



June 14, 2017

White Paper of the Adirondack Mountain Club (ADK) regarding Hut to Hut and Lodging and Dining Proposal for the Adirondack Forest Preserve.

The New York State Governor's 2017 State of the State message proposed under the Adventure NY program to place lodging and dining facilities on the Forest Preserve lands of the Boreas Pond Tract.

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Adirondack Park Agency (APA) and the Department of Environmental Conservation (DEC) staff informed ADK that the Governor's office will ask the Agencies to leave five acres of unclassified lands on the Boreas Road to the west of the four corners on the Boreas Ponds Tract. The Boreas Ponds Tract was recently acquired by the State of New York and is currently in the classification process. The five unclassified acres would eventually be classified as Intensive Use in order to locate the aforesaid lodging and dining facilities.

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The proposal for Hut to Hut glamping lodging and dining facilities on the Forest Preserve is described in the 1) *Concept Plan for a Hut-to-hut Destination-based Trail System for the Five Towns of Long Lake, Newcomb, Indian Lake, Minerva, and North Hudson* and 2) *Adirondack Hamlets to Huts, Inc., A Conceptual Backcountry Lodging Plan for the Forest Preserve*.

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These documents also reveal that the state is considering lodging and dining facilities at least 12 to 15 other locations of the state owned Forest Preserve. In fact, the *Conceptual Plan* makes the Forest Preserve the default for these facilities if private land owners and businesses do not agree to support the plan. This White Paper uses the proposal for a glamping location on the Boreas Ponds Tract as an example, but most of this document applies equally to other proposed lodging and dining facilities on the Forest Preserve.

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ADK believes that the Hut to Hut glamping lodging and dining facilities are unconstitutional because these structures or improvements violate the constitutional requirement of Article XIV, section 1 that any state facilities and land uses on the Forest Preserve must be consistent with keeping and preserving its wild forest character. Moreover, the proposed glamping facilities are new structures and improvements which are not authorized or allowed by any provision of the Adirondack Park State Land Master Plan (APSLMP). Specifically, the guidelines for Wild Forest and Intensive Use areas cannot be read or interpreted to authorize glamping structures, improvements, or activities, especially the proposed Boreas Ponds Tract glamping facility which would be located eight miles from the nearest public road and very close to the already overcrowded Eastern High Peaks.

Glamping lodging facilities erected and operated by the State of New York on Forest Preserve violate the provisions of the APSLMP governing Intensive Use Areas

The guidelines of the Adirondack Park State Land Master Plan (APSLMP) governing the classification of Intensive Use areas state that: “They will not be situated where they will aggravate problems on lands already subject to or threatened by overuse, such as the eastern portion of the High Peaks Wilderness,” (page 42, APSLMP). The proposed five-acre Intensive Use area intended for hut to hut lodging and dining facilities will be about 3.25 miles from the popular Allen Mountain of the Eastern High Peaks. The guidelines for an Intensive Use area in the APSLMP also limits its application to two types of areas; campgrounds and day use areas (page 42, APSLMP). The day use definition does not apply to the proposed hut to hut lodging and dining facility. The campground definition, which is limited to campsites of a rustic nature which contain a fireplace or fire ring, a picnic table and a tent site retaining the character of the surrounding forest (page 43, APSLMP), does not apply to the proposed hut to hut lodging and dining facility either.

The hut to hut lodging and dining facility proposal for the Boreas Pond Tract is not authorized or permitted by the guidance provisions for Intensive Use. In the case of the public campgrounds described above, the camper brings his own tent, has his own stove or cooks his own food over an open fire, and sleeps in his own sleeping bag. In striking contrast, the *Adirondack Hamlets to Huts, Inc., Conceptual Backcountry Lodging and Cluster Configurations* plan for the Forest Preserve lists the following minimum needs; bed/bunk with mattress, kitchen with stoves and fuel, a wood floor, a stove or heater for warmth with the cluster of “huts” having a desired capacity of between 24 to 36 people.

