

Forest Preserve Work Plan Policy Response to Public Comment

General Comments

Comment: The Policy is trending in the wrong direction. Saplings should not be considered trees.

Response: *The purpose of this Policy is to establish administrative procedures for assessing the impacts of construction and maintenance activities and for drafting site-specific work plans on the Forest Preserve permissible within the parameters established by Article XIV of the New York State Constitution, the Adirondack Park State Land Master Plan, the Catskill Park State Land Master Plan, Environmental Conservation Law, and DEC Rules, Regulations and Policies. As a result, the work plans required by this Policy are necessary to maintain a record of the planned construction and maintenance of structures and improvements. To fully assess the impacts of a project, the work plan process requires a count of all trees above 1 inch in diameter.*

Comment: Multiple commentors expressed general support for various sections of the Policy.

Response: *Thank you for your support.*

Comment: Commenter questioned whether policy requirements were to be carried out by DEC personnel or volunteers.

Response: *Work plans will usually be developed by DEC personnel. However, some projects might include information and recommendations from contractors and volunteers.*

Comment: Commenter questioned whether a project's size would impact level of adherence to policy requirements.

Response: *The Policy must be followed regardless of the size of the project. The type of project will determine if the project needs a Detailed Project Work Plan noticed in the ENB or an Ordinary Maintenance Work Plan.*

Comment: The Policy should allow the flexibility for not requiring a work plan if it can be objectively demonstrated that modest action while taken on-site will avoid a return trip (to reduce overall carbon footprint).

Response: *The work plans required by this Policy are necessary to maintain a record of the planned construction and maintenance of structures and improvements on the Forest Preserve. To maximize efficiency, during the development of the work plan the land manager will assess other work that may be needed in the vicinity and may include it in the work plan.*

Comment: Work plans should follow a consistent format, including when developed by partner agencies.

Response: *When this Policy is finalized, the templates will be standardized.*

Comment: The final work plan templates should be consistent with the criteria, organization, and headings of the Work Plan Policy.

Response: *The work plan templates will be updated to be consistent with the Policy to the greatest extent possible.*

Comment: Provisions should be included in the Policy to ensure work plans are approved in a timely manner.

Response: *It is the goal of DEC to review and approve work plans in a timely manner. However, it is more important to take the time necessary to conduct a thorough review and evaluation of all work plans. Staff will be encouraged to submit work plans with adequate lead time for approval and scheduling of crews.*

Comment: Work plans should not be required for ordinary maintenance.

Response: *The work plans required by this Policy are necessary to maintain a record of the planned construction and maintenance of structures and improvements on the Forest Preserve. However, as noted in the Policy, certain maintenance activities do not require work plans. For instance, for those activities that are necessary to keep an existing structure or improvement in good working order and do not require change to the structural elements of a structure or improvement, an Ordinary Maintenance/Modification Work Plan shall not be required.*

Comment: The Policy is too long and confusing.

Response: *The purpose of this Policy is to establish administrative procedures for assessing the impacts of construction and maintenance activities and for drafting site-specific work plans on the Forest Preserve permissible within the parameters established by Article XIV of the New York State Constitution, the Adirondack Park State Land Master Plan, the Catskill Park State Land Master Plan, Environmental Conservation Law, and DEC Rules, Regulations and Policies. However, the Policy has been revised in certain areas to provide clarity.*

Comment: The Policy should allow trees to be cut to allow trails to be maintained and kept open for people with disabilities.

Response: *The intent of the Policy is to document the detailed, site-specific assessments conducted by Regional Land and Facility Managers when siting a particular project to ensure that an analysis of the relevant constitutional, statutory, and regulatory factors have been considered prior to the actual construction or modification of a project previously approved in a UMP. The Policy itself does not prohibit the maintenance of trails which are accessible for individuals with disabilities.*

Definitions and Clarifications

Comment: The Policy should define “front-country” and “back-country.” DEC should immediately drop use of the arbitrary, undefined terms “front-country” and “back-country.” It is all Forest Preserve, all subject to the SLMP classifications and guidelines for management and use

Response: *These terms have been removed from the Policy and the content edited to clarify the intent of the statement.*

Comment: The Policy should define “tree-cutting,” and should include multi-stemmed trees as a single tree.

Response: *The definition of tree cutting has been added to the Policy definitions. Multiple stem trees are counted as individual trees if they fork below breast height (4 ½ feet above ground).*

Comment: The Policy should define “sustainable trail construction” and examples of earth disturbance such as “side-cutting” and “bench cutting.”

