

# **APPENDIX**

# **EXHIBIT A**

STATE OF NEW YORK.

---

IN CONVENTION

DOCUMENT

No. 63.

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REPORT

OF COMMITTEE ON FOREST PRESERVES.

To the Constitutional Convention:

The Special Committee on State Forest Preservation, which was directed to consider and report what, if any, amendments to the Constitution should be adopted for the preservation of the State forests, respectfully report:

That your committee has had presented to it many valuable arguments and statements bearing upon the matter, and, after careful consideration, has unanimously reached the conclusion that it is necessary for the health, safety and general advantage of the people of the State that the forest lands now owned, and hereafter acquired by the State, and the timber on such lands, should be preserved intact as forest preserves, and not under any circumstances be sold.

Your committee is further of the opinion that, for the perfect protection and preservation of the State lands, other lands contiguous thereto should, as soon as possible, be purchased or otherwise acquired, but feel that any action to that end is more properly within the province of the Legislature than of this Convention.

Your committee recommends the adoption by this Convention of the following as an amendment to the Constitution, viz.:

Doc. No. 63.

2

"The lands of the State now owned, or hereafter acquired, constituting the forest preserves, shall be forever kept as wild forest lands. They shall not, nor shall the timber thereon, be sold."

Dated August 23, 1894.

DAVID McCLURE,  
Chairman.



THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK  
ALBANY, NY 12230

New York State Library

Date: January 10, 2017

To Whom It May Concern:

I do hereby certify that I have caused to be compared the annexed photocopy of:

1894 NYS CONVENTION DOCUMENT NO. 63

with the original of such record now on file in the New York State Library, and that such copy so hereto annexed is a true copy of said original.

IN WITNESS WHEREOF, I have hereunto  
set my hand in the New York State Library in  
the City of Albany, this 12 day of JUNE 2017.

DOUGLAS O'CONNOR

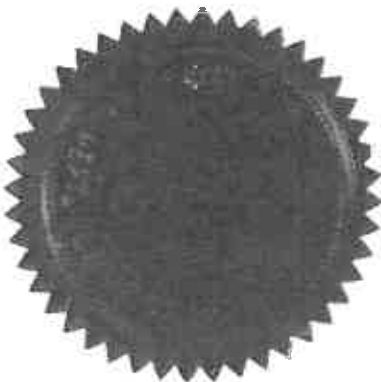
Name

Douglas O'Connor

Signature

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Title



## **EXHIBIT B**



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IN THE  
**Court of Appeals**  
OF THE  
STATE OF NEW YORK

Attorney General for the Protection  
of the Public Health  
vs. [Redacted]

Commissioner  
of Health  
City and County of New York  
Independent and  
in the Division of Health  
of the Government  
of the State of New York  
Appellate

**STATEMENT UNDER RULE 291**

This action began by a submission  
statement of facts against  
upon the parties above named pursuant  
to the provisions of Sections 536-541  
of the Code of Civil Procedure  
which was duly executed and  
filed in the office of the Clerk of Albany County  
and submitted to the Appellate Division of the  
Supreme Court, Third Department, November  
11, 1929.

The names of the original parties herein are  
as above. There has been no change of parties  
since this action was begun.

# Supreme Court of New York

APPELLATE DIVISION—THIRD DEPARTMENT.

THE ASSOCIATION FOR THE PROTECTION  
OF THE ADIRONDACKS and JOHN G.  
AGAR,

Plaintiffs,

against

ALEXANDER MACDONALD, Conservation  
Commissioner of the State of New  
York, and WILLIAM G. HOWARD, Su-  
perintendent of Lands and Forests,  
in the Division of Lands and Forests,  
of the Conservation Department  
of the State of New York.

Sections 1546-54

The Association for the Protection of the  
Adirondack Park, an unincorporated  
association organized and existing under  
the laws of the State of New York, and  
John G. Agar, a person of full age,  
plaintiffs above named, versus  
Alexander Macdonald, Conservation  
Commissioner of the State of New York and Wil-  
liam G. Howard, Superintendent of Lands and  
Forests in the Division of Lands and Forests of  
the Conservation Department of the State of New  
York, each of full age, the defendants above  
named, being parties to a question in differ-  
ence between them hereinafter stated, do hereby refer  
upon the following case containing a statement of  
the facts upon which the controversy between them

4 depends and, pursuant to Sections 510-548 of the Civil Practice Act, do hereby submit the same to the above named Court and pray the decision and judgment of this Honorable Court upon the question in dispute and the controversy between them as herein stated.

### Statement of Facts

5 The Association for the Protection of the Adirondacks is a domestic corporation duly organized and existing under and by virtue of the Membership Corporations Law of the State of New York and John G. Agar, President thereof, is a citizen of this State residing at No. 944 Fifth Avenue in the Borough of Manhattan, City, County and State of New York. Alexander Mac-Donald is the Conservation Commissioner of the State of New York and as such is the head of the Conservation Department of the State Government. The said Conservation Department has the care, custody and control of all state lands at any time herein mentioned, and has the power generally to manage the same. William G. Howard is the Superintendent of Lands and Forests and as such is the head of the Division of Lands and Forests of the Conservation Department. As such Superintendent, subject to the supervision, direction and control of the Conservation Commissioner, he is charged with the care, custody and control of all State lands at any time herein mentioned and has the power generally to manage the same.

6 Section 10 of Chapter 417 of the Laws of 1929, which was amended by Chapter 417 of the Laws of 1930, and reads as follows:

Chapter 417: "An Act to provide for the construction and maintenance of a bobsleigh run or slide on State lands and other lands in the town of North Elba, Essex County, and making an appropriation for preparing the way therefor. 7

Became a law April 9, 1929, with the approval of the Governor, Passed, three-fifths being present.

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. To induce the people to visit and enjoy the wild forest lands of the State, to stimulate public interest in preserving them for the scenic and recreational purposes for which they were set apart as wild forest lands, and thereby to foster a desire among the people that the maintenance of the same shall be

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...additional lands  
...in which the necessary equipment  
...vided without cost to the State  
...of North Elba, Essex County, on the  
...slope of North Elba. The commissioner  
...shall determine the course of such run or  
......and to clear the land necessary therefor.  
...No wider nor longer clearing shall be made  
...than is actually needed for such run or slide,  
...and such work shall be carried on in a manner  
...so far as practicable, that also will remedy  
...any conditions which tend to hamper the  
...growth of the adjacent wild forest lands. The  
...work of such clearing shall be done by direct  
...employment of labor and direct purchase or  
...rental of machinery and implements by the  
...commissioner. When such clearing is com-

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pleted, the commissioner may prepare plans for and construct and run such run or slide at a cost of not exceeding seventy-five thousand dollars and may let the necessary contract or contracts therefor. When completed, the run or slide shall be maintained during the winter season, for the use and pleasure of the public under the direction of the conservation department and subject to its rules. The sum of two thousand dollars (\$2,000.00)

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no much thereof as may be needed, is hereby appropriated for clearing the land for such run or slide and return way, payable from the State Treasury on the audit and warrant of the comptroller and the certificate of the conservation commissioner. In the discretion of the comptroller, such moneys may be advanced to such commissioner in lump sums from time to time on his requisition and upon his voucher audited as provided in section four-a of the State Finance Law. The vouchers for expenditures therefrom by the commissioner also shall be filed with the comptroller and be subject to his audit as provided in such law.

Section 2. This act shall take effect immediately.

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State of New York,  
Department of State.

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

Edward J. Flynn,  
Secretary of State

Under date of June 4, 1929, the Attorney General of the State of New York rendered to the defendant Alexander MacDonald as Conservation Commissioner, an opinion regarding the constitu-

tionality of Chapter 417 of the Laws of 1929, which 18  
opinion reads as follows:

"June 4, 1929.

Hon. Alexander MacDonald  
Conservation Commissioner  
Albany, New York.

In the Matter of  
The Constitutionality of Chapter 417  
of the Laws of 1929.

Dear Sir:

While Chapter 417 of the Laws of 1929 provides for a certain amount of clearing for the route of the proposed Catskill run or slide, nevertheless this is only incidental to the main purpose of the act, which is to provide further opportunities for the recreational uses of the forest preserve by the people of the State.

Many of my predecessors have rendered opinions construing Section 7 of Article VII of the State Constitution, being the section in relation to the forest preserve and I observe in these opinions a growing tendency to recognize the recreational uses of the forest preserve and to so construe the constitutional section as not to prevent access to those areas which the State seeks to preserve for the benefit of its people.

Unfortunately there has been little or no judicial discussion of the questions involved and I regard your inquiry as affording an excellent opportunity for the obtaining of a judicial interpretation of this section of the constitution.

I have recently attended a conference with you at which were present the proponents of the construction of the proposed Catskill slide and also Mr. John G. Agar, President of the Association for the Protection of the

16 Adirondacks. At this conference it was agreed by all present that the construction of Chapter 417 by the courts was desirable in the public interest, and I am favored under date of May 29th with a communication from Mr. Agar as President, enclosing a resolution adopted by the Board of Trustees of the Association for the Protection of the Adirondacks, at a meeting held on Tuesday, May 29th, 1929, reading in part as follows:

17 Resolved, that the President be authorized to write to the Attorney General and the Association for the Protection of the Adirondacks, believing that Chapter 417 of the Laws of 1929 is unconstitutional insofar as it applies to State lands in the Forest Reserve, respectfully asks him to render aid, guided by the request of the Conservation Commission, as to the constitutionality of said act. If the Attorney General is of the opinion that the Act is unconstitutional, the President is directed to test the question in the Courts.

The Constitution itself presents a clear method of bringing this matter into question. Section 7 of Article VII reads in part as follows:

18 A violation of any of the provisions of this section may be restrained at the suit of the people or with the consent of the Supreme Court in Appellate Division on appeal to the Attorney General at the suit of any citizen.

Therefore, for the purpose of bringing this matter before the Courts I advise you that in my opinion it is proper for you to proceed under Chapter 417 of the Laws of 1929 until restrained by appropriate action.

