

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL DEFENSE FOUNDATION,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA;

THE PENNSYLVANIA HOUSE OF REPRESENTATIVES and BRYAN DEAN CUTLER, in his official capacity as its SPEAKER;

THE PENNSYLVANIA SENATE and JAKE CORMAN, in his official capacity as the SENATE PRESIDENT PRO TEMPORE; and

TOM WOLF, in his official capacity as GOVERNOR of PENNSYLVANIA, Respondents

_____ M.D. 2021

PETITION FOR REVIEW
IN THE NATURE OF DECLARATORY RELIEF
OF THE CONSTITUTIONALITY OF LEGISLATIVELY MANDATED
ALL-TERRAIN VEHICLE USE ON STATE FOREST AND STATE PARKS

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- Exhibit C** – District Forester ATV Survey Results, Assessment of Current ATV Situation of Pennsylvania State Forest Lands, July 11, 2000
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I. INTRODUCTION

1. The Pennsylvania Environmental Defense Foundation (“PEDF”) is filing this Petition for Review (“Petition”) under the fiduciary provisions of the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541, seeking declarations that legislation mandating the development of all-terrain vehicle (“ATV”) trails on State Forest and State Park lands, which are trust assets that must be conserved and maintained, violates Article I, Section 27 of the Pennsylvania Constitution, commonly known as and referred to in this Petition as the Environmental Rights Amendment (“ERA”). Pa. Const. art. I, § 27. PEDF is also seeking declarations that the ATV trail pilot project initiated in 2021 to fulfill the legislative mandates violated the ERA and that the Respondents breached their fiduciary duties as trustees of our State Forest and State Park public natural resources by mandating these actions.

2. PEDF specifically is seeking declarations that the following legislation violates the ERA:

(a). ATV provisions in the Snowmobile and ATV Law, 75 Pa.C.S. §§ 7701-7753, mandating that the Pennsylvania Department of Conservation and Natural Resources (“DCNR”) issue certificates of title for and register ATVs in Pennsylvania to generate revenue for ATV trails on State Forest and State Parks under its jurisdiction.

(b). Section 1720-E of the Fiscal Code, 72 § P.S. § 1720-E, enacted in 2018 and amended in 2020 mandating that DCNR develop new ATV trails using State Forest roads and State or local roads under the jurisdiction of the Pennsylvania Department of Transportation (“PennDOT”) or political subdivisions of the Commonwealth of Pennsylvania (“Commonwealth”).

3. The Respondents forced DCNR to develop and expand ATV trails on our State Forest and State Parks despite the degradation to these public natural resources documented by DCNR and DCNR’s long-standing policies against further ATV trail development on our State Forest and State Parks.

4. PEDF is seeking declarations that the Commonwealth and the following specific Commonwealth government bodies and officials violated their constitutional fiduciary duties under the ERA by enacting the challenged legislation mandating ATV trails that degrade our State Forest and State Parks: the Pennsylvania House of Representatives and Representative Bryan Dean Cutler, in his official capacity as its Speaker; the Pennsylvania Senate and Senator Jake Corman, in his official capacity as the Senate President Pro Tempore, and Governor Tom Wolf, in his official capacity.

5. PEDF is seeking declarations that the ATV trails mandated by the challenged legislation are inimical to the natural ecosystem of our State Forest and State Parks and degrade these public natural resources protected by the ERA. PEDF

further seeks declarations that these ATV trails violate the constitutional rights of PEDF's members and the people of Pennsylvania, including future generations, to have their public natural resources conserved and maintained and to have clean air, pure water, and the preservation of the natural, scenic, historic and esthetic value of their State Forest and State Park public natural resources.

6. Based on DCNR's decades of experience with ATV use on our State Forest, PEDF is seeking a declaration that the legislative mandates for an extensive, motorized, high-speed vehicle recreational programs in our State Forest and State Parks directly conflict with the primary mission of our State Forest District Managers and State Park Managers to conserve and maintain our State Forest and State Park public natural resources in compliance with the plain terms of the ERA.

II. STATEMENT OF JURISDICTION

7. This Petition is brought pursuant to Article I, Section 27 of the Pennsylvania Constitution, and the Declaratory Judgements Act, specifically Section 7532, entitled "General scope of declaratory remedy," which states that "[c]ourts of record, within their respective jurisdictions, shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed ...", and Section 7535, entitled "Rights of fiduciaries and other persons," which states that "[a]ny person interested, as or through ... [a] trustee, ... in the administration of a trust, ... may have a declaration of rights or legal relations in

respect thereto: ... [t]o direct the ... administrators, or trustees to do or to abstain from doing any particular act in their fiduciary capacity [or] [t]o determine any question arising in the administration of the ... trust, including questions of construction of ... writings.” 42 Pa.C.S. §§ 7532 and 7535.

III. PARTIES

8. The Pennsylvania Environmental Defense Foundation, Petitioner, is a non-profit organization incorporated under the laws of Pennsylvania since 1986 for the purposes of protecting and preserving the environmental interests of its members in Pennsylvania. PEDF’s President, Ron Evans, resides at 818 Spring Creek Road, Bellefonte, Pennsylvania 16828, and can be contacted at 717-579-2263.

9. The Respondent Commonwealth of Pennsylvania is the trustee of the constitutional public trust established by the ERA over Pennsylvania’s public natural resources, which are owned in common by the people of Pennsylvania, including future generations, and are to be conserved and maintained under the trust for their benefit. The named individual Respondents are the Commonwealth officials responsible for the government bodies that enacted the challenged legislation.

10. The Respondent Pennsylvania House of Representatives, and Representative Bryan Dean Cutler, in his official capacity as its Speaker, are trustees of the constitutional public trust established under the ERA and cannot infringe upon the declared rights of people under Article I of the Pennsylvania Constitution in

carrying out their legislative duties under Articles II, III and VII of the Pennsylvania Constitution.

11. The Pennsylvania Senate and Senator Jake Corman, in his official capacity as the Senate President Pro Tempore, are trustees of the constitutional public trust established under the ERA and cannot infringe upon the declared rights of people under Article I of the Pennsylvania Constitution in carrying out their legislative duties under Articles II, III and VIII of the Pennsylvania Constitution.

12. Governor Tom Wolf, in his official capacity as the Chief Executive Officer of the Commonwealth, is a trustee of the constitutional public trust established under the ERA and cannot infringe upon the declared rights of people under Article I of the Pennsylvania Constitution in carrying out his executive duties under Articles IV and VII of the Pennsylvania Constitution. Under Article IV, Section 2 of the Pennsylvania Constitution, the governor “has the supreme executive power of the executive branch of the Commonwealth, who shall take care that the laws [of the Commonwealth] be faithfully executed.”

IV. STATEMENT OF MATERIAL FACTS

A. ATV Use on Our State Forest and State Parks

13. In 1971, the Bureau of Forestry (“Bureau”), then part of the Pennsylvania Department of Environment Resources (“DER”), was forced through legislation to title and register snowmobiles and to develop trails for their use in the

State Forest.¹ Prior to enactment of the Snowmobile Law, the Bureau had prohibited use of snowmobiles on the State Forest because such use would harm the forest, would disturb other users of the forest, would be impossible to manage and to enforce use restrictions, and would take away resources the Bureau needed to carry out its primary mission to conserve and maintain the forest. The Bureau's concerns were ignored, and the Snowmobile Law was passed. *See* State Forest ATV Use Expert Report of Retired State Forest District Managers Robert Davey, Jr., Roy Siefert, and Robert G. Merrill, Jr., page 8 (copy provided as **Exhibit A**).

14. In the early 1980s, ATV users began using State Forest roads and lands in the Sproul State Forest District, causing damage to the forest and endangering others, without the Bureau's approval. As a result, the Sproul State Forest District installed gates and posted signs prohibiting ATV use on the State Forest. **Exhibit A**, page 9.

15. Rather than confer with the Bureau to evaluate its concerns with ATV use on the State Forest, the Commonwealth amended the Snowmobile Law in 1985 to require DER to also title and register ATVs and to provide ATV trails on State Forest and State Park lands under its jurisdiction.² *Id.*

¹ Act of August 12, 1971, P.L. 299, No. 75 (referred to as the Snowmobile Law).

² Act of July 11, 1985, P.L. 220, No 56. By this time, the Snowmobile Law had been incorporated into Title 75 of the Pennsylvania Consolidated Statutes as Chapter 77 of the Vehicle Code. 75 Pa.C.S. §§ 7701 *et seq.* In 1985, the short title for this chapter became the "Snowmobile and All-Terrain Vehicle Law." 75 Pa.C.S. § 7701. With the creation of DCNR in 1995 by the Conservation

16. The Snowmobile and ATV Law defines an ATV as “a motorized off-highway vehicle which travels on three or more off-highway tires” with certain exceptions not relevant here. 75 Pa.C.S. § 7702. This law requires DCNR, among other things, to issue certificates of title and register all ATVs within the Commonwealth and to register ATV dealers, again with certain exceptions not relevant here. 75 Pa.C.S. §§ 7711-7718. The law also authorizes ATVs to be operated on ATV routes designated by DCNR on State Forest and State Park lands. 75 Pa.C.S. § 7724(b).

17. The Snowmobile and ATV Law requires DCNR to deposit all revenue generated in its administration of the law into restricted accounts and mandates that the DCNR use the money in the ATV restricted account to carry out the purposes of the law relative to ATVs. 75 Pa.C.S. § 7706. Those purposes include “registration and certificate of title activities, training, education, enforcement activities, construction and maintenance of snowmobile and ATV trails and acquisition of equipment, supplies and interests in land,” as well as giving grants to others in connection with ATV use on both lands owned and not owned by the Commonwealth. *Id.*

and Natural Resource Act, the bureaus responsible for managing our State Forest and State Parks became part of DCNR and the powers and duties under the Snowmobile and ATV Law were transferred to DCNR. 71 P.S. §§ 1340.302, 1340.303, and 1340.308(c).

