

**New York State
Court of Appeals**

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

Appellants,

-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.

APL-2018-00112

BRIEF OF APPELLANTS

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CORPORATE DISCLOSURE STATEMENT (22 NYCRR § 500.1(f))

Adirondack Wild: Friends of the Forest Preserve has no parents, subsidiaries or affiliates. Protect the Adirondacks! Inc. has no parents, subsidiaries or affiliates.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
QUESTION PRESENTED	1
JURISDICTION.....	2
STATEMENT OF THE CASE.....	2
LEGAL BACKGROUND	5
I. THE WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM ACT.....	5
A. Division of Jurisdiction.....	6
B. Restrictive Management Requirement.....	6
C. Continuation of Existing Land Uses	8
D. The Wild River Classification	8
II. THE STATE FOREST PRESERVE AND MANAGEMENT OF THE ADIRONDACK PARK	9
A. Article XIV, Section 1 of the New York State Constitution	10
B. The Adirondack Park Agency Act.....	11
C. The Adirondack Park State Land Master Plan.....	13
1. Wild, Scenic, and Recreational Rivers Classification....	14
2. Wilderness Classification	15
FACTUAL BACKGROUND.....	16
I. THE ESSEX CHAIN COMPLEX	16
II. THE ESSEX CHAIN UNIT MANAGEMNT PLAN.....	19

III.	THE INSTANT ACTION	20
IV.	THE SUPREME COURT DECISION	22
V.	THE APPELLATE DIVISION DECISION	23
	ARGUMENT	24
	POINT 1: DISMISSAL OF APPELLANTS’ THIRD CLAIM WAS ERROR BECAUSE THE RIVERS ACT AND THE MASTER PLAN PROHIBIT MOTOR VEHICLE USE ON CHAIN LAKES ROAD SOUTH.....	24
A.	The Rivers Act’s Existing Use Exemption Conflicts with the Master Plan’s Mandate That Non-Conforming Uses Be Discontinued, and the More Protective Master Plan Provision Thus Controls	26
B.	The Rivers Act’s Existing Use Exemption Does Not Apply to Non-Conforming Uses on Forest Preserve Land Governed by the Master Plan.....	31
C.	The Record Does Not Support the Appellate Division’s Determination That Public Motor Vehicle Use on Chain Lakes Road South Is An Existing Use Without Expansion or Alteration	36
1.	Public Motorized Use Is Not An Existing Use On Chain Lakes Road South.....	36
2.	Public Snowmobiling and Seasonal Motor Vehicle Use Constitutes an Impermissible Alteration and Expansion of Any Existing Use	39
	CONCLUSION.....	43

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Adirondack Mountain Club, Inc. v. Adirondack Park Agency</i> , 33 Misc 3d 383, 387 (Sup Ct, Albany County 2011).....	13
<i>Baker v. Dept. of Envtl. Conservation</i> , 634 F Supp 1460 (ND NY 1986).....	35
<i>Flacke v. Town of Fine</i> , 113 Misc 2d 56, 61 (Sup Ct, St. Lawrence County 1982).....	29, 32, 36
<i>Helms v. Diamond</i> , 76 Misc. 2d 253 (Sup Ct, Schenectady County 1973).....	35
<i>Helms v. Reid</i> , 90 Misc 2d 583 (Sup Ct, Hamilton County 1977).....	11, 13
<i>Lewis Family Farm, Inc. v. Adirondack Park Agency</i> , 868 NYS2d 481 (Sup Ct, Essex County 2008), <i>affd</i> , 64 AD3d 1009 (3d Dept 2009)	29, 30

Statutes & Regulations

Adirondack Park Agency Act, Executive Law §§ 800 et seq	
Executive Law § 801	11
Executive Law § 805	12
Executive Law § 816	12, 13
Adirondack Park State Land Master Plan.....	<i>passim</i>
CPLR 5601(a)	2
Executive Law § 81(1).....	21
New York Wild, Scenic and Recreational Rivers System Act, ECL Art. 15, tit. 27	
ECL 15-2701	5

ECL 15-2703.....	29
ECL 15-2705.....	6, 27, 29, 30
ECL 15-2707(2)(a).....	9, 37
ECL 15-2709.....	1, 8, 9, 24, 27, 30, 31, 32, 39
ECL 15-2713.....	36
ECL 15-2721.....	1, 6, 7, 28, 30, 31
1885 NY Laws ch. 283 § 8	9
1892 NY Laws ch. 707	10
6 NYCRR 666.3(yy)	6
6 NYCRR 666.13(E)(4)	1, 9, 24
Other Authorities	
New York State Consitution, Article XIV, § 1.....	7, 10

QUESTION PRESENTED

Question 1: Does Respondents' opening of a road to public motorized use when that road is located on newly acquired Forest Preserve land in the Adirondack Park—in an area managed as Wilderness under the Adirondack Park State Land Master Plan (“Master Plan”) and protected as Wild under the Wild, Scenic, and Recreational Rivers System Act (“Rivers Act”)—violate the Master Plan and the Rivers Act?

Answer 1: Yes, because the Master Plan prohibits the use of motor vehicles in Wilderness areas regardless of whether such use occurred on those lands while in private ownership, Master Plan at 22 (A.592), and the Rivers Act prohibits motor vehicle use in Wild river areas except for forest management purposes, New York Environmental Conservation Law (“ECL”) 15-2709(2)(a); 6 N.Y. Comp. Codes R. & Regs (“NYCRR”) 666.13(E)(4). In addition, for lands that are part of the Forest Preserve, the Rivers Act explicitly requires the application of the provisions of the Master Plan where they are more restrictive than the Rivers Act. ECL 15-2721.

The Appellate Division, Third Department incorrectly found that the Rivers Act “is controlling” and that its allowance for the continuation of a purported existing use supersedes the Master Plan such that the prior use of the road when the land was under private ownership allowed DEC to determine rationally that

opening that road to public motor vehicle use is permissible. *See* Opinion and Order at 4-7 (A.10-13). The Appellate Division, Third Department also incorrectly concluded that opening the road to public motorized use would not constitute an alteration or expansion of the existing use of that road. *Id.* at 7 (A.13).

JURISDICTION

This Court has jurisdiction over this matter because the action originated in the Supreme Court, *see* A.32-58, and the Opinion and Order that is the subject of this appeal is an order of the Appellate Division, Third Department, which made a final determination affirming the dismissal of Appellants' petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"). *See* A.7-19; *see also* CPLR 5601(a). Appellants appeal to this Court as of right because two justices in the Appellate Division, Third Department dissented on a question of law in favor of Appellants. *See* Opinion and Order at 8-13 (A.14-19); CPLR 5601(a). Moreover, the issue presented in this appeal is preserved because it was raised, fully briefed, and decided by the Supreme Court, A.27-29, and the Appellate Division, Third Department, A.10-13.

