State of New York
Court of Appeals

OPINION

No. 21
Protect the Adirondacks! Inc.,
Respondent-Appellant,
v.
New York State Department of Environmental Conservation et al.,
Appellants-Respondents.

Jennifer L. Clark, for appellants-respondents.
John W. Caffry, for respondent-appellant.
Sierra Club; Adirondack Association of Towns and Villages, Inc. et al.; Empire State Forest Products Association, Inc.; Open Space Institute, Inc. et al.; Adirondack Council, Inc. et al.; The Nature Conservancy, amici curiae.

RIVERA, J.:

On this appeal, we must d

approximately 27 miles of Class II community connector trails designed for snowmobile

id. § 816 [1]).

In 2006, the Department of Environmental Conservation (DEC) and the New York

communities in the Adirondack Park. In 2009, DEC developed a guidance document,

- le trails are meant to improve

-motorized recreational pursuits in the

open to snowmobiles are classified as

either Class I secondary snowmobile trails or Class II trails, the type at issue in this appeal.

travel routes for snowmobiles.

Protect the Adirondacks! Inc. commenced this combined declaratory judgment action and article 78 proceeding, alleging, in relevant part, that construction of the Class II trails violated article XIV, § 1, of the New York Constitution. Plaintiff alleged that the construction of the trails is impermissible because it required cutting and destruction of a

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nature. After a bench trial

Supreme Court held that the construction was not unconstitutional.

The Appellate Division reversed with one Justice dissenting (175 AD3d 24 [3d Dept 2019]). The majority adopted a bifurcated analysis of the constitutional provision and held

and ski trails and have less impact than roads or parking

forest nature of the Forest Preserve (*id.* at 29). Nevertheless, the Appellate Division held that the trail construction constitutes an unconstitutional destruction of timber (*id.* at 29-31). The dissent would have held that

reasoned balance between protecting the Forest Preserve and allowing year-

(*id.* at 32 [Lynch, J., dissenting]).

Defendants appeal, and plaintiff cross-appeals, as of right (*see* CPLR 5601 [b]).[1] We now affirm and hold that the planned construction of the Class II community connector trails would violate the constitution.

II

The Forest Preserve is a publicly owned wilderness of incomparable beauty. Located in two regions of the Adirondack and Catskill Mountains, the Forest Preserve with its trees, rivers, wetlands, mountain landscape, and rugged terrain is a respite from the demands of daily life and the encroachment of commercial development. It has been this way for over a century because our State Constitution mandates:

> constituting the forest preserve as now fixed by law, shall be

[1] Following a jurisdictional inquiry, we retained both the appeal and cross appeal.

or hereafter constituting the forest preserve shall be forever kept as wild forest lands. They shall not be sold, nor shall they be leased or taken by any person or corporation, public or

id. § 8).

The original statutory and administrative efforts to protect the wild forest proved ineffective. Just two years after the Forest Preserve was created, the legislature afforded the comptroller the authority to sell, upon the recommendation of the Forest Commission, timber and land located on the boundaries of the preserve (*see* L 1887, ch 475, § 8, amending L 1885, ch 283, § 8). In 1893, the legislature conferred upon the Forest

and paths in the Forest Preserve (*Association for Protection of Adirondacks v MacDonald*, 228 App Div 73, 77-78 [3d Dept 1930], citing L 1893, ch 332).

The Constitutional Convention of 1894 assembled in response to widespread discontent with the destruction of the Adirondack forest.[4] The convention delegates were determined to maintain the wild forest nature of the Preserve -spread

[4] The Forest Commiss y

NY Constitutional Convention at 130). David McClure, a New York City lawyer and delegate, sponsored an amendment that would protect the Forest Preserve. McClure described how the failure to preserve the forest had already resulted in environmental distress

mountains, from which trees have been taken, and everywhere we have seen the falling of

id. at 132). Thus, one delegate exclaimed,

you must close the door and you must close it tight, and close it right away; and not only that, you must keep it closed *id.* at 156).

