



July 27, 2015

Corrie O’Dea
NYS Dept. of Environmental Conservation
232 Golf Course Road
Warrensburg, NY 12885

Re. Essex Chain of Lakes Complex Draft Unit Management Plan (UMP)

Dear Ms. O’Dea:

On behalf of Adirondack Wild: Friends of the Forest Preserve, we recognize The Adirondack Nature Conservancy, the Open Space Institute, Governor Andrew Cuomo, DEC Commissioner Joe Martens and former DEC Commissioner Pete Grannis, for without their efforts and that of their staff to acquire the Essex Chain Lakes and Upper Hudson River for the public, there would be no Forest Preserve here to worry and comment about.

We also recognize Paul Schaefer and his Hudson River Committee members from Newcomb to New York City who from 1965-70 successfully fought against New York City’s efforts to build the Gooley Dam which would have flooded the Upper Hudson River all the way to Rich Lake in Newcomb.

This is a statewide resource, but also a globally significant landscape. Therefore, our recognition also goes to Finch, Pruyn Paper Company, the Town of Newcomb and employees for their history of stewardship of these woods and waters for well over one hundred years.

There is one big improvement in this Draft compared with the Draft UMP presented one year ago: Snowmobiling and related snowmobile community connector objectives are included in this Draft, when they were hidden from public view one year ago. This is a more transparent UMP in this respect, and we appreciate that.

Unfortunately, a similar number and extent of serious legal and policy conflicts, as well as other deficiencies exist for management proposals in this Draft UMP as existed in the Draft submitted and withdrawn by DEC one year ago. These legal obstacles, conflicts and other UMP deficiencies should make it impossible for the APA to find this Draft UMP compliant with the Adirondack Park State Land Master Plan (SLMP). These obstacles include:

Analysis of Alternatives violates SEQRA: SEQRA requires DEC to analyze alternative approaches to achieve the same project with fewer environmental impacts. DEC’s alternatives for snowmobile community connector trails in this Draft UMP lack the necessary rigorous analysis. Some alternatives are

not assessed at all. For example, in discussing alternative routes between Indian Lake and Newcomb the Draft fails to include any analysis of the existing snowmobile connector trail (“O’Neil Flow”) connecting Indian Lake- Blue Mountain Lake and Newcomb via conservation easement land where snowmobiling is expressly authorized. The Draft only describes part of this route, but states: “This alternative was discarded because of its indirect approach towards reaching Minerva, and because of the uncertainty surrounding the use of the conservation easement roads during timber harvesting activities.” The O’Neil Flow Trail was created by the Conservancy as a community benefit of the Finch land conservation transaction in c. 2008. Just inside the woods between Indian Lake and Blue Mountain Lake is a sign clearly marking this route as a 33-mile Newcomb to Indian Lake snowmobile connector. Users of this route will, by use of alternatives proposed to Minerva, eventually be able to reach that community as well as Long Lake. Use of O’Neil Flow trail is only ten miles longer than the preferred alternatives. “Indirectness” of snowmobile connector trails is nowhere defined or prohibited, so DEC’s use of the term as a reason to reject an alternative is entirely arbitrary.

Violation of the Snowmobile Trail Guidance Document (2009): DEC’s own Snowmobile Trail Guidance document of 2009 states: “New and rerouted snowmobile trails, through the acquisition of easements or other access rights from willing sellers, will be sited on private lands rather than State lands wherever possible to minimize impacts on the Forest Preserve.” DEC’s rejection of a private land/conservation easement alternative with virtually no analysis or discussion in favor of a new trail on Forest Preserve east of the Hudson River involving considerable tree-cutting, bridging and other disturbance is a stark violation of SEQRA/SLMP-required alternatives analysis, and the Snowmobile Trail Guidance document.

Additional examples of violations of the SEQRA alternatives requirement and the Guidance include the snowmobile community connection between Drakes Mill Road and Newcomb. Alternative 2a along Goodnow Flow Road and then onto conservation easement lands into Newcomb is a current snowmobile route yet is rejected in this Draft because “because there is a history of private land issues related to snowmobiling in this area, and the use of a Town road for a long distance is not ideal when other alternatives exist.” No attempt is made to explain why the private land issues cannot be mitigated, how “long distances” along Town Roads are defined, or why policy pre-empts use of portions of a Town Road to connect communities.

