

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF JURISDICTION	3
III. PARTIES	4
IV. STATEMENT OF MATERIAL FACTS AND LAW	6
A. 1971 Constitutional Protection Given to Our State Forest and Parks	6
B. 1985 Vehicle Code Provisions Allowed ATVs on State Forest and Parks	11
C. 1995 Conservation and Natural Resources Act Created New Agency, DCNR, to Better Protect State Forest and Park Natural Resources	13
D. 1995 State Forest Protection Through Ecosystem Management	15
1. 1995 DCNR Bureau of Forestry State Forest Strategic Plan	15
2. Updated State Forest Resource Management Plans	18
E. DCNR Policies to Limit Expansion of ATV Use on the State Forest	28
F. 2018 and 2020 Fiscal Code Mandates to Expand ATV Riding in the State Forest and Parks of Northcentral Pennsylvania and DCNR Compliance	37
1. Fiscal Code Mandates	37
2. DCNR Compliance with the Fiscal Code Mandates	42
G. Degradation of Our State Forest and Parks in Northcentral Pennsylvania by Recreational ATV Use Authorized by the Commonwealth Trustees	54
1. Overall Degradation.....	54
2. Degradation of the Sproul State Forest District	75

TABLE OF CONTENTS

	<u>Page</u>
3. Degradation of the Susquehannock State Forest District and Lyman Run State Park	82
4. Degradation of the Tioga State Forest District, the Pine Creek Gorge Natural Area and Colton Point State Park	89
5. Degradation of the Tiadaghton State Forest District	93
6. Degradation of the Moshannon State Forest District ...	100
V. RELIEF SOUGHT	104
A. Declaratory Relief Requested by PEDF (Counts I-V)	104
1. The Commonwealth Trustees Have the Non-Discretionary Fiduciary Obligation under the ERA to Conserve and Maintain the Natural Resources and Ecology of Our State Forest and Parks in Northcentral Pennsylvania (Count I)	104
2. The Commonwealth Trustees Have Authorized ATV Use in the State Forest and State Parks of Northcentral Pennsylvania That Has Caused and Continues to Cause the Degradation, Diminution and Depletion of These Public Natural Resources (Count II)	105
3. The Governor Breached His Fiduciary Duties as Trustee and the ERA Trust by Requiring DCNR to Continue to Allow ATV Recreational Use on Our State Forest and Parks in Northcentral Pennsylvania Knowing ATVs Deplete These High Value ERA Trust Assets (Count III)	108

TABLE OF CONTENTS

	<u>Page</u>
4. DCNR and its Secretary Breached Their Fiduciary Duties as Trustees and the ERA Trust by Authorizing ATV Recreational Use on our State Forest and Parks in Northcentral Pennsylvania Knowing that ATVs Deplete These High Value ERA Trust Assets (Count IV)	111
5. The Legislative Mandates of Section 1720-E of the Fiscal Code Are Unconstitutional As Applied in Our State Forest and Parks in Northcentral Pennsylvania (Count V)	116
B. Injunctive Relief Requested by PEDF (Count VI)	118
C. Other Relief Requested by PEDF (Count VII)	119
VI. CONCLUSION	120

EXHIBITS

VOLUME ONE – DCNR EXHIBITS

- Exhibit A *Penn’s Woods—Sustaining Our Forests*, DCNR Bureau of Forestry, 1995 (“1995 State Forest Strategic Plan”), excerpts
- Exhibit B State Forest Resource Management Plan, DCNR Bureau of Forestry, 2003 (“2003 State Forest Plan”), excerpts
- Exhibit C State Forest Resource Management Plan, DCNR Bureau of Forestry, 2007 (“2007 State Forest Plan”), excerpts
- Exhibit D State Forest Resource Management Plan, DCNR Bureau of Forestry, 2016 (“2016 State Forest Plan”), excerpts
- Exhibit E ATVs – 5-Year Plan Memorandum, DCNR Secretary John C. Oliver, March 16, 2000
- Exhibit F District Forester ATV Survey Results, Assessment of Current ATV Situation in Pennsylvania State Forest Lands, DCNR Office of Policy, July 11, 2000
- Exhibit G ATV Trail Development on State Forest Lands Moratorium, DCNR, September 12, 2001
- Exhibit H ATV Trail Development on State Forest Lands Moratorium Expires, DCNR, July 8, 2002
- Exhibit I ATV Trail Development Policy, DCNR, June 5, 2003
- Exhibit J ATV Trail Strategic Connections, DCNR Bureau of Forestry, undated; Strategic Connections to Expand ATV Riding Opportunities on State Forest Lands, DCNR Press Release, July 23, 2007
- Exhibit K ATV Strategic Connections, DCNR Bureau of Forestry, update as of June 15, 2011
- Exhibit L ATV Policy, DCNR, September 16, 2015
- Exhibit M ATV Feasibility Study, Whiskey Springs—Bloody Skillet Connector Trail, Larsen Design Group, 2018, excerpts

EXHIBITS

- Exhibit N Clinton County Board of Commissioners Letter to Governor Wolf, April 23, 2019
- Exhibit O DCNR Secretary Dunn Letter to Clinton County Board of Commissioners, May 10, 2019
- Exhibit P Central Mountain ATV Association Minutes of Meeting with DCNR scheduled by Senator Scarnati, August 14, 2019
- Exhibit Q ATV Trail Development and Management Policy, DCNR, November 18, 2020
- Exhibit R Report to General Assembly on Northcentral ATV Regional Trail Connector Pilot, DCNR, December 31, 2023
- Exhibit S Environmental Review: SFER 002101, 2021 ATV Regional Trail Connector Pilot, DCNR Bureau of Forestry, July 15, 2021

EXHIBITS

VOLUME TWO – PEDF EXHIBITS

- Exhibit T Affidavit of Roy A. Siefert, Retired State Forest District Manager
- Exhibit U Affidavit of Robert Davey, Jr., Retired State Forest District Manager
- Exhibit V Affidavit of Douglas J. D’Amore, Retired State Forest District Manager
- Exhibit W Affidavit of Robert Merrill, Retired State Forest District Manager
- Exhibit X Affidavit of Robert Barbour, Retired State Forest Ranger
- Exhibit Y Affidavit of Cynthia Bower, PEDF Chair
- Exhibit Z Affidavit of Jim Weaver, Retired Tioga County Planner
- Exhibit AA Expert Report of John A. Arway, Retired PFBC Fisheries Biologist, on the Impacts of All-Terrain-Vehicles on State Forest Fish and Aquatic Public Natural Resources, October 3, 2024
- Exhibit BB Affidavit of the Lycoming Audubon Society and Gary Metzger, Chairman of its Conservation Committee
- Exhibit CC Affidavit of Tiadaghton Audubon Society Member Robert M. Ross
- Exhibit DD Affidavit of Keystone Trail Association, Executive Director Brook Lenker
- Exhibit EE Affidavit of the Susquehannock Trail Club, Officer Lois B. Morey
- Exhibit FF Affidavit of the Pine Creek Preservation Association, President Mary Vuccola Bennett & Secretary Dr. Lou Anne Gasperine

I. INTRODUCTION

1. The Pennsylvania Environmental Defense Foundation (“PEDF”), Petitioner, files this Petition for Review (“Petition”) seeking judicial review of the actions of the Commonwealth of Pennsylvania (“Commonwealth”) taken through its Governor Josh Shapiro, its Department of Conservation and Natural Resources (“DCNR”) and its DCNR Secretary Cindy Adams Dunn (collectively, the “Commonwealth Trustees”) to allow recreational use of all-terrain vehicles (“ATVs”) on our State Forest and State Parks in northcentral Pennsylvania that have caused and continue to cause the degradation, diminution and depletion of these public natural resources in breach of their trustee duties under Article I, Section 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment (“ERA”).

2. Based on PEDF’s as-applied analyses set forth in this Petition of the actions taken by the Commonwealth Trustees to carry out statutory authority they have been granted through the Vehicle Code and Fiscal Code to allow ATV recreational use on our State Forest and State Parks, PEDF seeks the following declaratory relief:

(a) The Commonwealth Trustees have the non-discretionary fiduciary obligation under Article I, Section 27 of the Pennsylvania Constitution to conserve

and maintain the natural resources and ecology of our State Forest and State Parks in northcentral Pennsylvania (Count I);

(b) The Commonwealth Trustees have authorized ATV use in the State Forest and State Parks of northcentral Pennsylvania that has caused and continues to cause the degradation, diminution and depletion of these public natural resources (Count II);

(c) The Governor breached his fiduciary duties as trustee and the ERA trust and infringed on the constitutional rights of PEDF members and other trust beneficiaries by requiring DCNR to continue to allow and to expand ATV recreational use on our State Forest and State Parks in northcentral Pennsylvania knowing ATVs deplete these high value ERA trust assets (Count III);

(d) DCNR and its Secretary have breached their fiduciary duties as trustees and the ERA trust and infringed on the constitutional rights of PEDF members and other trust beneficiaries by authorizing continued and expanded ATV recreational use on our State Forest and State Parks in northcentral Pennsylvania knowing that ATVs deplete these high value trust assets (Count IV); and

(e) The legislative mandates of Section 1720-E of the Fiscal Code are unconstitutional as applied to our State Forest and State Parks in northcentral Pennsylvania (Count V).

3. In addition to the above declaratory relief, PEDF seeks injunctive relief to enjoin the Commonwealth Trustees from allowing the recreational use of ATVs in our State Forest and State Parks of northcentral Pennsylvania to prevent further depletion of these high value trust assets and to conserve and maintain them for future generations as required by plain language of Article I, Section 27 of the Pennsylvania Constitution and Pennsylvania trust law (Count VI) .

4. PEDF also seeks to recover attorney fees and other costs, as well as any other relief the Commonwealth Court may deem appropriate (Count VII).

II. STATEMENT OF JURISDICTION

5. The Commonwealth Court has original jurisdiction over this civil action against the Commonwealth as trustee of the natural resources of our State Forest and State Parks under Article I, Section 27 of the Pennsylvania Constitution, as well as the officers of the Commonwealth acting in their official capacity to carry out the Commonwealth’s trustee duties pursuant to the following:

(a) Section 761 of the Judicial Code, 42 Pa.C.S. 761 (“The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings: (1) Against the Commonwealth government, including any officer thereof, acting in his official capacity ...”);

(b) Section 7712(a) of the Uniform Trust Act, 20 Pa.C.S. § 7712(a) (“By accepting the trusteeship of a trust having its situs in this Commonwealth ..., the

trustee submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.”);

(c) Section 7532 of the Declaratory Judgements Act, 42 Pa.C.S. § 7532 (“Courts 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

(d) Section 7535 of the Declaratory Judgements Act, 42 Pa.C.S. § 7535 (“Any 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.”).

III. PARTIES

6. Petitioner PEDF is a nonprofit 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 Chair, Cynthia Bower, resides at 2753 Sugar Camp Road, Trout Run, PA 17771, and can be contacted at 570-998-8244.

7. Respondent Commonwealth of Pennsylvania is the constitutionally designated trustee under the ERA of the Commonwealth’s public natural resources,

which are owned in common by the people of Pennsylvania, including future generations, and are to be conserved and maintained as the corpus of the trust for their benefit.

8. Respondent Josh Shapiro, in his official capacity as the Governor of the Commonwealth (“Governor”), has the supreme executive power to carry out the Commonwealth’s trustee duties under the ERA. He cannot infringe upon the declared Article I constitutional rights of people established in the ERA when exercising the supreme executive power granted to him under Article IV, Section 2 of the Pennsylvania Constitution or when exercising his budget and financial planning duties under Article VIII, Section 12 of the Pennsylvania Constitution. The Governor appoints the Secretary, Deputy Secretaries, and policy and legislative directors of DCNR, as well as the General Counsel who in turn appoints the Chief Counsel and assistant counsel for DCNR. These appointed public officials serve at the pleasure of the Governor.

9. Respondent DCNR is an agency of the Commonwealth established in 1995 by the Conservation and Natural Resources Act (“CNRA”),¹ 71 P.S. §§ 1340.101-1340.1103, to administer the natural resources of our publicly owned lands acquired to establish our State Forest and State Parks, which are ERA trust assets that must be preserved as part of the trust corpus under the ERA.

¹ Act of June 28, 1995, P.L. 89, No. 18 (71 P.S. §§ 1340.101-1340.1103).

10. Respondent Cindy Adams Dunn is the Secretary of Conservation and Natural Resources appointed by the Governor and approved by a majority of the members elected to the Senate to serve as the head of DCNR. CNRA § 301, 71 P.S. § 1340.301. As Secretary, she has taken an oath to “support, obey and defend the Constitution of Pennsylvania.” Pa. Const. art. VI, § 3; Administrative Code of 1929 § 218, 71 P.S. § 78.

IV. STATEMENT OF MATERIAL FACTS AND LAW

A. 1971 Constitutional Protection Given to Our State Forest and Parks

11. In 1971, by a margin of nearly four to one, the people of Pennsylvania ratified a proposed amendment to their Declaration of Rights in the Pennsylvania Constitution, recognizing their environmental rights as commensurate with their most sacred political and individual rights, stating:

The people have the right to clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of 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; *see also PEDF v. Commonwealth*, 161 A.3d 911, 916 (Pa. 2017) (“*PEDF II*”).

12. Article I, Section 25 of the Pennsylvania Constitution expressly denies the Respondents the power to infringe upon the people’s declared ERA rights in Article I of our state constitution, stating that “[t]o guard against the 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.” Pa. Const. art. I, § 25.

13. Pennsylvania’s State Forest and State Parks are administered by the Commonwealth Trustees as part of the corpus of the environmental trust established by the ERA and must be managed according to the plain language of the ERA and the fiduciary duties imposed under Pennsylvania trust law. *PEDF II*, 161 A.3d at 916.

14. The primary fiduciary duty of the Commonwealth Trustees is to preserve the corpus of the trust. The trust corpus at issue in this case are the natural resources of our State Forest and State Parks in northcentral Pennsylvania where the Commonwealth Trustees have authorized the recreational use of ATVs.

15. The explicit terms of the ERA require the Commonwealth Trustees to “conserve and maintain” the corpus of the trust, and “the plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, and depletion of our public natural resources.” *Id.* at 932.

16. As a fiduciary, each Commonwealth Trustee “has a duty to act toward the corpus of the [ERA] trust—the public natural resources—with prudence, loyalty, and impartiality.” *Id.* (quoting *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 956-957 (Pa. 2013)).

17. The natural resources of our State Forest and State Parks are owned in common by the people of Pennsylvania, including future generations. The ERA’s “express inclusion of generations yet to come in ‘all the people’ establishes that current and future Pennsylvanians stand on equal footing and have identical interests in the environmental values broadly protected by the ERA.” *PEDF v. Commonwealth*, 255 A.3d 289, 310 (Pa. 2021). Thus, the Commonwealth Trustees “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.’” *Id.*

18. In reviewing the reasons that the people of Pennsylvania voted overwhelmingly in 1971 to amend their state constitution to add the fundamental right to have their public natural resources protected, the Pennsylvania Supreme Court has observed that “[i]t is not a historical accident that the Pennsylvania Constitution now places citizens’ environmental rights on par with their political rights.” *PEDF II*, 161 A.3d at 916. The court summarized several past abuses of Pennsylvania’s natural resources that yielded widespread environmental degradation for short-term economic gain, including “a lumber industry harvesting boom that, by 1920, had left much of Pennsylvania barren. ... Similarly, by 1890, ‘game’ wildlife had dwindled ‘as a result of deforestation, pollution and unregulated hunting

and trapping.” *Id.* at 917. The court also pointed out that “the industrial exploitation of Pennsylvania’s coalfields from the middle of the nineteenth well into the twentieth century ... was devastating to the natural environment of the coal-rich regions of the Commonwealth, with long-lasting effects on human health and safety, and on the esthetic beauty of nature.” *Id.*

19. The drafters of the ERA recognized and acknowledged the “shocks to our environment and quality of life” that led to the need for constitutional protection of our public natural resources, including the following from the ERA’s legislative history:²

We seared and scarred our once green and pleasant land with mining operations. We polluted our rivers and our streams with acid mine drainage, with industrial waste, with sewage. We poisoned our ‘delicate, pleasant and wholesome’ air with the smoke of steel mills and coke ovens and with the fumes of millions of automobiles. We smashed our highways through fertile fields and thriving city neighborhoods. We cut down our trees and erected eyesores along our roads. We uglified our land and we called it progress.

Id. at 918 (citing 1970 Pa. Legislative Journal—House at 2270).

20. The Pennsylvania Supreme Court also recognized the long-lasting consequences of these historic abuses, observing that the “[r]egeneration of our forests (less the diversity of species) has taken decades” and that the cost of “a

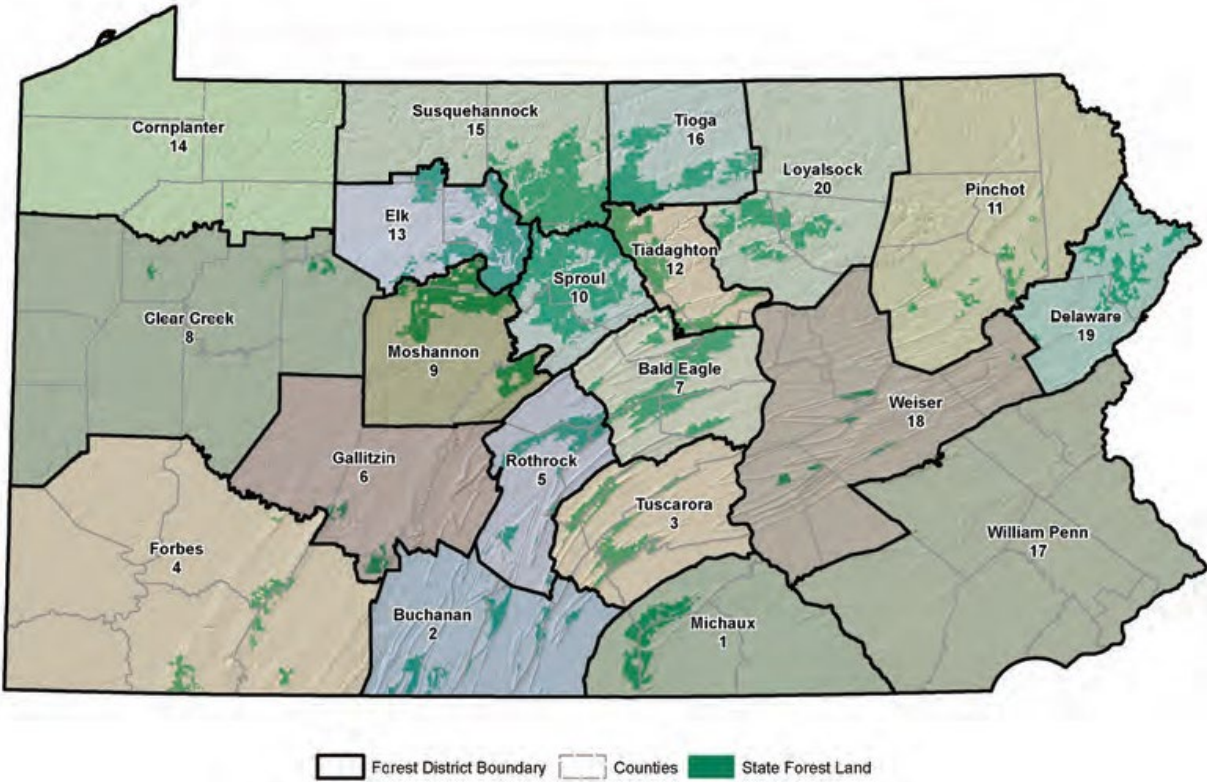
² On April 14, 1970, the Pennsylvania House of Representatives voted unanimously to accept the final language of the ERA as amended by the Senate on the third consideration of House Bill 958. This action was taken as part of a special order of business in which the House became “the first legislative body in America to announce its participation in the national observance of Earth Day.

massive undertaking to reclaim over 250,000 acres of abandoned surface mines and about 2,400 miles of streams contaminated with acid mine drainage ... has been in the hundreds of millions of dollars ... [with] an estimated 15 billion dollars [] in fact necessary to resolve the problem of abandoned mine reclamation alone.” *Id.* at 917.