Very truly yours,

(Signed) HASTINGS WARD,  
Attorney General

THIRD: The plaintiffs herein duly applied for 19  
 an order of this Court conferring its consent that  
 they or either of them institute suit for the pur-  
 pose of restraining the Conservation Commis-  
 sioner from proceeding to construct and/or main-  
 tain a bobsleigh run or slide on state lands in the  
 forest preserve in the Town of North Elba, Essex  
 County, New York, on the ground that Chapter  
 417 of the Laws of 1929 purporting to confer  
 authorization therefor on the said Conservation  
 Commissioner is unconstitutional and void as in  
 violation of Section 7 of Article VII of the Con-  
 stitution of this State. The Attorney General 20  
 duly appeared in such proceeding on behalf of  
 the defendant, Alexander MacDonald.

An order of this Court was duly entered herein  
 on the 21st day of June, 1929, and reads as fol-  
 lows:

"The Association for the Protection of the  
 Adirondacks and John G. Agar having made  
 application, pursuant to the provisions of  
 Section 7 of Article VII of the Constitution  
 of this State, on notice to the Attorney Gen-  
 eral, for an order of this Court conferring its  
 consent that the Association for the Protec- 21  
 tion of the Adirondacks and John G. Agar, its  
 President, or either of them, institute suit  
 for the purpose of restraining the Conserva-  
 tion Commissioner from proceeding to con-  
 struct and/or maintain a bobsleigh run or  
 slide in the Town of North Elba, Essex  
 County,

Now, on reading and filing the notice of  
 motion, dated June 12, 1929, the affidavit of  
 Bertram F. Willcox, sworn to June 12, 1929,  
 with admission of due and timely service of  
 both of said papers on the Attorney General,  
 and the notice of appearance and consent to  
 the entry of such order executed by the Attor-  
 ney General of the State of New York; and  
 on motion of Schurman, Wiley & Willcox,



22

attorneys for The Association for the Protection of the Adirondacks and John G. Agar,

23

It is Ordered, that the consent of this Court be, and hereby is, conferred that the Association for the Protection of the Adirondacks and John G. Agar, its President, or either of them, institute suit for the purpose of restraining the Conservation Commissioner from proceeding to construct or maintain a toboggan run or slide, including a way for returning such sleighs to the top, in the Town of North Elba, Essex County, on the ground, among others, that Chapter 417 of the Laws of 1929 purporting to confer authority therefor is unconstitutional and void in that it violates the provisions of Article XIII, Section 7, of the Constitution of this State, and in the absence of other legal remedy or remedy in the premises, as said Association and/or John G. Agar may be advised.

(Signed) John S. Higgins,  
Clerk."

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A copy of the said order was duly served on the said Attorney General of the State of New York Bureau. On July 2, 1929 the defendant Alexander Macdonald, Conservation Commissioner, wrote to the defendant William G. Howard, Superintendent of the Division of Lands and Forests of the Conservation Department, a letter which reads as follows:

July 2, 1929

Wm. G. Howard, Superintendent,  
Division of Lands and Forests,  
Conservation Department,  
Albany, N. Y.

Dear Sir:

You are aware that I have received from the Attorney General an opinion relative to Chapter 417 of the Laws of 1929, which pro-

vides for clearing land for a bob-sled run on State land in the Forest Preserve on the westerly slope of the Sentinel Range in the Town of North Elba, Essex County. 25

You will, therefore, please arrange to have the land cleared for the bob-sled run as laid out by the recent survey in which Mr. Merrill participated, such clearing to consist of the cutting of whatever trees will have to be removed to provide for the construction of the bob-sled run.

Very truly yours,

(Signed) ALEXANDER MACDONALD  
Commissioner. 26

FIFTH: Pursuant to such letter, the defendant, William G. Howard, has selected a site for the proposed bobsleigh run or slide and return way. The site so selected is a mountain on the westerly slope of Sentinel Range, as indicated on the map (upper right hand corner thereof) hereto annexed and made a part hereof as Exhibit "A". The said defendant has further surveyed a route on the said site for the proposed bobsleigh run or slide and also for the return way. The route for the proposed bobsleigh run or slide is indicated by a solid black line on the said Exhibit "A" and the return way is indicated thereon by a dotted black line. The said bobsleigh run or slide does not follow or lie on any existing road or trail, but the return way or go-back road, from its foot to approximately the point where it crosses the bobsleigh run or slide, follows a former road now used as a trail and thereafter, in large part, follows an abandoned lumber road. 27

If constructed, the proposed bobsleigh run or slide will be approximately one and one-quarter miles ( $1\frac{1}{4}$ ) long and six and one-half feet ( $6\frac{1}{2}$ ) in

28 width, and it will be necessary to clear additional land on either side of the said bobsleigh run or slide so that the width thereof where its course is straight will be approximately sixteen feet (16) and where such course curves the width will be approximately twenty feet (20). The return way will be either a roadway approximately one mile long and eight feet (8) wide up which the bobsleighs will be hauled to the top of the slide by tractor, or a line approximately five-eighths (5/8) of a mile long and six feet (6) wide up which the bobsleighs will be hauled by a cable. This latter plan would require the installation of an electric or gas engine motor at one end of the line. At the present time electricity is not available at the site chosen.

In due course the said defendants will, unless restrained, cause the land to be cleared for the proposed bobsleigh run, slide and also for the said return way and will cut and remove certain trees as hereinafter set forth.

30 The Third Olympic Winter Games are to be held in January or February of 1932 and the bobsleigh run or slide and return way will, if constructed, be used in connection with such Third Olympic Winter Games. Such slide and return way will also be available for general use.

The art of bobsleighting is highly technical. The sleigh itself is about six hundred pounds in weight and will accommodate from five to eight persons. The person in front, assisted by the person in rear, starts and guides the bobsleigh. Those sitting between these two do not participate in the operation of the sled but are passengers who follow the directions of the two leaders as to balance and the like. The speed obtained by a bobsleigh in its descent from the summit of the slide is often in excess of sixty (60) miles per

hour. This sport is in vogue in Switzerland and in other European countries, where winter sports are practiced, but there is no bobsleigh run or slide and return way, at least of the projected type, in the United States. 31

The said bobsleigh run or slide and return way will, when, and if, constructed lie and be situated wholly on State lands in the forest preserve. Such lands are part of the Adirondack Park within the Blue Line and are located in the Town of North Elba, Essex County, in this State.

SIXTH: The mountain selected as the site for the proposed bobsleigh run or slide and return way has an elevation of approximately two thousand four hundred feet (2,400) above sea level. It is a part of the Sentinel Range, but like other nearby spurs, has no independent name. It lies approximately five (5) miles northeast of the Village of Lake Placid and about fifteen (15) miles from the Village of Saranac Lake, and its base on the west is bounded by the so-called Wilmington Notch Highway, also known as New York State Highway No. 8, contiguous to which is the west branch of the Ausable River. 32

In constructing the said bobsleigh run or slide, it will be necessary to blast away approximately fifteen large boulders and in addition the ends of three or four ledges of rock will have to be blasted out. This will entail the removal by blasting of about fifty (50) cubic yards of rock. There will be many small cuts and fills in the course of said bobsleigh run or slide, but it is anticipated that no wooden trestles need be constructed. 33

SEVENTH: The mountain on which it is proposed to construct the said bobsleigh run or slide and return way is wooded with spruce, hemlock, bal-

34 sam, maple, birch, beech, poplar, cherry, ash and elm. In order to construct the said bobsleigh run or slide, it will be necessary to cut down and remove from the said mountain the following timber:

LIVE TIMBER

D.B.H.	Species	New				Pop			
		Spruce	Maple	Birch	Beech	Pop	Cherry	Ash	Elm
3 in.	21	70	210	107	10	18	20		1
4 in.	27	51	182	85	12	21	20	1	2
5 in.	25	41	147	51	5	10	16		
6 in.	23	30	100	30	13	6	4		2
7 in.	19	21	70	12	12	2	5	1	
8 in.	16	15	50	11	13	5	2		
9 in.	11	10	40	11	11	1	1		
10 in.	7	7	28	7	10	1	1	1	1
11 in.	5	5	20	5	5	1			
12 in.	3	3	12	3	3				
13 in.	2	2	8	2	2				
14 in.	1	1	4	1	1				
15 in.	1	1	4	1	1				
16 in.	1	1	4	1	1				
17 in.	1	1	4	1	1				
18 in.	1	1	4	1	1				
19 in.	1	1	4	1	1				
20 in.	1	1	4	1	1				
21 in.	1	1	4	1	1				
22 in.	1	1	4	1	1				
23 in.	1	1	4	1	1				
24 in.	1	1	4	1	1				
25 in.	1	1	4	1	1				
26 in.	1	1	4	1	1				
27 in.	1	1	4	1	1				
28 in.	1	1	4	1	1				
29 in.	1	1	4	1	1				
30 in.	1	1	4	1	1				
Total	183	15	310	507	121	100	100	4	7

A total of 1,710 trees.

DEAD TIMBER

D.B.H.	New				Pop			
	Spruce	Maple	Birch	Beech	Pop	Cherry	Ash	Elm
3 in.								
4 in.								
5 in.								
6 in.								
7 in.								
8 in.								
9 in.								
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26 in.								
27 in.								
28 in.								
29 in.								
30 in.								
Total	1	1	1	1	1	1	1	1

A total of 10 trees.

The symbol D. B. H. in the above tables means diameter breast high. 37

The quantity of timber so necessary to be cut is as follows:

## LIVE TIMBER.

Species	Cords	Board Feet
Spruce	6.18	
Hemlock	.70	
Balsam Fir	4.76	
Maple	6.39	6,780
Birch	6.34	13,950
Beech	4.54	4,180
Poplar	1.13	160
Cherry	1.31	60
Ash	.67	60
Elm	.16	50
Total	31.46	25,240

38

## DEAD TIMBER.

Birch	920
Total	920

In order to construct the proposed return way or go-back road, it will be necessary to cut and remove, in addition to the above, approximately fifty per centum of a like amount and kind of trees.

The stumpage value of the timber contained in these trees is estimated at ten dollars (\$10.00) per thousand for hardwoods and five dollars (\$5.00) per cord for softwoods, so that the trees to be removed have a value on the stump of \$418.90. Approximately \$210.00 should be added to this figure as representing the stumpage value of trees to be cut for the return way or go-back road. In arriving at such value in dollars, consideration is given to the remoteness of the said mountain from railhead and the cost necessarily involved of transporting such wood thither.

The proposed site was lumbered for softwood timber about 18 years ago, some portions of the

40 site being cut heavily where the timber was easy to get, with more timber left on the rough and rocky portions. Hence most of the softwood now on the site is second growth. There is a scattering stand of first growth hardwoods. The timber in these hardwood trees is not of the best quality.

