

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED
DEC 2 2 41 PM '94
OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY WV Code 5B-1-13a, 20-1A-7

AMENDMENT TO AN EXISTING RULE: YES X NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Rules governing public use of WV State
Parks, Forests, Wildlife Management Areas under Division of Natural Resource.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Charles B. Felton, Jr.
Director, Division of Natural Resources

NOTE: Filed for Public Hearing as Title 144, Series I,
Division of Tourism and Parks

8.20



STATE OF WEST VIRGINIA
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

State Capitol Complex
Building 3, Room 669

1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0660
TDD 558-1439 TDD 1-800-354-6087
Telephone (304) 558-2754 Fax (304) 558-2768

GASTON CAPERTON
Governor

CHARLES B. FELTON, JR.
Director

AUTHORIZATION TO FILE AGENCY APPROVED AMENDMENTS TO A
LEGISLATIVE RULE WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

The Division of Natural Resources is authorized to file Agency
Approved proposed amendments to Title 58, Series Rules Governing
Public Use of West Virginia State Parks, State Forests and State Wildlife
Management Areas under the Division of Natural Resources. (Filed for
Public Hearing as Title 144, Series I, Division of Tourism & Parks.)

Charles B. Felton, Jr.
Director
Division of Natural Resources

12/2/94
Date

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules governing public use: State Parks, Forests & Wildlife Management Areas

Type of Rule: X Legislative Interpretive Procedural

Agency Division of Tourism & Parks

Address 2101 Washington Street, East
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

No fiscal impact.

3. Objectives of these rules:

See attached August 16, 1994 memorandum.

Rule Title: Rules governing public use: State Parks, Forests & Wildlife Management Areas

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

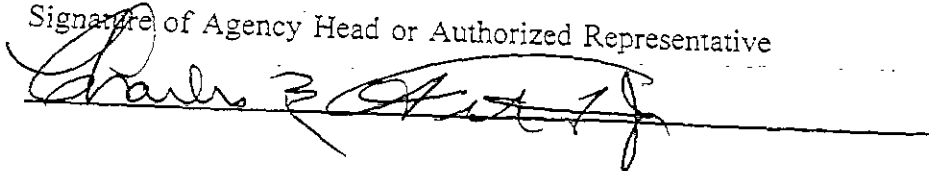
Date: October 13, 1994

Signature of Agency Head or Authorized Representative

NOTE: Fiscal Note for Proposed Rules is the same for Changes to Proposed Rules as it was for Original Proposed rules.

Date: December 1, 1994

Signature of Agency Head or Authorized Representative



DATE: 11-30-94

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Natural Resources

LEGISLATIVE RULE TITLE: Rules Governing Public Use State Parks

1. Authorizing statute(s) citation 5B-1-13a, 20-1A-7

2. a. Date filed in State Register with Notice of Hearing

October 20, 1994

b. What other notice, including advertising, did you give of the hearing?

Printed in Stateline Newsletter

Press release to all WV papers

c. Date of Hearing(s) November 22, 1994, Morgantown, WV

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. Name and phone number(s) of agency person(s) to contact for additional information:

Cordie Hudkins, Chief

Parks & Recreation

558-2764

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

TITLE 58
LEGISLATIVE RULES
DIVISION OF NATURAL RESOURCES

SERIES ____
RULES GOVERNING PUBLIC USE OF
WEST VIRGINIA STATE PARKS, STATE FORESTS, AND STATE
WILDLIFE MANAGEMENT AREAS UNDER THE DIVISION OF NATURAL RESOURCES

§144-1-1. General.

1.1 Scope. -- This legislative rule governs the public use of West Virginia state parks, state forests, and recreation areas in state wildlife management areas under the jurisdiction and management of the Division of Natural Resources. They shall not be construed to include the state forests or state wildlife management areas, or any areas or facilities therein, under the jurisdiction and management of the Department of Agriculture or of the Division of Natural Resources, respectively. The rules are necessary to provide for public health, safety and welfare; to protect state property; and to assure state recreational area guests of a safe, beneficial and enjoyable experience.

1.2. Authority. -- W.Va. Code 5B-1-13a

1.3. Filing Date.

1.4. Effective Date.

§144-1-2. General Rules Governing Public Use of State Parks, State Forests, and Recreational Areas in State Wildlife Management Areas under the Division of Natural Resources.

2.1. It is unlawful to cut, deface, destroy, or drive any object into any tree, shrub, rock, sign, building or other structure or object in a state park, state forest, or state wildlife management area. This rule does not apply to the erection of temporary blinds or tree stands in state wildlife management areas.

2.2. It is unlawful to remove any man-made or natural object, material, substance, plant, animal or historical or archeological relic or artifact from a state park, state forest, or state wildlife management area, except those legally acquired through hunting and fishing in accordance with W. Va. Code §20-2-1 et seq. or upon proper authorization in writing by the Chief of Parks and Recreation, Division of Natural Resources.

