

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

PROTECT THE ADIRONDACKS! INC.,

Plaintiff,

-against-

SUMMONS

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Index No. 900663-23

Defendant.

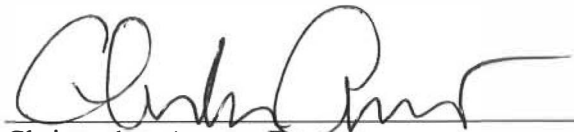
TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE that you are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York;

PLEASE TAKE FURTHER NOTICE that in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint;

PLEASE TAKE FURTHER NOTICE that Plaintiff designates Albany County as the place of trial because Defendant's principal office is located there.

Dated: Albany, New York
January 18, 2023



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

PROTECT THE ADIRONDACKS! INC.,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Defendant.

**VERIFIED
COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE
RELIEF**

Index No. 900663-23

Plaintiff Protect the Adirondacks! Inc. (“Plaintiff” or “Protect”), as and for its complaint against Defendant New York State Department of Environmental Conservation (“Defendant,” “DEC” or “Department”), hereby alleges as follows:

PRELIMINARY STATEMENT

1. This is a complaint pursuant to Civil Practice Law and Rules (“CPLR”) § 3001 for declaratory and injunctive relief challenging the unlawful construction by Defendant of a road in the MacIntyre East Tract of the High Peaks Wilderness Complex in the Adirondack Park. The MacIntyre East Tract consists of approximately 4,500 acres located in the western portion of the High Peaks Wilderness Complex.

2. The MacIntyre East Tract, and the entire High Peaks Wilderness Complex, are part of the New York Forest Preserve. Article 14, section 1 of the New York State Constitution, the “Forever Wild” clause, mandates that Forest Preserve lands “shall be forever kept as wild forest lands.”

3. The Adirondack Park State Land Master Plan (“APSLMP”), which governs management of Forest Preserve lands in the Adirondack Park, defines a Wilderness area as:

an area where the earth and its community of life are untrammelled by man--where man himself is a visitor who does not remain. A wilderness area is further defined to mean an area of state land or water having a primeval character, without significant improvement or permanent human habitation, which is protected and managed so as to preserve, enhance and restore, where necessary, its natural conditions, and which . . . generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable

APSLMP at 22.

4. Prior to its acquisition by the State in 2015, the MacIntyre East Tract was privately owned and was managed for timber production. The Tract includes several miles of former logging roads.

5. In March 2018, Governor Andrew Cuomo approved a land classification package adding the newly acquired 4,500-acre MacIntyre East Tract to the High Peaks Wilderness Complex.

6. The APSLMP classifies roads as non-conforming structures or improvements in Forest Preserve lands classified as Wilderness; requires the phasing out and closure of pre-existing roads within three years of the lands being classified as Wilderness; and prohibits the construction of new roads in Wilderness areas. *Id.* at 23-24, 26.

7. In July 2018, the Adirondack Park Agency (“APA”) approved amendments to the 1999 Unit Management Plan (“UMP”) for the High Peaks Wilderness Complex (the “2018 UMP Amendments”). The 2018 UMP Amendments included, among other things, management requirements and goals for the MacIntyre East Tract. 2018 UMP Amendments at 5, 51-59, 122-23.

8. In conformance with the APSLMP, the 2018 UMP Amendments did not propose or include any uses for the former logging roads in the MacIntyre East Tract, nor did the Amendments authorize use of the roads for any purpose. *Id.*

9. The 2018 UMP Amendments require DEC to prepare a work plan for any new activities that it proposes to undertake in the High Peaks Wilderness Complex, including in the MacIntyre East Tract. *Id.* at 9.

10. In compliance with the 2018 UMP Amendments, DEC in 2019 prepared a work plan entitled, “Road Reclamation and Rewilding Project” for the MacIntyre East Tract (the “2019 Work Plan”). The 2019 Work Plan called for removing four bridges and culverts on former logging roads in the MacIntyre East Tract and for decommissioning, reclaiming, and rewilding the existing logging roads in the Tract.

11. In accordance with the 2018 UMP Amendments and the 2019 Work Plan, DEC in 2019 and 2020 removed the four bridges and culverts from former logging roads in the MacIntyre East Tract and undertook reclamation and rewilding of the former logging roads in the Tract. As implemented by DEC, the Road Reclamation and Rewilding Project involved constructing a series of pits and mounds in the former road corridors, dismantling the long linear form of the roadways, and exposing boulders, all of which was intended to accelerate forest regrowth and mimic a natural intact forest landscape.

