STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
THE ADIRONDACK COUNCIL, INC.,

Petitioner- Plaintiff,

-against-

ADIRONDACK PARK AGENCY
and DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Respondents-Defendants.

For a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

ORDER and JUDGMENT
INDEX NO. 7991-10

(Supreme Court, Albany County, Special Term)
(Hon. Eugene P. Devine, J.S.C., presiding)

APPEARANCES:

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DEVINE, J.:

The petitioner-plaintiff commenced this hybrid action for a declaratory judgment and special proceeding pursuant to CPLR Article 78 to vacate and have declared invalid respondent-defendant Adirondack Park Agency's (APA) and respondent-defendant Department of Environmental Conservation's (DEC) approval and implementation of the "Jessup River Wild

Forest Unit Management Plan," (JRUMP) in September 2010, which was amended by the "Management Guidance for Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park" (the Guidance), alleging, among other things, that such agency determinations are unlawful, arbitrary and capricious and constitute an abuse of discretion. Respondents-defendants have served an answer opposing the complaint/petition and seeking its dismissal.

Land use in the Adirondack Park is governed by the Adirondack Park State Land Master Plan (Master Plan), which creates various categories of land units in the park and directs how these units are to be used. Specifically, the Master Plan provides that, while snowmobile usage is permissible in the Wild Forest unit, there should not be any "material increase" in the snowmobile trail mileage. In 1986, DEC determined that, where snowmobile activity had been designated as impermissible use in certain land units of the park, including the wilderness, primitive and canoe areas, it was necessary to provide additional trails in the wild forest area and that such trails should be limited to a total of 848.88 miles.

Thereafter, as the snowmobile industry grew, DEC and the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) adopted a Snowmobile Plan/Final Generic Environmental Impact Statement (FGEIS), pursuant to the State Environmental Quality Review Act (SEQRA), which created a framework for "how snowmobile trails and trail segments will be developed and maintained, particularly when and if they are located on Forest Preserve Lands within the Park."[1] The Snowmobile Plan/FGEIS further indicated that it was a conceptual planning document from which DEC policies would be promulgated and that creation of "specific, on the ground proposals for snowmobile trails and trail segment proposals will take

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[1] Respondents' Return Item 6, page 4.

place through the Unit Management Planning process established in the [Master Plan] in compliance with SEQRA."[2] Thereafter, the JRUMP was adopted in August 2006, however, following a court challenge by various advocacy groups, including petitioner-plaintiff, those portions of the JRUMP pertaining to snowmobile trails were rescinded as part of a stipulated settlement. In 2009, the Guidance was adopted by APA resolution to "direct and guide DEC and APA staff during the development of unit management plans in the designation of community connector trails and backcountry trails intended to preserve a more traditional type of Adirondack snowmobiling experience."[3] On December 21, 2009, DEC gave final approval to the Guidance which, according to DEC Commissioner Alexander Grannis, conformed to the Master Plan and would allow for snowmobile trail planning and management in the park's Forest Preserve lands.

Subsequent to the approval of the Guidance, petitioner-plaintiff commenced an identical declaratory judgment action/special proceeding to annul the Guidance, however, such action/proceeding was dismissed by Supreme Court (Connolly, J.) on ripeness grounds, finding, specifically, that petitioner-plaintiff had yet to experience actual harm inasmuch as the Guidance stated that actual implementation of its provisions would take place through the individualized unit management plan (UMP) process, which had not taken place.

By May 2010, DEC adopted amendments to the JRUMP and the final SEIS, after which adoption the APA enacted a resolution approving the final proposed amendment to the JRUMP, finding, among other things, that it conformed with the Master Plan and sought "to minimize or avoid adverse environmental effects," while still providing an ample and safe snowmobiling trail system within the Adirondack Park. Similarly, in September 2010, Grannis issued a

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[2] Id., at page 5.

[3] Verified Petition and Complaint, at exhibit D.

memorandum of approval which stated that the "Final Unit Management Plan (UMP) for the [JRUMP] has been completed. The UMP amendment is consistent with . . . the Master Plan, the State Constitution, [ECL] and [DEC] Rules, Regulations and Policies." Days later, public written notice was issued indicating that the "Amendment/Final SEIS to the [JRUMP/EIS] had been given final approval and that the Unit Management Plan Amendment was available on-line for review. This action/proceeding was commenced in November 2010.

Here, petitioner-plaintiff contends that, among other things, the APA and DEC acted beyond the scope of their authority and in an arbitrary and capricious manner in adopting the Guidance and JRUMP, both of which violate Art. XIV, section 1 of the state Constitution in that they allow for snowmobile trails to be located in interior lands of the park's wild forest which impairs the character of the land and threatens wildlife in those areas. Further, the petition/complaint alleges that the Guidance and the JRUMP violate Executive Law § 816 as they fail to conform to the requirements of the Master Plan and, additionally, that the APA and DEC's administrative approval and implementation of the Guidance and JRUMP was unlawful, arbitrary and capricious and an abuse of discretion. Finally, it is alleged that the DEC and APA failed to take a hard look at the potential adverse environmental impact that the Guidance and JRUMP posed to the park and failed to prepare a SEIS prior to the adoption of the Guidance, in violation of SEQRA.

