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Executive Director

July 14, 2016

Marc S. Migliore
NYS DEC Division of Permits
232 Golf Course Road
Warrensburg, NY 12885

Re: Permit to Construct Motorized Route within One-Half Mile of "Scenic" Boreas River, Application: 5-1599-00019/00001, ENB Notice June 29, 2016

Dear Marc,

Protect the Adirondacks finds many problems with the proposal by the Department of Environmental Conservation (DEC) to build a new bridge over the Boreas River, where it is classified under the NYS Wild, Scenic and Recreational Rivers Act (WSRRA) as a "Scenic River." The WSRRA states that "Management of scenic river areas shall be directed at preserving and restoring the natural scenic qualities of such rivers." The proposed new bridge for snowmobile use undermines and disturbs the natural scenic qualities of the Boreas River. PROTECT finds this proposal to violate the Rivers Act, the Adirondack Park State Land Master Plan, and Article XIV Section 1 of the NYS Constitution.

This bridge is part of the new class II community connector snowmobile trail that runs from Newcomb to Minerva. The ENB notice talks about a new multi-use trail. Make no mistake, this trail is being designed and constructed for snowmobile use and for grooming with large tracked groomers. This road-like, 9-12 foot wide trail has little to do, and offers little enjoyment, for horse riding, bicycle use or hiking. This is principally a snowmobile trail.

The ENB Notice states:

The Department of Environmental Conservation proposes to construct a multi-use recreational trail within one-half (1/2) mile of the Boreas River, which is designated as a Scenic River by Environmental Conservation Law Title 27, Wild, Scenic and Recreational Rivers Systems. The total acreage of the trail within the River corridor is approximately 1.1 acres, or approximately one (1) mile of trail, located within the 92,000-acre Vanderwhacker Mountain Wild Forest.

The 1.1 acres of land clearing will likely see 1,000 trees of all size destroyed, all

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understory removed and destroyed, and extensive grading with heavy machinery on both sides of the Boreas River. This level of tree cutting is consistent with tree cutting on the recently constructed trail segments north of the Boreas River from the Hyslop Conservation Easement area to the Roosevelt Truck Trail. The DEC has not adequately assessed impacts to mature and old growth forest areas from this level of tree cutting. This level of tree cutting also violates Article XIV Section 1 of the NYS Constitution.

A New Bridge on a Trail to Nowhere: The DEC has not completed agreements, and it is highly unlikely that they will successfully do so, among private landowners at the south end of this route in Minerva. DEC has stated that it will build this new trail through the Forest Preserve, at a great financial and ecological cost, yet has not enlisted the support of private landowners necessary to link the Forest Preserve with services in downtown Minerva.

As it stands now, DEC is building a trail to nowhere.

A Failure of Planning as this Snowmobile Trail is being Built in a Part of the Adirondacks with Poor Snowfall: During the approval of the amendment to the Vanderwhacker Mountain Wild Forest Area UMP, and other UMPs, DEC said it did not have to assess snowfall records because this is a multiple use trail and not solely a snowmobile trail. This is a dishonest statement. This trail is being built the way it is not for other users but for snowmobile use. The Minerva area is marginal snowmobile country in the best years. In average snow years this trail will be inoperable. This trail, though expensive and deleterious to the traversed forest systems, will be of little value to the snowmobiling community and will be of no value to the hiking, horse riding or bicycling communities.

Here's how DEC dealt with this issue in the 2015 UMP amendment to the Vanderwhacker Mountain Wild Forest area in its Response to Public Comments section:

- DEC should include long-term snowfall data in UMPs to support construction of new trails. *These proposals are for multiple use trails so snowfall is not required for all uses.* (Page 67)

DEC dodged the question then and continues to dodge the question now.

