



Board of Directors

Charles Clusen
Chair

Barbara Rottier
James McMartin Long
Vice-Chairs

Chris Walsh
Secretary

David Quinn
Treasurer

Nancy Bernstein
John Caffry
Andy Coney
Dean Cook
James C. Dawson
Lorraine Duvall
Robert Glennon
Roger Gray
Evelyn Greene
Sidney Harring
Sheila Hutt
Patricia Morrison
John Nemjo
Peter O'Shea
Philip Terrie
Michael Wilson

Staff

Peter Bauer
Executive Director

Claudia K. Braymer, Esq.
Deputy Director

Christopher Amato, Esq.
*Conservation Director
and Counsel*

Via Email

November 19, 2024

Megan Phillips
Deputy Director of Planning
Adirondack Park Agency
PO Box 99
Ray Brook, NY 12977

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

Dear Ms. Phillips:

Protect the Adirondacks ("PROTECT") is pleased to submit these comments on the proposed amendments to the Adirondack Park State Land Master Plan ("Master Plan") prepared by the staff of the Adirondack Park Agency ("APA").

Introductory Comments

PROTECT appreciates and commends the effort by APA staff to update and clarify parts of the Master Plan. However, we are disappointed in the non-transparent and inordinately hasty manner in which the proposed amendments were developed. Despite the crucial role of the Master Plan in governing management of the Forest Preserve and the unprecedented changes embodied in several of the proposed amendments, the APA staff failed to hold any stakeholder meetings prior to bringing the amendments to the APA Board and releasing them for public comment. It is particularly regrettable that requests by PROTECT and other groups for meetings to discuss the proposed amendments prior to their release were rebuffed by APA staff. To the extent that APA staff were willing to briefly address the amendments at all, they did not provide any details about them and mischaracterized the amendments as minor. In addition, for reasons that remain unclear, the proposed amendments were not first brought to the APA Board's State Land Committee for its review and input prior to being brought to the full APA Board. In sum, the process followed by APA staff in developing the amendments falls far short of the open, transparent and measured consideration that is warranted when seeking to amend the Master Plan.

Protect the Adirondacks

PO Box 48, North Creek, NY 12853 518.251.2700

www.protectadks.org info@protectadks.org

Like Us on Facebook and on Instagram/Threads @ProtectAdkPark

Regarding the proposed amendments themselves, PROTECT is particularly pleased by the effort to incorporate the requirements of the Climate Leadership and Community Protection Act (“CLCPA” or “Climate Act”) into planning and management of Forest Preserve lands, and we are hopeful that this indicates that APA will also incorporate the CLCPA requirements as part of its review of private land projects, as it is required to do.

PROTECT supports the goal of increasing access to Forest Preserve recreational opportunities for persons with disabilities and welcomes the proposed addition of Master Plan provisions requiring inventory of existing accessible infrastructure and planning for expansion of accessible recreational opportunities during the Unit Management Plan (“UMP”) process. However, two of the proposed Master Plan amendments regarding accessibility are problematic. First, the proposed change to the definition of “motor vehicle” to exclude Other Power-Driven Mobility Devices (“OPDMDs”) would, for the first time in the Adirondack Park’s history, open Wilderness, Primitive and Canoe areas to a vast array of motor vehicles including cars, trucks, ATVs, golf carts and Segways. This proposed change would violate Article 14 of the New York State Constitution (the “Forever Wild” clause) and the Guidelines for Management and Use in the Master Plan. As discussed below, the proposed change is not required by the Americans With Disabilities Act (“ADA”) because it would constitute a fundamental alteration in the recreational programs offered for these areas.

Second, the proposed addition to the Master Plan of a provision delegating to the Department of Environmental Conservation (“DEC”) unfettered discretion to permit the use of OPDMDs is, at best, premature because DEC has no written policy concerning use of OPDMDs on Forest Preserve lands. Moreover, granting DEC this authority without any guidelines or restrictions to govern its exercise would eliminate APA oversight of motor vehicle use on Forest Preserve lands in violation of both the Master Plan and the APA Act.

PROTECT welcomes the effort to clarify and expand upon the Master Plan’s requirement that carrying capacity studies be conducted as part of the UMP process. However, PROTECT suggests that the proposed amendments addressing carrying capacity be modified to clarify that protecting natural resources, not encouraging more recreational use, is the primary goal of a carrying capacity study and that carrying capacity studies are required for both lands and waters in the Forest Preserve.

These issues, along with others, are discussed in detail below.

Climate Change

General Comments

PROTECT applauds 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 draft 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.*

We note that the proposed amendments quote directly from section 7 of the CLCPA, stating that “[t]he Climate Act requires all state agencies to consider whether the issuance of permits or other approvals are ‘inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in Article 75 of the Environmental Conservation Law (ECL).’” SLMP Redline at 13. PROTECT applauds APA staff’s inclusion of this critical CLCPA requirement; however, we must note that APA staff has thus far failed to comply with this requirement in its review of projects on private lands pursuant to the Adirondack Park land use and development plan (Executive Law § 805). The most recent example is APA’s approval of the application by Barton Mines, LLC to expand its mining operations even though the application fails to include any analysis of the project’s current or projected emissions of greenhouse gases (“GHGs”) in violation of the CLCPA. We also see no indication that the APA is considering or complying with the goals of the CLCPA when proposing to expand motor vehicle use in the Forest Preserve, as it currently proposes to do, and as it did recently with its expansive interpretation of the “no material increase” provision in the Master Plan.

Specific Comments

Page 13 of the SLMP Redline includes the following proposed sentence:

The Park includes abundant sources of clean freshwater and wetland habitats, as well as millions of acres of intact, Constitutionally-protected Forest Preserve to capture GHG emissions and offer resilience against extreme weather events.

It is not technically accurate to state that the Forest Preserve captures GHG emissions. Forests capture and store carbon, but do not capture other GHGs such as methane. In addition, forests both sequester and store carbon. “Carbon sequestration” refers to the active process of capturing carbon dioxide from the atmosphere and converting it to glucose during photosynthesis, while “carbon storage” refers to carbon being held in a tree as woody biomass by converting glucose to cellulose and lignin. PROTECT suggests that the above-quoted sentence be modified to state as follows:

The Park includes abundant sources of clean freshwater and wetland habitats, as well as millions of acres of intact, Constitutionally-protected Forest Preserve **that sequester and store carbon from the atmosphere** and offer resilience against extreme weather events.

Pages 13-14 include the following proposed sentences:

Unit management plans should describe how the proposed management actions and alternatives analyses assess and plan for climate change vulnerabilities. For instance, right-sizing bridges and culverts and sustainable trail construction can help to safeguard investments in recreational infrastructure and prevent future environmental degradation.

It is important to make clear that right-sizing bridges and culverts and sustainable trail construction will be carried out within the strictures imposed by Article 14 of the New York State Constitution and the case law interpreting it. Specifically, this proposed Master Plan language must make clear that right-sizing bridges and culverts and sustainable trail construction does not mean that unconstitutionally wide bridges or trails will be constructed or that constitutionally impermissible tree removal will occur. PROTECT suggests the following language change to address this issue:

Unit management plans should describe how the proposed management actions and alternatives analyses assess and plan for climate change vulnerabilities. For instance, right-sizing bridges and culverts and sustainable trail **siting, design and** construction, **accomplished in conformance with constitutional and Master Plan restrictions,** can help to safeguard investments in recreational infrastructure and prevent future environmental degradation.

PROTECT supports the proposed addition to Unit Management Plan requirements of a description of how the proposed management actions and alternatives, when considered together, assess and plan for climate change vulnerabilities specific to the unit. SLMP Redline at 12. However, PROTECT suggests that the provision be modified to also address carbon emissions from motor vehicles. We propose that the following paragraph be added at the end of the Climate Change section as follows:

In accordance with the statewide goals for reduction of greenhouse gas emissions set forth in the Climate Change and Community Protection Act, unit management plans will evaluate the climate change-related impacts of any action involving the removal of trees or an increase in motor vehicle use.

Accessibility

General Comments

Persons with disabilities have and should continue to have access to the Forest Preserve in a manner consistent with the “Forever Wild” clause of the New York State Constitution and the Guidelines for Management and Use for each of the land classifications in the Master Plan. PROTECT commends APA and the Department of Environmental Conservation (“DEC”) for their past and continuing efforts to expand and improve access for persons with disabilities to recreational opportunities in the Forest Preserve through creation of accessible trails, campgrounds, wildlife observation areas, boat launches and other recreation facilities. In addition, opportunities for the use of motor vehicles in appropriate portions of the Forest Preserve by persons with disabilities has been and continues to be provided through Commissioner Policy 3, “Motorized Access Program for People With Disabilities” (“CP-3”). It is important to note that these accommodations have been achieved by balancing compliance with the ADA with the

management restrictions imposed by Article 14 and the Master Plan. However, two of the proposed Master Plan amendments significantly upset the careful balance that APA and DEC have previously achieved between ADA requirements on the one hand and constitutional and Master Plan mandates on the other.

First, the proposal to exclude Other Power-Driven Mobility Devices (“OPDMDs”) from the Master Plan’s definition of “motor vehicle” would, for the first time, allow a wide array of motor vehicles to potentially be used in Wilderness, Primitive and Canoe land classifications in violation of Article 14 and the Master Plan. The Master Plan amendments propose the following definition for OPDMDs:

Other Power Driven Mobility Device – consistent with applicable law and regulation, an OPDMD is currently defined as any mobility device powered by batteries, fuel, or other engines— whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

SLMP Redline at 21.

This exceedingly broad definition includes *all* motor vehicles in the definition of OPDMDs, including cars, trucks, ATVs, golf carts, Segways, among others. These motor vehicles are prohibited in Wilderness, Primitive and Canoe areas by Article 14 of the New York State Constitution, the Master Plan and DEC regulations. *See* APA, Adirondack Park State Land Master Plan (Aug. 2019) (“Master Plan”) at 25, 31, 33; 6 NYCRR § 196.1. *See also* *Association for Protection of the Adirondacks*, 228 AD 73, 81 (3d Dept. 1930), *aff’d* 253 NY 234 ((holding that the Adirondack Forest Preserve “must always retain the character of a wilderness”); *Helms v. Diamond*, 76 Misc.2d 253, 260 (Sup. Ct. Schenectady Co. 1973) (“The concept of prohibiting the use of motor vehicles, motorized equipment, motorboats and landing of aircraft in remote wilderness areas is not new.”). Thus, allowing motor vehicle use by persons with disabilities in Wilderness, Primitive and Canoe areas would fundamentally alter the recreational programs currently offered by DEC and, as discussed in detail below, neither the ADA nor the ADA implementing regulations require a public entity to offer motorized access where it would fundamentally alter the program offered by a public entity.

Second, the proposed amendments purport to grant DEC unfettered authority to determine where the use of OPDMDs may be appropriate. and do not exclude such use in Wilderness, Primitive and Canoe areas. This provision is ill-advised because the provision does not exclude such use in Wilderness, Primitive and Canoe areas and, moreover, DEC currently lacks any written policy governing use of OPDMDs on the Forest Preserve. It is therefore unclear what standards or criteria are being or will be applied in determining whether and where such use is appropriate. In addition, the proposed wholesale delegation of authority abdicates APA’s statutory obligation to determine whether DEC’s management of the Forest Preserve complies with Article 14 and the Master Plan. *See* Executive Law § 816(1) (requiring DEC to prepare UMPs “in consultation with” APA and requiring that UMPs “shall conform to the general guidelines and criteria set forth in the

master plan”); Master Plan at 12 (requiring APA review of draft UMPs prepared by DEC); Memorandum of Understanding Between APA and DEC Concerning Implementation of the Master Plan for Management of State Lands in the Adirondack Park (March 2010) (“APA-DEC MOU”) at 3 (requiring “that any policy or guidance developed by [DEC] which impacts [APA] . . . shall be effective only if developed cooperatively and agreed to by both agencies”).

Specific Comments

The ADA Does Not Require Use of OPDMDs or Other Motor Vehicles Where Such Use Would “Fundamentally Alter” the State Program

Title II of the ADA applies to State and local government entities and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. 42 USC § 12132. The ADA directs the Department of Justice (“DOJ”) to promulgate implementing regulations for Title II and DOJ promulgated those regulations in 1991 and updated and revised the regulations in 2010. 28 Code of Federal Regulations (“CFR”) Part 35.

Significantly, 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. The ADA provides:

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, *would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.*

42 USC § 12201(f); (emphasis added).

The DOJ regulations echo this crucial statutory provision:

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 contained in § 35.130(b)(7).”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

The DOJ regulations provide additional specific guidance on when modification of existing facilities, such as existing hiking trails, is not required by the ADA:

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.

