

**“FOREVER WILD”
A LEGISLATIVE UPDATE ON NEW YORK’S
ADIRONDACK PARK†**

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† All budgetary figures in this article are current as of March 2011. For a budgetary analysis of Adirondack Park in 2011–12, see N.Y. DIV. OF THE BUDGET, 2011–12 ENACTED BUDGET FINANCIAL PLAN (2011), *available at* <http://publications.budget.state.ny.us/budgetFP/2011-12EnactedBudget.pdf>.

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INTRODUCTION

Forever wild. The term immortalized in the protection of New York's Adirondack Park can just as easily be applied to the state's turbulent legislature,¹ complex state and local agencies,² and the conflicting interests of conservation and economic development in much of the area where the park is located.³ The new governor, Andrew Cuomo, comes into office at a time when the future of several important issues facing the Adirondack Park is uncertain. From reigning in the authority of the Adirondack Park Agency to regulating moose hunting, the 2011 legislature will hear a myriad of proposals affecting the park. This article serves as a primer for these issues as well as providing a review of current law and regulations.

The Adirondack Park is a publicly protected area in northeast New York.⁴ Officially, it is the largest park and the largest state-level protected area in the contiguous United States, and the largest national historic landmark.⁵ In the simplest sense of the word, however, Adirondack Park is not a park at all.⁶ Though state-owned land currently comprises 2.7 million acres, including the highest peaks in New York, the remaining three million acres of the land in the park are privately owned, containing 110

¹ See Gerald Benjamin, *Reform in New York: The Budget, the Legislature, and the Governance Process*, 67 ALB. L. REV. 1021, 1021 (2004) (discussing the decline in the performance of New York State governance); ANDREW STENGEL ET AL., BRENNAN CTR. FOR JUSTICE, *STILL BROKEN: NEW YORK STATE LEGISLATIVE REFORM 2008 UPDATE 1-2* (2009), available at <http://www.brennancenter.org/page/-/publications/Still.Broken.pdf> (discussing the problems of the state legislative process and the need for structural reforms in each chamber's operating rules).

² See Patricia E. Salkin, *Regional Planning in New York State: A State Rich in National Models, Yet Weak in Overall Statewide Planning Coordination*, 13 PACE L. REV. 505, 505-06 (1993).

³ See PHILIP G. TERRIE, *CONTESTED TERRAIN: A NEW HISTORY OF NATURE AND PEOPLE IN THE ADIRONDACKS* (2nd ed. 1997); BARBARA McMARTIN, *PERSPECTIVES ON THE ADIRONDACKS: A THIRTY-YEAR STRUGGLE BY PEOPLE PROTECTING THEIR TREASURE* (2002).

⁴ N.Y. CONST. art. XIV, § 1 (McKinney 2006).

⁵ Anthony DePalma, *Conservancy Buys Large Area of Adirondack Wilderness*, N.Y. TIMES, June 19, 2007, available at <http://www.nytimes.com/2007/06/19/nyregion/19adirondacks.html>.

⁶ TERRIE, *supra* note 3, at 160; see Claudia Braymer, Comment, *Improving Public Access to the Adirondack Forest Preserve*, 72 ALB. L. REV. 293, 295 (2009) (explaining that the term Adirondacks comprises the constitutionally protected Forest Preserve, as well as the statutorily created Adirondack Park).

villages and hamlets.⁷

The vast open spaces and abundant natural resources of the Adirondacks “provide extensive recreational opportunities for the tens of millions of persons who live within a day’s drive of [the] area.”⁸ Nine million tourists flock to the Adirondacks annually, most visiting summer homes.⁹ In fact, the “great camps” of the Adirondacks are a storied part of the state’s history. Yet only about 130,000 residents live inside its borders year round.¹⁰ It is these residents, some argue, that have been ignored since the beginning of the state’s political involvement in the region.¹¹ A popular bumper sticker amongst year round residents proclaims: “It’s NO damn PARK. It’s the ADIRONDACKS. It’s our HOME. It’s where we WORK.”¹² The Resident’s Committee to Protect the Adirondacks responded to this sticker with their own, stating: “Adirondack Park. Since 1892, a great park, and a great place to live, work, and play.”¹³

The dichotomy between conservation and economic development is one that the Adirondacks residents and non-residents have struggled with for about 150 years. As historian Philip Terrie notes: “Recent Adirondack history has been a series of conflicts, all revolving around disputes over the best way to use, protect, or enjoy the Adirondack landscape.”¹⁴ This conflict has led to legislative debates, isolation of residents and even violence.¹⁵ Now more than ever, it is important that a “balance must be struck between the preservation of the Forest Preserve and public use of the Adirondack Park ‘in order to fully satisfy the constitutional mandate.’”¹⁶

⁷ Braymer, *supra* note 6, at 295; Andrew C. Revkin, *Land Sought for State Park is Up for Sale*, N.Y. TIMES, Jan. 10, 1997, available at <http://www.nytimes.com/2007/06/19/nyregion/19adironacks.html>.

⁸ Richard A. Liroff & G. Gordon Davis, *Protecting Open Space: Land Use Control in the Adirondack Park*, 70 CORNELL L. REV. 361, 367–368 (1984) (book review).

⁹ Jonathan Kandell, *Adirondacks Style: At Six Million Acres, New York’s Funky Wilderness Preserve, One of America’s Largest Refuges, is Also One of the Most Alluring. An Aficionado Explains Why*, SMITHSONIAN, Oct. 2004, available at <http://www.smithsonianmag.com/travel/adirondacks.html#ixzz1CuqlmFz1>.

¹⁰ *Id.*

¹¹ TERRIE, *supra* note 3, at 160.

¹² *Id.* at 205–06.

¹³ *Id.*

¹⁴ *Id.* at 159.

¹⁵ *Id.*

¹⁶ Braymer, *supra* note 6, at 297–98 (quoting *Helms v. Reid*, 394 N.Y.S. 2d 987, 999 (Sup. Ct. 1977)).

I. HISTORY OF THE ADIRONDACK PARK

A. The Early Days of the Adirondack Timber Industry

Before legal protections were put into place, the Adirondacks were exploited for their timber, iron, and beaver. The fur trade in beaver pelts was what defined the area for much of the seventeenth to the early nineteenth centuries. In 1671, “it was reported that Dutch traders delivered 80,000 pelts a year to Europe. . . . Many of the pelts supplied the beaver hat fad that raged throughout Europe into the 1800s.”¹⁷ The introduction of the steel trap rendered the beaver almost extinct in the area. Historians estimate “that there had been millions of beaver in 1600 in Northern New York, but by 1860 there were only fifty beaver in the state, existing in about seven or eight families along the St. Regis and Raquette Rivers.”¹⁸

The Adirondack’s earliest mines were small iron mines and forges along Lake Champlain in the late 1700s.¹⁹ In the 1820s, the mining industry started to grow rapidly, but reached its peak in the late 1880s.²⁰

Everyday life in rural villages, towns, and cities depended on [iron] resources . . . in the 1800s]. . . . [Iron] was used to make nails, tools, cookware, and stoves. Iron was also needed in the booming railroad business that was quickly expanding across the United States. By 1890, “iron horses,” as steam engines were often called, ran along over 250,000 miles of rails in the United States.²¹

During the Civil War, iron mines increased their production, but the boom did not last. Many factors, including the cost of transporting iron out of the Adirondacks, forced companies to

¹⁷ John Warren, *Extinction: A Short History of the Adirondack Beaver*, ADIRONDACK ALMANACK (Apr. 8, 2009), <http://www.adirondackalmanack.com/2009/04/extinction-short-history-of-adirondack.html>.

¹⁸ *Id.* These beaver are “said to have sparked a renewed interest in the species locally and led to agitation for their reintroduction beginning about 1900.” *Id.* The reintroduction worked and by 1915 “it was estimated that there were 15,000 beaver in the state. Six thousand were taken in the first two special trapping seasons (in 1924 and 1925); regular trapping seasons began in 1928. In 1975 the beaver was made the official [animal] of the New York State.” *Id.* See 1975 N.Y. Laws 1236, § 79.

¹⁹ TERRIE, *supra* note 3, at 34.

²⁰ *Id.* at 74.

²¹ *Out of the Earth: Mining in the Adirondacks*, ADIRONDACK MUSEUM, <http://www.adirondackhistory.org/adkmining/intro.html> (last visited May 15, 2011).

close their mines.²²

Timber was and continues to be a contentious issue in the Adirondacks. Loggers chose trees for their proximity to a body of water, typically to cut them down in the winter and then throw them into the water in the spring to begin their journey to a distant mill.²³ As one source noted: “By the middle of the nineteenth century, New York led the nation’s timber industry.”²⁴ In 1851, the “Big Boom” was built across the Hudson River in Glens Falls to catch the logs being driven down that river to the sawmills.²⁵ A quarter of a million logs made their way down the Hudson River in 1852.²⁶ “The newly built railroad that traversed the Adirondacks from southwest to northeast allowed” even easier lumber transportation.²⁷

B. Fear of Water Contamination

As early as 1865, building an aqueduct from the Adirondacks to New York City was proposed as a potential water supply for the city.²⁸ Travelers from the city, however, began to notice the devastation of the forest lands. This attention to the loss of their still exclusive destination, combined with the fear that deforestation would contaminate the state’s drinking waters,²⁹ made preserving the Adirondacks a political issue by the late nineteenth century.³⁰

The idea to preserve the Adirondacks as a watershed did not take hold overnight. The popular sportsman magazine *Forest and Stream* published articles in 1873, declaring the watershed

²² See TERRIE, *supra* note 3, at 33–34.

²³ See 2 ALFRED DONALDSON, A HISTORY OF THE ADIRONDACKS 150 (reprint 1992) (1921).

²⁴ A *Political History of the Adirondack Park and Forest Preserve: Prior to 1894 Constitutional Convention*, ADIRONDACK-PARK.NET, <http://www.adirondack-park.net/history/political/pre-const.html> (last visited May 15, 2011) [hereinafter ADIRONDACK-PARK.NET].

²⁵ *Id.*

²⁶ *Id.*

²⁷ MCMARTIN, *supra* note 3, at 3.

²⁸ See DONALDSON, *supra* note 23, at 165; see also FRANK GRAHAM, JR., THE ADIRONDACK PARK: A POLITICAL HISTORY 96 (Alfred A. Knopf ed. 1978).

²⁹ As early as 1865, the idea of building an aqueduct from the Adirondacks to New York City was proposed to provide a potential water supply for the city. See DONALDSON, *supra* note 23, at 165.

³⁰ See Todd Mathes, *Recreation in the Adirondack Park: A Look at the Paradox of Managing “Forever Wild” Forest Preserve*, 9 ALB. ENVTL. OUTLOOK 179, 183; see also ADIRONDACK-PARK.NET, *supra* note 24.

argument as the road to victory in preserving the Adirondack wilderness.³¹ Almost ten years later, newspapers finally took notice of declining water levels in the upstate streams, and downstream residents finally began to condemn logging and mining in the Adirondacks.³²

Conservation was a relatively new topic at that time. Ralph Waldo Emerson's essay "Nature" was published in 1836, urging readers to go back into nature and appreciate its gifts.³³ Preserving the Adirondacks was seen primarily as a benefit to the downstate economy. As historian Frank Graham Jr. explains, the logging in the Adirondacks had a potential not only to contaminate the water supply, but to alter the water levels of the Erie Canal, thus posing "twin threats to [New York] city's economic well-being" while the Adirondacks were seen as "a key to its survival."³⁴

C. The Legislature Intervenes

The legislature's first involvement in the Adirondacks began in 1872. Just two weeks after President Ulysses S. Grant signed a bill establishing the first national park in the world, Yellowstone, the New York State Assembly created the State Park Commission to consider the preservation of the region and ordered a topographical study.³⁵

Assemblyman Thomas Alvord of Onondaga County introduced legislation later that year to appoint a commissioner of parks. At the time, the Parks Commission was "essentially parkless," having been tasked to "inquire into the expediency of providing for vesting in the state the title to the timbered regions lying within the counties of Lewis, Essex, Clinton, Franklin, St. Lawrence, Herkimer and Hamilton, and converting the same into a public park."³⁶

The first report of the Parks Commission was published in

³¹ Mathes, *supra* note 30, at 183; see GRAHAM, JR., *supra* note 28, at 96.

³² *Id.*

³³ RALPH WALDO EMERSON, NATURE (1836), available at http://rwe.org/works/Nature_complete.htm. Emerson traveled to the Adirondacks in 1858 and predicted that one day the area would be full of summer residents accustomed to living in the wilderness; see DONALDSON, *supra* note 23, at 271–80.

