

WSR 11-01-050
PROPOSED RULES
COLUMBIA RIVER
GORGE COMMISSION

[Filed December 7, 2010, 11:43 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Amending existing rules to clarify and streamline processes for commission and other users.

Hearing Location(s): Multnomah County Rural Fire Protection District #14, 36930 East Historical Columbia River Highway, Corbett, Oregon, on February 8, 2011, at 9:00 a.m. (Note this is the beginning of the commission's regular meeting. The actual hearing time may be later.)

Date of Intended Adoption: February 8, 2011.

Submit Written Comments to: Jill Arens, Executive Director, P.O. Box 730, White Salmon, WA 98672, e-mail crgc@gorgecommission.org, by February 1, 2011.

Assistance for Persons with Disabilities: Contact Nancy Andring by February 1, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to all rules except 350-81 are being made to clarify and streamline internal commission processes and process for users of commission rules. These changes are needed to reduce workload for commission staff as a result of its significantly reduced budget during the past biennium and going forward. Changes to rule 350-81 are required by remand from the Oregon Court of Appeals and Oregon Supreme Court and a settlement agreement in another pending litigation matter. Interested persons may contact the commission office for copies of the relevant court decisions. These changes resulting from the court decisions have been adopted into the management plan for the National Scenic Area and received the concurrence of the Secretary of Agriculture. The changes resulting from the settlement agreement are procedural for users and commission staff.

The intent of these rules is to reduce the time and expense for local governments and other users of the rules. For example, the commission is proposing to allow electronic filing of records and other briefs in appeals before the commission. This will reduce the time to duplicate and mail and the expense of paper and postage. One proposed amendment, to rule 350-60-060, could require local governments to submit more paper copies of an appeal record than required by current rules, but this is not certain. The changes to Div. 81 resulting from the court decisions may require additional commission staff labor, but the commission is unable to quantify the amount or cost.

Reasons Supporting Proposal: See above description of purpose of rule.

Statutory Authority for Adoption: RCW 34.97.015, ORS 196.150, 16 U.S.C. § s544e.

Statute Being Implemented: RCW 34.97.015, ORS 196.150, 16 U.S.C. § s544e.

Rule is necessary because of federal law, and state court decision [No further information supplied by agency.]

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jeffrey B. Litwak, Counsel, Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA, (509) 493-3323; Implementation and Enforcement: Jill Arens, Executive Director, Columbia River Gorge Commission, P.O. Box 730, White Salmon, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed amendments do not add substantive regulations. Most of the proposed amendments govern commission procedures and will not have any effect on small businesses. The other rules are required by a decision of the Oregon Supreme Court in *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 346 Or 366, 213 P3d 1164 (2009).

A cost-benefit analysis is not required under RCW 34.05.328. Most of the proposed amendments govern only commission procedures and are exempt pursuant to RCW 34.05.328 (5)(b)(ii) and (iii); the substantive rules are required by a decision of the Oregon Supreme Court in *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 346 Or 366, 213 P3d 1164 (2009).

December 7, 2010

Nancy A. Andring

Rules Coordinator

AMENDATORY SECTION

350-30-015. Civil Penalty.

(1) Any person who willfully violates any of the following may incur a civil penalty:

- (a) P.L. 99-663;
- (b) the management plan;
- (c) a land use ordinance;
- (d) an implementation measure; or
- (e) any order issued by the Commission or the Director.

(2) The Commission may not assess a civil penalty under section 15 (a)(3) of P.L. 99-663 unless it provides notice and an opportunity for a public hearing to the person ~~alleged by the Commission~~ that the Commission alleges to have violated one of the measures listed in subsection (1) of this section.

(3) Each day of continuing violation is a separate and distinct violation.

AMENDATORY SECTION

350-30-020. Investigation.

(1) The Director shall investigate alleged violations of the measures listed in subsection 1 of 350-30-015 of this Division.

(2) The Director may inspect the subject property if necessary to conduct an investigation under subsection (1) of this section.

~~(3) If the Director determines a violation has occurred, he shall follow the procedures in 350-30-030, unless it is de minimis. If it is de minimis, he shall follow the procedures in 350-30-025.~~

AMENDATORY SECTION**350-30-025. De Minimis Violation.**

~~(1) If the Director determines believes a violation has occurred but it is of a de minimis nature, readily correctable, not repeated and with cooperative parties, a summary describing the matter shall be sent to the Commission. The summary shall analyze the relevant factors and present a final resolution. the Director should work with the landowner to resolve the matter through a new development review application, modification or removal of a building or structure, or other appropriate means. The Director shall periodically report to the Commission about resolutions to de minimis violations.~~

~~(2) If any three members of the Commission want further review of the violation, they shall request it in writing within 14 days of issuance of the summary. The Director shall follow the procedures in 350-30-030 to set the matter for hearing before the Commission.~~

~~(3) If no further review is requested, the Director shall finalize disposition of the violation.~~

AMENDATORY SECTION**350-30-030. Notice of Alleged Violation.**

(1) ~~If the violation is not de minimis,~~ The Director shall serve written notice of violation on the alleged violator by personal service or by registered or certified mail. The notice shall include:

- (a) a plain statement describing the alleged violation;
- (b) the provision of P.L. 99-663, the management plan, the land use ordinance, the implementation measure or the order alleged to have been violated;
- (c) the legal and common description of the subject property;
- (d) the proposed disposition of the matter through either 350-30-050 through 350-30-060 or 350-30-070 including the recommended penalty to be imposed (if any) and the criteria from 350-30-090 upon which the penalty is based;
- (e) a statement that the alleged violator shall file an answer within 14 days after receipt of the notice of violation;
- (f) a copy of 350-30-040 which prescribes how to file an answer; and
- (g) a statement that if resolution is not reached through 350-30-050 through 350-30-060 the Commission will consider the alleged violation at a contested case hearing which may result in the entry of a final order imposing a civil penalty based upon a prima facie case made on the record, whether or not the alleged violator participates.

(2) Service shall be deemed complete three days after written notice is mailed to:

- (a) the alleged violator; or
- (b) any person designated by law as competent to receive service of a summons or notice for the alleged violator.

(3) Notice sent by registered or certified mail to a person at the last known address of the person is presumed to have reached the person within three days after mailing.

AMENDATORY SECTION**350-30-060. Hearing on Proposed Resolution Through Agreement.**

(1) The hearing shall be conducted using the following procedure:

(a) ~~Counsel for the~~ The Director shall provide a brief summary of the nature of the case, the proposed resolution and the key legal issues.

(b) The Director shall provide any other information required along with his recommendation.

(c) The alleged violator or the alleged violator's representative shall be given a reasonable opportunity to be present and have the opportunity to address the Commission.

(d) The Commission may request further information from the Director or the alleged violator.

(e) The Commission shall decide whether to accept, reject or modify the proposed resolution.

(f) If rejected, the matter shall be reset for a contested case hearing under 350-30-070.

AMENDATORY SECTION**350-30-080. Order.**

(1) The Commission shall issue a final order. The order shall be served by personal delivery or certified or registered mail. If served by mail, the order shall be deemed received three days after mailing.

(2) The order shall specify:

- (a) the resolution of the violation (including any consent decree);
- (b) whether a penalty is imposed and the amount of such penalty; and
- (c) any other conditions or requirements.

(3) The order shall be final for purposes of judicial review ~~under the applicable laws of Oregon and Washington.~~

AMENDATORY SECTION**350-40-010. Definitions.**

~~The definitions in Chapter 350, Division 20, Section 002 shall apply to this division. Reserved~~

AMENDATORY SECTION**350-40-020. Authority.**

(1) Consideration of requests to revise urban area boundaries is a discretionary action authorized by section 4(f) of the Act. The Act does not entitle a county, or any person or entity, to have the Commission review a request to revise any urban area boundary, and does not contain time requirements for consideration of a request. The Commission may make "minor revisions" to the boundaries of an Urban Area [Scenic Area Act, Section 4(f)].

(2) Three procedural requirements are included in Section 4 (f)(1) of the Scenic Area Act:

- (a) Requests to revise an Urban Area boundary are submitted to the Commission by a county government;
- (b) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and
- (c) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve a revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

(3) Section 4 (f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

(3) Section 4 (f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

(a) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

(b) Revision of Urban Area boundaries is consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;

(c) Revision of Urban Area boundaries will result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(d) Revision of Urban Area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-40-050. Submission and Acceptance of Application.

(1) A county government shall submit an application to revise the boundary of an Urban Area to the Commission office. Fifteen copies of each application are required after the Executive Director determines the application is complete. Only two copies of the large scale maps are required.

(2) ~~Within ten (10) working days of receiving an application,~~ The Director shall review the application for completeness and adequacy and notify the applicant in writing of any deficiencies.

(3) The Executive Director shall not accept an application as complete until all omissions and deficiencies noted by the Executive Director are corrected.

NEW SECTION

350-40-055. Work Plan.

The Commission shall adopt a work plan for each application to revise an urban area boundary. The work plan should contain and estimate of the time and steps needed to review the application, which may vary among applications depending on Commission staffing, budget and resources, and other agency work. At a minimum, the work plan shall include the steps and time periods in sections 060 through 090 in this division. The start date, steps, and time periods shall be set considering commission staffing level, budget and resources, other agency work, and adequate time for public review. The work plan is only an estimate; the Executive Director may require information or procedure not listed in the work plan; skip procedures and information requirements listed in the workplan; or lengthen or shorten time to complete steps in the workplan without permission from the Commission.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-40-060. Notice of Application.

(1) ~~Once the application is deemed complete,~~ The Executive Director shall send ~~public~~ electronic or paper notice of the completed application to the U.S. Forest Service - National Scenic Area Office, States of Oregon and Washington, all four Indian tribal governments, the six Gorge county planning offices, appropriate city planning offices, and interested parties who have requested notice.

(2) The Executive Director shall publish notice of the application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

(3) ~~The Executive Director shall make copies of~~ The complete application shall be available for inspection at the Commission office during normal office hours.

AMENDATORY SECTION

350-40-065. Public Comment.

(1) Interested persons shall have ~~twenty (20) working~~ no less than 30 days from the date the notice is ~~posted~~ sent to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

AMENDATORY SECTION

350-40-070. Report of the Executive Director.

~~Within thirty (30) working days following the end of the public comment period,~~ The Executive Director will ~~will~~ shall prepare a report analyzing the proposed Urban Area boundary revision, and which may include recommendations. ~~Upon application of the Executive Director, the Commission may extend the time for submission of the report. The report will analyze the proposed Urban Area boundary revision based on the criteria of the Scenic Area Act and this rule.~~

AMENDATORY SECTION

350-40-080. Hearing.

(1) The Commission will conduct a hearing on every application accepted as complete by the Director.

(2) The Commission shall provide ~~30~~ 20 days notice of the hearing to interested parties and ~~members of~~ the public.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues:

(a) ~~The applicant is required to proceed first in the hearing and shall~~ may present the basis for the urban area boundary revision.

(b) Federal, state, county, tribal and other government officials may participate through submission of oral or written comments.

(c) ~~Members of~~ The public may participate through submission of oral or written comments.

(d) After those who participate in the hearing on behalf of the government or the public are finished, the applicant

shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, ~~the Chair shall invite the Commission to shall~~ deliberate on the proposed urban area boundary revisions.

~~(f) If the Commission makes no changes to the boundary revision proposal, the Commission may proceed to vote on the proposal.~~

~~(g) If the only changes to the boundary revision proposal are for the purposes of clarification, the Commission may proceed to vote on whether to adopt the boundary revision after providing an opportunity for public comment during the hearing on any change.~~

~~(h) If substantive changes, i.e. those not covered by subparagraph (g) immediately above, to the boundary revision are approved by the Commission during the hearing, the Commission shall:~~

~~(i) provide an opportunity for additional public comment during the hearing on the proposed changes, and then proceed to vote on whether to approve the boundary revision; or~~

~~(ii) continue the hearing to a new date to allow for adequate public notice of the content of the modifications and for further consideration of the issues. When the hearing is resumed, the Commission shall provide a reasonable opportunity for the applicant and members of the public to respond to the proposed modifications under review, and then proceed to vote on whether to approve the boundary revision.~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-50-020. Authority.

(1) Consideration of amendments to the Management Plan is a discretionary action authorized by section 6(h) of the Act. The Act does not entitle any person or entity to have the Commission review an application to amend the Management Plan, and does not contain time requirements for consideration of a request. ~~The Commission may adopt an amendment to the Management Plan only if it is consistent with the purposes and standards of the Scenic Area Act, the provisions in section 6(h) of the Act, and this rule.~~

(2) The Act allows only the Commission to adopt a plan amendment:

(a) If the Commission determines at any time that conditions within the Scenic Area have significantly changed; and

(b) If the Commission approves the plan amendment by a majority vote of the members appointed, including approval by at least three members from each state. In the event of recusal, the doctrine of necessity shall apply.

AMENDATORY SECTION

350-50-035. Matters Not Constituting a Plan Amendment.

(1) The Executive Director and Area Manager may jointly correct any typographical, grammatical, cross-reference, mapping errors (such as land use designation boundaries that differ from property lines when the intent to follow property lines is clear), or other similar error contained in the

Management Plan that does not change the substantive provisions of the Management Plan.

(2) The Executive Director and Area Manager shall report such changes to the Commission at a regularly noticed meeting. The meeting agenda shall include notice of a report under this section. For such changes, the Commission shall not be required to amend the Management Plan as provided in this division of the Commission's rules, nor seek concurrence by the Secretary of Agriculture.

(3) A correction shall be considered a final action for the purpose of judicial review at the time the Executive Director and Area Manager report the correction to the Commission.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-50-040. Origin of Applications.

(1) Any person may request that the Commission initiate a legislative amendment to the Management Plan.

(2) Any person may ~~submit an application~~ apply for a quasi-judicial amendment to the Management Plan. All owners of parcels to which the proposal applies shall give written consent to the application.

(3) For the purpose of this division of the Commission Rules, a quasi-judicial amendment shall be one that proposes to change the land use designation, recreation intensity class or landscape setting on one or any clearly identifiable set of parcels that share a similar set of facts, and the change does not establish new policies, or one that proposes to change policy that would apply to one or a small number of clearly identifiable parcels that share a similar set of facts. All other amendments shall be considered a legislative amendment.

(4) The Executive Director shall determine whether the proposal is for a legislative or a quasi-judicial amendment. The Executive Director may make this determination prior to or at the pre-application conference.

AMENDATORY SECTION

350-50-045. Pre-Application Conference Required for Quasi-Judicial Plan Amendment.

(1) Prior to submitting any application for ~~an~~ a quasi-judicial plan amendment to the Management Plan, an applicant shall attend a pre-application conference with the Executive Director.

(2) The applicant shall submit a statement of the proposed change to the land use designation, landscape setting, or recreation intensity class or policy change and the purpose for which the changes are sought. Proposals for quasi-judicial amendments shall include a list of all parcels to which the proposal applies and the names and addresses of the owners of the parcels. The Executive Director may request the applicant submit additional information about the proposal prior to scheduling a pre-application conference.

(3) The Executive Director shall ~~hold~~ schedule a pre-application conference ~~within 30 days after an applicant requests a pre-application conference~~ after the applicant submits all additional information that the Executive Director

requests. The Executive Director shall hold the pre-application conference within a reasonable period of time after receipt of the additional information. The Executive Director shall notify the following persons of the pre-application conference:

- (a) The applicant;
- (b) For quasi-judicial amendments, the owners of all parcels to which the proposal applies;
- (c) Representatives of the USDA Forest Service, the county or counties where the subject parcel or parcels are located, the four Indian Tribes with treaty rights in the National Scenic Area, and appropriate state agencies; and.
- (d) Any other person the Executive Director believes may have an interest in the proposal or requests notice of the pre-application conference; and.
- (e) ~~For legislative amendments, the person who submitted the original request.~~

(4) The Commission may charge a fee for holding a pre-application conference. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for pre-application conferences.

(5) The purpose of the pre-application conference is to assist the applicant to complete the Plan Amendment process successfully and expeditiously, ~~determine the nature of the proposal as quasi-judicial or legislative~~, identify possible practicable alternatives, identify issues that concern the Commission and other agencies and interested persons, determine what information ~~will~~ would be necessary for the Executive Director to review the application, give an estimated schedule for considering the application, and identify possible conditions of approval.

(6) ~~Within 14 days after a pre-application conference,~~ The Executive Director shall issue a pre-application conference report, which shall summarize the discussion at the conference and shall contain a preliminary list of information necessary to review the application. The list of necessary information shall be as comprehensive as reasonably possible, but shall not be exclusive.

(7) The Executive Director may require an applicant to attend a new pre-application conference if the application submitted is materially different ~~than~~ from the proposal discussed at the pre-application conference, or conditions in the Scenic Area have materially changed.

AMENDATORY SECTION

350-50-060. Processing of Applications and Requests.

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process during the biennium and may set its limit at zero. Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall ~~maintain track~~ requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of

appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) ~~For legislative amendments, the Executive Director shall hold a pre-application conference as provided in 350-50-045. Following the pre-application conference, the Executive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-50-070. Acceptance of Application for Quasi-Judicial Plan Amendment Application.

(1) ~~Within 14 days of receiving an application,~~ The Executive Director shall review the application for completeness and notify the applicant in writing of any deficiencies, and any additional information that is required as provided in 350-50-050 (1)(f).

(2) The Executive Director shall not accept an application as complete until the applicant corrects all deficiencies and submits all additional information noted by the Executive Director.

(3) The applicant shall submit 15 copies of the application after the Executive Director determines the application is complete.

AMENDATORY SECTION

350-50-080. Notice of Application for Quasi-Judicial Plan Amendment or Proposal for Legislative Amendment.

(1) The Executive Director shall send public notice of ~~the a completed application for a quasi-judicial plan amendment or a proposal for a legislative amendment~~ to the U.S. Forest Service - National Scenic Area Office; appropriate state agencies; all four Indian tribal governments; the six Gorge county planning offices; interested parties who have requested notice; and for quasi-judicial applications, all landowners within 200 feet of the boundaries of all parcels to which the proposal applies. The notice shall specify the due date for comment.

(2) The Executive Director shall publish notice of a quasi-judicial plan amendment application in a newspaper serving the community where the parcels to which the proposal would apply are located. The Executive Director shall publish notice of a legislative plan amendment proposal in one or more local newspapers serving the geographic area(s) that the amendment would affect.

(3) ~~For all plan amendments, the Executive Director shall give electronic publish notice of a legislative plan amendment application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver. notice to all persons that receive electronic notice of commission meetings.~~

(4) The ~~Executive Director shall make copies of the complete application or proposal shall be~~ available for inspection at the Commission office during normal office hours.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-50-085. Public Comment.

(1) Interested persons ~~shall have 30 days from the date the notice is posted to~~ may submit written comments to the Executive Director within the time specified in the notice. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

(2) The Commission shall provide copies of the written comments submitted during the comment period to the applicant prior to or with the staff report to enable the applicant to address the comments at the hearing.

AMENDATORY SECTION

350-50-090. Report of the Executive Director.

(1) ~~Unless otherwise specified in the pre-application conference, Within 60 days following the end of the public comment period,~~ The Executive Director shall prepare a staff report, which may include recommendations. The report will analyze the proposed amendment based on the criteria of the Scenic Area Act and Rule 350-50-030.

(2) For legislative amendments, the Executive Director shall include recommended plan amendment language in the staff report.

AMENDATORY SECTION

350-50-100. Hearings.

(1) The Commission shall conduct a hearing on every the proposed plan amendment application after the Executive Director issues the report and there has been adequate time for public review of the report.

(2) The Commission shall provide 20 days notice of the hearing to all persons who received the notice of a quasi-judicial plan amendment application, and any ~~other~~ person who submitted comment on the application. The notice of the ~~application~~ proposed plan amendment may include the notice of hearing.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues.

(a) The Executive Director shall present the staff report. The Commission may ask questions concerning the staff report.

(b) The applicant for a quasi-judicial plan amendment shall present the proposed plan amendment.

(c) Interested persons may present oral or written comments.

(d) Following testimony from interested persons, the applicant shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, the Chair shall close the public hearing, and the Commission shall deliberate and vote on the proposed plan amendment.

~~(f) For quasi-judicial plan amendment applications,~~ The Commission may proceed to vote on the application as submitted or attach conditions of approval necessary to ensure the proposal proposed plan amendment complies with the criteria for approval. The Commission shall allow the applicant to comment on proposed conditions of approval prior to voting on the application. If the Commission proposes a condition different than recommended by the applicant or by the staff, or discussed during the hearing, the Commission shall allow the applicant to comment on the proposed condition of approval prior to voting on the application. The Commission shall deny the proposed plan amendment if any of the criteria in 350-50-030 are not satisfied by the application as submitted and cannot be satisfied through imposing reasonable conditions of approval.

~~(g) For legislative amendments, the Commission may modify the recommended language in any manner.~~

~~(i) If the Commission makes clarifying changes to the recommended language, then it may proceed to vote on whether to adopt the recommended language, as clarified, after providing an opportunity for public comment during the hearing.~~

~~(ii) If the Commission makes substantive changes, i.e. those not covered by subparagraph (i) immediately above, to the recommended language, the Commission shall:~~

~~(A) provide an opportunity for additional public comment during the hearing on the new language, and then proceed to vote on whether to adopt the amendment; or~~

~~(B) continue the hearing to a new date to allow for adequate public notice of the content of the language and for further consideration of the issues. When the hearing is resumed, the Commission shall provide a reasonable opportunity for the applicant and members of the public to respond to the proposed language, and then proceed to vote on whether to adopt the amendment.~~

~~(hg) The Commission shall determine if the amendment as approved is mandatory for counties to adopt into their land use ordinances. Unless otherwise specified by the Commission, amendments to county land use ordinances shall follow the procedures established in Sections 7 and 8 of the Scenic Area Act (16 U.S.C. §§ 544e and 544f).~~

AMENDATORY SECTION

350-60-040. Definitions.

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties, Oregon; and Clark, Skamania and Klickitat counties, Washington.

(4) "Days" means calendar days.

(5) "File" means to deliver to Commission offices by personal delivery ~~or by U.S. Postal mail, or email~~. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, ~~or the date that it is mailed or emailed~~.

~~(a) A motion filed with the consent of all parties may be filed by fax. When a motion is filed by fax, the original shall be mailed or delivered in person to the Commission offices on the same day or on the next business day. A motion filed by fax shall be considered filed on the date it is faxed if the fax is received at Commission office by 5:00 p.m.~~

~~(b) Any document filed with the Commission shall include a certification that the document was served on all parties on the same or earlier date and in the same manner that the document was filed.~~

(6) "Final decision": A decision is final when it is reduced to writing and bears the necessary signatures of the governing body decisionmaker(s).

(7) "Governing body" means a county governing body.

(8) "Land use decision" means a final decision by the governing body of a county in the National Scenic Area based on the National Scenic Act.

(9) "Notice" means the Notice of Appeal and refers to the document that must be filed with the Commission in order to begin an appeal.

(10) "Party" means the appellant, the governing body, the applicant (if different than the appellant), and ~~or~~ any intervenor.

(11) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(12) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, or to send by email, a copy of the original to all parties, including intervenors and persons who have a pending motion to intervene before the Commission.

~~(a) Only motions that are filed by fax may be served by fax. If a motion is served by fax, then it shall also be served by mailing or delivering a copy of the original to all parties on the same or next day.~~

~~(b) All documents served on the other parties shall include a certification that the document was served on the same or earlier date that the document was filed. Service shall occur on all parties in the same manner, but need not occur in the manner which the original document was filed (Exhibit 4).~~

AMENDATORY SECTION

350-60-042. Delegation of Authority to the Chair of the Commission

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, requests for intervention, preliminary motions, motions to dismiss, and other procedural matters. The Chair of the

Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission. The Chair of the Commission may also choose, at his or her sole discretion, to bring a matter to the full Commission for decision.

AMENDATORY SECTION

350-60-045. Time

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of time after service of a ~~notice or other paper document~~, and the service of the ~~notice or other paper document~~ is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by ~~fax~~ email.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

NEW SECTION

350-60-047. Electronic Filing and Service

(1) The Commission allows filing of all documents by electronic mail (email) to the Commission's Office. All documents shall be emailed to crgc@gorgecommission.org, and shall have a subject heading that clearly identifies the email as filing a document and that clearly identifies the appeal by caption and/or appeal number. The Commission allows email filing even if a party opts out of email service. A party need not file a document by mail if that party has already filed the document by email.

(2) All documents may be served by email to parties and persons that do not opt out of email service (see rules below for Notice of Appeal and Notice of Appearance). Parties filing a petition for review are encouraged to communicate with parties and persons who are entitled to receive a copy of the Notice of Appeal about electronic service of the Notice of Appeal.

(3) The preferred format for filed and served documents shall be a searchable portable document format (.pdf). Color originals available electronically, or easily able to be scanned in color shall be filed and served in color. Requirements for color covers or fastening of documents shall not apply to documents filed or served by email.

(4) The Commission understands that parties' and persons' computers and internet service may display times that

vary by several minutes, and have different technological capabilities. Parties and persons filing and serving documents by email should communicate with each other to ensure that the documents can be received and read. The Commission will apply the rules in this chapter in the interest of promoting full participation in an appeal, resolving the appeal in an expeditious manner, and to promote justice in disputes concerning email filing and service such as whether a document was timely filed; timely served; should have been filed or served by email; whether and when the document was received; and whether the document was sent in a readable format. In resolving disputes over electronic service, the Commission will consider whether the parties made good faith efforts to communicate about electronic mail service and whether parties attempted to resolve the dispute without involving the Commission.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION **350-60-050. Notice of Appeal.**

(1) Filing: Except as provided in 350-60-240 below, an appellant shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. Except as provided in 350-60-240 below, a Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Notice of Appeal shall be served on the governing body, the governing body's legal counsel, the applicant, the applicant's legal counsel, and all persons identified in the Notice as required by subsection (3)(h) of this rule on or before the date the Notice of Appeal is filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as appellant(s); ~~and~~ the name of the governing body, identifying the governing body as respondent; and if the appellant is not the applicant, the name of the applicant, identifying the applicant as respondent;

(b) Adjacent to the caption the heading "Notice of Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to resolve the case through alternative dispute resolution ("ADR"), including but not limited to mediation. This statement shall not be used to argue the merits of the appeal.

(g) A statement whether the appellant is willing to consider a shortened record in accordance with 350-60-060(f).

(h) The name, address, email address, and telephone number of each of the following:

(A) The Appellant. If the appellant is not represented by an attorney, the appellant's name, address, email address, and

telephone number shall be included. If an attorney represents the appellant, the attorney's name, address, email address, and telephone number shall be substituted for that of the appellant.

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the appellant). If an applicant was represented by an attorney before the governing body, the applicant's address and telephone number contact information may be omitted and the name, ~~address and telephone number~~ and contact information of the applicant's attorney shall be included;

(D) Any other person to whom written notice of the land use decision was mailed as shown on the governing body's records. The telephone number and email address may be omitted for any such person.

(i) A statement advising all persons other than the governing body and applicant, that in order to participate in the review proceeding a person must file at the Commission office and serve a motion to intervene pursuant to 350-60-160.

(j) A statement advising all persons other than the governing body and applicant, that in order to present oral argument at the hearing before the Commission, a person must intervene and file a brief pursuant to 350-60-120(1).

(k) A statement informing all parties and persons whether the party filing the Notice of Appeal opts out of email service, and a statement informing parties and persons that service of documents may be by email unless a party or person expressly opts out of receiving documents by email.

~~(l)~~ Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the average cost to the Commission of handling appeals under this rule.

AMENDATORY SECTION

350-60-055. Respondent's' ~~ADR Statement~~ Notice of Appearance.

Within ~~40~~ 14 days after filing of a Notice of Appeal, ~~the governing body a respondent~~ shall file at the Commission office and serve a "Respondent's ADR Statement Notice of Appearance" stating whether the respondent is willing to attempt to resolve the case through alternative dispute resolution means, and whether the respondent opts out of email service of all documents. Note that the respondent must affirmatively opt out of email service. This ~~statement~~ Notice of Appearance shall not be used to argue merits of the appeal.

AMENDATORY SECTION

350-60-060. Record.

(1) Contents of Record: The record on appeal from a governing body shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding.

(c) Photos, maps, and exhibits that were presented to the governing body in color shall be provided to the Commission in color in the original or certified copy of the record;

(d) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been prepared, it shall be included.

(e) The governing body may retain the audiotape recording, any large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The governing body shall make these items reasonably available for inspection and duplication by the parties during the pendency of the appeal, and shall specify in its filing of the record the available times and procedure for reviewing for these items.

(f) The Gorge Commission encourages parties to stipulate to a shortened record.

(A) A shortened record may eliminate duplicates of documents, letters that do not include substantive information, documents related to issues that are not being appealed, or other documents that the parties do not believe are necessary for the Gorge Commission to decide the issues raised in the appeal.

(B) Notwithstanding subsection (2)(A) above, a shortened record shall include the documents referred to in subsections (1)(a) and (d) above, and any document submitted in a shortened record shall comply with subsection (1)(c) and (e) above.

(C) A shortened record may be submitted only as agreed upon by all parties. The record shall contain any document that one or more parties desires to include in the record.

(D) Any party that desires to refer to a document that was eliminated by agreement of the parties in a shortened record may at any time file at the Commission office and serve a motion to supplement the record with that document, and shall include the document as part of its motion. A motion to supplement the record under this section shall comply with 350-60-130.

(E) The shortened record shall be considered the complete record before the Gorge Commission for the purpose of any judicial review of the Gorge Commission's decision.

(2) Filing of Record: ~~The governing body shall w~~ Within 30 days after ~~service of the Notice of Appeal is filed, on~~ the governing body, shall file at the Commission office ~~the original or a certified paper copy or an electronic copy, and two copies of the record of the proceeding under review. Approximately 30 days prior to the date of oral argument, the Commission will contact the governing body and request paper copies of the record, which the governing body shall provide to the Commission office no later than 14 days prior to the date of oral argument. The number of paper copies of the record will depend on the number of members of the Gorge Commission that request a paper copy.~~

(3) Service of Record: Contemporaneously with filing the record at the Commission office, the governing body shall serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents ~~which that~~ are difficult to duplicate, on the appellant, the applicant, and all

other parties, including intervenors. If intervention is granted after the record is filed and served, then the governing body shall serve a copy of record as soon as possible after intervention is granted. The governing body may provide the record to parties in an electronic form.

(4) Specifications of Record:

(a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice, and the Commission's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each audiotape recording, large map or other exhibit or document retained by the governing body;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(F) Indicate whether it is a shortened record. The governing body is not required to indicate documents that were excluded by stipulation of all parties to produce the shortened record.

(b) A record which does not conform to the preceding requirements shall not be accepted by the Commission.

(5) The governing body may charge an appellant the cost of duplicating and filing paper copies of the record to the Commission and serving paper copies on other parties.

AMENDATORY SECTION

350-60-070. Objections to the Record.

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the party filing the objection. The party filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the governing body and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials included as part of the record during the proceedings before the governing body. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included as part of the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the basis for the claim that the item(s) are not part of the record.

(c) The minutes do not accurately reflect the proceedings, or the transcripts of the meetings or hearings are incomplete.

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and

shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the governing body to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Chair of the Commission may conduct a telephone conference with the parties to consider any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the Chair's letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits. A letter or an order of the Chair settling the record is not appealable to the full Commission.

AMENDATORY SECTION 350-60-080. Appellant's Brief.

(1) Filing and Service of Brief: The Appellant's Brief shall be filed at the Commission office and served no later than 30 days after the record is filed, or settled if a party files an objection to the record. Failure to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal.

(2) Specifications of Brief: The Appellant's Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If a brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author, and order a time period in which to submit a revised brief satisfying the 50 pages limit ~~shall be filed and served within three (3) days of notification.~~

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. An intervenor shall be designated as either appellant or respondent.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) filing the brief.

(e) Be typewritten, in ~~12~~14-point ~~size~~ type in a regularly used font such as Times New Roman, Helvetica, or Calibri, and double spaced;

(f) Be signed on the last page by the author. An electronic brief may contain an electronic signature or other generally accepted substitute.

(3) Contents of Brief: The Appellant's Brief shall

(a) State the facts that establish appellant's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision and the relief sought by the appellant;

(B) A summary of the arguments appearing under the assignments of error in the body of the brief;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(c) State why the challenged decision is a land use decision subject to the Commission's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law;

(f) Contain a copy of any management plan provisions, comprehensive plan provision, ordinance or other provision of local law cited in the brief, unless the provision is quoted verbatim in the brief.

(4) Copies of example Appellant's briefs are available at the Commission office for parties to review for form.

AMENDATORY SECTION 350-60-100. Respondent's Brief.

(1) Filing and Service of Brief: ~~The Respondents~~ shall file at the Commission office and serve a Respondent's brief no later than 20 days after the date the Appellant's Brief is filed.

(2) Specifications of Brief: The Respondent's brief shall conform to the specifications of the Appellant's Brief, except that the brief shall have a red cover. If there is more than one respondent, the cover page shall specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the Appellant's Brief. The respondent shall specifically accept the appellant's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where support for the facts alleged can be found.

(b) The Respondent shall accept or challenge the appellant's statement of the Commission's jurisdiction and the appellant's statement of standing. The basis for any challenge shall be stated. If the respondent contends that the facts alleged by the appellant in support of standing are not true, the respondent shall specify which allegations are contested.

AMENDATORY SECTION 350-60-110. Reply Brief.

A reply brief ~~may~~ shall not be filed.

[AMENDATORY SECTION] 350-60-120. Oral Argument.

(1) The hearing before the Commission shall be on the record submitted by the county, as long as the county has based its decision upon a record made at an adjudicative hearing open to participation by persons adversely affected or aggrieved. Only parties who have submitted briefs shall be allowed to present oral argument to the Commission.

(2) If the county did not base its decision upon a record made in an adjudicated hearing open to participation by persons adversely affected or aggrieved, then anyone adversely

affected or aggrieved may participate in a hearing before the Commission.

(3) If a party waives the right to present oral argument, the Commission shall consider the case based on that party's brief and the brief and oral arguments presented by other parties. The parties may, with consent of the Commission, stipulate to submit a case to the Commission on briefs without oral argument.

(4) The Commission shall inform the parties of the time and place of oral argument. Unless the Commission otherwise orders, the procedure for oral argument shall be as follows:

(a) Members of the Commission shall have an opportunity to ask questions that they wish the parties to address in their oral arguments.

(b) The appellant(s) shall be allowed 20 minutes for oral argument, which may be divided between the initial presentation and rebuttal, and which shall be uninterrupted by questions asked by members of the Commission. Multiple appellants shall share the twenty minutes for argument.