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

Allowing OPDMDs to be used in Wilderness, Primitive or Canoe areas would fundamentally alter the recreational program offered because public motor vehicle use has been prohibited in those areas since their inception. *See* Master Plan at 25, 31, 33. As recognized in the final programmatic environmental impact statement (“Master Plan EIS”) governing amendments to the Master Plan, “Article XIV of the State Constitution places severe limitations on uses allowable in Forest Preserve.” Adirondack Park Agency, Final Programmatic Environmental Impact Statement Guidelines for Amending the Adirondack Park State Land Master Plan (Feb. 1979) at 33. The Master Plan EIS also recognizes that:

The very foundation of Wilderness is the guideline which prohibits motorized access by the public and severely restricts such access by the Department of Environmental Conservation. Alteration of this guideline to permit generalized use of motor vehicles or aircraft would destroy the character of wilderness, a cornerstone of the Master Plan.

Id. at 31.

The Master Plan EIS also makes clear that the prohibition of motor vehicles is crucial to the fundamental nature of Primitive and Canoe areas as well:

The Wilderness, Primitive and Canoe classifications generally prohibit the use of motor vehicles, motorized equipment and aircraft. Any amendment to the

Services”, available at <https://www.ada.gov/law-and-regs/regulations/title-ii-2010-regulations/#section-35137-mobility-devices>.

Plan which would sanction such uses in these areas would severely diminish the Primitive character of those lands and should not be proposed. Noise intrusion is only one component of an area's character. The mere knowledge that motorized access is permissible diminishes an area's sense of remoteness.

Id. at 35.

The ADA also recognizes the incompatibility of motor vehicle use in federal Wilderness areas:

Congress reaffirms that nothing in the Wilderness Act (16 U.S.C. 1131 et seq.) is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, *and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.*

42 USC § 122207(c)(1); (emphasis added). *See also* U.S. Dept. of Agriculture, Forest Service, Accessibility Guidebook for Outdoor Recreation and Trails (Aug. 2012) at 6 (stating that “[a]n example of a fundamental alteration to a program would be allowing use of a motor vehicle in an area not designated for motorized-vehicle use.”); *id.* at 8 (recognizing that “[a]llowing motor vehicles in a nonmotorized area would be a fundamental alteration of the recreation program for that area.”).

It is therefore evident that allowing use of OPDMDs in Wilderness, Primitive or Canoe areas would fundamentally alter the recreational programs offered in these areas and is therefore not required by either the ADA or the DOJ implementing regulations. Indeed, the judicial settlement in *Galusha v. New York State Department of Environmental Conservation*, a case initiated by persons with disabilities under the ADA, implicitly recognized this key fact by not requiring any new motorized access by persons with disabilities to Wilderness, Primitive or Canoe areas. A copy of the *Galusha* consent decree is annexed as Exhibit A.

OPDMD Use Should be Addressed Through Amendments to CP-3

To the extent that OPDMDs may be allowable or appropriate in Forest Preserve land use classifications other than Wilderness, Primitive or Canoe, the appropriateness of such use should be addressed by DEC, in consultation with APA, modifying CP-3 to address OPDMDs and not by amending the Master Plan. CP-3 already provides an ADA-compliant framework for limited operation by persons with disabilities of motor vehicles on certain Forest Preserve lands, and that is the appropriate method for addressing this issue. CP-3 should be amended to make clear that OPDMDs may only be used by persons with disabilities, that OPDMD use will not be allowed in Wilderness, Primitive or Canoe areas, and that the decision whether or not to allow OPDMD use in other land classifications will be based on the DOJ regulatory criteria for evaluating the appropriateness of OPDMD use. *See* 28 CFR § 35.137(b)(2) (setting forth five factors to be used 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.

We understand that these DOJ factors have been mistakenly interpreted by DEC as the factors to be applied in determining whether allowing OPDMD use will constitute a “fundamental alteration” of the program. In fact, as discussed above, whether a proposed modification of a state entity’s program would constitute a “fundamental alteration” of the program is a question of state law. Moreover, the DOJ regulations clearly state that the factors apply to “a specific facility,” not to a program offered by a public entity. *Id.* Thus, if a public entity determines that it can modify its policies to potentially allow the use of OPDMDs without “fundamentally alter[ing] the nature of the service, program, or activity,” it must then apply the assessment factors in Section 35.137(b)(2) to determine “whether a particular [OPDMD] can be allowed in a specific facility.”

Accordingly, APA and DEC need to first evaluate the nature of the existing programs provided by the various Forest Preserve land classifications to determine whether allowing OPDMDs would fundamentally alter those programs. Then, if it is determined that there are some land classifications where OPDMDs could be used without fundamentally altering the nature of the program, then the assessment factors would be applied to assess which specific OPDMDs can be used under what circumstances and in which locations and land classifications.

PROTECT understands, based on comments made by DEC staff at a recent meeting of the Forest Preserve Advisory Committee (October 18, 2024), that DEC believes that the ADA requires that requests to use OPDMDs on Forest Preserve lands must be handled on an individual, case-by-case basis and that broad policies applying to specific Forest Preserve land use classifications are impermissible. This is incorrect. To the contrary, the ADA regulations require that persons with disabilities be provided with advance notice of where OPDMD use is permissible. *See* 28 CFR § 35-106 (“A public entity shall make available . . . information regarding the provisions of this part *and its applicability to the services, programs, or activities of the public entity . . .*”) (emphasis added).

In fact, the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) has already adopted a broad policy on OPDMD use at OPRHP facilities. *See* OPR-POL-024, Use of Other Power-Driven Mobility Devices in Outdoor Areas of New York State Parks & Historic Sites (April 1, 2022) (“OPRHP Policy”), annexed as Exhibit B. The OPRHP Policy sets forth size, weight, speed, noise and emission standards for OPDMD use in different land use classifications managed by OPRHP and specifies that “OPDMDs equipped with gas-fueled engines will largely be prohibited in many park settings.” *Id.*

Many other state land management agencies have also issued OPDMD policies including California (establishing size, weight, speed, noise and emissions standards for OPDMD use and identifying trail and road categories where such use is permitted); Illinois (specifying areas where OPDMDs may and may not be used); Michigan (identifying types of OPDMDs that may be used in specified types of facilities, roads and trails); New Hampshire (specifying the type, dimensions of weight of OPDMDs that may be used and areas where such use is permitted); Pennsylvania (listing land use classifications where OPDMD is allowed or prohibited); Vermont (providing that district teams will assess where OPDMD use is allowable and develop a list of roads and trails

open to such use); and Wisconsin (providing for assessment of state-owned lands to determine where PDMDs can be used safely while maintaining resource protection).

Following the lead of OPRHP and other state land management agencies by amending CP-3 to address OPDMD use will obviate the need for any amendments to the Master Plan to specifically address use of OPDMDs on Forest Preserve lands. Providing DEC with unfettered discretion to determine where OPDMDs may be used, as proposed in the Master Plan amendments, needlessly creates an open-ended and obscure process for addressing this issue, particularly since the proposed amendments fail to identify the factors that the ADA regulations require be evaluated by a state agency in determining whether to permit OPDMD use.

PROTECT offers the following additional comments concerning the specific accessibility-related proposed language:

SLMP Redline at 10: PROTECT supports adding “an inventory of existing structures and improvements that are consistent with the applicable federal accessibility standards for buildings, sites, and outdoor recreation facilities” to the requirements for Unit Management Plans (“UMPs”).

SLMP Redline at 12: PROTECT supports the inclusion in UMPs of “the identification of management actions to improve access to and enjoyment of the unit’s lands and waters by persons with disabilities.”

SLMP Redline at 13: PROTECT supports adding a new section labelled “Accessibility;” supports inclusion of the first two paragraphs in that section summarizing ADA requirements and DEC’s reliance on ADA and ABA standards for designing, constructing and altering facilities; and supports the first sentence in the third paragraph acknowledging that wheelchairs are permitted anywhere that pedestrian access is permitted.

PROTECT opposes inclusion of the final sentence in the third paragraph, stating that “the DEC is responsible for interpreting federal regulations and guidance to determine where the use of Other Power-Driven Mobility Devices (OPDMDs) may be appropriate.” PROTECT opposes inclusion of this sentence because it will be rendered unnecessary by DEC’s amendment of CP-3 to address OPDMD use. In any event, DEC is not “responsible for interpreting federal regulations and guidance” under the ADA; the DOJ is the sole agency vested with responsibility for interpreting ADA Title II and for promulgating regulations and guidance for Title II. *See* 42 USC § 12134. Thus, while DEC is responsible for applying ADA’s implementing regulations and guidance, the Department is not responsible for interpreting them as incorrectly stated. Second, as currently written, the sentence appears to grant DEC unfettered discretion to determine where and under what circumstances OPDMD use may be allowed on Forest Preserve lands, even though DEC currently has no written policy on OPDMD use. Moreover, the proposed language effectively eliminates any oversight or input by APA, which is contrary to both the APA Act and the Master Plan. *See* Executive Law § 816(1); Master Plan at 12; APA-DEC MOU at 3.

SLMP Redline at 20: APA proposes to amend the definition of “motor vehicle” by adding the phrase, “but does not include wheelchairs or other power driven mobility devices.” PROTECT

supports excluding wheelchairs from the definition of “motor vehicle” but opposes excluding OPDMDs from that definition. The federal definition of OPDMD includes:

any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

28 CFR § 35.104. Thus, OPDMDs can include, among other things, cars, trucks, and ATVs that are used by persons with a disability for locomotion. This would fundamentally alter the Master Plan’s definition of “motor vehicle” and open the door to motor vehicle use in Wilderness, Primitive and Canoe areas in contravention of Article 14 and the Master Plan.

SLMP Redline at 21: PROTECT opposes the addition of a definition for OPDMDs. As discussed above, the appropriate way to address OPDMD use, and the specific types of devices that qualify as OPDMDs, is for DEC, in consultation with APA, to modify CP-3 to address such use. That approach would render addition of this definition unnecessary.

SLMP Redline at 23: PROTECT supports adding a definition of “wheelchair” as proposed.

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. Nevertheless, the proposed amendments may be confusing and misleading to the extent that they appear to equate VUM with carrying capacity. Specifically, carrying capacity is the assessment, measurement and prescription of the type of resource and social conditions in a particular area that can be sustained without adverse impacts to natural resources and the visitor experience, while VUM is one tool that can be used to compare on-the-ground conditions with carrying capacity and identify management actions needed to maintain or restore the desired conditions.

Given the importance of this issue, PROTECT offers the following line-by-line comments and proposed changes:

“Carrying capacity assessments are prescribed throughout this document.” This is a correct statement but should be clarified to state as follows: **“Carrying capacity assessments for both Forest Preserve lands and waters are prescribed throughout this document.”**

“Fulfilling this requirement must include establishing desired conditions; indicators; thresholds for resource, social and managerial conditions; monitoring; and adaptive management.” PROTECT suggests that it would be helpful and informative to precede this sentence with a brief explanation of carrying capacity, as follows:

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.

The current proposed sentence should then be modified to read:

Fulfilling **the** requirement **for carrying capacity studies** must include establishing desired conditions **for both land and water resources**; indicators; thresholds for resource, social and managerial conditions; monitoring; and adaptive management.”

“Levels of time and resources to fulfill this commitment should be proportional to the significance of impacts.” The purpose of a carrying capacity study is to, among other things, determine the significance of impacts. Making assumptions about the significance of impacts—and restricting levels of time and resources based on those assumptions—prior to completing a carrying capacity study is premature and prejudices the outcome of the study. This sentence should therefore be removed.

“Carrying capacity has been a concept for determining how many people could use a given recreational setting before impacts are unacceptable.” This is an incomplete characterization of carrying capacity and will be unnecessary if the explanatory language proposed above is adopted. This sentence should therefore be removed.

