

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ADIRONDACK PARK AGENCY
AND THE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CONCERNING IMPLEMENTATION OF THE
STATE LAND MASTER PLAN FOR THE
ADIRONDACK PARK

REVISED MARCH, 2010

Commissioner
New York State Department of
Environmental Conservation

Chairman
Adirondack Park Agency

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WHEREAS, the Legislature of the State of New York in 1885 established the Adirondack Forest Preserve, and in 1892 created the Adirondack Park to consist of both the Forest Preserve and private lands within the Park's boundary, and in 1895, the People of the State of New York, through constitutional amendment, further protected the Forest Preserve as lands to remain "Forever Wild"; and

WHEREAS, the New York State Department of Environmental Conservation (DEPARTMENT) has the statutory responsibility under the Environmental Conservation Law, to provide for the care, custody, and control of the Forest Preserve, and for the protection of other natural resources of the State; and

WHEREAS, the New York State Adirondack Park Agency (AGENCY), has the statutory responsibility under the Adirondack Park Agency Act for the long-range planning for the Adirondack Park, including the preparation, continual revision and evaluation, administration and interpretation of the Adirondack Park Private Land Use and Development Plan and Map and the interpretation preparation and periodic revision of the Adirondack Park State Land Master Plan (APSLMP), and for the administration within the Park of the Freshwater Wetlands Act; and

WHEREAS, the DEPARTMENT and the AGENCY each recognize that, as units of the same New York State Executive Department, it is imperative that the specific authorities and program responsibilities of each are administered as cooperative elements of a coordinated State government program for the Adirondack Park; and

WHEREAS, the DEPARTMENT and the AGENCY each agree that their specific program responsibilities and activities are enhanced by the involvement and participation of the other, including coordinated policy development and implementation, as well as sharing of information, technical and other resources; and

WHEREAS, the AGENCY and the DEPARTMENT agree that it is in the interest of the State of New York to fully coordinate and integrate their respective program responsibilities as they pertain to the Adirondack Park for the good of the People of the State, State government, the Adirondack local governments, residents of the Park and Park visitors; and

WHEREAS, the DEPARTMENT and the AGENCY agree that this Memorandum is not intended to diminish any authority or responsibility of either the DEPARTMENT or the AGENCY nor transfer to the other any authority to act on matters with which it is charged;

NOW, THEREFORE, the parties do hereby agree to exercise their responsibilities and authorities through the cooperative arrangements created by this Memorandum.

I. GENERAL COORDINATION AND COMMUNICATION

(a) The DEPARTMENT and the AGENCY will each conduct their various program responsibilities with respect to the Adirondack Park State lands so as to promote the recognition, support and acceptance by the general public of the laws, rules, regulations, administrative policies and procedures of the other.

(b) The DEPARTMENT and the AGENCY will communicate and coordinate as follows:

(1) The agencies agree that any policy or guidance developed by the DEPARTMENT which impacts the AGENCY and any policy or guidance developed by the AGENCY which impacts the DEPARTMENT shall be effective only if developed cooperatively and agreed to by both agencies. Conforming amendments will be made to this Memorandum of Understanding if required by such new policy or guidance.

(2) Except with respect to the procedures for Unit Management Planning Set forth in section IV, Adirondack Park State Land Unit Management Plans (UMPs), all actions requiring formal, written interagency consultation pursuant to paragraph I.(b)(4) shall be coordinated through the primary contact persons designated in paragraph I.(b)(3). The agencies shall maintain and share current organization charts depicting their respective subdivisions of program responsibilities.

(3) The DEPARTMENT and the AGENCY will each appoint a primary contact person for implementation of this Memorandum. The primary contact person for the DEPARTMENT shall be the Forest Preserve Coordinator, New York State Department of Environmental Conservation. The primary contact person for the AGENCY shall be the Director, Planning, Adirondack Park Agency.

(4) Where there has been interagency consultation at the DEPARTMENT and AGENCY staff level and staff disagree, the matter will be formally referred in writing for resolution as follows. A written request may be transmitted by the primary contact person for the DEPARTMENT to the Commissioner of Environmental Conservation's designee to the AGENCY. A written request may be transmitted by the primary contact person for the AGENCY to the Executive Director of the AGENCY. Issues which cannot be resolved by such designee and such Executive Director within 30 days of such referral will be referred by them for final resolution to the AGENCY Chairman and the Commissioner of Environmental Conservation according to the applicable regulations and procedures of each.

