



Board of Directors

September 9, 2021

Charles Clusen
Chair

Hon. Basil Seggos, Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Marilyn DuBois
James McMartin Long
Michael Wilson
Vice-Chairs

RE: DEC's Trail Construction in the Sundown Wild Forest in the Catskill Park Raises Constitutional Issues

Barbara Rottier
Secretary

Dear Commissioner Seggos:

David Quinn
Treasurer

Protect the Adirondacks recently visited the proposed multi-use trail in the Sundown Wild Forest in the Catskill Park and a newly constructed adjoining trail in the Vernoo Kill State Forest outside the Park. This trail is part of the proposed relocation of the Long Path. Our fieldwork left us with many questions. It is our understanding that tree cutting and trail construction using heavy machinery in the Forest Preserve has begun. Based on our fieldwork, using maps and materials supplied by the Department of Environmental Conservation (DEC), we do not believe that this project was accurately noticed in the Environmental Notice Bulletin (ENB).

Nancy Bernstein
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We also have concerns about the compliance of this project with Article 14, Section 1, the forever wild clause in the New York Constitution. The DEC Staff has recently stated that it hopes to avoid further litigation over snowmobile trails and Article 14, but its recent actions make us wonder if this is true.

The ENB Notice for the project states:

ENB Region 3 Notices 7/14/2021, Tree Removal for the Relocation of a Section of the Long Path Trail

The action involves cutting and removal of 1,267 trees three inches or larger in diameter at breast height (DBH) to facilitate the relocation and construction of six miles of new multiple-use trail that will allow snowmobile use during appropriate weather conditions. This project will be completed through an approved work plan and is identified in the approved 2019 Sundown Wild Forest and Vernoo Kill State Forest Unit Management Plan. Trail construction will not exceed standards for Class B trail as defined in Office of Natural Resource Policy #2,

Snowmobile Trails - Forest Preserve. Tree cutting will be in compliance with Lands and Forests Policy #91-2 on Cutting, Removal or Destruction of Trees and

Peter Bauer
Executive Director

Protect the Adirondacks

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Other Vegetation on Forest Preserve Lands.

The project is located in the Sundown Wild Forest in the Towns of Rochester and Wawarsing, New York.

Multiple Proposed Routes with Conflicting Length: The DEC Work Plan for this project stated: “This proposed trail reroute would traverse through several miles of State Forest as well as 6 miles of Catskill Forest Preserve lands within the Sundown Wild Forest. The Long Path at this location will be a DEC marked and maintained multi-use trail and will include the use of snowmobiles when conditions are appropriate for use.”

The work plan provided a map that detailed the route, and the DEC staff also provided GPS route coordinates, which I had requested at a Forest Preserve Advisory Committee meeting. In addition, the route was flagged by DEC staff in the Forest Preserve.

Using DEC GPS data, DEC maps, and following flags in the woods set out by DEC staff, our fieldwork found the proposed trail to be 8 miles long. It appears to us that both the ENB and Work Plan are incorrect. See map on page 7.

Tree Cutting on the Forest Preserve: The proposed project seeks to cut down 1,267 trees at 3” DBH or greater, as stated in the work plan. The DEC prepared its work plan and counted trees using its tree-cutting policy LF91-2, which only counts trees at 3” DBH or greater. This decision stands in contrast to the string of recent court cases at the State Supreme Court in Albany, the Appellate Division, Third Department, and the Court of Appeals in the *Protect* case where the courts ruled that cutting 25,000 trees at 1” DBH or greater violated Article 14, Section 1. The DEC’s decision to exclude counts of trees on the Forest Preserve at between 1-3” DBH is inconsistent with the recent court decisions.

