



Board of Directors

November 15, 2022

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Ray Brook, NY 12977

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Barbara Rice, Executive Director
NYS Adirondack Park Agency
PO Box 99
Ray Brook, NY 12977

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RE: APA's failure to investigate DEC's reconstruction of nearly 1 mile of a road in the High Peaks Wilderness Area

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Dear John Ernst, Chairman, and Barbara Rice, Executive Director:

In December of last year Protect the Adirondacks contacted the Adirondack Park Agency (APA) to report a potential violation of the Adirondack Park State Land Master Plan (APSLMP) by the Department of Environmental Conservation (DEC) involving DEC's rebuilding of nearly one mile of an abandoned logging road near Dudley Brook in the MacIntyre East section of the High Peaks Wilderness Area (see a map attached on page 21). This road was previously reclaimed in 2019-20 by DEC staff as authorized by an approved Work Plan. To reclaim this area, DEC staff constructed hundreds of pits and mounds along a dozen miles of abandoned logging roads to expedite natural forest restoration of the roads consistent with Wilderness area management guidelines in the APSLMP. Similar work was also done on abandoned roads near the Boreas Ponds.

Peter Bauer
Executive Director

When we questioned the DEC about the road rebuilding project, they stated that the work was necessary to correct mistakes made during forest reclamation work by DEC staff in 2019-20 that had escaped the notice of senior DEC officials in Albany for two years. According to DEC, the purportedly faulty restoration work had to be dismantled in order to protect water quality and public safety, and to facilitate revegetation. However, based on our site visits in 2021, the results of which were shared with the APA in a letter dated December 6, 2021, DEC's explanations did not withstand scrutiny.

Christopher Amato
**Conservation Director
and Counsel**

This road in question connects to the East River Road in adjacent conservation easement lands, where there is a private hunting club, and to a Primitive Corridor through

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Wilderness that connects two tracts of easement lands. We recently revisited the site in the early fall of 2022. Based on our field assessment of the DEC's completed work to re-install approximately 0.82 miles of the previously reclaimed road, the Department's claims that it rebuilt the road to protect water quality and public safety, and to facilitate revegetation, are without merit.

We recently contacted the APA to inquire about the status of the Agency's investigation of this violation, and were informed by the APA Counsel that the matter is closed because the APA had determined that rebuilding the road in a Wilderness Area did not violate the APSLMP.

The Abandoned Roads and Forest Reclamation Project in the Southern High Peaks Wilderness

In 2018, the APA approved a Unit Management Plan Amendment for the High Peaks Wilderness Area that included management actions for the newly acquired and classified lands in the MacIntyre East area. These former industrial forest lands had many vestiges from decades of logging, including miles of abandoned logging roads replete with benchcuts, borrow pits, and drainage ditches, as well as many grassy and open log landing areas. None of these landscape features were identified in the UMP for conversion to hiking trails or any other type of recreational improvement. In fact, the UMP provides that this part of the MacIntyre East area is to be managed as a largely trailless area, with a single new 8.2-mile White Lily Trail that will not utilize any of the former logging roads.

The 2019 Work Plan authorizing the reclamation of abandoned logging roads in the Dudley Brook area states: "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 states: "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." Thus, the stated intent of the Work Plan was to dismantle and reclaim the existing logging road systems in the MacIntyre East area.

In 2019-20, DEC staff began to implement the "naturalization" work on the abandoned logging roads called for in the Work Plan by creating a series of pits and mounds in the road corridors to mimic a natural intact forest landscape, dismantle the long linear geometric form of the roadway, and expose boulders. See pictures from 2022 on pages 8-9 that show the pits and mounds that were created to dismantle the former road corridors. See pictures from 2021 on pages 10-11 that show the pits and mounds that were created to discommission the former road corridors.

DEC's Explanation for Reversing Forest Reclamation Work and Rebuilding the Road Does Not Add Up

As stated above, the DEC has stated that it was necessary to reverse its approved road reclamation actions and rebuild 0.82 miles of road in the High Peaks Wilderness in order to correct purported

mistakes and to protect water quality and public safety, and facilitate revegetation. DEC's reversal of its prior reclamation work, and its explanation for why that work was supposedly necessary, are problematic in several respects.

