

Department of Environmental Management

Administrative Adjudication Division

State of Rhode Island

RE: RHODY ROVERS MOTORCYCLE CLUB, INC.

AAD No. 99-001/FEA
APPLICATION DENIAL
March 1, 1999

DECISION AND ORDER

FACTS AND TRAVEL

This matter is before the hearing officer on the appeal of the Rhody Rovers Motorcycle Club, Inc. (hereinafter *Applicant*) from a denial of their request by the Arcadia Management Council for a special use permit for an event to be held in the Arcadia Management Area on May 16, 1999 (hereinafter *Event*). Peter Ruggiero Esq. Represented the Applicant and Catherine Robinson Hall represented the Division of Forest Environment.

The request for hearing was filed with the Administrative Adjudication Division for Environmental Matters on December 31, 1998. A status conference was conducted with counsel on January 22, 1999. At the status conference, the Applicant moved that the matter be expedited. Without objection, the motion was granted and after discussion with counsel, each waived their right to notice of a prehearing conference. The filing of prehearing memoranda was dispensed with and the status conference was converted to a prehearing conference. A Prehearing Conference Record and Order was issued to counsel on January 29, 1999 which, with some amendments made on the record at the administrative hearing, governed the conduct of the hearing held on February 8, 1999. A listing of Exhibits is attached as Appendix A.

A brief summary of the facts pertinent to this appeal follows. On October 20, 1998 the Applicant submitted three activity/special use permit applications to Jay B. Aron, Chairman of the Arcadia Management Council (hereinafter *AMC*). The AMC was established by the Department of Environmental Management at or about 1980 to address the overlapping responsibilities of several Divisions within DEM concerning management areas including Arcadia. The AMC is comprised of a representative from each of the following Divisions within DEM: Fish and Wildlife, Forest Environment, Planning and Development, Enforcement and Parks and Recreation. The AMC considered the special use applications filed by Applicant and by way of letter dated December 22, 1998, informed Applicant of its' decisions thereon. Two applications were granted, (the July 11, 1999 and August 1, 1999 events) and the remaining application for a May 16, 1999 event was denied and is the subject of this appeal.¹

In pursuing its appeal, and as set forth in the Notice of Administrative Hearing, the Applicant bears the burden of proving by a preponderance of the evidence that it complies with the applicable rules and regulations. The parties have agreed that the Rules and Regulations for the Control, Government and Use of Property Under the Care, Control or Custody of the Department of Environmental Management (hereinafter *Regulations*), and filed with the Secretary of State on July

14, 1986, are the pertinent regulations with which Applicant must prove compliance. The Regulations are comprised of three parts; General Regulations (GR), Park Regulations (PR) and Management Area Regulations (MA). With the agreement of counsel, the hearing officer has taken administrative notice of the Regulations.

SUMMARY OF WITNESS TESTIMONY

The Applicant, by agreement, submitted the testimony of Stephen T. Antoniou in affidavit form. The Division waived cross-examination of Mr. Antoniou. Mr. Antoniou is the Treasurer of the Rhody Rovers Motorcycle Club. The Club is a non-profit corporation. Mr. Antoniou stated that Applicant makes distributions of at least thirty percent (30%) from the proceeds of club events to various charitable entities. With respect to the May 16, 1999 event, which is the subject of this appeal, a full one hundred percent (100%) of the net proceeds will be donated to the Exeter–West Greenwich Kids Scholarship Program.

The testimony of Joseph Walsh was likewise submitted, by agreement, in affidavit form. The Division waived cross-examination of this witness. Mr. Walsh is the President of the Exeter–West Greenwich Kids Scholarship Fund. In that capacity, Mr. Walsh stated that from the period January 1, 1992 through January 1, 1999 the Applicant has donated in excess of fifteen thousand dollars (\$15,000.00) to the scholarship fund. The donations provide four (4) annual scholarships to graduating high school seniors pursuing post-secondary education as well as seed money to create a self perpetuating scholarship fund.