(c) The respondent(s) shall be allowed 20 minutes to respond, which shall be uninterrupted by questions asked by members of the Commission. Multiple respondents shall share the twenty minutes for argument.

(d) After the parties' uninterrupted arguments, members of the Commission may ask brief questions of the parties concerning the facts of the case, the arguments made, and applicable law. Appellant(s) and respondent(s) shall each have 2 minutes to answer each question, except that the Chair may allow a longer time provided that both sides are afforded the same time to answer the question. Multiple petitioners or respondents shall share the allotted time to answer a question.

(5) The Commission shall ~~tape~~ audio record all arguments, but any party may also arrange at its own expense to record the argument in ~~the same or other~~ a manner that does not delay or disrupt the proceeding.

(6) The governing body shall ensure that all ~~audio~~ tape recordings, large maps, or exhibits and documents, which were not included in the duplicated record pursuant to 350-60-060 (1)(d), are present at the oral argument, even if the governing body chooses not to participate in oral argument. All other parties are encouraged to remind the governing body of this requirement. The governing body shall transmit such items to the Commission at the beginning of the hearing. The Commission shall have broad authority to redress a governing body's failure to transmit such items, including but not limited to, postponing the hearing, exclusion of the item from the record before the Commission, or judicial notice of the contents of the record.

(7) The Commission may consult with its staff and counsel regarding facts, legal analysis, issues and matters in the appeal. The Commission may allow, but shall not be required to allow the parties to respond to the staff and counsel's statements to the Commission.

(8) The Commission's rules concerning ex parte contact and appearance of fairness, Commission Rules 350-16-016 and 350-16-017 shall apply.

(9) The Commission shall send a Notice of Hearing in accordance with Commission Rule 350-16, which shall also

include a summary of the requirements and procedures for oral argument in this section.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION

350-60-130. Motions, Generally and Procedural Orders.

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail, email or personal delivery, ~~except that motions to which all parties consent may be filed by fax as provided in 350-60-040.~~

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responsive ~~briefs~~ briefs. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

(7) The Chair of the Commission may provide the parties with a copy of an order on a motion by electronic mail to parties that have not opted out of email service.

AMENDATORY SECTION

350-60-160. Intervention.

(1) Standing to Intervene: ~~The applicant and a~~ Any person who appeared before the county may intervene in a review proceeding before the Commission. An intervenor shall be entitled to receipt of all matters requiring service upon the parties beginning on the date the motion to intervene is filed, regardless of whether an objection is filed.

(2) If the county review process is not open to persons adversely affected or aggrieved, any person adversely affected or aggrieved may intervene in a review proceeding before the Commission.

(3) Motion to Intervene: In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed at the Commission office and served within 14 days after the Notice of Appeal is filed ~~pursuant to 350-60-050.~~ The motion shall be served on all parties to the appeal and, if known, any person who has submitted a motion to intervene

as of the date of the motion; the motion need not be served on all persons that the appellant served with the Notice of Hearing. The motion to intervene (exhibit 3) shall:

(a) State whether the party is intervening on the side of the appellant or the respondent;

(b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;

(c) Include a brief "Intervenor's ADR Statement" stating whether the proposed intervenor is willing to attempt to resolve the case through alternative dispute resolution means. This statement shall not be used to argue merits of the appeal;

(d) Include a brief statement about whether the proposed intervenor is willing to consider a shortened record in accordance with 350-60-060(f); and

(e) If applicable, a statement opting out of email service (note that a party must affirmatively opt out of email service).

(4) Objections to a motion to intervene shall be filed and served within 7 days of the motion.

(5) The intervenor shall be entitled to participate in developing the record, including shortening the record and filing objections to the record.

(6) The Chair of the Commission may conduct a telephone conference with the parties to consider an objection to a motion to intervene.

(7) The Chair of the Commission shall issue a written decision on the motion to intervene, which shall be served on all the parties. The Chair of the Commission shall not consider the ADR statement for the purpose of deciding whether to grant the motion to intervene.

(8) Intervenor's Brief:

(a) If intervention is sought as an appellant, the brief shall be filed and served within the time limit for filing the Appellant's Brief, and shall satisfy the requirements for the Appellant's Brief in 350-60-080.

(b) If intervention is sought as a respondent, the brief shall be filed and served within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in 350-60-100.

AMENDATORY SECTION

350-60-170. Amicus Participation.

(1) A person or organization may appear as amicus only by permission of the Commission on written motion. The motion shall set forth the specific interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding. The motion may include a statement that the amicus party opts out of email service. The Chair of the Commission shall decide motions for amicus participation.

(2) Appearance as amicus shall be by brief only, unless the Commission specifically requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal and shall be filed and served within the time required for filing respondent's brief. An amicus brief shall be submitted at the time the respondent's brief is due unless a later date is authorized by the Chair of the Commission. No filing fee is required. An amicus brief shall have a green cover.

AMENDATORY SECTION

350-60-190. Extensions of Time.

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of all parties, the Commission's motion or motion of a party.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by all parties, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the parties.

(5) Any other motion for extension of time that is stipulated to by all parties shall be presumed granted for a period of 14 days, or until the Chair issues an order, whichever is earlier. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

~~(6) Any motion for extension of time that is stipulated to by all parties may be filed and served by fax.~~

~~(7) Any motion for extension of time that is not stipulated to by all parties shall be treated as a contested motion pursuant to 350-60-130 above.~~

AMENDATORY SECTION

350-60-200. Stays.

(1) A motion for a stay of a land use decision shall include:

(a) A statement setting forth movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

~~(2) A copy of a motion for stay shall be served on the governing body and the applicant for the land use decision, on the same day the motion is filed with the Commission.~~

(3) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(4) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented at an evidentiary hearing which

may be convened at the discretion of the Chair of the Commission and follow the process in 350-60-150.

AMENDATORY SECTION

350-60-205. Dismissal by the Commission.

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant filed or expressed orally to the Commission prior to the start of oral argument. The dismissal shall be considered with prejudice and shall be effective on the date it is filed or expressed orally to the Commission.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal upon or without motion by any other party when it appears to the Chair that the Appellant and all intervenors on the side of the Appellant have failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust to the responding parties. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The parties shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the parties an order of dismissal, which shall be an appealable action ~~by~~ of the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the parties have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

AMENDATORY SECTION

350-60-210. Final Order of Commission.

(1) An Order of the Commission shall:

(a) ~~Have a cover page that e~~Contains the caption of the appeal and states "Final Opinion and Order";

(b) ~~Specify the items of~~ Acknowledge the record and other documents that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.

(c) Address the Special Review under Rule 350-60-090, where applicable.

(d) Indicate whether the decision being reviewed is dismissed, affirmed, reversed or remanded;

(e) Contain the date of the final order;

(f) Contain a statement of the right to appeal the Commission's Order in the following or substantially similar form, "NOTICE: You are entitled to judicial review of this order within 60 days of the date of this order, pursuant to section 15 (b)(4) of the Scenic Area Act, P.L. 99-663."; and

(g) Be signed by the Chair of the Commission, or his/her delegate.

(2) The final order shall be served on all parties. The parties are not afforded an opportunity to comment on the order before it is made final by the Commission.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of

its final orders or other orders furnished to members of the public.

(4) No dissenting opinions by members of the Commission are allowed.

(5) For the purpose of calculating the time for judicial review of the Commission's order, the date of the order shall be the date the order is served on the parties even if that date is later than the date that the order is signed.

AMENDATORY SECTION

350-60-220. Reversal or Remand of Land Use Decisions.

(1) The Commission shall reverse or remand a land use decision for further proceedings when:

(a) The governing body exceeded its jurisdiction;

(b) The decision is unconstitutional;

(c) The decision violates a provision of applicable law and is prohibited as a matter of law; or

(d) The decision was clearly erroneous or arbitrary and capricious;

(e) The findings are insufficient to support the decision;

(f) The decision is not supported by substantial evidence in the whole record;

(g) The decision is flawed by procedural errors that prejudice the substantial rights of the appellant(s);

(h) The decision improperly construes the applicable law; or

(i) A remand is required pursuant to 350-60-090 (3)(d).

(2) The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the governing body upon finding that all of the following criteria are met. When the Chair orders a remand pursuant to this section, it shall remand back to the last local decision maker that issued the appealed decision.

(a) The governing body shall either rescind the land use decision that is the subject of the appeal or provide that any new or modified land use decision shall supercede the remanded decision;

(b) The governing body shall not be required to issue a subsequent land use decision, but if it does, then it shall agree to address all of the issues raised in the appeal in that subsequent land use decision.

(c) The governing body shall follow all applicable notice and review procedures in modifying the remanded decision or issuing a new land use decision.

(d) ~~An Oral decision of argument before~~ the Commission has ~~not been rendered in the matter started~~.

AMENDATORY SECTION

350-70-040. Definitions.

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the Executive Director of the Gorge Commission take an action which resulted in a land use decision.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties, Oregon, and Clark, Skamania, and Klickitat counties, Washington.

(4) "Days" means calendar days.

(5) "Executive Director" or "Director" means the director of the Gorge Commission.

(6) "File" means to deliver to Commission offices by personal delivery ~~or by U.S. Postal mail, or email~~. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, ~~or the date that it is mailed, or emailed~~.

~~(a) A motion filed with the consent of all parties may be filed by fax. When a motion is filed by fax, the original shall be mailed or delivered in person to the Commission offices on the same day or on the next business day. A motion filed by fax shall be considered filed on the date it is faxed if the fax is received at Commission office by 5:00 p.m.~~

~~(b) Any document filed with the Commission shall include a certification that the document was served on all parties on the same or earlier date and in the same manner that the document was filed.~~

(7) "Final decision": A decision is final when it is reduced to writing and bears the signature of the Executive Director of the Gorge Commission.

(8) "Land use decision" means a final decision by the Executive Director based on the National Scenic Act.

(9) "Notice" means the Notice of Appeal and refers to the document which must be filed with the Commission in order to begin a review proceeding.

(10) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(11) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, or to send my email, a copy of the original to all parties, including intervenors.

~~(a) Only motions that are filed by fax may be served by fax. If a motion is served by fax, then it shall also be served by mailing or delivering a copy of the original to the appellant and intervenors on the same or next day.~~

(b) All documents served on the other parties shall include a certification that the document was served on the same ~~or earlier~~ date that the document was filed. ~~Service shall occur on all parties in the same manner, but need not occur in the manner which the original document was filed (Exhibit 3).~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-70-042. Delegation of Authority to the Chair of the Commission.

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case set-

ting, preliminary motions, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission. The Chair of the Commission may also choose, at his or her sole discretion, to bring a matter to the full Commission for decision.

AMENDATORY SECTION

350-70-045. Time.

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period of time after service or a ~~notice or other paper document~~, and the service of the ~~notice or other paper document~~ is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by ~~fax~~ email.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

NEW SECTION

350-70-046. Electronic Filing and Service.

(1) The Commission allows filing and service of all documents by electronic mail (email) to the Commission's Office. All documents to be filed or served shall be emailed to crgc@gorgecommission.org, and shall have a subject heading that clearly identifies the email as filing a document or serving a document and that clearly identifies the appeal by caption and/or appeal number. The Commission allows email filing even if a person opts out of email service. A person need not file a document by mail if that person has already filed the document by email.

(2) All documents may be served by email to persons that do not opt out of email service (see rules below for Notice of Appeal and Notice of Appearance). Persons filing a petition for review are encouraged to communicate with persons who are entitled to receive a copy of the Notice of Appeal about electronic service of the Notice of Appeal.

(3) The preferred format for filed and served documents shall be a searchable portable document format (.pdf). Color originals available electronically, or easily able to be scanned in color shall be filed and served in color. Requirements for color covers or fastening of documents shall not apply to documents filed or served by email.

(4) The Commission understands that persons' computers and internet service may display times that vary by several minutes, and have different technological capabilities. Persons filing and serving documents by email should communicate with each other to ensure that the documents can be received and read. The Commission will apply the rules in this chapter in the interest of promoting full participation in an appeal, resolving the appeal in an expeditious manner, and to promote justice in disputes concerning email filing and service such as whether a document was timely filed; timely served; should have been filed or served by email; whether and when the document was received; and whether the document was sent in a readable format. In resolving disputes over electronic service, the Commission will consider whether persons made good faith efforts to communicate about electronic mail service and whether persons attempted to resolve the dispute without involving the Commission.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION **350-70-050. Notice of Appeal.**

(1) Filing: A person wishing to appeal a decision by the Director shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Appellant shall serve a copy of the Notice of Appeal on all persons identified in the Notice as required by subsection (3)(g) of this rule on or before the date the Notice of Appeal is required to be filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption, which specifies the title of the appeal as "In the matter of an appeal of Development Review Decision No. [FILE NUMBER] by [APPELLANT'S NAME]."

(b) Adjacent to the caption, the heading "Notice of Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the appellant's reasons for appealing the decision including citations to the findings of fact, conclusions of law and conditions of approval in the decision and to provisions of the land use ordinance, sufficient to permit a person to understand the issues the appellant is raising to the Commission;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to settle the case through negotiation with the Executive Director and other interested persons, or through alternative dispute resolution (including but not limited to mediation), and specifying the potentially interested persons (if applicable). This statement shall not be used to argue the merits of the appeal.

(g) The name, address, email address, and telephone number of each of the following:

(A) The Appellant, except that if an attorney represents the appellant, then the attorney's name, address, email address, and telephone number shall be substituted for that of the appellant.

(B) The applicant, if other than the appellant. If the applicant is represented by an attorney, then the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

(C) Any other person to whom written notice of the land use decision was mailed as shown on the Executive Director's records. The telephone number and email address may be omitted for any such person.

(h) A statement advising that all persons may give testimony at the hearing on the appeal; however, if a person wishes to receive a copy of the record an/or participate in the proceedings prior to the hearing, then that person must file and serve a Notice of Intervention pursuant to 350-70-170. The applicant is an automatic party to the appeal and need not file a notice of intervention.

(i) A statement that the Commission will set the date, time, and place for a hearing on the appeal and provide notice of the hearing approximately 20 days prior to the date of the hearing.

(j) A statement that written comments on the appeal will be accepted by the Commission until the close of the public hearing, but that persons are encouraged to submit written comments within 60 days from the date of the Notice of Appeal.

(k) A statement informing all persons whether the party filing the Notice of Appeal opts out of email service, and a statement informing persons that service of documents may be by email unless a person expressly opts out of receiving documents by email.

~~(kl)~~ Proof of service upon all persons required to be named in the Notice.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the true cost to the Commission of handling the appeal.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION **350-70-070. Record.**

(1) Contents of Record: The record shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All evidence, exhibits, maps, documents or other written materials included in the Executive Director's land use application file; photos, maps, and exhibits that were prepared by or presented to the Executive Director in color shall be provided to the Commission in color in the original or cer-

tified copy of the record and all duplicate copies of the record;

(c) Minutes of any meetings conducted by the Executive Director as required by law.

(d) All documents relating to an applicant's request for special review, including the applicant's request, the Executive Director's recommendation, and all documents relied on by the Executive Director in making the recommendation.

(e) The Executive Director may retain any audiotape recording, large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The Executive Director shall make these items reasonably available for inspection and duplication by any person during the pendency of the appeal, and shall specify in its filing of the record the procedure for reviewing for these items.

(2) Preparation and Service of Record: Within 30 days after the Notice of Appeal is filed, the Executive Director shall prepare and serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents which are difficult to duplicate, on the appellant and intervenors. The Commission may serve the record to persons in an electronic form to persons not opting out of email service.

(3) Specifications of Record:

(a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins and listing each audiotape recording, large map or other exhibit or document retained by the Executive Director;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(3) The Commission may charge persons the cost of duplicating and serving paper copies of the record consistent with the Commission's public records rule. 350-12.

AMENDATORY SECTION

350-70-080. Objections to the Record.

(1) Before filing an objection to the record, a person shall attempt to resolve the matter with the Executive Director.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the person filing the objection. The person filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the Executive Director and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials in the Executive Director's land use application file. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included in the Executive Director's land use application file. The item(s) not included shall be specified, as well as the basis for the

claim that the item(s) are not part of the record. A document that is excluded from the record under this subsection may still be submitted to the Commission as otherwise provided in this division.

(c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings. An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the Executive Director to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is an audiotape recording, a transcript of the relevant portion shall be submitted.

(3) The Chair of the Commission may conduct a telephone conference to consider and resolve any objections to the record.

(4) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order settling the record and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits. A letter or an order of the Chair settling the record is not appealable to the full Commission.

AMENDATORY SECTION

350-70-090. Appellant's Brief.

(1) Filing and Service of Brief: The appellant shall file at the Commission office and serve an Appellant's Brief within 30 days after the date the record is filed ~~under subsection -070 above, or settled under section -080 above or settled if a party files an objection to the record.~~ The Brief shall also be served on intervenors. Failure by the Appellant to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the Gorge Commission.

(2) Specifications of Brief: The Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If an Appellant's Brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed and served within three (3) days of notification.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of the appellant and all intervenors. If any of the above is represented by an attorney, the name, address and telephone number of the attorney shall be substituted.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) that are filing the Brief.

(e) Be typewritten, in ~~14-point~~ 14-point type in a regularly used font such as Times New Roman, Helvetica, or Calibri, and double spaced;

(f) Be signed on the last page by the author. An electronic brief may contain an electronic signature or other generally accepted substitute.

(3) Contents of Brief: The Appellant's Brief shall:

(a) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The relief sought by the appellant;

(B) A summary of the arguments;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found, or other documents that the appellant intends to introduce at the hearing.

(b) Set forth each issue under a separate heading. Where several issues present essentially the same legal questions, the argument in support of those issues shall be combined;

(c) Contain, each as separate appendices, copies of all management plan provisions, comprehensive plan provisions, and all local state, regional, and federal laws cited in the brief, unless the provision is quoted verbatim in the Brief.

(d) Contain, each as separate appendices, copies of any documents and evidence, not contained in the record, that are referred to in the Brief.

AMENDATORY SECTION

350-70-120. Motions, Generally and Procedural Orders.

For the purpose of this section only, the term "party" shall refer to the appellant and any intervenor.

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail, email, or personal delivery, ~~except that motions to which all parties consent may be filed by fax as provided in 350-70-040.~~

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responsive briefs. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

(7) The Chair of the Commission may provide the parties with a copy of an order on a motion by electronic mail to parties that have not opted out of email service.

AMENDATORY SECTION

350-70-170. Intervention.

~~(1) The applicant and a~~ Any person may intervene in an appeal proceeding before the Commission. Status as an intervenor shall be recognized upon filing a Notice of Intervention.

(2) Notice of Intervention: In the interests of promoting timely resolution of appeals, a Notice of Intervention shall be filed at the Commission office within 14 days after the Notice of Appeal is filed pursuant to 350-70-050. The Notice of Intervention (exhibit 2) shall:

(a) State whether the person supports or opposes the appellant, or whether the person neither supports nor opposes the appellant;

(b) Include a brief statement of the reasons for filing the motion for intervention, including citations to the decision and land use ordinance, if different than the reasons set forth in the Notice of Appeal.

(c) Include a brief "Intervenor's ADR Statement" stating whether the intervenor is willing to attempt to participate in resolving the case through negotiation or alternative dispute resolution, such as mediation. This statement shall not be used to argue merits of the appeal.

(d) Be served on the appellant and all other persons who have filed a Notice of Intervention.

(e) If applicable, a statement opting out of email service (note that a person must affirmatively opt out of email service).

(3) A person who files a Notice of Intervention shall be entitled to receive a copy of all matters that are filed with the Commission.

(4) Intervenor's Brief:

(a) An intervenor who supports the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-70-090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief in Support of Appellant".

(b) An intervenor who opposes the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-70-090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief Opposing Appellant", and shall have a red cover.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-70-200. Extensions of Time.

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of the appellant and participants, the Commission's motion, or the motion of the appellant or a participant.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and

is stipulated to by the appellant and all intervenors, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the appellant and all intervenors.

(5) Any other motion for extension of time that is stipulated to by the appellant and all intervenors shall be presumed granted for a period of 14 days, or until the Chair issues an order, whichever is earlier. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

~~(6) Any motion for extension of time that is not stipulated to by the appellant and all intervenors shall be treated as a contested motion pursuant to 350-70-130 above.~~

AMENDATORY SECTION

350-70-210. Stays.

(1) Only an appellant or intervenor who would have standing to appeal a land use decision may file a motion for a stay. The movant may file a Notice of Intervention concurrently with the motion for a stay. A motion for a stay of a land use decision shall include:

(a) A statement setting forth the movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

~~(2) A copy of a motion for stay shall be served on the same day the motion is filed with the Commission.~~

~~(3)~~ (2) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(4) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon the motion presented. Documents may be attached to the motion in the form of affidavits, maps or other materials, or presented at a hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-70-140.

AMENDATORY SECTION

350-70-220. Final Order of Commission.

(1) A Final Order of the Commission shall:

(a) Contain the caption of the appeal and state "Final Opinion and Order";

(b) Acknowledge the record and other documents that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.

(c) Address the Special Review under Rule 350-60-090, where applicable.

~~(bd)~~ (d) Contains findings of fact and conclusions of law or incorporates them from the record below.

~~(ee)~~ (e) Indicate the Commission's decision;

~~(ef)~~ (f) Contain the date of the final order; and

~~(eg)~~ (g) Be signed by the Chair of the Commission.

(2) The order shall be served on all parties.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

AMENDATORY SECTION

350-70-225. Dismissal by the Commission.

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant filed or expressed orally to the Commission prior to the start of oral argument. The dismissal shall be considered with prejudice and shall be effective on the date it is filed or expressed orally to the Commission.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal when it appears to the Chair that the Appellant has failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The Appellant and intervenors shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the Appellant and intervenors an order of dismissal, which shall be an appealable action ~~by~~ of the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the Appellant and intervenors have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

AMENDATORY SECTION

350-70-230. Reversal or Remand of Land Use Decisions.

(1) The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the Executive Director upon finding that all of the following criteria are met.

(a) The Executive Director shall either rescind the land use decision that is the subject of the appeal or provide that any new or modified land use decision shall supercede the remanded decision;

(b) The Executive Director shall not be required to issue a subsequent land use decision, but if he or she does, then he or she shall agree to address all of the issues raised in the appeal in that subsequent land use decision.

(c) The Executive Director shall follow all applicable notice and review procedures in modifying the remanded decision or issuing a new land use decision.

(d) An ~~oral~~ decision of argument before the Commission has ~~not been rendered in the matter started.~~

DELETED SECTION

~~350-120-025. Certification Procedures.~~

All applications for certification shall follow either the process in 350-120-030 through 040 or the process in 350-120-050.

DELETED SECTION

~~350-120-030. Recommendation of the Director.~~

(1) In making a recommendation on a proposed grant or loan the Director shall:

(a) Consult with the applicant and such agencies as the Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(2) The Director shall recommend a grant or loan for certification only if it is consistent with the purposes of the Act, the management plan and land use ordinances adopted pursuant to the Act.

(3) Within 21 days of acceptance of the application as complete, the Director shall issue a report setting forth the recommendation and the basis for it.

(4) The Director shall mail a copy of the report to the applicant, Gorge Commissioners, the Forest Service, the States of Oregon and Washington, the Indian Tribes with treaty rights in the Scenic Area, and the planning director of the applicable county or city.

DELETED SECTION

~~350-120-040. Review and Decision by Commission.~~

(1) The Commission shall review the recommendation and report of the Director at a scheduled meeting. Public comment shall be allowed.

(2) The Commission may request further information at the meeting if it is deemed relevant to its decision.

(3) At the first Commission meeting occurring five (5) or more working days of after issuance of the Director's report, the Commission shall make a decision on the grant or loan, as follows:

(a) approve the request, certifying the grant or loan is consistent with the purposes of the Act, the management plan and land use ordinances adopted pursuant to the Act;

(b) approve the request contingent upon approval of certain required state and/or federal environmental permits;

(c) defer the decision, pending receipt of further information; or

(d) deny the request, stating that the grant or loan is not consistent with the purposes of the Act, the management plan and land use ordinances adopted pursuant to the Act.

(4) The Director shall notify the applicant, and the applicable state investment board of the Commission's decision.

AMENDATORY SECTION

~~350-120-050. Expedited Certification Process.~~

(1) The Executive Director of the Gorge Commission may issue a decision for a certification application that meets all of the following criteria. The Executive Director may, at

his or her discretion, require an application be reviewed pursuant to 350-120-030 and 040 above.

(a) The project and activity shall not involve ground disturbance or changes to structures that are 50 years old or older;

(b) The project shall be located wholly within an Urban Area;

(c) The project and activity shall be consistent with the economic development policies in the Management Plan

(d) The project and activity shall be consistent with the Economic Development Plans for Oregon and Washington as amended from time to time by the states consistent with Section 11 (a) of the Scenic Area Act;

(e) The project shall not involve relocation of a business from one National Scenic Area community to another;

(f) The activity shall not involve program administration; and

(g) The project shall occur only in counties that have in effect land use ordinances found consistent by the Commission and concurred on by the Secretary.

(12) In making a decision to certify a proposed grant or loan the Director shall:

(a) Consult with the applicant and such agencies as the Director deems appropriate, and

(b) Consider information submitted by the applicant and all other relevant information available.

(23) The Director shall approve a grant or loan for certification only if it is consistent with the purposes of the Act, ~~and~~ the management plan, and land use ordinances adopted pursuant to the Act, and the following criteria:-

(a) The project and activity shall be consistent with the economic development policies in the Management Plan;

(b) The project and activity shall be consistent with the Economic Development Plans for Oregon and Washington as amended from time to time by the states consistent with Section 11(a) of the Scenic Area Act;

(c) The project shall not involve relocation of a business from one National Scenic Area community to another;

(d) The activity shall not involve program administration; and

(e) The project shall occur only in counties that have in effect land use ordinances found consistent by the Commission and concurred on by the Secretary.

(34) Within 14 days of acceptance of the application as complete, the Director shall issue a decision along with findings of fact and conclusions of law setting forth the basis for the decision.

(45) The Director shall mail a copy of the decision to the applicant, the Forest Service, the States of Oregon and Washington, the Indian Tribes with treaty rights in the Scenic Area, the planning director of the applicable county or city, and any person who requests a copy of the decision.

(56) The Executive Director shall ~~prepare periodic summaries~~ periodically report to the Commission about ~~of the~~ certifications approved and denied through this expedited process for submission to the Gorge Commission.

AMENDATORY SECTION

EXHIBIT 1
(350-60-050)
BEFORE THE COLUMBIA RIVER GORGE COMMISSION

| | | |
|--------------------------------|---|------------------|
| Jane Clark, |) | |
| |) | CRGC No. |
| Appellant, |) | |
| |) | NOTICE OF APPEAL |
| vs. |) | |
| Tahoma County, |) | |
| |) | |
| Respondent, |) | |
| and |) | |
| <u>John Developer.</u> |) | |
| <u>Respondent (Applicant).</u> |) | |

I.

Notice is hereby given that [NAME OF APPELLANT(S)] appeals that land use decision of respondent entitled [INDICATE TITLE OF LAND USE DECISION], which became final on [INDICATE DATE] and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

ADR STATEMENT: [INDICATE WHETHER YOU ARE WILLING TO ATTEMPT TO SETTLE THE CASE THROUGH MEDIATION OR OTHER MEANS].

SHORTENED RECORD: [STATE WHETHER YOU ARE WILLING TO CONSIDER A SHORTENED RECORD AS ALLOWED BY 350-60-060(f)].

EMAIL SERVICE: [STATE WHETHER YOU OPT OUT OF EMAIL SERVICE. IF YOU ARE NOT WILLING TO RECEIVE DOCUMENTS ELECTRONICALLY, YOU MUST OPT OUT. IF YOU DO NOT OPT OUT, THEN YOU WILL RECEIVE DOCUMENTS RELATING TO THE APPEAL BY EMAIL TO THE EMAIL ADDRESS YOU PROVIDE]

II.

Appellant, Jane Clark, has as her contact information: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

[If applicable] Appellant, Jane Clark, is represented by: [INDICATE NAME, MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY].

Respondent, Tahoma County, has as its ~~mailing address and telephone number~~ contact information: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER] and has, as its legal counsel: [INDICATE NAME, ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

Applicant, John Developer, has as his contact information: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER]

[If applicable] Applicant, John Developer, was represented in the proceeding below by: [INDICATE NAME, MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY].

III.

~~Applicant, John Developer, was represented in the proceeding below by: [INDICATE NAME, ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY].~~

Other persons mailed written notice of the land use decision by Tahoma County, as indicated by its records in this matter, include: [INDICATE NAMES, ADDRESSES, EMAIL ADDRESS (IF KNOWN), AND TELEPHONE NUMBER (IF KNOWN) OF ALL PERSONS WHOM THE GOVERNING BODY'S RECORDS INDICATE WERE MAILED WRITTEN NOTICE OF THE LAND USE DECISION. THE TELEPHONE NUMBERS OF SUCH PERSONS MAY BE OMITTED].

NOTICE:

Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Columbia River Gorge Commission must file with the Commission a Motion to Intervene in this proceeding within 14 days of the date of this Notice, as required by CR 350-60-160. Anyone that desires to present oral argument to the Commission must intervene and file a brief as required by CR 350-60-120(1).

Appellant (each appellant must sign)

or

Attorney for Appellant(s)

[Add Certificate of Service. See form in Exhibit 4.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

EXHIBIT 3
(350-60-160)
BEFORE THE COLUMBIA RIVER GORGE COMMISSION

| | | |
|-------------------------|---|---------------------|
| Jane Clark, |) | |
| |) | CRGC No. |
| Appellant, |) | |
| |) | MOTION TO INTERVENE |
| vs. |) | |
| Tahoma County, |) | |
| Respondent |) | |
| <u>and</u> |) | |
| <u>John Developer.</u> |) | |
| Respondent (Applicant). |) | |

I.

John Smith moves to intervene on the side of (a) Appellant or (b) Respondent [INDICATE WHICH] in the above-captioned appeal.

Mr. Smith's (or his attorney's) ~~address and phone number are~~ contact information is as follows: [INDICATE ADDRESS, EMAIL ADDRESS, AND PHONE NUMBER].

ADR STATEMENT: [INDICATE WHETHER YOU ARE WILLING TO ATTEMPT TO SETTLE THE CASE THROUGH MEDIATION OR OTHER MEANS.

SHORTENED RECORD: [STATE WHETHER YOU ARE WILLING TO CONSIDER A SHORTENED RECORD AS ALLOWED BY 350-60-060(f)].

EMAIL SERVICE: [STATE WHETHER YOU OPT OUT OF EMAIL SERVICE. IF YOU ARE NOT WILLING TO RECEIVE DOCUMENTS ELECTRONICALLY, YOU MUST OPT OUT. IF YOU DO NOT OPT OUT, THEN YOU WILL RECEIVE DOCUMENTS RELATING TO THE APPEAL BY EMAIL TO THE EMAIL ADDRESS YOU PROVIDE].

II.

The facts establishing movant's right to intervene are as follows: [SET FORTH STATEMENT OF FACTS].

III. [OPTIONAL]

In support of this motion, John Smith relies on the attached affidavit, Memorandum of Law or both.

Date

John Smith
or

Barbara Neil, Attorney for
John Smith

[Add Certificate of Service. See form in Exhibit 4.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

EXHIBIT 4
CERTIFICATE OF SERVICE

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this [IDENTIFY DOCUMENT] by (a) first class mail, (b) personal delivery, or (c) facsimile email [INDICATE WHICH] on the following persons: [LIST NAME AND ADDRESS, OR EMAIL ADDRESS OF EACH PARTY OR THE PARTY'S ATTORNEY].

Dated: _____

Signature

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

EXHIBIT 1
(350-70-050)
BEFORE THE COLUMBIA RIVER GORGE COMMISSION

In the matter of an appeal of Development Review Decision)
No. [FILE NUMBER]) NOTICE OF APPEAL
By Jane Clark)
_____)

I.

Notice is hereby given that Jane Clark appeals Development Review Decision No. [INDICATE NUMBER OF LAND USE DECISION], which became final on [INDICATE DATE] and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

The reasons for this appeal are: [SET FORTH THE REASONS FOR FILING THE APPEAL, INCLUDING CITATIONS TO THE DECISION AND LAND USE ORDINANCE].

ADR STATEMENT: [SET FORTH A BRIEF STATEMENT INDICATING WHETHER YOU ARE WILLING TO ATTEMPT TO RESOLVE THE APPEAL THROUGH MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION].

EMAIL SERVICE: [STATE WHETHER YOU OPT OUT OF EMAIL SERVICE. IF YOU ARE NOT WILLING TO RECEIVE DOCUMENTS ELECTRONICALLY, YOU MUST OPT OUT. IF YOU DO NOT OPT OUT, THEN YOU WILL RECEIVE DOCUMENTS RELATING TO THE APPEAL BY EMAIL TO THE EMAIL ADDRESS YOU PROVIDE]

II.

Appellant, Jane Clark, has as her contact information: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

[If applicable] Appellant, Jane Clark, is represented by: [INDICATE NAME, MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY, IF ANY].

Applicant, John Developer, has as his contact information: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

[If applicable] Applicant, John Developer, was represented in the proceeding below by: [INDICATE NAME, MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY].

III.

Applicant, John Developer, was represented in the proceeding below by: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].

Other persons mailed written notice of the land use decision by Executive Director, as indicated by its records in this matter, include: [INDICATE NAMES, MAILING ADDRESSES, EMAIL ADDRESS (IF KNOWN), AND TELEPHONE NUMBER (IF KNOWN) OF ALL PERSONS WHOM THE EXECUTIVE DIRECTOR'S RECORDS INDICATE WERE MAILED WRITTEN NOTICE OF THE LAND USE DECISION. THE TELEPHONE NUMBERS OF SUCH PERSONS MAY BE OMITTED].

NOTICES:

Anyone designated in paragraph III of this Notice who desires to receive a copy of the record and participate in all matters prior to the hearing, must file with the Commission a Motion to Intervene in this proceeding as required by Commission Rule 350-70-170. Filing a motion to intervene is not a prerequisite to giving written or oral testimony in this appeal.

The Commission will set the date for hearing and provide notice of the hearing approximately 20 days prior to the date of the hearing.

Written comments on the appeal will be accepted by the Commission until the close of the public hearing, but that persons are encouraged to submit written comments within 60 days from the date of the Notice of Appeal.

Dated: _____

Petitioner (each petitioner must sign)

or

Attorney for Petitioner(s)

[Add Certificate of Service. See form in Exhibit 3.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

EXHIBIT 2
(350-70-170)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

| | | |
|--|---|------------------------|
| In the matter of an appeal of Development Review |) | |
| Decision No. [FILE NUMBER] |) | JOHN SMITH'S |
| By Jane Clark |) | NOTICE OF INTERVENTION |
| _____ |) | |

I.

