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**Conservation Director
and Counsel**

March 7, 2023

Hon. John L. Ernst
Chair
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

Barbara Rice
Executive Director
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

RE: Legal Status of CP-3 Roads Under Adirondack Park State Land Master Plan Wild Forest Basic Guideline 4: No Material Increase

Dear Chairman Ernst and Executive Director Rice:

Protect the Adirondacks ("PROTECT") submits this letter concerning the legal status of roads maintained by the Department of Environmental Conservation ("DEC" or "Department") in areas classified as Wild Forest pursuant to the Adirondack Park State Land Master Plan ("APSLMP") and that are opened by the Department on a discretionary basis to certain members of the public under DEC Commissioner Policy 3, Motorized Access Program for People With Disabilities ("CP-3" or the "Policy").¹ This issue has arisen in the context of the Agency's consideration of Wild Forest Basic Guideline Number 4, which prohibits "any material increase in the mileage of roads . . . open to motorized use by the public in wild forest areas that conformed to the master plan at the time of its original adoption in 1972." APSLMP at 35.

Comments by members of the Adirondack Park Agency ("APA") Board during the December 2022 and February 2023 Agency meetings made clear that there is considerable uncertainty among some APA Board members as to whether the mileage of CP-3 roads (roads in Wild Forest areas that are open for motorized use by members of the public who possess a CP-3 permit issued by DEC) must be included in determining

¹ Available at www.dec.ny.gov/outdoor/76213.html

whether there has been a material increase in Wild Forest road mileage since 1972. There was also uncertainty expressed by Board members as to the status of roads opened to CP-3 motorized use as a result of the settlement in *Galusha et al. v. NYS Dept. of Env'tl. Conservation et al.*

As discussed in detail below, CP-3 roads fall squarely within the APSLMP's definition of a "road" and CP-3 road mileage must therefore be considered in the Agency's assessment of whether there has been a material increase in Wild Forest road mileage since 1972. Furthermore, the Consent Decree in *Galusha* makes clear that roads opened pursuant to that settlement are CP-3 roads and are not excluded or exempt from any provisions or requirements of the APSLMP, including Wild Forest Basic Guideline Number 4.

The Department's CP-3 Program

The CP-3 program was established by DEC in 1997 in order to "clarify the authority of the Department . . . to issue . . . permits . . . to qualifying people with disabilities to allow them motor vehicle access to certain specified State lands under the Department's jurisdiction, thereby facilitating such access." CP-3 at 1. The Policy specifically recognizes that, on Forest Preserve lands, "the Department must comply with the directive in Article XIV of the New York State Constitution which requires that Forest Preserve lands be 'forever kept as wild forest lands'" and thus "the Department may not issue permits which have the result of diminishing the forever wild character' of those lands. *Id.* The Policy also specifically recognizes that issuance of CP-3 permits is constrained by the APSLMP, which places "restrictions on motor vehicle access into the Forest Preserve." *Id.* Thus, the Policy explicitly acknowledges that CP-3 motorized use of Forest Preserve lands is subject to the legal constraints imposed by Article XIV and the APSLMP.

The Department's program for providing access to DEC-administered lands to persons with disabilities is set forth in the Policy as follows:

A qualified person with a certified disability who wants to access State land by a suitable motor vehicle . . . may do so only through the authority of a [CP-3] Permit On lands administered by the Department, a suitable type of motor vehicle shall be allowed to provide motor vehicle access for qualified people with disabilities to operate on designated roads, trails and geographical areas where, in the opinion of the Department with comments from the public where appropriate, the use of such motor vehicles will not have a deleterious effect on the trail, road or geographical area, the land's natural resource values or the experience of other users. *Such designation and use must be consistent with current law, including the Environmental Conservation Law, the State Land Master Plan for the Adirondack Park or Catskill Park, as the case may be, Department rules and regulations, a Unit Management Plan for the area, and an administrative directive consistent with current law, and must not endanger the safety and welfare of the general public. Within the Adirondack Park and Catskill Park, the motor vehicle may not be used on trails and in geographical areas, and may only be used on designated and specifically marked roads.*

Id. at 4; (emphasis added).

