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# The Park Report



• Newsletter from Protect the Adirondacks • Spring 2023 •

Read about the state's new 30 by 30 law to protect 30% of NYS lands and waters, New York's climate change mitigation goals, and our work to limit motor vehicle roads on the Forest Preserve!



# Message from the Executive Director

## Spring 2023

This spring we've been busy. We've detailed the highlights in this issue of *The Park Report*, ranging from new land protection opportunities, to climate change mitigation goals, to working to limit the impacts of motor vehicles on the Forest Preserve, to bringing out good, sound information on the realities of rural population and economic trends.



*Peter Bauer*

In 2019, New York passed the Climate Leadership and Community Protection Act (CLCPA), which set out goals for the reduction of greenhouse gas (GHG) emissions with targets for 2030 and 2050. Forests across New York, but especially the Forest Preserve, play a critical role in helping the state to meet these goals. Complementing the CLCPA was the passage of the "30 by 30" law that set out the goal of permanently protecting 30% of New York's lands and waters by 2030. The increased protection of New York's forests will be a cornerstone of the 30 by 30 efforts, which should dovetail with New York's GHG emission reductions.

One of the core focuses of our work has been to limit the use of motor vehicles on the Forest Preserve. Nothing changes an area more than a road driven on by motor vehicles. This spring, state agencies adopted a new policy that will see a slight increase in the overall mileage of roads on the Forest Preserve. This was their objective when they started this process a year ago. Our work helped prevent a massive expansion, which state agencies contemplated, but the incremental gain is still worrisome. We'll continue to monitor the state's continued efforts to motorize the Forest Preserve.

Please save the date in your calendars for our annual members meeting on Saturday, July 22nd in Newcomb. The day will focus on our work to defend and uphold the Forever Wild clause in the NYS Constitution. There's more information at the end of this newsletter and online. All members will also receive an invitation in the mail to the annual meeting and a ballot for the Board of Director's 2023 election soon.

We remain, as always, tremendously grateful to our members for your generous and steady support. We could not do everything that we do without your help. Thank you so much!





# New “30 by 30” and climate change legislation create major challenges for the Adirondack Park

In 2022, Governor Kathy Hochul signed the “30 by 30” law, which is a landmark environmental protection program for New York State. This law set a goal for the conservation of 30% of New York State lands by 2030, moving New York to do its part as part of a similar national goal. This is a major step forward for New York’s political leadership in recognizing the importance of open spaces, in particular forests and wetlands, as cornerstones of New York’s long-term climate resilience and mitigation efforts. It is also an important step on the road to fulfilling legendary ecologist E.O. Wilson’s vision, who long advocated that we need to keep half of the earth as protected, intact, wild and natural systems.

This legislation calls on the Department of Environmental Conservation (DEC) to prepare a plan by July 1, 2023, that shows how much of New York State land is in a protected state and the amount of land that needs to be protected to meet this goal. The DEC is drafting this plan with the Office of Parks, Recreation, and Historic Preservation. This plan will likely include an accounting of protected lands that exist in New York today and a list of strategies to protect additional lands in order to meet the 30 by 30 goals. The legislation says that this plan “shall also take into account the goal of the state to facilitate the conservation of at least thirty percent of land in New York State by the year two thousand thirty.”

Protect the Adirondacks has been assessing the status of current protected lands in New York. The 30 by 30 legislation calls for the protection of 30% of New York’s 30.18 million acres. A big challenge going forward will be in the details of the state’s plan for what it considers protected lands. For instance, should lands counted as part of the 30% be permanently conserved? What constitutes permanently conserved? What types of activities will be allowable on conserved lands? These are all important details.