2.3. Fires may be lighted only in fireplaces, fire rings or grates provided by the State or in places designated by the area superintendent. Those responsible for a fire shall extinguish it completely before leaving it. Ashes, charcoal briquets and other materials used for a fire shall be left in the fireplace, fire ring, grate or place designated for the fire, or be deposited in a trash container or a container provided specifically for that purpose but only after they are extinguished. Such materials shall not be strewn over the ground.

2.4. No person shall attempt to or hunt, catch, capture, take, kill, trap, pursue or have in his possession any animal, except as provided in W. Va. Code §20-2-1 et seq. Hunting is prohibited in all state parks; however, legally authorized hunting is permitted in state forests, and state wildlife management areas.

a. No person shall attempt to feed, or feed, any animal in a state park, state forest, or state wildlife management area, except a pet they own, or as part of a wildlife management program officially approved by the state agency having lawful jurisdiction over the program.

2.5. Loud or excessive noise, demonstrations, disturbances, disorderly conduct, profanity, public drunkenness, and the possession or use of controlled substances is prohibited and unlawful.

2.6. Swimming is prohibited in state parks, state forests, and state wildlife management areas, except in places designated for that purpose.

2.7. Recreational activities including, but not limited to, rock climbing, rappeling, hang gliding, parachuting, parasailing, skydiving, spelunking and other like or similar recreational activities that require a high degree of specialized training and equipment are permitted, except where they are prohibited by posted signs. Persons who intend to participate in any such activity shall register at the area superintendent's office before engaging or participating in it and specify where it will take place ~~and give evidence that they have proper training and equipment for the activity~~. Participants in such activities assume full responsibility and liability for any risk or injury related to the activity. Scenic rocks, overlooks and vistas are for providing scenic beauty and aesthetic benefit for guests; therefore, they shall not be used for, or disfigured by, any such recreational activity. This rule does not apply to golf, skiing, horseback riding, hunting or fishing.

2.8. Garbage, waste, bottles, cans, paper, junk, or any other trash or refuse shall not be dumped, deposited or strewn

within the boundary of any state park, state forest, or state wildlife management area.

2.9. Lodge rooms, cabins, campsites, picnic shelters, swimming pools and beaches, or any other facility shall not be subleased by guests or patrons.

2.10. It is unlawful for any person not to pay the rental, charge or fee for any facility, service, activity or good he uses or purchases in a state park, state forest, or state wildlife management area.

2.11. Only registered lodge, cabin, and camping guests, licensed hunters, and fishermen while hunting or fishing and persons who have authorized, legitimate business in a state park, state forest, or state wildlife management area are permitted on the premises between the closing hour of 10:00 P.M. and the opening of 6:00 A.M. during which hours they are closed to the general public.

2.12. Dogs and cats are the only pets permitted in state parks, state forests, and state wildlife management areas; however, they are prohibited in state park and state forest cabins and the areas immediately around them, in state park lodges, and in swimming pool and beach swimming areas. In and around campgrounds, picnic areas, playgrounds and other similar intense public use areas, they shall be restrained at all times on a sturdy leash not to exceed ten feet in length and their owner or master shall clean up the pet's excreta, keep it quiet and from disturbing other guests, and be responsible for all damages it causes.

2.13. Explosives, incendiaries, flammables and other dangerous substances are prohibited in state parks, state forests, and state wildlife management areas.

2.14. Uncased firearms, uncased bows and uncased arrows are prohibited in state parks, state forests, and state wildlife management areas, and on state trails, except:

a. When the area is open for hunting (hunting is prohibited in state parks) or when a registered park or forest guest has the written permission of the area superintendent to carry them cased from his lodge room, cabin or campsite to open hunting areas, or to an officially designated rifle, pistol, skeet, trap, target or shooting range.

b. Area superintendents may authorize their use in historical reenactments and plays.

c. The Chief of Parks and Recreation, Division of Natural Resources, may authorize their use for a limited period in conjunction with recreational and arts and crafts programs.

2.15. The Division of Natural Resources assumes no responsibility for any personal property. If personal property is abandoned or left unattended more than forty-eight (48) hours, it will be removed from the public use area and disposed of according to law.

2.16. Hawking, peddling, soliciting, begging, advertising, or carrying on any business or commercial enterprise is prohibited in state parks, state forests, and state wildlife management areas without the written permission of the Director of the Division of Natural Resources.

2.17. Fishing and boating are permitted in state parks, state forests, and state wildlife management areas only in accordance with state law, fishing and boating rules and regulations promulgated thereunder, and rules publicly posted in those areas.

2.18. The speed limit for motor vehicles is thirty (30) miles per hour in state parks, state forests, and state wildlife management areas, except where a lower speed limit is posted. All traffic laws, signs and directions shall be strictly observed. Driving of motor vehicles in any manner that creates a nuisance to any guest by repetitive or continuous cruising or operation is prohibited.

