.

(2) Reservation procedures shall be established by the director to:

(a) Enable efficient customer access to facilities; and

(b) Increase the potential for others to use facilities that have had reservation cancellations.

(3) Reservation Rate (non-refundable): \$6 per reservation request.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 390.124

Hist.: PR 3-1996, f. & cert. ef. 5-13-96

### 736-010-0100

#### Overnight Rentals

To promote department financial self-sufficiency, 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 to increase to the nearest dollar the daily rental rate where a local transient lodging tax is charged. These additional revenues shall be retained by the department. Campsite Rental (per night per site):

(1) Full Hookup Campsite:

(a) Type I: \$17;

(b) Type II: \$15;

(c) Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

(2) Electrical Hookup Campsite:

(a) Type I: \$16;

(b) Type II: \$14;

(c) Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

(3) Tent Campsite:

(a) Type I: \$15;

(b) Type II: \$13;

(c) Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

(4) Primitive Campsite:

(a) Type I: \$9;

(b) Type II: \$9;

(c) Provides campsite with table and stove; water and sanitary facilities may be some distance away.

(5) Hikers/Bicyclist Campsite: \$4 per camper per night: Provides cleared area for camping; water and sanitary facilities may be some distance away.

(6) Extra Vehicle in Campground:

(a) Extra Vehicle — \$5 Per extra vehicle per night: An additional rental rate is charged when an extra vehicle is allowed overnight and is driven into the campground.

(b) Extra Motorcycle in Campground — If the initial campsite sale is to a motorcyclist, and the first extra vehicle is a motorcycle, the second motorcyclist will not be charged. Each additional motorcycle will be charged as an extra vehicle.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 390.124

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

### 736-010-0115

#### Day Use

(1) At designated parks, group picnic areas can be reserved by individuals, clubs, or organizations. The maximum group size for each area will be determined by the park manager.

(2) Group picnic rental rates shall be charged to offset additional park administration and main-tenance costs:

(a) 0–50 people — \$ 25;

(b) 50–100 people — \$ 50;

(c) 101–200 people — \$ 75;

(d) 201–400 people — \$150;

(e) 401–600 people — \$300;

(f) 601–1000 people — \$500;

(g) 1001+ people — \$600;

(h) As an alternate, the director may establish a comparable per person rate.

(3) The group leader may be asked to make prior arrangements with the park manager 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) Applicants must be 18 years of age or older. The group must have adult supervision at all times.

(6) No alcoholic beverages shall be served after 6 p.m. without prior approval of the park manager.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & 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 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

### 736-010-0120

#### Day Use Parking Permit

(1) Based on a program goal to manage increased visitor use of park areas and promote department financial self-sufficiency, the park director may require a motor vehicle day use parking permit at selected parks.

(2) General Regulations:

(a) Parking permits are to be clearly displayed in the driver's inside lower left corner of windshield;

(b) Permits with a self-adhesive backing are to be affixed to the windshield;

(c) Permits are non-transferrable and are assigned by vehicle license and registered owner(s).

(3) Day Use Parking Permit:

(a) Daily Vehicle — \$3;

(b) Annual Permit — \$20;

(c) Extra Vehicle Permit for additional vehicles registered to purchaser of annual pass (maximum 2) — \$5;

(d) Maximum allowable vendor's fee per permit — \$.50;

(e) In lieu of the charge for each motor vehicle, the park director may use alternate collection methods to achieve the program goals.

(4) Exceptions to the charge for motor vehicles include:

(a) Emergency vehicles;

(b) Government vehicles on official business;

(c) Business and delivery vehicles on official business;

(d) Motor vehicles of current state park registered campers;

(e) Park concessionaires and their employees;

(f) Park permittees;

(g) Park volunteers on duty in the park;

(h) Other persons as designated by the director or designee.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 390.124

Hist.: 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 16-1992, f. & cert. ef. 12-1-92; PR 7-1993, f. & cert. ef. 3-30-93; 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

### 736-010-0125

#### Miscellaneous Rentals and Products

(1) Firewood: Where conditions permit, firewood will be sold.

(2) Boat Moorage Facilities — \$5 per day per boat: Where boat moorage facilities are provided they may be reserved at the time campsite reservations are made.

(3) Showers — \$2 per person: Charged where showers are available to non-campers in a campground.

(4) Horse Camping Area — \$9 per day per camper unit (motor home, trailer, tent and camper).

(5) Pack and Saddle Animals — \$1 per animal per day: Charged where pack and saddle animals are permitted in special camping areas.

(6) Group Camps: \$40 per group area per night. Small group areas are available in some state parks and are designed to accommodate approximately 25 people. Water and toilet facilities are provided nearby, but shower facilities may be some distance away.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 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

## DIVISION 15

### SPECIAL GROUP FACILITIES

#### (Lodges, Resident Camps, and Conference Center)

### 736-015-0010

#### Rental Rates

(1) Rental rates will be charged for the use of special facilities which includes lodges, cabins, resident camps, meeting halls, conference centers and similar facilities.

(2) Due to the variety of locations and services available, the director will designate differential rental rates for use of special facilities based on one or more of the following criteria:

(a) Prevailing rates for comparable facilities;

(b) Day of week;

(c) Season of year;

(d) Amenities;

(e) Marketing opportunities.

(3) In lieu of the rates charged for special facilities, the park director may:

(a) Permit sponsors or individuals to provide in-kind services or materials;

(b) Waive rates for other considerations of equal value that benefit the department.

(4) Cleaning/Damage Deposit — Based on the potential to clean and repair facilities, the park manager may establish a refundable facility cleaning/damage deposit payable prior to use.

Stat. Auth.: ORS 390.124



Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 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 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 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

### 736-015-0015

#### Operational Procedures

The director is authorized to establish site specific operational procedures including reservations, length of stay, daily checkout times and age of applicants to provide marketing opportunities and assist in managing use.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111 & ORS 390.121

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 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

### 736-015-0020

#### Revocation

A permit may be denied or revoked if in the opinion of the park manager, the applicant does not satisfactorily comply with the conditions of the permit or with the park area rules. The park manager may consider past conduct in determining whether a permit should be issued, denied or revoked.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

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 1-1990, f. & cert. ef. 5-14-90

### 736-015-0030

#### Age

All applicants and group leaders must be 18 years of age or older, and are responsible for the activities of facility users. All users of group facilities shall have adequate administrative and supervisory staff to provide protection and safety to users, camp facilities and park lands. At least one responsible adult 18 years of age or older must be present at all times.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

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

### 736-015-0035

#### Use of Trailers and Pickup Campers

Except at group trailer camp areas, overnight use of trailers and pickup campers is not permitted unless prior approval has been obtained from the park manager.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

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

### 736-015-0040

#### Visitors

Visitors not staying overnight must vacate the park before the closing time posted at the individual special group facility location.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

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

### 736-015-0045

#### Alcoholic Beverages

Permission to consume alcoholic beverages in the group facilities may be granted by the park manager in charge. It shall be the

responsibility of the sponsoring group to obtain such permission in advance and to comply with all applicable state laws.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

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

### 736-015-0050

#### Pets

With the exception of seeing-eye dogs, no pets will be allowed at the Silver Falls Conference Center.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

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

### 736-015-0055

#### Swimming Pools at Silver Falls State Park

(1) Silver Creek Youth Camp:

(a) Under normal conditions, the pool will be in operation from June 15 to September 15;

(b) The pool will be heated and maintained at approximately 70 degrees;

(c) The daily fee will include heating, chemicals, and normal maintenance of pool;

(d) The fee will not include lifeguard protection. The user group will be required to furnish a certified senior lifeguard or approved equal as determined by the American Red Cross;

(e) User groups will be requested to make arrangements for use of the pools at the time of application.

(2) Silver Falls Conference Center:

(a) Under normal conditions, the pool will be in operation from June 15 to September 15;

(b) The pool will be used only by registered guests of the Conference Center;

(c) Oregon State Parks does not provide lifeguard protection and accepts no responsibility for accident or injury. Individuals who use the pool do so at their own risk.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 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

#### Bald Peak State Park

### 736-015-0058

#### Alcoholic Beverages

Use or possession of alcoholic beverages in Bald Peak State Park day use area is prohibited without a permit.

Stat. Auth.: ORS 390.124

Stat. Implemented: ORS 390.111 & ORS 390.121

Hist. PR 8-1996, f. 8-14-96, cert. ef. 8-15-96

#### Benson State Park

### 736-015-0060

#### Motor Boats

For the safety of those persons using the swimming facilities, the operation of motor boats on the lake in Benson State Park is prohibited.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81

#### Bonnie Lure State Park

### 736-015-0063

#### General Regulations

No alcoholic beverages of any kind are permitted on park grounds.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111 & ORS 390.121



Hist.: PR 16-1992, f. & cert. ef. 12-1-92

#### Bowers Rock State Park

##### 736-015-0065

###### General Regulations

(1) Seasonal hunting of waterfowl is permitted in portions of Bowers Rock State Park.

(2) Safety zone signs will seasonally be placed informing the general public and hunters of waterfowl hunting boundaries.

(3) Hunting and trapping are permitted only under the rules and regulations of the Oregon Department of Fish and Wildlife.

(4) Trapping in Bowers Rock State Park is allowed only by permit from the Oregon Parks and Recreation Department.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

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

#### Cape Kiwanda State Park

##### 736-015-0067

###### General Regulations

The use of hang gliders is permitted at Cape Kiwanda State Park.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 1-1990, f. & cert. ef. 5-14-90

#### Dabney State Park

##### 736-015-0070

###### General Regulations

(1) No dogs, except seeing-eye dogs, are permitted on park grounds.

(2) Use or possession of alcoholic beverages in Dabney State Park day use area is prohibited without a permit.

(3) The park shall be closed to visitors from dusk to daylight. Park visitors remaining after said time shall be subject to arrest.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 34(Temp), f. & ef. 8-7-74; 1 OTC 39, f. 10-1-74; 1 OTC 40, f. 11-1-74; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 8-1996, f. 8-14-96, cert. ef. 8-15-96

#### Deschutes River State Recreation Area

##### 736-015-0072

###### General Regulations

(1) Seasonal hunting of game wildlife permitted within the park south of the stream gage cable crossing line and parallel extensions of the cable crossing line to the east and west park boundaries.

(2) Hunting is permitted only under the rules and regulations of the State Department of Fish and Wildlife and the Deschutes River Scenic Waterway program.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

Hist.: PR 11-1986, f. & ef. 7-9-86

#### Ecola State Park

##### 736-015-0075

###### Skateboards and Similar Devices

To assure maximum safety to park visitors and property, no person shall use the paved roads and pedestrian trails for traveling on skateboards, or other similar devices, within the boundary of Ecola State Park.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 4-1978, f. & ef. 3-30-78; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81

#### Elijah Bristow State Park

##### 736-015-0080

#### General Regulations

(1) Seasonal hunting of waterfowl is permitted only in that portion of Elijah Bristow State Park located north of the main channel of the Middle Fork of the Willamette River.

(2) Safety zone signs will seasonally be placed informing the general public and hunters of waterfowl hunting boundaries.

(3) Hunting and trapping are permitted only under the rules and regulations of the Oregon Department of Fish and Wildlife.

(4) Trapping at Eliza Bristow State Park is allowed only by permit from the Oregon Parks and Recreation Department.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

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

#### Fort Stevens State Park (Coffenbury Lake)

##### 736-015-0085

###### Motor Boats

(1) The speed of motor boats and all other watercraft operating on Coffenbury Lake in Fort Stevens State Park, Clatsop County, Oregon, is restricted to ten miles per hour.

(2) Motor boats and all other watercraft are prohibited from entering the restricted swimming areas established except for the protection or rescue of human life.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81

#### Fort Stevens State Park

##### 736-015-0090

###### General Regulations

(1) Seasonal hunting of game waterfowl is permitted in portions of Fort Stevens State Park.

(2) Safety zone signs will seasonally be placed informing the general public and hunters of game waterfowl hunting boundaries.

(3) Hunting is permitted only under the rules and regulations of the State Department of Fish and Wildlife.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

Hist.: 1 OTC 75, f. & ef. 6-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81

#### Honeyman State Park

##### 736-015-0093

###### General Regulations

(1) No animals other than seeing-eye dogs shall be allowed in the water and abutting beaches designed for swimming.

(2) To access the Oregon Dunes Recreational Area (ODNRA), Off Highway Vehicles (OHV's) may operate on public roadways only within Sections K and L of the campground between the hours of 7 am to 10 pm daily from October 1 through April 30. The park manager may prohibit operation of OHV's which exceed the maximum decibel level as determined by the ODNRA and may restrict the hours of operation of OHV's when it is in the best interest of the department.

Stat. Auth.: ORS 390.124

Stat. Implemented: ORS 390.124

Hist.: PR 2-1987, f. & ef. 3-27-87; PR 13-1996, f. & cert. ef. 12-23-96

#### LaPine State Recreation Area

##### 736-015-0095

###### General Regulations

(1) Seasonal hunting of deer and game waterfowl is permitted in portions of LaPine Recreation Area.

(2) Safety zone signs will seasonally be placed informing the general public and hunters of deer and game waterfowl hunting boundaries.

(3) Hunting is permitted only under the rules and regulations of the State Department of Fish and Wildlife.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 2-1987, f. & ef. 3-27-87

### Lewis and Clark State Park

#### 736-015-0097

##### General Regulations

The use or possession of alcoholic beverages is prohibited between the east bank river frontage road and the Sandy River from I-84 upstream to the park boundary.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 1-1990, f. & cert. ef. 5-14-90

### Molalla River State Park

#### 736-015-0100

##### General Regulations

(1) Seasonal hunting of waterfowl is permitted only on or within 100 feet of the Molalla River within Molalla River State Park.

(2) Safety zone signs will seasonally be placed informing the general public and hunters of waterfowl hunting boundaries.

(3) Hunting and trapping are permitted only under the rules and regulations of the Oregon Department of Fish and Wildlife.

(4) Trapping in Molalla River State Park is allowed only by permit from the Oregon Parks and Recreation Department.

Stat. Auth.: ORS 184 & ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1987(Temp), f. & cert. ef. 7-7-87; PR 1-1988, f. & ef. cert. 3-25-88; PR 10-1991, f. & cert. ef. 6-18-91

### Prineville Reservoir State Park

#### 736-015-0102

##### General Regulations

No person shall use the campground shower facilities unless they are a registered camper of the park.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 5-1987(Temp), f. & cert. ef. 7-7-87; PR 1-1988, f. & ef. cert. 3-25-88

### Rooster Rock State Park

#### 736-015-0105

##### Parking Permits

(1) All motor vehicles and trailers parking overnight in the boat ramp parking area must obtain a permit from the park office.

(2) Motor vehicles and trailers without a permit are subject to be towed away at the owner's expense.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81

#### 736-015-0110

##### Nudity

(1) All persons of post-pubescent age or who have reached their 12th birthdays are prohibited from engaging in nudity, as defined below, in any area west of the boundary established by a line running north and south from 100 yards east of the easternmost beach access stairway and south of a line running east and west along the approximate high water mark of the Columbia River in Rooster Rock State Park.

