

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of

ADIRONDACK WILD: FRIENDS OF THE FOREST
PRESERVE, and PROTECT THE ADIRONDACKS! INC.,

Petitioners/Plaintiffs,

for Judgment Pursuant to Article 78 of the New York Civil
Practice Law and Rules, Declaratory Judgment, and Injunctive
Relief

NOTICE OF PETITION

Index No. _____

-against-

NEW YORK STATE ADIRONDACK PARK AGENCY;
LEILANI ULRICH, in her capacity as Chairperson of the New
York State Adirondack Park Agency; NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION;
and BASIL SEGGOS, in his capacity as Acting Commissioner
of the New York State Department of Environmental
Conservation,

Respondents/Defendants.

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PLEASE TAKE NOTICE that upon the annexed Verified Petition and Complaint of Adirondack Wild: Friends of the Forest Preserve and Protect the Adirondacks! Inc. (jointly “Petitioners”), verified on January 6, 2016; the exhibits annexed thereto; the Affirmation of Hannah Chang, dated January 8, 2016; the Affidavit of Daniel R. Plumley, sworn to on January 6, 2016; the Affidavit of David Gibson, sworn to on January 6, 2016; the Affidavit of Peter Bauer, sworn to on January 6, 2016; the Affidavit of Lorraine Duvall, sworn to on January 6, 2016; the Affidavit of John Collins, sworn to on January 6, 2016; the Affirmation of Robert C. Glennon, dated January 6, 2016; and Petitioners’ Memorandum of Law in Support of their Verified Petition/Complaint, Petitioners will move this Court at an Article 78 Term at the Albany

County Courthouse, 16 Eagle Street, Albany, New York, on the 5th day of February at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to Sections 3001 and 7806 of the New York Civil Practice Law and Rules:

1. adjudging and declaring that the APA's November 13, 2015 Conformance Determination for the Essex Chain Lakes Complex Management Plan ("Essex Chain UMP") is affected by errors of law, arbitrary and capricious, and an abuse of discretion;
2. annulling and vacating the Conformance Determination;
3. remanding the matter to Respondents for the development and approval of an Essex Chain UMP that complies with all applicable law, rules, and guidance;
4. enjoining and restraining Respondents from implementing the Essex Chain UMP pending preparation and approval of a revised UMP that conforms with all applicable law, rules, and guidance; and
5. granting Petitioners such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 11, 2016

Respectfully submitted,



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of

ADIRONDACK WILD: FRIENDS OF THE FOREST
PRESERVE, and PROTECT THE ADIRONDACKS! INC.,

Petitioners/Plaintiffs,

for Judgment Pursuant to Article 78 of the New York Civil
Practice Law and Rules, Declaratory Judgment, and Injunctive
Relief

**VERIFIED PETITION
AND COMPLAINT**

Index No. _____

-against-

NEW YORK STATE ADIRONDACK PARK AGENCY;
LEILANI ULRICH, in her capacity as Chairperson of the New
York State Adirondack Park Agency; NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION;
and BASIL SEGGOS, in his capacity as Acting Commissioner
of the New York State Department of Environmental
Conservation,

Respondents/Defendants.

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Petitioners/Plaintiffs Adirondack Wild: Friends of the Forest Preserve and Protect the
Adirondacks! Inc. (jointly, “Petitioners”), for their verified petition for judgment pursuant to
Article 78 of the New York Civil Practice Law and Rules (“CPLR”) and their complaint seeking
a declaratory judgment pursuant to section 3001 of the CPLR, by their attorney, Earthjustice,
allege as follows:

PRELIMINARY STATEMENT

1. This proceeding challenges the November 13, 2015 approval by
Respondent/Defendant New York State Adirondack Park Agency (“APA” or “Agency”) of the
Essex Chain Lakes Management Complex Final Unit Management Plan (“Essex Chain UMP”),

dated November 12, 2015, and prepared by Respondent/Defendant New York State Department of Environmental Conservation (“DEC” or “Department”).¹

2. The Essex Chain UMP dictates the short- and long-term management actions to be undertaken by DEC regarding the lands and waters comprising the Essex Chain Complex (“the Complex”).

