

STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

DRAFT
February 13, 2013

In the Matter of the Application of
PROTECT THE ADIRONDACKS! INC.,

**COMBINED COMPLAINT
AND PETITION**

Plaintiff-Petitioner

INDEX NO. _____

for a Judgment Pursuant to
Section 5 of Article 14 of
the New York State Constitution,
and CPLR Article 78,

DATE OF FILING:

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION and ADIRONDACK PARK AGENCY,

Defendants-Respondents.

Plaintiff-Petitioner Protect the Adirondacks! Inc.
("Plaintiff" or "PROTECT"), for its verified combined complaint
and petition herein, by its attorneys, Caffry & Flower, alleges
as follows:

SUMMARY OF THE ACTION AND PROCEEDING

1. Pursuant to Section 5 of Article 14 of the New York
State Constitution, Plaintiff seeks to enjoin the Defendants from
constructing certain new snowmobile trails in the Adirondack
Forest Preserve, and to obtain a declaratory ruling that the
creation of certain new snowmobile trails in the Forest Preserve,
sometimes known as "Class II" and "Community Connector" trails,
is a violation of Section 1 of Article 14, and other relief.

2. Pursuant to CPLR Article 78, Plaintiff seeks to have the Court declare null and void certain temporary revocable permits ("TRP") issued by defendant New York State Department of Environmental Conservation ("DEC") on or about December 17, 2012 and January 2, 2013, and any other such permits and agreements, for the grooming of the snow on certain snowmobile trails in the Adirondack Forest Preserve by the use of large mechanical grooming machines, which is a violation of the Adirondack Park State Land Master Plan ("APSLMP").

3. Pursuant to CPLR Article 78, Plaintiff seeks to have the Court declare null and void said temporary revocable permits and agreements because they were issued in violation of 6 NYCRR Part 196.

THE PARTIES

4. Plaintiff Protect the Adirondacks! Inc. ("PROTECT") is a New York not-for-profit corporation. It is exempt from taxation pursuant to Internal Revenue Code § 501(c)(3). PROTECT was formed by the consolidation in 2009 of two predecessor organizations: Residents' Committee to Protect the Adirondacks, Inc. (formed in 1990) and The Association for the Protection of the Adirondacks, Inc. (formed in 1902).

5. Among the purposes for which PROTECT was organized are the following statements from its Certificate of Consolidation:

Protect the Adirondacks! Inc. shall be a non-profit, grassroots membership organization dedicated to the protection and stewardship of the public and private lands of the Adirondack Park, and to building the health and diversity of its human communities and economies for the benefit of current and future generations.

Permanently protect the Park's wildlands, with special emphasis on the Forest Preserve.

Ensure that the "Forever Wild" clause, Article XIV of the New York State Constitution, is preserved and that the Forest Preserve and other lands are strictly managed according to such Article.

Promote the Adirondack Park as a global model of landscape-scale conservation in which strong protection of large, interconnected public wildlands are integrated with sustainably managed, economically viable, private farms and forests that are linked to healthy, diverse rural communities.

Protect, preserve, and enhance the wilderness character, ecological integrity, scenic resources, and appropriate recreational uses of the New York State Forest Preserve.

6. PROTECT currently has approximately 2,000 members, about one-half of which reside or own property within the Adirondack Park.

7. Many of its members are regular users of the New York State Forest Preserve in the Adirondack Park and some of them regularly use the Moose River Plains Wild Forest, Jessup River Wild Forest, Wilmington Wild Forest, and other units of the

Forest Preserve classified as "Wild Forest" under the Adirondack Park State Land Master Plan ("APSLMP").¹

8. As part of its mission to protect the New York State Forest Preserve, and to promote appropriate recreational use thereof, the Plaintiff, its predecessor organizations, and their members have long advocated for the preservation and improved management of the Forest Preserve. See Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. 234 (1930); Matter of Adirondack Mtn. Club Inc. v. Adirondack Park Agency, 33 M.3d 383, 387 (Sup. Ct. Albany Co. 2011).

9. Plaintiff's members use the Wild Forest lands of the Forest Preserve more than most other members of the public. Some members return to them year after year.

10. Plaintiff's members regularly use these areas for recreation and to study and enjoy their lands and waters, and their flora and fauna.

11. Defendant DEC is an agency of the State of New York created pursuant to ECL Article 3. Its principal offices are located in the City and County of Albany, New York.

12. Pursuant to ECL § 9-0105(1) and § 9-0101(6), DEC is responsible for the care, custody and control of the New York State Forest Preserve.

¹ Available at http://apa.ny.gov/Documents/Laws_Regs/SLMP-20120201-Web.pdf.

13. Pursuant to Executive Law Article 27, Adirondack Park Agency Act ("APA Act") § 816, DEC is responsible for preparing an individual management plan ("UMP") for each unit of state land in the Adirondack Park.

14. Defendant Adirondack Park Agency ("APA") is an agency of the State of New York created pursuant to APA Act § 803. Its office is located at Ray Brook in the Town of North Elba, County of Essex, New York.

15. Pursuant to APA Act § 816, APA is responsible for preparing the APSLMP and ensuring that the UMPs for units of state land in the Adirondack Park comply with the APSLMP.

