

CHAPTER ~~VII~~ 7
~~DESIGNATION OF AREAS PURSUANT TO W.S. §35-11-112(a)(v)~~
VERY RARE OR UNCOMMON AREAS

Section 1. ~~Authority~~ Purpose and Scope.

These rules are ~~promulgated by authority of the Environmental Quality Act, W.S. §35-11-112 and W.S. §16-3-103,~~ intended to provide a process to implement W.S. 35-11-112(a)(v), which provides that the Council may remove rare and uncommon designations made prior to July 1, 2011.

~~(formerly Section 2) These rules are intended to provide a process to implement W.S. §35-11-112(a)(v) of the Environmental Quality Act which provides that the Council shall designate those areas of the state that are very rare or uncommon and have particular historical, archaeological, wildlife, surface geological, botanical or scenic value. These rules apply only to the Land Quality Article, Article 4, of the Environmental Quality Act. The scope of these rules is limited to areas sought to be designated for purposes related to the permit approval and denial process contained in W.S. §35-11-406(m) for noncoal mining operations. Included in these rules are criteria to be used in evaluating lands of the state that are being considered for this designation. The hearing procedure is similar to that of Chapter III of these rules, and is authorized by W.S. §16-3-103.~~

Section 2. ~~Purpose~~ Definitions.

~~(Formerly Section 4(a))~~ (a) “Critical habitat” as defined in Section §35-11-103(e)(xxix) means only that fish and wildlife habitat designated as critical by the United States Secretary of the Interior or Secretary of Commerce, for the survival and recovery of listed threatened and endangered species.

~~(Formerly 4(b))~~ “Important habitat” or “Crucial habitat” as defined in Section §35-11-103(e)(xxx) means that fish and wildlife habitat, exclusive of agricultural lands, which in limited availability, increases the species diversity of a localized area and fulfills one (1) or more of the essential living requirements of important wildlife species.

~~(Formerly 4(e))~~ (b) “Fragile lands” means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by mining operations. For examples of fragile lands see Section 1.(a), Chapter XXVIII, Land Quality Rules and Regulations.

Section 3. ~~Applicability~~ General Procedure.

(a) ~~Areas designated pursuant to these rules are subject to the limitation contained in Section §35-11-406(m). A designation under Chapter VII shall not bar issuance of a coal mining permit under Section §35-11-406(n).~~

(b) ~~No areas subject to existing mining operations for which the Department of Environmental Quality shall have issued a permit shall be affected by a designation so long as the permit remains in effect.~~

(c) ~~No area subject to an application for a noncoal mining permit shall be considered for designation if the petition to designate is filed after the close of the public comment period allowed by Section §35-11-406(k).~~

51 (d) ~~—A designation as very rare or uncommon shall not restrict non-mining agricultural~~
52 ~~operations. Nor shall such designation restrict activities excluded from the Environmental Quality Act,~~
53 ~~Section §35-11-401(e) and Section §35-11-1104.~~

54
55 (Formerly Section 5(a)) (a) The rules in this Chapter ~~shall supersede the rules of Chapter III,~~
56 ~~Section 1.e. for petitions for designation of lands pursuant to W.S. §35-11-112(a)(v) govern petitions to~~
57 ~~remove designation of lands pursuant to W.S. 35-11-112(a)(v).~~

58
59 (Formerly 5(b)) (b) The hearing under this ~~e~~Chapter is not a contested case proceeding ~~but is~~
60 ~~a non-adversarial legislative proceeding except where the surface and/or mineral owner objects to the~~
61 ~~designation. Under those circumstances all parties shall be entitled to cross-examine witnesses and~~
62 ~~proceed under contested case procedures. Hearings shall be conducted consistent with rules hearings~~
63 ~~before the Council under Chapter 3 of the Rules of Practice and Procedure.~~

64
65 (Formerly 5(e)) ~~The Council, on its own motion or on the motion of any person, in the interests~~
66 ~~of developing information about the area considered for designation, may adopt one or more of the~~
67 ~~provisions contained in Chapter II of the rules governing procedures in contested cases. Such action by~~
68 ~~the Council shall not constitute a finding that the proceeding before the Council is in the nature of a~~
69 ~~contested case.~~