21. Pennsylvania’s State Forest comprises approximately 2.2 million acres. The northcentral region of the State Forest is approximately 1.6 million acres, divided administratively by DCNR into seven districts, which are shown on the figure below—the Sproul, Susquehannock, Tioga, Moshannon, Elk, Tiadaghton, and Loyalsock.

22. Our State Forest in northcentral Pennsylvania is a unique and high value public natural resource of largely contiguous forest. This forest is a natural ecosystem of trees, other plants, and wildlife supported by its soil, mycorrhizae, clean air, and high value streams, wetlands, and vernal ponds, as well as its climate, geology and topography. Our State Forest in northcentral Pennsylvania is the core public natural resource of the Commonwealth initiative appropriately named the “Pennsylvania Wilds”, which is supported by 12 counties in this region.³

³ The history of the Pennsylvania Wilds initiative is available at <https://www.pawildscenter.org/the-pa-wilds-region/history-of-the-pa-wilds/>.



Source: State Forest Resource Management Plan, DCNR, 2016, Figure 1.1, page 26.

B. 1985 Vehicle Code Provisions Allowed ATVs on State Forest and Parks

23. In 1971, the newly created Department of Environmental Resources (“DER”) was required by statute to title and register snowmobiles in Pennsylvania and given statutory authority to allow recreational use of snowmobiles on state lands under its jurisdiction, which included the State Forest and State Parks.⁴

24. The snowmobile statutory requirements later became part of the Pennsylvania Vehicle Code (75 Pa.C.S. Chapter 77) and were amended in 1985 to require DER to also title and register ATVs. As with snowmobiles, DER was also

⁴ Act of August 12, 1971, P.L. 299, No. 75 (referred to as the Snowmobile Law).

given statutory authority to allow recreational use of ATVs on state lands under its jurisdiction. 75 Pa.C.S. § 7724(b).

25. Chapter 77 of the Vehicle Code 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.

26. Chapter 77 of the Vehicle Code requires DCNR to deposit revenue generated from its administration of snowmobiles and ATVs under Chapter 77 into restricted accounts established in the State Treasury. 75 Pa.C.S. § 7706(a). DCNR is authorized to draw revenue from these restricted accounts to carry out the purposes of Chapter 77, 75 Pa.C.S. § 7706(a)(2), and to award grants to municipalities and profit and nonprofit organizations to administer ATV recreational activities, 75 Pa.C.S. § 7706(b).

27. After the Vehicle Code was amended in 1985 to allow recreational use of ATVs on the State Forest, four large recreational riding areas with approximately 150 miles of roads dedicated exclusively to ATV use were developed in the State Forest in northcentral Pennsylvania. Two ATV riding areas were established in the Sproul State Forest District: Whiskey Springs with 50 miles of ATV trails and Bloody Skillet with 38 miles of ATV trails. One recreational riding area was established in the Susquehannock State Forest District and provides 44 miles of ATV trails between Denton Hill and Lyman Run State Parks. The fourth recreational

riding area was established in the Tiadaghton State Forest District near Haneyville with 18 miles of ATV trails.

28. As set forth in detail below, based on the experience gained from managing ATV recreational riding on the State Forest after the Vehicle Code was amended in 1985 to authorize such use, DCNR adopted a policy against further expansion of this activity on the State Forest because this activity could not be effectively managed consistent with DCNR's core mission to protect the natural resources of the forest ecosystem.

C. 1995 Conservation and Natural Resources Act Created New Agency, DCNR, to Better Protect State Forest and Park Natural Resources

29. In 1995, the General Assembly recognized the need for a separate agency to fulfill the constitutional trust mandate to conserve and maintain the natural resources and ecology of our State Forest and State Parks. The Conservation and Natural Resources Act was enacted to create a separate Commonwealth agency, DCNR, to carry out the day-to-day trustee duties of the Commonwealth to preserve these constitutionally protected trust assets under the ERA.

30. In establishing DCNR, the General Assembly recognized that our State Forest and State Parks "contain some of our State's most precious and rare natural areas," that conservation and maintenance of our State Forest and State Parks had "taken a back seat" to other environmental problems, that "not enough time, energy and money" was being devoted to solving the problems facing our State Forest and

State Parks, and that a “cabinet-level advocate” was needed to highlight these and other conservation issues for the public. CNRA § 101, 71 P.S. § 1340.101.

31. The General Assembly’s first legislative finding in the CNRA states that “Pennsylvania’s public natural resources are to be conserved and maintained for the benefit of all the citizens as guaranteed by section 27 of Article I of the Constitution of Pennsylvania.” CNRA § 101(a)(1), 71 P.S. § 1340.101(a)(1).

32. The stated purpose of the CNRA is “[t]o create a new Department of Conservation and Natural Resources to serve as a cabinet level advocate for our State parks, forest, rivers, trails, greenways and community recreation and heritage conservation programs to provide more focused management of the Commonwealth’s recreation, natural and river environments. The primary mission of the Department of Conservation and Natural Resources will be to maintain, improve and preserve State parks, to manage State forest lands to assure their long term health, sustainability and economic use, to provide information on Pennsylvania’s ecological and geologic resources ...”. CNRA § 101(b)(1), 71 P.S. § 1340.101(b)(1).

33. Although DCNR’s stated mission in the CNRA is to “manage the state forest for long term health, sustainability and economic use”, the CNRA recognizes that economic use must be accomplished in compliance with DCNR’s trustee obligations under the state constitution to conserve and maintain the natural

resources of the State Forest for the benefit of all citizens and to protect their constitutional rights to the preservation of the clean air, pure water and natural, scenic, historic and esthetic values of the forest.

D. 1995 State Forest Protection Through Ecosystem Management

1. 1995 DCNR Bureau of Forestry State Forest Strategic Plan

34. As part of the renewed statutory emphasis under the CNRA on administering our State Forest consistent with its ERA trustee duties, the Bureau of Forestry adopted a new strategic plan in 1995 upon its transfer to the newly created DCNR. *See Penn's Woods—Sustaining Our Forests*, DCNR Bureau of Forestry, 1995 (“1995 State Forest Strategic Plan”), excerpts incorporated as **Exhibit A**.⁵ In this strategic plan, the DCNR Bureau of Forestry recognized the need to shift from managing the State Forest for various uses, an approach that had evolved following World War II, to a “management strategy geared toward sustaining the long-term health and productivity of the forested ecosystems.” *Id.*, page 8.

⁵ The full text of the 1995 State Forest Strategic Plan is available on DCNR’s website at https://elibrary.dcnr.pa.gov/GetDocument?docId=1741347&DocName=sf-Penns_Woods_Strategic_Plan.pdf. Dr. James R. Grace, the State Forester and director of the Bureau of Forestry in 1995, oversaw the preparation of this new strategic plan. Dr. Grace earned his Ph.D. in Forest Resources from the Pennsylvania State University in 1978, with a focus on forest ecology. He also earned a B.S. in forest management at the University of Vermont in 1970 and a master’s degree in forest science at Yale University in 1972. He became the DER deputy secretary for forestry, state parks, and geological survey in 1987 and was the DCNR state forester in 1995 when the strategic plan was adopted.

35. In the 1995 State Forest Strategic Plan, the DCNR Bureau of Forestry explains that the “primary goal of ecosystem management is to keep the complex interdependencies of ecosystems intact and functioning well over long periods of time” and that the “key elements include the maintenance of a diversity of plants and animals and the proper functioning of nutrient, water and energy cycles.” *Id.* The bureau describes biodiversity as a “key element in maintaining ecosystem integrity and viability” because it “is a foundation of life, serving as building blocks for ecosystems and as a barometer for ecosystem health. Biodiversity is important to our economy and way of life, providing raw materials, medicines and food to meet our everyday needs.” *Id.*, page 9. The bureau also states that “habitat destruction and fragmentation, along with degradation from pollution, are the greatest threats to biodiversity. *Id.*”

36. The Western Pennsylvania Conservancy, a nonprofit charitable organization that has been dedicated to protecting and restoring natural places in western Pennsylvania since 1932, describes biodiversity as “essential for the processes that support all aspects of life on Earth for plants, animals, and humans alike. Without a wide range of animals, plants and microorganisms, then clean air, water, soil, food, medicines, natural areas and healthy ecosystems would not exist. Nature thrives through a large diversity of plants and animals. Forests are one of the

most important natural habitats to support biodiversity. A flourishing forest provides food, shelter and clean air and water to support a wide range of species.”⁶⁶

37. In the 1995 State Forest Strategic Plan, the DCNR Bureau of Forestry identified the lack of forest regeneration as “[p]erhaps the most critical issue facing our forests” with “many [forest] areas of Pennsylvania ... nearly devoid of small tree seedlings” because of factors “including poor seed production, competing vegetation, insects and diseases” and over browsing by white-tailed deer. *Id.*, page 9. The bureau concluded that “[u]ntil we have a better understanding of what impacts our actions have on the complex interrelationships of the elements of ecosystems, we must proceed cautiously to ensure their integrity and sustainability.” *Id.*

38. In the 1995 State Forest Strategic Plan, the DCNR Bureau of Forestry adopted the specific goal “to manage State Forests under sound ecosystem management, to retain their wild character and maintain biological diversity while providing pure water, opportunities for low density recreation, habitats for forest plants and animals, sustained yields of quality timber, and environmentally sound utilization of mineral resources.” *Id.*, page 23.

39. To carry out the specific goal of managing the State Forest under sound ecosystem management, the DCNR Bureau of Forestry adopted a State Forest

⁶⁶ See Conserve Magazine, Western Pennsylvania Conservancy, Volume LXXVI, Winter 2023, pages 3-4, available at https://issuu.com/wpcfww/docs/conserves_winter2024_final?fr=sNzlmODY2NTA3NTY.

recreation policy in the 1995 State Forest Strategic Plan, which states that “State forest lands should provide the citizens of the Commonwealth with *the opportunity for the types of healthful, dispersed outdoor recreation that can only be obtained from large forested areas*. State Forest visitors should be assured of a high-quality outdoor experience.” *Id.* at 25 (emphasis added). While committing to continued and increased “[d]ispersed, low-density recreational activity ... on State Forest land”, the bureau also acknowledged that “[f]uture restrictions on types and quantities of recreational use may be necessary to protect forest values and provide a quality recreational experience.” *Id.*

2. Updated State Forest Resource Management Plans

40. After adoption of the 1995 State Forest Strategic Plan, the DCNR Bureau of Forestry updated its State Forest Resource Management Plan, which when first developed in 1955 “focused primarily on timber and water resources.” State Forest Resource Management Plan, DCNR, June 2003 (“2003 State Forest Plan”), page 6 (excerpts incorporated as **Exhibit B**). The bureau explained that in 1992, it “began a strategic planning process to address the long-term sustainability of the Commonwealth’s forest resources” in response to “a host of increasing pressures being placed on state forest lands”, including “intense public interest in a vast scope of outdoor recreational opportunities, ongoing demands for industrial raw materials, urban sprawl and other forms of forest fragmentation, invasive species, endemic and

exotic forest pests and diseases, overpopulation of whitetail deer, and other ecological impacts, all of which could lead to unsustainable conditions under current forest management guidelines.” *Id.*

41. The DCNR Bureau of Forestry further explained in the 2003 State Forest Plan that “[u]nder the prevailing ‘multiple use’ [State Forest] management paradigm and strategies, no overarching management criteria was in place to ensure that critical [forest] ecosystem processes were being monitored or maintained.” The bureau explained that the “primary outcome of the strategic planning effort was the recognition of the need to shift the perspective of management to one of ecosystem management, which is articulated in the Bureau of Forestry’s Mission Statement.” *Id.* The bureau then reiterated in the 2003 State Forest Plan the mission statement it adopted in the 1995 State Forest Strategic Plan:

Contained in Article I, Section 27 of the Pennsylvania Constitution are these words: ‘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.’

The mission of the Bureau of Forestry is to ensure the long-term health, viability, and productivity of the Commonwealth’s forests and to conserve native wild plants.

Id. (emphasis in original); *see also* 1995 State Forest Strategic Plan (Exhibit A), page 32.

42. The DCNR Bureau of Forestry states in the 2003 State Forest Plan that “[c]onducting and maintaining accurate and current forest resource inventories is critical to implementing ecosystem management and achieving sustainable forestry.” *Id.*, pages 19. The bureau then provides an overview of its continuous forest inventory process, which primarily identifies the types, size and density of trees and other vegetation in the State Forest, and an overview of its classification of the forest into various commercial and non-commercial management zones. *Id.*, pages 19-34.

43. In the 2003 State Forest Plan, the DCNR Bureau of Forestry includes discussion of the importance of various natural resources of the State Forest to the “overarching goal” established in the 1995 State Forest Strategic Plan of managing the State Forest “under sound ecosystem management, to retain their wild character and maintain biological diversity, emphasizing opportunities for dispersed recreation, habitats for forest plants and animals, sustained yields of quality timber and environmentally sound utilization of mineral resources.” *Id.*, page 36.

44. The DCNR Bureau of Forestry acknowledged in the 2003 State Forest Plan that “some key elements and other ecological factors ... have not been given sufficient attention or recognition” in past planning, including “biodiversity conservation, bioreserves, natural areas, wild areas, old-growth strategy, forest fragmentation, and connectivity” and includes discussions of these factors in the

plan. *Id.*, page 43, 67-95. The bureau discusses these ecological considerations in the plan primarily in the context of specific non-commercial forest management “zones” (aesthetic/buffer, limited resource, natural areas, wild area, and special resource management zones.) *Id.*, page 23.

45. In addition to the above specific ecological considerations, the DCNR Bureau of Forestry discussed in the 2003 State Forest Plan the continued need to protect “the health of the state forest ecosystem from destructive agents”, including wildfire, forest pests and diseases, invasive species, and illegal waste disposal (*id.*, pages 44, 96-108), as well to protect forest soil, water, flora and fauna natural resources critical to sustaining a healthy forest.

46. Regarding forest soil resources, the DCNR Bureau of Forestry recognized in the 2003 State Forest Plan that the “soil ecosystem’ performs key functions essential to healthy forest ecosystems” and that “maintenance of these soil functions requires careful consideration of the entire soil ecosystem, including soil floral and faunal communities composed of bacteria, algae, fungi, protozoa, nematodes, arthropods, earthworms, insects, small vertebrates, and plants, as well as physical and chemical properties of the soil. Providing and protecting the necessary habitat components and physical conditions for soil organisms is critical for managing soil resources.” *Id.*, page 120. The bureau commits in the plan “to follow [best management practices] to protect soil resources and investigate new strategies

for actively managing soil resources in order to protect, enhance, and restore soil ecosystem health and productivity.” *Id.*, page 124.

47. Regarding forest water resources, the DCNR Bureau of Forestry recognized in the 2003 State Forest Plan that “[f]orested watersheds and riparian zones greatly influence the ability of surface waters to provide in-stream values, uses and functions; and thus, will be managed as integral components of the forest ecosystem.” *Id.*, page 131. The bureau further recognizes that “[r]iparian areas, or streamside forests are critical to the protection of aquatic ecosystems. Due to their location, riparian areas play a critical role in protecting water quality, reducing soil erosion and enhancing fish and wildlife resources. Also, because of the dendritic pattern exhibited by most of the streams on state forest land, riparian zones provide travel lanes or corridors for most wildlife species. Aquatic and riparian systems are linked. Riparian habitats form a natural buffer between an aquatic ecosystem and the drier upland terrestrial systems.” *Id.* The bureau commits in the plan to “manage water resources within the context of ecosystem management, considering the wide range of potential impacts, issues and opportunities relating to water resources.” *Id.*, page 147.

48. Regarding forest floral resources, the DCNR Bureau of Forestry stated in the 2003 State Forest Plan that “[f]orests are complex ecosystems composed of animal and plant communities integrated with the physical environment. Trees are

but a small number of the plant species found in the forest. A myriad of shrubs, herbs, ferns, fungi, mosses and lichens compose the forest under story and blanket the forest floor.” *Id.*, page 166. Under “Floral Resources” in the 2003 State Forest Plan, the bureau discusses its statewide responsibilities for inventorying and protecting native wild plants within the Commonwealth under the Wild Resource Conservation Act.⁷ The bureau commits to manage the State Forest lands “as examples in promoting the conservation of native wild flora” and “to provide habitats that support a diversity of native plant communities and species” by expanding its inventory and monitoring efforts, promoting “public plant sanctuaries” on the State Forest, and taking steps to reduce invasive species. *Id.*, page 173-174.

49. Regarding forest fauna resources, the DCNR Bureau of Forestry recognized in the 2003 State Forest Plan that the “values of animals in our forests are many and immeasurable.” *Id.*, page 181. The bureau commits “through ecosystem management” to “manage the state forests to provide suitable habitats for the many species of wildlife that are woven into the fabric of these forests.” *Id.* The bureau states that it will do so by using “existing habitat information” and focusing “on habitats and habitat components that are important for a variety of species.” *Id.*

50. As part of its expanded discussion in the 2003 State Forest Plan of the ecological resources, functions and values of the State Forest, the DCNR Bureau of

⁷ Act of June 23, 1982, P.L. 597, No. 170, as amended (32 P.S. §§ 5301-5314).

Forestry provided numerous goals, actions, and guidelines to be employed when managing activities allowed on the forest pursuant to powers granted by the Conservation and Natural Resources Act and other statutes (*e.g.*, extracting and selling minerals, allowing and promoting recreation, harvesting timber and other forest products, and developing and maintaining infrastructure to support these and other forest uses). The bureau also includes separate discussions of these forest uses in the plan (Geology/Minerals, Recreation, Silviculture/Timber Management, Non-Timber Forest Products, and Infrastructure).

