

# THE ADIRONDACK PARK AT A CROSSROAD: A ROAD MAP FOR ACTION

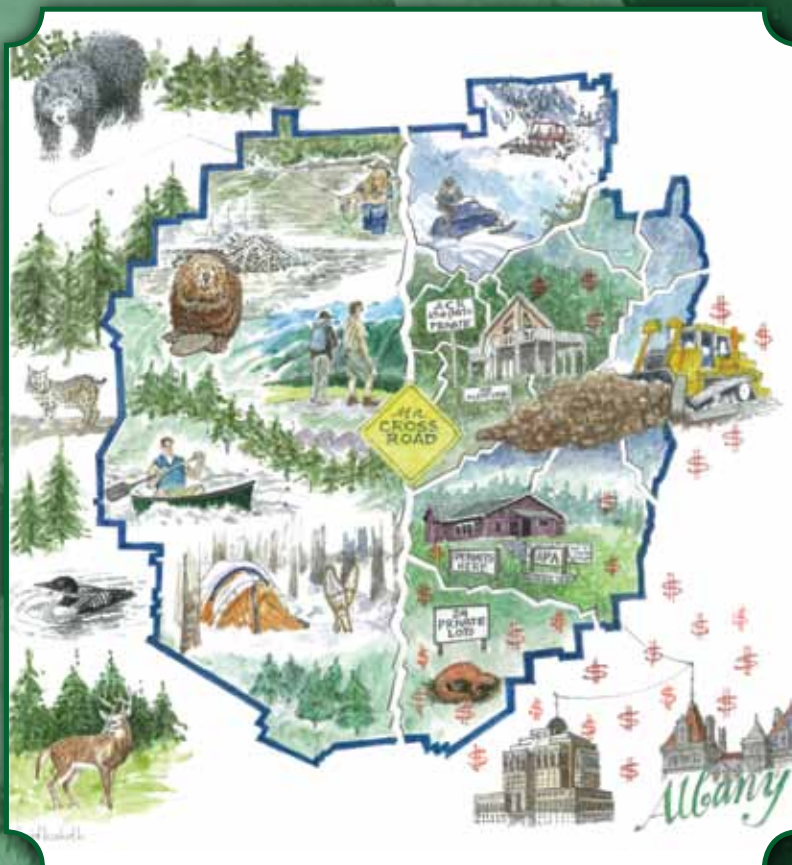




by Adirondack Wild: Friends of the Forest Preserve

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## The Fund in Memory of Ferne Hastings and Clarence A. Petty



The five couplets of images on the front cover show development and destruction of fish and wildlife habitats and wilderness authorized in recent years by the State of New York (in red) compared with more natural conditions or alternative actions which avoid such destructive impacts (in green). *River photos by Naj Wikoff*







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# EXECUTIVE SUMMARY

The Adirondack Park is treasured by New Yorkers, Park residents and people from across the United States and around the world. Most assume that the standards of wilderness and natural resource protection and stewardship in the Park are high. Indeed, in the past dedicated personnel strove for such standards, even if they often fell short. However, recent years have seen a steady and significant erosion of both agency oversight and political will to maintain the fragile integrity of the Park's ecological balance. In fact, today's Park and its natural resources face grave threats. That is the story and the purpose of Part 1 of Adirondack Park at a Crossroad: A Road Map for Action. It is out of concern for the future of the Park that this document grew – to identify the threats and ongoing damage to the integrated public and private landscape of the Adirondack Park, and to recommend ways to avoid these threats and thus pass on one of America's most precious natural assets unimpaired to future generations. As a stakeholder in the Park's future, we invite you to read on.

In the following pages, we document recent permit decisions and management practices by the NYS Adirondack Park Agency (APA) and Department of Environmental Conservation (DEC) which we believe are inconsistent with the constitutional and statutory requirements designed to ensure long term protection of the Park's integrity and which are irreconcilable with the agencies' obligations as the public's trustees of the Adirondack Park. We show how both agencies have departed from past precedent by sacrificing protection of Park resources to economic and recreational development considerations. We explain how the standards now being applied to land use decisions in the Park ignore the paramount statutory duty of protection and stewardship of healthy natural resources, which are also critical to healthy



Dan Plumley speaks with young climber of Cascade Mountain, High Peaks Wilderness Area. Photo by Ken Rimany

local communities and economies. We illustrate how this significant shift in priorities at APA and DEC is having negative impacts on features which make the Adirondack Park unique, including its unbroken, contiguous forest canopy and large expanses of road-less wilderness.

We review examples to demonstrate that these agency actions are part of a larger pattern of allowing increasingly destructive development to proceed with little or no environmental baseline data, only cursory environmental review, and little in the way of avoidance or mitigation of negative impacts.

Our report is issued in two parts. This part, Part 1, seeks to inform, alert and heighten public consciousness about threats to the Park's wild lands and natural resources by APA and DEC permit and management decisions which tend to fragment mostly unbroken forest and other ecosystems into smaller pieces. The Park is so large and its protection so assumed that insults in one area are assumed not to impact the entire region when, in fact, they do. Our report seeks to raise awareness that the Park is an integrated whole. Part 1 concludes with a series of policy, regulatory and legislative recommendations that we believe are needed to address the threats and problems we identify. These recommendations are Adirondack Wild's "*roadmap for action*." We will work with State and private partners and citizens across the state to discuss, promote and achieve these goals.

In Part 2, to be published later this year, we will focus on the crucial roles of local governments, Park communities and landowners in today's Adirondack Park conservation. Part 2 will also contain a prioritized series of recommendations.



# INTRODUCTION AND BACKGROUND

Few protected areas in the world have enjoyed the longevity and intensity of citizen concern and actions for its conservation and protection as the six-million acre Adirondack Park. This iconic American landscape, comprised of a complex mosaic of public and private lands, covers an area one-fifth the size of the entire state of New York, as large as the entire State of Vermont and larger than the combined acreage of Yellowstone, Yosemite, Grand Canyon, Glacier and Olympic National Parks. Its breathtaking landscapes have inspired artists, writers, naturalists and adventurers for over 150 years.

During the latter half of the 20th century, the Adirondack Park also gained global attention. In 1964, the Park's Forest Preserve was granted National Historic Landmark status by the National Park Service. In 1989, because of its protected status, rich diversity of ecosystems and history of scientific research the Park was designated one of the largest and most significant international biosphere reserves in the world: The Champlain-Adirondack Biosphere Reserve. Each year, delegations from around the globe visit the Adirondack Park to learn about its history and complex management of intermingled wild lands and human communities (103 towns and villages) spread over a 9,000 square mile area in upstate New York State, or six million acres, comprising twenty percent of the state.



New York's Adirondack Park is roughly the size of Vermont and larger than the combined acreage of five of our great western National Parks.



The Adirondack Forest Preserve is a National Historic Landmark.

The 1885 law creating the New York State Forest Preserve and the 1892 law creating and defining the Adirondack Park established New York as a national leader in state protection of wild lands. This position was consolidated by passage in 1894 of the “*forever wild*” amendment to the New York State Constitution. So many years later, New York remains the only state in the nation to provide constitutional protection to its state-owned wild lands. The constitutional amendment, known as Article 14 (or Article XIV), mandates that the state-owned forest known as the Forest Preserve in the Adirondack and the Catskill Parks “*shall be forever kept as wild forest land.*”

Article 14 places a check on any attempt by government or private interests to sacrifice the wilderness values of the Forest Preserve for short-term economic or political

expedience. Moreover, in order to ensure that enforcement of Article 14 does not rest solely with government, Article 14 grants any citizen of the State the right to seek redress of violations of Article 14 in the State's courts.

Care for the Forest Preserve is entrusted to the DEC, subject to the restrictions and guidelines set forth in the Adirondack Park State Land Master Plan. In 1971, the APA was created to plan for the future of the Adirondack Forest Preserve and to develop and implement long range planning and regional zoning and regulation of private land uses that complement protection of the Forest Preserve. The APA was directed to do this in cooperation with other state agencies and with local governments. APA was truly groundbreaking; it was one of the earliest regional land planning agencies in the country.



Photo by Ken Rimary

# INTRODUCTION AND BACKGROUND

Given its constitutional and statutory protection and global reputation, it comes as no surprise that most New Yorkers and visitors assume that:

- The natural resources of the Adirondack Park are well protected;
- Existing and potential new threats to the Park's resources are studied, monitored and incorporated into decision making;
- New development proposals are carefully scrutinized and, if found to have inappropriate adverse impacts on Park resources, denied permission to move forward;
- DEC and APA are guided by the mandate that protection of the Park be the paramount consideration, and that DEC and APA ensure that protective laws are enforced.

We report that none of these assumptions are justified today.

DEC and APA currently suffer from a lack of commitment and leadership to ensure that the constitutional “*forever wild*” mandate and protection of natural resources are given priority in agency decision-making. There is a lack of coordinated, well-funded research and monitoring to understand and respond to trends and threats to the Park. Massive, sprawling development projects have been recently approved after inadequate environmental review.



Wilderness conservationist Paul Schaefer at his camp in the Town of Johnsburg, Warren County. Paul founded Friends of the Forest Preserve in 1945, the forerunner to Adirondack Wild: Friends of the Forest Preserve. Photo by Paul Grondahl

And management of the public's Forest Preserve and its sensitive physical and biological resources is increasingly focused on allowing more destructive forms of public access and use of Forest Preserve regardless of resulting adverse impacts to resources or to the wild forest character of the public's land.

The Adirondack Park is at a crossroad. In one direction lies the continued encouragement and approval of projects which fragment the Park. In the

other direction is a Park where development is carefully planned to avoid sensitive habitats and preserve large blocks of connected open space; where environmental baseline data and trends are collected on a regular basis and factored into agency decision making; where development projects undergo a rigorous and public environmental review; where DEC and APA fulfill their legal duty to place

protection of natural resources above other important considerations; and where Forest Preserve management decisions protect and restore damaged resources, avoid overuse, limit motor vehicle intrusion, and maintain and restore wild forest character.



Boreal forest in Moose River Plains Wild Forest. Photo by Ken Rimany



# ADIRONDACK PARK AGENCY

The APA's statutory mission is *"to insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park."*



Adirondack Wild's Dan Plumley making comments at an APA meeting. Photo by Ken Rimany

Additionally, the APA

*"is to focus the responsibility for developing long-range park policy in a forum reflecting statewide concern. This policy shall recognize the major state interest in the conservation, use and development of the Park's resources and the preservation of its open space character, and at the same time provide a continuing role for local government"* (APA Act, Section 801).

Contrary to its legislative charter, the APA, the lead agency for planning, protection and administration of the Park, has become a politically reactive and compliant permitting agency and not the proactive guardian of Park resources that it was intended to be, and actually was in prior years.

There was a time when the APA took its responsibilities for the Park's conservation seriously, pursuing studies, dialogue, planning, and then taking action to resolve problems. For example, after observing trends of heavy harvesting of trees over large areas of private lands, in 1980 the APA convened a forest science and management study of intensive timber harvests on private Adirondack forests. This 18-month process led to enactment of the APA's first clear-cutting regulations. Another example came two decades later when APA acknowledged the threats to Park scenic and aesthetic

resources posed by applications to erect wireless communication towers on mountain tops and ridgelines in the Park. After much study and dialogue, APA in 2002 developed and adopted a Tall Towers Policy to steer new towers away from the tops of mountains and ridgelines in order to reduce visual impacts.

Today, the APA fails to act in response to trends affecting the quality of the Park's environment. For example, the APA has failed to control the trend of increasing forest fragmentation within the most sensitive private land zones of the Park (Resource Management and Rural Use). In fact, as discussed below, APA abets this trend by issuing permits that fragment the landscape.

The risk to the Adirondack Park posed by the APA's straying from its mission was foreseen more than thirty years ago by author Frank Graham (Graham, 1978):

*"If either the agency's members or the staff undergoes a rapid turnover and becomes susceptible to political and social pressures, the framework of the land use plan will be nibbled away. Decisions will inevitably be based on expediency rather than on the long-range needs of the land. In the future, a governor of a certain political persuasion could, by exercising the executive right of appointment, change the public-spirited nature of the Adirondack Park Agency to the park's detriment."*

As we will demonstrate, Graham's conditions have been fully met and his prediction has unfortunately come true.



Governor Nelson Rockefeller signs the APA Act in 1973. With him, left to right, are first APA Chairman Richard Lawrence, State Assembly Speaker Perry Duryea, and State Senator Bernard C. Smith. Photo by Paul Schaefer

# ADIRONDACK PARK AGENCY

## FLAWED APA ACT

The APA Act of 1973 is weak when compared with its lofty legislated purpose. As former APA executive director Robert Glennon has written,

*“a comparison of the soaring language of Section 801 with the regulatory machinery provided to achieve the stated purposes reveals a sad, flawed, megacephalic statute unworthy of the magnificent natural areas it is supposed to protect”* (Glennon, 1990).