70
71 Section 4. **Initiation of Proceedings.**

72
73 (Formerly Section 6(a)) (a) Any person may file a petition ~~to designate lands as very rare or~~
74 ~~uncommon pursuant to W.S. §35-11-112(a)(v) or a petition to modify or to modify or terminate~~ remove
75 an existing designation. The petition shall contain the following:

76
77 (Formerly 6(a)(i)) (i) The name, address, phone number, and email address for the
78 petitioner;

79
80 (Formerly 6(a)(ii)) (ii) The location by legal description, including section, township,
81 and range, of the area the petitioner is proposing to be removed;

82
83 (Formerly 6(a)(iii)) (iii) The names, if any, by which an area ~~may be known locally~~ is
84 locally known;

85
86 (Formerly 6(a)(iv)) (iv) The distance from the area to the nearest city or town;

87
88 (Formerly 6(a)(iv)) (v) ~~and~~ v The county in which the area is located;

89
90 (Formerly 6(a)(v)) (vi) An original ~~USGS-U.S. Geological Survey~~ USGS-U.S. Geological Survey topographic map
91 showing the area ~~in question which reflects~~ reflecting the surface land ownership pattern (private, state,
92 federal) in the area;

93
94 (Formerly 6(a)(vi)) (vi)(vii) A list of the names and addresses of the surface and
95 mineral owners whose lands are included within the area proposed for ~~designation, modification, or~~
96 ~~termination~~ removal with a description of the ownership interest of each surface and mineral owner,
97 including a legal description of the lands in which each person has an interest;

98
99 (Formerly 6(a)(vii)) (vii)(viii) A concise statement of the reasons ~~the area is alleged to~~
100 ~~be very rare or uncommon and a description of the archaeological, surface geological, historical, wildlife,~~

101 ~~botanical, or scenic attributes of the area, or, if the petition seeks to modify or terminate an existing~~
102 ~~designation, a concise statement of the reasons for the modification or termination~~ for the removal
103 including an explanation of the substantial change in circumstances that has occurred since designation;

104
105 (Formerly 6(a)(viii)) ~~(viii)~~(ix) A description of the current and historical land use in the
106 area;

107
108 (Formerly 6(a)(ix)) ~~(ix)~~(x) A list of any special designations or descriptions of the
109 area made by other governmental agencies, including, but not limited to, designations by the Department
110 of Interior, Bureau of Land Management, or Office of Surface Mining, designations by the U.S. Fish and
111 Wildlife Service, and designations by the Wyoming Department of Game and Fish;

112
113 (Formerly 6(a)(x)) ~~(x)~~(xi) The names and addresses of all expert witnesses whose
114 work or whose testimony may be offered by the petitioner to support the petition;

115
116 (Formerly 6(a)(xi)) ~~(xi)~~(xii) The names and addresses of the surface owners of lands
117 contiguous to the area proposed for ~~designation, modification, or termination~~ removal; and

118
119 (Formerly 6(a)(xii)) ~~(xii)~~(xiii) A list of any scientific documents to be offered by the
120 petitioner to support the petition that discuss the area to be ~~designated, modified, or terminated; and~~
121 removed.

122
123 (Formerly 6(a)(xiii)) ~~(xiii)~~(b) ~~At the time of filing, eight (8) copies of the petition shall be~~
124 ~~submitted~~ Petitioner shall submit eight (8) copies of the petition to the ~~Chairman~~ Chair of the
125 Environmental Quality Council at the Council's office in Cheyenne, Wyoming. The petition shall be
126 considered to be filed in the Council's office as of the date it is received in that office.

127
128 (Formerly 6(b)) ~~(b)~~(c) ~~Upon receipt of a petition under these rules~~ The Council shall
129 consider the petition at a regularly scheduled Council meeting and shall notify the petitioner and surface
130 and mineral owners whose lands or minerals are within the area ~~proposed for designation~~ of the time,
131 date, and location of the meeting. The Council's consideration shall be limited to whether the petition
132 should be accepted or dismissed.

133
134 (Formerly 6(c)) ~~(c)~~(d) The Council may dismiss a petition if, after review ~~of the petition~~, the
135 Council determines that the petition does not provide the information required by these rules or that the
136 petition does not provide sufficient information to support the conclusion that the area may be ~~designated,~~
137 ~~modified, or terminated~~ removed if the Council were to proceed.

