

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

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
TATE CONNOR

Index No. 2137-13
RJI No. 01-13-ST-4541

Hon. Gerald W. Connolly

State of New York :
 :ss.:
County of Essex :

Tate Connor, being duly sworn, deposes and says:

1. I am a Forester I in the New York State Department of Environmental Conservation (DEC or Department) Region 5 in Ray Brook, New York, and have been in this position since 2006. I am responsible for land use and recreational planning and management of Forest Preserve and other State lands under DEC's jurisdiction primarily in Essex and Franklin Counties, as well as portions of Hamilton County. I received an Associate's Degree in Applied Science in Forest Recreation from Paul Smith's College in May 1999 and a Bachelors Degree of Science in Forestry from the University of Maine in May 2003.

2. I am familiar with this proceeding having previously submitted sworn affidavits dated July 14, 2013 (opposing plaintiff's motion for preliminary injunction to prevent DEC from

completing the Seventh Lake Mountain Trail); September 23, 2013 (in answer to the petition/complaint, attesting that the construction of the Seventh Lake Mountain Trail does not impair the wild forest character of the Forest Preserve) and August 17, 2016 (in support of the State's motion for summary judgment).

3. I have had extensive experience in the layout and construction of trails on forested lands as described in my September 23, 2013 affidavit, which also includes a description of the basic principles involved in the design and construction of trails. Sept. 23, 2013 Connor Aff. ¶¶ 5-13, and Appendix A (summary of trail construction experience).

4. I have read the allegations in the affidavits of Steve Signell dated August 25, 2016 and Peter Bauer dated August 31, 2016, regarding Class II trails and the Seventh Lake Mountain Class II Community Connector Snowmobile Trail (Seventh Lake Mountain trail) and I submit this affidavit in opposition to those affidavits.

5. I also provided sworn testimony in a deposition on January 21, 2015, and was questioned regarding construction of Class II trails, including the use of small landscaping equipment and specifics of construction on the Seventh Lake Mountain trail.

6. Mr. Signell's August 25, 2016 affidavit alleges that DEC uses "heavy machinery" in construction of Class II trails. Aug. 25, 2016 Signell Aff. ¶¶ 21, 27. As I explained in my deposition, DEC uses small landscaping equipment in trail construction, not heavy machinery. January 21, 2015 Deposition transcript of Tate Connor at 52:11-54:4 (low impact landscaping equipment).

7. Plaintiff's Executive Director Peter Bauer alleges there is no meaningful comparison between a hiking trail and a Class II trail. Aug. 31, 2016 Bauer Aff. ¶ 16. He is incorrect. The Adirondack Park State Land Master Plan defines a snowmobile trail as a marked

trail of essentially the same character as a foot trail. Record Exhibit (R. Ex.) 1 at 18 (definition # 31). Furthermore, as described in my prior affidavit, while trails vary in shape, dimensions and purpose, all trails intended for public use are constructed in the same manner and have the same basic construction features and components. Sept. 23, 2013 Connor Aff. ¶¶ 5-13. Additionally, the methods for laying out snowmobile trails are set forth in DEC Guidance, and are basically the same as those used in laying out and building a foot trail. Sept. 23, 2013 Connor Aff. ¶ 16; R. Ex. 8 (2009 Guidance).

8. Mr. Bauer asserts that DEC does limited tree cutting for foot trails, citing to a Goodnow Mountain foot trail, which he alleges required cutting of fewer trees than equal stretches of the Newcomb to Minerva snowmobile trail. Aug. 31, 2016 Bauer Aff. ¶ 16. In the first instance, Goodnow Mountain is a research forest area on the Huntington Wildlife Forest lands of the State University of New York Environmental Science and Forestry College. Second, Mr. Bauer fails to disclose the width of the trail, or whether it was a pre-existing trail, an old woods road or a herd path, that may not have required the same amount of tree cutting as a new trail through the forest. Finally, a number of factors determine how many trees are cut on a trail, including, the forest type, species and age of trees and the spacing of trees, and width of the trail. For all these reasons, Mr. Bauer's allegations are without merit. Aug. 31, 2016 Bauer Aff. ¶ 16.

The Seventh Lake Mountain Trail

9. The Seventh Lake Mountain Trail is a Class II trail on Forest Preserve land in the Adirondack Park, located in the Moose River Plains Wild Forest, approved in the 2011 Moose River Plains Wild Forest Unit Management Plan (UMP). R. Ex. 5 at 116, 119 (alt.11), 125 (alt 8). I was the construction supervisor of the Seventh Lake Mountain trail and provided a detailed description of the construction in my September 23, 2013 affidavit. Sept. 23, 2013 Connor Aff. ¶¶ 22-29.

