

STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

AMENDED PETITION

In the Matter of the Application of

INDEX NO. 5953-06

ADIRONDACK MOUNTAIN CLUB, INC.,
RESIDENTS' COMMITTEE TO PROTECT THE
ADIRONDACKS, INC., THE ADIRONDACK
COUNCIL, INC. and THE ASSOCIATION FOR
THE PROTECTION OF THE ADIRONDACKS,
INC.,

DATE OF FILING:

9/12/06

Petitioners,

for a Judgment Pursuant to
CPLR Article 78

-against-

ADIRONDACK PARK AGENCY, DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and OFFICE
OF PARKS, RECREATION AND HISTORIC
PRESERVATION,

Respondents.

Petitioners, Adirondack Mountain Club, Inc., Residents'
Committee to Protect the Adirondacks, Inc., The Adirondack
Council, Inc. and The Association for the Protection of the
Adirondacks, Inc., for their verified amended petition herein, by
their attorneys, Caffry & Flower, allege as follows:

SUMMARY OF PROCEEDING

1. This proceeding is brought pursuant to Article 78 of the
Civil Practice Law and Rules ("CPLR") to annul, vacate, and set
aside the following actions:

a. Approval by respondent Adirondack Park Agency ("APA") on July 14, 2006 of all snowmobile-related portions of the Unit Management Plan for that unit of the New York State Forest Preserve known as the Jessup River Wild Forest ("Jessup River UMP");

b. Adoption by APA on July 14, 2006 of all snowmobile-related portions of findings supporting its approval of said Jessup River UMP, pursuant to the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations at 6 NYCRR Part 617 ("SEQR") ;

c. Approval by respondent Department of Environmental Conservation ("DEC") on August 28, 2006 of all snowmobile-related portions of said Jessup River UMP; and

d. Adoption by DEC on August 28, 2006 of SEQR findings supporting its approval of all snowmobile-related portions of said Jessup River UMP.

e. Approval by DEC AND respondent Office of Parks, Recreation and Historic Preservation ("OPRHP") on November 10 and November 12, 2006, respectively, of the Final Snowmobile Plan for the Adirondack Park /Final Generic Impact Statement ("Final Snowmobile Plan").

f. Adoption by DEC and OPRHP in the Fall of 2006 of SEQR findings supporting their approval of said Final Snowmobile Plan.

2. This proceeding its further brought to enjoin respondents APA and DEC from undertaking the actions authorized

by said Jessup River UMP and Final Snowmobile Plan which would create new, modified and/or relocated snowmobile trails and which would allow the use of motorized tracked grooming machines to groom the snow on snowmobile trails in the Adirondack Forest Preserve.

Summary of Claims Regarding
Jessup River Wild Forest UMP

3. The approval of the Jessup River UMP by respondents APA and DEC violated Executive Law § 816 and the Adirondack Park State Land Master Plan ("APSLMP")¹ because:

- ▶ the Jessup River UMP purports to authorize the use of tracked motorized grooming machines for the grooming of snow on snowmobile trails even though such grooming is prohibited by the APSLMP (First and Second Causes of Action, infra);

- ▶ the Jessup River UMP encourages additional public use of snowmobiles in the Jessup River Wild Forest unit of the Adirondack Forest Preserve, contrary to the APSLMP (Third and Fourth Causes of Action, infra);

- ▶ the Jessup River UMP did not include the necessary information and findings required by the Master Plan, including, but not limited to, an assessment of the carrying capacity of the

¹ All references to the APSLMP herein are to the 2001 edition of the plan, which is the most recent updated edition. It is available on APA's website at http://www.apa.state.ny.us/Documents/Laws_Regs/SlmpPDF2001.pdf.

Jessup River Wild Forest for snowmobiles and snowmobile trails (Fifth Cause of Action, infra); and

- ▶ the Jessup River UMP will add additional miles of snowmobile trails in the Adirondack Park, even though DEC already operates more miles of such trails in the Park than are allowed by the APSLMP and will materially increase the mileage of snowmobile trails in the Jessup River Wild Forest, (Sixth Cause of Action, infra).

4. The approval of the Jessup River UMP by respondents APA and DEC, which would allow the operation of motorized snowmobile trail grooming machines on trails in the Jessup River Wild Forest, was contrary to DEC's regulations at 6 NYCRR § 196.1 which prohibit the operation of motor vehicles in the Forest Preserve, other than on roads (Seventh Cause of Action, infra).

5. The approval of the Jessup River UMP by respondents APA and DEC violated SEQR because they:

- ▶ failed and refused to take a "hard look" at the potential significant adverse environmental impacts of the action and to mitigate those impacts (Eighth Cause of Action, infra);

- ▶ failed and refused to assess the cumulative environmental impacts of the Jessup River UMP and snowmobile trails planned for other areas of the Adirondack Park, as required by SEQR (Ninth Cause of Action, infra); and

- ▶ illegally segmented the SEQR review of the action (Tenth Cause of Action, infra).

6. For all of these reasons, the actions of respondents APA and DEC in approving the snowmobile related aspects of the Jessup River UMP were illegal and should be annulled.

Summary of Claims Regarding
the Snowmobile Plan for the
Adirondack Park and Final GEIS

7. The approval of the Final Snowmobile Plan by DEC² violated Executive Law § 816 and the Adirondack Park State Land Master Plan ("APSLMP")³ because:

- ▶ the Final Snowmobile Plan purports to authorize the use of motorized tracked grooming machines for the grooming of snow on snowmobile trails on the Wild Forest lands of the Adirondack Forest Preserve, even though such grooming is prohibited by the APSLMP (Eleventh and Twelfth Causes of Action, infra);
- ▶ the Final Snowmobile Plan encourages additional public use of snowmobiles on the Wild Forest lands of the Adirondack

² Respondent OPRHP is made a party to this proceeding because it also approved the Final Snowmobile Plan, even though it has no jurisdiction over the Forest Preserve. To the extent that its actions affect the Forest Preserve, they too should be annulled and enjoined, for the same reasons set forth herein that DEC's actions should be annulled and enjoined.

³ All references to the APSLMP herein are to the 2001 edition of the plan, which is the most recent updated edition. It is available on APA's website at http://www.apa.state.ny.us/Documents/Laws_Regs/SlmpPDF2001.pdf.

Forest Preserve, contrary to the APSLMP (Thirteenth and Fourteenth Causes of Action, infra);

- ▶ the Final Snowmobile Plan purports to authorize private persons and municipal personnel to operate motorized tracked grooming machines on snowmobile trails on the Wild Forest lands of the Adirondack Forest Preserve, even though the APSLMP limits the use of motorized vehicles to State administrative personnel (Fifteenth Cause of Action, infra);

- ▶ the Final Snowmobile Plan purports to authorize the creation of 9 foot wide trails with prepared surfaces on the Wild Forest lands of the Adirondack Forest Preserve, that will have the character of roads, even though the APSLMP requires snowmobile trails to have essentially the character of a foot trail (Sixteenth Cause of Action, infra).