3. The Complex includes the Essex Chain Lakes Primitive Area, the Pine Lake Primitive Area, and portions of the Blue Mountain and Vanderwhacker Mountain Wild Forests. These wild lands are known to contain a spectacular variety of ecologically significant resources, including segments of the Hudson and Cedar Rivers protected under New York’s Wild, Scenic and Recreational Rivers System Act (“WSRRSA”).²

4. The Essex Chain UMP unlawfully authorizes the intrusion of a new motorized corridor in the Complex that crosses two Scenic rivers and enters a Wild river area as it threads through a narrow corridor between Primitive areas to the west and Wilderness to the east. Specifically, the Essex Chain UMP is fatally deficient because it unlawfully:

- (1) calls for construction of a new snowmobile bridge over the Cedar River at a location where the river is a designated Scenic river, in violation of the WSRRSA;

¹ The Essex Chain UMP includes the Unit Management Plans (“UMP”) for the Essex Chain Lakes Primitive Area and Pine Lake Primitive Area, Amendments to the 1995 Blue Mountain Wild Forest UMP and 2005 Vanderwhacker Mountain Wild Forest UMP, and River Area Management Plans for the Hudson River and Cedar River. A copy of the most recently available public version of the document, dated November 10, 2015, is available at <http://apa.ny.gov/Mailing/2015/11/stateLand.htm> (click on link for “Essex Chain Lakes Management Complex Proposed Final Plan-Redline Version (revised 11-10-2015)”), and is annexed hereto as Exhibit 2. *See* Ex. 1 (Affirmation of Hannah Chang, dated January 8, 2016).

² A map of the Complex extracted from the UMP is annexed hereto as Exhibit 3.

(2) calls for opening the existing Polaris Bridge over the Hudson River to public motorized use at a location where the river is a designated Scenic river, in violation of the WSRRSA;

(3) calls for opening an existing road within the Wild river corridor of the Hudson River to public motorized use in violation of the WSRRSA;

(4) authorizes the establishment of a new snowmobile corridor, the Indian Lake-to-Minerva Snowmobile Community Connector, that duplicates an existing snowmobile route in violation of the 2009 Management Guidance for Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park (“Snowmobile Guidance”); and

(5) authorizes public all terrain bicycle use within the Essex Chain Lakes and Pine Lake Primitive Areas in violation of the Adirondack Park State Land Master Plan (“SLMP”).

5. APA’s approval of the Essex Chain UMP must be vacated because the UMP violates the WSRRSA, the SLMP, and the Snowmobile Guidance. Petitioners seek judgment pursuant to CPLR §§ 3001 and 7806 declaring that APA’s approval of the Essex Chain UMP was arbitrary and capricious, an abuse of discretion, and affected by errors of law; annulling and vacating the approval of the Essex Chain UMP; and remanding the matter to Respondents for the development of an Essex Chain UMP that complies with all applicable laws, rules, and guidance.

THE PARTIES

6. Petitioner/Plaintiff Adirondack Wild: Friends of the Forest Preserve (“Adirondack Wild”) is a not-for-profit corporation organized and existing under the laws of the State of New York, with approximately 650 members who deeply treasure wilderness in New York State.

Adirondack Wild's mission is to advance New York's "forever wild" legacy and to promote stewardship practices that advance wilderness values. Many of Adirondack Wild's members live near the Adirondack and Catskills Parks. *See* Affidavit of Daniel Plumley, sworn to on January 6, 2016 (a copy of which is annexed hereto as Exhibit 4) ("Plumley Aff."); *see also* Affidavit of David Gibson, sworn to on January 6, 2016 (a copy of which is annexed hereto as Exhibit 5) ("Gibson Aff."). As is set forth more fully in the affidavits of Mr. Plumley and Mr. Gibson, members of Adirondack Wild will be harmed if the relief requested by Petitioners is denied. *See* Ex. 4 (Plumley Aff. ¶¶ 13-18); Ex. 5 (Gibson Aff. ¶¶ 6-16). Adirondack Wild submitted comments on the Draft UMP, attended and testified at public hearings on the Draft UMP, and submitted comments on UMP's conformance with the SLMP elucidating concerns about the illegality of the Essex Chain UMP. *See* Ex. 5 (Gibson Aff. ¶¶ 17-20).

7. Petitioner/Plaintiff Protect the Adirondacks! Inc. ("Protect") is a not-for-profit corporation organized and existing under the laws of the State of New York with over 2,000 members and supporters, many of whom live or own property in the Adirondack Park. *See* Affidavit of Peter Bauer ¶ 4, sworn to on January 6, 2016 (a copy of which is annexed hereto as Exhibit 6) ("Bauer Aff."). Protect's mission is to protect the natural environment and human communities of the Adirondack Park and New York State Forest Preserve for future generations. Members of Protect, including Mr. Bauer and Ms. Lorraine Duvall, will be harmed if the relief requested by Petitioners is denied. *See* Ex. 6 (Bauer Aff. ¶¶ 14-20); Affidavit of Lorraine Duvall ¶ 6, sworn to on January 6, 2016 (a copy of which is annexed hereto as Exhibit 7). Protect submitted comments on the Draft UMP, attended and testified at public hearings on the Draft UMP, and submitted comments on UMP's conformance with the SLMP elucidating concerns about the illegality of the Essex Chain UMP. *See* Ex. 6 (Bauer Aff. ¶¶ 11-13).