STATEMENT OF THE CASE

This appeal raises a question of first impression and will determine whether Respondents Department of Environmental Conservation ("DEC") and the Adirondack Park Agency ("APA") can, by administrative fiat, eviscerate the

protections conferred on the State's most pristine and scenic rivers by the New York Wild, Scenic and Recreational Rivers Act ("Rivers Act"), ECL Art. 15, Tit. 27, and the Adirondack Park State Land Master Plan ("Master Plan").

At issue in this proceeding is the Essex Chain Lakes Management Complex Unit Management Plan ("Essex Chain UMP"), which governs management of the recently created Essex Chain Complex in the Adirondack Park. This unique assemblage of Forest Preserve lands and waters, which came into State ownership in 2013, consists of a multitude of remote and wild bodies of water; secluded stretches of the Hudson, Cedar, Indian, and Rock Rivers; and thousands of contiguous acres of forest. A main feature of the Essex Chain UMP is its authorization of a new snowmobile trail that will introduce public motorized use into a narrow corridor surrounded on both sides by wild, undeveloped Forest Preserve land. In establishing this new snowmobile corridor, the Essex Chain UMP calls for the crossing of three river areas protected under the Rivers Act, including snowmobile access and seasonal motor vehicle access on a one-mile stretch of road—Chain Lakes Road South—on Forest Preserve land within the protected river area of the Hudson River, where that river is designated Wild under the Rivers Act.

Rivers designated as part of the Wild, Scenic, and Recreational rivers system are statutorily protected from a range of intrusive activities that could compromise

the important attributes that the Rivers Act seeks to preserve. These protections shield both the rivers themselves and the adjoining “river areas,” defined as adjacent lands located within one-half mile of the riverbanks. Wild rivers are the most pristine of the three classifications under the Rivers Act and are managed under the most restrictive guidelines meant to preserve their wild and undeveloped conditions. One of the most critical protections for Wild rivers is the prohibition against recreational motorized uses in Wild river areas.

The Master Plan, which governs state-owned Forest Preserve land in the Adirondack Park, complements the Rivers Act by managing protected river areas on state-owned land within the Adirondack Park. In recognition of the fact that Wild rivers are remote, undeveloped, and pristine, the Master Plan requires that Wild river areas that are part of the Forest Preserve be managed as Wilderness areas—the most restrictive of the nine classifications set forth in the Master Plan. The Master Plan strictly prohibits motor vehicle use in all Wilderness areas.

In blatant contravention of the protections set forth in the Rivers Act and the Master Plan, the Essex Chain UMP opens Chain Lakes Road South to public snowmobiling and seasonal motor vehicle use. Introduction of motorized recreational uses into this remote, protected Forest Preserve land runs afoul of the clearly stated provisions of the Master Plan and the Rivers Act, and the Appellate Division, Third Department’s dismissal of this third cause of action in Appellant’s

Article 78 petition is consequently flawed. Appellants respectfully request that the Appellate Division, Third Department's dismissal of this cause of action be reversed and that this Court annul and vacate the APA's approval and DEC's adoption of the Essex Chain UMP and remand the UMP to Respondents to allow the development and approval of an Essex Chain UMP consistent with law.

LEGAL BACKGROUND

I. THE WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM ACT

The Rivers Act, 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.” ECL 15-2701(1). Specifically, the statute instituted a Wild, Scenic and Recreational rivers system by setting forth the criteria for designating river areas within each class (Wild, Scenic, or Recreational), mandating the management objectives and requirements for administering the river areas within each class, and designating the initial river areas that are part of the system. *See id.* §15-2701(4).

Upon being classified as Wild, Scenic, or Recreational, designated rivers “and their immediate environs shall be protected for the benefit and enjoyment of present and future generations.” *Id.* §15-2701(3). In order to implement the statutory directive that rivers and “their immediate environs” be protected, the

protected “river area” is defined by regulation as the river and “that area within one-half mile of each bank of the river.” 6 NYCRR 666.3(yy).

A. Division of Jurisdiction

Rivers designated and included in the Wild, Scenic and Recreational Rivers system may be located on state-owned or privately-owned land. The Rivers Act vests the APA with “the functions, powers and duties encompassed by this section” with respect to “any privately owned part of a river area within the Adirondack park . . . which may become part of the system.” ECL 15-2705. Meanwhile, the Rivers Act authorizes DEC to have “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.” *Id.* The Rivers Act explicitly notes that this jurisdictional designation “shall not be construed to divest [DEC] from the exercise of functions, powers and duties which have not been delegated by law to the [APA].” *Id.*

B. Restrictive Management Requirement

The Rivers Act includes a conflict of laws provision that recognizes the various protections and management requirements that may apply to any given river segment within the Wild, Scenic and Recreational rivers system, and evidences an intent that rivers within the system receive the greatest possible protections. *See* ECL 15-2721. For instance, a river designated part of the Wild,

Scenic and Recreational rivers system may be located on state-owned Forest Preserve land and therefore subject to the constitutional mandate described in greater detail below that the Forest Preserve “shall be forever kept as wild forest lands.” NY Const. art XIV, § 1. Or, a river designated part of the system may be located in the Adirondack Park and therefore subject to the requirements of the Adirondack Park Land Use and Development Plan, if located on private lands within the park, or subject to the requirements of the Adirondack Park State Land Master Plan, if located on Forest Preserve land within the park, also as explained below.

Recognizing that multiple legal frameworks may apply to a river within the system, the Rivers Act specifies:

Any section of the state wild, scenic and recreational rivers system that is or shall become a part of the Forest Preserve, the Adirondack or Catskill Parks or any other state park . . . shall be subject to the provisions of this title, and the laws and constitutional provisions under which the other areas may be administered, and in the case of conflict between the provisions of those laws and constitutional provisions and the provisions of this title, the more restrictive provisions shall apply.

ECL 15-2721. In other words, the requirements of the Rivers Act do not apply exclusive of other relevant statutory or constitutional protections—after all, the designated river is subject to the Rivers Act “*and* the laws and constitutional provisions under which the other areas may be administered.” *Id.* (emphasis added). Even more, the Rivers Act provides for resolution of any conflict between

the relevant laws governing a designated river by expressly requiring application of the more limiting, or protective, provision. *Id.*

C. Continuation of Existing Land Uses

The Rivers Act specifies that “[a]fter inclusion of any river in the wild, scenic and recreational rivers system, no dam or other structure or improvement impeding thereof shall be constructed on such river,” but provides 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 [DEC] or [APA] orders the discontinuance of such existing land use.

ECL 15-2709(2). In other words, for both designated river areas on state lands within DEC’s jurisdiction and designated river areas on private lands within APA’s jurisdiction, both DEC and APA are presumed to have the authority to “order[] the discontinuance of” land uses already existing in those river areas at the time the river area is included in the Wild, Scenic and Recreational rivers system. *See id.* But neither DEC nor APA is authorized to allow an alteration or expansion of an existing use, unless such altered or expanded use is allowed by the classification for that river area. *See id.*

D. The Wild River Classification

Wild rivers are the most pristine of the three classifications under the Rivers Act and are 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.*

The Rivers 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 [for] forest management pursuant to forest management standards duly promulgated by regulations.” *Id.* § 15-2709(2)(a) (emphasis added). The Rivers Act’s 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 used solely for forest management purposes. *See* 6 NYCRR 666.13(E)(4).