8. The approval of the Final Snowmobile Plan by DEC and OPRHP, which would allow the operation of motorized snowmobile trail grooming machines on trails in the Wild Forest lands of the Adirondack Forest Preserve, was contrary to DEC's regulations at 6 NYCRR § 196.1 which prohibit the operation of motor vehicles in the Forest Preserve, other than on roads (Seventeenth Cause of Action, infra).

9. The approval of the Final Snowmobile Plan by DEC and OPRHP violated SEQR because they:

- ▶ failed and refused to take a "hard look" at the potential significant adverse environmental impacts of the action

and to mitigate those impacts (Eighteenth Cause of Action, infra);

- ▶ failed and refused to assess the cumulative environmental impacts of the snowmobile trails planned for all areas of the Adirondack Park, as required by SEQR (Nineteenth Cause of Action, infra); and

- ▶ illegally segmented the SEQR review of the action (Twentieth Cause of Action, infra).

10. For all of these reasons, the actions of DEC and OPRHP in approving the Final Snowmobile Plan were illegal and should be annulled.

THE PARTIES

11. Petitioner Adirondack Mountain Club, Inc. ("ADK") is a New York not-for-profit corporation, with its offices in the Town of Lake George, Warren County; Town of North Elba, Essex County; and City of Albany, Albany County, State of New York. It is exempt from taxation pursuant to Internal Revenue Code § 501(c)(3).

12. Among the purposes for which ADK was organized are the following statements from its Certificate of Incorporation:

- To open, develop, extend and maintain trails for walkers and mountain climbers in the Adirondack mountains.

- To maintain a Bureau of Information where specific advice about Trails and Camps in the Adirondacks will be available; particular attention to be given to collecting data concerning scenery, history, geology, botany, forestry, fish and game of the Adirondacks, and other matters of interest to users of the trails.
- To organize and conduct walking and mountain climbing tours in the Adirondacks.
- To create public interest in the principles of conservation of the natural resources of the Adirondacks, including fish and game and the wild life of the region, and especially to educate the public in correct camping customs and in forest fire prevention.
- To undertake the foregoing activities throughout the State of New York, and wherever else it may be necessary, and in affiliation with like-minded organizations of all kinds, wheresoever they may be located, in order to achieve its purposes.
- To protect New York's Forest Preserve, parks and other wild lands and waters and to promote the responsible recreational use thereof, and to that end, to employ a balanced approach to outdoor recreation, advocacy, environmental education, natural resource conservation, public service and stewardship.

13. ADK currently has approximately 30,000 members. Many of its members are regular users of the New York State Forest Preserve in the Adirondack Park and some of them use the Jessup River Wild Forest.

14. Petitioner Residents' Committee to Protect the Adirondacks, Inc. ("RCPA") is a New York not-for-profit corporation, with its office in the hamlet of North Creek, in the Town of Johnsbury, County of Warren, State of New York. It is exempt from taxation pursuant to Internal Revenue Code § 501(c)(3).

15. Among the purposes for which RCPA was organized are the following statements from its Certificate of Incorporation:

- To promote, encourage and support the preservation of the unique wilderness and other open space resources of the Adirondack Park.
- To promote, encourage and support the economic well-being of the residents of the Adirondack Park and safeguard their traditions and way of life.
- To promote, encourage and support the protection of the human and natural environment and resources of the Adirondack Park, and the implementation of sound land use planning methods in the park.
- To foster the preservation of wildlife and its habitat, and create through education, public recognition of the value of, and the need for protection of wildlife,

native plants, soil and water, as well as the interdependence of man and these natural resources.

- To study and research the facts essential to the formulation of sound policies in these fields.

16. RCPA currently has approximately 3,600 members, the majority of whom reside or own property within the Adirondack Park. Many of its members are regular users of the New York State Forest Preserve in the Adirondack Park and some of them use the Jessup River Wild Forest.

17. Petitioner The Adirondack Council, Inc. ("The Council") is a New York not-for-profit corporation, with its offices in the Town of Elizabethtown, Essex County and City of Albany, Albany County, State of New York.

18. Its purposes include the protection of the open space resources of the Adirondack Park, ensuring the ecological integrity and wild character of the Park, helping sustain the natural and human resources of the region, advocacy and lobbying for land use planning and land protection in the Park, researching issues that affect the ecology and economy of the Park, public education about the Park and environmental monitoring.

19. The Council currently has approximately 18,000 members. Many of its members are regular users of the New York State Forest Preserve in the Adirondack Park and some of them use the Jessup River Wild Forest.

20. Petitioner The Association for the Protection of the Adirondacks, Inc. ("The Association") is a New York not-for-profit corporation, with its offices in the Town of Niskayuna, Schenectady County, State of New York.

21. Its purposes include protecting, preserving and properly sustaining through wise stewardship the wilderness character and ecological integrity of the New York State Forest Preserve, monitoring actions that could affect the Forest Preserve, wilderness stewardship, education and research about these issues, and enhancing the well-being of local communities and economies in the Adirondacks.

22. The Association currently has approximately 3,500 members. Many of its members are regular users of the New York State Forest Preserve in the Adirondack Park and some of them use the Jessup River Wild Forest.

23. The Petitioners, as well as other interested parties, each filed written comments on the proposed Jessup River UMP during the public comment period.

24. Respondent Adirondack Park Agency ("APA") is an agency in the Executive Department of the State of New York created pursuant to Executive Law Article 27, §§ 800, et seq. (the "APA Act"). Its principal offices are located at Ray Brook, Town of North Elba, Essex County, New York.

25. Respondent Department of Environmental Conservation ("DEC") is an agency of the State of New York created pursuant to

Environmental Conservation Law ("ECL") Article 3. Its principal offices are located in the City and County of Albany, New York.

26. Respondent Office of Parks, Recreation and Historic Preservation ("OPRHP") is an agency of the State of New York in the Executive Department created pursuant to Article 3 of the Parks, Recreation and Historic Preservation Law. Its principal offices are located in the City and County of Albany, New York.

VENUE

27. Venue of this proceeding properly lies in Albany County pursuant to CPLR § 506 because respondents DEC and OPRHP have their principal offices in said county.

BACKGROUND

The Jessup River Wild Forest

28. The Jessup River Wild Forest is located on New York State Forest Preserve lands in the Towns of Arietta, Indian Lake, Lake Pleasant and Wells in Hamilton County.

29. It is located in the Adirondack Park of the State of New York.

30. It includes numerous lakes, rivers, ponds, streams and mountains on over 47,000 acres of mostly forested land.

31. It also includes many miles of hiking and cross-country ski trails, Adirondack lean-tos, campsites, snowmobile trails, and other man-made facilities.

The Adirondack Park State Land Master Plan

32. State Forest Preserve lands are to be kept "Forever Wild" pursuant to Article XIV, Section 1 of the New York State Constitution.

33. Pursuant to APA Act § 816, the Adirondack Park State Land Master Plan ("APSLMP"), as approved by APA and the Governor, controls the use and management of the Forest Preserve in the Adirondack Park.

34. The APSLMP has the force of law and is binding upon APA and DEC.

35. The APSLMP divides the Adirondack Forest Preserve into various classifications, including Wilderness, Primitive, Canoe, Wild Forest and Intensive Use.

36. The APSLMP spells out what types of facilities are allowed in each such classification of State land in the Adirondack Forest Preserve.

