

STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY
In the matter of the Application of

**AFFIDAVIT OF
PETER S. PAINE, JR.**

PROTECT THE ADIRONDACKS! INC.,

INDEX NO. 2137-13

Plaintiff-Petitioner,

RJI NO. 01-13-ST-4541

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

-against-

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

Defendants-Respondents.

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

Peter S. Paine, Jr., being duly sworn, deposes and says:

1. I am an attorney and counselor at law duly licensed to practice law in the State of New York. I reside in Willsboro, New York. I am a retired partner of the law firm of Cleary Gottlieb Steen & Hamilton, LLP of New York City. I am familiar with the facts and circumstances of this combined action and proceeding.

2. I submit this affidavit in reply to the Answer and affidavits of the Defendants-Respondents and in support of the Second Cause of Action in this action and proceeding, which alleges violation by the Defendants-Respondents of the

Adirondack Park State Land Master Plan ("SLMP") in that they are allowing the grooming of snowmobile trails by snowcats and other large tracked motor vehicles in violation of the SLMP.

THE 1970 TEMPORARY STUDY COMMISSION
ON THE FUTURE OF THE ADIRONDACKS

3. I served as a member of Governor Nelson A. Rockefeller's Temporary Study Commission on the Future of the Adirondacks ("Commission") from its creation in 1968 until it issued its final report, The Future of the Adirondack Park, in 1970. See Return¹ Exhibit 13.

4. The first recommendation (out of 181) of the Commission's Final Report was that an independent, bipartisan Adirondack Park Agency ("APA" or "Agency") be created. The Commission recommended that the Agency be charged with preparation of and submission to the Governor and Legislature of a land use and development plan for the private lands in the Park. It also recommended that, after consultation with the newly-created Department of Environmental Conservation ("DEC"), the Agency prepare "a comprehensive plan for the entire Adirondack Park forest preserve and individual plans for each forest preserve tract . . ." (Recommendation 34). Return Exhibit 13. The Forest Preserve lands were to be "classified

¹ The Administrative Return filed by the Respondents with the Respondents' Objections in Point of Law and Answer dated September 25, 2013 (hereinafter "Return").

according to their characteristics and their capacity to withstand use" (Recommendation 32). Return Exhibit 13.

5. The Temporary Study Commission's accompanying Technical Reports also included one entitled "Care, Custody and Control Guidelines for the Adirondack Forest Preserve; Wild, Scenic and Recreational Rivers", which set forth the guidelines (that were later to be reflected in statutory form in the SLMP), and, one entitled "Motor Vehicle Regulation", which in essence proposed to limit the use of snowmobiles on State land to DEC-designated snowmobile trails, when completely covered by snow and ice, and similarly-marked trails on frozen lakes and ponds. See Temporary Study Commission on the Future of the Adirondacks, Private and Public Land, Technical Report 1, vol. B [1970].

ORIGINS OF THE
COMMISSION'S RECOMMENDATION
WITH RESPECT TO STATE LAND

6. The Commission's recommendation that a SLMP be created was directly informed, *inter alia*, by the work of the Joint Legislative Committee on Natural Resources ("Committee"), created in 1951, chaired initially by Senator Wheeler Milmoe, who was succeeded by Assemblyman R. Watson Pomeroy in 1959 (Assemblyman Pomeroy was also a member of the 1968 Temporary Study Commission). In 1961, the Committee proposed a "study bill" which would allow the then-Conservation Department to

designate twelve wilderness areas in the Adirondack Park and four in the Catskill Park. The bill contained a number of legislative findings, one of which was that each year more and more people were using motorized equipment to penetrate remote areas of the Forest Preserve and there were indications that "the unique and priceless wild character of these lands is being ruined".²

7. In 1963, the Committee set forth a number of recommendations for a management policy for the Forest Preserve, including that the then-Conservation Department "take such action as may be necessary to regulate or, if necessary, prohibit the use of motorized equipment wherever the wilderness character of the Forest Preserve is threatened thereby".³

8. As a result, then Commissioner of Conservation Harold Wilm ordered 76 roads in the Forest Preserve closed to motor vehicles in Fall 1963, but shortly thereafter exempted "snow and ice vehicles" from the ban, causing Chairman Pomeroy to observe

² Tenth Annual Report of the Joint Legislative Committee on Natural Resources, Leg. Doc. No. 41 (1961), pp. 183-186, quoted in Scrafford, The Adirondack Park State Land Master Plan: Origins and Current Status, Technical Report 3, Commission on the Adirondacks in the Twenty-First Century, 1990, p. 38. A copy of the Scrafford materials is annexed hereto as Exhibit A.