10. The Seventh Lake Mountain trail has three segments and was constructed to a trail tread width of nine feet, except on curves and steep slopes where the width is 12 feet. A total of 2,085 trees (1,924 live trees and 161 dead trees) were approved to be cut over the 11.9 miles of trail and construction was completed on December 15, 2013. However, the number of live trees cut was less than the 1,924 tally because some trees marked to be cut, were not cut, although I did not keep a tally of uncut trees. Sept. 23, 2013 Connor Aff. ¶ 31.

11. Photographs of the Seventh Lake Mountain trail taken on July 14, 2016, over 2 ½ years after construction show that vegetation is growing and has blended in with the forested area, the trail canopy is preserved and the character of the trail is consistent with the wild forest nature of the adjoining areas. Aug. 17, 2016 Connor Aff. Ex. B (2016 Photos).

12. The August 25, 2016 Signell affidavit alleges that 6,480 trees were cut over 11.69 miles of trail and that the northern portions of the trail have old growth trees. Aug. 25, 2016 Signell ¶¶ 70, 72. As explained below, Mr. Signell's tree count is flawed, the trail is 11.9 miles in length, and very few large trees were cut.

13. First, the Signell affidavit alleges that "6,480 trees are known to have been removed" on the Seventh Lake Mountain Trail. Aug. 25, 2016 Signell ¶ 72. However, as I have

sworn in previous affidavits submitted to this Court, I personally counted the trees to be cut on the Seventh Lake Mountain trail and fewer than 1,924 live trees, 3" dbh or greater were cut. Sept. 23, 2013 Connor Aff. ¶ 31.

14. The allegation that 6,480 trees were cut is incorrect because, upon information and belief, Mr. Signell's count includes stumps of seedling, saplings and possibly vegetative growth, rather than trees 3" diameter at breast height (dbh). Neither DEC standards, nor forestry standards, consider seedlings, saplings or brush under 3" dbh to be timber sized trees. R. Ex. 18 at 2. Mr. Signell's affidavit acknowledges as much, noting that forestry definitions consider "trees" less than 4" dbh to be seedling and saplings, not timber sized trees. Aug. 25, 2016 Signell Aff. Tables 2 and 3.

15. Mr. Signell's affidavit includes a chart, which characterizes the number of trees DEC authorized for cutting on the Seventh Lake Mountain trail as "Est." Aug. 25, 2016 Signell Aff. Exhibit D. Assuming "Est" is meant to represent an "estimated" count, Mr. Signell is in error. As I have previously sworn, I personally supervised each tree to be marked for cutting on the trail and 1,924 live trees were marked, and 161 dead trees were marked, for a total of 2,085, 3" dbh or greater approved for cutting, not 2,847 as indicated in Mr. Signell's chart. Aug. 25, 2016 Signell Aff, Exhibit D ("DEC Tree Cut Est." for Seventh Lake Mountain Trail).

16. Mr. Signell further alleges a "significant undercount" of trees cut on the trail because he only found 893 stumps of 3" dbh or greater, rather than his estimate of 2,847. Aug. 25, 2016 Signell Aff. ¶ 68. However, this assertion only confirms my prior sworn statements that I did not cut all trees marked for cutting as noted in work plans.

17. Upon information and belief, Mr. Signell visited the trail to observe stumps more than three and a half years after tree cutting was completed. Aug. 25, 2016 Signell Aff. ¶ 66

(Aug. 2016); Sept. 23, 2013 Connor Aff., ¶ 31 (tree cutting was completed Dec. 2012). By way of contrast, my tree counts are actual counts, recorded by size and species, for each tree marked for cutting. My personal observations were recorded in work plans and work plan modifications as the trail was constructed. R. Ex. 36.

18. While I counted each tree to be cut, Mr. Signell observed only a subsample group of 30 stumps on the trail, 3 ½ years after the cutting was completed. Aug. 25, 2016 Signell Aff. ¶ 66. Upon information and belief, his conclusion that DEC cut 6,500 trees is based on the alleged observations of plaintiff's Executive Director Peter Bauer, not Mr. Signell's personal observation. Aug. 25, 2016 Signell Aff. ¶ 65.

19. Upon information and belief, Mr. Signell's alleged count of tree stumps includes thousands of seedlings and saplings under 3" dbh. In accordance with longstanding policy, only timber size trees 3" dbh are counted.