The proposal was revised to ban the leasing of the land and the removal or destruction of timber. As revised, the amendment garnered unanimous support from the 1894 Constitutional Convention delegates and was submitted to a vote of the electorate and approved by the people of the State of New York. The drafters conceived that any use of the Forest Preserve contrary to the constitutional mandate may only be accomplished by an amendment approved by the electorate. The legislature, by more than a century of

Applying *MacDonald* to the appeal before us, we conclude that the planned 27 miles of snowmobile trails may not be built without constitutional amendment.[6] Contrary to the Appellate Division, we do not interpret the provision as a bifurcated clause. All members of the Court agree that the constitutional protection is unitary (*see* dissenting op at 6-7). The forever wild provision ensures the preservation of state-owned land within the

resulting in the clearing of the forest floor up to 20 feet in width in certain areas a span wide enough to site a two-car garage.

Defendants and the dissent offer two principal arguments in response. The first is that we should not view the destruction of trees as significant because the number is comparatively small per mile of trail (*see* dissenting op at 14). We rejected a similar argument in *MacDonald* when we declined to minimize the impact of the project by viewing it as a small percentage of the overall Forest Preserve (*see*

a constitutional amendment is also required to construct rights of way for a different form of motorized transportation (snowmobiles).[9]

If the trails at issue here are equally important to New York as those projects were, then the people can express their will accordingly through the democratic process. Until they say otherwise, however, the door is closed because the planned Class II trails are constitutionally forbidden.

The order of the Appellate Division should be affirmed, without costs.

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[9] The 2017 amendment to article XIV, § 1, provided a simplified method of advancing a limited set of projects in the public interest, by adding 250 acres to the Forest Preserve and creating
drafters of this amendment recognized that, under article XIV, it was
ll communities to amend the Constitution for every modest public project they wished to execute
Accordingly, with the land account established, a town, village, or county may be granted Forest Preserve land to address a limited set of public projects as long as no other alternative exists (*see* Assembly Bill 2016-10721, available at https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10721&term=2015&Summary=Y&Text=Y).

STEIN, J. (dissenting):

For well over one hundred years, the leaders and citizens of this State have strived to protect one of its most precious resources, the Adirondack Forest Preserve, consistent

preserved in their natural state, the advantages are for every one within the State and *for the use of the People*

(majority op at 9). The majority misreads our State Constitution to arrive at the mistaken conclusion that the people of this State must undertake the arduous process of constitutional amendment to enable a long-

amendment authorizing snowmobile trails, there are nearly 800 miles of trails in the Forest Preserve that can accommodate snowmobiles. Despite the existence of these trails, the majority deems unconstitutional the construction of 27 miles of new trails that are suitable for use by snowmobiles but will serve multiple purposes year-round on the ground that

change to the Forest Preserve

It is unclear how the continuation of a long-standing public use by means of a project that reduces the total number of trails in the Preserve and protects its most ecologically sensitive areas constitutes a substantial change or impacts the wild forest nature of the Preserve.

By way of background, in 2006, DEC and the Office of Parks, Recreation and Historic Preservation adopted the Snowmobile Plan for the Adirondack Park/Final Generic Environmental Impact Statement. The plan anticipated a new trail system with no material increase in miles, but with the development and creation of trails to connect communities located within the Park, as well as the redesignation of existing trails within the forest interior as nonmotorized trails (*see Matter of Adirondack Council, Inc. v Adirondack Park Agency*, 92 AD3d 188, 189 [3d Dept 2012]). Under the plan, the new trails would be open year-round for recreational use by, not just snowmobilers, but also hikers, cyclists and cross-country skiers. The proposed placement of trail segments at the periphery of Forest Preserve areas near existing roads and the closure of multiple preexisting snowmobile

of sensitive resources on both public and private

DEC & Office of Parks, Snowmobile Plan for the

Adirondack Park/Final Generic Environmental Impact Statement, 4 [October 2006]; *see Adirondack Council, Inc.*, 92 AD3d at 190).

In 2009, to implement the plan, DEC and respondent APA adopted the

-tiered

classification system for snowmobile trails, consisting of Class II, community connector trails and Class I, secondary trails that are spur trails or ungroomed (*see Adirondack Council, Inc.*, 92 AD3d at 189-190). This appeal involves only the Class II trails.

