
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.

**PLAINTIFF'S
PROPOSED FINDINGS
OF FACT AND
CONCLUSIONS OF LAW**

INDEX NO. 2137-13

**RJI NO. 01-13-ST-
4541**

**HON. GERALD W.
CONNOLLY, ASSIGNED
JUSTICE**

Plaintiff Protect the Adirondacks! Inc. submits the following proposed Findings of Fact and Conclusions of Law, and requests that the Court adopt them as its Findings of Fact and Conclusions of Law in this action. Plaintiff is simultaneously submitting a Post-Trial Memorandum of Law ("MOL") in support hereof.

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PROPOSED FINDINGS OF FACT

PROCEDURAL HISTORY

1. This action was commenced by the filing of a summons, notice of petition, and combined complaint-petition dated April 12, 2013 ("Complaint"), with the Albany County Clerk on April 15, 2013.

2. The Plaintiff is an organization described in Internal Review Code § 501(c)(3), and is exempt from taxation thereunder. T. 800:5-10; Complaint ¶4.¹

3. The Defendants are agencies of the State of New York, the Department of Environmental Conservation ("DEC") and the Adirondack Park Agency ("APA").

¹ The Court ruled that it could take judicial notice of the pleadings. T. 136:10-13. References to the trial transcript are abbreviated herein as "T."

4. Prior to the filing of the action, on March 28, 2013, the Appellate Division granted permission pursuant to Article 14, § 5 of the New York State Constitution for the first cause of action to be commenced.

5. The first cause of action "seeks to enjoin the Defendants from constructing certain new snowmobile trails in the Adirondack Forest Preserve, and to obtain a declaratory ruling that the creation of certain new snowmobile trails in the Forest Preserve, sometimes known as 'Class II' and 'Community Connector' trails, is a violation of Section 1 of Article 14, and other relief." Complaint ¶1.

6. In December 2014, the second and third causes of action in the combined complaint-petition, which were brought under CPLR Article 78, were dismissed by Supreme Court.

7. Thereafter, the parties conducted discovery on the first cause of action, during which several motions were made and decided by the Court.

8. The Plaintiff moved several times for injunctive relief to stop DEC's construction of new Class II trails during the pendency of the action.

9. Upon this Court's August 10, 2016 denial of Plaintiff's July 2016 motion for an injunction, Plaintiff appealed to the Appellate Division and sought injunctive relief in that court.

10. Plaintiff's motion for a preliminary injunction was

granted by the Appellate Division on September 7, 2016, and remains in effect; the appeal has not yet been heard or decided by the Appellate Division. This Decision and Order on Motion enjoins the Defendants from "cutting or otherwise destroying trees in the Adirondack Forest Preserve for the construction of Class II Community Connector snowmobile trails", and from undertaking grading, clearing and other specified types of work on the Newcomb to Minerva to North Hudson trail during the pendency of the appeal.

11. In August 2016, Plaintiff and Defendants both moved for summary judgment.

12. By Decision and Order dated January 25, 2017, the parties' motions for summary judgment were denied, and the Court ordered a trial to resolve questions of fact.

13. The questions of fact identified by the January 25, 2017 Decision and Order included, among other things:

- a. what trails are subject to the Court's determination;
- b. the number of trees cut;
- c. the length of the trails;
- d. what constitutes "timber" for purposes of the Constitution;
- e. whether only trees 3" or more in diameter at breast height ("DBH") should be counted;
- f. whether the closing of trails in remote interior areas

has occurred and to what extent;

- g. whether the amount of tree cutting was substantial or material;
- h. the context and purpose of the tree cutting; and
- i. whether the trails constitute an improper use of the Forest Preserve because they impair it to an unconstitutional extent.

14. A bench trial was held over 13 days from March 1, 2017 to April 4, 2017.

THE FOREVER WILD CLAUSE WAS ADDED TO THE
CONSTITUTION DUE TO CONCERNS THAT THE
LEGISLATIVE AND EXECUTIVE BRANCHES WERE
ALLOWING THE FOREST PRESERVE TO BE DESTROYED

15. As testified to by Plaintiff's expert historian, Dr. Philip Terrie, the New York State Forest Preserve was first created by the Legislature in 1885, due to concerns about the quality of the state's forests, and "a widespread belief that commercial logging was destroying the Adirondacks and all its values." T. 43:12-44:16, 50:13-17. See MOL Point III.

16. By law, the Forest Preserve was to "be forever kept as wild forest lands", and the land could not be leased or sold, but it could still be logged. T. 44:6-13, 51:9-23; Ex. 9, pp. 125-126.²

² References to the parties' exhibits admitted at trial are abbreviated as "Ex."

17. Following the creation of the Forest Preserve, it was controlled by the State's Forest Commission, a predecessor of defendant DEC. T. 50:21-52:2; Ex. 9, pp. 129, 137.

18. During the period when the Forest Commission was responsible for the Forest Preserve, there was widespread concern in the state about mismanagement and corruption, including collusion by the Commission with loggers who were logging on the Forest Preserve. T. 52:3-17, 58:18-60:1, 60:13-20.

19. At the Constitutional Convention of 1894, the Chairman of the Convention appointed delegate David McClure, of the New York Board of Trade and Transportation, to head a committee on conservation, which was empowered to address this issue. T. 60:21-61:2; Ex. 9, pp. 124-126.

20. The Committee issued a report which recommended that an amendment "to the Constitution should be adopted for the preservation of the State forests", such that the State-owned forest lands and the timber thereon "should be preserved intact as forest preserves, and not under any circumstances be sold." T. 61:18-62:13, 67:2-18. Ex. 9, pp. 124-126.

21. The Court takes judicial notice of this report.³ See T. 61:3-24, 113:13-23, 116:15-24.

22. The Committee recommended to the Convention that the Constitution be amended to prevent alienation of Forest Preserve

³ A certified copy of this document is annexed hereto as Appendix Exhibit A.

lands, as was already required by the 1885 law, and further, that a prohibition on sale or removal of the timber be added. T. 72:14-73:17; Ex. 9, pp. 124-126, 139-140.

23. The delegates to the Convention were concerned about mismanagement of the Forest Preserve by the State and did not trust it to properly protect the land and the trees. T. 78:3-79:11, 81:22-82:11; Ex. 9, pp. 138-139, 142-144, 155-156, 157-158.

24. During the Convention's debate, the proposal was amended to prevent the timber on the Forest Preserve from being "destroyed" (T. 77:1-9, 77:15-78:2; Ex. 9, pp. 141-142, 157-158, 160-161), a restriction that was not in the 1885 statute (T. 73:3-73:14).

25. This proposal, as amended, was approved by the only unanimous vote at the Convention. T. 80:11-19; Ex. 9, pp. 160-163.

26. The proposed new Constitution was approved by the People of the State of New York in November 1894, and took effect on January 1, 1895. T. 80:20-81:8.

27. This amendment has come to be known as the Forever Wild Clause of the Constitution. T. 26:2-5.

28. As a result of the adoption of the Forever Wild Clause, only the People of the State have the power to approve

significant alterations to the Forest Preserve. T. 81:9-16, 81:22-82:11; MOL Point IV.

29. The Forever Wild Clause, being the first 54 words of Article 14, § 1, of the Constitution, as adopted in 1894, remains unchanged in the current Constitution, over 110 years later. T. 113:9-12.

TREES OF ALL SIZES, INCLUDING TREES UNDER 3 INCHES DBH, CONSTITUTE TIMBER FOR PURPOSES OF THE CONSTITUTION

The Use of the Word "Timber" in the Constitution

30. Article 14, § 1, of the Constitution prohibits the destruction of the "timber" in the Forest Preserve.

31. In the late Nineteenth Century, logging practices in the Adirondacks included removing trees of all sizes. T. 52:8-54:1, 55:14-57:16.

32. This included "very small trees" (T. 53:6-18), and, as of 1893, trees as small as 1" in diameter were being cut for pulpwood for the paper industry. T. 53:19-22, 57:6-16; Ex 27.⁴

33. Said logging practices were described in the 1893 Report of the State Surveyor, Verplanck Colvin (see Ex. 9, p. 131) which was issued prior to the Constitutional Convention of 1894 and had been previously provided to many of the Convention delegates, due to their positions in the Legislature. T. 94:21-

⁴ Exhibit 27 was admitted into evidence at T. 94:21-95:8, 96:22-97:5, 97:17-100:12.

95:8, 99:1-21, 100:22-101:4; see also T. 55:14-56:14, 74:24-75:13.

34. In the late Nineteenth Century, the common usage of the word "timber" in literature included multiple meanings, including little trees (T. 90:15-92:6, 93:20-94:17; Ex. 6), as well as individual trees, the forest as a whole, and downed trees, and was not limited to merchantable timber. T. 89:4-19.

35. In the late Nineteenth Century, the words "tree" and "timber" were commonly used interchangeably. T. 89:20-90:6.

36. Webster's 1890 International Dictionary of the English Language, the most up to date "dictionary of record for American usage" of that era (T. 41:15-42:12, 82:15-83:17), contained several definitions of "timber", including "woods or forest", "a wooded land", and the "body, stem or trunk of a tree". T. 85:9-86:16;
Ex. 7.

37. Webster's did not limit the definition of "timber" to living trees, to large trees of a merchantable size, or to any other size in particular. T. 86:17-87:5; Ex. 7.

38. The definition of "stem" in that dictionary expanded the definition of "timber" to include both the principal body of a tree, as well as any branch thereof, and made no reference to the size thereof. T. 88:12-89:3; Ex. 7.

39. The delegates to the Constitutional Convention of 1894 used the words "tree" and "timber", along with "woods" and "forest", interchangeably. Ex. 9, pp. 130-132, 136-137, 139, 142-143, 152.

40. The delegates to the 1894 Convention supported the Forever Wild Clause for several equally important reasons, including protecting the trees, timber, and woods of the Adirondacks (T. 79:22-80:6; Ex. 9, pp. 131, 134, 137, 149, 151, 156), preserving the benefits of the Adirondacks as a health, recreational and spiritual retreat (T. 73:18-74:1; Ex. 9, pp. 131-132, 142-143, 146, 156), protecting the watershed of the rivers on which the state's commerce depended (T. 74:3-7, 75:1-13; Ex. 9, pp. 130-137, 142-143, 146-147, 151-153), and preserving the intactness of the wilderness (T. 74:15-18, 80:4; Ex. 9, pp. 131, 147, 156).