John Smith gives notice that he intervenes in favor of the appellant or in opposition to the appellant [INDICATE WHICH] in the above-captioned appeal. Mr. Smith's (or his attorney's) address and phone number is as follows: [INDICATE MAILING ADDRESS, EMAIL ADDRESS, AND TELEPHONE NUMBER].

[IF THE REASONS FOR INTERVENING DIFFER FROM THE REASONS FOR THE APPEAL AS SET FORTH IN THE NOTICE OF APPEAL, THEN STATE THE REASONS, INCLUDING CITATIONS TO THE DECISION AND LAND USE ORDINANCE-].

ADR STATEMENT: [SET FORTH A BRIEF STATEMENT INDICATING WHETHER YOU ARE WILLING TO ATTEMPT TO RESOLVE THE APPEAL THROUGH MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION].

EMAIL SERVICE: [STATE WHETHER YOU OPT OUT OF EMAIL SERVICE. IF YOU ARE NOT WILLING TO RECEIVE DOCUMENTS ELECTRONICALLY, YOU MUST OPT OUT. IF YOU DO NOT OPT OUT, THEN YOU WILL RECEIVE DOCUMENTS RELATING TO THE APPEAL BY EMAIL TO THE EMAIL ADDRESS YOU PROVIDE].

Dated: _____

John Smith

or

Barbara Neil, Attorney for
John Smith

[Add Certificate of Service. See forms in Exhibit 3.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

EXHIBIT 3
CERTIFICATE OF SERVICE

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this [IDENTIFY DOCUMENT] by first class mail, personal delivery, or facsimile email [INDICATE WHICH] on the following persons: [LIST NAME AND ADDRESS OF THE APPELLANT (OR THE APPELLANT'S ATTORNEY), THE APPLICANT OR THE APPLICANT'S ATTORNEY, AND EACH INTERVENOR OR THE INTERVENOR'S ATTORNEY].

John Appellant (or Attorney)
123 Main Street
City, State, Zip
Email:

John Intervenor (or Attorney)
124 Main Street
City, State, Zip
Email:

Dated: _____

Signature

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

350-81-017. Advising When Review is Required

(1) When a person inquires from the Commission whether a proposed development requires Scenic Area review and approval, and the Commission must consider whether the proposed development is in an urban area, the landowner or the landowner's representative shall submit to the Commission:

- (a) narrative metes and bounds description of the urban area boundary for the subject parcel;
(b) survey map showing the subject parcel; the urban area boundary line; and the location of all proposed development, including but not limited to, buildings, other structures, fences, roads, and utilities; and,
(c) written permission for Gorge Commission staff and persons providing technical assistance to the Commission to access the subject property to review or conduct surveying activities as needed for review of the survey.

(2) A licensed surveyor shall prepare the metes and bounds description and survey map. The surveyor shall contact the Commission office for a copy of the official maps, other necessary information, and technical assistance. The survey shall be based on official maps and shall not assume the correctness of any prior boundary determination by a non-surveyor. The Commission may require the surveyor to review proposed methodology with a U.S. Forest Service surveyor or another surveyor providing technical assistance to the Commission.

(3) After receipt of the items listed in section (1) above, the Commission will review the items and advise the landowner and county whether the proposed development requires approval under Scenic Area authorities. The Commission may engage a surveyor as needed for its review.

(4) Any disagreement with the landowner's metes and bounds description or survey map shall be handled in a manner common to resolution of surveying disputes generally, and shall not be appealable pursuant to the Scenic Area Act, Management Plan, or Commission Rules.

AMENDATORY SECTION

350-81-020. Definitions

(102) Natural resources (SMA): Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(102a) Natural Resources (GMA): Wetlands, streams, ponds and lakes, riparian areas, wildlife and wildlife habitat, rare plants, and natural areas.

AMENDATORY SECTION

350-81-082. Existing Uses and Discontinued Uses

(1) Right to Continue Existing Uses and Structures (a) Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster

(a) Except as provided in 350-81-082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure.

(B) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(C) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

(D) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

(3) Replacement of Existing Structures Damaged or Destroyed by Disaster

(a) An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.

(B) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:

(i) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(ii) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(iii) The new building site complies with the cultural resources, natural resources, and treaty rights protection guidelines.

(C) The replacement structure shall be the same size and height as the original structure, provided:

(i) The footprint of the replacement structure may be up to 10 percent larger than the footprint of the original structure.

(ii) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code.

(D) The replacement structure shall only be subject to the following scenic resources standards:

(i) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(ii) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(iii) In the General Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:

(I) Except as provided in 350-81-082 (3)(a)(D)(iii)(II), the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.

(II) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

(III) To help determine how much vegetation may be required under 350-81-082 (3)(a)(D)(iii)(I) and (II), land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:

(1) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.

(2) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.

(3) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.

(IV) The height of any new trees shall not be required to exceed 5 feet.

(V) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.

(iv) In the Special Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(I) The *Scenic Resources Implementation Handbook* shall be utilized to determine approvable species and mini-

imum approvable sizes of new trees planted (based on average growth rates expected for approvable species).

(II) The height of any new trees shall not be required to exceed 5 feet.

(III) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(E) The replacement structure shall be subject to 350-81-082 (2)(a)(A), (B), and (C) above if it would not comply with 350-81-082 (3)(a)(B) and (C).

(F) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two year time frame.

(4) Changes to Existing Uses and Structures

(a) Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-81.

(A) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMA, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.

~~(B) Expansion of Existing Industrial Uses in the GMA: Existing industrial uses in the GMA may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site shall be prohibited.~~

(C) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(D) Existing Development or Production of Mineral Resources in the GMA: In the GMA, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist:

(i) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation.

(ii) The site has not maintained a required state permit.

(iii) The site has not operated legally within 5 years before October 15, 1991.

(E) Existing Development or Production of Mineral Resources in the SMA: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist:

(i) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMA.

(ii) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.

(5) Discontinuance of Existing Uses and Structures

(a) Except as provided in 350-81-082 (3)(a) and (3)(a)(F), any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(A) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(B) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures:

(a) Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-540. General Management Area Cultural Resource Review Criteria

(1) General Provisions for Implementing the Cultural Resources Protection Process.

(a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

(i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-81-540 (1)(c)(A)(ii) below.

(ii) A reconnaissance survey shall be required for all proposed uses, except:

(I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(V) Proposed uses that would occur on sites that have been adequately surveyed in the past. The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.
- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be

adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For 350-81-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

(i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.

(ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

(i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.

(ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.

(iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

(i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(i) A description of the proposed use, including drawings and maps.

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site

that are important in defining the overall historic character of the historic buildings or structures.

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

(g) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons. Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic

research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2 (b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(iv) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(a) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO)

1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.11.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.5].

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.5]. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.11, including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(6) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [350-80-540 (1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [350-80-540 (3)(a)].

Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

(7) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [350-81-540 (5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [350-81-540 (5)(c)] are met and the mitigation plan is executed.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-560. General Management Area Wetland Review Criteria

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within wetlands and their buffer zones.

(2) Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions, and

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-560 (2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan

amendment to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

- | | | |
|-------|--------------|-----|
| (i) | Restoration: | 2:1 |
| (ii) | Creation: | 3:1 |
| (iii) | Enhancement: | 4:1 |

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

- | | |
|-----------------------------|----------|
| (A) Forest communities: | 75 feet |
| (B) Shrub communities: | 100 feet |
| (C) Herbaceous communities: | 150 feet |

(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

AMENDATORY SECTION

350-81-570. General Management Area Stream, Pond, Lake and Riparian Area Review Criteria

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and

(C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within streams, ponds, lakes, riparian areas and their buffer zones.

(2) Commission Rule 350-81-570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-81-570(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-074, 350-81-570 (2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-81-570(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and local laws.

(6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-81-560 (6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(b) The proposed use is in the public interest as determined by 350-81-560 (6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

(H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560 (7)(b), substituting the term pond or lake as appropriate.

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordi-

nary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

(8) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-580. General Management Area Sensitive Wildlife Review Criteria.

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

Bald eagle habitat
 Deer and elk winter range
 Elk habitat
 Mountain goat habitat
 Peregrine falcon habitat
 Pika colony area
 Pileated woodpecker habitat
 Pine marten habitat
 Shallow water fish habitat (Columbia R.)
 Special streams
 Special habitat area
 Spotted owl habitat
 Sturgeon spawning area
 Tributary fish habitat
 Turkey habitat
 Waterfowl area
 Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

- (i) listed as endangered or threatened pursuant to federal or state endangered species acts,
- (ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,
- (iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or
- (iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon).

Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and sites.

(2) Field Survey

A field survey to identify sensitive wildlife areas or sites shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously

disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-81-580(4) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify/verify the precise location of the wildlife area or site,

(B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

(A) Biology of the affected wildlife species.

(B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife area or site is not active, or

(B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent

to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(5) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and

shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled

between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

**AMENDATORY [AMENDATORY] SECTION
350-81-590. General Management Areas Rare Plant Review Criteria.**

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are

(A) endemic to the Columbia River Gorge and vicinity,

(B) listed as endangered or threatened pursuant to federal or state endangered species acts, or

(C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within sites within 1000 feet of rare plants.

(2) Field Survey

A field survey to identify sensitive plants shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously

disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(4), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.

(c) New uses shall be prohibited within sensitive plant species buffer zones.

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(5).

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.

Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

(5) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

(6) Sensitive Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants,

(B) Describes the biology of the sensitive plants, and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants

and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 11-02-059

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed January 4, 2011, 11:24 a.m.]

WAC 246-102-001, 246-102-010, 246-102-020, 246-102-030, 246-102-040, 246-102-050, 246-102-060 and 246-102-070, proposed by the department of health in WSR 10-13-097 appearing in issue 10-13 of the State Register, which was distributed on July 7, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 11-02-064

PROPOSED RULES DEPARTMENT OF HEALTH

[Filed January 4, 2011, 2:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-065.

Title of Rule and Other Identifying Information: Chapter 246-272B WAC, Large on-site sewage systems.

Hearing Location(s): Washington State Department of Health, Town Center 1, Room 163, 101 Israel Road S.E., Tumwater, WA 98501, on February 9, 2011, at 2:00 p.m.

Date of Intended Adoption: February 10, 2011.

Submit Written Comments to: Melissa McEachron, Department of Health, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by February 9, 2011.

Assistance for Persons with Disabilities: Contact Ashley Bazarov by January 26, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule consolidates requirements for large on-site sewage systems with a design flow of 3,500 gpd - 100,000 gpd, updates existing requirements and standards, and establishes environmental review requirements and standards. The proposed rule also includes requirements for siting, design, construction, installation, management, operation, maintenance, and repairs.

Reasons Supporting Proposal: The proposed rule protects public health and the environment by establishing a comprehensive framework for ongoing oversight and management of large on-site sewage systems to prevent human contact and environmental contamination with untreated sewage.

Statutory Authority for Adoption: RCW 70.118B.020.

Statute Being Implemented: Chapter 70.118B RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa McEachron, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3265; **Implementation and Enforcement:** Denise Lahmann, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3348.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

What is the scope of the proposed rule? An on-site sewage system (OSS) is a type of wastewater system that collects, treats, and disposes of sewage from individual homes or buildings at or near its point of generation. Large OSS, or LOSS, includes on-site sewage systems with design flows from 3,500 gpd to 100,000 gpd. In 2007, the legislature consolidated regulation of LOSS under the department of health (department). The proposed rules establish a comprehensive framework for LOSS siting, design, construction, installation, permitting, operation, maintenance, repair, compliance, and enforcement. Chapter 70.118B RCW, Large on-site sewage disposal systems, maintains oversight of LOSS 3,500 - 14,500 gpd with the department, but expanded the scope beyond the traditional role of protecting public health to include environmental protection. For LOSS with design flows of 14,500 - 100,000 gpd, the statute transferred oversight from the department of ecology (ecology) to the department and expanded the scope beyond the historic environmental protection to include public health protection. The proposed rules are in response to the 2007 legislation and consolidate, revise, and clarify existing department and ecology requirements, and for new areas of responsibility, establish requirements or standards.

The proposed rules include requirements that unify ecology design and approval requirements for domestic wastewater facilities with department LOSS design review and approval requirements. The combined design and approval requirements replace the following ecology rules for domes-

tic wastewater facilities: Chapters 173-240, 173-230 WAC. The proposed rules incorporate key concepts from chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington relating to all known, available, and reasonable treatment and groundwater standards.

In addition, the proposed rules transition permitting requirements for 14,500 gpd to 100,000 gpd systems from ecology to the department. For systems in this size range, the requirements of the proposed rules replace the requirements of chapter 173-216 WAC, State waste discharge permit program.

The proposed rule amendments affect LOSS owners as LOSS owners are responsible for all activities during the service life of their LOSS. The department divided requirements into the following three distinct categories:

- Requirements for LOSS constructed on or before 1984;
- Requirements for LOSS with current permits issued from the department, ecology, or delegated local health jurisdictions (LHJs); and
- New construction requirements.

Which businesses are impacted by the proposed rule package? What are their North American industry classification system (NAICS) codes? What are their minor cost thresholds? The proposed rules affect only one category of business directly, sewage system installers. However, a LOSS can be used for sewage treatment and disposal for a wide range of residences or buildings in a variety of settings including, but not limited to, churches, schools, strip malls, restaurants, mobile home parks, housing developments, or small cities. The owner of a business is only impacted by these proposed rules if they also own the LOSS serving the business. No business by its function as a business is required to have a LOSS. Therefore, costs of the proposed rules are only indirectly related to any particular type of business other than sewage system installers.

The applicable NAICS classification for sewage system installers is:

Site preparation contractors (238910): This United States industry comprises establishments primarily engaged in site preparation activities, such as excavating and grading, demolition of buildings and other structures, septic system installation, and house moving. Earth moving and land clearing for all types of sites (e.g., building, nonbuilding, and mining) is included in this industry. Establishments primarily engaged in construction equipment rental with operator (except cranes) are also included.

Although no other specific business is directly impacted by the proposed rules, the department conducted additional analysis to determine if the proposed rules will result in costs that exceed minor cost thresholds for a selection of other businesses. For this analysis, the department selected the three most commonly permitted businesses of the approximately four hundred fifty currently permitted LOSS in Washington state. These three business classifications as identified in NAICS are:

Lessors of other real estate property (NAICS 531190): This industry comprises establishments primarily engaged in acting as lessors of real estate (except buildings),

such as manufactured home (i.e., mobile home) sites, vacant lots, and grazing land.

Full-service restaurants (NAICS 722110): This industry comprises establishments primarily engaged in providing food services to patrons who order and are served while seated (i.e. waiter/waitress service) and pay after eating. These establishments may provide this type of food services to patrons in combination with selling alcoholic beverages, providing carry out services, or presenting live nontheatrical entertainment.

RV (recreational vehicle) parks and campgrounds (NAICS 721211): This United States industry comprises establishments primarily engaged in operating sites to accommodate campers and their equipment, including tents, tent trailers, travel trailers, and RVs (recreational vehicles). These establishments may provide access to facilities, such as washrooms, laundry rooms, recreation halls and playgrounds, stores, and snack bars.

The following table shows the number of businesses in Washington that fall within the four identified NAICS codes, and the minor cost thresholds for payroll and sales.

| NAICS Code (4, 5 or 6 digit) | NAICS Business Description | # of businesses in WA (2007) | Minor Cost Threshold = 1% of Average Annual Payroll (2007) | Minor Cost Threshold = .3% of Average Annual Receipts (2007) |
|------------------------------|------------------------------|------------------------------|--|--|
| 238910 | Site preparation contractors | 1,505 | \$4,087.36 | \$5,238.02 |
| 531190 | Mobile Home Parks | 312 | \$484.74 | \$1,341.38 |
| 722110 | Full-Service Restaurant | 5,273 | \$2,838.76 | \$2,391.86 |
| 721211 | RV parks and campgrounds | 204 | \$732.45 | \$1,128.66 |

What is the range of costs per business of the proposed rule? The only proposed rule that directly affects sewage system installers is WAC 246-272B-05000 Installer requirements. This section expands the current requirement to obtain LHJ approval before installing a LOSS by adding required experience. This requirement can be met either with three years experience installing on-site sewage systems, or with one successful installation of a similarly designed sewage treatment system with a pressure distribution drainfield. The department assumes sewage system installers who currently install LOSS meet the requirements of the proposed rule. As a result, the estimated cost of this proposed change is \$0.

The remaining proposed requirements are evaluated for their impact on the LOSS owner. There is considerable diversity among LOSS depending on the system size, site conditions, treatment types employed, design complexity,

age and condition of the system, number of customers served, and ownership and management structure. The current cost of constructing a LOSS varies dramatically based and [on] this diversity of circumstance ranging from \$20 to \$40 per gpd of designed flow. Similar variability in cost is also expected for the proposed changes to the rules.

The following table illustrates the complexity of gauging the potential impact of the proposed rules due to this high degree of variability among LOSS. The table includes the significant rule changes being proposed, identifies the types of systems or activities that could be affected, and estimates the costs expressed as a range dependent on the specific attributes of the LOSS. For the purposes of this analysis, low volume LOSS have a design flow between 3,500 and 14,500 gpd, and high volume LOSS have a design flow between 14,501 and 100,000 gpd.

| Section Number and Required Activity | Applies to: | Brief Description of Change, Which Systems are Affected | Cost Range and Rationale |
|--------------------------------------|--|--|--|
| 02250, Public notice | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | High volume LOSS are currently required to conduct public notification under existing rules. The only changes for high volume LOSS are: <ul style="list-style-type: none"> Requires public notice earlier in the development process. Requires owner production of notice. Reduces publication days from 30 to 2. | <ul style="list-style-type: none"> \$0 Nominal cost. Cost savings. <p><i>No new costs for low volume LOSS</i></p> |

| Section Number and Required Activity | Applies to: | Brief Description of Change, Which Systems are Affected | Cost Range and Rationale |
|---|--|---|---|
| 02550, Modifications—Management plan revisions related to ownership change | Specific modifications to existing LOSS | New requirement for both low volume and high volume LOSS. <ul style="list-style-type: none"> • Requires revision and department approval of management plan prior to changing ownership of a LOSS. | \$2,000 - \$10,000 Dependant on complexity of ownership structure. The department assumes this may occur once in the lifetime of a LOSS (lifetime is thirty - fifty years). |
| 02600, Failure and abandonment—Notification | Specific existing LOSS | New requirement for both low volume and high volume LOSS. <ul style="list-style-type: none"> • If failure, notify department within one day. • If directed by the department to notify customers of failure, notification must occur within ten days. • If planned abandonment, notify the department and customers at least one year in advance. | <ul style="list-style-type: none"> • Nominal cost. • Nominal cost. • Nominal cost. |
| 03200, Site risk survey | <ul style="list-style-type: none"> • New LOSS • Certain modifications to existing LOSS | New requirements for low volume LOSS. Requires the following information: <ul style="list-style-type: none"> • Maps to scale. • Description of environmental conditions. • Soil suitability analysis. • Well logs. • Screening nitrate balance. • Description of the potential environmental impacts from the LOSS, if any. | \$300 - \$1700 Dependent on site conditions and availability of data. <i>No new cost for high volume LOSS</i> |
| 03300, Hydrogeology report (HGR) | <ul style="list-style-type: none"> • New LOSS • Certain modifications to existing LOSS | New requirements for low volume LOSS. Requires HGR for LOSS 3,500 - 14,500 gpd under certain circumstances. The HGR includes: <ul style="list-style-type: none"> • Site specific nitrate balance. • Mounding analysis. • Groundwater monitoring from existing well. • Groundwater monitoring requiring new wells. | <ul style="list-style-type: none"> • \$10,000 - \$25,000 • \$5,000 - \$10,000 • \$5,000 - \$10,000 • \$25,000 - \$30,000 The department assumes twenty-five percent of new low volume LOSS may incur some of these costs. Not all costs will be incurred by any one low volume LOSS. <i>No new cost for high volume LOSS</i> |

| Section Number and Required Activity | Applies to: | Brief Description of Change, Which Systems are Affected | Cost Range and Rationale |
|--|--|--|---|
| 05000, Installer requirements | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | New requirement for installers. Adds experience requirements for installers: <ul style="list-style-type: none"> Three years experience installing sewers, or One successful installation of a similarly designed and installed pressure distribution system. | \$100 - \$600 initial approval. \$0 - \$300 renewal. The department assumes current installers meet the proposed requirements. |
| 05100, Construction oversight and testing | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | New requirements for both low volume and high volume LOSS. Low volume LOSS <ul style="list-style-type: none"> New requirement for watertightness testing of tanks. (Already required to pretest drainfield.) High volume LOSS <ul style="list-style-type: none"> New requirement to pretest of drainfield. (Already required to do watertightness testing.) | <ul style="list-style-type: none"> \$200 - \$3,000 (The number of tanks for each LOSS range from 1 to 6 at \$200 - \$500 per tank test = \$3,000). \$800 - \$1,200 per pretest. |
| 05200, Water tightness testing | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | New requirement for both low volume and high volume LOSS. Establishes approved watertightness testing methods for low volume and high volume LOSS. | Costs included in 05100. |
| 06250, Treatment | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | New requirement for both low volume and high volume LOSS. Changes treatment standards based on LOSS site conditions. | \$0 Costs incurred for applying a higher treatment standard are offset by the ability to develop previously unsuitable sites. |
| 06350, Drain-fields | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | New requirements for both low volume and high volume LOSS. <ul style="list-style-type: none"> Requires timed dosing (current industry standard). Limits drainfield location to within 1/2 mile from the property served. Reduces drainfield parameters dependent on treatment level or other treatment offsets. | <ul style="list-style-type: none"> \$0 \$0 \$0 Costs incurred for applying a higher treatment standard are offset by the ability to develop previously unsuitable sites. |
| 06450, Sewage tanks | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | New requirements for both low volume and high volume LOSS. <ul style="list-style-type: none"> Increases single family resident STEP size from 900 to 1000 gallons (no cost difference between tank sizes). Establishes minimum size of 1000 gallons for grease interceptors (minimum industry standard tank size). | <ul style="list-style-type: none"> \$0 \$0 |

| Section Number and Required Activity | Applies to: | Brief Description of Change, Which Systems are Affected | Cost Range and Rationale |
|--|--|---|---|
| | | <ul style="list-style-type: none"> Increases LOSS design flow standard to three times daily design flow. | <ul style="list-style-type: none"> \$0 |
| 06550, Public domain and proprietary technologies | <ul style="list-style-type: none"> New LOSS Certain modifications to existing LOSS | New requirement for both low volume and high volume LOSS. The proposed rule incorporates alternative standards and guidance. | \$0 Applicants already required to follow standards and guidance for approval of distribution systems. |
| 07050, Operations and maintenance | <ul style="list-style-type: none"> All LOSS | New requirements for low volume LOSS. <ul style="list-style-type: none"> Maintain financial responsibility. Timely response to customer complaints. Avoid bypassing any treatment component. Effluent monitoring. Use of an accredited laboratory for sample testing. | <ul style="list-style-type: none"> \$0 \$0 \$0 \$200 (twenty percent of all low volume LOSS likely to monitor for fecal coliform and nitrates at \$25 per parameter four times per year = \$200). Costs for using an accredited lab are included in parameter cost estimate above. No new cost for high volume LOSS |
| 07200, Operator requirements | <ul style="list-style-type: none"> All LOSS | New requirements for both low volume and high volume LOSS. <ul style="list-style-type: none"> Requires a qualified operator for each LOSS 3,501 - 14,500 gpd. Requires ecology operator certification for high volume LOSS where previously part of management entity requirements. Requires a qualified operator trained specifically to operate a LOSS with proprietary treatment. | <ul style="list-style-type: none"> \$55 - \$1,600 initial approval. \$55 - \$400 renewal. \$0 - Cost of ecology certification same as previous management entity requirements. \$0 - Already required by proprietary treatment providers. |
| 07450, Failures | <ul style="list-style-type: none"> Specific existing LOSS | New requirements for both low volume and high volume LOSS. <ul style="list-style-type: none"> Notify the department within one business day of known failure. Notify customers within ten business days of being directed by the department to discontinue use of the LOSS. | <ul style="list-style-type: none"> \$0 Nominal. |
| 07500, Abandonment - Written notice | <ul style="list-style-type: none"> Specific existing LOSS | New requirements for low volume LOSS. Requires: <ul style="list-style-type: none"> One year advance notice to the department, LHJ, and customers of abandonment of LOSS. Removal of electrical and mechanical equipment in addition to existing site cleanup. | <ul style="list-style-type: none"> Nominal cost. Nominal cost (incremental increase over costs of existing required activities). |

Does the rule impose more than minor costs on two or more impacted businesses? For sewage system installers, the department determined the proposed rules do not pose more than minor costs on a small business as the costs of acquiring the experience required by the proposed rules is estimated at \$0.

For the three types of businesses the department selected to assess the impacts of the proposed rules on LOSS owners, the costs exceed all minor cost thresholds. The department assumes the costs will exceed minor cost thresholds of many other small businesses that own and operate LOSS.

Does the rule have a disproportionate impact on small businesses? The cost of this proposed rule can vary greatly depending on the circumstances of the specific LOSS. As stated previously, the size of the business does not have any bearing on the cost of the LOSS used for that business. Some of the largest, most complex, and most costly LOSS are owned by very small businesses with five employees, while other smaller simpler and less costly LOSS are owned by large businesses with more than fifty employees. Based on this circumstance, the department assumes the proposed rules will have a disproportionate impact on some small businesses.

Did we make an effort to reduce the impact of the rule? To reduce the impact of the proposed rules, the department modified substantive regulatory requirements for systems constructed on or before July 1, 1984. The statutory amendments of 2007 extended regulatory oversight to include LOSS built before 1984. These systems were previously exempt from regulation. The proposed rules make allowances for existing LOSS by reducing the documentation necessary to obtain an initial operating permit. These systems need only submit an application, the appropriate fee based on the system size, and copies of available design and construction documentation for department review. The department will then issue an operating permit unless there is a known failure. In order to protect public health and the environment, the department may impose conditions on the operating permit to ascertain the condition of the LOSS and ensure it is operated optimally over time. These conditions may include submitting a design engineer inspection and evaluation, a site risk survey, or an operation and maintenance manual; or the permit condition may prohibit additional connections to the LOSS until it is evaluated consistent with the requirements of the chapter.

By issuing an initial operating permit in this manner rather than requiring demonstration of compliance in advance, the department is also allowing a delay in compliance for these systems. This delay allows the department and the owner of the LOSS to work together to prioritize actions that best protect public health and the environment based on the conditions of the site and the LOSS.

The department also provides mitigation in the proposed rule by requiring environmental assessments based on the complexity of the proposed LOSS and the site conditions. This is achieved by requiring owners to complete a screening tool, the site risk survey (WAC 246-272B-03200), when proposing a new LOSS and certain modifications to existing LOSS, including expansion. The site risk survey requires information that characterizes the site's ability to support the

design flow and waste strength of the proposed LOSS. The site risk survey includes a description of the physical characteristics of the primary and reserve drainfield site, identification of sensitive or critical areas, basic hydrogeology information, and a topographic map. Only when the department is not able to determine the public health and environmental impacts of the LOSS based on the results of the site risk survey is an owner required to proceed with a comprehensive analysis called the HGR. The HGR (WAC 246-272B-03300) is a much more in-depth analysis of the site's ability to support the proposed LOSS based on the results of the site risk survey. The HGR requires a mitigation plan to reduce or eliminate potential environmental and public health impacts of the LOSS and may include a ground and surface water monitoring plan. Rather than requiring all LOSS owners to prepare an HGR and incur the additional cost to prepare the report, the department determined a site risk survey is adequate in most cases to assess the public health and environmental impacts of a proposed LOSS.

Did we involve small businesses in the rule development process? The department convened a workgroup to assist in developing rule requirements that best protect public health and the environment while considering the impact to small businesses in Washington state. The following businesses represented the interests of small businesses on the workgroup and contributed to the discussion on the scope and approach in drafting the rule:

- Building Industry Association of Washington;
- Manufactured Housing Communities of Washington;
- Aqua Test (OSS and LOSS operation and maintenance);
- Jensen Engineering and P Scott E. Jones & Associates (OSS and LOSS design engineers);
- Stuth Company, Inc. (OSS and LOSS installers);
- Taylor Shellfish Farms, Inc. (Shellfish industry and environmental interests); and
- Evergreen Valley Utilities (Private utility company).

Will businesses have to hire or fire any employees because of the requirements in the rule? The department determined businesses will not have to hire or fire any employees because of the requirements of the proposed rules. However, the statutory amendments of 2007 extended regulatory oversight to include LOSS built before 1984. These systems were previously exempt from regulation. The existing rules require each LOSS be operated by a qualified operator. The proposed rules carry this requirement forward and apply it to all LOSS, including systems built before 1984. While the proposed rules modify the qualifications for a LOSS operator, the requirement to have an operator is not new and the department's analysis concludes that there will not be any jobs created or lost as a result of the proposed rules.

A copy of the statement may be obtained by contacting Melissa McEachron, P.O. Box 47824, Olympia, WA 98504-7824, phone (360) 236-3265, fax (360) 236-2257, e-mail Melissa.McEachron@doh.wa.gov.

A small business economic impact statement was not prepared. The proposed rule would not impose requirements

on any industry identified in the North American industrial classification system.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Melissa McEachron, P.O. Box 47824, Olympia, WA 98504-7824, phone (360) 236-3265, fax (360) 236-2257, e-mail Melissa.McEachron@doh.wa.gov.

January 4, 2011
Mary C. Selecky
Secretary

PART 1: GENERAL PROVISIONS

NEW SECTION

WAC 246-272B-01000 Purpose and objectives. (1)

The purpose of this chapter is to protect public health and the environment by establishing a comprehensive framework for statewide management of LOSS.

(2) This chapter implements chapter 70.118B RCW, Large on-site sewage disposal systems, by establishing regulations for LOSS owners, operators, design engineers, and installers; and their duties in siting, designing, constructing, installing, permitting, operating, monitoring, maintaining, and repairing LOSS to achieve sustainable long-term sewage management.

NEW SECTION

WAC 246-272B-01100 Applicability and relationship to other statutes and regulations. (1) This chapter applies to all LOSS constructed, operated, and maintained in the state of Washington, except for:

- (a) Systems receiving industrial wastewater discharges;
- (b) Systems receiving storm water discharges;
- (c) Combined sanitary sewer and storm water systems;
- (d) Evaporative lagoon systems with design flows above three thousand five hundred gallons per day;
- (e) Systems with design flows above one hundred thousand gallons per day; and
- (f) Systems that discharge to surface water or to land surface.

(2) This chapter requires LOSS owners and those proposing to construct a LOSS to comply with applicable sections of chapter 90.48 RCW, Water pollution control, regarding control and prevention of pollution of waters of the state including, but not limited to:

- (a) Surface and groundwater standards established in RCW 90.48.035; and
- (b) Those provisions requiring all known, available, and reasonable methods of treatment.

(3) This chapter is intended to be consistent with the reclaimed water requirements under chapter 90.46 RCW, Reclaimed water use.

(4) This chapter is intended to be consistent with other statutes and rules that apply to professional engineers in chapter 18.43 RCW, Engineers and land surveyors, and Title 196 WAC, Licensing, department of (engineers and land surveyors, board of registration for professional).

(5) This chapter is intended to be consistent with the requirements of any comprehensive plan or development regulation adopted under chapter 36.70A RCW, Growth management—Planning by selected counties and cities, or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county.

(6) In addition to the requirements of this chapter, it is the responsibility of a person designing, constructing, owning, or operating and maintaining a LOSS to also comply with chapter 27.53 RCW, Archaeological sites and resources.

(7) In addition to the requirements of this chapter, it is the responsibility of a person designing, constructing, owning, or operating and maintaining a LOSS to also comply with applicable local requirements including, but not limited to, land use and development regulations, comprehensive plans, designated sensitive and critical areas regulations, and building permit and inspection requirements.

NEW SECTION

WAC 246-272B-01200 General requirements. (1)

Persons may not install or operate a LOSS without an operating permit as provided in this chapter.

(2) Owners shall obtain an operating permit from the department and shall renew it annually.

(3) LOSS permitted prior to the effective date of this chapter, that do not fully comply with the design, construction, and operating requirements in this chapter may continue in service without upgrade until modified, expanded, or repaired. The department shall require upgrades if it determines there is a threat to public health or the environment.

(4) The LOSS owner shall operate and maintain the LOSS to consistently and reliably treat sewage.

(5) The department may impose more stringent requirements than those described in this chapter when necessary to protect public health or the environment.

NEW SECTION

WAC 246-272B-01300 Acronyms and definitions.

The following acronyms and definitions apply throughout this chapter unless the context clearly requires otherwise:

(1) "Additive" means a commercial product added to an OSS intended to affect performance or aesthetics of an OSS.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Bank" means any naturally occurring slope greater than one hundred percent (forty-five degrees) and extending vertically at least five feet from the toe of the slope to the top of the slope.

(4) "Bed" means a drainfield component consisting of an excavation with a width greater than three feet and up to ten feet.

(5) "BOD" means biochemical oxygen demand, typically expressed in mg/L.

(6) "Building sewer" means that part of the horizontal piping of a drainage system extending from the building drain, which collects sewage from all the drainage pipes inside a building, to an OSS. It begins two feet outside the building wall and conveys sewage from the building drain to the remaining portions of the OSS.

(7) "CBOD" means carbonaceous biochemical oxygen demand, typically expressed in mg/L.

(8) "Cesspool" means a pit receiving untreated sewage and allowing the liquid to seep into the surrounding soil or rock.

(9) "Covenant" means a recorded agreement stating certain activities or practices are required or prohibited.

(10) "Cover material" means soil placed over a drainfield or dripfield composed predominantly of mineral material with no greater than ten percent organic content. Cover material may contain an organic surface layer for establishing a vegetative landscape to reduce soil erosion.

(11) "Cut" means any artificially formed slope greater than one hundred percent (forty-five degrees) and extending vertically at least five feet from the toe of the slope to the top of the slope.

(12) "Department" means the Washington state department of health.

(13) "Design engineer" means a professional engineer who is licensed in Washington state under chapter 18.43 RCW and is experienced and qualified in the analysis and design of LOSS or sewage treatment system components. If the LOSS or any component of the LOSS is considered a "significant structure" as defined in chapter 18.43 RCW, the design engineer shall be licensed as a structural engineer unless an exception specified in RCW 18.43.040 applies.

(14) "Design flow" means the maximum volume of sewage a residence, structure, or other facility is estimated to generate in a twenty-four-hour period. It incorporates both an operating capacity and a surge capacity for the LOSS during periodic heavy use events.

(15) "Development" means a combination of residences, structures, and facilities, or similar activity, in or on subdivisions, sites, or areas, where residential strength sewage is produced.

