Matter of Protect the Adirondacks! Inc. v New York State Dept. of Envtl. Conservation
2014 NY Slip Op 34070(U)
December 12, 2014
Supreme Court, Albany County
Docket Number: Index No. 2137-13
Judge: George B. Ceresia, Jr.

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

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.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-13-ST4541 Index No. 2137-13

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DECISION/ORDER

George B. Ceresia, Jr., Justice

The plaintiff-petitioner (hereinafter "petitioner") is a not-for-profit corporation dedicated to the protection and preservation of the lands of the Adirondack Forest Preserve. It has commenced the above-captioned combined action/proceeding to prohibit certain activities upon state-owned lands within the Forest Preserve. The complaint-petition contains three causes of action. The first, in the form of a plenary action, alleges that construction and development of certain snowmobile trails on state-owned lands violates New York State Constitution article XIV, § 1, which requires that the Forest Preserve remain forever wild, and which specifically prohibits removal of timber. The petitioner seeks declaratory relief and a permanent injunction to prevent damage to, and illegal use of the Forest Preserve. The second and third causes of action, which seek relief under CPLR Article 78, challenge actions of the New York State Department of Environmental Conservation (hereinafter "DEC") in authorizing the grooming of snowmobile trails on state-owned lands within the Adirondack Park through use of tracked motor vehicles (other than snowmobiles). Specifically, petitioner's second cause of action challenges issuance of

[1]The New York State Snowmobile Association was granted permission to submit papers as *amicus curiae* by order of this Court dated November 21, 2013.

temporary revocable permits ("TRPs") by DEC to towns within the Adirondack Park which allows them to maintain and groom snowmobile trails using tracked motor vehicles. The petitioners also challenge the practice of DEC of entering into what are known as Adopt-A-Natural Resource ("AANR") agreements with local municipalities and snowmobile clubs for the same purpose. It is argued that under the Adirondack Park State Land Master Plan (hereinafter "Master Plan") the only motor vehicles which are permitted to be operated on snowmobile trails on state lands within the Forest Preserve are snowmobiles, and that use of tracked grooming vehicles is not allowed. Petitioner's third cause of action, alleges that the operation of tracked motor vehicles on snowmobile trails violates DEC Rule 196.1 of the (see 6 NYCRR § 196.1 [a]), and that the issuance of TRPs and AANR agreements for such purposes is therefore illegal.

The instant decision/order/judgment addresses petitioner's second and third causes of action only.

Petitioner's Second Cause of action

The Court has included in Appendix A, annexed hereto, a list of definitions set forth in the Master Plan which are relevant to the issues under discussion.

The Master Plan establishes nine classifications of state lands within the Adirondack Park. These include (as relevant here) Wilderness areas, Primitive areas, Wild Forest areas and Intensive Use areas. Wilderness areas are where "man is a visitor who does not remain", areas "having a primeval character, without significant improvement or permanent human habitation" (Master Plan, p. 19). A Primitive area "is essentially wilderness in character but contains some structures, improvements, or uses that are inconsistent with wilderness"

(Master Plan p. 25). Wild Forest is described as "an area where the resources permit a somewhat higher degree of human use than in wilderness [] areas, while retaining an essentially wild character" (Master Plan p. 31). It is "an area that frequently lacks the sense of remoteness of wilderness [or] primitive []areas and that permits a wide variety of outdoor recreation." (id.). By way of comparison, an Intensive Use area "is [] where the state provides facilities for intensive forms of outdoor recreation by the public. Two types of Intensive Use areas are defined by this plan: campground and day use areas." (Master Plan, p. 37). The focus of the instant proceeding is on the Wild Forest area, by reason that snowmobile trails are permitted in the Wild Forest, but generally are not permitted in Wilderness or Primitive areas.

The Master Plan establishes what it terms "basic guidelines" for each area of the Forest Preserve. Basic guidelines applicable to the Wild Forest, as particularly relevant to the instant discussion, are set forth in Appendix B. Other pertinent provisions of the Master Plan, as they relate to permitted uses and activities within Wild Forest areas, including use of motor vehicles and snowmobiles, are set forth in Appendix C.

