

Regulatory Impact Statement

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

1) Statutory Authority: Environmental Conservation Law ("ECL") §1-0101 establishes as a policy of the State of New York to conserve, improve and protect its natural resources and environment.

ECL §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 §3-0301(1)(b) empowers the Department to "[p]romote 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 §3-0301(1)(p) authorizes the Department to "[a]dminister properties having unique natural beauty, wilderness character, or geological, ecological or historical significance dedicated by law to the State Nature and Historical Preserve."

ECL §§45-0117(1),45-0117(2)(n) authorize the Department to "manage and exercise custody and control over lands dedicated pursuant to [the State Nature and Historical Preserve trust]."

ECL §9-0105(1) authorizes the Department to "[e]xercise care, custody, and control of the several preserves, parks and other state lands described in [Article 9 of the ECL]."

ECL §9-0105(19) authorizes the Department to "manage and conserve plants and ecological communities that are rare in New York State, located on state-owned lands under the jurisdiction of the Department."

ECL §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]."

ECL §9-0105(3) authorizes the Department to "[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9]."

2) Legislative Objectives: ECL §1-0101 establishes as the policy of the State of New York to conserve, improve and protect its natural resources and environment. ECL §§ 3-0301, 9-0105 empowers the Department to exercise care, custody, and control over certain state lands and other real property. The Department is also authorized to promulgate rules and regulations for the use of such lands (see ECL §§3-0301(2) (m) and 9-0105). Consistent with this authority, the proposed regulations are crafted to protect natural resources and the health, safety and general welfare of those who engage in recreational activities within the Zoar Valley Multiple Use Area including Zoar Valley Unique Area and the Onondaga Escarpment Unique Area.

3) Needs and Benefits:

a. Onondaga Escarpment Unique Area (UA)

The Onondaga Escarpment UA is a 50-acre property bordering the village of Akron, in the Town of Newstead in northeastern Erie County. The property was acquired in 1991. Prior to state ownership, the Onondaga Escarpment UA was used for mining activities and later for animal grazing and recreation. Those activities degraded the site, though rare and uncommon plant communities persisted, including populations of threatened plant species.

Because of its proximity to the Village of Akron, the Onondaga Escarpment UA is a popular area for recreational visitors. Hiking and nature observation are the most common activities. The trampling of vegetation has resulted in exposed and compacted soil. Bicyclists are attempting to build trails in locations that are undesirable and unsustainable. Unauthorized use of off-road vehicles create muddy trail conditions. Garbage, trash, and broken glass are despoiling the character of the property and raising public safety concerns.

The Onondaga Escarpment UA is surrounded on two sides by Akron Central School, including school buildings and athletic fields. A private airport borders the property to the south. The small size and proximity to the school grounds and airport limit the ability of the property to support some recreational activities, including camping, hunting, horseback riding, and biking.

The proposed regulations are intended to protect the area from resource damage caused by unregulated activities that are incompatible with the small and sensitive nature of the site and to protect visitors and neighboring property users by restricting certain activities most likely to endanger the health and safety of those users. The major provisions of the proposed regulations will establish the hours of use, prohibit fires, camping, horseback riding, bathing, swimming, snowmobiles, and off-road vehicles, as well as requiring parking of motor vehicles in designated sites only. These proposals will help to protect the natural resources from overuse and abuse. Additionally, the proposed regulations prohibit the discharging of a firearm, hunting, and trapping unless otherwise authorized by the Department. These restrictions are intended to protect the safety and welfare of visitors and neighboring properties, particularly students at Akron Central Schools.

b. Zoar Valley Multiple Use Area including Zoar Valley Unique Area ("Zoar Valley MUA/UA")

Zoar Valley, located in Erie and Cattaraugus counties is one of the most scenic and ecologically diverse environmental areas in western New York. It is known for the spectacular scenery created by its deep gorge, sheer cliffs, flowing waterfalls, and dense forests. These same features come with inherent hazards, yet the property continues to be very popular for recreational visitors seeking this rugged and varied terrain. There have been numerous serious injuries to visitors in the last decade, including fatalities. Although some of these incidents occurred on private neighboring properties, the Department is committed to restricting such access to protect public safety. Due to this dramatic increase in public use, serious public health and safety

issues are being created. In addition to public health and safety concerns, the natural resources of portions of the Zoar Valley property are rapidly becoming despoiled and fragile ecosystems are being degraded.