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(c) The DEPARTMENT and AGENCY will share, to the fullest extent possible, all information and data pertaining to the natural, physical, social, and economic resources of the Adirondack Park collected by each.

(d) The DEPARTMENT and AGENCY will provide each other with actions or policy determinations as described hereafter that may affect program responsibilities of the other.

(e) The DEPARTMENT and the AGENCY each will not represent any technical or legal positions on behalf of the other except by express mutual agreement; furthermore, the DEPARTMENT and the AGENCY each agree to provide timely notice to the proponent of any improvement within the Adirondack Park of the possible regulatory responsibilities of the other.

(f) In recognition of the regulatory role and program responsibilities of the AGENCY, the AGENCY shall not request, nor shall the DEPARTMENT provide, any information pertaining to specific acquisitions of land by the DEPARTMENT as additions to the Adirondack Forest Preserve prior to binding contract or title transfer. The DEPARTMENT shall not request the AGENCY to consider any change to the Adirondack Park Private Land Use and Development Plan Map's classification of private lands that the Department proposes to acquire.

II. ADIRONDACK PARK STATE LAND MASTER PLAN

(a) The AGENCY shall prepare and shall periodically revise the APSLMP. The APSLMP shall provide a policy framework for the administration and management of the Adirondack Park Forest Preserve lands by the DEPARTMENT. The APSLMP establishes a system and procedure for the classification of all State lands, describes the general guidelines for the management and use of such lands, designates specific units of such land in accordance with the classification system, and provides for the implementation of the APSLMP by the DEPARTMENT through the Unit Management Planning process. Terms within this Memorandum of Understanding shall be interpreted by reference to the definitions and provisions of the APSLMP.

(b) The AGENCY will consult with the DEPARTMENT in the revision of the APSLMP as follows:

(1) The AGENCY shall not undertake the revision of the APSLMP, including any hearings or public review documents without prior notice to the Commissioner of Environmental Conservation of the intent to do so.

(2) The AGENCY shall request the official designation of a representative of the DEPARTMENT to participate with the AGENCY on behalf of the DEPARTMENT in any process of APSLMP revision.

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(3) The AGENCY shall provide the DEPARTMENT with a schedule for the revision of the APSLMP and shall promptly advise the DEPARTMENT of any changes proposed thereto.

(4) The AGENCY will solicit the recommendations of the DEPARTMENT prior to the appointment of any citizen's advisory committee for the purposes of assisting the AGENCY in preparing revisions to the APSLMP.

(5) The AGENCY shall provide the DEPARTMENT with proposed revisions to the APSLMP prior to conducting any required public hearing on such proposed revisions, and shall provide the DEPARTMENT with a minimum of thirty (30) days prior to such hearings for review and response to such proposed revisions.

(6) The AGENCY will advise the DEPARTMENT, in writing, of its acceptance or rejection of any recommendations of the DEPARTMENT with respect to any APSLMP revision at least fifteen (15) days prior to such hearings.

(7) The AGENCY, after public hearings on the proposed revisions to the APSLMP shall provide the DEPARTMENT with a copy of the revised APSLMP as proposed for submittal to the Governor for approval, and shall provide the DEPARTMENT with a minimum of thirty (30) days for review and response prior to the submittal of the proposed revised APSLMP by the Chairman of the AGENCY and the Commissioner of the DEPARTMENT to the Governor.

III. STATE LAND CLASSIFICATIONS

(a) The AGENCY will classify new State land acquisitions in the Adirondack Park using the following procedure:

(1) The AGENCY shall not undertake classification of new State land acquisitions within the Adirondack Park without prior written notice to the Commissioner of Environmental Conservation of the intent to do so.

(2) The AGENCY shall request the official designation of a representative of the DEPARTMENT to participate with the AGENCY on behalf of the DEPARTMENT in the assignment of classifications to new land acquisitions. The AGENCY shall designate a staff member to serve as the AGENCY's contact person to the DEPARTMENT.

(3) The AGENCY shall provide the DEPARTMENT with a schedule for the classification of new acquisitions and will promptly advise the DEPARTMENT of any changes to such schedule.

(4) The AGENCY shall provide the DEPARTMENT with drafts of the proposed classifications prior to the conduct of public hearings and will provide the DEPARTMENT with a minimum of thirty (30) days for review and response to such drafts prior to such hearings.