The petitioner relies heavily upon the affidavit of Peter S. Paine, Jr., an attorney who served as a member of Governor Nelson A. Rockefeller's Temporary Study Commission on the Future of the Adirondacks from 1968 to 1970. Mr. Paine was co-drafter with Richard A. Persico of gubernatorial program bills which led to enactment of the Adirondack Park Agency Act in 1971 (see L 1971, c 706, § 1). Mr. Paine served as a member of the Adirondack Park Agency from its creation in 1971 to 1995. He was primary drafter of the original Master Plan approved by Governor Rockefeller in 1972. He was also primary

drafter of revisions to the Master Plan approved by Governor Mario M. Cuomo in 1979 and 1987. Mr. Paine indicates that as primary drafter of the original Master Plan, and revisions in 1979 and 1987, it was never his intent to allow snowmobile trails to be groomed with snowcats or other similar non-snowmobile motor vehicles. Mr. Paine indicates that under the paragraph 2 (c) of the Wild Forest heading Motor Vehicles, Motorized Equipment and Aircraft (see Appendix C, infra), the only motor vehicle permitted to be used on a snowmobile trail is a snowmobile. In the course of tracing the history of the Master Plan, Mr. Paine avers that during public hearings held in 1978, issues were raised on the one hand concerning the intrusion of snowmobiles in the Forest Preserve (and their negative impact on wildlife), and on the other hand, with regard to the lack of grooming of snow on such trails, which rendered some trails impassable. The 1978 public hearings preceded amendments to the Master Plan made in 1979, in which the definitions of cross-country ski trail and improved cross country ski trail were devised (see Appendix A, infra). These revisions were made, according to Mr. Paine, to accommodate the grooming of cross country ski trails in the Mt. Van Hoevenberg Intensive Use Area, which was to be used for the 1980 Winter Olympics. Although the revision authorized the grooming of improved cross country ski trails with motor vehicles, and while "serious attention was given to whether there should be any mechanized maintenance of snowmobile trails in the Adirondacks" (Paine affidavit, p. 13, ¶ 24), he indicates that no other revisions were adopted in 1979 to permit grooming of snowmobile trails. Mr. Paine maintains that while the Master Plan provided for maintenance of snowmobile trails, no mention was made with regard to the grooming of snow on such trails, "including daily grooming by a multi-ton motor vehicle groomer" (Paine affidavit, p.

14, ¶ 30). He points out that although administrative personnel are authorized to use motor vehicles and motorized equipment in the Wild Forest "where necessary to reach, maintain or construct permitted structures and improvements" (see Wild Forest heading "Motor Vehicles, Motorized Equipment and Aircraft", ¶ 2, Appendix C, infra), the Master Plan was not amended in 1979 to authorize the grooming of snowmobile trails by administrative personnel.

Mr. Paine points out that while several revisions were made to the Master Plan in 1986, including provisions applicable to snowmobile trails, no mention was made with regard to the grooming snow on such trails; or with regard to the use of tracked groomers on such trails.

Mr. Paine accordingly asserts that the use of snowcats or other similar large tracked vehicles, including those pulling a mechanical grooming device, are not permitted on snowmobile trails within the Wild Forest. He argues that grooming of snowmobile trails does not constitute "maintaining" or "rehabilitating" such trails within the meaning of the Master Plan; but that even if it did, the grooming by large tracked motor vehicles by administrative personnel has not been shown to be necessary, since snowmobiles (which are permitted on snowmobile trails) can also do the job. It is also argued that the grooming of snowmobile trails does not constitute an "improvement" of the trail as that term is defined in the Master Plan (see Appendix A, infra); and that had the Adirondack Park Agency ("APA") intended to allow grooming of snowmobile trails by motor vehicles other than snowmobiles, it would have expressly amended the Master Plan to do so, as it did when it authorized the grooming (by motor vehicles) of Improved Cross Country Ski Trails.

In its reply papers, the petitioner has submitted the affidavit of George Davis, Director of Planning of the APA from its inception to 1976. Mr. Davis indicates "[t]here is no doubt in my mind that the Agency recognized snowmobiles with their attendant noise and fumes were inappropriate anywhere on the Forest Preserve." Because the use of snowmobiles within the Forest Preserve had "created a precedent", Mr. David indicates that the Agency believed that such use should be recognized, "but well regulated". He indicates that groomers were not in use at that time, and therefore were "not subject to discussion." In his view the foot trail size limitation (of snowmobile trails) meant that groomers should never be used without amendment to the Master Plan.

