



M E M O R A N D U M

TO: James Connolly

FROM: Richard Weber *REW*

DATE: September 2, 2009

RE: Staff recommendation regarding the proposed classification of lands and waters in the vicinity of Lows Lake and the Five Ponds Wilderness Area.

Purpose and background:

The purpose of the proposed classification action is to clarify and reinforce the long-standing management direction for the area first established in 1985 as part of the Centennial Celebration of the Forest Preserve. Specifically, the proposal is intended to align the State's management actions toward preserving the wild canoe route in the area of the Bog River Flow and Lows Lake.

Agency staff, at the direction of the DEC and the Agency Board, sought authorization to proceed to public hearings on the classification/reclassification proposal for the State lands and waters in the area of Lows Lake at the May 2009 meeting of the Agency. Since that time, four public hearings have been held and a public comment period to receive written comment was open until August 28. The complete record of oral and written comment has been provided under a separate cover for Agency review and consideration.

During this same period, Agency staff has conducted additional field visits to the Lows Lake area, visited the Boy Scout property and evaluated maps and the public comment record. As a result, the classification proposal has been revised to better reflect the staff understanding of the physical, biological resources of the area, existing uses as well as to reflect the social and psychological aspects of the area otherwise referred to as the intangible qualities of the lands and waters.

Key elements of the revised proposal:

The three key elements of the original proposal have changed as the result of the staff evaluation. Specifically, the proposed changes include:

- 1) The bed and waters are now proposed to be zoned into two distinct classification areas as opposed to the original proposal which applied the classification of the entire area of Lows Lake to Wilderness. The revised proposal divides the lake on a north-south line at the western most tip of Frying Pan Island. To the west of the line the lake bed and waters are proposed to be classified as Wilderness. To the east of the line, the bed and waters are now proposed to be classified as Primitive.
- 2) Staff proposes that the core area of what is currently known as the Hitchins Pond Primitive Area be retained in the Primitive classification. The original proposal in May of this year recommended isolating the two dams and existing roads through this area to become a part of the newly created Eastern Five Ponds Access Primitive Area. The intervening lands in this area were then to be classified as Wilderness and added to the Five Ponds Wilderness. Staff recognizes that the density of non-conforming improvements and uses in this area are material in their influence on Wilderness character and the Primitive classification is therefore more appropriate.
- 3) The revised proposal does not include the classification of the bed and waters in the area of Hitchins Pond and the portion of the Bog River between the lower and upper dams. The waters are entirely surrounded by State lands and the proposal to classify the area as Wilderness is therefore not necessary.

Response to public comments:

Agency staff has reviewed all the public comment received regarding the proposed State land classification and reclassification action including both a summary of the oral comments made at the public hearings as well as all written comments or letters that were received on the matter. In reviewing the record, staff noted that a certain set of key issues were repeatedly raised by the public that in turn staff believe require a response. The following are the five key issues and staff responses:

- 1) The action is premature, inappropriate and will degrade the definition of Wilderness.

In general, the significance of human use and permanent habitation is so minor in the context of the large 2,600 acre Lake that the entire area largely achieves Wilderness conditions in its present state. Depending on location, the impact of the uses and physical presence of the private in-holdings on Lows Lake is considered to be of such an immaterial duration and level that Wilderness conditions already exist for a majority of the area. Staff has reviewed the public comment and further evaluated the conditions in the field and recommends revising the proposal so that the Lake is divided into two distinct zones or classifications based on the varying degree of human habitation and man-made improvements. Staff recommends the eastern end of the Lake be classified as Primitive and the larger and more remote portion of the Lake to the west be classified Wilderness.

The visibility of human development along the Lake's shoreline above the upper dam is not considered material. However, staff does note that the close proximity of roads on both sides of the narrow, river-like section on the eastern end of the Lake, combined with certain sounds including limited motorboat use resulting from the Boy Scout's activities during an eight week summer period, merits designating this portion of the Lake as Primitive.

