

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: THIRD DEPARTMENT

---

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.

---

AFFIDAVIT OF  
PETER J. FRANK

Supreme Court Index No. 2137-13  
RJI No. 01-13-st-4541

Hon. Gerald W. Connolly

State of New York    )  
                                  )    ss.:  
County of Albany    )

**Peter J. Frank**, being duly sworn, deposes and says:

1. I am currently employed as a Forester 4, and am the Chief of the Bureau of Forest Preserve Management (Bureau) in the Division of Lands and Forests (Division), New York State Department of Environmental Conservation (Department or DEC). I have been in this position since September 26, 2002, and have been employed by the Department in other capacities since December 1986. My responsibilities include Bureau administration, coordinating and reviewing Unit Management Plans (UMPs), and oversight of project work plans.

2. I received an Associate Degree in Applied Science in Pre-Professional Forestry from Paul Smith's College, Paul Smiths, New York, in May 1983. In May 1986 I earned a

Bachelor of Science in Natural Resources Management from the State University of New York College of Environmental Science and Forestry, Syracuse, New York. In May 1998 I was awarded a Master of Science degree in Computer Management Systems from Union College, Schenectady, New York.

3. I have read the verified complaint/petition (complaint) of plaintiff-petitioner Protect the Adirondacks! Inc. (plaintiff). I submit this affidavit in support of Defendants-Respondents' motion for summary judgment.

*No Material Increase in Mileage of Snowmobile Trails*

4. The Adirondack Forest Preserve is comprised of the approximately 2.6 million acres of state-owned Forest Preserve land within the six million-acre Adirondack Park. The DEC is authorized by statute to manage those public lands, and does so in accordance with the State Land Master Plan developed and administered by the Adirondack Park Agency (APA or Agency). These public lands include more than 1,800 miles of marked trails for public recreational use, including multi-use seasonal snowmobile trails.

5. As relevant here, the current mileage of snowmobile trails in areas classified as Wild Forest in the Adirondack Forest Preserve, is limited to 848.88 miles. This mileage number was determined by APA in a March 14, 2008 Resolution to not constitute a material increase in the mileage of snowmobile trails for purposes of compliance with the State Land Master Plan. *See*, August 17, 2016 Affidavit of Kathleen Regan (Regan Aff.), ¶ 20. In its Resolution, the Agency confirmed that this mileage is consistent with the State Land Master Plan's requirement that there be no "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.” R. Ex. 1 at 32 (#4) (Master Plan).

6. That mileage number represents only a small fraction of Forest Preserve acreage. By way of example, if one were to calculate the acreage of snowmobile trails based upon the maximum number of linear miles of snowmobile trails allowed in the Forest Preserve (848.88 miles), if all trails ranged from 9 feet to 12 feet in width,<sup>1</sup> the snowmobile trails would represent from 926 acres to 1235 acres of land, depending on the width of the trail. However, this illustration does not mean that tree cutting is taking place on the entirety of this acreage. As provided in the Snowmobile Trail Policy ONR-2, trail development and relocation are planned to minimize impacts to Wild Forest lands, and therefore seek only selective tree cutting and siting of snowmobile trail miles on existing roads, former woods roads and trails to the extent possible. R. Ex. at 20.

7. The mileage was articulated in a 1986 DEC Forest Preserve policy for snowmobile trails. That policy referenced recommendations from a Temporary Study Commission on the Future of the Adirondacks established by Governor Rockefeller, as well as provisions from the 1979 State Land Master Plan for controlling snowmobiles and snowmobile trails in the Forest Preserve. R. Ex. 13 (excerpts of Temporary Study Commission report); Ex. 15 at 27 (#4, 1979 Master Plan); and Ex. 19 (1986 Policy); *see also* September 25, 2013 Affidavit of Karyn Richards (9/25/13 Richards Aff.), attached hereto as Ex. A, at ¶¶ 8-10, 16-18.

#### *Class II Community Connector Trails*

8. Class II Community Connector snowmobile trails (Class II trails) are in fact multiple use recreational trails which are designated as open to snowmobiles that enable travel

---

<sup>1</sup> Class I trails are built to a maximum width of eight (8) feet.

between communities within the Adirondack Park over Forest Preserve lands, and have similar characteristics with other trails throughout the Forest Preserve. R. Ex. 8 at 3 (2009 Guidance). An in-depth discussion of the management and history of snowmobile use on Adirondack Forest Preserve lands is found in the Answering Affidavit of DEC Forest Preserve Coordinator Karyn Richards (9/25/13 Richards Aff.), which is attached hereto as Ex. A.

9. DEC oversees construction of trails in the Adirondack Park, including Class II trails. Class II trails are constructed and maintained to a nine-foot wide trail tread (instead of an eight-foot wide maximum tread for foot trails and Class I snowmobile trails) and a 12-foot trail tread width on curves and bridges. Standards for construction of Class II trails are set forth in DEC's 2009 guidance document, *Management Guidance: Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park* (2009 Guidance). R. Ex. 8 (2009 Guidance).

10. Before DEC constructs any Class II trails the agency engages in a comprehensive planning process, including preparation of a Unit Management Plan (UMP), a public notice and comment period, environmental review pursuant to the State Environmental Quality Review Act (SEQRA), and review by the Adirondack Park Agency (APA or Agency) for conformance with the State Land Master Plan. R. Ex. 1 (Master Plan). This planning process for state land units in the Adirondack Park can take several years. After a UMP is finalized, DEC drafts work plans with detailed information for each trail setting forth the location, size, and number of trees allowed to be cut, the number of bridges to be constructed, and numerous other features of trail design used in the construction of each trail, consistent with sound trail management practices. Each work plan is approved by DEC and the APA.

11. To ensure that the snowmobile trail mileage in the Adirondack Forest Preserve does not exceed 848.88-miles as indicated in the 2008 APA resolution, each UMP includes a section calculating the estimated cumulative mileage in the entire Adirondack Forest Preserve, the proposed net gain or loss of mileage in the Unit, and the resulting new total estimated mileage in the Forest Preserve. *See, e.g.*, R. Ex. 5 at 131 (Moose River Plains Wild Forest UMP).

*Class II Snowmobile Trails in the Adirondack Forest Preserve*

12. Currently, there are approximately 780.13 miles of snowmobile trails (including those on roads) in the Adirondack Forest Preserve, 68.75 miles below 848.88.<sup>2</sup> This mileage includes both Class I and Class II snowmobile trails.

13. There have been approximately 27 miles of Class II trails constructed, or for which construction commenced, during what I understand to be the relevant timeframe of this litigation: January 1, 2012 through October 15, 2014, and one trail from 2011. *See* August 19, 2016 Affidavit of Max Wolckenhauer, Ex. A. Moreover, 53 miles of existing trails have been closed to snowmobile use and more are scheduled to be closed or relocated from interior areas. *See*, August 22, 2016 Affidavit of Jonathan DeSantis (DeSantis Aff.), ¶¶12-14; *see also*, August 19, 2016 Affidavit of Joshua Clague (Clague Aff.), ¶¶ 8-10 and Exhibits A, B and C (maps). The Class II trails at issue are built, or will be built, to a nine foot wide trail tread, except on sharp curves, steep running slopes and bridges, where trails can be up to twelve feet wide. R. Ex. 8 at 10 (2009 Guidance). Therefore, the total acreage for Class II trails constructed or for

---

<sup>2</sup> 780.13 miles of trails as of August 2016.

which construction commenced between the relevant time frames ranges from 29.5 acres (at a 9 foot width) to 39.3 acres (at a 12 foot width).