“However, establishing a number of visitors is only one strategy to protect resources and experiences, while allowing for recreational use.” This sentence could be read to imply that the primary focus and goal in visitor use management should be recreational use by visitors rather than protection of physical and biological natural resources. PROTECT proposes clarifying this sentence as follows:

However, establishing a number of visitors is only one strategy to protect resources and experiences, while allowing for recreational use. **Regardless of the strategy adopted, the paramount goal must always be protection of physical and biological resources and ensuring that those resources are not degraded.**

“Additional visitor use management strategies exist, including, but not limited to, changing visitor behavior, modifying where and when use occurs, or building facilities that can accommodate heavy use.” As with the preceding sentence discussed above, this sentence could be read to imply that the focus of VUM is recreational use rather than protection of natural resources. Also, VUM

is an ongoing process and the particular strategies used for VUM should not be prescribed in advance. PROTECT proposes clarifying this sentence as follows:

Additional visitor use management strategies exist, including, but not limited to, changing visitor behavior, modifying where and when use occurs, or building facilities that can accommodate **reasonable public** use. **However, the focus and overriding goal of visitor use management must always be protection of natural resources and ensuring that natural resources are not degraded; it is not the goal of visitor use management to maximize recreational use up to the limit that a particular land or water management unit can withstand.**

Elimination of Deadlines

The proposed amendments would remove the deadlines set forth in the Master Plan for completion of UMPS (SLMP Redline at 12); removal on 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. Although these deadlines have passed, it is important to retain them 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 proposed amendments would 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. 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.**

PROTECT opposes the proposed removal of the 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 proposed amendments add a new definition of “beaver control structure” and authorize the placement of such structures in several Forest Preserve land classifications. PROTECT opposes 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.

Definition: The amendments propose to add the following definition:

Beaver Control Structure – a device used to reduce impacts to human infrastructure caused by beavers while maintaining suitable habitat for beavers. Beaver control structures maintain water flow or regulate water levels.

SLMP Redline at 19.

The proposed definition of “beaver control structure” is problematic in several respects. 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.

The definition also 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 proposed amendments authorize the installation of beaver control structures in Wilderness, Primitive and Wild Forest land classifications. However, 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.

As noted above, it is unclear what types of structures in addition to WLCDs are authorized by the definition of “beaver control structure,” and it is therefore 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.

Moreover, 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, the provisions concerning beaver control structures should be either withdrawn, redrafted and released for further public comment or removed entirely.

Miscellaneous Provisions

PROTECT supports the proposed addition of species of special concern to the definition of “wildlife management structure.” SLMP Redline at 23.

PROTECT supports the addition of horse mounting platforms constructed of natural materials to the list of permissible structures in Wilderness areas. SLMP Redline at 26.

PROTECT supports the addition of bicycle trails to the list of permissible improvements in Wild Forest areas. SLMP Redline at 39.

PROTECT supports the technical language changes to the description of Historic areas. SLMP Redline at 48-49.

PROTECT suggests that the opening quote of the SLMP include the following words from S. H. Hammond (1857) speaking about the Adirondacks before the Adirondack Park was created:

Civilization is pushing its way even towards this wild and, for all agricultural purposes, sterile region . . . When that time shall have arrived, where shall we go to find the woods, the wild things, the old forests, and hear the sounds which belong to nature in its primeval state? Whither shall we flee from civilization, to take off the harness and be free, for a season, from the restraints, the conventionalities of society, and rest from the hard struggles, the cares and toils, the strifes and competitions of life? Had I my way, I would mark out a circle of a hundred miles in diameter, and throw around it the protecting aegis of the constitution. I would make it a forest forever. It should be a misdemeanor to chop down a tree, and a felony to clear an acre within its boundaries. The old woods should stand here always as God made them, growing on until the earthworm ate away their roots, and the

strong winds hurled them to the ground, and new woods should be permitted to supply the place of the old so long as the earth remained. . .

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Christopher Amato
Conservation Director and Counsel

enc.

cc: Barbara Rice, Executive Director (via email)
Damion Stodola, Esq., Counsel (via email)

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THEODORE E. GALUSHA, TEENA
WILLARD, and WILLIAM SEARLES

Plaintiffs,

- against -

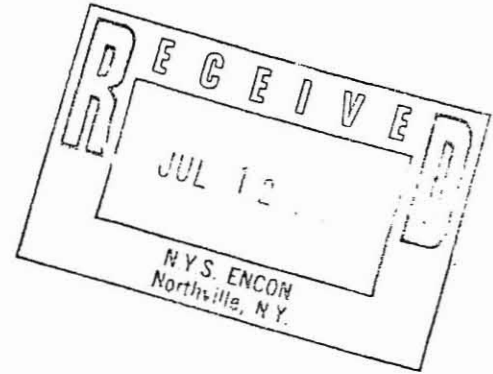
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
JOHN P. CAHILL, sued herein in his official
capacity as Commissioner of the New York
State Department of Environmental
Conservation, ADIRONDACK PARK
AGENCY OF THE STATE OF NEW YORK,
DANIEL T. FITTS, sued herein in his official
capacity as Chairman of the Adirondack Park
Agency of the State of New York, GEORGE E.
PATAKI, sued herein as Governor of the State
of New York, JOHN DOE, Individually, and
STATE OF NEW YORK,

Defendants,

- and -

ADIRONDACK COUNCIL, ADIRONDACK
MOUNTAIN CLUB, RESIDENTS
COMMITTEE TO PROTECT THE
ADIRONDACKS, ENVIRONMENTAL
ADVOCATES, ASSOCIATION FOR THE
PROTECTION OF THE ADIRONDACKS,
GRAHAM L. COX, LISA M. GENIER,
DEBRA HAMILTON and EARNEST B.
LaPRAIRIE,

Intervenor-Defendants.



CONSENT DECREE

Civil Action
No. 98-CV-1117
(LEK-RWS)

Plaintiffs Theodore E. Galusha, Teena Willard and William Searles (“Plaintiffs”) and Defendants New York State, New York State Department of Environmental Conservation, Adirondack Park Agency of the State of New York, John P. Cahill, in his official capacity as Commissioner of the New York State Department of Environmental Conservation (“DEC”), Daniel T. Fitts, in his official capacity as Executive Director of the Adirondack Park Agency (“APA”) of the State of New York, and George E. Pataki, as Governor of the State of New York, (hereinafter collectively “Defendants”), and Intervenor-Defendants Adirondack Mountain Club, Inc., Adirondack Council, Residents’ Committee to Protect the Adirondacks, Environmental Advocates, Association for the Protection of the Adirondacks, Graham L. Cox, Lisa M. Genier, Debra Hamilton, and Ernest B. LaPrairie (collectively “Intervenor-Defendants”) hereby agree as follows:

WHEREAS the Defendants are charged by Article XIV of the New York State Constitution, statute, regulation and the Adirondack Park and Catskill Park State Land Master Plans (“SLMPs”) to act as stewards and, in the case of DEC, land manager for the Forest Preserve within the constraints of New York State Constitution Article XIV’s “forever wild” provision and the SLMP land classification system and to act in accordance with all applicable state and federal law;

WHEREAS Plaintiffs have commenced an action under Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132 *et seq.* and 42 U.S.C. § 1983, alleging that

Plaintiffs have been discriminated against, and seeking motor vehicle access in various locations in the Adirondack Forest Preserve;

WHEREAS Plaintiffs seek injunctive relief, compensatory and punitive damages and attorneys' fees in this action;

WHEREAS Defendants and Intervenor-Defendants have denied Plaintiffs' allegations and asserted, *inter alia*, that neither the ADA nor 42 U.S.C. § 1983 requires motor vehicle access to recreational programs on any state lands, particularly state lands located in the Forest Preserve;

WHEREAS the Defendants affirm their commitment to provide reasonable access to recreational programs within the Forest Preserve for persons with disabilities;

WHEREAS the Defendants have the legal obligation and authority to determine whether, where and in what manner reasonable access to recreational programs within the Forest Preserve for persons with disabilities, particularly mobility-related impairments, shall exist;

WHEREAS Defendants recognize the importance of incorporating the needs and perspectives of persons with disabilities into the unit management planning process;

WHEREAS the parties wish to resolve the instant lawsuit in an equitable manner and to avoid potentially lengthy and costly litigation; and

WHEREAS the Court has considered the matter and issues;

IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

SECTION I. Description of Settlement

In consideration of Plaintiffs' (1) agreement to discontinue the instant litigation with prejudice and settle any and all claims under the ADA and 42 U.S.C. § 1983 raised, or that could have been raised, in the complaint against the Defendants concerning any matter relating to the Adirondack Forest Preserve and/or any other State Forest Preserve including, but not limited to motorized access at locations in the Forest Preserve by persons with disabilities, and compliance in any manner with the ADA; (2) agreement to discontinue all claims for attorney's fees, except as otherwise set forth in paragraph H of Section III of this Consent Decree; and (3) representation that they presently know of no other actual or potential causes of action that they have or may have against the State of New York, its departments, employees, agents or elected officials for anything whatsoever, Defendants agree to provide the following:

A. Expedited UMPs. DEC and APA commit to develop and process Unit Management Plans ("UMPs") for Wild Forest areas within the Adirondack Forest Preserve and on other state lands, consistent with all applicable law as follows:

1. DEC will prepare and submit amendments to existing UMPs and supporting SEQRA documentation in final form to include provisions as set forth in this Consent Decree, to

the APA for commencement of the public review process for the following Units within six months of the entry of this Consent Decree:

- Aldrich Pond Wild Forest
- Black River Wild Forest
- Cranberry Lake Wild Forest
- Fulton Chain Wild Forest
- Grasse River Wild Forest
- Hammond Pond Wild Forest
- Independence River Wild Forest

2. DEC will prepare and submit draft UMPs and supporting SEQRA documentation in final form to include provisions as set forth in this Consent Decree, to the APA for commencement of the public review process for the following Units within eighteen (18) months of the entry of this Consent Decree:

- Lake George Wild Forest
- Horseshoe Lake Wild Forest
- Wilcox Lake Wild Forest
- Moose River Wild Forest
- Shaker Mountain Wild Forest
- Vanderwacker Wild Forest

3. DEC will involve representatives of the New York State Independent Living Center Council, Inc. and/or Eastern Paralyzed Veterans Association, and other persons with disabilities, in unit management planning, and will consider recreational opportunities for persons with disabilities in the course of developing all future UMPs.

B. Capital Projects. DEC will implement, over a five-year period following entry of this Consent Decree, capital projects to enhance accessibility to recreational programs for persons with disabilities within certain areas classified as Wild Forest, Intensive Use and Historic within the Forest Preserve, as well as locations outside the Forest Preserve, as set forth and described in Exhibits C, D, E, F and G [**approximate cost of \$ 4.312 million**]. Insofar as any such project constitutes a new facility, otherwise applicable permit or review requirements shall not be superseded or made inapplicable by this Consent Decree. As set forth in more detail in Exhibits C, D, E, F and G, the capital projects include constructing and/or improving parking, restroom and showering facilities, access to fishing opportunities, campgrounds, picnic areas, recreational trails, equestrian mounting platforms, boat launches, signage, promotional materials and road rehabilitation. In addition, DEC will commit to upgrade the Warrensburg DEC Sub-office to ADA Accessibility Guidelines (“ADAAG”) and/or appropriate New York State Uniform Fire Prevention and Building Code provisions. [**approximate cost of \$350,000**]

C. Expanded Motorized Access to Programs in the Forest Preserve.

1. As described in Exhibit A, DEC will propose, and DEC and APA will support through the UMP amendment process, motor vehicle access for persons with disabilities holding permits under Policy CP-3, subject to closure for seasonal conditions in the discretion of DEC as land manager for the Forest Preserve, including reasonable closure for environmental and/or public safety reasons, at the following locations, for access to the programs listed below:

<u>UMP</u>	<u>Road Name</u>	<u>Miles</u>	<u>Program</u>
Indep. River	Mount Tom	4.7	Wildlife Observation

Indep. River	Branough	0.25	Hunting Camping Hunting Swimming
Lake George	Bear Slide	0.97	Fishing
Wilcox Lake	Fishpond (Upper)	2.10	Fishing
Moose River	Mitchell Pond	1.77	Camping Fishing
Moose River	Helldiver Pond	0.50	Hunting Fishing
Moose River	Icehouse Pond	0.50	Hunting Fishing
Moose River	Lost Ponds	0.92	Hunting Fishing
Moose River	Beaver Lake	2.25	Camping Hunting Fishing
Moose River	Squaw Lake	0.50	Camping Hunting Fishing
Shaker Mtn.	Holmes Lake	5.08	Hunting

Total: 19.54 miles

2. As described in Exhibit H, the following roads, opened for motor vehicle access to persons with disabilities holding permits under Policy CP-3 by court order, shall remain open subject to final approval in the UMP process, subject to closure for seasonal conditions in the discretion of DEC as the land manager for the Forest Preserve, including reasonable closure for environmental and/or public safety reasons:

<u>UMP</u>	<u>Road Name</u>	<u>Miles</u>	<u>Program</u>
Lake George	Gay Pond	3.3	Camping Fishing
Lake George	Jabe Pond	0.1	Camping Fishing

Lake George	Lily Pond	2.3	Camping Fishing
Lake George	Buttermilk Roads	3.5	Camping Fishing
Luzerne Campground	Lake Luzerne Campsite - 4th Lake	2.44	Camping Fishing
Moose River Plains	Rock Dam, Otterbrook, Indian Lake, Limekiln Lake- Cedar River	36.1	Camping Fishing Wildlife Observation

Total: 47.74 miles

3. The roads and trails outside the Forest Preserve identified in Exhibit B will be added to the list associated with Commissioner Policy CP-3, and will be posted for ATV, truck and/or car use, as appropriate and as set forth in Exhibit B, by persons with disabilities holding permits under Policy CP-3, as soon as practicable following entry of this Consent Decree, but in any event, no later than ninety days after entry of this Consent Decree.

