

Commonwealth of Pennsylvania
Department of Conservation and Natural Resources

Guidelines for Right-of-Way Development on Pennsylvania
State Forest and State Park Lands

June 17, 2009

The Commonwealth's Department of Conservation and Natural Resources (DCNR or Department)¹ considers requests to site Right(s)-of Way (ROW) on the lands it manages when a clear and definitive need has been established. This document is intended to provide guidance and general information to applicants for such ROW.

Introduction

Pennsylvania is fast becoming the focus of an increased number of new energy transmission projects that require the construction or expansion of linear corridors, or ROW, to facilitate the transportation of energy products.

ROW represent a long-term change in land use that can limit or prevent other uses (such as recreational access) and can have a variety of impacts on habitat. Linear corridors dramatically increase edge habitat within the forest. While this can benefit several species of flora and fauna, it fragments the forest, decreases critical habitat for intact forest-dependent species, increases competition for limited resources and fuels the potential for introducing undesirable invasive species and diseases.

DCNR manages over 2.4 million acres of State Forest (comprising more than 2.1 million acres) and State Park lands, and receives many requests to site ROW on these public lands. The Department balances the need for suitable corridors for transporting energy products with the need to sustainably manage the land with which it is entrusted for its many uses and values.

DCNR's Bureau of Forestry is one of the largest landowners in the United States to be certified as "well managed" according to the principles of the Forest Stewardship Council. Pennsylvania's State Forests have been certified by this independent, third-party system since 1998, passing annual audits that monitor compliance with the standard. The principles by which DCNR manages the State Forest land are set forth in the State Forest Resource Management Plan available at <http://www.dcnr.state.pa.us/forestry/sfrmp/update.aspx>.

The DCNR Bureau of State Parks manages 117 State Parks and establishes management principles for each park through the development of a resource management plan. These plans ensure that recreational facilities can be used and enjoyed by all park visitors while achieving the long-term stewardship of the natural resources of the park for future generations.

¹ A brief summary of the statutes that govern DCNR's review of rights-of-way requests is included in Appendix A. An overview of the roles of other federal and state agencies is also provided in Appendix A.

Guidelines

DCNR evaluates and administers ROW requests according to the following guidelines in a manner consistent with its mission and natural resource management plans:

Special Protection Areas:

1. ROW development within Wild Areas, Natural Areas, and State Parks is predominately incompatible with management objectives.
2. Corridors should avoid exemplary geologic formations, sensitive habitats, and known occurrences for rare, threatened, or endangered flora and fauna species.
3. Impacts to water resources including wetlands and vernal pools should be avoided.

Route Planning:

1. A clear need for the ROW should be established and alternative routes should be investigated and included in the proposal as well as a justification for why the preferred route was chosen.
2. Proposals should minimize further forest fragmentation by paralleling existing rights-of-way and roads.
3. Routes should work within topographical constraints to minimize aesthetic impacts.
4. Proposed corridors should consider potential recreational impacts and existing DCNR operations.

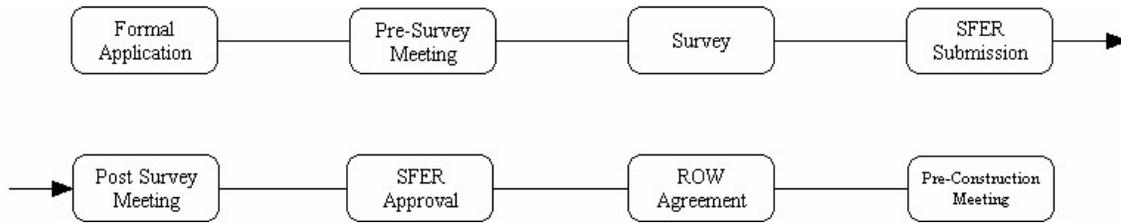
Design and Construction:

1. Companies with existing rights-of-way should work within that ROW to increase available capacity versus requesting additional acreage to site additional infrastructure.
2. Corridor widths should be minimized as much as possible while still ensuring safe and adequate working conditions.
3. Companies with adjacent ROW interests should work cooperatively in the management of the corridor and the siting of necessary infrastructure.