41. The delegates to the 1894 Convention did not state any intention to limit the protections of the Forever Wild Clause to large merchantable timber. T. 79:12-21; see Ex. 9.

Trees Less Than 3 Inches DBH Can Be Decades Old
and Can Grow to Great Heights; They Have Important
Ecological Functions in the Forest Preserve

42. Adirondack trees less than 3" DBH can be over 100 years old and are capable of reproducing. T. 256:2-10.

43. Many trees of less than 3 inches DBH that were cut on the Class II trails that are at issue herein were as old as 80 years. T. 256:11-257:11, 257:18-23, 258:14-21.

44. Many trees, of several species, of less than 3 inches DBH that were marked for cutting on Class II trails, but were not yet cut, were as tall as 50 feet. T. 537:21-538:18.

45. Smaller trees under 3" DBH serve an important function in the forest, as the potential next generation of large trees, waiting for the chance to grow after larger trees die. T. 258:22-260:16.

46. Defendants' witness Timothy Howard, Ph.D., confirmed these facts in his testimony. T. 1363:23-1364:24, 1377:24-1379:24.

47. APA Associate Natural Resources Planner Walter Linck, who the Court held could testify as an expert (T. 1630:1-1632:3, 1632:8-10, 1633:22-24, 1634:24-1635:1, 1636:1-3; see Ex. 164, pp. 4-11), stated that younger, smaller, trees have ecological value and that removing them has an ecological impact on the Forest Preserve. Ex. 164, p. 29:8-15.

48. Mr. Linck also testified regarding the ecological value of dead trees to the Forest Preserve. Ex. 164, pp. 169:5-170:13.

The Defendants Provided No Proof That the
Definition of Timber as Used in the Constitution
Should Not Include Trees Less Than 3" DBH

49. Pursuant to its Policy LF-91-2, "Cutting, Removal or Destruction of Trees ... on Forest Preserve Lands" (T. 929:20-930:2, 934:6-7; Ex. C), when DEC undertakes the construction of projects on the Forest Preserve that involve the cutting of trees, it only counts trees of 3 inches DBH or greater. T. 930:16-19, 934:20-935:5, 1084:9-13, 1085:1-21; Ex. C, pp. 2, 6, 7.

50. The only reason given by DEC for not counting "seedlings and saplings", i.e. trees under 3" DBH (see T. 1378-24-1379:4), when it tallied the trees that would be destroyed by construction of the Class II trails, was that "we do not have a policy that requires us to do so." T. 1107:18-24.

51. Peter Frank, the Bureau Chief of the DEC Forest Preserve Bureau, who oversees the development of policies (such as LF-91-2) and guidance documents, the approval of plans for the Forest Preserve, and the construction and maintenance of trails (T. 156:24-157:3, 902:15-21, 904:21-905:17, 906:9-15, 966:6-17), admitted that he knew of no scientific basis for the policy of only counting trees of 3" DBH or more. T. 931:5-10. Nor did he, or any other witness, provide any other foundation for the policy.

52. With regard to live, standing trees, Policy LF-91-2 refers only to "trees" and does not use the word "timber". Ex. C.

53. Policy LF-91-2 makes no mention of the Constitution or Forever Wild, and does not purport to interpret the word "timber" or to define the meaning of that word. Ex. C.

54. The only stated purpose of Policy LF-91-2 is to establish administrative procedures for DEC staff. T. 977:22-978:12; Ex. C, p. 1.

55. Therefore, Policy LF-91-2 has no substantive effect, and is not relevant to the interpretation of Article 14.

56. Policy LF-91-2 was admitted into evidence on administrative procedure issues only, and not for the purpose of determining the constitutionality of Defendants' actions. FOF 247-248.

57. Defendants' witness Robert Ripp provided testimony on the meaning of the word "timber", but only in the context of the modern private timber industry and its commercial needs. T. 1514-1516, 1561-1562.

58. In that context, Mr. Ripp defined "timber" as being 15" DBH or larger (T. 1514:10), and 8" to 10" DBH (1515:1-3, 1515:11-13). This testimony provided no support for DEC's policy of only counting trees of 3" DBH or larger.

59. Current definitions of "merchantable trees" are not relevant to the interpretation of the Constitution. T. 945:11-17.

60. Mr. Ripp's testimony did not address the definition of "timber" in a scientific, ecological, spiritual, watershed, or wilderness context, all of which were of importance to the delegates to the 1894 Convention (FOF 40).

61. Mr. Ripp also defined "timber" as being made up of "wood, trees." T. 1514:6-7.

62. There is no evidence in the record that supports DEC's policy of only counting trees of 3" DBH or larger.

63. To the contrary, Plaintiff's expert Stephen Signell testified that, although in the fields of science, forestry and ecology, there is no single accepted definition of a "tree" based on diameter, the U.S. Forest Service's "Forest Inventory and Analysis" research report uses a 1" cut-off to distinguish between a tree and a "sapling", so he used that size for his tree counts. T. 253:1-254:8, 255:23-256:1.

64. The Court takes judicial notice of the fact that the current online Merriam-Webster dictionary (www.merriam-webster.com) defines "timber" as "growing trees or their wood".

65. There is no evidence in the record to support Defendants' position in this action that trees under 3" DBH are

not "timber" which is protected by the Forever Wild Clause of the Constitution. See MOL Point I.B.

DEC's 3" DBH Policy Was Not
Created by Prior Court Decisions

66. The Court takes judicial notice of the Record on Appeal from Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. 234 (1930).⁵ See Court Exhibit 2, p. 3, item #4.

67. In that Record on Appeal, the Court of Appeals was only presented with an estimate of trees of 3" DBH or more, and no estimate of smaller trees, that would be cut for the project that was at issue therein, and that Court relied upon those estimates in reaching its decision. Appendix Exhibit B, pp. 12-13; Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. at 236.

68. The Court of Appeals did not make any ruling as to whether or not trees under 3" DBH should be counted for purposes of the Forever Wild Clause. Id.

69. The Court takes judicial notice of the following documents from the record in Balsam Lake Anglers Club v. DEC, 199 A.D.2d 852 (3d Dept. 1993) (see Court Exhibit 2, p. 3, item #5):

⁵ A copy of this document is attached hereto as Appendix Exhibit B.

a. A portion of the affidavit of Frederick J. Gerty, Jr., sworn to on April 18, 1991.⁶

b. A portion of DEC's August 6, 1993 Appellate Division brief.⁷

70. In Balsam Lake Anglers Club v. DEC, DEC counted all of the trees that had been, or would be, cut for the trail at issue that were 1" or more in diameter at stump height, and the Appellate Division relied upon those tree counts in reaching its decision. Appendix Exhibit C, pp. 8-9, Appendix Exhibit D, pp. 15-18; Balsam Lake Anglers Club v. DEC, 199 A.D.2d at 853-854.

71. The trial court in that case took into account all "seedlings, saplings and timber-sized trees" in its decision. Balsam Lake Anglers Club v. DEC, 153 M.2d 606, 609-610 (Sup. Ct. Ulster Co. 1991).

DEFENDANTS ARE CONSTRUCTING A SYSTEM OF CLASS
II TRAILS IN THE ADIRONDACK FOREST PRESERVE

72. The Plaintiff's Complaint alleged at ¶63 that "[t]he final snowmobile plan includes recommendations for a system of snowmobile connections between communities in the Adirondack

⁶ A copy of this document is attached hereto as Appendix Exhibit C.

⁷ A copy of this document is attached hereto as Appendix Exhibit D.

Park", and Defendants' Answer⁸ admitted this allegation. T. 136:18-137:5.

73. The Plaintiff's Complaint alleged at ¶65 that "[t]he final snowmobile plan (PP45-46, 49-50, 52) includes a system of hundreds of miles of community connector trails", and Defendants' Answer admitted this allegation. T. 137:6-137:15.

74. These admissions in Defendants' Answer are binding on the Defendants. MOL Point VIII.

75. Four DEC employees and one APA employee admitted in their deposition testimony during disclosure in this case that, by constructing the Class II trails that are at issue herein, DEC was implementing that planned trail system. T. 145:24-147:24, 151:19-153:1, 157:5-158:24, 160:17-161:16, 164:11-166:6, 169:9-171:12.

76. The DEC employees making these admissions included Karyn Richards, the Special Assistant Forest Preserve Coordinator for DEC, who supervises the "Bureau of Forest Preserve Management", which prepares the unit management plans ("UMPs") for the Forest Preserve (T. 141:13-22, 144:19-145:10), and Peter Frank who is the Bureau Chief of said Bureau of Forest Preserve Management (FOF 51). Mr. Frank's duties include oversight of the Class II trails. T. 906:9-15.

⁸ Objections in Point of Law[,], Answer, and Return, verified on September 24, 2013.

77. During his trial testimony Mr. Frank further admitted that DEC has planned such a network or system of Class II trails. T. 912:3-6, 914:20-22, 915:10-916:6, 916:14-917:10.

78. DEC forester Robert Ripp admitted that the Class II trails are "intended to connect communities within the Adirondacks to a network of snowmobile trail systems." T. 1513:11-14.

79. The APA employee who made these admissions was Assistant Natural Resources Planner Walter Linck, whose duties include review of UMPs, review of DEC projects in the Forest Preserve, park-wide planning, planning Class II trails, and review and approval of DEC's work plans for Class II trails. Ex. 164, p. 4:11-16, 5:11-6:1, 11:9-21, 20:23-21:21.

80. Mr. Linck personally approved the work plans for five of the eight Class II trails at issue herein. Ex. P, R, AD, CO, CP. He also advised DEC on the routing of the Newcomb to Minerva Trail. Ex. 164, pp. 98:15-99:13.

81. The Defendants' 2006 Snowmobile Plan for the Adirondack Park describes the proposed system, or network (Ex. A, pp. 43-48), and contains a list of approximately two dozen planned community connector snowmobile trails. Complaint, ¶67; Ex. A, pp. 45-46.

82. The Defendants' 2009 "Management Guidance for Snowmobile Trail Siting, Construction and Maintenance on Forest

Preserve Lands in the Adirondack Park" ("2009 Guidance"), states that it is intended to support the creation of that system. Ex. B, pp. 2-4.

