



Board of Directors

August 30, 2024

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Chair

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NYS DEC
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James McMartin Long
Michael Wilson
Vice-Chairs

Barbara Rottier
Secretary

Re: Public Comment on New York State 30 by 30 Draft Strategies and Methodology

David Quinn
Treasurer

Dear Mr. Mapes:

Nancy Bernstein
John Caffry
Andy Coney
Dean Cook
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Robert Glennon
Roger Gray
Evelyn Greene
Sidney Harring
Sheila Hutt
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Chris Walsh

Protect the Adirondacks (PROTECT) has reviewed the New York State 30 by 30 Draft Strategies and Methodology report (“Strategies report”) developed by the Department of Environmental Conservation (DEC) and the Office of Parks, Recreation and Historic Preservation (OPRHP). We congratulate DEC and OPRHP on the timely release of the draft Strategies report marking an important and vital first step in New York’s effort to achieve the State’s goal of protecting 30 percent of the State’s lands and inland waters by 2030 as set forth in ECL § 49-0113.

Staff

We also commend DEC and OPRHP for fairly representing that at least 2,836,161 acres of land need to be protected to meet the 30 by 30 goal. The Strategies report calculates that approximately 7,639,505 acres of lands and waters in the State currently meet the report’s definition of “protect” or “conserve” and that this translates into an estimate that “approximately 22 percent of New York’s lands and waters are considered conserved.” Strategies report at 9-10. This figure roughly agrees with PROTECT’s 2023 estimate that approximately 6,220,150 acres of lands and waters in the State—or about 20 percent—are currently protected within the meaning of the 30 by 30 law. *See 20% in 2023: An Assessment of the New York State 30 by 30 Act (2023)*. These figures clearly indicate that a substantial land acquisition and protection effort is needed for the State to achieve the 30 by 30 goal.

Peter Bauer
Executive Director

Claudia K. Braymer,
Esq.
Deputy Director

Christopher Amato,
Esq.
**Conservation Director
and Counsel**

PROTECT generally supports the baseline land categories and the strategies proposed in the Strategies report for protecting the sizeable acreage needed to meet the State’s goal. However, the definitions and strategies in the Strategies report can be improved in several key ways as discussed below.

Defining “Conservation”

The draft Strategies report provides a reasonable definition of lands that are currently protected and what parameters will apply in determining whether additional lands will be considered protected in the future. The draft Strategies report defines protected lands as “land, water, and habitats” that have “permanent and persistent use restrictions” including regulatory frameworks (e.g., the Freshwater Wetlands Act) that provide “persistent restriction”. Strategies report at 6-7.

PROTECT supports the principle that protected lands include those with “permanent” legal protections such as fee ownership by the State, municipality or by a qualifying land trust or conservation easements held by such entities. However, the Strategy report’s inclusion of “persistent use restrictions” in determining whether lands or waters are protected is problematic because such restrictions may impose temporary limits on development but do not provide long-term legally enforceable protections and are easily reversed. For instance, the Strategies report includes in its definition of conserved lands, and in the calculations of baseline conditions (Table 1), lands that are privately owned and voluntarily enrolled in the New York State Forest Tax Law Program 480/480-a. These types of voluntary land management programs should not count as protected lands for purposes of the 30 by 30 goal because landowners can opt out of the land protection commitment at any time or after a relatively short time (with or without a monetary penalty depending upon the circumstances) and develop the land.

Additionally, the Strategies report’s reliance on wetlands regulations as one of the “persistent use restrictions” ignores the fact that the Freshwater Wetlands Act (FWA) requires permits for developing wetlands and adjacent areas but does not prohibit such development. The Strategies report counts as protected 1.21 million acres of freshwater and tidal wetlands, but neither the current freshwater wetlands regulations nor the recently proposed regulations implementing amendments to the FWA prohibit development activities in non-jurisdictional wetlands and in protected wetlands and adjacent areas.

Moreover, implementation of the FWA’s restrictions has been inconsistent at best. For example, the Adirondack Park Agency (APA) (which implements the FWA in the Adirondack Park) issued an FWA permit for a massive expansion of a commercial marina in protected wetlands by arbitrarily applying the incorrect wetlands value classification. After the approval was overturned in Court, APA then determined that the project, which will include docks and other structures located in and over more than 15,000 square feet of protected wetlands, did not need an FWA permit (that determination is currently facing a legal challenge). This is one example of why the Strategy report’s assumption that jurisdictional wetlands are protected is incorrect.