The respondents indicate that DEC has had a longstanding policy of treating snowmobile trail grooming as a form of trail maintenance. They point out that in January 1986 the Director of DEC's Division of Lands and Forests adopted a new policy for snowmobile trails within the Forest Preserve which, under the heading "Maintenance", mentioned trail grooming. The policy indicated that grooming should not be a function of the Department, but rather should be performed by "user groups" under a TRP. Respondents also indicate that in 1998, DEC's Office of Natural Resources issued a policy ("ONR-2"). Under the heading "Maintenance", the policy again mentioned that grooming of snowmobile trails would not be a function of the Department; but rather must be performed by user groups under a TRP.

The respondents make mention of the issuance by DEC of two documents in 2000. The first, issued by the Division of Lands and Forests, was entitled "Clarification of Practice Regarding Motor Vehicle Use for Snowmobile Trail Grooming, Maintenance and

Construction in Wild Forest" ("2000 Clarification"). As relevant here, under the heading "Grooming", the 2000 Clarification indicated, *inter alia*, that the use of grooming equipment must be approved by the Department, in order to protect snowmobile trails from alteration. The second document was entitled "Interim Guidelines For Snowmobile Trail Construction and Maintenance in the Adirondack Forest Preserve" ("2000 Interim Guidelines"). This document indicated that the grooming of snow would constitute ordinary maintenance or rehabilitation of an existing snowmobile trail.

Respondents indicate that in 2006, DEC (together with the New York State Office of Parks, Recreation and Historical Preservation), issued the "Snowmobile Plan for the Adirondack Park/Final Generic Environmental Impact Statement" ("2006 Snowmobile Plan"). This document authorized the grooming of snowmobile trails through use of a snowmobile with drag or a small tracked groomer (2006 Snowmobile Plan, p 61). It also contained the following statement: "[t]he use of mechanical groomers, as described above, will be operated only by administrative personnel including DEC staff or volunteers under an agreement with the DEC (AANR or TRP) []." (id., at 62).

The respondents further indicate that in 2009 DEC and the APA jointly issued a document entitled "Management Guidance Regarding Snowmobile Trail Siting, Construction and Maintenance on Forest Preserve Lands in the Adirondack Park ("2009 Management Guidance"). The 2009 Management Guidance established two categories of snowmobile trails: Class II trails, referred to as community connector trails[2]; and Class I trails, referred

[2]"Snowmobile trails or trail segments that serve to connect communities and provide the main travel routes for snowmobiles within a unit are Community Connector Trails. These trails are located in the periphery of Wild Forest or other Forest Preserve areas. They are always located as close as possible to motorized travel corridors, given safety, terrain and environmental

to as secondary snowmobile trails[3]. The respondents point out that the 2009 Management Guidance, among other things, authorized use of tracked groomers other than snowmobiles for use on Class II trails, as approved in an AANR or TRP (2009 Management Guidance p 16).

The respondents maintain that petitioner's second cause of action is time barred under Executive Law 818 (1)[4] by reason that the petitioner in this proceeding actually seeks to "collaterally attack" a resolution of the APA dated November 13, 2009 ("2009 APA Resolution")[5] which approved the 2009 Management Guidance, and (of great significance here) determined it to be in compliance with the Master Plan. Relevant portions of the 2009

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constraints, and only rarely are any segments of them located further than one mile away from the nearest of these corridors. They are not duplicated or paralleled by other snowmobile trails. Some can be short, linking communities to longer Class II Community Connector Snowmobile Trail trails that connect two or more other communities." (2009 Management Guidance, p 3)

[3]"All other snowmobile trails that are not Community Connector Trails are Secondary Snowmobile Trails. These trails are located in the periphery of Wild Forest and other Forest Preserve areas where snowmobile trails are designated. They may be spur trails (perhaps leading to population areas and services such as repair shops, service stations, restaurants and lodging), short loop trails or longer recreational trails. If directly connected to Class II Community Connector Snowmobile Trail trails, new and rerouted Class I trails are always located as close as possible to - and no farther than one mile from – motorized travel corridors. If not directly connected to Class II trails, they are generally located within one mile of motorized travel corridors, although some - with high recreational value - may be located beyond one mile and may approach a remote interior area." (2009 Management Guidance, p 3-4)

