

to their alterations of the terrain and the forest, is substantial and will be long-lasting. I am also familiar with the 2009 “Snowmobile Trail Management Guidance” (Record Exhibit 8) issued by the APA and DEC as their policy governing the construction of these connector trails. For the following reasons, it is my opinion that the construction of a network of these snowmobile connector trails in the Adirondack Forest Preserve is not consistent with the wild forest character of the Forest Preserve.

3. I have read the memorandum of law and affidavits supporting the State’s motion for summary judgment submitted by Loretta Simon of the New York State (“NYS”) Office of the Attorney General and Department of Environmental Conservation (“DEC”) staff, including Tate Connor, Peter Frank, and Timothy Howard, and Kathy Regan from the NYS Adirondack Park Agency (“APA”). These affidavits claim that the newly constructed Class II Community Connector snowmobile trails are built in the “character of a foot trail.”

4. As previously stated in the Bauer Aff., I have visited and reviewed many of the Class II Community Connector snowmobile trails that have been approved and constructed.

The Class II Community Connector Snowmobile
Trails Do Not Have the Character of a Foot Trail

5. Class II Community Connector snowmobile trails are 9-12 feet wide. A foot trail, as shown by the Answering Affidavit of Steve Signell sworn to on October 26, 2016, at pages 3-7, is much narrower. William Amadon has also enumerated the

ways that Class II Community Connector snowmobile trails substantially differ from foot trails. Affidavit of William Amadon, sworn to on September 27, 2016.

6. DEC has enumerated foot trail standards in Appendix 13 (“Trail Classification System”) of the Shaker Mountain Wild Forest Area Unit Management Plan, which was approved in 2006. Copies of the pertinent pages of that plan are attached hereto as Exhibit A. This document shows how the Defendants classify the character of foot trails in their routine planning process, although its snowmobile trail classifications have now been modified by the 2009 Snowmobile Trail Management Guidance.

7. The Trail Classification System in Exhibit A outlines standards for trails, from “unmarked” for occasional use, to “trunk or primary trails” for heavy use. The trail widths vary from 14-18 inches for tread width with a clear area of three feet at the smallest, to 18-26 inches tread width and a 6-foot clear area. Other types of foot trails listed are “path,” “primitive,” and “secondary” and range in tread widths up to 18 inches and clear areas up to 4 feet. Horse trails under these guidelines have a trail tread of 2-4 feet and a cleared area up to 8 feet. Given that foot trails, as defined here by the DEC, have 14-26 inch tread widths and cleared areas from 3-6 feet, it simply defies any standard of reasonableness that 9-12 foot wide road-like Class II Community Connector snowmobile trails are designed and constructed in a way that is consistent with the “character of a foot trail.”

The Seventh Lake Mountain Trail Damaged the
Wild Forest Character of the Forest Preserve

8. I have reviewed Tate Connor's August 17, 2016 affidavit (¶¶ 18-19) describing his return to portions of two segments of the Seventh Lake Mountain Trail during July 2016. Mr. Connor states that he visited portions of Segment 1 (Limekiln Lake-Cedar River Road to Seventh Lake) and Segment 2 (Seventh Lake to Uncas Road). I also visited these parts of the trail in July and August 2016, when I photographed the stumps of over 9,000 trees that were cut down by Mr. Connor and his crew (many other stumps were obliterated by grading with heavy machinery) and when I accompanied Plaintiff's experts into the field.

9. First of all, this is hardly an in-depth study. The DEC did not do an analysis of the impacts of the Seventh Lake Mountain Trail that looked at the wild forest character of this trail compared with the surrounding forest. Mr. Connor apparently walked approximately 9 miles of the trail and took only five photographs.

10. Mr. Connor's affidavit (¶¶ 18-19) gives an incomplete description of the trail. He failed to either notice or document numerous problems that persist on this trail and which negatively impact the wild forest character of the surrounding Forest Preserve, which are documented by the affidavits of Plaintiff's experts, Ronald Sutherland, Ph.D., Steven Signell, and William Amadon, which are being submitted simultaneously herewith.

11. Mr. Connor states (¶18) of the five (5) photographs that he included in his Exhibit B: "These photographs show that the trail construction features are consistent with the wild forest character of the adjoining lands and areas where the vegetation is growing are blended in with the forested area." It's telling that Mr.

Connor failed to provide any pictures of both the trail and the surrounding forest to compare and contrast.

12. Mr. Connor failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right past that are experiencing trail erosion. Copies of photographs of such erosion that I observed on this trail in July and August of 2016 are attached hereto as Exhibit B.

13. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right past that are still characterized by man-made land forms, such as bench cuts, which are numerous and incongruent with the surrounding forests, even 3.5 years after their construction. The bench cuts in the side slopes are often 4-6 feet in height. These are unnatural man-made geometric forms in the forest that do not blend in with the random, natural forms of the forest. The man-made bench cuts will be plainly evident for decades to come. Copies of photographs of such bench cuts that I observed on this trail in July and August of 2016 are attached hereto as Exhibit C.

14. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right past where bench cuts have not re-vegetated. Mr. Connor stated (§19), "As demonstrated in the photos taken in 2016, the trail has re-vegetated, bench cuts blend with the surrounding forest and the trail tread is stable." There were numerous sections in Segments 1 and 2 of the Seventh Lake Mountain Trail where bench cuts have not re-vegetated. Copies of photographs of such bench cuts that I observed on this trail in July and August of 2016 are attached hereto as Exhibit D.

15. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right through that have become fields of grass. The vast grassy swaths of the trail are a direct result of trail construction and massive terrain alterations. In essence, a complex and dynamic forest has been reduced to a wide grass swath in these areas. As shown by Plaintiff's expert Ronald Sutherland (affidavit sworn to on September 27, 2016, pages 7-8), such large swaths of grass are not part of a natural forest system. These are evidence of massive disturbance by forest clearing and grading with heavy machinery. Grasses are sun-loving plants and their abundance on the trail shows significant disruptions to the forest canopy. See Sutherland affidavit, pages 7-8. It is telling that two out of five of Mr. Connor's pictures show massive grassy patches, which is what this trail has come to be in many places. Copies of photographs of such grassy areas that I observed on this trail in July and August of 2016 are attached hereto as Exhibit E.

16. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right through that have become fern fields. While ferns can grow in patches in the forest, it is rare to see them in vast monolithic fields such as are now seen in parts of the Seventh Lake Mountain Trail. Areas of the trail that have become vast fern beds are evidence of a highly disturbed area. Copies of photographs of such fern beds that I observed on this trail in July and August of 2016 are attached hereto as Exhibit F.

17. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 where he would have walked past large pits along the trailside where boulders or stumps were dug out and moved. The trail is often much wider than 9-

12 feet at these locations. The holes are clearly evident today and are incongruent with the surrounding forest. These formations will be long-lasting features of the trail. Copies of photographs of such pits that I observed on this trail in July and August of 2016 are attached hereto as Exhibit G.

18. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right through that have remained extremely wide openings in the forest. Many sections of trail are far beyond the 9-12 foot widths allowed by the Snowmobile Trail Management Guidance and are often caused by a combination of man-made trail construction activities, such as trail flattening, bench cutting, stump and boulder removal, and creation of water bars. These activities are highly disruptive and create a corridor of disturbance far in excess of the 9-12 feet allowable under the 2009 Snowmobile Trail Management Guidance. Copies of photographs of such areas that I observed on this trail in July and August of 2016 are attached hereto as Exhibit H.

19. As mentioned above, Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right through that were intact old growth forests before trail construction. In these section, especially in Segment 2, Mr. Connor would have walked over many large stumps of trees that he cut down to build this trail. Dr. Sutherland, Steve Signell and I observed many such large stumps. On one, Steve Signell counted 295 annual rings, dating back to before George Washington was born. On another one he counted 370 rings, dating it to the 1640s, when New York was still New Netherland. Mr. Connor makes no mention of the impacts from this trail on old growth forest systems. Copies of photographs of

these two old growth stumps (placed side by side on a single sheet) and a map of old growth areas that I observed on this trail in July and August of 2016 are attached hereto as Exhibit I.

20. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right through where the roots of trailside trees were cut. In fact, some trees were so badly damaged from having their root masses destroyed that they have toppled over since the completion of the construction process and the completion of the tree counts conducted by DEC. Mr. Connor makes no statement about root damage to trailside trees from construction activities, such as trail widening and bench cutting. Nor does it seem that these dead trees were included in DEC's counts of trees that were destroyed by the construction of this trail. Copies of photographs of such damaged trees that I observed on this trail in July and August of 2016 are attached hereto as Exhibit J.

21. Mr. Connor also failed to comment on the areas of the trail in Segments 1 and 2 that he would have walked right through where trailside debris, consisting of destroyed trees, tree trunk sections, branches, stumps, boulders, and other materials, had been piled up during trail construction. The 2009 Snowmobile Trail Maintenance Guidance says that such materials are to be dispersed into the forest and not piled on the trailside, but this did not occur. Copies of photographs of such debris that I observed on this trail in July and August of 2016 are attached hereto as Exhibit K.

22. Mr. Connor makes statements (¶¶ 7, 11) that the construction of the Seventh Lake Mountain Trail, an effort that he managed and led, preserved the wild

forest character of the area. For all of the reasons detailed above, Mr. Connor's conclusions are wrong. It's important to note that Mr. Connor omitted many important features of the Seventh Lake Mountain Trail, which undermine his conclusions.