³ Twelfth Annual Report of the Joint Legislative Committee on Natural Resources, Leg. Doc. No. 15 (1963), described in Scrafford, supra, p. 41 (Exhibit A hereto).

that what had been a long forward step had turned out to be a "faltering limp".⁴

THE STATE LAND MASTER PLAN

9. As a result of my service on the Temporary Study Commission, I was the co-drafter, with Richard A. Persico, of gubernatorial program bills intended to implement the Commission's recommendations. Those bills led to the enactment of the Adirondack Park Agency Act (Executive Law, Article 27) by L. 1971, c. 706, §1, which contained then APA Act § 807,⁵ which directed the Agency to prepare, in consultation with DEC, a master plan for the management of State lands which would, *inter alia*, "classify such lands according to their characteristics and capacity to withstand use and provide general guidelines and criteria for the management and use of lands within such classifications."

⁴ Brown, Motor Vehicles in the Forest Preserve: Background for the Crane Pond Road Closure Situation, pp. 5-6. (Lake George: Adirondack Mountain Club [1991]).

⁵ Section 807 was amended and renumbered § 816 by L. 1973, c. 348, § 1 in the course of enactment of the Adirondack Park Private Land Use and Development Plan, which the original 1971 Act directed the Agency to prepare and submit to the Governor and Legislature. I was also the primary drafter of these 1973 amendments.

10. I served as a Member⁶ of the Adirondack Park Agency from its creation in 1971 until 1995. During that time I also chaired its Legal Committee and its Subcommittee on State Lands. As State Lands Subcommittee Chairman, I was the primary drafter of the original SLMP, with staff support from the Agency's Director of Planning and its Counsel. This was submitted to Governor Rockefeller on June 1, 1972 and approved by him on July 20, 1972. I was also the primary drafter of the revisions to the SLMP approved by Governor Mario M. Cuomo on October 24, 1979 and on November 7, 1987. The 1987 SLMP is the one currently in effect, as it has subsequently been amended only to add descriptions of newly-acquired and classified tracts of forest preserve land. See Return Exhibit 1.

11. As primary drafter of the original and subsequent revisions of the SLMP, it was never my intent to allow, nor does the SLMP in fact allow, snowmobile trails to be groomed with snowcats or similar non-snowmobile motor vehicles. Likewise, the specific provisions of the SLMP, as approved by the Agency's State Lands Subcommittee, thereafter by the full Agency, and thereafter by the Governor, demonstrate that it was never their intent for such vehicles to be used to groom snowmobile trails on the Forest Preserve.

⁶ See APA Act § 803.

ADOPTION OF THE SLMP IN 1972

12. The original SLMP adopted in 1972 provided for the management of public and administrative motor vehicle use on the Forest Preserve by defining the permitted activities and setting rules for where they are allowed and how they can be used.

13. In the "Definitions" section, the original SLMP clearly and intentionally differentiated between different types of motor vehicles in the definition of "Motor Vehicle":

"Motor Vehicle - 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 and water or through water. The term includes such vehicles as automobiles, trucks, jeeps, all-terrain vehicles, duffel carriers, snowmobiles, snowcats, bulldozers and other earth moving equipment and motorboats."

Return Exhibit 14, p. 8. This definition separately listed "snowmobiles" and "snowcats." The purpose of this was to deliberately distinguish between the operation of a snowmobile and the operation of a snowcat, which at that time, was a motor vehicle used primarily for transporting groups of people over the snow, but it could also be used for grooming the snow.

14. Further, the word "snowmobile", as a specific and different type of motor vehicle, was also separately defined.

"Snowmobiles - A motor vehicle designed primarily to travel on snow or ice by means of skis, skids, tracks, or other devices."

Return Exhibit 14, p. 8. This also shows that the SLMP differentiates between snowmobiling and other types of public use activities on the Forest Preserve, in that it is the only type of motor vehicle that is individually defined.