The Applicant's final witness was William Haas. Mr. Haas testified at the administrative hearing. Mr. Haas has served intermittently in various capacities with the Rhody Rovers Motorcycle Club from 1971 to the present. Most notably, he served as President in the late 1960's and has served in that capacity for the last 10–12 years. Mr. Haas also serves as the District 1 off-road representative to the New England group. Mr. Haas testified that the Event under appeal is in the nature of a trail ride undertaken primarily by families interested in motorcycling and riding. The Application indicates that approximately 180 cyclists would participate at speeds ranging from 18–24 mph. This type of event has been held by Applicant in this location since approximately 1981. Prior to 1981, the Applicant held other Club events in the spring in Arcadia Management Area. In the early years of the events, Mr. Haas testified, a permit was not needed.

With respect to the Event, Mr. Haas testified that as soon as he coordinated dates with the New England Trail Riders Association and the East Coast Enduro Association he completed the Activity/Special Use Permit Application and submitted it to the AMC on October 20, 1998. By way of letter dated December 22, 1998 the AMC, through its Chairman Jay Aron, informed Mr. Haas that the July and August dates were tentatively approved but that the request for the May 16, 1999 date was denied. Mr. Haas indicated that he spoke with Mr. Aron after he received the denial and that Mr. Aron indicated that he had to adhere to the Large Events Policy (LEP). Mr. Haas further testified that although he had discussed the denial with both Brian Tefft and Jay Aron, both AMC members, neither raised any environmental concern regarding the Event. Mr. Haas ended his direct testimony by stating that the Applicant could, with respect to the May 16, 1999 event, meet all the typical requirements necessary in prior years including liability insurance and additional enforcement personnel.

Upon cross-examination, Mr. Haas expanded upon his description of the Event. He indicated that the riders mark a trail with arrows that proceeds through Arcadia Management Area and into the

State of Connecticut. The ride lasts approximately five (5) to six (6) hours. The largest May event sponsored by Applicant to date has included approximately 182 riders. Mr. Haas stated that he had not contacted the AMC or Mr. Aron to schedule a date other than that requested and denied. On redirect, Mr. Haas explained that he has been unable to clear a date within the June 20, 1999 to September 30, 1999 window suggested by the AMC in the denial letter. He indicated that this was due to the other events scheduled by riding clubs in the New England area and the clubs' rule that one club cannot run a like event on the same date as another club.

The Applicant rested its case at the conclusion of Mr. Haas' testimony.

Thomas A. Dupree was the first witness for the Division of Forest Environment. Mr. Dupree has served as the Chief of the Division of Forest Environment for approximately twelve years and has worked in the Division of Forest Environment for twenty five years. His duties with regard to the management areas are to control recreational use, oversee the fire protection and timber harvesting programs, and to be responsible for the maintenance and use of the beaches, roads and trails within the management areas. He explained that a management area is a parcel of state land used for dispersed recreational uses such as hiking, horseback riding, bobsledding, biking and hunting. Mr. Dupree distinguished the uses of a management area from the uses ascribed to state parks. He indicated that state parks are subject to more intensive use whereas the management areas accommodate fewer people in a much larger area. Mr. Dupree testified to his familiarity with the Regulations and the restrictions on use imposed by them. He referenced GR 4d which prohibits utilization of the resource in ways that would interfere with others and GR 11c which limits use by groups of ten (10) or more. He stated that written permission is required for groups of ten (10) or more in order to reduce conflicts between users and to protect people and the resource.

Mr. Dupree also testified that the Trails Advisory Committee (TAC) is a committee of user groups assembled by DEM to satisfy federal law (the Simms Act) and which serves dually to advise the Department of the public's concerns regarding recreational use of the management areas. The TAC is limited to an advisory role in developing policy. In general terms, Mr. Dupree outlined the Large Events Policy (a policy which limits the number of large events each group may hold per year; the number of people for each event; and establishes a window of time in which the events are allowed) and the participation of the Applicant and the TAC in the formulation of the policy. Mr. Dupree established that he met with the Applicant prior to the adoption of the policy and that Applicant expressed its concerns regarding implementation of the LEP and its impact on the Applicant's members. In the spring of 1998, in response to the concerns raised by Applicant, the LEP was amended to widen the event window from July 1st through September 30th to June 20th through September 30th and increased the number of persons allowed at a large event. Mr. Dupree indicated that the LEP was adopted by DEM in May of 1998 after a vote by the TAC.