23. Perhaps the most significant of Mr. Connor's omissions is the 250-yard mistake he evidently made where an unused segment of the Seventh Lake Mountain Trail was cleared southwest of Bridge 9, and then abandoned. Mr. Connor discusses in his affidavit (¶13) how he rerouted the trail here, but fails to mention that he had his crew cut a wide swath through the forest and cut down 57 trees, only to abandon the route. Mr. Connor would have walked right past this section, yet his affidavit (¶13) makes no reference to the long-lasting damage to the forest from this cleared area and to how this mistake damaged the wild forest character of the area. Nor is it clear whether or not these trees were included in DEC's counts of trees destroyed in the construction of this trail. Copies of photographs and a map of this cleared and abandoned section of the trail that I observed in July and August of 2016 are attached hereto as Exhibit L.

24. Mr. Connor (page 7) made the statement that the Seventh Lake Mountain Trail Segments 1 and 2 that he visited are "Consistent with the wild forest character of the adjoining lands" yet he provided no pictures of the adjoining lands. Copies of photographs of the trailsides of intact forest lands that adjoin the trail that truly exhibit "wild forest character" are attached hereto as Exhibit M. A snowmobile trail corridor simply does not exhibit wild forest character.

The Trails Have Been Cleared of All Trees

25. I also reviewed the affidavit of Peter Frank, sworn to on August 24, 2016, where he states “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.” (Frank Affidavit, page 8)

26. Mr. Frank’s quibbling about the use of the word “clear-cut” does not change the fact that Class II Community Connector snowmobile trails destroy every tree within the 9-12 foot trail corridor. Further, subsequent maintenance activities will ensure that trees will not grow back. Whether the destruction of all trees within the trail corridor is a clearcut, or a clearing of all trees, the fact remains that all trees within the corridor are destroyed.

27. The fact that the Class II Community Connector trails are indeed cleared areas is not lost on Mr. Frank. Later in his affidavit (page 9) he concedes that “47.7 acres of the Forest Preserve” would be cleared by this activity. No firm figure exists for the total clearing of the Forest Preserve for Class II Community Connector trails due to the undulating character of the 9-12 foot trails that snake through the forest. I have estimated the clearing, so far, to be as high as 53 acres.

28. In his affidavit (page 9), Mr. Frank states “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 in 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.” (page 9) The issue is not the size of the Forest Preserve or the scale of DEC’s action relative to the size of the Forest Preserve. The issue is the constitutionality of DEC’s action. In this matter, the only issue is clearing by the DEC of 47.7 acres, or more, of Forest Preserve lands, a land area that will become even higher as more trails are constructed.

The Trails Have Allowed Invasive Species to Invade the Forest Preserve

29. In my visits to the Class II Community Connector trail from Newcomb to Minerva to North Hudson in 2016 I saw sections of this newly constructed trail between the Santanoni Historic Area and Lake Harris that were infested with Japanese knotweed (*Fallopia japonica*), which is an invasive plant species that has infested many road corridors throughout New York and the Adirondack Park. One concern about construction of wide Class II Community Connector trails is that they require a great deal of disturbance to construct, often using heavy machinery. Invasive species, such as Japanese knotweed, thrive in disturbed areas.

30. The connector trails will allow invasive species to penetrate deep into interior areas of the Forest Preserve, as seeds can become entangled in motor vehicles used for construction or maintenance. It’s unfortunate that knotweed was found growing on this section of the newly constructed connector trail as this infestation will be difficult to eradicate and will likely spread. Infestations of invasive species on the new connector trail shows how these trails undermine the wild forest character of the Forest Preserve. Copies of photographs of Japanese

knotweed that I observed on this trail in 2016 are included in Exhibit N attached hereto.

31. In these same visits in 2016 I also saw common ragweed (*Ambrosia artemisiifolia*) in areas of the trail that grasses had taken over. Common ragweed is an invasive plant that can grow prolifically in disturbed areas and is often found along roadsides. This plant is now growing abundantly in the highly disturbed sections, often where there was extensive benchcutting and grading, on the trail from Santanoni to Harris Lake. It's unfortunate that ragweed was found growing on this section of the newly constructed Class II Community Connector trail, as this infestation will be difficult to eradicate and will likely spread. Infestations of invasive species on this new connector trail shows how these trails undermine the wild forest character of the Forest Preserve. Copies of photographs of common ragweed that I observed on this trail in 2016 are included in Exhibit N attached hereto.

Conclusion

32. In my prior affidavit (Bauer Aff. page 9) I argued that clearing in the Forest Preserve of 40-50 acres or more requires a constitutional amendment and should not be undertaken by administrative action. Clearly, the framers of Article 14 in 1894 intended to remove all major decisions about the Forest Preserve from the vicissitudes and political pressures of public administrative bodies and give this authority to the people of the State of New York. Clearing of 40-50 acres, for use primarily for motor vehicle recreation, is a decision that should be made by the

people in the constitutional amendment process, and not by DEC and APA.

Peter Bauer

Sworn to before me this _____
day of November, 2016.

NOTARY PUBLIC