

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

In the Matter of the Application of

PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,

AFFIDAVIT

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.

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").

2. I make this affidavit in support of Plaintiff's motion for the consent of the Supreme Court in Appellate Division, pursuant to New York Constitution Article 14, § 5, to maintain a suit in Supreme Court, Albany County, to restrain a violation of Article 14, § 1, of the Constitution by the Defendant-Respondent

Department of Environmental Conservation ("DEC") in the Adirondack Forest Preserve, by enjoining the construction of certain new snowmobile trails planned and approved by the Defendants.

3. 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.

4. A draft of the proposed Combined Complaint and Petition (hereinafter "Complaint") is annexed hereto as Exhibit A and incorporated herein. 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. If this motion is granted, Plaintiff will file the finalized Complaint in Supreme Court.

5. The Plaintiff represents thousands of citizens of the State of New York who regularly hike, camp, and enjoy the Adirondack Forest Preserve. Complaint ¶¶ 5-7.

6. Article 14, § 1 of the Constitution 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.

7. As set forth more fully in the draft Complaint, defendant DEC is the manager of the state-owned lands in the Adirondack Park, which make up the Forest Preserve. The Forest Preserve, as defined in 9 NYCRR § 9-0101(6) is protected as "Forever Wild" by Article 14, § 1.

8. DEC seeks to create nearly 44 miles of new so-called Class II Community Connector snowmobile trails in the Forest Preserve. Complaint ¶67.

9. Construction on at least two of these trails - Gilmantown Trail in the Jessup River Wild Forest, and the Limekiln Lake Trail in the Moose River Plains Wild Forest - has commenced. Complaint ¶¶ 80-81.

10. The trails at issue herein are located in at least eight Wild Forest management units in the Adirondack Forest Preserve. Complaint ¶88.

11. To conform with the State's Final Snowmobile Plan for the Adirondack Park (Complaint ¶59), similar trails are likely to be approved in the other Wild Forest management units that do not yet have approved Unit Management Plans ("UMPs"), or by the amendment of existing UMPs. Complaint ¶89.

12. The construction of the already-approved trails will result in the cutting of thousands of trees on the Forest Preserve, the destruction of nearly 48 acres of Forest Preserve land, and the construction of facilities that are not compatible

with the Forever Wild nature of the Forest Preserve, all of which are violations of Article 14, § 1.

13. The First Cause of Action of the annexed proposed Complaint seeks to restrain these violations of Article 14, § 1 by the Defendant DEC. The remaining causes of action pursuant to CPLR Article 78 do not require the consent of the Court for Plaintiff to pursue them.

WHEREFORE, it is requested that the Court give its consent to the Plaintiff to maintain the First Cause of Action of the proposed Complaint in Supreme Court, Albany County; and grant 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 _____
day of February, 2013.

NOTARY PUBLIC