83. The Complaint challenged the legality of the entire planned system or network of Class II trails. Complaint, ¶¶ 63-67, p. 39, ¶A.

84. Defendants agreed that "plaintiff has put into play the issue of the network and the system that it [Ex. A] is creating." T. 910:10-15.

85. Pursuant to decisions dated October 15, 2015 (p. 8) and January 25, 2017 (p. 25), the Court limited the proof at trial to Class II trails that had been planned or approved as of October 15, 2015, so no testimony was heard regarding the other planned trails that are part of that system.

EIGHT CLASS II TRAILS, TOTALING 34.06 MILES AND 37.1 ACRES OF THE FOREST PRESERVE, ARE AT ISSUE IN THIS ACTION

86. The parties stipulated that there are eight Class II trails at issue in this action, within the parameters set by the Court, which are listed in a table in Court Ex. 1, ¶14.

87. The eight trails have a total length of 34.06 miles. See Court Ex. 1, ¶14, Ex. 80.⁹

88. The 34.06 mile total was determined as follows:

⁹ A copy of Exhibit 80 is attached hereto as Appendix Exhibit E.

a. The parties stipulated to the length of the 11 trail segments listed in Court Ex. 1, ¶14, and the total length of said segments is 32.11 miles.

b. Court Ex. 1, ¶10 erroneously states that said trails total approximately 27 miles in length. The source of this error could not be identified by the Defendants. See T. 966:18-967:10, 968:8-13, 968:24-970:9, 980:18-981:5.

c. Court Ex. 1, ¶14 does not include the segment of the Newcomb to Minerva Trail from the Roosevelt Truck Trail to the Boreas River.

d. Testimony by Plaintiff's expert Stephen Signell established that the length of this segment is 1.95 miles. T. 234:22-235:14, 244:24-245:1; Ex. 80.

e. $32.11 + 1.95 = 34.06$ miles.

f. In the alternative, Exhibit 80 shows that the total mileage of the four principal trails at issue herein is 32.45 miles. As shown by the hand-written correction on Exhibit 80, this total understated the length of the Wilmington Trail by .06 miles. Exhibit 80 does not include the four shorter trails which are at issue herein. See FOF 117-128, infra. The total length of those trails is 1.54 miles. See FOF 128, infra; Court Ex. 1, ¶14.

g. $32.45 + .06 + 1.55 = 34.06$ miles.

89. Testimony by Plaintiff's expert Stephen Signell established that, conservatively estimated, 1.09 acres of the Forest Preserve was cleared of all trees for each mile of new Class II trail constructed.¹⁰ T. 232:15-233:6, 246:22-247:1, 265:7-9; Ex. 80.

90. Accordingly, the construction of the 34.06 miles of trails at issue will result in the clearing of all trees from 37.1 acres of the Forest Preserve (34.06 x 1.09 = 37.1).

OVER 25,265 TREES HAVE BEEN, OR WILL BE, DESTROYED
BY THE CONSTRUCTION OF THE EIGHT TRAILS AT ISSUE HEREIN

Construction of the **Four Principal Trails**
Will Destroy at Least 24,113 Trees and Clear All
of the Trees on 35.4 Acres of the Forest Preserve

91. The four principal Class II trails at issue in this action are:

- a. Newcomb to Minerva Trail
- b. Seventh Lake Mountain Trail
- c. Gilmantown Trail
- d. Wilmington Trail (a/k/a Cooper-Kiln Trail)

Court Ex. 1, ¶14, Ex. 80.

92. Construction of these four principal trails destroyed, or will destroy,¹¹ at least 6,596 trees of 3" DBH or larger (FOF

¹⁰ 35.4 acres ÷ 32.45 miles = 1.09 acres/mile. See Ex. 80.

¹¹ Approximately 6,417 trees of all sizes that were authorized by DEC to be cut for the construction of the Newcomb to Minerva

97-101, infra), and 17,577 trees of less than 3" DBH (FOF 102-116, infra), for a total of 24,113 trees.

93. For the reasons set forth below (FOF 112-116), the counts of the trees that were cut, and/or authorized to be cut, by DEC for the construction of the four principal Class II trails at issue herein, are "conservative". T. 311:19-22.

94. Likewise, additional trees that were damaged during trail construction, or were exposed to windthrow by the removal of surrounding trees, have died after the initial construction of the trails, or will die later. T. 425:19-426:1, 426:23-428:16, 429:15-430:24, 431:1-432:13; Ex. 103, 107, 108; Ex. 164, p. 176:3-10.

95. For these reasons, the number of trees destroyed by the construction of the Class II trails will actually exceed the numbers counted by the parties.

96. The construction of 32.45 miles for these four trails (Court Ex. 1, ¶14; Ex. 80.) will result in in the clearing of all trees on 35.4 acres of the Forest Preserve (See FOF 89).

Trail have not yet been cut because work on that trail was halted by the injunction issued by the Appellate Division on September 7, 2016. See fn 12, fn 13, infra.

About 6,596 Trees of 3" DBH or Greater Were
Authorized to Be Destroyed for the Construction
of the Four Principal Trails at Issue Herein

97. The parties stipulated that on the four principal trails at issue, 5,881 trees of 3" DBH or greater were cut, or authorized to be cut.¹² Court Ex. 1, ¶14; Exhibit 80.

98. No such number was stipulated for the segment of the Newcomb to Minerva Trail from the Roosevelt Truck Trail to the Boreas River because DEC has not yet undertaken any such count for that segment. T. 238:5-24, 1606:4-14, 1607:15-24; Court Ex. 1, ¶14; Ex. 80. That segment has not yet been cut. T. 241:11-15.

99. The testimony (T. 238:5-241:17) proved that 715 trees of 3" DBH or greater would be cut if that segment is constructed. T. 241:16-17; Ex. 80.

100. The total number of trees of 3" DBH or greater cut or authorized to be cut for the construction of the four principal trails is about 6,596 (5,881 + 715).

101. The exact number of such trees cut may vary slightly, because one of Defendants' witnesses testified that a few authorized trees were not actually cut (T. 1163:2-20), but no

¹² Approximately 1,138 (715 + 423) trees of 3" DBH or larger that were authorized by DEC to be cut for the construction of the Newcomb to Minerva Trail have not yet been cut (T. 235:1-20, 241:11-17, 286:14-22, 287:16-19; Ex. 80; Court Ex. 1, ¶14) because work on that trail was halted by the injunction issued by the Appellate Division on September 7, 2016. T. 1574:6-11.

exact number of trees that had been spared was given, and there is no evidence that this number is significant.

At Least 17,517 Trees of Under 3" DBH Were
Authorized to be Destroyed for the Construction
of the Four Principal Trails at Issue Herein

102. At least 17,517 trees of under 3" DBH were destroyed, or authorized to be destroyed,¹³ for the construction of the four principal trails at issue herein. T. 309:8-17; Exhibit 80.

103. Plaintiff's expert Stephen Signell and his assistant Peter Bauer used a common computer application known as "Fulcrum" on their cell phones to collect much of this data. T. 207:8-210:14, 294:14-295:6, 298:4-10, 307:21-308:5.

104. Mr. Signell also took over 1,100 photos by other means (T. 211:1-15) and he tallied some trees by hand (T. 218:12-16, 229:15-19).

105. Initially, Plaintiff's expert counted all trees of at least one quarter inch in diameter at stump height on two segments of the Class II trails. T. 231:20-232:4, 240:20-241:10. All of these trees were several years old, with visible annual rings. T. 241:2-10.

¹³ Approximately 5,279 (3,101 + 2,178) trees of less than 3" DBH that were authorized by DEC to be cut for the construction of the Newcomb to Minerva Trail have not yet been cut (T. 235:1-20, 242:19-243:7, 286:14-22, 287:22-288:9; Ex. 80; Court Ex. 1, ¶14) because work on that trail was halted by the injunction issued by the Appellate Division on September 7, 2016. T. 1574:6-11.

106. Plaintiff's expert then exercised his professional judgment, relying in part on a U.S. Forest Service research protocol, in determining that 1" diameter at stump height was an appropriate size for conducting tree counts on the Class II trails. T. 253:1-254:8, 255:23-256:1.

107. For the most part, because the trees had already been removed, Plaintiff's expert determined the size of trees at stump height, rather than by their DBH. T. 199:9-14, 213:16-217:2, 217:11-218:19. Because he was not limiting his counts to trees of 3" DBH or more, he had no need to measure their DBH. T. 216:18-217:19.

108. Defendant DEC employed a similar methodology of counting trees at stump height in Balsam Lake Anglers Club v. DEC, where the trees had already been cut at the time of the litigation (Appendix Exhibits C, D), and the courts therein relied on such counts in reaching their decisions. FOF 131-135.

109. Plaintiff's expert, and/or his assistant, personally walked each trail, and counted all of the trees that were cut, or to be cut, on the four principal trails at issue herein. T. 219-309, *passim*.

110. Plaintiff's expert properly used an assistant to collect data for his tree counts, as this is a standard practice in the field, he personally trained the assistant, observed some of his work in the field, field-checked a sample of the

assistant's work, and analyzed all of the collected data himself. T. 199:21-202:14, 203:3-206:20, 530:2-12, 530:22-531:4, 531:19-23. That assistant later testified about how he collected that data and that he had followed the expert's instructions. T. 804:24-806:13, 807:2-13, 839:5-18, 852:11-24, 856:12-857:1.

111. The methodology employed by Plaintiff's expert for counting said trees under 3" DBH was credible. MOL Point V.

112. Additional trees that were damaged during trail construction, or were exposed to windthrow by the removal of surrounding trees, have died after the initial construction of the trails, or will die later, but were not included in the counts. FOF 94, 154, 211.

113. On the 2.2 mile Harris Lake segment of the Newcomb to Minerva Trail, the 11.9 mile long Seventh Lake Mountain Trail, and the 2.96 mile long Wilmington Trail (Court Ex. 1, ¶14), it was not possible for Plaintiff to count "a lot" (T. 251:11-12, 252:1, 307:16) of the trees under 3" DBH that had been destroyed, because the stumps were removed due to the grading of the trails by DEC. T. 250:5-252:2, 293:16-294:3, 305:16-17, 306:23-307:20, 810:13-811:15, 812:1-9, 839:22-840:1, 846:9-18, 853:13-21.