The following pictures are examples of proposed hut structures for placement on the Forest Preserve.



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Image Source: <https://www.cruaoutdoors.com/collections/all-products/products/crua-great-loj>



These “huts”, yurts, or wooden floor platform tent cabins are clearly structures within the definition of the APSLMP which provides the following definition on page 20,

“36. Structure-any object constructed, installed or placed on land to facility land use, including but not limited to bridges, buildings, ranger stations or ranger cabins, sheds, lean-tos, pit privies, picnic table, horse barns, horse hitching posts and rails, fire towers, observer cabins, telephone and electric light lines, mobile homes, campers, trailers, signs, docks, and dams.”

Clearly huts, yurts, or wooden floor tent cabins would be objects constructed, installed or placed on land to facilitate the “glamping” experience. However, a basic guideline of the APSLMP (page 16) expressly precludes the erection of these huts, yurts, or wooden floor tent enclosed cabins on Forest Preserve where they do not now exist. On page 16, the APSLMP states,

“Insofar as forest preserve lands are concerned, no structures, improvements or uses not now established on the forest preserve are permitted by these guidelines and in many cases more restrictive management is provided for.”

Since none of these structures or the new use of glamping dining and lodging facilities currently exists on any part of the Forest Preserve including the Boreas Tract, a plain reading of the foregoing language of the APSLMP expressly prohibits the erection or installation of huts, yurts, or wooden floor enclosed tent cabins; therefore, neither DEC, nor APA can proceed with establishing glamping on the Forest Preserve.

This sentence is intended to establish that unless a structure, improvement, or use is expressly permitted by the guidelines and guidance set forth in the APSLMP, those structures, improvements, or uses are prohibited. The glamping concept of state erected huts, yurts, or wooden floor, wooden frame tent cabins providing lodging and/or dining on the Forest Preserve is not authorized or permitted by any language or provision of the APSLMP, and is a completely new use and therefore unlawful. The proposed hut to hut glamping facilities, even those mischaracterized as “tents” by the state, utterly fails to conform or comply with the definition 28 on page 19 of the APSLMP which expressly defines a primitive tent site as follows:

“ 28. Primitive Tent Site-a designated tent site of an undeveloped character providing space for not more than three tents, which may have an associated pit privy and fire ring, designed to accommodate a maximum of eight people on a temporary or transient basis, and located so as to accommodate the need for shelter in a surrounding environment.”

The glamping proposals for huts, yurts and wooden floor/wooden frame tent cabins providing lodging and cooking for 24 to 36 people are clearly inconsistent with the definition of a Primitive Tent Site. The glamping proposal is also clearly inconsistent with the facilities authorized for public campgrounds, the only camping facility authorized in Intensive Use areas. The definition for campgrounds in Intensive Use areas states,

“Campgrounds

1. All campgrounds will be of a rustic nature without utility hookups and other elaborate facilities customarily provided by private campgrounds. Each individual site will retain the natural character of the surrounding forest and contain only a fireplace or fire ring, a space for a single vehicle with trailer if needed, picnic table, and appropriate sites. All facilities and appurtenances are to be constructed of natural materials to the fullest extent possible so as to blend with the natural environment.”

The concise definition makes it clear that the APSLMP authorizes only two types of Intensive Use areas: campground and day use areas. The camping facilities permitted at Intensive Use campgrounds are rustic campsites where the camper must furnish his own tent or shelter, and the only cooking or heating amenity provided is a fireplace or fire ring. The only other amenity furnished at the campsite is an outdoor picnic table and shared water spigots. The campground itself has small buildings with sinks, toilets, and showers. Basic guideline 8 for Intensive Use Areas provides that no new structures or improvements will be constructed except in conformity with a final unit management plan (UMP) for such area. It is well established in the APSLMP (page 10) that all UMPs will conform to the guidelines and criteria set forth in the APSLMP and cannot amend the master plan.