I have recently spent many days doing an inventory of the DEC's new Seventh Lake Mountain class II community connector snowmobile trail that runs through the Moose River Plains Wild Forest area and connects Inlet and Raquette Lake. My time in the field has been on beautiful June and July days. This trail was built at great expense to New York taxpayers and marked an investment of millions of dollars by the state. This trail is billed as a "multiple use trail" and perfectly illustrates that fiction. Though these have been beautiful days I have seen no other people. I have seen scarcely a footprint on the ground of tire track of a mountain bike. I have not seen any horseshoe prints. And this was supposed to be a showcase multi use trail in an area of the Adirondacks with many state campgrounds and many more visitors than ever go to Newcomb or Minerva. Make no mistake, this is a snowmobile trail and a snowmobile trail only and is a complete failure for inspiring multiple uses.

The new Newcomb to Minerva trail is being cut in an area of the Park with marginal snowfall. When the western Adirondacks and High Peaks have good snowpacks, Minerva is often

snowless. DEC's failure to honestly confront the historic weather conditions of this trail area will lead to a massive poor expenditure of scarce public funds, an unjustifiable negative impact on intact forest systems, and a complete failure of public Forest Preserve management policy. It is simply not a good investment to build a snowmobile trail in a part of the Adirondacks that historically does not receive snowfall levels needed to support this sport.

Newcomb to Minerva Snowmobile Trail is Cut through Old and Mature Forests: Great stretches of the Newcomb to Minerva snowmobile trail is cut through sections of the Forest Preserve that are included in the Forest Preserve maps of 1892. These constitute some of the state's oldest Forest Preserve lands. DEC has not undertaken any kind of assessment of impacts from placing a motorized trail through unbroken and intact forest areas. This proposed new bridge in part of this disruptive new trail as there are lands on the 1892 maps both north and south of the Boreas River.

WSRRA Regulations Requires that Bridges should be constructed with Naturally Occurring Materials: The WSSRA states that any bridge within a designated river corridor must be "constructed, to the greatest extent, of naturally occurring materials." The proposed Boreas River Bridge does not meet this standard.

WSRRA Regulations Limits Trails to 4 Feet in Width in Scenic River Corridors: DEC regulations 6 NYCRR Part 666.3 "Definitions" states that a "trail" "means a marked and maintained path or way four feet or less in width, and located and designed to provide for reasonable access in a manner causing the least effect on the local environment." Yet, the DEC proposes to build a bridge for a class II community connector trail 9-12 feet in width, which clearly conflicts with 6 NYCRR Part 666.

Prohibitions on Public Motor Vehicle Use in Scenic River Corridors: The restrictions for public motorized uses within Scenic river corridors are evident in various statements made by the DEC in its Environmental Impact Statement (EIS) promulgated at the time of adoption of 6 NYCRR Part 666 in 1986. These statements shine additional light on DEC's prohibitions and limitations for management of Scenic River corridors. In its "Public Response" section, the EIS states:

- Regulations have been amended to prohibit motorized open space recreational uses in scenic river areas. Therefore, bridges for this use have been prohibited. (Page 57)
- The Department agrees that motorized recreational vehicles should not be allowed to operate in scenic river areas due to their relatively undeveloped nature and the concurrent extensive low intensity recreational and other passive outdoor uses which predominately take place within such river areas and conflict with motorized recreational vehicles. (Page 58)
- A maximum width of four feet has been established for foot trails. This will assist in precluding inappropriate motorized uses on such trails and prevent designation of roads as foot trails. (Page 31)

- The Regulations have been amended to prohibit motorized open space recreational uses in scenic river areas. (Page 60)
- It should also be pointed out that the EIS provided important guidance on River Management Plans too: “[I]t should be noted that management plans control river specific actions and in no way provide relief or relaxation of the provisions contained in statewide regulations. Management plans can only recommend more stringent controls than those contained in the Statewide Regulations.” (Page 39)

Note that the EIS states such types of motorized bridges can be created in Recreational river areas, but not in Scenic river areas.

It is manifestly clear that the only way that a major class II community connector snowmobile trail can lawfully be built within a Scenic River corridor or across the Boreas River is for the Legislature to change the WSRRA classification from Scenic to Recreational, otherwise amend the WSRRA, or for the DEC to change 6 NYCRR Part 666.