14. The following is an annotated list of Class II trails constructed, or for which construction commenced, in the timeframe of this litigation. The name of the Wild Forest unit for each trail is followed by the trail name(s) and the name(s) of the person(s) whose affidavit discusses that trail:

- a. Moose River Plains Wild Forest  
Seventh Lake Mountain Trail (Tate Connor, Keith Rivers, Jonathan DeSantis)
- b. Wilmington Wild Forest  
Wilmington Trail, Segment 3 (Stephen Guglielmi)  
(including a portion of Cooper Kill)
- c. Jessup River Wild Forest
  - i. Gilmantown Trail (Benjamin Thomas)
  - ii. Perkins Clearing to Lewey Lake (John DeSantis)  
Also referred to as “Two Miles of Hell” trail
  - iii. Old Powerline Trail (John DeSantis)
- d. Vanderwhacker Mountain Wild Forest  
Newcomb to Minerva to North Hudson Trail (Robert Ripp)
- e. Taylor Pond Wild Forest  
Taylor Pond Trail (including a portion of Catamount Trail) (Dan Levy)
- f. Watson’s East Triangle Wild Forest  
Steam Sleigh Trail (Keith Rivers)
- g. Independence River Wild Forest  
Mt. Tom East Trail (Keith Rivers)

15. The following trails are alleged in ¶ 69 of the Petition/Complaint to be Class II trails, but the listed trails are Class I trails, unclassified trails, or trails outside the scope of this proceeding/action, or trails that have not been built, as explained in the corresponding staff

affidavits:

- a. Jessup River Wild Forest (Jonathan DeSantis)
  - i. Crow Hill Relocation
  - ii. Fish Mountain Spur Trail
  - iii. Mud Lake Trail
  - iv. Moffitt Beach Trail;
- b. Black River Wild Forest<sup>3</sup>
  - i. Round Top Mountain Connector
  - ii. Cohen Road to Otter Lake Airport
- c. Shaker Mountain Wild Forest (Jonathan DeSantis)
  - i. Sailor Swamp Trail
  - ii. Pinnacle Trail
  - iii. Old State Road Trail
- d. Watson's East Triangle Wild Forest (Keith Rivers)
  - i. Burning Creek Trail

*Tree-Cutting in the Adirondack Forest Preserve*

16. Pursuant to DEC's tree-cutting policy (LF-91-2), which is part of the record in this matter, the Department publishes a notice of all tree-cutting related to trail construction in the Forest Preserve in the Environmental Notice Bulletin (ENB), which notice limits the number of trees to be cut. R. Ex. 18. Although LF-91-2 does not include a specified time between notice in the ENB and the start of tree-cutting, after oral argument in plaintiff's 2015 request for a preliminary injunction, the Department put in place a practice to wait two (2) weeks after publication of the notice in the ENB before commencing tree-cutting.

17. DEC foresters design and develop trails in a manner that minimizes their impacts on the surrounding forest, consistent with the 2009 Guidance. This includes minimizing tree cuts, maintaining a forest canopy, avoiding larger, more mature trees, using existing roads and

---

<sup>3</sup> The Black River Wild Forest UMP was adopted prior to the 2009 Guidance and has not been updated. Therefore, neither route has been designated as a Class II trail.

former woods roads, locating the trails to prevent erosion, and constructing the trails to withstand public use *See* 8/23/16 Ripp Aff.; *see also* 9/23/13 Connor Aff. ¶ 5.

18. Plaintiff is simply wrong when it claims that Class II trail construction constitutes “clear-cutting.” Complaint ¶¶ 71, 96, 112. It does not. Under professional forestry standards, a clear-cut is the removal of an entire stand of trees in one cutting to create a new tree community. *See*, August 23, 2016 Affidavit of Robert Ripp (Ripp. Aff.), ¶ 13.

19. In accordance with the 2009 Guidance, DEC trail development seeks to minimize impacts to the Wild Forest lands. Class II Community Connector trails are maintained to a width of nine feet, rather than the eight foot width established in the DEC Forest Preserve Snowmobile Trail Policy in 1986, and individual trees cut to widen existing trails are selectively chosen so that the canopy of the forest is largely maintained.

20. Therefore, plaintiff’s characterization of trail mileage as all trees being removed (*see, e.g.*, Complaint ¶ 71, n.18; July 7, 2016 Braymer Aff. ¶¶ 16-17), is misleading and presents an inaccurate picture of trail construction activities. It is not the size of the area being “harvested” that makes a clear cut, but the characteristics and dimensions of the cut area. Clear cuts are used by foresters to regenerate tree species that are intolerant of shade, so a clear cut needs to be broad enough to allow sunlight to reach the ground unimpeded. The minimum width of a strip clear cut is typically 1 to 5 times the height of the forest canopy. To classify the Class II trails as a strip clear cut, they would have to be at least 60-80 feet wide. Selective tree cutting at certain locations along a trail does not constitute clear cutting.


21. Because of the nature of the forests in the Adirondacks – highly variable in species composition, age, and size of trees – measuring the number of trees cut for each segment



of trail, as is the practice in DEC work plans, is the most accurate record when assessing the impact of a trail on the surrounding forest. DEC foresters identify the trees to be cut and document each tree in an approved work plan or work plan verification. Tree counts can vary depending on location of trails on former woods roads, the unique features of the terrain, size of the tree, density, conditions and species of the tree stands.

22. Even if one were to adopt plaintiff's flawed characterization of the linear trail mileage as a "clear cut," and accept its anticipated acreage calculation for completed trail construction, the Class II Community Connector trail network would result in cutting only "47.7 acres of the Forest Preserve" (Complaint ¶ 71). Simple math demonstrates that this amount of trail construction would constitute a *de minimus* impact on the 2.6 million-acre Adirondack Forest Preserve.

23. Even with all the Class II trails in place (or under construction), the total trail mileage is well under the APA's March 2008 Resolution finding that 848.88 miles does not constitute a "material increase" and conforms to the strictures of the State Land Master Plan.

  
Peter J. Frank

Sworn to before me this 24<sup>th</sup> day  
of August 2016

  
Notary Public

LISA M. BURIANEK  
Reg. No. 02BU6297042  
Ex. 02/18/2018

**EXHIBIT A**



2. As Forest Preserve Coordinator, I am involved in many issues related to the management, administration and public use of more than four million acres of State land that are under DEC's jurisdiction, including approximately 2,596,000 acres of Forest Preserve lands situated within the Adirondack Park (Park). I have been extensively involved for the past 14 years in snowmobile trail planning and management issues on Forest Preserve lands in the Park. I am familiar with the pleadings, issues and circumstances of this action.