(2) "Nudity" is defined as uncovered or less than opaquely covered:

(a) Human genitals;

(b) Human pubic areas;

(c) The human female breast below a point immediately above the top of the areola. (For purposes of this definition, a female breast is considered uncovered if only the nipple or only the nipple and areola are covered.); or

(d) The buttocks of the human male or female.

(3) The above restriction applies only where the person engaging in nudity is in public view, but 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 & ORS 390.121

Hist.: 1 OTC 10-1979(Temp), f. & ef. 5-17-79; 1 OTC 2-1980, f. & ef. 1-4-80;

1 OTC 14-1980(Temp), f. & ef. 8-6-80, ef. 8-9-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1992, f. & cert. ef. 2-14-92

#### 736-015-0115

##### Pets

No animals other than seeing-eye dogs shall be allowed in the water and abutting beaches designated for swimming.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 9-1981, f. & ef. 4-6-81

### Shore Acres State Park

#### 736-015-0120

##### Pets

No animals other than seeing-eye dogs shall be permitted outside of vehicles.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 9-1981, f. & ef. 4-6-81

### Silver Falls State Park

#### 736-015-0125

##### Descending or Scaling Rock Formations

(1) Descending or scaling the rock formations within the Silver Creek Canyon portions of the park is prohibited, due to the safety hazard to people on the trails or water areas below and the destructive impact to the significant scenic and vegetative resources of the park.

(2) With the exception of seeing eye dogs, no dogs are allowed on trails of the Silver Creek Canyon portions of the park.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 3-1984, f. & ef. 3-5-84

### Succor Creek State Recreation Area

#### 736-015-0130

##### Removal of Material from Park Area

(1) The following special regulations concern exceptions to park rules prohibiting the removal of any dirt, stones, rock, or other material from park areas.

(2) The Succor Creek Canyon vicinity is an area where the public has found recreational enjoyment for many years from the hobby of rock collecting. The State Parks and Recreation Department finds it to be in the public interest to provide special regulations which will allow amateur rock collectors to continue to explore for and retain rock souvenirs from the Succor Creek State Recreation Areas.

(3) Limited souvenir collecting of agate and gem stone rock materials is permitted within the boundaries of Succor Creek State Recreation Area away from the developed public use areas and roadways of the park under the following conditions:

(a) No commercial digging, quarrying, or removal of rock is allowed;

(b) No excavating or rock collecting is permitted within a distance of 500 feet from any developed public use picnic area or campground, or 200 feet from an improved highway or park road within the park area; or within the area of an archeological site;

(c) Excavation is restricted to standard hand tools such as a hand pick, shovel, or hammer;

(d) No person may set up any explosive charge or cause any blasting for the purpose of excavation or exposing of minerals or rocks;

(e) The use of mechanical excavators such as bulldozers, backhoes, scoops, tractors, or the use of other power tools to excavate or remove materials is prohibited;

(f) Rock and surface materials shall not be disturbed on hillside areas above public use areas or roadways where falling or rolling material could cause injury to persons or property below;

(g) Persons engaging in exploration or rock collecting along steep cliff areas or within excavation holes do so at their own risk;

(h) Excavation of rock or soil materials around the root zone of trees and shrubs is prohibited;

(i) That none of this regulation precludes compliance with existing state and federal government rules and regulations concerning mining or the protection of public archeological features or artifacts on the state and federal lands of this area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 31(Temp), f. & ef. 8-1-74; 1 OTC 35, f. 9-4-74, ef. 9-25-74; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 16-1992, f. & cert. ef. 12-1-92

### 736-015-0135

#### General Regulations

(1) Seasonal hunting of upland game birds is permitted in portions of Succor Creek State Recreational Area.

(2) Safety zone signs will seasonally be placed informing the general public and hunters of upland game bird hunting boundaries.

(3) Hunting is permitted only under the rules and regulations of the State Department of Fish and Wildlife.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81

### The Cove Palisades State Park

### 736-015-0140

#### Pets

No animals other than seeing-eye dogs shall be allowed in the water and abutting beaches designated for swimming.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81

### Tou Velle State Park

### 736-015-0144

#### General Regulations

Use or possession of alcoholic beverages permitted by group picnic permit only as issued by the park manager.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 11-1986, f. & ef. 7-9-86

### Tumalo State Park

### 736-015-0146

#### General Regulations

(1) Use or possession of alcoholic beverages in day use areas permitted by group picnic permit only as issued by the park manager.

(2) No animals other than seeing-eye dogs shall be allowed in the water and abutting beaches designated for swimming.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 4-1990(Temp), f. & cert. ef. 8-1-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91

### Warm Springs Access/Deschutes River Scenic Waterway

### 736-015-0148

#### General Regulations

No alcoholic beverages are to be consumed at the Warm Springs boat launch access, Deschutes River, Jefferson County.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: PR 1-1990, f. & cert. ef. 5-14-90

### Willamette Mission State Park

### 736-015-0150

#### General Regulations

(1) Seasonal hunting of waterfowl is permitted only in that portion of Willamette Mission State Park located on Grand Island in Yamhill County.

(2) Safety zone signs will seasonally be placed informing the general public and hunters of waterfowl hunting boundaries.

(3) Hunting and trapping are permitted only under the rules and regulations of the Oregon Department of Fish and Wildlife.

(4) Trapping in Willamette Mission State Park is allowed only by permit from the Oregon Parks and Recreation Department.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; 1 OTC 15-1980(Temp), f. & ef. 8-29-80; PR 9-1981, f. & ef. 4-6-81; PR 10-1991, f. & cert. ef. 6-18-91

### 736-015-0155

#### Boats

The use of power boats on Goose Lake and Mission Lake is restricted to electrically powered boats with thrust not exceeding 25 pounds.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.111 & ORS 390.121

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; 1 OTC 15-1980(Temp), f. & ef. 8-29-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83

### Willamette River Greenway Corridor

### 736-015-0160

#### General Regulations

The Willamette River Greenway Corridor is comprised of parcels of land acquired and developed under the jurisdiction of the State Parks and Recreation Department. The Greenway program was established to "protect, conserve, enhance and maintain the natural scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River." The intensity of development of Greenway Corridor Lands is minimal, with the primary goal being to provide adequate opportunities for public recreational use and enjoyment while reducing the potential for conflicts with adjacent property owners:

(1) Fires:

(a) Fires shall be confined to the fire rings provided on the site;

(b) No open fire shall be made unless a shovel, axe, and bucket of water are nearby.

(2) Pets: Except when in use for hunting gamebirds or training hunting dogs in greenway parcels open to hunting, any dog or other animal except horses shall be confined in a vehicle or on a leash not more than six feet long.

(3) Hunting and Firearms:

(a) In those Willamette River Greenway Corridor parcels closed to hunting, as listed below, it is against state park rules to:

(A) Hunt, pursue, trap, kill, injure, or molest any wildlife or disturb their habitat;

(B) Possess any loaded firearms or discharge any firearm, pellet gun, bow and arrow, slingshot, or other weapon capable of injuring any person or wildlife.

(b) The following Willamette River Greenway Corridor parcels are closed to hunting:

Corridor Parcel	Approximate R.M.	Branch*	Facing Bank Downstream
Wapato Access (Virginia Lake)	17.6-18.0;	MC	Right
(Closed from boardwalk in middle of Virginia Lake to south boundary)			
Crown Zellerbach	21.3;	WR	Left
Merrell (M.S. Young State Park)	23.6;	WR	Left
Willamette Shores Inc. (M.S. Young State Park)	24.0;	WR	Left
Meldrum Bar Park (City of Gladstone)	24.2-24.4;	WR	Right
Hattan-Fisher	24.3;	WR	Left
Dahl Park (City of Gladstone)	24.7;	WR	Right
Coalca Landing	30.7;	WR	Right
Lang	30.7;	WR	Left



Pete's Mountain Landing	30.8;	WR	Left
Peach Cove Landing	31.5;	WR	Left
Brandborg	32.0;	WR	Left
Asche	34.1;	WR	Left
French Prairie Access	41.0;	WR	Right
Parrett Mountain Access	45.5-46.0	WR	Left
San Salvador Access	56.7;	WR	Right
Lincoln Access	76.2-77.0;	WR	Left
Lincoln (Doaks Ferry) Access	77.6;	WR	Left
Darrow Rocks Access	78.1;	WR	Left
Ross Island Sand & Gravel (Salem Waterfront)	82.8;	WR	Right
Halls Ferry Access	91.3;	WR	Right
Springhill Access	113.8;	WR	Left
Takenah Landing City of Albany (Closed only between the two bridges)	118.5;	WR	Left
Jasper Bridge	195.2;	MF	Right
Minshall, Eller	119.9;	WR	Left
Jones, Lanham	120.1;	WR	Left
F. Schmidt, P. Schmidt	120.3;	WR	Left
Truax Island Access (Closed only for 500 feet west of parking area)	127.2;	WR	Right
Marshall Island Access (Banton)	168.7;	WR	Left
Log Jam Access	194.4-194.8;	MF	Left
Pengra Access (Jasper Bridge)	195.2;	MF	Right
Cougar Mountain Access	15.5;	CF	Right
Lynx Hollow Access (Closed except for 100 foot strip along riverbank)	17.2;	CF	Left

\*Branch — indicates branch of the Willamette River as follows: MC — Multnomah Channel; WR — Willamette River, Main Channel; MF — Willamette River, Middle Fork; CF — Willamette River, Coast Fork.

(c) Hunting is permitted in all other Willamette River Greenway Corridor parcels:

(A) During authorized seasons with shotguns or bows and arrows only;

(B) Only under the rules and regulations of the Oregon Department of Fish and Wildlife;

(C) Hunting dogs being used for hunting game birds or unprotected wildlife or being trained for hunting or tracking shall be in control of the handler and are not permitted to run at large.

(d) Trapping. Trapping in the Willamette River Greenway Corridor parcels closed to hunting, as listed above, is permitted only with written authorization from the Oregon Parks and Recreation Department.

ORS ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 498.002

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91

## DIVISION 16

### NON-TRADITIONAL PARK ACTIVITIES

#### 736-016-0005

##### General Regulations

(1) This rule is intended to ensure public health and safety, protect park resources and facilities and assist in maintaining facilities and services in instances where a party desires to use state park facilities for a non-traditional event or activity including:

(a) Use by large numbers of people;

(b) Non-recreational use of a facility;

(c) Use of a facility for which it was not designed to accommodate;

(d) Or use which involves unusual activities such as construction projects, placement of utilities, erection of substantial structures or displays;

(e) This rule is designed to accommodate uses in excess of the one-day "group and company picnics" and moderate-size group camping arrangements permitted by existing rules.

(2) For the purposes of this rule, a "non-traditional park activity" means any organized activity, gathering or use conducted in

whole or in part within the boundaries of a state park, ocean shore or other recreational area, which is not a recreational use permitted by the posted park regulations or other provisions of OAR Chapter 736, Divisions 10, 15 and 20. Such non-traditional activities may be permitted when the following policies are satisfied:

(a) Adequate sanitation, policing, medical facilities, traffic control and other necessary services are provided;

(b) Conflict with traditional park activities is minimized;

(c) All expenses, risks and liabilities are borne by the sponsors rather than the general public;

(d) The health, well-being and property of park users, park neighbors and of the general public are protected.

(3) Acceptable activities may include but are not limited to large group gatherings, rental or lease of property and structures, commercial filming, construction activities and placement of utilities.

Stat. Auth.: ORS 184 & ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 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

#### 736-016-0010

##### Permit Required

No person, corporation or other entity shall sponsor, promote or conduct a non-traditional park activity within the boundaries of any state park without having first obtained a permit to do so from the State Parks and Recreation Department.

Stat. Auth.: ORS 184 & ORS 390

Stats. Implemented: ORS 390.111 & ORS 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

#### 736-016-0015

##### Permit Application Procedure

(1) Permit applications for a non-traditional park activity are to be received by the Area Manager or designee no less than ten working days prior to the planned activity.

(2) Information to be provided by the applicant for a permit shall include:

(a) Date of application;

(b) Name of park, ocean shore or other recreation area where the activity is to occur;

(c) Name and address of applicant and/or sponsor, firm, group or organization;

(d) Name, date of birth, address and phone number of the person who will be on site and responsible for the permit compliance during the activity;

(e) Date(s) and hour(s) of activity;

(f) Description and where applicable the script pages related to activities to be performed in the park;

(g) The number of participants involved;

(h) A site plan indicating the location of activities and construction of all facilities, structures and utilities;

(i) Description of parking and security arrangements;

(j) Description of plans for use of amplified sound, alcohol, participant entry/ticket fees and sale of food, beverages, souvenirs, goods or other services;

(k) A plan for timely cleanup and restoration of park area;

(l) The foregoing is not an exclusive list of the elements required for a permit. The applicant shall anticipate other measures necessary to protect the public and the park, depending upon the character of the park area and conditions existing at the time. For example, the sponsor will be required to provide certified lifeguards when the event is planned to be held adjacent to bodies of water in the summer months.

(3) All activities shall comply with applicable state and local building electrical, sanitation, health, fire and mass gathering codes, rules and ordinances. Additional state and local permits required shall be obtained prior to the beginning of the activity.

(4) The Area Manager or designee may approve, with conditions, or deny the permit application consistent with the policies set forth in these rules. The following shall be considered in evaluating the permit application:

(a) The ability of the applicant 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 and image;

(b) The extent to which the proposed activity, in both nature and timing, threatens interference with customary usage of the park by members of the public or interferes with the convenience of park neighbors and the general public;

(c) The experience of the applicant in performing similar activities in the past;

(d) Measures undertaken to mitigate any changes in customary park usage or damage to park resources caused by the activity.

Stat. Auth.: ORS 184 & ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 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

### 736-016-0020

#### Permit Form and Requirements

(1) Upon the approval of the permit application, a permit will be issued with the terms of permit to be strictly observed by the applicant. The permit shall at a minimum require that:

(a) The sponsor assumes full responsibility and liability for damages or injury to any member of the public arising out of the activity, including personal injury and property damage, and for any damage to park property;

(b) The sponsor shall indemnify and hold harmless the State of Oregon, its Parks and Recreation Commission and members thereof, the State 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;

(c) Prior to the permit being issued, the sponsor shall procure liability insurance which names the State of Oregon, its Parks and Recreation Department, its Parks and Recreation Commission, and the officers, agents and employees thereof as parties insured. The insurance coverage shall have limits of not less than \$50,000 property damage for each accident or occurrence, and for injury or death to persons, not less than \$100,000 for each person and \$500,000 for each accident or occurrence;

(d) The sponsor shall comply with all applicable federal, state and local laws, regulations and ordinances; and

(e) 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 event. 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 amount of security shall be determined by the department based on exposure and potential for damages from the activity.

(2) The department may, in its discretion, cancel the 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 and may cancel the permit effective immediately upon any breach of other permit conditions.

(3) The applicant shall terminate the activity 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.

Stat. Auth.: ORS 184 & ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 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

### 736-016-0023

#### Fees and Charges

(1) The non-refundable permit application fee is \$100, except where a monthly or annual rental lease or access fee is charged in which circumstance the application fee is waived.