12. Subsequent to completion, or near completion, of the Road Reclamation and Rewilding Project in the MacIntyre East Tract, DEC used heavy machinery, including a bulldozer and an excavator, to undo the reclamation and rewilding work undertaken in 2019-2020 on one of the former logging roads and to reconstruct and rebuild the road. The former logging road on which this work took place branches off the East River Road, which is

designated as a Primitive Corridor running through the western portion of the High Peaks Wilderness Complex to provide motorized access to privately owned inholdings. From where it branches off the East River Road, the former logging road runs in a northeasterly direction through the MacIntyre East Tract to Dudley Brook (hereinafter, the “Dudley Brook Road”).

13. DEC used the heavy machinery to remove pits and mounds that had previously been constructed to reclaim and rewild the Dudley Brook Road pursuant to the 2019 Work Plan; to regrade and flatten the former road corridor; and to remove boulders. As part of this work, DEC installed a new culvert and bridge. The result of the work was the reconstruction and rebuilding of nearly one mile of a road in the MacIntyre East Tract of the High Peaks Wilderness Complex.

14. Upon information and belief, DEC commenced reversing the reclamation and rewilding work and reconstruction and rebuilding of the Dudley Brook Road in the Fall of 2021 and intends to continue that work.

15. The APSLMP prohibits the construction of new roads in Wilderness areas for any purpose, and the 2018 UMP Amendments do not authorize reconstruction or rebuilding of any of the former logging roads in the MacIntyre East Tract or the use of those roads for any purpose.

16. In addition, the 2018 UMP Amendments require preparation of a work plan for all projects undertaken in the High Peaks Wilderness Complex, including the MacIntyre East Tract. The 2019 Work Plan does not authorize the construction or rebuilding of any roads for any purpose, and it does not authorize removal of the pits and mounds that were constructed by DEC in 2019-2020. Nor does the 2019 Work Plan authorize the regrading and flattening of the former Dudley Brook Road, the installation of a new culvert and bridge, or the removal of boulders.

DEC did not prepare a new work plan for its road reconstruction and rebuilding activities in 2021.

17. DEC has claimed that the road reconstruction and rebuilding work was necessary to minimize erosion, sedimentation and to correct public safety hazards. However, Plaintiff's three field inspections revealed that DEC's reconstruction of the former Dudley Brook Road created, rather than resolved, erosion and sedimentation problems. In addition, DEC's claim that the road reconstruction is necessary to minimize public safety hazards makes no sense, because there are no hiking trails in the MacIntyre East Tract, and the 2019 Work Plan expressly recognizes that any new trail constructed in the MacIntyre East Tract will not utilize the former logging roads.

18. In any event, reconstructing and rebuilding a road in a Wilderness area—regardless of the purpose—is prohibited by the APSLMP.

19. Moreover, DEC's reconstruction and rebuilding of the previously reclaimed and rewilded Dudley Brook Road is not authorized by the 2018 UMP Amendments.

20. Upon information and belief, the reconstructed road is being utilized for unlawful motor vehicle use because DEC has not effectively prevented access to and use of the reconstructed road. The APSLMP prohibits motor vehicle use in Wilderness areas.

21. Upon information and belief, DEC intends to continue undoing the reclamation and rewilding work that was previously completed on the former Dudley Brook Road, and on other former logging roads in the MacIntyre East Tract.

22. DEC's removal of previously completed reclamation and rewilding work on the former Dudley Brook Road; its reconstruction and rebuilding of the previously reclaimed and rewilded road; the presence of the reconstructed and rebuilt road; and, upon information and

belief, DEC's intention to continue removal of previously completed reclamation and rewilding work and reconstruction and rebuilding of the road and to undertake the same activities on other former logging roads in the MacIntyre East Tract, constitute a continuing violation of the APSLMP and the 2018 UMP Amendments.

23. Plaintiff seeks declaratory judgment pursuant to CPLR § 3001 that DEC's reconstruction and rebuilding of approximately one mile of the previously decommissioned, reclaimed, and rewilded Dudley Brook Road in the MacIntyre East Tract of the High Peaks Wilderness Complex violates the APSLMP and the 2018 UMP Amendments. Plaintiff also seeks injunctive relief prohibiting any further road reconstruction or rebuilding by DEC in the MacIntyre East Tract; directing DEC to reclaim and rewild, in compliance with the approved 2019 Work Plan, the approximately one mile of the former Dudley Brook Road that DEC has reconstructed and rebuilt; and directing DEC to place appropriate barriers and signage to prevent illegal motor vehicle use of the reconstructed road.