Thus, the plain language of CP-3 makes clear that motor vehicle use on Forest Preserve land pursuant to the Policy is subject to and must be consistent with “current law,” including the APSLMP where such use will occur in the Adirondack Park. CP-3 further states that “Executive Law 816(1) provides that [the APSLMP] ‘shall guide the development and management of State lands in the Adirondack Park’ [and] *the Master Plan therefore has the effect of law.*” *Id.* at 7; (emphasis added)

The Galusha Settlement

Galusha was a federal court case under the Americans With Disabilities Act (“ADA”) in which plaintiffs alleged that they had been discriminated against in violation of the ADA and sought motor vehicle access to various locations in the Adirondack Forest Preserve. The case was settled in July 2001 with the filing and approval by the presiding judge of a Consent Decree.² The two organizations that merged to form Protect the Adirondacks were parties to that settlement.

Contrary to statements made at the December 2022 and February 2023 Agency meetings, the Consent Decree did not “order” DEC to open certain roads in the Adirondack Park to motor vehicle use. Rather, the Consent Decree required DEC to (i) propose amendments to certain existing UMPs allowing access to specific areas under the Department’s CP-3 program, and (ii) ensure that certain roads already open to CP-3 use remained open for such use “subject to final approval in the UMP process.” *See* Consent Decree at 6-8. Thus, the Consent Decree, by requiring that all roads proposed for CP-3 motorized use go through the UMP review process, confirmed that CP-3 roads opened pursuant to the Decree were still subject to APSLMP requirements. *See, e.g.*, APSLMP at 10 (“Section 816 of the Act directs [DEC] to develop, in consultation with the Agency, individual unit management plans for each unit of land under its jurisdiction classified in the master plan.”); *id.* at 12 (“Any material modification in adopted unit management plans will be made following the procedure for original unit plan preparation.”). Indeed, the Consent Decree made clear that approval under the UMP review provisions of the APSLMP of Decree-proposed roads for CP-3 use was not a foregone conclusion because it included procedures to be followed “in the event that any road [proposed for CP-3 use] is not approved through the UMP process.” Consent Decree at 8.

In addition, no part of the Consent Decree excludes or exempts any of the proposed CP-3 roads from applicable legal constraints, including those imposed by the APSLMP. In fact, the Decree recognizes that DEC and APA “are charged by Article XIV of the New York State Constitution, statute, regulation and the Adirondack Park and Catskill Park State Land Master Plans (“SLMPs”) to act as stewards and, in the case of DEC, land manager for the Forest Preserve *within the constraints of the New York State Constitution*

² Pertinent portions of the Consent Decree referenced herein are attached as Exhibit A to this letter.

Article XIV's "forever wild" provision and the SLMP classification system and to act in accordance with all applicable state and federal law." Id. at 2; (emphasis added).

Thus, having gone through the UMP review process, roads opened for CP-3 motorized use as a result of the *Galusha* settlement are no different from any other Forest Preserve roads opened for such use, and have no special legal status or exclusion from the legal constraints of the APSLMP, including Wild Forest Basic Guideline Number 4.

CP-3 Roads are Included in the APSLMP's Definition of "Road"

The APSLMP³ defines a "road" as:

an improved or partially improved way designed for travel by automobiles and which may also be used by other types of motor vehicles except snowmobiles, unless the way is a designated snowmobile trail; and is,

- (i) either maintained by a state agency or a local government and open to the general public;
- (ii) maintained by private persons or corporations primarily for private use but which may also be open to the general public for all or a segment thereof;
- or,
- (iii) *maintained by the Department of Environmental Conservation or other state agency and open to the public on a discretionary basis.*

APSLMP at 20; (emphasis added).

CP-3 roads meet the italicized portion of the APSLMP's definition of "road" because (i) they are maintained by DEC; (ii) they are open to members of the public who have a CP-3 permit (*i.e.*, meet the definition of "qualified person with a disability" in CP-3); and (iii) the opening is on a discretionary basis, because such roads are open for motor vehicle use only to members of the public possessing a CP-3 permit, and persons wishing to participate in the program must apply to DEC for the permit, meet specified criteria in order to obtain the permit, and DEC has the discretion to deny the application. *See* CP-3 at 3, 5-6. DEC also has discretion to close the roads to motorized use by CP-3 permit holders as needed for environmental and/or public safety reasons. *Id.*

Because CP-3 roads fall squarely within the APSLMP's definition of "road" they are subject to Wild Forest Basic Guideline Number 4. Indeed, excluding CP-3 roads from the ambit of Basic Guideline Number 4 would mean there is no limit whatsoever on the mileage of Wild Forest roads that can be opened to CP-3 motorized use.