18. Thus, the ATV provisions of the Snowmobile and ATV Law required DCNR to administer a major new program regulating ATV use within the Commonwealth and to develop a statewide recreational program for ATV use, including use on State Forest and State Park lands and roads.

19. The Commonwealth did not make any evaluation of the impacts that ATV trails would have on the ecosystem of the forests within both our State Forest and State Parks or on the natural, scenic, historic or esthetic values of the public natural resources of those forests prior to enacting the ATV provisions of the Snowmobile and ATV Law in 1985; nor did the Commonwealth attempt to determine in any way its compliance, nor the compliance of DER, with their constitutional trustee duties under the ERA before enacting the ATV legislation or subsequent amendments.

20. In 1986, less than a year after the ATV program was legislated, DER began designating ATV trails on the State Forest, primarily where illegal use had been occurring, to satisfy the mandates associated with the 1985 ATV legislation and continuing pressure for ATV use. **Exhibit A**, page 9.

21. DCNR was created in 1995 specifically to conserve and maintain the public natural resources of our State Forest and State Parks under the ERA. 71 P.S.

§ 1340.101.³ Prior to establishing DCNR, the Commonwealth did not make any evaluation of the potential conflict between DCNR's constitutional duties under the ERA and the duties imposed on DCNR under the ATV provisions of the Snowmobile and ATV Law.

22. On March 16, 2000, then DCNR Secretary John Oliver wrote a memorandum to his executive staff (copy provided as **Exhibit B**) directing the development of a five-year plan for ATV use on the State Forest because of the dramatic increase in the number of ATVs registered by DCNR and the resultant demands for additional trails by ATV users. Secretary Oliver directed development of this plan because of "*the Governor's Office has expressed interest in DCNR's response to this issue.*" **Exhibit B** (emphasis added).

23. As part of developing the plan for ATV use on the State Forest, DCNR conducted a survey in 2000 of all the State Forest District Managers to assess the current situation in the State Forest regarding ATVs. The DCNR Office of Policy compiled and issued the results on July 11, 2000. *See* District Forester ATV Survey

³ While DCNR's predecessor, DER, also had a duty to conserve and maintain our State Forest and State Park public natural resources under the ERA, DCNR was specifically created in recognition that the "current structure of [DER] impedes the Secretary of [DER] from devoting enough time, energy and money to solving the problems facing our State parks and forests." 71 P.S. § 1340.101(a)(7). The General Assembly further found that "State parks and forests have taken a back seat to other environmental issues" and "have lost out in the competition for financial and staff resources because they have no cabinet-level advocate to highlight these issues for the public." 71 P.S. § 1340.101(a)(8)-(9).

Results, Assessment of Current ATV Situation in Pennsylvania State Forest Lands, July 11, 2000 (copy provided as **Exhibit C**).

24. The 2000 survey found that approximately 222 miles of ATV trails were approved on the State Forest, and over 2,500 miles of illegal trails had been created on the State Forest by ATV users. The illegal trails were causing severe damage to sensitive environmental areas, including streambeds, wetlands, vernal ponds, wild plant areas, and utility and pipeline corridors. Both the approved and illegal trails were causing erosion and sedimentation problems. Additional impacts included noise and air pollution. The biggest problem was that the illegal use was unmanageable. *Id.* (**Exhibit C**).

25. As a result of the impacts of the significant illegal ATV use on the State Forest, DCNR issued a temporary moratorium on the development of new ATV trails on the State Forest on September 12, 2001 (copy provided as **Exhibit D**). This moratorium was intended to give DCNR time increase its enforcement capabilities through additional funding and authority provided through amendments to the Snowmobile and ATV Law approved on June 25, 2001.⁴

26. DCNR issued a revised ATV Trail Development Policy on June 5, 2003 (copy provided as **Exhibit E**) reiterating the incompatibility of ATV use with

⁴ Act of June 25, 2001, P.L. 701, No. 68 (referred to as H.B. 154 in the DCNR moratorium).

DCNR's core mission as trustee to assure "the sustainability of both State Park lands and State Forest public lands." Through this policy, DCNR stated that it "did not intend to significantly increase officially designated ATV trails on existing State Forest lands" but rather to "use existing grant funding to promote ATV trail development where appropriate on other private or public lands."

27. In the background section of the policy, DCNR stated: "In most districts, the illegal riding activity is at or near the top of the forest management problems identified by the District Foresters. The Department views the ATV related problem as one of the most significant threats to carrying out the agency's stewardship responsibilities. ... *The Department has made it clear that ATVs present a unique set of challenges, that in many instances are incompatible with the core mission of the agency.*" Exhibit E (emphasis added).

28. In the 2003 ATV Trail Development Policy, DCNR made it clear that "the primary management focus on existing public lands will be concerned with the repair and maintenance of already designated ATV trails and with enforcement to curtail illegal riding activity." DCNR also states in the policy that "*the department recognizes its responsibility to use a portion of the funds generated by ATV riders to help provide places for people to ride. While [DCNR] is not authorized to make grants for trails on State Park or State Forest lands, it shall be the policy of the*

Department to utilize grant funding to promote ATV trail development where appropriate on other public or private lands.” Exhibit E (emphasis added).

29. Despite DCNR’s policies against expanding ATV use on the State Forest, pressure for such expansion continued as ATV ownership continued to increase. While DCNR’s efforts to meet that need focused on expanding ATV riding opportunities on private land, DCNR agreed to consider “strategic connector” trails on the State Forest in part to support local economic interests. *See* DCNR Bureau of Forestry ATV Strategic Connections and DCNR Press Release, July 23, 2007, Strategic Connections to Expand ATV Riding Opportunities on State Forest Lands (copies provided as **Exhibit F**).

30. The 2007 ATV Trail Strategic Connections policy made the following statement regarding ATV strategic connections: “To accommodate the growing number of ATV riders, ATV trails have been opened in seven state forests and comprise 248 miles. ... Creating short and (< ¼ mile) tactically planned joint-use state forest roads as connections to non-state forest lands must be thoroughly examined where environmental, enforcement, illegal riding and conflicting use issues are severe. ... *We will oppose recommendations that allow ATVs to legally operate on state forest roads.*” **Exhibit F** (emphasis added).

31. By 2015, the ATV trail system on the State Forest had expanded to 265 miles. On September 16, 2015, DCNR issued new ATV Policy (copy provided as

Exhibit G), citing the Conservation and Natural Resources Act and the Snowmobile and ATV Law as its authority. In the background section of the policy, DCNR stated that it “plays a multi-faceted role with ATVs: registering their use statewide; managing registration-generated fees for the maintenance, enhancement, and enforcement of existing recreational trail opportunities on state forest lands; and working with partners to provide new ATV trails off of state forest lands.”

32. In the 2015 ATV Policy, DCNR stated that “[a]s ATV use has grown in popularity, *illegal riding activity on state forest lands remains near the top of forest management problems identified by staff. In addition, illegal use of the state forest not designated as part of the 265-mile existing ATV trail system continues to impact many of the core functions these forestlands were acquired to address— protection of clean water, clean air, wildlife habitat, scenic beauty, rare and significant ecosystems, and wild plants.*” **Exhibit G** (emphasis added).

33. In the 2015 ATV Policy, DCNR specifically reiterated its policy “not to expand the current system of ATV trails on state forest lands,” except for “limited development of connectors, as deemed appropriate by the Department.” Such connectors would only be considered “within the periphery of existing designated ATV trail systems; however, *DCNR prohibits operating ATVs within Pennsylvania State Parks based on visitor safety, resource management, and other operational concerns.*” DCNR’s management focus on existing designated ATV trails on the

State Forest would continue to be “to repair and maintain the existing trails, as well as enforcement to curtail illegal riding activity.” **Exhibit G** (emphasis added).

34. In the 2015 ATV Policy, DCNR specifically stated that “*the Department does not consider state forest roads to be an option for connectors between trail systems*, as there is an established and consistent record of ATV accidents that illustrates that the use of such machines on roadways is not in the best interest of visitor safety.” **Exhibit G** (emphasis added).

35. Despite its ATV Policy against any significant expansion of ATV trails on the State Forest, DCNR was pressured to consider establishing a new ATV trail through the Sproul State Forest District to connect two existing designated ATV trails in the district—the Bloody Skillet ATV Trail in northern Centre County and the Whiskey Springs ATV Trail in western Clinton County.

36. DCNR retained the Larson Design Group to independently evaluate the feasibility of such a connector trail in December of 2016. Based on the comments provided by local government officials, local businesses, and the ATV riding advocates during the stakeholder review process conducted by the Larson Design Group, these stakeholders would support converting the remote portion of the Sproul State Forest District that lies between the Bloody Skillet and Whiskey Springs ATV Trails into an ATV recreation park with an extensive network of ATV trails, campgrounds and other amenities to support ATV recreation and local economic

development. *See Stakeholder Review, Whiskey Springs-Bloody Skillet ATV Feasibility Study Connector Trail, July 2017 (excerpts provided as Exhibit H).*⁵

37. The Larson Design Group was unable to identify a connector ATV route that would not impact on sensitive State Forest resources and would not require unsafe travel by ATVs on public uses roads under the jurisdiction of DCNR, PennDOT, or local municipalities. *See 2018 Whiskey Springs-Bloody Skillet ATV Feasibility Study Connector Trail Report (excerpts provided as Exhibit I).*⁶

38. On June 22, 2018, shortly before the Larson Design Group completed its study, the Respondents approved amendments to the Fiscal Code to include a new Section 1720-E(a) stating the following:

Section 1720-E. Department of Conservation and Natural Resources
[(Reserved)].

