STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY

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-

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

Defendants-Respondents.

CORRECTED AFFIDAVIT OF JOHN W. CAFFRY

INDEX NO. 2137-13

RJI NO.01-13-ST-4541

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, the attorneys for the Plaintiff-Petitioner Protect the Adirondacks! Inc. (hereinafter the "Plaintiff" or "PROTECT"). I am also a member of PROTECT and a member of its Board of Directors. 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 summary judgment on its first cause of action.

INTRODUCTION

3. Article 14, § 1 of the New York State Constitution ("Article 14")[1] 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.

4. The courts have interpreted this provision to prohibit the cutting, removal or other destruction of trees on the Forest Preserve "to a substantial extent" or "to a material degree", even when the cutting would be performed by the State itself for a public recreational purpose. Association for the Protection of the Adirondacks[2] v. MacDonald, 253 N.Y. 234, 238 (1930)(dicta). Any use of the Forest Preserve that would create a man-made setting or "in any way" interfere with the wild forest nature of these lands is also prohibited. Id. at 241-242; Association for the Protection of the Adirondacks v. MacDonald, 228 A.D. 73, 82 (3d Dept. 1930). See also Balsam Lake Anglers Club v. DEC, 199 A.D.2d 852 (3d Dept. 1993); Balsam Lake Anglers Club v. DEC, 153 M.2d 606 (Sup. Ct. Ulster Co. 1991). Any activity that violates any one of these three restrictions is prohibited.

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[1] Article 14, § 1 was originally adopted as Article 7, § 7. It was renumbered in 1935.

[2] The Plaintiff herein is the successor by merger to the plaintiff in the MacDonald case.

5. Defendant New York State Department of Environmental Conservation ("DEC") is in the process of constructing a network of Class II Community Connector snowmobile trails in the Adirondack Forest Preserve. So far, in violation of Article 14, it has destroyed several thousand trees. Currently planned and approved trails will result in the destruction of at least 20,000 more trees. The total number of trees cut to date, and planned for cutting in the near future, exceeds 31,000 trees. Many more miles of such trails are in the works, which will result in the destruction of even more tens of thousands of trees on the Forest Preserve.

6. Plaintiff's combined complaint and petition (hereinafter "Complaint") demonstrates that this network of trails has, and will, result in the destruction of a material or substantial number of trees on the Forest Preserve, create many miles of man-made settings, and interfere with the wild forest nature of those lands, all in violation of Article 14.

7. The present motion is limited to the fact that the construction of the Class II Community Connector snowmobile trails will result in the destruction of a material or substantial amount of trees in the Forest Preserve, in violation of Article 14. If this case is not resolved by summary judgment prior to trial, Plaintiff will also establish at trial that the construction of the Class II Community Connector snowmobile

trails will create a man-made setting and interfere with the wild forest nature of large parts of the Forest Preserve.

8. There are no material questions of fact and summary judgment should be granted on the Plaintiff's first cause of action. See Plaintiff's August 31, 2016 Memorandum of Law ("Mem. Law").

PROCEDURAL BACKGROUND

9. On February 13, 2013, Plaintiff served a motion pursuant to New York State Constitution Article 14, § 5 for the consent of the Appellate Division, Third Department, to commence this action to restrain Defendants' violation of Article 14, § 1 and prevent DEC from destroying thousands of trees in the Forest Preserve, creating a man-made setting, and interfering with the wild forest nature of the Forest Preserve, by the construction of the planned system of Class II Community Connector snowmobile trails. DEC and the Adirondack Park Agency ("Defendants") did not oppose the motion, and on March 28, 2013, it was granted. A copy of the Appellate Division's decision and order granting the motion is annexed hereto as Exhibit A.

10. On April 13, 2013, Plaintiff commenced a combined action and Article 78 proceeding by the filing of a summons, notice of petition and the Complaint. Copies thereof are being submitted to the Court simultaneously herewith. Pursuant to CPLR § 105(u), the verified Complaint is the equivalent of an

affidavit for purposes of this motion. I verified the Complaint on my own personal knowledge, and as a member and director of Plaintiff. I hereby reaffirm the statements set forth therein.

11. The first cause of action was in the form of a plenary action and sought to enforce Article 14 by enjoining the construction of the system of Class II Community Connector snowmobile trails. Complaint pp. 1-2, 6-7, 13-28.

12. The second and third causes of action were brought pursuant to CPLR Article 78, and sought to bar the use of mechanical snow grooming machines on snowmobile trails in the Forest Preserve, as being in violation of state law. Complaint pp. 2, 7-13, 28-29.

