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Via Email

March 6, 2026

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Forest Preserve Coordinator
Division of Lands and Forests
New York State Department of Environment Conservation
625 Broadway, 5th Floor
Albany, NY 12233-4254

RE: Comments on DEC Draft Other Power-Driven Mobility Devices Policy

Dear Josh:

Protect the Adirondacks (“PROTECT”) appreciates the opportunity to submit comments on the draft Other Power-Driven Mobility Devices (“OPDMD”) Policy (“Policy”). We commend the Department of Environmental Conservation (DEC) for undertaking the important task of developing a statewide framework to address OPDMD use and for its continued commitment to expanding meaningful recreational access for persons with disabilities on State lands.

Introductory Comments

PROTECT strongly supports improving accessibility in a manner that is consistent with the Americans with Disabilities Act (“ADA”). We also recognize DEC’s ongoing efforts to expand access through accessible trails, campgrounds, fishing and boating facilities, and programs such as Commissioner Policy 3, Motorized Access Program for People with Disabilities (“CP-3”). These initiatives demonstrate that accessibility and responsible Forest Preserve stewardship can be successfully balanced.

At the same time, we respectfully urge DEC to refine the draft Policy to ensure full consistency with Article 14 of the New York State Constitution, the Adirondack Park State Land Master Plan (“Master Plan”), existing Unit Management Plans (“UMPs”), and DEC’s regulations by making the following revisions (discussed in detail in subsequent sections of this letter):

Protect the Adirondacks

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- Provide a more detailed discussion of the legal constraints on Forest Preserve lands imposed by Article 14 of the New York State Constitution, the Adirondack Park State Land Master Plan, the Catskill Park Master Plan, and DEC’s 6 NYCRR Part 191.6 regulations;
- Expand the reference to the Adirondack Park State Land Master Plan to include the Master Plan’s descriptions of the different Forest Preserve land classifications and summarizing the applicable management guidelines and objectives for each classification, particularly as they relate to motor vehicles;
- Acknowledge that all categories of OPDMDs described in the Policy are included in the Master Plan’s definition of “motor vehicle;”
- Include a discussion of how the threshold “fundamental alteration of the program” set forth in the ADA (42 USC § 12201(f)) and U.S. Department of Justice (“DOJ”) regulations (28 CFR § 35.130(b)(7)(i)) was considered and applied for each Forest Preserve land classification;
- Revise Table 2 of the Policy to classify to all OPDMDs as incompatible in Wilderness, Primitive and Canoe areas beyond 500 feet of a public highway;
- Revise Table 2 to clarify that Category 1 and 2 OPDMDs are not deemed incompatible in Wilderness, Primitive and Canoe areas when used for the sole purpose of gaining access to and utilizing existing or new trailheads, parking areas, picnic areas, fishing and waterway access sites and other peripheral facilities that have been or are in the future lawfully established pursuant to an approved UMP;
- Revise Table 2 to classify Category 5, 6 and 7 OPDMDs as incompatible in Wild Forest areas;
- For the OPDMD categories listed as “incompatible” in Table 2, clarify whether the Policy is intended to nevertheless allow DEC to permit such use on an individual, case-by-case basis;
- Remove Category 3 and 3-A OPDMDs from the “Approved” list for Newcomb Lake Road;
- Remove Category 4 and 4-A OPDMDs from the “Approved” list for the Adirondack Rail Trail;
- Revise Appendix C to remove the “fundamental alteration” test as one of the individual, facility-specific assessment factors under 28 CFR § 35.137(b)(2); and
- Revise Appendix D to include a more robust and informative discussion of how the “fundamental alteration” test and the individual facility-specific assessment factors were considered and applied for each OPDMD category included in and excluded from the “incompatible” list (Table 2).

Clarifying these issues now and aligning them with the applicable constitutional, statutory and regulatory limits governing motor vehicle use on Forest Preserve lands will strengthen the Policy’s legal defensibility, improve transparency, and foster broad public confidence in its implementation. We urge DEC to provide an additional period for public review and comment on a revised draft Policy.

Legal Framework

The ADA and DOJ’s Implementing Regulations

Title II of the ADA provides that no qualified individual with a disability may be excluded from participation in or be denied the benefits of a services, programs of activities offered by a public entity, or be subjected to discrimination by such entity. 42 USC § 12132. The ADA requires public entities to make reasonable modifications to their policies, practices and procedures to achieve these goals. *Id.* § 12182(b)(2)A(ii). However, the ADA expressly provides that a public entity need not make modifications to every program:

Nothing in this chapter alters the provision . . . specifying that reasonable modifications in policies, practices, or procedures shall be required, *unless an entity can demonstrate that making such modifications . . . would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.*