(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:

(a) Commercial Film Use (motion picture, video and still camera activities requiring the use of props):

Number of Participants — Daily Use Rate

(A) 1–5 — \$100;

(B) 6–30 — \$150;

(C) 31–60 — \$300;

(D) 61 or more — \$400.

(b) Other Users (Commercial and Non-Profit except for activities at the Champoeg Amphitheater):

.....Refundable Fee + Deposit

(A) 0–50 people \$25 \$25;

(B) 51–100 people \$50 \$50;

(C) 101–200 people \$75 \$75;

(D) 201–400 people \$150 \$150;

(E) 401–600 people \$300 \$300;

(F) 601–1000 people \$500 \$500;

(G) 1001 people \$600 \$600;

(H) Each additional 100 people above 1,000 people +\$50/100 people +\$50/100 people

(c) Champoeg Amphitheater — Use without admission fee:

Refundable Fee + Deposit

(A) 0–400 people \$500 \$2,000

minimum;

(B) 401–1,000 people \$600

(C) Each additional 100 people above 1,000 people +\$50/100

(d) Champoeg Amphitheater — Use with admission fees: Applicants charging an admission fee will be assessed 10% of ticket sales up to \$2,500; this amount shall not be less than the permit fee as calculated in subsection (c) of this section based on size of audience. A refundable deposit of \$2,000 minimum will be required.

(3) If concessions are sold an assessment of 10% of the gross concessions receipts shall be paid to the department.

(4) Events co-sponsored by the department may have a negotiated fee.

(5) There will be an hourly rate assessment of \$20 (minimum four hours) for each employee required by the department to be on site to monitor and/or assist in the permittee activities.

(6) Annual or monthly rental, lease and access fees may be assessed and paid to the department where appropriate.

Stat. Auth.: ORS 184 & ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 390.124

Hist.: PR 5-1992, f. & cert. ef. 9-24-92; PR 7-1994, f. & cert. ef. 7-11-94

### 736-016-0025

#### Exemptions and Miscellaneous Provisions

(1) The sponsor may be exempted from certain requirements set forth in this rule when one or more of the following are satisfied:

(a) The sponsor is a governmental subdivision, or is a bona fide charitable organization conducting the event solely for charitable purposes;

(b) The event will be attended by the public for no more than one day; or

(c) The department determines that the given requirement(s) may be waived without creating a significant risk or threat of harm to public peace, health safety or to park resources.

(2) In lieu of the fees charged under OAR 736-016-0023, the department may permit the sponsors to provide in-kind services or other value.

(3) The department may stop the activity, and require the sponsor to clear the activity area of visitors, in the event of any emergency, significant law enforcement problem, or substantial threat to public safety arising from or affecting the activity.

(4) No application or proposal for a non-traditional park activity permit will be considered by the department unless:

(a) The sponsor or its principal representative is at least 21 years of age; and

(b) The sponsor or sponsor-organization has satisfied all outstanding liabilities and requirements running to the department and arising out of any prior activity involving property under the jurisdiction of the department.

(5) No permit agreement shall be transferable or assignable to any other sponsor, party or entity without the prior written approval from the department.

Stat. Auth.: ORS 183 & ORS 390.124

Stats. Implemented: ORS 390.111, ORS 390.121 & ORS 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

## 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 OAR 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 recre-



ation 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 reestablish 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 inter-

pretive 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, OAR 736-018-0028, and OAR 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 2000;

(b) Cape Lookout State Park;

(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 State Park;

(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) Elijah Bristow State Park;

(l) Cove Palisades State Park;

(m) Silver Falls State Park Master Plan, as amended in 1999;

(n) North 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;

(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; 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; 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; and

(y) Illinois River Forks State Park.

(2) The master plan documents which have been incorporated by reference into this division are available from the State Parks and Recreation Department, 1115 Commercial Street NE Suite 1, Salem OR 97301-1002.

Stat. Auth.: ORS 390.180(1)(c) & ORS 390.124

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

### 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 land-owners;

(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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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 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 - ORS 390.770 & ORS 390.990 - ORS 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 ORS 196.800 (ORS 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 ORS 390.715; or a permit for the removal of products from the ocean shore as required by the provisions of ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 con-



duit over, across or under the state recreation area or submerged lands adjoining the ocean shore under ORS 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 ORS 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, oceanfront 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 person 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, OR 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, ORS 184, ORS 390.605 et seq. & ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 — ORS 390.770 & ORS 390.990 - ORS 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 alterna-

tives 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 & ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 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 — ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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, ORS 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, ORS 184, ORS 390.605 et seq. & ORS 390.124  
Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 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, ORS 189, ORS 390.605 et seq. & ORS 390.124  
Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 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 OAR 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, ORS 189, ORS 390.605 et seq. & ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 OAR 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

### 736-020-0080

#### Fees

(1) Fees — each application for an improvement on the ocean shore, as that term is defined in ORS 390.605, shall be accompanied by a processing fee. The fee shall be determined according to the construction value of the improvement 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) “Construction value” shall include costs of labor, equipment, materials and all contractor fees, where those costs are incurred by the applicant or the applicant’s agents.

(3) In determining the construction value of a proposed project, the department shall consider the entire project, not just that portion on the ocean shore.

(4) Evidence the department may consider in establishing the construction value of a project may 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; and

(d) Other evidence of costs acceptable to the department if (a), (b) or (c) of this section are not available.

(5) All ocean shore application processing fees collected under sections (1) through (5) of this rule shall be dedicated to the ocean shores program and shall be continuously appropriated to the department to carry out the responsibilities, duties and activities described in ORS 390.605 to 390.760 and OAR Chapter 736, Divisions 20 through 28 and Division 30.

Stat. Auth.: ORS 390.124

Stats. Implemented: OL 1999, ch. 373

Hist.: PRD 6-1999(Temp), f. & cert. ef. 11-10-99 thru 5-8-00

### 736-020-0085

#### Administrative Relief; Appeals; Judicial Review

(1) Where an application for permit under Oregon Laws 1999, Chapter 373, Section 4 is denied, the applicant may request a hearing from the director; or where a permit is issued under Oregon Laws 1999, Chapter 373, Section 4, any person aggrieved by the issuance of the permit or conditions imposed on the permit, may request a hearing from the director.

(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 the director’s order denying or granting the permit.

(3) 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 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 a variety of methods of alternative dispute resolution.

(4) The hearing described in Sections (1) through (3) of 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.

(5) Appeals of final orders in contested case proceedings shall be in the Court of Appeals in accordance with ORS 183.482.

Stat. Auth.: ORS 390.124

Stats. Implemented: OL 1999, ch. 373

Hist.: PRD 6-1999(Temp), f. & cert. ef. 11-10-99 thru 5-8-00

### 736-020-0090

#### Enforcement Procedures

The director is authorized to take civil, criminal or administrative action to enforce ocean shore permit regulations as provided by Oregon Laws 1999, Chapter 373 and ORS 390.990. For purposes of this rule, ocean shore permit regulations include permit activities described in or contemplated by, and administrative rules implementing ORS 390.640, permits for ocean shore improvements; ORS 390.715, permits for pipe, cable or conduit across the ocean shore; and ORS 390.725, permits for removal of products along the ocean shore. This authority shall apply to any permits issued under ORS 390.650 or to any activity subject to permitting under ORS 390.650 including ocean shore improvement permits; pipe, cable and conduit permits; and product removal permits.

(1) When the director makes a preliminary determination that a violation of the ocean shore permit regulations has occurred, the director may pursue and or all of the remedies available under the ocean shores statutes.

(2) The director may seek voluntary compliance from a violator by allowing the violator to submit an after-the-fact permit application for projects that have been started without a required permit but not yet completed, except as provided in section (5) of this rule. The purpose of an after-the-fact permit is to allow a partially completed, unauthorized ocean shore improvement activity to be suspended while a determination is made as to whether the permit will be issued to complete the project. An after-the-fact permit applies to ocean shore improvement activity already accomplished at the time the application is submitted, as well as the additional activity proposed in the after-the-fact application to complete the project.

(3) Allowing the violator to apply for an after-the-fact permit does not prohibit the director from pursuing any other remedies, including imposing civil penalties.

(4) A violator may apply for an after-the-fact permit only if the project complies with the local land use plan and ordinances. An ocean shore improvement, pipe, cable, conduit or product removal project which does not comply with local land use plans and ordinances shall be subject to enforcement measures to achieve compliance.

(5) Violations involving ocean shore improvements, pipes, cables, conduits or product removal projects which were completed at the time of discovery by the department shall not be reviewed under after-the-fact applications but, instead, shall be subject to enforcement measures to achieve compliance with the ocean shore permit regulations. An enforcement order may include allowance of an after-the-fact application or require removal of the project.

(6) Existence of any of the following circumstances will normally lead to direct enforcement action rather than an after-the-fact permit application:

(a) The violator was aware of the ocean shore permit regulations while the project was in progress;

(b) The violator has previously violated the ocean shore permit regulations;

(c) The project has ongoing impacts which must be remedied by immediate full or partial restoration; and

(d) The purpose of the project is primarily to dispose of waste or surplus material or to justify site development in a manner that would be inappropriate without the project.

(7) When a project has ongoing impacts, the director may order initial corrective measures to be undertaken prior to employing other enforcement provisions of this rule.

(8) Before a violator is allowed to apply for an after-the-fact permit, the violator shall agree in writing to:

(a) Minimize impacts and cease activity on the ocean shore while the permit application is being processed;

(b) Restore the affected ocean shore site if the permit application is denied, withdrawn, or abandoned; and

(c) Comply with any other conditions that the director determines are necessary and consistent with the protection, conservation, and best use of the ocean shore.



(9) An after-the-fact permit application shall be processed by the department in the same manner as a timely application. The applicant shall be entitled to administrative and judicial review as provided in Oregon Laws 1999, Chapter 373, Section 6.

(10) Any person aggrieved or adversely affected by the issuance of an after-the-fact permit may request a hearing pursuant to Oregon Laws 1999, Chapter 373, Section 6.

(11) When the director determines the conditions of an ocean shore permit have been violated, the director may initiate the following proceedings to revoke the permit:

(a) The director shall issue a preliminary order indicating the intent to revoke the permit;

(b) The preliminary order shall include, but not be limited to, the following information:

(A) A statement of the permittee's right to a hearing before the permit may be revoked, and the time period in which such a request may be made;

(B) A statement of the authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular sections of the statutes and rules involved; and

(D) A short and plain statement of the matters asserted or charged as constituting the violation(s).

(c) The preliminary order may include a statement of the action, if any, that may be taken by the permittee to correct or offset the effects of the violation including, but not limited to, removal of the ocean shore improvement, pipe, cable, conduit or product removal project and restoration of the ocean shore to its natural condition:

(A) If such action is specified in the preliminary order, the order shall include a reasonable time period of not less than 20 days in which to complete the corrective action;

(B) If the permittee completes such action within the specified time period, the revocation procedure shall be terminated.

(d) If the permittee fails to request a contested case hearing within the time period provided, the director may issue a final order revoking the permit after presenting a prima facie case demonstrating that a violation has occurred.

(12) For the purpose of investigating ocean shore developments constructed without a permit issued under ORS 390.650 or that are suspected of violating conditions of such a permit, the director may authorize employees of the department to enter at reasonable times upon any private or public property.

Stat. Auth.: ORS 390.124

Stats. Implemented: OL 1999, ch. 373

Hist.: PRD 6-1999(Temp), f. & cert. ef. 11-10-99 thru 5-8-00

### 736-020-0095

#### Civil Penalty Provisions

In addition to any other remedy, the director has authority to assess a civil penalty for any violation of the ocean shore permit regulations. For purposes of this rule, ocean shore permit regulations include permit activities described in or contemplated by, and administrative rules implementing ORS 390.640, permits for ocean shore improvements; ORS 390.715, permits for pipe, cable or conduit across the ocean shore; and ORS 390.725, permits for removal of products along the ocean shore. This authority shall apply to any permits issued under ORS 390.650 or to any activity subject to permitting under ORS 390.650 including ocean shore improvement permits; pipe, cable and conduit permits; and product removal permits.

(1) For purposes of these rules relating to civil penalties:

(a) "Violation" means failure to comply with any provision of the ocean shore permit regulations, or any rule, order or permit adopted or issued thereunder;

(b) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the ocean shore permit regulations, or any rule, order or permit adopted or issued thereunder.

(2) Upon notice to the department of an apparent violation, the director shall conduct an investigation to determine whether a violation has occurred.

(3) After completion of a staff investigation, if the director determines a violation has occurred, the director may assess a civil penalty as prescribed in these rules.

(4) More than one civil penalty may be assessed for an unauthorized ocean shore improvement action. Example: A civil penalty assessed on an initial violation may be followed by a separate civil penalty for failure to comply with a restoration order issued on the same violation.

(5) The director shall give written notice of a civil penalty by personal service or by registered or certified mail to the person incurring the penalty. The notice shall include, but not be limited to, the following:

(a) The particular section of the statute, rule, order, or permit involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 20 days of receiving the notice; and

(d) A statement of the amount of penalty assessed and terms and conditions of payment.

(6) The person incurring the penalty may request a contested case hearing within 20 days from the date of personal service or mailing of the notice. The request shall be made in writing to the director, and shall be received within the 20 day period.

(7) Hearings shall be conducted under the provisions of ORS 183.415 to 183.430, 183.440 to 183.460, and 183.470 applicable to contested cases. If no hearing is requested or if the party requesting a hearing fails to appear, a final order shall be entered upon a prima facie case made on the record of the agency.

(8) Penalty Formulas for Violations — The amount of civil penalty, P, per day of violation shall be determined by the formula,  $P = BOVIC$ , where;

(a) B is base fine;

(b) O is ocean shore value;

(c) V is prior violations;

(d) I is ocean shore impact; and

(e) C is cooperation.

(9) The formula in section (8) of this rule is subject to the following modifications:

(a) In cases where the cooperation value, C, is greater than 1 and the ocean shore value, O, is greater than 1, the amount of the civil penalty, P, as determined by the formula in section (8) of this rule shall be doubled;

(b) In cases involving the violation of permit conditions where the ocean shore impact I value is 1, the formula shall be  $P = CX$  (\$100), where X is the number of permit conditions violated. Where there have been five or more permit conditions violated, X is 5;

(c) After final adjudication of any penalty listed in sections (8) or (9) of this rule, for every 20 working days which pass without payment, the amount of the penalty owing shall increase by the amount of the original penalty. No penalty shall be increased by more than ten times the original penalty amount.

(10) The following values and computations apply to the civil penalty formulas set forth in sections (8) and (9) of this rule:

(a) The base fine, B, is the amount of a permit application fee as defined in Oregon Laws 1999, Chapter 373, Section 4.

