State of New York Court of Appeals

OPINION

No. 69
In the Matter of Adirondack Wild:
Friends of the Forest Preserve et al.,
Appellants,
v.
New York State Adirondack Park Agency,
et al.,
Respondents.

Hannah Chang, for appellants.
Laura Etlinger, for respondents.
Adirondack Council, Inc., amicus curiae.

DiFIORE, Chief Judge:

The Adirondack Park is a world-renowned treasure in our own backyard. Created in 1892, its six million acres include 2.6 million acres owned by New York State and 3.4 million acres which are privately held. Larger than several New England states and

incorporating more territory than Yosemite, Yellowstone, Glacier, Grand Canyon, and Great Smoky Mountain National Parks combined, there are 3,000 lakes and ponds and 30,000 miles of rivers and streams in the Adirondack Park (Adirondack Regional Tourism Council, https://visitadirondacks.com/about/adirondack-park [last accessed Oct. 15, 2019]). Our state's constitutional commitment to conservation for more than a century has ensured the continued protection of the region's iconic landscapes while providing extraordinary outdoor recreational experiences to citizens of this state and tourists from around the world. Agencies charged with managing park property must balance, within applicable constitutional, statutory and regulatory constraints, the preeminent interest in maintaining the character of pristine vistas with ensuring appropriate access to remote areas for visitors of varied interests and physical abilities. In this appeal, we review a challenge brought by environmental groups to a determination of the New York State Department of Environmental Conservation ("DEC") made in consultation with the Adirondack Park Agency ("APA") that, among other things, permits seasonal snowmobile use on an existing roadway on property recently acquired by the State and added to the Adirondack Forest Preserve. Because we are unpersuaded by petitioners' contention that the determination either contravenes controlling motor vehicle use restrictions in the Adirondack Park State Land Master Plan ("Master Plan") and Wild, Scenic and Recreational Rivers System Act (ECL 15-2701 et seq. ["Rivers Act"]) or is otherwise irrational, we affirm the challenged portion of the Appellate Division order.

In 2012 and 2013, New York State acquired two tracts of land in the Adirondack Park—the 18,100-acre Essex Chain Lakes Parcel and the 960-acre Indian River Parcel—from The Nature Conservancy, which had recently purchased the land from a pulp and paper manufacturing company named Finch, Pruyn & Co. ("Finch") to facilitate its inclusion in the Adirondack Forest Preserve. Finch had owned the land since the 1800s and used it for commercial timber production. Parcels of the land were leased by Finch to private hunting and fishing clubs for recreational use by members and guests. Upon the State's acquisition of the land, adjacent areas of state-owned property were reclassified and combined with the two newly-acquired parcels to form the Essex Chain Complex Area (the "Complex Area") of the Forest Preserve, encompassing the disputed land at issue here: a one-mile stretch of an existing road called Chain Lakes Road (South). The one-mile portion of the preexisting road is located within one-half mile of the Hudson River where the river is designated "Wild" under the Rivers Act (see ECL 15-2713[1][c]). Both the Rivers Act and the Master Plan restrict motor vehicle use in Wild river areas, with certain exceptions.

As required by Executive Law § 816, DEC, in consultation with the APA, created a management plan for the Complex Area titled the Essex Chain Lakes Management Complex Plan ("Complex Plan") outlining the actions DEC planned to undertake for the recently acquired land in the Complex Area, including the disputed section of roadway. To inform the Complex Plan, the agencies commissioned a law firm to investigate the history of the Essex Chain Lakes Complex Area, with particular emphasis, as relevant here,

on the establishment of roads and the use of motor vehicles. In March 2015, the law firm issued the "Schachner Report," compiling information from public records and the affidavits of 19 individuals familiar with the use of the land, including, among others, former Finch employees, members of private recreational clubs and the descendants of the local families who operated area hunting lodges. The report detailed constant motor vehicle use on existing roadways, beginning in the 1920s and including the use of trucks and other heavy machinery for logging as well as other vehicles, including snowmobiles, for transportation and recreation. Crediting the information in the Schachner Report, DEC concluded that the "operation of motor vehicles, including snowmobiles" constituted "an existing land use on the roads within the Complex Area River Areas." DEC explained in the Complex Plan:

> Before being acquired by the State, much of this Complex Area had been used by the public to access the remote wilderness areas, and later for timber production by Finch Pruyn Company who also provided access for recreation by lessees, licensees, invitees and the public. The local towns created and maintained a road network for public travel and recreation, [that] was later maintained by Finch Pruyn to facilitate access within and throughout the property. Use of these roads predates and continued regularly after the enactment of the [Rivers] Act.

(Complex Plan at 26). With respect to Chain Lakes Road (South) in particular, DEC noted:

> [R]esearch of historical documents, including local town records, and review of testimony from individuals with personal knowledge of the area, indicate that motor vehicle use of the Chain Lakes Road (South) and, seasonally, along this road through the Wild Forest Corridor north of this point, predates, and continued regularly after the enactment of the [Rivers] Act.

(id. at 28). DEC acknowledged that compliance with the Rivers Act, particularly its motor vehicle use restrictions, was required with respect to the portion of Chain Lakes Road (South) that passes within one-half mile of the Hudson River in an area where that body of water has been classified by the legislature as "Wild." However, DEC found "that continued motor vehicle use on this road within the Wild River [corridor] . . . is authorized to continue" pursuant to the River Act's existing land use exception (see ECL 15-2709[2]) and related regulations (Complex Plan at 28). The Complex Plan restricted such motor vehicle use to seasonal snowmobile use and access by other motor vehicles only during the two-month fall hunting season, to be further "constrained by measures adopted by DEC in order to limit public motor vehicle access, and restrict parking to designated areas" (id.).

Accordingly, the Complex Plan permits snowmobile use on a portion of Chain Lakes Road (South) as a link to a 20.6-mile snowmobile corridor connecting the towns of Indian Lake and Minerva in the Adirondack Park. In addition, the Complex Plan allows public motor vehicle access on this road during big game hunting season (from October 1 through early December). In devising the Complex Plan after considering several other alternatives, DEC concluded that the limited seasonal continued use of Chain Lakes Road (South) as a snowmobile trail and road would alleviate the need to disturb natural resources on undeveloped land for the construction of new trails and would facilitate the closure of 23 miles of other roadway resulting in the establishment of a larger primitive area. After a public hearing and comment process, the Complex Plan was submitted to the APA, which

determined that it complied with the Master Plan. DEC formally approved the Complex Plan in March 2016.

Soon thereafter, petitioners brought this combined CPLR article 78 proceeding and declaratory judgment action in Supreme Court. Relevant to this appeal, in the third cause of action petitioners alleged that DEC's approval of public snowmobile use on the portion of Chain Lakes Road (South) designated "Wild" under the Rivers Act violated both the Rivers Act and the Master Plan. Petitioners contended that the Rivers Act's existing land use exception was inapplicable because it was superseded by more restrictive provisions in the Master Plan which they claim contains no similar exception and, in any event, asserted that the determination that public snowmobile use was an existing land use was irrational. Supreme Court converted petitioners' action for declaratory relief into a CPLR article 78 proceeding, denied relief and dismissed the petition in its entirety. Regarding the third cause of action, Supreme Court concluded that DEC was authorized to permit snowmobile use on the disputed portion of roadway under the Rivers Act's existing land use exception, concluding that determination was not arbitrary or capricious, lacking rational basis or affected by an error of law.

On petitioners' appeal, the Appellate Division affirmed in a divided decision. With respect to the Chain Lakes Road (South) controversy, all five Justices agreed that the Rivers Act's existing land use exception was applicable and was not superseded by the Master Plan (Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency, 161 AD3d 169, 175, 178 [3d Dept 2018]). The majority further

held that DEC rationally concluded that the proposed snowmobile use was a permissible continuation of an existing land use. Two Justices dissented and would have annulled the Complex Plan to the extent it permitted snowmobile use on the disputed portion of roadway, reasoning the proposed public use would impermissibly expand the prior, "private" use and therefore did not meet the criteria of the exception (id. at 181-182). Petitioners appeal as of right (see CPLR 5601[a]), challenging only the portion of the order dismissing the third cause of action, and we now affirm.

Petitioners argue that the Rivers Act's existing land use exception conflicts with a more restrictive prohibition on motor vehicle use in the Master Plan, triggering a conflict provision in the Rivers Act (see ECL 15-2721) under which the more restrictive provision controls. Respondents argue that the Master Plan does not preclude DEC from exercising its authority under the Rivers Act because the relevant provisions of the Rivers Act and the Master Plan are compatible and recognize that DEC retains exclusive authority, independent of the Master Plan, to approve existing land uses on Wild river areas on state land in the Adirondack Park.