114. The presence of grass 2 to 3 feet high and extensive beds of ferns in many areas of the Seventh Lake Mountain Trail also made it difficult to count the stumps. T. 810:13-811:1, 815:1-15.

115. These trails totaled 17.06 miles in length (Ex. 80), so that on one-half of the 34.06 miles of Class II trail (FOF 88(e)) at issue herein, Plaintiff was unable to count "a lot" of the destroyed trees under 3" DBH.

116. The destruction of stumps by grading, vegetation on the trails, and post-construction loss of trees, all caused a significant undercount of the number of trees destroyed, or to be destroyed, by DEC, in constructing the Class II trails.

Construction of the Four Additional Trails Destroyed at Least 1,152 Trees (Including 303 Trees of 3" DBH or Larger), and Cleared All of the Trees on 1.7 Acres of the Forest Preserve

117. There are four additional Class II trails at issue, regarding which no testimony was given by witnesses, but for which certain pertinent statistics were stipulated to by the parties:

- a. Perkins Clearing - Lewey Lake Trail (see Ex. P)
- b. Steam Sleigh Trail (see Ex. CO)
- c. Mt. Tom East Trail (see Ex. CP)
- d. Taylor Pond to Wilmington Connector Trail (see Ex. M)

Court Ex. 1, ¶14.

118. The four additional trails have a total length of approximately 1.55 miles. See Court Ex. 1, ¶14.

119. A total of 303 trees 3" DBH or larger were approved to be cut for the construction of the four additional trails. See Court Ex. 1, ¶14.

120. There was no testimony that any of the 303 trees were not actually cut.

121. Approximately 195 trees 3" DBH or larger were cut per mile for the construction of the four additional trails. See Court Ex. 1, ¶14.¹⁴

122. This average is consistent with the 203 trees 3" DBH or larger that were cut per mile for the four principal trails. See Ex. 80.

123. For each mile of Class II trail, 1.09 acres of the Forest Preserve was cleared. See FOF 89.

124. The construction of the 1.55 miles of the four additional trails resulted in the clearing of all trees from 1.7 acres of the Forest Preserve. See FOF 89; Ex. 80.¹⁵

125. No evidence was presented at trial regarding the number of smaller trees that was cut on the four additional trails.

126. Averages of 681 trees of all sizes per acre, and 743 trees of all sizes per mile, were destroyed by the construction of the four principal trails. See Ex. 80.

127. Thus, based on these averages, the Court can reasonably infer that the clearing of 1.7 acres for the construction of the

¹⁴ 303 trees ÷ 1.55 miles = 195 trees/mile.

¹⁵ 1.55 miles x 1.09 acres/mile = 1.7 acres.

1.55 miles of the four additional trails resulted in the destruction of at least 1,152 trees of all sizes.¹⁶

128. Based on the numbers set forth above and Court Ex. 1, ¶14, the number of trees destroyed for the construction of the Steam Sleigh ("SS"), Mt. Tom East ("MTE"), and Taylor Pond to Wilmington Connector ("TPWC") Class II trails are:¹⁷

Name	Acres ¹⁸	Miles ¹⁹	Stip. ²⁰ Trees ≥ 3" DBH	Trees ≥ 3" /ac.	Trees ≥ 3" /mi.	Est. ²¹ Total Trees	Total Trees /ac. ²²	Total Trees /mi. ²³
SS	.15	.14	43	287	307	104	681	743
MTE	1.2	1.15	124	103	108	854	681	743
TPWC	.27	.25	133	493	532	186	681	743
Total	1.62	1.54	303	187	197	1144	681	743

¹⁶ 1.55 miles x 743 trees/mile = 1,152 trees; 1.7 acres x 681 trees/acre = 1,158. The difference between these totals may be attributed to rounding.

¹⁷ The 50 foot long Lewey Lake Trail was too small to include in a tally of mileage.

¹⁸ At 1.09 acres per mile. See FOF 89.

¹⁹ From Court Ex. 1, ¶14.

²⁰ From Court Ex. 1, ¶14.

²¹ At 743 trees per mile - see FOF 126, supra.

²² See FOF 126, supra.

²³ See FOF 126, supra.

The Total Number of Trees of All
Sizes Was Substantial and Material

129. In constructing the 34.06 miles of Class II trails at issue herein, DEC destroyed, or will destroy, at least 25,265 trees of all sizes (including about 6,899 trees of 3" DBH or larger), and cleared all of the trees on 37.1 acres of the Forest Preserve. See FOF 91-128, Ex. 80.

130. The number of trees destroyed by the construction of the Class II trails will actually exceed the numbers counted by the parties. FOF 93, 112-116.

131. In Balsam Lake Anglers Club v. DEC, approximately 350 trees of 1" or more in diameter were cut, or to be cut, for the construction of a trail approximately 2.3 miles long. Appendix Exhibit C, pp. 6-10, Appendix Exhibit D, pp. 15-18; Balsam Lake Anglers Club v. DEC, 199 A.D.2d at 853-854.

132. This was approximately 152 trees of that size per mile.

133. This average is vastly exceeded by the 743 trees of that size per mile that have been, and would be, cut for the Class II trails at issue herein. See FOF 126; Ex. 80.

134. In Balsam Lake Anglers Club v. DEC, approximately 78 trees of 3" or more in diameter at stump height were cut, or to be cut, for the construction of a trail approximately 2.3 miles long. Appendix Exhibit C, pp. 6-10, Appendix Exhibit D, pp. 15-18; Balsam Lake Anglers Club v. DEC, 199 A.D.2d at 853-854.

135. This was approximately 34 trees of that size per mile.

136. This average is vastly exceeded by the 203 trees of that size per mile that have been, and would be, cut for the Class II trails at issue herein. See FOF 96; Ex. 80.

137. In Association for the Protection of the Adirondacks v. MacDonald, approximately 2,500 trees of 3" DBH or greater were to be cut for the bobsleigh run, and its return-way, that were at issue therein, which would have had a combined length of approximately 2.25 miles, and cleared 4.68 acres of the Forest Preserve. Appendix Exhibit B, pp. 9-14; Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. at 236.

138. This was approximately 1,111 trees per mile.

139. This average is comparable to the 203 large trees and 742 small trees per mile that have been, and would be, cut for the Class II trails at issue herein, particularly taking into account that the trees cut in this case were undercounted. See FOF 112-116; Ex. 80.

140. Combining Exhibit 80 (Appendix Exhibit E), and the table at FOF 128, the following table summarizes the total numbers of trees destroyed by the Class II trails that are at issue herein:

Type	Ac. ²⁴	Miles ²⁵	Trees ≥ 3" DBH ²⁶	Trees ≥ 3" /ac.	Trees ≥ 3" /mi.	Est. ²⁷ Total Trees	Total Trees /ac.	Total Trees /mi.
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²⁴ At 1.09 acres per mile.

²⁵ From Court Ex. 1, ¶14.

²⁶ From Court Ex. 1, ¶14, plus 715 trees on Roosevelt Truck Trail

Principal	35.4	32.45 +.06	6,596	186	203	24,113	681	743
Add'l	1.62	1.54	303	187	197	1,144	706	482
Total	37.02	34.05	6,899	186	203	25,257	682	742

141. The following table compares the number of trees cut for the Class II trails at issue herein ("Class II") with the number of trees cut in Association for the Protection of the Adirondacks v. MacDonald ("Ass'n") and Balsam Lake Anglers Club v. DEC ("BLAC"), and the total for the two foot trails that were testified about herein (Coney Mountain and Goodnow Mountain) (FOF 197-198, infra):

Case	Ac. ²⁸	Miles ²⁹	Trees ≥ 3" DBH ³⁰	Trees ≥ 3" /ac.	Trees ≥ 3" /mi.	Total Trees	Total Trees /ac.	Total Trees /mi.
Ass'n	4.68	2.25	2,500	534	1,111	NA	NA	NA
BLAC	NA	2.3	78	NA	34	350	NA	152

to Boreas River segment (Ex. 80).

²⁷ At 743 trees per mile - see FOF 126, supra.

²⁸ FOF 90; Appendix Exhibit B (note: cleared area was about 16-20 feet wide (p. 10), so trees per mile is not the best measure for comparing the tree counts in that case to other situations).

²⁹ FOF 90; Appendix Exhibit B, Court Ex. 1, Ex. 80.

³⁰ FOF 100; Appendix Exhibit B, Court Ex. 1, Ex. 80.

Class II	37.02	34.05	6,899	186	203	25,257	681	742
2 Foot Trails	NA	2.25	NA	NA	NA	77	NA	34

142. The tree counts for the Class II trails greatly exceed those for the foot trails at issue in Balsam Lake Anglers Club and the two foot trails for which there was testimony in this case, and are comparable to those in the Association for the Protection of the Adirondacks case.

143. The raw numbers of trees cut for the Seventh Lake Mountain Trail and the Newcomb to Minerva Trail, as well as the system of Class II trails as a whole, greatly exceed those for the foot trails at issue in Balsam Lake Anglers Club and the two foot trails for which there was testimony in this case, and are comparable to those in the Association for the Protection of the Adirondacks case. See MOL Points I.A, I.C.

CONSTRUCTION OF THE CLASS II TRAILS HAS
IMPAIRED THE WILD FOREST LANDS OF THE FOREST
PRESERVE TO AN UNCONSTITUTIONAL DEGREE

144. The Plaintiff's Complaint alleged at ¶98 that construction of the Class II trails destroys the "wild forest nature of the Forest Preserve and is a violation of Article 14". See T. 12:11-13:5; see also MOL Point I.D.

145. There was extensive testimony from the Plaintiff's

witnesses about the impacts to the Forest Preserve as a result of the construction of the Class II trails.

