

ISSUES SUBMITTAL FORM

Date: 03/01/2024	
ISSUE:	Should new disqualification factors be adopted for the Landowner Preference Program?
DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):	
<p>The Landowner Preference Program (LPP), §33-4-103, allows for individuals to be disqualified from the LPP if they have been convicted of violations of §33-4-103 or the LPP regulations, Chapter W-2 (2 CCR 206.B.4.a). Similarly, but different, a person may also have their wildlife license privileges suspended pursuant to §33-6-106 if they are convicted of qualifying wildlife violations. However, a disqualification and a suspension are not only different in name; they also affect an individual in different ways. Primarily, a disqualification from the LPP only affects a person’s, or business’s, ability to apply and obtain LPP vouchers and does not impact their ability to hunt and fish with other wildlife licenses. It is possible for a person to be disqualified from the LPP or have their license privileges suspended, or both. The two processes do converge when a landowner is disqualified from the LPP, then any preference points associated with that landowner account are invalidated. Finally, a disqualification from the LPP is not entered into the Interstate Wildlife Violator Compact, as it would be for a wildlife license suspension.</p> <p>Although a disqualification from the LPP and a wildlife license suspension are two different processes, there is currently only a regulation that provides factors specific to a wildlife license suspension (2 C.C.R. 406-16:1601.B.2.f 1-17). There is no regulation or factors that provide the hearing examiner, commission or LPP participant with any guidance on what criteria an LPP disqualification should be based on.</p> <p>This is important because, prior to 2016, a wildlife license suspension did not have factors or parameters to provide the hearing examiner, commission or licensee any guidance in knowing what a suspension would be based upon. This issue was challenged in <i>Farmer, v. CPW</i> and the Colorado Court of Appeals ruled that Mr. Farmer’s 20-year suspension decision was “arbitrary and capricious” because there was nothing to base a suspension on. As a result of this ruling, the commission adopted a list of 17 factors that provided some sideboards, or basis, that were to be used in determining the length of a wildlife license suspension. However, these factors were developed to apply only to wildlife license suspension cases and not LPP disqualification cases.</p> <p>The hearings office has conducted hearings for LPP disqualifications and in these LPP disqualification hearings (2016 to present); the 17 factors that are applied to wildlife license suspensions have been used in determining a LPP disqualification. There have only been a handful of LPP disqualification hearings during this time, but using the wildlife license suspension factors has proved to not be applicable in most cases and the rationale for issuing a disqualification, or not, was difficult to describe while staying within the 17 factors. Additionally, the language used in statute and regulation is wildlife license suspension specific. An LPP disqualification regulation in W-16 would provide LPP specific factors and language to address the LPP disqualification process created in W-2 and § 33-4-103.</p> <p>To minimize the chance that a LPP disqualification would be challenged similarly to the <i>Farmer</i> decision and to provide a LPP specific basis for what a disqualification would be based on, there is a need for an LPP disqualification regulation that closely resembles the current regulation governing wildlife license suspensions. During discussions with law enforcement and licensing staff, the following factors have been brought forward as pertinent to a LPP disqualification decision:</p> <p>1) Were warnings issued or other educational attempts made previously?</p>	

- 2) Were the violations committed mistakenly, knowingly, or intentionally?
- 3) Were there prior LPP violations committed and/or prior disqualifications?
- 4) Was there any compensation or other consideration exchanged for the LPP vouchers?
- 5) Did the LPP violation result in additional wildlife violations and/or the take of wildlife?
- 6) Was the Respondent acting in concert with others?
- 7) Did the Respondent hinder the investigation or attempt to conceal the violations in any way?

See attachment for full regulatory language, including show-cause framework and related procedural regulations.

STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:

***IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED*.**

No public outreach on this topic has occurred to date.

ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):

1. *Preferred Alternative* Adopt new regulatory criteria for LPP disqualification.

NEW Regulation

#1601.B.5 Landowner Preference Program (LPP) Disqualification Hearings and Appeals

- a. If a landowner, the landowner's agent, or hunter fails to comply with § 33-4-103, CRS or any of its implementing regulations, the Division may disqualify such person (the "Respondent") from participating in the LPP for up to five years. Disqualification proceedings will be heard initially and decided by a Commission hearing examiner. Respondents shall be given the opportunity to appear and show cause why they should not be disqualified from participating in the LPP. A copy of the hearing examiner's initial decision shall be sent to the Respondent by certified mail, return receipt requested, to the last known address of such person. The hearing examiner's initial decision shall advise the Respondent of their right to appeal the initial decision to the Commission. Any person seeking or otherwise requiring Commission review of the hearing examiner's initial decision shall file a written notice of appeal with the Commission no later than 45 days from the date contained in the certificate of service accompanying the initial decision. The notice of appeal must be sent to "CPW License Appeals" 6060 Broadway, Denver, CO 80216. If a timely appeal is not made to the Commission, the hearing examiner's initial decision shall become final, effective 45 days from the date contained in the certificate of service accompanying the initial decision. If a timely appeal is made to the Commission, the hearing examiner shall send notice to the Respondent of the date of their scheduled hearing before the Commission and advise that the hearing examiner's initial decision to disqualify is automatically stayed pending Commission review and final action.
- b. The notice of appeal shall include:
 - 1) the Respondent's name, address, telephone number and case file number;