As this case did not involve a determination made after a quasi-judicial hearing required by law, judicial review is limited to whether the challenged portion of DEC's determination was irrational, arbitrary and capricious or contrary to law (Matter of Peckham v Calogero, 12 NY3d 424 [2009]; CPLR 7803[3]). The propriety of this determination turns, in part, on the meaning of several provisions of the Rivers Act. "[W]hen presented with a question of statutory interpretation, our primary consideration is

to ascertain and give effect to the intention of the [l]egislature" (Samiento v World Yacht Inc., 10 NY3d 70, 77 [2008], quoting Matter of DaimlerChrysler Corp. v Spitzer, 7 NY3d 653, 660 [2006]). Because "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (Majewski v Broadalbin-Perth Cent. School Dist., 91 NY2d 577, 583 [1998]; see DaimlerChrysler, 7 NY3d at 660).

The Rivers Act addresses the stewardship of rivers and their immediate environs in the State that are designated as part of the Wild, Scenic and Recreational Rivers System (the "Rivers System"). Under the Rivers Act, DEC has "exclusive jurisdiction" over all river areas on state land and the APA has authority over any privately-owned part of a river area within the Adirondack Park (ECL 15-2705). Based on recommendations from DEC and the APA (see id. 15-2715[1]), the legislature classifies each river in the Rivers System as wild, scenic or recreational (id. 15-2713; 2714). The boundaries of the protected river areas on state land generally extend one-half mile from each bank (id. 15-2707[2][a][2]; 2711). The one-mile segment of Chain Lakes Road (South) at issue here is located within a half-mile of the Hudson River in an area where the river is designated "Wild" (see id. 15-2713[1][c]). Under the Rivers Act, the use of motor vehicles, which is defined to include snowmobiles, is generally prohibited in Wild river corridors (id. 15-2709[2][a]; 2703[7]),[1]

[1]The Rivers Act defines "motor vehicle" as "a device for transporting personnel or material, incorporating a motor or an engine of any type for propulsion and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on, or adjacent to land and water or through water" (ECL 15-2703[7]).

with two exceptions: motor vehicles are permitted (1) for "forest management purposes" and (2) under the existing land use exception DEC relied on here. With respect to the latter, the Rivers Act states that "[n]otwithstanding anything herein contained to the contrary, existing land uses within the respective classified river areas may continue, but may not be altered or expanded . . . unless the commissioner [of DEC] or [the APA] orders the discontinuance of such existing land use" (id. 15- 2709[2]).[2] The Rivers Act also contains a "Conflict with other laws" provision stating that, in the event of a conflict between the Rivers Act and "laws and constitutional provisions" under which certain parks, including the Adirondack Park, are administered, "the more restrictive provisions shall apply" (id. 15-2721).

Here, petitioners argue that the Rivers Act's conflict provision is triggered because the Master Plan contains a more restrictive provision governing motor vehicle use – one that contains no exception for preexisting uses. The APA, in consultation with DEC, drafted the Master Plan to guide development and use of state land in the Adirondack Park (see Executive Law § 816) and it is tasked with classifying all land as one of seven basic

[2] As noted by two of our dissenting colleagues (see Wilson, J., dissenting op. at 22), the existing land use provision goes on to permit payment by the state of "adequate compensation" for discontinued existing land uses, recognizing compensation of the "real property owner" may be appropriate when the APA orders the discontinuation of an existing land use on privately owned river corridor property in the Adirondack Park or DEC orders the discontinuation of an existing land use on privately-owned river corridor property located outside the park. Petitioners did not contend below and do not argue in this Court that the inclusion of the "adequate compensation" clause somehow restricts the scope of DEC's authority not to discontinue an existing land use – i.e., to permit the continuation of an existing land use on newly-acquired state land, as occurred here.

categories: Wilderness, Primitive, Canoe, Wild Forest, Intensive Use, and Historic. Under the Master Plan, public motor vehicle use is not permitted in areas the APA has classified as "Wilderness" – "an area of state land or water having a primeval character, without significant improvement or permanent human habitation" – except for emergency use by appropriate officials (Master Plan at 22). The disputed portion of roadway is not in an area classified by the APA as "Wilderness." Indeed, Chain Lakes Road (South) traverses an area the APA has classified as "Wild Forest" – "where the resources permit a somewhat higher degree of human use than in wilderness, primitive or canoe areas" and which "frequently lacks the sense of remoteness [of such areas,]" "while retaining an essentially wild character." Motor vehicle use, including snowmobile use, is expressly authorized in Wild Forest areas.[3] However, the Master Plan provides that river corridors in the Adirondack Park designated as "Wild" under the Rivers Act should be managed as "Wilderness" areas (id. at 44). Because the one-mile stretch of roadway is in a Wild river corridor, petitioners contend the provision in the Master Plan precluding public motor vehicle use in Wilderness areas[4] conflicts with the Rivers Act and, thus, governs here by virtue of the conflicts provision.

[3] In the Wild Forest section under the subsection "Snowmobile trails," the Master Plan states that "the mileage of snowmobile trails lost in the designation of wilderness, primitive and canoe areas may be replaced in wild forest areas with existing roads," noting that "appropriate opportunities to improve the snowmobile trail system may be pursued subject to basic guideline 4 . . . where the impact on the wild forest environment will be minimized, such as . . . designation of new snowmobile trails on established roads in newly acquired state lands classified as wild forest" (Master Plan at 34-35).

[4] The Wilderness section of the Master Plan contains general non-conforming use provisions that – like the Rivers Act – preclude "additions or expansions of non-

Petitioners' argument lacks merit. Under a plain reading of the Rivers Act and the Master Plan, DEC's authority to approve motor vehicle use in Wild river corridors located on state land in the Adirondack Park under the existing land use exception in the Rivers Act is not superseded by the Master Plan's general prohibition of public motor vehicle use in areas the APA has classified as Wilderness. Even accepting for purposes of this case that the Master Plan is a "law" or "constitutional provision" that could trigger the Rivers Act's conflict provision—an issue we need not reach—there is no conflict here. The Rivers Act explicitly grants DEC "exclusive jurisdiction" over all river areas on state land (ECL 15-2705). Likewise, the Master Plan itself recognizes that DEC has the authority – "independent of the [M]aster [P]lan" – to regulate uses of Wild river areas on state land in the Adirondack Park (Master Plan at 4). The Wild Scenic and Recreational Rivers section of the Master Plan begins by clarifying that "[t]he classification system and the recommended guidelines specified below are designed to be consistent with and complementary to both the basic intent and structure of" the Rivers Act (id. at 43). Thus, under the Master Plan, DEC's proposed use of the existing road does not conflict with the Master Plan because authority over this particular type of state land is ceded exclusively to DEC "independent of the [M]aster [P]lan" and the Master Plan directs that the

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conforming uses" (Master Plan at 19). The Master Plan further provides that "nonconforming 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" (Master Plan at 19). This provision, referring specifically to "newly-classified wilderness areas" does not conflict with the Rivers Act's existing land use provision, applicable to the Wild river corridor at issue here. Our dissenting colleagues' extensive reliance on this non-conforming use provision (see Wilson, J., dissenting op., at 14-16), is therefore misplaced.

"recommended guidelines" on which petitioners rely are to be interpreted consistently with provisions in the Rivers Act. Notably, the APA – which drafted the Master Plan and is granted authority to interpret its provisions (Master Plan at 13-14) – reached the same conclusion: that the Complex Plan permitting snowmobile use on state-owned land in a Wild river area under the Rivers Act's existing land use exception did not contravene the Master Plan. That is, the drafter of the Master Plan interprets the provision in the Plan reserving DEC's authority to administer the Rivers Act as eliminating any alleged conflict between that Act and the Master Plan, as well as preserving DEC's authority to permit existing uses to continue under the Rivers Act (see Matter of Gaines v New York State Div. of Hous. & Community Renewal, 90 NY2d 545, 548-549 [1997] ["(T)he interpretation given to a regulation by the agency which promulgated it and is responsible for its administration is entitled to deference if that interpretation is not irrational or unreasonable."]). Therefore, DEC's conclusion that the propriety of continued snowmobile use on the disputed parcel turned on the applicability of the Rivers Act's existing land use exception is not contrary to law.[5]

Petitioners nonetheless argue that, even if it were applicable (as we have concluded), the Rivers Act's existing land use exception was improperly applied here. DEC's

[5] Notwithstanding the hyperbole in Judge Wilson's dissent, by construing the provisions of the Master Plan consistently with the view espoused by the APA – the drafter of the document and the agency expressly authorized to interpret it – we are not "amending" the Master Plan, circumventing the statutorily required amendment process. We are fulfilling the distinctly judicial role of resolving a dispute concerning the proper interpretation of the text of the relevant statutory and regulatory scheme.

determination that seasonal snowmobile use on the one-mile stretch of Wild river area roadway was permitted under the Rivers Act as an "existing land use[]" without alteration or expansion may not be disturbed unless it lacks a rational basis or is arbitrary and capricious (see Calogero, 12 NY3d at 431; Matter of Gilman v New York State Div. of Hous. & Community Renewal, 99 NY2d 144, 149 [2002]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (Calogero, 12NY3d at 431). "If a determination is rational it must be sustained even if the court concludes that another result would also have been rational" (Matter of Madison County Indus. Dev. Agency v N.Y. Auths. Budget Off., 33 NY3d 131, 135 [2019]; see Matter of Wooley v New York State Dept. of Correctional Servs., 15 NY3d 275, 280 [2010]).