The law was intended to allow limited, orderly, well planned private land use and development of the Park’s roughly three million acres of private land that complements the roughly three million acres of Forest Preserve. From the very beginning, however, the law’s regional zoning plan rested on the allowable intensity of private land uses averaged over a given acreage. No private land use is prohibited outright on any of the private land use classifications. The law is so complex and the jurisdictional authority of APA over private land so limited that 50% or more of new building lots in the Park are not reviewed by the APA at all (Glennon, 1990). This means that many areas sensitive to intensive development, including those lying at higher elevations, along Park highways or amidst upland forests and meadows may receive little or no planning oversight or environmental review.

## NO ANALYSIS OF CUMULATIVE IMPACTS

In the more than forty years since the inception of the APA, the greatest threat to the Park’s natural resources has been the cumulative, incremental development sited in ecologically sensitive areas which erode the Park’s world-class biodiversity of plants and animals.

The Commission on the Adirondacks in the Twenty-First Century reported that, under the law’s overall intensity guidelines, it was mathematically possible to build just over 156,598 new principal buildings on the 2.5 million acres of the Park’s private land classified as Rural Use and Resource



Upper St. Regis Lake. Photo by Ken Rimany

Management (Commission, 1990). According to the APA Act’s Section 805, Resource Management land is to be managed in order to

*“protect the delicate physical and biological resources, encourage proper and economic management of forest, agricultural and recreational*

*resources and preserve the open spaces that are essential and basic to the unique character of the park.”*

Rural Use areas are

*“characterized by a low level of development and variety of rural uses generally compatible with the protection of the generally intolerant natural resources and the preservation of open space. These areas and the resource management areas provide the essential open space atmosphere that characterizes the Adirondack Park.”*

These two private land classifications cover 87% of the Park’s private land. The acreage of state and privately held conservation easements in the Park which largely prohibit future residential development has grown by roughly 650,000 acres since 1990 (DEC and APA websites). This has, fortunately, reduced the mathematically allowable number of principal buildings on Rural Use and Resource Management by approximately 21,000. However, the threat remains that over 135,000 new dwellings may someday be built on these most sensitive of private land classifications.

APA has the authority to review each application for new development in the context of prior, pending or anticipated land use development in the same area. The purpose of this *“cumulative impact analysis”* is to determine the overall effect of multiple developments on the same resource, such as the impact of additional house lots on the water quality of a lake already impaired by existing development.

Yet, despite having the legal authority to do so, APA still has no regulation or standard method for considering and measuring the cumulative impacts of the permits it issues every year.



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## NO ANALYSIS OF TRENDS

During 1989 the APA reported to the Commission on the Adirondacks in the Twenty-First Century that 21,000 single family homes and 6,500 vacant lots had been carved out of undeveloped private lands within the Park since 1970, a 42% increase over 20 years. APA also found that the number of subdivided lots had more than tripled, and that only half of the approved residential subdivisions had been subject to any review by the APA (Commission, 1990). A number of policy recommendations were made to address these trends, but were subsequently caught up in a political storm and never enacted.

An Adirondack not-for-profit, the Residents' Committee to Protect the Adirondacks, found that the trends detected by the APA a decade earlier were ongoing and persistent through 1999. The organization found that 8,589 new residential and commercial structures had been added in the 1990s, continuing a trend of 800-900 new structures per year despite economic downturns. And the APA was still reviewing only 43% of these new developments (The Residents' Committee, 2001).

What has happened since 1999? We don't know because trends like these are not systematically monitored and analyzed. *"Continuing a trends analysis should be a high priority,"* APA staff wrote in 2001 (APA Trends Analysis, 2001). In that report, APA identified 18 natural and cultural resource areas as priorities for trends monitoring, with 59 suggested data indicators for the health of these resources. There the effort stalled. In the ensuing years APA leaders failed to make the analysis an ongoing priority. Now, fourteen years later, a search of the APA website for *"trends analysis"* reveals only the same recommendations from 2001. Yet, losses of lake ice and snow cover, and extreme precipitation events have accelerated during this time frame. As climate conditions are changing, the region's planning agency is essentially blind when it comes to selecting key resource indicators, monitoring changes, and analyzing trends.



# ADIRONDACK PARK AGENCY

## QUALITY OF APA NOMINATIONS

The protection of the Park's private landscape and implementation of the letter and spirit of the APA Act and other laws rests substantially on the motivation, independence and drive of the APA staff and board members. The APA board is comprised of eight citizens and three State agency designees, all nominated or appointed by the Governor, on whom the state's voters rely to uphold the laws protective of the Adirondack Park. For much of APA history a majority of its members were mindful of their statewide responsibilities and were committed to carrying out the letter and spirit of the APA Act and other laws. Many of these past members had interests and backgrounds that were particularly well suited to the protection of the Park. For instance, former member Elizabeth Thorndike was a leader in promoting public awareness and understanding of the impacts of and solutions to acid rain in the Adirondacks. Former members Anne LaBastille and Herman "Woody" Cole increased the APA's awareness of the consequences of the global loss of biological diversity. Peter Paine brought a demonstrated concern for and experience in wilderness protection and a personal history of protecting Lake Champlain. John Stock had much experience in forestry practice and forest management. Bill Roden informed the APA board of fish and wildlife issues in the Adirondacks. John Collins, a fifth-generation Adirondack resident and a school teacher, was an articulate and fair Park advocate who guided APA through a series of important regulatory improvements. Arthur Savage was an experienced environmental attorney and co-chaired the Adirondack Nature Conservancy. Richard Lefebvre championed visitor centers and better interpretation of the Park for visitors and residents.

An original APA member from Lake Placid, Mary Prime wrote to then-Governor Hugh Carey upon her retirement from the APA (Prime, 1977) that she was gravely concerned about the person that would replace her:

*"Please continue to appoint members to the Agency on the basis of their qualifications. If such appointments have political value for you and your administration, so much the better. But the statewide interest in the protection of the Adirondack Park must come first. Otherwise the Agency commission will degenerate into a policy making group of questionable competence and dubious commitment."*

Today, Mary Prime's warning has become the reality at APA. Of the current APA board members, only one regularly displays a keen environmental planning interest, and demonstrates the will to confront major policy issues facing the APA. While all members are fine people devoting much time to the APA, most members tend to conform to the Cuomo Administration's political and economic development priorities at the expense of natural resource protection. There is little vigorous public debate about major policy issues. Even on controversial matters affecting the most important resources in the Park few critical questions are asked, and an incomplete answer to the occasional probing question is usually accepted. For the most restrictive land use classification, Resource Management, where protection of natural resources is supposed to take precedence, all but one of the current APA members voted to support large estate homes and sprawling development in this "green" classification (APA Project Permit 2005-100).



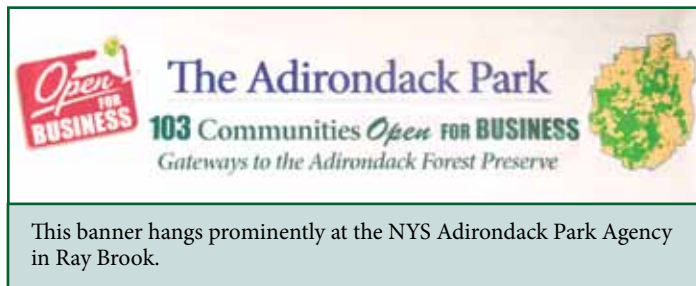
## OPEN FOR BUSINESS

The manner in which the APA or any State agency presents itself to the public sends a strong message about its priorities and mission. For many years the APA's graphic image or logo was a simple schematic of mountain ranges



and peaks, emblematic of the Park's spectacular scenery and of APA's resource protection and regional planning responsibilities, with the agency name beneath.

Then, during 2011-12, APA placed the following banner on its wall:



Governor Andrew Cuomo had ordered that all state agencies be *"open for business,"* and nowhere was this more evident than in the Adirondack Park. Then, in 2015 Governor Cuomo ordered the APA and all other state agencies to replace their former distinctive agency logos, which depicted their respective statutory duties and missions, with a uniform logo showing an outline of the state and the slogan: State of Opportunity.

The message is clear: all state agencies must march in lockstep to place economic considerations above all else, regardless of their statutory missions and duties.

The changes to the logo were more than matched by significant changes in decision-making. APA began asserting that APA's duty to protect natural resources must be *"balanced"* with economic development. For example, in their closing statement on the Adirondack Club and Resort (ACR) project APA staff described the APA Act as requiring *"a balance of the adverse resource impacts of the project with its potential benefits"* (Hearing Staff, 2011). This is incorrect. In fact, a State appellate court rejected the balancing approach urged by APA staff, holding that

*"the APA, on the other hand, is not charged with such a balancing of goals and concerns but, rather, is required to ensure that certain projects within its jurisdiction 'would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park'"* (Association for the Protection of the Adirondacks et.al. v. Town of Tupper Lake, AD3d, 2009).

Moreover, the underlying assumption that resource protection and economic development are competing goals that must be balanced is deeply flawed. In fact, the foundation of economically healthy communities tied closely to mountains, lakes, rivers and forests lies in the protection of those environments. The two are linked and interdependent, particularly in the Adirondack Park where the health of the natural environment plays such a significant role in the region's economies.

## SUBDIVIDING THE PARK FRAGMENTS THE PARK

*“Let us develop as if human beings were planning to be around and live on this land for a while longer.”* So said nationally recognized land planner Randall Arendt at a 2013 Adirondack conference (Adirondack Explorer, 2013). Stating *“there is no constitutional right to sprawl,”* Arendt continued: *“I look forward to returning to the Adirondack Park when conservation development is the mandate and the norm, not the exception.”*

One of the principle goals of ecologically sensitive design for development in a large, mostly intact landscape like the Adirondack Park is to avoid human-induced fragmentation. Fragmentation can also be caused by natural processes, but these changes are nowhere near as permanent as human-caused or induced fragmentation which is defined as the degradation of continuous habitat by breaking it into smaller patches that vary in size and configuration. The fragmentation of contiguous habitat happens through road development, real estate subdivision, poor agricultural practices, utility corridors, and various other human uses. These uses break up blocks of habitat, block pathways for migrating wildlife and introduce non-native, invasive species of plants and animals while favoring native species which thrive in human-dominated landscapes.

*“Road construction is often the first stage of the human-caused fragmentation process... Once roads are established habitat fragmentation accelerates with land clearing for agriculture or the construction of isolated vacation homes or large lot subdivisions scattered here and there in otherwise undeveloped wild lands. This ‘early-stage’ fragmentation, where a number of small developed areas are set within a larger natural ecosystem, is called a perforated landscape. As development proceeds and intensifies over time, these remaining natural-habitat patches are built on, broken up, and divided even further”* (Johnson and Klemens, 2005).

The Adirondack Park is still a largely interconnected system of contiguous forests, waterways, wetlands and assemblages of birds and other wildlife that are rare or not found at all elsewhere in the State. Fragmentation of such a large intact system, particularly when the State has invested so much in its conservation, would be particularly tragic.

Thus, Arendt and others argue that the APA should make conservation design of residential subdivisions a basic

requirement and should discourage outdated approaches that spreads development across the landscape.

Arendt summarized the step by step process of conservation subdivision design:

1. A comprehensive environmental inventory is conducted by an experienced professional team;
2. From that data, sensitive areas to protect, like wetlands, steep slopes and shallow soils are identified, as well as other important habitats and land features, including open space, scenic and recreation areas;
3. All these areas are mapped for permanent conservation, free of development;
4. Only then are developable lots sketched out, the reverse of what usually happens in conventional development where housing lots are identified early in the planning process.

Under conservation subdivision design the applicant can potentially develop the same number of lots. If well designed the lots will retain or increase their value for the homeowners because they are contiguous to permanently protected open space, and the community as a whole will gain more value because of the forest, forest harvesting, farmland, wildlife, aesthetic or recreational values the protected land offers. The applicant saves money because houses are more concentrated in one area of the project, and thus roads and other infrastructure do not need to be as lengthy to reach these lots. *“This is the way it should happen here in the Adirondack Park,”* Arendt stated at the conference.

