

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(c))~~ (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).~~

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

49
50 ~~(c) — No area subject to an application for a noncoal mining permit shall be considered~~
51 ~~for designation if the petition to designate is filed after the close of the public comment~~
52 ~~period allowed by Section §35-11-406(k).~~

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

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

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

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

74 75 **Section 4. Initiation of Proceedings.**

76
77 ~~(Formerly Section 6(a)) (a) Any person may file a petition to designate lands as very~~
78 ~~rare or uncommon pursuant to W.S. §35-11-112(a)(v) or a petition to modify or to modify or~~
79 ~~terminate remove an existing designation. The petition shall contain the following:~~

80
81 ~~(Formerly 6(a)(i)) (i) The name, address, phone number, and email address for~~
82 ~~the petitioner;~~

83
84 ~~(Formerly 6(a)(ii)) (ii) The location by legal description, including section,~~
85 ~~township, and range, of the area the petitioner is proposing to be removed;~~

86
87 ~~(Formerly 6(a)(iii)) (iii) The names, if any, by which an area ~~may be known~~~~
88 ~~locally is locally known;~~

89
90 ~~(Formerly 6(a)(iv)) (iv) The distance from the area to the nearest city or~~
91 ~~town;~~

92
93 (Formerly 6(a)(iv)) (v) and ~~†~~The county in which the area is located;

94
95 (Formerly 6(a)(v))(vi) An original ~~USGS~~U.S. Geological Survey topographic
96 map showing the area ~~in question which reflects~~ reflecting the surface land ownership pattern
97 (private, state, federal) in the area;

98
99 (Formerly 6(a)) ~~(vi)~~(vii) A list of the names and addresses of the surface and
100 mineral owners whose lands are included within the area proposed for ~~designation, modification,~~
101 ~~or termination~~ removal with a description of the ownership interest of each surface and mineral
102 owner, including a legal description of the lands in which each person has an interest;

103
104 (Formerly 6(a)(vii))(viii) A concise statement of the reasons ~~the area is~~
105 ~~alleged to be very rare or uncommon and a description of the archaeological, surface geological,~~
106 ~~historical, wildlife, botanical, or scenic attributes of the area, or, if the petition seeks to modify or~~
107 ~~terminate an existing designation, a concise statement of the reasons for the modification or~~
108 ~~termination~~ for the removal including an explanation of the substantial change in circumstances
109 that has occurred since designation;

110
111 (Formerly 6(a)(viii)) (ix) A description of the current and historical land use
112 in the area;

113
114 (Formerly 6(a)(ix)) (x) A list of any special designations or descriptions of
115 the area made by other governmental agencies, including, but not limited to, designations by the
116 Department of Interior, Bureau of Land Management, or Office of Surface Mining, designations
117 by the U.S. Fish and Wildlife Service, and designations by the Wyoming Department of Game
118 and Fish;

119
120 (Formerly 6(a)(x)) (xi) The names and addresses of all expert witnesses
121 whose work or 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
124 lands 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
127 the petitioner to support the petition that discuss the area to be ~~designated, modified, or~~
128 ~~terminated; and~~ removed.

129
130 (Formerly 6(a)(xiii)) (b) ~~At the time of filing, eight (8) copiers of the petition shall~~
131 ~~be submitted~~ Petitioner shall submit eight (8) copies of the petition to the ~~Chairman~~ Chair of the
132 Environmental Quality Council at the Council's office in Cheyenne, Wyoming. The petition
133 shall be considered to be filed in the 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
136 shall consider the petition at a regularly scheduled Council meeting and shall notify the petitioner
137 and surface and mineral owners whose lands or minerals are within the area ~~proposed for~~

138 ~~designation~~ of the time, date, and location of the meeting. The Council's consideration shall be
139 limited to whether the petition should be accepted or dismissed.

140
141 ~~(Formerly 6(e))~~ (d) The Council may dismiss a petition if, after review ~~of the petition~~,
142 the Council determines that the petition does not provide the information required by these rules
143 or that the petition does not provide sufficient information to support the conclusion that the area
144 may be ~~designated, 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~~
151 ~~initiate formal hearing procedures in accordance with these rules.~~

152 Section 5. Hearing and Notice.

153
154 ~~(Formerly Section 7(a))~~ (a) The Council shall:

155
156
157 ~~(Formerly 7(a)(i))~~ (i) Set the time, date, and location of a hearing on the petition,
158 and

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

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

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

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

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

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

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

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

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

194
195 **Section 6. ~~Initiation of Proceedings~~ Decision.**

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

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

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

206
207 **Section 7. ~~Hearing and Notice~~ Criteria for Removal.**

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

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

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

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

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

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

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

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

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

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

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

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

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

257
258 ~~(Formerly 11(d)(vi))~~ (vi) Whether the area includes federally designated
259 critical habitat for threatened or endangered plant or animal species which is determined by the
260 U.S. Fish and Wildlife Service or the Wyoming Game and Fish Department to be of essential
261 value and where the presence of threatened or endangered species has been scientifically
262 documented;

263
264 ~~(Formerly 11(d)(vii))~~ (vii) Whether the area contains a bald or golden eagle
265 nest or nest site that is determined to be active and includes all or a portion of a buffer zone of
266 land around the nest which has been evaluated and approved by the U.S. Fish and Wildlife
267 Service;

268
269 ~~(Formerly 11(d)(viii))~~ (viii) Whether the area includes bald and golden eagle
270 roost and concentration areas used during migration and wintering;

271
272 ~~(Formerly 11(d)(ix))~~ (ix) Whether the area contains a falcon (excluding
273 kestrel) cliff nesting site with an active nest and a buffer zone around the nest site which has
274 been evaluated and approved by the U.S. Fish and Wildlife Service; or

275
276 ~~(Formerly 11(d)(x))~~ (x) Whether the area includes lands ~~which~~ that are high
277 priority habitat for migratory birds of high federal interest on a regional or national basis as
278 determined by the U.S.Fish and Wildlife Service.

