BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LINN COUNTY FARM BUREAU, CORY KOOS, KIM KOOS, JOHN GALE SWATZKA ESTATE, BETTY JO SMITH, MARY B. PARKER, LONNIE L. PARKER, PETER BOUCOT, JAN BOUCOT, MICHAEL GREIG, PRISCILLA GREIG, TELLY WIRTH, CAROLYN JENKS OLSEN, CINDY CLARK, ART MARTINAK, JOYCE MARTINAK, DEAN SCHROCK and KATHLEEN SCHROCK,
Petitioners,

vs.

LINN COUNTY.
Respondent.

LUBA No. 2010-006

FINAL OPINION
AND ORDER

Appeal from Linn County.

Jennifer Bragar, Portland, filed the petition for review and argued on behalf of petitioner. With her on the brief was William Kabeiseman and Garvey Schubert and Barer.

Thomas N. Corr, Albany, and Todd Sadlo, Portland, filed a joint response brief on behalf of respondent. Todd Sadlo argued on behalf of respondent.

Erin L Donald, Assistant Attorney General, Salem, filed a state agency brief and argued on behalf of the Department of Land Conservation and Development. With her on the brief was John R. Kroger, Attorney General.

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

REMANDED 06/09/2010

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

Petitioners appeal a county decision approving a conditional use application to establish a new county park, including a full-service recreational vehicle (RV) campground, on a 175-acre tract zoned for exclusive farm use (EFU).

MOTION TO STRIKE

Petitioners move to strike references in the response brief at pages 13-14 to statements made at an April 22, 2010 meeting of the Land Conservation and Development Commission (LCDC), which are not found in the record in this appeal. The county does not respond to the motion, and we agree with petitioners that the extra-record references are not something the Board can consider. The motion to strike is granted.

FACTS

The subject property consists of two tax lots totaling 175 acres in size, located at the intersection of Interstate Highway 5 and State Highway 34, in the western portion of the county. The property is located between the urban growth boundaries of the cities of Albany and Tangent, approximately two to three miles from each city's urban growth boundary. Soils on the property are Class II-IV soils, identified as prime farmland in the county's comprehensive plan. The property is currently under cultivation in perennial ryegrass.

In 2007, the county purchased the subject property with the intent of developing a new county park. In 2008, the county parks and recreation department filed an application for a conditional use permit to establish a county park on the site. The application proposed a 60-acre "RV park" area consisting of (1) a campground that at full build-out would feature 196 RV campsites, each served by sewer, water and electric hookups, (2) five restroom and shower buildings, (3) a camp store, (4) one or two enclosed shelters approximately 1,200 square feet in size, (5) a caretaker dwelling for a full-time park ranger, and (6) administrative office, shop, equipment storage building, etc. In addition, a 110-acre day use area would be

constructed including picnic shelters, restrooms, trails, etc. Water for the proposed park will be supplied by on-site wells, distributed by a community water system. Treatment of sanitary waste will be provided by an on-site septic system capable of handling up to 25,000 gallons per day.

The county planning commission denied the application, based on traffic and compatibility concerns. On appeal to the board of county commissioners, the commissioners conducted a hearing and voted to approve the application. As approved by the county, the park will be limited to no more than 50 RV campsites without additional county approvals, but the county required that septic facilities be constructed to accommodate the full build-out of 196 RV sites. The county also imposed a condition prohibiting RV stays in the park longer than seven days. This appeal followed.

INTRODUCTION

The primary issue raised in the first three assignments of error is whether approval of the proposed public park requires that the county adopt concurrent exceptions to Statewide Planning Goals 3 (Agriculture), 11 (Public Facilities and Services) and 14 (Urbanization), instead of simply approving the new park under a conditional use permit. We first set out the statutes and administrative rules that bear on that issue.

ORS 215.283(2) sets out various uses that are permitted in an EFU zone subject to county approval. ORS 215.283(2)(d) allows the county to approve "Parks and playgrounds," and further specifies that "[a] public park may be established consistent with the provisions of ORS 195.120." In turn, ORS 195.120 provides that the LCDC shall adopt administrative rules and necessary goal amendments to provide for a number of specified uses in state and local parks.[1] ORS 195.120(4) specifies that a local government shall not be required to

[1] ORS 195.120 provides, in relevant part:

adopt an exception from a land use planning goal protecting agriculture or forestry resources to authorize a use in a state or a local park that is identified in a LCDC rule promulgated under ORS 195.120(2).

In 1998, to comply with ORS 195.120, LCDC promulgated OAR chapter 660, division 034, governing state and local park planning. Minor amendments to the rule followed in 2004 and 2006. OAR 660-034-0035 sets out a list of uses allowed in state parks,

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> "(2) The Land Conservation and Development Commission, in cooperation with the State Parks and Recreation Commission and representatives of local government, shall adopt rules and land use planning goal amendments as necessary to provide for:
>
> "(a) Allowable uses in state and local parks that have adopted master plans;
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> "(b) Local government planning necessary to implement state park master plans; and
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> "(c) Coordination and dispute resolution among state and local agencies regarding planning and activities in state parks.
>
> "(3) Rules and goal amendments adopted under subsection (2) of this section shall provide for the following uses in state parks:
>
> "(a) Campgrounds, day use areas and supporting infrastructure, amenities and accessory visitor service facilities designed to meet the needs of park visitors;
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> "(b) Recreational trails and boating facilities;
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> "(c) Facilities supporting resource-interpretive and educational activities for park visitors;
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> "(d) Park maintenance workshops, staff support facilities and administrative offices;
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> "(e) Uses that directly support resource-based outdoor recreation; and
>
> "(f) Other park uses adopted by the Land Conservation and Development Commission.
>
> "(4) A local government shall not be required to adopt an exception under ORS 197.732 from a land use planning goal protecting agriculture or forestry resources to authorize a use identified by rule of the Land Conservation and Development Commission under this section in a state or local park."