Response: *This Policy is not limited to trails, and applies to the modification, expansion, and construction of facilities, including trails and appurtenances to trails. DEC intends to develop a trail manual and construction /maintenance specifications for the various types of recreational trails.*

Comment: Commenter would like to know examples of “minor reroutes” of trails that may not require a UMP amendment prior to implementation of an approved work plan. Also, the Policy should define “minor reroute.”

Response: *The APA/DEC MOU allows for minor reroutes of certain trails pending consultation with APA staff and is beyond the scope of this Policy. However, the Policy has been revised to reflect the terms outlined in the DEC/APA Memorandum of Understanding.*

Comment: The term “earthwork” should be clarified to ensure that general drainage maintenance and removal of eroded soil and debris from trail drainage features/structures should not require a work plan.

Response: *The Policy has been revised to add a definition of significant earthwork. Generally, cleaning eroded soils from drainage will not be considered significant earthwork.*

Comment: The Policy should not speak of permissible thresholds in the second and third constitutional questions without specifying what the thresholds are.

Response: *The information solicited by these questions and the required elements of the Detailed Project Work Plan are intended to inform the DEC’s assessment of whether the actual construction or modification of a structure or improvement is or is not appropriate within the parameters established by Article XIV, Environmental Conservation Law, and DEC Rules, Regulations and Policies.*

Comment: In order to ensure consistency, the definitions for “structure” and “improvement” should be changed to match the definitions of those terms in the APSLMP.

Response: *The definitions in this Policy are based on the APSLMP and CPSLMP definitions and state that the examples are “included but not limited to...”.*

Comment: In the definition of “earthwork”, the words “and in a new position” should be removed.

Response: *The definition of earthwork remains unchanged.*

Comment: The terms “significant earthwork” should be defined.

Response: *The Policy has been revised to include a definition of “significant earthwork.”*

Comment: The Work Plan Policy should state that any proposed activities that do not satisfy Article XIV will not be approved.

Response: *In addition to the general descriptions of Proposed Management Actions described in UMPs, which are approved and developed in accordance with Article XIV of the New York State Constitution, Executive Law §816, Environmental ECL §§3-0301(1)(d), 9-0105(1), the APSLMP and the CPSLMP, it is the policy of DEC to require work plans which provide an analysis of the impacts of a particular management action within the confines of the above noted statutes, rules and regulations. The intent of the Detailed Project Work Plan is to document the detailed, site-specific assessments conducted by Regional Land and Facility Managers when siting a particular project to ensure that an analysis of the relevant constitutional, statutory, and regulatory factors have been considered prior to the actual construction or modification of a project previously approved in a UMP. As a result, as written the Policy addresses this concern.*

Comment: The Policy should clarify how to approach areas of the Forest Preserve outside the Adirondack and Catskill Parks.

Response: *The Policy applies to all areas of the Forest Preserve under the jurisdiction of DEC.*

Comment: It is unclear what “additional work plans” means in reference to Volunteer Stewardship Agreements.

Response: *Most of the Volunteer Stewardship Agreements (VSAs) already cover work that falls in the category of “ordinary maintenance,” and will not require the completion of an additional work plan. However, if a volunteer group is undertaking a project involving new construction or the improvement or expansion of existing structures and improvements a Detailed Project Work Plan will be required to be completed together with the appropriate DEC staff. The Policy has been revised to clarify this point.*

Comment: It is unclear if hazard tree removal requires a work plan.

Response: *Yes. Hazard tree removal requires an Ordinary Maintenance Work Plan, unless it is an actual ongoing emergency, in which case no work plan is required.*

Comment: From the original Article XIV to the draft Policy, there does not seem to be a clear definition of “timber”. The use of nouns such as trees, saplings, or woody perennials might clarify this.

Response: *It is not the intent of this Policy to define terms used in Article XIV, but to document the detailed, site-specific assessments conducted by Regional Land and Facility Managers when siting a particular project to ensure that an analysis of the relevant constitutional, statutory, and regulatory factors have been considered prior to the actual construction or modification of a project previously approved in a UMP. As provided by the Policy, a Detailed Project Work Plan is required for the construction of new structures or improvements and the expansion of existing structures or improvements on the Forest Preserve. A Detailed Project Work Plan is also required when modifications of existing structures or improvements require tree cutting or significant earthwork.*

Comment: It is important the Policy document clearly defines the boundaries between “routine” trail maintenance and those that require Ordinary Maintenance Work Plans.