The following shall apply to appropriations for the Department of Conservation and Natural Resources:

(1) The department shall, in consultation with the Department of Transportation, develop, open and maintain an ATV trail connecting the Whiskey Springs ATV trail to the Blood (sic) Skillet ATV trail by utilizing existing State roads and State forest roads by April 1, 2020.

(2) The department shall, in consultation with the Department of Transportation, implement the full Northcentral Pennsylvania ATV initiative and create a network of ATV trails connecting Clinton County to the New York State border by utilizing existing State roads and State forest roads by April 1, 2024.

⁵ Full report available at <http://elibrary.dcnr.pa.gov/PDFProvider.ashx?action=PDFStream&docID=1743437&chksum=&revision=0&docName=Whiskey+Springs+Bloody+Skillet+ATV+Connector+Trail+Study+July+2017&nativeExt=pdf&PromptToSave=False&Size=10445974&ViewerMode=2&overlay=0>.

⁶ Full report available under Whiskey Springs and Bloody Skillet Connectivity Study at <https://www.dcnr.pa.gov/Recreation/WhatToDo/ATVRiding/pages/default.aspx>.

72 P.S. § 1720-E(a).⁷

39. The Respondents enacted Section 1720-E(a) of the Fiscal Code despite DCNR's policies against expansion of ATV trails on the State Forest, which were based on decades of experience by DCNR and its predecessor with the harm caused by such ATV trails, and without any evaluation of the Respondents' duties or DCNR's duties as trustees to conserve and maintain our State Forest public trust assets under the ERA and to protect the people's rights to clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of our State Forest and State Parks.

40. On April 23, 2019, the Clinton County Board of Commissioners sent a letter to the Respondent Governor Wolf asking about the next steps in completing the Whiskey Springs-Bloody Skillet ATV connector trail, which they considered to be vital to the recreational and economic development of the region (copy provided as **Exhibit J**).

41. On May 10, 2019, DCNR Secretary, Cindy Adams Dunn, responded to the Clinton County Board of Commissioners advising that DCNR would not be able to meet the April 1, 2020 deadline in Section 1720-E(a) of the Fiscal Code for constructing the Whiskey Springs-Bloody Skillet ATV connector trail for several

⁷ Act of June 22, 2018, P.L. 281, No. 42, § 17.

reasons (copy provided as **Exhibit K**). DCNR estimated the cost of a route developed based on the Larson Design Group study and DCNR's internal efforts would be \$16-20 million, but no source of funding had been identified as part of the Fiscal Code mandate. In addition, DCNR advised that both it and PennDOT had concerns "as to the suitability of utilizing the roads as described in the Fiscal Code, for reasons including user safety, environmental consequences, user satisfaction and legality, among others." DCNR advised of its belief "that developing a designated trail, as opposed to utilizing state forest roads or highway is the only way to responsibly develop a connection between these locations."

42. In response to DCNR's letter to the Clinton County Board of Commissioners, the former President Pro Tempore of the Pennsylvania Senate, Senator Joe Scarnati, held a meeting on August 14, 2019 with DCNR and PennDOT officials, State Representative Stephanie Borowicz (who represents the connector trail region) and the Central Mountain ATV Association. *See* Central Mountain ATV Association Meeting Minutes (copy provided as **Exhibit L**).⁸ Senator Scarnati's office and Representative Borowicz advised that they planned to have further discussions with the Governor's Office, PennDOT and DCNR "to determine why

⁸ Accessed from <http://cmatva.org/site/index.php/ncpa-initiative/> on December 2, 2021.

the two departments were not complying with the Governor's directive to change their policies [regarding use of roads for ATVs] as was signed into law."

43. On November 18, 2020, the DCNR Policy Office, which is an extension of the Governor's Policy Office, issued a new ATV Trail Development and Management Policy that rescinded the prior moratorium on significant expansion of ATV trails on State Forest and State Park lands and now authorizes such expansion of ATV trails, including the use of State Forest roads for ATVs (copy provided as **Exhibit M**). The miles of ATV trails on the State Forest, as identified in the policy, has now increased to 267 miles. The DCNR Policy Office states in the new policy that "DCNR is working to ensure that registered ATV owners receive sufficient benefits for their registration funds while *balancing* the protection of our natural resources and the needs of all recreational uses on state lands." **Exhibit M** (emphasis added). The policy further states that the growth in popularity of ATV riding has resulted in an increase in unlawful riding activity on State Forest land and "adversely impacts many of the core functions that state forest lands were acquired to address, including protection of clean water, clean air, wildlife habitat, scenic beauty, rare and significant ecosystems, and wild plants." *Id.* The policy further states that "[DCNR], in the best interest of visitors and staff, does not consider state forest roads to be a viable option for ATV connectors or trail systems mainly because they may not be conducive for ATV riding." *Id.*

44. On November 23, 2020, five days after the DCNR Policy Office issued the new DCNR ATV Trail Development and Management Policy, the Respondents amended the Fiscal Code to add Section 1720-E(b), 72 P.S. § 1720-E(b), stating that DCNR “shall establish a regional pilot program for ATV use on department lands;” that DCNR “shall ... evaluate all department forest districts, including Elk, Moshannon, Sproul, Susquehannock and Tioga, for roads and trails to serve as potential regional connectors and to provide local access or serve as a trail complex for ATV use;” and that DCNR “shall provide access to the department ATV pilot area for the 2021 summer ATV riding season from the Friday before Memorial Day through the last full weekend in September.”⁹

45. To comply with the mandates of Section 1720-E(b) of the Fiscal Code, DCNR developed its 2021 ATV Regional Trail Connector Pilot (“2021 ATV Pilot”) that included 59 miles of ATV trails on the State Forest (45.4 miles of existing trails and 13.6 miles of new trails) and new designation of 11.8 miles of State roads under PennDOT’s jurisdiction for ATV use. This pilot would also use existing township roads already designated for ATV use. *See* 2021 ATV Regional Trail Connector Pilot, State Forest Environmental Review (“2021 ATV Pilot SFER”) (copy provided as **Exhibit N**).

⁹ Act of November 23, 2020, P.L. 1140, No. 114, § 7.

46. The proposed 2021 ATV Pilot “*reflects plans for an initial phase of a potential larger project, plans for which will be submitted later. In future years the trail network may be expanded. Any expansions of the system will be covered by subsequent SFERs.*” **Exhibit N** (Project Overview).

47. Due to the time constraints mandated by Section 1720-E(b) of the Fiscal Code, the Bureau of Forestry prepared its environmental review at the same time it was developing the 2021 ATV Pilot. *See* Bureau memorandum dated July 15, 2021 approving Environmental Review: SFER 002101, 2021 ATV Regional Trail Connector Pilot (“ATV Pilot Approval Memo”) (copy provided as **Exhibit O**). The Bureau Planning and Recreation Sections prepared and circulated their 2021 ATV Pilot SFER within the Bureau for internal analysis on June 25, 2021. **Exhibit O**.

48. During the Bureau’s internal review of the 2021 ATV Pilot SFER, the following concerns were raised:

- The limited opportunity for review of the SFER because of the expedited timing and processing of the SFER.
- The impact of increased dust from ATV use, along with impacts on other recreational uses, erosion and sedimentation, and water quality.
- The deterioration of State Forest roads from potentially heavy ATV use.
- The potential for an increase in frequency and risk of fuel or lubricant spills that could affect water resources.

- The negative impact of ATV use on the aesthetic beauty, wild character and recreation experience of State Forest and State Parks, especially areas of Colton Point State Park and the Pine Creek Gorge included in the pilot area.
- The failure to review impacts in the context of the overall State Forest resources.
- The increased burden on DCNR Rangers and other Bureau staff to respond to increased accidents and search and rescue needs.
- An insufficient capacity for parking, especially in Coudersport and near Colton Point State Park.
- Further demands for connector trails by leased camp owners and area residents.
- Increased impacts to animals such as snakes from ATV strikes.
- Adverse impacts to Wild Character Focus Areas within the State Forest.
- The spread of invasive species to northcentral Pennsylvania from ATV riders traveling from outside of this area.
- Insufficient Bureau staff and funding to ensure appropriate management of the ATV pilot area given potentially dramatic increases in ATV use coupled with other recreation use increase.

- The major management concern of illegal ATV riding already an issue across the State Forest system.

Exhibit O.

49. On July 15, 2021, DCNR approved the 2021 ATV Pilot with the following conditions:

1. An adaptive resource management plan will be developed to assess and address potential management concerns, such as but not limited to dust suppression, wildfire avoidance, illegal activity, and road maintenance.
2. Roles and responsibilities for enforcement, accident response, fire response, and search and rescue related to ATV connectors will be clarified.
3. Mechanisms, outreach and education will be evaluated and implemented to minimize the spread of invasive species due to traveling ATV riders.
4. The administrative, managerial, and fiscal impacts of the pilot will be tracked and monitored.
5. An assessment of outreach, education and signage needs will be performed to address potential issues outlined in the SFER. As issues or needs arise, the recreation, communications and planning sections will review, discuss and develop any necessary outreach materials (signage, websites, social media posts etc.) to properly address any issues that could be addressed through communication.
6. The ATV Regional Trail Connector pilot is permitted to commence with this conditionally approved SFER. As stipulated in the fiscal code and in accordance with bureau adaptive resource management practices, a period of monitoring will occur between now and

December 2023 to examine impacts of the project, both positive and negative. The monitoring program will include stakeholder engagement which will be used to inform adaptive management process.

Exhibit O.

B. Degradation of Constitutional Trust Assets by ATV Use

1. Our State Forest and State Parks Are Constitutionally Protected Trust Assets under the ERA

50. Our State Forest and State Parks are part of the corpus of an enforceable constitutional trust established by the people of Pennsylvania in 1971 under Article I, Section 27 of the Pennsylvania Constitution. *PEDF v. Commonwealth*, 161 A.3d 911, 916 (Pa. 2017) (“*PEDF I*”). The ERA states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. art I, § 27.