To begin with, the rebuilding of the East River Road in the High Peaks Wilderness Area is not authorized by the UMP. Consequently, the Department's rebuilding of the road violates the APSLMP. In addition, it appears that the Department did not prepare a new Work Plan for the rebuilding of the road with heavy machinery. It is disturbing, to say the least, that the Department would reconstruct a road in a Wilderness Area, in clear violation of the APSLMP, and without a Work Plan.

In our field assessment in 2021, we photographed the heavy machinery that the DEC used to remove 51 sets of pits and mounds along a 0.82-mile stretch of the abandoned logging road connecting to the East River Road. See pictures of the heavy machinery used in the High Peaks Wilderness in 2021 on page 12. This work rebuilt the roadway making it accessible for motor vehicles by returning it to its prior condition as a wide, flat road. See pictures on pages 13-14 that show areas where pits and mounds were removed in 2021 and the roadway was fully rebuilt.

In the early fall of 2022, we revisited the site to evaluate the Department's claims concerning water quality, public safety and revegetation. As discussed below, our inspection revealed no improvements to protect water quality; to the contrary, we observed that DEC's construction activities had weakened water quality protections. Likewise, we did not see any part of the road rebuilding work that facilitated revegetation or forest restoration. We also found that the pits and mounds that remained in the restored roadways were no hazard to public safety and were easier to walk on than bushwhacking through the adjacent intact forest lands. Last, we found that the rebuilt road was attracting illegal motor vehicle use.

Water Quality: DEC claims that when the original reclamation was undertaken, silt fencing was not used where intermittent streams crossed the roadway and that bare soils in these areas were prone to erosion and had to be stabilized. However, our field inspection revealed poorly placed, tangled, and completely ineffective silt fencing remaining on site nearly one year after DEC's road rebuilding activities. We also found many areas where intermittent streams cross the roadway over bare soils that are eroding, as well as piles of trash from the road rebuilding work.

During our site visit we surveyed hundreds of pits and mounds on miles of reclaimed abandoned roads in this area and did not see any water quality issues. Thus, contrary to DEC's claim, the only negative impacts to water quality in that area are associated with the rebuilt road, not with the reclaimed roadways.

On page 15, see pictures from 2022 of tangled silt fencing and garbage and debris remaining on site. See pictures from 2022 on pages 16-17 that show poor drainage or open stream crossings on the rebuilt road.

Revegetation: DEC's claim that its road rebuilding work was necessary to facilitate revegetation is meritless on its face. First, by ripping out the pits and mounds, DEC destroyed any vegetation that was starting to grow. Second, the use of heavy equipment flattened and destroyed any vegetation in the road corridor. See pictures on page 9 taken in 2022 that show revegetation occurring on the pits and

mounds that remain. Reforestation would be improved with a tree planting crew transplanting into the former road corridors abundant nearby seedlings and saplings.

Public Safety: DEC claims that it was necessary to rebuild the road as a public safety measure, stating that a lost hiker would find it easier to walk along a rebuilt road rather than a reclaimed road. This rationale simply does not make sense and, taken to its logical conclusion, would require all abandoned roads in Wilderness areas to be rebuilt as “public safety” measures.

DEC’s concern that the pits and mounds in the reclaimed road corridor are more dangerous to a lost hiker who is off-trail fails to take into account that a lost hiker who is bushwhacking through the forest faces even greater obstacles, such as dense, impenetrable vegetation, downed trees with uprooted root crowns, and wetlands and boggy areas. More importantly, there is nothing in either the High Peaks Wilderness UMP or the APSLMP that calls for maintaining old roadways to facilitate public safety.

Illegal Motor Vehicle Use: The rebuilt road in the MacIntyre East area is now inviting illegal motor vehicle and ATV use. DEC placed three boulders in the roadway entrance at the Wilderness boundary line to supposedly block motor vehicle access. However, the middle “boulder” is easy to push aside. See pictures of the ineffectual barrier on page 19. Because the rebuilt road is poorly secured, motor vehicles are now illegally using the roadway. See pictures on pages 19-20 that show evidence of illegal motor vehicle use.

