

1  
2  
3  
4  
5  
6

**Summary of Changes and Corrections to 1/19/17 Draft**

Section 7

(a): Added underline to "removing" in "In considering removing designations," The color indicated it was an added word, but the underline was missing.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57

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).~~

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

61  
62 ~~(Formerly Section 5(a))~~ (a) The rules in this Chapter ~~shall supersede the rules of Chapter III,~~  
63 ~~Section 1.e. for petitions for designation of lands pursuant to W.S. §35-11-112(a)(v) govern petitions to~~  
64 ~~remove designation of lands pursuant to W.S. 35-11-112(a)(v).~~

65  
66 ~~(Formerly 5(b))~~ (b) The hearing under this ~~e~~Chapter is not a contested case proceeding ~~but is~~  
67 ~~a non-adversarial legislative proceeding except where the surface and/or mineral owner objects to the~~  
68 ~~designation. Under those circumstances all parties shall be entitled to cross-examine witnesses and~~  
69 ~~proceed under contested case procedures. Hearings shall be conducted consistent with rules hearings~~  
70 ~~before the Council under Chapter 3 of the Rules of Practice and Procedure.~~

71  
72 ~~(Formerly 5(c))~~ The Council, on its own motion or on the motion of any person, in the interests  
73 ~~of developing information about the area considered for designation, may adopt one or more of the~~  
74 ~~provisions contained in Chapter II of the rules governing procedures in contested cases. Such action by~~  
75 ~~the Council shall not constitute a finding that the proceeding before the Council is in the nature of a~~  
76 ~~contested case.~~

#### 77 78 Section 4. **Initiation of Proceedings.**

79  
80 ~~(Formerly Section 6(a))~~ (a) Any person may file a petition ~~to designate lands as very rare or~~  
81 ~~uncommon pursuant to W.S. §35-11-112(a)(v) or a petition to modify or to modify or terminate remove~~  
82 ~~an existing designation. The petition shall contain the following:~~

83  
84 ~~(Formerly 6(a)(i))~~ (i) The name, address, phone number, and email address for the  
85 petitioner;

86  
87 ~~(Formerly 6(a)(ii))~~ (ii) The location by legal description, including section, township,  
88 and range, of the area the petitioner is proposing to be removed;

89  
90 ~~(Formerly 6(a)(iii))~~ (iii) The names, if any, by which an area ~~may be known locally~~ is  
91 locally known;

92  
93 ~~(Formerly 6(a)(iv))~~ (iv) The distance from the area to the nearest city or town;

94  
95 ~~(Formerly 6(a)(iv))~~ (v) and ~~the~~ county in which the area is located;

96  
97 ~~(Formerly 6(a)(v))~~ (vi) An original ~~USGS~~ U.S. Geological Survey topographic map  
98 showing the area ~~in question which reflects~~ reflecting the surface land ownership pattern (private, state,  
99 federal) in the area;

100  
101 ~~(Formerly 6(a)(vi))~~ (vii) A list of the names and addresses of the surface and mineral  
102 owners whose lands are included within the area proposed for ~~designation, modification, or termination~~  
103 removal with a description of the ownership interest of each surface and mineral owner, including a legal  
104 description of the lands in which each person has an interest;

105  
106 ~~(Formerly 6(a)(vii))~~ (viii) A concise statement of the reasons ~~the area is alleged to~~  
107 ~~be very rare or uncommon and a description of the archaeological, surface geological, historical, wildlife,~~

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

111  
112 ~~(Formerly 6(a)(viii))~~ (ix) A description of the current and historical land use in the  
113 area;

114  
115 ~~(Formerly 6(a)(ix))~~ (x) A list of any special designations or descriptions of the area  
116 made by other governmental agencies, including, but not limited to, designations by the Department of  
117 Interior, Bureau of Land Management, or Office of Surface Mining, designations by the U.S. Fish and  
118 Wildlife Service, and designations by the Wyoming Department of Game and Fish;

119  
120 ~~(Formerly 6(a)(x))~~ (xi) The names and addresses of all expert witnesses whose work or  
121 whose testimony may be offered by the petitioner to support the petition;

122  
123 ~~(Formerly 6(a)(xi))~~ (xii) The names and addresses of the surface owners of lands  
124 contiguous to the area proposed for ~~designation, modification, or termination~~ removal; and

125  
126 ~~(Formerly 6(a)(xii))~~ (xiii) A list of any scientific documents to be offered by the  
127 petitioner to support the petition that discuss the area to be ~~designated, modified, or terminated; and~~  
128 removed.