In our fieldwork on the proposed new multi-use trail in the Sundown Wild Forest Area, we counted 586 trees between 1-3” DBH at an estimated 6-foot trail width that were not part of the DEC’s count of trees in its work plan. Due to the extent of steep slopes on more than half of the proposed route, along with the number of curves, where the DEC plans to widen the proposed trail to 8 feet, we estimate that the destruction of 1-3” DBH trees will increase by as much as 50%. The total trees on the Forest Preserve projected to be destroyed is likely to top 2,100. This means that at 6 miles in length the DEC will destroy 350 trees per mile. At 8 miles in length the DEC will destroy 262 trees per mile. Tree cutting at this rate is far more than the tree cutting determined by the courts to be permissible in the *Balsam Lake* decision. Pictures on pages 18-19 show the character of this forest to be cut.

In addition to the destruction of trees by this project, we estimate that at 6 feet in width, with an estimated 50% of the trail built to an 8-foot width, the new multi-use trail will see over 6 acres of forest cleared, where benchcuts are built, rocks and roots removed from the trail, and the trail tread is flattened and graded. The clearing of over 6 acres to build this trail raises serious constitutional questions given the recent Court of Appeals decision, and recent Article 14 amendments for projects as small as 1 acre.

Compliance with Article 14 Decisions: The new multi-use trail in the Vernoooy Kill State Forest saw extensive use of benchcuts, which greatly expanded the disturbed area in many locations. Whereas the DEC stated that the trail tread width on this trail would be 6 feet on flat and straight sections and up to 8 feet on slopes and curves, the reality is that the disturbed area is consistently wider than 8 feet, with

many areas seeing 10-foot and 12-foot-wide disturbed areas and wider (see pictures on pages 9-16). More than any other feature, benchcuts created during snowmobile trail construction change the character of a trail and the Forest Preserve, making snowmobile trails very different than a foot trail. This fact was noted in the recent *Protect* decision where the Court of Appeals wrote:

Further, the Class II trails require greater interference with the natural development of the Forest Preserve than is necessary to accommodate hikers. Their construction is based on the travel path and speed of a motorized vehicle used solely during the snow season. The trails may not be built like roads for automobiles or trucks, but neither are they constructed as typical hiking trails.⁸ Under DEC's 2009 guidance document, the Class II trails are not to exceed nine feet in width except on sharp curves, steep slopes, and bridges, where a 12-foot width is allowed—the same width as an interstate highway lane and enough to accommodate two SUVs, side-to-side. The proposed bench cuts—cuts into sloped ground and removal of the cut soil, rock and trees to create a “bench” upon which a trail can be placed—require clearing the land on the up- and down-slopes of the trail, resulting in the clearing of the forest floor up to 20 feet in width in certain areas—a span wide enough to site a two-car garage.

The new multi-use trail in the Sundown Wild Forest area will require extensive use of benchcuts due to the many curves and steep slopes.

One of the reasons that the DEC uses to substantiate its need to build a multi-use trail is to provide access. This position was expressly rejected by the Court of Appeals in the *Protect* decision where it wrote “defendants and the dissent contend that the project’s impacts are justified because it enhances access to the Preserve and provides a variety of recreational opportunities. That analysis proceeds from a fundamental misunderstanding. The constitution provides for access and enjoyment of the Forest Preserve as a wild forest.” We contend that the way in which this new multi-use trail is designed and constructed, in addition to the forest clearing and tree cutting, raises significant issues that we believe violate Article 14. The design and construction methods that the DEC plans to use to construct this new multi-use trail undermines the Wild Forest character guaranteed by the State Constitution.