8. Respondent/Defendant APA is an executive agency of the State of New York, with powers and duties set forth in the New York Executive Law. APA has its principal office in Essex County. APA reviewed the Essex Chain UMP, and on November 13, 2015, adopted a resolution concluding that the Essex Chain UMP conforms to the SLMP and that the proposed snowmobile corridor between Indian Lake and Minerva complies with the 2009 Management Guidance (“Conformance Determination,” a copy of which is annexed hereto as Exhibit 8).

9. Respondent/Defendant Leilani Ulrich is Chairperson of the APA.

10. Respondent/Defendant DEC is an executive agency of the State of New York, with relevant powers and duties for “care and custody” of the state Forest Preserve set forth in the New York Environmental Conservation Law (“ECL”) and the Executive Law. DEC has its principal office in Albany County.

11. Respondent/Defendant Basil Seggos is Acting Commissioner of DEC.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to CPLR sections 3001, 7801, and 7803(3).

13. Petitioners timely initiated this special proceeding and declaratory judgment action by properly filing their Notice of Petition, Verified Petition and Complaint, and all supporting affidavits and other exhibits on January 11, 2016, less than 60 days after APA issued its Conformance Determination on November 13, 2015, *see* N.Y. Exec. L. § 818(1).

14. Venue lies in the Supreme Court, Albany County, pursuant to CPLR § 7804(b), because the principal office of Defendants/Respondents DEC and Acting Commissioner Seggos is located there, *id.* § 505(a), and it is where Defendants/Respondents DEC and Acting Commissioner Seggos made the determinations challenged in this proceeding, *id.* § 506(b).

RELEVANT LAW

I. THE WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM ACT

15. The WSRRSA, enacted in 1972, implements the policy of the state to preserve certain selected rivers, which “with their immediate environs, possess outstanding natural, scenic, historic, ecological and recreational values,” such that “they and their immediate environs shall be protected for the benefit and enjoyment of present and future generations.” ECL § 15-2701.

16. Under the WSRRSA, rivers designated for inclusion in the system are classified as wild, scenic, or recreational. *Id.* § 15-2707. “River area” is defined by regulation as “the river and the land area in its immediate environs Upon designation and until boundaries are established by the commissioner, the river area shall be that area within one-half mile of each bank of the river.” 6 N.Y. Comp. Codes R. & Regs (“NYCRR”) § 666.3(yy).

17. The Act vests APA with power and duties for privately owned parts of a river area within the Adirondack Park, and grants DEC “exclusive jurisdiction over all other river areas in the state and of all parts of river areas owned by the state located within the Adirondack park which may become part of the system.” ECL § 15-2705. The Act directs the two agencies to “consult and cooperate to carry out the purposes of this title.” *Id.*

18. Wild rivers are the most pristine and managed under the most restrictive guidelines “directed at perpetuating them in a wild condition.” ECL § 15-2707(2)(a). Specifically, wild rivers are “[t]hose rivers or sections of rivers that are free of diversions and impoundments, inaccessible to the general public except by water, foot or horse trail, and with river areas primitive and undeveloped in nature and with development, if any, limited to forest management and foot bridges.” *Id.*

19. The Act provides that “[i]n wild river areas, no new structures or improvements, no development of any kind and no access by motor vehicles shall be permitted other than forest management pursuant to forest management standards duly promulgated by regulations.” *Id.* § 15-2709(2)(a).

20. The implementing regulations include a “Table of Use Guidelines” that reiterates that in Wild river areas, all uses of motor vehicles or motorized equipment are prohibited, unless for forest management purposes. 6 NYCRR § 666.13(E)(4).

21. Scenic rivers are

[t]hose rivers, or sections of rivers, that are free of diversions or impoundments except for log dams, with limited road access and with river areas largely primitive and largely undeveloped or which are partially or predominantly used for agriculture, forest management and other dispersed human activities which do not substantially interfere with public use and enjoyment of the rivers and their shores.

Id. § 15-2707(2)(b).

22. The Act provides that “[m]anagement of scenic river areas shall be directed at preserving and restoring the natural scenic qualities of such rivers.” *Id.* More specifically:

In scenic river areas, the continuation of present agricultural practices, the propagation of crops, forest management pursuant to forest management standards duly promulgated by regulations, limited dispersed or cluster residential developments and stream improvement structures for fishery management purposes shall be permitted. There shall be no mining, excavation, or construction of roads, except private roads necessary for residential, agricultural or forest management purposes, and with the further exception that public access through new road construction may be allowed, provided that there is no other such access within two land miles in either direction.