APA Failed to Conduct a Meaningful Investigation

On December 6, 2021, Protect the Adirondacks called on the APA to investigate DEC’s illegal road rebuilding effort in the High Peaks Wilderness Area:

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.

There is no evidence that APA conducted an investigation of this blatant violation of the High Peaks Wilderness UMP and the APSLMP; indeed, based on the Agency’s response to our Freedom of Information Law request, apparently no APA staff even visited the site.

One of the APA's primary responsibilities is to ensure that DEC's management actions on Forest Preserve lands conform to an approved UMP and are consistent with the APSLMP. Frankly, we are at a loss to understand how the Agency can find that the rebuilding of a road in a Wilderness area—previously reclaimed as required by the applicable UMP—complies with the UMP and the APSLMP.

DEC's Rebuilding of a Road in a Wilderness Area Violates the APSLMP

The APSLMP makes it clear that roads have no place in a Wilderness area:

A wilderness area is further defined to mean an area of state land or water having a primeval character, without significant improvement or permanent human habitation, which is protected and managed so as to preserve, enhance and restore, where necessary, its natural conditions, and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable. (p 22)

There is nothing in this definition that makes a long, linear 0.82-mile roadway allowable in a Wilderness area. This road is not a designated trail, it is simply an illegal road.

The APSLMP Basic Wilderness Guideline 1 states: "The primary wilderness management guideline will be to achieve and perpetuate a natural plant and animal community where man's influence is not apparent." (p. 22) Clearly, rebuilding a road violates Basic Wilderness Guideline 1 because "man's influence" is readily apparent and will remain so for years. The attached pictures show clearly visible signs of "man's influence" on the rebuilt roadway.

Basic Wilderness Guidelines 2a and 2c state:

In wilderness areas:

- a) no additions or expansions of non-conforming uses will be permitted;
- c) non conforming 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)

Basic Wilderness Guidelines 2a and 2c were violated by rebuilding this road, which is inarguably a non-conforming use. Reconstruction of this road was an addition or expansion of a non-conforming use that should not have been permitted.

Basic Wilderness Guidelines 3 states: "No new non-conforming uses will be permitted in any designated wilderness area." (p. 23) The rebuilding of 0.82 miles of a road in a Wilderness area is a new non-conforming use; the road had been removed and was then re-installed. The APSLMP requires that non-conforming structures or improvements, such as a road, are to be removed from newly acquired Forest Preserve lands classified as Wilderness. The APSLMP also makes it clear that no new nonconforming structures or improvements, such as roads, will be allowed in Wilderness areas.

Conclusion

Protect the Adirondacks saw the forest restoration/road decommissioning work on the abandoned logging roads around the Dudley Brook section of the MacIntyre East area of the High Peaks Wilderness, and similar work undertaken on the Boreas Ponds area of the High Peaks Wilderness, as an ambitious and positive management action by the DEC. DEC's decision to reverse course and rebuild this road was illegal and was 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 expense that the work to reverse ecological restoration work and illegally rebuild a road in a Wilderness Area cost New York State taxpayers.

The proof is plain for all to see. Today, there is 0.82 miles of a rebuilt road, which is being used by motor vehicles, at the south end of the High Peaks Wilderness. Two years ago, DEC staff, operating under an approved Work Plan, removed this roadway, which was a non-conforming structure and improvement in a Wilderness Area, and then one year ago DEC reversed course and re-installed that roadway, creating a new non-conforming use. We cannot recall any other instance in the last 50 years of managing the APSLMP where a non-conforming use was removed from a Wilderness Area and then re-installed.

Despite the clear violations of the APSLMP Wilderness Area management guidelines, and High Peaks Wilderness UMP, the APA has failed to conduct an adequate investigation and has failed to fulfill its obligation to monitor DEC's compliance with the applicable UMP, and the APSLMP. Given that the staff has failed to uphold the law, we call upon the APA Board to take action and correct this mistake.

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", with a stylized, cursive script.