All of the said mountain on which it is proposed to construct the said bobsleigh run and return way constitute a part of the Adirondack Park and lies wholly within the so-called Blue Line. It is near the recreation and health centers of the Adirondack Park.

41. In 1885, prior to the creation of the Forest Preserve, the State owned 681,374 acres within the confines of the Adirondack Forest Preserve.

In 1894, after the creation of the Adirondack Park, there were within said park 551,693 acres owned by the State and owned by the State outside such park 120,526 acres, making a total of 672,219 acres within the Adirondack Forest Preserve.

42. In 1922, there were inside the Adirondack Park 1,000,514 acres and outside such Park 350,529 acres owned by the State, making a total of 1,351,043 acres within the Adirondack Forest Preserve.

The total stumpage of the Forest Preserve is presently estimated at 9,100,000 M board feet and the trees which would have to be cut to clear the way for the proposed bobsleigh run or slide and return way would, if converted into lumber, produce approximately 60 M board feet. The construction of the proposed slide will necessitate the removal of trees from 266 acres for the slide and from approximately 2 acres for the return way.

NINTH: It is possible to construct and maintain a bobsleigh run or slide and return way on lands privately owned and situated elsewhere. One such site is located on Mt. Jo, north of Clear Lake, near Adirondack Lodge, in North Elba Township, Essex County, of this State. This site is shown on Exhibit "A" (lower right center thereof). Chapter 23 of the Laws of 1929 authorizes the construction of a bobsleigh run or slide and return way on lands privately owned in said North Elba township, and a route for such bobsleigh run or slide has been tentatively surveyed. Such route is indicated by a solid black line on the said Exhibit "A", with the return way shown by a dotted black line. All of Mt. Jo is privately owned and hence does not constitute a part of the Forest Preserve.

The site at Mt. Jo is not so accessible to the public as the site heretofore referred to in Article "Fifth" hereof, in that it is located over nine miles by the most direct road from the Village of Lake Placid, and about nineteen miles from the Village of Saranac Lake. Access thereto is by a dirt road, in fairly good condition most of the time, 5.2 miles long branching off from the Cascade Lakes Highway at a point 3.8 miles from the Village of Lake Placid. The Cascade Lakes Highway is at present not a State road but is now being converted into a State highway. The dirt road leading to the said Mt. Jo site is a town highway and is not owned by the State, nor is it kept open by snow plows in the winter. It is estimated that it would be fifty per cent more costly, and require more difficult construction work to build a slide and return way at Mt. Jo.



**Question.**

The question submitted to the Court upon the foregoing statement of facts is as follows:

Is Chapter 437 of the Laws of 1929 unconstitutional and void in that it violates the provisions of Section 7 of Article VII of the Constitution of this State?

If this question is answered in the affirmative, then a judgment is to be rendered in favor of the plaintiffs against the defendants, ordering and decreeing that the defendants, and each of them, their agents or employees, be permanently enjoined and restrained from conducting and maintaining a hot-air balloon run or slide, including a way for returning such flights to the top, on State lands in the forest preserve on the ground that the statute purporting to confer authorization therefor is unconstitutional and void.

The Association for the Protection  
of the Adirondacks.

By John H. Allen, President,  
John G. Allen,

Plaintiffs.

Alfred W. MacDonell,  
Conservation Commissioner.

Warren G. Howan,  
Superintendent of the Divi-  
sion of Lands and Forests,  
State Conservation De-  
partment.

Defendants.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 6th day of November, 1929, before me personally came JOHN G. AGAR, to me known and being by me duly sworn, did depose and say that he resides in New York City, New York; that he is the president of the Association for the Protection of the Adirondacks, the corporation described in and which executed the foregoing agreed case and submission of controversy; that said corporation has no corporate seal and that he signed his name thereto by order of the board of directors of said corporation.

50

FRANCIS R. LIVESY,  
Notary Public, New York County.

State of New York, }  
County of New York, } ss.:

JOHN G. AGAR, being duly sworn, says that he is the President of the Association for the Protection of the Adirondacks, which Association is one of the parties to the foregoing agreed case and submission of controversy; that the controversy is real and the submission is in good faith for the purpose of determining the rights of the parties, and that this affidavit is made on behalf of said Association.

51

JOHN G. AGAR.

Sworn to before me this }  
6th day of November, 1929. }

FRANCIS R. LIVESY,  
Notary Public, New York County.

52

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 6th day of November, 1929, before me personally came JOHN G. ADAM, to me known and known to me to be one of the persons described in and who executed the foregoing agreed case and submission of controversy, and he duly acknowledged to me that he executed the same for the purposes therein set forth.

53

FRANCIS E. LYNCH,  
Notary Public, New York County.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

JOHN G. ADAM, being duly sworn, says that he is one of the parties to the foregoing agreed case and submission of controversy; that the controversy is real and the submission is in good faith for the purpose of determining the rights of the parties.

54

JOHN G. ADAM

Sworn to before me this }  
6th day of November, 1929. }

FRANCIS E. LYNCH,  
Notary Public, New York County.

STATE OF NEW YORK, }  
 COUNTY OF ALBANY, } ss.

On this 8th day of November, 1929, before me personally came ALEXANDER MACDONALD, Conservation Commissioner of the State of New York, to me known and known to me to be such Conservation Commissioner and to be one of the persons described in and who executed the foregoing agreed case and submission of controversy, and he duly acknowledged to me that he executed the same for the purposes therein set forth.

56

ROSINE M. MULLARKEY,  
 Notary Public, Albany County.

STATE OF NEW YORK, }  
 COUNTY OF ALBANY, } ss.

ALEXANDER MACDONALD, being duly sworn, says that he is the duly appointed and acting Conservation Commissioner of the State of New York and is one of the parties to the foregoing agreed case and submission of controversy; that the controversy is real and the submission is in good faith for the purpose of determining the rights of the parties.

57

ALEXANDER MACDONALD

Sworn to before me this }  
 8th day of November, 1929. }

ROSINE M. MULLARKEY,  
 Notary Public, Albany County.

58

STATE OF NEW YORK, }  
COUNTY OF ALBANY, } SH.

On this 6th day of November, 1929, before me personally came WILLIAM G. HOWARD, Superintendent of the Division of Lands and Forests of the Conservation Department of the State of New York, to me known and known to me to be such Superintendent of the Division of Lands and Forests and to be one of the persons described in and who executed the foregoing agreed case and submission of controversy, and he duly acknowledged to me that he executed the same for the purposes therein set forth.

59

ROBERT M. MURPHY,  
Notary Public, Albany County.

State of New York,  
County of Albany.

WILLIAM G. HOWARD, being duly sworn, says that he is the duly appointed and acting Superintendent of the Division of Lands and Forests of the Conservation Department of the State of New York and is one of the parties to the foregoing agreed case and submission of controversy; that the controversy is real and the submission is in good faith for the purpose of determining the rights of the parties.

WILLIAM G. HOWARD,  
Sworn to before me this  
6th day of November, 1929.

ROBERT M. MURPHY,  
Notary Public, Albany County.

## **EXHIBIT C**

STATE OF NEW YORK  
SUPREME COURT ; COUNTY OF ULSTER

-----  
In the Matter of the Application  
of BALSAM LAKE ANGLERS CLUB,

Petitioner,

-against-

For a Declaratory Judgement under  
Article 78 of the Civil Practice  
Law and Rules in the Nature of a  
Writ of Prohibition of Mandamus  
against the DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, and  
the STATE OF NEW YORK,

AFFIDAVIT

Index No. 90-2044  
RJI No. 55-90-01116  
Judge Cobb

-----  
Respondents.

STATE OF NEW YORK     )  
                                  )     ss.:  
COUNTY OF ULSTER     )

FREDERICK J. GERTY, JR., being duly sworn, deposes and says:

1. As I stated in my answering affidavit, I am the Regional Forestry Manager for Region 3 of the respondent New York State Department of Environmental Conservation ("DEC") at the Region 3 headquarters in New Paltz, New York. I am familiar with the Balsam Lake Mountain Wild Forest Unit of the Catskill Forest Preserve, the Catskill State Land Master Plan (Item A of the Return) and with the unit management plan ("UMP") for the management of the Balsam Lake Mountain Unit issued in June, 1989 (Item B).

Mountain Wild Forest Unit. See the Master Plan, Item A, pp. 52, 64 and the UMP Item B, pp. 1-2, for descriptions of these two separate units of the forest preserve.

7. One of the primary issues argued at length by the Club in its memorandum and in the Hoag affidavit is the extent of cutting that was already done for the relocation of that portion of the Hardenburgh-Neversink Trail which crosses Club lands (The trail relocation has not yet been completed on account of this lawsuit).

On page 26 of its memorandum, the Club points out the erroneous date in my tally of the trees cut for the trail compiled from notes of Forest Ranger Robert Marrone, Exhibit E of my prior affidavit. The correct date is November 7, 1989. The error arose inadvertently as I was retranscribing Mr. Marrone's notes. My original tally contains the correct date; I rewrote this tally, with the wrong date, because there were cross outs and changes on the original draft. A copy of my original tally is attached hereto as Exhibit A. A copy of Forest Ranger Marrone's field notes are attached to his affidavit, submitted herewith.

8. I need to clarify another point with respect to the tally on this exhibit. The tally indicates that another 23 trees 1 to 3 inches in diameter but none greater than 3 inches in diameter would be cut for the remaining portion of the trail



reroute. This tally was DEC's first attempt at accommodating the Club's request to move the trail further away from the Club's Vly Pond. However, the Club rejected this attempt as insufficient. See paragraphs 36 and 38 of my prior affidavit. As stated in those paragraphs, I and Mr. Rudge, the staff member mentioned earlier, flagged a second re-route that involves instead the 50 more trees one or more inches in diameter to be cut, 5 of which would be greater than 3 inches in diameter, in order to move the relocated section of the trail further north and east in a second attempt to meet the Club's request. The Club is not satisfied with the second reroute, but the trail cannot go further north, due to the presence of protected plants.