Proximity to non-conforming activity does not itself preclude Wilderness classification. Many in-holdings within Wilderness areas accessed by Primitive corridors exist in the Park. The large in-holding in the High Peaks Wilderness Area in the area of Ampersand Lake does not significantly degrade or preclude the adjoining State lands in close proximity to this area from being classified Wilderness. Other similar examples exist in the Five Ponds, West Canada Lake and Silver Lake Wilderness Areas.

Also, the Wilderness definition in the Master Plan does not indicate an absolute, untrammled condition must exist before a Wilderness classification can be applied. Rather the definition uses some moderating language such as,

"A Wilderness area is further defined to mean an area of state land or water having a primeval character, without significant improvement or permanent

human habitation, which is protected and managed so as to preserve, enhance and restore, where necessary, its natural conditions, and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable..."

The Master Plan also indicates that State land policy and management can establish direction or intent to move toward a goal for an area as opposed to waiting until Wilderness conditions are fully achieved before designating the area. The use of the word restore in the definition above implies acknowledgement of a condition that is not yet attained. This approach should not be construed as an indiscriminant lack of minimum tolerances or standards for designating or managing Wilderness areas. The language does suggest that once a direction through classification has been established, all of the State's actions should be directed toward achieving Wilderness conditions. The Master Plan's Area Descriptions also contain many examples of non-conforming conditions within a designated Wilderness establishing the intent, direction or movement toward their eventual removal.

At the time of the Master Plan's adoption many non-conformances existed in Wilderness areas. However, the State had also identified the intent to move toward the management of these areas as Wilderness. The Master plan also acknowledged that a minimal degree of non-conformance did not preclude Wilderness classification,

"At the time of the original enactment of this master plan, a majority of these areas contained some structures and improvements or were subjected to uses by the public or by official personnel that were incompatible with Wilderness. However, the extent of these non-conforming uses was very modest from the standpoint of the total acreage involved. Since 1972 all but a few of those non-conforming uses have been removed..."

In summary, the degree or extent of non-conforming improvements or uses on, or in proximity to, the lake bed, waters or lands that are the subject of this classification is considered immaterial, will not degrade the Wilderness definition and the Wilderness classification is therefore considered appropriate. Staff also believes that it is important and timely to continue to clarify and reinforce the long-term management direction to create a Wilderness

canoe route for the lands and waters connecting Lows Lake to adjacent water bodies and to acknowledge the Wilderness characteristics of the associated waterways and their connection to the Five Ponds Wilderness Area.

- 2) Why now? The Wilderness classification should not occur until all in-holdings in the area have been acquired by the State.

The response to this comment is essentially the same as the response to comment 1) above. The only additional considerations to the question regarding the timing (why now?) of the action includes the addition of newly acquired lands to the area, the promulgation of regulations prohibiting motorboat use on Lows Lake, and the scheduled commitment to prohibit commercial float-plane on the lake by the end of 2011. These recent actions, combined, constitute a significant movement toward attaining a Wilderness condition in the area, and the designation of these areas as Wilderness and Primitive is considered appropriate at this time.

- 3) The State does not own the rights or have the authority to consider classifying the bed and waters of Lows Lake.

The State does have sufficient interest in the ownership of the bed of Lows Lake and surrounding lands in the Five Ponds Wilderness Area to support the classification of the bed and waters as indicated in the revised proposal.

The four fee acquisitions in the area of Lows Lake between 1985 and 2006 (see attached map: Major Acquisitions of State Land in the Lows Lake Area) indicate that the total deeded acreage of each Forest Preserve Acquisition (AFP) includes the acquisition of substantial acreage of lands under the water or the bed of the lake. The deeds for these acquisitions also include language indicating ownership of the bed, and in some cases, the waters of Lows Lake. The deed for AFP St. Lawrence 156 states that the interests in the transaction included "...all ponds, streams, roads, highways and the lands lying within the beds of all ponds, streams, roads..." The deed for AFP St. Lawrence 158 refers to the described area of the transaction as including "...the lands and waters..." Finally, the deed for AFP Hamilton 301.02 more specifically refers to the interests as including "...the ponds, marshes, rivers, lakes,

creeks, waters and lands under water located in, upon or adjoining the above described premises..."