1 including campgrounds and a number of other uses.[2] The prefatory paragraph to that list of
2 uses allowed in state parks states in part that:

[2] OAR 660-034-0035, entitled "Park Uses on Agricultural and Forest Land," provides in relevant part:

> "(1) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a state park, and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a state park, provided such uses are also allowed under OAR chapter 736, division 18 and all other applicable laws, goals, and rules. Local governments may allow state parks and park uses as provided in OAR chapter 660, division 33, and ORS 215.213 or 215.283 on agricultural lands, or as provided in OAR 660-006-0025(4) on forest lands, regardless of whether such uses are provided for in a state park master plan.
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> "(2) 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:
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> "(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;
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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;
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> "(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;

> "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[.]" OAR 660-034-0035(2).

In other words, notwithstanding the direction in ORS 195.120(4) that local governments "shall not be required to adopt an exception" to allow uses authorized by LCDC in state or local parks, *see* n 1, LCDC chose to allow some uses in state parks that in fact do require an exception to Goals 3 or 4, but the requirement to take an exception to the resource goals is obviated where those uses are authorized in a state master park plan adopted prior to July 15, 1998.[3] Rather unhelpfully, however, the rule does not specify which of the uses listed in OAR 660-034-0035(2) require a goal exception in the absence of a state parks master plan.

> "(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;
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> "(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;
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> "(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:
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> "(A) Meeting halls not exceeding 2000 square feet of floor area;
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> "(B) Dining halls (not restaurants)."

[3] One could argue that the provisions of OAR 660-034-0035 and 660-034-0040 are inconsistent with ORS 195.120(2) and (4), to the extent they require an exception for some of the uses identified by LCDC rule in a state or local park. *See* n 1. ORS 195.120(2) directs LCDC to "adopt rules and land use planning goal amendments as necessary to provide for" listed public park uses. LCDC adopted an administrative rule, but did not adopt any goal amendments to provide that listed public park uses that would otherwise require a goal exception do not require a goal exception, as ORS 195.120(4) suggests was intended. On the other hand, one could argue that by providing the option of adopting a master park plan to obviate the need for any goal

OAR 660-034-0040 governs *local* park planning, and in general allows the uses listed in OAR 660-034-0035(2)(a) through (g) to be approved in local parks, under a similar scheme whereby *some* of listed uses require an exception to the resource goals if there is no local master parks plan, but the rule does not specify which uses do and do not require a goal exception in the absence of a local master parks plan. OAR 660-034-0010(8) defines a "local park" as "a public area intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, or park district and that is designated as a public park in the applicable comprehensive plan and zoning ordinance."[4] OAR 660-034-0040(1) encourages local governments to adopt local park master plans, but provides that local governments are not required to adopt a local park master plan in order to approve a park or park uses as conditional uses under ORS 215.213 or 215.283, as "further addressed" in Sections 3 and 4 of the rule.[5]

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exceptions, LCDC has not acted inconsistently with the statute. Because no party makes any arguments at all on this point, we do not consider the issue further.

[4] It is not clear whether the site has been designated as a public park in the county's comprehensive plan and zoning ordinance. Arguably, the county cannot approve a conditional use permit for a local public park unless the local park is first designated as such in the comprehensive plan. But no party raises any issue regarding whether the property currently qualifies as a "local park" under the OAR 660-034-0010(8) definition in the absence of a comprehensive plan designation, and we do not consider the issue.

[5] 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. * * *
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> "* * * * *
>
> "(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.

In turn, OAR 660-034-0040(4) provides that "[a]lthough 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 meets similar criteria to those governing a state master park plan. In short, like state park uses under OAR 660-034-0035, *some* of the uses listed in OAR 660-034-0035(2)(a) through (g) that can be authorized in a local park pursuant to OAR 660-034-0040(4) require an exception to the resource goals, but others do not, and the rule does not specify which listed uses require an exception in the absence of a local master park plan, or even provide any guidance on how to go about determining which of the uses listed in OAR 660-034-0035(2)(a) through (g) require exceptions to Goals 3 or 4.

Finally, we note a contextual provision that may have some bearing on the issue of what kind of uses in a public park require an exception to Goal 3 or 4 that is not subject to a master park plan. OAR Chapter 660, Division 033 describes uses that are permitted in an EFU zone without the necessity of taking an exception to Goal 3. Table 1 to OAR Chapter 660, Division 033 allows on non-high-value farmland *private* "parks, playgrounds, hunting and fishing preserves and campgrounds," subject to standards in OAR 660-033-0130(19). In turn, OAR 660-033-0130(19) limits *private* campgrounds in various ways, including prohibitions on "intensively developed recreational uses such as swimming pools, tennis

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> "(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 * * *"

courts, retail stores or gas stations."[6] Further, OAR 660-033-0130(19)(b) prohibits providing separate sewer, water or electric service hook-ups to individual camp sites.

