

# NEWS RELEASE

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## **ADIRONDACK WILDERNESS ADVOCATES TO OPPOSE STATE'S DESTRUCTION OF FOREST PRESERVE**

### ***Urge New York High Court to Retain Limitations on Tree-Cutting, Honor 'Forever Wild'***

ALBANY, N.Y. – The Adirondack Council today released a copy of the “friend of the court” brief that it, together with Adirondack Wild: Friends of the Forest Preserve, was seeking permission to file with the NYS Court of Appeals last week to protect the wild character and prevent the substantial removal of trees in the “forever wild” Adirondack Park Forest Preserve. If accepted by the Court, the Adirondack Council’s and Adirondack Wild’s brief would join the Sierra Club, Atlantic Chapter’s amicus brief that was previously accepted in defense of the Forever Wild clause of the New York Constitution.

“The state’s Department of Environmental Conservation appears determined to overturn 90 years of court precedent prohibiting ‘substantial or material destruction’ of timber or trees for the construction of new snowmobile trails in the Adirondack Forest Preserve,” said Adirondack Council Executive Director William C. Janeway. “This precedent was recent reaffirmed by a lower court. The constitution is clear. State agencies cannot remove substantial numbers of trees to support construction projects in the Adirondack Forest Preserve.”

Rather than scale-back its tree cutting plan after losing in court, the DEC and other parties have appealed that decision. They are seeking to weaken the Constitution’s ‘forever wild’ clause, Janeway said. The state’s stance threatens the wild forest character of the Adirondack Forest Preserve, including the headwaters of the Hudson River and five other major waterways.

“Our response is that the DEC should be more careful with the public’s forest, clean water and rare ecosystems,” Janeway said. “They should not seek permission to be more

destructive of the priceless, century-old Adirondack legacy we hold in trust for future generations by this challenge to the “forever wild” clause in the NYS Constitution.”

### **Adirondack Wild: Forever Wild is Indivisible; Don’t Pick and Choose Phrases**

“Article XIV, Section 1 of our NYS Constitution—the ‘forever wild’ clause -- should always be read as one integrated statement about principle, policy and practice with the public’s Forest Preserve,” said David Gibson, managing partner with Adirondack Wild: Friends of the Forest Preserve. “It is wrong to separate the ironclad commitment and forever opportunity that the lands of the State ‘shall be forever kept as wild forest lands’ and the second sentence which lends practical meaning to the first by adding specific prohibitions on lease, sale, exchange, taking, sale, removal or destruction of timber in the Forest Preserve. Yet, that is exactly what the DEC is arguing to the Court of Appeals in its effort to skirt these critical constitutional protections.”

“Our amicus brief asks the Court to read both sentences of Article XIV – all 54 words - as one coherent policy which has repeatedly been affirmed by the NYS voters over its more than 125-year history as beyond DEC’s administrative discretion to alter,” Gibson continued. “Because DEC has taken the construction of snowmobile community connectors to an extreme level by blasting and leveling trails for ever-faster mechanized uses and by cutting trees for this faster mechanization beyond a reasonable degree, the State attempts to alter the state constitution by administrative fiat.”

### **Sierra Urges Court: Don’t Set ‘Alarming Precedent’**

“The Sierra Club was compelled to file our own amicus brief with the Court of Appeals because we are witnessing the erosion of the ‘forever wild’ clause’s highest purpose and meaning,” said Roger Downs, Conservation Director of the Sierra Club’s Atlantic Chapter. “We are entering a new chapter in our state’s history, where the cataclysmic effects of climate change must be met with bold plans to protect our remaining wilderness for resiliency and adaption. Our future relies upon our wild forests to sequester carbon, protect drinking water and provide refuge in a rising tide of extinction. Violating this constitutional obligation, with plans to log and bulldoze tens of thousands of trees, miles into the Forest Preserve – just to create highways for snowmobiles – sets an alarming precedent that can be replicated across the park and betrays our understanding of Article 14 and all that must be done to secure New York’s ‘forever wild’ legacy.”

Article 14, Section 1 of the NYS Constitution, known as the “forever wild” clause:

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 leased, sold or exchanged by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

**Adopted 1894**

In 2019, the state's plan to cut more trees than ever before for wider, flatter and straighter community-connector snowmobile trails was ruled to be an unconstitutional destruction of the state's Adirondack Forest Preserve. Building snowmobile or other trails has been found to be constitutional as long as the cutting is not substantial or material. And the courts have been very specific to the range of trees that can be cut and not be considered substantial or material. The Appellate Division of the NYS Supreme Court said the state's new plan to cut down 25,000 trees to create 27 miles of high-speed snowmobile roads – or 925 trees per mile – was a clear violation.