146. The construction of Class II has already resulted in:

a. cutting thousands of trees (FOF 140; Court Ex. 1, Ex. 80);

b. clearing of approximately 34 miles of trails, which equates to approximately 37 acres of cleared land (T. 944:1-19; Court Ex. 1);

c. loss or impairment of old growth trees and forests, which are both rare and "play a remarkable number of important roles in the ecosystem" T. 491:23-24 (T. 491:18-495:10, 502:15-23, 555:21-556:4, 981:16-24; Ex. 84, 87-88);

d. grading, leveling (including hummock, rock and stump removal), and flattening the trail surface with 9,000 pound excavators and other tools "to an extent where there were no longer rocks and logs and other structures that were in the surface of the trail bed or footbed or roadbed" (T. 390:1-6; see T. 215:21-24; 252:1-2, 772:3-17, 773:8, 810:17-24, 811:9-15, 811:1-8, 818:9-14, 821:3-6, 8-13; 823:1-5, 824:13-20, 826:1-11, 826:24, 827:1-13, 831:10-11, 833:17-24, 834:17-24; 840:2-20, 841:14-15, 842:1-14, 1103: 16-20, 1111:12-23, 1176:6-12, 1416:10-24, 1417:1-20, 1418:1, 1586:5-7,

- 1591:5-18; Ex. 151, 153, 154, 156, 157, 158; Ex. 164, p. 115:1-5, 115:12-17);
- e. widening of the trail surface to 9 feet wide or 12 feet wide, and clearing a total width of as much as 20 feet wide, mostly on curves and places where bench cuts were constructed (T. 371:19-20, 372:1-3, 390:3-12, 464:7-8, 768:9-11; 771:10, 1603:5-8; Ex. 95-98, 127);
- f. massive, road-like bridges in the Forest Preserve (T. 381:4-12, 382:1-383:3, 487:16-488:3, 786:22-24; 787:1-4, 830:12-18; Ex. 99, 100, 142, 155);
- g. opening of the forest's tree canopy (T. 391:12-19, 395-399, 400:17-24, 445:9-13, 462:2-13, 1298:22-24; Ex. 102-107);
- h. bench cutting often as much as 30, 40, 50 and 75 feet in length) and filling in steep side slopes (T. 366:6-24, 372:7-373:4, 385:24, 386:1-12, 390:13-17, 783:1-6, 822:15-16, 823:20-24, 16-18, 824:13-20, 825:1-4, 826:1-6 827:16-18, 827:19-24, 828:1-4, 1179:3-24, 1180:1-24, 1181:1-3; Ex. 95-98, 101, 140, 152, 153, 154; Ex. AD, p. 2; Ex. AF);
- i. alteration of the ecosystem due to proliferation of grasses on the trail surface (T. 333:20-24, 365:15-23, 608:23-24, 609:1-22; Ex. 60-62, 76, 95-98);
- j. increased mortality risks to standing trees and other

vegetation remaining along the side of the trail corridor (T. 386:13-387:8, 427:10-428:10, 431:2-14, 432:3-10, 775:20-24, 776:1-14; Ex. 107, 108, 128, 132, 133);

- k. increased risk for, and increased presence of, invasive or non-native plant and animal species within the trail corridor, and loss of native vegetation and animal species (T. 391:6-11, 401:10-19, 403:22-24, 404:1-24, 405:1-19, 436:3-11, 437:5-24, 438:1-24, 439:1-16, 585:12-24, 586:1-24, 587:1-7, 1386:17-19, Ex. 122);
- l. soil erosion problems and the need for erosion control techniques (T. 387:9-24, 388:1-2, 460:7-462:1, 466:9-16, 467:2-12, 19-21, 468:8-24, 477:16-19, 478:10-15, 487:10-15, 480:6-9, 484:11-24, 485:3-9, 487:15-18; Ex. 101, 110-119);
- m. plastic warning signs and direction signs that are similar to highway signs (T. 883:4-5, 885:24, 886:1-2; Ex. 116, 165); and
- n. human disturbances of interior forests (T. 450:2-16, 452:3-6, 508:15-18).

147. These negative impacts, causing impairment of the wild forest nature of the Forest Preserve, occur on each of the Class II snowmobile trails. T. 376:18-377:2, 383:4-6; 384:9-16, 488:2-8; Ex. 164, pp. 138:19-23, 139:1-5.

148. All of the trail construction activities, and the existence and use of the resulting Class II trails themselves, result in habitat changes, habitat fragmentation, and negative effects on the flora and fauna in the Forest Preserve. T. 387:9-388:13, 388:22-389:12, 391:20-24, 394:8-406:2, 421:4-11, 445:9-13, 447:17-21, 449:13-450:1, 452:20-24, 511:7-10, 584:22-587:7, 621:11-14, 1385:19-1386:13, 1395:21-24, 1396:1-4; Ex. 89, 90, 91, 164, p. 178:6-19.

149. Class II trails create an ecosystem that is fundamentally altered and different from the surrounding forests. T. 426:2-427:24, 583:5-15.

150. Along with the removal of trees, the grading of the trail surface, and the removal of tree stumps, rocks, and hummocks, substantially alters the terrain of Class II trails, and changes the character of the forest. T. 366:19-24, 390:7-12, 768:3-4, 774:2-24, 775:1-3, 9-12, 777:7-24, 1111:12-23; Ex. 97, 138, 139, 140.

151. APA employee Walter Linck admitted that tree cutting, grading, and bridge building on Class II trails causes an adverse impact to the wild forest nature of the Forest Preserve. Ex. 164, pp. 116:12-14, 139:3-7, 153:1-3, 174:18-22. In addition, the grading and compaction of the soil "impacts the oxygen content in the soil, the physical structure of the soil, the living creatures in the soil and then, ultimately, that has

certain physical and ecological effects". Ex. 164, p. 117:6-16.

152. The soil erosion problems resulting from the construction and existence of Class II trails causes adverse impacts to the aquatic environment. T. 386:13-388:13, 454:1-3; Ex. 110-119.

153. APA employee Walter Linck stated that the bench cutting for the Class II trails required "making some significant alterations to the terrain". Exhibit 164, p. 41:9-12.

154. As a result of the terrain alterations, trees along the sides of the newly built Class II trails are prone to dying off post-construction due: (i) to construction equipment having damaged their bark cut their roots, (ii) to the canopy being compromised such that there is "greater wind penetration . . . lead[ing] to trees falling over directly or being tipped up and then falling over", (iii) "alterations in the microclimate around the tree . . . lead[ing] to lower water availability and . . . stressing a tree enough to cause it to die". T. 425:19-426:1, 426:23-428:16, 429:15-430:24, 431:1-432:13; Ex. 103, 107, 108; Ex. 164, p. 176:3-10.

155. In many places, due to the opening of the tree canopy, the Class II trails have a grasslands ecosystem and not a forest ecosystem. T. 583:19-22, 600:19-24, 601:1-8, 605:4-20; Ex. 148, 150.

156. Grass is an indicator species of change and alteration

of the forest. T. 605: 4-20; Ex. 76, 148, 150.

157. The Plaintiff's expert's quantitative analytical study of the presence or absence of grass on the Seventh Lake Mountain Trail shows that there are statistically significant, measurable, differences between the amount of grass on Class II trails compared to the amount of grass (or lack thereof) in the Forest Preserve off of the Class II trails. T. 590:606, 604:11-19; Ex. 63-67.

158. Another one of Plaintiff's experts testified that the amount of grass shown by the study to be growing on one of the Class II trails creates a significant impact on the ecology of the forest because "different species are able to basically flow up and down th[e] trail and colonize more of the forest interior environment that they would otherwise not have access to". T. 447:13-16.

159. Defendants' witness agreed that "[e]very transportation corridor that goes through a forest has ecological effects". T. 1375:20-21.

160. Transportation corridors "all have effects on forests. . . from very, very little effect of just a foot trail to a little bit more effect to a heavily used foot trail going to the high peaks. To a little bit higher to maybe - - to a higher impact trail. That extends all the way up to dirt roads, paved roads and four lane roads". T. 1375:23-1376:5.

The Class II Trails are Like Roads
And Have the Impacts of New Roads

161. The creation of the Class II community connector snowmobile trails has resulted in impacts that are similar to the impacts that would result from the construction of new forest roads in the Forest Preserve. T. 366:4-7, 373:10-376:16, 393:8-19.

162. Class II trails are the same size, and have the same composition and nature, as a forest road. T. 393:17-18.

163. Class II trails are wide enough on which to drive an ordinary vehicle or pickup truck or a Jeep. T. 365:15-23.

164. The appearance of Class II trails is road-like, and they do not look like natural features of the forest. T. 366:4-7, 367:22-24, 368:1-11, 373:2-4, 376:18-24, 377:1-2, T. 392:1-20; Ex. 95, 96, 97, 98.

165. Bridges on Class II trails are suitable for use by motor vehicles. T. 382:17-24; T. 383:1-3; Ex. 99, 100, 142, 155.

166. APA employee Walt Linck stated that the bridges on Class II trails are not normal "in a natural setting" in the Forest Preserve. Ex. 164, p. 137:3-6.

167. Defendants' witness Tate Connor opined that the Class II trails did not meet his personal definition of a road (T. 1087:16-1089:6), but his definition did not comport with DEC's official definition and policy for Forest Preserve roads. T.

1412:24-1414:14; Ex. 168. Said policy (Ex. 168) did not contradict Plaintiffs' witnesses' testimony.

Class II Trails Permanently Impair the
Ecological Function of the Forest Preserve

168. On at least two trails - two miles on the Seventh Lake Mountain Trail, and the Newcomb to Minerva Trail - the Class II trails were routed through significant stands of old growth forests, with trees at least 200 years old. T. 494:14-495:10, 500:9-24, 510:14-511:6; Ex. 84, 87-88, 120, 121.

169. "[I]t was detrimental to build a small road through an old growth forest essentially for all the reasons that we have covered already that detail the ecological impacts of similar forest roads. It provides the intrusion of early successional habitat, which is habitat that's of a young age into an older ecosystem type. It provides edge effects and leads directly to the death of numerous old trees that have been living in that place for hundreds of years". T. 501:15-23; see 572:21-573:14.

170. In other areas, it will take decades for the areas to completely recover from the construction of the Class II Community Class II Community connector trails. T. 445:9-13, 446:1-9, 1389:13-17.

171. Grass-dominated habitats and grassy areas on Class II trails will likely persist for decades. T. 605: 21-24; Ex. 76, 148, 150.

172. The Class II trails contribute to the long-term impairment of the ecological function of the Forest Preserve, and this impairment can "persist long after the use of the roads even stops". T. 445:20; see T. 391:20-24, 443:10-445:5, 488:15-489:1, 585:11, 1386:2-22, 605, 1386:20-1387:9, 1389:8-12.

