BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

RURAL THURSTON, INC.,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

WILLAMALANE PARK AND RECREATION DISTRICT,
Intervenor-Respondent.

LUBA No. 2007-104

FINAL OPINION
AND ORDER

Appeal from Lane County.

William Hugh Sherlock, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, P.C.

Stephen L. Vorhes, Assistant County Counsel, Eugene, filed a response brief and argued on behalf of respondent.

Laurence E. Thorp, Springfield, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief were Barry D. Smith, and Thorp, Purdy, Jewett, Urness & Wilkinson, P.C.

BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board Member, participated in the decision.

AFFIRMED 12/07/2007

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a county decision approving a special use permit authorizing improvements to a public park within an exclusive farm use (EFU) zone.

FACTS

Ruff Park is a 9.96-acre property zoned EFU-30, developed as a public park with trails, benches, signage, doggy bag dispensers, a magnolia arboretum and other landscaping. The South Branch of Cedar Creek forms the eastern, northern and western boundaries of the main park area. A small, undeveloped trapezoidal section of the park lies to north across the South Branch of Cedar Creek. The North Branch of Cedar Creek forms the northern boundary of that trapezoidal section. *See* Figure 1, at the end of this opinion.

The properties south of the park are within the City of Springfield city limits and the Springfield urban growth boundary, and are zoned and partially developed for urban residential development. Properties to the east, north and west of the park are zoned for agricultural uses. Tax lots 1504 and 1503 to the north of the panhandle are developed with a residence and used for cattle grazing. Tax lot 1302 to the north of the North Branch of Cedar Creek is also developed with a residence and used for cattle grazing. Tax lot 900 to the east of the park is developed with a residence and used for wheat farming. The other adjoining parcels are not currently in agricultural use.

The park has no current vehicular access or parking. Access is provided at two pedestrian access points: (1) a footpath entering from the south through a residential subdivision, and (2) a graveled driveway along the panhandle on the west connecting the park to 66th Street.

Intervenor-respondent (intervenor) owns and operates Ruff Park, and applied to the county for a special use permit to construct proposed improvements, including a pedestrian

and maintenance vehicle bridge over the South Branch of Cedar Creek, additional trails, a restroom, picnic tables, and 23 parking spaces within the panhandle access strip.

The county planning director conducted a public hearing, at which neighbors and members of petitioner testified about a history of vandalism and human and canine trespass onto neighboring farms by users of the park. The planning director approved the application, but with conditions requiring that intervenor construct a fence along both sides of the panhandle and along the banks of certain portions of the creeks. Both intervenor and petitioner appealed the planning director's decision to the county hearings officer. After conducting a hearing, the hearings officer affirmed the planning director's decision, with modifications to the conditions of approval. Petitioner appealed the hearings officer decision to the county board of commissioners, which declined to hear the appeal. This appeal followed.

FIRST ASSIGNMENT OF ERROR

ORS 215.213(2)(e) and implementing county regulations allow "public and private parks" in an EFU zone, subject to the standards at ORS 215.296. In turn, that statute provides in relevant part that a use allowed under ORS 215.213(2) may be approved only where the local government finds that the use, as conditioned, will not (1) force a significant change in accepted farm practices on surrounding lands devoted to farm use, or (2) significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.[1]

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[1] ORS 215.296 provides, in relevant part:

> "(1) A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:
>
> > "(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
> >
> > "(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

A. Significant Change/Increase in the Cost of Accepted Farm Practices

The planning director found and there is no dispute that the *existing* park is a source of vandalism and trespass that have significantly impacted farm practices on surroundings lands devoted to farm use. Neighboring farm practices consist of two adjoining cattle operations on tax lots 1503/04 and 1302, and wheat farming on tax lot 900. The most egregious problem for the two cattle operations appears to be off-leash dogs that slip through the barbed wire fences on the adjoining properties and harass cattle.[2] There are also documented instances of human trespass and vandalism on tax lots 1503/04 and 1302. Apparently, no evidence was submitted of trespass or vandalism with respect to tax lot 900, which is a large wheat farm.

Ruff Park currently has no fence or other barrier on the park side of the relevant property boundaries. In response to testimony regarding vandalism and trespass stemming from users of the existing park, the planning director imposed conditions 10 and 11, which require "security fencing" along the panhandle and along certain portions of the north and south branches of Cedar Creek.[3] Intervenor appealed the planning director's decision, arguing that the fences should not be required because they will not stop dogs from entering adjoining properties. Record 192. The hearings officer rejected that argument, but modified conditions 10 and 11 in two minor respects, first, to note that the fencing must be constructed outside the 50-foot riparian corridor, unless a modification is requested, and second, to

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> "(2) An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective."

