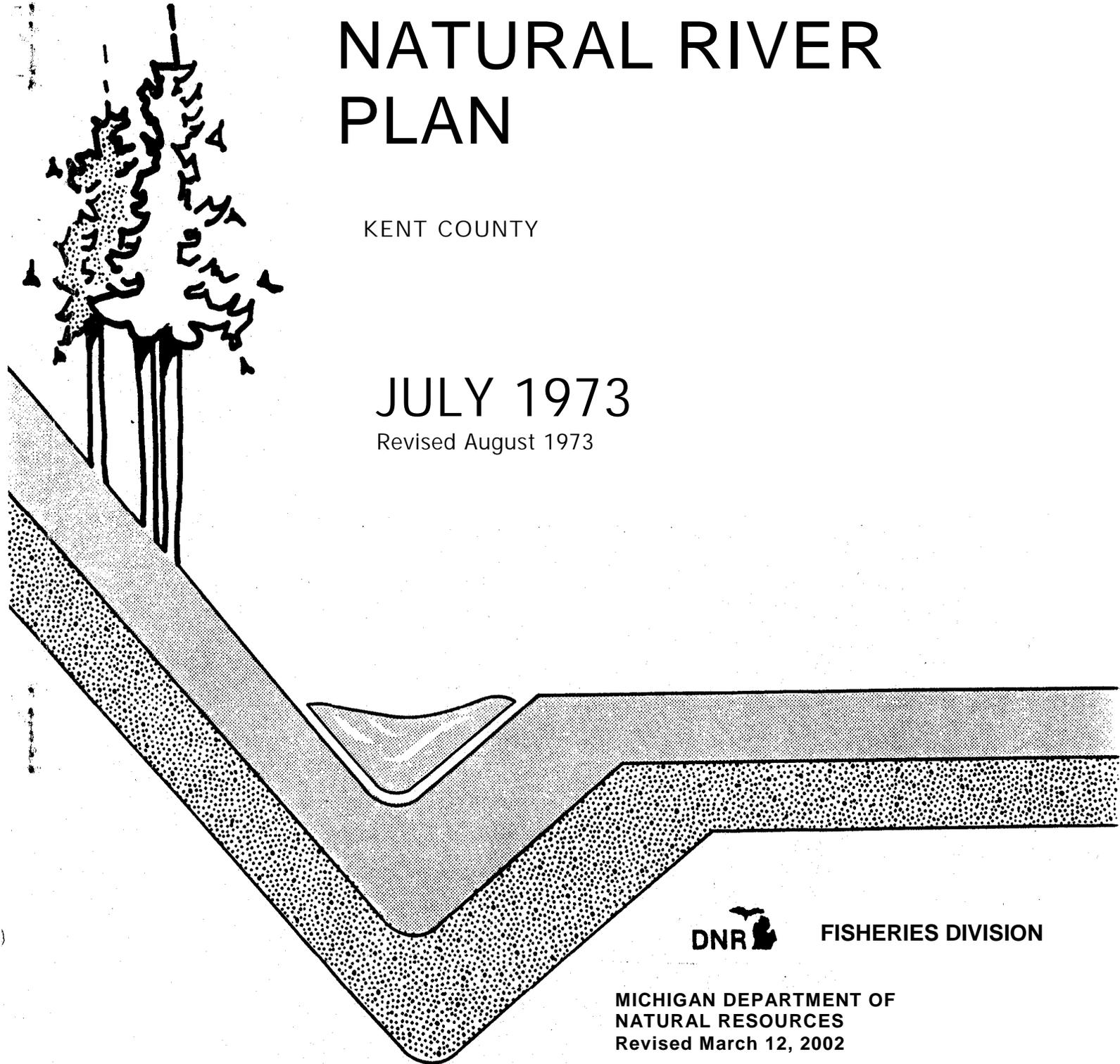


# ROGUE RIVER NATURAL RIVER PLAN

KENT COUNTY

JULY 1973

Revised August 1973



FISHERIES DIVISION

MICHIGAN DEPARTMENT OF  
NATURAL RESOURCES  
Revised March 12, 2002



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## PREFACE

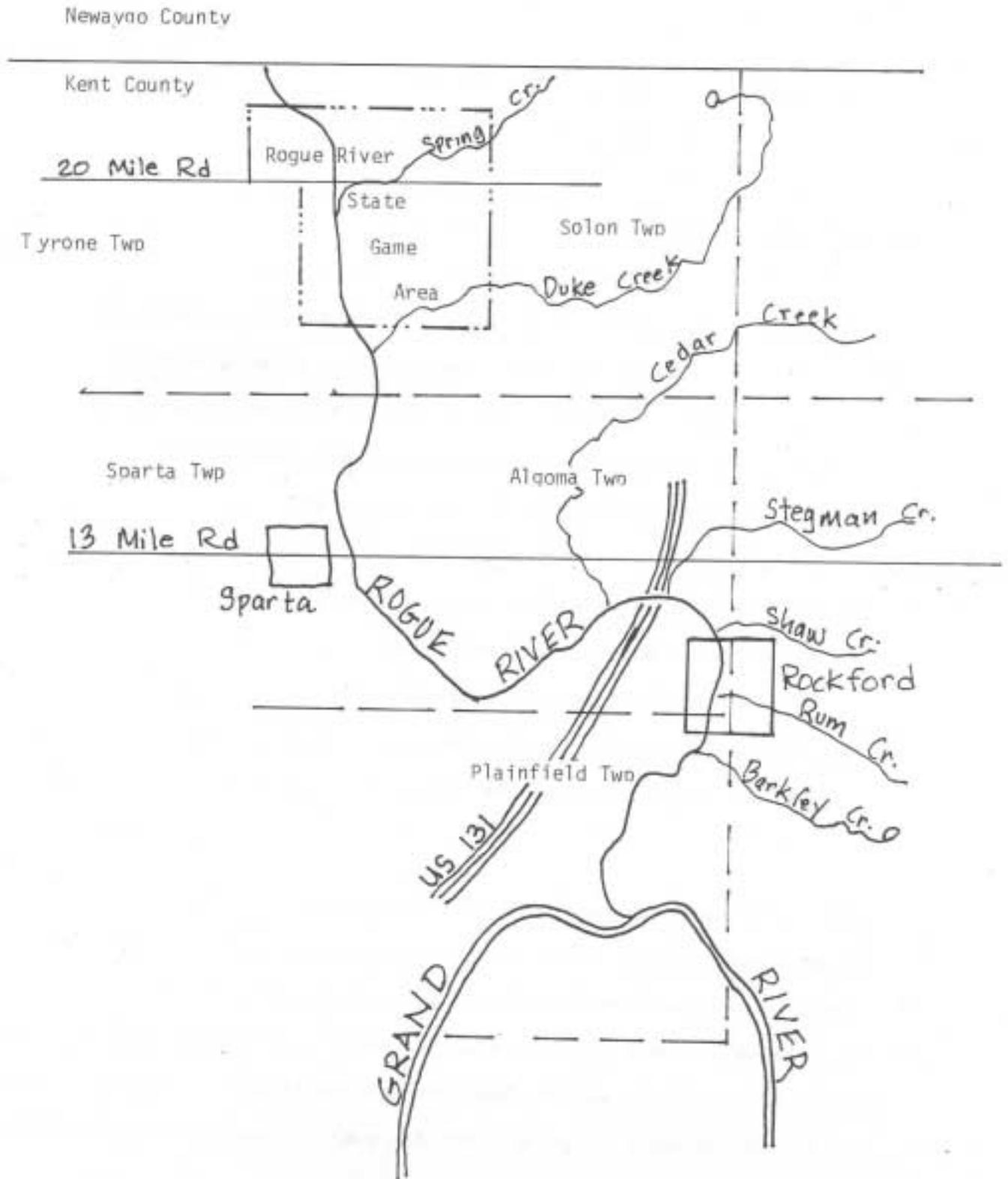
The Rogue River in Kent County has become one of the "hottest" trout streams in southern Michigan. Located close to Michigan's second largest metropolitan area - Grand Rapids - the Rogue can provide a quality fishing experience for the most discriminating angler. Many fishermen have discovered they do not have to travel hundreds of miles to find good trout fishing. As more anglers become aware of the fishery provided by the Rogue and its tributaries and as population in the surrounding area increases, it will become increasingly important to protect the natural qualities of this valuable resource.