173. The Class II trails have been "transformed into something non-forest". T. 604 (see T. 600).

THE IMPACTS TO THE FOREST PRESERVE ARE NOT
OFFSET BY THE CLOSURE OF CERTAIN ROADS/TRAILS

174. Defendants claimed that DEC had closed 46.39 miles of trails to snowmobile use, and that the purported closures of these trails offset the impacts to the Forest Preserve from the construction of the Class II community connector snowmobile trails. Ex. 29, p. 114.

175. Defendants also touted their claim that the total number of miles of snowmobile trails remained under the statutorily-mandated cap of 848.88 miles for the entire Adirondack Park. T. 941-944, 971-974, 1006-1007; Ex. X, p.36; Ex I, p. 7.

176. However, Defendants' closure of certain roads and trails to snowmobile use does not offset the impacts from the construction of new Class II community connector trails due to the length of time that it will take for the ecosystems on some of the closed roads and trails to recover. T. 510:3-511:6,

511:16-23, 512:5-513:4.

177. Moreover, Defendants could continue "closing" hundreds of other snowmobile trails park-wide in order to proceed with their plan to construct the Class II trail system. T. 973:15-20. Therefore, the mileage cap for the entire Adirondack Park does nothing to limit or prevent the increase in the mileage of Class II trails.

178. An analysis of the habitat fragmentation of the areas where the Class II trails are constructed needs to assess the cumulative "impact on the overall ecosystem". T. 512:23-24.

179. In the habitat fragmentation study prepared by the Defendants' witness, he did not take into consideration the actual use or characteristics, such as age, width or trail tread, of the specific trails and roads that were purportedly closed. T. 1390:11-18.

180. Nearly 24 miles of these trails closed to snowmobiles continue to possess characteristics of wide forest roads that will persist for decades. T. 673-698, T. 1389:13-17; Ex. 29, pp. 113-114.

181. This observation is corroborated by Defendants' witness who testified that though the Pharaoh Lake Trail was closed to motor vehicle use in the mid-1970s, he supervised work to build "turnpikes" on the trail to narrow it and control erosion: this former road, though closed to motor vehicle, never revegetated in

some locations. T. 1223: 3-13, 18-23, 1224: 4-16, 1225: 20-24, 1226: 1-21.

182. Additionally, Defendants' witness testified that a long portion of the Indian Pass Trail, originally built as an industrial forestry skid trail, required turnpiking to narrow the trail and allow for the remaining trail to stabilize. T. 1232:7-19, 1233:6-10, 1234:8-24; Ex. AJ. This former industrial skid trail, though closed to snowmobile use, will take decades to recover. T. 688:8-16.

183. Most of the trails that Defendants claimed had been closed to snowmobile use are still open to the public for other uses. T. 1382:10-11, 1394:6-21; Ex. 29, pp 113-114.

184. Therefore, there was no benefit to the Forest Preserve from those trails' purported closure.

185. The Defendants' expert still considered those trails to be closed "because [his] assessment was about snowmobile traffic" and his forest habitat assessment did not take into consideration that other types of uses of those trails and roads would continue. T. 1382:15-16.

186. If the Defendants' expert had considered the cumulative impacts of the existing (but now closed to snowmobile use) trails and roads and the new Class II community connector trails, his habitat fragmentation analysis would have showed significantly worse results for forest fragmentation. T. 1394:1-1395:7.

187. The Defendants' expert also did not take into consideration the specific forest habitat type within the forest blocks being analyzed. T. 1390:7-10.

188. Where new Class II community connector trails are routed through old growth forests, the closure of roads and trails elsewhere in younger forests cannot offset the impacts to the old growth forests that take more than 150 years or more to grow. T. 490:24, 510:23-24.

189. In other cases, the trails had been previously closed for so long that the closure was merely a paper closure of a route that was no longer used. Therefore, there was no actual net benefit to the Forest Preserve from the paper closure of said routes. T. 510:3-511:6.

190. The table below shows the trails purportedly closed to snowmobile use in the Moose River Plains Wild Forest, their mileage, the uses currently allowed, and the current condition of each (see Ex. 29):

Former Snowmobile Trail	Mileage	Current Allowable Uses	Current Condition	Exhibit Number
Fawn Lake Trail	1.88	Hiking, bicycling	Wide trail, visible tree stumps from recent trail widening, grassy stretches	32
Bear Pond Trail	2.20	Hiking	6-8 foot wide grassy trail	33
Benedict Creek Trail	1.27	Closed (none)	Overgrown, not used as a trail in a long time, bridge washed away	36

Lost Ponds Trail	2.93	Hiking, bicycle	8-10 foot wide corridor, grass, open canopy, trees overgrown in trail beyond Lost Pond estimated at 10-20 years old	46, 47
Butter Brook Trail	3.25	Closed (none)	Bridge out, overgrown, not used as a trail in a long time	37
7 th -8 th Lake Loop	4.88	Partially open to snowmobiles	No data	
Otter Brook Trail	8.9	Hiking	15-foot wide road corridor, grassy,	50
Rock Dam Trail	1.43	Hiking, bicycle	Narrow foot trail	51
Limekiln Lake Loop	2.16	8-10 foot wide, grassy trail	.5 miles will be maintained as foot, bicycle, ski trail	32
Lost Ponds Road	.3	Motor Vehicle Road	Wide motor vehicle road	43
Ice House Pond Trail	.34	Foot trail, maintained for disabled access	Wide trail with special features in places for disabled access, 4-6 wide, surface has been hardened	40
Sly Pond Trail	5.31	Hiking	8-10 foot wide trail	52
Sly Pond Loop	2.7	Hiking	Narrow foot trail	53
Beaver Lake Trail	2.0	10 foot, grassy trail, limited motor vehicle use	10-foot wide foot trail, trail that will accommodate limited motor vehicle use	35
Indian Lake Road	5.26	Foot trail, limited motor vehicle use	Very wide grassy road	41, 42
Sly Pond Road	.25	Foot trail	No data	
Beaver Lake Road	.25	Motor vehicle road	12-foot wide or wider gravel road, open for motor vehicle use	34

Squaw Lake Trail	.5	Hiking, limited motor vehicle use	6-foot wide foot trail, trail that will accommodate limited motor vehicle use	54
Indian Lake Trail	.1	Hiking, limited motor vehicle use	No data	
Helldiver Pond Trail	.35	Foot trail, maintained for disabled access	Wide trail with special features in places for disabled access, 4-6 wide, surface has been hardened	39

T. 673-698; Ex. 29, pp 113-14.

191. The following table summarizes the purportedly closed trails, by current condition:

Condition	Mileage	Use	Percent
Overgrown, closed	4.52	Closed	10
Foot Trail	4.13	Foot Trail	9
Road-like	23.38	Hiking, biking, and remains road-like	50.54
Motor Vehicle	8.31	Motor Vehicles allowed	18
Disabled Access	0.69	Special, wide, hardened trails	0.014
No data	5.23	No data on these trails	11.3

Only 10% of these trails are truly closed.

192. These tables demonstrate that the State's purported closure of certain roads and trails to snowmobile use in the Moose River Plains did not offset the impacts from the construction of new Class II trails because more than 75% of the trails are still being used and will take decades to fully recover, or will not ever recover.

193. In three of the Wild Forest areas where the four

principal new trails are being constructed, the mileage of new snowmobile trails will increase by a total of 6.34 miles once the Unit Management Plans are fully implemented:

- a. Wilmington Wild Forest (Wilmington Trail): + .35 miles (Ex. E, p. 68);
- b. Jessup River Wild Forest (Gilmantown Trail): + 2.4 miles (Ex. F, p. 22); and
- c. Vanderwhacker Mountain Wild Forest (Newcomb to Minerva Trail): + 3.59 miles (Ex. BE, p. 27).

See also T. 1265:4-9, 1267:3-24, 1268:1, 24, 1269:1-24, 1270:1-24.

194. The construction of the Class II trails and related closures of certain other snowmobile trails, has resulted in a net detriment to the wild forest nature of the Forest Preserve.

FOOT TRAILS ARE CONSTRUCTED
VERY DIFFERENTLY FROM CLASS II TRAILS

195. In the Balsam Lake Anglers Club case, the court found that the construction of a 2.3 mile long cross-country ski trail in the Catskill Forest Preserve, and the cutting of 350 trees of all sizes as the result of that work, was not a violation of Article 14, § 1 of the Constitution. FOF 131-135.

196. Cross-country ski trails are similar to hiking trails. T. 732:19-21, 735:9-11.

197. Construction of the 1.25 mile long Goodman Mountain foot trail required cutting only 64 trees. T. 540:12-24, 542:1-12, 552:1-9; Ex. 38, 81.

198. Construction of the one mile long Coney Mountain foot trail required cutting only 13 trees. T. 549:6-15, 552:10-12, 856-12-857:1; Ex. 82.

199. The number of stumps found (trees cut) from the construction of these trails was more than ten times less than the amount of trees cut for the Class II trails. T. 552:13-553:20; see FOF 140.

200. Class II trails are road-like in appearance, comparable in size to forest roads, and have adverse effects on the Forest Preserve comparable to those created by roads. FOF 161-167.

201. Exhibits 126 to 134 are photographs of the T Lake Trail near Piseco, in the Adirondack Forest Preserve, and depict a typical Adirondack foot trail. T. 757:23-758:11, 760:14-22.

202. Exhibits 135 to 143 are photographs of the Harris Lake section of the Newcomb to Minerva Class II trail, and depict typical conditions on the Class II trails. T. 761:6-20, 761:21-24. Exhibit 144, also taken on the Newcomb to Minerva Trail, also depicts a typical condition on a Class II trail. T. 763:6-764:11.

203. As shown by these photographs, foot trails are typically under two feet wide, and meander around trees, stumps

and boulders. T. 767:7-11, 768-14. Although foot trails may sometimes be as wide as eight feet, that is not typical. T. 791:16-22, 792:16-21.

204. By contrast, Class II trails are about 9 feet to 12 feet wide (T. 768:15-769:5), and can have a total cleared width of as much as 20 feet (FOF 146(e)). They do not have the type of width that foot trails typically have. T. 769:10-14, 771:9-10.

205. Foot trails are typically not graded, and rocks are left in the trail. T. 771:18-24. Class II trails are graded. T. 771:11-17. Class II trails do not have the type of trail surface that is characteristic of a foot trail. T. 772:13-17, 773;7-8.

