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**Via Email**

June 10, 2025

Kenneth Lynch  
Adirondack Park Agency Board Member  
State Land Committee Chair  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

**RE: Comments on Revised Proposed Amendments to the  
Adirondack Park State Land Master Plan**

Dear Chair Lynch:

Protect the Adirondacks ("PROTECT") is pleased to submit these comments on the revised amendments to the Adirondack Park State Land Master Plan ("Master Plan"), dated June 2025, prepared by the staff of the Adirondack Park Agency ("APA"). The revised amendments were released to the public on June 6, 2025 and will be presented to the APA Board's State Land Committee at its June 13, 2025 meeting, though it is our understanding that no vote will be taken at that time. We are pleased that the State Land Committee is taking the time to consider and review the latest revision of the proposed amendments at its upcoming meeting.

**Introductory Comments**

PROTECT appreciates and applauds the APA staff's decision to remove two particularly problematic proposals from the revised amendments:

1. The proposed redefinition of "motor vehicle" to exclude Other Power-Driven Mobility Devices ("OPDMDs"); and
2. The proposed delegation to the Department of Environmental Conservation ("DEC") of broad, unchecked discretion to permit OPDMD use on Forest Preserve lands.

As detailed in PROTECT's prior comments dated November 19, 2024, the proposed change to the Master Plan's definition of "motor vehicle" would have, for the first time in the Park's history, allowed motor vehicles—including cars,

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trucks, ATVs, golf carts, and Segways—into Wilderness, Primitive, and Canoe areas in violation of Article 14 of the New York State Constitution and the Master Plan. Importantly, this change was not required by the Americans With Disabilities Act (“ADA”), as such a fundamental alteration of the programs offered in these land classifications is not mandated by the ADA.

Furthermore, delegating OPDMD authority exclusively to DEC for the Forest Preserve was premature and inappropriate. DEC currently lacks a formal, written policy on OPDMD use in the Forest Preserve. Removing APA oversight of motor vehicle use on these lands would not only be inconsistent with the Master Plan but would also violate the APA Act.

PROTECT commends the APA staff for its thoughtful consideration of the extensive public feedback on these critical issues, and for its willingness to remove these proposals from the revised amendments.

### **Climate Change**

PROTECT commends the APA staff for acknowledging the importance of incorporating climate change impacts, planning, adaptation and resiliency into the Master Plan’s management prescriptions for Forest Preserve lands and waters. *See* SLMP Amendments Redline (“SLMP Redline”) at 13-14. PROTECT is particularly gratified that the critical role of the “forever wild” Forest Preserve in providing large-scale carbon sequestration is being specifically acknowledged in the amendments, and that the importance of the Forest Preserve in providing climate refugia and habitat connectivity for species of fish and wildlife is explicitly recognized. *Id.*

### **Accessibility**

PROTECT welcomes APA’s inclusion of accessibility planning provisions in the Master Plan amendments and supports the removal of the proposed exclusion of OPDMDs from the definition of “motor vehicle.” These changes are critical to maintaining the integrity of Forest Preserve classifications while improving access for persons with disabilities.

However, we remain gravely concerned about the Agency’s flawed interpretation of the Americans with Disabilities Act (“ADA”) as outlined in the “ADA Explainer” in the accompanying response to public comments document. Specifically, APA incorrectly applies DOJ regulatory factors when evaluating whether OPDMD use constitutes a “fundamental alteration” of programs offered in Wilderness, Primitive, and Canoe areas. The ADA and DOJ regulations make clear that this determination must first be made at the programmatic level.

APA and DEC must recognize that the foundational character of Forest Preserve lands under Article XIV and the State Land Master Plan—including prohibitions on public motorized access—cannot be altered without fundamentally changing the nature of these lands and the programs they support.

Both the ADA and the DOJ implementing regulations specify that a public entity is not required to modify its programs or facilities if doing so would “fundamentally alter” the program or facility. *See* 42 USC § 12201(f); 28 CFR § 35.130(b)(7)(i). Whether a proposed modification of a state

entity's program would constitute a "fundamental alteration" of the program is a question of state law. In this case the law is clear that allowing OPDMD use in Wilderness, Primitive or Canoe areas would fundamentally alter the nature of those areas and the constitutional and statutory constraints under which they are managed for the public. *See* Master Plan at 25, 31, 33 (prohibiting public motor vehicle use in Wilderness, Primitive and Canoe areas).

