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April 22, 2025

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Mitchell Krah (mitchell.krah@dec.ny.gov)  
NYS DEC – Region 5 Office  
Division of Operations  
1115 Route 86  
Ray Brook NY 12977

**Re: Draft Work Plan for Prospect Mountain Overlooks**

Dear Mr. Krah,

Protect the Adirondacks has reviewed the revised draft Work Plan dated February 28, 2025 prepared by the Department of Environmental Conservation (DEC), and noticed in the April 9, 2025 Environmental Notice Bulletin, for the proposed tree cutting on four summits (Overlooks 1, 2, and 3 and Summit Overlook south) of the Prospect Mountain Veterans Memorial Highway Day Use Area. We appreciate that DEC has reconsidered the scope of proposed tree cutting on Forest Preserve lands involved with the proposed work since the initial project was proposed, and we welcome the opportunity to review and comment on the revised draft Work Plan.

We recognize that Prospect Mountain is a highly visible and popular destination that DEC desires to manage for the public, particularly veterans, “to experience public lands of the Adirondack Park” (Work Plan p. 1). However, DEC must also ensure that its work on Prospect Mountain complies with Article 14 of the NYS Constitution.

We are pleased that the revised proposal reduces the number of Forest Preserve trees to be cut from 13,393 trees to 4,114 trees and eliminates tree cutting on one of the five summits originally proposed for cutting. However, the proposed level of tree cutting is still quite significant, and we remain concerned that this activity is proposed to be undertaken in the absence of an approved Unit Management Plan (UMP) and, as far as we can determine, without consulting the Adirondack Park Agency (APA) as required by DEC Commissioner Policy 78/Forest Preserve Work Plan Policy (CP-78). *See* CP-78 § V(A) (specifying that “in areas of the Adirondack Park Forest Preserve without an adopted UMP, the new construction or expansion of existing

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structures or improvements may be allowed, subject to consultation with the APA in accordance with the APA/DEC Memorandum of Understanding and Work Plan approval.”). Moreover, the Work Plan fails to include an assessment of Article 14 compliance as required by CP-78. *See* CP-78 §§ III(A), V(A)(1)(c). We therefore urge DEC to postpone implementation of the proposed work pending consultation with APA and revision of the Work Plan to comply with CP-78’s Article 14 review requirements.

### **Failure to Comply with the Adirondack Park State Land Master Plan**

The Prospect Mountain Veterans Memorial Highway Day Use Area is classified as an Intensive Use area pursuant to the Adirondack Park State Land Master Plan (APSLMP). APSLMP p. 45. The Intensive Use classification requires that all management actions “blend with the Adirondack environment,” “have the minimum adverse impact possible on surrounding state lands,” and must “limit vegetative clearing.” Further, improvements in an Intensive Use Area must conform to “a final adopted unit management plan for such area”. *Id.* p. 42.

The Work Plan continues to reference “scenic vistas” as justification for the significant amount of tree cutting proposed for this action. Work Plan p. 6. However, Prospect Mountain Highway is not located in a “Highway Corridor” where scenic vistas may be designated, and it is not located in a “Railroad Corridor” where scenic vistas are allowed pursuant to “an adopted unit management plan”. APSLMP pp. 54-55.

In our view, the proposed tree cutting is inconsistent with the APSLMP, because it does not “blend with the Adirondack environment,” “have the minimum adverse impact possible on surrounding state lands,” “limit vegetative clearing,” and does not conform to “a final adopted unit management plan for such area”. APSLMP p. 42. In light of these inconsistencies, DEC must consult with APA prior to approving the proposed Work Plan, and must bring the Work Plan into compliance with the APSLMP.

### **Failure to Comply with Article 14 of the Constitution**

The draft Work Plan contains no discussion of Article 14 compliance as required by CP-78. While the revised Work Plan contains the tree tally information showing all of the trees 1” DBH and larger to be cut, these tree tallies do not constitute an analysis of Article 14 compliance as required by CP-78, which sets forth the three questions that must be analyzed and answered for determining compliance with the provisions of Article 14, the “Forever Wild Clause”. CP-78 § III(A).

CP-78 requires DEC 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 § V(A). The revised draft Work Plan does not include any analysis by DEC staff to ensure that the constitutional restrictions have been considered, and more importantly, have been satisfied. In fact, the three criteria set forth in CP-78 are not even discussed in the Work Plan:

**Criterion 1: Is the proposed cutting, removal, or destruction of timber “material or substantial”?**

The revised Work Plan does not include any analysis of whether the cutting of 4,114 trees on 1.09 acres of Forest Preserve land is “material or substantial.” See *Protect the Adirondacks v. DEC* (37 NY3d 73 [2021]); *Association for Protection of Adirondacks v. MacDonald* (253 NY 234 [1930]).

**Criterion 2: Is the degree of alteration of the existing Forest Preserve terrain permissible?**

The Work Plan does not describe any new terrain alteration, so it is our understanding that none will take place. The analysis of this criterion should be included in the Work Plan.

**Criterion 3: Do the impacts of the proposed project impair the wild forest nature of the Forest Preserve?**

The revised draft Work Plan does not include any analysis of the impact on the wild forest nature of the Forest Preserve, including impacts of the tree cutting on the wild forest character of the Forest Preserve on Prospect Mountain and on the adjoining Lake George Wild Forest. There is also no analysis of the impacts of the tree cutting on the views of Prospect Mountain from the Village of Lake George, Beach Road, Lake George Beach (aka Million Dollar Beach), Lake George Battlefield Day Use Area, and the waters of Lake George.

DEC should conduct a visual impact analysis of the proposed tree cutting showing the views of Prospect Mountain from these publicly accessible and highly visited areas. Such an analysis is a critical part of the assessment required by CP-78 regarding the proposed action’s impact on the wild forest nature of the Forest Preserve.

DEC should also conduct a professional visual impact analysis of the views from the four summits to determine if the size of the areas to be cleared can be further reduced in order to bring the Work Plan within constitutional limits. Although the Work Plan claims that some sort of analysis was done, that was not provided in the plan, so it is unclear whether or not professional visual impact analysis protocols were followed.

**Statutes Cannot Supersede Article 14 of the Constitution**

The Work Plan’s references to the Prospect Mountain statutes seem to imply that the work proposed for this land is not subject to Article 14 of the NYS Constitution. If that is the implication, we refer you to our prior comment letter dated September 18, 2024 on the initial Work Plan for our discussion of the supremacy of Article 14 of the Constitution over the statutes concerning the Prospect Mountain Veterans Memorial Highway Day Use Area. In summary, the laws of 1954 and 1964 relating to the Prospect Mountain State Parkway and Prospect Mountain do not supersede or render inapplicable the limitations of Article 14 of the Constitution.

### **DEC Must Consult With APA and Prepare a Revised Work Plan**

We are grateful that DEC reconsidered the level of tree cutting that was proposed in the initial Work Plan. However, we urge DEC to postpone approval of the Work Plan until after consultation with APA, revision of the Work Plan to include the APSLMP and Article 14 analyses required by CP-78, and an opportunity for public comment on these analyses. The Work Plan must be further revised in order to bring it into compliance with the APSLMP and Article 14.

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

Sincerely,

A handwritten signature in black ink that reads "Claudia K. Braymer". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Claudia K. Braymer  
Executive Director

cc: Megan Phillips, APA  
Thomas Berkman, Esq., DEC  
Molly Breslin, Esq., DEC