

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

PREAMBLE

1. **Sections Affected**

Article 25	<u>Rulemaking Action</u>
R12-5-2501	New Article
R12-5-2502	New Section
R12-5-2503	New Section
2. **The specific authority for the rulemaking including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 37-132(A)(1)
Implementing statute: A.R.S. § 37-313(B)(3); 37-312(A); 37-312(C)
3. **The effective date of the rule:**

March 5, 1998
4. **A list of all previous notices appearing in the Register addressing the final rule.**

Notice of Docket Opening: 2 A.A.R. 3311, July 5, 1996
Notice of Proposed Rulemaking: 3 A.A.R. 3488, December 12, 1997
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking.**

Name:	Arlan Colton, Director Arizona Preserve Initiative
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Name:	Richard B. Oxford, Director Operations Division
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6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Arizona Legislature enacted Laws 1996, Ch. 347, which amended A.R.S. §§ 37-211 and 37-212; amended Title 37, Ch. 2, by adding Article 4.2; and enacted Laws 1997, Ch. 261, which amended A.R.S. § 37-312; amended Article 4.2 by adding Section 37-312.01; which collectively authorize the State Land Commissioner to nominate certain State Trust lands as being under consideration for classification as Trust lands suitable for conservation purposes when it is in the best interest of the Trust and to consider selling or leasing trust land for conservation purposes when it is in the best interest of the Trust.

The rule outlines the process by which a qualified person may petition the State Land Commissioner to consider classifying certain State Trust lands for conservation purposes.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

The Department adopts the rule to facilitate the process by which interested individuals and other entities may petition the State Land Commissioner to classify certain State Trust lands as being suitable for conservation purposes when it is in the best interest of the Trust and to consider selling or leasing trust land for conservation purposes when it is in the best interest of the Trust.

The requirements of the rule apply equally to each petitioner. Petitioner costs involve individual and staff time to research state, county, and local records to compile information on local economic issues, multiple use potential of the area proposed for conservation, resource production preservation, relationship to other State Trust lands, preexisting protections, benefits to the Trust, land ownership, and site visits. There may be consultant costs to analyze conservation values, mineral values, or to assist in developing conservation plans.

A petitioner will be required to submit a bond in the initial amount of \$1,000. Additional bonding may be required depending on the Department's costs to process the petition. These include the costs of planning (to determine whether reclassification is in the best interest of the Trust); noticing existing lessees of the subject property, local and regional planning authorities, adjacent property owners, affected state agencies and the public who have expressed interest in being notified; advertising in the newspaper and holding public hearings.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The Department published the Notice of Proposed Rulemaking in the *Arizona Administrative Register* on December 12, 1997, (Vol. 3, Issue No. 50, p. 3488-3492). Reference was erroneously made in the proposed rule heading as "Article 13" rather than "Article 25". The preamble and the text of the rule correctly referenced Article 25.

R12-5-2502(A)(2)(b):

Formerly read: "Existence of scenic vistas from nearby major roadways and pathways."

Changed to read: "Existence of a scenic vista on to or through the land under petition from nearby major roadways or pathways, in addition to the mere existence of undeveloped open space"

R12-5-2502(A)(3)(a):

Formerly read: "Existence of significant vegetation or wildlife native to the region and worthy of protection."

Changed to read: "Existence of significant vegetation or wildlife, both native to the region and worthy of protection due to the relative lushness, health, and diversity of the vegetation or the numbers and diversity of the wildlife."

Clarifying language was added to each rule to avoid possible misunderstandings regarding the intent of the rule.

10. **A summary of the principal comments and the agency response to them:**

The Department received comments regarding the proposed rules from 2 entities. The comments are addressed as follows:

Hereford Natural Resources Conservation District (HNRCD)

HNRCD Comment: "[T]he law authorizing this rule was passed as a result of pressure from groups with a specific purpose in mind - to eliminate cattle grazing on public lands."

"House Bill 2555 should never have been enacted."

"As the lessor of state trust land, the State Land Department already is in a strong position to oversee it and to take the necessary steps to preserve its natural environment."

"We don't need outsiders petitioning under the guise of conservation, to pick off choice parcels of trust land. Livestock raising in Arizona can't stand many more challenges if it is to remain a viable industry."

