

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

Our File #538.

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9-6-79 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 9-26-79

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 9/20 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A
17. Petition by Public, where applicable N.A.

~~p. 12~~ - 3/2 1.305 B incorrect because it includes Metro Area
No - subd 3 of statute point metro & Stat. excludes metro area

Rules as adopted

State Planning Agency

Office of Local and Urban Affairs

Rules and Amendments to Rules for Administering Grants for Park and Open Space Acquisition and Development

Amendments as adopted

Rules 10 MCAR §§ 1.300 to 1.304 Administering Federal and State Outdoor Recreation Grants

10 MCAR § 1.300 Authority, definitions and general provisions.

A. Authority. The rules contained herein are prescribed by the State Planning Agency, Office of Local and Urban Affairs, pursuant to authority granted in Minn. Stat. § 86.71 ~~(1974)~~ (1978) and Minn. Laws 1969, ch. 1139, § 48, subd. 7, paragraph ~~g, as amended~~ and Minn. Extra Session Laws 1971, ch. 3, § 48, subd. 7, paragraph h ~~as amended (et seq.)~~ and Minn. Stat. § 4.36 (1978).

B. Purpose of rules. These rules are set forth to provide criteria, priorities, and procedures for evaluating outdoor recreation proposals of local government units under consideration for LAWCON, and LCMR grants-in-aid~~,~~, athletic courts, and trails.

C. Definitions. The following terms as used in these rules have the following meanings:

~~1. "Ad Hoc Lake Improvement Committee" means the committee composed of representatives of the State Planning Agency, Department of Natural Resources, University of Minnesota, Department of Health, Pollution Control Agency, Legislative Commission on Minnesota Resources, and Department of Agriculture, that reviews and evaluates lake improvement applications.~~

~~2.~~ 1. ~~"BOR"~~ "HCRS" means the ~~Bureau of Outdoor Recreation~~ Heritage Conservation and Recreation Service of the United States Deparment of the Interior.

~~3.~~ 2. "~~BOR~~ HCRS Guidelines" means those guidelines established by ~~Bureau of Outdoor Recreation~~ Heritage Conservation and Recreation Service Grants-in-Aid Manual effective as of ~~May 6, 1976~~ October 1, 1978.

10 MCAR § 1.300 C.4.-19 Renumber as 10 MCAR § 1.300 C.3.-18.

10 MCAR § 1.301 LAWCON grant program.

A. Application process.

1. Submission of preliminary applications.

a. Eligibility. Any local applicant which satisfies the guidelines for eligibility established by ~~BOR~~ HCRS, may apply for a LAWCON grant.

b. Notice. Annually, OLUA shall send notice of the period of time that preliminary applications for LAWCON grants shall be accepted by OLUA. The notice shall be sent at least 45 days before the period ends. Such notice shall be sent to the following:

(1) Mayors ~~and~~ in care of the clerks of all cities in Minnesota;

(2) County board chairmen ~~and~~ in care of the auditors of all counties in Minnesota;

(3) Chairpersons of county planning commissions and city planning commission of all cities over 5,000 population according to the last federal dicennial census in Minnesota;

(4) Chairman in care of the Executive Directors of Regional Development Commissions;

(5) Chairpersons of each county's Township Association;

(6) Statewide organizations representing Minnesota local governments;

(7) Persons requesting notice; and

(8) Upon request, to the Minnesota State Legislature.

2. Evaluation of preliminary applications. Preliminary project applications which satisfy the ~~BOR's~~ HCRS project eligibility guidelines and priorities for LAWCON grants shall be evaluated and ranked as follows: a) general criteria; b) acquisition priorities; and c) development priorities.

5. BOR HCRS approval. If the final application is satisfactory, OLUA shall request BOR HCRS approval of a LAWCON grant for the recommended project. OLUA shall notify the applicant of the action taken by BOR HCRS.

B. Project agreement. Upon approval by BOR HCRS, OLUA shall execute a project agreement with the applicant and the applicant shall comply with the terms of the project agreement.

C. Disbursement of grant. The applicant shall initially pay for the project costs as specified in the project agreement. The applicant shall submit to OLUA a billing request for work completed on the project, but not more than six billings per project. Upon receipt of a billing request, containing the documentation required in the project agreement, OLUA shall request from BOR HCRS the Federal share of the eligible costs represented by that billing. Upon receipt of the LAWCON grant for that billing, OLUA shall reimburse the applicant. The final billing shall reflect any cost adjustments due to project changes and shall be subject to a site inspection by the State and BOR HCRS personnel and verification by federal and state audit.

D. Amendments. A request for an amendment in the project scope, costs or time period may be submitted to OLUA prior to project termination. If the request is eligible for a LAWCON amendment and OLUA considers the amendment request to be reasonable and justified and it does not substantially affect the project eligibility under 10 MCAR § 1.301 A. 2., above, it may request BOR HCRS to approve the amendment.

10 MCAR § 1.302 LCMR grants-in-aid program.

B. Grant categories and financial assistance.

1. Regional project. An LCMR grant-in-aid may be available in the percentage rates specified by State Law, when the applicants can document that the project serves a regional need. ~~under the following circumstances:~~

~~a. Project with approved federal grant: Eligible applicants with an approved federal grant for a park, recreation or open space project within their jurisdiction, may apply for a LCMR grant in aid up to 100% of the local share of that acquisition or development project provided that the state share shall not exceed 75% of the total project costs.~~

~~b. Project without approved federal grant: Eligible applicants not receiving a federal recreation grant may apply for a LCMR grant in aid up to 75% of the total cost of the project application.~~

2. Other than regional projects. An LCMR grant-in-aid may be available in the percentage rates specified by State Law to applicants for other than regional projects. ~~under the following circumstances:~~

~~a.--Project-with-approved-federal-grant:--Eligible-applicants-receiving a-federal-grant-for-a-park,-recreation-or-open-space-project-may-apply-for-a LCMR-grant-in-aid-to-50%-of-the-local-share-of-the-project.~~

~~b.--Project-without-approved-federal-grant.--Eligible-applicants-not receiving-a-federal-recreation-grant-may-apply-for-LCMR-grant-in-aid-up-to 50%-of-the-total-cost-of-the-project.~~

D. Application procedure.

1. Projects under consideration for a LAWCON grant.

b. Upon ~~BOR~~ HCRS approval of a LAWCON application, OLUA shall initiate the application procedure for applicants that have not received LCMR grants-in-aid exceeding the maximum legislative grant allowable for that project.

~~10-MCAR-§-1.304-LCMR-grants-in-aid-program-for-lake-improvement-projects.~~

~~A.--Lake-improvement-program.--A-lake-improvement-grant-program-is-hereby established-for-demonstrating-or-carrying-out-new-techniques-to-improve-the quality-of-lakes.--This-grant-program-is-an-extension-of-the-LCMR-grants-in-aid program-and-is-established-by-Minn.-Laws-1969,-ch.-1139,-§-48,-subd.-7,-paragraph g.--Pursuant-to-said-statute,-the-following-shall-be-eligible-to-apply-for such-projects:~~

~~B.--Eligible-applicants.~~

~~1.--Units-of-local-government-and-public-agencies-that-have-the-authority to-undertake-lake-improvement-projects;~~

~~2.--Non-profit-organizations-and-associations-whose-primary-objective is-the-management-of-natural-resources-and-the-improvement-of-the-environment.~~

C.--Eligible projects.--Eligible projects for lake improvement grants shall be pilot demonstration projects which are new or unique for that type of lake. Eligible projects and facilities may receive a LCMR grant-in-aid of 50 percent of the eligible costs but not to exceed the maximum legislative grant-in-aid allowable for that projects.--Grants from this program shall be available for acquisition, construction and testing costs.--Maintenance and operational costs shall be the responsibility of the applicant.

D.--Application process.--Eligible applicants may apply for a LCMR grant-in-aid for lake improvement by submitting a preliminary application to OLUA and the Metropolitan Council or the appropriate regional development commission for a project review.--The Metropolitan Council or appropriate regional development commission at their option may recommend on an advisory basis to OLUA, a list of applications from the region arranged in order of priority.--OLUA shall prescribe the form and content of the application.

E.--Evaluation of applications.

1.--Priorities.--The criteria that shall be used to evaluate and establish priorities for applications shall be based upon projects that:

a.--Perpetuate the beneficial natural characteristics of the shoreline.

b.--Consider upstream conditions and sound watershed management practices, as may be established in the comprehensive watershed plan.

c.--Are located in areas that have and are enforcing effective zoning ordinances, building codes, health ordinances, and conservation rules that affect the project.

d.--Have a majority of shoreline in public ownership.--Only lakes that are accessible to the public shall be eligible for a grant.

e.--Improve the quality of waterbased recreational activities and fish and game habitat.

f.--Have received a federal grant.

2.--Procedure.--Upon receipt of a preliminary application for lake improvement grant, OLUA shall follow the following procedure:

a.--The application shall be reviewed for eligibility and completeness. If additional information is required, the applicant shall be notified and asked to provide the additional information.

b.--A preliminary evaluation and priority ranking of the lake improvement project shall be conducted by OLUA, the Department of Natural Resources and the Pollution Control Agency.

c.--Applicants that receive a high priority ranking in the preliminary project evaluation shall then be submitted to the "Ad Hoc Lake Improvement Committee" for review.

d.--Applicants that receive a high ranking from the "Ad Hoc Lake Improvement Committee" evaluation shall be eligible to submit a final application.

e.--Final applications shall be submitted to OLUA.--OLUA shall prescribe the form and content of the application.--Final applications that are acceptable shall be recommended to the LCMR and the LAC in accordance with 10 MCAR § 1.302 D.1.c.,d.,e.

F.--Disbursement of grants.--The disbursement of grants for LCMR grant in aid lake improvement projects shall be as specified in 10 MCAR § 1.302 E.

G.--Amendments.--Lake improvement projects shall be eligible for LCMR grant in aid amendments as specified in 10 MCAR § 1.302 F.

~~H.--Project-completion.--Upon-completion,-the-project-shall-be-subject-to closing-requirements-as-specified-in-10-MCAR-§-1.302-G.-~~

Rules as adopted

10 MCAR § 1.304 Athletic Court Grants program.

A. Distribution of Grants. OLUA shall distribute state grants for the development of basketball, handball, tennis and volleyball courts in conformance with Minn. Stat. § 4.36, subd. 4 (1978) and the rules contained herein. Applications for athletic court grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA.

B. Application procedure.

1. Eligible applicants are those units of government as defined by Minn. Stat. § 4.36, subd. 1 (c).

2. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

3. All applications for projects shall be submitted to OLUA for review under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall also be submitted to the Metropolitan Council for their review. Applications for projects within the jurisdiction of a Regional Development Commission shall be submitted to the Regional Development Commission for its review.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Projects and facilities eligible for a state grant shall include the following:

1. A special surface area of asphalt or concrete materials with adequate foundation suitable for the soil and climatic conditions. Prior to construction, such surface areas and foundations shall be approved by the applicant's engineer, as being suitable. Courts shall be outlined on the surface area and be of proper size to meet generally recognized athletic court dimensions.

2. Hoops, nets and supporting structures for athletic court games which shall be of a proper size to utilize the facility.

3. Walls and fences for the athletic court of a proper size to utilize the facility in the manner intended.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

a. Priority shall be given to eligible applicants that demonstrate the athletic courts will be developed, operated and maintained jointly with one or more eligible applicants. Evidence of cooperative use of such facilities between schools, cities and other local units shall be considered but not given as high priority.

b. Eligible project applications received by OLUA shall be ranked in order from highest to lowest in relation to those projects located in cities or towns which have the lowest number of similar public athletic courts in relation to their population.

c. Eligible project applications received by OLUA shall be ranked in order from highest to lowest by the distance the project is located away from similar existing public athletic courts.

d. Priority shall be given to eligible applicants that can demonstrate that the courts will be readily accessible to the public by vehicular and pedestrian traffic, serve residential areas, and are available to the entire community during daylight and evening hours.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. Grants shall be distributed in order of ranking until available athletic court funds are depleted. For those applicants recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement in documents or statements accompanying the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of the project. Property developed with an athletic court grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a non-recreational

use or another recreational use without prior approval of OLUA. In the event an unapproved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed.

I. Responsibilities of recipient. A recipient of an athletic court grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

10 MCAR § 1.305 Trail Grants program.

A. Distribution of grants. OLUA shall distribute state grants for the development of hiking, biking and touring trails in conformance with Minn. Stat. § 4.36 subd. 3, (1978) and the rules contained herein. Applicants for trail grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA. Trail grants shall be available for trail development on public parks or other public lands excluding public road rights-of-way.

B. Application procedure.

1. Eligible applicants are those units of government as defined by Minn. Stat. § 4.36, subd. 1. (c).

2. Only trails that provide a primary recreational activity in themselves shall be eligible for trail grants. Pathways that just connect recreational activities, provide access to them, or protect the site from overuse shall not be eligible.

3. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant; relationship to future plans, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

4. Applicants for the projects outside jurisdication of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules, and to the Regional Development Commission having jurisdiction for its review and ranking. Applicants for projects within the jurisdiction of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules, and to the Metropolitan Council for its review and ranking.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Project and facilities eligible for a state grant shall include the following:

1. Clearing of vegetation, grading, and construction of a surface area and necessary drainage structures suitable for the type of trails proposed, where applicable.

2. Shelters, signs, parking, bridging, toilet facilities, and water systems suitable for type of trail proposed, where applicable.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

a. Priority shall be given to trail projects located so as to minimize interference with incompatible activities and features.

b. Priority shall be given to trail projects that provide access to areas of outstanding natural resources or man-made features.

c. Priority shall be given to trail projects that continue or link into other trail systems or proposed trail systems.

d. Priority shall be given to trail projects from applicants that have the fewest miles of similar trails in relation to their population.

e. Priority shall be given to eligible applicants that can demonstrate that the proposed trails are readily accessible to the public by vehicular, pedestrian and bicycle traffic and are available to the entire community.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. State grants shall be distributed in order of ranking until trail development funds are depleted. For those applicants who are recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of project. Property developed with a trail grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a non-recreational use or another recreational use without prior approval of OLUA. In the event an approved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed.