(5) The AGENCY shall advise the DEPARTMENT in writing of its acceptance or rejection of the recommendations of the DEPARTMENT with respect to classifications at least fifteen (15) days prior to such hearings.

(6) The AGENCY, after public hearings on the classifications as required by Executive Law §816(2), shall provide the DEPARTMENT with the classifications as proposed for submittal to the Governor, and shall provide the DEPARTMENT with a minimum of thirty (30) days for review and response prior to the submittal of the proposed classifications by the Chairman of the AGENCY and the Commissioner of the DEPARTMENT to the Governor for approval.

IV. ADIRONDACK PARK STATE LAND UNIT MANAGEMENT PLANS

General Guidelines

(1) The DEPARTMENT shall prepare and periodically revise UMPs for each of the discrete units of State land in the Adirondack Park, as outlined in the APSLMP, Section I, Introduction, "Unit Management Planning Development." UMPs will contain an inventory of the natural resources, facilities and public use of State land units; establish goals and objectives for the future use and management of State land units; evaluate alternative plans for the provision and management of public use of State land units and an assessment of the environmental impacts of each alternative; establish preferred management options for each unit through a procedure involving the participation of interested citizens, user groups and adjacent local governments; describe the specific management goals and policies which are incorporated in the preferred management plan; describe any specific physical development or improvement projects required by the management plan, including a priority schedule for the completion of each project and estimated costs thereof; provide a priority schedule for the removal and/or termination of any non-conforming uses; and describe procedures for the continued monitoring of the plan's implementation. A UMP cannot amend the APSLMP and as finally adopted shall be in conformance with the general guidelines and criteria of the APSLMP. Any issues with respect to conformance of a proposed UMP with the APSLMP will be resolved and any necessary Amendments to the APSLMP acted on, in accordance with the provisions of this memorandum, prior to the DEPARTMENT providing the AGENCY with a

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proposed Final UMP for final review and determination as to whether such UMP complies with the general guidelines and criteria set forth in the APSLMP.

(2) The DEPARTMENT annually shall provide the AGENCY with a schedule for the preparation and/or revision of any UMP proposed to be undertaken by the DEPARTMENT and shall promptly advise the AGENCY of any changes thereto. The DEPARTMENT will provide the AGENCY with a status report of the preparation and revision of UMPs at the monthly AGENCY meeting.

(3) The DEPARTMENT will consult with the AGENCY prior to undertaking the preparation of a UMP to identify significant issues and constraints, scheduling, data needs, and public involvement.

(4) On request of the DEPARTMENT, or on its own initiative, the AGENCY will promptly provide interpretations of the APSLMP to facilitate the preparation of UMPs and to otherwise administer and manage the State lands of the Adirondack Park.

Staff Consultation

The DEPARTMENT will consult with the AGENCY in the preparation and/or revision of a UMP as follows:

(1) The DEPARTMENT shall not undertake the preparation and/or revision of any UMP without written notice to the AGENCY of the intent to do so.

(2) The Director of Planning is the designated contact for communications between the DEPARTMENT and the AGENCY for the AGENCY'S State Land program. The AGENCY'S Executive Director may designate other AGENCY staff to be the contact on specific issues as appropriate and will so notify the designated contact for the DEPARTMENT, AGENCY Chair, and the Chair of the State Land Committee. The Forest Preserve Coordinator is the designated contact for communications between the AGENCY and the DEPARTMENT. The Director of the Division of Lands and Forests may designate other DEPARTMENT staff to be the contact on specific issues as appropriate and will so notify the designated contact for the AGENCY.

(3) The DEPARTMENT shall request the official designation of a representative of the AGENCY to assist the DEPARTMENT with preparation and/or revision of UMPs. The AGENCY'S Director of Planning will designate AGENCY staff to be members of each of the DEPARTMENT'S UMP teams.

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(4) To assist the planning team in the development of individual UMPs AGENCY staff - the Director of Planning's designee(s), will receive UMP materials for review coincident with the DEPARTMENT'S team members, consult on APSLMP conformance issues, participate in planning team discussions and review preliminary UMP drafts, and comment on UMP text and proposed management actions.