51. After centuries of exploitation and degradation of the Commonwealth’s natural resources resulting in the overwhelming tasks of reclamation and regeneration of the Commonwealth’s natural resources, when even possible, the citizens of the Commonwealth declared their environmental rights under the ERA and placed them on par with their political rights by including them in Article I of the Pennsylvania Constitution. *PEDF II*, 161 A.3d at 916-918 (quoting *Robinson*

Township v. Commonwealth, 83 A.3d 901 (Pa. 2013) (“It is not a historical accident that the Pennsylvania Constitution now places citizens’ environmental rights on par with their political rights.” The Pennsylvania Supreme Court summarizes the long history of natural resource degradation in the Commonwealth leading to the passage of the ERA, including unregulated logging that decimated the extensive forests of the Commonwealth, unregulated hunting and trapping that along with the destruction of habitat by logging decimated wildlife populations in the Commonwealth, and unregulated oil and gas drilling, coal mining and other industrial development that polluted the air and waters of the Commonwealth).

52. The powers given by the citizens of Pennsylvania to their state government under other articles of their state constitution cannot be used to infringe upon the declared rights of the people in Article I. *See* Article I, Section 25 of the Pennsylvania Constitution (“To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.”).

53. Under the ERA, all branches of state government and agencies and entities of the Commonwealth, both statewide and local, have a fiduciary duty as trustees to act toward the corpus of the trust with prudence, loyalty, and impartiality. *PEDF II*, 161 A.3d at 932 n. 23.

54. All Commonwealth trustees under the ERA have the fiduciary duty to prevent and remedy the degradation, diminution, or depletion of the public natural resources that are the corpus of the constitutional trust. *PEDF II*, 161 A.3d at 932.

55. The ERA explicitly includes present and future generations of Pennsylvanians as beneficiaries of the constitutional trust and this cross-generational dimension requires all Commonwealth trustees to consider an “incredibly long timeline” when acting as trustees; they “cannot prioritize the needs of the living over those yet to be born” and “may not succumb to ‘the inevitable bias toward present consumption of public resources by the current generation, reinforced by a political process characterized by limited terms of office.’” *PEDF v. Commonwealth*, 255 A.3d 289, 310 (Pa. 2021) (“*PEDF IV*”) (quoting *Robinson Twp.*, 83 A.3d at 959 n. 46)

56. The Respondents are trustees under the ERA and have the fiduciary duty to conserve and maintain our State Forest and State Park public natural resources as part of the corpus of the constitutional trust, to protect the clean air and pure water of our State Forest and State Parks, and to preserve the natural, scenic, historic and esthetic values our State Forest and State Parks.

57. To conserve and maintain our State Forest and State Park constitutional trust assets, the Respondents have the fiduciary duty, as trustees, to prevent and remedy the degradation, diminution, or depletion of these public natural resources

and to act toward the State Forest and State Park trust assets with prudence, loyalty, and impartiality.

2. Long-Standing Harm to the State Forest from ATV Use

58. In 1971, the same year the Bureau of Forestry was forced to allow snowmobile use on the State Forest under the Snowmobile and ATV Law (*see* ¶ 13 above), the Bureau was required to manage the State Forest as a trustee under the ERA, which became part of the Pennsylvania Constitution that year.

59. When the Bureau was transferred to the newly created DCNR in 1995 through the Conservation and Natural Resources, 71 P.S. §§ 1340.101 *et seq.*, the Bureau adopted a new strategic plan, *Penn's Woods, Sustaining Our Forests* (“*Penn's Woods*”), dedicated to use of the principles of ecosystem management to fulfill its fiduciary duties under the ERA (copy provided as **Exhibit P**).¹⁰

60. The Bureau recognized in *Penn's Woods* that the primary goal of ecosystem management is to keep the complex interdependencies of ecosystems intact and functioning well over long periods of time. **Exhibit P**, page 8. A forest is more than a stand of trees. It is a complex ecological system and one of the keys to

¹⁰ Full copy available at http://elibrary.dcnr.pa.gov/GetDocument?docId=1741347&DocName=sf-Penns_Woods_Strategic_Plan.pdf.

maintaining its biodiversity is consideration of the interaction and habitat requirements of all living organisms within it. **Exhibit A**, pages 6-7.

61. The State Forest in northcentral Pennsylvania is approximately 1.4 million acres of largely contiguous forest managed by the Bureau as one of the most extensive intact forest ecosystems in the eastern United States. **Exhibit A**, page 5.

62. Based on over 35 years of experience with the impacts of ATV use on the State Forest, this use is not compatible with the ecology of the forest. **Exhibit A**, pages 12-17.

63. On designated ATV trails within the State Forest, ATVs disrupt the physical, biological, and chemical balances that exist among soil, water and air of the forest necessary for both plants and animals. **Exhibit A**, pages 12-13. ATV trails must be at least 12 feet wide to allow passing in the opposite direction. *Id.* ATV trails fragment the forest, compact the soil, concentrate water flow causing erosion and sedimentation, and degrade high quality and exceptional value headwater stream. ATV use generates dust and destroys habitats for sensitive species in wetlands and vernal pools. *Id.*

64. Even more extensive impacts result from illegal ATV use of the State Forest beyond designated ATV trails, including illegal use of former logging roads restored to native vegetation and grass, illegal use of gated forest access roads and utility rights-of way, illegal use of the extensive network of oil and gas roads and

pipelines developed over the last decade from shale gas development, illegal use on steep slopes (20 – 30 %), illegal use on reclaimed coal strip-mine areas, and illegal use on infrastructure that protects water quality such as drainageways, culverts and bridges. **Exhibit A**, pages 13-14.

65. Healthful, dispersed, low density, low impact outdoor recreation has always been an important part of managing our State Forest consistent with the Bureau's principles of ecosystem management. Not only is ATV use inconsistent with traditional State Forest recreation activity, the noise, speed, dust and exhaust associated with ATV use negatively impacts those traditional recreational activities. ATVs are loud with a noise level more akin to heavy industrial equipment that can be heard for considerable distance against the backdrop of the otherwise quiet forest. **Exhibit A**, pages 14-15.

66. ATV use on State Forest roads is not compatible with the low-speed scenic driving that occurs on these roads to experience the quiet and esthetic values of the forest, to see the trees and plants, and to watch and hear the birds and other wildlife. ATV use on State Forest roads endangers both ATV riders and others and has resulted in fatalities to ATV users. ATV users can evade law enforcement by speeding or going off-road, creating further danger to themselves and Bureau staff. **Exhibit A**, page 15.

67. ATV use is incompatible with maintaining a healthy State Forest ecosystem when added to the cumulative impacts of other mandated forest uses, including unprecedented impacts from shale gas development over the past decade, unprecedented impacts from invasive species, challenges with forest regeneration, and long-standing challenges from legacy mineral extraction (e.g., acid mine drainage, abandoned oil and gas well, etc.). **Exhibit A**, page 16.

68. ATV use degrades State Forest public natural resources and State Forest District Managers do not have the staff or other resources necessary to continually inventory this degradation, evaluate the complexity of its impact to the forest ecosystem, and remedy those impacts. In other words, State Forest District Managers cannot conserve and maintain the State Forest public natural resources when ATV use is allowed. **Exhibit A**, pages 16-17.

69. The 2021 ATV Pilot SFER does not demonstrate that ATV use is compatible with the principles of ecosystem management used to assess activities that can be authorized in the State Forest. The purpose of the Bureau's environmental review is to fully evaluate an activity prior to approving it to determine if it can occur without long-term harm to the forest ecosystem. By allowing more ATV activity when degradation to portions of the State Forest already open to this use is already occurring, the Bureau is not properly applying ecosystem management or fulfilling

its constitutional duties to conserve and maintain the State Forest natural resources.

Exhibit A, pages 17-19.

70. By mandating that the Bureau allow ATV use on the State Forest, the Respondents are mandating degradation of the State Forest and mandating that State Forest District Managers violate their constitutional duties to conserve and maintain the public natural resources of the State Forest. **Exhibit A**, page 12.

3. Harm to PEDF Members from ATV Use in State Forest and Parks

71. In addition to the above degradation of the State Forest from ATV use identified by retired State Forest District Managers with over 100 years of collective experience managing our State Forest, other PEDF members have experienced direct, immediate and irreparable harm from the degradation of our State Forest and State Parks by ATV use.

72. **Cynthia Bower** is a member of the PEDF Board of Directors who has recreated in the Tiadaghton, Sproul, Susquehannock, Bald Eagle, Tioga and Loyalsock State Forests for the past 50 years, including hiking, canoeing and kayaking. *See* Affidavit of Cynthia Bower (copy provided as **Exhibit Q**). She has walked many of the ATV trails on the State Forest, including the Haneyville ATV Trail in the Tiadaghton State Forest District, the Susquehannock ATV Trail in the Susquehannock State Forest District Forest, the Bloody Skillet ATV Trail in the Sproul State Forest District, and on illegal trails in the Hammersley Fork Wild Area

and the Dutlinger Natural Area in the Susquehannock Forest. She has experienced widespread evidence of unauthorized off trail use by ATVs in the State Forest, including barricades being bypassed and a “No ATVs” sign torn down and laying on the ground. On the Kato-Orviston Road in the Tioga State Forest District near Morris, she observed rogue trails everywhere in an ATV riding free-for-all. Ms. Bower also observed widespread trail widening to skirt pools, mudholes, and hydrologic areas that were rutted, muddy, and pooled messes. At the Haneyville ATV Trail, she recorded 44 mudholes created by ATV use, 48 trail bypasses, and 109 areas of trail destruction, including deeply rutted, wet, eroded areas. She observed oil slicks on pools and mudholes in the Susquehannock. The ATV users she encountered simply wanted to go FAST. None of the riders seemed to be interested in the forest. It was merely a challenge course with trees. In the Cross Fork/Hamersley Fork Area, she observed where ATV users forded streams in unauthorized locations. *See Exhibit Q*, photographs of degradation taken by Ms. Bower. From these experiences, she believes it is obvious that DCNR does not have the manpower to monitor and enforce ATV use or maintain the trails. She believes **“[a] forest is a forest. It is not an industrialized Marcellus well pad; a wetland-chewing machine; or a costly hard-packed dirt parking lot ... for noisy, dirty, exhaust spewing vehicles to further degrade the forest resources that are**

needed to sustain all life ...” (emphasis in original). She concludes that “[o]ur State lands must not become a giant Amusement Park for destructive ATV recreation.”