15. The SLMP separately defined "Foot Trail" and "Snowmobile Trail" to clearly distinguish between these two types of public uses:

"Foot Trail - A marked and maintained path or way for foot travel located and designed to provide for reasonable access in a manner causing the least effect on the local environment."

"Snowmobile Trail - A marked trail designated by the Department of Environmental Conservation on which snowmobiles are allowed to travel when covered by snow or ice."

Return Exhibit 14, p. 8. The SLMP definition makes it very clear that "snowmobiles" are the only type of "motor vehicles" allowed to travel on snowmobile trails.

16. The SLMP defined "Improvements" as the physical changes to the Forest Preserve land to allow for public use:

"Improvement - Any change in or addition to land, which materially affects the existing use, condition or appearance of the land or any vegetation thereon, including but not limited to foot and horse trails, roads, jeep trails, state truck trails, snowmobile trails, trail heads, picnic areas and campsites."

"Snowmobile trails" were listed as an "improvement" because they are a "change in or addition to land, which materially affects

the existing use, condition or appearance of the land or any vegetation thereon."

17. The "Guidelines for Management and Use" in Wild Forest Areas clearly managed the operation of snowmobiles as a separate and distinct activity with a clear set of special rules.

In Wild Forest areas, the SLMP has two "Basic Guidelines" for motor vehicle use:

"Basic Guideline 1 - The primary wild forest management guideline will be 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."

"Basic Guideline 4 - Public use of motor vehicles will not be encouraged and there will not be any material increase in the mileage and trails open to motorized use."

Return Exhibit 14, p. 14. These two Basic Guidelines for Wild Forest areas clearly sought to regulate the operation of motor vehicles in the Forest Preserve.

18. In the "Motor Vehicles, Motorized Equipment and Aircraft" section of the Wild Forest management guidelines, the permissible scope of snowmobile use is further detailed:

Section "2. In addition, the use of motor vehicles, motorized equipment and aircraft will be allowed as follows: (c) by snowmobiles on trails specifically designated by the Department of Environmental Conservation in accordance with the guidelines for such trails specified below."

Return Exhibit 14, p. 15. Under this guideline, snowmobiles are the only motor vehicles identified and specifically allowed by

the SLMP to be used on snowmobile trails. Although (to the best of my recollection) snowcats were not being used to groom snowmobile trails in 1972, I and the other drafters of the SLMP knew what they were and intentionally chose to allow only snowmobiles on the snowmobile trails.

19. In the "Snowmobile Trails" section of the Wild Forest management guidelines, the criteria for the design and location of snowmobile trails are detailed:

"Snowmobile trails should be designed and located in a manner which will not adversely affect adjoining private landowners or the wild forest environment and in particular:

-- the mileage of snowmobile trails lost in the designation of wilderness, primitive and canoe areas may be replaced in wild forest areas with existing jeep trails or abandoned woods roads as the basis of such new snowmobile trail construction except circumstances requiring the cutting of new trails;

-- appropriate opportunities to improve the snowmobile trail system may be pursued 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 are not available and topography permits..."

Return Exhibit 14, p. 15. The SLMP clearly contemplated snowmobiling on the Forest Preserve as an activity to be conducted "between communities", and did not consider grooming the snow with large motor vehicles as an activity to be

conducted on these "community connector" trails or any other snowmobile trails.

THE 1979 SLMP REVISION

20. A number of important changes were made in the 1979 revision⁷ of the SLMP that refined the management of snowmobiles and snowmobile trails on the Forest Preserve. See Return Exhibit 15. At that time, the issue of snowmobile use and grooming on the Forest Preserve was being raised by various parties as an important issue.

21. During public hearings on the revisions to the SLMP, some people expressed concern about "snowmobile penetration" in the Forest Preserve negatively impacting wildlife, while others complained that the lack of grooming on snowmobile trails on State lands made the trails "impassable" and unacceptable for riders. Minutes of December 7, 1978 Public Hearing, pp. 13-14; see Minutes of December 11, 1978 Public Hearing, p. 6; Minutes of December 9, 1978 Public Hearing, pp. 14-16; Minutes of January 19, 1979 Public Hearing, p. 70.⁸

22. In the 1979 revision, definitions of "Cross Country Ski Trail" and "Improved Cross Country Ski Trail" were added to the SLMP:

⁷ The proposed revisions to the 1979 SLMP are annexed hereto as Exhibit B.