Accordingly, it is axiomatic that no structure or improvement can be authorized by unit management plan for a public campground, where the specific structure or improvement is not expressly authorized by the provisions of the APSLMP that govern public campgrounds. Day use areas will not provide for overnight camping or other overnight accommodations for the public (APSLMP, page 42, guideline 5).

The guidelines for public campground Intensive Use Areas mandate that they be adjacent to or serviceable from an existing public road (APSLMP, page 42, guideline 2). The proposed site for the 5 acre Intensive Use area is 8 miles from the nearest public road.

The guidelines of the APSLMP that pertain to Wild Forest areas of the Forest Preserve prohibit the erection of tent platforms and expressly limit permissible camping to primitive tent sites (page 35, APSLMP). Moreover, basic guideline 9 on page 36 states,

“9) All management and administrative actions and interior facilities in wild forest areas will be designed to emphasize the self-sufficiency of the user to assume a high degree of responsibility for environmentally sound use of such areas and for his or her own health, safety and welfare.”

The erection and placement of huts, yurts and tents containing beds, cots, bedding, tables, chairs, stoves and cooking facilities or meal service is diametrically inconsistent with the foregoing requirement of the APSLMP and section 1 of Article XIV of the New York State Constitution.

The proposed glamping lodging facility violates Article XIV, section 1 of the New York State Constitution

The DEC “hut to hut” glamping proposal for glamping lodging and dining cabins, yurts, and/or wooden floor tent cabins is also prohibited by Section 1 of Article XIV of the state constitution. Proponents of state operated lodging and dining facilities on the Forest Preserve attempted to get the “closed cabin” or Porter-Brereton Amendment approved in 1932, to authorize the erection and operation of these facilities. The amendment was defeated 2:1 by voters after a spirited battle by Forest Preserve defenders including the Adirondack Mountain Club. Shortly afterward, the Conservation Department asked Attorney General John J. Bennett for his opinion on the issue. Attorney General Bennett responded in an opinion dated February 14, 1934. Significantly, the Attorney General rendered his opinion *after* the most important court cases interpreting Article XIV: Section 1 had been decided by the New York Appellate Division (228 App Division 73) and the Court of Appeals (253 N.Y. 234). The Attorney General relied heavily on these cases in giving his opinion

to the Conservation Department that the building of enclosed shelters along remote trails in the Forest Preserve where food and lodging could be provided was of doubtful constitutionality. Before reaching his decision, the Attorney General framed the question,

“You state that the chief demand comes from those who, while able to travel long distances , are not physically able to carry the heavy packs needed to for the transfer of camp equipment and food supplies. Reference is made to the system established on State and Federal lands in the White Mountains in New Hampshire, where a club operates a chain of huts under permits from the Federal and State authorities. The scheme is to furnish food and lodging, the food to be the simplest kind and the huts relatively small and simple.” [emphasis added] See 1934 A.G. opinion @ 279.

Attorney General Bennett noted that Article XIV, Section 1 provides that the Forest Preserve, “shall forever be kept as wild forest lands.” He noted that it would be necessary to determine the meaning of this provision to answer the question. He noted,

“The preserve should not only have its timber supply jealously protected, but every effort should be made to have it retain the character of wild forest lands which means more than simply the protection of trees thereon. It was to be a “wild forest park” as distinguished from the urban parks throughout the State. So as far as possible the area was to be preserved in its natural state.”