Extensive Slopes will Require Extensive Benchcuts: The proposed route for the new multi-use trail in the Sundown Wild Forest area traverses terrain with many steep slopes. We estimate that 53% of the proposed route is over grades of 10% or higher. (See the slopes map on page 6.) The proposed route traverses slopes that are 10% grade or less over 47% of the route, slopes between 10-20% grade over 30% of the route, and slopes over 20% on 23% of the route. In areas with curves or steep slopes, the DEC plans to build this trail to 8-feet in width, necessitating greater tree cutting. This trail will also require numerous long benchcuts. The extensive use of benchcuts and the flattening of the trail surface with heavy machinery will result in a trail that is in essence a Class II snowmobile trail. These trails were struck down by the courts in part due to their design. This new trail will be something very different from a foot trail. If the DEC builds this new trail in the Sundown Wild Forest like it recently constructed the multi-use trail in the Vernooey Kill State Forest, there will be many bench cut areas that are far in excess of 8 feet in width. See map on page 8 that shows areas with wide benchcuts and pictures on pages 9-16.

Recent Multi-Use Trail Construction Work in the Vernooey Kill State Forest: At the FPAC meeting on August 26, 2021, DEC staff stated that the new multi-use trail through the Sundown Wild Forest area would be constructed the same way as the recent new multi-use trail through the Vernooey Kill State Forest, which was designed to link with the new trail. The work plan for the Sundown Wild Forest trail

states: “In terms of width, the treadway width will generally be 6’ wide with some sections up to 8’ in width where necessary for turns and sections of steeper cross slope.”

Our fieldwork on the Vernooy Kill State Forest trail found this trail to be something very different from a foot trail. In many places, the trail tread exceeded 8 feet and large benchcuts saw clearing well outside the 8-foot trail tread. The pictures attached on pages 9-16 show benchcuts that widened the trail to widths of 10 feet and wider in many locations. If the DEC plans to build the multi-use trail in the Sundown Wild Forest using the same general design and oversight as the trail built through the Vernooy Kill State Forest, we have little confidence that the DEC will adhere to the required limits, and instead will regularly disturb areas beyond 8 feet.

New Trail in Sundown Wild Forest Does Not Comply with DEC Policy ONR-2: ONR-2 states “Care should be taken to designate separate areas for incompatible uses such as snowmobiling and ski touring or horseback riding and hiking.” Yet, despite this directive in ONR-2, the DEC is planning a multi-use trail in the Sundown Wild Forest. The decision to include snowmobiling on this multi-use trail will result in many changes to this trail that make it something entirely different from a foot trail or a mountainbike trail. Further, this trail is not on the periphery of the Forest Preserve, but runs through the heart of this Wild Forest unit.

The design conditions to support snowmobiling include the 6- to 8-foot trail tread widths at many points due to extensive slopes on the trail route. Large rocks and roots will be removed from the trail tread area. The trail tread will be flattened by grading with heavy machinery. The trail will see extensive use of benchcuts on one or both sides of the trail, which introduces human geometric shapes to an otherwise wild forest atmosphere. The benchcuts will also result in disturbed trail widths far wider than 8 feet, where widths of 10-20 feet will regularly occur. These construction methods are being used solely to accommodate snowmobiling, which is not a significant recreational use in the Catskills, and will undermine the foot trail experience and enjoyment for hikers and mountainbike riders. These multi-use trail construction methods are no different than those used to build the Class II trails that were found to be unconstitutional in the Protect case.

It’s also important to point out that ONR-2 does not provide any guidance for benchcuts, rock removal, root removal, and trail tread flattening and grading. These are staples of snowmobile trail construction that were omitted from ONR-2.

Existing Snowmobile Trail Poorly Maintained, Unrideable For Snowmobiles in Locations: The existing trail from Yeagerville to Vernooy Falls, which the new multi-use trail links to, is not a viable snowmobile trail in its current condition. The trail is poorly maintained and has many sections where trees and shrubs prevent snowmobile use. While this trail has long been marked as a snowmobile trail, it clearly has not seen much, if any, snowmobile use in recent years. The major presence of large rocks along the trail will require significant snowfall to make this trail marginally passable in limited sections. This trail may be a snowmobile trail on paper, but the realities on the ground make this trail unusable for modern snowmobiling. See pictures on pages 17-18.

