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RE: Cedar River Bridge and Recreational Trail

Dear Marc,

Thank you for the opportunity to comment on the Cedar River Bridge and Recreational Trail Chain Lakes Rd North - Chain Lakes Rd South, Minerva/Newcomb, NY 12851; Application ID: 5-1599-00021/00001; Permit Application: Article 15 Title 27 Wild, Scenic & Recreational Rivers.

Adirondack Mountain Club

ADK is a nonprofit organization with 30,000 members in 27 chapters and 36 year-round staff offering programs that help people discover, play in, and protect natural places. Since its founding in 1922, The Adirondack Mountain Club has protected wild lands and waters through the work of its dedicated member volunteers and staff. ADK members hike, camp, snowshoe, cross-country ski, paddle, and cycle the lands and waters of the Adirondack Park and other state lands. Our members are also monitors and maintainers of trails and recreation infrastructure as well as watchdogs of public lands and watersheds to monitor for invasive species or irresponsible and destructive motorized trespass.

We respectfully request that you consider the following concerns and comments outlined below.

ADK is concerned that the proposed Cedar River Bridge does not comply with NYS Wild, Scenic, and Recreational Rivers (WSRR) Act Regulations. The Department of Environmental Conservation (DEC) must follow the law in creating this new recreational resource in the Essex Chain Lakes Management Complex. DEC’s desire to allow snowmobiles to cross the Scenic River Area of the Cedar River on a new bridge would require DEC to seek a site specific variance for 6 NYCRR 666.13[E]5.b(i) which now
prohibits public motorized recreation uses of a bridge to carry that public snowmobiling traffic (see 6 NYCRR 666.9 for Variance procedure).

6 NYCRR 666.9 clearly states, “No variance may authorize any development or improvement prohibited by the act.”

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 the proposed bridge over the Cedar River and the existing bridge over the Hudson River. DEC must analyze their plans for the Essex Chain Lakes Management Complex in the context of the Blue Mountain Wild Forest 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.”¹ 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.”²

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. 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.

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 construction of the Cedar River Bridge for motorized use, nor does it support the proposed alteration and expansion of use for a public snowmobile trail on the Polaris Bridge.

In fact NYCRR 6 NYCRR 666.13[E]5.b(i) clarifies that,

“New or extended public roads, private roads open to the public, and any bridges necessary thereto may be constructed only to provide access for the public to the shoreline of a portion of a scenic river area that is at least 2 land-miles, as measured along the river, from the nearest existing public access on the same side of the river. Except for that portion of a public road which provides access to a river, all such new or extended roads shall be constructed no closer than 500 feet from the river bank.”

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 Cedar River Bridge and the Polaris Bridge to carry the snowmobile and groomer traffic of 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 motorized use of the Polaris Bridge, the proposed Cedar River 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.

Logging and lease club use of the Polaris Bridge or the South Chain Lakes Road, and historical use of a Cedar River bridge, by lessees and their invitees is not equivalent to general public recreational use that would support a grandfathering argument. There is no evidence that either Finch Pruyn or its lease or snowmobile clubs permitted the general public to use the old Cedar River Bridge, 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 Cedar River Bridge, 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 roads without paying dues or any fees 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 [C8A]
snowmobile community connector trail route [see Image 2 below] between Indian Lake and Newcomb.

DEC must not allow motorized use of the proposed Cedar River Bridge or the Polaris Bridge. DEC’s own regulations for the Wild, Scenic and Recreational Rivers Act prohibit the use of these bridges for motorized recreation because they are located in Scenic River corridors. Using the Cedar River Bridge and the Polaris Bridge to permit snowmobiles to cross the Scenic River Areas of the Cedar River and the Hudson River would require DEC to pursue a variance from NYCRR 6 NYCRR 666.13[E]5.b(i), which now prohibits public motorized recreation uses of the Polaris bridge and the proposed Cedar River Bridge over designated Scenic Rivers.

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 proposed Cedar River Bridge or the Polaris Bridge for public motorized recreation. A new public snowmobile trail over the Polaris Bridge or the proposed Cedar River Bridge would not be permissible under 6 NYCRR Part 666.13, Part E, the Table entitled “Roads, Trails, Bridges and Motorized Access.” Using the Cedar River Bridge and the Polaris Bridge for proposed new public snowmobile routes, would be a new motorized recreational use of the Polaris Bridge and the proposed Cedar River Bridge. Since new public motorized recreational use is not authorized in Part E of 6 NYCRR 666.13, it is presumed incompatible with the purposes of the WSRR Act.

DEC has the legal option of seeking a site-specific variance from NYCRR 6 NYCRR 666.13[E]5.b(i). The DEC has chosen not to seek these site-specific variances and accordingly, the proposed new bridge crossing the proposed Cedar River for public snowmobile use and Sno-Cat grooming would violate the aforesaid regulations of the WSRR Act.

There is no justification for the proposed community connector snowmobile trails that would use the Cedar River Bridge and the Polaris Bridge without complying with the regulations of the WSRR Act. We point out that DEC has a very viable option to construction of the proposed Cedar River Bridge if it
chooses not to seek a variance. There is an existing snowmobile trail to connect Indian Lake and Newcomb on the west side of the Hudson River and DEC has failed to thoroughly address the existing West of Hudson alternative, the existing snowmobile trail C8A (see Image 1 and 2 below). There is also a route from Newcomb to Minerva proposed (see Image 2 below). The trails illustrated in Images 1 and 2 below obviate the need for trails through trailless areas of the Vanderwhacker Wild Forest. Use of the proposed Cedar River Bridge and the Polaris Bridge for snowmobiles and construction of community connector snowmobile trails would put motorized use too close to the defined Remote Interior areas in the Vanderwhacker Wild Forest. The proposed snowmobile routes through the Vanderwhacker Wild Forest will also have major construction and long-term maintenance issues.

Thank you for considering the above comments.

Sincerely,

[Signature]

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