

12-1-2010

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Historic Preservation and the Wilderness

by Seth Kagan

I. Introduction

The Adirondack and Catskill parks are...distinguished by significant historic resources that reveal the story of human settlement and attainments in a wilderness environment...The legislature finds that the potential exists for conflict between the policies of protecting the wild forest character of the forest preserve and preserving significant historic resources.¹

The focus of this legislative statement, whether the historic sites can be preserved in the Adirondack and Catskill parks, is on Article XIV of the New York State Constitution. Article XIV, also known as the “forever wild” clause, states as follows:

The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law shall be kept forever wild as forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall timber thereon be sold, removed or destroyed.²

These words have been a sine-qua-non of the New York State Constitution since their ratification and incorporation into the Constitution as Article VII § 7, in 1895. Despite this fact, these words have been the focus of a contentious debate over the years of what can be done with the lands within the Forest Preserve without violating the

¹ Act of June 21, 1983, ch. 351, § 1, 1983 N.Y. Sess. Laws 585, 586 (West).

² N.Y. Const. art. XIV, § 1.

provision to keep the lands “forever wild.”³ For the most part, the courts have been determinative that “the framers of the Constitution...intended to stop the willful destruction of trees upon the forest lands, and to preserve these in the wild state now existing.”⁴ In coming to this conclusion the New York Court of Appeals determined that the words of Article XIV are so specific as to their intent, that only “reasonable” and “necessary” uses can be contemplated for the disruption of the forest preserve, or if not, require an amendment to the New York State Constitution. But what does this mean for the preservation of historic sites and archaeological resources within the forest preserve lands? Presumptively, “forever wild” means “forever wild,” therefore any man-made structure must be dismantled to accommodate this demanding provision, regardless of its historic importance. Or does it?

This paper will discuss the competing interests between the “forever wild” provision and that of historic preservation. In examining the history of legislative, administrative, and judicial action, it is clear that a picture emerges in favor of historic preservation alongside the interest of keeping the parks “forever wild.” In looking towards the future, for the preservation of both interests, it is important to

³ *See Ass’n for Protection of Adirondacks v. MacDonald*, 253 N.Y. 234, 241-242 (N.Y. 1930) (discussing how construction of a bobsled run for the Olympics on Forest Preserve land does not accord with “forever wild”); *see also Adirondack Park Agency v. Ton-Da-Lay Associates*, 61 A.D.2d 107, 112 (App. Div. 3rd Dept, 1978) (interpreting “forever wild,” through N.Y. EXEC. LAW, art. 27, as not imposing a total freeze on development within the Adirondack Park).

⁴ *Ass’n for Protection of Adirondacks*, 253 N.Y. at 241-242.

determine what the state of each of the interests is in regard to one another. If there is to be a constitutional convention, would Article XIV have to change in order to accommodate further preservation of historic sites within the park? Or could it be left as it currently stands? Or should it be changed completely and reassessed in order to accommodate historic preservation along with other contemporary interests?

II. History of Article XIV and Its Implication for Historic Preservation: Human Structures in Wild Lands

While the passage of the “Forever Wild” provision created a forest preserve for the preservation of ecological resources, concern for historic and archaeological resources was not contemplated; after all, it was the 1890s and American history was in the process of still being made. Over the years, however, historic context has developed throughout the forest preserve and the preservation of such historic resources has been noted as an important interest for the State of New York.⁵ But before a legal analysis of the situation can be fully understood, the historical context of the areas of the Forest Preserve must be established.

A. History of the Catskills

Though seasonally used by the Native Americans before the establishment of the colonies, the Catskill and Adirondack mountains were not extensively settled until later on. The Catskill Mountains, due

⁵ New York State Historic Preservation Act of 1980, N.Y. PARKS REC. & HIST. PRESERV. LAW, § 14 (2010).

to their proximity to New York City, had been settled earlier than the Adirondacks. When the Dutch first settled the colony of New Amsterdam in the 1600's, the Catskills were used much as the Native Americans had utilized the area, as a place for seasonal hunting and trapping. The Dutch also traded furs down the Hudson River to the City of New Amsterdam and for export abroad. Though the Dutch instituted a manorial type system in the Catskills called the patroon system, the land was not extensively settled.⁶

The greatest change occurred once the British took over the colony. In 1706, the Governor of the New York colony, Edward Viscount Cornbury, was approached by an ambitious speculator, Johannes Hardenbergh, and his partners, to petition for a land grant in the mountains in Ulster County. After a series of shady back-door deals, the patent, which became known as the Hardenbergh Patent, was granted on April 20, 1708.⁷ The Patent granted Hardenbergh practically the entire Catskill region as we know it today, from just west of Kingston and extending to the West Branch of the Delaware. Hardenbergh began selling off shares in the partnership, since no formal survey of the land had been completed and no subdivisions had been set. The most notable of them was the acquisition of nearly a million acres by Robert Livingston, grandfather of Robert R.