That portion of the already cleared relocated section of the Hardenburgh-Neversink Trail, closer to the Club's Vly Pond, will be abandoned and allowed to regrow. The net result is to slightly lengthen the relocated portion of the trail, and to cut additional trees in the effort to accommodate the Club's request. The final total length of the relocated section of the Hardenburgh-Neversink Trail will probably be about 2 or 2.1 miles. This last section has not been cleared yet, so the trail route is not completed.

9. Mr. Hoag claims in paragraph 9 of his affidavit that more trees than the 300 I refer to in my prior affidavit were cut, taking into account the growth less than one inch in

diameter that was cut. This claim is misleading. Vegetative growth less than one inch in diameter is a "seedling" or "brush" or "shrub"; growth 1 inch to 3 inches or as much as 5.5 inches in diameter at breast height ("DBH", a height of 4 1/2 feet from the ground) is classified as a "sapling".<sup>1</sup> The DEC Division of Lands and Forests does not regard vegetative growth less than 3 inches diameter at breast height ("DBH") as a "tree". The Commissioner's Organization and Delegation Memorandum No. 84-06 (Item G iii), read as a whole, requires a tally of trees only 3 inches or more in diameter. Any growth that is smaller is immaterial.

Nonetheless, the staff tallied the growth 1 to 3 inches in diameter to show the relative insignificance of the cutting that has been done over the 1.9 miles of the original relocation of the trail. Though it is immaterial, Ranger Marrone also counted 232 stumps of vegetation 1 inch or less in diameter that were cut.

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<sup>1</sup> See, for example, the classification of timber from the document entitled "Forest Resources of the Catskill Region", prepared by the State University of New York College of Environmental Science and Forestry for the Temporary State Commission to Study the Catskills, the pertinent portion of which is attached as Exhibit B.

10. The cutting for the relocated portion of the Hardenburgh-Neversink Trail is not a substantial amount when considered over the distance involved. Specifically:

- a. Regarding the 1.9 miles, or 10,032 feet, that were cut.
  - (i) the 73 trees with stumps 3 inches or more in diameter that were cut over that distance (only 33 of which were more than 3 inches in diameter) represent an average of one such tree every 137 feet;
  - (ii) the 300 trees with stumps 1 inch or more in diameter (including the trees in a(i) above) that were cut represent an average of one such tree every 33.4 feet; and
  - (iii) the 532 total stumps, including the 232 stumps of vegetation less than 1 inch in diameter and the trees in a(ii) above, represent an average of 1 stump every 18.9 feet.
  
- b. Regarding the proposed .4 mile reroute (2,112 feet) mentioned in paragraph 8, upon completion, an additional 5 live trees more than 3 inches in diameter will be cut, as will 45 "trees" 1 to 3 inches in diameter. Vegetation less than 1 inch in diameter was not tallied. As a result,

- i) the 5 trees more than 3 inches in diameter represent an average of 1 tree every 422.4 feet;
- ii) the "trees" more than 1 inch in diameter (including the trees in b(i)) represent an average of 1 "tree" every 42.2 feet.

11. Mr. Hoag claims in paragraph 9 of his affidavit that he was present during the trail cutting and claims in paragraph 11 that he never saw anyone from DEC. However, I met Mr. Hoag once to discuss the route of the trail near Samuels Clearing (September 29, 1989). Mr. Rudge and Ranger Marrone were present while the trail was being cleared, as they explain in their affidavits.

12. Mr. Hoag also asserts in paragraphs 9 and 10 of his affidavit that he saw at least 43 trees 3 or more inches in diameter that were cut and claims that none of them were dead or diseased. As I state in paragraph 36 of my prior affidavit, the trees with stumps of this size that were cut were either dead, diseased or posed a safety hazard. Some, but not all, of these trees were live. A number of live and dead trees had to be removed to keep the trail passable and safe. The crew was instructed not to cut any live tree growth greater than 3 inches DBH. Mr. Rudge inspected the cutting while it was occurring and he informed me that it was proceeding in compliance with his flagging and instructions.

The State-owned lock remained on the cable until June, 1986, when Ranger Marrone removed it upon the advice of the DEC Regional Attorney.

28. The Club's allegations must be dismissed for the foregoing reasons stated above and in my prior affidavit.

  
\_\_\_\_\_  
FREDERICK J. GERTY, JR.

Sworn to before me this  
18<sup>th</sup> day of April, 1991.

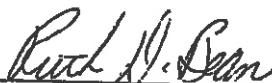
  
\_\_\_\_\_  
RUTH D. BEAN  
Notary Public, State of New York  
No. 4653229  
Qualified in Ulster County  
Term Expires ~~March 30, 1991~~  
May 31, 1991

EXHIBIT A, ATTACHED TO SUPPLEMENTAL AFFIDAVIT OF FREDERICK J. GERTY JR. -- TREE TALLY SHEET.

TREE TALLY - ULY POND TRAIL (1.9 miles)

As of Nov 7, 1989 (Ranger Marrone)

Stumps on the new trail.

Stump Size	Number
1-2"	138
2-3"	89

Area 3' :

	Beech	Hemlock	Birch	Maples	Σ
3"	34	0	3	3	40
4"	14	0	1	4	19
5"	6	1	2	3	12
6"			1		1
9"				1	1
					<u>73</u>

Grand total: 323

Trees ~~to~~ remaining to cut on ~~the~~ <sup>last</sup> section:

DBH 1-2" -	12	12
2-3" -	11	11
> 3"	<u>0</u>	<u>0</u>
		23

Trees cut/to cut:

323

## **EXHIBIT D**

To Be Argued By:  
Lawrence A. Rappoport

Estimated time of argument:  
15 Minutes

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

**In the Matter of the Application of  
BALSAM LAKE ANGLERS CLUB,**

**Petitioner-Appellant-Cross-Respondent,**

**No. 67257**

**For a Declaratory Judgment under Article 78 of  
the Civil Practice Law and Rules in the Nature  
of a Writ of Prohibition or of Mandamus**

**-against-**

**the DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
and the STATE OF NEW YORK,**

**Respondents-Respondents-Cross-Appellants.**

---

**BRIEF OF RESPONDENTS-RESPONDENTS-CROSS-APPELLANTS**

**ROBERT ABRAMS  
Attorney General of the State  
of New York  
Attorney for Respondents and  
Cross-Appellants  
New York State Department  
of Law  
The Capitol  
Albany, New York 12224  
(518) 474-1191**

**PETER R. CRARY  
Assistant Attorney General**

**DOUGLAS H. WARD  
Assistant Attorney General**

**LAWRENCE A. RAPPOPORT  
Associate Attorney**

**Of Counsel**



would not change the wild forest nature of the preserve and would not involve tree cutting to a material degree would not be unconstitutional. Contrary to the Club's arguments (Br., pp. 14-16), the court in Helms v. Reid, 90 Misc 2d 595-598, 605-606, correctly applied the Court of Appeals' MacDonald analysis in upholding the Adirondack Park Agency's preparation of the Adirondack Park State Land Master Plan. See, also, Flacke v. Town of Fine, 113 Misc. 2d 56, 58 (Sup. Ct., St. Lawrence Co., 1982), which also applied the MacDonald analysis in upholding DEC's requirements that a town must apply for permit before cutting any timber in the repair of a town road crossing forest preserve land. As the Helms court stated at 90 Misc 2d 598, it is unreasonable to interpret Article XIV, § 1:

as requiring a constitutional amendment anytime any timber whatsoever is to be cut in the preserve no matter what the purpose.

Consequently, the Club's argument that Article XIV, §1 bars any cutting of vegetation on forest preserve land for any project proposed in the UMP is meritless and must be rejected.

The Club also contends (Br., pp. vii-ix and Point I) that the relocation of a portion of the Hardenburg-Neversink Trail, the construction of the Mill Brook Ridge Trail and five new parking areas as proposed in the UMP are improper uses of the forest preserve that have or will result in a material and thus unconstitutional amount of vegetative cutting that will clear approximately 8-9 acres of forest preserve. The Club is wrong.

According to the staff's tally, the trail relocation resulted in the cutting of a total of 300 "trees" one-inch or more in diameter cut over a distance of 1.9 miles (R. 907, 925,<sup>7</sup> 975-976). (In response to the Club's allegations that this tally did not include vegetation less than one inch in diameter [R. 945], the staff also counted an additional 232 stumps of vegetation less than one inch in diameter cut over this distance [R. 976-977, 1025, 1027]). Completion of the trail relocation, including DEC's accommodation of the Club's request to re-route the trail further from its property, will result in the cutting of 50 more live trees one inch or more in diameter over a distance of .4 miles (R. 907-910, 974-978). This is a total of 350 trees of one inch or more in diameter that have been or will be cut for the trail relocation (R. 907, 977, 1025, 1028).<sup>8</sup>

This amount of cutting is not substantial. The 300 trees one inch or more in diameter cut over the 1.9 miles (or 10,032 feet) represents an average of one tree cut every 33.4 feet (R. 977). Taking into account the additional growth less than one inch in diameter that was cut over that distance, there has been one cut every 18.9 feet. The 50 trees one inch or more in diameter over a distance of .4 miles (or 2,112 feet) for the

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<sup>7</sup>Contrary to the Club's contention (Br., p. 29), the November 7, 1987 date written on the tally at R. 925 was inadvertent. The correct date of the tally is November 7, 1989 (R. 1025, 1028).

<sup>8</sup>The tally given above belies the Club's claim (Br., p. ix) that DEC staff did not include "trees" less than 3 inches in diameter at breast height ("DBH"), approximately 4½ feet from the ground.

Club's requested re-routing of the trail represents the cutting of an average of one tree every 42.2 feet (R. 977).

This cutting is more insignificant from the fact that only 33 stumps of the 300 trees cut over the 1.9 mile distance were more than 3 inches in diameter (R. 977). Only 5 of the 50 trees to be cut over the .4 mile re-route will be more than 3 inches DBH (R. 977-978, 1014-1015). The rest of the cutting, 312 trees, has been or will be 3 inches or less in diameter.<sup>9</sup>

These figures contrast starkly with the 2600 to 2700 trees 3 inches or more DBH proposed (according to the agreed statement of facts noted at 228 App. Div. 75-76) to be cut for the bobsled run in MacDonald over a distance of 1-1/4 miles in a swath 16 to 20 feet wide. The MacDonald cutting would have averaged one tree every 2.7 or 2.8 feet, which was found to be a material amount of cutting that would destroy the wild forest nature of the forest preserve and therefore determined to be forbidden.