Attorney General Bennett noted the constitutional requirement to protect and preserve the wild forest character of the forest preserve was expressly addressed by Justice Hinman writing in the Appellate Division decision in MacDonal. Judge Hinman in discussing the meaning of the phrase "forever kept as wild forest lands" states at 228 App. Div. at 81:

“We must conclude that the idea intended was a health resort and playground with the attributes of a wild forest park as distinguished from other parks so common to our civilization. We must preserve it in its wild nature, its trees, its rocks, its streams. It was to be a great resort for the free use of all the people, but it was made a wild resort in which nature is given free reign. Its uses for health and pleasure must not be inconsistent with its preservation as forest lands in a wild state. It must always retain the character of a wilderness. Hunting, fishing, tramping, mountain climbing, snowshoeing, skiing, or skating find ideal setting in nature’s wilderness. It is essentially a quiet and healthful retreat from the turmoils and artificialities of a busy urban life. Breathing its pure air is invigorating to the sick. No artificial setting is required for any of these purposes. Sports which require a setting which is

man-made are unmistakably inconsistent with the preservation of these forest lands in the wild and natural states in which Providence has developed them.”

After quoting Judge Hinman, the attorney general opined, “While it is probably true that the proposed scheme would be pleasing to the class of people to which you refer, it is also a fact that many others would prefer the remote section in their present less artificial condition although not so convenient and more burdensome of approach.”

He concluded, “As pointed out by the Appellate Division (page 82) the establishment of such a questionable precedent is but to open the door through which other and more reprehensible activities would insistently crowd. The establishment of such buildings and restaurant service would not, in my judgment, meet a general public demand, while it would lessen, to whatever degree extended, the solitude and wildness, which many consider lends charm to the north woods.”

Attorney General Bennett concluded that the Conservation Department could not build enclosed shelters and furnish meals in remote sections of the Forest Preserve without violating Article XIV, Section 1 of the constitution. After the issuance of the Attorney General’s opinion considering the concept of hut to hut lodging and dining facilities in the Forest Preserve, the supporters of placing these amenities in the Forest Preserve tried to pass constitutional amendments in 1935, 1945, 1946, 1949, 1955, 1961, 1962, and 1966. All of these efforts failed and no constitutional amendment allowing state operated lodging and dining facilities in the Forest Preserve was ever approved. We can fully document each of these failed attempts to seek constitutional authorization for glamping hut to hut lodging and dining facilities in the Forest Preserve.

The proposed glamping lodging facility violates numerous statutes and regulations governing the use and management of the Forest Preserve

We wish to point out some additional sections of the state law which preclude or prohibit the placement and operation of lodging and dining cabins, yurts, or wooden platform/wooden floor tents on the Forest Preserve. These facilities are not defined or listed in the Environmental Conservation Law (ECL) section 9-0903, which lists what kind of recreational facilities are permissible to be built and operated by the Department of Environmental Conservation. DEC cannot lease, contract, or enter any agreement with any person or private entity to operate the huts, yurts, or tent cabins under the provisions of section 5 of the ECL 9-0303. The state cannot charge any fee for use of huts, yurts, or wooden floor tent cabins or meals which could be retained by DEC for defraying the costs of these lodging and dining facilities under ECL Section 9-0903(2), which states that any fees collected be deposited in the

State Treasury (and would not be available to DEC) pursuant to the provisions of the State Finance Law.

The state cannot contract with any person or private entity to operate hut to hut facilities because DEC regulation 6 NYCRR part 190.8 prohibits the use of state lands or any structures or improvements thereon for private revenue or commercial purposes. Moreover, the Hamlets to Huts Conceptual Plan calls for the huts to remain in place for periods in excess of three (3) months at a time, sometimes for up to nine (9) months. Section 6 NYCRR part 190.4 precludes temporary camping in one location for four nights or more, except for big game hunting season where no temporary camping permit can be issued for a period in excess of (14) nights. Under Section 6 NYCRR part 190.5 permits for the erection of permanent tent platforms will not be issued by the department under any condition. If the state tries to characterize the wooden floor tent cabins as temporary wooden platforms, they must be completely removed from the site at the expiration of the permit.