4. In accordance with the statements of the parties on the record at the conference with the Court on March 15, 2001, the following process will be implemented in the event that any road identified in paragraph I.C. is not ultimately approved through the UMP process:

a. The parties shall consult with respect to proposing through the UMP amendment process alternative road(s) which are comparable, with respect to mileage and program, to the road(s) that were not ultimately approved.

b. Plaintiffs may propose through the UMP amendment process alternative road(s) which are comparable, with respect to mileage and program, to the road(s) that were not

ultimately approved. In the event Plaintiffs make one or more of such proposals, the UMP amendment process involving such proposals shall be completed within 24 months of the entry of this Consent Decree, or as otherwise agreed to by the parties.

c. In the event an alternative road proposed by Plaintiffs through the UMP amendment process is not ultimately approved through such process, Plaintiffs may apply to the Court with respect to opening alternative road(s) which are comparable, with respect to mileage and program, to the road(s) not ultimately approved through the UMP amendment process. All parties reserve all rights with respect to any application made by Plaintiffs pursuant to this subparagraph.

d. The phrase "comparable, with respect to mileage" as used in this Consent Decree shall mean that the total mileage of any road proposed as an alternative to a road not approved through the UMP process, or through the UMP amendment process as set forth in paragraph I.C.4.c., shall be, as nearly as practicable, the same total mileage as the road not approved; provided, however, that such alternative road may differ in length in an amount not to exceed .5 miles, or as agreed to by all parties. In addition, the phrase "comparable, with respect to ... program" shall mean a program comparable to the program(s) associated with the road(s) not opened through the UMP process or UMP amendment process, such as, for example, hunting, fishing, camping, or wildlife observation, or as agreed to by all parties.

D. Expanded Non-Motorized Access to Programs in the Forest Preserve

1. Defendants commit to establish, within six months of entry of this Consent Decree, a system for qualifying persons with disabilities for the use of existing non-motorized

access to the Santanoni Great Camp without cost to such persons. Persons who have received permits pursuant to DEC CP-3 shall qualify for participation in such system under this paragraph. In addition, one person may, without cost, accompany each such qualifying person with disability in his or her use of existing non-motorized access to the Santanoni Great Camp, upon submission of a written statement by a physician reflecting a determination that such person's accompaniment is medically necessary, and explaining the basis for such determination. This provision shall not be construed to prevent any person who makes payment as agreed to by the provider of the existing non-motorized access to the Santanoni Great Camp from utilizing such access. Motorized access to Santanoni by persons who hold permits pursuant to DEC CP-3 shall continue until such time as non-motorized access is available.

2. DEC will construct, or cause to be constructed, accessible horsedrawn wagon, carriage and/or equestrian mounting platforms that are accessible to persons with mobility impairments at the following locations for access to programs in the Forest Preserve:

<u>UMP</u>	<u>Road Name</u>	<u>Miles</u>	<u>Program</u>
Lake George	Fishbrook Pond	1.33	Fishing Camping
Lake George	Millman Pond	1.94	Fishing Camping
Lake George	Bumps Pond	4.43	Fishing Camping
Camp Santanoni	Newcomb Lake	4.75	Fishing Hunting Camping Wildlife Viewing Unique Historical Site

Total: 12.45 miles

Defendants shall require that any agent, guide or entity providing services utilizing a horsedrawn wagon, carriage or vehicle providing services at these locations shall have provision for safely transporting persons with disabilities, including those with mobility impairments.

E. Training and Materials.

1. DEC and APA will hire one or more independent consultants with relevant expertise to conduct training, relating to making DEC programs accessible to persons with disabilities, of the following persons:

- DEC and APA Central Office and Regional personnel;
- guides licensed pursuant to New York Environmental Conservation Law § 11-0533; and
- other vendors of services involving programs in the Forest Preserve.

With respect to assisting persons with disabilities in their enjoyment of, and access to, programs in the Forest Preserve, such training will include sensitivity awareness to attitudes, terminology, needs and characteristics relating to persons with disabilities, methods for conducting trail accessibility assessments, assessing the need for facility improvements and identifying access opportunities, among other topics to be developed with the consultant(s).

2. DEC will develop, produce and distribute educational, interpretive and outreach materials regarding recreational opportunities for persons with disabilities within two (2) years of the entry of this Consent Decree, including the following information:

- Identification of DEC Statewide and Regional Coordinators for Access Issues, as described in paragraph I.G.1 herein
- Statewide list of all locations designated pursuant to Policy CP-3
- Locations of non-motorized access to programs including, *inter alia*, accessible fishing piers, campsites, boat launches, hardened trails and mounting platforms
- Identification of guides and other commercial vendors appropriately trained and offering services to persons with disabilities

F. Settlement Implementation.

1. Defendants commit to make a good faith effort to fulfill their obligations under this Consent Decree within three years of the date of its entry. Defendants shall make one payment of \$60,000 to the New York State Independent Living Council, Inc. within 90 days of the entry of this Consent Decree, such monies to be used solely for assisting and verifying Defendants' implementation of their commitments made herein. If, at the end of the three year period following the date of entry of this Consent Decree, the Defendants have not yet satisfied their commitments hereunder, the New York State Independent Living Council, Inc., on behalf of the Plaintiffs, may contact the Defendants, provide evidence to support Plaintiffs' belief that such commitments have not been satisfied, and seek additional funding of \$20,000 for an additional year to continue the assistance and verification of Defendants' implementation described in this paragraph. Defendants shall not unreasonably refuse to provide additional funding. A second one-year extension may be sought by the New York State Independent Living Council, Inc. if, at the end of the fourth year following entry of this Consent Decree, the Defendants have not yet satisfied their commitments. The commitments made by the Defendants in this paragraph shall

not, absent order of the Court, extend beyond two additional \$20,000 annual payments or five years following the entry of this Consent Decree. No money provided pursuant to this paragraph shall be used to purchase, lease, repair or maintain any motorized vehicle, including but not limited to automobiles, trucks and all-terrain vehicles; provided, however, that funds provided to the New York State Independent Living Council, Inc. pursuant to this paragraph may be used for reimbursement, at the approved State rate, for mileage for vehicle use in furtherance of the “assisting and verifying” activities referred to in this paragraph.

2. The New York State Independent Living Council, Inc. shall submit to the Court, the DEC Director of Land and Forests, and the undersigned Assistant Attorney General, within 60 days of each one year anniversary date of the payment made pursuant to paragraph I.F.1 above, a report concerning the activities conducted using funds provided pursuant to such paragraph. Such report shall include an itemized accounting of all expenditures. All actions of the New York State Independent Living Council, Inc., its employees, agents and/or other representatives under paragraph I.F. of this Consent Decree, shall comply with all applicable provisions of law, including without limitation New York Constitution Article XIV, § 1, the Adirondack State Land Master Plan, Unit Management Plans, the New York Environmental Conservation Law, and DEC regulations, policies and guidance memoranda. DEC commits that any relevant policies and/or guidance memoranda adopted following entry of this Consent Decree shall comply with New York Environmental Conservation Law § 3-0301(2)(z).

3. One or more of the Defendants shall, on a quarterly basis, submit to the Court a report identifying the status of each commitment made herein. The first such report shall be submitted no later than the close of the second calendar quarter following entry of this Consent Decree.

4. Except as set forth in Section III.A of this Consent Decree, Plaintiffs' right to freedom of speech shall not otherwise be abridged by this Consent Decree.

G. Other Commitments.

1. Defendants commit to designate a (a) DEC Central Office Statewide Coordinator for Access Issues, and (b) Coordinator for Access Issues in each of the Department's nine Regional Offices. These designees will be included among those persons to be trained pursuant to paragraph I.E.1 above. The duties of these designees with respect to the ADA shall be limited to programmatic access, and shall not include employment, public transportation or telecommunication issues.

2. Defendants commit that new construction or renovation of facilities by the DEC or the APA in the Adirondack Forest Preserve and any other New York State Forest Preserve will be in compliance with the New York State Uniform Fire Prevention and Building Code.

3. DEC shall create an Advisory Committee to the DEC comprised of Plaintiffs, other appropriate persons, organizations or representatives of persons with disabilities. Such Committee shall meet periodically with DEC and APA to consult with and advise these agencies concerning issues of interest to persons with disabilities. Defendants commit to give such Committee advance notice of the public meetings of those agencies which relate to the management of State lands in the Adirondack Forest Preserve, and will give the Committee an opportunity to put on the agenda of such meetings matters of particular interest to the Committee.

4. Defendants commit to appoint a person with disabilities, or a representative of or advocate for persons with disabilities, to the Forest Preserve Advisory Committee.

Defendants will consider nominations, if any, by the Committee established in paragraph I.G.3 above, and by other interested persons, as provided for in the Charter of the Forest Preserve Advisory Committee.

5. The parties agree that, to the extent that new public motorized opportunities are being opened under this Consent Order, such opportunities shall be exclusive to persons with disabilities holding permits under

3. Accordingly, DEC agrees that it will adopt and implement measures to secure these roads against unauthorized use. For those opportunities located inside the Forest Preserve, these measures will be taken either through the UMP process or pursuant to a separate public process.

Control options to be considered in formulating these measures may include such options as:

a. Gating (in compliance with Section 504 of the Rehabilitation Act of 1973);

b. Where gating is appropriate, DEC may consider installing locks with changeable codes or combinations that would be revealed outside the Department to CP-3 permit holders only. DEC may also consider assigning DEC personnel to open gates upon request by CP-3 permit holders; provided, however, that such gates shall be closed the same day as they are opened; and

c. Posting signage providing notice to persons with disabilities holding permits under policy CP-3, and providing warnings to persons not holding such permits that they are subject to prosecution under applicable law.

DEC shall enforce against illegal motor vehicle use of the roads identified in this Consent Order.

H. Attorneys Fees and Costs. Upon review of contemporaneous time records prepared by counsel for Plaintiffs, and a determination that such records support a reasonable attorney's fee, Defendants shall provide Plaintiffs' reasonable attorneys' fees and costs, in full satisfaction of any and all liability and/or responsibility therefor under any federal statute or otherwise, in an amount not to exceed \$185,000, payable by the Defendants to counsel for Plaintiffs, Alvin O. Sabo, within 120 days after (a) entry of the Consent Decree, and (b) receipt by the undersigned Assistant Attorney General of a copy of the entered Consent Decree. Payment shall be made to the order of "Donohue, Sabo, Varley and Armstrong, P.C.," and transmitted to Alvin O. Sabo, Esq., at One Winners Circle, P.O. Box 15056, Albany, New York 12212-5056. Payment by the State of New York is subject to the approval of all appropriate state officials in accordance with the provisions of New York Public Officers Law Section 17(3)(a). If a dispute arises regarding any portion of the submitted bill, including but not limited to the attorney time, rates, costs or disbursements that have been sought by Plaintiffs' Counsel, and Plaintiffs and Defendants are unable to resolve the issue, an application may be made to the Magistrate Judge in letter form, or as directed by the Magistrate Judge, to resolve the dispute.

SECTION II. Commitments of Intervenor-Defendants

A. Except as set forth in paragraphs II.B and II.C below, all Intervenor-Defendants agree that, in accordance with their statements on the record at the conference before the Court on March 15, 2001, they will not oppose, whether in the UMP process, or through judicial, administrative or other extrajudicial means, the opening of roads identified in Section I.C of this Consent Decree for motor vehicle access for persons with disabilities holding permits under DEC

Policy CP-3. In particular, and without limitation except as set forth in paragraphs II.B and II.C below, Intervenor-Defendants will not oppose: (1) the proposal, through the UMP process, of motor vehicle access at locations identified in paragraph I.C.1 herein and Exhibit A hereto; and/or (2) Defendants' commitment to keep open those roads identified in paragraph I.C.2. herein and Exhibit H hereto, initially opened pursuant to the Court's Memorandum-Decision and Order filed October 9, 1998.

