

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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PROTECT THE ADIRONDACKS! INC.,

*Petitioner,*

-against-

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION and  
NEW YORK STATE ADIRONDACK PARK  
AGENCY,

*Respondents.*

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**NOTICE OF  
PETITION**

Index No.

**PLEASE TAKE NOTICE**, that upon the Verified Petition of Petitioner Protect the Adirondacks! Inc. (“Petitioner”), verified on March 28, 2024, and the exhibits annexed thereto, Petitioner by and through its attorneys Christopher A. Amato, Esq. and Claudia K. Braymer, Esq., will move this Court at the Albany County Courthouse, 16 Eagle Street, Albany, New York, on the 26th day of April, 2024 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order pursuant to CPLR Article 78 granting the relief sought in the accompanying Verified Petition in full and awarding Petitioner such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to CPLR § 403(b), answering papers, if any, must be served on the undersigned at least seven days

before the return date.

Dated: March 28, 2024  
Johnsburg, New York



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Christopher A. Amato, Esq.  
Conservation Director and Counsel  
Protect the Adirondacks! Inc.  
[conservationdirector@protectadks.org](mailto:conservationdirector@protectadks.org)

Claudia K. Braymer, Esq.  
Deputy Director  
Protect the Adirondacks! Inc.  
[deputydirector@protectadks.org](mailto:deputydirector@protectadks.org)

*Attorneys for Petitioner*  
105 Oven Mountain Road  
Johnsburg, NY 12843  
(518) 860-3696  
(518) 251-2700

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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PROTECT THE ADIRONDACKS! INC.,

Petitioner,

-against-

**VERIFIED PETITION**

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION and  
NEW YORK STATE ADIRONDACK PARK  
AGENCY,

Index No.

Respondents.

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**PRELIMINARY STATEMENT**

1. Petitioner Protect the Adirondacks! Inc. (“PROTECT” or “Petitioner”) brings this mandamus action pursuant to Civil Practice Law and Rules (“CPLR”) §§ 7801 and 7803(1) to compel Respondent New York State Department of Environmental Conservation (“Department” or “DEC”) to perform its non-discretionary duty to complete a carrying capacity study of water bodies in the Saranac Lake Wild Forest (“SLWF”) as mandated by the Adirondack Park State Land Master Plan (“Master Plan”) and the Unit Management Plan (“UMP”) for the SLWF in the Adirondack Park.

2. The SLWF is comprised of approximately 75,070 acres of Wild Forest lands and 142 water bodies totaling 19,000 acres. The major water bodies in the

SLWF include Upper Saranac Lake, Middle Saranac Lake, Lower Saranac Lake, Weller Pond, Second Pond, Fish Creek Ponds, Square Pond, Little Square Pond, Copperas Pond, Floodwood Pond, Rollins Pond, Whey Pond, and Follensby Clear Pond, among others, all of which are connected by natural channels, a lock system or short carries and are bordered either partially or completely by Forest Preserve lands (hereinafter, “the Saranac Lakes Complex”).

3. Water bodies in the Saranac Lakes Complex provide direct recreational opportunities (such as swimming, angling, paddling and boating), scenic and aesthetic value, and fish and wildlife habitat.

4. The Master Plan requires that each UMP include “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.” Master Plan at 10-11.

5. According to the SLWF UMP, the Saranac Lakes Complex includes seven public boat launches and 14 public access sites for hand launching of boats. In addition, there are at least two privately owned marinas in the Saranac Lakes Complex.

6. The SLWF UMP recognizes that water bodies in the Saranac Lakes Complex are subject to increasing pressure from recreational boaters, resulting in adverse impacts to water quality and fish and wildlife habitat, potential introduction

of invasive species and interference with recreational users' experience due to noise, pollution and crowding. SLWF UMP at 111.

7. In order to address these concerns, the SLWF UMP requires DEC to undertake and complete a carrying capacity study of the Saranac Lakes Complex. SLWF UMP at 111-112. A carrying capacity study examines and evaluates the maximum amount of cumulative development or use that a water body can sustain without such development or use interfering with, degrading or causing adverse impacts to water quality; fish and wildlife species; fish and wildlife habitat; native plant populations; scenic beauty; aesthetic values, including noise and light pollution; and recreational use, including the quality of the recreational experience. *See* Affirmation of Chad Dawson, Ph.D., in Support of Verified Petition, sworn to on March 27, 2024 (“Dawson Aff.”) ¶¶ 12-14, attached hereto and made part of this Petition as **Exhibit A**.

8. The scientific underpinning of carrying capacity is that land and water natural resources have limits to the amount and type of recreational use that they can withstand before adverse impacts occur. These adverse impacts include (i) unsustainable changes in natural biological and ecological conditions, characteristics and processes; (ii) unacceptable and undesirable changes in the quality of the recreational experience; and (iii) undesirable, unsafe or unsustainable conditions in the management of recreational lands and facilities. *Id.*

9. Both the SLWF UMP and the Master Plan impose a non-discretionary duty on DEC to undertake and complete a carrying capacity study for the Saranac Lakes Complex.

10. In the nearly five years that have passed since approval and adoption of the SLWF UMP, the Department has failed to undertake or complete the required carrying capacity study and has thus failed to perform the nondiscretionary duty imposed by the SLWF UMP and the Master Plan to do so.

11. Petitioner seeks an order (i) directing DEC to perform its nondiscretionary duty to undertake and complete a carrying capacity study for the Saranac Lakes Complex; (ii) enjoining Respondents DEC and the Adirondack Park Agency (“APA”) from issuing a permit or approval for any proposed project that will result in the docking, mooring or use of additional motorized watercraft in the Saranac Lakes Complex pending completion of the carrying capacity study; and (iii) enjoining DEC and APA, upon completion of the carrying capacity study, to consider the study prior to issuing a permit or approval for any proposed project that will result in the docking, mooring or use of additional motorized watercraft in the Saranac Lakes Complex. Petitioner also seeks to recover the costs and disbursements of this action, including attorneys’ fees.

## VENUE

12. Venue is proper in this Court pursuant to CPLR §§ 7804(b) and 506(b) because the principal office of Respondent DEC is located in Albany County.

## PARTIES

13. PROTECT is a New York not-for-profit corporation managed by a Board of Directors. It is a grassroots membership organization dedicated to the protection, stewardship, and sustainability of the natural environment and human communities of the Adirondack Park and the Forest Preserve for current and future generations. PROTECT's mission statement is available [here](#). See Affirmation of Peter Bauer in Support of Verified Petition, sworn to on March 27, 2024 ("Bauer Aff.") ¶ 3, attached hereto and made part of this Petition as **Exhibit B**.