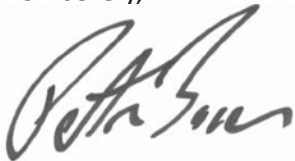
The Long Path Deserves Better: While we see the merit and importance of moving a long stretch of the Long Path from a road walk to the State Forest and Forest Preserve, we see the decision to build a multi-use trail as a means of re-routing the Long Path as a missed opportunity. If the new trail in the Sundown Wild Forest is built in any way like the new trail was built in the Vernooy Kill State Forest the experience of the Long Path will be greatly diminished. What could have been a beautiful hike through

beautiful wild country will be undermined by a wide multi-use trail that is far more akin to a road than a hiking trail. A beautiful narrow foot trail should have been constructed for the Long Path, but the public hiking experience was sacrificed for expansion of motor vehicles into a part of the Forest Preserve where they simply do not belong and makes no practical sense.

Conclusion: We urge the DEC to halt its plans to build this new multi-use trail in the Sundown Wild Forest Area in the Catskill Park given the incorrect ENB notice and the constitutional questions that surround it.

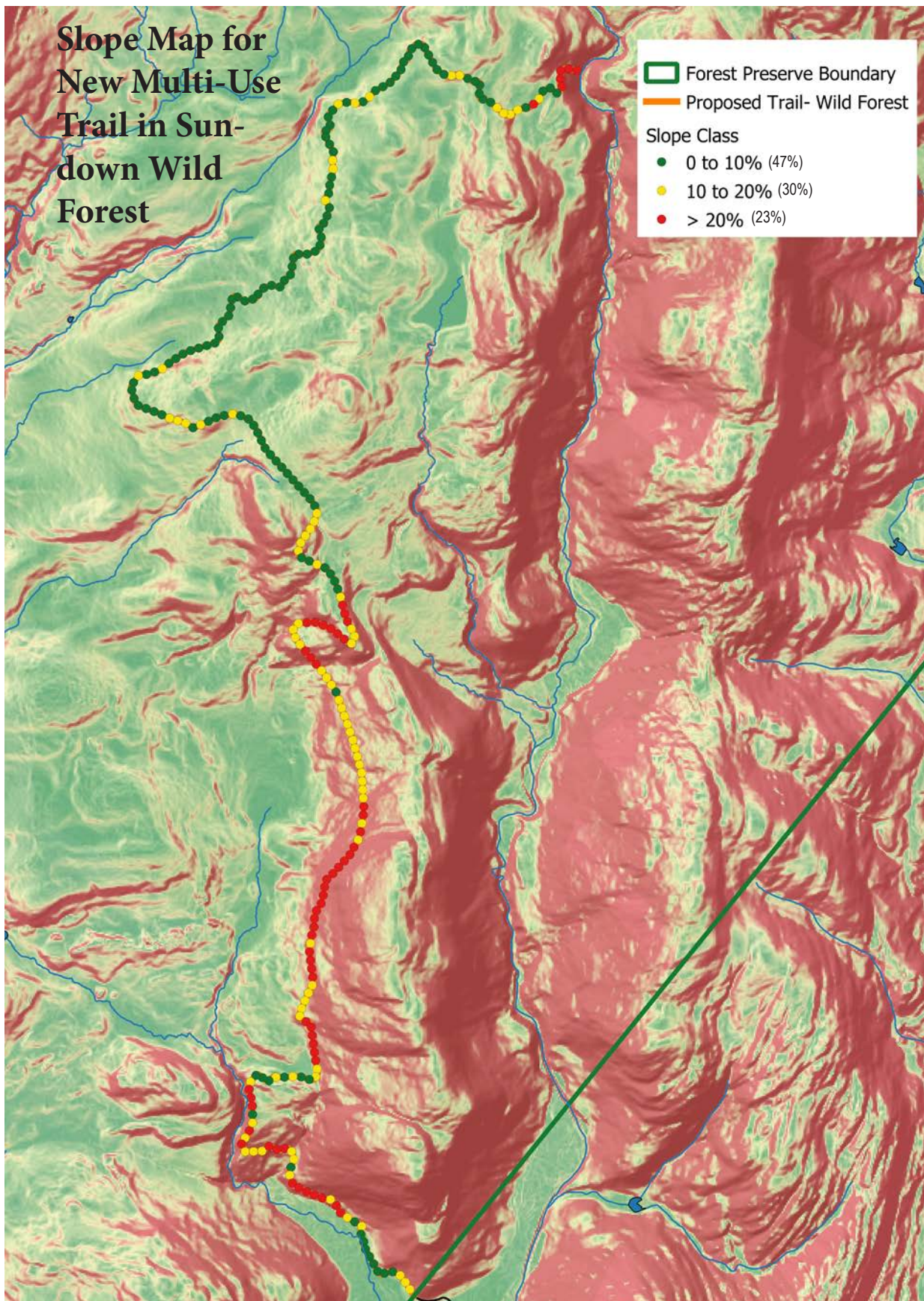
On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to share our concerns with you.