Other land use planning tools can be used in conjunction with conservation subdivision design, such as Transferable Development Rights (TDR). TDR is a land use tool that allows a community to use market forces to encourage the transfer of development potential from areas that the community wants to preserve (*“sending zones”*) to areas that are more appropriate to accommodate increased growth (*“receiving zones”*). Applying TDR in such a large area as the Adirondack Park is not easy. It will require defined policy objectives and significant planning effort at all levels of government as well as in the private sector, and creation of performance standards for both sending and receiving zones. But it holds promise as an additional way to protect forest and agricultural lands in Rural Use and Resource Management where natural resource considerations are *“paramount.”*





## PAST COMPLIANCE WITH THE LAW

This gap between the APA Act's lofty legislative goals and more pedestrian tools to carry out these objectives has not stopped former APA staff and members from concerted efforts to protect Park natural resources. While conservation subdivision design never has been the explicit standard required of new development in the Adirondack Park, for many years APA staff attempted to practice a form of conservation subdivision design in order to protect large swaths of the Park's open space in the two most protected private land use classifications, Resource Management and Rural Use. These past permits followed many conservation design principles. They were informed by substantive natural resource surveys, attempted to cluster development in a small area of the project site near existing infrastructure, eliminated lots or chose alternative locations for housing lots based on ecosystem analysis, avoided habitat fragmentation and maintained the vast amount of acreage as contiguous undeveloped, forested open space available for the practice of forestry, hunting and fishing leases and a wide range of open space recreational activities.

The following examples of such permits spanning 15 years of APA history are illustrative of this past effort by APA staff to implement best practices. Many other examples could be cited. Taken together, they clearly demonstrate that APA has long known that the protection of open space in the Park is both legally required and of the utmost importance. While by no means perfect, these permits are representative of what the APA could, if properly led, continue to do today under its current law.



*Photo by Jesse Gigandet*

# ADIRONDACK PARK AGENCY

## PAST COMPLIANCE WITH THE LAW

### 1. PATTEN CORPORATION – 1988 – TOWN OF GRIEG

The original application was for a 2750 acre subdivision of land classified as Rural Use into 19 lots ranging from 100-250 acres each. After an adjudicatory public hearing, the APA denied the project because it was inconsistent with the law's purposes and the objectives for the Rural Use classification in that the homes were not clustered, and because the cumulative impacts of this and other similar projects could be significant. The applicant substantially downsized the project, and a second public hearing was held. The final permit avoided impacts to trout streams, wetlands, deer wintering areas, forests and forest management. APA ultimately approved 11 hunting and fishing cabins of 800 sq. ft. or less, and prohibited new roads and further subdivision. A forest management plan was required (APA Project Permit 87-340a).

### 2. BUTLER LAKE – 1991 – TOWN OF OHIO

The applicant gridded out the entire Butler Lake shoreline with a 96-lot subdivision on 532 acres of land classified as Low Intensity Use. APA disapproved the project because of its extensive resource impacts. The owner sold the land, and the next owner proposed 60 lots with many of the same impacts. After holding an adjudicatory public hearing, the APA board rejected the project because the entire shoreline would be subdivided, but ultimately allowed 23 building lots clustered off the lake to preserve 85% of the lakeshore and water quality. Three open space lots comprising the most sensitive off-lake resources were permanently protected. In explaining its permit conditions, APA noted that Butler Lake was an important regional resource in the Adirondack Park due to the diverse composite of special features (APA Project Permit 89-312).





## PAST COMPLIANCE WITH THE LAW

### 3. WHITNEY INDUSTRIES – 1996 – TOWN OF LONG LAKE

The shoreline of Little Tupper Lake, part of the 45,500-acre Whitney Park, was proposed for subdivision and development, all in Resource Management. The application was limited to four lots but many more would follow. APA responded that this type of application constituted unlawful project segmentation and required the applicant to submit a master plan for the entire property with all necessary surveys completed and comprehensive plans in place. Ultimately the APA permitted the 4 lots, but left a contiguous acreage of 45,200 acres, or 99% of the property dedicated to open space, wildlife habitat and forestry. In its permit APA wrote that *“a traditional grid subdivision of the property would reduce its future timber potential... The best way to utilize the forest resource and at the same time protect its wildlife and open space values and the water quality of water bodies and streams... is to maintain it in a relatively unsegmented ownership”* (APA Project Permit 96-138).

### 4. PERSEK SUBDIVISION – 2004 – TOWN OF HORICON

This permit was presented as a *“model for conservation design of development, impact avoidance, and protection of large, contiguous tracts in land classified as Resource Management”* by Agency staff. The APA permit created eight building lots near roads and existing infrastructure on 348 acres in Resource Management, but as a project condition left 86% of the project site conserved either as wetland or for the practice of forestry and open space recreation adjacent to a public Wilderness area (APA Project Permit 2001-76).



Persek subdivision in Horicon as proposed by a private applicant to APA in 2001, a traditional suburban design showing long, linear lots with lengthy driveways to distant houses, fragmenting the lot's Resource Management land into smaller pieces, and impacting the entire tract, including the adjacent public Wilderness area (in gray).

Persek subdivision as permitted by APA in 2004 employing conservation design principles of smaller, clustered lots and building footprints, short, shared driveways near existing roads and utilities, leaving most of Resource Management (green) as contiguous, undivided open space suitable for forestry and recreation and compatible with adjacent Wilderness area.



# ADIRONDACK PARK AGENCY

## RECENT PERMITS BETRAY ENVIRONMENTAL DUTIES

In dramatic contrast to these examples from the past, the following three APA permits issued in 2012, 2014 and 2015 abandon prior APA best practice and precedent. If this trend continues, the accumulating impacts of dispersed homes and human activities in the Park's most protected and sensitive zones will severely damage wildlife habitats and significantly raise the public costs of private development.

### ADIRONDACK CLUB AND RESORT – 2012: AN ILLUSION OF GREEN



A beaver dam holds back the shallow waters of Cranberry Pond which the APA permitted the ACR applicant to use for stormwater runoff from roads and driveways, sewage effluent, and snowmaking.  
*Photo by Dave Gibson*

In 2012, APA approved the resource intensive, sprawling 650 residential unit Adirondack Club and Resort (ACR) subdivision, which included 82 large residences in the “green” Resource Management zone. In essence, residential development had trumped resource protection and management, turning the priority of the APA Act on its head.

APA justified this large amount of residential development by limiting the size of building envelopes beyond which construction is not allowed, while imposing deed

restrictions which prevent further subdivision of each lot. The lands in each private lot not directly impacted by new construction or visible alteration of the landscape were viewed by the applicant and by APA as green “open space.” When accumulated across the 39 lots, this added up to over 4500 acres, allowing the APA to claim that over 85% of the entire tract was kept as “open space” (APA Project Permit 2005-100).

However, APA's characterization of the fragmented checkerboard of lots under separate ownerships as “open space” is actually an illusion because it ignores the fact that lots separated by roads, driveways, lawns, structures and a wide range of human activities cannot ecologically function as open space. When large acreage is broken up into smaller, individual house lots widely spread out from each other across a previously undeveloped or lightly developed landscape, the open space functions differently. As the landscape fragments, there is neither true resource management nor protection of biotic or ecological integrity. Subdivided green space parceled up into separate lots and fragmented by houses and driveways fails from several key environmental viewpoints. As one expert land use analyst, Joel Russell, testified at the ACR public hearing (Russell, 2011),

*“the testimony of many of the environmental experts goes to the fact that just because you don't have development on it doesn't mean that it is being managed as a resource.”*

He explained why so many lots in separate ownerships, all making their own separate decisions about land use, make practicing sustainable forestry or forest recreation across thousands of acres, which the law encourages, extremely difficult. Indeed, the APA's permit for the ACR project issued months after the hearing ended made clear that forestry as currently practiced on this single ownership



Sugarloaf Mountain in the foreground would be surrounded by roads and residential development under the APA's permit for the ACR project. Tupper Lake is in the background.  
*Photo by Dave Gibson*



## RECENT PERMITS BETRAY ENVIRONMENTAL DUTIES

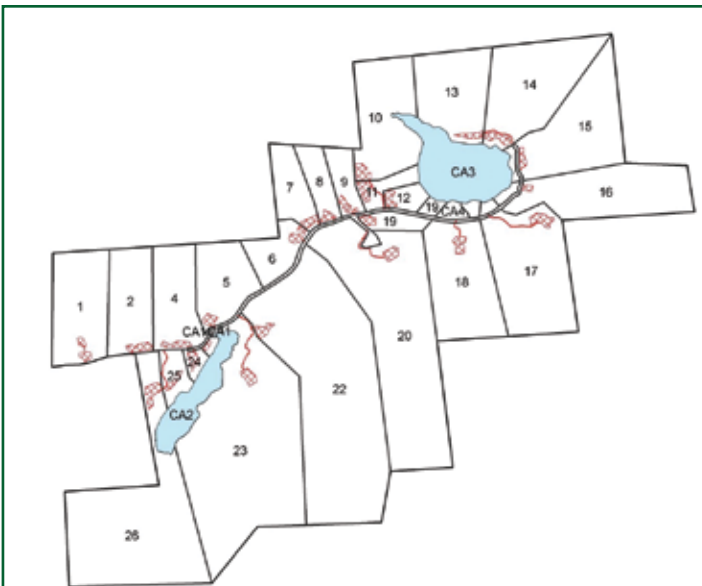
would end as the result of subdivision into so many separate, smaller lots and ownerships.

*“While the proposed project will result in the elimination of the commercial timber harvesting activities that occur on these Resource Management lands, some forestry management may continue under the proposed forest management plan” (APA Project Order, January, 2012).*

Ecologist and herpetologist Michael Klemens described the wildlife impacts of the ACR subdivision (Klemens, 2011):

*“It’s extremely large... because of the amount of roads and the way the development is spread across the site. It’s a fairly large footprint... I mean basically to me it is sprawl. These large dispersed developments give people the illusion of greenery and ecological integrity. In fact, they spread the impacts out with a huge amount of edge effect and a huge amount of impact. And that’s why you want to think about trying to make it more compact.”*

The APA never did make it compact.



In 2015, APA permitted all of these new residential lots to surround currently undeveloped Woodworth and Hines Lakes in the Town of Bleecker. The entire area is zoned Resource Management.

### NEW YORK LAND AND LAKES – 2015

The illusion of green also characterizes the New York Land and Lakes project that the APA approved in 2015. In this project, 1100 acres and two lakes in Resource Management, once a boy scout camp with very light development on it, was subdivided by an APA permit (APA Project Permit 2014-48) into 24 separate building lots each allowing a principal home and a guest house. None of the building lots were clustered or concentrated on one part of the site. Instead, the project’s impacts will spread out across the entire tract and affect neighboring Forest Preserve land.



This satellite image of Woodworth Lake, subdivided by the APA into two dozen lots, shows its wild, undeveloped character, and demonstrates its proper zoning as Resource Management. It is immediately adjacent to Forest Preserve.



Spring Salamander found during Dr. Klemens’ rapid amphibian survey, ACR project site.  
Photo by Ken Rimany

## RECENT PERMITS BETRAY ENVIRONMENTAL DUTIES

### WILDLIFE SURVEYS NEVER CONDUCTED

APA never required the ACR or New York Land and Lakes applicants to conduct competent and comprehensive biological surveys of the project sites. Absent such surveys it is impossible to identify, avoid and mitigate adverse impacts, as the law requires. The applicant only performed a cursory inventory of the New York Land and Lakes site during the fall season and failed to conduct any survey during the breeding and growing seasons when biological activity is at its height. APA considered that level of survey adequate despite universal criticism from Adirondack wildlife and conservation organizations.

Just prior to voting, the criticism prompted one APA member to say to the staff:

*“there has been much criticism about the lack of much biological inventory or survey. How do you envision improving that?”* (Lussi, 2015).

APA staff responded:

*“It was not needed here. The natural resources were unremarkable, and given the cost and time required, we felt such a survey was unwarranted”* (APA Staff Response, 2015).

The APA member simply accepted that answer and joined with his colleagues in voting to approve the project.

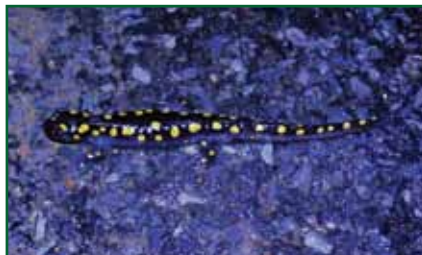
In the case of the ACR project, only anecdotal information about wildlife observations was supplied by the developer over a seven year period before the public hearing. In all those years, the developer identified only a handful of bird species on the site. Not a single amphibian was recorded. Yet, in a single



Herpetologist Dr. Michael Klemens explains during the Adirondack Club and Resort hearing why the subdivision's design threatens to destroy a local breeding population of salamanders and frogs. Photo by Dave Gibson



Dr. Klemens and Adirondack Wild's Dave Gibson conducting a rapid amphibian assessment on and just off public roadways on the ACR project site. Dr. Klemens was denied permission to sample elsewhere. He found eleven species in just a single 24-hour period. In the seven previous years, the ACR applicant had not documented a single species of amphibian. Photo by Ken Rimany



A spotted salamander found during its spring migration to breeding ponds at the ACR project site. This particular breeding population is severely threatened by the way the ACR project is designed and permitted by the APA. Photo by Ken Rimany

day of sampling Dr. Michael Klemens found 11 species of amphibians breeding on one small part of the ACR project site and showed how those populations would be negatively impacted by the subdivision (Klemens, 2011).