VENUE

16. Venue of this action-proceeding properly lies in Albany County pursuant to CPLR § 506 because defendant DEC has its principal office in said county.

BACKGROUND

Article 14, § 1 of the Constitution

17. Article 14, § 1 of the New York State Constitution ("Article 14") provides, in pertinent part:

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

18. Pursuant to ECL § 9-0101(6), all lands of the State, with limited exceptions that are not applicable in this action, that are located in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster and Sullivan, are part of the Forest Preserve.

19. State Forest Preserve lands are to be kept "Forever Wild" pursuant to Article 14, § 1.

20. Article 14, § 1 prohibits the cutting, removal or other destruction of trees and timber in the Forest Preserve to a substantial extent for any purpose.²

21. Article 14, § 1 requires that said lands be preserved as wild forest lands.³

22. Article 14, § 1 prohibits the construction on such lands of facilities for any sport that requires an artificial or man-made setting.⁴

² Association, supra, 253 N.Y. at 238-242; Balsam Lake Anglers Club v. DEC, 199 A.D.2d 852 (3d Dept. 1993). The Plaintiff herein is the successor to the plaintiff in the 1930 case. See ¶4, supra.

³ Association, supra, 253 N.Y. at 241-242; Association for the Protection of the Adirondacks v. MacDonald, 228 A.D. 73, 82 (3d Dept. 1930).

⁴ Association, supra, 228 A.D. at 82. See also Association, supra, 253 N.Y. at 241-242.

The Adirondack Park State Land Master Plan

23. The APA Act created the APA to oversee and regulate the use and management of state and private land within the Adirondack Park.

24. Pursuant to Executive Law § 816, the APSLMP, as approved by APA and the Governor, controls the use and management of the Forest Preserve in the Adirondack Park.

25. The APSLMP has the force and effect of law and is binding upon APA and DEC.⁵

26. The APSLMP divides the Adirondack Forest Preserve into various classifications, including Wilderness, Primitive, Canoe, Wild Forest and Intensive Use. APSLMP p. 14.

27. The APSLMP spells out what types of facilities and uses are allowed in each such classification of land in the Adirondack Forest Preserve. APSLMP pp. 19-50.

28. The use of motor vehicles is strictly limited in all of the land classifications, except for Intensive Use Areas. APSLMP pp. 20-41.

29. The APSLMP (pp. 16-17) defines a "motor vehicle" as:

a device for transporting people, supplies or material, incorporating a motor or an engine of any type for propulsion and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on or adjacent to land and water or through water. The term includes such vehicles as automobiles, trucks, jeeps,

⁵ Adirondack Mtn. Club, supra, 33 M.3d at 387; Helms v. Reid, 90 M.2d 583, 602 (Sup. Ct. Hamilton Co. 1977).

motorbikes, dirt or trail bikes, any type of all-terrain vehicles, duffel carriers, snowmobiles, snowcats, bulldozers and other earth-moving equipment, and motorboats. (emphasis added)

30. The APSLMP (p. 18) defines a "snowmobile" as "a motor vehicle designed solely for travel on snow or ice by means of a combination of tracks and a ski or skis."

31. The APSLMP purports to allow the use of snowmobiles by the public in Forest Preserve units classified as Wild Forest and Intensive Use, but prohibits their use by the public in units classified as Wilderness, Primitive and Canoe. APSLMP pp. 23, 28, 30, 36, 40.

32. The APSLMP limits the public use of snowmobiles in the Forest Preserve to certain roads and to designated "snowmobile trails", which are defined as:

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 year. APSLMP p. 18.

33. In Wild Forest Areas, certain other types of motor vehicles may be used by the public, but only on designated roads. APSLMP p. 34.

34. In addition, the APSLMP (p. 33) permits certain other uses of motor vehicles in Wild Forest Areas for limited administrative purposes.

Wild Forest Lands

35. Article 14 requires that all Forest Preserve lands "shall be forever kept as wild forest lands" (emphasis added). The APSLMP uses the term "Wild Forest" in a different context, to denominate a subset of the lands making up the Forest Preserve. APSLMP p. 31. However, Article 14 applies equally to all of the Forest Preserve land classifications in the APSLMP.

36. Park-wide, there are over 1.2 million acres of land classified as Wild Forest pursuant to the APSLMP.

37. "The primary wild forest management guideline [is] to protect the natural wild forest setting and to provide those types of outdoor recreation that will afford public enjoyment without impairing the wild forest atmosphere." APSLMP p. 31.

38. "Although the nature of most wild forest areas indicates that potential recreational overuse will not be as serious as in wilderness, primitive and canoe areas, care must nonetheless be taken to avoid overuse, and the basic wilderness guidelines in this respect apply also to wild forest lands." APSLMP p. 36.

39. Wild Forest lands should "retain[] an essentially wild character." APSLMP p. 31.

40. The APSLMP (p. 31) further provides that "[c]are should be taken to designate separate areas for incompatible uses such as snowmobiling and ski touring...".

41. To protect the wild character of Wild Forest lands, "[p]ublic use of motor vehicles will not be encouraged" in Wild Forest areas. APSLMP p. 32.