³⁴ GRAHAM, JR., *supra* note 28, at 96.

³⁵ DONALDSON, *supra* note 23, at 163.

³⁶ GRAHAM, JR., *supra* note 28, at 76.

1873 and it stressed the importance of protecting the forest.³⁷ The report also described the enormous watershed contained in the area and its importance to the Erie Canal and the state's mills and factories.³⁸ Management of the forest by professional foresters, as was done at the time in Germany, France, and Switzerland, was recommended.³⁹ Governor John Dix was asked by the commissioner for his assistance in creating a park.⁴⁰ Dix was reluctant at first to include the issue in his annual address to the legislature, fearing the creation of a park would prove too restrictive on its residents.⁴¹ He was convinced, however, by a member of the commission, Verplank Colvin, who promised that only "untillable, rocky and mountainous lands" would be included.⁴² Dix ended up mentioning the report in his address but without any recommendations and it was ignored by the legislature that session.⁴³

By 1882, Alonzo Cornell was governor and the support for protecting the Adirondacks as a watershed had grown.⁴⁴ Cornell warned of "imminent danger" if the timber continued to be removed at its current rate, stating "[t]he rain-falls will diminish, the springs and streams fail and unaccountable loss ensue."⁴⁵ The legislature finally responded in 1883 by voting to suspend all sales of state owned land in the Adirondacks, which totaled 600,000 acres at the time mostly due to the reversion to the state for unpaid taxes.⁴⁶

D. "Forever Wild"

The term "forever wild" first became part of the Adirondack lexicon with a report of a commission created in 1884 to investigate a system of forest preservation. It came to be known as the Sargent Commission after its prominent member Charles Sprague Sargent, a professor of arboriculture at Harvard.⁴⁷ A

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 77.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ PHILIP G. TERRIE, FOREVER WILD: A CULTURAL HISTORY OF WILDERNESS IN THE ADIRONDACKS 96 (1994) [hereinafter FOREVER WILD].

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

report was issued by the commission which recommended that the region “shall be forever kept as wild forest lands” and that a new forest commission be created to oversee its maintenance.⁴⁸ It was expected that the forest commission would be self sufficient by contracting with lumbermen for timber, pleasing legislators who wanted both to protect the watershed and profit from its timber.⁴⁹

On May 15, 1885, legislation set aside 681,000 acres of land in the present day Adirondack Park and Catskill Park to make up the state’s forest preserve.⁵⁰ To strengthen this protection, the law was later amended to provide: “The lands now 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 private.”⁵¹ The legislation also created the forest commission, an entity that has since produced annual reports on the state of the forest preserve.⁵² As historian Philip Terrie explains, “a crucial point of the 1885 law . . . was that while the land would be forever part of the public domain, the timber could be sold and harvested.”⁵³ This point was illustrated later the same year by Governor Roswell Flower who proposed a new bill known as the “cutting bill,” which would allow the state to sell timber from the forest preserve.⁵⁴ Flower had a grandiose vision for the Adirondacks. Upon selling 17,468 acres of “spruce stumpage” in early 1894 for \$53,400, he proclaimed:

If from so small a portion of the Forest Preserve, so considerable a revenue is received without injury to the forest, we can reasonably look forward to the time when the Forest Preserve will not only be a great conservator of our water courses and the restorer of health, but will contribute a large part of the money required for the support of State government.⁵⁵

His plans were short lived, however, as opposition to the cutting

⁴⁸ *Id.*

⁴⁹ *Id.* at 96–97.

⁵⁰ GRAHAM, JR., *supra* note 28, at 106 (“All the lands now owned or that may hereafter be acquired within the counties of Clinton, except the towns of Altona and Dannemora, and the counties of Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster and Sullivan, shall constitute and be known as the Forest Preserve.”).

⁵¹ *Id.* at 106.

⁵² *See* FOREVER WILD, *supra* note 44, at 96.

⁵³ *Id.* at 97.

⁵⁴ GRAHAM, JR., *supra* note 28, at 124–25.

⁵⁵ *Id.* at 125.

bill grew from New York City business leaders, owners of private sports clubs, as well as the state's chief forester Bernhard Fernow, who criticized the forest commission's cutting practices as irrational and likely to destroy new growth of trees.⁵⁶

E. The Constitutional Convention of 1894

By that time, support of preserving the land for recreation as well as protection of the watershed had emerged. In 1892, the legislature ordered the forest commission to conduct a report on acquiring the title to a large contiguous park with the secondary goal of recreation.⁵⁷ After receiving the report, the Adirondack Park was established by law the same year. In its first year, the park was 2.8 million acres, 500,000 of which were owned by the state and the rest private land.⁵⁸ The boundaries were drawn on the official state map and have ever since been referred to as the "blue line."⁵⁹

The constitutional convention of 1894 gave conservationists the opportunity to permanently safeguard the Adirondack's future. In July of 1894, a five-member committee was established to determine whether the preservation of the Adirondacks needed constitutional protection.⁶⁰ Fires in the northeast, due to dry weather, convinced many at the convention that protecting the Hudson River and the canal system was integral to protecting the state's water system. Thus, despite lobbying by the logging industry, the park was given constitutional protection so that the state-owned lands within its bounds would be protected.⁶¹ Article VII, Section 7, as approved, read:

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, . . . nor shall the timber thereon be sold, removed, or destroyed.⁶²

This language represented a reversal of policy from the state-sponsored cutting of the preserve and was met with opposition

⁵⁶ *Id.* at 126–27.

⁵⁷ FOREVER WILD, *supra* note 44, at 102.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See ADIRONDACK-PARK.NET, *supra* note 24.

⁶¹ *Id.*

⁶² N.Y. CONST. art. XIV, § 1; see ADIRONDACK-PARK.NET, *supra* note 24.

from the lumber industry.⁶³ Debate was stalled for several weeks after the amendment was first introduced, during which time the American Forestry Association called the change “a waste of resources.”⁶⁴ Convention delegate David McClure, who introduced the amendment at the suggestion of the New York Board of Trade and Transportation,⁶⁵ persuaded the delegates for its approval, stressing the importance of maintaining the watershed and adding, as an additional benefit, the enjoyment of the park by residents of the state.⁶⁶

Following its adoption, the anti-lumbering provisions of Article VII, Section 7 were criticized, especially by the newly created State Fisheries, Game, and Forests Commission, which was responsible for monitoring logging on private land.⁶⁷ Many believed the amendment was a temporary measure in response to an exaggerated threat.⁶⁸ The Conservation Commission, a later incarnation of the Fisheries Commission,⁶⁹ continued its attack on the amendment, writing in 1911 that the framers of the section were “wise men in their day and generation, prudent and foreseeing. . . . The time has come, however, when modification of this drastic policy may safely be considered.”⁷⁰

The Forest Preserve Board was created by legislation in 1897, along with an appropriation of \$1 million, and given the authority to condemn land for inclusion within the park.⁷¹ At the time, the idea was to acquire the land within the blue line eventually. Though the legislature continued to appropriate smaller sums of money in subsequent years, the full public ownership of all the land within the Blue Line became more unrealistic with the ascent of private ownership and development.⁷²

F. Private Sporting Clubs

The plan for the state to own all of the forest lands within the

⁶³ See FOREVER WILD, *supra* note 44, at 104.

⁶⁴ *Id.* at 105.

⁶⁵ *Id.* at 104.

⁶⁶ See *id.* at 105.

⁶⁷ *Id.* at 109.

⁶⁸ *Id.* at 106.

⁶⁹ *Id.* The Fisheries Game and Forest Commission became the Forest, Fish and Game Commission in 1900 and later the Conservation Commission in 1911. *Id.* at 122; GRAHAM, JR., *supra* note 28, at 155.

⁷⁰ FOREVER WILD, *supra* note 44, at 123.

⁷¹ GRAHAM, JR., *supra* note 28, at 150.

⁷² *Id.*

blue line was complicated when wealthy urbanites starting buying large tracts of land. Land acquisition by private sporting clubs began in the 1890's. One of the earliest of these clubs was the Adirondack League Club, a group of 500 socially prominent men mostly from New York City, organized in 1890.⁷³ The club's stated objections were for:

- (1) The preservation and conservation of the Adirondack forest and the propagation and proper protection of fish and game in the Adirondack region.
- (2) The establishment and promotion of an improved system of scientific forestry.
- (3) The maintenance of an ample preserve for the benefit of its members for the purpose of hunting, fishing, rest, and recreation.⁷⁴

The club purchased 104,000 acres of land known as the Moose River Tract in Herkimer and Hamilton counties for \$475,000 in August 1890.⁷⁵ Five hundred shares of the club were offered to members for the development of a five-acre plot of land to develop a cottage or camp with 200 feet of waterfront.⁷⁶ The club is still active today⁷⁷ and in 1998 was sued by the Sierra Club over access to the Moose River.⁷⁸

For the less rustic set, hotels and inns started to be developed in the region in the late nineteenth century. By 1876, there were twenty hotels clustered around the southern end of Lake George. The Lake George Club, often referred to as "The Millionaires' Club," was opened in 1909.⁷⁹ It offered boat docks, tennis courts and golf course and a clubhouse with dining facilities to its members.⁸⁰

G. Challenging Article VII, Section 7

Once the "forever wild" language was added to the constitution did some realize just how far reaching its restrictions were. For over a century, politicians, justices, scholars and scientists have analyzed and debated its meaning.

⁷³ *Id.* at 122; see DONALDSON, *supra* note 23, at 159.

⁷⁴ DONALDSON, *supra* note 23, at 159.

⁷⁵ *Id.*

⁷⁶ *Id.* at 161.

⁷⁷ See ADIRONDACK LEAGUE CLUB, <http://www.alcclub.org> (last visited May 15, 2011).

⁷⁸ *Adirondack League Club, Inc. v. Sierra Club*, 706 N.E.2d 1192, 1993 (N.Y. 1998).

⁷⁹ GALE J. HALM & MARY H. SHARP, *IMAGES OF AMERICA: LAKE GEORGE* 78 (2000).

⁸⁰ *Id.*

A constitutional amendment was proposed in 1911 to allow the flooding of three percent of the preserve for reservoirs.⁸¹ This would let water be diverted for drinking water, wells, canals, and flood control. It was passed by the legislature for two consecutive sessions and was approved by the voters in 1913.⁸²

In 1912, the state acquired twenty-five acres at Lake George for the purpose of erecting a Revolutionary War memorial.⁸³ This raised the question of whether this was a constitutional use of the land, because the area where the land was purchased was within the forest preserve. The New York Attorney General issued an opinion endorsing the memorial stating that the intended use was constitutional because it was “acquired by the State under a law authorizing its purchase for a definite and proper governmental purpose inconsistent with its use as a wild forest land.”⁸⁴

Further legislation in 1912 broadened the definition of the Blue Line to include all lands within the area, not just state lands.⁸⁵ For the first time in the state’s history, private land was officially part of the park.⁸⁶

Another constitutional convention was held in 1915. The lumber industry proposed several changes, including the division of the preserve into two different classifications: (1) mountaintops, and land abutting streams and lakes and (2) all other lands owned by the state.⁸⁷ The lumbermen wanted to keep all present restrictions on logging in the former, but allow timber to be cut in the latter. This amendment was defeated in convention. The entire proposed constitution was later rejected by the electorate.⁸⁸

H. Winter Olympic Games in Lake Placid

By 1919, the Conservation Commission finally acknowledged the potential of the Adirondacks for recreation. The new chairman, George D. Pratt, formerly served as the President of

⁸¹ GRAHAM, JR., *supra* note 28, at 169.

⁸² *Id.*

⁸³ *Id.* A battle was waged in Lake George during the Revolutionary War. *Id.*

⁸⁴ *A Political History of the Adirondack Park and Forest Preserve: Threats to Forever Wild*, ADIRONDACK-PARK.NET, *supra* note 24.

⁸⁵ GRAHAM, JR., *supra* note 28, at 168.

⁸⁶ *Id.*

⁸⁷ *Id.* at 170.