The above deed citations do provide sufficient evidence of State interest in the bed and waters of Lows Lake to support the classification action. Where the State's interest in the land or water is recognized, the Master Plan provides for the establishment of a coherent policy direction through a zoning or classification process that is legally separate from the details of real property ownership by the State, or Article 14 Constitutional constraints that may also apply.

- 4) The action is a precedent that will be applied to other lake beds and waters in the Park.

This classification is being proposed to clarify and reinforce a long-standing management directive provided in the Master Plan regarding the preservation of the Wild character of the Bog River-Lows Lake-Oswegatchie canoe route. The importance of the specific management directive in the Master Plan, the significant State land holdings around Lows Lake classified as Wilderness in combination with the State interest in the bed of the Lake, creates a unique case for classifying its bed and waters as either Primitive or Wilderness.

This is the first time a classification proposal has been mapped and described for the bed and waters of a lake. In this sense the proposal does represent a precedent. Past practice has typically identified the waters completely surrounded by Wilderness as being managed for Wilderness without specifically addressing or mapping the waters as actually being classified. The convergence of factors in this classification proposal is unique and is not intended to be, nor could be, applied broadly. That said, the classification of water could be applied in other places if a similar pattern of State-held interests existed. In any case, all proposals to classify lands or waters will continue to be the result of a careful process involving State agencies with jurisdiction over the land, the DEC, public hearings held inside and outside the Park, the oversight of the Agency Board which must make a recommendation to the Governor for action.

MAJOR ACQUISITIONS OF STATE LAND IN THE LOWS LAKE AREA

AFP St. Lawrence 156

Acquired in 1985
Deeded Acreage: 2838.39
GIS Calculated Total Acreage: 2856.3
GIS Calculated Acreage of Land: 1994.5
GIS Calculated Acreage of Water: 861.8