13. Rather than serve an answer, the Defendants made a motion to convert the first cause of action to a special proceeding, and to dismiss the second and third causes of action. Plaintiff cross-moved for a default judgment on the first cause of action due to Defendants' failure to timely answer, or in the alternative, for a preliminary injunction halting work on the Class II Community Connector snowmobile trails. The Defendants also moved to be relieved of their default.

14. By a decision and order dated August 22, 2013, Hon. George B. Ceresia, Jr. denied all of said motions, except for Defendants' motion to be relieved of their default. A copy of said order is annexed hereto as Exhibit B.

15. Thereafter, Defendants served and filed their answer and a nine volume return on or about September 25, 2013, and issue was joined. The return included documents related to all three causes of action, and should be considered to be part of the record on this motion. Plaintiff has requested that the Clerk transmit it to the Court. It is hereinafter cited to as the "Return". A copy of the answer is being submitted to the Court simultaneously herewith.

16. Plaintiff served its reply on October 13, 2013. A copy of the reply is being submitted to the Court simultaneously herewith.

17. After the second and third causes of action were fully briefed and submitted, they were dismissed by a decision, order, and judgment of Justice Ceresia dated December 12, 2014. Said decision stated (p. 3) that it "addresses petitioner's second and third causes of action only." Plaintiff filed a notice of appeal, but the appeal was not perfected within the time required by the rules of the Appellate Division. Thus, these claims are not part of the present motion.

18. Discovery regarding the first cause of action began in November, 2013. This led to motion practice by the parties, and on October 15, 2014, Justice Ceresia issued a decision and order setting forth the parameters of the permissible discovery in this action. A copy thereof is annexed hereto as Exhibit C.

19. Pursuant to said order, discovery continued until March, 2015. Plaintiff then made a motion seeking additional discovery, which was granted in part and denied in part by a decision and order of Hon. Gerald W. Connolly dated October 15, 2015. A copy thereof is annexed hereto as Exhibit D. After the Defendants' production of certain documents for *in camera* review, an additional decision and order was issued by Justice Connolly on March 18, 2016. A copy thereof is annexed hereto as Exhibit E.

20. Discovery was completed in November 2015, subject to the obligations of the parties to supplement their discovery pursuant to CPLR § 3101(h). Plaintiff served its expert discovery disclosure on May 31, 2016 and Defendants are required to serve such a disclosure by August 31, 2016.

21. During the pendency of this action, Plaintiff has made four motions seeking injunctions against continued cutting of trees for the construction of Class II Community Connector snowmobile trails. The first such motion was denied by the decision and order set forth at Exhibit B. The second such motion was denied by a decision and order of Justice Ceresia dated November 19, 2013. A copy thereof is annexed hereto as Exhibit F. The third such motion was denied by a decision and order of Justice Connolly issued on September 4, 2015. A copy thereof is annexed hereto as Exhibit G.

22. The fourth such motion was made on July 6, 2016. Hon. Kimberly A. O'Connor denied Plaintiff's request for a temporary restraining order, but Hon. Christine Clark of the Appellate Division, Third Department, granted that request on July 15, 2016, and her order was affirmed on July 22, 2016 by a decision and order on motion issued by a four judge panel of the Appellate Division. A copy thereof is annexed hereto as Exhibit H. The temporary restraining order was to stay in effect "pending determination by Supreme Court, Albany County of the preliminary injunction motion". Exhibit H.

23. On August 10, 2016 Justice Connolly denied Plaintiff's motion for a preliminary injunction. A copy of that decision and order is annexed hereto as Exhibit I.

24. Plaintiff promptly filed a notice of appeal of that decision and order, and simultaneously sought another temporary restraining order from the Appellate Division. On August 19, 2016, Justice Clark granted the temporary restraining order. A copy of Justice Clark's order to show cause (as modified on August 25, 2016) is annexed hereto as Exhibit J. The request for a temporary restraining order was returnable before the Appellate Division on August 29, 2016. The appeal itself is pending, but has not yet been perfected.

25. Plaintiff now moves for summary judgment on the first cause of action under Article 14 of the Constitution.

FACTUAL BACKGROUND

26. The basic facts of the case are laid out in the Complaint. As described in Complaint ¶¶ 60-116, the Defendants have adopted plans and polices for the construction of a vast system of Class II Community Connector snowmobile trails for the Adirondack Park, much of which is being built on the Forest Preserve.[3] These trails are wider and more developed than hiking trails, or even more traditional snowmobile trails. Complaint ¶¶ 103-116.