I. Responsibilities of recipient. A recipient of a trail grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

APPROVED AS TO FORM AND LEGALITY

SEP. 20 1979 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 20 1979
Joan Anderson Growe
Secretary of State
10:35 AM

RECEIVED
AUG 31 1979
OFFICE OF HEARING EXAMINERS

State Planning Agency Office of Local and Urban Affairs

Proposed Rules and Proposed Amendments to Rules for Administering Grants for Park and Open Space Acquisition and Development

Amendments as Proposed

Rules 10 MCAR §§ 1.300 to 1.304 Administering Federal and State Outdoor Recreation Grants

10 MCAR § 1.300 Authority, definitions and general provisions.

A. Authority. The rules contained herein are prescribed by the State Planning Agency, Office of Local and Urban Affairs, pursuant to authority granted in Minn. Stat. § 86.71 ~~(1974)~~ (1978) and Laws of 1969, ch. 1139, § 48, subd. 7, paragraph g, ~~as amended~~ and Extra Session Laws of 1971, ch. 3, § 48, subd. 7, paragraph h ~~as amended et seq.~~ and Minn. Stat. § 4.36 (1978).

B. Purpose of rules. These rules are set forth to provide criteria, priorities, and ~~procedures~~ for evaluating outdoor recreation proposals of local government units under consideration for LAWCON, ~~and~~ LCMR grant-in-aid, athletic courts, and trails.

C. Definitions. The following terms as used in these rules have the following meanings:

~~1. "Ad Hoc Lake Improvement Committee" means the committee composed of representatives of the State Planning Agency, Department of Natural Resources, University of Minnesota, Department of Health, Pollution Control Agency, Legislative Commission on Minnesota Resources, and Department of Agriculture, that reviews and evaluates lake improvement applications.~~

1. ~~2.~~ ~~"BOR"~~ "HCRS" means the ~~Bureau of Outdoor~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

~~Recreation~~ Heritage Conservation and Recreation Service of the United States Department of the Interior.

2. ~~3.~~ "~~BOR~~ HCRS Guidelines" means those guidelines established by ~~Bureau of Outdoor Recreation~~ Heritage Conservation and Recreation Service Grants-in-Aid Manual effective as of ~~May 6, 1976~~ October 1, 1978.

10 MCAR § 1.300 C.4.-19 Renumber as 10 MCAR § 1.300 C.3.-18.

10 MCAR § 1.301 LAWCON grant program.

A. Application process.

1. Submission of preliminary applications.

a. Eligibility. Any local applicant which satisfies the guidelines for eligibility established by ~~BOR~~ HCRS may apply for a LAWCON grant.

b. Notice. Annually, OLUA shall send notice of the period of time that preliminary applications for LAWCON grants shall be accepted by OLUA. The notice shall be sent at least 45 days before the period ends. Such notice shall be sent to the following:

(1) Mayors ~~and~~ in care of the clerks of all cities in Minnesota;

(2) County board chairmen ~~and~~ in care of the auditors of all counties in Minnesota;

(3) Chairpersons of county planning commissions and city planning commission of all cities over 5,000 population according to the last federal dicennial census in Minnesota;

(4) Chairman in care of the Executive Directors of Regional Development Commissions;

(5) Chairpersons of each county's Township Association;

(6) Statewide organizations representing Minnesota local governments;

(7) Persons requesting notice; and

(8) Upon request, to the Minnesota State Legislature.

2. Evaluation of preliminary applications. Preliminary project applications which satisfy the ~~BOR's~~ HCRS project eligibility guidelines and priorities for LAWCON grants shall be evaluated and ranked as follows: a) general criteria; b) acquisition priorities; and c) development priorities.

5. ~~BOR~~ HCRS approval. If the final application is satisfactory, OLUA shall request ~~BOR~~ HCRS approval of a LAWCON grant for the recommended project. OLUA shall notify the applicant of the action taken by ~~BOR~~ HCRS.

B. Project agreement. Upon approval by ~~BOR~~ HCRS, OLUA shall execute a project agreement with the applicant and the applicant shall comply with the terms of the project agreement.

C. Disbursement of grant. The applicant shall initially pay for the project costs as specified in the project agreement. The applicant shall submit to OLUA a billing request for work completed on the project, but not more than six billings per project. Upon receipt of a billing request, containing the documentation required in the project agreement, OLUA shall request from ~~BOR~~ HCRS the Federal share of the eligible costs represented by that billing. Upon receipt of the LAWCON grant for that billing, OLUA shall reimburse the applicant. The final billing shall reflect any cost adjustments due to project changes and shall be subject to a site inspection by the State and ~~BOR~~ HCRS personnel and verification by federal and state audit.

D. Amendments. A request for an amendment in the project scope, costs or time period may be submitted to OLUA prior to project termination. If the request is eligible for a LAWCON amendment and OLUA considers the amendment request to be reasonable and justified and it does not substantially affect the project eligibility under 10 MCAR § 1.301 A.2., above, it may request ~~BOR~~ HCRS to approve the amendment.

10 MCAR § 1.302 LCMR grants-in-aid program.

B. Grant categories and financial assistance.

1. Regional project. A LCMR grant-in-aid may be available in the percentage rates specified by State Law, when the applicants can document that the project serves a regional need. ~~under the following circumstances:~~

~~a. Project with approved federal grant Eligible applicants with an approved federal grant for a park, recreation or open space project within their jurisdiction, may apply for a LCMR grant-in-aid up to 100% of the local share of that acquisition or development project provided that the state share shall not exceed 75% of the total project costs.~~

~~b. Project without approved federal grant Eligible applicants not receiving a federal recreation grant may apply for a LCMR grant in aid up to 75% of the total cost of the project application.~~

2. Other than regional projects. A LCMR grant-in-aid may be available in the percentage rates specified by State Law to applicants for other than regional projects ~~under the following circumstances:~~

~~a. Project with approved federal grant Eligible applicants receiving a federal grant for a park, recreation or open space project may apply for a LCMR grant-in-aid to 50% of the local share of the project.~~

~~b. Project without approved federal grant Eligible applicants not receiving a federal recreation grant may apply for LCMR grant-in-aid up to 50% of the total cost of the project.~~

D. Application procedure.

1. Projects under consideration for a LAWCON grant

plication, OLUA shall initiate the application procedure for applicants that have not received LCMR grants-in-aid exceeding the maximum legislative grant allowable for that project.

~~10 MCAR § 1.304 LCMR grants-in-aid program for lake improvement projects.~~

~~A. Lake improvement program. A lake improvement grant program is hereby established for demonstrating or carrying out new techniques to improve the quality of lakes. This grant program is an extension of the LCMR grants-in-aid program and is established by Minn. Laws 1969, ch. 1139, § 48, subd. 7, paragraph g. Pursuant to said statute, the following shall be eligible to apply for such projects:~~

~~B. Eligible applicants.~~

~~1. Units of local government and public agencies that have the authority to undertake lake improvement projects;~~

~~2. Non-profit organizations and associations whose primary objective is the management of natural resources and the improvement of the environment.~~

~~C. Eligible projects. Eligible projects for lake improvement grants shall be pilot demonstration projects which are new or unique for that type of lake. Eligible projects and facilities may receive a LCMR grant-in-aid of 50 percent of the eligible costs but not to exceed the maximum legislative grant-in-aid allowable for that projects. Grants from this program shall be available for acquisition, construction and testing costs. Maintenance and operational costs shall be the responsibility of the applicant.~~

~~D. Application process. Eligible applicants may apply for a LCMR grant-in-aid for lake improvement by submitting a preliminary application to OLUA and the Metropolitan Council or the appropriate regional development commission for a project review. The Metropolitan Council or appropriate regional development commission at their option may recommend on an advisory basis to OLUA, a list of applications from the region arranged in order of priority. OLUA shall prescribe the form and content of the application.~~

~~E. Evaluation of applications.~~

~~1. Priorities. The criteria that shall be used to evaluate and establish priorities for applications shall be based upon projects that:~~

~~a. Perpetuate the beneficial natural characteristics of the shoreline.~~

~~b. Consider upstream conditions and sound watershed management practices, as may be established in the comprehensive watershed plan.~~

~~c. Are located in areas that have and are enforcing effective zoning ordinances, building codes, health ordinances, and conservation rules that affect the project.~~

~~d. Have a majority of shoreline in public ownership. Only lakes that are accessible to the public shall be eligible for a grant.~~

~~e. Improve the quality of waterbased recreational activities and fish and game habitat.~~

~~f. Have received a federal grant.~~

~~2. Procedure. Upon receipt of a preliminary application for lake improvement grant, OLUA shall follow the following procedure:~~

~~a. The application shall be reviewed for eligibility and completeness. If additional information is required, the applicant shall be notified and asked to provide the additional information.~~

~~b. A preliminary evaluation and priority ranking of the lake improvement project shall be conducted by OLUA, the Department of Natural Resources and the Pollution Control Agency.~~

~~c. Applicants that receive a high priority ranking in the preliminary project evaluation shall then be submitted to the "Ad Hoc Lake Improvement Committee" for review.~~

~~d. Applicants that receive a high ranking from the "Ad Hoc Lake Improvement Committee" evaluation shall be eligible to submit a final application.~~

~~e. Final applications shall be submitted to OLUA. OLUA shall prescribe the form and content of the application. Final applications that are acceptable shall be recommended to the LCMR and the LAC in accordance with 10 MCAR § 1.302 D.1.c.,d.,e.~~

~~F. Disbursement of grants. The disbursement of grants for LCMR grant-in-aid lake improvement projects shall be as specified in 10 MCAR § 1.302 E.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

~~G. Amendments. Lake improvement projects shall be eligible for LCMR grant-in-aid amendments as specified in 10 MCAR § 1.302 F.~~

~~H. Project completion. Upon completion, the project shall be subject to closing requirements as specified in 10 MCAR § 1.302 G.~~

Rules as Proposed

10 MCAR § 1.304 Athletic Court Grants program.

A. Distribution of Grants. OLUA shall distribute state grants for the development of basketball, handball, tennis and volleyball courts in conformance with Minn. Stat. § 4.36, subd. 4 (1978) and the rules contained herein. Applications for athletic court grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA.

B. Application procedure.

1. Eligible applicants are those units of government as defined by Minn. Stat. § 4.36, subd. 1 (c).

2. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

3. All applications for projects shall be submitted to OLUA for review under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall also be submitted to the Metropolitan Council for their review. *Applications for projects within the jurisdiction of a Regional Development Commission shall be submitted to the Regional Development Commission for its review.*

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Projects and facilities eligible for a state grant shall include the following:

1. A special surface area of asphalt or concrete materials with adequate foundation suitable for the soil and climatic conditions. Prior to construction, such surface areas and foundations shall be approved by the applicant's engineer, as being suitable. Courts shall be outlined on the surface area and be of proper size to meet generally recog-

2. Hoops, nets and supporting structures for athletic court games which shall be of a proper size to utilize the facility.

3. Walls and fences for the athletic court of a proper size to utilize the facility in the manner intended.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

a. Priority shall be given to eligible applicants that demonstrate the athletic courts will be developed, operated and maintained jointly with one or more eligible applicants. Evidence of cooperative use of such facilities between schools, cities and other local units shall be considered but not given as high priority.

b. Eligible project applications received by OLUA shall be ranked in order from highest to lowest in relation to those projects located in cities or towns which have the lowest number of similar public athletic courts in relation to their population;

c. Eligible project applications received by OLUA shall be ranked in order from highest to lowest by the distance the project is located away from similar existing public athletic courts.

d. Priority shall be given to eligible applicants that can demonstrate that the courts will be readily accessible to the public by vehicular and pedestrian traffic, serve residential areas, and are available to the entire community during daylight and evening hours.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. Grants shall be distributed in order of ranking until available athletic court funds are depleted. For those applicants recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement in documents or statements accompanying the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of the project. Property developed with an athletic court grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a non-recreational use or another recreational use without prior approval of *OLUA. In the event an unapproved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed.*

I. Responsibilities of recipient. A recipient of an athletic court grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

10 MCAR § 1.305 Trail Grants program.

A. Distribution of grants. OLUA shall distribute state grants for the development of hiking, biking, and touring *trails in conformance with Minn. Stat. § 4.36 subd. 3, (1978) and the rules contained herein. Applicants for trail* grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA. Trail grants shall be available for trail development on public parks or other public lands excluding public road rights-of-way.

B. Application procedure.

1. Eligible applicants are those units of government as defined by Minn. Stat. § 4.36, subd. 1. (c).

2. Only trails that provide a primary recreational activity in themselves shall be eligible for trail grants. Pathways that just connect recreational activities, provide access to them, or protect the site from overuse shall not be eligible.

3. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant; relationship to future plans, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

4. Applicants for the projects outside jurisdication of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules, and to the Regional Development Commission having jurisdiction for its review and ranking. Applicants for projects within the jurisdiction of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules, to the Metropolitan Council for its review and ranking.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Project and facilities eligible for a state grant shall include the following:

1. Clearing of vegetation, grading, and construction of a surface area and necessary drainage structures suitable for the type of trails proposed, where applicable.