AFP St. Lawrence 159

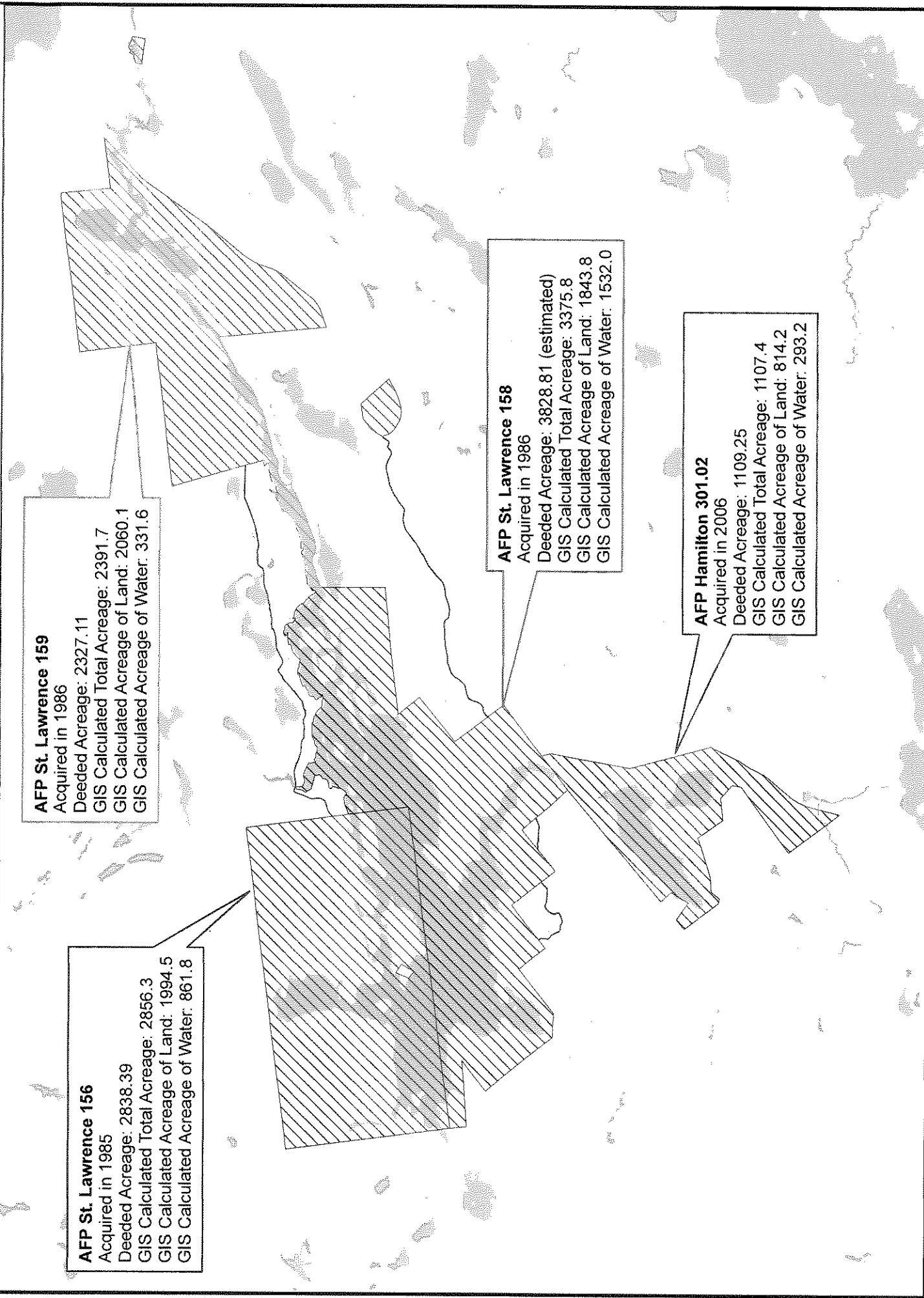
Acquired in 1986
Deeded Acreage: 2327.11
GIS Calculated Total Acreage: 2391.7
GIS Calculated Acreage of Land: 2060.1
GIS Calculated Acreage of Water: 331.6

AFP St. Lawrence 158

Acquired in 1986
Deeded Acreage: 3828.81 (estimated)
GIS Calculated Total Acreage: 3375.8
GIS Calculated Acreage of Land: 1843.8
GIS Calculated Acreage of Water: 1532.0

AFP Hamilton 301.02

Acquired in 2006
Deeded Acreage: 1109.25
GIS Calculated Total Acreage: 1107.4
GIS Calculated Acreage of Land: 814.2
GIS Calculated Acreage of Water: 293.2



- 5) The proposed action will further restrict motor vehicle use.

The proposed classification/reclassification action will not further restrict either the public or the private motor vehicle use rights to the waters of Lows Lake. The public right to use motorboats on the Lake has already been prohibited through the promulgation of DEC regulation in 2006. This action is to be followed by a prohibition of commercial float-plane use on Lows Lake by December 31, 2011 through the promulgation of additional regulation. Consequently, the prohibition of the public's right to use motorboats or aircraft on the water has already been established.

The rights of the private landowners on the shoreline of Lows and Bog Lakes are not affected by this classification proposal. All private rights are protected as part of the reserved rights identified in the Eastern Five Ponds Access Primitive Area.

SEQRA:

Agency staff have reviewed the proposal and determined that it will not have a significant adverse environmental impact. A negative declaration was filed in the Environmental Notice Bulletin on June 24, 2009.

Staff recommendation:

Agency staff recommends the revised classification proposal dated September 2, 2009 resulting from the evaluation of a number of alternatives is consistent with the guidelines and criteria of the Adirondack Park State Land Master Plan and the Programmatic Environmental Impact Statement pertaining to the amendment of the State Land Master Plan.

