



Board of Directors

February 28, 2024

Charles Clusen
Chair

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

James McMartin Long
Michael Wilson
Vice-Chairs

Re: Forest Preserve Fee Acquisition in the Adirondack Park Attempts to Subvert Recent Court of Appeals Decision on Constitutional “Forever Wild” Protection

Barbara Rottier
Secretary

David Quinn
Treasurer

Dear Commissioner Seggos:

Nancy Bernstein
John Caffry
Andy Coney
Dean Cook
James C. Dawson
Lorraine Duvall
Robert Glennon
Roger Gray
Evelyn Greene
Sidney Harring
Sheila Hutt
Dale Jeffers
Patricia Morrison
John Nemjo
Peter O’Shea
Philip Terrie
Chris Walsh

Protect the Adirondacks was pleased to see the recent purchase by the Department of Environmental Conservation (DEC) of 181 acres in the Town of Newcomb for addition to the Forest Preserve. While we wholeheartedly support the State’s acquisition of new Forest Preserve lands, we are concerned that this recent purchase of Forest Preserve lands was subject to an easement that was conveyed by The Nature Conservancy (TNC) to the Town of Newcomb (Town) just prior to the purchase of the property by DEC. The easement purports to authorize construction of an unconstitutionally sized new snowmobile trail on what are now Forest Preserve lands and appears to be a ploy by all involved to conduct an end run around the Court of Appeals decision in *Protect the Adirondacks, Inc. v. NYS Dept. of Env’tl. Conservation*, 37 NY3d 73 (2021). The easement also subverts the Adirondack Park State Land Master Plan (Master Plan), and the obligations of the Adirondack Park Agency (APA) and DEC to follow a public process for preparing individual Unit Management Plans (UMP) for the development and management of newly acquired Forest Preserve lands in the Adirondack Park.

Staff

Peter Bauer
Executive Director

The subject property is located in the Town of Newcomb, Essex County (near a portion of the Vanderhacker Wild Forest) and was purchased by the State from TNC for \$217,000.00. The October 2023 deed to the State indicates that TNC conveyed the land to DEC “Subject to a permanent easement for a snowmobile trail granted by The Nature Conservancy, Inc. to the Town of Newcomb dated April 13, 2022, recorded in the Essex County Clerk’s Office on April 20, 2022” (Book 2080, Page 109).

Claudia K. Braymer, Esq.
Deputy Director

Christopher Amato, Esq.
**Conservation Director
and Counsel**

The easement, conveyed by TNC to the Town at no cost, purports to grant the Town a twelve (12) foot wide easement for the construction and maintenance

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by the Town of a snowmobile trail through the property at a location that is designated on an appended map. The easement was clearly granted in contemplation of the State becoming the future owner of the land because it requires the Town to “release, hold harmless, and indemnify” TNC *and* the “The People of the State of New York” from claims relating to injury or damage arising from the use of the easement. Additionally, the easement states that “Upon conveyance of the [property] to The People of the State of New York, any and all liability of [The Nature Conservancy] shall be governed by the laws of the State of New York.” Significantly, the easement provides that construction of the snowmobile trail is subject to approval of the landowner (now the State) and that such approval shall not unreasonably be withheld.

The easement negotiated between TNC and the Town was finalized well after the May 2021 Court of Appeals *Protect the Adirondacks* decision that found 12-foot-wide snowmobile trails to be unconstitutional on the Forest Preserve. We are mystified as to why DEC would agree to buy Forest Preserve lands that include an easement that purports to allow the construction of an unconstitutional improvement.

NYS Constitution

As you know, Article 14, section 1 of the Constitution, the famed “forever wild” provision, mandates that “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”. In *Protect the Adirondacks*, the Court of Appeals held that the Department’s construction of snowmobile trails that “are nine to 12 feet in width . . . violates the ‘forever wild’ provision of the New York State Constitution (art XIV, § 1) and therefore cannot be accomplished other than by constitutional amendment.” Accordingly, construction of a new snowmobile trail on the property that is 12 feet in width as purportedly authorized by the Town’s easement would violate Article 14.