2. Shelters, signs, parking, bridging, toilet facilities, and water systems suitable for type of trail proposed, where applicable.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

a. Priority shall be given to trail projects located so as to minimize interference with incompatible activities and features.

b. Priority shall be given to trail projects that provide access to areas of outstanding natural resources or man-made features.

c. Priority shall be given to trail projects that continue or link into other trail systems or proposed trail systems.

d. Priority shall be given to trail projects from applicants that have the fewest miles of similar trails in relation to their population.

e. Priority shall be given to eligible applicants that can demonstrate that the proposed trails are readily accessible to the public by vehicular, pedestrian and bicycle traffic and are available to the entire community.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. State grants shall be distributed in order of ranking until trail development funds are depleted. For those applicants who are recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of project. Property developed with a trail grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a non-recreational use or another recreational use without prior approval of OLUA. In the *event an unapproved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed.*

I. Responsibilities of recipient. A recipient of a trail grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

RECEIVED
AUG 31 1979
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

STATE PLANNING AGENCY

In the Matter of the Proposed Rules and Proposed Amendments To Rules of the Minnesota State Planning Agency for Administering Grants for Parks and Open Space Acquisition and Development.

FINDINGS OF FACT OF THE STATE PLANNING AGENCY

The above-entitled matter came on for hearing before Myron S. Greenberg, Hearing Examiner of the Office of Hearing Examiners of the State of Minnesota, on May 21, 1979 at 9:30 a.m. in the Capitol Square Building, St. Paul, Minnesota after proper notice required by Minn. Stat. § 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed rules for the required period of time after receipt of the Hearing Examiner's Report, the State Planning Agency does hereby accept and adopt with the exceptions described below the findings, conclusions, and recommendations comprising the Report of the Hearing Examiner which is attached to and made part of these Findings.

The State Planning Agency finds that references to rule 301 A.1. b.(3) contained in finding 9 of the Hearing Examiner's Report should be references to rule 301A.1. b.(4). The State Planning Agency expressly finds that the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Parks and Open Space Acquisition and Development, including those modifications made in accordance with the Conclusions of the Hearing Examiner, are needed and reasonable and may be properly adopted.

Dated: 8-2-79

Arthur E. Sidner

ARTHUR E. SIDNER
Director, Minnesota State Planning Agency

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 29th day of June, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner, PLAN-79-001-MG

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on the individual named below.

Eileen A. Gaiovnik

Subscribed and sworn to before me this 29th day of June, 1979.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

Mr. William E. Dorigan
Special Assistant Attorney General
State Planning Agency
101 State Capitol Building
St. Paul, Minnesota - 55155

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE PLANNING AGENCY

In the Matter of the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Park and Open Space Acquisition and Development.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing on May 21, 1979, in the Capitol Square Building in St. Paul before Myron S. Greenberg, Hearing Examiner assigned by the Chief Hearing Examiner.

This is a rules hearing pursuant to Minn. Stat. Ch. 15 to determine whether proposed rules and rule amendments governing grants for park and open space acquisition and development should be adopted.

The following persons appeared for the Minnesota State Planning Agency ("Agency"): Ron Kaliszewski, Assistant Director of the Office of Local and Urban Affairs; William Atkins, Director of Parks and Recreation Grants Section; and William Dorigan, Special Assistant Attorney General.

One person attended the hearing and signed the hearing register. The hearing continued until all interested persons and all interested groups had had an opportunity to be heard.

Pursuant to Minn. Stat. sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Agency Board shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Agency on the issues of substantial changes in the rule and compliance with Minn. Stat. sec. 15.0412 within ten calendar days. The Agency will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On March 27, 1979, the Agency filed the following documents with the Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On April 16, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1904.

3. On April 5, 1979, the Agency mailed the Notice of Hearing and proposed rules to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice and to all state agencies, political subdivisions, and other interested entities.

4. On April 23, 1979, the Agency filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) The names of Agency personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through May 29, 1979, for the receipt of written comments and statements. No public comments were received following the hearing; the Agency submitted a letter dated May 29, 1979, with responses to matters raised during the hearing and changes to the proposed rules and amendments. (References to that letter will be designated as "Agency Letter.")

Statutory Authority and General Background

6. In 1963, the Congress of the United States enacted the Land and Water Conservation Program (LAWCON). This program provides funds to the states for acquisition and development of park and open space and permits the state to make grants to local units of government for the same purposes. Originally the Conservation Department (now DNR) was assigned the responsibility for administering this program. The legislature had specified that of the funds coming into the state, 50% should be used for state projects, and 50% granted to units of local government (Minn. Stat. sec. 86.71). In 1969, administration of the 50% earmarked for grants to units of local government was transferred to the Office of Local and Urban Affairs (OLUA) (Minn. Laws 1969, Chapter 1139, sec. 48, subd. 7, paragraph g)

In 1969, the Minnesota Legislature created a program of state grants to units of local government for acquisition and development of park and open space. The intent of this program was to supplement the Federal LAWCON grants. This program is known as the Legislative Commission on Minnesota Resources (LCMR) grants. Administration of this program was also assigned to the OLUA in 1969 (Minn. Laws 1969, Chapter 1139, sec. 48, Subd. 7, paragraph g.)

In 1977, the Minnesota Legislature created three new grant programs funded with money obtained from the sale of bonds. These programs deal with parks and trails, trails in local parks and local outdoor athletic courts. (Minn. Laws 1977, Chapter 421, sec. 2, subds. 2, 3, 4) The State Planning Agency was authorized to adopt rules, including emergency rules, for the administration of these programs. That authority, as noted in

10 MCAR sec. 1.300 A., is found at Minn. Stat. sec. 4.36, subd. 5 (1978). Emergency rules were adopted but have since expired.

The purpose of this proceeding is to amend the rules governing the LAWCON and LCMR programs and to establish permanent rules for the administration of the three new programs funded by the sale of bonds. The amendments are necessary because of changes in Federal rules governing the LAWCON program and because of changes in state legislation governing the LCMR program. The amendments reflect these changes. The permanent rules are necessary in order to continue administration of the program. The proposed permanent rules closely follow the emergency rules.

The proposed rules and amendments deal with the administration of athletic court and trail development grants for local government units. They also reflect recent changes in state legislation and federal regulations. The athletic court grant program provides funds for the development of special surface areas and supporting equipment or structures for basketball, volleyball, handball and tennis. The trail grant program provides funds for the development of surface areas and supporting facilities for hiking, biking and ski-touring trails on public lands.

Need and Reasonableness of Rules

7. The Agency's Statement of Need and Reasonableness is extensive and, unless otherwise specified in subsequent Findings, provides ample and well-reasoned justification for each of the proposed amendments and new rules. The Examiner finds no necessity or merit in restating the arguments presented by the Agency in that document for those proposed rules and amendments which were neither ambiguous or the object of comment. Instead, the Examiner finds the Statement of Need to adequately support the need for and reasonableness of all proposed rules and amendments not otherwise specifically discussed below, and the Examiner further adopts the justification presented in that document.

8. After the hearing, the Agency responded by letter to questions raised and made some changes in the proposed rules and amendments. The first change noted is correction of reference in 10 MCAR sec. 1.300 A. to the codified statute authorizing the instant rules. Such change, wherever it appears in the rules, is reasonable for ease of reference. (Hereinafter, references to the proposed rules and amendments will be abbreviated so that 10 MCAR sec. 1.300 A. would appear as 300 A.)

9. Mr. Philip D. DelVecchio, Executive Director of the East Central Regional Development Commission (RDC), in a letter dated May 1, 1979 to Mr. Kaliszewski (hereinafter "DelVecchio Letter") suggested adding the following to 301 A.1.b.:

> (3) Regional Development Commissions in care of the Executive Directors of all Regional Development Commissions in Minnesota.

Providing notice to RDCs is a good idea because they are concerned with the general development of a specific area and may be interested in commenting on grant applications. The suggested language (if altered to end after "Directors") is reasonable, necessary and not a substantial change which the Agency accepted. (Tr. 91).

10. As indicated during the hearing, minor changes in syntax in 302 B.1. and 302 B.2. are insubstantial and help make the rule more easily understood. (Tr. 21-22)

11. Extensive discussion during the hearing established that it is impractical to set specific dates or deadlines for application submission and approval in 304 A. because of the different fiscal years used by federal, state and local governments (which create difficulties in planning for grants and implementation of grant funds.)

The suggestion by the City of Duluth to make provision for multi-purpose court game areas which would be useable on a year-round basis, including such winter activities as hockey and broomball, has great merit but is not contemplated by the enabling legislation. (Letter of May 4, 1979 from Richard C. Loraas, Director of Planning and Development, City of Duluth; see, definition of "athletic courts" in Minn. Stat. sec. 4.36, subd. 1(a), which limits activities to basketball, volleyball, handball and tennis; Tr. 85.) To make provision for such a good and practical idea, it would be necessary to pursue legislative amendment of the statute.

12. After the hearing, the Agency decided to change 304 B.1. and 305 B.1. to more clearly define the class of "eligible applicants" for athletic court grants and trail grants by referring to the statutory definition of "units of government." (Agency Letter, pp. 2 and 3, items 3 and 8) Such change is reasonable to clarify the term "eligible applicants".

13. The suggestion that 304 B.3. and 305 B.4. be supplemented with language requiring submission of applications to appropriate RDCs is reasonable but not necessitated by statute. (DelVecchio letter) The law requires only special consideration of the Metropolitan Council, not all regional councils. (See, 1977 Minn. Laws, Ch. 421, sec. 12, subds. 3 and 4) The addition of such requirement, however, does not appear to be substantial, prohibited or onerous and was not objected to by the Agency. (Tr. 93, 94-95).

14. Proposed 304 C.4. was withdrawn by the agency during the hearing as unnecessary pursuant to the suggestion of Mr. Maurice Anderson (Tr. pp. 37-43, especially 42).

The written suggestion that 304 C. require grant projects to include "toilet and parking facilities of proper design to utilize the facility" was apparently rejected by the Agency. (DelVecchio letter) The suggestion is not supported by any arguments for its reasonableness or necessity, and its inclusion would be a substantial change because of the cost involved in construction of such facilities. (Tr. 94; but see a similar provision in 305 C.)

15. A question was raised about priorities among criteria established by 304 D. (and, presumably 305 D.) for evaluation of applications. (Tr. 49-54) Both at the hearing and in written comment, the Agency indicated clearly that it

> intends that the priority should relate in some way, although not exclusively, to joint use of the property, joint liability and/or maintenance, joint instructrin or joint policy agreements. The Agency believes that joint funding or use of property constitutes a more substantial commitment of cooperation.

(Agency letter) Some clarification of that position would be appropriate and reasonable in the rule.

16. The East Central RDC suggested that the following material be incorporated in the rules as 304 D.3.:

> When Regional Development Commissions have adopted an evaluation and ranking system consistent with the criteria found in D1 of these rules and approved by OLUA, applications from within the jurisdiction of the Regional Development Commission shall be evaluated and ranked by the Regional Development Commission. In such cases the determination of which proposals shall receive funding shall be made by the Regional Development Commission.

(DelVecchio Letter) Similar language was proposed for addition to 305 D. (Ibid.)

The imposition of such a new level of screening for application would be a substantial change requiring notice to those affected in order to allow comment. The record does not provide a basis to determine whether such a provision would be reasonable or necessary, and the Agency's claim that such change is beyond its statutory authority has merit. (Tr. 94, 95-96)

17. As a result of discussions during the hearing regarding the vague accounting/recordkeeping requirements of 304 F. (Tr. 64-71), the Agency decided to clarify by indicating the material which a grant recipient will need to maintain to verify use of the grant funds. Specification of that material will be found "in documents or statements accompanying the project agreement." (Tr. 71) Such addition is both necessary and reasonable; it gives the recipient forewarning of what verification may be required in auditing use of grant proceeds while allowing flexibility to the Agency in working out the types of records which they may wish to review for such verification.

18. In the last sentences of 304 H. and 305 H., the Agency noted that "approved" should properly be "unapproved". (Tr. 77, 83) This typographic correction alleviates parta of the concern expressed by Mr. Anderson that no changes will be permitted in an athletic facility (or a trail) after its initial development. (Tr. 72-77) Further clarification of the rule is provided by eliminating the last phrase of the last sentence, "to a non-recreational use," and ending that sentence after the word "changed." (Tr. 77-78)

19. Mr. DelVecchio's suggestion that "bridging" be added to 305 C.2. aft er "parking" is reasonable and necessary for clarification of the rule. (DelVecchio letter) Although the Agency asserts that bridging should be understood to be included as part of "drainage structures" in 305 C.1., it is not clear that that is the case (Tr. 95)

20. Adding the phrase "where applicable" to the end of 305 C.1. and 2. is reasonable and necessary to clarify that not all trail projects must have the items mentioned in the rules (such as shelters, toilet facilities or drainage structures) to be eligible for grants (Agency letter, pp. 3-4).

Based upon the foregoing, the Examiner makes the following:

CONCLUSIONS

1. The State Planning Agency and the Office of Hearing Examiners duly acquired and have jurisdiction in the instant matter.

2. Due, timely and adequate legal notice of the hearing was properly served and published by the Agency. All other procedural requirements of statute and rule have been fulfilled.

3. The Agency has demonstrated its statutory authority to adopt the proposed rules and amendments.

4. Except as noted in the Findings, the Agency has demonstrated that the proposed rules and amendments are reasonable and necessary.

Based on the foregoing, the Examiner makes the following:

RECOMMENDATION

That the amendments and rules be adopted as proposed, except as modified pursuant to the Findings contained in this Report.

Dated this 28th day of June, 1979.

Myron S. Greenberg

MYRON S. GREENBERG
Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General
G-25 Administration Building

DATE: September 5, 1979

FROM : Douglas C. Blomgren
Special Assistant Attorney General

PHONE: 6-1265

SUBJECT: In the Matter of the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Parks and Open Space Acquisition and Development.
PLAN-79-001-MG

Enclosed for review and approval are the proposed rules and amendments to rules in the matter referenced above.