Like the snowmobile plan, the Guidance called for the closure of trails to motorized vehicle use in interior areas of the Preserve and the placement of new trails along the

outer peri

emission levels, decreased impacts on wildlife and reduced user conflicts between users participating in motorized and non-

re

old growth and large trees should be protected. Thereafter, DEC constructed 11 non-contiguous Class II trails or trail segments on Forest Preserve land. The 27 miles of new trails constructed between January 1, 2012, and October 15, 2014 required that a total of 6,184 trees measuring at least three inches or larger at breast height (DBH) be cut.

not limited to

marketable logs or wood products, but refers to all trees, regardless of size

approximately 25,000 trees either had been

or would be cut to construct the trails *id.*). Supreme Court relying on the evidence that the tree cutting was not for commercial purposes, involved no clear cutting, and was in the

held that

circumstances as to render the actions violative of the Constitution

Appellate Division held that the construction of the Class II trails would result in an unconstitutional destruction of timber in the Forest Preserve to a substantial extent or to [a] material degree (175 AD3d at 31

concomitantly, the removal of timber that is not sufficiently substantial to impact the wild forest nature of the Preserve will not be unconstitutional. Although the amount of timber cut is central to the inquiry, the *MacDonald*

standard cannot be reduced to merely an exercise in tree counting, but requires consideration of the scope, nature, purpose and impact of the project on the affected area and on the Forest Preserve as a whole.

Turning to the legal issues disputed by the parties, the construction of the trails at issue here involving the removal of 6,184 trees three inches DBH or larger took place over 27 miles of non-contiguous, multi-use trails that did not adversely affect old-growth trees, retained a closed canopy, provided for erosion control, involved no infiltration of invasive species, and resulted in the closure to motorized use of 46 miles of preexisting snowmobile trails in sensitive interior areas. Under these circumstances, the subject timber cut is not sufficiently substantial or material, in itself, to impair the wild forest nature of the 2.6-million-acre Preserve within the meaning of the Forever Wild provision, particularly inasmuch as this Court has long recognized the primary importance of the

access the Preserve (*see MacDonald*, 253 NY at 238-239).

In discussing the history of the 1894 amendment that first added the Forever Wild provision, the majority correctly observes that the Forever Wild provision had its genesis in widespread public concern over the depredation of timber by industrial logging interests and the impact of commercial exploitation on the forest and watershed (*see* majority op at 5-7). The 1885 statute that created

be forever kept as wild forest l

[1] We further explained that, in making the Forest Preserve lands *use* is not restricted, either by legislation or circumstances, to a special locality, or to a limited number of inhabitants, but *is extended to all the people* (*id.* at 247-248 [emphasis added]).

Approximately 30 years later, in *MacDonald*, the Court stated that

> the debates in the Convention of 1894, was to prevent the cutting or destruction of the timber or the sale thereof, as had theretofore been permitted by legislation, to the injury and ruin of the Forest Preserve. To accomplish the end in view, it was thought necessary to close all gaps and openings in the law, and to prohibit any cutting or any removal of the trees and timber *to a substantial extent*

(*MacDonald*, 253 NY at 238 [emphasis added]). The Court reaffirmed its understanding for everyone within the State and for the *use* *id.* at 238-239 [emphasis added]). In other words, we have long considered the recreational use of the wild forest lands to be constitutional, so long as such use does not impair the wild nature thereof.

MacDonald is especially instructive here.

removed; that to preserve the property as wild forest lands means to preserve it from the inter

Preserve as a wild forest, provided that

two of the questions before us on this

[2]

With

century, contemporaneous statutes distinguished

defined timber as trees of a certain size (*see* Former Fisheries, Game and Forest Law § 280

away or causing to be cut or assisting to cut or carry away, any tree, bark or timber within

ission to purchase

lands subject to the right of the owner to remove timber provided that it was not hard wood

In my view, under *MacDonald*, the timber cutting at issue here was not to such a

iv at 82).

made for the golf course in summer, or for other sports requiring the use of the removal of timber. In other words, this plea in behalf of sport is a plea for an open door through which

example of an appropriate use of the Prese The trails do not irrevocably change the wild

or encourage large, concentrated gatherings of sporting participants and spectators. Given the purpose and nature of these trails, together with the affirmed findings

Order affirmed, without costs. Opinion by Judge Rivera. Judges Fahey, Garcia and Wilson concur. Judge Stein dissents in an opinion, in which Chief Judge DiFiore concurs.

Decided May 4, 2021