



Board of Directors

November 15, 2023

Charles Clusen
Chair

Dan Levy
NYS DEC – Region 5
Division of Lands and Forests
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James McMartin Long
Michael Wilson
Vice-Chairs

Barbara Rottier
Secretary

Re: Valcour Island Parking Lot (Project 2023-RB-15; CO-WP-311)

David Quinn
Treasurer

Dear Dan,

Nancy Bernstein
John Caffry
Andy Coney
Dean Cook
James C. Dawson
Lorraine Duvall
Robert Glennon
Roger Gray
Evelyn Greene
Sidney Harring
Dale Jeffers
Mark Lawton
John Nemjo
Peter O'Shea
Philip Terrie
Chris Walsh

Protect the Adirondacks has reviewed the draft Forest Preserve Work Plan for the Valcour Island Parking Lot prepared by the NYS Department of Environmental Conservation (DEC). At this point, we find that the project violates Article 14, Section 1 of the New York Constitution and needs to be reconsidered and redesigned. We urge the DEC to revise this Work Plan.

Article 14 Compliance

Staff

Peter Bauer
Executive Director

Claudia K. Braymer, Esq.
Deputy Director

Christopher Amato, Esq.
**Conservation Director
and Counsel**

This Forest Preserve Work Plan for the Valcour Island Parking Lot was supposed to be drafted to comply with the new Commissioner's Policy (CP-78). The recent *Protect the Adirondacks* court decision (2021) that found that the DEC and Adirondack Park Agency (APA) had violated Article 14, Section 1, the famed Forever Wild clause in the NYS constitution, outlined six criteria for evaluating the constitutional compliance of a proposed activity on the Forest Preserve. Unfortunately, CP-78 incorporated only three, which we predicted would lead to problems down the road. Omitted issues include prohibitions on overly wide trails, a directive to limit impacts of a project on the Forest Preserve to the lightest possible, as seen with hiking and camping, and the directive that the principal purpose of the Forest Preserve is the preservation of Wilderness. These issues are problems with this particular Work Plan because it does not limit impacts on the Forest Preserve, and it does not serve the principal purpose of preserving the wild forest nature of the Forest Preserve.

Protect the Adirondacks

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Protect the Adirondacks is also disappointed that DEC staff made the decision to conduct their constitutional compliance assessments pursuant to CP-78 in secret. Further, the DEC has declined to provide any kind of public summary for the draft Work Plan that states affirmatively how and why this proposed project complies with Article 14. This decision by the DEC violates the spirit and letter of CP-78.

Nevertheless, the new policy established for the first time a process by which state agencies are required to evaluate constitutional compliance. Under DEC's distorted reading of CP-78, the secret, internal, shrouded, unrecorded, and non-public analysis of constitutional compliance for a draft Work Plan is supposed to answer three critical constitutional questions:

1. Is the proposed cutting, removal, or destruction of timber "material or substantial"?

The answer is yes given the large number of trees cut in a small area of the Forest Preserve and the fact that a great deal of this part of the Forest Preserve has already been cleared.

2. Is the degree of alteration of the existing Forest Preserve terrain permissible?

The terrain has already been vastly altered. All subsequent maintenance efforts should focus on how to restore various Forest Preserve aesthetic and ecological values. The altered terrain is presently damaging neighboring properties and causing stormwater pollution. The existing vastly altered terrain (a parking lot) should be ameliorated by stormwater controls and tree planting.

3. Are the impacts of the proposed project on the existing wild state of the Forest Preserve permissible?

This project fails to uphold the wild forest state of the Forest Preserve. This project needs a robust tree replanting component in order to comply with the constitution.

The proposed Work Plan fails to pass muster with the three constitutional compliance questions enumerated in CP-78.

