

12-1-2010

Article XIV, Agriculture, and Keeping New York's Wilderness Wild

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Recommended Citation

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Hilary Atkin

Constitutional Protection of the Wilderness

December 1, 2010

Article XIV, Agriculture, and Keeping New York's Wilderness

Wild

A wilderness area, in contrast with those areas where man and his own works dominate the landscape, is an area where the earth and its community of life are untrammelled by man - where man himself is a visitor who does not remain.

- Adirondack State Land Master Plan

I. Introduction

Article XIV, Section one of the New York State Constitution requires the Legislature to pose a question to the voters of New York state every twentieth year after 1957: "Shall there be a convention to revise the constitution and amend the same?"¹ If a majority of the voters decide in favor of the convention, delegates are elected and then assembled to propose amendments to the Constitution of New York State. If a majority of the delegates vote in favor of amendments, or an entirely new proposed constitution, the voters of NY vote on whether to

¹ N.Y. Const. art. XIX, § 2.

accept the changes no less than six weeks after the adjournment of the convention.

When the constitutional convention question is put on the ballot in 2017, the voters of New York will again choose whether to have a convention to revise or replace their Constitution. There are many issues related to the Forest Preserves of New York State that may lead delegates to consider whether Article XIV, Section one's "forever wild" provision should be amended or even done away with. With the popularity of the local farming movement increasing the intensity of agriculture in and around the Adirondack and Catskill Parks, delegates could consider amendments that clarify the responsibilities that Article XIV currently demands of state and local agencies regarding protecting the Forest Preserves. The importance of the health of the Forest Preserve for drinking water quality and quantity is clearly articulated in Article XIV and its legislative history, and agricultural practices can have a major impact on water resources. However, if the goal is to ensure the wild nature of the Forest Preserve, legislative measures may be the best avenue. Such legislation should require that agencies adopt measures and policies that mandate and encourage farming practices in and around the blue lines to assure the future integrity of the Forest Preserve and the future viability of agriculture in the Adirondacks and Catskills.

II. Farming in New York

Farming is an important and growing business in many New York communities. Farms are local businesses. They create jobs and support other businesses by purchasing local goods and services. According to the National Agricultural Statistics Service, farms in New York sold approximately \$3.6 billion in farm products in 2005, a 33% increase since 1987.² In 2004, farmers spent nearly \$2.8 billion on production expenses, much of which stayed within New York.³ New York farmers own approximately \$3.3 billion in machinery and equipment and an additional \$12 billion in land and buildings.⁴ The economic impacts of farm sales are multiplied in the local economy as machinery is built and maintained and farm products are processed. Professor Nelson Bills of Cornell University reported that the agricultural services sector earned approximately \$1.4 billion and the food manufacturing sector earned about \$18.6 billion in 1996 in New York.⁵ Other statistics suggest that the New York farm and food

² United States Department of Agriculture, National Agricultural Statistics Service, New York State Annual Bulletin 2005, http://www.nass.usda.gov/Statistics_by_State/New_York/index.asp (last visited October 15, 2010).

³ DAVID HAIGHT, JERRY COSGROVE, AND KIRSTEN FERGUSON, AMERICAN FARMLAND TRUST PUBLICATIONS, GUIDE TO LOCAL PLANNING FOR AGRICULTURE IN NEW YORK 4, http://www.farmlandinfo.org/documents/30379/Guide_to_Local_Planning_for_Agriculture_NY.pdf.

⁴ National Agricultural Statistics Service, *US Census of Agriculture: New York State Level Data Table 44 and Table 43*, UNITED STATES DEPARTMENT OF AGRICULTURE (2002).

⁵ Bills, Nelson, *Agriculture-Based Economic Development: Trends and Prospects for New York*, DEPARTMENT OF APPLIED ECONOMICS AND MANAGEMENT, CORNELL UNIVERSITY (2001).

industry has a combined \$23 billion economic impact annually.⁶ New York is in the top three nationally in production of dairy goods, maple syrup, corn, wine, apples, pumpkins and cabbage.⁷

In addition to creating income for communities, farmland requires fewer community services and helps maintain lower property taxes. Development imposes costs on communities in the form of increased demand for schools, roads, water, sewer and other community services.⁸ Numerous “cost of community services” studies and other research have shown that farms generate more local tax revenue than they cost in services.⁹ By comparison, residential development typically fails to make up for local costs with property tax revenue.¹⁰

Farms remain a critical part of New York’s cultural identity and tourism industry. Scenic farm landscapes are part of the draw for visitors to the Hudson Valley, Finger Lakes and many other regions of New York.¹¹ Farm buildings, stone walls, historic farm machinery, open fields and other elements of agriculture are important links to

⁶ LIZ BROCK, DAVID HAIGHT, AND JERRY COSGROVE, PICKING UP THE PACE: A ROAD MAP FOR ACCELERATING FARMLAND PROTECTION IN NEW YORK, AMERICAN FARMLAND TRUST PUBLICATIONS 4 (2007), http://www.farmland.org/programs/states/documents/AFT_PickingUpThePace_NewYork_January07.pdf.

⁷ Peter Applebome, *Keeping Agriculture Alive Near New York City (Yes, Really)*, N.Y. Times, October 17, 2010, at A23, available at <http://www.nytimes.com/2010/10/18/nfyregion/18towns.html>.

⁸ See DAVID HAIGHT, JERRY COSGROVE, AND KIRSTEN FERGUSON, *supra* note 3 at 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See LIZ BROCK, DAVID HAIGHT, AND JERRY COSGROVE, *supra* note 6 at 4.

farming heritage.¹² There are 55 county and youth agricultural fairs across New York each year, and the State Fair attracts more than 900,000 people annually.¹³ Wine trails in Western New York, the Finger Lakes and on Long Island saw 4.14 million visitors in 2005, with 23% of these tourists coming from outside New York.¹⁴ By protecting farms, future generations are ensured the opportunity to visit local farms and learn more about agriculture.¹⁵ By protecting cropland, pastures and woods, communities can retain their traditional sense of place and rural identity.¹⁶

Farms also produce fresh local foods.¹⁷ Many people feel that locally-grown food tastes better and is healthier. Communities with local farms have access to farmers' markets, farmstands and other retail outlets that sell fresh local farm products, including fruits, vegetables, meats, dairy products and other items.¹⁸ Local food reduces

¹² See DAVID HAIGHT, JERRY COSGROVE, AND KIRSTEN FERGUSON, *supra* note 3 at 5.

¹³ See LIZ BROCK, DAVID HAIGHT, AND JERRY COSGROVE, *supra* note 6 at 4.

¹⁴ MKF Research, LLC., Economic Impact of New York Grapes, Grape Juice and Wine,

<http://www.nywines.org/informationstation/hottopics/topic.asp?BlurbID=804> (last visited October 15, 2010).

¹⁵ See DAVID HAIGHT, JERRY COSGROVE, AND KIRSTEN FERGUSON, *supra* note 3 at 5.

¹⁶ *Id.*

¹⁷ In 2008, Congress passed the Food, Conservation, and Energy Act which defined local as product that is transported less than 400 miles from its origin or that is transported within the State in which the product is produced. US DEPARTMENT OF AGRICULTURE, LOCAL FOOD SYSTEMS: CONCEPTS, IMAGES, AND ISSUES, ECONOMIC RESEARCH SERVICE REPORT SUMMARY 1 (2010) http://www.ers.usda.gov/Publications/ERR97/ERR97_ReportSummary.pdf.

¹⁸ See DAVID HAIGHT, JERRY COSGROVE, AND KIRSTEN FERGUSON, *supra* note 3 at 5.

the amount of “food miles,” with resulting benefits to air quality.¹⁹ Farmers’ markets, community supported agriculture operations, u-pick farms, farm to school programs and other agricultural programs help form closer ties between farms and consumers.²⁰ Local food supports the local economy, preserves the working landscape, and preserves local culture.²¹ In the future, the security of having a local food supply may become even more important to communities.²²

Local food has become something of a nation-wide movement. The local food movement has been defined as a "collaborative effort to build more locally based, self-reliant food economies - one in which sustainable food production, processing, distribution, and consumption is integrated to enhance the economic, environmental and social health of a particular place."²³ Local food markets now account for a small but growing share of total U.S. agricultural sales. Direct-to-consumer marketing amounted to \$1.2 billion in current dollar sales in 2007, according to the 2007 Census of Agriculture, compared with \$551 million in 1997.²⁴ The number of farmers’ markets rose to 5,274 in 2009, up from 2,756 in 1998 and 1,755 in 1994, according to USDA’s

¹⁹ *Local Food Greener Than Organic*, BBC NEWS, March 2, 2005, available at <http://news.bbc.co.uk/2/hi/science/nature/4312591.stm>

²⁰ See LIZ BROCK, DAVID HAIGHT, AND JERRY COSGROVE, *supra* note 6 at 5.

²¹ PURE CATSKILLS MAGAZINE, GUIDE TO FARM FRESH PRODUCTS 2 (2010-2011), <http://issuu.com/chronogram/docs/purecatskills2010>.

²² See DAVID HAIGHT, JERRY COSGROVE, AND KIRSTEN FERGUSON, *supra* note 3 at 5.