20. Mr. Signell's measurements were also made in the wrong location. He measured the diameter of stumps at ground level. Aug. 25, 2016 Signell Aff. ¶ 14. But tree size is typically measured at breast height, not ground level. Measurements of stumps at ground level will yield a wider diameter than at breast height (4 ½ feet), because tree root areas at ground level are generally wider than at breast height. Accordingly Mr. Signell's estimate of tree size does not necessarily reflect the actual size of trees cut. Tree stems taper as they grow, versus being a perfect cylinder. The amount of taper and ratios are referred to as "form class." Different tree species have different "form class" depending on many variables related to the site they are growing on. These variables will influence the ratio between stump diameter and diameter at breast height. For instance, Hemlock trees tend to have a greater taper than Red Maple trees.

The difference in species or site variables could affect the correlation made by Mr. Signell to dbh. Additionally, root areas can be wider at a windy or wet site.

21. Segment 1 of the Seventh Lake Mountain trail had existing old woods or carriage roads that were incorporated into the trail. These old roads were covered with a thick carpet of softwood regeneration, which Mr. Signell may have counted as trees, when in fact they were seedlings, or saplings.

22. In general, when designing trails, I select routes as close as possible to the periphery of the unit, which narrows possible locations. I then select the most sustainable location, avoiding wetlands and highly erodible locations, and minimizing tree cutting, and to the greatest extent possible using existing woods roads to avoid impacts. R. Ex. 8 (2009 Guidance at 2-13). Mr. Signell is aware of these considerations, as he consulted with me on development of proposed routes for sustainable snowmobile trails in the Wilcox Lake Wild Forest Unit, and provided computer modeling for trail routing for DEC. I followed these practices when designing the Seventh Lake Mountain trail as described in detail in my prior submissions to the Court. Sept. 23, 2013 Connor Aff.

23. Upon information and belief, Mr. Signell claims the northern two thirds of the Seventh Lake Mountain trail contain old growth trees. Aug. 25, 2016 Signell Aff. ¶ 70. The northern area of the trail encompasses segments 2 and 3. Segment 2 parallels State Route 28, within a half mile of the road for its entire length, approximately 1.8 miles. R. Ex. 37 (map). Segment 3 runs adjacent to Route 28 for about 1 ½ - 2 miles, and at one point is within 100 yards of Route 28.

24. Mr. Signell's affidavit asserts that a downed tree on the northern segment of the trail had 338 rings. Aug. 25, 2016 Signell Aff., ¶ 70 and Ex X (photo). He opines that "it was

cut about 15 inches from the base in order to clear the trail.” Aug. 25, 2016 Signell Aff. ¶ 70. There is no allegation that DEC cut this tree as part of trail construction, and the photo depicts extensive green moss on the tree, an indication the tree may have been on the ground for quite some time. While the implication may be that the trail contains an old growth forest, construction of the trail involved minimal cutting of large trees. The vast majority of trees cut, approximately 95%, were in the range of 8 inches or less dbh. R. Ex. 38 (tree tally for Seventh Lake Mountain trail) and September 26, 2016 affidavit of Max Wolckenhauer. Two trees 20 inches dbh range were marked for cutting, and none greater than 20 inches dbh were marked. R. Ex. 38. I avoided cutting large trees on the trail and wove the trail in between larger trees where possible.

25. Mr. Signell further argues trees were “obliterated” as a result of tread work and that the actual number of trees cut was much higher. Aug. 25, 2016 Signell Aff. ¶¶ 73-74. Notwithstanding this characterization of trail construction, fewer than 1,924 live trees, 3” dbh or greater were cut during construction of the trail and all cut trees were placed on surrounding forest preserve land and remain as part of course woody debris on the forest floor.

26. As demonstrated in the photos taken in 2016, the forest canopy along the trail was preserved through careful planning, and construction and the trail is consistent with the surrounding wild forest. Aug. 17, 2016 Connor Aff. Ex. B (2016 photos). Additionally, the trail was located parallel to Route 28 to avoid interior, remote areas of the Forest Preserve in an effort to protect the ecology, habitat and remote nature of the interior areas.

27. Like all of the Class II Community Connector trails, the Seventh Lake Mountain trail was designed for safe recreational access to the Forest Preserve, with construction features that control erosion, protect wetlands and streams, maintain the forest canopy and preserve and

maintain the essential wild forest character of the Forest Preserve. Accordingly, plaintiff's claims are unfounded.


TATE CONNOR

Sworn to before me this
29 day of September, 2016
Kathy R. Scriver
Notary Public

Kathy R. Scriver
Notary Public, State of New York
No. 01Sc6146364
Qualified in Franklin County
Commission Expires May 15, 2018