Instances Where APA-DEC Have Conflicting Regulations: The APA has sadly taken the position that public motorized recreational activities are allowed in a Scenic River corridor that runs through a Wild Forest area because motor vehicles are allowed in some parts of Wild Forest areas. This narrow reading of the Adirondack Park State Land Master Plan (SLMP) regulations stands in direct conflict with DEC's regulations with regard to allowable uses in Scenic River corridors. Just as the APA Act directs the APA to promulgate regulations for State lands through the SLMP, the Environmental Conservation Law directs the DEC to develop regulations for the WSRRA. DEC WSRRA Regulations at 6 NYCRR Part 666.4 states “Management of scenic river areas will be directed to preserving and restoring their natural scenic qualities.” PROTECT questions how construction of a Boreas River Bridge meets the requirement to preserve and restore the natural scenic qualities of this river as required by the WSRRA.

More importantly, the Boreas River bridge proposal fails to recognize a guiding principle in the WSRRA for how to adjudicate conflicting state agency rules and regulations. Article 27, Section 15-2721 of the Environmental Conservation Law, which governs the WSRRA, states:

§ 15-2721. Conflict with other laws.

Any section of the state Wild, Scenic and Recreational Rivers system that is or shall become a part of the Forest Preserve, the Adirondack or Catskill Parks or any other state park, wildlife refuge, or similar area shall be subject to the provisions of this title, and the laws and constitutional provisions under which the other areas may be administered, and in the case of conflict between the provisions of those laws and constitutional provisions and the provisions of this title, the more restrictive provisions shall apply.

The Boreas Bridge proposal takes the position that a Scenic River corridor should be managed no differently than Wild Forest lands. This interpretation violates the WSRRA rules and regulations.

Class II Community Connector Snowmobile Trail Construction Violates the Adirondack Park State Land Master Plan

The Adirondack Park State Land Master Plan (SLMP) defines a snowmobile trail as “a marked trail of essentially the same character as a foot trail” and mandates that it be “compatible with the wild forest character of an area.” A snowmobile trail “should be designed and located in a manner than will not adversely affect adjoining private landowners or the wild forest atmosphere....” These road-like class II community connector snowmobile trails simply do not have the character of a foot trail and violate both the wild forest character and the wild forest atmosphere of the area. PROTECT has consistently stated that class II community connector snowmobile trails do not conform to these three standards.

There is no way the new class II community connector snowmobile trails in the Vanderwhacker Mountain Wild Forest area bears any rational resemblance to something having the “character of a foot trail.” A class II community connector snowmobile trails surface has been graded, leveled, and flattened by a multi-ton excavator. Extensive bench cuts are dug into side slopes that parallel the trail for long distances, protruding rocks are removed, extensive tree cutting is done, all understory vegetation is removed, and oversized bridges are built to support multi-ton groomers. In places bedrock may be fractured and chipped or gravel may be used to stabilize the trail surface. Bridges have been outfitted with plastic reflectors for nighttime driving.

A “foot trail” is where people walk single file. They step over roots and rocks. The trail surface is uneven and follows the terrain. There are scarcely any stumps of cut trees. Vegetation on the side often encroaches, and the trail is canopy covered. Steppingstones and split logs are commonly used to pass over streams and wet areas. There are no reflectors on trees or bridges.

PROTECT has identified that there are many other areas of the SLMP for Wild Forest areas that are expressly violated by the design and construction of class II community connector snowmobile trails and by grooming with large tracked (motor vehicle) groomers. These include:

- Basic Guideline 2 (Motor Vehicles, Motorized Equipment and Aircraft 6) states that public access accommodations should be “consistent with the wild forest character.”