With that overview of the applicable statues and rules, we turn to petitioners' assignments of error.

FIRST ASSIGNMENT OF ERROR

The county has not adopted a master park plan. Opponents to the proposal argued below that, given the intensity of the proposed RV park/campground, the RV park/campground is among the uses that, in the absence of a local master park plan, require exceptions to applicable statewide planning goals, pursuant to OAR 660-034-0040(4).

The county rejected that argument, finding:

> "[OAR 660-034-0040(3) and (4)] do not establish when Goal exceptions are required to site park uses on exclusive farm use land. In this case, the County has relied on its acknowledged land use regulations in concluding that all of the proposed uses are allowed on the Seven Mile Lane site without the need for exceptions to Goals 3, 4, 11 or 14, as some have alleged. * * *
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> "* * * * *
>
> "Arguments have been made in this case that the proposed park cannot be approved unless the County takes 'exception' to a host of statewide planning goals, including Goals 3, 4, 11 and 14. The Board rejects the arguments made

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[6] OAR 660-033-0130(19) provides, in relevant part:

> "(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. * * * Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.
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> "(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule."

> with regard to Goal exceptions. State law allows the development of public parks in Exclusive Farm Use zones. An exception is not required to allow public park uses in the established zone. The approval is issued pursuant to acknowledged Linn County land use regulations. The statewide land use planning goals do not directly apply to the park application." Record 18-19.

With respect to Goal 3, the county found:

> "Goal 3 directs local governments to preserve and maintain agricultural land. ORS 215.283 allows listed farm and nonfarm uses to take place in exclusive farm use zones. Both state statute and LCDC administrative rules allow the use of agricultural lands for the development of public parks." Record 19.

The county went on to adopt additional findings explaining why it believed that Goals 11 and 14 do not apply to the proposed uses, and therefore that exceptions to those goals are not required. Record 19-22. The second and third assignments of error challenge those findings.

Under the first assignment of error, petitioners argue that the county erroneously concluded that none of the park uses listed in OAR 660-034-0035 require an exception to Goals 3 or 4. According to petitioners, that conclusion is based on the county's apparent belief that a public park is a conditional use in EFU zones under ORS 215.283(2), and exceptions to the resource goals are generally never required for conditional uses allowed under that statute. *See* OAR 660-004-0010(1)(a) (an exception to Goal 3 is not required for any of the farm or nonfarm uses permitted in an EFU zone under ORS chapter 215). On appeal, the county argues in its brief that given LCDC's failure to specify which if any park uses listed in OAR 660-034-0035 require an exception in the absence of a master plan, LUBA should not interpret the rule to require an exception for any of the listed uses. The county argues that LCDC knows how to specify what kind or intensity of nonfarm use is allowed in the EFU zone without taking an exception to Goal 3, and has done so with respect to private campgrounds, for example, under OAR 660-033-0130(19). According to the county, the ambiguous suggestion in OAR 660-034-0040(4) that "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" should not be understood to require that an exception be taken for any of the listed public park uses.

In our view, OAR 660-034-0040(4) is not ambiguous with respect to whether "some of the uses listed in OAR 660-034-0035(2)(a) to (g)" require an exception in local parks, in the absence of a local master park plans. There is no other way to read the rule other than to provide that "some" of the listed uses require an exception. However, the rule is profoundly ambiguous regarding *which* listed uses require an exception in the absence of a local master park plan, and which do not.

On that question, both parties discuss LUBA's decision in *Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382 (2007), which involved a conditional use permit approving improvements to an existing county park, including a pedestrian and vehicle bridge over a creek, hiking trails, a restroom, picnic tables and 23 parking spaces. The county concluded that the requested uses could be approved without taking an exception, because they were on the less-intensive end of the spectrum of uses listed in OAR 660-034-0035(2). We agreed 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." 55 Or LUBA at 399.

Petitioners argue that the park uses listed in OAR 660-034-0035(2) range from relatively high-intensity development such as RV park/campgrounds and marinas with fuel stations to less intensive uses such as day use areas and hiking trails. Petitioners contend that a higher-intensity use such as the proposed 60-acre RV park/campground served by a community water and sewage system, a camp store, clubhouses and other developed amenities, is clearly among the type of listed uses that require an exception to Goal 3, in the absence of a local master park plan.

In its state agency brief, DLCD agrees with petitioners, noting that in *Rural Thurston, Inc.*, LUBA appeared to locate the dividing line between low-intensity uses that do not require an exception and higher-intensity uses that do require an exception, with reference to the Goal 3 administrative rules governing "campgrounds in resource zones." 55 Or LUBA at 399. DLCD argues that LUBA correctly located the dividing line for public park uses that do or do not require an exception based on a comparison to the OAR 660-033-0130(19) rule governing a similar use, campgrounds in private parks. As set out in n 6, OAR 660-033-0130(19) permits a private campground in the EFU zone without an exception to Goal 3, but subject to restrictions intended to preclude intensively developed elements such as "swimming pools, tennis courts, retail stores or gas stations." Further, DLCD notes that OAR 660-033-0130(19)(b) prohibits the provision of separate sewer, water or electric service to individual camp sites. DLCD argues:

> "By comparing OAR 660-033-0130(19) with OAR 660-034-0035 and 660-034-0040 for local parks, it is apparent that the rules establish a parallel though slightly shifted scheme for private campgrounds and local parks. Passive, low-intensity uses are permitted in both private campgrounds and local parks. Intensively developed uses, however, and specifically RV campsites involving separate sewer, water or electrical hookups for the RVs, are prohibited in both private parks and local parks unless the county takes an exception to Goal 3 (or has an approved master plan)." State Agency Brief 12-13.