Turning, first, to respondents-defendants' contention that this Court is without jurisdiction to consider petitioner-plaintiff's claim that the APA and DEC's actions in adopting the Guidance were arbitrary and capricious and erroneous as a matter of law in that the Guidance violated the standards announced in Article XIV, section 1 of the New York Constitution, the Court agrees with petitioner-plaintiff in its assertion that it has raised a purported violation of

Article XIV solely as a means to demonstrate that the respondents-defendants' actions are arbitrary and capricious and are affected by an error of law.

The Cõurt's review of respondents-defendants' decisions in this matter is limited to determining whether there is a rational basis for such decisions and, furthermore, where, as here, the administrative agencies have acted "pursuant to [their] authority and within [their] area of expertise," the challenged determinations will be afforded judicial deference.[4] Indeed, the Court may not substitute its judgment for that of the respondent-defendant agencies and their decisions "will be disturbed only when they lack a rational basis or are arbitrary and capricious."[5]

Petitioner-plaintiff insists that the snowmobile trail system established in the Jessup River Wild Forest is not permitted by the Master Plan and that the act of creating snowmobile trails in that area to replace trails lost in other areas was improper as the trails were only to be created in areas with "existing roads or abandoned wood roads" and not in interior lands. Brian Houseal, Executive Director of petitioner-plaintiff, states that the most alarming aspect of the Guidance relates to the creation of "community connector" snowmobile trails, called Class II trails, which are defined as follows:

"Snowmobile trails or trail segments that serve to connect communities and provide the mail travel routes for snowmobiles within a unit are Community Connector Trails. These trails are located in the periphery of Wild Forest or other Forest Preserve areas. They are always located as close as possible to motorized travel corridors, given safety, terrain and environmental constraints, and only rarely are any segments of them located further that one mile away from the nearest of these corridors. They are not duplicated or paralleled by other snowmobile trails. Some can be short, linking communities to longer Class II trails that connect two or more other communities."

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[4] Matter of Riverkeeper, Inc. v Johnson, 52 AD3d 1072, 1074 [3d Dept. 2008], lv denied 11 NY3d 716 [2009].

[5] Matter of Port of Oswego Authority v Grannis, 70 AD3d 1101, 1103 [3d Dept. 2010], lv denied 14 NY3d 714 [2010]; see Matter of Flacke v Onondaga Landfill Sys., 69 NY2d 355, 363 [1987].

Houseal avers that this expanded area of trails, located one to two miles within a wild forest unit, may create a disturbance to hibernating animals and cause "forest fragmentation," thereby damaging the wild forest character of the affected areas. Respondents-defendants submit an affidavit from Thomas Kapelewski, a Senior Forester with DEC, who responds that the proposed trails will use "old roads when possible, following terrain contouring and winding between larger trees [which] will minimize the number of trees that need to be removed to accommodate trails while retaining "foot trail character" as required by the [Master Plan]."[6] Kapelewski further counters petitioner-plaintiff's allegations that the new trails will impact the remote interior areas of the forest preserve, stating that most of the trails will be located near motorized highways and that the siting provisions of the JRUMP actually decreased noise and emissions, provided for safer snowmobile usage, as well as less intrusion on the habitat and land within that area of the park.

Walter Linck, a Natural Resources Planner for the APA, indicates that Houseal's claims that the trails will encroach upon and irreparably harm the wildlife within the Jessup River forest preserve are highly speculative and unsupported by credible expert findings on the subject. Specifically, Linck avers that he has researched existing scientific studies regarding the environmental impact of snowmobile use on wildlife and has not found research that concludes that such activity negatively affects the wildlife populations, with the exception of a study that shows elevated metabolic rates in deer caused by vehicular noise. Linck states that this reaction was indeed a "concern in the siting of snowmobile trails" and that the agency staff will ensure that trails are not placed through or adjacent to deer wintering areas "and any other critical wildlife

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[6] Kapelewski Affidavit at page 7.

habitat as required by the [Master Plan]."[7]

As to petitioner-plaintiff's claim that the trail siting provisions of the Guidance are "illegal" and in contravention of the Master Plan's dictates that snowmobile trails be situated "adjacent to but screened from public highways" and that the trails should be of "essentially the same character as a foot trail,"[8] Kapelewski maintains that nothing in the Master Plan attempts to limit respondents-defendants' discretion to determine the best location for trail routes and that an "objective reading of the [Master Plan] confirms the expectation that planners will exercise their best land management judgment and would allow alternate routes on either state or private land as an alternative." The Court agrees that respondents-defendants were vested with the discretionary authority to create and implement unit management plans in accordance with their interpretation of the Master Plan and that there is nothing in the record which indicates that the Master Plan prohibited respondents-defendants' definition of "periphery," which covers areas located within two miles of a motorized travel corridor. Nonetheless, Kapelewski states that "in actuality both existing trails to be retained and new trails proposed for construction within the Jessup River Wild Forest will stay within one mile of a "motorized travel corridor."[9] Furthermore, the record reveals that respondents-defendants' snowmobile trail siting decisions did not violate the requirement that the trails reflect similar attributes of park foot trails and, in fact, petitioner-plaintiff fails to present proof that the trails provided for in the JRUMP were not mapped in a manner that ensured for rider safety, while also preserving the surrounding environment, pursuant to the Master Plan.

