

**Virginia Board of Conservation and Recreation
November 14, 2008
VCU Rice Center, Charles City, Virginia**

Board of Conservation and Recreation Members Present

Mark E. Smith, Chair	Stephen Murray, Vice Chair
Alan D. Albert	Linda Crandell
Gwen Mason	Sheryl W. Swinson
David Watts	

Board of Conservation and Recreation Members Not Present

Gerry Connolly	Joy Antoinette Cooley
Richard Formato	E. Carter Nettles
Jennifer C. Wagner	

DCR Staff Present

Joseph H. Maroon, Director
Russell W. Baxter, Deputy Director
John R. Davy, Director, Division of Planning and Recreation Resources
David C. Dowling, Director of Policy, Planning and Budget
Joe Elton, Director, Division of State Parks
Michael R. Fletcher, Board and Constituent Services Liaison
Tom Smith, Director, Division Natural Heritage
Warren Waugh, Assistant Director, Virginia State Parks

Call to Order and Introductions

Chairman Smith called meeting to order. A quorum was not yet present.

Mr. Smith welcomed members. He noted that David Brickley was no longer a member of the Board and that David Watts had been appointed to that position. Mr. Smith welcomed Mr. Watts to the Board.

Mr. Smith said that he was pleased that the Board was able to meet at the Rice Center. He said that the Center had been developed through a partnership with VCU, and federal, state and government entities. Mr. Smith introduced Dr. Len Smock from VCU who serves as the Director of Rice Center.

Dr. Smock gave an overview of the history and construction of the facility.

Mr. Maroon thanked Dr. Smock and noted that this was the second Board meeting DCR had held at the facility.

Mr. Albert arrived and a quorum was declared present.

Minutes of the August 1, 2008 Meeting

MOTION: Ms. Mason moved that the minutes of the August 1, 2008 meeting of the Board of Conservation and Recreation be approved as submitted by staff.

SECOND: Mr. Murphy

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Maroon gave the Director's report.

Mr. Maroon noted that Mr. Brickley had asked not to be reappointed. Mr. Maroon welcomed David Watts to the Board.

MOTION: Mr. Albert moved that the Board approve the following resolution:

VIRGINIA BOARD OF CONSERVATION & RECREATION
VIRGINIA DEPARTMENT OF CONSERVATION &
RECREATION
COMMENDING RESOLUTION
Presented to

DAVID G. BRICKLEY

In appreciation of his outstanding service as a member of the Board of Conservation and Recreation from 2003 through 2008, and

In recognition of his previous public service as a member of the Virginia House of Delegates (including 20 years on the Conservation and Natural Resources Committee), as Director of the Department of Conservation and Recreation from 1998 to 2002, and his service on regional greenway and trail initiatives,

BE IT THEREFORE RESOLVED that the Virginia Board of Conservation and Recreation recognizes and applauds Mr. David G. Brickley for his life long commitment to the recreational and natural resources of the Commonwealth,

BE IT FURTHER RESOLVED, that on this date, November 14, 2008, the Virginia Board of Conservation and Recreation establishes as public record their deep appreciation for Mr. Brickley's years of service.

SECOND: Ms. Mason

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Maroon noted that Board Member Gerry Connolly had recently been elected to Congress and would be stepping down from the Board.

Mr. Maroon said that DCR was very actively engaged with Stafford County for the purchase of an additional 1,100 acres associated with Phase II of the Crow's Nest property. He said that the process of acquiring Crow's Nest had spanned more than ten years.

Mr. Maroon stated that of the \$30 million appropriated for land acquisition in the last budget, that Governor Kaine had committed four million for Crow's Nest. He said that DCR was hoping to combine this with other funds from federal grants and possibly funds from the County.

Mr. Maroon said that the committee chaired by Ms. Mason had done a substantial amount of work regarding the showcasing of Natural Area Preserves. However, he said that with the economy and the budget situation those plans would have to be put on hold. Mr. Maroon said the budget situation was not very promising.

An inquiry was made whether recreational facilities would be placed on Crow's Nest. Mr. Maroon said that Widewater State Park in the same area of Stafford County was more suitable for park development.

Ms. Mason inquired as to what other park developments are planned.

Mr. Maroon said that another property, High Bridge, would be come a premier state park. He said the park will be about 35 miles long. He said that in August of 2008, the first four miles of the trail were opened. The plan is to have the entire park opened by Summer 2009. This is DCR's 35th State park. DCR has land for an additional four parks.

Mr. Maroon said a new park will also be developed in Powhatan. The land was carved out of the Beaumont Juvenile Correctional Facility. He asked Mr. Davy to provide additional information.

Mr. Davy said that progress had been delayed due to current budget restrictions but that the Agency was beginning to develop the RFP (Request for Proposal) to begin the planning. He said that DCR currently had about 18 projects under construction. The Powhatan project had been delayed to allow the other projects to get up to speed.

Ms. Mason asked if the transportation issues concerned the park had been addressed.

Mr. Davy said that VDOT had been directed to do a study and report back on necessary road improvements.

Ms. Swinson said that the road estimate came in at \$2.7 million.

Mr. Davy said that if VDOT gets the necessary funding they can proceed. He said the first phase of park development would not include overnight facilities that when built would necessitate road improvements to allow access by recreational vehicles.

Mr. Maroon said that the hope was to have a dedication of the park before Governor Kaine leaves office.

Mr. Maroon said that the Agency had been talking about Grand Caverns for some time. He said that many in the Valley were hoping for the Caverns to become a state park. It is currently owned by a regional park authority.

Mr. Maroon said that the General Assembly had asked for another report to the budget committees regarding Grand Caverns. He said that the facilities around the Cavern are in need of substantial improvements which would be immediate costs. He said that would require the closing of the facilities until such time as improvements could be made. He said there was concern with regard to the closing of the property. However, DCR would make that a condition of any transaction.