II. THE STATE FOREST PRESERVE AND MANAGEMENT OF THE ADIRONDACK PARK

In 1885, the New York Legislature enacted “An act to establish a forest commission, and to define its powers and duties and for the preservation of forests,” which provided: “The lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands. They shall not be sold, nor shall they be leased or taken by any person or corporation, public or private.” 1885 NY Laws ch. 283 § 8. In 1892, the Legislature created the Adirondack Park,

comprised of land in certain counties and encompassing both state-owned Forest Preserve lands and private lands. 1892 NY Laws ch. 707.

A. Article XIV, Section 1 of the New York State Constitution

Two years after the establishment of the Adirondack Park, the New York State Constitution was amended to provide:

The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

NY Const. art XIV, § 1 (formerly art VII, § 7); *see also* Master Plan at 4 (A.574).

The passage of this constitutional provision, known as the “Forever Wild” clause, enshrining what had previously been only statutory protection of state-owned Forest Preserve land evidenced a desire “to prevent the ravages of the Adirondack forests and the dissipation of the state’s land-holdings, which typified the closing decade of the 19th century.” Master Plan at 4 (A.574). The exact wording in the Forever Wild clause has remained unchanged since 1895, when it went into effect. *Id.*

The “intermingling of public and private lands in a checkerboard pattern” is a key feature of the Adirondack Park. *Id.* at 2 (A.572). As of 2014, state ownership accounted for approximately 40 percent of the six million acres within the park, with the remaining 60 percent of land in the park privately owned. *Id.* at

3 (A.573). The “Forever Wild” clause of Article XIV applies only to Forest Preserve lands and not to the privately owned land in the Adirondack Park. *See, e.g., Helms v. Reid*, 90 Misc 2d 583, 599-600 (Sup Ct, Hamilton County 1977) (“Under these circumstances, the ‘forever wild’ mandate only applies to about 39 per cent of the Adirondack Park lands, which is all that is publicly owned.”). Notably, “the administration of the forest preserve has been in the hands of [DEC] and its predecessor agencies since the ‘forever wild’ amended was first enacted.” Master Plan at 5 (A.575).

B. The Adirondack Park Agency Act

Although the stated-owned lands in the Adirondack Park were thus managed and regulated by DEC and its predecessors since the very creation of the park, private lands within the park lacked similar oversight. In 1971, as a result of “the threat of unregulated development on such private lands” that “jeopardized” the unique pattern of public and private land use within Adirondack Park, the New York Legislature enacted the Adirondack Park Agency Act, Executive Law §§ 800 *et seq.*, to ensure “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; *see also Reid*, 90 Misc 2d at 601.

The APA Act created the APA and directed the development of two separate land use plans. The Adirondack Park Land Use and Development Plan, developed, approved, and implemented by APA, applies to private lands within the Adirondack Park. Executive Law § 805(1)(a) (“The Adirondack park land use and development plan is hereby adopted and shall hereafter serve to guide land use planning and development throughout the entire area of the Adirondack park, *except for those lands owned by the state.*”) (emphasis added).

The second plan, the Adirondack Park State Land Master Plan, was to be developed by APA, in consultation with DEC, to “guide the development and management of *state lands* in the Adirondack park.” *Id.* § 816(1) (emphasis added). Consistent with its long history of managing the Forest Preserve, DEC was directed “to develop, in consultation with [APA], individual management plans for units of land classified” in the Master Plan, in order to effectuate the Master Plan and to administer the state lands within DEC’s jurisdiction. *Id.* Unit management plans (“UMPs”) “shall conform to the general guidelines and criteria set forth in the [Master Plan], and “[u]ntil amended, the [Master Plan] and the individual [UMPs] shall guide the development and management of state lands in the Adirondack park.” *Id.*

C. The Adirondack Park State Land Master Plan

The Master Plan was approved by the Governor in 1972, and Article 27 of the Executive Law was amended “to give legislative sanction” to the Master Plan. *See Reid*, 90 Misc 2d at 602; *see also* Executive Law § 816; Master Plan at 1 (A.571); *Adirondack Mountain Club, Inc. v. Adirondack Park Agency*, 33 Misc 3d 383, 387 (Sup Ct, Albany County 2011) (“Because the [Master Plan] and amendments thereto are subject to approval by the Governor, it has been construed as having, the force of a legislative enactment.”) (internal quotation marks omitted). The Master Plan states unequivocally that protection of natural resources is to be the management priority for state-owned lands in the Adirondack Park:

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.

Master Plan at 1 (emphasis added) (A.571).

Pursuant to the Master Plan, all Forest Preserve lands within the Adirondack Park are assigned to one of nine classifications: wilderness; primitive; canoe; wild forest; intensive use; historic; state administrative; wild, scenic and recreational rivers; or travel corridors. *See id.* at 14 (A.584). For each classification, the Master Plan specifies the management guidelines for the area, identifying the recreational uses and structures that are allowed in areas with that classification

and conversely, the non-conforming uses in that classification. *Id.* A non-conforming use is “a structure, improvement or human use or activity existing, constructed or conducted on or in relation to land within a given classification that does not comply with the guidelines for such classification specified in the master plan.” *Id.* at 17 (A.587). The Master Plan requires “the removal of such non-conforming uses as may remain” when land is newly acquired as part of the Forest Preserve. *Id.* at 10 (A.580). The Master Plan emphasizes that “[i]nsofar as forest preserve lands are concerned, no structures, improvements or uses not now established on the forest preserve are permitted by these guidelines and in many cases more restrictive management is provided for.” *Id.* at 14 (A.584).

1. Wild, Scenic, and Recreational Rivers Classification

The Wild, Scenic, and Recreational rivers classification is a “corridor overlay[] to the basic land classification(s) through which the corridor passes.” *Id.* The Master Plan’s management guidelines for areas with the Wild, Scenic, and Recreational Rivers classification “are designed to be consistent with and complementary to both the basic intent and structure of” the Rivers Act, and the Master Plan recognizes that DEC “has the authority independent of the master plan to regulate uses of waters and uses of wild, scenic and recreational rivers running through state land.” Master Plan at 43, 4 (A.613, A.574). Much like the Rivers Act, the Master Plan defines a wild river as “a river or section of river that is free

of diversions and impoundments, inaccessible to the general public except by water, foot or horse trail, and with a river area primitive in nature and free of any man-made development except foot bridges.” *Id.* at 43 (A.613). The Master Plan specifies that “[w]ild rivers and their river areas will be managed in accordance with the guidelines for wilderness areas” *Id.* at 44 (A.614).

2. Wilderness Classification

The most restrictive of the classifications in the Master Plan is Wilderness. Wilderness areas are “where the earth and its community of life are untrammelled by man.” *Id.* at 19 (A.589). A Wilderness area is classified as such because it is:

an area of state land or water having a primeval character, . . . 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.