PROTECT does not believe that the new road-like class II community connector class II snowmobile trails are consistent with the wild forest character. The route’s width, bridges, reflectors, bench cuts, ledge cuts, use of gravel and straw, extensive surface alteration, tree removal, understory removal are all inconsistent with the “wild forest character” of Wild Forest areas.

- Basic Guideline 2 (Motor Vehicles, Motorized Equipment and Aircraft #8) states “All conforming structures and improvements will be designed and located so as to blend with the surrounding environment and require only minimal maintenance.” PROTECT does not believe that the new class II community connector snowmobile trails meet the minimal maintenance test expressed here. DEC and the APA claim that the grooming of this trail is maintenance. PROTECT does not believe that nu-

merous trips per week by a multi-ton tracked groomer on a major snowmobile route meets the “minimal maintenance” test.

- Basic Guideline 2 (Motor Vehicles, Motorized Equipment and Aircraft 9) states “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 for his or her own health, safety and welfare.”

Leaving aside concerns of snowmobile environmentally sound use with their mileage rates less than most SUVs, PROTECT questions the “self-sufficiency” of the users of class II community connector snowmobile trails where the principal recreational use of snowmobiling can only be accomplished if the trail has been regularly groomed by a multi-ton tracked groomer.

Class II community connector snowmobile trails widely violate the SLMP.

Indian Lake to Minerva Snowmobile Trail Violates 2006 NYS Snowmobile Plan: The proposed Boreas River bridge is a vital connection for the Indian Lake to Minerva Snowmobile Trail. The 2006 Snowmobile Plan for the Adirondack Park contains a list of priority trail systems to link communities throughout the Adirondack Park. This plan is the definitive policy to date of vital community connection trails in the Adirondacks. Under “Community Connection Goals” in the “Trail Section” part of the Snowmobile Plan (pages 45-46), there is no mention of a Minerva-to-Indian Lake snowmobile trail. This was not a major goal for New York and was not recognized as a high priority. The Environmental Impact Study associated with the Snowmobile Plan did not evaluate the impacts of a Minerva-to-Indian Lake trail. PROTECT believes that in order for the APA-DEC to approve and build a Minerva-to-Indian Lake trail, the State must revise the 2006 Snowmobile Plan for the Adirondack Park.

Class II Community Connector Snowmobile Trails Violate the State Constitution: It would be much more accurate for the DEC to state that new class II community connector snowmobile trails through the Vanderwhacker Mountain Wild Forest area are solely for snowmobiles and drop the pretense that these are multi-use trails. In fact, these trails are designed and built not to facilitate hiking, mountainbiking, horseback riding, or cross-country skiing. These trails are designed and built for snowmobiles to travel 25 miles per hour or higher and be groomed with large tracked groomers. No other recreational use in the Forest Preserve requires 9-12 foot wide trails, specifically designed and constructed to allow regular grooming with large multi-ton motor vehicles and high-speed snowmobile travel.

Unlike other trails built by hand, these trails are excavated with heavy machinery, utilize extensive bench cutting, remove thousands of trees over 3 inches diameter at breast height (DBH), remove tens of thousands of trees under 3 inches DBH, remove the entire native understory, often replace the native understory with a grass mix, open the forest canopy, often fracture and chip away bedrock, utilize oversized bridges often equipped with reflectors, and are built to handle operation of motor vehicles at high rates of speed. No other recreational activity in the Forest Preserve, outside of Intensive Use Areas, requires such pro-

found terrain alteration and destruction of natural resources. PROTECT believes that this network of class II community connector snowmobile trails violates the SLMP and Article XIV, Section 1 of the NYS Constitution.

For all the reasons stated above, Protect the Adirondacks opposes approval and construction of a new motor vehicle bridge over the Boreas River in an area classified as Scenic under the NYS Wild, Scenic and Recreational Rivers Act.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer".

Peter Bauer
Executive Director

CC V. Lannon, Executive Chamber

K. Dineen, Executive Chamber

B. Seggos, NYSDEC

P. Walke, NYSDEC

K. Moser, NYSDEC

R. Davies, NYSDEC