Agency Evaluation: The comment expresses general concern regarding the Trust land conservation program established under Laws 1996, Ch. 347 and modified by Laws 1997, Ch. 261 from the standpoint that the program adversely impacts Arizona's livestock grazing industry. Currently, the Department leases 8.4 million acres of Trust land for livestock grazing under approximately 1,300 state grazing leases.

Agency Response: While the comments did not specifically address the rules, the Department determined that 2 of the criteria in R12-5-2502 on Reclassification address concerns on preservation of the livestock industry. R12-5-2502(A)(6)(k)(i) provides that resource protection, for example, grazing resource, would include the "existence of grazing lands that a conservation designation might help to protect." R12-5-2502(A)(6)(k)(iii) cuts to the chase of the livestock grazing industry by providing "protection of the resource production component (such as grazing, agricultural, mining and timber) of the local economy".

Gallagher & Kennedy; Betts (G&K)

G&K Comment: "R12-5-2502(A)(2)(b) should be more specifically defined. There should be a more limiting description ... that identifies certain components necessary to have a scenic vista" and "...that the mere existence of 'open space', without other significant preservation attributes, would not necessarily qualify as a scenic vista".

Agency Evaluation: R12-5-2502(A)(2)(b) addresses criteria of "...scenic vistas from nearby major roadways or pathways" as being 1 of a number of criteria that Trust lands with unique scenic beauty may be suitable for reclassification consideration. The Department agrees that the word "scenic" is not specifically quantifiable, but it is also true that the criteria proposed do not constitute a matrix requiring a set number of items to be met in order for the land to qualify as suitable for conservation. A parcel of Trust land may have several qualifying criteria, that is, riparian, unusual topography, open space values or scenic beauty, and therefore it is not necessary to qualify 1 criterion by excluding others.

Agency Response: R12-5-2502(A)(2)(b) was clarified to read, "Existence of a scenic vista on to or through the land from nearby major roadways and pathways, in addition to the mere existence of undeveloped open space. (New language underlined)

The Department believes the new language does not materially change the intent of the rule but simply clarifies the fact that scenic vistas actually have to be connected to the Trust land, and that "open space" and "scenic vistas" are 2 different issues.

G&K Comment: "R12-5-2502(A)(3)(a) is an ambiguous criteria which, without more definition as to what is 'existence of significant vegetation' or 'worthy of protection' will present problems of interpretation."

Agency Evaluation: R12-5-2502(A)(3)(a) was written for the petitioner to account for the relative amount, diversity, health, and lushness of the native vegetation on the land and the relative diversity and numbers of wildlife living on or passing through the parcel of Trust land being petitioned for conservation classification.

Agency Response: The Department clarified its intent by clarifying R12-5-2502(A)(3)(a) to read as follows:

"Existence of significant vegetation or wildlife, both native to the region and worthy of protection due to the relative lushness, health and diversity of the vegetation or the numbers and diversity of the wildlife." (New language underlined)

G&K Comment: "R12-5-2502(A)(6)(1) contains the important assessment criteria of '[r]elationship to other state lands.' The relationship between preservation lands and developable lands should be more effectively tied together as development can be an effective mechanism to obtain preservation areas. The API rules (sic) should provide procedures whereby a parcel of state trust land suitable for preservation could be combined with a master plan for development of suitable trust land adjoining or near the sensitive preservation area.

Agency Evaluation: R12-5-2502(A)(6)(1) was written simply to note whether there was State Trust land adjacent to the State Trust land being petitioned for conservation classification so that potential impacts of a conservation classification on the adjacent land, both positive and negative, could be better evaluated. While the comment that this criterion should be rewritten to provide a process to better tie the Urban Lands Act of 1981^{1/} with the Arizona Preserve Initiative (API)^{2/} may be valid, it is considered to be premature at this time.

Agency Response: No change in the rule as drafted.

G&K Comment: R12-5-2502(A)(6)(o) appears redundant to A.R.S. § 37-312(I).

Agency Evaluation: The criteria of R12-5-2502(A)(6)(o), which require the petitioner to consider whether and for what reason reclassification for conservation purposes is in the best interest of the Trust, could be considered redundant of A.R.S. § 37-312(I), which requires the State Land Commissioner to determine whether the reclassification is in the best interest of the Trust. The Department considers the requirement to be of such importance that the specific criteria were included in the rule.