27. The purpose of such trails is to provide for transportation through the Forest Preserve from one town to another for economic development purposes. See Exhibit B to Affidavit of Steven Signell, sworn to on August 25, 2016 ("Signell Aff.") p. 1.

28. DEC has already constructed over 36 miles of this trail system, and is about to construct several more miles. See Signell Aff. pp. 14-41 & Table 1.

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[3] The following documents referenced in the Complaint are in the Defendants' Return at the locations set forth below:

- 2006 Snowmobile Plan for the Adirondack Park (Complaint ¶¶ 60-68) - separately bound
- 2009 Management Guidance: Snowmobile Trail Siting (Complaint ¶¶ 78-80) - Return Vol. 2, Exhibit 8
- 2011 Moose River Wild Forest Unit Management Plan (Complaint ¶¶ 69, 72-75) - separately bound
- 2006 Wilmington Wild Forest Unit Management Plan (Complaint ¶¶ 69, 77) Return Vol. 5, Exhibit 6
- 2010 Amendment to Jessup River Wild Forest Unit Management Plan (Complaint ¶¶ 69, 76) Return Vol. 1, Exhibit 7

29. So far, in constructing the network of Class II Community Connector snowmobile trails, DEC has destroyed about 5,700 trees of 3" or more diameter at breast height ("DBH") and more than 11,000 trees of less than 3" DBH,[4] for a total of about 16,700 trees. Currently planned and approved trails will result in the destruction of another 2,000 +/- trees of 3" or more DBH and another 12,500 +/- trees of less than 3" DBH, for a total of 14,500 +/- trees. The total of trees cut to date, and planned for cutting in the near future, exceeds at least 7,600 trees of 3" or more DBH and another 23,600 +/- trees of less than 3" DBH, for a total of over 31,300 trees. See Signell Aff. Table 1. Even by DEC's own counts, which ignore trees under 3" DBH, 6,398 trees have been, or will be, destroyed. Id.

30. Many more miles of such trails are in the works, which will result in the destruction of many more thousands of trees on the Forest Preserve. Complaint ¶¶ 67-71.

THERE IS NO BASIS FOR EXCLUDING TREES LESS THAN THREE INCHES DBH FROM PROTECTION BY ARTICLE 14

31. Throughout this case, Defendants have seized on the word "timber" in Article 14 to justify their refusal to consider trees that are less than 3" DBH as being protected by Article 14. There is no legal or factual justification for doing so, and all

[4] As set forth below at ¶¶ 31, *et seq.*, DEC's purported distinction between trees over 3" DBH and trees under 3" DBH has no legal, constitutional, scientific, or ecological basis.

such trees should be taken into account by the Court in deciding this motion, regardless of their size.

32. During discovery, Plaintiff sought to obtain production of any documents in the possession of the Defendants that supported DEC's policy by which it justified its refusal to count such trees. Defendants refused to produce them, and the Court upheld that refusal. See Exhibit C pp. 23-24. As a result, the Court has already determined that Defendants' policies and other documents:

> defining a "tree" or "timber" as not including any vegetation less than three (3) inches in diameter at breast height ("3" dbh"), or as otherwise differentiating such vegetation under 3" dbh from a "tree" or "timber", as was discussed in the Defendants' prior papers served in this matter . . . are irrelevant.

Exhibit C, pp. 23-24. This decision was not appealed by the Defendants. The law of the case doctrine prevents them from now arguing that DEC's internal policies are relevant, including its policy of not counting trees that are less than 3" DBH. Mem. Law Point I.B.

33. The legislative history of Article 14 also demonstrates that trees under 3" DBH are protected. As shown by the Affidavit of Philip G. Terrie, Ph.D., sworn to on August 30, 2016 ("Terrie Aff."), when Article 14 was approved by the Constitutional Convention of 1894, its proponents did not distinguish between large and small trees. Their intent was to preserve the entire forest, and all of its parts, not just trees of some particular size or financial value. Terrie Aff. ¶¶ 29-

33, 37-45 and Exhibit D thereto.[5] See also Affidavit of Peter Bauer, sworn to on August 31, 2016 ("Bauer Aff.") pp. 1-7, 10-11.