⁸⁸ *Id.* at 171.

the Camp Fire Club of America.⁸⁹ His tenure as chairman saw the addition of hiking trails, lean-tos, and the formation of the Adirondack Mountain Club in which Pratt was involved.⁹⁰ This shift was also seen at the federal level, with President Woodrow Wilson signing legislation creating the National Park Service in 1916, an agency to administer parks strictly for aesthetic and recreational purposes.⁹¹

Lake Placid played host to the 1932 Winter Olympics, showcasing the Adirondacks to the world.⁹² In order for the games to happen, however, several legal obstacles had to be overcome. In 1927, the state legislature approved a highway up one of the High Peaks, Whiteface Mountain, in order for the games to proceed.⁹³ A 1927 concurrent resolution of the senate and assembly allowed the Whiteface Memorial Highway to be built.⁹⁴ It was not officially opened until 1935.⁹⁵

Before the games, another controversy arose over the placement of the bobsled run.⁹⁶ In 1929, Assemblyman Fred Porter of Essex County, introduced a bill allowing the bobsled run to be built on state lands in the forest preserve.⁹⁷ This bill was signed into law by Governor Franklin D. Roosevelt,⁹⁸ though it meant cutting down 2,500 trees in the preserve.⁹⁹ The Association for Protection of Adirondacks challenged the law as violating the “forever wild” provision of the state constitution.¹⁰⁰ An appellate court defeated the proposition, and the Court of Appeals upheld the lower court’s decision in the beginning of 1930.¹⁰¹ In his decision, Judge Frederick C. Crane agreed that the proposed location for the bobsled run was ideal, yet unconstitutional, writing:

⁸⁹ *Id.* at 172.

⁹⁰ *Id.*

⁹¹ FOREVER WILD, *supra* note 44, at 132.

⁹² *Id.* at 133. Or at least part of the world; because of the Great Depression only seventeen countries sent athletes to the games.

⁹³ Con. Res. of Mar. 14, 1927, 1927 Leg., 150th Reg. Sess. (N.Y. 1927).

⁹⁴ *Id.*

⁹⁵ *Whiteface Memorial Highway Celebrates 75 Years*, NEW YORK HISTORY BLOG (Sept. 13, 2010), <http://www.newyorkhistoryblog.com/2010/09/whiteface-memorial-highway-celebrates.html>.

⁹⁶ GRAHAM, JR., *supra* note 28, at 184–85.

⁹⁷ *Id.* at 185.

⁹⁸ *Id.* at 185; see 1929 N.Y. Laws 931.

⁹⁹ GRAHAM, JR., *supra* note 28, at 185.

¹⁰⁰ See *Ass’n for the Prot. of the Adirondacks v. MacDonald*, 170 N.E. 902, 903 (N.Y. 1930).

¹⁰¹ *Id.* at 905.

Considering the distinction of having one of the beauty spots of New York State selected as appropriate for the International Olympic winter games and the advantages afforded by Lake Placid and its vicinity, together with the good will promoted in the recognition by the State, through its Legislature, of the event, what possible objection can there be to the above law permitting this toboggan slide to be constructed on State land? One objection, and one only—the Constitution of the State, which prevents the cutting of the trees.¹⁰²

Reading Article VII, Section 7 in its ordinary meaning, the court held that the removal of the trees was a taking and therefore unconstitutional.¹⁰³ The court said: “The Adirondack Park was to be preserved, not destroyed.”¹⁰⁴ In the end, the state purchased an easement on Lake Placid Club land on Mt. Van Hoevenberg, where the bobsled and luge runs still exist today.¹⁰⁵

I. The Closed Cabin Amendment

Robert Moses, the architect of much of the state’s current infrastructure, proposed allowing the state to build ski lodges, hotels, and other recreational facilities throughout the Forest Preserve. Then serving as the chairman of the State Council of Parks, Moses persuaded legislators to introduce what became known as the “Closed Cabin Amendment” in 1930.¹⁰⁶ Though the legislation was successful, the voters handed Moses a rare political defeat in 1932 when the measure was defeated after aggressive lobbying by the Association for the Protection of the Adirondacks and other groups.¹⁰⁷

J. Tourism Boom Brings Change to the Area

Automobiles led to an increase in travel to the Adirondacks. New York City businessman Julian Reiss opened Santa’s Workshop, the first of many attractions designed solely to attract

¹⁰² *Id.* at 903.

¹⁰³ *Id.* at 903, 905.

¹⁰⁴ *Id.* at 904.

¹⁰⁵ *Lake Placid Bobsled Experience*, WHITEFACE.COM, <http://www.whiteface.com/activities/bob.php> (last visited May 15, 2011). The public can even get a feel for what it is like to be an Olympic bobsledder at the mountain. *See id.*

¹⁰⁶ PAUL SCHNEIDER, *THE ADIRONDACKS: A HISTORY OF AMERICA’S FIRST WILDERNESS* 290 (1997).

¹⁰⁷ *Id.* at 291.

tourists in the region.¹⁰⁸ The first theme park in the United States, Santa's Workshop was designed by former cartoonists for Walt Disney, Arto Monaco, who was born in Upper Jay, New York.¹⁰⁹ It was soon followed by several other tourist attractions, including Frontier Land, a mock Western town that opened in 1952 in North Hudson where everyday a stage coach was held up by (fake) gun-toting criminals.¹¹⁰ Animal Land, a commercial zoo filled with exotic animals like kangaroos, ostriches, and alligators soon followed in Lake George, which historian Philip Terrie notes "quickly acquired a reputation as the gaudiest, most commercial town in the Adirondacks."¹¹¹ Monaco also designed the Land of Make Believe, which opened in Upper Jay in 1955 (the same year Disneyland opened) and featured plaster and wood depictions of children's fairy tales.¹¹² In defense of his business, one theme park operator said: "When you get right down to it, just what is there for the average tourist to *do* in an area which has only scenery?"¹¹³

II. THE ADIRONDACK PARK AGENCY ACT

A. *Adirondacks as a National Park?*

The issue of regulating private land continued to be a contentious one for the Adirondacks. Laurance Rockefeller, Chairman of the State Council of Parks proposed the creation of a large national park in 1967.¹¹⁴ The plan included the purchase of 600,000 acres of private land by the National Parks Service.¹¹⁵ The idea was universally unpopular, but it brought to light the problem of unrestrained development in the fifty-seven percent of the park not within the Forest Preserve.¹¹⁶

Laurance's brother, Governor Nelson Rockefeller, thus created The Temporary Study Commission on the Future of the Adirondacks in 1968.¹¹⁷ The commission warned that to protect

¹⁰⁸ TERRIE, *supra* note 3, at 160.

¹⁰⁹ GRAHAM, JR., *supra* note 28, at 231.

¹¹⁰ TERRIE, *supra* note 3, at 160.

¹¹¹ *Id.* at 160–61.

¹¹² *Id.* at 161.

¹¹³ GRAHAM, JR., *supra* note 28, at 231.

¹¹⁴ SCHNEIDER, *supra* note 106, at 295–96

¹¹⁵ *Id.* at 296.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

the character of the park, the forest landscape would have to be preserved.¹¹⁸ In 1970, the Temporary Study Commission released its final report, which listed 181 recommendations for action, including recommendations for establishment of an independent, bipartisan Adirondack Park Agency.¹¹⁹

B. The Adirondack Park Agency

It was this recommendation from the Temporary Commission which finally led to the Adirondack Park Agency Act. The legislation introduced by Rockefeller followed most of the commission's recommendations and was largely drafted by the commission itself. One of the most important recommendations was to charge the agency with regulating private land use.

Rockefeller was able to convince the Republican majority in both houses to overcome any "philosophical qualms they may have had [about] regional planning."¹²⁰ This agreement reflected actions being taken simultaneously on the federal level, including the bipartisan support of the Clean Water Act, the Clean Air Act, the Endangered Species Act, and the Environmental Protection Act.

The Adirondack Park Agency Act, enacted in 1971, added Article 27 to the Executive Law, creating the Adirondack Park Agency (APA).¹²¹ The act was a victory for bipartisanship as well as the environment. Downstate Democrats, who would have been inclined to oppose the bill on partisan grounds, were convinced otherwise by their fellow lawmaker, Manhattan Assemblyman Peter Berle, who argued that voters from outside the park had been paying taxes for almost a century that ultimately went to local governments in the Adirondacks for the park's protection in the form of property taxes on Forest Preserve land.¹²² The creation of the APA, Berle argued, would end the system of taxation without representation by empowering the agency advocate for all the residents of the state.¹²³

The APA is governed by an eleven-member board, including the commissioners of Environmental Conservation, Economic

¹¹⁸ *See id.*

¹¹⁹ GRAHAM, JR., *supra* note 28, at 240.

¹²⁰ SCHNEIDER, *supra* note 106, at 297.

¹²¹ 1971 N.Y. Laws 1853, § 1.

¹²² SCHNEIDER, *supra* note 106, at 297.

¹²³ *Id.*

Development, and the secretary of state.¹²⁴ The other members, five of whom must be park residents, are nominated by the governor, and each is appointed for four year terms and confirmed by the senate.¹²⁵ No member may be a current employee of a state department or agency.¹²⁶ Section 801 of the Executive Law explains the legislative intent behind the agency's creation:

The Adirondack Park is abundant in natural resources and open space unique to New York and the eastern United States. The wild forest, water, wildlife and aesthetic resources of the park, and its open space character, provide an outdoor recreational experience of national and international significance. Growing population, advancing technology and an expanding economy are focusing ever-increasing pressures on these priceless resources.

Our forefathers saw fit nearly a century ago to provide rigid constitutional safeguards for the public lands in the Adirondack park. Today forest preserve lands constitute approximately forty percent of the six million acres of land in the park. The people of the state of New York have consistently reiterated their support for this time-honored institution.¹²⁷

Section 801 also states that the creation of the Adirondack Park Agency recognizes the importance of long-term planning for the Adirondacks as a statewide interest, yet "at the same time, provide a continuing role for local government."¹²⁸ The APA was tasked with preparing a comprehensive plan for state lands in the park, as well as a land use and development plan for the non-state lands.¹²⁹ The APA soon created the Adirondack Park State Land Master Plan, which was signed into law by Governor Rockefeller in July, 1972, as well as a land use plan for non-state lands, signed into law in 1973.¹³⁰ Upon signing the latter, Rockefeller stated: "The Adirondacks are preserved forever."¹³¹

The regulatory structure of the APA was intended to be both

¹²⁴ N.Y. STATE DIV. OF THE BUDGET, 2010–11 EXECUTIVE BUDGET AGENCY PRESENTATIONS 167 (2010), available at <http://www.budget.state.ny.us/pubs/archive/fy1011archive/eBudget1011/agencyPresentations/pdf/AgencyPresentations.pdf>.

¹²⁵ *Id.*

¹²⁶ N.Y. EXEC. LAW § 803 (McKinney 2005).

¹²⁷ *Id.* § 801.

¹²⁸ *Id.*

¹²⁹ Richard S. Booth & Harvey M. Jacobs, *Protecting Open Space: Land Use Control In The Adirondack Park*, 70 CORNELL L. REV. 361, 369–70 (1985) (book review).

¹³⁰ 1973 N.Y. Laws 1222–83.

¹³¹ SCHNEIDER, *supra* note 106, at 299.

environmentally sound as well as sensitive to the economic and societal concerns of the area.¹³² The most controversial restriction is the requirement that the authority issue a permit before any “regional project” may be approved.¹³³

Soon after they were enacted, the state land master plan as well as regulations promulgated under the plan were challenged in court. A seaplane taxi operator brought an action challenging the plan and a regulation which prevented seaplanes from landing on any of the 700 lakes which were completely surrounded by state-owned land within the park.¹³⁴ Several environmental groups including the Sierra Club, the Adirondack Council, Adirondack Mountain Club, Association for the Protection of the Adirondacks, National Audubon Society, Wilderness Society, and the Natural Resources Defense Council were allowed to intervene in the action.¹³⁵ In *Helms v. Ogden*, the court stated that the issue at hand was “of the utmost importance to people living in the forest preserve lands of New York State, especially the Adirondack Park area, as well as the people of New York State as a whole.”¹³⁶ The *Helms* case was one of the first to analyze the “forever wild” provision of the constitution and noted its lack of precedent.

The first issue in *Helms* was to resolve was whether the division of the Adirondack Park land by the Master Plan into seven land use categories violated the “forever wild” provision of the constitution, which the plaintiffs argued should keep all land within the preserve wild.¹³⁷ Looking at the proceedings of the framers of the 1894 constitutional convention and *Ass’n for the Protection of the Adirondacks v. McDonald*,¹³⁸ the court found that the clause requires a strict interpretation.¹³⁹ Yet, the court pondered: “How do we preserve the wild forest character of the forest preserve and at the same time enable the public to use and enjoy it as was intended by the framers of this constitutional provision?”¹⁴⁰ Ultimately, the court found that while the cutting

¹³² Booth & Jacobs, *supra* note 129, at 370.