51. The 2003 State Forest Plan established a process for environmental review of “any project on state forest land that may or will disrupt, alter, or otherwise change the environment”, including the above forest uses. *Id.*, page 50. Under this process, a written review of 23 listed items reflective of the principles of ecosystem management discussed in the plan was to be prepared, disseminated for review, and approved or disapproved by the state forester (*i.e.*, the DCNR Bureau of Forestry Director). *Id.* The review was to include “a narrative consideration of each of the environmental review items [that] must include an assessment of the project’s probable impact on each factor and whether it is beneficial or adverse. Factors where an adverse impact is indicated require an explanation of the corrective measures that will be taken, or justification why none are planned.” *Id.*

52. Regarding ATV recreation on the State Forest, the 2003 State Forest Plan stated that ATV “ownership is at an all time high in the Commonwealth and growing at an enormous rate.” *Id.*, page 230. By 2003, “the ATV trail system [on the State Forest] has grown to over 214 miles of trails in 10 different State Forests. Subsequently the damage realized from ATV use has continued to increase, most of which is from illegal use. It is the policy of DCNR to not significantly increase the current ATV trail system on existing state forest land. DCNR is also targeting development of ATV activities to private, municipal, and county lands where the focus can be solely on motorized recreation. The development of trails on private, municipal, and county lands [will be] assisted by a DCNR grant program.” *Id.*

53. Consistent with the State Forest recreation policy in the 1995 State Forest Strategic Plan, the 2003 State Forest Plan stated that “[t]he Bureau of Forestry will focus on the opportunity to provide all Pennsylvanians with dispersed low density recreation that is compatible with maintaining the integrity of forest ecosystems.” *Id.*, page 40.

54. In 2007, the DCNR Bureau of Forestry updated its State Forest Resource Management Plan to, among other things, include a discussion of the important ecosystem function of carbon sequestration. State Forest Resource Management Plan, DCNR, 2007 (“2007 State Forest Plan”), page 10 (excerpt incorporated as **Exhibit D**).

55. In the 2007 State Forest Plan, the DCNR Bureau of Forestry identified the carbon cycle as a critical part of forest ecosystem management at the global, national, state, and local levels. *Id.* The plan identified management of the 2.1 million acres of State Forest to enhance carbon sequestration as important to offset Pennsylvania’s contribution to global warming. *Id.* Options for enhancing carbon sequestration included protection of the existing forestland base, enhancement and restoration of this base, and increasing Pennsylvania’s forestland base. *Id.*

56. Regarding ATV recreation on the State Forest, the 2007 State Forest Plan stated that “a major recent undertaking was the enhancement of DCNR’s ATV trail system through a strategic expansion of key internal links to connect additional riding opportunities off of state forest lands.” *Id.*, page 34.⁸

57. The DCNR Bureau of Forestry updated the State Forest Resource Management Plan again in 2016. State Forest Resource Management Plan, DCNR, 2016 (“2016 State Forest Plan”), excerpts incorporated as **Exhibit D**. The DCNR Bureau of Forestry states that this plan is the primary instrument that the bureau uses to plan, coordinate, and communicate its management of the state forest system.” *Id.*, page 2. The bureau further states that this current plan “lays the groundwork for

⁸ The 2007 State Forest Plan provided links to two documents entitled “ATV expansion opportunities” and “Strategic ATV Connectors” for additional information. These links are no longer functional but the second document appears to be the document discussed below and included as Exhibit J.

ensuring that the overarching goal of the state forest management—ensuring sustainability—is achieved. *Id.*

58. While the DCNR Bureau of Forestry purports to continue to apply the principles of ecosystem management in the 2016 State Forest Plan, the bureau for the first time formally states that its mission in applying ecosystem management allows the balancing of adverse impacts to the ecology of the forest from development authorized by the bureau, particularly ongoing natural gas development, with the social and economic values of such development. *Id.*, page 154 (“Geologic resources on state forest lands offer a variety of environmental, social, and economic values that the bureau considers in ecosystem management.”); *id.*, page 156 (“The economic use and sound extraction and utilization of geologic resources is part of the bureau’s mission in managing these lands. Managing geologic resources requires thorough analysis, strategic planning, and attentive oversight to ensure that the value of geologic resources is balanced with other forest uses and values.”). Likewise, while environmental reviews are still mentioned in the 2016 State Forest Plan, the discussion of such reviews is limited to one paragraph with no explanation of the nature of the review required or the need to address adverse impacts of a project to the ecology of the forest to obtain approval. *Id.*, page 70.

59. Regarding ATV recreational use of the State Forest, the DCNR Bureau of Forestry states in the 2016 State Forest Plan that DCNR’s moratorium on the expansion of ATV trails on state forest land imposed in 2001 and reinstated in 2003 remained in effect. *Id.*, page 200-201 (see further discussion on the history of DCNR’s moratorium below). The bureau states that “[a]s ATV use has grown in popularity, unauthorized riding on state forest lands has remained near the top of recreational forest management problems identified by staff ... and continues to impact many of the core functions these forest lands were acquired to address— protection of clean water, clean air, wildlife habitat, scenic beauty, rare and significant ecosystems, and wild plants.” *Id.*, page 200.

E. DCNR Policies to Limit Expansion of ATV Use on the State Forest

60. From September 2001 through November 2020, DCNR published written public policy statements placing a moratorium on further expansion of ATV use in the State Forest because of its inability to prevent degradation of the forest from this activity.

61. On March 16, 2000, then DCNR Secretary John Oliver wrote a memo directing his executive staff and bureau directors to develop a five-year plan for recreational use of ATVs on the State Forest in part to respond to interest from the Governor’s Office on this issue. Copy of memo incorporated as **Exhibit E**. The

memo advised that no additional trails would be constructed on the State Forest until field recommendations on such trails were reviewed.

62. To develop this five-year plan, DCNR conducted a survey in 2000 of all the District Forest Managers to assess the status of recreational use of ATVs on the State Forest. The survey results were compiled in a report dated July 11, 2000 (“2000 DCNR ATV Survey”), a copy of which is incorporated as **Exhibit F**.⁹ The survey showed that recreational use of the State Forest by ATVs was having a significant adverse impact on the health of the forest, as well as the safety of people recreating in the forest.

63. The District Forest Manager responses to the 2000 DCNR ATV Survey identified a problem with extensive illegal ATV use occurring on the State Forest with reports of 10 times as many miles of illegal trails compared to legal trails. At that time, DCNR had authorized approximately 222 miles of ATV trails for use within the State Forest; however, more than 2,500 miles of trails and roads in the State Forest not authorized for ATV use were identified as being used illegally by ATV riders. *Id.*, page 2.

⁹ DCNR provided the copy of the District Forester ATV Survey Results dated July 11, 2000 that is incorporated as Exhibit F. The copy provided by DCNR did not have page numbers or include Attachment 2, which was a table of the survey results organized by question and State Forest District. PEDF has added page numbers to the document to aid in providing references to the survey.

64. The District Forest Managers reported that ATVs caused numerous problems in the State Forest, including soil erosion, stream degradation, wetland destruction, wildlife habitat destruction, and public health and safety problems. These problems resulted from both legal ATV use in designated areas and illegal use. The Michaux State Forest District (District 1) reported that even with its best enforcement efforts, many offenses and destruction continued. *Id.*, page 3-4.

65. The most severe problems were caused by ATV riders traveling off designated trails, *i.e.*, illegal operations. ATV riding in unauthorized forest areas resulted in extreme environmental degradation involving streambeds, wildflower sites, wetlands, vernal ponds, powerlines and pipelines, and other environmentally sensitive areas. *Id.*

66. Illegal ATV riding on State Forest roads at high speeds was reported as creating unsafe conditions resulting in fatalities and other serious injuries. The Sproul State Forest District (District 10) had identified 15 fatalities, all of which had been young riders under the age of 16 who were speeding on forest roads that were closed to ATV use. *Id.*

67. The survey found no evidence that providing ATV trails in the State Forest decreased the amount of illegal use. When compared to areas that do not allow any ATV use, areas that currently have authorized ATV trails had approximately the same amount of illegal activity and a similar ranking of ATV problems. *Id.*, page 5.

68. On September 12, 2001, following review of the results of the survey of the Forest District Managers, DCNR extended the temporary moratorium it had imposed on the development of new ATV trails on the State Forest until July 1, 2002. A copy of this moratorium is incorporated as **Exhibit G**. This moratorium was intended to give DCNR time to increase its enforcement capabilities with additional funding provided through its recently passed budget and to focus on developing new ATV trails on private lands for the foreseeable future based on additional authority given to DCNR under Chapter 77 of the Vehicle Code to make grants for ATV trail development on private lands.¹⁰

69. On July 8, 2002, the DCNR Bureau of Forestry was directed upon expiration of the moratorium “to continue its review of ATV trail opportunities and to prepare trail development guidelines and procedures in cooperation with the Department’s newly created Snowmobile and ATV Advisory Committee.” A copy of the DCNR announcement of the expiration of the moratorium on ATV trail development on State Forest lands and DCNR’s next steps is incorporated as **Exhibit H**.

70. DCNR’s next steps included developing a second recreational riding area for ATVs in the Sproul State Forest District on additional forest land acquired in 2002 (the Litke Estate). Extensive illegal ATV use had been occurring on

¹⁰ Act of June 25, 2001, P.L. 701, No. 68 (referred to as H.B. 154 in the DCNR moratorium).

approximately 1,200 acres of the Litke Estate that had been strip mined for coal. This area in the Sproul State Forest District is now the Bloody Skillet ATV Trail. *Id.*

71. On June 5, 2003, DCNR issued a revised ATV Trail Development Policy, which is incorporated as **Exhibit I**. Through this policy, DCNR essentially reestablished its moratorium on the development of new ATV trails on existing State Forest lands, stating that “[i]n 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.*” *Id.* (emphasis added).

72. In the 2003 ATV Trail Development Policy, DCNR stated 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.” *Id.*¹¹ DCNR also stated that “*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.*” *Id.* (emphasis added).

¹¹ This policy left open the possibility of further development of ATV recreational riding areas within the State Forest on newly acquired lands as had recently occurred with the development of the Bloody Skillet ATV Trail in the Sproul State Forest District announced the prior year. The policy stated that it did not apply to “future acquisitions of new State Forest lands where such lands, or a portion of these lands, are purchased specifically for the purpose of providing additional ATV riding opportunities.”

73. While DCNR attempted through its 2003 ATV Trail Development Policy to satisfy the increased demand for ATV recreational riding within the Commonwealth by expanding ATV riding opportunities on private land and public lands other than the State Forest, the policy recognized “that there may be some opportunities for limited development of connectors to increase riding usage within the designated ATV trail networks.”

74. In 2007, in response to continued pressure to expand ATV recreational riding opportunities within the Commonwealth, the DCNR Bureau of Forestry announced an initiative to consider “strategic connections between designated ATV riding areas on state forest lands *and joint-use municipal roads or other legitimate riding areas. These ‘links’ would provide destination riding experience for the users and the possible influx of additional visitors to locales near the system, thus, acting as the area’s economic stimulus.*” See DCNR Bureau of Forestry ATV Strategic Connections incorporated as **Exhibit J** (emphasis added); *see also* DCNR News Release, Strategic Connections to Expand ATV Riding Opportunities on State Forestlands, July 23, 2007, incorporated as part of Exhibit J.

75. In announcing its ATV trail strategic connections initiative in 2007, the DCNR Bureau of Forestry stated that “[t]o accommodate the growing number of ATV riders, ATV trails have been opened in seven state forests and comprise 248 miles. ... Creating short (<¼ mile) and 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.” *Id.*

76. Despite efforts by the DCNR Bureau of Forestry to minimize the expansion of ATV trail development on the State Forest through its strategic connections initiative, the bureau reported adding more than 40 more miles of ATV trails to the State Forest under this initiative by 2011. *See* DCNR Bureau of Forestry ATV Strategic Connections, status update as of June 15, 2011, incorporated as **Exhibit K**.

77. DCNR continued to face escalating pressure to provide longer distance ATV riding opportunities by connecting ATV riding areas in the State Forest with other local amenities (*e.g.*, restaurants/bars, gas stations, campgrounds and other lodgings). Many local municipalities were opening their public roads to joint use by ATVs and wanted DCNR to allow such joint use of state forest roads, which DCNR prohibited to protect visitor safety and the forest. DCNR issued an updated ATV Policy on September 16, 2015, which is incorporated as **Exhibit L** (“2015 DCNR ATV Policy”), to clarify its position on providing ATV recreational riding opportunities within the Commonwealth.

78. Based on authority provided to DCNR through CNRA §§ 302, 303 and 304 and Vehicle Code § 7706, DCNR reasserted its policy “not to expand the current system of designated ATV trails on state forest lands.” 2015 DCNR ATV Policy, page 2. While DCNR would continue to “allow for the limited development of connectors, as deemed appropriate by the Department, ... 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.” *Id.* The policy also stated that “DCNR prohibits operating ATVs within Pennsylvania State Parks based on visitor safety, resource management, and other operational considerations.” *Id.*, page 1.

79. By way of background, DCNR states in its 2015 DCNR ATV Policy 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.” *Id.*, page 2.

80. DCNR again reiterates in its 2015 DCNR ATV Policy that “*illegal riding activity 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 existing*

265-mile 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.” Id. (emphasis added).

81. In response to specific pressure to expand ATV riding in Clinton County by connecting the two existing ATV riding areas within the Sproul State Forest District (the Whiskey Springs and Bloody Skillet ATV Trails), DCNR contracted with the Larsen Design Group in 2016 to examine the feasibility of developing a new ATV trail to connect these two existing riding areas.

82. In its final report issued in 2018, the Larson Design Group was unable to identify a contiguous ATV trail alignment to connect the Bloody Skillet and Whiskey Springs ATV trail systems. *See Whiskey Spring—Bloody Skillet ATV Feasibility Study Connector Trail*, Larson Design Group, 2018 (“2018 ATV Connector Study”), page 95, excerpts incorporated as **Exhibit M**.

83. The 2018 ATV Connector Study identified a preferred conceptual trail alignment that would traverse over 27 miles of forest within the Sproul State Forest District. *Id.*, page 57. This preferred alignment did not meet all the environmental constraints that had been identified. *Id.*, page 29. It would require construction of 19.2 miles of new road through the State Forest for ATV use, crossing two wilderness trout streams, crossing one high quality stream, crossing six wetlands,

and crossing one spring. *Id.*, page 91. The study did not assess the impact of this new ATV trail on the overall health of the forest ecosystem. Nor did it identify any feasible route across private lands that would be encountered in South Renovo and Renovo or the feasibility of allowing ATVs to cross the State Route 144 bridge over the West Branch of the Susquehanna River that connects these two municipalities. *Id.*, page 95.

F. 2018 and 2020 Fiscal Code Mandates to Expand ATV Riding in the State Forest and State Parks in Northcentral Pennsylvania and DCNR Compliance

1. Fiscal Code Mandates

84. On June 22, 2018, the General Assembly and the Governor approved amendments to the Fiscal Code, including a new Section 1720-E requiring DCNR to expand ATV riding in the State Forest of northcentral Pennsylvania.¹²

85. This new Fiscal Code provision disregarded DCNR’s decision to not allow further expansion of ATV use on the State Forest and to not allow ATV use on State Forest roads, but rather to aid in the development of additional ATV riding opportunities within the Commonwealth on private land or other public lands that could be dedicated solely to motorized recreation.¹³

¹² Act of June 22, 2018, P.L. 281, No. 42, § 17.

¹³ This Fiscal Code provision was passed shortly before Larson Design Group issued its final 2018 ATV Connector Study. The Larson Design Group briefly discusses passage of this Fiscal Code provision in its final report as an “unforeseen development [that] represented a significant change to the criteria under which [it] conducted this assessment for DCNR.” 2018 ATV Connector Study, page 95.

86. Section 1720-E of the Fiscal Code enacted in 2018 states:

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.*

72 P.S. § 1720-E(a) (emphasis added).

87. A separate study conducted by DCNR of suitable areas within the Commonwealth that could be developed for ATV riding concluded that large areas of northcentral Pennsylvania were not suitable for expanded ATV riding areas because they included “features (*i.e.*, wetlands, rare species habitat, streams, etc.) and other areas of ecological significance or sensitivity which were determined to be completely unsuitable for ATV use” and/or were protected state or federal lands. Pennsylvania All-Terrain Vehicle Area Suitability Study, DCNR, January 2019, page 14.¹⁴

¹⁴ This study is available on DCNR’s website under “ATV Riding in State Forest – Additional Information” at <https://www.dcnr.pa.gov/Recreation/WhatToDo/ATVRiding/pages/default.aspx>.

88. DCNR did not immediately comply with the new Fiscal Code requirement to open State Forest roads in the Sproul State Forest to connect the Bloody Skillet and Whiskey Springs ATV riding areas. On April 18, 2019, the Clinton County Board of Commissioners sent a letter to Governor Wolf, which is incorporated as **Exhibit N**, asking Governor Wolf to intervene with DCNR and the Pennsylvania Department of Transportation (“PennDOT”) to implement Section 1720-E of the Fiscal Code.

89. On May 10, 2019, DCNR Secretary Dunn sent a letter in response to the Clinton County Board of Commissioners on behalf of the Governor, which is incorporated as **Exhibit O**, advising that DCNR would not be able to meet the April 1, 2020, deadline in Section 1720-E of the Fiscal Code for constructing the Whiskey Springs – Bloody Skillet ATV connector trail for several reasons.

90. In the letter to Clinton County, DCNR estimated the cost of its preferred connector route developed based on the work done by the Larson Design Group and DCNR’s internal efforts to be \$16-20 million, but noted that the Fiscal Code had not provided any source of funding or manpower because it expected DCNR and PennDOT to open existing public roads to ATV use. *Id.*

91. In the letter to Clinton County, DCNR advised that both DCNR 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.” Id. (emphasis added). DCNR advised of its continued 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.” *Id.*

92. On August 14, 2019, a meeting scheduled by then Senate President Pro Tempore Scarnati was held in his office in the Capitol Complex with representatives from DCNR to discuss compliance with Section 1720-E of the Fiscal Code. Senator Scarnati’s Legislative Director, Adam Pankake, chaired the meeting, which was also attended by Representative Stephanie Borowicz and members of the Central Mountain ATV Association (“CMATVA”). CMATVA published minutes of this meeting on its website, which are incorporated as **Exhibit P**. The meeting concluded with Senator Scarnati’s Legislative Director and Representative Borowicz advising that they were going to have further discussion with the Governor’s Office to determine why DCNR and PennDOT were not complying with the Governor’s directive to change their policies to allow the joint use of their state roads by ATVs as directed by the Fiscal Code.

93. Subsequently, on November 18, 2020, DCNR issued a new ATV Trail Development and Management Policy, which is incorporated as **Exhibit Q** (“2020 DCNR ATV Policy”), that rescinded its moratorium on the development of additional ATV trails on the State Forest and rescinded its prohibition on the use of

State Forest roads by ATVs. Notwithstanding these announced changes, DCNR reiterated as part of the policy background that ***“[f]or visitor safety, resource management, and other operational considerations, the Department permits ATV riding only on designated trails on state forest lands. ATV riding is prohibited on State forest roads.”*** *Id.*, page 3 (emphasis added). DCNR further states in this policy 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.*, page 5 (emphasis added).

94. On November 23, 2020, five days after DCNR issued the 2020 DCNR ATV Policy, the Governor and General Assembly amended Section 1720-E of the Fiscal Code to require further expansion of the development of ATV trails on the State Forest and State Parks in northcentral Pennsylvania.¹⁵ Specifically, the new Fiscal Code provisions required DCNR to “establish a regional pilot program for ATV use on department lands” in northcentral Pennsylvania that would be available to ATV riders in six months, *i.e.*, “for the 2021 summer ATV riding season from the Friday before Memorial Day through the last full weekend of September”. 72 P.S. § 1720-E(b).