3. Plaintiff-Petitioner Protect the Adirondacks! Inc. (Protect) seeks a declaration that the creation of "Class II Community Connector" snowmobile trails violates Article XIV, §1, of the New York State Constitution and seeks an order enjoining DEC and the Agency from constructing these trails on Forest Preserve lands in the Park. Protect also seeks to have the Court annul certain temporary revocable permits ("TRPs") and "adopt a natural resource" agreements (AANRs) allowing the grooming of snowmobile trails by mechanical grooming machines (tracked groomers), claiming that these TRPs and AANRs violated the Adirondack Park State Land Master Plan (Master Plan) and 6 N.Y.C.R.R. Part 196, DEC's regulations governing the use of lands under its jurisdiction.

4. I have read the allegations in the complaint/petition (complaint) in this action and submit this affidavit in opposition to those allegations and to show that DEC's policies and criteria for constructing snowmobile trails on Forest Preserve lands are consistent with the purpose and objectives of State Constitution, Article XIV, § 1.

5. I am familiar with the following documents, among others, relating to this matter:
- a. The Master Plan, updated October 2011 (2011 Master Plan, Exhibit No. 1);<sup>1</sup>
  - b. The 1970 Report of the Temporary Study Commission on the Future of the Adirondacks (relevant portions of which are Exhibit No. 13);
  - c. The June 1, 1972 Adirondack Park State Land Master Plan (1972 Master Plan, relevant portions of which are Exhibit No. 14);
  - d. The April 20, 1979 amended Master Plan, reprinted in January, 1985 (1979 Master Plan, relevant portions are Exhibit No. 15);
  - e. The November, 1987 amended Master Plan, reprinted in 1997 (relevant portion of which is Exhibit No. 16);
  - f. A January 6, 1986 Policy on Snowmobile Trails issued by Norman Van Valkenburg, former Director of the DEC's Division of Lands and Forests (1986 Policy, Exhibit No. 17).
  - g. Memorandum of Understanding between the Adirondack Park Agency And The Department of Environmental Conservation Concerning Implementation Of The State Land Master Plan For The Adirondack Park, last revised 2010 (2010 MOU, Exhibit No. 2);
  - h. The 2006 Snowmobile Plan for the Adirondacks (2006 Snowmobile Plan, Exhibit No. 3);
  - i. A DEC guidance document entitled "Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park, adopted in 2009 (2009 Guidance, Exhibit No. 11);
  - j. A guidance document entitled "Adirondack Park Agency State Land Master Plan Interpretation – Standard Snowmobile Trail Bridge Design and Use of Natural Materials for Design and Construction" adopted in June 2006 (2006 Snowmobile Bridge Guidance, Exhibit No. 12);
  - k. 2009 State Parks document entitled "Guidelines for Snowmobile Trail Groomer Operator Training" (Exhibit No. 10);
  - l. Tree cutting policy, set forth in LF 91-2 (Exhibit No. 18);<sup>2</sup> and

---

<sup>1</sup> Citations to the Master Plan below are to the 2011 Master Plan except as otherwise noted.

<sup>2</sup> The 2009 Guidance, 2006 Snowmobile Bridge Guidance, and LF 91-2, Exhibits Nos. 8, 12, and

- m. DEC's regulations, 6 N.Y.C.R.R. Parts 190-196, governing its administration of Forest Preserve and other lands under its jurisdiction.

**MANAGEMENT OF SNOWMOBILE USE ON  
ADIRONDACK FOREST PRESERVE LANDS**

6. State Constitution Article XIV, § 1, mandates that Forest Preserve lands “be forever kept as wild forest lands.” As explained below, to comply with this directive, State management of public snowmobile use on Forest Preserve lands within the Adirondack Park has become more and more restrictive with the passage of time. Among other management issues, this progression has culminated in the development of strict criteria and standards that ensure that all snowmobile trails are carefully sited, designed, constructed and maintained to preserve the essential characteristics of foot trails, to ensure protection of sensitive natural resources on public lands and to minimize snowmobiling safety hazards in a manner consistent with the spirit and intent of Article XIV, § 1.

7. Recreational snowmobiling on Forest Preserve lands within the Adirondack Park began in the 1960s, when these lands were managed by the former Conservation Department, DEC's predecessor agency. Initially, the Conservation Department had no restrictions on where snowmobiling could occur, and no guidance on snowmobile trail design, construction, or maintenance.

8. It is my understanding that the Conservation Department began to control snowmobiles in the Park in 1964, when it limited snowmobile use in the Forest Preserve to roads constructed for four-wheel-drive vehicles. In 1968, the Conservation Department prohibited snowmobiles everywhere in the Forest Preserve except on trails specifically posted for their use.

---

18, are also submitted as appendices to the 2010 MOU, Exhibit No. 2.

9. Also, in the 1960s, it is my understanding that lands within the Adirondack Park, including Forest Preserve lands, faced increasing developmental issues as a result of the construction of the Northway. Consequently, in 1968, then Governor Rockefeller appointed the Temporary Study Commission on the Future of the Adirondacks (the Commission) to review the problems facing private and public lands within the Park and submit recommendations to the Governor for consideration. In 1970, the Commission submitted its recommendations in a report to the Governor entitled *The Future of the Adirondack Park*. In Recommendations Nos. 1-10, the Commission recommended the creation of an independent bi-partisan Adirondack Park Agency (Agency) with general powers over the use and development of both private and public lands in the Park. In Recommendations Nos. 32-42, the Commission recommended the establishment of a classification system and management guidelines for Forest Preserve and other State lands within the Park, consistent with Article XIV, § 1, according to their characteristics and ability to withstand use. *See* Exhibit No. 13 (relevant excerpt from the Report, Vol. I, Recommendations Nos. 1-10 and 32-42).

10. The Commission recognized that snowmobiling was rapidly growing in the Park and concluded impacts from snowmobiling could be diminished by prohibiting snowmobile use in Wilderness and Primitive areas and improving trails in other areas of the Forest Preserve. *See* Exhibit No. 13 (Report, Vol. I at 76; Recommendations 127 and 128). In Recommendation No. 124, the Commission recommended that snowmobile mileage in the Park should not be expanded and existing mileage should be improved by, among other things, relocating existing trails that were damaging the environment to other areas of wild forest lands that were better suited to snowmobile use. *See* Exhibit No. 13 (Report, Vol. I at 76).

## Adirondack Park State Land Master Plan

11. In 1971, the Legislature enacted the Adirondack Park Agency Act, Executive Law Article 27, which created the Adirondack Park Agency. *See* L. 1971, ch. 706. Executive Law former § 807 directed the Agency to submit a master plan in consultation with DEC<sup>3</sup> to former Governor Rockefeller for the classification and management of Forest Preserve and other State lands within the Park (Master Plan) by June 1972. In July 1972, former Governor Rockefeller adopted the first version of the Master Plan (1972 Master Plan). In 1973, the Legislature amended and recodified Executive Law former § 807 as Executive Law § 816 to reflect the adoption of the 1972 Master Plan.