[4]Executive Law § 818 recites: "1. Any act, omission, or order of the [Adirondack Park Agency] or of any officer or employee thereof, pursuant to or within the scope of this article, may be reviewed at the instance of any aggrieved person in accordance with article seventy-eight of the civil practice law and rules, but application for such review must be made not later than sixty days from the effective date of the order or the date when the act or omission occurred." (Executive Law § 818)

[5]The full title of the document is "Resolution Adopted by the Adirondack Park Agency With Respect To An Interpretation of the State Land Master Plan, Involving Compliance of Proposed Guidance For Snowmobile Trail Siting, Construction and Maintenance On Forest Preserve Lands in the Adirondack Park" (2009 APA Resolution, unnumbered p. 1)

APA Resolution are annexed hereto as Appendix D. Among its various findings, the APA concluded that the use of small tracked groomers was appropriate for maintenance of snowmobile trails within the Wild Forest; that the 2009 Management Guidance was "consistent" with the Master Plan; and that the 2009 Management Guidance "compl[ies] with" the Master Plan (2009 APA Resolution, Appendix D, annexed hereto). In the respondents' view, the petitioners should have commenced the instant proceeding within sixty days of November 13, 2009.

The respondents further contend that the issuance of TRPs authorizing tracked vehicles to groom snowmobile trails in the Wild Forest does not violate the Master Plan and is not arbitrary and capricious. As part of their argument they cite various provisions of the Master Plan, the 2006 Snowmobile Plan, the 2009 Management Guidance and 2009 APA Resolution, as well as other documents. In their view, the Master Plan can be reasonably construed to allow tracked groomers to operate on snowmobile trails within the Wild Forest.

Turning first to respondent's affirmative defense predicated upon the statute of limitations, the petitioner takes the position that it is not challenging the 2009 Management Guidance or the 2009 APA Resolution, but rather is challenging the issuance of TRPs and AANRs[6] on December 17, 2012 and January 2, 2013 (as having been issued in violation of the Master Plan). In support of its argument, the petitioner points out that it never mentioned the 2009 APA Resolution in the complaint/petition. Because the petitioner only challenges DEC's action in issuing TRPs (and unspecified AANRs), and is not challenging the actions

[6]The Court observes that the petitioner did not identify a single AANR which it is challenging in its complaint-petition.

of the APA, the Court finds that the second cause of action accrued, at the earliest, on December 17, 2012. The Court further finds that the sixty day statute of limitations under Executive Law § 818 (1) does not apply, by reason that the petitioner does not seek review of an action or determination of the APA. In view of the foregoing, because the instant complaint/petition was filed on April 15, 2013, the Court finds that it is timely under the provisions of CPLR 217. For this reason, the Court concludes that respondents' statute of limitations defense as to petitioner's second cause of action has no merit.

Turning to the merits, the Court observes that the Court's role in reviewing an administrative determination is not to substitute its judgment for that of the agency, but simply to ensure that it is not made in violation of lawful procedure or affected by an error of law, and was not irrational, arbitrary and capricious or an abuse of discretion (see CPLR 7803 [3]; Matter of Peckham v Calogero, 12 NY3d 424, 431 [2009]; In the Matter of Terrace Court, LLC v. New York State Division of Housing and Community Renewal, 18 NY3d 446, 454 [2012]; Matter of Warder v Board of Regents, 53 NY2d 186, 194; Matter of Flacke v Onondaga Landfill Sys., 69 NY2d 355, 363). "'An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts'" (In the Matter of Murphy v New York State Division of Housing and Community Renewal, 21 NY3d 649, [2013], quoting Peckham v Calogero, 12 NY3d 424 [2009] at 431, which cited Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]).

Of great significance here, the Master Plan, under the heading "Interpretation and Application of the Master Plan" recites, in part, as follows:

"[T]he following guidelines will apply to questions of interpretation and application of the master plan:

> *– The Agency will be responsible as a policy matter, for general interpretations of the master plan itself either on its own initiative, at the request of any interested state agency [].*
>
> – The Agency will be responsible for determining whether a proposed individual unit management plan complies with the general guidelines and criteria set forth in the master plan.
>
> – The Department of Environmental Conservation (or other appropriate state agencies) will be responsible for the application of the master plan and individual unit management plans with respect to administration and management of the state lands under its jurisdiction.
>
> – The Agency and the Department of Environmental Conservation or other appropriate state agencies will enter into memoranda of understanding designed to implement these guidelines in actual practice. The Agency and the Department of Environmental Conservation have operated under such a memorandum of understanding since 1982." (Master Plan, p. 12, emphasis supplied)

Hence, the power to interpret the Master Plan reposes in the APA. Notably, the exercise of that power by the APA, through an interpretation of specific provisions of the Master Plan, can independently serve as a rational basis for a subsequent determination of the DEC.