279
280 ~~(Formerly 11(e))~~ (e) For purposes of determining whether an area has particular surface
281 geological value the Council shall consider the following factors:

282
283 ~~(Formerly 11(e)(i))~~ (i) Whether the area has unique surface geological formations
284 that expose upheavals and faults that are indicative of sub-surface geological features;

285
286 ~~(Formerly 11(e)(ii))~~ (ii) Whether the area has significant paleontological
287 resources; or

288
289 ~~(Formerly 11(e)(iii))~~ (iii) Whether the area has geologic features with unusual
290 or substantial recreational, aesthetic, or scientific value.

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

294
295 ~~(Formerly 11(f)(i))~~ (i) Whether the area is critical habitat for endangered or
296 threatened plant species as designated by state or federal agencies;

297
298 ~~(Formerly 11(f)(ii))~~ (ii) Whether the area contains stands of a rare native
299 vegetation type, or contains stands of a native vegetation type that is now rare, or contains stands
300 of a native vegetation type in pristine condition for which pristine stands are unusual; or

301
302 ~~(Formerly 11(f)(iii))~~ (iii) Whether the area contains plant species and habitat
303 determined to be crucial or vital for resident wildlife species.

304
305 ~~(Formerly 11(g))~~ (g) For purposes of determining whether an area has particular scenic
306 value the Council shall consider the following factors:

307
308 ~~(Formerly 11(g)(i))~~ (i) Whether the area ~~ineudes~~ includes lands within or adjacent
309 to a corridor for a river designated as a National Wild and Scenic River or a corridor for a
310 National Scenic Byway;

311
312 ~~(Formerly 11(g)(ii))~~ (ii) Whether the area has been the subject of substantial
313 artistic attention in the works of artists, sculptors, photographers, or writers; or

314
315 ~~(Formerly 11(g)(iii))~~ (iii) Whether the area has substantial aesthetic value and
316 its value would be apparent to a reasonable person.

317
318 ~~(Formerly 11(h))~~ (h) An area shall be ~~designated~~ removed from designation under
319 ~~pursuant to~~-W.S. §35-11-112(a)(v) if, in addition to finding that the area is no longer eligible for

320 designation, the Council finds that the area is no longer very rare or uncommon. For purposes of
321 determining if an area is very rare or uncommon the Council shall consider the following:

322
323 ~~(Formerly 11(h)(i))~~ (i) Whether the area exhibits historical, archaeological,
324 wildlife, surface geological, botanical, or scenic values that are very rare ~~of~~ or uncommon when
325 compared with other areas of the state or a region therein;

326
327 ~~(Formerly 11(h)(ii))~~ (ii) Whether the area contains historical, archaeological,
328 wildlife, surface geological, botanical, or scenic values seldom found within the state or a region
329 therein; or

330
331 ~~(Formerly 11(h)(iii))~~ (iii) Whether the area contains historical, archaeological,
332 wildlife, surface geological, botanical, or scenic values known or suspected to be declining
333 which, if left unprotected, could become extinct or extirpated.

334
335 **~~Section 8. — Witnesses.~~**

336
337 ~~(a) — Any person may comment on a proposed designation, modification, or~~
338 ~~termination either by appearing at the hearing and entering comments into the record orally, or~~
339 ~~by submitting written comments within a time period set by the Council.~~

340
341 ~~(b) — Witnesses submitting testimony in writing shall submit one (1) copy, and are~~
342 ~~requested to submit 8 copies, of their complete testimony to the Council.~~

343
344 ~~(c) — Witnesses will not be cross-examined except by the Council, the Council’s staff,~~
345 ~~or other persons designated by the Council.~~

346
347 ~~(d) — Whenever the Council allows testimony to be submitted in writing, the testimony~~
348 ~~shall be considered to be timely filed if it is received in the office of the Environmental Quality~~
349 ~~Council by the end of the business day on the date set by the Council. Late submittals shall not~~
350 ~~be considered by Council members unless the Council votes to reopen the record.~~

351
352 ~~(e) — Witnesses may be called by the Council, and expenses of these witnesses will be~~
353 ~~paid by the Council.~~

354
355 ~~(f) — The Council may impose time limitations on oral presentations at hearings.~~

356
357 **~~Section 9. — Record.~~**

358
359 ~~The hearing proceedings including all testimony shall be reported verbatim~~
360 ~~stenographically or by other appropriate means determined by the Council. A copy of the~~
361 ~~proceedings will be furnished to any person upon written request and the payment of a~~

362 ~~reasonable fee. If a person elects to have the hearing transcribed by a certified court reporter, he~~
363 ~~or she must make the necessary arrangements and bear the cost thereof.~~

364

365 **~~Section 10. — Decision.~~**

366

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

369

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

373

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

377

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