³ Available at https://apa.ny.gov/Documents/Laws_Regs/APSLMP.pdf

Conclusion

Because CP-3 roads, including all roads opened to CP-3 permit holders pursuant to the *Galusha* Consent Decree, meet the APSLMP's definition of "road," all existing CP-3 road mileage on Wild Forest lands in the Adirondack Park must be included in the Agency's assessment of whether there has been a material increase in road mileage on Wild Forest lands since 1972.

Alternative 4, currently under consideration as part of the Agency's review of the APSLMP's "no material increase" directive, is legally flawed because it excludes the mileage of CP-3 roads from its tally of existing road mileage. Because of that impermissible omission, Alternative 4 mistakenly concludes that there has been no material increase in road mileage on Wild Forest lands since 1972. Thus, Alternative 4, and any other alternative that does not include CP-3 road mileage in the tally of existing road mileage on Wild Forest lands, must be rejected by the Board, as being inconsistent with the APSLMP.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato", with a stylized flourish at the end.

Christopher Amato
Conservation Director and Counsel

Cc: APA Board Members
Christopher Cooper, Esq., APA Counsel
Megan Phillips, APA Deputy Director for Planning
Tom Berkman, Esq., DEC Deputy Commissioner and General Counsel
Katie Petronis, Esq., DEC Deputy Commissioner for Natural Resources
Fiona Watt, Director, DEC Division of Lands and Forests
Molly Breslin, Esq., DEC Office of Counsel
Josh Clague, DEC Adirondack Coordinator
Ashley Dougherty, Esq., Executive Chamber

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THEODORE E. GALUSHA, TEENA
WILLARD, and WILLIAM SEARLES

Plaintiffs,

- against-

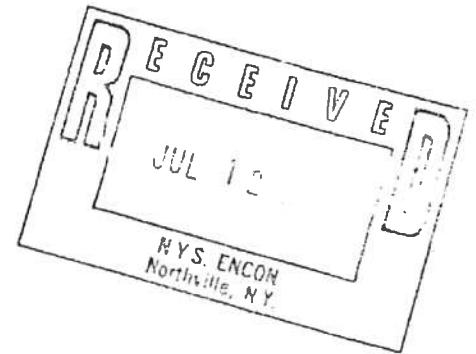
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
JOHN P. CAHILL, sued herein in his official
capacity as Commissioner of the New York
State Department of Environmental
Conservation, ADIRONDACK PARK
AGENCY OF THE STATE OF NEW YORK,
DANIEL T. FITTS, sued herein in his official
capacity as Chairman of the Adirondack Park
Agency of the State of New York, GEORGE E.
PATAKI, sued herein as Governor of the State
of New York, JOHN DOE, Individually, and
STATE OF NEW YORK,

Defendants,

- and -

ADIRONDACK COUNCIL, ADIRONDACK
MOUNTAIN CLUB, RESIDENTS
COMMITTEE TO PROTECT THE
ADIRONDACKS, ENVIRONMENTAL
ADVOCATES, ASSOCIATION FOR THE
PROTECTION OF THE ADIRONDACKS,
GRAHAM L. COX, LISA M. GENIER,
DEBRA HAMILTON and EARNEST B.
LaPRAIRIE,

Intervenor-Defendants.



CONSENT DECREE

Civil Action
No. 98-CV-1117
(LEK-RWS)

Plaintiffs Theodore E. Galusha, Teena Willard and William Searles ("Plaintiffs") and Defendants New York State, New York State Department of Environmental Conservation, Adirondack Park Agency of the State of New York, John P. Cahill, in his official capacity as Commissioner of the New York State Department of Environmental Conservation ("DEC"), Daniel T. Fitts, in his official capacity as Executive Director of the Adirondack Park Agency ("APA") of the State of New York, and George E. Pataki, as Governor of the State of New York, (hereinafter collectively "Defendants"), and Intervenor-Defendants Adirondack Mountain Club, Inc., Adirondack Council, Residents' Committee to Protect the Adirondacks, Environmental Advocates, Association for the Protection of the Adirondacks, Graham L. Cox, Lisa M. Genier, Debra Hamilton, and Ernest B. LaPrairie (collectively "Intervenor-Defendants") hereby agree as follows:

WHEREAS the Defendants are charged by Article XIV of the New York State Constitution, statute, regulation and the Adirondack Park and Catskill Park State Land Master Plans ("SLMPs") to act as stewards and, in the case of DEC, land manager for the Forest Preserve within the constraints of New York State Constitution Article XIV's "forever wild" provision and the SLMP land classification system and to act in accordance with all applicable state and federal law;