14. PROTECT uses advocacy, independent public oversight, grassroots organizing, education, scientific research, and legal action to advance its mission. Its offices are located in the Adirondack Park at 105 Oven Mountain Road, Johnsburg, New York. *Id.*

15. PROTECT has over 2,000 members and supporters who share a common desire to protect the environmental health and legacy of the Adirondack Park. Many of PROTECT's members reside or own property within the Park. *Id.* ¶

4.

16. PROTECT's members are also regular users of and visitors to the Forest Preserve who recreate in and enjoy the natural resources and scenic treasures of the Adirondack Park., including the Saranac Lakes Complex. *Id.*

17. PROTECT and its members are committed to ensuring that public and private lands in the Adirondack Park are managed in a coordinated and complementary manner as envisioned and required by the Master Plan, applicable UMPs and the Adirondack Park Agency Act ("APA Act"). *Id.*

18. As a grassroots organization, PROTECT depends on volunteers. A high proportion of PROTECT's membership dues directly support projects that help protect the Adirondack Park's six million acres. Through independent public oversight, advocacy, education, grassroots organizing, water quality monitoring, research, and legal action, PROTECT and its members work to protect, preserve, and enhance the wilderness character, ecological integrity, and scenic resources of the Adirondack Park, and to promote appropriate recreational uses in the Forest Preserve. *Id.* ¶ 6.

19. One of PROTECT's priorities is to ensure that DEC's management of Forest Preserve lands in the Adirondack Park complies with all applicable constitutional and other legal requirements, including the "Forever Wild" clause of the New York State Constitution, the Master Plan, and applicable UMPs. To this end, PROTECT monitors DEC's actions on Forest Preserve lands and APA's



oversight of those actions to ensure that both agencies adhere to and comply with the legal protections afforded those lands. As part of this effort, PROTECT communicates on a regular basis with staff and leadership at both agencies. *Id.* ¶ 7.

20. In addition to advocacy on key issues related to the management of private and public lands in the Adirondack Park, PROTECT pursues its mission through education about Forest Preserve management. PROTECT is a member of DEC's Forest Preserve Advisory Committee and the Forest Preserve Trails Stewardship Working Group. PROTECT's website is also actively maintained as a repository of comment letters to the agencies, public information about the Forest Preserve, the history of the Adirondack Park and popular online trail guides to 100 hikes in the Park. *Id.* ¶¶ 8-9.

21. PROTECT's members and volunteers also undertake research projects to educate the public and State agencies. For example, PROTECT published a report identifying opportunities for motor-less recreation on 200 of the largest lakes and ponds in the Adirondack Park. PROTECT also published a report on impacts to natural resources in the Forest Preserve resulting from the use of all-terrain vehicles. And in 2001, PROTECT published a report on private land development trends in the Adirondack Park, which was the first long-term analysis of private development in the Park. *Id.* ¶10.

22. Although PROTECT relies in most cases on direct advocacy before the DEC and APA staff and leadership to achieve its goals, it does resort to court action when appropriate and necessary to ensure that the agencies comply with the Forever Wild clause, the Master Plan, and applicable UMPs. Most recently, PROTECT was successful before the New York Court of Appeals in its suit claiming that DEC's construction on Forest Preserve lands of miles of extra-wide snowmobile trails requiring the cutting of thousands of trees violates the Forever Wild clause of the New York State Constitution. *Protect the Adirondacks! Inc. v. N.Y.S. Dep't of Envtl. Conserv.*, 37 NY3d 73 (2021). *Id.* ¶ 11.

### **PROTECT'S Involvement in the SLWF**

23. PROTECT's members frequently engage in recreational activities in the Saranac Lakes Complex, including paddling, swimming, camping and wildlife viewing, and plan to return there to engage in those activities in the future. The PROTECT members who recreate in the Saranac Lakes Complex are attracted to the area because it is part of the Saranac Lake Wild Forest; the wild character of many water bodies in the Saranac Lakes Complex; the opportunities for quiet paddling of canoes and kayaks; and the opportunities to fish, view wildlife and enjoy the surrounding undeveloped and mountainous landscape, much of which is part of the "forever wild" Forest Preserve. *Bauer Aff.* ¶ 12.

24. DEC's failure to undertake and complete a carrying capacity study for the Saranac Lakes Complex as required by the Master Plan and the SLWF UMP directly harms PROTECT's members who recreate there by allowing continued expansion of motorized watercraft use of the Complex without fully considering the impacts of such increased use or the ability of those water bodies to withstand the additional impacts of such increased use. The harm to PROTECT's members is the increased water and noise pollution; adverse impacts to fish and wildlife habitat; diminished sense of solitude; disruption of serene and quiet recreational experiences; and overcrowding resulting from ever increasing motorboat activity, all of which are the direct result of DEC's failure to conduct the carrying capacity study of the Saranac Lakes Complex. *Id.* ¶ 13.

25. In addition, some of PROTECT's members own property in the Saranac Lakes Complex. DEC's failure to complete a carrying capacity study and the approval by DEC and APA of projects that allow for additional docking, mooring and use of the Saranac Lakes Complex by motorized watercraft in the absence of such a study increases the level and intensity of motorized watercraft use of the Saranac Lakes Complex resulting in increased noise and water pollution, adverse impacts to fish and wildlife and their habitat; and negative aesthetic and visual impacts that irreparably alter the recreational experience and character of the Saranac Lakes Complex. *Id.* ¶ 14.

26. PROTECT also administers the Adirondack Lake Assessment Program (“ALAP”), now in its 27th year, in partnership with the Adirondack Watershed Institute at Paul Smith’s College. PROTECT organizes lake associations, local governments, and volunteers; trains them in the water quality sampling protocol developed by the Institute; and provides them with the necessary materials to monitor water quality at waterbodies throughout the Adirondack Park. The samples are analyzed by the Institute and an annual water quality report is published based on the results. Through ALAP, PROTECT helps to monitor the water quality of approximately 80 lakes and ponds throughout the Adirondacks. Water quality in water bodies in the Saranac Lakes Complex, including Middle Saranac Lake and Lower Saranac Lake, has been monitored as part of ALAP since 2001. *Id.* ¶ 15.

27. PROTECT has been involved in review of SLWF management issues for many years, including submitting two detailed comments letters to DEC on the draft UMP for the SLWF; advocating that Weller Pond in the Saranac Lakes Complex be closed to motorized watercraft; opposing expansion of an existing commercial marina on Lower Saranac Lake in the Saranac Lakes Complex; and opposing expansion of another commercial marina on Lower Fish Creek Pond in the Saranac Lakes Complex. *Id.* ¶¶ 16-18.