B. Notwithstanding the provisions of paragraph II.A. above, Intervenor-Defendants Adirondack Council, Residents Committee to Protect the Adirondacks, Environmental Advocates and Association for the Protection of the Adirondacks, reserve their rights to oppose, in the UMP process or otherwise, the following: (1) the opening to motor vehicle access of the Mount Tom and Branaugh locations identified in paragraph I.C.1 herein and Exhibit A hereto; (2) the capital project involving Arrow Road, set forth in Exhibit D hereto; (3) the proposed "improvement" of Lily Pond Road as described in Exhibit G, ¶ 7; and/or (4) any proposal to open or improve any roads for motor vehicle access for persons who do not hold permits under policy CP-3.

C. Notwithstanding the provisions of paragraph II.A. above, Intervenor-Defendant Adirondack Mountain Club, Inc. reserves its right to oppose, in the UMP process, the following: (1) the capital project involving Arrow Road, set forth in Exhibit D hereto; (2) the accessibility project involving Trout and Mud Ponds, set forth as item #23 in Exhibit C hereto; (3) the opening to motor vehicle access of the Holmes Lake location identified in paragraph I.C.1 herein; and (4) any proposal to open or improve any roads for motor vehicle access for persons who do not hold permits under policy CP-3.

SECTION III. General Provisions

A. Effect of Consent Decree. By entering into this Consent Decree, Defendants and Defendant-Intervenors make no admission of any liability with respect to any of the claims asserted by Plaintiffs, nor of any fact asserted by Plaintiffs, nor of the validity of any of the claims asserted by the Plaintiffs. By entering into this Consent Decree, Plaintiffs agree to discontinue this action with prejudice, and agree that they will not file or support in any way any future claims or complaints, or commence or support litigation under the Americans with Disabilities Act, United States Constitution or other statute or common law relating to issues that were, or could have been, raised in this litigation concerning any matter relating to the Forest Preserve including, but not limited to motorized access at locations in the Forest Preserve by persons with disabilities, and compliance in any manner with the ADA as it relates in any way to the Forest Preserve.

B. Continuation of DEC CP-3. DEC CP-3, entitled "Motor Vehicle Access to State Lands Under the Jurisdiction of the Department of Environmental Conservation for People with Disabilities," adopted on June 4, 1997, will remain in effect. Nothing herein shall limit the authority of DEC to amend such policy; provided, however, that any such amendment shall comply with all applicable provisions of law. To the extent additional Forest Preserve roads and/or other routes on DEC-administered lands outside the Forest Preserve, providing motor vehicle access to programs for qualifying persons with disabilities under DEC CP-3 are identified in this document, those roads and/or other routes will be added to DEC's comprehensive, statewide list associated with DEC CP-3. Nothing in this Consent Decree shall be construed to

permit motor vehicle use on any road and/or other route that has not been approved for motor vehicle use pursuant to applicable law.

C. Force Majeure.

1. Defendants shall not be in default regarding the provisions of this Consent Decree if they are unable to comply with any provision because of an act of Nature, war, insurrection, strike, judicial injunction or other court order, contract default, budget delay, catastrophic condition, or other circumstance beyond their control. Defendants shall notify Plaintiffs in writing, within thirty (30) days, of any occurrence of any of the above events that lead to delays in compliance, or the prospective inability to comply with this Consent Decree, and shall request modification of this Consent Decree, where appropriate. Failure to satisfy any requirement of this Consent Decree shall be excused, and/or extensions of milestones provided, under the terms of this section if Defendants show that they took steps reasonably necessary to avoid or mitigate the delay or other noncompliance, and complied with the notice requirements of this section.

2. Plaintiffs' remedy for any failure or default by Defendants with respect to performance under one or more provisions of this Consent Decree, where such failure is not otherwise excused pursuant to paragraph III.C.1 of this Consent Decree, shall be limited to specific performance of such provision, as ordered by the Court. In no event shall any such failure or default be grounds for rescission, in whole or in part, of other provisions of this Consent Decree.

D. Continuing Jurisdiction. The Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court for any further order that may be needed to carry out or enforce compliance with the specific commitments made by the parties to this Consent Decree; provided, however, that the exercise by DEC of its discretionary authority as land manager for the Forest Preserve pursuant to New York State Constitution Article XIV, New York statutes and regulations, and the SLMP land classification system, with respect to matters not covered by this Consent Decree, shall not be subject to this paragraph.

E. Termination. This Consent Decree shall be deemed completely satisfied and shall terminate when the parties have met all their obligations hereunder.

F. Notice. Notice of the actions to be taken or exchange of information pursuant to this Consent Decree shall be provided to the following:

Counsel for Plaintiffs

Alvin O. Sabo, Esq.
Donohue, Sabo, Varley & Armstrong, P.C.
One Winners Circle
P.O. Box 15056
Albany, New York 12212-5056
(518) 458-8922
(518) 438-4349 (fax)

Counsel for Defendants

D. Scott Bassinson
Lisa M. Burianek
Assistant Attorneys General
New York State Department of Law

Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518) 473-5843
(518) 473-2534 (fax)

Counsel for Intervenor-Defendants

Blair W. Todt
Carter, Conboy, Case, Blackmore
Napierski & Maloney, P.C.
Attorneys for Intervenor-Defendant Adirondack
Mountain Club, Inc.
20 Corporate Woods Boulevard
Albany, New York 12211-2350
(518) 465-3484
(518) 465-1843 (fax)

Douglas H. Ward
Young, Sommer, Ward, Ritzenberg,
Wooley, Baker & Moore, LLC
Attorneys for Intervenor-Defendants Adirondack
Council, Residents' Committee to Protect the
Adirondacks, Environmental Advocates,
Association for the Protection of the Adirondacks,
Graham L. Cox, Lisa M. Genier, Debra Hamilton,
and Ernest B. LaPrairie
Executive Woods
Five Palisades Drive
Albany, New York 12205
(518) 438-9907
(518) 438-9914 (fax)

The parties may from time to time as necessary modify the address or designee for purposes of notice and exchange of information. Notice of such a modification shall be provided in writing to the then-existing designees under this provision.

G. Severability. If any provision of this Consent Decree is determined, by court ruling, order, decision, memorandum and/or opinion, to be invalid or otherwise contrary to law, such ruling, order, decision, memorandum and/or opinion shall not affect the continuing validity of the remaining provisions of this Consent Decree.

H. Entire Agreement. This Consent Decree, with Exhibits A-H incorporated by reference and attached hereto, constitutes the entire agreement entered into by the parties to settle this matter. By signing this Consent Decree, each party acknowledges that, except as set forth in paragraph III.D. concerning the continuing jurisdiction of the Court, entry of this Consent Decree will result in complete termination of this action including extinguishing all claims asserted in this action and any potential appeals, with prejudice.

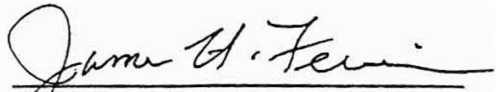
I. Authority. The undersigned representative for each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Consent Decree and to bind them to it.

THIS DECREE IS AGREED TO BY ALL PARTIES, AS AMENDED
IN OPEN COURT ON THE RECORD ON JULY 5, 2001.

Dated: July 31, 2001
Albany, New York

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



JAMES H. FERREIRA, ESQ.
Deputy Commissioner and General Counsel
625 Broadway
Albany, NY 12233-3254
(518) 485-7707


DJB
AOS
DHLW
BUT

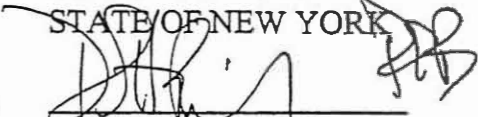
Dated: May 31, 2001
_____, New York

RICHARD LEFEBVRE
CHAIRMAN
ADIRONDACK PARK AGENCY

By: _____
RICHARD LEFEBVRE
P.O. Box 99, Route 86
Ray Brook, New York 12977
(518) 891-4050


Dated: May 31, 2001
Albany, New York

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

By: 
D. SCOTT BASSINSON
Bar Roll No. 103818
LISA M. BURIANEK
Bar Roll No. 506779
Assistant Attorneys General
Attorneys for Defendants
The Capitol
Albany, New York 12224-0341
(518) 473-5843
(518) 473-2534 (fax)

Dated: May 31, 2001
Albany, New York

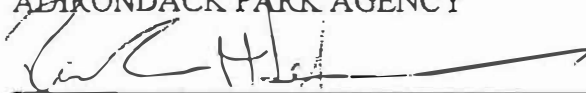
DONOHUE, SABO, VARLEY
& ARMSTRONG, P.C.
ATTORNEYS FOR PLAINTIFFS

By:  AS
ALVIN O. SABO
Bar Roll No. 102509
One Winners Circle
P.O. Box 15056
Albany, New York 12212-5056
(518) 458-8922
(518) 438-4349 (fax)

Dated: May 31, 2001
Canton, New York

RICHARD LEFEBVRE
CHAIRMAN
ADIRONDACK PARK AGENCY

By:



RICHARD LEFEBVRE
P.O Box 99, Route 86
Ray Brook, New York 12977
(518) 891-4050

Dated: May ___, 2001
Albany, New York

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

By:

D. SCOTT BASSINSON
Bar Roll No. 103818
LISA M. BURIANEK
Bar Roll No. 506779
Assistant Attorneys General
Attorneys for Defendants
The Capitol
Albany, New York 12224-0341
(518) 473-5843
(518) 473-2534 (fax)

Dated: May ___, 2001
Albany, New York

DONOHUE, SABO, VARLEY
& ARMSTRONG, P.C.
ATTORNEYS FOR PLAINTIFFS

By:

ALVIN O. SABO
Bar Roll No. _____
One Winners Circle
P.O. Box 15056
Albany, New York 12212-5056
(518) 458-8922
(518) 438-4349 (fax)

Dated: 7/5, 2001
Albany, New York

CARTER, CONBOY, CASE,
BLACKMORE NAPIERSKI &
MALONEY, P.C.

By: Blair W. Todt
BLAIR W. TODT
Bar Roll No. 508043
Attorneys for Intervenor-Defendant
Adirondack Mountain Club, Inc.
20 Corporate Woods Boulevard
Albany, New York 12211-2350
(518) 465-3484
(518) 465-1843 (fax)

Dated: 7/5, 2001
Albany, New York

YOUNG, SOMMER, WARD,
RITZENBERG, WOOLEY, BAKER &
MOORE, LLC

By: Douglas H. Ward
DOUGLAS H. WARD
Bar Roll No. 501204
Attorneys for Intervenor-Defendants
Adirondack Council, Residents' Committee
to Protect the Adirondacks, Environmental
Advocates, Association for the Protection of
the Adirondacks, Graham L. Cox, Lisa M.
Genier, Debra Hamilton, and Ernest B.
LaPrairie
Executive Woods
Five Palisades Drive
Albany, New York 12205
(518) 438-9907
(518) 438-9914 (fax)

IT IS SO ORDERED. THIS CONSENT DECREE IS IN THE PUBLIC INTEREST, AND IS FAIR & REASONABLE.
Lawrence E. Kahn
HON. LAWRENCE E. KAHN

DH
KOS
But

7-5-01

EXHIBIT A
MOTORIZED ACCESS BY PERMIT FOR PERSONS
WITH DISABILITIES, TO BE PROPOSED AND SUPPORTED
THROUGH THE UMP PROCESS

#	UMP	"Road" Name	Miles	Program(s)
1	Indep. River	Mount Tom	4.7	Wildlife Observation Hunting
2	Indep. River	Branough	.25	Camping Hunting Swimming
3	Lake George	Bear Slide	0.97	Fishing
4	Wilcox Lake	Fishpond (Upper)	2.10	Fishing, Hunting
5	Moose River	Mitchell Pond	1.77	Camping, Fishing
6	Moose River	Helldiver Pond	0.50	Hunting, Fishing
7	Moose River	Icehouse Pond	0.50	Hunting, Fishing
8	Moose River	Lost Ponds	0.92	Hunting, Fishing
9	Moose River	Beaver Lake	2.25	Camping, Hunting, Fishing
10	Moose River	Squaw Lake	0.50	Camping, Hunting, Fishing
11	Shaker Mountain	Holmes Lake	5.08	Hunting
		Total	19.54	

EXHIBIT B
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ROADS AND TRAILS OPEN TO MOTOR VEHICLE USE BY
PERSONS WITH MOBILITY IMPAIRMENT DISABILITIES

