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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

State Trails System Rules

Proposed Readoption without Amendments N.J.A.C. 7:5D

Authorized by Bob Martin, Commissioner  
Department of Environmental Protection

Authority: N.J.S.A. 13.8-30 et seq.

Calendar Reference: See summary below for an explanation of the exception to calendar requirement.

DEP Docket No.: 08-10-09

Proposal Number:

Submit written comments by December 17, 2010 to:

Gary J. Brower, Esq.  
Office of Legal Affairs  
Attn: DEP Docket No. 08-10-09  
Department of Environmental Protection  
401 East State Street, Floor 4  
P.O. Box 402  
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in

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order to facilitate use by the Department of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at <http://www.state/nj/us/dep/rules>.

The agency proposal follows:

### **Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to N.J.S.A. 52:14B-5.1, the State Trails System (System) rules, N.J.A.C. 7:5D, expire on September 8, 2010. The Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. In addition, the New Jersey Trails Council (Council), representing various trail user, conservation and governmental organizations, recommended readopting the rules without amendments in a November 24, 2009 meeting. The Council is appointed by the Commissioner of the Department and serves in an advisory capacity to the Commissioner. The Department

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agrees with the recommendation of the Council and is proposing to readopt these rules without amendments. Because the proposed readoption was filed before September 8, 2010, the expiration date was statutorily extended by 180 days, to March 7, 2011. See N.J.S.A. 52:14B-5.1c.

The New Jersey Trails System Act, N.J.S.A. 13:8-30 et seq. (Act), enacted in 1974, was established to provide for the ever-increasing outdoor recreation needs of an expanding population and to promote public access to, travel within, enjoyment and appreciation of the outdoor and natural areas of the State. Under the Act, the Department has established a system of scenic trails, recreation trails and connecting or side trails, and promulgated the State Trails System rules, which establish standards, procedures and practices for designating and maintaining trails as part of the System. Designation of trails to the System is intended to help preserve the natural, recreational, ecological, geological, historical and cultural qualities of trails and the areas through which they pass; to increase open space and recreational opportunities; and to enhance the quality of life for all State residents and visitors.

A description of the rules proposed for readoption follows.

Subchapter 1, General Provisions, explains the purpose and scope of the rules and contains definitions for terms used throughout the chapter.

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Subchapter 2, New Jersey Trails Council, describes the membership and duties of the Council.

Subchapter 3, Land Acquisition for Trails, explains how the Department, with the advice of the New Jersey Trails Council, acquires land for trails.

Subchapter 4, Classes of Trails, establishes the three types of trails, scenic, recreational and connecting, that can be designated to the System.

Subchapter 5, Designation of Trails to the State Trails System, establishes the eligibility criteria and documentation required for designation of trails to the System; the steps for designating a trail to the System; and procedures for repealing the designation of a trail to the System.

Subchapter 6, Trails Management, establishes the objectives to be addressed through the preparation of a management plan and procedures to ensure designation objectives are met.

Subchapter 7, Review of Department-funded Construction Projects Affecting Designated Trails, establishes procedures for reviewing the impact on a designated trail by a capital improvement project.

Subchapter 8, State Trails System, identifies designated trails in the System.

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### **Social Impact**

The rules proposed for readoption without amendment will have a beneficial social impact. Readopting the current rules will allow the Department to continue to preserve New Jersey's trails, thereby allowing the State's population to use and enjoy this resource. The rules proposed for readoption without amendments will also provide the public with assurance that the trails are marked for the appropriate uses and promote awareness of New Jersey's natural and cultural heritage.

### **Economic Impact**

The rules proposed for readoption are expected to have a positive impact on the State's economy. The presence and accessibility of attractive long-distance trails throughout New Jersey has fostered the creation of local ecotourism businesses to provide services and facilities to these trail users. The System enhances a vibrant and vital tourism industry in New Jersey. The rules proposed for readoption will maintain this development.

Usage statistics for the System are difficult to obtain. For example, in 2009 an estimated 1.43 million people used the Delaware and Raritan Canal State Park, a major component of which is the D&R Canal State Park Multi-Use Path. However, the park also includes the Bulls Island Recreation Area, which offers picnicking, canoeing, kayaking, bird watching, and other

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outdoor recreational activities, and there is no practical way of separately estimating the number of trail users. Similar data limitations apply to other trails in the System, all of which lie within State, federal or county parks and forests with multiple recreational activities.

The eligibility criteria for designating new trails for the System at N.J.A.C. 7:5D-5.2 reflect economic as well as environmental and other considerations. Specifically:

1. The Scenic Quality and Accessibility criteria are basic to the very purpose of the System and give New Jersey residents reasons to use the System. The location of trails throughout the State allows the System to serve residents from many geographic areas, including drawing out-of-state visitors.
2. The Multiple Use and Length criteria foster economies of scale in creating longer trails that serve more than one type of user.
3. The criterion emphasizing trails with low Development and Maintenance Costs reflects a concern for the efficient use of scarce conservation resources.
4. The Environmental Impact criterion emphasizes the need for trails in the System to “cause minimal erosion or destruction of plant, animal, historic or cultural resources”, thereby helping to preserve New Jersey’s valuable natural capital and other resources.