(b) The ocean shore value, O, shall be based on the director's determination of biological, recreational, fishery, and wildlife value and the relative degree of existing development of the ocean shore where the violation occurred and shall be assessed as follows:

(A) A value of 1 shall be applied to areas or sites the director determines to be of minor value. Possible examples are ocean shore areas with insignificant fish and wildlife resource or recreational value, wetlands of low resource value as a result of historical disturbances or physical alterations that were not violations existing prior to the violation under consideration, areas of accreting dunes encroaching on preexisting development and ocean beachfront areas exhibiting a high degree or frequency of preexisting legal development of a character and scale similar to that which is the subject of the violation;

(B) A value of 1.5 shall be applied to areas the director determines to be of moderate value. Possible examples are ocean shore

areas with modest habitat value for warm water species but lacking habitat value for spawning and rearing of anadromous salmonids and other game fish, wetland areas with modest diversity and public resource value and ocean beaches with modest levels of preexisting legal development of a character and scale similar to that which is the subject of the violation;

(C) A value of 2 shall be applied to areas the director determines to be of major value. Possible examples are ocean shore areas that are salmon and trout spawning areas, and provide significant wildlife and waterfowl habitat, freshwater wetlands with high diversity and high public resource value, ocean beach areas with diverse landforms, limited or no development or include or are physically adjacent to and visually prominent from federal, state or local parks, campgrounds, waysides or viewpoints.

(c) The prior violation or knowledge value, V, shall be determined by the director as follows:

(A) A value of 1 shall be applied where the director determines the person was unaware of the ocean shore permit regulations at the time of the violation;

(B) A value of 1.5 shall be applied where the director determines the person was aware of the ocean shore permit regulations at the time of the violation.

(C) A value of 2.5 shall be applied where the director determines the person was aware of the ocean shore permit regulations at the time of the violation and has previously violated the ocean shore permit regulations or any statute, rules, orders, or permits pertaining to the ocean shore.

(d) The ocean shore impact value, I, shall be determined by the director as a measure of extent, degree, permanence or relative size or scope of ocean shore impact as follows:

(A) A value of 1 shall be applied where the director determines the impacts of the violation are minor, have no impacts or positive impacts on public recreation access and use of the ocean shore and would naturally restore and cease to have visual impacts on the ocean shore within one year.

(B) A value of 1.5 shall be applied where the director determines the impacts of the violation on natural resource values are moderate, visual impacts are readily apparent, public access and use of the ocean shore are adversely affected and pre-violation conditions will take up to two years to restore naturally or through artificial means;

(C) A value of 2 shall be applied where the director determines the impacts of the violation on natural resource values are major, visual impacts are readily apparent, public access and use of the ocean shore are adversely affected and pre-violation conditions will not restore naturally or by artificial means or would take over two years to restore naturally or through artificial means.

(e) The cooperation value, C, shall be determined by the director after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assessed as follows:

(A) A value of 1 shall be applied where the person complies with restoration as requested by the director without the need for an enforcement order or court action by the director, or where the director determines that restoration efforts would be unlikely to benefit the resource.

(B) A value of 3 shall be applied where the person is not cooperative in complying with restoration as requested by the director and the director must issue an enforcement order or obtain a court order to restore the disturbed site.

(11) **Penalty Formula for Violation of Compensatory Mitigation Conditions** — If the director determines that a violation of compensatory mitigation conditions associated with a permit or an enforcement action has occurred, the director may assess a civil penalty.

(12) The amount of civil penalty, P, per violation, or day of violation, shall be determined by the formula,  $P = BC$ , where B is the mitigation base fine and C is the cooperation value. The amount of civil penalty, P, shall increase with the increase in elapsed time between the notice of violation and the date of compliance as follows:

(a) For an elapsed time of compliance of from 1 day to 90 days,  $P = BC$ ;

(b) For an elapsed time of compliance of from 91 days to 365 days,  $P = 3BC$ ;

(c) For an elapsed time of compliance greater than 365 days,  $P = 5BC$ .

(13) The mitigation base fine, B, shall be determined by the director as follows:

(a) For “minor” violations, the mitigation base fine is \$100. Possible examples of “minor” violations include late-filing of progress reports, failure to comply with safety conditions imposed by the permit, or enforcement action order, failure to comply with a planting plan where less than 25 percent of the area requiring planting was not planted or the density of planting was reduced by not more than 25 percent;

(b) “Major” violations:

(A) For “major” violations, the mitigation base fine is assessed according to the following scale:

(i) \$200 for ocean shore mitigation sites measuring less than 0.25 acres or involving less than 50 linear feet of beach front;

(ii) \$300 for ocean shore mitigation sites measuring 0.25 to 1.0 acres or involving from 50 linear feet up to 100 linear feet of beach front;

(iii) \$500 for ocean shore mitigation sites measuring 1.0 to 5.0 acres or involving from 100 linear feet up to 200 linear feet of beach front; and

(iv) \$1,000 for ocean shore mitigation sites measuring greater than 5 acres or involving in excess of 200 linear feet of beach front.

(B) Possible examples of “major” violations include violations where less than 75 percent of the required compensatory mitigation area or beach front distance was completed, there was failure to plant areas required by permit, order or enforcement action, where more than 25 percent of the area requiring planting was not planted and where the density of plantings was reduced by more than 25 percent.

(14) The cooperation value, C, shall be determined by the director as follows:

(a) A value of 1 shall be applied where the director determines the person achieved compliance with the required mitigation conditions after notification of non-compliance by the director, without the need for an enforcement order of court action by the director;

(b) A value of 3 shall be applied where the director determines the person is not cooperative in complying with the required mitigation conditions after notification of non-compliance by the director and the director must initiate an enforcement order or court action.

(15) **Limit on Amount of Civil Penalty** — The amount of civil penalty assessed per day of violation shall be P or \$10,000, whichever is less.

(16) **Remit or Mitigate Penalty** — Pursuant to Oregon Laws 1999, Chapter 373, Section 11, upon request of the person assessed and presentation of evidence of financial hardship, the director may remit or mitigate the amount of any civil penalty. The request shall be made in writing to the director and shall be received within 20 days from the date of personal service or mailing of the notice of civil penalty. Evidence of the person’s economic and financial condition may be presented by the person without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

Stat. Auth.: ORS 390.124

Stats. Implemented: OL 1999, ch. 373

Hist.: PRD 6-1999(Temp), f. & cert. ef. 11-10-99 thru 5-8-00

## 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 imposi-

tion 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 per-

son 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 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

## DIVISION 21

### GENERAL OCEAN SHORE STATE RECREATION AREA RULES

### 736-021-0010

#### Scope of Rules

These rules govern the use of all ocean shore areas not bordering a state park area or wayside. Beaches bordering coastal state parks are governed by separate state park rules.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0020

#### Statutory Authority

(1) ORS 390.050 authorizes the park director and the director's designees to enforce park and ocean shore area rules by citation authority.

(2) These rules are adopted pursuant to ORS 390.635 and 390.660, which grant the Oregon State Parks and Recreation Commission:

(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 which will contribute to the general welfare of the public and the natural and cultural resources thereon;

(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, ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0030

#### Definitions

(1) "Commission" means the Oregon Parks and Recreation Commission.

(2) "Department" means the Oregon Parks and Recreation Department.

(3) "Enforcement Officer" means a department employee authorized by the department to investigate observed or reported violations and to issue oral or written warnings and citations for violations of the ocean shore recreation area rules.

(4) "Ocean Shore Recreation Area" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line established and described by ORS 390.770, except for those beach portions abutting a park area.

(5) "Ocean Shore Resources" means a any natural or man-made product, feature or structure in the ocean shore recreation area.

(6) "Park Property" 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 Commission.

(7) "Park Director" means the director of the department.

(8) "Park Employee" means employees of the department.

(9) "Park Manager" means the area manager, assistant area manager, or designated employee in charge of a designated ocean shore recreation area. See **Exhibit 1**.

#### Exhibit 1

Ocean Shore Management Jurisdiction Director.

Columbia River to Tillamook Bay  
AREA 1-OPRD  
Fort Stevens State Park  
Hammond OR 97121  
(503) 861-3170

Bayocean Spit to Nye Beach Wayside  
AREA 2-OPRD  
2505 Highway 101 N. Suite A  
Tillamook OR 97141  
(503) 842-5501

Nye Beach to Umpqua Lighthouse Beach  
AREA 3-OPRD  
Honeyman State Park  
84505 Hwy 101 S  
Florence OR 97439  
(541) 997-3851

Umpqua Lighthouse to California Border  
AREA 4-OPRD  
Sunset Bay State Park  
10965 Cape Arago Hwy  
Coos Bay OR 97420  
(541) 888-3778

(10) "Upland" means the land lying shoreward or easterly of the Ocean Shore Recreation Area.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0040

#### General Regulations

(1) The park manager shall seek compliance by the public with the Ocean Shore Recreation Area rules. The park manager may order any person violating these rules to leave the ocean shore recreation area.

(2) No person shall obstruct, harass or interfere with the official duties of any park employee during enforcement of the ocean shore recreation area rules.

(3) To protect ocean shore resources, public health and safety, provide security and avoid user conflicts, or for other reasons, the park manager or enforcement officer may restrict access, impose use limits on a temporary basis, or close all or a portion of the ocean shore recreation area to a specific use or activity (e.g., due to natural disaster, hazardous spill, discovery of toxic dumping, or due to wildlife habitat needs).

(4) Individuals are to comply with signs installed to seek compliance with said restrictions or the ocean shore recreation area rules.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0050

#### Fines

(1) Any person, firm or corporation violating any rule commits a Class A park and recreation infraction punishable, upon conviction, by a fine not to exceed \$700.

(2) Each occurrence of an ocean shore recreation area rule violation shall be considered a separate offense.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.050 & ORS 390.124

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0060

#### Motor Vehicles

(1) Motorists shall comply with motor vehicle regulatory signs in the ocean shore recreation area.

(2) Motor vehicle use is allowed on beaches unless otherwise posted. Beaches closed to vehicles may be accessed only by permit.

(3) Motor vehicles shall be "street legal" and registered to operate on public highways and roads, except on beaches where vehicle use is allowed at the Oregon Dunes National Recreation Area and at the Sand Lake Recreation Area. Vehicles there need only be equipped with minimum off-road vehicle safety equipment.

(4) Vehicle operators shall have a valid driver's license in their possession except at the Dunes NRA and at Sand Lake and on adjacent beaches open to off-road vehicle use, where Class I all-terrain vehicle operators must meet one of the following qualifications:

(a) The person must hold a valid driver's license;

(b) The person must hold a valid Class I all-terrain vehicle operator permit issued under ORS 821.180;

(c) The person must be accompanied by a person who is at least 18 years of age, who has either a valid Class I all-terrain vehicle operator permit and who is either on the same vehicle if the vehicle is designed to carry passengers, or on a separate Class I all-terrain vehicle.

(5) At the Dunes NRA and at Sand Lake persons whose driving privilege has been suspended or revoked may not operate Class I all-terrain vehicles on the ocean shore.

(6) Unless otherwise posted, motor vehicles shall not be operated within the ocean shore recreation area at speeds in excess of 25 miles per hour.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.668 & ORS 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

### 736-021-0070

#### Pets and Other Animals

(1) The owner of any dog, cat, or other animal brought into or kept in the ocean shore recreation area shall be responsible for the animal's behavior and physical control while in the ocean shore recreation area.

(2) Saddle animals such as horses, llamas, mules, etc. may be used on the ocean shore recreation area where not otherwise posted. No animal shall be hitched or confined in a manner that may cause damage to any natural resources on the ocean shore.

(3) The park manager or designee may take any measures deemed necessary, including the removal of the animal from the area,

to protect ocean shore resources and to prevent interference by the animal with the safety, comfort, and well-being of visitors.

(4) Park managers may seize any animal running at large in the ocean shore recreation area and release the animal to an animal control officer or pound.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0080

#### Livestock

No person shall harass livestock or interfere with farming activities and facilities, including fencing, lawfully permitted on any ocean shore recreation area.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0090

#### Vandalism and Litter

(1) No person shall, except with the written permission of the park manager or designated park employee:

(a) Cut, trim, uproot, or remove any living vegetation;

(b) Dig up or remove any sand, soil, rock, historical or fossil materials or Indian artifacts or burials, except in accordance with ORS Chapter 358 and OAR 736-020-0035.

(2) Persons shall not mutilate, deface, damage or remove any property, structure or facility of any kind in the ocean shore recreation area.

(3) Persons shall not roll stones or other objects, or carve, dig caves, sculpture sand dunes or sea cliffs, in a way which endangers visitors or damages ocean shore resources.

(4) No person shall deposit garbage, sewage, refuse or waste on any ocean shore recreation area.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 164.775, ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0100

#### Prohibited Activities

The following activities are prohibited within the ocean shore recreation area:

(1) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other similar devices without the written permission of the park manager of the beach area in which the permittee wishes to discharge such devices. See ocean shore management jurisdiction directory for address and phone number. Fireworks are defined in OAR 837-012-0072(19);

(2) Constructing a structure or sign without a permit;

(3) Harassing wildlife, seabirds or nesting birds; disturbing tide pools; gathering eggs or other live material.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635, ORS 390.655 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0110

#### Hunting and Firearms

No person within the ocean shore recreation area shall:

(1) Hunt, pursue, trap, kill, injure, or molest any wildlife or disturb their habitats;

(2) Discharge any firearm, pellet gun, bow and arrow, slingshot, paint-ball gun, or other weapon capable of injuring any person or wildlife.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 166.630, ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0120

#### Fires

(1) Small recreational beach fires in the ocean shore recreation area are allowed provided they are located in the open dry sands area, downwind of and below beachgrass and the driftwood line; no fires are allowed in dunes or beach log accumulations.

(2) No fire shall be placed in driftwood, left unattended or be permitted to cause damage to facilities or natural resources. Every fire shall be extinguished before its users leave the area.

(3) No fire shall be permitted within 25 feet of a seawall that is constructed of wood or other combustible material.

(4) At the discretion of a park manager, fires normally permitted in the ocean shore recreation area may be restricted or prohibited due to high fire hazard conditions.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124 & ORS 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

### 736-021-0130

#### Commercial Activities

(1) Except as otherwise provided in this rule, no person shall conduct any commercial activity on the Ocean Shore Recreation Area. Commercial activities include, but are not limited to: selling, renting, leasing or offering to sell, rent or lease any merchandise, food, beverage or service; operating a concession; advertising; monetary transactions or payments; and displaying or storing goods for sale or rent.

(2) In the sole discretion of the department a special permit may be granted by the department to a private party for a commercial activity in conjunction with a special event if all of the following conditions are met:

(a) No feasible alternative location is available at some off-beach site;

(b) The permitted activity does not pose a threat to public health, safety or welfare, does not cause any lasting damage to any ocean shore resources, and does not interfere with public access to and along the beach.

(3) A special permit may be granted by the department to a local city or county government to allow specific commercial activities to be performed by a named private parties if the following conditions are met:

(a) The specific type of commercial activity exists at the specific ocean shore location on the effective date of these rules;

(b) There are no feasible alternative locations nearby at some off-beach site;

(c) No money is exchanged or payment made on the beach;

(d) The permitted activity does not pose a threat to public health, safety or welfare, does not

cause any lasting damage to any ocean shore resources, and does not interfere with public access to and along the beach;

(e) The affected city or county government will be responsible for enforcing all terms of the permit.

