



Board of Directors

December 6, 2021

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Chair

Hon. John Ernst
Chair
NYS Adirondack Park Agency
PO Box 99
Ray Brook, NY 12977

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Secretary

RE: APA Needs to Fully Investigate Illegal Work by the NYSDEC to Reconstitute Abandoned Roads in the MacIntyre East Section of the High Peaks Wilderness Area

David Quinn
Treasurer

Dear Chairman Ernst:

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Protect the Adirondacks recently returned to the Dudley Brook area in the MacIntyre East section of the High Peaks Wilderness Area for a second field visit. We went there to review work underway by the Department of Environmental Conservation (DEC) using heavy machinery on an abandoned logging road. This roadway had been reclaimed in 2019-20 by DEC staff, where a series of pits and mounds were constructed in an effort to expedite the natural restoration of that road corridor to a wildlands condition and setting befitting a classified Wilderness area. This work was done in conformance with Wilderness Area guidelines in the Adirondack Park State Land Master Plan (APSLMP) that called for the removal of non-conforming uses. A work plan for this restoration work was approved in 2019 by the DEC. In 2021, the DEC set out to reverse the restoration work and is now in the process of reconstituting this roadway by filling in the pits and flattening the mounds. The DEC is functionally re-establishing a road in a Wilderness area and there was no new work plan.

Peter Bauer
Executive Director

Our recent field visit on November 21st found that 51 pits and mounds had been removed along a 0.83-mile stretch of the abandoned road. The DEC's work underway now is clearly returning this roadway to a condition that makes it accessible for motor vehicles. DEC's current work has made this abandoned roadway once again into a wide, flat road. The heavy machinery that DEC is using flattens the roadway further with each trip and further compacts soil and the gravel roadbed.

DEC's work to reconstitute this roadway appears to us to be a violation of the APSLMP. The DEC's work is, in essence, an effort to rebuild and restore a non-conforming use. We are unaware of another instance where a non-conforming use in a Wilderness area was removed and then re-installed. This appears to be a novel situation.

Protect the Adirondacks

PO Box 48, North Creek, NY 12853 518.251-2700
www.protectadks.org info@protectadks.org
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The DEC disputes this allegation and argues that the work it's doing now is simply to correct mistakes made by DEC staff in 2019-20 that somehow escaped the notice of senior DEC officials in Albany for two years until they discovered problems in the late summer of 2021. They say that the faulty restoration work must be dismantled in order to protect water quality, protect public safety, and facilitate revegetation. DEC's rationales appear to us to be fanciful.

Our field assessments on November 11th and the 21st did not find water quality or public safety issues. We have a hard time accepting these as rational or reasonable explanations to justify the work underway. The reality of the situation, appears to us, is that the DEC is reconstituting and rebuilding a roadway in a Wilderness area, which is a direct violation of the APSLMP. This rebuilt roadway will be accessible for use by motor vehicles and this illegal incursion and non-conforming use will remain in the High Peaks Wilderness Area for the foreseeable future.

2019-20 DEC Work

The 2019 work plan that was authorized by the DEC stated: "Work will be completed to remove culverts, bridges and reclaim the road surface, on grades. This project will improve the recovery of the natural resources and enhance the Wilderness Experience of future users."

The work plan further stated: "The intent of the work is to remove the larger infrastructure of the road system, hasten naturalization and support a future trail system. By removing the bridges and allowing the road system to start the recovery process, we provide a blank slate for the future of trail development. By designing the trail system from the start, to be a hiking trail system and not relying on using old roads, the Department is situating itself to create a sustainable trail system that blends with the forested surroundings and enhances the hiker's overall trail experience." The intent of the work plan was to dismantle the existing road systems in newly purchased Forest Preserve in the MacIntyre East and Boreas Ponds tracts that were classified as Wilderness.

To reclaim the road corridor the DEC created a series of pits and mounds, where the roadway was dug out in places and mounds were constructed (see pictures on pages 6-9). This work not only broke up the linear road corridor, but it also mimicked the natural forest floor and understory of a mature forest. The purpose of this work was to expedite the recovery of the road corridors for reintegration into the forest ecosystem of the area.