⁸ Copies of these minutes are annexed hereto as Exhibits C-F, respectively.

"Cross Country Ski Trail - A marked or maintained path or way for cross country ski or snowshoe travel, which has the same dimensions and character and may also serve as a foot trail, designed to provide reasonable access in a manner causing the least effect on the surrounding environment and not constructed, maintained or groomed with the use of motor vehicles."

"Improved Cross Country Ski Trail - A marked or maintained path for cross country ski use designed for competitive or intensive use conditions which may be constructed, maintained or groomed with the use of motor vehicles."

These two new definitions were added in order to accommodate the grooming of cross country ski trails in the Mt. Van Hoevenberg Intensive Use Area, which contained part of the groomed cross country ski trail system that would be used for the 1980 Winter Olympics and was heavily used by athletes and the public. See Memorandum dated September 30, 1977 from John Wargo to Anne LaBastille, Peter Paine and Vince Moore, a copy of which is annexed hereto as Exhibit G.⁹

23. Grooming by motor vehicles on improved cross country ski trails was limited to Intensive Use areas, where automobiles, trucks and other such vehicles are already permitted, and was not extended to Wild Forest Areas, where such vehicles are limited to roads. See Exhibit E, p. 15 (stating that "grooming is permissible in intensive use areas but not on wild forest"). The differentiation between trails where such

⁹ That memo expressed my concern then that "allowing [grooming] within wild forest would allow the snowmobile trail network to proliferate" in those areas. Exhibit G, p. 4.

grooming was allowed, and where it was not, was provided by the SLMP provision that the only trails on which grooming with a motor vehicle could be undertaken was on an "improved cross country ski trail."

24. At the same time, especially given the complaints about the lack of grooming on snowmobile trails on Forest Preserve lands, serious consideration was given to "whether there should be any mechanized maintenance of snowmobile trails in the Adirondacks, or only some and at very carefully controlled [sic] extent". Exhibit E, p. 16.

25. In the end, the revisions to the SLMP purposely did not include authorization for grooming snowmobile trails anywhere in the Park with a non-snowmobile motor vehicle.

26. "Cross country ski trails" and "improved cross country ski trails" were also added to the "Improvements" definition.

27. No revision was made to the definition of "Motor Vehicle" where "snowmobiles" and "snowcats" were listed as separate and distinct types of motor vehicles. Thus, it is again clear that the drafters meant to allow only snowmobiles to be used on snowmobile trails in Wild Forest areas.

28. Seven new "Guidelines for Management and Use" for Wild Forest areas were added in this revision. Of these new Basic Guidelines, numbers 5, 6, 8 and 9 had particular pertinence to the use and management of snowmobile trails:

"Basic Guideline 5 - Care should be taken to designate separate areas for incompatible uses such as snowmobiling and ski touring or horseback riding and hiking."

"Basic Guideline 6 - When public access to and enjoyment of wild forest areas are inadequate, appropriate measures may be undertaken to provide improved access to encourage public use consistent with the wild forest character."

"Basic Guideline 8 - All conforming structures and improvements will be designed so as to blend with the surrounding environment and to require only minimal maintenance."

"Basic Guideline 9 - All management and administrative actions and interior facilities in wild forest areas will be designed to emphasize the self sufficiency of the user to assume a high degree of responsibility for environmentally sound use of such areas and for his or her health, safety and welfare."

Return Exhibit 15, p. 27. Taken together, these new Basic Guidelines emphasized that snowmobiling itself is a use that has impacts to the surrounding Forest Preserve and on other users beyond the snowmobile trail and must be limited accordingly.

29. A snowmobile trail is an "improvement" under the SLMP for which maintenance is allowed. However, grooming is not identified as a type of maintenance, and the SLMP did not mean for "minimal maintenance" (Basic Guideline 8) to include daily grooming by a multi-ton motor vehicle groomer. Return Exhibit 15, p. 27.