12. The 1972 Master Plan organized the Forest Preserve and other State lands in the Adirondack Park into separate “units,” established seven classification categories (Wilderness; Primitive; Canoe; Wild Forest; Intensive Use; Wild, Scenic and Recreational Rivers; and Travel Corridors) and provided management and use guidelines for each category.<sup>4</sup> The 1972 Master Plan required the elimination of all snowmobile trails in the most restrictive categories, Wilderness, Primitive and Canoe areas, and authorized the transfer of the amount of snowmobile trail mileage in these areas to Wild Forest areas. *See* Exhibit No. 14 (1972 Master Plan at 9, 10, 12, 13 and 15).

---

<sup>3</sup> In 1970, the Legislature replaced the former Conservation Law with the Environmental Conservation Law, by which DEC superseded the former Conservation Department.

<sup>4</sup> Executive Law § 816 requires DEC to develop “unit management plans” (UMPs) for each unit of State land under its jurisdiction classified by the Master Plan. The UMPs include the management goals and proposed activities and projects for each unit in accordance with the Master Plan’s guidelines. Before DEC adopts a UMP, the Agency must determine whether that the UMP conforms to the Master Plan’s guidelines.



13. Consistent with DEC regulations adopted in 1972, which restricted snowmobile use to trails and roads designated by DEC and on certain frozen lakes and ponds (now codified as 6 N.Y.C.R.R. § 196.2), the 1972 Master Plan defined “snowmobile trail” as “a marked trail designated by the Department of Environmental Conservation on which snowmobiles are allowed to travel when covered by snow or ice.” Exhibit No. 14 (1972 Master Plan at 8). The Plan also required snowmobile trails to be designed and located in a manner that would not adversely affect adjoining landowners or the wild forest environment and avoid deer wintering yards and other important wildlife and resource areas. Exhibit No. 14 (1972 Master Plan at 14-15). However, the 1972 Plan provided no specific criteria or guidelines for the siting, construction, or maintenance of snowmobile trails, or for ensuring the preservation of the wild forest character of Forest Preserve lands traversed by such trails.

14. An amended Master Plan approved in 1979 (1979 Master Plan) augmented the 1972 Plan’s snowmobile guidelines by directing that in Wild Forest areas, “care should be taken to designate separate areas for incompatible uses such as snowmobiling and ski touring . . .” Exhibit No. 15 (1979 Master Plan at 27-28). The 1979 Master Plan did not provide any specific criteria for snowmobile siting, construction, or maintenance.

15. In 1986, the Agency amended the Master Plan again, which former Governor Mario Cuomo approved in 1987 (1987 Master Plan). The 1987 Plan significantly revised the definition of “snowmobile trail” to read: “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 the year (emphasis added).” See Exhibit No. 16 (1987 Master Plan at 15). By requiring

that snowmobile trails have “essentially the same character as a foot trail,” the 1987 Plan for the first time described the general nature of a snowmobile trail. However, this description, like the prior versions of the Master Plan, provided no specific criteria or guidance for ensuring that snowmobile trail construction and maintenance retain “essentially the same character of a foot trail,” or for ensuring the preservation of the wild forest character of Forest Preserve lands traversed by such trails. These criteria remained to be developed.

### **1986 DEC Policy on Snowmobile Trails**

16. In January 1986, Norman Van Valkenburg, former Director of DEC’s Division of Lands and Forests, adopted a new policy on snowmobile trails (1986 Policy, Exhibit No. 19). The 1986 Policy established new procedures for siting, construction, and maintenance of snowmobile trails in the Forest Preserve. The 1986 Policy, citing recommendations made by the Temporary Study Commission and provisions from the 1979 Master Plan, stated that: existing snowmobile trails could not be widened or upgraded without authorization in approved unit management plans; new snowmobile trails could not impact adjacent private land owners without their prior written agreement; snowmobile trails should avoid crossings of water bodies, environmentally sensitive areas, or other habitats; existing woods roads and trails should be used to avoid new trail construction; snowmobile trails with excessive maintenance costs or trails receiving minimal or no use should be closed; dead end trails should be closed unless they ended at a specific facility or feature used by the public in winter; and snowmobile trails should be located and maintained to ensure safe travel. *See* Exhibit No. 19 (1986 Policy at 7-9).

17. The 1986 policy classified snowmobile trails as Class A (major travel routes providing physical features that permit grooming) and Class B (travel routes other than major

travel and are not designed for grooming.). Class B trails included connecting trails, spur trails off of Class A trails, and trails that lead to particular points of interest, such as ice fishing ponds or scenic overlooks. The policy directed that trail alignment should avoid blind curves and abrupt changes in either horizontal or vertical direction; sight distance should be a minimum of 50 feet; and curves with a radius of less than 25 feet shall not be included in any trail alignment. The policy directed that Class A trails be kept clear of vegetation to a width of eight feet on straight or gently curved trail stretches and to a width of twelve feet on curves and steep grades; Class B trails be kept clear to a width of eight feet throughout their length; and both Class A and Class B trails be kept clear of vegetation to a height of 12 feet. The policy also required adequate drainage on snowmobile trails, the bridging of open streams for safety purposes, and the re-routing of trails to eliminate stream crossings. *See* Exhibit No. 19 (1986 Policy at 9-12). The policy intended to address environmental problems associated with snowmobile trails and contained specific criteria or guidelines (as noted above) to assist DEC regional staffs in siting, constructing, and maintaining snowmobile trails. As explained below, DEC subsequently refined these criteria.

18. Under the title "maintenance," the 1986 Policy directed that maintenance activities not defined in the policy were to occur in the late summer and early fall, and stated that "grooming of trails is not to be a function of the Department," but that "if grooming is necessary, user groups may perform grooming under temporary revocable permit." Exhibit No. 19 (1986 Policy at 12). Thus, as early as 1986, DEC considered the grooming of snowmobile trails to constitute trail maintenance. The 1986 Policy did not identify the types of grooming equipment that could be used on snowmobile trails.

## DEC Policies Governing Tree Cutting on Forest Preserve Lands

19. Closely associated with DEC's increasing control of snowmobile trails on Forest Preserve lands was its increasing control over tree cutting on these lands. In 1984, Commissioner Henry G. Williams adopted a policy, "Organization and Delegation memorandum #84-06" to limit tree cutting on Forest Preserve lands, including snowmobile trails (O&D #84-06, Exhibit No. 17). O&D #84-06 directed that: (i) tree cutting on Forest Preserve lands must be approved by the Director of the Division of Lands and Forests; (ii) tree cutting requests must include a map, a description of the project and its purpose, a count by species of all trees to be cut, a delineation of the area within which vegetation was to be disturbed, a list of protected species of vegetation within 300 feet of the project, and a description of proposed mitigation measures; and (iii) compliance with the State Environmental Quality Review Act. *See* Exhibit No. 17 (O & D #84-06 at 2). In a 1986 amendment, O&D #84-06 required that notice of the location and amount of cutting of trees 3 inches or more diameter at breast height (dbh) in the Adirondack and Catskill Parks be given in the *Environmental Notice Bulletin*. In effect, O&D #84-06 ensured that snowmobile trails could not be sited, constructed or maintained without minimizing tree cutting. However, O&D #84-06 did not contain any other specific criteria or guidelines that would govern snowmobile trails.