(4) Special permits issued pursuant to this rule are not transferable. The department may require additional conditions on any special permit issued pursuant to this rule. Permits for commercial activities under section (2) of this rule are limited in duration to no more than the length of the special event. Permits for cities and counties under section (3) of this rule shall be limited to five years, and the city or county may further limit the time it allows the activity to continue. Issuance of a permit confers no right or expectation that the permit will be renewed or extended.

(5) Violation of terms or conditions of permits issued under sections (2) and (3) may cause the permits to be subject to immediate cancellation or revocation.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & ORS 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

### 736-021-0140

#### Signs

(1) No sign, marker, advertisement, or inscription of any kind shall be placed within the ocean shore recreation area without written permission from the park manager.

(2) No person may distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind, within the ocean shore recreation area, unless they have first obtained permission from



a park manager and reported their name, address and number of leaflets to be distributed to the park manager.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0150

#### Lost Articles

All money or goods found in the ocean shore recreation area must be turned over to the park manager. All money or goods shall be disposed of according to department policy adopted in accordance with ORS Chapter 98.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.124, ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

### 736-021-0160

#### Additional Rules

Additional administrative rules shall be posted in specific ocean shore recreation areas to which they pertain. These include but are not limited to Divisions 20, 23, 24, 25, 26, 27 and 28.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635 & ORS 390.660

Hist.: PR 9-1994, f. 11-29-94, cert. ef. 12-1-94

## 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 & ORS 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 & ORS 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 Ferrelo;
- (v) Cape Ferrelo 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, ORS 390.755 & ORS 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, not withstanding 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, ORS 390.635 & ORS 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: Exhibit 1 referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 183.545, ORS 184 & ORS 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, ORS 184 & ORS 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 beach 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: Exhibit 2 referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 183.545, ORS 184 & ORS 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, ORS 184 & ORS 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 County:

(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: Exhibit 3 referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]  
Stat. Auth.: ORS 183.545, ORS 184 & ORS 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: Exhibit 4 referenced in this rule is not printed in the OAR Compilation. Copies 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: Exhibit 5 referenced in this rule is not printed in the OAR Compilation. Copies 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: Exhibit 6 referenced in this rule is not printed in the OAR Compilation. Copies 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: Exhibit 7 referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]  
Stat. Auth.: ORS 183.545, ORS 184 & ORS 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 & ORS 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 & ORS 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 & ORS 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, ORS 184 & ORS 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 & ORS 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 & ORS 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, ORS 184 & ORS 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, ORS 184 & ORS 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, ORS 184 & ORS 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, ORS 184 & ORS 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, ORS 184 & ORS 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, ORS 184 & ORS 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 & ORS 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 life-saving 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 & ORS 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 & ORS 390.150

Stats. Implemented: ORS 390.280 & ORS 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 & ORS 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 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, ORS 390.050, ORS 390.124 & ORS 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 & ORS 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 maximum 6' leash on the ocean shore within the city limits of Cannon Beach and on a leash or under voice or signal command on the ocean shore within the city limits of 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 & ORS 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

**736-030-0020**

**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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 & ORS 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 manner as will permit remaining overnight, or for other extended periods.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.365 & ORS 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 auditive public hearings, if such is requested, under the provisions of ORS 390.845(2).

(2) Any public hearing held pursuant to ORS 183.330 shall be fully recorded and transcribed by the Secretary of the Commission, and the Secretary will receive and properly mark all exhibits, documents or other statements introduced or received by the hearing officer at the hearing. Exhibits, documents or other statements received by the Commission within ten days after any hearing will be made part of the record of the hearing.

(3) Following the transcribing of the hearing, the Commission's Secretary 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 transcript, including exhibits, documents or other statements, will be considered in preparing Scenic Waterways rules and regulations by the Commission.

(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 limits and intent of the proposed rules and regulations will be explained by representatives of the State Parks and Recreation Department;

(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 the opening statements by the representatives of the State Parks and Recreation 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, ORS 183.550 & ORS 390.805 - ORS 390.925

Stats. Implemented: ORS 390.124 & ORS 390.845

Hist.: HC 1252, f. 5-13-71, ef. 5-12-71; PR 15-1992, f. & cert. ef. 11-12-92

**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, ORS 183.550, ORS 184 & ORS 390.805 - ORS 390.925

Stats. Implemented: ORS 390.826 & ORS 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.

(3) "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.

(4) "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.

(5) "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.

(6) "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.

(7) "Road" means all roads, public and private.

(8) "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.

(9) "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.

(10) "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 183.545, ORS 183.550 & ORS 390.805 - ORS 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

**736-040-0020**

**Responsibility and Authority of the Oregon Parks and Recreation Commission**

(1) The Act shall be administered by the Commission 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 State Water Resources Board.

(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 183.545, ORS 183.550 & ORS 390.805 - ORS 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

**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) Pumphouse 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 insure that debris, silt, chemicals or other materials, shall not be discharged into or allowed to reach the waters within a scenic waterway and that the natural beauty of the scenic waterway shall 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 these rules, 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: Replacement of existing structures and improvements, including those lost by fire, flood or other casualty, will be permitted, provided the new structure or improvement is in compliance with provisions of the Act and these rules and regulations. Notification procedures set forth in OAR 736-040-0040 and Commission approval 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 State Engineer;

(b) No bank protection works or dredging facility shall be constructed or used on such waters, except as permitted by the Director of the Division of State Lands and approved by the State Land Board.

(14) Emergencies:

(a) The owner or his authorized agent may act in emergencies without prior notice when necessary in the interest of public safety, or safety of his own 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) The owner or his 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

### 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) This Recreational Area will be administered consistent with the purposes of OAR 736-040-0040(1)(c)(B). Within this area, mining operations, timber harvesting, other landscape alteration activities, new structures and improvements shall be permitted by State Parks 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) This Recreation Area will be administered consistent with the purposes of OAR 736-040-0040(1)(c)(B). Within this area, mining operations, timber harvesting and other landscape alteration activities shall be permitted by State Parks 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) This Scenic Area will be administered consistent with the purposes of OAR 736-040-0040(1)(b)(B). Within this area, new structures and improvements, mining operations and timber harvesting activities shall be permitted by State Parks 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 project may be permitted 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

### 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) This Recreational Area will be administered consistent with the purposes of OAR 736-040-0040(1)(c)(B). Within this area, mining operations, timber harvesting, other landscape alteration activities, new structures and improvements shall be permitted by State Parks 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

### 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) These Recreational River Areas will be administered 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. 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) This Recreation River Area will be administered 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. Tree harvesting, thinning and other forest management activities on Willamette National Forest lands are subject to review by the State Parks Department 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) These Scenic River Areas will be administered 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

**736-040-0044**

**Interim Classification of State Scenic Waterways**

Those segments of rivers under the scenic waterways program without a management plan will be assigned an interim river classification until such time a river management plan has been adopted by the State Parks and Recreation Commission with the concurrence of the Water Resources Board. 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:	
(a) Upper, that segment from Little Lava Lake to Crane Prairie Reservoir (8 miles);	Recreational
(b) Bend, that segment from Urban Growth Boundary to Central Oregon Irrigation diversion.	Scenic
(3) John Day River:	
(a) North Fork, that segment from Wilderness boundary River Mile 20.2 (Willamette Meridian) above Monument (56 miles);	Recreational
(b) South Fork, that segment from Post-Paulina Road crossing to north boundary of Murderer's Creek Wildlife Area (29 miles);	Recreational
(c) Middle Fork, that segment from Crawford Bridge crossing to confluence with North Fork (71 miles);	Recreational
(d) Main stem, that segment from Parrish Creek to Service Creek (13 miles).	Recreational
(4) Klamath River: From the John Day Boyle Dam power house to California Border (11 miles).	Accessible Natural
(5) 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
(6) North Santiam River: Little North Fork: that segment from Battle Ax Creek to Willamette National Forest boundary (7 miles).	Scenic
(7) 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

**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, Town-

ship 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 1/2 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) This "Recreation River Area" will be administered consistent with standards set by OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition to the above standards, new mining operations, road construction, and similar improvements shall be permitted 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) This "Recreation River Area" will be administered 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, new mining operations, road construction, commercial tree harvesting, and similar improvements shall be permitted 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 moderately 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) This "Scenic River Area" will be administered 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, new mining operations, road construction, commercial tree harvesting 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). 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 One East, Willamette Meridian (E1/2, NW 1/4, and W1/2, NE 1/4, Section 20, T26S, R1E, W.M.), Douglas County.

(b) Within these River Community areas described in OAR 736-040-0041(3)(a)(A)–(E) new commercial facilities such as resorts, motels, and private recreational vehicle parks shall not be permitted 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

#### 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 regraded, 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.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 10-1993, f. & cert. ef. 6-24-93

#### 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 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, 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 Willowa 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 Willowa 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 Willowa River from the north boundary of the Recreational River Area to the Willowa’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 Willowa 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.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: PR 11-1993, f. & cert. ef. 6-24-93

**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 Decem-



ber 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, OAR 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, OAR 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, OAR 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, OAR 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)

### 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.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72

### 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 these areas, 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 OAR 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 exact distance for the above setbacks will be determined on a case-by-case basis and will be 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 Division 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 OAR 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) & ORS 390.845(2)

Hist.: PR 9-1996, f. & cert. ef. 10-9-96

**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 OAR 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 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 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 OAR 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 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.

(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 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.

(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 permitted. 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) This Recreational River Area shall be administered consistent with the standards set by OAR 736-040-0035 and OAR 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 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 screen-

ing 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 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 (3) 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 (3) 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 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.

Stat. Auth.: ORS 390.845

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72; PRD 10-2000, f. & cert. ef. 9-1-00

## 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 OAR 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 OAR 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 pro-

vide 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. 9-1-00

### 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 OAR 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 OAR 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 OAR 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 OAR 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 State Parks and Recreation Department to adopt a management plan by rule to administer the Deschutes River Scenic Waterway Recreation Area. ORS 390.124 authorizes the Oregon Parks and Recreation 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 Oregon Parks and Recreation 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 Parks and Recreation Department, 1115 Commercial, N.E., Suite 1, Salem, OR 97301-1002.

(c) The state managing agencies, including the State Parks and Recreation Department, Department of Fish and Wildlife, 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 this area, no 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 will be permitted.

(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 these areas, when consistent with Jefferson County and Wasco County zoning ordinances, permitted uses and structures may include agriculture, single-family and multiple-family dwellings, churches, lodges, resorts, motels, transient public trailer parks, and necessary 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 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 Oregon Parks and Recreation 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) 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 except at Deschutes State Park where the camping limit shall be ten days out of 14. Plan at page 63;

(iii) Seven nights for motorized boats between May 15 and October 15 in those areas where they are allowed. Plan at page 63.

(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 the four night, overnight camping length of stay specified in subparagraph (4)(c)(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)(c)(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) 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.

(d) Campfires, Fuel, Firepans, Smoking:

(A) Open fires and charcoal shall be prohibited from June 1 to October 15. Periods of fire closure may be extended 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 liquified 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 390.825, 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, or boats on the water. Plan at page 77.

(e) 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.

(f) 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.

(g) 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 are camped more than 800 feet from a developed toilet facility or in sites where no developed toilet facility is provided. No person shall leave, deposit, or scatter human waste or toilet paper on the ground within the Deschutes River Scenic Waterway. Portable toilets shall only be dumped at facilities developed and identified especially for that purpose. An approved portable toilet is any non-biodegradable, rigid, durable, container designed to receive and hold human waste without leaking and equipped with openings or conventional fittings which allow the container to be rinsed and emptied into a receiving system in a sanitary manner without spills or human exposure to the waste. Plan at page 62. Where toilets are not provided, persons shall bury all human waste and 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.

(h) 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.

(i) 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) and one driver and 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 the load within or on the back of any open bed motor vehicle.

(j) 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: The publications referenced in this rule are available for review at the agency.]

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.934(2) & ORS 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

### 736-040-0071

#### Deschutes River Scenic Waterway Boater Pass System Rules

(1) Policy:

(a) The Oregon Parks and Recreation 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 State Parks and Recreation 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 State Parks and Recreation 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 Oregon Parks and Recreation 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 State Parks and Recreation Department Director or the Director's designed;

(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 390.825 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 Section 2, Chapter 798, Oregon Laws 1981;

(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 State Park and Recreation Department employee authorized to issue citations pursuant to Section 2, Chapter 692, Oregon Laws 1981;

(e) "Day" — Any part of a 24-hour period running from 12:01 a.m. to the following midnight;

(f) "Group" — A boating party of 2-16 persons;

(g) "Group Leader" — A person who purchases a pass as the representative of a group;

(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 or the property owner's spouse who reside with the owner of property which immediately abuts 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 390.825, 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 State Parks and Recreation 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 State Parks and Recreation 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 downstream end of Moody Rapids to the Columbia River solely for boat access to the Columbia River, shall be \$1 per person per day.

(b) The fee for issuance of an individual annual pass shall be \$15 per person per year. 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.

(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) The pass will be available for purchase at selected state park offices, certain cooperating businesses and selected public agency locations throughout the state. 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 State Parks and Recreation 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 Parks and Recreation 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 Section 2(3), Chapter 798, Oregon Laws 1981, the State Parks and Recreation 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 390.825 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 390.825;

(B) Free annual passes shall be issued by the State Parks and Recreation Department to persons who qualify under this section and have contacted the State Parks and Recreation 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, State Parks and Recreation Department, 1115 Commercial St. N.E., Suite 1, Salem, OR 97301-1002 (Attn: Free Annual Pass), 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 State Parks and Recreation 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 Section 3(2), Chapter 798, Oregon Laws 1981, 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: The publications referenced in this rule are available for review at the agency.]

Stat. Auth.: ORS 390.124 & ORS 390.848

Stats. Implemented: ORS 390.124, ORS 390.848 & ORS 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

**736-040-0072**

**Middle Deschutes River Scenic Waterway**

**(1) North Bend River Community Area:**

(a) From Sayer 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 exact distance for the above setbacks shall be determined on a case-by-case basis and shall be 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 exact distance for the above setbacks will be determined on a case-by-case basis and will be 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

**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 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)(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 exact distance for the above setbacks will be determined on a case-by-case basis and will be 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 Division 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 these areas 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 OAR 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 exact distance for the above setbacks will be determined on a case-by-case basis and will be 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 Division 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 exact distance for the above setbacks will be determined on a case-by-case basis and will be 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 Division 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

### 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 ordi-

nances 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, ORS 183.550 & ORS 390.805 - ORS 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 State Parks Region office or to the State Parks and Recreation Department in Salem;

(c) The proposed change of use or improvement or activity shall not be carried out or commenced sooner than one year after such notification 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 of the original notice to the Commission unless the owner and the Commission sooner reach agreement on an alternate plan.