[2] The park does not permit off-leash dogs, and has posted signs to that effect, but apparently those signs have not prevented some park users from allowing their dogs to run off-leash.

[3] The required security fencing must be "chain link or field fencing." The decision does not indicate what field fencing is, but apparently it is fencing that, like chain link fencing, has a close weave sufficient to prevent dogs from slipping through, unlike barbed wire.

specify that the fences must be constructed within one year, rather than the two year period allowed by the planning director:

> "10. The applicant shall construct security fencing (chain link or field fencing) on the east side of Cedar Creek to prevent trespass onto tax lots 1500, 1501, 1503, and south of Cedar Creek to prevent trespass northward onto tax lot 1302. *Unless granted a modification to the riparian setback pursuant to Lane Code 15.253(6), the fencing shall be located outside of the 50 [foot] riparian corridor. The fencing shall be constructed within one year of this decision being final, and* shall be adequate to restrict animals and humans to the subject property. A solid fence is not authorized.
>
> "11. The applicant shall construct security fencing (chain link or field fencing) on the north and south property lines forming the access panhandle to prevent trespass onto tax lots 1501, 1503, and 1504. *The fencing shall be constructed within one year of this decision being final, and* shall be adequate to restrict animals and humans to the subject property." Record 26 (italicized language added by hearings officer).

Petitioner argues that conditions 10 and 11 are inadequate to reduce to an insignificant level the impacts of the park on adjoining farm practices, as required to comply with ORS 215.296. According to petitioner, conditions 10 and 11 are vague regarding the exact locations of the required fencing, and there appear to be large gaps where dogs and trespassers could easily access neighboring properties, particularly on the east boundary of tax lot 1500, between the two creeks. We understand petitioner to argue that nothing short of a complete perimeter fence would be adequate to keep off-leash dogs from entering adjoining properties that do not have cattle operations, and then running around to properties where cattle are found. Even then, petitioner argues, a perimeter fence would not completely prevent some of the documented incidents of human vandalism, for example, persons shooting cattle with BB guns. A fence, petitioner argues, simply gives such vandals a convenient rest on which to steady their aim.

As support for its contention that a partial fence is inadequate, petitioner notes that, in intervenor's appeal of the planning director's decision, intervenor argued that the fence

required by conditions 10 and 11 "would not be sufficient to contain dogs from accessing neighboring properties," and thus the condition is not "rational." Record 192. Petitioner contends that even the applicant admits that the fence required by conditions 10 and 11 would not significantly reduce impacts on adjoining farm operations.

The hearings officer's found that, as conditioned, the park will not force a significant change in accepted farm practices on surrounding lands devoted to farm use, or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.[4] Respondent and intervenor contend that finding is supported by substantial evidence in the record.

Petitioner is correct that Condition 10 is not clear as the exact location of the required fences. The first sentence requires a fence on the "east side of Cedar Creek," and a fence "south of Cedar Creek," but does not specify which branch. From the context, however, it is reasonably clear that the "east side of Cedar Creek" refers to the east bank of the South Branch of Cedar Creek, and the phrase "south of Cedar Creek" applies to the area south of the North Branch of Cedar Creek. *See* Figure 1. We understand petitioner to argue that Condition 10 leaves a gap between the two required fence sections, with no connecting fence between the two creeks along the eastern boundary of tax lot 1500. Petitioner contends that, without a connecting fence, dogs and humans will cross the South Branch of Cedar Creek into the trapezoidal undeveloped area of the park, turn west and cross an existing non-

[4] The hearings officer found, in relevant part:

> "The applicant proposed using fences to buffer the proposal from neighboring uses on Page 8 of its submittal under the discussions for 'Property #4' and 'Property #5.' These locations are precisely where the condition requires the fencing to be located. The Planning Director found that the proposed fencing was necessary to minimize the conflicts associated with nuisance trespass of dogs and persons with adjacent farming practices. The applicant is correct in its assertion that this fencing, in isolation, will not succeed in minimizing the conflict. However, combined with Condition of Approval #11, which requires security fencing along the north and south perimeters of the access panhandle, there is a reasonable likelihood that animal and casual human trespass will be eliminated and determined human trespass will be significantly reduced." Record 105.

security fence to enter tax lot 1500, and then turn either north or south to trespass onto tax lots 1503/04 and 1302 to harass cattle, crossing the barbed wire fences on those properties. Petitioner also contends that similar trespasses will occur on the east, with dogs and humans crossing the South Branch of Cedar Creek onto tax lot 900, which is used for wheat farming, turn north to cross the North Branch of Cedar Creek, then turn west to trespass onto tax lot 1302 to harass cattle.