20. In 1991, DEC's Division of Lands and Forests established administrative procedures to implement O&D 84-06 by adopting Direction - LF-91-2 (LF-91-2; Exhibit No. 18). LF-91-2 applied to the removal of trees that have blown down, trees that pose hazards, and other trees where the tree was larger than three inches diameter breast height (dbh). It required staff to obtain permission from the DEC Regional Forester to conduct routine maintenance

projects involving the cutting of such trees, and allowed tree cutting for structural projects (e.g., construction of lean-tos, bridges, and waterbars) only after staff analyzed alternatives to minimize the amount of tree cutting. *See* Exhibit No. 18 (LF 91-2 at 6-8).

### **1998 DEC Office of Natural Resources Policy #2 (ONR 2)**

21. In September 1998, DEC's Office of Natural Resources, which includes the Division of Lands and Forests, issued Office of Natural Resources Policy #2 (ONR 2, Exhibit No. 20). ONR 2 incorporated much of the 1986 Van Valkenburg Policy but, in addition, provided more specific procedures for siting, constructing, and maintaining snowmobile trails. In ONR 2, DEC noted that snowmobile trails on the Forest Preserve were to be more narrow than those on private land and required slower speeds and more cautious driving. ONR 2 continued the 1986 Policy's Class A and Class B trail classification system but differentiated between those trails designated by the New York State Office of Parks, Recreation and Historic Preservation (State Parks) as part of a statewide snowmobile corridor system and those trails that were not part of the statewide system. Class A and B trails that were part of the statewide system could be kept clear of vegetation up to a width of 8 feet on straight sections of the trail, except that Class A trails could be kept clear of vegetation up to a width of 12 feet on curves and steep grades. Both types of trails could be kept clear of vegetation up to a height of twelve feet from ground level. Class A and Class B trails that were not part of the statewide system could be kept clear to a width of 12 feet on curves and steep grades only if no trees or woody growth in excess of three inches dbh needed to be cut. *See* Exhibit No. 20 (ONR 2 at 5-6).

22. When DEC adopted ONR 2 in 1998, the grooming of snowmobile trails with tracked motor vehicles (tracked groomers) was already an established practice in the Adirondack

Park. As was the case with the 1986 Policy, ONR 2 specified that grooming could be undertaken by user groups under TRPs as a means of maintaining the trails during the winter months. ONR 2 did not restrict the type of equipment that could be used to groom snowmobile trails. See Exhibit No. 20 (ONR 2 at 6).

### **1999 Snowmobile Trail Planning Initiative**

23. In the late 1990s, snowmobile clubs were purchasing larger motor vehicles and equipment to groom trails within their local trail systems on roads and trails on public and private lands that were open for snowmobiling. In some instances, the use of larger snow grooming equipment on Forest Preserve trails led to the widening of the trails to accommodate this equipment. Environmental groups expressed serious concern with this activity, and the snowmobiling community sought to engage in discussions to improve snowmobiling opportunities within the Adirondack Park. In 1999, the Governor's Office directed DEC, the Agency, and the New York State Office of Parks, Recreation and Historic Preservation (State Parks) to meet with the snowmobiling community and environmental groups to develop a snowmobile plan for the Adirondack Park.

24. State Parks was included in the planning initiative because that agency administers snowmobiling programs throughout the State. In 1989, State Parks adopted the "State of New York Snowmobile Trail Plan" for the development and maintenance of a state-wide snowmobile system. Although the 1989 State wide Plan included the Adirondacks, the three State agencies recognized that the classification and standards for snowmobile trails within the Forest Preserve required refinement to better reflect the character of the Forest Preserve and the constitutional and statutory constraints applicable to the Preserve.

25. The snowmobile planning initiative took longer to prepare than originally anticipated. Therefore, in November 2000, to provide additional control over snowmobiling on the Forest Preserve while the planning process continued, DEC's Division of Lands and Forests issued two documents to clarify the intentions of the then existing policy governing the siting, construction, and maintenance of snowmobile trails. The first addressed the use of motor vehicles to construct, maintain, and groom Forest Preserve trails; the second addressed the construction and maintenance of snowmobile trails.

#### **2000 DEC Clarification of Practice Regarding Motor Vehicle Use**

26. The first document issued by the Division of Lands and Forests was the "Clarification of Practice Regarding Motor Vehicle Use for Snowmobile Trail Grooming, Maintenance and Construction in Wild Forest" (Clarification of Motor Vehicle Use) to limit the use of motor vehicles for snowmobile trail maintenance, construction, and grooming. See Exhibit No. 3 (2006 Snowmobile Plan [discussed below], Appendix N at 303-306). The Clarification of Motor Vehicle Use clarified the intention that all snowmobile trail construction and maintenance activities must be undertaken pursuant to a work plan demonstrating that such activities will comply with State Constitution Article XIV, § 1, the Master Plan, and all other applicable laws and regulations. The Clarification of Motor Vehicle Use also clarified that motor vehicle use be minimized, to be used only where no feasible alternative existed and supervised by someone who had been trained to understand the Interim Guidelines, also discussed below. See Exhibit No. 3 (2006 Snowmobile Plan, Appendix N at 304-306).

27. With respect to grooming, the Clarification of Motor Vehicle Use noted that, as clearly outlined in ONR 2, the widths of snowmobile trails should not exceed eight feet except

that on curves and steep slopes, widths should not exceed twelve feet. The Clarification of Motor Vehicle Use also noted that, because the character of snowmobile trails varied widely, the width of appropriate groomers and grooming equipment would vary from trail to trail. The Clarification of Motor Vehicle Use outlined a process where applications to use grooming equipment must discuss the character of the snowmobile trail to be groomed and identify the type of groomer to be used and its size and weight to ensure that the groomer did not widen or otherwise alter the fundamental nature of the trail. Where use of a groomer more than 6 feet wide was requested, the Clarification of Motor Vehicle Use stated that DEC staff would take before and after photographs of the trail to ensure that the use of the groomer was not altering the fundamental nature of the trail. *See* Exhibit No. 3 (2006 Snowmobile Plan, Appendix N at 306).

28. After the issuance of the Clarification of Motor Vehicle Use, DEC began to issue TRPs and to enter into AANRs that explicitly authorized the use of tracked groomers to groom snowmobile trails on Forest Preserve lands. For example, *See* Exhibit No. 22, the December 3, 2001 AANR with Trail Groomers Snowmobile Club and December 4, 2001 AANR with Algonquin Sno-Blazers, Inc. In both AANRs, DEC authorized the use of specific tracked groomers.<sup>5</sup>

#### **2000 DEC Interim Guidelines**

29. The second policy that DEC's Division of Lands and Forests adopted in November 2000 were a set of "Interim Guidelines" prepared in collaboration with Agency staff. The interim guidelines identified those activities that constituted "ordinary maintenance" and did not

---

<sup>5</sup> These AANRs are also included in Exhibit No. 51, a compilation of TRPs and AANRs authorizing the use of tracked groomers. *See* Affidavit of Maxwell Wolckenhauer, ¶ 6.



require UMP authorization or Agency consultation. *See* Exhibit No. 3 (2006 Snowmobile Plan, Appendix N at 307-311). “Ordinary maintenance” included brushing, mowing, grooming of snow, blow down removal, installation or replacement of water bars, ditching outside wetlands, replacement of existing bridges and culverts, removal of rocks that present hazards to safety, minor grading, minor trail relocation, and tree cutting, all pursuant to a work plan. Exhibit No. 3 (2006 Snowmobile Plan, Appendix N at 307-308).