The Natural Rivers Act (Part 305, P.A. 451 of 1994) authorizes the Natural Resources Commission to establish a system of "natural rivers" in the state and to provide for their preservation, protection and enhancement. The Michigan Department of Natural Resources and a committee of township officials and concerned citizens from Kent County have studied the Rogue River and is recommending it be designated as a Country Scenic River. A Country Scenic River is in an agricultural setting with narrow bands of woods or pastoral borders. Farms and other developments may be visible from the river and it may be readily accessible by road. It may have undergone some impounding and its waters should meet established water quality standards.

This report (1) provides a physical description of the river and surrounding lands; (2) reviews values of the river and factors affecting its future nature and use; and (3) provides a plan for the protection of the river's natural qualities and to guide its future use. The plan is the result of joint efforts of the Department of Natural Resources and local public officials representing the townships bordering the Rogue River.



# Rogue River and Designated Tributaries





## THE STUDY AREA

### A. Stream Characteristics

The Rogue River is a major tributary of the Grand River. It drains an area of approximately 234 square miles in Newaygo and Kent counties. Its headwaters are a series of ditches that drain the old Rice Lake bed in southern Newaygo County. In this area the stream has been dredged and straightened for drainage purposes leaving limited fish habitat. The ditch conditions extend into Kent County and the Rouge River State Game Area for 1 1/8 mile below 22 Mile Road. The upper portions of the river are characterized by a rather sluggish current. Natural diversion channels frequently leave the mainstream, flow through lowlands, then rejoin the mainstream. The bottom type throughout this stretch is predominantly sand and silt. A dense canopy of lowland hardwoods provides overhead shading. Numerous dead elms in the river reduce the flow rate which tends to warm the water. From Pine Island Drive downstream to the confluence with the Grand the stream gradient increases and the bottom type changes to gravel, sand and rubble. This creates numerous riffles and pools which keep the water well oxygenated and furnish trout cover.

The tributaries of the Rogue maintain its excellent water quality. Without these spring fed tributaries (Spring, Cedar, Duke, Stegman, Rum, Shaw and Barkely Creeks) the Rogue could not support cold-water species of fish. There are also warm-water tributaries such as Post, Hickory, Walter, and Ball Creeks. In addition, Ransom, Camp, Freska, Grass (Bella Vista), Indian and Spring Lakes all have outlets flowing into the Rogue. It should be noted that this creates a delicate ecological balance. If the cold water conditions were altered and the waters of the Rogue warmed, the trout fishery would probably be destroyed. The present combination of cold, clean, fresh water plus the addition of nutrients from fertile agricultural lands contribute to the superior growth exhibited by trout and helps provide a fishery capable of supporting extensive fishing pressure.

The upper portions of the river are difficult to fish and canoe because of streamside brush and numerous fallen trees. Downstream from 13 Mile Road wading and floating conditions are excellent. The river width varies from 15 to 20 feet in the upper portions to approximately 80 feet in the lower reaches. Stream depths range from 1 to 4 feet with deeper holes in spots.

Portions of the river upstream from Grange Avenue are characterized by a floodplain 1/4 to 1/2 mile in width. This floodplain, which remains wet much of the year, has tended to limit development and helped maintain a natural buffer zone along the riverbanks.

There are two impoundments on the river. The Rockford Impoundment provides the domestic water for the Rockford area and the Childsdale Impoundment provides water for the Rockford Paper Mill. Plans are now being considered to remove the Childsdale Impoundment. (NOTE: There is no longer a dam at Childsdale.)

## B. Historic and Archeological Sites

Although Kent County is rich in history, sites of historic or archeological interest are not common in the proposed Natural River District. Most Indian villages and early developments were situated on the higher ground away from the immediate riverbanks. Hinsdale's Archeological Atlas of Michigan indicates there was an Indian village on the west bank of the Rogue near the confluence with the Grand River. Indian villages were also located on the east shores of Indian and Camp Lakes. Trails connected these villages, but they did not follow the river.

There were many mills built on tributaries of the Rogue, but few on the Rogue itself. The generally slight gradient of the Rogue does not provide a head of water that would have been sufficient to power the early mills. Stegman Creek did have 12 mills built on it. At one time there was a barrel mill near the mouth of Cedar Creek. There is also the remains of the race of the original saw mill built on the Rogue just north of Rogue River Drive. This now appears to be a naturally flowing creek.

The Pennsylvania railroad bridge crossing Stegman Creek is also of interest. Consideration should be given to preserving this unique stone structure.

## C. Soils

The watershed is within the Southern Drift Plain. Topography varies from near level to moderately and steeply hilly land with some small lakes and wetlands in depressions. The Rogue flows through a former glacial channel which is flat and swampy with poor drainage. Surface elevations vary from 610 feet at the outlet to 1,000 feet in the headwaters. Lowland soils are characterized by the very poorly drained Brookston Loam and Carlisle Muck series. The upland soils are characterized by the moderately well-drained Berrien Sandy Loam and the very poorly drained Newton Loamy Sand series. These conditions lead to flooding and inadequate drainage of the surrounding lands.

## D. Vegetation

Vegetation adjacent to the stream varies along its length. In southern Newaygo County muckland crops are common. The organic soils support crops of onions, mint, carrots and celery. In Kent County upland crops (principally corn and hay) and lesser amounts of forest and pastureland are found. Lowland hardwoods such as elm, basswood, soft maple, and ash are found in the floodplain and along adjacent banks. The immediate banks of the river in the lowlands are characterized by Sagittaria, various grasses and hedges and herbacious shrubs. The in-stream submergent and emergent vegetation types are dominated by Potamogeton, Vallisneria, Elodea, Sparangium, and Nasturtium.

## E. Climate

The Rogue River watershed is in the latitude where convergence of polar and tropical air masses create rapidly changing weather patterns. However, Lake Michigan operates as a modifier and makes for generally cooler summers and milder winters than experienced by other areas of the same general latitude.

The area has an average annual precipitation of over 33 inches with a fairly uniform distribution throughout the year. Average annual snowfall is 58.1 inches. The average annual temperature is 47.8 degrees with the highest monthly maximum temperature average occurring in July - 72.9 degrees - and the lowest monthly minimum temperature average occurring in February - 17.5 degrees. The average growing season extends from the first week in May to the first week in October. The prevailing winds are from the southwest at about 10 mph. On the average during each year, the percent possible sunshine is about 50 percent.

#### F. Ownership and Accessibility

Approximately 80 percent of the land along the mainstream of the Rogue is privately owned. The major portion of publicly owned land - 5,260 acres - is located in the Rogue river State Game Area. Public access to the river can be gained at the State Game Area or at any of the bridges and culverts crossing the river. There is an access site near the mouth of the Rogue in Plainfield Township, and Kent County leases to the Department of Natural Resources an access site and park at the junction of 12 Mile Road and Summit Avenue. Because access sites with adequate parking spaces are needed, the State is attempting to buy additional parcels along the river. They are negotiating to buy the Nawara property in Section 22 of Algoma Township and have recently purchased the Powell property in Section 23. This provides an additional 1800 feet of river frontage for public use. They have also purchased 43 acres south of Fonger Road in Section 30 of Algoma Township, and approximately 40 acres in the NW 1/4 of the SW 1/4, Section 32 Algoma Township, near Pine Island Drive.

### EXISTING USES

#### A. Agriculture

Agriculture is the major land use in the Rogue River watershed. Fifty-five percent of the land is in cropland. In Newaygo County, muckland crops predominate. The drainage from these lands are the headwaters of the mainstream of the Rogue. Periodic cleaning of these drains may cause downstream siltation in the river. In Kent County, pasture land, upland crops and forest land are found along the banks of the river.

Supplemental irrigation of croplands near the river is an established practice. Algoma Township has about 100 acres of land in irrigation from surface water sources. Plainfield , Sparta and Tyrone Townships all have lesser amounts.

Although timber harvest is not a major industry in the watershed, there is some harvest from small woodlot operations. Forests comprise 30 percent of the land in the watershed. Much of this forest land is within the declared boundaries of the Rogue River State Game Area.

## B. Hunting and Fishing

The watershed is moderately productive farm game habitat. There is a sparse ring-necked pheasant population, few quail, a fair cottontail rabbit population and good fox squirrel numbers. Fur bearers and waterfowl are numerous on the streams, lakes, and ponds. There is excellent ruffed grouse hunting in the surrounding uplands and a heavy white-tailed deer population in the lowlands along the river.

The Rogue has the distinction of being one of Michigan's southernmost trout streams. Throughout its entire length in Kent County it is designated and managed as a trout stream by the Department of Natural Resources. However, during the summer months water temperatures nearly approach the maximum tolerance level for trout. Sluggish water, eroding banks, sedimentation, and lack of cover are habitat problems which must be corrected.

