

Appendix F

OREGON STATE SCENIC WATERWAY PROGRAM

Background

The Oregon Scenic Waterway Act was established by a ballot initiative in 1970. The original Oregon Scenic Waterways system created by the Act included 496 free-flowing miles of six rivers.

Rivers can be added to the system through designation by the Governor or the legislature. Such actions have added significant mileage of five rivers, as well as Waldo Lake, to the Scenic Waterways system since passage of the original Act.

Rivers can also be added to the system by the citizens of Oregon. In 1988, Oregon voters passed the Oregon Rivers Initiative (Ballot Measure #7), which added 573 river miles to the system. These additions included the Willowa River from its confluence with the Minam River at the hamlet of Minam to its confluence with the Grande Ronde at Rondowa, and the Grande Ronde River from Rondowa to the Oregon-Washington state line. There is now one lake and segments of 19 rivers (1,148 miles) in the State Scenic Waterways system.

Program Goals

The scenic waterway program promotes cooperative protection and wise use of rivers in the system by all agencies (Federal, State, and local), individual property owners, and recreation users. Program goals are:

- To protect the free-flowing character of designated rivers for fish, wildlife, and recreation. No dams, reservoirs, impoundments, or placer mining activities are allowed on scenic waterways.
- To protect and enhance scenic, aesthetic, natural, recreation, scientific, and fish and wildlife values along scenic waterways. New development or changes of existing uses proposed within a scenic waterway are reviewed before they may take place.

- To protect private property rights. The Act discourages unsightly structures or inappropriate development that could be a nuisance to neighboring landowners or even depreciate property values. It prohibits pollution and the disturbance of adjacent surface lands by placer mining. It also prohibits public use of private property without explicit consent of the landowner.
- To promote expansion of the scenic waterway system. The Act sets up a process for adding new rivers to the system and establishes criteria for candidate rivers.
- To encourage other local, State, and Federal agencies to act consistently with the goals of the program. Oregon State Parks reviews plans and decisions made by other agencies to ensure consistency with the scenic waterways program.

Administration

Scenic waterways are administered under the authority of the Oregon State Parks and Recreation Commission (ORS 390.805 to ORS 390.925). Administrative rules (OAR 736-40-005 to 736-40-095) have been adopted to govern the program (see Appendix G). In addition to the general rules governing the program, specific rules are generated for management of each river segment in the system. These rules are created through the management planning process, and tailored to the actions necessary to maintain the existing character of the designated river corridor.

The Act and the Commission's rules require the evaluation of proposed land use changes within one-quarter mile from each side of the river for their potential impacts on aesthetic and scenic values, as viewed from the river. Property owners wanting to build roads or houses, develop mines, harvest timber, or other similar projects, must provide written notification to the Oregon State Parks and Recreation Department. Parks evaluation of the project will be coordinated with other natural resource agencies (Federal and State) having regulatory responsibility and with the local jurisdiction. Parks relies on its river classification and administrative rules for each segment of the scenic waterway to determine whether the proposed project is incompatible or inconsistent with the

designated classification. State Parks will work with the landowner to reach a mutually satisfactory resolution of any conflicts. Where such a resolution cannot be reached, the Commission must decide within one year of the original notification whether to pay the property owner for the land or the development rights. If the Commission does not decide within one year to acquire the land or development rights, then the landowner may proceed in accordance with the original development proposal.

Other local and State agencies must comply with the scenic waterway laws and rules. Parks also works closely with Federal agencies to assure their actions are compatible with scenic waterway law, rule, and resource management recommendations.

The Management Planning Process

The goal of the scenic waterway management planning process is to develop a comprehensive and workable management plan which will protect or enhance the special attributes of the designated river corridor. Primary emphasis is the protection of aesthetic, scenic, fish and wildlife, scientific and recreational features. The intent is to maintain the scenic "status quo" condition of the area, without "turning back the clock" on existing land uses. The mechanisms for protection and enhancement include:

River Classification - Within the management plan, scenic waterways are classified into one or more of six possible classifications, according to the character of the landscape and the amount and type of development.

Administrative Rules - Once the classifications are set, specific guidelines for new development are established as rules.

Other Management Recommendations - These are suggestions for actions to protect corridor values, to be implemented by persons or agencies other than State Parks.

Scenic Waterway Classification

Under Oregon law (ORS 390.845 - Functions of the department; use of adjacent lands), the scenic wa-

terway program is administered by the State Parks and Recreation Commission, and staffed by the Oregon State Parks and Recreation Department. The Parks Department is required to protect and aesthetic, scenic, fish and wildlife, scientific and recreation features based on special attributes of each river area. The Parks Department strives to protect special attributes of the river while recognizing existing land uses and management practices on adjacent lands.

In order to define and achieve management goals, the river is classified into one or more of six possible classifications, according to the present level of land development or landscape alterations. Once the classifications are set, appropriate guidelines for new development or landscape alterations are established as rules. The aim of the program is to maintain the existing scenic condition of the river.

The following are existing land use and land alteration conditions usually associated with each of the six river classifications; and how each kind of classification should be administered (managed) in scenic waterways:

1. Natural River Areas are generally inaccessible except by trail or river, with primitive or minimally developed shorelands. Preservation and enhancement of the primitive character of these areas is the goal of this and the next two classifications.
2. Accessible Natural River Areas are relatively primitive, undeveloped areas with access by railroad or lightly traveled road.
3. Natural Scenic View Areas are designated where one riverbank is inaccessible, undeveloped or primitive in character while the opposite bank is accessible and developed.
4. Scenic River Areas may be accessible by roads, but are largely undeveloped and primitive except for agriculture and grazing. River segments considered "Scenic" are managed to maintain or enhance their high scenic quality, recreation value, fishery and wildlife habitat. The intent is to preserve their largely undeveloped character while allowing continuing agricultural uses.

5. Recreational River Areas are readily accessible by road or railroad, with some agricultural, commercial and/or residential development along the banks; the river may have undergone some impoundment or diversion in the past. River segments considered "Recreational" are managed to allow continuance of compatible river-oriented public outdoor recreation opportunities, to the extent that these do not substantially impair the natural beauty of the scenic waterway or diminish its aesthetic, fish and wildlife, scientific and recreational values.

6. River Community Areas are river segments where the density (residential tract or platted subdivision) of existing structures or other developments precludes application of a more restrictive classification. River segments considered "Community Areas" are managed to allow development that is compatible with county zoning and blends into the natural character of the surrounding landscape. This also means protecting riparian vegetation, and encouraging activities that enhance the landscape.

The rules established for each river classification generally allow some new construction and continued use of existing structures and improvements. Though some improvements require notification, review and approval, many others do not.

For example, notification and approval is not generally needed for construction of new fences; maintenance of farm buildings, fences or outbuildings; laying of irrigation lines; crop rotation; removal of danger trees; construction of grain storage facilities under certain conditions; maintenance of existing residences and outbuildings; minor residential remodeling; construction of garages adjacent to existing homes; certain changes in homesite landscaping; maintenance of roads and bridges; and firewood cutting for personal use.

Mining, road building, construction of most new structures, placement of mobile homes, land clearing, and timber harvest are examples of activities requiring approval. River classifications and the associated rules or guidelines determine how the natural and scenic beauty of the river will be maintained.

