

July 31, 2023

Jennifer Maglienti, General Counsel  
NYS Office of Parks, Recreation and Historic Preservation  
Albany NY, 12238

Grant No. EPF C11394GG-N1

General Counsel Maglienti:

This writing is in response to your letter dated July 13, 2023.

Contrary to OPHRP's assertion, the Adirondack Mountain Club's (ADK) communication of June 2nd did not express its intent to forego the EPF grant. On the contrary, ADK would prefer a positive resolution to this saga, but to do so OPHRP will need to cease moving the goal posts and adhere to the original terms, including the information shared by OPHRP staff and relied upon by ADK in signing the state contract.

### **Communications from State Parks After the Grant is Awarded to ADK**

State Parks' wrongly claims that Cascade's buildings have always been contemplated as part of this project. First, OPHRP has consistently shared that this grant would involve a conservation easement; generally, a conservation easement applies to the environmental protection of land, as opposed to an historic preservation easement which protects the historic integrity of a building. Second, the grant administrator's email of March 14, 2022 expressly stated that EPF funding is "not appropriate for some of the functions to be hosted in the facility (lodging, office space)"; as such, "[Parks] can support the request for \$500k award to be used *only* for the acquisition of the 200 acres of open space." To this point, the grand administrator directed ADK to secure surveys and multiple appraisals to show that the land alone held a value of at least a million (or the grant amount would be reduced).

Despite its definitive tone, OPHRP eventually became more nuanced in its stance, demonstrating an interest in making sure that the public would have access to space other than just the land. In her email of May 6, 2022, Ms. Jenkins states: "The Grants Bureau has been in discussion about the acquisition of the property for this grant and we would like to explore a way to keep the building in the boundary map for the protected area. The main issues that the agency will need to consider are: public access to the property; use of the restaurant area; use of the lodging area; restrooms; parking."

And on October 14, 2022 (10 months after the grant award), OPHRP presented a draft easement to ADK on October 14, 2022. ("Copied below is the link to find the draft

conservation easement language” email from S. Jenkins). The draft easement appeared entirely appropriate upon review; it provided for public access in perpetuity as well as a list of appropriate environmental restrictions on the property (e.g., restricts development, dumping, use of toxic chemicals, etc.). What’s more, this draft easement expressly stated that where buildings existed on protected land, ADK would have “the right to renovate, repair and maintain . . . in order to enhance the Protected Property for use as a public park.”

And so, the sum of communications from State Parks’ following the grant award and prior to the execution of the state contract is the following:

- (1) including the building would *not* be permissible under the grant;
- (2) ADK needs to secure surveys and multiple appraisals (\$20,000+) to demonstrate that the land alone held a certain value;
- (3) Parks may have an interest in securing ‘public access’ to the building; and
- (4) a draft easement is shared with acceptable terms including the right to renovate and maintain the building.

Four days after State Parks shared the draft easement, it provided the state contract for execution. ADK signed and returned the same. And that’s when everything changed.

## Post Contract Communications

On March 29, 2023, one year and two months after the awarding of the grant; more than six months after Parks provided an acceptable draft easement; and six months after execution of the contract, State Parks sent a newly proposed easement with entirely different terms.

1. **ADK Could No Longer Make Repairs, Renovations or Even Maintain Cascade:** Removed from the initial draft was language that gave ADK “the right to renovate, repair and maintain . . . existing structures and facilities . . .” This would include ADK’s ability to repair and make renovations to the existing building to bring it up to code, make it safe and usable for the public as well as existing and future programming (e.g., replace a burst pipe, fix the old outdoor staircase, or partition a room to add office space for additional employees). There are hundreds of examples of routine maintenance and repairs that would be prohibited without the express permission from the Commissioner of Parks.
2. **ADK Could Not Sell or Rent Anything Not Approved by Parks:** According to the newly proposed easement, the same is true with respect to what ADK could sell at Cascade. The proposed easement provides only a narrow list of acceptable categories that ADK may sell/lease in perpetuity. Everything else would be prohibited. As just a few examples, ADK could no longer sell bear canisters to protect hikers and wildlife, or rent bike helmets to mountain bikers, or even sell water bottles or bug spray.
3. **No Timeframe or Standard for Parks’ Review.** In proposing to give the Parks’ Commissioner exclusive authority over every decision relative to the Cascade Welcome Center, the proposed easement provides no timeline or standard by which the Commissioner would have to adhere. This would frustrate ADK’s ability to administer