37. The APSLMP (pp. 34-35) allows snowmobile trails in the Wild Forest Areas of the Adirondack Forest Preserve, but strictly limits the number of miles of such trails, controls how they may be used, and limits them to trails having essentially the character of a foot trail. Certain roads that are not trails may also be opened to snowmobiles.

38. Not all trails in a Wild Forest Area may be used by snowmobiles, only those which have been officially designated for such use in a unit management plan ("UMP") for that particular area of the Forest Preserve.

39. Snowmobile trails may also be used by cross country skiers and snowshoers in the winter, and they are often used as hiking trails in the summer. (APSLMP p. 19)

The Unit Management Plan Process

40. Pursuant to the APSLMP, the Adirondack Forest Preserve is divided into various geographic areas or "units". For example, these include such units as the High Peaks Wilderness Area, the Gore Mountain Ski Center Intensive Use Area, and the Jessup River Wild Forest, which is the unit at issue herein.

41. Pursuant to the APSLMP, each unit of the Forest Preserve must have an approved UMP in order for the construction or relocation of any facilities to occur in that unit.

42. Pursuant to the APSLMP, UMPs are developed by DEC and must then receive approval by APA, and final approval by DEC.

43. All UMPs must conform to the requirements of the APSLMP.

44. Any provision of a UMP that is not permitted by the APSLMP is ultra vires and void.

45. UMPs are also subject to the requirements of SEQR.

46. Typically, when developing a UMP, DEC will combine the environmental impact statement ("EIS") for the UMP into a single document with the UMP.

47. Each UMP/EIS will include a draft UMP/EIS that is the subject of public comment and a public hearing. Following that

process, and possible revisions to the document, a final UMP/EIS is prepared by DEC and approved by APA and DEC.

The Approval of the Jessup River UMP

48. In or about May, 2005, DEC, acting as lead agency under SEQR, accepted the draft Jessup River UMP/EIS for the action, and released that document for public comment.

49. A public hearing was held on the UMP pursuant to the APA Act and SEQR, and written public comments were received.

50. During the public comment period the Petitioners herein filed with respondents APA and DEC multiple written comments on the proposed Jessup River UMP, both individually and jointly.

51. In November, 2005, DEC issued a proposed Final UMP and Final EIS for said Jessup River UMP.

52. Thereafter, in May, 2006, DEC issued a supplemental EIS/Addendum to the Final UMP to address certain issues related to snowmobile trails, and also issued a revised response to comments section (Appendix 11) to the final EIS/UMP.

53. Written public comments were accepted by respondents APA and DEC on the Supplemental EIS/Addendum and the Petitioners timely filed such comments.

54. Pursuant to the APSLMP and APA Act § 816, APA must approve the Jessup River UMP before it can go into effect.

55. At a meeting of the voting Agency Members, on July 14, 2006, APA adopted its SEQR findings for the action and also approved the Jessup River UMP.

56. On August 28, 2006, DEC adopted its SEQR findings for the action and also approved the Jessup River UMP.

The Final Snowmobile Plan

57. The Final Snowmobile Plan includes recommendations for a system of snowmobile trail connections between communities in the Adirondack Park. Much of the mileage of these trails would be located on Forest Preserve lands. It also includes guidelines and criteria for the development, management and maintenance of snowmobile trails in the Adirondack Park, particularly in the Forest Preserve. It purports (pp. 3, 34, 192) to be a conceptual document, and it does not designate specific new trails.

58. A draft of this plan entitled "Draft Comprehensive Snowmobile Plan for the Adirondack Park" had been previously released for public comment in 2003, and hearings were held on it.

59. Said draft plan also included a draft generic EIS ("GEIS") prepared pursuant to SEQR.

60. The Petitioners herein, as well as individual members of Petitioners, all submitted written comments on the draft and/or appeared at the hearings and expressed their opinions on the draft.

61. Said comments expressed numerous concerns regarding the illegality of certain aspects of the draft plan.

62. The Final Snowmobile Plan is a supplement to the Statewide Snowmobile Plan approved by OPRHP in 1989. It is not a UMP.

63. The Final Snowmobile Plan also includes a final GEIS for the plan, prepared under SEQ. R.

64. Although the cover of the Final Snowmobile Plan is dated October 2006, it was not actually approved until the following month.

65. DEC approved the Final Snowmobile Plan on or about November 10, 2006.

66. OPRHP approved the Final Snowmobile Plan on or about November 12, 2006.

67. Unlike the Jessup River UMP, the Final Snowmobile Plan was not approved by APA.

68. Public notice of the adoption of the Final Snowmobile Plan was issued in DEC's Environmental Notice Bulletin, published on the internet, on November 22, 2006.

69. Despite purporting to be only a conceptual plan, the Final Snowmobile Plan represents the policy of DEC, as an agency of the State of New York.

70. Page 16 of the Final Snowmobile Plan states that "[a]ll state agencies have committed to use good faith efforts to implement the Final Plan/GEIS". The Final Snowmobile Plan (at page 19) also states that all future UMPs for the Adirondack Park "will be written to reflect the recommendations of the Final Plan/GEIS, to the extent that they are consistent with legal

authority existing at that time". Similar statements appear at page 8 of the Final Snowmobile Plan.

71. Thus, DEC has committed to make this Plan binding on itself for all future actions it takes with regard to snowmobile use in the Adirondack Park, subject only to approval of certain actions that require the approval of APA and other agencies.

CAUSES OF ACTION AGAINST THE JESSUP RIVER UMP

**AS AND FOR A FIRST SEPARATE
AND DISTINCT CAUSE OF ACTION**

72. Each and every allegation set forth above is hereby repeated and realleged.

73. Pursuant to the APSLMP, the use of motorized grooming machines such as tracked groomers to groom snowmobile trails is not permitted in Wild Forest Areas in the Adirondack Forest Preserve.

74. The Jessup River UMP would allow the use of such groomers, as follows:

Snowmobile Trail Grooming - DEC will continue to allow grooming by small tracked groomers on trails where this activity has occurred in the past in the JRWF in the interim period while the Comprehensive Snowmobile Plan for the Adirondacks is being finalized and adopted. In the event that the Comprehensive Snowmobile Plan for the Adirondacks is not finalized at the end of the 2-year period, APSLMP compliance with tracked grooming on JRWF trails will be resolved by the Department [DEC] and the APA.

This statement appears on page 4 of the May 2006 Jessup River Wild Forest Proposed Final Unit Management Plan Addendum and Final Environmental Impact Statement put forth by DEC and

approved by APA and DEC as part of the final Jessup River UMP (hereinafter "Addendum").

75. The use of such groomers in the Jessup River Wild Forest would be a violation of the APSLMP.

76. The APSLMP (pp. 17-18) defines a "motor vehicle" as:
a device for transporting people, supplies or material, incorporating a motor or an engine of any type for propulsion and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on or adjacent to land and water or through water. It shall include such vehicles as automobiles, trucks, jeeps, motorbikes, dirt or trail bikes, any type of all-terrain vehicles, duffel carriers, snowmobiles, snowcats, bulldozers and other earth-moving equipment, and motorboats. (emphasis added)

77. The APSLMP (p. 19) defines a "snowmobile" as "a motor vehicle designed solely for travel on snow or ice by means of a combination of tracks and a ski or skis."

