

Caffry & Flower

ATTORNEYS AT LAW

100 BAY STREET
GLENS FALLS, NEW YORK 12801
(518) 792-1582 • FAX: 793-0541

FILE COPY

JOHN W. CAFFRY

CLAUDIA K. BRAYMER

KRISTINE K. FLOWER

September 13, 2013

Thomas G. Clingan
Albany County Clerk
16 Eagle Street
Albany, New York 12206

Re: Protect the Adirondacks! Inc. v. NYS Department of
Environmental Conservation and Adirondack Park Agency,
Index No. 2137-13, RJI No. 01-13-ST-4541

Dear Mr. Clingan:

Enclosed please find the a Notice of Motion and Affidavit of
John W. Caffry, with Exhibit, and an affidavit of service, for
filing.

Also enclosed is a check in the amount of \$45.00 for the
motion filing fee.

Please file these documents and then transmit them to the
assigned Justice, Hon. George B. Ceresia, Jr., along with the
other pleadings and papers in this matter.

Please also return a date-stamped copy of this letter to me
in the postage-paid envelope provided.

If you have any questions, please let us know. Thank you.

Sincerely,

Claudia K. Braymer
Claudia K. Braymer
Cbraymer@caffrylawoffice.com

enc.

cc: Peter Bauer
Lawrence A. Rappoport, Esq.
Hon. George B. Ceresia, Jr.
(All w/enc.)

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

Plaintiff-Petitioner,

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

-against-

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

Defendants-Respondents.

NOTICE OF MOTION

INDEX NO. 2137-13

RJI NO.01-13-ST-4541

**NO ORAL ARGUMENT
REQUESTED; SUBMITTED
ON PAPERS**

PLEASE TAKE NOTICE that, on September 26, 2013, at 9:30 a.m., at the Albany County Courthouse, Columbia and Eagle Streets, Albany, New York, upon the annexed affidavit of John W. Caffry, sworn to September 13, 2013, and the prior pleadings and submissions in this matter, including but not limited to, the affidavit of John W. Caffry, sworn to on July 12, 2013, Plaintiff's Memorandum of Law dated July 12, 2013, the affidavit of Peter Bauer, sworn to on July 15, 2013, the Plaintiff's Reply Memorandum of Law dated July 24, 2013, and the Summons, Notice of Petition and Verified Complaint-Petition dated April 12, 2013, Plaintiff Protect the Adirondacks! Inc. will move for the following relief:

A. Granting Plaintiff a temporary restraining order, and then a preliminary injunction, enjoining Defendants from cutting or otherwise destroying trees in the Adirondack Forest Preserve

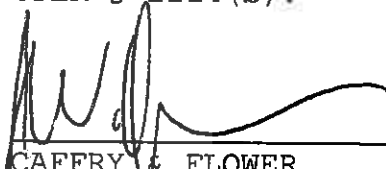
for the construction of Class II Community Connector snowmobile trails and other trails having similar characteristics, and from otherwise clearing, excavating or filling land for such trails, during the pendency of the First Cause of Action;

B. Awarding Plaintiff-Petitioner the costs and disbursements of the motion; and

C. Granting such other and further relief as may be deemed to be just and proper by the Court.

PLEASE TAKE FURTHER NOTICE that any answering papers should be served in accordance with CPLR § 2214(b).

Dated: September 13, 2013



CAFFRY & FLOWER
Attorneys for Petitioners
John W. Caffry, of Counsel
Claudia K. Braymer, of Counsel
100 Bay Street
Glens Falls, New York 12801
518-792-1582

To: ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Defendants-Respondents APA and DEC
Lawrence A. Rappoport, of Counsel
The Capitol
Albany, New York 12224
518-474-1191

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STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

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

**AFFIDAVIT OF
JOHN W. CAFFRY**

Plaintiff-Petitioner,

INDEX NO. 2137-13

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

RJI NO.01-13-ST-4541

-against-

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

Defendants-Respondents.

STATE OF NEW YORK)
)SS.:
COUNTY OF WARREN)

John W. Caffry, being duly sworn, deposes and says that:

1. I am an attorney licensed to practice law in the State of New York, and am a member of Caffry & Flower, attorneys for the Plaintiff-Petitioner Protect the Adirondacks! Inc.

