

Assessment of Public Comment

Final Regulation – Amendment to 6 NYCRR Part 190.10 and Part 190.25

A Notice of Emergency Adoption and Proposed Rule Making was published in the New York State Register on August 4, 2021. The public comment period closed October 3, 2021. In total, 98 individual commenters responded. No comments were received relating to the Onondaga Escarpment Unique Area. Issues and concerns have been grouped because they are related, or for the convenience in providing an efficient response. DEC's response is provided for each issue. Numbers in parenthesis indicate the number of related comments received.

COMMENT: Commenter supports the 15-foot restriction from the cliff's edge at Zoar Valley MUA/UA. (1)

RESPONSE: Thank you for contributing a comment. We appreciate your input and interest.

COMMENT: Commenters oppose the restricted area on the South Branch of Cattaraugus Creek at Zoar Valley MUA/UA and assert that the existing rules are sufficient to protect private property rights. (3)

RESPONSE: Private properties at the southern end of Zoar Valley MUA/UA on the South Branch of Cattaraugus Creek are the location of many search and rescue operations. The Department continues to field complaints from neighboring landowners with concerns about property damage to their properties, trash accumulation, and threats of physical violence. Designating this area as restricted will allow Department staff, including law enforcement personnel, a better opportunity to reduce the need for search and rescue operations and prevent intentional trespassing onto neighboring properties.

COMMENT: Commenters oppose exceptions for ice climbing. (2)

RESPONSE: The Department appreciates the comment, however, this limited exception is similar to 190.36 for the Northern Catskill Riparian Area and no revisions are necessary.

COMMENT: Commenters support ice climbing and rappelling by rope exceptions. (37)

RESPONSE: Thank you for contributing a comment. We appreciate your input and interest.

COMMENT: Commenters oppose the 15-foot restriction from the cliff's edge at Zoar Valley MUA/UA because will prevent views of the valley. (6)

RESPONSE: The regulations are intended to preserve the natural resource and protect public safety. The designated and marked trails on the Erie County side of the property still afford views of the valley and the trail planned at Valentine Flats will include overlooks and/or vistas of the valley.

COMMENT: Several commenters suggest using geologic data to identify areas of instability and adjust the 15-foot restriction from the cliff's edge at Zoar Valley MUA/UA based on that data. (14)

RESPONSE: The Zoar Valley MUA/UA encompasses approximately 15 miles of the top of the gorge along the Cattaraugus Creek and the South Branch of Cattaraugus Creek. The Department reviewed soil data from the United States Department of Agriculture which informed the 15-foot setback restriction. Having areas with different setback rules will create visitor confusion and make enforcement difficult.

COMMENT: Commenter opposes restrictions to "Knife Edge Ridge", "Point Peter" and "Pyramid Hill" at Zoar Valley MUA/UA (1)

RESPONSE: The Knife Edge Ridge (also known as the hogsback ridge), is a shale cliff and talus slope ecological community, characterized by steep, unstable, and eroding shale and siltstone. In addition to public safety concerns for visitors entering this area, the DEC is committed to protecting this sensitive site from recreational overuse. Regarding the commenter's reference to Point Peter, it is believed they are referring to Overlook Point (a.k.a. Valentine Point). This feature has experienced tremendous resource pressure from decades of unregulated use. The soils in the area are heavily compacted from overuse. Tree roots are exposed from the constant foot traffic to the site leading to a concern for tree health. Additionally, parts of Overlook Point are undercut and held precariously by the trees growing there. Pyramid Hill on Valentine Flats is a unique geological feature. There is no authorized, designated trail up the hill.

COMMENT: Commenters suggest that access to restricted areas at Zoar Valley MUA/UA should be permissible for those who pay for annual pass, complete a safety course, belong to a hiking association or by permit. (3)

RESPONSE: The proposed regulations include exceptions to authorize access to restricted areas by a DEC issued permit. Permits may be authorized if the requested use is compatible with public safety and protecting the natural resource.

COMMENT: Educating the public is a better solution than punishing those acting responsibly. (8)

RESPONSE: The DEC is committed to educating the public about the responsible use of state lands. In 2021, DEC hired additional seasonal staff in the summer of 2021 to provide outreach and increase contact with the recreating public. The DEC is committed to pursuing volunteer stewardship opportunities to increase public education and protection of the resource.

COMMENT: Commenter expressed frustration with a virtual public meeting held on September 15, 2021 and requests an extension of the public comment period until after a public meeting on the proposed regulations. (1)

RESPONSE: A public hearing was not required for this proposed rulemaking for which the Department held the required 60-day public comment period from August 4, 2021 to October 3, 2021. Separate from the proposed regulation, the Department held a webinar on September 15, 2021 to share information related to the Draft Niagara Frontier Unit Management Plan. Because the Draft UMP relates to the area impacted by this rulemaking, and in an effort to support transparency the proposed and emergency regulations were discussed.

COMMENT: Commenters opposed the proposed regulation asserting that those who know how to be safe and respect the area should not be restricted at Zoar Valley MUA/UA. (3)

RESPONSE: The regulation is intended to protect public safety and the natural resource and applies equally to all visitors.

COMMENT: Commenter recommends that DEC should limit the number of people allowed at Zoar Valley MUA/UA per day. (1)

RESPONSE: The DEC has considered a permitting system to limit the number of visitors, similar to the Peekamoose Valley Riparian Corridor in Sundown Wild Forest, Ulster County. The proposed regulation is intended to protect public safety and protect the natural resource

without restricting overall public access. However, the Department will continue to monitor visitor use and safety and may consider other actions to protect natural resources and public safety.