programs and visitor experiences and would come at a cost that will quickly eliminate any economic value of this grant. As just one example, when ADK hires an architect to develop renderings in preparation to renovate the Cascade building (erected in 1978), the Commissioner of Parks could: (1) repeatedly reject the proposals (for any or no reason at all), thus forcing ADK to incur significant costs for plans that might otherwise satisfy ADK's Board; or (2) not accept or reject the plans for years, thus legally preventing ADK from moving forward. And under the proposed easement, what could ADK do about any of this? Absolutely nothing. What's more, the fact that the Parks' Commissioner, his deputies and counsel's office has refused to engage in a single conversation with ADK at any point in connection with this grant does not bode well for success under the proposed terms.

4. **ADK Carries all the Liability:** Even as Parks seeks to deprive ADK from making timely repairs and maintenance, the proposed easement relieves Parks of any and all liability. And so, if the building needs to be brought up to code, or if a staircase needs repair (as is presently the case), ADK would not be able to legally proceed without the permission of Parks. As such, ADK would have a choice: (a) close the building to the public and lose all revenue while awaiting a response from Parks (if any comes at all); or (b) allow the public to continue to have access and bear any and all liability if an injury occurs. This is untenable.
5. **Post-Contract Easement is the Inverse of the Initial Easement:** No longer does the proposed easement simply provide a list of prohibited activities that ensures the land will be protected in perpetuity; rather, it provides a narrow list of just a few activities that ADK will be permitted to do going forward (many existing programs are not on the list). Given this, could ADK expand programming in the summer for disabled veterans or children from underserved areas? No. Could it continue its birding or nature walks, hold a board meeting, or allow other non-profits to host meetings or activities on the premises? Not without the written permission of the Parks' Commissioner.

Parks asserted in its letter of July 13, 2023 that it had concerns about the intended use of the building during the grant approval process, but was legally unable to contact ADK. That barrier applied only up to the point of the award. That does not explain why Parks didn't seek to resolve this issue with ADK after the awarding of the grant and before proceeding with the execution of the contract. By contrast, ADK recently received a "conditional award" from DEC, which prompted a meeting immediately following to address the concern *prior to the execution of the contract*. But this grant is not a 'conditional award'; it is a straightforward grant award, with a straightforward draft easement that was provided to ADK following the award, as well as assertions from OPHRP staff that the buildings would not be included (save in a public access capacity).

Suffice it to say, ADK cannot sign the easement in its current form. The financial benefit of this grant has already been greatly diminished given the out-of-pocket costs, staff time, and lost opportunities for lower interest rates with alternative funding. What's more, Parks' effort to leverage a signed state contract that it induced, with entirely separate terms, is not only in

bad faith, it bizarrely asks ADK to give up all decision making relative to its investment (for only 20% of the purchase price).

ADK is a century-old non-profit with a proven track record of serving hundreds of thousands of people by providing public access to its facilities, education programs, and stewardship of lands. Indeed, ADK has provided the public with access to Cascade's trails and building throughout this process. Now it is time for OPHRP to keep its end of the bargain and preserve a solution to better serve all New Yorkers. Resend ADK the originally proposed easement for execution, which it will execute, and release the grant funds.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael Barrett', with a stylized, flowing script.

Michael Barrett  
Executive Director  
Adirondack Mountain Club

Cc: Erik Kulleseid, Commissioner  
Sunshine Jenkins, Grant Administrator