(16) "Distribution technology" means any arrangement of equipment or materials that distributes LOSS effluent within the drainfield.

(17) "Domestic sewage" means urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, nonresidential buildings such as churches or schools, commercial establishments, or other buildings, excluding industrial wastewater and storm water.

(18) "Drain rock" means clean washed gravel or crushed rock ranging in size from three-fourths inch to two and one-half inches, and containing no more than two percent by weight passing a US No. 8 sieve and no more than one percent by weight passing a US No. 200 sieve.

(19) "Drainfield" means the treatment and soil dispersal component of a LOSS consisting of trenches or beds containing either a distribution pipe within a layer of drain rock covered with a geotextile or equivalent covering, or an approved gravelless distribution technology, designed and installed in original, undisturbed, unsaturated soil providing at least minimal vertical separation as established in this chapter, with pressure distribution of effluent.

(20) "Dripfield" means a type of drainfield where effluent is applied directly into the soil through driplines.

(21) "Dripline" means the distribution piping used with a subsurface drip system to discharge effluent into the soil. A dripline consists of small diameter, flexible polyethylene tubing with small in-line emitters.

(22) "Drywell" means a subterranean pit, chamber, or structure used to collect storm water, effluent, or other liquid and disperse it into the soil.

(23) "Effective particle size" means the size of sieve opening where ninety percent by weight of a sample of filter media is retained on the sieve and ten percent passes through the sieve.

(24) "Effluent" means liquid discharged from a septic tank or other LOSS treatment component.

(25) "Emitter" means an orifice that discharges effluent at a slow, controlled rate.

(26) "Expansion" means a change to the LOSS or its influent that causes the LOSS to exceed its existing treatment or dispersal capacity, or a change that reduces the treatment or dispersal capacity of the existing LOSS.

(27) "Extremely gravelly" means soil with sixty to ninety percent rock fragments by volume.

(28) "Failure" means a condition of a LOSS or LOSS component that threatens the public health or environment by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public.

(29) "FC" means fecal coliform bacteria, typically expressed in number of colonies/100 mL.

(30) "Fecal coliform" means bacteria common to the digestive systems of warm blooded animals that are cultured in standards tests. Counts of these organisms are typically used to indicate potential contamination from sewage or to describe a level of needed disinfection, and are generally expressed as colonies per 100 ml.

(31) "gpd" means gallons per day.

(32) "Gravelly" means soils with fifteen to thirty-four percent rock fragments by volume.

(33) "Greywater" means domestic type flows from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen or utility sinks. Greywater does not include flow from a toilet or urinal.

(34) "Gross land area" means the total land area of a proposed development that might include the centerline of adjoining road or street right of ways, if dedicated as part of the development, but does not include land area under surface water.

(35) "Groundwater" means water in a saturated zone or stratum beneath the surface of land or below a surface water.

(36) "High quality effluent (HQE)" means a treatment level higher than Treatment Level B as established in WAC 246-272B-06250.

(37) "Holding tank sewage system" means a LOSS that incorporates a sewage tank without a discharge outlet, and requires the services of a sewage pumper, and off-site treatment and disposal for the generated sewage.

(38) "Hydraulic loading rate" means the rate at which effluent is applied to a drainfield or other treatment component usually expressed as gpd/sf.

(39) "Hydrogeologist" means a professional hydrogeologist who is licensed in Washington state under chapter 18.220 RCW.

(40) "HGR" means hydrogeology report.

(41) "HQE" means high quality effluent.

(42) "Industrial wastewater" means the water or liquid carried waste from an industrial process. This waste may result from any process or activity of industry, manufacture, trade, or business; from the development of any natural resource; or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

(43) "Infiltrative surface" means the horizontal surface area measured in square feet within a drainfield to which effluent is applied and through which effluent moves into original undisturbed soil or other porous treatment media.

(44) "Influent" means the domestic sewage entering the LOSS.

(45) "Installer" means a person who installs or repairs an OSS and who meets the requirements in WAC 246-272B-05000.

(46) "Large on-site sewage system (LOSS)" means an OSS with design flows of three thousand five hundred gpd up to and including one hundred thousand gpd.

(47) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department as defined in RCW 70.05.010, or his or her authorized representative.

(48) "LOSS" means large on-site sewage system.

(49) "Maintenance" means the actions necessary to keep the OSS and its components functioning to protect public health and the environment.

(50) "Management entity" means a publicly or privately owned entity acting as an agent of the owner responsible for the proper and safe long-term management of the LOSS.

(51) "Massive structure" means soil that appears as a coherent or solid mass not separated into peds of any kind.

(52) "mg/L" means milligrams per liter.

(53) "ml" means milliliter.

(54) "mm" means millimeter.

(55) "Moderate structure" means well formed distinct peds evident in undisturbed soil. When disturbed, soil material parts into a mixture of whole peds, broken peds, and material that is not in peds.

(56) "Modification" means a change to an existing LOSS that includes, but is not limited to, a repair, an expansion, a replacement, treatment or other process improvement, or a management or ownership change.

(57) "Monitoring" means routine observation and measurement of LOSS performance to determine if it is functioning as intended and if maintenance is needed. Monitoring also includes maintaining accurate records documenting monitoring activities.

(58) "N₁₀" means a treatment level based on total nitrogen of 10 mg/L-N.

(59) "N₂₀" means a treatment level based on total nitrogen of 20 mg/L-N.

(60) "NEMA" means National Electrical Manufacturer Association.

(61) "NRCS" means Natural Resources Conservation Service.

(62) "O&G" means oils and grease.

(63) "Oils and grease" means a component of sewage typically originating from food stuffs or consisting of compounds of alcohol or glycerol with fatty acids, typically expressed in mg/L. Standard laboratory methods for determining O&G are USEPA Method 1664 or Standard Methods 5520.

(64) "O&M" means operations and maintenance.

(65) "On-site sewage system (OSS)" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. It consists of a collection system, a treatment component or treatment sequence, and a drainfield. It may or may not include a mechanical treatment system. An OSS also refers to a holding tank sewage system or other system that does not have a drainfield. A holding tank that discharges to a sewer is not included in the definition of OSS. A system into which storm water or industrial wastewater is discharged is not included in the definition of OSS.

(66) "Operator" means a person who is responsible for operating the LOSS and ensuring that it consistently and reliably treats sewage according to the terms and conditions of the operating permit, and who meets the requirements in WAC 246-272B-07200.

(67) "Operating capacity" means the average daily volume of sewage that a LOSS can treat and disperse on a sustained basis.

(68) "Ordinary high-water mark" means the mark on lakes, streams, springs, and tidal waters found by examining the beds and banks and ascertaining where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland with respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. The following definitions apply where the ordinary high-water mark cannot be found:

(a) The ordinary high-water mark adjoining marine water is the elevation at mean higher high tide; and

(b) The ordinary high-water mark adjoining freshwater is the line of mean high water.

(69) "OSS" means on-site sewage system.

(70) "Owner" means a person responsible for the LOSS and for complying with this chapter.

(71) "P" means phosphorus, typically expressed in mg/L.

(72) "Ped" means a unit of soil structure such as a block, column, granule, plate, or prism formed by natural processes.

(73) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(74) "Platy structure" means soil that contains flat peds that lie horizontally and often overlap. This type of structure impedes the vertical movement of water.

(75) "Pressure distribution" means a system of small diameter pipes equally distributing pumped effluent throughout a drainfield.

(76) "Private management entity" means a person, for-profit organization, nonprofit organization, or the authorized agents of these entities responsible for the proper and safe

long-term management of the LOSS. This definition does not include public entities or wastewater companies regulated by the Washington utilities and transportation commission.

(77) "Proprietary product" means sewage treatment or distribution technology, methods, and materials subject to a patent or trademark.

(78) "psi" means pounds per square inch.

(79) "Public domain technology" means sewage treatment or distribution technology, method, or material not subject to a patent or trademark.

(80) "Public entity" means a municipal corporation such as a city; town; county; water, sewer, or water-sewer district; public utility district; port district; or federal, state, or local agency.

(81) "Pumper" means a person approved by the local health officer to remove and transport sewage or septage from an OSS.

(82) "Reclaimed water" means water derived in any part from wastewater with a domestic wastewater component that has been adequately and reliably treated, so that it can be used for beneficial purposes. Reclaimed water is not considered a wastewater.

(83) "Record drawing" means an accurate graphic and written record of the location and features that are needed to properly monitor, operate, and maintain the LOSS that bears the stamp and signature of a design engineer.

(84) "Repair" means reconstruction, relocation, or replacement of a LOSS or a LOSS component that has failed or is not functioning as designed.

(85) "Reserve area" means an area of land approved for the installation of a LOSS and dedicated for replacement of the LOSS in the event of a failure.

(86) "Residential strength sewage" means sewage with the constituency and strength of biochemical oxygen demand; carbonaceous biochemical oxygen demand; fats, oils, and grease; and suspended solids typical of domestic sewage.

(87) "Restrictive layer" means a stratum impeding the vertical movement of water, air, and growth of plant roots. Some examples include: Hardpan, claypan, fragipan, caliche, some compacted soils, bedrock, or unstructured clay soils.

(88) "Rock fragment" means pieces of rocks or minerals having a diameter greater than two millimeters, such as gravel, cobbles, stones, and boulders.

(89) "Sanitary sewer system" means all facilities, including approved LOSS, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial wastewater. LOSS are only considered sanitary sewer systems if they are designed to serve urban densities. Sanitary sewer system is also commonly known as public sewer system.

(90) "Seepage pit" means an excavation where the side-wall or bottom is designed to dispose of effluent without the use of pipe or other approved method of distribution.

(91) "Septage" means the mixture of solid wastes, scum, sludge, and liquids pumped from septic tanks, pump chambers, holding tanks, or other OSS components.

(92) "Septic tank" means a water tight treatment receptacle receiving the discharge of sewage from a building sewer or sewers; designed and constructed to permit separation of settleable and floating solids from the liquid, and detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

(93) "Septic tank effluent (STE)" means liquid waste with characteristics typical of effluent from a properly sized septic tank treating residential strength sewage.

(94) "Sewage tank" means a water tight prefabricated or cast-in-place septic tank, pump tank, holding tank, grease interceptor tank, recirculating filter tank, tank used with a proprietary product, or any other tank used in an OSS. This term also includes tanks used in a septic tank effluent pump or vacuum collection or transmission system for an OSS.

(95) "Site risk survey (SRS)" means a screening tool used to identify and evaluate potential impacts to public health and the environment from a LOSS.

(96) "Soil log" means a detailed description of soil characteristics providing information on the soil's capacity to act as an acceptable treatment and dispersal medium for sewage.

(97) "Soil scientist" means a person certified by the American Society of Agronomy or Soil Scientist Society of America as a Certified Professional Soil Scientist.

(98) "Soil texture" means the USDA numerical classification of soil particles two millimeters or less in size and the description of the percent of sand, silt, and clay.

(99) "Soil type" means one of seven numerical classifications based on USDA classifications of soil texture, structure and percent rock fragments as described in Table 1 in WAC 246-272B-03400.

(100) "sf" means square feet.

(101) "SRS" means site risk survey.

(102) "STE" means septic tank effluent.

(103) "Strong structure" means peds are distinct in undisturbed soil. They separate cleanly when soil is disturbed, and the soil material separates mainly into whole peds when removed.

(104) "Subsurface drip system" means a pressurized wastewater distribution system that can deliver small, precise doses of effluent to soil surrounding the dripline.

(105) "Surface water" means any body of water, whether fresh or marine, which either flows or is contained in natural or artificial unlined depressions or drainage course and contains water for forty-eight continuous hours during May through October. Such bodies include, but are not limited to, natural and artificial lakes, ponds, springs, rivers, streams, canals, ditches, swamps, marshes, tidal waters, and wetlands.

(106) "Test pit" means an excavation used to observe the soil profile in its original condition for purpose of completing a soil log.

(107) "Timed dosing" means delivery of discrete volumes of sewage at prescribed time intervals.

(108) "Treatment component" means a technology or process that reduces targeted constituents in sewage in preparation for dispersal or disposal.

(109) "Trench" means a drainfield component consisting of an excavation with a width of three feet or less.

(110) "TSS" means total suspended solids, typically expressed in mg/L.

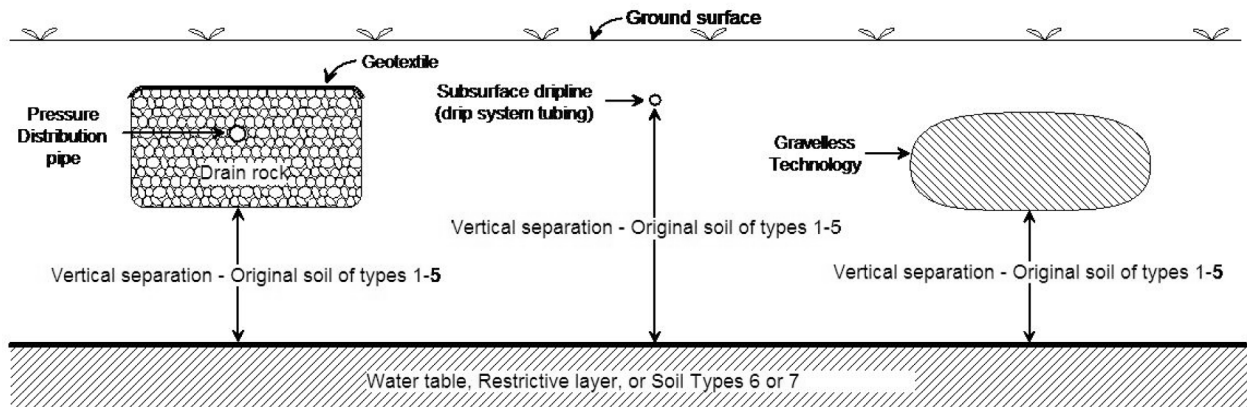
(111) "Uniformity coefficient" means a numeric quantity calculated by dividing the size of the sieve opening which will pass sixty percent of a sample by the size of the opening which will pass ten percent of the sample on a weight basis. Symbolically this is depicted as $d_{60}/d_{10} = U_c$.

(112) "USDA" means United States Department of Agriculture.

(113) "USEPA" means United States Environmental Protection Agency.

(114) "Vertical separation" means the depth of unsaturated, original, undisturbed soil between the infiltrative surface of a drainfield component and the highest seasonal water table, a restrictive layer, or soil types 6 or 7 as illustrated by the profile drawings of drainfields in Figure 1 below.

Figure 1: Profile Drawings of Drainfields Showing Examples of Vertical Separation



(115) "Very gravelly" means soil with thirty-five to fifty-nine percent rock fragments by volume.

(116) "Water table" means the upper surface of the groundwater, whether permanent or seasonal.

(117) "Well" means water well, resource protection well, and dewatering well as defined in RCW 18.104.020.

PART 2: APPROVAL AND PERMITTING PROCESS

Subpart A - New Construction

NEW SECTION

WAC 246-272B-02000 Site review—Predesign report, soil characterization, and site inspection. (1) The owner proposing a new LOSS shall submit to the department:

- (a) Two hard copies and one copy in electronic format acceptable to the department of the predesign report that meets the requirements of WAC 246-272B-03000 and is prepared, stamped, signed, and dated by a design engineer; and
- (b) The base fee as established in chapter 246-272 WAC, Wastewater and reclaimed water use fees.

(2) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the conceptual treatment design appears to be viable, the notice of determination must include an invoice for the inspection fee as established in chapter 246-272 WAC, Wastewater and reclaimed water use fees, and instructions to proceed to the site inspection.

(b) If the conceptual treatment design is not viable, the notice of determination must include an invoice for all unpaid fees, the reasons for the determination, and a statement that the department is discontinuing review of the project.

(3) Upon receiving the notice to proceed, the owner may proceed with the site inspection. To proceed, the owner shall:

- (a) Schedule the site inspection with the department, design engineer and the person who prepared the soil logs if different than the design engineer; and
- (b) Pay the inspection fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees.

(4) After receiving the fee, the department shall inspect the proposed LOSS site with the design engineer and the person who prepared the soil logs, if different than the design engineer, to:

- (a) View test pits;
- (b) Verify soil type and other predesign report information; and
- (c) Determine if more information or changes are needed, including laboratory analysis of soil consistent with WAC 246-272B-03400.

(5) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department determines that the soil and site information is consistent with the conceptual treatment design, the notice of determination must include the maximum loading rate and instructions to proceed to the environmental review.

(b) If the department determines that the soil and site information is not consistent with the conceptual treatment design, the notice of determination must include an invoice for all unpaid fees, the reasons for the decision, and a statement that the department is discontinuing review of the project. Once the department discontinues review, the LOSS project ends. The department shall treat any future LOSS project submittals involving the same location as a new

LOSS project subject to the requirements of subsection (1) of this section.

NEW SECTION

WAC 246-272B-02050 Environmental review—Site risk survey and hydrogeology report. (1) Upon receiving the notice to proceed, the owner may proceed with the environmental review. To proceed, the owner shall submit an SRS that meets the requirements of WAC 246-272B-03200.

(2) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department determines that the SRS contains sufficient information to determine the public health and environmental impacts of the LOSS and the LOSS is feasible, the notice of determination must include instructions to proceed to engineering.

(b) If the department determines that site conditions identified in the SRS require further evaluation to determine the public health and environmental impacts of the LOSS, the notice of determination must include instructions for the owner to submit an HGR.

(3) Upon receiving the notice requiring an HGR, the owner may complete an HGR. To proceed, the owner shall submit an HGR that meets the requirements of WAC 246-272B-03300 and is prepared, signed, and dated by a licensed hydrogeologist.

(4) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department determines that the HGR contains sufficient information and the LOSS is feasible, the notice of determination must include instructions to proceed to engineering.

(b) If the department determines that the HGR indicates the LOSS is not feasible due to unacceptable environmental or public health impacts, the notice of determination must include an invoice for all unpaid fees and the reasons for the decision, and the department shall discontinue review of the project.

(5) An owner may satisfy the requirements of an SRS by submitting an HGR that meets the requirements of WAC 246-272B-03300.

NEW SECTION

WAC 246-272B-02100 Engineering. (1) Upon receiving the department determination that the HGR contains sufficient information to determine the public health and environmental impacts of the LOSS and the LOSS is feasible, the owner may proceed with engineering. To proceed, the owner shall submit two hard copies and one copy in an electronic format acceptable to the department of an engineering report that meets the requirements of WAC 246-272B-04000, and a draft O&M manual that meets the requirements of WAC 246-272B-04200 that are prepared, stamped, signed, and dated by a design engineer.

(2) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department approves the engineering report and draft O&M manual, the notice of determination must include instructions to proceed to plans and specifications.

(b) If the department does not approve the engineering report and draft O&M manual, the notice of determination must include an invoice for all unpaid fees, the reasons for the decision, and a statement that the department is discontinuing review of the project.

(3) Upon receiving the notice to proceed, the owner may proceed with plans and specifications. To proceed, the owner shall submit to the department three hard copies and one copy, in an electronic format acceptable to the department, of plans and specifications that meet the requirements of WAC 246-272B-04400 that are prepared, stamped, signed, and dated by a design engineer.

(4) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department approves the plans and specifications, the notice of determination must include an invoice for unpaid fees, a copy of the department-approved plans and specifications, and instructions to submit a completed operating permit application.

(b) If the department does not approve the plans and specifications, the notice of determination must include an invoice for all unpaid fees and the reasons for the decision, and the department shall discontinue review of the project.

(5) If the department approves the plans and specifications, the department shall send a copy of the department-approved plans and specifications to the design engineer.

(6) The owner shall use department-approved plans and specifications for bidding and construction purposes.

NEW SECTION

WAC 246-272B-02150 LOSS 14,500 gpd and below—Operating permit application and approval to construct. (1) To apply for an operating permit, the owner of a LOSS with design flow of 14,500 gpd and below shall submit a completed operating permit application on a form provided by the department; the operating permit fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees; and all other unpaid fees.

(2) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department determines that the application meets the requirements of this chapter, the notice of determination must include the draft operating permit, and an invoice for the inspection fee and any additional review fees established in chapter 246-272 WAC, Wastewater and reclaimed water use fees.

(b) If the department determines that the application does not meet the requirements of this chapter, the notice of determination must include an invoice for all unpaid fees, the reasons for the decision, and a statement that the department is discontinuing review of the project.

(3) If the owner disagrees with the department draft operating permit, the owner may submit comments to the department within thirty days of receipt.

(4) The department shall consider comments submitted by the owner, and issue approval to construct and the operating permit after all fees are paid.

NEW SECTION

WAC 246-272B-02200 LOSS greater than 14,500 gpd—Operating permit application. (1) To apply for an operating permit, the owner of a LOSS with a design flow greater than 14,500 gpd shall complete and submit an operating permit application on a form provided by the department; the operating permit fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees; and all other unpaid fees.

(2) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department determines that the application meets the requirements of this chapter, the notice of determination must include the draft operating permit and instructions to provide public notice that meets the requirements of WAC 246-272B-02250.

(b) If the department determines that the application does not meet the requirements of this chapter, the notice of determination must include an invoice for all unpaid fees and the reasons for the decision, and the department shall discontinue review of the project.

(3) If the owner disagrees with the department draft operating permit, the owner may submit comments to the department, within thirty days of receipt.

(4) The department shall consider comments submitted by the owner and may modify the draft operating permit before the owner provides public notice.

NEW SECTION

WAC 246-272B-02250 LOSS greater than 14,500 gpd—Public notice. (1) Within one year of receiving the notice of determination under WAC 246-272B-02200 (2)(a), the owner may proceed with public notice. To proceed, the owner shall provide public notice that meets the requirements of this section prior to receiving department approval to construct the LOSS.

(2) The owner shall provide the draft public notice to the department for review and approval. The public notice must include the following information:

- (a) Date of notice;
- (b) Name, mailing and e-mail addresses of the owner;
- (c) Brief description of development to be served by the proposal, including property location and local zoning of the development and drainfield site;
- (d) Proposed LOSS design flow;
- (e) Proposed LOSS waste strength;
- (f) Proposed location of treatment and drainfield site, giving street address and parcel number;
- (g) How to obtain a copy of the operating permit application, draft operating permit, LOSS project information, or additional information from the owner; and
- (h) How to comment to the department and the date comments are due. Comments are due thirty days from the first date of publication.

(3) The department shall review and provide a written response to the owner within fourteen days of receipt of the draft public notice. The department may approve the notice as submitted or require changes to the notice including, but not limited to, corrections, or additional distribution or posting of the public notice to interested parties, local governments, or state agencies.

(4) The owner shall, at the owner's expense:

(a) Make changes to the public notice as directed by the department prior to publication and distribution;

(b) Publish the public notice once a week for two consecutive weeks in a local paper of general circulation in the county where the project is proposed;

(c) Provide additional distribution or posting of the public notice if directed by the department; and

(d) Submit an affidavit of publication to the department within fourteen days of the second publication.

(5) If the department determines that the public notice does not meet the requirements of this section, the department shall notify the owner in writing and include an invoice for all unpaid fees and the reasons for the decision, and the department may:

(a) Allow the owner an opportunity to correct public notice deficiencies in order to meet the requirements of this section; or

(b) Discontinue review of the project.

NEW SECTION

WAC 246-272B-02300 LOSS greater than 14,500 gpd—Operating permit and approval to construct. (1) The department shall consider comments received within thirty days of the first published public notice required by WAC 246-272B-02250, and may:

(a) Require additional information from the owner;

(b) Require changes to the LOSS design, O&M manual, or management plan; or

(c) Modify the draft operating permit.

(2) The department shall notify the owner in writing of additional submittals required by subsection (1) of this section.

(3) The owner shall submit required information and changes to the LOSS design, O&M manual, or management plan to the department.

(4) After reviewing all submitted information, the department shall provide a written notice of determination to the owner.

(a) If the department determines that the proposed LOSS meets the requirements of this chapter, the notice of determination must include an invoice for the final inspection fee, the annual operating permit fee, all other unpaid fees, and the operating permit.

(b) If the department determines that the LOSS does not meet the requirements of this chapter, the notice of determination must include an invoice for all unpaid fees and the reasons for the decision, and the department shall discontinue review of the project.

(5) The department shall provide on the department's web site at doh.wa.gov the notice of final decision that identifies whether the LOSS operating permit has been approved

and issued, or has been denied. The department may also use any of the following methods to provide the notice of final decision:

- (a) Publication in a local newspaper of general circulation in the county of the proposal;
 - (b) Electronic mail;
 - (c) Press release; or
 - (d) Other means of notification the department deems appropriate.
- (6) An owner may appeal the department's decision on the operating permit by requesting an adjudicative proceeding consistent with WAC 246-272B-08200.
- (7) An aggrieved person may appeal the department's issuance of an initial operating permit according to WAC 246-272B-08300.
- (8) The department shall notify the owner in writing of approval to construct when all fees are paid and all appeals, if any, are resolved.

NEW SECTION

WAC 246-272B-02350 Construction. (1) The owner may not begin construction until receiving the department's written approval to construct.

(2) After receiving approval to construct, the owner shall annually apply to renew the operating permit.

(3) If construction does not begin within two years following the date of the department's approval of the plans and specifications:

(a) The approval for plans and specifications, any approval given to documents following public notice, and notice to construct expire and become null and void. If these approvals expire, the operating permit becomes null and void.

(b) The owner may request a single extension of up to two years of the plans and specifications approval and all subsequent approvals prior to the two year expiration date by submitting a written request including a status report and construction schedule with the anticipated completion date.

(c) The department may impose additional terms and conditions if it grants an extension.

(4) The owner shall use an installer that meets the requirements of WAC 246-272B-05000 to construct the LOSS.

(5) If during construction, the owner determines a substantial change to the approved plans and specifications is necessary, the owner shall submit revised plans and specifications that are prepared, stamped, signed, and dated by a design engineer to the department for review and approval.

(6) The department shall review the revised plans and specifications, approve or deny the changes, and notify the owner of the decision in writing and include an invoice for review fees.

(7) The owner shall construct the LOSS consistent with the approved plans and specifications, and Part 5 of this chapter.

(8) After the design engineer has verified the LOSS has been pretested and functions consistently with the approved engineering documents and plans and specifications, the

owner shall schedule the final inspection with the department and design engineer.

(9) The department shall conduct the final inspection in accordance with WAC 246-272B-05300 and notify the owner in writing of the inspection results.

(10) If the LOSS fails the final inspection, the department may:

(a) Allow the owner the opportunity to correct deficiencies and schedule another final inspection with the department and design engineer; or

(b) Determine the LOSS is unable to pass final inspection.

(11) If the department determines the LOSS is unable to pass final inspection, the department shall notify the owner in writing. The notice must include an invoice for all unpaid fees, the reasons for the decision, and a statement that the department is discontinuing review of the project and the LOSS may not be put into service.

(12) If the LOSS passes the final inspection, the owner shall submit to the department the construction completion report, final O&M manual, record drawings, and final management plan, all of which must be prepared, stamped, signed, and dated by a design engineer; and all unpaid fees within sixty days of receiving the final inspection results.

(13) After receiving final documents and all unpaid fees, the department may approve the construction completion report, final O&M manual, record drawings, and final management plan as submitted or require changes. If the final documents are approved, the department shall notify the owner in writing that the LOSS may be put into service. The LOSS may not be put into service until the owner receives department notification.

(14) The owner shall provide copies of the final department-approved O&M manual to the operator and management entity.

Subpart B - First Department Operating Permit for Existing LOSS

NEW SECTION

WAC 246-272B-02400 LOSS constructed on or before July 1, 1984. (1) The owner of a LOSS constructed on or before July 1, 1984, who does not have an operating permit issued by the department shall submit:

(a) A completed application on a form provided by the department;

(b) Copies of all available design and construction documentation, including previous design and construction reviews of the LOSS by the department of ecology or local health jurisdiction;

(c) A copy of any permit previously issued by the department of ecology or a local health jurisdiction; and

(d) The annual operating permit fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees.

(2) The department shall review the application and all other documents submitted and may issue an operating permit unless there is a current known failure. The operating permit may have conditions including, but not limited to, the following owner requirements:

(a) Submit inspection results prepared, stamped, signed, and dated by a design engineer that identify and map the basic treatment elements of the LOSS;

(b) Submit an SRS;

(c) Submit an engineering evaluation prepared, stamped, signed, and dated by a design engineer to verify that the LOSS is operating properly to treat sewage, and protect public health and the environment;

(d) Submit an O&M manual; or

(e) Prohibit additional connections to the LOSS until the owner demonstrates that the LOSS treatment process, drainfield, and reserve area meet requirements specified in WAC 246-272B-06050, 246-272B-06100, and 246-272B-06250 through 246-272B-06500.

(3) If the LOSS is failing, the owner shall comply with the requirements in WAC 246-272B-07450.

NEW SECTION

WAC 246-272B-02450 LOSS with current permit from department of ecology or local health jurisdiction.

(1) The owner of a LOSS permitted by the department of ecology or local health jurisdiction shall continue to maintain a current permit and meet its terms and conditions until the department issues a LOSS operating permit.

(2) The department shall notify the owner when to submit an operating permit application to the department.

(3) The owner shall submit a complete operating permit application on a form provided by the department and annual operating permit fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees, within thirty days of receiving notification from the department.

(4) The department shall review the operating permit application and other information obtained from the department of ecology or local health jurisdiction and may issue an operating permit. The operating permit may have conditions including, but not limited to, the following:

(a) Continue existing permit conditions;

(b) Submit inspection results prepared, stamped, signed, and dated by a design engineer that identify and map the basic treatment elements of the LOSS;

(c) Submit an SRS;

(d) Submit an engineering evaluation prepared, stamped, signed, and dated by a design engineer to verify that the LOSS is operating properly to treat sewage, and protect public health and the environment;

(e) Submit an O&M manual; or

(f) Prohibit additional connections to the LOSS until the owner demonstrates that the LOSS treatment process, drainfield, and reserve area meet requirements specified in WAC 246-272B-06050, 246-272B-06100, and 246-272B-06250 through 246-272B-06500.

(5) If the LOSS is failing, the owner shall comply with the requirements in WAC 246-272B-07450.

NEW SECTION

WAC 246-272B-02500 LOSS constructed after July 1, 1984, without current operating or discharge permit.

(1) The owner of a LOSS constructed after July 1, 1984, that does not have an operating or discharge permit from the

department, department of ecology, or local health jurisdiction shall submit:

(a) An operating permit application on a form provided by the department;

(b) Copies of all design and construction documents, including any previous design and construction review of the LOSS by the department of ecology or local health jurisdiction;

(c) Inspection results prepared, stamped, signed, and dated by a design engineer that identify and map the basic treatment elements of the LOSS;

(d) An SRS;

(e) An engineering evaluation prepared, stamped, signed, and dated by a design engineer to verify that the LOSS is operating properly to treat sewage, and protect public health and the environment; and

(f) The annual operating permit fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees.

(2) The department may also require the owner to submit a predesign report, engineering report, plans and specification, O&M manual, or management plan.

(3) The department shall review the operating permit application and other information provided by the owner or obtained from the department of ecology or local health jurisdiction and may issue an operating permit.

(4) The department shall not approve any additional connections to the LOSS until the owner demonstrates that the LOSS treatment process, drainfield, and reserve area meet requirements specified in WAC 246-272B-06050, 246-272B-06100, and 246-272B-06250 through 246-272B-06500.

(5) If the LOSS is failing, the owner shall comply with the requirements of WAC 246-272B-07450.

Subpart C - Permitted LOSS

NEW SECTION

WAC 246-272B-02550 LOSS modifications. (1)

When a LOSS owner proposes a modification to the design, operation, or physical facilities, or when the department requires the owner to make such a modification, the owner shall consult with the department to determine the appropriate site review, environmental review, or engineering documents to prepare and submit.

(2) Based on consultation with the department, the owner proposing a LOSS modification shall submit to the department:

(a) Two hard copies and one copy in electronic format acceptable to the department, that meets the requirements of this chapter of one or more of the following documents: Pre-design report, SRS, HGR, engineering report, management plan, O&M manual; or

(b) Three hard copies and one copy in electronic format acceptable to the department of plans and specifications that meet the requirements of WAC 246-272B-04400; or

(c) Documents identified in subsection (2)(a) and (b) of this section; and

(d) The base fee as established in chapter 246-272 WAC, Wastewater and reclaimed water use fees.

(3) The owner and department shall follow the process for preparing, submitting, reviewing, and approving site review, environmental review, and engineering submittals consistent with WAC 246-272B-02000, 246-272B-02050, and 246-272B-02100.

(4) The department shall notify the owner in writing of its decision to approve or deny the proposal to repair, expand, or otherwise modify a LOSS.

(5) If the department approves the proposal to repair, expand, or otherwise modify a LOSS where the existing and proposed design flow is 14,500 gpd or less, the department shall issue a notice to construct after receiving all unpaid fees, and the owner shall comply with the requirements of Part 5 of this chapter.

(6) If the department approves the proposal to repair or otherwise modify a LOSS where the existing design flow is more than 14,500 gpd, the flow will not increase, and waste strength will not change, the department shall issue a notice to construct after receiving all unpaid fees, and the owner shall comply with the requirements of Part 5 of this chapter.

(7) If the department approves the proposal to repair, expand, or otherwise modify a LOSS, the owner shall submit an operating permit application consistent with WAC 246-272B-02200, and provide public notice consistent with WAC 246-272B-02250 when:

(a) The proposed modification expands the design flow from 14,500 gpd or less to greater than 14,500 gpd; or

(b) The existing design flow is greater than 14,500 gpd and:

(i) The design flow increases; or

(ii) The waste strength characteristics change.

(8) If the proposal is denied, the notification must include the reasons for the denial.

(9) LOSS owners proposing modifications to the design, operation, or physical facilities identified in subsection (7) of this section shall follow applicable requirements of WAC 246-272B-02300 and 246-272B-02350.

(10) LOSS owners shall report any change in ownership or management entity to the department a minimum of thirty days prior to the change taking effect.

(11) Any new owner shall submit an application for a new operating permit, the permit fee, and a new management plan that meets the requirements of WAC 246-272B-04100 thirty days prior to assuming ownership.

(12) The department may approve or deny the change in ownership, notifying the owner of the decision in writing.

(a) If the department approves the change in ownership, it shall issue the new owner an operating permit within thirty days of receiving the new application and management plan.

(b) If the department denies the change in ownership, the notice of the decision must include the reasons for the decision.

(13) If the change in ownership is denied:

(a) The owner to whom the operating permit is issued may continue to operate the LOSS;

(b) The department may allow another person to operate the LOSS under a compliance agreement or order; or

(c) The department may direct the person operating the LOSS without a valid operating permit to discontinue operating the LOSS.

NEW SECTION

WAC 246-272B-02650 Operating permit renewals.