42. Additionally, new construction of snowmobile trails "will not be encouraged." APSLMP p. 33.

43. In fact, the cutting of new trails "to improve the snowmobile trail system may be pursued" only:

where the impact on the wild forest environment will be minimized, such as (i) provision for snowmobile trails adjacent to but screened from certain public highways within the Park to facilitate snowmobile access between communities where alternate routes on either state or private land are not available and topography permits and, (ii) designation of new snowmobile trails on established roads in newly acquired state lands classified as wild forest. APSLMP p. 35.

44. In general, all new "structures and improvements will be designed and located so as to blend with the surrounding environment and to require only minimal maintenance." APSLMP p. 32.

45. Further, "[n]o new structures or improvements in wild forest areas will be constructed except in conformity with a finally adopted unit management plan". APSLMP p. 32.

Unit Management Plans

46. Pursuant to APA Act § 816(1) and the APSLMP (pp. 9-11), the Adirondack Forest Preserve is divided into various geographic areas or "units". For example, these include such units as the

High Peaks Wilderness Area, the Gore Mountain Ski Center Intensive Use Area and the Lake George Wild Forest.

47. The Moose River Plains Wild Forest, Jessup River Wild Forest, and Wilmington Wild Forest are among the Forest Preserve Wild Forest units at issue herein.

48. Descriptions of the management units may be found on DEC's website at <http://www.dec.ny.gov/lands/4979.html>.

49. The APSLMP briefly describes each such Adirondack Park Forest Preserve unit and the management goals for the unit. APSLMP pp. 51-117. The Wild Forest units are described at APSLMP pp. 92-104.

50. Pursuant to APA Act § 816(1) and the APSLMP (pp. 9-11), each unit of the Forest Preserve must have an approved UMP.

51. Pursuant to APA Act § 816(1), the APSLMP (pp. 9-11) and a March 2010 Memorandum of Understanding ("MOU") between APA and DEC⁶, UMPs are initially developed by DEC and must then receive approval by APA, and final approval by DEC.

52. All UMPs must conform to the requirements of the APSLMP. APA Act § 816(1); APSLMP p. 9.

53. Any provision of a UMP that is not permitted by the APSLMP is *ultra vires* and void.

⁶ Available at: http://apa.ny.gov/State_Land/2010-APA-DEC-MOU.pdf, pp. 7-12.

54. UMPs are also subject to the requirements of ECL Article 8, the State Environmental Quality Review Act ("SEQR").

55. Typically, when developing a UMP, DEC will combine the environmental impact statement ("EIS") for the UMP into a single document with the UMP.

56. Each UMP/EIS includes a draft UMP/EIS that is the subject of input by APA, public comment and a public hearing. Following that process, and revisions to the document, a final UMP/EIS is prepared by DEC and approved by APA and DEC.

57. DEC is then charged by law with carrying out the requirements of the UMP. APA Act § 816; APSLMP p. 11.

58. Each UMP has the force and effect of law and is binding upon APA and DEC.

The Adirondack Park Final Snowmobile Plan

59. On or about November 10 and November 12, 2006, defendant DEC and the New York Office of Parks, Recreation and Historic Preservation ("OPRHP"), respectively, approved the Final Snowmobile Plan for the Adirondack Park/Final Generic Environmental Impact Statement ("Final Snowmobile Plan").⁷

60. A draft of this plan entitled "Draft Comprehensive Snowmobile Plan for the Adirondack Park" ("Draft Snowmobile Plan") had been previously released for public comment in 2003, and public hearings were held on it.

⁷ Available at:
http://www.dec.ny.gov/docs/lands_forests_pdf/snplfnl.pdf.

61. The Final Snowmobile Plan is a supplement to the Statewide Snowmobile Plan approved by OPRHP in 1989. It is not a UMP.

62. The Final Snowmobile Plan includes recommendations for a system of snowmobile trail connections between communities in the Adirondack Park. Much of the mileage of these trails would be located on Forest Preserve lands. It also includes guidelines and criteria for the development, management and maintenance of snowmobile trails in the Adirondack Park, particularly in the Forest Preserve. It purports (pp. 4, 9, 41, 185) to be a conceptual document, and it does not designate specific new trails.

63. The Final Snowmobile Plan (pp. 45-46, 49-50, 52) includes a system of hundreds of miles of Community Connector trails,⁸ which would be at least 9 feet wide or more (pp. 52-53) and have a "prepared surface" (p. 50).

64. These "prepared surface" Community Connector trails would be widened, flattened, ditched, graded, banked, leveled, and cleared, to the point that they would no longer have the character of a foot trail. Final Snowmobile Plan pp. 51-57.

