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Division of Publications**

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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

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<b>Division:</b>	Natural Areas and State Parks
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0400-02-08	Management of Tennessee Natural Resource Areas
Rule Number	Rule Title
0400-02-08-.01	Natural Resource Recreation Areas
0400-02-08-.02	Applicability and Scope
0400-02-08-.03	Definitions
0400-02-08-.04	Penalties
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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendment

Chapter 0400-02-08  
Management of Tennessee Natural Resource Areas

Chapter 0400-02-08 Management of Tennessee Natural Resource Areas is deleted in its entirety and replaced with the following so that, as amended, the Chapter shall read:

Chapter 0400-02-08  
Management of Tennessee Natural Resource Areas

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0400-02-08-.01 Natural Resources Areas

Natural Resource Areas are areas that have significant natural, historical, cultural or recreational values and consist of legislatively designated natural areas, rivers and trails that have been established to preserve a project's inherent qualities and/or provide a specialized recreational facility. Each area is maintained and operated primarily for the preservation of the particular resource. The development of areas under this major classification will be limited to a few basic physical facilities. Larger structures such as interpretation and visitor centers, staff residences, picnic areas, parking areas and toilet facilities will be located in specified zones near the major access points if they cannot be located outside of the designated natural area. The purpose of these rules is to assure the preservation of areas designated as Natural Resource Areas throughout the State and to prevent abuse and misuse of the privileges and facilities provided.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.02 Applicability and Scope

These rules apply to all designated natural areas. The state park rules at Chapter 0400-02-02 also apply to natural areas. Many state statutes are also applicable to all natural resource areas, including, but not limited to, T.C.A. § 11-5-108 regarding vandalism of caves.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.03 Definitions

The following definitions shall apply to these regulations:

- (1) The term "Commissioner" shall mean the Commissioner of the Tennessee Department of Environment and Conservation or his or her designee.
- (2) The term "Department" shall mean the Tennessee Department of Environment and Conservation.
- (3) The term "Natural Resource Area" shall mean those areas legislatively designated natural areas, scenic rivers and scenic trails.
- (4) The term "Program Administrator" shall mean the administrator of the Scenic Trails System, the Scenic Rivers System or the Natural Areas System.
- (5) The term "manager" shall mean that person given the responsibility of overseeing that particular natural resource area.
- (6) The term "designated agency" shall mean that agency designated in the management plan for the area as being responsible for management of the area.
- (7) The term "exotic species" shall mean those species considered non-indigenous to the particular area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.04 Penalties

The penalties and sanctions provided by the General Assembly for violations of the statutes and rules governing scenic rivers, scenic trails and natural areas differ.

- (1) T.C.A. § 11-13-117 states that whoever violates, fails, neglects or refuses to obey any provision of the Scenic Rivers Act or rule or order of the Commissioner may be punished by a fine of not more than fifty dollars (\$50) for each day of such violation.
- (2) T.C.A. § 11-11-120 states that whoever violates, fails, neglects or refuses to obey any provision of the Tennessee Trails System Act or rule or order of the Commissioner may be punished by a fine of not more than fifty dollars (\$50) for each day of such violation.
- (3) T.C.A. § 11-14-115(a) states that whoever violates, fails, neglects or refuses to obey any provision of the Natural Areas Preservation Act or rule promulgated thereunder may be punished by a fine of not less than one hundred dollars (\$100) for each day of such violation. T.C.A. § 11-14-115(b) states that any person who commits any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:
  - (a) Any damage or vandalism to any natural area;
  - (b) The removal or destruction of any rare, threatened or endangered species of plants in any natural area; or
  - (c) Any other violation of the Natural Areas Preservation Act or this Chapter.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.05 Management Plan

- (1) There shall be a management plan for each designated natural area. Development of each management plan will adhere to a standardized outline format. The Department shall consult with citizen's organizations, as well as federal, state and municipal agencies in the preparation of these plans as much as possible. For additional information concerning public involvement see T.C.A. §§ 11-11-109, 11-13-105 and 11-14-107.
- (2) Responsibility for preparation and revision of the management plan for each designated natural area shall rest with the designated natural area's program administrator or the state park manager with the approval of the Commissioner. The state park manager is responsible for preparation and revision when the primary management authority is the state park. For designated state natural areas owned and managed by federal agencies, both the preparation and revision of the management plan and the day to day management of the natural area is the responsibility of the federal agencies. The natural areas program administrator will be notified when federal agencies or state park managers are preparing and revising a management plan. For designated natural areas that are not owned by state or federal agencies and not in state ownership, the owners shall be consulted regarding the natural areas management plan preparation. Representatives of administering agencies, private organizations and other interested groups or individuals may provide written comment on management plans.
- (3) The management plan for each designated natural area and revisions thereto shall take effect upon approval by the Commissioner. A deviation from these rules shall take effect only as provided in Rule 0400-02-08-.05. An up-to-date copy of each management plan shall be held by the manager, the Department and the designated agency. These copies shall be available for public inspection during regular business hours as provided by law.
- (4) Management of each Natural Resource Area shall be in accordance with these rules except for deviations as may be provided in the management plan for designated natural areas.
- (5) Whenever it is required by the management plan that there be a deviation from the rules in the management of a designated natural area, such deviation shall be set forth in detail, together with the reasons therefore, in the management plan. A deviation from these rules shall take effect only upon approval by the Commissioner, and only when in accordance with the provisions and restrictions of the respective resource legislation.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.06 Administration and Custody

The form and method of administration and custody of each designated natural area shall be designated in the management plan. Each designated natural area shall have a manager who shall administer, manage and protect the area in accordance with these rules and the management plan. The management plan shall designate an agency or owner to manage the area. The management plan may make a recommendation on whether an individual manager is needed full time in the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.07 Reports

The designated agency shall submit an annual report and such other periodic reports to the Commissioner in such form and at such time as the Department may designate. The annual report shall include a record of management activities, land and easement inspection reports, natural catastrophes, visitor use data and other influences affecting natural conditions within the Natural Resource Area as provided in Rule 0400-02-08-.30. State and federal agencies will be contacted for special conditions that might affect the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.08 Intrusions

- (1) Environmental intrusions are those areas, structures or works of man that cause a negative impact upon the character of the Natural Resource Area or the experience the area offers to its users.
- (2) There shall be no development of structures, rights-of-way or land uses which do not conform with the purposes and definition of a natural area as specified in T.C.A. §§ 11-14-101 et seq., or these rules, except for intrusions that are permitted by each management plan. Any intrusion allowed by the management plan shall be considered as a deviation from these rules and treated as provided in Rule 0400-02-08-.05.
- (3) Any environmental intrusion not necessary for the public use or well being or for the management of the area, and of such nature that it can be excluded, shall be so removed. This includes, but is not limited to, removing and revegetating roads, relocating powerlines and, removing buildings, dams and trash dumps.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.09 Publicity

Information about Tennessee Natural Resource Areas and appropriate descriptive material shall be developed and made available to all interested persons. Publicity which would tend to induce the general public to visit an area, except to such extent as is compatible with the maximum desirable visitor use for the area as established by the management plan, shall be avoided. (See Rule 0400-02-08-.25.) Information will emphasize protection and preservation of the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.10 Boundary Markers

State owned Natural Resource Area boundaries shall be made clearly evident by placing survey monuments at corners or other strategic locations, by posting boundary markers at intervals not exceeding two hundred feet or a smaller distance if necessary so that each sign shall be visible from at least one other sign, except as otherwise provided in the management plan, and, if appropriate, by fencing or other means. Boundary marking of non-state owned designated natural areas shall be addressed in the management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.11 Boundary Fences

Necessary boundary fences and barriers may be installed as provided in the management plan. Generally they shall not be in a form that will create a detrimental effect on movement of wildlife, air circulation, other natural or aesthetic conditions, or cause unnecessary public opposition.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.12 Roads

- (1) Service Roads. Vehicular access lanes shall be installed and maintained within a Natural Resource Area only where essential for patrol, fire control or other necessary management activities and in accordance with the management plan. Such lanes shall be closed to all except service and emergency vehicles. They shall provide a single track and clearing shall not extend more than seven feet on each side of the center of the lane. Existing roads no longer necessary for management purposes shall be treated as intrusions per Rule 0400-02-08-.08 unless otherwise utilized for public access as part of a trail system.
- (2) Public Access Roads. Public access roads will be installed and maintained only when needed to provide for visitor utilization of the area. Installation of these roads will be in accordance with Rule 0400-02-08-.24 and the management plan. These roads will be constructed subject to the following criteria:
  - (a) Road development in all Natural Resource Areas shall be limited to the minimum necessary to provide access for the maintenance and/or public use of the area. Roads shall be designed with

extreme care and located with a concern for environment. Roads shall follow the general contour of the natural terrain.