Id.

23. The regulations specify that bridges are allowed over a Scenic river for “public roads or for non-motorized open space recreational uses.” 6 NYCRR § 666.13(E)(5). No other uses for bridges in Scenic river areas are identified.

24. The regulations provide that “[a]ny new land use or development not listed in this Part as ‘no permit necessary’, ‘permit required’ or notification required’, is presumed incompatible with the purposes of the act.” *Id.* § 666.2(h).

25. The WSRRSA states that “existing land uses within the respective classified river areas may continue, but may not be altered or expanded *except as permitted by the respective classifications*, unless the commissioner or agency orders the discontinuance of such existing land use.” ECL § 15-2709(2) (emphasis added).

26. In the January 1986 Final Environmental Impact Statement (“FEIS”) for the Part 666 regulations, a copy of which is annexed hereto as Exhibit 9, DEC explicitly stated that the regulations “*prohibit motorized open space recreational uses in scenic river areas. Therefore bridges for this use have been prohibited.*” Exhibit 9 at 57 (emphasis added); *see also id.* at 58 (“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 [sic] take place within such river areas and conflict with motorized recreational vehicles.”).

27. In 1994, the Part 666 regulations were repealed and readopted, but earlier provisions relating to motorized open space recreational uses in scenic river areas were not substantively altered. *See* DEC Summary of 1994 Part 666 rulemaking (Jan. 27, 1993) (a copy of which is annexed hereto as Exhibit 10).

28. The implementing regulations specify that a permit also is necessary for “[t]rails” in Scenic river areas. Trails are defined as “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.” 6 NYCRR § 666.3(III).

29. In the FEIS for the Part 666 regulations in 1986, DEC stated that “[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.*” Ex. 9 (FEIS at 31) (emphasis added).

II. THE ADIRONDACK PARK STATE LAND MASTER PLAN

30. In 1971, New York’s Legislature enacted the APA Act, N.Y. Exec. Law §§ 800 *et seq.*, “to insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack park.” *Id.* § 801.

31. As originally enacted, section 807 of the Act required the APA to develop and submit to the governor for approval a master plan for management of state lands.

32. The SLMP received gubernatorial approval in 1972. A copy of relevant portions of the SLMP is annexed hereto as Exhibit 11.

33. The SLMP provides:

If there is a unifying theme to the master plan, it is that the protection and preservation of the natural resources of the state lands within the Park must be paramount. Human use and enjoyment of those lands should be permitted and encouraged, so long as the resources in their physical and biological context as well as their social or psychological aspects are not degraded. This theme is drawn not only from the Adirondack Park Agency Act . . . and its legislative history, but also from a century of the public’s demonstrated attitude toward the forest preserve and the Adirondack Park.

Ex. 11 (SLMP at 1).

34. Pursuant to the SLMP, all Forest Preserve lands within the Adirondack Park must be classified as one of eight classifications: wilderness, primitive, canoe, wild forest, intensive use, historic, state administrative, or travel corridors. *See id.* at 14. Wild, scenic, and recreational rivers are an additional classification under the SLMP. *See id.*

35. The SLMP defines the Primitive land classification as follows:

A primitive area is an area of land or water that is either:

1. Essentially wilderness in character but, (a) contains structures, improvements, or uses that are inconsistent with wilderness, as defined, and whose removal, though a long term objective, cannot be provided for by a fixed deadline, and/or, (b) contains, or is contiguous to, private lands that are of a size and influence to prevent wilderness designation; or,

2. Of a size and character not meeting wilderness standards, but where the fragility of the resource or other factors require wilderness management.

Id. at 25.

36. The SLMP states that the “primary primitive management guideline” is “to achieve and maintain in each designated primitive area a condition as close to wilderness as possible, so as to perpetuate a natural plant and animal community where man’s influence is relatively unapparent.” *Id.*

37. In Wilderness areas, public use of all terrain bicycles is prohibited. *Id.* at 23.

38. Public use of all terrain bicycles is prohibited in Primitive areas as well, “except that all terrain bicycles may be used on existing roads legally open to the public and on state truck trails specifically designated for such use by [DEC] as specified in individual unit management plans.” *Id.* at 28.

39. The SLMP provides that “[w]ild rivers and their river areas will be managed in accordance with the guidelines for wilderness areas” *Id.* at 44.

40. In Wilderness areas, “[p]ublic use of motor vehicles, motorized equipment and aircraft [is] prohibited.” *Id.* at 22.