PARTIES

24. Plaintiff is a not-for-profit, grassroots membership organization dedicated to the protection and stewardship of the public and private lands of the Adirondack Park, and to building the health and diversity of its natural and human communities for the benefit of current and future generations. Plaintiff pursues this agenda through advocacy, independent public oversight, grassroots organizing, education, scientific research, and legal action. Its offices are located in the Adirondack Park at 105 Oven Mountain Road, Johnsburg, New York.

25. One of Protect's priorities is to ensure that DEC's management of Forest Preserve lands in the Adirondack Park complies with all applicable constitutional and other legal requirements, including the "Forever Wild" clause of the New York State Constitution, the

APSLMP, and applicable UMPs. To this end, Protect monitors DEC's actions on Forest Preserve lands and the APA's oversight of those actions to ensure that both agencies adhere to and comply with the legal protections afforded those lands. As part of this effort, Protect communicates on a regular basis with staff and leadership at both agencies.

26. Although Protect relies in most cases on direct advocacy before the DEC and APA staff and leadership to achieve its goals, it does on occasion resort to court action when appropriate and necessary to ensure that the agencies comply with the Forever Wild clause, the APSLMP, and applicable UMPs. Most recently, Protect was successful before the New York Court of Appeals in its suit claiming that DEC's construction on Forest Preserve lands of miles of extra-wide snowmobile trails requiring the cutting of thousands of trees violates the Forever Wild clause of the New York State Constitution. *Protect the Adirondacks! Inc. v. N.Y.S. Dep't of Envtl. Conserv.*, 37 NY3d 73 (2021).

27. Protect has over 2,000 members. Many of Protect's members enjoy a variety of recreational activities, including hiking, camping, canoeing, kayaking, snowshoeing, skiing, and biking, on Forest Preserve lands in the Adirondack Park through all four seasons.

28. Protect's members frequently engage in recreational activities in the High Peaks Wilderness Complex and plan to return there to engage in those activities in the future. The Protect members who recreate in the High Peaks Wilderness Complex are attracted to the area by its remote and wild character and by the absence of roads or other signs of human development.

29. DEC's reconstruction and rebuilding of a road in the High Peaks Wilderness Complex directly harms Protect's members who recreate there by diminishing the remote, wild, untrammeled and undeveloped nature of those lands and by adversely impacting those members' ability to enjoy and experience wilderness. The harm to Protect's members who recreate in the

High Peaks Wilderness is exacerbated by the fact that DEC's reconstruction and rebuilding of the road required the elimination and removal of reclamation and rewilding work intended to accelerate the return of former logging roads in the MacIntyre East Tract to a wild forest condition. Protect's members who recreate in the High Peaks Wilderness are further harmed by the presence of heavy machinery in a Wilderness area for the purpose of reconstructing a road and by evidence that members of the public may be using the reconstructed road to operate motor vehicles in the High Peaks Wilderness, all of which is contrary to the Forever Wild clause, the APLSMP and the 2018 UMP Amendments.

30. Peter Bauer, Protect's Executive Director who is a member of Protect, lives in Blue Mountain Lake in the Adirondack Park and uses Forest Preserve lands every month of the year. He has hiked and camped in the High Peaks Wilderness Complex countless times over the past several decades and intends to hike and camp there again in the future. He has hiked through the MacIntyre East Tract on three occasions in 2021 and 2022 and intends to return there in the future.

31. DEC's reconstruction and rebuilding of a road in the High Peaks Wilderness Complex directly harms Mr. Bauer by diminishing the remote, wild, untrammled and undeveloped nature of those lands and by adversely impacting his ability to enjoy and experience wilderness. The harm to Mr. Bauer is exacerbated by the fact that DEC's reconstruction and rebuilding of the road required the elimination and removal of reclamation and rewilding work intended to accelerate the return of former logging roads in the MacIntyre East Tract to a wild forest condition. Mr. Bauer has been further harmed by observing the reconstructed road, the presence of heavy machinery for the purpose of road reconstruction in an area classified as Wilderness, and evidence that members of the public may be using the reconstructed road to

operate motor vehicles in the High Peaks Wilderness, all of which is contrary to the Forever Wild clause, the APSLMP and the 2018 UMP Amendments.

32. Protect has been involved in management issues concerning the MacIntyre East Tract for several years. By letter dated December 30, 2016, Protect advocated for inclusion of approximately 4,500 acres of the newly acquired MacIntyre East Tract in the High Peaks Wilderness Complex. Protect also submitted comments (dated June 27, 2018) on the draft 2018 amendments to the UMP for the High Peaks Wilderness Complex, which included the management requirements for the MacIntyre East Tract, and submitted comments (dated March 2, 2020) to DEC on the High Peaks Strategic Planning Advisory Group, which is responsible for assisting DEC in addressing management issues in the High Peaks Wilderness Complex.