North Fork John Day Scenic Waterway

Proposed Classifications

Accessible Natural River Area - From the Boundary of the North Fork John Day Wilderness, near Big Creek, to the Bridge on Highway 395, approximately 34.5 miles, is proposed to be an Accessible Natural River Area. This segment is paralleled on one side by a dirt road and has been impacted by historical mining. Most of the land in this section is publicly owned. The management goal is to maintain the relatively primitive character of the landscape.

Recreational River Area - From the Bridge on Highway 395 to the confluence with Camas Creek, approximately 2.5 miles, is proposed to be a Recreational River Area. This segment is paralleled on one side by State Highway 395. There is good river access here for rafting and fishing. The management goal is to allow the continuance of existing uses with minimum restrictions, and to provide for public recreational needs.

Proposed Land Management Rule

Accessible Natural River Area - That segment of the North Fork John Day River from the Boundary of the North Fork John Day Wilderness, near Big Creek, downstream to the Bridge on Highway 395.

This Accessible Natural river Area will be administered consistent with the standards set by OAR 736-40-040 (1)(e)(B) and OAR 736-40-035. In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) must comply with Umatilla and Grant County land use regulations.

No new structures or improvements which are visible from the river will be permitted except as provided under OAR 736-40-030 (5).

New roads will be permitted only when fully screened from the river by topography or existing vegetation.

When consistent with other state and federal regulations, new or expanded mining operations, (except placer mining), 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, mining and similar forms of improvements may be permitted if vegetation is established which would 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 the altered improvement site.

Visible tree harvest may be allowed provided that: 1) the operation complies with the relevant Forest Practices Act rules, 2) harvest methods with low visual impact are used and 3) the effect of the harvest is to enhance 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).

Existing visible roads may be upgraded when those roads are partially screened or partial screening is established. 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.

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 period (4-5 years). The condition of "partial vegetative screening" shall consist of an ample density and mixture of native evergreen and/or deciduous vegetation to allow a moderately filtered view (at least 50% filtering) of the road.

Proposed utility facilities should share existing utility corridors, and any vegetation disturbance should be kept to a minimum. Improvement needed for public recreation use or resource protection may be visible from the river, but must be primitive in character and designed to blend with the natural character of the landscape.

Whenever the standards of OAR 736-40-035 and the above rule are more restrictive than the applicable County Land Use and Development Ordinance, the above Administrative Rules shall apply.

Recreational River Area - That section of the river from the bridge at Highway 395 downstream to the confluence with Camas Creek, approximately 2.5 miles.

This Recreational River Area will be administered consistent with the standards set by OAR 736-40-040 (1)(c)(B) and OAR 736-40-035. In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) must comply with Umatilla County land use regulations. New structures and associated improvements (except as provided under OAR 736-40-030 (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). The condition of "partial vegetative screening" shall consist of an ample density and mixture of evergreen and deciduous vegetation to partially obscure (at least 30%) the viewed improvement or structure, or allow a partially filtered view (at least 30% filtering) of the proposed structure or improvement.

Visible tree harvest may be allowed provided that : 1) the operation complies with the relevant Forest Practices Act rules, 2) harvest methods with low visual impact are used and 3) 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 density patterns).

New roads constructed for agricultural use, mining, timber harvest, or residential use shall be partially screened, either with vegetation and/or topography. If inadequate topography or vegetative screening exists, the road may be permitted if native vegetation is established to provide moderate screening of the road 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 allow a moderately filtered view (at least 50% filtering) of the road.

When consistent with other state and federal regulations, new or expanded mining operations^(Except Placer Mining) 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 on 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 the altered improvement site.

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.

Whenever the standards of OAR 736-40-35 and the above rule are more restrictive than the Grant County and Umatilla County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

Agency Jurisdiction

A number of agencies other than Oregon State Parks have land management and/or land use responsibilities within the Grande Ronde and Wallowa state Scenic Waterway corridors. Most of both corridors are within Wallowa County, with a few small portions in Union County. The Wallowa River Scenic Waterway is under study for inclusion in the federal Wild & Scenic Rivers program; lead agency for the study is the Wallowa-Whitman National Forest. The Grande Ronde Scenic Waterway is designated under the federal ~~Wild & Scenic Rivers program~~ ^{Resource} program; lead management agency is the Baker ~~District~~ ^{Area} of the Bureau of Land Management. A memorandum of understanding between the United States Forest Service and the Bureau of Land Management with Oregon State Parks has provided the framework by which the USFS and BLM will notify and consult with State Parks regarding land use activity on federal lands. See Appendix ___ for a text of the memorandum.

County Land Use Administration

This section describes, in a general way, county land use classifications and allowed uses within the Grande Ronde and Wallowa scenic waterway corridors. Both corridors are primarily within Wallowa County, but small portions of each are within Union County.

Most of the land (both corridors, both counties) is zoned for either Exclusive Farm Use or Timber-Grazing. The Exclusive Farm Use zone is intended "...to provide areas for the continuation of existing commercial agricultural activities and permit the establishment of only those new uses which are compatible with agricultural activities...to guarantee the preservation of the areas so classified for farm use free from conflicting non-farm uses." Similarly, the Timber-Grazing zone is intended "...to provide areas for commercial farm and forest activities and permit the establishment of only those new uses which are compatible with

agricultural activities...to guarantee the preservation of the areas so classified for farm use free from conflicting non-farm, non-forest use."

In both zones, uses permitted outright are:

farm uses
management and harvest of forest products
a single-family dwelling for the operator (if the homesite is on a lot or parcel managed as part of the operation not smaller than the minimum lot size)
another single-family dwelling on the same lot or parcel ~~for~~ *with* assistance is necessary for management of the operation
nonresidential buildings customarily provided in conjunction with the farm or forest uses.

In addition, public or private schools and solid waste disposal facilities are allowed within the Exclusive Farm Use zone. Some of these outright uses are subject to county review to ensure that they fall within the provisions and definitions set forth in state statutes and county ordinances.

Both zones allow the creation of new lots greater than 160 acres, following county review. New lots smaller than 160 acres may also be approved, if the county finds that certain conditions are met and following a public hearing.

Both zones also allow for certain uses other than those listed above, subject to findings of fact and a public hearing on whether a particular use should be allowed. If the county decides to allow a use, it may impose conditions that must be met by the landowner. These conditional uses include:

single-family dwellings not necessary for farm or forest operations
temporary placement of mobile homes or travel trailers under certain hardship conditions
churches or other meeting places of non-profit groups
public utility services, except transmission towers over 200 feet high
exploration, mining and processing of geothermal, aggregate or sub-surface resources
commercial activities in conjunction with farm use
private or public parks, playgrounds, campgrounds, fishing and hunting preserves
community centers operated by a government agency or a non-profit organization
personal use airports and helicopter pads
certain home occupations
temporary facilities for the processing of forest products
cultivation and harvest of aquatic species

the boarding of horses for profit
golf courses

State Agencies

Oregon Water Resources Department (WRD). The WRD is responsible for management and allocation of the state's water resources. The Water Resources Commission typically develops policy through the preparation of basin plans for each of Oregon's 18 river basins. Through Basin plans, the WRD classifies stream flow for certain purposes, such as domestic use, industry, municipal, recreation or irrigation. The plans are adopted as administrative rules which reflect how water is currently used, and its future use and allocation.