42 USC § 12201(f); (emphasis added).

As required by the ADA, the Department of Justice (“DOJ”) promulgated implementing regulations in 1991 and updated and revised the regulations in 2010. *See* 28 Code of Federal Regulations (“CFR”) Part 35. The DOJ regulations include the “fundamentally alter” exclusion:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, *unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.*

28 CFR § 35.130(b)(7)(i); (emphasis added). DOJ guidance and analysis of its implementing regulations reiterates that “an [OPDMD] can be excluded if a public entity can demonstrate that its use is unreasonable or will result in a fundamental alteration of the entity’s service, program, or activity” because “this exception is covered by the general reasonable modification requirement”.¹

¹ Title II Regulations: 2010 Guidance and Section-by-Section Analysis, Appendix A to Part 35 – Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services”, available at <https://www.ada.gov/law-and-reg/regulations/title-ii-2010-regulations/#section-35137-mobility-devices>.

The DOJ regulations further clarify that compliance with ADA accessibility requirements is to be determined by looking at the entire program, rather than its individual components:

A public entity shall operate each service, program, or activity so that the service, program, or activity, *when viewed in its entirety*, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, and that compliance with §35.150(a) of this part would result in such alteration or burdens.²

28 CFR § 35.150(a).

The federal assessment factors referenced in Section B.1 and Appendix C of the draft Policy are set forth in 28 CFR § 35.137(b)(2) and are separate and independent of the threshold determination of whether modifications made pursuant to the ADA would fundamentally alter the nature of the program offered. This is made clear by the fact that the “fundamentally alter” standard is set forth in different, preceding sections of both the ADA and the DOJ regulations from the assessment factors. Therefore, whether ADA modifications would alter the fundamental nature of the program is a threshold question that must be answered prior to applying the individual assessment factors. This makes sense, because application of the individual assessment factors is not necessary if it has already been determined that ADA modifications would fundamentally alter the program and are thus not mandated.

Article 14 and the Master Plan

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).

² The regulations also specify the manner in which a public entity must demonstrate that compliance would fundamentally alter the offered service, program or activity. 28 CFR § 35.150(a)(3).

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.

The New York Court of Appeals has consistently stressed that the overarching purpose of Article 14 is to protect the wild state of Forest Preserve lands. *See Association for Protection of the Adirondacks v. MacDonald*, 253 NY 234, 242 (1930) (Article 14 is “intended to . . . preserve these [Forest Preserve] lands in the wild state now existing.”); *Protect the Adirondacks*, 37 NY3d at 82 (“The forever wild provision ensures the preservation of state-owned land within the Adirondack Park . . . in its wild state . . . [with] the ultimate objective of protecting the forest as wilderness.”).

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, which has the force and effect of law. The Master Plan and DEC’s regulations prohibit public use of motor vehicles in Wilderness, Primitive and Canoe areas. *See Master Plan at 27, 33, 36; 6 NYCRR § 196.1.*

A “motor vehicle” is defined as:

[a] device for transporting people, supplies or material, incorporating a motor or an engine of any type for propulsion and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on or adjacent to land and water or through water. The term includes such vehicles as automobiles, trucks, jeeps, motorbikes, dirt or trail bikes, any type of all-terrain vehicles, duffle carriers, snowmobiles, snowcats, bulldozers and other earth-moving equipment and motorboats, but does not include wheelchairs.

Master Plan at 20-21.

The Master Plan does allow some limited development of and motor vehicle access to peripheral portions of Wilderness areas located within 500 feet of a public highway:

Where a wilderness boundary abuts a public highway, the Department of Environmental Conservation will be permitted, in conformity with a duly adopted unit management plan, to locate within 500 feet from a public highway right-of-way, on a site-specific basis, trailheads, parking areas, fishing and waterway access sites, picnic areas, ranger stations or other facilities for peripheral control of public use, and, in limited instances, snowmobile trails.

Summary of Draft OPDMD Policy

The draft Policy divides OPDMDs into nine categories:

Category 1: A battery-operated power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of outdoor locomotion, with a maximum width of 40 inches, a maximum weight of 400 lbs; a maximum speed of 4 mph; and a decibel limit of 30.

Category 2: A device powered solely by electric motor that has tandem wheels, handlebars, and a floorboard or a seat that can be stood or sat upon by the operator with a maximum width of 30 inches, a maximum weight of 300 lbs; a maximum speed of 20 mph; and a decibel limit of 40.

Categories, 3, 3-A, 4, and 4-A: These are different classes of e-bikes.

Category 5: A battery- or gas-powered device with a maximum width of 52 inches, a maximum speed of 20 mph; and a decibel limit of 60 dB.

Category 6: A device designed for use off road including an All-Terrain Vehicle (ATV), Utility Terrain Vehicle (UTV), Side by Side, Class 3 e-bike (VTL §102-C(c)), and other gas or battery-powered devices which have a maximum speed of 20 mph and a decibel limit of 70 dB.

