

6 NYCRR Sections 190.39 and 190.40

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 consistent with the environmental policy of the state and take into account the cumulative impact upon all such resources . . . in promulgating any rule or regulation.” ECL section 3-0301(1)(d) authorizes the Department to “provide for the care, custody and control of the Forest Preserve.” ECL section 9-0105(1) provides that the Department shall “[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. 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.” 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],” and 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 sections 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 sections 3-0301(2) (m) and 9-0105(3)).

The objective of this legislation is to authorize the Department to adopt regulations for the protection of the Forest Preserve. Consistent with this authority, the proposed regulations are crafted to protect natural resources and the health and safety of those who engage in recreational activities within the Neversink River Riparian Corridor of the Forest Preserve in the Catskill Park.

3. Needs and benefits:

The Neversink River Riparian Corridor is an area encompassing approximately 44 acres of Forest Preserve lands straddling the Neversink River along Claryville Road (Sullivan County 19) in the Town of Neversink in Sullivan County. The 44-acre Neversink River Riparian Corridor is part of the 231-acre former Camp Pine property that was acquired by the Department in 2011. The 44-acre Corridor runs along the eastern edge of the 231-acre property.

The 231-acre Camp Pine parcel was originally acquired in December 1949 by what is now known as Cornell Cooperative Extension Association of Sullivan County.

Until 1980 the parcel was used as a rustic outdoor educational facility formerly known as Camp Pine. The property was managed as a working forest for two decades until it was conveyed to the Department in 2009 at which time public access was permitted. The parcel has more than 4,400 feet of frontage along both shores of the Neversink River and can be accessed from Claryville Road in the Town of Neversink. A parking lot near the parcel can accommodate six vehicles.

The Corridor is part of a remote area in the heart of the Catskill Park and New York City's Catskill and Delaware watershed. The Neversink River flows into the Neversink Reservoir, an important drinking water supply for New York City. Due to the high quality of the Catskill and Delaware water supply, New York City is one of only five large cities in the country with a surface drinking water supply of such high quality that filtration is not required as a form of treatment. The proposed regulations will help reduce human waste in the area and protect water quality in the Neversink River.

The Camp Pine parcel experienced a dramatic increase in visitation during the 2020 season. Public complaints concerning overuse, traffic safety issues with parking along the County highway, garbage, and human waste on Camp Pine increased significantly in 2020 and 2021. Department staff met several times with local municipal officials and the community during the summer of 2020. During 2020, the Department posted signage, placed a port-a-john at the site, and undertook weekly garbage clean-ups. The County posted "No Parking" signs along a 1.3-mile section of Sullivan County Route 19, and local law enforcement has expressed a willingness to assist with enforcement. The Town of Neversink Town Board also requested that the Department adopt rules and regulations to restrict fires, audio devices and glass containers.

Despite the Department's attempts to address the area's issues stemming from overuse, public use continued to exceed the area's carrying capacity, perpetuating unsanitary conditions, threats to water quality, increased trampled vegetation and dramatic degradation of the wild character of the area.

Due to the significant increase in public use, certain areas within the Corridor are experiencing rapid degradation of natural resources and serious public health and safety issues are being created. The trampling of vegetation has exposed and compacted the soil. Trees are being stripped of their limbs for firewood, and indiscriminately located campfires are creating numerous carbon scars on the ground. Garbage, trash, and broken glass are despoiling the wild character of these areas and raising public health and safety concerns. The use of audio devices, especially throughout the evening and night, have interfered with the Corridor's quiet and solitude. Moreover, the Town of Neversink indicates that Claryville Road may not be passable by emergency service vehicles because of illegally parked cars, and visitors sometimes stand in the road, putting themselves and passing motorists at risk.

Both the Town of Neversink, local residents, and the Department agree that the Department should develop special regulations for the Neversink River Riparian Corridor because existing Part 190 regulations for state lands do not adequately address public health, safety and natural resource degradation issues that are unique to the Neversink River Riparian Corridor .

The proposed regulations define the Neversink River Riparian Corridor as a 600 foot wide corridor on New York State Forest Preserve lands lying and situated within

300 feet on either side of the centerline of the Neversink River situated within the property formerly known as “Camp Pine” adjacent to the west side of County Route 19, Claryville Road, in the Town of Neversink, Sullivan County. The Neversink River Riparian Corridor begins at the New York state land boundary where the state land’s southeastern boundary intersects the Neversink River, thence heading north for approximately 4,400 feet, and ending where the state land boundary’s northeastern border intersects the Neversink River, encompassing lands designated by the Department as the Sundown Wild Forest of the Catskill Park.

To address the problem of broken glass and improper behavior, the regulations will prohibit the use of coolers over 12” in any dimension, alcoholic beverages, and glass containers in the Corridor, except when necessary to store prescription medications. The regulations will prohibit the use of audio devices in the Corridor, helping to restore quiet and solitude for the public. Fires of any kind, including portable stoves, will be prohibited in order to reduce carbon scarring and tree cutting.

The regulations will also restrict the hours of public use in the area, with an exception for licensed hunters, anglers, and otherwise authorized persons, to one half hour before sunrise to one half hour after sunset, thereby reducing or eliminating abusive activity at the site by prohibiting the public from being in the area at night, when the greatest amount of abusive activity occurs. The regulations will also protect public health and safety by requiring the public to leave the area at times when sufficient daylight allows for safe passage over uneven and steep terrain.

Local law enforcement and public safety officials are the first responders to incidents on this property. Local governments support the regulatory proposal and local

law enforcement agencies have expressed a willingness to assist the Department with enforcement.

Department staff have met several times during the summer of 2020 with local government officials and the community on the proposed actions needed to address issues within the Corridor. The Catskill Park Advisory Committee has also been made aware of the Department's intent to propose regulations for the Neversink River Riparian Corridor. Information regarding the Department's intent to propose the regulation, 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.

4. Costs:

No costs to the regulated community are anticipated to result from the adoption of the proposed regulations. Costs to the state for the additional management actions are minimal and are estimated as follows: \$4,000 for a kiosk and new signage; \$2,500/year for port-a-john rental/service.

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 it does not adequately protect the Neversink River Riparian Corridor from overuse and abuse and does not protect public health and safety. Reliance on Part 190 regulations for state lands are inadequate in protecting public health, safety and natural resources on the Neversink Riparian Corridor because of its unique characteristics, remote location and high level of public use.

Closing the area to public use is 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 are effective immediately, and all persons will be expected to comply with them upon their effective date. The Department will seek to educate the public about the regulations through information posted on the Departments' web site, in a widely-distributed local newspaper, signage posted on the property, and by working with user groups and other stakeholders to help disseminate information regarding the regulations.