A stream improvement plan has been implemented calling for clearing the channel of fallen trees to increase the stream flow and decrease "spreading", eliminating erosion through bank stabilization, increasing food production by increasing sunlight in over shaded areas, and by providing more trout cover by installation of log covers.

From Pine Island Drive upstream, 20 miles of the river will have fallen trees removed or relocated to increase the flow rates. In addition to lowering water temperatures this will provide additional fish cover and make the stream more accessible to fishermen. Overhanging brush along approximately 50 acres of immediate stream bank will be trimmed to increase indirect sunlight falling on the river to increase food production for trout without causing warming of the water. Plans also call for the construction of 400 small natural log fish covers, 40 erosion control structures and sedimentation basins to minimize any possible sedimentation caused by cleaning upstream drains. In the lower portion of the river from Pine Island Drive to Rockford 160 natural log fish covers and 16 erosion control structures are planned.

Prior to an eradication program in 1969, the fish population was dominated by carp, suckers and burbot while some smallmouth bass, northern pike and brown trout were present. Extensive stocking had taken place since 1954 but most trout did not survive the competition and predation. Those that did survive grew well. From 1969 through 1972, 124,307 brown trout, 85,690 rainbows and 343,158 steelhead were planted. Intensive creel census data is not available but periodic checks reveal large numbers of rainbows and browns have been harvested.

The first steelhead returning from Lake Michigan were caught in the spring of 1972. With the completion of a fish ladder on the dam on the Grand River in Grand Rapids and the demolition of the Childsdale Dam, anadromous fish runs are expected to increase.

### C. Camping, Canoeing, Picnicking and Other Activities

Camping and picnicking facilities are limited along the Rogue. There are no state campgrounds, but there is one privately owned campground at Sparta and one planned near the confluence of the Rogue and Grand Rivers. Picnickers are able to use any of the publicly owned land along the river, but no improved picnic sites with tables, toilet facilities and fireplaces are provided.

From Pine Island Drive downstream the river is attractive to canoeists. Scattered development characterizes the lower part of the river, but it does not detract too much from the scenic aspects. Some rocky riffles and fast moving pools give the novice canoeist some challenge.

Hikers, trailbikers and ATV users are also competing for land use along the river. ATV's have caused some environmental damage to river banks and surrounding swampland. Hikers are also able to use the Rogue River State Game Area. There are also several marked snowmobile trails in the game area.

## FUTURE USE AND POTENTIAL PROBLEMS

The Rogue River experienced a big increase in angler numbers following the 1968 chemical reclamation and subsequent restocking with trout. It is estimated that angler usage increased from 20 to 80 anglers per mile per year. When the fisheries management objectives are completed, the Rogue will provide even more trout for the angler. They will be healthier, faster growing, and more accessible to the fisherman. With an improved fishery it is estimated angler numbers will increase to between 120 and 150 anglers per mile per year. If this projected increase in angler numbers does occur, it will necessitate more public access sites and might also increase the demand for camping areas. Because of the large amount of land in private holdings these needs might be met by privately owned and operated campgrounds.

Development along the river in the form of home building is increasing. The populations in Plainfield, Sparta, Tyrone and Algoma Townships as shown by the 1970 census data and the projected 1990 populations for these townships is given below:\* (The City of Rockford is located in three townships so is listed separately.)

TOWNSHIP POPULATION	1970 CENSUS	1990 PROJECTED
Plainfield	16,935	29,500

Algoma	3,088	6,500
Sparta	6,466	7,660
Tyrone	2,638	4,150
Rockford	<u>2,428</u>	<u>3,800</u>
TOTAL	31,555	51,500

Unregulated housing development along the river could easily destroy its present beauty and natural characteristics. Fortunately, the townships in Kent County through which the Rogue flows are presently zoned. Although they have no "greenbelt zoning" the fact that they have all retained the same attorney should make development of common Natural River zoning ordinance amendments feasible.

It is possible that industrial, municipal and agricultural diversions of surface water could also increase. Presently four industries use approximately 416 million gallons of surface water per year; municipalities draw about 138 million gallons per year; and it is possible that irrigation of such things as golf courses could increase.

#### LAWS AND PROGRAMS REINFORCING OBJECTIVES OF THE NATURAL RIVERS PROGRAM

A number of Michigan laws now authorize Department of Natural Resources' programs or activities for partial protection of rivers. Officials administering the Natural Rivers Program for the protection of the Rogue should utilize these statutes in implementing the plan objectives for the river and its tributaries (see appendix).

The proposed Department of Natural Resources' program to establish rules for river use on heavily used streams may also be directed toward protecting natural rivers, particularly those rivers where recreational use is or may be expected to be quite heavy. The rules have been designed to protect the river resources and recreational experiences that are characteristic of a particular stream.

\*Projected populations are not available for villages other than Rockford.

#### ROGUE RIVER MANAGEMENT PLAN

##### A. Proposed Designation

The 42-mile long Rogue River is a designated trout stream providing quality trout fishing close to Michigan's second largest metropolitan area. Approximately 90 miles of cold water tributaries contribute the clear fresh water and spawning areas necessary to maintain a natural fishery. Its relatively undeveloped borders offer seclusion to the angler, canoeist or hiker. The upper four miles in Kent County flow through the Rogue River State Game Area. Because of their unique

natural characteristics, it is recommended the following portions of the Rogue River system be classified as County-Scenic River and be designated as a Natural River by the Natural Resources Commission under Part 305, P.A. 451 of 1994:

The mainstream of the Rogue River from 20 Mile Road downstream to the confluence with the Grand River should be included as "mainstream" designation. Spring, Cedar, Duke, Stegman, Rum, Shaw and Barkley Creeks from their headwaters to their confluences with the Rogue should be included as "tributary" designation.

B. Natural River District

The Rogue River Natural River District is a strip of land 300 feet wide on each side of and parallel to the river and its specified tributaries. Establishment of this district in no way implies a taking of private lands by the State or opening them up to public use. Private land remains private and subject to the rights of private ownership with respect to public use. Existing structures are not affected. The district merely establishes a definable area within which certain types of development and use will be controlled so as not to be injurious to most of the existing private development and to maintaining the river for its scenic and recreational values. Private ownership within the Natural River District for the proposed mainstream and tributaries is estimated to be about 9,000 acres.

C. Water Quality

The existing high water quality will be maintained. The river will be monitored periodically by the Surface Water Quality, Department of Environmental Quality staff to ensure continued maintenance of high water quality (Part 31, P.A. 451 of 1994).

D. Land Development

1. Building Setbacks: New buildings and appurtenances thereto in the Natural River District shall be setback at least 150 feet from the river's edge on the mainstream and 100 feet on designated tributaries. The Department of Natural Resources agrees that new structures on state land will adhere at least to minimum setback requirements or, where possible, be placed further back and out of view.
2. Subdivisions: New subdivisions and unplatted lots in the Natural River District shall accommodate a 150 foot building setback from the water's edge on the mainstream and a 100 foot building setback from the water's edge on designated tributaries and a minimum lot width of 200 feet. Where, by reason of the narrowness, shallowness or shape of a lot or property, at the time of the effective date of these regulations, the lot or property cannot accommodate a building because of the required building setback, variances shall be allowed by the appropriate local board only if such reasonable terms as may be set forth in the zoning ordinance or rule

are met. All such variances shall make provisions that such structures shall be so placed as to best meet the spirit and objectives of the Natural Rivers Act.