New York State encompasses roughly 30.18 million acres. When 30% of the state’s land area is protected that will encompass around 9 million acres. As we look across New York today we have around 2.7 million acres of Forest Preserve, around 825,000 acres of state-held conservation easements, 700,000 acres of State Forests, 350,000 acres of state parks, 100,000 acres of protected and regulated wetlands, another 250,000 acres of other various state lands, and around 75,000 acres of municipal park lands and county forests. All told, these lands total 5 million acres. Other protected lands include easements and



lands owned by land trust and conservation organizations, which are sizeable in New York, as well as agricultural easements. Changes to the state’s wetlands law could also add significant protected areas.

How the state aims to protect another 3 to 4 million acres is the big question. Will the state attempt to say that all of the lands within the Adirondack and Catskill Parks are protected? Will it argue that all lakes and ponds and surface water areas, or lake bottom or ocean bottom lands, count as protected? Additionally, in the Adirondack Park, where some 1.8 million acres is zoned at 15 houses per square mile, would that constitute permanently protected areas? Would conservation zoning in other parts of the state count?

These are important questions that will set policy and long-term goals for the state. Protect the Adirondacks is working to organize data about current protected lands in New York to answer the basic questions about what lands are currently protected and what constitutes protected lands.

The 30 by 30 legislation is important because it should spotlight the key role that the Adirondack Park plays in meeting the state’s land conservation goals through purchases for new Forest Preserve and conservation easement lands. In order to meet the 30 by 30 goal, we’ll need to figure out some kind of new open space protection program that rewards landowners for keeping their lands as largely undeveloped, mature forests. Across the state there is over 8 million acres of forest lands in small ownerships with some 700,000 landowners. Protection of these lands is vital for protecting habitat and helping New York achieve its climate change goals.

Protect the Adirondacks plans to publish its 30 by 30 analysis later this spring.



# It's business as usual at APA after courts strike down two decisions; PROTECT appeals White Lake Granite Quarry decision

In the last few months, Protect the Adirondacks has intervened, monitored, or participated as a Plaintiff in three cases involving the Adirondack Park Agency (APA). In two cases, plaintiffs prevailed over the APA, and in a third we're part on an appeal.

**Lower Saranac Lake Marina Case:** In August 2020, the APA approved a permit for a significant expansion of a commercial marina on Lower Saranac Lake. A nearby property owner, Thomas Jorling (Department of Environmental Conservation Commissioner, 1987 to 1994), filed an Article 78 lawsuit challenging APA's approval. The trial court dismissed the case, but Mr. Jorling appealed to the Appellate Division. (Mr. Jorling was represented in the litigation by Claudia Braymer, who is now PROTECT's Deputy Director).

Upon appeal to the Appellate Division, Protect the Adirondacks was granted permission to submit to the court an amicus ("friend of the court") brief written by Christopher Amato, Conservation Director and Counsel. PROTECT's amicus brief focused on the failure of the state agencies (DEC and APA) to conduct a carrying capacity study as required by the Adirondack Park Agency Act, the Adirondack Park State Land Master Plan, and the Saranac Lake Wild Forest Unit Management Plan (UMP). APA admitted to the court that it did not have a carrying capacity study of Lower Saranac Lake, but argued that it could approve the project without such a study of the impacts of the marina on the lands and waters of the Lake.

The Appellate Division ruled in favor of Mr. Jorling, annulled the permit, and stated that: "The state respondents' failure to comply with these principles, and specifically with the stated objective contained in the Saranac Lake Wild Forest UMP, is wholly unexplained and, indeed, inexplicable."

In overturning the permit, the Appellate Division rejected the APA's interpretation of its wetlands regulations, holding that "the agency's interpretation contradicts the plain language of the regulations." The applicant has reapplied to APA for its marina permit and PROTECT is reviewing the application materials.

**Lake George Case:** In March 2023, the Supreme Court in Warren County



(Muller, J.) ruled in favor of the petitioners The Lake George Association, The Lake George Waterkeeper, The Town of Hague, and Helena G. Rice and annulled the permit issued by APA to the Lake George Park Commission, and the NYS Department of Environmental Conservation for use of ProcettaCOR on Lake George. ProcettaCor is an herbicide used to control the growth of Eurasian watermilfoil ("EWM").