Mr. Maroon said that private cavern owners in the area have also expressed concerns regarding the state owning the property. DCR has met with private owners as well as legislators and local representatives from the area. He said DCR also received a commitment of \$350,000 from localities to defray some of the operational costs.

Mr. Maroon said that, as this has been discussed for over a decade, DCR has asked for a clear sign of intent from the General Assembly.

Mr. Maroon said that in previous discussions ownership of Natural Chimneys had been tied to Grand Caverns. However, Augusta County has indicated a willingness to absorb Natural Chimneys into their park system.

Mr. Maroon said that DCR had also been having ongoing discussions regarding the Clinch River Valley area in Russell County. Delegate Bud Phillips is interested in have a park site or increased outdoor recreational opportunities in the area. DCR owns the Pinnacle and Cleveland Barrens Natural Area Preserves in Russell County.

As a follow-up to previous discussions, Mr. Maroon referenced a letter from Assistant Attorney General Elizabeth Andrews regarding Fundraising by the Board of Conservation and Recreation. A copy of this letter is available from DCR.

Mr. Maroon said that there had been discussions regarding whether the Board had authority to raise funds privately for the support of Agency activities. Mr. Maroon said that the letter does explain that the Board has the authority to raise funds. However, that activity must occur under a plan authorized by the Department of Planning and Budget. Mr. Maroon said that further action would be postponed until following the General Assembly session and the addressing of budget issues.

Mr. Watts asked if DCR allowed corporate sponsorships on displays.

Mr. Smith said that naming opportunities have been discussed.

Mr. Murray said that there was a need to protect the image. He said the public often gets tired of seeing corporate names on public facilities.

Mr. Watts said that guidelines could allow this to be addressed on a project by project basis.

Mr. Smith said that in view of the current economic situation it would be best to continue to research how this activity might proceed and to have further discussion to answer any questions. He asked the staff to continue to pursue the matter and said that it would be on the agenda at the spring meeting of the Board.

Ms. Crandell noted that the Board had already established a naming policy for parks and buildings.

Ms. Mason said that policy addressed individual names. She said that while exhibits were important with regard to fundraising, due to the current economic concerns there may be a need to reprioritize.

Mr. Maroon said that it would be important to know the scope of the budget cuts before embarking on a fundraising plan. He said that operations funding was a very challenging situation. He said a fundraising plan would likely be focused on capital and the equipping of buildings.

Ms. Crandell said that it could be problematic when there were funds to build, but not to staff a facility.

Mr. Maroon said that the intent was for the Board to help with the substantial needs of the Agency. He said that when the topic was brought up the present budget situation was unknown.

Mr. Smith said that the fundraising committee would continue their work and report back to the Board at the spring meeting. He confirmed that Ms. Swinson will chair the committee. Mr. Watts, Mr. Murray and Ms. Crandell will serve as committee members.

Mr. Maroon gave an update regarding the issue of guns in state parks. He distributed a copy of a letter from the Attorney General to State Senator Ken Cuccinelli addressing the issue. The Attorney General was asked to issue an opinion regarding open carry of firearms in state parks.

Mr. Maroon said that the opinion of the Attorney General was that DCR does not have the authority to regulate firearms in the parks and that the regulations should be revised accordingly. A copy of the Attorney General's letter is available from DCR.

Mr. Smith noted that the Agency currently allows concealed carry with a permit. Also a number of parks allow limited hunting under a permit process or a managed hunt.

Mr. Smith said that staff would continue to work on this issue and would report back to the Board.

Mr. Murray asked how the parks were currently handling open carry.

Mr. Wahl said that currently the park would contact the individual and ask them to comply with the current regulation which does preclude open carry.

Mr. Maroon said that at this point the regulation remained on the books and was a long standing policy. He said that, thus far, there have not been problems.

Mr. Maroon said that the current state park regulations have been on the books since 1965 or in some cases as far back as 1936. He said that DCR does allow concealed weapons with a permit and managed hunts.

Mr. Maroon said that there have been three Attorney General opinions since 2001. He said that the 2001 ruling indicated that DCR had the general authority to regulate firearms. A 2002 Attorney General opinion that said that in the absence of explicit authority DCR could not prohibit concealed carry with a permit. Governor Warner agreed with that opinion and directed the Department to modify its regulations accordingly.

Mr. Smith asked if that opinion was for state parks only or for all parks.

Mr. Maroon said the opinion specifically addressed state parks.

Mr. Maroon noted a news article in the Virginian Pilot addressing the issue. That article may be obtained at the following address: <http://hamptonroads.com/2008/10/keep-parks-safe-loaded-guns>.

Mr. Maroon said that he had discussed the issue with Senator Cuccinelli. He said the Senator was not currently aware of the issue in national parks.

Mr. Murray asked if under current regulations a visitor was required to advise the park that they were carry a weapon.

Mr. Wahl said that was not currently required. He said that most courses for concealed carry outline protocols to be observed, but those are not mandated.

Mr. Watts asked from a technical standpoint if the Attorney General said that regulations are not in accordance with state statute was that saying that the AG would not support a prosecution under the regulation. He asked if that could raise the risk of a civil rights violation.

Ms. Andrews said that it would be difficult to defend an Agency in that situation. She said if the Governor were to choose to advise DCR not to revise the regulations and DCR chose to enforce them as currently written, DCR would be advised to retain outside counsel.

Mr. Wahl said that any criminal action would be handled by the Commonwealth Attorney in the specific jurisdiction.

Mr. Maroon said that the Agency would follow the Governor's directive and that he would keep the Board informed regarding this issue.

Master Plan Update: Douthat State Park

Mr. Davy presented an update regarding proposed amendments to the Master Plan for Douthat State Park. A complete copy of the Executive Summary is available from DCR.

The current Douthat State Park Master Plan was first adopted in 1998. In 2004, in keeping with the five-year review schedule, the plan was reviewed to determine if any changes were necessary and it was determined that there were none. Several projects identified for future development in the 1998 plan were funded with the 2002 General Obligation Bond. Several cabins and a new six-bedroom lodge were proposed to be constructed in the cabin area. A 20-site equestrian campground with bathhouse and horse stalls was also funded as well as a day-use horse trailer parking lot and trail head facility. Some new trails were to be constructed and many existing trails are to be upgraded under the bond to support use by mountain bicycles, pedestrians, and equestrians.