As the steward of these Forest Preserve lands, DEC has a constitutional and statutory duty to ensure that uses of the property do not violate the Constitution. Private party rights that may be granted in an easement do not take precedence over legal protections, restrictions or regulations that apply to the burdened (or “servient”) property. Therefore, DEC cannot approve the construction by the Town of a 12-foot-wide snowmobile trail on Forest Preserve lands that are protected by Article 14. Remarkably, DEC has thus far been unwilling to provide any commitment or assurance that it will not approve a new snowmobile trail that does not meet the constitutional standards enunciated by the Court of Appeals in the *Protect the Adirondacks* decision. We therefore ask that you direct DEC’s staff to provide that commitment and inform the Town of DEC’s intention to abide by the constitutional standards imposed by the Court of Appeals.

Adirondack Park State Land Master Plan

The Master Plan sets forth the parameters that the State must adhere to when acquiring lands for the Forest Preserve. The Master Plan provides that, with some exceptions not relevant in this situation, the State “should not acquire lands” for the purpose of developing intensive

recreational facilities. Moreover, the Master Plan specifies that the State should prioritize the acquisition of “fee title” lands that are not encumbered with covenants and others’ rights, except “a term of life tenancy,” which obviously is temporary and would not constitute a permanent tenancy or right to the property.

Here, the Department has acquired a property encumbered by an easement that, by its terms, purports to authorize a new recreational snowmobile trail or “facility” that is patently unconstitutional. Moreover, DEC did not acquire “fee title” free of encumbrances, rather the property is subject to a permanent easement that was granted almost contemporarily to the Town. The acquisition is therefore contrary to the parameters set forth in the Master Plan and the Department should seek to terminate the easement. The Department should also exercise more due diligence in the future to avoid acquiring fee title to property that is encumbered in a way that is contrary to the Master Plan and Article 14.

Classification of New Forest Preserve and Preparation of a Unit Management Plan

Section 816 of the Adirondack Park Agency Act states that the DEC is “directed to develop, in consultation with the agency, individual management plans for units of land classified in the master plan” and those individual management plans “shall guide the development and management of state lands in the Adirondack Park.” The Master Plan (page 8) states that “land acquisitions should be classified as promptly as possible following acquisition.” After classification of the newly acquired land, DEC, in consultation with APA, must develop a Unit Management Plan(s) in accordance with the classification of the lands and the physical, biological and social carrying capacity of the lands and their natural resources. The UMP addresses the management objectives and actions for the property, including “the regulation or limitation of public use such that the carrying capacity of the area is not exceeded.” (Master Plan page 11). The Master Plan provides the public the right and opportunity to “review and comment on the draft unit management plans”, and requires DEC to give “due consideration” to the public’s comments.

DEC’s acquisition of new Forest Preserve lands encumbered by a facially unconstitutional easement undermines the Master Plan’s requirements that DEC and APA objectively classify the lands, assess their carrying capacity, and make a rational and unbiased decision about management of the lands. The private easement not only made critical management decisions without any benefit of the required biological assessments, but sharply constrains any meaningful public input or public process for these decisions.

Conclusion

As stated above, and for the reasons stated in this letter, we urge DEC to take steps to terminate the easement that was given by TNC to the Town for free. At a minimum, DEC should provide a written commitment to the public that it will not approve a new snowmobile trail on the subject property that does not comport with constitutional standards and communicate this limitation to the Town. Regardless, before any action is undertaken by DEC or the Town to establish new

uses of the property, APA should classify the parcel and DEC should prepare a UMP. DEC should also engage in a public process involving any requests by the Town regarding its use of the easement. We appreciate that DEC's General Counsel has assured us that DEC's process to review any proposal by the Town to construct a snowmobile trail will be transparent to the public.

In future property transactions, we urge DEC to carefully scrutinize prospective purchases for encumbrances that may conflict with Article 14. We suggest that the State refrain from purchasing fee title to property that is subject to third party encumbrances or covenants that do not pass constitutional muster.

On behalf of the Board of Directors of Protect the Adirondacks, thank you for your consideration of our concerns regarding this and future property acquisitions.

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: Thomas Berkman, Deputy Commissioner and General Counsel, NYS DEC
Katie Stone Petronis, Deputy Commissioner Natural Resources, NYS DEC
Fiona Watt, Director Lands and Forests, NYS DEC
Robert Morrell, NYS DEC
Barbara Rice, Executive Director, Adirondack Park Agency
Megan Phillips, Deputy Director for Planning, Adirondack Park Agency
NYS Office of the Attorney General, Real Property Bureau
Robin DeLoria, Town of Newcomb Supervisor
Peg Olsen, TNC