With respect to the existing land use determination, DEC largely relied on the Schachner Report and its supporting documents. The Schachner Report outlines the factual history of the establishment of Chain Lakes Road (South) and the nature of motor vehicle use on the roadway, based on land records and affidavits of 19 individuals familiar with the historic use of the land. The affiants included former, long-time Finch employees, a former contract logger, a former superintendent of the Indian Lake Highway Department, a retired DEC forest ranger, members and a caretaker of private recreational clubs and the descendants of local families who operated area hunting lodges. Citing these affidavits and records, the report explains that the area had been inhabited since at least 1866, and Chain Lakes Road (South) existed and has been used for transportation since the mid- to late-1800s. Chain Lakes Road was designated a highway in the late 1800s and Finch

continued the historic land uses from the time it purchased the property in the 1890s. From the 1940s onward, after Finch initiated larger-scale logging operations, the roadway was subject to heavy commercial use as the company frequently drove cars, Jeeps, ten-wheel tractor-trailers, and trucks on Chain Lakes Road to transport pulp and logs. According to a former Finch employee, "many" people, including Finch employees, contract loggers, members of the recreation clubs, and members of the general public, used the roadways on the property, and an additional affiant stated that the general public used Chain Lakes Road. The use was so significant in scope that, in the 1970s, Finch's Woodlands Department crew of 15 to 30 workers – tasked with maintaining roads on the property – improved Chain Lakes Road (South) to make it more passable. The report also notes that, since at least the 1960s, there has been significant snowmobile use on the road during the winter for transportation and recreational purposes. By the 1990s, members, families, and guests of four different recreational clubs used the property, including the road, for access to hunting and snowmobiling. Further, even after The Nature Conservancy acquired the parcel, Finch continued its logging operations on the property under contract. Based on these facts, DEC's determination that the limited, seasonal motor vehicle use authorized in the Complex Plan on the disputed portion of roadway constituted a continuation of an existing land use was not irrational.

Petitioners contend that the DEC-approved use impermissibly alters or expands the preexisting use because the land had been held privately and now is being opened to the public. But it was rational for DEC to conclude that the contemplated use of the disputed

one-mile portion of the road during the winter and hunting season would not necessarily alter or expand the prior use within the meaning of ECL 15-2709 (2), even assuming prior users of the road could not accurately be characterized as members of the "public." Opening the road to public snowmobile use will not alter or expand the nature of the existing use; people have used snowmobiles on the land for decades, as described by numerous affiants cited in the Schachner Report. Moreover, Finch's commercial operations on Chain Lakes Road (South) involved year-round motor vehicle use, including that of tractor-trailers and other logging machinery, and Finch also permitted members and guests of four recreational clubs to use motor vehicles on the road for hunting and snowmobiling. Under the Complex Plan, this one-mile stretch of road will now be used only by snowmobilers during the limited snow-season (and by hunters during a two-month hunting season)—and the prior, year-round and heavy commercial motor vehicle use will be eliminated. In resolving the existing land use question, it was rational for DEC to focus on the nature and scope of the prior motor vehicle use, without deeming the identity of the vehicle operators (previously primarily Finch employees and club members, now members of the "public") to be dispositive of the alteration or expansion question. While one of our dissenting colleagues points to the absence of empirical evidence comparing the volume of traffic on the roadway when it was owned by Finch to the volume anticipated under the Complex Plan (see Fahey, J., dissenting op. at 7-8), retrospective data will rarely be available when privately-owned land is acquired by the State, nor can DEC be faulted for failing to quantify a prediction concerning future use. On rationality review, our role is to determine whether there is any basis in the record for the conclusion reached by the agency

– a standard that is met here. Thus, DEC did not exceed its authority under the Rivers Act to approve, as an existing land use, limited seasonal motor vehicle use, specifically snowmobile use, on the state-owned portion of Chain Lakes Road (South) that is designated a Wild river area.

Accordingly, the order of the Appellate Division insofar as appealed from should be affirmed, with costs.

Matter of Adirondack Wild: Friends of the Forest Preserve
v New York State Adirondack Park Agency

No. 69

FAHEY, J. (dissenting):

I respectfully dissent.

I.

New York is fortunate in its unique commitment to the preservation of forests and the watersheds they protect. This did not happen by accident. It is the product of over a

century of sustained leadership by all branches of state government. That leadership required the ability to reject proposed compromises over the use of these lands. Whether it was the proposal of "scientific forestry" at the 1915 Constitutional Convention, which was rejected,[1] or the use of motorized vehicles proposed here, every plan that undermines the integrity of the natural environment of the Adirondacks inevitably weakens the long term viability of that forest as a "forever wild" preserve (see NY Const, art XIV, § 1).

The conclusion by the Department of Environmental Conservation (DEC) that motor vehicle use on the relevant portion of Chain Lakes Road South would not be expanded after the road is opened to the public is bewildering. That conclusion requires a factual basis of support for this Court to uphold it. The record in this case does not provide such a foundation. The record supports the conclusion that there was preexisting private use, but nothing in the record or in any objective comparison of similar situations supports DEC's decision that motor vehicle use on the road will not expand. Reason dictates that to open a closed, private area to public use will result in an "expansion" of the previous use.

The goal of preserving the Adirondacks cannot be achieved by balancing competing interests that desire to use the land for economic or recreational purposes against the larger

[1] See Philip G. Terrie, Forever Wild Forever: The Forest Preserve Debate at the New York State Constitutional Convention of 1915, New York History, Vol. 70, No. 3, 251-275 (July 1989), available at http://www.jstor.org/stable/43460261 (last accessed October 15, 2019). As Terrie explains, principles of scientific forestry, which supported the "exploitation of publicly-owned resources" such as trees by "properly trained experts," were rejected at the 1915 Constitutional Convention (see id. at 264-273).

goal of strict preservation in order to protect the overall ecosystem of eastern New York State. This larger goal can only be accomplished if we have the courage to say no.

II.

Initially, I agree with my colleagues in the majority that the "existing use" exception of the Wild, Scenic, and Recreational Rivers System Act (the Rivers Act) is applicable here (see majority op at 9-12). It is undisputed that the relevant one-mile portion of Chain Lakes Road South is located within a "Wild" river area, and therefore that motor vehicle use, including snowmobile use, is generally prohibited on that portion of the road both under the Rivers Act and the Adirondack Park Agency (APA) Master Plan (see ECL 15-2703 [7]; ECL 15-2709 [2] [a]). The existing use exception upon which DEC relies provides that existing, non-conforming land uses "within the respective classified river areas may continue, but may not be altered or expanded except as permitted by the respective classifications" (ECL 15-2709 [2]). Consequently, unless motor vehicle use on this portion of the road was (1) preexisting and (2) will not be altered or expanded when the road is opened to the public, motor vehicle use is prohibited. I further agree that the record demonstrates that motor vehicle use on the relevant portion of Chain Lakes Road South existed when the land was owned by the paper company Finch, Pruyn & Co. (Finch Pruyn) (see majority op at 13-15).

In addition, I agree with the majority that DEC rationally concluded that public motor vehicle use would not "alter" the preexisting land use. Although the Rivers Act does not define what constitutes an alteration, it should reasonably be considered a change in

the *nature* of the existing land use, rather than a change in *who* is using the land, as petitioners suggest. It would have no meaningful impact on the Wild river area for members of the public to use motor vehicles on a road where the same kinds of motor vehicles were already being used by employees of Finch Pruyn and recreational club members, *so long as* the volume of motor vehicle use does not increase, an issue which is addressed by the "expansion" prong of the existing use exception.

There, however, my agreement with the majority ends.

The Rivers Act does not define the word "expanded." "In the absence of a statutory definition, 'we construe words of ordinary import with their usual and commonly understood meaning, and in that connection have regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase' " (Yaniveth R. v LTD Realty Co., 27 NY3d 186, 192 [2016], quoting Rosner v Metropolitan Prop. & Liab. Ins. Co., 96 NY2d 475, 479-480 [2001]). One ordinary meaning of "expand," and the one relevant here, is "to increase the extent, number, volume, or scope of" (Merriam-Webster Online Dictionary, expand [http://www.merriam-webster.com/dictionary/expand]; see also Webster's New Collegiate Dictionary 402 [1977], expand ["to increase the extent, number, volume, or scope of"]). Accordingly, for DEC's determination that motor vehicle use on the road would not "expand" to be rational, there must be some basis in the record upon which DEC could reasonably conclude that once the road is opened to the public, motor vehicle use on the road would not increase in extent, number, volume, or scope.

