

March 9, 2006

TO: Land Conservation and Development Commission (LCDC)

FROM: Bob Rindy, DLCD

SUBJECT: **Agenda Item 6; March 23, 2006, LCDC meeting**

**Public Hearing and Possible Adoption of Amendments to Administrative Rules
Regarding Park Uses Allowed on Farm and Forest Land in State Parks**

AGENDA ITEM SUMMARY

This item includes a public hearing and possible commission adoption of proposed amendments to Administrative Rules Regarding Park Uses Allowed on Farm and Forest Land in State Parks. The proposed amendments (Attachment A to this report) are intended to clarify state land use regulations regarding park uses allowed in state parks on agriculture and forest land. The department is also proposing some corresponding “housekeeping” amendments to other rules under OAR chapter 660, division 034. These amendments are intended to correct grammar and citations, and to make existing requirements more clear. The amendments will not change the intent of existing provisions and will not create new requirements.

For more information about this agenda item, contact Bob Rindy at (503) 373-0050, Ext. 229, or email bob.rindy@state.or.us.

SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission receive testimony regarding the proposed amendments to OAR 660, division 34 and adopt the proposed amendments indicated in Attachment A to this report. The department proposes that these amendments be effective and apply upon filing with the Secretary of State’s Office.

BACKGROUND AND HISTORY

LCDC adopted OAR 660, division 34, in 1998 in response to legislation requiring LCDC to adopt land use procedures for coordination of state parks plans and local land use plans. Division 34 also includes rules for local park planning.

At the time LCDC was considering the adoption of the division 34 rules, the Oregon Parks and Recreation Department (OPRD) submitted a proposed list of park uses that, in the opinion of OPRD, should be allowed on farm land or forest land in state parks

without taking exceptions to Goals 3 or 4. Many of the uses on OPRD's list were already allowed under Goals 3 and 4 without an exception, but some were not. The Commission agreed to change the proposed division 34 rules (and subsequently, the division 033 rules regarding farm land) so that the park uses would be allowed on farm or forest land in a state park without an exception.

OPRD's proposal was brought to the Commission's attention at the end of the initial rulemaking process (i.e., at the final public hearing scheduled for adoption of division 34). As such, the Commission was reluctant to postpone adoption of the rules in order to craft wording that carefully differentiated which of the park uses on OPRD's list were already allowed under Goals 3 and 4, and which had historically required an exception to Goals 3 and 4 but would be henceforth be excused from that requirement. At that time, it did not seem necessary to differentiate these uses because the proposed rule amendment was intended to simply indicate that all the uses suggested by OPRD should be allowed in a state park whether or not Goals 3 or 4 already allowed them.

At the same time, in response to OPRD's proposal, local governments requested that the local park planning rules also under division 034 should include a parallel list of uses allowed in local parks on farm or forest land. LCDC agreed, with some modification to the list, provided a local government adopts a "local park plan" following the same broad public procedures used by OPRD in adopting a state park plan.

Over time, this list, and the wording in the rule related to the list, created considerable confusion on the part of local governments and OPRD. Some counties interpreted the rule to disallow any of the uses on the list when proposed on a state or local park unless there is also an adopted park master plan, even though some of the uses are authorized under Goals 3 or 4 for farm or forest land. This had not been the intent of LCDC in their original rule adoption. In 2003, Metro requested that LCDC amend local park rules to clarify this issue with respect to local parks, and LCDC agreed. The department's "housekeeping" rulemaking for OAR 660-034-0040 in January 2004 included new "clarifying" language. OPRD approached the commission at that time and requested that a parallel clarifying amendment be included regarding state parks. However, OPRD's request was made subsequent to formal rulemaking notice, so the department could not include this amendment in the January 2004 rulemaking without postponing and issuing new notice. Rather than do this, the commission suggested that this clarification be included in the 2005-07 biennium rulemaking, i.e., the proposal outlined in this report.

As part of this proposal, legal counsel has suggested additional housekeeping amendments to rules under division 034. These are also described below.

PROPOSED AMENDMENTS

OAR 660-034-0000 to 0030 and 0040 – Amendments to all rules under this division proposed by legal counsel to correct grammar, citations, or other minor and technical adjustments. We note that on page 4, line 46, the Oregon Dispute Resolution Program has been replaced by the Oregon Consensus Program for mediation of land use disputes

involving local governments. The only substantive amendment in these rules is on page 6, line 25: the department proposes eliminating periodic review as an option for submittal of prior adopted park master plans, consistent with the recent statutory amendments to periodic review that focus that process on urban issues.

OAR 660-034-0035(1) – These proposed amendments are intended to clarify that, for farm and forest land in state parks, uses allowed by goals 3 and 4 are allowed on farm and forest land regardless of whether the uses are provided for in a state park master plan [p. 7, lines 7-10]

OAR 660-034-0035(2) – This proposed amendment is to clarify that uses listed in (2)(a) through (f) of this section includes some uses that are generally allowed by Goals 3 and 4, and some that are not. However, all the uses on the list are allowed in state parks without an exception to Goals 3 or 4 if they are part of a state parks master plan [p. 7, lines 11 – 18]

NOTICE AND OTHER GOAL AMENDMENT REQUIREMENTS

Statutes and other requirements governing the Commission's adoption or amendment of administrative rules have been met through formal notices filed with the Secretary of State's office. The department provided additional notice of the proposed rule amendments by mailing to interested parties, legislators, and the secretary of state's office, as required by law and by the Commission rules. (See notices and statements of need and fiscal impact in Attachment C to this report).

COMMENTS RECEIVED

No comments were received prior to the mailing of this report.

OVERALL CONCLUSION AND RECOMMENDATION

The department recommends that the Commission adopt the proposed amendments to OAR 660, division 34, shown in attachment A to this report. If adopted, these amendments would be effective and apply upon filing with the Secretary of State's Office.

Suggested Motion to approve: I move that the proposed amendments in Attachment A be adopted, and that the amendments be effective upon filing.

Suggested Motion to continue or deny: I move that the proposed amendments in Attachment A not be adopted at this time. Staff is instructed to revise the proposed amendments so as to (indicate), and to schedule the revised proposal to the commission for public hearing and adoption on (date).

ATTACHMENTS

- A. Proposed amendments to OAR 660, division 034
- B. Proposed amendments to OAR 660-034-0035 previously shown on the department's web site but superseded by the proposals in Attachment A.
- C. Public Notices