

STATE OF NEW YORK  
APPELLATE DIVISION

SUPREME COURT  
THIRD DEPARTMENT

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In the Matter of the Application of

PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,

for the Consent of the Supreme Court in  
Appellate Division to Restrain a Violation  
of Article 14 of the New York State  
Constitution, Pursuant to Article 14,  
Section 5 of the Constitution,

-against-

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

Defendants-Respondents.

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**MEMORANDUM OF LAW IN SUPPORT OF  
APPLICATION FOR CONSENT TO MAINTAIN SUIT  
PURSUANT TO CONSTITUTION ARTICLE 14, § 5**

Dated: February 13, 2013

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## **PRELIMINARY STATEMENT**

This memorandum of law is submitted in support of the motion by plaintiff Protect the Adirondacks! Inc. ("PROTECT") for the consent of the Appellate Division to maintain a suit pursuant to Constitution Article 14, § 5 in Supreme Court, Albany County, to restrain the violation by the defendant-respondent New York State Department of Environmental Conservation (hereinafter "DEC") of the "Forever Wild" clause of the Constitution, Article 14, § 1.

With the approval of defendant-respondent Adirondack Park Agency ("APA"), DEC is constructing certain new snowmobile trails in the Adirondack Park, and is also permitting the use of large mechanical snow grooming machines on certain snowmobile trails in the Adirondack Park. The Forest Preserve lands on which these actions are taking place are protected by Article 14, § 1.

The destruction of timber on Forest Preserve lands to construct these snowmobile trails is a violation of Article 14, § 1. The Plaintiff should be given the consent of this Court to maintain an action to restrain these violations. A draft of the Combined Complaint and Petition<sup>1</sup> (hereinafter "Complaint") that PROTECT would file in Supreme Court if this motion is granted is annexed to the affidavit of John W. Caffry, filed herewith, for the Court's reference.

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<sup>1</sup> In addition to the First Cause of Action that is based upon a violation of Article 14, §1, PROTECT intends to include two other causes of action pursuant to CPLR Article 78.

## ARGUMENT

### POINT I:

#### DEC'S ACTIONS VIOLATE ARTICLE 14

As set forth more fully in the First Cause of Action of the draft Complaint (¶¶ 78-90), DEC is in various stages of planning and constructing so-called Class II Community Connector snowmobile trails in many of the Wild Forest areas of the Adirondack Forest Preserve. The Community Connector snowmobile trails being created by DEC will result, and indeed have already resulted, in the destruction of substantial amounts of timber on Forest Preserve land. This is a violation of Article 14, § 1, which prohibits the timber on the Forest Preserve from being destroyed. The officers of the State have no authority to authorize the substantial removal or destruction of timber on the Forest Preserve. See Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. 234, 242 (1930); People v. Santa Clara Lumber Company, 213 N.Y. 61, 66 (1914); Matter of Balsam Lake Anglers Club v. Department of Env'tl. Conservation, 199 A.D.2d 852, 853 (3d Dept. 1993).

Additionally, even if creation of the Class II Community Connector snowmobile trails did not involve the cutting of a substantial number of trees in the Forest Preserve, the creation of the Class II Community Connector snowmobile trails (and any other categories of snowmobile trails with similar

characteristics) is unconstitutional because they require a man-made setting and do not preserve the land in its wild state. See Association for Protection of Adirondacks v. MacDonald, 253 N.Y. at 242 (bobsled run not compatible with wild forest nature of Forest Preserve); Association for the Protection of the Adirondacks v. MacDonald, 228 A.D. 73, 82 (3d Dept. 1930); see also Opinion of the Attorney General No. 96-F2 (finding that laying of private power cables on Forest Preserve land under Raquette Lake was not permissible).