Response: *Thank you for your comment. The Policy has been revised to clarify when maintenance activities require the development of an Ordinary Maintenance Work Plan.*

Work Plan Development Process

Comment: Commenter questioned whether the three constitutional questions in *Section III – Purpose and Background* are to be answered directly by staff who are filling out the work plan.

Response: *The work plan forms do not direct staff to provide specific answers to these three questions, but work plans completed and approved in compliance with the Policy will answer these questions affirmatively. The information solicited by these questions and the required elements of the Detailed Project Work Plan are intended to inform DEC’s assessment of whether the actual construction or modification of a structure or improvement is or is not appropriate within the parameters established by Article XIV, Environmental Conservation Law, and DEC Rules, Regulations and Policies.*

Comment: The impacts of a site’s “footprint” often go far beyond the work site; noise, vibrations, soil compaction, and other impacts have a much larger, sometimes longer lasting impact on ecological communities above and below ground, and these factors must be weighed when reviewing work plans.

Response: *Thank you for your comment. Section V.A.1.c.5. requires Detailed Project Work Plans to analyze the impacts beyond the footprint of the project. “Describe any impacts that will be outside the trail corridor and if applicable, any measures to be taken to mitigate impacts outside the trail corridor or area of the proposed project.”*

Comment: Commenter supports the Policy requirement to avoid, minimize, and mitigate natural resource impacts, however, would also like to see cumulative impact analysis and carrying capacity analysis be included.

Response: *Cumulative impact analyses are more appropriately conducted through the SEQR process, which is typically carried out in conjunction to the UMP process. In rare instances,*

SEQR will be completed as part of the work plan process. Similarly, carrying capacity studies, when appropriate, should be conducted as part of the adoption of a UMP. Work Plans should reference such studies when relevant to the project.

Comment: In the *Desired Conditions* section, DEC should reverse “user experience” and “resource conditions” to read “... to further illustrate what kind of resource conditions and user experience are considered ideal at a specific site...” thus prioritizing natural resource conservation over the user experience within the Policy.

Response: *The Policy has been modified to reflect this suggestion.*

Comment: Tree removal and other maintenance work should generally be done with the least intrusive tool, with a preference for hand tools over machines, especially in Wilderness Areas.

Response: *DEC uses a minimum tool approach in management of the Forest Preserve. DEC policies and the APSLMP and CPSLMP limit the use of mechanized equipment and motor vehicles in the Forest Preserve, especially in areas classified as Wilderness. Personnel's safety is also an important consideration in determining which tool is appropriate for the task.*

Comment: General support was expressed for the Policy requirements for tree tallies, minimizing impacts to streams, waterbodies, wetlands, special plant communities, wildlife corridors, and sensitive, rare, threatened, or endangered species, and the inclusion of alternatives.

Response: *Thank you for your comment.*

Comment: Regarding the provision that “occasional” tree cutting may occur at a single stem per 300-foot interval and would not trigger a work plan requirement: this can be interpreted as DEC defining “material change” for tree cutting as more than 1 tree per 300 ft. The Policy should also describe a timeframe so that “occasional” tree cutting does not occur over time to circumvent a work plan.

Response: *This reference has been removed from the Policy.*

Comment: Soil disturbance for construction activities needs to be measured against the full impact of soil erosion over the life of a non-sustainably constructed trail.

Response: *It is the intent of this Policy to develop work plans that do not result in unsustainably constructed trails and continuous soil erosion.*

Comment: For work plans within Wilderness (Primitive, Canoe), it would be helpful to DEC and other staff to incorporate basic, site relevant SLMP Wilderness definitions and guidelines within the desired conditions of the work plan itself.

Response: *SLMP guidelines are considered during the UMP/UMP Amendment process. At the work plan development stage, the project has already been conceptually approved through the UMP process. The purpose of the work plan is to further define the desired site conditions, analyze and minimize the specific impacts of the project. Where appropriate, the work plan should draw on language from the SLMPs to illustrate both the existing and desired conditions.*

Comment: The section on Accessibility should be re-written to reflect the fact that the ADA does not impose universal access requirements that would result in a fundamental alteration of DEC's Forest Preserve management program.

Response: *The appendix has been updated to provide further guidelines for the assessment ADA compliance.*

Comment: To facilitate adaptive management, it would be good to include a task to each work plan to capture photographs of the area after the work has been completed. This will allow DEC to assess the changes to the site over time and assess the effectiveness of the completed work vs. its original objectives.