WHEREAS Plaintiffs have commenced an action under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 *et seq.* and 42 U.S.C. § 1983, alleging that

Plaintiffs have been discriminated against, and seeking motor vehicle access in various locations in the Adirondack Forest Preserve;

WHEREAS Plaintiffs seek injunctive relief, compensatory and punitive damages and attorneys' fees in this action;

WHEREAS Defendants and Intervenor-Defendants have denied Plaintiffs' allegations and asserted, *inter alia*, that neither the ADA nor 42 U.S.C. § 1983 requires motor vehicle access to recreational programs on any state lands, particularly state lands located in the Forest Preserve;

WHEREAS the Defendants affirm their commitment to provide reasonable access to recreational programs within the Forest Preserve for persons with disabilities;

WHEREAS the Defendants have the legal obligation and authority to determine whether, where and in what manner reasonable access to recreational programs within the Forest Preserve for persons with disabilities, particularly mobility-related impairments, shall exist;

WHEREAS Defendants recognize the importance of incorporating the needs and perspectives of persons with disabilities into the unit management planning process;

WHEREAS the parties wish to resolve the instant lawsuit in an equitable manner and to avoid potentially lengthy and costly litigation; and

WHEREAS the Court has considered the matter and issues;

IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

SECTION I. Description of Settlement

In consideration of Plaintiffs' (1) agreement to discontinue the instant litigation with prejudice and settle any and all claims under the ADA and 42 U.S.C. § 1983 raised, or that could have been raised, in the complaint against the Defendants concerning any matter relating to the Adirondack Forest Preserve and/or any other State Forest Preserve including, but not limited to motorized access at locations in the Forest Preserve by persons with disabilities, and compliance in any manner with the ADA; (2) agreement to discontinue all claims for attorney's fees, except as otherwise set forth in paragraph H of Section III of this Consent Decree; and (3) representation that they presently know of no other actual or potential causes of action that they have or may have against the State of New York, its departments, employees, agents or elected officials for anything whatsoever, Defendants agree to provide the following:

A. Expedited UMPs. DEC and APA commit to develop and process Unit Management Plans ("UMPs") for Wild Forest areas within the Adirondack Forest Preserve and on other state lands, consistent with all applicable law as follows:

1. DEC will prepare and submit amendments to existing UMPs and supporting SEQRA documentation in final form to include provisions as set forth in this Consent Decree, to

the APA for commencement of the public review process for the following Units within six months of the entry of this Consent Decree:

- Aldrich Pond Wild Forest
- Black River Wild Forest
- Cranberry Lake Wild Forest
- Fulton Chain Wild Forest
- Grasse River Wild Forest
- Hammond Pond Wild Forest
- Independence River Wild Forest

2. DEC will prepare and submit draft UMPs and supporting SEQRA documentation in final form to include provisions as set forth in this Consent Decree, to the APA for commencement of the public review process for the following Units within eighteen (18) months of the entry of this Consent Decree:

- Lake George Wild Forest
- Horseshoe Lake Wild Forest
- Wilcox Lake Wild Forest
- Moose River Wild Forest
- Shaker Mountain Wild Forest
- Vanderwacker Wild Forest

3. DEC will involve representatives of the New York State Independent Living Center Council, Inc. and/or Eastern Paralyzed Veterans Association, and other persons with disabilities, in unit management planning, and will consider recreational opportunities for persons with disabilities in the course of developing all future UMPs.

B. Capital Projects. DEC will implement, over a five-year period following entry of this Consent Decree, capital projects to enhance accessibility to recreational programs for persons with disabilities within certain areas classified as Wild Forest, Intensive Use and Historic within the Forest Preserve, as well as locations outside the Forest Preserve, as set forth and described in Exhibits C, D, E, F and G [approximate cost of \$ 4.312 million]. Insofar as any such project constitutes a new facility, otherwise applicable permit or review requirements shall not be superseded or made inapplicable by this Consent Decree. As set forth in more detail in Exhibits C, D, E, F and G, the capital projects include constructing and/or improving parking, restroom and showering facilities, access to fishing opportunities, campgrounds, picnic areas, recreational trails, equestrian mounting platforms, boat launches, signage, promotional materials and road rehabilitation. In addition, DEC will commit to upgrade the Warrensburg DEC Sub-office to ADA Accessibility Guidelines ("ADAAG") and/or appropriate New York State Uniform Fire Prevention and Building Code provisions. [approximate cost of \$350,000]

