

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

BLACK RIVER VALLEY FOUR-WHEELER
CLUB, INC.,

Plaintiff,

-against-

**AMENDED DECISION
and ORDER
INDEX No. 407-05
RJI No. 01-05-0081042**

ERIN M. CROTTY, as Commissioner of the
New York State Department of Environmental
Conservation,

Defendant.

Supreme Court Albany County, All Purpose Term, December 15, 2006.
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Kelleher & Gable, LLC
William H. Reynolds, Esq.
Attorney for Plaintiff
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Latham, New York 12110

Hon. Andrew Cuomo, Esq.
Attorney General of the State of New York
Attorneys for Defendant
Lisa M. Burianek, Esq.
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The Capitol
Albany, New York 12224

TERESI, J.:

Defendant, the New York Department of Environmental Conservation ("DEC"), moves pursuant to CPLR § 3212 seeking an order granting summary judgment in its favor seeking declarations that its September 2004 Forest Preserve road closures for public all-terrain vehicle

("ATV") use were within the DEC Commissioner's authority and discretion under State Constitution Article XIV, § 1, the Environmental Conservation Law ("ECL"), the Adirondack Park State Land Master Plan ("Master Plan"), and Vehicle and Traffic Law ("V & T Law") § 2405(1). DEC also seeks a declaration that the closure of the roads at issue to ATV use was rational and not arbitrary or capricious, and that the Plaintiff has no right or entitlement to insist that Defendant maintain the roads as open for public ATV use. Plaintiff, Black River Valley Four Wheeler Club, Inc. ("Black River"), cross-moves pursuant to CPLR § § 3001 and 3212 seeking an order granting summary judgment and final declaratory judgment in its favor declaring that Defendant is illegally prohibiting ATV use upon certain public lands located within the Adirondack Park.

After full review of the record, the court will grant Defendant's motion for summary judgment and deny Plaintiff's cross-motion for summary judgment.

Pursuant to the Adirondack Park State Land Master Plan ("Master Plan") that was approved by Governor Rockefeller in 1972, the DEC became authorized to develop unit management plans ("UMP") that *inter alia* provide "assessment[s] of the impact of actual and projected use on the resources, ecosystems and public enjoyment of the area with particular attention to portions of the area with particular attention to portions of the area threatened by overuse and an assessment of the physical, biological and social carrying capacity of the area with particular attention to portions of the area threatened by overuse in light of its resource limitations and its classifications under [Master Plan]." The Master Plan organizes State lands in the Adirondack Park into specific, cohesive units. The 54 roads at issue here are all located in the "Wild Forest" unit and all allowed ATV access in some way or the other.

DEC alleges that in or about November 2001, the DEC Executive staff became more

aware of the need to exercise oversight of the regional management of Forest Preserve lands and received many reports of ATV damage to Forest Preserve roads. Such damage allegedly includes the cutting of a tree to make way for ATV passage, wet spots transformed into mud holes, wet land disturbances, and long, deep, water-filled ruts. At this time, the DEC allegedly found that ATV travel was not confined to the road bed but was also occurring on adjacent lands, apparently to avoid the mud holes and ruts in the road bed that were ATV's created. DEC staff reviewed the status of the roads and concluded that 54 must be closed to ATV use allegedly due to several management factors including, but not limited to, the need to prevent further degradation of the "wild forest" character of the Forest Preserve, the need to prevent rampant ATV trespass on Forest Preserve lands where motor vehicle use is prohibited, and because the roads at issue were not properly opened to public ATV use in the first instance.

Black River is a not-for-profit corporation located in Lewis County, New York. Its membership amounts to approximately 230 people and all of its members own and operate ATVs. Black River commenced this action as a result of DEC's closing 54 Forest Preserve Roads to public ATV use. Black River maintains that V&TL § 2405(1) only applies to "public highways" and, therefore, cannot be applied to the roads in question. Furthermore, affidavits of Black River's members state that they have never seen any indication that a governmental authority attempted to maintain these roads, and the affidavit of a Forester with the U.S. Forest Service alleges that there are no environmental impacts disclosed that could not be mitigated or eliminated through proper trail management techniques and enforcement efforts.

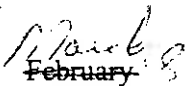
"It is settled that in a proceeding seeking judicial review of an administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or

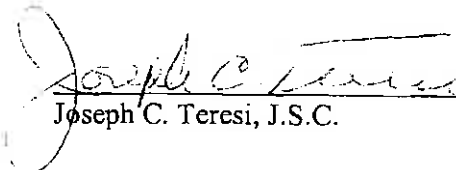
whatever it is arbitrary or capricious.” Flacke v. Onondaga Landfill Systems, Inc., 69 N.Y.2d 355, 363 (1987) (citing Warder v. Board of Regents, 53 N.Y.2d 186, 194 (1981) (stating “Deference to the judgment of the agency, when supported by the record, is particularly appropriate when the matter under review involves a factual evaluation in the area of the agency’s expertise.”)).

Based on the foregoing, this Court finds Defendant’s determination to be rationally based and, therefore, its September 2004 Forest Preserve road closures for public ATV use were within the DEC Commissioner’s authority and discretion. Defendant’s motion for summary judgment is granted and Plaintiff’s cross-motion for summary judgment is denied.

All papers, including this Decision and Order are being returned to the attorneys for the Defendants. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated:  February 8, 2007
Albany, New York


Joseph C. Teresi, J.S.C.

Papers Considered:

1. Plaintiff’s Notice of Motion, dated November 15, 2006; Affidavit of Floyd J. Rivers, dated November 10, 2006 with Exhibits A through D; Affidavit of Charles Root, dated November 6, 2006; Affidavit of Francis Roy, dated November 10, 2006; Affidavit of Richard Seller, dated November 12, 2006; Affidavit of Thomas Crimmins, dated November 13, 2006; Attorney Affirmation of William H. Reynolds, dated December 13, 2006;
2. Defendant’s Notice of Motion and Exhibits 1 through 4, dated November 14, 2006; Defendant’s Affidavit in Opposition to Club’s Cross-Motion for Summary Judgment, dated December 8, 2006;