Response: *DEC will consider this suggestion as projects are completed pursuant to this Policy.*

Comment: The Policy should provide an exception for when no alternative locations can be identified.

Response: *If there is not a clear alternative for a project, the work plan should provide an explanation and compare the project to the "do nothing" alternative.*

Comment: The Policy should allow for earth-moving equipment as a means to build appropriate facilities that minimize erosion over time.

Response: *The Work Plan Policy itself does not explicitly allow or prohibit the use of motorized equipment. Use of motorized equipment may be allowed depending on the land classification and APSLMP and CPSLMP restrictions. If applicable, the conditions under which equipment may be used, shall be explained in the work plan and follow the guidelines set forth the APSLMP, CPSLMP and CP-17, the Commissioners Policy on the Administrative Use of Motor Vehicles and Aircraft in the Forest Preserve.*

Comment: Certain activities, such as re-locating privies, rock moving, and clearing duff away from structures, should not require new construction work plans.

Response: *The Policy has been revised to make it clear when certain activities are considered maintenance activities that do not require a work plan. "For those activities that do not require tree cutting or significant earthwork but are necessary to keep an existing structure or improvement in good working order and do not require change to the structural elements of a structure or improvement, an Ordinary Maintenance Work Plan shall not be required."*

Comment: Maps should include sensitive natural resources including wetlands and hydrological features, steep slopes, important/unique habitats, and other relevant features.

Response: *UMPs include maps of sensitive natural resources including wetlands and hydrological features, steep slopes, important/unique habitats, and other relevant features. As appropriate, references to UMPs should be included as supporting documents in the work plan.*

Comment: The work plan should include measures taken to minimize impacts in addition to those taken to mitigate impacts, in keeping with the stated goal of Section V.D. Emergency Procedures.

Response: *The Policy has been revised to include “actions taken or necessary to minimize and mitigate impacts.”*

Comment: The Policy should emphasize avoidance of tree cutting, terrain alteration, and alteration of wild forest character. Only where avoidance is not possible, should minimization and mitigation be allowed.

Response: *Minimizing tree cutting and terrain alteration is largely accomplished through avoidance.*

Comment: The work plan description of motorized vehicle/equipment use should include an assessment of impacts from improvements or actions needed to facilitate access to the work site. The discussion should also include steps taken to restore disturbance.

Response: *The Policy requires analysis of impacts beyond the footprint of the project. In V.A.1.c.5. “Describe any impacts that will be outside the trail corridor and if applicable, any measures to be taken to mitigate impacts outside the trail corridor or area of the proposed project.”*

Comment: A requirement should be added that no invasive species will be included in the logs, brush or slash moved beyond the 20’ setback from the public highway Right of Way (ROW). Road ROWs are known vectors for invasive plant species and moving slash to near or past tree line can introduce invasive species into the forest.

Response: *Work conducted along public highway rights-of-way should follow Best Management Practices for managing invasive species.*

Comment: In the assessment of tree cutting, all trees 1” DBH or more must be counted. The tree tally can then be used to answer the question about whether the “proposed cutting, removal, or destruction of timber [is] ‘material or substantial’”.

Response: *The tree tally along with other factors about the scope and the scale of the work are used to evaluate the impacts of the project and whether it is permissible.*

Comment: There’s no need to separate the 1-3” DBH trees from the age/class data for tree cutting.

Response: *The information is provided to help illustrate the existing stand composition and structure. Visualizing the current setting is helpful in considering the impacts to the site and surrounding area.*

Comment: The Policy should state who is responsible for implementing projects in accordance with the approved work plan, and who is responsible for monitoring implementation to ensure compliance with the approved work plan.

Response: *All employees involved in a project are responsible for being familiar with and following the approved work plan.*

Comment: Under description of Ordinary Maintenance Work Plans, another requirement for such work plans should be any project that will likely result in an increased usage of the structure or improvement.

Response: *Use levels are considered during the UMP/UMP Amendment process.*

Work Plan Internal Review Process

Comment: The lengthy review process outlined in the Policy will lead to delays in the approval of work conducted by volunteer organizations, which in turn could negatively affect morale or lead to a loss of volunteers.

