



November 9, 2017

Peter D'Luhosch
Conservation Easement Specialist
NYS Dept. of Environmental Conservation
6739 U.S. Highway 11
Potsdam, NY 13676

Re: Comments on the Kildare, Five Mile, and Raquette-Jordan Boreal Unit Management Plan Amendments

Dear Mr. D'Luhosch:

Earthjustice and Adirondack Wild: Friends of the Forest Preserve ("Adirondack Wild") jointly submit these comments regarding the proposal by the New York State Department of Environmental Conservation ("DEC" or "Department") to amend the Unit Management Plan ("UMP") for the Raquette-Jordan Boreal Primitive Area (the "Boreal Primitive Area")¹ to allow construction of a new 1.25-mile road for the purpose of providing increased motorized access to the Boreal Primitive Area and adjacent conservation easement lands.

The proposed UMP amendment should be withdrawn for several reasons. First, the proposed amendment would increase public motorized access to the Boreal Primitive Area and adjacent conservation easement lands even though the Department has not conducted the baseline motorized use studies that the UMP requires be completed prior to any proposal to increase motorized access. The proposed amendment is therefore inconsistent with the commitments

¹ DEC, *Raquette Boreal Unit Management Plan* (Dec. 2006).

made by the Department in the UMP, which were explicitly recognized and relied upon by the Adirondack Park Agency (“APA”) in issuing its December 14, 2006 Consistency Determination.

Second, the Department’s assessment pursuant to the State Environmental Quality Review Act (“SEQRA”)² of the potential environmental impacts of the proposed amendment is deficient. The Department’s SEQRA analysis is limited to the “footprint” of the proposed new road itself, and fails to address potential impacts to the Boreal Primitive Area and other ecologically sensitive areas from the increase motorized access. The proposed amendment would increase public motorized access to remote areas that possess unique and significant natural resources of statewide significance, and that provide outstanding opportunities for solitude, yet the Department has failed to assess the impacts that such increased access may have on those natural resources or on the opportunities for solitude provided by those areas.

Third, the Department has failed to consider or analyze the impacts of the proposed amendment and its resulting increase in motorized access on the long-term prospect of creating a Boreal Wilderness Area, a recommendation of the Commission on the Adirondacks in the Twenty-First Century and of others.

For all of these reasons, discussed in detail below, we urge the Department to withdraw the proposed UMP amendment.

I. The Boreal Primitive Area and Adjacent Lands Contain Natural Resources of Statewide Significance

The Boreal Primitive Area and adjacent lands are home to unique, sensitive and rare ecosystems; protected rivers; and endangered, threatened and rare plant and animal species. In its resolution determining that the UMP for the Boreal Primitive Area was consistent with the Adirondack Park State Land Master Plan, APA noted that the Primitive classification was based on the presence of “biological resources of Statewide significance” as well as on “unique and significant resource values for its sense of remoteness and outstanding opportunities for solitude.”³

A. The UMP Identifies Numerous Unique and Outstanding Attributes

The outstanding natural resource and scenic attributes of the Boreal Primitive Area are explicitly recognized in the UMP:

- The portions of the Raquette, Jordan, and St. Regis rivers flowing through the Boreal Primitive Area have been designated “Scenic” under the New York Wild, Scenic and Recreational Rivers Systems Act.⁴ UMP at 17-18.

² N.Y. Env’tl. Conserv. Law (“ECL”), art. 8.

³ APA, Resolution Adopted by the Adirondack Park Agency With Respect to Raquette Boreal Unit Management Plan, (Dec. 14, 2006) (“Consistency Determination”) at 2.