Request Process

DCNR has developed a process to administer ROW requests based upon the guidelines and criteria established by this document. For more detailed instructions on applying for a ROW on DCNR lands, please visit the following link: [How to Apply for a Right-of-Way on DCNR Lands.](#)

Figure 1: General illustration of the DCNR ROW request process:



Exceptions

ROW agreements are not required for pipelines or transmission corridors on State Forest or State Park lands when the requester has the ability to use the surface for such purposes as a result of the requester’s subsurface ownership or rights through other existing agreements.

The Commonwealth owns all rights and interests (both surface and subsurface) on approximately 77% of State Forest and State Park lands. On the approximately 370,000 acres of State Forest land for which the Commonwealth owns the subsurface oil and gas rights, DCNR has entered into leases with private companies for the development of the oil and gas resources or for natural gas storage. As of January 2009, the DCNR Bureau of Forestry administers 120 active leases for such purposes. Surface appurtenances (including pipelines) required for the development of subsurface resources are typically authorized under these leases and thus separate ROW agreements would not be necessary for use of the surface in these instances.

On the remaining 23% (approximately 550,000 acres), the Commonwealth only owns the rights and interests in the surface. The owners of the subsurface rights on these lands have the ability to make certain use of the surface.

When subsurface owners are interested in using the surface for pipelines to transport their subsurface resources (*e.g.*, oil or gas), they may not need a ROW agreement depending on the nature of the pipeline and the rights provided by deed when the subsurface was severed from the surface ownership. Subsurface owners interested in constructing pipelines or otherwise establishing transmission corridors should provide DCNR with a description of the proposed project and copies of the documents (deeds, leases, etc.) describing the subsurface owner’s rights regarding use of the surface. If DCNR agrees that the subsurface owner has the right to use the surface as proposed, a ROW agreement would not be required.

DCNR strongly urges subsurface owners to enter into a voluntary agreement with DCNR to ensure that the subsurface owner’s use of the surface proceeds in a manner that both the subsurface owner and DCNR agree protects the State Forests or State Park land.

Appendix A

DCNR Statutory Authority

The Conservation and Natural Resources Act (act of June 28, 1995, P.L. 89, No. 18) provides DCNR with the following authority to grant rights-of-way for pipelines or transmission corridors:

Section 302. Forests

* * *

(b) Utilization and protection. The department has the following powers and duties with respect to the utilization and protection of State forest lands:

* * *

3. To grant rights-of-way through State forests to individuals or corporations who may apply therefore when it shall appear to the department that the grant of a right-of-way will not so adversely affect the land as to interfere with its usual and orderly administration, and when it shall appear that the interests of the Commonwealth or its citizens will be promoted by such grant. Right-of-way, as used in this subsection, is hereby construed to include rights of passage and haulage for any lawful purpose, also rights of flowage or transmission for any lawful purpose.

(71 P.S. § 1340.302(b)(3))

Section 303. Parks

(a) Powers and duties enumerated. The department shall have the following powers and duties with respect to parks:

* * *

10. To grant rights-of-way in and through State parks to municipal authorities and political subdivisions of this Commonwealth for the laying of water lines and of lines for the transportation of sewage to sewage lines or sewage treatment facilities on State park land under such terms and conditions, including the payment of fees, as the department may deem proper and when it shall appear that the grant of such right-of-way will not so adversely affect the land as to interfere with its usual and orderly administration and that the interests of this Commonwealth or its citizens will be promoted by such grant.

(71 P.S. § 1340.303(a)(10))

Section 318. Contracts and agreements.

* * *

(c) Rights-of-way. The department shall have the power to lease rights-of-way for a period of not more than 35 years, on terms and conditions as it may consider reasonable, to owners of real property abutting State lands under the jurisdiction of the department.

(71 P.S. § 1340.318(c))

The Administrative Code of 1929 (act of April 9, 1929, P.L. 177, art. V, § 514) also provides the following authority for granting rights-of-way on Commonwealth land:

§ 194. (Adm. Code § 514). Sale of real estate and grants of rights of way or other rights over or in real estate; tapping water lines of institutions and sanitoria