3. Building Design and Screening:
  - a) Property owners are encouraged to use natural materials and unobtrusive colors in the construction of new or maintenance of old buildings.
  - b) Property owners of existing buildings, visible from the river, are encouraged to screen them with native vegetation. The DNR area forester will advise on planting stock.
4. Commercial and Industrial Structures: No commercial or industrial structures or uses shall be permitted in the 300-foot Natural River District.\*
5. Cutting, filling or building in a flood plain shall be prohibited.
6. Building on the uplands within the 300-foot district where the highest ground water table is within six feet of the surface shall be prohibited.
7. Stream Alteration: To protect the natural character of the river, and the natural flow of its waters, no damming, dredging, filling or channelization will be permitted in the portions of the Rogue River or tributaries designated under the Natural Rivers Act unless approved by the Department of Natural Resources (Part 305, P.A. 451 of 1994). Water withdrawal will be permitted in accordance with the riparian doctrine of reasonable use. Stream improvements for fish habitat or other natural resource management practices which might alter the natural character of the stream, must be approved by the Department of Natural Resources.
8. Utilities: Gas or oil pipelines, or electric transmission lines shall not be permitted in the Natural River District or to cross the designated river and tributaries except on existing right-of-way without prior written consent of the Natural Resources Commission. Plans for these transmission lines which include crossing the Natural River District, or river and designated tributaries, must be approved by the Natural Resource Commission (Part 305, P.A. 451 of 1994). New distribution lines shall not cross the designated portions of the river or housing setback zones unless they are placed underground. Plans for distribution lines which are to be placed under the river should be approved by the Regional Manager of the Department of Natural Resources. Local service lines to private dwellings shall originate from the landward side of the dwelling.
9. Signs: Only those signs necessary for (a) identification, (b) direction, (c) resource information, and (d) regulation of use should be placed along public use areas of the designated river and tributaries. The Department of Natural Resources shall post signs at access sites emphasizing respect for private property rights and penalties for littering and trespassing. Signs for the sales of products or services shall be prohibited on private property in the Natural River District.
10. Docks: Docks may be constructed not to exceed six feet in width nor more than 20 feet in length with no more than four feet of the dock

extending over the water. The use of "natural" materials should be encouraged.

11. Disposal of Solid Wastes shall be prohibited in the Natural River District.

#### E. Land Use

1. Natural Vegetation Strip: Trees, shrubs, and other vegetation types native to the area shall be maintained on each side of the river to protect and enhance the river's natural values.
  - a. State-owned Land: The DNR agrees that on state-owned land a 100 foot natural vegetation strip shall be maintained on each side of the mainstream and designated tributaries. On non-designated tributaries the State Forest Management Plan shall determine forest management practices within these water influence zones.
  - b) Private Land: On private frontage, a natural vegetation strip 50 feet wide bordering each side of the river shall be maintained on the designated mainstream and 25 feet wide on the designated tributaries (Part 305, P.A. 451 of 1994). Cutting and removal of only dead, diseased, unsafe or fallen trees and noxious weeds and shrubs is permitted, except that trees and shrubs in one corridor per lot may be pruned for a view of the river upon approval of the zoning administrator and area forester.
2. Grazing shall not be permitted within these natural vegetation strips if the Surface Water Quality, Department of Environmental Quality determines grazing contributes to stream degradation. In those cases, livestock shall be fenced out to protect the riverbanks. Cattle crossings and water areas shall be constructed so as not to cause damage to the stream.
3. On private lands adjacent to and within one-quarter mile of the Natural River District, it is recommended that the local Soil Conservation Districts, County Extension Service and Department of Natural Resources cooperate with landowners to ensure that timber harvest, agricultural practices, housing, road building or other development, are compatible with the country-scenic designation of the river.
4. Minerals: New development, exploration or production of gas, salt brine, sand and gravel or other minerals except ground water are not permitted within the Natural River District or the designated river or tributaries on private lands (Sec. 10, Natural Rivers Act). Natural Resources Commission policy prohibits drilling for gas or oil within 1/4 mile of streams on state land.

#### E. River or River Related Activities

1. Boating and Canoeing:

The use of motorized watercraft will be prohibited from West River Drive upstream.

2. Campgrounds and Picnic Areas:

- a) No new structures incidental to a campground or picnic area shall be permitted within 150 feet of designated mainstream and 100 feet of designated tributaries.
- b) The DNR agrees that no new structures incidental to state campgrounds shall be permitted within 300 feet of the designated mainstream or tributaries.

3. Fishing and Hunting

- a) Fishing and hunting will continue to be permitted in the Natural River District and adjoining land areas under current laws and regulations.
- b) Emphasis will be given to maintaining the high-quality trout fishery and a quality fishing experience.
- c) Wildlife management practices if undertaken in the Natural River District will be done in conformance with the character of the area.

F. Access and Motorized Travel

- 1. Public Access: Additional vehicular access shall not be provided to the river. New public roads, highways and river crossings shall not be permitted in the Natural River District. Plans for relocations or improvements to public roads must be approved by the Natural Resources Commission (Part 305, P.A. 451 of 1994). Road access to private property shall be permitted upon approval of the proper zoning authority. Private road access shall not be permitted within 150 feet of the mainstream or within 100 feet of designated tributaries.
- 2. Motor Vehicles:
  - a) Licensed motor vehicles shall be prohibited in the 300 foot Natural River District except for travel on existing public roads, private roads and designated trails on publicly owned lands.
  - b) Amphibious vessels, all terrain vehicles or other offroad machines for which licenses are not required shall be prohibited on publicly owned land in the Natural River District except on such trails as may be designated.

3. The muffler requirement of the Michigan Vehicle Code shall be enforced for all motorized vehicles using public roads and designated trails within the Natural River District (Part 315, P.A. 451 of 1994).

## G. Administration

### 1. Property Control

- a) Zoning by local governmental units shall be the chief means of protecting the Rogue and its designated tributaries as a Country-Scenic River under the Natural River Plan.
  - 1) Zoning shall be applied within the 300-foot Natural River District on both the mainstream and designated tributaries. Upon adoption of a local zoning ordinance, certified copies of maps and/or documents describing the Natural River District shall be filed with the local tax assessing officer and County Equalization Department. In establishing true cash value of property within the Natural River District, the assessing officer shall recognize the effect of use limits established by the ordinance (Part 305, P.A. 451 of 1994).
  - 2) Appeals: Under certain circumstances strict adherence to this plan may create unreasonable hardships for the frontage owner. Such cases may be appealed to the appropriate local board for a variance. The district wildlife supervisor, district fish executive or other experts shall be consulted to recommend to the appropriate board a course of action which will have the least degrading impact on the character of the Natural River.
  - 3) Nonconforming uses: As stated in Part 305, P.A. 451 of 1994, "The lawful use of any building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance or rule or of an amendment thereof may be continued although such use does not conform with the provisions of the ordinance, rule or amendment. The ordinance or rule shall provide for the completion, restoration, reconstruction, extension or substitution of nonconforming uses upon such reasonable terms as may be set forth in the zoning ordinance or rule."

### b) Land Acquisition

- 1) The State may purchase or trade lands with owner consent on the designated river and tributaries to maintain or improve the river and its environment. Efforts should be made by the appropriate divisions of the Department to purchase lands on or trade other lands for lands along the river as key areas are identified and as funds become available (Part 305, P.A. 451 of 1994).
  - 2) Some landowners in the natural River District may be interested in offering scenic or other easements which coincide with their property interests. The opportunity to obtain such easements by gift or purchase should be pursued.
- c) Cooperative Agreements shall be developed with Federal and State agencies to support the Natural River Program by implementing policies which will provide financial assistance for practices which will protect and enhance the quality of the natural river and its tributaries, and conversely, will not provide grant assistance, loan funds or ensure mortgages for any person or contractors who develop project plans which are not in harmony with the Natural River concept and plan.
  - d) State Resources: Overall responsibility for implementing and coordinating the Natural River Plan is assigned to the Fisheries Division of the Department of Natural Resources. Enforcement of water quality standards and water use regulations will be the responsibility of the Surface Water Quality and other divisions of the Department of Environmental Quality.
  - e) Other Public Properties: Agreements between the Department of Natural Resources and other public landowners such as the county will be developed as required and feasible.
2. Other laws and programs reinforcing Natural Rivers Management objectives should be utilized to the extent necessary to protect the river in implementing the management plan for the river and its tributaries. (See Appendix A)
- I. Management of Areas beyond the Natural River District

It is recommended that local governmental units zone areas within the river influence district to maintain the integrity of the Rogue River and designated tributaries as a Country-Scenic River:

1. By limiting residential development to low density single-family structures or medium density cluster developments. Medium density cluster developments are recommended because it is easier to provide services and control.
2. By providing districts where industry which may product noise, smoke, fumes, odors, etc., will not affect the wilderness aspect of the river area.

3. By providing districts for commerce where heavy traffic, parking, automobile exhaust and noise will not create environmental intrusions.