2.19. Motor vehicles including, but not limited to, trail bikes, motorbikes, snowmobiles, and all terrain vehicles may be operated only on public roads usable by automotive vehicles, and on trails and areas designated for their use by the area superintendent by posted signs. It is unlawful for any unauthorized motor vehicle to go beyond a gate, cable, or other obstruction, or to proceed beyond any sign prohibiting such travel. All motor vehicles in state recreational areas shall obey and comply with all applicable state laws, rules and regulations.

a. Mountain and trail bicycles may be operated only on public roads, trails and other readily recognizable passageways such as logging roads and oil/gas well roads, except that they shall not be operated on horseback riding trails when they are open and operating as horseback riding trails, nor shall they be operated on any trail or road where their use is prohibited by posted signs.

"Mountain and trail bicycles" means any devices designed for operation on mountains and trails having two tandem wheels and pedals for propelling it by human power.

2.20. No person may operate a vehicle in a manner so as to harass, chase or annoy any person or animal.

2.21. Beer, wine, liquor, and all other alcoholic beverages are prohibited within the boundaries of all historical, day use and natural area state parks, which are Beartown, Berkeley Springs, Carnifex Ferry Battlefield, Cass Scenic Railroad, Cathedral, Chief Logan, Droop Mountain Battlefield, Fairfax Stone Historic Monument, Little Beaver, Pinnacle Rock, Point Pleasant Battle Monument, Prickett's Fort, Valley Falls, and Watters Smith Memorial, ~~and the Greenbrier River Trail and the North Bend Rail Trail~~; in the following vacation parks: Audra, Babcock, Camp Creek, Moncove Lake, Tomlinson Run except in reserved picnic shelters, in all boat launch ramp parking areas within the boundary of Bluestone State Park, and in all of Hawks Nest State Park except the lodge; in all state forests, which are Cabwaylingo, Calvin Price, Cooper's Rock, Greenbrier, Kanawha, Kumbrabow, Panther, and Seneca; in the following state wildlife management areas: Berwind Lake, Big Ditch Lake, Bluestone, Laurel Lake, Pleasants Creek, Plum Orchard Lake, and Teter Creek Lake; and in those state park areas where they are prohibited by posted signs: **Provided**, That any person, group or association sponsoring a private party at the restaurant at Chief Logan State Park or the multi-purpose log barn at Prickett's Fort State Park may provide beer, wine, liquor and all other alcoholic beverages for guests at the private party as long as the party is not open to the general public.

2.22. No person may operate a motor driven vehicle on the Greenbrier River Trail or the North Bend Rail Trail, except (a) those persons who have a vested right of ingress to and egress from the trail, (b) those persons who are authorized by the Director of the Division of Natural Resources to use them in the management, construction, maintenance and operation of the trail and its facilities; or (c) to fight forest fires and handle other emergencies.

2.23. State park and forest or other public land area foundations may apply for and be awarded 50% matching grants of up to \$7,500 per project as part of an "adopt a state park or forest program" for maintenance and improvement projects approved by the Chief of Parks and Recreation. To qualify, it is required that such lawfully chartered foundations must formally adopt the area for which it was created and for which it is working. Multiple foundations may adopt a park, forest or recreation area with the approval of the Director of the Division of Natural Resources.

2.234. Any person may be evicted from a state park, state forest, or state wildlife management area for any breach of these rules, or for the breach of any other rule which is in effect governing their use. All rentals, charges and fees are forfeited upon such eviction.

~~2.24. Any person may apply to the superintendent of a state park, state forest, or state wildlife management area for a special event permit and pay an application fee for the use of~~

~~firearms during historical reenactments, or the use of hay, straw, boughs, pine needles or similar materials for special events. The superintendent may issue a permit to limit areas use of any of these exceptions and require damage assessments, if necessary.~~

§144-1-3. Rules Governing Public Use of Campgrounds in State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources.

3.1. Campsites which are not reserved shall be rented on a first come, first served basis. Campers shall register before occupying a campsite, unless otherwise instructed by posted signs or by other clear means. A campsite is reserved when the rental fee for the site has been paid, which shall be indicated by a camping permit affixed to the numbered campsite post.

3.2. One responsible person who has passed his eighteenth (18th) birthday and who is answerable for the actions and safety of the campsite occupants and liable for any damages caused by them shall be at each rented campsite.

3.3. Camping in any manner is prohibited in state parks, state forests, and state wildlife management areas, except at numbered sites in areas designated for camping. Campground facilities are provided for the exclusive use of registered campers, except that the area superintendent, at his discretion, may permit cabin guests to use campground laundry facilities during periods of low use by campers, preferably at a designated time.

3.4. The length of stay in any camping area shall not exceed fourteen (14) consecutive nights, except after Labor Day until the first day of May of the following year campsites may be rented for longer periods, at the discretion of the area superintendent, when there are vacant campsites. At the end of a rental exceeding fourteen (14) consecutive nights the area superintendent, at his discretion, may request the camper to move to another campsite for conservation and maintenance of the first rental site. In no case may occupancy of a campsite be extended by the camper registering under a different name. Campers not granted a discretionary extension must vacate park campsites for a period of 48 hours.

3.5. Not more than two (2) motor vehicles are permitted on a campsite at any time. A non-family camping group may have only one camping unit (tent, trailer, motor home, camper van, etc.) on its campsite. A family camping group, at the discretion of the area superintendent, may be permitted to have one (1) or two (2) small tents on its campsite in addition to the main camping unit, but in no case may the additional units be ecologically detrimental to the campsite. A family is defined as parents or guardians and their dependent children.