41. The SLMP provides that “[s]cenic rivers and their river areas will be managed in accordance with the guidelines for the management of wild forest areas (except where such rivers flow through wilderness, primitive or canoe areas, where the more restrictive guidelines of the particular area will apply)” *Id.* at 44.

42. Section 816 of the APA Act directs DEC “to develop, in consultation with [APA], individual management plans for units of land classified” in the SLMP. N.Y. Exec. Law § 816(1). UMPs “shall conform to the general guidelines and criteria set forth in the master plan. Until amended, the master plan for management of state lands and the individual management plans shall guide the development and management of state lands in the Adirondack park.” *Id.*

III. SNOWMOBILE GUIDANCE

43. In 2009, APA and DEC entered into a Memorandum of Understanding entitled “Management Guidance: Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park,” a copy of which is annexed hereto as Exhibit 12.

44. This Snowmobile Guidance implements the October 2006 Snowmobile Plan for the Adirondack Park/Final Generic Environmental Impact Statement, which “present[ed] a conceptual snowmobile plan with the goal of creating a system of snowmobile trails between communities in the Adirondack Park.” Ex. 12 (Snowmobile Guidance at 2).

45. The Snowmobile Guidance “establish[ed] a new DEC snowmobile trail classification system with new standards and guidelines for snowmobile trail siting, construction and maintenance.” *Id.* Two classes of trails were established, one of them being Class II Trails, or Community Connector Trails, which are defined as follows:

Snowmobile trails or trail segments that serve to connect communities and provide the main 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 than 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.

Id. at 3.

FACTS

I. THE ESSEX CHAIN LAKES COMPLEX

46. In 2012, Governor Andrew Cuomo announced that the State had reached an agreement with The Nature Conservancy (“TNC”) to acquire 69,000 acres of lands for the Forest Preserve in a phased five-year contract. As part of this phased acquisition, the 18,100-acre Essex Chain Lakes Tract and the 960-acre Indian River Tract became part of the Adirondack Park Forest Preserve in 2013. *See* Ex. 2 (UMP at 2).

A. Historical Use of the Newly Acquired Lands

47. Prior to their acquisition by TNC in 2007, these lands had been owned by the Finch, Pruyn & Co. paper company (“Finch Pruyn”) since the late 1800s and managed for timber production.

48. Historically, Finch Pruyn had leased portions of its land to private clubs and individuals to help pay its taxes. Since at least 1946, for instance, the Gooley Club, a private hunting and fishing club, has leased large portions of the Complex Area. The Polaris Club, another private hunting and fishing club, established in the early 1960s, also leased lands from Finch Pruyn.

49. While under the private ownership of Finch Pruyn and later TNC, Chain Lakes Road South was closed to the general public. *See* Ex. 6 (Bauer Aff. ¶ 21); Affidavit of John Collins ¶ 4, sworn to on January 6, 2016 (annexed hereto as Ex. 13).

B. Description of the Essex Chain Complex

50. In 2014, APA and DEC classified the newly acquired lands and reclassified other lands pursuant to the SLMP. *See* Resolution Adopted By the Adirondack Park Agency With Respect to 2013 Classification Package , *available at* <http://apa.ny.gov/Mailing/2013/12/StateLand/2013%20Finch%20Resolution%20With%20Attachments.pdf> (“2013 APA Classification Resolution”).

51. The Primitive portion of the Essex Chain Complex is comprised of the Essex Chain Lakes Primitive Area to the north of the Cedar River and Pine Lake Primitive Area to the south of the Cedar River. *See* Ex. 3 (map).

52. Approximately 23 miles of former logging roads used and maintained by Finch Pruyn are located within these Primitive areas. Ex. 2 (UMP at 28). Approximately 0.65 miles of these former logging roads are designated by DEC as administrative use roads, otherwise referred to as state truck trails. *See id.*

53. The portion of the Cedar River that flows through these Primitive areas is designated Scenic under the WSRRSA.

54. North of this point on the Cedar River, along the eastern boundary of the Essex Chain Lakes Primitive Area, runs the Camp Six Trail/Camp Six Road which becomes the Chain Lakes Road (North).

55. South of the Cedar River, along the eastern boundary of the Pine Lake Primitive Area, runs Chain Lakes Road (South), which ultimately connects to the Town of Indian Lake to the south.

56. There is no bridge across the Cedar River where it flows between the Essex Chain Lakes and Pine Lake Primitive Areas. The last bridge over the Cedar River in this vicinity washed out in 1978 and was never replaced. Ex. 2 (UMP at 29).