REG	LOCATION	MILES ROADS	MILES TRAILS	TOWN	COUNTY	ROAD OR TRAIL NAME	RECOMMENDED VEHICLE TYPE (Car/truck/ATV, Other as specified on Permit)	PROGRAM	\$ NEEDED TO OPEN
5	FULTON 3; Rockwood	0.25		Johnstown & Ephratah	Fulton	D East Road	ATV	Hunting, Camping, Wildlife Observation	\$2,000
5	FULTON 3; Rockwood		0.5	Johnstown & Ephratah	Fulton	C North Trail	ATV	Hunting, Camping, Wildlife Observation	\$3,000
5	FULTON 3; Rockwood		0.3	Johnstown & Ephratah	Fulton	C-Connector Valley Trail	ATV	Hunting, Camping, Wildlife Observation	\$2,000
5	FULTON 3; Rockwood		0.25	Johnstown & Ephratah	Fulton	Chimney Loop Trail	ATV	Hunting, Camping, Wildlife Observation	\$2,000
5	FULTON 3; Rockwood		0.75	Johnstown & Ephratah	Fulton	Camp Road Trail	ATV	Hunting, Camping, Wildlife Observation	\$4,000

REG	LOCATION	MILES ROADS	MILES TRAILS	TOWN	COUNTY	ROAD OR TRAIL NAME	RECOMMENDED VEHICLE TYPE (Car/truck/ATV, Other as specified on Permit)	PROGRAM	\$ NEEDED TO OPEN
-----	----------	----------------	-----------------	------	--------	-----------------------	---	---------	-------------------------

6	Henderson Shores Unique Area	.8		Henderson	Jefferson	Radar Road	ATV/Truck/Car	Deer Hunting & Fishing	\$0
6	Bonaparte's Cave State Forest- Lewis 28		.4	Diana	Lewis	Green Pond Trail	ATV	Fishing (S.T. in Green Pond)	\$5,000
6	Cobb Creek State Forest- Lewis 19		.3	Harrisburg	Lewis	Cliff Road	ATV/Truck	Hunting	\$10,000
6	Coyote Flats State Forest- Jefferson 10		1.4	Theresa & LeRay	Jefferson	Coyote Road & extension	ATV/Truck	Deer & Turkey Hunting	\$10,500
5	East Osceola State Forest- Lewis 21	.9	.4	Osceola	Lewis	Malloy Brook Road & extension	ATV/Truck	Fishing Malloy Brook & Deer Hunting	\$20,000
5	Gould's Corners State Forest- Jefferson 8, 9		.9	Rodman	Jefferson	Dana Road	ATV	Deer Hunting	\$15,000

REG	LOCATION	MILES ROADS	MILES TRAILS	TOWN	COUNTY	ROAD OR TRAIL NAME	RECOMMENDED VEHICLE TYPE (Car/truck/ATV, Other as specified on Permit)	PROGRAM	\$ NEEDED TO OPEN
6	Grant Powell State Forest- Lewis 18, 29, 36, 38.	.7		Montague	Lewis	Bee Tree Road	ATV	Deer & Turkey Hunting	\$5,000
6	High Towers State Forest- Lewis 20	1.0		Lyonsdale	Lewis	Beech Flat Road	ATV/Truck	Deer & Turkey Hunting	\$0
6	Hogsback State Forest- Lewis 22		.7	Diana	Lewis	Hogsback Trail	ATV	Deer & Turkey Hunting	\$6,000
6	Indian Pipe State Forest- Lewis 24		.3	New Bremen	Lewis	Crystal Creek Access Trail	ATV	Trout Fishing in Crystal Creek	\$0
6	Frank Jadwin State Forest- Lewis 1, 4, 10, 13.		.8	Croghan	Lewis	River Flats Road	ATV	Fishing Indian River, Deer Hunting & Wildlife observation	\$25,000

REG	LOCATION	MILES ROADS	MILES TRAILS	TOWN	COUNTY	ROAD OR TRAIL NAME	RECOMMENDED VEHICLE TYPE (Car/truck/ATV, Other as specified on Permit)	PROGRAM	\$ NEEDED TO OPEN
6	Frank Jadwin State Forest- Lewis 1, 4, 10, 13.	1.5		Croghan	Lewis	Q-Road	ATV/Truck	Deer & Turkey Hunting & Wildlife observation	\$5,000
6	Frank Jadwin State Forest- Lewis 1, 4, 10, 13.		.9	Croghan	Lewis	Hay Flats Road	ATV	Deer Hunting, Trout Fishing in the West Branch Oswegatchie River & Wildlife observation	\$15,000
6	Frank Jadwin State Forest- Lewis 1, 4, 10, 13.		3.0	Croghan & Diana	Lewis	PASNY R.O.W. Roads	ATV/Truck	Deer & Turkey Hunting & Wildlife observation	\$15,000
6	Frank Jadwin State Forest- Lewis 1, 4, 10, 13.		.2	Diana	Lewis	Suzie's Road	ATV/Truck	Deer & Turkey Hunting	\$2,000

REG	LOCATION	MILES ROADS	MILES TRAILS	TOWN	COUNTY	ROAD OR TRAIL NAME	RECOMMENDED VEHICLE TYPE (Car/truck/ATV, Other as specified on Permit)	PROGRAM	\$ NEEDED TO OPEN
6	Lesser Wilderness State Forest- Lewis 2, 5, 8, 9, 23, 25, 33.		.6	West Turin	Lewis	Dolan-Market Snowmobile Trail	ATV	Deer & Turkey Hunting	\$5,000
6	Lesser Wilderness State Forest- Lewis 2, 5, 8, 9, 23, 25, 33.		.6	West Turin	Lewis	Toole Road Trail	ATV	Deer Hunting	\$5,500
6	Lesser Wilderness State Forest- Lewis 2, 5, 8, 9, 23, 25, 33.		.21	Martinsburg	Lewis	Curey Road Jeep Trail	ATV/Truck	Deer Hunting	\$4,000
6	Lesser Wilderness State Forest- Lewis 2, 5, 8, 9, 23, 25, 33.		.5	Martinsburg	Lewis	Maple Ridge Road Jeep Trail	ATV	Deer Hunting	\$7,500
6	Lookout State Forest- Lewis 31, 32		.2	Pinckney	Lewis	Lookout Road	ATV	Deer & Turkey Hunting	\$0

EG	LOCATION	MILES ROADS	MILES TRAILS	TOWN	COUNTY	ROAD OR TRAIL NAME	RECOMMENDED VEHICLE TYPE (Car/truck/ATV, Other as specified on Permit)	PROGRAM	\$ NEEDED TO OPEN
	Mohawk Springs State Forest		1.2	West Turin	Lewis	Apple Mill Snowmobile Trail	ATV	Deer & Turkey Hunting	\$7,000
	Onjebonge State Forest- Lewis 15		1.0	Diana	Lewis	Onjebonge Road	ATV/Truck/ Car	Deer, Turkey Hunting & Wildlife Observation	\$15,000
	Onjebonge State Forest- Lewis 15		1.4	Diana	Lewis	Lime Quarry Road	ATV/Truck/ Car	Deer, Turkey Hunting, also warm water fishing of Indian River	\$4,000
	Pinckney State Forest- Lewis-Jefferson 1		.4	Rutland	Jefferson	Ball Road	ATV	Deer & Turkey Hunting	\$6,500
	Sand Flats State Forest- Lewis 3		1.2	Lyonsdale	Lewis	Fall Brook Crest Trail	ATV	Turkey Hunting	\$5,000
	Sears Pond State Forest- Lewis 17 & 27		.5	Montague	Lewis	Short Trail	ATV	Deer Hunting & Access to Deer River	\$4,000

REG	LOCATION	MILES ROADS	MILES TRAILS	TOWN	COUNTY	ROAD OR TRAIL NAME	RECOMMENDED VEHICLE TYPE (Car/truck/ATV, Other as specified on Permit)	PROGRAM	\$ NEEDED TO OPEN
6	Swancott Mills State Forest- Lewis 26	1.3		Lewis	Lewis	Jug Point Road	ATV/Truck	Deer Hunting	\$0
6	Swancott Mills State Forest- Lewis 26		.4	Lewis	Lewis	Still Trail	ATV	Deer Hunting	\$5,000
6	Tug Hill State Forest- Jeff. 3,4,5 & Lew.-Jeff. 2			Worth	Jefferson	Clydes Road	ATV	Deer Hunting	\$0

**EXHIBIT C
ACCESSIBILITY PROJECTS RELATED TO
EXISTING WILD FOREST FACILITIES AND OPPORTUNITIES**

#	Region	UMP	Project	Cost
1	3	Bluestone	Resurface existing path to the shores of Onteora Lake, construct fishing pier, install bulletin board	\$25,000
2	3	Bluestone	Construct and install three (3) accessible picnic tables	\$3,000
3	3	Balsam Lake Mountain	Improve access to dam for fishing and fishing pier	\$25,000
4	3	Balsam Lake Mountain	Construct and install accessible interpretive kiosk	\$1,000
5	3	Balsam Lake Mountain	Provide accessible port-a-john for 8 months a year	\$1,000
6	3	Balsam Lake Mountain	Construct and install three (3) accessible picnic tables	\$3,000
7	3	Balsam Lake Mountain	Improve parking area to accessible guidelines	\$2,000

#	Region	UMP	Project	Cost
8	3	Sundown	Improve Peekamoose parking area to accessible guidelines	\$5,000
9	3	Sundown	Install one accessible port-a-john near camping site	\$1,000
10	3	Sundown	Construct and install three (3) accessible picnic tables	\$3,000
11	3	Sundown	Construct a one-quarter (1/4) mile accessible trail to campsite area for stream fishing access	\$5,000
12	3	Sundown	Construct and install accessible interpretive kiosk	\$1,000
13	3	Shandaken (Riesser Estate)	Construct accessible routes to lower pond and picnic site -- 1/4 mile	\$5,000
14	3	Shandaken (Riesser Estate)	Construct and install two (2) accessible picnic tables	\$2,000
15	3	Shandaken (Riesser Estate)	Improve parking area for two (2) vehicles to accessibility guidelines	\$10,000
16	3	Shandaken (Riesser Estate)	To provide accessible port-a-john -- 8 months a year	\$1,000
17	3	Shandaken (Riesser Estate)	Construct and install accessible interpretive kiosk	\$1,000

#	Region	UMP	Project	Cost
18	3	Shandaken (Albenden Area)	To provide accessible port-a-john – 8 months a year	\$1,000
19	3	Shandaken (Albenden Area)	Construct and install two (2) accessible picnic tables	\$2,000
20	3	Shandaken (Albenden Area)	Construct two (2) accessible camping areas	\$6,000
21	3	Shandaken (Albenden Area)	Construct accessible route to accessible camping area	\$2,000
22	3	Shandaken (Albenden Area)	Construct and install accessible interpretive kiosk	\$2,000
23	4	Campbell Mountain/ Cherry Ridge	Construct vehicle bridge on Trout Pond Road to access Trout and Mud Ponds; stabilize road by installing water diversion bars	\$80,000
24	4	North/South Lake Campground	Construct accessible trail from North Lake camping area to viewshed from escarpment; construct viewing platform	\$20,000

#	Region	UMP	Project	Cost
25	4	Kaaterskill	Construct accessible equestrian mounting platforms at Sleepy Hollow and Schutt Road trailheads; develop accessible campsite and privy; accessible equestrian mounting platform along the Sleepy Hollow Horse Trail	\$15,000
26	4	Colgate Lake	Develop accessible fishing access site	\$20,000
27	4	Colgate Lake	Develop accessible recreation trail around the lake – 1.5 miles	\$20,000
28	4	Colgate Lake	Develop accessible campsite and privy	\$4,000
29	4	Hunter Mountain	Construct accessible equestrian mounting platforms at the Hunter Brook parking area and at the Hunter Mountain Fire Tower	\$5,000
30	4	Middle Mountain	Develop accessible campsite and privy at Big Pond	\$4,000
31	4	Campbell Mountain	Develop accessible campsite and privy at Trout Pond, including motor vehicle access	\$6,000
32	4	Campbell Mountain	Develop two (2) accessible campsites and privies at Russell Brook	\$10,000

#	Region	UMP	Project	Cost
33	5	Moose River	Modify eight (8) campsites and privies to make accessible.	\$45,000
34	5	Saranac Lakes	Construct two (2) parking spaces to accessibility guidelines; construct accessible boardwalk, with signs and interpretive materials. ¹	\$30,000
35	5	Lake George	Construct accessible horsedrawn wagon, carriage and/or equestrian mounting platforms that are accessible to persons with mobility impairments at Fishbrook Pond	\$6,000
36	5	Lake George	Construct accessible horsedrawn wagon, carriage and/or equestrian mounting platforms that are accessible to persons with mobility impairments at Millman Pond	\$6,000
37	5	Lake George	Construct accessible horsedrawn wagon, carriage and/or equestrian mounting platforms that are accessible to persons with mobility impairments at Bumps Pond	\$6,000

¹As an existing facility, the boardwalk will be an allowable upgrade outside of the UMP process; as a new facility, this project will be undertaken via the UMP process.