3.6. Campsites shall be vacated by 12:00 noon on the day the campsite rental permit expires, unless the area superintendent extends the time at the request of the camper. No extension may extend beyond 4:00 p.m.

3.7. The campsite rental fee does not include the use of any other facilities or services for which a fee or rental is charged.

3.8. The washing of any equipment, paraphernalia, clothing, pet or human body is prohibited at water fountains and water pumps, and in lakes, ponds, pools and streams. The washing of cooking utensils, tableware, flatware or any other cooking or eating paraphernalia is prohibited at water fountains and water pumps, and in comfort stations, bathhouses and washrooms.

3.9. Hay, straw, boughs, pine needles or other similar materials shall not be kept or used in tents or screened rooms or under shelters for bedding or any other purpose, except the Chief of Parks and Recreation, Division of Natural Resources, may permit the use of hay and straw in conjunction with special events or programs.

3.10. No object may be driven into any tree, shrub, rock, sign, building or other object or structure in a state campground. Trenching or digging in a campsite is prohibited.

3.11. Quiet hours are in effect, and they shall be observed and enforced from 10:00 p.m. to 7:00 a.m. Generators shall not be operated during quiet hours. Motorbike riding is prohibited in camping areas, except to go to and from the campsite.

3.12. No bicycle may be ridden in a campground after dark, unless it is equipped with lights on both its front and rear and the lights are turned on while it is being ridden.

3.13. In accordance with W. Va. Code §5B-1-17c, West Virginia residents who are totally and permanently disabled are entitled to a fifty percent discount on campground rental fees from the day after Labor Day until four days prior to Memorial Day only. To qualify for the discount, they shall submit an application and a certification of state residency and disability form to the Director of Natural Resources. The Director shall issue each qualified applicant a permanent campground discount card. The application and qualification forms are available in all Parks and Recreation state recreational areas and the Charleston office.

§144-1-4. Rules Governing Public Use of Swimming Areas in State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources.

4.1. Swimming is prohibited in state parks, state forests, and state wildlife management areas, except in places designated for that purpose. Each person entering a designated swimming area shall pay the admission fee, except cabin and lodge guests are exempt. Children who have not reached their tenth (10th) birthday shall be accompanied at all times they are in the swimming area by a responsible person at least twelve (12) years of age. Persons who have reached their twelfth (12th) birthday are required to purchase an adult ticket for admission to the swimming area.

4.2. Any person may be denied admission to the swimming area who has a skin abrasion, cold, cough, inflamed eye, infection, rash, bandage or cast. Admission shall be denied to any person who is under the influence of alcohol, a controlled substance or medication.

4.3. Glass, food, ice chests, picnic supplies, beer, wine, alcoholic beverages, controlled substances and pets are prohibited in swimming areas. Food and drink purchased from the concession stand may be consumed only in the area designated for that purpose.

4.4. Plastic or rubber rafts, inner tubes, balls, inflatable water wings, and similar paraphernalia, toys and manmade objects of any kind are prohibited within the swimming area, except that exceptions may be made for the handicapped and for organized activities at the discretion of the lifeguard in charge.

4.5. No person is permitted in a swimming pool unless he is dressed in recognized swimming apparel. No street wear, cutoffs or similar apparel may be worn in a swimming pool. Parents and guardians who purchase an adult ticket may enter the swimming area in street clothes to accompany and supervise their children who have not reached their twelfth (12th) birthday and who have purchased a children's ticket. Parents and guardians who enter the swimming area and are not dressed in recognized swimming apparel are prohibited from entering the water. These restrictions do not apply to swimming areas which are natural bodies of water.

4.6. The wearing of indecent swimming or other apparel, the commission of any indecent act, and the commission of any act of indecent exposure are prohibited in the swimming area. Commission of any such act is cause for immediate eviction from the swimming area.

4.7. Only one (1) person is permitted on a diving board at a time. Running, pushing, wrestling, roughhousing or causing undue disturbance, noise or commotion is prohibited in the swimming area.

4.8. Only state employees or other authorized personnel are permitted behind counters where cash registers are located, behind concession stand counters, or in concession stand food storage areas, basket rooms, swimming area storage supply rooms, filtration rooms or chlorine rooms.

4.9. Every person entering a swimming area shall comply with all swimming rules and every instruction or directive of the lifeguards. Any person who fails to comply may be evicted immediately from the swimming area by a lifeguard or other state employee. Any person evicted forfeits the fee he paid to enter the swimming area.

4.10. No refunds may be given for any reason to any person who leaves the swimming area.

§144-1-5. Enforcement of Rules Governing Public Use of State Parks, State Forests, and Recreation Areas in State Wildlife Management Areas under the Division of Natural Resources and Penalties.

5.1. Responsibility for enforcing the rules.

It is the duty and responsibility of Conservation Officers, Special Conservation Officers, and the superintendents, assistant superintendents and managers of state parks, state forests, and state wildlife management areas to enforce all of the provisions of this rule.