Sincerely,

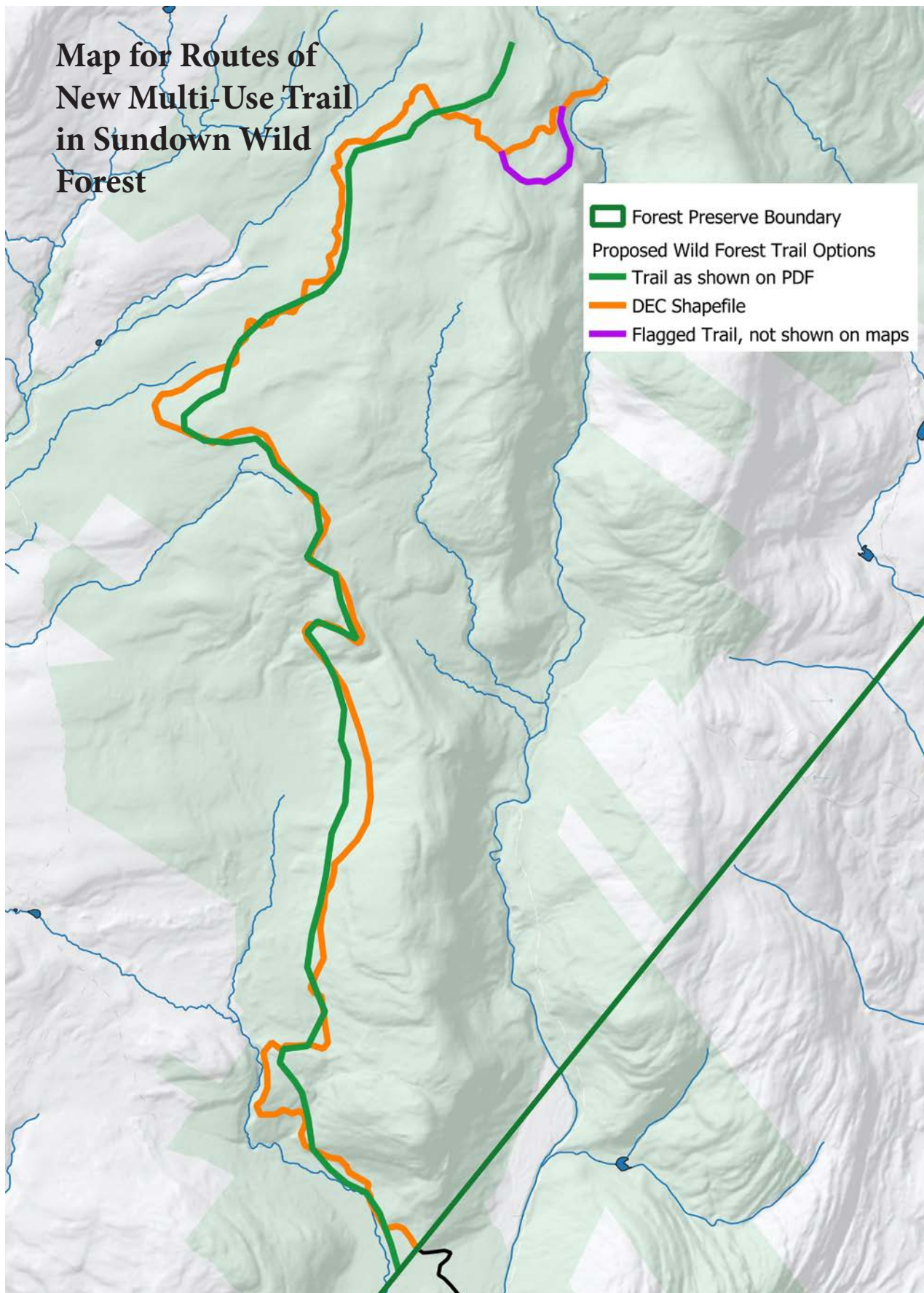
A handwritten signature in black ink, appearing to read "Peter Bauer", written in a cursive style.