- (b) Roads in Natural Resource Areas shall be constructed for a design speed not to exceed twenty-five miles per hour. Excessive cuts and fills shall be avoided. The width of roadways shall not exceed eighteen feet. Shoulders of the roadway shall not exceed one foot in width on each side. Two additional feet of shoulder will be allowed where guardrails are needed for safety purposes. The design of all structures-bridges, tunnels, grade separation devices and retaining walls shall be aesthetically pleasing as well as functional. Grades of up to 10% shall be used where needed for short distances. Gravel surfaced roads shall be used when practical in keeping with primitive character of Natural Resource Areas. Asphalt or concrete surfacing may be used where heavy use will make gravel surfacing impractical or when the safety of the visitor is involved.
- (3) Careful attention shall be given to the impact that roads will have on the environment in the planning phase of Natural Resource Area development. Road construction will not be initiated if during this phase it is determined that the impact will be negative to the character of the area. The appropriate program administrator for the area shall carefully weigh such values as drainage, streamflow, wildlife habitat and mobility, natural vegetation, geologic features, scenic features, noise levels and other natural characteristics of the area before determining whether a road is to be built. The exact route of the proposed road shall be inspected at the site to ensure that all natural features have been considered.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.13 Trails

Location, form and plan of any trails other than natural wildlife paths shall be specified in the management plan and conform to the objectives of the Natural Resource Area. Trails shall be adequate to provide for permitted use of an area and to prevent erosion, trampling of vegetation and other deterioration, but otherwise shall be kept to a minimum. Use of tread materials, foot bridges and elevated walks is permissible when necessary and provided for in the management plan. Trail development in designated natural areas is limited to foot trails and foot bridges. Only low impact recreation associated with hiking is permitted on foot trails. An exception may be granted for county or municipal owned natural areas where biking activities were expressly permitted prior to designation, provided that it is mentioned as a deviation in the management plan as provided in Rules 0400-02-08-.05 and 0400-02-08-.30.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.14 Other Structures and Improvements

Necessary signs, trash receptacles and structures are permitted if provided for in the management plan or in a permit for research activities. All structures and service facilities shall be located in specific areas only. Signs and structures shall conform to such style and standards as the Department may establish.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.15 Buffer Areas

Buffer areas may be established adjacent to or within Natural Resource Areas when deemed appropriate to eliminate the adverse effects of external influences. Such areas may be devoted to uses other than nature preservation which do not adversely affect the area. Buffer areas may be controlled by ownership, easement, cooperative agreement or other appropriate means. Criteria for buffer areas shall be included in the management plan. Management of a buffer area shall be in accordance with guidelines and provisions in the applicable Natural Resource Area legislation.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.16 Service Areas

Wherever possible, service areas should be established within buffer areas to provide access and parking, management facilities and visitor facilities. Provisions for necessary service areas shall be included in the management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.17 Scenic and Landscape Management

No measures shall be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness or amenities of an area. There shall be no cutting of grass, brush or other vegetation, thinning of trees, removal of dead wood, except for safety purposes, opening of scenic vistas or planting, except as provided in the management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.18 Safety Hazards

Guardrails, fences, steps and other devices necessary for visitor safety may be installed as provided in the management plan. Dead trees, branches or other features that constitute a safety hazard to persons on trails or in other authorized use areas should be removed. Control of hazardous plants or animals shall be as provided in paragraph (3) of Rule 0400-02-08-.23.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.19 Removal or Introduction of Objects

Except as provided in the management plan, there shall be no removal of any natural material, product or object from a Natural Resource Area. A collecting permit is required for collecting in all areas. (See Rule 0400-02-08-.28.) No natural or man made object that could endanger or detract from the natural characteristics of the Natural Resource Area may be introduced to the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.20 Water Level Control

Natural water levels shall not be altered. Water levels which have been altered by man may be changed if provided for in the management plan as essential for the restoration, safety, management or maintenance of the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.21 Fire Control

All wildfires shall be brought under control as quickly as possible. After a fire within a Natural Resource Area there shall be no cleanup, fire hazard reduction or replanting except with the approval of the Commissioner. Any special procedures and methods to be used for prevention and control of fire shall be included in the management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.22 Erosion Control

Erosion and soil deposition due to past or present disturbance by human activity or natural conditions within the area may be controlled in accordance with provisions of the management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.23 Vegetation and Wildlife Management

(1) Management of Rare or Unusual Plants and Animal Species.

- (a) Control of plant succession and habitat shall be undertaken only if restoration or preservation of a particular vegetative type, or preservation of a rare species of native flora or fauna, is designated in the management plan as an objective of the Natural Resource Area.
  - (b) Control measures must be undertaken only with adequate prior observation and study of the areas and only with adequate scientific evidence of necessity. Control measures shall be followed by adequate observation and study of results. The Tennessee Wildlife Resources Agency will be consulted in matters of management or control of wildlife populations.
- (2) Control of Exotic Species. Control of species may be undertaken as provided in the management plan. No introduction of non-indigenous species is allowed except when the introduced species is used to control damaging pests. The Tennessee Wildlife Resources Agency will be consulted in matters of management or control of wildlife populations.
  - (3) Control of Native Populations. There shall be no action to increase or reduce populations of native plants or animals or to restrict movement of wildlife across boundaries of a Natural Resource Area except as provided in the management plan. The Tennessee Wildlife Resources Agency will be consulted in matters of management or control of wildlife populations.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

0400-02-08-.24 Use

- (1) Use of areas shall be allowed only to such extent and in such manner as will not impair natural conditions. To the extent possible, the management plan shall define the use of each portion of the Natural Resource Area and specify the controls and restrictions to be placed on access and use. The manager will monitor conditions under which use will result in deterioration of the area and shall have the authority to further restrict access and use as necessary to protect the area. (See Rule 0400-02-08-.25.)
- (2) Visitor activities that are not compatible with the preservation of the natural character of each Natural Resource Area shall not be permitted.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

0400-02-08-.25 Natural Environment Zone

- (1) Each Natural Resource Area may be divided into Natural Environment Zones according to degree of development within the respective areas. Visitor presence and use may be specified for each zone.
- (2) In establishing zones, consideration will be given to the natural features and characteristics of the resource and to the objectives of the Natural Resource Area as stated in the management plan.
- (3) Natural areas are classified by default as natural environment predominates (Zone 2). A delineation of another type of zone will be referenced in the management plan.
- (4) Classification of Natural Environment Zones.

ZONE DESCRIPTION AND PRIMARY USE

- 1 Unmodified area containing unique natural characteristics is predominant. Primary use is research. Permit required for utilization.
- 2 Natural environment predominates. Day use passive recreation experience is emphasized. Primary visitor uses are hiking and observation.
- 3 Slightly modified natural environment discernible. Man made structures are minimal. Primary visitor uses are hiking, observation and camping.

- 4 Modified natural environment evident. Visitor centers, staff residences, picnic, parking and sanitary facilities are permitted.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

0400-02-08-.26 Access Control

Ingress and egress shall be allowed only at such locations and under such conditions as may be specified in the management plan. (See Rule 0400-02-08-.24 and Rule 0400-02-08-.12(2).)