Stat. Auth.: ORS 183.545, ORS 183.550 & ORS 390.805 - ORS 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

### 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 original notice to the Commission, the owner may use his 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

### 736-040-0090

#### Condemnation of Related Adjacent Land

With the concurrence of the State Water Resources Board, 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

### 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) & ORS 390.875  
Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

## DIVISION 50

### HISTORIC PRESERVATION OFFICER

#### Procedural Rules

### 736-050-0001

#### Statutory Authority and Procedure

Oregon Laws 1975, Chapter 514, Section 11 provides that the State Historic Preservation Officer shall adopt rules necessary to carry out the purpose of the act which relates to implementation of a special tax assessment applicable to historic property. Oregon Laws 1975, Chapter 759, Section 6 requires that all agencies shall adopt rules on procedure to be utilized in the adoption of rules.

Stat. Auth.: ORS 183  
Stats. Implemented: ORS 183.341  
Hist.: HPO 2, f. & ef. 9-10-76

**736-050-0002**

**Notice of Proposed Rules**

Prior to the adoption, amendment, or repeal of any rule, the State Historic Preservation Officer 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 State Historic Preservation Officer's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule; and
- (3) By mailing or furnishing a copy of the notice to the Associated Press.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(4)

Hist.: HPO 2, f. & ef. 9-10-76; PR 2-1992, f. & cert. ef. 5-1-92; PR 13-1994, f. & cert. ef. 12-5-94

**736-050-0005**

**Model Rules of Procedure**

The State Historic Preservation Officer hereby adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act as amended and effective September 15, 1997.

[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 and Recreation Department.]

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 183.341(1)

Hist.: HPO 1-1978, f. & ef. 4-26-78; 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 2-1992, f. & cert. ef. 5-1-92; PR 13-1994, f. & cert. ef. 12-5-94; PR 1-1996, f. & cert. ef. 1-5-96; PRD 5-1998, f. & cert. ef. 4-15-98

**736-050-0100**

**Special Assessment of Historic Property**

OAR 736-050-0100 through 736-050-0150 establish:

- (1) The procedures the State Historic Preservation Officer shall use when approving properties for special assessment as historic property.
- (2) The owner's responsibilities and minimum maintenance standards for specially assessed properties.
- (3) The procedures the State Historic Preservation Officer shall use when removing the special assessment.

Stat. Auth.: ORS 358

Stats. Implemented: ORS 358.545

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 11-1995, f. & cert. ef. 12-21-95

**736-050-0105**

**Definitions**

As used in OAR 736-050-0100 through 736-050-0150, unless the context requires otherwise:

- (1) "Advisory Committee" means the State Advisory Committee on Historic Preservation appointed by the Governor pursuant to ORS 358.565.
- (2) "Alteration" means to change, make different, or remove the elements of a building, structure, or outbuilding, and can include but is not limited to elements or features such as: Barns, sheds, garages, porches, additions (historic and non-historic), windows, storm windows (interior or exterior), roofs, dormers, siding, foundations, doors, ornament and trim elements in any material, floors, light fixtures, bathrooms, kitchens, bedrooms, walls, ceilings, stairs and railings, beamed or coffered ceilings, fireplaces, built-in cabinetry, wainscoting, paneling, moldings, brackets, as well as the finishes and materials of which these features or elements are made. Exterior paint colors are included. For site or landscape alteration, features or elements include, but are not limited to: Site relationships of buildings and structures, including orientation; character-defining landscape features such as views and topography; original landscape material such as trees, shrubs, water features, fountains, paving, trellises, arbors, gazebos, greenhouses, rockwork, retaining walls, paths, stairways, gates, and fences.
- (3) "Governing body" means the legislative body of the city within which an historic property is located, or the legislative body of the county if the property is not located within a city.
- (4) "Historic District" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or con-

tinuity of historic sites, buildings, structures or objects unified by past events or aesthetically by plan or physical development. A district may also comprise individual noncontiguous elements separated geographically, but linked by association or history.

(5) "Historic Property" means real property that:

- (a) Is listed in the National Register of Historic Places; or
- (b) Has been recommended for nomination to the National Register of Historic Places by the State Advisory Committee on Historic Preservation; or
- (c) Is within the boundaries of and contributes to the historical character of an individual property or historic district that is listed in the National Register, or an individual property or historic district that has been recommended by the Advisory Committee for nomination to the National Register.

(6) "Landmarks Commission" means an entity that has been formally designated by a governing body to consider matters pertaining to historic property and cultural resources within the jurisdiction of the governing body.

(7) "SHPO" means either the State Historic Preservation Officer appointed by the Governor pursuant to ORS 358.565 or the State Historic Preservation Office, depending on the context.

(8) "National Register" means the National Register of Historic Places maintained by the United States Department of the Interior.

(9) "New construction" includes, but is not limited to:

- (a) An additional new building, structure, or other physical improvement separate from the existing building mass, including but not limited to a parking area to be used or in use for commercial purposes;
- (b) An enlargement of the exterior mass or envelope of an existing building, structure, or physical improvement;
- (c) Any story or stories added to an existing building, structure, or physical improvement.

(10) "Owner" means one or more who own a majority interest in real property, including a purchaser under recorded instrument of sale.

(11) "DSHPO" means the Deputy State Historic Preservation Officer, who is manager of the State Historic Preservation Office.

(12) "Americans with Disabilities Act" means the Americans with Disabilities Act of 1990 (P.L. 100-336), as amended as it pertains to removal of architectural barriers under Title III of the Act.

(13) "Commercial Property" means wholly depreciable real property used in trade or business or held for the production of income, including multi-family residential rental property.

(14) "Energy Conservation Measures" means those work items which improve the overall energy efficiency of a building.

(15) "Historic Assessment Review Committee (HARC)" means the three-member committee appointed by the State Historic Preservation Officer to approve, approve with conditions, or deny special assessment applications.

(16) "Preservation Plan" means a written rehabilitation proposal submitted by the owner with a special assessment application and approved by the HARC, and as it may from time to time be amended and reapproved by the HARC.

(17) "Rehabilitation" means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

(18) "Renovation Plan" means a written proposal submitted by an owner of commercial property in connection with a reapplication for special assessment which details measures to be taken for purposes of either Americans with Disabilities Act compliance, seismic improvement measures, or energy conservation measures.

(19) "Seismic Improvement" means construction or other measures that improve the seismic performance or structural stability of a property, or that reduce the potential for heavy structural damage to a property in the event of an earthquake.

(20) "Significant Investment" means, relating to reapplications of commercial property only, an investment that maintains or returns a property to a high level of architectural, landscape or structural integrity based on the historic record or professional analysis and

which promotes compliance with ADA requirements or results in seismic or energy conservation improvements.

(21) "Tertiary Property" means any property in a National Register Historic District that does not have a primary contributing, secondary contributing, historic non-contributing, or non-contributing ranking.

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

### 736-050-0110

#### Application for Special Assessment

(1) An owner who desires Special Assessment of Historic Property pursuant to ORS 358.505 must submit an application for Special Assessment to the State Historic Preservation Officer (SHPO) on forms approved and supplied by the SHPO. The application form will include consent for access to and viewing of the property, interior and exterior, by the SHPO, SHPO staff, and the HARC. The application must:

(a) Be postmarked no earlier than January 1 and no later than 12 midnight of April 1 of the calendar year preceding the tax year an owner wishes the Special Assessment to begin, or if hand delivered, must be received by the SHPO by 5 p.m. on April 1 of the calendar year preceding the tax year the owner wishes Special Assessment to begin;

(A) For historic property acquired after March 1 and before July 1 preceding the first tax year for which an owner wishes the special assessment, the application may be made within 30 days after the date of acquisition;

(B) When making an application under paragraph(1)(a)(A) of this section, an owner shall provide proof that the property was acquired after March 1.

(b) Be accompanied by an original computer printout of the County Assessor's current statement of the subject property's assessed value. If an application is for only part of a property currently listed in the assessor's rolls, or if a total property value is to be divided upon approval of an application, an owner must request the county assessor to provide the assessed value of that part of the property which is subject to the application. In this case the assessor must initial the statement of assessed value on the application form, or provide a letter that states the assessed value of the property that is subject to the application. In any case, an application must contain or be accompanied by written information or other documents that enable an owner, the assessor, the HARC and the SHPO to clearly understand the extent and current assessed value of the property that is subject to the application;

(c) Be accompanied by a nonrefundable application fee of one-fifth of one percent (.002) of the real market value of the property subject to the application. The value to be used when computing the fee is the value of land and improvements combined.

EXAMPLE: The fee for a property with a real market value of \$12,470 for land and \$41,380 for improvements would be:  $\$53,850 \times .002 = \$107.70$ .

The fee must be paid by certified check or money order made payable to the Oregon State Parks and Recreation Department;

(d) Be accompanied by color print photographs (not Polaroids) of each building which is a subject of the application, which clearly show the physical condition of each exterior elevation, as well as complete views of significant interior spaces, rooms or features of each building that is subject to the application. As used in this section "...significant interior spaces, rooms or features..." includes, but is not limited to: Living rooms, dining rooms, hallways, parlors, lobbies, public areas, stairs and stair halls, fireplaces, bedrooms, built-ins, or decorative elements in any material. Significant interior spaces, rooms or features are often mentioned or listed in the National Register documentation for individually-listed properties. If an owner has questions about whether an interior space, room, or feature is significant, SHPO staff should be consulted;

(e) Be accompanied by a Preservation Plan as described in Section 736-050-0150 of these rules;

(f) If submitting a reapplication for a commercial property, be accompanied also by a Renovation Plan as described under Section 736-050-0150 of these rules;

(g) Be accompanied by a separate order form and fee for the plaque identification program.

(2) The special assessment applies to all of the property that is described in an application. Normally, landscape features and out-buildings are included, particularly if they are described in the National Register documentation as "contributing" features. If an owner desires part of a property not to be designated historic and specially assessed, the owner must so state in the application. If approved by the SHPO, this consideration will be reflected in the county assessor's appraisal of the property.

(3) An owner whose property is not yet listed in the National Register but which has been recommended for listing by the State Advisory Committee on Historic Preservation may make a preliminary application for special assessment no earlier than January 1 and no later than 12 midnight of April 1 of the calendar year preceding the tax year an owner wishes the special assessment to begin, provided the property is listed on the National Register by September 15 of the tax year for which the special assessment is first desired.

Stat. Auth.: ORS 358.485

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

### 736-050-0115

#### Review of Special Assessment Applications

(1) Upon receipt of a complete and accurate application for special assessment, the SHPO shall determine if the subject property qualifies as "historic property" as described in OAR 736-050-0105(5). The SHPO shall return applications for properties that do not qualify as historic property to the applicant. The SHPO may return incomplete or inaccurate applications, or may request additional or corrected information from the applicant if the application is substantially accurate and complete. If the subject property qualifies as historic property, the SHPO shall forward copies of the application to the applicable county assessor, and to the applicable governing body.

(2) The SHPO shall consider recommendations of the county assessor relating to accuracy and completeness of property description and other matters within the county assessor's expertise in determining whether a property qualifies for special assessment.

(3) The SHPO shall consider the governing body's recommendations relating to public benefit when determining whether a property qualifies for special assessment. "Public benefit" recommendations should relate to the historic preservation element, if any, of the governing body's Comprehensive Plan and to the policy statement found in ORS 358.475.

(4) The SHPO staff shall review applications and shall evaluate each Preservation and/or Renovation Plan and shall recommend to the HARC whether an application should be approved, approved with conditions, or denied. As part of this process, SHPO staff may make comments or recommendations to the HARC as to particular improvements, required repairs, signing or other actions to be taken by owners as requirements for Special Assessment.

(5) If the HARC does not receive a recommendation from the county assessor, or the governing body by the end of the business day on the 30th calendar day after the date of the SHPO's cover letter forwarding an application to them, the HARC shall consider the application to be recommended for approval.

(6) Properties within the boundaries of an historic district may or may not contribute to the historical character of the district. "Contributing" properties (as designated in the original nomination document) may have been altered prior to an application for special assessment being filed with the SHPO and no longer be considered "contributing." Conversely, owners of properties in districts with "non-contributing" rankings may have begun the process of reversing the treatments that resulted in the "non-contributing" designation. Therefore, before acting on an application for a property located in an historic district, the SHPO shall determine whether or not the property contributes to the character of the district. Recommendations from the applicable Landmarks Commission, if one exists in the local jurisdiction, shall be requested and considered before a determination is made. Properties that have been determined by the



SHPO not to contribute to the historical character of an historic district shall not be eligible for special assessment:

(a) A property in an historic district whose contributing status has been re-evaluated by the SHPO, and whose owner(s) wishes to apply for special assessment, must be able to meet the application requirements in OAR 736-050-0110;

(b) "Tertiary" properties will be reviewed on a case-by-case basis by the SHPO to determine whether they should be reclassified based on their contribution to the significance of the National Register Historic District.

(7) Properties that have been recommended for nomination to the National Register by the State Advisory Committee on Historic Preservation at the time an owner makes an application must be actually listed in the National Register by September 15 of the tax year for which classification and special assessment are sought. Similarly, an historic district must be actually listed by September 15 if properties within the district are to be eligible for certification for special assessment.

(8) The HARC may approve all or only part of a property described in an application for special assessment. In an application owners must identify what parcel of land is to go with the building or buildings that are to be certified for special assessment by plot number or assessor's tax lot on which the building is located. In rural areas, the HARC shall approve about one acre per building. (For example, a farmhouse, barn, and smoke-house listed in the National Register might receive special assessment for a three-acre parcel on which these buildings are located.) Exceptions to this policy will be made by the HARC only when a larger parcel is needed to contain the historic buildings; or when an especially significant landscape setting is required to protect a building's character, or if exceptional circumstances are demonstrated:

(a) An historic property applying for special assessment is entitled to any other exemption or special assessment provided by law. If the property has an existing exemption(s) or multiple exemptions are being considered at time of application, an owner shall consult with the county assessor's office to establish the historic property's assessed value and/or boundaries for purposes of determining an application value pursuant to OAR 736-050-0110(1)(b).

(9) Within 30 days of receipt of a complete application from the SHPO, the HARC shall approve, approve with conditions, or deny an application for special assessment.

(a) For purposes of this section, a "complete" application shall consist of the following:

(A) An application form containing the information and documents required in 736-050-0110;

(B) A Preservation and/or Renovation Plan containing the documents or materials specified in 736-050-0150;

(C) An evaluation by the SHPO or his or her designee of the application and Preservation and/or Renovation Plan;

(D) Recommendations submitted by the applicable county assessor or governing body pursuant to this rule, if any;

(E) The SHPO's evaluation of the county assessor's or governing body's recommendations on the application, if any; and

(F) A plaque identification order form and fee.

(b) By mutual agreement between the SHPO and the HARC, decisions made by the HARC may be transmitted to the SHPO through the mail or by electronic media.

(c) The HARC may meet periodically to review special assessment applications. HARC members' expenses are reimbursable.

(10) In considering whether to approve, approve with conditions or deny an application, the HARC shall consider the following criteria, as applicable:

(a) Approval of new applications — meets the rehabilitation requirements established for a Preservation Plan;

(b) Approval of reapplications (commercial property) — meets the rehabilitation requirements established for a Preservation Plan, is a "significant investment" and meets requirements established for a Renovation Plan;

(c) Approval with conditions (new applications or reapplications):

(A) Based upon recommendations from the SHPO and/or governing body, requires additional work items to be added to a Pre-

servation and/or Renovation Plan to meet the minimum requirements in 736-050-0150 for an adequate Preservation and/or Renovation Plan;

(B) Relating to recommendations from the county assessor, requires changes to the application based on the assessor's review of its technical adequacy.