28. Defendant DEC is an executive agency of the State of New York with its principal offices located at 625 Broadway, Albany, New York in Albany County.

Pursuant to Environmental Conservation Law §§ 9-0101(6) and 9-0105(1), DEC is responsible for the care, custody and control of the New York State Forest Preserve, including the Forest Preserve lands and waters at issue in this action, and has a non-discretionary duty to complete the carrying capacity study of the Saranac Lakes Complex required by the Master Plan and the SLWF UMP.

29. Respondent APA is an executive agency of the State of New York with its principal office is located at 1133 NYS Route 86, Ray Brook, Essex County, New York. Pursuant to the Adirondack Park Agency Act, Executive Law §§ 801 *et seq.*, APA reviews and approves UMPs prepared by DEC for Forest Preserve lands in the Adirondack Park and has permitting authority over certain new land use and development on privately owned lands in the Adirondack Park.

## **FACTS**

### **A. The Forest Preserve**

30. For more than a century, the Forest Preserve has been protected by the “Forever Wild” clause of the New York State Constitution, which provides:

The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

New York State Constitution, Art. XIV, § 1.

31. As recognized by the New York Court of Appeals, “[t]he Forest Preserve is a public owned wilderness of incomparable beauty.” *Protect the Adirondacks v. New York State Dept. of Environmental Conservation*, 37 NY3d 73, 79 (2021); see *Adirondack Wild: Friends of the Forest Preserve v. New York State Adirondack Park Agency*, 34 NY3d 184, 187 (2019) (“The Adirondack Park is a world-renowned treasure in our own backyard . . . [I]ncorporating more territory than Yosemite, Yellowstone, Glacier, Grand Canyon, and Great Smoky Mountain National Parks *combined*, there are 3,000 lakes and ponds and 30,000 miles of rivers and streams in the Adirondack Park.”) (emphasis in original).

## **B. The Master Plan**

32. To ensure that the natural resources and “forever wild” nature of the Forest Preserve are conserved, DEC’s management of these publicly owned lands is governed by the Master Plan. The Master Plan is available [here](#).

33. The Master Plan has the force and effect of law.

34. 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.*” Master Plan at 1; (emphasis added).

35. 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.*

*Id.* at 10-11; (emphasis added).

36. 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.*

37. For lands and waters classified as Wild Forest (such as the SLWF), the Master Plan directs that access to water bodies 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.

38. Significantly, the Master Plan does not differentiate between water bodies 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 water bodies that are the subject of a UMP, even if they have private ownership along the shoreline.

39. The Master Plan’s requirement that carrying capacity be addressed in UMPs imposes a mandatory duty on DEC to undertake and complete a study of each water body’s carrying capacity.

### **C. The SLWF UMP**

40. The UMP for the SLWF includes an express commitment by DEC to undertake a carrying capacity study of water bodies in the Saranac Lakes Complex. The SLWF UMP is available [here](#).

41. The SLWF UMP recognizes that lakes and ponds in the unit are subject to increasing pressure from recreational boaters. Dawson Aff. ¶ 25.

42. For example, at the Second Pond boat launch, a public boat launch in the Saranac Lakes Complex managed by DEC that 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; Dawson Aff. ¶ 26.

43. Between 2001 and 2017, the number of boats counted at the Upper Saranac Lake, boat launch, also part of the Saranac Lakes Complex, increased by more than 40 percent, from 1,204 to 1,713. SLWF UMP at 59, Table 8; Dawson Aff. ¶ 27.

44. 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. SLWF UMP at 59, Table 8; Dawson Aff. ¶ 28.

45. The SLWF UMP recognizes that 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.

46. The SLWF UMP recognizes that a carrying capacity study for water bodies in the unit is necessary and commits DEC to completing one, stating that “the [Master Plan] 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.” SLWF UMP at 111. Notably, the Master Plan imposes on DEC a nondiscretionary obligation to, among other things, complete “an assessment of the physical, biological and social carrying capacity of the area” covered by a particular UMP. Master Plan at 10-11.

47. The SLWF UMP further commits DEC to utilizing a “wildlands monitoring guidance framework [that] 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.” SLWF UMP at 111.

48. According to the SLWF UMP, “the monitoring will examine water-related use and development in the SLWF. The monitoring will select indicators, monitor the indicators, and evaluate against standards to determine the capacity of waterbodies. Indicators may look at ecological impacts (e.g. non-native aquatic plants, fecal coliform, chloride, dissolved oxygen, and water temperature), social impacts (e.g. trip satisfaction, visitor conflict), recreation use (e.g. people at one time, visitor overnight use), and adjacent development (e.g. number of campsites).” *Id.* at 111.

49. Significantly, the SLWF UMP recognizes that the cumulative impacts of use of the Saranac Lakes Complex have never been evaluated, stating that “this UMP provides information about impacts, but a cumulative assessment between use and impacts has not been done.” *Id.* at 111-112.

50. The SLWF UMP identifies specific data sets that DEC will utilize in the carrying capacity study, including “trail register information . . . physical feature data (e.g. max depth), results of chemical (e.g. pH) and biological surveys (e.g. fish species present and number caught) of lakes and ponded waters . . . individual pond descriptions (e.g. reclamation history, liming history, stocking history, recreational use, and shoreline conditions) . . . inventory and description of facilities in the SLWF (e.g. roads, trails, boat launches) for each waterbody . . . [and] inventory of aquatic invasive species.” *Id.* at 112.

51. The SLWF UMP commits DEC to achieving the objective of “develop[ing] and coordinat[ing] a comprehensive study of lakes and ponds in the SLWF . . . [and] [e]stablishing desired conditions to determine if carrying capacity has been exceeded.” *Id.* at 112-113.

52. The SLWF UMP further commits DEC to “[d]evelop and implement a comprehensive monitoring program [that] . . . will help measure and determine impacts to better inform carrying capacity development and long-term planning. Monitoring could include photo point locations, boat counts, water analysis, and visitor surveys.” *Id.* at 113.

#### **D. The Second Pond UMP**

53. 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 Second Pond UMP is available [here](#).

54. The Second Pond 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.

55. 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.

56. 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.