⁴ ECL art. 15, tit.27

- “Much of the beautiful scenery of the Raquette Boreal Unit can be encountered along the waterways. The 3,000[-]acre Carry Falls Reservoir is readily accessible by boat, offering panoramic views of gently sloping adjacent hills . . . [T]he 15 mile stretch of the Raquette River from Piercefield to Carry Falls is one of the premier routes in the state. The scenery is spectacular along this route with virgin white pine and hemlocks along the riverside. The Jordan River east of the Lassiter Main Haul Road provides a true boreal forest experience as it meanders thru forests of balsam fir, tamarack and black spruce, as well as a variety of wetlands, all more characteristic of northern Canadian boreal forests than the northeast US.” *Id.* at 37.
- “The wetlands of this unit possess great ecological, aesthetic, recreational and educational value.” *Id.* at 18.
- The New York Natural Heritage Program⁵ and the Master Habitat Data Bank identify “eleven notable ecological communities and four rare or endangered animal species and two rare plant species within the Raquette Boreal Unit.” *Id.* at 21
- According to New York State Breeding Bird Atlas data,⁶ 101 species of birds are believed to breed within the Raquette Boreal Unit. Bald eagles, a threatened species have been confirmed as nesting within the unit. Spruce grouse, an endangered species, are found in the unit as well. *Id.* at 30.
- Six endangered, threatened, species of special concern and other unique species are found in the Unit. *Id.* at 33-34.
- The Boreal Primitive Area includes all or portions of approximately 30% (9 of 29) of the sites which are thought to still support the endangered spruce grouse in New York State. Included among these nine sites are several sites that appear to be among the best remaining sites for the species in the state. “The number of sites and their close proximity to one another undoubtedly makes the Raquette Boreal Forest one of the most important areas in the state with regard to the preservation and possible recovery of spruce grouse populations in New York State.” *Id.* at 37.
- The spruce bog complexes in the Unit “also support populations of several other rare boreal specialist bird species that, in New York State, are restricted to the Adirondacks,

⁵ N.Y. Natural Heritage Program, *Raquette Boreal Forest, Rare Species & Significant Ecological Communities* (2002).

⁶ Andrle, Robert F. and Janet R. Carroll (eds.). *The Atlas of Breeding Birds in New York State*, Cornell University Press. Ithaca and London. 1988.

including palm warbler, gray jay, blackbacked woodpecker, boreal chickadee, yellow-bellied flycatcher, and olive-sided flycatcher.” *Id.* at 37-38.

- The Raquette River, which flows through the Boreal Primitive Area, “is one of just four rivers in the state currently known to support the state Special Concern extra-striped snaketail dragonfly.” *Id.* at 38.

B. The Proposed Boreal Wilderness Area

In 1988-89, Adirondack ecologist and planner George D. Davis called for the creation of a Low Elevation Boreal Reserve in southern St. Lawrence and western Franklin Counties.⁷ The entire area covered by the proposed amendment was included in that proposal. Since the low elevation boreal biome (an extensive area of spruce/fir forests and sphagnum bogs) was not then found in any units of the Adirondack Forest Preserve wilderness system, Davis also recommended that a portion of the proposed Adirondack Boreal Reserve be designated a Boreal Wilderness area. The recommendation to create a Boreal Wilderness Area was later adopted by the Commission on the Adirondack Park in the 21st Century.⁸

II. The UMP Recognized that Increased Motorized Access Could Threaten Natural Resources and Therefore Required DEC to Collect Baseline Data Before Allowing Such Access

The UMP noted that, at the time of its preparation, “[c]urrent use levels on the unit [were] relatively low, likely due to the lack of public motor vehicle access to the periphery of the unit.” UMP at 43. Nevertheless, the UMP also acknowledged that illegal use of all-terrain vehicles (“ATVs”) was an ongoing problem in the unit, stating that “[i]mpacts from illegal motor vehicle use are evident on most trails throughout the unit.” *Id.* at 58.

The UMP then explicitly acknowledged the need to assess potential threats to the unique resource attributes of the Boreal Primitive Area posed by increased motorized access:

The New York Natural Heritage Program . . . states the three most significant threats to the long-term viability of the natural communities within the Raquette Boreal Unit are: logging of natural areas, alterations to the hydrology of wetlands and rivers and the continued decline of spruce grouse populations. The report did not identify recreational use, either motorized or non-motorized, as a threat to

⁷ Davis, George D., *2020 Vision, Completing the Adirondack Wilderness System*, Vol. 2, The Adirondack Council (1990).

⁸ The Commission on the Adirondacks in the Twenty-First Century, *The Adirondack Park in the Twenty First Century*, (April 1990) at 54-55.

these communities. *However, a thorough assessment of potential impacts associated with these activities would be required to ensure the protection of these resources, prior to any proposed actions to allow them to occur.*

Id. at 27 (emphasis added).