30. The list of allowed "Structures and Improvements" in the Wild Forest section of the SLMP was revised in 1979, but no revision was made to authorize grooming as an allowable

maintenance activity on snowmobile trails, or as a purpose for which administrative personnel may use motor vehicles. Return Exhibit 15, pp. 27-28. This contrasts with the Intensive Use section where "cross country skiing under competitive or developed conditions" was added and "improved cross country skiing under competitive or developed conditions" was added to "Ski Areas, the Mt. Van Hoevenberg winter sports facilities." As principal drafter of the SLMP, I can affirm that the decision to omit grooming as a maintenance activity on snowmobile trails was intentional.

31. In the "Motor Vehicles, Motorized Equipment and Aircraft" section of the Wild Forest management guidelines a revision was made. This section stated:

"2. In addition, the use of motor vehicles, motorized equipment and aircraft will be allowed as follows: a) by administrative personnel where necessary to reach, maintain an construct permitted structures and improvements, for appropriate law enforcement and general supervision of public use, or for other appropriate purposes, including research, to preserve and enhance the fish and wildlife or other natural resources of the area."

Return Exhibit 15, p. 28. If somehow grooming of snowmobile trails was to be an authorized activity for administrative personnel, the SLMP would have been revised at this time to explicitly state as much.

32. Other changes were made to the "Motor Vehicles, Motorized Equipment and Aircraft" section of the Wild Forest management section:

"2. (c): by snowmobiles on trails now or hereafter specifically designated by the Department of Environmental Conservation in accordance with the basic guideline 4 set forth above, and with the guidelines for such trails specified below."

Return Exhibit 15, p. 28. Snowmobiles are the only motor vehicles allowed on snowmobile trails and the SLMP was revised to specifically emphasize the primacy of Basic Guideline 4 for snowmobiling on the Forest Preserve.

33. In the "Snowmobile Trails" section of the Wild Forest management section, snowmobile use is further detailed and refined through the 1979 revisions to the SLMP:

"--appropriate opportunities to improve the snowmobile trail system may be pursued subject to basic guideline 4 set forth above, 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 are not available and topography permits and (ii) designation of new snowmobile trails on established roads and jeep trails in newly acquired state lands classified as wild forest."

Return Exhibit 15, p. 29. Thus, the SLMP was revised to specifically emphasize the primacy of Basic Guideline 4 for snowmobiling on the Forest Preserve.¹⁰

¹⁰ Basic Guideline 4 for Wild Forest areas states: "Public use of motor vehicles will not be encouraged and there will not be any material increase in the mileage of roads and snowmobile

34. Also, the SLMP "Snowmobile Trails" section was revised, but no mention was made of grooming. This contrasts with the definition of "Improved Cross Country Ski Trail":

"Improved Cross Country Ski Trail - A marked or maintained path for cross country ski use designed for competitive or intensive use conditions which may be constructed, maintained or groomed with the use of motor vehicles."

35. If the original SLMP had been unclear that grooming by non-snowmobile motor vehicles was prohibited, the 1979 revision should have eliminated any confusion. Immediately after the 1979 revision was approved, a local official lobbied APA to amend the SLMP again "to allow the use of most commercial snow groomers" on Wild Forest lands. Letter dated November 30, 1979 from Theodore M. Ruzow to Paul J. O'Connor, a copy of which is annexed hereto as Exhibit H. There was pressure from others to "improve the maintenance and grooming of trails" on State lands. Memorandum dated February 24, 1981 from Edward L. Spencer to "The File", a copy of which is annexed hereto as Exhibit I.

THE 1986 SLMP REVISIONS

trails open to motorized use by the public in wild forest areas that conformed to the master plan at the time of its original adoption in 1972." Return Exhibit 1, p. 32.

36. Due to the increasing pressures on all State lands, one purpose of the 1986 revisions¹¹ was to more effectively manage and define public motorized uses on the Forest Preserve.

37. Most of these changes were also made to combat the specific management challenges raised by the growing use of snowmobiles on the Forest Preserve, and the desire of DEC, and others, to widen the permissible trail width to "accommodate grooming machines" on certain on snowmobile trails. Letter dated August 9, 1985 from Leigh M. Blake to Mr. Thomas A. Ulasewicz, a copy of which is annexed hereto as Exhibit K; see Minutes of August 13, 1985 Public Hearing, p. 10, a copy of which is annexed hereto as Exhibit L.