Category 7: Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power as defined by VTL § 125, with a decibel limit of 70 dB.

The Policy establishes four categories of OPDMD uses: “approved uses,” where specified categories of OPDMDs may be operated without further review by DEC; “future review,” where certain categories of OPDMD use may be allowed pending review through DEC’s land management processes; “individual accommodations,” where certain categories of OPDMD use may be allowed pending consideration by DEC on a case-by-case basis; and “incompatible uses,” where DEC has determined that the location cannot reasonably accommodate certain categories of OPDMDs.³

The Policy proposes to classify some categories of OPDMDs as approved uses for specified Forest Preserve lands, including campgrounds, the Newcomb Lake Road, the Adirondack Rail Trail, designated bicycle trails, and routes already approved for motorized access pursuant to CP-3.

In addition, certain categories of OPDMDs are classified by the Policy as “incompatible” in the following areas:

Equestrian trails: All OPDMD use (classes 1-7) is incompatible;

³ The Policy appears to provide that requests for incompatible OPDMD use in these areas may still be considered on a case-by-case basis, but this is unclear.

Recreational trails on Forest Preserve lands within 500 feet of a public highway, and classified as Wilderness, Primitive or Canoe, and with no provisions for bicycling or snowmobiling: OPDMD classes 3-7 are incompatible;

Recreational trails on Forest Preserve lands beyond 500 feet of a public highway, and classified as Wilderness, Primitive or Canoe, and with no provisions for bicycling, snowmobiling, or private rights-of-way: OPDMD classes 2-7 are incompatible; and

Recreational trails on Forest Preserve lands classified as Wilderness, Canoe, and Primitive: OPDMD classes 6 and 7 are incompatible (this restriction appears to be redundant in light of the above restriction).

The Policy provides that for these Forest Preserve lands, OPDMDs not listed as incompatible may potentially be used subject to prior review and approval by DEC on a case-by-case basis applying the federal assessment factors set forth in 28 CFR § 135.137(b) (relating to safety considerations) and applying 28 CFR § 135.130(7)(i) (whether OPDMD use would cause a fundamental alteration of the program).

Specific Comments

The Policy Should Include a Comprehensive Discussion of the Legal Constraints Applicable to Forest Preserve Lands

The draft Policy includes only a brief reference to Article XIV of the New York State Constitution (“Article 14”) and the Adirondack Park State Land Master Plan (“Master Plan”) in its description of Forest Preserve lands. Policy § IV.A.1. This limited treatment is insufficient given that Article 14, the Master Plan, and DEC’s regulations (6 NYCRR § 196.1) establish binding legal constraints on allowable uses, on the management and development of Forest Preserve lands, and on the programs offered by the State on those lands.

This section should be expanded to provide a more detailed discussion and explicit acknowledgement of these legal constraints. At a minimum, the Policy should (i) clearly explain that Article 14 imposes constitutional protections on Forest Preserve lands, including the “forever wild” mandate and restrictions on uses and improvements; and (ii) acknowledge that the Master Plan has the force and effect of law and governs the classification, management, and permissible uses of Forest Preserve lands.

In addition, the Policy should summarize the Master Plan’s land classifications (*e.g.*, Wilderness, Primitive, Canoe, Wild Forest, Intensive Use, and Historic) and briefly describe the management guidelines and objectives applicable to each classification. Particular attention should be given to how each classification addresses public motor vehicle use, including the extent to which such use is prohibited, restricted, or permitted.

The Policy should also reference the limits on motor vehicle use imposed by DEC’s regulations (6 NYCRR § 196.1).

Providing this legal and regulatory context is essential to ensure that the Policy is consistent with governing law and to provide the yardstick for considering and applying the “fundamentally alter” test, as discussed below.

The Policy Should Acknowledge That All OPDMDs are “Motor Vehicles”

The draft Policy should expressly acknowledge that all seven categories of OPDMDs fall within the Master Plan’s definition of “motor vehicle.” *See* Master Plan at 20–21; Policy § IV.C.

Under the Master Plan, a “motor vehicle” is broadly defined to include any device operated by a motor, and the definition is not limited by size, weight, design purpose, or intended user. Each of the seven OPDMD categories identified in the draft Policy is motor-driven and therefore meets this definition.

This clarification is not merely semantic; it is legally significant to DEC’s analysis under the ADA and its application of the “fundamentally alter” test. Because the Master Plan generally prohibits or strictly limits motor vehicle use in certain land classifications—most notably Wilderness, Primitive, and Canoe areas—recognizing that OPDMDs are “motor vehicles” is essential to evaluating whether permitting their use in particular settings would constitute a fundamental alteration of the nature of the program.