129  
130 ~~(Formerly 6(a)(xiii))~~ (b) ~~At the time of filing, eight (8) copies of the petition shall be submitted~~  
131 Petitioner shall submit eight (8) copies of the petition to the ~~Chairman~~ Chair of the Environmental Quality  
132 Council at the Council's office in Cheyenne, Wyoming. The petition shall be considered to be filed in the  
133 Council's office as of the date it is received in that office.

134  
135 ~~(Formerly 6(b))~~ (c) ~~Upon receipt of a petition under these rules~~ The Council shall  
136 consider the petition at a regularly scheduled Council meeting and shall notify the petitioner and surface  
137 and mineral owners whose lands or minerals are within the area ~~proposed for designation~~ of the time,  
138 date, and location of the meeting. The Council's consideration shall be limited to whether the petition  
139 should be accepted or dismissed.

140  
141 ~~(Formerly 6(c))~~ (d) The Council may dismiss a petition if, after review ~~of the petition~~, the  
142 Council determines that the petition does not provide the information required by these rules or that the  
143 petition does not provide sufficient information to support the conclusion that the area may be ~~designated,~~  
144 ~~modified, or terminated~~ removed if the Council were to proceed.

145  
146 ~~(Formerly 6(d))~~ (e) If the Council votes to dismiss the petition, ~~a brief statement of the~~  
147 ~~reasons for dismissal of a petition shall be served on the petitioner.~~ the Council shall issue a brief  
148 statement of the reasons for dismissal. ~~The petitioner may file an amended petition at any time.~~

149  
150 ~~(Formerly 6(e))~~ ~~If the Council votes to consider a petition, the Council shall initiate formal~~  
151 ~~hearing procedures in accordance with these rules.~~

## 152 153 Section 5. **Hearing and Notice.**

154  
155 ~~(Formerly Section 7(a))~~ (a) The Council shall:

156  
157 ~~(Formerly 7(a)(i))~~ (i) Set the time, date, and location of a hearing on the petition, and

158  
159           ~~(Formerly 7(a)(ii))~~ (ii) Schedule the hearing within the county in which the lands or a  
160 major portion thereof are located.

161  
162           ~~(Formerly 7(b))~~ (b) Subject to the review and approval of the form of the public notice by the  
163 Council or the hearing officer assigned to the petition, the petitioner shall:

164  
165           ~~(Formerly 7(b)(i))~~(i) Publish notice of the hearing once per week for four (4)  
166 consecutive weeks beginning at least forty-five (45) days ~~in advance of~~ before the hearing in a newspaper  
167 of statewide circulation and a newspaper of general circulation in the vicinity of the area proposed for  
168 ~~designation, modification, or termination~~ removal;

169  
170           ~~(Formerly 7(b)(ii))~~ (ii) ~~Serve~~ Provide notice of the hearing by personal service or by  
171 certified mail, ~~which notice shall include~~ including a copy of the petition, to all surface and mineral  
172 owners whose lands ~~and/~~ or mineral interests are included within the area proposed for ~~designation,~~  
173 ~~modification, or termination~~ removal;

174  
175           ~~(Formerly 7(b)(iii))~~ (iii) ~~Serve~~ Provide notice of the hearing by regular mail to all surface  
176 owners whose lands are contiguous to the area proposed for ~~designation, modification, or termination~~  
177 removal; and

178  
179           ~~(Formerly 7(b)(iv))~~ (iv) ~~Serve~~ Provide notice of the hearing by regular mail to the county  
180 commissioners of the counties ~~wherein that contain~~ lands proposed to be ~~designated, or a designation may~~  
181 ~~be modified or terminated, lie,~~ removed, the Attorney General's Office, and the Governor's Office, ~~and~~

182  
183  
184           ~~(Formerly 7(b)(v))~~ ~~— Except as otherwise provided in these rules, notice shall be served in~~  
185 ~~accordance with the Wyoming Rules of Civil Procedure.~~

186  
187           ~~(Formerly Section 7(e))~~ (c) ~~Costs of the publication and mailing of notice of the proceedings~~  
188 ~~shall be borne by the petitioner.~~ Petitioner shall pay costs of publishing and mailing notices of the  
189 proceedings.

190  
191           (d) A party electing to have the hearing transcribed by a certified court reporter shall make  
192 the necessary arrangements and bear the cost.

193  
194           Section 6. ~~Initiation of Proceedings~~ Decision.

195  
196           (a) The Council may direct the petitioner, the Council's staff, or others to analyze the oral  
197 and written comments.

198  
199           (b) An analysis of comments shall be in writing, submitted at a time to be set by the Council,  
200 and be a part of the record. The analysis may include recommendations to modify the petition.

201  
202           (c) The Council shall issue a written decision. The decision may be to grant or deny the  
203 petition. The Council shall issue a written order stating the reasons for the decision.

204  
205           Section 7. ~~Hearing and Notice~~ Criteria for Removal.