(a) Except as otherwise in this act expressly provided, a department, board, or commission, shall not sell or exchange any real estate belonging to the Commonwealth, or grant any easement, right of way, or other interest over or in such real estate, without specific authority from the General Assembly so to do, but a department, board, or commission may, with the approval of the Governor, grant a license to any public service corporation to place upon, in, or over, any dry or submerged land or bridge of or maintained by the Commonwealth, any public service line, if such line will enable any State building or State institution to receive better service, or if such line is necessary for the service of the public and it is necessary or reasonably required to cross the Commonwealth's land to afford such service or if the running of such line over a bridge will be more economical than the erection of a separate bridge for the line. Every such license shall be revocable for reasonable cause upon six months' written notice by the Commonwealth, and also after like notice for violation of such proper terms and conditions as the department, board, or commission, with the approval of the Governor, shall prescribe when the license issues. Unless any such line is primarily for the benefit of a State building or State institution, the license shall provide for the payment to the Commonwealth of compensation for the use of its property in such amount as the department, board, or commission granting it shall, with the approval of the Governor, prescribe.

* * *

(71 P.S. § 194)

Most State Forest and State Park land has been acquired using funds authorized by state and federal statutes that impose restrictions on use of the land that must be considered in granting a right-of-way. The funds authorized by state statutes include:

- Oil and Gas Lease Fund established by the act of December 15, 1955, P.L. 865 (71 P.S. §§ 1331-1333);
- Project 70 Land Acquisition Fund established by the Project 70 Land Acquisition and Borrowing Act (act of June 22, 1964, Spec. Sess., P.L. 131, No. 8, as amended) [*see* 72 P.S. § 3946.20 (restrictions on use)];
- Keystone Recreation, Park and Conservation Fund established by the Keystone Recreation, Park and Conservation Fund Act (act of July 2, 1993, P.L. 359, No. 50) [*see* 32 P.S. § 2020 (property restrictions)];
- Environmental Stewardship Fund and Growing Greener Bond Fund established by the Environmental Stewardship and Watershed Protection Act (act of December 15, 1999, P.L. 949, No 68, as amended) [*see* 27 Pa.C.S. § 6106 (property and equipment restrictions)].

Federal funds have also been provided through the Land and Water Conservation Fund established by the Land and Water Conservation Fund Act of 1965 (act of September 3, 1964, P.L. 88-579, 78 Stat. 897) (*see* 16 U.S.C. § 4601-8(f)(3) for property restrictions).

The granting of a right-of-way for a pipeline or transmission corridor across State Forest or State Park land could be allowing private use of these public lands for a purpose other than that authorized by the funding statutes listed above and could trigger additional requirements.

DCNR also administers and enforces the Wild Resource Conservation Act (act of June 23, 1982, P.L. 597, No. 170) , which states that it is “unlawful for any person to disturb, pick or take wild plants from State parks and forest lands except as provided by rules and regulations” (32 P.S. § 5311(a); *see also* 17 Pa. Code Chapter 45).

The Role of Other Federal and State Agencies

Federal Energy Regulatory Commission (FERC):

The Federal Energy Regulatory Commission (FERC) is an “independent agency that regulates the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals to build liquefied natural gas (LNG) terminals and interstate natural gas lines as well as licensing natural gas pipelines.” (FERC website, May 2009)

FERC has a well established process which provides ample opportunity for stakeholder involvement in their decision making process. The agency evaluates potential environmental impacts related to proposed natural gas and hydroelectric projects. They are also directly responsible for the siting and abandonment of interstate gas pipelines and storage facilities (FERC website, May 2009).

Pennsylvania Public Utility Commission (PUC):

The Pennsylvania Public Utility Commission (PUC) has numerous responsibilities related to electricity, natural gas, water, telecommunications, and transportation and safety. The PUC currently regulates the siting and construction of overhead electric transmission lines within the state using a process which mirrors that of FERC. The PUC is afforded one year from the date an application is received to review and rule on a proposed project. If a decision is not reached within this timeframe, regulatory authority for the project is assumed by FERC.

Other Authorities:

Numerous state and federal agencies also play an important role in reviewing projects. The agencies and their respective authority include:

- *PA Fish & Boat Commission:* fish, reptiles, amphibians and aquatic invertebrates
- *PA Game Commission:* birds, mammals and administration of State Game Lands
- *DCNR:* administers native wild flora, State Forests and State Parks
- *US Fish & Wildlife Service:* Endangered Species Act
- *PA Historical and Museum Commission:* historic preservation
- *Army Corps of Engineers:* Clean Water Act (§ 404 dredge and fill permits)
- *Department of Environmental Protections:* Clean Water Act, PA Clean Streams Law, dam safety and waterway management, erosion and sedimentation