30. Among its provisions, the Interim Guidelines specified the requirements for snowmobile trail alignment and grade, trail width, tree cutting, trail grading and trail drainage. The Interim Guidelines provided that: trail alignment should avoid long straight sections; the cutting of trees over eight inches dbh should be avoided; a closed canopy over the trail should be maintained; the maximum grade of a trail should be not more than 20% and preferably less than 12%; trails should avoid wetlands and rocky areas to the maximum extent possible; trails should not be graded flat; boulders and rocks may be removed from trails only where they protruded higher than 6 inches above the ground surface; the use of cuts and fill would be minimized to the maximum extent possible; trails would be sited to avoid drainage features; and bridges would be the preferred means of crossing wet areas.

31. At the time, DEC, intended that the interim guidelines would be in effect for only one year while DEC, the Agency and State Parks were preparing a snowmobile plan for the Adirondack Park. However, the guidelines remained in effect until after DEC and State Parks

adopted the Snowmobile Plan for the Adirondack Park in 2006 (2006 Snowmobile Plan, Exhibit No. 3), discussed below.<sup>6</sup>

### 2006 Adirondack Park Snowmobile Plan

32. In October, 2006, DEC and State Parks jointly adopted the “Snowmobile Plan for the Adirondack Park/Final Generic Environmental Impact Statement” as a supplement to State Parks’ 1989 Statewide Plan. *See* Exhibit No. 3 (2006 Snowmobile Plan at 3, 19). The 2006 Snowmobile Plan is a conceptual plan intended to reconfigure the existing snowmobile trail system in the Adirondack Park to connect communities within and without the Park while ensuring protection of sensitive resources on both public and private land and result in a net benefit to Forest Preserve lands. This reconfiguration was intended to shift snowmobile trails to the periphery of the Forest Preserve, near public highways and away from sensitive private lands, and close or re-designate existing snowmobile trails in interior areas away from highways for only non-motorized use. *Id.* at 19.

33. The development of the 2006 Snowmobile Plan was the culmination of an extensive public process that began in 1999, as stated above. The process included public information meetings and the creation of a focus group consisting of representatives from private landowners, snowmobile clubs, environmental groups (including Protect’s predecessor groups), and local municipalities, to assist DEC and State Parks in assessing the existing snowmobile trail system and reviewing various alternatives for establishing a system of snowmobile trails in the Adirondack Park. In 2003, before the Plan was adopted, DEC and State Parks presented a

---

<sup>6</sup> In March 2006, the Division of Lands and Forest explained the Clarification of Practice and the Interim Guidelines to the Agency’s State Land Committee for consideration in the future. *See* Affidavit of James C. Connolly (Connolly Aff.), ¶ 10, footnote 4.

draft snowmobile plan with a proposed selected alternative for formal public review and comment, including public hearings throughout the State.<sup>7</sup>

34. The goals of the 2006 Snowmobile Plan include: the protection of natural and cultural resources and the wild forest character of public lands in the Park as envisioned by the State Constitution, the Master Plan, and relevant laws, rules and regulations; the provision of opportunities for a safe, enjoyable snowmobile experience; and the promotion of tourism and economic opportunities for local communities. *Id.* at 37.

35. The 2006 Snowmobile Plan's preferred alternative identified several potential community connection goals to guide the establishment of community connection routes in all directions in the Park for both winter and summer use. The 2006 Snowmobile Plan also recognized that the actual designation of any such trail or trail segment on Forest Preserve lands would occur through the Master Plan's UMP process, which would provide the public with the opportunity to comment on the designation of a trail or segment. *Id.* at 45-46.

36. The 2006 Snowmobile Plan's preferred alternative also contained numerous specific criteria for snowmobile trail construction on the Forest Preserve that were aimed at protecting the forever wild nature of the Preserve. Of particular significance in this litigation, the

---

<sup>7</sup> The draft snowmobile plan proposed that community connector trails would be twelve feet wide. Because DEC staff believed that a width of twelve feet would require an amendment to the Master Plan requirement that snowmobile trails have "essentially the same character" of foot trails, the draft plan recommended that the Master Plan be amended in order to implement the Snowmobile Plan. However, as a result of public comments, DEC and State Parks determined to reduce the proposed twelve-foot width to nine feet in the final plan because DEC believed that nine-foot wide trails would have "essentially the same character" as a foot trail. Consequently, the final 2006 Snowmobile Plan deleted the draft plan's recommendation that the Master Plan be amended.

preferred alternative provides that community connector trails could be maintained to widths up to a maximum width of 9 feet, except that on curves and steep slopes, such trails may be maintained up to a maximum width of 12 feet. *Id.* at 49-50. The decision to expand the width of such trails from the previously authorized width of 8 feet was based on safety considerations. DEC and State Parks recognized that Class I trails are open to use for operation in opposite directions. Snowmobiles traveling in opposite directions will often have to pass each other, and 8-foot wide trails do not provide enough room for such passage.

### 2009 Snowmobile Trail Guidance

37. DEC and staff from the Agency further refined the specific trail construction criteria in the 2006 Snowmobile Plan in a guidance document entitled *Management Guidance Regarding Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park* (2009 Guidance; Exhibit No. 8). On November 13, 2009, the Agency determined that the 2009 Guidance conformed to the Master Plan.<sup>8</sup> Subsequently, DEC and the Agency formally adopted the Guidance as Appendix E to 2010 Agency/ DEC MOU concerning implementation of the Master Plan (Exhibit No. 2).<sup>9</sup> In addition, on November 21, 2009, the DEC Commissioner formally rescinded ONR 2 with respect to Adirondack Park Forest Preserve snowmobile trails. *See* Exhibit No. 8 (DEC Commissioner's November 21, 2009 memorandum).

---

<sup>8</sup> The affidavit of James Connolly describes the Agency's September – November process culminating in its November 13, 2009 conformance determination. At the Agency's September 2009 meeting, I presented DEC staff's power point explanation of the draft guidance to the full Agency. *See* Exhibit No. 28 (my power point presentation).

<sup>9</sup> The other appendices attached to the 2010 MOU show the same DEC-Agency collaboration on a number of other issues affecting Forest Preserve lands, such as the use of pesticides and the control of invasive species, to apply the Master Plan in a manner that is consistent with State Constitution Article XIV, § 1.

DEC staff began to implement the detailed criteria in the 2009 Guidance to all snowmobile trails on Forest Preserve land in the Park.

38. The 2009 Guidance divides snowmobile trails into two types: Community connector trails, also referred to as Class II trails, constitute the main snowmobile travel routes connecting communities. These trails are located on the periphery of Forest Preserve units, as close as possible to motorized travel corridors, given safety terrain and environmental constraints, and are only rarely located more than one mile away from these corridors. In contrast, Class I trails are secondary snowmobile trails that, although also located in the periphery of Forest Preserve units, may be spur trails, short loop trails, or longer recreational trails. Some Class I trails that have high recreational value may be located outside the periphery of units and may approach more remote interior areas. Exhibit No. 8 (2009 Guidance at 3-4).