As a result of Dr. Klemens' testimony, APA required *“after the fact”* amphibian studies on parts of the project area as a permit condition (APA Project Permit 2005-100). Because it was after the fact of permit issuance and only covered a relatively small part of the project site, none of the sampling for these sensitive creatures could result in any substantive project redesign.

Dr. Klemens explained why scientific baseline information is so important to project review and to making informed decisions (Klemens, Prefiled Testimony, 2011):

*“Once critical resources, both habitats and species, are identified mapping is undertaken which delineates the areas needed for each species to breed, forage, den, and migrate and which are added onto the site maps as constrained areas. Development is then placed on the landscape in areas that have been delineated as not impacting those mapped areas... The ACR development has been placed onto the site without any broad understanding of the ecological connectivity between upland and lowlands, or larger scale migration patterns, or of the species that actually occur on the site. The application is plagued with a dearth of information as it pertains to most wildlife species. ... How could such an approach be considered protective of the delicate physical and biological resources of the site?”*

Klemens' question continues to hang over the APA today. Failure to address it will steadily compromise the unique wildlife resources of the Park.



## RECENT PERMITS BETRAY ENVIRONMENTAL DUTIES

### THRILL RIDE DOWN A MOUNTAIN – 2014

In 2014, the APA issued a permit for a commercial thrill ride called a Zip-flyer down scenic French Mountain (APA Project Permit 2012-185), a privately owned mountain classified as Rural Use above the Village of Lake George at the southern entrance to the Adirondack Park. The permit authorizes the cutting of a 900-foot swath, 35-50 feet wide down a steep, undeveloped and highly visible mountainside which is also an historic setting for important battles fought during the French and Indian War. Steel cables holding up the ride from towers placed at the summit will be highly visible from many vantage points along State Route 9 and the Northway I-87. According to the APA staff, in some views the cables would be silhouetted above the mountain and the cut would resemble a utility line. In its permit review (APA Project 2012-185), APA staff conceded that:

*“The project involves the introduction of a tourist attraction onto an undeveloped and forested mountainside. The proposal, particularly the visual impact associated with the clearing of vegetation for the project will contrast significantly with the natural setting.”*

Yet, APA staff concluded that the impacts would be “mitigated” by allowing some vegetation to remain below the Zip-flyer. Adirondack Wild and others asked for

a public hearing so that actual and potential impacts of this development could be publicly aired. APA denied the request for a hearing and failed to require the applicant to develop project alternatives which might have significantly reduced aesthetic and other project impacts.

After APA’s approval, an adjacent landowner filed a legal challenge against the APA and the Town of Queensbury which had amended its zoning regulations to allow the Zip-flyer. The landowner’s attorney, Claudia Braymer, told the media that:

*“the APA did not do a good job considering the visual impacts on the Adirondack Park. They’re supposed to take into account the impacts on travel corridors, and I-87 is the most traveled entryway into the Adirondack Park. The APA even acknowledged that in their permit for the zip line, but they just didn’t seem to consider the negative impact.”*

She said the APA in its deliberations appeared to weigh heavily the “alleged economic benefits of the project,” such as employment and tax revenue.

*“They’re not allowed to balance that against the environmental impact,”*

she said, citing precedent which supported her position (Post Star, 2014).



French Mountain at the southern entrance to the Adirondack Park in Lake George. The Zip-flyer will be visible from this location. APA issued the permit despite writing that “The project involves the introduction of a tourist attraction onto an undeveloped and forested mountainside. The proposal, particularly the visual impact associated with the clearing of vegetation for the project will contrast significantly with the natural setting.”  
*Photo by Dave Gibson*

STATE ENVIRONMENTAL QUALITY REVIEW



The State Environmental Quality Review Act (SEQR) requires any State or local agency that undertakes, funds, or approves a project to evaluate the actual or potential environmental impacts of the project prior to taking final action. SEQRA clearly sets forth the state’s policy that adverse environmental impacts of proposed actions be fully considered and either minimized or avoided. The law states that

*“agencies shall use all practicable means to realize the policies and goals set forth and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process”* (Environmental Conservation Law, ECL 8-0109).

An agency must identify all areas of relevant environmental concern with respect to the project, take a hard look at them, and provide a reasoned elaboration for its determination as to whether the action may have a significant adverse impact on the environment. The agency must require preparation of an Environmental Impact Statement (EIS) if the proposed action may have any significant environmental impacts.

APA REVIEW IS NO LONGER THE EQUIVALENT OF AN EIS

In its review of projects, APA is exempt from the need to prepare an EIS because, as former APA executive director Robert Glennon has written,

*“the Legislature believed they (APA) were performing a comparable environmental review”* (Glennon, 2003).

In other words, the State Legislature assumed that review under the APA Act would be the functional equivalent of an EIS under SEQR and it was therefore unnecessary to have proposed projects subject to both laws.

However, it is clear that review under the APA Act has become far less comprehensive and rigorous than what SEQRA demands. As a result, many projects in the Adirondack Park are now subjected to less environmental scrutiny than similar projects in other areas of the state, an illogical situation that severely undermines the heightened protection the Park’s resources are supposed to enjoy.

Here is a simplified table showing how the current APA project review differs from SEQR.

Environmental Review steps	SEQR	APA
Environmental Assessment Required?	Yes	Yes
Determination of Environmental Impacts?	Yes	Yes
If Impacts deemed significant, is an EIS required?	Yes	No
If impact deemed significant, is the scope of impacts evaluated in public?	Yes	No. Scope of impacts selected by staff
Public hearings held?	Yes	Rarely
Alternative ways to develop with no or fewer impacts always analyzed in writing and in public?	Yes	Not always.



## STATE ENVIRONMENTAL QUALITY REVIEW

In particular, APA's failure to require applicants to conduct a rigorous analysis of alternative development options for a project is having a particular deleterious effect on the Park. Alternatives analysis is at the very heart of SEQRA's environmental review process. An agency cannot claim to have rationally chosen a preferred alternative if other alternative approaches to achieve the same project with fewer environmental impacts have not been evaluated with the same degree of rigor and detail. The APA's regulations authorize it to require alternatives analysis fully akin to that required by SEQR (APA Regulations, Part 572.3(b)(2) and Part 573.4 (c)(1,7). However, such analysis is not being required or performed.

For example, no alternatives were required during review of the massive ACR project, a fact that was conceded by the APA's own staff. APA's Deputy Director testified that the applicant had not been required to develop alternative plans and compare them to its preferred alternative (Sengenberger, 2011). A senior APA staff scientist stated that the process of identifying alternatives to the ACR subdivision layout was "*short-circuited*" by the applicant and that

*"there has not been an organized and rational discussion of reasonable, potential alternatives"* (Spada, 2011).



Photo by Jesse Gigandet



Bushnell Falls, Photo by Jesse Gigandet



# ADIRONDACK PARK AGENCY

## STATE ENVIRONMENTAL QUALITY REVIEW

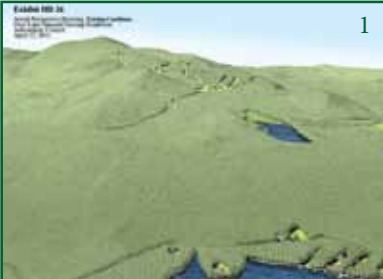


Testimony by landscape architect Harry Dodson showed several project design alternatives for the ACR project that would minimize land disturbance, road and utility construction, and avoid extensive land fragmentation. He wrote:

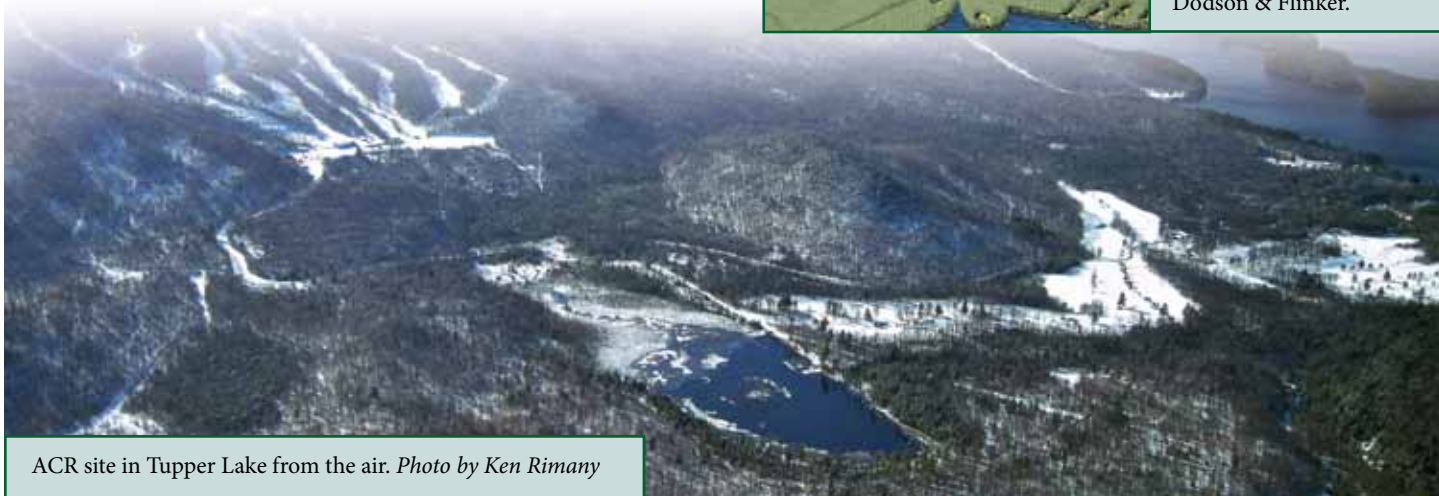
*"I believe that this historical land use pattern typical of the Tupper Lake area and the Adirondack Park as a whole offers a strong precedent for the layout and design of alternative plans for the ACR featuring compact, walkable and dynamic village-style development surrounded by large areas of preserved natural landscapes and wilderness lands... The ACR plan is based on an outmoded model of resort development that is out of place in the Tupper Lake area and the Adirondack Park. It is out of scale with the site and surrounding area... I determined that the proposed ACR development program could easily fit into a much smaller land area that could leave large areas of the site undeveloped while creating the type of compact village center style development popular in today's resort marketplace" (Dodson, 2011).*

The APA never produced evidence about why the Dodson alternatives could not be a *"reasonable alternative means of achieving project goals,"* quoting APA Regulations, Part 572.4 (d)(7).

APA similarly failed to require and assess alternatives for the Zip-Flyer project on French Mountain (APA Project 2012-185), or the New York Land and Lakes subdivision (APA Project 2014-148). While in discussion with the NY

Land and Lakes applicant, APA staff did ask for alternative configurations for the lots but did not insist on such an alternatives analysis (APA Staff memo, 2014). Instead, the APA staff accepted the applicant's assertion that such a redesign would not meet their market, sales and revenue goals. In the project permit issued earlier this year (APA Project 2014-148), there is no discussion of project alternatives.

	1	This sequence gives a closer view of one part of the ACR project looking SW from Lake Simond to Mt. Morris and the ski center.
	2	<b>Graphic 2</b> shows the subdivision's lots spread out between the mountain and Lake Simond and largely as approved by the APA.
	3	<b>Graphic 3</b> shows an alternative design that pulls the same number of lots in much closer to the mountain and ski center, eliminating much of the wasteful use of land resources, reducing impacts, and requiring less road and other built infrastructure. Exhibits are part of the ACR Hearing Record and come courtesy of Harry Dodson, Dodson & Flinker.



ACR site in Tupper Lake from the air. Photo by Ken Rimany



# DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)



Department of  
Environmental  
Conservation

Our analysis finds that DEC is falling short of its stewardship responsibilities for the care of the Forest Preserve in the following respects:

- Article 14 of the NYS Constitution which commands that the Forest Preserve is to remain “*forever wild*” is being compromised by the DEC today;
- Providing recreational access of all types and creating new, lengthy mechanized corridors regardless of resource impacts dominates DEC’s management of Wild Forest areas in violation of Article 14 and the State Land Master Plan;
- DEC’s establishment of longer, flatter, wider snowmobile routes required by mechanized snowmobile grooming vehicles, which also facilitate illegal use by all-terrain vehicles in warmer months, clouds the wild forest character of the Wild Forest areas such as the Wilcox Lake and Ferris Lake Wild Forest areas;
- Compliance with the management guidelines of SLMP is frequently deferred and remains elusive for many Forest Preserve Unit Management Plans. In particular, important follow-up studies to inform actions that bring degraded parts of the Forest Preserve up to standard are often never funded and completed;
- DEC has failed to take actions to limit public use of some heavily overused areas of the Forest Preserve even though its own resource assessments and visitor use studies have documented adverse impacts to natural resources and to visitor wilderness satisfaction.