Peter Bauer
Executive Director

CC: Karen Persichilli Keogh, Executive Chamber
Elizabeth Fine, Executive Chamber
B. Holohan-Scally, Executive Chamber
A. Dougherty, Executive Chamber
B. Seggos, NYSDEC
K. Petronis, NYSDEC
S. Mahar, NYSDEC
T. Berkman, NYSDEC
M. Breslin, NYSDEC
J. Rider, NYSDEC
P. Frank, NYSDEC

J. Clague, NYSDEC
J. Zalewski, NYSDEC Reg 5
K. Alberga, NYSDEC Reg 5
R. Daley, NYSDEC Reg 5
T. Connor, NYSDEC Reg 5
B. Rice, NYS APA
C. Cooper, NYS APA
M. Phillips, NYS APA
M. McNamara, NYS APA
K. Prickett , NYS APA
K. Lynch, NYS APA
B. Law-Diao, NYS APA
A. Lussi, NYS APA
A. Hogan, NYS APA
Z. Smith, NYS APA
M. Hall, NYS APA
D. Wilt, NYS APA
NYS DOS Designee
NYS ESD Designee
FPAC
Working Group



These pictures from 2022 show ecological restoration work undertaken by DEC in 2019-2020 to restore forests in abandoned logging road corridors in the MacIntyre East section of the High Peaks Wilderness. This work dismantled the road corridor and constructed a series of pits and mounds that mimic natural forest conditions.



More pictures from 2022 of ecological restoration work undertaken by DEC in 2019-2020 to restore forests in abandoned logging road corridors in the MacIntyre East section of the High Peaks Wilderness. This work dismantled the road corridor and constructed a series of pits and mounds that mimic natural forest conditions. Note that after three years from when this work occurred, these pits and mounds are revegetating. Forest growth would be even greater in these areas if active tree planting was undertaken with nearby seedlings and saplings.



These pictures from 2021 show ecological restoration work undertaken by DEC in 2019-2020 to restore forests on abandoned logging road corridors in the MacIntyre East section of the High Peaks Wilderness. This work dismantled the road corridor and constructed a series of pits and mounds that mimic natural forest conditions.



More pictures from 2021 of ecological restoration work undertaken by DEC in 2019-2020 to restore forests on abandoned logging road corridors in the MacIntyre East section of the High Peaks Wilderness. This work dismantled the road corridor and constructed a series of pits and mounds that mimic natural forest conditions.



These pictures from 2021 show the heavy machinery used by the DEC to reverse ecological and forest restoration work and reconstitute 0.82-miles of an abandoned logging road corridor in the MacIntyre East section of the High Peaks Wilderness Area.



These pictures from 2021 show where the DEC removed pits and mounds forest restoration work that was completed in 2019-20. DEC reversed ecological and forest restoration and reconstituted a roadway in a Wilderness area.



These pictures from 2021 show more work by the DEC to remove pits and mounds forest restoration work to expedite forest regeneration on abandoned roads in the MacIntyre East area of the High Peaks Wilderness Area. DEC reversed ecological and forest restoration and reconstituted a roadway in a Wilderness area.



