

6 NYCRR Section 190.10
Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) section 1-0101(3) (b) directs the Department of Environmental Conservation (Department) to guarantee “that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences.” ECL section 3-0301(1)(b) gives the Department the responsibility to “promote and coordinate management of...land resources to assure their protection, enhancement, provision, allocation, and balanced utilization...and take into account the cumulative impact upon all such resources in promulgating any rule or regulation.” ECL section 3-0301(2) (m) authorizes the Department to adopt rules and regulations “as may be necessary, convenient or desirable to effectuate the purposes of [the ECL],” section 9-0105(1) authorizes the Department to exercise care, custody and control of state lands and ECL section 9-0105(3) authorizes the Department to “[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9].”

2. Legislative objectives:

Paragraph 1 of section 3 of Article XIV of the New York State Constitution provides that “forest and wildlife conservation are . . . policies of the State.” ECL section 3-0301(2)(v) gives the Department jurisdiction to “...administer and manage the real property under the jurisdiction of the department for the purpose of preserving, protecting and enhancing the natural resource value for which the property was

acquired or to which it is dedicated, employing all appropriate management activities.” The Department is also authorized to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2) (m) and 9-0105(3)). Consistent with this authority, the proposed regulations are crafted to protect natural resources and public safety of those who engage in recreational activities within the Rush Oak Openings Unique Area (Monroe #1).

3. Needs and benefits:

The Rush Oak Openings Unique Area (Unique Area) is composed of 240 acres in the Town of Rush in Monroe County. The Unique Area has been a popular public destination since the state began acquiring land in this area, which began in 1990, and ended most recently in 2019 with an additional 12-acre parcel from The Nature Conservancy. The unit is accessible from County Route 15 from the west and Honeoye Falls-Five Points Road from the north.

The parcels that comprise Rush Oak Openings were acquired to protect the rare Oak-Savanna habitat, characterized by scattered oaks and warm season grasses. The Unique Area features the globally rare plant community commonly referred to as “oak opening” or “oak savanna.” The site is the only known intact oak opening remaining in New York State and is the easternmost remaining oak opening. Oak openings were very common in the Midwest where the prairie met Eastern forests prior to European settlement. In addition to the oak openings habitat, there are oak woodlands, limestone woodlands, wetlands, successional old field communities and the transition between each of these types. The Unique Area is also home to rare species of plants and animals as well as endangered and threatened species of plants. The previous, and

current Unit Management Plans (UMP's) for Rush Oak Openings recommended development of regulations specific to this Unique Area to protect it from overuse and to control the spread of invasive species.

One of the greatest threats to the Unique Area is from recreational overuse. This is of particular concern because the Unique Area is located in close proximity to the City of Rochester and the potential is very high for increased public use, some of which is inconsistent with the Unique Area. The intent of the regulation is to control use, protect the resource, and provide an enjoyable user experience. This will be achieved through the proposed rulemaking, which would:

1. Prohibit fires at all times, except prescribed fires as directed by the department;
2. Prohibit camping;
3. Prohibit the possession and operation of snowmobiles;
4. Prohibit the introduction, use or maintenance of any horses, work animals or other herbivorous animals;
5. Restrict parking of motor vehicles to designated parking areas only; and
6. Restrict discharging of firearms to the legal taking of game.

These specific regulations for Rush Oak Openings will supersede the general regulations enumerated in sections 190.0 through 190.9 in the event of a conflict.

The proposed regulations align with the current management and use of this property. The prohibition on fires, camping and snowmobiles is meant to deter overuse but still allow for day use.

There is some public desire for more restrictive regulations to prohibit hunting or the use of firearms altogether on this Unique Area. However, this action is not supported in the Rush Oak Openings UMP. The firearm prohibition, excepting the legal taking of game, was put in place to ensure target shooting is not allowed on this Unique Area. This will enhance public safety because this Unique Area allows for multiple recreational uses.

The prohibition of horses and other work animals was recommended to further protect the unique habitat of this Unique Area. Equestrians will likely desire access to this Unique Area; unfortunately, horses can be a primary vector for the introduction and spread of invasive species, particularly those plant species whose seed passes through the digestive tract of horses.

Requiring parking of motor vehicles in designated parking areas only, will protect public safety and natural resources on this Unique Area from overuse and abuse.

The Department has presented the proposed regulations at several meetings of local stakeholders through the UMP process. Local governments, including tourism and the County Planning Department, along with local user groups, first responders, sports people, and the hiking community, have attended these meetings. Additional outreach will take place through e-mail lists, Department social media and the Environmental Notice Bulletin. The proposed regulations will appear on the Department's website as well as in the State Register for a 60-day public comment period as part of the rulemaking process.

4. Costs:

No costs to the regulated community are anticipated to result from the adoption of the proposed regulations. Costs to the state for additional management actions are minimal. The only cost to the Department would be for the placement of additional signage costing less than \$500 and maintenance costs for facilities.

5. Local government mandates:

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork:

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

There is no duplication, conflict, or overlap with state or federal regulations.

8. Alternatives:

The no-action alternative is not feasible because it does not adequately protect the natural resources found on the Unique Area nor would it adequately address existing public safety issues. The existing Part 190 state land regulations are not adequate to protect this Unique Area because of its unique characteristics, close proximity to the City of Rochester and the potential for a very high level of public use.

Closing these areas to public use is also not an acceptable alternative. Unique areas are acquired for the use of and enjoyment by the public. The closure of Department administered land to public use should not occur except when absolutely necessary to protect public safety or the resource. Closure would also be impractical due to historical use of this Unique Area.

9. Federal standards:

There is no relevant federal standard governing the use of state lands.

10. Compliance schedule:

Once the regulations are adopted, they are effective immediately and all persons will be required to comply with them upon their effective date. The Department will educate the public about the regulations through information posted on the Department's website, signage posted on the property, and by working with user groups and other stakeholders to help disseminate information regarding the regulations.