

Regulatory Impact Statement

Final Regulation – Amendment to 6 NYCRR Part 190.38 – Brookfield Trail System

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...and take into account the cumulative impact upon all such resources ...in promulgating any rule or regulation." CL section 9-0105(1) authorizes the Department of Environmental Conservation to "exercise care, custody, and control" of State 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 section 9-0105(3) authorizes the Department to "make necessary rules and regulations to secure proper enforcement of (ECL Article 9)."

2) Legislative objectives: In adopting various articles of the ECL, the legislature has established forest, fish, and wildlife conservation to be policies of the State and has empowered the Department to exercise care, custody, and control over certain State lands and other real property. Consistent with these statutory interests, the proposed regulations will protect natural resources and the safety and welfare of those who engage in recreational activities at the Moscow Hill Camping and Assembly Areas on the Charles E. Baker State Forest in Madison County, New York and as well as on the entire Brookfield Trail System. The Department has also been authorized by the State Legislature to manage State owned lands (see ECL section 9-0105(1), and to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2)(m) and 9-0105(3)).

3) Needs and benefits: The lands comprising the Charles E. Baker State Forest were originally farmed, then abandoned as farming no longer proved to be successful. These lands were then acquired by the State for reforestation purposes. By 1930, 3,073 acres had been acquired and 2,106 acres reforested.

With the authorization of the Civilian Conservation Corps program in 1933, trees were planted, truck trails built, water holes dug, hardwood stands thinned, and camps and structures were built to support workers. Parts of the old foundations can still be seen in the Assembly and Camping Area along Moscow Road.

In 1967, the Empire State Horsemen's Association strongly backed the development of a horse trail system for pleasure riding. It required a joint effort by correction camp crews, operations personnel, rangers, and foresters to lay out and clear the trails.

Today the Moscow Hill Camping and Assembly Areas serve as the major trailhead to the approximately 100-mile complex of recreational trails designated for use by horses, llamas and bicyclists. The trail system is located on three State reforestation areas

covering over 13,000 acres, primarily within the Town of Brookfield, New York. The Moscow Hill Camping and Assembly Areas provide the main camping and equestrian related facilities for the Brookfield Trail System.

Over the last decade, public use of the Moscow Hill Camping and Assembly Areas has steadily increased, especially during peak periods. This unregulated use has led to overcrowding and degradation of natural resources, particularly to vegetation and trees. In addition, social impacts, including overcrowding, boisterous behavior and uncontrolled pets, such as dogs disturbing other users, continue to cause problems.

This rulemaking includes the addition of the definitions for "horse" and "llama", which are being added to section 190.0 of 6 NYCRR rather than including them in the new section 190.38, since this section only applies to the Brookfield Trail System. By placing definitions in section 190.0 for State lands generally, they will pertain to horse and llama use on all State lands. Horses and llamas are allowed anywhere on State land under the jurisdiction of the Department of Environmental Conservation unless otherwise prohibited by law, regulation, or posted notice.

The major provisions of the proposed regulations that will control use on the Moscow Hill Camping and Assembly Areas include: requiring horses and llamas that remain in the Camping and Assembly Areas overnight be tethered in a Department provided covered tie stall, or in the case of a stallion, in a stud stall; cat and dog restrictions, including a requirement that dogs and cats be under control and on a leash and have proof of a current rabies vaccination; camping only at designated sites; fire restrictions; formal quiet hours and generator use. The provisions that apply to the entire Brookfield Trail System, in addition to the Moscow Hill Camping and Assembly Areas include: seasonal closure of trails and prohibiting the possession or use of fireworks.

The restrictions requiring persons harboring a horse or llama overnight at the Moscow Hill Camping Area or Assembly Area to have them tethered in a covered tie stall, stallions in a stud stall, or within a horse trailer associated with the person responsible for the horse or llama, will protect vegetation and trees in the Camping and Assembly Areas. Tethering of horses and llamas to trees can cause damage to bark, and ultimately lead to the death of the tree. This is a potential problem, particularly during high use periods. The proposed regulations will also prohibit the public from using temporary corrals or paddocks for their horses or llamas which will protect vegetation and trees in the Camping and Assembly Areas.