95. The 2020 Fiscal Code provisions required that DCNR in the next month (by December 31, 2020) “evaluate department forest districts, including Elk,

¹⁵ Act of November 23, 2020, P.L. 1140, No. 114, § 7.

Moshannon, Sproul, Susquehannock and Tioga [in northcentral Pennsylvania], for roads and trails to serve as potential regional connectors and to provide local access or serve as a trail complex for ATV use.” *Id.*

96. The 2020 Fiscal Code provisions also required that DCNR, beginning in January 2021, “(i) consult with local community leaders to assess their interest in and the feasibility of a department ATV pilot area; (ii) perform outreach to affected communities and stakeholders; and (iii) map, mark and designate roads and trails in the department ATV pilot area”—all to “provide access to the department ATV pilot area for the 2021 summer ATV riding season.” *Id.*

2. DCNR Compliance with the Fiscal Code Mandates

97. To comply with the 2020 provisions of Section 1720-E(b) of the Fiscal Code, DCNR developed and provided access to the 154-mile Northcentral ATV Regional Trail Connector Pilot by the summer of 2021 notwithstanding its decades of experience and documented policies against expansion of ATV riding in the State Forest. *See* Report to General Assembly on Northcentral ATV Regional Trail Connector Pilot, DCNR, December 2023, page 12, incorporated as **Exhibit R** (“2023 Northcentral ATV Regional Pilot Report”).¹⁶ This ATV pilot route was located primarily in Potter and Tioga Counties. *Id.* It connected the existing ATV

¹⁶ Section 1720-E(b)(9) of Fiscal Code, 72 P.S. § 1720-E(b)(9), required DCNR to submit this report on the ATV pilot program to the General Assembly by December 31, 2023.

riding area in the Susquehanna State Forest District to Colton Point State Park “utilizing 12 miles of state forest roads, 47 miles of state forest trails, 13 miles of PennDOT roads, and 82 miles of township roads.” *Id.* By 2023, this ATV pilot route was expanded to 374 miles in Potter, Tioga, Lycoming and Clinton Counties and “utilized 33 miles of state forest roads, 131 miles of state forest trails, 33 miles of PennDOT roads, and 177 miles of township roads.” *Id.*

98. With less than six months to implement the Northcentral ATV Regional Trail Connector Pilot, the DCNR Bureau of Forestry prepared its State Forest environmental review at the same time it was developing the route for the new ATV pilot trail. The final DCNR environmental review and the memo approving it dated July 15, 2021 (“ATV Pilot Environmental Review”) are incorporated as **Exhibit S**. The ATV Pilot Environmental Review was circulated within the bureau for comment on June 25, 2021, just 20 days before its approval.

99. The Project Overview portion of the ATV Pilot Environmental Review states that the proposal being evaluated “*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 [State Forest environmental review].*” *Id.*, page 7 (Exhibit S-007) (emphasis added).

100. The following concerns were raised during the DCNR Bureau of Forestry internal review of the ATV Pilot Environmental Review (*Id.*, pages 1-3 (Exhibit S-001 – S-003):

(a) The limited opportunity for review due to the expedited timing and processing of the environmental review.

(b) The impact of increased dust from ATV use, along with impacts on other recreational uses, erosion and sedimentation, and water quality.

(c) The deterioration of State Forest roads from potentially heavy ATV use.

(d) The potential for an increase in frequency and risk of fuel or lubricant spills that could affect water resources.

(e) 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.

(f) The failure to review impacts in the context of the overall State Forest resources.

(g) The increased burden on DCNR Rangers and other bureau staff to respond to increased accidents and search and rescue needs.

(h) An insufficient capacity for parking, especially in Coudersport and near Colton Point State Park.

(i) Further demands for connector trails by leased camp owners and area residents.

(j) Increased impacts to animals such as snakes from ATV strikes.

(k) Adverse impacts to Wild Character Focus Areas within the State Forest.

(l) The spread of invasive species to northcentral Pennsylvania from ATV riders traveling from outside of this area.

(m) 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 increases.

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

101. On July 15, 2021, the DCNR Bureau of Forestry approved the planned route for the Northcentral ATV Regional Connector Trail Pilot with the following conditions (*id.*, page 4 (Exhibit S-004)), and the pilot trail was opened to the public for ATV use the next day:

(a) “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.”

(b) “Roles and responsibilities for enforcement, accident response, fire response, and search and rescue related to ATV connectors will be clarified.”

(c) “Mechanisms, outreach and education will be evaluated and implemented to minimize the spread of invasive species due to traveling ATV riders.”

(d) “The administrative, managerial, and fiscal impacts of the pilot will be tracked and monitored.”

(e) “An assessment of outreach, education and signage needs will be performed to address potential issues outlined in the [State Forest environmental review]. 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.”

102. The DCNR Bureau of Forestry concludes its approval of the ATV Regional Trail Connector Pilot stating that “[a]s 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.” *Id.*

103. In the 2023 Northcentral ATV Regional Pilot Report, DCNR states that the “report is in fulfillment of requirements set forth by the 2020 fiscal code (HB 2536) that *compelled* the Department of Conservation and Natural Resources (DCNR) to take specific action to expand regional riding opportunities by

establishing and monitoring a three year ‘pilot program’ for ATV use on Commonwealth lands, with this report due to the General Assembly by December 31, 2023.” 2023 Northcentral ATV Regional Pilot Report (Exhibit R), page 1 (emphasis added).

104. In the 2023 Northcentral ATV Regional Pilot Report, DCNR cites survey results obtained by its Bureau of Forestry beginning in 2017 regarding “public perceptions and sentiments related to ATV use in state parks and forest lands.” *Id.*, page 7. DCNR found that “ATVs generally are a frequent resource management topic” and that “81% of the ATV comments were in opposition to the use of ATVs on state forest land.” DCNR also found that “most participants use forest lands for viewing natural scenery, plants, or wildlife (55.3%); hiking (54.9%); or picnicking (53.1%).” *Id.*

105. The 2023 Northcentral ATV Regional Pilot Report also discussed the ATV Area Suitability Study completed by DCNR in 2019, which concluded that “[l]arge areas of Northcentral Pennsylvania were deemed unsuitable for the expansion [of ATV riding] due to high quality watersheds and other ecological sensitive features” and that “[n]early all DCNR lands were found unsuitable for ATV riding for environmental sensitivity reasons.” *Id.*, page 9.¹⁷ This study also found

¹⁷ See ¶ 87 and footnote 14, *supra*.

that “other parts of the Commonwealth were deemed suitable [for expanded ATV riding], mainly due to the presence of privately held mining lands.” *Id.*

106. In the 2023 Northcentral ATV Regional Pilot Report, DCNR discusses its ATV policy shift and the Fiscal Code amendments enacted in 2020 that “compelled DCNR to take specific actions to expand regional ATV riding opportunities by establishing a three-year ‘pilot program’ for ATV use on Commonwealth lands.” *Id.*, page 9-10. In summarizing its current ATV policy, DCNR reiterates that the policy 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 always be conducive for ATV riding.***” *Id.*, page 10 (emphasis added.) DCNR also states that its ATV policy “underscores the role DCNR serves as the trustee and steward of the state forests and state parks and its mandated responsibilities, under Article I, Section 27 of the Pennsylvania Constitution, to conserve and maintain these lands for future generations.” *Id.*

107. Section 1720-E(b)(4) of the Fiscal Code enacted in 2020 authorizes DCNR to “apply a fee and sell tags for access to the department ATV pilot area using a tag system to designate access.” 72 P.S. § 1720-E(b)(4). DCNR reports in the 2023 Northcentral ATV Regional Pilot Report that a “total of 10,799 ATV Pilot Passes were sold over the three-year pilot” from 2021 through 2023. 2023 Northcentral

ATV Regional Pilot Report (Exhibit R), page 3. During the 2023 riding season, DCNR sold 5,255 ATV Pilot Passes. *Id.*, page 2. Surveys of the ATV Pilot Pass holders indicated that holders made nine trips to the northcentral region to ride on the ATV pilot trail. *Id.*, page 3.

108. In the “Monitoring Need and Approach” section of the 2023 Northcentral ATV Regional Pilot Report, DCNR states that it developed and implemented a plan to monitor the environmental, social and economic impacts of the ATV pilot trail program. *Id.*, page 13. Under the “Monitoring Results” section, DCNR devotes less than two pages of its report to environmental effects (*id.*, pages 14-15), over fourteen pages to social effects (*id.*, pages 16-29), and over ten pages to economic effects (*id.*, pages 30-40).

109. Regarding environmental effects, DCNR developed monitoring protocols that could be “implemented quickly” prior to the 2021 ATV riding season “for monitoring the condition of state forest roads and trails, encroachment or degradation of plant communities, and invasive plants.” *Id.*, page 13. However, ***“[d]ue to time constraints associated with developing and implementing the ATV Pilot Monitoring program, impacts to wildlife, air, and water resources were not developed or implemented.”*** *Id.* (emphasis added). DCNR makes no mention of the need to monitor impacts on other forest ecological resources and functions.

110. Based on its limited monitoring, DCNR reported the following environmental findings in the 2023 Northcentral ATV Regional Pilot Report:

(a) A total of 201 sensitive trail segments and sensitive habitats were identified on State Forest land along the ATV pilot trail corridor. *Id.*, page 14. Sensitive segments are those where increased usage could lead to degradation of the trail or its surroundings through “the potential for excessive rutting, trail widening, erosion, littering, and unauthorized camping.” *Id.* Sensitive habitats are “ecological features such as wetlands, stream access areas, and sensitive vegetation assemblages.” *Id.* DCNR reports that two sites required either remediation or corrective action but provides no further details. *Id.*, page 15.

(b) A total of 43 existing rogue ATV trails were inventoried along the ATV pilot trail route. Rogue trails are those not designated for ATV use but accessible from the ATV pilot trail, thus “lend[ing] themselves to off-route riding ... on state forest land.” *Id.*, page 14. Illegal riding occurred on four of these rogue trails and required remedial action. *Id.* Another 43 locations were identified as “having the potential to become a rogue trail.” Eight of these locations had evidence of illegal ATV riding that needed to be addressed using barricades, signage and education. *Id.*, page 15.

(c) A total of 470 existing populations of invasive plants were found on State Forest land along the ATV pilot trail route, including 224 populations in the

Sproul District, 198 in the Tiadaghton District, and 48 in the Susquehannock District. *Id.*, pages 14-15. DCNR found that the three-year sampling period for the ATV pilot program “was not lengthy enough to detect invasive species populations or other environmental impacts.” *Id.*, page 59.

111. DCNR recognized dust and noise as significant concerns with the increased ATV traffic on the pilot trail but only discussed these issues in the context of their social effects (*i.e.*, effects on people) or economic effects. The impacts of dust and noise on the health of the other natural resources and functions within the forest ecosystem were not monitored.

112. Under the “Economic Effects” section of the 2023 Northcentral ATV Regional Pilot Report, DCNR discusses the cost of suppressing fugitive dust generated on the ATV pilot trail. *Id.*, page 33. As part of this economic discussion, DCNR states that “[f]ugitive dust from dirt and gravel roads is well documented in the literature to be a safety concern in terms of limiting visibility, increasing sedimentation in adjacent streams, degrading air quality from suspended particulates, and creating a nuisance to residences along gravel and dirt roads.” *Id.* DCNR then discusses the cost of purchasing dust suppressant and reimbursing municipalities that aided in suppressing dust on the ATV pilot trail but provides no discussion of the extent to which dust was controlled or the effects on the forest ecosystem of the fugitive dust generated. *Id.*

113. DCNR discusses the results of various surveys of those recreating and living near the ATV pilot trail in the “Social Effects” section of the 2023 Northcentral ATV Regional Pilot Report. Surveys found that 70% of the ATV Pilot Pass holders who responded to DCNR’s end-of-season survey indicated their experience with the pilot improved from 2021 to 2022, while 71% of non-motorized recreationalists responding to the end-of-season survey indicated they were dissatisfied with the ATV pilot program. *Id.*, page 16. DCNR also reports in this section that its rangers issued 633 warnings and 157 citations to ATV riders during the three-year pilot period and that five ATV accidents were reported. *Id.*

114. In the “Economic Effects” section of the 2023 Northcentral ATV Regional Pilot Report, DCNR reports that \$429,702 was generated from ATV Pilot Passes during the three-year pilot, while DCNR’s expenses to administer the pilot of this same period were \$2.4 million. *Id.*, page 30.

115. As part of the discussion of “Economic Effects” in the 2023 Northcentral ATV Regional Pilot Report, DCNR reports on the effects of the ATV pilot program on State Forest District operation. *Id.*, page 33. The ATV Pilot required the Forest Districts to adjust annual work plans regarding efforts to prepare and maintain the ATV pilot trail route. *Id.* State Forest road maintenance projects were postponed so the ATV Pilot trail route on the State Forest could be maintained.

Id. Time allotted for other forest maintenance activities such as maintaining deer fence, treating invasive plant, and tallying timber were reduced. *Id.*

116. In the 2023 Northcentral ATV Regional Pilot Report, DCNR reported the following key findings:

(a) “DCNR is not currently equipped with the staffing, budget, or expertise to effectively address the challenges of a multi-jurisdictional ATV recreational system.”

(b) “The northcentral ATV riding system in present and potential future conditions occurs across multiple local authorities (e.g., DCNR, PennDOT, municipalities, and private lands). Each entity carries its own respective jurisdictional sovereignty, rules, and policies. Administration over the entire system requires extensive coordination.”

(c) “The DCNR lacks explicit authority to act as a local authority for the purpose of coordinating the establishment of a multi-jurisdictional, recreational/transportation system and for collecting fees.”

(d) “Long-term planning across multiple jurisdictions must address complaints by residents about the number of [ATVs].”

(e) “Non-uniform administration of the [ATV pilot] corridor has resulted in management challenges that include:

- Inefficient approval and waiver process for opening new segments.

- Insufficient law enforcement coverage.
- Non-uniform requirements for [ATV] operation.
- Non-uniform signage and communication strategies.
- Inconsistent trail management objectives.
- Burden on DCNR and non-DCNR work units.

Id., page 42.

117. DCNR reports that nearly 20 townships participated in the ATV pilot trail in 2023 and it expects that much of the ATV connector trail route will continue to be on township roads over which DCNR has no jurisdictional authority. Thus, future operation of a regional ATV trail system requires “supporting the townships involved through funding for law enforcement presence, dust mitigation and trail-associated maintenance to their roads; as well as addressing those impacts to citizens which can be mitigated.” *Id.*

G. Degradation of Our State Forest and Parks in Northcentral Pennsylvania by Recreational ATV Use Authorized by the Commonwealth Trustees

1. Overall Degradation

118. The 1.6 million acres of State Forest in northcentral Pennsylvania comprise the almost contiguous core of “one of the largest expanses of public forest land in the eastern United States, making it a truly priceless public asset.” 2016 State Forest Plan (Exhibit D), page 1. State Parks embedded within the State Forest of northcentral Pennsylvania include Black Moshannon (3,394 acres), Bucktail Natural

Area (75 miles along the deep valleys of the West Branch of the Susquehanna River and Sinnemahoning Creek), Cherry Springs (82 acres), Colton Point (368 acres), Hyner Run (180 acres), Hyner View (6 acres), Kettle Creek (1,793 acres), Leonard Harrison (585 acres), Little Pine (2,158 acres), Lyman Run (595 acres), Ole Bull (132 acres), Parker Dam (968 acres), Patterson (10 acres), Prouty Place (5 acres), Simon B. Elliott (318 acres), Sinnemahoning (1,910 acres), Sizerville (386 acres) and Upper Pine Bottom (5 acres).

119. As set forth above, recreational use of ATVs has been authorized by the Commonwealth Trustees in the State Forest of northcentral Pennsylvania since the Vehicle Code was amended in 1985 to establish a regulatory scheme that promotes recreational ATV riding on our State Forest and State Parks. Based on the incompatibility of ATV recreational riding with DCNR's core mission to conserve and maintain the natural resources of the State Forest, as set forth in Section IV.F. above, DCNR imposed a moratorium on expansion of this recreational use on the State Forest for more than twenty years.

120. Three large ATV riding areas were initially developed in the State Forest of northcentral Pennsylvania in the 1980s, one each in the Sproul, Susquehannock and Tiadaghton State Forest Districts. A second large ATV riding areas was developed in the Sproul State Forest in the early 2000s.

121. As reported by DCNR in its 2023 Northcentral ATV Regional Pilot Report provided to the General Assembly, DCNR also developed the Northcentral ATV Regional Trail Connector Pilot to comply with Section 1720-E of the Fiscal Code. In 2021, DCNR opened a 154-mile ATV pilot route in northcentral Pennsylvania “focused on connecting the Susquehannock ATV Trail in Potter county to Colton Point State Park in Tioga county ... by utilizing 12 miles of state forest roads, 47 miles of state forest trails, 13 miles of PennDOT roads, and 82 miles of township roads.” 2023 Northcentral ATV Regional Pilot Report (Exhibit R), page 12.

122. In 2022, DCNR expanded the ATV pilot route in northcentral Pennsylvania to 230 miles to connect “business destinations in Lycoming county” and “utilized 6 miles of state forest roads, 51 miles of state forest trails, 22 miles of PennDOT roads, and 151 miles of township roads.” *Id.*

123. In 2023, DCNR further expanded the ATV pilot route in northcentral Pennsylvania to 374 miles to provide connections with the Whiskey Springs ATV Trail in the Sproul State Forest and the Haneyville ATV Trail in the Tiadaghton State Forest utilizing “33 miles of state forest roads, 131 miles of state forest trails, 33 miles of PennDOT roads, and 177 miles of township roads.” *Id.*

Affidavit of Roy Siefert, Retired State Forest District Manager

124. Roy Siefert is a retired professional forester with 34 years of experience working in the State Forest of northcentral Pennsylvania, including 15 years as the Forest District Manager for the Tioga State Forest District. He began his career with the Bureau of Forestry first as a recreational forester and then as a forest maintenance supervisor in the Susquehannock State Forest and had firsthand experience with ATV use in the Susquehannock ATV riding areas. He also had firsthand experience with illegal ATV use in both the Susquehannock and Tioga State Forest Districts. Affidavit of Roy A. Siefert incorporated as **Exhibit T**.

125. Based on Siefert's experience with ATV use in the State Forest of northcentral Pennsylvania, he has concluded that "ATVs are not compatible with conserving and maintaining the State Forest." *Id.*, page 10.

