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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736  
PARKS AND RECREATION DEPARTMENT

**FILED**  
09/26/2019 4:59 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Nehalem River Scenic Waterway Management Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/04/2019 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Salem, OR 97303

Filed By:  
Katie Gauthier  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 10/28/2019

TIME: 6:00 PM - 8:00 PM

OFFICER: Katie Gauthier

ADDRESS: North County Recreation  
District

36155 9th St

Nehalem, OR 97131

SPECIAL INSTRUCTIONS:

Please sign up by 6:30 in order to  
provide testimony.

NEED FOR THE RULE(S):

On June 30, 2019 the Nehalem River Scenic Waterway was designated. ORS 390.845(2) requires Oregon Parks and Recreation Department to adopt rules governing the management of land adjacent to the newly designated waterway.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Nehalem River Proposed State Scenic Waterway Report and Draft Management Plan

[https://www.oregon.gov/oprd/NATRES/scenicwaterways/Documents/NehalemRiverProposedScenicWaterwayStudy\\_DraftManagementPlan.pdf](https://www.oregon.gov/oprd/NATRES/scenicwaterways/Documents/NehalemRiverProposedScenicWaterwayStudy_DraftManagementPlan.pdf)

FISCAL AND ECONOMIC IMPACT:

The fiscal and economic impact of the proposed rules is expected to be minimal. There will be a review needed for projects that are within 1/4 mile of the river and are visible from the water. In some cases screening may be required, which is an added cost. We are unable to estimate specific costs as they will vary depending on the scope of each project.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Oregon Parks and Recreation department anticipates this rule will have a minimal impact on administration costs for the agency. There will be a review needed for projects that are within ¼ mile of the river and are visible from the water. In some cases screening may be required, which is an added cost. Oregon Department of Forestry may have additional costs for logging projects within the designated waterway. It is possible local governments may experience a decline in revenue from timber receipts for logging projects within the designated waterway. Local governments may also have added costs for additional screening of road projects. Members of the public may experience increased costs for screening; however, they may also experience increased property values by being located within a scenic waterway.

(2) The impact on small business would be minimal as the rules apply to development projects within ¼ mile of the river that are visible from the river. Logging is a business that could be impacted but the Oregon forest practices act places restrictions on logging near waterways which minimizes any further impacts of scenic waterway rules.

(a) There are no reporting, record keeping or other administrative activities required of small businesses. Any property owner seeking to develop property within ¼ mile of the river and visible from the water would need to submit a notice of intent to Oregon Parks and Recreation Department.

(b) There are no equipment, supplies, labor, record keeping or additional administrative costs for small businesses unless they have a development project visible from the river. In that case, screening may be required that would have associated costs.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Representatives of the community, including small business owners were involved in the advisory committee and rules advisory committee used to develop the proposed rules.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 736-040-0120

RULE SUMMARY: Adds management rules for the Nehalem River Scenic Waterway.

CHANGES TO RULE:

736-040-0120

Nehalem River Scenic Waterway Management Rules

(1) Scenic River Area:¶

(a) That segment of the Nehalem River from the Henry Rierson Spruce Run Campground to the confluence with Cook Creek is classified as a Scenic River Area.¶

(b) The department shall administer this Scenic River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition, all new improvement shall be consistent with applicable Federal and State law, and Tillamook and Clatsop County land use and development regulations.¶

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes native vegetation, soils and rock material.¶

(d) Native evergreen vegetation shall be maintained between the improvements and the river. If proposed improvements are visible from the river, the department may allow the project to proceed if vegetation is established by the applicant that will substantially screen the project in a reasonable time (for example, 4-5 years). Revegetation shall be initiated within one year of a project's completion. The condition of "substantial vegetative

screening" shall consist of an ample density and mixture of compatible native vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements as seen from the river year-round. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.¶

(e) New roads, trails, driveways and similar linear forms of development shall be permitted when substantially screened from view of the river by topography, vegetation, or both. Any existing roads should not be extended or realigned unless substantially screened by topography or vegetation. Revegetation shall be initiated within one year of a project's completion. The condition of "substantial vegetative screening" is described in 736-040-0120 (1)(d).¶

(f) Any erosion control projects intended to protect structures such as roads, homes, or other existing structures, shall be designed to blend into the existing landscape. Natural products such as vegetation and rock shall be used.¶

(g) The Oregon Department of Fish and Wildlife will review applicable activities and provide the department with any additional considerations necessary to protect fish and wildlife resources in a manner consistent with the scenic waterway classification.¶

(h) Timber harvest activities, including thinning, or other vegetation management may be allowed provided that: ¶

(A) The provisions of the Oregon Forest Practices Act are followed on all private forest land. The provisions of the State Forest Management Plan are followed on all state forest land.¶

(B) Any harvest or vegetation management within protected riparian buffers as described in the Oregon Forest Practices Act or State Forest Management Plan shall be designed to enhance the scenic view. "Enhance" means to benefit forest ecosystem function and vegetative health, and can for example include, but is not limited to, optimizing forest stand densities and vegetative composition, fostering forest landscape diversity, and promoting sustainable forest values.

Statutory/Other Authority: 390.124

Statutes/Other Implemented: 390.805-390.925