¹³³ N.Y. EXEC. LAW § 809(2)(a) (McKinney 2005).

¹³⁴ *Helms v. Reid*, 394 N.Y.S.2d 987, 991 (Sup. Ct. 1977).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 993.

¹³⁸ *Ass’n for the Prot. of the Adirondacks v. MacDonald*, 170 N.E. 902 (N.Y. 1930).

¹³⁹ *Helms*, 394 N.Y.S.2d at 996.

¹⁴⁰ *Id.* at 999.

of timber was prohibited by the constitution for commercial purposes, cutting it for public use was not in violation of the clause, and therefore assigning such duties to the APA was reasonable.¹⁴¹ Summary judgment was granted in favor of the constitutionality of the Master Plan and the regulations prohibiting seaplanes from landing on certain lakes within the preserve.

In *Wambat Realty Corp. v. New York*, a large land owner in Clinton County sued the state and the APA seeking a declaratory judgment that the act violated the state constitution's home rule clause because it impaired the town of Black Brook from performing its local zoning functions. The Court of Appeals held that the power of the APA to preempt local zoning and planning authority was upheld because "the future of a cherished regional park, is a matter of State concern."¹⁴² The court noted:

Of course, the Agency Act prevents localities within the Adirondack Park from freely exercising their zoning and planning powers. That indeed is its purpose and effect, not because the motive is to impair home rule, but because the motive is to serve a supervening State concern transcending local interests.¹⁴³

The court added that "[t]o categorize as a matter of purely local concern the future of the forests, open spaces, and natural resources of the vast Adirondack Park region would doubtless offend aesthetics, ecological, and conservational principles."¹⁴⁴

C. Department of Environmental Conservation and SEQRA

The Department of Environmental Conservation (DEC) was created in 1970 on the nation's first Earth Day.¹⁴⁵ The agency was actually just a reincarnation of the Conservation Department¹⁴⁶ which was created in 1911. The new agency absorbed the Conservation Department, functions of the Health Department related to the regulation of water, air pollution and waste disposal, and functions of the Department of Agriculture and Markets related to pesticide regulation.¹⁴⁷

¹⁴¹ *Id.* at 1004.

¹⁴² *Wambat Realty Corp. v. State*, 362 N.E.2d 581, 582 (1977).

¹⁴³ *Id.* at 584.

¹⁴⁴ *Id.* at 582.

¹⁴⁵ *History of DEC*, N.Y. STATE DEP'T OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/about/9677.html> (last visited May 15, 2011).

¹⁴⁶ *Id.*

¹⁴⁷ ROBERT B. WARD, NEW YORK STATE GOVERNMENT: WHAT IT DOES, HOW IT

In 1975, Governor Hugh Carey and the legislature enacted the landmark State Environmental Quality Review Act (SEQRA).¹⁴⁸ The law requires state and local agencies to conduct comprehensive reviews of the environmental impacts of any significant development. SEQRA reviews must be thorough and open to the public, allowing input from potentially affected parties.¹⁴⁹

D. The 1980 Winter Olympic Games at Lake Placid

The Winter Olympics returned to Lake Placid in 1980, and was most notable for the United State's Men's Ice Hockey victory over the Soviet Union. And while international politics played an important role in the games, the months leading up to them saw their fair share of confrontation at the state level. The Atlantic Chapter of the Sierra Club as well as the Adirondack Council opposed many of the decisions made by event organizers along the way, including the widening of New York Route 73 and the building of two new ski jumps.¹⁵⁰ The proposed new ski jumps at Intervale, the Sierra Club argued, would interfere with the views from the High Peaks.¹⁵¹ The strong opposition actually caused a splinter within several environmental groups and caused the Adirondack Mountain Club's liaison to the organizing committee to announce the club's withdrawal from the Adirondack Council.¹⁵²

Unlike other host cities, New York was determined to maximize their investment in Lake Placid. Created in 1982, the Olympic Regional Development Authority (ORDA) is tasked with administering the facilities used by the 1980 Olympics, including Whiteface and Gore mountains.¹⁵³ This decision came after a plan for a federal prison failed amid vocal criticism.¹⁵⁴ In *Slutzky v. Cuomo*, the court held that the "forever wild" provision of the constitution authorized the construction and maintenance of the

WORKS 385–86 (2002).

¹⁴⁸ *Id.* at 388.

¹⁴⁹ *Id.* at 389.

¹⁵⁰ McMARTIN, *supra* note 3, at 55.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ N.Y. PUB. AUTH. LAW § 2622(4) (McKinney 2002); see Harold Faber, *Winter Olympics Ending It's Deficit in Lake Placid*, N.Y. TIMES, May 26, 1981, at B2.

¹⁵⁴ See *Furor Over Lake Placid's "Olympic Jail"*, U.S. NEWS & WORLD REPORT, Oct. 2, 1978, at 82.

ski center, but prohibited its operation by a corporation or anyone other than an agent of the state.¹⁵⁵ ORDA, though an autonomous agency, was still subject to dissolution by the state and therefore their maintenance of Gore Mountain did not violate the constitution.

III. 1983–1994: MARIO CUOMO AND THE ENVIRONMENTAL PROTECTION ACT

A. Leadership

During Mario M. Cuomo's tenure as governor from 1983 to 1994, the Adirondacks experienced a real estate boom. Conservationists warned that "a thousand houses a year" were being built and demanded stricter controls.¹⁵⁶ In his first year of office, Cuomo was undecided on a bill to grant economic incentives for owners of private land in the park in exchange for a guarantee that their land would never be developed.¹⁵⁷

During his speech at the Democratic National Convention, Cuomo infamously referred to the economic situation in parts of the Adirondacks by saying: "Unlike any other party, we embrace men and women of every color, every creed, every orientation, every economic class. In our family are gathered everyone from the *abject poor of Essex County* in New York to the enlightened affluent of the gold coasts of both ends of our nation."¹⁵⁸ Many residents of Essex County, which includes lands in the Adirondacks, were offended by such characterization, prompting the governor to travel to the area to make an apology speech.¹⁵⁹

In January, 1989, Cuomo stressed the importance of preserving the park for future generations.¹⁶⁰ In response to growing concerns among downstate conservationists that the private land plan did not adequately protect the park's future, he established a Commission on the Adirondacks in the Twenty-First Century.¹⁶¹ A group called the Adirondack Fairness Coalition criticized the

¹⁵⁵ See *Slutzky v. Cuomo*, 490 N.Y.S.2d 427, 429–30 (Sup. Ct. 1985).

¹⁵⁶ SCHNEIDER, *supra* note 106, at 300.

¹⁵⁷ David E. Sanger, *Cuomo Undecided on Parkland Bill*, N.Y. TIMES, July 31, 1983, at 33.

¹⁵⁸ Michael Oreskes, *Cuomo Going to Upstate County to Apologize to its 'Abject Poor'*, N.Y. TIMES, Aug. 15, 1984 at A1 (emphasis added).

¹⁵⁹ *Id.*

¹⁶⁰ See SCHNEIDER, *supra* note 106, at 300.

¹⁶¹ TERRIE, *supra* note 3, at 176–77.

autonomy of the commission, claiming that “about 90% of the commission’s 245 recommendations have already been drafted into [proposed] legislation.”¹⁶² The report of the committee was controversial, warning that more must be done to stop development. Anti-regulation activists responded by shutting down traffic on the interstate with their protests, throwing eggs at a passing state vehicle and even (anonymously) threatening to burn the house down of the chairman of the APA, George Davis.¹⁶³ Cuomo distanced himself from the report and the proposed changes were not enacted.¹⁶⁴ Towards the end of his third term, Cuomo appointed an independent task force to examine internal problems within the Adirondack Park Agency.¹⁶⁵ The task force issued 133 recommendations in the spring of 1994 to streamline the permitting process and make the agency more user friendly.¹⁶⁶ Some of the recommendations were implemented promptly, such as reducing the average time to get a permit from fifty-one days to fewer than twenty-five days, putting the agency’s regulations in writing for the first time since 1982, and hiring additional staff to assist landowners with the permitting process.¹⁶⁷

In his re-election bid against then-State Senator George Pataki, Cuomo faced criticism over his failed efforts to store nuclear waste in areas of western New York.¹⁶⁸ Pataki was endorsed by several environmental groups, including the League of Conservation Voters.¹⁶⁹

B. Significant Legislation

Cuomo signed the Acid Deposition Control Act of 1984 into law, which imposed limits on air contaminants that cause acid rain.¹⁷⁰

¹⁶² McMARTIN, *supra* note 3, at 135. The Adirondack Fairness Coalition was comprised of local government officials and residents who opposed the Commission because they “felt excluded from the dialog about the future of the Adirondacks.” *Id.* at 126.

¹⁶³ SCHNEIDER, *supra* note 106, at 300–01.

¹⁶⁴ *See id.* at 301.

¹⁶⁵ *See* Janet Gramza, *Changes in Albany Put Onus on APA: Those on Both Sides of Adirondack Land Use Issues Await Pataki’s Impact on Regulatory Agency*, POST-STANDARD (Syracuse), Nov. 27, 1994, at D1.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *See* Cuomo, *Challengers State Positions in Gubernatorial Campaign*, BUFFALO NEWS, Nov. 2, 1994, at 3.

¹⁶⁹ *See* Andrew C. Revkin, *League of Conservation Voters to Endorse Pataki*, N.Y. TIMES, Sept. 3, 1998, at B6.

¹⁷⁰ *Cuomo Signs Acid-Rain Law, With Eye to Federal Action*, CHRISTIAN

Acid rain occurs when airborne sulfur dioxide and nitrogen oxide combine with water droplets, creating acidic precipitation. The *New York Times* noted: “Environmentalists say acid rain has made more than 200 lakes and ponds in the Adirondacks incapable of supporting aquatic life.”¹⁷¹ This law was mirrored in 1990 when the federal government made a similar amendment to the Clean Air Act of 1990.¹⁷²

In order to widen the ski trails at Gore and Whiteface mountains, the state in 1987 found that it was again necessary to amend the forever wild provision of the state constitution, now contained in Section 1 of Article XIV.¹⁷³ The legislature passed a joint resolution allowing voters to decide whether to allow the state to widen the trails from the constitutional 80 feet to 200 feet.¹⁷⁴ Voters approved the measure by a narrow margin.¹⁷⁵

In 1990, Cuomo proposed the Environmental Quality Bond Act “to buy lands, protect watersheds promote recycling and initiate other environmental projects.”¹⁷⁶ Voters failed to approve the \$1.975 billion initiative, which would have allowed the state to issue bonds over the next ten years.¹⁷⁷ Eight-hundred million dollars of the proposed fund had been allocated for acquisition of environmentally sensitive land, including in the Adirondacks.¹⁷⁸ A month before the vote, Cuomo and other lawmakers were barred from promoting the bond act, including by giving speeches and interviews.¹⁷⁹ As the *New York Times* reported: “[F]our Washington County residents sued the state, arguing that the government’s printing and distribution of millions of brochures

SCIENCE MONITOR, Aug. 16, 1984, at 2 [hereinafter *Eye to Federal Action*]; see Mario M. Cuomo, Letter to the Editor, *New York Can’t Go It Alone in the Fight to Control Acid Rain*, N.Y. TIMES, Feb. 23, 1990, at A30.

¹⁷¹ *Eye to Federal Action*, supra note 170.; see Nelson Bryant, *Outdoors; Canada Pressing Acid-Rain Issue*, N.Y. TIMES, Mar. 23, 1986, at 5.

¹⁷² See WARD, supra note 147, at 492–93; see also *Eye to Federal Action*, supra note 170, at 2.

¹⁷³ Article VII, Section 7 was renumbered article XIV, Section 1 in 1938.

¹⁷⁴ S. 3348, 1987 Leg., 210th Reg. Sess. (N.Y. 1987). The amendment also allowed the widening of Pete Gay Mountain and Bellayre Mountain, both of which also operated on forest preserve land. *Id.*

¹⁷⁵ See Harold Faber, *New York Ski Trails to Be Widened*, N.Y. TIMES, Nov. 8, 1987 at 64.

¹⁷⁶ See Sam Howe Verhovek, *Voters to Decide on Bond Act for Environmental Projects*, N.Y. TIMES, Nov. 6, 1990, at B2.