126. When Siefert found out about the Northcentral ATV Regional Trail Connector Pilot Program, he "became especially concerned about its effects on the ecology of the State Forest." *Id.*, page 7. He knew based on his experience "that such a plan was not consistent with DCNR's long-time ecosystem management. The new ATV trail cuts right through the heart of the State Forest in northcentral Pennsylvania. For miles it runs next to the Hammersley Wild area, one of the most primitive parts of the State Forest. DCNR reported to the legislature [in the 2023 Northcentral ATV Regional Pilot Report] that the trail runs through 470 existing

populations of invasive plants. ATVs transport invasive plants from one area to another. DCNR also reported 201 sensitive trail segments and sensitive habitats along the pilot trail, as well as 43 areas where illegal riding can occur along the pilot trail (called rogue trails) and another 43 areas with the potential for illegal riding.” *Id.*

127. Based on Siefert’s experience managing the State Forest in northcentral Pennsylvania, DCNR has valued and prioritized maintaining this forest, which along with “the private forest land within and surrounding it connect to create one of the largest areas of forest land in northeastern United States.” *Id.*, page 9. However, based on his experience, DCNR’s “decisions for more than a decade to expand natural gas extraction, ATV recreation and other uses that convert the forest to non-forest has undermined that priority and caused the degradation of the forest, including the high value waterways that flow through it.” *Id.*

128. Based on Siefert’s experience working in and managing the State Forest of northcentral Pennsylvania, the conversion of any part of the State Forest to non-forest “goes against DCNR’s core mission to sustain the forest. Incremental activity that causes long-term or permanent conversion of more and more forest to non-forest is not sustainable forest management.” *Id.* Siefert concludes that “DCNR’s decision to zone uses of the forest to ‘balance’ economic and recreational uses with forest protection ... is not compatible with ecosystem management.” *Id.*, page 9-10.

Additional facts based on his experience with ATV use in the Susquehannock and Tioga State Forest Districts and Lyman Run and Colton Point State Parks are included in the sections on these forest districts and their associated parks below.

Affidavit of Robert Davey, Jr., Retired State Forest District Manager

129. Robert (“Butch”) Davey is a retired professional forester with 43 years of experience working in the State Forest of northcentral Pennsylvania, including 21 years as the Forest District Manager of the Sproul State Forest District. Affidavit of Robert Davey, Jr., incorporated as **Exhibit U**. He has extensive firsthand experience with managing ATV use in the Whiskey Springs ATV riding area of the Sproul State Forest, as well as the development of the Bloody Skillet ATV riding area. *Id.* He has remained active in monitoring activities in the State Forest in northcentral Pennsylvania since his retirement, particularly the Sproul State Forest. *Id.*

130. Based on Davey’s experience with ATV use on the State Forest in northcentral Pennsylvania, he has concluded that ATV use “is not compatible with the [DCNR Bureau of Forestry’s] core duties to sustain the health of the forest, and to conserve and maintain the public natural resources of our State Forest under our state constitution.” *Id.*, page 1. He believes “the only way to manage the damage from ATVs in the forest is to not allow them at all.” *Id.* Additional facts based on his experience with ATV use in the Sproul and Susquehannock State Forest Districts are included in the sections on these forest districts below.

Affidavit of Doug D'Amore, Retired State Forest District Manager

131. Doug D'Amore has worked for over 43 years as a professional forester with over 35 years as a forester with DCNR, including 18 years as the Forest District Manager of the Sproul State Forest District. Affidavit of Douglas J. D'Amore incorporated as **Exhibit V**. D'Amore has extensive firsthand experience managing ATV use in the Whiskey Springs and Bloody Skillet ATV riding areas in the Sproul State Forest District, as well as managing illegal ATV use on the State Forest. *Id.* He has also had firsthand experience with the ongoing pressure to expand ATV access to the State Forest by connecting existing riding areas within the State Forest and creating opportunities to ride longer distances by connecting more areas of the forest with local businesses. *Id.*

132. Based on D'Amore's experience with ATV use on the State Forest in northcentral Pennsylvania, he has concluded that the degradation to the State Forest he experienced from ATV use has "been evident for at least the last fifteen years and [has] either been ignored, swept under the rug, or kicked down the road to be dealt with in the 'future.'" *Id.*, page 13. D'Amore finds the entire ATV program, including the Northcentral ATV Regional Trail Connector Pilot, to be "a sad case of state and local executive and legislative branch officials knowingly ignoring and blatantly refusing to do their constitutional and fiduciary trustee duties under Article I, Section 27 of the Commonwealth's constitution consistent with basic principles of trust law

they all understood.” *Id.* Additional facts based on his experience with ATV use in the Sproul State Forest District are included in the section on this forest district below.

Affidavit of Robert Merrill, Retired State Forest District Manager

133. Robert Merrill is a retired professional forester with 32 years of experience with DCNR, including 12 years as the Forest District Manager for the Moshannon State Forest District. Affidavit of Robert Merrill incorporated as **Exhibit W**. Merrill has also enjoyed recreating throughout his life in the State Forest, particularly the State Forest in northcentral Pennsylvania. *Id.* He has had firsthand experience, both as a professional forester and as a lifetime forest user, of the damage that illegal ATV use causes within the forest. *Id.*

134. Based on his experience with ATV use in the State Forest of northcentral Pennsylvania, Merrill had concluded that “recreational use of the State Forest [by ATVs] is incompatible with the ecosystem of the forest and with the wildness of the forest that is so important to so many of us.” *Id.*, page 1. Additional facts based on his experience with ATV use in the Moshannon State Forest District are included in the section on this forest district below.

Affidavit of Robert Barbour, Retired State Forest Ranger

135. Robert Barbour performed law enforcement work in the Tiadaghton and Loyalsock State Forest Districts in northcentral Pennsylvania for 24 years.

Affidavit of Robert Barbour incorporated as **Exhibit X**. During this time, he had extensive firsthand experience with ATV use on the State Forest, both authorized riding on the Haneyville ATV Trail in the Tiadaghton State Forest District and illegal ATV riding. *Id.*

136. Based on Barbour's experience with ATV riding in the State Forest in northcentral Pennsylvania, he has concluded that "it is not possible to manage ATV recreation safely and without serious degradation to the state forest." *Id.*, page 3. Additional facts based on his experience with ATV use in the Tiadaghton State Forest District are included in the section on this forest district below.

Affidavit of Cynthia Bower, PEDF Chair

137. Cindy Bower has spent more than 50 years living in Lycoming County, and hiking, canoeing and kayaking through the State Forest of northcentral Pennsylvania. Affidavit of Cynthia Bower incorporated as **Exhibit Y**. Bower has been a PEDF member for many years and is currently the chair of the PEDF Board of Directors.

138. Bower has had firsthand experience with ATV use on the State Forest of northcentral Pennsylvania. Based on the degradation of the forest caused by ATVs that she has witnessed, Bower has concluded that "ATVs simply do not belong in or on State Forest or State Park lands." *Id.*, page 5. Additional facts based on her

experience with ATV use on the Haneyville ATV Trail in the Tiadaghton State Forest District are detailed in the section on this forest district below.

Affidavit of Jim Weaver, Retired Tioga County Planner

139. Jim Weaver, a life-long resident of Tioga County, retired as a planner for Tioga County and continues to serve as a director for the Tioga County Conservation District. Affidavit of Jim Weaver incorporated as **Exhibit Z**. Weaver is an avid fisherman and has extensively fished, hunted and explored the State Forest of northcentral Pennsylvania. *Id.* Weaver has also been active with the Pine Creek Watershed Council and is currently a member of the PEDF Board of Directors.

140. Through Weaver's lifetime working to conserve the natural resources of Tioga County and the Pine Creek watershed, along with his countless hours fishing in the pristine waters of the State Forest in northcentral Pennsylvania, he has "witnessed, firsthand, 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 internal combustion engines." *Id.*, page 2. He believes that we owe it to future generations "to protect what we have left of the last great open space of the state. Opening up the forest to ATVs is not in [this] playbook." *Id.*

Expert Report of John Arway, Retired PFBC Fisheries Biologist

141. John Arway, a retired professional fisheries/aquatic biologist with 38 years of experience with the Pennsylvania Fish and Boat Commission (“PFBC”), including eight years as its Executive Director (2010-2018), reviewed the impacts of ATVs on the fish and aquatic resources within the State Forest of northcentral Pennsylvania. *See* Expert Report of John A. Arway on the Impacts of All-Terrain Vehicles on State Forest Fish and Aquatic Public Natural Resources incorporated as **Exhibit AA** (“Arway Expert Report”).

142. Based on Arway’s 30 years of experience evaluating the environmental impacts of a variety of human development projects on Commonwealth waters and fish and aquatic life habitats, he has concluded “to a reasonable degree of scientific certainty that the current and expanded use of ATVs on the State Forest is inconsistent with the trustee duties ... to conserve and maintain the State Forest ... because of the impacts from ATV use on the fish and aquatic habitats of the streams within the State Forest”, which are “headwater streams comprising some of the best wild trout habitat in the Commonwealth, if not in the country.” *Id.*, page 1.

143. Fifty-five percent (55%) of Class A wild trout streams of Pennsylvania occur in the State Forest in northcentral Pennsylvania. *Id.*, page 6-8. Class A wild trout populations “represent the best of this Commonwealth’s naturally reproducing trout fisheries.” *Id.* The Pennsylvania Fish and Boat Commission manages “self-

sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides.” *Id.*

144. Forty-two percent (42%) of the wilderness trout streams within the Commonwealth are in the State Forest of northcentral Pennsylvania. *Id.*, page 8-9. The PFBC advocates for the proper management of these streams “where stream remoteness and populations of naturally reproducing trout combine to offer sport fishing opportunity for the recreation of anglers in a wilderness setting away from roads and vehicles.” *Id.*, pages 1-2.

145. The watersheds within the State Forest of northcentral Pennsylvania are all designated as exceptional value or high quality, “which means these waters have the best quality within the Commonwealth.” *Id.*, page 2. The surface water of high quality and exceptional value streams “must and do support a high-quality aquatic community.” *Id.*

146. In its environmental review of the Northcentral ATV Regional Trail Connector Pilot completed in 2021, DCNR identifies 48 current and future ATV trail stream crossings on exceptional value and high-quality streams. *Id.*, page 12-14.

147. ATV use on stream ecology has shown that ATV use near or in streams, rivers and lakes creates a serious water pollution threat. *Id.*, page 2. Trying to minimize impacts by controlling unauthorized riding is not a reasonable solution to preventing the problem. *Id.*

148. Research has shown that ATV use adversely affects aquatic resources through soil erosion, soil compaction, impacts to stream bank stability and water quality, destruction and loss of vegetation, aquatic losses, and wildlife impacts. *Id.*, pages 2, 14-22.

149. The primary effects of ATV activity on soils and overall watershed function include altered soil structure (soil compaction in particular), destruction of soil crusts (biotic and abiotic) and desert pavement (fine gravel surfaces) that would otherwise stabilize soils, prevent erosion, and allow water retention. *Id.*, page 20.

150. The effects of ATV activities on water quality include sedimentation (deposited solids), turbidity (suspended solids), and pollutants within affected watersheds. *Id.*, page 16. Sedimentation increases because compacted soils, disrupted soil crusts, and reduced vegetation cover increase the amounts and velocities of runoff; in turn, this accelerates the rates at which sediments and other debris are eroded from areas used by ATVs and flushes to aquatic systems downslope. *Id.* Pollutants associated with the deposition of ATV emissions and spills of petroleum products may be absorbed to sediments, absorbed to plant material, or dissolved in runoff; once mobilized, these contaminants enter aquatic systems. *Id.*

151. In addition to mobilizing sediment and increasing stream bank erosion when ATVs ford streams, the loss of vegetation in riparian areas results in increased water temperatures and turbidity (from suspended solids). *Id.*, page 18.

152. ATV use increases the capacity for sediment transport by the overland flow of water by causing surface changes that alter runoff hydraulics. Channelization in vehicle tracks has especially important implications for accelerated erosion. *Id.*

153. Recreational use of ATVs also contributes to the spread of invasive species by transporting seeds and plant materials. *Id.*, page 22.

154. Arway has personally observed and experienced the impacts of ATV trails on our high quality streams. *Id.*, page 3. He has a camp in the Allegheny National Forest (“ANF”), which he and friends and family “have personally used for hunting, fishing, and outdoor recreation for over 70 years.” *Id.* The ANF is “crisscrossed with hundreds of miles of roads developed under oil and gas leases as well as ATV trails and logging roads. As a result, the streams have been substantially degraded by sedimentation and support limited numbers of wild trout. Widened streambeds caused by increased erosion and sedimentation, altered hydrology with increased runoff causing flash flooding along with reduced infiltration causing increased droughts are the net result of these changes to the landscape.” *Id.*

155. The noise levels from ATVs negatively impact anglers, hunters, hikers, and other outdoor enthusiasts, including Arway and his family and friends, who traditionally seek the solitude of the State Forests for enjoyment. *Id.*

156. Based on his independent review and professional experience, Arway has concluded, “to a reasonable degree of scientific certainty, that the current and

expanded use of ATVs on State Forests is inconsistent with the spirit and intent of DCNR's mission and DCNR's trustee duties under Article I, Section 27 of the Pennsylvania Constitution." *Id.*, page 25.

157. Arway further found DCNR's approach to environmental review of the proposed Northcentral ATV Regional Trail Connector Pilot "disturbing given the trusteeship responsibilities of the agency and the sensitivity of the natural resources in question." *Id.*

Affidavit of Lycoming Audubon Society and Member Gary Metzger

158. The Lycoming Audubon Society is a local chapter of the National Audubon Society with members in Clinton and Lycoming Counties in northcentral Pennsylvania. Affidavit of the Lycoming Audubon Society ("LAS") prepared by Gary Metzger, Chairman of the LAS Conservation Committee, on behalf of LAS and himself incorporated as **Exhibit BB**. LAS is a PEDF member. *Id.*, page 1.

159. LAS members "use the State Forests, State Parks and other public lands in the Commonwealth and [its] Board, and certainly many of [its] members, believe that the expanded use of our State Forests and Parks by ATVs is not consistent with DCNR's charge to maintain these magnificent public lands and their natural ecosystems for the enjoyment of all the citizens of the Commonwealth." *Id.*

160. LAS members use the State Forest and State Parks in northcentral Pennsylvania "for pursuits that require peace and quiet and that are based on

enjoyment of natural landscapes and untrammelled areas, which are not generally available in other parts of the state. ... 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 of these same areas.” *Id.*, page 1-2.

161. Metzger personally enjoys bird watching in the State Forest of northcentral Pennsylvania. *Id.*, page 2. He walks, bikes and drives through the forest on trails and roads “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. Identification and location of birds by species is often done by sound as well as by sight. The birds don’t sing as much and they can’t be heard over the roar of ATV traffic.” *Id.*

162. LAS refutes the argument that limiting ATV use of the forest to “narrow corridors” that “comprise only a tiny fraction of our State Forest acreage” limits “negative impacts on the forests and on most other types of public use of the forests. In fact, it is well established that the impacts of these ATV routes inevitably spill well beyond the actual designated road or trail. ... DCNR doesn’t have the resources to enforce trail use requirements, and given the linear and often remote nature of these trails, it’s hard to imagine that any effective control measures could conceivably be implemented. The PA Game Commission has problems with

unauthorized ATV use on our State Game Lands, and any ATV use in the Game Lands is prohibited.” *Id.*

163. Studies conducted by the National Audubon Society and others have shown that the populations of many species of birds in North America, including forest birds, are in serious decline. *Id.*, page 2-3. Audubon works “to preserve ‘sanctuary areas’ to nourish species that already utilize these areas” and “the great forests of the Appalachian Mountain Range ... have been identified as critical present and future habitat for birds. Pennsylvania’s woodlands are a very important part of that sanctuary habitat, especially the large tracts of protected public forest land in the north central part of the state. Our expansive State Forests are literally critical to the survival of many of the avian species that make Penns Woods their home for all or a portion of the year. ... Many of these birds cannot tolerate disturbance of their territories, especially during the nesting season, and also during the critical post-fledge period when birds are rearing their young.” *Id.*, page 3.

164. The Ruffed Grouse, Pennsylvania’s state bird, is an example of a bird that depends upon “our undeveloped State Forest for [its] very survival” and “is in serious decline through much of its range in the state. ... Areas in or near [the new] ATV trail system in northcentral [Pennsylvania] will be critical to this species recovery efforts.” *Id.*

165. The Northern Goshawk “is an apex avian predator of our northern forests which has suffered such a decline in its population in the state that the PA Game Commission has recently listed it as a [Pennsylvania] Endangered Species. This magnificent species does not tolerate human disturbance in its territory, so introducing noisy ATV traffic into its northerly State Forest haunts will hinder recovery efforts.” *Id.*, page 4.

166. The Wood Thrush, a “beloved, melodious” species, “is another of the many forest bird species that depend on undisturbed, minimally fragmented woodlands for successful breeding. ... This species population is in alarming decline in [Pennsylvania] and, again, additional fragmentation of our State Forests through the creation of additional ATV trails, parking areas, etc., will hinder breeding success, as will the noise and activity associated with ATV use of existing and new roads and trails.” *Id.*

167. Given the vast areas of State Forest in northcentral Pennsylvania subject to current and future natural gas development and its “attendant negative impacts both upon the public’s use and enjoyment of the resource and upon the many species of wildlife that absolutely depend upon unfragmented, undisturbed forested habitats for their species’ survival”, the Lycoming Audubon Society is “opposed to ATV use in Pennsylvania’s State Forest and Parks.” *Id.*

Affidavit of Tiadaghton Audubon Society Member Robert M. Ross

168. The Tiadaghton Audubon Society (“TAS”) serves members of the National Audubon Society in Tioga and Potter Counties and its members are bird enthusiasts who enjoy the State Forest in northcentral Pennsylvania. Robert Ross, a retired research ecologist and member of TAS and PEDF, enjoys the State Forest “almost daily by hiking, birding, and doing surveys of the Tioga State Forest as well as less often the Susquehannock and Tiadaghton State Forests.” Affidavit of Robert M. Ross incorporated as **Exhibit CC**.

169. Ross, along with his fellow TAS members and bird enthusiasts, “are concerned about the impact of [Section 1720-E(b) of the Fiscal Code added in 2020] because it seems to mandate unrestricted use of forest roads and trails in the Susquehannock, Tioga, Tiadaghton, Quehanna, 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.” *Id.*¹⁸

170. Based on the experience of Ross and others, “[p]ublic 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

¹⁸ The reference to “Quehanna” is the Quehanna Wild Area in the Moshannon and Elk State Forest Districts.

enjoyment by non-motorized recreationalists. ... Many of the forest interior birds are sensitive to noise and human activity.” *Id.*¹⁹

171. As a result, Ross and many Audubon members “oppose new ATV trails through the Susquehannock, Tioga, Tiadaghton and Quehanna State Forests. [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.” *Id.*, page 2.