(5) DEPARTMENT staff will consult with the AGENCY's State Land staff during the drafting of UMPs and UMP Amendments. AGENCY staff will review preliminary draft UMPs and provide comment on SLMP conformance issues. This internal, informal, deliberative process is essential to establishing the interagency relationship envisioned by the APSLMP and is ordinarily exempt from Freedom of Information Law (FOIL).

(5) AGENCY State Land staff will participate in public information sessions and conduct field inspections with the planning teams.

(6) In the preparation of UMPs, the DEPARTMENT will normally serve as lead agency for State Environmental Quality Review (SEQR) and the AGENCY will participate in the SEQR process as an involved agency.

UMP Review

INITIAL DRAFT UMP:

(1) The DEPARTMENT will provide AGENCY staff with five review copies of an internal "Initial Draft" of the UMP for each State land unit including alternative management objectives, where appropriate, for review and comment, prior to the completion of a draft plan for public review (the "Public Draft").

(2) The Initial Draft UMP will contain all the elements specified in the APSLMP, including all required inventories, statement of alternative management objectives, administrative actions, schedules for UMP implementation and all information, text, maps and appendices which are intended for inclusion in the Public Draft.

(3) Unless otherwise determined upon agreement by the DEPARTMENT and the AGENCY, within 45 days of the receipt of a complete Initial Draft, the Director of Planning will provide the DEPARTMENT with internal AGENCY comments on the Initial Draft UMP after review with the Chair of the AGENCY, the Chair of the State Land Committee and the Executive Director.

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- (4) Staff comments provided by the AGENCY's Director of Planning will evaluate the Initial Draft UMP's conformance with the requirements of the APSLMP. The DEPARTMENT will advise the AGENCY in writing of its responses to AGENCY staff comments on the Initial Draft UMP.
- (5) Prior to release of the Public Draft for public review, AGENCY staff will provide the DEPARTMENT with a written evaluation of APSLMP conformance issues in the proposed Public Draft. These inter-agency communications are an essential part of the deliberative process ordinarily exempt from FOIL.

PUBLIC DRAFT UMP:

- (1) The Public Draft which is released by the DEPARTMENT for public review and comment will contain appropriate SEQRA documents.
- (2) The DEPARTMENT will provide copies of the Public Draft to the AGENCY members, Executive Director and State Land staff. Upon release of the Public Draft, DEPARTMENT staff will provide a presentation to the AGENCY on the proposed management actions contained in the Public Draft and provide a written submission to the AGENCY discussing the DEPARTMENT's position on key APSLMP conformance issues. AGENCY staff will also at that time provide a presentation or written evaluation summarizing APSLMP conformance issues in the Public Draft UMP being presented.
- (3) If the initially released Public Draft is revised, subsequent Drafts will be entitled "Revised Public Draft" and dated appropriately.

FINAL UMP:

- (1) The DEPARTMENT, after completion of public review and comment on any UMP, shall prepare a response to public comments, necessary SEQR documentation and a proposed Final UMP. After the Commissioner of the DEPARTMENT approves the proposed Final UMP, the DEPARTMENT will transmit the proposed Final UMP to the AGENCY. The AGENCY shall not make its APSLMP conformance determination on the proposed Final UMP until at least 30 days after receiving such UMP from the DEPARTMENT.
- (2) The proposed Final UMP will be in a form proposed for approval of the Commissioner of the DEPARTMENT and include a summary of all public comments received and DEPARTMENT responses to comments.

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(3) DEPARTMENT staff will make a presentation on the proposed Final UMP as a “first reading” and prior to formal approval by the AGENCY for APSLMP conformance. AGENCY staff will provide the AGENCY with a presentation or written evaluation summarizing APSLMP conformance issues with the proposed Final UMP being presented.

(4) A minimum of two AGENCY meetings are preferred for final determination by the AGENCY as to whether the proposed Final UMP is in conformance with the Master Plan. One or more additional meetings may be scheduled by the AGENCY depending on the complexity of the APSLMP issues in a particular plan and the nature of public comment received during the AGENCY’s comment period.

(5) The AGENCY will provide public notice via its normal meeting announcements and accept written public comments on the conformance of the proposed Final UMP with the APSLMP for a minimum of two weeks subsequent to the “First Reading” by DEPARTMENT staff and presentation by AGENCY staff on APSLMP conformance issues. The opportunity for public comment will close two weeks prior to the AGENCY meeting at which an APSLMP conformance determination is scheduled. All public comments received will be reviewed by AGENCY staff and copies will be provided to AGENCY members and designees.