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

0400-02-08-.27 Orientation and Guidance of Visitors

There may be an interpretive program within each Natural Resource Area for the orientation, education and guidance of visitors. Exhibits, programs and printed materials as well as guide service, interpretive programs and labeled nature trails may be provided within the area. The overall interpretive program shall conform to the criteria in the management plan and to such additional general or special rules as the Division may establish.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

0400-02-08-.28 Special Use of Areas

A person wishing to engage in research or educational activities on a designated state natural area not otherwise permitted by these rules or in the management plan for the area shall secure a permit from the Department. If the activities are to be carried on by a group, a special use permit may be issued to the group leader who shall be responsible for the actions of the group.

(1) Educational Permits.

- (a) This permit shall provide adequate information about the applicant and his or her educational activities. There will be included the name, address, position, professional qualifications and general field of interest of the applicant and a description of the educational activities including the objective, methods and procedures to be followed, records to be kept, duration of the project, areas to be visited, frequency and length of visits and detailed description of disturbances to be made.
- (b) Educational permits will be required on Natural Environment Zone 1 and other areas that may be designated in the management plan. (See Rule 0400-02-08-.25)

(2) Scientific Research and Collection Permits.

- (a) This permit shall provide adequate information about the applicant and his or her research activities. There will be included the name, address, position, professional qualifications and general field of interest of the applicant and a description of the activities including the objective, methods and procedures to be followed, records to be kept, duration of the project, areas to be visited, frequency and length of visits and detailed description of disturbances to be made.
- (b) Scientific Research and Collecting permits will be issued to an individual or individuals sponsoring not more than fifteen students for the purpose of collection of biological, geological or archaeological materials in Natural Resource Areas. Permits shall be issued on the basis that the applicant agrees to adhere to these rules concerning Natural Resource Areas.
- (c) Applicants that are granted permission to conduct research or collect in Natural Resource Areas must submit written yearly reports of their research to the Department after application is approved. The collection data must be available to the public at all times for the purpose of scientific research to be made part of the management plan.
- (d) The application must specify information concerning the species or objects to be taken, numbers of species, method of taking and disposition of specimens. A scientific research and collecting

permit will be required for any part of a designated state natural area. Any permit that may be required by another agency must be obtained prior to research or collecting on State Natural Resource Areas.

- (e) Specimens collected for curation are to be deposited in a publicly assessable institution.
- (3) Fire Permits. A permit for the use of fire on a Natural Resource Area will be required for areas designated by the management plan as Natural Environment Zones 1 and 2. In Zones 3 and 4 a fire permit is not necessary but the use of fire will be permitted only in designated areas.
  - (a) General Information Concerning Permits.
    - (i) A permit will be valid for no longer than one year but may be renewable.
    - (ii) A permit may be modified, suspended or revoked by the Department at any time.
    - (iii) A person holding a permit will report to the manager before commencing and upon completing permitted activities.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

0400-02-08-.29 Management Research

There shall be continuing studies of the general problems of managing Natural Resource Areas. Appropriate action will be taken by the manager to alleviate problems determined by these studies. The overall goal of preservation of the Natural Resource Areas will be the main influence on the type and scope of any action taken.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

0400-02-08-.30 Record

Records shall be retained for each Natural Resource Area. Records may include annual reports of the manager as provided in Rule 0400-02-08-.07 and all other pertinent documentary material, studies, reports, obsolete portions of the management plan, research and collection permits and descriptions of significant events. The form and content of the record shall be as the Department may establish.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 6-27-2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/04/13

Rulemaking Hearing(s) Conducted on: (add more dates). 05/30/13

Date: 6-27-13

Signature: *Robert J. Martineau, Jr.*

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner



Subscribed and sworn to before me on: 6-27-13

Notary Public Signature: *Beth B. Smith*

My commission expires on: July 6, 2015  
7-6-13

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Robert E. Cooper, Jr.*

Robert E. Cooper, Jr.  
Attorney General and Reporter

8-22-13

Date

**Department of State Use Only**

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*Tre Hargett*

Tre Hargett  
Secretary of State

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BY [Signature]

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: The commenter stated the following:

The new rules have combined Rule 0400-02-08-.32 with Rule 0400-02-08-.05 to form a new Rule 0400-02-08-.05 that includes all matters concerning the management plan (MP) preparation. Old Rule 0400-02-08-.05 states: "The Department shall consult with citizens' groups, organizations, as well as federal, state and municipal agencies in the preparation of these plans as much as possible." Old Rule 0400-02-08-.32 states: "Representatives of administering agencies, private organization, and other interested groups or individuals may participate in the formulation and revision of master plans." New Rule 0400-02-08-.05(1) states in part: " For designated state natural areas owned and managed by federal agencies both the preparation and revision of the management plan and day to day management of the natural area is the responsibility of the federal agencies. Representatives of administering agencies, private organizations, and other interested groups or individuals may provide written comments on management plans." A federal exception has been carved out regarding MP preparation and revisions. It is not clear if State Parks and the Federal agencies will also allow written comments on those MPs. A simple notice requirement in the rules to both State Parks Division and Federal agencies that they give notice to the Division of Natural Areas when they intend to undertake MP preparation or revisions could solve this. The Division could in turn allow those written comments to be received.

Response: The Department agrees with this comment and has added language to paragraph (1) of Rule 0400-02-08-.05 to state that natural areas program administrators will be notified when federal agencies and state park managers are preparing and revising a management plan, and for designated natural areas that are not owned by state or federal agencies and not in state ownership, the owners shall be consulted regarding the natural areas management plan preparation.

Comment: The commenter stated the following:

New Rule 0400-02-08-.05(2) covers the method of MP production. It states in part: "The Department shall consult with citizen's organizations, as well as federal, state and municipal agencies in the preparation of these plans as much as possible." There should be some obligation for the State to consult with the owners of State Natural Areas (SNAs) when they are not State-owned. Perhaps wording could be inserted to this effect: "For designated SNAs that are not owned by State or Federal agencies, the owners shall be consulted regarding SNA MP preparation." This does not weaken the State's position of responsibility to protect the resources under State law but at least mandates some form of communication with the landowner. The command to consult with the landowner can be as simple as a registered letter to the owner of record notifying them of the plan to produce or revise an MP that covers their property.

Response: The Department agrees with the comment and has added that language to paragraph (1) of Rule 0400-02-08-.05 to that affect. See the response to the prior comment.

Comment: The commenter stated the following:

The new Rule 0400-02-08-.10 regarding boundary markers should make some reference to the need to produce a boundary survey within 3 to 5 years of designation if one does not already exist. This would be especially true of privately owned SNAs. The lack of an actual survey has caused a number of unanticipated consequences in the past when boundary markers were installed across private land or interjurisdictional issues arose between non-SNA protected ground and other government owned land. A boundary survey will solve these problems.

Response: The Department doesn't agree that such a requirement is necessary or useful. Not all designated natural area boundaries are necessarily defined by a legal property boundary. A natural area boundary may be internal within a property boundary through agreement between the landowner and the State and marked accordingly. Furthermore, newly designated lands that are in private property ownership that the State proposes for designation shall only be designated when there is a perpetual conservation easement. A conservation easement would include a legal boundary survey.

Comment: The commenter stated the following:

The new Rule 0400-02-08-.13 Trails states in part: "An exception may be granted for county or municipal owned natural areas where biking activities was expressly permitted prior to designation, provided that it is mentioned as a deviation in the management plan, as provided in Rules 0400-02-08-05 and 0400-02-08-.30." I think this rule change will benefit the State in many ways. The number and extent of mountain bike users is large across the State. There have been several popular mountain bike areas designated as SNAs over the years, with much of the effort to gain SNA status coming from the cycling community. I would like to speak of a SNA I know personally. I have observed trail use in the Lucius Burch SNA since 1985. I laid out the blue trail (interior trail) and have assisted volunteers in building many trail bridges, keeping trails clear and doing general trail repair over the years. There is not a month that has gone by when I have not been on the trails of the LBNA at some point. I can say with absolute assurance that the trails are generally in good condition despite almost continuous bike, jogging and hiking use in those years. Bike use was explicitly allowed in the area prior to designation and was allowed in the first management plan adopted in 1991. The opportunity in these new rules to openly acknowledge and manage use by cyclists will allow the Division to harness a huge constituency for trail protection and maintenance in many of the SNAs. Their use can be easily managed with common sense trail courtesy rules and wet weather trail rules in the MPs. The Division has done a good thing with this draft rule.