57. A portion of Chain Lakes Road South falls within one half mile of the Hudson River where the Hudson is designated Wild under the WSRRSA. *Id.* at 25.

58. The eastern boundary of the two Primitive areas, a one-tenth-mile-wide corridor running north-south was left partially unclassified under the SLMP pending a determination by DEC as to whether a new snowmobile bridge over the Cedar River could be legally built under the WSRRSA.

59. At the time the Agencies classified the lands, APA resolved to “request[] the Department consider whether exiting Part 666 authorizes the construction of a snowmobile bridge over the Cedar River Scenic River, and if it does not, consider making appropriate revisions to 6 NYCRR Part 666 to allow such a bridge.” 2013 APA Classification Resolution at 5-6.

60. The Hudson River is designated Scenic under the WSRRSA where it is crossed by the Polaris Bridge. This stretch of the Hudson was designated for inclusion into the wild, scenic and recreational rivers system in 1973. *See* ECL § 15-2713(2)(f).

61. The Polaris Bridge was constructed in 1992 by Finch Pruyn to enable it to better manage its lands on the east side of the Hudson River.

62. At that time, APA indicated that “[t]he proposed crossing was last used by the applicant approximately 1957” and described the site of the bridge as a remote section of the Hudson River where, “[o]ther than access via the river, the site is not accessible by the general public.” APA Polaris Bridge permit at 3 (a copy of which is annexed hereto as Exhibit 14).

63. While under the private ownership of Finch Pruyn and later TNC, the Polaris Bridge was used only for logging purposes and by lessees of the owner and was not accessible to the general public. *See id.*; *see also* DEC Polaris Bridge permit (a copy of which is annexed hereto as Exhibit 15).

64. A snowmobile route consisting of existing and approved trails and roads currently connects the Towns of Indian Lake and Minerva. *See Ex. 2* (UMP at 110) (describing the route of the existing Indian Lake-to-Minerva snowmobile route as the no action alternative).

C. Existing Lease Restrictions

65. With the state’s purchase of the newly acquired lands from TNC, the Finch Pruyn recreational leases expire on September 30, 2018, and will not be renewed by the State. *See id.* at 59-60. All lessee camp buildings and property will be removed by October 1, 2019. *See id.*

66. As part of a ten-year lease phase-out implemented by TNC in 2008, the exclusive leases held by the private clubs shrank to a one-acre parcel around existing camp buildings on October 1, 2013. *See TNC, Leaseholder Update: how leases will be managed on The Nature Conservancy Lands once these are transferred to New York State* (Sept. 27, 2013) (a copy of which is annexed hereto as Exhibit 16).

67. On information and belief, pursuant to the terms of leases held by private clubs, recreational vehicle use on roads outside of the one-acre parcels surrounding existing camp buildings is forbidden. Lessees may use vehicles, including snowmobiles, only along designated

access roads and only to access and exit their camps. *See* Ex. 16 at 1; Lease Agreement between TNC and Polaris Mountain Club (a copy of which is annexed hereto as Exhibit 17); Lease Agreement between TNC and Gooley Club (a copy of which is annexed hereto as Exhibit 18).

68. On information and belief, pursuant to the terms of the leases held by TNC with private clubs, the clubs were required to provide TNC with a list of their members each year, and members were issued and required to display prominent stickers on motorized vehicles identifying themselves as club members. *See* Ex. 16 at 2; Ex. 17 at 8-9, Management Agreement Terms; Ex. 18 at 9, Management Agreement Terms. Each Lessee member is permitted to invite a maximum of two guests onto the leased lands, who must be accompanied by the members at all times when not in camp. *See* Ex. 17 Management Agreement Terms; Ex. 18 Management Agreement Terms.

IV. THE ESSEX CHAIN UMP

69. The Essex Chain UMP includes a Schedule of Implementation that identifies specific actions that will be taken during each of the next five years. *See* Ex. 2 (UMP at 66-69).

70. The UMP calls for construction of a new snowmobile bridge over the Cedar River. *See id.* at 30, 68. The UMP claims that construction of the new snowmobile bridge within a Scenic River corridor requires DEC to issue itself a WSRRSA permit and variances. *Id.* at 112.

71. The UMP also calls for opening the Polaris Bridge to public snowmobile use where the Hudson River is designated Scenic under the WSRRSA. *Id.* at 30.

72. The Essex Chain UMP also provides seasonal public motor vehicle access on the Chain Lakes Road (South), which runs along the eastern boundary of the Pine Lake Primitive Area. *Id.* at 40.