(6) AGENCY staff will review the proposed Final UMP and the Director of Planning will transmit a draft staff recommendation summarizing the Plan and evaluating its conformance with the APSLMP. A draft resolution for AGENCY consideration will be provided to the Chair of the AGENCY, the Chair of the State Land Committee and the Executive Director for their review.

(7) After review by the Chair of the AGENCY, the Chair of the State Land Committee and the Executive Director, the Director of Planning will prepare a final staff recommendation and draft resolution for AGENCY consideration which will be transmitted to AGENCY members and the DEPARTMENT in advance of the meeting at which the AGENCY will consider adoption of the resolution and a determination whether the proposed Final UMP complies with the APSLMP (“Second Reading”).

(8) At the conclusion of such review, the AGENCY shall determine whether the proposed Final UMP complies with the guidelines and criteria set forth in the APSLMP.

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- (9) The AGENCY Executive Director will transmit the AGENCY findings concerning the UMP's conformance with the APSLMP to the Commissioner of the DEPARTMENT within seven (7) days of the adoption of the AGENCY's resolution.
- (10) Following the conformance determination by the AGENCY and subsequent approval of a UMP by the Commissioner the DEPARTMENT shall publish a notice of approval of the Final UMP in the ENB.
- (11) The approved UMP shall contain a copy of the AGENCY resolution on APSLMP conformance and the Commissioner of the DEPARTMENT approval memorandum. A copy of the Final UMP as approved by the Commissioner will be provided by the DEPARTMENT to the AGENCY for its files.

UMP Amendments

- (1) Any modification involving new or expanded improvements to an adopted UMP prior to the periodic five-year update must be processed as an Amendment to the UMP following the procedure for original UMP preparation.
- (2) Other UMP amendments which result from commitments made in an approved UMP that require further consultation and approval by the AGENCY Board will be processed as follows:
- After approval by the Commissioner of the DEPARTMENT for public release, the DEPARTMENT will provide AGENCY staff and members with copies of the text of the proposed Amendment, including maps at a scale appropriate to the Amendment and all necessary SEQR documentation. The AGENCY will not make a determination on whether the proposed Amendment complies with APSLMP guidelines and criteria until at least 30 days after the receipt of such proposed Amendment.
 - An AGENCY determination of APSLMP conformance of a UMP Amendment will generally be completed at one AGENCY meeting unless the complexity of the Amendment warrants additional review.
 - After consultation with the AGENCY Chairman, the Chair of the State Land Committee and the Executive Director, and prior to the AGENCY meeting at which the Amendment will be considered, the Director of Planning will provide AGENCY members with a staff recommendation as to the Amendment's

conformance with the APSLMP and a draft resolution for consideration by the full AGENCY.

- The Executive Director will transmit the AGENCY'S findings concerning the Amendment's conformance with the APSLMP to the Commissioner of the DEPARTMENT within 7 days of the adoption of the AGENCY's resolution.
- Following the conformance determination by the AGENCY and subsequent approval of a UMP Amendment by the Commissioner of the DEPARTMENT, the DEPARTMENT shall publish a notice of approval of the UMP Amendment in the ENB.
- The UMP Amendment shall contain a copy of the AGENCY resolution on APSLMP conformance and the Commissioner of the DEPARTMENT's approval memorandum. A copy of the Amendment as approved by the Commissioner will be provided to the AGENCY for its file.

V. STATE LAND PROJECT MANAGEMENT

(a) The DEPARTMENT, in recognition of the unique State interest, policies and programs that apply to the use and development of private lands in the Adirondack Park, shall conduct departmental programs involving the use and development of public lands in such a way as to exemplify the high commitment of the State government to the protection and stewardship of the natural resources, wilderness and other wildlands of the Forest Preserve and open space of the Adirondack Park.

(b) The DEPARTMENT may conduct activities described in an approved UMP without prior consultation with the AGENCY unless the UMP specifically requires such prior consultation or unless the proposed activity may involve regulated activities in freshwater wetlands.