Robert W. Sutton, Chief of the Office of Planning and Development was the next witness for the Division of Forest Environment. Mr. Sutton has served in that capacity since October of 1992 and works closely with Forest Environment and Fish and Wildlife, Mr. Sutton has served as chairperson of the TAC since 1995 when it was first created. He testified that the LEP was discussed by the TAC for a nine month period from September of 1997 to May of 1998. Applicant and Applicant's counsel met with Mr. Sutton in February of 1998 to address the Applicant's concerns regarding the LEP and in particular, to attempt to reach an agreement regarding the number cap and timeframe ("window") during which large events would be allowed. These negotiations resulted in an amended LEP which increased the number of persons from two

hundred (200) to three hundred (300) and expanded the window by ten (10) days from July 1st to June 20th, a date, according to Mr. Sutton, specifically chosen to accommodate the Applicant. In May of 1998 the TAC reached a consensus that the LEP reflected the wishes and interests of the TAC. At the May meeting during which this “consensus” was reached, the Applicant and at least three other motorcycle organizations were present.

Jay Bennett Aron testified next. Mr. Aron was qualified by agreement as an expert in Forestry and Resource Management. Mr. Aron is a Supervising Forester for the Division of Forest Environment and is assigned to the Arcadia Management Area. Since August of 1993 he has overseen the daily operation and recreational use of the Arcadia Management Area and other management areas within the authority of Forest Environment. Mr. Aron is Chairperson of the AMC. Mr. Aron explained, in general terms, the procedure followed by the AMC in evaluating requests for special use permits like the permit sought by Applicant. Written permission is required for use of management areas for groups of over ten (10) persons. Such groups routinely include Boy and Girl Scouts, fishermen, hikers, horseback riders and motorcycle clubs. A requesting organization generally calls Arcadia Management Area and is sent a special use permit application. The form requests information such as who is organizing the event, the date of the event and the number of people expected to attend/participate in the event as well as some specific information concerning the nature of the event. After the Application is submitted to Mr. Aron, it is reviewed at the next meeting of the AMC.

Mr. Aron testified that in weighing an application, the AMC evaluates the biological and physical impacts that the proposed event is likely to cause to the resource (the management area). More specifically, the AMC considers impacts to the ecosystem and wildlife and the physical effects of the proposed event on the management area. The AMC also determines if there are any conflicts among user groups for the date and attempts to coordinate uses. The final decision on an application is made by way of consensus. The AMC does not always approve applications. Mr. Aron testified that the AMC tries to work with a group when there are problems with an application and often a change of date or time change will assuage the concerns of the AMC. All event approvals are conditioned upon environmental conditions existing on the date of the event. Event approvals have been cancelled in the past due to excessive rain, mud, repeated freezing and thawing of the ground and other conditions which, in combination with the use expected by the proposed event would endanger the integrity of the resource. Other conditions such as insurance and additional enforcement details are required for the event to proceed.

Mr. Aron testified that the Application at issue in this proceeding followed this general process. As Chairman of the AMC, Mr. Aron participated in the review and final decision, in December of 1998, regarding the three special use applications submitted by the Applicant. Mr. Aron testified that he was concerned that the requested date was outside the “window” in which large events are allowed by the LEP and second, that he was concerned about trail conditions in the early spring. He stated that the AMC approved two of the requests, and with respect to this application, Mr. Aron characterized the AMC’s action as an approval, but not an approval as to the requested date. The reasons cited by Chairman Aron as the basis for the denial by the AMC were: the LEP, that the Event would present too much of a risk of damage to the resource, and that the Event would conflict with other user groups. The type of damage referenced by Mr. Aron included berming of the soil on curves, erosion and runoff and causing the undulating of the ground in areas on the trails. He acknowledged that the Applicant has held such events in the Arcadia Management Area on like dates in the past and has done a good job repairing damage caused by its events. He stated, however, that the AMC has determined that early spring events, although routinely allowed in

previous years, threaten the integrity of the management areas. According to Mr. Aron, large events held in the spring (March, April, May and June) cause detrimental impacts to the wildlife and physical features of the management area. Mr. Aron's testimony was uncontradicted.