The WRD issues water rights on all waters in the state and enforces the exclusion of dams, impoundments, and placer mining in scenic waterways and on tributary streams within scenic waterway boundaries. In addition, the Scenic Waterway Act requires the Water Resources Commission to review proposed land condemnations and to review new scenic waterway management plans and scenic waterway additions proposed by State Parks for designation by the governor.

Minimum perennial stream flows are administrative designations established by the Water Resources Commission. A law passed in 1987 by the Legislature allows for the conversion of minimum perennial stream flows to instream water rights. Three state departments may apply for these instream rights: Parks and Recreation, Fish and Wildlife, and Environmental Quality. Once granted, the instream water right is held by WRD in trust for the people of Oregon.

A 1988 Oregon Supreme Court decision (Diack vs. City of Portland) found that the Water Resources Commission must make findings on the effects of new consumptive water uses on state scenic waterways. Because of this court ruling, WRD is working closely with State Parks and other agencies to quantify stream flow needs for scenic waterways.

Division of State Lands (DSL).

DSL is the administrative arm of the State Land Board (composed of the Governor, the Secretary of State and the State Treasurer). Under constitutional and statutory guidelines, the Board is responsible for managing the assets of the Common School Fund as well as for administering the Oregon Removal-Fill Law.

Common School Fund assets include the beds and banks of Oregon's

navigable waterways, up to ordinary high water, and are to be managed for the "greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management".

New utility or transportation corridors that impose into or cross a navigable waterway below ordinary high water will require an easement from the Land Board. In addition, existing facilities will require an easement at such time as they undergo major structural alteration, replacement or relocation.

DSL studied the history of commercial navigation in the Grande Ronde basin in 1979. They found that the use of the river for unaided log drives would support the state's claim to the bed and banks of the Grande Ronde from River Mile 162 to River Mile 192 (about present-day Perry upstream nearly to Sheep Creek), and to the bed and banks of the Minam from its mouth to River Mile 2.5. The Minam claim may extend upstream to about River Mile 30, based on a finding of the Public Utilities Commission that log drives would be feasible during the spring and early summer. Additionally, that report suggested that commercial tourist use below the hamlet of Minam on the Wallowa River and below Rondowa on the Grande Ronde River is a sufficient foundation for state ownership of the bed and banks. Therefore, it is likely that both the Wallowa State Scenic Waterway and the Grande Ronde State Scenic Waterway meet the navigability standard for the assertion of state ownership of the bed and banks.

The Oregon Removal-Fill Law protects Oregon's waterways from uncontrolled alteration. The law requires a permit for fill or removal of more than 50 cubic yards of material within any waters of the state. The permit-review process involves coordination with the applicant, adjacent land owners, and natural resource and land use agencies from local through federal levels.

The State Scenic Waterways Act requires that the State Land Board approve any alteration of the bed and/or banks of a scenic river or wetlands within the scenic waterway, regardless of the amount of material involved. Generally, the Board will prefer non-structural techniques, such as bank sloping and revegetation, for bank projects, rather than hardened structures. In its review of a proposed project, the Board will consider the management goals and recommendations of this plan, and may require mitigation as a condition of approval.

Oregon Department of Fish and Wildlife (ODFW). The ODFW is charged with management and protection of Oregon's fish and wildlife resources, and for recommending seasons, methods and bag limits for recreational and commercial take of the resources.

Department of Land Conservation and Development (DLCD). The DLCD works with cities, counties, and state agencies to develop and maintain Oregon's comprehensive land use plans, and regulations. One aspect of these responsibilities is to ensure that jurisdictions have included State Scenic Waterways in their Goal 5 (Natural Resources) planning. To comply with Goal 5, counties must inventory the resource, identify conflicting uses which could impact the resource, and develop implementation strategies to resolve conflicting uses as identified. This would include a program to notify State Parks of proposed changes in land use within scenic river corridors. The resources identified in the inventory are then required to be protected through mandatory plans, policies and zoning requirements.

Department of Environmental Quality (DEQ). The DEQ is responsible for the implementation of the Statewide Water Quality Management Plan, which establishes standards of water quality for each of WRD's eighteen basins in Oregon. Beneficial uses of rivers and streams that are to be protected by DEQ are: public, private and industrial water supplies, irrigation, livestock watering, anadromous fish passage, salmonid rearing and spawning, resident fish and aquatic life, wildlife and hunting, fishing, boating, water contact recreation, and aesthetic quality. Dissolved oxygen is to be kept at the highest possible levels. Temperature, bacteria, dissolved chemical substances, and toxic materials are to be kept at the lowest possible levels. The DEQ anti-degradation policy states that high quality waters are to be protected from degradation unless the Environmental Quality Commission finds it necessary to make an exception based on economic or social needs.

DEQ regulates direct discharges of waste into waters of the state. Industrial and municipal dischargers must obtain a permit and comply with permit provisions for protection of water quality. DEQ also has standards and procedures for on-site sewage systems, issues permits for dredge and fill of wetlands, and maintains water quality monitoring stations throughout Oregon.

Department of Forestry (DOF). DOF responsibilities include fire protection on 16 million acres of private, state, and federal forests, detection and control of forest pests and forest tree diseases on state and private lands, and the management and rehabilitation of 785,000 acres of state-owned forest lands. DOF also administers the Oregon Forest Practices Act, adopted in 1971 and amended in 1987, which is governed by rules developed by the Board of Forestry. The purpose of the Act and rules is to encourage and enhance the growth and harvesting of trees while providing for the overall maintenance of air, water and soil resources, and fish and wildlife habitat. Forest practice rules regulate reforestation, road construction and maintenance,

harvesting, application of chemicals and disposal of slash.

Included within these regulation are rules designed to protect "riparian management areas." Under these rules, a proposed commercial forest operation within the riparian management are of a Class 1 stream must be described in a written plan. The FPA does not contain special requirements for operations within a scenic waterway. These plans are submitted to the DOF for approval. Written plans required for the purposes of the FPA must describe how the operation will be conducted to meet the minimum standards prescribed by the FPA.

In these sensitive areas, close coordination is required. For operations that occur within the state scenic waterways system, DOF directive (6-1-0-002) outlines specific procedures for coordinating the Forest Practices Program and the Oregon Scenic Waterways Program (see Appendix item ____). This coordination is designed to facilitate the involvement of DOF and State Parks personnel with the affected landowners and operators. The goal is to keep all parties informed of obligations, requirements and planned activities so as to make the whole process, from planning to accomplishment, as efficient and effective as possible.

OREGON ADMINISTRATIVE RULES
CHAPTER 736, DIVISION 40 — STATE PARKS AND RECREATION DIVISION

DIVISION 40

OREGON SCENIC WATERWAYS

Rules for Conducting Hearings on Scenic Waterways Regulations

736-40-005 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 Transportation Commission hereby delegates to the State Parks and Recreation Administrator, 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 (10) 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 Division are reasonable;

(b) The limits and intent of the proposed rules and regulations will be explained by representatives of the State Parks and Recreation Division;

(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 Division 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.:

Hist.: HC 1252, f. 5-13-71, ef. 5-12-71

Designated Scenic Waterways

736-40-010 The following rivers or segments of rivers are designated as Scenic Waterways:

(1) The segment of the Rogue River extending from the confluence with the Applegate River

downstream a distance of approximately 88 miles to Lobster Creek Bridge.