Failing to acknowledge that OPDMDs meet the Master Plan’s motor vehicle definition risks obscuring the governing legal framework and could lead to confusion regarding the scope of permissible uses on Forest Preserve lands. The Policy should therefore explicitly state that OPDMDs are motor vehicles under the Master Plan and explain that any authorization of their use must be analyzed in light of the Master Plan’s motor vehicle restrictions and applicable land classification guidelines.

The Policy Misinterprets the “Fundamentally Alter” Test

The draft Policy improperly conflates the “fundamentally alter” test with the federal assessment factors by including the “fundamentally alter” inquiry as the final item in the list of assessment factors. *See* Policy Appendix C; Policy § B.1.9. The Policy further states that the “fundamentally alter” test should be considered only after the assessment factors are applied. This interpretation conflicts with both the ADA and the DOJ regulations in two significant respects.

First, the ADA and DOJ regulations clearly treat the “fundamentally alter” test and the OPDMD assessment factors as separate and distinct requirements, set forth in different statutory and regulatory provisions. The “fundamentally alter” standard appears in 42 U.S.C. § 12201(f) and 28 C.F.R. § 35.130(b)(7)(i), while Congress separately directed DOJ to promulgate regulations addressing mobility devices (42 U.S.C. § 12134(c)), which DOJ implemented at 28 C.F.R. § 35.137(b)(2) by establishing specific assessment factors for OPDMD use. The structural separation of these provisions confirms that the “fundamentally alter” inquiry is not itself one of the assessment factors.

Second, the Policy’s sequencing reverses the logic of the governing regulations. DOJ’s regulation provides that the assessment factors are to be applied “[i]n determining whether a particular [OPDMD] can be allowed *in a specific facility*.” 28 C.F.R. § 35.137(b)(2) (emphasis added). That facility-specific inquiry presupposes that permitting OPDMD use in the overall program would not fundamentally alter its nature. In other words, the “fundamentally alter” analysis is a threshold determination that informs whether and how the facility-level assessment proceeds.

By relegating the “fundamentally alter” test to the final item in a list of nine facility-specific factors, the draft Policy collapses two distinct legal inquiries into one and improperly treats a program-level limitation as a site-specific consideration. This approach is unsupported by the plain language and structure of the ADA and DOJ regulations, lacks any articulated legal justification,⁴ and risks misapplication of the governing standard.

Appendix C should therefore be revised to remove the “fundamentally alter” test from the list of individual, facility-specific assessment factors and to clarify that the “fundamentally alter” inquiry is a separate, threshold legal determination that precedes and frames any application of the regulatory assessment factors.

Appendix D Should be Expanded to Clarify DEC’s Application of the “Fundamentally Alter” Test and the Assessment Factors

The draft Policy cites Appendix D as providing the rationale for why certain OPDMD categories have been deemed incompatible with specific Forest Preserve land classifications. However, Appendix D contains only brief narrative statements for each “incompatible” determination, leaving significant uncertainty regarding how DEC reached those conclusions.

For example, Appendix D contains no discussion of the “fundamentally alter” test, raising concern that DEC may not have considered or applied that standard when determining incompatibility. This concern is reinforced by the Policy’s definition of “incompatible use” as one “where DEC has determined that the location cannot reasonably accommodate certain categories of OPDMDs.” Policy § VI.A.4. The “reasonably accommodate” standard is materially different from the governing standard of whether a use would “fundamentally alter the nature of the program.” The absence of any explanation of how the “fundamentally alter” test was applied suggests that it may not have been meaningfully considered in developing the incompatible lists in Table 2.

Appendix D should therefore be revised to include a clear explanation of how DEC evaluated and applied the “fundamentally alter” test for each Forest Preserve land classification. Such clarification is necessary to ensure transparency and to provide the public with a meaningful understanding of how DEC determined that particular OPDMD categories would—or would not—fundamentally alter the recreational programs offered in those areas.

⁴ The legal citation in the Policy to support the claim that the “fundamentally alter” test is to be considered only after the assessment factors are applied does not support that claim. Policy § IV.B, n.xii. The citation is to the regulation articulating the “fundamentally alter” test and the regulation does not state that the test is to be considered only after applying the assessment factors.

In addition, the narratives addressing the individual, facility-specific assessment factors are exceedingly brief and lack sufficient detail. Appendix D would benefit from a more thorough explanation of how each assessment factor was analyzed and weighed in reaching incompatibility determinations. Without this explanation, it is difficult to evaluate whether the determinations are consistent, reasoned, and grounded in the applicable legal standards.

Finally, the Policy appears to suggest that OPDMDs listed as incompatible in Table 2 may nonetheless be permitted on a case-by-case basis. This point requires clarification. Allowing case-by-case approval would undermine the purpose of establishing categorical incompatibility determinations and would create confusion regarding which OPDMDs are permissible in a given area. Moreover, where DEC has determined that operation of a particular OPDMD would fundamentally alter the nature of the recreational program offered, further case-by-case review would be inconsistent with that determination.