138
139 (Formerly 6(d)) ~~(d)~~(e) If the Council votes to dismiss the petition, ~~a brief statement of the~~
140 ~~reasons for dismissal of a petition shall be served on the petitioner.~~ the Council shall issue a brief
141 statement of the reasons for dismissal. ~~The petitioner may file an amended petition at any time.~~

142
143 ~~(Formerly 6(e)) If the Council votes to consider a petition, the Council shall initiate formal~~
144 ~~hearing procedures in accordance with these rules.~~

145 Section 5. **Hearing and Notice.**

146
147 (Formerly Section 7(a)) (a) The Council shall:

148
149 (Formerly 7(a)(i)) (i) Set the time, date, and location of a hearing on the petition, and
150

151
152 (Formerly 7(a)(ii)) (ii) Schedule the hearing within the county in which the lands or a
153 major portion thereof are located.

154
155 (Formerly 7(b)) (b) Subject to the review and approval of the form of the public notice by the
156 Council or the hearing officer assigned to the petition, the petitioner shall:

157
158 (Formerly 7(b)(i))(i) Publish notice of the hearing once per week for four (4)
159 consecutive weeks beginning at least forty-five (45) days ~~in advance of~~ before the hearing in a newspaper
160 of statewide circulation and a newspaper of general circulation in the vicinity of the area proposed for
161 ~~designation, modification, or termination~~ removal;

162
163 (Formerly 7(b)(ii)) (ii) ~~Serve~~ Provide notice of the hearing by personal service or by
164 certified mail, ~~which notice shall include~~ including a copy of the petition, to all surface and mineral
165 owners whose lands ~~and/~~ or mineral interests are included within the area proposed for ~~designation,~~
166 ~~modification, or termination~~ removal;

167
168 (Formerly 7(b)(iii)) (iii) ~~Serve~~ Provide notice of the hearing by regular mail to all surface
169 owners whose lands are contiguous to the area proposed for ~~designation, modification, or termination~~
170 removal; and

171
172 (Formerly 7(b)(iv)) (iv) ~~Serve~~ Provide notice of the hearing by regular mail to the county
173 commissioners of the counties ~~wherein that contain~~ lands proposed to be ~~designated, or a designation may~~
174 ~~be modified or terminated, lie,~~ removed, the Attorney General’s Office, and the Governor’s Office, ~~and~~

175
176
177 ~~(Formerly 7(b)(v)) — Except as otherwise provided in these rules, notice shall be served in~~
178 ~~accordance with the Wyoming Rules of Civil Procedure.~~

179
180 (Formerly Section 7(c)) (c) ~~Costs of the publication and mailing of notice of the proceedings~~
181 ~~shall be borne by the petitioner.~~ Petitioner shall pay costs of publishing and mailing notices of the
182 proceedings.

183
184 (d) A party electing to have the hearing transcribed by a certified court reporter shall make
185 the necessary arrangements and bear the cost.

186
187 Section 6. ~~Initiation of Proceedings~~ Decision.

188
189 (a) The Council may direct the petitioner, the Council’s staff, or others to analyze the oral
190 and written comments.

191
192 (b) An analysis of comments shall be in writing, submitted at a time to be set by the Council,
193 and be a part of the record. The analysis may include recommendations to modify the petition.

194
195 (c) The Council shall issue a written decision. The decision may be to grant or deny the
196 petition. The Council shall issue a written order stating the reasons for the decision.

197
198 Section 7. ~~Hearing and Notice~~ Criteria for Removal.

199

200 (Formerly Section 11(a))(a) In considering removing designations, the Council shall follow a
201 two-tiered review process. First, the Council shall determine whether the area is no longer eligible for
202 designation by virtue of the existence of one or more of the particular values specified in the statute.
203 Secondly, the Council must determine whether any particular value that ~~is found~~ was previously found to
204 exist is either no longer exists or is no longer very rare or uncommon.
205

206 (Formerly 11(b)) (b) For an area to be eligible for removal, the Council must make an initial
207 finding that the area at issue no longer possesses particular historical, archaeological, wildlife, surface
208 geological, botanical or scenic value. For purposes of making the initial finding, or refusing to make the
209 initial finding, the Council shall consider the significance and the weight of all specifically identified
210 factors that are set forth in these criteria.
211