5.2. Violation of rules and penalties.

Any person violating any of the provisions of this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.

RESPONSE TO COMMENTS RECEIVED

Rule No. 2.21 has been changed in accordance with written comment received and attached.

Rule No. 2.23 has been added in accordance with oral comments received at the public hearing -- minutes of which are attached.

Various changes have been made to reflect agency title and agency personnel as a result of transfer to the Division of Natural Resources.

Regulation 2.21

1. Comment

Request that provision be made for alcoholic beverage use by groups renting the barn at Pricketts Fort State Park, under the strict supervision of the Pricketts Fort Memorial Foundation.

Response

The rule is being recommended to be changed.

Regulation 2.23

2. Comment

Clarify regulation 2.23, regarding the matching grant of \$7,500.

Response

The rule has been modified to read, in part, as follows: "...For total projects up to \$7,500 per project."

3. Comment

What criteria is used in selecting matching grant possibilities?

Response

The Matching Grant Program dated April 1, 1990, requires that prior to submitting the grant application to the Charleston office, the state park, forest or wildlife management area superintendent must endorse the project. This endorsement must be included in the cover letter which is required as a part of the grant proposal. Once the application is received in Charleston the criteria to award the grants is as follows:

1. Is the proposed project in keeping with the mission of the state park system and the recreation area?
2. Does the project conform to state park standards and policies?
3. If capital improvement projects, are all building codes and other applicable laws, rules and regulations adhered to?

4. Comment

Regarding more than one foundation per park - include a sentence ...nothing precludes the establishment of more than one foundation per state park or forest or other public land area.

Response

DNR Director Felton has agreed to change the rules so that there may be multiple foundations on each park, forest or recreation area as long as they are approved through him.

5. Comment

Are there any filing deadlines for matching grants?

Response

Deadlines are not addressed in current Guidelines, Policies and Procedures.

6. Comment

Does anyone know about the law?

Response

Foundations were all furnished with information relative to the program and many have applied for matching grants.

7. Comment

Please clarify the last three words in the second sentence of regulation 2.23.

Response

The regulation has been changed, in part, as follows: "...and for which it is working."

8. Comment

Has Coopers Rock Foundation formally adopted the orphan area or whole park?

Response

The area in question is a 400 acre outholding that is part of the Division of Forestry's Forest Management Plan. The West Virginia State Park System is responsible only for the management of the recreation within the boundaries of the state forest. Since there is no recreation on this area, the management of the area in question does not fall within the purview of the park system. Therefore, neither the park system nor the Foundation has official jurisdiction on this area.

9. Comment

Is there no problem with adopting part of the area?

Response

The Guidelines, Policies and Procedures for WV State Recreation Area Foundations state that the foundation must adopt the area for which it was created and for which it is working.

10. Comment

Will special consideration be given to adjoining landowners by Public Land Corporation?

Response

While we may sympathize with the landowners who adjoin this outholding, we do not think that their dilemma can be resolved by amending park rules and regulations to allow multiple foundations to adopt one park, forest, or recreation area. Surely the solution to their problem lies in other areas.

11. Comment

To establish more than one foundation would result in confusion for the park administration and state department to know who to listen to and which concerns to take seriously. It is the responsibility of any foundation to consider all facets of any issue affecting the state park it serves with a final set of recommendations being formulated to reflect the consensus of all its members. The Legislature does not have more than one finance committee or education committee to address issues or concerns not reflected in the first committee's actions.

Response

See response for question 4.

**RECORD OF PUBLIC COMMENT PERIOD ON
AMENDMENT OF EXISTING LEGISLATIVE RULES**

Legislative Rules, West Virginia Division of Natural Resources, Title 58, Series ___, Authority W. Va. Code §5B-1-13a

RULE TITLE: Rules Governing Public Use of West Virginia State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources.

Proposed amendment of the above subject rules was filed with the Office of the West Virginia Secretary of State on October 20, 1994.

A Notice of a Comment Period on a Proposed Rule was filed with the Office of the West Virginia Secretary of State on October 20, 1994. The comment period ended on November 22, 1994. A copy of the notice is attached.

Also, the West Virginia Division of Tourism and Parks issued a general press release dated November 7, 1994, to the news media for immediate release announcing the public comment period. A copy of the press release is attached.

One written comment and several oral comments were received and are attached hereto. Responses to the comments are attached.

Changes were made in the proposed rule changes as a result of the comments received.

☒ For Immediate Release

☐ Please Embargo Until _____

WEST VIRGINIA MEDIA RELEASE

Phone 304/558-2200

For Further Information Contact: Rich Hartman, Administrative Assistant



Gaston Caperton
Governor

Bureau of
Commerce

James B. Lawrence
Commissioner

West Virginia
Division of Tourism
State Capitol Complex
2101 Washington St., E
Charleston, West Virginia
25305-0312

FAX: 304/558-0108

1 800 CALL WVA

Advertising/
Public Relations
304/558-2286

FOR IMMEDIATE RELEASE
November 7, 1994

PUBLIC HEARING CONCERNING PUBLIC USE OF STATE PARKS, FORESTS AND WILDLIFE MANAGEMENT AREAS

(CHARLESTON, WV)---Written and oral comments will be accepted at a public hearing in Morgantown, November 22, regarding proposed amendments to regulations concerning the public use of West Virginia State Parks, Forests and Wildlife Management Areas.