At oral argument, the county and intervenor disputed that Condition 10 leaves a gap between the two fence sections. We understand respondents to argue that Condition 10 requires intervenor to construct a fence "to prevent trespass" onto tax lot 1500, that is, a fence that will be "adequate to restrict animals and humans to the subject property." We understand respondents to argue that Condition 10 can be read to require that the fence be constructed along the eastern boundary of tax lot 1500, thus connecting the two fence sections along the north and south branches of the creek.

Condition 10 is unclear on this point, but we agree with respondents that it can be read to require a fence along the eastern boundary of tax lot 1500, connecting the fence sections along the north and south branches of the creek. Tax lot 1500 borders the park only between the two branches of the creek, forming the western boundary of the park between the creeks. Absent a section of fence along that border, the required fencing would do little to prevent trespass onto tax lot 1500, as Condition 10 requires. Further, as intervenor notes, the planning director's decision states in his findings that the required fencing will be located "along the *western* and northern boundaries of the property," suggesting that the planning director intended Condition 10 to require a fence between the property and tax lot 1500, which forms part of the western boundary of the property. Record 203 (emphasis added).

With that understanding of Condition 10, petitioner's concerns regarding a "gap" on the boundary with tax lot 1500 between the two branches of the creek appear to be unfounded. However, that understanding does not dispose of petitioner's concerns that

without complete perimeter fencing, canine and human trespassers will be able to cross the South Branch of Cedar Creek onto tax lot 900, turn north to cross the North Branch of Cedar Creek, and then turn west to trespass onto tax lot 1302 to harass cattle. Nor does it dispose of petitioner's concerns that, even with a complete perimeter fence, some trespassing and harassment is still possible.

Respondents argue, and we generally agree, that the county is not required to impose conditions that are guaranteed to prevent *all* trespass or prevent *any* impact on farming practices, in order to comply with ORS 215.296. ORS 215.296(1) only requires that the proposed use not force a *significant* change in accepted farm practices on surrounding lands devoted to farm use, or *significantly* increase the cost of accepted farm practices on surrounding lands devoted to farm use. The planning director and hearings officer found that, as conditioned, the proposed park use would comply with ORS 215.296 and local implementing regulations. The question is whether that finding is supported by substantial evidence. For the following reasons, we conclude that it is.

Petitioner does not dispute that the fence will *reduce* incidents of trespass, but contends essentially that there is not substantial evidence that the fence will reduce the number or extent of such incidents below the significant threshold. There is apparently little direct evidence in the record one way or another on the extent to which the required fencing is likely to reduce trespass and other impacts on farm practices. As the hearings officer noted, intervenor's application proposed fencing part of the park boundary adjoining properties where reported incidents of trespass and vandalism have occurred. The hearings officer evidently understood intervenor to take the position that, along with other measures proposed by the applicant and accepted by the county, the fences would help reduce impacts to a level that would not be significant.[5] We are not sure what to make of intervenor's

[5] Intervenor proposed restoring riparian vegetation along the banks of the creeks and restoring natural vegetation in the trapezoidal natural area between the creeks as additional barriers to trespassers. The planning

argument, in its appeal of the planning director's decision, that the fence condition is not "rational" because it "would not be sufficient to contain dogs from accessing neighboring properties." The hearings officer rejected that argument, concluding that the fence is reasonably likely to eliminate animal and casual human trespass and significantly reduce determined human trespass.

There is not much evidence supporting that conclusion but, on the other hand, there is very little evidence controverting it. Petitioner speculates that off-leash dogs in the park will enter tax lot 900 to the east as one leg of a circuitous route to reach and harass cattle, but there is no evidence to support that speculation. Apparently, there have been no reported incidents of dog entry or other incidents with respect to tax lot 900, and petitioner cites no reason to believe that will change once the proposed park improvements are constructed. We conclude that, viewing the record as a whole, the hearings officer's finding that the security fence and other measures are reasonably likely to eliminate animal trespass is supported by substantial evidence, *i.e.*, evidence that a reasonable person would rely upon. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993).