The Court must initially observe that the terms "maintain", "maintenance", "groom" and "grooming" are not defined in the Master Plan. In addition, the grooming of snowmobile trails is not mentioned. The petitioner argues that this should end the discussion; and that the Court must ignore the 2009 APA Resolution and/or ignore the manner in which DEC has construed the Master Plan over a lengthy period of time. The Court does not agree.

As respondents point out, DEC has consistently treated grooming as a form of snowmobile trail maintenance dating at least as far back as 1986, to be performed, however,

by user groups under TRPs (see DEC Forest Preserve Policy Manual dated January 6, 1986 and ONR-2 issued by DEC in 1998). In November 2000 DEC published two documents: (1) a document entitled "Clarification of Practice Regarding Motor Vehicle Use For Snowmobile Grooming, Maintenance and Construction in the Wild Forest" ("2000 Clarification"); and (2) a document entitled "Interim Guidelines For Snowmobile Construction and Maintenance in the Adirondack Forest Preserve" ("2000 Interim Guidelines"). The 2000 Clarification specifically discussed use of motor vehicles on snowmobile trails for purposes of grooming, and it restricted the width of grooming equipment permitted to eight feet[7] (see 2006 Snowmobile Plan, Exhibit N, pp. 303, 306). The 2000 Interim Guidelines described the grooming of snow as a form of "ordinary maintenance or rehabilitation of an existing snowmobile trail" which did not require consultation with the APA (see 2006 Snowmobile Plan, Exhibit N, p. 307). The 2006 Snowmobile Plan contemplated use of grooming equipment on snowmobile trails, expressly permitting use of small tracked groomers operated by "administrative personnel including DEC staff or volunteers under an agreement with DEC (AANR or TRP)" (see 2006 Snowmobile Plan, p. 61-62). The 2009 Management Guidance was approved by the Commissioner of DEC on December 21, 2009. The Management Guidance, under the general heading of "Maintenance Trips Involving Snowmobiles and other Motor Vehicles" authorized use of a tractor with drag for the grooming of Class II trails (see 2009 Management Guidance, pp 15, 16). In March 2010 the APA and DEC entered into a revised Memorandum of Understanding (the "2010 MOU").

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[7]The 2009 Management Guidance increased the width of Class II Community Connector Snowmobile Trails to nine feet.

Several appendices were incorporated into the 2010 MOU, including the 2009 Management Guidance, which authorizes use of a tractor with drag and tracked groomers in order to groom snowmobile trails (see 2009 MOU, MOU Appendix E, p 14). DEC's interpretation of the Master Plan carries significant weight in an itself from the standpoint that DEC is entrusted with the responsibility of applying and carrying out the terms of the Master Plan (see Master Plan, p. 12, under the heading "Interpretation and Application of the Master Plan", supra).

The petitioner, in arguing that DEC has violated the Master Plan (by issuing the TRPs), ignores the APA's interpretation of the Master Plan, set forth in the unchallenged 2009 APA Resolution, which includes all of the following findings: that a snowmobile trail falls within the definition of an "improvement"[8]; that grooming is a basic maintenance activity for public recreational use and safety of an improvement[9]; that use of small tracked motor vehicles is appropriate for grooming of snowmobile trails; that use of tracked groomers may be carried out by "communities and snow mobile clubs" through the AANR and TRP process; and that the 2009 Management Guidance is consistent with the Master Plan. This, in the Court's view, in and of itself, provides independent support, and a rational basis for DEC's determination to issue TRPs and AANRs to allow tracked groomers to carry out the grooming of snowmobile trails within the Wild Forest.

