

PROTECT THE ADIRONDACKS!

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Certified Mail Return Receipt Requested

October 25, 2023

Hon. Basil Seggos
Commissioner
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1010

Re: Demand for Performance of Non-Discretionary Duty: Carrying Capacity Study for Water Bodies in the Saranac Lake Wild Forest

Dear Commissioner Seggos:

This letter constitutes a demand by Protect the Adirondacks! Inc. ("PROTECT") for the Department of Environmental Conservation ("DEC" or "Department") to perform its non-discretionary duty to complete a carrying capacity study for water bodies in the Saranac Lakes Wild Forest ("SLWF") in the Adirondack Park. The SLWF water bodies include, among others, Upper, Middle and Lower Saranac Lakes; Second Pond; Weller Pond; Oseetah Lake; Follensby Clear Pond; and Lake Flower, all of which are part of the constitutionally protected Forest Preserve.

As discussed below, the Adirondack Park State Land Master Plan ("Master Plan" or "APSLMP") and the Unit Management Plan ("UMP") for the SLWF impose a non-discretionary duty on DEC to complete a carrying capacity study of water bodies in the SLWF. Despite the fact that the SLWF was approved by the Adirondack Park Agency ("APA") and formally adopted by DEC in April 2019, the Department has failed to fulfill its duty to undertake and complete a carrying capacity study. Consequently, we demand that the Department promptly respond to this letter setting forth the timetable for completion of the required study.

The SWLF UMP Requires a Carrying Capacity Study

The SLWF is comprised of approximately 75,070 acres of Wild Forest lands and 142 water bodies totaling 19,000 acres. Water bodies in the SLWF provide direct recreational opportunities (such as swimming, angling, and boating),

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scenic value, and fish and wildlife habitat. According to the UMP, the SLWF planning area includes seven public boat launches and 14 access sites for hand launching of boats.

The SLWF UMP recognizes that lakes and ponds in the unit are subject to increasing pressure from recreational boaters. For example, at the Second Pond boat launch, which provides direct access to Lower Saranac Lake, the number of boats using the launch more than tripled between 2005 and 2017, from 1,676 to 5,282. SLWF UMP at 59, Table 8. Between 2001 and 2017, the number of boats counted at the Upper Saranac Lake boat launch increased by more than 40 percent, from 1,204 to 1,713. *Id.* And between 2011 and 2017, the Lake Flower boat launch, which provides access to Lower Saranac Lake through Oseetah Lake and a lock system, saw boat use increase by more than 45 percent, from 1,603 to 2,338. *Id.*

Exacerbating the overuse of the SLWF water bodies is the APA's recent approval of a major expansion of a commercial marina on Lower Saranac Lake that will result in increased boat traffic on that lake and on the connected water bodies in the SLWF. In addition, the APA is currently reviewing the proposed expansion of another commercial marina on Upper Saranac Lake. DEC has yet to evaluate the cumulative impacts on SLWF water bodies of expansion of these two commercial marinas and the Department's seven boat launches and 14 boating access sites. As recognized in the SLWF UMP, increased boat use of water bodies in the SLWF has potentially significant environmental and social impacts:

There are several ways that water quality is impacted [from motorized watercraft]: introduction of nutrients, petroleum products, effluent, sediment, and invasive species; damage to riparian vegetation; and disturbances to bird nesting are pressures and impacts on water bodies from use . . . In addition to the environmental impacts, there are also impacts to the recreational experience caused by use on water bodies. Crowding and conflict impact one's experience on a waterbody. Lower Saranac Lake and Follensby Clear Pond have a significant density of tent sites and ease of access. These factors greatly increase the probability of social impacts.

SLWF UMP at 111.

The SLWF UMP recognizes that a carrying capacity study for water bodies in the unit is necessary and commits DEC to completing one:

The APSLMP recommends that a comprehensive study of Adirondack lakes and ponds should be conducted by the Department to determine each waterbody's capacity to withstand various uses. The Department and APA are working together to develop a guidance framework for monitoring wildlands in the Adirondack Park which will assess the effects of management actions and public use with respect to the physical, biological and social conditions. This wildlands monitoring guidance framework will likely be based on selecting indicators that will comprehensively monitor the ecological and social impacts of use on the water bodies and surrounding riparian lands to assess the carrying capacity . . . The monitoring will

select indicators, monitor the indicators, and evaluate against standards to determine the capacity of waterbodies.

Id. at 111-112.