(1) The owner shall submit a completed operating permit renewal application, annual report, all other information required by the department, and the annual permit fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees, to the department at least thirty days prior to the expiration date of the current operating permit.

(2) The department shall review the completed renewal application, submitted information, the existing permit, and other relevant information to determine compliance with this chapter and existing operating permit conditions and requirements.

(3) The department shall issue, deny, or modify a renewal operating permit within thirty days of receiving the complete renewal form and other required items, or notify the owner of any delay within thirty days.

(4) During the department's review of the completed renewal application and other materials, the current LOSS operating permit shall remain in full force and effect until the owner is notified of the department's decision.

(5) In the renewal operating permit, the department shall impose conditions or requirements it determines are necessary to demonstrate the LOSS is properly operated and maintained to protect public health and the environment.

NEW SECTION

WAC 246-272B-02700 Operating permit requirements and conditions. (1) The department shall issue a LOSS operating permit for the LOSS and owner named in the application.

(2) The department may issue a new operating permit when there is a change in LOSS ownership or management, according to WAC 246-272B-02550.

(3) LOSS owners shall employ one or more operators meeting the requirements of WAC 246-272B-07200 at all times and shall notify the department of any change in the operator, including when there is no operator, within thirty days.

(4) LOSS owners shall employ an approved management entity at all times that meets the requirements of WAC 246-272B-04100.

(5) Operating permit conditions may include, but are not limited to, requiring:

(a) Monitoring information;

(b) Reports;

(c) New or modified documents such as SRS, HGR, O&M manual, engineering report, engineering inspection and evaluation of the LOSS, plans and specifications, record drawings, or other information to the department; and

(d) LOSS component repairs or replacement.

(6) The owner shall notify the department within five calendar days when the LOSS is not in compliance with any operating permit monitoring limit or condition.

(7) The owner shall submit an annual operating report that:

(a) Summarizes results and actions taken over the prior year related to the LOSS, including treatment upsets and monitoring violations, if any;

(b) Discusses any proposed modifications to the monitoring and reporting plan for the next year;

(c) Lists recorded influent sewage volume, measured in gpd; and

(d) Compares actual peak and average daily flows to the LOSS design flow.

(8) Reports required in the operating permit have the following due dates:

(a) Monthly reports are due on the 10th of each month for the prior month.

(b) Quarterly reports are due on the 10th of April, July, October, and January for the prior calendar quarter.

(c) Annual reports are due with the application for permit renewal.

PART 3: SITE AND ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A - Site Review

NEW SECTION

WAC 246-272B-03000 Site review—Predesign report. At a minimum, the predesign report must include the following information:

(1) Contact information for the owner and design engineer;

(2) Site address, legal description, and name of the county where the project is located;

(3) Vicinity map showing:

(a) The project site;

(b) Project property boundaries;

(c) Parcels surrounding and adjoining the project property boundaries; and

(d) Zoning and current land use of all identified properties and parcels.

(4) Site map scaled to clearly show:

(a) Project boundaries;

(b) Topographic contours with maximum intervals of five feet, including the data source for the map;

(c) Cuts, banks, fill;

(d) Slopes greater than thirty percent;

(e) Areas of soil or slope instability;

(f) Bedrock outcrops;

(g) All items identified in WAC 246-272B-06050, Table 3 that are within the minimum horizontal setback distance noted in the table;

(h) All wells within one thousand feet of the project property boundaries;

(i) Location of one hundred-year flood boundaries, if any, within the mapped area;

(j) Proposed primary and reserve drainfield boundaries; and

(k) Test pits.

(5) Identification of tribal lands and archaeological resources within one thousand feet of the primary or reserve drainfield perimeter.

(6) A description of underground utilities at the site;

(7) USDA NRCS soil map and mapping unit description;

(8) A narrative discussion of the LOSS project describing at a minimum:

(a) The development with specific residential and non-residential facilities identified;

(b) The drinking water source serving the development;

(c) The total land area available, in acres, for the development and all LOSS components;

(d) Applicable parts of the city, town, or county comprehensive plan or development regulations for all property the LOSS will be sited on and the development it serves, including the primary and reserve drainfield areas;

(e) How the LOSS project complies and is consistent with local comprehensive plans and land use and development regulations, including standards developed for any sensitive or critical areas designated by a city, town, county, or local health jurisdiction within one thousand feet of the drainfield perimeter;

(f) Any city, town, county, or local health jurisdiction requirement for the property to connect to public sewer;

(g) Expected project design flow and waste strength;

(h) Proposed treatment and dispersal method; and

(i) A description of how the owner proposes to meet the ownership and management requirements in WAC 246-272B-04100(2).

(9) Soil logs meeting the requirements in WAC 246-272B-03400 from the primary and reserve drainfield areas;

(10) Soil type and hydraulic loading rate using Table 1 in WAC 246-272B-03400;

(11) Narrative describing the physical characteristics of the primary and reserve drainfield site including:

(a) Topography and slope;

(b) Vegetation;

(c) Predominant soil type;

(d) Vertical separation;

(e) Site drainage patterns; and

(f) Water table and any restrictive layers.

(12) Calculations and a discussion showing that the proposed site meets the minimum land area requirements of WAC 246-272B-03500 using the values in Table 2 in that section for the identified soil types; and

(13) A copy of the SEPA checklist and determination or other environmental review and local planning determination for the development.

NEW SECTION

WAC 246-272B-03100 Site review—Inspection. (1) The owner shall prepare test pits that are open and available for inspection, and meet the requirements of WAC 246-272B-03400.

(2) The owner shall provide a means for safe ingress and egress and is responsible for constructing, maintaining, and closing test pits in a safe manner as required by chapter 296-155 WAC, Safety standards for construction work.

(3) The owner shall provide the department representative at the time of inspection a topographic site map scaled to clearly show:

(a) Numbered test pit locations within the proposed primary and reserve drainfield areas;

(b) Accurate geographic location of test pits; and

(c) A reference point that is marked on the site that can be used for horizontal measurement.

(4) The owner, design engineer, or soil scientist shall be prepared to mark the boundaries of the proposed drainfield areas if requested by the department.

(5) The owner shall make equipment and an operator available to dig additional test pits if required by the department or if the proposed drainfield is relocated. If not, and an additional site inspection is necessary, the owner shall pay an additional site inspection fee established in chapter 246-272 WAC, Wastewater and reclaimed water use fees.

Subpart B - Environmental Review

NEW SECTION

WAC 246-272B-03200 Environmental review—Site risk survey. At a minimum, the SRS must include the following information:

- (1) Design flow and waste strength.
- (2) A description of the physical characteristics of the primary and reserve drainfield site including:
 - (a) Predominant soil type;
 - (b) Vertical separation; and
 - (c) Water table.
- (3) Identification of sensitive or critical areas designated by a local, state, or federal agency if the primary or reserve drainfield is located within the boundaries of the area including, but not limited to:
 - (a) Critical aquifer recharge area;
 - (b) Sole source aquifer;
 - (c) Designated wellhead protection area;
 - (d) Marine recovery area; and
 - (e) One hundred-year flood plain.
- (4) Identification of sensitive lands or resources within one-half mile of the primary or reserve drainfield perimeter including, but not limited to:
 - (a) Fish hatcheries;
 - (b) Shellfish growing areas; and
 - (c) Water recreation areas.
- (5) Basic hydrogeology information for the primary and reserve drainfield including, but not limited to:
 - (a) Well logs for all wells within one thousand feet;
 - (b) Depth to groundwater including perched groundwater and deeper aquifers;
 - (c) Vadose zone characteristics, including the presence of impermeable layers or aquitards;
 - (d) Direction of groundwater flow;
 - (e) Groundwater quality information, including nitrate and fecal coliform;
 - (f) Nitrate screening balance; and
 - (g) Potential hydraulic continuity to surface water.
- (6) Topographic map that clearly shows site features including:
 - (a) Map scale and north arrow;
 - (b) Section, township, and range where project is located;
 - (c) Project or property boundaries;
 - (d) Location of proposed primary and reserve drainfields;

(e) Location of areas prone to flooding including any designated one hundred-year flood plain boundaries;

(f) Unstable areas prone to significant surface or mass erosion;

(g) Direction of groundwater flow;

(h) Other contaminant sources including other OSS;

(i) Critical area boundaries or other sensitive areas listed in subsections (3) and (4) of this section;

(j) Surface water and wetlands within one thousand feet of the proposed drainfield perimeter; and

(k) Active and abandoned wells within one thousand feet of the proposed drainfield perimeter.

(7) Other information the department may request to determine public health and environmental impacts from the LOSS.

NEW SECTION

WAC 246-272B-03300 Environmental review—Hydrogeology report. (1) The department will determine the scope of the HGR based on the site conditions identified in the SRS, if one has been completed.

(2) If an SRS has not been completed, the owner shall include the information listed in WAC 246-272B-03200 in the HGR.

(3) The HGR must include sufficient site specific information and analysis for the department to determine the public health and environmental impacts of the LOSS, including:

- (a) Further analysis of the site conditions identified in the SRS; and
 - (b) Mitigation to reduce or eliminate potential impacts.
- (4) The HGR must also include a ground and surface water monitoring plan as appropriate.

Subpart C - Site Standards

NEW SECTION

WAC 246-272B-03400 Soil characterization. (1) The owner shall install enough test pits to characterize soil type and conditions across both the primary and reserve drainfield areas.

(2) Each test pit must be:

(a) Prepared so the soil profile can be viewed in original undisturbed position to a depth of at least three feet deeper than the anticipated infiltrative surface, or to a restrictive layer or to seasonal high water table, whichever is shallower; and

(b) Open and accessible during the department's inspection.

(3) Soil logs must be prepared by either a soil scientist or design engineer and include the following:

- (a) Numbers that correspond to the test pit number;
- (b) Collection date;
- (c) Weather conditions on the day the test pits were excavated;
- (d) Soil names and particle size limits of the USDA NRCS Soil Classification System;
- (e) The most restrictive soil type for hydraulic loading;
- (f) The most coarse soil type for treatment;
- (g) Groundwater depth in profile, if present;

- (h) The presence of fill or debris in the soil profile;
- (i) Other characteristics that affect the treatment or water movement potential of the soil;
- (j) The following information, by horizon:
 - (i) Soil type using Table 1 below;
 - (ii) Depth;
 - (iii) Thickness;
 - (iv) Texture;
 - (v) Structure;
 - (vi) Percent rock;
 - (vii) Relative soil density;
 - (viii) Moist soil color using a Munsell soil color chart to describe both the soil matrix and mottling, if present; and
 - (ix) Unusually wet soil; and
- (k) If prepared by a design engineer, the design engineer's stamp, signature, and date.

(4) The department may require the owner to submit soil samples for laboratory analysis to confirm soil type and to support the proposed hydraulic loading rates.

(a) Soil analyses must be performed by a qualified laboratory and reported using the USDA NRCS Soil Classification System.

(b) Each sample must be identified by project name, date collected, weather conditions, test pit number, and depth where the sample was collected to the nearest inch.

(c) The owner shall provide a copy of the laboratory results to the department.

(5) When water table measurements are needed to assess the impact of the LOSS on the environment and the highest seasonal water table cannot be reliably determined, the department may require an analysis based on:

(a) Continuous water table measurements at the site recorded during months of probable high-water table conditions; and

(b) Corresponding average monthly precipitation data for the area from the national weather service.

(6) The department may require additional soil information relevant to the LOSS design.

Table 1: Soil Types and Hydraulic Loading Rates

| Soil Type | Soil Textural Classification | Maximum Hydraulic Loading Rate, for residential strength effluent, gpd/sf |
|-----------|--|---|
| 1 | Gravelly and very gravelly coarse sands, all extremely gravelly soils. | 1.0 |
| 2 | Coarse sands. | 1.0 |
| 3 | Medium sands, loamy coarse sands, loamy medium sands. | 0.8 |
| 4 | Fine sands, loamy fine sands, sandy loams, loams. | 0.6 |

| Soil Type | Soil Textural Classification | Maximum Hydraulic Loading Rate, for residential strength effluent, gpd/sf |
|-----------|--|---|
| 5 | Very fine sands, very fine loamy sand, very fine sandy loams; or silt loams and sandy clay loams with a moderate or strong structure (excluding platy structure). | 0.4 |
| 6 | Other silt loams, sandy clay loams, clay loams, silty clay loams. | Not suitable |
| 7 | Sandy clay, clay, silty clay, strongly cemented or firm soils, soil with a moderate or strong platy structure, any soil with a massive structure, any soil with appreciable amounts of expanding clays. Soils greater than 90% rock. | Not suitable |

NEW SECTION

WAC 246-272B-03500 Minimum land area. (1) To manage nutrient loading, and in addition to any nutrient reduction treatment required by the department based on the SRS or HGR prepared under WAC 246-272B-03200 and 246-272B-03300, the owner shall dedicate a minimum land area for the total development served by the LOSS and the LOSS drainfield.

(2) For all types of development, the maximum daily volume of effluent that can be discharged per acre of gross land area is shown in Table 2 in this section.

(3) Table 2 applies to residential strength effluent.

(4) This section does not apply to individual lot sizes.

Table 2: Maximum Effluent per Acre

| Finest Textured Soil Type Within the Vertical Separation | Maximum Effluent, gpd Per Acre |
|--|--------------------------------|
| 1 and 2 | 900 |
| 3, 4, and 5 | 1,575 |

PART 4: ENGINEERING REQUIREMENTS

NEW SECTION

WAC 246-272B-04000 Engineering report. (1) The engineering report must outline the scope of the LOSS project, provide necessary background information, the design guidance or standards used, calculations for developing plans

and specifications, and impact on public health and the environment.

(2) The engineering report must be prepared using design and technical standards in Part 6 of this chapter and consistent with good engineering practice.

(3) The engineer may incorporate by reference, or include in an appendix, information developed for the site review or environmental review, if still relevant.

(4) At a minimum the report must include:

(a) An executive summary providing a brief overview of the following:

- (i) Nature of the project, such as a new development, expansion, phased construction;
- (ii) Location of the LOSS;
- (iii) Proposed ownership and management;
- (iv) Facilities served when the development is complete;
- (v) Design flow;
- (vi) Wastewater characteristics and strength;
- (vii) Site and soil characteristics; and
- (viii) Treatment and dispersal proposal;

(b) A narrative providing a detailed explanation of the following:

- (i) Facilities served when the development is complete;
- (ii) Existing or anticipated wastewater characteristics and strength;
- (iii) Proposed treatment and dispersal method;
- (iv) Local comprehensive plans, land use and development regulations, sensitive area designations, and requirements by local jurisdictions to connect to public sewer that apply to property the LOSS will be sited on and the development to be served, including the primary and reserve drainfield areas;

(v) Existing sewer or water systems on the development site; and

(vi) Source of drinking water and water system purveyor for properties served by the LOSS;

(c) A copy of the applicable parts of:

(i) City, town, or county comprehensive plans or development regulations for property the LOSS will be sited on and the development it serves, including the primary and reserve drainfield areas; and

(ii) City, town, county, or local health jurisdiction requirements for the property to connect to public sewer;

(d) A statement that the LOSS and development are consistent with the regulations and designations identified in (c) of this subsection;

(e) An explanation of how the LOSS and the development are consistent with the local comprehensive plan, land use and development regulations, and sensitive and critical areas. The explanation must provide sufficient information to demonstrate that the LOSS and the development are consistent with these regulations and designations, and may include copies of relevant portions of the local comprehensive plan, land use or development regulations, sensitive area designations, or other related documents pertaining to the LOSS site and proposed development;

(f) A copy of the SEPA checklist and determination or other environmental review and local planning determination for the project;

(g) A vicinity map showing the project's location;

(h) A map and development plan of the development area scaled to clearly show the following:

- (i) Total development area;
- (ii) Proposed primary and reserve drainfield areas;
- (iii) Any surface water, wetland, or well within one thousand feet of the drainfield perimeter;
- (iv) Topographic contour lines and elevations shown at intervals of ten feet or less and verified by field measurements;
- (v) Drainage basins and drainage patterns throughout the development site;
- (vi) Any existing or proposed storm water systems or retention basins on the development site;
- (vii) Location of one hundred-year flood boundaries within one thousand feet of the drainfield perimeter;
- (viii) Existing or proposed structures, roads, and parking areas adjacent to the proposed drainfield;
- (ix) Location of existing and proposed encumbrances affecting system placement; and
- (x) All water, sewer, greywater, reclaimed water, storm water, irrigation lines within ten feet of the project or property boundaries;

(i) An analysis of the site's capacity to treat and dispose of the proposed quantity and quality of sewage;

(j) SRS as described in WAC 246-272B-03200, if one was completed;

(k) HGR as described in WAC 246-272B-03300, if one was completed;

(l) Soil characterization as described in WAC 246-272B-03400 if updated since the department approval of the pre-design report;

(m) A discussion of proposed treatment processes addressing:

(i) Wastewater characterization, flow patterns, and any site specific constituents of concern of the wastewater;

(ii) Treatment standard approved by the department in the site review and environmental review process, and the expected treatment performance of the proposed treatment technology;

(iii) Proposed O&M activities; and

(iv) Any alternative treatment processes evaluated;

(n) Confirmation, including calculations, that the development and LOSS design complies with the minimum land requirements in WAC 246-272B-03500;

(o) Design criteria, calculations, and any other supporting material needed to develop the plans and specifications, including:

(i) Design flow;

(ii) Soil type and hydraulic loading rate;

(iii) Pipe sizes;

(iv) Hydraulic evaluation and drainfield dosing calculations to determine dose volume, orifice size, spacing, residual head;

(v) Pump selection with pump and system curves;

(vi) Tank size; and

(vii) Treatment component design calculations, if applicable, and supporting performance information;

(p) Proposed monitoring and sampling for influent, effluent, and, if necessary, water quality monitoring to demonstrate treatment standards will be met on an ongoing basis;

(q) A summary description of how the LOSS will be owned and managed after construction;

(r) A copy of the legal title or recorded easement to the property where the LOSS will be located showing that the owner retains legal control of the drainfield and LOSS components. If there will be sewage tanks on individual lots, the report must include a plan for obtaining easements if not already established;

(s) Discussion of the construction process summarizing how the requirements of Part 5 will be met;

(t) Updated general information, including changes to the following:

(i) Name, telephone number, fax number, mailing address, and e-mail address of:

(A) Owner of the LOSS proposal;

(B) Authorized representative of the owner, if any;

(C) Legal owner of property where the LOSS is proposed to be installed;

(D) Design engineer;

(E) Certified operator, if known; and

(F) Any other project contact;

(ii) Project site address, county, tax parcel number, and legal description; and

(u) A management plan that meets the requirements of WAC 246-272B-04100.

NEW SECTION

WAC 246-272B-04100 Management plan. (1) The management plan must include, at a minimum:

(a) A statement identifying whether the ownership of the development served by the LOSS is:

(i) A single owner; or

(ii) A collection of individually owned lots or units.

(b) If a development has individually owned lots or units, a statement that it is managed by:

(i) A public entity or a wastewater company regulated by the Washington utilities and transportation commission; or

(ii) A private management entity with a public entity or a wastewater company regulated by the Washington utilities and transportation commission contracted as a third party guarantor.

(c) A copy of the agreement, ordinance, covenant, or other legal document given to all customers that explains the rights and responsibilities of individual users of the LOSS and of the owner, management entity, or other responsible person. The agreement, ordinance, covenant, or other legal document must include, but is not limited to, the following:

(i) The fees and rates to be charged;

(ii) How charges may be amended; and

(iii) A list of substances that are prohibited from entering the LOSS in WAC 246-272B-06000.

(d) A narrative describing the management entity's experience managing LOSS and OSS including, but not be limited to:

(i) A list of all LOSS and OSS currently managed and owned, and counties they are located in;

(ii) Number of staff and their qualifications.

(e) Name, telephone number, fax number, mailing address, and e-mail address for the following:

(i) Management entity;

(ii) Primary contact person for the management entity;

(iii) Third-party guarantor, if any.

(f) A copy of all recorded LOSS and LOSS component easements that allow access to perform O&M, repair, modification, and replacement, if located on private property or in the public right of way, including easements for sewage tanks on individual lots. Easements for sewage tanks on individual lots must be obtained and recorded as the lots are built upon, if not before.

(g) A description of the specific duties of the management entity;

(h) A contingency plan to operate, maintain, and manage the LOSS so that public health and the environment are protected during a transition from one management entity to another;

(i) Signed and notarized management agreement between the LOSS owner and the management entity in which the management entity agrees to comply with the following requirements:

(i) Operate and maintain the LOSS consistent with this chapter and any other applicable rules or statutes, and with the requirements in the owner's operating permit;

(ii) Provide adequate management, staff, and facilities to properly manage the LOSS;

(iii) Provide the owner and the department updated contact information including name, telephone number, fax number, mailing address, and e-mail address when changes occur;

(iv) Contract with licensed, certified, or local health jurisdiction-approved professionals for maintenance service, pumping, electrical, and mechanical repair and modifications, as needed; and

(v) When a proprietary treatment component is used, employ the proprietary treatment component manufacturer to monitor and maintain the proprietary system, or employ a LOSS operator who meets the requirements of WAC 246-272B-07200(3).

(j) Maintain records of performance and all inspections, repairs, sampling, pumping, and improvements;

(k) Proof of an accounting and audit system set up and maintained using standard accounting practices; and

(l) Description of how the owner or management entity will obtain and maintain adequate current and future funding for LOSS operations and capital improvement expenses including:

(i) Long-term maintenance and operation of the LOSS and operator costs;

(ii) Inspection, repair, and replacement of components; and

(iii) Compliance with any conditions of construction approval or conditions that may be included in the operating permit.

(2) If the LOSS serves individually owned units or lots, the management plan must also include the following:

(a) Articles of incorporation and bylaws, including procedures to amend existing agreements for homeowner associations, corporations, or other associations of owners.

(b) Name of the association's or corporation's registered agent; and

(c) Copies of recorded easements to the LOSS and all components, including sewage tanks on individual lots, regarding access to perform O&M, repair, modification, and replacement. Easements for sewage tanks on individual lots must be obtained and recorded as the lots are built upon, if not before.

NEW SECTION

WAC 246-272B-04200 Operations and maintenance manual. The O&M manual must include the following information:

(1) Name, telephone number, fax number, mailing address, and e-mail address for the following:

- (a) Operator;
- (b) Owner;
- (c) Design engineer;
- (d) Installer;
- (e) Electrician;
- (f) Pumper;
- (g) Management entity;
- (h) Primary contact person for the management entity;

and

- (i) Third party guarantor, if any.
- (2) Owner and operator responsibilities;
- (3) Copies of LOSS legal documents including, but not limited to, the management contract:

(4) LOSS information including:

- (a) Narrative description of treatment and dispersal process and components;
- (b) LOSS flow diagram or schematic; and
- (c) Design criteria:
 - (i) Number and type of units served;
 - (ii) Design flow;
 - (iii) Soil type and drainfield hydraulic loading rate;
 - (iv) Sieve analysis, if any;
 - (v) Drainfield capacity;
 - (vi) Tank capacities; and
 - (vii) Treatment component capacities.

(5) Normal operation and maintenance procedures and schedules, including at a minimum:

- (a) Summary and schedule of permit conditions to be met;
- (b) Drainfield dosing and resting;
- (c) Flow metering reading;
- (d) Recommended component settings;
- (e) Process control information;
- (f) Periodic facilities inspection to verify efficiency of operation, adequacy of performance, and general condition of the equipment and components;

(g) Periodic inspection of scum and sludge levels and the integrity of LOSS sewage tanks and tanks on individual lots and cleaning filters, pumping tanks, or making repairs as needed;

(h) Periodic maintenance of pumps, motors, and switches;

(i) Periodic calibration of sampling and measuring devices;

(j) Replacement or repair of worn or damaged equipment;

(k) Activities that provide dosing and resting cycles for the drainfield; and

(l) Other maintenance activities as needed, depending on the type of system.

(6) Trouble-shooting guide listing possible failure and malfunction situations and responses to repair, replace, or modify LOSS components to restore LOSS function;

(7) Abnormal operation procedures including, but not limited to:

(a) Emergency contact information for the owner, management entity, operator, pumper, local health jurisdiction, department, and any contractors or maintenance provider; and

(b) Emergency notification procedures to alert and advise customers, the department, and the local health jurisdiction.

(8) Documentation of repairs;

(9) Component testing information;

(10) Recordkeeping procedures for the following:

- (a) Operator inspections;
- (b) Monitoring and sampling;
- (c) Routine and emergency maintenance;
- (d) Repairs;
- (e) Modifications; and
- (f) Annual reports.

(11) Safety procedures, including where to find a copy of the following department of labor and industries rules:

(a) Chapter 296-809 WAC, Confined spaces;

(b) Chapter 296-62 WAC, General occupational health standards;

(c) Chapter 296-823 WAC, Occupational exposure to bloodborne pathogens; and

(d) Chapter 296-803 WAC, Lockout/tagout (control of hazardous energy).

(12) Electrical component information and wiring diagram for alarms, panels, pumps, dosing controls;

(13) Manufacturer cut sheets for all components requiring routine or periodic maintenance;

(14) Annual operating permit renewal schedule and fee schedule, including where to find the current application form;

(15) Copies of the following LOSS documents:

(a) Department approval letter of the engineering report, plans and specifications, and final O&M manual;

(b) Current operating permit;

(c) Construction completion report submitted with final O&M manual; and

(d) LOSS record drawings submitted with final O&M manual showing the locations of all easements.

(16) Component testing information submitted with the final O&M manual, including:

(a) Tank water tightness testing results;

(b) Pipe pressure testing results;

(c) Pump chamber drawdown information; and

(d) Drainfield squirt heights.

(17) The final monitoring and reporting plan in its own section of the O&M manual that meets the requirements in WAC 246-272B-04300 submitted with the final O&M manual; and

(18) Any other information required by the department.

NEW SECTION

WAC 246-272B-04300 Monitoring and reporting plan. At a minimum, the monitoring and reporting plan must include:

- (1) Constituents of the sewage or effluent that must be tested to assure that treatment components are meeting treatment level requirements, and to monitor groundwater or surface water:
 - (a) As required by the department; and
 - (b) For process control.
- (2) Values or ranges of values that must be met for the constituents listed in subsection (1) of this section;
- (3) Sampling frequency, including time and day samples will be taken. Samples must be taken when maximum concentrations of contaminants are expected;
- (4) Procedures for decontaminating sampling equipment and sample ports;
- (5) Field test methods;
- (6) Sampling methods;
- (7) Well purging methods, if applicable;
- (8) Handling and labeling of containers;
- (9) Holding times;
- (10) Quality assurance and quality control procedures;
- (11) Transport of samples;
- (12) List of equipment that will be used for sampling and field testing;
- (13) Test method for each constituent;
- (14) Monitoring that will be performed by a proprietary treatment manufacturer or their agent as described in WAC 246-272B-04100 (1)(g)(v);
- (15) Map or schematics showing any monitoring wells and all sample points;
- (16) Plans and construction specifications for monitoring wells, monitoring points, and piezometers;
- (17) Response plan for abnormal or elevated sampling results which may include additional sampling, notification to the department, treatment, or other appropriate action;
- (18) Any report forms;
- (19) Procedures for submitting required monitoring results to the department; and
- (20) Procedures and schedules for recordkeeping.

NEW SECTION

WAC 246-272B-04400 Plans and specifications. (1) Construction plans and specifications must be clear and detailed documents. Hard copies must use a common engineering drawing size of 22 x 34 inches, 24 x 36 inches, or 11 x 17 inches.

- (2) Plans must include the following:
 - (a) Design flow, treatment level, drainfield and tank sizing, and hydraulic loading rate;
 - (b) LOSS schematic or flow diagram;
 - (c) Hydraulic profile of the LOSS; and
 - (d) Plan and profile views as applicable of all LOSS components.
- (3) Plan sets must be scaled to clearly show all necessary information and include the following:
 - (a) A title sheet, plan and profile sheets, and other information that outlines and details the LOSS facilities design;

- (i) Title block indicating the project title, owner's name, date, seal and signature of the design engineer;
- (ii) Index to individual sheets;
- (iii) Vicinity map with project site location;
- (iv) Master site plan showing facilities served and general system layout; and
- (v) List of abbreviations, definitions, and symbols used within the plans.
- (b) A general statement that all work must be in conformance with the requirements of this chapter and other design and technical standards specified by the design engineer.
- (4) Plan sheets must be consecutively numbered and include, as appropriate:
 - (a) A north arrow;
 - (b) Description of scale in text and with a graphical bar;
 - (c) A descriptive title and date;
 - (d) Plan views;
 - (e) Section views;
 - (f) Profile views;
 - (g) Elevations;
 - (h) Easement and franchise locations and boundaries;
 - (i) Component details;
 - (j) General layout; and
 - (k) Supplemental views.
- (5) Sewage tanks and other treatment component plans and specifications must:
 - (a) Show location, dimensions, and elevations of all treatment and pumping units;
 - (b) Include detailed plan and cross-section views with dimensions;
 - (c) Include installation details including placement depth and bedding materials, and connections to the tank to minimize settling impacts;
 - (d) Include a detailed standard plan, including any related electrical components, and installation requirements for tanks designed for individual lots;
 - (e) Specify tank capacity, baffling, filters, risers and other appurtenances, liquid volume, emergency, scum and sludge volumes, float switch or other control component settings;
 - (f) Identify manufacturer and model for prefabricated tanks; and
 - (g) Include a statement that:
 - (i) Any substitutions must be approved by the design engineer; and
 - (ii) All prefabricated tanks must meet the requirements of chapter 246-272C WAC, On-site sewage system tanks.
- (6) Plans and specifications must include design and structural calculations and all necessary construction information for tanks constructed on-site.
- (7) Plans and specifications for collection and transmission piping must specify:
 - (a) Pipe type, material and size;
 - (b) Pipe elevations;
 - (c) Depth from grade and slope if applicable;
 - (d) Installation details including placement depth and bedding materials;
 - (e) Location and detail for all cleanouts and other appurtenances;
 - (f) Horizontal setbacks from all other utility piping; and

- (g) All water-sewer crossing detail and instructions.
- (8) Plans for the drainfield component must:
 - (a) Use an appropriate scale of 1:50 or less;
 - (b) Show plan view of trenches or beds in relation to site topography, showing contours on maximum two-foot intervals;
 - (c) Show trench or bed:
 - (i) Length;
 - (ii) Separations;
 - (iii) Pipe size, materials, and configuration; and
 - (iv) Detail of orifice size, spacing and orientation.
 - (d) Show locations of numbered test pits and test wells, if any, in relation to primary and reserve drainfields; and
 - (e) Show trench or bed profile with width, depth, piping, cover and any features such as sand, gravel, geotextile, chambers.
- (9) Plans for alarm systems must:
 - (a) Show location of panels and alarms; and
 - (b) Identify manufacturer and model number of panel.
- (10) Plans for flow metering must show:
 - (a) Valve locations;
 - (b) Access boxes to grade; and
 - (c) Any special installation instructions.
- (11) Plans must show all electrical components and include a statement that all components meet applicable state or federal codes.
- (12) Plan notes must include quality assurance, inspection, and testing:
 - (a) Where appropriate, the installer shall provide documentation to the design engineer that sand or other media meets specifications;
 - (b) The design engineer or authorized representative shall inspect the work during construction;
 - (c) The design engineer shall schedule a final inspection and drainfield pressure test witnessed by the department prior to cover; and
 - (d) The installer shall call for a special inspection for the following type of work:
 - (i) Poured-in-place septic tanks and pump chambers and other special containment vessels;
 - (ii) Proprietary treatment or distribution components;
 - (iii) Any special excavation requirements;
 - (iv) Placement of select fill material or final elevation of fill;
 - (v) Testing of the pressure distribution network prior to final inspection;
 - (vi) Pressure testing of all piping; and
 - (vii) Water tightness testing of all tanks.
- (13) All LOSS construction specifications must be in conformance with state or nationally recognized standards. Examples include, American Public Works Association standards, Ten States Standards, Department of Ecology's Criteria for Sewage Works Design, Department of Transportation's Standard Specifications for Road, Bridge, and Municipal Construction, and the department's recommended standards and guidance.
- (14) Specifications must include all construction information not shown on the plans and necessary to inform the installer of the design requirements including, but not limited to:

- (a) The quality of materials;
- (b) Workmanship and fabrication of the project;
- (c) Type, size, strength, operating characteristics, and rating of equipment;
- (d) Allowable leakage for testing gravity sewer pipe;
- (e) Electrical apparatus and wiring components;
- (f) Meters;
- (g) Operating tools;
- (h) Construction materials;
- (i) Special filter or drainfield media other than native soil;
- (j) Other appurtenances;
- (k) Instructions for testing materials and equipment as needed to meet design standards; and
- (l) LOSS component and process testing to confirm functionality prior to department final inspection.

PART 5: CONSTRUCTION REQUIREMENTS

NEW SECTION

WAC 246-272B-05000 Installer qualifications and responsibilities. The installer shall:

- (1) Be currently approved by the local health jurisdiction in the county where the LOSS is to be constructed.
- (2) Have the following experience:
 - (a) Three or more years experience installing OSS; or
 - (b) A record of successful completion of at least one similar installation, including a pressure distribution drainfield.
- (3) Maintain a copy of approved plans and specifications on-site during construction;
- (4) Follow the approved plans and specifications or obtain approval from the design engineer prior to making field changes;
- (5) Install sewage tanks approved by the department according to the provisions of chapter 246-272C WAC, On-site sewage system tanks;
- (6) Be on the site at all times during the excavation and construction of the LOSS;
- (7) Backfill and grade the site after construction to prevent surface water from accumulating over any LOSS component; and
- (8) Leave the drainfield lines uncovered until the drainfield passes the department's final inspection. Driplines may be covered prior to inspection.

NEW SECTION

WAC 246-272B-05100 Construction oversight and testing. The design engineer or the engineer's authorized representative shall:

- (1) Conduct inspections to:
 - (a) Verify LOSS construction and materials conform with approved plans and specifications; and
 - (b) Collect data for the record drawings.
- (2) Inspect the following:
 - (a) Poured-in-place sewage tanks construction;
 - (b) Installation of proprietary and public domain treatment and dispersal components;

(c) Installation of LOSS components in difficult conditions including, but not limited to, steep slopes and shallow soils; and

(d) Placement of sand or other fill material.

(3) Conduct or witness LOSS component testing to verify that all results fall within acceptable limits:

(a) Water tightness testing of all tanks under WAC 246-272B-05200; and

(b) Pressure testing of all new collection and conveyance piping according to an acceptable industry standard; and either

(c) Pressure and flow testing of the subsurface drip system to verify it functions properly prior to scheduling a LOSS final inspection by the department; or

(d) Pressure testing of the drainfield to verify it functions properly prior to scheduling a LOSS final inspection by the department.

(4) Record baseline pressure and flow information and provide passing results to the department during the final inspection.