PROTECT shares the concerns of Petitioners and other members of the public that the herbicide treatment could spread beyond the treatment areas, could lead to harmful algal blooms, and could negatively impact drinking water as well as non-targeted plants and aquatic species. PROTECT believes that APA needs to hold an adjudicatory hearing on the permit application before approval for use of the herbicide is granted. Supreme Court's decision stated that "the APA approval process was lacking in comparative analysis", was unnecessarily rushed by APA staff, who provided only a "one-sided" presentation of the proposal, and that the Board did not have "sufficient information upon which to make a determination" about the impacts of the proposed herbicide treatment on the wetlands at Blairs Bay. APA has filed a notice of appeal of Supreme Court's decision.

**White Lake Case:** PROTECT, along with the Adirondack White Lake Association, is appealing a decision by the Supreme Court in Oneida County dismissing their petition challenging APA's approval of a permit for a new mining operation in the Town of Forestport. The appeal focuses on APA's failure to hold an adjudicatory hearing prior to granting approval when the agency did not apply its own regulatory criteria for holding a hearing, there was a one-sided presentation by APA staff, and numerous public comments demonstrated public interest, and significant issues relating to noise and drinking water impacts to nearby residents. The appeal should be decided later this year.



# APA-DEC act to increase the mileage of roads in the Forest Preserve

For nearly one year the Adirondack Park Agency (APA) and Department of Environmental Conservation (DEC) have been involved in a process to formally interpret a part of the Adirondack Park State Land Master Plan (Master Plan) that caps the total mileage of roads in the Wild Forest areas in the Forest Preserve. Protect the Adirondacks has monitored and participated in this process because we were concerned that it was being used to expand the mileage of roads available for motor vehicle use in the Forest Preserve. In the end, our concerns were well founded because the final decision by APA, which is the agency that has the responsibility for interpreting and applying the Master Plan, will substantially increase the mileage of roads in the Forest Preserve.

The issue stems from a passage in the Master Plan that applies to areas classified as Wild Forest. Currently, there are 1,324,023 acres of Wild Forest lands in the Forest Preserve. These are lands where more intensive recreational activities are allowed, such as mountain biking, snowmobiling, and the use of motor vehicles on designated roads. There are also a wide array of motorized options for people with disabilities under a state permit system. The Master Plan caps overall road mileage in Wild Forest areas where it states: “Public use of motor vehicles will not be encouraged and there will not be any material increase in the mileage of roads and snowmobile trails 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.”

According to information developed by DEC, in 1972 there were 211 miles of roads in Wild Forest areas, and today that number has decreased to 206 miles. The decrease is the result of reclassification of significant Wild Forest lands as Intensive Use Areas. The reclassified lands contained over 25 miles of roads that are now not subject to the cap on road mileage. The decrease is also due to certain roads not being counted towards the road mileage as explained below in more detail.

The Master Plan directs the APA not to encourage public use of motor vehicles and requires that there shall not be a “material increase” in the mileage of roads opened for motor vehicle use. The Master Plan does not state what constitutes a “material increase,” so APA set out to make that determination over the last year.

APA’s determination was based on three factors. First, APA had to determine what road mileage is subject to the Master Plan’s mileage cap. The Master Plan defines a road as follows:



“Road--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,

- either maintained by a state agency or a local government and open to the general public;
- 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
- maintained by the Department of Environmental Conservation or other state agency and open to the public on a discretionary basis.”

Over the past year there was a lot of public discussion about what Wild Forest roads are open to the general public, what are open only for state management purposes as administrative roads, and what roads are open to the public under the DEC’s discretion. Decisions on the meaning of the complex road definition above determined how the APA tallied up the overall road mileage in Wild Forest areas.