²³ G. Feenstra, *Creating space for sustainable food systems: lessons from the field*, AGRICULTURE AND HUMAN VALUES, Vol. 19, 2002, at 99-106.

²⁴ DEPARTMENT OF AGRICULTURE, LOCAL FOOD SYSTEMS: CONCEPTS, IMAGES, AND ISSUES, ECONOMIC RESEARCH SERVICE REPORT SUMMARY 1 (2010), http://www.ers.usda.gov/Publications/ERR97/ERR97_ReportSummary.pdf.

Agricultural Marketing Service.²⁵ In 2005, there were 1,144 community-supported agriculture organizations, up from 400 in 2001 and 2 in 1986.²⁶ In early 2010, estimates exceeded 1,400, but the number could be much larger.²⁷ The number of farm to school programs, which use local farms as food suppliers for school meals programs and promote relationships between schools and farms, increased to 2,095 in 2009, up from 400 in 2004 and 2 in the 1996-97 school year.²⁸ In 2007, the New Oxford American Dictionary picked locavore as its word of the year.²⁹

In New York, local food and the presence of locavores has become mainstream. Couples planning a wedding at the Plaza Hotel in New York City can offer guests a “100-mile menu” of food from the caterer’s farm and neighboring fields in upstate for as little as \$72 a person.³⁰ Locally grown food, even fully cooked meals, can be delivered to your door.³¹ Farmers in New York are responding to local food demand. Roxbury Farm,³² located in Kinderhook, NY, began supplying food directly to 30 families in 1990, and now supplies about 1,400 in New York City, Westchester and Columbia Counties and the Capital

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 2.

²⁸ *Id.* at 1.

²⁹ Kim Severson, *A Locally Grown Diet With No Fuss But No Muss*, N.Y. TIMES, July 22, 2008, at A1, available at http://www.nytimes.com/2008/07/22/dining/22local.html?ref=local_food.

³⁰ *Id.*

³¹ *Id.*

³² See <http://www.roxburyfarm.com/>.

District.³³ The Hearty Roots Community Farm³⁴ in Red Hook, NY is now in its seventh growing season. It mostly grows mixed vegetable crops, and it serves 600 households in three towns in the Hudson Valley and three neighborhoods in Brooklyn.³⁵ The founder of Hearty Roots, Benjamin Shute, is also a founding board member of the National Young Farmers Coalition and wants to make agriculture his life's work.³⁶

Farming is clearly not allowed in the Forest Preserves.³⁷ However, agriculture and the local food movement is a part of life in and around the Adirondack and Catskill Parks. Today, there are about 52,000 acres of farmland open space in the Adirondack Park.³⁸ The approximately 200 farms are located on the most productive soils at the edges of the Park.³⁹ According to the 2007 Census of Agriculture, the number of farms in northern New York has declined by 6.6% since 2002; however, during this same time period there has been a 22.3% increase in the number of farms selling directly to consumers.⁴⁰ And

³³ See Peter Applebome, *supra* note 7 at A23.

³⁴ See <http://www.heartyroots.com/>.

³⁵ See Peter Applebome, *supra* note 7 at A23..

³⁶ *Id.*

³⁷ N.Y. Env'tl. Conserv. Law § 9-0303 (McKinney's 2004) ("No person shall use any portion of the forest preserve for agricultural purposes, nor shall cattle or domestic animals of any kind be permitted to graze thereon").

³⁸ ADIRONDACK PARK REGIONAL ASSESSMENT PROJECT 90 (2009), <http://www.aatvny.org/content/Generic/View/1:field=documents;/content/Documents/File/16.pdf>.

³⁹ JERRY JENKINS, *THE ADIRONDACK ATLAS* (Syracuse University Press, 2004).

⁴⁰ BERNADETTE LOGOZAR AND TODD M. SCHMIT, *ASSESSING THE SUCCESS OF FARMERS' MARKETS IN NORTHERN NEW YORK: A SURVEY OF VENDORS, CUSTOMERS, AND MARKET MANAGERS 2*(Cornell College of Agriculture and Life

although the entire region has experienced a loss in the total number of farms, some counties in the Adirondack region actually had a growth in the number of farms, specifically Franklin and Essex counties, which increased farm numbers 13.5% and 3.0%, respectively.⁴¹ As reported by Adirondack Harvest,⁴² 38 farmers' markets were operating in 2009 in northern New York, up from 34 the year prior.⁴³ In fact, there are more farmers' markets per capita in northern New York than any other area of New York State.⁴⁴

Farming is an important part of life and the economy in the Catskill region. In the early 20th century, farmers in the Catskills Region were frequently photographed holding two large heads of cauliflower.⁴⁵ Mineral-rich soil and a moderate climate with warm days and cool nights that encouraged slow and solid head development made this region famous for its premium quality cauliflower.⁴⁶ Almost every farm in the region planted some of this "white gold" to supplement its income.⁴⁷ From the 1920s to 1940s, local cauliflower was shipped in huge quantities via rail and highway to ready markets in New York, Philadelphia and Boston, making the Catskills

Sciences, June 2009),
http://aem.cornell.edu/outreach/extensionpdf/2009/Cornell_AEM_eb0908.pdf.

⁴¹ *Id.*

⁴² *See* <http://www.adirondackharvest.com/about-us.html>.

⁴³ *See* BERNADETTE LOGOZAR AND TODD M. SCHMIT, *supra* note 40 at 2.

⁴⁴ *Id.*

⁴⁵ Pure Catskills, About Us, <http://www.purecatskills.com/> (follow "Why Fresh, Why Local?" hyperlink) (last visited October 15, 2010).

⁴⁶ *Id.*

⁴⁷ *Id.*

synonymous with fine quality produce.⁴⁸ Now, in Greene, Ulster, Sullivan and Delaware counties, all of which contain some part of the Forest Preserve, there are over 1,870 farms and 332,000 acres of farmland.⁴⁹ Efforts to promote local farmers in the Catskills region are supported by several organizations, including Pure Catskills.⁵⁰ The Center for Discovery⁵¹ in Harris runs a biodynamic community supported agriculture program on their Thanksgiving Farm as a rehabilitation program for children and adults with severe disabilities.⁵² It is the largest employer in Sullivan County, and it supplies over 250 customers.

III. Farming, Forests, and Water

From the beginning, committees and studies formed to consider the formation of a protected forest area in New York State were principally concerned with the ability of forests to preserve water quality and quantity. An early study on the potential creation of a park or preserve stated that water concerns were prominent, speaking of “the maintenance of the quantity of water in the navigable rivers, in the

⁴⁸ *Id.*

⁴⁹ UNITED STATES DEPARTMENT OF AGRICULTURE, TABLE 94: FARMLAND: FARMS AND LAND IN FARMS, BY COUNTY, NEW YORK, NATIONAL AGRICULTURAL STATISTICS SERVICE (2008-2009), http://www.nass.usda.gov/Statistics_by_State/New_York/Publications/County_Estimates/2010/2010%20page78%20-%20Farm%20Land.pdf.

⁵⁰ See About Us, *supra* note 45.

⁵¹ See Center for Discovery website: <http://www.thecenterfordiscovery.org/farms/CSA.aspx> (last visited November 21, 2010).

⁵² Open Space Institute, OSI Teams Up With The Center for Discovery to Protect Catskills Farm (April 27, 2005), http://www.osiny.org/site/PageServer?pagename=news_pressID_108 (last visited November 21, 2010).

streams that supply the canals, and afford power to mills and manufactories, which from time immemorial has flowed in undiminished volume in their channels, and which only in these later days begins slowly to fail and disappear.”⁵³ In 1884, Governor Cleveland stressed the need to protect forests as a means of saving water for the canals.⁵⁴ Also in 1884, the Sargent Committee, reported the need to protect timber resources because of their effect on river and canal water levels.⁵⁵ In 1890, Governor Hill recommended the creation of a state park, stating that “[t]he people now well understand that we must save our forests if we would save our timber, our water, our farms, and our factories, as well as the health of our fast-increasing population.”⁵⁶ Such legislative history shows that water preservation had been the foremost concern in creating a forest preserve since 1972, and, as the last quote demonstrates, even acknowledged the interplay between water and agriculture.

As it turns out, the committees that were formed to study the importance of forever preserving forest land were correct – a healthy forest does have beneficial impacts on the quantity and quality of water in a watershed. About 80 percent of the United States’ scarce freshwater resources originate in forests, which cover about one-third of

⁵³ Alfred S. Forsyth, *The Forest and the Law*, THE SIERRA CLUB, 1970 at 5.

⁵⁴ *Id.* at 6.

⁵⁵ *Id.* at 7.

⁵⁶ *Id.* at 8-9.

the land area.⁵⁷ The forested land absorbs rain, refills underground aquifers, cools and cleanses water, slows storm runoff, reduces flooding, sustains watershed stability and resilience, and provides critical habitat for fish and wildlife.⁵⁸

In addition, undeveloped land such as the Forest Preserve helps reduce contamination. Both wetlands and soils filter out nutrients and other contamination before the runoff reaches the main course of a waterway.⁵⁹ Vegetation slows down runoff, permitting solid pollutants to settle out, and stabilizes soils, reducing contamination from siltation.⁶⁰ Land preservation thus performs double duty by eliminating a major source of contamination, and protecting the waterway from the nonpoint sources that do exist.⁶¹

Agricultural activity, on the other hand, can be a blessing or a curse for watersheds. Well-managed farms provide such valuable ecosystem services⁶² as aquifer recharge and act as natural filters to

⁵⁷ JAMES SEDELL, MAITLAND SHARPE, DAINA DRAVNIKS APPLE, MAX COPENHAGEN, AND MIKE FURNISS, WATER AND THE FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE at i, <http://www.fs.fed.us/publications/policy-analysis/water.pdf>.