(c) The DEPARTMENT may conduct rehabilitation activities for the control of invasive species in accordance with the "Inter-Agency Guidelines for Implementing Best Management Practices for the Control of Terrestrial and Aquatic Invasive Species on Forest Preserve Lands in the Adirondack Park" (Appendix F to MOU) without approval in an adopted UMP and without prior AGENCY consultation if it is determined by the DEPARTMENT the nature and extent of the proposed activity will not materially change the use or appearance of the land or the vegetation thereon nor involve the cutting of trees over 3" dbh unless done in compliance with "Division of Lands and Forests Direction LF-91-2,

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Cutting, Removal or Destruction of Trees and Endangered, Threatened or Rare Plants on Forest Preserve Lands: FINAL POLICY," attached hereto as (Appendix A to MOU).

(d) Rehabilitation activities for invasive species control identified in Appendix F which, due to their nature and extent, may materially change the use or appearance of the land or the vegetation thereon, shall not be undertaken by the DEPARTMENT unless specifically agreed to by the AGENCY and the DEPARTMENT after consultation following the procedure set forth in paragraphs V.(g), (h) and (i) below.

(e) The following activities define ordinary maintenance, rehabilitation, and minor relocation of conforming structures or improvements not requiring approval in an approved and filed UMP and not requiring prior AGENCY consultation pursuant to subparagraph V.(f) below. "Ordinary maintenance, rehabilitation and minor relocation" for these purposes is defined as those activities that do not materially change the use or appearance of land or the vegetation thereon nor involve the cutting or destruction of trees over 3" dbh unless done in compliance with "Division of Lands and Forests Direction LF-91-2," attached hereto as Appendix A. These activities are those that may be carried out in a manner that preserves the land, trails and all appurtenances in a condition that is consistent with the character of the area prior to commencement of a maintenance activity. With respect to any trail or road work, such activities shall only include maintenance work within the existing footprint of such road or trail. More specifically, ordinary maintenance, rehabilitation and minor relocation shall include the following activities in the following APSLMP classifications:

Wilderness Classified Locations

- Removal of non-conforming facilities.
- Maintenance of non-conforming facilities until scheduled date for removal.
- Replacement of signs and markers on existing trails and trailheads.
- Erection of trailhead registration booths to monitor public use.
- Existing trail brushing, removal of blowdown, grubbing, tread stabilization and drainage facilities.

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- Rehabilitation and maintenance of existing lean-tos.
- Relocation of existing lean-tos, campsites and sanitary facilities to over 100-150 feet from water and trails to enhance safety and environmental site protection.
- Maintenance of trailhead and parking facilities.
- Maintenance or removal of existing bridges.
- Maintenance and replacement of existing fire rings, campsites, sanitary facilities, barriers, bridges, dams and trail registration structure.
- Erection of new barriers and signs on newly acquired lands and/or on existing lands to control motorized vehicle use.

Canoe Classified Locations

- Same as Wilderness classified locations and, in addition:
Maintenance of identified State Truck Trails.

Primitive Classified Locations

- Same as Wilderness classified locations and, in addition:
Maintenance of existing roads, truck trails, jeep trails, Telephone and electric lines, fire towers, cabins and Appurtenances until a UMP is approved and adopted. Thereafter, in accordance with the approved and adopted UMP.

Wild Forest Classified Locations

- Same as Primitive classified locations and, in addition:
Maintenance of existing horse barns, boat docks, small fireplaces, storage sheds, electronic communications facilities, water supply facilities, and wildlife management structures; cutting select individual danger trees pursuant to "Division of Lands and Forests Direction LF-91-2, Cutting, Removal or Destruction of Trees and Endangered, Threatened or Rare Plants on Forest Preserve Lands: FINAL POLICY."

Intensive Use Classified Locations

- Same as Wild Forest classified locations and, in addition:

Maintenance, rehabilitation and minor relocation of all existing roads, fences, buildings, sewers and sanitary facilities, boat facilities, fireplaces, water systems, electric and telephone lines, picnic tables, ditches, interpretive program screens, bulletin boards, garbage facilities, towers, ramps, machinery, generators and retaining walls, including other common public facilities and common DEPARTMENT Administration and Management facilities.

(f) Activities which do not meet the definitions of ordinary maintenance, rehabilitation, and minor relocation of conforming structures or improvements provided in paragraphs V.(c) or (e) above, and any regulated activity which may involve freshwater wetlands, shall not be undertaken by the DEPARTMENT unless specifically agreed to by the AGENCY and the DEPARTMENT after consultation following the procedure set forth in paragraphs V.(g), (h) and (i) below, provided that where activities which may not meet the definition of ordinary maintenance, rehabilitation and minor relocation of conforming structures or improvements are authorized by an approved and filed UMP, consultation shall be required only if so specified in the UMP.