For these reasons, Appendix D should be expanded to clearly articulate the legal standards applied, the reasoning underlying each determination, and the intended effect of the incompatibility listings in Table 2.

Category 1 OPDMD Use Would Fundamentally Alter the Programs Offered in Wilderness, Primitive and Canoe Areas

The “fundamentally alter” test is a threshold inquiry under the ADA. It reflects Congress’s recognition that state programs need not be modified where doing so would disrupt or seriously compromise their essential nature. Accordingly, before applying any facility-specific assessment factors, DEC must first determine whether allowing OPDMD use would fundamentally alter the nature of the recreational programs offered within each Forest Preserve land classification.

As the Second Circuit explained in *Mary Jo C. v. N.Y. State & Local Retirement System*, 707 F.3d 144, 153 (2d Cir. 2013), the threshold ADA question is “whether [the] . . . proposed modifications amount to ‘reasonable modifications’ which should be implemented, or ‘fundamental alterations’ which the state may reject.” See *Olmstead v. L.C. by Zimring*, 527 U.S. 581, 592 (1999) (affirming the ADA’s “fundamentally alter” exemption). If the use of a category of OPDMD would fundamentally alter the nature of the program offered, DEC must document that conclusion and is not required to proceed to the individualized, facility-specific assessment factors under 28 C.F.R. § 35.130(b)(7) or 28 CFR § 35.137(b)(2). Only if OPDMD use would not fundamentally alter the program does the analysis proceed to those secondary factors.

Whether the proposed modification of an offered program to accommodate OPDMDs would constitute a “fundamental alteration” of the program is a question of state law. See *Jones v. City of Monroe*, 341 F3d 474, 480 (6th Cir. 2003) *abrogated in part on other grounds by Lewis v. Humboldt Acquisition Corp.*, 681 F.3d 312 (6th Cir. 2012) (*en banc*). (the “fundamental alteration” test is “whether waiver of the [state] rule in the particular case would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change.”).

The Nature of the Program in Wilderness, Primitive, and Canoe Areas

The draft Policy correctly recognizes that DEC-managed lands provide outdoor recreation, including hiking, camping, boating, hunting, fishing, trapping, birdwatching, and wildlife viewing. However, the recreational program offered in Wilderness, Primitive, and Canoe areas is not simply “outdoor recreation” in general. Rather, under the Master Plan, it is the provision for people of all abilities of a wilderness experience in a protected area that is “untrammelled by man.” Master Plan at 24.

The Master Plan defines Wilderness as an area with a primeval character, without significant human improvement, protected and managed to preserve natural conditions, and offering outstanding opportunities for solitude and primitive, unconfined recreation. Master Plan at 24. The central management guideline is to “achieve and perpetuate a natural plant and animal community where man’s influence is not apparent.” *Id.* Consistent with that mandate, the Master Plan prohibits public use of motor vehicles and bicycles in Wilderness, Primitive, and Canoe areas. *Id.* at 27, 33, 36.

Category 1 OPDMDs meet the Master Plan’s definition of “motor vehicle,” as they incorporate a motor for propulsion. As described in the Policy, they may exceed three feet in width and weigh up to 400 pounds. Policy § IV.C. Allowing such devices beyond 500 feet from a public highway on recreational trails in Wilderness, Primitive, or Canoe areas would directly conflict with the long-standing prohibition on public motorized access and, by doing so, would fundamentally alter the wilderness experience offered in those areas.

The Master Plan’s programmatic environmental impact statement underscores this point. It explains that the prohibition on motorized access is the “very foundation” of the Wilderness classification and that permitting generalized motor vehicle use “would destroy the character of wilderness.” Adirondack Park Agency, Final Programmatic Environmental Impact Statement Guidelines for Amending the Adirondack Park State Land Master Plan (Feb. 1979) at 31. It further recognizes that even the knowledge that motorized access is permissible diminishes an area’s sense of remoteness and primitive character. *Id.* at 35.

The ADA Recognizes the Incompatibility of Motor Vehicle Use With Wilderness

Federal law expressly acknowledges that motor vehicle use fundamentally alters wilderness programs. The ADA itself provides that “consistent with the Wilderness Act, no agency is required to provide any form of special treatment or accommodation, or to construct an facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.” 42 U.S.C. § 12207(c)(1).

Similarly, the U.S. Forest Service’s Accessibility Guidebook for Outdoor Recreation and Trails explains that allowing motor vehicles in an area not designated for motorized use would constitute a fundamental alteration of that recreation program. U.S. Dept. of Agriculture, Forest Service, Accessibility Guidebook for Outdoor Recreation and Trails (Aug. 2012) at 6.

