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**Comments to: the New York State Climate Action Council**

**From: *Adirondack Wild: Friends of the Forest Preserve***

**Re. Comments on Climate Scoping Plan**

**Date: May 23, 2022**

On behalf of the nonprofit advocate *Adirondack Wild: Friends of the Forest Preserve*, we are pleased to submit these comments on the Draft Scoping Plan. Your visionary scope extending to specific strategies that reach Greenhouse Gas (GHG) reduction goals for buildings, transportation and electrical sectors is impressive. The 300-page document marshals and centralizes a vast amount of information and lists many vitally important individual sector strategies.

**Analysis is Deficient**: However, the sheer amount of information presented tends to make the Draft Scoping Plan encyclopedic rather than analytic.   The complexity and size of New York make it a daunting challenge to integrate strategies. Integration may in fact be the greatest challenge in the State’s Climate Action Scoping Plan, and it must be given a stronger emphasis.

The **Draft Transportation strategies**, for example, recognize the symbiosis between land use and transportation and that local governments make land use decisions (page 110), yet there are no specific strategies to ensure local land use decisions support State or regional transportation efforts.  It is not enough to merely encourage Smart Growth land use practices.  A climate change-sensitive land use policy would mandate high density development at  mass transit hubs while clustering development at low densities in exurban areas. Such patterns both conserve open space and decrease VMT’s.  The Draft Scoping Plan must address how to achieve integration between the Transportation and Land Use Strategies.

**Land Use Strategies are Merely Aspirational**: The draft states in Chapter 19, page 110, that a “broader set of smart growth strategies and recommendations are contained within Chapter 19.” Here again, the document strives to be encyclopedic in breadth rather than analytic and integrative in approach. For instance, one strategy is to “assist local governments to create land-use policies. DOS, DEC, and the Legislature should assist county and local governments to create land-use policies, land conservation programs, and smart growth strategies that prioritize and protect wetlands, forests, grasslands, stream buffers, and other natural areas” (page 288).

Such assistance to local governments has been ongoing for years. Is aspiring to more collaboration an effective driver in the effort to dramatically reduce or mitigate GHG emissions? The answer is clearly “no.” More assistance to local governments fails to stretch the needed but nonexistent muscles of broader regional planning collaboration and authority which the scoping plan states are needed to reach GHG reduction goals.

The Scoping Plan land use strategies fail to deliver much more than hopeful appeals to stronger local, county and state government entity land use and planning cooperation and collaboration. Appeals are not climate drivers. For decades, New York has had strong but underutilized planning organizations and talents at the state, regional and county levels, most of which can only recommend actions, but which lack any real planning powers. The level of regional, transboundary, collaborative smart-growth planning sought as needed by the Scoping Plan in an (almost) strictly home-rule state has no experience or precedent except in two places, the Adirondack Park and the Tug Hill Plateau. Both of those have legislatively derived origins, though of significantly different kinds.

To achieve the GHG mitigation goals that this plan envisions, appeals for greater voluntary collaboration amongst towns and counties are insufficient. The Governor and state legislature must be engaged to create new regional plans and powers. If the Scoping Plan hopes to achieve the “Keep Forests as Forests” “Smart Growth,” “Afforestation,” land protection and related land-based goals to reach its carbon sequestration and storage objectives, it should recommend true drivers of regional cooperation and collaboration, including:

1. strong, legally enforceable, legislated planning rules, and
2. equally strong, enticing and motivational incentives to keep forests as forests, etc.

**Our recommendations**:

1. **Transportation and Land Use Strategies**: As stated above, the Draft Scoping Plan must address how to achieve better integration between the Transportation and Land Use Strategies.
2. **Keep Forests as Forests**: On page 277 the Draft Scope recommends a “Keep Forests as Forests” state law, stating that “the State should immediately enact legislation to ‘keep forest as forests’ requiring developers to purchase and set aside forested land when forest carbon is lost during development following the principals of avoid, minimize, and mitigate.”

Most local governments already require that developers set-aside funds for community needs including open space and require some conservation land set-aside depending on the size of the subdivision and number of lots. These are, for climate mitigation purposes, meaningless in dollars and in acreage. Developers are not and never will be strategic purchasers of forests as forests. Placing them in that position is bound to fail. Needed are systematic, legislated rules which require developers seeking x number of lots on y acreage to set aside proportional funds in escrow to their municipality. The affected county, town, city or village government then must use those funds to acquire unprotected forests as forest land as the additionality “ticket” needed to review the subdivision and development application. There should be no local review and approval of the new land use and subdivision application without the proportional forest set-aside and mitigation/sequestration and storage requirement achieved in advance.