On cross-examination Mr. Aron acknowledged that the application for a special use permit does not reference the LEP. Mr. Aron was uncertain when asked whether there were any other events planned for May 16, 1999 which would conflict with the Applicant's Event. Mr. Aron acknowledged that the LEP was used by the AMC in evaluating the Application. He testified that it was, however, applied as a policy and not a rule. When asked to explain the difference, Mr. Aron indicated that the LEP was used as "help" or guidance in coming to a determination. He indicated that a policy provides leeway whereas application of a rule is much more restrictive. He explained that application of the LEP provided latitude for the AMC to approve a third large event for this Applicant whereas applying the newly enacted Large Events Rule precludes a third event in a calendar year.

Brian C. Tefft, Principal Wildlife Biologist with the Division of Fish and Wildlife was the Division's final witness. Mr. Tefft was qualified by agreement of the parties as an expert in wildlife biology. In his capacity as a wildlife biologist, Mr. Tefft conducts research and surveys regarding state wildlife populations and assesses biological impacts to management areas from a variety of uses. In his capacity as a wildlife biologist for the Division of Fish and Wildlife, Mr. Tefft oversees activities in the passive/active areas of Arcadia and is responsible for the maintenance of wildlife populations. He has served in this capacity since October of 1992.

Mr. Tefft testified that he has served as the Division of Fish and Wildlife's representative on the AMC since 1992. He participates regularly in the review of applications for special use permits in management areas. His responsibilities in reviewing such applications include providing the AMC with expertise concerning wildlife and fishing issues and assessing environmental impacts on wildlife, including hunting and fishing species. He is familiar with the LEP and assisted in preparing policy drafts. He indicated that the LEP was adopted after several years of growing concern regarding the impact to management areas from large events. He indicated that large motorized events, in particular, began escalating in 1995 causing further concern for the impact on wildlife habitat and resources and the species using these areas.

Mr. Tefft reviewed the Application and participated in the decision by the AMC not to approve the May 16, 1999 date. He testified that the Event, if held on May 16, 1999 would be likely to have an adverse impact on nesting, breeding and courtship functions of wildlife species inhabiting the area. He voiced concern that a large motorized event at nesting and breeding time would cause trampling of young. He also indicated that migratory wildlife species use the management areas during their migration in early spring. Large numbers of people and noise introduced to the management area at this time of year are detrimental to the resource according to Mr. Tefft. He explained that his secondary concerns included the physical impact which large numbers of off road vehicles would have on the trail system. Central to these concerns was the expected erosion of soils with poor stability at this time of year as well as the sedimentation of water bodies likely to occur due to soil disturbance. As a further basis for denying the May 16, 1999 date, Mr. Tefft noted that the approval of the Event would conflict with other licensed users of the resource (turkey hunters). Mr. Tefft stated that denial of the May 16, 1999 date was based upon the foregoing concerns, primarily the sensitivity of the wildlife, its habitat, and the physical resource during early spring and the interference with licensed hunters. Included as a concern was the risk of fire due to the use of motorized vehicles. Mr. Tefft testified that he based his opinions and

conclusions on his knowledge of the area, his experience and his training as a wildlife biologist.

On cross-examination Mr. Tefft indicated that turkey hunting season runs from the last Thursday in April through the last week in May. Hunting is allowed every day within that time period from one half (½) hour before sunrise until 1:00 p.m. Mr. Tefft acknowledged that he did not conduct any noise studies or studies regarding soil erosion or sedimentation after motorcycle or horseback riding events. Mr. Tefft's testimony was uncontradicted.

ANALYSIS

The Rhody Rovers Motorcycle Club, Inc. is a non-profit organization seeking to conduct a fundraising event in Arcadia Management Area on the date certain of May 16, 1999. As a fair portion of Applicant's testimony reveals, this is a charitable event to assist local high school students defray college costs. Clearly the Applicant has, and continues to perform a very laudatory function as part of its recreational activities and should be commended for the important role it serves in the community. All Applicants, however, must demonstrate by a preponderance of the evidence that the Application as proposed complies with the Rules and Regulations for the Control, Government and Use of Property Under the Care, Control or Custody of the Department of Environmental Management. The charitable nature of the proposed Event, although admirable, does not relieve the Applicant from compliance with the Regulations. Those Regulations require that a group of ten or more persons must obtain written permission for use of a management area (General Rule 11c). Testimony of Department witnesses indicates that the purpose of the Regulation is to protect the integrity of the resource and to limit conflicts with other user groups. General Rule 4d prohibits utilization of the resource in ways that interfere with others and prohibits activities which are unreasonable considering the nature of the conduct, the time of the activity and the purpose to which the area is dedicated.