#	Region	UMP	Project	Cost
38	5	Camp Santanoni	Construct accessible horsedrawn wagon, carriage and/or equestrian mounting platforms that are accessible to persons with mobility impairments at Newcomb Lake	\$6,000
39	6	Black River (Wolf Lake)	Construct and install accessible picnic table and privy along the Moose River near Remsen Falls.	\$5,000
40	6	Black River (Little Long Lake)	Improve parking area to accessibility guidelines; Construct accessible car-top boat launch; Construct accessible campsites and accessible route.	\$25,000
41	6	Fulton Chain	Improve parking area to accessibility guidelines; modify: Moss Lake, non-motorized, wheelchair accessible recreation trail, campsites, access route to lake, picnic tables; construct accessible benches and viewing deck along the shore of Moss Lake.	\$70,000
42	6	Independence River (Stillwater Res.)	Improve the parking area to accessibility guidelines; modify: access route to the boat launch area, dock and four campsites and provide accessible privies.	\$260,000

#	Region	UMP	Project	Cost
43	6	Independence River (Francis Lake)	Modify car-top boat launch site to make accessible; modify parking area to accessibility guidelines; modify access route, construct an accessible dock.	\$20,000
44	6	Independence River (Basket Factory Rd.)	Modify campsite and privy to make accessible.	\$5,000
45	6	Independence River (Smith Rd.)	Modify campsite and privy to make accessible.	\$5,000
46	6	Independence River (McCarty Rd.)	Modify campsite and privy to make accessible.	\$5,000
47	6	Independence River (Otter Creek Horse Trails)	Construct three (3) accessible equestrian mounting platforms at scenic points.	\$6,000
48	6	Independence River (Payne Lake)	Modify car-top boat launch site to make accessible. Modify parking area to accessibility guidelines; modify access route and construct an accessible dock.	\$20,000

#	Region	UMP	Project	Cost
49	6	Horseshoe Lake (Horseshoe Lake)	Modify parking area to accessibility guidelines; construct accessible fishing pier, modify campsites and information kiosks to make accessible.	\$40,000
50	6	Grasse River (Lampson Falls)	Modify parking area to accessibility guidelines; modify information kiosk and access route to falls to make wheelchair accessible.	\$20,000
			Total	\$871,000

EXHIBIT D
ACCESSIBILITY PROJECTS TO BE UNDERTAKEN
WITH RESPECT TO LOCATIONS IDENTIFIED IN EXHIBIT A, UPON
COMPLETION OF THE UMP PROCESS FOR THE WILD FOREST UNITS
IN WHICH THEY ARE LOCATED, AND FOR ACCESSIBILITY PROJECTS
FOR ROADS THAT ARE CURRENTLY OPEN TO MOTOR VEHICLE TRAFFIC

Reg	UMP	UMP Status	Project	Cost
5	Moose River	Fast Track (18 mo.)	Rehabilitate Limekiln Lake-Cedar River Road, modify campsites and privies, construct 3 accessible fishing piers and 2 accessible canoe launches	\$275,000
5	Moose River	Fast Track (18 mo.)	Rehabilitate Helldiver Pond Road, 0.5 miles and construct accessible fishing pier.	\$25,000
5	Moose River	Fast Track (18 mo.)	Rehabilitate Mitchell Ponds Road, 3 miles and construct accessible fishing pier. Modify campsites and privies.	\$85,000
5	Moose River	Fast Track (18 mo.)	Rehabilitate Icehouse Pond Road, 0.5 miles and construct accessible fishing pier.	\$25,000
5	Moose River	Fast Track (18 mo.)	Rehabilitate Beaver Lake Road, 2 miles; modify campsites, privies and construct accessible fishing pier.	\$75,000
5	Moose River	Fast Track (18 mo.)	Rehabilitate Squaw Lake Road, 0.5 miles and construct accessible fishing pier. Modify campsites and privies.	\$35,000

Reg	UMP	UMP Status	Project	Cost
5	Wilcox Lake	Fast Track (18 mo.)	Rehabilitate Arrow Road from Wilcox Lake Road to Baldwin Springs (4 miles), for disabled ATV access to camping, hunting and nature observation.	\$20,000
6	Independence River	Completed Amend (6 mo.)	Rehabilitate Mount Tom Road, 4.7 miles, for disabled ATV access to wildlife observation and hunting opportunities	\$20,000
6	Aldrich Pond	Completed Amend (6 mo.)	Rehabilitate Kalurah Road, 2.5 miles, for disabled ATV access to wildlife/nature observation and hunting opportunities	\$25,000
6	Independence	Completed Amend (6 mo.)	Open Branaugh Road, 0.25 miles, for accessing camping, hunting and swimming opportunities	
			Total	\$585,000

EXHIBIT E
ADDITIONAL CAPITAL PROJECTS

Reg	UMP	Project	Cost
3	Mongaup Pond	Loops D and E: reconstruct campsite pads to accessible standards	\$10,000
3	Mongaup Pond	Construct access route to beach	\$3,000
4	North/South Lake	Rehabilitate showers to comply with accessibility guidelines	\$100,000
4	North/South Lake	Construct ten (10) accessible camping pads, tables, and fireplaces	\$10,000
5	Fish Creek	Modify eleven (11) campsites to make accessible.	\$11,000
5	Fish Creek	Modify parking area to accessibility guidelines	\$25,000
5	Fish Creek	Modify toilet access.	\$100,000
5	Fish Creek	Modify access routes to two (2) pavilions	\$10,000
5	Fish Creek	Construct fishing access to make accessible.	\$10,000
5	Rollins Pond	Modify nine (9) campsites to make accessible.	\$9,000
5	Rollins Pond	Modify parking area to accessibility guidelines	\$25,000
5	Rollins Pond	Modify toilet access route to make accessible.	\$100,000
5	Northhampton Beach	Modify ten (10) campsites to make accessible.	\$10,000
5	Rogers Rock	Modify twelve (12) campsites to make accessible.	\$12,000
5	Hearthstone Point	Modify ten (10) campsites to make accessible	\$10,000

Reg	UMP	Project	Cost
5	Lake George Beach and Battlefield Park	Modify ten (10) campsites to make accessible	\$10,000
5	Moffit Beach	Modify ten (10) campsites to make accessible	\$10,000
5	Saranac Lake Islands	Modify four (4) campsites to make accessible	\$20,000
6	Nicks Lake	Upgrade existing canoe launch to make accessible and provide accessible fishing pier	\$150,000
6	Nicks Lake	Rehabilitate existing toilet units in Loops B, C, and E to comply with accessibility guidelines	\$50,000
6	Nicks Lake	Replace existing toilet unit in Loop A to comply with accessibility guidelines	\$200,000
6	Cranberry Lake	Reconstruct shower house to comply with accessibility guidelines	\$150,000
6	Cranberry Lake	Construct bath house to comply with accessibility guidelines	\$300,000
6	Cranberry Lake	Construct dual purpose accessible sites	\$40,000

Reg	Project	Cost
5	Rehabilitate existing boating and fishing access sites (29): Lake Colby Lake Placid Long Lake Fourth Lake Schroon Lake (Horicon) Mossy Pt. (Lake George) Northville Peru Dock Port Douglas Port Henry Raquette River Great Sacandaga Lake - Th of Day Second Pond South Bay (Pier) Ticonderoga Tupper Lake Upper Chateaugay Lake Upper Saranac Lake West Lake Westport Willsboro Moose Pond East Pine Pond Follensby - Clear Pond Indian Carry	\$362,000

Reg	Project	Cost
5	Rehabilitate parking areas (5) to accessible standards: Hague Brook Black Pond @ Paul Smiths Bouquet River - Wadhams No. Branch Saranac No. Branch Chazy	\$15,000
Total		\$1,752,000

EXHIBIT F

REGION 6 FWMB ITEMS

A. JEFFERSON COUNTY

1. Black River boat/fishing access upstream from the City of Watertown.

OPRHP will be building a cartop access at the upper end of the impoundment.

2. The current boat launch facility (OPRHP) at Chaumont needs improved access signage on the highway and some enhancement of the ramp and parking facility.

A new entrance sign was installed on Route 12E in the summer 2000. Defendants commit to improve the ramp and parking facility. Cost: approximately \$40,000.

B. ONEIDA COUNTY

1. Improved access roadways at the Oriskany Flats WMA, i.e. bringing roads up to grade, additional fill, etc.

Defendants commit to make the necessary improvements, including constructing 1.5 miles of access roads, replacing or repairing one large culvert bridge, replacing one smaller culvert and rebuilding a farm access road. Cost: approximately \$200,000.

C. HERKIMER COUNTY

1. Improved access and signage to Moshier Falls, Pepperbox Wilderness.

Defendants commit to improve the road to the current Moshier parking below the Stillwater dam, and improve the parking lot. Cost: approximately \$30,000.

2. Improved access to Sis Lake and Bubb Lake with improved parking on Route 28.

Defendants commit to work with DOT to expedite the improvement to parking on Route 28, comprised of a paved 4-5

car parking area adjacent to Route 28.

3. The Bear Creek Road should be opened for public vehicular access to state lands.

This road is already open for 3.1 miles into the Forest Preserve (Black River Wild Forest). Its name is Mill Creek Road once it enters Forest Preserve.

D. LEWIS COUNTY

1. Improved access to the Soft Maple Flow of the Beaver River.

As part of the settlement of this litigation, Defendants commit to construct a cartop boat launch at the Soft Maple Reservoir. Cost: approximately \$15,000.

2. Improved access and signage to:

Long Pond
Rock Pond
Trout Pond aka Trout Lake
Round Pond

The following has improved and will continue to improve access and signage: a new FWMA agreement has been signed with the Future Farmers of America, purchase of lands from Champion will provide public access to some of these waters, and in 1999 a new canoe/small boat access site for persons with disabilities was developed adjacent to the West Branch of the Oswegatchie which will provide access to Mud and Rock ponds.

3. Improve Big Otter Lake access road.

As part of the settlement of this litigation, Defendants will propose and support through the UMP process to improve/upgrade this road. Cost: approximately \$30,000.

E. ST. LAWRENCE COUNTY

1. Towns of Colton, Church Pond access trail from State Route 56 requires better signage and roadside parking.

To be addressed in the UMP process, due to begin in January 2002.

2. Town of Clare/Colton, Stone Dam Forest Preserve tract requires better signage, vehicular access and parking.

As part of the settlement of this litigation, Defendants commit to develop a brochure for the Long Pond tract that identifies the access to the Stone Dam tract.

3. Town of Pitcairn, Aldrich Pond Wild Forest requires better signage and a parking area at the end of the Powell Road.

The Powell Road has been upgraded through to the forest preserve boundary so the forest preserve lands there are now much more accessible. As part of the settlement of this litigation, Defendants commit to upgrade parking lot at this location. Cost: approximately \$10,000.

4. Towns of Colton/Piercefield regarding Niagara Mohawk Power Corp. lands. Improved access signage in those areas not immediately adjacent to public roadways.

As part of the settlement of this litigation, Defendants commit to improve access signage and develop a brochure providing information concerning these areas.

5. Town of Depeyster, Mud Lake improved access across existing state land and parking.

As part of the settlement of this litigation, Defendants commit to expend funds necessary for road improvements, a parking lot and signage. Cost: approximately \$25,000.

6. Towns of Hermon/Russell, access to and fishing rights on Elm Creek consistent with DEC Fisheries determining if renewed brown trout management would be viable.

As part of the settlement of this litigation, Defendants commit to do a survey with respect to this item.

7. Towns of Rossie/Gouverneur, access to the Oswegatchie River for boating/fishing from Wegatchie to Elmdale.

A small boat launch built in Oxbow(is in Jeff. County but on this stretch of river). Defendants commit to making purchase of access to the Oswegatchie River at Elmdale a priority.

8. Towns of Waddington, Louisville, ensure continued access to state owned and NYPA lands for hunting, fishing and trapping on and adjacent to the St. Lawrence River.

Discussions are ongoing with the New York Power Authority about this and DEC's position is in support of this access issue.

EXHIBIT G

1. 13th Lake.

Motorized access is currently provided to a location approximately five hundred feet from the shoreline of Thirteenth Lake. Defendants will commit to procure the services of a consultant with expertise in non-motorized access, such as Wilderness Inquiry, to conduct and provide to Defendants an assessment of this location with respect to providing non-motorized access to Thirteenth Lake for boats and/or canoes. In addition, Defendants commit, to the extent consistent with the assessment provided by the consultant as mentioned above, to construct an Outdoor Recreation Access Route consistent with proposed ADAAG for Outdoor Developed Areas on Thirteenth Lake. Estimated time to complete assessment: 8 months from entry into contract with consultant.