Judicial Recognition in the Adirondack Context

Federal courts addressing ADA claims involving the Adirondack Forest Preserve have also recognized that allowing public motor vehicle use would fundamentally alter wilderness attributes. See *Galusha v. New York State Dept. of Env'tl. Conservation*, 27 FSupp2d 117, 125 (NDNY 1998) (“Allowing the disabled motorized access [to Adirondack Forest Preserve lands], however, would not be required under the ADA were it to ‘fundamentally’ or ‘substantially’ alter the [Adirondack] Park program.”); *id.* at 126 (ordering that “[n]o motorized vehicle access is authorized by this Court for those with mobility impairment disabilities on hiking trails, snowmobile trails, horse trails, foot paths, and other pedestrian paths or waterways in the Adirondack Park Forest Preserve not otherwise used by non-emergency motorized vehicles.”); *Baker v. Department of Environmental Conservation*, 634 FSupp 1460, 1465-66 (NDNY 1986) (ruling that “the granting of special permission for the use of motorized vehicles . . . in [wilderness] areas would not constitute a ‘reasonable’ accommodation” because “any use of motorized vehicles . . . in wilderness areas would be inimical to the nature of these areas” and “the maintenance of a pristine wilderness would be derogated by such use.”). Indeed, the judicial settlement in *Galusha*, a case initiated by persons with disabilities under the ADA, recognized this principle by not requiring any new motorized access by persons with disabilities to Wilderness, Primitive or Canoe areas.

The Policy’s Case-by-Case Approach Misapplies the Test

The draft Policy proposes applying the “fundamentally alter” test on a case-by-case basis for Category 1 OPDMD use in Wilderness, Primitive, and Canoe areas. This approach misapprehends the structure and purpose of the test.

The fundamental alteration inquiry is a threshold determination about the nature of the program itself. Where the governing legal framework—Article XIV of the State Constitution and the Master Plan—prohibits public motorized access as a defining feature of the classification, allowing motorized OPDMD use beyond 500 feet of a public highway necessarily alters the essential character of the program. It is illogical to conclude that motorized OPDMD use would fundamentally alter the wilderness program in one case but not in another when the defining characteristic of the program is the absence of motorized public access.

Given the constitutional constraints of Article 14, the Master Plan’s explicit motor vehicle prohibitions, federal recognition that motor vehicle use fundamentally alters wilderness programs, and controlling case law in the Adirondack context, allowing Category 1 OPDMD use beyond 500 feet of a public highway in Wilderness, Primitive, or Canoe areas would fundamentally alter the recreational programs offered in those areas.

Accordingly, Table 2 of the Policy should be revised to list Category 1 OPDMDs as incompatible in Wilderness, Primitive, and Canoe areas beyond 500 feet of a public highway. Such a revision would properly reflect the threshold “fundamental alteration” analysis required by the ADA and ensure consistency with governing state and federal law.

The Use of Category 1 and 2 OPDMDs Within 500 Feet of Public Highway Should be Clarified to be Consistent With the Master Plan

The draft Policy proposes to potentially allow, on a case-by-case basis, the use of Category 1 and 2 OPDMDs on all recreational trails within 500 feet of a public highway bordering Wilderness, Primitive, and Canoe areas. Although the Policy does not expressly state the basis for this proposal, it appears to rely on the Master Plan's provision allowing certain specified facilities to be located within 500 feet of a public highway if included in an approved UMP. However, the Policy's proposal is significantly broader than what the Master Plan permits.

The Master Plan authorizes the establishment of "trailheads, parking areas, fishing and waterway access sites, picnic areas, ranger stations or other facilities for peripheral control of public use" within 500 feet of a public highway, provided they are included in an approved UMP. Master Plan at 30. This provision does not expressly authorize general motor vehicle use on recreational trails within that 500-foot corridor. To our knowledge, the only form of motorized use expressly contemplated in that context—snowmobiles—has never been implemented in such locations because no snowmobile trails have been established there.

At most, the Master Plan's authorization of peripheral facilities implicitly contemplates limited public motor vehicle access directly associated with those specific, lawfully established facilities. It does not authorize motorized travel along all recreational trails within 500 feet of a public highway.

Accordingly, we strongly oppose the Policy's proposal to allow Category 1 and 2 OPDMD use on all recreational trails within 500 feet of a public highway in Wilderness, Primitive, and Canoe areas. Such a blanket authorization exceeds what the Master Plan contemplates and would likely prove unenforceable in practice.

However, we would support a more narrowly tailored approach. Specifically, Category 1 and 2 OPDMD use within 500 feet of a public highway should be permitted solely for the purpose of accessing and utilizing existing or future trailheads, parking areas, picnic areas, fishing and waterway access sites, ranger stations, and other peripheral facilities that have been lawfully established pursuant to an approved UMP. Limiting OPDMD use to direct access to such facilities would align the Policy with the Master Plan while providing the reasonable accommodation required under the ADA.