Response: *DEC is grateful for the work of volunteers, who play a critical role in helping maintain Forest Preserve facilities. The majority of Volunteer Stewardship Agreements (VSAs) already cover work that falls in the category of “ordinary maintenance,” and will not require the completion of an additional work plan.*

Comment: Most of the Policy is redundant with programs and DEC staff supervision already in place. As such, the Policy requirements will impose more burden on an already stretched DEC workforce.

Response: *The Policy establishes consistent administrative procedures for assessing the impacts of construction and maintenance activities and for drafting site-specific work plans on the Forest Preserve permissible within the parameters established by Article XIV of the New York State Constitution, the Adirondack Park State Land Master Plan, the Catskill Park State Land Master Plan, Environmental Conservation Law, and DEC Rules, Regulations and Policies. The Policy will improve transparency and show the thought process behind project design and implementation prior to construction.*

Comment: Commenter supports emphasis on woody vegetation in the review process but would like to see similar emphasis on streams and wetlands where other governing bodies do not provide such protections.

Response: *Consultation with the Adirondack Park Agency, which regulates wetlands in the Adirondack Park, is a necessary step in the review process when projects might have an impact to a wetland. Additionally, the Policy requires the work plan describe how “The project will avoid or minimize impacts to streams, waterbodies, and wetlands. The project will also be designed and sited to withstand erosion, prolonged flooding, and other factors caused by high rainfall events.”*

Comment: There is a lack of language in the *Emergency Procedures* section ensuring that this clause will not be exploited, especially in wilderness areas, but be allowed only for legitimate, immediate emergencies.

Response: *The Policy allows emergency procedures “In the case of actual and ongoing emergencies involving the protection of human life, public health or intrinsic resource values work where immediate action is warranted.” This is consistent with the APSLMP and CPSLMP. The Policy requires a follow up report on the incident. The Emergency Procedure do not allow for construction of a new facility; it does allow correction of an emergency situation.*

Comment: The Policy must be more specific about needed steps taken for all DEC divisions to ensure that “all DEC staff involved in construction and maintenance projects in the Forest Preserve will ensure that all work is authorized and carried out in accordance with the approved Work Plan.”

Response: *All employees involved in a project are responsible for being familiar with and following the approved work plan. Responsibilities are further explained in the “Procedure” section of the Policy.*

Comment: For work plan Policy to be effective is will need to be adopted everywhere, especially the most popular parts of the Forest Preserve. There will also need to be follow-through to ensure that objectives are met.

Response: *The Policy applies equally to all Forest Preserve lands in the Catskills and Adirondacks.*

Comment: The first sentence of section III.A is not entirely accurate. UMPs often do not include assessments of whether the purpose of a proposed project is a permissible use of the Forest Preserve under Article XIV. Also, much of the Forest Preserve still does not have an approved UMP, and most existing UMPs were approved before the 2021 Court of Appeals decision, so they include projects that are now clearly unconstitutional.

Response: *UMPs are the appropriate management tool to address threshold questions related to proposed management actions.*

Comment: In the procedure for review of work plans, the Policy should identify the next steps to be taken if the Director of Lands and Forests disapproves a work plan.

Response: *DEC only issues approved Detailed Project Work Plans. In some cases the Division Director may direct staff to revise a work plan where necessary to comply with applicable statutes, regulations, or policies.*

Comment: DEC Counsel’s Office should be included as part of the Central Office Review Team so that there will be a legal review of the draft work plan and draft ENB notice.

Response: *The Central Office Review Team regularly consults with program counsel.*

Comment: The draft template for Ordinary Maintenance Work Plans should be titled “Forest Preserve Work Plan for Ordinary Maintenance Project”, rather than “Forest Preserve Application”.

Response: *The templates have been revised.*

Public Review and Comment Process

Comment: Commenters expressed appreciation for inclusion of Trail Stewardship Working Group in the review of the Policy.

Response: *DEC is grateful to the Trail Stewardship Working Group for their time and expertise in providing additional review and comment during the development of the Policy.*

Comment: The Policy will improve transparency and allow for public engagement in a proactive, constructive manner.

Response: *The Policy strives to provide appropriate transparency and opportunity for public review and comment on work plans.*

Comment: It is unclear how long the public can expect work plans to remain accessible as the agency's record retention policy is not on its website. The policy should be publicly available to improve agency transparency.

Response: *In general, and in accordance with DEC's Records Management Procedures manual, the Division of Lands and Forests retains administrative records for a five-year period.*

Comment: Commenters questioned whether changes based on public comment would be shared with the Trail Stewardship Working Group prior to being formally adopted.