The judicial standard of review for an administrative agency decision, while deferential, does not require the Court to act as a rubber stamp. We are obliged to reverse an administrative determination if it is arbitrary and capricious, that is, "when it is taken without sound basis in reason or regard to the facts" (Matter of Peckham v Calogero, 12 NY3d 424, 431 [2009]). Here, DEC's determination was made without sound basis in reason and in disregard of the record facts. There is no basis in the record for DEC to conclude that motor vehicle use on the road would not increase in extent, number, volume or scope once the road is opened to the public. In fact, the only information in the record on that subject contradicts DEC's determination.

III.

This portion of Chain Lakes Road South has never before been open to *public* use. On this record, all public use constitutes an expansion. The Appellate Division majority relied on statements contained within four affidavits included in the Schachner Report where the affiants stated, in conclusory fashion, that they had seen "the public" using Chain Lakes Road South when it was still owned by Finch Pruyn (see Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency, 161 AD3d 169, 176-177 [3d Dept 2018]). As the dissenting Justices stated, however, "when read in context, most of these are in fact describing use by club members and their guests—as distinguished from the owner's labor force—and some apparently describe use by trespassers" (id. at 180 [Garry, P.J., concurring in part and dissenting in part]). These affidavits acknowledge that the land was owned by Finch Pruyn, and they provide no

explanation for how the affiants knew that the people they saw using the road were not Finch Pruyn employees or recreational club members with whom the affiants were simply unfamiliar. Furthermore, even assuming that these people were in fact members of the general public, that merely made them trespassers on private land. I agree with the dissenting Justices that "[t]he fact that some persons who had no legal authority to enter the area may previously have taken advantage of its remote character to use it without permission should not serve as the basis for a principled determination that it should now be opened to the general public" (id.). Moreover, use by such trespassers "cannot be considered to be commensurate with the level of use that will result from opening the road to the general public as part of a marked and mapped snowmobile corridor, established for the stated purpose of encouraging snowmobilers to travel between two communities" (id.).

More importantly, "DEC itself makes no claim that there was previous public use of the Chain Lakes Road section" (id. at 181), and DEC does not rely on the affidavits' conclusory mentions of "public" use as providing a rational basis for its decision. DEC concedes that this portion of the road has never before been open to public use. Instead, DEC has made two arguments. First, DEC asserts that it would be "speculative" to conclude that opening the road to public motor vehicle use would constitute an expansion of the existing use. Second, DEC argues that Finch Pruyn employees drove heavy logging trucks and equipment on the road regularly until 2012, whereas now members of the public will use snowmobiles on the road only in the winter and other passenger motor vehicles on the road only during hunting season. For that reason, DEC argues, it could rationally

decline to assume that opening the road to the public will constitute an expansion in motor vehicle usage.

DEC's arguments turn the Rivers Act existing use exception on its head. The *default* rule, established by the Rivers Act and the Master Plan, is that motor vehicles are prohibited in Wild river areas (see ECL 15-2709 [2] [a]). To approve a unit management plan that allows motor vehicles in a Wild river area, DEC must have a rational basis for determining that motor vehicle use was already existing, that it would not be altered, and that it would not be expanded (ECL 15-2709 [2]). If there is no rational basis in the record for DEC to make those determinations, motor vehicle use may not continue. DEC cannot merely point to the *absence* of evidence in the record regarding the increase of motor vehicle traffic as the rational basis for its determination. There is simply no record support for DEC's determination that motor vehicle use on the road will not expand. DEC was required to point to information in the record demonstrating that motor vehicle use will *not* expand. If DEC cannot do so, motor vehicle use is prohibited by statute. That is especially true where, as here, DEC has not even attempted to measure, in any form, whether the volume of motor vehicle traffic will increase once the road is opened to the public.

On that issue, the record is entirely silent. DEC does not know the approximate volume of motor vehicle traffic on the road when it was owned by Finch Pruyn, and DEC does not know what the approximate volume of motor vehicle traffic will be when the road is opened to the public. DEC has no objective data by which to measure the anticipated volume of motor vehicle traffic when the road is opened to the public. DEC has not

attempted to study the change, if any, in motor vehicle traffic in similar areas that were previously privately owned and then opened to public use. DEC did not attempt to survey members of the public to approximate the anticipated volume of motor vehicle traffic. How DEC could possibly purport to claim, based on this lack of information, that motor vehicle use on the road will not increase in extent, number, volume, or scope once the road is open to the public escapes me. Instead, DEC provided the legal equivalent of "trust us." That cannot survive even rational basis scrutiny.

DEC can point to no facts in the record supporting its theory that any increase in public motor vehicle traffic, and any corresponding potential harm to the Wild river area, will be offset by seasonal use and lighter vehicles. DEC argues that it was rational to conclude there would be no expansion of motor vehicle use because the weight of the vehicles traveling on the road will be lighter than those Finch Pruyn sometimes used and because the public will use the road only seasonally. Those arguments are based on nothing more than the assumption that any increase in motor vehicle traffic will be offset by the weight of the vehicles used seasonally. DEC did not attempt to measure the potential impact to the Wild river area by lighter-weight but increased-volume motor vehicle use, nor did it attempt to measure whether, even though the public use would be seasonal, motor vehicle traffic on the road would nevertheless increase overall. If the volume of public motor vehicle traffic will increase significantly above the volume of traffic when the road was privately owned, that increase in volume may not be offset by the seasonal public use. In other words, a significant increase in volume of traffic, even if it occurs only during part

of the year and with passenger vehicles and snowmobiles, could detrimentally impact the Wild river area and its surrounding environs, contrary to the purpose of the Rivers Act (see ECL 15-2701). DEC's shortcut reasoning undermines the purpose of the Rivers Act and the public policy purposes behind the protection of the Adirondack Park as a whole. This Court should not sanction it, even under a deferential rational basis review standard.

The only record evidence on this particular issue—a comparison of motor vehicle use of the road when it was privately owned versus anticipated motor vehicle use when the road is opened to the public—supports the conclusion that motor vehicle use on the road will expand. Petitioners submitted an affidavit from a lifelong resident of Indian Lake and former APA board member, who averred that based on his experience, "snowmobile community connectors generally receive heavy use from the public snowmobile community, and the level of use generally exceeds that of snowmobile trails located on private lands that are not open to the public." Nothing in the Schachner Report or otherwise submitted by respondents refutes that assertion.

Importantly, DEC's own Statement of Findings, issued pursuant to SEQRA on the same date that the Essex Chain Lakes Management Complex Plan was approved, supports the opposite conclusion. There, DEC acknowledged that there may be a "potential increase in volume of visitors traveling by car to the Complex area" and "a potential increase in the number of snowmobiles utilizing the proposed community connector trail," which might result in increased greenhouse gas emissions. DEC stated that it was "reasonably foreseeable for the local community to have some minor growth inducing impacts from the

success of the multiple-use trail as a snowmobile trail." DEC also acknowledged an "expected increase in the number of snowmobiles" when stating that the resulting increased emissions would be offset by stricter emission standards in snowmobile manufacturing. DEC's *own documents* therefore recognize an "expected increase" in the volume of motor vehicle use once the road is opened to the public. Motor vehicle use therefore will be "expanded," contrary to the requirements of the Rivers Act existing use exception (see ECL 15-2709 [2]).

IV.

There is record evidence supporting the conclusion that motor vehicle use on Chain Lakes Road South will expand once the relevant portion of the road is opened to the public. There is no record evidence supporting DEC's conclusion that motor vehicle use will not expand. DEC's determination lacked a rational basis. I would reverse the order of the Appellate Division, insofar as appealed from by petitioners.

One of our great leaders, President and former New York Governor Theodore Roosevelt, is attributed with expressing during a 1903 address at the Grand Canyon the very same values underlying the creation of New York's unique forest preserve: "Here is your country. . . . Cherish these natural wonders, cherish the natural resources, cherish the history and the romance as a sacred heritage, for your children and your children's children.

. . . The world and the future and your very children shall judge you according[ly] as you deal with this sacred trust."[2]

As we act in small matters so shall we act in large. This decision is a relatively small matter. It represents a large compromise of our unique heritage.

[2] Mark Thompson, American Character: The Curious Life of Charles Fletcher Lummis and the Rediscovery of the Southwest 237 (2001). A copy of Theodore Roosevelt's address contained within Roosevelt's papers at the Library of Congress contains similar, but not identical, remarks (see Address of President Roosevelt at Grand Canyon, Arizona, May 6, 1903, Theodore Roosevelt Papers, Library of Congress Manuscript Division, Theodore Roosevelt Digital Library, Dickinson State University, https://www.theodorerooseveltcenter.org/Research/Digital-Library/Record?libID=o289796 [last accessed October 15, 2019]).

