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avoid substantial impairment of the values of the SNRA.

(g) *Bond requirements.* (1) An operator shall furnish a bond, in the amount determined by the Area Ranger to be appropriate for reclamation of the disturbed surface area, prior to the commencement of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit or not less than the required dollar amount of the bond.

(2) When the reclamation of the project, or portions thereof, has been completed, the operator will notify the Area Ranger who will examine the area to determine whether the reclamation is acceptable. When the Area Ranger has accepted as completed any portion of the reclamation, he shall reduce proportionately the amount of bond thereafter to be required with respect to the remaining reclamation. However, the operator will not be released from liability under the bond for the amount which may be necessary to revegetate each planting area for a minimum period of at least 5 years after the first efforts at revegetation if those initial efforts are unsuccessful.

(3) If the Area Ranger determines that revegetation is likely to occur before the expiration of such minimum period, he may release the operator from the extended liability under the bond for revegetation of planting area.

(h) *Access.* The operator shall permit free and unrestricted public access to and through lands included within an unpatented mining claim for all lawful and proper purposes. In areas where such access would unduly interfere with authorized operations or would constitute a hazard to public health and safety, public use may be restricted with prior approval of the Area Ranger.

[42 FR 39387, Aug. 4, 1977]

### Subpart E—Hells Canyon National Recreation Area—Private Lands

AUTHORITY: 89 Stat. 1117; 16 U.S.C. 460gg-460gg-13.

## 36 CFR Ch. II (7-1-12 Edition)

SOURCE: 59 FR 30497, June 13, 1994, unless otherwise noted.

### § 292.20 Purpose and scope.

(a) *Purpose.* The Act establishing the Hells Canyon National Recreation Area (hereafter referred to as HCNRA) (16 U.S.C. 460gg-460gg-13) encourages the retention of traditional and valid uses of private land within the HCNRA, such as ranching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they existed at the time the HCNRA was established on December 31, 1975. To this end, the Act directs the Secretary of Agriculture to promulgate regulations establishing standards for the use and development of private land within the HCNRA and grants the Secretary limited condemnation authority to address situations where the standards are not met. The purpose of this subpart is to establish standards that would guide the Secretary's consideration of the use of the limited condemnation authority granted by the Act.

(b) *Scope.* The regulations in this subpart establish standards applicable to all private property within the boundaries of the HCNRA, including that within the boundaries of the Rapid, Snake, and Innaha Wild and Scenic Rivers and the Hells Canyon Wilderness. The regulations in this subpart do not operate to restrict the use and development of private property; rather, they serve to inform the landowner of those uses that are compatible with purposes for which the HCNRA was established. Uses not compatible with these standards could result in the Secretary acquiring land or interests therein without a landowner's consent.

The regulations in this subpart, in and of themselves, do not effect a taking of private property, including valid, existing water rights, nor do the standards established in this subpart limit or restrict a private landowner's property use that is compatible with the purposes of the Act. The Responsible Official may use the regulations in this subpart solely to determine whether private land uses or developments are compatible with the purposes and direction of the Act and, if not, to determine whether the Secretary should

consider initiating condemnation proceedings to acquire land or scenic easements.

#### § 292.21 Definitions.

For the purposes of this subpart, the following terms are defined:

*Act* refers to the act of December 31, 1975, which established the Hells Canyon National Recreation Area (89 Stat. 1117; 16 U.S.C. 460gg-460gg-13).

*Archaeological sites* are those sites containing relics, artifacts, and other evidence of past human cultures including historic properties as defined by the National Historic Preservation Act.

*Commercial land* is land within the HCNRA developed for commercial purposes as of June 13, 1994 and which is assigned to the commercial land category (§ 292.22).

*Condemnation* is the acquisition of lands or interests therein by the Secretary without the consent of the owner. In the case of the Act, condemnation is a limited authority that may be exercised by the Secretary only in the event that a standard or standards set forth herein are violated for all private land categories except mining lands. Where mining lands are involved, the Secretary may exercise his or her condemnation authority notwithstanding the fact that the mining land owner has complied with the relevant standards of this section.