The county responds that *Rural Thurston, Inc.*, simply held that certain low-intensity park uses do not require an exception to Goal 3, but LUBA's decision in *Rural Thurston, Inc.* did not purport to locate the dividing line, if any, between park uses listed in OAR 660-034-0035(2) that require an exception in the absence of a master park plan, and those that do not. According to the county, the converse of the holding in *Rural Thurston, Inc.* is not true: just because the uses at issue in that case did *not* require an exception does not mean that other listed uses not at issue in that case *do* require an exception.

With respect to comparison with the rules governing private campgrounds at OAR 660-033-0130(19), the county argues that the Goal 3 rule treats private campgrounds

and public parks differently, subject to different standards. The county notes that private parks and campgrounds are not allowed at all on high-value farm soils, but public parks are allowed on land with any kind of agricultural soil. OAR 660-033-0120, Table 1. Private parks and campgrounds are subject to OAR 660-033-0130(19), which among other things prohibits location of a private campground within three miles of an urban growth boundary, unless located on a lake or reservoir. Public parks are not subject to OAR 660-033-0130(19), and can be located in any proximity to an urban growth boundary. Given those differences, the county argues, other OAR 660-033-0130(19) restrictions that apply exclusively to private parks and campgrounds, such as prohibitions on providing sewer, water and electric hookups to individual RV camp sites, should not be imported and applied to campgrounds in public parks subject to OAR 660-034-0035 and 660-034-0040.

We generally agree with the county that it is inappropriate to simply transfer the restrictions applicable to private campgrounds under OAR 660-033-0130(19) to the park uses listed in OAR 660-034-0035(2), and use those restrictions to determine which listed park uses require an exception to Goal 3 in the absence of a master park plan. It is clear under the Goal 3 rule that, for whatever reason, LCDC has chosen to treat public parks more favorably than private campgrounds in private parks. The restrictions that apply to private campgrounds under OAR 660-033-0130(19) might reflect LCDC's general view of the boundary between campground uses permissible on EFU land without an exception to Goal 3 in both public and private parks, but they might also reflect other policy considerations. Absent some indication that LCDC intended that the restrictions that apply to campgrounds in private parks should also apply directly to campgrounds in public parks, or should otherwise be used to delimit public park uses that require exceptions from those that do not, we decline to read that intent into the public park rules.[7]

[7] We understand the county to suggest that OAR 660-033-0130(19) should be ignored completely, or that the only permissible inference drawn from the rule is that because LCDC failed to specify limitations in the

That said, the Goal 3 rule regarding private parks and campgrounds is relevant context, and is the only analogous area of law in which LCDC has attempted to delineate the type or intensity of uses that are allowed in the EFU zone as a conditional use without an exception, from those types or intensities of uses that require a goal exception. That delineation may offer guidance in attempting to discern what LCDC meant in providing that "some" of the listed public park uses require a Goal 3 or 4 exception in the absence of a park master plan. OAR 660-033-0130(19) prohibits "intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations," limits the occupancy of camp sites, and prohibits providing separate sewer, water, and electric hookups to individual camp sites, with the exception of electrical service to yurts. That context suggests, consistent with our reasoning in *Rural Thurston, Inc.*, that LCDC is concerned with park uses that are on the more developed, intensive end of the spectrum. Such uses have a more obvious potential for inconsistency with Goals 3 and 4.

That concern with more developed, intensive park uses is perhaps also reflected in the fact that OAR 660-034-0035 provides for two additional types of uses in *state* parks than are allowed in *local* parks under OAR 660-034-0040. Under OAR 660-034-0035(3)(h) and (i), a state park can include natural and cultural museums and similar facilities, which can include a retail store, and also visitor lodging and retreat facilities, which can include meeting and dining halls. *See* n __. However, in a *local* park, OAR 660-034-0040(4) permits only "the

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Goal 3 rule for public parks and campgrounds, no limitations were intended under OAR chapter 660, division 034. LCDC attaches to its state agency brief legislative history of 2004 amendments to OAR chapter 660, division 034, that provides a partial explanation for why LCDC has not attempted in the Goal 3 rule or elsewhere to delineate what public park uses require exceptions. Briefly, the legislative history suggests that initial drafts of the public park rule did not require separation of uses allowed in state parks into those that require an exception and those that do not, because all were uses allowed in state parks regardless of whether a goal exception would otherwise be required, presumably because state parks all operate under master park plans. Later the draft was amended at the request of the Association of Oregon Counties to include *local* parks, but at that point in rulemaking LCDC was reluctant to differentiate between park uses that require an exception and those that do not, because it "would have required a new round of hearings delving into Goal 3 and 4 rules, which would have delayed adoption of the park rules[.]" January 20, 2004 Staff Report to LCDC, Appendix D to state agency brief, p. 2. That history does not suggest that LCDC's failure to impose limitations in the Goal 3 rule on public park uses similar to those imposed on private parks means that LCDC intended that no limitations apply to public park uses.

