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.

REPLY AFFIDAVIT OF
ROBERT RIPP

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

Hon. Gerald W. Connolly

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

Robert Ripp, being duly sworn, deposes and says:

1. I am employed as a Forester I in the New York State Department of Environmental Conservation (DEC or Department) Region 5 office, in Warrensburg, New York and have been with DEC since March 2013. I have also worked as a forester in the private sector and I have extensive experience in designing the layout, planning and construction of trails. My professional experience and degrees, including a Bachelor of Science in Ecological Forest Management, are set forth in my August 23, 2016 affidavit and in my resume, which is attached as Exhibit A.

2. I previously submitted affidavits in this matter dated July 19, 2016 (in opposition to plaintiff's motion for a preliminary injunction and its expert Steve Signell's June 30, 2016

affidavit); August 23, 2016 (in support of the State's motion for summary judgment) and September 27, 2016 (in opposition to the Aug. 26, 2016 Affidavit of Steve Signell).

3. I submit this affidavit as part of the State's reply on its motion for summary judgment, and in opposition to the November 1, 2016 Affidavit of Peter Bauer; the September 27, 2016 Affidavit of William Amadon; the October 26, 2016 Affidavit of Steve Signell (Oct. 26, 2016 Signell Aff.) and the September 27, 2016 Affidavit of Ronald W. Sutherland (Sutherland Aff.), and the allegations therein regarding trail construction and the Newcomb to Minerva to North Hudson trail system.

4. I am the Department forester responsible for planning and construction of the Newcomb to Minerva to North Hudson Class II community connector trail network (Newcomb-Minerva-North Hudson), which is located in Essex County. The Newcomb-Minerva-North Hudson trail network is described more fully in my affidavit of August 23, 2016. Aug. 23, 2016 Ripp Aff. ¶¶ 17- 42.

5. Tree cutting began on the first trail in the Newcomb-Minerva-North Hudson network of trails in July 2014, but was halted in July 2016 as a result of an order of the Appellate Court in this matter. As I have previously sworn, I estimate a total of 2,011 trees have been cut on three trails in the Newcomb-Minerva-North Hudson trail network.[1] *See* Sept. 27, 2016 Ripp Aff. ¶ 10.

6. Plaintiff argues that Class II Community Connector Snowmobile trails (Class II trails) are not designed or constructed consistent with the character of a foot trail because Class II trails

[1] This figure does not include trees cut for a segment of the North Hudson portion of the network, which is an administrative access road for the Palmer Pond Dam for maintenance and repair work. However, that figure is disclosed in the Aug. 19, 2016 affidavit of Maxwell Wolckenhauer, Ex. A.

are 9 feet wide and foot trails are between 3 and 6 feet wide. Nov. 1, 2016 Bauer Aff., ¶ 7; *see also* Sept. 27, 2016 Affidavit of William Amadon, ¶¶ 9, 13.

7. Plaintiff is mistaken. Foot trails in the Adirondack Forest Preserve can be constructed to a maximum trail tread width of 8 feet, not 6 feet, as has been the practice in the Forest Preserve for many years, even prior to the 2009 Snowmobile Guidance. *See* Exhibit B (Exerpt from "Trail Construction and Maintenance Manual" [trail width 4-8 feet]); *see also* Record Exhibit 8 (2009 Guidance at 10, Class II trails maintained to a 9-foot width, except on sharp curves and steep slopes where they can be 12 feet). Additionally, Class I snowmobile trails can be constructed to an 8-foot width. R. Ex. 8 at 9.

8. Though Class II trails are one foot wider than the maximum foot trail in the Adirondack Forest Preserve, they share many of the same construction design features and characteristics of foot trails.

9. Plaintiff ignores the fact that all trails have common design and construction characteristics including erosion control features such as water bars, bench cuts, broad-based dips, bridges, and limitations on height of clearing to protect the forest canopy. *See* Aug. 23, 2016 Ripp Aff. ¶¶ 8-11.

10. In paragraph 9 of the October 26, 2016 Affidavit of Steve Signell, Mr. Signell refers to the DEC policy for foot trails as a basis to establish the height of a foot trail as "a person of average height, and a typical 2 foot long axe handle" rather than referencing the "Trail Construction and Maintenance Manual." Exhibit B (excerpts). This manual allows trails to be cleared to a 10-foot height and a width of 8 feet. Exhibit B.