*Conservation easement* or *Scenic easement* as defined in Section 9(d) of the Act "means the right to control the use of land in order to protect aesthetic values for the purposes of this Act, but shall not be acquired without the consent of the owner to preclude the continuation of any farming or pastoral use exercised by the owner as of the date of enactment of this Act."

*Dude ranching* is a business oriented primarily towards furnishing small groups with an outdoor recreational and educational experience associated with ranching activities and perpetuates the purposes for which the HCNRA was established. Dude ranching is subservient to the primarily recognized ranching operation.

*Existing uses* are those uses of or developments to private land as of the

date of enactment of the Act on December 31, 1975.

*Farm/Forest/Grazing lands* are those lands used for farm, forest, and grazing purposes, for maintaining watersheds as fish and wildlife habitat, or for providing outdoor recreational activities. All such lands are assigned to the Farm/Forest/Grazing land category in § 292.22.

*Farm/Forest/Grazing Use* is any traditional agricultural, silvicultural, or livestock management use or combination thereof on farm/forest/grazing lands within the HCNRA. This includes, but is not limited to, truck farming, growing and harvesting of timber, grazing of livestock, horticultural use, animal husbandry use, horse, cattle, and sheep ranching, and preparation and storage of the products raised on farm/forest/grazing land for on-site use or for disposal by marketing or otherwise. Farm/forest/grazing uses may also consist of uses related to and in furtherance of the protection of watersheds, maintenance of fish and wildlife habitat, and the pursuit of recreational activities.

*Hazardous substance* includes any material so classified under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

*Mining lands* are lands primarily used for mining purposes as of June 13, 1994 and which are assigned to the mining land category in § 292.22.

*Outdoor recreational activities* are activities such as camping, picnicking, rafting, boating, hiking, rock climbing, fishing, hunting, horseback riding, and the viewing of wildlife or scenery.

*Parcel* as used in this subpart refers to contiguous tax lots under one ownership. For the purposes of this subpart, rights-of-way do not divide parcels into smaller units.

*Partition* is the division of land into lots, and which, under county planning ordinances, is identified by a map, drawing, or writing which contains the descriptions, locations, specifications, and dedications for roads, utilities, etc. and which has been properly filed with the County recorder.

*Private land* is land not in federal, state, or local government ownership.

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*Proposed uses* are those uses of or development to a private land parcel within the HCNRA initiated after June 13, 1994.

*Ranger* is the HCNRA Area Ranger, Wallowa-Whitman National Forest, with offices located in Enterprise, Oregon, Riggins, Idaho, and Clarkston, Washington, except for the Rapid Wild and Scenic River where the term refers to the Salmon River District Ranger, Nez Perce National Forest, located in Whitebird, Idaho.

*Recreational facilities* are facilities associated with or required for outdoor recreational activities and include, but are not limited to, parks, campgrounds, hunting and fishing lodges, and interpretive displays.

*Residential lands* are lands within the HCNRA developed for residential purposes as of June 13, 1994 and which are assigned to the Residential land category in § 292.22.

*Scenic Easement.* See *Conservation Easement*.

*Screening* is the reduction or elimination of the visual impact of any structure or land modification as seen from any public travel route within the HCNRA.

*Solid waste* is discarded solid materials resulting from mining, industrial, commercial, agricultural, silvicultural, and community activities. This term does not include domestic sewage or pollutants such as silt or dissolved materials in irrigation return flows.

*Structure* is any permanent building or facility, or part thereof such as barns, outhouses, residences and storage sheds. This includes electric transmission line systems, substations, commercial radio transmitters, relays or repeater stations, antennas, and other electronic sites and associated structures.

*Traditional uses* are ranching, grazing, farming, timber harvesting and the occupation of homes and land associated therewith within the HCNRA, or other activities including outdoor recreational activities and facilities, which existed on or before December 31, 1975.

*Travel route* is a route, such as a county or National Forest system road or river or trail, that is open for use by members of the general public.