DEC is the result of re-organization in 1970 that placed natural resource protection and stewardship of the Forest Preserve within the same organization charged with creating and enforcing air and water quality and hazardous waste standards. For more than forty years, natural resource planning as well as public land management has suffered in the competition for resources within DEC. The Adirondack Park itself is itself fragmented into two DEC regions with two regional directors. There is also a history of internal resistance to embracing and expanding upon the DEC’s wilderness protection mandate. As former DEC General Counsel and Deputy Commissioner Nicholas A. Robinson has written:

*“DEC has barely tapped most of its further statutory authority under New York’s environmental laws in order to enhance the Forest Preserve. The DEC has done far too little to construe intelligently the concept of wilderness in the New York Constitution and the State’s statutes. The Unit Management Plan process has been halting and inadequately informed by a land ethic”* (Robinson, 2007).

There have been successful examples of proper management of the Forest Preserve by the DEC over the years, but they tend to be episodic. This section will show how in the absence of a consistent management philosophy for the “*forever wild*” Forest Preserve and strong, steady leadership, DEC has been pressured to allow motorized technology and unconstrained recreational uses to dominate discussion of Forest Preserve management, and to lower standards of resource protection.



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DEC's former logo, now replaced by “State of Opportunity”

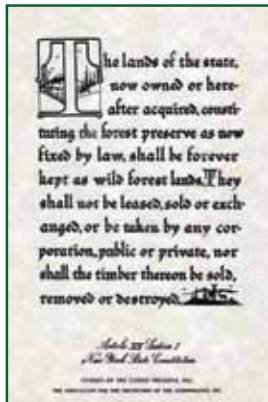
# DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)



Department of  
Environmental  
Conservation

## ARTICLE 14 (XIV) OF THE NYS CONSTITUTION, “FOREVER WILD”

DEC has the legal duty to protect and care for the Forest Preserve and other public lands on behalf of the public. Since 1894, the New York’s State Constitution has mandated that the state-owned Forest Preserve



*“shall be forever kept as wild forest lands” and “shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed” (Article 14, Section 1, NYS Constitution).*

It is not widely appreciated that the Forest Preserve is part of the public trust, and therefore can only be enhanced, but cannot be

weakened or diminished (Leisch, 2010). The public trust is a part of our common law, and is as old as the Magna Charta. It tells us that the governing body acts as the public’s trustee for commonly held resources, like our air, water, wildlife and public lands. The public trust acts as a check on government’s power to diminish or degrade these commons, which would deprive future generations of their full use and enjoyment. By granting the publicly-owned Forest Preserve constitutional protection, New Yorkers have placed these wild forest lands beyond the power of government to sell, lease, exchange or compromise.

Every amendment to Article 14, Section 1 must be approved by two separately elected State Legislatures, and then by the voters in a referendum. In the 120 years since 1894, there have been just 24 amendments of “forever wild” approved by the voters (Van Valkenburgh, 1996), including land exchanges, all for specified, limited acreages and all for a public purpose. For instance, one amendment allows three percent of the Forest Preserve to be used for municipal water supply. Another authorizes the use of 300 acres of Forest Preserve for the construction of interstate highway I-87, the Adirondack Northway. Others specified the precise number of miles of ski trail to be constructed on Forest Preserve for Whiteface, Gore and Belleayre Ski Centers. Recent small land exchange amendments enabled expansion

of a cemetery in Keene, a high voltage electric line to cross Forest Preserve in Colton, and the settling of dispute over land titles on the shoreline of Raquette Lake. Adirondack Wild strongly supported this last amendment because it was limited, highly focused and clearly in the public’s interest. This last criterion is vitally important and clearly violated by the following examples.

### MINING IN A WILDERNESS

A separate provision of the State Constitution prohibits the spending of public money to aid a private undertaking. For years, that meant that DEC did not attempt to sway public voting one way or the other on any ballot measure which might support a private enterprise. That dramatically changed in 2012-2013. For about twenty years, NYCO Minerals, an international mining company with a large open pit mining operation in Essex County, had approached DEC to support the mine’s expansion into the adjacent Jay Mountain Wilderness Area, a block of State land known as “Lot 8.” For years, under both Democratic and Republican administrations, DEC had consistently rejected NYCO’s proposal as not being in the public interest. Then, in 2012 under the Cuomo administration DEC policy towards NYCO suddenly changed. In a dramatic shift, DEC began to encourage and voice support to NYCO’s plan to expand its mine into a Forest Preserve Wilderness area.



NYCO Minerals existing open pit mine seen in the distance from Bald Peak in the adjoining Jay Mountain Wilderness Area. Photo by Dave Gibson



## ARTICLE 14 (XIV) OF THE NYS CONSTITUTION, “FOREVER WILD”

The constitutional amendment approved by the Legislature provided for a two-step process (NYS Senate bill 4688, 2013). First, NYCO would be authorized to explore for minerals on Lot 8 in order to determine if sufficient concentrations existed to justify a full mining operation. Second, if NYCO wished to proceed with a land exchange the company would share the data and information derived from the exploratory drilling with the DEC. DEC would then appraise the value of Lot 8 and convey it to NYCO and, in

exchange, NYCO convey at least the same number of acres for the Forest Preserve. The Legislature would be required to determine that the lands to be received by the State would be equal to or greater than the value of Lot 8, and provided that the value of the land to be conveyed for the Forest Preserve be no less than one million dollars.

Governor Andrew Cuomo and his NYS DEC applied pressure on members of the NYS Legislature to approve the NYCO amendment, claiming it was a jobs bill and that the company might leave the Adirondacks without it. DEC also promoted it as a “good” land swap (DEC Position Paper, 2013). DEC claimed that for the 200 acres of Wilderness, NYCO would allegedly be willing to give the State 1500 acres of land in exchange. Further, DEC claimed that these 1500 acres would be more valuable recreationally and ecologically than Lot 8 which DEC asserted had virtually no public value whatsoever. The Legislature passed the bill in two separate sessions. Then the Governor and his DEC lobbied for passage at the polls. NYCO Minerals spent \$600,000 to secure passage of the amendment. On Nov. 5 2013, the voters approved the constitutional amendment by 53%-47%.



Old sugar maple forest showing layered forest canopy on Lot 8, Jay Mtn. Wilderness, which will be turned into another open pit mine under the NYCO amendment. Photo by Dan Plumley

Many of the Cuomo administration’s claims misled the public. For example, the mining company had previously admitted that it had more than 25 years of mineral reserves on its own lands at Oak Hill, several miles away from its existing open pit mine (APA Permit, Project 96-76). This asset, added to its significant investment in plant and equipment, made it extremely unlikely the company had any intention of leaving the Adirondacks, but that information was not provided to the voters. Furthermore,

field evidence showed that Lot 8 possessed considerable ecological diversity and value (Adirondack Wild, 2013). No independent comparison of the lands to be exchanged had been done, so no public measure of value, both monetary and non-monetary, was available for the voters to consider. After the vote, the State authorized exploratory drilling while the land remained public Wilderness (Temporary Revocable Permit, 2014) on the grounds that non-constitutional laws protective of wilderness were implicitly repealed by the amendment.

In summary, for the first time in New York State history the constitution’s “forever wild” provision was sloppily amended for the sole convenience and profit of a private corporation at the expense of the public interest and integrity of Article 14. Starting down this road takes us back to the days before “forever wild” was approved in 1894 when the State was illegally selling Forest Preserve lands for exploitation by private logging companies, which is why Article 14 was passed in the first place - to limit such abuses of governmental authority.

# DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)



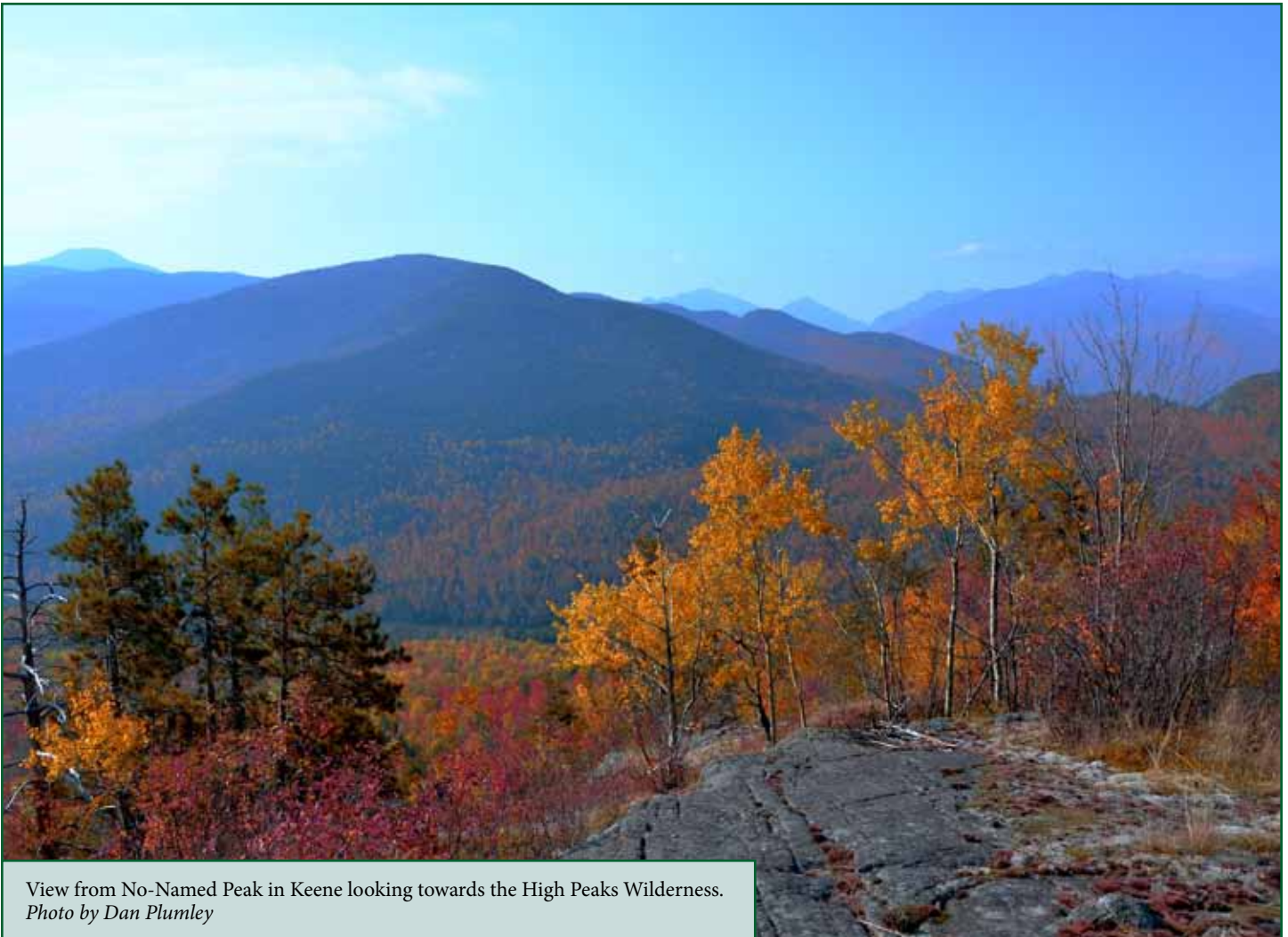
Department of  
Environmental  
Conservation

## ARTICLE 14 (XIV) OF THE NYS CONSTITUTION, “FOREVER WILD”

### AUCTIONING OFF STATE LANDS

In 2011, the NYS Office of General Services acted to auction off to the highest bidder 92-acres of State Land in the Adirondack Park, the former Camp Gabriels prison in Franklin County, despite the fact that the land underneath the many prison buildings legally is part of the Forest Preserve. Citizen advocates immediately pointed this out to the Governor and to OGS, urging the State instead to draft an amendment to Article 14 that, if ratified by the public, would allow a future owner of the land to gain clear title and to re-use the buildings as an economic benefit. However, Governor Cuomo and every State agency, including DEC, treated the auction as a routine matter, as applicable within

the Adirondack Park as anywhere else regardless of what the Constitution and Environmental Conservation Law said about it. None of the agencies even brought the question of the land's Forest Preserve status before the Attorney General for an opinion about the constitutionality of auctioning it off. Now, in 2015 the State's failure to respect the constitutional amendment process has come back to haunt it. An interested private owner is ready to re-develop the property, but cannot gain title insurance. A timely proposal to amend Article 14 beginning in 2011 would have likely gained public support and enabled the private entity to have clear title.