(2) The segment of the Illinois River from the confluence with Deer Creek downstream a distance of approximately 46 miles to its confluence with the Rogue River.

(3) The segment of the Deschutes River from immediately below the existing Pelton Re-regulating Dam downstream approximately 100 miles to its confluence with the Columbia River, excluding the City of Maupin.

(4) The entire Minam River from Minam Lake downstream a distance of approximately 45 miles to its confluence with the Wallowa River.

(5) The segment of the South Fork Owyhee River in Malheur County from the Oregon-Idaho border downstream approximately 25 miles to Three Forks where the main stem of the Owyhee River is formed, and the segment of the main stem Owyhee River from Crooked Creek (six (6) miles below Rome) downstream a distance of approximately 45 miles to the mouth of Birch Creek.

(6) The segment of the main stem of the John Day River from Service Creek Bridge (at river mile 157) downstream 147 miles to Tumwater Falls (at river mile 10).

(7) The segment of the Sandy River from the east boundary line of Section 25 and Section 36, Township 1 South, Range 4 East, of the Willamette Meridian, in Clackamas County at Dodge Park, downstream approximately 12.5 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.

(8) The confluence of the Rogue and Applegate Rivers is defined as the West boundary line of the East 1/2 of the East 1/2 of Section 19, Township 36 South, Range 6 West, of the Willamette Meridian, in Josephine County.

(9) The segment of the Clackamas River from River Mill Dam to Baker Bridge at Carver.

(10) Opal Lake in Marion County and the main stream of Opal Creek from Opal Lake to its confluence with Battle Ax Creek.

(11) Waldo Lake in Lane County and the segment of the North Fork of the Middle Fork of the Willamette River from Waldo Lake to a point one mile upstream from the railroad bridge that is near the town of Westfir.

(12) The following segments of the Upper Deschutes River in Jefferson and Deschutes Counties are classified as a state scenic waterway. Those segments are: The gauging station (approximately river mile 226.4) immediately below Wickiup Dam downstream approximately 28 miles to the General Patch Bridge at river mile 199; that segment beginning at Harper Bridge at river mile 192 downstream approximately 20 miles to river mile 172 above Bend, Oregon; and the segment beginning at Twin Bridges at river mile 154.5 downstream approximately 34.5 miles to Lake Billy Chinook approximately river mile 120 excluding the Cline Falls Dam and powerhouse between river miles 145 and 144.

Stat. Auth.: ORS Ch. 184 & 390

Hist.: EC 1258, f. 6-30-71; HC 1285, f. 6-27-72; 10TC 6, f. 11-1-73; 10TC 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

OREGON ADMINISTRATIVE RULES
CHAPTER 736, DIVISION 40 — STATE PARKS AND RECREATION DIVISION

Definition of Terms

736-40-015 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 Transportation Commission.

(3) "Existing Use" means the use to which related adjacent land was being put on December 3, 1970, 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 or segment of a river, 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.:

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

Responsibility and Authority of the Oregon Transportation Commission

736-40-020 (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.:

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

Public Use of Scenic Waterways

736-40-025 (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

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these waterways, of value to the human spirit, is the common heritage of all.

Stat. Auth.: ORS Ch. 390

Hist.: HC 1285, f. 6-27-72; PR 3-1982, f. & ef. 3-26-82

Land Management

Improvements and Changes in Use of Related Adjacent Lands

736-40-030 (1) Except as provided in section (5) of this rule, OAR 736-40-035 and 736-40-045 through 736-40-075, 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 736-40-080.)

(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 736-40-080.)

(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 736-40-035(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.:

Hist.: HC 1285, f. 6-27-72; IOTC 6, f. 11-1-73

Rules of Land Management

736-40-035 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 736-40-030(5);

(e) Additions to farm buildings, if not in violation of OAR 736-40-030(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 736-40-045 through 736-40-075;

(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 736-40-030(5), except within classified natural river areas named in OAR 736-40-045 through 736-40-075;

(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 736-40-030(5);

(c) Construction of garages necessary to the use of existing homes, if not in violation of OAR 736-40-030(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.

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(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 736-40-030(5), sections (3) and (4) of this rule and OAR 736-40-045 through 736-40-075, 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) Except for large farm buildings such as barns, metal siding or roofing shall not be used;

(D) No structures shall exceed 30 feet in height from natural grade on a side facing the river;

(E) 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 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 (3) 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 736-40-040 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;

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(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.:

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

Classification of Scenic Waterways and Segments Thereof

736-40-040 (1) OAR 736-40-040 through 736-40-075 supplement, but in no way alter, other provisions of these rules and regulations. Notification procedures set forth in OAR 736-40-030, 736-40-035 and 736-40-080, 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.

736-40-041 Nestled River Scenic Waterway
736-40-042 Upper Creeks
736-40-043 Upper Mc Kenzie

Stat. Auth.:
Hist.: HC 1285, f. 6-27-72

Interim Classification of State Scenic Waterways

736-40-044 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:

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River	Classification	Description
(1) Clackamas River:		Crater Lake National Park to the east boundary of Rogue River National Forest (42 miles).
(a) North Fork of the Clackamas River, that segment from the source to North Fork Reservoir (12 miles);	Scenic	(11) North Santiam River: Little North Fork, that segment from Battle Ax Creek to Willamette National Forest boundary (7 miles).
(b) South Fork of the Clackamas River, that segment from river mile 4 to mainstem;	Scenic	(12) North Umpqua River: From Mt. Thielsen Wilderness boundary to Lemolo Reservoir (6 miles).
(c) Mainstem, that segment from Ollalie Lake Scenic Area boundary to North Fork Reservoir (54 miles).	Recreational	
(2) Deschutes River:		Stat. Auth.: ORS 390.845(2) Hist.: PR 11-1991, f. & cert. ef. 6-18-91
(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	
(c) Upper, that segment from Sawyer Park to Tumalo State Park (5 miles);	Scenic	
(d) Upper, that segment from Deschutes Market Road to Twin Bridges, excluding Cline Falls hydroelectric facility (17 miles).	Scenic	
(3) Elk River:		
(a) North Fork, that segment from the source to South Fork (5 miles);	Scenic	
(b) South Fork, that segment from the source to North Fork (5 miles);	Scenic	
(c) Mainstem, that segment from North-South Forks confluence to Elk River Fish Hatchery (11 miles).	Scenic	
(4) Grande Ronde: From the confluence with Wallowa River to Washington border (42 miles).	Recreational	
(5) Wallowa River: From the confluence with Minam to confluence with Grande Ronde (10 miles).	Recreational	
(6) John Day River:		
(a) North Fork, that segment from the North Fork John Day Wilderness boundary to 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) Mainstem, that segment from Parrish Creek to Service Creek (13 miles).	Recreational	
(7) Klamath River: From the John Boyle Dam powerhouse to California Border (11 miles).	Accessible Natural	
(8) 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	
(c) Mainstem, that segment from Clear Lake to Carmen Reservoir (2 miles);	Scenic	
(d) Mainstem, that segment from Tamolitch Falls to Trail Bridge Reservoir (2 miles);	Scenic	
(e) Mainstem, that segment from Trail Bridge to Paradise (USFS) campground (12 miles).	Recreational	
(9) Metolius River: Mainstem, that segment from Metolius Lodge Springs to Candle Creek (14 miles).	Recreational	
(10) Rogue River: Upper, that segment from	Scenic	

**Classifications by River and Segment, With
General Administrative Criteria for Each**

Rogue River Scenic Waterway

736-40-045 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

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Natural River View Area and the River Community Areas therein contained;

(B) Agness, extending from Watson Creek downstream approximately 10 miles to Blue Jay Creek, but excluding the River Community Area therein contained;

(C) Skookumhouse, extending from the unnamed creek in Section 36, Township 35 South, Range 13 West, of the Willamette Meridian (T 35S, R 13W, W.M.), Curry County, downstream approximately seven miles to the Lobster Creek Bridge.

