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and Counsel**

March 14, 2023

Hon. John L. Ernst, Chair
Board Members
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

RE: APA Policy Revisions Proposed for the APA Policy & Guidance System and for the Agency Public Comment Policy

Dear Chair Ernst and APA Board Members:

Protect the Adirondacks (“PROTECT”) submits this comment letter regarding the proposed revisions to the APA Policy & Guidance System and to Agency Public Comment Policy. We find it concerning that these proposed policy revisions were added to the Agency’s agenda for its meeting on March 16, 2023 with little to no public notice and no formal public comment period. The Agency should provide a written public comment period before adopting these revisions. We also find it concerning that the Agency is reducing the opportunity for written and verbal public comments.

APA Policy & Guidance System

According to the memorandum to you from the Agency’s counsel, dated March 9, 2023, this policy revision was prepared “[a]t the direction of the Board”. It is unclear what direction the Board provided to staff in preparing the proposed revisions. The Board’s direction should be discussed by the Board at an Agency meeting so that the public understands the basis for these changes.

While we applaud the Agency for intending to develop and adopt new or revised policies “in a public process”, the proposed revisions to the APA Policy & Guidance System are reducing the opportunities for public review of, and input on, Agency policy adoption. The proposed revisions remove the three-step process for adopting new or revised policies, and

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replace that process with a vague and discretionary process for public review and comment. Instead of requiring a minimum of three meetings, the Agency may adopt new or revised policies at a single Agency meeting.

In addition, the proposed revisions imply that public comments can be submitted on the new or revised policies, but there is no minimum comment period established, no public notice requirement, and no minimum amount of time that the new or revised policies must be available to the Board Members and to the public in advance of an Agency meeting.

The Agency's "Government Transparency Initiative Plan" dated October 20, 2021 states that the Agency "[r]outinely posts all programmatic and meeting materials one week ahead of the monthly Agency Board meeting". However, the agenda and materials for an upcoming Thursday meeting are typically not posted to the Agency's website until the afternoon on Friday before the meeting. That means that the public, pursuant to the current Public Comment Policy, has only two and half business days (by noon on the day before the meeting) to review and submit a written comment on a new or revised Agency policy. Pursuant to the proposed changes to the Public Comment Policy, the window for submitting written comments will be even shorter, as discussed in the next section.

The draft Agency Policy & Guidance System should be modified to require the Agency to post all proposed new or revised policy documents to the Agency website at least eight days prior to the scheduled Board meeting. That would provide the public with five business days to review the materials in advance of a Board meeting and be able to provide meaningful input.

Moreover, the draft Agency Policy & Guidance System should also be amended to state that public notice of the proposed new or revised policy will be published in the Environmental Notice Bulletin at least one week prior to the Agency meeting in which the policy will be considered for action.

These two revisions are critical given that the changes to the Agency Public Comment Policy, discussed below, will require that written comments be provided to the Agency even earlier than what is required under the current policy. It is unfair to the public, and weakens the Agency's purported goal of transparency, if new policies can be added to the agenda without formal public notice, with only one business day for submitting written comments, and no opportunity for providing verbal comments.

Agency Public Comment Policy

According to the memorandum to you from the Agency's counsel, dated March 9, 2023, this policy revision was prepared "[a]t the direction of the Board Chair". It is unclear what direction the Chair provided to staff in preparing the proposed revisions. The Chair's direction should be discussed by the Board at an Agency meeting so that the public understands the basis for these changes.

Verbal Comments

The proposed changes include eliminating the public comment period at the beginning of Agency meetings. Since the Agency is proposing to move the public comment period to the end of the meeting, after all of the Agency business has been completed, there is no need for an overall time limit (proposed to be 20 minutes) on the length of public comment provide to the Agency. This will ensure that everyone who has made the effort to appear in person and virtually will be afforded the opportunity to use their three minutes to address the Board. We note that there is no similar time cap placed on comments made by Board members or staff at the end of the meeting, when sometimes Board members give lengthy remarks, often of their latest outdoor adventure, which do not relate to Agency business. We believe that Board members and staff should be limited in their general comments at the end of the meeting to the same time limits placed upon the public.

Additionally, we believe it is unfair to cap public comments at 20 minutes. If a member of the public has traveled to Ray Brook, which can be a considerable distance for some people, with the intention of making a public comment, they should be afforded that opportunity if they are present.

Moving the comment period to the end of the meeting eliminates the ability of the public to comment on matters before the Agency – such as new or revised policies – that have not been the subject of a noticed public comment period. The Agency should provide a means for the public to offer verbal comments to the Board, *prior to the Board taking action*, on matters that have not been the subject of a noticed public comment period. Not every member of the public has the time or means to submit an electronic comment.

Written Comments

We support the proposal to accept written comments only during the open public comment period for “matters for which a noticed public comment period is held”. We also support the proposal to accept written comments only as part of the official record of the proceeding for matters that are the subject of an adjudicatory hearing. The policy should be revised to reflect how those written comments will be disseminated to the Board Members for your deliberations in those matters.

We are not opposed to the proposal to move up the deadline for providing written comments to the Board from noon the day before the meeting to “close of business” three days before the Agency meeting. However, that proposal must be coupled with a change in policy that requires the Agency to post all materials to the Agency website at least eight days prior to the scheduled Board meeting. The additional time will give the public a fair opportunity to review and comment on the materials that are not part of a notice public comment period or an adjudicatory hearing. Otherwise, according to current Agency practice of posting materials online late on Friday afternoon, the public would be required to review all of the materials, conduct extensive legal and policy research, and prepare written comments over the weekend and on one business

day. That is an unfair burden to place on the public, especially when it can be remedied by simply having the materials posted online by the Agency earlier.

Furthermore, since public comments will be provided to the Agency three days in advance of the meeting, the policy should state clearly how those public comments will be disseminated to the Board Members in advance of the meeting so that you can review them and give them meaningful consideration.

Finally, the policy should clarify what is meant by “close of business three business day” [sic] (e.g., if the meeting is Thursday, is the deadline the preceding Friday or presumably Monday, and is it 4:00pm, 5:00pm, 6:00pm, 11:59pm?), or if the policy will not be “rigidly applied”, as the current policy states.

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on these proposed policy revisions.

Sincerely,

A handwritten signature in cursive script that reads "Claudia K. Braymer".

Claudia Braymer,
Deputy Director