View from No-Named Peak in Keene looking towards the High Peaks Wilderness.  
*Photo by Dan Plumley*



## MECHANIZATION OF THE FOREST PRESERVE

The Adirondack Park State Land Master Plan (SLMP), part of New York's Executive Law (APA Act, Section 816), begins this way:

*"If there is a unifying theme to the master plan, it is that the protection and preservation of the natural resources of the state lands within the Park must be paramount. Human use and enjoyment of those lands should be permitted and encouraged, so long as the resources in their physical and biological context as well their social or psychological aspects are not degraded. This theme is drawn from ...a century of the public's demonstrated attitude toward the forest preserve and the Adirondack Park."*

DEC and APA have been pressured to place all manner of recreational uses of the Forest Preserve ahead of this "*paramount*" purpose of resource protection and preservation. In response to this pressure, DEC has allowed mechanized technology, particularly snowmobiles and snowmobile trail grooming equipment, to dominate management activity in many Wild Forest sections of the Forest Preserve (Management Guidance, 2009). Noted author of Adirondack guidebooks Barbara McMartin, once the Chair of DEC's Forest Preserve Advisory Committee, wanted the visiting public to notice the "*gravelly old roads... small lakes and ponds, wooded hills, and ranges of open rock summits affording marvelous views*" in Wild Forest. Yet, as she wrote in 1990, "*only a few blocks of Wild Forest have been given adequate consideration for (purposes) other than motorized recreation*" (McMartin, 1990).

The late, noted Adirondack forest ecologist Dr. Edwin H. Ketchledge wrote about the future of the Forest Preserve that

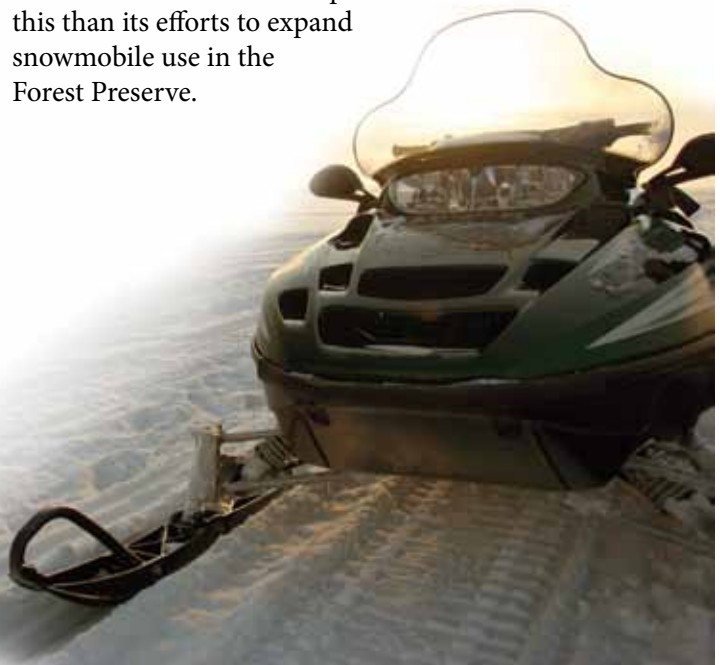
*"recreation is still dominant; public information and education needs remain essentially unattended. We, the public, still inflict damage with our feet and many of our sports... but we, the State, still fail to exercise the mind of the recreationists when they visit their Forest Preserve. Ecological information and interpretation is missing. We have acquired the Preserve, but regretfully we only play with it"* (Ketchledge, 1994).

Widespread, well-documented use of all-terrain vehicles on and off foot and snowmobile trails has severely damaged natural resources in Wild Forest. More than ten years ago, DEC began to draft a policy that would publicly clarify that public ATV riding on the Forest Preserve is not an approved recreational activity and is, in fact, illegal. To date, DEC has failed to complete and issue the policy. This lack of action has emboldened more and more ATV riding on the Forest Preserve despite the SLMP's explicit prohibition on increased motorized activity there.

Neither the Constitution nor the SLMP treat Wild Forest as an inferior part of the Forest Preserve. In fact, the SLMP makes clear that motorized uses in Wild Forest are to be limited and strictly controlled:

*"All types of recreational uses considered appropriate for wilderness areas are compatible with wild forest and, in addition, snowmobiling, motor boating and travel by jeep or other motor vehicles **on a limited and regulated basis** that will **not materially increase motorized uses** that conformed to the Master Plan at the time of its adoption in 1972 and will **not adversely affect the essentially wild character of the land** are permitted."*

In violation of this guidance, DEC has materially increased and encouraged motorized uses on Wild Forest, and there is no better example of this than its efforts to expand snowmobile use in the Forest Preserve.



# DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)



Department of  
Environmental  
Conservation

## MECHANIZATION OF THE FOREST PRESERVE

### SNOWMOBILE COMMUNITY CONNECTORS

In 2000 Governor George Pataki proposed a “community connector” snowmobile trail system in the Park which would require wider, flatter trails for high speed winter travel between towns. Governor Pataki believed correctly that such significant changes to snowmobiling in the Forest Preserve would require amendments to the Adirondack Park State Land Master Plan, necessitating public comment and hearings across the State. However, the Comprehensive Snowmobile Plan for the Adirondack Park was approved by

of trees. Additionally, because they must handle larger snowmobiles traveling at faster speeds, large rocks must be removed and trail surfaces must be leveled frequently, which requires daily mechanical grooming with a separate vehicle called a Snow-Cat groomer. Such motor vehicle snow grooming vehicles are not authorized on snowmobile trails by the SLMP. Yet DEC and APA have nevertheless permitted this use without the statewide debate that would be required to amend the SLMP. DEC’s construction of this network of snow highways degrades the Park’s wild forest character through increases in mechanization, speed, noise and air pollution, while it discourages other non-motorized uses.

In addition to violating the SLMP, DEC’s encouragement of increased snowmobile use contravenes the “forever wild” mandate of the State Constitution. As a state appellate court stated in *McDonald v. Association for the Protection of the Adirondacks* (228 AD 3d 1930), affirmed by the Court of Appeals:

*“Giving to the phrase ‘forever kept as wild forest lands’ the significance which the term ‘wild forest’ bears, we must conclude that the idea intended was a health resort and playground with the attributes of a wild forest park as distinguished from other parks so common to our civilization. We must preserve it in its wild nature, its trees, its rocks, its streams. It must be a great resort for the free use of all the people, but it must be a wild resort in which nature is given free*

*rein. Its uses for health and pleasure must not be inconsistent with its preservation as forest lands in a wild state. It must always retain the character of a wilderness. Hunting, fishing, tramping, mountain climbing, snowshoeing, skiing or skating find ideal setting in nature’s wilderness.*

*No artificial setting is required for any of these purposes. Sports which require a setting which is man-made are unmistakably inconsistent with the preservation of these forest lands in the wild and natural state in which Providence has developed them.”*



12-ft. snowmobile bridge is part of the newly constructed Seventh Lake Community Connector snowmobile trail in the Moose River Plains Wild Forest. Photo by Ken Rimany

the DEC in 2006 without amendments and hearings. Since 2009, a management document approved by both DEC and APA has guided the actual construction of these wider routes through Wild Forest areas of the Forest Preserve designed to provide corridors upon which snowmobiles can travel at high speed from one hamlet to another. The new trails are being built to the dimensions of small roads (9-12 feet) using mechanized construction equipment. Due to their larger size, the trails require use of heavy timbers and large bridges for stream crossings and extensive clearing



## MECHANIZATION OF THE FOREST PRESERVE

Since 1990 the State has spent a considerable sum of money negotiating and acquiring more than 800,000 acres of conservation easements on private property in the Park. One of the stated purposes of these lands under easement is to allow controlled public motorized activity on existing gravel roads that is otherwise inappropriate on the Forest Preserve. Adding more and wider snowmobile routes on Forest Preserve often duplicates what is already available, or could be made available on private lands under conservation easement or under other types of landowner agreement. The State adopted a policy to avoid snowmobile trail duplication (Management Guidance, 2009), but is ignoring its own guidance.

The construction and maintenance of wider, flatter snowmobile highways through the Forest Preserve have other serious impacts, including attracting and encouraging illegal use by all-terrain and off-road vehicles during the warmer months. And they consume large amounts of limited funding, staff time and enforcement patrols. Staffing at NYS DEC declined 10.4 percent, from 3,256 Full-Time Equivalents (FTEs) in fiscal year 2003-04 to 2,917 FTEs in fiscal year 2013-14 (Comptroller, 2014). Over a longer time period, the workforce in DEC's Division of Lands and Forests, which oversees management of the Adirondack and Catskill Forest Preserve, shrank by 25-30 % since 1995 (DEC, 2015). In DEC Region 5 which encompasses the eastern two-thirds of the Adirondack Park, there are only 4 Full-Time Equivalent positions assigned exclusively to the Forest Preserve. APA has only three personnel assigned full-time to State Lands and oversight of the SLMP. In 1970, DEC patrolled



This snowmobile trail on the Forest Preserve is frequently used by all-terrain vehicles. *Photo by Dave Gibson*



All terrain vehicles parked in the Forest Preserve. *Photo by Dave Gibson*

3-million acres of state land with 118 Forest Rangers, but today, with 5-million acres of state lands (statewide, including conservation easements), the force is down to 106 Rangers. During the next six years, 48 rangers will be eligible for retirement (DEC, 2015).

A single snowmobile community connector project – the 15 mile long Seventh Lake Trail through the Moose River Plains Wild Forest – required DEC staff from all over the state to be temporarily reassigned to the Adirondacks to oversee its construction. It remains to be seen how DEC will be able to enforce against the use of all-terrain vehicles on this new snowmobile highway.

There can be no question that DEC's creation of the snowmobile community connector trail network violates the SLMP and Article 14 by encouraging increased motor vehicle use and by degrading the wild forest character of the lands through which these snowmobile highways traverse.

Missing at the DEC today is a sustained philosophical commitment to achievement of best practices of wilderness management across all units of the Forest Preserve and from one DEC administration to the next. In the words of former DEC Lands and Forests Director Norman J. Van Valkenburgh, basic tenets of wilderness management

*“must guide the wilderness manager and those who develop the unit management plans. Without an understanding of these tenets, the planning and implementation processes will be meaningless and the plans themselves will be without substance”* (Van Valkenburgh, 1987).

# DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)



Department of  
Environmental  
Conservation

## LOWERED MANAGEMENT STANDARDS

Unit Management Plans (UMP) are intended to carry out the guidance of the State Land Master Plan in all units of the Adirondack (and Catskill) Forest Preserve. The following are just four examples - many others could be included – which demonstrate that the DEC and other agencies have significantly lowered their standards of natural resource protection on the Forest Preserve.

### ST. REGIS CANOE AREA

To its credit, DEC funded a visitor use and campsite condition study of the popular St. Regis Canoe Area (SRCA), a part of the Adirondack Forest Preserve, in order to guide its management planning and decision-making. The 18,400 acre SRCA is supposed to be managed consistent with Wilderness guidelines. No motorized boats or vehicles are permitted. The study revealed that although most visitors showed overall satisfaction with their camping, canoeing or kayaking experiences, and would return to the area for another experience, one or more resource, social or campsite conditions detracted from the experience of 95% of those responding to the survey. These detracting conditions included lack of firewood, human impacts to campsite, difficulty finding place to camp, poorly marked designated sites and unattractive campsites. (Dawson et. al., 2008).

The study also surveyed 56 primitive tent sites on or near the many ponds in the area. It showed that 31 of the 56 sites

were in a steeply deteriorating or badly degraded condition with little to no organic matter in the soil, exposed mineral soil and tree roots, erosion of campsites down to the water's edge, widespread loss of vegetation, and damaged or dying trees in the immediate vicinity of the campsite. The study concluded that

*“visitors are identifying detracting situations that exist due to degraded campsite conditions and visitor impacts on their experiences. The campsite condition results supported the visitor’s observations and feelings that campsite conditions are not in the desired condition class within the SRCA and are non-conforming to UMP and SLMP requirements for a primitive campsite.”*

The study recommended immediate improvement of campsite conditions and enforcement to reduce the expansion of campsites through sharing designated sites and the consequent enlarging of the campsite area. It urged follow-up monitoring after desired conditions are reached in compliance with SLMP guidelines for primitive tent sites (Dawson et.al, 2008).