206. Exhibits 126, 128, 129, and 130 also show that rocks and roots are often left in foot trails. Exhibits 135 to 138 show that rocks and roots are not left in the Class II trails.

207. Stumps are typically left in place just a few inches to the side of a foot trail. T. 773:16-23, 787:20-788:1, 788:8-23; Ex. 128, 144. On Class II trails stumps are removed from the trail, which is not consistent with the character and construction of a foot trail. T. 774:4-7, 774:22-775:12; Ex. 139.

208. On foot trails, the rocks are typically left in place, and the trail goes around them. T. 776:23-777:1, 777:9-20; Ex. 126, 129, 130. On Class II trails, the rocks are typically

removed from the trail. T. 779:7-23, 780:3-8; 780:13-24; Ex. 138, 140. Such rocks are rarely moved for the construction of foot trails, because "the trail tread can be accommodated without moving them. T. 781:1-8.

209. Bench cuts of the size used in Class II trail construction "project[] a view of something that doesn't happen in nature." T. 782:10-24. Trails with such bench cuts do not have the character of a foot trail. T. 783:5-9.

210. The twelve foot wide bridges used on the Class II trails are not normal or common on foot trails, where bridges are either not needed, or are likely to be no wider than three feet. T. 784:1-24, 785:13-17, 786:6-8, 786:13-16. Due to the presence of 12 foot wide bridges, typical Class II trails do not have the appearance of a foot trail. T. 786:22-787:4.

211. Foot trails are designed so as to avoid damage to tree roots, in both construction and use of the trails. T. 775:16-776:14; Ex. 128, 132, 133. On Class II trails, tree roots are typically absent after construction or are damaged by construction. T. 776:1-5.

212. Plaintiff's expert on trail construction and Adirondack trails, William Amadon, demonstrated the requisite expertise, qualifications, and experience to testify on these issues. T. 769:15-771:4, 792:5-11; MOL Point VI.

213. Defendants proffered several photographs of wider, heavily constructed foot trails, some of which used construction techniques that were purportedly similar to those found on Class II trails. T. 1042:14-1043:5; Ex. AJ. However, while Defendants claimed that the trails in question "represent a variety of the typical trails" (T. 1056:18-19), they offered no testimony that the actual locations depicted had conditions typical of foot trails in the Forest Preserve. See T. 1061:21-1062:13.

214. To the contrary, these locations were not typical:

(a) Photo 1 - Hurricane Mountain Trail - This photo showed a bench cut on a sidehill trail in a very steep location. T. 1068-1069, 1216-1217. There was no testimony that this technique was common on that trail, or on other foot trails.

(b) Photos 2 and 3 - Pharaoh Lake Trail - These photos depicted a trail that was located on an old jeep road, that had been open to motor vehicles until the mid-1970s. T. 1070:15-17, 1219:10-15, 1223:3-12. It had been built with obsolete construction techniques and had become highly eroded. T. 1072:5-16. Unlike a hiking trail, all of the rocks were removed from it when it was built, contributing to the erosion problem, which necessitated that "turnpiking" be used to restore it. T. 1224:4-16.

The Pharaoh Lake Trail continues to be used as a horse trail, and not just a foot trail. T. 1043:20-1044:2, 1059:1-3.

Horse trails are 8 feet wide, wider than the widest foot trails. See FOF 216, infra.

(c) Photos 4 and 5 - Orebed Trail and Avalanche Lake Trail - These photos depicted trails with wooden ladders built on them to assist hikers on very steep, rocky slopes and rock slides. T. 1073:4-1075:6. Such ladders are not used on snowmobile trails. T. 1227:2-7.

Such ladders are uncommon, existing on only about 13 foot trails in the entire Adirondack Forest Preserve. T. 1411:1-1412:23.

(d) Photo 6 - Indian Pass Trail - This photo depicted another former road, with poor drainage, that required turnpiking to rehabilitate it. T. 1075:10-1076:9, 1077:4-22, 1233:6-13, 1234:8-17. It was variously described as a "logging skid road", "skid trail, "woods road", and "industrial land skid trail". T. 1075:10-23, 1076:13, 1232:17-1233:5.

This trail was not designed and built for hiking use. T. 1077:10-13. It was designed and built for use by log skidders or bulldozers. T. 1233:1-5.

(e) Photo 7 - This photo depicted a water bar on the Cascade Trail. T. 1236:1-4. This is a heavily used trail on the most heavily used peak in the High Peaks, which has grown to 20 or 30 feet wide due to "impacts from use". T. 1236:11-22. This

trail "is wider than the classification" and is in need of work to return it to the desired width. T. 1237:15-1238:4.

215. Under DEC's trail classification scheme (Ex. D, pp. 325-326; T. 1181:4-1183:17), foot trails have a permissible tread width of 14 inches to 26 inches, and a permissible cleared width of three feet to six feet. T. 1189:4-17.

216. Under that same system, horse trails have a permissible tread width from two to four feet, and a permissible cleared width of eight feet. T. 1190:21-24, 1191:13-17.

217. Under that same system, ski trails have a permissible cleared area of six feet. T. 1192:11-13.

218. Class II trails have a permissible tread width of 9 feet, and a permissible cleared area of 9 to 12 feet.

219. The Class II trails do not have the same character or type of construction as foot trails or cross-country ski trails.

220. Class II trails do extensive damage to the wild forest nature of the Forest Preserve. See FOF 144-173.

APA PLAYS A SIGNIFICANT ROLE IN THE ROUTING,
DESIGN, SITING, AND APPROVAL OF THE CLASS II TRAILS

221. All DEC management actions in the Adirondack Forest Preserve must be consistent with the Adirondack Park State Land

Master Plan ("APSLMP"), which is developed and administered by APA. T. 992:4-20, 993:6-9; Ex. X, pp. 1, 8-9.³¹

222. Before DEC may construct a Class II trail, it must be approved by the APA board as part of a unit management plan ("UMP"). T. 916:22-917:10, 992:21-993:5, 1000:13-19, 1181:17-1182:5, 1639:17-24; see Ex. B, p. 17, Ex. X, pp. 9-11, Ex. AA, pp. 14, 17-18.

223. APA reviewed and approved all of the UMPs, or UMP amendments, that authorized the Class II trails. Ex. D, Ex. E, Ex. F, p. 3, Ex. BE.

224. APA and DEC have entered into a memorandum of understanding ("MOU") (Ex. AA) through which they coordinate their Forest Preserve planning work. T. 1005:11-24.

225. Exhibit B, the 2009 Guidance, which controls the building of the Class II trails (Ex. B, pp. 1-4), was adopted as an amendment to the MOU (Ex. AA). T. 923:5-924:5; Ex. B, cover page, p. 17.

226. The MOU requires that, with limited exceptions, DEC may not undertake management activities in the Adirondack Forest Preserve, "unless specifically agreed to by" APA. Ex. AA, p. 17; see also T. 1640:13-24; Ex. B, p. 17, Ex. AA, p. 18.

³¹ The APSLMP expressly abjures any role in making constitutional determinations, "which are properly a matter for the Attorney General and ultimately the courts." Ex. X, p. 1; see also FOF 247. see also Ex. A, p. 4, Ex. AA, pp. 4, 18.

227. Because the 2009 Guidance is part of the MOU, this requirement for approval by APA specifically applies to the construction of Class II trails by DEC. T. 928:15-929:2.

228. The 2009 Guidance, approved by both APA and DEC, created the specifications to which the Class II trails are built. Ex. C.

229. DEC Policy LF-91-2 requires the preparation of a "work plan" for any work on the Forest Preserve "that will result in cutting, removal or destruction of trees". Ex. C, pp. 1-2.

230. No Class II trails may be built without the staff of the APA approving DEC's proposed work plan for each trail. T. 916:22- 917:10, 993:4-9, 1000:20-1001:2, 1526:6-11, 1577:16-1578:22; Ex. B, p. 17, Ex. AA, pp. 17-18.

231. The APA staff goes out in the Forest Preserve with the DEC staff to the sites of proposed Class II trails to help develop the work plans, including locating the routes for the trails. T. 1001:2-15, 1525:20-1526:5.

232. The APA staff reviewed and approved DEC's work plans for all of the trails at issue herein, as well as all modifications to the work plans. Ex. M, P, R, T, AD, AU, AX, AZ, BA, BG, BL, BM, BN, BO, CO, and CP.

233. APA employee Walter Linck (Ex. 164, p. 4:2-3) "work[ed] together with DEC in making and siting and approving the trails" in the Forest Preserve. T. 1633:1-2.

234. Mr. Linck helped DEC to plan the trails, and reviewed DEC's work after it was done. Ex. 164, pp.11:10-21, 20:23-22:5. His work often led to revisions to DEC's plans, including "major to minor routing changes". Ex. 164, pp. 22:6-23:16. He also worked with DEC to mark the individual trees to be cut. Ex. 164, p. 24:3-12. He helped to select the route of the Newcomb to Minerva Trail. Ex. 164, pp. 98:15-99:13.

235. APA played a significant role in the routing, design, siting, and approval of the Class II trails at issue herein.

236. Under the policies, procedures and plans listed above, APA would play a similarly significant role in the routing, design, siting, and approval of any additional Class II trails that are built by DEC in the future. See MOL Point VII.

DEFENDANTS' EMPLOYEES WERE AUTHORIZED TO SPEAK FOR THEM

237. The Court takes judicial notice (see T. 135-136) of the Plaintiff's November 25, 2014 amended Notice to Take Deposition Upon Oral Examination and subsequent correspondence between the counsel for the parties, by which Defendants designated several DEC employees as their representatives for depositions.³²

238. Among the employees of the Defendants who were so designated were the four DEC employees whose deposition

³² Copies of said documents are attached hereto as Appendix Exhibit F.

transcripts were read into the record, being Karyn Richards, Peter Frank, Tom Martin, and Tate Connor. T. 138:9-173:10.

239. DEC employees Karyn Richards (FOF 76) and Peter Frank (FOF 51, 76) are senior executives in DEC who have responsibility for management of the Forest Preserve, including Class II trails. FOF 76. These were the highest-level DEC employees that Plaintiff was permitted to depose, despite Plaintiff having requested to take depositions of the highest authorities within DEC. T. 172:18-173:11; Appendix Exhibit F.