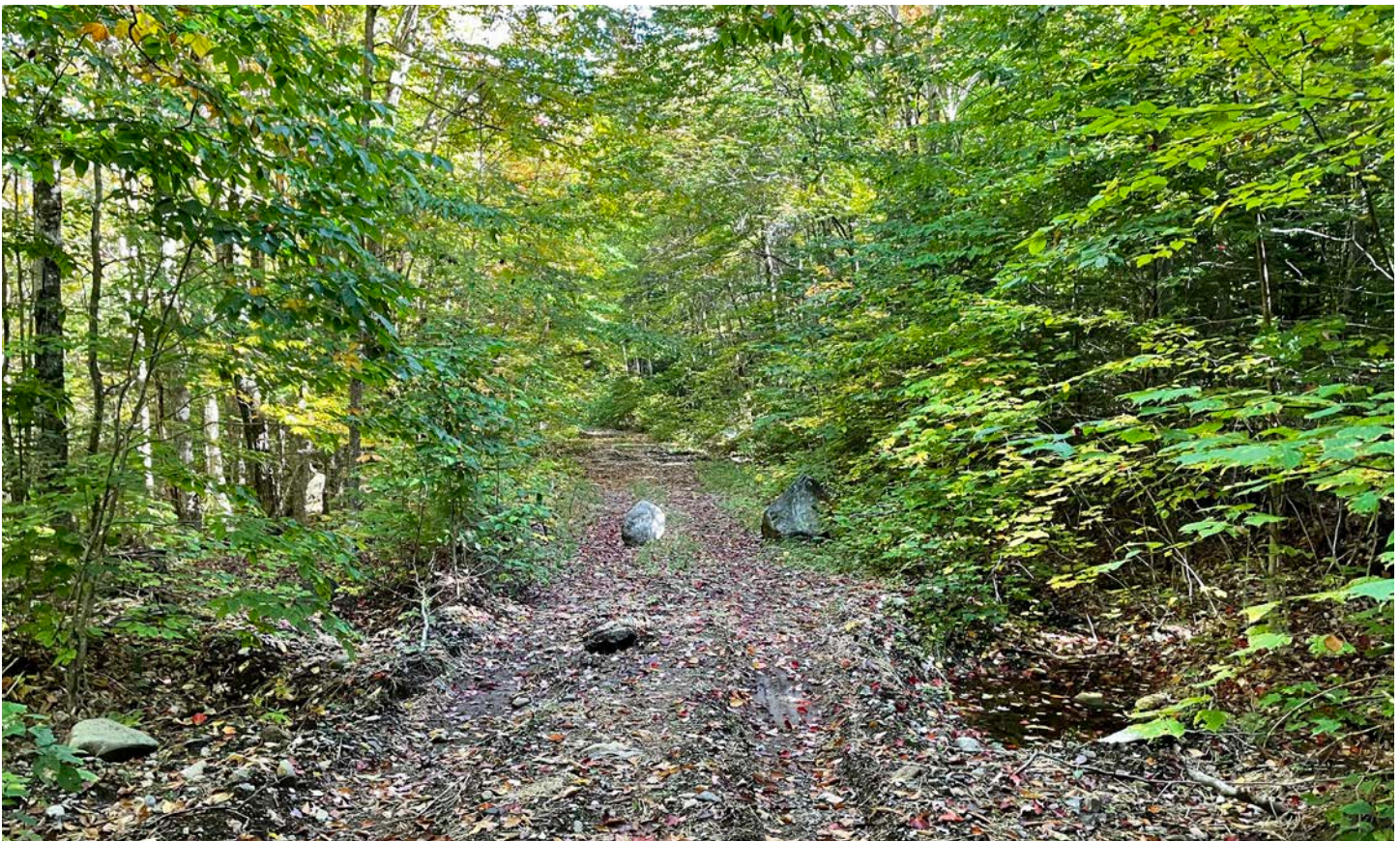
Top picture from 2022 shows tangled silt fencing installed on just one side of an intermittent stream channel that crosses the roadway, making it ineffective. This silt fencing was poorly placed and should have been removed at the end of the DEC's work in 2021. This silt fencing accomplished little for water quality protection. Lower picture shows debris left on site by the DEC.



Top picture from 2022 shows an open and eroding stream channel. The picture above shows poor drainage in an area where the DEC removed a pit and mound in 2021 that were part of its forest reclamation project. The DEC's work to rebuild 0.82 miles of a road accomplished nothing in terms of water quality protections, yet was very successful in rebuilding nearly one mile of a road now suitable for motor vehicles.



These two pictures from 2022 shows areas with poor drainage where the DEC removed pits and mounds in 2021 that were part of its forest reclamation project. The DEC's work to rebuild 0.82 miles of a road accomplished nothing in terms of water quality protections, yet was very successful in rebuilding nearly one mile of a road now suitable for motor vehicles.