73. **Richard Martin** is a member of the PEDF Board of Directors and the Coordinator of the Pennsylvania Forest Coalition. *See* Affidavit of Richard A. Martin (copy provided as **Exhibit R**). He is a retired high school science teacher. He has owned ATVs and has trained others in their safe use. He and other members of the Pennsylvania Forest Coalition frequent Pennsylvania’s State Forest for their enjoyment of low-impact recreation, including hunting, bird watching, fishing, hiking, and other activities in a natural setting. They believe ATVs are not natural to our State Forest. They believe motorized trails are the most invasive use of the forest. They believe we are merely visitors to the forest. The forest is not Disneyland. It is not a sacrificial playground for invasive motorized recreation. Opening the State Forest to additional ATV use is not protecting the resource. ATVs have destroyed natural habitat, including vernal ponds, habitat for amphibians, including salamanders, frogs and herps.

74. The **Pine Creek Preservation Association** (“PCPA”) has been a member of PEDF for over 10 years. *See* Affidavit of Mary Vuccola Bennett, President, and Dr. Lou Anne Gasperine, Secretary, Pine Creek Preservation Association (copy provided as **Exhibit S**). PCPA has over 1,100 members, most of whom are property owners in the Pine Creek watershed, which encompasses

portions of Potter, Tioga and Lycoming Counties. Much of the area of the Pine Creek watershed is in the Tiadaghton and Tioga State Forest. The Haneyville ATV trail is in the Pine Creek valley adjacent to the Miller Run Natural Area. From years of misuse and lack of maintenance, the trails are deeply eroded with extensive pools and mud holes and miles of degradation on and around the trail. It has been left unmaintained. PCPA believes DCNR should have never been required to register ATVs or to develop ATV trails, particularly in our State Forest or State Parks. Although a strong demand for ATV recreation may exist, this type of activity does not belong in our Tiadaghton State Forest in the Pine Creek watershed or in the wildness of our State Forest or the peacefulness of our State Parks anywhere in the Commonwealth because the natural aesthetic values of these lands provide respite to an ever-increasing population seeking them. Our public lands are intrinsically valuable locally and globally in the climate change arena—as critical antidotes. Our members hike, fish, camp, and just simply enjoy the quietness and the beauty of the forest with its wide vistas, its diversity of plants and animals, and its numerous trout streams. We believe ATV trails in our State Forest and Parks are not compatible with the values that we share, with public safety, and with other State Forest uses and values. The roar, the fragmentation, and the destruction of the natural resources caused by ATVs violate the things we cherish most.

75. The **Keystone Trails Association** (“KTA”) represents the hiking community in Pennsylvania including 37 member clubs and more than 7,000 members. *See* Affidavit of Robert Merrill, President, Keystone Trail Association (copy provided as **Exhibit T**). KTA believes Section 1720-E(b) of the Fiscal Code adopted by the Governor and the General Assembly in 2020 will greatly expand ATV trails on public lands and is contrary to the rights of citizens as delineated in Article I, Section 27 of the Pennsylvania Constitution. On April 18, 2020, KTA adopted the following policy:

High impact recreational uses such as motorized vehicles are incompatible with the protection and preservation of the scenic and conservation values of our public lands and trails. To safeguard the features in the surrounding environment that contribute to the hiking trails experience, KTA will support all measures that minimize or eliminate the environmental, visual and auditory impacts caused by all-terrain vehicles and other motorized vehicles.

As recreational vehicles, ATVs are incompatible with the aims of public resource ownership, including the preservation of clean air, clean water, and wildlife habitat. They do not belong on our State Forest, unless used for search and rescue, or used by someone with a disability. KTA lists eight specific concerns, including: environmental degradation, increased sedimentation, erosion and harm to exceptional value and high-quality streams, noise pollution, and air pollution. KTA has concerns with ATV safety issues and cites publications that establish ATV use on roads as dangerous. A 2020 study conducted by the Consumer Product Safety

Commission found that 106 deaths occurred between 2015 and 2017 (just two years) from off-road vehicles, mostly ATV use in Pennsylvania. KTA opposes the expansion of ATVs on public lands and public roads.

76. The **Susquehannock Trail Club**, with approximately 280 members, is a member of PEDF. *See* Affidavit of Lois Morey, Susquehannock Trail Club (copy provided as **Exhibit U**). For over 50 years, the club’s moto has been “*One Foot in Potter County*”. Trail club members “go to the forest for peace and quiet that cannot be found in the world of machines and vehicles. When ATVs roar through the woods, in packs of a dozen or more, peace and quiet is destroyed.” Trail club members “go to the woods to hear birds and the sound of streams’ waters working their way over rocks. When ATVs roar through the woods nothing but their motors and engines can be heard.” Trail club members “go into the forest to breathe clean, oxygenated air. ATVs pollute the woods with their smoke, the particulate in their exhaust, and the dust they stir up behind them.” Trail club members “go to the woods to see special plants—to delight in finding trillium or a patch of Indian pipes or bee balm or uniquely colored and shaped fungi along pathways. ATVs create wide swaths of mud and dirt that wipe out all living things in their path. The integrity of the forest habitat is dissected and decimated. Forest diversity is harmed; some species are destroyed permanently.” Trail club members “go into the woods with a culture of walk softly and go quietly. ATVs do not go quietly in our woods.” As a

result of ATV trail development by DCNR, the Susquehannock Trail Club has been told by DCNR that it cannot complete a hiking trail project to mitigate an erosion problem and facilitate other major improvements. The trail club was told, “Sorry—we can’t do that hiking trail project. It’s all ATVs going forward.” The Susquehannock Trail Club believes that the ATV trail expansion program violates the mission and purpose of DCNR and violates the Commonwealth’s Constitution.

77. **Wanda Shirk** is a member of PEDF, who when she began hiking twenty years ago “learned an ATV little known fact: ATVs spew beer cans out the back.” See Affidavit of Wanda Shirk (copy provided as **Exhibit V**). Ms. Shirk has observed that “Silence is golden. The very nature of hundreds of ATVs in our forests is irreparably damaging to ecosystems and habitat. Rupturing contiguous sections of forests with corridors wide enough for ATVs creates harm, causing losses of many types of living species we revel in spotting: little red-eft stage salamanders, toads, mushrooms in red, yellow, and purple arrays, blooms of Dutchmen’s britches, woods turtles that could be crushed by wheels.” She recognizes that “[o]ur planet is in the midst of *The Sixth Extinction* (Elizabeth Kolbert). We have no planet B. I am appalled to find the BIG MONEY INTERESTS of ATV manufacturers have redirected the purposes of the **DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**, to become the **DEPARTMENT OF CONSTRUCTION OF ATV AMUSEMENT PARKS.**” Ms. Shirk believes that “[t]he courts, the last

resort when money controls the executive and legislative branches, must uphold the law by requiring the government to act properly as trustee of our State lands.”

78. The **Lycoming Audubon Society** and **Gary Metzger**, the Chairman of its Conservation Committee, have been members of PEDF for many years. *See* Affidavit of Gary L. Metzger for the Lycoming Audubon Society (copy provided as **Exhibit W**). Members of the society use our State Forest and State Parks. The Society Board and many members believe that the use of our State Forest and Parks is not consistent with DCNR’s charge to maintain these magnificent public lands and their natural ecosystems for the enjoyment of all citizens. The Society’s members use these public lands for pursuits that require peace and quiet and that are based on enjoyment of natural landscapes and untrammelled areas. Bird watching and other wildlife, fishing our spectacular headwater streams, hiking the forests and trails, bicycling and driving peacefully through the quiet natural forests, camping in quiet State Parks—all of these activities are negatively impacted by noisy, fume spewing ATV use in the forest. Bird watching is what Mr. Metzger does in the northcentral Pennsylvania State Forest. He walks, bikes, and drives through the forest searching for the birds that call these forests home. It turns out that a significant part of bird watching has to do with bird listening. The birds do not sing as much and cannot be heard over the roar of ATV traffic. It is well established that the impacts from ATV routes inevitably spill well beyond the actual designated

roads or trails. DCNR does not have the resources to enforce trail use requirements. The Pennsylvania Game Commission specifically prohibits ATV use on game lands because they have problems with unauthorized use. The populations of many species of birds in North America are in serious decline. Audubon's conservation strategy to attempt to mitigate the negative impacts of warming climate and other stressors of our avian populations is to work to preserve sanctuary areas. In the Eastern United States, the great forests of the Appalachian Mountain Range have been identified as critical habitat for present and future birds. Pennsylvania's woodlands are a very important part of that sanctuary habitat, especially the large tracts of protected public forest land in the northcentral part of the State. Our expansive State Forest is literally critical to the survival of many of the avian species that make Penn's Woods their home. Many of these birds cannot tolerate disturbance of their territories, especially during the nesting season. The Ruffed Grouse, our State bird, is in serious decline. Areas in or near ATV trail systems in northcentral Pennsylvania will be critical to species recovery efforts. The Northern Goshawk is an apex avian predator of our northern forests that the Pennsylvania Game Commission has listed as a State Endangered Species. This magnificent bird does not tolerate human disturbance in its territory. Introducing noisy ATV traffic into its northerly State Forest haunts will hinder its recovery. The beloved melodious Wood Thrush is another of the many forest bird species that depend on undisturbed, minimally fragmented woodlands for

successful breeding. Additional ATV trails and parking areas will hinder breeding success. For these and other reasons, the Lycoming Audubon Society and its members are opposed to ATV use in Pennsylvania's State Forest and Parks.