¹⁷⁷ *Id.*

¹⁷⁸ See *id.*

¹⁷⁹ Kevin Sack, *Judge Briefly Silences Politicians on Bond Act*, N.Y. TIMES, Oct. 4, 1990, at B9.

about the bond act violated state law,” for using “state funds to promote partisan political activity.”¹⁸⁰

The battle over access to the Adirondack’s lake, rivers, and streams was waged in and out of Albany at this time. The Department of Environmental Conservation warned boaters that access to a body of water was not available if both shores were owned by private landowners posting “No Trespassing” signs.¹⁸¹ In the legislature, a bill was introduced in the honor of deceased Assemblyman Bill Hoyt, who had been an advocate of public right of access to navigable waters, to codify the public’s common law right of navigation.¹⁸² If it had been enacted, it likely would have clarified the public’s right to paddle on rivers that pass through private land in the Adirondacks and elsewhere in the state. The bill did pass in the assembly and a companion bill in the senate never made it to the floor for a vote.¹⁸³ After Hoyt left the assembly, the bill was taken up by Assemblyman Richard Brodsky and named for Hoyt’s efforts.¹⁸⁴

Assemblyman Brodsky served as Chairperson of the Environmental Conservation committee of the assembly from 1993 to 2002. As chairperson, he played an important role in allowing legislation to be debated. Brodsky, from downstate in Westchester, pleased environmentalists when he introduced Adirondack legislation.¹⁸⁵ During his tenure as chairperson, Brodsky sponsored legislation to combat acid rain, preserve open space, and protect Adirondack lands.¹⁸⁶

During an economic recession in 1993, the legislature passed the Environmental Protection Act,¹⁸⁷ finding that the “preservation, enhancement, restoration, improvement and stewardship of the state’s environment” was one of their “most fundamental obligations.”¹⁸⁸ The legislative findings also stressed that action must be taken in order to prepare the state for the twenty-first century with a sound policy for managing solid

¹⁸⁰ *Id.*

¹⁸¹ See McMARTIN, *supra* note 3, at 308.

¹⁸² Assem. 4616, 1997 Leg., 220th Reg. Sess. (N.Y. 1997); see COMM. ON ENVTL. CONSERVATION, N.Y. STATE ASSEM., 1998 ANNUAL REPORT 18 (1998), available at <http://assembly.state.ny.us/Reports/PandC/1998encon.html>.

¹⁸³ COMM. ON ENVTL. CONSERVATION, *supra* note 182.

¹⁸⁴ *Id.*

¹⁸⁵ McMARTIN, *supra* note 3, at 185.

¹⁸⁶ See COMM. ON ENVTL. CONSERVATION, *supra* note 182.

¹⁸⁷ 1993 N.Y. Laws 3751, § 2.

¹⁸⁸ *Id.*

waste.¹⁸⁹ Perhaps most notably, the act created the Environmental Protection Fund to provide funds for a variety of local and state environmental initiatives, including open space conservation projects and farmland protection.¹⁹⁰ The fund was designed to ensure there would always be money set aside for environmental initiatives and programs.

The Environmental Protection Act was endorsed by environmental and municipal groups throughout the state, though not without reservation. In a memorandum of support from the New York State Association of Counties, Executive (NYSAC) Director Edwin Crawford wrote that while the association supported funding for landfill closures, solid waste management and coastal rehabilitation, “NYSAC continues to hold its longstanding position that the commingling of funds for solid waste management and land acquisition are not in our counties’ best interests, and will, in fact have a direct financial impact on our municipalities.”¹⁹¹

C. The Adirondack League Club v. Sierra Club

The Sierra Club sued the private sportsmen group the Adirondack League Club in 1992 over access to the Moose River. The case involved five paddlers who descended the South Branch of the Moose River from near its source in the Moose River Plains, and into the private, property, that was posted, of the Adirondack League Club.¹⁹² Their voyage was a test case, announced in advance to determine whether or not paddlers have the right to portage around stretches of the river made un-navigable due to obstructions or dangerous rapids. The club made a motion for summary judgment on the grounds that the portion of the Moose River was not protected as a navigable river.¹⁹³

The Court of Appeals in *Adirondack League Club v. Sierra Club* ruled that a summary judgment was not warranted, but declined to determine whether the river was, in fact navigable.¹⁹⁴

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* § 13.

¹⁹¹ Memorandum from N.Y. State Ass’n of Counties (July 21, 1993), *in* N.Y. Bill Jacket, L.1993 c. 610.

¹⁹² *Adirondack League Club, Inc. v. Sierra Club*, 706 N.E.2d 1192, 1193 (N.Y. 1998).

¹⁹³ *Id.* at 1193–94.

¹⁹⁴ *Id.* at 1194.

Their ruling did acknowledge that recreational use was a valid component of the definition of navigability.¹⁹⁵ The Adirondack League argued that because the South Branch of the river was not suited for commercial use it was not protected, while the Sierra Club argued that recreational use should be protected as well.¹⁹⁶ The Court agreed with the latter argument, stating, “[w]e do not broaden the standard for navigability-in-fact, but merely recognize that recreational use fits within it.” It also found that property rights were not materially altered by this ruling.¹⁹⁷

IV. 1995–2006: GOVERNOR GEORGE PATAKI, CONTROVERSIAL CONSERVATIONIST

A. Leadership

While a first term state senator, George Pataki was named “State Legislator of the Year” by the Environmental Planning Lobby for his support of environmental initiatives.¹⁹⁸ Over his twelve years as governor, Pataki continued to be acknowledged as a leader on environmental issues.

Upon taking office, Pataki appointed Greg Campbell as the chairman of the APA. In many ways this was a controversial choice; Campbell, the former Clinton County Republican Chairman, had a much more political background than any of his predecessors.¹⁹⁹ The appointment was lobbied against by the Resident’s Committee to Protect the Adirondacks because of the fear that Campbell represented an extreme faction.²⁰⁰ The decision was applauded by sportsmen, stating “[i]f environmental groups are that opposed to his confirmation as chairman of the Adirondack Park Agency, he must be doing something right.”²⁰¹ Campbell was supported by the Adirondack Conservation Council, a group then representing more than 50,000 sportsmen,

¹⁹⁵ *See id.* at 1195.

¹⁹⁶ *See id.* at 1198.

¹⁹⁷ *Id.* at 1195.

¹⁹⁸ Press Release, Clarkson University, Governor George Pataki Receives Clarkson University’s Bertrand H. Snell Award (Feb. 21, 2003), *available at* <http://www.clarkson.edu/new/view.php?id=781>.

¹⁹⁹ McMARTIN, *supra* note 3, at 193.

²⁰⁰ *Adirondack Residents Lobby Governor on APA Appointment*, POST-STANDARD (Syracuse), June 6, 1995, at B1.

²⁰¹ Dick Nelson, *Campbell Must be the Right Guy*, TIMES UNION (Albany), July 2, 1995, at D8.

of which he had once served as the Lake Champlain chairman.²⁰² After his appointment, Campbell's decisions were fought by the Adirondack Council²⁰³ during his three-year tenure as chairman, including accusations of altering meeting minutes to hide his original proposal to permit forest clear cutting.²⁰⁴

In the late nineties, criticism grew of the decisions and regulations of the Adirondack Park Agency. An economic development lobbying group, decrying the onerous building permit approval process, sent legislators ping pong balls with the inscription "Banned by the APA," referring to a permit approval that was granted on the condition that a boathouse not contain a ping pong table.²⁰⁵ Environmental activists defended the restriction, which also prohibits beds, sofas and pool tables, as a means from preventing the boathouse from being used as a residence, thus protecting the water quality.²⁰⁶

Pataki announced the reduction of twenty percent of the APA's staff in 1997.²⁰⁷ Robert Glennon, the departing Director of the APA, responded to these cuts by stating "if they're going to do this they might as well put the APA out of its misery entirely," lamenting the already short staff.²⁰⁸

Pataki vetoed \$10 million in land acquisition funding, for acquisitions such as: the Long Island Pine Barrens, inner-city open space, and Adirondack properties in the 1998 legislative budget.²⁰⁹ Also in 1998, Pataki approved the Open Space Conservation Plan, a cooperative effort of the Department of Environmental Conservation, the Office of Parks, Recreation and

²⁰² *Id.*

²⁰³ See McMARTIN, *supra* note 3, at 193. The Adirondack Council's mission is to "ensure the ecological integrity and wild character of the Adirondack Park for current and future generations," not to be confused with the Adirondack Conservation Council, a coalition of sports clubs from through the Adirondacks and part of the New York State Conservation Council. See *Who We Are*, THE ADIRONDACK COUNCIL, <http://www.adirondackcouncil.org/aboutus3.html> (last visited May 15, 2011); N.Y. STATE CONSERVATION COUNCIL, INC., <http://www.nyscc.com/aboutthenyscc.html> (last visited May 15, 2011).

²⁰⁴ McMARTIN, *supra* note 3, at 193–94; see Raymond Hernandez, *Park Board's Chairman Orders Minutes Changed*, N.Y. TIMES, May 5, 1997, at B2.

²⁰⁵ Janet Gramza, *Changes in Albany Put Onus on APA: Those on Both Sides of Adirondack Land Use Issues Await Pataki's Impact on Regulatory Agency*, POST-STANDARD (Syracuse), Nov. 27, 1994, at D1.

²⁰⁶ *Id.*

²⁰⁷ Andrew C. Revkin, *Adirondack Park Agency to Lay Off 12 of 62 Workers*, N.Y. TIMES, May 17, 1996, at B1.

²⁰⁸ SCHNEIDER, *supra* note 106, at 305.

²⁰⁹ COMM. ON ENVTL. CONSERVATION, *supra* note 182, at 6.

Historic Preservation, nine regional advisory committees, and broad public participation.²¹⁰ The plan provided a framework to preserve open space throughout the state.

In the fall of 1999, “New York Governor George Pataki announced that the New York State Department of Environmental Conservation would, within five years, finalize all Unit Management Plans (UMPs) for the Adirondack and Catskill Parks.”²¹¹ As one scholar noted, “UMPs are plans that enable the DEC to manage public recreational use of forestland consistent with the Adirondack and Catskill Park State Land Master Plans and, more importantly, the “forever wild” clause of the New York State Constitution.”²¹²

The declining economy was the background for Pataki’s notable proposal to protect one million acres of undeveloped land given during his State of the State speech in January, 2002.²¹³ The enthusiasm from environmental advocates which met this proposal was diminished only days later when he released his annual proposed budget, which transferred \$100 hundred from the Environmental Protection Fund to help with the state’s deficit.²¹⁴

In 2003, Pataki received a “thumbs up” on the Adirondack Council’s annual report card for protecting 10,000 acres of the high peaks, proposing a ten-state cooperative to reduce emissions, and appropriating millions of dollars to local water and sewage treatment programs; he received a thumbs down, however, for attempting to add \$33 million in administrative expenses to the Environmental Protection fund, a move that was blocked by the legislature.²¹⁵

The New York State Department of Transportation in 2005 violated Article XIV of the constitution when it cut trees in the forest preserve along State Route 3 in the Adirondacks between Lower Saranac Lake and Route 30.²¹⁶ This prompted The

²¹⁰ Peter S. Duncan, *New York State’s Open Space Conservation Program*, 4 ALB. L. ENVTL. OUTLOOK 18, 18 (1999).

²¹¹ See Mathes, *supra* note 30, 179.

²¹² *Id.*

²¹³ Jioni Palmer, *Loss for Environment: Proposed N.Y. Budget Cuts \$100M from Fund*, NEWSDAY (New York), Jan. 27, 2002, at A6.

²¹⁴ *Id.*

²¹⁵ Press Release, Adirondack Council, Governor Pataki & Atty. Gen. Spitzer Fare Best in Annual Adirondack Council State of The Park Report (Nov. 3, 2003), available at <http://www.adirondackcouncil.org/sop03pr.html>.

²¹⁶ Press Release, Assoc. for the Protection of the Adirondacks, Thousands of Trees on State Forest Preserve Cut along NYS Rt. 3; Excessive DOT Tree

Association for the Protection of the Adirondacks to file a formal complaint with DEC.

