

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THEODORE E. GALUSHA, TEENA
WILLARD, and WILLIAM SEARLES

Plaintiffs,

- against-

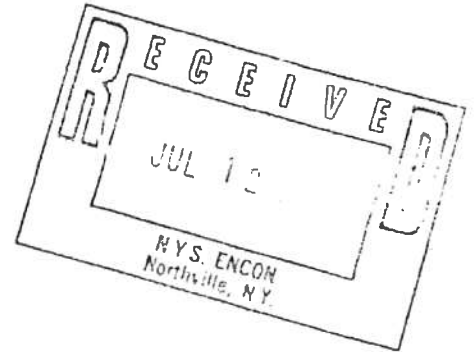
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
JOHN P. CAHILL, sued herein in his official
capacity as Commissioner of the New York
State Department of Environmental
Conservation, ADIRONDACK PARK
AGENCY OF THE STATE OF NEW YORK,
DANIEL T. FITTS, sued herein in his official
capacity as Chairman of the Adirondack Park
Agency of the State of New York, GEORGE E.
PATAKI, sued herein as Governor of the State
of New York, JOHN DOE, Individually, and
STATE OF NEW YORK,

Defendants,

- and -

ADIRONDACK COUNCIL, ADIRONDACK
MOUNTAIN CLUB, RESIDENTS
COMMITTEE TO PROTECT THE
ADIRONDACKS, ENVIRONMENTAL
ADVOCATES, ASSOCIATION FOR THE
PROTECTION OF THE ADIRONDACKS,
GRAHAM L. COX, LISA M. GENIER,
DEBRA HAMILTON and EARNEST B.
LaPRAIRIE,

Intervenor-Defendants.



CONSENT DECREE

Civil Action
No. 98-CV-1117
(LEK-RWS)

Plaintiffs Theodore E. Galusha, Teena Willard and William Searles (“Plaintiffs”) and Defendants New York State, New York State Department of Environmental Conservation, Adirondack Park Agency of the State of New York, John P. Cahill, in his official capacity as Commissioner of the New York State Department of Environmental Conservation (“DEC”), Daniel T. Fitts, in his official capacity as Executive Director of the Adirondack Park Agency (“APA”) of the State of New York, and George E. Pataki, as Governor of the State of New York, (hereinafter collectively “Defendants”), and Intervenor-Defendants Adirondack Mountain Club, Inc., Adirondack Council, Residents’ Committee to Protect the Adirondacks, Environmental Advocates, Association for the Protection of the Adirondacks, Graham L. Cox, Lisa M. Genier, Debra Hamilton, and Ernest B. LaPrairie (collectively “Intervenor-Defendants”) hereby agree as follows:

WHEREAS the Defendants are charged by Article XIV of the New York State Constitution, statute, regulation and the Adirondack Park and Catskill Park State Land Master Plans (“SLMPs”) to act as stewards and, in the case of DEC, land manager for the Forest Preserve within the constraints of New York State Constitution Article XIV’s “forever wild” provision and the SLMP land classification system and to act in accordance with all applicable state and federal law;

WHEREAS Plaintiffs have commenced an action under Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132 *et seq.* and 42 U.S.C. § 1983, alleging that

Plaintiffs have been discriminated against, and seeking motor vehicle access in various locations in the Adirondack Forest Preserve;

WHEREAS Plaintiffs seek injunctive relief, compensatory and punitive damages and attorneys' fees in this action;

WHEREAS Defendants and Intervenor-Defendants have denied Plaintiffs' allegations and asserted, *inter alia*, that neither the ADA nor 42 U.S.C. § 1983 requires motor vehicle access to recreational programs on any state lands, particularly state lands located in the Forest Preserve;

WHEREAS the Defendants affirm their commitment to provide reasonable access to recreational programs within the Forest Preserve for persons with disabilities;

WHEREAS the Defendants have the legal obligation and authority to determine whether, where and in what manner reasonable access to recreational programs within the Forest Preserve for persons with disabilities, particularly mobility-related impairments, shall exist;

WHEREAS Defendants recognize the importance of incorporating the needs and perspectives of persons with disabilities into the unit management planning process;

WHEREAS the parties wish to resolve the instant lawsuit in an equitable manner and to avoid potentially lengthy and costly litigation; and

WHEREAS the Court has considered the matter and issues;

IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

SECTION I. Description of Settlement

In consideration of Plaintiffs' (1) agreement to discontinue the instant litigation with prejudice and settle any and all claims under the ADA and 42 U.S.C. § 1983 raised, or that could have been raised, in the complaint against the Defendants concerning any matter relating to the Adirondack Forest Preserve and/or any other State Forest Preserve including, but not limited to motorized access at locations in the Forest Preserve by persons with disabilities, and compliance in any manner with the ADA; (2) agreement to discontinue all claims for attorney's fees, except as otherwise set forth in paragraph H of Section III of this Consent Decree; and (3) representation that they presently know of no other actual or potential causes of action that they have or may have against the State of New York, its departments, employees, agents or elected officials for anything whatsoever, Defendants agree to provide the following:

A. Expedited UMPs. DEC and APA commit to develop and process Unit Management Plans ("UMPs") for Wild Forest areas within the Adirondack Forest Preserve and on other state lands, consistent with all applicable law as follows:

1. DEC will prepare and submit amendments to existing UMPs and supporting SEQRA documentation in final form to include provisions as set forth in this Consent Decree, to

the APA for commencement of the public review process for the following Units within six months of the entry of this Consent Decree:

Aldrich Pond Wild Forest
Black River Wild Forest
Cranberry Lake Wild Forest
Fulton Chain Wild Forest
Grasse River Wild Forest
Hammond Pond Wild Forest
Independence River Wild Forest

2. DEC will prepare and submit draft UMPs and supporting SEQRA documentation in final form to include provisions as set forth in this Consent Decree, to the APA for commencement of the public review process for the following Units within eighteen (18) months of the entry of this Consent Decree:

Lake George Wild Forest
Horseshoe Lake Wild Forest
Wilcox Lake Wild Forest
Moose River Wild Forest
Shaker Mountain Wild Forest
Vanderwacker Wild Forest

3. DEC will involve representatives of the New York State Independent Living Center Council, Inc. and/or Eastern Paralyzed Veterans Association, and other persons with disabilities, in unit management planning, and will consider recreational opportunities for persons with disabilities in the course of developing all future UMPs.

B. Capital Projects. DEC will implement, over a five-year period following entry of this Consent Decree, capital projects to enhance accessibility to recreational programs for persons with disabilities within certain areas classified as Wild Forest, Intensive Use and Historic within the Forest Preserve, as well as locations outside the Forest Preserve, as set forth and described in Exhibits C, D, E, F and G [approximate cost of \$ 4.312 million]. Insofar as any such project constitutes a new facility, otherwise applicable permit or review requirements shall not be superseded or made inapplicable by this Consent Decree. As set forth in more detail in Exhibits C, D, E, F and G, the capital projects include constructing and/or improving parking, restroom and showering facilities, access to fishing opportunities, campgrounds, picnic areas, recreational trails, equestrian mounting platforms, boat launches, signage, promotional materials and road rehabilitation. In addition, DEC will commit to upgrade the Warrensburg DEC Sub-office to ADA Accessibility Guidelines ("ADAAG") and/or appropriate New York State Uniform Fire Prevention and Building Code provisions. [approximate cost of \$350,000]

C. Expanded Motorized Access to Programs in the Forest Preserve.

1. As described in Exhibit A, DEC will propose, and DEC and APA will support through the UMP amendment process, motor vehicle access for persons with disabilities holding permits under Policy CP-3, subject to closure for seasonal conditions in the discretion of DEC as land manager for the Forest Preserve, including reasonable closure for environmental and/or public safety reasons, at the following locations, for access to the programs listed below:

<u>UMP</u>	<u>Road Name</u>	<u>Miles</u>	<u>Program</u>
Indep. River	Mount Tom	4.7	Wildlife Observation

Indep. River	Branough	0.25	Hunting Camping Hunting Swimming
Lake George	Bear Slide	0.97	Fishing
Wilcox Lake	Fishpond (Upper)	2.10	Fishing
Moose River	Mitchell Pond	1.77	Camping Fishing
Moose River	Helldiver Pond	0.50	Hunting Fishing
Moose River	Icehouse Pond	0.50	Hunting Fishing
Moose River	Lost Ponds	0.92	Hunting Fishing
Moose River	Beaver Lake	2.25	Camping Hunting Fishing
Moose River	Squaw Lake	0.50	Camping Hunting Fishing
Shaker Mtn.	Holmes Lake	5.08	Hunting

Total: 19.54 miles

2. As described in Exhibit H, the following roads, opened for motor vehicle access to persons with disabilities holding permits under Policy CP-3 by court order, shall remain open subject to final approval in the UMP process, subject to closure for seasonal conditions in the discretion of DEC as the land manager for the Forest Preserve, including reasonable closure for environmental and/or public safety reasons:

<u>UMP</u>	<u>Road Name</u>	<u>Miles</u>	<u>Program</u>
Lake George	Gay Pond	3.3	Camping Fishing
Lake George	Jabe Pond	0.1	Camping Fishing

Lake George	Lily Pond	2.3	Camping Fishing
Lake George	Buttermilk Roads	3.5	Camping Fishing
Luzerne Campground	Lake Luzerne Campsite - 4th Lake	2.44	Camping Fishing
Moose River Plains	Rock Dam, Otterbrook, Indian Lake, Limekiln Lake- Cedar River	36.1	Camping Fishing Wildlife Observation

Total: 47.74 miles

3. The roads and trails outside the Forest Preserve identified in Exhibit B will be added to the list associated with Commissioner Policy CP-3, and will be posted for ATV, truck and/or car use, as appropriate and as set forth in Exhibit B, by persons with disabilities holding permits under Policy CP-3, as soon as practicable following entry of this Consent Decree, but in any event, no later than ninety days after entry of this Consent Decree.

4. In accordance with the statements of the parties on the record at the conference with the Court on March 15, 2001, the following process will be implemented in the event that any road identified in paragraph I.C. is not ultimately approved through the UMP process:

a. The parties shall consult with respect to proposing through the UMP amendment process alternative road(s) which are comparable, with respect to mileage and program, to the road(s) that were not ultimately approved.

b. Plaintiffs may propose through the UMP amendment process alternative road(s) which are comparable, with respect to mileage and program, to the road(s) that were not

ultimately approved. In the event Plaintiffs make one or more of such proposals, the UMP amendment process involving such proposals shall be completed within 24 months of the entry of this Consent Decree, or as otherwise agreed to by the parties.

c. In the event an alternative road proposed by Plaintiffs through the UMP amendment process is not ultimately approved through such process, Plaintiffs may apply to the Court with respect to opening alternative road(s) which are comparable, with respect to mileage and program, to the road(s) not ultimately approved through the UMP amendment process. All parties reserve all rights with respect to any application made by Plaintiffs pursuant to this subparagraph.

d. The phrase "comparable, with respect to mileage" as used in this . . . Consent Decree shall mean that the total mileage of any road proposed as an alternative to a road not approved through the UMP process, or through the UMP amendment process as set forth in paragraph I.C.4.c., shall be, as nearly as practicable, the same total mileage as the road not approved; provided, however, that such alternative road may differ in length in an amount not to exceed .5 miles, or as agreed to by all parties. In addition, the phrase "comparable, with respect to . . . program" shall mean a program comparable to the program(s) associated with the road(s) not opened through the UMP process or UMP amendment process, such as, for example, hunting, fishing, camping, or wildlife observation, or as agreed to by all parties.

D. Expanded Non-Motorized Access to Programs in the Forest Preserve

1. Defendants commit to establish, within six months of entry of this Consent Decree, a system for qualifying persons with disabilities for the use of existing non-motorized

G. Severability. If any provision of this Consent Decree is determined, by court ruling, order, decision, memorandum and/or opinion, to be invalid or otherwise contrary to law, such ruling, order, decision, memorandum and/or opinion shall not affect the continuing validity of the remaining provisions of this Consent Decree.

H. Entire Agreement. This Consent Decree, with Exhibits A-H incorporated by reference and attached hereto, constitutes the entire agreement entered into by the parties to settle this matter. By signing this Consent Decree, each party acknowledges that, except as set forth in paragraph III.D. concerning the continuing jurisdiction of the Court, entry of this Consent Decree will result in complete termination of this action including extinguishing all claims asserted in this action and any potential appeals, with prejudice.

I. Authority. The undersigned representative for each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Consent Decree and to bind them to it.

THIS DECREE IS AGREED TO BY ALL PARTIES, AS AMENDED
IN OPEN COURT ON THE RECORD ON JULY 5, 2001.

Dated: May 31, 2001
Albany, New York

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


JAMES H. FERREIRA, ESQ.

Deputy Commissioner and General Counsel
625 Broadway
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(518) 485-7707





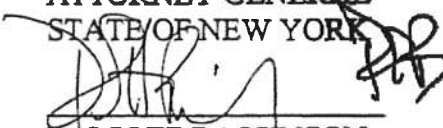

Dated: May 31, 2001
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CHAIRMAN
ADIRONDACK PARK AGENCY

By: _____
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Dated: May 31, 2001
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Dated: May 31, 2001
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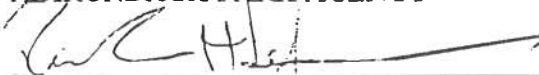
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