Id. Accordingly, the Master Plan specifies a list of 14 “structures and improvements” that are “considered as conforming to wilderness standards” and therefore permitted in these areas, including scattered Adirondack lean-to’s below 3,500 feet in elevation, pit privies, foot trails, cross country ski trails, and horse hitching posts and rails. *Id.* at 20-21 (A.590-591).

The Master Plan is clear that “[a]ll other structures and improvements, except for interior ranger stations themselves . . . will be considered non-conforming,” and identifies a non-exhaustive list of non-conforming structures, including “snowmobile trails” and “roads and state truck trails.” *Id.* at 21 (A.591) (emphasis added). Consistent with its list of conforming structures, which includes foot trails and cross-country ski trails, but explicitly does not include snowmobile trails and roads, the Master Plan specifies that in Wilderness areas, “[p]ublic use of motor vehicles, motorized equipment and aircraft [is] prohibited.” *Id.* at 22 (A.592).

The Master Plan also is explicit that in Wilderness areas, “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 19 (A.589) (emphasis added). Moreover, in Wilderness areas, “no additions or expansions of non-conforming uses will be permitted” and “[n]o new non-conforming uses will be permitted in any designated wilderness area.” *Id.*

FACTUAL BACKGROUND

I. THE ESSEX CHAIN COMPLEX

The approximately 19,000-acre Essex Chain Complex came under state ownership and became part of the Adirondack Park Forest Preserve in 2013. *See* UMP at 2 (A.278). These newly acquired Forest Preserve lands consist of a

multitude of remote lakes, ponds, and wetlands; secluded and undeveloped stretches of the Hudson, Cedar, Indian, and Rock Rivers; and thousands of acres of intact, unfragmented forest. UMP at 1 (A.277). In recognition of the remote and wild character of these lands, the fragility of the natural resources they contain, and their location adjacent to the Hudson Gorge Wilderness Area, the majority of the Essex Chain Complex—including what is now the Pine Lake Primitive Area and the Essex Chain Lakes Primitive Area—was classified as Primitive under the Master Plan.¹ *See id.*

The Hudson Gorge Wilderness Area that borders the Essex Chain Complex to the east is Forest Preserve land that “encompasses the wildest and most remote section of the Hudson River, as well as a spectacular white water gorge.” Master Plan at 61 (A.631). In the entire 23,494 acres of the Hudson Gorge Wilderness, there is not a single structure or use that is non-conforming for Wilderness areas. *Id.* at 62 (A.632). Chain Lakes Road South is located in the southern part of the Essex Chain Complex and runs between the eastern boundary of the Pine Lake Primitive Area and the western boundary of the Hudson Gorge Wilderness Area. *See* A.60 (map). For approximately one mile, the Chain Lakes Road South is

¹ A “Primitive” area is “[e]ssentially wilderness in character” where “the primary . . . management guideline will be to achieve and maintain . . . 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.” Master Plan at 25 (A.595).

located within one quarter mile of the Hudson River where the Hudson River is designated Wild under the Rivers Act, and is thus within the Wild river area of the Hudson River. UMP at 28 (A.304); DEC Findings Statement at 28 (A.538).

Prior to its acquisition by the State in a five-year phased acquisition of 69,000 acres of lands from The Nature Conservancy, the lands in the Essex Chain Complex had been owned by The Nature Conservancy since 2007 and before that, had been owned since the late 1800s by Finch, Pruyn & Co. (“Finch Pruyn”), a paper company. A.43-44. Historically, Finch Pruyn had managed the lands for timber production and also leased portions of the land to private hunting and fishing clubs to generate additional income from the property. A.299, 326-327. For example, the Gooley Club, a private hunting and fishing club, leased portions of the Essex Chain Complex since the 1940s, and the Polaris Club, another such club, leased lands from Finch Pruyn since the 1960s. A.299, 308.

While under the private ownership of Finch Pruyn (and later The Nature Conservancy), Chain Lakes Road South was closed to the general public. *See* Aff. of Peter Bauer ¶ 20 (May 17, 2016) (“Bauer Aff.”) (A.84); Aff. of John Collins ¶ 4 (Jan. 6, 2016) (“Collins Aff.”) (A.104). Indeed, as the Essex Chain UMP itself notes: “Although the public has travelled through these lands throughout history and individuals have had recreational access to these lands with permission of the landowner (through leases and other types of agreements), *the general public has*

not had unfettered use of portions of the Complex Area in over one hundred years.” UMP at 1 (A.277) (emphasis added).

II. THE ESSEX CHAIN UNIT MANAGEMNT PLAN

Because the Essex Chain Complex is entirely state-owned land and therefore part of the Forest Preserve, it is subject to the requirements of the Master Plan. Accordingly, DEC in consultation with APA prepared the Essex Chain UMP to guide the development and management of these lands within its jurisdiction. Executive Law § 816(1). The Essex Chain UMP was approved by APA in its November 13, 2015 Conformance Determination concluding that the UMP conforms to the Master Plan, A.559-564, and adopted by DEC in a Statement of Findings pursuant to the State Environmental Quality Review Act dated March 31, 2016, A.511-558.

A key feature of the Essex Chain UMP is its creation of a new Class II Community Connector snowmobile trail that will introduce public motorized recreational use into a narrow sliver of land threading between lands classified as Wilderness on one side and Primitive on the other, UMP at 57-58 (A.333-334), and connecting the towns of Indian Lake and Minerva, which are already connected by an existing snowmobile trail. *See id.* at 123-124 (A.399-400). The establishment of this duplicative snowmobile trail would allow public snowmobile use on Chain Lakes Road South within the Wild river area of the Hudson River; construction of

a new snowmobile bridge over the Cedar River where the river is designated Scenic; and opening of the Polaris Bridge over the Hudson River where it is designated Scenic to public snowmobiling. *Id.* at 58-59 (A.334-335). In addition to public snowmobile use on Chain Lakes Road South, the Essex Chain UMP also would allow seasonal public motor vehicle access on this road during big game season. *Id.* at 45 (A.321).

DEC acknowledges that a stretch of Chain Lakes Road South, “approximately one mile in length, passes within one quarter mile of the Hudson River where it is classified as a wild river under the Rivers Act” and that the Master Plan “requires wild river corridors to be managed in accordance with wilderness guidelines.” DEC Findings Statement at 28 (A.538). Nevertheless, the agency concludes that “consistent with the Rivers Act, the use of the road represents a permissible, preexisting recreational use.” *Id.* at 28-29 (A.538-539). DEC therefore concluded that “Chain Lakes Road (South) constitutes an existing use and the Complex Plan allows, consistent with historical and more recent uses, access within the river corridor by snowmobile and motor vehicles.” *Id.* at 29 (A.539).

III. THE INSTANT ACTION

Appellants filed their joint verified petition for judgment pursuant to Article 78 of the CPLR and complaint seeking a declaratory judgment on January 11,

2016, within the 60-day statute of limitations for challenging actions of the APA under Article 78. *See* Executive Law § 81(1). Appellants filed an amended petition and complaint on May 19, 2016, after DEC's Findings Statement adopting the Essex Chain UMP was signed by then Acting Commissioner Seggos and made public on April 22, 2016. *See* A.32-56.