Response: The Department appreciates the commenter's support on this amendment.

Comment: The commenter stated the following:

I am president of Mid-South Trails Association, an off road cycling organization with 150 members. I am writing to support the addition of language in the revised 0400-02-08.13. Specifically supporting language that allows "An exception may be granted for county or municipal owned natural areas where biking activities was expressly permitted prior to designation, provided that it is mentioned as a deviation in the management plan, as provided in Rules 0400-02-08-.05 and 0400-02-08-.30." Bicycling was allowed in the Lucius Burch Natural Area (LBNA) from its inception in 1988 until 1996. Laura Adams, Executive Director of the Shelby Farms Park Conservancy, has stated to me several times that the conservancy wants to return cycling to the trails in the LBNA. This rule change would allow that change to be made. Off road cycling is a major contributor of volunteer time in Shelby Farms Park. We were asked to submit an annual time report in 2009. In the years 2009 to date off road cycling has documented 1,471 volunteer hours assisting with trail maintenance in Shelby Farms. If the park is allowed to move forward to return cycling to the Wolf River Trails volunteer time would certainly increase. I am asking that the changes mentioned above be retained in the rule language.

Response: The Department appreciates the support and intends on retaining the rule language regarding this amendment.

Comment: The commenter stated the following:

Rule 0400-02-08-.01 is titled Natural Resource Recreation Areas. There is no other reference throughout the Rules where Recreation is inserted when referencing Natural Resource Areas including the title of the Rules. This is apparently an oversight and should be corrected.

Response: The Department agrees and has removed the word Recreation from the title of Rule 0400-02-08-.01 so it correctly reads Natural Resources Areas.

Comment: The commenter stated the following.

Paragraph (3) of Rule 0400-02-08-.25 Natural Environment Zone should be changed to read: "Natural areas are classified by default where a natural environment predominates (Zone 2). A delineation of another type of zone will be referenced in the management plan."

Response: The Department agrees and has reworded the paragraph as suggested.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

These rules apply to managers of natural areas and there are no small businesses subject to these rules.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There will be no addition reporting, recordkeeping or other administrative costs required because of these amendments.

- (3) A statement of the probable effect on impacted small businesses and consumers.

These amendments will not impact small business or consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

These amendments will not impact small businesses.

- (5) A comparison of the proposed rule with any federal or state counterparts.

The proposed rule changes are comparable to federal and state counterparts.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

These amendments will not impact small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These amendments will have an impact on local governments that manage natural areas.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amendments are to Chapter 0400-02-08 Management of Tennessee Natural Resource Areas. These rules are intended to assure the preservation of areas designated as Natural Resource Areas and to prevent abuse and misuse. Changes to the rules update references to statutes and changes to terminology to current use, consolidated rules by reducing the number of rules and eliminate references to rules that are obsolete or no longer useful. There are changes to the management planning process that better identifies the roles of the owners and managers in the preparation and revision of the management plans. A new exception to the rules were added to allow biking on trails in designated natural areas owned by a county or municipality where biking on trails had previously been permitted prior to designation and another exception allows for the introduction of non-indigenous species for the purpose of controlling damaging pests (allows for bio-control). Other changes are minor and mostly are housekeeping in nature.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These amendments are being promulgated under the authority of T.C.A. §§ 11-1-101, 11-13-106 and 11-14-104.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Designated natural area managers and owners who may be non-profit organizations and government agencies; state, federal, county and municipal. Although the Department received suggested language changes, no one rejected these amendments and some urged adoption of specific amendments.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department is not aware of any.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Brian Bowen  
Division of Natural Areas  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-0436

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard  
Deputy General Counsel

Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-0131  
[Jenny.Howard@tn.gov](mailto:Jenny.Howard@tn.gov)

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: \_\_\_\_\_  
Rule ID(s): \_\_\_\_\_  
File Date: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Natural Areas and State Parks
<b>Contact Person:</b>	Brian Bowen
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2 <sup>nd</sup> Floor Nashville, Tennessee
<b>Zip:</b>	37243
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0400-02-08	Management of Tennessee Natural Resource Areas
Rule Number	Rule Title
0400-02-08-.01	Natural Resource Recreation Areas
0400-02-08-.02	Applicability and Scope
0400-02-08-.03	Definitions
0400-02-08-.04	Penalties
0400-02-08-.05	Utilization
0400-02-08-.06	Administration and Custody
0400-02-08-.07	Reports
0400-02-08-.08	Intrusions
0400-02-08-.09	Publicity
0400-02-08-.10	Boundary Markers
0400-02-08-.11	Boundary Fences
0400-02-08-.12	Roads
0400-02-08-.13	Firebreaks
0400-02-08-.14	Trails
0400-02-08-.15	Signs
0400-02-08-.16	Other Structures and Improvements
0400-02-08-.17	Buffer Areas
0400-02-08-.18	Service Areas
0400-02-08-.19	Scenic and Landscape Management
0400-02-08-.20	Safety Hazards
0400-02-08-.21	Removal or Introduction of Objects
0400-02-08-.22	Water Level Control

0400-02-08-.23	Fire Control
0400-02-08-.24	Erosion Control
0400-02-08-.25	Vegetation and Wildlife Management
0400-02-08-.26	Use
0400-02-08-.27	Natural Environment Zone
0400-02-08-.28	Access Control
0400-02-08-.29	Orientation and Guidance of Visitors
0400-02-08-.30	Special Use of Areas
0400-02-08-.31	Management Research
0400-02-08-.32	Master Plan
0400-02-08-.33	Record

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendment

### Chapter 0400-02-08 Management of Tennessee Natural Resource Areas

Chapter 0400-02-08 Management of Tennessee Natural Resource Areas is deleted in its entirety and replaced with the following so that, as amended, the Chapter shall read:

### Chapter 0400-02-08 Management of Tennessee Natural Resource Areas

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0400-02-08-02	Applicability and Scope
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0400-02-08- <del>16</del> 14	Other Structures and Improvements
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#### 0400-02-08-01 Natural Resources ~~Recreation~~ Areas

Natural Resource Areas are ~~these components of the Tennessee Outdoor Recreation Area System (TORAS) that exhibit significant natural, historical, cultural, or recreational resources.~~ These areas that have significant natural, historical, cultural or recreational values and consist of legislatively designated natural areas, rivers and trails that have been established to preserve a project's inherent qualities and/or provide a specialized recreational facility. Each area is maintained and operated primarily for the preservation of the particular resource. The development of areas under this major classification will be limited to a few basic physical facilities. Larger structures such as interpretation and visitor centers, staff residences, picnic areas, parking areas and toilet facilities will be located in specified zones near the major access points if they cannot be located outside of the designated natural area.

