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Subject: Public Hearing Comments

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Comments on Docket #2025-R-P-0017 - State Parks Regulations

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Comments:

Please accept these comments in opposition to several provisions contained within the proposed amendments to 7 DE Admin. Code 9201, Regulations Governing State Parks. Although the Division of Parks and Recreation possesses authority to adopt reasonable regulations governing the operation and protection of state parks, that authority is not unlimited. It must be exercised consistently with the Delaware Code, the Delaware Administrative Procedures Act, the United States Constitution, federal disability law, and the public purposes for which Delaware's parklands are owned and maintained. State parks and beaches are not private recreational clubs operated for the benefit of one preferred group. They are public resources supported through permit revenue, entrance fees, taxpayer funding, and the broader economic participation of Delaware residents and visitors. Regulations governing those resources should therefore be based upon demonstrated necessity, reliable evidence, equal treatment, and the least restrictive reasonable means of addressing an identifiable problem. The proposed amendments instead contain several broad restrictions that appear to substitute administrative preference for evidence. Before adopting any such restriction, DNREC should identify the specific harm being addressed, disclose the evidence demonstrating that the harm is substantial, explain why existing laws are inadequate, and establish why a narrower alternative would not accomplish the same objective. I. **EQUITABLE ACCESS TO DELAWARE'S DRIVE-ON BEACHES** Delaware's beaches are shared public resources maintained for the benefit of all citizens—not solely one recreational user group. Fishing is a lawful and important use of these beaches, but it is not the only legitimate reason for a resident to wish to access the shoreline. Restricting vehicle access exclusively to people who are continuously and actively fishing disproportionately affects seniors, families with young children, people with physical limitations, and individuals with mobility disabilities. For some residents, driving onto the beach is not a luxury. It may be the only practical means by which they can reach and enjoy the shoreline. A person's inability or lack of desire to fish does not make that person's use of public land less legitimate. A senior citizen watching the ocean, a family spending time together, and a person with limited mobility accessing the beach from a properly equipped vehicle are all using the public resource for legitimate recreational purposes. DNREC should consider a more equitable system that provides reasonable vehicle access for fishing and non-fishing users. The system should allow both fishing and non-fishing access to drive-on beach areas in a fair and balanced manner, without requiring non-anglers to purchase fishing equipment or misrepresent their activity in order to access public land that they also support. Any rule using the phrase "actively engaged in surf fishing as a

condition of beach access” should not be used to exclude non-fishing visitors from public shoreline areas, as the beaches should remain available for shared use by both fishing and non-fishing members of the public. Bait fishing does not involve continuously casting and retrieving a line. Once bait is properly placed, an angler may reasonably wait for a strike, attend to family members, prepare food, rest, or briefly use a restroom while remaining engaged in the activity. DNREC should not create an ambiguous standard under which lawful visitors can be cited based upon an individual officer’s subjective assessment of whether they appear sufficiently active. If an active-fishing requirement is retained, the regulation should distinguish among bait fishing, artificial-lure fishing, tending equipment, landing a fish, assisting another angler, and addressing personal necessities.

II. OPPOSITION TO BAIT RESTRICTIONS AND THE PROHIBITION OF KAYAK BAIT DEPLOYMENT

I oppose the proposed bait restrictions and any blanket prohibition against using a kayak, paddleboard, manually operated vessel, drone, or other safe method to deploy fishing bait from Delaware beaches. Kayak bait deployment is a long-established fishing practice. DNREC has not demonstrated in the proposed regulation that responsible bait deployment has caused a documented pattern of injuries, swimmer entanglements, environmental damage, wildlife mortality, or other harm sufficient to justify a categorical prohibition. The existence of a theoretical risk is not, by itself, an adequate basis for prohibiting an entire recreational activity. Almost every permitted park activity—including swimming, boating, horseback riding, bicycling, ordinary fishing, driving on sand, and consuming food near wildlife—carries some degree of risk. Sound regulation should address demonstrated and material risks, not merely the possibility that an activity could be misused. Delaware already designates and marks areas for fishing and bathing. Drive-on fishing areas are intended for fishing, while guarded swimming areas are separately identified. If individuals disregard those boundaries, DNREC should enforce the existing rules against the person violating them. The Department should not punish every responsible angler because a swimmer enters a fishing area or because an irresponsible individual fails to follow existing safety requirements. Kayak bait deployment may place bait beyond the area normally occupied by swimmers and conventional surf anglers. For anglers pursuing sharks or other large species from shore, deploying bait can also allow the use of appropriately sized tackle and controlled placement. A prohibition may not eliminate the underlying fishing activity; it may instead encourage anglers to attempt unsafe casts with oversized bait or use less effective equipment. If DNREC believes certain conduct presents a legitimate danger, it has less restrictive options available, including: Enforcing personal-flotation-device requirements for kayak users. Prohibiting deployment within designated swimming or guarded-bathing areas. Establishing reasonable distance, time, weather, or congestion restrictions. Requiring anglers to maintain control of deployed lines. Enforcing existing laws against reckless boating, interference with swimmers, wildlife mistreatment, littering, and abandoned fishing gear. Restricting a particular location when documented conditions justify a location-specific rule. Requiring appropriate release equipment when protected species are targeted. A statewide blanket prohibition is not narrowly tailored to actual circumstances. DNREC should withdraw the proposed bait restrictions unless and until it produces documented evidence demonstrating why existing rules and narrower alternatives are inadequate.