Peter Bauer,
Executive Director

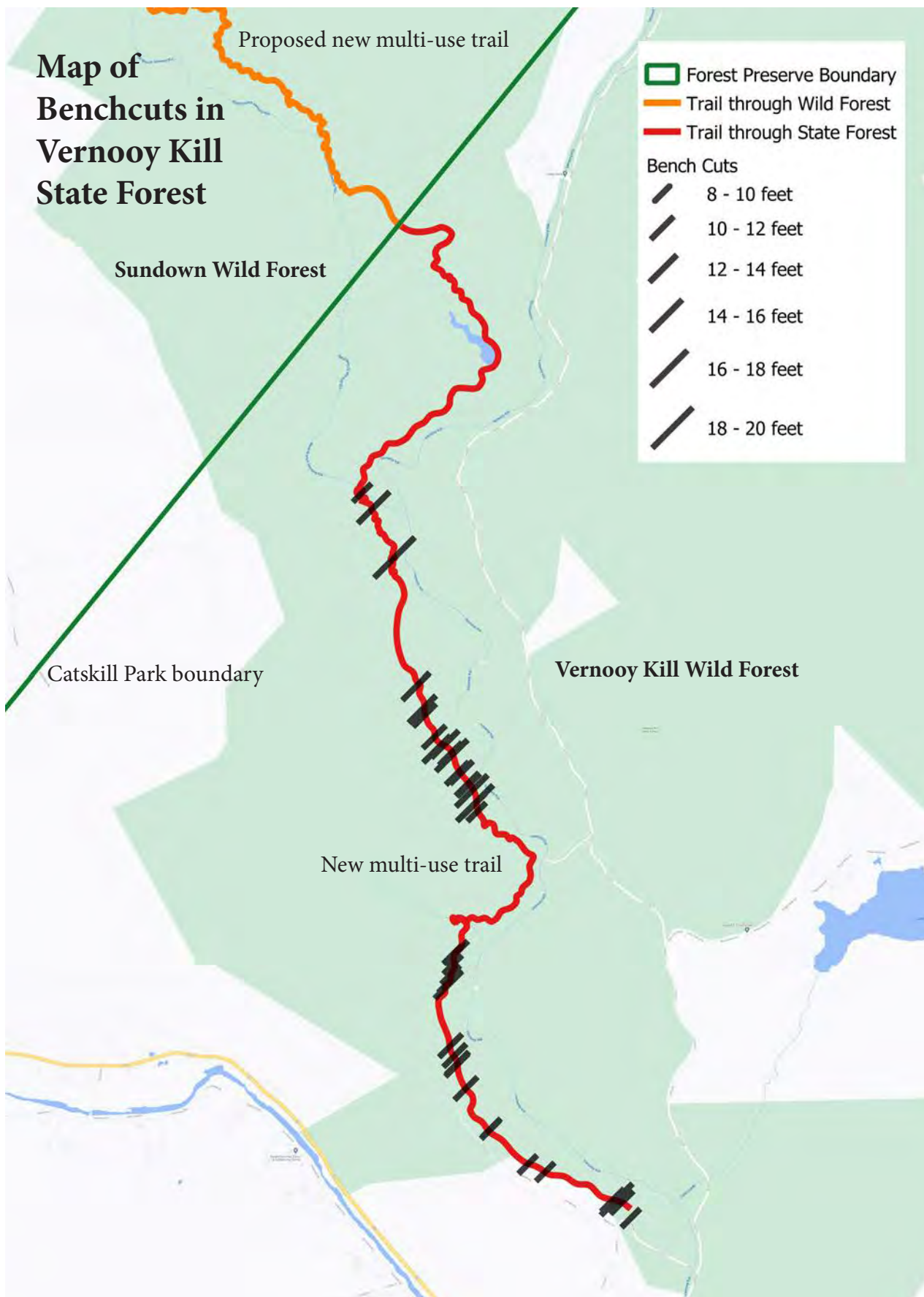
CC: Governor Kathy Hochul
K. Persichilli Keogh, Executive Chamber
E. Fine, Executive Chamber
R. Shah, Executive Chamber
K. O'Leary, Executive Chamber
R. Isacowitz, Executive Chamber
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This map shows the slope conditions on the new proposed multi-use trail in the Sundown Wild Forest Area. The proposed route traverses slopes that are 10% grade or less over 47% of the route, slopes between 10-20% grade on over 30% of the route, and slopes over 20% on 23% of the route. DEC plans to build this trail to 8-feet in width on 53% of this trail that is on steep slopes, necessitating greater tree cutting and use of benchcuts. The steepness of the route will require frequent and long benchcuts.