34. Likewise, modern ecological and forestry practices recognize that smaller trees less than 3" DBH are just as important as larger trees, and can also be considered to be "timber". Signell Aff. pp. 3-11; see also Bauer Aff. *passim.*

35. In their depositions, none of the Defendants' witnesses could identify a legal or scientific basis for excluding trees under 3" DBH from the ambit of Article 14. For instance, Karyn Richards, the highest-ranking DEC official who was deposed, said that she was not aware of any scientific examination having been done by DEC to arrive at this policy. Richards Trans.[6] pp. 127 (Exhibit K). See also Frank Trans. pp. 172-173 (Bureau Chief of DEC's Bureau of Forest Preserve Management admitted not knowing of any studies supporting this policy, and not knowing the source of the policy)(Exhibit L); Munk Trans. p. 30 (Exhibit M); Martin Trans. pp. 22-23 (Exhibit N); Connor Trans. pp. 70-73 (DEC policy was not consistent with standard forestry training or practices)

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[5] The pertinent pages of the Revised Record of the Constitutional Convention of 1894 are Terrie Aff. Exhibit D. This Record was heavily relied upon in Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. 234 (1930) and Association for the Protection of the Adirondacks v. MacDonald, 228 A.D. 73 (3d Dept. 1930).

[6] Copies of the pertinent pages of Ms. Richards' deposition transcript are annexed hereto as Exhibit K ("Richards Trans.").

(Exhibit O).[7] Also, in response to a 2016 Freedom of Information Law request by PROTECT, DEC was unable to provide any scientific studies or other support for this policy. Bauer Aff. ¶2.

36. DEC's policy for the cutting of trees on the Forest Preserve is designated as LF-91-2. A copy thereof is annexed hereto as Exhibit P. It only requires that trees 3" DBH and over be tallied before they can be cut, removed or destroyed, and does not consider trees under 3" DBH. Exhibit P, pp. 2, 6, 7. Policy LF-91-2 contains no rationale or justification for this omission.

37. There is no legal precedent for omitting smaller trees from the protection of Article 14. In the leading case on this issue, the courts focused on trees of 3" DBH or larger, not because the Constitution did not protect smaller trees, but because those were the only facts that were presented to them by the parties.

38. Association for the Protection of the Adirondacks v. MacDonald was decided in the Appellate Division on a stipulation of facts. That stipulation was then made part of the Record on Appeal at the Court of Appeals. A copy of the pertinent portion of that Record on Appeal, which was obtained by PROTECT from the State Archives, is annexed hereto as Exhibit Q.

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[7] Annexed hereto as exhibits are copies of the pertinent pages of the deposition transcripts of DEC's Bureau Chief of the Bureau of Forest Preserve Management Peter Frank ("Frank Trans.")(Exhibit L), Region 6 Natural Resources Supervisor Fred Munk ("Munk Trans.")(Exhibit M), Region 5 Natural Resources Supervisor Thomas Martin ("Martin Trans.")(Exhibit N), and Forester I Tate Connor ("Connor Trans.")(Exhibit O).

39. The stipulation shows that the two courts were only presented with only data on trees 3" DBH or larger. Exhibit Q, pp. 12-13. Thus, the question of trees under 3" dbh was not before them, and these decisions provide no basis for DEC's policy. Based on that stipulation, the Court of Appeals held that the removal of an estimated 2,500 trees, "large and small", would violate the Constitution. Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. at 236.[8]

40. More recently, in Balsam Lake Anglers Club v. DEC, the courts did take into account trees of all sizes, not just trees of 3" DBH or more. The tree counts in that case were set forth in affidavits sworn to by DEC's regional forestry staff. In that case, I represented Adirondack Mountain Club, Inc., Appalachian Mountain Club, and New York-New Jersey Trail Conference, as *amici curiae*, in both the trial court and the Appellate Division. As such, I am fully familiar with the facts and circumstances of that case. In that case the *amici* supported DEC's position that only a very limited amount of tree cutting had occurred in the construction of the trail at issue, and that this did not violate Article 14. Annexed hereto are true copies of two affidavits of DEC staff that presented the final tree count numbers in that case, copies of which are contained in the file on that case which I maintain in my office. The affidavit of Frederick J.

[8] Notably, the fact that this would only affect four acres out of the existing 1,941,403 acres of the Forest Preserve did not affect this judgment. Id.

Gerty, Jr., sworn to on April 18, 1991, is attached hereto as Exhibit R. The affidavit of William J. Rudge, sworn to on April 18, 1991, is attached hereto as Exhibit S.