DEC and APA have yet to make any other effort to comply with the UMP's directive that a carrying capacity study be undertaken and completed. In response to PROTECT's recent Freedom of Information Law requests for any records relating to the UMP commitment to undertake a carrying capacity study, both DEC and the APA responded that they have no such records. This confirms the conclusion that the two agencies have taken no steps to fulfill the obligation imposed by the UMP and the Master Plan to assess the carrying capacity of water bodies in the SLWF.

In addition to the duty imposed by the SLWF UMP, the UMP for the Second Pond Boat Launch Intensive Use Area ("Second Pond"), finalized by DEC in April 2014, states that Second Pond's "carrying capacity will . . . be developed as a part of the Saranac [Lakes] Wild Forest UMP." Second Pond UMP at 7. The UMP further states that the "Saranac Lake Wild Forest and Second Pond [boat launch] are integral, and if conditions on the waters and lands of the Saranac Lakes Wild Forest are found to be outside acceptable limits, changes to the management of the Second Pond Intensive Use Area may be required." *Id.* at 7. DEC acknowledges in the Second Pond UMP that it has not completed "the required carrying capacity assessment to assess current use levels" and that "a carrying capacity assessment is needed to assist in managing social and biological resources of the Saranac Lakes Wild Forest" and Second Pond. *Id.* at XIII.

The APA, in approving the Second Pond UMP, also recognized that "management of the Second Pond Intensive Use Area has impacts on the Saranac Lakes Wild Forest and management actions in response to the required carrying capacity assessments for the Saranac Lakes Wild Forest may include changes to the management of the Second Pond Intensive Use Area." APA Resolution on Second Pond UMP at 2.

Although DEC has recently initiated a pilot study to examine and manage visitor use on Forest Preserve lands, that effort is focused on a single unit in the Adirondack Park (the High Peaks Wilderness Complex) and does not address any water bodies, including those in the SLWF.

DEC Has a Non-Discretionary Duty to Complete a Carrying Capacity Study

The Master Plan recognizes that "[h]uman use and enjoyment of [State lands in the Park] should be permitted and encouraged, *so long as the resources in their physical and biological context as well as their social or psychological aspects are not degraded.*" APSLMP at 1; (emphasis added).

The Master Plan specifies that:

Unit management plans will contain: an assessment of the impact of actual and projected public use on the resources, ecosystems and public enjoyment of the area with particular attention to portions of the area threatened by overuse; *and an assessment of the physical, biological and social carrying capacity of the area with*

particular attention to portions of the area threatened by overuse in light of its resource limitations and its classification under the master plan.

APSLMP at 10-11; (emphasis added).

Based on the analysis of carrying capacity, a UMP must include “the regulation or limitation of public use such that the carrying capacity of the area is not exceeded” *Id.* For lands and waters classified as Wild Forest (such as the SLWF), the Master Plan directs that access to waterbodies can be provided only if the “physical, biological and social carrying capacity of the water body or other water bodies accessible from the site will not be exceeded.” *Id.* at 40. Significantly, the Master Plan does not differentiate between waterbodies wholly surrounded by public land and those that include private lands on the shoreline, as is the case with some of the water bodies in the SLWF. Nor does the Master Plan absolve DEC from the obligation to consider carrying capacity for waterbodies (such as Lower Saranac Lake) that are the subject of a UMP and include private ownership along the shoreline.

The Master Plan’s requirement that carrying capacity be addressed in UMPs imposes a mandatory duty on DEC to do so. *Adirondack Wild: Friends of the Forest Preserve v. New York State Adirondack Park Agency*, 34 N.Y.3d 184, 192 (2019). (“accepting for purposes of this case that the Master Plan is a ‘law’”); *Matter of Adirondack Mtn. Club v. Adirondack Park Agency*, 33 Misc.3d 383, 387 (Sup. Ct. Albany Co. 2011) (“Because the [Master Plan] and amendments thereto are subject to approval by the Governor, it has been construed as having ‘the force of a legislative enactment,’” citing *Helms v. Reid*, 90 Misc.2d 583, 604 (Sup. Ct. Hamilton Co. 1977)).

In accordance with the Master Plan’s mandate, both the SLWF and Second Pond UMPs include express commitments by DEC to undertake a carrying capacity study of water bodies in the SLWF. The Department’s failure to carry out its non-discretionary duty despite the passage of four years since adoption of the SLWF UMP and despite the increasing recreational use pressures on water bodies in the SLWF is, as noted by the Appellate Division, “wholly unexplained and, indeed, inexplicable.” *Matter of Jorling v. Adirondack Park Agency*, 214 AD3d 98, 105 (3d Dept. 2023). Consequently, PROTECT demands that the Department promptly respond to this letter setting forth the timetable for completion of the required carrying capacity study.

Thank you for your consideration of this matter.

Sincerely,



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