Response: *No, DEC does not intend to share this responsiveness document with the Trail Stewardship Working Group prior to publication and adoption of the Policy.*

Comment: DEC's answers to the three critical questions that are identified in section III.A (pp. 3-4), should be included as a written statement. This analysis is also vital for public review and comment on the draft work plans. DEC's answers to these questions should be a separate and distinct section in the work plan.

Response: *It is the intent of the Policy that the analysis solicited by these questions be contained within the narrative required by this Policy.*

Comment: The Policy should identify who within the Division of Lands and Forests will be responsible for providing adequate information and opportunities for public involvement. Within the Adirondack Park, APA staff responsible for reviewing plans should also be identified.

Response: *The Policy itself requires publication of Detailed Project Work Plans for public comment. Additionally, the Policy is intended to apply beyond the employment of any individual or position. As a result, it would be inappropriate to include such information within the Policy.*

Comment: Where APA consultation is required for a project, the consultation response to DEC should be part of the record available for public comment.

Response: *Where applicable, APA Consultation responses are included with the published work plan.*

Comment: For projects that involve expansion or modification structures or improvements in an approved UMP, greater thought needs to go into defining the point where a UMP amendment and public vetting should be undertaken. That option does not appear to be considered in the Policy.

Response: *Determining if a UMP or UMP amendment is needed is beyond the scope of this Policy. The process is contained within the APA/DEC MOU.*

Comment: The public comment period for projects noticed in the ENB should be increased to 30 days.

Response: *The Policy requires a comment period of at least 14 days. When appropriate, a longer comment period may be used. It is also important to note that ENB submissions must be received at least one week prior to the publication. Requiring a 30-day public comment period for all Detailed Project Work Plans would be unduly burdensome and create an unnecessary delay.*

Comment: The public comment period for projects noticed in the ENB should be decreased to 7 days.

Response: *The intent of the Policy is to provide adequate public notice and an opportunity to be heard while not unduly delaying necessary stewardship projects.*

Comment: Work plans should be posted on DEC's website and listed by year and by DEC region.

Response: *All work plans are now being posted on the DEC website.*

Comment: DEC should include an option for modification of a project based on public comments.

Response: *Where appropriate, Detailed Project Work Plans may be modified based on public comment or other changing conditions.*

Comment: Other stewardship agreements are not subject to the same scrutiny of review as set forth in the Work Plan Policy. Therefore, tree cutting, removal or destruction or earthwork that is to be undertaken pursuant to stewardship agreements should also require work plans.

Response: *Most of the Volunteer Stewardship Agreements (VSAs) already cover work that falls in the category of "ordinary maintenance," and will not require the completion of an additional work plan. However, if a volunteer group is undertaking a project involving new construction or the improvement or expansion of existing structures and improvements a Detailed Project Work Plan will be required to be completed together with the appropriate DEC staff. The Policy has been revised to clarify this point.*

Comment: The Policy should include a mandatory assessment at some point in the future after a number of Forest Preserve work plans have been prepared. This could be done at 3 years or 5 years down the line. We believe that the DEC and greater Adirondack and Catskill Forest Preserve communities will learn a lot over the next several years as this new important Policy is completed and implemented.

Response: *The Policy requires the Director of the Division of Lands and Forests to periodically review the provisions of the Policy and recommend amendments, where necessary.*

Purpose of Policy

Comment: DEC should require written work plans to bring non-compliant facilities and improvements into compliance with the State Land Master Plan (APSLMP) guidelines and Unit Management Plans. All investigated violations and all subsequent compliance agreements to resolve the violations ought to be subject to work plans under this Policy. The Policy should state that no work of any type ought to be allowed on such APSLMP non-compliant or unconstitutional structures and improvements unless such work includes specific steps needed to bring the improvements into compliance with the APSLMP or Article XIV.

Response: *When activities are undertaken to bring structures and improvements into compliance with all applicable laws, such work will be conducted in compliance with the Policy. However, prioritizing such work is outside the scope of this Policy.*

Comment: Restoration work is a different kind of project and may need its own guidelines. *Section II. Policy* lists three types of work, and we suggest adding restoration as a fourth category, along with any additional detail that would be necessary in the rest of the document.

Response: *Where a project meets the requirements set forth in the Policy, restoration projects may require either a Detailed Project Work Plan or an Ordinary Maintenance Work Plan. It is important to note that other policies or best management practices may still apply to projects subject to this Policy.*

Comment: There are two additional purposes that should be added to the Policy: 1) to identify standards, appropriate to measure achievement of desired conditions, and 2) to establish a baseline and long-term plan to monitor standards and desired conditions. Additionally, it should be the responsibility of the regional program manager to ensure that best monitoring practices are established and utilized.