78. As set forth above, certain trails in Wild Forest Areas may be designated for use by snowmobiles.

79. In some cases, these snowmobile trails are groomed in order to smooth out the snow surface and allow for easier and faster riding.

80. Grooming may be done by pulling a "drag" behind a snowmobile. It may also be done by pulling a larger mechanical grooming device behind a larger motor vehicle such as a snowcat. These vehicles operate on treads, much like a bulldozer, and are anywhere from 6 or 7 feet wide, and can be much wider. Some mechanical grooming devices grind or otherwise dig up the snow surface, and then pack it. The vehicles and grooming devices are

similar to those used to groom ski trails at downhill ski centers.

81. Pursuant to the APSLMP (pp. 23, 35), motor vehicles are only allowed to be used in Wild Forest Areas under limited circumstances.

82. Tracked motorized trail grooming machines, such as snowcats, are "motor vehicles" as defined in the APSLMP, but are not snowmobiles.

83. The APSLMP (p. 34) permits snowmobile trails in Wild Forest Areas of the Forest Preserve.

84. The APSLMP (p. 19) defines a "snowmobile trail" as:

a marked trail of essentially the same character as a foot trail designated by the Department of Environmental Conservation on which, when covered by snow and ice, snowmobiles are allowed to travel and which may double as a foot trail at other times of year.

85. While snowmobile trails are expressly permitted (APSLMP p. 34), nowhere does the APSLMP permit the use of motor vehicles, including tracked motorized vehicles such as snowcats, for the grooming of snowmobile trails.

86. Because, unlike other motor vehicles, snowmobiles are allowed on designated snowmobile trails, only snowmobiles may be used for such grooming.

87. The allowed uses of motor vehicles in Wild Forest Areas under the APSLMP (pp. 23, 35) do not include tracked motorized trail grooming machines.

88. Likewise, the APSLMP (p. 35) permits "the use of motor vehicles" ... "by administrative personnel where necessary to reach, maintain or construct permitted structures and improvements ...".

89. However, this allowed maintenance and construction usage does not include the use of tracked motor vehicles and motorized trail grooming machines for grooming snowmobile trails.

90. By contrast, the APSLMP (p. 17) differentiates between a "cross country ski trail" which is not "constructed, maintained or groomed with the use of motor vehicles" and an "improved cross country ski trail" "which may be constructed, maintained or groomed with the use of motor vehicles".⁴

91. The distinction made between the two types of cross country ski trails shows that grooming with motor vehicles is only permitted where expressly provided for, and is otherwise not allowed.

92. While motor vehicles may be used "to reach, maintain or construct permitted structures and improvements ..." in Wild Forest (APSLMP p. 35), this does not include using them to "groom" snowmobile trails.

⁴ "Improved cross country ski trails" are allowed in "Intensive Use Areas" (APSLMP p. 41) but not in Wild Forest Areas, which only allow for "cross country ski trails" (APSLMP pp. 21, 34). (Cross country ski trails are listed as an allowed improvement in Wilderness Areas, and any improvement allowed in Wilderness Areas is also allowed in Wild Forest Areas. Id.)

93. The definitions of the two types of cross country ski trails, which refer to trails being "constructed, maintained or groomed" (emphasis added) show that "grooming" is different from "maintenance". Otherwise, there would have been no need to list it separately from "maintenance" in those two ski trail definitions (APSLMP p. 17).

94. The fact that the word "groom" is not used in the list of allowed uses of motor vehicles in Wild Forest Areas (APSLMP p. 35) shows that grooming is not "maintenance".

95. Since grooming is not a listed allowable use of motor vehicles in Wild Forest Areas, the grooming of snowmobile trails by any type of motor vehicle other than a snowmobile is prohibited by the APSLMP.

96. The use of tracked motorized grooming machines will lead to the widening of snowmobile trails, removal of rocks and other obstructions, grading of trails, cutting and filling of trails, building wider and larger bridges, and other actions that will result in snowmobile trails that no longer have "essentially the same character as a foot trail" as required by the APSLMP (p. 19).

97. In December 2003 DEC promulgated a "Draft Comprehensive Snowmobile Plan for the Adirondack Park".

98. Among this plan's various provisions, at pages 3, 111 and 141, DEC admitted that the APSLMP would have to be amended in

order to permit the use of motorized grooming equipment in Wild Forest Areas⁵.

99. No such amendment has been adopted.

100. The Final Snowmobile Plan (pp. 3-4, 8-9, 19) also concedes that many of its elements will require amendments to existing rules, and as such, are not legally valid.

101. The Final Snowmobile Plan also (pp. 38, 44, 54, 57-58, 60, 244) differentiates between "grooming" and "maintenance", much in the same way as the APSLMP.

102. The Final Snowmobile Plan (pp. 53, 59), while purporting to authorize grooming of trails, refers only to existing DEC grooming "practice", an acknowledgment that grooming is not permitted by existing laws, policies or regulations.

103. The Jessup River UMP (Addendum p. 4) implies that the use of grooming may only be temporary:

In the event that the Comprehensive Snowmobile Plan for the Adirondacks is not finalized at the end of the 2-year period, APSLMP compliance with tracked grooming on JRWF trails will be resolved by the Department [DEC] and the APA. Addendum p. 4.

⁵ Page 111 states that motorized grooming would be consistent with the APSLMP on proposed Class I and II trails. This is because Class I trails are actually roads where motor vehicles of all kinds are permitted, and because grooming of Class II trails would only be done with snowmobiles themselves, and not with large tracked motorized groomers such as snowcats. 2003 Draft Comprehensive Snowmobile Plan for the Adirondack Park, pages 68-69, 110-111.

104. This does not change the fact that such grooming is not presently allowable under the APSLMP and it is still prohibited, even as a temporary measure.

105. Indeed, the statement in the Jessup River UMP (Addendum p. 4) that "APSLMP compliance with tracked grooming on JRWF trails will be resolved by the Department [DEC] and the APA" in the future is an admission by DEC and APA that grooming is not currently permitted by the APSLMP.

106. If a type of use, structure or improvement is not specifically listed in the APSLMP as an allowed activity in the type of Forest Preserve land area involved (such as Wild Forest), then it is not permitted and must be prohibited or removed promptly. Any provision of a UMP to the contrary is in excess of APA's and DEC's authority.

107. Even temporary exceptions to this rule are prohibited.

108. Therefore, the approval of the Jessup River UMP allowing the grooming of snowmobile trails with motorized grooming machines such as tracked groomers was in violation of the APSLMP and was arbitrary and capricious, in excess of APA's and DEC's jurisdiction and affected by error of law, and should be annulled.

**AS AND FOR A SECOND SEPARATE
AND DISTINCT CAUSE OF ACTION**

109. Each and every allegation set forth above is hereby repeated and realleged.

110. As set forth above, the APSLMP (p. 35) only allows the use of motor vehicles on trails in Wild Forest Areas when "necessary".

111. The Jessup River UMP (Addendum p. 4) states that it will allow the use of tracked grooming machines.

112. However, the Jessup River UMP contains no findings or determinations that such use is "necessary", as required by the APSLMP. At most, it contains one finding that such grooming is merely "desired" (Addendum p. 2).