#### **E. Recent APA Approval of Marina Expansions**

57. Exacerbating the overuse of water bodies in the Saranac Lakes Complex is the APA’s recent approval of a major expansion of a commercial marina on Lower Saranac Lake that will result in increased motorized watercraft traffic on that lake and on the other connected water bodies in the SLWF. The marina expansion, approved by APA on June 15, 2023, will result in the addition of approximately 145 motorized watercraft to the Saranac Lakes Complex. Dawson Aff. ¶¶ 29-30.

58. APA approved the marina expansion, which made it the largest commercial marina in the Adirondack Park, in the absence of a carrying capacity of the Saranac Lakes Complex, which includes Lower Saranac Lake. *Id.* ¶ 31.

59. In addition, APA and DEC are currently reviewing a proposal for another commercial marina on Lower Fish Creek Pond in the Saranac Lakes Complex that, if approved, will result in the addition of approximately 90 motorized watercraft to the Saranac Lakes Complex. *Id.* ¶ 32.

60. DEC has yet to evaluate the cumulative impacts on water bodies in the Saranac Lakes Complex of these two commercial marinas, DEC's seven boat launches and 14 boating access sites, and private boat docks. *Id.* ¶ 33.

61. The data showing significant increases in use of public boat launches in the Saranac Lakes Complex, coupled with the expansion of commercial marinas in the Complex, suggest that the physical, biological and social carrying capacity of the Saranac Lakes Complex is at substantial risk of being exceeded, if it has not already been exceeded. *Id.* ¶ 35.

#### **F. DEC's Continuing Failure to Perform its Nondiscretionary Duty**

62. Despite the passage of nearly five years since adoption of the SLWF UMP and despite the ever-increasing recreational use pressures on water bodies in the Saranac Lakes Complex, DEC has taken no steps to perform its nondiscretionary duty to complete a carrying capacity study. This failure is, as noted by the Appellate

Division, Third Department, “wholly unexplained and, indeed, inexplicable.” *Matter of Jorling v. Adirondack Park Agency*, 214 AD3d 98, 105 (3d Dept. 2023).

63. DEC and APA have yet to make any effort to comply with the SLWF UMP’s directive that a carrying capacity study be undertaken, completed and used for management of these waterbodies. In response to PROTECT’s recent Freedom of Information Law requests for any records relating to the SLWF UMP commitment to undertake a carrying capacity study, both DEC and the APA responded that they have no such records. Thus, the two agencies have taken no steps to fulfill the obligation imposed by the SLWF UMP and the Master Plan to assess the carrying capacity of water bodies in the Saranac Lakes Complex.

64. By letter dated October 25, 2023, Petitioner demanded that DEC perform its nondiscretionary duty to complete a carrying capacity study of the Saranac Lakes Complex and provide a response setting forth the timetable for completion of the required study. A copy of Petitioner’s demand letter to DEC is annexed hereto and made part of this Petition as **Exhibit C**.

65. DEC responded by a single page letter dated December 5, 2023. The letter does not include a commitment by DEC to complete a carrying capacity study for the Saranac Lakes Complex and fails to include a timetable for completing such a study. A copy of the DEC response letter is annexed hereto and made part of this Petition as **Exhibit D**.

66. Nearly five years have passed since adoption of the SLWF UMP without any steps being taken by DEC to prepare the required carrying capacity study.

**G. The Adverse Impacts of DEC's Failure to Perform its Nondiscretionary Duty to Complete a Carrying Capacity Study**

67. DEC's failure to complete the required carrying capacity of the Saranac Lakes Complex is likely to have significant adverse impacts resulting from the unmonitored and uncontrolled increase in motorized watercraft use. These impacts are likely to include degradation of water quality; increased disturbance of wildlife with consequent decline in opportunities for wildlife viewing; disturbance and degradation of fish and wildlife habitat; introduction and spread of invasive species; increased crowding, with consequent decline in opportunities for solitude; increased noise pollution; increased incidence of user conflicts; adverse impacts to aesthetic attributes; and overall degradation of the recreational user experience. Dawson Aff.

¶ 43.

68. In addition, the cumulative effects of these impacts are likely to significantly degrade the natural resources of the Saranac Lakes Complex and the user experience of people recreating in and around water bodies in the Complex. *Id.*

¶ 44.

69. Because some waterbodies in the Complex, such as Lower Saranac Lake, are already experiencing substantially increased motorized watercraft use,

DEC's continuing failure to complete a carrying capacity study seriously jeopardizes the ecological and recreational integrity of those waterbodies. *Id.* ¶ 45.

70. In some cases, the damage to natural resources from overuse, such as degradation of water quality or impacts to fish and wildlife habitat, can take years or even decades to reverse. In the absence of a carrying capacity study and the implementation of measures to return conditions to sustainable levels and to avoid exceeding the carrying capacity, the damage from overuse will continue to increase, thereby risking long-term or even permanent damage to the natural resources of the Saranac Lakes Complex. *Id.* ¶ 46.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

71. Petitioner repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

72. The Master Plan and the SLWF UMP impose a non-discretionary on DEC to complete a carrying capacity study of the Saranac Lakes Complex.

73. DEC has failed to begin, or even take any steps to begin, a carrying capacity study of the Saranac Lakes Complex.

74. DEC has failed to provide a timetable for completing a carrying capacity study of the Saranac Lakes Complex.

75. The failure by DEC to take any steps in the past nearly five years to initiate the carrying capacity study of the Saranac Lakes Complex mandated by the



Master Plan and the SLWF UMP constitutes an unreasonable delay and a violation of its non-discretionary duty to complete such a study.

**WHEREFORE**, Petitioner respectfully requests that this Court enter judgment as follows:

1. Enjoining DEC to undertake and complete, by a date certain, a carrying capacity study of the Saranac Lakes Complex as mandated by the Master Plan and the SLWF UMP;

2. Enjoining DEC and APA from issuing a permit or approval for any proposed project that will result in additional docking, mooring or use of additional motorized watercraft in the Saranac Lake Complex pending completion of the carrying capacity study;

3. Enjoining DEC and APA, upon completion of the carrying capacity study, to consider the results of such study prior to issuing a permit or approval for any proposed project that will result in additional docking, mooring or use of additional motorized watercraft in the Saranac Lakes Complex;

4. Awarding Petitioner the costs, disbursements, and attorneys' fees incurred in connection with this proceeding; and

5. Awarding Petitioner such other and further relief as this Court shall deem just, proper, or equitable.

Dated: March 28, 2024  
Johnsburg, New York



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Christopher A. Amato, Esq.  
Conservation Director and Counsel  
Protect the Adirondacks! Inc.  
[conservationdirector@protectadks.org](mailto:conservationdirector@protectadks.org)

Claudia K. Braymer, Esq.  
Deputy Director  
Protect the Adirondacks! Inc.  
[deputydirector@protectadks.org](mailto:deputydirector@protectadks.org)

*Attorneys for Petitioner*  
105 Oven Mountain Road  
Johnsburg, NY 12843  
(518) 860-3696  
(518) 251-2700



# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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PROTECT THE ADIRONDACKS! INC.,

*Petitioner,*

-against-

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION and  
NEW YORK STATE ADIRONDACK PARK  
AGENCY,

*Respondents.*

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**AFFIRMATION OF CHAD DAWSON, PH.D.  
IN SUPPORT OF PETITION**

**CHAD DAWSON, Ph.D.**, hereby affirms under penalty of perjury the following:

1. I am Professor Emeritus of Recreation Resources Management and former Chair of the faculty of Forest and Natural Resources Management at the State University of New York College of Environmental Science and Forest in Syracuse, New York (SUNY-ESF).