33. Defendant DEC is an agency of the State of New York with its principal offices located in Albany County. Pursuant to Environmental Conservation Law §§ 9-0101(6) and 9-0105(1), DEC is responsible for the care, custody and control of the New York State Forest Preserve, including the Forest Preserve lands at issue in this action.

VENUE

34. Venue of this proceeding properly lies in Albany County pursuant to CPLR § 506 because Defendant's principal office is in that county.

FACTS

The MacIntyre East Tract

35. The MacIntyre East Tract is located in the towns of Newcomb and North Hudson in Essex County and is bordered to the north and east by the High Peaks Wilderness Area; to the northwest by the NL Lands Tract; to the south by the North Rivers Tract; and to the southwest

and southeast by private lands. A map of the MacIntyre East Tract is attached to and made part of this Complaint as **Exhibit A**.

36. The East River Road runs through part of the western portion of the MacIntyre East Tract. It branches off the road to the Upper Works in Newcomb, runs through the Vanderwhacker Mountain Wild Forest and conservation easement lands, then continues through the MacIntyre East Tract as a Primitive Corridor to provide access to private land inholdings. *See Ex. A.*

37. Because the MacIntyre East Tract was previously managed for timber production, it contains several miles of abandoned logging roads. None of the former logging roads in the MacIntyre East Tract were identified in the 2018 UMP Amendments for conversion to hiking trails or any other type of recreational facility. In fact, the 2018 UMP Amendments provide that the MacIntyre East Tract is to be managed as a largely trailless area, except for a planned new 8.2-mile trail that will not utilize any of the former logging roads.

DEC's Road Reclamation and Rewilding Project

38. The APSLMP classifies roads as non-conforming uses in Wilderness areas and requires that pre-existing roads be phased out and closed within three years of the lands being classified as Wilderness. In compliance with the APSLMP's mandate and consistent with the 2018 UMP Amendments, DEC prepared the 2019 Work Plan, which called for removal of four bridges and culverts and the decommissioning, reclamation, and rewilding of pre-existing roads in the MacIntyre East Tract. These reclamation and rewilding measures were intended to mimic a natural intact forest landscape. As stated in the 2019 Work Plan, "[t]he intent of the work is to remove the larger infrastructure of the road system, hasten naturalization and support a future

trail system.” 2019 Work Plan at 1. A copy of the 2019 Work Plan is attached to and made part of this Complaint as **Exhibit B**.

39. The 2019 Work Plan further states that “this is the first time we are in a position to help erase some of man’s impact to the Wilderness and set ourselves up for success in both having a truly world class purpose built trail system and improved Wilderness Experience of our users.” *Id.* at 2.

40. In compliance with the APSLMP, the 2018 UMP Amendments, and the 2019 Work Plan, DEC undertook reclamation and rewilding of the former logging roads in the MacIntyre East Tract in 2019-2020. DEC’s reclamation and rewilding work included removal of four bridges and culverts; constructing a series of pits and mounds in the road corridors; dismantling the long linear form of the roadways; and exposing boulders.

41. One of the former logging roads on which the reclamation and rewilding work took place is the Dudley Brook Road. Photographs of the reclamation and rewilding work done on the former Dudley Brook Road pursuant to the 2019 Work Plan, taken by Plaintiff’s Executive Director during site inspections in November 2021, are attached to and made part of this Complaint as **Exhibit C**.

DEC’s Reconstruction and Rebuilding of the Former Dudley Brook Road

42. Subsequent to completion, or near completion, of the reclamation and rewilding project on the former Dudley Brook Road, DEC used heavy machinery, including a bulldozer and an excavator, to undo the reclamation and rewilding work completed on the former road in 2019-2020.

43. Upon information and belief, DEC commenced reversing the reclamation and rewilding work, and reconstruction and rebuilding of the Dudley Brook Road, in the Fall of 2021.

44. DEC's reconstruction and rebuilding of the former Dudley Brook Road included removing exposed boulders and eliminating previously constructed pits and mounds by regrading and flattening the former road corridor and covering the regraded and flattened areas with straw. Photographs taken by Plaintiff's Executive Director during site visits in November 2021 of the straw-covered, regraded and flattened parts of the reconstructed road are attached to and made part of this Complaint as **Exhibit D**.