C. Expanded Motorized Access to Programs in the Forest Preserve.

1. As described in Exhibit A, DEC will propose, and DEC and APA will support through the UMP amendment process, motor vehicle access for persons with disabilities holding permits under Policy CP-3, subject to closure for seasonal conditions in the discretion of DEC as land manager for the Forest Preserve, including reasonable closure for environmental and/or public safety reasons, at the following locations, for access to the programs listed below:

<u>UMP</u>	<u>Road Name</u>	<u>Miles</u>	<u>Program</u>
Indep. River	Mount Tom	4.7	Wildlife Observation

Indep. River	Branaugh	0.25	Hunting Camping Hunting Swimming
Lake George	Bear Slide	0.97	Fishing
Wilcox Lake	Fishpond (Upper)	2.10	Fishing
Moose River	Mitchell Pond	1.77	Camping Fishing
Moose River	Helldiver Pond	0.50	Hunting Fishing
Moose River	Icehouse Pond	0.50	Hunting Fishing
Moose River	Lost Ponds	0.92	Hunting Fishing
Moose River	Beaver Lake	2.25	Camping Hunting Fishing
Moose River	Squaw Lake	0.50	Camping Hunting Fishing
Shaker Mtn.	Holmes Lake	5.08	Hunting

Total: 19.54 miles

2. As described in Exhibit H, the following roads, opened for motor vehicle access to persons with disabilities holding permits under Policy CP-3 by court order, shall remain open subject to final approval in the UMP process, subject to closure for seasonal conditions in the discretion of DEC as the land manager for the Forest Preserve, including reasonable closure for environmental and/or public safety reasons:

<u>UMP</u>	<u>Road Name</u>	<u>Miles</u>	<u>Program</u>
Lake George	Gay Pond	3.3	Camping Fishing
Lake George	Jabe Pond	0.1	Camping Fishing

Lake George	Lily Pond	2.3	Camping Fishing
Lake George	Buttermilk Roads	3.5	Camping Fishing
Luzerne Campground	Lake Luzerne Campsite - 4th Lake	2.44	Camping Fishing
Moose River Plains	Rock Dam, Otterbrook, Indian Lake, Limekiln Lake- Cedar River	36.1	Camping Fishing Wildlife Observation

Total: 47.74 miles

3. The roads and trails outside the Forest Preserve identified in Exhibit B will be added to the list associated with Commissioner Policy CP-3, and will be posted for ATV, truck and/or car use, as appropriate and as set forth in Exhibit B, by persons with disabilities holding permits under Policy CP-3, as soon as practicable following entry of this Consent Decree, but in any event, no later than ninety days after entry of this Consent Decree.

4. In accordance with the statements of the parties on the record at the conference with the Court on March 15, 2001, the following process will be implemented in the event that any road identified in paragraph I.C. is not ultimately approved through the UMP process:

a. The parties shall consult with respect to proposing through the UMP amendment process alternative road(s) which are comparable, with respect to mileage and program, to the road(s) that were not ultimately approved.

b. Plaintiffs may propose through the UMP amendment process alternative road(s) which are comparable, with respect to mileage and program, to the road(s) that were not

ultimately approved. In the event Plaintiffs make one or more of such proposals, the UMP amendment process involving such proposals shall be completed within 24 months of the entry of this Consent Decree, or as otherwise agreed to by the parties.

c. In the event an alternative road proposed by Plaintiffs through the UMP amendment process is not ultimately approved through such process, Plaintiffs may apply to the Court with respect to opening alternative road(s) which are comparable, with respect to mileage and program, to the road(s) not ultimately approved through the UMP amendment process. All parties reserve all rights with respect to any application made by Plaintiffs pursuant to this subparagraph.

d. The phrase "comparable, with respect to mileage" as used in this . . . Consent Decree shall mean that the total mileage of any road proposed as an alternative to a road not approved through the UMP process, or through the UMP amendment process as set forth in paragraph I.C.4.c., shall be, as nearly as practicable, the same total mileage as the road not approved; provided, however, that such alternative road may differ in length in an amount not to exceed .5 miles, or as agreed to by all parties. In addition, the phrase "comparable, with respect to ... program" shall mean a program comparable to the program(s) associated with the road(s) not opened through the UMP process or UMP amendment process, such as, for example, hunting, fishing, camping, or wildlife observation, or as agreed to by all parties.