Response: *It is the intent of DEC to continue to develop and revise applicable policies and best management practices where appropriate for stewardship efforts in the Forest Preserve.*

Comment: The Policy will have an overall negative effect on the environment due to the delay imposed by the Policy requirements in repairing degraded facilities.

Response: *The Policy should not pose a delay that will negatively affect the environment, in the case of an actual ongoing emergency causing environmental damage (chemical spill, road failure into a waterbody) action may be taken immediately.*

Comment: A fifth bullet on page 3 should be added and placed first that reads: "Assessing full compliance with Article XIV and Forest Preserve law and policies."

Response: *The next section of the Policy is devoted to Article XIV considerations.*

Comment: DEC's analysis of whether "a particular project would alter the wild forest character of the Forest Preserve such that it would violate the Forever Wild Clause" is an important milestone in the state's Forest Preserve management.

Response: *Thank you for the comment.*

Comment: It would be worthwhile in high use areas to conduct visitor surveys or support social science research to be able to empirically say that whatever modification is being made to support visitor experiences and wilderness qualities is actually going to do that. While some research may not exist yet, this could also be a good opportunity to start that process so that a baseline of information exists for futures studies of the Adirondacks and the Catskills.

Response: *Visitor use surveys are beyond the scope of this Policy. However, DEC agrees that social science is an important part of managing the forest preserve.*

Compliance and Consistency with other Laws, Case Law, Regulations, and Policies

Comment: Once a path of remediation for Class II snowmobile trails is established for the Protect vs. State of New York decision, the Work Plan Policy should be updated to address this element.

Response: *The development of trail standards or desired conditions for particular types of recreational trails is outside the scope of this Policy. However, when the conditions of this Policy are met, Detailed Project Work Plans or Ordinary Maintenance Work Plans will be required.*

Comment: The Policy fails to mention the impacts of climate change and does not state how it will comply with Sections 7 and 9 of the Climate Leadership and Community Protection Act (CLCPA). This is concerning as the CLCPA requires the DEC to “promote adaptation and resilience” by assessing “reasonably foreseeable risks of climate change on any proposed projects,” including “impacts on species and other natural resources.” If the agency is expecting this to be covered in the final CP-49 Climate Change and DEC Action Policy, it must be referenced as other DEC policies are referenced.

Response: *As UMP’s are updated and amended, CLCPA discussions will be included. However, for purposes of this Policy, a reference has been added to CP-49.*

Comment: The Policy contains no mention of Wilderness definitions for either park. While it makes mention of each SLMP in name, it does not capture the general desired conditions for Wilderness lands per SLMP definitions. In the 2021 Protect! case, the courts acknowledged that “The destruction or removal of trees represented a principal threat recognized by the 1894 Convention delegates, and violation of the prohibition against the destruction of timber is a violation of the ‘forever wild’ clause, because that prohibition was a means to the ultimate objective of protecting the forest as wilderness.” The Policy, and ergo the work plans themselves, should reflect a strong intent to minimize tree-cutting in Wilderness areas, including for material drops.

Response: *The Policy applies to work being conducted on all Forest Preserve lands, and the guidelines for management and use for each land classification outlined in the two State Land Master Plans will continue to inform the development of work plans. The Policy itself does not identify desired conditions for any land classification, recreational activity, or specific location but rather identifies the need to include such desired conditions in individual work plans where applicable.*

Comment: DEC should accurately quote the 2021 Court of Appeals decision, which the Policy currently does not.

Response: *The Policy properly cites the relevant Court of appeals decisions related to Article XIV.*

Comment: Instead of referencing “permissible thresholds” in the constitutional questions, pose questions which are more in keeping with the actual language of the Court of Appeals ruling.

Response: *The intent of the questions is to solicit the analysis identified by the caselaw as cited in the Policy.*

Comment: The Policy offers no guidance about how the Parks’ SLMP classifications and legal guidelines for management and use intersect with actual work planning, at a conceptual and practical level.

Response: *Conformance with SLMPs is contemplated during the development of the UMP and/or consultation with the APA.*

Comment: The Policy should not exempt activities included in stewardship agreements with DEC from work plan requirements under this Policy. Rather than subject cooperating individuals and organizations to separate, duplicative work specifications, this work plan procedure should be the standard and applied universally to all stewardship agreements.