This map shows discrepancies in the different routes between the map in the DEC work plan, the GPS coordinates provided by the DEC, and the route that was flagged by DEC staff. This trail is 8 miles long, not 6 miles.



This map shows the locations of excessively wide benchcuts on the new multi-use trail in the Vernooey Kill State Forest area. The frequent use of benchcuts resulted in lots of wide disturbed areas beyond a 6- or 8-foot-wide trail tread limit.



Two pictures of typical scenes from the new multi-use trail in the Vernooy Kill State Forest. The top is a 12-foot+ span as measured from the top of the benchcut to edge of disturbed area near a tree. The bottom picture shows a tape measure at a span of 8 feet in an 11-foot disturbed area.



Three pictures of benchcuts from the new multi-use trail in the Vernooy Kill State Forest, which were widely used. In addition to a wide artificially flat trail tread, benchcuts change the character and atmosphere of a trail as they introduce human geometric forms to a natural setting. These benchcuts are very different from small benchcuts used on a hiking trail. This section is well over 8 feet wide of disturbed area.



Two pictures of a typical scene from the new multi-use trail in the Vernooy Kill State Forest. The top shows a measuring tape at six feet on the trail tread. The bottom picture shows a measuring tape at 8 feet. The span of the disturbed area from the benchcut and grading is over 11 feet wide. The trail should be no more than 6 feet wide.



Two pictures from the new multi-use trail in the Vernoooy Kill State Forest. The top picture shows a stretch of the trail that has the appearance of a forest road and not a hiking trail. The bottom picture shows another stretch of the trail that has the appearance of a forest road and not a hiking trail. Both section are well over 6 feet wide.



Three pictures of a benchcut from the new multi-use trail in the Vernoooy Kill State Forest, where benchcuts were widely used. The disturbed area spans 15 feet with a high bench cut on one side. This section of the trail more resembles a road than a hiking trail. This straight, flat section should have been no more than 6 feet wide.