NEW SECTION

WAC 246-272B-05200 Water tightness testing of sewage tanks. The design engineer shall verify that all sewage tanks used in the LOSS are tested for water tightness by either vacuum testing or water-pressure testing.

(1) Vacuum testing steps:

(a) Seal the empty tank;

(b) Temporarily seal access openings, risers, and inlet and outlet pipes; and

(c) Introduce negative pressure into the tank and apply a vacuum to four inches (one hundred millimeters) of mercury.

(d) The tank passes if ninety percent of vacuum is held for two minutes.

(2) Water-pressure testing steps:

(a) Seal the empty tank;

(b) Seal access openings, risers, and inlet and outlet pipes;

(c) Fill the tank with water two inches into the riser and let stand for twenty-four hours; and

(d) Add water to the tank, if necessary, to the original level.

(e) The tank passes if the water level is unchanged after one hour.

(3) The design engineer shall reject tanks that do not meet the water tightness standard.

(4) If the tank fails, the owner may try to repair and retest the tank.

(a) The test must be completed according to the requirements of subsection (2) or (3) of this section.

(b) If the water-pressure test method is used, the twenty-four hour standing time is not required.

NEW SECTION

WAC 246-272B-05300 Department final inspection.

(1) The department shall conduct a final inspection for all LOSS and witness a pressure test of the drainfield prior to cover except for LOSS with subsurface drip systems.

(2) The department may accept baseline pressure and flow information from the design engineer in lieu of witnessing a pressure test of subsurface drip systems.

(3) The department may allow the drainfield to be partially covered prior to the final inspection if:

(a) The design engineer verifies the LOSS has been pre-tested and functions according to the approved design; and

(b) The department is able to witness a pressure test of at least the distal orifice in every lateral during the final inspection.

NEW SECTION

WAC 246-272B-05400 Post-construction documentation. Post-construction documents must include the following:

(1) A LOSS construction completion report prepared by the design engineer that:

(a) Is on a form provided by the department;

(b) States the LOSS was constructed in substantial accordance with the approved plans and specifications; and

(c) Notes changes from the approved plans and specifications, if any.

(2) LOSS record that:

(a) Include one hard copy in a common engineering drawing size of 22 x 34 inches, 24 x 36 inches, or 11 x 17 inches, and one copy in electronic format; and

(b) Are scaled to clearly show all necessary information.

(3) The final management plan that meets the requirements of WAC 246-272B-04100.

(4) A final O&M manual for the installed LOSS that meets the requirements of WAC 246-272B-04200.

PART 6: DESIGN AND TECHNICAL STANDARDS

Subpart A - General Requirements

NEW SECTION

WAC 246-272B-06000 General design requirements.

(1) Design engineers shall use design criteria detailed in this chapter and from generally accepted guidance and standards when designing LOSS.

(2) All sewage from a building served must be directed to the LOSS, unless the LOSS permit allows another option.

(3) LOSS must be designed to produce effluent prior to dispersal that is equal to or higher quality than septic tank effluent originating from residential strength sewage.

(4) LOSS owners and operators are responsible for ensuring that certain substances do not enter a LOSS collection system. These include:

(a) Strong bases, acids, chlorinated solvents, or other toxic or hazardous substances;

(b) Fire or explosion hazards;

(c) Solid or viscous wastes that could plug sewer lines;

(d) Drainage from surface runoff, footing drains, roof drains, subsurface storm water infiltration systems, swimming pools, and other nonsewage drains; and

(e) Industrial wastewater.

(5) Chemicals in common household products used in moderate amounts are exempt from the provisions of subsection (4) of this section.

(6) Drainage identified in subsection (4) of this section must also be prevented from entering any areas where LOSS components are located, including primary and reserve drainfield areas.

NEW SECTION

WAC 246-272B-06050 Horizontal setbacks. (1) The design engineer shall design the LOSS and verify it is installed in compliance with the minimum horizontal setbacks shown in Table 3 of this section.

(2) The design engineer shall increase the separation distance between the LOSS and a public drinking water well, spring, or surface water supply if required by the water purveyor's source water protection program, prepared under chapter 246-290 WAC, Group A public water supplies.

(3) The department may require greater horizontal setbacks than the minimum values shown in Table 3 when

needed to protect public health and the environment. Such areas include, but are not limited to, those with:

- (a) Highly permeable soils;
- (b) Unconfined aquifers;
- (c) Locally identified and state-identified areas of concern such as critical aquifer recharge areas or shorelines;
- (d) Shallow soils;
- (e) Saturated soils; and
- (f) Hand-dug or improperly abandoned wells.

(4) The department may approve a sewer line placed less than ten feet from a water line only:

- (a) With the written approval of the owner of the water line; and
- (b) When the water line is protected from leakage and contamination consistent with the department of ecology "Criteria for Sewage Works Design," August 2008, or the department of ecology and department of health publication "Pipeline Separation Design and Installation Reference Guide," July 2006.

Table 3: Minimum Horizontal Setbacks

| Items requiring setback | From edge of drainfield and reserve area | From sewage tank and distribution box | From building sewer, and nonperforated distribution pipe |
|--|--|---------------------------------------|--|
| Well or suction line | 100 ft. | 50 ft. | 50 ft. |
| Public drinking water well | 100 ft. | 100 ft. | 100 ft. |
| Spring used as a drinking water source | 200 ft. | 200 ft. | 100 ft. |
| Surface water (measured from ordinary high water mark) | 100 ft. | 50 ft. | 10 ft. |
| Pressurized water supply line | 10 ft. | 10 ft. | 10 ft. |
| Decommissioned well: Decommissioned according to chapter 173-160 WAC | 10 ft. | N/A | N/A |
| Lined storm water pond located: <ul style="list-style-type: none"> • Down-gradient from LOSS component: • Up-gradient from LOSS component | 75 ft. 30 ft. | 10 ft. 10 ft. | 10 ft. 10 ft. |
| Unlined storm water pond (up or down-gradient from the LOSS component) | 100 ft. | 50 ft. | 10 ft. |
| Building foundation and in-ground swimming pool located: <ul style="list-style-type: none"> • Down-gradient from LOSS component • Up-gradient from LOSS component | 30 ft. 10 ft. | 5 ft. 5 ft. | 2 ft. 2 ft. |
| Property or easement line | 5 ft. | 5 ft. | N/A |
| Interceptor, curtain drains, foundation drains, lined drainage ditches located: <ul style="list-style-type: none"> • Down-gradient from LOSS component • Up-gradient from LOSS component | 30 ft. 10 ft. | 5 ft. N/A | N/A N/A |
| Other site features that may allow effluent to surface located: <ul style="list-style-type: none"> • Down-gradient from LOSS component • Up-gradient from LOSS component | 30 ft. 10 ft. | 5 ft. N/A | N/A N/A |
| Down-gradient cuts or banks with at least 5 ft. of original, undisturbed soil above a restrictive layer | 25 ft. | N/A | N/A |
| Down-gradient cuts or banks with less than 5 ft. of original, undisturbed, soil above a restrictive layer | 50 ft. | N/A | N/A |
| Down-gradient subsurface storm water infiltration or dispersion component | 30 ft. | N/A | N/A |
| Up-gradient subsurface storm water infiltration or dispersion component | 100 ft. | N/A | N/A |
| Other adjacent drainfields, including individual OSS beds or dispersal sectors | 10 ft. | N/A | N/A |

NEW SECTION

WAC 246-272B-06100 Vertical separation. (1) A vertical separation of at least three feet is required between the infiltrative surface of the drainfield bed or trench and:

- (a) The highest seasonal water table;
- (b) A restrictive layer; or
- (c) Soil types 6 or 7.

(2) The department may allow a reduction of vertical separation to a minimum of two feet when all of the following criteria are met:

- (a) Soil types 2-5;
- (b) Treatment is provided prior to dispersal as follows:
 - (i) For LOSS with design flows up to and including 14,500 gpd, Treatment Level C or better;
 - (ii) For LOSS with design flows greater than 14,500 gpd, Treatment Level HQE.

(c) Information collected during the site review process clearly demonstrates minimum vertical separation can be maintained across the primary and reserve drainfield areas;

(d) An HGR is submitted that demonstrates that the site can safely and adequately disperse the effluent; and

(e) The monitoring and reporting plan includes a sampling program and schedule that demonstrates that required performance standards are consistently met.

(3) The department may impose additional requirements when necessary to protect public health and the environment including, but not limited to:

- (a) Higher level of treatment;
- (b) Monitoring and evaluation of the seasonal high water table;
- (c) Additional tank capacity to handle flow surges and allow flow attenuation; and
- (d) Increased horizontal setbacks.

NEW SECTION

WAC 246-272B-06150 Design flows. (1) The design engineer shall use the following minimum design flows, which include the appropriate peaking factors, for developments or portions of developments serving residential facilities such as single-family residences, multi-family dwellings, and mobile home parks with total LOSS design flows of 14,500 gpd or less:

- (a) Modifications of existing developments:
 - (i) 120 gpd per bedroom; or
 - (ii) 240 gpd per existing dwelling unit, residence or mobile home lot or space, whichever is greater.

(b) New residential developments and new mobile home parks:

- (i) 120 gpd per bedroom; or
- (ii) 360 gpd per lot or space, whichever is greater.

(2) The design engineer shall use 270 gpd minimum design flow per dwelling unit, residence or mobile home lot or space for residential developments or portions of developments serving residential facilities, with total LOSS design flow greater than 14,500 gpd.

(3) For commercial and nonresidential developments or portions of developments that serve commercial and nonresidential facilities, the department may accept the following:

- (a) Design flows listed in Table 4 in this section; or

(b) Design flows from other generally recognized sources, on a case-by-case basis.

Table 4: Typical Design Flows for Nonresidential Facilities

| Type of Facility | Design Unit ¹ | Design Flow (gpd) |
|---|----------------------------|-------------------|
| Schools with showers and cafeteria ² | per student | 16 |
| Schools without showers and with cafeteria ² | per person | 12.6 |
| Schools without showers and without cafeteria | per person | 10 |
| Boarding schools ² | per person | 75 |
| Temporary farm worker housing ² | per person | 50 |
| Hotels, motels, and B&Bs | per room | 130 |
| Restaurants ² | per seat | 50 |
| Truck stops and Interstate restaurants ² | per seat | 180 |
| Offices, with showers | per person, per 8-hr shift | 25 |
| Offices, without showers | per person, per 8-hr shift | 15 |
| Nursing homes ² | per bed | 200 |
| Elder care facilities, retirement homes ² | per bed | 100 |
| Laundromats ² | per machine | 500 |
| Churches, without kitchen | per seat | 3 |
| Churches, with kitchen ² | per seat | 5 |
| Day care centers | per person | 20 |
| Picnic areas | per person | 5 |
| Campgrounds, RV parks with flush toilets only, no laundry or wet sewer hookup | per camp site | 50 |
| Campgrounds, RV parks with flush toilets, showers, laundry, no wet sewer hookup | per camp site | 75 |
| Campgrounds, RV parks with flush toilets, showers, and wet sewer hookup, with or without laundry ² | per RV space | 120 |
| Trailer dump stations ² | per dump | 40 |
| Resort cabin | per person | 40 |
| Bar, cocktail lounge ² | per seat | 20 |

1. Does not include employees and staff, unless indicated.
 2. Indicates potential for waste strength to exceed that of residential strength sewage, requiring Treatment Level E or higher.

(4) For the department to evaluate alternate design flows, a written request and the following information must be submitted:

(a) The preceding year's actual metered flow data read at intervals acceptable to the department to capture seasonal and peak usage; or

(b) Comparable flow data from similar existing facilities, including:

- (i) From a minimum of three similar developments; and
- (ii) Using a peaking factor if average flows are recorded.

NEW SECTION

WAC 246-272B-06200 Sewage characterization. (1)

The design engineer shall identify sewage characteristics in terms of the following:

(a) CBOD₅, TSS, O&G, BOD₅, and fecal coliform bacteria;

(b) Other parameters that can impact treatment anywhere in the treatment sequence including, but not limited to, pH, temperature and dissolved oxygen; and

(c) Nitrogen and phosphorus, where either parameter is identified as a contaminant of concern.

(2) For LOSS treating sewage from nonresidential or commercial sources, the design engineer shall submit:

(a) Discharger information to show the sewage is not from an industrial facility;

(b) Sewage characterization that identifies any parameters not typically found in residential strength sewage; and

(c) Data that demonstrates that effluent quality is or will be equivalent to or better than effluent from a properly sized septic tank treating residential strength sewage.

NEW SECTION

WAC 246-272B-06250 Treatment. (1) Treatment to produce effluent of a higher quality than STE is required when:

(a) LOSS conditions match those in Table 6 of this section that require minimum Treatment Levels E, C, B, HQE, N₁₀, N₂₀, or P;

(b) Sewage characteristics exceed typical values expected from residential strength sewage; or

(c) The department determines it is needed based on results of the site and environmental review process.

(2) Treatment level parameters are shown in Table 5 of this section. The values represent maximum annual average effluent requirements.

(3) Treatment technology requirements are in WAC 246-272B-06550.

(4) Table 6 shows minimum required treatment levels for various conditions.

(5) To determine the minimum treatment level for a proposed LOSS, the design engineer shall:

(a) Identify the coarsest textured soil within the vertical separation shown in the soil logs;

(b) Use Table 6 in this section with the coarsest textured soil type, and proposed design flow and sewage characteristics to identify a minimum treatment level; and

(c) Increase the treatment level, if the drainfield is near areas where pathogens or other effluent parameters are a public health or environmental concern including, but not limited to:

- (i) Shellfish growing areas;
- (ii) Designated swimming areas; and
- (iii) Well head protection areas.

(6) The design engineer shall propose, at a minimum, specific values for Treatment Level HQE parameters and performance levels based on project-specific site and soil conditions. The department shall review and, if appropriate, confirm parameter values and performance levels.

(7) For LOSS with design flow of 14,500 gpd or less, the design engineer shall not use disinfection treatment to meet the fecal coliform standard in:

- (a) Treatment Level B for drainfields in Type 1 soils; or
- (b) Treatment Level C.

(8) For LOSS with design flow above 14,500 gpd, the department may allow disinfection treatment to meet the fecal coliform standard if all of the following conditions are met:

(a) The owner shall employ a qualified operator for the lifetime of the LOSS;

(b) The monitoring and reporting plan described in WAC 246-272B-04300 must demonstrate performance standards are consistently met; and

(c) The management plan described in WAC 246-272B-04100 must verify that the ownership, management, and financial resources are adequate to meet subsection (7)(a) and (b) of this section for the lifetime of the LOSS.

(9) The department may:

(a) Impose more stringent treatment and design requirements if necessary to protect public health or the environment;

(b) Require, as a condition of the operating permit, ongoing influent, effluent, and groundwater monitoring, to assure performance requirements are met;

(c) Require the owner to have a service contract with the proprietary treatment manufacturer or a qualified operator according to WAC 246-272B-07200(3) when the department determines the proposed treatment requires frequent operator attention to meet performance requirements; or

(d) Deny approval for LOSS designs that propose using specific technologies or treatment processes that have monitoring and sampling histories indicating inadequate or unreliable performance.

Table 5: Treatment Levels

| Effluent Parameters * | | | | | | |
|-----------------------|--------------------------|------------|------------|---------------|-----------|----------|
| Treatment Level | CBOD ₅ (mg/L) | TSS (mg/L) | O&G (mg/L) | FC (#/100 mL) | TN (mg/L) | P (mg/L) |
| HQE | ** | ** | ** | ** | ** | ** |
| B | 15 | 15 | | 1,000 | | |
| C | 25 | 30 | | 50,000 | | |
| E | 125 | 80 | 20 | | | |
| N ₁₀ | | | | | 10 | |
| N ₂₀ | | | | | 20 | |
| P | | | | | | ** |

* The values represent effluent maximum annual averages.
 ** Site specific; see WAC 246-272B-06250(7).

Table 6: Requirement Minimum Treatment Levels for Various Conditions

| Conditions | Minimum Required Treatment Level |
|--|---|
| Project Specific ¹ | HQE ² |
| Vertical Separation of 2 to < 3 feet, design flow higher than 14,500 gpd | HQE |
| Soil Type 1 | B |
| Vertical Separation of 2 to < 3 feet, design flow 14,500 gpd or less | C |
| Sewage that is not residential strength | E |
| All sites not requiring B, C, E or HQE | STE |
| Sites where nitrogen or phosphorus is identified as a contaminant of concern | N ₁₀ , N ₂₀ , or P ³ |

Table 6 notes:

- As identified during the site review process.
- HQE: High quality effluent; project specific standards are set case-by-case. Treatment Level HQE is required where Treatment Level B is inadequate, or may be chosen by the LOSS owner.
- As required by the department, based on the environmental review. Nitrogen treatment higher than N₁₀ may be required for some sites. Phosphorus or other treatment value will be project specific, determined in the environmental review or by local or state regulation.

NEW SECTION

WAC 246-272B-06350 Drainfields. (1) Pressure distribution with timed dosing to the drainfield is required for all LOSS projects. A typical drainfield profile is shown in Figure 2 in this section.

(2) The drainfield area must be sufficient to allow installation of the required capacity and for a reserve area calculated using requirements in this section.

(3) The drainfield for a new LOSS must be located on the property served or within one-half mile or less from the new drainfield site property line to the closest point of the development property line.

(4) Any easements and right of way franchises must be obtained, recorded on the property title, and copies submitted to the department according to WAC 246-272B-04100 (1)(f).

(5) The design engineer shall not design or approve the installation of a drainfield as part of a LOSS where:

- The slope is greater than thirty percent or seventeen degrees;
- The area is subject to:
 - Encroachment by buildings or other construction including, but not limited to, placement of power poles and underground utilities;
 - Cover by impervious material; or
 - Vehicular traffic.
- The reserve area is insufficient to treat and dispose of all of the design flow;
- The land is unstable;
- Surface drainage is directed toward the drainfield site; or
- Other activities or conditions identified by the department could adversely affect the soil or the performance of the LOSS.

(6) Except with the use of subsurface driplines or when treatment is provided consistent with subsection (16) or (17) of this section, drainfield components must be sized as follows:

- Hydraulic loading rates must not exceed the rates listed in WAC 246-272B-03400, Table 1;
- Calculation of the absorption area must be based on the design flow determined following requirements of WAC 246-272B-06150; and
- One hundred fifty percent of the required drainfield capacity must be constructed and sufficient area held in reserve to construct another fifty percent.

(7) Drainfield sizing when subsurface dripline is used must meet the requirements of WAC 246-272B-06650 (19) and (21).

(8) Drainfield pipe materials must meet the following minimum specifications:

(a) ASTM D2241-05 Class 200 or equivalent; or
 (b) For schedule 40 and schedule 80 PVC, the material must meet ASTM D1785-06.

(9) A minimum of three equal-sized distribution sectors must be provided to allow for resting, emergency capacity, and repair capability.

(10) Dosing must automatically rotate among the active distribution sectors.

(11) The infiltrative surface must not be deeper than three feet below finished grade.

(12) The infiltrative surface must be constructed level.

(13) On sloping sites, the trenches and beds must run parallel to the natural ground contours.

(14) For drainfields using drain rock and distribution pipe, the following are required:

(a) A minimum of six inches of drain rock below the distribution pipe;

(b) A minimum of two inches of drain rock above the distribution pipe;

(c) A minimum of six inches of sidewall must be located in original undisturbed soil; and

(d) Six to twenty-four inches of cover material.

(15) For drainfields using trenches, the following minimum separations are required:

(a) Four and one-half feet between adjacent trench sidewalls; and

(b) Ten feet from the edge of one drainfield sector to the edge of an adjacent drainfield sector.

(16) For drainfields using beds, the following are required:

(a) Installation only in soil types 1 or 2, or in medium sands;

(b) Maximum bed width of ten feet; and

(c) Minimum separation between adjacent bed walls of ten feet.

(17) With documentation and justification from the design engineer, the department may authorize one of the following design changes for a LOSS that meets Treatment Level C or better and has a design flow of 14,500 gpd or less:

(a) The hydraulic loading rate in Table 1, WAC 246-272B-03400, may be increased:

(i) Up to a factor of two for soil types 2-4; or

(ii) Up to a factor of one and one-half for soil type 5;

(b) Vertical separation may be reduced as described in WAC 246-272B-06100; or

(c) The constructed drainfield capacity may be reduced from one hundred fifty percent to one hundred percent if the reserve area has the capacity to receive one hundred percent of the design flow.

(18) With documentation and justification from the design engineer, the department may authorize one of the following design changes for a LOSS that meets Treatment Level C or better and has a design flow greater than 14,500 gpd.

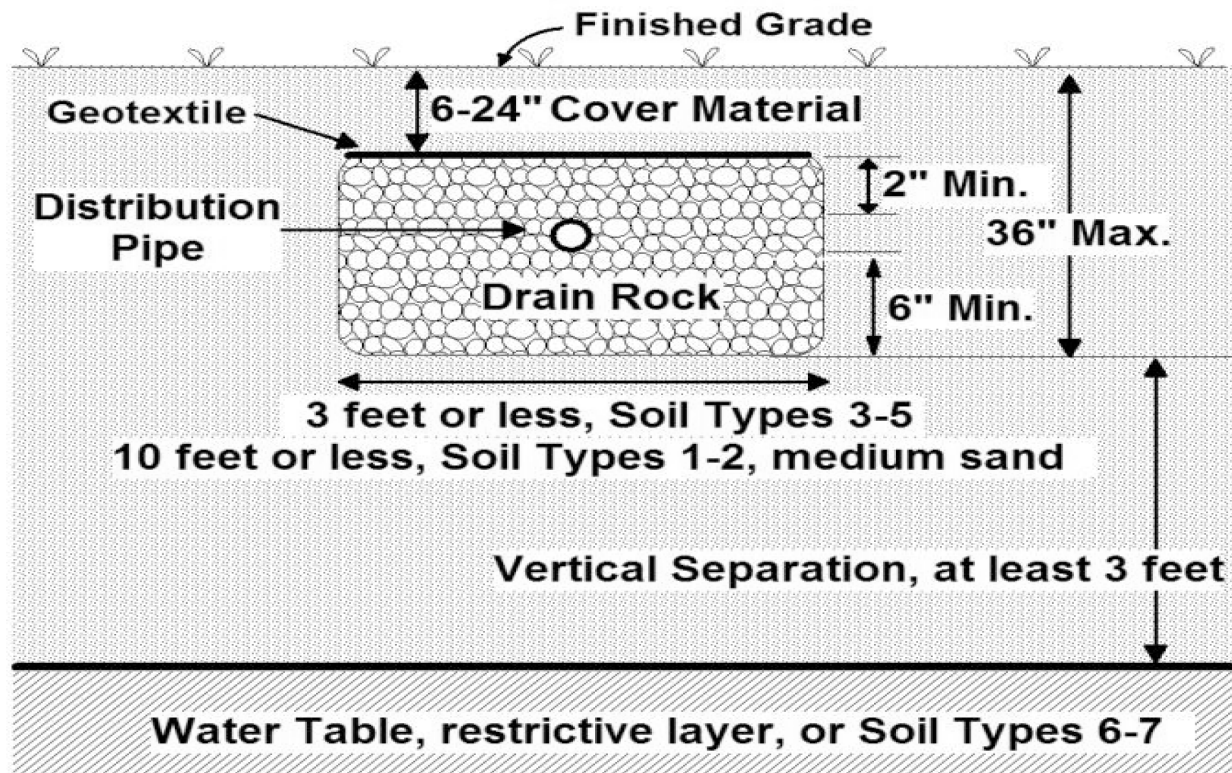
(a) The Table 1 hydraulic loading rate may be increased up to a factor of one and one-half for soil types 2-4;

(b) Vertical separation may be reduced as described in WAC 246-272B-06100; or

(c) The constructed drainfield capacity may be reduced from one hundred fifty percent to one hundred percent if the reserve area has the capacity to receive one hundred percent of the design flow.

(19) The department shall only approve one design change listed in subsections (17) or (18) of this section for any proposed LOSS.

(20) The reserve area for the drainfield must be calculated based on maximum hydraulic loading rates in Table 1 in WAC 246-272B-03400 and may not be reduced by the provisions listed in subsection (17) or (18) of this section.

Figure 2: Typical Pressure Distribution Drainfield Profile**NEW SECTION**

WAC 246-272B-06400 Design requirements to allow monitoring and maintenance. (1) The design engineer shall design LOSS to facilitate operation, monitoring and maintenance. The design of cleanouts and monitoring ports must be consistent with good engineering practice and the department's recommended standards and guidance for pressure distribution systems.

(2) All accesses to LOSS components must be designed to:

- (a) Allow for monitoring and maintenance activities;
- (b) Prevent unauthorized access; and
- (c) Minimize confined space entry. Confined space entry is regulated by department of labor and industries under chapter 296-809 WAC, Confined spaces.

(3) The design engineer shall design and verify that the LOSS meets the following minimum requirements:

- (a) Service access ports must be installed at finished grade for all LOSS components;
- (b) Monitoring ports must:
 - (i) Be located at the end of each lateral;
 - (ii) Be a minimum of four inches in diameter;
 - (iii) Extend from the infiltrative surface of the drainfield to final grade;
 - (iv) Have a cap or cover to stop precipitation from entering them; and
 - (v) Be anchored so they remain in place.

(c) Mechanical and electric distributing valves, if used, must be accessible to allow verification that they are working properly;

(d) Controls and warning devices must be clearly accessible and visible including, but not limited to:

(i) Process controls, such as measuring devices, float and pressure activated pump on-off switches, pump-run timers, and process flow controls;

(ii) Diagnostic tools, such as dose cycle counters and flow meters on either the water supply or sewage stream or hour meters on the sewage stream; and

(iii) Alarms.

(e) Audible and visual alarms must be placed on a circuit independent of the pump circuit.

NEW SECTION

WAC 246-272B-06450 Sewage tanks. (1) The design engineer shall specify and the installer shall install only sewage tanks that comply with the requirements of chapter 246-272C WAC, On-site sewage system tanks, and this section.

(2) Sewage tanks must be tested for water tightness after installation at the project site, per requirements of WAC 246-272B-05200. The department shall not issue final approval for a LOSS with a sewage tank that does not pass the water tightness test.

(3) Sewage tanks used in proprietary treatment systems must be sized according to the manufacturer's specifications.

(4) Septic tanks must have:

- (a) An effluent screen with a maximum mesh size of one-eighth inch for all applications;
- (b) The following minimum liquid volumes:
 - (i) One thousand gallons per residence for LOSS treating sewage from a residential development where individual lots each have a tank;
 - (ii) Three times the daily design flow for all other LOSS.
- (5) Where proprietary treatment is used, the department may approve other septic tank sizes if justified by the manufacturer.
- (6) Sizing of a sewage tank used for hydraulic surge control or where batch treatment occurs must be justified and any effect on treatment must be addressed.
- (7) The design engineer shall size the pump chamber so there is sufficient volume, at a minimum, for:
 - (a) Routine dosing;
 - (b) Pump submergence;
 - (c) Scum and sludge storage; and
 - (d) Emergency storage.
- (8) Emergency storage must be provided in the pump chamber or in the LOSS at or before the point at which pumping will stop during a power outage, as follows:
 - (a) Twenty-four hours of reserve capacity for LOSS with design flow from 3,500 up to and including 14,500 gpd; and
 - (b) Twelve hours reserve capacity for LOSS with design flow above 14,500 gpd.
- (9) No reduction in pump tank reserve volume is allowed with a back-up power generator.
- (10) Grease interceptors must have:
 - (a) A minimum volume of one thousand gallons; or
 - (b) Two times the daily greywater design flow of the facility served, whichever is greater.

NEW SECTION

WAC 246-272B-06500 Collection, conveyance, and other piping appurtenances. (1) Collection and conveyance systems and their sewer pipes, manholes, air release valves, lift stations, and other appurtenances must be designed and constructed to prevent contamination of drinking water, and protect ground and surface water, public health, and the environment from contamination with untreated or partially treated sewage.

(2) The design and construction of LOSS piping must be consistent with good engineering practice, the department of ecology's publication "*Criteria for Sewage Works Design*," August 2008, and the department of ecology and department of health publication "*Pipeline Separation Design and Installation Reference Guide*," July 2006.

(3) LOSS piping systems must be designed to prevent infiltration and inflow of groundwater, surface water and storm water.

(4) The department may require owners of existing LOSS to conduct infiltration and inflow analysis and may require repair and replacement of piping and appurtenances to reduce infiltration and inflow.

Subpart B - Specific Technologies

NEW SECTION

WAC 246-272B-06550 Public domain and proprietary technologies. (1) The department shall only approve treatment technologies and distribution technologies that comply with this section.

(2) For public domain treatment technologies with department published recommended standards and guidance and approved specific treatment levels, the design engineer shall submit stamped, signed, and dated design calculations and reference the applicable standards and guidance documents used for the calculations.

(3) For public domain treatment technologies with no department published recommended guidelines and standards, the design engineer shall submit a stamped, signed, and dated engineering report that:

(a) Demonstrates the treatment technology can consistently meet the required treatment level;

(b) Contains supporting information, including flow data, and influent and effluent quality sampling results from a minimum of three LOSS installations with similar design loading to support the performance claim; and

(c) Includes design calculations citing the industry recognized source.

(4) For proprietary treatment technologies registered with the department according to chapter 246-272A WAC, On-site sewage systems, with flows less than 3,500 gpd to the treatment component, the design engineer shall submit stamped, signed, and dated design calculations or references manufacturer sizing guidelines.

(5) For proprietary treatment technologies registered with the department according to chapter 246-272A WAC, On-site sewage systems, and unregistered proprietary treatment technologies with flows 3,500 gpd or greater to the treatment component, the design engineer shall submit a stamped, signed, and dated engineering report that includes:

(a) Dated written confirmation from the proprietary product design engineer stating the technology is suitable for the proposed LOSS and can consistently meet the required treatment level;

(b) Design calculations or references to manufacturer sizing guidelines; and

(c) Supporting information, including flow data, and influent and effluent quality sampling results from a minimum of three LOSS installations with similar design loading to support the performance claim.

(6) For all public domain distribution technologies that the department has developed recommended standards and guidance, the design engineer shall submit stamped, signed, and dated design calculations and reference the applicable standard, guidance, or rule used.

(7) For proprietary distribution technologies that are registered with the department according to chapter 246-272A WAC, On-site sewage systems, the design engineer shall submit stamped, signed, and dated design calculations and reference the applicable standard, guidance, or rule used.

NEW SECTION**WAC 246-272B-06600 Pressure distribution.** (1)

Pressure distribution with timed dosing of LOSS effluent to the drainfield is required.

(2) The maximum spacing between the outside laterals and the edge of the trench or bed must be one-half of the selected orifice spacing, with a variance of one-half foot or less.

(3) All pressure distribution laterals must be equipped with cleanouts and monitoring ports at the distal ends and accessible at finished grade.

(4) Required distribution system minimum residual pressure head:

(a) Is two feet or 0.87 psi for distribution systems with three-sixteenth inch diameter orifices and larger; and

(b) Is five feet or 2.18 psi for distribution systems with orifices smaller than three-sixteenth inch diameter.

(5) If any portion of the pump fittings or effluent transport line is at a higher elevation than the drainfield, the distribution system must be equipped with an air vacuum release valve or other device to prevent siphoning.

(6) Duplex alternating pumps that provide timed dosing to the drainfield are required.

(7) Quick disconnect couplers or an equivalent quick disconnect system for all sewage pumps are required.

(8) If float switches are used, they must be mounted independent of the pump discharge and transport line.

(9) All mechanical and electrical components must be rated for wastewater applications.

(10) The control panel for the pressure distribution pumps must:

(a) Contain an elapsed time meter and a dose counter;

(b) Be in an enclosure that is secure from tampering and, if outside, resistant to weather; and

(c) Be equipped with both audible and visual alarms.

(11) The drainfield dose frequency must be a minimum of six doses per day.

(12) Except where subsurface drip distribution is used, the volume of each dose must be at least five times the internal volume of the pipe dosing network to be pressurized.

(13) The variation in orifice discharge rates within any one lateral must not be more than ten percent.

(14) The variation in orifice discharge rates over the entire distribution system must not be more than fifteen percent.

(15) Orifices must be no smaller than one-eighth inch in diameter.

(16) Orifices must be evenly distributed along the laterals and spaced as follows:

(a) In soil types 1, 2, and 3, and in sand filters, sand-lined trenches and beds, recirculating gravel filters and mounds, the maximum orifice spacing must be:

(i) One orifice per six square feet of infiltrative surface when not using gravelless chambers; or

(ii) One orifice per nine square feet of infiltrative surface when using gravelless chambers.

(b) In soil types 4 and 5, the maximum orifice spacing must be one orifice every six feet on center along the lateral.

(17) When using gravelless chambers with pressure distribution, the orifices must be oriented in the twelve o'clock position.

(18) Pressure distribution systems with design flows greater than 14,500 gpd must include:

(a) The capacity for remote or off-site operation and alarm notification; and

(b) A means to connect to an emergency power generator.

(19) Electrical components and wiring must comply with WAC 296-46B-501, Special occupancies NEC Class I locations.

(20) Electrical control and other electrical components must be approved by Underwriters Laboratories (UL) or an equivalent rating agency.

NEW SECTION**WAC 246-272B-06650 Subsurface drip systems.** (1)

Subsurface drip systems must have a:

(a) Supply line to deliver effluent to the dripline; and

(b) Return line to route filter and line flushing waste back to the primary treatment unit.

(2) Where Treatment Level C or better is provided, the return line may be double-plumbed to the primary treatment tank and pump chamber to return flush water to the pump chamber under normal operation, and to the primary tank during chemical cleaning flushes.

(3) The dripline must be installed to a minimum depth of eight inches into original, undisturbed soil. Where frost is a concern, the design engineer should consider deeper placement.

(4) Maximum dripline installation depth is three feet below finished grade.

(5) For determining vertical separation, the infiltrative surface for a drip system may be assumed to be the same as installed dripline depth.

(6) Air and vacuum relief valves must be installed:

(a) At the high point of each distribution sector on both the supply and return sides; and

(b) In a valve box with access to finished grade, including a gravel sump.

(7) All mechanical and electrical components must be rated for wastewater applications.

(8) Electrical components and wiring used in drip system design must comply with requirements of WAC 296-46B-501, Special occupancies NEC Class I locations.

(9) Duplex alternating pumps that provide timed dosing to the drainfield are required.

(10) Quick disconnect couplers or an equivalent quick disconnect system for all sewage pumps are required.

(11) If float switches are used, they must be mounted independently of the pump discharge and transport line.