The UMP went on to warn that “[t]he Raquette Boreal Unit . . . cannot withstand ever-increasing, unlimited visitor use without suffering the eventual loss of its essential, natural character.” *Id.* at 54. In particular, the UMP identified the following potential adverse impacts to the Boreal Primitive Area from motorized uses:

- Pollution of surface waters related to road and trail maintenance activities and motorized use;
- Negative effects on fish and wildlife populations related to road and trail maintenance activities and motorized use;
- The removal of vegetation related to road and trail maintenance activities and motorized use;
- An increase in the need for law enforcement, fire protection, and search and rescue services;
- An increase in the visual impacts related to road and trail improvements and motorized use;
- The creation of safety hazards;
- An increase in noise levels in areas surrounding open roads, trails and related facilities; and
- Effects on significant plant and animal communities.

Id. at 105-07.

In order to ensure that existing levels of use and possible increased use levels did not jeopardize the Unit’s resources, the UMP set forth specific data-gathering and planning commitments, including:

- Develop Limits of Acceptable Change (“LAC”) indicators and standards for vegetation in riparian areas near lakes and streams (*Id.* at 80);
- Develop LAC indicators and standards for soil erosion (*Id.* at 81);

- Monitor and afford extra protection, where warranted, to species which are Endangered, Threatened or of Special Concern that are currently using the Raquette Boreal Unit (*Id.* at 83);
- Conduct biological and chemistry surveys of all ponds within the unit (*Id.* at 84);
- Monitor use of roads utilized under reserved rights of others (*Id.* at 88); and
- Develop uniform method of collecting use data across the unit (*Id.* at 105).

The importance of the UMP’s directive that baseline data on motorized access be collected prior to any consideration of providing increased public motor vehicle access to the Boreal Primitive Area and associated conservation easement lands was underscored in the APA’s Consistency Determination:

[T]he Plan calls for the monitoring of public use to assess changes in use levels, monitoring of motor vehicle use of roads within the unit which are utilized under reserved rights, developing a Limits of Acceptable Change system to monitor and address environmental impacts related to the existence of improvements and facilities in the Unit and prevent illegal motor vehicle use.

Consistency Determination at 2.

To date, the Department has failed to undertake any of the UMP commitments regarding monitoring, collection of baseline data, development of LAC, or assessment of environmental impacts, or control of illegal motor vehicle use.

III. The Proposed Amendment Cannot Lawfully Move Forward Absent the Baseline Studies Required by the UMP

DEC has repeatedly acknowledged that the purpose of the proposed UMP amendment is to provide, for the first time, public motorized access to remote areas in the Boreal Primitive Area and associated conservation easement lands. *See, e.g.*, DEC press release, “DEC Constructing Road Between Two Conservation Easements to Open Remote Area to Public;”⁹ Proposed UMP Amendment at 3 (“This amendment . . . will provide public motor vehicle access for the first time to thousands of acres of conservation easement and Forest Preserve lands.”). However, contrary to the UMP’s requirement that DEC conduct studies and collect vital baseline data prior to proposing any increase in public motorized access, the Department is proposing to open up

⁹ Available at <http://www.dec.ny.gov/press/111365.html> (Sept. 12, 2017);

previously inaccessible areas to public motorized use without having first completed any of the prerequisite studies. DEC's apparent decision to proceed with the amendment in the absence of critical data collection required by the UMP constitutes a material change in planning for the Unit. In the absence of an amendment to the UMP dispensing with the need for the previously required studies, the proposed amendment constitutes a material modification that has not gone through the requisite public process and therefore violates both the UMP and the APSLMP. *See* APSLMP at 12 ("Any material modification in adopted [UMPs] will be made following the procedure for original unit plan preparation."); *see also* N.Y. Exec. Law § 816(1) (specifying that "the master plan for management of state lands *and the individual management plans shall guide the development and management of state lands in the Adirondack park.*" (emphasis added)).

Thus, the proposed amendment cannot move forward in the absence of the prerequisite studies without violating both the UMP and the APSLMP.

IV. The Department's SEQRA Analysis is Deficient

The Department's SEQRA analysis is deficient because (1) the Environmental Assessment Form ("EAF") fails to accurately describe the proposed action and the resources that may be affected by the action; and (2) both the EAF and the Negative Declaration fail to identify and evaluate numerous potentially significant environmental impacts of the action.