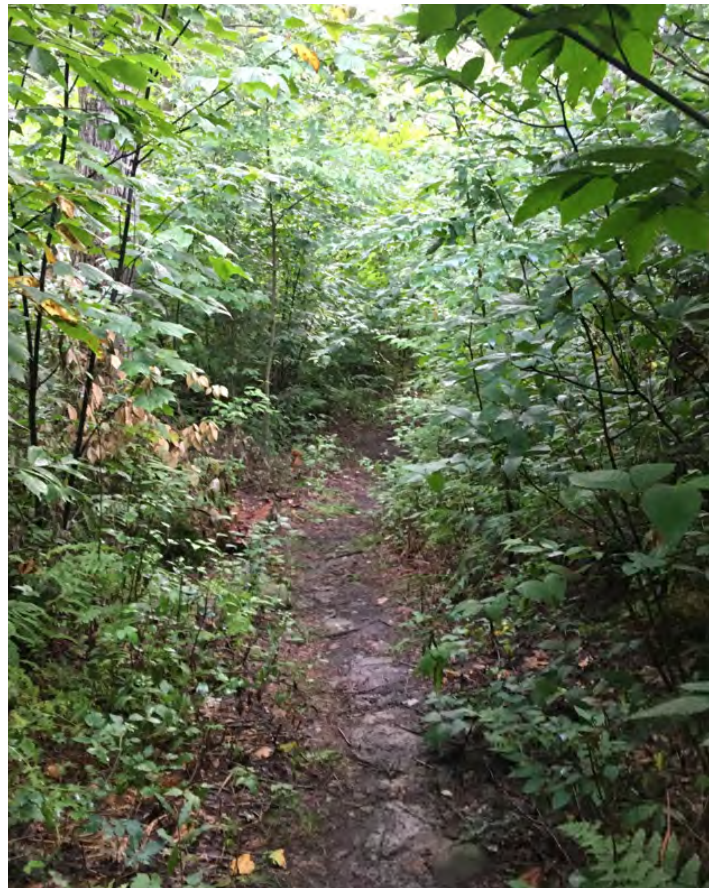
Two pictures of long benchcuts on the new multi-use trail in the Vernooy Kill State Forest. These pictures show two stretches of the trail with a long benchcut and flattened and graded surface. These sections are 12 and 13 feet wide of disturbed area respectively. They should have been no more than 6 feet wide.



Three pictures of a major washout on a steep part of the new multi-use trail in the Vernooy Kill State Forest. One can't help but wonder if the wide trail built with major benchcuts on such a steep grade at this location contributed to this major washout that makes the trail impassable and will cost a small fortune to repair.



Three pictures of sections of the new multi-use trail in the Vernooy Kill State Forest. The two top pictures show rutted sections that are wide with extensive benchcuts. Bottom picture shows a wide section with a debris pile.



Three pictures of the Vernoooy Falls Trail from Yeagerville. This trail is marked as a snowmobile trail, but a number of the trail markers are old collector's items as shown top left. In many places this trail is narrow and clearly has not been used as a snowmobile trail in decades.



Two more pictures of the Vernooy Falls Trail from Yeagerville. This trail is marked as a snowmobile trail, but is narrow and clearly has not been used as a snowmobile trail in decades. Note the large rock in the trail in the top picture that will require several feet of snow to make this trail section safe and passable for a snowmobile.



Three pictures from the proposed multi-use trail route through an intact mature forest in the Sundown Wild Forest Area in the Catskill Forest Preserve. The top picture shows flags placed to mark the route where many trees will be destroyed. The bottom picture shows a section of the mature forest along the proposed route.



Two pictures of the proposed multi-use trail route through an intact mature forest in the Sundown Wild Forest Area in the Catskill Forest Preserve. Note the massive upturned trees, indicators of a mature forest. Note the thicker understory in the top picture.