In 2007, the state acquired the Whispering Pines Campground as an addition to Douthat State Park. This 52-acre campground was in need of considerable renovation to bring it to code and to upgrade the access road and bridges. Existing facilities on the property were removed and a new site plan for the

property has been formulated. This site provides enough suitable land to expand camping in the park to meet the measured demand.

In 2008, planners and state park staff from the Department of Conservation and Recreation conducted a review of the current master plan in accordance with § 10.1-200.1 of the Code of Virginia. After a thorough review of the adopted master plan and a discussion of what had changed, it was determined that conditions had changed to the point where some modifications of the master plan were advised.

Recommended revisions were as follows:

- Two proposed developments from the 1998 plan, the Middle Mountain Lodge and the Middle Hollow Camp were determined to have a detrimental impact to the scenic character of the park and would have required extensive new road construction. By removing the proposed developments from the back country portions of the park, the developed footprint of the park will be substantially reduced and the plan will retain more of its original CCC design vision.
- A 1998 plan for construction of an equestrian campground was found to be too restrictive to meet requirements. With the acquisition of Whispering Pines property, it is proposed that following the completion of Whispering Pines Campground, that Campground "B" be converted to an equestrian campground.
- The 24 campsites in "B" will be replaced by 38 campsites in Phase I at Whispering Pines.
- Another change in the master plan is the reduction of the number of new cabins proposed for the park. New cabin construction has been proposed for only one new area instead of four.
- The estimated cost to complete development of Douthat Park, including the 2002 GOB projects, is \$39,800,536.

MOTION: Ms. Mason moved that the Board recommend adoption of the revisions to the Master Plan for Douthat State Park as presented by staff.

SECOND: Mr. Watts

DISCUSSION: None

VOTE: Motion carried unanimously

Ms. Crandell commended staff for the Master Planning process.

Recreational Road Access Request

Mr. Davy presented the Recreational Road Access Requests.

MOTION: Ms. Swinson moved that the Board of Conservation and Recreation accept the access road proposal as presented by staff and recommend to the Director of the Department of Conservation and Recreation that action be taken to designate Ivy Creek Park in the City of Lynchburg as a public recreational area. Further, the BCR recommends that the Commonwealth Transportation Board provide Recreational Access Road Funds for this public park.

SECOND: Ms. Crandell

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Mr. Murray moved that the Board of Conservation and Recreation accept the access road proposal as presented by staff and recommend to the Director of the Department of Conservation and Recreation that action be taken to designate South Lawson Park in the City of Poquoson as a public recreational area. Further, the BCR recommends that the Commonwealth Transportation Board provide Recreational Access Road Funds for this public park.

SECOND: Ms. Swinson

DISCUSSION: None

Natural Area Preserve Names

Mr. Smith presented the proposed name for Fletcher Ford Preserve.

The Cope Tracts represent an addition of 55 acres to the 211-acre Fletcher Ford Preserve owned by The Nature Conservancy along the Powell River. The Cope 1 & Cope 2 Tracts were purchased by The Nature Conservancy and funded by VLCF and dedicated as a Natural Area Preserve.

This preserve protects a globally rare limestone woodland community, state rare plant species Gyandotte beauty and Canada bluets, and eleven state and globally rare mussel and fish species.

MOTION: Ms. Swinson moved that the Board of Conservation and Recreation recommend to the Director that the area presented by staff be named the Fletcher Ford Preserve.

SECOND: Ms. Mason
DISCUSSION: None
VOTE: Motion carried unanimously

Mr. Smith noted that previously the Board had recommended approval for the name Sweet Spring Hollow Natural Area Preserve in Montgomery County. At the request of the owner, DCR has approved the name change to Sweet Spring Natural Area Preserve.

State Park Regulations

Mr. Dowling gave the following presentation regarding Regulations.

Board of Conservation and Recreation Regulatory Overview November 14, 2008

What is a regulation?

- A regulation is a general rule governing people's rights or conduct that is promulgated by a state agency and has the force of law.
- Agencies promulgate regulations in order to administer and enforce specific state laws and to implement general agency objectives.
- Each regulation must be authorized by law. Each chapter of the Virginia Administrative Code (VAC) contains a single regulation.
- Regulations are promulgated in accordance with the Virginia Administrative Process Act.

What is the Virginia Administrative Process Act (APA)?

- The Virginia Administrative Process Act (APA) provides the basic framework for rulemaking in Virginia. The APA sets out the stages of the regulatory process, including notice and comment; requires agencies to promulgate public participation guidelines on how the public can be involved in the rulemaking process; and requires the Governor to publish procedures for executive review of regulations.
- Administrative Process Act Definition: "Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

Title 4: Agency 3 - BOARD OF CONSERVATION AND RECREATION

Chapter 11 PUBLIC PARTICIPATION GUIDELINES (effective October 29th)

Chapter 10 REGULATIONS GOVERNING APPLICATION FOR AND USE OF GRANT FUNDS TO LOCALITIES (Agency 45)

Title 4: Agency 50 - VIRGINIA SOIL AND WATER CONSERVATION BOARD

- Chapter 11 PUBLIC PARTICIPATION GUIDELINES
- Chapter 20 IMPOUNDING STRUCTURE REGULATIONS
- Chapter 30 EROSION AND SEDIMENT CONTROL REGULATIONS
- Chapter 50 EROSION AND SEDIMENT CONTROL CERTIFICATION REGULATIONS
- Chapter 60 VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS

Title 9: Agency 10 - CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

- Chapter 10 PUBLIC PARTICIPATION GUIDELINES
- Chapter 20 CHESAPEAKE BAY PRESERVATION AREA DESIGNATION AND MANAGEMENT REGULATIONS

Title 4: Agency 5 - DEPARTMENT OF CONSERVATION AND RECREATION

- Chapter 11 PUBLIC PARTICIPATION GUIDELINES
- Chapter 15 NUTRIENT MANAGEMENT TRAINING AND CERTIFICATION REGULATIONS
- Chapter 20 STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO OPEN SPACE USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW
- Chapter 30 VIRGINIA STATE PARKS REGULATIONS
- Chapter 36 STANDARD FEES FOR USE OF DEPARTMENT OF CONSERVATION AND RECREATION FACILITIES, PROGRAMS, AND SERVICES

How is a regulation promulgated?