The "ADA Explainer" incorrectly states that the DOJ regulatory factors must be applied to determine whether allowing OPDMD use would fundamentally alter the programs offered in Wilderness, Primitive and Canoe areas. APA's interpretation is contradicted by the regulatory language, which state that the factors are to be applied to "a specific facility"—not to a program offered by a public entity. *See* 28 CFR § 35.137(b)(2) (setting forth five factors to be use in determining whether to permit OPDMD use "in a specific facility," including the type, size, weight and speed of the device, the volume of pedestrian traffic, the facility's design and operational characteristics, whether the device can be safely operated at the facility and whether such operation creates a substantial risk of serious harm to the immediate environment or natural or cultural resources).

Accordingly, and contrary to the interpretation presented in the "ADA Explainer," APA and DEC must first assess the fundamental nature of the programs associated with each Forest Preserve land classification—such as Wilderness, Primitive, and Canoe areas—to determine whether allowing OPDMD use would constitute a fundamental alteration under the ADA. Only if such use is deemed compatible with the essential character of the program should the agencies proceed to apply the DOJ regulatory factors set forth in 28 C.F.R. § 35.137(b)(2). These factors are designed to assess the appropriateness of specific OPDMDs within a particular facility, not to determine whether OPDMD access is permissible at the programmatic level in the first instance.

We urge APA to make changes to the "ADA Explainer" and to other references to OPDMDs in the public comment responsiveness document before it is finalized as part of the amendment package.

### **Carrying Capacity**

PROTECT applauds APA for proposing to expand on and further explain the Master Plan's directive that carrying capacity studies be included in all UMPs. The amendments include two new paragraphs that seek to define the parameters of carrying capacity studies and to describe the interplay between carrying capacity and visitor use management ("VUM"). SLMP Redline at 11. This effort is especially noteworthy in light of DEC's current VUM project for the High Peaks Wilderness Complex.

### **Elimination of Deadlines**

The revised amendments remove the deadlines set forth in the Master Plan for completion of UMPS (SLMP Redline at 12); removal of non-conforming structures and improvements from Wilderness areas (SLMP Redline at 24, 26); removal of non-conforming structures and improvements from Primitive areas (SLMP Redline at 31, 33); and removal of non-conforming structures and improvements from Wild Forest areas (SLMP Redline at 38). PROTECT opposes

removal of the deadlines. As noted in our prior comment letter, it is important to retain these deadlines in the Master Plan to demonstrate the urgency with which the drafters of the Master Plan viewed these actions, to show that completion of UMPs and removal of non-conforming uses and structures was to be accomplished promptly, and to place DEC's progress (or lack thereof) in completing these actions in historical context. Maintaining the original dates also supports the need for increasing DEC staff levels to address these long-overdue actions.

### **Use of Motor Vehicles After the Phase-Out Period**

The revised amendments eliminate the three-year period after land classification during which motor vehicle use by DEC is permissible for the purpose of removing non-conforming structures or improvements. SLMP Redline at 28. As discussed in our prior comment letter, PROTECT supports this proposed amendment provided that the following clarifying language is included:

Irrespective of the above or any other guidelines in this master plan, use of motor vehicles by administrative personnel to remove non-conforming structures or improvements after the phase-out period will be evaluated on a case-by-case basis by the Agency. This work must occur during the off-peak seasons, **and will not involve the cutting of trees, removal of boulders, alteration of existing terrain, the maintenance, reconstruction or rehabilitation of existing roads, or the construction of new roads.**

We continue to believe that addition of the boldface language is necessary to ensure that motor vehicle use by DEC conforms to the constitutional restraints imposed by Article 14.

