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November 1, 2021

Hon. Basil Seggos
Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

RE: DEC Must Comply With New York Court of Appeals Decision on Article 14

Dear Commissioner Seggos:

It has been more than five weeks since the Department of Environmental Conservation ("DEC") called together various Adirondack stakeholders to discuss its response to the May Court of Appeals decision in *Protect the Adirondacks v. DEC/APA*. In September, the DEC verbally agreed to suspend construction of a new wide multi-use/snowmobile trail in the Catskills. Since then the Governor's Office stated to us and allied organizations that the DEC would provide at least two weeks' notice if it intended to start work on this trail, or any other controversial Forest Preserve project that involved tree cutting.

As we're now moving well into the fall and it's soon to be winter and snowmobile season, another issue has moved to the forefront regarding the DEC's response to the *Protect* decision. That is the DEC's apparent decision to maintain and manage existing Class II Community Connector Snowmobile Trails ("Class II trails") that the Court of Appeals found to violate the State Constitution. Among the major Class II trails that the Court found to be illegal were the Seventh Lake Mountain Trail in the Moose River Plains Wild Forest Area and the Gilmantown Trail in the Jessup River Wild Forest Area.

These trails cannot be opened in the winter of 2021-22 for snowmobiling when New York's highest court found that they were illegal. These trails must be closed immediately and remediated as soon as possible.

Closure and remediation of these two Class II trails is one of several actions that the DEC must undertake soon in order to comply with the Court of Appeals decision in the *Protect* case.

Protect the Adirondacks

PO Box 48, North Creek, NY 12853 · 518.251.2700

www.protecttheadirondacks.org · info@protectadks.org

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Other necessary actions include:

1. Rescind the Commissioner's Order for ONR-2, and replace it with new Interim Forest Preserve Trail Management Guidelines for Adirondack and Catskill Parks (see outline for these guidelines below), and then commit to developing final guidelines within a set timeframe.
2. Rescind Policy LF-91-2, and draft a new Forest Preserve Tree Cutting Policy that counts trees 1" DBH and greater. This new policy must include specific requirements for assessing compliance with Article 14 before any tree cutting is approved.

The *Balsam Lake* tree cutting standard should be codified in the new DEC tree cutting policy. All new trails must conform with the *Balsam Lake* decision, where the Appellate Division adhered to the 1930 *MacDonald* decision. The level of tree cutting in the *Balsam Lake* decision (which found that cutting 350 trees over 1" DBH over the course of 2.3 miles for a cross-country ski trail was allowable under Article 14) was neither substantial nor material using the *MacDonald* test. This level of tree cutting conforms with the *Protect* decision in that new trails should not "require greater interference with the natural development of the Forest Preserve than is necessary to accommodate hikers." (*Protect v. DEC*, p. 83)

3. Not permit any new snowmobile trail construction, except on designated roads or in other areas where the construction of the trails can adhere to *Balsam Lake* and *Protect* decisions.
4. Restore Class II trails that were partly constructed, such as the Newcomb to Minerva Trail and Cooper Kiln Trail.
5. End the DEC policy fiction of multi-use trails that are designed and constructed primarily to facilitate use by snowmobiles. Multi-use trails must meet the trail construction standards for each type of proposed use. There should not be any construction of new multi-use trails that are designed primarily for use by snowmobiles until further policy is developed.

Long-term, the *Protect* decision demands more far-reaching reforms of the DEC's and APA's Forest Preserve management. These reforms include:

1. In compliance with the May Court of Appeals decision, there should be no new trails of any kind that "require greater interference with the natural development of the Forest Preserve than is necessary to accommodate hikers." (*Protect v. DEC*, p. 83)
2. Forest Preserve trail maintenance and construction work must adhere to the new tree cutting standard (where all trees 1" DBH or greater are counted).
3. New trail construction must be limited to trails where all work is contained within an 8-foot-wide disturbed area. New trail projects should not involve snowmobile trails unless they are routed on Forest Preserve roads.

4. Trail maintenance is encouraged to continue. Trail maintenance projects include those that:
 - do not involve cutting of trees greater than 1" DBH
 - do not involve grading or other use of motorized/mechanized machinery or motor vehicles, other than chainsaws, powered hand tools
 - do not disturb areas outside of an 8-foot-wide envelope
 - contain all bench cuts within the 8-foot-wide envelope
 - allow trees that are less than 1" DBH to be cleared during maintenance activities
 - maintain a trail tread at a maximum of four feet wide or less.
5. Draft work plans that include tree cutting or use of motor vehicles on the Forest Preserve must be posted on the ENB and provide an opportunity for public comments. Final work plans that include tree cutting or use of motor vehicles must include a response document to public comments.
6. Work plans must state the scope of work required for all UMP-approved projects relative to earth moving, bench cutting, trail grading, and tree cutting.
7. All final work plans must be publicly accessible at the time of approval on the NYSDEC website where they are organized by year and Forest Preserve management unit.
8. A final Forest Preserve Trails Management Policy that is adopted by DEC in a timely manner. This policy shall cover all types and classifications of trails on the Forest Preserve in the 16 counties of the Catskill Park and Adirondack Park.
9. Unit Management Plan approvals must take Article 14 compliance into account for all new construction in the Forest Preserve.

Protect the Adirondacks believes that it is unacceptable for the DEC to stonewall and fail to comply with the *Protect* decision. We look forward to continuing discussion with the DEC, but continued failure by the DEC to comply with the *Protect* decision will force us to go back to court to seek relief.

On behalf of the Board of Directors of Protect the Adirondacks, I thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, written in a professional style.

Peter Bauer
Executive Director

CC: Karen Persichilli Keogh, Executive Chamber
Elizabeth Fine, Executive Chamber
R. Shah, Executive Chamber
B. Holohan-Scally

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R. Isacowitz, Executive Chamber
R. Wood, Executive Chamber
B. Seggos, NYSDEC
C. Gallagher, NYSDEC
S. Mahar, NYSDEC
T. Berkman, NYSDEC
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K. Petronis, NYSDEC
R. Davies, NYSDEC
P. Frank
NYS APA