## APPENDIX A

### PART 305 NATURAL RIVERS

#### **324.30501 Definitions.**

Sec. 30501. As used in this part:

- (a) "Free flowing" means existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification.
- (b) "Natural river" means a river that has been designated by the department for inclusion in the wild, scenic, and recreational rivers system.
- (c) "River" means a flowing body of water or a portion or tributary of a flowing body of water, including streams, creeks, or impoundments and small lakes thereon.
- (d) "System" means all of those rivers or portions of rivers designated under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

#### **324.30502 Natural river; designation; purpose; long-range plans; publicity; cooperation.**

Sec. 30502. The department, in the interest of the people of the state and future generations, may designate a river or portion of a river as a natural river area for the purpose of preserving and enhancing its values for water conservation, its free flowing condition, and its fish, wildlife, boating, scenic, aesthetic, floodplain, ecologic, historic, and recreational values and uses. The area shall include adjoining or related lands as appropriate to the purposes of the designation. The department shall prepare and adopt a long-range comprehensive plan for a designated natural river area that sets forth the purposes of the designation, proposed uses of lands and waters, and management measures designed to accomplish the purposes. State land within the designated area shall be administered and managed in accordance with the plan, and state management of fisheries, streams, waters, wildlife, and boating shall take cognizance of the plan. The department shall publicize and inform private and public landowners or agencies as to the plan and its purposes, so as to encourage their cooperation in the management and use of their land in a manner consistent with the plan and the purposes of the designation. The department shall cooperate with federal agencies administering any federal program concerning natural river areas, and with any watershed council established under part 311, when such cooperation furthers the interest of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

#### **324.30503 Qualifications for designation; categories of rivers.**

Sec. 30503. A river qualifying for designation as a natural river area shall possess 1 or more of the natural or outstanding existing values cited in section 30502 and shall be permanently managed for the preservation or enhancement of such values. Categories of natural rivers shall be defined and established by the department, based on the characteristics of the waters and the adjoining lands and their uses, both as existing and as proposed, including such categories as wild, scenic, and recreational. The categories shall be specified in the designation and the long-range comprehensive plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

#### **324.30504 Land acquisition; purpose; interest acquired; consent.**

Sec. 30504. The department may acquire lands or interests in lands adjacent to a designated natural river for the purpose of maintaining or improving the river and its

environment in conformance with the purposes of the designation and the plan. Interests that may be acquired include, but are not limited to, easements designed to provide for preservation and to limit development, without providing public access and use. Lands or interests in lands shall be acquired under this part only with the consent of the owner.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30505 Federal financial assistance programs; leases; expenditures; purposes.**

Sec. 30505. (1) The department may administer federal financial assistance programs for natural river areas.

(2) The department may enter into a lease or agreement with any person or political subdivision to administer all or part of their lands in a natural river area.

(3) The department may expend funds for works designed to preserve and enhance the values and uses of a natural river area and for construction, management, maintenance, and administration of facilities in a natural river area conforming to the purposes of the designation, if the funds are appropriated by the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30506 Public hearings; notice.**

Sec. 30506. Before designating a river as a natural river area, the department shall conduct public hearings in the county seat of any county in which a portion of the designated natural river area is located. Notices of the hearings shall be advertised at least twice, not less than 30 days before the hearing, in a newspaper having general circulation in each such county and in at least 1 newspaper having general circulation in the state and 1 newspaper published in the Upper Peninsula.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30507 Land uses; zoning; local ordinances; state rule.**

Sec. 30507. After designation of a river or portion of a river as a natural river area and following the preparation of the long-range comprehensive plan, the department may determine that the uses of land along the river, except within the limits of an incorporated municipality, shall be controlled by zoning contributing to accomplishment of the purposes of this part and the natural river plan. County and township governments are encouraged to establish these zoning controls and additional controls as may be appropriate, including, but not limited to, building and subdivision controls. The department may provide advisory, planning, and cooperative assistance in the drafting of ordinances to establish these controls. If the local unit does not, within 1 year after notice from the department, have in full force and effect a zoning ordinance or interim zoning ordinance established under authority of the acts cited in section 30510, the department, on its own motion, may promulgate a zoning rule in accordance with section 30512. A zoning rule may also be promulgated if the department finds that an adopted or existing zoning ordinance fails to meet adequately guidelines consistent with this part as provided by the department and transmitted to the local units concerned, does not take full cognizance of the purposes and objectives of this part, or is not in accord with the purposes of designation of the river as established by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30508 Zoning ordinance or rule; purpose.**

Sec. 30508. A zoning ordinance adopted by a local unit of government or a zoning rule promulgated by the department shall provide for the protection of the river and its related land resources consistent with the preservation and enhancement of their values

and the objectives set forth in section 30502. The ordinance or rule shall protect the interest of the people of the state as a whole. It shall take cognizance of the characteristics of the land and water concerned, surrounding development, and existing uses and provide for conservation of soil, water, streambed and banks, floodplains, and adjoining uplands.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30509 Zoning ordinance or rule; establishment of districts; powers; distance.**

Sec. 30509. The ordinance or rule shall establish zoning districts within which such uses of land as for agriculture, forestry, recreation, residence, industry, commerce, and additional uses may be encouraged, regulated, or prohibited. It may limit or prohibit the placement of structures of any class or designate their location with relation to the water's edge, to property or subdivision lines, and to flood flows and may limit the subdivision of lands for platting purposes. It may control the location and design of highways and roads and of public utility transmission and distribution lines, except on lands or other interests in real property owned by the utility on January 1, 1971. It may prohibit or limit the cutting of trees or other vegetation, but such limits shall not apply for a distance of more than 100 feet from the river's edge. It may specifically prohibit or limit mining and drilling for oil and gas, but such limits shall not apply for a distance of more than 300 feet from the river's edge. It may contain other provisions necessary to accomplish the objectives of this part. A zoning rule promulgated by the department shall not control lands more than 400 feet from the river's edge.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30510 Local zoning ordinance; conformance with applicable law; construction.**

Sec. 30510. A local unit of government, in establishing a zoning ordinance, in addition to the authority and requirements of this part, shall conform to the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, including, but not limited to, the variance provisions of those acts. Any conflict shall be resolved in favor of the provisions of this part. The powers granted under this part shall be liberally construed in favor of the local unit or the department exercising them, in such manner as to promote the orderly preservation or enhancement of the values of the rivers and related land resources and their use in accordance with a long-range comprehensive general plan to ensure the greatest benefit to the state as a whole.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;--Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000.

**324.30511 Districts; valuation for tax purposes.**

Sec. 30511. Upon adoption of a zoning ordinance or rule, certified copies of the maps showing districts shall be filed with the local tax assessing officer and the state tax commission. In establishing true cash value of property within the districts zoned, the assessing officer shall take cognizance of the effect of limits on use established by the ordinance or rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30512 Rules; enforcement; promulgation; variance; existing use.**

Sec. 30512. (1) The department shall prescribe administrative procedures and rules and provide personnel as it considers necessary for the enforcement of a zoning ordinance or rule enacted in accordance with this part. A circuit court, upon petition and a showing by the department that there exists a violation of a rule properly promulgated under this

part, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

(2) The department shall promulgate a zoning rule to implement this part. The rule shall include procedures for receiving and acting upon applications from local units of government or landowners for change of boundaries or change in permitted uses in accordance with chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. An aggrieved party may seek judicial review under chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

(3) A variance from a zoning rule promulgated by the department to implement this part may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and the variance provisions of the zoning rule.

(4) The lawful use of any building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance or rule or of an amendment of a zoning ordinance or rule may be continued although the use does not conform with the ordinance, rule, or amendment. The ordinance or rule shall provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms as set forth in the zoning ordinance or rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;--Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000.