(b) Within these areas, permitted uses and structures may include agriculture, single-family dwellings, lodges, resorts and other necessary commercial public service facilities. Including those already existing, structures and improvements which are visible from the river will be limited to a total of four on each side of the river within any one mile of river frontage as shown on the plan and profile maps of the Rogue River prepared by the U.S. Geological Survey from survey made in 1923.

(4) Natural Scenic View Area:

(a) The shoreline and related adjacent land lying along the right bank of the river (as seen when facing downstream) between Hellgate Bridge as located in Section 4, Township 35 South, Range 7 West, of the Willamette Meridian (T 35S, R 7W, W.M.), Josephine County, and the Grave Creek Bridge as located in Section 1, Township 34 South, Range 8 West, of the Willamette Meridian (T 34S, R 8W, W.M.), Josephine County, is classified as a Natural Scenic View Area;

(b) Within this area no new structures or improvements which are visible from the river, except those needed for public outdoor recreation or for resource protection, will be permitted. Roads shall not be extended, or improved substantially.

(5) River Community Areas:

(a) Within the Hellgate Recreational River Area:

(A) Related adjacent lands lying within the boundaries of the following subdivision plats as recorded in the Clerk's office of Josephine County, Oregon;

(B) Galice — plat of Galice Subdivision, Volume 5, pages 4, 5. (Within the W 1/2 Section 36, T 34S, R 8W, W.M.);

(C) Rogue Riffles — plat of Rogue Riffles Subdivision, Volume 4, page 49. (Within the SW 1/4 of the NW 1/4, Section 25, T 35S, R 7W, W.M., and SE 1/4 of the NE 1/4, Section 26, T 35S, R 7W, W.M.);

(D) Burnette — plat of Burnette Estates Subdivision, Volume 7, page 8. (Within the NE 1/4 of the SW 1/4, Section 35, T 35S, R 7W, W.M.);

(E) Ferry Park — plat of Ferry Park Estates, Volume 7, pages 19, 20. (Within the SE 1/4 of the NE 1/4 and NE 1/4 of the SE 1/4, Section 2, T 36S, R 7W, W.M.);

(F) Peaceful Valley — plat of Peaceful Valley Acres Subdivision, Volume 3, page 54. (Within the SE 1/4 of the NW 1/4, and SW 1/4 of the NE 1/4, Section 11, T 36S, R 7W, W.M.).

(b) Also:

(A) Cathcart — Those related adjacent lands that are included in a plat of tracts surveyed for Tom Cathcart, which are situated in Sections 23 and 24, Township 35 South, Range 7 West, of the Willamette Meridian (T 35S, R 7W, W.M.),

Josephine County, and are filed by Survey No. 111-68 and Survey No. 106-71 in the County Surveyor's Office in Josephine County;

(B) Greentree — Those related adjacent lands included in a Notice of Intention filed with the Real Estate Division, Department of Commerce, on 29 September 1970 by Trenor and Helen Scott and identified by reference number PNI 2798, which are situated in Section 14, Township 35 South, Range 7 West, of the Willamette Meridian (T 35S, R 7W, W.M.), Josephine County;

(C) Within these areas, structures, improvements and uses that are consistent with Josephine County Zoning Ordinances and OAR 736-40-030 and 736-40-035 may be permitted.

(c) Within the Agness Recreational River Area:

(A) Agness — A parcel of land that comprises the Southwest Quarter (SW 1/4); West Half of the Southeast Quarter (W 1/4 SE 1/4), Section 7; and the Northwest Quarter (NW 1/4); West Half of the Northeast Quarter (W 1/2 NE 1/4), Section 18; all in Township 35 South, Range 11 West, of the Willamette Meridian (T 35S, R 11W, W.M.), Curry County;

(B) Also a parcel of land that comprises the East Half of the Southeast Quarter (E 1/2 SE 1/4), Section 12; and the East Half of the Northeast Quarter (E 1/2 NE 1/4), Section 13; all in Township 35 South, Range 12 West, of the Willamette Meridian (T 35S, R 12W, W.M.), Curry County;

(C) The Commission recognizes that further development of the Agness area may be necessary in order to provide services for both local residents and the public;

(D) Within the Agness River Community Area, when consistent with Curry County zoning ordinances, permitted uses, structures and improvements may include agriculture, single and multiple family dwellings, churches, lodges, resorts, motels, transient public trailer parks and other necessary commercial public service facilities. Permitted densities of improvements and structures which are visible from the river may be established by the Commission after consultation with the U.S. Forest Service, the Curry County Planning Commission, the Agness Community Council, and such other persons and agencies as the Commission may select. *736-40-047 Elsie's Ridge*

Stat. Auth.: *736-40-045 Nelson*
Hist.: HC 1285, f. 6-27-72
736-40-049 Upper Clackamas

Illinois River Scenic Waterway

736-40-050 (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

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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.

736-40-051 Middle River Area

Stat. Auth.:

Hist.: HC 1285, f. 6-27-72

Owyhee River Scenic Waterway

736-40-055 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.:

Hist.: HC 1285, f. 6-27-72

Minam River Scenic Waterway

736-40-060 (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.:

Hist.: HC 1285, f. 6-27-72

John Day River Scenic Waterway

736-40-065 (1) Natural River Area:

(a) The segment of the scenic waterway beginning at the intersection of West to East Centerline of Section 5, Township 5 South, Range 19 East, of the Willamette Meridian, (T 5S, R 19E, W.M.), Sherman County, extended easterly from the center of said section to its intersection with the John Day River, near the mouth of Thirty Mile Creek; thence downstream approximately 31 miles to the North Boundary of the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of Section 24, Township 2 South, Range 18 East, of the Willamette Meridian, (T 2S, R 18E, W.M.), Sherman and Gilliam Counties, near East Ferry Canyon, is classified as a Natural 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 agricultural uses, or those needed for public recreation or resource protection will be permitted. Additional dwellings and commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river will not be permitted.

(2) Scenic River Areas:

(a) The segments of the scenic waterway upstream and downstream from the designated Wild River Area are classified as Scenic River Areas;

(b) Within these areas, no new structures or improvements which are visible from the river, other than those erected or made in connection with agricultural uses, or those needed for public

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recreation or resource protection will be permitted. Additional dwellings, other than those necessary to existing agricultural uses, and commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, will not be permitted.

