



24 July 2015

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Conservation

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Education

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Recreation

Since 1922

Re: The Essex Chain Lakes Management Complex UMP (ECLMC UMP)

Dear Ms. O'Dea,

Thank you for the opportunity to comment on the Essex Chain Lakes Management Complex UMP and for all of the good planning work you and other NYS employees have put into this UMP to both protect our Forest Preserve resource and to provide important recreational opportunities in this beautiful area.

Although there are many aspects of the plan that ADK fully supports, but there are also significant portions of the plan that are very concerning. We outline our concerns below.

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**Grandfathering Use in WSRR Corridors**

One of the most significant issues is the fact that the Polaris (Iron) Bridge is currently designated for motorized use in this UMP so that snowmobiles can access one of two proposed trails in the Vanderwhacker Wild Forest. DEC relies on the zoning concept of grandfathering as set forth in ECL Article 15, Title 27, Section 15-2709 (2).

Grandfathering in relation to land use and zoning laws has only been interpreted to protect existing private property uses and property interests. Grandfathering cannot legally be used to authorize public use of motor vehicles across a bridge in a designated wild or scenic river corridor under the provisions of 6 NYCRR 666.13.

On page 33 of the ECLMC UMP DEC states,

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Motor vehicle access to the Iron (Polaris) Bridge from the east predates, and continued regularly, after the enactment of the WSRR Act, therefore continued motor vehicle use on this road within the Scenic River Area is authorized by statute and regulation.

However, ECL Article 15, Title 27, Section 15-2709 (2) states,

After inclusion of any river in the wild, scenic and recreational rivers system, no dam or other structure or improvement impeding the natural flow thereof shall be constructed on such river except as expressly authorized in paragraphs b and c of this subdivision.

**Notwithstanding anything herein contained to the contrary, existing land uses within the respective classified river areas may continue, but may not be altered or expanded except as permitted by the respective classifications,** unless the commissioner or agency orders the discontinuance of such existing land use. In the event any land use is so directed to be discontinued, adequate compensation therefor shall be paid by the state of New York either by agreement with the real property owner, or in accordance with condemnation proceedings thereon. The following land uses shall be allowed or prohibited within the exterior boundaries of designated river areas depending on the classification of such areas:

a. In 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.

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

Clearly, ECL Section 15-2709 (2) does not support the proposed alteration and expansion of use for a public snowmobile trail on the Polaris Bridge. The very description of “private” roads in 15-2709 (2) (b) shows that this section was intended to be applied to private lands through which run water bodies with a Scenic River designation. The language of this statute was clearly intended to grandfather only existing private property rights on the many miles of rivers, covered by the WSRR Act, that flow through private property. The statute and its legislative history make it clear that this section was never intended to be interpreted to use existing private property uses to grandfather new public motorized recreational uses after the state acquires private property. This is especially true where these new public uses (snowmobiling) would be an alteration and expansion of the private uses. It is clear that allowing the Polaris bridge to carry the snowmobile and groomer traffic of two community connector snowmobile trails would be both an alteration and an expansion of a private use.

ADK could find no evidence in the WSRR Act and its implementing regulations for DEC to make the legal decision that proof of grandfathering could be used to authorize public use of the Polaris Bridge or the South Chain Lakes Road. In fact the DEC official response to comments on the 1986 Draft Environmental Impact Statement (DEIS) for the WSRR regulations states much to the contrary. On page 57 (of the 1986 DEIS for WSRR regulations), DEC responds to a question about the need for a permit for using a bridge for motorized open space recreation by stating: "Response - - The Regulations have been amended to prohibit motorized open space recreational uses in scenic river areas. Therefore bridges for this use have been prohibited." This response is repeated on page 59 in response to a question about all terrain vehicle use in a scenic river area. On page 58, the DEC response agrees that motorized recreational vehicles should not be allowed to operate in scenic river areas.

DEC does not disclose any historical or contemporary evidence upon which this determination is based. Logging and lease club use of the Polaris Bridge or the South Chain Lakes Road by lessees and their invitees is not equivalent to general public recreational use that would support a grandfathering argument. Under section 9-0301 of the Environmental Conservation Law, the Forest Preserve should

be forever maintained for the free use of the people. There is no evidence in the ECLMC UMP that either Finch Pruyn or its lease or snowmobile clubs permitted the general public to use the Polaris Bridge or the South Chain Lakes Road without being a paid member of an authorized club. In order to support a grandfathering of public recreational use today to avoid compliance with the provisions of the WSRR Act and its regulations, it is not sufficient to show that some people who joined a club and paid dues used the Polaris Bridge and the South Chain Lakes Road prior to the enactment of WSRR Act and its regulations. It must be shown that the general public could freely use the road without paying dues or any fee to do so.