Affidavit of Keystone Trail Association

172. The network of hiking trails on the State Forest of northcentral Pennsylvania is extensive. The Keystone Trail Association (“KTA”) is a statewide organization established in 1956 that “preserves, protects, provides, and promotes hiking trails and hiking opportunities in Pennsylvania.” Affidavit of Keystone Trail Association prepared by its Executive Director, Brook Lenker, incorporated as **Exhibit DD**. KTA members have “cared for the Commonwealth’s footpaths and advocated for conservation of the state’s forests—the integrity of which is integral to the consummate hiking experience.” *Id.*, page 1. Thousands of KTA members and

¹⁹ Ross cites to a 2021 bird survey on the Tioga State Forest that he published (Ross, R.M. 2021. Single Point Seasonal Avian Survey for Baldwin Run Headwaters at Sawdust Trail, Tioga State Forest. Technical Report (15 pages) for DCNR Bureau of Forestry, Tioga State Forest, Wellsboro, PA. 21 October 2021), as well research published on the effects of noise on birds (Merrill, E.S. and K.L. Evens. 2020. Anthropogenic noise reduces avian feeding efficiency and increases vigilance along an urban-rural gradient regardless of species’ tolerances to urbanization. *J. Avian Biology* 2020: e02341)).

followers, “through decades of forest enjoyment, conservation, and advocacy, have earned a legitimate voice at the proverbial table on matters pertaining to ATVs and UTVs on our state forest. ... The damage from motorized recreation is already occurring and must be curtailed, remediated and undone.” *Id.*

173. KTA members have “witnessed firsthand the destruction caused by ATVs and UTVs to our state forests.” *Id.* They have “photo documentation of their insidious impacts: the spread of invasive species, erosion and sedimentation, destruction of forest vegetation, and more.” *Id.*

174. KTA members value “the spectrum of ecological functions that state forests provide: clean air, clean water, carbon sequestration, and habitat for a multitude of wildlife, including species that require intact, non-fragmented expanses of forests that are increasingly rare in an urbanizing world.” *Id.*

175. ATV riding activity on our state forests “introduces an unnecessary source of anthropogenic noise. The cacophony not only disturbs wildlife communication, behavior, and migration, but also delivers the negative effects (e.g., stress, sleep disturbance, etc.) of noise pollution to human forest users seeking the increasingly elusive condition known as solitude.” *Id.*

176. KTA members “believe it is indisputably evident that ATV/UTV activity in our state forest diminishes and is incongruent with the purposes the forest was created.” *Id.* KTA members are alarmed by what is known about the harm from

ATV riding in the State Forest but are also concerned about what “we do not know or have not fully measured.” *Id.* They know that “climate change threatens our forests in many ways, yet forest policies facilitate those very threats by accommodating motorized recreation.” *Id.*

177. KTA members know that the “great hiking trails of Pennsylvania, trails that stir [their] souls and fuse everlasting bonds with nature, are intertwined and inseparable from the forests that make them possible and oh so special” and that the “wrongs done to our state forest by DCNR’s accommodation of ATVs and UTVs and the legislative acts that set them in motion” must be remedied to “assure that our forests are safeguarded for the noble purposes for which they were intended.” *Id.*

2. Degradation of the Sproul State Forest District

178. The Sproul is the largest forest district with over 300,000 acres of State Forest in northcentral Pennsylvania, primarily in Clinton and northern Centre Counties. The two large ATV riding areas within the Sproul State Forest provide approximately 88 miles of roads constructed and maintained exclusively for ATV use—approximately 50 miles on the Whiskey Springs ATV Trail developed in the late 1980s and 38 miles on the Bloody Skillet ATV Trail developed in the early 2000s.²⁰ In 2011, DCNR opened another 6-mile ATV route in the Sproul State Forest

²⁰ See “ATV Trails in State Forests” on the DCNR website at <https://www.dcnr.pa.gov/Recreation/WhatToDo/ATVRiding/ATVTrailsinStateForests/Pages/default.aspx>.

to connect the Bloody Skillet ATV Trail with the Kato-Orviston Road, a township road opened for joint use by ATVs to access the privately operated Snow Shoe Rail Trail.²¹

179. In 2023, DCNR opened approximately 27 miles of State Forest road for joint use by ATVs within the Sproul Forest District as part of the Northcentral ATV Regional Trail Connector Pilot mandated by Section 1720-E of the Fiscal Code to connect the Whiskey Springs ATV Trail to amenities in Renovo and North Bend.²²

Affidavit of Robert Davey, Jr., Retired Sproul State Forest District Manager

180. Robert (“Butch”) Davey was the Sproul State Forest District Manager from 1982 to 2003 during the development of the two large ATV riding areas in this portion of the State Forest. Affidavit of Robert Davey, Jr. (Exhibit U). Since his retirement in 2003, Davey has continued to actively monitor activities in the Sproul State Forest District, including continued problems with ATV use, and has spent time hiking, planting trees and enjoying other activities in the State Forest with his family and friends. *Id.*, page 1.

181. When Davey first became the manager of the Sproul State Forest in 1982, he and his staff regularly observed ATVs being driven illegally and at unsafe

²¹ The Snow Shoe Rail Trail extends through Snow Shoe Township and into Rush Township in Centre County along Moshannon Creek and is open to ATVs, as well as hikers, bikers, equestrians and snowmobiles (see <https://www.ssrt.org/about>).

²² At least 15 miles of additional State Forest roads in the Sproul State Forest District are expected to be opened for joint ATV use to connect the Bloody Skillet ATV Trail to South Renovo.

speeds on State Forest roads and traveling off these roads into the forest on closed logging roads and other trails. He observed damage to sensitive natural resources within the forest from the ATV tires, which are designed to grip the soil, thus easily gouging and rutting the soft forest soil and leaf litter and creating areas for water to accumulate—areas that were expanded as the ATV riders used them for “mudding”.

Id., page 3.

182. Initially, Davey worked to reduce illegal riding by posting signs on every State Forest road within the district advising that ATV riding was prohibited within the State Forest and working to educate ATV riders. However, when the Vehicle Code was amended in 1985 to require DER to regulate ATVs, he was directed to find a place for ATVs to ride within the Sproul State Forest District. He identified a former mine-scarred area that was already being used illegally by ATVs. This area was developed into the Whiskey Springs ATV Trail, which prevented restoration of this area of the State Forest to natural forest. This ATV riding area was supposed to curb illegal ATV use in the Sproul State Forest District, but it did not.

183. Shortly before retiring in 2003, Davey was again directed to develop a second ATV recreational riding area within the Sproul State Forest on recently acquired State Forest land known as the Litke Tract. Illegal ATV riding on this land prior to its addition to the State Forest was extensive. Instead of restoring this land to natural forest, approximately 1,200 acres near the village of Orviston were

developed into the Bloody Skillet ATV Trail. The opening of this large second ATV riding area did not curb illegal ATV riding in the Sproul State Forest District.

184. Although Davey tried to find ways to support recreational use of the State Forest by ATVs without compromising his duty to protect the forest, he could not. Based on his 43 years of experience as a professional forester in Pennsylvania with the Bureau of Forestry and his over 20 years managing the Sproul State Forest District, Davey found that allowing ATV recreational riding within the State Forest did not stop illegal ATV riding and caused increased damage to the forest itself, as well as to other recreational uses of the forest.

Affidavit of Doug D'Amore, Retired Sproul State Forest District Manager

185. Upon Davey's retirement in 2003, Doug D'Amore became the Sproul State Forest District Manager and served in that capacity for the next 18 years until his retirement in December 2021. While serving as manager of the Sproul, D'Amore was responsible for the two large ATV riding areas within the forest (Whiskey Springs and Bloody Skillet). He was also responsible for protecting the natural resources of the State Forest from both authorized and illegal ATV use.

186. When D'Amore became the manager of the Sproul State Forest District, the 1995 State Forest Strategic Plan and 2003 State Forest Management Plan directed management of the State Forest consistent with the principles of ecosystem management. D'Amore recognized the State Forest of northcentral Pennsylvania as

“an intact functioning ecosystem. It has provided and continues to provide Pennsylvania with one of the largest almost continuous forest ecosystems in the nation. [He] always considered the DCNR Bureau of Forestry’s core mission to be ensuring that our public forests are managed to preserve the ecology of the forest, while also allowing thousands of Pennsylvanians the opportunity to experience the wildness of the forest through hiking, fishing, hunting, bird watching and other low impact recreation. As the manager of the Sproul State Forest District, it was [his] job to make decisions about the management of this public forest to ensure it was protected and enhanced.” Affidavit of Douglas J. D’Amore (Exhibit V), page 1.

187. During his 35½ years as a forester at DCNR, D’Amore experienced increasing political pressure to manage the State Forest for short-term monetary gain at the expense of the future health of the forest. *Id.* As a result, he was “required to manage activities that are inimical to the ecology of the forest”, including “the development of more trails for ATV recreational riding in the forest when illegal ATV riding within the forest was already a major problem.” *Id.*, pages 1-2. Since his retirement in 2021, DCNR’s “two major changes [in its ATV policy] – the creation of miles of long ‘connector’ trails through the forest and opening the state forest public use roads to joint ATV use—have had and will continue to have major impact on the biological, ecologic, environmental and fiscal health of the Sproul State Forest District, as well as the entire state forest system.” D’Amore opted to retire several

years earlier than initially planned rather than implement these policy changes in the Sproul State Forest District. He recalled his grandfather's advice – “You only have one reputation, don't blow it!” *Id.*, page 2.

188. D'Amore managed the Whiskey Springs and Bloody Skillet ATV Trails in the Sproul State Forest, which “brought thousands of high powered motorized vehicles into the forest.” *Id.*, page 2. The Sproul State Forest District constructed and maintained ATV trails 12 to 15 feet wide exclusively for ATV riding and “had to convert hundreds of acres of natural forest into impacted roads.” *Id.* The Sproul State Forest District also has over 200 miles of illegal trails. *Id.*

189. ATVs used on the State Forest, which include larger side-by-side and utility task vehicles (“UTVs”), “are made to be ridden off road through rough terrain” and “are loud and destructive. ... Conflicts between ATV riders and other recreational users of the State Forest are a constant struggle. Many hikers, horseback riders, bird watchers, hunters and mountain bikers do not want to use areas near ATV trails and want the ATV used curtailed. ... Mountain bikers and others using the Eagleton Mine Camp Shared Use Trail, hikers on the Chuck Keiper and Donut Hole Trails, and individuals pleasure riding on the state forest road system all lodged regular complaints about ATV use encountered during their visits. The Sproul State Forest District also experienced conflicts between individuals with leased State Forest campsites and ATVs”, including “the roads to these camps being eroded from

ATV use”, “noise and dust”, “ATV riders hanging out on their porches”, and “vandalism and theft”. *Id.*

190. Regarding environmental and ecological impacts of ATV recreational use on the State Forest, the expansion of ATV riding in the State Forest “conflicts with or negates every one of” DCNR’s policies on “clean air, global warming, water quality and forest fragmentation.” *Id.*, page 9. ATVs are “among the dirtiest, least fuel efficient internal combustion engines available” and the ATV riding on the State Forest emits “thousands of pounds of carbon dioxide in the atmosphere on a yearly basis.” *Id.* ATVs “have and continue to severely damage streams and wetlands found throughout the Sproul State Forest.” *Id.*, page 10. Fugitive dust from dirt and gravel roads “has a major impact on the forest ecosystem.” *Id.*, page 11. ATVs “can be heard from over a half mile away.” *Id.* The amount of noise generated over a weekend of heavy use on the ATV trail system within the State Forest is “continuous, far exceeding that from other man made sources.” *Id.*

Expert Report of John Arway, Retired PFBC Fisheries Biologist

191. The State Forest in the Sproul District has many streams classified as exceptional value or high quality, as well a Class A wild trout and wilderness trout streams. The effects of ATV riding on the ecology of streams and aquatic resources and DCNR’s failure to properly assess these effects, as set forth in the Arway Expert

Report (Exhibit AA; *see also* ¶¶ 141-157 above), apply to the streams in this forest district.

Affidavits of Local Audubon Chapters and Members

192. The State Forest in the Sproul District provides habitat for many bird and wildlife species. The effects of ATV riding on birds and those who enjoy bird watching described by Audubon members (Exhibits BB and CC; *see also* ¶¶ 158-171 above) apply to this forest district.

Affidavit of the Keystone Trail Association

193. The State Forest in the Sproul District has over 700 miles of hiking trails. 2016 State Forest Plan (Exhibit D), page 201. The effects of ATV riding on people hiking on trails in the State Forest of northcentral Pennsylvania, as described by the Keystone Trail Association (Exhibit DD; *see also* ¶¶ 172-177), apply to the hiking trails in this forest district, including the popular Chuck Keiper and Donut Hole Trails.

3. Degradation of the Susquehannock State Forest District and Lyman Run State Park

194. Over 260,000 acres of State Forest in northcentral Pennsylvania are managed by the Susquehannock State Forest District, the second largest forest district. A large ATV recreational riding area was developed within the heart of this forest in the 1980s with over 40 miles of road constructed and maintained

exclusively for ATV use in the forest area extending from the Denton Hill State Park on Route 6 to the Lyman Run State Park embedded within the forest.

Affidavit of Roy Siefert, Retired State Forest District Manager

195. Unlike the ATV riding areas in the Sproul, the riding area within the Susquehannock was not mine-scarred land where illegal ATV riding had been occurring. The extensive network of roads constructed and maintained for ATV riding in the Susquehannock have fragmented core forest. Affidavit of Roy A. Siefert (Exhibit T), page 1.

196. Roy Siefert worked as a forester managing the State Forest for 34 years (1980 to 2014), including 15 years as the Forest District Manager for the Tioga State Forest. *Id.* He began his career as recreational forester in the Susquehannock State Forest District in the late 1980s and assisted in the development and maintenance of the Susquehannock ATV Trail. *Id.*

197. Over 40 miles of road more than 12 feet wide have been constructed through the Susquehannock State Forest exclusively for ATV riding as part of the Susquehannock ATV Trail. *Id.* The surface of this network of ATV roads is gravel and compacted dirt that requires regular maintenance. *Id.* These roads cross several exceptional value headwater streams and tributaries and cross the Susquehannock Hiking Trail at least five times. *Id.*

198. Siefert has experienced the harm that ATV recreational riding has caused and continues to cause to the health of the State Forest. *Id.*, page 2. The road networks constructed to support ATV riding have converted an extensive acreage of forest to non-forest areas. *Id.*, page 10. These road networks fragments the forest by severing large core forest areas into smaller “woodlots”, which reduces the ability of trees to interact with their environment and each other. *Id.*, page 2.

199. “The power of the ATVs and their aggressive off road tires cause dust and erosion that get into the streams and blankets the plants and trees adjacent to the trail. The forest soil, which is one of the most important elements of the forest health, is permanently impacted.” *Id.*

200. “ATV recreation directly and indirectly impacts the use and enjoyment of others who use the forest for low impact, dispersed activities. The noise from ATVs disturbs birds and animals. It interferes with the natural peace and tranquility of the forest for others.” *Id.* Siefert has experienced the noise, increased runoff and erosion caused by ATVs in both Lyman Run State Park and Susquehannock State Forest. *Id.*, page 3.

201. The Susquehannock ATV Trail “is difficult to maintain and has steep grades that contribute to erosion and runoff that enters the exceptional value headwater streams that flow through the forest. The only way to control the runoff and reduce erosion is to construct the ATV roads with broad based dips. The trail

system has several stretches that are too steep to properly install these important drainage structures. They are difficult to establish on existing roads and the steep terrain within the forest prevents finding alternative routes that allow these features to work.” *Id.*

202. One example of these steep areas on the Susquehannock ATV Trail “occurs in and around Lyman Run State Park. Lyman Run forms the park lake before flowing into the West Branch of Pine Creek. These are very popular water resources for cold water fishing and boating. [Siefert] tried to establish broad based dips on this section of the ATV trail but found it difficult and hard to maintain. As a result, runoff bypasses the existing drainage structures and continues gaining volume and speed on the steep slopes, picking up sediment along the way and carrying it to nearby streams.” *Id.*, pages 3-4.

203. This same erosion and sedimentation effect “happens on less steep sections of gravel roads used by ATVs, where their aggressive tires disturb the running surface and create ruts. Water accumulates in these ruts and bypasses drainage pipes and ditches, further eroding the road surface.” *Id.*, page 4.

204. “ATVs, by design, are built to conquer natural obstacles, not minimize their impacts on them. Their aggressive tires and high revving engines result in spinning wheels and more disturbed forest surface.” *Id.*

205. Although DCNR's policy has always been to prohibit the use of ATVs in our State Parks, "the Susquehannock ATV Trail goes through the heart of Lyman Run State Park, which is surrounded by the Susquehannock State Forest. The ATV trail in the park goes directly to the pavilion on the lake, and runs along the lake to the end of the park." *Id.*

206. A camping area has been developed in Lyman Run State Park "exclusively for ATVs, and a parking area has been constructed for trucks and trailers for access to the Susquehannock ATV Trail from the park. The ATV trail also runs around and above the park, including the camp ground for tent camping. In effect, Lyman Run has become an ATV recreational park." *Id.*

207. As a result, Lyman Run State Park "no longer serves other visitors who are interested in a quiet wilderness experience this park previously provided. The noise of the ATVs going up the mountain on both sides of the park detracts from the experience of visitors who came to enjoy fishing, non-motorized boating, hiking, birdwatching, camping, and many other uses of the forest and its natural tranquil environment." *Id.*

Expert Report of John Arway, Retired PFBC Fisheries Biologist

208. The State Forest in the Susquehannock District has many streams classified as exceptional value or high quality, as well a Class A wild trout and wilderness trout streams. The trout streams in the Hammersley Wild Area in this

forest district provide exceptional fishing experiences for anglers. The effects of ATV riding on the ecology of streams and aquatic resources and DCNR's failure to properly assess these effects, as set forth in the Arway Expert Report (Exhibit AA; *see also* ¶¶ 141-157 above), apply to the streams in this forest district.

Affidavits of Local Audubon Chapters and Members

209. The State Forest in the Susquehannock District provides habitat for many bird and wildlife species. The effects of ATV riding on birds and those who enjoy bird watching described by Audubon members (Exhibits BB and CC; *see also* ¶¶ 158-171 above) apply to this forest district.

Affidavit of the Susquehannock Trail Club

210. The State Forest in the Susquehannock District has over 300 miles of hiking trails. 2016 State Forest Plan (Exhibit D), page 201. The popular Susquehannock Trail System ("STS") is an 85-mile loop hiking trail that extends from Route 6 in northern Potter County to south of Cross Fork just into Clinton County.

211. When Butch Davey became a forester in the Susquehannock District in 1965, few hiking trails existed within the State Forest. Affidavit of Robert Davey, Jr. (Exhibit U), page 1. He and his wife spent many weekends with other local volunteers to build the hiking trails that are now part of the Susquehanna Trail System. *Id.* Davey and his wife continue to be members of the Susquehannock Trail

Club, which now has approximately 280 members, and maintains the STS. Affidavit of Susquehannock Trail Club prepared by member and officer Lois B. Morey, incorporated as **Exhibit EE**. The Susquehannock Trail Club is also a PEDF member.

Id.

212. STS hikers “go to the forest for peace and quiet that cannot be found in the world of machines and vehicles.” *Id.* However, the Susquehannock ATV Trail crosses the STS at least five times and the Northcentral ATV Regional Trail Connector Pilot now brings more ATVs into the State Forest near many more hiking trails.

213. The Susquehannock Trail Club members have found that “[w]hen ATVs roar through the woods, in packs of a dozen or more, peace and quiet [are] destroyed. We 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. We 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. ... We 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.

We promote a culture of ‘*walk softly*’ and ‘*go lightly*’. ATVs do not ‘*go lightly*’ in our woods.” *Id.*

214. The concerns of the Susquehannock Trail Club are echoed by the Keystone Trail Association (Exhibit DD; *see also* ¶¶ 172-177 above). These concerns apply to all hiking trails in the Susquehannock State Forest District impacted by ATV riding.