Similarly, with respect to human trespass and vandalism stemming from the park, the county is not required to ensure that all possibility of such incidents is eliminated. Petitioner does not dispute that the security fence is likely to reduce the number of such incidents. The dispute is whether the fence is likely to reduce the number and extent of such incidents so that they will not have significant impacts on farm practices on surrounding land devoted to farm use. The hearings officer found that the security fencing is reasonably likely to eliminate "casual" human trespass and significantly reduce "determined" human trespass. While petitioner disagrees with that finding, petitioner has not established that a reasonable person could not draw that conclusion from the record as a whole.

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director found that such measures would not be sufficient, in themselves, to discourage dogs and humans from crossing the creeks.

With respect to non-trespass vandalism such as people throwing trash over the fence or throwing rocks at cows, petitioner argues, that the fence will do nothing to prevent such incidents. That may be true, but again the county is not required to eliminate all adverse impacts on farm practices. Most of the testimony below cited to us involves incidents of canine and human trespass, and we are cited to no findings or evidence that non-trespass incidents, in themselves, have risen to the level of significantly impacting farm practices, or are likely to once the security fence and other improvements are constructed.

B. One-Year Deadline to Construct Fences

Condition 1 of the planning director's decision allowed intervenor up to two years to complete all improvements, including the fences. Intervenor appealed that condition, arguing that the two-year timeline was too burdensome. The hearings officer disagreed with respect to the fences, finding that existing impacts on farm practices caused by the existing park require expedited fence construction. The hearings officer stated that "it seems reasonable to require that the security fencing be in place prior to the completion of the parking lot, bridge or restrooms, or one year, whichever is sooner." The hearings officer revised Conditions 10 and 11 to require intervenor to construct the fencing within one year.

Apparently as an alternative to the arguments above, petitioner contends that even if the security fence is adequate to mitigate impacts on farm practices, a one-year period is not consistent with ORS 215.296(2). According to petitioner, given the existing and ongoing impacts on farm practices caused by the existing park, the hearings officer should not allow any significant period of delay before the required fences are constructed.

Intervenor responds that a shorter time frame than one year is unreasonable, noting that intervenor is a public body that must conduct its business under a state-mandated budget process that does not allow expenditures without budget authorization.

As far as we can tell, no party argued below that a one-year deadline to construct the required fences is too long. Intervenor argued that the two-year deadline imposed by the

planning director is too short, but neither petitioner nor any other participant appealed the two-year deadline on other grounds. Be that as it may, petitioner does not offer a suggestion as to what maximum period of time to construct the fence is reasonable under the circumstances. Absent more focused argument on this point, we cannot say that a one-year deadline to construct the security fence is unreasonable.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner contends that the park use of the subject property cannot be expanded or intensified without taking an exception to Statewide Planning Goal 3 (Agricultural Land), pursuant to the State and Local Park Planning Rule, at OAR Chapter 660, division 034.

As noted, a public park is allowed in an EFU zone under ORS 215.213(2)(e). OAR 660-034-0035 governs planning for state parks. OAR 660-034-0035(2) provides a list of park uses that may be permitted in state parks within farm or forest zones.[6] The rule

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[6] OAR 660-034-0035(2) provides, in full:

> "The park uses listed in subsection (a) through (i) of this section are allowed in a state park subject to the requirements of this division, OAR chapter 736, division 18, and other applicable laws. Although some of the uses listed in these subsections are generally not allowed on agricultural lands or forest lands without exceptions to Statewide Planning Goals 3 or 4, a local government is not required to adopt such exceptions in order to allow these uses on agricultural or forest land within a state park provided the uses, alone or in combination, meet all other applicable requirements of statewide goals and are authorized in a state park master plan adopted by OPRD, including a state park master plan adopted by OPRD prior to July 15, 1998:
>
> "(a) Campground areas: recreational vehicle sites; tent sites; camper cabins; yurts; teepees; covered wagons; group shelters; campfire program areas; camp stores;
>
> "(b) Day use areas: picnic shelters, barbecue areas, swimming areas (not swimming pools), open play fields, play structures;
>
> "(c) Recreational trails: walking, hiking, biking, horse, or motorized off-road vehicle trails; trail staging areas;
>
> "(d) Boating and fishing facilities: launch ramps and landings, docks, moorage facilities, small boat storage, boating fuel stations, fish cleaning stations, boat sewage pumpout stations;

specifies that "some of the uses" listed in the rule "are generally not allowed on agricultural lands or forest lands without exceptions to Statewide Planning Goals 3 or 4." However, the rule states that a local government "is not required to adopt such exceptions in order to allow these uses on agricultural or forest land within a state park provided the uses, alone or in combination, meet all other applicable requirements of statewide goals and are authorized in a state park master plan * * *."