The Draft fails to discuss how rejection of this alternative is consistent with statements from the 2009 DEC/APA Snowmobile Guidance, including the one cited earlier involving private land under conservation easement and this: “New and rerouted snowmobile trails will be sited, when possible, along existing routes or previously existing old routes such as foot trails, all-season roads, utility rights of way and abandoned railroad beds in lieu of constructing entirely new trails.” Yet, DEC’s Draft proposes to construct a new 9-12’ snowmobile corridor through the Vanderwhacker Wild Forest east of the Hudson River, subjecting that Forest Preserve to new tree cutting and no fewer than ten bridges over wet areas and streams. Therefore, in violation of SEQRA there seem to be more, not fewer, environmental impacts resulting from DEC’s preferred alternative.

The UMP snowmobile community connector alternatives discussion also fails to confront this declarative statement from the Snowmobile Guidance Document: “only rarely are any segments of them located further than one mile away from the nearest of these corridors. They are not duplicated or paralleled by other snowmobile trails.” The preferred alternatives are located more than one mile away from motorized corridors and duplicate the existing O’Neil Flow Trail in that both O’Neil Flow and the preferred alternative connect Indian Lake with Newcomb.

Finally, in assessing various alternative management recommendations this Draft UMP fails to take Climate Change into account. The decline in the number of weeks of snow pack and the loss of ice cover even in the central Adirondack Park over the past 50 years is very well-documented. The failure of any Adirondack Forest Preserve UMP to take these facts into account in how winter sports like snowmobiling are planned and managed should be viewed by the DEC and APA as a serious UMP deficiency.

“Grandfathered” Public Motorized Uses do not exist on the Forest Preserve: Throughout the Draft UMP, DEC argues that the public motorized uses on corridors within the Forest Preserve and within Wild and Scenic River corridors - principally for snowmobiling – are allowed by existing law because they are “grandfathered.” If this argument is sustained, then the DEC hamstring its authority to end all manner of prior existing land use which pre-dated State Land acquisition. The Forest Preserve is replete with former land uses long made illegal under the Constitution and statutory and executive law. DEC commonly asserts that when land becomes Forest Preserve, the State buys all fee simple rights and extinguishes all prior underlying rights of ownership - absent a reserved and deeded right. There are no reserved, deeded rights in this case. Yet, DEC illogically argues here for “grandfathered” rights.

According to this Draft UMP motorized uses pre-dated and continued after the Wild, Scenic and Recreational Rivers Act, the State Land Master Plan, etc. therefore continued motor vehicle use is authorized by statute and regulation. While the Rivers statute allows existing uses to continue after designation, it says nothing about such uses continuing after private land reverts to public (Forest Preserve). The Constitution states that the lands of the State now owned or hereafter acquired shall be forever kept as wild forest land. No historical evidence is given that the public had the right to access and drive on the roads during Finch, Pruyn’s ownership and prior to the date of public acquisition in 2012. There is plenty of evidence to the contrary. DEC asserts the novel (and dangerous) theory that activity under private ownership is the equivalent of public activity under State ownership; and that private landowner activity which pre-dated State Land acquisition for the Forest Preserve can continue after the date of State acquisition.

Adirondack Wild concludes that DEC’s grandfathering argument has no basis in the law. UMPs must be in compliance with all existing laws. It should therefore be removed from the Draft UMP.

Motorized bridges over Scenic River corridors are not authorized by current law and regulation: DEC asserts it has the regulatory authority to issue itself a permit to build a new 145-foot snowmobile bridge over the Cedar River, designated Scenic at that point. It asserts it has the authority to allow snowmobile use on the existing iron Polaris Bridge over the Hudson River, also designated Scenic. It cites the “River

Regulations” Part 666 for this authority. Yet, the section DEC cites, 666.13 (5)(E), states that the only circumstances where bridges over Scenic Areas may be permitted are “over a designated river for public roads or for non-motorized open space recreational uses.” Neither the Chain Lakes nor the Camp Six corridors on either side of the “scenic” Cedar River are public roads, they are corridors or trails and the proposed bridge is for a motorized recreational use. Trails are defined in the River regulations as "a marked and maintained path or way four feet or less in width, and located and designed to provide for reasonable access in a manner causing the least effect on the local environment.” Yet the motorized bridge and route in this Scenic River corridor is proposed as 9-12 feet. This section also states “New or extended public roads, private roads open to the public, and any bridges necessary thereto may be constructed only to provide access for the public to the shoreline of a portion of a scenic river area...” Proposed in this Draft UMP is not access to the Scenic river, but a motor vehicle crossing of that river.