The materials are set out in the following order:

Rules as adopted;
Rules as proposed;
Order for Hearing;
Notice of Hearing;
Secretary of State's List;
Affidavit of Receipt of Secretary of State's List;
Affidavit of Mailing;
Statement of Need and Reasonableness;
Letter from Heritage Conservation Resources Services and 10 program directives;
Transcript of proceedings;
Hearing Examiner's Findings of Fact and Recommendations;
Chief Hearing Examiner's Report;
Agency's Findings of Fact;
Order Adopting Rules;
Statement of Compliance with Manual of Rulemaking Procedure.

Should you have questions, please call me.

DCB:bl

RECEIVED
AUG 3 1 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR E. SIDNER
DIRECTOR OF MINNESOTA
STATE PLANNING AGENCY

In the Matter of the Proposed Rules
And Proposed Amendments to Rules
Of the Minnesota State Planning Agency
For Administering Grants For Parks and
Open Space Acquisition and Development

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Myron S. Greenberg, Esq., Hearing Examiner assigned by the Chief Hearing Examiner of the State of Minnesota on the 21st day of May, 1979 at 9:30 a.m. in the Capitol Square Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Parks and Open Space Acquisition and Development are adopted this 2nd day of July, 1979, pursuant to authority vested in me by Minn. Stat. § 4.36 (1978).

STATE OF MINNESOTA
STATE PLANNING AGENCY

Arthur E. Sidner
DIRECTOR

PLAN-79-001-MG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE PLANNING AGENCY

IN THE MATTER OF THE PROPOSED)
RULES AND PROPOSED AMENDMENTS)
TO RULES OF THE MINNESOTA)
STATE PLANNING AGENCY FOR)
ADMINISTERING GRANTS FOR)
PARKS AND OPEN SPACE)
ACQUISITION AND DEVELOPMENT.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 21, 1979, before Myron S. Greenberg, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the State Planning Agency on June 28, 1979; and

WHEREAS, the State Planning Agency has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the State Planning Agency has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the State Planning Agency has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the State Planning Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Agency to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 4th day of September, 1979.

DUANE R. HARVES
Chief Hearing Examiner

United States Department of the Interior
HERITAGE CONSERVATION AND RECREATION SERVICE
~~BUREAU OF OUTDOOR RECREATION~~
LAKE CENTRAL REGION
FEDERAL BUILDING
ANN ARBOR, MICHIGAN 48107

IN REPLY REFER TO:

G32

February 16, 1978

Ms. Barbara B. Clark
Assistant Commissioner of Planning
Department of Natural Resources
301 Centennial Building
St. Paul, Minnesota 55155

Dear Ms. Clark:

The transformation to Heritage Conservation and Recreation Service is not without minor administrative problems. The following special term must be included in all Land and Water Conservation Fund project agreements or amendments before submission to our office.

> Any reference to the Bureau of Outdoor Recreation (BOR) contained in the agreement, or in any attachments incorporated thereto, shall hereinafter be considered a reference to the Heritage Conservation and Recreation Service (HCRS).

Agreements or amendments already signed by the State and pending final approval in this office will be modified before signature.

Sincerely yours,

JOHN D. CHERRY
Regional Director

By: Richard D. Rieke
Richard D. Rieke
Acting

MINNESOTA STATE PLANNING AGENCY

In the Matter of the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Park and Open Space Acquisition and Development

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

In 1963 the Congress of the United States enacted the Land and Water Conservation Program (LAWCON). This program provides funds to the states for acquisition and development of park and open space and permits the state to make grants to local units of government for the same purposes. Originally the Conservation Department (now DNR) was assigned the responsibility for administering this program. The legislature had specified of the funds coming into the state 50% should be used for state projects and 50% granted to units of local government (M.S. 86.71). In 1969 administration of the 50% earmarked for grants to units of local government was transferred to the Office of Local and Urban Affairs (OLUA) (Minn. Laws 1969, Chapter 1139, § 48, Subd. 7, paragraph g.)

In 1969 the Minnesota Legislature created a program of state grants to units of local government for acquisition and development of park and open space. The intent of this program was to supplement the Federal LAWCON grants. This program is known as the Legislative Commission on Minnesota Resources (LCMR) grants. Administration of this program was also assigned to the OLUA in 1969 (Minn. Laws 1969, Chapter 1139, § 48, Subd. 7, paragraph g.)

In 1977 the Minnesota Legislature created three new grant programs funded with money obtained from the sale of bonds. These programs deal with parks and trails, trails in local parks and local outdoor athletic courts. (Minn. Laws 1977, Chapter 421, § 2, Subd. 2, 3, 4.) The State Planning Agency (SPA) was authorized to adopt rules including emergency rules for the administration of these programs. Emergency rules were adopted but have since expired.

The purpose of these rules is to amend the rules governing the LAWCON and LCMR programs and to establish permanent rules for the administration of the 3 new programs funded by the sale of bonds. The amendments are necessary because of changes in Federal rules governing the LAWCON program and because of changes in state legislation governing the LCMR program. The amendments reflect these changes. The permanent rules are necessary in order to continue administration of the program. The proposed permanent rules closely follow the emergency rules.

The proposed rules and proposed rules amendments prescribed in the following deal with the administration of athletic court and trail development grants for local government units.

They also reflect recent changes in state legislation and federal regulations. These rules are proposed by the State Planning Agency, Office of Local and Urban Affairs, to administer this state grant program. The athletic court grant program provides funds for the development of special surface areas and supporting equipment or structures for basketball, volleyball, handball and tennis. The trail grant program provides funds for the development of surface areas and supporting facilities for hiking, biking and ski-touring trails on public lands.

RULE JUSTIFICATION

10 MCAR § 1.300 is hereby changed to the following:

§ 1.300 Authority, definitions and general provisions.

A. Authority. The rules contained herein are prescribed by the State Planning Agency, Office of Local and Urban Affairs, pursuant to authority granted in Minn. Stat. § 86.71 ~~(1974)~~ (1978) and Minn. Laws 1969, ch. 1139, § 48, subd. 7, paragraph g, as amended and Minn. Extra Session Laws 1971, ch. 3, § 48, subd. 7, paragraph 7, paragraph h as amended (et seq.) ~~and laws of 1977~~, and 1977 Minn. Laws, ch. 421, § 2.

JUSTIFICATION: This additional phrase is necessary to establish the legislative authority for the State Planning Agency, to establish these athletic court and trail grant programs, and adopt rules for it. It is important to use the most updated Minnesota Statutes to have all current laws reflected in these rules.

Minn. Laws, Chapter 421, § 2, subd. 5 provides the State Planning Agency with authority to adopt rules and establish programs for athletic courts and trails as follows:

"POWERS:RULES. The director of the State Planning Agency shall have all powers necessary and convenient in order to establish programs for recreational betterment grants-in-aid for parks, trails, and athletic courts pursuant to this section including, but not limited to, the authority to adopt rules and regulations for the programs, pursuant to chapter 15, and emergency rules and regulations to commence immediately the programs, pursuant to section 15.0412."

B. Purpose of rules. These rules are set forth to provide criteria, priorities, and procedures for evaluating outdoor recreation proposals of local government units under consideration for LAWCON, ~~and~~ LCMR grants-in-aid, athletic courts, and trails.

JUSTIFICATION: This additional phrase is necessary to explain to potential applicants what additional types of recreation activities are eligible for grants within these rules.

C. Definitions. The following terms as used in these rules have the following meanings:

~~1.--"Ad-Hoc-Lake-Improvement-Committee"-means-the committee-composed-of-representatives-of-the-State Planning-Agency,-Department-of-Natural-Resources, University-of-Minnesota,-Department-of-Health, Pollution-Control-Agency,-Legislative-Commission on-Minnesota-Resources,-and-Department-of-Agriculture, that-reviews-and-evaluates-lake-improvement applications.~~

JUSTIFICATION: The deletion of this paragraph is necessary since the state legislature removed the authority of the State Planning Agency to make lake improvement grants.

Minn. Laws 1977, Chap. 455, § 33, Subd. 9, paragraph g states as follows:

"(g) Grants-in-aid for local recreation and natural areas..... This appropriation is to pay up to 50 percent of the total cost or 50 percent of the local share if federal matching funds are used, of long term lease, acquisition and development for recreational projects for the purposes described in Laws 1965, Chapter 810, Section 23, as amended by Laws 1969, Chapter 1139, Section 48, Subdivision 7, Paragraph g, except that no lake improvement grants are authorized under this subdivision and the per project limit for state grants shall be $200,000."

~~2.~~1. ~~"BOR"~~ "HCRS" means the ~~Bureau-of-Outdoor Recreation~~ Heritage Conservation and Recreation Service of the United States Department of the Interior.

JUSTIFICATION: The change of BOR to HCRS is necessary to be consistent with the name change of the Bureau of Outdoor Recreation (BOR) to the Heritage Conservation and Recreation Service (HCRS). The HCRS notified the State Planning Agency in a letter of February 16, 1978 that "any reference to the Bureau of Outdoor Recreation (BOR) contained in the agreement, or in any attachments incorporated thereto, shall hereinafter be considered a reference to the Heritage Conservation and Recreation Service (HCRS)."

~~3.~~2. "~~BOR~~ HCRS Guidelines" means those guidelines established by ~~Bureau-of-Outdoor-Recreation~~ Heritage Conservation and Recreation Service Grants-in-Aid Manual effective as of ~~May 6, 1976~~ October 1, 1978.

JUSTIFICATION: This change is necessary to correct BOR to HCRS and change the date to put into effect those regulations of the HCRS Grants-in-Aid Manual which have become effective since the previous effective date of May 6, 1976.

These are ten amendments to the BOR Grants-in-Aid Manual since May 6, 1976 and these are summarized as follows:

1. Manual Release 135 amendment (approved May 11, 1976).

   Amendment I, Part 685 - This replaces the existing appendix I with recently adopted regulations by the U.S. Dept. of Interior on Uniform Relocation Assistance and real property acquisition policies.

2. Program Directive No. 19 (approved Aug. 5, 1976).

Digest of Changes:

670.1.2(1) (a) - The word "receives" is changed to "accepts" to indicate that acquisition costs are incurred when an exchange for binding consideration is made.

685.3 - Decreases the required frequency of compliance inspections to once every five years after an initial inspection is conducted within three years of project completion.

3. Program Directive No. 20 (approved December 16, 1976).

Digest of Changes:

660.2.2I - This change revises the basic criteria for evaluating projects which may create a competitive situation with privately operated facilities.

660.2.10 - A new paragraph has been added to emphasize the need for a close review of the project agreement to insure it adequately describes and represents the area to be covered by the provisions of section 6(f) of the Land and Water Conservation Fund Act, as amended.

4. Program Directive No. 21 (approved July 21, 1977).

Digest of Changes:

620.1.2 - This paragraph provides for the change in the ratio of funding as authorized by Section 5 of P.L. 94-422.

620.1.4 - This paragraph provides for the change in the apportionment of the appropriation as authorized by Section 6(b) of P.L. 94-422.

620.1.8 - This paragraph has been revised to provide for the reversion of certain unexpended balances of expired funds to a special reapportionment account.

630.1.2D - This paragraph and three subparagraphs provide the revised guidelines for public participation in SCORP development as required by Section 6(d) of P.L. 94-422.

630.1.2F - This paragraph clarifies the review process of plans and plan supplements.

675.9 - This chapter provides for temporary project signing required by Section 8 of P.L. 94-422.

685.2.4A - This paragraph clarifies the application of Title VI Civil Rights requirements to all park and recreation areas administered by an agency receiving assistance.

685.2.4B - This paragraph sets forth prohibitions against discrimination based on residence as required by Section 6(F) (8) of P.L. 94-422.

5. Program Directive No. 22 (approved Aug. 25, 1977).

Digest of Changes:

600.5 - This Chapter establishes the procedures for the annual reporting requirements of Section 6(f) (7) of the Land and Water Conservation Fund Act, as amended.

6. Program Directive No. 23 (approved November 1, 1977).

Digest of Changes:

645.1.1 - Third paragraph provides for change from OMB Circular A-103 to Federal Property Management Regulations, subchapter A, Subpart 101-6.1.

645.1.3 - This new section modifies current requirements for applying uniform relocation and land acquisition procedures to property acquired without Land and Water Conservation Fund assistance but for which development assistance is being provided.

645.1.4 - Formerly 645.1.3.

645.1.4D - Provides change from Section 114-50.1003 to Section 114-50.1004 of the Departmental regulations.

645.1.5 - Formerly 645.1.4.

645.1.5C(7) - Provides change from 645.1.9 to 645.1.10.

645.1.6 - Formerly 645.1.5. Provides change from 645.1.4C to 645.1.5C.

645.1.7 - Formerly 645.1.6.

645.1.8 - Formerly 645.1.7.

645.1.9 - Formerly 645.1.8.

645.1.10 - Formerly 645.1.9.

645.1.11 - Formerly 645.1.10. Provides change in reporting date from September 1 to December 1.

645.1.12 - Formerly 645.11.

7. Program Directive No. 24 (approved November 30, 1977).

Digest of Changes:

650.1 - This chapter has been revised to simplify the preparation of environmental assessments and to identify types of projects for which assessments will not be required.

8. Program Directive No. 25 (approved December 12, 1977).

Digest of Changes:

660.1.3E - This paragraph is revised to increase certification project limits to $100,000 Fund assistance, and to clarify the certification statement format relative to historic and archaeological features.

660.1.3F - Procedures for master projects have been eliminated. Guidelines to allow for certification of all projects (without regard to Fund amount) in selected States have been substituted.

Illustration I and
Illustration 1A- Incorporates SF-424 as covering sheet of OMB 80-R0184 application form.

Illustration III-Eliminated as SF-424 replaces SF-240.

9. Program Directive No. 26 (approved December 16, 1977).

Digest of Changes:

620.2 - Provides the revision of the specific criteria for Contingency Reserve projects.

620.4 - Mandates documentation for commitments of regular apportionment and a letter from the Governor endorsing the project.

620.6 - Delegates approval authority of Contingency Reserve Agreements and Amendments to Regional Directors.