Adirondack Wild v NYS Adirondack Park
No. 69

WILSON, J. (dissenting):

The breathtaking majesty of the Adirondack Park is almost surpassed by the breathtaking number of "no snowmobiling" directives the majority careens past. Neither the Federal Constitution nor the Constitution of any State other than New York contains a provision requiring that wild forest lands remain "forever wild." The history of that provision is important to understand the fundamental error made by the majority in authorizing the Department of Environmental Conservation ("DEC") to permit snowmobiles to traverse what is now a wild river area. I turn first to that history, then to the origins and purpose of the Master Plan, then to the Rivers Act (on which the majority

relies), and finally to the defects in the majority's statutory interpretation. Because I conclude existing law bars the DEC from permitting snowmobiles to operate on Chain Lakes Road, I do not address the rationality of its determination.

I

"I'll launch my boat, and idly float
O'er the winding water, and all things note:
All things that gleam along the stream –
Water-bird, water-fly, blossom, or beam.
And thus the hours I'll wing with flowers,
And speed them away in these dreamy hours"

(Alfred Billings Street, "At Rest" in John A. Hows, Forest Pictures of the Adirondacks 1 [1871]). Inspired by Mr. Street's Adirondack poetry, a young real estate lawyer turned surveyor, Verplanck Colvin, traipsed through the Adirondacks for several years, after which the legislature created a post for him: Superintendent of the Adirondack Survey. From that post, he authored the "Report of the Topographical Survey of the Adirondack Wilderness of New York, for the Year 1873." In it, he observed that "within one hundred years the cold, healthful living waters of the wilderness . . . will be required for the domestic water supply of the cities of the Hudson River valley," which, "if the present ratio of increase of population continues . . . must eventually contain one long, marginal city, extending from the Mohawk river to New York" (*Report of the Topographical Survey of the Adirondack Wilderness of New York, for the Year 1873*). To protect that water supply, as well as the natural beauty of the Adirondacks, he concluded: "[f]or the present, the

protection of the forest is all that is required, and unless this be done we shall incur the merited scorn of posterity" (id.). He issued successive reports in the following years, repeating that warning.

In 1885, the legislature and Governor Hill adopted Superintendent Colvin's recommendation, enacting Chapter 283 of the Laws of 1885. That statute established a forest commission and provided that "[a]ll of the lands now owned or which may hereafter be acquired by the state of New York, within the counties of Clinton . . . Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan" – that is, the counties containing the Adirondack forest – "shall constitute and be known as the forest preserve" (L 1885, ch 283, § 7). The legislature then mandated that "[t]he lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands" (id. § 8). The forest commission was given the responsibility "to maintain and protect the forests now on the forest preserve, and to promote as far as practicable the further growth of the forests thereon" (id. § 9).

Seven years later, the Legislature created the Adirondack Park (L 1892, ch 707). Originally, approximately 700,000 acres of the park were state-owned forest preserve, with the balance privately held (*The Adirondacks: New York's Forest Preserve and a Proposed National Park*, New York Conservation Department, at 1 [1968], available at http://digitalcollections.archives.nysed.gov/index.php/Detail/objects/14457 [last accessed Oct. 17, 2019]). "[H]istorians are agreed that at the time of its creation by the Act of 1892, it was intended that the state should acquire all the land within the existing 'blue line'" defining the Adirondack Park's borders (id. at 7). The Adirondack Park Act authorized the

forest commission to purchase additional lands to include within the Adirondack Park and provided that "the Adirondack Park shall for all purposes, be deemed a part of the forest preserve [and] [a]ll laws for the protection of the forest preserve shall be applicable to the Adirondack park." Despite the forest commission's mandate to preserve the park as "wild forest lands," the forest commission authorized mass sales of timber from the Adirondack Park, sparking widespread public outrage (see e.g. *The Adirondack Forests,* The New York Times Company [April 11, 1894], at 4 ["the extensive use of the power conferred upon the Forest Commission will result in defeating the very object for which the Adirondack Park was created and render worthless the expenditure that has been made upon it. . . . The destruction could have gone on without official assistance"]).[1]

"By 1894, the public's faith in legislative protection of the Adirondacks had been seriously eroded and the Constitutional Convention of 1894 seemed to offer one last hope" (*The Adirondacks: New York's Forest Preserve and a Proposed National Park,* at 7). That Convention, being resolved that "preservation of the forests and water-sheds of this State is of the greatest importance to all our people, and to every interest within the borders of the State" (Journal of the Constitutional Convention of 1894, at 426), formed a five-person committee to consider whether to propose a constitutional amendment to preserve the

[1] The DEC is the successor to the forest commission (see *History of State Forest Program,* Department of Environmental Conservation, available at https://www.dec.ny.gov/lands/4982.html [last accessed Oct. 17, 2019] ["In 1911, the Conservation Department, predecessor of today's Department of Environmental Conservation, was created by legislation to consolidate the functions of the Forest, Fish and Game Commission, the Forest Preserve Board, the Water Supply Commission and the Water Power Commission"]).

state's forest land. David McClure, a leader of the New York City bar, chaired the committee, took testimony from Verplanck Colvin, among others, and recommend that the convention adopt the "forever wild" clause to "shut the door" on any depredation of wild forest lands (5 Rec, 1894 NY Constitutional Convention at 2063).[2] By a unanimous vote, the convention adopted the "forever wild" provision to create an "unsurpassable constitutional barrier" to executive branch actions facilitating the depredation of the forest reserve (Frank Graham, Jr., The Adirondack Park: A Political History 127-31 [1978]). The New York's voters enacted it, and it took effect on January 1, 1895. The "forever wild" provision of our Constitution reads:

> "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). "These words within Article XIV, Section 1, of the Constitution of New York State, inaugurated the concept of 'wilderness' into the world of law for the first time ever, anywhere" (Nicholas A. Robinson, *"Forever Wild": New York's*

[2] The delegates were vocal and uniform in their intention to increase the mass of the park and preserve its lands as forever wild (see e.g. statement of Mr. McClure, 5 Rec, 1894 NY Constitutional Convention at 2054 ["the Legislature should purchase all of the forest lands . . . and should preserve them even though it costs millions of dollars to do it"]; statement of Mr. Floyd, id. at 2057 [urging the State to "solidify the Adirondack park" by "acquir[ing] in some way" the privately-held lands within the park's boundaries]; statement of Mr. Mereness, id. at 2058 ["the screech of the locomotives introduced into that lovely section . . . can now be heard, and the time is fast approaching when the whole region will be made desolate and barren, unless the hand of the despoiler is stayed"; the state should "appropriate from its vast resources sufficient moneys to the end that the State may acquire and forever hold our yet beautiful forests for the benefit of all our people"]).

Constitutional Mandates to Enhance the Forest Preserve [Arthur M. Crocker Lecture, Feb. 15, 2007], http://digitalcommons.pace.edu/lawfaculty/284/ [last accessed Oct. 17, 2019]). Our "forever wild" clause remains unique amongst all the constitutions of the other states of the union.[3]

Understanding the tremendous import of the "forever wild" clause, we have construed it strictly. Nearer in time to its adoption than we now are, we rejected a project much more vital to the State's recreation, prestige and economic development than the one-mile snowmobile path at issue here. Lake Placid was selected to host the 1932 Winter Games. Eager to host them, the Legislature passed an act authorizing the DEC Commissioner to build a bobsleigh run on state-owned land in the Adirondack Park (see L 1929, ch 417). Supporters of the development argued that the removal of 2,500 trees, amidst a park of many millions, would be inconsequential. Steadfast in our commitment to the constitutional command of the "forever wild" clause, we voided the legislation: "However tempting it may be to yield to the seductive influences of outdoor sports and international contests, we must not overlook the fact that constitutional provisions cannot always adjust themselves to the nice relationships of life" (Association for the Protection of Adirondacks v MacDonald, 253 NY 234, 241-42 [1930]). In short, we spoke for the trees.[4] Or, as Paul Newman put it: "While progress should never come to a halt, there are

[3] Appellants have not argued that the challenged actions violate the "forever wild" clause; I refer to the clause and its history as important background to an informed understanding of the place of the Adirondack Park, the APA and the DEC in the legislative scheme.
[4] Theodore S. Geisel, The Lorax (1971). The bobsleigh run was subsequently completed on private lands, in time for the 1932 Winter Games.

many places it should never come to at all" (*About the WST Act*, National Wild and Scenic Rivers System, available at https://www.rivers.gov/wsr-act.php [last accessed Oct. 17, 2019]).