ADK identified this legal issue as one that needed to be resolved in our December 10, 2013 Letter to the APA which states,

It is our understanding that DEC will endeavor to legally establish a history of grandfathered motorized uses so as to comply with ECL 15-2709 where the motorized recreational route passes through the ½ mile Wilderness set back in the vicinity of The Outer Gooley Club and the confluence of the Wild designated section of the Hudson River and the Indian River. In the event that the Eastern Chain Lakes road – Camp 6 snowmobile connector trail is not practical due to the foregoing legal issues, ADK believes the appropriate back up plan is the existing Cornell road conservation easement community connector trail between Indian Lake and Newcomb. We do not support the construction of the east-west “crossover” trail. Travel from Indian Lake to Newcomb via the Cornell road snowmobile route is 25 miles compared to the 30 miles if travelling by the Crossover trail and the Crossover route is barely 1 mile closer to the Polaris Bridge than the Cornell Road Western snowmobile connector trail.<sup>1</sup>

The Department of Environmental Conservation (DEC) must not allow motorized use of the Polaris (Iron) Bridge and should remove this temporary bridge which was installed by Finch Pruyn for logging in 1992. DEC's own regulations for the Wild, Scenic and Recreational Rivers Act prohibit the use of this bridge for motorized recreation because it is located in a Scenic River corridor.

Using the Polaris Bridge to permit snowmobiles to cross the Scenic River Area of the Hudson River would require a variance or change in Part 666 of Title 6 of 6

NYCRR 666.13[E][5][6] which now prohibits public motorized recreation uses of the Polaris Bridge in the said Hudson River Scenic Area.

The WSRR Act (and its implementing regulations found in Part 666 of Title 6) regulates the activities within the Scenic River Area. 6 NYCRR 666 does not authorize the use of the Polaris Bridge for public motorized recreation. A new public snowmobile trail over the Polaris Bridge would not be permissible under 6 NYCRR Part 666.13, Part E, the Table entitled “Roads, Trails, Bridges and Motorized Access.” A permit is required for a bridge over a designated scenic river for public roads and for non-motorized recreational use. Using the Polaris Bridge for the proposed new Essex Chain Lakes Tract to Route 28N trail, would be a new motorized recreational use of the Polaris Bridge. Since a new public motorized recreational use of the Polaris Bridge is not authorized in Part E of 6 NYCRR 666.13, it is presumed incompatible with the purposes of the WSRR Act and not permitted under 6 NYCRR 666.129(h). Accordingly, the ECLMC UMP cannot authorize the use of the Polaris Bridge for a new snowmobile trail originating in the Essex Chain Lakes Tract and connecting to the existing Route 28N community connector trail between Newcomb and Minerva.

There is no justification for the two proposed community connector snowmobile trails that would use the Polaris Bridge to cross into the Vanderwhacker Wild Forest. Proposal 1A of the plan would require the construction of a new trail on the east side of the Hudson River running northeast into the hamlet of Newcomb. This proposed trail is both redundant and unnecessary. There are existing snowmobile trails to connect Indian Lake and Newcomb on the west side of the Hudson River and DEC fails to thoroughly discuss these existing West of Hudson alternatives to constructing a new trail in a trailless area of the Vanderwhacker Wild Forest.

There is a similar problem with the proposed snowmobile community connector trail 1B which would cross the Polaris bridge and be cut and constructed to reach the Route 28N corridor via the Moose Pond Road. Again this trail is redundant and unnecessary. The Adirondack Park Agency approved a new community connector trail between Newcomb and Minerva using the Route 28N corridor at its July meeting. These trails obviate the need for trails through trailless areas of the Vanderwhacker Wild Forest. Use of the Polaris bridge for snowmobiles and

construction of community connector snowmobile trails 1A and 1B would put motorized use too close to the defined Remote Interior areas in the Vanderwhacker Wild Forest. Proposed Community Connector Snowmobile Trails 1A and 1B would also necessitate an evaluation as to whether the amount of tree cutting would be "material" when considered with the cumulative, total amount of tree cutting anticipated to construct the whole Adirondack Forest Preserve Community Connector Snowmobile Trail as noted by State Supreme Court in the Seventh Mountain Snowmobile case. The mileage of these new trails will also figure in any calculation of a "material increase" in snowmobile trail mileage.