65. Ultimately, the Defendants intend to create hundreds of miles of snowmobile trail connections between the following communities in or near the Adirondack Park, which are likely to

⁸ The Final Snowmobile Plan labeled these trails as "Class III" trails. They were re-designated as "Class II" trails in the "2009 Management Guidance" which is described below.

require the construction of Class II Community Connector snowmobile trails in Wild Forest Areas of the Forest Preserve:

Community Connection Goals

GOAL 1 Travel South to North, from Northville to Colton, by connecting existing trail segments with the following links:

1. Northville to Wells
2. Speculator to Indian Lake
3. Indian Lake to Long Lake
4. Long Lake to Remsen/Lake Placid railway corridor, at Horseshoe Lake

GOAL 2 Travel South to North, from Washington County to Newcomb (to points east/west), by establishing the following links:

5. Washington County to Lake George
6. Warrensburg to Chestertown
7. Chestertown to Minerva via
 - 7a. Johnsbury to North Creek to North River
 - 7b. Johnsbury to Pottersville to Minerva
8. Minerva to Newcomb

GOAL 3 Travel North to South, from Plattsburgh to Lake George, by establishing the following links:

9. Plattsburgh to Ticonderoga
10. Ticonderoga to existing trail system in and adjacent to Lake George Wild Forest
11. Chestertown to Warrensburg
12. Warrensburg to Lake George

GOAL 4 Travel East to West, from Ticonderoga to Forestport/Booneville, by connecting existing trails segments with the following links:

13. Ticonderoga to Newcomb:
 - 13a. By traveling south through Schroon Lake and Pottersville, onto Minerva and Newcomb
 - 13b. By traveling directly west to North Hudson To Newcomb
14. Long Lake to points west:
 - 14a. By traveling west to the Remsen/Lake Placid railway corridor, at Horseshow Lake
 - 14b. By traveling south to Raquette Lake
15. South Lake to Forestport

GOAL 5 Travel West to points along the western Park boundary and outside to Tug Hill and Central New York, by establishing the following link:

16. McKeever to Brantingham

GOAL 6 Travel East from Raquette Lake to Indian Lake (to connect to points east/west and north/south), by establishing the following link:

17. In Moose River Plains, to connect existing trails to Raquette Lake

Final Snowmobile Plan, pp. 45-46.

66. While some of these trails may be located on roads or existing trails, much this trail mileage will be created by clearcutting the Forest Preserve.

The Approved Class II Community
Connector Snowmobile Trails

67. Pursuant to the Final Snowmobile Plan, the Defendants have so far approved UMPs that include nearly 44 miles of Class II Community Connector snowmobile trails in Wild Forest Areas of the Forest Preserve,⁹ including:

- a. Black River Wild Forest
 - i. Round Top Mountain Connector Trail - 2.0 miles
 - ii. Cohen Road to Otter Lake Airport - 1.25 miles
- b. Independence River Wild Forest
 - i. Town Line Road Cutoff - 0.3 miles
 - ii. Catspaw Lake Road Spur - 0.1 miles
- c. Jessup River Wild Forest

⁹ These UMPs are available at:
<http://www.dec.ny.gov/lands/4979.html>.

- i. Crow Hill Relocation - less than 0.1 miles
- ii. Gilmantown Trail - 0.5 miles¹⁰
- iii. Fish Mountain Trail - 7.1 miles
- iv. Fish Mountain Spur Trail - 0.8 miles
- v. Mud Lake Trail - 0.4 miles
- vi. Moffitt Beach Trail - 0.4 miles
- vii. Brister Brook Trail - 1.6 miles
- d. Moose River Plains Wild Forest
 - i. Limekiln Lake-Cedar River Road to Seventh-Eighth Lake Trail, and
 - ii. Seventh-Eighth Lake Trail to South Inlet Bridge - combined = 12.74 miles¹¹
- e. Shaker Mountain Wild Forest
 - i. Sailor Swamp Trail - 1.5 miles
 - ii. Pinnacle Trail - 1.7
 - iii. Old State Road Trail - 1.2 miles
- f. Vanderwhacker Mountain Wild Forest
 - i. Minerva to Newcomb - 4+/- miles
 - ii. Pottersville to Schroon Lake - 1.5 miles
- g. Watson's East Triangle Wild Forest
 - i. Burning Creek Snowmobile Trail - 1.3 miles
- h. Wilmington Wild Forest
 - i. Cooper Kill Connector Trail - 5.25 miles

¹⁰ Actually about 0.3 miles.

¹¹ Actually about 11.9 miles.

68. Thus far, the Defendants have approved in said UMPs a total of 43.7 +/- miles of new Community Connector snowmobile trails.

69. The construction of said trails will result in the clearcutting of a minimum of 47.7 acres of the Forest Preserve, with all of the trees being removed from said acreage.¹²

70. Pursuant to the UMP for each of the relevant Wild Forest areas, DEC is already in the process of creating the new Class II Community Connector snowmobile trails in the Moose River Plains Wild Forest, the Jessup River Wild Forest, the Wilmington Wild Forest, and possibly others.

71. The new snowmobile trail in the Moose River Plains Wild Forest, as approved in the Moose River Plains Wild Forest UMP, will consist of a 1.9 mile segment from the Seventh Lake snowmobile trail to the Eighth Lake snowmobile trail, a 5.1 mile segment from Limekiln Lake-Cedar River Road to the Seventh-to-Eighth Lake snowmobile trail, and a 4.9 mile segment from the old Uncas Road to the Sagamore Road.

72. Combined, these 3 segments total nearly 12 miles of new Class II Community Connector snowmobile trail.¹³

¹² Using the standard trail width of 9 feet, per Final Snowmobile Plan p. 52, (43.7 miles long x 9 feet wide = 2,078,525 square feet / 43,560 square feet/acre = 47.7 acres) (1.1 acres per mile). Because the Final Snowmobile Plan allows Community Connector trails to be as wide as 12 feet in some places, and some trails constructed so far are as wide as 20 feet in spots, this figure is very conservative.