A. The EAF Contains Significant Errors and Omissions

Despite the fact that, as noted above, DEC has acknowledged that the proposed connector road will, for the first time, provide public motorized access to remote areas of the Boreal Primitive Area and adjacent conservation easement lands, the EAF limits its description of the proposed action, the affected resources, and potential impacts solely to the "footprint" of the connector road itself. In doing so, the EAF fails to fully and accurately describe the action, the affected resources, or potential impacts as required by SEQRA. *See* 6 NYCRR § 617.2(m) (requiring that an EAF "contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment."). In order to comply with SEQRA, the EAF should have identified and evaluated the potential impacts of the action on the larger environment, specifically the impacts from opening up more than 17 miles of road (the Lassiter Haul Road) to public motorized access for the first time in the Unit's history.

It is important to recognize that the Lassiter Haul Road and its spurs extend to the border of Forest Preserve lands, classified as Primitive and Wild Forest. In fact, the proposed amendment acknowledges that "[i]n addition to providing access to and through the Kildare CE lands, these roads also provide access to the adjacent Raquette River Wild Forest and Raquette-Jordan Boreal Primitive Area." Proposed Amendment at 10. Despite the fact that the amendment acknowledges that the proposed action will, for the first time, provide public motorized access to previously remote areas, the EAF fails to identify or describe the natural resources that exist in those potentially affected areas, including the Scenic Raquette, Jordan, and St. Regis rivers; the numerous high value wetlands in the Unit; the eleven notable ecological communities identified

by the New York Natural Heritage Program; and the six endangered, threatened or special concern species in the Unit.

For example, DEC's Spruce Grouse Recovery Plan¹⁰ shows historic spruce grouse habitat extending from Kildare Pond on the west, to the West Branch of the St. Regis River on the east, and extending to Cold Brook to the south. This area includes the location of the proposed 1.25-mile connector road and many of the roads which will, for the first time, be opened to public motorized access. Yet, this spruce grouse habitat is neither described nor mapped in the EAF. Nor does the EAF identify areas which spruce grouse are known to currently occupy, such as the upper Jordan River. In fact, the proposed public motorized access to the terminus of the Cold Brook Road and East Haul Road appears to come within one or two miles of occupied spruce grouse habitat. However, this fact is not acknowledged or its potential impacts assessed in the Department's SEQRA analysis.

Compounding these significant omissions is the Department's erroneous entries in the EAF concerning potential impacts. For example, in Part 3 of the EAF, DEC checked "No, or small impact may occur" in every box related to Impact on Plants and Animals, despite the documented presence of historic and occupied endangered spruce grouse habitat, the known eleven ecologically significant communities, and the known mapped megawetlands.

B. The EAF and Negative Declaration Fail to Address Numerous Potentially Significant Impacts

The UMP clearly states that DEC is obligated to carefully assess the potential impacts of new public motorized access on the unique and sensitive resources in the Boreal Primitive Area and adjacent conservation easement lands:

Prior to any management proposals to open roads or trails for public motorized uses, a careful assessment of projected use must be conducted, in order to relate how those proposals may impact areas surrounding roads or trails. The New York Natural Heritage Program identifies eleven notable ecological communities, four rare or endangered animal species and two rare plant species within the Raquette Boreal Unit. The protection of these resources is a primary management objective for this plan. *Therefore, prior to any increased public motorized use an assessment of impacts on these communities, associated with that use, must be conducted.*

UMP at 105-07 (emphasis added).

This commitment is reiterated elsewhere in the UMP:

¹⁰ DEC, *Recovery Plan for New York State Populations of the Spruce Grouse (Falci pennis canadensis)* (Dec. 2012).

Currently[,] there is no public motor vehicle access to the Lassiter Easement lands nor the Forest Preserve lands east of Carry Falls Reservoir . . . Should motor vehicle access to the unit be proposed in the future an amendment to this plan will be required *along with a more detailed analysis of potential impacts associated with motor vehicle access.*

Id. at 89 (emphasis added).