39. The 2009 Guidance also directs the elimination of many snowmobile trails that do not provide safe snowmobiling; penetrate the more remote areas of large Wild Forest parcels; traverse an existing undeveloped forest corridor connecting two or more remote interior areas in the Forest Preserve; allow illegal motorized access to public and private lands or create significant potential conflicts with adjacent property owners; incur unusually high snowmobile trail maintenance costs; or are located near Wilderness area boundaries; are redundant trails, are part of an unnecessarily dense, local snowmobile trail network where opportunities for quiet, non-motorized use of trails are rare or nonexistent; or are no longer used or receive only minimal public use. *Id.* 5-6.

40. In order to develop snowmobile trails on the Forest Preserve that preserve the wild forest character of the lands they cross, and ensure public safety, the 2009 Guidance

contains extensive snowmobile route design, construction and maintenance standards.

Particularly:

- a. Snowmobile trails are to be sited where possible along existing trails or previously existing roads must avoid safety hazards and environmentally sensitive areas. Exhibit No. 8 (2009 Guidance at 7-8).
- b. Trails should follow the natural contours of the terrain, avoid rocky areas and areas with drainage features, and be re-routed where serious environmental or safety problems exist. *Id.* at 9, 11.
- c. Only low impact landscaping equipment may be used during optimal environmental conditions and in a manner that will not contribute to any potential degradation of the wild forest environment. *Id.* at 8-9.
- d. The trail tread of Class II (community connector) trails cannot exceed 9 feet in width, except on curves and steep slopes where trails cannot exceed a width of 12 feet. Class I trails cannot exceed a width of 8 feet. Trails cannot have blind curves and abrupt changes in horizontal or vertical direction. Sight distance must be at least 50 feet, and curves must have a radius of at least 25 feet, and grades should not exceed 20% in slope. *Id.* at 9-10.
- e. Cross trails should not be laid out on existing cross slopes with a grade greater than 12%. *Id.* at 9.
- f. Tree cutting must comply with DEC's LF-91-2 1991 tree cutting policy, but, in addition, the 2009 Guidance prohibits the cutting of overstory, large trees, and

old growth trees should be avoided. No tree-cutting can occur outside the trail width except for trees that present an immediate hazard to snowmobilers. The root masses of trees that are cut flush to the ground within the trail width must normally be left in place, but, when necessary, may be ground up or moved to the adjacent forest so as to have the lowest profile possible. The Management Guidance prohibits any removal of brush outside the cleared trail width. *Id.* at 10-11.

g. Removal of boulders and rocks from the trail surfaces must be minimized to the greatest extent possible, as described in the work plan for a trail, and no boulders or rocks located outside the trail surface may be moved. On Class I (non-community connector) trails, rocks can be removed with hand tools only, except that in rare circumstances low-impact landscaping equipment may be used to move uncommon, major obstacles presenting clear safety hazards that cannot be avoided by trail re-routing. On Class II (community connector) trails, low impact landscaping equipment may be used to move rocks, but only as detailed in an approved work plan. Such rocks should be buried elsewhere in the bed of the trail. *Id.* at 11-12.

h. Sides slopes should be eliminated or reduced by means of bench cuts using only hand tools, but the layout for Class I trails should attempt to minimize the need for bench cuts. The use of appropriate landscaping equipment may be used for bench cuts on Class II trails. On occasion, terrain considerations may require the

dressings and “tapering” of side slopes outside of the trail width where necessary to address degradation and restore environmentally sound conditions. *Id.* at 12-13.<sup>10</sup>

i. Drainage of water from the trail must be adequate to maintain a safe trail and prevent trail erosion and washouts. Therefore, trails should maintain natural drainage patterns and not intercept groundwater. Bridges should be constructed to cross wet areas. Water bars and broad-based dips<sup>11</sup> may be installed to disperse water off trails, but culverts cannot be used. Wetlands should be avoided, but where avoidance is not possible the trail should be designed to minimize potential impacts. *Id.* at 13.

j. Work sites should be accessed by the least intrusive means possible, preferably by non-motorized means or by snowmobile when conditions are appropriate, except that the use of motor vehicles other than aircraft should occur only in August, September, and October. Motor vehicle use must be approved, and must be supervised by a properly trained DEC staff member. A Snowmobile Trail Maintenance Log must record all work done on snowmobile trails. *Id.* at 13-14.

41. The 2009 Guidance authorizes an initial annual maintenance trip to remove fallen branches and trees that obstruct a snowmobile trail and maintain drainage features. Only one such trip per year may include the use of a motor vehicle. The DEC forester assigned to the trail must record any additional necessary work to be done through the preparation of a work plan. Subsequent maintenance, rehabilitation and construction trips may be undertaken for route

---

<sup>10</sup> “Tapering” of a bench cut is explained in ¶ 35 of the Affidavit of Tate Connor. Mr. Connor oversaw the construction of the Seventh Lake Mountain Community Connector Snowmobile Trail.

<sup>11</sup> Water bars and dips are explained in ¶ 10, footnote 3 of the Connor Affidavit.



design, construction and non-ordinary maintenance purposes. Any motor vehicle use on such trips must be undertaken by the least intrusive means possible. *Id.* at 13-15.

42. With respect to trail grooming, the 2009 Guidance allows Class II community connector trails to be groomed with a tracked motor vehicle (tracked groomer) and drag of a width less than the trail width, as approved in a TRP or AANR agreement. Class I non-community trails may be groomed only by snowmobiles with drags as allowed by the width and layout of the trail, and as approved in a TRP or AANR agreement. Grooming equipment may be operated only by qualified administrative personnel, must be tailored to the class of the trail, must not alter a trail's width or physical character, and must not be used to gather snow from outside the allowable cleared width of the trail. *Id.* at 15. The Guidance also allows maintenance trips during the winter to remove fallen or tipped trees that present safety hazards, place trail signs or markers, prune vegetation, transport building materials to be used during the next construction season, install temporary trail safety or natural resource protection features, or remove projects. *Id.*

43. The 2009 Guidance recognizes that the siting, design, and construction of a particular trail require site-specific professional judgments that must weigh the short and long term impacts of competing actual and potential environmental considerations. These judgments are made in a work plan that DEC and Agency staffs develop together before construction of a trail begins. The work plan identifies routes to be followed, bench cuts to be made, trees and other vegetation to be cut, bridges to be built, and areas where the terrain requires manipulation. The work plan process is flexible and allows adjustments be made to a work plan through modification reports to address problems that were missed in the initial site studies or were

unforeseen and encountered while the trail was being constructed. *See* Connor Affidavit, ¶ 19. Differences between DEC and Agency staffs as to a particular tree to be cut or rock to be relocated, are to be resolved in accordance with the procedures set forth in the 2010 DEC/APA MOU. *See* Exhibit No. 2 (2010 MOU at 18-20).