2. From 2016 to 2020, I served as a member of the Board of the Respondent Adirondack Park Agency (APA). I was appointed to that position by

Governor Andrew Cuomo with the advice and consent of the New York State Senate.

3. I submit this affidavit in support of PROTECT’s Verified Petition to compel Respondent New York State Department of Environmental Conservation (“Department” or “DEC”) to perform its non-discretionary duty to complete a carrying capacity study of the Saranac Lakes Complex in the Saranac Lake Wild Forest (“SLWF”) as mandated by the Adirondack Park State Land Master Plan (“Master Plan”) and the Unit Management Plan (“UMP”) for the SLWF.

4. As used in this affidavit, the “Saranac Lakes Complex” refers to Upper Saranac Lake, Middle Saranac Lake, Lower Saranac Lake, Weller Pond, Second Pond, Fish Creek Ponds, Square Pond, Little Square Pond, Copperas Pond, Floodwood Pond, Rollins Pond, Whey Pond, and Follensby Clear Pond, among others, all of which are connected by natural channels, a lock system or short carries and are bordered either partially or completely by Forest Preserve lands.

**Education and Professional Experience**

5. I earned a Bachelor of Science in Conservation and Resource Planning from the University of Michigan; a Master’s Degree in Resource Policy and Planning from Cornell University; and a Doctor of Philosophy degree in Resource Management and Policy from SUNY-ESF.

6. As noted above, I am Professor Emeritus of Recreation Resources Management and former Chair of the faculty of Forest and Natural Resources Management at the State University of New York College of Environmental Science and Forest in Syracuse, New York (SUNY-ESF). I taught undergraduate and graduate courses and conducted research related to recreational use and wilderness management at SUNY-ESF for 22 years, from 1989 to 2011.

7. Prior to joining the faculty at SUNY-ESF I worked 15 years as an educator and researcher at Cornell University and the University of Minnesota.

8. I was Senior Extension Associate and Team Leader for the Cornell Cooperative Extension and the New York State Sea Grant Program, and Assistant Professor and Extension Agent for the University of Minnesota Cooperative Extension Service and Minnesota Sea Grant Program.

9. For 15 years, from 2001 to 2016, I served as the Managing Editor of the International Journal of Wilderness, a peer-reviewed scientific journal that publishes research on wilderness issues, including recreational overuse and wilderness management.

10. I am the co-author of two textbooks: *Wilderness Management: Stewardship and Protection of Resources and Values* (Chad Dawson and John Hendee, 2009; 4th edition; Fulcrum Publishing, Golden, CO); and *Introduction to*

*Forests and Renewable Resources* (2020; 9<sup>th</sup> edition, Waveland Press, Long Grove, IL).

11. I have also published numerous peer-reviewed papers on wilderness management and recreational overuse in scientific journals and textbooks.

**DEC is Required to Conduct a Carrying Capacity Study to Protect and Preserve Adirondack Park Resources**

12. The scientific underpinning of carrying capacity is that land and water natural resources have limits to the amount and type of recreational use that they can withstand before adverse impacts occur. These adverse impacts include (i) unsustainable changes in natural biological and ecological conditions, characteristics and processes; (ii) unacceptable and undesirable changes in the quality of the recreational experience; and (iii) undesirable, unsafe or unsustainable conditions in the management of recreational lands and facilities.

13. The importance of understanding how recreational uses impact the capacity of water resources in the Adirondack Park to sustain and maintain their wild and natural conditions is explicitly recognized in the Master Plan, which states: “The water resources of the Adirondacks are critical to the integrity of the Park. The protection of the major watersheds of the state was a major reason for the creation of the forest preserve and continues to be of significant importance. Waters, particularly lakes and ponds, have their carrying capacity from a physical, biological and social standpoint just as do tracts of public or private land. The use made of



state waters also has a direct impact on adjacent land holdings.” Master Plan at pp. 3-4.

14. The Master Plan plainly directs DEC to conduct a carrying capacity of water bodies in the Adirondack Park, stating: “A genuine need exists to insure that the scale and intensity of water-oriented uses are consistent with uses of adjoining state and private lands and the general character of the Park, particularly so far as the type, speed and numbers of boats are concerned. A comprehensive study of Adirondack lakes and ponds should be conducted by the [DEC] to determine each water body’s capacity to withstand uses, particularly motorized uses, and to maintain its biological, natural and aesthetic qualities.” Master Plan at p. 4.

15. The Master Plan also requires that the UMPs for each Forest Preserve unit include a carrying capacity study. Specifically, the Master Plan requires each UMP to include “an assessment of the impact of actual and project use on the resources, ecosystems and public enjoyment of the area with particular attention to portions of the area threatened by overuse.” Master Plan at pp. 11-12.

16. UMPs are also required to include “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.” *Id.*

17. Furthermore, each UMP must include management objectives to preserve the natural resources of the Adirondack Park, including “the regulation or limitation of public use such that the carrying capacity of the area is not exceeded and the types of measures necessary to achieve that objective.” *Id.*

18. Even though the Master Plan’s directive to DEC to conduct carrying capacity studies of Adirondack lakes and ponds has been in place since the Master Plan’s adoption in 1972, DEC has yet to conduct a carrying capacity study of any water body in the Adirondack Park.

19. Moreover, I am fully familiar with the SLWF UMP and the Second Pond Boat Launch Intensive Use Area UMP. Even though both UMPs commit DEC to complete a carrying capacity study of the Saranac Lakes Complex, DEC has yet to undertake such a study despite the passage of nearly five years since adoption of the SLWF UMP.