212 (Formerly 11(c)) (c) For purposes of determining whether an area of the State may be
213 considered to have particular historical, prehistorical, or archaeological value the Council shall consider
214 the following factors:
215

216 (Formerly 11(c)(i)) (i) Whether the area is mentioned prominently in historic journals
217 or other historic literature;
218

219 (Formerly 11(c)(ii)) (ii) Whether the area is important because it is associated with
220 cultural or religious traditions and practices;
221

222 (Formerly 11(c)(iii)) (iii) Whether the area has received designation pursuant to
223 state or federal laws that provide for special protection and management due to outstanding historic or
224 prehistoric values such as national historic landmarks, national historic sites, or the National Register of
225 Historic Places; or
226

227 (Formerly 11(c)(iv)) (iv) Whether the area contains buildings, structures, artifacts,
228 or other features that are significant in the history or prehistory of the state.
229

230 (Formerly 11(d)) (d) For purposes of determining whether an area has particular wildlife value
231 the Council shall consider the following factors:
232

233 (Formerly 11(d)(i)) (i) Whether the area includes lands that are considered irreplaceable
234 fish or wildlife habitat;
235

236 (Formerly 11(d)(ii)) (ii) Whether the area includes preserves or easements ~~which~~ that
237 have been established and used for the protection for habitat for wildlife;
238

239 (Formerly 11(d)(iii)) (iii) Whether the area includes lands that the Game and Fish
240 Department has designated as crucial or vital habitat for resident species;
241

242 (Formerly 11(d)(iv)) (iv) Whether the area contains or may affect fisheries
243 classified as class I by the Wyoming Game and Fish Department;
244

245 (Formerly 11(d)(v)) (v) Whether the area includes fragile lands that offer unique wildlife
246 or scientific values;
247

248 (Formerly 11(d)(vi)) (vi) Whether the area includes federally designated critical
249 habitat for threatened or endangered plant or animal species which is determined by the U.S. Fish and

250 Wildlife Service or the Wyoming Game and Fish Department to be of essential value and where the
251 presence of threatened or endangered species has been scientifically documented;

252
253 (Formerly 11(d)(vii)) (vii) Whether the area contains a bald or golden eagle nest or
254 nest site that is determined to be active and includes all or a portion of a buffer zone of land around the
255 nest which has been evaluated and approved by the U.S. Fish and Wildlife Service;

256
257 (Formerly 11(d)(viii)) (viii) Whether the area includes bald and golden eagle roost
258 and concentration areas used during migration and wintering;

259
260 (Formerly 11(d)(ix)) (ix) Whether the area contains a falcon (excluding kestrel)
261 cliff nesting site with an active nest and a buffer zone around the nest site which has been evaluated and
262 approved by the U.S. Fish and Wildlife Service; or

263
264 (Formerly 11(d)(x)) (x) Whether the area includes lands ~~which~~ that are high priority
265 habitat for migratory birds of high federal interest on a regional or national basis as determined by the
266 U.S. Fish and Wildlife Service.

267
268 (Formerly 11(e)) (e) For purposes of determining whether an area has particular surface
269 geological value the Council shall consider the following factors:

270
271 (Formerly 11(e)(i)) (i) Whether the area has unique surface geological formations that
272 expose upheavals and faults that are indicative of sub-surface geological features;

273
274 (Formerly 11(e)(ii)) (ii) Whether the area has significant paleontological resources; or

275
276 (Formerly 11(e)(iii)) (iii) Whether the area has geologic features with unusual or
277 substantial recreational, aesthetic, or scientific value.

278
279 (Formerly 11(f)) (f) For purposes of determining whether an area has particular botanical
280 value the Council shall consider the following factors:

281
282 (Formerly 11(f)(i)) (i) Whether the area is critical habitat for endangered or threatened
283 plant species as designated by state or federal agencies;

284
285 (Formerly 11(f)(ii)) (ii) Whether the area contains stands of a rare native vegetation type,
286 or contains stands of a native vegetation type that is now rare, or contains stands of a native vegetation
287 type in pristine condition for which pristine stands are unusual; or

288
289 (Formerly 11(f)(iii)) (iii) Whether the area contains plant species and habitat
290 determined to be crucial or vital for resident wildlife species.