Accordingly, the determination of the court below that the amount of cutting for the trail relocation is immaterial and not constitutionally prohibited should be upheld. Since the total amount of cutting for the trail relocation comes within the permissible ambit of Article XIV, § 1, there was no need for the

---

<sup>9</sup>DEC does not consider vegetative growth less than 3 inches in diameter DBH to be "trees" (R. 975-976, 990-992, 1015). Growth less than one inch in diameter is a "seedling," "brush" or "shrub"; growth between one to 3 inches or as much as 5.5 inches DBH is a "sapling" (R. 975-976, 990-992, 1015). The Commissioner's Organization and Delegation Memorandum No. 84-06 (R. 721-724) requires the DEC staff to obtain approval for the cutting of trees only 3 inches or more in diameter (R. 1015).

court below to resolve the issue whether any vegetation less than 3 inches in diameter is "timber" under Article XIV, § 1.

The court below also correctly declined to review the anticipated cutting for the proposed 7.5 mile Mill Brook Ridge trail, since no route has yet been determined. Though the Club speculates (Br., pp. 5-6) that over 1000 trees would be cut for this trail, it cannot base its constitutional challenge on speculation that DEC will violate Article XIV, § 1 in the future. As the court below noted (R. 12), DEC staff must comply with its trail construction design and construction techniques and obtain approval for the route it selects from the Director of the Division of Lands and Forests pursuant to the Commissioner's Organization and Delegation Memorandum No. 84-06 (R. 721-724, 893-899, 905). If the Director determines that a material amount of cutting would be necessary, the trail construction will not be approved (R. 895, 914).<sup>10</sup> While the court below did not address the cutting for the proposed five scattered parking areas, the same Commissioner's Memorandum No. 84-06 would limit the amount of cutting for these acres to an immaterial amount to insure that

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<sup>10</sup>DEC staff anticipated that the cutting for the Mill Brook Trail would be minimized because a portion of the trail is proposed to follow an old logging road (R. 1017). The trail will then go through a mature forest where only some understory need be cut (R. 1017-1018).

Also, even if the Club's speculation that 1000 trees would be cut for the trail were considered, that is not a material amount when considered over the entire 7.5 mile (or 39,600 foot) length of the trail. Such cutting amounts to an average of one tree for every 39.6 feet.

Beaverkill as part of the Rivers System (R. 847-8484) provides no basis to annul the negative declaration.

Accordingly, the Club's various arguments that DEC did not have sufficient information with which to assess the impact of the UMP on the resources of the Balsam Lake Mountain unit should be rejected. The Club has not established that DEC has overlooked any relevant areas of environmental concern or has failed to take a hard look at any of them. The judgment of the court below annulling DEC's negative declaration should therefore be reversed.

**CONCLUSION**

**THOSE PORTIONS OF THE JUDGMENT DECLARING THAT THAT THE UMP IS CONSTITUTIONAL AND DOES NOT VIOLATE THE CLUB'S PROPERTY RIGHTS SHOULD BE AFFIRMED. THAT PORTION OF THE JUDGMENT ANNULLING THE NEGATIVE DECLARATION FOR THE UMP SHOULD BE REVERSED.**

**Dated: August 6, 1993**

**ROBERT ABRAMS  
Attorney General of the State  
of New York  
Attorney for respondents and  
cross-appellants**

**PETER R. CRARY  
Assistant Attorney General**

**DOUGLAS H. WARD  
Assistant Attorney General**

**LAWRENCE A. RAPPOPORT  
Associate Attorney**

**Of Counsel**

## **EXHIBIT E**

Summary of Tree Counts  
on Class II Community Connector Trails

Trail Segment	Acres	Miles	Status during count	Stipulated number of trees $\geq 3"$ DBH <i>approved to be cut</i>	Signell's count of $< 3"$ DBH Trees	Total stp. trees $\geq 3"$ DBH + $< 3"$ DBH	Stp. Trees $\geq 3"$ DBH / acre	Total stp. trees $\geq 3"$ DBH + $< 3"$ DBH / acre	Stp. Trees $\geq 3"$ DBH / mile	Total stp. trees $\geq 3"$ DBH + $< 3"$ DBH / mile
Santanoni-Harris Lake	2.4	2.2	Cut and graded	363	245	608	151	253	165	276
Hyslop to Roosevelt Truck Trail (segment 6)	3.2	2.9	Recently Cut	1148	3251	4399	363	1,390	396	1,517
Roosevelt Truck Trail to Boreas River	2.1	1.95	Route marked, uncut	715*	3101	3816*	336*	1793*	367*	1957*
Boreas River to Hewitt Pond Road to Stony Pond Trail (segment 9)	5.8	5.3	N. section marked, S. section recently cut	1253	1875	3128	217	541	236	590
Stony Pond Trail to Private (Minerva) (segment 11)	3.2	2.9	Route marked, uncut	423	2178	2601	134	822	146	897
<b>Total for Newcomb to Minerva Trail</b>	<b>16.6</b>	<b>15.25</b>	<b>n/a</b>	<b>3,902</b>	<b>10,650</b>	<b>14,552</b>	<b>235</b>	<b>875</b>	<b>256</b>	<b>954</b>
Seventh Lake Mountain Trail	13.0	11.9	Trail completed	2,085	5116	7201	161	555	175	605
Gilmantown Trail (Jessup River)	2.6	2.4	Trail completed	127	261	388	49	148	53	162
Cooper-Klin Trail (Wilmington)**	3.2	2.9	Trail completed	482	1490	1972	152	623	166	680
Subtotal for other trails	18.8	17.2	n/a	2,694	6867	9561	144	510	157	556
<b>TOTALS</b>	<b>35.4</b>	<b>32.45</b>		<b>6,596</b>	<b>17,517</b>	<b>24,113</b>	<b>186</b>	<b>681</b>	<b>203</b>	<b>743</b>

\*no stipulated number for trees  $\geq 3$  inches, so Signell count used instead.

## **EXHIBIT F**



**Caffry & Flower**  
ATTORNEYS AT LAW

100 BAY STREET  
GLENS FALLS, NEW YORK 12801  
(518) 792-1582 • FAX: 793-0541

**COPY**  
CLAUDIA K. BRAYMER

**JOHN W. CAFFRY**

**KRISTINE K. FLOWER**

November 25, 2014

**VIA UPS OVERNIGHT**

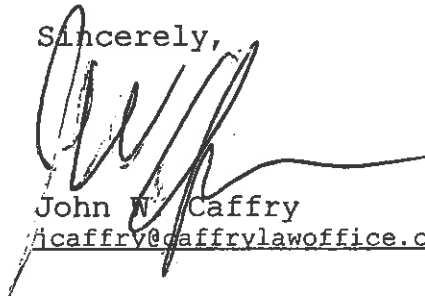
Loretta Simon  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
Division of Social Justice  
The Capitol  
Albany, NY 12224-0341

Re: Protect the Adirondacks! Inc. v.  
NYS Department of Environmental  
Conservation and Adirondack Park Agency  
Index No. 2137, RJI No. 01-13-ST-4541

Dear Loretta:

Enclosed please find Plaintiff's re-noticed notice to take depositions. I would be glad to discuss this with you regarding narrowing down who will actually be deposed.

Sincerely,

  
John W. Caffry  
[jcaffry@caffrylawoffice.com](mailto:jcaffry@caffrylawoffice.com)

JWC/ljs  
enc.

cc: Protect the Adirondacks! Inc. (w/enc.)

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STATE OF NEW YORK  
SUPREME COURT

ALBANY COUNTY

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.

**AMENDED  
NOTICE TO TAKE DEPOSITION  
UPON ORAL EXAMINATION**

**INDEX NO. 2137-13**

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

**Hon. George B. Ceresia,  
Jr., Assigned Justice.**

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules the deposition upon oral examination of the following officers and employees of the Defendants:

1. Joe Martens, DEC, Commissioner
2. Marc Gerstman, DEC, Executive Deputy Commissioner
3. Kathy Moser, DEC, Assistant Commissioner, Natural Resources
4. Robert Davies, DEC, State Forester, Director of Lands and Forests Division
5. Karyn Richards, DEC, Special Assistant, Forest Preserve Coordinator
6. Peter J. Frank, DEC, Bureau Chief, Bureau of Forest Preserve Management
7. Kenneth Hamm, DEC, Attorney, Counsel to Division of Lands and Forests
8. Sandra Garlick, DEC, Attorney, Counsel to Division of Lands and Forests

will be taken before a notary public who is not an attorney, or an employee of an attorney, for any party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at 625 Broadway, Albany, New York, on the 17th day of December, 2014 at 9:30 a.m. with respect to evidence material and necessary in the prosecution of the First Cause of Action of this action.

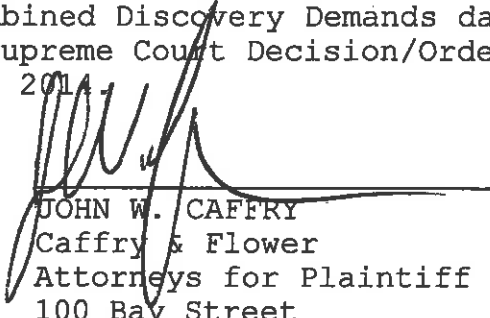
PLEASE TAKE FURTHER NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules the deposition upon oral examination of the following officers and employees of the Defendants:

1. Leilani Ulrich, APA, Chairwoman
2. Terry Martino, APA, Executive Director
3. James Townsend, APA, Attorney
4. Richard Weber, APA, Deputy Director
5. Walter Linck, APA, Associate Natural Resource Planner
6. Robert Steggemann, DEC, Region 5, Director
7. Kristopher Alberga, DEC, Region 5, Regional Forester
8. Thomas Martin, DEC, Region 5, Regional Natural Resource Supervisor
9. Tate Connor, DEC, Region 5, Forester 1
10. Thomas Kapelewski, DEC, Region 5, Senior Forester
11. Judy Drabicki, DEC, Region 6, Director
12. David Smith, DEC, Region 6, Regional Forester
13. Fred Munk, DEC, Region 6, Regional Natural Resource Supervisor

will be taken before a notary public who is not an attorney, or an employee of an attorney, for any party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at 232 Golf Course Road, Warrensburg, New York, on the 19th day of December, 2014 at 9:30 a.m. with respect to evidence material and necessary in the prosecution of the First Cause of Action of this action.