- A regulation is created, amended, or repealed through a regulatory action in accordance with the APA.
- Typically, regulatory actions take about 18 months from start to finish.
- The purpose of a regulatory action is to ensure that the public has an opportunity to participate in the rulemaking process and that all perspectives are considered in the development of a final regulation.
- In addition, proposed regulations must meet the Governor's policy goals as set out in his Executive Order and are usually subject to an economic impact analysis.
- Unless there are special circumstances each regulatory action goes through a standard three stage process giving state decision makers, businesses and the public ample opportunity to scrutinize the proposed change and provide recommendations and feedback.

Fast-Track Rulemaking Process

- Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial.
- To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees.

- Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

DCR Authority for Promulgation of State Park Regulations

- § 10.1-104. Powers of the Department.
 - A. The Department shall have the following powers, which may be delegated by the Director:
 - 4. To prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law;
- The State Park Regulations have been part of the Virginia Administrative Code (VAC) since at least 1965 and likely since the State Park System was created in 1936.
- Other than the firearms regulation which was amended effective February 12, 2003, the regulations have not been amended since at least May 4, 1983 and most likely not since they were originally promulgated.

Reasons for amending the State Park Regulations

- As noted above, the regulations have not been reviewed for decades.
- Many of the regulations are antiquated (ex. Tin cans, talking machine, etc.)
- Many regulations are duplicative of Code and not utilized for enforcement purposes.
- Needed to address firewood importation as a mechanism to control infesting or infecting species.
- Recommendations from the Attorney General's Regulatory Reform Task Force

OAG Recommendations: State Park Regulations (4VAC5-30)

Section	Title	Recommendation	Effective date of change	Process
4VAC5-30-10	Definitions	The definition of "person" is not consistent with the definition of "person" used in the Nutrient Management program, Soil and Water Conservation Board, Stormwater Management, and general DCR regulations, but it does match the definition in the Department of Forestry regulations.	To be considered after completion of all exempt actions	Fast Track

		DCR should consider adopting one sufficiently broad, consistent definition throughout its regulations. One possibility would be to use the definition in § 2.2-419 that is used by the Secretary of the Commonwealth.		
4VAC5-30-40	Permits	Add the ability to apply for a permit electronically		To be determined by potential legislation
4VAC5-30-40	Permits	Include an explanation of how to obtain a permit	To be considered after completion of all exempt actions	Fast Track
4VAC5-30-50	Flowers, plants, minerals	Consolidate “special permits” for scientific collecting	To be considered after completion of all exempt actions	Fast Track
4VAC5-30-70	Disposal of refuse, garbage, etc.	Add § 10.1-200.2 to statutory authorization provision	Completed by December 2008	Exempt
4VAC5-30-100	Gambling	Remove regulations that are redundant because these illegal activities are already covered in the Code of the Virginia	To be considered after completion of all exempt actions	Fast Track
4VAC5-30-110	Intoxicating liquors or beverages	Remove regulations that are redundant because these illegal activities are already covered in the Code of the Virginia	To be considered after completion of all exempt actions	Fast Track
4VAC5-30-140	Picnic area	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-150	Camping	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-150	Camping	Change the capital C in camping to lowercase in	Completed by December 2008	Exempt

		(E)		
4VAC5-30-150	Camping	Omit the redundant “the” in (G)	Completed by December 2008	Exempt
4VAC5-30-150	Camping	Add the ability to make reservations electronically		To be determined by potential legislation
4VAC5-30-150	Camping	Add § 10.1-200.3(B) to statutory authorization provision	Completed by December 2008	Exempt
4VAC5-30-160	Cabins	Add the ability to make reservations electronically		To be determined by potential legislation
4VAC5-30-160	Cabins	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-180	Dressing and undressing	Remove regulations that are redundant because these illegal activities are already covered in the Code of the Virginia	To be considered after completion of all exempt actions	Fast Track
4VAC5-30-220	Fires and lighted cigarettes	Consolidate “special permits” for setting fires in un-designated areas	To be considered after completion of all exempt actions	Fast Track
4VAC5-30-220	Fires and lighted cigarettes	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-270	Sports and games; when permitted	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-280	Horses	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-300	Parking	Add § 10.1-200.3 to the statutory authorization provision	Completed by December 2008	Exempt
4VAC5-30-300(B)	Parking in disabled designated parking	Remove regulations that are redundant because these illegal activities are already covered in the Code of the Virginia	To be considered after completion of all exempt actions	Fast Track
4VAC5-30-	Obstructing	Add § 10.1-200.3 to the	Completed by	Exempt

310	traffic	statutory authorization provision	December 2008	
4VAC5-30-310	Obstructing traffic	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-320	Speed limit	Add “in any state park” to be consistent with similar regulations	Completed by December 2008	Exempt
4VAC5-30-370	Advertising	Incorporate requirement of “written permission from the Department”	Completed by December 2008	Fast Track
4VAC5-30-340	Commercial enterprises	Add “for a commercial purpose: at the end to clarify	Completed by December 2008	Exempt
4VAC5-30-390	Alms and contributions	Incorporate requirement for “special permission” from the Director of DCR	To be considered after completion of all exempt actions	Fast Track

Mr. Dowling referenced the State Parks Regulations that include potential amendments that are being provided for member review. A copy of those regulations are included as Attachment #1.

Ms. Mason said that she was comfortable with the staff approach to necessary revisions.