⁵⁸ *Id.*

⁵⁹ James Salzman, Barton H. Thompson, Jr., and Gretchen C. Daily, *Protecting Ecosystem Services: Science, Economics, and the Law*, 20 STAN. ENVTL. L. J. 309, 314 (2001).

⁶⁰ *Id.*

⁶¹ *Id.* at 314-315.

⁶² Ecosystem services are “the conditions and processes through which natural ecosystems, and the species which make them up, sustain and fulfill human life.” GRETCHEN C. DAILY, INTRODUCTION: WHAT ARE ECOSYSTEM SERVICES? IN NATURE’S SERVICES: SOCIETAL DEPENDENCE ON NATURAL ECOSYSTEMS 3 (Gretchen C. Daily ed., 1997).

surface and subsurface water.⁶³ If agriculture is not maintained, the conversion of farmland to more developed uses can result in a 140%-180% increase in nonpoint source pollution.⁶⁴ In addition, transforming previously non-agricultural lands into farmland to meet demand from the loss of former farmland usually requires significant irrigation and fertilization, which detrimentally affects water supplies and water quality, and necessitates significant expense.⁶⁵

Unfortunately, agriculture is also a well recognized cause and victim of water contamination. In 1991, the U.S. Geological Survey (USGS) began the National Water Quality Assessment (NAWQA) Program to assess the quality of the Nation's water and study how human activities and natural factors affect water quality.⁶⁶ Monitoring found that streams in basins with agricultural development almost always contain mixtures of nutrients and pesticides originating from human activities.⁶⁷ In some cases, concentrations were high enough to

⁶³ See LIZ BROCK, DAVID HAIGHT, AND JERRY COSGROVE, *supra* note 6 at 4.

⁶⁴ U.S. Environmental Protection Agency, Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters: Watershed Protection Management Measures (2010), <http://www.epa.gov/nps/MMGI/Chapter4/ch4-2b.html> (last visited November 21, 2010).

⁶⁵ DICK ESSEKS, SUSTAINING AGRICULTURE IN URBANIZING COUNTIES: INSIGHTS FROM FIFTEEN COORDINATED CASE STUDIES, UNIVERSITY OF NEBRASKA-LINCOLN 115 (2009) <http://www.farmland.org/resources/sustaining-agriculture-in-urbanizing-counties/documents/Sustaining-agriculture-in-urbanizing-counties.pdf>.

⁶⁶ UNITED STATES DEPARTMENT OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, AGRICULTURAL RESOURCES AND ENVIRONMENTAL INDICATORS: CHAPTER 2.3: WATER QUALITY IMPACTS OF AGRICULTURE 4, http://www.ers.usda.gov/publications/arei/ah722/arei2_3/arei2_3waterqimpacts.pdf.

⁶⁷ *Id.*

be of concern for human or ecosystem health.⁶⁸ More than 90 percent of water and fish tissue samples from all streams sampled contained one, or more often several, pesticides.⁶⁹

The study also revealed that an estimated 71 percent of U.S. cropland (nearly 300 million acres) is located in watersheds where the concentration of at least one of four common surface-water contaminants (dissolved nitrate, total phosphorus, fecal coliform bacteria, and suspended sediment) exceeds criteria for supporting water-based recreation.⁷⁰ A study of the presence in groundwater of seven important herbicides (atrazine, cyanazine, simazine, alachlor, metolachlor, prometon, and acetochlor) using data collected by NAWQA and the USGS Midwest Pesticide Study sought to find statistical correlations between land use and herbicide use detections.⁷¹ In agricultural settings, frequencies of detection in shallow ground water were generally higher in areas of more intensive use.⁷²

Agricultural activities also have the potential to detrimentally impact water quantity. Increases in rain-fed cropland and pastureland during the past 300 years from forest and grasslands decreased evapotranspiration and increased recharge and streamflow.⁷³ However,

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 5.

⁷² *Id.* at 5.

⁷³ B.R. Scanlon, I. Jolly, M. Sophocleous, and L. Zhang, *Global Impacts of Conversions From Natural to Agricultural Ecosystems on Water Resources: Quantity Versus Quality*, WATER RESOURCES RES., Vol. 4, 2007, at 1, available at

increased water quantity degraded water quality by mobilization of salts, salinization caused by shallow water tables, and fertilizer leaching into underlying aquifers that discharge to streams.⁷⁴ In addition, irrigated agriculture has expanded globally by 174% since the 1950's and accounts for 90% of global freshwater consumption.⁷⁵ Increases in groundwater-fed irrigation in the last few decades in these areas has lowered water tables and reduced streamflow.⁷⁶ Although much emphasis has been placed on potential impacts of climate change on water resources, impacts of land use changes on water resources, particularly those associated with agriculture, may rival or exceed those of climate change.⁷⁷

Agriculture can also have detrimental effects on the wild nature of the Forest Preserves. The most prevalent source of agricultural water pollution is soil that is washed off fields.⁷⁸ Sediment can destroy or degrade aquatic wildlife habitat, reducing diversity and damaging commercial and recreational fisheries.⁷⁹ Many toxic materials can be bound to silt and clay particles that are carried into water bodies, including nutrients, pesticides, industrial wastes, and metals.⁸⁰ Such

<http://www.beg.utexas.edu/staffinfo/pdf/Scanlon%20et%20al%20Global%20Ag%20WRR%202007.pdf>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ US ENVIRONMENTAL PROTECTION AGENCY, NONPOINT SOURCE CONTROL BRANCH, PROTECTING WATER QUALITY FROM AGRICULTURAL RUNOFF, http://www.epa.gov/owow/NPS/Ag_Runoff_Fact_Sheet.pdf.

⁷⁹ *Id.*

⁸⁰ See ECONOMIC RESEARCH SERVICE, *supra* note 66 at 5.

materials cause algal blooms and depleted oxygen, which is deadly to most aquatic life.⁸¹ Insecticides, herbicides, and fungicides can poison fish and wildlife, contaminate food sources, and destroy the habitat that animals use for protective cover.⁸²

The health of the Forest Preserves and the water resources they protect are important to the Adirondacks, Catskills, New York State, and beyond. The Adirondacks contain 85% of all wilderness in the eastern United States.⁸³ Within the park are 3,000 lakes and ponds and more than 1,200 miles of rivers fed by an estimated 30,000 miles of brooks and streams.⁸⁴ An estimated 7-10 million tourists visit the region annually.⁸⁵ The Adirondacks offer some of the finest opportunities in the eastern United States for outdoor recreation in a superb natural setting, including boating of all kinds, camping, picnicking, hiking, mountaineering, cycling, hunting, fishing, swimming, downhill and cross-country skiing, ice skating and snowshoeing.⁸⁶ The Catskill Forest Preserve is home to 98 peaks more than 3,000 feet high and contains five major rivers, the Mohonk Preserve, Catskill Park, wild forests, crystal lakes, and fertile valleys.⁸⁷ The New

⁸¹ See NONPOINT SOURCE CONTROL BRANCH, *supra* note 78.

⁸² *Id.*

⁸³ Adirondacks Come to Life, *Fast Facts*, <http://visitadirondacks.com/newsroom/fast-facts.html> (last visited November 21, 2010).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Catskill Region, Attractions, <http://www.visitthecatskills.com/attractions.php?qaction=allListings&category=attraction> (last visited November 21, 2010).

York City drinking water system is located primarily within the Catskills. Without healthy and abundant waters, the natural setting of the Forest Preserves would not exist.

The Adirondacks and the Catskills should not be pushed out of the agricultural economy, the local food movement, and access to fresh, healthy food. Farming and local agricultural markets are already thriving in these regions. In order to secure a regional food supply, protect wildlife and natural resources, and promote a deeper, more sustainable economy, a commitment to providing economic incentives for members of the food and farming community is imperative.⁸⁸ In addition, a clean, bountiful water supply is important to tourism in the Adirondack and Catskill regions. Finally, management of farms in ways that will protect the integrity of the nearby Forest Preserves, their watersheds, and the economic stimulus that the Forest Preserves provide must be promoted and enforced in order to comply with the mandates of Article XIV of the New York State Constitution.

IV. Article XIV's Affirmative Command

Article XIV clearly prohibits agriculture on forever wild lands. The article prohibits the removal or destruction of timber.⁸⁹ However, the

⁸⁸ ADIRONDACK COUNCIL, POSITION STATEMENT ON AGRICULTURE IN THE ADIRONDACK PARK 1 (July 2009), http://www.adirondackcouncil.org/Agriculture_Position_Paper.pdf.