A major area of discussion was how to categorize and count the mileage of roads that have been opened for motor vehicle use by qualified people with disabilities under special permits. In 1997, the DEC approved “Commissioner Policy 3, Motorized Access Program for People With Disabilities,” which is

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known as “CP-3.” To date, the CP-3 policy has opened about 22 miles of roads in Wild Forest areas, all of which were approved as part of the Unit Management Plan process. These are roads where motor vehicles may only be used by individuals who obtain special CP-3 permits.

In July 2001, the DEC settled a lawsuit brought by a coalition of individuals and organizations advocating for individuals with disabilities, that alleged discrimination under the Americans With Disabilities Act in the state’s Forest Preserve management. This settlement has come to be known as the “Galusha” settlement and it shaped the DEC’s management of outdoor recreational opportunities for people with disabilities, leading to an array of new facilities and programs that were built across the State. The two organizations that merged to create Protect the Adirondacks were both part of that settlement. Among the many activities outlined in the *Galusha* settlement was the proposed opening of selected roads for special permits under CP-3.

In Wild Forest areas, DEC calculated there were 21.6 miles of roads which were ultimately opened for CP-3 use under the *Galusha* settlement. The settlement specified that the opening of roads for CP-3 use had to comply with the Master Plan and the Forever Wild clause in the State constitution. *Galusha* roads and all other CP-3 roads were subject to review during the Unit Management Plan process.

The key issue was whether the non-*Galusha* and *Galusha* CP-3 roads should be counted as part of the total mileage that was supposed to be capped under the “no material increase” clause in Master Plan. Together these roads totaled around 43 miles, which when combined with the 206 miles of other roads total nearly 250 miles, well over the 1972 level of 211 miles.

As noted above, the Master Plan defines “roads” to include roads “open to the public on a discretionary basis.” APA took the position that 22 miles of non-*Galusha* CP-3 roads fit this definition, but the 21 miles of roads mentioned in the *Galusha* settlement do not. Protect the Adirondacks believes that all non-*Galusha* and *Galusha* CP-3 roads, which are open to members of the public on a discretionary basis, fall squarely within the Master Plan’s definition of “road” and thus all of these roads must be counted as part of the total Wild Forest road mileage.

APA’s twisted interpretation of the Master Plan, to include some CP-3 roads and not others, bends the rules to reach an outcome that allows it to authorize the opening of more miles of roads in Wild Forest areas to motor vehicle use in the future. Expansion of motor vehicle use in the Forest Preserve has been a core objective at both APA and DEC for the last decade or more.

## Browning of Adirondack waters is emerging as a long-term threat



The “browning” of Adirondack lakes is a growing concern because it is viewed as one of the first major changes to Adirondack waters from climate change. Analyzing the color of water has been a core part the Adirondack Lake Assessment Program (ALAP).

Many Adirondack lakes and ponds have experienced higher overall water temperatures, which in turn, has produced longer growing seasons for aquatic vegetation. The Adirondacks is also seeing over 20% more annual rainfall than 30 years ago, and more intense rainstorms, resulting in more storms where more than two inches of rain falls in a 24-hour period.

High water temperatures have produced more algae in the water and more dissolved organic matter (DOM) such as plant pigments. Increased rain has created more churned sediments from streams and stormwater. More algae, DOM, and sediment can change water temperatures, the nutrient cycle, the thermocline and lake stratification, and oxygen content in a lake or pond. How light travels through the water column and in many lakes dulls the standard beautiful turquoise color.

Lake water “color” is analyzed at the Paul Smith’s College Adirondack Watershed Institute laboratory using a spectrophotometry process. Color is analyzed by comparing filtered and unfiltered parts of the water sample. Today, a relatively small number of Adirondack lakes and ponds are displaying color changes, but the trend is growing.