Mr. Dowling said that he would be happy to answer any specific questions.

Mr. Maroon asked staff to comment on any specific areas of concern.

Mr. Dowling said that one particular change was on line 286 regarding vehicles and where they were prohibited. He said this was a substantive policy decision. He said that a statement reading “those individuals with mobility impairments” had been added.

Mr. Dowling said that essentially this was saying that with regard to vehicles on trails for those with mobility impairments, that DCR would revert back to electric vehicles only and eliminate the use of gas powered vehicles on trails.

Mr. Elton said that previously DCR had gone beyond what is prescribed in the ADA because of the threat of a lawsuit from another state agency. Accommodations at the time were made that require the state parks director to review every application for a special use permit. Currently there are over 100 special use permits.

Mr. Elton said that the Department is trying to preserve the non-motorized trails yet still comply with the ADA requirements.

Mr. Elton said that equestrians and bicyclists are opposed to golf carts being on the trail at all. He noted that on the New River Trail alone there were 30 bridges and crossings and that carts could make those areas dangerous.

Mr. Watts asked if there were objective standards in the ADA.

Mr. Elton said that while they have not been adopted at the federal level, the ADA requirements would require the accommodation of electric golf carts and scooters.

Mr. Elton said that he would prefer not to be making the individual decision and would like for Virginia to be among the states preserving non-motorized trails.

An inquiry was made how the regulatory process might work should a challenge occur.

Mr. Dowling said that would depend on how DCR chose to approach the regulations. He said that if the regulations went through the fast track process and encountered an objection, then the process would begin again with a full NOIRA and regulatory process.

Ms. Crandell asked if this was eliminating all motorized vehicles.

Mr. Elton noted his preference would be to eliminate gas powered vehicles and golf carts. The only motorized equipment would be electric wheelchairs and scooters. However, he recognized that the regulations as currently amended allow for "other electric mobility assistance devices" which might also include electric golf carts.

Ms. Mason asked about Segways.

Mr. Elton said that the Legislature included Code language to allow DCR to designate trails that would be acceptable for Segway use. He said that the Cape Henry trail at First Landing had been designated. The majority of that trail is a paved trail.

Mr. Albert suggested that DCR follow the traditional NOIRA process for this section and the remainder of the changes be placed in the fast track process.

Mr. Watts asked if law enforcement officers had the authority to enforce all laws.

Mr. Elton said that authority exists on park property.

Ms. Mason said that she would like to see cigarette butts specifically designated as litter.

Mr. Smith thanked staff for the presentation and noted that the staff had the sense of the Board on how to proceed with specific issues.

Mr. Maroon said that it was up to the Board's discretion whether they would like to see these regulations again. He said that DCR would probably hold out the ADA and gun issue for the NOIRA process and send the remainder through the fast track process.

Mr. Smith said that the Briefing on the State Trail System and Governor's Conference as well as the State Parks Kiosk Presentation would be held until the next meeting.

Public Comment

There was no public comment.

Next Meeting

Mr. Smith said that the Board and staff would look at the April, August and November time frame for meetings in 2009.

Budget Update

Mr. Maroon referenced the budget update provided in member packets. A copy of this update is available from DCR.

Ms. Crandell asked about progress towards the Governor's Land Conservation Goal.

Mr. Maroon said that the number currently stood at about 260,000 of the 400,000. He said that DCR believed that the numbers were on track but acknowledged that with the budget situation the goal could be difficult.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Mark E. Smith
Chair

Joseph H. Maroon
Director

Attachment #1

Recommended changes are highlighted in grey.

DEPARTMENT OF CONSERVATION AND RECREATION State Park Regulation Updates

4VAC5-30-10. Definition of terms.

Whenever used in this chapter, the following respective terms, unless otherwise therein expressly defined, shall mean and include each of the meanings herein respectively set forth.

"Bathing area" means any beach or water area designated by the department as a bathing area.

"Bicycle path" means any path maintained for bicycles.

"Bridle path or trail" means any path or trail maintained for persons riding on horseback.

"Camping Unit" means a tent, tent trailer, travel trailer, camping trailer, pick-up camper, motor homes or any other portable device or vehicular-type structure as may be developed, marketed or used for temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

"Department" means the Department of Conservation and Recreation.

"Foot path or trail" means any path or trail maintained for pedestrians or ~~handicapped disabled~~ persons.

"Motor vehicle" means any vehicle which possesses a motor of any description used for propulsion or to assist in the propulsion of the vehicle.

"Owner" means any person, firm, association, copartnership or corporation owning, leasing, operating, or having the exclusive use of a vehicle, animal or any other property under a lease or otherwise.

"Park" means, unless specifically limited, all designated parks, parkways, historical and natural areas, natural area preserves, sites, and other ~~recreational~~ areas under the jurisdiction of the Department of Conservation and Recreation.

"Permits" means any written license issued by or under authority of the department, permitting the performance of a specified act or acts.

"Person" means any ~~natural person,~~ corporation, company, association, ~~joint stock association, firm or copartnership~~ an individual, proprietorship, partnership, joint venture, joint stock company, syndicate, business trust, estate, club, committee, organization, or group of persons acting in concert.

~~"Regulation" means regulations duly adopted by the Department of Conservation and Recreation.~~

4VAC5-30-20. Construction.

In the interpretation of the Virginia State Parks Regulations, their provisions shall be construed as follows: (i) any terms in the singular shall include the plural; (ii) any term in the masculine shall include the feminine and the neuter; (iii) any requirements or prohibition of any act shall, respectively, extend to and include the causing or procuring,

directly or indirectly of such act; (iv) no provision hereof shall make unlawful any act necessarily performed by any law enforcement officer as defined by § 9.1-101 or employee of the department in line of duty or work as such, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement with the department; (v) any act otherwise prohibited by Virginia State Parks Regulations, provided it is not otherwise prohibited by law or local ordinance, shall be lawful if performed under, by virtue of and strictly within the provisions of a permit so to do, and to the extent authorized thereby, and (vi) this chapter are in addition to and supplement the state vehicle and traffic laws which are in force in all parks and which are incorporated herein and made a part hereof.