The purpose of these rules is to assure the preservation of areas designated as Natural Resource Areas throughout the State and to prevent abuse and misuse of the privileges and facilities provided.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.02 Applicability and Scope

To assure the preservation of areas designated as Natural Resource Areas throughout the State and to prevent abuse and misuse of the privileges and facilities provided, the following rules and regulations governing public use are adopted under the following authority: Tennessee Code Annotated Sections 11-1406, 11-1617, 11-1613, and 11-1704. These rules apply to all designated natural areas. The state park rules at Chapter 0400-02-02 also apply to natural areas. Many state statutes are also applicable to all natural resource areas, including, but not limited to, T.C.A. § 11-5-108 regarding vandalism of caves.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.03 Definitions

The following definitions shall apply to these regulations:

- (1) The term "Commissioner" shall mean the Commissioner of the Tennessee Department of Environment and Conservation or his or her designee.
- (2) The term "Department" shall mean the Tennessee Department of Environment and Conservation.
- ~~(2)~~(3) The term "Natural Resource Area" shall mean those areas legislatively designated natural areas, scenic rivers and scenic trails.
- ~~(3)~~(4) The term "Program Administrator" shall mean the administrator of the Scenic Trails System, the Scenic Rivers System, or the Natural Areas System.
- ~~(4)~~(5) The term "manager" shall mean that person given the responsibility of overseeing that particular natural resource area.
- ~~(5)~~(6) The term "designated agency" shall mean that agency designated in the ~~master~~ management plan for the area as being responsible for management of the area.
- ~~(6)~~(7) The term "exotic species" shall mean those species considered non-indigenous to the particular area.
- ~~(7)~~ The term "carrying capacity" shall mean the maximum use a resource can withstand for a specified length of time without sustaining physical damage or degrading the integrity of the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.04 Penalties

~~Any violation of these rules of management of such properties will be subject to the following penalty:~~

- ~~(1) SCENIC RIVERS. Title I, Chapter 14, Section 11-1417. BE IT FURTHER ENACTED, That whoever violates, fails, neglects or refuses to obey any provision of this Act or regulation or order of the Commissioner of the Department of Conservation may be compelled to comply with or obey the same by injunction, mandamus or other appropriate remedy; and provided further that whoever violates, fails, neglects or refuses to obey any provision of this Act or regulation or order of the Commissioner of the Department of Conservation may be punished by a fine of not more than fifty dollars (\$50.00) for each day of such violation.~~
- ~~(2) SCENIC TRAILS. Title II, Chapter 16, Section 11-1620. Violations-Compelling compliance-Penalties. Whoever violates, fails, neglects or refuses to obey any provision of this chapter or regulation or order of the Commissioner may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy; and provided, further that whoever violates, fails, neglects, or refuses to obey any~~

~~provisions of this chapter or regulation or order of the Commissioner may be punished by a fine of not more than fifty dollars (\$50.00) for each day of such violation.~~

- ~~(3) — NATURAL AREAS. Title II, Chapter 17, Section 11-1715. Violations-Penalties. Whoever violates, fails, neglects or refuses to obey any provisions of this chapter or rule or regulation promulgated hereunder may be punished by a fine of not less than one hundred dollars (\$100.00) for each day of such violation. It shall be the duty of district attorneys general to prosecute violations of this chapter.~~

The penalties and sanctions provided by the General Assembly for violations of the statutes and rules governing scenic rivers, scenic trails and natural areas differ.

- (1) T.C.A. § 11-13-117 states that whoever violates, fails, neglects or refuses to obey any provision of the Scenic Rivers Act or rule or order of the Commissioner may be punished by a fine of not more than fifty dollars (\$50) for each day of such violation.

- (2) T.C.A. § 11-11-120 states that whoever violates, fails, neglects or refuses to obey any provision of the Tennessee Trails System Act or rule or order of the Commissioner may be punished by a fine of not more than fifty dollars (\$50) for each day of such violation.

- (3) T.C.A. § 11-14-115(a) states that whoever violates, fails, neglects or refuses to obey any provision of the Natural Areas Preservation Act or rule promulgated thereunder may be punished by a fine of not less than one hundred dollars (\$100) for each day of such violation. T.C.A. § 11-14-115(b) states that any person who commits any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:

(a) Any damage or vandalism to any natural area;

(b) The removal or destruction of any rare, threatened or endangered species of plants in any natural area; or

(c) Any other violation of the Natural Areas Preservation Act or this Chapter.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.05 Utilization Management Plan

- (1) There shall be a management plan for each designated natural area. Development of each management plan will adhere to a standardized outline format. The Department shall consult with citizen's organizations, as well as federal, state and municipal agencies in the preparation of these plans as much as possible. For additional information concerning public involvement see T.C.A. §§ 11-11-109, 11-13-105 and 11-14-107.

- (1)(2) There shall be a master plan for each Natural Resource Area. Development of each master plan will adhere to a standardized outline format. The Department shall consult with citizens' organizations, as well as federal, state and municipal agencies in the preparation of these plans as much as possible. For additional information concerning public involvement see Tennessee Code Annotated, Title II, Chapter 14, Section 11-1401, 11-1416; Chapter 16, Section 11-1609; and Chapter 17, Section 11-1707, 11-1710. Responsibility for preparation and revision of the management plan for each designated natural area shall rest with the designated natural area's program administrator or the state park manager with the approval of the Commissioner. The state park manager is responsible for preparation and revision when the primary management authority is the state park. For designated state natural areas owned and managed by federal agencies, both the preparation and revision of the management plan and the day to day management of the natural area is the responsibility of the federal agencies. The natural areas program administrator will be notified when federal agencies or state park managers are preparing and revising a management plan. For designated natural areas that are not owned by state or federal agencies and not in state ownership, the owners shall be consulted regarding the natural areas management plan preparation. Representatives of administering agencies, private organizations and other interested groups or individuals may provide written comment on management plans.

~~(3)~~ The management plan for each designated natural area and revisions thereto shall take effect upon approval by the Commissioner. A deviation from these rules shall take effect only as provided in Rule 0400-02-08-.05. An up-to-date copy of each management plan shall be held by the manager, the Department and the designated agency. These copies shall be available for public inspection during regular business hours as provided by law.

~~(2)(4)~~ Management of each Natural Resource Area shall be in accordance with these rules except for deviations as may be provided in the master management plan for the particular area designated natural areas.

~~(3)(5)~~ Whenever it is required by the area master management plan that there be a deviation from the rules in the management of a Natural Resource Area designated natural area, such deviation shall be set forth in detail, together with the reasons therefore, in the master management plan. A deviation from these rules shall take effect only upon approval by the Commissioner of Conservation, Department of Conservation, and only when in accordance with the provisions and restrictions of the respective resource legislation.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.06 Administration and Custody

The form and method of administration and custody of each Natural Resource Area designated natural area shall be designated in the master management plan. Each Natural Resource Area designated natural area shall have a manager who shall administer, manage, and protect the area in accordance with these rules and the master management plan. The master management plan shall designate an agency or owner to manage the area, and shall ~~The management plan may make a recommendation on whether or not an individual manager is needed full time in the area. (If not otherwise provided in the master plan, the owner of a Natural Resource Area shall have custody.)~~

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.07 Reports

The designated agency shall submit an annual report and such other periodic reports to the Commissioner of the Department of Conservation in such form and at such time as the Department may designate. The annual report shall include a record of management activities, land and easement inspection reports, natural catastrophes, visitor use data and other influences affecting natural conditions within the Natural Resource Area as provided in Rule ~~0400-02-08-.33~~ 0400-02-08-.30. State and federal agencies will be contacted for special conditions that might affect the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.08 Intrusions

- (1) Environmental intrusions are those areas, structures, or works of man that cause a negative impact upon the character of the Natural Resource Area or the experience the area offers to its users.
- (2) There shall be no development of structures, rights-of-way, or land uses which do not conform with the purposes and definition of a Natural Resource Area natural area as specified in the respective Acts T.C.A. §§ 11-14-101 et seq., or these rules for management, except for intrusions that are permitted by each master management plan. Any intrusion allowed by the master management plan shall be considered as a deviation from these rules and treated as provided in Rule 0400-02-08-.05.
- (3) Any environmental intrusion not necessary for the public use or well being or for the management of the area, and is of such nature that it can be excluded, shall be so removed. This includes, but is not limited to, removing and revegetating roads, relocating powerlines and, removing buildings, dams, and trash dumps.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.09 Publicity

Information about Tennessee Natural Resource Areas and appropriate descriptive material shall be developed and made available to all interested persons. Publicity which would tend to induce the general public to visit an area, except to such extent as is compatible with the maximum desirable visitor use for the area as established by the ~~master management plan~~, shall be avoided. (See Rule ~~0400-02-08-.27~~ 0400-02-08-.25.) Information will emphasize protection and preservation of the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.10 Boundary Markers

State owned Natural Resource Area boundaries shall be made clearly evident by placing survey monuments at corners or other strategic locations, by posting boundary markers at intervals not exceeding ~~330~~ two hundred feet or a smaller distance if necessary so that each sign shall be visible from at least one other sign, except as otherwise provided in the ~~master management plan~~, and, if appropriate, by fencing or other means. ~~Boundary marker signs shall be as the Department may establish~~ Boundary marking of non-state owned designated natural areas shall be addressed in the management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.11 Boundary Fences