45. According to Plaintiff's GPS readings and the Fulcrum fieldwork application that plots locations of GPS points, DEC removed approximately 50 previously constructed pits and mounds and regraded and flattened approximately 0.82 miles of the former Dudley Brook Road, thereby reconstructing and rebuilding nearly one mile of a road in a Wilderness area.

46. As part of its reconstruction and rebuilding of the road, DEC installed a new culvert and bridge on the road. Photographs taken by Plaintiff's Executive Director in November 2021 of the newly installed culvert and bridge are attached to and made part of this Complaint as **Exhibit E**.

47. DEC used heavy machinery, including a bulldozer and excavator, to reconstruct and rebuild the former Dudley Brook Road. A photograph taken by Plaintiff's Executive Director in November 2021 of the heavy machinery is attached to and made part of this Complaint as **Exhibit F**.

48. Plaintiff contacted DEC in November 2021 about the road reconstruction work in the MacIntyre East Tract. DEC responded that its work was authorized by the 2019 Work Plan.

However, the 2019 Work Plan authorizes only road decommissioning, reclamation, and rewilding; it does not authorize removal of previously constructed pits and mounds, installation of a new culvert and bridge, removal of boulders, and regrading and flattening to reconstruct a road.

Plaintiff's Site Inspections of DEC's Road Reconstruction

49. Observations made during three visits to the site of DEC's road reconstruction in the MacIntyre East Tract by Peter Bauer, Protect's Executive Director, confirm that DEC's work is unnecessary, serves no valid purpose, and is not authorized by the APSLMP, the 2018 UMP Amendments, or the 2019 Work Plan.

50. During site inspections conducted on November 11 and 21, 2021 and September 30, 2022, Mr. Bauer observed intermittent streams running across the newly reconstructed road, causing erosion of road sediments. Photographs taken by Mr. Bauer during his site inspections of intermittent streams crossing the reconstructed road are attached to and made part of this Complaint as **Exhibit G**.

51. Mr. Bauer also observed water ponding in deep heavy machinery tracks on the rebuilt road. Photographs taken by Mr. Bauer during his site inspections of water ponded in heavy machinery tracks are attached to and made part of this Complaint as **Exhibit H**.

52. In addition, Mr. Bauer observed that one section of the newly reconstructed road has steep, unprotected benches on each side of a stream running across the road which will be likely to erode into the stream during storm events. A photograph taken by Mr. Bauer during his site inspection of this section of the road is attached to and made part of this Complaint as **Exhibit I**.

53. Thus, DEC's road reconstruction has created, not resolved, erosion and sedimentation problems.

54. During his September 2022 field inspection, Mr. Bauer observed that DEC had removed the newly installed bridge and culvert he observed in November 2021. He also observed that silt fencing left behind by DEC had collapsed into intermittent streams running through the area, and that plastic bags used to contain straw and a discarded culvert had been left in the reconstructed road by DEC. A photograph taken by Mr. Bauer of the collapsed silt fencing is attached to and made part of this Complaint as **Exhibit J**. A photograph taken by Mr. Bauer of the discarded plastic bags and culvert is attached as **Exhibit K**.

55. During the September 2022 field inspection, Mr. Bauer observed that the entrance to the newly rebuilt Dudley Brook Road, where it branches off from the East River Road, was inadequately secured against motor vehicle use. DEC had placed three boulders in the roadway entrance at the Wilderness boundary line to supposedly block motor vehicle access. However, the middle "boulder" is easy to push aside. A photograph taken by Mr. Bauer of DEC's ineffective barrier at the entrance to the reconstructed road is attached to and made part of this Complaint as **Exhibit L**.

56. Because the rebuilt road is poorly secured, it appears that motor vehicles are now illegally using the roadway, as evidenced by what appear to be new tire tracks in the rebuilt road. DEC has claimed that it stopped using heavy machinery in the MacIntyre East Tract at the end of 2021. Consequently, the new vehicle tracks observed in September 2022 are apparently evidence of illegal motor vehicle use in the High Peaks Wilderness Complex. A photograph taken by Mr. Bauer during his September 30, 2022 site inspection of what appear to be new tire

tracks on the reconstructed Dudley Brook Road is attached to and made part of this Complaint as **Exhibit M**.

The APA Fails to Act

57. In December 2021, Protect requested the APA to open an enforcement investigation into DEC's unlawful rebuilding of a road in a Wilderness area. The request was made because the APSLMP provides that the APA is responsible, in consultation with DEC, for long-range planning and the establishment of basic policy for State lands in the Park and has the authority to establish general guidelines and criteria for the management of State lands, subject to the approval of the Governor.