4VAC5-30-30. Territorial scope.

All Virginia State Parks Regulations shall be effective within and upon all state parks, historical and natural areas, natural area preserves, roads, sites and other recreational areas in the Commonwealth which may be under the jurisdiction of the Department of Conservation and Recreation and shall regulate the use thereof by all persons.

4VAC5-30-32. General.

Failure to comply with the Virginia State Park Regulations, as well as other applicable laws and regulations, may result in revocation of permits, forfeiture of fees paid, and prosecution.

4VAC5-30-40. Permits.

A permit to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof. Any violation by its holders or his agents or employees of any term or condition thereof shall constitute grounds for its revocation by the department, or by its authorized representative, whose action therein shall be final. In case of revocation of any permit, all moneys paid for or on account thereof shall, at the option of the department, be forfeited to and be retained by it; and the holder of such permit, together with his agents and employees who violated such terms and conditions, shall be jointly and severally liable to the department for all damages and loss suffered by it in excess of money so forfeited and retained; but neither such forfeiture and retention by the department of the whole or any part of such moneys nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person or persons from liability to punishment for any violation of any provision of any Virginia State Parks Regulation.

Permit applications may be obtained through individual parks, the department website, or through the park central office. Permits may be filed electronically in a manner specified by the department, including, but not limited to, electronic mail or by completing any forms provided online by the department.

4VAC5-30-50. Flowers, plants, minerals, etc.

No person shall remove, destroy, cut down, scar, mutilate, injure, take or gather in any manner any tree, flower, fern, shrub, rock or plant, historical artifact, or mineral in any park unless a special permit has been obtained for scientific collecting. Special permits may be obtained for scientific collecting. To obtain a special permit for scientific

collecting in a state park, a Research and Collecting permit application must be completed and provided to the Department at:

Department of Conservation and Recreation

203 Governor Street, Suite 306

Richmond, Virginia 23219-2010.

To obtain a special permit for scientific collecting in a natural area or natural area preserve, a Research and Collecting permit application must be completed and provided to the Department at:

Department of Conservation and Recreation

Division of Natural Heritage

217 Governor Street, Third Floor

Richmond, Virginia 23219.

4VAC5-30-60. Buildings, signs, structures, etc. prohibited.

No person shall in any manner injure, deface, disturb, destroy, or disfigure any part of any park, nor any building, sign, equipment or any other property found therein.

4VAC5-30-70. Disposal of refuse, garbage, etc. prohibited.

No person shall deposit in any part of the park any garbage, sewerage, refuse, waste, vegetables, foodstuffs, boxes, ~~tin~~ cans, plastics, paper, or other litter or other waste material or obnoxious material, except in containers designed for such purposes.

4VAC5-30-80. Pollution of waters prohibited.

No person shall in the streams, lakes or other waters of any park bathe dogs or other animals, wash vehicles or clothing, or throw, cast, lay, drop, or discharge into or leave in the streams, lakes or other waters of the park or in any storm sewer or drain flowing into said waters, any substance, matter or thing, liquid or solid, which may or shall result in the pollution of said waters.

4VAC5-30-90. Disorderly conduct prohibited.

No person shall disobey a lawful order of a Virginia State Park manager, caretaker, ranger, or patrolman conservation officer; nor commit a nuisance; nor use abusive, profane, or insulting language; nor unreasonably disturb or annoy others; be under the influence of intoxicants, do any act tending to or amounting to a breach of the peace nor conduct himself in any disorderly manner whatsoever.

4VAC5-30-100. Gambling. (Repealed.)

~~Gambling in any park is prohibited and no person shall bring into the park or have in his possession while there, any implement or device commonly used, or intended for gambling purposes.~~

4VAC5-30-110. ~~Intoxicating liquors or beverages. (Repealed.)~~

~~No person shall be or become intoxicated, or under the influence of intoxicants, in public while in the confines of any park. Public display or use of beer, wine, whiskey or other intoxicating liquor or beverage or the containers thereof is prohibited.~~

4VAC5-30-120. Opening and closing hours.

No person except employees or officers of the department shall be allowed within the park between the hours of 10 p.m. and 6 a.m. except cabin guests and campers unless participating in special park ~~affiliated sanctioned~~ activities, ~~hunting and fishing~~.

4VAC5-30-130. Charges.

No person shall make use of, gain admittance to, or attempt to use or gain admittance to the facilities in any park for the use of which a charge is made by the department unless he shall pay the charge or price fixed by the department.

4VAC5-30-140. Picnic area.

Picnicking in any park is allowed only in the areas designated as picnic areas.

4VAC5-30-150. Camping.

A. Permit. Camping will be conducted only under permit. A permit is obtained by completing a valid Virginia State Park Camping Permit Form or Honor Camping Application and submitting payment of all applicable fees upon arrival at the designated park. A camping permit can only be issued by the park management. Only an individual, 18 years of age or older, who is a member of and accepts responsibility for, the camping party, may be issued a camping permit. The act of placing a reservation through the state parks reservation center does not constitute a camping permit.

Camping may only be performed in strict accordance with the terms and conditions of the permit. Any violation of the permit by the permittee or any member of the party shall constitute grounds for permit revocation by the department, or by its authorized representative, whose action therein shall be final. In case of revocation of any permit, all moneys paid for or on account thereof shall, at the option of the department, be forfeited and retained by the department.

B. Registration. Registration for a camping permit, by an adult, 18 years of age or over, who is a member of and accepts responsibility for, the camping party, is required before setting up camp.

CB. Occupancy. Occupancy of each campsite shall be limited to not more than six persons or one immediate family, except by special permission from designated park officials. The term immediate family shall mean relatives living at the same common household of residence.