Stat. Auth.:
Hist.: HC 1285, f. 6-27-72

Deschutes River Scenic Waterway

736-40-070 (1) 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.

(2) River Community Areas:

(a) The segment of the scenic waterway extending from Pelton Re-regulating Dam downstream approximately 4 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.

(3) 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 736-40-035 (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) Nothing in these rules give 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) No camping is permitted on river islands;

(B) No person shall camp or allow their equipment to occupy a campsite on public land for more than four (4) consecutive days in any one campsite. In addition, the campsite must be vacated at least three (3) days prior to re-occupying the same campsite. This rule does not apply to the following areas within the Deschutes River Scenic Waterway: Public campgrounds at Trout Creek, South Junction and Deschutes River State Park, and all public lands between the locked gate above Maupin within Section 36, Township 5 South, Range 13 East, of the Willamette Meridian, and Mack's Canyon Campground. In order to comply with this rule an individual's tent, stove and all other associated camp equipment and personal property must be physically removed from the campsite area to an entirely new campsite area location at least one-quarter mile from the original campsite. The intent of this rule is to keep desirable campsite areas available for the short-term use of all river users;

(C) In order to minimize the impact of camping on the fragile river area, it is recommended that camping parties limit their size to 16 persons.

(d) Campfires, Fuel, Firepans:

(A) No person shall build, maintain or keep any fire which is fueled by other than charcoal, gas or petroleum products within the Deschutes River Scenic Waterway designated by ORS 390.825 from June 1 to October 1. Fire must be contained in a firepan or similar device of metal. A firepan is a

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metal container with at least 2-inch high sides to prevent ashes from spilling onto the ground;

(B) 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, from June 1 to October 1, shall carry and keep reasonably accessible one bucket of at least one gallon capacity and one spade or shovel;

(C) No person shall leave a fire unattended;

(D) All fires shall be completely extinguished after use and the remains disposed of in a manner consistent with subsection (g) of this section relating to the disposal of litter;

(E) Within 48 hours after the declaration of an extreme fire danger condition as determined by the Bureau of Land Management, the following rules shall apply within the Deschutes River Scenic Waterway from Pelton Re-regulation Dam to the confluence of the Deschutes River with the Columbia River:

(i) No person shall build any fire, including but not limited to fires built in firepans, or using wood or charcoal briquets, except in enclosed structures (e.g., residence of recreational vehicles);

(ii) Commercially manufactured metal camp stoves and lanterns are permissible for outdoor use only when fueled with bottled liquified petroleum gas (e.g., propane) or white gas. Such stoves or lanterns shall be operated in a responsible manner at all times;

(iii) Smoking is prohibited except in enclosed buildings, enclosed motor vehicles, or in boats on the river.

(F) These rules shall remain in effect until the close of the normal fire season on October 1 or until suspended by action of the State Parks Director.

(e) Tree Cutting and Firewood Gathering: No dead, living, standing or down trees or brush, including driftwood, shall be cut, gathered, or damaged in any way by persons using the Deschutes River Scenic Waterway for recreational purposes;

(f) Firearms: The discharge of firearms for any purpose other than protection of life and property, including livestock, is prohibited within the scenic waterway corridor from the third Saturday in May through August 31 of each year;

(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 or abandoned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway area for disposal;

(B) All persons using the Deschutes River Scenic Waterway for recreational purposes shall use the developed toilet facilities provided at public recreation sites. 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.

(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) 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.

Stat. Auth.: ORS Ch. 390

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

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Deschutes River Scenic Waterway Boater Pass System Rules

736-40-071 (1) Policy:

(a) The Oregon Transportation Commission finds that in order to carry out the intent of Oregon Law 1981, Chapter 798, 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 Administrator, 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 Administrator may consider input from the Scenic Waterways Advisory Committee, the various local, state, and federal agencies involved with managing resources within the Deschutes River Scenic

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Waterway, the Confederated Tribes of Warm Springs Reservation of Oregon, and the general public;

(e) The Oregon Transportation 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 Oregon Law 1981, Chapter 798, to the State Parks Administrator or the Administrator's designee;

(f) The Commission encourages all local, state and federal agencies involved in resource management of the Deschutes River Scenic Waterway and the river users themselves, to give their full cooperation to this program;

(g) The Commission recognizes that the Deschutes River Scenic Waterway Boater Pass program is experimental in nature. It will endeavor to annually adjust the program as new information about visitation, river user needs and trends become apparent.

(2) Definitions: For purposes of this rule, the following definitions shall apply:

(a) "Deschutes River Scenic Waterway" — That portion of the Deschutes River designated in ORS 390.825 as a State Scenic Waterway. The designated river area 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 Oregon Laws 1981, Chapter 798, Section 2;

(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 employee authorized to issue citations pursuant to Oregon Laws 1981, Chapter 692, Section 2;

(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 the Deschutes River Scenic Waterway shall display his/her individual, annual, group or special pass upon the demand of any law enforcement officer or employee of the Parks and Recreation Division who is authorized to enforce these rules.

(4) Time Period of Pass: The time period for which a valid pass is required will be from May 15, 1982, until January 1, 1986.

(5) Requirements for Valid Pass:

(a) The pass will consist of the following information to be placed on a form provided by the Parks Division 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 \$1.75 per person per day;

(b) The fee for issuance of an individual annual pass shall be \$12 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 in multiples of 16 persons or less;

(c) The pass shall be in the possession of the group leader at all times while within the Deschutes River Scenic Waterway.

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(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 Division/Vendor agreement and the Division'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, raincheck 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 beginning in March, 1982. The State Parks Division 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.

(9) Refunds, Cancellations, Replacements:

(a) No cash refunds will be permitted in the event a pass is not used;

(b) A passholder who determines that the pass will not be used, may receive a raincheck for the value of the pass. The value of the raincheck may be applied to the purchase of a new pass at any time during the year in which it was issued;

(c) The passholder must make such a request for the raincheck in writing, or in person. The request must be made any time up to and including the earliest effective date of the original pass. The original pass must be surrendered prior to issuance of the raincheck;

(d) Rainchecks will be issued at any of the vendor locations where Deschutes River Scenic Waterway Boater Passes are sold;

(e) 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 Oregon Laws 1981, Chapter 798, Section 2(3), the State Parks Administrator 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 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 Division to persons who qualify under this section and have contacted the

State Parks and Recreation Division. All passes issued under this section are non-transferable. 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 Division, 525 Trade Street SE, Suite 301, Salem, Oregon 97310 (Attn: Free Annual Pass), and present for the Division's review evidence that substantiate 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 Administrator may issue a \$5 annual access pass to persons who own, either wholly or in partnership, farm, ranch or residential land within the Deschutes River Scenic Waterway 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 written request to the State Parks Administrator clearly stating the reasons, factors or circumstances requiring the issuance of the annual access pass.

(c) The State Parks Administrator may issue a \$5 annual occupational pass to persons or employees of farm, ranch or residential property owners and leasees of farm, ranch or residential property. The farm, ranch or residential property must be immediately abutting the Deschutes River Scenic Waterway. 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 Oregon Laws 1981, Chapter 798, Section 3(2), no Deschutes River Scenic Waterway boater pass will be required of:

(A) Peace officers, members or employees of a governmental body or their agents while engaged in the discharge of official duties; or

(B) Any member of the Confederated Tribes of the Warm Springs Indian Reservation.