Vindicating our Court's judgment, when in 1932 the legislature sent a referendum to the people of New York proposing to amend the "forever wild" clause to permit the construction of recreational facilities within the forest preserve, Governor Franklin Roosevelt denounced the proposal as "unnecessary and potentially dangerous" (*A Foolish Amendment*, The New York Times Company [February 22, 1932], at 16) and the voters rejected it by a nearly two-to-one margin (*Votes Cast for and Against Proposed Constitutional Conventions and also Proposed Constitutional Amendments*, Constitutional Conventions and Amendments [1821-1987], available at https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf [last accessed Oct. 17, 2019]).

II

That history is important in understanding the Adirondack Park Act and the comprehensive plans it created. In the 1960s, the tourism boom in the Adirondacks threatened the wild forest preserve (see e.g. Peter Siskind, *"Enlightened System" or "Regulatory Nightmare"?: New York's Adirondack Mountains and the Conflicted Politics of Environmental Land-Use Reform During the 1970s*, 31 Journal of Policy History 406, 409 [2019]). By 1968, the state-owned lands within the Adirondack Park had "nearly tripled since 1885" to 2,244,828 acres (*The Adirondacks: New York's Forest Preserve and a Proposed National Park*, at 1). At the initiative of Governor Nelson Rockefeller, in 1971

the legislature enacted the Adirondack Park Agency Act ("APA Act"). The Act's legislative findings and purpose state that "[t]he wild forest, water, wildlife and aesthetic resources of the park provide an outdoor recreational experience of national and international significance. Growing population, advancing technology and an expanding economy are focusing ever-increasing pressures on these priceless resources" (L 1971, ch 706, § 801).

The key component of the APA Act was the creation of the Adirondack Park Agency, whose immediate charges were to develop two plans: (1) the Adirondack Park Land Use and Development Plan, designed to "guide land use planning and development throughout the entire area of the Adirondack park, *except for those lands owned by the state*" (id. at § 805 [1] [a] [emphasis added]); and (2) the Adirondack State Land Master Plan "for management of state lands, whether now owned or hereafter acquired, located in the Adirondack park" (id. at § 807 [1]). It is this latter plan, governing management of state-owned lands, that is relevant here and to which I refer as the "Master Plan" (Adirondack Park Agency, *Adirondack Park State Land Master Plan* [December 2013]).[5] The APA Act provides that "[u]ntil amended, the master plan for management of state lands and the individual management plans shall guide the development and management of state lands in the Adirondack park" (id. at § 807 [2]). The APA Act also required the Master Plan to include Unit Management Plans for units classified within the Master Plan.

[5] I cite to the version of the Master Plan that governed at the time the 2016 Management Complex Plan was adopted (as described in maj op 3). The majority cites to the most recent, August 2019 version of the Master Plan. Although there is a slight difference in terminology, there are no major substantive discrepancies between the two versions

Those unit management plans must "conform to the guidelines and criteria set forth in the master plan and cannot amend the master plan itself" (Master Plan at 9).

Some of the relevant substance of the Master Plan came from federal law. In 1968, Congress adopted the Wild and Scenic Rivers Act, codified at 16 USC §§ 1271 *et seq.*, stating the policy of the United States to preserve in unspoiled condition certain rivers and their environs (id. at § 1271). The Act defined "wild river areas" as "rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America" (id. at § 1273 [b] [1]). By contrast, "recreational areas" are those "that are readily accessible by road or railroad" (id. at § 1273 [b] [3]). Rivers "that are designated as wild, scenic or recreational rivers" by a state legislature, agency or political subdivision are included in the federal Wild and Scenic Rivers system. When the APA created the Master Plan, it precisely followed the Wild and Scenic Rivers Act's taxonomy of rivers, dividing New York's rivers into Wild, Scenic or Recreational (compare 16 USC §§ 1273 with Master Plan at 43).

Governor Rockefeller approved the Master Plan in July 1972. In 1973, the legislature "renumbered and then amended Section 807 to Section 816" (Master Plan at 1). Without deciding the issue, the majority accepts "for purposes of this case that the Master Plan is a 'law' or 'constitutional provision'" (maj op at 11), which I too accept for the purpose of my analysis.[6] By allowing snowmobiling on Chain Lakes Road (South), the

[6] Lower courts have held that, as a consequence of the gubernatorial and legislative approval, the Master Plan has the force of legislation (see Helms v Reid, 90 Misc 2d 583

DEC has contravened section 816's requirement that its Complex Plan conform to the Master Plan's numerous prohibitions on snowmobiling in violation of law.

III

In 1972, the legislature passed the Rivers Act (see ECL 15-2701 *et seq.*). The Assembly memorandum in support explained that "[a]s the federal government has already recognized the need for a national wild and scenic rivers system (Public Law 90-542) so should the State of New York recognize the need for a state-wide wild, scenic and recreational rivers system" (Assembly Mem., Bill Jacket, L 1972, ch 869). The memorandum further noted that

> "development of a wild, scenic and recreational rivers system [a]ffecting private lands within the Adirondack Park should come under the jurisdiction of said Agency. Development of the system without the boundaries of the Park shall be within the exclusive jurisdiction of the Department of Environmental Conservation. The Agency and Department of Environmental Conservation are directed to act in close cooperation in any matter related to designated rivers or streams within the Park"

(id.). The Rivers Act's statement of policy and legislative findings specifies "the policy of this state that certain selected rivers of the state which, with their immediate environs, possess the aforementioned characteristics, shall be preserved in free-flowing condition and that they and their immediate environs shall be protected for the benefit and enjoyment of present and future generations" (ECL 15-2701 [3]). That language, partially quoting the

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[Sup Ct, Hamilton County 1977]; Adirondack Mountain Club, Inc. v Adirondack Park Agency, 33 Misc 3d 383, 387 [Sup Ct, Albany County 2011]). That aside, section 816 explicitly requires unit master plans, including the plan at issue here, to conform to the Master Plan. Therefore, whether the Master Plan as a whole has the force of law, section 816 is undeniably a law requiring that the unit plan conform to the Master Plan.

language of the Wild and Scenic Rivers Act, demonstrates New York's intention that the Rivers Act would expand – not contract – the protection of wild and scenic rivers.

The legislature's intention that the Rivers Act would strengthen New York's environmental protections is evidenced by the provision of the Rivers Act at the center of this dispute, ECL 15-2721, which states:

> "Any section of the state wild, scenic and recreational rivers system that is or shall become a part of the Forest Preserve . . . 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 [emphasis added]). Despite the majority's attempt to wish that language away, the underscored portion forms the core of the dispute, to which I now turn.

A

The majority and I work from the same set of undisputed facts, which illustrates how, consistent with New York's intention for the Adirondack Park dating back to its inception, private land can become part of the wildest terrain in the park. In 1866, Harve Bonnie constructed a "sportsman's camp" and shortly thereafter built a road to transport guests to and from the camp: the Chain Lakes Road, which is the subject of the present dispute. In the late 1800s, Jeremiah Finch and Samuel Pruyn bought nearby land and used the road to run logging operations. At some point in the 1950s, visitors to the sportsman's camp and other private clubs along the Hudson River began to use the Chain Lakes Road for snowmobiling. The clubs also allowed camp visitors to use the road for their private

vehicles, as well as commercial vehicles servicing the camp. In 2007, the Nature Conservancy bought the property, including Chain Lakes Road. Six years later, the State of New York purchased the property, and it became part of the Adirondack Park Forest Preserve, consistent with the longstanding legislative mandate that the state acquire private lands within the Adirondack park. As the majority notes, the one-mile portion of Chain Lakes Road (South) at issue here is classified as a "Wild River" area under the Rivers Act (see maj op at 3, 4).

In 2016, nine years after all authorized private snowmobiling had ceased, the Department of Environmental Conservation issued a Management Complex Plan for the newly acquired property that opened the Chain Lakes Road (South), a portion of the road that runs alongside the Hudson River, to public snowmobiling.

B

The APA Act requires that the APA develop the Master Plan "in consultation with the department of environmental conservation, for management of state lands, whether now owned or hereafter acquired, located in the Adirondack park" (L 1971, ch 706, § 807). Like the majority, I assume that the "Master Plan is a 'law' or 'constitutional provision' that could trigger the Rivers Act's conflict provision" without deciding that question (maj op at 11). I further note that the Governor and legislature approved the Master Plan several

months after they adopted the Rivers Act. Thus, I begin with what the Master Plan says about snowmobiles in wild river areas.[7]

Under the Master Plan, "[a] wild river is 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" (Master Plan at 43). The Master Plan further requires that:

> "Wild rivers and their river areas will be managed in accordance with the guidelines for wilderness areas except that no new, reconstructed or relocated structures or improvements will be permitted other than: foot and horse trails, foot trail bridges constructed of natural materials, primitive tent sites with fire rings, and pit privies. Existing lean-tos in wild river areas may be maintained for the balance of their useful lives. Such lean-tos will not be reconstructed or replaced and will ultimately be phased out in favor of primitive tent sites as specified in individual unit management plans"

(id. at 44). The majority agrees that "the Master Plan provides that river corridors in the Adirondack Park designated as "Wild" under the Rivers Act should be managed as 'Wilderness' areas" (maj op at 10).