Response: *The Policy does not exempt work completed pursuant to Stewardship Agreements; the Policy has been modified to make this clear. Please note that most work completed pursuant to Stewardship Agreements tends to be ordinary maintenance and as such will not require a work plan.*

Comment: Maintenance of “scenic vistas” should make explicit that the work plan applies to roadside scenic vistas only, not to Wild Forest scenic vistas. Opening scenic vistas on Wild Forest trails is not APSLMP compliant.

Response: *This comment is outside the scope of this Policy. The Policy is not intended to supplant any other required Policy or guidance.*

Comment: There is no document reconciling the various legal precedents into a format that can be used by a work planner or trail builder.

Response: *It is responsibility of DEC staff to ensure this Policy is followed, and work is conducted in accordance with an approved work plan. During review of the work plan compliance with all applicable laws and regulations will be considered. Work plan templates will be provided to assist in the development of work plans.*

Comment: The Policy does much to address gaps in oversight that have resulted in over-aggressive construction efforts that violate existing standards.

Response: *Thank you for your comment.*

Comment: The Policy needs a companion “trail building standards” document that removes most of the uncertainty about what is legally required. This should be done with stakeholder input.

Response: *DEC agrees and intends to develop trail standards and a trail manual.*

Comment: As part of determining whether the impacts of the proposed project on the existing wild state of the Forest Preserve [are] permissible, DEC should assess whether the proposed project would “require greater interference with the natural development of the Forest Preserve than is necessary to accommodate hikers”, pursuant to the 2021 Court decision.

Response: *In addition to the general descriptions of Proposed Management Actions described in UMPs, which are approved and developed in accordance with Article XIV of the New York State Constitution, Executive Law §816, Environmental ECL §§3-0301(1)(d), 9-0105(1), the APSLMP and the CPSLMP, it is the Policy of DEC to require work plans which provide an analysis of the impacts of a particular management action within the confines of the above noted statutes, rules, regulations and relevant caselaw.*

Comment: The APSLMP prohibits new structure or improvements, and expansions or modifications of existing facilities or improvements in areas without an approved UMP.

Response: *The APA/DEC MOU requires the DEC to consult with the APA on projects not included in a UMP.*

Comment: If a proposed action has been reviewed pursuant to SEQRA, including a pre-existing Generic EIS, the work plan should identify when that review took place and reference the document.

Response: *Work plans should identify any relevant supporting documents.*

Comment: Article XIV compliance should occur in the UMP process before much effort is undertaken through the work-planning process only to find out a structure or improvement is not constitutional.

Response: *Threshold questions related to permissible Forest Preserve purposes are appropriately addressed in UMPs. Work plans are intended to solicit further site-specific analysis.*

Comment: All projects undertaken pursuant to a stewardship agreement, with or without a work plan, should be closely monitored by DEC for compliance with Article XIV and all applicable laws, regulations and policies.

Response: *DEC continuously works closely with partners to further its mission to provide for the care, custody and control of the Forest Preserve.*

Comment: Under “Related References,” the Policy should include a citation to the 2019 Appellate Division decision in *Protect the Adirondacks v. Department of Environmental Conservation and Adirondack Park Agency*. This was affirmed by the Court of Appeals, and it provides important background and context for the 2021 decision.

Response: *The Policy appropriately cites the Court of Appeals decisions as the highest court in the State of New York.*

Comment: Under “Related References,” the Policy should include applicable parts and sections of the NYCRR. DEC’s regulations are referenced in the Summary and in Part III, so the citations should be provided here for ease of reference by work plan preparers.

Response: *The Policy has been revised.*

Comment: The “Regulatory Clearance Checklist” should list Article XIV compliance as a requirement.

Response: *The complex factors outlined by the relevant caselaw cannot be reduced to a checklist.*

Comment: The form should include an affirmation by a DEC attorney that they have reviewed the work plan and have determined that it is consistent with the Work Plan Policy, Article XIV of the NYS Constitution, and, as applicable, the Adirondack Park State Land Master Plan, the Catskill Park State Land Master Plan, the Environmental Conservation Law, and DEC rules, regulations, and policies.

Response: *Such an affirmation is outside the scope of a commissioner's Policy.*

Comment: The Policy should provide MAPPWD permit holders access to all administrative roads.

Response: *However, this comment is outside the scope of this Policy.*