In addition, PROTECT continues to oppose the proposed removal of existing language providing that maintenance of roads and trails utilized for removal of non-conforming uses will be curtailed and efforts made to encourage revegetation with lower forms of vegetation to permit their conversion to foot trails and, where appropriate, horse trails. SLMP Redline at 28. Removal of this provision implies that DEC will be allowed to continue to maintain and clear such roads and trails regardless of whether such maintenance and clearing is authorized by a UMP. This provision should remain in the Master Plan.

### **Beaver Control Structures**

The revised amendments add a new definition of "beaver control structure" and authorize the placement of such structures in several Forest Preserve land classifications. PROTECT continues to oppose these new provisions. Although PROTECT understands that there are times when beaver activity on Forest Preserve lands may flood trails or other recreational infrastructure or facilities, the installation of intrusive man-made structures to limit or control such flooding is neither appropriate nor desirable in all Forest Preserve land use classifications.

Although the definition of "beaver control structure" has been changed in the revised amendments, it suffers from the same problems as the prior definition of this term. SLMP redline at 19. First, this is not a term in general use by DEC or other natural resource agencies. DEC uses the term "Water Level Control Structure" (WLCD), which is a device to "keep beaver away from [the

WLCD] intakes and regulate the water level in the [beaver] pond.” NYSDEC, Beaver Damage Control Techniques Manual (April 1996) at 11. The proposed definition would encompass not only WLCDs but also other structures that are not identified. It is therefore unclear what types of structures other than WLCDs are included in the proposed definition.

As was the case with the previous definition of this term, the new definition in the revised amendments fails to specify size limitations for such structures or the types of materials that may be used for those structures. These are particularly significant omissions because WLCDs can be very large, are usually easily visible, and are normally constructed of PVC piping, polyethylene tubing, corrugated steel pipe or welded wire cylinders. *Id.* at 12.

Authorization of Structures: The revised amendments authorize the installation of beaver control structures in Wilderness, Primitive and Wild Forest land classifications. However, as pointed out in our prior comments, these provisions are internally inconsistent and do not align with the definitions and guidelines for management and use for land classifications in the Master Plan.

Because the definition of “beaver control structure” is unclear, it is impossible to fully assess the compliance of such structures with Master Plan requirements. However, even if the definition was limited to WLCDs, those devices are inappropriate in Wilderness and Primitive areas. A Wilderness area “is an area where the earth and its community of life are untrammelled by man . . . [and] is further defined to mean an area of state land or water having a primeval character, without significant improvement . . . and which . . . generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” Master Plan at 22. Furthermore, the Master Plan specifies that “[t]he primary wilderness management guideline will be to achieve and perpetuate a natural plant and animal community where man’s influence is not apparent.” *Id.* As noted above, WLCDs can be very large, are usually easily visible, and are normally constructed of PVC piping, polyethylene tubing, corrugated steel pipe or welded wire cylinders. This type of intrusive man-made structure is inconsistent with the Master Plan’s definition of Wilderness and the primary management guideline and should not be allowed. For the same reasons, beaver control structures should not be permitted in Primitive areas, which are “[e]ssentially wilderness in character” and where “[t]he primary primitive management guideline will be to achieve and maintain in each designated primitive area a condition as close to wilderness as possible, so as to perpetuate a natural plant and animal community where man’s influence is relatively unapparent.” *Id.* at 28-29.

Further, as pointed out in our prior comments, it is unclear why the circumstances in which such structures may be installed differ significantly between land classifications. Adding to these inconsistencies is the fact that the proposed amendments do not allow beaver control structures to be installed in Intensive Use areas, “where the state provides facilities for intensive forms of outdoor recreation by the public.” *Id.* at 41. Thus, PROTECT again urges that the provisions concerning beaver control structures be withdrawn.

### **Miscellaneous Provisions**

PROTECT supports the substitution of the Anne LaBastille quote for the William Chapman White quote.

### **Conclusion**

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on the proposed amendments to the Master Plan. We look forward to additional opportunities to comment as these amendments continue to be reviewed by the Agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato", with a stylized flourish at the end.

Christopher Amato  
Conservation Director and Counsel

cc: Barbara Rice, Executive Director (via email)  
Damion Stodola, Esq., Counsel. (via email)  
Megan Phillips, Deputy Director of Planning (via email)