⁸⁹ N.Y. Const. art. XIV, § 1.

forever wild lands only include state-owned lands. There is a lot of land in and around the Forest Preserves that is privately owned, and thus not designated “Forever Wild” by Article XIV. On this land, farming can and does take place, and the effects of these farming activities can have detrimental effects on the Forest Preserves, effecting the land and water in a manner that is not consistent with their mandated wild nature. The water that comes in contact with and flows from the farmland in and around the Forest Preserve recharges aquifers which reach below Forest Preserve lands and are hydrologically connected to the lakes, streams and rivers in the Forest Preserve. The affirmative command of Article XIV requires all state agencies and local governments in New York to take affirmative steps to protect the Forest Preserves.

a. History

The Adirondacks have a history of exploitation of natural resources and acute environmental degradation.⁹⁰ By the end of the 1800s many hoped that the rise of scientific forestry would lead to wise use of timber.⁹¹ However, short-term economic forces greedily cut timber without regard for scientific forestry methods or any other use of the land.⁹² Interest in the preservation of the forest and other natural

⁹⁰ See, e.g., FRANK GRAHAM, JR., *THE ADIRONDACK PARK: A POLITICAL HISTORY* (New York, Knopf, 1978).

⁹¹ Nicholas A. Robinson, *Forever Wild: New York's Constitutional Mandates to Enhance the Forest Preserve*, Arthur Crocker Lecture (2007) at 11.

⁹² *Id.*

resources of the Adirondacks grew state-wide after Verplanck Colvin's surveys of the Adirondacks.⁹³

In the early years of discussion of the Forest Preserve, the Catskills were not mentioned.⁹⁴ The Catskills had already been subject to a deluge of development, with hotels being put on summits and in valleys.⁹⁵ The Catskills were initially declared not fit for inclusion in the Forest Preserve.⁹⁶ They had been thoroughly ransacked by lumbermen and barkpeelers, fires had swept the region, destroying the thin soil, and the streams were only of local influence.⁹⁷ However, a deal was made by the County of Ulster to turn over lands to the state for inclusion in the Forest Preserve in return for the forgiveness of tax indebtedness.⁹⁸

On May 15, 1885, the Legislature established the Forest Preserve.⁹⁹ The Preserve law established a Forest Commission to manage the state-owned forests in the Adirondacks and Catskills and support itself through selective contracts with lumber companies.¹⁰⁰ But the New York public cast a suspicious eye on the Forest Commission from the start. The 1880s were an era of rampant corruption, often involving

⁹³ *Id.*

⁹⁴ ALF EVERS, *THE CATSKILLS: FROM WILDERNESS TO WOODSTOCK* 584, 585 (1982 ed.) (1972).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ PHILIP TERRIE, *CONTESTED TERRAIN: A NEW HISTORY OF NATURE AND PEOPLE IN THE ADIRONDACKS* 95 (2nd Edition, The Adirondack Museum) (2008).

¹⁰⁰ *Id.* at 96.

collusion between government and corporations.¹⁰¹ Editors, sportsmen, doctors, and merchants argued that the protections of the law were inadequate.¹⁰²

Slowly, New York State moved toward creating the constitutional forever wild provision. The Forest Commission discussed the possibility of creating an Adirondack Park in an 1890 report, and then formally proposed a 2,847,000 square acre park in 1891.¹⁰³ In 1892, the Legislature sent an Adirondack Park bill to the governor, but it still contained a provision allowing timber to be cut.¹⁰⁴ On August 23, 1894, a special committee presented a report which stated that “it is necessary for the health, safety and general advantage of the people of the State that the forest lands now owned by and hereafter acquired by the State, and the timber on such lands, should be preserved intact as forest preserves... other lands contiguous thereto should, as soon as possible, be purchased or otherwise acquired.”¹⁰⁵ Water preservation had been the foremost concern in the creation of a forest preserve since the first study was performed in 1972.¹⁰⁶

When the State convened its Constitutional Convention in 1894, delegates were receptive to elevating the Forest Preserve to

¹⁰¹ *Id.* at 96. .

¹⁰² Martin John Byrne, *Life in the North Country 100 Years Ago*, microfilm 4.26, 103 (Adirondack Museum Library).

¹⁰³ See PHILIP TERRIE, *supra* note 99 at 99.

¹⁰⁴ See PHILIP TERRIE, *supra* note 99 at 102; See Nicholas A. Robinson, *supra* note 91 at 12.

¹⁰⁵ David McClure, *Report of the Special Committee on State Forest Preservation* (August 23, 1984).

¹⁰⁶ See Alfred S. Forsyth, *supra* note 53 at 12..

constitutional status and requiring that the forests be kept in a wild state. The proposed clause read:

The lands of the State, now owned or hereafter acquired, constituting the forest preserve as fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold or removed.

The clause was passed as the present Article XIV of the NYS Constitution in November of 1894. The words “or destroyed” were later added at the end as an amendment in 1894.

b. Affirmative command

The plain language of Article XIV creates an affirmative mandate to protect and keep the Forest Preserves wild. Article XIV requires that “[t]he lands... shall be kept forever as wild forest lands.” *The lands* are a geographic area, the protected areas in the Adirondacks and the Catskills, but are also the soils, flora, fauna, and waters that comprise the lands.¹⁰⁷ The lands are deemed to be *forever* subject to the mandate of Article XIV, or for as long as the Constitution is in force and effect. This indicates that the Forest Preserve was intended to exist in a wild and natural state for time eternal.¹⁰⁸

¹⁰⁷ See Nicholas A. Robinson, *supra* note 91 at 20.

¹⁰⁸ *Id.* at 21.

Wild is the state that exists when human impacts are absent or minimized.¹⁰⁹ In the wild, humans are a part of nature without significantly altering it. Wild derives contextual meaning by being coupled with *forest lands*.¹¹⁰ Forest lands necessarily subsume the entire web of life that supports a forest, such as rainfall, ground water, biodiversity, and the species sustained by the forests.¹¹¹ It also includes the watersheds supported by the forests.

The word *shall* indicates that each component of State and local government under the Constitution is commanded to observe the mandate of Article XIV.¹¹² Shall is connected to *be kept*. By using the word kept, the Constitution doesn't mean that the Forest Preserve is to be locked up like a wild animal and not be cared for.¹¹³ Instead, the language clearly mandates that the lands be preserved and maintained in a state of wilderness. It is an affirmative duty of stewardship and caring. All agencies are directed to take affirmative measures to preserve and act intentionally to sustain the lands and forests.

The plain meaning of Article XIV is the core of that constitutional provision. Considering each word in light of plain scientific and cultural meaning makes the mandate to keep the Forest Preserve, and thus enhance its natural and wild character, evident. Too much debate since Article XIV was passed has been focused on the second sentence,

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

prohibiting the destruction of trees.¹¹⁴ Lawyers and others who have dwelt on this have risked debasing a core mandate within Article XIV. In addition, it's important to keep in mind that the Forest Preserve isn't just an area on a map. The Forest Preserves are also the ecosystems, wildlife, and water systems within that area.

c. Executive Order Interpretation of Article XIV

The idea that the language of a Constitutional provision can be considered an affirmative command was recently supported by an Executive Order issued by Governor Paterson pertaining to agriculture and Article XIV, Section 4. The Order stated that protection of agricultural land is mandated by the language of Article XIV, Section 4 of the NYS Constitution, and commanded State agencies to fulfill those obligations.¹¹⁵ Article XIV, Section 4 states that “[t]he policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products.”¹¹⁶ The Order gave instructions for all state agencies to support the development of local food programs as part of their land

¹¹⁴ *Id.* at 15 (“All these battles during the first five decades under the constitution’s “forever wild” mandate produced a pattern of public discourse and political action that focused on *what the mandate prohibited*, rather than cultivating an understanding of *what the mandate promoted*”).

¹¹⁵ N.Y.S. Exec. Order No. 39, *Establishing State Policies for the Promotion of Sustainable Local Farms and the Protection of Agricultural Lands* (November 4, 2010), available at http://www.state.ny.us/governor/executive_orders/exeorders/pdf/EO_39.pdf.

¹¹⁶ N.Y. Const. art. XIV, § 4, available at <http://www.adirondack-park.net/history/article14-text.html>.

protection obligation.¹¹⁷ It is also worth pointing out that the language of Article XIV, Section 4 states that when protecting agricultural land, pollution must be abated, and water resources must be regulated.¹¹⁸

d. Implications for agriculture

The mandate of Article XIV gives State agencies and local governments the affirmative duty to keep the Forest Preserves wild. This duty imposes an obligation to regulate agriculture to maintain the health of the Forest Preserves and their watersheds. Currently, New York agencies do not specially regulate agriculture in and around the Adirondack and Catskill Parks in an effort to keep the Forest Preserves wild. In addition, regulations on farming are usually not well received, as regulators often desire to encourage agriculture and farmers and regulators alike often perceive regulations as inevitably hampering the profitability of farming. However, regulations that seek to protect the forests and watersheds will in turn improve and protect agriculture.

V. Current Policy and Regulations Regarding the Forest Preserves and Farming

Because of the affirmative command of Article XIV, every agency in New York State that has an influence on the Forest

¹¹⁷ See N.Y.S. Exec. Order No. 39, *supra* note 114 (“It shall be a goal of the State of New York to achieve the significant environmental, health and economic benefits from expanding production of, and demand for, locally grown food, meaning food products that are grown or processed within the border of New York State”).