The hearing will concern proposed amendments to Title 144, Series I, Rules Governing Public Use of West Virginia State Parks, State Forests and State Wildlife Management Areas under the Division of Tourism and Parks.

Some of the proposed changes include adding the North Bend Rail Trail to the list of state park areas that prohibit alcoholic beverages and adding a provision governing the award of matching grants to the "adopt-a-state park or forest program."

The hearing will be held at 6 p.m. in the basement meeting room of the Morgantown Public Library, located at 373 Spruce Street. Persons unable to attend may submit their comments by mail to the West Virginia Division of Tourism, ATTN: Rich Hartman, 2101 Washington Street, East, Charleston, WV 25305-0315.

(more)

Equal Opportunity
Employer

Public Hearing - Add 2

Copies of the proposed amendments are available from the West Virginia Division of Tourism, 2101 Washington Street, East, Charleston, WV 25305-0315, 304/558-2286, or from the Secretary of State's Office, 1900 Kanawha Blvd., East, Charleston, WV 25305-0770, 304/558-6000.

WEST VIRGINIA DIVISION OF TOURISM & PARKS

PUBLIC HEARING

AMENDMENTS TO LEGISLATIVE RULES

TITLE 144, SECTION I

PUBLIC USE OF STATE PARKS, FORESTS, WILDLIFE MANAGEMENT AREAS

SIGN IN SHEET

NAME	ORGANIZATION (IF APPLICABLE)	DO YOU WISH TO SPEAK?? YES NO
------	---------------------------------	----------------------------------

Joe My Perpetots

Tom Stewart

W. C. Stewart

W. C. Stewart

Jeanne Stoughton

BRIAN BAKER

D. Fulton

WEST VIRGINIA DIVISION OF TOURISM & PARKS
PUBLIC HEARING

Post-It Fax Note 7871		Date: 11/28	# of pages: 5
To: Bob Beanblossom		From: Linda	
Co./Dept:		Co.:	
Phone #:		Phone #:	
Fax #:		Fax #:	

AMENDMENTS TO TITLE 144 - SER.
VIRGINIA STATE PARKS, STATE FORESTS, AND WILDLIFE MANAGEMENT
UNDER THE DIVISION OF TOURISM & PARKS

NOVEMBER 22, 1994, 6:00 PM
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MORGANTOWN, WV

Richard Hartman, Administrative Assistant
WV Division of Tourism & Parks
Facilitator

Richard Hartman: O.K. we're available at the public hearing to solicit and receive any comments that you might have on the proposed changes to the Park Regulations. Anyone that wishes to submit a comment is free to do so at this time.

- ① Tom Stewart: I had a question or clarification as to regulation 2.23, rule or regulation 2.23 regarding the matching grant of \$7500. First of all, is that on an annual, per year, per project basis? I believe that you have told me previously that it was on a project basis and that context, does that mean that there could be more than 1 project per year or does it mean, how is that determined?

Bob Beanblossom: That would be or course contingent upon monies that we've set aside for the matching grant number 1; and, number 2, it would be contingent upon our approval of the project itself, whether or not we felt if worthy of matching.

It would be, I mean a foundation couldn't say well.....couldn't do one project and come back and say well I want to do this one, give us some money. We've got to approve the project.

Richard Hartman: But there's no prognosis on multiple projects being approved?

Bob Beanblossom: No.

- ② Tom Stewart: Are there any criteria you use in selecting matching grant possibilities? Do you have a set criteria?

Bob Beanblossom: The two chief criteria has been that the area foundation number 1 and number 2, that foundation has adopted that particular area and to comply with the statute. And then there have been some general grant guidelines established. Beyond that, if it's an extensive project involving construction, our engineering section is going to review it once it gets to Charleston and you know, it will have to comply with engineering standards.

Once a grants gets to Charleston it's reviewed by me, by the Chief of Parks, the Deputy Chief of Parks, by Planning, Engineering and Maintenance Section. We've also receive input from the Superintendent and his staff.

Tom Stewart: I guess the part of that rule that I have the biggest question about

thought it was important to allow more than one foundation.....from your comments a moment ago, you said "well, we only allow one" and, that sort of forecloses the opportunity for anybody with a different viewpoint than the present foundation primarily because of the fact that they were established first in time gives them priority and/or not priority, the only possibility of establishing an opinion or even facilitating the use of a particular area of any park. I mean, I think that's difficult for me as a citizen to comprehend just because they were first in time they have all the priorities. I don't think that makes sense to me so I think that Mr. Gallagher are well taken by me at any rate and I think that it's something that you should consider. On that note.....we were here first, so forget it, you know that's, I just don't understand that attitude. Not saying that you have it or that it exists in every state park but there are competing interest, particularly in Monongalia County there are competing interest and it's something which your commission should be aware of in your department.