11. Due to snowmobiles riding on snow pack and the elevated height of the user on snow, the additional two feet above the 10 feet of cleared height allowed on other trails is needed for

safety, which is why the 2009 Snowmobile Guidance lists an allowable cleared height of 12 feet. This is not a significant difference to the extent that it makes Class II trails fundamentally different from other trails in the park.

12. Plaintiff also alleges that an invasive plant, Japanese Knotweed, was found growing on a segment of the Newcomb-Minerva-North Hudson trail network and that the presence of an invasive plant undermines the wild forest character of the Forest Preserve. Nov. 1, 2016 Bauer Aff. ¶¶ 29, 31.

13. Japanese knotweed is an invasive species that has been tracked in the Forest Preserve and private lands in the Adirondack Park for years. This specific population of knotweed has been tracked since 2007 by the Adirondack Park Invasive Plant Program (APIPP).[2] It is located just off the edge of a parking lot at the Camp Santanoni maintenance facility. Upon information and belief it was likely introduced to the parking area previous to 2007. Since the trail construction commenced in 2014, construction of the snowmobile trail did not introduce this species to the area. The area in question is approximately 10 feet by 15 feet. DEC routinely works with APIPP to address infestations throughout the park and, upon information and belief, will be addressing this infestation as well.

14. Plaintiff also alleges that common ragweed is an invasive plant that is growing on a portion of the Newcomb-Minerva-North Hudson trail network. Nov. 1, 2016 Bauer Aff. ¶ 31. Again, this is incorrect. Ragweed is a native Adirondack pioneer species. To the extent it appears on a Class II trail, it is temporary and, since it is not shade tolerant, it will not survive once resident shade tolerant species grow back, after trail construction is complete.

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[2] For more information about APIPP, *see* http://adkinvasives.com/

15. Signell indicates that grasses are not aesthetically desirable on foot trails because they contrast with the surrounding forest understory, and they are not ecologically desirable because they indicate the canopy has been disturbed and these grasses can persist for decades. Oct. 26, 2016 Signell Aff. ¶ 18.

16. In the case of the Newcomb-Minerva trail, these grasses were planted purposefully as an erosion control management technique, as required by the Storm Water and Pollution Prevention Plan for this project. All areas that experience soil disturbance are seeded with grass seed and topped with straw in order to prevent erosion. The straw acts as an immediate erosion control feature, braking up rain and sheet flow. It allows the grass seed to sprout and establish a root system that holds the soil in place. Due to the shade intolerance of the grasses and the closed nature of the canopy, the herbs and shrubs of the surrounding forest revegetate these disturbed areas and replace the planted grasses. This temporary soil stabilization prevents erosion, helps establish a sustainable trail tread, and protects water quality until surrounding forest plants re-establish themselves on the tread.

17. In paragraph 3 of the October 26, 2016 Affidavit of Steve Signell, Mr. Signell asserts he personally assessed the "6 mile Polaris Trail that has been approved in the Essex Chain Lakes Complex Unit Management Plan." This trail has not been laid out or marked at all on the ground; therefore, there is not a route to assess. Any information gathered here does not exist on the ground. *See* Sept 27, 2016 Ripp Aff. ¶ 16.

18. In paragraph 10 of the September 27, 2016 Affidavit of Ronald Sutherland, Mr. Sutherland addresses impacts of increased human activity on wildlife into areas that previously were rarely and infrequently traversed by humans. However, Class II trails are designed to lie in close proximity to major roadways. R. Ex. 8 at 4-6. Focusing trail use near existing roadways greatly reduces the effects to animal populations and their habits. Additionally, as these trail connections are completed other more remote trails can be closed, which further benefits wildlife populations, by removing use from interior areas.

Robert Ripp

Sworn to before me this 7th day
of November, 2016

Notary Public

Andrea L. Catalfamo
Notary Public, State of New York
Reg. No. 01CA6229819
Qualified in Fulton County
Commission Expires October 25, 2018

EXHIBIT A

ROBERT H. RIPP
232 Golf Course Road
Warrensburg, NY 12885
Phone (518) 623-1209 | Email robert.ripp@dec.ny.gov

PROFESSIONAL EXPERIENCE

Division of Lands and Forests, New York State Department of Environmental Conservation
Forester I, March 2015 – Present, NYSDEC 232 Golf Course Rd, Warrensburg, NY
Responsible for the administration and management of Forest Preserve programs in the Lake George Wild Forest, Vanderwhacker Mountain Wild Forest, Hoffman Notch Wilderness Area, and the Camp Santanoni Historic Area, and conservation easement recreation management for the Division of Lands and Forests at the DEC Warrensburg sub-office. My duties include the preparation of unit management plans for state-owned lands, recreation management plans for private lands subject to state-owned conservation easements, and project specific work plans.