10. Program Directive No. 27 (effective date is October 1, 1978).

Summary of Changes:

660.1 - Introduces consolidated project application procedures and associated administrative flexibility; expands single project (certification) option; provides for project scope flexibility; and updates certain other application requirements.

660.2 - Updates criteria for project evaluation.

660.3 - Incorporates changes in Service review of an application and updates amendment requirements.

660.4 - Updates general provisions.

670.1 - Simplifies requirements relating to preagreement planning costs, and donation of services, materials, equipment and land. Updates policies regarding waivers of retroactivity and equipment use rates.

675.2 - Simplifies donation appraisal requirements.

675.5 - Simplifies performance and P.L. 91-646 reporting requirements. Incorporates changes in inspection responsibilities and allows for the use of the letter of credit for reimbursements.

675.8 - Revises documentation procedures for project completion.

Special Notation:

All references to the Bureau of Outdoor Recreation in the Outdoor Recreation Grants-in-Aid Manual are herewith changed to the Heritage Conservation and Recreation Service.

~~4.~~3.

~~5.~~4.

~~6.~~5.

~~7.~~6.

~~8.~~7.

~~9.~~8.

~~10.~~9.

~~11.~~10.

~~12.~~11.

~~13.~~12.

~~14.~~13.

~~15.~~14.

~~16.~~15.

~~17.~~16.

~~18.~~17.

~~19.~~18.

JUSTIFICATION: The above renumbering of paragraphs is necessary so the paragraphs correspond in numerical order.

10 MCAR § 1.301 is hereby changed to the following:

§ 1.301 LAWCON grant program.

A. Application process

1. Submission of preliminary applications.

a. Eligibility. Any local applicant which satisfies the guidelines for eligibility established by BOR HCRS, may apply for a LAWCON grant.

JUSTIFICATION: This change is necessary to be consistent with the name change of the Bureau of Outdoor Recreation to the Heritage Conservation and Recreation Service.

b. Notice. Annually, OLUA shall send notice of the period of time that preliminary applications for LAWCON grants shall be accepted by OLUA. The notice shall be sent at least 45 days before the period ends. Such notice shall be sent to the following:

(1) Mayors ~~and~~ in care of the clerks of all cities in Minnesota;

(2) County board chairmen ~~and~~ in care of the auditors of all counties in Minnesota;

JUSTIFICATION: This change is needed to reduce administrative time and expense of sending out preliminary applications. Sending preliminary applications to the chief elected official in care of a principal administrative official would insure that either official could receive the application without requiring the sending of a second duplicate application.

2. Evaluation of preliminary applications. Preliminary project applications which satisfy the ~~BOR's~~ HCRS project eligibility guidelines and priorities for LAWCON grants shall be evaluated and ranked as follows: a) general criteria; b) acquisition priorities; and c) development priorities.

5. ~~BOR~~ HCRS approval. If the final application is satisfactory, OLUA shall request ~~BOR~~ HCRS approval of a LAWCON grant for the recommended project. OLUA shall notify the applicant of the action taken by ~~BOR~~ HCRS.

B. Project agreement. Upon approval by ~~BOR~~ HCRS, OLUA shall execute a project agreement with the applicant and the applicant shall comply with the terms of the project agreement.

C. Disbursement of grant. The applicant shall initially pay for the project costs as specified in the project agreement. The applicant shall submit to OLUA a billing request for work completed on the project, but not more than six billings per project. Upon receipt of a billing request, containing the documentation required in the project agreement, OLUA shall request from ~~BOR~~ HCRS the Federal share of the eligible costs represented by that billing. Upon receipt of the LAWCON grant for that billing, OLUA shall reimburse the applicant. The final billing shall reflect any cost adjustments due to project changes and shall be subject to a site inspection by the State and ~~BOR~~ HCRS personnel and verification by federal and state audit.

D. Amendments. A request for an amendment in the project scope, costs or time period may be submitted to OLUA prior to project termination. If the request is eligible for a LAWCON amendment and OLUA considers the amendment request to be reasonable and justified and it does not substantially affect the project eligibility under 10 MCAR § 1.301 A. 2., above, it may request ~~BOR~~ HCRS to approve the amendment.

JUSTIFICATION: The above changes are necessary to be consistent with the name change of the Bureau of Outdoor Recreation to the Heritage Conservation and Recreation Service.

10 MCAR § 1.302 is hereby changed to the following:

§ 1.302 LCMR Grants-in-aid program.

B. Grant categories and financial assistance.

1. Regional project. A LCMR grant-in-aid may be available in the percentage rates specified by State Law when the applicants can document that the project serves a regional need. ~~under the following circumstances:~~

~~a. Project with approved federal grant: Eligible applicants with an approved federal grant for a park, recreation or open space project within their jurisdiction, may apply for a LCMR grant in aid up to 100% of the local share of that acquisition or development project provided that the state share shall not exceed 75% of the total project costs.~~

~~b. Project without approved federal grant: Eligible applicants not receiving a federal recreation grant may apply for a LCMR grant in aid up to 75% of the total cost of the project application.~~

2. Other than regional projects. A LCMR grant-in-aid may be available in the percentage rates specified by State Law to applicants for other than regional projects. ~~under the following circumstances:~~

~~a. Project with approved federal grant: Eligible applicants receiving a federal grant for a park, recreation or open space project may apply for a LCMR grant in aid to 50% of the local share of the project.~~

~~b. Project without approved federal grant: Eligible applicants not receiving a federal recreation grant may apply for LCMR grant in aid up to 50% of the total cost of the project.~~

JUSTIFICATION: This paragraph change is necessary to reflect the change in the percentage rates of state grants established by the state legislature in 1977 and make them applicable to any future changes without required revision of rules whenever such change occurs.

Minn. Laws 1977, Chapter 455, § 33, Subd. 9, paragraph h states as follows:

"Grants-in-aid for regional recreation and natural areas..... This appropriation is available to pay up to 50 percent of the total cost or 50 percent of the local share, where federal matching funds are used, for long term lease, acquisition and major development for recreation projects, natural areas and open space serving a regional need to counties, local units of government, special units of government and public educational institutions authorized to acquire, maintain and operate recreational and natural areas."

D. Application procedure.

1. Projects under consideration for a LAWCON grant.

b. Upon ~~BOR~~ HCRS approval of a LAWCON application, OLUA shall initiate the application procedure for applicants that have not received LCMR grants-in-aid exceeding the maximum legislative grant allowable for that project.

JUSTIFICATION: This change is necessary to be consistent with the name change of the Bureau of Outdoor Recreation to the Heritage Conservation and Recreation Service.

~~§-1.304-LCMR-grants-in-aid-program-for-lake-improvement projects.~~

~~A.--Lake-improvement-program.--A-lake-improvement grant-program-is-hereby-established-for-demonstrating-or-carrying-out-new-techniques-to-improve the-quality-of-lakes.--This-grant-program-is-an extension-of-the-LCMR-grants-in-aid-program-and is-established-by-Minn.-Laws-1969,-ch.-1139,-§-48, subd.-7,-paragraph-g.--Pursuant-to-said-statute, the-following-shall-be-eligible-to-apply-for-such projects.~~

~~B.--Eligible-applicants.~~

~~1.--Units-of-local-government-and-public agencies-that-have-the-authority-to-undertake lake-improvement-projects;~~

~~2.--Nonprofit-organizations-and-associations whose-primary-objective-is-the-management-of natural-resources-and-the-improvement-of-the environment.~~

~~C.--Eligible-projects.--Eligible-projects-for-lake improvement-grants-shall-be-pilot-demonstration projects-which-are-new-or-unique-for-that-type-of lake.--Eligible-projects-and-facilities-may-receive a-LCMR-grant-in-aid-of-50-percent-of-the-eligible costs-but-not-to-exceed-the-maximum-legislative-grant-in-aid-allowable-for-that-project.--Grants-from-this program-shall-be-available-for-acquisition,-construction and-testing-costs.--Maintenance-and-operational-costs shall-be-the-responsibility-of-the-applicant.~~

D.--Application process.--Eligible applicants may apply for a LCMR grant in aid for lake improvement by submitting a preliminary application to OLUA and the Metropolitan Council or the appropriate regional development commission for a project review.--The Metropolitan Council or appropriate regional development commission at their option may recommend on an advisory basis to OLUA, a list of applications from the region arranged in order of priority.--OLUA shall prescribe the form and content of the application.

E.--Evaluation of applications.

1.--Priorities.--The criteria that shall be used to evaluate and establish priorities for applications shall be based upon projects that:

a.--Perpetuate the beneficial natural characteristics of the shoreline.

b.--Consider upstream conditions and sound watershed management practices, as may be established in the comprehensive watershed plan.

c.--Are located in areas that have and are enforcing effective zoning ordinances, building codes, health ordinances, and conservation rules that affect the project.

d.--Have a majority of shoreline in public ownership.--Only lakes that are accessible to the public shall be eligible for a grant.

e.--Improve the quality of waterbased recreational activities and fish and game habitat.

f.--Have received a federal grant.

2.--Procedure.--Upon receipt of a preliminary application for a lake improvement grant, OLUA shall follow the following procedure:

a.--The application shall be reviewed for eligibility and completeness.--If additional information is required, the applicant shall be notified and asked to provide the additional information.

b.--A preliminary evaluation and priority ranking of the lake improvement project shall be conducted by OLUA, the Department of Natural Resources and Pollution Control Agency.

c.--Applicants that receive a high priority ranking in the preliminary project evaluation shall then be submitted to the "Ad Hoc Lake Improvement Committee" for review.

~~d.--Applicants that receive a high ranking from the "Ad Hoc Lake Improvement Committee" evaluation shall be eligible to submit a final application.~~

~~e.--Final applications shall be submitted to OLUA.--OLUA shall prescribe the form and content of the application.--Final applications that are acceptable shall be recommended to the LCMR and the LAG in accordance with 10 MCAR § 1.302D.1.c, d., e.~~

~~F.--Disbursement of grants.--The disbursement of grants for LCMR grant in aid lake improvement projects shall be as specified in 10 MCAR § 1.302 E.~~

~~G.--Amendments.--Lake improvement projects shall be eligible for LCMR grant in aid amendments as specified in 10 MCAR § 1.302 F.~~

~~H.--Project completion.--Upon completion, the project shall be subject to closing requirements as specified in 10 MCAR § 1.302 G.~~

JUSTIFICATION: Minn. Laws 1977, Chapter 455, § 33, Subd. 9, paragraph (g) deleted the lake improvement grants program from the State Planning Agency as follows:

"Grants-in-aid for local recreation and natural areas..... This appropriation is to pay up to 50 percent of the total cost or 50 percent of the local share if federal matching funds are used, of long term lease, acquisition and development for recreational projects for the purposes described in Laws 1965, Chapter 810, Section 23, as amended by Laws 1969, Chapter 1139, Section 48, Subdivision 7, Paragraph g, except that no lake improvement grants are authorized under this subdivision and the per project limit for state grants shall be $200,000."

10 MCAR § 1.304 Athletic Court Grants program.

A. Distribution of grants. OLUA shall distribute state grants for the development of basketball, handball, tennis and volleyball courts in conformance with 1977 Minn. Laws, ch. 421, § 2, subd. 4 and the rules contained herein. Applications for athletic court grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA.

JUSTIFICATION: This paragraph is necessary to establish a separate state grant program for athletic courts since it is a new category of grants with different criteria. State legislation states that this program is to be administered by the State Planning Agency and OLUA is the Division of State Planning Agency which administers similar recreation grants to local government units. It is important to inform potential applicants when applications will be considered and when they can obtain submission deadline information so that they can plan for application preparation. Minnesota Laws 1977, ch. 421, § 2, subd. 4 specifies that the State Planning Agency is to administer this program and indicates the criteria to be considered in making grants as follows:

"Grants for local outdoor athletic courts. The State Planning Agency shall administer a program to provide grants to units of government for the betterment of public land and improvements needed for local athletic courts. A grant shall not exceed 50 percent of the costs of the betterment of the athletic court. To be eligible for a grant, a unit of government must provide at least 50 percent of the costs of the betterment of the athletic court. In making grants the agency shall consider, among other factors, evidence of cooperation between units of government, local need and available financial resources, and court locations that encourage maximum use, patronage, and availability."

Minn. Laws 1977, ch. 421, § 2, subd. 1 defines athletic courts as follows:

"(a) 'Athletic courts' means special surface areas and supporting equipment or structures such as nets, hoops, and walls which can be used for active games that have definite boundaries and are played on a marked surface, limited to basketball, volleyball, handball and tennis."

B. Application procedure.

1. Eligible applicants as defined by Minn. Laws 1977, ch. 421, § 2, subd. 1 (c) may apply for state athletic court grants.

JUSTIFICATION: This paragraph is necessary to inform potential applicants who are eligible to apply for the athletic courts grant program. Minn. Laws 1977, ch. 421, § 2, subd. 1 (c) states who is eligible as follows:

"(c) 'Units of government' means any county, city and home rule charter city, town, school district, public post-secondary educational institution, special park district, or any elected park and recreation board having control over parks, parkways, playgrounds, and trees in a city of the first class."

2. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

JUSTIFICATION: This paragraph is necessary to permit OLUA to limit the content of applications to the information necessary to determine eligibility, evaluate, and rank projects consistent with these rules. This paragraph is also necessary to inform potential applicants of the kinds of information to be expected in applications for athletic court grants.

3. All applications for projects shall be submitted to OLUA for review under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall also be submitted to the Metropolitan Council for their review.

JUSTIFICATION: This paragraph is necessary to inform potential applicants who will review their application and to which agencies they should be submitted. Applicants within the jurisdiction of the Metropolitan Council are to submit their applications to that body for review. 1977 Minn. Laws, ch. 421, § 12, subd. 4 establishing this program specifies that grants to governmental units in the Metropolitan area be made in accordance with priorities jointly established by the Metropolitan Council and the State Planning Agency as follows:

"Subd. 4. Local athletic court grants, pursuant to section 2, subdivision 4

$650,000 of this appropriation shall be used for grants to units of government in the metropolitan area in accordance with priorities established by the metropolitan council and the agency. $650,000 of this appropriation shall be used for grants to units of government outside the metropolitan area."