# School districts data illustrate enduring Rural America population trends

Today, across New York State, there are more than a million fewer school children than in 1970, though the state's population has only mildly ticked up. Just ten years ago, in the 2011-12 school year, there were 2,699,840 students, over 280,000 more than now. The drop in the last five years is consistent with long-term trends. Decade after decade, losses continue as New York's population ages and families choose to have fewer children.

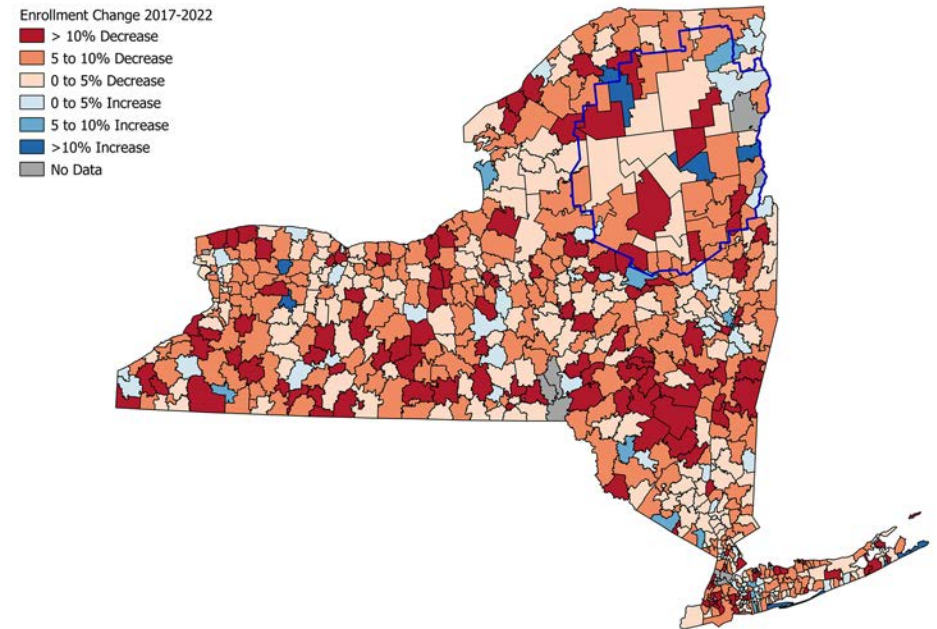
In the last five years, New York's secondary school enrollment has dropped by over 180,000 students. The last five years for which we have data, 2017-18 to 2021-22 (2022-23 data will not be released until September 2023), show that student enrollment in the 718 school districts across New York collectively dropped from 2,607,284 K-12 students in the 2017-18 school year to 2,418,569 in 2021-22, a loss of 188,715 students.

Unfortunately, we do not have fully detailed 2020 US Census data yet, which would help us drill down further on changes to the age composition in New York and the rest of the country. Regional variations will be interesting to assess. The limited data produced so far for voting redistricting purposes provided information on residents 18 years old and older and those younger. From this data, we saw that from 2010 to 2020, New York State saw a -4.9% drop in young people under 18 years old, some 211,815 fewer kids. Yet, in the last decade, New York's population also grew by over 825,000. This means that during a decade in which New York's total population increased by over 825,000, the population 18 years old or older grew by over 1 million, while the population of young people under 18 years old shrank by over 200,000.

New York's total school district enrollment has been declining for decades. Often, one district's stats will be held up as evidence or proof of a community's decline, but school enrollment is best understood in a larger context. Losses were pervasive throughout the New York; 692 of New York's 718 school districts saw enrollment drops over the last five years, fully 87%. The average drop in enrollment was -7.2%. In the Adirondack Park, over the last five years, most school districts contracted, though many were well below the state average. There were some districts that posted gains.