41. These affidavits show that for a 1.9 mile section of the hiking trail in question 300 trees had been cut so far. These included several dead trees of 3" DBH or more (Exhibit R pp. 3-4), and 73 trees measured at stump height as being 3" or more in diameter, which included said several dead trees of 3" DBH or more. In addition, 227 trees 1" to 3" in diameter at stump height (called "saplings" according to DEC at the time) had been cut. Exhibit R pp. 8-9; Exhibit S pp. 3-4. It was estimated by DEC that the remaining 0.4 mile section of this trail would require cutting 5 more trees of 3" DBH or more and 45 more trees between 1" and 3" DBH. Exhibit R p. 9. This was a total of 350 trees of 1" DBH or more, including 78 trees of more than 3" in diameter. An additional 232 stumps of vegetation less than 1" in diameter (this type of vegetation was referred to as a "'seedling,' 'brush' or a 'shrub'", according to DEC at the time) were also counted as having been cut. Exhibit R p. 8; Exhibit S p. 4.

42. The Appellate Division ultimately held in that case that "approximately 350 trees have been or will need to be cut to accommodate the trail relocation" and that this amount of cutting was not prohibited by the Constitution. Balsam Lake Anglers Club v. DEC, 199 A.D.2d at 853-854. Thus, the court took into account

all trees over 1" in diameter.[9] Likewise, the trial court took into account all "seedlings, saplings and timber-sized trees" in its decision. Balsam Lake Anglers Club v. DEC, 153 M.2d at 609-610.

43. On the other hand, if one were to assume, for the sake of discussion, that only trees of 3" DBH or more should be counted, then **the Balsam Lake case stands only for the proposition that the cutting of about a dozen such trees over the length of a 2.3 mile trail is constitutional**. See Exhibit S p. 3 ("several" dead trees); p. 5 (5 more live trees). In the present case, almost all of the trails and trail segments at issue have required the cutting of 366 or more such trees. See Signell Aff. *passim* & Table 1 thereto. This is many times the number of trees over 3" that were found to be permissible in Balsam Lake. **Contrary to misleading prior claims by DEC in the course of this litigation, Balsam Lake does not justify the cutting of 300 or more trees over 3" DBH.** See also Bauer Aff. ¶16.

44. Finally, there is no scientific or ecological basis for excluding trees under 3" DBH from the protection of Article 14. Such trees are often decades old, and are just waiting for an opening in the forest canopy to give them an opportunity to grow

[9] The court also referred to an additional 312 saplings of vegetative growth that was not considered to be trees. The source of this number does not appear to be in DEC's affidavits, Exhibits R and S.

larger. They can also play an important ecological role. See Signell Aff. ¶11; Terrie Aff. ¶¶ 30-33.

45. There is no relevant legal, constitutional, scientific or ecological basis to exclude trees under 3" DBH from the protection of Article 14. Also, in the present case, the law of the case doctrine precludes DEC from arguing otherwise. Therefore, when making its decision in this matter, the Court should consider all tallies and estimates of trees under 3" DBH that have been cut, or are to be cut, as well as trees of 3" DBH or more.

THERE IS NO BASIS FOR EXCLUDING DEAD OR DISEASED TREES FROM PROTECTION BY ARTICLE 14, § 1

46. Throughout this case, Defendants have also refused to count dead trees, and sometimes, diseased or unhealthy trees, as being protected by Article 14. There is no legal or factual justification for doing so, and all such trees should be taken into account by the Court.

47. When Article 14 was adopted by the Constitutional Convention of 1894, its proponents did not distinguish between live and dead trees. Their intent was to preserve the entire forest, and all of its parts. They recognized the value of dead and dying trees to the ecology of the forest. Terrie Aff. ¶¶ 30-33.

48. Dead trees provide valuable benefits to the ecology of the forest. Two of the deposed DEC employees testified that such

trees provide benefits to wildlife and return nutrients to the ecosystem. Frank Aff. pp. 122-123 (Exhibit L); Connor Aff. pp. 115-118 (Exhibit O). Likewise, diseased trees can often survive for decades, all the while remaining valuable parts of the forest's ecology.

49. Not even DEC's own policy on tree cutting provides a basis for considering dead or diseased trees to be not protected by Article 14. The removal of dead or hazardous trees must go through the same internal approval process as the cutting of live trees. See Policy LF-91-2 (Exhibit P). In fact, DEC's staff does indeed tally dead trees when they plan tree cutting projects under Policy LF-91-2. Frank Aff. pp. 122-123 (Exhibit L); Connor Aff. pp. 115-118 (Exhibit O). There is nothing in Policy LF-91-2 that supports the position that DEC has taken in this case.