Clearly, no operation of any yurt or wooden floor tent cabin is practical under these established time limits and complete removal from the site regulations. It is well established law that the state cannot delegate authority to operate the so called hut to hut lodging and dining facilities on the lands of the Forest Preserve to a non-state entity, persons, or private or municipal corporation. See Slutsky v. Cuomo (Third Dept. 1986) 114 A.D. 2d116.

Historic Areas Must Not Be Used For Glamping

The Concept Plan for a Hut-to-hut Destination-based Trail System for the Five Towns of Long Lake, Newcomb, Indian Lake, Minerva, and North Hudson describes different types of places where glamping lodging and dining facilities could be provided by the state for public use. Location types one and two would be on private lands and conservation easement lands. Type three would be on state land classified as intensive use. Type four is using existing buildings or temporary lodging (platform tents, yurts, or something similar) on state land classified as Historic. Type five, and least desirable, will be temporary lodging (platform tents, yurts, or something similar) on other parcels of state land.

This White Paper discusses the reasons why these glamping lodging and dining facilities would be unconstitutional under Article XIV, section of the state constitution and would violate the Wilderness, Wild Forest, and Intensive Use

provisions of the Adirondack Park State Land Master Plan (APSLMP). We will now address the proposal to use existing buildings or platform tents, huts or yurts on state land classified as Historic. Environmental Conservation Law section 9 – 0109 governs the acquisition and management of lands classified as historic. Under this section of law, historic structures and improvements must be used and maintained in a manner consistent with Article XIV of the state constitution (see subsection c of section 4 of ECL 9 – 0109). We have demonstrated that state provided lodging and dining facilities would violate the requirement that state management actions must “preserve the wild forest and wilderness character of the Forest Preserve” (see, Association for the Protection of the Adirondacks v. MacDonald, 228 App. Div. 73 at page 82). Shortly after this case was decided, Attorney General John Bennett concluded that state provided hut to hut lodging and dining facilities erected and run on the Forest Preserve would violate section 1 of Article XIV (see 1934 N.Y. A. G. 279). There are only five Historic Areas in the Adirondack Forest Preserve, the St. Regis Fire Tower, the Hurricane Mountain Fire Tower, John Brown’s Farm, the Crown Point fortifications, and Camp Santanoni. Only the last named Camp Santanoni would present any opportunity for a hut to hut facility, but any type of conversion of the inside of the existing buildings for public lodging and meal service would be inconsistent with preserving the historic character of the building and grounds as required by the Historic Area guidelines of the Adirondack Park State Land Master Plan, the provisions of ECL 9 – 0109 as noted and the “forever wild clause” of the state constitution.

The Governor’s plan for providing a glamping facility on the Boreas Ponds Tract constitutes impermissible segmentation under the State Environmental Quality Review Act and is patently illegal spot zoning.

Finally, the Governor’s plan to require the Adirondack Park Agency (APA) to set aside five acres of unclassified land in the middle of what should be classified as Wilderness, constitutes impermissible spot zoning. I have previously made the case that even if the said five acres were to be classified as Intensive Use in the future, the hut to hut facility is not authorized by the APSLMP provisions applying to Intensive Use areas. Intensive Use areas apply only to public campgrounds. At public campgrounds, the public brings their own shelter, bedding and food, and utilizes a designated campsite. The “glamping” experience where the public arrives expecting to be provided with a shelter cabin, yurt, or tent cabin and be served food or use a furnished kitchen and be kept warm with a provided for stove and fuel is a

totally different form of experience which is not authorized by the provisions of the APSLMP that apply to Intensive Use public campgrounds.

Moreover, the five acre area ‘postage stamp’ would be illegal spot zoning which is defined as the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area with a likelihood of environmental impact and harm to the sensitive natural resources of the Boreas Ponds Tract as amply documented by the staff of the Adirondack Park Agency (APA) and the hearing record. It is clearly not consistent with any classification determination based on the public record compiled by the Adirondack Park Agency and the Boreas Ponds Tract to date. See Matter of Save our Forest Action Coalition v. City of Kingston, 246 A.D. 2d217 (Third Dept. 1998).