Table 2 should therefore be revised to incorporate clarifying language limiting Category 1 and 2 OPDMD use within 500 feet of a public highway to access associated with specifically authorized peripheral facilities.

Finally, we suggest that DEC identify the specific peripheral facilities and sites within Wilderness, Primitive, and Canoe areas where Category 1 and 2 OPDMD use will be allowed and include those locations in the Approved Use list. Providing that level of specificity will improve transparency, enforceability, and public understanding of the Policy's scope.

OPDMD Use in Wild Forest Areas Should be More Limited to Comply With the Master Plan

The draft Policy would potentially allow, following a case-by-case review, the use of all categories of OPDMDs on recreational trails in Wild Forest areas. This proposal is overly broad and inconsistent with the Master Plan.

The Master Plan defines a Wild Forest as “an area where the resources permit a somewhat higher degree of human use than in wilderness, primitive or canoe areas, while retaining an essentially wild character.” Master Plan at 37. The primary management guideline is “to protect the natural wild forest setting and to provide those types of outdoor recreation that will afford public enjoyment without impairing the wild forest atmosphere.” *Id.* at 38. Consistent with these directives, the Master Plan further provides that in Wild Forest areas, “[p]ublic use of motor vehicles will not be encouraged.” *Id.*

Against this backdrop, the Policy’s failure to designate any category of OPDMD as incompatible with Wild Forest recreational trails is problematic. The Master Plan’s directive that public motor vehicle use is not to be encouraged reflects an intent to limit, not expand, motorized access in these areas. Yet the Policy appears to contemplate that even Category 5, 6, and potentially Category 7 OPDMDs—which include gas-powered vehicles such as ATVs, UTVs, jeeps, and trucks—could be compatible with all recreational trails in Wild Forest areas.

Such a conclusion is unsupported by any detailed explanation of how the “fundamentally alter” test was applied, or how the individual assessment factors were evaluated. Allowing gas-powered motor vehicles on all recreational trails would raise serious questions about whether the essential wild forest character could be preserved, and whether such use would constitute a fundamental alteration of the recreational program “in a wild forest atmosphere” offered in those areas.

The same concern applies to the exclusion of all categories of e-bikes from the incompatible list for Wild Forest recreational trails. The Policy does not provide a reasoned explanation for this categorical exclusion, nor does it demonstrate how application of the “fundamentally alter” test and the individual assessment factors supports that result. We are skeptical that proper application of those standards would justify excluding Categories 3 through 7 from the incompatible list for all Wild Forest recreational trails.

Accordingly, the Policy should be revised to add Category 5, 6, and 7 OPDMDs to the incompatible list for Wild Forest areas. In addition, Appendix D should be expanded to provide a detailed explanation of the legal and factual basis for excluding all categories of e-bikes from the incompatible list. Clear articulation of the analytical framework and conclusions is necessary to ensure consistency with the Master Plan and to provide transparency to the public.

The Policy’s E-Bike Provisions Should be Revised to Be Consistent with Existing Management Restrictions

The draft Policy proposes to allow Category 2, 3, and 3-A OPDMDs to utilize the Newcomb Lake Road, and Category 2, 4, and 4-A OPDMDs to utilize the Adirondack Rail Trail. These proposals are inconsistent with binding management commitments set forth in the applicable UMP, the Master Plan, and existing DEC trail policy.

Newcomb Lake Road

Under the Master Plan, the Camp Santanoni Historic Area must be managed to “preserve the quality and character of the historic resources” at the site. Master Plan at 46. Further, all management actions must comply with the approved UMP for the Camp Santanoni Historic Area. The UMP expressly provides that public motorized access to Camp Santanoni—including via Newcomb Lake Road—is prohibited, and that members of the public, including persons with disabilities, are “encouraged to use historically appropriate means of access.” Camp Santanoni Historic Area UMP (March 2016) at 63, 65. It further specifies that DEC will provide free non-motorized access to Camp Santanoni for persons with disabilities via horse-drawn wagon or similar services. *Id.* at 65. The UMP also notes that access for persons with disabilities is governed by the *Galusha* settlement, under which DEC agreed to provide non-motorized access without cost. *Id.*

To our knowledge, the State does not currently offer public motorized access to Camp Santanoni (despite a legally questionable proposal in 2025 to provide golf cart rides for the public to Camp Santanoni on the Newcomb Lake Road). Accordingly, presumptively allowing Category 2 OPDMDs—motorized devices powered by electric motors and weighing up to 300 pounds—to operate on Newcomb Lake Road would directly conflict with the UMP’s prohibition on public motorized access. It would also alter the fundamental nature of the program offered at Camp Santanoni, which is expressly structured around non-motorized, historically appropriate access.