Contrary to preserving the land in its wild state, the Community Connector snowmobile trails are a man-made setting created by DEC to facilitate the winter sport of snowmobiling. Complaint ¶¶ 91-103. The construction of the Community Connector snowmobile trails requires the cutting of trees, clearing of land, removal of rocks, destruction of bedrock ledges, and bench cutting and tapering of the natural terrain. Complaint ¶¶ 59-76. This is a violation of Article 14, § 1. See Association for the Protection of the Adirondacks v. MacDonald, 228 A.D. at 82.

POINT II:

CONSENT SHOULD BE GRANTED FOR THIS SUIT  
TO RESTRAIN THESE VIOLATIONS OF ARTICLE 14

New York Constitution Article 14, § 5 provides that:

[a] violation of any of the provisions of this article [14] may be restrained at the suit of the people or,

with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen.

As was held in a prior Article 14 case:

The vigilance of plaintiff to seek judicial resolution of questions concerning the "forever wild" provisions of our Constitution is essential to its continual perpetuation. A concerned, active citizenry is the best method to insure allegiance to this constitutional mandate that State forest lands be preserved for future generations. Slutzky v. Cuomo, 128 M.2d 365, 369 (Sup. Ct. Albany Co. 1985).

PROTECT represents thousands of citizens of the State of New York who regularly use the Adirondack Forest Preserve. See Complaint ¶¶ 6-10. Therefore, it is qualified to maintain a suit to restrain the violations of Article 14, § 1 by the DEC.

The draft Complaint demonstrates that DEC's ongoing construction of the Class II Community Connector snowmobile trails has violated Article 14, § 1, and damaged the Forest Preserve. See Point I, supra; Complaint ¶¶ 78-104. As such, this Court should consent to an action by PROTECT to restrain these violations. See Article 14, § 5.

In addition, plans for the construction of more Class II Community Connector snowmobile trails, and other categories of snowmobile trails with similar characteristics, have been approved in the Unit Management Plans ("UMP") for several other Wild Forest areas in the Forest Preserve. See Complaint ¶¶ 67-69. There is no administrative relief available through DEC to

stop these violations, and PROTECT is not required to pursue "all possible remedies that might be available through" New York Office of Parks, Recreation and Historic Preservation ("OPRHP") or Defendant-Respondent New York State Adirondack Park Agency, before bringing this proposed action. Matter of Ward v. Bennett, 79 N.Y.2d 394, 401 (1992).

Further, there are nine Wild Forest areas without an approved UMP where additional Class II Community Connector snowmobile trails are likely to be approved and constructed because DEC has shown that it intends to follow the recommendations in the Final Snowmobile Plan for the Adirondack Park that it created jointly with OPRHP. See Complaint ¶¶ 59-65, 89. Future construction of these trails, which have the potential to be completed in a short period of time, would also violate Article 14, § 1, and would also cause significant harm to the Forest Preserve. The likelihood of these violations occurring, the significance of the anticipated harm, and the potential for subsequent lawsuits related to those trails, substantiates the Court's granting of this motion for consent permitting PROTECT to pursue an action in Supreme Court in order to prevent future destruction of the Forest Preserve, rather than waiting for the damage to occur.

The Appellate Division has routinely granted applications of this nature seeking the Court's consent for citizens to sue to

restrain violations of Article 14. See Oneida County Forest Preserve Council v. Wehle, 309 N.Y. 152, 154 (1955); Helms v. Reid, 51 A.D.2d 894 (3d Dept. 1975); Association for the Protection of the Adirondacks, supra, 228 A.D. at 74; Slutzky, supra, at 367.

The Court need not reach the merits of the Plaintiff's claims under Article 14. That is a matter for the trial court to decide, in the first instance, when it rules on the Complaint that Plaintiff files in Supreme Court. See Adirondack Council, supra; see also Helms v. Reid, 90 M.2d 583 (Sup. Ct. Hamilton Co. 1977) (rejecting claim of violation of Article 14).



**CONCLUSION**

The Court should grant the motion for consent so that Plaintiff may pursue its First Cause of Action in the Combined Complaint and Petition to restrain the violations of Article 14, § 1 by DEC.

Dated: February 13, 2013

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