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Director

STATE OF WASHINGTON

WASHINGTON STATE PARKS AND RECREATION COMMISSION

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Item E-2: Resource Sale Rule Amendment – Requested Action

EXECUTIVE SUMMARY: This item asks the Washington State Parks and Recreation Commission to amend sections in Chapter 352-28 WAC to update and consolidate definitions and clarify the agency approval process for resource sales. This item advances the Commission’s strategic goal: “Resource Protection: Protect and conserve park system resources for the future.”

SIGNIFICANT BACKGROUND INFORMATION: Through RCW 79A.05.035 Additional powers and duties, the Legislature directs that the Washington State Parks and Recreation Commission (Commission) shall “manage timber and land under its jurisdiction to maintain and enhance aesthetic and recreational values” and to “apply modern conservation practices to maintain and enhance aesthetic, recreational, and ecological resources.” Under Chapter 352-28 of the Washington Administrative Code (WAC), the Commission authorizes the sale and removal of natural resources from select areas of the park system.

Staff conducts timber sales as a component of agency-driven forest health and other natural resource stewardship projects. The agency also occasionally sells timber as part of park development projects. Pursuant to the Commission’s Natural Resources Policy, all proceeds in excess of the cost of removing the timber are dedicated to natural resource stewardship activities and to related interpretation and education activities.

Currently, Chapter 352-28 WAC has definitions in multiple sections and procedural guidelines for resource sales that are unclear. This proposal would update definitions and consolidate them in one place under WAC 352-28-005. The proposal would also clarify the agency approval process for resource sales by setting new measures and thresholds for approval of sales based on volume, rather than value of timber. Using a volume threshold clarifies the approval process, is more consistent with other state natural resource agencies, and more accurately represents the scale and significance of forest health treatments.

WAC 352-28-020 currently requires Commission approval for sales with an appraised value over \$25,000 and director approval under that threshold. The proposed amendment would require Commission approval for timber sales over 1 million board-feet, director approval for sales between 1 million and 5,000 board-feet, and program manager approval for sales of 5,000 board-feet or less. The proposed amendment would also require approval for timber sales, resulting from the conversion of forest land for the development of park facilities, where the appraised

value of the timber is over \$25,000. The revision will clarify the agency's internal approval process, but it is not anticipated to affect the overall number or scale of resource sales.

STAFF RECOMMENDATION: After consulting with other state natural resource agencies and receiving Commission feedback at the November 2020 work session, staff recommends that the Commission adopt the proposed changes to Chapter 352-28 WAC contained in Appendix 1.

LEGAL AUTHORITY: RCW 79A.05.035

SUPPORTING INFORMATION:

Appendix 1: Full Text of Proposed Changes to Chapter 352-28 WAC Protection and Conservation of State Parks Natural Resources

REQUESTED ACTION OF COMMISSION:

That the Washington State Parks and Recreation Commission

1. Declare this meeting to be a public hearing for amending WAC 352-28.
2. Consider the data, views, and arguments submitted by any person on the proposed rules as published in the Washington State Register and as further modified herein.
3. Formally amend WAC 352-28.
4. Authorize the Director to file the regulations and to comply with all necessary procedural requirements.

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Reviewer(s):

Jessica Logan, SEPA REVIEW: The above referenced Requested Action is categorically exempt from the procedural requirements of the State Environmental Policy Act pursuant to WAC 197-11-800 (19)(a). Future actions associated with timber harvests will be reviewed under SEPA, as appropriate.

Van Church, Fiscal Impact Statement: Approval of this requested action has no fiscal impact at this time.

Andy Woo, Assistant Attorney General: Reviewed 3/26/2021

Peter Herzog, Assistant Director – Parks Development

Approved for Transmittal to Commission



Peter M. Mayer, Director

APPENDIX 1
Full Text of Proposed Changes to Chapter 352-28 WAC
Protection and Conservation of State Parks Natural Resources

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10,
effective 8/12/10)

WAC 352-28-005 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) (~~"Catastrophic forest event" means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.~~

~~(2))~~ "Commission" means the Washington state parks and recreation commission.

~~((3))~~ (2) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(3) "Cruise" means a forest survey to locate and estimate the quantity of timber on a given area according to species, size, quality, possible products, or other characteristics.

(4) "Director" means the director of the Washington state parks and recreation commission.

(5) "Emergency tree" means any tree that has already failed, or that poses an imminent or probable likelihood of failure before the next inspection, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, could impact a target.

(6) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC ((~~232-12-014~~) 220-610-010.

~~((6))~~ (7) "Natural resource(s)" includes biological organisms, their processes, dead or organic matter, soils, and geologic materials.

~~((7))~~ (8) "Resource conservation plan" means a plan that advances the stewardship of that resource. The plan may address, although not be limited to, resource conservation, protection, restoration or mitigation.

~~((8))~~ (9) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

~~((9))~~ (10) "Significant tree" means living and dead standing trees greater than 10 inches in diameter at breast height (4.5 feet above the ground).

(11) "Target" means a structure, facility, property, activity, or person that has the potential to be hit or impacted by a falling tree or tree part.

(12) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

(13) "Timber" means forest trees of commercial value.

[Statutory Authority: RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 10-15-024, § 352-28-005, filed 7/12/10, effective 8/12/10. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 08-05-009, § 352-28-005, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 43.51.040(1), [43.51.]045, [43.51.]050, [43.51.]060(1), [43.51.]061 and [43.51.]395. WSR 96-01-078, § 352-28-005, filed 12/18/95, effective 1/18/96. Statutory Authority: RCW 43.51.040. WSR 94-10-012, § 352-28-005, filed 4/25/94, effective 5/26/94. Statutory Authority: RCW 43.51.040 and 43.51.045. WSR 84-08-017 (Resolution No. 76), § 352-28-005, filed 3/27/84.]