Moreover, and apart from the foregoing, although the petitioner has made clear that

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[8]In the Court's view, this interpretation is not irrational, inasmuch as the grooming of a snowmobile trail "materially affects the existing *use, condition or appearance*" thereof (see definition of the term "Improvement", Appendix A hereof, emphasis supplied)

[9]User safety and welfare, is a proper consideration under Wild Forest Basic Guideline 9 (see Appendix B, annexed hereto).

it is not challenging the APA's action in construing the Master Plan, were it necessary to reach the issue, the Court would find that there is a rational basis in the record for the APA's interpretation, as set forth in the 2009 APA Resolution. This would include the APA's finding that the grooming of a snowmobile trail is a form of maintenance of an "improvement" within the meaning of the Master Plan; that motor vehicles in the form of small tracked groomers may be utilized for this purpose; and that such tasks may be delegated to local municipalities and/or snowmobile clubs, who are deemed to be state administrative personnel. Paragraph 2 (a) of the Master Plan under the Wild Forest heading "Motor vehicles, motorized equipment and aircraft", indicates that motor vehicles may be used "(a) by administrative personnel *where necessary* to reach, maintain or construct permitted structures and improvements, for appropriate law enforcement and general supervision of public use, or for appropriate purposes, including research, to preserve and enhance the fish and wildlife or other natural resources of the area" (see Appendix C, annexed hereto, emphasis supplied). The petitioner asserts that tracked groomers are not necessary, since snowmobiles can be used to groom trails. Neither DEC nor the APA have construed the term "necessary" in such a strict fashion. Nor is there anything within the Master Plan which mandates that they do so. Notably, the petitioner ignores the catch-all phrase "or for appropriate purposes" in the very same paragraph (see id.).

In sum, two separate agencies have construed the Master Plan in such a fashion as to permit use of tracked groomers on snowmobile trails within the Wild Forest: the APA, to which the power to interpret the Master Plan has been conferred; and the DEC, which has been delegated the responsibility under the Master Plan to apply and carry out its provisions.

The petitioner has acknowledged in this proceeding that it does not challenge the 2009 APA Resolution, which has determined that grooming of snowmobile trails within the Wild Forest with tracked groomers is permitted under the Master Plan.

Under all of the circumstances, the Court finds that the petitioner has not demonstrated that issuance of TRPs and/or AANRs was affected by an error of law (specifically, a violation of the Master Plan), or was otherwise irrational, arbitrary and capricious of an abuse of discretion. For this reason, the Court concludes that petitioner's second cause of action must be dismissed.

Petitioner's Third Cause of Action

With regard to respondent's affirmative defense predicated upon the statute of limitations, the respondents argue that the proceeding is an untimely collateral attack on the 2000 Clarification and AANRs issued by DEC in 2001. The Court adopts the same reasoning set forth in connection with the Court's discussion of the petitioner's second cause of action. Inasmuch as petitioner only seeks to challenge TRPs and AANRs, the Court finds that the third cause of action accrued no earlier than December 17, 2012; that Executive Law § 818 does not apply; and that the instant proceeding was timely commenced on April 15, 2013 pursuant to the provisions of CPLR 217.

Turning to the merits, Rule 196.1 of DEC Rules and Regulations recites:

> "(a) No person shall operate a motorized vehicle in the forest preserve except as permitted in subdivisions (b) and (c) of this section.
>
> "(b) Operation of motorized vehicles is permitted on roads:
> (1) that are under the jurisdiction of the State Department of Transportation or a town or county

highway department, in accordance with applicable State and local laws;
(2) where a temporary revocable permit has been issued by the department for motorized vehicle use by those persons to whom the permit has been issued and only in the accomplishment of the purpose of the permit;
(3) specifically marked by the department for motorized vehicle use;
(4) on public campgrounds operated by the department, in accordance with regulations for use of motorized vehicles at such facilities; or
(5) where a legal right-of-way exists for public or private use.

"(c) Operation of motor vehicles is permitted on the Limekiln Lake-Cedar River Road in accordance with section 196.3 of this Part." (see 6 NYCRR § 196.1)

The petitioner maintains that by virtue of the foregoing, no person, under any circumstance, even if such person is a DEC employee, may operate an off-road motor vehicle within the Forest Preserve. In other words DEC Rule 196.1 is claimed to be a complete and absolute bar to any off-road use of a motor vehicle within the Forest Preserve by all persons, whether they be state officers or employees, or (as particularly relevant here) administrative personnel performing snowmobile trail grooming pursuant to TRPs and AANRs.