Despite that acknowledgement, the majority whizzes past several increasingly emphatic legislative "no snowmobiling" commands, without pausing to consider whether the road to its conclusion is barred. The first appears at page 19 of the Master Plan. In wilderness areas (which the majority agrees includes the one-mile stretch of Chain Lakes Road (South) at issue here), the Master Plan states the following:

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[7] Again, whether the Master Plan in its entirety has the force of law, section 816 does. When the legislature in 1973 re-numbered and amended section 808 as section 816, it specifically provided that the individual management plans must conform to the "master plan for management of state lands heretofore prepared by the agency." Section 816 unquestionably has the force of law, even if the Master Plan as a whole does not.

> "(b) any remaining non-conforming uses that were not removed by the December 31, 1975 deadline provided for in the original version of the master plan will be removed by March 31, 1987;
>
> (c) 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"

(Master Plan at 19). The Master Plan then lists several types of conforming uses, such as primitive tent sites, scattered lean-tos and foot and cross-country ski trails, horse trails and directional signs, and provides that "[a]ll other structures and improvements, except for interior ranger stations themselves . . . will be considered non-conforming" (id. at 21). A snowmobile trail, like a cross country ski trail, is a structure or improvement and explicitly disallowed under this provision.

The second "no snowmobiling" mandate disregarded by the majority is even plainer: in case the above language was not clear enough to define snowmobile trails as nonconforming structures in wilderness areas, the Master Plan goes on to specify that "snowmobile trails" (and "roads and state truck trails") are nonconforming structures that "will be removed" from wilderness areas (id. at 21).

I suppose that, if one is going to ignore two plain commands with the force of law, one might as well ignore them all. The majority notes, in passing, that the Master Plan "restrict[s] motor vehicle use in Wild river areas, with certain exceptions" (maj op at 3), which it does: the wilderness area section of the Master Plan contains a subsection titled, "Motor vehicles, motorized equipment and aircraft" (Master Plan at 22). But the immediately following subsection of the "WILDERNESS" section governs "Roads, snowmobile trails and state truck trails," and provides as follows:

> "Any non-conforming roads, snowmobile trails or state truck trails resulting from newly classified wilderness areas will also be phased out as rapidly as possible and in any case will be closed by the end of the third calendar year following classification. In each case, the Department of Environmental Conservation will:
>
> -- Close such roads and snowmobile trails to motor vehicles as may be open to the public
> -- Prohibit all administrative use of such roads and trails by motor vehicles; and
> -- Block such roads and trails by logs, boulders or similar means other than gates.
> (3) During the phase-out period:
> -- the use of motorized vehicles by administrative personnel for transportation of materials and personnel will be limited to the minimum required for proper interim administration and the removal of non-conforming uses; and,
> -- maintenance of such roads and trails will be curtailed and efforts made to encourage revegetation with lower forms of vegetation to permit their conversion to foot trails and, where appropriate, horse trails"

(id. at 23).[8]

The law, as stated in the Master Plan, could not be any more contrary to the majority's conclusion. When the state newly acquires land in the Adirondack Park, the DEC is not free to continue existing uses of snowmobile trails or roads in wild river (wilderness) areas. Instead, the Master Plan requires the DEC to remove those roads as quickly as possible and, in the interim, to render them unusable.

[8] The majority dismisses this subsection by claiming that the land in question is not a "newly-classified wilderness area" (maj op at n 4). However, the Master Plan applies only to "management of *state lands*, whether now owned or hereafter acquired, located in the Adirondack park" (L 1971, ch 706, § 807 [1] [emphasis added]). The Chain Lakes Road (South) land could not have been classified as anything at all under Master Plan until the State purchased the land in 2012 and 2013. At that point, Chain Lakes Road (South) was "newly classified" under the Master Plan, so that the above subsection required the DEC to close it and block snowmobiles from it.

C

I come, then, to the core of the majority's argument. The majority admits, as it must, that the Rivers Act specifically states that if there is any conflict between a provision of the Rivers Act and any other law under which parks are administered, "the more restrictive provisions shall apply" (maj op at 9, quoting Rivers Act, ECL 15-2721). However, the majority concludes "there is no conflict" (id. at 11). Given the Master Plan's repeated and emphatic "no snowmobiling" edicts, how can it be that those "more restrictive" provisions of the Master Plan do not supersede anything in the Rivers Act, in view of the Rivers Act's express statement that they must? According to the majority, even though the Master Plan has the force of law, and even though its snowmobiling prohibitions are more restrictive than anything in the Rivers Act, there is no conflict because the DEC has '"exclusive jurisdiction' over all river areas on state land" independent of the Master Plan (id.), which enables the DEC to rely on the Rivers Act's allowance that the DEC may permit preexisting uses to continue in some wild river areas. That conclusion suffers from numerous flaws.

First, there is a patent conflict between the Master Plan, which requires that the "Department of Environmental Conservation will: close such roads and snowmobile trails to motor vehicles as may be open to the public . . . and, block such roads and trails by logs, boulders or similar means other than gates" (Master Plan at 23) and the Rivers Act's allowance of the continuation of such uses in the DEC's discretion. No convoluted argument about jurisdiction can avoid the clear conflict between a law allowing preexisting uses to continue and one requiring the blocking and removal of snowmobile paths. The

Rivers Act itself resolves that conflict by providing that the "more restrictive" provisions must apply. Blocking and wiping out existing snowmobile trails is indisputably more restrictive than allowing continued use. Particularly when measured against the history of the Adirondack Park and the "forever wild" provision in our constitution, once one admits that the Master Plan has the force of law, it is plain that the Rivers Act itself requires the DEC to adhere to the "more restrictive" provisions of the Master Plan.

Second, the majority has misinterpreted and mischaracterized the DEC's "exclusive jurisdiction." In discussing ECL 15-2705, the majority quotes a snippet of a sentence to support its conclusion. ECL 15-2705's grant of jurisdiction reads:

> "Notwithstanding provisions of any other general or special law, the functions, powers and duties encompassed by this section shall be vested in the Adirondack park agency as to any privately owned part of a river area within the Adirondack park as defined by law which may become part of the system; however, the commissioner shall 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. This section shall not be construed to divest the commissioner from the exercise of functions, powers and duties which have not been delegated by law to the agency."

The full text demonstrates that the purpose of the provision is to divide authority between the APA and the DEC – not to empower the DEC to disregard the environmental protections contained within the Master Plan. [9]

[9] I add that neither the parties nor the majority has considered whether the above language gives the APA, and not the DEC, "powers and duties" over the parcels of land the state here acquired from the Nature Conservancy: "powers and duties encompassed by this section shall be vested in the Adirondack park agency as to any privately owned part of a river area within the Adirondack park as defined by law which may become part of the system" (emphasis added). The DEC's jurisdiction extends to: "[i] all other river areas in the state and [ii] all parts of river areas owned by the state located within the

Further, the majority's statement that "the Master Plan itself recognizes that DEC has the authority – 'independent of the [M]aster [P]lan' – to regulate uses of Wild river areas on state land in the Adirondack Park" likewise rests on a misleading elision, based on a partial quotation (maj op at 11). The full provision says:

> "The Department of Environmental Conservation 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, but may not have such authority to regulate certain uses of waters where all or part of the shoreline is in private ownership. The [Adirondack Park] Agency has the authority to regulate motorized use of wild, scenic and recreational rivers and their river corridors on private lands. Regulations exercising this authority have been promulgated by the Agency"

(Master Plan at 4). The Master Plan does not state that the DEC has the authority to regulate wild river areas "in the Adirondack Park" – it refers to the DEC's jurisdiction over such areas "through state land" (which includes areas outside the Adirondack Park). Rather, it recognizes that the DEC has no jurisdiction over privately-held lands within the Park. The Master Plan thus reflects the language of ECL 15-2705 quoted above and provides no support for the proposition that the DEC has jurisdiction over all wild river areas within the Adirondack Park. The DEC cannot singlehandedly determine the extent of wild, scenic or recreational river areas within the Adirondack Park; those boundaries

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Adirondack park which may become part of the system" (emphasis added). Chain Lakes Road (South) was privately owned land that became part of the system – not a part of river areas owned by the state that became part of the system. It is clear that, before the passage of the APA, the state owned some lands within the Adirondack Park: the Master Plan itself identifies the "non-forest preserve" lands owned by the state within the Adirondack Park (Master Plan at 1-2). The parties have chosen not to raise that issue of division of authority between the APA and the DEC in this litigation, and I do not read anything in the majority opinion to address, much less resolve, it.