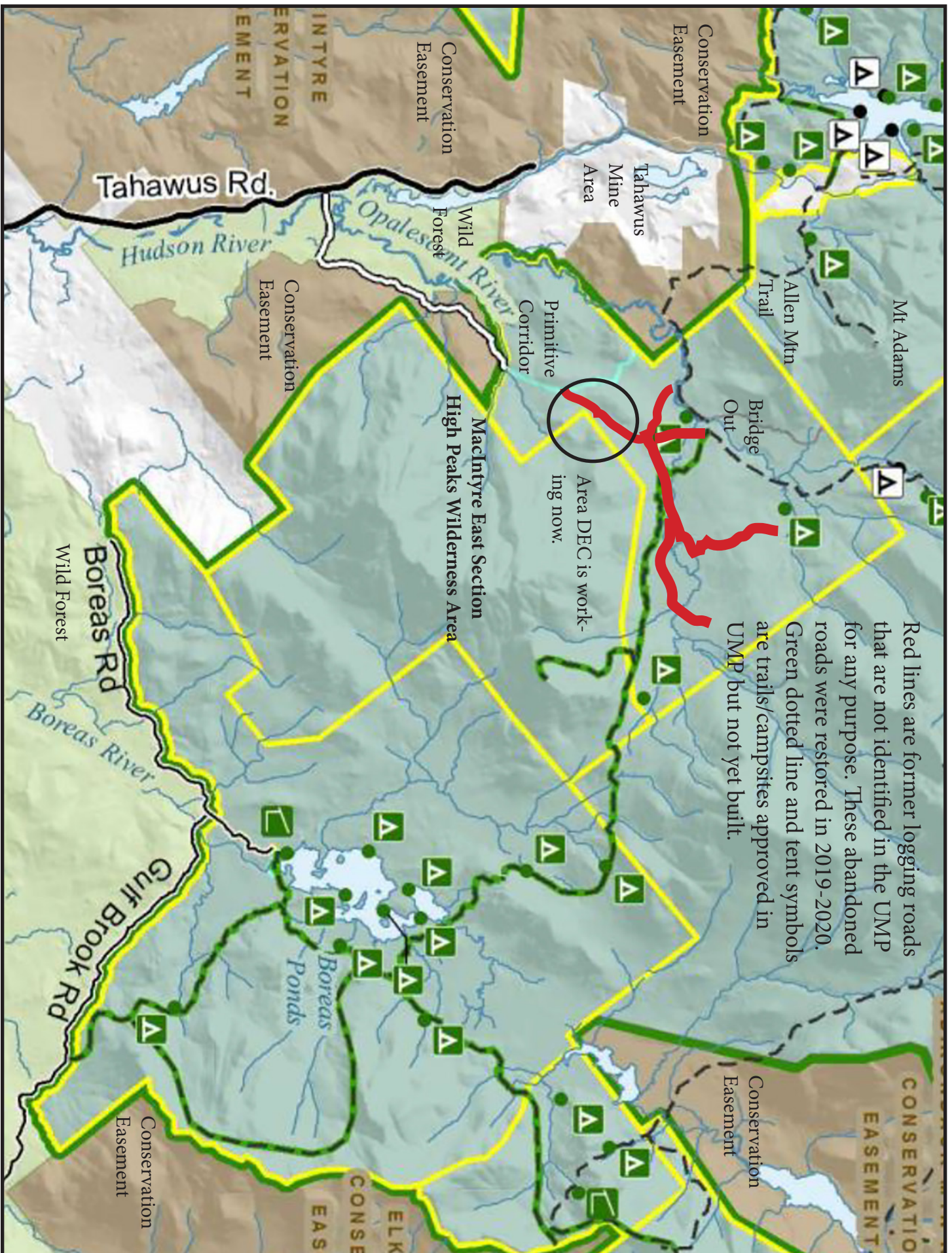
These pictures from 2022 show boulders placed in the reconstituted roadway to block motor vehicle access. The middle “boulder” is easy to push out of the way. Because this roadway is poorly secured, there is evidence of motor vehicles illegally entering the High Peaks Wilderness Area.



These pictures from 2022 show two sections of the illegally reconstituted roadway where DEC removed pits and mounds as part of “renaturalization” work. The reconstituted road is now easily accessible for motor vehicle use. These pictures show evidence of motor vehicles illegally entering the High Peaks Wilderness Area.



These pictures from 2022 show two sections of the illegally reconstituted roadway where DEC removed pits and mounds as part of “renaturalization” work. The reconstituted road is now easily accessible for motor vehicle use. These pictures show evidence of motor vehicles illegally entering the High Peaks Wilderness Area.



Red lines are former logging roads that are not identified in the UMP for any purpose. These abandoned roads were restored in 2019-2020. Green dotted line and tent symbols are trails/campsites approved in UMP but not yet built.