¹¹⁸ N.Y. Const. art. XIV, § 4 (“... The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources”), *available at* <http://www.adirondack-park.net/history/article14-text.html>.

Preserves must participate in keeping the Forest Preserves wild. As it currently stands, this obligation is not being fulfilled.

a. The Adirondack Park Agency

The Adirondack Park Agency (“APA”) was created in 1971 by the Legislature to develop long range land use plans for both public and private lands within the boundary of the Park, commonly referred to as the “Blue Line.”¹¹⁹ The Agency prepared the State Land Master Plan, which was signed into law in 1972, followed by the Adirondack Park Land Use and Development Plan in 1973.¹²⁰ The Adirondack Park Land Use and Development Plan (“the Plan”) regulates development on private lands within the Adirondack Park. Fifty two percent of the Adirondack Park is private land, which includes settlements, farms, timber lands, businesses, homes and camps.¹²¹

The general policy of the APA regarding agriculture seems to exempt agriculture from restrictions throughout the Adirondack Park. The Plan does not generally require an Agency permit for “agricultural uses”¹²² and “agricultural use structures.”¹²³¹²⁴ Both the Freshwater

¹¹⁹ NEW YORK STATE ADIRONDACK PARK AGENCY, ANNUAL REPORT 6 (2009), *available at*

<http://www.apa.state.ny.us/Documents/Reports/2009APAAnnualReport.pdf>.

¹²⁰ NEW YORK STATE ADIRONDACK PARK AGENCY, CITIZEN’S GUIDE TO ADIRONDACK PARK AGENCY LAND USE REGULATIONS 1, <http://www.apa.state.ny.us/Documents/Guidelines/CitizensGuide.pdf>.

¹²¹ *Id.*

¹²² Agricultural uses is defined as “any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; horticulture or orchards; including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds.” 9 NYCRR SUBTITLE Q § 577.2(a),

Wetlands Act¹²⁵ and the Wild, Scenic and Recreational Rivers System Act¹²⁶ allow for the undertaking of most agricultural activities in the Adirondack Park without a permit.¹²⁷ However, under both the Adirondack Park Agency Act and the Rivers Act, shoreline setbacks apply to agricultural structures and the Adirondack Park Agency Act

available at

http://www.apa.state.ny.us/Documents/Laws_Regs/RulesRegs2009feb04.pdf

¹²³ Agricultural use structure is defined as “any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use.” 9 NYCRR SUBTITLE Q § 577.2(b), *available at* http://www.apa.state.ny.us/Documents/Laws_Regs/RulesRegs2009feb04.pdf.

¹²⁴ NEW YORK STATE ADIRONDACK PARK AGENCY, CITIZEN’S GUIDE

SUPPLEMENT: AGRICULTURAL USES AND STRUCTURES 2 (2010),

http://www.apa.state.ny.us/Documents/Flyers/Agricultural_Uses_and_Structures.pdf.

¹²⁵ See 9 NYCRR SUBTITLE Q § 578.3(n)(4)(e), (f) (“*Regulated activities* do not include: . . . (e) draining land or wetlands for growing agricultural products; and (f) otherwise engaging in the use of wetlands or other land for growing agricultural products. The activities of farmers or other landowners listed in this subparagraph include the construction of structures required to be located in the wetland or adjacent area for enhancement or maintenance of the agricultural productivity of the land, but exclude any filling activities (including the construction of wood roads involving the placing of fill) or other material disturbance of a wetland”).

¹²⁶ See 9 NYCRR SUBTITLE Q § 577.4(b)(3)(ii) (“The following may be undertaken without a permit if in compliance with the restrictions and standards set forth in section 577.6 of this Part: . . . (3) in scenic and recreational river areas: . . . (ii) agricultural uses, agricultural use structures . . . and accessory uses and structures to such uses or to any preexisting use . . .”); See also 9 NYCRR SUBTITLE Q § 577.6(g)(4) (“The natural water flow of each wild, scenic or recreational river shall be maintained and there shall be no diversions. Limited water withdrawals from scenic or recreational rivers for agricultural . . . purposes which do not materially affect the natural flow of the river shall be permitted”); See also 9 NYCRR SUBTITLE Q § 577.8(c)(1)(i) (“The agency shall not issue a rivers system permit for the following rivers projects unless it shall determine that . . . (1) The harvesting, cutting, culling, removal or other disturbance of timber or other vegetation inside the mean high-water mark of the river or within 100 feet of the mean high-water mark is: (i) for compelling purposes as would be consistent with recognized sound forestry or agricultural practices . . .”).

¹²⁷ See CITIZEN’S GUIDE SUPPLEMENT: AGRICULTURAL USES AND STRUCTURES, AGRICULTURAL SERVICE USES, *supra* note 123 at 2.

requires a permit for new “agricultural service uses” in all land use areas except hamlets.¹²⁸

Policies favorable to agricultural development also exist in the APA’s regional planning guidelines. When the APA is considering whether to allow an amendment to the Adirondack Park Land Use and development map, the APA is to consider articulated land use area classification determinants.¹²⁹ One such determinant is soil. If a characteristic of the soil is that it is a viable agricultural soil, as classified by the New York State Cooperative Extension, “their agricultural values should be retained. Consequently, class I and class II soil types found within the Adirondack Park should be used primarily for agricultural purposes.”¹³⁰ Another determinant is existing land use. If the characteristic of the existing land use is that it is under intensive agricultural management with continuing capital investment, these lands should be utilized at a minimal level of intensity.¹³¹ If the existing land use is less viable agricultural activities frequently interspersed with other types of land use, these lands should be utilized at a low level of development intensity.¹³²

¹²⁸ *Id.*

¹²⁹ 9 NYCRR SUBTITLE Q §583.2.

¹³⁰ 9 NYCRR SUBTITLE Q, Appendix Q-8 (A) Determinant: Soil, (11) Viable agricultural soils, *available at*

http://www.apa.state.ny.us/Documents/Laws_Regs/RulesRegs2009feb04.pdf.

¹³¹ 9 NYCRR SUBTITLE Q, Appendix Q-8 (I) Determinant: Existing Land Use, (4) Agricultural lands, (a)(1), (2), *available at*

http://www.apa.state.ny.us/Documents/Laws_Regs/RulesRegs2009feb04.pdf.

¹³² *Id.*

Beyond the above articulated regulations and policies, the APA has no restrictions or incentive programs for agriculture best practices in the Adirondack Park. Permitting farming without any restrictions or incentive programs to encourage beneficial farming practices that will keep the Forest Preserve wild by mitigating impacts on forest health, water health, and water quantity does not comply with the mandate of Article XIV. In addition, the policies and regulations of the APA specifically exempt agriculture from those regulations meant to protect water in the Adirondacks. These policies and regulations must be changed to reflect the affirmative command of Article XIV.

b. Regulation of farming in the Catskills

Unlike the Adirondack Preserve, there is no central agency responsible for land use regulation in the Catskill Forest Preserve. The Department of Environmental Conservation (DEC) monitors the Forest Preserve and has published a land use master plan for state-owned lands, but there are no State agency regulations on private land use within the Catskill Park. There are incentive programs for sound agricultural practices in the Catskills, but they are based on the presence of the New York City watershed, and in order to comply with the Filtration Avoidance Determination,¹³³ and are not based on the presence of the Forest Preserve or on the affirmative mandate of Article

¹³³ See generally Environmental Protection Agency, Region 2 Water, Filtration Avoidance, <http://www.epa.gov/region2/water/nycshed/filtad.htm> (last visited November 21, 2010).

XIV. In addition, the incentives are only available within the watershed and none of the programs are mandatory.

c. The Department of Agriculture and Markets

The New York State Department of Agriculture and Markets (NYSDAM) does not have special regulations regarding farming practices in the Forest Preserves. Because of the affirmative command of Article XIV, every agency which may have a presence or influence on the Forest Preserves must participate in keeping the Forest Preserve wild. As the Agency responsible for the promotion and regulation of farming in New York State, NYSDAM is the most obvious agency subject to the affirmative command of Article XIV with regard to agriculture in the Forest Preserves.

The NYSDAM appears to only have policies and regulations encouraging and protecting unrestricted agricultural activity. Farming operations state-wide have the potential to be subject to the Agricultural Districts Law.¹³⁴ Farm operations that are enrolled within a county adopted, State certified, agricultural district¹³⁵ are protected from “unreasonably restrictive local law, ordinances and rules”¹³⁶ and from private nuisance lawsuits.¹³⁷ The protection given consists of

¹³⁴ N.Y. AGRIC. & MKTS. LAW §§ 300-310.

¹³⁵ N.Y. AGRIC. & MKTS. LAW § 303.

¹³⁶ *Id.*

¹³⁷ N.Y. AGRIC. & MKTS. LAW § 305-a(1)(a) (“Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in

review by the NYSDAM Commissioner, and the ability of NYSDAM to bring an action against a municipality if it insists on authorizing an unreasonably restrictive regulation.¹³⁸ Guidance documents list an example of an “unreasonable restriction” as any local requirements regarding CAFOs that exceed state DEC standards.¹³⁹ However, the DEC does not require CAFO permits for smaller farms,¹⁴⁰ and as such, a municipality may wish to impose some sort of permitting system or set of regulations to protect its water resources. Under current NYSDAM regulations, such regulations would be subject to a potential lawsuit by the NYSDAM commissioner.