Richard Hartman: Are there any other comments on the records portion of the public hearing and will be sitting here to discuss it after the official (on the record hearing) so we're not through once we turn the tape off but we wanted to make sure we get everybody's comments on the tape so that we can produce a transcript.

Tom Stewart: I guess I also had a question as to the wording, the last three words on the second sentence "and is working". I guess I'm a little bit confused as to the definition of the "working" and I presume it means it's a lawfully chartered foundation.....I'm not sure not what it means??

Richard Hartman: I suspect it refers to a foundation that is still active. That a foundation must still be having meetings, still have members, still working with the superintendent that a foundation has not met for a year, two years, something like that would be essentially a defunct foundation. They essentially would have to be an on-going foundation. I'm assuming that is what "working" is referring to and is probably somewhat loose termed and should be and should be "functioning as an acting foundation". That would probably be a better term for that. But my understanding is that is what "working" refers to.

Tom Stewart: Well, first of all it's grammatically incorrect then. And secondly, and this does not have to do with these rules other than clarification as to the Monongalia County question that has arisen here. Do you know if the Coopers Rock Foundation has formally adopted the orphan area or the whole park area in their application to the department?

Bob Beanblossom: I can't give you a definitive answer. I'm assuming that they officially adopted thereas as there on the list of receiving a grant in 1990. And that was one of the requirements that we had. And also, the concept of adopting an area was that facility in its total effort, it wasn't a portion of it, it wasn't a playground, it wasn't to mean for the swimming pool, or the campground, or lodge. The concept is that the foundation had to adopt the area.

Tom Stewart: But there's no prohibition of adopting part of the area that you are aware of?

Bob Beanblossom: There's no prohibition on it. No.

Richard Hartman: Just by practice and policy was it that one foundation would adopt the entire park or entire forest and there wouldn't multiple foundations adopting of

actually is the second sentence. It says "to qualify is required such lawfully foundations...." Let's stop right there for a second. It's my understanding that I'm going to take that at face value, a lawfully chartered foundation can be anyone. You can have more than foundation per park as under the rules that are promulgated here.

Do you have any answer to that?

Richard Hartman: As I understand it, the policy is been one foundation per facility. so they do not get into competing projects or philosophies between the foundations. That is the way it has been that there's just been one foundation per park as a policy of the state parks office. There is not, in my view, a prohibition on more than one within the statute or within the regulations.

Brian Gallagher: I'd like to see a sentence in here that says.....nothing precludes the establishment of more than one foundation per state park or forest or other public land area.

And I'd also like to see, the second thing.....touching on some of the comments that were made prior to the tape being put on, some language along the lines of other maintenance and improvement project which are not funded by a state or grant may be authorized by the director provided that the foundation provides for funding and/or labor associated with the project. The Director shall supply written grounds for the denial of any proposed project.

-----: It may be beneficial to have filing deadlines in there. There might be at points at which some projects would have the benefit of the doubt because it was early in the fiscal year so that some guidelines in terms of filing dates would probably be beneficial.

Richard Hartman: Are there no filing dates now or is it pretty much as they come in?

Bob Beanblossom: It has been pretty much as they come in I think chiefly because there hasn't been that many foundation that have applied for it. Like I say, within the last year, only 5 according to this print out they gave me.

-----: You might have periodic times during the year when people could apply.

Richard Hartman: I don't think the budget has been completely wiped out by the ones that have been submitted.

Tom Stewart: I don't think anybody knows about the law.

Richard Hartman: The foundations all know about the program that is already there and most of it has been, it's not easy to raise the money. We're only 50% match, they have to raise the 50% and allot of the parks are in communities that are not been able to generate allot of donations to it.

Bob Beanblossom: In fact, we have allowed some in-kind contributions but they can't exceed 25%.

Tom Stewart: Getting back to Mr. Gallagher comment a minute ago that allowing, he

It.....

-----: Since this was separate from its own, it might be easier if there were more than one. We're talking a huge area and if select citizens were more interested in an area closer to them, it would seem that it would be easier to manage.

Brian Gallagher: I think if the analogy is drawn to "Adopt A Highway" Program, it's absurd to think of one group to adopt an entire highway system in a county.

Tom Stewart: Or even two counties. That's a case like here. Well, I think it might be something that you take back that.....

Richard Hartman: We'll definitely have to take it back.

Tom Stewart: It may be a perspective that hasn't been considered before. Maybe the situation hasn't arisen or maybe no one has been aware of it before, but there is certainly a case here that we want to make tonight and in the future and forever how long we live probably, that this is important to us and that we not only desire, we expect to be able to retain the forests lands that we use. I know that the code says that special consideration are given to adjoining landowners and in this case so far, the Public Land Corporation, and I know you're not a part of that, but the Public Land Corporation has not given any kind of consideration to us at all and it's not really the forum to argue that matter here but it's something that you should be aware of because it's going to effect your department as well.

Richard Hartman: Very well. Are there any other comments on the proposed amendments? If not, I'll declare the public records of the public hearing closed.