In opposition to this argument, the respondents cite ECL § 9-0101 (7), which defines a "person" as "any individual, firm, co-partnership, association or corporation, *other than the state or a public corporation*, as the latter is defined in subdivision 1 of section 3 of the General Corporation Law[10]." (ECL § 9-0101 [7]). They maintain that this definition should

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[10]General Corporation Law was repealed in 1973 (see L 1973, c 451 § 2). The definition of the term "public corporation" is now found in New York General Construction Law § 66 (1). A public corporation "includes a municipal corporation, a district corporation or a public benefit corporation" (General Construction Law § 66 [1]).

apply to Rule 196.1, in the absence of a definition of the term "person" in DEC Rules. They point out that under ECL § 9-0105 (15) DEC has the authority to issue TRPs and enter into AANRs.[11] Taking this one step further, they maintain that the individuals who carry out the grooming of snowmobile trails pursuant to TRPs and AANRs are administrative personnel of the state, and therefore do not fall within the definition of "person" within the meaning of DEC Rule 196.1. The petitioner concedes that holders of TRPs and AANRs act as administrative personnel of the state when they groom snowmobile trails (see plaintiff's Reply Memorandum of Law dated October 31, 2013, p 33, footnote 21). It contends, however, that it is irrational for DEC to apply the ECL § 9-0101 (7) definition of a person to Rule 196.1. The Court does not agree. The Court is of the view that it is rational and proper for DEC to read ECL § 9-0101 (7) and DEC Rule 196.1 together. Contrary to petitioner's argument, nothing required DEC, in adopting Rule 196.1, to expressly incorporate the ECL definition into the Rule.

As pointed out by the petitioner, the Master Plan is less restrictive than Rule 196.1 from the standpoint that the Master Plan does not limit motor vehicle use within the Forest Preserve only to roads (see Master Plan pp 33-34, heading "Motor vehicles, motorized equipment and aircraft" paragraph 2). This, in the Court's view, provides further support for DEC's interpretation of Rule 196.1. The Court finds that the respondent's interpretation of Rule 196.1 has a rational basis.

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[11]ECL § 9-0105 recites: "For the purpose of carrying out the provisions of this article, the department shall have the power, duty and authority to: [] 15. Make rules and regulations and issue permits for the temporary use of the forest preserve." (see ECL § 9-0105). Under ECL 9-0113 DEC is authorized to enter into AANRs for purposes of "establishing or maintaining access or nature trails" (see ECL § 9-0113 [2])

The Court has reviewed the remaining arguments and contentions of the petitioner and has found them to be without merit.

The petitioner had the burden of proof in the instant CPLR Article 78 proceeding, not the respondents. Under all of the circumstances, the Court finds that the petitioner failed to satisfy its burden of proof of demonstrating that DEC's issuance and/or approval of the TRPs and AANRs was effected by an error of law, arbitrary and capricious, irrational and/or an abuse of discretion. For this reason the Court finds that petitioner's second and third causes of action have no merit and must be dismissed.

Accordingly, it is

ORDERED and ADJUDGED, that petitioner's second and third causes of action be and hereby are dismissed.

This shall constitute the decision and order of the Court. The original decision/order is returned to the attorney for the respondents. All papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order and delivery of this decision/order does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: December 12, 2014
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Summons, Notice of Petition and Combined Complaint and Petition dated April 12, 2013
2. Respondents' "Re-Notice of CPLR Article 78 Second and Third Causes of

Action of Complaint-Petition" dated September 25, 2013, Objections in Point of Law, Answer and Supporting papers

3. Respondents' Return
4. Plaintiff-Petitioner's Reply dated October 15, 2013, Supporting Papers and Exhibits
5. Affidavit of Peter S. Paine, Jr., sworn to October 15, 2013 and Exhibits
6. Affidavit of Susan L. Taylor, Assistant Attorney General, sworn to October 24, 2013 and Exhibits
7. Affidavit of James E. Connolly, sworn to October 23, 2013 and Exhibits
8. Amicus Curiae Affidavit of James Rolf, sworn to September 19, 2013 and Exhibits
9. Affidavit of John W. Caffry, Esq., sworn to December 11, 2014 in Response to Amicus Curiae Affidavit