



Board of Directors

November 29, 2023

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Chair

Brett Byrne (brett.byrne@dec.ny.gov)
NYS DEC – Region 4 Office
Division of Lands and Forests
1130 North Westcott Road
Schenectady NY 12306

James McMartin Long
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Re: Draft Work Plan for South Lake Dam Project

Dear Brett,

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

Protect the Adirondacks has reviewed the draft Work Plan prepared by the NYS Department of Environmental Conservation (DEC) for the proposed project to rehabilitate the South Lake Dam, which was noticed in the November 15, 2023 Environmental Notice Bulletin. We appreciate the opportunity to review and comment on this draft Work Plan that provides details about the work proposed on Forest Preserve lands in the North South Lake Campground Intensive Use Area. We generally do not comment on Forest Preserve issues in the Catskills, but in light of potential Article 14 compliance problems with the proposed work, we offer the following comments for your consideration prior to finalizing the Work Plan. We urge the DEC to reconsider the project and to revise the Work Plan.

Staff

Article 14 Compliance

Peter Bauer
Executive Director

We note that this Work Plan does not meet the standard required by the new DEC Commissioner's Forest Preserve Work Plan Policy (CP-78). The policy (CP-78 page 5) states that the "intent of the Detailed Project Work Plan is to document the detailed, site-specific assessments conducted by Regional Land and Facility Managers when siting a particular project to ensure that an analysis of the relevant constitutional, statutory, and regulatory factors have been considered prior to the actual construction or modification of a project previously approved in a UMP."

Claudia K. Braymer, Esq.
Deputy Director

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

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

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Forest Preserve. Unfortunately, CP-78 incorporated only three of the six criteria, but the policy (CP-78 page 7) does state that DEC must ensure that the “removal of trees and other vegetation will be minimized to the extent possible”, that DEC must provide “a description and justification for why tree cutting is required”, and that DEC must ensure that “significant terrain modifications such as earth work and soil disturbance will be minimized to the extent possible”. Omitted criteria include 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.

The new policy establishes for the first time a process by which DEC is required to evaluate constitutional compliance, and to “document the detailed, site-specific assessments conducted by Regional Land and Facility Managers when siting a particular project to ensure that an analysis of the relevant constitutional, statutory, and regulatory factors have been considered.” CP-78 page 5. The draft Work Plan does not “document” the analysis used by DEC staff to ensure that the constitutional provisions have been considered, and more importantly, have been satisfied. This Work Plan fails to contain important findings and the public is not fully informed about DEC’s constitutional analysis of this project.

Our constitutional analysis of the Work Plan raises serious concerns relating to the critical questions that CP-78 (pages 3-4) requires DEC to answer:

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. For this project, DEC proposes to cut 456 trees over approximately 0.68 acres of forested land where the tree cutting will be located (Tree Survey Memorandum, Attachment 2 Project Mapping). This is a substantial amount of tree cutting for a project covering a relatively small acreage of forested land. This level of tree cutting, approximately 670 trees per acre, exceeds the levels that have been found to be unconstitutional. While there may be necessary cutting of the trees that have grown up on the dam and its immediate embankments, the tree cutting proposed in the adjacent forested/wooded areas should be eliminated or significantly reduced to lower the number of trees to be cut for this project.

We appreciate that trees were counted down to 1” DBH, as required by the *Protect the Adirondacks* Article 14 court decision, and that the chart in the Work Plan (Tree Survey Memorandum, Attachment 1 Data Table) shows all of the trees 1” DBH and up.

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

The terrain has already been vastly altered as a result of the dam. The dam rehabilitation efforts should focus on how to restore various Forest Preserve aesthetic and ecological values. The altered terrain should be ameliorated by tree planting where it will not cause safety issues to the dam. The forested/wooded areas located beyond the boundaries of

the dam itself should not be cut, or if tree cutting is necessary for construction work, the forested areas should be replanted with trees to the greatest extent possible. Wherever possible, grassy areas should not be used to replace forested areas.

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

The Work Plan contains no discussion of Article 14 compliance for maintaining the “wild state” of the Forest Preserve in this proposed state management action. Further, there is no discussion in the Work Plan acknowledging the “ultimate objective of protecting the forest as wilderness” as required by the *Protect the Adirondacks* court decision. The wild forest nature of the Forest Preserve is an important aspect of the new Work Plan policy that should have been analyzed here. If it had been analyzed, DEC would have been able to identify that the project, as currently proposed, fails to uphold the wild forest state of the Forest Preserve because it significantly expands a manmade, developed feature in the Forest Preserve. This project needs to be reduced in scale, and a robust tree replanting component must be added in order to comply with the Constitution. In addition, while the alternatives section of the Work Plan discusses dam removal, this section should also discuss whether this dam should be replaced with a bridge to restore the wild forest state of the Forest Preserve.

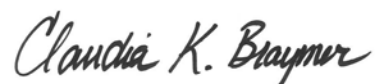
The proposed Work Plan fails to pass muster with the three constitutional compliance questions enumerated in CP-78 and should be rejected.

Recommendations

This draft Work Plan should be rejected, and DEC needs to reevaluate the proposal as currently designed. In the redesign, DEC should limit the areas of tree cutting, and should plan to include a vigorous tree planting program. 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, as are commensurate with the number of trees proposed to be destroyed.

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,



Claudia Braymer,
Deputy Director