58. By email dated September 21, 2022, APA's Counsel stated that the Agency had "found no violation of the APSLMP" and that the APA would not take any enforcement action.

59. Upon information and belief, APA staff did not visit the MacIntyre East Tract or the site of DEC's road rebuilding work prior to concluding that no violation had occurred.

60. Because APA staff did not, upon information and belief, visit the site, the Agency's conclusion that no violation of the APSLMP has occurred is wholly unsupported. In fact, had Agency staff visited the site, they would have seen—as Plaintiff's Executive Director did during three visits to the site—that DEC has reversed the decommissioning, reclamation and rewilding work on the former Dudley Brook Road and reconstructed and rebuilt the road, all in violation of the APSLMP and the 2018 UMP Amendments.

61. The APSLMP makes clear that the reconstruction of a road in a Wilderness area is prohibited for any purpose. The APA's counsel's email did not include any legal analysis or explanation of the basis for its conclusion that DEC's reconstruction of a road in a Wilderness area does not violate the APSLMP.

**AS AND FOR A FIRST CAUSE OF ACTION:
VIOLATIONS OF THE APSLMP**

62. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

63. The APSLMP defines a Wilderness area as follows:

A wilderness area, in contrast with those areas where man and his own works dominate the landscape, is an area where the earth and its community of life are untrammelled by man--where man himself is a visitor who does not remain. A wilderness area is further defined to mean an area of state land or water having a primeval character, without significant improvement or permanent human habitation, which is protected and managed so as to preserve, enhance and restore, where necessary, its natural conditions, and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least ten thousand acres of contiguous land and water or is of sufficient size and character as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological or other features of scientific, educational, scenic or historical value.

APSLMP at 22.

64. In keeping with this definition of Wilderness, the APSLMP specifies that “[t]he primary wilderness management guideline will be to achieve and perpetuate a natural plant and animal community where man’s influence is not apparent.” *Id.*

65. The APSLMP’s Basic Guidelines for management of Wilderness areas list the structures and improvements that are considered conforming in areas classified as Wilderness, and states that “[a]ll other structures and improvements . . . will be considered non-conforming.” Roads are not included in the list of conforming structures and improvements and are thus considered non-conforming in areas classified as Wilderness. *Id.* at 23-24.

66. The Basic Guidelines state that “[n]o additions or expansions of non-conforming uses will be permitted” in Wilderness areas and “[n]o new non-conforming uses will be permitted in any designated wilderness area.” *Id.* at 22-23.

67. The APSLMP further requires that “non-conforming uses resulting from newly-classified wilderness areas will be removed as rapidly as possible and in any case by the end of the third year following classification.” *Id.* at 22.

68. With respect to pre-existing roads in newly classified Wilderness areas, the APSLMP’s Basic Guidelines require that such roads:

be phased out as rapidly as possible and in any case will be closed by the end of the third calendar year following classification. In each case the Department of Environmental Conservation will:

- close such roads and snowmobile trails to motor vehicles as may be open to the public;
- prohibit all administrative use of such roads and trails by motor vehicles; and,
- block such roads and trails by logs, boulders or similar means other than gates.

Id. at 26.

69. The APSLMP further provides that “[d]uring the phase-out period, the use of motorized vehicles by administrative personnel for transportation of materials and personnel will be limited to the minimum required for proper interim administration and removal of non-conforming uses; and maintenance of such roads . . . will be curtailed and efforts made to encourage revegetation with lower forms of vegetation to permit their conversion to foot trails and, where appropriate, horse trails.” *Id.*

70. The APSLMP’s Basic Guidelines further specify that “[n]o new roads, snowmobile or administrative roads will be allowed” in areas classified as Wilderness. *Id.*

71. The Basic Guidelines also specify that in areas classified as Wilderness, “[p]ublic use of motor vehicles of motor vehicles . . . will be prohibited.” *Id.* at 25.

72. The APSLMP has the force and effect of law and is binding upon DEC in its management of Forest Preserve lands and waters in the Adirondack Park.

73. DEC's 2019 Work Plan for the MacIntyre East Tract complied with the APSLMP's requirement that non-conforming uses be removed within three years of land classification, complied with the APSLMP's Basic Guidelines concerning roads in Wilderness areas, and was consistent with the APSLMP's definition of "Wilderness."

74. DEC's implementation of the 2019 Work Plan in 2019-2020 complied with the APSLMP's requirement that non-conforming uses be removed within three years of land classification, complied with the APSLMP's Basic Guidelines concerning roads in Wilderness areas, and was consistent with the APSLMP's definition of "Wilderness."