uses listed in OAR 660-034-0035(2)(a) to (g)," even with adoption of a local master park plan. Although it is not clear why LCDC chose to authorize uses listed in OAR 660-034-0035(2)(h) and (i) in state but not local parks, it seems clear that a museum with a retail store or a visitor lodging and retreat facility of the kind allowed under OAR 660-034-0035(3)(h) and (i) would be among the most developed and intensive uses potentially allowed in a public park. Again, that suggests that in providing that "some of the uses listed in OAR 660-034-0035(2)(a) to (g)" require a Goal 3 or 4 exception LCDC was referring to listed uses at the most developed or intensive end of the spectrum. However, nothing in the public park rule or immediate context indicates what other listed uses might require a Goal 3 or 4 exception in the absence of a parks master plan, or how intensive or developed a park use must be before it requires an exception.

Without some kind of textual guidance, in our view the most appropriate touchstone in determining which public park uses require a goal exception is to consider directly whether the proposed use is consistent with Goal 3 or 4, whichever is applicable. Goal 3 is "[t]o preserve and maintain agricultural lands." Goal 3 goes on to require that "[a]gricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700." The latter is concerned with residential use of resource land, and is not particularly germane. The state agricultural land use policies in ORS 215.243 provide:

> "(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.
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> "(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

> "(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.
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> "(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones."

Although not especially helpful, consideration of the agricultural land policies, particularly Policy 3, suggests that the more "urban" and service-intensive proposed park development is, the more likely it is to be inconsistent with Goal 3.

Of somewhat more assistance is Goal 3, Guideline B.1, which states that "[n]on-farm uses permitted within farm use zones under ORS 215.213(2) and (3) and 215.283(2) and (3) should be minimized to allow for maximum agricultural productivity." While goal guidelines are simply advisory guidelines and do not constitute mandatory standards, *see* ORS 197.015(9) and *Downtown Community Assoc. v. City of Portland*, 80 Or App 336, 722 P2d 1258 (1986), Guideline B.1 appears to offer pertinent guidance regarding the relationship between Goal 3 and non-farm uses allowed under ORS 215.213(2) and 215.283(2), including parks. *See Utsey v. Coos County*, 176 Or App 524, 573, 32 P3d 933 (2001) (Deits, C.J, dissenting) (Guideline B.1 as a contextual indication that Goal 3 is intended to limit the nature and intensity of park uses on agricultural land). In encouraging local governments to "minimize" non-farm uses to reduce loss of agricultural productivity, Guideline B.1 can be read to suggest that the scope of permanent development, services and infrastructure for non-farm uses should be minimized, if possible, to preserve the potential for agricultural use. As applied to park uses, this suggests that in circumstances where there is more than one way to provide a particular type of park development or service, one that involves significant permanent, high-intensity development or infrastructure and another that involves less permanent or intense development or infrastructure, Guideline B.1 would

encourage local governments to minimize loss of potential agricultural productivity by choosing the less developed or land-intensive option. That is consistent with the policies in ORS 215.243 and other context discussed above. For lack of any better textual or contextual guidance, we will apply that understanding of Goal 3 in determining what disputed park uses or facilities require an exception, in the absence of a master park plan.

Turning to the present case, petitioners and DLCD argue that some of the proposed public park uses and services are so intensive that they require an exception to Goal 3, in the absence of a master park plan. The principal issue for both petitioners and DLCD appears to be the provision of septic, water and electric service to individual RV camp sites. In addition, DLCD argues that the proposed "clubhouses" are not allowed uses under OAR 660-034-0035(2)(a) to (g), and correspond most closely to the "meeting hall" that is authorized in a state park as part of a visitor lodging and retreat facility under OAR 660-034-0035(2)(i), but which is not allowed in a local park without an exception. Petitioners also object to the clubhouses, and in addition contend that development such as the single-family caretaker dwelling, camp store and administrative offices are not permitted without an exception to Goal 3. We address each contention in turn.

A. Septic, Water and Electric Service to Individual RV Camp Sites

OAR 660-034-0035(2)(f) authorizes "[s]upport facilities serving only the park lands wherein the facility is located," including "sewage collection and treatment facilities[.]" The county approved (1) a sewage collection and treatment facility sized to accommodate the 196 RV camp sites that may ultimately be approved in the park, (2) several restroom and shower structures, (3) RV pump-out facilities, and (4) installation of collection and distribution facilities to provide septic, water and electric service to each of the individual RV camp sites. Petitioners and DLCD object only to the provision of full-hookups to individual RV camp sites, arguing that provision of such urban-like and intensive services require an exception to Goal 3, in the absence of a master park plan.

The county provides only a general response that all of the uses listed in OAR 660-034-0035(2)(a) to (g) are permitted in a local park without the need for an exception, and does not address petitioners' and DLCD's arguments regarding specific facilities. We have rejected, above, the county's view that none of the uses listed in OAR 660-0034-0035(2)(a) through (g) require an exception. Although the rule is frustratingly silent on which uses require an exception in the absence of a master plan, it is clear that "some" do.