¹³ The UMP approved a 12.74 mile trail. This has apparently been shortened by about 0.84 mile since the adoption of the UMP.

73. The new Gilmantown snowmobile trail in the Jessup River Wild Forest, as approved in the Jessup River Wild Forest UMP, will run approximately 2.4 miles from Gilmantown Road to the Perkins Clearing-Speculator Tree Farm Conservation Easement. Approximately 0.3 miles of this trail will be a new trail, and the remainder will be on an old road. This trail "will eventually provide a completely land-based connection between [the Towns of] Speculator and Wells."¹⁴

74. A new snowmobile trail segment in the Wilmington Wild Forest, as approved in the Wilmington Wild Forest UMP, will run approximately 2.6 miles, from the Cooper Kiln Trail to Forestdale Road.

The 2009 Adirondack Forest Preserve
Snowmobile Trail Management Guidance

75. In 2009, DEC adopted the "Management Guidance" for "Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park" (hereinafter the "2009 Management Guidance").¹⁵

76. The 2009 Management Guidance (p. 10) permits the Class II Community Connector trails to be 9 feet wide, and 12 feet wide on curves. It permits the removal of trees, brush, rocks, stumps, ledges and other natural features, the grading and

¹⁴ DEC Environmental Notice Bulletin, Region 5 Notices, December 26, 2012.

¹⁵ Available at:
http://www.dec.ny.gov/docs/lands_forests_pdf/snowmangguid.pdf.

leveling of the trails, and the cutting of side slopes by means of "bench cuts". 2009 Management Guidance pp. 11-13. Where bench cuts are made, the sides of the trails may be "tapered" to a width of greater than 12 feet, requiring the cutting of more trees and the clearing of more land. 2009 Management Guidance pp. 12.

**AS AND FOR A FIRST SEPARATE
AND DISTINCT CAUSE OF ACTION
PURSUANT TO CONSTITUTION ARTICLE 14**

77. Each and every allegation set forth above is hereby repeated and realleged.

The Proposed Community Connector
Snowmobile Trails Require an Unconstitutional
Level of Tree Cutting in the Forest Preserve

78. DEC has cut, or "destroyed" trees in the Forest Preserve to create the Class II Community Connector snowmobile trails, and intends to continue doing so.

79. Cutting, removing, or destroying a substantial amount of trees in the Forest Preserve violates Article 14 of the New York State Constitution.

80. DEC has admitted that it has cut, or will cut, at least 2,220 trees of three inches or more in diameter at breast height ("dbh") for the construction of the 11.9 miles of new snowmobile trail in the Moose River Plains Wild Forest in the vicinity of Limekiln Lake.

81. DEC has admitted that it has cut, or will cut, at least 123 trees of 3" or more dbh in the Jessup River Wild Forest for the construction of the new 0.3 mile section of the Gilmantown snowmobile trail.

82. DEC has admitted that it has cut, or will cut, at least 398 trees of 3" or more dbh in the Wilmington Wild Forest for the construction of the 2.6 miles of the new Cooper Kill snowmobile trail.

83. By DEC's own count, the total number of trees cut, or to be cut, for these three trails is at least 2,741 trees of 3" or more dbh.

84. Individually, and collectively, the amount of trees cut, or to be cut, for these trails is a substantial number of trees.

85. Based on DEC's own tallies to date, the construction of the Limekiln Lake, Gilmantown, and Cooper Kill trails will destroy about 2,741 trees of 3" dbh or larger over a combined distance of about 14.8 miles, or 185.2 +/- trees per mile.

86. Thus, the construction of the 43.7 +/- miles of such trails listed in ¶67, supra, would result in the destruction of about 8,223 trees of 3" dbh or larger.

87. This degree of tree cutting does not reflect the full extent of trees cut, or to be cut, because it does not include the trees smaller than 3" dbh, or saplings or smaller tree growth that will be cut as these trails are clearcut. In addition, this calculation assumes that the trails will only be 9 feet wide,

when in fact they will be wider in places. See footnote 12, supra.

88. There are 27 Wild Forest Areas designated in the APSLMP (pp. 92-104). Only 18 of them have approved UMPs.¹⁶ As described above, at least 8 of these 18 Wild Forest UMPs have approved Community Connector trails in them.

89. Thus, there are approximately 9 other Wild Forest units without approved UMPs, where additional Class II Community Connector trails are likely to be constructed, as set forth in the Final Snowmobile Plan. See ¶¶ 63-65, supra. It is also likely that some of the older UMPs that were approved before the Final Snowmobile Plan was adopted in 2006 and the 2009 Management Guidance was issued will be revised to add more Class II Community Connector trails.

90. Each such Class II Community Connector trail would result in the additional destruction of a substantial number of trees and more clearcutting in the Forest Preserve.

The Proposed Class II Community Connector Snowmobile
Trails Are Not Consistent With Preserving
the Wild Forest Nature of the Forest Preserve

91. DEC has begun, but not yet completed, construction of the Limekiln Lake snowmobile trail in the Moose River Plains Wild Forest.

¹⁶ See <http://www.dec.ny.gov/lands/4979.html>.