**324.30513 National wild and scenic river system; administration.**

Sec. 30513. This part does not preclude a component of the system from becoming a part of the national wild and scenic river system under the wild and scenic rivers act, Public Law 90-542, 16 U.S.C. 1271 to 1287. The department may enter into written cooperative agreements for joint federal-state administration of rivers that may be designated under the wild and scenic rivers act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30514 Area plans; approval; rules.**

Sec. 30514. The department shall approve preliminary and final plans for site or route location, construction, or enlargement of utility transmission lines, publicly provided recreation facilities, access sites, highways, roads, bridges, or other structures and for publicly developed water management projects, within a designated natural river area, except within the limits of a city or incorporated village. The department may require any measure necessary to control damaging erosion or flow alteration during or in consequence of construction. The department shall promulgate rules concerning the approvals and requirements provided for in this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**324.30515 Construction of part.**

Sec. 30515. This part does not prohibit a reasonable and lawful use of any other natural resource that benefits the general welfare of the people of this state and that is not inconsistent with the purpose of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**APPENDIX B**

**DEPARTMENT OF NATURAL RESOURCES  
FISHERIES DIVISION  
ROGUE RIVER NATURAL RIVER ZONING**

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being §281.773 of the Michigan Compiled Laws)

**R 281.201 Definitions.**

Rule 1. As used in these rules:

- (a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit, special exception permit, or variance.
- (b) "Appurtenance" means a structure incidental to a dwelling, including, but not limited to, garages, private access roads, pump houses, wells, sanitary facilities, and electrical service lines.
- (c) "Bluff" means a steep bank which rises sharply from the river's edge.
- (d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer the provisions of Act No. 230 of the Public Acts of 1972, as amended, being §125.1501 et seq. of the Michigan Compiled Laws, and known as the state construction code act of 1972.
- (e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as presently required under the provisions of Act No. 230 of the Public Acts of 1972, as amended, being §125.1501 et seq. of the Michigan Compiled Laws.
- (f) "Commission" means the natural resources commission.
- (g) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.
- (h) "Director" means the director of the department of natural resources.
- (i) "Family" means either of the following:
  - (i) One or more persons who are related by blood, legal adoption, or marriage and who occupy a single-family dwelling unit with not more than 3 other persons.
  - (ii) Not more than 5 unrelated persons who occupy a single-family dwelling unit.
- (j) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from the river, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no clear cutting.
- (k) "Front" means that side of a lot abutting the river's edge of the mainstream or tributary.
- (l) "Lot" means a continuous area or acreage of land which can be described for purposes of transfer, sale, lease, rental, or other conveyance.
- (m) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules, or a lot or parcel described by metes and bounds, which has been recorded as required by law.
- (n) "Natural river district" means the Rogue river natural river district as described in R 281.203(l).

(o) "Ordinary high-water mark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(p) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.

(q) "River's edge" means the ordinary high-water mark as used in Act No. 346 of the Public Acts of 1972, being §281.951 et seq. of the Michigan Compiled Laws, and as defined in subdivision (o) of this rule.

(r) "Setback" means the horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(s) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains housekeeping facilities.

(t) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Act No. 347 of the Public Acts of 1972, as amended, being §282.101 et seq. of the Michigan Compiled Laws.

(u) "Structure" means anything that is constructed, erected, or to be moved to or from any premise which is located above, on, or below the ground, including, but not limited to, roads, signs, billboards, and mobile homes. Temporary recreational facilities, including, but not limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 30 days per year and located landward of the natural vegetation strip.

(v) "Zoning administrator" means the administrator of these rules who is appointed by the natural resources commission.

(w) "Zoning permit" means a standard form which is issued by the zoning administrator upon a determination that the proposed use of land and the proposed buildings and structures thereon are in compliance with all provisions of these rules.

(x) "Zoning review board" means a group of not less than 5 nor more than 9 people which includes not less than 3 local representatives and 1 department of natural resources representative and which is appointed by the commission to act upon requests for special exceptions.

History: 1979 ACS 7, Eff. July 16, 1981.

### **R 281.202 Purpose.**

Rule 2. The commission, on its own motion, in order to implement the intent of Act No. 231 of the Public Acts of 1970, being §281.761 et seq. of the Michigan Compiled Laws, and in the absence of local zoning to protect the designated portions of the Rogue river, a designated natural river, promulgates these rules whose purposes are as follows:

(a) To promote the public health, safety, and general welfare, to prevent economic and ecological damage due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing conditions, fish and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Rogue river and adjoining land.

(c) To prevent flood damage due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damage, and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for residential and other compatible, permitted uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

History: 1979 ACS 7, Eff. July 16, 1981.

**R 281.203 Boundaries; rules of construction; display and filing of zoning map; effect of zoning rules.**

Rule 3. (1) The boundaries of the Rogue river natural river district shall be as described in these rules and as depicted on the certified Rogue river natural river zoning map. The Rogue river natural river district comprises an area which is described as follows:

(a) The mainstream of the Rogue river from 20 mile road, section 14 T10N, R12W, in Kent county downstream to the confluence with the Grand river, Kent county.

(b) Barkley creek from its headwaters downstream to the Rogue river.

(c) Cedar creek from its headwaters downstream to the Rogue river.

(d) Duke creek from its headwaters downstream to the Rogue river.

(e) Rum creek from its headwaters downstream to the Rogue river.

(f) Shaw creek from its headwaters downstream to the Rogue river.

(g) Spring creek from its headwaters downstream to the Rogue river.

(h) Stegman creek from its headwaters downstream to the Rogue river.

(i) The lands lying within 300 feet of the edge of the waters listed in subdivisions (a) to (h) of this subrule.

(2) Certified copies of the Rogue river natural river zoning map shall be filed with the local tax assessing officers and with the state tax commission, and additional display copies shall be provided to local officials in the Rogue river area, including all of the following:

(a) County register of deeds.

(b) Zoning administrator of these rules.

(c) Local planning, zoning, and health officials.

(d) Township and county clerks.

(e) Local building inspector.

(f) Local soil erosion and sedimentation control enforcement agencies.

(g) The soil conservation service.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions applicable to lands within the natural river district, except that if these rules impose greater restrictions than those found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

(4) These zoning rules do not permit actions prohibited by other statutes or ordinances, including zoning ordinances, which are applicable to the natural river district. Therefore, all of the following provisions apply:

(a) All earth-changing activities, other than normal landscaping or maintenance, that are undertaken within 500 feet of a lake or stream are subject to the provisions of Act No. 347 of the Public Acts of 1972, as amended, being §282.101 et seq. of the Michigan Compiled Laws.

(b) All dredge and fill activities and construction of permanent structures lying below the ordinary high-water mark are subject to the provisions of Act No. 346 of the Public Acts of 1972, being §281.951 et seq. of the Michigan Compiled Laws.

(c) All development and land uses in the Rogue river natural river district are subject to the provisions of appropriate local zoning ordinances, health codes, and building codes, including requirements for permits and approvals.

(5) If uncertainty exists with respect to the boundaries indicated on the Rogue river natural river zoning map, all of the following rules shall apply:

(a) Boundaries that are indicated as approximately following streets or highways shall be construed to be the center lines of the streets or highways.

(b) Boundaries that are indicated as approximately following lot lines shall be construed as following such lot lines.

(c) Boundaries that are indicated as approximately following city, township, or county boundary lines shall be construed as following such city, township, or county boundary lines.

(d) Boundaries that are indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

(e) Boundaries that are indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the official Rogue river natural river zoning map. If no distance is given, the dimension shall be determined by the use of the scale shown on the official Rogue river natural river zoning map.

(f) Boundaries that are following the shoreline of a river, stream, lake, or other body of water shall be construed to follow such shoreline and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Boundaries that are indicated as approximately following the thread of streams, canals, or other bodies of water shall be construed to follow such threads.

History: 1979 ACS 7, Eff. July 16, 1981.

**R 281.204 Zoning permits; application; additional requirements.**

Rule 4. (1) A person shall not commence excavation, erection, alteration, or repair of a building or structure, or commence a land use, until a zoning permit has been obtained from the zoning administrator. If the alterations or ordinary maintenance made on a dwelling does not change the character of the structure or land use, and if the total cost does not exceed 5% of the market value of the structure in any 12-month period, the owner of the structure or land is exempt from obtaining a zoning permit, but may be required to obtain a local building permit from the appropriate local building inspector.

(2) A written application for a zoning permit shall be filed with the zoning administrator. All of the following information shall be submitted with an application for a zoning permit:

(a) Two copies of a site plan which gives accurate dimensions on either a scale drawing or a rough sketch and which contains all of the following information:

(i) The location on the lot of all existing and proposed structures.

(ii) The existing or intended use of the structure.

(iii) The generalized vegetative cover.

(iv) The lines and dimensions of the lot to be used.

(b) Evidence of ownership of all property that is affected by the coverage of the permit.

(c) Evidence that all required federal, state, county, and township licenses or permits have been acquired, or that applications have been filed for the required licenses or permits.

(d) Other information as required by the zoning administrator which is necessary to carry out the intent and provisions of these rules.

(3) One copy of both the plans and the specifications shall be filed and retained by the zoning administrator, and the other copy shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued the zoning permit. To insure that new land uses in the natural river district are in conformance with these rules, before beginning construction or commencing a land use, the applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed. Failure to obtain and display a permit is a violation of these rules.

(4) Within 30 days of receipt of a completed application, the zoning administrator shall render a decision to issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(5) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of time not to exceed 6 months. Any subsequent extensions shall have the written approval of the zoning review board.

History: 1979 ACS 7, Eff. July 16, 1981.

