



April 17, 2023

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Ms. Megan Phillips  
Deputy Director for Planning  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

**RE: Comments on “No Material Increase” Alternative No. 4:  
Adirondack Park State Land Master Plan Wild Forest Basic  
Guideline 4**

Dear Ms. Phillips:

Protect the Adirondacks (“PROTECT”) appreciates the opportunity to submit these comments concerning the Agency’s “No Material Increase” Alternative No. 4. This issue has arisen in the context of the Agency’s consideration of Wild Forest Basic Guideline Number 4, which provides that “[p]ublic use of motor vehicles will not be encouraged and there will not be any material increase in the mileage of roads . . . open to motorized use by the public in wild forest areas that conformed to the master plan at the time of its original adoption in 1972.” APSLMP at 35.

We urge the Agency to reject Alternative No. 4 because it violates the Adirondack Park State Land Master Plan (“APSLMP”). Alternative No. 4 is factually and legally flawed because (i) it fails to include road mileage on Wild Forest lands open for motor vehicle use by members of the public possessing permits issued by the Department of Environmental Conservation (“DEC”) pursuant to DEC Commissioner Policy 3, Motorized Access Program for People With Disabilities (“CP-3” or the “Policy”);<sup>1</sup> and (ii) due to its failure to include CP-3 road mileage, it incorrectly states that current road mileage on Wild Forest lands is 206.6 miles and erroneously concludes this incorrect mileage total does not constitute a material increase in road mileage over the 211.6 miles of roads existing in 1972.

As discussed in detail below, CP-3 roads fall squarely within the APSLMP’s definition of a “road” and CP-3 road mileage must therefore be

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<sup>1</sup> Available at [www.dec.ny.gov/outdoor/76213.html](http://www.dec.ny.gov/outdoor/76213.html)

considered in the Agency’s assessment of whether there has been a material increase in Wild Forest road mileage since 1972. Furthermore, the Consent Decree in *Galusha et al. v. NYS Dept. of Env’tl. Conservation et al.* makes clear that roads opened pursuant to that settlement are CP-3 roads and are not excluded or exempt from any provisions or requirements of the APSLMP, including Wild Forest Basic Guideline Number 4. Furthermore, the *Galusha* settlement did not, as some have claimed, deprive DEC of its discretion to open or close roads identified in the settlement for CP-3 use; to the contrary, the settlement expressly preserved DEC’s discretion with respect to those roads and required that they go through the Unit Management Plan (“UMP”) review process before they could be opened.

The omission of CP-3 road mileage from Alternative No. 4 significantly skews the analysis of Wild Forest road mileage and distorts the assessment of whether current mileage constitutes a material increase over the 1972 mileage. As the Agency has acknowledged, inclusion of CP-3 road mileage—which as discussed below is clearly required by the APSLMP—results in a total of 244.7 miles of Wild Forest roads. This represents slightly more than a 15 percent increase over the 1972 mileage and constitutes a material increase that is inconsistent with Wild Forest Basic Guideline Number 4.

Lastly, PROTECT objects to the truncated and rushed evaluation of Alternative No. 4, which has clearly left APA Board members confused and is likely just as confusing to members of the public. The significant (but unspoken) underlying assumption in Alternative No. 4 is that CP-3 road mileage on Wild Forest lands does not need to be considered in assessing whether there has been a material increase in road mileage since 1972. Yet the Agency has failed to provide any information or rationale supporting that momentous conclusion. Indeed, as pointed out in our March 7, 2023 letter to the Agency, the question of whether CP-3 road mileage must be included in the “no material increase” assessment requires a legal interpretation of the APSLMP. However, neither the public nor, to our knowledge, the APA Board has been provided with any legal analysis supporting the Agency’s proposed exclusion of CP-3 roads or demonstrating how Alternative No. 4 complies with Basic Guideline No. 4 of the APSLMP. Until such an analysis is provided to the public and the APA Board, we believe that Board consideration of Alternative No. 4 is premature.