206

207 ~~(Formerly Section 11(a))~~(a) In considering removing designations, the Council shall follow a  
208 two-tiered review process. First, the Council shall determine whether the area is no longer eligible for  
209 designation by virtue of the existence of one or more of the particular values specified in the statute.  
210 Secondly, the Council must determine whether any particular value that ~~is found~~ was previously found to  
211 exist is either no longer exists or is no longer very rare or uncommon.  
212

213 ~~(Formerly 11(b))~~ (b) For an area to be eligible for removal, the Council must make an initial  
214 finding that the area at issue no longer possesses particular historical, archaeological, wildlife, surface  
215 geological, botanical or scenic value. For purposes of making the initial finding, or refusing to make the  
216 initial finding, the Council shall consider the significance and the weight of all specifically identified  
217 factors that are set forth in these criteria.  
218

219 ~~(Formerly 11(e))~~ (c) For purposes of determining whether an area of the State may be  
220 considered to have particular historical, prehistorical, or archaeological value the Council shall consider  
221 the following factors:  
222

223 ~~(Formerly 11(e)(i))~~ (i) Whether the area is mentioned prominently in historic journals  
224 or other historic literature;  
225

226 ~~(Formerly 11(e)(ii))~~ (ii) Whether the area is important because it is associated with  
227 cultural or religious traditions and practices;  
228

229 ~~(Formerly 11(e)(iii))~~ (iii) Whether the area has received designation pursuant to  
230 state or federal laws that provide for special protection and management due to outstanding historic or  
231 prehistoric values such as national historic landmarks, national historic sites, or the National Register of  
232 Historic Places; or  
233

234 ~~(Formerly 11(e)(iv))~~ (iv) Whether the area contains buildings, structures, artifacts,  
235 or other features that are significant in the history or prehistory of the state.  
236

237 ~~(Formerly 11(d))~~ (d) For purposes of determining whether an area has particular wildlife value  
238 the Council shall consider the following factors:  
239

240 ~~(Formerly 11(d)(i))~~ (i) Whether the area includes lands that are considered irreplaceable  
241 fish or wildlife habitat;  
242

243 ~~(Formerly 11(d)(ii))~~ (ii) Whether the area includes preserves or easements ~~which~~ that  
244 have been established and used for the protection for habitat for wildlife;  
245

246 ~~(Formerly 11(d)(iii))~~ (iii) Whether the area includes lands that the Game and Fish  
247 Department has designated as crucial or vital habitat for resident species;  
248

249 ~~(Formerly 11(d)(iv))~~ (iv) Whether the area contains or may affect fisheries  
250 classified as class I by the Wyoming Game and Fish Department;  
251

252 ~~(Formerly 11(d)(v))~~ (v) Whether the area includes fragile lands that offer unique wildlife  
253 or scientific values;  
254

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

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

259  
260 ~~(Formerly 11(d)(vii))~~ (vii) Whether the area contains a bald or golden eagle nest or  
261 nest site that is determined to be active and includes all or a portion of a buffer zone of land around the  
262 nest which has been evaluated and approved by the U.S. Fish and Wildlife Service;

263  
264 ~~(Formerly 11(d)(viii))~~ (viii) Whether the area includes bald and golden eagle roost  
265 and concentration areas used during migration and wintering;

266  
267 ~~(Formerly 11(d)(ix))~~ (ix) Whether the area contains a falcon (excluding kestrel)  
268 cliff nesting site with an active nest and a buffer zone around the nest site which has been evaluated and  
269 approved by the U.S. Fish and Wildlife Service; or

270  
271 ~~(Formerly 11(d)(x))~~ (x) Whether the area includes lands ~~which~~ that are high priority  
272 habitat for migratory birds of high federal interest on a regional or national basis as determined by the  
273 U.S. Fish and Wildlife Service.

274  
275 ~~(Formerly 11(e))~~ (e) For purposes of determining whether an area has particular surface  
276 geological value the Council shall consider the following factors:

277  
278 ~~(Formerly 11(e)(i))~~ (i) Whether the area has unique surface geological formations that  
279 expose upheavals and faults that are indicative of sub-surface geological features;

280  
281 ~~(Formerly 11(e)(ii))~~ (ii) Whether the area has significant paleontological resources; or

282  
283 ~~(Formerly 11(e)(iii))~~ (iii) Whether the area has geologic features with unusual or  
284 substantial recreational, aesthetic, or scientific value.