COMMENT: Several commenters expressed support for the regulations and support their final adoption. (25)

RESPONSE: Thank you for your comment. We appreciate your input and interest.

COMMENT: Commenters indicated that the restricted areas depicted on the last page of the Draft UMP encompass more area than the "Gorge Walls" on the map's index. The map should be re-printed (12)

RESPONSE: The map in the Draft UMP is not the subject of this proposed rulemaking and is intended as a reference for informational purposes only. Therefore, no amendments to the regulation are necessary.

COMMENT: Commenter opposes limiting access to the creek via the Valentines Flat Trail. (1)

RESPONSE: Currently, there are two authorized access points used to reach the creek. Visitors can enter at Valentine Flats, which contains the Valentine Flats Trail, or enter at Forty Road. Planned trail improvements on the Valentine Flats Trail will address erosion concerns to create a more sustainable trail for both recreation and emergency response.

COMMENT: Commenter expressed frustration that the regulation appears to allow hunters and anglers complete access at Zoar Valley MUA/UA, but hikers are restricted. (1)

RESPONSE: All visitors, regardless of what activity they are engaged in, must comply with regulations for the use of state land. Hunters and anglers, as well as hikers must follow the setback restrictions and shall not enter any restricted area, except on a trail designated and marked by the department or by permit. The only exception is anglers, who can access the South Branch of the Cattaraugus Creek restricted area provided they possess a valid fishing license from DEC and are engaged in fishing.

COMMENT: Commenters expressed concern that placing restrictions at Zoar Valley MUA/UA will start a trend of placing other restrictions across the state (5)

RESPONSE: The proposed regulations are specific to Zoar Valley MUA/UA.

COMMENT: Commenters generally oppose the amendments at Zoar Valley MUA/UA. (5)

RESPONSE: The DEC has the responsibility to exercise care, custody, and control over state lands and to protect natural resources and the health, safety, and general welfare of those who engage in recreational activities at Zoar Valley MUA/UA. The DEC is committed to protecting ecologically sensitive areas of the property from overuse and to protecting the safety of those who visit it.

COMMENT: Commenter expressed the need to find a balance between preserving natural beauty and allowing safe access without restriction (1)

RESPONSE: The regulations are intended to protect the properties from damage caused by overuse or incompatible use while preserving public access. At Zoar Valley MUA/UA, access to the creek is still allowed via the Valentine Flats Trail and the Forty Road Parking area. The Holcomb Pond and Ross Pond Trails also provide access to vistas of the gorge.

COMMENT: Commenter opposes removing water and cliff access at Zoar Valley MUA/UA. (1)

RESPONSE: Access to the creek is still allowed via the Valentine Flats Trail and the Forty Road Parking area. There is no authorized, safe access to the creek from the Erie County side of the property, nor from the Town of Otto side of the property in Cattaraugus County.

COMMENT: Commenter opposes trail closures. If people use them correctly, they do not pose any unsafe conditions. (1)

RESPONSE: The DEC continually monitors and assesses trails for public safety and resource degradation. Occasionally trails need to be closed or re-routed for safety reasons or because the old trail is not sustainable. The DEC is committed to providing trails that are both safe and sustainable.

COMMENT: Commenters oppose prohibiting public access to areas designated as restricted by the Department. (3)

RESPONSE: The regulations are intended to preserve the natural resource and to protect public safety. Restricting public access to trails designated and marked by the Department is necessary to achieve this goal.

COMMENT: Commenter favors implementing more safety measures (more personnel, signage, fencing) instead of regulations. (1)

RESPONSE: The DEC uses a combination of education, management planning, enforcement, and permit issuance to minimize impacts to public use and safety. When this combination of efforts is insufficient to protect natural resources and public safety, property specific regulations may be developed. The DEC is committed to further implementing safety measures at Zoar Valley MUA/UA through monitoring and evaluating signage and wayfinding, trail construction and upgrades, hiring seasonal staff, working with stewardship partners, and will also consider fencing in strategic areas.

COMMENT: Commenters advocate for the imposition of fines or reimbursement of rescue costs for those requiring search and rescue. (3)

RESPONSE: Search and rescues are an essential lifesaving service provided by the State and DEC. No amendments to the regulation are necessary.

COMMENT: Commenters support new safety signage at Zoar Valley MUA/UA. (2)

RESPONSE: Thank you for contributing a comment. The DEC is committed to maintaining, monitoring, and evaluating signage.

COMMENT: Commenters oppose fencing along cliffs at Zoar Valley MUA/UA. (2)

RESPONSE: The proposed regulation is intended to protect public safety and to protect the resource. The regulation does not implement fencing along the entire length of the cliff edge. However, if necessary, DEC will consider the use of fencing in strategic locations.

COMMENT: The regulations need to be backed by proper staffing of Forest Rangers and/or law enforcement personnel. (1)

RESPONSE: The DEC is holding a Forest Ranger academy in 2022 and is hoping to have additional Rangers proactively patrolling this and other DEC state lands. DEC has hired Assistant Forest Rangers to patrol Zoar Valley MUA/UA the past several seasons. The DEC is hoping to continue to hire these seasonal personnel to assist with informing the public about state land rules and regulations.

COMMENT: Commenter expresses a desire for primitive camping to be permitted within Zoar Valley MUA.

RESPONSE: Comment is outside the scope of the proposed regulation. No response is necessary.