Under these protections, it would appear that any municipality which has an agricultural district could be subject to suit for regulations seeking to protect the Forest Preserve. There may be an argument that a remedy to address water supply concerns in the Forest Preserves exists within NYSDAM regulations. The Agricultural Districts law recognizes an exception for local regulations if the municipality can show that there is a threat to public health or

contravention of the purposes of this article unless it can be shown that the public health or safety is threatened”).

¹³⁸ N.Y. AGRIC. & MKTS. LAW § 305-a(1)(b) (“The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision”).

¹³⁹ NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS, GUIDELINES FOR REVIEW OF LOCAL LAWS AFFECTING NUTRIENT MANAGEMENT PRACTICES 3 (2005), <http://www.agmkt.state.ny.us/AP/agsservices/guidancedocuments/305-a%20Nutrient%20Management%20Guidelines.pdf>

¹⁴⁰ *Id.*

safety.¹⁴¹ In addition, guidance documents published by the NYSDAM acknowledge that the protection of ground water is an important issue.¹⁴² However, the guidance document goes on to state that current NYS Department of Health standards for water well construction are adequate to assure human health and safety with regards to groundwater,¹⁴³ which seems to indicate that regulations on groundwater protection above and beyond those articulated by the NYSDOH would be found to be unreasonable.

Another avenue to write Forest Preserve protections into municipal law under current NYSDAM regulations may exist. NYSDAM guidance states that “each [local] law... is examined on its own merits... if the local government believes that local conditions warrant standards which differ from DEC’s, the Department [of Agriculture] will consider those conditions in evaluating whether the local standards are unreasonably restrictive.”¹⁴⁴ It would be interesting to see how a municipal law seeking to protect the Forest Preserve would fare under an argument that local conditions warrant their application.

¹⁴¹ N.Y. AGRIC. & MKTS. LAW § 305-a(1) (“...unless it can be shown that the public health or safety is threatened”).

¹⁴² *Id.* at 3-4.

¹⁴³ *Id.* at 4.

¹⁴⁴ See NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS, GUIDELINES FOR REVIEW OF LOCAL LAWS AFFECTING FARM OPERATIONS’ USE OF WETLANDS 1 (2005) <http://www.agmkt.state.ny.us/AP/agsservices/guidancedocuments/305-aWetlands.pdf>.

The NYSDAM is sponsoring a Buy Local campaign for 2010 in which it will award monies from federal Specialty Crop Block Grant funds to farmers in each of New York State's eleven "vacation regions." These regions include the Adirondacks and the Catskills. The funds will be used to market regional campaigns promoting local farming, with the intent to increase sales and economic development.¹⁴⁵ The campaign at no point mentions promoting or funding farming practices that would mitigate detrimental impacts on the Forest Preserves.

Policy changes need to take place within the DEC, APA and NYSDAM in order to comply with the Article XIV mandate. The NYSDAM seems primarily concerned with promoting the uninhibited economic profitability of farming within New York State. However, section one of Article XIV obligates the preservation of the Forest Preserve in a wild state, an obligation that is not necessarily at odds with economic viability concerns, but which does require regulation of farming practices. In addition, incentive programs based on the ecosystem services that farming provides can supplement the income of farmers and improve the viability of agriculture by improving water and soil quality.

VI. Aligning "Forever Wild" and Agriculture

¹⁴⁵ 2010 REGIONAL BUY LOCAL CAMPAIGN DEVELOPMENT : REQUEST FOR PROPOSALS (N.Y. Dept. of Agric. & Mkts., 2010), *available at* http://www.agmkt.state.ny.us/rfps/specialty_crop/2010/Buy_Local_RFP_2010.pdf

To keep the Forest Preserves “forever wild” and to comply with Article XIV, agricultural policies, programs, and regulations must be adopted which will minimize or eliminate detrimental impacts to the wild nature of the Forest Preserves and to the health of the resources they were created to protect. Such policies should recognize the ecosystem services that farmlands provide, benefit the Forest Preserve, and benefit human and environmental health. Well-managed farms can help protect water quality and natural resources. Farms provide several ecosystem services, among them maintaining wildlife habitat, providing buffers for wetlands and waterways, and protecting recharge areas for aquifers and other environmental resources.¹⁴⁶ The ecosystem services provided by farms have been well recognized by cities such as New York City and Syracuse, which have invested millions of dollars to conserve well managed farms that protect drinking water quality and other natural resources in their watersheds.¹⁴⁷

i. Economic incentives programs

An excellent example of a funded initiative to improve water quality and reduce pollution from agricultural sources is the watershed programs sponsored by the Watershed Agricultural Council (WAC). The WAC is a nonprofit organization with the mission to support the economic viability of agriculture and forestry through the protection of water quality and the promotion of land conservation in the New York

¹⁴⁶ See David Haight, Jerry Cosgrove, and Kirsten Ferguson, *supra* note 3 at 5.

¹⁴⁷ *Id.*

City watershed region.¹⁴⁸ WAC is funded by the New York City Department of Environmental Protection, the U.S. Department of Agriculture, the U.S. Forest Service and other federal and foundation sources.¹⁴⁹ WAC sponsors several voluntary programs that it fully funds in order to protect the water supply for the New York City metropolitan area.¹⁵⁰ Basically, WAC funds pay for the ecosystem services that sound agricultural management practices can provide.

One program sponsored by WAC is the Conservation Reserve Enhancement Program (CREP), which is a voluntary program that protects sensitive streamside land with vegetative buffers.¹⁵¹ Farmers receive annual rental payments and reimbursement for establishing practices like livestock fencing, stream crossings, and alternate livestock water sources.¹⁵² Water quality is improved because animal contact with stream areas is reduced, and the surface water is filtered by the additional vegetation.¹⁵³

A more holistic approach is WAC's Whole Farm Planning program, where farmers voluntarily agree to develop a Whole Farm Plan in conjunction with a Planning and Implementation Team. The goal of the Whole Farm Planning program is to identify and prioritize

¹⁴⁸ Watershed Agricultural Council, What is WAC?, <http://www.nycwatershed.org/index.html> (last visited November 21, 2010).

¹⁴⁹ *Id.*

¹⁵⁰ Watershed Agricultural Council, About Us, http://www.nycwatershed.org/index_wachistory.html (last visited November 21, 2010).

¹⁵¹ Watershed Agricultural Council, Land Stewardship, Stream Buffers, http://nycwatershed.org/lc_crep.html (last visited November 21, 2010).

¹⁵² *Id.*

¹⁵³ *Id.*

environmental issues without compromising agricultural business.¹⁵⁴ The Team, in consultation with the farmer, selects BMPs based on reducing prioritized potential pollutants, including parasites, pesticides, and nutrients.¹⁵⁵ These BMPs are conservation practices meant to prevent or reduce the amount of pollution by agricultural non-point sources in order to protect and enhance water quality. The BMPs used are mostly standard practices established by the USDA Natural Resources Conservation Service.¹⁵⁶ The strategy is to set up multiple barriers starting with the source of the pollutant and continuing to the stream corridor.¹⁵⁷ The plan must be approved by WAC, and the farmer and Team work to implement the plan.¹⁵⁸ One of the key components of Whole Farm Planning is stream buffers.¹⁵⁹

ii. Best Management Practices

Although regional and State agencies seem to be failing to comply with Article XIV's constitutional mandate, local organizations in the Adirondacks and Catskills recognize the importance of farming and good agricultural practices to their unique communities. The Adirondack Council advocates for the conservation and improvement of agricultural lands for the sustainable production of food and other

¹⁵⁴ Watershed Agricultural Council, Clean Water, Whole Farm Planning, http://nycwatershed.org/clw_wholefarmplanning.html (last visited November 21, 2010).

¹⁵⁵ *Id.*

¹⁵⁶ See WATERSHED AGRICULTURAL COUNCIL, BMP PROCUREMENT PROCEDURE (June 9, 2009) <http://www.nycwatershed.org/pdfs/BMPprocurement.pdf>.

¹⁵⁷ See Clean Water, Whole Farm Planning, *supra* note 154.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

agricultural products, and for the protection of ecological and scenic open space resources.¹⁶⁰ It supports farming that upholds rural quality of life, clean air and water, and native wildlife.¹⁶¹ The Adirondack Council has articulated several “Opportunities for Action” in order to both promote agriculture in the Adirondacks, and limit negative impacts on the region.¹⁶² These opportunities include making local food available for local people, reconciling NYSDAM and APA policies toward farmlands by limiting the potential for subdivision and nonagricultural development, increasing grants to assist communities in saving small farms, and promoting the use of conservation easements for farmlands.¹⁶³

The Adirondack Council also recommends conducting public education and outreach on best management practices (BMPs) for farmlands.¹⁶⁴ It has articulated several BMPs, including restoration of wide riparian corridors and streamside buffers (at least 50 feet on small bodies of water and 100 feet on larger bodies) to filter nutrients, protect wildlife habitat, reduce erosion and improve water quality, and planning and designing farm lands and scheduling production activities to conserve biological diversity and mimic natural cycles.¹⁶⁵ Such plans could include developing crop rotation and nutrient management cycles that protect geomorphic characteristics, as well as wildlife habitats and

¹⁶⁰ See ADIRONDACK COUNCIL, *supra* note 88 at 1.