285  
286 ~~(Formerly 11(f))~~ (f) For purposes of determining whether an area has particular botanical  
287 value the Council shall consider the following factors:

288  
289 ~~(Formerly 11(f)(i))~~ (i) Whether the area is critical habitat for endangered or threatened  
290 plant species as designated by state or federal agencies;

291  
292 ~~(Formerly 11(f)(ii))~~ (ii) Whether the area contains stands of a rare native vegetation type,  
293 or contains stands of a native vegetation type that is now rare, or contains stands of a native vegetation  
294 type in pristine condition for which pristine stands are unusual; or

295  
296 ~~(Formerly 11(f)(iii))~~ (iii) Whether the area contains plant species and habitat  
297 determined to be crucial or vital for resident wildlife species.

298  
299 ~~(Formerly 11(g))~~ (g) For purposes of determining whether an area has particular scenic value  
300 the Council shall consider the following factors:

301  
302 ~~(Formerly 11(g)(i))~~ (i) Whether the area ~~ineudes~~ includes lands within or adjacent to a  
303 corridor for a river designated as a National Wild and Scenic River or a corridor for a National Scenic  
304 Byway;

305  
306 ~~(Formerly 11(g)(ii))~~ (ii) Whether the area has been the subject of substantial artistic  
307 attention in the works of artists, sculptors, photographers, or writers; or

308  
309                   ~~(Formerly 11(g)(iii))~~ (iii)           Whether the area has substantial aesthetic value and its  
310 value would be apparent to a reasonable person.

311  
312                   ~~(Formerly 11(h))~~ (h)    An area shall be ~~designated~~ removed from designation under ~~pursuant to~~  
313 W.S. §35-11-112(a)(v) if, in addition to finding that the area is no longer eligible for designation, the  
314 Council finds that the area is no longer very rare or uncommon. For purposes of determining if an area is  
315 very rare or uncommon the Council shall consider the following:

316  
317                   ~~(Formerly 11(h)(i))~~ (i)   Whether the area exhibits historical, archaeological, wildlife,  
318 surface geological, botanical, or scenic values that are very rare ~~of~~ or uncommon when compared with  
319 other areas of the state or a region therein;

320  
321                   ~~(Formerly 11(h)(ii))~~ (ii) Whether the area contains historical, archaeological, wildlife,  
322 surface geological, botanical, or scenic values seldom found within the state or a region therein; or

323  
324                   ~~(Formerly 11(h)(iii))~~ (iii)       Whether the area contains historical, archaeological,  
325 wildlife, surface geological, botanical, or scenic values known or suspected to be declining which, if left  
326 unprotected, could become extinct or extirpated.

327  
328                   ~~Section 8. — Witnesses.~~

329  
330                   ~~(a) — Any person may comment on a proposed designation, modification, or termination either~~  
331 ~~by appearing at the hearing and entering comments into the record orally, or by submitting written~~  
332 ~~comments within a time period set by the Council.~~

333  
334                   ~~(b) — Witnesses submitting testimony in writing shall submit one (1) copy, and are requested~~  
335 ~~to submit 8 copies, of their complete testimony to the Council.~~

336  
337                   ~~(c) — Witnesses will not be cross-examined except by the Council, the Council's staff, or other~~  
338 ~~persons designated by the Council.~~

339  
340                   ~~(d) — Whenever the Council allows testimony to be submitted in writing, the testimony shall be~~  
341 ~~considered to be timely filed if it is received in the office of the Environmental Quality Council by the~~  
342 ~~end of the business day on the date set by the Council. Late submittals shall not be considered by Council~~  
343 ~~members unless the Council votes to reopen the record.~~

344  
345                   ~~(e) — Witnesses may be called by the Council, and expenses of these witnesses will be paid by~~  
346 ~~the Council.~~

347  
348                   ~~(f) — The Council may impose time limitations on oral presentations at hearings.~~

349  
350                   ~~Section 9. — Record.~~

351  
352                   ~~The hearing proceedings including all testimony shall be reported verbatim stenographically or by~~  
353 ~~other appropriate means determined by the Council. A copy of the proceedings will be furnished to any~~  
354 ~~person upon written request and the payment of a reasonable fee. If a person elects to have the hearing~~



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

357  
358 ~~Section 10. — Decision.~~

359  
360 ~~(a) — The Council, in its discretion, may direct the petitioner, the Council's staff, or others to~~  
361 ~~analyze the oral and written comments.~~

362  
363 ~~(b) — An analysis of comments shall be in writing, shall be submitted at a time to be set by the~~  
364 ~~Council, and shall be a part of the record of the designation proceedings. The analysis may include~~  
365 ~~recommendations to modify the petition to designate.~~

366  
367 ~~(c) — The Council shall issue a written decision. The decision may be to designate all or a~~  
368 ~~portion of the area or to deny the petition. The Council shall issue a written statement of reasons for the~~  
369 ~~decision.~~

370  
371 ~~(d) — The petitioner shall be served with a copy of the Council's decision and statement of~~  
372 ~~reasons.~~

373