While it is a close question given the lack of guidance on this issue from LCDC, we agree with petitioners and DLCD that the county has not demonstrated that separate provision of septic, water and electric services to each of the individual RV camp sites is consistent with Goal 3. Although OAR 660-033-0130(19) does not control authorization of campgrounds in public parks in EFU zones, it does generally suggest that LCDC is concerned with the intensity of public facilities in campgrounds on agricultural lands. Providing full hook-ups to individual RV camp sites places a campground one significant step closer towards potential use as a high-density residential or quasi-residential use, and hence toward the "urban" end of the scale. ORS 215.243(3) suggests that provision of "urban-like" development or services on EFU land is inconsistent with Goal 3. Consideration of Goal 3 Guideline B.1 suggests that where a local government has a choice between types of infrastructure supporting a non-farm use, to ensure consistency with Goal 3 it should "minimize" permanent loss of agricultural potential by choosing the less intensive type of infrastructure. It is common in campgrounds, even those that accommodate RVs, to provide centrally located restrooms and water distribution sites as the sole means of providing essential septic and water services to a number of different camp sites. The full hookup/full service system approved by the county presumably requires a significantly greater extent and intensity of infrastructure, for pipes, connections, pumping stations, etc. Given that context, we believe that it is inconsistent with Goal 3 to provide full utilities to individual RV camp sites in a public park on EFU land. Accordingly, we agree with

petitioners and DLCD that the county erred in concluding that it can authorize provision of full utilities to individual RV camp sites without an exception to Goal 3.

B. Clubhouses

The county approved as part of the campground use "[o]ne or two clubhouses or enclosed shelters (approximately 1,200 s.f.) for group activities. These will be designed for all-season use with large sliding glass doors on at least one side." Record 12. OAR 660-034-0035(2)(a) provides for "group shelters" as part of a campground. DLCD argues that an enclosed all-season "clubhouse" is not appropriately viewed as a campground "group shelter," but is instead closer in character to "meeting halls not exceeding 2000 square feet of floor area" that are permitted in state parks, but not local parks, under OAR 660-034-0035(2)(i) as part of a visitor lodging and retreat center. *See* n 2.

The county responds that Conditions 1 and 2 effectively preclude development of the proposed clubhouses. Condition 1 states:

> "Only the uses described in the findings for approval, or listed as 'park' uses in LCC [Linn County Code] 920.100(B)(208), and not otherwise limited by these conditions, are allowed under this approval." Record 35.

Condition 2 states:

> "A Recreational Vehicle (RV) camping facility, having no more than 50 [RV] camping spaces may be developed on the site, without prior, additional public process or Board of Commissioners' review, in accordance with law. Additional public process and Board of Commissioners' review are required prior to construction of more than 50 RV camping spaces at the park. A caretaker dwelling, interpretative kiosks and trails may be developed as operations of the park warrant." *Id.*

The findings describe and appear to approve all of the proposed park uses, including the proposed clubhouses, but we understand the county to argue that Condition 2 operates to "limit" the approved uses to those specified in Condition 2. However, the only specific limitation is to the number of RV spaces. The last sentence of Condition 2 states that the caretaker dwelling, interpretative kiosk and trails may be developed as operations warrant,

but we do not understand that sentence to implicitly deny the other proposed uses, such as the day use area, picnic tables, etc. If the county intended Condition 2 to reject the proposed clubhouses and other proposed park uses approved in the findings, that intent is not adequately expressed.

On the merits, the county does not argue that the proposed clubhouses should be viewed as "group shelters" permitted in a local park under OAR 660-034-0035(2)(a) rather than "meeting halls" that are not permitted in a local park under OAR 660-034-0035(2)(i). As noted above, a "meeting hall" is associated with one of the most intensive uses listed in OAR 660-034-0035(2), and is almost certainly a use that requires a goal exception, in the absence of master park plan.

We tend to agree with DLCD that a fully enclosed, 1,200-square foot structure intended for all-season group activities appears to be closer in nature to the "meeting halls not exceeding 2000 square feet of floor area" described in OAR 660-034-0035(2)(i) and not allowed in a local park, than it is to the campground "group shelter" contemplated by OAR 660-034-0035(2)(a). Although it is far from clear to us what distinguishes a group shelter from a meeting hall, the county has made no effort to justify the relatively large size, full-enclosure and all-season nature of the proposed clubhouses, or explain why the clubhouses are properly viewed as campground "group shelters" that can be approved in a local park without an exception to Goal 3.

C. Camp Store

OAR 660-034-0035(2)(a) permits a "camp store" as part of a campground. Petitioners assert that the proposed camp store is a category of park uses that require a goal exception. The county presents no specific argument with respect to the camp store.

The findings do not describe the camp store, other than to state that "[i]t would sell basic convenience items for the RV park users." Record 15. The store will apparently resemble a convenience store, which is not a retail use permitted in the EFU zone under ORS

chapter 215 or under the Goal 3 rule. In general, the statute and rule do not permit retail commercial activities on agricultural land. In addition, the findings note that "[o]ther commercial areas are located immediately adjacent to the RV camping area, and elsewhere near the I-5 interchange." *Id.* These commercial areas include a convenience store and service stations, and are presumably located in areas not zoned EFU or subject to Goal 3. We agree with petitioners that because a commercial use such as a convenience store is not allowed in the EFU zone or on Goal 3 land without an exception, a camp store in a public campground on EFU land is the kind of use that requires a Goal 3 exception, in the absence of a park master plan.

D. Caretaker Dwelling and Administrative Office

OAR 660-034-0035(2)(g) permits "administrative offices [and] staff lodging" under the category of park maintenance and management facilities. Petitioners contend that such uses are among the types of uses in a public park that require a goal exception.