79. **Jim Weaver** is a member of PEDF, who has “worked across the entire field of Environmental and Ecological disciplines [his] whole life here in Pennsylvania.” *See* Affidavit of Jim Weaver (copy provided as **Exhibit X**). Mr. Weaver has worked as an environmental consultant, a Tioga County planner, and Conservation District Director, and spends much of his time in retirement fishing in the vast wild forested watersheds of State Forest in northcentral Pennsylvania. Based on his extensive experience, he feels “qualified to testify where the bear did it in the buckwheat—or why it’s wrong headed to open up our state forest system to ATVs.” He observes that we must protect our public natural resources because they are the foundation of our own life support system. He has been fishing, hunting and exploring the public lands of the Commonwealth his entire life. He has observed that the clean water of our forested watersheds are the last stronghold of the Brook trout, our native State fish whose survival depends on these natural resources He holds dear the principles of leave no trace ethics and ecosystem management of our public lands and considers the intrusions of more motorized vehicles into the grand landscape of our State Forest, with their fragmentation, erosion, emissions, and noise impacts, to go against those principles. He has witnessed first-hand the degradation

of our pristine wildlands by ATVs in the headwaters of the Susquehanna River, with trampled riparian buffers, increased erosion and sedimentation, illegal trail use and intrusion of the solitude by the internal combustion engines of ATVs. He has observed that “[m]onied interests, materialistic motorheads and hand tied administrators just lead to more degradation, diminution, and destruction of our life support system. Death by a thousand mosquito bites.” Mr. Weave concludes stating, “But we have rights under the constitution and dadburnit!!!

80. **Robert Ross** is a member of PEDF and the **Tiadaghton Audubon Society**. *See* Affidavit of Robert M. Ross (copy provided as **Exhibit Y**). Mr. Ross hikes and bird watches in the State Forest and is a retired research ecologist. He and other bird enthusiasts and members of the Tiadaghton Audubon Society are concerned about the impact of the Fiscal Code provisions enacted in 2020 “because it seems to mandate unrestricted use of forest roads and trails in the Susquehannock, Tioga, Tiadaghton, Quehanna [Moshannon], and more westerly districts in response to pressure from these off-road machines to gain access to the state forest. These forest districts are precisely where we bird and recreate with frequent year-round use.” Mr. Ross observes that public lands are already under greatly increased development pressure from the gas industry, and conservation values have been degraded as a result, as well as the peaceful enjoyment by non-motorized recreationalists. He states that many of the forest interior birds are sensitive to noise

and human activity, citing a recent article in the Journal of Avian Biology (Merrall and Evans 2020, Anthropogenic noise reduces avian feeding efficiency and increases vigilance along an urban-rural gradient regardless of species' tolerances to urbanization. J. Avian Biology 202: e02341). As a result, Mr. Ross and many Audubon members oppose ATV trails through the Susquehannock, Tioga, Tiadaghton and Quehanna [Moshannon] State Forest because they “want quiet, peaceful places in which to recreate and rejuvenate [their] lives. The cumulative effect of so much motorized forest activity is inconsistent with the value of the State Forest system and its management.”

81. In conclusion, the complexities of the forest ecosystem and the undisputed evidence of the degradation of the forest from ATV trails makes it clear that ATV use in our State Forest and State Parks is not consistent with the constitutional rights of PEDF's members under the ERA, or the rights of both current and future generations of Pennsylvanians.

V. CONTESTED ACTS AND ACTIONS

82. PEDF is seeking declarations that the following legislative acts and actions taken pursuant to those acts are unconstitutional under the ERA and that the Respondents violated their constitutional duties as trustees under the ERA in mandating them:

(a). The legislatively forced use of ATVs on our State Forest and State Parks by the provisions in the Snowmobile and ATV Law that require DCNR to title and register ATVs within the Commonwealth, authorize the use of ATVs on our State Forest and State Parks, and thus create the expectation among ATV users that DCNR will use the revenue generated by ATV titling and registration activities to provide ATV trails for their use on our State Forest and State Parks.

(b). The legislatively forced use of ATVs on our State Forest and State Parks by Section 1720-E(a) of the Fiscal Code enacted in 2018 that requires DCNR to develop, open and maintain new ATV trails in the Sproul State Forest District to connect the existing Whiskey Springs and Bloody Skillet ATV trails, to authorize the use of State Forest roads as part of this new ATV trail system, and to create a network of ATV trails connecting Clinton County to the New York State border.

(c). The legislatively forced use of ATVs on our State Forest and State Parks by Section 1720-E(b) of the Fiscal Code enacted in 2020 that requires DCNR to implement a regional ATV connector trail pilot program during the summer of 2021.

(d). The ATV Regional ATV Connector Trail Pilot opened during the summer of 2021 to comply with Section 1720-E(b) of the Fiscal Code that further expands ATV trails on our State Forest and State Parks, thus increasing the use of our State Forest and State Parks by ATVs.

83. The legislatively forced use of our State Forest and State Parks by ATVs despite the material facts set forth in Section IV of this Petition demonstrating that such use degrades these constitutionally protected trust assets demonstrates that the Respondents have violated the ERA in enacting the challenged legislation and violated their constitutional fiduciary duties as trustees under the ERA to conserve and maintain our State Forest and State Park trust assets.

84. The exploitation of our State Forest and State Park public natural resources for the non-trust purpose of ATV use to promote tourism and economic development repeats the Commonwealth's historic abuses to our natural resources that led to the passage of the ERA, as articulated by the Pennsylvania Supreme Court in *PEDF II* and *Robinson Township*.

85. The legislative mandate to develop and maintain ATV trails in our State Forest and State Parks is an action that directly negatively impacts the natural forest ecosystem of these public lands and the people's constitutional rights under the ERA.

A. Legislatively Forced ATV Use on Our State Forest and Parks by the Snowmobile and ATV Law is Unconstitutional

86. The regulatory scheme established by the Snowmobile and ATV Law violates the ERA by forcing DCNR to title and register ATVs within the Commonwealth and use the money generated to provide trails for ATV use. Since

our State Forest and State Parks are the only lands over which DCNR has jurisdiction, this regulatory scheme creates the expectation by ATV users that DCNR will establish trails for their use on these constitutionally protected trust assets.

87. These legislatively created expectations are in direct conflict with the core purposes for which DCNR was established under the Conservation and Natural Resources Act, which are to conserve and maintain our State Forest and State Park trust assets, to protect the clean air and pure water of these trust assets, and to preserve their natural, scenic, historic and esthetic values.

88. The Snowmobile and ATV Law does not include any limitations to protect our State Forest and State Parks from degradation by for ATV use. To the contrary, the law creates the expectation that these ERA trust assets can be exploited for such use.

89. Neither DCNR nor its predecessor, nor any other Commonwealth office or officials, determined that ATV trails designated on our State Forest or State Parks for ATV use complied with the ERA prior to designating such use to implement the Snowmobile and ATV Law. To the contrary, the Bureau of Forestry has consistently reported to the Governor and General Assembly that ATV use on the State Forest has degraded these constitutionally protected trust assets protected under the ERA as set forth in the material facts in Section IV of this Petition.

90. No study or evaluation was made by the Governor or the General Assembly before passage of any of the ATV provisions in the Snowmobile and ATV Law of the existing or potential conflicts imposed on DCNR or its predecessor by mandating that it administer a major off-road motorized vehicle recreational program in the Commonwealth, including the development of ATV trails in the State Forest and State Parks.

91. No evaluation was made by the Governor or the General Assembly to determine whether this legislation complied with their constitutional duties under the ERA to conserve and maintain our public natural resources, or whether it ensured compliance with the constitutional rights of the people to clean air, pure water, and the preservation of the natural, scenic, historic and aesthetic values of our State Forest and State Parks.

92. DCNR's statutory duty to administer the ATV recreational program directly conflicts with its statutorily designated duty conserve and maintain the State Forest in compliance with the ERA.

93. For all the reasons set forth in this Petition, PEDF is asking this Honorable Court to declare that the ATV provisions of the Snowmobile and ATV Law are unconstitutional because they mandate ATV trails on our State Forest and State Parks that degrade and diminish these ERA trust assets, they fails to include any provisions to ensure compliance with the ERA, and they infringes on the

constitutional rights of PEDF’s members and current and future generations of Pennsylvanians to have their State Forest and State Park trust assets conserved and maintained, to have the clean air and pure water of these trust assets protected, and to have the natural, scenic, historic and esthetic values of these trust assets preserved.

B. Legislatively Forced ATV Use on Our State Forest and Parks by Section 1720-E(a) of the Fiscal Code Enacted in 2018 is Unconstitutional

94. In 2018, while DCNR’s moratorium on expanding ATV trails on the State Forest was still in place based on DCNR’s known degradation of the State Forest by ATV use, the General Assembly and the Governor enacted Section 1720-E(a) of the Fiscal Code mandating the development of significant increases in ATV trails and ATV use on the State Forest. Specifically, Section 1720-E(a)(1) required DCNR to “develop, open and maintain an ATV trail connecting the Whiskey Springs ATV trail to the Bloody Skillet ATV trail by using existing State roads and State Forest roads by April 1, 2020.” Section 1720-E(a)(2) required DCNR to “implement the full Northcentral Pennsylvania ATV initiative and create a network of ATV trails connecting Clinton County to the New York border by utilizing existing State roads and State Forest roads by April 1, 2024.” 72 P.S. § 1720-E(a).