The area in question is located on the MacIntyre East section of the High Peaks Wilderness Area. The old logging roads are in the Dudley Brook section (see map on page 22). These lands were purchased by the State of New York as part of the Finch/TNC purchase. Former Governor Andrew Cuomo approved these lands as Wilderness in March 2018. The subsequent High Peaks Unit Management Plan Amendment did not recognize these former logging roads in the Dudley Brook area as any form of trail. Hence, these former logging roads, like many old logging roads on lands purchased for the Forest Preserve, were destined to reforest and revegetate. The 2019 work plan was an attempt to expedite the reforestation of these former logging roads.

The 2019-20 work complied with the APSLMP. DEC's restoration work with heavy machinery to remove these roads was undertaken in conformance with the APSLMP Wilderness Basic Guideline 2C, which reads: "nonconforming uses resulting from newly classified wilderness areas will be removed as rapidly

as possible and in any case by the end of the third year following classification.” (p 22) This work was undertaken within the 3-year window. It is our understanding that DEC is not bound by other APSLMP guidelines that prohibit the use of motor vehicles in Wilderness areas when operating within the 3-year window to remove non-conforming uses from recently acquired and classified lands.

We also note that the “Motor vehicles, motorized equipment and aircraft” section in the Wilderness guidelines of the APSLMP states in section 3 that “Use of motorized equipment or aircraft, but not motor vehicles, by administrative personnel may be permitted for a specific major administrative, maintenance, rehabilitation, or construction project if that project involves conforming structures or improvements, or the removal of nonconforming structures or improvements, upon the written approval of the Commissioner of Environmental Conservation.” (p. 25) That work in 2019-20 to remove non-conforming logging roads from this part of the Wilderness, and ecologically restore these areas, conformed with the APSLMP.

By contrast, the current DEC work to undo the restoration work and reconstitute and re-motorize an abandoned road in the High Peaks Wilderness openly violates the APSLMP.

We saw the restoration work on the abandoned logging roads around Dudley Brook, and similar work undertaken on the Boreas Ponds area of the High Peaks Wilderness, as an ambitious and positive management action by the DEC. We not only see the DEC’s decision to reverse course and reconstitute these roads as illegal, but also as fundamentally poor Wilderness policy and management. We had looked forward to monitoring the restoration of these abandoned roads into healthy and robust forests in the years and decades ahead. We also question the vast expense that the work to reverse ecological restoration and illegally reconstitute a road is costing New York State taxpayers.

2021 DEC Work Is Inconsistent with the 2019 Work Plan

In conversations with DEC leaders they said they started this work in November for three reasons: 1) to address water quality issues; 2) for public safety; 3) and because the 2019-20 work had failed to facilitate revegetation. An examination of these issues in the field found that the DEC’s rationale does not make sense and that the work underway is not justified.

The reality is that the DEC is using these issues as a subterfuge to reconstitute and rebuild an illegal roadway with heavy machinery. (See pictures of heavy machinery on page 10 and pictures of DEC’s current work to remove pits and mounds on pages 11-15.)

Claims about Water Quality: Many places among the hundreds of places where work was done in 2019-20 to reclaim the roadway resembled large waterbars, similar to over-sized waterbars on Class II Community Connector Snowmobile Trails and wide trunk trails in the Forest Preserve. We fail to see how DEC’s new work, where trenches have been built for water flow is different from the road reclamation work in a qualitative way. (See pictures of pits and mound removal and water quality issues on pages 16-18.)

If this is DEC’s new water quality protection standard for the Forest Preserve, we ask the APA staff to look at any of the thousand other places across the Forest Preserve, including a dozen areas on the trail to Allen Mountain from the Mount Adams Trailhead parking area that is used to access the MacIntyre

East site, where poor trail management has led to far worse water quality issues and habitat degradation. The water quality claim is without merit.

Claims about Public Safety: DEC leaders claim that the pits and mounds on the reclaimed roadways are a public safety hazard. DEC argues that lost hikers utilize old roads in the Forest Preserve, such as those in the MacIntyre East area, to find their way out. The DEC argues that the reclaimed roads are dangerous and difficult to walk upon, and because they were intentionally constructed by the DEC they raise a liability issue. These arguments strain credulity. First, this part of the MacIntyre East area is currently a trailless area. Public access is very difficult and requires a ford of a major river. Second, traversing the pits and mounds on reclaimed roads is far easier than bushwhacking through forest dominated by young trees. Third, the APSLMP does not authorize retaining roadways in Wilderness areas for public safety. Fourth, the liability concerns are not credible. The public safety claim is without merit.

