

736-040-0066

North Fork John Day River Scenic Waterway

(1) Accessible Natural River Areas: two segments of the North Fork John Day River are designated Accessible Natural River Areas:

(a) That segment of scenic waterway beginning at the west boundary of the North Fork John Day Wilderness in the Umatilla National Forest as that boundary was constituted on December 8, 1988, being at about river mile 76.7, where the North Fork John Day River intersects the western section line of Section 18, Township 7 South, Range 34 East, Willamette Meridian, (Section 18, T 7S, R 34E, W.M.) and extending downstream approximately 16.7 miles to the State Highway 395 Bridge crossing, at about river mile 60, is classified as an Accessible Natural River Area;

(b) That segment of scenic waterway beginning at the confluence of Camas Creek, at about river mile 57, and extending downstream approximately 36.7 miles to the intersection with the northern boundary of the south one-half of Section 20, Township 8 South, Range 28 East, Willamette Meridian, (Section 20, T 8S, R 28E, W.M.) at about river mile 20.3, is classified as an Accessible Natural River Area.

(c) These Accessible Natural River Areas shall be administered consistent with the standards set by [OAR 736-040-0035](#) and [OAR 736-040-0040\(1\)\(e\)\(B\)](#). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant or Umatilla County land use regulations.

(d) New structures and associated improvements shall be totally screened from view from the river by topography and/or vegetation, except as provided under [OAR 736-040-0030\(5\)](#), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "total screening," as used in section (1) of this rule, shall consist of adequate topography and/or density and mixture of native evergreen and deciduous vegetation to totally obscure (100%) the subject improvement.

(e) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(f) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(g) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(h) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition of "substantial screening," as used in Section (1) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to substantially obscure (at least 75%) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(i) Visible tree harvest or other vegetation management may be permitted provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(j) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(k) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(l) Whenever the standards of OAR 736-040-0035 and section (1), subsections (c) through (k) of this rule are more restrictive than Grant County's or Umatilla County's Land Use and Development Ordinance, the above Oregon Administrative Rules shall apply.

(2) Recreational River Area:

(a) That segment of scenic waterway beginning at the State Highway 395 Bridge crossing, at about river mile 60, and extending downstream approximately three miles to the confluence of Camas Creek, at about river mile 57, is classified as a Recreational River Area.

(b) This Recreational River Area shall be administered consistent with the standards set by OAR 736-040-0035 and OAR 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Grant County or Umatilla County land use regulations.

(c) New structures and associated improvements shall be moderately screened from view from the river by topography and/or vegetation, except as provided by OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide moderate screening of the proposed structure or improvement within a reasonable time (4 - 5 years). The condition of "moderate screening," as used in Section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to moderately obscure (at least 50%) the viewed improvement or structure.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4-5 years). The condition of "total screening," as used in Section (2) of this rule, shall consist of adequate topography and/or density and mixture of native, evergreen and deciduous vegetation to totally obscure (100%) the altered improvement site.

(f) New roads constructed for agricultural use, mining or residential use shall be moderately screened with vegetation and/or topography. If inadequate topographic or vegetative screening exists, the road may be permitted if acceptable topography can be created or road design techniques used to moderately screen the road at the time of construction or native vegetation can be established to provide moderate screening of the road within a reasonable time (4-5 years).

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when partially screened from view from the river. If inadequate topography or vegetation exists to provide partial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to partially screen the road at the time of construction or native vegetation can be established to provide partial screening of the subject improvement within a reasonable time (4-5 years). The condition of "partial screening," as used in section (2) of this rule shall consist of adequate

topography and/or density and mixture of native, evergreen and deciduous vegetation to partially obscure (at least 30%) views of the road improvement. When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public outdoor recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Whenever the standards of OAR 736-040-0035 and section (2), subsections (c) through (i) of this rule are more restrictive than Grant County or Umatilla County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.845(2)

Hist.: PRD 10-2000, f. & cert. ef. 9-1-00

Land Management

736-040-0030

Improvements and Changes in Use of Related Adjacent Lands

(1) Except as provided in section (5) of this rule, OAR 736-040-0035 and 736-040-0045 through 736-040-0075, no person shall make any improvement or change in the existing use of related adjacent land without first giving written notification to the Commission of the intent to make an improvement or change in land use. The proposed improvement or change in land use shall not be made or work started sooner than one year after such notice unless the Commission has given its written approval of the proposal. (See notification procedures in OAR 736-040-0080.)

