

Wyoming Administrative Rules

**Environmental Quality, Dept. of**

Practice and Procedure

Chapter 7: Very Rare or Uncommon Areas

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**CHAPTER 7**  
**VERY RARE OR UNCOMMON AREAS**

**Section 1. Purpose and Scope**

These rules are 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.

**Section 2. Definitions.**

(a) "Critical habitat" means 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.

(b) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by mining operations.

**Section 3. General Procedure.**

(a) The rules in this Chapter govern petitions to remove designation of lands pursuant to W.S. 35-11-112(a)(v).

(b) The hearing under this chapter is not a contested case proceeding. Hearings shall be conducted consistent with rules hearings before the Council under Chapter 3 of the Rules of Practice and Procedure.

**Section 4. Initiation of Proceedings.**

(a) Any person may file a petition to remove an existing designation. The petition shall contain the following:

- (i) The name, address, phone number, and email address for the petitioner;
- (ii) The location by legal description, including section, township, and range, of the area the petitioner is proposing to be removed;
- (iii) The names, if any, by which an area is locally known;
- (iv) The distance from the area to the nearest city or town;
- (v) The county in which the area is located;
- (vi) An original U.S. Geological Survey topographic map showing the area reflecting the surface land ownership pattern (private, state, federal) in the area;

(vii) A list of the names and addresses of the surface and mineral owners whose lands are included within the area proposed for removal with a description of the ownership interest of each surface and mineral owner including a legal description of the lands in which each person has an interest;

(viii) A concise statement of the reasons for the removal including an explanation of the substantial change in circumstances that has occurred since designation;

(ix) A description of the current and historical land use in the area;

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

(xi) The names and addresses of all expert witnesses whose work or whose testimony may be offered by the petitioner to support the petition;

(xii) The names and addresses of the surface owners of lands contiguous to the area proposed for removal; and

(xiii) A list of any scientific documents to be offered by the petitioner to support the petition that discuss the area to be removed.

(b) Petitioner shall submit eight (8) copies of the petition to the Chair of the Environmental Quality Council at the Council's office in Cheyenne, Wyoming. The petition shall be considered to be filed in the Council's office as of the date it is received in that office.

(c) The Council shall consider the petition at a regularly scheduled Council meeting and shall notify the petitioner and surface and mineral owners whose lands or minerals are within the area of the time, date, and location of the meeting. The Council's consideration shall be limited to whether the petition should be accepted or dismissed.

(d) The Council may dismiss a petition if, after review, the Council determines that the petition does not provide the information required by these rules or that the petition does not provide sufficient information to support the conclusion that the area may be removed if the Council were to proceed.

(e) If the Council votes to dismiss the petition, the Council shall issue a brief statement of the reasons for dismissal.

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

(a) The Council shall:

(i) Set the time, date, and location of a hearing on the petition, and

(ii) Schedule the hearing within the county in which the lands or a major portion thereof are located.

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

(i) Publish notice of the hearing once per week for four (4) consecutive weeks beginning at least forty-five (45) days before the hearing in a newspaper of statewide circulation and a newspaper of general circulation in the vicinity of the area proposed for removal;

(ii) Provide notice of the hearing by personal service or by certified mail, including a copy of the petition, to all surface and mineral owners whose lands or mineral interests are included within the area proposed for removal;

(iii) Provide notice of the hearing by regular mail to all surface owners whose lands are contiguous to the area proposed for removal; and

(iv) Provide notice of the hearing by regular mail to the county commissioners of the counties that contain lands proposed to be removed, the Attorney General's Office, and the Governor's Office.

(c) Petitioner shall pay costs of publishing and mailing notices of the proceedings.

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

#### **Section 6. Decision.**

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

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

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

#### **Section 7. Criteria for Removal**

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

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

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

(i) Whether the area is mentioned prominently in historic journals or other historic literature;

(ii) Whether the area is important because it is associated with cultural or religious traditions and practices;

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

(iv) Whether the area contains buildings, structures, artifacts, or other features that are significant in the history or prehistory of the state.

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

(i) Whether the area includes lands that are considered irreplaceable fish or wildlife habitat;

(ii) Whether the area includes preserves or easements that have been established and used for the protection for habitat for wildlife;

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

(iv) Whether the area contains or may affect fisheries classified as class I by the Wyoming Game and Fish Department;

(v) Whether the area includes fragile lands that offer unique wildlife or scientific values;

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

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

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

(viii) Whether the area includes bald and golden eagle roost and concentration areas used during migration and wintering;

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

(x) Whether the area includes lands that are high priority habitat for migratory birds of high federal interest on a regional or national basis as determined by the U.S. Fish and Wildlife Service.

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

(i) Whether the area has unique surface geological formations that expose upheavals and faults that are indicative of sub-surface geological features;

(ii) Whether the area has significant paleontological resources; or

(iii) Whether the area has geologic features with unusual or substantial recreational, aesthetic, or scientific value.

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

(i) Whether the area is critical habitat for endangered or threatened plant species as designated by state or federal agencies;

(ii) Whether the area contains stands of a rare native vegetation type, or contains stands of a native vegetation type that is now rare, or contains stands of a native vegetation type in pristine condition for which pristine stands are unusual; or

(iii) Whether the area contains plant species and habitat determined to be crucial or vital for resident wildlife species.

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

(i) Whether the area includes lands within or adjacent to a corridor for a river designated as a National Wild and Scenic River or a corridor for a National Scenic Byway;

(ii) Whether the area has been the subject of substantial artistic attention in the works of artists, sculptors, photographers, or writers; or

(iii) Whether the area has substantial aesthetic value and its value would be apparent to a reasonable person.

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

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

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

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