Further, the two routes 1A and 1B that DEC proposed to cross the Polaris (Iron) Bridge have major construction and long-term maintenance issues. Either one of these proposed routes would also create a redundant snowmobile corridor because of the existing snowmobile route to the west of the Essex Chain Lakes Management Complex that utilizes the Cornell Road and connects Indian Lake to Newcomb and Minerva, and is described in the ECLMC UMP on pages 45 and 47. Unplowed town roads on the west side of the Hudson provide another route into Newcomb from the proposed Chain Lakes Road snowmobile trail connecting Indian Lake with Newcomb. Another option would be to construct a new crossover snowmobile trail in the Wild Forest Area south of Goodnow Flow to get snowmobiles from the Wild Forest Corridor to the existing snowmobile route that connects the Cornell road route to the west side of the hamlet of Newcomb.

Another significant issue that concerns ADK involves the Cedar River Bridge. DEC must ensure that the planning, implementation, and construction of this new resource complies with NYS Wild, Scenic, and Recreational Rivers (WSRR) Act Regulations. DEC must follow the law in creating this new recreational resource in the Essex Chain Lakes Management Complex. Allowing snowmobiles to cross the Scenic River Area of the Cedar River on a new bridge would require a variance or change in Part 666 of Title 6 of 6 NYCRR 666.13[E][5][6] which now prohibits public motorized recreation uses of the said Cedar River Scenic Area and the use of a bridge to carry that public snowmobiling traffic.

Further, DEC must also address in detail the justification/alignment with law, policy, and management practice for allowing motorized use within the Wild River

corridor of the Hudson River which would likely be necessary for a snowmobile route using the Chain Lakes Road South and a bridge over the Cedar River. DEC must analyze their plans for the Essex Chain Lakes Management Complex in the context of the Blue Mountain Wild Forest UMP (attached and incorporated by reference) which calls for the phasing out of snowmobiles in the ¼ mile wide Wild River corridor of the Cedar River, which is a designated “wild river.”<sup>2</sup> In the Blue Mountain Wild Forest UMP DEC states,

“The State Land Master Plan states that wild river areas must be managed in accordance with the guidelines for wilderness areas, which prohibits motor vehicles; including snowmobiles, aircraft, and motorized equipment.”<sup>3</sup>

DEC has asserted that this route would be possible given alleged grandfathering of public motorized use on the road in that area. However, ECL Article 15, Title 27, Section 15-2709 (2) clearly does not permit this use (see above).

### **Floatplanes**

DEC fails to consider that the western half of Pine Lake falls within the Wild River corridor of the Cedar River. The use in Wild River corridors of Floatplanes, as motorized vehicles, does not conform to the APSLMP or DEC's WSRR Act regulations. DEC must not allow floatplane use within the Wild River corridor area of the Cedar River. DEC must also not allow floatplanes within the Wild River corridor to drop customers at campsites.

Floatplane use on First and Pine Lakes violates several provisions of the ECL. DEC must extinguish the floatplane easements if current floatplane operators stop using First and Pine Lakes and remove all docks, personal property and debris at the any primitive campsites used by floatplanes.

### **Outer Gooley Farmhouse**

DEC must not retain and authorize use of the Outer Gooley Farmhouse as a privately run facility for a “hut-to-hut ski/snowmobile/equestrian touring system.” This would be a violation of Article XIV, section 1 of the state Constitution. DEC must not revisit the situation proposed by the 1932 “Closed Cabin” Constitutional Amendment.

### **Bicycle Use**

ADK supports riding opportunities for bicycles on properly designated administrative roads in the Essex Chain Lakes Primitive Area where those roads have been designated in accordance with the guidelines for administrative roads in Primitive Areas, and where DEC has demonstrated that the continued use of these administrative roads is necessary to reach and maintain structures and improvements whose removal cannot be effected by a fixed deadline, or in the case of primitive areas, not destined to become wilderness, whose presence is of an essentially permanent character (See Page 26 of the Adirondack Park State Land Master Plan).

**Fisheries** - ADK believes that public fishing should be catch and release (See, p.36)

### **Motorized Seasonal Access**

We are disappointed that DEC has decided to extend public motorized access seasonally into the interior of the Essex Chain Lakes Tract along the north-south Wild Forest Corridor, on the Camp 6 road in the north, and along the Chain Lakes Road (south). This plan is contrary to the preferred alternative adopted by the APA that identified a Wild Forest Corridor which clearly planned for the potential winter-use of snowmobiles only (in terms of motorized recreation). Opening this corridor for cars and trucks or other motorized vehicles is contrary to stakeholder negotiations, and the APA process that classified the Wild Forest Corridor for potential winter use by snowmobiles. On pages 2 and 3 in the context of a Wild Forest Corridor along the Chain Lakes Road South and the Camp 6 Road, the *Resolution Adopted by the Adirondack Park Agency with Respect to 2013 Classification Package* the APA lists specifically the uses of “hunting, horse and wagon riding, All-Terrain Bicycling, snowmobiling.” The resolution does not list the use of vehicles and trucks along the Wild Forest Corridor. Extending motorized use for cars and trucks or other motorized vehicles along these corridors will create an unacceptable impact on other forms of recreation in the Essex Chain Lakes and on the adjacent Wilderness and Primitive Areas. We respectfully request that DEC remove this unacceptable extension of motorized vehicle use from the ECLMC UMP.