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the the responsibility of the applicant. Projects and facilities eligible for a state grant shall include the following:

JUSTIFICATION: This paragraph is necessary to inform potential applicants when projects become eligible for grants and that grants are not eligible for maintenance or operational costs. Since the Minnesota legislature has established this program for the construction of new athletic courts, it is necessary to specify that those already constructed are not eligible for grant consideration. The legislation also specifies that grant funds are only available for construction of athletic courts. Thus, there is no authority to provide operational or maintenance grant funds, 1977 Minn. Laws, ch. 421, § 2, subd. 4, specifies the eligibility of state athletic court grants and the authority for construction purposes as follows:

"Subd. 4. Grants for local outdoor athletic courts. The State Planning Agency shall administer a program to provide grants to units of government for the betterment of public land and improvements needed for local athletic courts. A grant shall not exceed 50 percent of the costs of the betterment of the athletic court. To be eligible for a grant, a unit of government must provide at least 50 percent of the costs of the betterment of the athletic court. In making grants the agency shall consider, among other factors, evidence of cooperation between units of government, local need and available financial resources, and court locations that encourage maximum use, patronage, and availability."

1. A special surface area of asphalt or concrete materials with adequate foundation suitable for the soil and climatic conditions. Prior to construction, such surface areas and foundations shall be approved by the applicant's engineer, as being suitable. Courts shall be outlined on the surface area and be of proper size to meet generally recognized athletic court dimensions.

2. Hoops, nets and supporting structures for athletic court games which shall be of a proper size to utilize the facility.

3. Walls and fences for the athletic court of a proper size to utilize the facility in the manner intended.

4. Adequate lighting to extend the use of the court games into hours of darkness.

JUSTIFICATION: These paragraphs are necessary to further delineate what elements are eligible for an athletic court grant. 1977 Minn. Laws, ch. 421, § 2, subd. 1 generally defines what is eligible for athletic courts as follows:

"(a) 'Athletic courts' means special surface areas and supporting equipment or structures such as nets, hoops, and walls which can be used for active games that have definite boundaries and are played on a marked surface, limited to basketball, volleyball, handball and tennis."

It is necessary to further delineate what facilities are eligible for athletic courts so that potential applicants are aware of the specific facilities to apply for.

1. It is important that athletic court surfaces be constructed of asphalt or concrete materials so that it is sufficient durability to withstand intense usage and requires minimal maintenance. Both asphalt and concrete surfaces are in common use on tennis courts throughout the United States and it is important that athletic court games played in Minnesota be comparable to those played throughout the country and of a recognized national standard quality. It is important that athletic courts surface be suitable for the type of soil and climatic conditions encountered at the site so that they can be designed to be as durable and long lasting as possible. It is important that surface areas be approved by the applicant's engineer so that there is some professional assurance that the surface area is properly designed to fit the soil and climatic conditions found at the site. It is important that courts be outlined on the surface area so that players have the propoer reference in which to play the game. Athletic courts need to be of a proper size so that games played on Minnesota courts are of a standard recognized throughout the country and comparable so that Minnesota residents can play proficiently on similar sized courts throughout the country.

2. It is important that hoops, nets and supporting structures for athletic courts be of a proper size so that the facility can be adequately utilized and are of a nationally recognized standar for comparable play. There are necessary supporting equipment to enable the proper play of games in accordance with standards common throughout the country.

3. It is important that walls and fences be a proper supporting equipment since these are common athletic court features across the country and save the player considerable time chasing balls. Such fencing and walls also protect nonparticipants from being hit by stray balls.

4. It is important that adequate lighting be a proper supporting equipment since this is a common athletic court feature across the country and enable the courts to be used for longer periods of time and by larger numbers of people. This maximizes the state investments in such facilities for the number of persons served.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

JUSTIFICATION: This paragraph is necessary to inform potential applicants who will be evaluating and ranking applications. 1977 Minn. Laws, ch. 421, § 2, subd. 4 shown below establishing the athletic courts grants program provides that the program is to be administered by the State Planning Agency. The evaluation and ranking of projects is an integral part of this administrative process. The State Planning Agency has assigned the administration of the athletic court grant program to the Office of Local and Urban Affairs since this office is already administering similar recreation grants programs to local units of government. This paragraph is also necessary to state the basic consideration that all of the specific criteria are considered on an equal basis. 1977 Minn. Laws, ch. 421, § 2, subd. 4 shown below specifies the criteria to be used for evaluating applications. Since there was no legislative indication that any one criteria should be given greater weight than another, each of the criteria factors is given equal consideration.

1977 Minn. Laws, ch. 421, § 2, subd. 4. Grants for local outdoor athletic courts. The State Planning Agency shall administer a program to provide grants to units of government for the betterment of public land and improvements needed for local athletic courts. A grant shall not exceed 50 percent of the costs of the betterment of the athletic court. To be eligible for a grant, a unit of government must provide at least 50 percent of the costs of the betterment of the athletic court. In making grants the agency shall consider, among other factors, evidence of cooperation between units of government, local need and available financial resources, and court locations that encourage maximum use, patronage, and availability.

a. Priority shall be given to eligible applicants that demonstrate the athletic courts will be developed jointly with one or more eligible applicant. Included shall be evidence of cooperative use of such facilities between schools, cities, and other local units.

JUSTIFICATION: This paragraph is necessary to comply with the factors to be considered in making grants required by State legislation establishing the program as listed above and inform potential applicants of this evaluation factor. This factor is "evidence of cooperation between units of government." Such evidence of cooperation is indicated by how eligible applicants demonstrate how facilities will be jointly developed with other eligible applicants. It is important that cooperation only be considered between eligible applicants since they are the units of governments to be considered by the state legislation establishing this program.

b. Eligible project applications received by OLUA shall be ranked in order from highest to lowest in relation to those projects located in cities or towns which have the lowest number of similar public athletic courts in relation to their population.

JUSTIFICATION: This paragraph is necessary to comply with the factors to be considered in making grants required by the State legislation establishing the program as listed above. This paragraph is also necessary to further explain the evaluation factor of "local need" listed in the State Legislation establishing this program. A major consideration in determining local need is the number of existing courts in relation to the population of the city or the town in which the facility is to be located. Those locations which have the fewest courts in relation to their population are presumed to have the greatest need. It is important that the population of the city or town in which the facility is located be used in determining this evaluation factor since the state legislation specifies "local" and this most equably compares all categories of eligible applicants. It is also important that city and town populations be used since up to date population data is readily available through the federal Bureau of the Census and gathered for each community in a similar manner.

c. Eligible project applications received by OLUA shall be ranked in order from highest to lowest by the distance the project is located away from similar existing public athletic courts.

JUSTIFICATION: This paragraph is necessary to further explain the evaluation factor of "local need" listed in the State Legislation establishing this program. Another major consideration in determining local need is the distance people have to travel to use similar athletic court facilities. Thos locations where people have the furthest distance to travel to use similar athletic court facilities are presumed to have the greatest need. The evaluation factor of this paragraph is also important since it tends to balance the needs of varied sized communities in Minnesota in being able to compete equally for athletic court grants. The evaluation factor of this paragraph tends to give more favorable consideration to smaller sized communities whereas the evaluation of the previous factor tends to give more favorable consideration to larger sized communities. The evaluation factor of this paragraph is of further importance in that it allows a second factor in which an applicant can compete, if the applicant has little chance of only competing favorably in the previous need factor.

d. Priority shall be given to eligible applicants that can demonstrate that the courts will be readily accessible to the public by vehicular and pedestrian traffic, serve residential areas, and are available to the entire community during daylight and evening hours.

JUSTIFICATION: This paragraph is necessary to comply with the evaluation factor of "court locations that encourage maximum use, patronage and availability" required by the State Legislation establishing this program. This paragraph is important to further specify in greater detail those factors taken into consideration in determining the above evaluation factors. A major factor in encouraging maximum use of athletic courts is to locate them in residential areas where they are readily available to the people and lighted to extend the hours of usage per day they are intended to serve. Encouraging maximum patronage of athletic courts is achieved by encouraging their location where they can be served by both pedestrian and vehicular traffic. Athletic locations are considered most available if they are available to the entire community and not cut off from major portions of the community by physical barriers.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D. 1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

JUSTIFICATION: This paragraph is necessary to inform potential applicants in the metropolitan area that they will be ranked by both the Office of Local and Urban Affairs and the Metropolitan Council pursuant to their criteria. It is important that the Metropolitan council evaluate and rank athletic court applications since the State Legislation establishing this program provides that the priorities for grants of metropolitan applicants by established jointly between the State Planning Agency and the Metropolitan Council as follows:

1977 Minn. Laws, ch. 421, § 12, subd. 4. Local athletic court grants, pursuant to section 2, subdivision 4.

$650,000 of this appropriation shall be used for grants to units of government in the metropolitan area in accordance with priorities established by the Metropolitan Council and the agency. $650,000 of this appropriation shall be used for grants to units of government outside the metropolitan area.

E. Distribution of grants. Grants shall be distributed in order of ranking until available athletic court funds are depleted. For those applicants recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of an executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

JUSTIFICATION: This paragraph is necessary to inform potential applicants how grant funds will be distributed and that funds will be distributed only to the extent that they are made available by the state legislature in any given year of allocation. This paragraph is also important to inform potential applicants that grant funds will be contingent upon the satisfactory execution of an agreement for the project when funds are distributed and when the applicant may start the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement.

JUSTIFICATION: This paragraph is necessary to inform applicants of the need to establish proper accounting procedures of project costs and justify to OLUA the proper expenditure of grant funds and to comply with the project agreement. It is important that OLUA prescribes the documentation necessary to verify the costs and comply with the project agreement so it is limited to that information necessary to account for and close out the project. Since the content must conform with the legislation as it changes over a period of time, occasional revisions may be necessary. To reduce the number of rule changes necessary if the contents of the project documentation are revised, the specific form and content of project documentation are not specified.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

JUSTIFICATION: This paragraph is necessary to verify that the project has been completed in accordance with terms of the project agreement and provide for the return of any unused portion of the grant. Since state grants are only approved for specific projects, it is necessary that any unused portion of the grant not necessary to complete the project be returned to the state for other approved uses.

H. Retention and use of the project. Property developed with an athletic court grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a nonrecreational use or another recreational use without prior approval of OLUA. In the event an approved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed to a nonrecreational use.

JUSTIFICATION: This paragraph is necessary to insure that the state athletic court grants shall continue to be used for the purposes intended by State Legislation establishing this program. Since these grants are intended for public use it is important that athletic courts be available to the public on nondiscriminatory basis. It is also important that if an applicant decides to change the property to another use, OLUA can evaluate that change and determine if the change is consistent with the intent of the program or if the state funds should be returned to the state so they can be reused for the proper intended us of the State Legislation.

I. Responsibilities of recipient. A recipient of an athletic court grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

JUSTIFICATION: This paragraph is necessary to insure that recipients of athletic court grants comply with any applicable present or future State laws and regulations not mentioned in these regulations. The inclusion of this paragraph allows athletic court grants distributed under these rules to be applicable to present and future state laws to minimize the necessity of amending these rules and regulations.

§ 1.305 Trail Grants Program.

A. Distribution of grants. OLUA shall distribute state grants for the development of hiking, biking, and touring trails in conformance with 1977 Minn. Laws, ch. 421, § 2, subd. 3 and the rules contained herein. Applications for trail grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA. Trail grants shall be available for trail development on public parks or other public lands excluding public road rights-of-way.

JUSTIFICATION: This paragraph is necessary to establish a separate state grant program for trails systems since it is a new category of grants with different evaluation criteria. It is important that the development of trails under this grant program be for hiking, biking and ski touring since these activities are typically done in on or connecting parks funded under the other rules of OLUA. It is also important to limit trails of this program to hiking, biking and ski touring so that this grant program does not duplicate trail grant programs of other state agencies. 1977 Minn. Laws, ch. 421, § 2, subd. 3 establishing this trail grant program as follows:

"Grants for trails in local parks. The State Planning Agency shall administer a program to provide grants to units of government for the betterment of public land and improvements needed for recreational trails in parks owned and operated by units of government. A grant shall not exceed 40 percent of the costs of the betterment of the trail. To be eligible for a grant, a unit of government must provide at least ten percent of the costs of the betterment of the trail."

B. Application procedure.

1. Eligible applicants defined by 1977 Minn. Laws, ch. 421, § 2, subd. 1 (c) may apply for trail grants.

JUSTIFICATION: This paragraph is necessary to inform potential applicants who is eligible to apply for the trail grants program. 1977 Minn. Laws, ch. 421, § 2, subd. 1 (c) states who is eligible as follows:

"Units of government" means any county, city and home rule charter city, town school district, public post-secondary educational institution, special park district, or any elected park and recreation board having control over parks, parkways, playgrounds, and trees in a city of the first class."

2. Only trails that provide a primary recreational activity in themselves shall be eligible for trail grants. Pathways that just connect recreational activities, provide access to them, or protect the site from overuse shall not be eligible.

JUSTIFICATION: This paragraph is necessary to insure that grants funded under this program serve a recreational purpose rather than are for other uses such as providing access or preventing overuse. 1977 Minn. Laws, ch. 421, § 2, subd. 3 provides for the State Planning Agency to administer grants for improvements needed for recreational purposes only as follows:

"Subd. 3. Grants for trails in local parks. The State Planning Agency shall administer a program to provide grants to units of government for the betterment of public land and improvements needed for recreational trails in parks owned and operated by units of government. A grant shall not exceed 40 percent of the costs of the betterment of the trail. To be eligible for a grant, a unit of government must provide at least ten percent of the costs of the betterment of the trail."

3. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant; relationship to future plans, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

JUSTIFICATION: This paragraph is necessary to permit OLUA to limit the content of applications to the information necessary to determine eligibility, evaluate and rank projects consistent with these rules. This paragraph is also necessary to inform potential applicants of the kinds of information to be expected in applications for athletic court grants.

4. Applications for projects outside of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules, and to the Metropolitan Council for its review and ranking.

JUSTIFICATION: This paragraph is necessary to inform potential applicants who will review their application and to which agencies they should be submitted. Applicants within the jurisdiction of the Metropolitan Council are to submit their applications to that body for review, since the legislation establishing this program specifies that grants to governmental units in the Metropolitan area be made in accordance with priorities jointly established by the Metropolitan Council and the State Planning Agency as follows:

1977 Minn. Laws, ch. 421, § 12, subd. 3. Grants for trails within local parks, pursuant to section 2, subdivision 3

$650,000 of this appropriation shall be used for grants to units of government in the metropolitan area in accordance with priorities established by the Metropolitan Council and the agency. $650,000 of this appropriation shall be used for grants to units of government outside the metropolitan area.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Project and facilities eligible for a state grant shall include the following:

JUSTIFICATION: This paragraph is necessary to inform potential applicants at what date projects are eligible for grants and that grants are not eligible for maintenance or operational costs. Since the Minnesota Legislature has established this program for the construction of new athletic courts, it is necessary to specify that those already constructed are not eligible for grant consideration. The legislation also specifies that grant funds are only eligible for construction of athletic courts. Thus, there is no authority to provide operational or maintenance grant funds.

1. Clearing of vegetation, grading, and construction of a surface area and necessary drainage structures suitable for the type of trails proposed.

2. Shelters, signs, parking, toilet facilities, and water systems suitable for type of trails proposed.

JUSTIFICATION: These paragraphs are necessary to explain to potential applicants what elements are eligible for trail grants.

1. The preparation and construction of the trail surface suitable for the type of trail proposed, constitutes the basic construction necessary to make a trail system usable. It is important that necessary drainage structures be included so that storm water runoff and natural water courses do not destroy the trail construction.

2. It is important that suitable shelters, signs, toilet facilities and water systems be eligible for state grants since these are types of supporting facilities necessary to provide basic health and safety conveniences for trail uses.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

JUSTIFICATION: This paragraph is necessary to inform potential applicants who will be evaluating and ranking applications. 1977 Minn. Laws, ch. 421, § 2, subd. 3 establishing the trail grant program provides that the program is to be administered by the State Planning Agency as shown below. The evaluation and ranking of projects is an integral part of this administrative process. The State Planning Agency has assigned the administration of the trail grant program to the Office of Local and Urban Affairs since this office is already administering similar recreation grant programs to local units of government.

1977 Minn. Laws, ch. 421, § 2, subd. 3 is as follows:

"Subd. 3. Grants for trails in local parks. The State Planning Agency shall administer a program to provide grants to units of government for the betterment of public land and improvements needed for recreational trails in parks owned and operated by units of government. A grant shall not exceed 40 percent of the costs of the betterment of the trail. To be eligible for a grant, a unit of government must provide at least ten percent of the costs of the betterment of the trail."

a. Priority shall be given to trail projects located so as to minimize interference with incompatible activities and features.

JUSTIFICATION: This evaluation criteria is important so as to give priority to trails that provide a primary activity in themselves and do not interfere with or infringe on active recreational facilities.

b. Priority shall be given to trail projects that provide access to areas of outstanding natural resources or man-made features.

JUSTIFICATION: This evaluation criteria is important so as to give priority to trails that provide access to scenic outdoor natural environments or offer the user an opportunity to interpret such environments. Such criteria provide the most common criteria for establishing trails across the country. Trails by their traditional nature provide a place to communicate with nature in a scenic quiet atmosphere as an alternative to a person's normal busy existence.

c. Priority shall be given to trail projects that continue or link into other trail systems or proposed trail systems.

JUSTIFICATION: This evaluation criteria is important so that priority is given to those applicants that have already initiated trail systems on their own and link trails into a continuous system thereby increasing their usability by larger numbers of people.

d. Priority shall be given to trail projects from applicants that have the fewest miles of similar trails in relation to their population.

JUSTIFICATION: This evaluation criteria is important in determining local need of the project. Those communities which have the fewest miles of similar trails in relation to their population are considered to have the greatest need. It is important that the population of the city or town in which the facility is located by used in determining this evaluation factor since it most equably compares all categories of eligible applicants and up to date population data is readily available through the federal Bureau of the Census. This census gathers population data for each community in a similar manner.

e. Priority shall be given to eligible applicants that can demonstrate that the proposed trails are readily accessible to the public by vehicular, pedestrian and bicycle traffic and are available to the entire community.

JUSTIFICATION: This evaluation criteria is important to give priority to those applicants whose trails are readily accessible to people and are not cut off from major portions of the community by physical barriers.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

JUSTIFICATION: This paragraph is necessary to inform potential applicants in the metropolitan area that they will be ranked by both the Office of Local and Urban Affairs and the Metropolitan Council pursuant to their criteria. It im important that the Metropolitan Council evaluate and rank trail applications since the State Legislature establishing this program provides that the priorities for grants of metropolitan applicants by established jointly between the State Planning Agency and the Metropolitan Council as follows:

1977, Minn. Laws, ch. 421, § 12, subd. 3. Grants for trails within local parks, pursuant to section 2, subdivision 3

$650,000 of this appropriation shall be used for grants to units of government in the metropolitan area in accordance with priorities established by the Metropolitan Council and the agency. $650,000 of this appropriation shall be used for grants to units of government outside the metropolitan area.

E. Distribution of grants. State grants shall be distributed in order of ranking until trail development funds are depleted. For those applicants who are recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of the executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

JUSTIFICATION: This paragraph is necessary to inform potential applicants how grant funds will be distributed and that funds will be distributed only to the extent that they are made available by the State Legislature in any given year of allocation. This paragraph is also important to inform potential applicants that grant funds will be contingent upon the satisfactory execution of an agreement for the project when funds are distributed and when the applicant may start the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement.

JUSTIFICATION: This paragraph is necessary to inform applicants of the need to establish proper accounting procedures of project costs and justify to OLUA the proper expenditure of grant funds and to comply with the project agreement. It is important that OLUA prescribes the documentation necessary to verify the costs and comply with the project agreement so it is limited to that information necessary to account for and close out the project. Since the content must conform with the legislation as it changes over a period of time, occasional revisions may be necessary to reduce the number of rule changes necessary if the contents of the project documentation are revised, the specific form and content of project documentation are not specified.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

JUSTIFICATION: This paragraph is necessary to verify that the project has been completed in accordance with terms of the project agreement and provide for the return of any unused portion of the grant. Since state grants are only approved for specific projects, it is necessary that any unused portion of the grant not necessary to complete the project be returned to the state for other approved uses.

H. Retention and use of project. Property developed with a trail grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a nonrecreational use or another recreational use without prior approval of OLUA. In the event an approved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed to a nonrecreational use.

JUSTIFICATION: This paragraph is necessary to insure that state trail grants shall continue to be used for the purposes intended by State Legislation establishing this program. Since these grants are intended for public use it is important that trails be available to the public on a nondiscriminatory basis. It is also important that if an applicant decides to change the property to another use, OLUA can evaluate that change and determine if the change is consistent with the intent of the program or if the state funds should be returned to the state so they can be reused for the proper intended use of the State Legislation.

I. Responsibilities of recipient. A recipient of a trail grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

JUSTIFICATION: This paragraph is necessary to insure that recipients of trail grants comply with any applicable present or future state laws and regulations not mentioned in these regulations. The inclusion of this paragraph allows trail grants distributed under these rules to be applicable to present and future state laws to minimize the necessity of amending these rules and regulations.

PLAN-79-001-MG

STATE OF MINNESOTA

STATE PLANNING AGENCY

COUNTY OF RAMSEY

In the Matter of the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Park and Open Space Acquisition and Development

AFFIDAVIT OF MAILING

Pauline Petroske, being first duly sworn, deposes and says:

That on the *5th* day of *April*, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, (s)he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Pauline Petroske

Subscribed and sworn to before me this 5 day of April, 1979.

Karen Beckman

KAREN BECKMAN
Notary Public, Ramsey County, Minn.
My Commission Expires Nov. 3, 1981

PLAN-79-001-MG

STATE OF MINNESOTA

STATE PLANNING AGENCY

COUNTY OF RAMSEY

In the Matter of the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Park and Open Space Acquisition and Development

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Kevin Sullivan, being duly sworn on oath deposes and says:

1. That he is an employee of the State Planning Agency of the State of Minnesota.

2. That on the 3rd day of April, 1979, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412 (1978).

3. That on the 3rd day of April, 1979, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAITH NOT.

Kevin Sullivan

Subscribed and sworn to before me this 5th day of April, 1979.

Libuse R. Imbrone

LIBUSE R. IMBRONE
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES JAN. 12, 1984

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption
of Rules of _____ Division
Governing _____

I hereby certify that the attached 588 Label 2 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:25 o'clock A.M, this 3rd day of April, 1979, have requested pursuant to M.S. 1974, 13.4012 _____, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Donna M. Bealt

PLAN-79-001-MG

OK
MY 5/29/79

RECEIVED

MAR 2 3 1979

OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Park and Open Space Acquisition and Development

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412 (1978) and Minnesota Statutes § 4.17 (1978) in the above-entitled matter commencing in the Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota at 9:30 a.m. on May 21, 1979. The hearing may be continued to such time and place as the Hearing Examiner may designate until all interested or affected groups or persons or their representatives have had an opportunity to participate and be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Written material may be submitted to the Office of Hearing Examiners, Myron Greenberg, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, and recorded in the hearing record without appearing at the hearing and will be accepted for a period of 5 working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

The purpose of these rules is generally as follows: To establish procedures for administering grants for athletic court and trail development for local government units. The rules also reflect recent changes in state legislation and federal regulations regarding acquisition and development of parks and open space. The athletic court grant program provides funds for the development of special surface areas and supporting equipment or structures for basketball, volleyball, handball and tennis. The trail grant program provides funds for the development of surface areas and supporting facilities for hiking, biking and skitouring trails on public lands. These rules will provide a mechanism for determining the types of projects which will be eligible for grant awards. These rules will also describe criteria for applicant eligibility and criteria for selection of grant award recipients. The Minnesota State Planning Agency was given authority to provide federal and state funds for acquisition and development of park and open space to appropriate units of government by Minn. Laws 1969, ch. 1139, § 48, subd. 7, para. g. In 1977, three new grant programs were created by the Minnesota legislature to provide funding for parks and trails, local trails and athletic courts. Minn. Laws 1977, ch. 421, § 2,

subds. 2, 3 and 4. Minn. Stat. § 4.17 (1978) gives the Minnesota State Planning Agency authority to promulgate rules for distributing these funds.

Free copies of the proposed rules are now available upon request by writing or telephoning the:

Minnesota State Planning Agency,
Office of Local and Urban Affairs
200 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Tel: (612) 296-9006

Notice is also given that all lobbyists must register with the State Ethical Practices Board prior to engaging in any conduct for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules. Minn. Stat. § 10A.01, subd. 11 states in part:

> "Lobbyist" means any individual:
>
> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
>
> (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The State Ethical Practices Board is located at 41 State Office Building, St. Paul, Minnesota 55155, telephone number (612) 296-1720. Any questions concerning lobbying should be directed to that Board.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request

notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Rules and Proposed Amendments to Rules of the Minnesota State Planning Agency for Administering Grants for Park and Open Space Acquisition and Development

ORDER FOR HEARING

To effectively implement the program for Park and Open Space Acquisition and Development, the Minnesota State Planning Agency deems it necessary to consider adoption of the proposed Rules and Amendments to rules captioned above, pursuant to the authority granted in Laws of Minnesota, 1977, Chapter 421, Section 2, subdivisions 2, 3 and 4 and Laws of Minnesota, 1969, Chapter 1139, Section 48, subdivision 1, paragraph 5.

NOW, THEREFORE, IT IS ORDERED that a public hearing on the proposed Rules be held commencing in St. Paul in the Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, at 9:30 a.m. on May 21, 1979, and continuing until all interested persons, representatives and organizations have had an opportunity to be heard by submitting oral or written data, statements, comments or arguments or by presenting witnesses.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons and associations who have registered their name with the Secretary of State for that purpose and that notice of said hearing shall be published in the State Register.

Dated this 22nd day of March, 1979.

STATE OF MINNESOTA

STATE PLANNING AGENCY

By A. Edward Hunter

A. Edward Hunter
Deputy Director

 Exhibit "B" Rules as proposed

RECEIVED
AUG 31 1979
OFFICE OF HEARING EXAMINERS

State Planning Agency
Office of Local and Urban Affairs

Proposed Rules and Proposed Amendments to Rules for Administering Grants for Park and Open Space Acquisition and Development

Amendments as Proposed

Rules 10 MCAR §§ 1.300 to 1.304 Administering Federal and State Outdoor Recreation Grants

10 MCAR § 1.300 Authority, definitions and general provisions.

A. Authority. The rules contained herein are prescribed by the State Planning Agency, Office of Local and Urban Affairs, pursuant to authority granted in Minn. Stat. § 86.71 ~~(1974)~~ (1976) and Laws of 1969, ch. 1139, § 48, subd. 7, paragraph g, as amended and Extra Session Laws of 1971, ch. 3, § 48, subd. 7, paragraph h as amended (et seq.) and Laws of 1977, ch. 421, § 2.

B. Purpose of rules. These rules are set forth to provide criteria, priorities, and procedures for evaluating outdoor recreation proposals of local government units under consideration for LAWCON, ~~and~~ LCMR grant-in-aid, athletic courts, and trails.