Therefore, the total acreage of wetlands that are outside of fee-owned conservation areas or conservation easement lands should not be included as protected for purposes of meeting the 30 by 30 goal. The Strategies report should acknowledge that wetlands are susceptible to future development and are not necessarily protected.

Finally, the Strategies report recognizes that some areas and actions (e.g., by schools, colleges, voluntary certification programs, pollinator gardens on highways and capped landfills, agricultural districts and assessments, and local zoning initiatives) help to support the goals of 30

by 30. Strategies report at 8-9. These types of supportive land management practices “may not fit the definition of permanent or persistent ‘conservation’” and do not appear to be included in the Strategies report’s calculations of baseline conditions (Table 1). Strategies report at 8. PROTECT supports the omission of these lands and areas from the acreage of protected areas unless they are otherwise permanently protected and would meet the definition of conserved lands.

Strategies for Implementing 30 by 30

The report lays out three draft strategies for meeting the 30 by 30 goal. These strategies should be described in greater detail to provide clear guidance to the State agencies implementing the necessary programs, to the Legislature and to the public.

Strategy 1 – Existing State Programs

Strategy #1 involves ramping up the existing land protection infrastructure in New York through existing state and local programs and the work of outside organizations and institutions. This will require a major shift in existing land acquisition and protection programs, which have been nearly dormant for several years now (e.g., the report acknowledges that only 43,676 acres were acquired by the State since 2019). Since 2011, the State has protected an average of only 15,000 acres per year. If land acquisition and protection continue to proceed at this snail’s pace, it will take 180 years to meet the 30 by 30 goal. In contrast, Governor George Pataki famously protected over 1.1 million acres during his 12 years in office. Governor Hochul will need to significantly increase her administration’s land protection efforts in order to meet the 30 by 30 goal. The Attorney General’s office also needs to streamline its land acquisition process by allowing for the use of commercial title insurance policies to ensure the State’s ownership is safeguarded.

Strategy #1 should identify how the State will protect an additional 2,836,161 acres by identifying the specific amounts of land and water (fee title and conservation easements) that the State will protect through each of the 10 listed existing land protection programs. This strategy should also include a recommendation that the Environmental Protection Fund (EPF) be increased to \$500 million annually with at least \$125 million dedicated to open space land conservation. DEC and OPRHP also need to significantly increase staffing for land protection and these positions should be identified and included in the State’s operating budget.

Strategy #1 identified the State’s Open Space Conservation Plan as “the blueprint for the state’s Land Acquisition Program”. Strategies report at 11. This is an important statement that should be reaffirmed by DEC as PROTECT’s representative on the Region 6 Regional Advisory Committee has seen no evidence that the newly revised Open Space Plan will be an actual blueprint for meeting the 30 by 30 goal. It is imperative that the Open Space Plan lay the groundwork for the State to acquire significant acreage over the next five and half years to meet the 30 by 30 goal. As part of this effort, PROTECT urges the State to commit to acquiring 1 million acres of land in fee title and conservation easements in the new Open Space Plan.

The undeveloped and currently unprotected lands within the Adirondack Park play a key role in helping the State to reach the 30 by 30 goal. From the 36,000-acre Whitney Park tract to the large tracts of commercial forestlands to the numerous tracts of smaller forested parcels, there are critical opportunities for land protection that would enhance public access, expand Wilderness areas, and preserve standing forests. Land protection in the Adirondack Park is an investment in the economy and environment in the Adirondack Park and in the future of New York. Of the 1 million acres that PROTECT recommends that the State acquire statewide, PROTECT urges the State to focus a quarter of that land protection effort in the Adirondacks and expand the Forest Preserve by 250,000 acres.

Strategy 2 – New Programs

Strategy #2 should identify a specific amount of land and water (fee title and conservation easements) that the State will endeavor to protect through new programs. One of the new programs should be a tax incentive program designed for private landowners across New York that provides them with tax benefits for permanently “leaving mature forests intact” on privately owned lands for the purpose of “carbon sequestration, storage, and climate resilience”. NY Climate Action Council Scoping Plan, Chapter 15, at 277.