73. The Essex Chain UMP provides for the establishment of a new Class II/Community Connector snowmobile corridor to connect Indian Lake and Minerva. *Id.* at 51. As described in the Essex Chain UMP, the new nine-foot-wide snowmobile corridor will run along a partly unclassified road that is bordered on the west by the Pine Lake Primitive Area and on the east by the Hudson River Gorge Wilderness Area; cross the Cedar River on the newly constructed snowmobile bridge; run along an existing road that is bordered on the west by the Essex Chain Lakes Primitive Area and on the east by the Hudson River Gorge Wilderness Area; run along an existing road to cross the Polaris Bridge; and, after crossing the Polaris Bridge, require construction of a new snowmobile corridor through the unfragmented interior of the Vanderwhacker Mountain Wild Forest. *See id.* at 52, 108.

74. The Essex Chain UMP also designates approximately nine miles of former logging roads in the Essex Chain Lakes and Pine Lake Primitive Area for all terrain bicycle use. *Id.* at 45.

V. PETITIONERS' EXHAUSTION OF ADMINISTRATIVE REMEDIES

75. Petitioners have exhausted administrative remedies. As set forth in the Affidavits of Mr. Bauer and Mr. Gibson, Petitioners have consistently voiced their concerns and pressed the Agencies to approve an Essex Chain UMP consistent with the law. *See* Ex. 6 (Bauer Aff. ¶¶ 11-13); Ex. 5 (Gibson Aff. ¶¶ 17-20).

76. At this juncture, Petitioners cannot avail themselves of any further administrative avenue to prevent or ameliorate the harm that will be done to their interests as a result of the Essex Chain UMP's approval.

VI. APA'S APPROVAL OF THE ESSEX CHAIN UMP

77. On November 13, 2015, the Agency approved the Essex Chain UMP by an 8-2 vote.

78. Prior to the vote, Agency Member Richard Booth expressed his opposition to the UMP and his belief that the UMP is inconsistent with the SLMP. He characterized the "grandfathering concept" to allow public motorized use of the Polaris Bridge and construction of the Cedar Bridge as a "fiction" and "a sham" that poses potential danger to the Agency's future decision-making.

79. Member Booth further noted that the new snowmobile corridor called for in the UMP is redundant because an existing snowmobile route already connects Indian Lake to Newcomb.

80. Agency Member Arthur Lussi also opposed approval of the UMP and noted his disagreement with approving the actions called for in the Essex Chain UMP before making necessary amendment to the WSRRSA and the SLMP to make the actions legal.

FIRST CAUSE OF ACTION (VIOLATION OF WSRRSA)

81. Petitioners hereby reallege and incorporate each and every allegation in paragraphs 1 through 80.

82. The WSRRSA and its implementing regulations do not permit public motorized recreational use, including snowmobiling, or construction or use of bridges for this purpose, in Scenic river areas. ECL § 15-2709; 6 NYCRR § 666.13.

83. The Essex Chain UMP calls for the construction of a new bridge over the Cedar River for public snowmobile use where the Cedar is designated Scenic under the WSRRSA.

84. A new snowmobile bridge over a segment of the Cedar River designated Scenic violates the WSRRSA.

85. APA's approval of the Essex Chain UMP was therefore affected by an error of law, arbitrary and capricious, and an abuse of discretion, and should be set aside.

**SECOND CAUSE OF ACTION
(VIOLATION OF WSRRSA)**

86. Petitioners hereby reallege and incorporate each and every allegation in paragraphs 1 through 80.

87. The WSRRSA and its implementing regulations do not permit public motorized recreational use, including snowmobiling, in Scenic river areas. ECL § 15-2709; 6 NYCRR § 666.13.

88. The Polaris Bridge was constructed in 1992, nearly two decades after the segment of the Hudson River it crosses was designated Scenic under the WSRRSA in 1973.

89. Prior to its acquisition by the State, and at all times relevant to this Petition, the Polaris Bridge was not open to the public for snowmobiling.

90. The Essex Chain UMP opens the Polaris Bridge to the public for snowmobiling where the Hudson is designated Scenic under the WSRRSA.

91. The opening of the Polaris Bridge to the public for snowmobiling where the Hudson River is designated Scenic violates the WSRRSA because the WSRRSA prohibits public motorized recreation uses in Scenic river areas.

92. Even if snowmobiling were an existing land use at that location on the Hudson River, opening the Polaris Bridge to public snowmobiling constitutes an impermissible expansion of a use not permitted under the Scenic classification, in violation of the WSRRSA.

93. APA's approval of the Essex Chain UMP was therefore affected by an error of law, arbitrary and capricious, and an abuse of discretion, and should be set aside.