92. Upon information and belief, DEC believes that this work complies with all applicable plans and guidance.

93. In order to accommodate both snowmobiles and multi-ton tracked snow grooming machines, the snowmobile trail's "prepared surface" (Final Snowmobile Plan p. 50) has been constructed by grading, leveling, and flattening the ground using a nine-thousand-pound excavator.

94. In contrast to normal 8 foot wide or less foot trails in the Forest Preserve, the Class II Community Connector snowmobile trails are nine to 12 feet wide, with a number of spots being 20 feet wider or more.

95. In many sections of the Limekiln Lake trail, extensive bench cuts were dug along the side slopes of the trails for a hundred yards or more, protruding rocks were removed or "armored", numerous hummocks were "reduced" and hollows filled, ledge rock was fractured, split apart and removed, and large amounts of crushed gravel were used.

96. The trail surfaces were scarred with deep wheel ruts by the 6-wheel all terrain vehicles and 9,000-pound excavators that were driven into the Wild Forest lands in order to construct these massive trails.

97. On these trails, bridges have been constructed using telephone pole-sized logs, outfitted with plastic reflectors for night-time driving, and built oversized to support the multi-ton grooming machines.

98. Extensive tree cutting was performed, and all of the understory vegetation within the trail's width was removed.

99. Similar methods have been used, or will be used, in the construction of the 0.3 mile new trail section of the Gilmantown trail, and for the additional dozens of miles of Community Connector trails that are in the planning stages.

100. Construction of this type is not consistent with the wild forest nature of the Forest Preserve, in violation of Article 14.

The Proposed Community Connector Snowmobile
Trails Are an Artificial Man-Made Setting
that is not Permissible in the Forest Preserve

101. The tree-cutting, clearcutting, removal of rocks, destruction of bedrock ledges, grading, bench cutting and tapering, and the overall building of road-like trails, and other alteration of the Forest Preserve required for the construction of the Class II Community Connector snowmobile trails, as described above, results in an artificial, man-made setting that is not permitted by Article 14 in the Forest Preserve.

102. Snowmobiling has been designated as a "sport" in the Final Snowmobile Plan (pp. 105, 195, 214).

103. All of this construction has created, or will create, a man-made setting in the Forest Preserve for the sport of snowmobiling, in violation of Article 14.

The Class II Community Connector
Snowmobile Trails Are Unconstitutional

104. Therefore, the Court should declare that the construction of the Class II Community Connector snowmobile trails listed above, and any other trails having similar characteristics or requiring like amounts of tree cutting, individually and collectively, is unconstitutional, and the continued maintenance and construction of said trails should be enjoined, pursuant to Constitution Article 14, § 5, which provides that “[a] violation of any of the provisions of this article may be restrained ... at the suit of any citizen.”

**AS AND FOR A SECOND SEPARATE
AND DISTINCT CAUSE OF ACTION
PURSUANT TO CPLR ARTICLE 78**

105. Each and every allegation set forth above is hereby repeated and realleged.

106. Pursuant to the APSLMP, the use of tracked motorized grooming machines such as snowcats to groom the snow on snowmobile trails is not permitted in the Wild Forest Areas of the Adirondack Forest Preserve.

107. On or about December 17, 2012 and January 2, 2013, DEC issued the following “temporary revocable permits” (“TRP”) to several towns in the Adirondack Park which purported to allow said towns to “maintain and groom” snowmobile trails in several Wild Forest units of the Adirondack Forest Preserve:¹⁷

¹⁷ See <http://www.dec.ny.gov/lands/34466.html>.

TRP Number & Date	Wild Forest Unit(s)	Permittee
6715 12/17/12	Moose River Plains, Fulton Chain	Town of Inlet
6716 12/17/12	Jessup River	Town of Lake Pleasant
7054 12/17/12	Ferris Lake, Jessup River	Town of Arietta
7055 12/17/12	Ferris Lake	Town of Morehouse
7056 12/17/12	Blue Mountain, Jessup River, Moose River Plains,	Town of Indian Lake
7057 12/17/12	Blue Mountain, Moose River Plains, Sargent Ponds	Town of Long Lake
7241 1/2/13	Fulton Chain, Black River	Town of Webb

108. Upon information and belief, DEC has issued additional TRPs to other towns, and entered into agreements with other parties, for additional such grooming activities elsewhere in the Forest Preserve.

109. Upon information and belief, such grooming would involve the use of large tracked snowcats or other such motor vehicles in these Wild Forest Areas of the Forest Preserve.

110. The use of such groomers in the Forest Preserve would be a violation of the APSLMP.

111. As set forth above, certain trails in Wild Forest Areas may be designated for use by snowmobiles.

112. In some cases, the snow on these snowmobile trails is groomed in order to smooth out the snow surface and allow for easier and faster snowmobile riding.

113. Grooming may be done by pulling a "drag" behind a snowmobile. It may also be done by pulling a larger mechanical grooming device behind a larger motor vehicle such as a snowcat. These vehicles operate on treads, much like a bulldozer, and are anywhere from 6 to 8 feet wide, and can be much wider. Some mechanical grooming devices grind or otherwise dig up the snow surface, and then pack it. The vehicles and grooming devices are similar to those used to groom the snow on ski trails at downhill ski centers.