Studies show that standing forests store much more carbon than young forests subject to forest management programs (i.e., timber harvesting), and that the rate of carbon sequestration in standing forests is just as high as, if not more than, the rate of carbon sequestration in managed forests. For example, the Climate & Applied Forest Research Institute found that “working [forests] and [Forest Preserve] lands across the [Adirondack] Park have very similar average rates of [carbon] sequestration”.¹ Indeed, research shows that the “actual annual amount of carbon increase is small in the early years” of a growing tree, while carbon gain in an older tree is significant; forests with trees that are between 80 to 140 years old sequester more carbon than forests with trees 0-20 years old.² It has also been documented that mature forests “typically continue to sequester additional carbon for many decades or even centuries, and sequester significantly more carbon than younger and managed stands”.^{3 4} This is because the older trees, as compared to younger ones, have a larger total leaf area and more overall mass that can be used to sequester and store carbon.⁵

¹ *The New York Forest Carbon Assessment*, Beier, C., Presentation to the Adirondack Park Agency, June 20, 2024 available [online](#) (last accessed August 13, 2024).

² *Carbon Sequestered and Stored in Young Versus Old Forests in the Adirondacks*, Leverett, B., May 17, 2023 available [online](#) (last accessed August 13, 2024).

³ *Intact Forests in the United States: Proforestation Mitigates Climate Change and Serves the Greatest Good*, Moomaw, W., et al., June 11, 2019 available [online](#) (last accessed August 13, 2024).

⁴ *Forest-clearing to create early-successional habitats: Questionable benefits, significant costs*, Kellett, M., et al., January 9, 2023, available [online](#) (last accessed August 13, 2024).

⁵ See <https://sustainability.stackexchange.com/questions/6967/which-consumes-more-carbon-dioxide-a-fully-grown-forest-or-a-newly-planted-one>

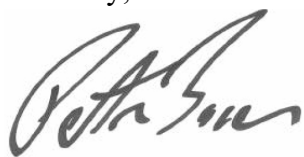
In our 2023 report *20% in 2023: An Assessment of the New York State 30 by 30 Act*, which was cited in the Strategies report, PROTECT identified over 10 million acres of forested lands across New York, in tracts of 10 acres or more, that could be the focus of a new “proforestation” program.⁶ Such a program, allowing “private forest landowners to . . . conserve their forests in natural conditions” would provide long-term carbon sequestration and storage as called for in the NY Climate Action Council Scoping Plan (Chapter 15, at 283) while at the same time helping meet the 30 by 30 goal by fostering permanent protection of privately owned forestlands. Thus, a new program should be developed to emphasize permanently protecting mature private forests that are allowed to grow without timber harvesting to maximize carbon storage and carbon sequestration.

Strategy 3 – Legislative and Regulatory Initiatives

Strategy #3 should provide additional guidance about how DEC and OPRHP will collaborate with conservation partners to develop and provide recommendations to the Legislature and state agencies. This effort should include an assessment about staffing needs at the DEC and OPRHP Real Property Offices, which are currently staffed at half the levels compared with the Pataki years. New York State will not be able to meet the 30 by 30 goals without investing in more staff at DEC and OPRHP. The strategy should also answer the following questions: Who will lead this effort? Will there be stakeholder meetings in the future? Will there be opportunities for public comment to assess progress and provide input on existing programs, and to suggest new initiatives that need to be undertaken? Will DEC commit to holding a public comment period on the annual reports that the 30 by 30 Act requires “to provide information with regard to the implementation and status of the goal?” Will the Open Space Plan be an actual blueprint for meeting the 30 by 30 goal? These questions need to be answered.

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 Strategies report.

Sincerely,



Peter Bauer
Executive Director

cc: Ashley Dougherty, Assistant Secretary for the Environment
Tom Berkman, DEC Deputy Commissioner and General Counsel
Fiona Watt, Director, Division of Lands and Forests
Hon. Pete Harckham, Chair, Senate Environmental Conservation
Hon. Deborah Glick, Chair, Assembly Environmental Conservation
Hon. Patricia Fahy, Assembly Sponsor of the 30 by 30 Act

⁶ The term “proforestation” refers to “growing existing forests intact”. Moomaw, *fn* 3.