III. NO ADDITIONAL SHARK-FISHING OR MAGNET-FISHING LICENSES

DNREC should not create another permit, license, endorsement, mandatory course, or additional fee for shark fishing or magnet fishing. Delaware residents already pay entrance fees, surf-fishing permit fees, fishing-license fees, vehicle expenses, and other charges associated with using state parks. In fact, it appears that nearly every conceivable recreational activity in the state has already been subjected to some form of fee, permit, or administrative charge. Creating yet another layer of permission or cost would only

continue this pattern of cumulative overreach, increasing expense and bureaucracy without necessarily changing irresponsible behavior. A separate shark-fishing permit would burden responsible anglers who already comply with Delaware fishing laws. The fact that another state has adopted an additional endorsement or course does not establish that Delaware needs one. DNREC should first identify a Delaware-specific problem, quantify it, determine whether existing laws address it, and demonstrate that additional licensure would produce a measurable safety or conservation benefit. The same objection applies to magnet fishing. Participants should not be required to purchase an additional license merely to retrieve metal objects from waterways. Magnet fishing can remove discarded tools, bicycles, electronics, scrap metal, and other debris. If DNREC is concerned about historical artifacts, weapons, hazardous materials, sensitive structures, or particular waterways, it may establish clear reporting requirements or site-specific restrictions. Those concerns do not justify imposing an additional licensing program upon every participant across every state park. Licensing should not become the default governmental response whenever an agency encounters an activity it wishes to manage. Existing laws should be enforced before new permits, fees, and administrative barriers are created.

IV. FIRST AMENDMENT OBJECTIONS TO SIGN, FLAG, AND MESSAGE RESTRICTIONS

DNREC's purpose is to manage park resources, protect the environment, preserve public safety, and provide fair recreational access. It is not the Department's role to decide which lawful political, religious, social, cultural, or personal messages park visitors may express. The First Amendment protects expression even when government officials or other members of the public consider that expression offensive, misguided, unpopular, or distasteful. Public parks have historically occupied a significant place in First Amendment law. DNREC may not suppress private expression merely because of the subject, message, or viewpoint communicated. Any regulation distinguishing "political," "offensive," "inappropriate," or similar displays is constitutionally suspect. These terms invite subjective and selective enforcement. A park employee should not be placed in the position of deciding whether one political flag is acceptable while another is prohibited, whether a religious display is permitted while a social message is not, or whether a controversial symbol crosses an undefined line of appropriateness. The word "obscene" also carries a specific and narrow constitutional meaning. DNREC should not use it as a general synonym for vulgar, offensive, disagreeable, or politically provocative. A regulation that provides no objective standard risks being unconstitutionally vague and may result in uncertainty for visitors regarding what is prohibited. DNREC may regulate only objective, content-neutral physical impacts such as blocking traffic, obstructing visibility, damaging natural resources, creating a physical hazard, or being permanently installed without permission, and any such standards must apply uniformly without regard to message, viewpoint, or subject matter. Any attempt to regulate signs or flags based on content, perceived appropriateness, or expressive meaning is impermissible. DNREC should remove any provision granting open-ended authority to regulate flags or signs according to their content, viewpoint, political character, perceived offensiveness, or subjective appropriateness.

V. BICYCLES, E-BIKES, SCOOTERS, SKATES, AND OTHER PERSONAL MOBILITY DEVICES

Publicly funded trails and pathways should remain broadly accessible to pedestrians and people using lawful personal mobility devices, including bicycles, e-bikes, scooters, and skates that do not require motor-vehicle registration under existing transportation laws. DNREC should regulate actual conduct rather than categorically excluding people based solely upon the technology they use. A traditional cyclist can travel recklessly at a high speed, while an e-bike rider may travel responsibly at a low speed. A rule based only upon equipment classification can therefore prohibit a safe user while failing to address an unsafe conventional cyclist. The appropriate regulatory focus should be: Reasonable and clearly posted trail-speed limits. Yielding to pedestrians and equestrians. Audible warnings

before passing. Safe passing distances. Restrictions against reckless operation. Additional limits on narrow or environmentally sensitive trails when supported by site-specific conditions. Enforcement based upon observed conduct and speed. Class-based restrictions also create substantial enforcement problems. Class 2 and Class 3 e-bikes may appear similar, and equipment may be modified after manufacture. Rangers cannot reasonably determine the classification, motor rating, or programmed assistance limit of every passing bicycle without stopping and inspecting it. Categorical mobility-device restrictions may also create disability-access implications. Under Title II of the Americans with Disabilities Act, a public entity must allow wheelchairs and manually powered mobility aids in areas open to pedestrians. E-bikes can be substantially beneficial for active mobility-impaired seniors, enabling independent access to trails and recreational areas that might otherwise be inaccessible. Any DNREC rule must preserve this individualized reasonable-modification process. These are public trails on public land. Restrictions should be supported by trail-specific engineering, congestion, safety, or environmental evidence—not generalized dislike of a particular type of bicycle or mobility technology.