The first two causes of action in the amended Petition and Complaint challenge as violations of the Rivers Act the Essex Chain UMP's authorization of a new snowmobile bridge over a segment of the Cedar River designated Scenic and its opening of an existing bridge to public snowmobiling over a segment of the Hudson River designated Scenic. *See* A.51-52. The third cause of action challenges as a violation of the Rivers Act and the Master Plan the Essex Chain UMP's allowance of public motor vehicle use on Chain Lakes Road South within the Hudson River's Wild river area. *See* A.53. The fourth cause of action challenges the Essex Chain UMP's establishment of a new snowmobile community connector that is redundant of an existing snowmobile route connecting the same communities as an arbitrary and capricious departure from policy, as set forth in Respondents' 2009 Snowmobile Guidance. *See* A.53-54.

Appellants asked the Court to declare the APA's Conformance Determination and DEC's Findings Statement adopting the Essex Chain UMP affected by errors of law, arbitrary and capricious, and an abuse of discretion; to

annul and vacate the Conformance Determination and Findings Statement, and to remand the matter to Respondents for the development and approval of an Essex Chain UMP that complies with all applicable law. *See* A.54.

IV. THE SUPREME COURT DECISION

In a Decision/Order/Judgment dated January 25, 2017, Supreme Court converted Appellants' action to an Article 78 proceeding and dismissed the petition in its entirety. With respect to the first two causes of action relating to the authorization of a new snowmobile bridge over a Scenic river and the opening of an existing bridge over a Scenic river to snowmobile use, Supreme Court found that the claims "are not ripe for review because the bridge projects are not final."

A.25. Supreme Court dismissed the third cause of action because, without even addressing the Master Plan's management requirements for Wild Rivers and Wilderness, it found that Respondents rationally concluded that "snowmobile use of the Chain Lakes Road (South) constitutes an existing use that will be permitted to continue without expansion or alteration" under the Rivers Act. A.29. Finally, Supreme Court dismissed the fourth cause of action because it concluded that the 2009 Snowmobile Guidance was not binding and vests the agency with discretion.

Id.

V. THE APPELLATE DIVISION DECISION

Appellants appealed the entirety of the Supreme Court decision to the Appellate Division, Third Department. In an Opinion and Order dated May 3, 2018, the Appellate Division affirmed Supreme Court's decision. The Appellate Division found that for the first and second causes of action relating to snowmobile use over Scenic rivers, "Supreme Court correctly concluded that the first and second causes of action are not ripe for judicial review." Opinion and Order at 4 (A.10). The Appellate Division likewise affirmed Supreme Court's dismissal of the fourth cause of action "on the basis that respondents are not bound by the 2009 Guidance." *Id.* at 8 (A.14).

The Appellate Division was split on the third cause of action. The majority opinion concluded that "there is no direct conflict between the Rivers System Act and the Master Plan as it relates to continuation of preexisting motor vehicle use in wild river areas located on state-owned land" because the Rivers System Act "is controlling." A.11. And because the Rivers System Act allows the continuation of existing uses, the Appellate Division examined the record and concluded that it contained "a sufficient basis for DEC to have rationally determined that there would be no alteration or expansion of the preexisting use of snowmobiles on the relevant portion of Chain Lakes Road (South)." A.12.

The two-justice dissent and concurrence disagreed, finding that “the record does not support a conclusion that members of the general public previously operated snowmobiles on the Chain Lakes Road section in a density commensurate with that which will result from opening it to public use.” A.15-16. The dissent and concurrence concluded that “the Rivers System Act requires DEC to consider the increase in volume that results from opening a previously exclusively private road to unlimited use by the public in determining whether a previous use may continue,” and found that on the record before Respondents, “it is irrational to conclude that opening the Chain Lakes Road section to public snowmobile traffic will not expand the previous limited use.” A.17-18.

ARGUMENT

POINT 1: DISMISSAL OF APPELLANTS’ THIRD CLAIM WAS ERROR BECAUSE THE RIVERS ACT AND THE MASTER PLAN PROHIBIT MOTOR VEHICLE USE ON CHAIN LAKES ROAD SOUTH

Appellants’ third cause of action was erroneously dismissed by the courts below. The Rivers 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.*” ECL 15-2709(2)(a) (emphasis added); *see also* 6 NYCRR 666.13(E)(4). Moreover, upon its acquisition by the State as part of Adirondack Park, Chain Lakes Road South became part of the

Forest Preserve and therefore subject to the Master Plan, which provides that “[w]ild rivers and their river areas will be managed in accordance with the guidelines for wilderness areas.” Master Plan at 44 (A.614). In Wilderness areas, the Master Plan explicitly prohibits “[p]ublic use of motor vehicles” and identifies roads and snowmobile trails as non-conforming uses. *Id.* at 21-22 (A.591-592). Respondents’ decision to allow the public to drive motor vehicles through the heart of the Wild river area of the Hudson River therefore violates both the Rivers Act’s express prohibition against motor vehicle use in Wild river areas, ECL 15-2709(2)(a), and the Master Plan’s mandate that Wild river areas be managed as Wilderness, in which public motor vehicle use is prohibited, Master Plan at 22, 44 (A.592, 614).

Respondents’ argument, adopted by the court below, that public motorized use of Chain Lakes Road South in the Essex Chain Complex is permissible as an “existing use” under the Rivers Act fails for three separate and independent reasons. First, the Appellate Division incorrectly concluded that there was no conflict between the Rivers Act and the Master Plan because the Rivers Act “is controlling.” Opinion and Order at 5 (A.11). As a matter of law, the Rivers Act does not take precedence over the Master Plan and does not supersede the management requirements set forth in the Master Plan, as the Appellate Division wrongly found. A proper reading of the Master Plan and the Rivers Act

necessarily leads to the conclusion that the Rivers Act's conflict of law provision applies, such that the Master Plan's more restrictive requirement that Wild river areas be managed as Wilderness, where motor vehicle use is prohibited, overrides the Rivers Act's less restrictive exemption for existing uses.

Second, even without reference to the Rivers Act's conflict of laws provision, a plain reading of the Rivers Act and the Master Plan makes clear that the Rivers Act's "existing use" exemption does not apply to non-conforming uses on Forest Preserve lands. Thus, even if public motorized use were an existing use on Chain Lakes Road South, which it was not, that use is non-conforming in an area required to be managed as Wilderness and must be discontinued pursuant to the Master Plan's mandate. Third, the record does not support, in any event, Respondents' determination and the Appellate Division, Third Department's conclusion that public motor vehicle use of Chain Lakes Road South is an existing use without alteration or expansion under the Rivers Act. *See* ECL 15-2709(2).