95. Section 1720-E(a) of the Fiscal Code violates the ERA by mandating the construction of new ATV trails that will further degrade our State Forest and State Park public natural resources, and by infringing on the constitutional rights of

PEDF members and current and future generations of Pennsylvanians to the benefits of those resources under the ERA, as set forth in the material facts of Section IV of this Petition. Section 1720-E(a) further violates the ERA by mandating the use of State Forest roads for ATV use for these new ATV trails, which will further degrade the corpus of the public trust and will endanger the lives and the welfare of the beneficiaries of our State Forest trust assets.

96. The Respondents violated the ERA and their duties as trustees thereunder by enacting Sections 1720-E(a) of Fiscal Code in 2018 to overrule DCNR's moratorium on developing more ATV trails on the State Forest and to overrule DCNR's prohibition against using ATVs on State Forest roads; and by doing so without any evaluation prior to enacting the legislation of its compliance with the ERA consistent with their fiduciary duties as trustees and without any provisions in the legislation to ensure such compliance.

97. DCNR adopted and continued its policy against further expansion of ATV use on our State Forest for more than 17 years based on now more than 35 years of experience by the Bureau of Forestry with ATV use on the State Forest. The legislatively forced rescission of DCNR's long-standing ATV policy to appease ATV owners and promote tourism and economic development in local communities violates the ERA by degrading constitutionally protected trust assets for non-trust purposes, as established by the material facts in Section IV of this Petition.

98. The constitutionality of the Respondents' acts and decisions effecting our public natural resources depends upon whether the acts and decisions result from the Respondents' "faithful exercise of [their] fiduciary duties vis a vis our public natural resources." *PEDF II*, 161 A.3d at 939. The Respondents' ability to override decisions by DCNR is contingent upon the extent to which they "do so in a manner that is faithful to [their] trustee obligations, not [their] various other obligations." *Id.* The Respondents were not faithful to their trustee obligations under the ERA in overriding DCNR's decisions on ATV use on our State Forest and State Parks.

99. DCNR is the legislatively designated trustee of State Forest and State Park trust assets under the Conservation and Natural Resources Act. The Respondents have the authority to change or withdraw that designation, provided they designate another Commonwealth agency with appropriate expertise to serve as the trustee of our State Forest and State Parks. But absent such an action, the Respondents have the duty to accept DCNR's decision on how to manage ATVs on State Forest land and State Forest roads in compliance with the ERA when DCNR makes that decision based on the experience and profession judgment of the Bureau of Forestry, which has managed this activity on our State Forest for more than 35 years. When DCNR decided that ATV use degrades trust assets under its legislatively authorized jurisdiction based on its expertise in managing those assets and decided that allowing that activity to continue or to expand would violate the

ERA and its constitutional duties as trustee of those assets, the Respondents cannot overrule those decisions through legislation without a demonstration on the public record that DCNR erred in its constitutional analysis. The Respondents made no such demonstration.

100. As set forth in the material facts in Section IV of this Petition, DCNR established clear evidence of the degradation ATV trails have on the forest ecosystem of our constitutionally protected trust assets, and on our constitutional rights to have those assets conserved and maintained, to have the clean air and pure water of those assets protected, and to have the natural, scenic, historic and esthetic values of those assets preserved. The Respondents refused to consider DCNR's clear evidence.

101. Section 1720-E(a) of the Fiscal Code violates the ERA because it mandates creating ATV trails that degrade and diminish the public natural resources of the State Forest and the rights of the people to those resources. It violates the ERA on its face because Section 1720-E(a) does not include any considerations that demonstrate it will comply with the constitution.

102. For all the reasons set forth in this Petition, PEDF is asking this Honorable Court to declare that Section 1720(a) of the Fiscal Code is unconstitutional because it mandates ATV trails on our State Forest that degrade and diminish these ERA trust assets, it fails to include any provisions to ensure

compliance with the ERA, and it infringes on the constitutional rights of PEDF's members and current and future generations of Pennsylvanians to have their State Forest and State Park trust assets conserved and maintained, to have the clean air and pure water of these trust assets protected, and to have the natural, scenic, historic and esthetic values of these trust assets preserved.

C. Legislatively Forced ATV Use on Our State Forest and Parks by Section 1720-E(b) of the Fiscal Code Enacted in 2020 is Unconstitutional

103. In 2020, the Respondents again specifically and intentionally overruled DCNR's long-standing policy against expanding ATV trails on State Forest land and against using ATVs on State Forest roads by enacting Section 1720-E(b) of the Fiscal Code. Section 1720-E(b) required DCNR to develop and implement "a regional pilot program for ATV use on department lands" in northcentral Pennsylvania beginning in the summer of 2021. 72 P.S. § 1720-E(b).

104. Despite DCNR's continued evaluation and demonstration that ATV trails degrade our State Forest and State Park constitutionally protected trust assets, as set forth in the material facts of Section IV of this Petition, the Respondents enacted Section 1720-E(b) of the Fiscal Code to appease ATV users seeking long-distance riding opportunities in northcentral Pennsylvania and to appease some local communities in this region seeking to promote ATV-based recreational tourism and economic development based on that tourism. To evade DCNR's clear evidence of

degradation by ATV use of constitutionally protected trust assets under its legislatively mandated jurisdiction, the Respondents call the new ATV trail system mandated on these assets a “regional *pilot* program” in complete disregard of DCNR’s over 35 years of experience with ATV use on our State Forest.

105. Section 1720-E(b) of the Fiscal Code violates the ERA by mandating the construction of new ATV trails that will further degrade our State Forest and State Park public natural resources, and by infringing on the constitutional rights of PEDF members and current and future generations of Pennsylvanians to the benefits of those resources under the ERA. Section 1720(b) further violates the ERA by mandating the use of State Forest roads for ATV use for these new ATV trails, which will further degrade the corpus of the public trust and will endanger the lives and the welfare of the beneficiaries of our State Forest trust assets.

106. The Respondents violated the ERA and their duties as trustees thereunder by enacting Sections 1720-E(b) of Fiscal Code in 2020 to again overrule DCNR’s moratorium on developing more ATV trails on the State Forest and to again overrule DCNR’s prohibition against using ATVs on State Forest roads; and by doing so without any evaluation prior to enacting the legislation of its compliance with the ERA consistent with their fiduciary duties as trustees and without any provisions in the legislation to ensure such compliance.

107. As set forth in the material facts in Section IV of this Petition, DCNR adopted and continued its policy against further expansion of ATV use on our State Forest for more than 17 years based on now more than 35 years of experience by the Bureau of Forestry with ATV use on the State Forest. The legislatively forced rescission of DCNR's long-standing ATV policy to appease ATV owners and promote tourism and economic development in local communities violates the ERA by degrading constitutionally protected trust assets for non-trust purposes.

108. The constitutionality of the Respondents' acts and decisions effecting our public natural resources depends upon whether the acts and decisions result from the Respondents' "faithful exercise of [their] fiduciary duties vis a vis our public natural resources." *PEDF II*, 161 A.3d at 939. The Respondents' ability to override decisions by DCNR is contingent upon the extent to which they "do so in a manner that is faithful to [their] trustee obligations, not [their] various other obligations." *Id.* The Respondents were not faithful to their trustee obligations under the ERA in overriding DCNR's decisions on ATV use on our State Forest and State Parks.

109. DCNR is the legislatively designated trustee of State Forest and State Park trust assets under the Conservation and Natural Resources Act. The Respondents have the authority to change or withdraw that designation, provided they designate another Commonwealth agency with appropriate expertise to serve as the trustee of our State Forest and State Parks. But absent such an action, the

Respondents have the duty to accept DCNR's decision on how to manage ATVs on State Forest land and State Forest roads in compliance with the ERA when DCNR makes that decision based on the experience and profession judgment of the Bureau of Forestry, which has managed this activity on our State Forest for more than 35 years. When DCNR decided that ATV use degrades trust assets under its legislatively authorized jurisdiction based on its expertise in managing those assets and decided that allowing ATV use to continue or to expand would violate the ERA and its constitutional duties as trustee of those assets, the Respondent cannot overrule those decisions through legislation without a demonstration on the public record that DCNR erred in its constitutional analysis. The Respondents made no such demonstration.

110. As set forth in the material facts in Section IV of this Petition, DCNR established clear evidence of the degradation ATV trails have on the forest ecosystem of our constitutionally protected trust assets, and on our constitutional rights to have those assets conserved and maintained, to have the clean air and pure water of those assets protected, and to have the natural, scenic, historic and esthetic values of those assets preserved. The Respondents refused to consider DCNR's clear evidence.

111. Section 1720-E(b) of the Fiscal Code violates the ERA because it mandates creating ATV trails that degrade and diminish the public natural resources

of the State Forest and the rights of the people to those resources. It violates the ERA on its face because Section 1720-E(b) does not include any considerations that demonstrate it will comply with the constitution.

112. For all the reasons set forth in this Petition, PEDF is asking this Honorable Court to declare that Section 1720(b) of the Fiscal Code unconstitutional because it mandates ATV trails on our State Forest that degrade and diminish these ERA trust assets, it fails to include any provisions to ensure compliance with the ERA, and it infringes on the constitutional rights of PEDF's members and current and future generations of Pennsylvanians to have their State Forest and State Park trust assets conserved and maintained, to have the clean air and pure water of these trust assets protected, and to have the natural, scenic, historic and esthetic values of these trust assets preserved.

D. Legislatively Mandated Regional ATV Pilot Program Implemented in 2021 is Unconstitutional

113. On July 16, 2021, the ATV Regional Connector Trail Pilot was implemented as mandated by Section 1720-E(b) of the Fiscal Code. 72 P.S. § 1720-E(b). The 2021 ATV Regional Trail Connector Pilot included 59 miles of ATV trails directly on State Forest and State Park lands and significantly expanded the potential for use of ATVs on our State Forest and State Parks by connecting them with over

200 miles of township roads and almost 12 miles of State roads. **Exhibit N** (Project Overview).