Successful partnerships with regional groups were instrumental in helping Pataki secure conservation easements, allowing a landowner to sell the development rights on a tract of private land to the state or a third party.²¹⁷ Upon leaving office in 2006, the *New York Times* declared the legacy for which Pataki will be most remembered: his work on environmental issues, stating he “has earned his badge as an environmental governor by protecting wilderness.”²¹⁸

B. Significant Legislation

New York voters got an opportunity to weigh in on the environmental future of the state with the Clean Water/Clean Air Bond Act of 1996. The act, proposed by Pataki, was passed by the legislature and signed by the governor in 1996, but still required the approval of the people for a \$1.75 billion bond.²¹⁹ Voters approved the act, which provided funding for a five categories of environmental improvements: clean water, safe drinking water, solid waste, brownfields, and air quality.²²⁰

In 1997, \$70 million in state funds were approved to the Olympic Regional Development Authority for improvements to the state-managed ski areas at Whiteface and Gore mountains, as well as the bobsled run at Mt. Van Hoevenberg.²²¹

One of the biggest critics of Pataki’s environmental agenda was

Cutting Violates State Policy for the Adirondacks (Sept. 9, 2005), *available at* <http://www.rcpa.org/news/releases/2005-09-09.html>.

²¹⁷ Press Release, Governor George E. Pataki, Governor Pataki Announces Largest Land Preservation In State History Historic Agreement Will Preserve Nearly 260,000 Acres In the Adirondacks (Apr. 22, 2004), *available at* <http://www.adirondackcouncil.org/govpriplanddeal.html>. These easements were recommended as early as the 1970s by the Temporary Study Commission on the Future of the Adirondacks. See TERRIE, *supra* note 3, at 190.

²¹⁸ Editorial, *The George Pataki Era*, N.Y. TIMES, Dec. 31, 2006, *available at* <http://www.nytimes.com/2006/12/31/opinion/nyregionopinions/CIpataki.html?pagewanted=2>.

²¹⁹ David L. Markell, *Legal Development: Some Overall Observations About the 1996 New York State Environmental Bond Act and a Look at Title 5 and its Approach to the “Brownfields” Dilemma*, 60 ALB. L. REV. 1217, 1217 n.2 (1997); see N.Y. CONST. art. 7, § 11 (stating that debt may not be contracted for unless authorized by law, and such law shall not take effect until a majority of voters in the next general election so approve).

²²⁰ Clean Water/Clean Air Bond Act of 1996 § 4, N.Y. ENVTL. CONSERV. LAW §§ 56-0201–56-0601 (McKinney 2008).

²²¹ *Introduction* to TERRIE, *supra* note 3, at xv–xvi.

Assemblyman Brodsky.²²² Brodsky, who had been named Legislator of the Year by the Adirondack Council in 1997, proposed the Adirondack Recovery Act, which detailed a plan to stimulate economic growth across the Adirondacks.²²³ In an interview in 1998, Assemblyman Brodsky discussed the Adirondack Recovery Act:

It's the first time we got everyone to talk about the two disparate issues—land acquisitions and local economic survival—in the same room at the same time. It's not going to be easy. Lots of folks up there don't want to talk about land acquisition. Many folks who favor acquisition don't want to talk about the local economic growth. If we're going to respond to this crisis, we have to think anew. That's why we put the Adirondack Recovery Act on the Assembly agenda.²²⁴

The Adirondack Recovery Act proposal would have provided financial assistance for timber processing, Christmas tree farming and maple sugaring. It also included provisions to stimulate tourism and small-business development.²²⁵

Brodsky introduced a bill in the 2002–2003 legislative session that would have permitted advertising for fuel or lodging and informational kiosks along Interstate 87 (commonly known as the Northway) in the Adirondack Region.²²⁶ Currently section 9-0305 of the Environmental Conservation Law bans such advertising.²²⁷ In 2005, legislation was passed to increase snowmobile registration fees: The Snowmobile Rights and Responsibilities Act of 2005.²²⁸

²²² See Janet Essman, *Brodsky Keeps Environmental Decision-Makers on Their Toes*, ALB. BUS. REV., Sept. 28, 1999, available at <http://www.bizjournals.com/albany/stories/1998/09/28/focus1.html>.

²²³ *Id.*

²²⁴ Interview by David J. Miller with Richard Brodsky, Assemblyman, N.Y. State Assem., in Albany, NY. (Mar. 9, 1998), available at <http://ny.audubon.org/advocate/spring98/Headlines.html>.

²²⁵ Essman, *supra* note 222.

²²⁶ Assem. A7267, 2003 Leg., 226th Reg. Sess. (N.Y. 2003).

²²⁷ N.Y. ENVTL. CONSERV. LAW § 9–0305 (McKinney 2005).

²²⁸ Press Release, Assem. Teresa Sayward, Sayward Stands Up For Snowmobilers' Rights: Investigates Reappropriation of Funds Intended for Snowmobile Fund (Apr. 16 2008), available at http://assembly.state.ny.us/member_files/113/20080416/ (last visited Apr. 14, 2011). Though the money collected by the fees was meant to improve trails, as Republican Assemblywoman Teresa Sayward pointed out, the money collected had been swept into the state's general fund. *Id.*

V. 2007–2010: ELIOT SPITZER AND DAVID PATERSON

A. Leadership

While serving as the attorney general, Eliot Spitzer received praise from the Adirondack Council for legal victories on behalf of the environment, including challenging the Ohio Edison utility company for violations of the Clean Air Act. The group claimed that Spitzer “has proven to be an effective and committed partner in the effort to stop acid rain in New York State.”²²⁹

Still, Spitzer was called “very urban”²³⁰ and accused of being a New York City elitist during his campaign for governor, especially after he famously claimed upstate New York “looks like Appalachia.”²³¹ Before he took office, Spitzer was urged to address the problems within the Adirondack Park Agency. In late 2006, the Adirondack Council called on Governor-elect Spitzer to make much needed changes to the agency’s enforcement division, citing a list of specific recommendations in its released report on the topic.²³²

After Spitzer became governor in 2007, subtle environmental changes were noticed immediately in Albany. The capitol’s one recycling container for bottles and cans was joined by twenty-five more containers inside and outside the building.²³³ In his first State of the State address, Spitzer pledged to revitalize the upstate economy. Part of this plan included smart growth planning for the Adirondacks. He also appointed reputable environmental advocates to key roles in the administration, including former Assemblyman and proponent of the original bottle bill, Pete Grannis as Commissioner of DEC.²³⁴

²²⁹ Press Release, Adirondack Council, Adirondack Council Praises Eliot Spitzer For Job Well Done: Ohio Pollution Decision Will Spur Action in Congress (Aug. 8, 2003), *available at* <http://www.adirondackcouncil.org/spitzer03pr.html>.

²³⁰ Eleanor Randolph, Op-Ed., *If Eliot Spitzer Could Channel Bob Marshall*, N.Y. TIMES, Dec. 30, 2008, at A18 (discussing whether Spitzer would succeed where Pataki had failed in preserving wilderness in honor of Bob Marshall, the late founder of the Wilderness Society).

²³¹ Jennifer Medina, *Upstate ‘Looks Like Appalachia’ to Spitzer, and He Has Plans to Fix It*, N.Y. TIMES, Mar. 22, 2006, at B5.

²³² ADIRONDACK COUNCIL, *SWEPT UNDER THE RUG: THE TRUTH ABOUT ENVIRONMENTAL ENFORCEMENT IN THE ADIRONDACK PARK* 4–5 (2006).

²³³ Anthony DePalma, *Gov. Spitzer Picks Activists to Make State a Bit Greener*, N.Y. TIMES, Oct. 1, 2007, at B1.

²³⁴ *Id.*

A major lawsuit against a polluting power company was successfully resolved by Spitzer, who secured an agreement with American Electric Power Service Corporation to cut 813,000 tons of air pollution upwind from the Adirondack Park.²³⁵ The company also agreed to install pollution control equipment costing more than \$4.6 billion and to pay a \$15 million penalty.²³⁶

Following the death of a Brooklyn man who died after he was unable to connect to a wireless signal after an accident on the Adirondack Northway, there was a public outcry to increase the number of cell towers in the Adirondacks. The 2007 legislative budget proposed \$1 million to help extend coverage—a move that was previously fought by environmentalists.²³⁷

David Paterson became governor when Spitzer resigned in March, 2008, during the busiest legislative time of the year, with the budget due in just two weeks. He also came into office during an economic recession and called upon the heads of state agencies to cut their budgets by 3.35% and threatened a hiring freeze.²³⁸ This freeze did not apply to the Adirondack Park Agency, however, and the staff number remained at seventy two.²³⁹ The 2008–2009 executive budget kept the same funding to the APA as the 2007–2008 budget, \$6.2 million, of which \$5.5 million came from the General Fund and \$700,000 came from federal funds.²⁴⁰

Governor Paterson's 2010 state budget proposed moratorium on state land purchases in the Adirondack Park, reducing cuts made to environmental programs and funds, reducing the Environmental Protection Fund by \$69 million.²⁴¹ Though the

²³⁵ Kim Smith Dedam, *APA Commends Spitzer on Air-Pollution Agreement*, PRESS REPUBLICAN (Plattsburgh), Nov. 9, 2007, available at http://pressrepublican.com/0100_news/x155196845/APA-commends-Spitzer-on-air-pollution-agreement.

²³⁶ *Id.*

²³⁷ *\$1 Million for Northway Phone Coverage*, PRESS REPUBLICAN (Apr. 1, 2007), <http://blog.pressrepublican.com/archive/index.php?option...>

²³⁸ *The Paterson Administration: A History of Fiscal Reform*, N.Y. STATE OFFICE OF TAXPAYER ACCOUNTABILITY, http://taxpayer.ny.gov/fiscal_reform.htm (last visited May 15, 2011).

²³⁹ *2008-09 Enacted Budget: State Workforce Chart*, N.Y. STATE DIV. OF THE BUDGET, http://www.budget.state.ny.us/pubs/archive/fy0809archive/enacted0809/0809Budget_Workforce.html (last visited May 15, 2011).

²⁴⁰ N.Y. STATE DIV. OF THE BUDGET, ADIRONDACK PARK AGENCY, <http://www.budget.state.ny.us/pubs/archive/fy0809archive/eBudget0809/agencyPresentations/pdf/apa.pdf>.

²⁴¹ Michael Virtanen, *State Closing on Land Deals That Predate Moratorium*, PRESS-REPUBLICAN (Plattsburgh), Jan. 22, 2010, available at http://pressrepublican.com/0100_news/x1566851133/State-closing-on-land-deals-

moratorium was put into place, one last land deal in the Adirondacks that had been in the works for years was allowed to go through. Using \$30 million from the Environmental Protection Fund in late 2010, the state bought a conservation easement 89,000 acres of working forest in the central Adirondacks once owned by paper manufacturer Finch, Pruyn & Company from the Nature Conservancy.²⁴² The property represents the latest piece in a complex, multiyear process involving a total acquisition of 161,000 acres for \$110 million from Finch, Pruyn.²⁴³ It is the largest conservation and financial transaction in the history of the Nature Conservancy in New York and was approved by all twenty-seven towns that are part of the scattered acreage. As the *Times Union* reported: “The pact includes 16,000 acres of wetlands, 70 lakes and ponds, 90 mountain peaks and 48 miles of Hudson River shoreline.”²⁴⁴

B. Significant Legislation

A bill that established the New York State Climate Change Task Force was passed by the legislature in 2007, only to be vetoed by Spitzer.²⁴⁵ The task force would have been created within DEC with the power to conduct comprehensive analyses of issues related to global climate change. Within twelve months of its creation, the task force was to issue a draft climate change action plan. In his veto message, the governor commended the legislature for this action but stated that the task force would largely duplicate other work on the subject being done by the New York State Greenhouse Gas Task Force, the Sea Level Rise Task Force, and the newly created Office of Climate Change within DEC.²⁴⁶

Until recently, New York used to classify areas of the state as “empire zones” for purposes of tax credits and job creation. In 2005, a bill that would have designated the entire Adirondack Park as an empire zone was introduced.²⁴⁷ The justification

that-predate-moratorium.

²⁴² Paul Grondahl, *\$30M Wins ‘Jewel in the Adirondack Crown,’* TIMES UNION (Albany), Dec. 31, 2010, available at <http://www.timesunion.com/default/article/30M-wins-jewel-in-the-Adirondack-crown-929461.php>.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ S. 5427-A, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

²⁴⁶ *Id.*

²⁴⁷ Assem. 7965, 2006 Leg., 229th Sess. (N.Y. 2006).

provided in the sponsor's memorandum stated how with the land acquisition by the state in the park, little is left for private development, rendering the park "a difficult place to make a living and sustain business activity."²⁴⁸ The bill, introduced by Assemblyman Darrel Aubertine, died in the Economic Development Committee.