¹⁶¹ *Id.*

¹⁶² *Id at 2.*

¹⁶³ *Id at 2.*

¹⁶⁴ *Id at 2.*

¹⁶⁵ *Id at 2.*

movement, raising crops and livestock that best fit the Adirondack environment, practicing predator safe and pasture-fed livestock management practices, and maintaining hedgerows, forested linkages and native wildflowers to enable wildlife movement, natural pollination and seed dispersal.¹⁶⁶ The Adirondack Council also suggests using organic¹⁶⁷ or Integrated Pest Management¹⁶⁸ practices to reduce the use of herbicides and pesticides and increase natural controls, and developing affordable farm worker housing ownership opportunities for aspiring local farm workers, with development clustered on the farm or in nearby villages.¹⁶⁹

The American Farmland Trust (ATF) has developed a unique and promising approach to BMPs which could also be utilized in New York as a model for encouraging BMPs in the Forest Preserves. The BMP Challenge for Nutrient Management and the BMP Challenge for Reduced Tillage programs develop BMPs for a farm to reduce fertilizer

¹⁶⁶ *Id at 2.*

¹⁶⁷ See Environmental Protection Agency Website, Agriculture, Organic Farming, <http://www.epa.gov/agriculture/torg.html> (last visited November 21, 2010) (“‘Organically grown’ food is food grown and processed using no synthetic fertilizers or pesticides”).

¹⁶⁸ See Environmental Protection Agency Website, Pesticides, Topical and Chemical Fact Sheets, Integrated Pest Management Principles, <http://www.epa.gov/pesticides/factsheets/ipm.htm> (last visited November 21, 2010) (“Integrated Pest Management (IPM) is an effective and environmentally sensitive approach to pest management that relies on... current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment... [O]rganic food production applies many of the same concepts as IPM but limits the use of pesticides to those that are produced from natural sources, as opposed to synthetic chemicals”).

¹⁶⁹ See ADIRONDACK COUNCIL, *supra* note 88 at 2.

runoff and soil erosion and guarantee farmers cash if their yield and income are reduced while participating.¹⁷⁰ The programs allow farmers to try conservation practices on their own land, observe performance over time in side-by-side comparisons, and evaluate economic impact, without risk of reduced income due to yield loss.¹⁷¹ Farmers generally earn at least as much as they would earn while using typical fertilizer rates, and in most years, farmers make a profit.¹⁷² Participants help expand the BMP Challenge to more farmers by reinvesting a portion of their savings back into the program.¹⁷³

For the nutrient management program, farmers begin participation in the programs by enrolling one or more fields before applying commercial fertilizer.¹⁷⁴ A crop advisor then prepares a recommendation to cut fertilizer costs while maintaining yield based on field history and soil test results.¹⁷⁵ The farmer applies traditional practice to a check strip. On the balance of the field, the new practices are applied. The farmer manages the entire field the same way, and at harvest, the farmer and crop advisor assess the yield of the program

¹⁷⁰ American Farmland Trust Website, ATF's Environmental Solutions: BMP Challenge, <http://www.farmland.org/programs/environment/solutions/bmp-challenge.asp> (last visited November 21, 2010).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ American Farmland Trust Website, ATF's Environmental Solutions: BMP Challenge for Nutrient Management, <http://www.farmland.org/programs/environment/solutions/nutrient-BMP-Challenge.asp> (last visited November 21, 2010).

¹⁷⁵ *Id.*

field with the yield of the check strip.¹⁷⁶ If there is a loss in yield minus fertilizer savings, the farmer is paid for the difference.¹⁷⁷

iii. Land conservation programs

A further option to protect the wild nature of the Forest Preserves from the impacts of agriculture is the use of conservation easements. A conservation easement is different from a traditional common law easement. Conservation easements are authorized by State statute, and the New York statute changes the common law to no longer require that a conservation easement be appurtenant to a piece of land in order to last in perpetuity.¹⁷⁸ Conservation easements are voluntary agreements between a landowner and a holder designed to protect land as a natural resource by restricting uses of that land to activities compatible with its conservation goals.¹⁷⁹ In New York, the conservation goals may include “preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property.”¹⁸⁰ Conservation easements may be for a term of years or last for perpetuity unless they are extinguished.¹⁸¹

A conservation easement may be donated to or purchased by a qualified holder. A qualified holder in New York is a public body or

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ N.Y. Env'tl. Conserv. Law § 49-0307 (McKinney 1995).

¹⁷⁹ Henry E. Rodegerdts, *Land Trusts and Agricultural Conservation Easements*, 13 NAT. RESOURCES AND ENV'T 336 (1998).

¹⁸⁰ N.Y. Env'tl. Conserv. Law § 49-0303 (McKinney 1995).

¹⁸¹ N.Y. Env'tl. Conserv. Law § 49-0307 (McKinney 1995).

non-profit organization that is exempt under 503(c) of the Internal Revenue Code, or an organization that meets the definition of a public body under New York's Environmental Conservation Law.¹⁸² A local, regional, statewide or national nonprofit land trust is an example of a qualified holder.¹⁸³ The holder usually assumes responsibility for enforcement of the restrictions.¹⁸⁴ In New York, the easement must be a written agreement, signed by all parties, and filed both with the county clerk's office and with the Department of Environmental Conservation.¹⁸⁵

An agricultural conservation easement is an easement that is agreed upon specifically to preserve agricultural land. Many local, regional, and state governments and governing bodies have sponsored agricultural conservation easement purchase programs. Funding currently comes from such varied sources as outright appropriations, lottery proceeds, state general obligation bonds, property transfer taxes, special district assessments, cigarette taxes, development mitigation fees and the Federal Farmland Protection Policy Act, as well as land trusts and other private groups.¹⁸⁶

Although conservation easements are a current option for farmers in the Adirondacks and Catskills, BMPs that protect water quality and quantity, and the integrity of a wild forest, are currently

¹⁸² See 26 I.R.C. § 503(c) (2001); N.Y. Env'tl. Conserv. Law § 49-0303(2) (McKinney 2001).

¹⁸³ See Henry E. Rodegerdts, *supra* note 179.

¹⁸⁴ *Id.*

¹⁸⁵ N.Y. Env'tl. Conserv. Law § 49-0305 (McKinney 1995).

¹⁸⁶ See Henry E. Rodegerdts, *supra* note 179.

discouraged from being terms in those conservation easements when such terms should be required. NYSDAM regulations covering agricultural districts do not allow state, regional, or local laws on agriculture that are unreasonable restrictive.¹⁸⁷ Programs involving the NYSDAM which fund conservation easements are guided by the right to farm provisions in the Agricultural Districts Law.¹⁸⁸ NYSDAM considers several factors when determining whether a regulation is unreasonably restrictive, including whether the provision would restrict production options which could affect the economic viability of the farm.¹⁸⁹ The guidance documents list as examples of “unreasonable restrictions” the requirement of specific agricultural practices, prohibitions on feedlots or concentrated animal feeding operations, and blanket prohibitions of certain types of livestock production.¹⁹⁰

¹⁸⁷ N.Y. AGRIC. & MKTS. LAW § 305-a(1)(a) (“Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened”).

¹⁸⁸ *Protection Implementation Grant Program: Farmland Protection and Agricultural Districts Policy Guidance*, NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS GUIDANCE DOCUMENT SERIES, 2008, at 2, available at http://www.agmkt.state.ny.us/AP/agsservices/GD_FP%20and%20Ag%20Districts_%20FINALJPC.pdf.

¹⁸⁹ NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS GUIDANCE DOCUMENT SERIES, FARMLAND PROTECTION IMPLEMENTATION GRANT PROGRAM: FARMLAND PROTECTION AND AGRICULTURAL DISTRICTS POLICY GUIDANCE 3 (2008), http://www.agmkt.state.ny.us/AP/agsservices/GD_FP%20and%20Ag%20Districts_%20FINALJPC.pdf.

¹⁹⁰ *Id.*

Ideally, incentive programs, BMPs and conservation easements that utilize environmentally beneficial farming practices and land conservation would be encouraged, funded, and implemented state-wide. Agriculture which seeks to maintain the health of water resources and the environment is beneficial to the public and ultimately to farming business, which uses those same water sources for their operations. Article XIV mandates that these policies at least be implemented in and around the Forest Preserve.

VII. Implementing the Affirmative Command of Article XIV

To preserve the integrity of the Forest Preserves and comply with the affirmative mandate of Article XIV, regulations, incentive programs, and policies must be developed to mandate and encourage agricultural practices that keep the Forest Preserves wild. How to incorporate them is an important discussion. As utilization of the constitutional convention to amend Article XIV to address the issue is an option, it will be analyzed. However, more preferable options exist to remind all those who have influence on the Forest Preserves of their current Article XIV, Section 1 obligations.

a. Constitutional Convention

An amendment to Article XIV of the New York State Constitution to more specifically articulate the affirmative duty that is imposed on all State, regional, and local agencies to keep the Forest

Preserves wild could be proposed. The amendment may simply modify Article XIV to state:

The lands of the State, now owned or hereafter acquired, constituting the forest preserve as fixed by law, shall be forever kept as wild forest lands. *This imposes a duty on each State, regional and local agency to maintain the wild nature of the lands of the forest preserves.* They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Such language seems simple enough. However, an amendment discussing affirmative obligations under Article XIV could quickly become elaborate. It could name each department that has an affirmative duty, and what that duty entails. For example, the following details regarding agriculture could be added to the above amendment:

Departments that have an affirmative duty include:

- a) The Department of Agriculture and Markets. The NYSDAM shall pass regulations to ensure that all agricultural land within agricultural districts in the Adirondack and Catskill Parks is farmed according to best management practices which will keep the Forest Preserves wild;

- b) The Department of Environmental Conservation. The DEC shall pass regulations requiring best management practices on all privately held agricultural lands within the Adirondack and Catskill Parks which will keep the Forest Preserves wild.