4. Degradation of the Tioga State Forest District, the Pine Creek Gorge Natural Area and Colton Point State Park

215. Approximately 162,000 acres of State Forest in northcentral Pennsylvania primarily in Tioga County are managed by the Tioga State Forest District. The largest portion of this forest lies in the rugged terrain of the deep valleys of the Pine Creek watershed. This forest includes the Pine Creek Gorge Natural Area and two State Parks along the section of the gorge known as the Grand Canyon of Pennsylvania—Colton Point State Park on the west rim and Leonard Harrison State Park on the east rim.

Affidavit of Roy Siefert, Retired Tioga State Forest District Manager

216. Roy Siefert served as the Forest District Manager of the Tioga State Forest District for 15 years. Affidavit of Roy Siefert (Exhibit T), page 1. During that time, “ATVs were not allowed in the forest.” The forest district “had not constructed any trails designated exclusively for ATVs” or “opened any State Forest roads to joint use by ATVs.” *Id.*, page 5.

217. The Tioga State Forest District “had illegal ATV riding, especially in the more fragmented areas of the forest in eastern Tioga County. The more remote areas of the State Forest, particularly the large area in southwestern Tioga County west of the Pine Creek Gorge Natural Area, did not have as many problems with ATVs because it was harder to get to those areas before violators would be caught.”

Id.

218. That changed in 2022 when, as part of the new Northcentral ATV Regional Trail Connector Pilot, the “Tioga District was directed to provide ATV riders with access to the scenic vistas on the west rim of the Pine Creek Gorge Natural Area in Colton Point State Park” overlooking the Grand Canyon of Pennsylvania. *Id.*

219. The Tioga State Forest District “provided access to the vistas in Colton Point State Park by allowing both joint and exclusive use of state forest roads by ATV riders. Specifically, the district opened a portion of the Painter-Leetonia state forest road to joint use by the public and ATV riders and closed the Deadman Hollow state forest road to the public for scenic driving during the ATV riding season to provide exclusive use of this road to ATVs. Deadman Hollow is a narrow, winding scenic road through the forest previously enjoyed by the public for scenic driving, mountain biking, bird watching, access to hiking trails and other recreational use.

However, use of this state forest road by both ATVs and other motorized vehicles was too dangerous.” *Id.*, page 5-6.

220. DCNR’s decision to allow ATVs to ride through remote forest areas to access the scenic vistas in Colton Point State Park “provides a classic example of recreational creep”, where “DCNR focuses only on the incremental effect of each newly authorized use without considering the overall consequences to the forest or visitors who come to the forest to enjoy its natural values.” *Id.*, page 6-7.

221. DCNR uses an inventory system developed by the U.S. Forest Service known as the Recreation Opportunity Spectrum “to assess the natural character of the forest. However, rather than using this inventory to protect the primitive and remote experience of the large core forest provided by our State Forest in northcentral Pennsylvania, DCNR has sought to ‘balance’ all types of non-forest uses, including ATV recreation, within the whole state forest system.” *Id.*, page 7; *see also* 2016 State Forest Plan (Exhibit D), pages 205-208.

Expert Report of John Arway, Retired PFBC Fisheries Biologist

222. The State Forest in the Tioga District has many streams classified as exceptional value or high quality, as well a Class A wild trout and wilderness trout streams. Pine Creek and its tributaries within the Pine Creek Gorge Natural Area

provide exceptional fishing experiences for anglers.²³ The effects of ATV riding on the ecology of streams and aquatic resources and DCNR's failure to properly assess these effects, as set forth in the Arway Expert Report (Exhibit AA; *see also* ¶¶ 141-157 above), apply to the streams in this forest district.

Affidavits of Local Audubon Chapters and Members

223. The State Forest in the Tioga District provides habitat for many bird and wildlife species. The effects of ATV riding on birds and those who enjoy bird watching described by Audubon members (Exhibits BB and CC; *see also* ¶¶ 158-171 above) apply to this forest district.

Affidavit of Keystone Trail Association

224. The State Forest in the Tioga District has over 400 miles of hiking trails. 2016 State Forest Plan (Exhibit D), page 201. The effects of ATV riding on people hiking on trails in the State Forest of northcentral Pennsylvania, as described by the Keystone Trail Association (Exhibit DD; *see also* ¶¶ 172-177), apply to the hiking trails in this forest district.

²³ *See* Affidavit of Jim Weaver (Exhibit Z), a lifelong Tioga County resident and avid fisherman of the trout streams in the State Forest of northcentral Pennsylvania, particularly the Pine Creek Gorge Natural Area.

5. Degradation of the Tiadaghton State Forest District

225. Approximately 147,000 acres of State Forest in northcentral Pennsylvania primarily in Lycoming County are managed by the Tiadaghton State Forest District. Like most of the State Forest managed by the Tioga District, the largest area of forest in the Tiadaghton District lies in the rugged terrain of the deep valleys of the Pine Creek watershed in western Lycoming County.

226. One of the early large ATV riding areas developed after authority for ATV riding was added to the Vehicle Code in 1985 was an area in the Tiadaghton State Forest District near the community of Haneyville, just south of the Miller Run Natural Area. Like the Susquehannock ATV Trail, the 18 miles of roads constructed and maintained exclusively for ATVs in the Haneyville trail system have fragmented core forest.

227. The Black Forest Trail, a popular 42-mile loop hiking trail on the State Forest in northwest Lycoming County, is maintained by the Tiadaghton State Forest District and “covers some of the most spectacular terrain in Pennsylvania offering views into Pine Creek Valley and many of its side hollows.”²⁴

228. Since 2022, DCNR has developed over 20 miles of new ATV trail in the Tiadaghton State Forest District as part of the Northcentral ATV Regional Trail

²⁴ See Tiadaghton State Forest Resource Management Plan, DCNR, December 2019, page 76, available on DCNR’s website at <https://www.dcnr.pa.gov/StateForests/FindAForest/Tiadaghton/Pages/default.aspx>.

Connector Pilot that cuts through center of this rugged forest terrain, as well as the Black Forest Trail loop. As described by the Keystone Trail Association, this ATV activity in the State Forest “diminishes our state forests and is inherently incongruent with the purposes for which these lands were historically established.” Affidavit of the Keystone Trail Association (Exhibit DD), page 1.

Affidavit of Robert Barbour, Retired State Forest Ranger

229. Robert Barbour performed law enforcement in the Tiadaghton and Loyalsock State Forest Districts for 24 years (1989-2013). Affidavit of Robert Barbour (Exhibit X). He was initially hired in response to concerns with illegal activities associated with increased recreational use of the Tiadaghton State Forest, “especially illegal ATV use.” *Id.*, page 1. “State Forest users who came to the forest for peace and tranquility and the traditional uses of State Forest Lands were finding increasing disruptions by such illegal uses.” *Id.*

230. Barbour observed that “[l]ogging roads that were seeded for erosion control and to benefit wildlife were being impacted. Native brook trout streams were being driven through and soil was eroding and washing into them. New illegal trails were being created.” *Id.*

231. Barbour experienced problems with ATV riding “from both designated ATV areas and non-ATV designated areas. ... Much of the illegal ATV operation was taking place in [the Haneyville] area ... ATV riders who used the designated

trail at Haneyville were often bored after a couple hours of riding there and would venture out onto State Forest roads and old logging trails to explore new territory.” *Id.*, page 2. Many of the illegal ATV operators that Barbour encountered told him “that they had been told by the dealers they bought their ATVs from that they ‘could be ridden anywhere on State Lands.’” *Id.*

232. Barbour found safety to be a serious problem, both to ATV riders and himself. Although “ATV manufacturers had warnings that ATVs were not safe to drive on roads and handled much differently than other vehicles and should NOT BE OPERATED on roads open to other motor vehicles”, Barbour “observed many ATVs driven at high rates of speed and many operators not wearing safety helmets. ... Occasionally [Barbour] would encounter a rider who panicked and tried to flee once they knew they ‘were in trouble’. One individual dragged [him] down a road for approximately 40 yards before stopping and then saying he was scared. [He] encountered individuals with extensive criminal histories. One ran [him] over rather than get a simple summary traffic citation. For officers encountering ATVs operating illegally, they have no idea what is coming next in a split second and how things will turn out until the incident is over.” *Id.*

233. Barbor encountered other enforcement problems “caused by the size of the forest areas that need to be covered. While the number of Forest Rangers has increased in the past few years, it is still common for only one or two Rangers to be

working a shift and covering up to 300,000+ acres of some of the most remote areas of the Commonwealth.” *Id.*

234. Based on Barbour’s 24 years of experience in law enforcement on the State Forest, he has concluded “that it is not possible to manage ATV recreation safely and without serious degradation to the state forest.” *Id.*, page 3.

Affidavit of Cynthia Bower, PEDF Chair

235. Cynthia Bower, a life-long resident of Lycoming County, has spent “countless hours” over the past 50 years hiking, canoeing, kayaking, and exploring the State Forest of northcentral Pennsylvania. Affidavit of Cynthia Bower (Exhibit Y), page 1. Bower is a long-time PEDF member, *id.*, and is currently the chair of the PEDF Board of Directors.

236. Bower has walked many of the State Forest areas developed for ATV recreation, including the Haneyville ATV Trail in the Tiadaghton State Forest District. *Id.*, page 3.

237. Bower observed that the damage to the State Forest from the Haneyville ATV Trail “from years of use and misuse was abundant and appalling.” *Id.* She “recorded [44] mudholes, [48] trail bypasses (to skirt mudholes or to just go around trees), and [109] total areas of trail destruction in the [6½] miles [she] walked. This included deeply rutted, wet, eroded areas, some of which were [2½] feet deep, trail expansion from [6 to 20] feet wide; running water in the trail ruts; and areas of

multiple bypasses. In one area about [140] feet long, the designated trail had become so wide that loads of large rock and boulders had been brought in and dumped in order to narrow the trail width. In some places, the original trail was all be impossible to identify.” *Id.*

238. When walking on Button Road, a state forest road that is part of the Haneyville ATV Trail, the ATVs that Bower encountered “simply wanted to go FAST. These [road] areas are hardpacked, impermeable dirt/rock surface. Curves were ‘splayed’ on the outward edges, as sort of ‘ATV moraine.’ None of the riders seemed to be interested in the forest. It was merely a challenge course with trees.” *Id.*, page 4. On the last half mile of her walk on the Haneyville ATV Trail, Bower was passed by two ATVs and “could taste their dust, dirt, and exhaust for the entire half-mile back to the parking lot.” *Id.* Photographs of the forest degradation from ATVs that Bower witnessed are attached to her affidavit.

239. Based on Bower’s experience hiking in the State Forest of northcentral Pennsylvania, she concluded “that DCNR does not have the manpower to monitor and enforce ATV traffic and maintain the trails.” *Id.* Based on the degradation she observed, she further concluded that “ATVs simply do not belong in or on State Forest or State Park lands.” *Id.*, page 5.

Affidavit of the Pine Creek Preservation Association

240. The Pine Creek Preservation Association (“PCPA”) is an affiliate member of the Pine Creek Council of Governments and a member of the Pine Creek Watershed Council. Affidavit of the Pine Creek Preservation Association prepared by its President, Mary Vuccola Bennett, and its Secretary, Dr. Lou Anne Gasperine, incorporated as **Exhibit FF**, page 1. PCPA has over 1,100 members, most of whom own property in the Pine Creek Valley areas, and is also a member of PEDF. *Id.*

241. PCPA members have witnessed that “from years of use and misuse, the Haneyville [ATV] trails are deeply eroded and rutted, with extensive pools of standing water and mud holes. To avoid the worst areas, ATV riders have created bypasses (causing more destruction) and yet more bypasses caused even more destruction. ... This has caused further devastation to the integrity of the surrounding forest as the trails split and divide into pieces what had been undisturbed ground; introduce invasive species into the vegetation; compact the soil; and fill the air with dust, noise and exhaust. There are miles of this degradation at Haneyville.” *Id.*, page 2.

242. Based on the experiences of PCPA members, ATV recreation “does not belong in our Pine Creek watershed, in the wildness of our State Forests, or the peacefulness of our State Parks *anywhere in the Commonwealth* because of the

natural and esthetic values that these lands provide as respite to an ever-increasing population seeking them.” *Id.*, page 3.

243. PCPA recognizes that our State Forest, State Parks and other public lands “are intrinsically valuable—locally and globally in the climate change arena—as critical antidotes. [PCPA] 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. [They] believe ATV trails in our State Forest and Parks are not compatible with the values that [they] 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 [they] cherish most.” *Id.*

Affidavit of John Arway, Retired PFBC Fisheries Biologist

244. The State Forest in the Tiadaghton District has many streams classified as exceptional value or high quality, as well a Class A wild trout and wilderness trout streams. Pine Creek and its tributaries provide exceptional fishing experiences for anglers. The effects of ATV riding on the ecology of streams and aquatic resources and DCNR’s failure to properly assess these effects, as set forth in the Arway Expert Report (Exhibit AA; *see also* ¶¶ 141-157 above), apply to these forest streams.

Affidavits of Local Audubon Chapters and Members

245. The State Forest in the Tiadaghton District provides habitat for many bird and wildlife species. The effects of ATV riding on birds and those who enjoy bird watching described by Audubon members (Exhibits BB and CC; *see also* ¶¶ 158-171 above) apply to this forest district.

Affidavit of the Keystone Trail Association

246. The State Forest in the Tiadaghton District has over 600 miles of hiking trails. 2016 State Forest Plan (Exhibit D), page 201. The effects of ATV riding on people hiking on trails in the State Forest of northcentral Pennsylvania, as described by the Keystone Trail Association (Exhibit DD; *see also* ¶¶ 172-177), apply to the hiking trails in this forest district, including the popular Black Forest Trail with its spectacular vistas of the Pine Creek valley.

6. Degradation of the Moshannon State Forest District

247. Approximately 191,000 acres of State Forest in northcentral Pennsylvania primarily in northern Clearfield, southwest Elk and southeast Cameron Counties are managed by the Moshannon State Forest District. A large tract of State Forest in western Centre County surrounding Black Moshannon State Park is also part of the Moshannon State Forest District.

248. Much of the State Forest managed by the Moshannon District, which includes part of the 50,000-acre Quehanna Wild Area, is within the range of

Pennsylvania's reintroduced elk herd.²⁵ The State Forest in northcentral Pennsylvania provides critical habitat for the elk herd, whose range currently includes portions of the Moshannon, Elk, Sproul and Susquehannock Districts.

249. The Moshannon State Forest District does not have any designated ATV riding areas; however, ATV routes to connect the Bloody Skillet ATV riding area in the Sproul State Forest District westward into the Moshannon and Elk State Forest Districts have occurred and are expanding.

250. DCNR opened an ATV route in the Sproul State Forest to connect to the Bloody Skillet ATV Trail with the Kato-Orviston Road—a township road opened for joint use by ATVs—so ATVs riders can continue traveling west through Snow Shoe Township and into Rush Township in Centre County on the privately operated Snow Shoe Rail Trail. Portions of the Snow Shoe Rail Trail border Moshannon Creek and State Forest lands managed by the Moshannon State Forest District, as well as the Allegheny Front Trail—an approximately 40-mile loop hiking trail around Black Moshannon State Park.

Affidavit of Robert Merrill, Retired Moshannon State Forest District Manager

251. Although the Moshannon State Forest District currently has no designated ATV riding areas, illegal ATV riding has been a problem. *See* Affidavit

²⁵ The remaining portion of the Quehanna Wild Area is within the Elk State Forest District, which encompasses almost 220,000 acres of State Forest in northcentral Pennsylvania located primarily in Cameron County and northeast Elk County.

of Robert Merrill (Exhibit W). During his 12 years as the District Forest Manager in the Moshannon State Forest District, Robert Merrill experienced miles of illegal ATV trails through the forest and the resulting degradation. *Id.*, page 1-2. He observed damage from illegal ATV riding in areas of the forest that had been previously mined and were being reclaimed (*e.g.*, Munson Mine and Bark Camp areas), damage from illegal ATV riding through pristine exceptional value trout streams (*e.g.*, Rock Run Creek), damage from illegal ATV riding on steep terrain along pipelines causing erosion and sedimentation of nearby streams (*e.g.*, Medix Run), and high speed illegal ATV riding on state forest roads resulting in serious injury (*e.g.*, Mill Run Road accident). *Id.*, page 2-4.

252. Based on his 32 years of experience as a professional forester with the DCNR Bureau of Forestry in the Moshannon and Clear Creek State Forest Districts, as well as his personal experiences recreating throughout the State Forest in northcentral Pennsylvania, Merrill has concluded that ATV recreational riding in the State Forest “is incompatible with the ecosystem of the forest and the wildness of the forest that is so important to so many.” *Id.*, page 1.

253. Because “ATVs are motorized off-road vehicles designed to have maximum friction between the tires and soft running surfaces”, Merrill has observed “lineal strips 10 to 15 feet wide stretching nearly a mile through formerly undisturbed areas of the forest”, as well as “miles of bare soil strips 6 to 8 feet wide

created by illegal ATV riding” in the Moshannon State Forest District and other forest districts in northcentral Pennsylvania. *Id.*, page 2. These strips “turned into wet muddy track and mud holes” during wet weather and caused “widespread dust within the forest ... coating the vegetation and disrupting the normal functions of forest plants” during dry weather. *Id.*

Expert Report of John Arway, Retired PFBC Fisheries Biologist

254. The State Forest in the Moshannon District has many streams classified as exceptional value or high quality, as well a Class A wild trout and wilderness trout streams. The effects of ATV riding on the ecology of streams and aquatic resources and DCNR’s failure to properly assess these effects, as set forth in the Arway Expert Report (Exhibit AA; *see also* ¶¶ 141-157 above), apply to the streams in this forest district.

Affidavits of Local Audubon Chapters and Members

255. The State Forest in the Moshannon District provides habitat for many bird and wildlife species. The effects of ATV riding on birds and those who enjoy bird watching described by Audubon members (Exhibits BB and CC; *see also* ¶¶ 158-171 above) apply to this forest district.

Affidavit of the Keystone Trail Association

256. The State Forest in the Moshannon District has over 300 miles of hiking trails. 2016 State Forest Plan (Exhibit D), page 201. The effects of ATV riding on

people hiking on trails in the State Forest of northcentral Pennsylvania, as described by the Keystone Trail Association (Exhibit DD; *see also* ¶¶ 172-177), apply to the hiking trails in this forest district, including the popular Allegheny Front Trail.

V. RELIEF SOUGHT

A. Declaratory Relief Requested by PEDF (Counts I-V)

1. **The Commonwealth Trustees Have the Non-Discretionary Fiduciary Obligation under the ERA to Conserve and Maintain the Natural Resources and Ecology of Our State Forest and Parks in Northcentral Pennsylvania (Count I)**

257. Based on the material facts and law set forth in Section IV.A. of this Petition, the plain language of Article I, Sections 25 and 27 of the Pennsylvania Constitution (1) impose a mandatory duty on the Commonwealth Trustees to conserve and maintain our public natural resources, which include our State Forest and State Parks in northcentral Pennsylvania, and (2) prohibit the Commonwealth Trustees from infringing on the rights of the people of Pennsylvania, including PEDF's members, to clean air, pure water and the preservation of the natural, scenic, historic and esthetic values of their environment, including our State Forest and State Parks in northcentral Pennsylvania.

258. WHEREFORE, PEDF requests the Commonwealth Court to declare that the Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to conserve and maintain the natural resources and ecology of our State Forest and State Parks in northcentral Pennsylvania.