291
292 (Formerly 11(g)) (g) For purposes of determining whether an area has particular scenic value
293 the Council shall consider the following factors:

294
295 (Formerly 11(g)(i)) (i) Whether the area ~~includes~~ includes lands within or adjacent to a
296 corridor for a river designated as a National Wild and Scenic River or a corridor for a National Scenic
297 Byway;

298
299 (Formerly 11(g)(ii)) (ii) Whether the area has been the subject of substantial artistic
300 attention in the works of artists, sculptors, photographers, or writers; or

301
302 (Formerly 11(g)(iii)) (iii) Whether the area has substantial aesthetic value and its
303 value would be apparent to a reasonable person.

304
305 (Formerly 11(h)) (h) An area shall be ~~designated~~ removed from designation under ~~pursuant to~~
306 W.S. §35-11-112(a)(v) if, in addition to finding that the area is no longer eligible for designation, the
307 Council finds that the area is no longer very rare or uncommon. For purposes of determining if an area is
308 very rare or uncommon the Council shall consider the following:

309
310 (Formerly 11(h)(i)) (i) Whether the area exhibits historical, archaeological, wildlife,
311 surface geological, botanical, or scenic values that are very rare ~~of~~ or uncommon when compared with
312 other areas of the state or a region therein;

313
314 (Formerly 11(h)(ii)) (ii) Whether the area contains historical, archaeological, wildlife,
315 surface geological, botanical, or scenic values seldom found within the state or a region therein; or

316
317 (Formerly 11(h)(iii)) (iii) Whether the area contains historical, archaeological,
318 wildlife, surface geological, botanical, or scenic values known or suspected to be declining which, if left
319 unprotected, could become extinct or extirpated.

320
321 ~~Section 8. Witnesses.~~

322
323 ~~(a) Any person may comment on a proposed designation, modification, or termination either~~
324 ~~by appearing at the hearing and entering comments into the record orally, or by submitting written~~
325 ~~comments within a time period set by the Council.~~

326
327 ~~(b) Witnesses submitting testimony in writing shall submit one (1) copy, and are requested~~
328 ~~to submit 8 copies, of their complete testimony to the Council.~~

329
330 ~~(c) Witnesses will not be cross-examined except by the Council, the Council's staff, or other~~
331 ~~persons designated by the Council.~~

332
333 ~~(d) Whenever the Council allows testimony to be submitted in writing, the testimony shall be~~
334 ~~considered to be timely filed if it is received in the office of the Environmental Quality Council by the~~
335 ~~end of the business day on the date set by the Council. Late submittals shall not be considered by Council~~
336 ~~members unless the Council votes to reopen the record.~~

337
338 ~~(e) Witnesses may be called by the Council, and expenses of these witnesses will be paid by~~
339 ~~the Council.~~

340
341 ~~(f) The Council may impose time limitations on oral presentations at hearings.~~

342
343 ~~Section 9. Record.~~

344
345 ~~The hearing proceedings including all testimony shall be reported verbatim stenographically or by~~
346 ~~other appropriate means determined by the Council. A copy of the proceedings will be furnished to any~~
347 ~~person upon written request and the payment of a reasonable fee. If a person elects to have the hearing~~

348 ~~transcribed by a certified court reporter, he or she must make the necessary arrangements and bear the~~
349 ~~cost thereof.~~

350
351 ~~Section 10. — Decision.~~

352
353 ~~(a) — The Council, in its discretion, may direct the petitioner, the Council's staff, or others to~~
354 ~~analyze the oral and written comments.~~

355
356 ~~(b) — An analysis of comments shall be in writing, shall be submitted at a time to be set by the~~
357 ~~Council, and shall be a part of the record of the designation proceedings. The analysis may include~~
358 ~~recommendations to modify the petition to designate.~~

359
360 ~~(c) — The Council shall issue a written decision. The decision may be to designate all or a~~
361 ~~portion of the area or to deny the petition. The Council shall issue a written statement of reasons for the~~
362 ~~decision.~~

363
364 ~~(d) — The petitioner shall be served with a copy of the Council's decision and statement of~~
365 ~~reasons.~~
366