Finally, the DEC’s Final Environmental Impact Statement on adopting Part 666 (1986) clarifies beyond question that motorized bridges over the Hudson and Cedar Rivers within the Scenic River corridor are prohibited: "The Regulations have been amended to prohibit motorized open space recreational uses in scenic river areas. Therefore, bridges for this use have been prohibited. The Department agrees that motorized recreational vehicles should not be allowed to operate in scenic river areas due to their relatively undeveloped nature and the concurrent extensive low intensity recreational and other passive outdoor uses which predominately take place within such river areas and conflict with motorized recreational vehicles."

Adirondack Wild concludes that DEC can only authorize snowmobiling across bridges within these Scenic River corridors through a process of re-opening SEQRA, holding hearings, issuing a new Findings Statement, and amending the existing regulations (Part 666).

Driving to the Essex Chain of Lakes by permit violates the State Land Master Plan and the APA Classification Resolution: The Draft UMP recommends that the general public, by permit, be allowed to drive past Deer Pond parking lot for 2 miles to a 4- car parking lot at “the Wild Forest-Primitive boundary” near Fifth Lake. By doing so, the Draft undermines the APA classification resolution for a “motorless” Essex Chain Lakes Primitive Area. Even 4-cars by permit throughout the year encourage the very things DEC does not want: introduction of invasive species into the lakes, and introduction of baitfish into the lakes. The easier DEC makes motor vehicle access for the general public, the more likely that the lakes will become polluted. The proposed action violates the Master Plan’s Primitive Area guidelines by proposing a motor vehicle road to the heart of a Primitive area. Further, it undermines the very purpose of the DEC’s CP-3 program designed to provide exclusive motorized access to persons with disabilities or mobility limitations so that they have an opportunity to experience the same solitude and connection to nature that the general public enjoys. Finally, the APA classification decision in 2013 clearly intended to limit motor vehicle use of this road only to those qualifying for CP-3 access: "Wild Forest access... to the south shore of Fifth Lake was established for the sole purpose of providing access to persons with disabilities."

Adirondack Wild concludes that DEC must remove this action from the UMP in order to be compliant with the APA Classification Resolution, the SLMP and its other UMP objectives to keep the lakes free of invasive species. Able-bodied individuals can wheel their canoes and kayaks the 1.5-2 miles from Deer Pond parking lot to Third or Fifth Lake. If they cannot, they can travel with an individual who can. And rental or sale of canoe & kayak carts adds to the recreational economy.

Retaining the Outer Gooley Farmhouse in violation of the Environmental Conservation Law: The UMP fails to assess how this structure complies with the ECL, specifically ECL 9-0105. That law gives to the DEC authority to retain certain structures deemed historic on the Forest preserve, under certain conditions. One of those conditions is that the State's ownership of the historic structure pre-date the date the law was enacted (1983). The land on which the farmhouse sits was only acquired in 2013, and not acquired prior to the law's enactment in 1983, which is a prerequisite for its preservation and maintenance. The Draft UMP alternatives analysis fails to properly cite the prerequisites of ECL 9-0105. Adirondack Wild concludes that DEC must remove the farmhouse from the Forest Preserve and recommends that it be taken down carefully and rebuilt in the hamlet of Indian Lake as an interpretive exhibit. We support use the building site as a natural/cultural history outdoor exhibit after the building is removed and relocated.