(12) The control panel for the pumps must:

(a) Include read-outs for a flow meter and a pressure gauge, calibrated for the system design flow and pressure range;

(b) Include a means to track and verify dosing;

(c) Be in an enclosure that is secure from tampering and, if outside, resistant to weather;

- (d) Be equipped with both audible and visual alarms;
- (e) Include the capacity for remote or off-site operation and alarm notification; and
- (f) Provide a means to connect to an emergency power generator.
- (13) Automatic flushing of the filters, manifolds, and dripline is required.
- (14) A chemical injector port must be installed at an appropriate location in the drip system to allow future injection of chemicals when needed for cleaning.
- (15) Any additional filtration recommended by the dripline manufacturer must be provided.
- (16) A flow meter with totalizer feature and a pressure gauge, both with remote read-out capability, are required for all drip systems.
- (17) All components requiring regular service or used to monitor system performance, such as filters, actuated valves, flow meters, and pressure gauges, must be installed in a valve box with locking lid and access at finished grade.
- (18) A minimum of twelve equally spaced timed doses per day per distribution zone is required.

- (19) Calculation of the absorption area must be based on:
 - (a) The design flow that meets the requirements of WAC 246-272B-06150; and
 - (b) The requirements in this section, including Table 7.
- (20) Maximum nominal emitter discharge rates are:
 - (a) One and three-tenths gallons per hour in soil types 1, 2, and 3; and
 - (b) Six-tenths gallons per hour in soil types 4 and 5.
- (21) The values in Table 7 must be used to determine the minimum number of emitters and minimum dripfield area required for a subsurface drip system.
 - (a) Select the desired emitter and dripline spacing.
 - (b) Determine the minimum number of emitters required by dividing the design flow of the LOSS by the maximum daily emitter discharge that corresponds to the soil type and selected emitter and dripline spacing.
 - (c) Calculate the minimum dripfield area by multiplying the minimum number of emitters by the area per emitter value that corresponds to the chosen emitter and dripline spacing.

Table 7: Maximum Daily Emitter Discharge Rates

| | | | Maximum Daily Emitter Discharge (gpd/Emitter)* | | | | |
|--------------------------|---------------------------|-------------------------------------|--|-----|------|-----|-------|
| | | | Soil Types | | | | |
| Emitter Spacing (inches) | Dripline Spacing (inches) | Area per Emitter (ft ²) | 1** | 2 | 3 | 4 | 5 |
| 6 | 12 | 0.5 | 0.5 | 0.5 | 0.25 | 0.2 | 0.125 |
| 12 | 12 | 1.0 | 1 | 1 | 0.5 | 0.4 | 0.25 |
| 12 | 18 | 1.5 | 1 | 1 | 0.8 | 0.6 | 0.4 |
| 12 | 24 | 2.0 | 1 | 1 | 0.8 | 0.8 | 0.4 |
| 24 | 24 | 4.0 | 1 | 1 | 1 | 1 | 0.4 |

* Table values apply regardless of additional treatment.
 ** Requires treatment to Treatment Level B or better.

NEW SECTION

WAC 246-272B-06700 Sand-lined trenches and beds.

- (1) Sand-lined trenches or beds may be used to meet Treatment Level B.
 - (2) The minimum dosing frequency is:
 - (a) Twelve equally spaced timed doses per day for coarse sand; or
 - (b) Six equally spaced timed doses per day for ASTM C-33 sand.
 - (3) The maximum allowable hydraulic loading rate is one gallon per square foot per day.
 - (4) The design engineer shall:
 - (a) Use coarse sand that meets the following specifications:
 - (i) Particle size distribution per Table 8 of this section;
 - (ii) Effective particle size from 0.3 to 0.5 mm; and
 - (iii) Uniformity coefficient less than four; or
 - (b) Use sand that meets the ASTM-33 specification, Table 9 of this section and:
 - (i) Has no more than forty-five percent passing any one sieve and retained on the next consecutive sieve, of those listed in Table 9 of this section; and

- (ii) Has a fineness modulus of not less than 2.3 or more than 3.1. The fineness modulus is calculated by adding the cumulative percents of samples retained on the sieves listed in Table 9 and dividing the sum by 100; or
- (c) Verify that the sand material meets the desired specification and provide to the department a particle size analysis of the sand material.
- (5) The minimum depth of sand media is twenty-four inches.
- (6) The design engineer shall:
 - (a) Design the LOSS to meet the drainfield requirements in Table 3 in WAC 246-272B-06050 for the minimum horizontal setback from the edge of the sand-lined trench or bed;
 - (b) Specify that for installations in type 1 soil, trench and bed widths be increased by one foot from the calculated minimum absorption area based on design flow; the additional volume must be filled with sand media in order to prevent effluent from bypassing filter media by flowing out the side-walls; and
 - (c) Specify monitoring ports as required in WAC 246-272B-06400.

Table 8: Coarse Sand—Required Particle Size Distribution

| Sieve | Particle Diameter, mm | Percent Passing by Weight |
|----------|-----------------------|---------------------------|
| 3/8 inch | 9.50 | 100 |
| No. 4 | 4.75 | 95 to 100 |
| No. 8 | 2.36 | 80 to 100 |
| No. 16 | 1.18 | 45 to 85 |
| No. 30 | 0.6 | 15 to 60 |
| No. 50 | 0.3 | 3 to 15 |
| No. 100 | 0.15 | 0 to 4 |

Table 9: Fine Aggregate—ASTM C-33 Sand—Particle Size Distribution

| Sieve | Particle Diameter, mm | Percent Passing by Weight |
|----------|-----------------------|---------------------------|
| 3/8 inch | 9.50 | 100 |
| No. 4 | 4.75 | 95 to 100 |
| No. 8 | 2.36 | 80 to 100 |
| No. 16 | 1.18 | 50 to 85 |
| No. 30 | 0.6 | 25 to 60 |
| No. 50 | 0.3 | 5 to 30 |
| No. 100 | 0.15 | 0 to 10; prefer < 4 |
| No. 200 | 0.075 | 0 - 3; prefer 0 |

NEW SECTION

WAC 246-272B-06750 Intermittent sand filters. (1)

Intermittent sand filters may be used to meet Treatment Level B.

- (2) Pressure distribution to the filter media is required.
- (3) The minimum dosing frequency is:
 - (a) Twelve equally spaced timed doses per day for coarse sand; or
 - (b) Six equally spaced timed doses per day for ASTM C-33 sand.
- (4) The maximum hydraulic loading rate for the sand filter is one gallon per day per square foot.
- (5) The minimum depth of sand media is twenty-four inches.
- (6) The influent wastewater quality distributed to the filter media must meet or exceed effluent characteristics from a properly sized septic tank treating residential strength sewage.
- (7) The minimum horizontal setback from the sand filter must meet the sewage tank requirements in Table 3 in WAC 246-272B-06050.
- (8) The maximum depth of cover material over the distribution technology is twelve inches.
- (9) The design engineer shall meet the sand specification requirements in WAC 246-272B-06700(4).
- (10) The filter bed must be contained in:

(a) A flexible membrane-lined pit where the membrane has a minimum thickness of thirty mm and there is a three-inch layer of sand beneath the membrane; or

(b) A concrete vessel that is water tight, durable, and structurally sound.

(11) The underdrain must be designed with sufficient void storage volume for a single dose to the filter and maintain unsaturated filter material above the underdrain component.

(12) Filtrate may be collected and discharged from the bottom of the filter by either gravity flow or a pumpwell system.

(13) When filtrate is discharged by gravity, a boot and exit pipe must exit the side of the liner and be installed:

(a) By the manufacturer or the manufacturer's representative;

(b) So the boot outlet is bedded in sand;

(c) With the boot properly secured to the outlet pipe, such as with stainless steel bands, screws, and sealant strips, or as recommended by the manufacturer; and

(d) Watertight. If the boot will be submerged in a seasonal high water table, the installer shall test and verify it is watertight.

(14) Two observation ports must be installed every one thousand square feet in the sand filter and distributed uniformly throughout the filter area.

(a) One observation port must be installed to the top of the filter media; and

(b) One observation port must be installed to the bottom of the underdrain.

NEW SECTION

WAC 246-272B-06800 Recirculating gravel filters.

(1) A recirculating gravel filter may be used to meet Treatment Level C.

(2) Pressure distribution of the effluent to the filter media is required.

(3) Filter media must meet the following specifications:

(a) Effective particle size between three mm and five mm; and

(b) Uniformity coefficient less than or equal to two.

(4) Filter media depth must be at least thirty-six inches.

(5) The recirculating pump must be controlled by a timer.

(6) The dosing schedule must provide for at least forty-eight doses per day, equally spaced throughout the day.

(7) Doses must be uniform in volume.

(8) The influent or filtrate mixture must cycle through the filter five times before dispersal.

(9) The maximum hydraulic loading rate for the gravel filter is five gallons per day per square foot, if influent BOD₅ is no greater than 230 mg/L.

(10) The hydraulic loading rate must be calculated on the basis of the incoming BOD as follows:

$$\text{Loading Rate (expressed as gpd/ft}^2\text{)} = \frac{1150}{\text{BOD}_5 \text{ of septic tank effluent}}$$

(11) The maximum influent values are:

- (a) BOD₅ - 575 mg/L; and
- (b) O&G - 30 mg/L.

(12) The minimum horizontal setback from the recirculating gravel filter must meet the sewage tank requirements in Table 3 in WAC 246-272B-06050.

(13) The filter bed must be contained in:

(a) A flexible membrane-lined pit where the membrane has a minimum thickness of thirty mm and there is a three-inch layer of sand beneath the membrane; or

(b) A concrete vessel that is water tight, durable, and structurally sound.

(14) Two observation ports must be installed every one thousand square feet in the recirculating gravel filter and distributed uniformly throughout the filter area.

(a) One observation port must be installed to the top of the media interface; and

(b) One observation port must be installed to the bottom of the underdrain.

(15) The minimum volume of a recirculating mixing tank is:

(a) One hundred fifty percent of the daily design flow for residential applications; or

(b) One hundred percent of the daily design flow for nonresidential applications.

(16) Underdrain and filtrate handling must be designed as required in WAC 246-272B-06750 (11), (12), and (13).

(17) The return flow from the recirculating gravel filter must be split to direct:

(a) A minimum of seventy-five percent of the effluent back to the recirculating or mixing tank; and

(b) The remainder to the drainfield or next downstream LOSS component.

NEW SECTION

WAC 246-272B-06850 Cesspools and seepage pits.

The department shall not approve a LOSS design that includes a cesspool, a drywell, or a seepage pit.

NEW SECTION

WAC 246-272B-06900 Holding tank sewage systems.

(1) An owner shall not install or use a holding tank sewage system for any new residential development or expansion of residential development, except as set forth in this section.

(2) The department may approve installation of holding tank sewage systems only for:

(a) Permanent uses limited to controlled, part-time, commercial usage, such as recreational vehicle parks and trailer dump stations;

(b) Short term use in case of an emergency situation as allowed in WAC 246-272B-07450(4); or

(c) Repairs as allowed in WAC 246-272B-07400(11).

(3) An owner proposing to use a holding tank sewage system shall:

(a) Hire a design engineer who follows good engineering practice and prepares a design consistent with the department's recommended standards and guidance on holding tank sewage systems;

(b) Submit and receive department approval of an O&M manual that meets the requirements of WAC 246-272B-04200; and

(c) Use a holding tank registered by the department according to chapter 246-272C, On-site sewage system tanks, and tested for water tightness under WAC 246-272B-05200.

PART 7: LOSS OPERATIONS REQUIREMENTS

Subpart A - Routine Operations

NEW SECTION

WAC 246-272B-07000 Management requirements.

(1) A single owner development must be managed by a public entity, a wastewater company regulated by the Washington utilities and transportation commission, or a private management entity.

(2) A development where lots or units served by the LOSS are individually owned must be managed by:

(a) A public entity; or

(b) A private management entity with a public entity or a wastewater company regulated by the Washington utilities and transportation commission contracted as a third-party guarantor.

NEW SECTION

WAC 246-272B-07050 Operations and maintenance requirements. (1) The owner shall operate and maintain the LOSS according to:

(a) The requirements in this chapter;

(b) The current operating permit issued by the department, including all conditions and requirements of the operating permit; and

(c) LOSS operating procedures such as those described in department guidance, texts, handbooks, and manuals.

(2) The owner shall maintain financial resources sufficient for O&M of the LOSS including, but not limited to:

(a) Creating and continuously funding operating and reserve accounts;

(b) Setting and adjusting fees and rates for connections, monthly service charges, charges for routine and emergency repairs; and

(c) Establishing a process to collect on delinquent accounts or disconnect customers.

(3) The owner shall respond to customer concerns and service complaints in a timely manner.

(4) The owner shall not install or maintain a bypass to divert sewage or partially treated sewage around any feature of the treatment process, unless approved in writing by the department.

(5) The owner shall not allow substances listed in WAC 246-272B-06000 to enter into the LOSS collection system or any other LOSS component.

(6) The owner shall conduct reliable and representative monitoring following operating permit conditions and requirements, and provide results to the department.

(7) As required in the operating permit, samples must be analyzed by an accredited laboratory, according to chapter 173-50 WAC, Accreditation of environmental laboratories.

(8) O&M data must be available to the department and a third-party guarantor, if any.

(9) The owner shall use reasonable security measures to protect the LOSS treatment processes and components, including the soil profile, from possible damage or harm by unauthorized persons, vehicles, animals, vegetation, or other sources.

NEW SECTION

WAC 246-272B-07100 Department inspections. (1) The department may enter and inspect any LOSS site or LOSS facility to determine compliance with chapter 70.118B RCW, Large on-site sewage disposal systems or this chapter:

(a) On any weekday that is not a legal holiday between the hours of 8:00 a.m. and 5:00 p.m.; and

(b) At any time with the consent of the owner or owner's agent.

(2) The department may inspect:

(a) All records, including records of O&M;

(b) All data submitted;

(c) All permits; and

(d) The LOSS, all LOSS components, and all LOSS performance equipment.

(3) During an inspection, the department shall have free and unimpeded access to all:

(a) Buildings, warehouses, storage facilities, and other places reasonably considered to be or to have been part of the LOSS;

(b) Ledgers, books, accounts, memorandums, or records required to be compiled or maintained in this chapter; and

(c) Products, components, maintenance supplies, or other material used in connection with the LOSS.

(4) During the inspection, the department may take such samples as may be reasonably necessary to verify compliance.

(5) The owner shall take preventative or corrective action as directed by the department when results of an inspection indicate conditions which may harm or are harming LOSS operation or which are in violation of any requirements of this chapter.

NEW SECTION

WAC 246-272B-07150 Reliability and emergency response. (1) All LOSS must provide adequate treatment in quantity and quality to sewage in a reliable manner at all times.

(2) The owner shall create and implement operating procedures for normal operating conditions.

(3) The owner shall create and implement operating procedures for abnormal operating conditions, such as those associated with floods, unscheduled power outages, facility failures, and LOSS maintenance, including procedures to notify the department.

(4) The owner shall document procedures for LOSS operation during normal and abnormal operating conditions in the O&M manual as required in WAC 246-272B-04200.

(5) The department may require the owner to prepare an engineering report according to WAC 246-272B-04000 that evaluates any problem with normal or abnormal operations,

recommends and designs solutions to correct the problem. The department may require corrective actions to be implemented.

NEW SECTION

WAC 246-272B-07200 Operator qualifications and responsibilities. (1) Owners of LOSS using mechanical treatment or lagoons with design flow greater than 14,500 gpd shall employ one or more operators certified according to chapter 173-230 WAC, Certification of operators of wastewater treatment plants.

(2) Owners of LOSS with design flow greater than 14,500 gpd not using mechanical treatment or lagoons shall employ one or more operators approved by a local health jurisdiction in Washington state.

(3) The operator of a LOSS using proprietary treatment shall be qualified to monitor and maintain that LOSS. Examples of a qualified operator include someone who:

(a) Has experience successfully operating a LOSS with similar technology;

(b) Is an employee or authorized agent of the treatment component manufacturer;

(c) Is trained, authorized in writing by, and in good standing with the manufacturer of the proprietary treatment;

(d) Has education or certification in operating similar technology; or

(e) Has other qualifications acceptable to the department.

(4) Owners of LOSS with design flows of 14,500 gpd or less shall employ one or more operators approved by a local health jurisdiction in Washington state.

(5) If an operator described in WAC 246-272B-07200 (2) or (4) is unavailable, the owner of a LOSS shall propose and the department may accept a person with OSS or LOSS experience.

(6) The operator shall prepare and sign monitoring reports, certifying that the results are correct and the report is complete, whether results are from process gauges or from an accredited laboratory.

NEW SECTION

WAC 246-272B-07250 Metering. (1) The LOSS owner shall install and maintain one or more flow monitoring devices to measure flow.

(2) The LOSS owner or operator shall record and report flow data in gpd as directed in the operating permit.

NEW SECTION

WAC 246-272B-07300 Sewage tank management. (1) The owner, management entity, or operator shall create and follow a routine schedule as required in WAC 246-272B-04200(5) for:

(a) Sewage tank inspection for septage, grease, and scum; and

(b) Sewage tank pumping.

(2) When removing septage, grease, scum, or sewage from a LOSS, the owner shall: Employ only persons approved by the local health jurisdiction to pump and transport septage, grease, scum, or sewage and that:

- (a) Transport septage, grease, scum, or sewage only in vehicles clearly identified with the name of the business;
- (b) Record and report septage removal to the owner as required by the approved O&M manual and the LOSS operating permit; and
- (c) Dispose of septage, grease, scum, or sewage, or apply septage biosolids to land consistent with local health jurisdiction regulations and chapter 173-308 WAC, Biosolids management.

Subpart B - LOSS Changes

NEW SECTION

WAC 246-272B-07400 Modifications. (1) When an owner modifies a LOSS, the component or components being modified must meet the requirements of this chapter.

(2) If the LOSS cannot meet the requirements of subsection (1) of this section, the department may consider repair or replacement of a LOSS component that is located and designed to meet new construction and treatment standards to the maximum extent allowed by the site and:

- (a) Protects drinking water sources and distribution systems, and shellfish growing areas;
- (b) Minimizes nitrogen discharge in areas where nitrogen is identified as a contaminant of concern;
- (c) Prevents the direct discharge of sewage or partially treated sewage to groundwater, surface water, or upon the surface of the ground;
- (d) Meets the horizontal setbacks described in WAC 246-272B-06050 to public drinking water sources and distribution pipes;
- (e) Maximizes vertical separation, and distance to any well, spring, suction line and surface water; and
- (f) Meets other requirements, as directed by the department to protect public health and the environment.

(3) Component modifications that require department approval must follow the procedures outlined in WAC 246-272B-02550. Examples of modifications requiring department approval include drainfield repair or replacement; repairs or replacement that also include improvements expanding the LOSS capacity or service area; and treatment process changes.

(4) Routine LOSS repair and equipment replacement activities that do not affect capacity or treatment performance do not require department review. Examples include pump replacement or repair, with equivalent size; minor collection pipe repair or replacement; and replacement of most valves and switches.

(5) In any submittal documents, the design engineer shall identify all the contributing factors of the failure or need for repair or replacement and design the repair or replacement to mitigate those identified possible causes or contributing factors.

- (6) Drainfield reserve area is not required for repairs.
- (7) All LOSS component repairs or replacements, including those to drainfields, must be located on:
 - (a) The property served; or
 - (b) A repair or replacement site where the distance between the property served and the repair or replacement

site has been approved by the department based on site conditions and risk to public health and the environment.

(8) If needed, the owner shall obtain easements and right of way franchises, record them on the property title, and submit copies of the recorded documents to the department.

(9) A drainfield that cannot be repaired or replaced constitutes a failure of the LOSS and the owner shall comply with WAC 246-272B-07450.

(10) If a repair or replacement is not possible or feasible, the LOSS owner shall consult the department.

NEW SECTION

WAC 246-272B-07450 Failures. (1) LOSS or LOSS component failures include, but are not limited to:

- (a) Sewage or partially treated sewage on the ground;
- (b) Sewage backing up into a connected residence or structure caused by slow soil absorption of the treated effluent or other failure;
- (c) Sewage or partially treated sewage leaking from a septic tank, pump chamber, holding system or collection system;
- (d) Cesspools or seepage pits where evidence of groundwater or surface water quality degradation exists;
- (e) Plant growth above the drainfield that indicates the effluent is not filtering down through the soil profile;
- (f) Inadequately treated effluent contaminating groundwater or surface water; or
- (g) Noncompliance with standards stipulated in the operating permit.

(2) The owner shall address and correct all failures immediately. LOSS component failures that can be corrected by repair or replacement must follow the requirements in WAC 246-272B-07400.

(3) The owner of a LOSS that has a failure shall report the condition to the department by telephone or by e-mail within one business day of discovery.

(4) The department may require:

- (a) Modifications, reduction in capacity, changes in operations, additional monitoring, temporary use of a holding tank, or other emergency measures in order to reduce or eliminate the risk to public health and actual or potential environmental contamination;

(b) Residences, structures, lots, and units that are connected to the failing LOSS to connect to another LOSS with sufficient approved capacity or to a sanitary sewer system, if available;

(c) The LOSS owner to apply for a National Pollutant Discharge Elimination System permit or a state waste discharge permit from the department of ecology, if effluent will be discharged to the land surface or into surface water; or

(d) The LOSS to be shut down and abandoned, according to WAC 246-272B-07500.

(5) When the owner is directed by the department to discontinue operation of a LOSS or to cease serving some or all dwellings, structures, lots, or units, the owner shall give department-approved written notice to all affected customers and property owners within ten business days, return receipt requested.

(6) The department may direct the owner to discontinue use of the LOSS or any portion of the LOSS due to a system or component failure.

NEW SECTION

WAC 246-272B-07500 Abandonment. The LOSS owner who is permanently abandoning any portion of a LOSS, including a septic tank, seepage pit, cesspool, or other sewage container, and all accessible parts of the drainfield that may become a hazard, including distribution boxes and pump chambers, shall provide:

- (1) Written notice of the abandonment to the department and local health jurisdiction of the county where the LOSS is located a minimum of one year in advance;
- (2) Department-approved, return receipt requested written notice of the abandonment to all affected customers and property owners whose connected dwellings, structures, lots, or units will no longer have sewage service a minimum of one year in advance;
- (3) Hire an approved pumper to remove all partially treated sewage;
- (4) Remove all mechanical and electrical equipment;
- (5) Remove or destroy all lids;
- (6) Fill any voids with soil or gravel; and
- (7) Meet any other local or state requirements.

NEW SECTION

WAC 246-272B-07550 Connection to a sanitary sewer system. (1) The department may require the LOSS owner to connect some or all residences, structures, lots and units to a sanitary sewer system consistent with WAC 246-272B-07450 (4)(b).

(2) If the local health officer or local regulations require connection to a sanitary sewer system, the owner shall abandon the LOSS according to WAC 246-272B-07500.

(3) The department shall not approve a new LOSS if sanitary sewer service is available within two hundred feet of the property line, or other distance specified in local regulation, and:

- (a) The local board of health or county has passed a local regulation requiring connection to a sanitary sewer system to protect public health; or
- (b) Connection to a sanitary sewer system is required by the local comprehensive land use plan or local development regulations.

PART 8: WAIVERS, ENFORCEMENT, AND APPEALS

NEW SECTION

WAC 246-272B-08000 Waivers. (1) The LOSS project applicant or LOSS owner may request a waiver from specific requirements of this chapter. The request must:

- (a) Be in writing;
 - (b) Identify the requirement requested to be waived;
 - (c) State the reason for the waiver; and
 - (d) Provide supporting information.
- (2) The department may grant a waiver request if it:

(a) Is consistent with the applicable standards and the intent of this chapter; and

(b) Provides a comparable level of public health and environmental protection to the requirement being waived.

(3) If the department approves a waiver request, the department shall notify the requestor of the decision in writing.

(4) If the department denies a waiver request, the department shall notify the requestor of the decision in writing stating the reasons for the denial.

NEW SECTION

WAC 246-272B-08100 Enforcement. (1) The department shall enforce this chapter and chapter 70.118B RCW, Large on-site sewage disposal systems.

(2) When any person is out of compliance with a law or rule regulating LOSS and administered by the department, the department may take appropriate enforcement actions, regardless of any prior approvals issued.

(3) The department may initiate enforcement action against the owner to bring the system into compliance by using one or more of the following options, which include, but are not limited to:

- (a) A conference between the department and the owner to explore facts and resolve problems;
- (b) A compliance agreement between the department and the owner;
- (c) A notice of correction;
- (d) A notice of violation;
- (e) A state departmental order;
- (f) Civil penalties;
- (g) Operating permit conditions or approval conditions;
- (h) Injunctions; and
- (i) Other authorized proceedings.

(4) The department may issue an emergency stop work order or department order to refrain from using any LOSS or portion of the LOSS or improvements to the LOSS until all permits, certifications, approvals, and determinations to proceed required by rule or statute are obtained.

(5) The department may issue an order to stop work on LOSS construction activities that occur or are scheduled to occur prior to receiving department approval, determination to proceed, or a department operating permit.

(6) The department may impose civil penalties pursuant to RCW 70.118B.050 in an amount of up to ten thousand dollars per day per violation.

(7) The department may deny an application for an operating permit, approval, or determination to proceed, or revoke, suspend or modify a permit, approval, or determination to proceed if:

- (a) The permit was obtained by fraud;
- (b) An owner violates or fails to comply with any term or condition of the permit;
- (c) A LOSS failure or the need for a repair or replacement of a LOSS component has resulted from neglect or poor management practices;
- (d) A person fails, refuses, or is unable to comply with chapter 70.118B RCW, Large on-site sewage disposal systems or this chapter;

(e) There is a change in any condition that requires the LOSS to temporarily or permanently limit or stop operating; or

(f) It is necessary to comply with applicable water quality provisions in chapter 90.48 RCW, Water Pollution Control Act.

(8) The department may enjoin a violation or threatened violation of this chapter or chapter 70.118B RCW, Large on-site sewage disposal systems, in the superior court in the county in which the system is located or in Thurston County.

NEW SECTION

WAC 246-272B-08200 Notice of decision, appeals, and adjudicative proceedings. (1) The department's notice of a denial, suspension, modification, or revocation of a permit; approval; or determination to proceed must be consistent with RCW 43.70.115. An applicant or permit holder has the right to an adjudicative proceeding to contest the decision.

(2) The department's notice of imposition of a civil penalty must be consistent with RCW 43.70.095 and 70.118B-050. A person upon whom the department imposes a civil penalty has the right to an adjudicative proceeding.

(3) A person upon whom the department imposes a civil penalty or issues a notice of denial, suspension, modification or revocation of a permit; approval; or determination to proceed may contest a department decision within twenty-eight days of receipt of the decision by filing a written application for an adjudicative proceeding by a method showing proof of receipt with the administrative hearings unit, department of health. The person must include the following in or with the application:

(a) A specific statement of the issue or issues and law involved;

(b) The grounds for contesting the department decision; and

(c) A copy of the contested department decision.

(4) An adjudicative proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 246-10 WAC, Administrative procedure—Adjudicative proceedings.

NEW SECTION

WAC 246-272B-08300 Third-party appeals to department permit decisions for LOSS over 14,500 gpd and adjudicative proceedings. (1) A person aggrieved by the issuance of an initial permit, or by the issuance of a subsequent permit to increase the volume of waste disposal or to change effluent characteristics, for systems with design flows of more than 14,500 gpd, has the right to an adjudicative proceeding.

(2) The application for an adjudicative proceeding must be in writing and must state the basis for contesting the action, include a copy of the decision and be served on and received by the department within twenty-eight days of receipt of notice of final decision and be served in a manner that shows proof of receipt.

(3) An adjudicative proceeding conducted under this section is governed by chapter 34.05 RCW, Administrative Procedure Act.

PART 9: SEVERABILITY

NEW SECTION

WAC 246-272B-09000 Severability. If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected.

WSR 11-02-073

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 5, 2011, 7:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-19-103.

Title of Rule and Other Identifying Information: The department is creating a new chapter under Title 388 WAC, Department of social and health services. The title of the new chapter is "Residential habilitation centers—Compliance standards."

The department is proposing new sections WAC 388-111-0001 Definitions, 388-111-0010 Mandated reporting to the department, 388-111-0020 Mandated reporting to law enforcement, 388-111-0030 Mandated reporting policies and procedures, 388-111-0040 Resident and client protection program—Investigation of reports of abandonment, abuse, neglect, or financial exploitation, 388-111-0050 Resident and client protection program—Notice to individual of preliminary findings, 388-111-0060 Resident and client protection program—Notice to others of preliminary findings, 388-111-0070 Resident and client protection program—Disputing a preliminary finding, 388-111-0080 Resident and client protection program—Disputing a preliminary finding—Hearing procedures, 388-111-0090 Resident and client protection program—Finalizing the preliminary finding, 388-111-0100 Resident and client protection program—Reporting final findings, 388-111-0110 Resident and client protection program—Appeal of administrative law judge's initial order or finding, 388-111-0120 Resident and client protection program—Disclosure of investigative and finding information, 388-111-0130 Notice—Service complete, and 388-111-0140 Notice—Proof of service.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on February 8, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 9, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery Office Building 2, DSHS Headquarters, 1115 Washington,

Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 8, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 25, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Highlights of proposed new chapter:

- Clarifies that staff working in residential habilitation centers (RHCs) that are intermediate care facilities for persons with intellectual disabilities (ICFs/ID) are mandated reporters subject to chapter 74.34 RCW.
- Specifies when mandated reports must be made to the department and to law enforcement.
- Identifies what may be included in the department's investigation of a mandatory report made under chapter 74.34 RCW.
- Describes what constitutes notice of a preliminary finding.
- Identifies who may be notified of a preliminary finding.
- Describes how an individual may challenge a department preliminary finding, and the hearing procedures to dispute a preliminary finding.
- Identifies who receives reports of final findings, and the process for disclosing investigative and finding information.
- Defines requirements for appealing an administrative law judge's decision.
- Specifies when service of the department's notice is considered complete and what constitutes proof of service.

The purpose of creating this chapter is to formalize the due process rights and abuse reporting requirements for individuals working in state RHCs that are also ICFs/ID.

Vulnerable adult abuse reporting requirements and due process rights are codified in chapters 388-78A and 388-97 WAC, and chapters 74.34 and 34.05 RCW for individuals working in ICFs/ID that are licensed boarding homes or nursing homes. All staff working in ICFs/ID, including state RHCs are subject to the requirements in chapter 74.34 RCW.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.030.

Statute Being Implemented: Chapters 74.34, 74.39A, and 34.05 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: John Gaskell, P.O. Box 45600, Olympia, WA 98513, (360) 725-3210; Implementation and Enforcement: Bob McClintock, P.O. Box 45600, Olympia, WA 98513, (360) 725-2419.

No small business economic impact statement has been prepared under chapter 19.85 RCW. State operated RHCs do not meet the definition of a "small business."

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@dshs.wa.gov.

December 29, 2010
Katherine I. Vasquez
Rules Coordinator

Chapter 388-111 WAC

RESIDENTIAL HABILITATION CENTERS—COMPLIANCE STANDARDS

NEW SECTION

WAC 388-111-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical or physical restraints unless the restraint is consistent with certification requirements.

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives an individual an opportunity to appeal a finding of abandonment, abuse, neglect or financial exploitation of a resident.

"Administrative law judge (ALJ)" means an impartial decision maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Department" means the department of social and health services (DSHS).

"Facility":

(1) Except as defined in subsection (2) of this definition, the term "facility" means an intermediate care facility for persons with intellectual disabilities (ICF/ID) certified under chapter 42 C.F.R., Part 483, Subpart I, unless the facility is licensed as a nursing home under chapter 18.51 RCW or as a boarding home under chapter 18.20 RCW.

(2) When used in the definition of "mandated reporter", the term "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any individual for his or her profit or advantage.

"Individual" means anyone used by the facility to provide services to residents, who is alleged to have abandoned, abused, neglected, misappropriated property of, or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors and volunteers. "Individual" also includes a person used by the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Intermediate care facility for persons with intellectual disabilities (ICF/ID)" or **"Facility"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, unless the facility is licensed as a nursing home under chapter 18.51 RCW or as a boarding home under chapter 18.20 RCW. For the purposes of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

"Neglect" means that an individual or entity with a duty to care for residents has:

(1) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare or safety; or

(2) Through conduct or inaction, or a pattern of conduct or inaction, failed to provide a resident with the goods and services that maintain physical or mental health of a vulnerable adult, or that failed to avoid or prevent physical harm, pain, mental anguish, or mental illness.

"Resident" means an individual residing in a facility or in the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Willful" means the deliberate, or nonaccidental, action or inaction by an individual that he or she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

NEW SECTION

WAC 388-111-0010 Mandated reporting to the department. Mandated reporters, including the facility and staff:

(1) Must comply with reporting requirements under chapter 74.34 RCW and this chapter;

(2) Must immediately make mandated reports to the department's centralized toll free complaint telephone number or fax number when:

(a) There is reasonable cause to believe that a vulnerable adult, as defined in chapter 74.34 RCW, has been abandoned, abused, neglected, or financially exploited; or

(b) There is a reason to suspect physical or sexual assault.

(3) Must make any other written and oral reports as required by the department; and

(4) Must protect the alleged victim and others from further abuse, neglect, abandonment, and financial exploitation.

NEW SECTION

WAC 388-111-0020 Mandated reporting to law enforcement. Mandated reporters, including the facility and staff, must immediately report to the appropriate law enforcement agency if there is reason to suspect that any of the following has occurred:

(1) Sexual assault - Any alleged or suspected sexual assault;

(2) Physical assault (nonclient to client) - Any suspected physical assault as well as any act that causes fear of imminent harm; and

(3) Physical assault (client to client) - Any suspected physical assault that causes bodily injury requiring more than first aid, or in the event of:

(a) Injuries that appear on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) Fractures;

(c) Choking attempts;

(d) Patterns of physical assault between the same vulnerable adults or involving the same vulnerable adults;

(e) A reasonable cause to believe that an act has caused fear of imminent harm; and

(f) Any incident, regardless of injury, if requested by the client, his/her legal representative, or family member.

NEW SECTION

WAC 388-111-0030 Mandated reporting policies and procedures. (1) The facility must develop, train staff on, and implement written policies and procedures for:

- (a) Immediately reporting mandated reporting incidents to:
 - (i) The department and law enforcement;
 - (ii) The facility; and
 - (iii) The alleged victim's legal representative.
 - (b) Protecting clients;
 - (c) Preserving evidence when necessary; and
 - (d) Initiating an outside review or investigation.
- (2) The facility must not have or implement any policies or procedures that interfere with a mandated reporter's obligation to report.

NEW SECTION

WAC 388-111-0040 Resident and client protection program—Investigation of reports of abandonment, abuse, neglect, or financial exploitation. (1) The department will review all allegations that an individual abandoned, abused, neglected, or financially exploited a resident as those terms are defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

- (a) The review of facility and state agency records;
- (b) Interviews with anyone who may have relevant information about the allegation; and
- (c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

WAC 388-111-0050 Resident and client protection program—Notice to individual of preliminary findings.