With those goals in mind, all applications are reviewed in the same manner with regard to the nature of the event and its potential impact on the physical and biological integrity of the resource and upon other users of the resource. In this case, the AMC considered the concerns of Messrs. Aron and Tefft regarding damage to the trails and the particular sensitivity of wildlife species to disturbance in the early spring. The uncontradicted testimony of Messrs. Tefft and Aron establishes that the Event, *if allowed on the date requested*, would degrade the integrity of the resource and interfere with other licensed users. It is important to note that the nature of the use proposed by Applicant is not *per se* prohibited by the Regulations or by the denial letter. It is the nature of the use coupled with the timing of the Event and factors present in the management area at that time of year that renders the Event, under those specific circumstances, unreasonable.

Testimony establishes that the Large Events Policy, so central to Applicant's argument, was not a controlling reason for denial. Although Mr. Aron indicates that it was one of three reasons for denial, the combined testimony of Messrs. Aron and Tefft reveals that adverse physical and biological impacts to the resource and interference with other users of the management area were paramount. The Applicant did not introduce any evidence in its direct case or in rebuttal to sustain its burden that the Event would not conflict with other user groups and not cause degradation to the management area.

Applicant argues that, imposition of the Large Events Policy, whether in the form of a policy or rule, is an imposition of a standard not properly promulgated pursuant to the Administrative Procedures Act and therefore inapplicable pursuant to the decision of the Rhode Island Supreme

Court in the matter of *Newbay Corp. v. Annarummo*, 587 A.2d 63 (R.I.1991). Applicant argues, accordingly, that the permit should be issued. In *Newbay*, the applicant proceeded through the administrative hearing with a generically similar burden, to demonstrate compliance with the applicable regulations governing issuance of the permit. After evaluation of the testimonial and documentary evidence, the hearing officer determined that the applicant met or exceeded every established regulation governing issuance of the permit. Thereafter, the Director adopted those findings, but imposed another standard which constituted a “new” rule, not yet promulgated by the Department. The Director conditioned issuance of the permit upon demonstrated compliance with a yet to be drafted Rule.

The pending appeal is distinguishable from *Newbay* in one very compelling aspect. In *Newbay*, once the impediment of the “new rule” was removed, there remained a compliant applicant. In this matter, removal of the LEP does not reveal a compliant Applicant. Here, unlike *Newbay*, Applicant did not satisfy its burden to demonstrate by preponderance of the evidence, that it meets existing Regulations.

But for the “new rule”, *Newbay* proved by a preponderance of the evidence at an administrative hearing that it met or exceeded all applicable Regulations, *Newbay*, 587 A.2d 63, 64. In the instant matter, if, as urged by Applicant, I were to strike the LEP as an improper rule or policy, applicant still has not demonstrated by a preponderance of the evidence that it complies with the Regulations.

The Applicant did not offer evidence sufficient to establish compliance with the Regulations and the credible testimony offered by the Division of Forest Environment regarding impact to other users and the resource was uncontradicted. The evidence of record demonstrates that the decision of the AMC was thoughtful and deliberate. The evidence indicates that the AMC considered the nature of the event, its impact on other users of the resource and its impact on the biological and physical integrity of the management area. Ultimately, the AMC determined that the date on which the Event was to be held was not acceptable due to the sensitivity of the resource at that time of year and the adverse impacts likely to occur to the management area and it’s wildlife. No evidence of record contradicts these findings.

FINDINGS OF FACT

After careful consideration of all the documentary and testimonial evidence of record, I find as fact the following:

1. The Rhody Rovers Motorcycle Club, Inc. is a non-profit corporation which distributes at least thirty percent (30%) of the proceeds of club events to various charitable entities.
2. Upon coordinating dates with the New England Trail Riders Association and the East Coast Enduro Association, the Applicant completed the Activity/Special Use Permit Application and submitted it on October 20, 1998 to Jay B. Aron, Chairman of the Arcadia Management Council.
3. The proposed event is a family oriented trail ride by approximately 180 cyclists along trails in the Arcadia Management Area at speeds ranging from 18–24 mph. The trail ride is approximately five (5) to six (6) hours in duration.
4. The AMC was established by the Department of Environmental Management at or about 1980 to address the overlapping responsibilities of several Divisions within DEM concerning management

areas including Arcadia.