## **Universal Access**

The Resolution Adopted by the Adirondack Park Agency with Respect to 2013 Classification Package, states on page 6 that The “Wild Forest access along the Boots to Cornell Road to the south shore of Fifth Lake will be possible for the purpose of Universal Access only.”<sup>4</sup> This statement is clarified on page 7 of Attachment D of the Resolution, the State Land Master Plan Area Description, which states, “Wild Forest access along the Boots-to-Cornell Road, and then to the south shore of Fifth Lake was established for the sole purpose of providing access to persons with disabilities.”<sup>5</sup> ‘*Persons with disabilities*’ refers to DEC’s C-P3 Program.<sup>6</sup> This successful program allows those with disabilities to access areas that they would otherwise be unable to enjoy. DEC describes the CP3 program on their web site explaining the use of a TRP for those participating in CP3,

The MAPPWD permit is a temporary revocable permit (TRP) that provides motor vehicle access to certain state lands administered by DEC. MAPPWD permit holders are permitted uncommon access to activities such as hunting, fishing, camping and wildlife observation. The permit is only issued to qualified people with disabilities, who must complete and submit the application linked below.

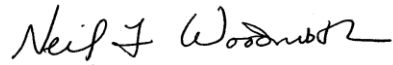
Permit holders can use a permitted vehicle to travel beyond the reach of public roads, to areas where others must hike or bike. The permit provides access for those who seek solitude, connection to nature, undisturbed wildlife habitat, and inclusion with fellow sportspeople.

MAPPWD Routes have been carefully selected in order to protect natural areas and recreational activities.<sup>7</sup>

In the ECLMC UMP, DEC’s reference on page 24 to “Universal Access” for the general public and the use of a second parking lot near the lot designated for those with a CP3 permit for use by the general public is intentionally opaque and attempts to confuse readers regarding the concept of Universal Access. It also undermines the excellent CP3 program by destroying the goal of the program which is uncommon access for people with disabilities who may be seeking “...solitude, connection to nature, undisturbed wildlife habitat, and inclusion with fellow sportspeople.”<sup>8</sup> There may be other ways to enhance the ECLMC UMP with universal access opportunities, but certainly compromising the experience that persons with disabilities may seek on the Essex Chain Lakes by siting a general public parking

area near CP3 site to access the same resource features is definitely not one of those ways. Further, the addition of two adjacent parking areas in the middle of the sensitive Essex Chain Lakes ecosystem is certainly not in the best interest of the resource.

Respectfully submitted,



Neil F. Woodworth

Executive Director and Counsel

Adirondack Mountain Club, Albany Office

The Adirondack Mountain Club (ADK) is dedicated to the protection and responsible recreational use of the New York State Forest Preserve, and other parks, wild lands, and waters vital to our members and chapters. The Adirondack Mountain Club (ADK) founded in 1922, is a member-directed organization committed to public service and stewardship. ADK employs a balanced approach to outdoor recreation, advocacy, environmental education, and natural resource conservation. The Adirondack Mountain Club's 30,000 members enjoy hiking, canoeing, kayaking, cross-country skiing, camping, backpacking, biking, mountaineering, snowshoeing, and other "muscle-powered" outdoor activities. Our members are committed to protecting the places they play in, volunteering countless hours to advance ADK's mission of protecting natural resources and promoting responsible recreation

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<sup>1</sup> ADK December 10 Letter to APA (p. 7)

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<sup>2</sup> <http://www.dec.ny.gov/lands/22609.html> Blue Mountain Wild Forest UMP (p.96 and 152)

<sup>3</sup> <http://www.dec.ny.gov/lands/22609.html> Blue Mountain Wild Forest UMP (p. 152)

<sup>4</sup> Resolution Adopted by the Adirondack Park Agency with Respect to 2013 Classification Package, Attachment A, Description of Action (p. 6)

<http://apa.ny.gov/Mailing/2013/12/StateLand/2013%20Finch%20Resolution%20With%20Attachments.pdf>

<sup>5</sup> Resolution Adopted by the Adirondack Park Agency with Respect to 2013 Classification Package, Attachment D, APSLMP Area Descriptions (Comparison Showing Changes From October 2011) (p. 3)

<sup>6</sup> <http://www.dec.ny.gov/outdoor/2574.html>

<sup>7</sup> <http://www.dec.ny.gov/outdoor/2574.html>

<sup>8</sup> <http://www.dec.ny.gov/outdoor/2574.html>