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### § 292.22 Land category assignments.

(a) *Land categories.* (1) All privately owned lands within the HCNRA are to be assigned to one of the following four land categories:

- (i) Farm/forest/grazing land.
- (ii) Mining land.
- (iii) Residential land.
- (iv) Commercial land.

(2) Not later than August 12, 1994, a map or maps displaying the privately owned lands within the HCNRA and the land categories to which they have been assigned must be on file and available for public inspection at the Ranger's office. The Ranger shall give notice of the availability of this map or maps in the local newspapers of record.

(b) *Changes in land category assignment.* Lands assigned to the Commercial, Residential, or Mining category may be reclassified as farm/forest/grazing land so long as the intended use or development is consistent with the standards in § 292.23 and the Ranger has given public notice of the proposed change in the local newspaper of record and has notified adjacent landowners and the affected county government at least 30 days prior to any decision on the proposed change.

### § 292.23 Standards of compatible land use and development.

Private land use that conforms to the standards of this section is deemed to be compatible with the purpose for which the HCNRA was established.

(a) *Standards applicable to all private lands.* As of June 13, 1994, the use and development of private lands in all land categories within the HCNRA is deemed compatible with the purposes for which the HCNRA was established, if the use and development of such lands meets the following standards:

(1) Use and development conforms to applicable local, state, and federal environmental, natural resource, cultural resource, and land use development law.

(2) All new or replacement structures are screened and/or constructed of materials that blend with the natural environment, except where structures typify the architectural style and materials of a significant historic era such as pre-World War II. Screening is not

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required, however, for new or replacement structures that are associated with an existing unscreened structure or structures that were not screened at the time this rule became effective.

(3) No public or commercial solid waste disposal sites or hazardous substance disposal sites are located on private lands within the HCNRA.

(4) All new or replacement utility lines are placed underground where ground conditions and topography permit. This standard does not prevent or impair routine maintenance of utility lines or related structures in existence prior to June 13, 1994.

(5) No new or replacement structures are developed within the boundaries of the Hells Canyon Wilderness, provided that existing structures may be repaired and/or maintained.

(6) Significant historic, archaeologic, or paleontologic sites are protected.

(7) Sites used for the extraction of common mineral materials, such as gravel, for construction and maintenance purposes on all except designated mining lands, are screened where possible, and are not in excess of 2 acres in size.

(8) New recreational facilities enhance and are compatible with the purpose of the Act.

(b) *Farm/forest/grazing lands standards.* The following additional standards are applicable to farm/forest/grazing lands:

(1) Except as otherwise provided in this paragraph, the minimum lot size for residential development is 160 acres. Only residences associated with farm/forest/grazing uses may be developed. Partitions of less than 160 acres may be made to provide for the continuation of existing commercial agriculture, but such partitions may not be developed for residential use. Lots of less than 160 acres existing on June 13, 1994, with residences permanently affixed to a foundation or basement, are considered to be in compliance.

(2) Structures are limited to those necessary to conduct farm/forest/grazing use.

(3) Dude ranching is permitted provided it is compatible with the purpose and direction of the Act and is part of a recognized ranching operation.

(4) New or replacement structures for farm/forest/grazing use are not closer

than 25 feet from a property line or 55 feet from the center line of a travel route.

(c) *Mining Lands.* (1) The following standards are applicable to mining lands:

(i) The owner of mining lands must consult with the Ranger concerning proposed mineral development activities prior to submitting a plan of operations to the relevant state or federal agencies.

(ii) Operations comply with Federal and State mining, air quality, water quality, hazardous waste, water disposal and reclamation standards.

(iii) The type and number of structures, including but not limited to residences associated with the mining activity, are limited to the minimum necessary for the use and development of the mining lands.

(iv) No new structures are located closer than 25 feet from a property line or 55 feet from the center line of a travel route.

(v) Mining lands are not partitioned.