2. Whitney/Little Tupper Lake.

Defendants will agree to construct a new accessible ramp to the wood dock at the Administrative Headquarters at a cost of approximately \$3,000.

3. Bear Slides/Hudson River Recreation Area ("HRRR").

Defendants commit to return picnic tables that were once at this location, and to remove barriers to access to the tables.

4. Pikes Beach.

This property is located in the HRRR, part of the Lake George Wild Forest. Defendants will support and fund the addition and maintenance of accessible camping sites and privies, and to support, through the UMP process, opening the road to motorized access for those with qualifying disabilities. Estimated Costs: \$5,000 initial costs, \$1,000 annual maintenance. Defendants are currently determining whether the UMP has already designated camping sites; if so, UMP amendment would be necessary only with respect to the road.

5. Schofield Flats.

Also located in the HERRA, Defendants will support and fund necessary road improvements (to reduce grade and erosion problems), as well as to designate camping sites and construct accessible privies. Estimated Costs: \$10,000 initial costs, \$2,000 annual maintenance.

6. Aldrich Pond.

Plaintiffs have requested a commitment to keep open the existing motorized access, especially to Streeter Lake. Defendants agree to support this through subsequent Unit Management Plans. In addition, the Department will specifically consider accessible campsites/shelters/lean-tos.

7. Lily Pond Road.

This road is currently open to motor vehicles, and is a designated snowmobile trail from Route 8 to the shore of Lily Pond. Although currently passable by two wheel drive truck, the defendants propose to conduct extensive maintenance to improve the road so that a car could access Lily Pond. Estimated Costs: \$40,000 initial costs, \$10,000 annual maintenance.

8. Champion Easement Projects.

Approximately 25 miles of easement roads were recently opened to public motor vehicle access. At Sand Pond Road on the Croghan Easement Tract, the Department will agree to construct an accessible parking lot and an Outdoor Recreation Access Route consistent with proposed ADAAG for Outdoor Developed Areas to Sand Pond. Cost: \$12,000. As additional Champion easement roads are identified and opened over the next few years, the Department will seek out other opportunities for related accessibility projects.

9. Long Pond Easement.


DEC will upgrade more than 30 miles of roads and 10 miles of trails as new opportunities for ATV use. Estimated cost: \$400,000. It should be noted that the easement restricts use of the easement lands from 1998 through 2013 as follows: No public hunting from September 1 to December 15, and no public use whatsoever from October 1 to December 15.

EXHIBIT H

**INJUNCTION ROADS TO REMAIN OPEN
SUBJECT TO FINAL APPROVAL IN THE UMP PROCESS**

#	Reg.	UMP	UMP Status	"Road" Name	Miles	Program(s)
1	5	Lake George	Fast Track (18 mo.)	Gay Pond	3.3	Fishing, Camping
2	5	Lake George	Fast Track (18 mo.)	Jabe Pond	0.1	Fishing, Camping
3	5	Lake George	Fast Track (18 mo.)	Lily Pond	2.3	Fishing, Camping
4	5	Lake George	Fast Track (18 mo.)	Buttermilk Roads	3.5	Fishing, Camping
5	5	Luzerne Campground	Completed (6 mo.)	Lake Luzerne Campsite - 4 th Lake	2.44	Fishing, Camping
6	5	Moose River Plains Roads	Fast Track (18 mo..)	Rock Dam, Otterbrook, Indian Lake, Limekiln Lake- Cedar River	36.1	Fishing, Camping, Wildlife Viewing
				TOTAL	47.74	

EXHIBIT B

 <p>New York State Parks, Recreation and Historic Preservation</p> <p>Section: Operations</p>	<p>Policy Title: Use of Other Power-Driven Mobility Devices in Outdoor Areas of New York State Parks & Historic Sites</p> <p>Directive: OPR-POL-024</p> <p>Effective Date: 04/01/2022</p>
--	--

Purpose

The New York State Office of Parks, Recreation & Historic Preservation (OPRHP) is committed to enabling the use and enjoyment of the State park system by persons with disabilities. The United States Department of Justice (DOJ) rules implementing the Americans with Disabilities Act (ADA) require public entities to allow people with disabilities who use manual or power wheelchairs or scooters, and manually-powered mobility aids such as walkers, crutches, and canes, to use such devices in any areas open to pedestrian use. A public entity must also make reasonable modifications in its policies, practices, or procedures to permit the use of other types of power-driven mobility devices (OPDMDs) by individuals with mobility disabilities, unless the entity can demonstrate that the type of OPDMD cannot be operated because of legitimate safety requirements or damage to natural resources.

Definitions

Other power-driven mobility device (OPDMD): Any mobility device powered by batteries, fuel, or other means – whether or not designed primarily for use by individuals with mobility disabilities – used by individuals with mobility disabilities, including golf carts, electronic personal assistance mobility devices (i.e., the Segway PT), or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

Wheelchair: A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the purpose of indoor or of both indoor and outdoor locomotion.

Process for Assessment

Who May Use OPDMDs: The ADA requires that people with mobility related disabilities be allowed to use OPDMDs, and also allows public agencies to institute reasonable restrictions on their use for legitimate safety reasons. The use of OPDMDs in OPRHP facilities is restricted to people with mobility disabilities as defined in §35.104 of Title II of the Americans with Disabilities Act. Users of OPDMDs may be asked to provide credible assurance that the mobility device is required because of their disability. A government-issued pass showing evidence of a

qualified mobility disability or any state's valid disabled parking placard or card assigned to the person who will be using the OPDMD constitutes credible assurance that a mobility device is required by the person's disability. A verbal representation is also acceptable, if the statement is not contradicted by observable fact. However, Staff shall not ask an individual using a wheelchair or OPDMD questions about the nature or extent of the individual's disability.

Assessment Factors: OPRHP facility managers have experience with OPDMD use and application of the prior version of this policy since 2015. The following factors are used in determining whether an OPDMD can be safely used in an OPRHP facility:

- i) The type, size, weight, dimensions, and speed of the device;
- ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- iii) The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
- iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with land management laws and regulations.

Land Classifications: Outdoor Developed Area Paths (e.g., through developed lawn areas, boardwalks or any other routes that pedestrians use).

Paved Trails

Typical examples of Paved Trails are Bicycle Class I (Greenway Trails) and developed or interpretive hiking trails. Paved trails are typically multi-use trails but in some high-use areas may be designated for foot traffic only. Tread width can vary from 5 to 14 feet with additional shoulder width. Considering the factors listed above, the characteristics of an OPDMD could affect other trail users based on the volume of pedestrian traffic and operational characteristics of the trail. These trails are typically high capacity, high volume, two-way traffic areas, where a width restriction allows for safe passing of other OPDMDs, bicycles and pedestrians.

Wide Unpaved Trails

Typical examples of wide unpaved trails are natural surface (unpaved) fire and park roads, carriage roads, and mowed trails, usually greater than 8 feet in width. These trails are typically wide enough for one-way vehicle traffic, and this width restriction allows for safe passing of other OPDMDs, bicycles, and pedestrians.

Standards for Outdoor Developed Area Paths, Paved Trails and Wide Unpaved Trails:

- **Size:**
OPDMDs shall not be wider than 48" (this width is needed in order to safely allow two OPDMDs to pass, and to allow OPDMDs to pass between bollards designed to prevent street vehicles operated by people without mobility disabilities from accessing the trails).
- **Weight:**
The overall weight of the device and user(s) shall not exceed 550 pounds (the weight limit is designed to limit heavier loads for two reasons. Heavier loads may cause damage to trails. Heavier devices may also be unstable on surfaces that may not be able to accommodate heavier loads safely).
- **Speed:**
OPDMDs shall not be operated at speeds in excess of 5 miles per hour (some paths or trails may be unpaved, and steeper than long-distance trails and any faster speeds would lead to soil erosion. Also, other paths and paved trails are more heavily used, and the lower speed limit is needed for the protection of other path or trail users).
- **Noise:**
OPDMDs shall not produce noise levels in excess of 70 decibels (this is a recognized maximum safe noise level).
- **Emissions:**
OPDMDs shall not exceed zero emissions during use (only manually or battery/electricity operated devices are permitted).

These trails include natural surface (unpaved), and often unimproved, narrow gauge tread (generally 18-36" tread width and maximum 6' corridor width), suitable for foot travel such as hiking, and/or multiple use activities, including mountain biking, and/or horseback riding. These are typically narrow trails; two-way traffic would require users to venture off-trail at risk of personal injury and harm to natural resources when overtaking or allowing passage.

Standards for Pedestrian (foot) or Multi-Use Single Track Trails:

- **Size:**
To protect other users on these trails, as well as their natural resources, only in-line OPDMD devices will be allowed. These OPDMDs should be smaller-sized and not exceed 26" in maximum width and have a maximum wheel width of 6".

The weight, speed, noise and emissions restrictions in the standards for the other land classifications above also apply to devices used on these pedestrian or multi-use trails.

In some facilities, these pedestrian or multi-use single track trails may be found in natural or remote areas and feature steep or uneven terrain, which may mandate additional caution and/or protections for natural resources. To protect patron safety and the area's natural

resources, it may be appropriate to preclude use of OPDMDs on these trails, or subject them to recurring seasonal or other restrictions. The facility managers should identify these trails in advance as not available to wheelchairs or OPDMDs and ensure that information is posted at the facility and on the Agency's websites and apps.

Policy Statement

If the OPDMD meets the standards for the land classifications described above an individual does not need to request access.

Exception

On a temporary basis, the facility manager may use the assessment factors and land classification to consider whether the characteristics of the OPDMD and on-site conditions such as the volume of traffic and operational characteristics of the area or seasonal conditions (e.g. flooding, rockslides, wildfires, crowds, etc.) could affect the safety of other users or the user of the OPDMD and may preclude use of the OPDMD. An articulable, legitimate safety concern may exist temporarily under certain seasonal conditions in specific areas of a park or historic site; however, OPDMDs should be allowed to the extent those temporary conditions are alleviated.

Prohibition

Gas-powered OPDMD

One type of OPDMD is a mobility device powered by a gas-fueled engine using natural gas, gasoline, diesel, synthetic or biofuel, or a combination thereof, including all-terrain vehicles (ATV), carts, off-road bikes, motor scooters, motorcycles, tractors and vehicles (whether two, three, or four wheeled).

OPDMDs equipped with gas-fueled engines will largely be prohibited in many park settings due to risks outlined below; however, the risks associated with gas-powered devices warrant an individualized assessment of the device's operating condition, operator's knowledge of existing conditions and restrictions, and the intended itinerary. This will reduce the risk of safety hazards arising from conflicting use of facilities and trail conditions. Consultation has not presented an unreasonable burden to users; virtually all state park facilities are staffed and have the capacity to review the request on-site and consult without undue delay.

OPRHP facilities possess significant natural topographical features and ecological resources that are managed to support a wide range of plant and animal communities in harmony with public recreation. Gas-powered OPDMDs present a substantial risk of harm to operators, visitors, and the immediate environment due to their internal combustion engines and relatively large dimensions, weight, driving range and/or horsepower.

Additional risks posed by gas-powered devices are detailed as follows:

- Volatile fuels present a risk of fire created by ignition systems and the heat of engine combustion.

- Fuel tanks may leak or fuel may spill during refueling. Fuel leaks damage the environment and may cause fire.
- Engine noise can produce a significant zone of disturbance to native wildlife and can negatively impact visitor experience. Noise presents a health risk to park users when it exceeds 70dB, which the World Health Organization has set as a maximum safe noise level in the workplace. Many gas-powered devices, such as ATV and motor bikes, have the capacity to routinely exceed this threshold level under otherwise normal operating conditions.
- The exhaust of small internal combustion engines may pose an air quality risk for park visitors and employees.

Other Notes:

- OPRHP facilities may post lower speed limits intended for all users that reflect path or trail conditions.
- Wheelchairs and OPDMD users must operate their devices in a safe manner, consider the nature of the path or trail and the other users.
- Wheelchairs or OPDMDs must always stay on designated paths or trails. Exceptions can be made when crossing turf or lawn areas or crosswalks to leave or rejoin a path or trail as necessary.
- When required by New York State law, wheelchair or OPDMD users shall wear protective gear or an appropriate helmet while operating their vehicles.

Forms

No forms.

Other Related Information

U.S. Department of Justice, Civil Rights Division, Disability Rights Section. *Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices*. <https://www.ada.gov/opdmd.htm>

History

- 04/01/2022 Substantial revisions, including removal of permits for OPDMDs, and providing guidance on device specifications for certain types of trails.
- 07/15/2015 Policy created and effective immediately.