#### **R 281.205 Subdivision of land; plats with preliminary approval.**

Rule 5. (1) A lot that exists on the effective date of this rule, or amendment thereto, shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrule (2) of this rule.

(2) Proposed lots which have preliminary plat approval pursuant to Act No. 288 of the Public Acts of 1967, as amended, being §560.101 et seq. of the Michigan Compiled Laws, but which do not meet the dimensional requirements of these rules on their effective date shall, on final plat approval, be issued a permit subject to the requirements provided in R 281.209.

History: 1979 ACS 7, Eff. July 16, 1981.

#### **R 281.206 Permitted uses.**

Rule 6. (1) The following uses are permitted by the owner upon the owner's property within the natural river district, subject to the limitations and requirements outlined in these zoning rules, local ordinances, and other applicable statutes:

(a) Private camping and other recreational activities which do not require the installation of permanent structures within 150 feet of the designated mainstream and 100 feet of the designated tributaries.

(b) The operation of motorized watercraft, subject to the limitations of local ordinances established under the authority of Act No. 303 of the Public Acts of 1967, as amended, being §281.1001 et seq. of the Michigan Compiled Laws.

(c) Fishing and hunting in compliance with existing laws and rules.

(d) Reforestation and other accepted forest management practices, subject to the limitations outlined in R 281.207.

(e) Normal agricultural activities, if the activities meet the requirements of these rules, and if the bureau of environmental protection of the department of natural resources determines that such activities do not contribute to stream degradation.

(f) The operation of licensed motor vehicles on dedicated public roads or access roads to private single-family dwellings.

- (g) Off-road operation of emergency and public utility maintenance vehicles.
- (2) The following uses are permitted upon approval of the zoning administrator:
  - (a) One single-family dwelling and appurtenances on a lot not less than 200 front-feet wide, subject to the following limitations:
    - (i) On the designated portions of the mainstream, the setback shall be 150 feet from the river's edge.
    - (ii) On the designated tributaries, the setback shall be 100 feet from the river's edge.
    - (iii) Setback shall be not less than 15 feet from side lot lines and not less than 25 feet from the right-of-way of a public road.
    - (iv) New structures shall not be located on land that is subject to flooding.
    - (v) New structures shall be set back not less than 50 feet from the top of the bluff on the cutting edges of the river and tributaries.
  - (b) Plats, if the minimum setback and lot width requirements specified in subdivision (a) of this subrule are met.
  - (c) Private boat docks that are not more than 6 feet in width or 20 feet in length, with not more than 4 feet of the dock extending over the water if the docks are designed, constructed, and maintained with indigenous natural materials and if a permit is issued under the authority of Act No. 346 of the Public Acts of 1972, being §281.951 et seq. of the Michigan Compiled Laws.
  - (d) Mining and extractive industries which are located more than 300 feet from the ordinary high-water mark, if they are constructed and operated pursuant to applicable local ordinances and state laws and rules.
  - (e) Utility lines to service private single-family dwellings.
  - (f) Utility transmission lines or interests in real property which are continuously owned by a utility from January 1, 1971, subject to review and approval by the commission.
  - (g) Disposal fields and septic tanks which are located not less than 100 feet from the water's edge and which are in conformance with local county health codes and the provisions of these rules.
  - (h) Land alteration such as grading, dredging and filling of the land surface, unless the high-groundwater table is within 6 feet of the land surface, if the activities meet all of the provisions of Act No. 347 of the Public Acts of 1972, as amended, being §282.101 et seq. of the Michigan Compiled Laws, and Act No. 346 of the Public Acts of 1972, being §281.951 et seq. of the Michigan Compiled Laws, and if approval is granted by the local soil erosion and sedimentation control enforcement agency and the department of natural resources.
  - (i) Signs and outdoor advertising devices shall meet all of the following requirements:
    - (i) They shall be related to permitted uses.
    - (ii) They shall be not more than 1 square foot in area for residential uses and not more than 4 square feet in area for any other uses.
    - (iii) They shall not be illuminated by a neon light or flashing device.
    - (iv) They shall not be attached to a tree or shrub.
  - (j) Other uses for which an applicant is granted a permit by the zoning administrator pursuant to R 281.208, R 281.209, and R 281.211.

History: 1979 ACS 7, Eff. July 16, 1981.

**R 281.207 Natural vegetation strip.**

Rule 7. A 50-foot minimum restricted cutting belt shall be maintained on each side of the Rogue river mainstream. For designated Rogue river tributaries, a 25-foot minimum restricted cutting belt shall be maintained on each side of the tributary. Trees and

shrubs may be pruned for a filtered view of the river upon approval of the local zoning administrator or the area forester, but clear cutting in the natural vegetation strip is prohibited. The natural vegetation strip is also subject to both of the following provisions:

(a) Dead, diseased, unsafe, or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac, and poison oak, may be removed.

(b) Selective removal or trimming of trees for timber harvest, landscaping, or public utility facilities is permitted upon approval of the area forester or local zoning administrator.

History: 1979 ACS 7, Eff. July 16, 1981.

**R 281.208 Special exception permits.**

Rule 8. (1) Special exception permits may be granted to allow a use in the natural river district which is not specifically permitted by R 281.206, if implementation of that use does not contravene the purposes of these rules as specified in R 281.202.

(2) Applications for a special exception permit shall be made on a form provided by the zoning administrator.

(3) Upon reviewing an application for a special exception permit, the zoning review board, at any time before rendering a decision thereon, shall require the applicant to furnish all of the following information which the zoning review board deems necessary for determining the suitability of the particular site for the proposed use:

(a) A detailed description of the proposed activity or use.

(b) A surface view plan which gives accurate dimensions on either a scale drawing or a rough sketch and which shows all of the following:

(i) Elevations or contours of the ground, including existing earth fills.

(ii) Generalized vegetative cover.

(iii) Size, location and spatial arrangement of all proposed and existing structures on the site.

(iv) The location and elevations of streets, access roads, and water supply and sanitary facilities.

(c) Photographs that show existing land uses and vegetation upstream and downstream from the proposed use.

(d) Valley cross-sections that show the natural stream channel, streambanks, high-water marks, flood marks, if known, and locations of proposed development.

(e) Other information which is deemed relevant by the zoning administrator, and which is necessary to carry out the intent and provisions of these rules.

(4) Before considering applications, the zoning review board shall give notice, by certified mail, to all of the following:

(a) Property owners and residents whose property is within 500 feet of the proposed use as shown on the current tax assessment rolls.

(b) The appropriate local officials and department of natural resources personnel, including all of the following:

(i) The township supervisor.

(ii) The township building inspector.

(iii) The county health officer.

(iv) The local soil erosion and sedimentation control enforcement agency.

(v) County and township planning and zoning officials.

(vi) The soil conservation service.

(vii) The regional office and natural rivers section of the department of natural resources.

(c) Any other interested party who requests that they be notified of such applications in the natural river district.

(5) In reviewing an application, the zoning review board shall consider all of the following:

(a) All relevant factors specified in these rules in the light of the spirit and intent of the purposes specified in R 281.252.

(b) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely in light of the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact, together with a description of the title history, shall be included in the hearing evidence.

(c) Increases in flood level and flood damage that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences, and other relevant factors within the terms of these rules.

(d) The cumulative effect upon the natural river district from the potential development of holdings in a legal position similar to the applicant's, if the applicant's request is approved by the zoning review board.

(e) Reasonable alternatives that are available to the applicant.

(6) In weighing the applicant's request, consideration of public health, safety, and welfare shall prevail, unless private injury is proved by a preponderance of the evidence to be so great as to override the public interest.

(7) A requested use shall not be granted if the zoning review board determines that the requested use poses a substantial hazard to life or to either public or private property rights.

(8) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 30 days after its receipt, except that if public hearings are held or if additional information is required pursuant to subrule (3) of this rule, the zoning review board shall render a decision within 30 days following the hearings or upon receipt of the last requested item of information.

(9) The zoning review board shall attach such conditions to the granting of a special exception permit as are necessary to further the purposes of these rules.

(10) A special exception use shall adhere strictly to the terms of the special exception permit. A special exception permit that does not adhere strictly to the terms of the permit may be revoked by the zoning administrator.

History: 1979 ACS 7, Eff. July 16, 1981.

**R 281.209 Substandard lots of record.**

Rule 9. (1) The zoning administrator, in compliance with the terms of this subrule, shall grant a permit if, because of either of the following circumstances, a proposed structure cannot be erected on a lot of record or a lot described in a deed or land contract executed and delivered before the effective date of this rule:

(a) The lot is of insufficient width, depth, or area.