50. There is also no basis in the Constitution, in the Revised Record of the Constitutional Convention of 1894 (Terrie Aff. Exhibit D), or even in DEC's own policy, for treating dead, diseased or unhealthy trees as if they were not protected by Article 14. Therefore, in deciding this motion, the Court must count dead and diseased trees on an equal basis with live trees.

THE ENTIRE SYSTEM OF CLASS II TRAILS SHOULD BE TAKEN INTO ACCOUNT ON THIS MOTION

51. During the course of this litigation, DEC has tried to piecemeal its actions, and segment the various parts of the system of Class II Community Connector snowmobile trails, so as

to try to make it appear as if its destruction of trees on the Forest Preserve is under the level permitted by the Constitution. It has even gone so far as to claim that various parts of the same trail should not be considered together.

52. As set forth in the Complaint at ¶¶ 60-79, DEC's own planning documents show that this system was intended to be a unified network of trails.

53. During discovery, some of Defendants' senior Forest Preserve managers admitted in their depositions that the Class II Community Connector snowmobile trails were a single system of trails, which DEC is now in the process of building. See e.g. Martin Trans. pp. 13-27 (Exhibit N); Frank Trans. pp. 68-69 (Exhibit L).

54. In addition to the 36+ miles of such trails currently built, under construction, and/or authorized, DEC is actively planning at least 25 more miles of Class II Community Connector snowmobile trails. Munk Trans. pp. 33-36 (Exhibit M); Martin Trans. pp. 13-27 (Exhibit N).

55. Therefore, for purposes of this action, the entire system of Class II Community Connector snowmobile trails should be taken into account.

DEC'S INTERNAL POLICIES ARE OF NO CONSEQUENCE IN THE INTERPRETATION OF ARTICLE 14

56. The courts owe no deference to DEC's interpretation of Article 14 of the Constitution or to its internal policies for

the management of the Forest Preserve. Mem. Law Point I.B. In the present case, the law of the case bars the consideration of such policies. Mem. Law p. 4.

57. The Revised Record of the Constitutional Convention of 1894 (Terrie Aff. Exhibit D) and other historical sources show that one of the principal reasons why the forever wild doctrine was enshrined in the Constitution in 1894 was that bitter experience, over the decade since the Forest Preserve had first been created by statute in 1885, had shown that the Legislature and the Executive Branch, including the Forest Commission (a predecessor to DEC), could not be trusted to safeguard the Forest Preserve from destruction. Terrie Aff. ¶¶ 26-27, 35. See also Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. at 239-240 (Article 14 was adopted in reaction to passage of laws allowing sale of timber and privatization of lands in Forest Preserve and "depredations"); Association for the Protection of the Adirondacks v. MacDonald, 228 A.D. at 77-80. With the adoption of Article 14, "the use to which the Forest Preserve might be put with legislative sanction was greatly limited." Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. at 240.

58. In Association for the Protection of the Adirondacks v. MacDonald the courts found that the act of the Legislature that required the Conservation Department (DEC's immediate predecessor) to destroy thousands of trees to build a bobsleigh

run in the Forest Preserve to be unconstitutional. Id. Now, 122 years after the adoption of Article 14, the wisdom of that action has been made evident by DEC's wilful destruction of thousands of trees for the construction of the system of Class II Community Connector snowmobile trails.

CONCLUSION

59. The planned system of Class II Community Connector snowmobile trails will destroy tens of thousands of trees on the Adirondack Forest Preserve, in violation of Article 14, § 1 of the Constitution. Plaintiff's first cause of action should be granted.

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

A. Enter judgment in favor of the Plaintiff on the first cause of action;

B. Declare that the system of Class II Community Connector snowmobile trails violates Article 14, § 1 of the New York State Constitution.

C. Enjoin Defendants from constructing, in the Forest Preserve, Class II Community Connector snowmobile trails, and other trails having similar characteristics or requiring like amounts of tree cutting;

D. Order Defendants to rehabilitate the damage done to the Forest Preserve so far by the construction of said trails, including, but not limited to, the replanting of trees on said trails;

E. Award Plaintiff the costs and disbursements of this action;

F. Award Plaintiff its legal fees and other expenses pursuant to the New York State Equal Access to Justice Act, CPLR Article 86; and

G. Grant such other and further relief as may seem just and proper to the Court.

John W. Caffry

Sworn to before me this 19th day of September, 2016.

NOTARY PUBLIC

LOIS J. STARK
NOTARY PUBLIC, State of New York
Reg. No. 01ST6244871
Qualified in Washington County
Commission Expires July 11, 2019

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