38. New definitions were added to the SLMP for "All Terrain Bicycle" and "All Terrain Vehicle". While the "Motor Vehicle" definition was changed, "snowmobile" and "snowcat" were kept as separate and distinct types of motor vehicles. This was also done to separate ATVs from snowmobiles to make sure that only snowmobiles were allowed on trails.

39. The "Roads" definition was revised:

"Road - an improved or partially improved way designed for travel by automobiles and which may also be used by other types of motor vehicles except snowmobiles, unless the way is a designated snowmobile trail. . . ."

¹¹ The proposed 1986 revisions are annexed hereto as Exhibit J.

Return Exhibit 16, p. 15. This change was made due to the recognition that some "roads" are designated snowmobile trails and some "foot trails" are designated snowmobile trails and that the two are different.

40. The "Snowmobile" definition was also revised:

"Snowmobiles - A motor vehicle designed solely [primarily] to travel on snow or ice by means of a combination of skis, skids, tracks, or other devices and a ski or skis."

Return Exhibit 16, p. 15.

41. Most importantly, the "Snowmobile Trail" definition was revised:

"Snowmobile Trail - 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 or ice snowmobiles are allowed to travel and which may double as a foot trail at other times of the year."

Return Exhibit 16, p. 15. This change was specifically designed to reaffirm that "snowmobiles" are the only type of "motor vehicles" allowed to travel on snowmobile trails and to require that "snowmobile trails" maintain the same character as a "foot trail".

42. The massive grooming machines that were then coming into use on non-Forest Preserve lands by snowmobile groups and local governments required that the trails be specially-widened in order to accommodate such large machines.

43. By requiring that "snowmobile trails" maintain the same character as a "foot trail", the SLMP precluded the use of

grooming machines, which needed substantially more trail width than a mere "foot trail".

44. The heightened focus on regulating snowmobiles in the SLMP can also be seen in the "Wild Forest" section where a limitation on the mileage of "snowmobile trails" was inserted into Basic Guideline 4 for the first time:

"4. Public use of motor vehicles will not be encouraged and there will not be any material increase in the mileage of roads and snowmobile trails open to motorized use by the public in wild forest areas that conformed to the master plan at the time of its original adoption in 1972."

Return Exhibit 16, p. 26.

45. In the "Wild Forest" section on "Motor vehicles, motorized equipment and aircraft" two key changes were made pertaining to snowmobile trail management:

"2. In addition, the use of motor vehicles, snowmobiles, motorized equipment and aircraft will be allowed as follows:"

"(c) by snowmobiles on snowmobile trails now or hereafter designated by the Department of Environmental Conservation in accordance with the basic guidelines 4 set forth above, and with the guidelines for such trails specified below."

Return Exhibit 16, p. 27. These two changes show that the SLMP revision process fully recognized the special focus required for management of snowmobile trails and the need to limit the types of motor vehicles using snowmobile trails to snowmobiles only.

46. Reinforcing the clarification of the definition of "snowmobile trail" described above (¶41), no change was made in

the section entitled "Motor vehicles, motorized equipment and aircraft" to authorize grooming of snowmobile trails as a permissible activity to be carried out by administrative personnel. That section states:

"2. (a) by administrative personnel where necessary to maintain or construct permitted structures and improvements, for appropriate law enforcement and general supervision of public use, or for appropriate purposes, including research, to preserve and enhance the fish and wildlife or other natural resources of the area."

Return Exhibit 16, p. 27.

47. If grooming was an activity authorized by the SLMP for administrative personnel it would have been listed here. Since it is not, grooming cannot be undertaken on designated "trails" on the Forest Preserve by a motor vehicle other than a snowmobile.

RELEVANT PORTIONS OF THE CURRENT SLMP

48. The foregoing traces the history of the current SLMP. For the Court's convenience, set forth are the provisions of the current SLMP relevant to the Second Cause of Action:

Definitions¹²

- a) A "cross-country ski trail" is one, *inter alia*, which is "not constructed, maintained or groomed with the use of motor vehicles."
- b) A "foot trail" is a marked and maintained path or way

¹²Return Exhibit 1, pp. 15-18.

for foot travel located and designed to provide for reasonable access in a manner causing the least effect on the surrounding environment."