OAR 660-0034-0040 governs planning for local parks. OAR 660-034-0040(1) states in relevant part that local governments may, but are not required to, adopt master park plans prior to adopting a land use decision approving a park on resource lands. OAR 660-034-0040(4) indicates that although "some of the uses" listed in OAR 660-034-0035(2)(a) to (g) are not allowed on resource lands without an exception, a local government is not required to take an exception to Goals 3 or 4 to allow such uses in a local park "provided such uses,

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"(e) Amenities related to park use intended only for park visitors and employees: laundry facilities; recreation shops; snack shops not exceeding 1500 square feet of floor area;

"(f) Support facilities serving only the park lands wherein the facility is located: water supply facilities, sewage collection and treatment facilities, storm water management facilities, electrical and communication facilities, restrooms and showers, recycling and trash collection facilities, registration buildings, roads and bridges, parking areas and walkways;

"(g) Park Maintenance and Management Facilities located within a park: maintenance shops and yards, fuel stations for park vehicles, storage for park equipment and supplies, administrative offices, staff lodging;

"(h) Natural and cultural resource interpretative, educational and informational facilities in state parks: interpretative centers, information/orientation centers, self-supporting interpretative and informational kiosks, natural history or cultural resource museums, natural history or cultural educational facilities, reconstructed historic structures for cultural resource interpretation, retail stores not exceeding 1500 square feet for sale of books and other materials that support park resource interpretation and education;

"(i) Visitor lodging and retreat facilities in state parks: historic lodges, houses or inns and the following associated uses in a state park retreat area only:

"(A) Meeting halls not exceeding 2000 square feet of floor area;

"(B) Dining halls (not restaurants)."

alone or in combination, meet all other statewide planning goals and are described and authorized in a local master park plan" that is adopted as part of the local comprehensive plan.[7]

[7] OAR 660-034-0040 provides, in relevant part:

"(1) Local park providers may prepare local park master plans, and local governments may amend acknowledged comprehensive plans and zoning ordinances pursuant to the requirements and procedures of ORS 197.610 to 197.625 in order to implement such local park plans. Local governments are not required to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR 660-006-0025(4), as further addressed in sections (3) and (4) of this rule. If a local government decides to adopt a local park plan as part of the local comprehensive plan, the adoption shall include:

"(a) A plan map designation, as necessary, to indicate the location and boundaries of the local park; and

"(b) Appropriate zoning categories and map designations (a 'local park' zone or overlay zone is recommended), including objective land use and siting review criteria, in order to authorize the existing and planned park uses described in local park master plan.

"* * * * *

"(3) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a local park and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a local park, in accordance with applicable laws, statewide goals, and rules.

"(4) Although some of the uses listed in OAR 660-034-0035(2)(a) to (g) are not allowed on agricultural or forest land without an exception to Goal 3 or Goal 4, a local government is not required to take an exception to Goals 3 or 4 to allow such uses on land within a local park provided such uses, alone or in combination, meet all other statewide goals and are described and authorized in a local park master plan that:

"(a) Is adopted as part of the local comprehensive plan in conformance with Section (1) of this rule and consistent with all statewide goals;

"(b) Is prepared and adopted applying criteria comparable to those required for uses in state parks under OAR chapter 736, division 18; and

"(c) Includes findings demonstrating compliance with ORS 215.296 for all uses and activities proposed on or adjacent to land zoned for farm or forest use."

