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PHONE: (717) 398-4476
THURSDAYS 9AM TO 4PM
REPLY TO PENN HILLS PLAZA OFFICE



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November 10, 1997

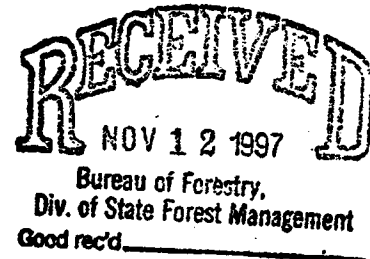
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Mr. Warren A. Ely, Chief
Division of State Forest Management
Department of Conservation and Natural Resources
Rachel Carson Building
P.O. Box 8552
Harrisburg, PA 17105-8552



Re: Objections to Proposed DCNR State Forest Rules and Regulations

Dear Mr. Ely:

On behalf of many of my constituents, I am submitting the following comments concerning the proposed state forest rules and regulations.

On September 17, 1997, the Department issued a press release announcing the proposed regulations. The release stated, in part, that the Department was following "Governor Ridge's call for more user-friendly government regulations". The proposed regulations, however, are in some respects not user-friendly.

SECTION 21.26

Section 21.26 would prohibit horses on 18 state designated hiking trails unless posted "open" to horses. These trails are considered by many to be the most scenic in the state forest system. Many of my constituents have numerous objections to this proposal. First, the regulation may violate the Americans with Disabilities Act. As the Department is aware, the handicapped horseback riding program uses some of the trails so that handicapped children have an opportunity to experience these unique areas. The closure of these trails to the handicapped by prohibiting horses may violate the ADA. On Friday, November 7, 1997, I raised this concern with Joseph Graci of DCNR. Mr. Graci mentioned that the availability of other trails may constitute "reasonable accommodation" and, therefore, the regulation would not violate the ADA. Since I am not an expert on the ADA, I contacted an attorney who litigates ADA cases. His preliminary thoughts are contrary to Mr. Graci's. I have also discussed this issue with

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individuals involved in the handicapped riding program and referred them to the attorney in the event it is necessary and appropriate to protect their rights by seeking the intervention of the U.S. Justice Department or, ultimately, the Federal Court. I would appreciate knowing the Department's position on this issue. I hasten to add that the regulation also discriminates against the elderly who may not be capable of hiking but are capable of sitting on a horse. I cannot comment on the legality of this type of discrimination because I have not yet performed any preliminary research nor contacted any senior citizen organizations due to time constraints.

Second, not only is the regulation not user-friendly to the disabled but it is also not user-friendly to horseback riders who are not disabled. The language of the regulation is a statement to those individuals that they are not welcome on taxpayer property. The verbal representations that the Department may open all or part of the trails does not change the negative language of the regulation.

Third, the present procedure of closing portions of trails to protect fragile or sensitive areas has, in most instances, worked successfully. In fact, the members of the Alpine Club who are demanding closure of the Loyalsock Trail stated in their letter of November 5, 1997 to you that the present policy in the Tiadaghton Forest "has been fair, effective and it works".

Fourth, the regulation will cause the taxpayers to needlessly incur additional costs. You estimated that there are 800 miles of state designated trails and that approximately 400 miles are already closed. You also stated that the Department intends to open by posting the 400 miles already open once the regulation is adopted. Would you please confirm in writing that the Department will open the 400 miles of trails if the regulation is adopted? If the Department intends to follow its verbal assurances, please advise me of the cost of erecting signs opening trails to horses that are already open to horses.

Fifth, at our meeting with Secretary Oliver and you on October 29th, the Department candidly admitted that the reason for the regulation was the Department's desire to satisfy hiking organizations. You also stated that the hiking organizations would be upset if the proposed regulation was changed. This later statement implies that the hiking organizations were consulted during the drafting of the regulation. Is my assumption correct? Were any horseback riding organizations consulted when the regulation was being drafted? If not, why were horseback riding organizations not consulted? Why is the Department attempting to satisfy only one user group?

Sixth, the closure of the state designated hiking trails will have the effect of closing hundreds of miles of other trails. Portions of many of the state trails are used to access other trails. The closure of the trails will, therefore, result in the closure of many other trails. This will also result

in the creation of additional side trails as horseback riders attempt to bypass or parallel the portion of the closed state trail.

Last, assuming the Department intends to honor the verbal representations that the portions of the trails now open will be posted open, how long will it take the Department to post the trails? From the moment the regulation is effective it will be illegal to horseback ride on any part of the trail. If the Department delays due to an alleged lack of resources or other bureaucratic reasons, it could result in the closure of the trails for months or years. I would suggest that the regulation not be effective for an additional six months during which time the District Foresters should be instructed that they must post the trails open in accordance with your verbal assurances.

SECTION 21.27

This regulation would limit bicyclists in a similar manner to horseback riders. Many of my constituents object to this proposal for reasons similar to section 21.26.

SECTION 21.78

This regulation prohibits group activities without written authorization. The definition of "group activity" is too broad. As defined, the definition could arguably be used to prohibit group hunting activities. One employee of the Department has stated that this is not the Department's intent. If it is not the Department's intent then it should be clarified. I will assume if it is not clarified that it is the Department's intent to have a regulation which could be used in the future to prohibit or limit group hunting activities. I have discussed this proposal with Dr. N. Charles Bolgiano of the Unified Sportsmen of Pennsylvania. Dr. Bolgiano is also concerned the regulation could be used to limit group hunting.

SECTION 21.61

This section would require a camping permit to be acquired by all campers on state forest land. I have several concerns with this requirement. First, I do not believe that a camping permit is necessary in any of the remote regions. In fact, the remote regions are under utilized. Second, if the Department believes that a camping permit is absolutely necessary there must be some provision for individuals to obtain a permit 24 hours a day, seven days a week. Not everyone plans remote camping trips weeks or even days in advance. Some individuals may plan a remote camping trip on Friday evening when they would not be able to obtain a permit. If the Department intends to require a permit, it must provide a permit system 24 hours a day, seven days a week by telephone.

SECTION 21.70

This would require written permission from a District Forester to plow state forest roads. There are individuals who own cabins on state forest land who access those cabins by state forest roads. There are also individuals who own cabins on private property who can only access those cabins on state forest roads. If a District Forester decides not to grant permission, which the regulation would permit him, individuals may not be able to gain access to their property not only to utilize their property but to protect their property. Further, emergency services vehicles may not be able to obtain access to the property. If the Department insists on this regulation it seems to me that there needs to be a provision that if an individual owns a cabin either on state land or on private land that is accessed by a state forest road that they must be given permission to plow snow in order to access their property.

I appreciate the opportunity to comment on the proposed regulations. I urge the Department to change the proposed regulations to insure that they are truly user-friendly.

Very truly yours,



Brett Feese
State Representative
84th Legislative District

BF/pbh

cc: Kurt Leitholf, Citizens Advisory Council
Dennis Walsh, Governor's Office
Representative Robert Reber
Representative Camille George
Senator Roger Madigan
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