DC. Number of Camping Units Camping units, equipment, and vehicles. No camping unit can be used except that which is shown in the campsite application. All camping units, equipment, and vehicles shall be placed within the perimeter of the designated campsite, without infringing on adjoining campsites or vegetation. Where high impact areas have been designated, all camping units, equipment, and vehicles shall be placed within the defined borders of the high impact area.

ED. Camping Periods periods. No Camping camping shall be permitted in excess of 14 consecutive days nights within a 30-day period. The minimum camping period shall be one day. Park managers shall have the authority to extend this period.

Check-in time shall be 4 p.m. Check-out Check-out time is 4:00 p.m. 3 p.m. Campers may be permitted to occupy campsites prior to 4 p.m., but no earlier than 8 a.m., if campsites are available. No camping units, vehicles or other Any personal property shall be left or allowed to remain on at the campsite after the duration or termination of the permitted camping period reservation period check-out time shall be removed by park staff at the owner's expense.

FE. Motor Vehicles vehicles. Only one 2 motor vehicle vehicles in addition to the camping unit allowed under subsection D above may be are permitted on a campsite at any time with no additional fees. All other motor vehicles must shall be parked at in the designated parking areas area of each campsite. Any additional vehicles are subject to daily parking fees and shall be parked at designated overflow parking areas if insufficient space is available at the campsite designated parking area.

GF. Visitors. All campers, at the time of registration, shall inform the designated park official of the names of any visitors who are expected to arrive at the campsite during the permitted camping period. No visitor shall be allowed at the campsite unless so identified. All visitors shall register on the visitors register. No visitor shall be allowed before 8:00 6 a.m. and all visitors must leave the campground area by 10:00 10 p.m. All visitors shall be charged the appropriate daily parking or admissions fees prior to entering the park.

G. Quiet hours. Quiet hours in the campgrounds shall be from 10 p.m. to 6 a.m. Generators, amplified music or other disturbances which can be heard outside the perimeter of the user's campsite(s) is prohibited during the designated quiet hours.

H. Pets. Domestic and household pets are permitted in campgrounds only with payment of applicable fees. Owners are responsible for cleaning up after their pets and for ensuring their pets do not disturb other campers. Horses and other livestock are not permitted unless facilities are specifically provided for them.

4VAC5-30-160. Cabins.

Cabin reservations are made for a minimum period of one week, and, when space is available, for a maximum period of two weeks. If a vacancy exists at the termination of the rental period, the occupant may extend his stay. Reservations begin on Monday and run until the following Monday. Use of state park cabins shall only be permitted pursuant to established department regulations (4VAC5-36) and policy dealing with reservations, registration, occupancy, fees, length of stay, and rental period.

4VAC5-30-170. Bathing, where permitted.

No person shall bathe, wade or swim in any waters in any park except at such times, and in such places, as the department may designate as bathing areas, and unless so covered with a bathing suit as to prevent any indecent exposure of the person.

4VAC5-30-180. Dressing and undressing.

Dressing and undressing, except in bathhouses, camping units or cabins is prohibited.

4VAC5-30-190. Boating.

Boating of any kind in a bathing area is prohibited ~~except such boating as is necessary to keep such areas properly protected and policed.~~

4VAC5-30-200. Firearms.

No person except employees, police officers, or officers of the department shall carry or possess firearms of any description, or airguns, within the park. This regulation shall not apply in areas designated for hunting by the Department of Conservation and Recreation. This regulation also shall not apply to the holders of a valid concealed handgun permit issued pursuant to §18.2-308 of the Code of Virginia.

4VAC5-30-210. Explosives. (Repealed.)

~~No person shall bring into or have in any park any explosive or explosive substance.~~

4VAC5-30-220. Fires and lighted cigarettes.

No person shall kindle, build, maintain or use a fire other than in places provided or designated for such purposes ~~in any park except by special permit.~~ Any fire shall be continuously under the care and direction of a competent person over sixteen years of age from the time it is kindled until it is extinguished. No person within the confines of any park shall throw away or discard any lighted match, cigarette, cigar, or other burning object. Any lighted match, cigarette, cigar, or other burning object must be entirely extinguished before being thrown away or discarded.

4VAC5-30-230. Smoking.

No person shall smoke in any structure or place in any park where smoking is prohibited. Smoking may be forbidden by the department or its authorized agent in any part of any park ~~when it is deemed the fire hazard makes such action advisable.~~

4VAC5-30-240. Hunting.

No person within the confines of any park, shall hunt, pursue, trap, shoot, injure, kill or molest in any way any bird or animal, nor shall any person have any wild bird or animal in his possession within the park, provided, however, that this regulation shall not apply in areas designated for hunting by the ~~Department of Conservation and Recreation department.~~ At such time as the department director deems it in the best interest of the safety and welfare of the public and other persons authorized to be in the area, he shall close the area to hunting ~~and post boundaries to that effect.~~

4VAC5-30-250. Fishing.

~~Fishing~~ The taking of fish by hook and line, the taking of bait fish by cast net, and crabbing by line and net is permitted in the designated areas in each park, the only stipulations being that persons fishing taking fish by hook and line must have a state fishing license ~~where~~ required by law and comply with the applicable Game and Inland Fisheries or Marine Resources Commission rules and regulations. This is intended to be a complete list of authorized fishing activities in parks and does not allow other activities

requiring fishing licenses such as bow-fishing or the taking of amphibians, which are prohibited.

4VAC5-30-260. Animals at large.

No person shall cause or permit any animal owned by him, in his custody, or under his control, except an animal restrained by a leash not exceeding six feet in length, to enter any park, and each such animal found at large may be seized and disposed of as provided by the law or ordinance covering disposal of stray animals on highways or public property then in effect at the place where such stray animals may be seized. No animal shall be left unattended by its owner in any park at any time, except for animals in designated stables. Animals shall not be allowed in bathing areas under any circumstances.

4VAC5-30-270. Sports and games; when permitted.

No games or athletic contest shall be allowed in any park except in such places as may be designated therefor.

4VAC5-30-274. Foot path or trail use.