240. Ms. Richards was listed on Defendants' Witness List dated February 22, 2017 as a potential witness on "DEC planning and documents related to Class II . . . trails", indicating that she has speaking authority regarding such matters.³³ The Court takes judicial notice of said Witness List. See T. 135-136.

241. Mr. Frank was presented by Defendants as a trial witness, and was listed on Defendants' Witness List (Appendix Exhibit G), as a potential witness regarding "Forest Preserve lands management, unit management plans and work plans related to Class II . . . trails; discussion of 'timber' in forestry", indicating that he has speaking authority regarding such matters.

242. DEC employee Tom Martin is the Natural Resources Supervisor for DEC's Region 5. T. 160:1-15. He was listed on Defendants' Witness List (Appendix Exhibit G), as a potential

³³ A copy of said Witness List is annexed hereto as Appendix Exhibit G.

witness regarding "unit management plans, work plans and general management related to Class II . . . trails", indicating that he has speaking authority regarding such matters.

243. DEC employee Tate Connor was listed on Defendants' Witness List (Appendix Exhibit G, pp. 1, 6), as both a potential fact and expert witness, on a wide variety of issues regarding siting and constructing Class II trails, as well as "forestry industry practices", indicating that he has speaking authority regarding such matters. He testified at trial on many of these issues, over the course of three days.

244. APA employee Walter Linck is an Associate Natural Resources Planner, whose duties include planning, review and approval of Class II trails. FOF 79-80.; T. 1638:7-12. He was listed on Defendants' Witness List (Appendix Exhibit G, p. 4), as a potential witness regarding "inspection of construction at Seventh Lake Mountain Trail", indicating that he has speaking authority regarding such matters.

245. Mr. Linck was the only APA employee with relevant knowledge of the case whose deposition the Plaintiff was allowed to take, despite Plaintiff having requested to take depositions of the highest authorities within APA. See Appendix Exhibit F; Decision and Order dated October 20, 2015, pp. 3-4; FOF 79.

246. For the foregoing reasons, the Defendants' employees whose partial deposition transcripts were read into the record

(T. 138:9-173:10), and admitted into evidence (Ex. 164), had speaking authority for their employers with regard to the issues on which their transcripts were used at trial. See MOL Point VIII. Cf. T. 1637:4-6 (Linck did not have speaking authority for "general agency issues").

DEFENDANTS' VARIOUS GUIDANCES, GUIDELINES
AND PLANS WERE NOT ADMITTED RELATIVE TO THE
CONSTITUTIONAL ISSUE THAT IS BEFORE THE COURT

247. At trial, the parties entered into the following stipulation. T. 964:12-17, 965:14-18, 1067:2-5, 1067:12-19.

One. Defendants' policies, guidances, guidelines and plans including Exhibits A, B, double A, C, J and I were not offered or admitted as evidence on the question of whether Class II community connector trails individually or collectively or any aspect of the design, siting or construction are constitutional under the New York State Constitution Article XIV, Section 1. T. 964:18-965:1.

Two. Any statements therein as to their constitutionality will not be considered by the Court. T. 965:2-4.

Three. These exhibits were offered and admitted into evidence on the subject of the internal procedures and standards upon which defendants' staff relied, among other items, in their design siting and construction of Class II community connector trails. T. 1067:6-11.

Four. In particular these exhibits are not admitted on the question of whether the policies, procedures and standards contained in the exhibits are constitutional under Article XIV, Section 1 or whether Defendants' employees alleged following of those policies, procedures and standards was constitutional under Article XIV, Section 1. T. 965:6-13.

248. Said documents include, but are not limited to, the 2006 Snowmobile Plan for the Adirondack Park (Ex. A), the 2009

Guidance (Ex. B), the 1991 DEC Policy LF-91-2 "Cutting, Removal or Destruction of Trees ... on Forest Preserve Lands" (Ex. C), the 1986 DEC Policy on Snowmobile Trails (Ex. I), the 1998 DEC Policy "Snowmobile Trails - Catskill Forest Preserve" (Ex. J), the APSLMP (Ex. X), and the 2010 DEC/APA MOU (Ex. AA).

PROPOSED CONCLUSIONS OF LAW

1. Article 14, § 1 of the New York State Constitution (the Forever Wild Clause) prohibits the destruction of timber on the Forest Preserve to a substantial extent or to a material degree. Association for Protection of Adirondacks v. MacDonald, 253 N.Y. 234, 238 (1930). See MOL Point I.A.

2. Article 14, § 1 prohibits any use of the Forest Preserve that would impair its wild forest lands to an unconstitutional extent. Decision and Order, January 25, 2017, pp. 11-12 (Connolly, J.); see MOL Point I.D.

3. From 1885 to 1894, logging was permitted on the Forest Preserve. With the adoption of the Forever Wild Clause, logging was prohibited, as was the destruction of the timber for other purposes.

4. The Forever Wild Clause was added to the Constitution due to concerns that the Legislative and Executive branches were allowing the Forest Preserve to be destroyed.

5. The Forever Wild Clause was proposed at the Constitutional Convention of 1894, approved by the voters, and took effect on January 1, 1895.

6. Article 14, § 1 can only be changed by a vote of the People of the State, as an amendment to the Constitution. See MOL Point IV.

7. The word "timber", as used in the Forever Wild Clause, includes trees of all sizes, and is not limited to trees 3 inches DBH or larger. Accordingly, trees of all sizes are considered to be timber for purposes of Article 14, § 1. See MOL Point I.B.

8. There is no *de minimus* acreage exception to Article 14, § 1. See MOL Point I.E.

9. In interpreting Article 14, § 1, the Court owes no deference to the Defendants. See MOL Point II.

10. Plaintiff's expert, Dr. Philip Terrie, was properly permitted to testify on historical issues related to the adoption of the Forever Wild Clause in 1894, including its meaning, its legislative history, and the concerns that led to its adoption. See MOL Point III.

11. The documents for which Dr. Terrie's testimony laid the foundation were properly admitted into evidence. See MOL Point III.

12. The Defendants are constructing a system or network of Class II community connector snowmobile trails on the Adirondack Forest Preserve. See MOL Point VIII.C.

13. The constitutionality of such trails should be determined both individually and as a whole.

14. The tree counts performed by Plaintiff's expert Steven Signell were properly admitted into evidence. See MOL Point V.

15. The testimony by Plaintiff's expert on Adirondack trails and their construction, William Amadon, was properly admitted into evidence. See MOL Point VI.

16. Defendant Adirondack Park Agency's motion to be dismissed from the case is hereby denied. See MOL Point VII.

17. The deposition testimony of five of Defendants' employees was properly admitted into evidence. See MOL Point VIII.

18. Defendants' various guidances, plans, rules, policies, and procedures are not relevant to the constitutionality of the Class II trails. See FOF 247-248; MOL Point II.

19. The number of trees cut for the Class II trails, individually, and as a whole, was substantial and material. See MOL Point I.C.

20. The construction of the Class II trails, individually, and as a whole, is an improper use that has impaired the wild

forest lands of the Forest Preserve to an unconstitutional extent. See MOL Point I.D.

21. The construction of the eight Class II community connector snowmobile trails at issue herein, which are part of a planned system or network of such trails, violated Article 14, § 1 of the New York State Constitution.

22. The construction of the system of Class II community connector snowmobile trails is prohibited by Article 14, § 1 of the New York State Constitution.

23. The construction of the Seventh Lake Mountain Class II community connector snowmobile trail violated Article 14, § 1 of the New York State Constitution.

24. The construction of the Newcomb to Minerva Class II community connector snowmobile trail violated Article 14, § 1 of the New York State Constitution.

25. The construction of the Wilmington (a/k/a Cooper Kiln) Class II community connector snowmobile trail violated Article 14, § 1 of the New York State Constitution.

26. The construction of the Gilmantown Class II community connector snowmobile trail violated Article 14, § 1 of the New York State Constitution.

27. The construction of the Mt. Tom East Class II community connector snowmobile trail violated Article 14, § 1 of the New York State Constitution.

28. The construction of the Taylor Pond to Wilmington Connector Class II community connector snowmobile trail violated Article 14, § 1 of the New York State Constitution.

29. The construction of the Steam Sleigh Class II community connector snowmobile trail violated Article 14, § 1 of the New York State Constitution.

30. Plaintiff is a "party" as defined in CPLR § 8602(d)(iii), and is a "prevailing party" as defined in CPLR § 8602(f). Defendants are the "state" as defined in CPLR § 8602(g).

31. The "position of the state", as defined in CPLR § 8602(e), was not "substantially justified". CPLR § 8601(a).

RELIEF GRANTED

1. Pursuant to Article 14, § 5 of the Constitution, Defendants are hereby enjoined from constructing, in the Forest Preserve, Class II Community Connector snowmobile trails, as defined in the 2009 Guidance (Exhibit B).

2. Pursuant to Article 14, § 5 of the Constitution, Defendants are hereby enjoined from constructing, in the Forest Preserve, snowmobile trails having similar characteristics, or requiring destruction of trees in amounts similar to, the Class II Community Connector snowmobile trails, as defined in the 2009 Guidance (Exhibit B).

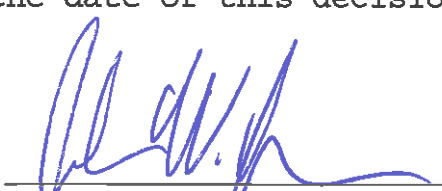
3. Pursuant to Article 14, § 5 of the Constitution, Defendants are hereby ordered to promptly close to snowmobile use the Class II Community Connector snowmobile trails which have been built to date (Court Exhibit 1, ¶14), and are further ordered to rehabilitate the damage done to the Forest Preserve so far by the construction of said Class II trails, including, but not limited to, replanting trees and other native vegetation on said trails, removing all bridges and signs, restoring the natural contours of the land, within one year of the date of this decision.

4. Plaintiff is awarded the costs and disbursements of this action.

5. Plaintiff is awarded its legal fees and other expenses pursuant to the New York State Equal Access to Justice Act, CPLR Article 86.

6. Plaintiff shall submit its bill of costs, together with an itemized statement of its legal fees and expenses pursuant to CPLR § 8601(b), within 60 days of the date of this decision.

Dated: July 31, 2017



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