2. The Commonwealth Trustees Have Authorized ATV Use in the State Forest and State Parks of Northcentral Pennsylvania That Has Caused and Continues to Cause the Degradation, Diminution and Depletion of these Public Natural Resources (Count II)

259. Based on the material facts and law set forth in Section IV.B. of this Petition, the statutory authority for DCNR and its predecessor to regulate ATVs within the Commonwealth and to allow recreational use of ATVs on our State Forest and State Parks was given in 1985 through amendments to Chapter 77 of the Vehicle Code. As a result, areas of the State Forest in northcentral Pennsylvania were designated for ATV recreational use and roads were constructed in these areas for the exclusive use of ATVs.

260. Based on the material facts and law set forth in Section IV.C. of this Petition, the Conservation and Natural Resources Act was enacted in 1995 to create DCNR to better protect the natural resources of our State Forest and State Parks consistent with the trust mandates of Article I, Section 27 of the Pennsylvania Constitution.

261. Based on the material facts and law set forth in Section IV.D. of this Petition, the DCNR Bureau of Forestry adopted the principles of ecosystem management to ensure the long-term health of the natural systems of the State Forest consistent with its ERA trust mandates. The bureau also began the process to implement this new paradigm through its periodic updates to its State Forest Resource Management Plan.

262. Based on the material facts and law set forth in Section IV.E. of this Petition, DCNR imposed a moratorium on the expansion of recreational use of ATVs in the State Forest because of its inability to prevent the degradation, diminution and depletion of the natural resources of the forest from this activity consistent with its ERA trust mandates. This moratorium was initiated in September 2001 and rescinded in November 2020 to comply with new statutory mandates enacted through amendments to the Fiscal Code.

263. Based on the material facts and law set forth in Section IV.F. of this Petition, Section 1720-E(a) of the Fiscal Code enacted in 2018 requires DCNR, in consultation with PennDOT, to expand ATV access to the State Forest in northcentral Pennsylvania by opening state forest roads, as well as state highways, to ATVs. Section 1720-E(b) of the Fiscal Code enacted in 2020 required DCNR to establish a pilot program to further expand ATV access to the State Forest and State Parks in northcentral Pennsylvania by the 2021 ATV riding season. To comply with these Fiscal Code mandates, DCNR developed the Northcentral ATV Regional Trail Connector Pilot, which opened in 2021 and has continued to expand. DCNR prepared a report as required by the Fiscal Code on its first three years of operation of the ATV pilot program that identifies but does not address the continued degradation, diminution and depletion of the natural resources of the State Forest

caused by ATV recreational use and, instead, focuses on social and economic justifications for ATV use.

264. Based on the material facts and law set forth in Section IV.G. of this Petition, ATV recreational use of our State Forest and State Parks in northcentral Pennsylvania, both in areas designated for exclusive ATV use and areas now accessible through the new ATV pilot program, has caused and will continue to cause the degradation, diminution and depletion of these public natural resources.

265. Based on decades of experience by professional foresters and others who worked for the DCNR Bureau of Forestry managing ATV use of the State Forest in northcentral Pennsylvania, as set forth in Section IV.G. of this Petition, ATV recreational use of the forest is incompatible with protecting and sustaining the ecology of this largely contiguous intact forest, one of the largest in the eastern United States. ATVs fragment the forest, erode forest soil, spread invasive species, disrupt wildlife and their habitat, increase the discharge of sediment and other pollutants into pristine forest streams, emit pollutants into the pristine forest air, and decrease the forest's ability to capture carbon.

266. Based on decades of experience of individuals who have lived, recreated and worked to protect the natural resources in the State Forest and State Parks of northcentral Pennsylvania, as set forth in Section IV.G. of this Petition, ATV recreational use is incompatible with the traditional dispersed low impact

recreational uses of the forest dependent on the solitude, tranquility and natural ecology of the forest, such as hiking and fishing.

267. WHEREFORE, PEDF requests the Commonwealth Court to declare that the ATV use authorized by the Commonwealth Trustees in the State Forest and State Parks of northcentral Pennsylvania has caused and continues to cause the degradation, diminution and depletion of these public natural resources.

3. The Governor Breached His Fiduciary Duties and the ERA Trust and Infringed on the Constitutional Rights of PEDF Members by Requiring DCNR to Continue and Expand Recreational Use of ATVs in the State Forest and Parks of Northcentral Pennsylvania Knowing ATVs Deplete These High Value ERA Trust Assets (Count III)

268. The Governor has the supreme power under Article IV, Section 2 of the Pennsylvania Constitution to ensure that the executive branch faithfully executes its trustee duties under the ERA to preserve the corpus of the ERA trust.

269. As the Commonwealth trustee with the supreme power over the executive branch of state government, the Governor is a “fiduciary obligated to comply with the terms of the [ERA] trust and with standards governing a fiduciary’s conduct. The explicit terms of the trust require the [Governor] to ‘conserve and maintain’ the corpus of the trust. *See* Pa. Const. I, § 27. The plain meaning of the terms to conserve and maintain implicates the duty to prevent and remedy the degradation, diminution or depletion of our public natural resources. As a fiduciary, the [Governor] has a duty to act toward the corpus of the trust – the public natural

resources [of our State Forest and State Parks], with prudence, loyalty, and impartiality.” *PEDF II*, 161 A.3d at 932 (citing *Robinson Twp*, 83 A.3d at 956-957).

270. As the Commonwealth trustee with the supreme power over the executive branch of state government, the Governor has the constitutional duty under Article I, Section 25 of the Pennsylvania Constitution to ensure that neither he nor any executive branch agency or official infringes on the rights of PEDF members, or any trust beneficiary, to the preservation of their ERA trust assets, in this case the natural resources of their State Forest and State Parks in northcentral Pennsylvania, or to the preservation of their clean air, pure water, and natural, scenic, historic and esthetic values of these public natural resources guaranteed by the ERA.

271. As the Commonwealth trustee with the supreme power over the executive branch of state government, the Governor has the fiduciary duty of loyalty, which “imposes an obligation to manage the corpus of the [ERA] trust to accomplish the trust purposes for the benefits of the [ERA] trust’s beneficiaries.” *Id.* (citing *Metzger v. Lehigh Valley Trust & Safe Deposit Co.* 69 A. 1037, 1038 (Pa. 1908); *In Re Hartje’s Estate*, 28 A.2d 908, 910 (Pa. 1942), and the Restatement (Second) of Trusts § 186); *see also* 20 Pa.C.S. § 7772.

272. Based on the material facts and law set forth in Section IV.E. of this Petition, the Governor knew that DCNR had for decades imposed a moratorium on the expansion of ATV recreational use of the State Forest, opposed joint use of State

Forest roads by ATVs, and prohibited ATV use in State Parks because ATV use is incompatible with DCNR's trustee duty to conserve and maintain the natural resources of our State Forest and State Parks.

273. Based on the material facts and law set forth in Section IV.F. of this Petition, the Governor directed DCNR to expand ATV recreational use of the natural resources of our State Forest and Parks in northcentral Pennsylvania based on the statutory mandates in Section 1720-E of the Fiscal Code despite DCNR's determination that such expansion was incompatible with its trustee duties to conserve and maintain these public natural resources.

274. In carrying out his trustee duties to conserve and maintain our State Forest and State Parks under the ERA, the Pennsylvania Supreme Court has expressly stated that *"the Governor's ability to override decisions by DCNR ... is contingent upon the extent to which he does so in a manner that is faithful to his trustee obligations, not his various other obligations."* *PEDF II*, 161 A.3d at 939 (emphasis added).

275. Based on the Governor's knowledge of DCNR's long-standing policy against further expansion of ATV use on our State Forest and State Parks based on its more than 35 years of experience administering the ATV program within the Commonwealth, the Governor was not faithful to his ERA trustee obligations when he directed DCNR to rescind its policy against expansion of ATV recreation to

comply with the statutory mandates in Section 1720-E of the Fiscal Code and to expand ATV recreational use of our State Forest and State Parks in northcentral Pennsylvania. To the contrary, he degraded, diminished and depleted the corpus of the ERA trust—the natural resources of our State Forest and Parks in northcentral Pennsylvania—to achieve other objectives in his negotiations with the General Assembly to implement the budget through the Fiscal Code.

276. WHEREFORE, PEDF requests that the Commonwealth Court declare that the Governor breached his fiduciary duties as trustee and the ERA trust and infringed on the constitutional rights of PEDF members and other trust beneficiaries by requiring DCNR to continue and to expand ATV recreational use of our State Forest and State Parks in northcentral Pennsylvania knowing that such ATV use has caused and continues to cause the depletion of these high value ERA trust assets.

4. DCNR and its Secretary Breached Their Fiduciary Duties and the ERA Trust and Infringed on the Constitutional Rights of PEDF Members by Authorizing ATV Recreational Use on our State Forest and Parks in Northcentral Pennsylvania Knowing that ATVs Deplete These High Value ERA Trust Assets (Count IV)

277. Based on the material facts and law set forth in Section IV.A. of this Petition, the people of Pennsylvania voted overwhelming in 1971 to amend their state constitution to add Section 27 to their declared inalienable rights in Article I, thus requiring the agency responsible for managing the State Forest and State Parks in northcentral Pennsylvania (then the new DER and now DCNR) to conserve and

maintain these public natural resources as a trustee, and prohibiting the agency from infringing on the rights of Pennsylvania citizens (the trust beneficiaries) to the clean air, pure water and natural, scenic, historic and esthetic values of these public natural resources. *See* Pa. Const. art. I, §§ 25 and 27.

278. Based on the material facts and law set forth in Section IV.B. of this Petition, since 1985 the agency responsible for managing the State Forest and State Parks in northcentral Pennsylvania (first DER and now DCNR) also became responsible for administering the recreational use of ATVs within the Commonwealth through amendments to Chapter 77 of the Vehicle Code. As a result, four large ATV recreational riding areas were developed in the State Forest in northcentral Pennsylvania with approximately 150 miles of roads constructed for exclusive use by ATVs.

279. Based on the material facts and law set forth in IV.C. of this Petition, DCNR was created in 1995 by the Conservation and Natural Resources Act to carry out the day-to-day trustee duties of preserving the natural resources of our State Forest and State Parks in northcentral Pennsylvania as part of the corpus of the trust established by Article I, Section 27 of the Pennsylvania Constitution.

280. Based on the facts and law set forth in IV.D. of this Petition, the DCNR Bureau of Forestry developed a new strategic plan in 1995 adopting the scientific principles of ecosystem management in its decision-making to ensure the long-term

health of the natural systems of the State Forest. Subsequently, the bureau began through periodic updates to the document that guides its day-to-day decision-making—its State Forest Resource Management Plan—to incorporate scientific principles developed to implement ecosystem management. In its most recent update in 2016, the bureau acknowledged that ATV recreational use of the State Forest, particularly unauthorized riding, “remained near the top of recreational forest management problems identified by staff ... and continues to impact many of the core functions these forest lands were acquired to address—protection of clean water, clean air, wildlife habitat, scenic beauty, rare and significant ecosystems, and wild plants.” 2016 State Forest Plan (Exhibit D), page 200.

281. Based on the facts and law set forth in Section IV.E. of this Petition, DCNR placed a moratorium on further expansion of ATV recreational use of the State Forest in 2001 because a survey of the professional foresters managing the State Forest Districts across the Commonwealth found this activity was having a significant adverse impact on the health of the forest, as well as the safety of people recreating in the forest. DCNR maintained this moratorium until November 2020, when it rescinded the moratorium to comply with Section 1720-E of the Fiscal Code.

282. Based on the facts and law set forth in Section IV.F. of this Petition, DCNR Secretary Dunn continued to resist pressure to expand ATV use on our State Forest and State Parks in northcentral Pennsylvania even after expansion was

statutorily mandated by Section 1720-E(a) of the Fiscal Code enacted in 2018. However, political pressure from the leader of the Pennsylvania Senate, Senate President Pro Tempore Scarnati, resulted in DCNR's loss of support for its moratorium from the Governor and DCNR rescinded its moratorium on November 18, 2020. Five days later, Section 1720-E(b) of the Fiscal Code was enacted requiring DCNR to develop additional ATV access to the State Forest and State Parks in northcentral Pennsylvania.

283. Based on the facts and law set forth in Section IV.F. of this Petition, DCNR implemented the Northcentral ATV Regional Trail Connector Pilot program in the summer of 2021 as required by Section 1720-E(b) of the Fiscal Code without addressing the degradation, diminution or depletion of the natural resources of the State Forest identified by its Bureau of Forestry based on the bureau's decades of experience with ATV riding in the State Forest. DCNR opened a 154-mile route for ATVs through the State Forest and State Parks of northcentral Pennsylvania in 2021, which expanded to 374 miles by 2023 and is expected to continue to increase. In its report to the General Assembly on this pilot program required by Section 1720-E(b) of the Fiscal Code, DCNR admits that it has not had time to assess the ecological impacts of this pilot program on the forest but nonetheless identifies significant potential adverse impacts based on its decades of experience with ATV recreational use of the forest.

284. Based on the facts and law set forth in Section IV.G. of this Petition, retired DCNR professional foresters and others with decades of experience managing, protecting and/or recreating in the State Forest and State Parks in northcentral Pennsylvania have found, both in areas designated for exclusive ATV use and in areas now accessible through the new ATV pilot program, that ATV recreational use is incompatible with protecting and sustaining the ecology of the forest in the State Forest and State Parks of northcentral Pennsylvania.

285. Based on the facts set forth in Section IV of this Petition, ATV recreational use in our State Forest and State Parks in northcentral Pennsylvania fragment the forest, erode forest soil, spread invasive species, disrupt wildlife and their habitat, increase the discharge of sediment and other pollutants into pristine forest streams, emit pollutants into the pristine forest air, decrease the forest's ability to capture carbon and mitigate climate change, and interfere with the traditional dispersed low impact recreational uses of the forest dependent on the natural forest ecology.

286. DCNR and its Secretary have allowed ATV recreational use of our State Forest and State Parks in northcentral Pennsylvania to continue and to expand knowing that this use has caused and will continue to cause the degradation, diminution and depletion of these public natural resources.

287. WHEREFORE, PEDF requests that the Commonwealth Court declare that DCNR and its Secretary breached their fiduciary duties as trustees and the ERA trust and infringed on the constitutional rights of PEDF members and other trust beneficiaries by authorizing the continued and expanded recreational use of ATVs on our State Forest and State Parks in northcentral Pennsylvania knowing based on decades of experience that such ATV use has caused and will continue to cause the depletion of these high value ERA trust assets.

5. The Legislative Mandates of Section 1720-E of the Fiscal Code Are Unconstitutional As Applied in our State Forest and State Parks in Northcentral Pennsylvania (Count V)

288. Based on the material facts and law set forth in Section IV of this Petition and the averments in support of the declaratory relief sought in Counts I-IV above, which are incorporated by reference, Section 1720-E of the Fiscal Code has been implemented by the Commonwealth Trustees to allow ATV recreational use on our State Forest and State Parks in northcentral Pennsylvania in breach of their fiduciary obligations and the ERA trust.

289. DCNR repeatedly points to the mandatory language in Section 1720-E of the Fiscal Code to justify its continued allowance and expansion of ATV recreational use on the State Forest and State Parks in northcentral Pennsylvania. However, statutory authority cannot require government action that infringes on the

fundamental rights of the people of Pennsylvania guaranteed to them under Article I of their state constitution. Pa. Const. art. I, § 25.

290. The material facts and law set forth in Section IV of this Petition establish that ATV recreational use allowed on our State Forest and State Parks in northcentral Pennsylvania has degraded, diminished and depleted these public natural resources, which comprise a significant part of the corpus of the ERA trust, and has infringed on the fundamental rights of PEDF members and other trust beneficiaries to the preservation of the ERA trust corpus, as well as the clean air, pure water and natural, scenic, historic and esthetic values of these public natural resources.

291. Thus, the mandates of Section 1720-E of the Fiscal Code as applied by the Commonwealth Trustees to expand ATV recreational use on the State Forest and State Parks of northcentral Pennsylvania are unconstitutional because these mandates, as applied, breach the ERA trust and infringe on the fundamental Article I rights of PEDF members and other trust beneficiaries.

292. WHEREFORE, PEDF requests that the Commonwealth Court declare Section 1720-E of the Fiscal Code to be unconstitutional as applied by the Commonwealth Trustees to allow continued and expanded use of ATVs on the State Forest and State Parks of northcentral Pennsylvania.

B. Injunctive Relief Requested by PEDF (Count VI)

293. Under Section 7781(b) of the Uniform Trust Act, 20 Pa.C.S. § 7781, the Commonwealth Court may order any appropriate relief to remedy a breach of trust that has occurred or may occur, including enjoining the trustee from committing a breach of trust.²⁶

294. Based on the material facts and law set forth in Section IV of this Petition and the averments in support of the declaratory relief sought in Counts I-V above, which are incorporated by reference, the Commonwealth Trustees have breached the ERA trust by allowing ATV recreational use of our State Forest and State Parks in northcentral Pennsylvania to continue and to expand knowing that this ATV use has depleted and will continue to deplete these ERA trust assets and has infringed on the fundamental rights of PEDF members and other trust beneficiaries to the preservation of the ERA trust corpus, as well as the preservation of the clean air, pure water and natural, scenic, historic and esthetic values of these public natural resources.

295. WHEREFORE, PEDF respectfully asks the Commonwealth Court to enjoin the Commonwealth Trustees from allowing ATV recreational use on the State

²⁶ See also Pennsylvania Legislative Journal, House of Representatives, Vol. 1, No. 118, April 14, 1970, 2269-2291, 2276 (“If a governmental agency were to take action which itself damaged the environment, then the right given by the [ERA] would be violated, and the agency could be enjoined from continuing such action.”); available on the Pennsylvania General Assembly website at <https://www.legis.state.pa.us/WU01/LI/HJ/1970/0/19700414.pdf>.

Forest and State Parks in northcentral Pennsylvania by enjoining ATV access to these public natural resources via roads designated exclusively for ATV use, roads open to the public, or by any other means of access.

C. Other Relief Requested by PEDF (Count VII)

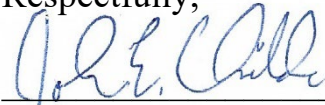
296. Under Section 7781(b) of the Uniform Trust Act, 20 Pa.C.S. § 7781(b), the Commonwealth Court may order any appropriate relief to remedy a breach of trust.

297. PEDF respectfully requests that the Commonwealth Court order the Commonwealth Trustees to pay the fees and expenses of PEDF's attorneys and grant any other relief the court deems appropriate (Count VII).

VI. CONCLUSION

298. For the reasons set forth in this Petition, PEDF respectfully requests that the Commonwealth Court grant the relief requested to prevent further degradation, diminution and depletion of the high value natural resources of our State Forest and State Parks in northcentral Pennsylvania caused by ATV recreational use authorized by the Commonwealth Trustees.

Respectfully,



John E. Childe

Atty ID # 19221

Kimberly H. Childe

Atty ID # 84392

960 Linden Lane

Dauphin, PA 17018

717-743-9811

717-571-9413

childeje@aol.com

kimchilde@comcast.net

Attorneys for Petitioner PEDF