### **DEC Has the Tools Necessary to Complete a Carrying Capacity Study**

20. There is no discernible reason why DEC has failed to complete a single carrying capacity study of any Adirondack Park water body in the more than 50 years that have passed since adoption of the Master Plan, particularly since the Department has the tools and protocols needed to conduct such studies.

21. During my tenure as a faculty member at SUNY-ESF and while an APA Board member, I worked with DEC and APA staff on developing practical and

applied approaches to incorporating carrying capacity concepts for management of State-owned Forest Preserve lands and waters. This included concepts such as Limits of Acceptable Change (a U.S. Forest Service land management agency methodology); Wilderness Monitoring (a DEC and APA proposed methodology); Visitor Use Management (an interagency methodology utilized by six federal land management agencies); and Carrying Capacity of Waterbodies (a research report published by SUNY-ESF).

22. In addition, while I was at SUNY-ESF, DEC hired me to develop a protocol for carrying capacity studies of water bodies in the Adirondack Park. I completed that project in 2011 and submitted a 91-page report to DEC setting forth that protocol entitled, “Adirondack Park Forest Preserve Carrying Capacity of Waterbodies Study: Phase I—Selecting Indicators for Monitoring Recreational Impacts” (McEwen, A., C. Dawson and L. Gerstenberger, SUNY-ESF, Aug. 31, 2011).

23. The protocol set forth in the report selected indicators such as water turbidity, fecal coliform counts and other factors for monitoring the ecological and social impacts of recreational use on ten Adirondack water bodies and adjacent lands. The purpose of the report was to demonstrate how to conduct a carrying capacity study for Adirondack Park water bodies.

24. Thus, DEC has the necessary tools and protocols for completing a carrying capacity study of the Saranac Lakes Complex.

**The Saranac Lakes Complex is Already Impacted by Recreational Overuse**

25. There is no question that some water bodies in the Saranac Lakes Complex are being adversely impacted by recreational overuse, particularly from motorized watercraft. The SLWF UMP recognizes that lakes and ponds in the unit are subject to increasing pressure from recreational boaters.

26. For example, at the Second Pond boat launch, a public boat launch managed by DEC that provides direct access to Lower Saranac Lake, in the Saranac Lakes Complex, the number of boats using the launch more than tripled between 2005 and 2017. SLWF UMP at 59, Table 8.

27. Between 2001 and 2017, the number of boats counted at the Upper Saranac Lake, boat launch, also part of the Saranac Lakes Complex, increased by more than 40 percent. *Id.*

28. 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. *Id.*

29. Exacerbating the overuse of water bodies in the Saranac Lakes Complex 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 other connected water bodies in the SLWF. In addition, the APA is currently reviewing the proposed expansion of another commercial marina on Fish Creek Ponds. Lower Saranac Lake and Fish Creek Ponds are part of the Saranac Lakes Complex.

30. On June 15, 2023, APA approved a major expansion of a commercial marina on Lower Saranac Lake. The marina expansion will result in the addition of approximately 145 motorized watercraft to the Saranac Lakes Complex.

31. The APA approved the marina expansion, which made it the largest commercial marina in the Adirondack Park, in the absence of a carrying capacity of the Saranac Lakes Complex, which includes Lower Saranac Lake.

32. Another commercial marina application on the Fish Creek Ponds, which are also part of the Saranac Lakes Complex, is pending before the APA and DEC. The new marina application, if approved, will result in the addition of approximately 90 motorboats to the Saranac Lakes Complex.

33. DEC has yet to evaluate the cumulative impacts on water bodies in the Saranac Lakes Complex of expansion of these two commercial marinas and the Department's seven boat launches and 14 boating access sites.

34. Significantly, the UMP recognizes that the cumulative impacts of use of the Saranac Lakes Complex has never been evaluated, stating that "this UMP

provides information about impacts, but a cumulative assessment between use and impacts has not been done.” *Id.* at 111-112.

35. In my opinion, the data showing significant increases in use of public boat launches in the Saranac Lakes Complex, coupled with the expansion of commercial marinas in the Complex, suggest that the physical, biological and social carrying capacity of the Saranac Lakes Complex is at substantial risk of being exceeded, if it has not already been exceeded.

**The SLWF UMP Requires That DEC Complete a Carrying Capacity Study**

36. The SLWF UMP recognizes that 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.

37. The SLWF UMP recognizes that a carrying capacity study for water bodies in the unit is necessary and commits DEC to completing one. SLWF UMP at 111. As part of this effort, the UMP commits DEC to utilizing a “wildlands monitoring guidance framework [that] 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.” *Id.* at 111.

38. As noted above, the 2011 report I submitted to DEC identified the indicators to be used in a carrying capacity study. In fact, the UMP lists the ecological indicators to be measured, such as fecal coliform, chloride, dissolved oxygen, and water temperature, and the social indicators such as visitor trip satisfaction, visitor conflicts, and intensity of recreational use. *Id.* at 111.

39. The UMP also identifies specific data sets DEC will utilize in the carrying capacity study, including trail register information, physical feature data, results of chemical and biological surveys, individual pond descriptions and history, and an inventory and description of recreational facilities in the SLWF for each waterbody. *Id.* at 112.

40. The UMP commits DEC to conduct “a comprehensive study of lakes and ponds in the SLWF” with the goal of “[e]stablishing desired conditions to determine if carrying capacity has been exceeded.” *Id.* at 112-113.

41. The UMP further commits DEC to develop and implement “a comprehensive monitoring program . . . to better inform carrying capacity development and long-term planning.” *Id.* at 113.

42. To the best of my knowledge, DEC has failed to collect and evaluate existing data or information, conduct any monitoring, or take any of the other actions described in the SLWF UMP to develop a carrying capacity study.

**The Impacts of DEC's Failure to Conduct a Carrying Capacity Study are Significant**

43. In my opinion, DEC's failure to complete the required carrying capacity of the Saranac Lakes Complex is likely to have significant adverse impacts resulting from the unmonitored and uncontrolled increase in motorized watercraft use. These impacts are likely to include degradation of water quality; increased disturbance of wildlife with consequent decline in opportunities for wildlife viewing; disturbance and degradation of fish and wildlife habitat; introduction and spread of invasive species; increased crowding, with consequent decline in opportunities for solitude; increased noise pollution; increased incidence of user conflicts; adverse impacts to aesthetic attributes; and overall degradation of the recreational user experience.

44. In addition, the cumulative effects of these impacts are likely to significantly degrade the natural resources of the Saranac Lakes Complex and the user experience of people recreating in and around water bodies in the Complex.

