

6 NYCRR Section 190.35

Regulatory Impact Statement

1. Statutory Authority:

Article XIV, Section 1 of the New York State Constitution provides that the lands of the Forest Preserve “shall be forever kept as wild forest lands.”

Environmental Conservation Law (“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) 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 §3-0301(1)(d) authorizes the Department to “provide for the care, custody and control of the Forest Preserve.”

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],” which includes Forest Preserve lands.

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:

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.” Article XIV, section 1 of the New York State Constitution provides that the lands of the Forest Preserve “shall be forever kept as wild forest lands,” and ECL §§3-0301(1)(b) and 9-0105(1) give the Department jurisdiction to manage Forest Preserve lands. 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(3)). 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 Peekamoose Valley Riparian Corridor of the Forest Preserve in the Catskill Park.

3. Needs and Benefits:

The Peekamoose Valley Riparian Corridor is an area encompassing more than 270 acres of Forest Preserve lands straddling the upper Rondout Creek along Peekamoose Road (Ulster County 42) in the Town of Denning in Ulster County. The Valley is a remote area in the heart of the Catskill Park and New York City’s Catskill/Delaware watershed. The upper Rondout Creek flows into the Rondout Reservoir, an important and high-quality drinking water supply for New York City. In recent years there has been a dramatic increase in public use of the Peekamoose

Valley Riparian Corridor, resulting in unacceptable impacts to natural resources as well as serious public health and safety issues.

In 2015, the Department attempted to address the problems associated with overuse by implementing a number of strategies, including: clearly defining parking lots and limiting parking to those lots; prohibiting parking along the road (as posted by the Town of Denning); performing weekly garbage pick-ups; and recommending alternative swimming/picnicking areas. These alternative recommendations included Department campgrounds, which have appropriate facilities and are more suited to withstanding more intense public use. Despite these efforts, in 2016 the Department determined that it was necessary to promulgate special regulations for the Peekamoose Valley Riparian Corridor, which encompasses approximately 270 acres of Forest Preserve lands in the Sundown Wild Forest and Slide Mountain Wilderness Area.

The regulation includes several prohibitions designed to protect water quality, protect the area from overuse and address activities which impact public health and safety. Again, public use of the area continued to increase and in June of 2018 the Department amended the regulation to create a day-use permit system for the western portion of the Corridor which included the Blue Hole. The regulation requires that all visitors to the Blue Hole must obtain a permit on weekends and holidays from May 15th thru October 15th of each year. Permits could only be obtained through Reserve America, similar to the reservation system for DEC's campgrounds. While DEC incurred an administrative cost for each permit, permits were issued free of charge to the user. Permits were issued for up to 6 individuals and a maximum of 40 permits were issued on any day that permits were required – allowing for a maximum of 240 people/day.

Overall, the permit system was a success, greatly reducing the number of visitors on weekends and holidays when use had historically surpassed the carrying capacity for the area. While our stewards interacted with over 15,000 visitors during the course of the 2018 and 2019 seasons, use of the Blue Hole was reduced to 6,500 visitors - 1,700 under permit on weekends and holidays and 4,800 on weekdays (no permit limitation). This compares to some Sundays in previous years where over 1,000 visitors were encountered in a single day. Over 6,000 people that arrived without a permit were educated and, after providing suggestions for alternative locations, were turned away. Reserve America collected data on the individuals who got a permit, and from that data we found that nearly 70% of those who got a permit were from the NY/NJ metropolitan area. Key to success of the permit system was the presence of the Blue Hole Stewards and Forest Rangers, who educated the visitors and ensured they understood and followed the rules.

The Peekamoose Valley Riparian Corridor, and specifically the Blue Hole, experienced a dramatic increase in visitation during the 2020 season. This increase can partially be attributed to the pandemic and an increased desire for individuals to recreate locally. Blue Hole Stewards interacted with 24,281 visitors over the course of the season. Under the permit system (weekends and holidays) visitor use decreased from 3,101 visitors in the 2019 season to 2,021 in 2020. This decrease is likely due to Department efforts to reduce the number of permits allowed on weekends to meet social distancing guidelines designed to combat the COVID-19 pandemic. However, weekday visitation increased from 2,509 to 10,369 (no permit limitation). Overall, in 2020 visitation increased 225% (2019 total visitation:10,796).

The most dramatic change we observed in 2020 was an increase in weekday use. In past years, weekday use was nominal. This season, weekday use ranged from 300-700 people/day. We also observed a tremendous amount of trash, litter and human waste as well as illegal parking and congestion at the Blue Hole. DEC Forest Rangers issued nearly 400 tickets during the 2020 season (228 tickets for permit violations and 170 for parking violations), compared to less than 100 tickets in 2019.

Despite the Department's significant efforts to address the area's problems, public use continues to exceed the area's carrying capacity. Such overuse has resulted in unsanitary conditions, threats to water quality, trampled vegetation and a dramatic degradation of the wild character of the area. Because of the immediate threat to the public health, safety and general welfare, combined with the surge in the number of people recreating in the Peekamoose Valley Corridor mid-week, it is essential to expand the permit requirement to all days of the week from May 15th through September 15th. In addition, it is necessary to expand the area where a permit is required to encompass the entire riparian (Rondout Creek) corridor. The expanded permit system will prevent those visitors who arrive without a permit from going downstream and congregating in an unrestricted area, causing natural resource impacts. The area within the Corridor requiring a permit will also encompass a traditional camping area, requiring campers to obtain a permit prior to camping. An initial Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on June 2, 2021. In response to concerns raised during the initial public comment period, the Department revised the proposed rulemaking to exempt from the general permitting system individuals with a valid hunting or fishing license. As a result, this Notice of Proposed Rulemaking clarifies

that individuals with valid fishing and hunting licenses will not be required to obtain a permit to enter the Corridor for those purposes.

While the permit system is intended to ease congestion and overuse, additional measures are necessary to reduce the amount of trash and human waste impacting the site. As a result, the amendment proposes to expand the prohibited activities to prohibit alcohol and large coolers. These prohibitions are intended to mitigate impacts to the natural resource and protect public health from trash and human waste.

The Department has received initial public input on the proposed actions through meetings and interaction with local government officials, including the Town of Denning Supervisor, and in meetings with stakeholder organizations, including the Catskill Park Advisory Committee.

4. Costs:

It is anticipated that any administrative costs associated with the administration of the expanded permit system will be offset by a permit fee of \$10 per permit.

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 does not adequately protect the Peekamoose Valley Riparian Corridor from overuse and abuse and does not protect the public health, safety, and general welfare.

Closing the area to public use is also not an acceptable alternative. Forest Preserve land is acquired for the use of and enjoyment by the public. ECL section 9-0301(1) provides that “all lands in the Catskill Park . . . shall be forever reserved and maintained for the free use of all the people . . .” The closure of Forest Preserve land to public use should not occur except when absolutely necessary to protect public health or the resource.

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’ web site, signage posted on the property, social media, at the Catskill

Visitor Center and by working with user groups and other stakeholders to help disseminate information regarding the regulations.