113. Therefore, the approval of the Jessup River UMP allowing the grooming of snowmobile trails with motorized grooming machines was in violation of the APSLMP and was arbitrary and capricious, in excess of APA's and DEC's jurisdiction and affected by error of law, and should be annulled.

**AS AND FOR A THIRD SEPARATE
AND DISTINCT CAUSE OF ACTION**

114. Each and every allegation set forth above is hereby repeated and realleged.

115. Basic Guideline 4 of the APSLMP for Wild Forest Areas (p. 33) provides that "public use of motor vehicles will not be encouraged".

116. A snowmobile is a motor vehicle under the APSLMP (p. 18).

117. Therefore, the APSLMP requires that the public use of snowmobiles may not be encouraged by APA and DEC in the Jessup River Wild Forest.

118. The use of large motorized grooming machines to improve snow conditions for snowmobiling will also result in greater use of the Wild Forest by snowmobiles.

119. Allowing such grooming will encourage the public use of the Jessup River Wild Forest by snowmobiles, as well as by the groomers themselves, all of which are motor vehicles.

120. Therefore, the authorization of the use of such groomers by the Jessup River UMP was in violation of the APSLMP and was arbitrary and capricious, in excess of APA's and DEC's jurisdiction and affected by error of law.

**AS AND FOR A FOURTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

121. Each and every allegation set forth above is hereby repeated and realleged.

122. The Jessup River UMP (Addendum p. 14) states that the actions authorized by the UMP will result in increased public usage of the Jessup River Wild Forest by snowmobiles.

123. Specifically, by providing connections between various communities and trail systems, it is the intention of the Jessup River UMP to "certainly lead to increased snowmobile use in the area..." Jessup River UMP, Addendum, p. 14.

124. Adding up to 3.8 more miles of snowmobile trails will also encourage more snowmobile use of the Jessup River Wild Forest.

125. This action constitutes encouraging the public use of the Jessup River Wild Forest by motor vehicles.

126. Therefore, APA's and DEC's approval of the Jessup River UMP was in violation of the APSLMP and was arbitrary and capricious, in excess of their jurisdiction and affected by error of law.

**AS AND FOR A FIFTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

127. Each and every allegation set forth above is hereby repeated and realleged.

128. The APSLMP (p. 10) requires that all UMPs must include "an assessment of the physical, biological and social carrying capacity of the area", a "statement of the management objectives for the protection and rehabilitation of the area's resources and ecosystems and for the public use of the area, consistent with its carrying capacity", measures to ensure that the carrying capacity of the area is not exceeded, and other inventory, analysis and assessment information essential to complying with the APSLMP and protecting the resources of the Adirondack Park.

129. With respect to the creation, relocation and improvement of snowmobile trails, APA and DEC failed and refused to address many of these issues in the Jessup River UMP, as

required by the APSLMP, including, but not limited to, assessing the carrying capacity of the Jessup River Wild Forest to sustain use by snowmobiles, to ensure that the carrying capacity is not exceeded.

130. The Jessup River UMP made no findings as to what the carrying capacity of the Jessup River Wild Forest is for snowmobiles.

131. The Jessup River UMP (p. 94) specifically found that "significant resource impacts are evident" on "some sections of snowmobile trails".

132. However, the Jessup River UMP did not identify those sections of trail, nor did it make a determination as to the carrying capacity of those areas, or of the Jessup River Wild Forest as a whole.

133. Nor did it identify objectives or measures to rehabilitate those areas.

134. The Jessup River UMP (p. 97) also found that environmental impacts from snowmobiles exist in the unit, including "air and noise pollution, tree damage and litter."

135. However, those impacts were not quantified or assessed in any way, nor were the means to rehabilitate them identified.

136. Therefore, the Jessup River UMP was approved in violation of the APSLMP and was arbitrary and capricious, in excess of APA's and DEC's jurisdiction and affected by error of law.

**AS AND FOR A SIXTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

137. Each and every allegation set forth above is hereby repeated and realleged.

138. The APSLMP (p. 33) provides that:

there will not be any material increase in the mileage of roads and snowmobile trails open to motorized use by the public in wild forest areas that conformed to the master plan at the time of its original adoption in 1972.

139. APA and DEC have previously determined that there were approximately 848 miles of snowmobile trails and roads open to snowmobiles in Wild Forest Areas throughout the Adirondack Park as of 1972.

140. According to DEC's 2003 Draft Comprehensive Snowmobile Plan for the Adirondack Park (p. 48), there are currently 883 miles, more or less, of such trails and roads open to the public for snowmobiling.⁶

141. Thus, DEC is already in violation of the APSLMP.

142. As of 1972, there were 26.9 or 27.9 miles of snowmobile trails in the Jessup River Wild Forest.

143. The Jessup River UMP, as approved, would result in some trails in the Jessup River Wild Forest being closed or relocated, and some new ones being created, for a new total of 30.7 miles.

⁶ The Final Snowmobile Plan (p. 35) claims that there are now 840.97 miles of such trails in existence, but provides no explanation for where the missing 42 +/- miles of trails have gone to.

144. This would result in an increase of 2.8 or 3.8 miles, which is an increase of 10% to 14%, in the mileage of such trails in the Jessup River Wild Forest.

145. This would violate the APSLMP, by creating a material increase in snowmobile trails in the Jessup River Wild Forest.

146. Because the snowmobile trail mileage in the Adirondack Park already exceeds the 1972 level to a material degree, any increase in trail mileage is prohibited.

147. The July 14, 2006 APA findings approving the Jessup River UMP state that "the issue of no material increase of snowmobile mileage will be calculated on a park-wide basis".

148. While the mileage cap is a park-wide figure, that does not mean that individual UMPs may avoid making a determination as to whether or not the UMP will result in a violation of that limit.

149. However APA and DEC refused to make such a determination.

150. Therefore, the approval of the Jessup River UMP was in violation of the APSLMP and was arbitrary and capricious, in excess of APA's and DEC's jurisdiction and affected by error of law.

**AS AND FOR A SEVENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

151. Each and every allegation set forth above is hereby repeated and realleged.

152. The New York State Forest Preserve, which is protected as "Forever Wild" by New York Constitution Article 14, § 1, is under the jurisdiction of DEC (ECL § 3-0301(1)(d), § 9-0903(1)).

153. ECL § 3-0301(1)(d) gives DEC the power and the responsibility to "[p]rovide for the care, custody, and control of the forest preserve".

154. ECL § 9-0903(1) provides DEC with similar "power, duty and authority to "[e]xercise care, custody, and control" of the Forest Preserve and ECL § 9-0903(3) empowers it to make rules and regulations for that purpose.

155. Pursuant to those powers, DEC has adopted 6 NYCRR § 196.1(a), which provides in part that "no person shall operate a motorized vehicle in the forest preserve except as permitted in subdivisions (b) and (c) of this section."

156. Subdivisions (b) and (c) of § 196.1 limit the use of motorized vehicles in the Forest Preserve only to roads.

157. In the Forest Preserve, snowmobile trails are not roads.

158. Therefore, motor vehicles are not permitted on trails, including on snowmobile trails.

159. However, pursuant to 6 NYCRR § 196.2(a) snowmobiles are permitted on trails specifically designated by DEC as a "snowmobile trail".