(hereinafter the "Plaintiff" or "PROTECT"). As such, I am fully familiar with the facts and circumstances of this action-proceeding.

2. I make this affidavit in support of Plaintiff's motion for a temporary restraining order, and then a preliminary injunction, during the pendency of the First Cause of Action.

3. The Plaintiff's First Cause of Action "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" of the New York State Constitution. Complaint-Petition, ¶ 1.

4. In the Court's Decision/Order dated August 22, 2013 (hereinafter "Decision"), the Court denied Plaintiff's prior motion for a preliminary injunction. Decision, p. 19.

5. In making its decision, the Court relied heavily upon the Defendants for "the material facts with regard to construction of the trails to date, removal of trees, and the amount of work" yet to be done. Decision, p. 12.

6. The Court found that 2,620 trees had already been cut for the construction of the Seventh Lake Mountain Community Connector Trail (1,924 trees cut), the Wilmington Community Connector Snowmobile Trail (666 trees cut), and the Gilmantown Community Connector Snowmobile Trail (30 trees cut). Decision, pp. 10-11.

7. According to the Defendants, only 149 additional trees needed to be cut to complete the construction of the Seventh Lake Mountain Community Connector Trail, the Wilmington Community Connector Snowmobile Trail, and the Gilmantown Community Connector Snowmobile Trail. Decision, pp. 14-15.

8. On this basis, the Court reasoned that when considering the trails "in the aggregate as a single project . . . well over ninety percent of the trees planned to be removed have already been removed and constitute a *fait accompli*". Decision pp. 15-16.

9. While the Plaintiff showed that the Defendants intend to create hundreds of miles of these illegal Community Connector trails (Complaint, ¶¶ 65-77), the Court found that "there is insufficient evidence in this record to demonstrate that the removal of trees in connection with construction of other snowmobile connector trails . . . is imminent". Decision, p. 16.

10. Accordingly, the Court found that there was "no showing of necessary to issue a preliminary injunction at this time", but that if "there is a change in circumstances" the Plaintiff may request a preliminary injunction again. Decision, p. 16.

11. However, what the Court did not know at the time of its Decision, is that there was already evidence of the Defendants' intentions to press forward with their plans to create hundreds of miles of new Community Connector trails in the Forest Preserve.

12. The facts demonstrating the Defendants' intentions were known to the Defendants, and they did not bring those facts to the attention of the Court at oral argument on July 26, 2013, or thereafter.

13. The Defendant Department of Environmental Conservation published in the Environmental Notice Bulletin on July 24, 2013 its plan to construct another new trail within the Class II Community Connector snowmobile trail system. A copy of this notice is annexed hereto as Exhibit A.

14. This latest trail, called the Catamount Snowmobile Trail, is located in the Taylor Pond Wild Forest and will connect

to the Class II Community Connector snowmobile trail in the Wilmington Wild Forest. See Exhibit A.

15. Its construction will include the removal of another 133 trees. See Exhibit A.

16. Its construction is imminent. In fact, the Assistant Attorney General assigned to this matter has confirmed to me that the construction of this trail has begun.

17. This is just one more trail to become part of the Class II Community Connector snowmobile trail system.

18. Now when considering the trails "in the aggregate as a single project", the percent of trees already cut decreases from 90 percent, and the percent of trees remaining to be cut increases. Decision pp. 15-16.

19. The percent of trees remaining to be cut will continue to fluctuate as the Defendants give notice of the new trails to be created, and as the Defendants hurriedly complete cutting of the trees for those trails.

20. The Plaintiff, and the Court, can not estimate the number of months or years over which the Defendants will trickle out specific information about the new Community Connector trails to be constructed.

21. If the Defendants are allowed to proceed in this piecemeal fashion, many more mature trees (at the current count, at least 149 more trees for the first three trails, plus 133 trees for the new Catamount Snowmobile Trail) will be cut before the Defendants' actions are reviewed by this Court. These trees are

in addition to the 2,620 trees already cut. Decision, pp. 10-11.