114. Pursuant to the APSLMP (pp. 22-23, 33-34), motor vehicles are only allowed to be used in Wild Forest Areas under limited circumstances.

115. Tracked motorized trail grooming machines, such as "snowcats", are "motor vehicles" as defined in the APSLMP, but are not "snowmobiles". The APSLMP definition of "motor vehicle" clearly differentiates between these two types of motor vehicles. APSLMP pp. 16-17; ¶29, supra.

116. The APSLMP (p. 35) permits snowmobile trails in Wild Forest Areas of the Forest Preserve.

117. The only motor vehicles permitted to be used by the public thereon are snowmobiles. APSLMP p. 34.

118. Nowhere does the APSLMP permit the use of motor vehicles, including tracked motor vehicles such as snowcats, for the grooming of the snow on snowmobile trails.

119. Because, unlike other motor vehicles, snowmobiles are allowed on designated snowmobile trails, they may be used for

such snow grooming. However, no other motor vehicles may be used for such purposes in Wild Forest Areas.

120. The list of allowed uses of motor vehicles in Wild Forest Areas under the APSLMP (pp. 22-23, 33-34) does not include tracked motorized trail grooming machines.

121. Likewise, the APSLMP (p. 33) permits "the use of motor vehicles" ... "by administrative personnel where necessary to reach, maintain or construct permitted structures and improvements ...".

122. However, this allowed administrative maintenance and construction usage does not include the use of tracked motor vehicles such as snowcats and motorized trail grooming machines for grooming the snow on snowmobile trails.

123. This may be contrasted with the way that the APSLMP (p. 16) differentiates between a "cross country ski trail" which is not "constructed, maintained or groomed with the use of motor vehicles" and an "improved cross country ski trail" "which may be constructed, maintained or groomed with the use of motor vehicles" (emphasis added).

124. The distinction made between the two types of cross country ski trails shows that, in the Forest Preserve, snow grooming with motor vehicles other than snowmobiles is only permitted where it is expressly provided for, and that where it is not expressly provided for, it is not permitted pursuant to the APSLMP.

125. When APA decided to allow the use of such snow grooming machines on certain cross-country ski trails, it limited that usage to Intensive Use Areas, and did not allow it in Wild Forest Areas. "Improved cross country ski trails" are allowed in "Intensive Use Areas" (APSLMP p. 37) but not in Wild Forest Areas, which only allow for "cross country ski trails" (APSLMP pp. 21, 32, 34).¹⁸

126. While motor vehicles may be used "to reach, maintain or construct permitted structures and improvements ..." in Wild Forest Areas (APSLMP p. 33), this does not include using them to "groom" the snow on snowmobile trails.

127. The definitions of the two types of cross country ski trails, which refer to trails being "constructed, maintained or groomed" (emphasis added) show that "grooming" is different from "maintenance". Otherwise, there would have been no need to list "groomed" separately from "maintenance" in those two ski trail definitions (APSLMP p. 16).

128. The fact that the word "groom" is not used in the list of allowed uses of motor vehicles in Wild Forest Areas (APSLMP p. 33-34) shows that snow grooming is not "maintenance".

129. Likewise, the TRPs issued to the various towns are intended to allow them to both "maintain and groom" such trails. See ¶107, supra.

¹⁸ Cross country ski trails are listed as an allowed improvement in Wilderness Areas, and any improvement allowed in Wilderness Areas is also allowed in Wild Forest Areas. APSLMP pp. 21, 32, 34.

130. Thus, DEC recognized the difference between these two activities, but issued these TRPs anyway.

131. Since snow grooming is not a listed allowable use of motor vehicles in Wild Forest Areas, the grooming of snowmobile trails by any type of motor vehicle other than a snowmobile is prohibited by the APSLMP.

132. The use of tracked motorized grooming machines will lead to the widening of snowmobile trails, removal of rocks and other obstructions, grading of trails, cutting and filling of trails, building wider and larger bridges, and other actions that will result in snowmobile trails that no longer have "essentially the same character as a foot trail" as required by the APSLMP (p. 18).

133. When, in December 2003, DEC promulgated the Draft Snowmobile Plan, it admitted (pp. 3, 111, 141) that the APSLMP would have to be amended in order to permit the use of motorized grooming equipment in Wild Forest Areas.¹⁹

134. No such amendment to the APSLMP has been adopted.

135. The Final Snowmobile Plan (pp. 3-4, 10-11, 22) also concedes that many of its elements will require amendments to existing rules, and as such, are not legally valid.

¹⁹ Page 111 of the Final Snowmobile Plan states that motorized grooming would be consistent with the APSLMP on proposed Class I and II trails. (The class types have since been revised.) This is because Class I trails are actually roads where motor vehicles of all kinds are permitted, and because grooming of Class II trails would only be done with snowmobiles themselves, and not with large tracked motorized groomers such as snowcats. Draft Snowmobile Plan, pp. 68-69, 110-111.

136. Much in the way that the APSLMP does, the Final Snowmobile Plan also (pp. 44-45, 50, 58-59, 61-62, 64, 230) differentiates between "maintenance", for which motor vehicles may sometimes be used in the Forest Preserve, and "grooming".