US Census data from 2010 to 2020 showed us that there were over 211,000 fewer school-age children in New York State in the last decade, even as our population grew. This trend is not confined to New York but intensifies and plays out the same way in all the neighboring Northeast U.S. states. From 2010 to 2020, New Jersey experienced a -2.8% drop (-57,530) in young people

## NYS School District Enrollment Changes, 2017-2022



under 18 years old, and Massachusetts saw a -3.7% drop (-52,729). Pennsylvania saw a -5.1% drop (-143,003), Rhode Island saw a -6.3% drop (-14,171), Maine saw a -8.1% drop (-22,259), Vermont saw a -8.2% (-10,638) loss, and Connecticut saw a -9.8% loss (-80,298). New Hampshire led the country with the biggest percentage drop in its number of young people under 18 years old with a -10.6% drop (-30,385). This collective loss of over 622,000 young people throughout the Northeast U.S. occurred in a decade in which these nine states saw an overall population growth of almost 2.3 million.

We're amidst national demographic changes in the U.S. that are intensifying and playing out across Upstate New York and the Adirondacks. These long-term trends will be tough to break. More Americans are choosing to live in urban and suburban areas. More jobs are being created and relocated to urban and suburban areas. More large employers are choosing to operate in urban and suburban areas.

A big question going forward is whether remote work will continue in big numbers. Anecdotal information from the Adirondacks reports that many second homes or camps are now occupied with remote workers year-round.

By our estimate, just six million Americans today have made a choice to live in the vast thinly populated rural lands that occupy over 60% of the continental U.S. Across Rural America, in areas very similar to Adirondack Park, communities are experiencing the same trends of an aging population, slow overall population loss, and a decline in school enrollments. We're not alone, far from it.



## Annual Members Meeting is set for Newcomb on July 22, 2023 and will be an exploration of the “Forever Wild” clause in the NYS Constitution



The annual membership meeting of Protect the Adirondacks will take place on Saturday July 22, 2023 in Newcomb at the Visitor’s Interpretive Center. The meeting starts at 10 AM. Information and registration materials will be mailed in mid-June. The day will provide an update on PROTECT’s activities and feature a presentation that explores the meaning of the Forever Wild clause that protects the Forest Preserve. The afternoon will feature opportunities to hike up Goodnow Mountain, canoe on Rich Lake, or walk the trails.

In the exploration of Forever Wild, historian Dr. Philip Terrie will talk about the creation of the Forest Preserve in 1885, origins of the wording “forever wild,” and go over the highlights of the 1894 and 1915 New York State Constitutional Conventions. John Caffry, the lead attorney on PROTECT’s successful defense of Article 14, the Forever Wild clause in the State constitution, will talk about two Article 14 court decisions from 1930 and 1990 that shaped PROTECT’s legal challenge. Claudia Braymer, PROTECT’s Deputy Director, will talk about the substance of the 2021 decision in favor of PROTECT by New York’s highest court. Chris Amato, PROTECT’s Conservation Director and Counsel, will talk about the long-term impacts of this decision on Forest Preserve management.

The annual meeting is an excellent way for members to get updates on major issues facing the Adirondack Park and meet with the Board and staff. The annual meeting will see a vote of the membership on the Board of Directors, a financial report, Conservation and Advocacy report, and updates on major activities. We encourage members to save the date and attend this meeting.



## Join the Forever Wild Legacy Group and help protect and defend the Adirondacks long-term

The Forever Wild Endowment Fund will ensure that the advocacy, research, independent public oversight, education, legal defense, and other vital programs of Protect the Adirondacks are sustained for decades.

Gifts to the Forever Wild Endowment Fund are administered by the Board of Directors of Protect the Adirondacks in partnership with professional financial advisors. The endowment is managed for long-term growth, and income supports PROTECT’s programs based on an annual allocation. No matter how one chooses to give, you can direct your gift to support the Forever Wild Endowment Fund.

The Forever Wild Legacy Group are people who have notified us that they have included Protect the Adirondacks as a beneficiary in their wills or estates. For more information on the Forever Wild Legacy Group call (518) 251-2700 or email us at [info@protectadks.org](mailto:info@protectadks.org). Thank you very much!