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10,
effective 8/12/10)

WAC 352-28-010 Cutting, collection and removal of natural resources. (1) **Trees may be cut and removed subject to the following limitations:**

(a) **Significant trees:** (~~Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground).~~) Except in emergencies and when feasible, significant trees in any area under the jurisdiction and/or management of the commission shall be removed only after they have been evaluated, rated, appraised and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet

process and upon the written approval of the director or the designee of the director.

(b) **Emergency trees:** (~~Emergency trees means any tree that has already failed (cracked, tipped, diseased, or standing dead) or that poses an imminent threat, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part.~~) The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or (~~arboriculture manager~~) certified arborist is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) **Worksheet:** The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emergency trees, occur only after agency review through the tree

activity worksheet process and the written approval of the director or designee.

(d) **Consultation:** The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except in the case of emergency trees, be approved only by the director or designee and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a resource conservation plan for affected natural resources, and a public hearing (~~on each such proposed cutting or removal conducted~~) in the county/counties in which the cutting or removal is to take place (~~as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county or by an alternative method prescribed by the commission deemed to yield equal or better public notice. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director~~)).

(2) **Native plants, fungi, and dead organic matter:** The cutting or removal of natural resources, other than trees or those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or designee.

(3) **Protected species:** Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of natural resources in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director or designee after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of natural resources to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005, on lands managed by the commission or

on other state lands, will only occur as a part of an interagency agreement or resource conservation plan that involves consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or designee.

(4) **Land classification (chapter 352-16 WAC) criteria:**

Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required, and only where necessary, to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of boundary fences, trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recreation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and overstory trees to provide screening, wind, and sun protection.

(vi) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

(vii) Prevent the deterioration or loss of historical/cultural resources.

(viii) Maintenance or construction of fire lanes for abatement of fires.

(ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

(x) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) **Use of fallen trees:** When feasible, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood, or where the tree has no economic values contributed to a state managed resource conservation effort. In natural area preserves, natural forest areas, natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

(6) **Parks use:** Subject to the guidelines of this section, the commission may authorize the use of natural resources within recreation areas, resource recreation areas, and heritage areas for park purposes.

[Statutory Authority: RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 10-15-024, § 352-28-010, filed 7/12/10,

effective 8/12/10. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 08-05-009, § 352-28-010, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, and 79A.05.075. WSR 05-17-105, § 352-28-010, filed 8/16/05, effective 9/16/05. Statutory Authority: RCW 43.51.040(1), [43.51.]045, [43.51.]050, [43.51.]060(1), [43.51.]061 and [43.51.]395. WSR 96-01-078, § 352-28-010, filed 12/18/95, effective 1/18/96. Statutory Authority: RCW 43.51.040. WSR 94-10-012, § 352-28-010, filed 4/25/94, effective 5/26/94. Statutory Authority: RCW 43.51.040 and 43.51.045. WSR 84-08-017 (Resolution No. 76), § 352-28-010, filed 3/27/84; Order 7, § 352-28-010, filed 4/1/70.]

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-020 Resource sales and leases. The following qualifications, procedures, and general provisions pertain to

the sale of natural resources from commission owned or managed lands:

(1) Subject to the limitations set forth under WAC 352-28-010(4), the sale of natural resources will be undertaken only where they advance a commission approved development, are part of a resource conservation plan or interagency agreement approved by the director or designee, or are deemed by the director or designee to advance agency stewardship goals and are surplus to the (~~(parks)~~) park's needs.

(2) Prior to a sale of natural resources, qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid, unless such natural resources are for use by the park or qualify for direct sale under subsection (~~(+4)~~) (5) of this section.

Where (~~(trees are)~~) timber is to be sold, such (~~(trees)~~) timber shall be cruised or appraised using methods consistent with those applied by the Washington department of natural resources or other applicable professional standards of forest land and timber appraisal. Complete records of the methods and

assumptions used to make the cruise or timber appraisal and estimated minimum acceptable bids shall be maintained.

(3) Sales of timber where the (~~(appraised value)~~) cruised volume of the (~~(materials)~~) timber is in excess of (~~(twenty-five thousand dollars)~~) one million board-feet shall require approval by a majority of the commission.

(4) Sales of timber where the (~~(appraised value)~~) cruised volume of the (~~(materials)~~) timber is less than or equal to (~~(twenty-five thousand dollars)~~) one million board-feet and greater than five thousand board-feet shall require approval by the director or designee. In cases of heightened public controversy, the director may defer to approval by a majority of the commission. All sales shall be conducted pursuant to procedures approved by the commission.

(5) Sales of timber where the cruised volume of timber is less than or equal to five thousand board-feet shall require approval by the natural resources program manager.

(6) Sales of timber resulting from the conversion of forest land for the development of park facilities where the appraised

value of the timber removed is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(7) Sales of natural resources other than timber where the appraised value is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(8) All sales shall be conducted pursuant to procedures approved by the commission.

[Statutory Authority: RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 10-15-024, § 352-28-020, filed 7/12/10, effective 8/12/10. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 08-05-009, § 352-28-020, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 43.51.040 and 43.51.045. WSR 84-08-017 (Resolution No. 76), § 352-28-020, filed 3/27/84; Order 26, § 352-28-020, filed 6/16/76; Order 7, § 352-28-020, filed 4/1/70.]