(2) Upon receipt of such notice, the Commission shall determine if the proposal would impair the natural beauty of the scenic waterway substantially.

(3) If the proposed improvement or change of land use would not impair the natural beauty substantially, the Commission shall give written notice to the owner of the related adjacent land that he may proceed immediately with the proposal as described in his notification to the Commission.

(4) Should the Commission determine that the proposal, if carried out, would impair the natural beauty of the scenic waterway substantially, or otherwise violate the provisions of the Act or these rules and regulations, it will so notify the owner of the related adjacent land in writing. No steps shall be taken by the applicant to carry out such proposal until at least one year after the original notice to the Commission unless agreement with the Commission is sooner reached. (See OAR 736-040-0080.)

(5) In connection with existing use of related adjacent land, farmers, ranchers and residents may modify existing structures or construct or place such subsidiary and lesser structures adjacent thereto, except residences or guest houses, as are usual and necessary to their existing use without prior notice to the Commission, provided that such modification or construction will not violate OAR 736-040-0035(7)(a) and (b) and will be in harmony with the natural beauty of the scenic waterway.

(6) Repair and maintenance of existing facilities and structures in a manner compatible with these rules and regulations do not require notification to the Commission.

Stat. Auth.:

Stats. Implemented: ORS 390.845

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

736-040-0035

Rules of Land Management

These rules and regulations governing the use of related adjacent lands and improvements made on or to these lands apply to all designated scenic waterways. Land management on scenic waterways includes, but is not limited to, the following examples:

(1) Timber Harvest: The forest cover on related adjacent land is a part of the scenic beauty of the scenic waterway and notification of planned timber harvest operations must be given to the Commission one year prior to commencement. The notification must include a plan specifying timber to be cut, road locations, logging methods, slash cleanup, soil stabilization, revegetation measures and any other details as the Commission may require.

(2) Tree Cutting: No person shall cut any living tree within a scenic waterway without prior written notice except as provided in these rules.

(3) Grazing and Farming: Existing use in the form of grazing or farming of the related adjacent land is a part of the scenic beauty of the waterway. Notification is not required for:

- (a) Construction of fences;
- (b) Maintenance of farm buildings, fences or appurtenances necessary to existing use;
- (c) Laying of irrigation lines;
- (d) Pump house construction, if not in violation of OAR 736-040-0030(5);
- (e) Additions to farm buildings, if not in violation of OAR 736-040-0030(5);
- (f) Crop rotation;
- (g) Variations in grazing land management;
- (h) Placing of grazing land under cultivation, except within classified natural river areas named in OAR 736-040-0045 through 736-040-0075;
- (i) Construction of silos and grain storage facilities, and other structures or buildings as are needed in connection with the existing use of the related adjacent land, if not in violation of OAR 736-040-0030(5), except within classified natural river areas named in OAR 736-040-0045 through 736-040-0075;
- (j) Cutting of danger trees. Notification is required for construction of new roads or improvement of existing roads.

(4) Suburban Housing: Notification is not required for:

- (a) Maintenance of existing homes in a manner compatible with these rules and regulations;
- (b) Modifications to existing single family dwellings, if not in violation of OAR 736-040-0030(5);
- (c) Construction of garages necessary to the use of existing homes, if not in violation of OAR 736-040-0030(5);
- (d) Changes in or additions to homesite landscaping which do not impair vegetation screening structures from view from the river;
- (e) Construction of protective fences necessary to use of the home;
- (f) Cutting of firewood for occupant's dwelling;

(g) Cutting of danger trees. Notification is required for construction of new roads or improvement of existing roads.

(5) Prospecting, Mining, Dredging, and Quarrying:

(a) All prospecting, mining, dredging, and quarrying operations, including removal or movement of gravel, rocks and sand within related adjacent lands, require notification to the Commission as prescribed herein;

(b) Such notification shall include plans to ensure that debris, silt, chemicals or other materials, will not be discharged into or allowed to reach the waters within a scenic waterway and that the natural beauty of the scenic waterway will not be impaired substantially.

(6) Transportation Facilities and Utilities:

(a) No roads, railroads or other facilities for transportation or utilities shall be constructed or improved within a scenic waterway without notification to the Commission as prescribed by the Act and herein;

(b) The Commission, whenever practicable, will require the sharing of land and airspace by such facilities and utilities. All permissible transportation facilities and utilities shall be so located as to minimize impairment of the natural beauty of the scenic waterway. For example, it will be desirable to place electrical and telephone lines underground wherever reasonably practicable.