If the illegal spot zone of five acres is segmented from the rest of the Boreas Ponds classification determination in violation of the State Environmental Quality Review Act (SEQRA), the entire classification is rendered null and void. This means that the Adirondack Park Agency (APA) must completely abandon the current classification process and commence de novo and entirely new land classification process with new alternatives including a full wilderness alternative for the entire tract.

In addition to the issues of spot zoning and segmentation under SEQRA, the Governor’s plan to have the APA leave five acres of the Boreas Ponds Tract unclassified while the rest of the tract is classified, clearly violates the language on page 8 of the APSLMP which states that newly acquired forest preserve lands be classified “as promptly as possible and in any case, classification of new acquisitions will be done annually.” The proposal to leave Forest Preserve acreage unclassified while the rest of the tract is classified, is not only impermissible segmentation under SEQRA, but a clear violation of the time limits set in the APSLMP for classifying new Forest Preserve. The state acquisition of the Boreas Ponds Tract was announced by the Governor on May 10, 2016. The state is now in violation of the time window of not more than one year from the date of acquisition for classifying every acre of the Boreas Tract properly.

Further, spot zoning an Intensive Use area within the larger Boreas Ponds Tract was never raised as a classification alternative in the APA’s Draft EIS in the SEQRA process. During the eight public hearings the public did not have the opportunity to comment on an alternative with a 5 acre Intensive Use Area. Therefore, the SEQRA process must be revisited and the public must have an opportunity to comment on this new proposed alternative in a revised Draft EIS. Proceeding without reopening the public hearings would violate several provisions of SEQRA law, including its

prohibition on segmentation mentioned above. The hut to hut proposals should also be viewed as one planning/management action that serves hikers crossing both the forest preserve and private lands. New York State is attempting to move forward with this planning/management action without knowing if private land owners have agreed to allow these facilities and infrastructure on their lands.

Segmentation is a violation of the State Environmental Quality Review Act (SEQR) as 6 CRR-NY 617.2 (ag) states, “*Segmentation* means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.”

Considering only a part or segment of an action is contrary to the intent of SEQR and is therefore unlawful.

The NYS Department of Environmental Conservation (DEC) explains segmentation as follows, “There are two types of situations where segmentation typically occurs. One is where a project sponsor attempts to avoid a thorough environmental review (often an EIS) of a whole action by splitting a project into two or more smaller projects. The second is where activities that may be occurring at different times or places are excluded from the scope of the environmental review. By excluding subsequent phases or associated project components from the environmental review, the project may appear more acceptable to the reviewing agencies and the public.”¹

Creating a five acre unclassified area in a new preferred alternative in a Final EIS that will be used by the Adirondack Park Agency Commissioners for classification decision-making on the Boreas Ponds Tract would be segmentation under SEQR because it would meet both of the situations described above by the DEC.

In summary, the state proposal for Hut to Hut glamping lodging and dining facilities as described in the document Adirondack Hamlets to Huts, Inc., A Conceptual Backcountry Lodging Plan for the Forest Preserve is unconstitutional because it is patently inconsistent with the constitutional requirement that state facilities and land uses must not be incompatible with preserving the wild forest character. Moreover, the proposed glamping facilities are new structures and improvements which are not authorized by any provision of the APSLMP. Specifically, the guidelines for Intensive Use areas cannot be read or interpreted to authorize glamping structures, improvements, or activities, especially those located eight miles from the nearest public road and very close to the already overcrowded Eastern High Peaks.

ADK submits that the placement and operation of “hut to hut” glamping lodging and dining facilities, including tents on Forest Preserve lands of the Adirondacks would be unlawful for the many reasons set forth herein.

Sincerely,

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¹ <http://www.dec.ny.gov/permits/45577.html>