VI. OPPOSITION TO A BLANKET ALCOHOL PROHIBITION A blanket prohibition against responsible adult alcohol possession or consumption on drive-on beaches could materially affect park attendance, permit demand, tourism revenue, and nearby Delaware businesses. Delaware’s coastal economy depends heavily on recreation and tourism. Drive-on beach users purchase permits, vehicles, recovery equipment, fishing licenses, fuel, food, ice, bait, tackle, lodging, and supplies. Businesses located near state parks, including bait-and-tackle stores and other establishments serving beach visitors, depend upon this activity. Before imposing a sweeping prohibition, DNREC should conduct and publish a meaningful economic-impact analysis. That review should examine potential effects on: Surf-fishing permit and reservation revenue; Daily and annual park attendance; Local bait, tackle, food, fuel, hospitality, and retail businesses; Park staffing supported by visitor-generated revenue; Enforcement costs; Displacement of visitors to neighboring states or non-state recreational areas. Existing laws already prohibit impaired driving, underage possession, disorderly conduct, public disturbances, littering, and other harmful behavior. DNREC should enforce those laws against the individuals who violate them. Responsible adults should not be treated as offenders merely because other individuals abuse alcohol. If DNREC can document problems at particular locations or during particular events, it should consider targeted measures such as glass-container restrictions, limits on quantities, enforcement against public intoxication, alcohol-free zones, or restrictions during specifically identified high-risk periods. A categorical ban affecting every responsible park visitor should be the last resort, not the first administrative response.

VII. REQUIREMENT FOR AN EVIDENCE-BASED REGULATORY RECORD For each disputed provision, DNREC should place the following information into the public rulemaking record: The number and nature of documented incidents supporting the proposal. Incident reports involving kayak bait deployment, swimmers, deployed fishing lines, sharks, magnet fishing, e-bikes, signs, flags, or alcohol. Enforcement records showing why existing regulations are inadequate. Scientific or technical studies relied upon. Economic impacts upon park revenue and surrounding businesses. Disability-access implications. Alternatives considered and the reason each alternative was rejected. The standards officers will use to ensure consistent enforcement. The statutory authority relied upon for each substantive prohibition. Any communications, complaints, advisory-group recommendations, or internal memoranda that caused DNREC to initiate each proposed restriction. An administrative agency should not merely state that a restriction promotes safety and treat that statement as sufficient evidence. The record should demonstrate a rational connection between a documented problem and the particular rule selected to address it. Under Delaware law, an administrative regulation may not extend, modify, or conflict with governing

statutes or their reasonable implications. Likewise, DNREC's legitimate authority to manage state parks does not displace constitutional protections, federal disability requirements, or the obligation to exercise delegated authority reasonably. VIII. REQUESTED ACTION For the reasons stated above, DNREC is respectfully requested to: Withdraw the blanket prohibition against kayaking or otherwise safely deploying bait. Reject broad bait restrictions that are not supported by documented Delaware-specific evidence. Decline to create additional licenses, permits, endorsements, fees, or mandatory courses for shark fishing or magnet fishing. Preserve reasonable drive-on access for non-fishing families, seniors, and individuals with mobility limitations. Develop separate fishing and recreational drive-on access options rather than requiring every visitor to pretend to fish. Define "actively engaged in surf fishing" objectively and accommodate normal bait-fishing practices, family responsibilities, and temporary personal necessities. Remove content- and viewpoint-based restrictions governing personal signs and flags. Replace subjective speech standards with narrow, objective, content-neutral safety provisions. Regulate trail speed and unsafe conduct rather than broadly banning lawful personal mobility devices. Preserve all reasonable-modification rights required by the Americans with Disabilities Act. Reject a blanket alcohol prohibition and enforce existing laws against actual misconduct. Conduct and publish a meaningful economic-impact analysis. Produce the factual, scientific, economic, and enforcement record supporting each substantive restriction. Reopen or extend the public-comment period if DNREC introduces material evidence or materially revises the proposal after the current hearing. Adopt narrowly tailored, location-specific, and behavior-based alternatives instead of categorical statewide prohibitions. Delaware's state parks belong to the public. DNREC is entrusted with managing those resources, but that responsibility must be exercised with restraint, transparency, constitutional awareness, and respect for the citizens who fund and use them. The Department should regulate demonstrated harm—not personal preference, hypothetical concerns, unpopular expression, or harmless conduct. Please incorporate this comment into the official record for Docket No. 2025-R-P-0017 and respond to each material objection before taking final action.