“The court ruled that removing so many trees for a trail or a road for snowmobiles violated the second sentence of the clause, which was enough to declare the state's plan unlawful,” Janeway explained. “That should have resulted in a change in plans by the DEC.”

Instead, the DEC has appealed the decision to the state's highest court. The DEC is arguing that the court should not have counted any tree smaller than “three inches in diameter at breast height.” This definition doesn't exist anywhere in the Constitution. The state argued that trees smaller than that size were saplings and not trees and could not be counted as “timber” and therefore were not significant.

The organization Protect the Adirondacks! was the original plaintiff in the case. Protect correctly argued that the Forest Preserve had plenty of trees smaller than 3 inches in diameter and some of them were 75 to 100 years old and were of similar age and ecological value to full-grown hardwoods that might be several feet thick. The friend of the court brief that the Adirondack Council and Adirondack Wild: Friends of the Forest Preserve have asked permission to file with the NYS Court of Appeals supports Protect's position.

### **Small Trees are Still Trees**

“Small trees are especially prevalent above 2,500 feet in elevation, where the harsh climate limits the size and thickness of the spruce and fir trees that make up most of the Forest Preserve,” Janeway said. “Those high-elevation trees contain some of the rarest wildlife habitat in the park (and are the subject of constant skier pressure to create downhill ski trails outside of Whiteface and Gore Mountains). The court should not abandon these forests, regardless of what groups of intensive recreational enthusiasts -- who don't support wilderness preservation -- want.”

The preserve was created in 1885 and protected by the state's constitution in 1894. Janeway was a regional director for the DEC and oversaw the Catskill Forest Preserve before joining the Adirondack Council in 2014. Janeway said the DEC is now asking the court to give it permission to “balance” the plain language of the forever wild clause against the DEC's current desire to provide motorized recreational opportunities to people who own snowmobiles.

“The plain language of the forever wild clause says the state *shall* protect the forest, and *shall not* destroy the forest,” Janeway said. “It doesn't say balance the health of the forests against the desires of a well-connected user group. We urge the court to reject that

interpretation. If the state wants to change the rules, they need to change the Constitution. And for that, they need permission from the people of this state.”

### **State’s Actions Must be Lawful**

Janeway noted that environmental organizations had agreed to allow the state to pursue a system of snowmobile trails connecting communities inside the Adirondack Park. But the Adirondack Council -- and others -- admonished state and local officials that the state’s plans had to be “lawful.”

“We were not so foolish as to buy a pig in a poke,” said Janeway. “We were careful to state, over and over, that the trail-construction plan had to comply with state law, or our cooperation would come to an end. That was our position on day one of these negotiations. It remains our position. No one should be surprised or feign disappointment.

“I have taught federal and state agency personnel trail design, construction and maintenance across the country for years, and it is clear to me that the state could have built the snowmobile trails with considerably less destruction of forest and trees,” Janeway said. “There was just no need to design the trails to allow snowmobiles to race through our most pristine Forest Preserve lands in violation of the Constitution.”

“The DEC has a responsibility to the public to protect and defend the constitutional protections afford the Forest Preserve so wisely by our ancestors,” Janeway said. “We urge the court to preserve those protections and defend the wild character of the Adirondack for generations yet to come.”

The Adirondack Council and Adirondack Wild are represented in the case by Philip H. Gitlen (a former DEC General Counsel) and Robert S. Rosborough IV, both of Whiteman Osterman & Hanna LLP.

The Adirondack Council is a privately funded not-for-profit organization whose mission is to ensure the ecological integrity and wild character of the Adirondack Park. The Council envisions a Park with clean water and clean air, comprised of core wilderness areas, surrounded by farms and working forests, as well as vibrant communities. The Adirondack Council carries out its mission through research, education, advocacy, and legal action. Adirondack Council advocates live in all 50 United States. It is the largest environmental organization focused solely on the Adirondack Park.

The mission of Adirondack Wild: Friends of the Forest Preserve, a not-for-profit, membership organization, is to advance New York’s ‘Forever Wild’ legacy and Forest Preserve policies in the Adirondack and Catskill Parks, and promote public and private land stewardship that is consistent with wild land values through education, advocacy, and research.

The Sierra Club, founded in 1892, is one of the largest, oldest, grassroots environmental organizations in the United States, with 3.8 million members nationwide, and 44,000 members in New York State.

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