1. **Town Law Needs Strengthening**: In addition, New York Town Law, Article 16, Section 278, has long granted town boards and planning boards the flexibility to require creative, conservation design of subdivisions as an alternative to traditional gridded-out subdivision plats. **Town Law should be changed so that this alternative option of conservation design of subdivisions is the default standard, not optional**. Year after year, hundreds of traditional grid subdivisions fragment and reduce the state’s private forest cover and leak a tremendous amount of stored carbon through deforestation, loss of natural soil cover, loss of the herbaceous layer, and erosion of overall ecological integrity extending far beyond the boundaries of the subdivision. State town law should be amended to make conservation subdivision design the default standard for all new land use and subdivision in the state. Traditional grid subdivisions should only be permitted by variance under truly extenuating circumstances following rigorous review by local and by empowered county planning boards.

If the Scoping plan’s GHG mitigation goals are to be achieved, conservation design is needed such that residential lots and new roads are designed and sited carefully only after rigorous environmental review and only after sensitive natural resources and blocks of natural habitat and forest are set aside according to specific design principles and standards. Under conservation design, the new lots and driveways are concentrated in ways to avoid negative impacts to the natural habitat and forest which are allowed instead to continue to absorb and store carbon.

1. **County government law needs strengthening**: Counties today lack the legislated land use planning powers they need to be a driver in climate mitigation through smart growth and intelligent land use practices across town and village lines. County planning boards must be staffed and empowered by the state legislature to be regional planning authorities. They should not only assist local town and village planning boards in their review of complex projects and add capacity to their review of development, but must have the powers to overrule those local boards whenever local boards fail to set aside forests as forests or fail to require conservation design as the default standard for new subdivisions, or fail to consider transboundary impacts of any given project upon neighboring towns, such as vehicle miles traveled.
2. **State Land Acquisition**: On page 277 the Scoping Plan states that in order to “establish programs to support local land acquisition, DEC should considerably enhance support for local land acquisition and conservation easements by municipalities and land trusts through mechanisms such as the Community Preservation Act, Conservation Partnership Program (CPP), Forest Conservation Easements for Land Trusts and Community Forest programs;” and further, that DEC should “maintain and increase State land acquisition.”

All these good goals ignore the severe understaffing at DEC. The DEC’s Division of Lands and Forests is so severely understaffed that they cannot positively respond to this recommendation. Cuts of up to 40% to these DEC programs made during the three terms of Governor George Pataki have never been restored. If DEC is to support local and state land acquisition at the enhanced level the scoping plan expects, then the DEC Division of Lands and Forests must be budgeted and staffed at the same robust level as DEC divisions for environmental quality.

Also, for the State to “maintain and increase State Land acquisition” of fee simple and conservation easement, the Environmental Conservation Law Article 49 needs to be amended to remove the 1993 compromise that new state land protection acquisitions (except those listed as Statewide Open Space Plan High Priority projects in 1993) can be vetoed by local government. Local consultation on such state protection projects is important. A local veto option is no longer sustainable given the Scoping Plan’s objectives.

1. **Carbon Storage Data Center**: On page 288 the Scoping Plan recommends that the “State should fund research, analysis, and monitoring to determine carbon storage and sequestration potential of tidal and non-tidal wetlands, submerged aquatic vegetation, forests, and other priority natural areas.” A great deal of research in these areas is underway today by non-governmental and academic institutions in the State and in the Northeast. A Carbon Storage data center should be established in NYS to bring the best information together for assessment and use in targeting GHG mitigation strategies.
2. **Carbon Markets**: The Plan says on page 277 that the “State should enact legislation to establish and/or require participation in a forest carbon market for GHG emission sources in the State.” Voluntary GHG markets already exist. The California market already exists. Weaknesses are significant. Carbon offsets are frequently issued for projects where the offsetting lands are already protected and are in no danger of development. In short, there is no additional GHG benefit. Claims of contribution to carbon reduction cannot legitimately be made by such transactions. Buying carbon offsets at low prices that have no environmental benefits to emit more carbon pollution should end, and the Plan’s strategies should incorporate this recommendation.
3. **Conservation Framework**: The Plan recommends on page 288 that the State “develop a statewide conservation framework: DEC should develop a statewide conservation framework that incorporates current, accurate spatial data on critical ecosystems (terrestrial and aquatic), including priority ecosystem complexes and future needs that address climate adaptation needs (such as landscape connectivity, wetland migration pathways, and source water areas); and provides basis for prioritizing State funding, tax relief, land acquisition, and technical assistance programs to conserve priority natural areas and promote smart growth. This should be publicly accessible.”