Bicycling: APA has hosted several stakeholder meetings this year to determine whether the State Land Master Plan should be amended to permit bicycling in this Primitive area, in other Primitive areas, or even in Wilderness and Canoe areas. This is a proper discussion to have consistent with the APA's 2013 classification decision. Instead, DEC improperly undermined that stakeholder discussion and the Master Plan by opening up the entire area to bicycling in its interim management plan, thus establishing a pattern of public use that would be extremely difficult to change, and violating the Master Plan's present prohibition on bicycling in Primitive areas unless DEC has taken legal steps to declare these routes to be truck trails designated for such use in a duly completed UMP. DEC should rescind this part of its interim plan, limit bicycling to those routes opened last summer, and await adoption of the UMP and future Master Plan amendments.

Public Appreciation and Understanding of the area: DEC and its partners could do more to enhance public understanding and appreciation of this area. DEC's partnership with the SUNY ESF and the Adirondack Visitor Interpretive Center in Newcomb is a very good thing, but in the UMP the partnership appears limited to issuing camping permits along the Essex Chain of Lakes. While this function is very important in safeguarding these shorelines from overuse, the partnership could go further. Partners could be trained to help Forest Rangers impart information, guidance and interpretation of the area's resources on site with visitors. As demonstrated by the Summit Steward Program in the High Peaks and Dix Mountain Wilderness areas, direct communication with the public is an invaluable tool for encouraging visitors to become active, informed partners for sustainable public use and stewardship. In addition, SUNY ESF faculty and students could be helping the DEC to perform needed public use surveys and studies of the lakes, wildlife, fisheries, human-wildlife interactions, and capacity of the area to withstand human uses. In addition, there could be a designated DEC wilderness manager or point

person for the area whose job it is to coordinate implementation of management actions including studies and surveys to inform and if necessary adjust management activity over the next five years.

Natural Resource Analysis: While the description and inventory of fish, wildlife and habitats in this UMP is significantly improved over last year's draft, this UMP still lacks the requisite analysis and assessment required under the SLMP. The majority of priority recommendations are generally stated, as in "monitor and inventory wildlife populations and their habitats." For an area noted for its ecological importance, including highly-rated and vulnerable wetlands, and with populations of breeding birds, amphibians, mammals and plants vulnerable to this higher intensity of human presence and uses, this UMP should recommend particularly needed or important wildlife studies, how these will be conducted and by whom, and any management implications. Regarding the fishery, while prohibiting the use and possession of bait fish is a good first step, 70 years of fishing use by the Gooley Clubs surely offers data that could be of practical use for considering whether other measures are warranted to conserve the lake and brook trout fisheries now under public fishing pressure for the first time, including the scheduling of a comprehensive fisheries survey and issuing a catch and release regulation. This UMP seems to fall short in not recommending that DEC do what it can to protect and sustain a reproducing Brook and Lake Trout fishery in the Essex Chain.

Conclusions: The Adirondack Park State Land Master Plan (SLMP) requires that Primitive areas be managed as close to a condition of wilderness as possible, and to perpetuate a natural plant and animal community where man's influence is not apparent. According to the SLMP, while recreational pursuits are important, they are to be clearly secondary to resource protection. Yet the majority of the management actions and proposed spending in the Draft UMP are devoted to accommodating new recreational corridors slicing across the core of this wild area.

Unit Management Plans must comply with existing law and regulation. They cannot create new law and regulation. Yet, this Draft UMP attempts to do both. The extent of this serious violation of the SLMP overshadows everything else in the Draft. We remind the DEC of two statements made at the June APA meeting in Ray Brook. The Local Government Review Board's Fred Monroe urged the DEC to ensure that this UMP fully complied with existing law because nobody wished to see UMP implementation held up by legal challenge. And APA member Richard Booth said to the DEC during the APA meeting: "you can undo it, meaning the Wild, Scenic River regulations (and other rules and laws), but not by legal fiction." We urge DEC to take these statements to heart.

This Draft UMP does not comply with the SLMP. DEC should re-write this UMP to forthrightly address and comply with all existing law, regulation, policy and guidance documents. We encourage DEC and APA to form a citizen advisory committee or stakeholder task force that brings the agencies together with the five towns, recreational interests and Forest Preserve advocates together to discuss the legal obstacles, alternative management recommendations, and other constructive forward steps to achieving SLMP compliance.

Thank you for this opportunity to comment.

Sincerely,

David Gibson and Dan Plumley

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