Failure to Maintain Facilities Has Caused Serious Environmental Problems

The Work Plan clearly states in several areas that the problems at this site are due to a lack of maintenance, saying "The portion of the ditch on state land has not been maintained and is no longer functioning" among other statements. This lack of maintenance, for what must have been decades due to the size of the trees identified for cutting, is unfortunate and is now causing constitutional compliance issues, though as pointed out above, the level of proposed tree cutting is but one issue, among at least three, where the DEC has constitutional compliance problems. The DEC's poor maintenance has also resulted in stormwater pollution to Lake Champlain and damage to neighboring properties.

Measures Taken to Avoid, Mitigate and Minimize Impacts to Natural Resources

This section states, without irony, that “the purpose of the project is to mitigate and minimize the impacts of an existing facility.” Hence, it is the existing facility that is causing environmental damage to the neighboring properties and appears to be contributing to stormwater pollution to Lake Champlain. The plan seeks to cut 506 trees over 1” DBH, yet there is no indication that DEC tried to actually avoid, mitigate and minimize impacts to natural resources, namely the 500 trees that are going to be cut. The proposal seems like a crude and poorly thought-out plan to remedy problems in a way that does not use best management practices for the Forest Preserve. Simply put, DEC is planning to bring in the chainsaws, bulldozers, and excavators.

Work Plan Fails to Comply with Intensive Use Area Guidelines

The proposed Work Plan fails to comply with the Intensive Use Area guidelines in the Adirondack Park State Land Master Plan. Intensive Use Area Basic Guideline 1 states: “The primary management guideline for intensive use areas will be to provide the public opportunities for family group camping, developed swimming and boating, downhill skiing, cross country skiing under competitive or developed conditions on improved cross country ski trails, visitor information and similar outdoor recreational pursuits in a setting and on a scale that are in harmony with the relatively wild and undeveloped character of the Adirondack Park.”

This facility as planned and maintained is not “in harmony with the relatively wild and undeveloped character of the Adirondack Park.”

Basic Guideline 2 states: “All intensive use facilities should be located, designed and managed so as to blend with the Adirondack environment and to have the minimum adverse impact possible on surrounding state lands and nearby private holdings.”

This facility as planned and maintained has an adverse impact on surrounding properties and the water quality of Lake Champlain.

Basic Guideline 10 states: “Any new, reconstructed or relocated buildings or structures located on shorelines of lakes, ponds, rivers or major streams, other than docks, primitive tent sites not a part of a campground (which will be governed by the general guidelines for such sites set forth elsewhere in this master plan) boat launching sites, fishing and waterway access sites, boathouses, and similar water related facilities, will be set back a minimum of 150 feet from the mean high water mark and will be located so as to be reasonably screened from the water body to avoid intruding on the natural character of the shoreline and the public enjoyment and use thereof.”

This project is not “reasonably screened from the water body to avoid intruding on the natural character of the shoreline and the public enjoyment and use thereof.” The large mowed grassy area does not conform with Basic Guideline 10.

For all of the reasons stated above, we do not believe that the maintenance actions proposed in this Work Plan comply with the State Land Master Plan.

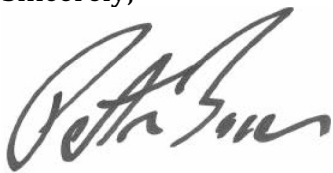
Recommendations

This plan should be rejected. This facility needs to be evaluated by a DEC Stormwater Engineer and needs a stormwater management plan. DEC needs to consider the use of rain gardens and other facilities that can capture and treat stormwater and prevent it from reaching Lake Champlain. The DEC needs to undertake a vigorous tree planting program on the grassy slope area and along the edges of the parking lot. The law allows for the removal of hazard trees that are a threat to public safety. We are concerned about the level of overall tree cutting and we encourage the DEC to plant as many trees, or transfer and replant trees, that are commensurate with the number of trees proposed to be destroyed.

This plan as currently developed fails to comply with the State Land Master Plan, fails to utilize routine stormwater management practices, and raises serious constitutional compliance issues.

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on this draft Work Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with a large initial "P" and "B".

Peter Bauer
Executive Director