In its own critique of the draft SRCA Unit Management Plan, APA staff pointed out frequent violations of the SLMP such as drive-in campsites which violate the definition of a primitive tent site, significant cutting of trees for scenic vistas that do not conform with Wilderness guidelines, a lack of data projecting future visitation and

The St. Regis Canoe area is supposed to be managed according to wilderness guidelines, but suffers from overuse of its camping areas and resulting damage to its natural resources. *Photo by Jesse Gigandet*



## LOWERED MANAGEMENT STANDARDS

public use required by the Master Plan, and failure to achieve proper separation distance between primitive tent sites and to resolve issues of overcrowding, loss of solitude and negative impacts of overuse (APA Memorandum, 2004). Some of these violations were resolved in the final approved UMP in 2006, but others were deferred.

In spite of years of documented public overuse in much of the St. Regis Canoe and other wilderness areas (such as the High Peaks Wilderness) in violation of the SLMP, DEC has studied but failed to implement user management controls such as camping permit reservation systems that are a common user management tool in heavily visited Wilderness elsewhere in the country. DEC pledged in its 1999 High Peaks Wilderness Unit Management Plan to form a working group to develop the structure and implementation process for a camping permit system in the heavily visited eastern High Peaks Wilderness hiking corridor, and to make recommendations to the Commissioner within a five year period. To our knowledge, that action was never taken. In 2014, DEC required a camping reservation system for the new and popular Essex Chain of Lakes Primitive Area. This is a hopeful sign, but so far DEC has not indicated that such a system should be replicated anywhere else.

### STEEL FIRE TOWERS SPOT-ZONED WITHIN WILDERNESS

From 2010-2014 two fire towers at the core of two wild land units – the Hurricane Mountain Wilderness and the St. Regis Canoe areas – were allowed to remain when the APA reclassified one-half acre on the two mountain summits



DEC and APA carved out a one half-acre historic area within the Hurricane Mountain Wilderness in order to preserve this fire tower, and in so doing violated their own State Land Master Plan guidelines. *Photo by Dave Gibson*

to Historic while their mountain surroundings – everything beyond the half-acre – were to be classified and managed as Wilderness. Then, two separate DEC UMP amendments for the one-half acre tower footprints were developed and approved. These actions to reclassify and carve out one-half acre in order to permanently maintain two fire towers within a wilderness setting violates SLMP definitions and management guidelines not just for Wilderness and Canoe, but also

for Historic areas. The wilderness resource around the towers is permanently compromised by these actions. This is an example of a joint failure by APA and DEC to adhere to well-known national principles of wilderness management, one of which is to manage wilderness as a comprehensive whole and as a composite resource, not as independent parts.



Road cut to drill pad site on Lot 8, Jay Mountain Wilderness. *Photo by Dan Plumley*

# DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)



Department of  
Environmental  
Conservation

## LOWERED MANAGEMENT STANDARDS

### TAYLOR POND WILD FOREST

In 2013, the DEC and APA deemed the Taylor Pond Wild Forest UMP in compliance with the SLMP. The plan affects over 50,000-acres of Forest Preserve and Wildlife Management Areas connecting Lake Champlain with large Wilderness Areas to the west. In short, the plan had great potential to recommend improvements to wild land connections between the Lake Champlain lowlands and some of the state's highest wilderness mountains. Indeed, the SLMP mandates that each UMP

*"should assess biological resources, conduct analysis of ecosystems, recommend management of important ecological areas, and recommend strategic additions to a unit where justified."*

In reaching for this objective, the plan failed badly.

The Taylor Pond UMP included a lot of information about the area and did a good job assessing specific recreational opportunities, but did not put the area into an overall conservation context. It failed to even comment upon ongoing private efforts to create a *"Split Rock Wildway,"* wildlife habitat connections between Lake Champlain, the West Champlain Hills, an area rich in plant and animal biodiversity, and the Jay Mountain Wilderness Area to the west. It did not address wildlife recovery despite the fact



This steel bridge across the designated "scenic" Hudson River, built specifically and temporarily for former logging operations when the shoreline was in private ownership, is now proposed by DEC as a new motorized route across the river, potentially fragmenting three adjoining units of the Forest Preserve. *Photo by Dave Gibson*



The Essex Chain of Lakes are fringed by wetland vegetation sensitive to human overuse. Pictured is a beaver lodge on Third Lake. *Photo by Dave Gibson*

that recovery of keystone predator species like cougar could prove critical to controlling white-tailed deer populations and the negative impacts of deer over-browsing of native vegetation. Further, this and other UMPs produced by DEC pay little heed to climate change, a significant omission because Adirondack planning should analyze ecosystems, human recreational uses, and potential for such use to exceed carrying capacities in the context of long-term environmental trends, such as the accelerating rate of extreme weather events which are a likely result of altered climate.

### ESSEX CHAIN OF LAKES PRIMITIVE AREA

The 19,000 acre Essex Chain of Lakes tract was acquired by the State and added to the Forest Preserve in 2012. The purchase was widely praised as a spectacular addition to the Forest Preserve. At the same time, it was also widely recognized that the Essex Chain of Lakes tract is typified by small water bodies, wetlands, a delicately balanced fishery, and other sensitive features susceptible to the impacts of human overuse.

Nevertheless, DEC proposed a Wild Forest classification for the sensitive Essex Chain, including corridors through the area for snowmobiles, trucks during hunting season, bicycles, and float plane access to the largest of the lakes (DEC Memorandum). The APA ultimately rejected DEC's Wild Forest recommendation and instead submitted a proposal to the Governor classifying much of the tract as Primitive, while creating Wild Forest corridors just beyond the Chain Lakes to allow for motorized access. This classification was approved by the Governor in 2014.



## LOWERED MANAGEMENT STANDARDS

Having for the most part lost the classification battle, DEC nevertheless continued to promote inappropriate public access to this sensitive area. In its first draft of a UMP for the Essex Chain tract, DEC has:

- Claimed, without providing evidence, that public motorized uses within the Hudson River Wild River corridor were “*grandfathered*” and therefore legal despite the express prohibition in the Wild, Scenic and Recreational Rivers Act against motorized uses in Wild River corridors;
- Proposed building a massive new bridge over 100 feet long across the “*scenic*” Cedar River. The bridge’s purpose to connect a long North-South snowmobiling corridor was hidden in this draft;
- Insisted on expanding public motorized access to the Essex Chain of Lakes and a new parking area within feet of the sensitive Chain in disregard of the Primitive classification;
- Failed to include natural resource and recreational assessments and analyses, which are mandated components of all UMPs. In particular, DEC’s draft failed to require a fisheries survey despite the sensitivity of the Chain Lakes fishery to exploitation.

Faced with intense public criticism over its proposals, DEC withdrew the draft UMP in 2014 and is preparing a new draft in 2015. DEC is also promoting public bicycling in this and other areas classified as Primitive despite the fact that Primitive Areas must be managed as Wilderness, free from mechanized uses, including bicycles. Bicycling is authorized by the SLMP on selected routes in Wild Forest areas.

### LACK OF STATE AGENCY COORDINATION IN THE PARK

There are many examples of how a lack of coordination, combined with understaffing, weak financing and poor performance standards, can contribute to the damage of natural and scenic resources in the Adirondack Park. One example is along the Park’s roadways. The great majority of New Yorkers and global visitors appreciate the wild beauty and mountain, lake or river scenery of the Adirondack Park from their automobiles. The good feelings those travelers receive from a Park roadway experience also benefits local towns and villages in the Park, directly and indirectly. Therefore, in addition to public safety, the character,

scenery, interpretive and other information available along scenic highways are very important, as are the standards by which those highways are maintained.

All of this was well understood by the Adirondack Highway Council, an interagency and citizen collaboration to achieve National Park quality highways, bikeways, signage, interpretation, landscaping, parking and treatment of utility lines in the Adirondack Park. The AHC was in existence from 1974 until the mid-1980s. Its standards and attempts to create an Adirondack Park brand can still be seen, from the yellow on brown highway signs throughout the Park, to rustic guard rails (now being removed), to interpretive displays along highways. A section on Travel Corridors in the Adirondack Park State Land Master Plan (SLMP) presents guidelines for managing these highways.

In ensuing years the vision and interagency coordination needed to maintain high standards and a distinctive Adirondack brand for the Park’s highways waned. Guidelines in the SLMP were not being observed. The decline culminated in 2005 when the DEC, APA and Department of Transportation (DOT) signed off on the cutting of 5000 “*hazard trees*” on Forest Preserve land along State Route 3, a designated scenic highway linking the Park’s communities of Tupper Lake and Saranac Lake. It was a prime example of agency dysfunction and erosion of Park standards. The resulting tree stumps on such a scenic road, some with Forest Preserve signs still posted on them, was a “*wake-up call*”. It resulted in a 2006 Consent Order signed by all three agencies re-committing to coordinated vision and highway project review, special engineering standards different from the rest of the State, a dedicated staff coordinator for the Park, and a stepped-up schedule for completing Park Highway Corridor Management Plans.

By 2015, much good work resulting from the Consent Order has been done, but key projects including the Corridor Management Plans are far off schedule and still there is only one hard-working staff person trying to coordinate all related projects on top of other job responsibilities. The Governor and his three agencies should recommit to the interagency vision for the Park from 1974-1985, and re-invest in the scenic splendor, educational opportunities, and special environmental standards expected along Adirondack Park highways.

# ADIRONDACK WILD'S RECOMMENDATIONS

Adirondack Wild recommends the following actions that we believe are most needed today to address the issues and problems identified in this report. Underlying them all is the need for renewed public awareness and consciousness about the significance of Article 14 of our State Constitution and the need for a strengthened State commitment to the Park with a commensurate set of tools to design and site land use and development in a manner that protects wilderness, open space and maintains ecological integrity and community resilience. In Part II, for publication later this year, we will include recommended actions at the landowner, local government and human community levels which play such important roles in the Adirondack Park.

## REFORM THE CONSTITUTIONAL AMENDMENT PROCESS

- **All future amendments of Article 14 including land exchanges should be narrowly defined, specific in purpose and limited in scope.** They must serve a well-documented need for public facilities or public services that cannot be provided in ways other than through an amendment. They should not be for the purpose of benefiting a private or public corporation and should never take public land for corporate or commercial purposes;
- Prior to consideration of first passage in the Legislature (or at a Constitutional Convention), the purpose, scope and public benefits of any proposed amendment to Article 14 should be discussed in public and in advance with legislative sponsors, and within the DEC Forest Preserve Advisory Committee;
- Public hearings should be scheduled across the state to discuss and debate the merits of amendment proposals prior to a statewide referendum;
- Prior to consideration of second passage, all lands affected by the amendment through a land swap, for example, should be competently surveyed and assessed by a team of scientists whose reports should be made public and be provided in a timely manner prior to consideration by the Legislature or a Constitutional Convention;
- If the amendment takes the form of a land exchange, it should be determined that the lands to be received for the Forest Preserve are actually available for transfer into the Forest Preserve, and be greater in acreage and in ecological, recreational or stewardship value than the lands to be removed from the Forest Preserve;
- During consideration of second passage, the important details of implementing legislation should accompany a constitutional amendment joint resolution; these details should be carefully considered in any vote on second passage.
- The State should never again attempt to auction off State Land in the Adirondack and Catskill Parks to the highest bidder. If there is ever any doubt about Forest Preserve status or the constitutionality of any action, an opinion by the State Attorney General should be sought.

## REFORM HOW SUBDIVISIONS ARE DESIGNED AND PERMITTED

- Conservation design of all significant residential subdivisions should be the Park standard.** Conservation design of new subdivision and development in defined critical resource areas of the Park should become the site plan standard in the law and regulation, not the exception as it is today. As we have shown, APA is failing to protect the landscape and natural resources on lands classified Resource Management and Rural Use. In particular, the APA is failing to follow state-of-the-art conservation design procedures in reviewing subdivisions in these sensitive locations. The Legislature should amend the APA Act to:
- Require conservation subdivision design in those private land areas where the law prioritizes natural resource protection, namely Resource Management, Rural Use and parts of Low Intensity Use;
  - Require that conservation subdivision design protect large, contiguous forested or open space tracts beneficial to the forest products industry, agriculture, hunting and fishing leases, and related businesses, as well as key wildlife habitats and connecting pathways and important ecological zones.



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## CREATE NEW LAND USE PLANNING TOOLS

**Transfer of Development Rights (TDR)** legislation and other tools to incentivize conservation are needed in the APA Act to help channel development onto private lands best suited for development. This should be done through careful study, planning and use of performance standards. TDR should be advanced as one of several land use planning incentives for protecting forest and agricultural lands in Rural Use and Resource Management where natural resource considerations are paramount under existing law. High standards should be expected for adding building density to areas of Low and Moderate Intensity Use. TDR might be best for towns that have an approved local land use plan and which strongly partner with APA to implement. New incentives to encourage the use of TDR, such as funds for hamlet and community revitalization, should be considered.