^{1/} The Urban Lands Act of 1981 (Title 37, Ch. 5.1, A.R.S. § 37-331, et. seq.) was a legislative act that established a process for planning and developing certain State Trust lands near urban areas. (Laws 1981, 1st Special Session, Ch. 1 §§ 1 and 25). Urban State Trust lands are not exempt from the rule.

^{2/} The Arizona Preserve Initiative (API) resulted from former Governor Symington's response to concerns expressed by Arizonans over land use and preservation of open space in June, 1995. The API resulted in the passage of HB 2555. The term "API rules" is a colloquial term used to describe the rules presently under consideration.

Agency Response: No change in the rule as drafted.

G&K Comment: "Given A.R.S. § 37-312(I) which requires that the Commissioner 'shall state in writing the reasons why the classification is or is not in the best interest of the trust,' the withholding of a conservation purpose finding under the multiple petitions rule (R12-5-2502(B)) may be inappropriate."

Agency Evaluation: Pursuant to A.R.S. § 37-312(I) the Commissioner is required to state in writing why the conservation classification is in the best interest of the Trust, but is not required to identify the specific conservation purpose. R12-5-2502(B) provides the Commissioner the option to either state or not state the conservation purpose as there may be overriding reasons beyond the specific stated purposes or in the specific case of multiple petitions, both petitions may state the same purpose.

Agency Response: No change in the rule as drafted.

G&K Comment: "Proposed rule R12-5-2502(C) should be expanded to require the submission of a management plan whether or not there are any existing uses of the land. A conservation use will require management activities whether or not there are existing uses. Public access will require a number of management responsibilities such as refuse removal, erosion maintenance and periodic physical monitoring for unwanted activities or uses."

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Agency Evaluation: When there is an existing use on the land, the statute (A.R.S. § 37-312(J)) clearly requires the preparation and adoption of a conservation management plan as the sole purpose of a plan is "to allow existing and conservation uses to be coordinated in a manner that will protect both existing uses and conservation and open space value." If there are no existing uses, the adoption of a plan has no statutory goal to achieve even though in many cases, it might be useful to know what is specifically proposed. This would go beyond statute to require such a plan.

If the otherwise unleased land were ultimately to be sold, the Land Commissioner would have no jurisdiction over the enforcement of that management plan. If the otherwise unleased land were to be the subject of a conservation lease, an understanding of how the land would be managed would by necessity be included as part of that lease agreement. Unfortunately, the knowledge of whether a parcel of land would be sold or leased for conservation purposes is not likely to be known at the time of reclassification or even at the time of a conservation management plan.

Agency Response: No change in the rule as drafted.

- 11. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules: None.
12. Incorporations by reference and their location in the rules: None.
13. Was this rule previously adopted as an emergency rule? The Agency failed to answer this question in the preamble.
14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES

Section

- R12-5-2501. Petition
R12-5-2502. Reclassification
R12-5-2503. Bond

ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES

R12-5-2501. Petition

- A. A petition to nominate trust land suitable for conservation purposes may be filed at the Arizona State Land Department during regular business hours. The petition shall be made on a form provided by the Department.
B. A petitioner shall nominate Trust lands in a manner consistent with and only for lands considered eligible under A.R.S. § 37-311, et seq.
C. A petitioner shall include the following information in a petition to nominate trust land suitable for conservation purposes:
1. A legal description of the land and a map that identifies the Township (T), Range (R), section, land description, acreage and county where the land is located.
2. A statement of proposed conservation uses of the land;
3. A statement of why the land is suitable for conservation purposes with reference to the criteria identified in R12-5-2502(A);
4. A statement of the existing surface uses on the land and how each existing use is affected both physically and economically by the proposed conservation use;
5. An identification of the local jurisdiction in which the land is located;
6. A statement of the local governing authority's comprehensive plan designation and existing zoning for the land and how the proposed conservation use is or is not consistent with the comprehensive plan and zoning;

- 7. A statement of the positive and negative physical and economic impacts on the local community nearest the land;
8. A statement of who or what entity will likely manage the land if, after the land is reclassified as suitable for conservation purposes, the land is approved for lease or purchase for conservation purposes; and
9. A statement of any known mineral potential, including sand and gravel, of the lands.