The Department improved safety and addressed resource concerns at Zoar Valley MUA/UA with the addition of special regulations in 2006 and again in 2010, to establish open hours from sunrise to sunset, prohibit alcohol, camping, and fires, among others. Additionally, the Department continuously reviews and installs warning signs and improves trail marking. Despite these efforts, visitors continue to engage in unsafe behaviors, such as walking along the cliff faces, climbing slippery waterfalls, and leaving the property to trespass onto neighboring private properties.

Most notably, visitors to Zoar Valley/MUA often park at the Forty Road parking area and immediately head upstream on the South Branch of Cattaraugus Creek and off the property in search of waterfalls that are on neighboring private properties. The actions of these visitors have resulted in search and rescue operations, injuries, and fatalities. This regulation is targeted to reduce incidents of trespassing onto private properties, and to protect the public health and safety throughout the Zoar Valley/MUA.

The Gorge of Cattaraugus Creek in the Zoar Valley MUA/UA cuts through shales and silt stones. The heights of the cliffs range from approximately 100 to over 400 feet. The proposed regulation will restrict unauthorized access and activities near and on the cliff walls to protect both the resource and public health and safety. The proposed regulation will restrict access to areas within 15 feet of the cliff's edge and prohibit the climbing of cliff walls, except by permit or when ice climbing or rappelling with ropes. The regulation will also deter trespass complaints from adjacent property owners by prohibiting visitors, except licensed anglers, from proceeding upstream from the Forty Road parking area near a southern boundary of the property.

The Department has discussed the proposed regulations with local stakeholders, including the search and rescue community, state representatives, local governments, user groups and neighboring property owners. The regulations will appear in the State Register for a 60-day public comment period as required as part of the rulemaking process. In addition, information regarding the Department's intent to propose these regulations, content of the regulation, and the public process associated with the rulemaking, will appear in a widely distributed newspaper in the area. All regulatory documents will appear on the Department's website.

Beyond the proposed regulations, the Department is developing the Niagara Frontier Unit Management Plan (UMP), which includes both the Zoar Valley MUA/UA and the Onondaga Escarpment UA. The purpose of the Niagara Frontier UMP will be to assess the natural and physical resources present within the unit of state-owned land. The UMP will also identify opportunities for public use and recreation that are consistent with the classifications of these lands, and consider the ability of the resources and ecosystems to accommodate such use. Included in the UMP planning process will be an opportunity for public comment. assess the natural and physical resources present within the unit of state-owned land. The UMP will also identify opportunities for public use and recreation that are consistent with the classifications of these lands, and

consider the ability of the resources and ecosystems to accommodate such use. Included in the UMP planning process will be an opportunity for public comment.

4) Costs: There are no costs to the regulated community because of this proposed regulation. Costs to the state for the additional management actions are minimal and are estimated at \$2,500 for new signage and posting of the properties.

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 since the existing regulation for Zoar Valley MUA/UA is insufficient to adequately address resource concerns and to protect public health and safety because of its unique characteristics, remote location, and very high level of public use. The existing 6 NYCRR Part 190 general regulations for state lands are not adequate in protecting the Onondaga Escarpment UA because of its rare plant communities, unique location and high level of public use.

9) Federal standards: There is no relevant federal standard governing the use of state lands.

10) Compliance schedule: Once the regulations are adopted, they will be effective immediately, and all persons will be expected to comply with them upon the anticipated effective date. The Department will educate the public about the regulations through information posted on the Departments' website, signage posted on the property, and by collaborating with user groups and other stakeholders to help disseminate information regarding the regulations.