(b) Physical limitations exist on an existing lot or parcel.

(2) The zoning administrator shall ensure that all structures are located to best meet the objectives and purposes of these rules, the adopted Rogue river natural river plan, and Act No. 231 of the Public Acts of 1970, being §281.761 et seq. of the Michigan Compiled Laws.

(3) The zoning administrator shall determine if a proposed structure on a lot of record or on a lot described in a deed or land contract executed and delivered before the effective

date of these rules cannot conform to the standards listed in R 281.206(2) and is, therefore, ineligible for consideration for use under R 281.206.

(4) A written application for a zoning permit on a lot of record shall be filed with the zoning administrator. The same information required in R 281.204(2) shall be submitted with an application.

(5) The zoning administrator shall grant a zoning permit for the use of a substandard lot of record only upon a showing of all of the following:

(a) Granting the permit is not contrary to the public interest.

(b) The permit does not allow the establishment of a use not otherwise permitted by these rules.

(c) The permit applies only to the property under the control of the applicant.

(d) The practical difficulties claimed by the applicant are not the result of actions taken by the applicant.

(e) Granting the permit poses no substantial hazard to life or to public or private property rights, secures public safety, and does substantial justice.

(f) Granting the permit will not result in an increase of flood levels or risk of flood damage to other lands.

(g) The lot shall be developed pursuant to department of natural resources requirements under Act No. 245 of the Public Acts of 1929, as amended, being §323.1 et seq. of the Michigan Compiled Laws.

(h) Use of the lot will not significantly impair existing water quality, vegetative cover, fisheries, or wildlife habitat or increase the risk of erosion.

(i) The substandard lot size shall be the minimum dimensional reduction necessary to achieve a reasonable use of the land, after evaluation of alternative dimensional arrangements and permitted land uses available to the applicant, given the peculiar characteristics of the lot and circumstances surrounding the request. Alternatives shall be examined in light of the applicant's entire contiguous holdings and not merely a single lot or the portion within the natural river area. If dimensional requirements may be more nearly met through lot combination of contiguous holdings, the zoning administrator may so require.

(j) The permit provides that no fill shall be placed within the natural vegetation strip and that the approval of both the appropriate county or district health department and the soil erosion and sedimentation control enforcement agency shall be secured.

(k) The permit provides conditions necessary to insure proper development of the substandard lot pursuant to these rules.

(6) A special exception permit is required if a dimensional reduction of more than 50% of any of the standards listed in R 281.206(2) (a) is necessary to achieve reasonable use of the land. The zoning review board shall base its decision upon the standards set forth in R 281.208(5).

(7) The zoning administrator may confer with, and seek the advice of, the zoning review board, personnel of the Michigan department of natural resources, and other federal, state, and local officials to determine the possible effects of, and a suitable location for, a proposed structure.

(8) One copy of the plans, specifications, and the zoning permit, with conditions attached, shall be filed and retained by the zoning administrator, and another copy of each shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection, and issued a zoning permit.

(9) The applicant may appeal any decision of the zoning administrator or any conditions attached to a zoning permit to the zoning review board.

History: 1981 ACS, Eff. July 16, 1981.

**R 281.210 Nonconforming uses.**

Rule 10. (1) The lawful use of any land or structure which is in existence on the effective date of these rules may be continued although the use does not conform with these rules.

(2) Routine or normal repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition are permitted. Remodeling of nonconforming structures within the confines of the existing foundation and elevations is permitted, if the structure is neither enlarged nor extended, nor its use changed.

(3) A special exception permit is required for the restoration of a nonconforming building or structure which is damaged or destroyed by more than 50% of its value due to flood, fire, or other means. In determining whether 50% of the value has been destroyed, the zoning review board shall use appraised replacement costs, as determined by a qualified individual appointed by the zoning review board, and shall compare the value of the part destroyed to the value of the total operating unit where there are several buildings or structures which are used together by the landowner as a single operating unit. A request for a permit to restore a nonconforming building or structure which is damaged or destroyed by more than 50% of its value shall be approved if all of the following conditions exist:

(a) The land on which the building or structure is situated is not subject to flooding.

(b) The continued use of a nonconforming building or structure will not lead to accelerated bank erosion or other material degradation of the river resource, and the use of the building or structure is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The continued use conforms with local county health codes and is approved by the local county health department.

(d) The continued use conforms with local building codes and is approved by the local building inspector.

(e) Restoration of a damaged building or structure, if approved by the zoning review board, shall be started within 1 year from the time of damage.

(4) A nonconforming use may be changed to a use of a like or similar character, if the new use more closely conforms to the rules of the natural river district.

(5) A nonconforming use of any land or structure shall not be enlarged nor extended without a special exception permit granted upon consideration of the factors outlined in subrule (3) of this rule. An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation which provides overnight facilities and which does not exceed 12 units may be approved by the zoning review board if the owner submits to the zoning review board a detailed description of the proposed enlargement or extension, together with a site plan showing the location of all new structures or uses, and if the zoning review board determines that all of the following conditions exist:

(a) The land on which the nonconforming use is situated is not subject to flooding.

(b) The enlargement or extension of the nonconforming use does not lead to accelerated bank erosion or other material degradation of the river resource, and the

enlargement or extension is approved by the local soil erosion and sedimentation control enforcement agency.

(c) The enlargement or extended use conforms with local county health codes and is approved by the local county health department.

(d) The enlarged or extended use conforms with local building codes and is approved by the local building inspector.

(e) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.202.

(6) The substitution of nonconforming structures with new conforming structures may be made if a special exception permit is granted, based on consideration of the factors outlined in subrule (5) of this rule to ensure that the changed use conforms as closely as possible to the purposes of these rules as specified in R 281.202.

(7) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(8) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on the owner's property. Certification of a prior nonconforming use shall be granted if the use meets the criteria of this rule and the common law criteria of nonconforming uses of this state.

History: 1979 ACS 7, Eff. July 16, 1981.

#### **R 281.211 Appeals; contested cases.**

Rule 11. An aggrieved party who contests a decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws, and R 299.3071 to R 299.3081.

History: 1979 ACS 7, Eff. July 16, 1981.

#### **R 281.212 Zoning administrator and zoning review board; appointment; duties.**

Rule 12. The commission shall appoint a zoning administrator and a zoning review board to act as its agent to enforce these rules. Their duties shall include, but not be limited to, all of the following:

(a) The receiving and processing of applications for zoning permits, special exception permits, petitions of appeals, requests for changes, amendments, and supplements.

(b) The inspecting of sites.

(c) The issuing or denying of zoning permits, as outlined in these rules.

(d) Assisting with other matters requiring a decision by the commission.

History: 1979 ACS 7, Eff. July 16, 1981.

#### **R 281.213 Violations.**

Rule 13. (1) An alleged violation shall be inspected by the staff of the department of natural resources. If it is found that a violation exists, the department shall order the applicant, in writing, to correct all conditions found to be in violation of these rules.

(2) The owner of a building, structure, or land that violates these rules is subject to the provisions of section 13 of Act No. 231 of the Public Acts of 1970, being §281.773 of the Michigan Compiled Laws.

History: 1979 ACS 7, Eff. July 16, 1981.

#### **R 281.214 Boundaries and permitted uses; changes, amendments, and supplements.**

Rule 14. (1) The commission may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a

landowner if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.202.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held pursuant to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 of the Michigan Compiled Laws.

(3) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following:

(a) The county register of deeds.

(b) The zoning administrator of these rules.

(c) Local planning, zoning, and health officials.

(d) Township and county clerks.

(e) Local building inspector.

(f) Local soil erosion and sedimentation control enforcement agencies.

(g) The soil conservation service.

(h) Public utility companies which provide service to riverfront property owners affected by these rules.

(4) Upon approval by the director, a local zoning ordinance which meets all of the requirements of Act No. 231 of the Public Acts of 1970, being §281.761 et seq. of the Michigan Compiled Laws, and of either Act No. 183 of the Public Acts of 1943, as amended, or Act No. 184 of the Public Acts of 1943, as amended, being §125.201 et seq. and §125.271 et seq. of the Michigan Compiled Laws, whichever is applicable, will take precedence over these rules. If the director withdraws his or her approval of a local zoning ordinance, or if the local ordinance becomes inapplicable to the land area encompassed by the Rogue river natural river district through court action or by any other reason, these rules shall apply.

History: 1979 ACS 7, Eff. July 16, 1981.