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[7] Linck Affidavit, at pages 8, 11.

[8] The Master Plan defines a foot trail as "a marked and maintained path or way for foot travel located and designed to provide for reasonable access in a manner causing the least effect on the surrounding environment."

[9] Kapelewski Affidavit, at page 8.

The Court finds that the parties' evidentiary submissions clearly demonstrate that the trail siting decisions at issue in the Guidance and the JRUMP were not made in a vacuum, without any public input, or in an arbitrary and capricious manner. The agency decisions raised in the petition-complaint evolved over a number of years and resulted from extensive collaboration, including numerous public hearing and meetings, with the local communities and public interest groups that would be directly affected by the decisions. Kapelewski states that revisions to the Guidance came directly from public concerns and comments and that additional public informational meetings were held to clarify the final amendments to the JRUMP at issue here in 2010. As respondents-defendants' snowmobile trail siting decisions had a rational basis and were made to comport with the Master Plan, the petition challenging such determinations cannot be granted.

Finally, petitioner-plaintiff's contention that respondents-defendants were in violation of SEQRA requirements in enacting and implementing the Guidance and JRUMP is without merit. Houseal's speculative and conclusory statements that the Guidance and JRUMP will have a significant and detrimental impact on the environment have been discussed herein and fail to convince the Court that further environmental impact statements were warranted. "Judicial review of an agency determination under SEQRA is limited to whether the agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination."[10] As lead agencies, DEC and OPRHP issued a final Plan/GEIS in 2006 which addressed potential environmental impacts posed by the snowmobile trail system. The Plan/GEIS discussed, in detail, the manner in which the proposed siting for snowmobile trails would impact the surrounding environment and specifically stated

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[10] Matter of Shop-Rite Supermarkets v Planning Bd. of Town of Wawarsing, 82 AD3d 1384, 1385 [3d Dept. 2011], lv denied 17 NY3d 705 [2011].

that trail changes would have a "positive net benefit" to the forest preserve, including reduced motorized traffic in interior areas of the park units, lowered exhaust emission levels, reduced noise levels, among other things. Further, the trail plan revisions would allow for vegetation and trees that had previously been cut back, to regrow "thereby improving the aesthetic experience of trail users."[11] Karyn Richards, a Forest Preserve Coordinator with DEC, avers that, inasmuch as the Guidance was found to be consistent with the Master Plan's provisions and with the 2006 Plan/GEIS, no further SEQRA review was warranted. The Court agrees that, because a final environmental impact statement was issued here and respondents-defendants proposed no further actions that could negatively impact the environment that had not been adequately addressed in said EIS, a SEIS was not required, thereby nullifying petitioner-plaintiff's SEQRA claims.[12]

Accordingly, it is now

ORDERED and ADJUDGED that the petition is dismissed and the relief requested therein is denied.

Those arguments not specifically discussed herein were considered by the Court and found to be unavailing.

This Memorandum shall constitute both the Order and Judgment of the Court. This original **ORDER and JUDGMENT** is being sent to the Attorney General. The signing of this **ORDER and JUDGMENT** shall not constitute entry or filing under CPLR 2220. Legal counsel for the respondents-defendants is not relieved from the applicable provisions of that section with respect to filing, entry and notice of entry.

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[11] Respondents-Defendants' Return item 6, at page 195.

[12] see e.g. Matter of Eadie v Town Bd. of Town of North Greenbush, 47 AD3d 1021, 1025 [3d Dept. 2008]; see also Save the Pine Bush, Inc. v Common Council of City of Albany, 13 NY3d 297, 306-308 [2009].

SO ORDERED
ENTER

Date: 10/7, 2011
Albany, New York

EUGENE P. DEVINE, J.S.C.

PAPERS CONSIDERED:

1. Notice of Verified Petition and Complain, with exhibits, Affirmation in Support of Marc S. Gerstman, Esq., Affidavit in Support of Brian Houseal, and Memorandum of Law in Support, dated November 29, 2010.
2. Verified Answer, Objections in Point of Law and Certified Return, dated March 31, 2011, Affidavit of Karyn B. Richards, Affidavit of Thomas Kapelewski, Affidavit of Walter Linck and Memorandum of Law in Opposition to the Petition, with exhibits, dated May 6, 2011.
3. Petitioner-Plaintiff's Reply Memorandum of Law, dated June 3, 2011.