C. Definitions. The following terms as used in these rules have the following meanings:

~~1. "Ad Hoc Lake Improvement Committee" means the committee composed of representatives of the State Planning Agency, Department of Natural Resources, University of Minnesota, Department of Health, Pollution Control Agency, Legislative Commission on Minnesota Resources, and Department of Agriculture, that reviews and evaluates lake improvement applications.~~

1. ~~2.~~ ~~"BOR"~~ "HCRS" means the ~~Bureau of Outdoor~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

~~Recreation~~ Heritage Conservation and Recreation Service of the United States Department of the Interior.

2. ~~3.~~ "~~BOR~~ HCRS Guidelines" means those guidelines established by ~~Bureau of Outdoor Recreation~~ Heritage Conservation and Recreation Service Grants-in-Aid Manual effective as of ~~May 6, 1976~~ October 1, 1978.

10 MCAR § 1.300 C.4.-19 Renumber as **10 MCAR § 1.300 C.3.-18.**

10 MCAR § 1.301 LAWCON grant program.

A. Application process.

1. Submission of preliminary applications.

a. Eligibility. Any local applicant which satisfies the guidelines for eligibility established by ~~BOR~~ HCRS may apply for a LAWCON grant.

b. Notice. Annually, OLUA shall send notice of the period of time that preliminary applications for LAWCON grants shall be accepted by OLUA. The notice shall be sent at least 45 days before the period ends. Such notice shall be sent to the following:

(1) Mayors ~~and~~ in care of the clerks of all cities in Minnesota;

(2) County board chairmen ~~and~~ in care of the auditors of all counties in Minnesota;

2. Evaluation of preliminary applications. Preliminary project applications which satisfy the ~~BOR's~~ HCRS project eligibility guidelines and priorities for LAWCON grants shall be evaluated and ranked as follows: a) general criteria; b) acquisition priorities; and c) development priorities.

5. ~~BOR~~ HCRS approval. If the final application is satisfactory, OLUA shall request ~~BOR~~ HCRS approval of a LAWCON grant for the recommended project. OLUA shall notify the applicant of the action taken by ~~BOR~~ HCRS.

B. Project agreement. Upon approval by ~~BOR~~ HCRS, OLUA shall execute a project agreement with the applicant and the applicant shall comply with the terms of the project agreement.

C. Disbursement of grant. The applicant shall initially pay for the project costs as specified in the project agreement. The applicant shall submit to OLUA a billing request for work completed on the project, but not more than six billings per project. Upon receipt of a billing request, containing the documentation required in the project agreement, OLUA shall request from ~~BOR~~ HCRS the Federal share of the eligible costs represented by that billing. Upon receipt of the LAWCON grant for that billing, OLUA shall reimburse the applicant. The final billing shall reflect any cost adjustments due to project changes and shall be subject to a site inspection by the State and ~~BOR~~ HCRS personnel and verification by federal and state audit.

D. Amendments. A request for an amendment in the project scope, costs or time period may be submitted to OLUA prior to project termination. If the request is eligible for a LAWCON amendment and OLUA considers the amendment request to be reasonable and justified and it does not substantially affect the project eligibility under 10 MCAR § 1.301 A.2., above, it may request ~~BOR~~ HCRS to approve the amendment.

10 MCAR § 1.302 LCMR grants-in-aid program.

B. Grant categories and financial assistance.

1. Regional project. A LCMR grant-in-aid may be available when the applicants can document that the project serves a regional need ~~under the following circumstances:~~ and in the percentage rates specified by State Law.

~~a. Project with approved federal grant: Eligible applicants with an approved federal grant for a park, recreation or open space project within their jurisdiction, may apply for a LCMR grant-in-aid up to 100% of the local share of that acquisition or development project provided that the state share shall not exceed 75% of the total project costs.~~

~~b. Project without approved federal grant: Eligible applicants not receiving a federal recreation grant may apply for a LCMR grant in aid up to 75% of the total cost of the project application.~~

2. Other than regional projects. A LCMR grant-in-aid may be available to applicants for other than regional projects ~~under the following circumstances:~~ and in the percentage rates specified by State Law.

~~a. Project with approved federal grant: Eligible applicants receiving a federal grant for a park, recreation or open space project may apply for a LCMR grant-in-aid to 50% of the local share of the project.~~

~~b. Project without approved federal grant: Eligible applicants not receiving a federal recreation grant may apply for LCMR grant-in-aid up to 50% of the total cost of the project.~~

D. Application procedure.

1. Projects under consideration for a LAWCON grant.

b. Upon ~~BOR~~ HCRS approval of a LAWCON ap-

plication, OLUA shall initiate the application procedure for applicants that have not received LCMR grants-in-aid exceeding the maximum legislative grant allowable for that project.

~~10 MCAR § 1.304 LCMR grants-in-aid program for lake improvement projects.~~

~~A. Lake improvement program. A lake improvement grant program is hereby established for demonstrating or carrying out new techniques to improve the quality of lakes. This grant program is an extension of the LCMR grants-in-aid program and is established by Minn. Laws 1969, ch. 1139, § 48, subd. 7, paragraph g. Pursuant to said statute, the following shall be eligible to apply for such projects:~~

~~B. Eligible applicants.~~

~~1. Units of local government and public agencies that have the authority to undertake lake improvement projects;~~

~~2. Non-profit organizations and associations whose primary objective is the management of natural resources and the improvement of the environment.~~

~~C. Eligible projects. Eligible projects for lake improvement grants shall be pilot demonstration projects which are new or unique for that type of lake. Eligible projects and facilities may receive a LCMR grant-in-aid of 50 percent of the eligible costs but not to exceed the maximum legislative grant-in-aid allowable for that projects. Grants from this program shall be available for acquisition, construction and testing costs. Maintenance and operational costs shall be the responsibility of the applicant.~~

~~D. Application process. Eligible applicants may apply for a LCMR grant-in-aid for lake improvement by submitting a preliminary application to OLUA and the Metropolitan Council or the appropriate regional development commission for a project review. The Metropolitan Council or appropriate regional development commission at their option may recommend on an advisory basis to OLUA, a list of applications from the region arranged in order of priority. OLUA shall prescribe the form and content of the application.~~

~~E. Evaluation of applications.~~

~~1. Priorities. The criteria that shall be used to evaluate and establish priorities for applications shall be based upon projects that:~~

~~a. Perpetuate the beneficial natural characteristics of the shoreline.~~

~~b. Consider upstream conditions and sound watershed management practices, as may be established in the comprehensive watershed plan.~~

~~c. Are located in areas that have and are enforcing effective zoning ordinances, building codes, health ordinances, and conservation rules that affect the project.~~

~~d. Have a majority of shoreline in public ownership. Only lakes that are accessible to the public shall be eligible for a grant.~~

~~e. Improve the quality of waterbased recreational activities and fish and game habitat.~~

~~f. Have received a federal grant.~~

~~2. Procedure. Upon receipt of a preliminary application for lake improvement grant, OLUA shall follow the following procedure:~~

~~a. The application shall be reviewed for eligibility and completeness. If additional information is required, the applicant shall be notified and asked to provide the additional information.~~

~~b. A preliminary evaluation and priority ranking of the lake improvement project shall be conducted by OLUA, the Department of Natural Resources and the Pollution Control Agency.~~

~~c. Applicants that receive a high priority ranking in the preliminary project evaluation shall then be submitted to the "Ad Hoc Lake Improvement Committee" for review.~~

~~d. Applicants that receive a high ranking from the "Ad Hoc Lake Improvement Committee" evaluation shall be eligible to submit a final application.~~

~~e. Final applications shall be submitted to OLUA. OLUA shall prescribe the form and content of the application. Final applications that are acceptable shall be recommended to the LCMR and the LAC in accordance with 10 MCAR § 1.302 D.1.c.,d.,e.~~

~~F. Disbursement of grants. The disbursement of grants for LCMR grant-in-aid lake improvement projects shall be as specified in 10 MCAR § 1.302 E.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

~~G. Amendments. Lake improvement projects shall be eligible for LCMR grant-in-aid amendments as specified in 10 MCAR § 1.302 F.~~

~~H. Project completion. Upon completion, the project shall be subject to closing requirements as specified in 10 MCAR § 1.302 G.~~

Rules as Proposed

10 MCAR § 1.304 Athletic Court Grants program.

A. Distribution of grants. OLUA shall distribute state grants for the development of basketball, handball, tennis and volleyball courts in conformance with Laws of 1977, ch. 421, § 2, subd. 4 and the rules contained herein. Applications for athletic court grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA.

B. Application procedure.

1. Eligible applicants as defined by Laws of 1977, ch. 421, § 2, subd. 1(c) may apply for state athletic court grants.

2. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

3. All applications for projects shall be submitted to OLUA for review under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall also be submitted to the Metropolitan Council for their review.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Projects and facilities eligible for a state grant shall include the following:

1. A special surface area of asphalt or concrete materials with adequate foundation suitable for the soil and climatic conditions. Prior to construction, such surface areas and foundations shall be approved by the applicant's engineer, as being suitable. Courts shall be outlined on the surface area and be of proper size to meet generally recognized athletic court dimensions.

2. Hoops, nets and supporting structures for athletic court games which shall be of a proper size to utilize the facility.

3. Walls and fences for the athletic court of a proper size to utilize the facility in the manner intended.

4. Adequate lighting to extend the use of the court games into hours of darkness.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

a. Priority shall be given to eligible applicants that demonstrate the athletic courts will be developed jointly with one or more eligible applicant. Included shall be evidence of cooperative use of such facilities between schools, cities, and other local units.

b. Eligible project applications received by OLUA shall be ranked in order from highest to lowest in relation to those projects located in cities or towns which have the lowest number of similar public athletic courts in relation to their population.

c. Eligible project applications received by OLUA shall be ranked in order from highest to lowest by the distance the project is located away from similar existing public athletic courts.

d. Priority shall be given to eligible applicants that can demonstrate that the courts will be readily accessible to the public by vehicular and pedestrian traffic, serve residential areas, and are available to the entire community during daylight and evening hours.

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. Grants shall be distributed in order of ranking until available athletic court funds are depleted. For those applicants recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of the project. Property developed with an athletic court grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a non-recreational use or another recreational use without prior approval of OLUA. In the event an approved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed to a non-recreational use.

I. Responsibilities of recipient. A recipient of an athletic court grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

10 MCAR § 1.305 Trail Grants program.

A. Distribution of grants. OLUA shall distribute state grants for the development of hiking, biking, and touring trails in conformance with Law of 1977, ch. 421, § 2, subd. 3 and the rules contained herein. Applications for trail grants shall be considered once a year and information concerning the deadline for the submission of such shall be available from OLUA. Trail grants shall be available for trail development on public parks or other public lands excluding public road rights-of-way.

B. Application procedure.

1. Eligible applicants as defined by Laws of 1977, ch. 421, § 2, subd. 1 (c) may apply for trail grants.

2. Only trails that provide a primary recreational activity in themselves shall be eligible for trail grants. Pathways that just connect recreational activities, provide access to them, or protect the site from overuse shall not be eligible.

3. The contents of the application shall be consistent with the informational requirements of these rules and must describe the project, financial resources of the applicant; relationship to future plans, and existing facilities with sufficient specificity so that a determination of eligibility and ranking can be made pursuant to these rules.

4. Applications for projects outside of the jurisdiction of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules. Applications for projects within the jurisdiction of the Metropolitan Council shall be submitted to OLUA for review and ranking under these rules, and to the Metropolitan Council for its review and ranking.

C. Eligible projects. No project, the construction of which has already commenced or for which a construction contract has already been let, shall be eligible for a grant under this program. Maintenance and operational costs shall be the responsibility of the applicant. Project and facilities eligible for a state grant shall include the following:

1. Clearing of vegetation, grading, and construction of a surface area and necessary drainage structures suitable for the type of trails proposed.

2. Shelters, signs, parking, toilet facilities, and water systems suitable for type of trails proposed.

D. Evaluation of applications.

1. Applications from outside the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA by giving equal consideration to each of the following criteria:

a. Priority shall be given to trail projects located so as to minimize interference with incompatible activities and features.

b. Priority shall be given to trail projects that provide access to areas of outstanding natural resources or man-made features.

c. Priority shall be given to trail projects that continue or link into other trail systems or proposed trail systems.

d. Priority shall be given to trail projects from applicants that have the fewest miles of similar trails in relation to their population.

e. Priority shall be given to eligible applicants that can demonstrate that the proposed trails are readily accessible to the public by vehicular, pedestrian and bicycle traffic and are available to the entire community.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

2. Applications from within the jurisdiction of the Metropolitan Council shall be evaluated and ranked by OLUA under the criteria found in D.1. of these rules and by the Metropolitan Council pursuant to their criteria. The determination of which proposals shall receive funding shall be made by combining the two rankings on an equal basis.

E. Distribution of grants. State grants shall be distributed in order of ranking until trail development funds are depleted. For those applicants who are recommended for a grant, OLUA will submit a project agreement to be executed between the applicant and the State of Minnesota. Upon completion of executed project agreement, the funds will be submitted to the applicant and it may proceed with the project.

F. Accounting. The applicant shall maintain a separate accounting of the project costs and shall submit documentation as required by OLUA to verify the costs and compliance with the project agreement.

G. Project completion. Upon completion, the project shall be subject to the closing requirements as specified in 10 MCAR § 1.302 G.

H. Retention and use of project. Property developed with a trail grant shall be retained and used for public outdoor recreation during its useful life. Any property so developed shall not be changed to a non-recreational use or another recreational use without prior approval of OLUA. In the event an approved change occurs, the applicant shall return that percentage of the state grant equal to the percentage of the developed property changed to a non-recreational use.

I. Responsibilities of recipient. A recipient of a trail grant shall comply with all existing or subsequent state laws and regulations that apply to the project.

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Douglas C. Blomgren, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Douglas C Blomgren

Special Assistant Attorney General

Dated: Sept 5 1979