A. The Rivers Act's Existing Use Exemption Conflicts with the Master Plan's Mandate That Non-Conforming Uses Be Discontinued, and the More Protective Master Plan Provision Thus Controls

The Appellate Division correctly concluded that "[t]he issue of whether there is a conflict between the Rivers System Act and the Master Plan presents a matter requiring interpretation of the language contained in each" such that the court "must give effect to the plain meaning of the relevant terms without

deference to any interpretation made by DEC or the APA.” Opinion and Order at 5 (A.11) (citing *Matter of Madison County Indus. Dev. Agency v. State of N.Y. Auths. Budget Off.*, 151 AD3d 1532, 1535 (2017), *lv granted*, 30 NY3d 913 (2018)). But the Appellate Division then drew the wrong legal conclusion in finding that “there is no direct conflict between the Rivers System Act and the Master Plan as it relates to continuation of preexisting motor vehicle use in wild river areas located on state-owned land” because “the Rivers System Act, which permits continuation of existing uses, is controlling.” Opinion and Order at 5 (A.11). As explained below, nothing in the language of these two statutes supports the conclusion that the Rivers Act is “controlling” and overrides the management guidelines set forth in the Master Plan. Actually, a proper reading of the Master Plan and the Rivers Act necessarily leads to a conclusion that the conflict between their terms results in application of the more restrictive requirement prohibiting motor vehicle use in the river area of a protected Wild river.

The lower court’s conclusion that no conflict exists between the Rivers Act and Master Plan follows from its reference to three provisions of law: (1) “The Rivers System Act provides DEC with exclusive jurisdiction over river areas located on state-owned land within the Adirondack Park,” *id.* (citing ECL 15-2705); (2) the Rivers Act “also provides that DEC shall administer river areas within its jurisdiction in accordance with the Rivers System Act,” *id.* (citing ECL

15-2709(1); and (3) “[t]he Master Plan recognizes the exclusive jurisdiction that has been granted to DEC by statute by acknowledging that DEC has authority to regulate the uses of river areas located on state land ‘*independent of the [M]aster [P]lan,*’” *id.* (citing Master Plan at 4). But just because DEC has exclusive jurisdiction to manage river areas on Forest Preserve in the Adirondack Park in accordance with the Rivers Act, and the Master Plan acknowledges this independent authority of the agency under the Rivers Act to regulate the uses of river areas on Forest Preserve by no mean supports a conclusion that the Rivers Act “is controlling” and takes precedence over the Master Plan.

In fact, as noted in the Legal Background above, the Rivers Act is explicit that

[a]ny section of the state wild, scenic and recreational rivers system that is or shall become a part of the Forest Preserve, the Adirondack or Catskill Parks or any other state park . . . shall be subject to the provisions of this title, *and* the laws and constitutional provisions under which the other areas may be administered.

ECL 15-2721 (emphasis added). In other words, the Rivers Act explicitly indicates that its provisions apply *in addition to* any other provisions that may apply in the administration of protected river areas within the Forest Preserve and the Adirondack Park. Moreover, as also set forth in the Legal Background above, the Rivers Act’s division of jurisdiction—to DEC for river areas on Forest Preserve lands within the Adirondack Park and to the APA for river areas on

privately owned land within the Adirondack Park—includes an explicit reservation of DEC’s duties and powers under the Master Plan: “This section shall not be construed to divest [DEC] from the exercise of functions, powers and duties which have not been delegated by law to the [APA].” ECL 15-2705; *see also id.* §15-2703 (defining “commissioner” and “the agency”).

It is foundational that “[s]tatutes are to be construed in harmony if that can be done without violating the established canons of statutory construction.” *Flacke v. Town of Fine*, 113 Misc 2d 56, 61 (Sup Ct, St. Lawrence County 1982) (citing McKinney's Cons Laws of NY, Book 1, Statutes, § 398). Moreover, “[i]n construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning.” *Lewis Family Farm, Inc. v. Adirondack Park Agency*, 22 Misc 3d 568, 577-578 (Sup Ct, Essex County 2008), *affd*, 64 AD3d 1009 (3d Dept 2009) (citations omitted). An agency's determination where a court “is faced with the interpretation of statutes and pure questions of law” is accorded no deference, and “[w]here the words of the statute are clear and the question simply involves the proper application of the provision there is little basis to rely on any special competence or expertise of the administrative agency . . . , especially when the interpretation . . . directly

contravenes the plain words of the statute.” *Id.* at 491 (citations and alterations omitted).

Here, the Rivers Act is clear that its provisions for managing protected rivers within the Wild, Scenic and Recreational rivers system apply *in addition to*, and not to the exclusion of, other laws governing the administration of the river areas located on state-owned land or in the Adirondack Park. *See* ECL 15-2705, 2721. The Appellate Division’s conclusion that the Rivers Act “is controlling” therefore does not withstand scrutiny. Reading the plain language of the Rivers Act and the Master Plan together—giving weight to the provision of each and the duties and authority set forth by each for DEC in its administration of protected rivers on state-owned land in the Adirondack Park—leads to the conclusion that the more restrictive provisions of the applicable laws apply, prohibiting motor vehicle use within Hudson River’s Wild river area.

The Master Plan requires the administration of Wild rivers as Wilderness, in which motor vehicle use is explicitly prohibited. *See* Master Plan at 22, 44 (A.592, A.614). The Rivers Act similarly prohibits motor vehicle use in Wild river areas, ECL 15-2709,² but the Rivers Act provides that “existing land uses within the respective classified river areas may continue, . . . unless [DEC] or [the APA]

² The Rivers Act does allow for access by motor vehicles to Wild river areas for forest management purposes. *See* ECL 15-2709(2)(a).

orders the discontinuance of such existing land use.” *Id.* §15-2709(2). Therefore, if it were the case that public motor vehicle use on Chain Lakes Road South were an existing use, then while the Master Plan uniformly prohibits all motor vehicle use on Chain Lakes Road South, the Rivers Act allows in theory for the continuation of such existing use.³ In the face of this apparent conflict between the provisions of the Rivers Act and the Master Plan, the Rivers Act’s conflict of law provision applies and expressly requires that “the more restrictive provisions shall apply.” ECL 15-2721. In this case, the more restrictive provision is the Master Plan’s uniform prohibition of motor vehicle use in Wilderness areas. Consequently, the Essex Chain UMP’s opening of Chain Lakes Road South in the Hudson River Wild river area to motorized use violates the Master Plan and the Rivers Act.

B. The Rivers Act’s Existing Use Exemption Does Not Apply to Non-Conforming Uses on Forest Preserve Land Governed by the Master Plan

Respondents do not dispute that upon its acquisition by the State, Chain Lakes Road South, including the portion of the road that is within the Wild river area of the Hudson River, became part of the Forest Preserve and therefore subject

³ As explained in the next section, however, the language in the Master Plan makes clear that existing uses on Forest Preserve land in the Adirondack Park that do not conform to the limitations set forth for the particular land classification—*i.e.*, non-conforming uses—must be discontinued.

to the Master Plan. But while Respondents and the court below focus on the Rivers Act's general allowance for existing land uses, ECL 15-2709(2), they ignore the basic tenet that "a statute of specific application will take precedence over an apparently conflicting statute of general application," *Flacke*, 113 Misc 2d at 61, when they fail to acknowledge the provisions of the Master Plan detailing the treatment of existing uses and making clear that all existing uses on Forest Preserve land in the Adirondack Park that do not conform to the applicable classification guidelines are to be removed or discontinued.