R12-5-2502. Reclassification

- A. Criteria: Reclassification of state lands as suitable for conservation purposes shall be in the best interest of the Trust as determined by the Commissioner. The Commissioner and the Conservation Advisory Committee may consider any or all of the following criteria in evaluating whether the nominated land should be reclassified as suitable for conservation purposes:
1. Open space: Existence of substantially undisturbed open space values that make the land's conservation an asset to the community or to other adjacent developable state trust land;
2. Unique scenic beauty:
a. Existence of a natural community landmark such as a significant mountain vista; or,
b. Existence of a scenic vista on to or through the land under petition from nearby major roadways or pathways, in addition to the mere existence of undeveloped open space;
3. Wildlife and vegetation:
a. Existence of significant vegetation or wildlife, both native to the region and worthy of protection due to the relative lushness, health and diversity of the vegetation or the number and diversity of the wildlife;
b. Existence of endangered, threatened, or protected plants or endangered or threatened wildlife species as identified under federal or state laws;

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- c. Existence of significant stands of a signature plant characteristic of the location;
 - 4. Cultural resources:
 - a. Existence of a prehistoric or historic archaeological site;
 - b. Existence of a historic structure; or
 - c. Comparative costs of mitigation, data recovery, or preservation compared to potential revenue production of the land;
 - 5. Wildlife habitat:
 - a. Existence of sufficient acreage and habitat quality to support populations of endangered, threatened, or other particular species;
 - b. Interconnection between the land under petition and nearby public lands for wildlife movement;
 - c. Diversity of plant communities or biodiversity of plant or animal species;
 - d. Habitat condition, whether intact or degraded; or
 - e. Distance from an existing or proposed roadway, utility line, or urban development;
 - 6. Other:
 - a. Geologic and topographic features:
 - i. Existence of a significant wash, slope, or other topographic feature;
 - ii. Existence of a unique rock outcropping, formation or other unusual geologic feature; and
 - iii. Known soil conditions unsuitable for development purposes;
 - b. Watershed integrity: Relationship of the land to maintenance of the integrity of 1 or more watersheds;
 - c. Floodplain management: Impact of the 100-year floodplain on the land;
 - d. Surface water and groundwater:
 - i. Existence of a spring or other wetland;
 - ii. Occurrence of perennial or intermittent stream flow; and
 - iii. Potential for groundwater recharge.
 - e. Long-term viability of the land for conservation management:
 - i. Viability of the land based on its size, configuration, and location for successfully conserving the resources it seeks to protect; and
 - ii. Relationship of conservation of the land to resolving wildland fire issues, particularly in the urban-wildland interface;
 - f. Local, regional or other planning considerations:
 - i. Relationship between the proposed conservation designation and adopted local and regional plans and policies; and
 - ii. Relationship of the land to other federal, state, local, or private land trust preserves, holdings, or plans;
 - g. Recreation:
 - i. Existence of or proposed trail-based or other low impact recreation opportunities; and
 - ii. Existence of direct access to or from adjacent public or private lands used for recreational purposes;
 - h. Accessibility:
 - i. Public accessibility and nature of that accessibility to the land; and
 - ii. Impact of accessibility, based on the purpose of conservation of the land;
 - i. Scientific education:
 - i. Historic use of the land for scientific research purposes; and
 - ii. Opportunities for scientific education;
- j. Types of multiple use:
 - i. Multiple use potential of the land; and
 - ii. Impact of specific multiple uses on the land;
 - k. Resource production preservation:
 - i. Existence of grazing lands under petition that a conservation designation may help to protect;
 - ii. Existence of prime agriculture areas under petition that a conservation designation may help to protect; and
 - iii. Protection of the resource production component (such as grazing, agriculture, mining, and timber) of the local or regional economy;
 - l. Relationship to other state trust lands:
 - i. Proximity to other state trust lands;
 - ii. Development capability of adjacent state trust lands; and
 - iii. Anticipated timing of development activity on adjacent state trust lands;
 - m. Preexisting protections: Existence of any federal, state, or local law requiring protection by existing lessee of proposed conservation values;
 - n. Tourism: Impact on local or regional tourism;
 - o. Benefit to the Trust: Whether and for what reason reclassification is in the best interest of the Trust;
- B. Multiple Petitions:** If multiple petitions are received and the Commissioner determines that reclassification is in the best interest of the Trust, the Commissioner may reclassify the land with the conservation purpose stated in 1 or more than 1 of the petitions, or the Commissioner may reclassify the land without stating a conservation purpose.
- C. Management Plan:** Upon reclassification, the Commissioner may require a party to submit a management plan to allow existing and conservation uses to be coordinated in a manner that will protect both existing uses and conservation and open space values.
- R12-5-2503. Bond**
- A.** Under A.R.S. § 37-312(D), a petitioner shall submit a bond in an initial amount of \$1,000 with a petition to nominate trust land suitable for conservation purposes. The bond shall be a surety bond or a cashier's check. The State Land Commissioner may require an additional bond amount under A.R.S. § 37-312 if the processing costs of the petition are estimated to exceed the initial bond amount based on the following factors:
- 1. Planning Costs: Planning involves review, consideration, and evaluation of:
 - a. Evidence and testimony presented at public hearing;
 - b. Physical and economic impact on other land owned or controlled by the current lessee or on the local community;
 - c. Existing holding leases, existing planning permits, and development plans in progress;
 - d. Input from local planning and zoning agencies and regional planning authorities;
 - e. Mineral potential, including sand and gravel; and
 - f. Consistency with the Enabling Act, the State Constitution, and Arizona Revised Statutes;
 - 2. Notice: Development and mailing of a notice of intent to classify lands suitable for conservation purposes and a notice of public hearing to:

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- a. Existing lessees;
 - b. Local planning and zoning agencies and regional planning authorities;
 - c. Owners of property within 300 feet of the land;
 - d. Persons who have requested notice of classification of lands suitable for conservation under § 37-311, et seq., with the Department; and
 - e. Affected state agencies;
3. Advertisement: Notice of public hearing for 6 publications in a newspaper of general circulation in the county where the land is located;
4. Public Hearing: Receipt and processing of oral and written testimony regarding the proposed reclassification including, but not limited to, review, consideration, and evaluation of testimony, as well as the costs of meeting facility and equipment rental.
- B. Upon reclassification of all or a portion of the land as suitable for conservation purposes, the successful petitioner shall forfeit the initial and any additional bond amounts to the state under A.R.S. § 37-312(D).

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TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATIONS**

Editor's note: Section R18-5-201 of this rule is being reprinted because text was added to the Section after it was approved by GRRC. Because this is not allowed, this particular Section had to be relabeled.

R18-5-201. Definitions.

"Air induction system" means a system whereby a volume of air is induced into a hollow ducting in a spa floor, bench, or wall. An air induction system is activated by an air power blower and is separate from the water circulation system.

"Artificial lake" means a manmade lake, lagoon, or basin, lined or unlined, with a surface area equal to or greater than 2 acres (87,120 square feet), that is used or intended to be used for water contact recreation.

"Backwash" means the process of thoroughly cleaning a filter by the reverse flow of water through the filter.

"Barrier" means a fence, wall, building, or landscaping that obstructs access to a public or semipublic swimming pool or spa.

"Cartridge filter" means a depth, pleated, or surface-type filter component with fixed dimensions that is designed to remove suspended particles from water flowing through the filter.

"Construct" means to build or install a new public or semipublic swimming pool or spa or to enlarge, deepen, or make a major modification to an existing public or semipublic swimming pool or spa.

"Coping" means the cap on a swimming pool or spa wall that provides a finished edge around the swimming pool or spa.

"Cross-connection" means any physical connection or structural arrangement between a potable water system and the piping system for a public or semipublic swimming pool or spa through which it is possible to introduce used water, gas, or any other substance into the potable water system. A bypass arrangement, jumper connection, removable section, swivel or change-over device, or any other temporary or permanent device that may cause backflow is a cross-connection.

"Deck" means a hard surface area immediately adjacent or attached to a swimming pool or spa that is designed for sitting, standing, or walking.

"Deep area" means the portion of a public or semipublic swimming pool that is more than 5 feet in depth.

"Discharge piping" means the portion of the circulation system that carries water from the filter back to the swimming pool or spa.

"Diving area" means the area of a public or semipublic swimming pool that is designated for diving from a diving board, diving platform, or starting block.

"Fill-and-draw swimming pool or spa" means a swimming pool or spa where the principal means of cleaning is the complete removal of the used water and its replacement with potable water.

"Filtration rate" means the rate of water flowing through a filter during the filter cycle expressed in gallons per minute per square foot of effective filter area.

"Flow-through swimming pool or spa" means a swimming pool or spa where new water enters the swimming pool or spa to replace an equal quantity of water that constantly flows out.

"Freeboard" means the vertical wall section of a swimming pool or spa wall between the waterline and the deck.