We disagree. The campground is open 24 hours a day, 365 days per year, with a full-time park ranger and seasonal staff, and petitioners do not explain how the proposed campground could operate without some kind of administrative office and provision for staff lodging. We note also ORS 215.755(3) provides for "[c]aretaker residences for public parks and public fish hatcheries" in forest zones, without the need for a Goal 4 exception. The OAR 660-034-0035(2)(g) provision for "staff lodging" in public park governs parks in both agricultural and forest zones. If the OAR 660-034-0035(2)(g) provision for "staff lodging" encompasses a caretaker dwelling in a public park on forest land, we do not understand why OAR 660-034-0035(2)(g) must be interpreted to exclude a caretaker dwelling in a public park on agricultural land.

E. Conclusion

In sum, we agree with petitioners and DLCD that the county must either remove from the proposal the approval of the camp store, clubhouses, and full hookups to individual RV camp sites, or take exceptions to Goal 3 for those aspects of the proposed park.

The first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

Petitioners contend that a 196-space RV park/campground is an urban use of rural land, and therefore requires an exception to Goal 14. According to petitioners, the intensity and density of the RV park/campground and associated services, and its location within three miles of two different urban growth boundaries, suggests that the proposed park should be viewed as an urban-like residential use that is prohibited on rural land under Goal 14 and the reasoning in *1000 Friends of Oregon v. LCDC* ("*Curry County*"), 301 Or 447, 724 P2d 268 (1986). Petitioners cite to *Oregon Shores Conservation Coalition v. Coos County* ("*Indian Point I*"), 55 Or LUBA 545, *aff'd* 219 Or App 429, 182 P3d 325 (2008), for the proposition that a large, dense, full-utility RV park located close to an urban growth boundary can be an urban use of rural land requiring an exception to Goal 14.

The county argues initially that because a public park is a conditionally permitted use in the EFU zone under ORS 215.283(2) that a local government can approve a public park without the need to consider compliance with Goal 14, unless LCDC provides otherwise, citing *Jackson Cty. Citizens' League v. Jackson County*, 171 Or App 149, 15 P3d 42 (2000). In that case, the Court of Appeals agreed with LUBA that because Goal 14 does not apply directly to conditional uses, and LCDC has not adopted rules or otherwise taken steps to restrict the county from approving a golf course on rural land as authorized by ORS 215.283(2), the county was not required to consider whether the golf course complied with Goal 14. On the merits, the county argues that the county adopted findings addressing Goal 14 and correctly concluded that the proposed RV park/campground is not an urban use.

OAR 660-034-0040(4) provides in relevant part that "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[.]" (Emphasis added.) Read in context with OAR 660-034-0040(1), which allows a local government to approve a local park as a conditional use "as further addressed" in OAR 660-034-0040(3), it can be argued that in approving a local public park as a conditional use in the absence of a local park master plan LCDC has required local governments to consider whether a proposed local park is consistent with all applicable statewide planning goals, potentially including Goal 14.

However, even if that is the case, we agree with the county that petitioners have not demonstrated that the county erred in concluding that the proposed park is not an urban use of rural land, and does not require an exception to Goal 14. The main authority petitioners cite for that proposition is *Indian Point I,* which involved a significantly different proposal to install on a permanent or semi-permanent basis 179 "park model" RVs on rural land within one mile from an urban growth boundary. As we explained recently in *Campers Cove Resort, LLC v. Jackson County*, __ Or LUBA __ (LUBA No. 2009-117, March 31, 2010), *review pending* (CA145328), a "park model" RV resembles a small manufactured dwelling that is permanently installed on site more than the typical self-propelled or pull-behind recreational vehicle that can readily be used for temporary occupancy of a campground site. The present case does not involve installation of park model RVs, or permanent or semi-permanent occupancy of camp sites by RV vehicles, which gave rise to the Goal 14 concerns raised in *Indian Point I*.

Without those two elements, petitioners have not demonstrated that the county erred in concluding that the proposed public park and RV campground do not violate Goal 14. In our view, the mere proximity of the park to UGBs, the density of the campground spaces, and the provision of utilities to individual camp sites are not sufficient, in themselves, to

convert a rural campground to an urban use requiring an exception to Goal 14, particularly in light of the condition restricting occupancy to no more than seven days. That condition goes a long way to ensure that the campground will not be used for high-density residential or quasi-residential use, which is the most proximate Goal 14 concern.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners argue that the county's decision violates Goal 11 because it establishes a sewer system outside of a UGB. The Goal 11 rule, at OAR 660-011-0060(2), provides that:

> "* * * a local government shall not allow:
>
> "(a) The establishment of new sewer systems outside of urban growth boundaries or unincorporated community boundaries[.]"

According to petitioners, the community sewage disposal system that will dispose of the waste generated at the park constitutes a "sewer system" that is prohibited by Goal 11 without an exception.

OAR 660-011-0060(1)(f) defines "sewer system" as:

> "* * * *a system that serves more than one lot or parcel*, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal * * *." (Emphasis added.)