(d) Denial of new applications or reapplications — based on recommendations from the SHPO and/or governing body that the Preservation and/or Renovation Plan does not meet the minimum requirements in 736-050-0150 for an adequate Preservation and/or Renovation Plan.

(e) The criteria in (a) through (d) apply to any request by a property owner for an amendment to an approved Preservation or Renovation Plan.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.490 & ORS 358.495

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

### 736-050-0120

#### Owner's Responsibilities

(1) An owner of a property that has been granted a special assessment is responsible for maintaining the property in good condition. A noticeable deterioration of a property, or a failure to make repairs that the SHPO determines are necessary to preserve or stabilize a property's physical condition, is sufficient cause for the SHPO to recommend removal of the property's special assessment.

(2)(a) An owner must provide a reasonable opportunity for members of the public to visit the property at least one day a year. Excepting all national holidays, owners may choose any day of the year to satisfy the visitation requirements of this section;

(b) Owners shall notify SHPO of the open house visitation date by January 31 each year, unless the owner has chosen a January open house date. In that case, owners shall notify the SHPO by December 1 of the previous year. For new applications approved after September 15 pursuant to ORS 358.495, owners shall provide the open house visitation date within 30 calendar days after the date of the application approval letter. The property must be open to the public for four consecutive hours between 9 a.m. and 9 p.m.;

(c) Within 14 calendar days after an open house is held, the owner shall provide to the SHPO, on forms provided by the SHPO, a signed statement that the open house was held on the date and during the times specified in the file. A guest list will appear on the form, and must be signed by those attending the open house;

(d) For properties where conducting an open house might endanger the public, the SHPO may approve an application for waiver of the open house requirement. A waiver may be granted *only* if a rehabilitation is already underway on January 1 and will not be completed by December 31 of the same calendar year, or if the SHPO believes that requiring the interior of the property to be open would present a life/safety risk to the public. If the rehabilitation is completed and the premises certified occupiable by the applicable local building official during the calendar year, the owner must hold an open house, and must give SHPO 30 days notice prior to the open house date;

(e) During a waiver period an interpretive display shall be placed on the property or its grounds by the owner, in an area visible to the public, but which will not present a danger to the public or interfere with construction activity. The display shall contain at a minimum: historic name of property as indicated on National Register nomination form (if known); date of construction; and other interpretive information regarding the property's historic or architectural significance;

(f) An owner of a property that is routinely open to the public without charge, such as a commercial property open to all during regular business hours must make special provision for the public to view public portions of the building at least one day per year. Additionally, owners of commercial property must also provide, by guided tours, brochures, videos, or other means, access to character-defining features or rooms that are not normally available for public viewing. Descriptions of these features or rooms are normally found in the National Register documentation. Owners of the properties that

are routinely open to the public for a fee, such as owners of theaters or privately-operated house museums, must make provision for free public visitation one day a year;

(g) Open houses that are held as a part of community-sponsored events, or as fund raisers for charitable or other organizations shall satisfy the mandatory open house requirement provided:

(A) The event is open to the public; and

(B) The property owner receives no fee that is charged to enter the specially-assessed property.

(h) Owners of apartment buildings, condominiums, or other multi-family unit buildings that are under special assessment must make provision for viewing by the public of public areas and at least one representative unit of the apartment, condominium, or multi-family dwelling;

(i) Owners of noncommercial residential property may restrict interior areas open to the public to spaces or rooms such as living rooms, parlors, dining rooms, hallways, stair halls, or other areas not normally deemed as "private." "Private" means rooms such as bedrooms, closets, bathrooms, or dressing rooms, unless the owner wishes to open these areas for public viewing. The public must have physical access throughout the areas that are open for public viewing.

(3) The SHPO may require reports from owners of specially assessed properties. The subject of required reports must be directly related to matters set forth in ORS 358.475 to 358.545 or in these rules. The SHPO must notify an owner of a required report by mail, return receipt requested. If an owner does not respond to the notice by providing the required information within 30 days of receipt of the notice, the SHPO must notify the county assessor of the owner's failure to comply. The county assessor then must withdraw the property's special assessment as historic property and apply the penalties provided by ORS 358.525.

(4) An owner shall allow the SHPO or SHPO staff and the HARC access to the property at reasonable times to insure the terms of these rules are being met.

(5)(a) Every 30 days the SHPO shall issue a press release announcing that specially-assessed properties will be open to the public and include other particulars of the special assessment program. Specific addresses of specially-assessed properties, plus dates and times of open houses shall be made available to the interested public through the SHPO. Direct mailings of open house information may also be made to a county assessor, landmarks commission, chamber of commerce, historical society, nonprofit or professional organization, or other local government agency, by mutual agreement between the SHPO and these agencies or organizations;

(b) Owners of specially-assessed property shall install a SHPO-approved plaque on the property in a location that is visible to the public from the public right-of-way. Acquisition of plaques shall be arranged through the SHPO. For new applications approved after July 1, 1996, plaques shall be ordered as part of the application process;

(c) The SHPO shall conduct spot monitoring to determine whether or not an owner held the requisite open house on the date and time specified. If the property is not open on the date and time specified, and no error was made by SHPO staff or the media in recording or publishing the open house information, an owner shall provide SHPO with a new open house date and time that will conform to SHPO deadlines for receipt and publication of the monthly open house list. Noncompliance with the open house requirement without good cause may be justification for administrative removal of special assessment.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.575, ORS 358.480, ORS 358.535 & ORS 358.545(1)

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

### 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) as program manager, and appoints the Preservation Specialist as the staff pro-

fessional qualified to coordinate the state's special assessment program.

(2) Owners shall seek prior SHPO review and approval in writing of the alteration of any significant interior and exterior space, room or feature or new construction that may affect the historic fabric or character of specially-assessed property. Definitions for "Alteration" and "New Construction" are found in OAR 736-050-0105. Previously altered spaces, rooms or features, such as kitchens and bathrooms, are exempt from the provisions of this section, unless the owner proposes to demolish or relocate historic features such as walls, windows, or detailing as a part of the proposal, or is proposing to alter the plan configuration to accommodate additions or other new construction.

(3) Any portion of a specially-assessed property that is leased by an owner is subject to the design review requirements of this rule.

(4) At a minimum, the owner shall provide the following for alteration or new construction reviews:

(a) Color print photos (not Polaroids) of the areas(s) in question which clearly show all historic material that is proposed for alteration or removal;

(b) A detailed work program that discusses the proposal and explains what physical effects the project will have on the historic fabric or character of the property;

(c) Construction documents, drawings, or other graphic representations of the project, depending on its complexity.

(5) When reviewing requests for approval of a Preservation Plan and/or Renovation Plan, proposed changes and alterations to a specially-assessed property, or reviewing the acceptability of alterations that have been made to a specially-assessed property, the SHPO shall apply the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1990). These standards are as follows:

(a) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment;

(b) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;

(c) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken;

(d) Most properties change over time; those changes that have acquired historical significance in their own right shall be retained and preserved;

(e) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;

(f) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence;

(g) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;

(h) Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken;

(i) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize a property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment;

(j) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(6) Changes and alterations to a property which in the professional opinion of the DSHPO or program staff do not conform to one

or more of these standards may result in the removal of a property's special assessment. Additional information to assist owners with the interpretation and understanding of these standards is available from the SHPO.

(7) A change or alteration that may have been permissible in one circumstance is not justification to make a similar change or alteration in another. The DSHPO shall evaluate all changes and alterations on a case-by-case basis: approving a kind of change or alteration in one case does not establish a precedent for approving similar kinds of changes in other cases.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.545(2)

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

### 736-050-0130

#### New Construction

(1) Additions to specially-assessed property, defined as "New construction" under OAR 736-050-0105(9), may not receive special assessment. The county assessor must assess these additions at real market value, and these additions are fully taxable.

(2) If an owner so requests in writing, the SHPO may approve two kinds of additions for inclusion in a property's special assessment:

(a) The SHPO may approve the historically accurate reconstruction of features of a property that once existed but are now missing, such as towers, wings, additional stories, or out buildings. An owner shall a request for the SHPO to approve these reconstructions with documentation to show that the reconstruction is historically accurate. This documentation shall include copies of historic photographs or drawings and architectural plans or similar information that shows how the documentary evidence will be translated into an accurately built reconstruction;

(b) The SHPO may approve small additions for stairs, elevators or other features that are necessary for safety, access by the physically impaired, or are necessary to meet fire and life safety code requirements. In this case, an owner shall demonstrate to the SHPO that the addition is necessary and that the features it contains cannot reasonably be incorporated into the existing structure.

(3) Nonhistoric, taxable additions to specially assessed properties shall be compatible with the size, scale, color, material, and character of the property and its environment, and shall meet the Standards found in OAR 736-050-0125(5). Additions which in the judgement of the SHPO do not meet the Standards and which destroy or alter historically significant character-defining features of a specially assessed property may result in removal of a property's special assessment.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.543

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

### 736-050-0135

#### Removal of Special Assessments

(1) A property's special assessment may be removed at an owner's request or administratively. When removed at an owner's request, the owner must pay a penalty as described in ORS 358.525(1). When removed administratively, the tax penalty is computed as described in ORS 358.525(2). No penalty is required if the property is transferred to an ownership making it exempt from property taxation or is destroyed by accidental fire, vandalism or Act of God. If the property continues to qualify as historic property, an owner subsequently may apply for a new special assessment following the procedure set forth in OAR 736-050-0145.

(2)(a) The SHPO may bring a questionable special assessment to the attention of the HARC, landmarks commission, governing body or an assessor;

(b) An assessor, governing body, landmarks commission, or the HARC may request the SHPO to determine if a property continues to qualify for any of the following reasons:

(A) Some or any of the "Owner's Responsibilities" described in OAR 736-050-0120 have not been met; or

(B) Inappropriate changes or alterations have been made to a property; or

(C) New construction has been added that is not in keeping with the character-defining features of a property; or

(D) Some or all of the qualities that enabled a property to qualify as historic property have been lost; or

(E) A procedural error was made in approving a property for special assessment; or

(F) Repairs, improvements, or other components of a Preservation and/or Renovation Plan required by the HARC when approving a property for special assessment have not been met.

(c) A request from a county assessor, HARC, landmarks commission, or governing body for the SHPO to determine if a property continues to qualify for special assessment shall be in writing. SHPO will not investigate the matter unless the request contains the name and address of the property's current owner, states why the assessor, HARC, landmarks commission, or governing body has reason to believe that the property no longer qualifies, and contains current photographs of the property and any other pertinent information. Upon receipt of a letter from any of the above, the SHPO shall investigate the complaint, inspect the property and may request a report pursuant to ORS 358.535. The SHPO shall make a determination on the property's continuing qualification within 60 days of receipt of the request;

(d) Upon receipt of a request to determine if a property continues to qualify, the SHPO or a designated representative shall deliver a notice to the owner in person or by mail, return receipt requested. The notice shall:

(A) Identify the property;

(B) State the reason why the special assessment is being questioned;

(C) Request a detailed response to each problem/issue identified in the notice; and

(D) Identify how the owner can appeal a determination that the property no longer qualifies. The notice may include other information pertinent to the circumstances and may request a report from the owner within 30 days.

(e) A determination by the SHPO that the property continues to qualify may contain mandatory corrective measures that an owner shall undertake to remedy or mitigate the problem/issue outlined in the notice.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.509, ORS 358.515 & ORS 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

### 736-050-0140

#### Appeals

Owners of affected historic properties, county assessors or heads of governing bodies may appeal any decision made by the SHPO or the HARC with regard to special assessment. An appeal must be filed no later than 30 calendar days after the date a decision is made by the SHPO or the HARC with regard to special assessment. It shall be in writing and directed to the SHPO. Appeals will be heard in accordance with the Administrative Procedures Act (ORS 183.413 – 183.470).

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

### 736-050-0145

#### Reapplication for Special Assessment

(1) After a special assessment has been removed under ORS 358.515, an owner may apply for a new special assessment. However, the new application must be based on the current assessed value established by the county assessor pursuant to ORS 358.505(3), and the application fee must be based on current real market value.

(2) Pursuant to ORS 358.540(3)(a), a commercial property that has received a full 15-year special assessment is eligible to reapply



for one additional 15-year special assessment, provided the owner can comply with the application requirements in 736-050-0110.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.485, ORS 358.505 & ORS 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

### 736-050-0150

#### Preservation and Renovation Plans

(1) A Preservation Plan submitted to the SHPO as part of the application process for special assessment shall contain the following:

- (a) Property location;
- (b) Historical background, if any, which briefly describes the people and events associated with the property, including period(s) of significance;
- (c) Chronology of the property's development and use, e.g. dates of physical construction and modifications over time, if any, including any known change in use prior to the date of application. The narrative should be based on the historical record, first-hand knowledge, physical evidence, or professional analysis;

(d) Physical description of all significant architectural and landscape features, and their condition; and

(e) Prioritized rehabilitation plan with general cost estimates, and approximate time line(s) for completion of work items.

(2) A summary of documentation from a nomination of a National Register property may be substituted in the application for items (a) through (d) if the nomination contains all of the information required in those items.

(3) A Renovation Plan for commercial property submitted with a Preservation Plan to the SHPO as part of the reapplication process for special assessment shall contain the following:

(a) A narrative and graphic description of at least one of the three work items described below. This information shall include a cost estimate and time line(s) for completion of the work item(s) that falls within the period of the special assessment benefit:

(A) American With Disabilities (ADA) — These are work items to implement the removal of architectural barriers. They can include the addition of ramps or devices to facilitate entrance/-exit; changes to door widths, floor elevations, bathroom or shower facilities; or other alterations that eliminate or mitigate architectural barriers. The cost of eliminating architectural barriers is not required to exceed those values cited in ORS 447.241;.

(B) Seismic safety structural improvements. These work items can improve the seismic performance or structural stability of a property, reduce the potential for heavy structural damage to property or improve life/safety performance in the event of an earthquake. Generally, they can include the addition of floor stiffening materials; devices to tie floor systems to exterior walls; vertical frames or walls in various materials to reduce the potential for shear or to strengthen areas that have high risk of collapse; base isolation systems; parapet bracing devices, or other treatments recommended by the professional analysis referenced in subsection (c) of this section.

(C) Energy conservation measures. These are work items that improve a property's energy performance. They are based on a professional analysis as referenced in subsection (c) of this section and can include: installation of new HVAC systems; rehabilitation of existing historic windows to increase thermal efficiency; replacement of historic windows where their replacement is justified and approved by the HARC; and installation of various types of insulation systems.

(b) All ADA, seismic, and energy conservation measures contained in the Renovation Plan must meet the appropriate standards for disabled persons access, seismic, and energy conservation as prescribed in the Oregon Structural Speciality Code (OSSC), or other applicable codes for existing buildings.

