



March 1, 2020

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**Executive Director**

Brian Layman  
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State Highway 10  
Stamford, NY 12167  
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E-mail: [brian.layman@dec.ny.gov](mailto:brian.layman@dec.ny.gov).

**RE: Proposed Tree Cutting at the Devils Tombstone Campground**

Dear Mr. Layman:

Protect the Adirondacks has reviewed the Environmental Notice Bulletin (ENB) notice published on November 27, 2019 titled "Tree Cutting for the Devils Tombstone Campground Water and Electric System Installation" that outlines a proposed project by the Department of Environmental Conservation (DEC). We have also reviewed the Application for Routine Maintenance Project dated October 9, 2019 for this project and the 2018 UMP for the campground.

The project proposes to replace the water source at the Devils Tombstone Campground on Forest Preserve land in the Town of Hunter in the Catskill Park by utilizing an existing well on the site and installing new underground piping, and making electrical system upgrades, including connecting the campground to the grid and installing underground wiring. Due to problems with compliance with NYS Department of Health water standards, the campground was closed for the entire 2019 season.

This project calls for "the cutting and removal of 77 trees 3 inch or larger diameter at breast height (DBH) and an estimated 1,694 trees less than 3 inch DBH as part of the water and electric system installation project that is necessary for health and safety purposes for the campground to be operational in the 2020 season."

Tree cutting on the public Forest Preserve is strictly limited by Article 14, Section 1, of the NYS Constitution. Article 14 reads: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be

**Protect the Adirondacks**

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leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.” This wording has not changed since its adoption by the Constitutional Convention of 1894.

Historically, limited tree cutting on the Forest Preserve has been undertaken by state agencies to facilitate various public recreational programs. Court cases from 1930 and 1993 have ruled that tree cutting is allowable on the Forest Preserve for management activities so long as it does not exceed a “material degree” or occur to a “substantial extent.”

In 1993, the *Balsam Lake Anglers Club v. NYS Department of Environmental Conservation and Adirondack Park Agency* case involved tree cutting by DEC of large diameter (> 3” DBH) and small diameter trees (<3” DBH ) to build a cross-country ski trail in the Catskill Forest Preserve. In that case a fishing club in the Catskills protested the widening of a foot trail by the DEC to accommodate cross-country skiing. In the *Balsam Lake* case, the court record shows that approximately 350 trees of 1” DBH or more were cut, or marked to be cut, for the construction of two trail sections totaling approximately 2.3 miles. This cutting was approximately 152 trees of that size per mile.

In 1930, in *The Association for the Protection of the Adirondacks v MacDonald*, the courts found that the state’s plans to cut 2,500 “large and small” trees on 4.5 acres of the Forest Preserve would violate Article 14, Section 1. The record in that case provided an accounting of trees over 3” DBH, but not trees under 3” DBH.

The July 3, 2019 Appellate Division, Third Department, decision in *Protect the Adirondacks v. DEC* found cutting of 952 trees of 1” DBH or greater per mile to build Class II snowmobile trails to be unconstitutional. This decision also upheld the standards from the previous Article 14 decisions from 1930 and 1993 that found that tree cutting is allowable on the Forest Preserve for management activities so long as it does not exceed a “material degree” or occur to a “substantial extent.” The Appellate Division’s decision expanded upon a lower court decision that, in part, recognized all trees on the Forest Preserve as “timber” for purposes of Article 14.

We note that for this project DEC has counted trees <3” DBH, as is required by the recent decision of the Appellate Division, Third Department in *Protect the Adirondacks V. DEC*. We appreciate DEC’s stated intention to adhere to constitutional protections and past legal precedent on that issue. While we also appreciate the effort involved in estimating the trees under ½” DBH that would be cut, we do not believe that the current state of the science or the case law requires this to be done.

In the November 27, 2019 ENB Notice, DEC stated:

A tree-cutting list, site plans and work plan have been prepared and approved. This project is listed in proposed management actions in the approved 2017 Devils Tombstone Public Campground Unit Management Plan and the approved 1990 Final Generic Unit Management Plan and Environmental Impact Statement

for Campgrounds and Day Use Areas. The proposed tree cutting will be done consistent with the New York State Supreme Court, Appellate Division decision in the case *Protect the Adirondacks! Inc. v. New York State Department of Environmental Conservation* dated July 3, 2019.

Protect the Adirondacks has reviewed the tree cutting tally for this project. The tally lists 53 trees greater than 3" DBH in Areas 1 and 2 of the project. These areas also include 35 trees between 1-2" DBH and 25 trees between 0.5-1" DBH. The total trees in Areas 1 and 2 is 113. Areas 1 and 2 cover 0.4 acres and this cutting is designed to take place on corridors totaling 1,304 feet.

The tally lists 24 trees greater than 3" DBH in Areas 3 and 4 of the project. These areas also include 12 trees between 1-2" DBH and 22 trees between 0.5-1" DBH. The total trees in Areas 3 and 4 is 58. Areas 3 and 4 covers 0.2 acres and this cutting is designed to take place on corridors totaling 1,215 feet.

The tally lists the total cutting of trees 1" DBH and greater to be 124 trees over just under .5 miles, totaling nearly 250 trees per mile, well above the 152 trees per mile in the *Balsam Lake* case.

In this case, Protect the Adirondacks finds that the proposed cutting of 124 trees of 1" DBH or more, on less than 0.5 miles of corridor, and the clearing of 0.6 acres, to be very questionable under the Constitution. We urge to DEC to explore alternatives that would reduce the level of tree cutting to bring it within the *Balsam Lake* limits. This could probably be accomplished by putting the water and electric lines under the existing road corridors in the campground, where no tree cutting would be required.

The ENB notice raised the issue that the proposed replacement of the water line is necessary for the campground to operate this year, as if this supposedly somehow exempts this project from the forever wild clause. Protect the Adirondacks rejects that notion. First, there is no such exemption in the Constitution. Second, an emergency situation does not exist, as we note that DEC closed the Devils Tombstone Campground in 2019, and has not identified any pressing importance for reopening it. Third, there have been genuine health and safety projects or emergencies that necessitated changes to the Forest Preserve, such as the Raquette Lake water supply, Piseco Airport, Route 56 power transmission line, and the recent creation of the Health and Safety Land Account, which were all subject to constitutional amendments, showing that health and safety or emergency situations are not exempt from Article 14. To date, there has not been a similar constitutional amendment for the DEC campgrounds on the Forest Preserve.

In addition to Article 14, this project is also subject to the Catskill State Park State Land Master Plan and the April 2018 Unit Management Plan (UMP) for the campground. These documents require DEC to limit vegetative clearing and minimize tree removal. UMP, p. 3. There is nothing in the current plan that shows that these requirements have been met.

On behalf of the Board of Directors of Protect the Adirondacks, please accept my gratitude for the opportunity to present our concerns on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Bauer".

Peter Bauer,  
Executive Director

CC D. Bryk, Executive Chamber  
A. Lefton, Executive Chamber  
M. Phillips, Executive Chamber  
B. Seggos, NYSDEC  
S. Mahar, NYSDEC  
J. Drabicki, NYSDEC  
T. Berkman, NYSDEC  
R. Davies, NYSDEC  
K. Hamm, NYSDEC  
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