160. For purposes of 6 NYCRR Part 190, including § 196, 6 NYCRR § 190.0(b)(8) defines a "motor vehicle" as:

a device for transporting personnel, supplies or material incorporating a motor or an engine of any type for propulsion, and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on or adjacent to land, water or ice. It shall include such vehicles as automobiles, trucks, jeeps, all-terrain vehicles, duffel carriers, snowcats, bulldozers and other earth-moving equipment, but shall not include snowmobiles. (emphasis added)⁷

161. A "snowcat" is a type of machinery used for grooming snowmobile trails, as well as ski trails, and for other purposes.

162. A motorized snowmobile trail grooming machine is clearly a "motor vehicle" for purposes of 6 NYCRR Part 196⁸.

163. Therefore, 6 NYCRR § 196.1(a) prohibits the use of such grooming machines in the Forest Preserve, other than on roads, even while allowing the use of snowmobiles.

164. Therefore, the approval of the Jessup River UMP allowing the grooming of snowmobile trails with motorized grooming machines was arbitrary and capricious, in excess of APA's and DEC's jurisdiction and affected by error of law.

**AS AND FOR AN EIGHTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

165. Each and every allegation set forth above is hereby repeated and realleged.

166. The approval of the Jessup River UMP is an "action" subject to the requirements of SEQR.

⁷ This definition is slightly different from that of the APSLMP, principally in that it excludes snowmobiles.

⁸ Section 196.1 uses "motor vehicle" and "motorized vehicle" interchangeably.

167. SEQR requires all state and local agencies which undertake or approve an action to take a "hard look" at the relevant areas of environmental concern and to determine whether or not the action may have a significant impact on the environment.

168. If an agency determines that a proposed action may have a significant impact on the environment, then it must adopt a "positive declaration" and require the preparation of an environmental impact statement ("EIS").

169. If an EIS must be prepared, then the agency may not approve the action until after the EIS is completed.

170. All agencies involved in the review and approval of the action must, prior to approving or disapproving the action, make findings, pursuant to SEQR, 6 NYCRR § 617.11(a)(2), inter alia, as to whether the action avoids or minimizes adverse environmental impacts to the maximum extent practicable.

171. Pursuant to 6 NYCRR § 617.9(b)(5)(iv) and 617.11(d)(5), an EIS must also identify and describe mitigation measures, and the agency's SEQR findings must ensure that adverse impacts have been mitigated to the maximum extent practicable.

172. In the present case, DEC, acting as the "lead agency" under SEQR, prepared an EIS for the action of the adoption of the Jessup River UMP. The EIS and the UMP were combined into a single document.

173. The Jessup River UMP/EIS (p. 94) specifically found that "significant resource impacts are evident" on "some sections of snowmobile trails".

174. The Jessup River UMP/EIS (p. 97) also found that environmental impacts from snowmobiles exist in the unit, including "air and noise pollution, tree damage and litter".

175. DEC and APA have in the record before them significant evidence of air pollution impacts from snowmobile use, yet they failed to include this information in the Jessup River UMP/EIS or to address it in the Jessup River UMP/EIS in any way.

176. However, the Jessup River UMP/EIS did not address these impacts.

177. Nor did it address the potential impacts from the use of tracked motorized grooming machines, including, but not limited to, the impacts arising from groomed trails encouraging the greater use of snowmobiles.

178. Adverse environmental impacts on the land from the creation of new snowmobile trails were also not adequately assessed in the Jessup River UMP/EIS.

179. Nor, despite approving an increase of 10% to 14% in the mileage of snowmobile trails in the unit, and finding that snowmobile usage would increase, did the Jessup River UMP/EIS address the increased impacts of snowmobiles on the Jessup River Wild Forest or on adjoining private lands.

180. Moreover, rather than assess certain impacts such as air pollution from snowmobiles, SEQR assessment of those impacts

was deferred by the Jessup River UMP/EIS to the Comprehensive Snowmobile Plan.

181. However, the Jessup River UMP/EIS was approved before the Comprehensive Snowmobile Plan (Final Snowmobile Plan) and its related EIS were completed, so that these impacts were not ever assessed before the UMP was completed, nor were mitigation measures for those impacts identified.

182. Instead, the Jessup River UMP/EIS (Addendum pp. 13, 15) put off the identification of specific mitigation measures to a later date and did not describe what those measures would be, instead merely claiming that "efforts will be made to mitigate any environmental impacts".

183. APA's SEQR findings statement deferred addressing the adverse environmental impacts of snowmobiles on the Jessup River Wild Forest to a later date, as part of other planning processes, which processes are not yet complete.

184. DEC's SEQR findings statement made no mention of snowmobiles and their adverse environmental impacts or of measures to mitigate those impacts.

185. Upon completion of the Final Snowmobile Plan, DEC has still failed to assess these impacts upon the Jessup River Wild Forest.

186. While it did look at certain issues on a park-wide basis, the GEIS contained in the Final Snowmobile Plan did not assess these impacts for the Jessup River Wild Forest.

187. Indeed, the Final Snowmobile Plan stated (such as at page 195) that assessment of impacts would be done in the UMP process.

188. Thus, in a perfect display of circular reasoning, DEC has not assessed the impacts of the UMP upon the Jessup River Wild Forest in either document, with each document claiming that such assessment will occur in the other.

189. Because they failed to take a "hard look" at these impacts, and to identify the specific required mitigation measures for these impacts, the decisions of APA and DEC in making their SEQR findings, and approving the Jessup River UMP/EIS, were arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A NINTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

190. Each and every allegation set forth above is hereby repeated and realleged.

191. SEQR, at 6 NYCRR § 617.7(c)(1)(xii) requires that every EIS identify and discuss the cumulative impacts of the proposed action, including any two or more individual effects on the environment which, when taken together, are significant or which compound or increase other environmental effects.

192. 6 NYCRR § 617.7(c)(2) also requires agencies to:

consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

193. At the time of the approval of the Jessup River UMP, DEC was in the process of preparing the Comprehensive Snowmobile Plan for the Adirondack Park. A draft of the plan was released in 2003.

194. The Comprehensive Snowmobile Plan includes within it a draft GEIS for the assessment of the adverse environmental impacts of the plan upon the Adirondack Park.

195. The Comprehensive Snowmobile Plan is intended to provide "a conceptual comprehensive and integrated snowmobile system and guidelines and standards for the protection of the Adirondack Park's important environmental resources..." (p. 10).

196. The Jessup River UMP/EIS repeatedly cites to the 2003 draft of the Comprehensive Snowmobile Plan.

197. Moreover, the Jessup River UMP/EIS expressly defers SEQR analysis of some adverse environmental impacts to the Comprehensive Snowmobile Plan, yet the Jessup River UMP was approved, although the Comprehensive Snowmobile Plan and its EIS had not yet been completed when the Jessup River UMP was approved.

198. At the same time as the Jessup River UMP was going through the approval process, DEC and APA were, and still are, preparing numerous unit management plans for Wild Forest Areas in the Adirondack Park, all or most of which include snowmobile trails. Some of these UMPs have already been approved.