5. The AMC is comprised of a representative from each of the following Divisions within DEM: Fish and Wildlife, Forest Environment, Planning and Development, Enforcement, and Parks and Recreation.

6. The AMC reviewed the special use applications filed by Applicant and by way of letter dated December 22, 1998, informed Applicant of its' decisions thereon. Two applications were granted, (the July 11, 1999 and August 1, 1999 events) and the remaining application for a May 16, 1999 event was denied.

7. The request for hearing was filed with the Administrative Adjudication Division for Environmental Matters on December 31, 1998 to appeal the denial of the May 16, 1999 event.

8. An event of this nature has been held by Applicant in this location since approximately 1981.

9. Prior to 1981, the Applicant held other Club events in the spring in Arcadia Management Area and in the early years of the events, a permit was not needed.

10. The largest May event sponsored by Applicant to date has included approximately 182 riders.

11. Mr. Haas stated that the Applicant could, with respect to the May 16, 1999 event, meet all the typical requirements necessary in prior years.

12. A management area is a parcel of state land used for dispersed recreational uses such as hiking, horseback riding, bobsledding, biking and hunting.

13. State parks are subject to more intensive use whereas the management areas accommodate fewer people in a much larger area.

14. General Regulation 11c limits use of management areas by groups of ten (10) or more and requires written permission for groups of ten (10) or more in order to reduce conflicts between users and to protect people and the resource. Such groups routinely include Boy and Girl Scouts, fishermen, hikers, horseback riders and motorcycle clubs.

15. The Trails Advisory Committee (TAC) is a committee of user groups assembled by DEM to advise the Department of the public's concerns regarding recreational use of the management areas. The TAC is limited to an advisory role in developing policy.

16. The Large Events Policy limits the number of large events each group may hold per year, the number of participants for each event, and establishes a window of time in which large events are allowed (June 20th through September 30th).

17. The LEP was formulated after several years of growing concern regarding the impact to management areas from large events. Large motorized events, in particular, began escalating in 1995 causing further concern for the impact on wildlife habitat and resources and the species using these areas.

18. The Applicant is a member of the TAC and participated in formulation of the Policy. The LEP was discussed by the TAC for a nine month period from September of 1997 to May of 1998.

19. Department representatives met with Applicant and Applicant's counsel in February of 1998

to address the Applicant's concerns regarding the LEP and in particular, to attempt to respond to applicant's concerns regarding the number cap and timeframe ("window") during which large events would be allowed. These negotiations resulted in an amended LEP which increased the number of persons from two hundred (200) to three hundred (300) and expanded the window by ten (10) days from July 1st to June 20th.

20. In May of 1998, at a meeting attended by The Applicant and at least three other motorcycle clubs, the TAC reached a consensus that the LEP reflected the wishes and interests of the TAC.

21. The LEP was adopted by DEM as a policy in May of 1998 after a vote by the TAC.

22. The Arcadia Management Council is responsible for approving/denying activity/special use applications for use of Arcadia Management Area. A requesting organization must complete a special use permit application which must include the date of the event and the number of people expected to attend/participate in the event as well as some specific information concerning the nature of the event.

23. When evaluating an application, the AMC considers the biological and physical impacts that the proposed event is likely to cause to the resource (the management area) including impacts to the ecosystem and wildlife. The AMC also determines if there are any conflicts among user groups for the date and attempts to coordinate uses.

24. The AMC does not always approve applications.

25. The Application at issue in this proceeding followed this general process. In its review of applications for special use permits in management areas, the AMC considers wildlife and fishing issues, and environmental impacts on wildlife, including hunting and fishing species.

26. The LEP was one factor used by the AMC in evaluating the Application. The LEP was used as guidance in making a final determination concerning the May 16, 1999 request.

27. The basis for the date denial by the AMC was threefold; the LEP, that the event would present too much of a risk of damage to the resource, and that the event would conflict with other user groups.

28. The LEP was not the controlling reason for denial.

29. In the spring, soil stability in Arcadia Management Area is poor.

30. Early spring is the most active and sensitive time for wildlife species nesting and breeding in the Arcadia Management Area.

31. The Event, if held in the spring (March, April, May and June), is likely to cause detrimental impacts to the physical and biological integrity of the management area.