Necessary boundary fences and barriers may be installed as provided in the ~~master management plan~~. Generally they shall not be in a form that will create a detrimental effect on movement of wildlife, air circulation, other natural or aesthetic conditions, or cause unnecessary public opposition.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

#### 0400-02-08-.12 Roads

- (1) Service Roads. Vehicular access lanes shall be installed and maintained within a Natural Resource Area only where essential for patrol, fire control, or other necessary management ~~or research~~ activities and in accordance with the ~~master management plan~~. Such lanes shall be closed to all except service and emergency vehicles. They shall provide a single track and clearing shall not extend more than seven feet on each side of the center of the lane. Existing roads no longer necessary for management purposes shall be treated as intrusions per Rule 0400-02-08-.08 unless otherwise utilized for public access as part of a trail system.
- (2) Public Access Roads. Public access roads will be installed and maintained only when needed to provide for visitor utilization of the area. Installation of these roads will be in accordance with Rule ~~0400-02-08-.26~~ 0400-02-08-.24 and the ~~management plan~~. These roads will be constructed subject to the following criteria:
  - (a) Road development in all Natural Resource Areas shall be limited to the minimum necessary to provide access for the maintenance and/or public use of the area. Roads shall be designed with extreme care and located with a concern for environment. Roads shall follow the general contour of the natural terrain.
  - (b) Roads in Natural Resource Areas shall be constructed for a design speed not to exceed twenty-five miles per hour. Excessive cuts and fills shall be avoided. The width of roadways shall not exceed eighteen feet. Shoulders of the roadway shall not exceed one foot in width on each side. Two additional feet of shoulder will be allowed where guardrails are needed for safety purposes. The design of all structures-bridges, tunnels, grade separation devices, and retaining walls shall be aesthetically pleasing as well as functional. Grades of up to 10% shall be used where needed for short distances. Gravel surfaced roads shall be used when practical in keeping with primitive character of Natural Resource Areas. Asphalt or concrete surfacing may be used where heavy use will make gravel surfacing impractical or when the safety of the visitor is involved.
- ~~(e)~~(3) Careful attention shall be given to the impact that roads will have on the environment in the planning phase of Natural Resource Area ~~D~~development. Road construction will not be initiated if during this phase it is determined that the impact will be negative to the character of the area. The appropriate

program administrator for the area shall carefully weigh such values as drainage, streamflow, wildlife habitat and mobility, natural vegetation, geologic features, scenic features, noise levels, and other natural characteristics of the area before determining whether a road is to be built. The exact route of the proposed road shall be inspected at the site to ensure that all natural features have been considered.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.13~~ Firebreaks

~~Necessary boundary firebreaks shall be constructed in a buffer area outside the area. Firebreaks within an area shall be kept to a minimum and shall not exceed ten feet in width and shall be constructed only in accordance with the master plan.~~

~~0400-02-08-.14~~ 0400-02-08-.13 Trails

Location, form, and plan of any trails other than natural wildlife paths shall be specified in the ~~master~~ management plan and conform to the objectives of the Natural Resource Area. Trails shall be adequate to provide for permitted use of an area and to prevent erosion, trampling of vegetation, and other deterioration, but otherwise shall be kept to a minimum. Use of tread materials, foot bridges, and elevated walks is permissible when necessary and provided for in the ~~master~~ management plan. Trail development in designated natural areas is limited to foot trails and foot bridges. Only low impact recreation associated with hiking is permitted on foot trails. An exception may be granted for county or municipal owned natural areas where biking activities were expressly permitted prior to designation, provided that it is mentioned as a deviation in the management plan as provided in Rules 0400-02-08-.05 and 0400-02-08-.30.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.15~~ Signs

~~A signing system for each Natural Resource Area will be specified in each master plan and developed per the guidelines of the TORAS signing program.~~

~~0400-02-08-.16~~ 0400-02-08-.14 Other Structures and Improvements

Necessary signs, trash receptacles, and structures are permitted if provided for in the ~~master~~ management plan or in a permit for research activities. All structures and service facilities shall be located in specific areas only. Signs and structures shall conform to such style and standards as the Department may establish.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.17~~ 0400-02-08-.15 Buffer Areas

~~Buffer areas shall may be established adjacent to or within Natural Resource Areas wherever possible in order when deemed appropriate to eliminate the adverse effects of external influences. Such areas may be devoted to uses other than nature preservation which do not adversely affect the area. Buffer areas may be controlled by ownership, easement, cooperative agreement, or other appropriate means. Criteria for buffer areas shall be included in the ~~master~~ management plan. Authorization is given on the establishment of Buffer Areas in Tennessee Code Annotated, Section 11-1801, et seq. Management of a buffer area shall be in accordance with guidelines and provisions in the respective applicable Natural Resource Area legislation.~~

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.18~~ 0400-02-08-.16 Service Areas

Wherever possible, service areas should be established within buffer areas to provide access and parking, management facilities, and visitor facilities. Provisions for necessary service areas shall be included in the ~~master~~ management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.19~~ 0400-02-08-.17 Scenic and Landscape Management

No measures shall be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness, or amenities of an area. There shall be no cutting of grass, brush, or other vegetation, thinning of trees, removal of dead wood, except for safety purposes, opening of scenic vistas, or planting, except as provided in the ~~master~~ management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.20~~ 0400-02-08-.18 Safety Hazards

Guardrails, fences, steps, and other devices necessary for visitor safety may be installed as provided in the ~~master~~ management plan. Dead trees, branches, or other features that constitute a safety hazard to persons on trails or in other authorized use areas should be removed. Control of hazardous plants or animals shall be as provided in paragraph (3) of Rule ~~0400-02-08-.25(3)~~ 0400-02-08-.23.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.24~~ 0400-02-08-.19 Removal or Introduction of Objects

Except as provided in the ~~master~~ management plan, there shall be no removal of any natural material, product, or object from a Natural Resource Area. A collecting permit is required for collecting in all areas. (See Rule ~~0400-02-08-.30~~ 0400-02-08-.28.) No natural or man made object that could endanger or detract from the natural characteristics of the Natural Resource Area maybe introduced to the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.22~~ 0400-02-08-.20 Water Level Control

Natural water levels shall not be altered. Water levels which have been altered by man may be changed if provided for in the ~~master~~ management plan as essential for the restoration, safety, management, or maintenance of the area.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.23~~ 0400-02-08-.21 Fire Control

All wildfires shall be brought under control as quickly as possible. After a fire within a Natural Resource Area there shall be no cleanup, fire hazard reduction, or replanting except with the approval of the Commissioner. Any special procedures and methods to be used for prevention and control of fire shall be included in the ~~master~~ management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.24~~ 0400-02-08-.22 Erosion Control

Erosion and soil deposition due to past or present disturbance by ~~man~~ human activity or natural conditions within ~~or outside of~~ the area may be controlled in accordance with provisions of the ~~master~~ management plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.25~~ 0400-02-08-.23 Vegetation and Wildlife Management

(1) Management of Rare or Unusual Plants and Animal Species.

- (a) Control of plant succession and habitat shall be undertaken only if restoration or preservation of a particular vegetative type, or preservation of ~~an endangered~~ a rare species of native flora or fauna, is designated in the ~~master~~ management plan as an objective of the Natural Resource Area.