**THIRD CAUSE OF ACTION
(VIOLATIONS OF WSRRSA AND SLMP)**

94. Petitioners hereby reallege and incorporate each and every allegation in paragraphs 1 through 80.

95. The WSRRSA prohibits motor vehicle use in Wild river areas except for forest management purposes. *See* ECL § 15-2709(2)(a); 6 NYCRR § 666.13(E)(4).

96. The SLMP provides that “[w]ild rivers and their river areas will be managed in accordance with the guidelines for wilderness areas” Ex. 11 (SLMP at 44). In Wilderness areas, public use of motor vehicles is prohibited. *Id.* at 22.

97. In violation of the WSRRSA, the Essex Chain UMP allows public motor vehicle use on a portion of Chain Lakes Road South that is located within the river area of the Hudson River at a location where the river is designated Wild under the WSRRSA.

98. In violation of the SLMP, the Essex Chain UMP allows public motor vehicle use in a river area that is to be managed as Wilderness.

99. APA's approval of the Essex Chain UMP was therefore affected by an error of law, arbitrary and capricious, and an abuse of discretion, and should be set aside.

**FOURTH CAUSE OF ACTION
(ARBITRARY AND CAPRICIOUS DEPARTURE FROM SNOWMOBILE GUIDANCE)**

100. Petitioners hereby reallege and incorporate each and every allegation in paragraphs 1 through 80.

101. The 2009 Snowmobile Guidance prohibits construction of new Class II/Community Connector Trails that duplicate existing snowmobile trails connecting communities.

102. The Essex Chain UMP calls for construction and establishment of a new snowmobile community connector that duplicates an existing snowmobile route connecting the same communities.

103. Neither APA nor DEC have provided a reasonable explanation in the Essex Chain UMP for the departure from the 2009 Snowmobile Trail Guidance.

104. In fact, both APA and DEC claim that the new Indian Lake-to-Minerva snowmobile corridor complies with the Snowmobile Guidance. *See* Ex. 2 (UMP at 170); Ex. 8 (Conformance Determination at 3).

105. APA's approval of the Essex Chain UMP is therefore arbitrary and capricious and an abuse of discretion, and should be set aside.

**FIFTH CAUSE OF ACTION
(VIOLATION OF SLMP)**

106. Petitioners hereby reallege and incorporate each and every allegation in paragraphs 1 through 80.

107. Pursuant to the SLMP, all terrain bicycles are allowed in Primitive areas only on existing roads legally open to the public and on state truck trails specifically designated for such use by DEC as specified in individual UMPs. *See* Ex. 11 (SLMP at 28).

108. The Essex Chain UMP authorizes public all terrain bicycle use on approximately nine miles of roads in the Essex Chain Lakes and Pine Lake Primitive areas.

109. No more than 0.65 miles of these roads are designated state truck trails.

110. The remaining 8.35 miles of roads are not existing roads legally open to public motorized use.

111. The opening of approximately nine miles of roads in the Essex Chain Lakes and Pine Lake Primitive Areas—that are neither state truck trails nor roads legally open to the public—to all terrain bicycle use violates the SLMP.

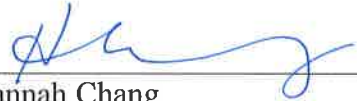
112. APA's approval of the Essex Chain UMP was therefore affected by an error of law, arbitrary and capricious, and an abuse of discretion, and should be set aside.

WHEREFORE, Petitioners respectfully request that this Court enter judgment against Respondents pursuant to CPLR §§ 3001 and 7806 as follows:

1. adjudging and declaring that APA's November 13, 2015 Conformance Determination for the Essex Chain UMP is affected by errors of law, arbitrary and capricious, and an abuse of discretion;
2. annulling and vacating the Conformance Determination;
3. remanding the matter to Respondents for the development and approval of an Essex Chain UMP that complies with all applicable law, rules, and guidance;
4. enjoining and restraining Respondents from implementing the Essex Chain UMP pending preparation and approval of a revised UMP that conforms with all applicable law, rules, and guidance; and
5. granting Petitioners such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 11, 2016

Respectfully submitted,



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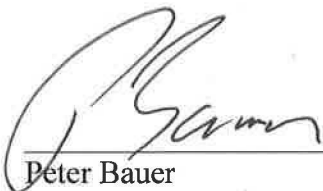
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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Peter Bauer, being duly sworn, hereby affirms under penalty of perjury: I am Executive Director of Protect the Adirondacks!, Inc., and I have authority to approve the annexed petition on behalf of Protect the Adirondacks!, Inc. I have reviewed the petition and know its contents. The petition is true to my knowledge, except to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.


Peter Bauer

Sworn to before me this
6 day of January, 2016


Notary Public