PLEASE TAKE FURTHER NOTICE, that the said persons to be examined shall produce at such examination all documents responsive to Plaintiff's Revised Combined Discovery Demands dated December 4, 2013, as modified by the Supreme Court Decision/Order (Ceresia, Jr., J.) dated October 15, 2014.

Dated: November 25, 2014



JOHN W. CAFFRY  
Caffry & Flower  
Attorneys for Plaintiff  
100 Bay Street  
Glens Falls, New York 12801  
(518) 792-1582

To: ATTORNEY GENERAL OF THE STATE OF NEW YORK  
Attorney for Defendants-Respondents APA and DEC  
Loretta Simon, Assistant Attorney General  
The Capitol  
Albany, New York 12224  
518-474-8097

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Shipment Receipt

Transaction Date: 25 Nov 2014

Tracking Number:

1ZF02W980192185476

1 Address Information

<b>Ship To:</b> New York State Attorney General Loretta Simon, AAG Empire State Plaza The Capitol ALBANY NY 12224	<b>Ship From:</b> Lois Stark Caffry & Flower 100 Bay St. Glens Falls NY 12801 Telephone:518-792-1582	<b>Return Address:</b> Lois Stark Caffry & Flower 100 Bay St. GLENS FALLS NY 12801 Telephone:518-792-1582
--	---	--

2 Package Information

Weight	Dimensions / Packaging	Declared Value	Reference Numbers
1. Letter (Letter billable)	UPS Letter		Acct. Rec. Customer Acct. - 2952

3 UPS Shipping Service and Shipping Options

<b>Service:</b>	UPS Next Day Air
<b>Guaranteed By:</b>	10:30 AM Wednesday, Nov 26, 2014
<b>Shipping Fees Subtotal:</b>	<b>22.28 USD</b>
Transportation	20.35 USD
Fuel Surcharge	1.93 USD

4 Payment Information

Bill Shipping Charges to: Shipper's Account F02W98

**A discount has been applied to the Daily rates for this shipment**

<b>Total Charged:</b>	<b>22.28 USD</b>
<b>Negotiated Total:</b>	<b>20.64 USD</b>

**Note: Your invoice may vary from the displayed reference rates.**

\* For delivery and guarantee information, see the UPS Service Guide. To speak to a customer service representative, call 1-800-PICK-UPS for domestic services and 1-800-782-7892 for international services.


**Responsibility for Loss or Damage**

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Loretta Simon  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
Division of Social Justice  
The Capitol  
Albany, NY 12224

I deposited said envelope in an official depository under the care and custody of the United Parcel Service.



Lois J. Stark

Sworn to before me this 26th  
day of November, 2014



NOTARY PUBLIC  
(Affix stamp or seal)

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JONATHAN GABBY  
Notary Public, State of New York  
Qualified in Westchester County  
No. 48 88027  
Commission Expires 1/31/18



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

DEC 05 2014

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

December 3, 2014

By Electronic and U.S. Mail

John W. Caffry, Esq.  
Claudia K. Braymer, Esq.  
Caffry & Flower  
100 Bay Street  
Glens Falls, New York 12801

Re: *Protect the Adirondacks! Inc. v. New York State Department of Environmental Conservation and the Adirondack Park Agency*  
Index No. 2137-13 (Hon. George B. Ceresia, Jr.)

Dear John and Claudia:

I write in response to your Notice to take Depositions, dated November 25, 2014 for the depositions of twenty-one (21) Department of Environmental Conservation (DEC) and Adirondack Park Agency (APA) employees, including the Commissioner of DEC and the Chairwoman of the APA. Pursuant to C.P.L.R. § 3106 (d), and the Court's October 15, 2014 Decision & Order (p. 31), I designate the following individuals to be produced for oral deposition on the following subjects related to the first cause of action<sup>1</sup>:

- 1) Karyn Richards, Special Assistant, Forest Preserve Coordinator, Division of Lands and Forests, DEC Central Office, 625 Broadway, Albany, NY 12233  
*Subject matter:* DEC Planning and Documents Related to Class II Community Connector Snowmobile Trails on Forest Preserve Lands
- 2) Peter J. Frank, Bureau Chief, Forest Preserve Management, Division of Lands and Forests, DEC Central Office, 625 Broadway, Albany, NY 12233  
*Subject matter:* Forest Preserve Lands Management, Unit Management Plans (UMPs) and Work Plans Related to Class II Community Connector Snowmobile Trails

<sup>1</sup> The first cause of action alleges that Class II Community Connector snowmobile trails violate the New York State Constitution, Article 14, Section 1, because a substantial amount of timber will be cut and destroyed, the trails are not consistent with the wild forest nature of the Forest Preserve, and the trails will result in creation of a man-made setting.

- 3) Tom Martin, Regional Natural Resource Supervisor, DEC Region 5, Ray Brook Headquarters, P.O. Box 296, 1115 State Route 86, Ray Brook, NY 12977-0296  
*Subject matter: UMPs, Work Plans, and other Documents Related to Class II Community Connector Snowmobile Trails on Forest Preserve Lands in Region 5*
  
- 4) Tate M. Connor, Forester 1, DEC Region 5, Ray Brook Headquarters, P.O. Box 296, 1115 State Route 86, Ray Brook, NY 12977-0296  
*Subject matter: Seventh Lake Mountain Trail*

Please be advised that all documents responsive to Plaintiff's revised demands dated December 4, 2013, as modified by the 10/15/14 Decision/Order of the Court were provided to you by overnight mail sent on November 25, 2014 and will not be produced a second time at the examinations.

With regard to scheduling and locations, as per our prior agreement, confirmed in my letter to you dated March 4, 2014, depositions for individuals located in the Albany DEC office will be held at the Office of the Attorney General (not the office of DEC), located at 146 State Street, Albany, New York, and depositions for Mr. Martin and Mr. Connor will be at DEC's Warrensburg office. I have arranged for a room at 146 State Street from 9:30 to 11:45 and from 2:30 to 4:45 on December 17, 2014, as per your notice. Ms. Richards will be available for the morning session and Mr. Frank will be available in the afternoon.

Finally, I am unable to arrange for depositions on December 19th and propose instead that we conduct the Warrensburg depositions on December 18. If December 18<sup>th</sup> is agreeable please let me know as soon as possible and I will make arrangements for Mr. Martin and Mr. Connor's appearances on that date in Warrensburg.

Sincerely,



Loretta Simon  
Assistant Attorney General  
(518) 474-8097

cc: Michael Naughton (email only)  
Elizabeth Phillips (email only)



**Caffry & Flower**

ATTORNEYS AT LAW

100 BAY STREET  
GLENS FALLS, NEW YORK 12801  
(518) 792-1582 • FAX: 793-0541

JOHN W. CAFFRY

CLAUDIA K. BRAYMER

KRISTINE K. FLOWER

December 11, 2014

VIA E-MAIL

Loretta Simon  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
Division of Social Justice  
The Capitol  
Albany, NY 12224-0341

Re: Protect the Adirondacks! Inc. v.  
NYS Department of Environmental  
Conservation and Adirondack Park Agency  
Index No. 2137, RJI No. 01-13-ST-4541

Dear Loretta:

This is in reply to your letter of December 3, 2014 and your e-mail of December 5, 2014.

We agree to do the depositions of Mr. Frank and Ms. Richards on December 17<sup>th</sup> at your office (146 State Street) beginning at 9:30 a.m. You say that you have arranged for a room. Have you also arranged for a steno? If OAG has one it usually uses, we would be glad to have you take care of that. If not, we will do so.

The amount of time that you have set out in your letter may not be adequate for these depositions. If it is not, we will have to continue from 9:30 to 5:00, with a shorter lunch break, and perhaps adjourn to another date, if needed.

December 18<sup>th</sup> does not really work for us for the Warrensburg depositions of Mr. Martin and Mr. Connor. I suggest that we pick mutually convenient dates in the third week of January.

By agreeing to depose these persons, we do not agree that they adequately satisfy defendant DEC's obligation to provide witnesses for deposition under CPLR § 3106(d). We reserve the

Loretta Simon  
Assistant Attorney General

2

December 11, 2014

right to depose additional personnel from DEC, depending on what occurs in these depositions.

Likewise, we do not agree to the limitations on the scope of their testimony that you have set forth in your letter of December 3rd.

Your letter failed to provide suggested witnesses from APA. Although you are representing two parties, each of them must separately provide witnesses for depositions under CPLR § 3106(d). From our observations of the snowmobile trail building program and the documents and papers previously filed herein, the most knowledgeable person at APA on these issues is Walter Linck, who was primarily responsible for coordination with DEC and site visits of the construction sites on behalf of APA.

We would like to depose him at the Warrensburg office of DEC. We reserve the right to depose additional personnel from APA, depending on what occurs in his deposition.

I would like to suggest that we block out two days for the three Warrensburg depositions, in case they go longer than one day.

Regarding Mr. Bauer's deposition in February, I offer our office as a location that may be more convenient for all parties. We could arrange for the steno if you wish.

If you wish to discuss this, I will be available Friday afternoon.

Sincerely,



John W. Caffry  
[jcaffry@caffrylawoffice.com](mailto:jcaffry@caffrylawoffice.com)

JWC/ljs

cc: Protect the Adirondacks! Inc.

**John W. Caffry**

---

**From:** John W. Caffry  
**Sent:** Thursday, December 11, 2014 1:16 PM  
**To:** 'Loretta Simon'  
**Cc:** Claudia K. Braymer, Esq.; 'Peter Bauer'  
**Subject:** Protect v. DEC and APA Depositions  
**Attachments:** SKMBT\_C22014121113030.pdf

Please see attached letter.

John

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

John W. Caffry  
Attorney at Law  
Caffry & Flower  
100 Bay Street  
Glens Falls, NY 12801  
518-792-1582  
Fax: 518-793-0541

[jcaffry@caffrylawoffice.com](mailto:jcaffry@caffrylawoffice.com)

To ensure compliance with requirements imposed by the IRS, we inform you, that unless otherwise indicated, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any tax -related matter addressed herein.



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHEIDTBERGER  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BRANCH

December 12, 2014

**By Electronic Mail**  
John W. Caffry, Esq.  
Caffry & Flower  
100 Bay Street  
Glens Falls, New York 12801

**Re:** *Protect the Adirondacks! Inc. v. New York State Department of Environmental Conservation and the Adirondack Park Agency*  
Index No. 2137-13 (Hon. George B. Ceresia, Jr.)