The New York Invasive Species Council was created within DEC in 2007.²⁴⁹ The council is responsible for the development of a comprehensive plan for invasive species management, providing input on funding for invasive species control and management, and developing a classification list for non-native wildlife and plant species, which would be the basis for recommendations of the council for restrictions on the introduction of such species and penalties for such violations.²⁵⁰ The council consists of nine members, including a member of the APA.²⁵¹

Despite legislative action, the Environmental Protection Fund has not received enough funding to carry out its mission. The council reported: "In 2007, the Legislature passed a bill calling for the [environmental program and funds] to reach \$300 million by 2010."²⁵² So far, "this has been a promise unfulfilled, as neither the governor, nor either house has proposed more than \$222 million, or the same amount appropriated in 2009."²⁵³ A bill was proposed both in 2007 and 2009 that would allow for "sustainable forestry" in both the Adirondack and Catskills parks.²⁵⁴ The bill would have created a "right to sustainable forestry practice similar to that of the right to farm laws."²⁵⁵

The Clean Water/Clean Air/Green Jobs Bond Act of 2009 was proposed to authorize the creation of a state debt of \$5 billion to provide moneys for the preservation, enhancement, restoration, and improvement of the state's environment.²⁵⁶ The sponsor's memorandum referenced the Clean Water, Clean Air Bond Act of 1996, stating that these funds had been exhausted and new

²⁴⁸ *Id.*

²⁴⁹ N.Y. ENVTL. CONSERV. § 9-1705(1) (McKinney 2005 & Supp. 2011).

²⁵⁰ *Id.* § 9-1705(5)(c).

²⁵¹ *Id.* § 9-1705(1).

²⁵² *Interview with Brian Houseal, ADIRONDACK COUNCIL* (Apr. 20, 2010), <http://www.empirepage.com/2010/4/20/interview-with-brian-houseal-adirondack-council>.

²⁵³ *Id.*

²⁵⁴ Assem. 1990, 2010 Leg., 233rd Reg. Sess. (N.Y. 2009).

²⁵⁵ Assem. 2802, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

²⁵⁶ Assem. 8810-A, 2009 Leg., 232nd Reg. Sess. (N.Y. 2009).

legislation was needed to make much needed improvements to the state's environment, all while providing training for "green jobs."²⁵⁷

Governor Paterson's 2009 State of the State address outlined his plan to meet forty-five percent of the state's electricity needs through clean, renewable energy and improved energy efficiency by 2015.²⁵⁸ As such, the Municipal Sustainable Energy Loan Program was created in 2009 to allow municipalities to provide loans to property owners for the installation of renewable energy systems and energy efficiency measures.²⁵⁹

Legislation chaptered in 2009 designated Mirror Lake and Lake Placid as inland waterways for purposes of waterfront revitalization.²⁶⁰ This change allows the municipalities along the river banks to be eligible for Department of State and Environmental Protection Fund waterfront revitalization grants.²⁶¹

A scathing report was issued in August 2010 by the Adirondack Park Local Government Review Board.²⁶² The review board, created by legislation in 1973, was statutorily created to ensure local governments have participation in the region's land use planning. The board complained as environmental groups "have deftly used the [regulatory] process to build their own fortunes while driving . . . their need to continue the state's string of land purchases and to apply tight APA regulations."²⁶³

A longstanding fight over hunting using a crossbow during regular hunting season, an issue of particular concern to hunters in the Adirondacks, was finally resolved when Paterson signed Chapter 483 into law in 2010.²⁶⁴ The new law permits hunting by a crossbow, which previously only was allowed by hunters who

²⁵⁷ Sponsor's Memorandum from Robert Sweeney, N.Y. State Assem., in Support of Assem. 8810, 2009 Leg., 232d Reg. Sess. (N.Y. 2009).

²⁵⁸ Gov. David Paterson, State of the State Address, *in* POST STANDARD BLOG (Jan. 7, 2009, 1:53 PM), http://blog.syracuse.com/indepth/2009/01/transcript_of_gov_david_paters.html.

²⁵⁹ N.Y. GEN. MUN. LAW, §§ 119-(ee)-(gg) (McKinney 2007 & Supp. 2011).

²⁶⁰ N.Y. EXEC. LAW § 911 (4)(a) (McKinney 1996 & Supp. 2011).

²⁶¹ *Id.*

²⁶² *See* THE ADIRONDACK PARK AGENCY, UNDER THE INFLUENCE AND IN NEED OF DETOXIFICATION: A REPORT TO GOV. PATERSON AND THE NEW YORK STATE LEGISLATURE (2010), http://www.adirondackdailyenterprise.com/pdf/news/51574_9_1.pdf.

²⁶³ *Id.* at 2.

²⁶⁴ N.Y. ENVTL. CONSERV. LAW §§ 11-0901(4)(b)(5), (c)(5) (McKinney 2009); *see New Legislation Allows Crossbows in to Regular Hunting Season*, WKTV (Utica) (Jul. 1, 2010), <http://www.wktv.com/news/local/97599629.html>.

were completely disabled.²⁶⁵ It was supported by the Disabled Sportsmen of America, as crossbows are much easier for the disabled to wield than long bows, the Safari Club, the New York State Conservation Council, the Niagara County Federation of Conservation Clubs, and the Shooters' Committee on Political Education.

VI. 2011: ANDREW CUOMO

Andrew Cuomo was sworn in as New York's governor on January 1, 2011, beginning his administration with both legislative leaders from downstate, though of different parties. Majority Leader Dean Skelos, a Republican from Garden City on Long Island, holds a narrow margin over the state senate, while Sheldon Silver retains his leadership as speaker of the assembly, which is controlled by Democrats. Besides a divided government, Cuomo also took the reins of a state with deep fiscal problems. During his State of the State address, Cuomo acknowledged the state's financial crisis, particularly in upstate New York where "[i]n real GDP, from 2001–2006 . . . [the region] grew about 1.7% per year while the average in the nation was 2.7%."²⁶⁶

The 2011–12 Executive Budget proposed by the governor maintained the *status quo* of \$134 million allocated for the Environmental Protection Fund. In light of the fiscal restraints faced by the state, this was considered a victory by environmentalists.²⁶⁷ The proposed budget was immediately praised by Neil Woodworth of the Adirondack Mountain Club, stating "[t]his budget essentially maintains the *status quo*, and hopefully, under Governor Cuomo's leadership, the state will soon be able to renew its commitment to adequately funding environmental programs that are essential to maintaining the public health and quality of life of all New Yorkers."²⁶⁸

The Executive Budget recommends \$6.3 million for the Adirondack Park Agency, of which \$5.1 million will come from the general fund, \$700,000 will be received in federal funds, and

²⁶⁵ N.Y. ENVTL. CONSERV. LAW §§ 11-0901(4)(b)(5), (c)(5).

²⁶⁶ Gov. Andrew M. Cuomo, State of the State Address (Jan. 5, 2011), <http://www.governor.ny.gov/sl2/stateofthestate2011transcript>.

²⁶⁷ Thomas Kaplan, *Cuomo's Budget Whittles at All Corners of the State*, N.Y. TIMES, Feb. 3, 2011, at A22.

²⁶⁸ Rick Karlin, *Enviros are Happy with Budget*, CAPITOL CONFIDENTIAL BLOG (Feb. 1, 2011, 12:27 PM), <http://blog.timesunion.com/capitol/archives/55509/enviros-are-happy-with-the-budget>.

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\$500,000 in capital funds.²⁶⁹ This amount reflects a \$338,000 decrease from 2009–2010, after adjusting for a new \$500,000 capital gift account resulting from overall state operations reductions and the closure of the Agency’s two Visitor Interpretative Centers in Newcomb, Essex County, and near Paul Smith’s College in Franklin County.²⁷⁰

For 2010–2011, the Executive Budget proposes the Adirondack Park Agency operate with a staff of fifty-nine positions, ten fewer than in 2009–2010. The budget will also continue to fund the Adirondack Park Local Government Review Board.

VII. PENDING LEGISLATION

As of February 1, five weeks into 2011’s legislative session, there were already thirty-one proposed bills affecting either the Adirondacks or the Adirondack Park Agency, from redefining the term “campground” as it pertains to the park, to requiring the governor to appoint the five members of the Adirondack Park Agency who reside in the park from a list established by the county legislatures.

A. Adirondack Park Agency

Some of the most significant governmental changes made in the Adirondacks happen not through legislation, but through rule-making. The APA’s October 2010 policy perspective acknowledges that “[s]ome have characterized recent Agency actions to update regulations as inappropriate due to a perception that the Agency is over-stepping its authority by ‘legislating’ via regulation.”²⁷¹ The agency cited a 1995 report by local government and environmental organizations which concluded that rulemaking was an essential element of the agency’s mission.²⁷²

Senate Bill 823 and Assembly Bill 512, the former sponsored by Senator Betty Little of Queensbury, and the current chairperson of the Senate Committee on Cultural Affairs, Tourism, Parks and Recreation, and the latter sponsored by Assemblywoman Teresa

²⁶⁹ N.Y. STATE DIV. OF THE BUDGET, *supra* note 124.

²⁷⁰ *Id.*

²⁷¹ THE ADIRONDACK PARK AGENCY, POLICY PERSPECTIVE 1 (2010), http://www.apa.state.ny.us/Press/_assets/APA_Policy_Perspective.pdf.

²⁷² *Id.*

Sayward of Wilsboro, proposes establishing a special ten-year statute of limitations to enforce violations of rules and regulations of APA.²⁷³ As the sponsor's memorandum states, this legislation would affect a "balance between protecting our natural resources and the human resource needs of the people that live and make their living in the Park."²⁷⁴

Citing the frequent problem of land being sold without the knowledge of violations by present owners, Senate Bill 823 calls for a "reasonable" statute of limitation from when the alleged violation first occurred.²⁷⁵ The memorandum details the struggle of the Monda family, who purchased a home in the Town of Putnam, Washington County, from a family who owned the property for many years. After contacting APA to receive a property line adjustment, an agent from APA informed them that their deck, which had been in place for over thirty years, was in violation of APA's code and would have to be removed or the family would face a hefty fine.²⁷⁶

The issue of the statute of limitations for APA violations has been debated for years, in and out of the legislature. Senator Little has introduced similar legislation since 2004. In 2009, a version of the bill won bipartisan support and unanimously passed the senate.²⁷⁷ After waiting nearly a year for the bill to be debated by the assembly, however, the bill was tabled by Tourism Committee Chairperson Steven Englebright.²⁷⁸

The membership of the APA has also inspired legislation. A bill introduced for the past several legislative sessions would allow county legislatures to weigh in on the five members of the agency who are appointed by the governor.²⁷⁹ An even more populous idea has been proposed by one commenter, allowing voters directly to elect members of the agency.²⁸⁰

²⁷³ S. 823, 2011 Leg., 234th Reg. Sess. (N.Y. 2011); Sponsor's Memorandum from Betty Little, N.Y. State Sen., in Support of S. 823, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁷⁴ *Id.*

²⁷⁵ Sponsor's Memorandum from Betty Little, N.Y. State Sen., in Support of S. 823.

²⁷⁶ *Id.*

²⁷⁷ S. 323, 2009 Leg., 233rd Reg. Sess. (N.Y. 2009).

²⁷⁸ Radio Broadcast: Bill Curtailing Adirondack Park Agency Enforcement Power Fails in Assembly (North Country Public Radio 2010), *available at* <http://www.northcountrypublicradio.org/news/story/15929/bill-curtailing-adirondack-park-agency-enforcement-power-fails-in-assembly>.

²⁷⁹ See Assem. 511, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁸⁰ Brian Mann, *Yes, Some Adirondack Park Agency Commissioners Should*

B. All Terrain Vehicles and Snowmobiles

The issue of all-terrain vehicles (ATVs) and snowmobiles in the Adirondacks continued to be debated by the legislature. A bill sponsored by Senator George Maziarz of Newfane would require a report on the economic impact of ATV-related tourism.²⁸¹ Similar versions of the bill were also introduced in the 2007–2008²⁸² and the 2009–2010²⁸³ sessions, the former of which passed the senate on June 7, 2007, and again on June 18, 2008, both times dying in the assembly. The bill requires a report to investigate the number of ATVs registered and unregistered in the state, the amount of money ATV operators spend on fuel, lodging and other travel-related expenses, an analysis of the impacts of ATV-related tourism, and recommendations regarding the possibility of planning and management of future ATV use on public and private land.²⁸⁴ It is supported by the New York State Off – Highway Recreational Vehicle Association.²⁸⁵

A bill that would ban ATV operation in the state forest preserve, Long Island’s central Pine Barrens area, and the Albany Pine Bush Preserve was introduced in the 2011-2012 legislative session.²⁸⁶ Sponsored by Assemblyman Englebright, similar versions of the same bill were also introduced in 2009, 2007, 2005,²⁸⁷ and 2003,²⁸⁸ never getting out of the committee on Tourism, Parks, Arts and Sports Development.