Persons shall only use paths, trails or other designated areas in any park.

4VAC5-30-276. Bicycle path use.

No person shall use a bicycle or similarly propelled devices in any area other than designated bicycle path in any park.

4VAC5-30-280. Horses Bridle path use.

No person shall use, ride, or drive a horse or other animal in any park except ~~to, from, or~~ along a bridle path, to or from a parking area associated with such bridle path, or other designated area.

4VAC5-30-290. Vehicles; where prohibited.

No person shall drive a ~~motor~~ motorized vehicle in any park within or upon a safety zone, ~~walk foot,~~ bicycle or bridle path, fire truck trail, service road or any part of any park not designated for, ~~or customarily used by~~ motor vehicles, except properly authorized individuals engaged in fire control, park maintenance, law enforcement, or other necessary park-related activities.

Those individuals with mobility impairments qualifying for accommodation under the Americans with Disabilities Act shall be allowed to use electric wheelchairs, electric scooters, or other electric mobility assistance devices approved by the Department on trails.

4VAC5-30-300. Parking.

A. No owner or driver shall cause or permit a vehicle to stand anywhere in any park outside of designated parking spaces, except a reasonable time in a drive to receive or discharge passengers.

~~B. No owner or driver shall cause or permit a vehicle to stand in any space designated for use by the handicapped in any park unless the vehicle displays a license plate or decal issued by the Commissioner of the Department of Motor Vehicles of Virginia under authority of §46.2-731 or §46.2-739 of the Code of Virginia, or a similar identification issued by similar authority in some other state or The District of Columbia.~~

4VAC5-30-310. Obstructing traffic.

No person shall cause or permit a vehicle to obstruct traffic by unnecessary stopping in any park.

4VAC5-30-320. Speed limit. (Repealed.)

~~Rate of speed in excess of twenty-five miles per hour is prohibited.~~

4VAC5-30-330. Excessive loads.

No person shall operate an excessively loaded vehicle anywhere in any park. The determination of whether a load is excessive will be made by the park manager park management and will be based upon the load and the condition of the road.

4VAC5-30-340. Commercial enterprises.

No person shall, in any park, ~~without a permit~~, sell or offer for sale, hire, lease or let out, any object or merchandise, property, privilege, service or any other thing, or engage in any business or erect any building, booth, tent, stall or any other structure whatsoever for a commercial purpose.

No person to whom property of any park has been entrusted for personal use shall hire, lease, let out, or sell the same to any other person.

4VAC5-30-350. Photographs. (Repealed.)

~~No person shall, without a permit, take photographs or moving pictures within the limits of any park for the purpose of selling the negatives thereof or the prints therefrom.~~

4VAC5-30-360. Commercial vehicles.

No person shall operate a bus, taxicab or other commercial vehicle designed or used for the transportation of passengers or property within any park ~~without a permit~~.

4VAC5-30-370. Advertising.

No sign, notice or advertisements of any nature shall be erected or posted at any place within any park, nor shall ~~any musical instrument, radio, talking machine, or drum be operated or~~ any noise be made for the purpose of attracting attention to any exhibition of any kind ~~without written permission from the Department~~.

4VAC5-30-380. Meetings and exhibitions.

No person shall in any park erect any structure, stand or platform, hold any meeting, or exhibition, perform any ceremony, make any speech, or address ~~except by permit if it~~

limits or impacts the ability of the general public to utilize the park for the purposes for which it was established.

4VAC5-30-390. Alms and contributions.

No person shall within any park solicit alms or contributions for any purpose, without special permission from the department director.

4VAC5-30-400. Aviation.

No person shall voluntarily bring, land or cause to descend or alight within or upon any park, any airplane, remote control model aircraft, flying machine, balloon, parachute or other apparatus for aviation except under permit. "Voluntarily" in this connection shall mean anything other than a forced landing.

4VAC5-30-410. Importation of firewood.

A. The director of the Department of Conservation and Recreation may prohibit the importation of firewood into any park or allow such entry only under specified conditions. Any firewood transported to the park by a park user found to be in violation of such prohibition shall be confiscated and destroyed. Should it be found that such confiscation was unlawful, the person shall be reimbursed for only the cost of the firewood.

B. When the director makes a written determination to implement subsection A, the following requirements apply:

1. Such determination shall be posted to the department's website, posted at the park where applicable, and communicated to the public in a manner appropriate to best inform the affected public.

2. Firewood to be used by any person within a park must be purchased from the park, must be proven to be from a certified source in accordance with subsection B3 if transported to the park, or may be collected from within the confines of the park in accordance with park policy. The department may allow for the sale or distribution of firewood within the park with prior written agreement that it has been treated in accordance with subsection B3. Firewood includes all wood processed or unprocessed, meant for use in a campfire. Such ban shall not include scrap building materials, such as 2x4's; but may extend to wood pallets as determined by the director.

3. Firewood certified to be sold and distributed within the park by a firewood dealer shall be subject to at least one of the following conditions:

a. Exclude all ash tree material from the firewood production area. Dealers will have to demonstrate ability to identify and separate firewood species.

b. Remove bark and outer half inch of sapwood off of all non-coniferous firewood.

c. Kiln dry all non-coniferous firewood to USDA specifications.

d. Heat treat all non-coniferous firewood to USDA specifications.

e. Fumigate all non-coniferous firewood to USDA specifications.

f. Offer conclusive proof demonstrating to the satisfaction of the department that the origin of the wood was from a non-infected area.

g. Offer conclusive proof demonstrating to the satisfaction of the department that the wood containing the potential infecting or infesting species of concern has

been properly treated and the species controlled by an alternative control mechanism.

The director may eliminate or restrict conditions offered in this subsection as determined to be necessary to properly address the infecting or infesting species of concern to the satisfaction of the department.

4VAC5-30-420. Release of animals or wildlife on park property.

No person shall release animals or wildlife captured or propagated elsewhere into any park.

4VAC5-30-422. Feeding wildlife prohibited.

No person shall feed wildlife in any park.