Dear John:

I am in receipt of your letter dated December 11, 2014, confirming that you will depose DEC employees Karyn Richards and Peter J. Frank at my office on December 17, 2014, and that you will not be available to depose Tom Martin or Tate Connor (of DEC, Region 5) on December 18<sup>th</sup>. With regard to your request for more time with Ms. Richards and Mr. Frank on December 17<sup>th</sup>, Ms. Richards has a previously scheduled commitment that afternoon, but Mr. Frank will be available until 5:00. If you need more time with either witness, we can discuss arrangements for another day for one or both of them. You asked whether I arranged for a stenographer for your depositions: I did not.

Your letter indicates that by deposing these witnesses you do not agree that they adequately satisfy CPLR § 3106(d) ("Designation of deponent"). As indicated in the Decision and Order of Hon. Ceresia, Jr., dated October 15, 2014, referencing your notice of deposition: "With regard to the individuals listed in plaintiff's notices to take depositions, it is well settled that governmental defendants (and employers, generally) have the right to produce an officer or employee of their choice . . ." (p.31). In addition to the four individuals I am designating in response to your 11-25-14 notice, you will recall that I previously offered to produce trail construction supervisors of three Class II Community Connector Snowmobile Trails (see my letter dated 1/15/14 in response to your 1/8/14 notice to take depositions). Of those trail construction supervisors, you advised me that you were only interested in Tate Connor, the supervisor for construction of the Seventh Lake Mountain Trail.

With regard to your suggestion that an APA witness be provided, as you are no doubt aware, DEC constructed the Class II Community Connector Snowmobile Trails, not the APA. Since the first cause of action is limited to Class II Community Connector Snowmobile Trails

constructed by DEC, I am designating individuals I believe are most knowledgeable about the plans and construction related to the building of Class II Community Connector trails. Having said that, to accommodate your request, I offer Matt McNamara, an APA Environmental Program Specialist 1, for deposition. Mr. McNamara was assigned to review alleged violations at the Seventh Lake Mountain trail, during the period of construction. Please let me know as soon as possible if you want to depose Mr. McNamara and I will arrange for his deposition in Warrensburg, after the DEC depositions.

With regard to your suggestion that we schedule depositions for Mr. Martin and Mr. Connor during the third week of January, I will check their availability and get back to you. However, please note that State offices are closed Monday January 19, for Martin Luther King Day. Regarding your suggestion that I depose your client Mr. Peter Bauer in your office on February 9, 2015, that is fine, and I will arrange for a stenographer. If you would like to discuss any of these matters, please feel free to call me.

Sincerely,

Loretta Simon  
Assistant Attorney General  
\*(518) 474-8097

\*Please note that after 12/31/14 my new phone number will be 776-2416.

cc: Michael Naughton (email only)  
Elizabeth Phillips (email only)

**John W. Caffry**

---

**From:** Loretta Simon <Loretta.Simon@ag.ny.gov>  
**Sent:** Friday, December 12, 2014 3:41 PM  
**To:** John W. Caffry  
**Cc:** Claudia K. Braymer, Esq.  
**Subject:** Protect the Adirondacks! v. DEC & APA  
**Attachments:** 2014.12.12 Letter from Simon to Caffry re Deposition schedule.pdf

**John,**

**Attached please find my response to your letter of December 11, 2014, regarding scheduling of depositions.**

**Loretta Simon  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224-0341  
(518) 474-8097  
After December 31, 2014, please call 776-2416**

**John W. Caffry**

---

**From:** John W. Caffry  
**Sent:** Tuesday, December 30, 2014 12:59 PM  
**To:** 'Loretta Simon'  
**Cc:** Claudia K. Braymer, Esq.; 'Peter Bauer'  
**Subject:** RE: Protect the Adirondacks v. DEC &APA

Loretta:

Your proposals regarding DEC staff are acceptable. We will arrange for the stenos.

Your proposal regarding APA staff is not acceptable. I will be in touch with you soon on that.

John

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

John W. Caffry  
Attorney at Law  
Caffry & Flower  
100 Bay Street  
Glens Falls, NY 12801  
518-792-1582  
Fax: 518-793-0541

[jcaffry@caffrylawoffice.com](mailto:jcaffry@caffrylawoffice.com)

To ensure compliance with requirements imposed by the IRS, we inform you, that unless otherwise indicated, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any tax -related matter addressed herein.

---

**From:** Loretta Simon [mailto:Loretta.Simon@ag.ny.gov]  
**Sent:** Monday, December 22, 2014 4:31 PM  
**To:** John W. Caffry  
**Cc:** Claudia K. Braymer, Esq.; Linda Friedman; Naughton, Michael P (DEC) (michael.naughton@dec.ny.gov); Phillips, Elizabeth A (APA) (Elizabeth.Phillips@apa.ny.gov); 'Paul Van Cott' (ptvancot@gw.dec.state.ny.us)  
**Subject:** Protect the Adirondacks v. DEC &APA

John,

I write regarding the schedule for depositions. I offer the following dates for you to depose defendants' employees:

- 1) Karyn Richards and Peter Frank (adjourned from 12/17 at your request):  
Ms. Richards can be deposed on Wednesday January 7, 2015, at my office.  
Mr. Frank can be deposed on Thursday January 8, 2015, at my office.
- 2) Tate Connor on Wednesday, January 21, 2015 or Friday, January 23<sup>rd</sup> at DEC's Warrensburg office.

- 3) Tom Martin on Wednesday, January 28, 2015, or Thursday, January 29<sup>th</sup> at DEC's Warrensburg office
- 4) Matt McNamara, Tuesday February 3, 2015 (subject to room availability).

Please confirm your availability for these dates.

Loretta Simon  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224-0341  
(518) 474-8097  
**After December 31, 2014, please call 776-2416**



**Caffry & Flower**

ATTORNEYS AT LAW

100 BAY STREET  
GLENS FALLS, NEW YORK 12801  
(518) 792-1582 • FAX: 793-0541

JOHN W. CAFFRY

CLAUDIA K. BRAYMER

KRISTINE K. FLOWER

January 5, 2015

VIA E-MAIL

Loretta Simon  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
Division of Social Justice  
The Capitol  
Albany, NY 12224-0341

Re: Protect the Adirondacks! Inc. v.  
NYS Department of Environmental  
Conservation and Adirondack Park Agency  
Index No. 2137, RJI No. 01-13-ST-4541

Dear Loretta:

This is in reply to your e-mail of December 22, 2014 and your prior correspondence regarding the scheduling of depositions in this matter.

Matt McNamara is not an acceptable representative to be deposed on behalf of defendant APA. As stated by Justice Ceresia in his decision of October 15, 2014 at page 31, the witness must be "someone having knowledge of the facts".

Upon reviewing the discovery documents which you provided in November, 2014, it appears that Mr. McNamara's only connection to the construction of the snowmobile trails which are at issue herein was the investigation of a potential violation of ECL Article 24, the Freshwater Wetlands Act, on a single trail. See e.g. NYS0005463, NYS0005477.<sup>1</sup> So far as we can tell, he had no other involvement with any of these trails, and was not involved in their planning or construction.

In comparison, the DEC work plans and other documents that you provided show that the APA "contact persons" for the

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<sup>1</sup> References to documents that you produced are given by the Bates stamp numbers on each document.

construction of all of the trails at issue herein, from 2012 to 2014, were Walter Linck (5 trails), Kevin Prickett (2 trails), and Kathleen Regan (1 trail). I also note that of the hundreds of APA documents and photos that you produced, the majority were taken by Messrs. Linck and Prickett.

In addition, Mr. Linck was involved in the preparation of, *inter alia*, the Moose River Plains (Return Exhibit 5) and Wilmington Wild Forest (Return Exhibit 6) UMPs.<sup>2</sup> Upon information and belief, he was also involved in the preparation of the 2006 Adirondack Park Snowmobile Plan (Return Exhibit 3) and the 2009 Management Guidance (Return Exhibit 8).<sup>3</sup> In addition, during the construction of the trails which are at issue herein, Mr. Linck investigated violations of the State Land Master Plan and APA/DEC snowmobile trail policy, guidance, work plans, and memoranda<sup>4</sup>. See e.g. NYS0005233-NYS0005238, NYS0005239-NYS0005249, NYS0005250-NYS0005251.

Mr. McNamara was not involved with any of the legal issues which are relevant herein. He only took about 10 or 20 photos. He was apparently dispatched at Mr. Linck's behest to investigate a single alleged violation of the Freshwater Wetlands Act, as part of a broader investigation by Mr. Linck. See NYS0005241. The Freshwater Wetlands Act is not at issue herein. See decision of Justice Ceresia, October 15, 2014 at pages 2, 31.

In a letter to you dated December 11, 2014 I asked to depose Mr. Linck on behalf of APA. By letter dated December 12, 2014, without providing a reason, you refused that request and offered Mr. McNamara in his place. Substitution of another person for a requested witness must be based on a proper reason, such as that the requested person lacks adequate knowledge of the facts and the proposed substituted person has such knowledge. See CPLR § 3106(d), McKinney's Practice Commentary C3106:7. Here, that is clearly not the case.

---

<sup>2</sup> While the First Cause of Action is based on Article 14 of the Constitution, the defendants' papers filed so far have relied heavily on these documents in defending this claim.

<sup>3</sup> Ditto.

<sup>4</sup> Ditto.

Loretta Simon  
Assistant Attorney General

3

January 5, 2015

Therefore, we still want to depose Mr. Linck, as the person within APA with the requisite knowledge of the relevant facts herein. We are available to do so on most days from January 19<sup>th</sup> to February 13<sup>th</sup>. Please let us know what days work for you and the witness.

I hope to be able to resolve this without motion practice, but if it is not resolved promptly, you will leave me no choice but to make a motion for a protective order requiring you to produce Mr. Linck.

Sincerely,



John W. Caffry  
[jcaffry@caffrylawoffice.com](mailto:jcaffry@caffrylawoffice.com)

JWC/ljs  
enc.

cc: Protect the Adirondacks! Inc.