## **Background**

### **A. The Department’s CP-3 Program**

The CP-3 program was established by DEC in 1997 in order to “clarify the authority of the Department . . . to issue . . . permits . . . to qualifying people with disabilities to allow them motor vehicle access to certain specified State lands under the Department’s jurisdiction, thereby facilitating such access.” CP-3 at p. 1. The Policy specifically recognizes that, on Forest Preserve lands, “the Department must comply with the directive in Article XIV of the New York State Constitution which requires that Forest Preserve lands be ‘forever kept as wild forest lands’” and thus “the Department may not issue permits which have the result of diminishing the forever wild character’ of those lands. *Id.* The Policy also specifically recognizes that issuance of CP-3 permits is constrained by the APSLMP, which places “restrictions on motor vehicle access into the Forest Preserve.” *Id.* Thus, the Policy explicitly acknowledges that CP-3

motorized use of Forest Preserve lands is subject to the legal constraints imposed by Article XIV and the APSLMP.

The Department's program for providing access to DEC-administered lands to persons with disabilities is set forth in the Policy as follows:

A qualified person with a certified disability who wants to access State land by a suitable motor vehicle . . . may do so only through the authority of a [CP-3] Permit . . . . On lands administered by the Department, a suitable type of motor vehicle shall be allowed to provide motor vehicle access for qualified people with disabilities to operate on designated roads, trails and geographical areas where, in the opinion of the Department with comments from the public where appropriate, the use of such motor vehicles will not have a deleterious effect on the trail, road or geographical area, the land's natural resource values or the experience of other users. ***Such designation and use must be consistent with current law, including the Environmental Conservation Law, the State Land Master Plan for the Adirondack Park or Catskill Park, as the case may be, Department rules and regulations, a Unit Management Plan for the area,*** and an administrative directive consistent with current law, and must not endanger the safety and welfare of the general public. Within the Adirondack Park and Catskill Park, the motor vehicle may not be used on trails and in geographical areas, and may only be used on designated and specifically marked roads.

*Id.* at p. 4; (emphasis added).

Thus, the plain language of CP-3 makes clear that motor vehicle use on Forest Preserve land pursuant to the Policy is subject to and must be consistent with “current law,” including the APSLMP where such use will occur in the Adirondack Park. Because motor vehicle use under the CP-3 program is subject to the APSLMP, it must therefore comply with the restrictions imposed by Wild Forest Basic Guideline Number 4.

#### B. The Galusha Settlement Roads Are No Different from Other CP-3 Roads

*Galusha* was a federal court case brought pursuant to the Americans With Disabilities Act (“ADA”) in which plaintiffs alleged that they had been discriminated against in violation of the ADA and sought motor vehicle access to various locations in the Adirondack Forest Preserve. The case was settled in July 2001 with the filing and approval by the presiding judge of a Consent Decree.<sup>2</sup> The two organizations that merged to form PROTECT were parties to that settlement.

Contrary to statements made at the December 2022 and February 2023 Agency meetings, the Consent Decree did not “order” DEC to open certain roads in the Adirondack Park to motor vehicle use. Rather, the Consent Decree required DEC to (i) propose amendments

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<sup>2</sup> Pertinent portions of the Consent Decree referenced herein are attached as Exhibit A to PROTECT's March 7, 2023 letter.

to certain existing UMPs allowing access to specific areas under the Department’s CP-3 program, and (ii) ensure that certain roads already open to CP-3 use remained open for such use “subject to final approval in the UMP process.” *See* Consent Decree at pp. 6-8. Thus, the Consent Decree, by requiring that all roads proposed for CP-3 motorized use go through the UMP review process, preserved DEC’s (and APA’s) discretion concerning which roads would be opened to CP-3 use. Indeed, far from “ordering” opening of roads to CP-3 use, the Consent Decree made clear that approval of Decree-proposed roads for CP-3 use was not a foregone conclusion because it included procedures to be followed “in the event that any road [proposed for CP-3 use] is not approved through the UMP process.” Consent Decree at p. 8. DEC’s discretion is also preserved by the Decree’s provision that roads opened to CP-3 use are nevertheless “subject to closure for seasonal conditions *in the discretion of DEC as land manager of the Forest Preserve*, including reasonable closure for environmental and/or public safety reasons . . . .” *Id.* at p. 6; (emphasis added).