A new subdivision, (c), paragraph (3), which states, "No person shall leave their cat or dog unattended in the Moscow Hill Camping Area or Assembly Area at any time unless securely confined in a camper or enclosed trailer" is included in the proposed regulations. This revision was made to accommodate users with small or older cats or dogs that cannot be taken on the trail. Instances where cats and dogs have disrupted campers will be avoided by requiring those pets to be on a leash or otherwise confined to the campsite of their owner.

The proposed regulations will establish formal "quiet hours" to be observed from 10:00 p.m. to 7:00 a.m. The operation of generators will be allowed from 8:00 a.m. to 10:00

a.m. and from 4:00 p.m. to 8:00 p.m. This will extend hours to allow generator use to accommodate users who are on the trails late in the day.

A seasonal closure of riding trails to horses, llamas and bicycles in the Brookfield Trail System was enacted in 1991 following an environmental assessment and environmental rehabilitation plan undertaken by the Department. This was undertaken to ensure erosion at the most sensitive times of the year would be minimized. Trail vulnerability is greatest between November 1 and April 30 during the spring and fall "mud seasons". At these times, trails show signs of degradation due to a combination of high moisture content in soils and heavy use. This can lead to trail deterioration and poor tread conditions, as well as stream sedimentation. For these reasons, restricting seasonal use has been in place for the past 25 years by signs posted in the area. Codifying the restriction in regulations will eliminate the need to maintain signs. A provision has been included in the proposed regulations that will restrict trail use between November 1 and April 30.

Additional regulations that may apply to the Brookfield Trail System can be found in 6 NYCRR Part 190, Use of State Lands.

The regulations for the Brookfield Trail System were proposed in the Brookfield Unit Management Plan adopted in 2017. The need for the proposed regulations were addressed in the plan and discussed at the public meeting held on the plan in April 2016.

Members of the New York State Plantation Walking Horse Club, New York State Horse Council, Eastern Competitive Trail Ride Association, Brookfield Riding and Driving Association, Leatherstocking Riding Club, Twin Tiers Trail Riders, New York Adventure Endurance Ride, Pure Country Campground and Endless Trails Bed and Breakfast Riding Stables, as well as concerned members of the public who gave their contact information at the April 7, 2016 public meeting received a letter announcing the Department's intent to propose this regulation. The proposed regulations appeared in earlier draft form as part of the approved Brookfield Unit Management Plan. There will be an opportunity for the public to officially comment on the proposed regulations during a 60-day public comment period when the regulation appears in the New York State Register as a proposed rulemaking.

4) Costs: There will be no increased staffing, construction or compliance costs projected for State or local governments or to private regulated parties as a result of this rulemaking. Costs to the Department for necessary signage for the Brookfield Trail System will be minimal.

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) Alternative approaches: Several alternatives were considered to determine which management strategies would best protect the resource and best serve the public using this facility. The "No Action" alternative is not feasible since it would continue to allow unregulated use at the Moscow Hill Camping and Assembly Areas and would do nothing to provide protection to the natural resources of the area or the experience of visitors. The Department considered requiring users to obtain permits from its Sherburne sub-office prior to arrival, but this proposal would place an additional burden on both users and on Department staff. Reliance on the current Part 190 regulations for State forest lands does not provide adequate public safety or law enforcement protections that are necessary for the protection of the Moscow Hill Camping and Assembly Areas because of their unique characteristics. The alternative chosen in the proposed regulations represented the least burdensome option for effective management of the facility.

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

10) Compliance schedule: The proposed regulations will become effective upon notice of adoption in the New York State Register. 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 educate the public about the regulations through information posted on the Departments' web site, signage posted on the property, and by working with user groups and other stakeholders to help disseminate information regarding regulatory compliance.