(c) All ADA, seismic and energy conservation measures contained in the Renovation Plan shall be prioritized based on a comprehensive professional analysis of the building. Additionally, the building's site should be considered in all analyses.

(4) For commercial (depreciable) property, the SHPO may allow an application for the federal investment tax credit (National

Park Service Form #10-168) for the rehabilitation of the property to be substituted for a Preservation and/or Renovation Plan provided the application calls for significant investment in the property and otherwise meets the requirements of this section and OAR 736-050-0150 relating to the content of Preservation and Renovation Plans.

(5) Forms and/or instructions for submission of a Preservation or Renovation Plan shall be provided by the SHPO.

(6) SHPO staff may consult with property owners on the sufficiency of a Preservation and/or Renovation Plan prior to submittal of the application.

Stat. Auth.: ORS 358

Stats. Implemented: ORS 358.540

Hist.: PR 11-1995, f. & cert. ef. 12-21-95

#### 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 and 61, 1994 edition, which are hereby adopted by reference into this administrative rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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

### 736-050-0230

#### Definitions

(1) "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.

(2) "Committee" — The State Advisory Committee on Historic Preservation, a nine member body appointed by the Governor pursuant to ORS 358.622.

(3) "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.

(4) "Deputy SHPO" — The Deputy State Historic Preservation Officer, who serves as SHPO staff manager under the delegated authority of the State Historic Preservation Officer.

(5) “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.

(6) “Handbook” — “**How to Prepare Nominations to the National Register of Historic Places: A Condensed Technical Guide for Oregon Property Owners**,” compiled by SHPO staff, the guide is a publication on how to prepare nominations to the National Register based on National Register Bulletin 16.

(7) “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.

(8) “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.

(9) “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.

(10) “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.

(11) “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.

(12) “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: The publication(s) referenced to in this rule 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

### 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(e)(7)** 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.

[Publications: The publication(s) referenced to in this rule are available from the agency.]

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

### 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 75 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 information, 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

### 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 244.020). 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. The member shall disclose the nature of the conflict, but need not disclose any monetary value involved. 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 (those not abstaining), 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;

(c) Relating to SHPO grant-assisted projects, accept private employment, obtain any interest, or enter into any agreement which, because of Committee action, would result in a direct pecuniary benefit to the member or household member or business associate of the member. This proscription includes bidding, either as an independent or associated contractor, on any grant-assisted project funded through the State Historic Preservation Office and applies throughout the member's tenure on the Committee; or

(d) Engage in preparation of National Register nominations for pecuniary benefit; solicit preparation of nominations of property, the development of which will result in pecuniary benefit to the member; or provide consulting services on special assessment applications.

(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 preliminary 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) No formal action will be taken by the Committee on a district or multiple property nomination at the meeting during which the preliminary draft was presented. Rather, final presentation and action based on detailed evaluation shall take place at a subsequent Committee meeting.

(A) The Committee may, at its discretion, waive the second meeting and take final action at the time of initial review when a nomination involves a property that is classified as a district technically but is a complex of limited scope. The Committee also may exercise its discretion concerning review and action in a single meeting on a multiple property proposal that is limited in scope.

(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 shall 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) An opponent of a nomination proposal or amendment to a listed property which has been approved by vote of the Committee may request an opportunity to present further argument to the SHPO up to 30 days from the date of the Committee's action. However, the SHPO shall consider further argument following the Committee's vote only when it can be demonstrated that substantive new information has been discovered that was not available at the time of the Committee's action. The opponent shall present the information to the SHPO during a meeting to which the proponent (or proponent's representative) and the Chairman of the Committee have been invited. The proponent may be allowed up to 7 days from the date of the special meeting to comment on the new information. The SHPO shall weigh the information and comments and determine whether the new information justifies returning the matter to the



Committee for reevaluation. If it is determined that further evaluation by the Committee is not called for, the opponent may appeal directly to the Keeper of the National Register for evaluation pursuant to **36 CFR 60.6(t)**.

(15) 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 may 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.

(16) 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. In such cases, the Committee shall vote on whether or not the property meets the criteria of the National Register and the nomination should have the State Historic Preservation Officer's signature of concurrence.

[Publications: The publication(s) referenced to in this rule are available from the agency.]

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

## 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 & ORS 390.240

Stats. Implemented: ORS 390.124 & ORS 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 & ORS 390.240

Stats. Implemented: ORS 390.124 & ORS 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 & ORS 390.240  
Stats. Implemented: ORS 97.750 & ORS 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 & ORS 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 & ORS 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 & ORS 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-artifactual 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 & ORS 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, prehistorical 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, 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, ORS 358.905 to 358.955, and ORS 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 & ORS 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 736-51-080(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 ORS 359.920(4)(b);

(b) The 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 & ORS 390.240

Stats. Implemented: ORS 390.235

Hist.: PR 1-1995, f. & cert. ef. 1-3-95

### Museum Grant-In-Aid

#### 736-053-0100

##### Purpose

The purpose of these rules is to make grant awards as provided in ORS 358.710 – 358.770, with the advice of the Oregon Historical Society and the Oregon Museums Association, and to adopt regulations establishing procedures that the Oregon Heritage Commission (Commission) shall use when distributing the Museum Grant Funds.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 358.730

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98

#### 736-053-0105

##### Definitions

As used in these rules, the following terms shall have the following meanings:

(1) "Commission" means the governor-appointed body charged with coordinating heritage activities statewide.

(2) "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 things which relate to history, anthropology, archaeology, science or art and have historical significance.

(3) "Grant" means an award from the Oregon Museum Grant Program.

(4) "Museum Grant Review Committee" means the four-person committee who reviews grant applications and makes funding recommendations to the Commission.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 358.730

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98

#### 736-053-0110

##### Eligible Applicants

In order to be eligible for a Grant, Museums shall meet the following requirements:

(1) Be in operation for a period of at least two years;

(2) Provide museum services to the public at designated and reasonable hours and places: "reasonable hours" means at least 120 hours per year

(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 essentially educational or aesthetic purposes;

(5) Care for and own or use tangible objects; and

(6) Exhibits the objects to the public on a regular basis through facilities the museum owns or operates.

Stat. Auth.: ORS 390.214

Stats. Implemented: ORS 378.740

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98

#### 736-053-0115

##### Application Procedure

(1) The Commission shall make applications available to all eligible Museums each year. The Museum Grant Program application shall include those items required by ORS 358.750.

(2) To apply for Grants, applicants return two copies of their applications for funding to Heritage Commission Coordinator, 1115 Commercial St, NE, Salem, Oregon 97310. The Museum Grant Review Committee shall review applications and attach the recommendations of the Oregon Historical Society and the Oregon Museums Association relating to museum services provided by the applicant. The Museum Grant Review Committee shall also make funding recommendations for each applicant. The Museum Grant Review Committee will then forward the applications to the Commission.

(3) Application deadlines will be established in the annual application information.

(4) Incomplete or technically incorrect applications will be ineligible for funding.

(5) Questions regarding applications should be directed to the Heritage Commission Coordinator at the address above.

Stat. Auth.: ORS 390.214

Stats. Implemented: ORS 358.750

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98

#### 736-053-0120

##### Distribution of Funds

(1) When Museum Grant Program funds are appropriated by the Legislative Assembly, the Commission shall distribute these funds on an annual basis. This distribution will be made with the advice of the Museum Grant Review Committee. The Museum Grant Review Committee shall review all applications and make recommendations regarding the funding of each application to the Commission within 45 days after the application deadline.

(2) Grants shall be distributed each year according to the following formula:

$$\frac{\text{Total Available Funds}}{\text{Total Eligible Applicants}} = \text{Individual Apportionment}$$

(3) Individual eligible requests may be for up to 50% of the amount expended by a Museum for Museum services in the previous fiscal year, not to exceed an amount established by the Commission, the Oregon Historical Society, and the Oregon Museums Association. In no event shall a Grant exceed \$5,000.

Stat. Auth.: ORS 390.214

Stats. Implemented: ORS 358.760

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98

#### 736-053-0125

##### Reimbursement

Grant recipients shall maintain records adequate for audit purposes and are solely responsible for any questioned audit findings. To remain eligible for Grants, recipients shall supply any information to substantiate costs requested by the Commission.

Stat. Auth.: ORS 390.214

Stats. Implemented: ORS 358.750

Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98

#### 736-053-0130

##### Museum Grant Review Committee

(1) The Museum Grant Review Committee shall be composed of:

(a) A representative from the Oregon Historical Society;

(b) Two institutional members of the Oregon Museums Association appointed by the Oregon Museums Association Board of Directors;

(c) Of the Oregon Museums Association representatives, one shall be from a Museum with a budget of less than \$60,000 annually; and,

- (d) A representative of the Oregon Heritage Commission.
  - (2) The Museum Grant Review Committee shall adopt conflict-of-interest and procedural rules.
- Stat. Auth.: ORS 390.214  
 Stats. Implemented: ORS 358.730(1)(d)  
 Hist.: PRD 3-1998, f. 2-11-98, cert. ef. 2-17-98

### Oregon Heritage Grants

#### 736-053-0200

##### Purpose

The purpose of these rules is to make grant awards as provided in ORS 358.590(3) and to adopt regulations establishing procedures that the Oregon Heritage Commission (Commission) shall use when awarding Oregon Heritage Grants.

Stat. Auth.: ORS 358.585  
 Stats. Implemented: ORS 358.590  
 Hist.: PRD 3-2000, f. & cert. ef. 4-5-00

#### 736-053-0205

##### Definitions

As used in these rules, the following terms shall have the following meanings:

- (1) "Commission" means the governor-appointed body charged with coordinating heritage activities statewide.
- (2) "Grant" means an award from the Oregon Heritage Grant Program.
- (3) "Heritage" means the array of significant things, thoughts, and activities associated with past human experience in Oregon.
- (4) "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.
- (5) "Heritage Conservation" means activities that preserve or enhance heritage resources.
- (6) "Heritage Development" means activities that fulfill the potential of heritage resources to educate Oregonians and their visitors and enrich their lives.
- (7) "Participant" means an eligible applicant legally capable of executing and which has executed a grant agreement for project awarded an Oregon Heritage Grant.
- (8) "Eligible Project Costs" means approved costs incurred after execution of a grant agreement.
- (9) "Approved" means approved in writing by the Commission.
- (10) "Project Completion" means satisfaction of all requirements of a grant agreement as determined after review and inspection by the Commission.

Stat. Auth.: ORS 358.585  
 Stats. Implemented: ORS 358.590  
 Hist.: PRD 3-2000, f. & cert. ef. 4-5-00

#### 736-053-0210

##### Eligible Applicants:

- (1) In order to be eligible for a Grant, applicants must meet the following criteria:
  - (a) Be one of the following: A non-profit organization incorporated in the State of Oregon, 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; or a local government within the State of Oregon.
  - (b) If a non-profit organization incorporated in the State of Oregon, have a 501(c)(3) determination from the United States Internal Revenue Service and have a legally-constituted board of trustees or directors.
- (2) The following are not eligible to apply for Oregon Heritage Grants:
  - (a) Individuals, religious organizations, for-profit organizations such as partnerships, companies, and corporations, state agencies, school districts, state-supported universities and colleges, and federal agencies.

Stat. Auth.: ORS 358.585  
 Stats. Implemented: ORS 358.590  
 Hist.: PRD 3-2000, f. & cert. ef. 4-5-00

#### 736-053-0215

##### Application Procedure

- (1) The Commission each biennium will announce the availability of, procedures to apply for, and deadlines for applying for Oregon Heritage Grants in general circulation publications in the State of Oregon and also by direct mail to parties who have expressed interest in the Oregon Heritage Grant Program. If the Commission has chosen to focus on a particular type of project in a particular grant cycle, that focus will be a part of the announcement.
- (2) Applicants will, by announced deadlines, submit application information in a format prescribed by the Commission that:
  - (a) Documents that the applicant is eligible to apply for an Oregon Heritage Grant;
  - (b) Documents that the proposed project qualifies for an Oregon Heritage Grant;
  - (c) Documents that the applicant is capable of carrying out the proposed project; and
  - (d) Documents the potential effectiveness of the proposed project to conserve or develop heritage resources.

Stat. Auth.: ORS 358.585  
 Stats. Implemented: ORS 358.590  
 Hist.: PRD 3-2000, f. & cert. ef. 4-5-00

#### 736-053-0220

##### Evaluation of Applications

- (1) Eligible applications received by announced deadlines will be evaluated by an Oregon Heritage Grants Review Committee appointed by the Commission Chair.
- (2) The Oregon Heritage Grants Review Committee will 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 effective the proposed project will be in the conservation or development of heritage resources. Priority will be given to projects that preserve or develop heritage resources which are threatened and/or are of statewide significance.
- (3) The Commission will, at regularly scheduled public meetings, consider and approve in part or in full the recommendations of the Oregon Heritage Grants Review Committee.

Stat. Auth.: ORS 358.585  
 Stats. Implemented: ORS 358.590  
 Hist.: PRD 3-2000, f. & cert. ef. 4-5-00

#### 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 and approved in part or in full by the Commission.
- (2) Grants will be made for no more than fifty percent of total project costs. Up to twenty-five percent of a participant's share of project costs may consist of approved donated services and materials.

(3) All awards will be the subject of binding grant agreements between the Commission and participants.

(4) Grant agreements will specify total project costs, participants' share, Commission share, work to be accomplished, products to be delivered, and deadlines for accomplishing work and delivering products.

Stat. Auth.: ORS 358.585  
 Stats. Implemented: ORS 358.590  
 Hist.: PRD 3-2000, f. & cert. ef. 4-5-00

#### 736-053-0230

##### Disbursement of Grant Funds

- (1) All Grant funds will be disbursed 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.

Stat. Auth.: ORS 358.585  
 Stats. Implemented: ORS 358.590  
 Hist.: PRD 3-2000, f. & cert. ef. 4-5-00



**736-053-0235****Recovery of Grant Funds**

(1) Participants who fail to complete approved projects to the Commission's satisfaction shall return all Grant funds.

(2) Participants shall 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 questioned in audit findings.

Stat. Auth.: ORS 358.585

Stats. Implemented: ORS 358.590

Hist.: PRD 3-2000, f. & cert. ef. 4-5-00

**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 & ORS 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. Non-contributing 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 exam-

ple, 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 & ORS 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), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 390.124, ORS 537.336 & ORS 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), ORS 183.341 & ORS 537.332 - ORS 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), ORS 183.341 & ORS 537.332 - ORS 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: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 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), ORS 183.341 & ORS 537.332 - ORS 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), ORS 183.341 & ORS 537.332 - ORS 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), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 537.338 & ORS 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 Chapter 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 com-

prehensive plan compatibility in OAR Chapter 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 Chapter 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 Chapter 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 - ORS 390.770 & ORS 390.990 - ORS 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 ORS 390.715, or an ocean shore product removal permit under ORS 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 ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 ORS 390.640, permits for pipe, cable, or conduit crossings of the ocean shore issued under ORS 390.715, and permits for removal of products along the ocean shore issued under ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 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 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00