The UMP indicates that mountain biking is permitted on Newcomb Lake Road. *Id.* at 62. However, it does not authorize e-bikes. Category 3 and 3-A OPDMDs are Class 1 e-bikes, and their use is not included in the UMP or in the DEC program currently offered at Santanoni.

For these reasons, the Policy’s proposal to allow Category 2, 3, and 3-A OPDMDs on Newcomb Lake Road is inconsistent with the Camp Santanoni UMP and therefore contrary to the Master Plan. It is also inconsistent with the *Galusha* settlement framework governing access at that location. The Policy should therefore be revised to remove Category 2, 3, and 3-A OPDMDs from the list of Approved Uses for Newcomb Lake Road and instead designate them as incompatible.

Adirondack Rail Trail

The UMP for the Adirondack Rail Trail permits only Class 1 e-bikes on the Trail. The draft Policy’s proposal to allow Category 4 and 4-A OPDMDs—corresponding to Class 2 e-bikes—is inconsistent with the Master Plan, the applicable UMP, and DEC’s current rules for the Trail.⁵

The Master Plan defines an “electric bicycle” as a bicycle equipped with operable pedals and an electric motor that engages only when the operator is pedaling and disengages when the brakes are applied, the operator stops pedaling, or the bicycle reaches 20 miles per hour. Master Plan at 19-20. This definition corresponds to a Class 1 e-bike. By contrast Class 2 e-bikes may be propelled solely by the motor without pedaling and are not authorized under the UMP for the Rail Trail.

⁵ <https://dec.ny.gov/places/adirondack-rail-trail>

Accordingly, Category 4 and 4-A OPDMDs should be removed from the list of Approved Uses for the Adirondack Rail Trail.

Additionally, the Rail Trail UMP specifies that motor vehicles are not permitted on the Trail, except for snowmobiles and Class 1 e-bikes. Category 2 OPDMDs—motorized devices powered by electric motors and weighing up to 300 pounds—meet the Master Plan’s definition of “motor vehicle.” Therefore, Category 2 OPDMDs should also be removed from the Approved Uses list for the Rail Trail.

The OPDMD Category Limits Are Potentially Misleading and Likely Not Enforceable

The draft Policy establishes maximum speed and noise limits for each of the nine categories of OPDMDs. Policy § IV.C. As written, these limits are potentially misleading because they could reasonably be interpreted by the public as design specifications incorporated into each OPDMD category. However, DEC has subsequently clarified that these are not design limits, but rather operational limits that DEC intends to impose by regulation or other mechanisms.

The Policy should be revised to explicitly acknowledge that the listed speed and noise thresholds are not inherent design characteristics of the devices themselves. It should also clearly explain the legal mechanism through which these limits will be established and enforced (*e.g.*, formal rulemaking, permit conditions, signage, or other regulatory tools). Without such clarification, the Policy risks creating confusion among users and enforcement personnel alike.

Even assuming such limits are formally adopted, serious questions remain regarding their practical enforceability. Speed and noise violations are inherently difficult to monitor and document, particularly in remote Forest Preserve settings. Given well-documented staffing shortages among DEC Forest Rangers and Environmental Conservation Officers, the Policy should address how compliance with these operational limits will realistically be monitored and enforced.

If DEC intends to rely on speed and noise caps as a central mitigation measure, the Policy should include a meaningful discussion of the enforcement authority under which such limits will be imposed, the tools and methods that will be used to measure speed and sound levels in the field, the personnel resources available to implement those measures; and the consequences for violations.

Absent such clarification, the inclusion of category-based speed and noise limits risks creating the appearance of regulatory control without a corresponding enforcement framework. To ensure protection of natural resources, public safety, and the recreational experience, the Policy must clearly articulate both the legal basis and the practical means of enforcing these operational restrictions.

Administration of the Policy

We support the Policy’s permit requirements, whether through a self-issued permit for pre-approved uses or a permit issued by the Program Manager. A permit system is an essential

administrative tool. It will provide DEC and the public with important data regarding the extent, frequency, and location of OPDMD use within the Forest Preserve.

Collecting this information is critical to ensuring that OPDMD use can be effectively monitored, evaluated, and, if necessary, adjusted to protect natural resources, public safety, and the recreational experience. A structured permit process will also promote transparency and accountability in implementation of the Policy.

Conclusion

We respectfully urge DEC to revise the Policy consistent with the concerns outlined above to ensure full compliance with Article 14, the Master Plan, applicable UMPs, and the ADA.

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on the draft OPDMD Policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato", written in a cursive style.

Christopher Amato
Conservation Director and Counsel

cc: Adirondack Park Agency State Land Committee