As noted in the Legal Background, the Master Plan defines a non-conforming use as "a structure, improvement or *human use or activity* existing, constructed or conducted on or in relation to land within a given classification that does not comply with the guidelines for such classification specified in the master plan." Master Plan at 17 (A.587) (emphasis added). In other words, a non-conforming use is an existing use that does not meet the classification guidelines set forth in the Master Plan. The Master Plan requires each UMP to "address, on a site-specific basis . . . *the removal* of such non-conforming uses as may remain [in the unit]." *Id.* at 10 (A.580) (emphasis added). The Master Plan also is explicit that in Wilderness areas, "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 19 (A.589) (emphasis added).

Because motor vehicle use, snowmobile trails, and roads are all non-conforming uses in Wilderness areas, the Master Plan sets forth specific steps to be followed to ensure that “[a]ny non-conforming roads, snowmobile trails or state truck trails resulting from newly classified wilderness areas will . . . be phased out as rapidly as possible and in any case will be closed by the end of the third calendar year following classification.” *Id.* at 23 (A.593). Specifically, DEC is required to:

- 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. Moreover, the Master Plan is rife with historical examples of DEC’s consistent practice in compliance with the Master Plan of discontinuing existing motor vehicle use and removing roads and snowmobile trails on Forest Preserve lands newly classified as Wilderness. In the Ha-De-Ron-Dah Wilderness, for instance, the Master Plan reports that “[t]he following non-conforming uses have been removed from this area: 6.5 miles of a truck trail, 2.3 miles of snowmobile trails This area now fully complies with Wilderness standards.” *Id.* at 57 (A.627).

With respect to the High Peaks Wilderness area, the Master Plan notes that “Meadows Lane is a town maintained public road which extends about a mile east into the Wilderness This road should be closed to conform to Wilderness

guidelines. [DEC] has committed to work with the Town of North Elba towards this closure.” *Id.* at 59 (A.629). In the Hoffman Notch Wilderness, DEC removed “[t]hree fairly extensive [DEC] snowmobile trails” and “[a] 2.5-mile jeep trail . . . bringing this area fully into compliance with Wilderness standards.” *Id.* at 61 (A.631). In Round Lake Wilderness, foot trails that provide hiking access to Trout Pond “were *closed to snowmobile use* after the area was reclassified from Wild Forest to Wilderness.” *Id.* at 69 (A.639) (emphasis added).

The vast majority of the 18 areas in the Adirondack Park classified as Wilderness have zero non-conforming uses. *See id.* at 50-75 (A.621-645) (identifying area statistics including any remaining non-conforming uses). Thus, Respondents’ claim and the lower court’s conclusion that “existing uses” on Forest Preserve lands can be allowed to continue in contravention of the classification requirements in the Master Plan defies the Master Plan’s clear edict that non-conforming pre-existing uses on those lands be removed or discontinued.

Consistent with the clear language of the Master Plan, the single case directly on point confirms that the allowance of incompatible existing use simply does not apply to Forest Preserve lands. In *Matter of Helms v. Diamond*, owners of an air taxi service challenged a DEC rule prohibiting floatplanes from landing on approximately 700 designated lakes in the Adirondack Park, claiming that they

had been landing on such lakes for decades as part of their air taxi business carrying hunters and fishermen to remote areas of the Adirondacks. 76 Misc 2d 253 (Sup Ct, Schenectady County 1973). Considering provisions of the Adirondack Park Agency Act that specifically allowed certain pre-existing uses to continue, the court held:

These provisions as to nonconforming uses must be deemed to apply only to privately-owned land within the Park, and not public land owned by the State. *It is impossible under the Constitution for individuals to acquire vested rights in the forest preserve by means of adverse possession, long use, or a prescriptive right.*

Id. at 257–58; *see also Baker v. Dept. of Env'tl. Conservation*, 634 F Supp 1460, 1467 (ND NY 1986) (citing *Helms* with approval).

As noted in *Helms*, “[t]he concept of prohibiting use of motor vehicles, motorized equipment, motorboats and landing of aircraft in remote wilderness areas is not new.” 76 Misc 2d at 260. Here, the Master Plan makes unmistakably clear that motorized uses have no place in Wild river areas and Wilderness on Forest Preserve lands, and this prohibition applies regardless of whether those non-conforming uses may have existed prior to the lands being added to the Forest Preserve. Master Plan at 10, 19 (A.580, 589). The Appellate Division, Third Department therefore erred in applying the Rivers Act’s general provision on the continuation of existing uses at the exclusion of the Master Plan’s more specific

provisions relating to existing use in Wilderness areas within the Adirondack Park Forest Preserve. *See Flacke*, 113 Misc 2d at 61.

C. The Record Does Not Support the Appellate Division’s Determination That Public Motor Vehicle Use on Chain Lakes Road South Is An Existing Use Without Expansion or Alteration

Even if the facts relating to the prior use of Chain Lakes Road South were relevant—which they are not, in light of the Rivers Act’s and the Master Plan’s provisions detailed above—the Appellate Division, Third Department erred by deferring to DEC’s conclusion that motorized use of Chain Lakes Road South was an “existing use” without expansion or alteration and that public snowmobiling and seasonal motor vehicle use on Chain Lakes Road South is therefore permissible under the Rivers Act. A.11-13. In fact, the record establishes that public motorized use was prohibited on these formerly private lands and is therefore not an existing use; and even if motorized use were considered an existing use, the public motorized use contemplated in the Essex Chain UMP is an impermissible alteration and expansion.

1. Public Motorized Use Is Not An Existing Use On Chain Lakes Road South

In 1973, when the relevant segment of the Hudson River was designated Wild under the Rivers Act, *see* ECL 15-2713(1)(c), the road now referred to as Chain Lakes Road South, a mile of which runs within one quarter mile of that segment of the Hudson River, was located on land privately owned by Finch Pruyn

paper company. The record establishes that while under private ownership, this road and other roads within what is now the Essex Chain Complex were not used by the public.⁴ Each of the eighteen affidavits in the so-called Schachner Report, upon which Respondents rely to establish historic motorized vehicle use within the Essex Chain Complex, was the affidavit of either a former employee of Finch Pruyn or a member of the various hunting and fishing clubs that were private lessees of Finch Pruyn. *See* R. Exs. 27, 27A, 27B, 27C. As the dissent and concurrence in the Appellate Division observed:

The affiants are former employees of the owner and members or affiliates of the private clubs. None of these individuals assert that the Chain Lakes Road section was legally open to the general public, nor do they describe any form of authorized access to the area other than employment or club membership; instead, they describe either the roles in which they used the roads as employees or contractors, or the years in which they had access because they belonged to or worked for the private club that leased that part of the land.