45. Because some waterbodies in the Complex, such as Lower Saranac Lake, are already experiencing substantially increased motorized watercraft use, DEC's continuing failure to complete a carrying capacity study seriously jeopardizes the ecological and recreational integrity of those waterbodies.



46. In some cases, the damage to natural resources from overuse, such as degradation of water quality or impacts to fish and wildlife habitat, can take years or even decades to reverse. In the absence of a carrying capacity study and the implementation of measures to return conditions to sustainable levels and to avoid exceeding the carrying capacity, the damage from overuse will continue to increase, thereby risking long-term or even permanent damage to the natural resources of the Saranac Lakes Complex.

I hereby affirm this 27th day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

*Chad Dawson*

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CHAD DAWSON, PH.D.

# EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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PROTECT THE ADIRONDACKS! INC.,

Petitioner,

-against-

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION and  
NEW YORK STATE ADIRONDACK PARK  
AGENCY,

Respondents.

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**AFFIRMATION OF  
PETER BAUER IN  
SUPPORT OF  
PETITION**

**PETER BAUER**, hereby affirms under penalty of perjury the following:

1. I am the Executive Director of Protect the Adirondacks! Inc. (“PROTECT”) and am familiar with PROTECT’s organization, membership, policies, and practices. As Executive Director, I am responsible for the program and administrative operations of the organization. I submit this affidavit in support of PROTECT’s Verified Petition to compel Respondent New York State Department of Environmental Conservation (“Department” or “DEC”) to perform its non-discretionary duty to complete a carrying capacity study of the Saranac Lakes Complex in the Saranac Lake Wild Forest (“SLWF”) as mandated by the Adirondack Park State Land Master Plan (“Master Plan”) and the Unit Management Plan (“UMP”) for the SLWF.

2. As discussed below, PROTECT has standing to commence this proceeding based upon (i) PROTECT's history of advocating for DEC and the Adirondack Park Agency ("APA") to uphold the highest standards of environmental protection afforded to the Adirondack Park by the New York State Constitution, statutes and regulations; (ii) the fact that PROTECT's members regularly use and enjoy the Saranac Lakes Complex and DEC's failure to complete the required carrying capacity study negatively impacts their use and enjoyment of water bodies in the Complex; (iii) the fact that some PROTECT members own property in the Saranac Lakes Complex and DEC's failure to complete the required carrying capacity study negatively impacts their use and enjoyment of their property and of the waterbodies in the Saranac Lakes Complex; (iv) the failure by DEC the APA to follow the law is an issue of Park-wide importance; (v) PROTECT's sponsorship of annual water quality surveys of numerous waterbodies in the Park, including waterbodies in the Saranac Lakes Complex; and (vi) PROTECT's advocacy concerning DEC's management of the SLWF and the Saranac Lakes Complex, including its advocacy concerning the SLWF UMP.

### **Background of PROTECT**

3. PROTECT is a New York not-for-profit corporation managed by a Board of Directors. It is a grassroots membership organization dedicated to the protection, stewardship, and sustainability of the natural environment and human

communities of the Adirondack Park and the Forest Preserve for current and future generations.<sup>1</sup> PROTECT uses advocacy, independent public oversight, grassroots organizing, education, scientific research, and legal action to advance its mission. Its offices are located in the Adirondack Park at 105 Oven Mountain Road, Johnsburg, New York.

4. PROTECT has over 2,000 members and supporters who share a common desire to protect the environmental health and legacy of the Adirondack Park. Many of PROTECT's members reside or own property within the Park. PROTECT's members are also regular users of and visitors to the Forest Preserve who recreate in and enjoy the natural resources and scenic treasures of the Adirondack Park. PROTECT and its members are committed to ensuring that public and private lands in the Adirondack Park are managed in a coordinated and complementary manner as envisioned and required by the Master Plan, applicable UMPs and the Adirondack Park Agency Act ("APA Act").

5. PROTECT was formed in 2009 by consolidating two predecessor organizations: The Association for the Protection of the Adirondacks, the oldest non-profit advocacy group for the protection of the natural and human communities of the Adirondack Park, founded in 1902; and Residents' Committee to Protect the Adirondacks, Inc., an environmental advocacy organization founded in 1990. I

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<sup>1</sup> PROTECT's mission statement is available [here](#).

served as Executive Director of Residents' Committee to Protect the Adirondacks from 1994 to 2007.

6. As a grassroots organization, PROTECT depends on volunteers. A high proportion of PROTECT's membership dues directly support projects that help protect the Adirondack Park's six million acres. Through independent public oversight, advocacy, education, grassroots organizing, water quality monitoring, research, and legal action, PROTECT and its members work to protect, preserve, and enhance the wilderness character, ecological integrity, and scenic resources of the Adirondack Park, and to promote appropriate recreational uses in the Forest Preserve.

7. One of PROTECT's priorities is to ensure that DEC's management of Forest Preserve lands in the Adirondack Park complies with all applicable constitutional and other legal requirements, including the "Forever Wild" clause of the New York State Constitution, the Master Plan, and applicable UMPs. To this end, PROTECT monitors DEC's actions on Forest Preserve lands and the APA's oversight of those actions to ensure that both agencies adhere to and comply with the legal protections afforded those lands. As part of this effort, PROTECT communicates on a regular basis with staff and leadership at both agencies.

8. In addition to advocacy on key issues related to the management of private and public lands in the Adirondack Park, PROTECT is a member of DEC's

Forest Preserve Advisory Committee, the Forest Preserve Trails Stewardship Working Group, and the DEC Visitor Use Management Plan Stakeholders Group. I also served as a member of the Saranac Lake Wild Forest UMP Citizens Discussion Group organized by the DEC.

9. PROTECT also pursues its mission through education about Forest Preserve management. PROTECT's website is also actively maintained as a repository of public information about the Forest Preserve, the history of the Adirondack Park and popular online trail guides to 100 hikes in the Park.

10. PROTECT's members and volunteers also undertake research projects to educate the public and State agencies. For example, PROTECT published a report identifying opportunities for motor-less recreation on 200 of the largest lakes and ponds in the Adirondack Park. PROTECT also published a report on impacts to natural resources in the Forest Preserve resulting from the use of all-terrain vehicles. And in 2001, PROTECT published a report on private land development trends in the Adirondack Park, which was the first long-term analysis of private development in the Park.

11. Although PROTECT relies in most cases on direct advocacy before the DEC and APA staff and leadership to achieve its goals, it does on occasion resort to court action when appropriate and necessary to ensure that the agencies comply with the Forever Wild clause, the Master Plan, and applicable UMPs. Most recently,

PROTECT was successful before the New York Court of Appeals in its suit claiming that DEC's construction on Forest Preserve lands of miles of extra-wide snowmobile trails requiring the cutting of thousands of trees violates the Forever Wild clause of the New York State Constitution. *Protect the Adirondacks! Inc. v. N.Y.S. Dep't of Envtl. Conserv.*, 37 NY3d 73 (2021).