137. The Final Snowmobile Plan (pp. 58, 63), while purporting to authorize grooming of trails, refers only to existing DEC grooming "practice", an acknowledgment that grooming is not permitted by existing laws.

138. The 2009 Management Guidance (pp. 15-16) purports to allow the grooming of snow on snowmobile trails, but in keeping with the nomenclature of the APSLMP, it differentiates between grooming snow and maintenance activities such as removing fallen trees, placing trail signs, pruning vegetation and hauling construction materials.

139. As set forth above, the APSLMP (p. 33) only allows the use of motor vehicles on trails in Wild Forest Areas when "necessary".

140. Even if the Defendants believe that the grooming of the snow on snowmobile trails is desirable, it is not "necessary" for the use thereof. Indeed, under the Final Snowmobile Plan (pp. 61-63), grooming is purportedly allowed on some trails, but not on others, so it is clearly optional.

141. If a type of use, structure or improvement is not specifically listed in the APSLMP as an allowed activity in the type of Forest Preserve land area involved (such as Wild Forest), then it is not permitted and must be prohibited or removed

promptly. Any provision of a UMP, TRP, or agreement to the contrary is in excess of APA's and DEC's authority.

142. Therefore, the approval of the TRPs and agreements described above, which allow the grooming of snowmobile trails with motorized grooming machines such as snowcats, was in violation of the APSLMP and was arbitrary and capricious, in excess of DEC's jurisdiction and affected by error of law, and should be annulled.

**AS AND FOR A THIRD SEPARATE
AND DISTINCT CAUSE OF ACTION
PURSUANT TO CPLR ARTICLE 78**

143. Each and every allegation set forth above is hereby repeated and realleged.

144. The New York State Forest Preserve, which is protected as "Forever Wild" by New York Constitution Article 14, § 1, is managed by DEC under ECL § 3-0301(1)(d) and § 9-0903(1).

145. ECL § 3-0301(1)(d) gives DEC the power and the responsibility to "[p]rovide for the care, custody, and control of the forest preserve".

146. ECL § 9-0903(1) provides DEC with similar "power, duty and authority to "[e]xercise care, custody, and control" of the Forest Preserve and ECL § 9-0903(3) empowers it to make rules and regulations for that purpose.

147. Pursuant to those powers, DEC has adopted 6 NYCRR § 196.1(a), which provides in part that "no person shall operate

a motorized vehicle in the forest preserve except as permitted in subdivisions (b) and (c) of this section."

148. Subdivisions (b) and (c) of § 196.1 limit the use of motorized vehicles in the Forest Preserve only to roads.

149. In the Forest Preserve, snowmobile trails are not roads.

150. Therefore, motor vehicles are not permitted on trails, including on snowmobile trails.

151. However, pursuant to 6 NYCRR § 196.2(a) snowmobiles are permitted on trails specifically designated by DEC as a "snowmobile trail".

152. For purposes of 6 NYCRR Part 190, including § 196, 6 NYCRR § 190.0(b) (8) defines a "motor vehicle" as:

a device for transporting personnel, supplies or material incorporating a motor or an engine of any type for propulsion, and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on or adjacent to land, water or ice. It shall include such vehicles as automobiles, trucks, jeeps, all-terrain vehicles, duffel carriers, snowcats, bulldozers and other earth-moving equipment, but shall not include snowmobiles. (emphasis added)²⁰

153. A "snowcat" is a type of machinery used for grooming snowmobile trails, as well as ski trails, and for other purposes.

154. Section 190.0(b) (8) differentiates between "snowcats" and "snowmobiles".

²⁰ This definition is slightly different from that of the APSLMP, principally in that it excludes snowmobiles.

155. A motorized snowmobile trail grooming machine, including a snowcat, is clearly a "motor vehicle" for purposes of 6 NYCRR Part 196.²¹

156. Therefore, 6 NYCRR § 196.1(a) prohibits the use of such grooming machines in the Forest Preserve, other than on roads, even while allowing the use of snowmobiles.

157. Therefore, the approval of the aforesaid TRPs allowing the grooming of snowmobile trails with motorized grooming machines was arbitrary and capricious, in excess of DEC's jurisdiction and affected by error of law.

WHEREFORE, it is requested that judgment be granted:

(A) Enjoining Defendants from constructing in the Forest Preserve Class II Community Connector snowmobile trails, and other trails having similar characteristics or requiring like amounts of tree cutting;

(B) Ordering Defendants to rehabilitate the damage done to the Forest Preserve so far by the construction of said trails;

(C) Enjoining Defendants from using or permitting the use of mechanical groomers such as snowcats on the snowmobile trails in the Forest Preserve;

(D) Annulling TRPs number 6715, 6716, 7054, 7055, 7056, 7057, and 7241, and all other TRPs and agreements described herein;

²¹ Section 196.1 uses "motor vehicle" and "motorized vehicle" interchangeably.

(E) Awarding Plaintiff the costs and disbursements of this action-proceeding;

(F) Awarding Plaintiff its legal fees and other expenses pursuant to the New York State Equal Access to Justice Act, CPLR Article 86; and

(G) Granting such other and further relief as may be deemed just and proper by the Court.

DRAFT

Dated: February _____, 2013

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