⁴ The Rivers Act establishes the following criteria for rivers eligible for designation as a Wild river:

Those 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.

ECL 15-2707(2)(a) (emphasis added). If Chain Lakes Road South had been a road accessible to public motor vehicle use in 1973, as claimed in the UMP, *see* A.302, A.304, that section of the Hudson River surely would not have qualified for a “Wild” river designation as it did.

A.16. These affidavits thus serve only to confirm the fact that historic motorized use of roads in the Essex Chain tract was in fact strictly limited to the private landowner and its private lessees and their invitees.⁵

Appellants submitted the Affidavits of Peter Bauer, a long-time resident of Indian Lake, and John Collins, a lifelong resident of Indian lake, former Chairman of the Town of Indian Lake Planning Board, and former APA Chairman, both of whom stated their personal knowledge that when under private ownership, first by Finch Pruyn and then The Nature Conservancy, Chain Lakes Road South was not accessible to the public. *See* Bauer Aff. (A.84), Collins Aff. (A.104); *see also* Opinion and Order at 9-10 (Garry, P.J. concurring in part and dissenting in part) (A.16) (referencing these affidavits, which “jointly averred that the Chain Lakes Road section has never been open to public use and that it was well known locally that the only means of gaining legal access to the road, other than employment by the owner, was to join the private club that leased the land through which it ran”) (A.15-16). The record therefore establishes that at the time the relevant portion of the Hudson River was designated Wild in 1973, Chain Lakes Road South was

⁵ Indeed, a 1973 lease between Finch Pruyn and the ARTEC Club required ARTEC to “engage such men as may be necessary during the terms of the lease to patrol said premises to determine if any person is engaged in hunting, trapping, fishing, or trespassing for any purpose whatsoever Lessee shall be responsible to see to it that all persons apprehended as violaters, poachers or trespassors shall be prosecuted.” R.2743.

privately owned and any motor vehicle access to the road was strictly limited to those affiliated with Finch Pruyn, either as an employee or a member or guest of the private hunting and fishing club lessees of Finch Pruyn. Public motorized use is therefore not an existing use pursuant to the Rivers Act. *See* ECL 15-2709(2).

2. Public Snowmobiling and Seasonal Motor Vehicle Use Constitutes an Impermissible Alteration and Expansion of Any Existing Use

Even if motorized use were considered an existing use, as detailed in the Legal Background section above, the Rivers Act is very clear that while “existing land uses within the respective classified river areas may continue,” any existing land uses “*may not be altered or expanded except as permitted by the respective classifications.*” ECL 15-2709(2) (emphasis added). The Rivers Act also is clear that in Wild river areas, “*no access by motor vehicles shall be permitted other than [for] forest management pursuant to forest management standards duly promulgated by regulations.*” *Id.* § 15-2709(2)(a) (emphasis added). In other words, Respondents are not authorized to allow an alteration or expansion of an existing use on Chain Lakes Road South that would entail access by motor vehicles other than for forest management purposes. But that is precisely what the Essex Chain UMP does.

Although Respondents contend that public motor vehicle use is not an impermissible alteration or expansion of the existing use of Chain Lakes Road

South, the record plainly demonstrates otherwise. At the very least, the opening of a road—formerly located on private lands and accessible to motor vehicle use only by private individuals—to snowmobiling and seasonal motor vehicle use by any member of the general public necessarily constitutes an *alteration*.

Moreover, the record reflects that such a change wrought by the Essex Chain UMP constitutes an *expansion* of any existing use as well. As the Appellate Division dissent and concurrence noted, “the record establishes that the purposes of establishing community connector trails like the one at issue here include enabling snowmobile traffic between communities that previously lacked a direct connection and, thus, creating economic benefits for both communities—benefits that, of course, arise directly from the increased numbers of snowmobilers traveling on the trails.” Opinion and Order at 12 (Garry, P.J. concurring in part and dissenting in part) (A.12). Class II Community Connector snowmobile trails like the one the Essex Chain UMP authorizes on this portion of Chain Lakes Road South are intended to “provide the main travel routes for snowmobile trails within a unit” and reflect Respondents’ policy of “shifting the *highest snowmobile use*” to these trails, which are supposed to be “located in the periphery of Wild Forest or other Forest Preserve areas.” 2009 DEC Snowmobile Management Guidance at 3, 5 (A.833, 835) (emphasis added). Additionally, the UMP itself notes that “[l]imited public access facilities were established following the acquisition of the

former Essex Chain and Indian River Tracts . . . in the fall of 2013. *The influx of visitors and users during this time reflected the high level of interest in the Complex Area.*” UMP at 1 (A.277) (emphasis added).

The affidavit of John Collins, a lifelong resident of Indian Lake who served for 18 years on the Town of Indian Lake Planning Board, and was a member of the APA board for eleven years, including five years when he served as APA Chairman, also provides relevant evidence of the expansion of use. *See Collins Aff.* ¶¶ 2-3 (A.104). Based on his years of Planning Board and APA experience, and his personal familiarity with two snowmobile community connector trails in Indian Lake, Mr. Collins states that “snowmobile community connectors generally receive heavy use from the public snowmobiling community, and the level of use generally exceeds that of snowmobile trails located on private lands that are not open to the public.” *Id.* ¶¶ 6-7 (A.104). Respondents have submitted no affidavits or other evidence to dispute this testimony, and the Appellate Division did not reference this affidavit in the context of the question of whether the Essex Chain UMP altered or expanded an existing use. *See A.13.*

Thus, the record establishes that (1) prior motorized use of Chain Lakes Road South was strictly limited to those employed by the former private owner, members of hunting and fishing club lessees, and guests of those members; and (2) the Essex Chain UMP calls for the opening of motorized recreational use on Chain

Lakes Road South to the public at large, which will constitute at least an alteration and also an expansion of such historical use, in violation of the Wild river designation. ECL 15-2709(2). By approving and adopting the Essex Chain UMP, Respondents have consequently acted arbitrarily, capriciously, and in violation of the law.

CONCLUSION

For all the reasons stated above, this Court should reverse the Opinion and Order below and order the relief requested in Appellants' Petition, including:

1. annulling and vacating the APA's Conformance Determination and DEC's Findings Statement for the Essex Chain UMP;
2. remanding the matter to Respondents for the development and approval of an Essex Chain UMP that complies with law;
3. enjoining and restraining Respondents from implementing the Essex Chain UMP pending preparation and approval of a revised UMP that conforms with all applicable law;
4. awarding Appellants costs and reasonable attorneys' fees; and
5. granting Appellants such other and further relief as the Court deems just and proper.

Dated: August 29, 2018
New York, New York

Respectfully submitted,



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WORD COUNT CERTIFICATION

This brief complies with the word count limitation set forth in 22 N.Y.C.R.R. § 500.13(c), because it contains 9,893 words, excluding the parts exempted by 22 N.Y.C.R.R. § 550.13(c)(3). Microsoft Word 2016 computed this word count.

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