(1) The department will serve notice of the preliminary finding as provided in WAC 388-111-0130.

(2) The department may establish proof of service as provided in WAC 388-111-0140.

NEW SECTION

WAC 388-111-0060 Resident and client protection program—Notice to others of preliminary findings. Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

- (1) Other divisions within the department;
- (2) The facility where the incident occurred;
- (3) The employer or program that is currently associated with the individual;
- (4) Law enforcement;
- (5) Other entities as authorized by law, including chapter 74.34 RCW and this chapter; and

- (6) The appropriate licensing agency.

NEW SECTION

WAC 388-111-0070 Resident and client protection program—Disputing a preliminary finding. (1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings and include the following information:

- (a) The individual's full legal name, current mailing address and the telephone number;
- (b) A brief explanation of why the individual disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign language or sign interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding; except under the circumstances described in WAC 388-111-0080.

NEW SECTION

WAC 388-111-0080 Resident and client protection program—Disputing a preliminary finding—Hearing procedures. (1) If an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

(2) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC.

(3) If a conflict exists between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

NEW SECTION

WAC 388-111-0090 Resident and client protection program—Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the time frame provided under WAC 388-111-0080.

(b) The individual requests an administrative hearing to appeal the preliminary finding and the administrative law judge:

- (i) Dismisses the appeal following withdrawal of the appeal or default; or
- (ii) Issues an initial order upholding the finding.

(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in subsection (3) of this section.

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists under the following circumstances:

- (a) The department determines the finding was made in error;
- (b) The finding is rescinded following judicial review; or
- (c) The department is notified of the individual's death.

NEW SECTION

WAC 388-111-0100 Resident and client protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect or financial exploitation of a resident, within ten working days to the following:

- (1) The individual;
- (2) The current superintendent of the facility in which the incident occurred;
- (3) The superintendent or administrator of the facility that currently employs the individual, if known;
- (4) The department's registry;
- (5) The appropriate licensing authority; and
- (6) Any other lists maintained by a state or federal agency, as appropriate.

NEW SECTION

WAC 388-111-0110 Resident and client protection program—Appeal of administrative law judge initial order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists, unless removal is required under WAC 388-111-0090(3).

NEW SECTION

WAC 388-111-0120 Resident and client protection program—Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, or financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or

the resident will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

NEW SECTION

WAC 388-111-0130 Notice—Service complete. Service of the department notices is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;
- (3) The notice is faxed and the department receives evidence of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; or
- (5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-111-0140 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the facility or to the individual to whom the notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

WSR 11-02-078

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-08—Filed January 5, 2011, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-110.

Title of Rule and Other Identifying Information: The proposed rule sets forth the standards, submission requirements and instructions related to the data call authorized by ESHB 1714 (chapter 172, Laws of 2010).

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on February 9, 2011, at 10:00 a.m.

Date of Intended Adoption: February 23, 2011.

Submit Written Comments to: Meg L. Jones, P.O. Box 40258, Olympia, WA 98504-0258, e-mail megj@oic.wa.gov, fax (360) 586-3109, by February 9, 2011.

Assistance for Persons with Disabilities: Contact Lorie Villaflores, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner anticipates that the proposed rule will provide the

commissioner and any retained consultant with data necessary to compare the performance of the small group and association health plan markets in Washington state.

Reasons Supporting Proposal: The legislation requiring the commissioner's report on market performance, ESHB 1714, specifically prohibits a data call for information unless rules have been adopted regarding the data call.

Statutory Authority for Adoption: RCW 48.02.060, chapter 162, Laws of 2010.

Statute Being Implemented: Chapter 162, Laws of 2010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kriedler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg L. Jones, P.O. Box 40258, Olympia, (360) 725-7170; Implementation and Enforcement: Leslie Krier, P.O. Box 40258, Olympia, (360) 725-7216.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the entities affected by the proposed rule qualify as small business entities.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Meg L. Jones, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7170, fax (360) 586-3109, e-mail megj@oic.wa.gov.

January 5, 2011

Mike Kriedler

Insurance Commissioner

Chapter 284-199 WAC

Health Insurance Market Performance Data Call Rules

NEW SECTION

WAC 284-199-001 Scope. This chapter applies to health care service contractors, health maintenance organizations, disability insurers, multiple employer welfare arrangements or any other company that bore risk between 2005 and 2008 for covered lives in the state of Washington, either through a small employer health plan, an association health plan, or any other arrangement to which two or more employers contribute to provide health care for employees. The chapter does not apply to direct patient provider primary care practices as defined in chapter 48.150 RCW.

(1) For purposes of this chapter only, the term "carrier" is used to refer to any entity identified in this chapter.

(2) This chapter explains to carriers the requirements associated with the commissioner's data call pursuant to chapter 172, 2010 laws.

(3) This chapter is effective until midnight September 30, 2011.

NEW SECTION

WAC 284-199-005 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise.

(1) "Association health plan" means a health benefit plan or policy issued through an association either pursuant to a master contract or through individual or group contracts that predicate eligibility for enrollment in whole or in part on membership in an association. Multiple employer welfare arrangements and member governed groups are included in the definition of association for purposes of this definition.

(2) "Comprehensive medical plan" means a plan providing "comprehensive health care services" as described in RCW 48.46.020(4), RCW 48.41.110(4) or RCW 48.41.120.

(3) "Data Call" means the commissioner's request for information pursuant to chapter 172 RCW, laws of 2010.

(4) "Direct earned premium" means premium as defined in RCW 48.43.005, plus any rate credits or recoupment less any refunds, for the applicable period, whether received before, during or after the applicable period.

(5) "Eligibility" means the standards used to determine whether an applicant may enroll in a health benefit plan.

(6) "Enrollment" means the process, standards and practices used to enroll an applicant under a health benefit plan, regardless of whether the process, standards or practices are imposed by a carrier or an association or an administrative agent on their behalf.

(7) "Enrollee" means a person entitled to coverage for benefits under a health benefit plan, including an enrollee, subscriber, policyholder, beneficiary of a group plan, or an individual covered by any other health plan.

(8) "General administrative expenses" means actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses.

(9) "Health benefit plan" means any policy, contract or agreement offered to provide, arrange, reimburse or pay for a comprehensive medical plan.

(10) "Health plan rate" means the rate used to calculate the premium charged, received or deposited as consideration for a health benefit plan or the continuance of a health benefit plan.

(11) "Health plan premium" means the amount agreed upon as a fee for coverage under a comprehensive medical plan for a defined period of time, regardless of the entity responsible for paying the premium or its equivalent, exclusive of cost-sharing amounts paid by enrollees at the time of service.

(12) "Health status factors" means information about an enrollee or applicant used to evaluate the enrollee or applicant's eligibility for coverage or receipt of benefits under a comprehensive medical plan. Health status factors may include, but are not limited to, information about a person's health status, medical condition, claims experience, receipt of health care, medical history, disability and evidence of insurability such as criminal history or domestic violence.

(13) "Incurred claims" means the sum of the following:

(a) Dollar amount of claims closed with payments; plus

(b) Reserves for reported claims at the end of the current year; minus

(c) Reserves for reported claims at the end of the previous year; plus

(d) Reserves for incurred but not reported claims at the end of the current year; minus

(e) Reserves for incurred but not reported claims at the end of the previous year; plus

(f) Reserves for loss adjustment expense at the end of the current year; minus

(g) Reserves for loss adjustment expense at the end of the previous year.

(14) "PPACA" means the Patient Protection and Affordable Coverage Act, P.L. 111-148 (2010).

(15) "Resident" means that person enrolled in a health benefit plan or applying for enrollment in a health benefit plan who resides in Washington State or whose employer is based in Washington State.

(16) "Small group health plan" means a health plan issued to a group of 2 to 50 or a grandfathered health plan issued to a small group of one in effect between 2005 and 2008.

(17) "Submission" means the transfer to and actual receipt by the commissioner of data, documents and information, performed by the carrier or the carrier's third party expert consistent with the format, method and timing specified by the commissioner.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 284-199-010 Acknowledgment. Carriers must acknowledge receipt of the data call by sending an electronic mail acknowledgment to the commissioner's mailbox: 1714survey@oic.wa.gov. The carrier must include the name, e-mail address and telephone number of the contact person within the organization regarding the data call.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 284-199-015 Aggregation of data. If a carrier determines that an association health plan block of business subject to the reporting requirements under chapter 172, laws of 2010 covers fewer than ten thousand lives in any of the reporting years, the carrier may contract with a third party to aggregate the information with other carrier data that similarly qualifies.

(1) The third party must respond to the data call within the time frames required of the carrier, and follow the commissioner's instructions for submission. If the commissioner requires resubmission of the data, in whole or in part, the third party must respond within the time frame that the commissioner requires.

(2) No extensions of time may be granted by the commissioner in order to accommodate a carrier's election to report data for a plan on an aggregated basis.

(3) If the plan block of business size changes from year to year, and in any year covers more than ten thousand lives, the plan must report data on a non-aggregated basis for those

years when the plan block of business size exceeds ten thousand lives.

(4) The data submitted by a third party aggregating data for multiple carriers must identify each carrier whose data is included in the submission, and include a statement executed by the carrier attesting to the accuracy of the data submitted by the carrier. The form of the statement is posted on the commissioner's web site.

NEW SECTION

WAC 284-199-020 Survey instrument. (1) The data call will be issued in the form of a survey instrument, template for narrative responses and record format instructions, containing questions requiring narrative as well as numeric responses. Carriers must respond to the survey instrument pursuant to the instructions posted on the commissioner's web site.

(2) The commissioner may request information not specifically referenced in ESHB 1714, chapter 172, laws of 2010. Carrier submission of data sets requested but not specifically referenced in chapter 172, laws of 2010 are voluntary in nature, and will be included based on the commissioner's determination that they provide information necessary to respond to the Legislature's request for a comparison of the small group and association health plan markets. Data sets that are voluntary will be specifically designated as such in the survey instrument.

NEW SECTION

WAC 284-199-025 Submission. Carriers and their third party consulting experts must comply with the commissioner's data submission standards. Carriers are responsible for the accuracy and completeness of the data for all record groups requested through the data call, and for correcting errors identified during the data validation process in a timely manner, and delivering corrected data on or before the due dates set by the commissioner during the data validation process.

(1) Data, supporting documents and any other information necessary to respond to the commissioner's data call must be submitted to the commissioner by the carrier or their third party consulting expert at the address specified in the instructions not later than 10:00 p.m. on the ninetieth day after these rules are adopted.

(2) Carriers must use the survey template form prepared and posted on the commissioner's web site when responding to the data call, and follow the instructions, requirements and guidelines for the record layout format also posted on the web site. Carriers may submit additional documents or other explanatory information with the completed survey template. These documents must be submitted to the commissioner in pdf format and in compliance with any other record layout format requirements included in the instructions.

(3) If a carrier submitted information to the Department of Health and Human Services pursuant to the data call referenced in 45 CFR 159.120(a), the carrier may comment on any change in experience between 2005-2008, the time frame for data reported under this section, and 2009-2010, the time frame for data reported under the federal interim final rules.

(4) If a carrier elects to submit aggregated data, the Aggregated Submission Statement must be completed and provided to the commissioner by the deadline for submission of the completed survey. The Aggregated Submission Statement must be posted by the commissioner on the agency web site not later than 90 days before the deadline for submission of the data.

(5) Carriers must submit data for an individual company as one file, unless they are aggregating. One individual must coordinate, compile and submit the complete package to the administrator electronically, as explained in the instructions posted on the commissioner's web site.

(6) Carriers may submit data in batches for validation if the data is clearly identified in relation to the survey instrument.

NEW SECTION

WAC 284-199-030 Resubmission. If the commissioner requires a carrier to resubmit data because the data file was submitted in an incorrect format or does not otherwise comply with the specifications in this chapter, the carrier must respond within 30 calendar days of receiving a notice to resubmit.

NEW SECTION

WAC 284-199-035 Validation. The carrier must validate the completed survey by executing and submitting to the commissioner the Statement of Data Validity posted on the commissioner's web site with the instructions related to this data call pursuant to chapter 172 RCW, laws of 2010.

NEW SECTION

WAC 284-199-040 Data retention. Carriers must retain all data, including computers runs produced to support the data call submission, until midnight, September 30, 2011.

NEW SECTION

WAC 284-199-045 Data fields. The survey template will require reporting of the following data fields:

| Field | Description | Type (numeric or text) | Notes |
|-------|---|------------------------|-------|
| (1) | Type of business | Numeric and Text | |
| (2) | Lines of coverage | Numeric | |
| (3) | Resident enrollees on first day of year | Numeric | |
| (4) | Resident enrollees on last day of year | Numeric | |
| (5) | Resident enrollees in plan during year | Numeric | |
| (6) | Resident Enrollee by type | Numeric | |

| Field | Description | Type (numeric or text) | Notes |
|-------|--|------------------------|-------------------------------|
| (7) | Annual incurred claims | Numeric | |
| (8) | Annual net earned premium | Numeric | |
| (9) | Annual general administrative expenses | Numeric | Voluntary |
| (10) | Health status factors | Text | |
| (11) | Non-resident enrollees | Numeric | |
| (12) | Zip codes of non-resident enrollees | Text | |
| (13) | Zip codes of resident enrollees | Text | |
| (14) | Washington resident applicants rejected due to health status factors | Numeric | |
| (15) | Eligibility requirements | Text | |
| (16) | Percentage of plan enrollees for whom claims experience was used in setting plan rates | Numeric | Association health plans only |
| (17) | Percentage of plan enrollees for whom employer group size was used in setting plan rates | Numeric | Association health plans only |
| (18) | Required number of employees threshold for employers to qualify for coverage | Numeric | |
| (19) | Percentage of plan enrollees for whom health status factors was used in setting plan rates | Numeric | |
| (20) | Contract holder | Text | |
| (21) | Age group band enrollment | Numeric | |
| (22) | Average age for each band | Numeric | |

| Field | Description | Type (numeric or text) | Notes |
|-------|--|------------------------------|-----------|
| (23) | Line item where enrollment for block of business is reported on annual statement | Numeric | |
| (24) | Producer compensation as a percentage of administrative expenses | Numeric | Voluntary |
| (25) | Association membership bylaws for reported associations | Text | Voluntary |

NEW SECTION

WAC 284-199-050 Contact person. Carriers must notify the commissioner of the name of the person within their organization, to whom the survey instrument and data call should be sent. The commissioner will contact the carrier through the person identified to communicate the data call, and to obtain answers to questions about the carrier's data submission. The notification must be submitted to 1714survey@oic.wa.gov, and must include the person's name, title, electronic mail address, physical address and telephone number.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 11-02-083
PROPOSED RULES
OFFICE OF MINORITY AND
WOMEN'S BUSINESS ENTERPRISES**

[Filed January 5, 2011, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-23-044.

Title of Rule and Other Identifying Information: 1. Hearings procedures (chapter 326-08 WAC), establishing a new, less time consuming and less costly process for appealing office decisions regarding decertification, denial of certification, and the assessment of penalties under chapter 39.19 RCW.

2. General provisions (chapter 326-02 WAC), amending sections of this chapter for consistency with the new appeals process.

3. Certification (chapter 326-20 WAC), amending sections of this chapter for consistency with the new appeals process.

Hearing Location(s): Office of Minority and Women's Business Enterprises (OMWBE), 406 Water Street S.W., Olympia, WA 98504, on February 8, 2011, at 1:30 p.m.

Date of Intended Adoption: February 15, 2011.

Submit Written Comments to: Vicky Schiantarelli, Rules Coordinator, 406 Water Street S.W., Olympia, WA 98504, e-mail vickys@omwbe.wa.gov, fax (360) 586-7079, by February 8, 2011.

Assistance for Persons with Disabilities: Contact Tammi Hazlitt, (360) 753-9691.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to reduce the time and unnecessary steps required of the office and the costs to the appellants in the appeal process under chapter 326-08 WAC. Changes in other chapters are to correct references to chapter 326-08 WAC and to make other nonsubstantive edits.

Reasons Supporting Proposal: The present process involves duplicative and multiple steps that result in additional costs to both the agency and the appellants. Further, the agency is unable to assure a timely resolution of appeals because the process requires the involvement of another agency and the scheduling of hearings depends on the availability of that agency's staff. The proposed process brings the process in-house while assuring that the reviewers have not participated in the process leading to the office's initial determination. The appellant's right to a full adjudicative proceeding is preserved in the new process.

Statutory Authority for Adoption: RCW 39.19.030.

Statute Being Implemented: Chapter 39.19 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OMWBE, governmental.

Name of Agency Personnel Responsible for Drafting: Juan Huey-Ray, Olympia, (360) 704-1197; Implementation: Bernard Johnston, Olympia, (360) 753-9679; and Enforcement: Cathy Canorro, Olympia, (360) 704-1187.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These procedural changes in the rules are designed to reduce rather than increase costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The affected rules govern the appeal process when the office has made a decision adverse to a firm's interest. The proposed changes eliminate unnecessary steps in that process.

January 5, 2011

Cathy Canorro

Acting Director

NEW SECTION

WAC 326-08-011 Brief adjudicative proceedings. (1)

The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The office will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the office to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A denial of certification under WAC 326-20-171; or

(b) A decertification of a firm under WAC 326-20-172;
or

(c) An assessment of a penalty under WAC 326-02-050.

(2) If an adjudicative proceeding is requested in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief adjudicative proceeding; and

(c) The protection of the public interest does not require that the office provide notice and opportunity to participate to persons other than the parties.

NEW SECTION

WAC 326-08-012 Application for and conduct of brief adjudicative proceedings. (1) An application for a brief adjudicative proceeding must be filed within twenty days from the date of service of the office's notice of action. A request for brief adjudication proceeding must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer. Other parties may file a written response, including supporting affidavits, within ten days after receipt of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties.

(2) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the director. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

(3) Accommodations.

(a) If limited English-speaking or hearing impaired parties will be involved in a brief adjudicative proceeding and need an interpreter, an interpreter will be provided at no cost to the party or witness.

(b) If disabled parties or witnesses will be involved in a proceeding and need accommodation of facilities or services, the office will provide reasonable accommodation.

(c) Any party or witness requiring an interpreter or accommodation shall notify the office at the time of the request for a brief adjudicative proceeding.

(4) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(5) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(6) No witnesses may appear to testify.

(7) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(8) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the

presiding officer for brief adjudicative proceedings shall enter an initial order.

NEW SECTION

WAC 326-08-013 Initial orders on brief adjudicative proceedings; review of initial orders. (1) Initial orders on brief adjudicative proceedings shall become final twenty-one days after service of the initial order unless:

(a) A petition for review of an initial order is served by certified mail, registered mail, or personal service upon the office, and copies shall be served on all parties. A petition for review of an initial order shall contain an explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect; or

(b) On its own initiative, the office determines to review the matter and, within twenty-one days of service of the initial order, provides notice to the parties of the date by which a determination shall be made.

(2) If review is taken under subsection (1) of this section, each party shall be provided an opportunity to state its view of the matter, and a written order containing findings of fact, conclusions of law and order shall be entered and served upon the parties within twenty days of service of the initial order or the request for review, whichever is later.

(3) A request for review is deemed to be denied if the office does not act on the request within twenty days after the request is submitted.

(4) If administrative review is taken under subsection (1) of this section, the presiding officer may convert the matter to a full adjudicative proceeding.

(5) The director or his or her designee shall act as the reviewing officer and shall conduct a review of an initial order upon the timely service of a petition for review or upon his or her own motion. The reviewing officer shall adopt, modify, or reject the initial order; but the reviewing officer shall not take any action on review less favorable to any party without giving that party notice and opportunity to explain the party's view of the matter.

(6) The order on review shall be in writing, shall include a brief statement of the reasons for the decision, and shall be entered within twenty days after the date of the initial order or the petition for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(7) The record in a brief adjudicative proceeding shall consist of any documents regarding the matters that were considered or prepared by the presiding officer for the brief adjudicative proceedings and/or by the reviewing officer for any review.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-015 (~~Procedure to request an~~) Full adjudicative proceedings. (~~((1) When business has been notified that it is to be decertified, denied certification, or assessed a penalty, the aggrieved party may request an adjudicative proceeding.~~)

(2) ~~The request shall be made in writing on 8 1/2" x 11" paper and shall set forth in detail the reasons the business believes the office's decision is in error.~~

(3) ~~The request must be filed and served on the office within twenty calendar days from the service of the notice to decertify or deny certification, or assess penalties. Service must be made pursuant to WAC 326-08-070.)~~ At the office's discretion or a presiding officer's determination that to protect the public interest or if the interest involved in the controversy warrants the use of more formal hearing procedures, the office or presiding officer can convert a brief adjudicative proceeding to a full adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-016 ~~((Action on requests for))~~ **Com-mencement of a full adjudicative proceeding.** (1) The office shall commence ~~((an))~~ a full adjudicative proceeding within ninety days after ~~((receipt of a request for an adjudicative proceeding))~~ the determination that the use of more formal hearing procedures is required.

(2) ~~((An))~~ A full adjudicative proceeding commences when the office notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

(3) Within thirty days after receipt of the request for an adjudicative proceeding, the office shall examine the request, notify the requestor of any obvious errors or omissions, request any additional information the office wishes to obtain and is permitted by law to require, and notify the requestor of the name, mailing address, and telephone number of the office that may be contacted regarding the request.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-018 Presiding officer. The presiding officer in ~~((an))~~ a full adjudicative proceeding is the administrative law judge designated by the office of administrative hearings after notice of hearing is issued by the office.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-020 General procedures rules for full adjudicative proceedings. The provisions of chapter 10-08 WAC, "Model rules of procedure" shall apply to full adjudicative hearings regarding certification or penalties by the office.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-035 Who may appear. (1) Any party to ~~((an))~~ a full adjudicative proceeding may participate personally.

(2) The owner of the majority interest in a certified business is a necessary party and shall appear on behalf of the business.

(3) A former employee of the office shall not, at any time after severing his or her employment with the office, appear as a representative or expert witness on behalf of a petitioner in a matter in which he or she previously took an active part as a representative of the office, except with the written permission of the director.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-050 Notice of hearing. (1) When ~~((the director receives a request for an))~~ a full adjudicative proceeding is commenced, the office will issue a notice to all parties and to the office of administrative hearings as provided by RCW 34.05.434.

(2) Time. All parties shall be served with notice not less than twenty days before the hearing.

(3) The notice shall include:

(a) The names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) The name of the proceeding;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

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

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

(g) A short and plain statement of the matters asserted by the agency; and

(h) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with WAC 326-08-105.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-110 Initial order. (1) Within ninety days after the conclusion of ~~((an))~~ a full adjudicative proceeding or after submission of memos, briefs, or proposed findings that the administrative law judge may allow after the adjudicative proceeding, the administrative law judge shall prepare an initial order for signature by the director.

(2) The initial order shall include a statement of findings and conclusions and the reasons and basis on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The initial order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(3) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters

officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the administrative law judge shall not base a finding exclusively on such inadmissible evidence unless the administrative law judge determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(4) Where it bears on the issues presented, the experience, technical competency, and specialized knowledge of the office may be used in the evaluation of evidence.

(5) If an administrative law judge becomes unavailable for any reason before the entry of the order, a substitute administrative law judge shall be appointed by the office of administrative hearings. The substitute administrative law judge shall use any existing record and may conduct any further proceedings appropriate in the interests of justice. Any action taken by a duly appointed administrative law judge for an unavailable administrative law judge is as effective as if taken by the unavailable administrative law judge.

(6) The administrative law judge shall cause to be served copies of the order on all parties.

AMENDATORY SECTION (Amending WSR 92-15-077, filed 7/16/92, effective 8/16/92)

WAC 326-08-120 Objections to initial order. (1) Any party to ~~((an))~~ a full adjudicative proceeding may file objections to an initial order pursuant to RCW 34.05.464.

(2) The objections to the initial order shall be filed with the director within twenty days of the date of service of the initial order. Copies of the objections to the initial order shall be served upon all other parties.

(3) The objections to the initial order shall specify the portions of the initial order to which objection is taken and shall refer to the evidence of the record which is relied upon to support each objection.

(4) Any party may file a reply to the objections to the initial order. The reply shall be filed with the director within ten days of the date of service of the objections to the initial order and copies of the reply shall be served upon all other parties.

AMENDATORY SECTION (Amending WSR 04-13-032, filed 6/9/04, effective 7/10/04)

WAC 326-02-034 Political subdivision fees. (1) It is the intent of the state legislature that political subdivisions within the state of Washington contribute to the costs of the state's certification program for minority and women's business enterprises. For the purpose of this section, political subdivisions means any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington that administers a policy or program, or funds from whatever source, which requires or encourages the use of certified minority, women, or disadvantaged business enterprises.

(2) Effective July 1, 1993, the office shall allocate a portion of its biennial operational costs to political subdivisions.

Each political subdivision shall pay a proportionate share of this allocation based on the formula set forth in subsection (4) of this section.

(3)(a) The fee charged to each political subdivision for the period, July 1, 2003 - June 30, 2005, and subsequent ~~((bienniums))~~ **biennia** unless revised by rule, shall be based on the annual average of expenditures for capital projects, supplies and other services for fiscal years 1999-2001 as reflected in the state auditor's on-line BARS report, when available. Data on the annual average of capital expenditures by the transit districts during the relevant period will be taken from a report produced by the Washington state department of transportation entitled, *2001 Summary of Public Transportation Systems in Washington State*. Data on the annual average of expenditures by school districts and educational service districts will be obtained from the office of the superintendent of public instruction. The basis for the fee to be charged to the Housing Authorities is the number of low-income units owned or managed during the last fiscal year as reported to the U.S. Department of Housing and Urban Development. The maximum amount charged to any political subdivision shall not exceed \$40,000.00 in a single biennium.

(b) For the biennium beginning July 1, 2005, and subsequent biennia, similar data reflecting expenditures during the previous biennium or in the case of Housing Authorities, the average number of low-income units owned or managed during the previous biennium will be used to calculate the fee charged to each political subdivision.

(c) When insufficient data is available to calculate the average expenditures from the sources listed in (a) of this subsection, the office may either use other sources for the data or estimate the amount of relevant expenditures. In either event, the office shall allow the affected political subdivisions to offer alternative data on which to base its calculation. New political subdivisions will be charged based on the office's estimate of the annual average of relevant expenditures by the entity for the current biennium.

(d) After paying the fee, the political subdivisions may challenge the office about the accuracy of the data used to calculate the fee under (b) of this subsection. Upon verification by the state auditor, the fee may be revised and refund issued or additional fee assessed.

(e) Following the initial billing in each biennium, which will include the total amount due for the biennium beginning July 1, 2003, the office will mail invoices on a quarterly basis one month before the start of each quarter for the outstanding balance at that time. Payments shall be due within thirty calendar days after receipt of the invoice.

(4)(a) The following formula will be used to calculate the fees:

For the annual average of expenditures ranging from \$1m - \$50.99m, a sliding scale as follows: (\$1m - \$10m = \$100; \$11m - \$20m = \$150; \$21m - \$30m = \$200; \$31m - \$40m = \$250; \$41m - \$50m = \$300). For \$51m - \$99.99m, the formula will be the annual average of expenditures multiplied by .0001. At \$100m, a sliding scale resumes; beginning at \$10k and increasing in increments of \$5k for each additional \$100m in the annual average of expenditures; e.g., \$200m - \$299m = \$15k; \$300m - \$399m = \$20,000; etc. Fees will not be charged

to any political subdivision with an average annual expenditure totaling less than \$1m during the period under review.

(b) The fee to Housing Authorities will be \$1 per low-income unit owned or managed during the last fiscal year.

(5) The office shall develop a policy and procedure for collection of any invoice that is not paid within thirty calendar days. The office shall distribute the collection policy and procedure to all political subdivisions along with the initial and quarterly billings.

AMENDATORY SECTION (Amending WSR 94-11-117, filed 5/18/94, effective 6/18/94)

WAC 326-02-050 Penalties which may be imposed.

(1) The penalties under this section may be imposed by the office, or by the state agency or educational institution administering a contract or procurement within which a violation occurs. Nothing in chapter 39.19 RCW or this title prevents the state agency or educational institution administering the contract from pursuing any procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

(2) Penalties which may be imposed include one or more of the following:

- (a) Withhold payment until the violation is remedied;
- (b) Debarment from contracting with the state for up to one year; debarment for up to three years may be imposed for willful repeated violations, exceeding a single violation;
- (c) Suspension of the contract;
- (d) Termination of the contract;
- (e) Immediate suspension of the certification of a certified firm;
- (f) Payment of civil penalties of up to five thousand dollars for each violation or up to ten percent of the amount of the contract; or
- (g) Decertification or denial of certification.

(3) Penalties may be imposed on one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(4) Penalties shall be imposed by the office giving a written notice which is either served personally or by certified mail, return receipt requested, to the person or business incurring the penalty. Except for suspension of certification, which is covered by WAC 326-02-090, the notice of the civil penalty shall be a final order of the office unless, within fifteen days after the notice is served, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office.

(5) If a notice of appeal is filed in a timely manner, the office shall conduct a ~~((show cause review))~~ brief adjudicative proceeding as outlined in ~~((WAC 326-20-171 or an adjudicative proceeding shall be conducted on behalf of the office by the office of administrative hearings in accordance with the provisions in))~~ chapter 326-08 WAC.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-02-090 Procedures for suspension, hearing provided. (1) If the director determines that suspension

of the certification of a business is necessary to prevent immediate harm to the public welfare, the business will be notified by personal service or certified mail, return receipt requested, of the suspension and the reasons therefor. The suspension shall take effect immediately upon receipt of the notice. The suspended business will be entitled to a hearing pursuant to chapter 326-08 WAC, but a written request for hearing must be made within twenty days of receipt of the notice of suspension.

(2) After the hearing, the ~~((administrative law judge))~~ presiding officer may recommend that:

- (a) Suspension of certification remain in effect for up to one year;
- (b) The suspension be removed; or
- (c) That the business be decertified.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-20-120 Submittal of forms. Application forms may be submitted by mail to the office at the following address:

STATE OF WASHINGTON
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
P.O. BOX 41160
OLYMPIA, WA 98504-1160

Forms may also be delivered to the office at its location, 406 ~~((South))~~ Water Street S.W., Olympia, Washington.

The minority, woman, or socially and economically disadvantaged owner shall be responsible for ensuring that the form is complete and accurate and is properly delivered to the office. The applicant should keep a copy of the completed form and all documents submitted with the form for its own reference.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-171 Denial of certification—~~((Show cause review))~~ Brief adjudicative proceeding. (1) If the office has reached the conclusion that an application for certification should be denied, the office shall notify the applicant in writing of its denial of certification. Within twenty days of receipt of this notification, the applicant ~~((must either:~~

~~((a) Submit a written request for show cause review by the director or designee, containing the information specified in subsection (2) of this section; or~~

~~((b) Submit a written request for an adjudicative proceeding, pursuant to WAC 326-08-015-))~~ may request a brief adjudicative proceeding under WAC 326-08-012. Application for and conduct of brief adjudicative proceedings. The written request for a review of the decision must contain the information specified in subsection (2) of this section.

(2) A request for ~~((show cause review))~~ brief adjudicative proceeding must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer.

(3) When an applicant requests a ~~((show cause review))~~ brief adjudicative proceeding, the finality of the denial for appeal purposes is stayed until the ~~((show cause review))~~ brief adjudicative proceeding is complete.

(4) Upon receipt of a timely request for a ~~((show cause review))~~ brief adjudicative proceeding the office will review any additional information provided by the applicant, and may conduct further investigation, and/or schedule a meeting with the applicant.

(5) The office will notify the applicant in writing of its decision either to affirm the denial or to grant certification. ~~((This notification is considered final for purposes of WAC 326-08-015.))~~

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-172 Decertification of firms. (1) A business may be decertified at any time the office determines that the business does not meet the current criteria for eligibility. A certified business shall notify the office, in writing, within thirty calendar days of any changes in its size, ownership, control, or operations. Failure to provide such notice in a timely manner may lead to decertification.

(2) When the office has determined that a certified business (a) no longer meets the certification criteria or (b) failed to supply additional information requested by the office in a timely manner, or (c) failed to give timely notice of changes, the office will notify the business in writing of its intent to decertify the business.

(3) When a certified business notifies the office that it is no longer in business, has sold the business, or no longer wishes to remain certified, or when the certified business fails or refuses to return the renewal of certification form, the office will notify the business in writing of its decertification. ~~((This notification is final for purposes of appeal pursuant to WAC 326-08-015.))~~

(4) Upon receipt of ~~((an "intent to decertify"))~~ a notice of decertification letter, the business ~~((must either:~~

~~(a) Submit a written request for a show cause review by the director which meets the criteria set out in (c) of this subsection; or~~

~~(b) Submit a written request for an adjudicative proceeding pursuant to WAC 326-08-015.~~

~~(c))~~ may request a brief adjudicative proceeding under WAC 326-08-012. Application for and conduct of brief adjudicative proceedings.

The request for ~~((show cause review))~~ brief adjudicative proceeding must be received by the office within twenty calendar days of receipt of the notice of ~~((intent to decertify))~~ decertification to the firm. The request for a ~~((show cause review))~~ brief adjudicative proceeding must set forth the reasons the business believes the office's decision to decertify is in error and must include any additional information and documentation the business has to offer.

(5) If the office has not received a request for a ~~((show cause review))~~ brief adjudicative proceeding nor any additional written documentation within twenty days of receipt of the ~~(("intent to decertify"))~~ notice of decertification letter, the

decision to decertify becomes final, with no further rights to contest or appeal the decision.

(6) Upon receipt of the request for a ~~((show cause review))~~ brief adjudicative proceeding, the office will review the request and any additional information provided and may conduct further investigation and/or request that the owner(s) attend ~~((a show cause meeting))~~ the brief adjudicative proceeding. The office will thereafter notify the business in writing of its decision to either affirm or reverse ~~((its intent to decertify the business))~~ the firm's decertification. ~~((This decertification decision is considered final for purposes of WAC 326-08-015.~~

~~(7) If a show cause review is requested and the decision to decertify is affirmed, any aggrieved party may request an adjudicative proceeding pursuant to WAC 326-08-015. The request must be made in writing and must be made within twenty days of receipt of the office's decision affirming the decertification decision.~~

~~(8))~~ (7) If the decision to decertify is appealed, the business shall remain certified until:

(a) The time provided by WAC ~~((326-08-015))~~ 326-08-012 for appeal of the decision to decertify has expired without action by the business; or

(b) The entry of a final decertification order issued by the director pursuant to WAC 326-08-130.

~~((9))~~ (8) Decertification shall be effective immediately upon the occurrence of (a) or (b) of this subsection, and will not be stayed pending review by any court.