Division of Lands and Forests, New York State Department of Environmental Conservation
Forester Trainee, March 2013 – March 2015, NYSDEC 232 Golf Course Rd, Warrensburg, NY
Responsible for the administration and management of Forest Preserve and conservation easement recreation programs for the Division of Lands and Forests at the DEC Warrensburg sub-office.

Gateway Properties of Upstate NY
Forester and Licensed Real Estate Salesperson, December 2005 – May 2016 Alder Creek NY
Represented clients on recreational land sales and acquisitions. Duties included collecting forest inventory data, marketing, timber harvest management, wildlife management, habitat building, wildlife plantings, and landowner consultations.

Ripps Forestry Service,
Forester and Wildlife Manager, December 2005 – Present, Lyons Falls NY
Collect forest inventory data, timber harvest management, and landowner consultations. Implemented wildlife management strategies to meet landowner objectives.

Trathen International,
Procurement Forester, June 2005 – December 2005, York NY
Responsible for collecting forest inventories, boundary line maintenance, timber harvest management, log buying and landowner consultations.

EDUCATION

Paul Smiths College
Bachelor of Science Ecological Forest Management
Associates in Applied Science in Pre-Professional Forestry
Associates in Applied Science in Fish and Wildlife Technology

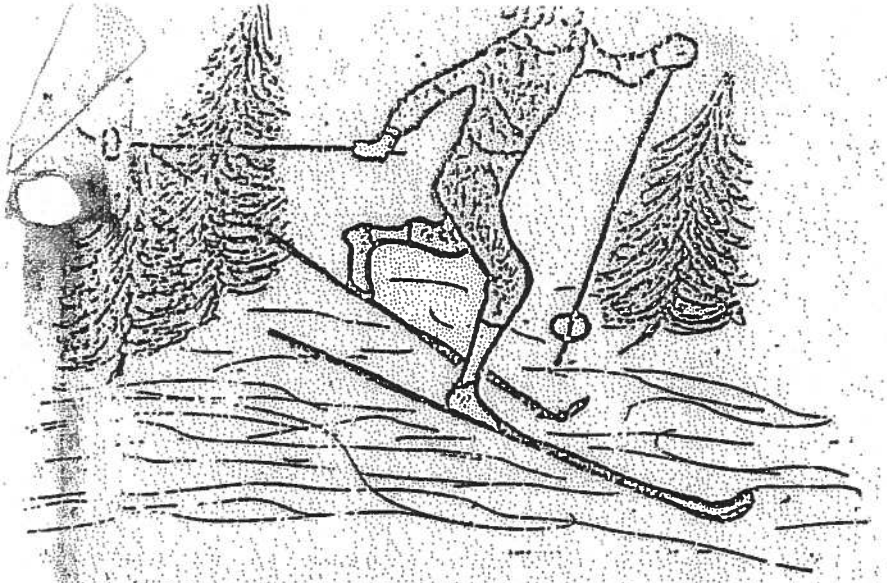
CERTIFICATIONS

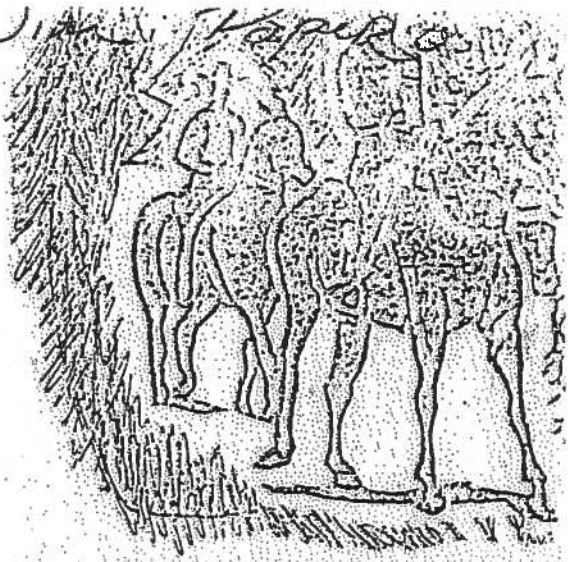
Paul Smith's College
Certification in Geographic Information Systems
Society of American Foresters
Certified Forester