- 2) a narrative statement of the Respondent's position, including a complete statement of the factual and statutory basis supporting relief from the decision of the hearing examiner and the relief requested;
 - 3) copies of any written documentation or documentary evidence submitted to the hearing examiner;
 - 4) copy of the hearing examiner's decision, including the findings of fact and conclusions of law, and;
 - 5) a copy of the disqualification hearing transcript. The Respondent requesting review shall be responsible for the production of the transcript.
- c. Commission review will be based on the notice of appeal and any additional written materials and documentary evidence provided to the Commission by the hearing examiner in response to the notice of appeal, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.
 - d. Except as may otherwise be directed by the Commission, LPP disqualification appeals will be reviewed at the next regular meeting of the Commission following their receipt, provided the notice of appeal is received by the Commission at least thirty days prior to the meeting. The appeal will be placed on the consent agenda unless the Respondent makes an oral presentation to the Commission pursuant to #1601.A.1. The final decision of the Commission is effective upon mailing and must contain a certificate of mailing.
 - e. Written notice of the final decision of the Commission shall be sent to the Respondent by certified mail to the last known address of such person. The notice shall advise the Respondent that they may appeal the Commission's disqualification decision to the state district court as provided in § 24-4-106, C.R.S., by bringing an action for judicial review within 35 days after such action becomes effective.
 - f. When deciding upon the duration of any disqualification term, the hearing examiner will consider the facts of the underlying violation(s) giving rise to the criminal conviction(s) and the administrative disqualification hearing, along with all relevant written materials and documentary evidence contained in the Division's records, all written materials and documentary evidence provided by the Respondent prior to the administrative disqualification hearing, and all evidence provided during the hearing, and will give specific consideration to the absence or presence of the following factors:
 - 1) Were warnings issued or other educational attempts made previously?
 - 2) Were the violations committed mistakenly, knowingly, or intentionally?
 - 3) Were there prior LPP violations committed and/or prior disqualifications?
 - 4) Was there any compensation or other consideration exchanged for the LPP vouchers?
 - 5) Did the LPP violation result in additional wildlife violations and/or the take of wildlife?
 - 6) Was the Respondent acting in concert with others?
 - 7) Did the Respondent hinder the investigation or attempt to conceal the violations in any way?

Based on all the evidence presented, the hearing examiner will determine the weight to be given to any factor and that factor's effect on the duration of the disqualification term.

6. All Other Adjudicatory Hearings

See §§ 24-4-105 and 33-1-111, CRS for additional detail and requirements

- a. Unless the Commission directs otherwise, all other adjudicatory matters within the jurisdiction of the Commission will be heard initially and decided by an administrative law judge within the Division of Administrative Hearings.
- b. Any person requesting an adjudicatory hearing on a matter within the jurisdiction of the Commission shall file a written request for a hearing with the Commission.
- c. The request for an adjudicatory hearing shall include:
 - 1) the person's name, address and telephone number;
 - 2) a narrative statement of the person's position, including a complete statement of the factual basis and legal justification for any relief requested;
 - 3) copies of any written documentation or documentary evidence supporting the person's position;
- d. Except as may otherwise be directed by the Commission, requests for adjudicatory hearings will be reviewed at the next regular meeting of the Commission following their receipt, provided the request is received by the Commission at least thirty days prior to the meeting.
- e. The person will be notified of the assignment of the matter to the Division of Administrative Hearings or whether the Commission will hear the matter itself.
- f. All further proceedings will be conducted in accordance with §§ 24-4-105, CRS

2. Status quo. Use the 17 factors adopted for wildlife license suspensions for LPP disqualifications as well.

Issue Raised by:	Steve Cooley, Hearing Examiner
Author of the issue paper (if different than person raising the issue):	
CC:	Ty Petersburg, Eric Lowery, John Flier
APPROVED FOR FURTHER CONSIDERATION BY:	Danielle Isenhart, LRCO Section
REQUIRES NEW SPACE IN THE BROCHURE?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	LRCO, I&E
RECOMMENDED FOR CONSENT AGENDA?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