Claims about Forest Revegetation: DEC also states that the reclamation work had failed because no trees had grown on the mounds within the last two years. The soils in the reclaimed roadway, where prodigious amounts of gravel and sand have been used over the years, can hardly be seen as optimum soils for tree growth. Moreover, these areas were heavily disturbed and mounds of mineral soils will take years to see tree growth. The DEC knows this. There are many upslopes on wide benchcuts on Class II Community Connector Snowmobile Trails that were built in 2011-2015 on the Seventh Lake Mountain Trail and Harris Lake Trail that have not regrown trees in years in far more fecund soils. Given that it's been only two years at the longest point in time where the first mounds were built, that's hardly adequate time for forest regeneration. Moreover, if tree growth is a concern of DEC leaders, a crew with shovels could easily transplant into the new mounds in the center of the roadway thousands of small trees that have grown up on the edges of the roadways. We also note that the older restored sections from 2019 show more vegetation than the section restored in 2020; see pictures of greening restored road corridors on pages 19-21. The forest restoration claim is without merit.

APA Investigation

APA needs to get out into the field with its Forest Preserve staff, legal staff, and Resource Analysis and Scientific Services staff. We believe that this is a major violation of the Adirondack Park State Land Master Plan and we believe that the DEC must be held accountable by the APA. As of November 21st, the DEC had reconstituted 0.83-miles of roadway. It appears to us that the DEC is intent on continuing this work for another 0.62 miles to Dudley Brook or another 0.7 miles to the Opalescent River. The APA must conduct a thorough investigation of the rationale behind the DEC's actions and the impacts in the field. All APA staff and field notes made in this investigation on public lands should be made public as part of any reporting on this matter.

The DEC's work, ironically, is reconstituting a non-conforming use in a Wilderness area. The DEC's position that by making the wide flat roadway that was clearly a non-conforming use under the APSLMP once again into a wide flat roadway that now is somehow a conforming use simply doesn't add up. The APA must cease this work immediately while it conducts an investigation. The APA must uphold the Adirondack Park State Land Master Plan and hold the DEC accountable for this gross violation.

On behalf of the Board of Directors of Protect the Adirondacks, I thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Bauer".

Peter Bauer
Executive Director

CC: Karen Persichilli Keogh, Executive Chamber
Elizabeth Fine, Executive Chamber
R. Shah, Executive Chamber
B. Holohan-Scally, Executive Chamber
K. O'Leary, Executive Chamber
R. Isacowitz, Executive Chamber
R. Wood, Executive Chamber
B. Seggos, NYSDEC
K. Petronis, NYSDEC
S. Mahar, NYSDEC
T. Berkman, NYSDEC
M. Breslin, NYSDEC
R. Davies, NYSDEC
P. Frank, NYSDEC
J. Clague, NYSDEC
J. Zalewski, NYSDEC
K. Alberga, NYSDEC
T. Connor, NYSDEC
NYS APA
J. Caffry, Esq.
C. Braymer, Esq.
FPAC



These pictures show ecological restoration work undertaken by DEC in 2019-2020 to restore abandoned logging road corridors in the MacIntyre East section of the High Peaks Wilderness. The DEC is now using heavy machinery to reverse this work.



More pictures of ecological restoration work undertaken by DEC in 2019-2020 to restore abandoned logging road corridors in the MacIntyre East section of the High Peaks Wilderness. The DEC is now using heavy machinery to reverse this work.



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These pictures show the heavy machinery currently being used by the DEC to reverse ecological restoration work and reconstitute an abandoned logging road corridor in the MacIntyre East section of the High Peaks Wilderness Area.



These pictures show recent work by the DEC to remove pits and mounds restoration work that was completed in 2019-2020 to expedite forest regeneration on abandoned roads in the MacIntyre East area of the High Peaks Wilderness Area. DEC is reversing ecological restoration and illegally reconstituting a roadway in a Wilderness area.



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The top picture shows a water channel with a pit and mound on part of the restored abandoned road. The bottom picture shows a water channel where a mound was removed. There is little functional difference other than the mound being removed, which makes the abandoned road accessible by motor vehicles.



These pictures show sections of abandoned roads in the MacIntyre East that were reclaimed in 2019. These are some of the older restored areas where the mounds are showing vegetation growth.



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