



PRESS RELEASE

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PROTECT begins Historic Lawsuit to Challenge APA and DEC Snowmobile Trail Building Program in the Adirondack Forest Preserve

Lawsuit to make constitutional challenge due to extensive tree cutting and destruction of wild forest character

Lawsuit to make Article 78 challenge due to illegal use of large tracked groomers on designated trails in the Forest Preserve

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Albany, NY – Last week Protect the Adirondacks filed a motion in a new lawsuit against the NYS Department of Environmental Conservation (DEC) and Adirondack Park Agency (APA) to challenge recent policy and snowmobile trail construction practices in the Adirondack Forest Preserve. The lawsuit contains two parts:

1) allegations that the construction by the DEC of new 9 - 12-foot-wide “community connector” snowmobile trails violates the “Forever Wild” clause of the NYS Constitution; and 2) allegations that the DEC and APA violated the Adirondack Park State Land Master Plan and DEC regulations in authorizing the mechanical grooming of snowmobile trails with large tracked groomers.

PROTECT is seeking approval for the constitutional lawsuit from the Appellate Division, 3rd Department, in Albany, a procedure required for all lawsuits alleging a violation of Article 14 of the NYS Constitution. If the motion is granted, the lawsuit would be filed in State Supreme Court in Albany.

Constitutional Claims: excessive tree cutting and destruction of “wild forest lands”

Article 14, Section 1, of the NYS Constitution reads, in pertinent part:

The lands of the state, now owned and hereafter acquired, Constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed, or destroyed.

PROTECT's lawsuit alleges that DEC's cutting of more than 2,200 trees over the 11.9 miles of the new class II community connector snowmobile trail in the Moose River Plains Wild Forest area of the Forest Preserve violated the NYS Constitution's prohibition on tree cutting. Whereas prior case law has found some limited tree cutting on the Forest Preserve in furtherance of state management to be acceptable, PROTECT believes that the amount of tree cutting for the new community connector snowmobile trail exceeds permissible limits. "The DEC chopped down over 2,200 trees to build the snowmobile trail through the Moose River Plains. We believe that the high number of trees removed violates the state Constitution," said Chuck Clusen, Chair of PROTECT. "We're not saying the state can never chop down a tree, but the work done on these new trails goes far beyond what is legal and acceptable."

In addition to the new "community connector" snowmobile trail built in the Moose River Plains, DEC has already approved similar trails in the Wilmington and Jessup River Wild Forest areas, which will also require cutting hundreds of trees. PROTECT estimates that the entire community connector trail system planned by DEC in its Adirondack Park Snowmobile Plan will result in cutting over 8,000 trees and clearcutting almost 50 acres of the Forest Preserve.

PROTECT's attorney, John Caffry, of Caffry & Flower in Glens Falls, said that "In 1930, the New York Court of Appeals struck down the state's plans to build the 'bobsleigh run' for the 1932 Winter Olympics on Forest Preserve land because doing so would have required destroying over 2,500 trees and clearing 4-1/2 acres of Forest Preserve land. DEC's plans for the community connector snowmobile trails go far beyond that, and are clearly unconstitutional." PROTECT's predecessor, The Association for the Protection of the Adirondacks, was the plaintiff in that 1930 case.

In addition to the illegal tree cutting, PROTECT alleges that the Forever Wild clause of the Constitution was violated by the widening, clearing, grading, flattening, tree removal, rock removal, destruction of bedrock, bench cutting, use of gravel, and bridge building involved in creating the new community connector snowmobile trail in the Moose River Plains. "We believe that the excessive alterations to the Forest Preserve in what is basically a 12-acre clearcut that snakes through the Forest Preserve, violates the constitutional mandate that these lands are to be 'forever kept as wild forest lands' " said John Caffry.

Under the state Constitution, all lawsuits by private parties seeking to enforce Article 14 of the State Constitution must receive approval from the Appellate Division before being heard in a lower court.

Article 78 Claims: violation of State Land Master Plan and DEC regulations by allowing large motor vehicle tracked groomers on designated "trails"

PROTECT's lawsuit also includes claims under Article 78 of the Civil Practice Law and Rules (CPLR) that the DEC and APA violated the Adirondack Park State Land Master Plan (SLMP) and DEC regulations when they authorized the use of large, multi-ton, tracked groomers on designated "trails" on the Forest Preserve. PROTECT believes state law provides that the only motor vehicle allowed to operate on a "trail" is a snowmobile on a designated snowmobile trail. All other motor vehicles are prohibited from operating on "trails" and must operate only on designated "roads."

The SLMP states that snowmobile trails are:

A marked trail of essentially the same character as a foot trail designated by the Department of Environmental Conservation on which, when covered by snow and ice, snowmobiles are allowed to travel and which may double as a foot trail at other times of the year.

“The SLMP is very clear that the only motor vehicle allowed on a snowmobile trail is a snowmobile. Yet, these new community connector trails are being built like roads, with all sorts of damage to the Forest Preserve, so that they can handle these large groomers. PROTECT believes that these trails are designed and built for an illegal use,” said Peter Bauer, Executive Director of Protect the Adirondacks. “If these trails had been designed and built to be groomed by snowmobiles pulling drags, which we think is legal, there would not have been nearly so many trees chopped down and the trail could have been built more like a trail rather than a road – and PROTECT would not be in court.”

“Both the SLMP and DEC regulations clearly prohibit use of these big groomers on trails, yet that’s what we’re seeing approved in a number of locations across the Park. We believe that snowmobile trails may legally only be groomed by snowmobiles. By law, large groomers may only be used on roads” said John Caffry.

DEC and APA embarked upon a new rush of snowmobile trail building in 2012. The new “trail” in the Moose River Plains is the first major trail to be built and likely the largest to be built. The trail, now named the Seventh Lake Mountain Trail was opened with a ribbon-cutting ceremony on February 15, 2013.

Extensive background material is posted on the PROTECT website www.protectadks.org.

Lawsuit is narrowly constructed, does not challenge snowmobiling or motor vehicle use in the Forest Preserve or use of large groomers on roads

It’s important to note what this lawsuit is not about. It is not about eliminating the use of snowmobiles on the Forest Preserve. It is not about eliminating motor vehicle use from the Forest Preserve.

“This lawsuit does not challenge the constitutionality or legality of the use of motor vehicles in general, or snowmobiles in particular, in the Forest Preserve,” said Peter Bauer. PROTECT believes that if these new trails were built without significant tree cutting or alteration of the land, and were only to be groomed by a snowmobile with a drag, they would be legal. “The class II community connector snowmobile trails were built like roads because they were built to handle large multi-ton tracked groomers. The entire premise of these new class II community connector trails is that they are being built like roads in order to accommodate large groomers. Only snowmobiles are supposed to be operated on trails. Groomers should only be operated on roads. That’s the crux of the issue.”

Protect the Adirondacks

Protect the Adirondacks is a privately funded, IRS-approved not-for-profit organization dedicated to the protection of the 6-million-acre Adirondack Park in northern New York. PROTECT was formed through the merger of the Association for the Protection of the Adirondacks and the Residents’ Committee to Protect the Adirondacks in 2009. PROTECT pursues its mission to protect the Adirondack Park and defend the public “forever wild”

Forest Preserve through citizen advocacy, grassroots organizing, education, research, and legal action. PROTECT is guided by a volunteer Board of Directors. PROTECT maintains an office in Lake George. For more information see www.protectadks.org.

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