75. DEC's actions commencing, upon information and belief in the Fall of 2021, to undo the previous decommissioning, reclamation, and rewilding work completed pursuant to the 2019 Work Plan violated the APSLMP in several respects.

76. DEC's removal of approximately 50 sets of previously constructed pits and mounds, installation of a new bridge and culvert, and regrading and flattening 0.82 miles of the reclaimed and rewilded former logging road constituted the reconstruction and rebuilding of nearly one mile of a road in an area classified as Wilderness.

77. DEC's reconstruction and rebuilding of a road in a Wilderness area is prohibited by and inconsistent with the APSLMP's definition of "Wilderness."

78. DEC's reconstruction and rebuilding of a road in a Wilderness area violates the APSLMP's Basic Guideline that that "[n]o additions or expansions of non-conforming uses will be permitted."

79. DEC's reconstruction and rebuilding of a road in a Wilderness area violates the APSLMP's Basic Guideline that "[n]o new non-conforming uses will be permitted in any designated wilderness area."

80. DEC's reconstruction and rebuilding of a road in a Wilderness area violates the APSLMP's Basic Guideline stating that "[n]o new roads, snowmobile or administrative roads will be allowed" in areas classified as Wilderness.

81. DEC's reconstruction and rebuilding of a road in a Wilderness area violates the APSLMP's requirement that "[d]uring the phase-out period, the use of motorized vehicles by administrative personnel for transportation of materials and personnel will be limited to the minimum required for proper interim administration and removal of non-conforming uses; and maintenance of such roads . . . will be curtailed and efforts made to encourage revegetation with lower forms of vegetation to permit their conversion to foot trails and, where appropriate, horse trails."

82. DEC has also violated the APSLMP by failing to adequately block the reconstructed and rebuilt road to prevent unlawful use of motor vehicles in the High Peaks Wilderness Complex. Upon information and belief, such unlawful motor vehicle use has occurred and is likely to continue to occur unless and until DEC erects adequate and effective barriers to such access and places appropriate signage informing the public that motor vehicle use is prohibited in areas classified as Wilderness.

83. Upon information and belief, DEC intends to continue undoing the reclamation and rewilding on the road at issue, and perhaps on other former logging roads in the MacIntyre East Tract.

84. DEC's removal of previously completed reclamation and rewilding work; its reconstruction and rebuilding of a previously reclaimed and rewilded former logging road; the presence of the reconstructed and rebuilt road; and, upon information and belief, DEC's intention to continue removal of previously completed reclamation and rewilding work and reconstruction

and rebuilding of the road and to undertake the same activities on other former logging roads in the MacIntyre East Tract, constitute a continuing violation of the APSLMP.

**AS AND FOR A SECOND CAUSE OF ACTION:
VIOLATIONS OF THE 2018 UMP AMENDMENTS**

85. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

86. Section 816 of the Adirondack Park Agency Act directs DEC to develop, in consultation with the APA, individual UMPs for each unit of land under its jurisdiction classified in the APSLMP.

87. Section 816 of the Adirondack Park Agency Act directs that UMPs, together with the APSLMP, “shall guide development and management of state lands in the Adirondack park” and the management directives in an approved UMP are therefore binding upon DEC.

88. The 2018 UMP Amendments provide that “[p]roposals in this UMP amendment, their implementation, and ongoing management of the unit will continue to allow the High Peaks Wilderness Complex to become a wilder and naturally driven place while enhancing the public’s wilderness experience.” 2018 UMP Amendments at 2.

89. The 2018 UMP Amendments do not propose or include any uses for the former logging roads on the MacIntyre East Tract and do not authorize use of those roads for any purpose. *Id.* at 5, 51-59, 122-23.

90. DEC’s reconstruction and rebuilding of the previously reclaimed and rewilded former logging road in the MacIntyre East Tract of the High Peaks Wilderness Complex violates the 2018 UMP Amendments because reconstruction and rebuilding of a former logging road in the MacIntyre East Tract for any purpose is not authorized by the 2018 UMP Amendments.

91. The General Guidelines for Management of the Unit in the 2018 UMP Amendments require DEC to “[p]repare a work plan for each construction project” that is proposed for the High Peaks Wilderness Complex, including the MacIntyre East Tract. *Id.* at 9.

92. DEC did not prepare a work plan for the reconstruction and rebuilding of the previously reclaimed and rewilded former logging road in violation of the 2018 UMP amendments.