C. Camping

Two bills introduced by both Assemblywoman Sayward and Senator Little would redefine “campground” within the

be Elected, THE IN BOX BLOG (Oct. 15, 2010, 6:22 PM), <http://blogs.northcountrypublicradio.org/inbox/2010/10/15/yes-some-adirondack-park-agency-commissioners-should-be-elected>.

²⁸¹ S. 246, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁸² S. 5706-C, 2007 Leg., 232nd Reg. Sess. (N.Y. 2007); see *Support the New York ATV Economic Impact Study*, N.Y. STATE OFF-HIGHWAY RECREATIONAL VEHICLE ASSOC. (May 24, 2007), <http://www.nysorva.org/ATVStudyBill.shtml>.

²⁸³ S. 2533, 2009 Leg., 233rd Reg. Sess. (N.Y. 2009).

²⁸⁴ Sponsor’s Memorandum from George D. Maziarz, N.Y. State Sen., in *Support of S. 246*, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁸⁵ N.Y. STATE OFF-HIGHWAY RECREATIONAL VEHICLE ASSOC., *supra* note 282.

²⁸⁶ Assem. 3818, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁸⁷ Assem. 6665, 2005 Leg., 231st Reg. Sess. (N.Y. 2005).

²⁸⁸ Assem. 8480, 2003 Leg., 230th Reg. Sess. (N.Y. 2003).

Adirondack Park. One such bill²⁸⁹ would allow recreational vehicles to remain parked at permanent campsites in the Adirondacks, a circumstance that is already widely practiced but in violation of the Executive Law. The other would prevent APA from creating any rule, regulation, or land use and development plan relating to campgrounds that is inconsistent with the Department of Health's rules and regulations relating to campgrounds.²⁹⁰ The latter bill was introduced in response to proposed APA regulations. As the sponsor's memorandum states:

The Agency has recently proposed regulations which have the potential to negatively impact campground owners and campers. There is no environmental benefit to the APA's regulations. Campgrounds within the Park must be able to compete with campgrounds located outside the Park otherwise people will go to campsites outside the Park or in other states. Seasonal campers spending time in these parks contribute to the economy of the area through shopping, dining, attending attractions, etc. As long as the camps comply with the Department of Health regulations, they should not be treated any differently just because they are located within the Blue Line.²⁹¹

D. Environmental Litigation

A bill introduced by Senator Liz Krueger enables injured parties who demonstrate standing the ability to seek abatement of ongoing violations of certain titles of the Environmental Conservation Law, including violations of rules or regulations of the APA.²⁹² According to the sponsor's memorandum, the limited enforcement resources make it difficult for every violation to be addressed in a timely manner.²⁹³ This legislation would allow aggrieved parties to seek their remedy through the court system instead of waiting for the state to address the violation.

²⁸⁹ Assem. 151, 2011 Leg., 234th Reg. Sess. (N.Y. 2011); S. 345, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁹⁰ Assem. 148, 2011 Leg., 234th Reg. Sess. (N.Y. 2011); S. 342, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁹¹ Sponsor's Memorandum from Teresa R. Sayward, N.Y. State Assem., in Support of Assem. 148, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁹² S. 891, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁹³ Sponsor's Memorandum from Liz Krueger, N.Y. State Sen., in Support of S. 891, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

E. Forestry

A proposed constitutional amendment would authorize state residents to gather dead timber from the floor of the state forest preserve when such timber is on the side of a public highway.²⁹⁴ As the sponsor's memorandum explains: "The prohibition on the removal of dead timber in the forest preserve has been an issue of concern with the residents of the Adirondack Park for many years. During the Ice Storm of 1998, thousands of downed trees were left to rot while residents without power searched for ways to heat their homes by other means such as a wood stove."²⁹⁵

Senate Bill 2140 creates a task force on interagency cooperation within the forestry industry. The bill requires the Commissioner of the Department of Economic Development to form a "task force to develop a plan to increase interagency cooperation with respect to the forest industry."²⁹⁶

The task force shall consist of six members [and] . . . include the commissioner of [A]griculture and [M]arkets or his or her designee, the chief executive officer of the [] state [E]nergy [R]esearch and [D]evelopment [A]uthority or his or her designee, two representatives from the [] state forestry industry to be appointed by the governor, a representative of local government in a county located within the Catskills state park to be appointed by the governor, and a representative of local government in a county located within the Adirondack state park to be appointed by the governor.²⁹⁷

The sponsor's memorandum states its justification simply: "Forestry is an important industry for our environment and economy. The forestry industry has indicated closer coordination is necessary between government agencies."²⁹⁸

F. Hunting and Gaming

The "Adirondack Sportsmen's Club Preservation Act" introduced this year and the 2009–2010 legislative session, would grant hunting clubs "the right of first refusal to purchase . . . a

²⁹⁴ S. 506, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁹⁵ Sponsor's Memorandum from Betty Little, N.Y. State Sen., in Support of S. 506, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁹⁶ S. 2140, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

²⁹⁷ *Id.*

²⁹⁸ Sponsor's Memorandum from Sen. Bonacic, N.Y. State Sen., in Support of S. 2140, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

long term lease of the land utilized by the club . . . at fair market value.”²⁹⁹ A bill has been introduced for several years that regulates the taking of moose and elk in the same manner as deer.³⁰⁰

G. Invasive Species

Current regulations state that no person shall launch or retrieve a boat without first inspecting it for invasive species.³⁰¹ A bill was introduced that would codify this regulation and makes it a criminal violation and subject to a \$250 fine and up to fifteen days in jail.³⁰² This legislation was endorsed by The Lake George Park Commission.³⁰³

H. Wetlands

A bill was introduced that would grant regulatory authority to the “Department of Environmental Conservation over freshwater wetlands of one acre or more in size and other wetlands of significant local importance.”³⁰⁴ This legislation comes soon after the U.S. Supreme Court ruled that the federal government no longer has jurisdiction over isolated wetlands.³⁰⁵ With the Supreme Court ruling in *Solid Waste Agency v. U.S. Army Corps of Engineers*, estimates “show at least 20% and possibly 50% of existing wetlands, constituting millions of acres nationwide, will be left unprotected.”³⁰⁶ As the sponsor’s memorandum explains: “While a number of states (including all the northeastern States)

²⁹⁹ S. 2487, 2011 Leg., 234th Reg. Sess. (N.Y. 2011); S. 4789, 2009 Leg., 232nd Reg. Sess. (N.Y. 2009).

³⁰⁰ Assem. 2413, 2011 Leg., 234th Reg. Sess. (N.Y. 2011); Assem. 815, 2009 Leg., 232nd Reg. Sess. (N.Y. 2009); Assem. 2417, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

³⁰¹ See Anthony F. Hall, *Lake George Park Commission Supports NYS Invasives Law*, ADIRONDACK ALMANACK, Jan. 14, 2011, <http://www.adirondackalmanack.com/2011/01/lake-george-park-commission-supports.html>.

³⁰² Assem. 568, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

³⁰³ Hall, *supra* note 301.

³⁰⁴ Assem. 3374, 2011 Leg., 234th Reg. Sess. (N.Y. 2011); Sponsor’s Memorandum from A. Sweeney, N.Y. State Assem., in Support of Assem. 3374, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

³⁰⁵ *Solid Waste Agency v. U.S. Army Corps of Engineers*, 531 U.S. 159, 174 (2001).

³⁰⁶ Sponsor’s Memorandum from A. Sweeney, N.Y. State Assem., in Support of Assem. 3374

already have the regulatory authority to step in and regulate the wetlands that Corps of Engineers formerly oversaw, New York's DEC is currently limited to regulating mapped wetlands of a size greater than 12.4 acres.³⁰⁷ It further states: “[i]f we do not protect New York's wetlands, we jeopardize our drinking water and property values.”³⁰⁸

Similar, a bill introduced by Senator Daniel Squadron amends the Freshwater Wetlands Act of Article 24 of the Environmental Conservation Law to strengthen protections for freshwater wetlands that are no longer protected by federal law, increase penalties for freshwater wetlands violations, establish permit application fees, and update certain other provisions.³⁰⁹

I. Other

A measure that would prevent the state from changing the location of highways located on state land within the park was introduced at the request of Adirondack Park Local Government Review Board and is also supported by the Adirondack Conservation Council.

The Private Well Testing Act is a statewide measure that mandates testing of drinking water from private wells upon the transfer of property.³¹⁰ The sponsor's memorandum explains the necessity to test private wells in the same manner that the public water supply is tested, stating the measure would “provide all citizens in the state with information on the quality of their drinking water . . . [i]f this information is provided upon the sale of property, where necessary, new homeowners may be able to install any necessary treatment for their potable water.”³¹¹

A measure that would add “the nighttime sky” of the Adirondack and Catskills Park as part of the unique “assuring surroundings” protected under section 1-0101 of the Environmental Conservation Law was introduced by Assemblywoman Linda Rosenthal of Manhattan.³¹²

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ S. 2797, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

³¹⁰ Assem. 667, 2011 Leg., 234th Reg. Sess. (N.Y. 2011); S. 2709, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

³¹¹ Sponsor's Memorandum from M. Grisanti, N.Y. State Sen., in Support of S. 2709, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

³¹² Assem. 1846, 2011 Leg., 234th Reg. Sess. (N.Y. 2011).

CONCLUSION

The political history of the Adirondack Park is one of competing public and private interests. From the logging industry threatening the water supply of New York City to private developers threatening the wilderness state of the park that the framers of the 1894 convention sought to preserve. It is also a story of how the regulations meant to protect natural resources conflict with the economic interests of the residents that they were designed to protect.

Government regulation of private property has increased dramatically in the past four decades. At the same time, the state has exerted more control over traditional local government land use planning. As Richard Booth and Harvey Jacob wrote: “No land use control effort in the United States exemplifies these two critical issues more clearly than New York State’s efforts to protect the Adirondack Park.”³¹³ The controls placed upon land in the Adirondacks have long been opposed by local governments and residents. All the same, others argue that the promise of “forever wild” has served as a model for the nation and other states, yet has been neglected at home.³¹⁴

The Environmental Protection Fund (EPF), a landmark piece of legislation designed to ensure a funding source for necessary environmental projects, has instead been used to cut the state’s budget gap. Since 2003, three governors and the legislature have raided \$500 million from the EPF—about one-third of all money ever appropriated for the EPF since it was created in 1993.³¹⁵

Environmental regulation often creates friction between preservation and allowing citizens freedom to pursue economic and other activities. For the Adirondacks, this tension is more complicated as the state continues its land acquisition plans in order to advance environmental goals, for residents it means

³¹³ Booth & Jacobs, *supra* note 129, at 366.

³¹⁴ Nicholas A. Robinson, Gilbert & Sarah Kerlin Distinguished Prof. of Env’tl. Law, Pace Univ. Sch. of Law, Arthur M. Crocker Lecture: ‘Forever Wild’: New York’s Constitutional Mandate to Enhance the Forest Preserve (Feb. 15, 2007), available at http://www.adirondackwild.org/images/featured_writers/robinson.pdf.

³¹⁵ BROOKLYN QUEENS LAND TRUST, *ENVIRONMENTAL FUNDING IN NEW YORK: PROTECTING OUR CLEAN WATER, CLEAN AIR AND COMMUNITIES 1* (2010), http://www.bqlt.org/Press/News%20Stories/Environmental_Funding_in_New_York.10.2010.OVERVIEW.pdf. See generally John R. Nolon, *The Erosion of Home Rule Through the Emergence of State-Interests in Land Use Control*, 10 PACE ENVTL. L. REV. 497, 525–30 (1993).

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“limiting economic options—for lumber operations, tourism, or other commercial activities—in a region where unemployment is high and most family incomes are low.”³¹⁶ Furthermore, “the economic situation is . . . bleak” for most full time residents of the park; unemployment rates climb even higher in the winter months when there is less tourism.³¹⁷

Though only a portion of the bills introduced in each legislative session ever become law, the wealth of current legislation affecting the Adirondacks reflects just how many issues the region faces. It is unlikely that a solution can be found for many problems that would please the sometimes extreme advocates on both ends of the spectrum, yet hopefully the new administration, as well as the new legislative session, brings opportunity for debate and compromise.

³¹⁶ WARD, *supra* note 147, at 401.

³¹⁷ Booth & Jacobs, *supra* note 129, at 369.