DEC's SEQRA analysis fails to comply with the UMP's directive that the Department assess the potential impacts of increased public motorized use on sensitive ecological resources and species in the Unit.¹¹ Indeed, as noted above, the UMP provided a road map for conducting such an assessment by specifically identifying the potential impacts of increased motor vehicle activity, such as pollution of surface waters, negative effects on fish and wildlife, vegetation removal, and visual and noise impacts. *Id.* at 105-07. The UMP also identified an ongoing problem with illegal motor vehicle use, and cited the need for increased law enforcement resources as another potential impact of increased public motorized access. However, neither the EAF nor the Negative Declaration recognize, much less assess, these potential impacts.

As pointed out in the comments on the proposed amendment submitted by Dr. Michale Glennon of the Wildlife Conservation Society,¹² lowland boreal forests are home to some of the rarest bird species in New York State. Dr. Glennon also states that roads, increased vehicular traffic and increased human presence can have significant adverse impacts on sensitive bird species. Neither the EAF nor the Negative Declaration mention or assess these potential impacts.

In any event, DEC cannot currently conduct an adequate assessment of potential impacts associated with increased public motorized access because it has failed to collect the baseline data on motorized uses and related impacts as required by the UMP. As discussed above, the administrative record is clear that DEC was obligated under the UMP to complete an array of studies and data collection prior to any proposal to increased public motorized access. The record is also unequivocally clear that DEC never completed the required studies and data collection. In the absence of the recreational impact studies and monitoring promised under the 2006 UMP, the DEC cannot possibly know whether and to what extent existing, limited motor vehicle and other recreational uses are currently impacting the high value resources in the Unit; what changes in uses and their impacts may have occurred since adoption of the UMP in 2006; or how the increase in public motorized access resulting from the proposed amendment might cause adverse impacts to the broad array of sensitive ecological resources in the Unit.

¹¹ DEC's failure to assess these impacts is also inconsistent with the SEQRA regulations, which require an agency to consider "reasonably related long-term, short-term, direct, indirect and cumulative impacts" 6 NYCRR § 617.7(c)(2).

¹² Ltr. from Michale Glennon, Wildlife Conservation Society, to Peter D'Luhosch, DEC (Nov. 6, 2017).

V. DEC Has Failed to Assess Impacts of the Proposed Amendment on Future Classification of a Boreal Wilderness Area

As noted above, the lands affected by the proposed amendment have previously been identified as potential future components of a new Boreal Wilderness Area. Neither the proposed amendment, the EAF, nor the Negative Declaration recognize this fact. Nor do any of these documents analyze the effect of the proposed amendment on eventual re-classification of the Boreal Primitive Area as wilderness, nor on creation of a new Boreal Wilderness Area encompassing the current conservation easement lands. *See* APSLMP at 8 (prior to classification . . . lands acquired by [DEC] . . . will be administered on an interim basis in a manner consistent with the character of the land and its capacity to withstand use *and which will not foreclose options for eventual classification.*” (emphasis added).

VI. Conclusion

For the reasons set forth above, Earthjustice and Adirondack Wild respectfully request that the Department withdraw the proposed amendment.

Thank you for the opportunity to submit these comments.

Sincerely,



Christopher Amato, Staff Attorney
Earthjustice Northeast Office



David Gibson, Managing Partner
Adirondack Wild: Friends of the Forest Preserve



Dan Plumley, Partner
Adirondack Wild: Friends of the Forest Preserve

Cc: Judy Drabicki, NYS DEC Regional Director, Reg. 6
Fred Munk, NYS DEC Natural Resource Supervisor, Reg. 6
Randall Young, NYS DEC Regional Attorney, Reg. 6
Dave Smith, Senior Forester, Reg. 6
Rob Davies, Director, NYS DEC Div. of Lands and Forests
Basil Seggos, Commissioner, NYS DEC

Kathy Moser, Deputy Commissioner for Natural Resources, NYS DEC
Kathleen Regan, NYS APA
Walter Linck, NYS APA
Sherman Craig, NYS APA
Terry Martino, NYS APA

Earthjustice Northeast Office
48 Wall Street, 19th Floor
New York, NY 10005
T: 212-845-7390 (direct)
F: 212-918-1556
earthjustice.org

Adirondack Wild: Friends of the Forest Preserve
P.O. Box 9247
Niskayuna, NY 12309
T: 518-469-4081
adirondackwild.org