22. Once these mature trees are removed, they can not be replaced.

23. The construction of the latest trail will also likely involve unconstitutional clearcutting, removal of rocks, destruction of bedrock ledges, grading, bench cutting and tapering, and the overall building of a road-like trail, and other unconstitutional alteration of the Forest Preserve.

24. This constitutes imminent, irreparable harm to the Forest Preserve.

25. As the Court found, the Complaint raises "serious concerns about the constitutionality" of the DEC's tree-cutting in the Forest Preserve. Decision, p. 14.

26. The Defendants should be exercising an abundance of caution as trustees of the Forest Preserve for the People of the State of New York, and out of respect for the Court's decision-making process. They should have restrained their own activities until the outcome of this lawsuit was known.

27. Rather than doing so, the Defendants are forging ahead with their plans, and exercising uncommon speed with respect to their implementation of a State policy that will forever change the wild character of the Forest Preserve.

28. Under these circumstances, the Court should grant the preliminary injunction even if the 133 trees for the new Catamount Snowmobile Trail have been removed by the time this motion is decided. See Decision, fn 4.

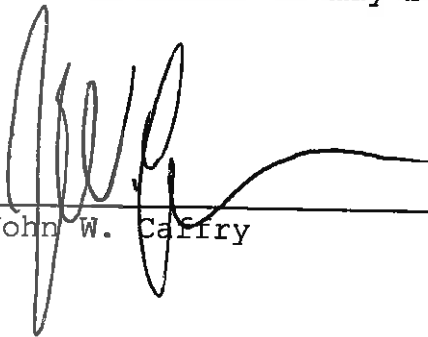
29. Therefore, Plaintiff is re-applying to the Court for an order enjoining the Defendants from cutting trees and creating Community Connector snowmobile trails in the Forest Preserve.

WHEREFORE, it is respectfully requested that the Court grant the following relief:

A. Granting Plaintiff a temporary restraining order, and then a preliminary injunction, enjoining Defendants from cutting or otherwise destroying trees in the Adirondack Forest Preserve for the construction of Class II Community Connector snowmobile trails and other trails having similar characteristics, and from otherwise clearing, excavating or filling land for such trails, during the pendency of the First Cause of Action;

B. Awarding Plaintiff-Petitioner the costs and disbursements of the motion; and

C. Granting such other and further relief as may be deemed to be just and proper by the Court.



John W. Caffry

Sworn to before me this 13th
day of September, 2013.



NOTARY PUBLIC

CLAUDIA K. BRAYMER
NOTARY PUBLIC-STATE OF NEW YORK
No. 028R6238807
Qualified in Saratoga County
My Commission Expires April 11, 2015

EXHIBIT A



ENB - Region 5 Notices 7/24/2013

Public Notice

Construction of the Catamount Snowmobile Trail from the Forestdale Road to Taylor Pond

County: Clinton

Lead Agency: New York State Department of Environmental Conservation (NYS DEC)

Location: Taylor Pond Wild Forest, Town of Black Brook, New York.

Project Description: The approved Taylor Pond Management Complex (TPMC) UMP proposes development of a Community Connector snowmobile trail and parking area within the TPMC to connect with the Community Connector snowmobile trail proposed in the Wilmington Wild Forest (WWF) UMP. This project was approved in the Taylor Pond Management Complex UMP (February 2013). This project will be constructed in accordance with the Department's Management Guidance on "Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park" and includes removal of 133 trees.

Construction of this new snowmobile connector trail will be approximately one quarter of a mile, beginning at the current Catamount trailhead. The trail will follow the current foot trail before leaving public land to travel across private property. The trail will return to public land at Taylor Pond and join the existing Taylor Pond Loop Trail.

Any tree cutting will be in compliance with Lands and Forest Policy # 91-2 on Cutting, Removal or Destruction of Trees and Other Vegetation on Forest Preserve lands. Best management practices will be followed during construction.

Contact: Robert Daley, NYS DEC - Region 5 Ray Brook, Division of Lands and Forests, 1115 NYS Route 86, Ray Brook, NY 12977, Phone: (518) 897-1291.