199. It is likely that all such UMPs will create environmental impacts similar to those set forth above.

200. By preparing the draft Comprehensive Snowmobile Plan for the Adirondack Park, including an "integrated snowmobile system", combined with a draft EIS on that plan, DEC has recognized that the planning for, and the creation of, snowmobile trails in the Park should be part of a single overall "long-range plan" in the SEQR context.

201. The Jessup River UMP is a part of that overall long-range planning process, and must be considered in that context, within the scope of 6 NYCRR § 617.7(c)(2).

202. Among other things, the Jessup River UMP approved new trails intended to improve connections between the Jessup River Wild Forest and other regions of the Adirondacks.

203. As set forth above, the Final Snowmobile Plan deferred the assessment of the environmental impacts of such connections to future UMPs.

204. Because the Jessup River UMP was approved without the completion of the Comprehensive Snowmobile Plan for the Adirondack Park, DEC and APA failed to "consider reasonably related long-term, short-term, direct, indirect and cumulative

impacts, including other simultaneous or subsequent actions" as required by 6 NYCRR § 617.7(c)(1)(xii) and 6 NYCRR § 617.7(c)(2).

205. Because they failed to consider the cumulative impacts of the Jessup River UMP together with all others, in the context of the Comprehensive Snowmobile Plan for the Adirondack Park, the decisions of APA and DEC in making their SEQR findings, and approving the Jessup River UMP/EIS, were arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A TENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

206. Each and every allegation set forth above is hereby repeated and realleged.

207. SEQR generally prohibits the segmentation of an action into separate segments for purposes of SEQR review:

"Segmentation" means the division of the environmental review of an action such that various activities or stages are addressed under [6 NYCRR part 617] as though they were independent, unrelated activities, needing individual determinations of significance. 6 NYCRR § 617.2(ag).

The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it. (1) Considering only a part or segment of an action is contrary to the intent of SEQR. 6 NYCRR § 617.3(g).

208. As set forth above, the Comprehensive Snowmobile Plan for the Adirondack Park was a single action under SEQR, intended

to plan the snowmobile trail network for the entire Adirondack Park, and to assess its environmental impacts pursuant to SEQR.

209. The snowmobile trail plans of the Jessup River UMP and other similar UMPs are all part of this action.

210. APA and DEC illegally segmented the SEQR review of the adverse environmental impacts of this action by approving the Jessup River UMP, including, but not limited to, new trail connections to other regions, prior to the completion of the Comprehensive Snowmobile Plan and its final EIS.

211. The segmented decisions of APA and DEC in making their SEQR findings, and approving the Jessup River UMP/EIS, were arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

CAUSES OF ACTION AGAINST THE FINAL SNOWMOBILE PLAN

**AS AND FOR AN ELEVENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

212. Each and every allegation set forth above is hereby repeated and realleged.

213. As set forth above in the First Cause of Action, the APSLMP prohibits the used of motorized tracked grooming machines to groom and pack the snow on snowmobile trails on Forest Preserve lands in the Adirondack Park.

214. The Final Snowmobile Plan purports at multiple locations therein to authorize the use of such grooming machines

on snowmobile trails on Forest Preserve lands in the Adirondack Park.

215. As set forth above at the First and Second causes of action, the use of motor vehicles other than snowmobiles, such as tracked mechanized grooming machines, such as "snowcats", is not permitted in the Adirondack Forest Preserve.

216. In addition, at several locations (pages (pp. 38, 44, 54, 57-58, 60, 244) the Final Snowmobile Plan differentiates between maintenance activities, for which motor vehicles may sometimes be used in the Forest Preserve, and the grooming of snowmobile trails.

217. As set forth above at the First Cause of action, limited motor vehicle use is permitted for maintenance, but not for grooming of snowmobile trails.

218. This further confirms that such grooming is not permitted in the Adirondack Forest Preserve under the APSLMP.

219. Nevertheless, the Final Snowmobile Plan purports to permit the use of such machines to groom and smooth the snow on Forest Preserve trails, for the benefit of snowmobiling.

220. Therefore, the approval by DEC and OPRHP of the Final Snowmobile Plan was arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A TWELFTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

221. Each and every allegation set forth above is hereby repeated and realleged.

222. As set forth above in the Second Cause of Action, the APSLMP (p. 35) only allows the use of motor vehicles on trails in Wild Forest Areas when "necessary".

223. The Final Snowmobile Plan states repeatedly that DEC will allow the use of motorized tracked grooming machines on trails in Wild Forest Areas.

224. However, the Final Snowmobile Plan contains no findings or determinations that such use is "necessary", as required by the APSLMP.

225. Any such findings or determinations, if made, would be erroneous, and unsupported by substantial evidence in the record, or the applicable law.

226. Therefore, the approval of the Final Snowmobile Plan by DEC and OPRHP allowing the grooming of snowmobile trails with motorized grooming machines was in violation of the APSLMP and arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A THIRTEENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

227. Each and every allegation set forth above is hereby repeated and realleged.

228. As set forth above at the Third Cause of Action, Basic Guideline 4 of the APSLMP for Wild Forest Areas (p. 33) provides that "public use of motor vehicles will not be encouraged".

229. A snowmobile is a motor vehicle under the APSLMP (p. 18).

230. Therefore, the APSLMP requires that the public use of snowmobiles may not be encouraged by the respondents in the Adirondack Forest Preserve.

231. The use of large motorized grooming machines to improve snow conditions for snowmobiling will also result in greater use of the Wild Forest areas of the Adirondack Forest Preserve by snowmobiles.

232. Allowing such grooming will encourage the public use of the Forest Preserve by snowmobiles, as well as by the groomers themselves, all of which are motor vehicles.

233. Therefore, the authorization by DEC and OPRHP of the use of such groomers by the Final Snowmobile Plan was in violation of the APSLMP and arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A FOURTEENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

234. Each and every allegation set forth above is hereby repeated and realleged.

235. As set forth above in the Third, Fourth and Thirteenth Causes of Action, the APSLMP prohibits DEC from encouraging public use of the Forest Preserve by motor vehicles.

236. The Final Snowmobile Plan is intended to encourage the public use of the Forest Preserve by snowmobiles, and by groomers, all of which are motor vehicles.

237. Specifically, but not limited to, the Final Snowmobile Plan states at pages 39-40 and 204 that the plan will increase snowmobile use of the Forest Preserve.

238. Thus, the Final Snowmobile Plan encourages the public use of the Adirondack Forest Preserve, and of Wild Forest Areas in particular, by motor vehicles.

239. Therefore, DEC's and OPRHP's approval of the Final Snowmobile Plan was in violation of the APSLMP and was arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A FIFTEENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

240. Each and every allegation set forth above is hereby repeated and realleged.

241. The APSLMP (page 35) permits, in Wild Forest areas of the Adirondack Forest Preserve, "the use of motor vehicles" ... "by administrative personnel where necessary to reach, maintain or construct permitted structures and improvements ...".

242. The Final Snowmobile Plan (page 58) interprets that language as permitting private persons and municipalities to operate motor vehicles on the Forest Preserve, including motorized tracked grooming machines.