D. Expanded Non-Motorized Access to Programs in the Forest Preserve

1. Defendants commit to establish, within six months of entry of this Consent Decree, a system for qualifying persons with disabilities for the use of existing non-motorized

G. Severability. If any provision of this Consent Decree is determined, by court ruling, order, decision, memorandum and/or opinion, to be invalid or otherwise contrary to law, such ruling, order, decision, memorandum and/or opinion shall not affect the continuing validity of the remaining provisions of this Consent Decree.

H. Entire Agreement. This Consent Decree, with Exhibits A-H incorporated by reference and attached hereto, constitutes the entire agreement entered into by the parties to settle this matter. By signing this Consent Decree, each party acknowledges that, except as set forth in paragraph III.D. concerning the continuing jurisdiction of the Court, entry of this Consent Decree will result in complete termination of this action including extinguishing all claims asserted in this action and any potential appeals, with prejudice.

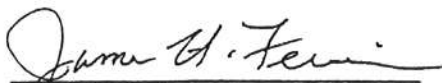
I. Authority. The undersigned representative for each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Consent Decree and to bind them to it.

THIS DECREE IS AGREED TO BY ALL PARTIES, AS AMENDED
IN OPEN COURT ON THE RECORD ON JULY 5, 2001.

Dated: May 31, 2001
Albany, New York

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



JAMES H. FERREIRA, ESQ.
Deputy Commissioner and General Counsel
625 Broadway
Albany, NY 12233-3254
(518) 485-7707



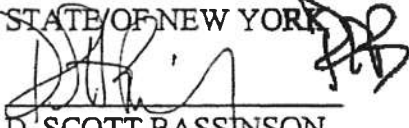
Dated: May 31, 2001
_____, New York

RICHARD LEFEBVRE
CHAIRMAN
ADIRONDACK PARK AGENCY

By: _____
RICHARD LEFEBVRE
P.O Box 99, Route 86
Ray Brook, New York 12977
(518) 891-4050

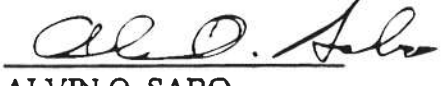
Dated: May 31, 2001
Albany, New York

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

By: 
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Dated: May 31, 2001
Albany, New York

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ATTORNEYS FOR PLAINTIFFS

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(518) 438-4349 (fax)

Dated: May 31, 2001
Canton, New York

RICHARD LEFEBVRE
CHAIRMAN
ADIRONDACK PARK AGENCY

By: 

RICHARD LEFEBVRE
P.O. Box 99, Route 86
Ray Brook, New York 12977
(518) 891-4050

Dated: May __, 2001
Albany, New York

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

By: _____

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(518) 473-2534 (fax)

Dated: May __, 2001
Albany, New York

DONOHUE, SABO, VARLEY
& ARMSTRONG, P.C.
ATTORNEYS FOR PLAINTIFFS

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Bar Roll No. _____
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March 8, 2023

Barbara Rice, Executive Director &
John Ernst, Chair
NYS Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

Dear Barbara and John,

During the February Agency meeting members and staff continued to debate Wild Forest guideline 4, “no material increase in the mileage of Wild Forest roads and snowmobile trails open to motorized uses by the public” than existed in 1972 when the Master Plan was first adopted.

“Public use of motor vehicles will not be encouraged,” continues the Master Plan, which also defines public roads on the Forest Preserve as being “designed for travel by automobiles and which may also be used by other motor vehicles.”

In February, you asked for a fourth alternative interpretation of Wild Forest guideline 4, that being: “The current estimated mileage of roads in lands classified as Wild Forest, 206.6 miles, does not constitute a material increase in road mileage since 1972, nor would increases of mileage up to and including the 1972 estimated mileage of 211.6.”

The fact that today there could be fewer miles of roads on Wild Forest open to public motorized uses than existed in 1972 could result in several ways. For instance, DEC could have counted motorized roads as existing back in 1972 that were not roads “designed for travel by automobiles,” as defined under the Master Plan, but in fact were old wagon paths not so designed. That possibility should be carefully re-examined today. Re-examination may result in fewer miles of Wild Forest roads open in 1972.

Alternatively, some Agency members today appear comfortable deciding not to count the miles of roads open now, or potentially open in the future exclusively to persons with disabilities. The assumption that such CP-3 routes not be counted significantly reduces the road mileage today. As APA staff have previously reported, counting CP-3 road mileage or potential mileage under approved Unit Management Plans adds 38 miles of motorized roads, yielding a total of 244.7 miles on Wild Forest, or a roughly 16% increase from the stated 1972 mileage.

Agency staff made the point in February that while some on the Agency may be assuming that such CP-3 roads are not Wild Forest motorized roads and that CP-3 permittees are not members of the public, such assumptions may not be valid.