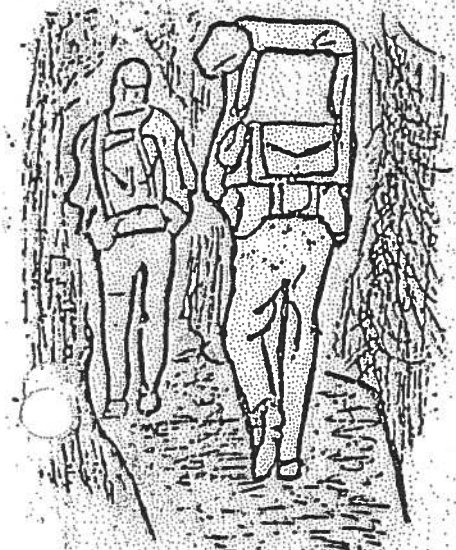
LICENSES

New York State Licensed Real Estate Agent 2006-2016
Notary Public, State of New York

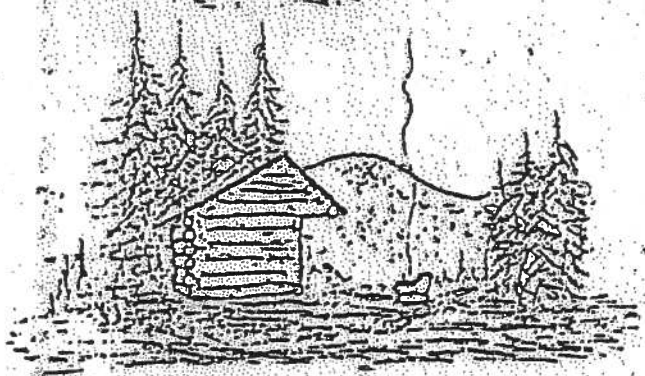
EXHIBIT B

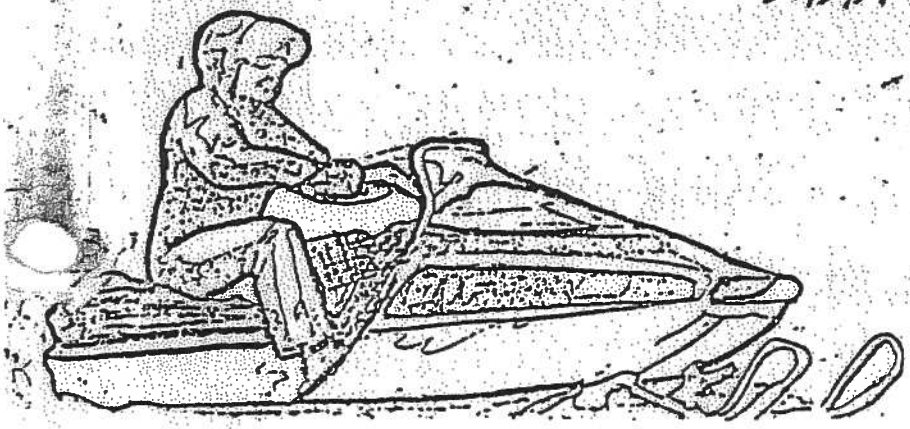






TRAIL CONSTRUCTION AND MAINTENANCE MANUAL





TRAIL CONSTRUCTION and MAINTENANCE MANUAL

N.Y.S.D.E.C. Division of Operations

Manual Committee

Douglas Fletcher, Chairman
Donald Smith
John Dalton
Bruce Richards
Gary West

Circa 1970

Trail Construction and Maintenance Manual

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Trail Types and Specifications

1. Hiking

trail clearances: width: 4 - 8' overhead: 10'

bridge: - width: 5 - 6'

In cutting clearances, keep in mind the safety and comfort of the recreational hiker, with full pack, under all weather conditions including rain and snow which will bend the saplings and small brush into the tread area. Trail tread should be cut to compensate for this amount of clearance. A snow fall of four to six feet of snow will require proper overhead cutting for snowshoe or ski usage. When cutting tree branches, cut as close to the tree as possible to avoid leaving sharp spikes which when dry are hazardous if bumped against by tripping or falling. The same applies to sapplings and small brush, cut as close to ground surface as possible to avoid sharp stumps, cut with brush clippers instead of an axe.