Such an accessible “framework” already exists; it is called the DEC/OPRHP Statewide Open Space Conservation Plan, updated every five years beginning in 1992. Given more state staffing and resources, the Open Space Plan could expand to address landscape connectivity and other climate adaptation needs. The Scoping Plan cannot afford to ignore strong, existing foundations. This Statewide Open Space Plan is one of those existing foundations on which to build.

1. **Conservation Incentives:** Also, on page 288 the Scoping Plan recommends providing “conservation incentives to landowners: The State should enhance and create landowner incentives and other techniques to conserve and restore tidal and non-tidal wetlands, forests, grasslands, and natural areas and utilize living shoreline and nature-based solutions (such as tax abatement programs, tax incentives, etc.). Legislation is drafted and introduced (2018, Empire Forests for the Future)) to create a program that incentivizes private forest landowners to reduce the conversion of forests to non-forest uses. With little effort the bill could be amended and reintroduced. The bill would fix the property tax shift associated with the current Real Property Tax Law (RPTL) section 480-a where taxing jurisdictions are impacted, create a new RPTL section 480-b which would decrease the required eligible acres to be eligible for relief, expand the eligible types of undeveloped lands (e.g. steep slopes, water bodies, wetlands, etc.) to be included in the program, expand the range of forest management activities eligible for tax abatement to include management for enhancing or preserving carbon sequestration, protecting water quality and quantity, and increasing wildlife habitat and conservation; and provide financial relief to those taxing jurisdictions significantly impacted.
2. **Where to Develop:** The draft scoping plan states on page 272 that “the way we use land, whether for development, conservation, or a mix of uses, directly affects the State’s carbon emissions, sequestration, and storage. Sustainable land use planning and zoning can facilitate optimal siting of renewable energy and protection of forests, cropland, and wetlands is critical for natural carbon sequestration. Deciding where to conserve land, where to develop and how to arrange and design that development constitutes the critical first steps in addressing climate change in land use. These decisions directly impact the ability to achieve carbon mitigation, sequestration and adaptation and resilience goals.”

**The Adirondack Park** has two regional land use plans, one for private lands, one for public lands, or Forest Preserve.  Affecting six-million acres, nearly one-fifth of the state, these plans guide where land is to be conserved, where it is to be developed and how to arrange and design that development. In short, the 50-year experience of the Adirondack Park’s Private Land Use and State Land Master Plans offer climate mitigation lessons and hope for other parts of New York State.

Unfortunately, the Adirondack Park is barely mentioned in the draft Scoping Plan, much less its significance in helping to reach the state’s GHG reduction goals. Fifty years ago, the state legislature figured out ways to, imperfectly, steer most Adirondack development away from forests, farms and open space resources (In Resource Management and Rural Use zones) which are now crucial strategies and zones to mitigate climate change.

Adirondack Park’s private zonal system, from Resource Management to Moderate Intensity Use to Hamlet, were carefully mapped and field truth-ed using hand-drawn resource overlay methods of the early 1970s. Overall, in the vast majority of the Park the zones have proven accurate all these years later.

The Adirondack Park’s wetlands are, thanks to the APA Act, better mapped down to one-acre and better protected within APA permits than in any other part of the state –  and also sequester and store a great deal of carbon. Geographic Information Systems are regularly employed in today’s land use overlays.

Could other regions of the state benefit from the Adirondack Park experience of applying these maps and legislated strategies to mitigate climate change through smarter land use patterns applied across town and county boundaries? The answer, we think, is yes.

The Park’s size, history, regional plans, forests and wetlands, on top of the grassroots climate action and energy smart community work of nonprofits like the Wild Center and Adirondack North Country Association (ANCA) have much to teach the rest of the state if we are collectively to meet mandated GHG reductions. The scoping plan should take all of this into account.

Thank you for considering our comments.

*Adirondack Wild: Friends of the Forest Preserve*

*P.O. Box 9247. Niskayuna. NY. 12309*

*www.adirondackwild.org*

*518.469.4081 (work cell)*

*David Gibson, Managing Partner*