In the present case, the planning director determined that the proposed park uses are allowed under OAR 660-034-0040(1) and (4) without a Goal exception, because the proposed uses are all low-intensity recreational uses listed in OAR 660-034-0035(2):

> "A review of the list of allowable uses [in OAR 660-034-0035(2)] reveals a variety of uses that range from open space uses, such as walking and hiking, to intensively developed uses, such as visitor lodging and retail stores. The specific uses that require an exception presumably include the more intensive types of uses that irrevocably commit the property to a use other than farm uses such as: laundry facilities; recreation shops; snack shops; fuel stations, administrative offices, staff lodging; museums, retail stores; and visitor lodging. The proposed park development includes a magnolia arboretum, landscaping/planting beds, an ADA-compliant trail system and restroom, outdoor tables and benches, central gathering area with pergola, informational kiosk, memorial plaza, and a children's play area. These uses appear to fall within the range of uses allowed under OAR 660-034-0035 that can be authorized without an exception because of the passive recreational nature of the uses and their similarity to uses allowed under separate OAR provisions within the Exclusive Farm Use Zone. The pergola, restrooms, bridge and information kiosk are clearly similar to those components found in campgrounds allowed under OAR 660-033-0130. The adoption of a local parks master plan is not necessary in this instance since it appears to be only required if any of the proposed uses are ones that require an exception." Record 202 (footnote omitted).

Petitioner argues that the county misconstrued the applicable law. According to petitioner, OAR 660-034-0040(4) applies only when there is an acknowledged local park master plan that establishes that the proposed park uses comply with the statewide planning goals.[8] Because there is no such acknowledged local park master plan, petitioner contends, whether the proposed uses require a goal exception is not determined by examining the list of uses in OAR 660-034-0035(2)(a) through (g), as the planning director did, but rather by determining whether the proposed uses are allowed in "public and private parks" under

[8] Intervenor responds, apparently as an alternative basis for concluding that no Goal exception is required, that intervenor has in fact adopted a general park plan that has been incorporated into the acknowledged City of Eugene/Springfield Metro Plan. In addition, intervenor argues that it has adopted a specific Ruff Park Plan, although that specific park plan has not been incorporated into the local comprehensive plan. Intervenor contends that adoption of those two plans suffices to constitute the "local park master plan" described in OAR 660-034-0040(1) and (4). However, the planning director and hearings officer did not consider this argument in concluding that no Goal exception is required, and we do not address it further.

ORS 215.213(2)(e). Petitioner contends that none of the proposed uses—the trails, the restrooms, the play area, the parking spaces or pedestrian bridge—are allowed in a public park under ORS 215.213(2)(e), and thus a goal exception is required for those uses.

OAR 660-034-0035 and 0040 are not models of clarity. Providing that "some of the uses" listed in OAR 660-034-0035(2) require a goal exception, but not specifying which uses, is not particularly helpful in determining which uses do and do not require a goal exception. Nonetheless, it is clear that some of the park uses listed in OAR 660-034-0035(2) require no goal exception to be approved in a state park. When OAR 660-034-0040(4) refers to the park uses listed in OAR 660-034-0035(2)(a) through (g), the apparent intent is to define the scope of uses that are also allowed in *local* parks in resource zones under OAR 660-034-0040(1) and (4).

We disagree with petitioner that OAR 660-034-0040(4) operates only when there is an acknowledged local park master plan. OAR 660-034-0040(1) clearly contemplates that a local government may approve a local park in the absence of a local park master plan. OAR 660-034-0040(4) provides that those uses listed in OAR 660-034-0035(2)(a) through (g) that would otherwise require a goal exception in fact do not require a goal exception if the local government has adopted an acknowledged local park master plan. By implication, some of the other uses listed in OAR 660-034-0035(2)(a) through (g) do not require a goal exception, even if the local government has not adopted a local park master plan. Under that scheme, there is no need to conduct a separate inquiry, as petitioner contends, into whether the proposed uses are allowed in a local public park under ORS 215.213(2)(e) without a goal exception. A listed use that is allowed in a state park without a goal exception under OAR 660-034-0035(2)(a) through (g) is also allowed in a local park without an exception under OAR 660-034-0040(1) and (4), with no need for further inquiry.

Petitioner offers no focused challenge to the planning director's and hearings officer's determinations of which uses listed in OAR 660-034-0035(2)(a) through (g) do and

do not require a goal exception. Although we need not address the matter in any detail, we generally agree with the county that the park uses proposed in the present case are not among the uses listed in OAR 660-034-0035(2)(a) through (g) that require a goal exception. The proposed uses are passive, low-intensity uses similar to those allowed in campgrounds in resource zones. Accordingly, the county did not err in concluding that the proposed uses do not require a goal exception.

The second assignment of error is denied.

The county's decision is affirmed.