In addition, the Consent Decree does not, nor could it legally, exclude or exempt any of the proposed CP-3 roads from applicable legal constraints, including those imposed by the APSLMP. In fact, the Consent Decree recognizes that DEC and APA “are charged by Article XIV of the New York State Constitution, statute, regulation and the Adirondack Park and Catskill Park State Land Master Plans (“SLMPs”) to act as stewards and, in the case of DEC, land manager for the Forest Preserve *within the constraints of the New York State Constitution Article XIV’s “forever wild” provision and the SLMP classification system* and to act in accordance with all applicable state and federal law.” *Id.* at p. 2; (emphasis added).

Thus, having gone through the UMP review process, roads opened for CP-3 motorized use as a result of the *Galusha* settlement are no different from any other Forest Preserve roads opened for such use, and have no special legal status or exclusion from the legal constraints of the APSLMP, including Wild Forest Basic Guideline Number 4.

### **Alternative No. 4’s Exclusion of CP-3 Road Mileage Violates the APSLMP**

#### **A. CP-3 Roads are Included in the APSLMP’s Definition of “Road”**

The APSLMP<sup>3</sup> defines a “road” as:

an improved or partially improved way designed for travel by automobiles and which may also be used by other types of motor vehicles except snowmobiles, unless the way is a designated snowmobile trail; and is,

- (i) either maintained by a state agency or a local government and open to the general public;

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<sup>3</sup> Available at [https://apa.ny.gov/Documents/Laws\\_Regs/APSLMP.pdf](https://apa.ny.gov/Documents/Laws_Regs/APSLMP.pdf)

- (ii) maintained by private persons or corporations primarily for private use but which may also be open to the general public for all or a segment thereof; or,
- (iii) *maintained by the Department of Environmental Conservation or other state agency and open to the public on a discretionary basis.*

APSLMP at p. 20; (emphasis added).

CP-3 roads meet the above italicized portion of the APSLMP's definition of "road" because (i) they are maintained by DEC; (ii) they are open to members of the public who have a CP-3 permit (*i.e.*, meet the definition of "qualified person with a disability" in CP-3); and (iii) the opening is on a discretionary basis, because such roads are open for motor vehicle use only to members of the public possessing a CP-3 permit, persons wishing to participate in the program must apply to DEC for the permit and meet specified criteria in order to obtain the permit, and DEC has the discretion to deny the application. *See* CP-3 at pp. 3, 5-6. DEC also has discretion to close the roads to motorized use by CP-3 permit holders as needed for environmental and/or public safety reasons. *Id.*

Because CP-3 roads fall squarely within the APSLMP's definition of "road" they are subject to Wild Forest Basic Guideline Number 4. Indeed, excluding CP-3 roads from the ambit of Basic Guideline Number 4 would mean there is no limit whatsoever on the mileage of Wild Forest roads that can be opened to CP-3 motorized use. Even the Policy acknowledges that the CP-3 roads are subject to the constraints of Wild Forest Basic Guideline Number 4. CP-3 at p. 1.

### **Conclusion**

Because CP-3 roads, including all roads opened to CP-3 permit holders pursuant to the *Galusha* Consent Decree, meet the APSLMP's definition of "road," all existing CP-3 road mileage on Wild Forest lands in the Adirondack Park must be included in the Agency's assessment of whether there has been a material increase in road mileage on Wild Forest lands since 1972.

Alternative No. 4 is legally flawed because it excludes the mileage of CP-3 roads from its tally of existing road mileage. Because of that impermissible omission, Alternative No. 4 mistakenly concludes that there has been no material increase in road mileage on Wild Forest lands since 1972. Thus, Alternative 4, and any other alternative that does not include CP-3 road mileage in the tally of existing road mileage on Wild Forest lands, must be rejected by the Board as being inconsistent with the APSLMP.

Finally, we would like to take this opportunity to express again our opposition to the Agency adopting a 15% increase in road mileage as not being a material increase. A reasonable interpretation of the "no material increase" clause would be an increase in the low single digits of 2-3%.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Christopher Amato  
Conservation Director and Counsel

Cc: Christopher Cooper, Esq., APA Counsel