114. The 2021 ATV Regional Trail Connector Pilot is only the beginning of significant expansion of ATV use on our State Forest and State Parks. This expansion was implemented without any management plan to prevent and remedy the degradation of our State Forest and State Park trust assets that the Respondents knew would occur based on the material facts set forth in Section IV of this Petition (*e.g.*, no plan to manage illegal ATV use in the State Forest; no plan for monitoring and assessing the impacts of authorized and illegal ATV use; and no plan identifying appropriate measures to remedy those impacts).

115. The 2021 ATV Regional Trail Connector Pilot violates the ERA because the legislation mandating this significant expansion of ATV trails and ATV use on our State Forest and State Parks is unconstitutional for the reasons set forth above in Section V.C. of this Petition.

116. The 2021 ATV Regional Trail Connector Pilot violates the ERA by significantly expanding ATV trails and use on our State Forest and State Parks and degrading these constitutionally protected trust assets, and by infringing on the constitutional rights of PEDF members and current and future generations of Pennsylvanians to the benefits of those resources under the ERA, as set forth in the material facts in Section IV of this Petition. The 2021 ATV Pilot further violates the

ERA by allowing ATV use of State Forest roads, which will further degrade the corpus of the public trust and will endanger the lives and the welfare of the beneficiaries of our State Forest trust assets.

117. The Respondents violated the ERA and their duties as trustees thereunder by mandating the 2021 ATV Regional Trail Connector Pilot and significantly expanding ATV use on our State Forest and State Parks; and by doing so without identifying the scope of this expanded ATV use or conducting any evaluation prior to implementation of this expanded ATV use to ensure its compliance with the ERA consistent with their fiduciary duties.

118. As set forth in the material facts in Section IV of this Petition, DCNR adopted and continued its policy against further expansion of ATV use on our State Forest for more than 17 years based on now more than 35 years of experience by the Bureau of Forestry with ATV use on the State Forest. The 2021 ATV Regional Trail Connector Pilot implemented to appease ATV owners and promote tourism and economic development in local communities violates the ERA by degrading constitutionally protected trust assets for non-trust purposes.

119. The constitutionality of the Respondents' acts and decisions effecting our public natural resources depends upon whether the acts and decisions result from the Respondents' "faithful exercise of [their] fiduciary duties vis a vis our public natural resources." *PEDF II*, 161 A.3d at 939. The Respondents' ability to override

decisions by DCNR is contingent upon the extent to which they “do so in a manner that is faithful to [their] trustee obligations, not [their] various other obligations.” *Id.* The Respondents were not faithful to their trustee obligations under the ERA in implementing the 2021 ATV Regional Trail Connector Pilot and overriding DCNR’s decisions on ATV use on our State Forest and State Parks.

120. As set forth in the material facts in Section IV of this Petition, DCNR established clear evidence of the degradation ATV trails have on the forest ecosystem of our constitutionally protected trust assets, and on our constitutional rights to have those assets conserved and maintained, to have the clean air and pure water of those assets protected, and to have the natural, scenic, historic and esthetic values of those assets preserved. The 2021 ATV Pilot SFER completed by DCNR further documented the degradation caused by ATV use notwithstanding the fact that DCNR had to conditionally approve this legislatively mandated pilot program. The Respondents refused to consider DCNR’s clear evidence of degradation.

121. For all the reasons set forth in this Petition, PEDF is asking this Honorable Court to declare the 2021 ATV Regional Trail Connector Pilot unconstitutional because it mandates ATV trails and use on our State Forest and State Parks that degrade and diminish these ERA trust assets, and it infringes on the constitutional rights of PEDF’s members and current and future generations of Pennsylvanians to have their State Forest and State Park trust assets conserved and

maintained, to have the clean air and pure water of these trust assets protected, and to have the natural, scenic, historic and esthetic values of these trust assets preserved.

E. The General Assembly and the Governor Breached Their Constitutional Fiduciary Duties by Mandating ATV Use on our State Forest and Parks

122. The Respondents’ trustee duties under the ERA “were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people’s rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.” *PEDF II*, 161 A.3d at 919 (quoting *Robinson Twp.*, 83 A.3d at 963).

123. As fiduciaries under the ERA, the Respondents have “a duty to act toward the corpus of the trust—the public natural resource—with prudence, loyalty, and impartiality.” *Id.* at 932 (quoting *Robinson Twp.*, 83 A3d at 956-957).

124. The Respondents’ trustee duty of prudence, under Pennsylvania law, “requires a trustee to ‘exercise such care and skill as a [person] of ordinary prudence would exercise in dealing with his [or her] own property.’” *Id.* (quoting *In re Mendenhall*, 398 A.2d 951 (Pa. 1979) and the Restatement (Second) of Trusts, § 174).

125. The Respondents’ trustee duty of loyalty, under Pennsylvania law, “imposes an obligation to manage the corpus of the trust so as to accomplish the trust’s purposes for the benefit of the trusts’ beneficiaries.” *Id.* (also citing Restatement (Second) of Trusts § 186 for the proposition that “the trustee can properly exercise such powers and only such powers as (a) are conferred upon him [or her] in specific words by the terms of the trust, or (b) are necessary or appropriate to carry out the purposes of the trust and are not forbidden by the terms of the trust”).

126. The Respondents’ must be loyal to the purpose of the constitutional trust established by the ERA, which is “conserving and maintaining the corpus by, inter alia, preventing and remedying the degradation, diminution and depletion of our public natural resources.” *Id.* at 938.

127. The Respondents’ must be loyal to the beneficiaries of the constitutional trust established by the ERA—current and future generations of Pennsylvanians, which “unmistakably conveys to the Commonwealth that when it acts as a trustee it must consider an incredibly long timeline and cannot prioritize the needs of the living over those yet to be born. The explicit inclusion as simultaneous beneficiaries of the future generations of Pennsylvanians creates a cross-generational dimension and reminds the Commonwealth that it may not succumb to ‘the inevitable bias toward present consumption of public resources by the current

generation, reinforced by a political process characterized by limited terms of office.” *PEDF IV*, 255 A.3d at 310 (quoting *Robinson Twp.* 83 A.3d at 959 n. 46).

128. The Respondents’ trust duty of impartiality “requires the trustee to manage the trust so as to give all beneficiaries due regard for their respective interests in light of the purposes of the trust.” *PEDF II*, 161 A.3d at 933.

129. The Respondents have not exercised the care and skill ordinarily exercised in dealing with one’s own property. The prudent course of action is to listen to those with experience and expertise in the matter at hand. As set forth in the material facts in Section IV of this Petition, the Bureau of Forestry has over 35 years of experience dealing with ATV use on the State Forest and more than 100 years of experience managing our State Forest. Based on that experience, the Bureau found ATV use incompatible with its trustee duties under the ERA, as reflected in the DCNR moratorium of more than 17 years on expansion of ATV use in the State Forest. Respondents, who have no similar experience upon which to base a decision, ignored the Bureau’s expertise. In fact, they pretended the Bureau had no experience with ATV use on the State Forest by mandating and implementing a regional ATV “*pilot*” program this past summer significantly expanding ATV use on State Forest trails and roads, as if the Bureau’s experience over the past 35 years with such use was irrelevant. In doing so, they breached their duty of prudence to the ERA trust and its beneficiaries.

130. The Respondents have not managed our State Forest and State Parks, which are part of the corpus of the constitutional trust established by the ERA, to prevent degradation and diminution of those trust assets and conserve and maintain them for the long-term benefit of the trust beneficiaries. Rather than consider the incredibly long timeline associated with conserving and maintaining our State Forest and State Park trust assets for generations yet to come, the Respondents have prioritized the desires (not the needs) of current ATV enthusiasts and local business and officials interested in economic development. As the Pennsylvania Supreme Court has admonished against, they have succumbed to the inevitable bias toward present consumption of public resources by the current generation, reinforced by a political process characterized by limited terms in office. They have breached their fiduciary duties of both loyalty and impartiality to the ERA trust and its cross-generational beneficiaries.

131. For all the reasons set forth in this Petition, PEDF is asking this Honorable Court to declare the Respondents in breach of their fiduciary duties of prudence, loyalty and impartiality as trustees under the ERA by:

(a). Enacting the ATV provisions of the Snowmobile and ATV Law authorizing degradation of our State Forest and State Park constitutional trust assets protected by the ERA by ATV use and creating the expectation by ATV users that

DCNR will establish riding opportunities for them that degrade our State Forest and State Park trust assets.

(b). Enacting Section 1720(a) of the Fiscal Code mandating degradation of our State Forest and State Park trust assets by significant expansion of ATV trails and use on our State Forest and State Parks, including ATV use of State Forest roads.

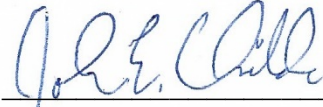
(c). Enacting Section 1720(b) of the Fiscal Code mandating degradation of our State Forest and State Park trust assets by further significant expansion of ATV trails and use on our State Forest and State Parks, including further ATV use of State Forest roads.

(d). Implementing the 2021 ATV Regional Trail Connector Pilot and degrading our State Forest and State Park trust assets by significantly expanding ATV trails and ATV use of these trust assets.

VI. CONCLUSION

132. For the reasons set forth in this Petition, PEDF requests that this Honorable Court grant its requests for declarations that Respondents' actions establishing and significantly expanding ATV use on and degrading our State Forest and State Parks trust assets protected by the ERA are unconstitutional and that the Respondents breached their fiduciary duties as trustees of these trust assets.

Respectfully,

A handwritten signature in blue ink, appearing to read "John E. Childe". The signature is written in a cursive style with a horizontal line underneath it.

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