Gaston Caperton
Governor

Bureau of
Commerce

James B. Lawrence
Commissioner

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November 29, 1994

David P. Elkinton
Executive Director
Pricketts Fort Memorial Foundation
RR 3, Box 407
Pricketts Fort State Park
Fairmont, West Virginia 26354-9470

Dear Mr. Elkinton:

I have received your letter dated November 23, 1994, regarding proposed changes in the regulations that control state park operations.

Mr. Elkinton, I certainly understand your concerns relative to the possible restriction of alcoholic beverages in specific state parks and why you feel that a provision should be made for groups renting the multi-purpose log barn at Pricketts Fort.

As you know, Parks and Recreation is being transferred to the Division of Natural Resources in the very near future, therefore, I am taking the liberty of sharing a copy of your letter with DNR Director, Charles B. Felton, as well as with Parks Director, Cordie O. Hudkins.

Thank you for taking the time to share your comments and concerns with us.

Sincerely,

James B. Lawrence
Commissioner

JBL/b

cc: Charles B. Felton (w./att.)
Cordie O. Hudkins (w./att.)



Pricketts Fort Memorial Foundation

RR 3 BOX 407

(304) 363-3030

PRICKETTS FORT STATE PARK, FAIRMONT, WEST VIRGINIA 26554-9470

November 23, 1994

RECEIVED

NOV 23 1994

Hon. James Lawrence, Commissioner
Division of Tourism & Parks
2101 Greenbrier St. East.
Charleston, WV 25305

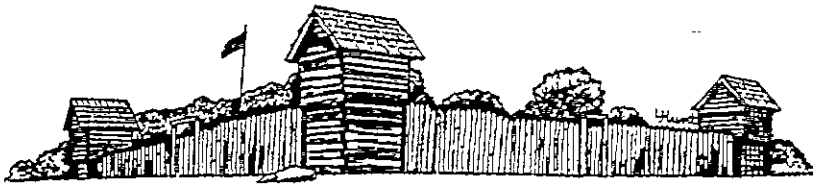
Dear Commissioner Lawrence:

We understand that you are accepting public comment on proposed changes in the regulations that control state parks operation. From a radio interview with Mr. Hartman, we understand two areas are involved: matching grants to foundations that adopt state parks, and use of alcoholic beverages in specific parks.

As you know the Pricketts Fort Memorial Foundation has constructed a multiple use log barn at Pricketts Fort State Park. Within this structure will be housed fully-accessible restrooms, a commercial kitchen, and large open meeting room. Our hope is to complete installation of all facilities, including heating and AC before summer 1995.

We have already received and accepted many requests for rental of this building in 1994, even though it is incomplete. We anticipate that it can easily become a first class meeting, conference, and reception area. We have had at least one informal conversation with Doug Baker relative to the use of alcoholic beverages by private groups desiring to rent this facility, but had not anticipated a formal request for consideration at this time.

However, within the proposed regulations being considered, we request that provision be made for alcoholic beverage use by groups renting the barn, under strict supervision of the Pricketts Fort Memorial Foundation. We feel this regulation is consistent with rental by private groups of other specific state park facilities, and will substantially enhance the marketability of this multiple use facility. Without this provision, the market for wedding receptions, private dinner parties, and similar events will be reduced.



Pricketts Fort Memorial Foundation

RR 3 BOX 407

(304) 363-3030

PRICKETTS FORT STATE PARK, FAIRMONT, WEST VIRGINIA 26554-9470

Commissioner Lawrence

Nov. 23, 1994

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Members of the community, under the leadership of the Foundation's Board of Directors, have spent thousands of man-hours constructing this facility. Most of the materials needed for construction and equipment have similarly been donated. Less than \$3,000 has been spent to build and equip a building that would have cost at least \$75,000 or more if built under contract.

The need for this facility has already been demonstrated by the number of requests for its use, even when it had no doors, flooring, or restrooms installed.

The rental income received will be used by the Foundation to further enhance the programs and facilities at Pricketts Fort State Park.

Your consideration of this request is greatly appreciated.

Sincerely,

David P. Elkinton
Executive Director



Valley Falls State Park Foundation

P.O. Box 1204 Route 6, Box 244 Fairmont, West Virginia 26554
(304) 363-3319

To: Doug Baker
From: Bill Shaffer *Bill*
Re: Multiple Foundations for State Parks
Date: December 1, 1994

I really do not understand the reasoning on the part of a few people to allow and perhaps encourage multiple foundations to serve any state park. There will always be a number of different points of view on matters of growth, direction of changes and standard operating policies and procedures. But there is a public forum already in existence through legislative representatives to air those views or concerns.

To establish more than one foundation would result in confusion for the park administration and state department to know who to listen to and which concerns to take seriously. It is the responsibility of any foundation to consider all facets of any issue affecting the state park it serves with a final set of recommendations being formulated to reflect the consensus of all its members.

On the flip side, does the legislature have more than one finance committee or education committee, etc., to address issues or concerns not reflected in the first committee's actions? Of course not.

12/2/94

cc: Cordie

Ken

Rich Hartman