(g) For all activities requiring consultation between the DEPARTMENT and the AGENCY pursuant to paragraphs V.(d) and (f) above, the DEPARTMENT will provide the AGENCY with the following information:

- (1) a site plan showing the area to be affected by the activity on a map;
- (2) a location map;
- (3) a brief narrative description of the proposed activity;
- (4) photos of the area to be affected by the proposed activity;
- (5) if available, basic plans showing what the structure would look like;
and
- (6) any additional information that is mutually agreed on.

(h) Whenever consultation occurs pursuant to paragraphs V.(d) and (f), the DEPARTMENT will publish notice of such consultation in the Environmental Notice Bulletin, including notice of its availability for inspection at the AGENCY's headquarters.

(i) The AGENCY shall make a good faith effort to respond to the DEPARTMENT's consultation request within thirty (30) days, but shall respond in not more than sixty (60) days of the receipt of such request unless the two agencies agree to a different time period. If the AGENCY determines that a proposed activity does not meet the definitions of ordinary maintenance, rehabilitation, and minor relocation of conforming structures or improvements provided in sub-paragraphs (c) and (e) above, a UMP or a UMP amendment will be required before the proposed activity may be undertaken. If the AGENCY determines that a proposed activity requires a freshwater wetlands permit, the DEPARTMENT shall not undertake such activity until it has applied for and obtained an AGENCY permit. Where the proposed activity is described in an approved UMP, and the UMP requires consultation with the AGENCY with respect to the proposed activity, the DEPARTMENT shall not undertake the proposed activity until the AGENCY determines that the activity, as proposed, would be consistent with the APSLMP and the UMP.

VI. STATE LAND ACTIVITY COMPLIANCE

(a) All complaints by the AGENCY or any third party to the AGENCY that any activity on State land conducted by or authorized by the Department is not consistent with the APSLMP, an applicable UMP or this MOU, will immediately be forwarded to the primary contact person for the DEPARTMENT for response. These complaints of alleged violations will be given an investigation number for the purpose of tracking.

(b) The DEPARTMENT will immediately notify the Director of Planning of the AGENCY of its own discovery of any such activity on State Land which may not be consistent with the APSLMP, UMP or MOU. These notifications of alleged violations will be given an investigation number for the purpose of tracking.

(c) Within thirty (30) days of the DEPARTMENT's receipt of any such complaint or its own discovery of such a compliance issue, or within such different time frame as may be agreed to by the DEPARTMENT and AGENCY staff, the DEPARTMENT will provide AGENCY staff with such information as is necessary to describe the compliance issue, which may include, as appropriate: a description of the activity which is the subject of the complaint; location map, drawings, sketches and photographs which document the nature and extent of the activity; a statement as to when the activity was undertaken; a statement as to whether the activity was undertaken by the DEPARTMENT or authorized by the DEPARTMENT; any relevant project work plan, Temporary Revocable Permit or Adopt-a-Natural-Resource Agreement; a description of any immediate measures

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undertaken by the DEPARTMENT to protect health, safety or the environment; and other material or information pertaining to the activity that may be relevant.

(d) AGENCY staff and the DEPARTMENT will undertake a joint review of the activity, which may include joint site visits, and shall review the record to discuss whether the activity was undertaken in compliance with the APSLMP, UMP or MOU.

(e) Within (30) days of receiving the DEPARTMENT's information concerning the activity, AGENCY staff will advise the DEPARTMENT whether it appears that such activity complies with the APSLMP, any applicable UMP or this MOU.

(f) If AGENCY staff advises the DEPARTMENT that such activity did not comply with the APSLMP, UMP or MOU, AGENCY staff may issue a proposed agreement to resolve the matter.

(g) DEPARTMENT staff may elevate an AGENCY staff finding alleging noncompliance and the draft agreement proposed by AGENCY staff for formal determination consistent with the procedures set forth in Paragraphs I.(b)(2) through (4), provided that elevation of such matters to the AGENCY Chairman and the Commissioner of Environmental Conservation shall be noticed in the next reasonably practicable AGENCY monthly mailing package. Furthermore, if the AGENCY Chairman refers the matter to an AGENCY standing committee, notice of such referral shall be included in the next reasonably practicable AGENCY monthly agenda and mailing package.