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These criteria are reinforced by the requirement at N.J.A.C. 7:5D-6.1 for trail management plans that provide for protection and enhancement of natural and scenic qualities; protection of natural vegetation; development of multiple compatible trail uses; erosion control measures; and identification of parking or other necessary ancillary facilities.

The costs to organizations that wish to submit requests for System designation of trails will be those related to composing or obtaining the limited documentation required under N.J.A.C. 7:5D-5.2(e). As the required submittals are not substantial, the costs for preparing them are anticipated to be minimal. Presumably organizations obtaining System designation for trails will obtain favorable recognition that would assist in member recruitment and fund-raising, and individuals participating in successful designation efforts will obtain personal satisfaction and enjoyment of the trails.

The cost to the Department of administering the rules proposed for re adoption is minimal. Because of previous staffing reductions, a single employee currently manages the System, the New Jersey Trails Plan, and the Recreational Trails Program. State Park maintenance staff and volunteer trail user groups perform trail maintenance.

In conclusion, the rules proposed for re adoption will result in minimal costs of compliance and administration, while allowing for the continued growth of New Jersey's ecotourism industry and the wider social benefit associated with a beautiful, usable, and accessible State Trail System.

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### **Environmental Impact**

The rules proposed for readoption without amendments will continue the Department's ongoing effort to protect New Jersey's natural resources and ecosystems. In determining the eligibility of a trail to the System, environmental factors such as erosion and erosion control measures, and endangered and threatened species habitat are evaluated for impacts. Trails within the System promote additional efforts to maintain the trail conditions in such a manner as to foster protection of environmentally sensitive areas. These trails also help to channel funding to projects that provide for environmental protection.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:5D is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis.

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### **Jobs Impact**

The creation of high-quality long-distance trails in New Jersey has increased ecotourism in the State, thereby supporting jobs in outdoor recreation, retail outdoor equipment and clothing, travel and other sectors to meet the varied needs of trail users for equipment, supplies, services, and facilities (such as lodging and restaurants). All of these activities in turn support indirect employment as these direct providers of goods and services place orders with their suppliers or spend the revenues generated by their activities. The rules proposed for re-adoption are expected to maintain these employment benefits.

### **Agriculture Industry Impact**

In accordance with N.J.S.A. 52:14B-4(a)2, the Department has reviewed the rules proposed for re-adoption without amendments and has determined that there will not be any impact upon the agriculture industry.

### **Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping and other compliance requirements that the rules proposed for re-adoption would impose on small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business which is resident

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in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.”

The rules proposed for readoption impose compliance requirements on three groups of entities that may be considered small businesses as defined under the Regulatory Flexibility Act: private organizations requesting the designation of a trail to the System; charitable conservancies serving as administering agencies for the designated trails; and organizations undertaking emergency measures on the trail right-of-way to protect the public health, safety and welfare.

The request for trail designation must include the documentation listed under N.J.A.C. 7:5D-5.2(e). The costs to organizations of submitting the request would be those administrative in nature related to composing or obtaining the required documentation. No professional services should be required.

Administering agencies are required to prepare a management plan for the trail right-of-way, in accordance with N.J.A.C. 7:5D-6.1(c). Such agencies are also responsible for initial development and maintenance of the trail; are required to cooperate to the fullest extent possible with the owner of the trail right-of-way in complying with the requirements of the Americans with Disabilities Act (ADA); and are required to post standardized trail head signs provided by the Department. The costs of development, maintenance and ADA compliance cooperation will vary depending upon the circumstances of each trail. The need to employ professional services, while not anticipated, might arise depending on the capabilities of an agency’s members.

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Organizations undertaking emergency measures are required to notify the Department in writing within 24 hours of the commencement of such measures. This requirement will cause organizations to incur only the de minimis cost of the written notice to the Department. No professional services should be required.

As both the request for designation of a trail and the assumption of the role of administering agency are voluntary, and the requirements imposed are considered the minimum necessary to permit efficient and informed trail designation and necessary trail development and maintenance, no lesser requirements or exceptions are provided for small businesses.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for readoption without amendment on the achievement of smart growth and implementation of the State Plan. The rules proposed for readoption are expected to contribute to the preservation, proper management and public use of open space in its natural state, consistent with the achievement of smart growth and the goals of the State Plan.

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### **Housing Affordability Impact**

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the rules proposed for readoption without amendment to determine what, if any, impact they will have on the affordability of housing. The Department has determined that the State Trails System Rules do not affect the average cost of housing.

### **Smart Growth Development Impact**

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the rules proposed for readoption without amendment to determine what, if any, impact these rules will have on smart growth development. The rules do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2 or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption without amendments may be found in the New Jersey Administrative Code at N.J.A.C. 7:5D.