A well cleared trail is one which a hiker with pack can walk on without touching limbs, trees or brush when wet or dry.

Trail Types and Specifications

2. Horse

trail clearances: width: 8' maximum overhead: 10'

bridge: width: 5' minimum to 8' maximum

fords: width: 10'

When trails are located on truck trail roads, ditches should be cleaned of brush and leaf build-up to ensure adequate drainage and culverts should also be cleaned to handle rain and snow thaw drainage. If these are not cleared periodically, wash-outs can occur to road bed and culvert areas creating dangerous conditions for horse and rider. This will eliminate time and maintenance expenses later that result from improper preventive maintenance. All blowdown should be cut and cleared full trail width including ditch area for proper clearance and drainage. Overhead clearance is important and should take into account wet leaves hanging into the ten foot zone, cut and remove from trail. Any log blowdown should be completely limbed as close as possible to log to eliminate dangerous spikes. Side cutting as close to the ground level as possible on saplings and brush so no stumps or stubs are present.

At all rest areas and lean-to and camping sites, hitching rails should be constructed for tie-ups for horses. Trails to watering holes as brooks or water source should be built to water horses.

On horse trails the use of any kind of corduroy bridging is prohibited. This method should not be used.

Trail Types and Specifications

3. Snowmobile

trail clearances: width: 8' maximum overhead: 10'

bridge: width: 8' maximum

Cut blowdown out of the trail the complete tread width for maximum clearance of trail. Overhead cutting is important, plan enough clearance with four to six feet of snow covering trail tread, and brush and saplings bearing snow and ice pulling them into trail space.

When side cutting brush and saplings, cut as close to the ground level as possible to avoid stubbles and stumps and to allow snowmobilers to be able to use the trail system with a minimum amount of snow cover. Also any large stones or obstacles should be removed to ensure a smooth tread and usage with limited snow cover.

Wet, boggy spots should be covered with bridging to allow safe comfortable passage on snowmobile. During summer maintenance, try to drain these mud or wet spots to eliminate winter problems.

When planning a new snowmobile trail, locate the trail where proper drainage will eliminate the problem of muddy spots. Ditches and culverts will help control wet areas where they can be used. Where these devices are in place, periodic ditch and culvert cleaning will be needed for maintenance.

Special caution signs for hazardous areas should be used to warn the snowmobiler of steep grades, sharp turns, gates, bridge ahead, road crossing, etc. This would make the experience more enjoyable and safer for the user.

Trail Types and Specifications

4. Cross-country (Nordic) Ski

trail clearances: width: Wilderness: 4' overhead: 10'

width: Wild Forest: 8' overhead: 10'

bridge: width: 5 - 6'

In wilderness areas, trail width should be limited to four feet with clearance overhead ten feet compensating again for winter snow fall.

In wild forest areas width six feet with overhead ten feet.

On steep slopes approaching a bridge, design the approach trail to the bridge gradually without sharp turns for safety reasons and ease of skiing for the beginner. On other areas where easy approaches are not possible to bridges off steep slopes, warning signs should be posted before the skier reaches the dangerous section.

All side cutting should be as close to the tree or ground level as possible to avoid stubs and stumps which would interfere with limited or minimal snow level skiing.

Ski trails should be listed and signed according to the degree of difficulty; easy, intermediate, or expert (most difficult).

Turns at the base of steep hills should be wide enough for turn-outs, making it easier to ski around the turn safely.

Trail Types and Specifications

5. Canoe

trail clearances: width: 8' maximum overhead: 10'

bridge: width: 5 - 6'

In maintaining canoe trails, clearances have to be made for user transporting canoe overhead without interference from brush and limbs. Trail tread should be clear of any stubs and stumps and roots which could cause user to trip and fall causing injury. All obstacles should be removed from the trail. In cutting and removing blowdown, cut and remove entire trail width for proper clearance and comfort and safety of user. Mud hole and wet spots should be bridged where possible, avoid using corduroy method which is slippery when wet from rain or snow melt.

Multiple Use of Trails

Depending on the time of year, whether summer or winter, certain trails have a multiple use function. In the summer time the trail may be a horse trail but when covered with snow in the winter its use turns to snowmobiling. The same is true with hiking trails, summer hiking and in winter skiing or snowshoeing.

When doing maintenance on these trails, one has to keep their multiple use concept in mind when cutting blowdown, side cutting, bridging, etc!