(h) Compliance agreements shall be signed by the Executive Director of the AGENCY and the appropriate Regional Director of the DEPARTMENT and shall include the following:

- (1) a statement of relevant facts;
- (2) a finding of noncompliance with the APSLMP and/or any appropriate UMP, including a description of the action or activity leading to such a finding and the effects of such action or activity on pertinent resources;
- (3) any mitigation measures necessary to bring the action or activity into compliance with the APSLMP and/or any appropriate UMP; and

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(4) the terms of resolution, including any remediation or restoration plan subsequently developed pursuant to such agreement.

(i) The AGENCY shall publish notice of compliance agreements in the Environmental Notice Bulletin as soon as is reasonably practicable after execution. In addition, the AGENCY shall publish notice in the Environmental Notice Bulletin, as soon as is reasonably practicable after finalization, of any remediation or restoration plan developed pursuant to paragraph (h)(iv) of this section.

(j) Once the agreement is signed by both the AGENCY and the DEPARTMENT, the DEPARTMENT shall agree to comply with the agreement and/or take appropriate action to ensure that responsible third parties comply with the agreement.

VII. INTERPRETATION OF THE APSLMP

(a) Either AGENCY staff or DEPARTMENT staff may petition the AGENCY for a formal interpretation of the APSLMP.

(b) Such a petition will specifically describe the matter to be resolved, including all pertinent facts, and demonstrate good cause for the interpretation. The petition may state a position with respect to the interpretation and may present statutory or administrative references and argument.

(c) The AGENCY Executive Director will, after consultation with the DEPARTMENT's Designee to the AGENCY, refer the petition to the AGENCY's State Land Committee for development of a draft determination. The State Land Committee will consider the petition and any additional information it deems appropriate in making its determination including, in the discretion of the Committee, a determination not to act on the petition.

(d) Any draft determination on the petition by the Committee will be referred to the AGENCY for a final determination.

(e) The AGENCY's final determination will be published in the Environmental Notice Bulletin.

VIII. AMENDMENTS AND APPENDICES

It may be necessary from time to time to review this Memorandum with regards to its effectiveness and to consider amendments and/or appendices hereto. It shall be the responsibility of the respective staff members previously named to bring recommendations for amendments and/or appendices to the AGENCY and the DEPARTMENT upon a consensus of such staff members that such action is appropriate. Any agreed upon amendments or appendices shall become part of this Memorandum of Understanding upon approval of the DEPARTMENT and the AGENCY.

This Memorandum will be revised as necessary after amendments to relevant statutes or regulations, or when other legal requirements take effect, and may be altered or terminated by mutual agreement upon sixty (60) days written notice by either Party to the other.

IX. TERM

The term of this Memorandum of Understanding shall be ten years, provided that at the end of five years the DEPARTMENT and AGENCY shall undertake a comprehensive review of its terms.

X. EFFECTIVE DATE

This Memorandum will be in full force and effect upon its execution by the Commissioner of Environmental Conservation and the Chairman of the Adirondack Park Agency.

COMMISSIONER
New York State Department of
Environmental Conservation

DATE

CHAIRMAN
New York State
Adirondack Park Agency

DATE

APPENDICES

- Appendix A Division of Lands and Forests Direction LF-91-2: Cutting, Removal or Destruction of Trees and Endangered, Threatened or Rare Plants on Forest Preserve Lands: FINAL POLICY.
- Appendix B 1993 Policy on All-Terrain Bicycles.
- Appendix C 1992 Policy on Fisheries Management.
- Appendix D Standard Snowmobile Trail Bridge Design and Use of Natural Materials for Design and Construction, APA State Land Master Plan Interpretation and Staff Guidance, June, 2006.
- Appendix E Management Guidance: Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park, 2009.
- Appendix F Inter-Agency Guidelines for Implementing Best Management Practices to Control Terrestrial and Aquatic Invasive Species on DEC Administered Lands of the Adirondack Park, March 2018.
- Appendix G Minimum Requirements Approach Guide for Construction of Trail Bridges in Wild Forest Areas in the Adirondack Park, May 2017.
- Appendix H Siting, Construction and Maintenance of Singletrack Bicycle Trails on Forest Preserve Lands in the Adirondack Park, March 2018.