ISSUES SUBMITTAL FORM

Date: 03/01/2024

ISSUE:	Should regulations be updated following the passage of SB 23-059?
DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):	
<p>The General Assembly passed SB 23-059 (State Parks and Wildlife Area Local Access Funding) in 2023, creating new § 33-10-117, CRS. The new law requires the Commission to adopt implementing regulations by July 1, 2024. Such regulations will (1) enable local governments to petition the Commission to adopt a rule imposing an additional fee to be charged on a daily vehicle pass that authorizes the use of a state park located within the petitioning local government’s geographic boundaries; and (2) supply the criteria for the Commission to consider in approving such a request. A local government shall use any fee received to support access to state parks. Supporting access may include maintaining and constructing local roads, bicycle lanes, shuttle operations, and multimodal access routes.</p> <p>Imposing the fee is at the discretion of the Commission and is not legally required. The Commission shall not unreasonably withhold approval of a request to create the fee.</p> <p>CPW would not collect the fee prior to January 1, 2025, which is initially capped at \$2.00. The Commission shall adjust the fee every five years to account for inflation or deflation, and the adjustment may allow the fee to exceed \$2.00 and must be rounded to the nearest dollar.</p> <p>CPW shall not collect the fee from a state park visitor who holds an annual or lifetime pass to visit state parks.</p> <p>This issue proposes Chapter W-16 Article III be amended to apply to rulemaking petitions generally and to add a new Regulation #1608 specific to SB 23-059.</p>	
STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:	
IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED.	
[List stakeholder groups and briefly summarize comments received CPW staff and the consultant team (RRC, Fehr & Peers, and SE Group) hired to conduct the study required by SB23-059 presented the proposed study approach and an overview of the process/criteria requirements outlined in SB23-059 at the January 2024 Parks and Wildlife Commission meeting. During the Commission meeting, staff and the consultant team received feedback from PWC commissioners as well as a Park County commissioner. <p>Additionally, the consultant team has been coordinating with Park County throughout January on the upcoming study and have received input from Park County on the feasibility of collecting the data/information outlined in the bill. CPW staff and RRC met with Park County on January 31st, 2024 to discuss their suggested criteria to include in the process. CPW staff and the consultant team will continue to solicit input from counties on their suggested criteria to include in the process this spring prior to the March Commission meeting.</p>	
ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):	

1. ***Preferred Alternative*:**

Chapter W-16 ARTICLE III – ~~CITIZEN~~-RULEMAKING PETITIONS

#1606 - Citizen Petition Requirements

Any person may petition the Commission to initiate rulemaking pursuant to 24-4-103(7), C.R.S. All petitions for rulemaking must contain the following information: (1) The name, address, and telephone number of the person requesting the rulemaking; and (2) A copy of the rule proposed in the petition, preferably in redline format, and a general statement of the reasons for the requested rule or revision.

#1608 - ~~Reserved~~ Implementation of [SB 23-059](#), concerning providing funding to local governments to support access to state-owned outdoor recreational areas.

A. Local governments may petition the Commission to initiate rulemaking pursuant to SB 23-059, codified at § 33-10-117, CRS, to impose a state park access fee on daily vehicle passes for visitors to a state park managed by CPW and open to the public located within the petitioner’s geographic boundaries, provided the requested fee does not apply to visitors to the state park holding an annual or lifetime pass.

To satisfy the standing requirements to file a petition, the petitioner must demonstrate that:

(I) it is responsible for an existing local access route(s) that provides access to a state park within the petitioner’s geographic boundaries (local access routes include rights-of-way, including bike or pedestrian paths, that are normally used to travel to or from a state park)

(II) the existing local access route(s) is located within a 3-mile radius to a state park entrance within the petitioner’s geographic boundaries.

(III) 50% or more of the vehicle traffic on the existing local access route(s) in the petitioner’s geographic boundaries is directly tied to park visitation on an annual basis.

If a petitioner satisfies the standing requirements above, they may file a petition for the Commission’s consideration. This petition must:

(1) Contain a copy of the proposed rule, preferably in redline format;

(2) Contain proof of how the petitioner qualifies as a “local government” pursuant 33-10-117 (3)(e); and

(3) Demonstrate how a state park access fee would improve state park access and/or alleviate existing access issues by either:

(I) identifying the existing local access route(s) within the petitioner’s geographic boundaries in need of funding for maintenance, including the current and anticipated costs and benefits of such route(s), and prioritize the existing local access route(s) in terms of most urgent need of funding; or

(II) identifying the need for financial assistance to support additional access to state parks within the petitioner’s geographic boundaries (supporting access may include maintaining and

constructing local roads, bicycle lanes, shuttle operations, and multimodal access routes) through a state park access fee.

Petitions are due by 11:59 pm MST May 31st annually to be considered during the same year, and if approved, implemented by January 1st the following year.

B. Reporting Requirements

The Commission shall adjust the fee every five years to account for inflation or deflation. The first fee adjustment will occur in 2030 and will repeat every 5 years. If the fee increases or decreases with inflation, the fee shall be rounded to the nearest dollar.

Reporting shall be required within 120 days of the end of every 5-year fee adjustment cycle. Reporting shall include at a minimum:

(I) Expenditure details

(II) A description of the project(s) that the local government is currently or is planning to use the disbursed funds on. The local government shall demonstrate how the disbursed funds are being used or will be used to support access to state parks within their geographic boundaries, which may include maintaining and constructing local roads, bicycles lanes, shuttle operations, and multimodal access routes.

(III) A description of how state park access has benefited or will benefit from the existing or proposed project(s).

Issue Raised by:	Amanda Biedermann	
Author of the issue paper (if different than person raising the issue):		
CC:		
APPROVED FOR FURTHER CONSIDERATION BY:	Katie Lanter	
REQUIRES NEW SPACE IN THE BROCHURE?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	Licensing	
RECOMMENDED FOR CONSENT AGENDA?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	