93. The 2018 UMP Amendments require DEC to consult with the APA on projects in the MacIntyre East Tract as required by the Memorandum of Understanding Between the Adirondack Park Agency and the Department of Environmental Conservation Concerning Implementation of the State Land Master Plan for the Adirondack Park dated March 2010 (the “APA/DEC MOU”). *Id.*

94. The APA/DEC MOU requires DEC to consult the APA prior to undertaking any project or activity on Forest Preserve lands that is not authorized by an applicable UMP; is not “rehabilitation activities for control of invasive species;” or is not “ordinary maintenance, rehabilitation, and minor relocation of conforming structures or improvements.”

95. DEC’s removal of its previously completed reclamation and rewilding work and its reconstruction and rebuilding of the previously reclaimed and rewilded former logging road in the MacIntyre East Tract of the High Peaks Wilderness Complex required prior consultation with the APA pursuant to the APA/DEC MOU because that work is not authorized by the 2018 UMP Amendments; is not “rehabilitation activities for control of invasive species;” and is not “ordinary maintenance, rehabilitation, and minor relocation of conforming structures or improvements.”

96. Upon information and belief, DEC did not consult with the APA prior to removing its previously completed reclamation and rewilding work and its reconstruction and rebuilding of the previously reclaimed and rewilded former logging road in violation of the requirement in the 2018 UMP Amendments that DEC comply with the consultation requirements of the APA/DEC MOU.

97. Upon information and belief, DEC intends to continue undoing the reclamation and rewilding on the road at issue, and perhaps on other former logging roads in the MacIntyre East Tract.

98. DEC's removal of previously completed reclamation and rewilding work; its reconstruction and rebuilding of a previously reclaimed and rewilded former logging road; the presence of the reconstructed and rebuilt road; and, upon information and belief, DEC's intention to continue removal of previously completed reclamation and rewilding work and reconstruction and rebuilding of the road and to undertake the same activities on other former logging roads in the MacIntyre East Tract, constitutes a continuing violation of the 2018 UMP Amendments.

WHEREFORE, Plaintiff respectfully requests the following:

A. As relief for the First Cause of Action, declaratory judgment pursuant to CPLR § 3001 that DEC's reconstruction and rebuilding of the previously reclaimed and rewilded former logging road in the MacIntyre East Tract of the High Peaks Wilderness Complex violates the APSLMP;

B. As relief for the Second Cause of Action, declaratory judgment pursuant to CPLR § 3001 that DEC's reconstruction and rebuilding of the previously reclaimed and rewilded former logging road in the MacIntyre East Tract of the High Peaks Wilderness Complex violates the 2018 UMP Amendments;

- C. As relief for the First and Second Causes of Action, injunctive relief:
- (i) prohibiting DEC from undertaking any further road reconstruction or rebuilding in the MacIntyre East Tract;
 - (ii) directing DEC to reclaim and rewild, in compliance with the 2019 Road Reclamation and Rewilding Work Plan, the approximately one mile of road DEC has reconstructed and rebuilt; and
 - (iii) directing DEC to place appropriate barriers and signage to prevent illegal motor vehicle use of the reconstructed and rebuilt road;

As relief for the First and Second Causes of Action, judgment awarding Plaintiff the costs and disbursements of this action, together with attorneys' fees, expert witness fees and other expenses pursuant to CPLR Article 86; and

- D. Such other and further relief as the Court deems just and proper.

Dated: Albany, New York
January 18, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Amato', written over a horizontal line.

Christopher Amato, Esq.
Conservation Director and Counsel
Protect the Adirondacks! Inc.
Attorney for Plaintiff
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North Creek, New York 12853
(518) 860-3696
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VERIFICATION

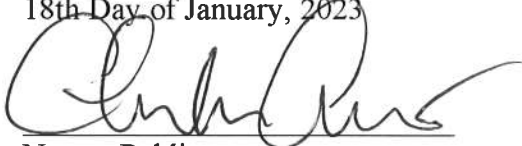
STATE OF NEW YORK)
)SS.:
COUNTY OF WARREN)

PETER BAUER, being duly sworn, hereby affirms under penalty of perjury that I am the Executive Director of Protect the Adirondacks! Inc.; that I have the authority to approve the annexed Complaint for Declaratory and Injunctive Relief; that I have reviewed the Complaint and the exhibits thereto and know their contents; and that the Complaint and exhibits thereto are true and accurate to my knowledge, except those 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
18th Day of January, 2023



Notary Public

CHRISTOPHER A. AMATO
NOTARY PUBLIC-STATE OF NEW YORK
No 02AM8317295
Qualified in Albany County
My Commission Expires 12-29-2024 ²⁴