## REFORM THE SEQRA PROCESS AT APA

**APA project review in the Park once was the functional equivalent of a SEQRA Environmental Impact Statement.** However, as discussed above, this is no longer the case. The result is a failure to comprehensively assess all actual and potential project impacts. Local knowledge matters, and project review suffers without a scoping procedure, and clear findings. The APA Act should be amended in order to ensure that:

- Project review more closely resembles an EIS;
- Project alternatives are substantive and well analyzed;
- Public scoping meetings are held to gain public input into the full range of actual and potential impacts and needed studies during project review;
- APA should also be required to issue clear Findings statements consistent with SEQRA.

## ANALYZE PARK TRENDS

**Particularly during our era of climate change, with severe weather events affecting the Adirondack Park and North Country region, the State must be able to establish and track critical environmental thresholds, trends and indicators of change.** The Governor and State Legislature should require and provide funds for the APA to do this in order to know what Parkwide trends are occurring and at what rate, and to issue periodic reports on the state of the Park. The Lake Tahoe Regional Planning Agency (LTRPA) provides a model for how to do this. LTRPA is required every four years to update its thresholds for attaining environmental goals and standards for the Lake Tahoe Basin that indirectly define the capacity of the Region to accommodate additional land development ([www.LTRPA.org](http://www.LTRPA.org)).

## STRENGTHEN APA NOMINATIONS

**What are the qualifications for APA members that should guide nominations by Governors?** A person of any background and vocation can contribute to the legislated mission of the APA. But basic to all should be these characteristics:

- A thorough grounding in the legislative purposes of the APA Act and other laws protective of the Park;
- A passion to use those legislative tools for their intended purposes;
- An awareness that he or she is representing all the citizens of New York concerned about the Park's status and future;
- A critical, thoughtful, independent mind and a willingness to actively use it during meetings;
- The courage of convictions during difficult votes on controversial matters.

# ADIRONDACK WILD'S RECOMMENDATIONS

## MEASURE CUMULATIVE IMPACTS

**Regulations are needed to specify the standard by which APA reviews proposed development in context of forty years of projects already permitted by the APA and by local governments.** The State's courts have affirmed that cumulative impact analysis is a vital tool the APA already has. Wildlife research is showing us that cumulative impacts of dispersed human development in the Park have severely negative consequences for the Park's endemic wildlife. Aided by a Park data center, this policy will not just assist the APA in carrying out its mission, but will also assist all 103 local governments in the Park looking to improve planning for their housing needs, parks and critical infrastructure.

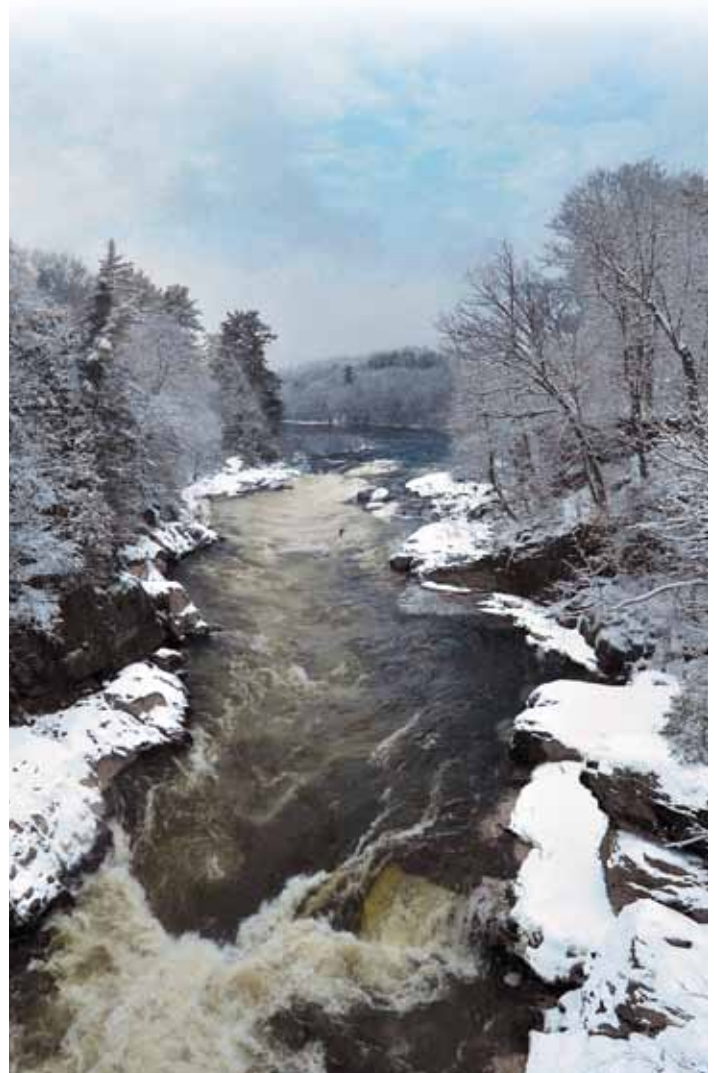
## STRENGTHEN SCIENTIFIC STANDARDS

**APA is supposed to weigh a permit application against a legislated number of “development considerations,”** such as surface and ground water features, air resources, key wildlife habitats, aesthetics and much more. The problem is that few of them are precisely defined to have real weight in the decision-making process. There are no clear standards to determine if they have been adequately applied to a project's review. For example, the Adirondack Club and Resort project shows the presence of many “ecotones” (one of the 37 Development Considerations) or transitional zones between habitats, throughout the project area, but there is no way to know how this development consideration was applied to the conditional approval granted by APA.

- **Regulations are needed to define each development consideration** as it applies to specific conditions;
- **APA should also create performance standards** for these and for the lengthy “secondary uses” list to assure that each allowed use is consistent with the purposes, policies and objectives of each land use areas in question. By doing these things, the APA's review of projects would gain more predictable, scientifically-based standards which would not only serve the public better, but APA applicants as well. Enhanced regulatory standards also help local governments to partner with APA in the employ of land use tools and incentives, such as transferable development rights.

## CREATE REGULATIONS FOR THE SLMP

**The SLMP should be given “teeth” by placing its guidelines for public use of the Forest Preserve into enforceable regulations.** As we have demonstrated, both the APA and DEC are not adhering to key sections of the SLMP despite the fact that it has the force and effect of law. Enforceable regulations envisioned by Section 816 of the SLMP should be immediately undertaken by the APA, in consultation with DEC. For our detailed recommendations on changes needed for the SLMP and Unit Management Plans, see our December, 2014 report *Strengthening the State Land Master Plan* found at [www.adirondackwild.org](http://www.adirondackwild.org).



Rockwell Falls, Upper Hudson River. Photo by Ken Rimany



### **PROHIBIT ALL-TERRAIN VEHICLES ON THE FOREST PRESERVE**

Because of the extreme, lasting damage they cause on public lands managed as “*forever wild*,” public use of all-terrain vehicles on the Forest Preserve should be expressly prohibited by DEC policy and regulation, except for permitted access for persons with disabilities on maintained roads, as per DEC’s existing CP-3 policy. If DEC continues to delay issuing its policy, the State Legislature should adopt legislation to prohibit public ATV use on the Forest Preserve.

### **SUBJECT SNOWMOBILE TRAIL GUIDANCE TO PUBLIC HEARINGS**

DEC and APA adopted a Snowmobile Plan in 2006 and Snowmobile Trail Siting, Maintenance and Construction guidance document in 2009 without SLMP public hearings, yet in several important respects the plan and the guidance violate provisions of the State Land Master Plan, as discussed. The SLMP can only be amended by following legal steps which include hearings. These documents should be withdrawn, fresh discussions held and the activities proposed as amendments to the State Land Master Plan subject to SEQRA review, evaluation and hearings.

### **CREATE STAFF POSITIONS AND TRAINING IN WILDERNESS MANAGEMENT**

During the more than forty years that DEC has had responsibility for managing wilderness in our Forest

Preserve pursuant to the Adirondack and Catskill State Land Master Plans, there are still no job titles intentionally written to recruit wilderness management professionals into the DEC, and to advance the careers of these professionals. Furthermore, in-service training in wilderness management for existing personnel working as natural resource planners remains episodic, not consistent. If New York is to reclaim leadership in wilderness management, it should have job titles devoted to it and annual in-service training on par with the standards of training received by the federal land management agencies.

### **MAKE SCENIC HIGHWAYS A PRIORITY**

The Adirondack Park is divided into three State Transportation regions. It has one hard-working staff coordinator attempting to carry out the 2006 Consent Order mandating the completion of Travel Corridor Management Plans and other projects to assure that Adirondack Park Highways maintain the Adirondack brand and meet strong environmental standards. Inventoried scenic areas along highways in the Park need to be incorporated within planning documents on a coordinated basis. DOT should consolidate its Park efforts, build on the current coordinator’s position, and create a well-staffed Adirondack/Forest Preserve office to oversee all Park projects.

## **CONCLUSION**

The Adirondack Park is at a crossroad. It could go further in the current direction of decisions that compromise and are inconsistent with laws and standards put in place years ago to reflect the deep public interest and concern for the Park. The examples we cite in this report are not isolated events, but part of a pattern which has serious consequences of Adirondack Park resources and wild forest character.

Alternatively, given growing public consciousness, public pressure, and through the recommendations we offer, the State’s leaders and agencies can once again embrace a region of increasing regional and global interest, and enhance the Park’s magnificent, rare wilderness, uninterrupted forests, waterways and wildlife habitats. In doing so, there will be significant ecological and economic benefits in and beyond the Adirondack Park.



## COMING PARTS OF ADIRONDACK PARK AT A CROSSROAD

In subsequent parts of our report, Adirondack Wild will offer more detail about the many impacts that mission failure among our state agencies are having. The topics of habitat and forest fragmentation will be extensively reviewed, as will the crucial role of landowners, local communities and local governments in the Park's conservation and resilience over time. Training, tools and incentives to enhance community planning will be explored. An additional suite of policy recommendations will be included.

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## ADIRONDACK WILD — WHO WE ARE, WHAT WE DO, AND CONTACT INFORMATION

*Adirondack Wild: Friends of the Forest Preserve* has its roots in the 1945 founding of Friends of the Forest Preserve by Paul Schaefer, a champion of the Adirondack wilderness and one of the great conservationists of the 20th century. Today, Adirondack Wild is a membership organization dedicated to protecting that which makes the Adirondack Park unique in New York State and in America – its interconnected public and private wild lands, including the constitutionally protected public Forest Preserve in the Adirondack and Catskill Parks. Adirondack Wild works within three program arenas (Safeguarding the Wild, Extending the Wild, Educating for the Wild) to protect and expand wild landscapes, employing informed advocacy, public outreach, education and, when necessary, legal action. Our vision for the Adirondack and Catskill Parks is for an interconnected, integrated network of wild lands in public and private ownerships, taking into account watershed qualities, wildlife, wilderness, outdoor recreation, spiritual and other values. Jobs in wildlife and heritage tourism, hunting and fishing, guiding, boatbuilding, outdoor education, skills development, local hospitality and learning centers benefit from an extensive wild land network.

Adirondack Wild works collaboratively with a variety of constituents and stakeholders and honors a 150-year old legacy to protect the wild lands and waters of the Adirondack and Catskill Parks. It stands on the shoulders of thousands of spirited citizens who have spoken out for New York's "forever wild" landscapes since 1885. More information about Adirondack Wild activities and how to become involved can be found on our website, [www.adirondackwild.org](http://www.adirondackwild.org).

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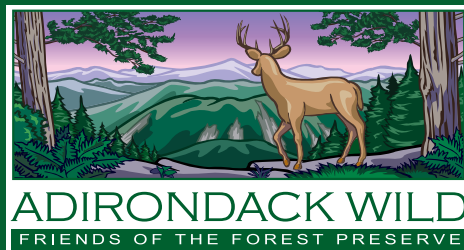


he lands of the state,  
now owned or here-  
after acquired, consti-  
tuting the forest preserve as now  
fixed by law, shall be forever  
kept as wild forest lands. They  
shall not be leased, sold or exch-  
anged, or be taken by any cor-  
poration, public or private, nor  
shall the timber thereon be sold,  
removed or destroyed.



*Article XIV Section 1  
New York State Constitution*

FRIENDS OF THE FOREST PRESERVE, INC.  
THE ASSOCIATION FOR THE PROTECTION OF THE ADIRONDACKS, INC.



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