As the emphasized language illustrates, a sewer system must serve more than one parcel to constitute the type of sewage disposal system that requires an exception to Goal 11. In other words, the same sewage disposal system that would be a "sewer system" under the rule if it served two parcels would not be a "sewer system" under the rule if it only served one parcel. As discussed earlier, the subject property currently consists of two parcels, and a sewage disposal system that would serve both parcels would presumably require an exception to Goal 11. The county, however, found that the sewage disposal system must be confined to one parcel unless and until the two existing parcels are consolidated, and

imposed a condition so requiring.[8] If the two parcels are consolidated, the sewage disposal system could then serve the entire site. The county's findings state:

> "It has been suggested that since the park is proposed for two separate tax lots, park facilities and services cannot be allowed to cross existing tax lot lines without implicating Goal 11. Goal 11 does not prevent a County agency from providing a public water system or sewage disposal system, or other, similar service, to a public park. In this case, all of the proposed services are proposed to be provided by resources available on-site. The applicant agrees to a condition of approval requiring that the two contiguous tax lots owned by the county and proposed for development of a park be formally consolidated into a single tax lot, prior to development of any sewer or water systems on the property that cross existing tax lot lines. Goal 11 is not implicated in this case, and no exception to Goal 11 is required." Record 19.

Petitioners appear to argue that even if the proposed sewage system is located on and serves only one parcel it is nonetheless a "sewer system" prohibited by Goal 11. Petitioners are wrong. The rule clearly states that a "sewer system" prohibited by Goal 11 must "serve[] more than one parcel." A sewage disposal system that only serves one parcel is not a "sewer system" for purposes of Goal 11 and the Goal 11 rule.

Petitioners cite *Indian Point I* for the proposition that the proposed sewage disposal system requires a Goal 11 exception. In *Indian Point I*, we found that the method of sewage disposal served "more than one unit within a planned unit development" and therefore met the definition of "sewer system" in OAR 660-011-0060(1)(f). Although *Indian Point I* also involved an RV park/campground, as explained the proposal at issue in that case was to permanently or semi-permanently install a large number of "park model" RVs, served by community sanitary facilities, which we found to constitute a residential planned unit development. Because we found that the RV park in *Indian Point I* was a residential planned unit development and the sewer system served more than one unit in the planned unit development, Goal 11 applied to the decision. The challenged decision does not involve

[8] Condition 11 requires consolidation for the tax lots "[p]rior to development of any sewer or water systems on the subject property that cross an existing tax lot line." Record 36.

park model RVs or a planned unit development, and therefore the reason Goal 11 applied in *Indian Point I* does not apply to this decision.

Petitioners also argue that the county improperly deferred its finding of compliance with Goal 11 by conditioning approval on consolidation of the two existing tax lots. According to petitioners, due to other county regulations it is not feasible to consolidate the two tax lots and therefore the deferral is improper. Petitioners, however, misunderstand the county's decision. The county recognized that it could not approve a sewage disposal system that served two parcels, so to ensure consistency with Goal 11 it restricted the sewage disposal system to only one parcel. Whether consolidation occurs or not, Condition 11 ensures that the sewage system will not serve more than one parcel, and therefore ensures consistency with Goal 11. The county did not defer a finding of compliance with Goal 11.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

In its findings, the county addressed the Transportation Planning Rule (TPR) at OAR 660-012-0060, which implements Statewide Planning Goal 12 (Transportation). In brief, the TPR requires certain measures be taken if a "plan or land use regulation amendment significantly affects a transportation facility."[9] The county noted that neither Goal 12 nor the

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[9] OAR 660-012-0060(1) provides:

> "Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:
>
> "(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
>
> "(b) Change standards implementing a functional classification system; or
>
> "(c) As measured at the end of the planning period identified in the adopted transportation system plan:

TPR applied to approval of a conditional use permit, but concluded based on a traffic study that the proposed park does not "significantly affect" any transportation facility, and thus is consistent with OAR 660-012-0060.

Petitioners dispute the adequacy of the traffic study, and argue that the traffic study fails to demonstrate that the proposed park will not "significantly affect" nearby transportation facilities within the meaning of OAR 660-012-0060. With respect to whether Goal 12 or the TPR apply to a conditional use permit, petitioners contend that the county's decision approves uses and facilities that will require adoption of exceptions to Goals 3, 11 and 14, as argued under the first, second and third assignments of error, and which will therefore require a comprehensive plan amendment. Because the proposed park will require a comprehensive plan amendment, petitioners argue, the county is required to show that the proposal complies with the TPR.

We sustained the first assignment of error in part, agreeing with petitioners and DLCD that some of the uses and facilities the county approved in the park require an exception to Goal 3, in the absence of a master park plan. On remand, the city could remove the components of the proposal that, we have held, require an exception to Goal 3, in which case no Goal 3 exception or comprehensive plan amendment would be necessary. Alternatively, the county could adopt an exception to Goal 3, which would require a comprehensive plan amendment and trigger potential application of the TPR. In the current

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> "(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
>
> "(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
>
> "(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan."

posture of this appeal, we cannot determine whether the TPR applies or not, and thus see no purpose in addressing petitioners' challenges to the county's finding and supporting evidence that the proposed park will not "significantly affect" any transportation facility and is thus consistent with the TPR. If on remand the county chooses to adopt an exception to Goal 3, it should re-evaluate its TPR findings in light of petitioners' challenges presented in this appeal. If the county chooses to remove from the proposal all components that we have held require a goal exception, then the issue of TPR compliance becomes moot.

The fourth assignment of error is sustained.

The county's decision is remanded.