(7) Structures, Buildings, and Other Improvements: Except as provided in OAR 736-040-0030(5), sections (3) and (4) of this rule and OAR 736-040-0045 through 736-040-0075, no structures, buildings, or other improvements shall be made, erected or placed on related adjacent lands without notification to the Commission as prescribed by the Act and herein. Permitted new structures, buildings, or other improvements on related adjacent lands which can be seen from the waters within a scenic waterway shall:

(a) Be of such design and be constructed of such materials as to be unobtrusive and compatible with the scenic qualities of the area. For example, the following shall apply:

(A) All structures shall be finished in muted tones appropriate to their natural surroundings;

(B) No large areas, including roofs, shall be finished with white or bright colors or reflective materials;

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

(D) All structures shall be so designed and constructed that little or no soil is left exposed when construction is completed.

(b) Be located in such a way that topography and natural vegetation make them as inconspicuous as reasonably practicable, and in no case obtruding on the view from the river. The Commission

may require that additional vegetative screening be established and maintained. In such event, it shall be evergreen, wherever practicable, and compatible with natural growth in the area.

(8) Mobile homes, modular residential structures, house trailers, campers and similar structures and vehicles. Mobile homes, modular residential structures, house trailers, campers, motor homes and the like shall not be established as dwellings, either permanent, (or) seasonal or temporary, within related adjacent lands unless they are entirely concealed from view from the waters within a scenic waterway by topography, except that those mobile homes, modular residential structures and house trailers, that are at least 20 feet wide, with exterior dimensions, less hitch, of 800 square feet, may be permitted under these rules subject to the same requirements and standards set forth in the previous section relating to criteria for review for structures and improvements that are visible from the waters within a scenic waterway. Additionally, except when a mobile home, modular residential structure, house trailer or the like is not set on a ground-level foundation, full skirting shall be installed which in design, color and texture appears to be an integral part of the exterior of the structure:

(a) For the purposes of this division, a structure is a mobile home, modular residential structure, house trailer, camper or motor home if it is used, designed or intended to house persons, and is transported to the site in a state of substantial prefabrication. Once a structure fulfills this test, it shall remain subject to the rule regardless of whether the wheels or other temporary assembly have been removed or detached, and regardless of whether the structure is subsequently relocated;

(b) Within public recreation sites and transient public trailer parks where travel trailers, campers, motor homes and similar vehicles are permitted by the public agency, firm or individual maintaining the facility, their transient, short-term use by travelers is allowed, but they shall not be left on the site during their user's absence of more than three day's duration.

(9) Maintenance of Structures and Improvements: Owners and users of existing structures and other improvements shall maintain them and their surroundings in a manner and condition in harmony with the environment, compatible with the objectives set forth in these rules and regulations for the classified river area in which they lie, and without impairing substantially the natural beauty of the scenic waterway. The existing color of such structures may be maintained.

(10) Replacement of Existing Structures and Improvements: The Commission may approve replacement of existing structures and improvements, including those lost by fire, flood or other casualty, provided the new structure or improvement is in compliance with provisions of the Act and this division. Notification procedures set forth in OAR 736-040-0040 are required.

(11) Advertising: No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained. Property protection signs (No Hunting, No Trespassing, etc.) are exempted.

(12) Erosion Protection: The Commission recognizes that erosion protection work and maintenance may be necessary on riverbanks and related adjacent lands along the scenic

waterways. Notification, which shall include plans to protect the natural beauty of the scenic waterway, and Commission approval are required.

(13) Submerged and Submersible Lands:

(a) No dam or reservoir or other water impoundment facility shall be constructed or placer mining permitted on waters within scenic waterways. No water diversion facility shall be constructed or used except by right previously established or as permitted by the Oregon Water Resources Department, State Engineer, or Court decree;

(b) No bank protection works or dredging facility shall be constructed or used on such waters, except as permitted by the Director of the Department of State Lands and approved by the State Land Board.