(11) Effective Date of Rule: Sections (3), (4) and (10) of this rule will be effective on May 15, 1982. All other sections shall take effect upon filing with the Secretary of State.

736-40-072 Middle Deschutes Scenic Waterway
Stat. Auth.: ORS Ch. 390
Hist.: PR 2-1982, L 2-3-82, ef. 5-15-82; PR 2-1983, f. & ef. 3-11-83

Sandy River Scenic Waterway

736-40-075 (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

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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 Division and dated September 13, 1972, new structures or other improvements which are visible from the river (see OAR 736-40-015(10), Definition of Terms), other than those erected or made in connection with compatible existing uses, or those needed for public outdoor recreation or resource protection will not be permitted unless they are so located that their visual effect is primarily on the upland scene (above the rims of the canyon, or "bluff line", usually readily discernible) rather than on the scene as viewed from the river;

(B) Outside that area of greatest visual effect on the natural river scene, uses which are consistent with applicable county zoning ordinances and OAR 736-40-030 and 736-40-035 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 736-40-030 and 736-40-035.

(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 Division 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.:

Hist.: 10TC 6, f. 11-1-73

Clackamas River Scenic Waterway

736-40-076 (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 736-40-040(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 736-40-025 through 736-40-035, shall apply to the Clackamas River Scenic Waterway except where this section is more specific.

Stat. Auth.: ORS Ch. 390

Hist.: PR 7-1985, f. & ef. 10-24-85

Opal Lake and Opal Creek Scenic Waterway

736-40-077 (1) Accessible Natural River Areas:

That segment of the Scenic Waterway including Opal Lake in Marion County and the main stream of Opal Creek from Opal Lake to its confluence with Battle Ax Creek, a distance of approximately four miles.

(2) The accessible natural river area will be administered to protect or enhance the essentially primitive scenic character, while allowing compatible public outdoor recreation use.

Stat. Auth.: ORS Ch. 390

Hist.: PR 6-1986, f. & ef. 5-28-86

Waldo Lake and the North Fork of the Middle Fork of the Willamette River

736-40-078 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.

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(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 Ch. 390
Hist.: PR 7-1986, f. & ef. 5-28-86

Upper Deschutes River Scenic Waterway

736-40-079 (1) Scenic River Areas:

(a) Three 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 Pringle Falls (about river mile 217.5 to 216.5) and General Patch River (river mile 204-199) as Community Areas as described in paragraph (2)(a)(A)(B)(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;

(C) The segment of the scenic waterway beginning at a point known as Twin Bridges where the north section line of Section 20, Township 16, South, Range 12 East, of the Willamette Meridian (Section 20, T 16S, R 12E, W.M.), crosses the river at about river mile 154.5 and extending downstream approximately 20 miles, excluding the Cline Falls Dam and powerhouse between river mile 145 and 144, to the Deschutes County Road Bridge (FAS 395) at Lower Bridge at about river mile 126.5 is classified as a Scenic River Area.

(b) Within these areas no new improvements, roads or mines other than those screened by topography, set back a minimum of 100 feet from the river's edge, set back 20 feet from the edge of the rim rock (where this feature exists) or those needed for public outdoor recreation or natural resource protection will be permitted;

(c) In paragraph (1)(a)(A) and subsection (1)(b) of this rule, timber harvest activities, including thinning, shall not be visually evident after completion of the removal of 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 tracks along the river in approximately river mile 217 of 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) from about river mile 217.5 to river mile 216.8 is classified as the Pringle Falls River Community Area;

(C) Those related adjacent lands within platted residential tracks known as Oregon Water Wonderland Unit 1, River Forest acres and Deschutes River Homesites, Units 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 River Community Area;

(D) Those related adjacent lands containing approximately 108 platted lots within the Crooked River Ranch development at approximately river mile 130.5 and 131.7 in Jefferson County is classified as the Crooked River Ranch River Community Area.

(b) Within these areas new improvements must be consistent with the applicable Deschutes or Jefferson County's zoning ordinances. New structures visible from the river must to the greatest extent possible, comply with the following conditions:

(A) Be finished in muted tones appropriate to the natural surroundings;

(B) Not exceed 30 feet in height from natural grade on the side facing the river;

(C) Be located in such a way that natural vegetation makes the improvements as inconspicuous as reasonably practicable. Additional vegetative screening may be required to be established and maintained.

(c) In order to maintain a healthy forest and to protect scenic natural values of the scenic waterway, timber harvest activities, including thinning except those needed to remove dead, dying, or diseased trees, must adhere to the following conditions:

(A) Be screened by topography or vegetation when seen from:

(i) The river;

(ii) Developed recreation sites within scenic waterways;

(iii) Trails adjacent to the river.

(B) Riparian vegetation shall be protected;

(C) Stumps shall be kept low; and remaining trees and brush protected from damage during harvest;

(D) Reforestation shall occur within over year of completion of harvest;

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(E) For operations involving the removal of dead, dying, or diseased trees section (1) of this rule shall not apply. All other conditions as stated above shall apply as well as any special conditions stipulating upon project approval.

(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 this area new improvements, including public outdoor recreation facilities and natural resource protection measures, may be visible from the river if the following conditions apply:

(A) Are of such design and be constructed of such materials as to be unobtrusive and compatible with the scenic qualities of the area;

(B) Are finished in muted tone appropriate to the natural surroundings;

(C) Do not exceed 30 feet in height from natural grade on the side facing the river;

(D) Are located in such a way that natural vegetation make the improvements as inconspicuous as reasonably practicable and in no case obtruding on the view from the river. Additional vegetative screening may be required to be established and maintained;

(E) Provide for minimal soil disturbance during construction. Allow for revegetation of disturbed areas.

(d) All other new land uses including roads and mines within this area must be screened from view from the river by evergreen vegetation or topography;

(e) In order to maintain a healthy forest and to protect scenic natural values of the scenic waterway, timber harvest activities, including thinning except those needed to remove dead, dying, or diseased trees, must adhere to the following conditions:

(A) Be screened by topography or vegetation when seen from:

(i) The river;

(ii) Developed recreation sites within scenic waterways;

(iii) Trails adjacent to the river.

(B) Riparian vegetation shall be protected;

(C) Stumps shall be kept low; and remaining trees and brush protected from damage during harvest;

(D) Reforestation shall occur within over year of completion of harvest;

(E) For operations involving the removal of dead, dying, or diseased trees section (1) of this rule above shall not apply. All other conditions as stated above shall apply as well as any special conditions stipulating upon project approval.

(4) Natural River Areas:

(a) One area is designated as a Natural River Area;

(b) The segment of the scenic waterway beginning at the Deschutes County Road Bridge

(FAS 395) at Lower Bridge at approximately river mile 133.7 and extending downstream approximately 14.5 miles excluding the Crooked River Ranch River Community Areas as described in paragraph (2)(a)(D) of this rule, to the Lake Billy Chinook stream gauge at approximately river mile 120 is classified as a Natural River Area;

(c) In order to preserve the related adjacent land visible from the river in an essentially primitive condition, no new structures or improvements, except those needed for resource protection or public outdoor recreation, will be allowed unless screened from view by topography.