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**John W. Caffry**

---

**From:** John W. Caffry  
**Sent:** Monday, January 05, 2015 11:21 PM  
**To:** 'Loretta Simon'  
**Cc:** Claudia K. Braymer, Esq.; 'Peter Bauer'  
**Subject:** Depositions  
**Attachments:** SKMBT\_C22015010523090.pdf

Please see attached letter.

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

John W. Caffry  
Attorney at Law  
Caffry & Flower  
100 Bay Street  
Glens Falls, NY 12801  
518-792-1582  
Fax: 518-793-0541

[jcaffry@caffrylawoffice.com](mailto:jcaffry@caffrylawoffice.com)

To ensure compliance with requirements imposed by the IRS, we inform you, that unless otherwise indicated, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any tax -related matter addressed herein.

## **EXHIBIT G**



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

**FILE COPY**

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

February 22, 2017

Honorable Gerald W. Connolly  
Supreme Court  
Albany County Courthouse  
16 Eagle Street, Room 219  
Albany, NY 12207

Re: *Protect the Adirondacks! Inc. v New York State Department of  
Environmental Conservation and the Adirondack Park Agency*  
Index No. 2137-13; RJI No. 01-13-ST-4541

Dear Justice Connolly:

Enclosed please find Defendants/ Respondents' Witness List.

Respectfully submitted,

  
Loretta Simon  
Assistant Attorney General  
(518) 776-2416

enc.

cc: John Caffry, Esq. (by email only)  
Claudia Braymer, Esq. (by email only)  
Michael Naughton, Esq. (by email only)  
Elizabeth Phillips, Esq. (by email only)

*Protect the Adirondacks! Inc. v. NYSDEC and APA*

*Index No. 2137-13*

**Defendants-Respondents' Witness List**

February 22, 2017

<b>DEFENDANTS-RESPONDENTS' NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION WITNESS LIST</b>	<b>SUBJECT OF TESTIMONY</b>
Karyn Richards Special Assistant Forest Preserve Coordinator, Division of Lands and Forests DEC Central Office 625 Broadway Albany, NY 12233	DEC planning and documents related to Class II Community Connector snowmobile trails on Forest Preserve lands
Peter J. Frank Bureau Chief, Forest Preserve Management Division of Lands and Forests DEC Central Office 625 Broadway Albany, NY 12233	Forest Preserve lands management, unit management plans and work plans related to Class II Community Connector snowmobile trails; discussion of "timber" in forestry
Thomas D. Martin Regional Natural Resource Supervisor DEC Region 5 Ray Brook Headquarters P.O. Box 296 1115 State Route 86 Ray Brook, NY 12977-0296	Unit management plans, work plans and general management related to Class II Community Connector snowmobile trails on Forest Preserve lands in Region 5
Keith Rivers Supervising Forester DEC Region 6 7327 State Route 812 Lowville, NY 13367	Mt. Tom and Steam Sleigh trails
Tate M. Connor Forester 1 DEC Region 5 Ray Brook Headquarters P.O. Box 296 1115 State Route 86 Ray Brook, NY 12977-0296	Seventh Lake Mountain trail

*Protect the Adirondacks! Inc. v. NYSDEC and APA*

*Index No. 2137-13*

**Defendants-Respondents' Witness List**

February 22, 2017

<b>DEFENDANTS-RESPONDENTS' NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION WITNESS LIST</b>	<b>SUBJECT OF TESTIMONY</b>
Steven J. Guglielmi Forester 1 DEC Region 5 Ray Brook Headquarters P.O. Box 296 1115 State Route 86 Ray Brook, NY 12977-0296	Wilmington trail
Robert J. Daley Forester 2 DEC Region 5 Ray Brook Headquarters P.O. Box 296 1115 State Route 86 Ray Brook, NY 12977-0296	Wilmington trail
Benjamin Thomas Forester 2 DEC Region 5 Warrensburg Sub-office 232 Golf Course Road Warrensburg, NY 12885	Gilmantown trail; Palmer Pond administrative road
Kristofer Alberga Regional Forester DEC Region 5 Ray Brook Headquarters P.O. Box 296 1115 State Route 86 Ray Brook, NY 12977-0296	Class II Community Connector snowmobile trail work plans, Region 5; Taylor Pond trail
Eric Kasza Section Chief, Public Lands Access Division of Lands and Forests DEC Central Office 625 Broadway Albany, NY 12233	Implementation of Class II Community Connector snowmobile trail work plans



*Protect the Adirondacks! Inc. v. NYSDEC and APA*

*Index No. 2137-13*

**Defendants-Respondents' Witness List**

February 22, 2017

<b>DEFENDANTS-RESPONDENTS' NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION WITNESS LIST</b>	<b>SUBJECT OF TESTIMONY</b>
Joshua Clague Associate Natural Resources Planner Division of Lands and Forests DEC Central Office 625 Broadway Albany, NY 12233	Mapping related to Class II Community Connector snowmobile trails
David Smith Regional Forester DEC Region 6 317 Washington Street Watertown, NY 13601	Class II Community Connector snowmobile trail work plans, Region 6
Fred Munk Regional Natural Resource Supervisor DEC Region 6 317 Washington Street Watertown, NY 13601	Unit management plans, work plans, and other documents related to Class II Community Connector snowmobile trails on Forest Preserve lands in Region 6
Jonathan DeSantis Forester 1 DEC Region 5 PO Box 1316 Northville, NY 12134	Trail closings in Moose River Plains Wild Forest; Old Powerline Trail, Perkins Clearing -- Lewey Lake Trail
Maxwell A. Wolckenhauer Natural Resource Planner DEC Region 4 65561 State Highway 10, Suite 1 Stamford, NY 12167	Class II Community Connector snowmobile trail work plan tree tally.
Robert Ripp Forester I New York State Department of Environmental Conservation, Region 5 Warrensburg, NY	Newcomb to Minerva to North Hudson trails

*Protect the Adirondacks! Inc. v. NYSDEC and APA*

*Index No. 2137-13*

**Defendants-Respondents' Witness List**

February 22, 2017

<b>DEFENDANTS-RESPONDENTS' ADIRONDACK PARK AGENCY WITNESS LIST</b>	<b>SUBJECT OF TESTIMONY</b>
Kathleen Regan Deputy Director of Planning Adirondack Park Agency P.O. Box 99 Ray Brook, New York, 12977	APA's role in the planning process for Class II Community Connector snowmobile trails and approvals therein
John Burth Environmental Program Specialist 2 Legal Enforcement Adirondack Park Agency P.O. Box 99 Ray Brook, New York, 12977	Resolution of Enforcement Complaints Related to Seventh Lake Mountain Trail
Matthew McNamara Environmental Program Specialist 1 Legal Enforcement Adirondack Park Agency P.O. Box 99 Ray Brook, New York, 12977	Inspection of Construction at Seventh Lake Mountain Trail
Walter Linck Associate Natural Resources Planner Adirondack Park Agency P.O. Box 99 Ray Brook, New York, 12977	Inspection of Construction at Seventh Lake Mountain Trail

*Protect the Adirondacks! Inc. v. NYSDEC and APA*  
*Index No. 2137-13*  
**Defendants-Respondents' Witness List**  
February 22, 2017

<b>EXPERT WITNESS LIST</b>	<b>SUBJECT OF TESTIMONY</b>
<p>Timothy Howard, Ph. D  Director of Science  New York Natural Heritage Program  625 Broadway, 5<sup>th</sup> Floor  Albany, NY 12233</p>	<p><b>Subject Matter.</b> The ecological benefits resulting from DEC's plan to remove snowmobile trails from roadless, interior forest blocks located in the Forest Preserve. Quantitative analysis of the implementation of the plan on forest fragmentation. Review of "canopy", "clearcut" and forest features, and associated trail construction practices as they pertain to Class II Community Connector snowmobile trails constructed pursuant to the 2009 Snowmobile Guidance. Qualitative analysis of forest community composition and structure.</p> <p><b>Substance of Facts and Opinions.</b> Analyses of metrics used to assess forest fragmentation indicate a net ecological benefit from implementation of the 2009 Snowmobile Guidance. Review of foundational ecological principles indicate current trail construction practices as outlined in the 2009 Snowmobile Guidance are better than old carriage roads with respect to local ecological integrity. Examination of Class II Community Connector trail construction work indicates no evidence of "clearcuts," as the term is applied in the ecological literature.</p>

*Protect the Adirondacks! Inc. v. NYSDEC and APA*  
*Index No. 2137-13*  
**Defendants-Respondents' Witness List**  
 February 22, 2017

<b>EXPERT WITNESS LIST</b>	<b>SUBJECT OF TESTIMONY</b>
<p>Robert Ripp            Forester I            New York State Department of            Environmental Conservation, Region 5            Warrensburg, NY</p>	<p><b>Subject Matter, Facts and Opinions</b>            Trail construction techniques &amp; features            including bench cuts, water bars, broad based            dip, corduroy, bridge construction and tree            cutting, forestry industry practices.            Trail siting and route selection.            Trail construction and application of DEC            tree cutting and trail construction policies.            Trail construction and preservation of the            wild forest nature of the Forest Preserve,            including preservation of forest canopy,            habitats, wetlands and other forest features.            Newcomb to Minerva to North Hudson trail</p>
<p>Tate M. Connor            Forester 1            DEC Region 5            Ray Brook Headquarters            P.O. Box 296            1115 State Route 86            Ray Brook, NY 12977-0296</p>	<p><b>Subject Matter, Facts and Opinions</b>            Trail construction techniques &amp; features            including bench cuts, water bars, broad based            dip, corduroy, bridge construction and tree            cutting.            Trail siting and route selection.            Trail construction and application of DEC            tree cutting and trail construction policies.            Trail construction and preservation of the            wild forest nature of the Forest Preserve,            including preservation of forest canopy,            habitats, wetlands and other forest features.            Seventh Lake Mountain trail</p>

**John W. Caffry**

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**From:** Linda Friedman <Linda.Friedman@ag.ny.gov>  
**Sent:** Wednesday, February 22, 2017 4:23 PM  
**To:** John W. Caffry; 'claudia@braymerlaw.com'  
**Cc:** Loretta Simon; Meredith Lee-Clark  
**Subject:** Protect! v DEC, APA: State's witness list  
**Attachments:** 2017 02 22 Letter LS to Connolly w State's witness list.pdf

**John and Claudia:**

Loretta asked me to email you the attached witness list. Please let me know that you have received it.

Thank you,

Linda

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