(14) Emergencies:

(a) An owner or their authorized agent may act in emergencies without prior notice when necessary in the interest of public safety, or safety of an owner's property, except that notice of any action taken shall be filed with the Commission not later than seven days following the commencement of the emergency procedures;

(b) An owner or their authorized agent must show that the emergency situation required immediate action to prevent immediate danger or damage. Such emergency procedures shall not be extended beyond the minimum necessary to accomplish the needed protection safely and shall be conducted throughout in such manner as to minimize impairment of the natural beauty of the scenic waterway. For example, car bodies and similar scrap or trash shall not be used as riprap.

(15) Solid Waste, Pollution and Sanitation: Owners, occupants and users of related adjacent land shall comply with the rules and regulations of the Department of Environmental Quality relating to solid waste control, water, air and noise pollution control and sewage disposal.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72; 1OTC 6, f. 11-1-73; 1OTC 28, f. 6-15-74; PR 12-1981, f. & ef. 7-29-81; PR 11-1996, f. & cert. ef. 12-23-96; PRD 6-2008, f. & cert. ef. 5-15-08

736-040-0040

Classification of Scenic Waterways and Segments Thereof

(1) OAR 736-040-0040 through 736-040-0075 supplement, but in no way alter, other provisions of these rules and regulations. Notification procedures set forth in OAR 736-040-0030, 736-040-0035 and 736-040-0080, relating to Land Management, are applicable to these rules. In order to establish varying intensities of protection or development based on special attributes of each area within the scenic waterways, the following classifications are established:

(a) Natural River Areas:

(A) Those designated scenic waterways or segments thereof that are generally inaccessible except by trail or the river, with related adjacent lands and shorelines essentially primitive. These represent vestiges of primitive America;

(B) Natural River Areas may include an occasional lightly traveled road, airstrip, habitation or other kind of improvement already established, provided the effects are limited to the immediate vicinity;

(C) Natural River Areas will be administered to preserve their natural, wild and primitive condition, essentially unaltered by the effects of man, while allowing compatible recreational uses, other compatible existing uses and protection of fish and wildlife habitat.

(b) Scenic River Areas:

(A) Those designated scenic waterways or segments thereof with related adjacent lands and shorelines still largely primitive and largely undeveloped, except for agriculture and grazing, but accessible in places by roads. Scenic River Areas may not include long stretches of conspicuous or well-traveled roads paralleling the river in close proximity, but may include extensive areas in agricultural use;

(B) Scenic Areas will be administered to maintain or enhance their high scenic quality, recreational value, fishery and wildlife habitat, while preserving their largely undeveloped character and allowing continuing agricultural uses.

(c) Recreational River Areas:

(A) Those designated scenic waterways or segments thereof that are readily accessible by road or railroad, that may have some development along their shorelines and related adjacent lands, and that may have undergone some impoundment or diversion in the past;

(B) Recreational River Areas will be administered to allow continuance of compatible existing uses, while allowing a wide range of compatible river-oriented public outdoor recreation opportunities, to the extent that these do not impair substantially the natural beauty of the scenic waterway or diminish its esthetic, fish and wildlife, scientific and recreational values.

(d) Natural Scenic View Areas:

(A) Those designated shorelines and related adjacent lands, lying along only one bank of a river within a scenic waterway, which possess the qualities of a Natural or Scenic River Area except that the opposite shoreline and related adjacent land, by reason of accessibility, or development, qualifies only for a less restrictive classification;

(B) Natural Scenic View Areas will be administered to preserve or enhance their essentially primitive scenic character, while allowing compatible public outdoor recreational use.

(e) Accessible Natural River Areas:

(A) Those designated scenic waterways or segments thereof that are readily accessible by road or railroad but otherwise possess the qualities of a Natural or Scenic River Area;

(B) Accessible Natural River Areas will be administered to protect or enhance their essentially primitive scenic character, while allowing compatible public outdoor recreation use.

(f) River Community Areas -- Those designated areas of a scenic waterway, perhaps on only one bank of the river, where density of structures or other developments, already existing or provided for precludes application of a more restrictive classification.

(2)(a) Within the general framework of these classifications, the Commission will further consider the nature and extent of existing land uses and developments, the scenic qualities and the esthetic, fish and wildlife, scientific and recreational values of each classified area within the scenic waterways in determining whether, in its judgment, proposals for changes of land use or improvements are compatible with the Act;

(b) Because of the individual character of each scenic waterway, administrative criteria within each of the six classifications may vary from one scenic waterway to another.

Stat. Auth.:

Stats. Implemented: ORS 390.845(2)

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