"Hose bibb" means a faucet with a threaded nozzle to which a hose may be attached.

"Hydrotherapy jet" means a fitting that blends air and water and creates a high-velocity, turbulent stream of air-enriched water for injection into a spa.

"Make-up water" means fresh water used to fill or refill a swimming pool or spa.

"Maximum bathing load" means the design capacity or the maximum number of users that a public or semipublic swimming pool or spa is designed to hold.

"Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

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"Operate" means to run, maintain, or otherwise control or direct the functioning of a public or semipublic swimming pool or spa.

"Overflow collection system" means equipment designed to remove water from a swimming pool or spa, including gutters, overflows, surface skimmers, and other surface water collection systems of various designs and manufacture.

"Potable water" means drinking water.

"Private residential spa" means a spa at a private residence used only by the owner, members of the owner's family, and invited guests, or a spa that serves a housing group consisting of no more than 3 living units [for example, duplexes or triplexes].

"Private residential swimming pool" means a swimming pool at a private residence used only by the owner, members of the owner's family, and invited guests, or a swimming pool that serves a housing group consisting of no more than 3 living units [for example, duplexes or triplexes].

"Public spa" means a spa that is open to the public with or without a fee, including a spa that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a spa.

"Public swimming pool" means a swimming pool that is open to the public with or without a fee, including a swimming pool that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a swimming pool.

"Recessed treads" means a series of vertically spaced, pre-formed stepholes in a swimming pool wall.

"Return inlet" means an aperture or fitting through which filtered water returns to a swimming pool or spa.

"Rope and float line" means a continuous line not less than 3/4 inch in diameter that is supported by buoys and attached to opposite sides of a swimming pool to separate areas of the swimming pool.

"Semi-artificial bathing place" means a natural bathing place that has been modified by man.

"Semipublic spa" means a spa operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic spa includes a spa that is operated by a neighborhood or community association for the residents of the community and their guests and any spa at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a spa and where the use of the spa is included in the fee for the primary use of the establishment.

"Semipublic swimming pool" means a swimming pool operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic swimming pool includes a swimming pool that is operated by a neighborhood or community association for the residents of the community and their guests and a swim-

ming pool at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a swimming pool and where the use of the swimming pool is included in the fee for the primary use of the establishment.

"Shallow area" means the portion of a public or semipublic swimming pool that is 5 feet or less in depth.

"Slip-resistant" means a surface that has a static coefficient of friction [wet or dry] of at least 0.50.

"Spa" means an artificial basin, chamber, or tank of irregular or geometric shell design that is intended only for bathing or soaking and that is not drained, cleaned, or refilled for each user. A spa may include features such as hydrotherapy jet circulation, hot water, cold water mineral baths, or an air induction system. Industry terminology for a spa includes "hydrotherapy pool," "whirlpool," "hot tub," and "therapy pool."

"Special use pool" means a swimming pool intended for competitive aquatic events, aquatic exercise, or lap swimming. A special use pool includes a wave action pool, exit pool for a water slide, swimming pool that is part of an attraction at a water recreation park, water volleyball pool, or a swimming pool with special features used for training and instruction.

"Suction outlet" means the aperture or fitting through which water is withdrawn from a swimming pool or spa.

"Suction piping" means the water circulation system piping that carries water from a swimming pool or spa to the filter.

"Swimming pool" means an artificial basin, chamber, or tank that is designed for swimming or diving.

"Turnover rate" means the number of hours required to circulate a volume of water equal to the capacity of the swimming pool or spa.

"User" means a person who uses a swimming pool, spa, or adjoining deck area.

"Wading pool" means a shallow swimming pool used for bathing and wading by small children.

"Water circulation system" means an arrangement of mechanical equipment connected to a swimming pool or spa by piping in a closed loop that directs water from the swimming pool or spa to the filtration and disinfection equipment and returns the water to the swimming pool or spa.

"Water circulation system components" means the mechanical components that are part of a water circulation system of a swimming pool or spa, including pumps, filters, valves, surface skimmers, ion generators, electrolytic chlorine generators, ozone process equipment, and chemical feeding equipment.

"Water level" means either:

- a. On swimming pools and spas with skimmer systems, the midpoint of the operating range of the skimmers, or
- b. On swimming pools and spas with overflow gutters, the height of the overflow rim of the gutter.