- (b) Control measures must be undertaken only with adequate prior observation and study of the areas and only with adequate scientific evidence of necessity. Control measures shall be followed by adequate observation and study of results. The Tennessee Wildlife Resources Agency will be consulted in matters of management or control of wildlife populations.
- (2) Control of Exotic Species. Control of ~~exotic plants and animals~~ species may be undertaken as provided in the ~~master~~ management plan. No introduction of non-indigenous species is allowed except when the introduced species is used to control damaging pests. The Tennessee Wildlife Resources Agency will be consulted in matters of management or control of wildlife populations.
- (3) Control of ~~Natural~~ Native Populations. There shall be no action to increase or reduce populations of native plants or animals or to restrict movement of wildlife across boundaries of a Natural Resource Area except as provided in the ~~master~~ management plan. The Tennessee Wildlife Resources Agency will be consulted in matters of management or control of wildlife populations.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-26~~ 0400-02-08-24 Use

- (1) Use of areas shall be allowed only to such extent and in such manner as will not impair natural conditions. To the extent possible, the ~~master~~ management plan shall define the use of each portion of the Natural Resource Area and specify the controls and restrictions to be placed on access and use. The manager will monitor conditions under which use will result in deterioration of the area and shall have the authority to further restrict access and use as necessary to protect the area. (See Rule ~~0400-02-08-27~~ 0400-02-08-25.)
- (2) Visitor activities that are not compatible with the preservation of the natural character of each Natural Resource Area shall not be permitted. ~~Each master plan shall specify the carrying capacity (people/day) permitted in each Natural Resource Area or section of an area. The carrying capacity shall be based on the respective natural environment zone, special features and conditions within the zone, and the influence of visitor use on the zone.~~

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-27~~ 0400-02-08-25 Natural Environment Zone

- (1) Each Natural Resource Area ~~will~~ may be divided into Natural Environment Zones according to degree of development within the respective areas. Visitor presence and use ~~will~~ may be specified for each zone.
- (2) In establishing zones, consideration will be ~~give~~ given to the natural features and characteristics of the resource and to the objectives of the Natural Resource Area as stated in the ~~master~~ management plan.
- (3) ~~Natural areas are classified by default where a natural environment predominates (Zone 2). A delineation of another type of zone will be referenced in the management plan.~~

~~(3)~~(4) Classification of Natural Environment Zones.

ZONE DESCRIPTION AND PRIMARY USE

- ~~1~~ 1 Unmodified area containing unique natural characteristics is predominant. Primary use is research. Permit required for utilization.
- ~~4~~ 2 ~~Unmodified natural~~ Natural environment predominates. Day use ~~wilderness~~ passive recreation experience is emphasized. Primary visitor uses are hiking and observation.
- ~~2~~ 3 Slightly modified natural environment discernible. Man made structures are minimal. ~~Efficiency in outdoor skills is important.~~ Primary visitor uses are hiking, observation, and camping.

~~3 4~~ **Modified natural environment evident.** ~~Man-made structures may be provided for comfort and convenience. Moderate proficiency in outdoor skills involved. Primary visitor uses are hiking, observation, and camping. Visitor centers, staff residences, picnic, parking and sanitary facilities are permitted.~~

~~4~~ **Modified natural environment dominant.** ~~Structures and facilities may exceed basic comfort and convenience accommodations. Proficiency in outdoors skills is not necessary when supplemented by administrative controls. Primary visitor uses a picnicking and day use family activities.~~

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.28~~ 0400-02-08-.26 Access Control

Ingress and egress shall be allowed only at such locations and under such conditions as may be specified in the master management plan. (See Rule ~~0400-02-08-.26~~ 0400-02-08-.24 and Rule 0400-02-08-.12(2).)

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.29~~ 0400-02-08-.27 Orientation and Guidance of Visitors

There may be an interpretive program within each Natural Resource Area for the orientation, education, and guidance of visitors. Exhibits, programs, and printed materials as well as guide service, interpretive programs, and labeled nature trails may be provided within the area. The overall interpretive program shall conform to the criteria in the master management plan and to such additional general or special rules as the Division may establish.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.30~~ 0400-02-08-.28 Special Use of Areas

A person wishing to engage in research or educational activities on a Natural Resource Area designated state natural area not otherwise permitted by these rules or in the master management plan for the area shall secure a permit approved by from the Department of Conservation. If the activities are to be carried on by a group, a special use permit may be issued to the group leader who shall be responsible for the actions of the group. ~~This permit will be valid only on State owned land or land otherwise controlled by the State.~~

(1) Educational Permits.

- (a) This permit shall provide adequate information about the applicant and his or her educational activities. There will be included the name, address, position, professional qualifications, and general field of interest of the applicant and a description of the educational activities including the objective, methods, and procedures to be followed, records to be kept, duration of the project, areas to be visited, frequency and length of visits, and detailed description of disturbances to be made.
- (b) ~~Educated~~ Educational permits will be required on Natural Environment Zone P 1 and other areas that may be designated in the master management plan. (See Rule ~~0400-02-08-.27~~ 0400-02-08-.25)

(2) Scientific Research and Collection Permits.

- (a) This permit shall provide adequate information about the applicant and his educational or her research activities. There will be included the name, address, position, professional qualifications, and general field of interest of the applicant and a description of the educational activities including the objective, methods, and procedures to be followed, records to be kept, duration of the project, areas to be visited, frequency and length of visits, and detailed description of disturbances to be made.

- (b) Scientific Research and Collecting permits will be issued to an individual or individuals sponsoring not more than fifteen students for the purpose of collection of biological, geological, or archaeological materials in Natural Resource Areas. Permits shall be issued on the basis that the applicant agrees to adhere to these rules concerning Natural Resource Areas.
  - (c) Applicants that are granted permission to conduct research or collect in Natural Resource Areas must submit written yearly reports of their research to the Department of Conservation after application is approved. The collection data must be available to the public at all times for the purpose of scientific research and to be made part of the Area master management plan.
  - (d) The application must specify information concerning the species or objects to be taken, numbers of species, method of taking, and disposition of specimens. A scientific research and collecting and research permit will be required for any park of any area controlled by the State part of a designated state natural area. Any permit that may be required by another agency must be approved before making application for collecting on obtained prior to research or collecting on State Natural Resource Areas.
  - (e) Specimens collected for curation are to be deposited in a publicly assessable institution.
- (3) Fire Permits.—A A permit for the use of fire on a Natural Resource Area will be required for areas designated by the Area master management plan as Natural Environment Zones P 1 and 4 2. In zZones 2, 3, 3 and 4 a fire permit is not necessary but the use of fire will be permitted only in designated areas.
- (a) General Information Concerning Permits.
    - (i) A permit will be valid for no longer than one year but may be renewable.
    - (ii) A permit may be modified, suspended, or revoked by the Department of Conservation at any time.
    - (iii) A person holding a permit will report to the manager before commencing and upon completing permitted activities.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.31~~ 0400-02-08-.29 Management Research

There shall be continuing studies of the general problems of managing Natural Resource Areas. Appropriate action will be taken by the manager to alleviate problems determined by these studies. The overall goal of preservation of the Natural Resource Areas will be the main influence on the type and scope of any action taken.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

~~0400-02-08-.32~~ Master Plan

- (1) ~~Responsibility for preparation and revision of the master plan for each Natural Resource Area shall rest with the appropriate program administrator with the approval of the Commissioner of Conservation. Representatives of administering agencies, private organizations, and other interested groups or individuals may participate in the formulation and revision of master plans.~~
- (2) ~~The master plan for each Natural Resource Area and revisions thereto shall take effect upon approval by the Commissioner of the Department of Conservation. A deviation from these rules shall take effect only as provided in Rule 0400-02-08-.05. An up-to-date copy of each master plan shall be held by the manager, the Department of Conservation, and the operational agency. These copies shall be available to public inspection during regular business hours as provided by law.~~

~~0400-02-08-.33~~ 0400-02-08-.30 Record

Records shall be prepared retained for each Natural Resource Area. ~~One copy shall be retained by the managing agency and one copy by the program administrator of the Natural Resource Area. Records shall may include~~

annual reports of the manager as provided in Rule 0400-02-08-.07 and all other pertinent documentary material, studies, reports, obsolete portions of the ~~master~~ management plan, research and collection permits, and descriptions of significant events. The form and content of the record shall be as the Department may establish. Responsibility for assembling the record shall be as designated in the master plan.