(2) Notwithstanding compliance with the standards of paragraph (c)(1) of this section, the Secretary may acquire mineral interests in the HCNRA without the consent of the owner, if the Secretary deems this necessary to meet the purposes for which the HCNRA was established.

### § 292.24 Determination of compliance and noncompliance.

(a) *Compliance.* Landowners may request a determination by the Forest Service as to whether an existing or a proposed use or development complies with the relevant standards set out in this subpart.

(1) Requests for a determination of compliance must be made in writing to the Ranger and include the following information:

(i) The current land category to which the land is assigned (§ 292.23);

(ii) The use of development that exists or that is proposed for the property;

(iii) A statement as to whether a change in the land category assignment will be necessary to accommodate the proposed use or development;

(iv) The timeframe for implementing the proposed use or development; and

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(v) A statement as to how the proposed use or development satisfies the relevant standards of § 292.23 of this subpart.

(2) The Ranger shall review the request and notify the landowner in writing within 45 days whether the existing or proposed use or development is in compliance with § 292.23 of this subpart. The Ranger may extend the time for making a compliance determination by 30 days if additional information is needed.

(b) *Noncompliance.* (1) In the event that the Forest Service determines that an existing or proposed use of development is not in compliance with the standards of § 292.23 of this subpart, the Ranger shall give the landowner written notice of the manner and nature of noncompliance. To the extent practicable, the notice will include suggestions for achieving compliance. The notice also must include a statement that the violation of a standard or standard and the failure to cure such violation may result in the initiation of condemnation proceedings by the Secretary.

(2) The Forest Service may initiate a noncompliance determination on its own without having first received a landowner request.

(c) *Written petition.* The landowner may file a written petition with the Forest Supervisor for a review of a decision of compliance or noncompliance. The Forest Supervisor shall render a decision within 30 days of the receipt of the petition. A decision by the Forest Supervisor constitutes the final administrative determination by the Department of Agriculture. Petitions of decisions on lands within the Rapid River Wild and Scenic River Corridor should be addressed to the Forest Supervisor, Nez Perce National Forest, Route 2, P.O. Box 475, Grangeville, Idaho 83450. All other petitions should be addressed to the Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

## § 292.25 Information requirements.

The information required by § 292.24 of this subpart in order for a landowner to obtain a determination of compliance constitutes an information requirement as defined in the Paperwork

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Reduction Act (44 U.S.C. 3507) and has been approved for use by the Office of Management and Budget and assigned control number 0596-0135.

## Subpart F—Hells Canyon National Recreation Area—Federal Lands

AUTHORITY: 16 U.S.C. 460gg-7.

SOURCE: 59 FR 36882, July 19, 1994, unless otherwise noted.

### § 292.40 Purpose and scope.

(a) *Purpose.* The rules of this subpart establish standards and guidelines for the protection and preservation of historic, archeological, and paleontological resources, the use of motorized and mechanical equipment, the use of motorized and non-motorized rivercraft, and the management, utilization, and disposal of natural resources by timber harvesting, mining and grazing on National Forest System lands that comprise the Hells Canyon National Recreation Area located in the Wallowa-Whitman, Nez Perce, and Payette National Forests in the States of Idaho and Oregon as established by the Act of December 31, 1975, as amended (89 Stat. 1117, 16 U.S.C. 460gg *et seq.*).

(b) *Scope.* Management of National Forest System lands within the Hells Canyon National Recreation Area is subject to all laws, rules, and regulations applicable to the national Forest System, except as otherwise provided in this subpart. In the event of a conflict of inconsistency between rules of this subpart and other rules within this title, the rules of this subpart shall take precedence to the extent permitted by law.

### § 292.41 Definitions.

Special terms used in this subpart are defined as follows:

*Act* means the Act of December 31, 1975, as amended (Pub. L. 94-199, 89 Stat. 1117) which established the Hells Canyon National Recreation Area.

*Authorized Officer* is a Forest Service line officer who has been delegated the authority to take certain actions pursuant to the provisions of this subpart.

*Comprehensive Management Plan* is the document that establishes the array, levels, and manner of resource