243. However, under the APSLMP, "administrative personnel" is intended to include only personnel employed by the State, not other persons.

244. As is admitted in the Final Snowmobile Plan (page 16), the APSLMP has the force of law.

245. The approval by DEC and ORPHP in the Final Snowmobile Plan of allowing private persons and municipal personnel to operate motorized tracked grooming machines on the Forest Preserve was in violation of the APSLMP, and so was arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A SIXTEENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

246. Each and every allegation set forth above is hereby repeated and realleged.

247. In the Adirondack Forest Preserve snowmobile trails must have "essentially the same character as a foot trail" as required by the APSLMP (p. 19).

248. Foot trails generally have a maximum width of 8 feet, and are often much narrower. Such trails are generally rough, with minimal alteration of the terrain to accommodate them.

249. As set forth in the Final Snowmobile Plan (p. 28), in keeping with the requirement that snowmobile trails must have the quality of a foot trail, current DEC policy limits them to 8 feet wide, and up to 12 feet wide occasionally on curves.

250. The Final Snowmobile Plan (pp. 38-39, 43, 44, 46) includes a series of hundreds of miles of community connector trails, which would be uniformly 9 feet wide or more (pp. 47, 52) and have a "prepared surface".

251. These "prepared surface" community connector trails would be widened, flattened, ditched, graded, banked, leveled and cleared, to the point that they would no longer have the character of a foot trail (pp. 47-53).

252. DEC's and ORRHP's approval of such trails in the Final Snowmobile Plan was in violation of the APSLMP, and thus was arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A SEVENTEENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

253. Each and every allegation set forth above is hereby repeated and realleged.

254. As set forth above at the Seventh Cause of Action, the DEC regulations at 6 NYCRR § 196.1(a) prohibit the use of tracked motorized grooming machines in the Forest Preserve, other than on roads, even while allowing the use of snowmobiles.

255. Therefore, the approval by DEC and ORRHP of the Final Snowmobile Plan, allowing the grooming of snowmobile trails with motorized grooming machines, was arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR AN EIGHTEENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

256. Each and every allegation set forth above is hereby repeated and realleged.

257. As set forth above at the Eighth Cause of Action, before an agency such as DEC and ORRHP may take any action that has been the subject of an EIS it must take a "hard look" at the potential significant adverse environmental impacts of that action.

258. The adoption of the Final Snowmobile Plan and its Final Generic EIS by DEC and ORRHP violated SEQOR because they failed to take the required "hard look" at the impacts of numerous actions approved therein, including:

(a) the increased usage of the Forest Preserve, by what the Final Snowmobile Plan (pp. 39-40, 204) acknowledges will be greater numbers of snowmobiles than would use the Forest Preserve without the plan;

(b) the impacts of operating large motorized grooming machinery on trails, which are required by the APSLMP (p. 19) to have "essentially the same character as a foot trail", including,

but not limited to, damage to trailside vegetation by such machines;

(c) the impacts of the use of large motorized tracked grooming machines, including, but not limited to, air pollution emissions, ground compaction and impacts to wildlife; and

(d) the impacts of clearing potentially hundreds of miles⁹ of new "community connector trails" 9 feet or more wide, including, but not limited to, loss of vegetation, impacts to wildlife and its habitat, forest fragmentation, erosion and runoff.

259. Indeed, at pages 195, 198 and 205 of the Final Snowmobile Plan, DEC specifically, and in violation of its duty to take a hard look before acting, deferred assessment of many of these impacts to some later phase of the planning process.

260. Because they failed to take a "hard look" at these impacts, and to identify the specific required mitigation measures for these impacts, the decisions of DEC and ORRHP in making their SEQR findings, and approving the Final Snowmobile Plan, were arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

⁹ Pages 38-39 of the Final Snowmobile Plan list the goals of such planned community connector trail routes. There are 6 such routes, some connecting communities that are one hundred or more miles apart.

**AS AND FOR A NINETEENTH SEPARATE
AND DISTINCT CAUSE OF ACTION**

261. Each and every allegation set forth above is hereby repeated and realleged.

262. As set forth above at the Ninth Cause of Action, SEQR requires that agencies must assess the cumulative impacts of their actions together with the impacts of related actions.

263. As set forth in the Ninth Cause of Action, DEC is undertaking numerous UMPs for the Forest Preserve, and has now adopted the Final Snowmobile Plan.

264. As set forth in the Ninth Cause of Action, the Jessup River UMP claimed that numerous environmental impacts would be assessed in the Final Snowmobile Plan.

265. However, instead of assessing the cumulative impacts of adding new community connector snowmobile trails, called for by the Final Snowmobile Plan throughout the Adirondack Park, and other issues, DEC deferred assessment of those impacts, described above, to the individual UMPs for the various Forest Preserve units. This occurs, *inter alia*, at page 195 of the Final Snowmobile Plan.

266. DEC's and ORRHP's failure to assess the cumulative impacts of the Final Snowmobile Plan was arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

**AS AND FOR A TWENTIETH SEPARATE
AND DISTINCT CAUSE OF ACTION**

267. Each and every allegation set forth above is hereby repeated and realleged.

268. As set forth above at the Tenth Cause of Action, SEQR prohibits the segmentation of the environmental review of actions.

269. Although the Final Snowmobile Plan is intended to provide for the creation of a park-wide system of community connector snowmobile trails, the GEIS failed to assess all of the impacts of the creation of this system.

270. Instead, the GEIS portion of the Final Snowmobile Plan specifically states (pages 3, 39-40, 195, 198, 203-205) that the environmental review of these trails will be undertaken in the individual UMPs for the various units of the Forest Preserve, or otherwise be performed later.

271. The individual UMPs will assess only the impacts of trails located in the specific units in question.

272. Thus, DEC and ORRHP have failed to assess the impacts of the community connector trail system, and instead intends to segment the environmental review thereof in the future among individual UMPs.

273. DEC's and ORRHP's segmentation of the SEQR review of the planned trail system in the Final Snowmobile Plan was arbitrary and capricious and an abuse of discretion, in violation of lawful procedure, and affected by error of law.

WHEREFORE, it is requested that judgment be granted:

(A) Annuling respondents APA's and DEC's approval of all snowmobile related portions of the Jessup River UMP by APA and DEC, including, but not limited to, the construction, modification or relocation of snowmobile trails, bridges and other facilities, and the use of motorized tracked grooming machines on snowmobile trails;

(B) Annuling respondents APA's and DEC's SEQR findings supporting the approval of all snowmobile related portions of the Jessup River UMP;

(C) Enjoining respondents APA and DEC from undertaking the snowmobile related actions authorized by said Jessup River UMP;

(D) Enjoining the use of motorized tracked grooming machines on snowmobile trails in the Jessup River Wild Forest;

(E) Annuling the approval of the Final Snowmobile Plan by DEC and ORPHP;

(F) Annuling DEC's and OPRHP's SEQR findings supporting the approval of the Final Snowmobile Plan;

(G) Enjoining DEC, OPRHP and APA from carrying out the Final Snowmobile Plan;

(H) Enjoining the use of motorized tracked grooming machines on snowmobile trails in the Adirondack Forest Preserve;

(I) Awarding Petitioners the costs and disbursements of this proceeding;