44. In developing such workplans, the two staffs exercise their professional judgment in how to best minimize impacts to the wild forest environment. For instance, avoiding wetlands may require re-routing a trail to an alternate location, but the alternate location may be longer in length and may require more tree cutting. Siting a trail to avoid the cutting of large trees to maintain a canopy above the trail may require the cutting of a greater number of smaller trees or additional bench cuts, boulder removal or bridge construction. Straight trails may result in the cutting of fewer trees, but straight trails may not avoid wetlands, drainage and terrain problems, and may fail to blend with the contours of the land and thus detract from the area's wild forest character.

45. In short, as shown above, the 2009 Guidance is the culmination of DEC's increasingly more stringent policies over the past 50 years governing snowmobile trails in the Adirondack Park to ensure that snowmobile trails on Forest Preserve lands maintain the wild forest character of Forest Preserve lands. Snowmobile trails that are poorly designed, sited, and constructed, as many were in the past, will deteriorate and become unsustainable over time, causing significantly more environmental degradation than had the trail been properly designed, sited, and constructed in the first instance. Consequently, community connector snowmobile trails that are constructed in accordance with the 2009 Guidance are consistent with the purpose and objective of State Constitution, Article XIV § 1.

46. In addition, the 2009 Guidance provides that, as community connector snowmobile trails are approved through the UMP process and constructed, DEC can close interior trails to snowmobile use, as stated in ¶ 39 above. Now that construction of the 11.9-mile Seventh Lake Mountain Trail in the Moose River Plains Wild Forest is nearly complete (*see* Affidavit of Tate M. Connor), DEC has begun to close or redesignate approximately 45.66 miles of existing interior snowmobile trails in that Wild Forest as either Class I (non-community connector) snowmobile trails or as open only to non-motorized uses. *See* Exhibit No. 5 (Moose River Plains Wild Forest UMP at 113-114, 131). Approximately 3.02 miles of interior snowmobile trails in the Wilmington Wild Forest have been redesignated as open only to non-motorized uses. *See* Exhibit No. 6 (Wilmington Wild Forest UMP at 6). Approximately 18.1 miles of trails in the Jessup River Wild Forest will similarly be closed or redesignated. *See* Exhibit No. 7 (Jessup River Wild Forest UMP at 19-20).

**Response to Protect’s Allegations in the First Cause of Action  
that Community Connector Snowmobile Trails are  
Unconstitutional “Man-Made Settings for Sport.”**

47. Protect argues that State Constitution Article XIV, § 1, prohibits the construction of artificial “man-made settings for sport,” such as the Class II community connector snowmobile trails at issue in the matter. *See* Complaint, ¶¶ 23, 112-117. The allegations miss an essential point. The techniques involved in the siting, construction, and maintenance of hiking, mountain biking, horse riding trails and others are similar to the techniques involved in the siting, construction, and maintenance of Class II community connector snowmobile trails.<sup>12</sup> *See*

---

<sup>12</sup> It is noteworthy that, in its 1970 Report, the Temporary Study Commission specifically referred to cross-country skiing and snowshoeing as “sports,” using the existing foot trail system. *See* Exhibit No. 13 (1970 Report, Vol. II, Technical Report 5 (Recreation) at 19, 29).

Affidavit of Tate M. Connor, ¶¶ 6-12, 39. (Mr. Connor oversaw construction of the Seventh Lake Mountain Community Connector Snowmobile Trail in the Moose River Plains Wild Forest); *see also* Exhibit No. 24 (Winter 2013 Adirondack Mountain Club newsletter at 5-9, describing and depicting trail repairs and new bridge construction on Forest Preserve land in both the Adirondack and Catskill Parks, including the High Peaks and West Canada Creek Wilderness area in the Adirondack Park).<sup>13</sup> If Protect's "man-made" argument is correct, virtually no trails will be permissible.

48. Furthermore, the Master Plan does not set different guidelines for constructing foot, horse, or snowmobile trails. Under the Master Plan, these trails should have the same character in order to look the same on the ground. The purpose of the 2009 Guidance is to ensure that the construction of a community connector snowmobile trail retain the "essential character of a foot trail" so that, when completed, the trail will look no different than a hiking trail.

**Response to Protect's Allegations in the Third Cause of Action  
that Use of Motorized Vehicles to Groom Snow on Forest Preserve  
Snowmobile Trails Violates DEC's Regulations.**

49. Protect asserts in its third cause of action that the use of mechanized groomers to groom snowmobile trails on Forest Preserve land violates 6 N.Y.C.R.R. § 196.1(b) and (c), which allegedly prohibits the use of all motorized vehicles in the Forest Preserve except on roads. Protect's assertion is not correct.

---

<sup>13</sup> The Adirondack Mountain Club has an annual contract with DEC to assist in the maintenance and repair of Forest Preserve hiking trails, under the supervision of DEC's Division of Lands and Forest.

50. Section 6 N.Y.C.R.R. § 196.1(a) provides that “(n)o *person* shall operate a motorized vehicle in the forest preserve except as permitted in subdivisions (b) and (c) of this section” (Emphasis added). Because 6 N.Y.C.R.R. § 196.1 implements Article 9 of the Environmental Conservation Law (ECL), the definitions contained in ECL Article 9 apply to 6 N.Y.C.R.R. § 196.1. Although “person” is not defined in Part 196, ECL § 9-0101(7) defines “person” as “any individual, firm, co-partnership, association or corporation, *other than the state . . .*” (emphasis added). Thus, the prohibitions on motor vehicle use contained in 6 N.Y.C.R.R. § 196.1(b) and (c) do not apply to the State.

51. As explained above, the Division of Lands and Forests issues TRPs and enters into AANRs authorizing municipalities and private snowmobile clubs to use mechanized groomers (tracked groomers) for snowmobile trail maintenance pursuant to the special terms and conditions that limit the size of the groomers and the trails on which the groomers may be used. The TRPs and AANRs are in essence a delegation of the Division’s authority to maintain snowmobile trails to these clubs and municipalities. While engaged in the trail grooming and other maintenance activities authorized by these TRPs and AANRs, the clubs and municipalities are acting as agents of the State and, like the State, are therefore exempt from the prohibitions contained in 6 N.Y.C.R.R. § 196.1(b) and (c). *See* Exhibit No. 31 (Kenneth Hamm memorandum explaining DEC’s delegation of administrative responsibilities), submitted to the Agency at its November 12-13, 2009 meeting.

52. The delegation of authority to municipalities and private snowmobile clubs through TRPs and AANRs to undertake grooming and other maintenance activities on Forest

Preserve snowmobile trails is consistent with the Master Plan. Master Plan Wild Forest Guideline No. 1 for "roads, jeep trail and state truck trails" authorizes "administrative personnel" to use motor vehicles "to . . . maintain . . . permitted structures and improvements" in areas classified as Wild Forest. See Exhibit No. 1 (Master Plan at 34).

53. Consequently, Protect's allegations that the use of tracked groomers to groom Forest Preserve snowmobile trails violates DEC's regulations must be rejected.

  
Karyn B. Richards

Sworn to before me this <sup>25</sup> day  
Of September, 2013



Notary Public

*Carmen Lee Story*  
Carmen Lee Story  
State of New York

**CARMEN LEE STORY**  
**NOTARY PUBLIC STATE OF NEW YORK**  
**RENSSELAER COUNTY**  
**LIC # 01ST6278857**  
**EXPIRES: APRIL 29, 2017**