In documents released to us by the Agency under FOIL, the historical record suggests that assumptions that CP-3 roads should not be counted and that CP-3 permittees are not members of the public are unsupported. Those documents include APA memorandum dated Dec. 17 1996, stating that Agency staff met with DEC staff "to discuss identifying DEC roads currently opened for public use of motor vehicles and to quantify the approximate miles of roads open in 1972...all part of an effort to develop a comprehensive park wide list of roads legally open to motor vehicles as part of the Department's new policy allowing people with disabilities to use motor vehicles on state land in the Park" (emphasis ours).

The memo infers that roads legally open to motor vehicles on Wild Forest included and incorporated the policy (which became CP-3) authorizing persons with disabilities to use motor vehicles. It infers that CP-3 permittees are considered members of the public and the roads driven by the permittees are to be counted toward Wild Forest road mileage under the Master Plan.

Another document released by the Agency is a Nov. 17 1997 letter from the DEC Lands and Forests director to the National Park Service Equal Opportunity Program Manager, copied to the Agency. The letter discusses increasing access for persons with disabilities. However, states DEC, "as we emphasized in our October meeting with you, we are precluded from designating roads or trails for such access where current law prohibits us from doing so. As you know, the Adirondack and Catskill Park and Department rules and regulations currently prohibit the public use of motor vehicles on most locations on state lands within the two parks." Here, again, DEC seems to confirm what APA staff asserted the prior year that public use of motor vehicles on Wild Forest included and incorporated such use by persons with disabilities.

We believe there are other historical documents at the Agency which may further confirm prior Agency determinations that persons with disabilities, CP-3 permittees, are members of the public and that roads open to their motorized use are Wild Forest roads subject to Guideline 4. Some of these additional documents were withheld from our FOIL request, but ought to be immediately made available to members of the Agency. Given the importance of this Master Plan guideline, and the impacts of road presence and uses so well documented by your staff, all Agency members should, after these many months, now be in possession of all relevant historical documents at the Agency pertaining to "no material increase."

Thank you, and sincerely,

A handwritten signature in cursive script, appearing to read "David Gibson".

David Gibson, Managing Partner

Adirondack Wild: Friends of the Forest Preserve

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Cc: Agency Members and Designees

Agency Counsel Chris Cooper

Agency Planning Megan Phillips

DEC Natural Resources Katie Petronis

DEC Lands and Forests Josh Clague

DEC Region 5

Executive Chamber, Ashley Dougherty



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Christopher Amato, Esq.
**Conservation Director
and Counsel**

March 14, 2023

Hon. John L. Ernst, Chair
Board Members
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

RE: APA Policy Revisions Proposed for the APA Policy & Guidance System and for the Agency Public Comment Policy

Dear Chair Ernst and APA Board Members:

Protect the Adirondacks ("PROTECT") submits this comment letter regarding the proposed revisions to the APA Policy & Guidance System and to Agency Public Comment Policy. We find it concerning that these proposed policy revisions were added to the Agency's agenda for its meeting on March 16, 2023 with little to no public notice and no formal public comment period. The Agency should provide a written public comment period before adopting these revisions. We also find it concerning that the Agency is reducing the opportunity for written and verbal public comments.

APA Policy & Guidance System

According to the memorandum to you from the Agency's counsel, dated March 9, 2023, this policy revision was prepared "[a]t the direction of the Board". It is unclear what direction the Board provided to staff in preparing the proposed revisions. The Board's direction should be discussed by the Board at an Agency meeting so that the public understands the basis for these changes.

While we applaud the Agency for intending to develop and adopt new or revised policies "in a public process", the proposed revisions to the APA Policy & Guidance System are reducing the opportunities for public review of, and input on, Agency policy adoption. The proposed revisions remove the three-step process for adopting new or revised policies, and

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replace that process with a vague and discretionary process for public review and comment. Instead of requiring a minimum of three meetings, the Agency may adopt new or revised policies at a single Agency meeting.

In addition, the proposed revisions imply that public comments can be submitted on the new or revised policies, but there is no minimum comment period established, no public notice requirement, and no minimum amount of time that the new or revised policies must be available to the Board Members and to the public in advance of an Agency meeting.