The Constitutional Commission would not articulate actual BMPs in the amendment. Such specifications would be left to the NYSDAM and the DEC to decide upon as they are the State experts in agriculture and environmental impacts, respectively.

Opening up Article XIV to changes may result in those who would undo the Forever Wild provisions taking the opportunity to weaken its language. The words of Article XIV as they currently stand are already adequate to protect the Forest Preserves if they are properly interpreted and enforced. Thus, other tools should be utilized.

b. Executive Order

The Governor could issue an Executive Order requiring State agencies to align their policies and regulations with the constitutional mandate of Article XIV. The recently passed Executive Order 39 under New York Governor Paterson is an excellent example of the format that could be utilized.¹⁹¹ An Executive Order regarding Article XIV could be simple, such as:

EXECUTIVE ORDER
NO. XX: REAFFIRMING THE CONSTITUTIONAL MANDATE TO

¹⁹¹ See N.Y.S. Exec. Order No. 39, *supra* note 114.

MAINTAIN THE WILD NATURE OF THE FOREST PRESERVES

WHEREAS, Article XIV, Section 1 of the New York State Constitution provides that “[t]he lands of the State, now owned or hereafter acquired, constituting the forest preserve as fixed by law, shall be forever kept as wild forest lands”; and

WHEREAS, the State of New York declares that the health of the Forest Preserves vitally concerns and affects the welfare, health and economic well-being of the people of the State of New York, and that it is the policy and duty of the State to promote, foster and encourage progressive policies which seek to maintain their wild nature;

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York do hereby order as follows:

1. It shall be a goal of the State of New York to achieve the significant environmental, health and economic benefits from the preservation of the Forest Preserve.
2. When adopting rules and regulations or taking other administrative actions, concerning activities which occur within the Adirondack or Catskill Parks, or which may have effects within the Adirondack or Catskill Parks, I hereby direct each State agency to incorporate protective measures to maintain the wild nature of the Forest Preserve;
3. When reviewing and revising any policies relevant to activities which occur within the Adirondack or Catskill Parks, or which may have effects within the Adirondack or Catskill Parks, I hereby direct each State agency to incorporate protective measures or make revisions to ensure the maintenance of the wild nature of the Forest Preserve,
4. For purposes of this Order, “State agency” shall mean any department, agency, division, commission, bureau or other entity of the State over which the Governor has executive power.
5. Public entities not subject to this Order, including public authorities and public benefit corporations, local governments and school districts, are encouraged to review their policies and practices concerning protection of the Forest Preserve for the purpose of achieving goals similar to those of the Executive Order.

c. Legislation

Arguably the most effective approach to protecting the Forest Preserve from the potential negative impacts of agriculture would be to realign statutes and regulations in accordance with the affirmative mandate in Article XIV. The Legislature could pass legislation requiring the APA, DEC, and/or the NYSDAM to adopt BMPs, regulations, and funding programs to encourage and require agricultural practices that will keep the Forest Preserves wild, preserve water quantity, and preserve water quality.

The State of Oregon has developed a regulation scheme specifically for agricultural practices. Oregon law directs the Oregon Department of Agriculture to adopt procedures to be utilized by soil and water conservation districts desiring to implement streambank erosion control or stream corridor management projects, which are to be funded in whole or in part with state funds.¹⁹² Oregon also has regulations for agricultural water quality management area plans, which comprehensively outline measures to be taken to prevent and control water pollution from agricultural activities and soil erosion on agricultural and rural lands located in a management area.¹⁹³ Boundaries for the areas are established by the department.¹⁹⁴ Separate plans for each area are detailed in Oregon State legislation.¹⁹⁵

¹⁹² See Or. Admin. R. ORS 603-072-0005 (2010) *available at* http://arcweb.sos.state.or.us/rules/OARS_600/OAR_603/603_090.html

¹⁹³ See Or. Admin. R. 603-090-0000 (2010) *available at* http://arcweb.sos.state.or.us/rules/OARS_600/OAR_603/603_090.html

¹⁹⁴ Or. Admin. R. 603-090-0000(3) (2010) *available at* http://arcweb.sos.state.or.us/rules/OARS_600/OAR_603/603_090.html; See 603-095-0220 (1) *available at*

New York could adopt a similar structure. Although such a structure would be beneficial to agricultural and environmental concerns throughout the state, legislation would at the very least designate plans with boundaries based on the boundaries of the Adirondack Park and the Catskill Park. Perhaps more preferable, boundaries for the plans could be based on the watershed of the water bodies that are within the Forest Preserves. Watershed boundaries would more accurately ensure than anything that was meant to be preserved by Article XIV, including the waters and ecosystems, would be protected from the potential detrimental effects of agricultural activities and kept wild.

Within the boundaries, BMP programs which compensate for the ecosystem services that well managed farms provide could be established. Such programs would seek to have the least possible influence on the wild character of the Forest Preserve by adopting many of the BMPs described above to filter water, recharge groundwater, reduce herbicide and pesticide use, and slow runoff. In addition, the designated areas could have priority status for conservation easement funding through the NYSDAM.

http://arcweb.sos.state.or.us/rules/OARS_600/OAR_603/603_095.html (“The Bear Creek subbasin includes the drainage area of Bear Creek upstream from the confluence with the Rogue River near Central Point, Oregon. The physical boundaries of the Bear Creek subbasin are indicated on the map included as Appendix 1 of these rules”).

¹⁹⁵ See Or. Admin. R. 603-095-0010 – 603-095-3960, *available at* http://arcweb.sos.state.or.us/rules/OARS_600/OAR_603/603_095.html (Includes plans for Tualatin River Subbasin, Bear Creek Subbasin, Klamath Headwaters Area, and several others).

VIII. Conclusion

Opening up Article XIV to amendments and scrutiny may result in those who would undo the Forever Wild provision taking the opportunity to weaken its language or call for its repeal. The words of Article XIV already give a clear command to all government entities that affect the Forest Preserves that they must keep the Forest Preserves wild. Thus, other tools should be utilized to enforce that command.

The Legislature should adopt legislation directing state agencies to uphold their Constitutional mandate to keep the Forest Preserve wild. Regulation should be passed by the agencies that create regulations that fund and require agricultural best management practices around the Catskill and Adirondack Forest Preserves. In order to address agricultural concerns, agencies which direct agricultural activities and environmental protection in the Adirondack and Catskills, such as the DEC, APA and the NYSDAM, should be specifically included in the legislation's directives.

An Executive Order by the Governor would not be sufficient to protect forever wild. The idea that agriculture should be exempted from environmental protections is deeply embedded within the current legislative and regulatory structure. In order to change that structure, the laws and regulations must be changed, which may not necessarily occur because of an Executive Order. An Executive Order also would not give enough force behind the requirements imposed by Article XIV.

It will take more than a gubernatorial order to change the current mindset towards agriculture, and to convince the public that the State is really behind preservation of the Forest Preserves. A law passed by representatives from throughout New York would present a more unified expression that the Forest Preserves are of state-wide significance. Finally, an executive order can be changed easily by the next Governor – all he or she would have to do is decide not to renew the order. Such potential for short-term influence is not congruent with the permanent language in Article XIV.

State laws would be more appropriate than commanding or relying on local governments to pass laws protective of the Forest Preserves. It seems that current NYSDAM regulations and policy would probably not allow local regulations that require specific farming practices to protect the wild nature of the Forest Preserve in an agricultural district, though there is some chance that such regulations would survive. Municipalities wishing to pass more stringent regulations on farming in order to comply with Article XIV would take the risk of being sued by the NYSDAM without restructuring of State laws. Accordingly, not only would state agencies need to pass new regulations in order to implement legislation which calls for protection of the Forest Preserve, they would also need to amend current regulations and laws which are presently not affirmatively seeking to protect the forever wild lands.

When the Legislature made the forever wild provision of Article XIV a part of the New York State Constitution, New York was seen as a leader in preservation of wilderness. Another opportunity has presented itself to New York to take the lead. By passing comprehensive legislation to address agricultural activities surrounding wilderness areas, New York will demonstrate their dedication to their forever wild lands, and that the trend towards weakening the provisions of Article XIV has ended. In addition, New York has the opportunity to be an innovative leader in agriculture by getting behind its agricultural community and making a statement that the ecosystem services that agriculture provides have value and should be compensated for. In 2017 when New York voters have the opportunity to call for a constitutional convention and change Article XIV, New York voters should resist the temptation. Instead, action should be taken now by the Legislature to enforce the provisions of Article XIV.