(5) Special Relief from Notification Requirements:

(a) Within the areas described in sections (1), (2), and (3), of this rule notification to the State Parks and Recreation Division is not required for new improvements and land use changes (e.g., timber harvest) if any of the following apply;

(b) The project is screened from view from the river by topography;

(c) The project is situated 100 feet or more away from the riverbank or twenty feet away from the rim rock feature;

(d) The project does not involve the removal of vegetation visible from the river; and

(e) The project is permitted outright under the Deschutes or Jefferson County Comprehensive Land Use Plan and Zoning Ordinance. In order to be permitted outright, the project must not require any special local land use reviews or approvals (i.e., variances, conditional use permits, flood plain development permits, zone or comprehensive plan changes or the like). A building permit is not considered a special local land use approval for the purpose of this rule.

Stat. Auth.: ORS Ch. 184 & 390

Hist.: PR 2-1988, f. & cert. ef. 3-25-88

Notification Procedures

736-40-080 (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 District Highway Engineer's office or to the State Parks and Recreation Division 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 may immediately proceed;

(b) Notify the owner or applicant in writing if the Commission determines the proposed use would

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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.:

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

Procedures in Event of Commission Denial

736-40-085 (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.:

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

Condemnation of Related Adjacent Land

736-40-090 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.:

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

Public Lands Within or Adjacent to a Scenic Waterway

736-40-095 (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.:

Hist.: HC 1258, f. 6-30-71; HC 1285, f. 6-27-72

**PUBLIC RECREATIONAL USE
OF PRIVATE LANDS**

105.655 Definitions for ORS 105.655 to 105.680. As used in ORS 105.655 to 105.680:

(1) "Charge" means the admission price or fee asked by any owner in return for invitation or permission to enter or go upon the owner's land.

(2) "Land" means agricultural land, range land, forest land, and lands adjacent or contiguous to the ocean shore as defined by ORS 390.605, including roads, bodies of water, watercourses, private ways, private buildings and structures on such lands and machinery or equipment on the land when attached to the realty, but shall not include lands described in ORS 390.605 to 390.770. "Land" also includes abandoned borrow pits, gravel or rock quarries not currently being used for commercial or industrial purposes, whether or not such pits or quarries are situated on agricultural land, range land, forest land or lands adjacent or contiguous to the ocean shore as defined in ORS 390.605.

(3) "Owner" means the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.

(4) "Recreational purpose" includes, but is not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, water skiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites and participating in a salmon and trout enhancement project under ORS 496.430 to 496.455. [1971 c.780 §1; 1973 c.732 §4; 1979 c.258 §1; 1983 c.775 §1]

105.660 Policy. The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes and, in the case of permissive use, by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for recreational purposes. [1971 c.780 §2; 1973 c.732 §3]

105.665 Duties and liabilities of owner of land used by public for recreation. Except as otherwise provided in ORS 105.675:

(1) An owner of land owes no duty of care to keep the land safe for entry or use by others for any recreational purpose or to give any warning of a dangerous condition, use, structure or activi-

ty on the land to persons entering thereon for any such purpose.

(2) An owner of land who either directly or indirectly invites or permits any person to use his land for any recreational purpose without charge does not thereby:

(a) Extend any assurance that the land is safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or

(c) Assume responsibility for or incur liability for any injury, death or loss to any person or property caused by an act or omission of that person. [1971 c.780 §3]

105.670 ORS 105.665 applies to duties and liability of owner of land leased to public body or public corporation. Unless otherwise agreed in writing, ORS 105.665 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any political subdivision thereof or to any public corporation for recreational purposes. [1971 c.780 §4]

105.675 Liabilities of landowner unaffected in certain cases. Nothing in ORS 105.655 to 105.680 limits in any way any liability of an owner of land which may otherwise exist:

(1) For his reckless failure to guard or warn against a dangerous condition, use, structure or activity on the land; or

(2) For any injury suffered where the owner of land charges any person who enters or goes upon the land for any recreational purpose, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection. [1971 c.780 §5]

105.677 Permissive recreational use of land does not create easement; preservation of preexisting public rights. (1) An owner of land who either directly or indirectly invites or permits any person to use his land for any recreational purpose without charge shall not thereby give to such person or to other persons any right to continued use of his land for any recreational purpose without his consent.

(2) The fact that an owner of land allows the public to recreationally use his land without posting or fencing or otherwise restricting use of his land shall not raise a presumption that the landowner intended to dedicate or otherwise give

over to said public the right to continued use of said land.

(3) Nothing in this section shall be construed to diminish or divert any public right acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973. [1973 c.732 §2]

105.680 Construction. Nothing in ORS 105.655 to 105.680 shall be construed:

(1) To create a duty of care or basis for liability upon any owner of land for injury to persons or property resulting from the use of such land for recreational purposes.

(2) To relieve any person using the land of another for recreational purposes from any obligation which he may otherwise have to exercise care in his use of the land in his activities thereon or from the legal consequences of his failure to employ such care. [1971 c.780 §6]

PUBLIC WOODCUTTING ON LAND OF OTHERS

105.685 Definitions for ORS 105.685 to 105.697. As used in ORS 105.685 to 105.697:

(1) "Charge" means the admission price or fee asked by any owner in return for invitation or permission to enter or go upon his land. However, "charge" does not include a reasonable fee, not to exceed \$5, for the cost of administration.

(2) "Owner" means the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.

(3) "Woodcutting" means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood. [1979 c.434 §1]

105.687 Declaration of legislative policy. The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for woodcutting by limiting their liability toward persons entering thereon for such purpose and, in the case of permissive use, by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for such purpose. [1979 c.434 §2]

105.689 Liability of landowner to woodcutters limited. Except as otherwise provided in ORS 105.693:

(1) An owner of land owes no duty of care to

keep the land safe for entry or use by others for woodcutting or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose.

(2) An owner of land who either directly or indirectly invites or permits any person to use his land for woodcutting without charge does not thereby:

(a) Extend any assurance that the land is safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or

(c) Assume responsibility for or incur liability for any injury, death or loss to any person or property caused by an act or omission of that person. [1979 c.434 §3]

105.691 Applicability of ORS 105.689 to land leased to public body. Unless otherwise agreed in writing, ORS 105.689 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any political subdivision thereof or to any public corporation for woodcutting. [1979 c.434 §4]

105.693 Limits to landowner exemption. (1) Nothing in ORS 105.685 to 105.697 limits in any way any liability of an owner of land which may otherwise exist:

(a) For his reckless failure to guard or warn against a dangerous condition, use, structure or activity on the land; or

(b) For any injury suffered where the owner of land charges any person who enters or goes upon the land for woodcutting, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection.

(2) The provisions of ORS 105.685 to 105.697 do not affect the liability of the State of Oregon under the provisions of ORS 30.260 to 30.300. [1979 c.434 §5]

105.695 Presumption of permission for continued use limited. (1) An owner of land who either directly or indirectly invites or permits any person to use his land for woodcutting without charge shall not thereby give to such person or to other persons any right to continued use of his land for such purpose without his consent.

(2) The fact that an owner of land allows the public to use his land for woodcutting without