32. The type of physical damage expected by the Event includes berming of the soil on curves, erosion and runoff and causing the undulating of the ground in areas on the trails.

33. A large motorized event at nesting and breeding time would cause trampling of young.

34. Migratory wildlife species use the management areas during their migration in early spring.

35. The Event, if held on May 16, 1999 would be likely to have an adverse impact on nesting, breeding, and courtship functions of wildlife species inhabiting the area.

36. The large numbers of people and noise introduced to the management area at this time of year are detrimental to the wildlife resources of the management area.

37. The physical impacts to the trail system caused by large numbers of off road vehicles include erosion of soils with poor stability as well as the sedimentation of water bodies due to soil disturbance.

38. The application for a special use permit indicates that the Event would run from 9:00 a.m. to 2:00 p.m.

39. The Event, if held on May 16, 1999 conflicts with other licensed users of the resource, specifically, licensed turkey hunters. Turkey hunting season runs from the last Thursday in April through the last week in May. Hunting is allowed every day within that time period from one half (½) hour before sunrise until 1:00 p.m.

CONCLUSIONS OF LAW

Based on the documentary and testimonial evidence of record and the applicable statutes and regulations I conclude the following as a matter of law:

1. The Applicant filed a timely appeal of a denial for an Activity/Special Use Permit for an Event to be held at the Arcadia Management Area on May 16, 1999.

2. The Applicant bears the burden of proving by a preponderance of the evidence that it complies with the Rules and Regulations for the Control, Government and Use of Property Under the Care, Control or Custody of the Department of Environmental Management filed with the Secretary of State on July 14, 1986.

3. General Regulation 11c prohibits use of management areas by groups of ten (10) or more without written permission.

4. General Regulation 4d prohibits utilization of the resource in a manner that would interfere with other users.

5. Pursuant to General Regulation 4d:

a. The Applicant failed to prove by a preponderance of the evidence that use of the Arcadia Management Area on the date and time requested will not interfere with other users of the resource; and

b. The Applicant failed to prove by a preponderance of the evidence that the Event, *if held on May 16, 1999*, would not be unreasonable considering the size and nature of the event and other factors such as the biological and physical harm to the resource which is likely to result from the proposed Event.

6. As each Conclusion of Law 5a or 5b is dispositive of this matter, it is not necessary to reach the issue of whether the LEP constitutes a Rule not properly adopted pursuant to the Administrative Procedures Act.

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby

ORDERED

That the Decision of the Arcadia Management Council is **SUSTAINED** and the Appeal of Rhody Rovers Motorcycle Club, Inc. is **DENIED**.

Entered as a Recommended Decision and Order this 26th day of February, 1999.

Kathleen M. Lanphear
Chief Hearing Officer

Entered as a Final Agency Decision and Order this 1st day of March, 1999.

George Welly
Interim Director

APPENDIX A

JOINT EXHIBITS

JT 1. Copy of Special Use Permits Memo

JT 2. Copy of Letter of Wm. Haas to R. Sutton With Attachments A – E for Identification

JT 3. Copy of Letter from P. Ruggiero to B. Sutton

JT 4. Copy of Letter from B. Sutton to P. Ruggiero

JT 5. Copy of Proposed Management Rules Amendment

JT 6. Copy of Letter from P. Ruggiero to J. Stoligitis

JT 7. Copy of Letter from J. Stoligitis to P. Ruggiero

JT 8. Copy of Letter from J. Aron to Wm. Haas

JT 9. Copy of Request for Hearing—Correspondence to Administrative Adjudication Division from Peter D. Ruggiero, Esquire—dated December 31, 1998 (1p.).

JT 10. Copy of Activity/Special Use Permit Applications.

(a) For date requested 05 – 16 – 99, d. 10/20/98 (1p).

(b) For date requested 07 – 11 – 99, d. 10/20/98 (1p).

(c) For date requested 08 – 01 – 99, d. 10/20/98 (1p).

JT 11. Copy of Large Event Policy, d. March 16, 1998 (3p).

FOR IDENTIFICATION ONLY

Applicant's 1 Copy of Studies re: Off road vehicle use

a-e

(I.D.)

Footnotes

- 1 The Division of Forest Environment characterizes their action as an approval with conditions—that the Applicant select a different date between June 20, 1999 and September 30, 1999.