Authority: T.C.A. §§ 11-1-101, 11-13-106, 11-14-104 and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 06/27/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/04/13

Rulemaking Hearing(s) Conducted on: (add more dates). 05/30/13

Date: June 27, 2013

Signature: \_\_\_\_\_

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Robert E. Cooper, Jr.  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: The commenter stated the following:

The new rules have combined Rule 0400-02-08-.32 with Rule 0400-02-08-.05 to form a new Rule 0400-02-08-.05 that includes all matters concerning the management plan (MP) preparation. Old Rule 0400-02-08-.05 states: The Department shall consult with citizens' groups, organizations, as well as federal, state and municipal agencies in the preparation of these plans as much as possible." Old Rule 0400-02-08-.32 states: "Representatives of administering agencies, private organization, and other interested groups or individuals may participate in the formulation and revision of master plans." New Rule 0400-02-08-.05(1) states in part: " For designated state natural areas owned and managed by federal agencies both the preparation and revision of the management plan and day to day management of the natural area is the responsibility of the federal agencies. Representatives of administering agencies, private organizations, and other interested groups or individuals may provide written comments on management plans." A federal exception has been carved out regarding MP preparation and revisions. It is not clear if State Parks and the Federal agencies will also allow written comments on those MPs. A simple notice requirement in the rules to both State Parks Division and Federal agencies that they give notice to the Division of Natural Areas when they intend to undertake MP preparation or revisions could solve this. The Division could in turn allow those written comments to be received.

Response: The Department agrees with this comment and has added language to paragraph (1) of Rule 0400-02-08-.05 to state that natural areas program administrators will be notified when federal agencies and state park managers are preparing and revising a management plan, and for designated natural areas that are not owned by state or federal agencies and not in state ownership, the owners shall be consulted regarding the natural areas management plan preparation.

Comment: The commenter stated the following:

New Rule 0400-02-08-.05(2) covers the method of MP production. It states in part: "The Department shall consult with citizen's organizations, as well as federal, state and municipal agencies in the preparation of these plans as much as possible." There should be some obligation for the State to consult with the owners of State Natural Areas (SNAs) when they are not State-owned. Perhaps wording could be inserted to this effect: "For designated SNAs that are not owned by State or Federal agencies, the owners shall be consulted regarding SNA MP preparation." This does not weaken the State's position of responsibility to protect the resources under State law but at least mandates some form of communication with the landowner. The command to consult with the landowner can be as simple as a registered letter to the owner of record notifying them of the plan to produce or revise an MP that covers their property.

Response: The Department agrees with the comment and has added that language to paragraph (1) of Rule 0400-02-08-.05 to that affect. See the response to the prior comment.

Comment: The commenter stated the following:

The new Rule 0400-02-08-.10 regarding boundary markers should make some reference to the need to produce a boundary survey within 3 to 5 years of designation if one does not already exist. This would be especially true of privately owned SNAs. The lack of an actual survey has caused a number of unanticipated consequences in the past when boundary markers were installed across private land or interjurisdictional issues arose between non-SNA protected ground and other government owned land. A boundary survey will solve these problems.

Response: The Department doesn't agree that such a requirement is necessary or useful. Not all designated natural area boundaries are necessarily defined by a legal property boundary. A natural area boundary may be internal within a property boundary through agreement between the landowner and the State and marked accordingly. Furthermore, newly designated lands that are in private property ownership that the State proposes for designation shall only be designated when there is a perpetual conservation easement. A conservation easement would include a legal boundary survey.

Comment: The commenter stated the following:

The new Rule 0400-02-08-.13 Trails states in part: "An exception may be granted for county or municipal owned natural areas where biking activities was expressly permitted prior to designation, provided that it is mentioned as a deviation in the management plan, as provided in Rules 0400-02-08-05 and 0400-02-08-.30." I think this rule change will benefit the State in many ways. The number and extent of mountain bike users is large across the State. There have been several popular mountain bike areas designated as SNAs over the years, with much of the effort to gain SNA status coming from the cycling community. I would like to speak of a SNA I know personally. I have observed trail use in the Lucius Burch SNA since 1985. I laid out the blue trail (interior trail) and have assisted volunteers in building many trail bridges, keeping trails clear and doing general trail repair over the years. There is not a month that has gone by when I have not been on the trails of the LBNA at some point. I can say with absolute assurance that the trails are generally in good condition despite almost continuous bike, jogging and hiking use in those years. Bike use was explicitly allowed in the area prior to designation and was allowed in the first management plan adopted in 1991. The opportunity in these new rules to openly acknowledge and manage use by cyclists will allow the Division to harness a huge constituency for trail protection and maintenance in many of the SNAs. Their use can be easily managed with common sense trail courtesy rules and wet weather trail rules in the MPs. The Division has done a good thing with this draft rule.

Response: The Department appreciates the commenter's support on this amendment.

Comment: The commenter stated the following:

I am president of Mid-South Trails Association, an off road cycling organization with 150 members. I am writing to support the addition of language in the revised 0400-02-08.13. Specifically supporting language that allows "An exception may be granted for county or municipal owned natural areas where biking activities was expressly permitted prior to designation, provided that it is mentioned as a deviation in the management plan, as provided in Rules 0400-02-08-.05 and 0400-02-08-.30." Bicycling was allowed in the Lucius Burch Natural Area (LBNA) from its inception in 1988 until 1996. Laura Adams, Executive Director of the Shelby Farms Park Conservancy, has stated to me several times that the conservancy wants to return cycling to the trails in the LBNA. This rule change would allow that change to be made. Off road cycling is a major contributor of volunteer time in Shelby Farms Park. We were asked to submit an annual time report in 2009. In the years 2009 to date off road cycling has documented 1,471 volunteer hours assisting with trail maintenance in Shelby Farms. If the park is allowed to move forward to return cycling to the Wolf River Trails volunteer time would certainly increase. I am asking that the changes mentioned above be retained in the rule language.

Response: The Department appreciates the support and intends on retaining the rule language regarding this amendment.

Comment: The commenter stated the following:

Rule 0400-02-08-.01 is titled Natural Resource Recreation Areas. There is no other reference throughout the Rules where Recreation is inserted when referencing Natural Resource Areas including the title of the Rules. This is apparently an oversight and should be corrected.

Response: The Department agrees and has removed the word Recreation from the title of Rule 0400-02-08-.01 so it correctly reads Natural Resources Areas.

Comment: The commenter stated the following.

Paragraph (3) of Rule 0400-02-08-.25 Natural Environment Zone should be changed to read: "Natural areas are classified by default where a natural environment predominates (Zone 2). A delineation of another type of zone will be referenced in the management plan."

Response: The Department agrees and has reworded the paragraph as suggested.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

These rules apply to managers of natural areas and there are no small businesses subject to these rules.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There will be no addition reporting, recordkeeping or other administrative costs required because of these amendments.

- (3) A statement of the probable effect on impacted small businesses and consumers.

These amendments will not impact small business or consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

These amendments will not impact small businesses.

- (5) A comparison of the proposed rule with any federal or state counterparts.

The proposed rule changes are comparable to federal and state counterparts.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

These amendments will not impact small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These amendments will have an impact on local governments that manage natural areas.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amendments are to Chapter 0400-02-08 Management of Tennessee Natural Resource Areas. These rules are intended to assure the preservation of areas designated as Natural Resource Areas and to prevent abuse and misuse. Changes to the rules update references to statutes and changes to terminology to current use, consolidated rules by reducing the number of rules and eliminate references to rules that are obsolete or no longer useful. There are changes to the management planning process that better identifies the roles of the owners and managers in the preparation and revision of the management plans. A new exception to the rules were added to allow biking on trails in designated natural areas owned by a county or municipality where biking on trails had previously been permitted prior to designation and another exception allows for the introduction of non-indigenous species for the purpose of controlling damaging pests (allows for bio-control). Other changes are minor and mostly are housekeeping in nature.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These amendments are being promulgated under the authority of T.C.A. §§ 11-1-101, 11-13-106 and 11-14-104.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Designated natural area managers and owners who may be non-profit organizations and government agencies; state, federal, county and municipal. Although the Department received suggested language changes, no one rejected these amendments and some urged adoption of specific amendments.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department is not aware of any.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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William R. Snodgrass Tennessee Tower  
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- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard  
Deputy General Counsel  
SS-7039 (October 2011)

Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.