"shall be mutually agreed upon by the commissioner and the agency" (ECL 15-2711). Furthermore, the wild, scenic and recreational rivers system is not to be administered everywhere by the DEC; instead, it "shall be administered in accordance with their respective jurisdictions by the commissioner or the agency according to policies and criteria set forth in this title upon establishment of each river area in accordance with section 15-2711 of this chapter" (ECL-2709). Thus, the "jurisdiction" granted to the DEC in ECL 15-2705 is cabined by these additional provisions. True, the DEC's statewide "jurisdiction" comes from a source "independent" from the Master Plan, but that fact does not mean that the DEC's jurisdiction supersedes anything in the Master Plan – it merely recognizes that even if the Master Plan were to disappear, the DEC would retain powers over wild, scenic and recreational river areas.

Third, the majority's "exclusive jurisdiction" argument is a red herring. Who better than judges to appreciate the difference between jurisdiction and substantive rules of law? Even if the DEC had "exclusive jurisdiction" over all wild river areas including those within the Adirondack Park, the Master Plan requires that the "Department of Environmental Conservation will: close such roads and snowmobile trails" (Master Plan at 26 [emphasis added]). The DEC cannot ignore that substantive requirement regardless of the extent of its jurisdiction. The Master Plan further notes that

> "Via the master plan, the Agency has the authority to establish general guidelines and criteria for the management of state lands, subject, of course, to the approval of the Governor. On the other hand, the Department of Environmental Conservation and other state agencies with respect to the more modest acreage of land under their jurisdictions, have responsibility for the administration and management of these lands in compliance with the guidelines and criteria laid down by the master plan"

(id. at 12 [emphasis added]). That language negates the argument that the DEC's jurisdiction supersedes the requirement of compliance with the Master Plan.

Fourth, the majority's interpretation – allowing the DEC to use the Rivers Act to permit the continuation of uses expressly prohibited by the Master Plan – would render nugatory the APA's procedure for amending the Master Plan. The APA Act provides amendments to the Master Plan must be made "in the same manner as [the Master Plan was] initially adopted" (L 1971, ch 706, § 808 [3]), which requires the Governor's approval to take effect (id. at § 807 [1] and [2]).[10] The DEC must use that route – including express gubernatorial approval – if it wishes to permit snowmobile use in areas where the Master Plan says it must immediately eliminate the possibility of snowmobile use. Instead, the majority misinterprets a provision of the Rivers Act – an Act that itself says the most restrictive conditions found in law must prevail to protect our wilderness areas – to scuttle the statutorily required amendment process. We do not interpret legislation to render provisions of other legislation meaningless unless there is no other option (see e.g. Matter of Gonzales v Annucci, 32 NY3d 461 [2018]; In re Cooper, 22 NY 67, 88 [1860]; Hernandez v Barrios-Paoli, 93 NY2d 781, 787 n 2 [1999]; Brown v Wing, 93 NY2d 517 [1999]; Lederer v Wise Shoe Co., 276 NY 459 [1938]). Here, particularly given the overall interrelationship of the Rivers Act and APA Act, and the state's long, visionary and steadfast commitment to the protection of our forest preserve in its pristine condition, the

[10] The Master Plan reiterates the statutorily-required amendment procedure (see Master Plan at 8).

majority errs in allowing DEC to abrogate the terms of the Master Plan in violation of the statutory requisites.[11] Indeed, it is precisely because the Forest Commission did not heed the legislature's directives that the "forever wild" clause of our Constitution exists, namely, to prevent incursions such as this.

Finally, the Rivers Act's grant of authority concerning the continuation of preexisting uses is much more circumscribed than the majority claims.[12] It is limited to situations in which the continuation of a preexisting use is the alternative to a governmental taking. Again, reference to the entire text, rather than the portion quoted by the majority, makes that clear:

> "2. 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

[11] The majority suggests that we should defer to the APA's interpretation of the Master Plan and how it is to be reconciled with the Rivers Act (maj op at 12). However, the majority has assumed that the Master Plan has the force of law because it was submitted to the Governor and legislature for approval, which both granted. Therefore, the Master Plan is not a regulation promulgated by an agency whose interpretations courts review on a deferential basis. Furthermore, even under a deferential standard of review, an agency may not interpret its own regulations in a way that is incompatible with the regulations themselves, as is the case here (see Matter of Visiting Nurse Serv. of NY Home Care v New York State Dept. of Health, 5 NY3d 499, 506 [2005] ["Although it is true that an agency's interpretation of its own regulation generally is entitled to deference, courts are not required to embrace a regulatory construction that conflicts with the plain meaning of the promulgated language"]).

[12] I note that the immediate preexisting use of the Chain Lakes Road was by the Nature Conservancy, not Finch, Pruyn & Co. or any of the nearby camps, and that there may have been some trespassory snowmobile use during the Nature Conservancy's ownership. Whether to interpret "preexisting use" as some preexisting use distant in time, a preexisting use that resulted in the now nonconforming structure, or the most immediate preexisting use, is not an issue I have occasion to reach, because it is irrelevant to my statutory analysis.

> 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.
>
> **c.** In recreational river areas, the lands may be developed for the full range of agricultural uses, forest management pursuant to forest management standards duly promulgated by regulations, stream improvement structures for fishery management purposes, and may include small communities as well as dispersed or cluster residential developments and public recreational areas. In addition, these river areas may be readily accessible by roads or railroads on one or both banks of the river, and may also have several bridge crossing and numerous river access points"

(ECL 15-2709 [emphasis added]). I agree with the majority that "when presented with a question of statutory interpretation, our primary consideration is to ascertain and give effect to the intention of the [l]egislature" (Samiento v World Yacht Inc., 10 NY3d 70, 77-78 [2008], quoting Matter of DaimlerChrysler Corp. v Spitzer, 7 NY3d 653, 660 [2006]).

Here, where the sentence allowing a pre-existing use is followed by a provision about providing adequate compensation if such use is not allowed to continue, the legislature only could have been regulating private lands. It would make no sense for the paragraph to apply to public lands, because the State is not required to pay itself adequate compensation if it disallows a previously permissible use. If Finch, Pruyn & Co. had continued to own the Chain Lakes Road (South), ECL 15-2709 would have given the APA (not the DEC, as per ECL 15-2705) the authority to allow Finch, Pruyn & Co. to continue to use the Chain Lakes Road as before (to avoid a taking), or to close the road and pay Finch, Pruyn & Co. reasonable compensation for loss of use of the road, or to take the entire property by condemnation if the state were willing to do so.

Reading the section as the majority does—to grant the DEC discretion to allow preexisting uses on state-owned land—does not comport with the statute's plain text. Reading it as written, i.e. limited to situations where the state preferred to allow a private landowner to continue a preexisting use instead of using state monies to extinguish that use, comports with the general scheme of gradual land acquisition in the Adirondack Park from its inception (see 113 Rec, 1894 NY Constitutional Convention, statement of Mr. Floyd, at 2059 ["(I trust that the great Empire State will) from time to time in the immediate future, appropriate from its vast resources sufficient moneys to the end that the State may acquire and forever hold our yet beautiful forests for the benefit of all of our people"]). The state's incremental land purchases within the park continues today, as budget appropriations allow (see e.g. Governor Andrew M. Cuomo, *Governor Cuomo Announces Completion of Largest Addition to Adirondack Forest Preserve in More Than*

a Century, May 10, 2016, available at https://www.governor.ny.gov/news/governor-cuomo-announces-completion-largest-addition-adirondack-forest-preserve-more-century [last accessed Oct. 17, 2019] [announcing "the final acquisition in a series of land purchases the state has completed under a 2012 agreement with The Nature Conservancy to conserve 69,000 acres of land previously owned primarily by the former Finch, Pruyn & Company paper company"]). That interpretation is reinforced by the fact that the Attorney General recommended that Governor Rockefeller veto the Rivers Act because the use restrictions would result in innumerable takings, with no provision in the Act for compensation.

For each of the above reasons, I cannot conclude that the DEC has any authority to permit snowmobiles on the one-mile stretch of Chain Lakes Road (South) at issue here.

IV

The Master Plan's frontspiece assures us that when we "tramp the woods to the lake," we will "find pines and lilies, blue herons and golden shiners, shadows on the rocks and the glint of light on the wavelets, just as they were in the summer of 1354, as they will be in 2054 and beyond . . . [allowing us to] be a part of time that was and time yet to come" (Master Plan at Preface, quoting William Chapman White, Adirondack Country). Pursuant to the clear repeated directives of the Master Plan and a proper reading of the relevant statutes, one may still do so, but may not ride a snowmobile through a wild river area to get there. I respectfully dissent.

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Order insofar as appealed from affirmed, with costs. Opinion by Chief Judge DiFiore. Judges Stein, Garcia and Feinman concur. Judge Fahey dissents in an opinion. Judge Wilson dissents in a separate dissenting opinion in which Judge Rivera concurs.

Decided October 22, 2019