### **PROTECT'S Involvement in the SLWF**

12. PROTECT's members frequently engage in recreational activities in the Saranac Lakes Complex, including paddling, swimming, camping and wildlife viewing, and plan to return there to engage in those activities in the future. The PROTECT members who recreate in the Saranac Lakes Complex are attracted to the area because it is part of the Saranac Lake Wild Forest; the wild character of many waterbodies in the Saranac Lakes Complex; the opportunities for quiet paddling of canoes and kayaks; and the opportunities to fish, view wildlife and enjoy the surrounding undeveloped and mountainous landscape, much of which is part of the "forever wild" Forest Preserve.

13. DEC's failure to undertake and complete a carrying capacity study for the Saranac Lakes Complex as required by the Master Plan and the SLWF UMP directly harms PROTECT's members who recreate there by allowing continued expansion of motorized watercraft use of the Complex without fully considering the impacts of such increased use or the ability of those waterbodies to withstand the



additional impacts of such increased use. The harm to PROTECT's members is the increased water and noise pollution; adverse impacts to fish and wildlife habitat; diminished sense of solitude; disruption of serene and quiet recreational experiences; and overcrowding resulting from ever increasing motorboat activity, all of which are the direct result of DEC's failure to conduct the carrying capacity study of the Saranac Lakes Complex.

14. In addition, some of PROTECT's members own property in the Saranac Lakes Complex. DEC's failure to complete a carrying capacity study and the approval by DEC and APA of projects that allow for additional docking, mooring and use of the Saranac Lakes Complex by motorized watercraft in the absence of such a study increases the level and intensity of motorized watercraft use of the Saranac Lakes Complex resulting in increased noise and water pollution, adverse impacts to fish and wildlife and their habitat; and negative aesthetic and visual impacts that irreparably alter the recreational experience and character of the Saranac Lakes Complex.

15. PROTECT also administers the Adirondack Lake Assessment Program ("ALAP"), now in its 27th year, in partnership with the Adirondack Watershed Institute at Paul Smith's College. PROTECT organizes lake associations, local governments, and volunteers; trains them in the water quality sampling protocol developed by the Institute; and provides them with the necessary materials to

monitor water quality at waterbodies throughout the Adirondack Park. The samples are analyzed by the Institute and an annual water quality report is published based on the results. Through ALAP, PROTECT helps to monitor the water quality of approximately 80 lakes and ponds throughout the Adirondacks. Water quality in several of the waterbodies in the Saranac Lakes Complex has been monitored as part of ALAP since 2001.

16. PROTECT has been involved in management issues concerning the SLWF for many years, including submitting two detailed comments letters to DEC on the draft UMP for the SLWF and advocating that Weller Pond in the Saranac Lakes Complex be closed to motorized watercraft.

17. PROTECT has repeatedly urged DEC to fulfill its duty to conduct a carrying capacity of the Saranac Lakes Complex.

18. In addition, PROTECT has also submitted comments to APA regarding the two commercial marina expansions in the Saranac Lakes Complex.

I hereby affirm this 27th day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



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PETER BAUER

# EXHIBIT C

# PROTECT THE ADIRONDACKS!

## Board of Directors

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Philip Terrie  
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## Staff

Peter Bauer  
*Executive Director*

Claudia K. Braymer, Esq.  
*Deputy Director*

Christopher Amato, Esq.  
*Conservation Director  
and Counsel*

## Certified Mail Return Receipt Requested

October 25, 2023

Hon. Basil Seggos  
Commissioner  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> 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),

Protect the Adirondacks

PO Box 48, North Creek, NY 12853 518.251.2700

[www.protectadks.org](http://www.protectadks.org) [info@protectadks.org](mailto:info@protectadks.org)

Follow Us on Twitter @ProtectAdkPark and Like Us on Facebook

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,



Christopher Amato  
Conservation Director and Counsel  
Protect the Adirondacks! Inc.  
P.O. Box 48  
North Creek, NY 12853  
Office: (518) 251-2700

Cell: (518) 860-3696

C: Hon. John Ernst, Chair, Adirondack Park Agency  
Barbara Rice, Executive Director, Adirondack Park Agency  
Sean Mahar, Executive Deputy Commissioner  
Tom Berkman, Deputy Commissioner and General Counsel  
Katie Petronis, Deputy Commissioner for Natural Resources  
Fiona Watt, Director, Division of Lands and Forests  
Joseph Zalewski, Regional Director, Region 5





# EXHIBIT D

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Division of Lands and Forests

625 Broadway, 5th Floor, Albany, New York 12233-4250

P: (518) 402-9405 | F: (518) 402-9028 | Landsforests@dec.ny.gov

www.dec.ny.gov

December 5, 2023

Christopher Amato  
Protect the Adirondacks  
PO Box 48  
North Creek, NY 12853

Dear Mr. Amato:

Commissioner Seggos asked me to respond to your recent letter regarding a carrying capacity study for waterbodies in the Saranac Lakes Wild Forest.

As noted in your letter, this study was proposed in the 2019 Saranac Lakes Wild Forest Unit Management Plan (UMP). As you know, the implementation of proposals identified within UMPs may occur several years after the adoption of such plans. Additionally, as you note, DEC is presently engaged in a first of its kind Visitor Use Management (VUM) study on Forest Preserve lands. Recognizing that the current VUM projects are limited in scope, DEC intends to learn from this process before expanding such mechanism to other lands and waters under the jurisdiction of DEC. DEC continues to evaluate options for conducting VUM or related carrying capacity studies for Forest Preserve waterbodies including those within the Saranac Lakes Wild Forest. DEC regularly consults with the Adirondack Park Agency to clarify the role of each agency in this effort as well as to ensure ongoing conformance with the Adirondack Park State Land Master Plan.

The obligation for the "care, custody and control" of the Forest Preserve is central to DEC's mission. To that end, DEC continues to encourage public and stakeholder feedback on management proposals, either as part of the UMP development process, or standalone initiatives. Any further studies of VUM or carrying capacity will certainly include opportunities for public outreach and feedback.

DEC appreciates your feedback on the shared goal of balancing public access to public lands with the preservation of our invaluable resources.

Sincerely,



Fiona Watt  
Director, Division of Lands and Forests



Department of  
Environmental  
Conservation