- c) An "improved cross-country ski trail" is a "marked and maintained path for cross-country ski use designed for competitive or intensive use conditions which may be constructed, maintained or groomed with the use of motor vehicles."
- d) An "improvement" is any change in or addition to land, which materially affects the existing use, condition or appearance of the land or any vegetation thereon, including but not limited to ... snowmobile trails ..."
- e) A "motor vehicle" is "a device for transporting people, supplies or materials, 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 . . . snowmobiles, snowcats, ..."
- f) "Motorized equipment" is defined as "machines not designed for transporting people, supplies or material, or for earth moving but incorporating a motor, engine or other non-living power source to accomplish a task ..."
- g) A "snowmobile" is "a motor vehicle designed solely for travel on snow or ice by means of a combination of tracks and a ski or skis."
- h) A "snowmobile trail" is "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."

Basic Guidelines For Wild Forest Areas¹³

- "1. The primary wild forest management guideline will be to protect the natural wild forest setting and to

¹³Return Exhibit 1, pp. 31-32.

provide those types of outdoor recreation that will afford public enjoyment without impairing the wild forest atmosphere. . . .

4. Public use of motor vehicles will not be encouraged..."

Structures and Improvements In Wild Forest Areas¹⁴

"The maintenance and rehabilitation of following structures and improvements will be allowed to the extent essential to the administration and/or protection of State lands or to reasonable public use thereof but new construction will not be encouraged; . . . -snowmobile trails as set forth below;" . . .

Motor Vehicles, Motorized Equipment
and Aircraft in Wild Forest Areas¹⁵

- "2. In addition, the use of motor vehicles, motorized equipment and aircraft will be allowed as follows:
 - (a) by administrative personnel where necessary to reach, maintain or construct permitted structures and improvements, for appropriate law enforcement and general supervision of public use, or for appropriate purposes, including research, to preserve and enhance the fish and wildlife or other natural resources of the area; . . .
 - (c) by snowmobiles on trails now or hereafter designated by the Department of Environmental Conservation in accordance with basic guideline 4 [no material increase in trail mileage allowed over that existing in 1972] set forth above, and with the guidelines for such trails specified below."

¹⁴Return Exhibit 1, pp. 32-33.

¹⁵Return Exhibit 1, pp. 33-34.

Snowmobile Trails in Wild Forest Areas¹⁶

"Snowmobile trails should be designed and located in a manner that will not adversely affect adjoining private landowners or the wild forest environment . . ."

CONCLUSION

49. In light of the foregoing, it is clear that, under the SLMP:

a) snowcats or similar large tracked vehicles, including those pulling a mechanical grooming device, are not "snowmobiles," which are the only motor vehicles allowed on snowmobile trails;

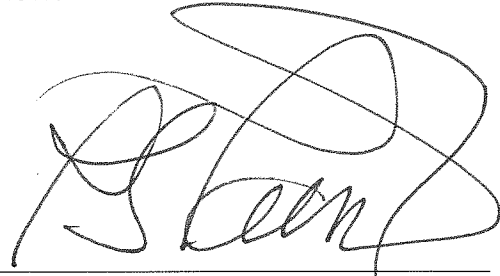
b) grooming the snow on snowmobile trails using such vehicles is not a permissible use in Wild Forest areas;

c) grooming the snow on snowmobile trails using such vehicles is not "maintain[ing] [or] rehabilitat[ing]" them, nor is it "necessary" for "reach[ing], maintain[ing] or construct[ing]" them when done by administrative personnel; and

d) grooming snowmobile trails using such vehicles is not allowed, as the SLMP specifically uses the phrase "constructed, maintained or groomed" when allowing such grooming in the case of "improved cross-country ski trails" (which exist only in Intensive Use areas) and does not use such terms with respect to snowmobile trails.

¹⁶ Return Exhibit 1, pp. 34-35.

50. The proper way for the Agency and DEC to have addressed the desire for the use of massive mechanized grooming machines on so-called "Community Connector Trails" (assuming the building of such trails is constitutional) would have been to amend the SLMP, providing further criteria for the siting of such trails and specifically allowing the use of such groomers thereon. Sadly, that step was not taken.



Peter S. Paine, Jr.

Sworn to before me this
15th day of October, 2013

Cynthia J. Monty
Notary Public

Cynthia J. Monty
Notary Public, State of New York
No. 01MO4890584
Qualified in Essex County
My Commission Expires 10/16/17

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