The Agency's "Government Transparency Initiative Plan" dated October 20, 2021 states that the Agency "[r]outinely posts all programmatic and meeting materials one week ahead of the monthly Agency Board meeting". However, the agenda and materials for an upcoming Thursday meeting are typically not posted to the Agency's website until the afternoon on Friday before the meeting. That means that the public, pursuant to the current Public Comment Policy, has only two and half business days (by noon on the day before the meeting) to review and submit a written comment on a new or revised Agency policy. Pursuant to the proposed changes to the Public Comment Policy, the window for submitting written comments will be even shorter, as discussed in the next section.

The draft Agency Policy & Guidance System should be modified to require the Agency to post all proposed new or revised policy documents to the Agency website at least eight days prior to the scheduled Board meeting. That would provide the public with five business days to review the materials in advance of a Board meeting and be able to provide meaningful input.

Moreover, the draft Agency Policy & Guidance System should also be amended to state that public notice of the proposed new or revised policy will be published in the Environmental Notice Bulletin at least one week prior to the Agency meeting in which the policy will be considered for action.

These two revisions are critical given that the changes to the Agency Public Comment Policy, discussed below, will require that written comments be provided to the Agency even earlier than what is required under the current policy. It is unfair to the public, and weakens the Agency's purported goal of transparency, if new policies can be added to the agenda without formal public notice, with only one business day for submitting written comments, and no opportunity for providing verbal comments.

Agency Public Comment Policy

According to the memorandum to you from the Agency's counsel, dated March 9, 2023, this policy revision was prepared "[a]t the direction of the Board Chair". It is unclear what direction the Chair provided to staff in preparing the proposed revisions. The Chair's direction should be discussed by the Board at an Agency meeting so that the public understands the basis for these changes.

Verbal Comments

The proposed changes include eliminating the public comment period at the beginning of Agency meetings. Since the Agency is proposing to move the public comment period to the end of the meeting, after all of the Agency business has been completed, there is no need for an overall time limit (proposed to be 20 minutes) on the length of public comment provided to the Agency. This will ensure that everyone who has made the effort to appear in person and virtually will be afforded the opportunity to use their three minutes to address the Board. We note that there is no similar time cap placed on comments made by Board members or staff at the end of the meeting, when sometimes Board members give lengthy remarks, often of their latest outdoor adventure, which do not relate to Agency business. We believe that Board members and staff should be limited in their general comments at the end of the meeting to the same time limits placed upon the public.

Additionally, we believe it is unfair to cap public comments at 20 minutes. If a member of the public has traveled to Ray Brook, which can be a considerable distance for some people, with the intention of making a public comment, they should be afforded that opportunity if they are present.

Moving the comment period to the end of the meeting eliminates the ability of the public to comment on matters before the Agency – such as new or revised policies – that have not been the subject of a noticed public comment period. The Agency should provide a means for the public to offer verbal comments to the Board, *prior to the Board taking action*, on matters that have not been the subject of a noticed public comment period. Not every member of the public has the time or means to submit an electronic comment.

Written Comments

We support the proposal to accept written comments only during the open public comment period for “matters for which a noticed public comment period is held”. We also support the proposal to accept written comments only as part of the official record of the proceeding for matters that are the subject of an adjudicatory hearing. The policy should be revised to reflect how those written comments will be disseminated to the Board Members for your deliberations in those matters.

We are not opposed to the proposal to move up the deadline for providing written comments to the Board from noon the day before the meeting to “close of business” three days before the Agency meeting. However, that proposal must be coupled with a change in policy that requires the Agency to post all materials to the Agency website at least eight days prior to the scheduled Board meeting. The additional time will give the public a fair opportunity to review and comment on the materials that are not part of a notice public comment period or an adjudicatory hearing. Otherwise, according to current Agency practice of posting materials online late on Friday afternoon, the public would be required to review all of the materials, conduct extensive legal and policy research, and prepare written comments over the weekend and on one business

day. That is an unfair burden to place on the public, especially when it can be remedied by simply having the materials posted online by the Agency earlier.

Furthermore, since public comments will be provided to the Agency three days in advance of the meeting, the policy should state clearly how those public comments will be disseminated to the Board Members in advance of the meeting so that you can review them and give them meaningful consideration.

Finally, the policy should clarify what is meant by “close of business three business day” [sic] (e.g., if the meeting is Thursday, is the deadline the preceding Friday or presumably Monday, and is it 4:00pm, 5:00pm, 6:00pm, 11:59pm?), or if the policy will not be “rigidly applied”, as the current policy states.

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on these proposed policy revisions.

Sincerely,

A handwritten signature in cursive script that reads "Claudia K. Braymer".

Claudia Braymer,
Deputy Director