⁶ Arthur G. Adams, *THE CATSKILLS: AN ILLUSTRATED HISTORICAL GUIDE WITH GAZETTER* 80 (1990).

⁷ *Id.* at 85.

Livingston, a signer of the Declaration of Independence.⁸ It was not until Hardenbergh's death in 1745 that settlement of the area was finally getting underway. Five years after his death, the entire Patent was subdivided and the Hardenbergh land company was dissolved.⁹

Before and during the Revolutionary War, as tensions increased between the colonies and Britain during the 1770s over how to pay for the war, the Catskills saw this divide play out rather sharply, as land in the Catskills was being promised to soldiers in both camps as payment. After the war, farm-tenant life continued in the Catskills as the abundance of water allowed for extensive farming in the area. In the early 1800's the area developed as a major site for the tanning industry, obtained from the bark of the hemlock tree.¹⁰ Spurred by the industry, the Catskills were opened up to travel through a series of railroad and canal projects.¹¹ The increasing ease of transportation started the vacation movement in the Catskills. Many affluent Southerners would escape the sweltering summer months in their home states vacationing in the more mild Catskills.¹² Due to the proximity, droves of urbanites from New York City and Philadelphia would also venture to the Catskills to escape the heat and stink of the cities.¹³

⁸ See Livingston Manor Homepage, *History of Livingston Manor: Timeline*, <http://livingstonmanor.net/Timeline.htm> (last visited Oct. 18, 2010).

⁹ See *id.*

¹⁰ See Adams, *supra* note 6 at 97.

¹¹ See *id.* at 98-119

¹² See *id.* at 120

¹³ See *id.*

To accommodate the influx, stagecoach inns began taking in tourists and vacationers. One of the earliest inns, still in operation today, is the Windham House in Windham, which was built in 1800.¹⁴ “It is a gracious old building with Ionic columns and a Garrison Colonial-style second-floor gallery.”¹⁵ These small bed and breakfasts were often not enough for the more affluent vacationers, and so the Mountain House type hotel was developed far away from the beaten path. One of the most renowned of these was the Catskill Mountain House.¹⁶ Originally built in 1824, it was a primitive hotel with only 10 rooms and a ballroom. By 1845, the fame of the view of the Mountain House, atop the Wall of Manitou, became so renowned that the hotel had to be expanded to 300 rooms.¹⁷ It became a must see for tourists, even those who were just passing through to other destinations in New England or northern New York.¹⁸ The building itself was an architectural patchwork of different styles; the initial structure was in the Federalist style, but the additions brought a colonnade of Corinthian columns, exemplary of Greek Revival architecture.¹⁹

Entering into the new century, the popularity of the Catskill Mountain House began to decline, through a combination of the aristocracy seeking out more exotic destinations – including the

¹⁴ *See id.*, *see also* Christman’s Windham House, <http://www.windhamhouse.com/> (last visited Nov. 16, 2010).

¹⁵ *See Adams, supra* note 6, at 120.

¹⁶ *See id.* at 123.

¹⁷ *See id.*

¹⁸ *See id.* at 123-125.

¹⁹ *See id.* at 123-124.

Adirondacks, the West, and Europe – as their summer playground. This decline was exacerbated by a comprehensive survey of the area which revealed that the highest peak in the Catskills was not Kaaterskill peak, right next door, but Slide Mountain far to the southwest. The last season of the Mountain House was in 1941. The State acquired the property in 1962, and though preservationists pointed to the hotel's historic value, they were ultimately unsuccessful and the DEC burned down the building on January 25, 1963 in accordance with Forest Preserve policy to keep the land "forever wild." Such was the fate of many other historic properties in the Catskills acquired by the State; it is a shame that such history is allowed to be lost. The Catskills became obsolete for the upper class, who sought more worldly destinations, so the great mountain houses of old have deteriorated, been demolished, or replaced by modern developments.

B. History of the Adirondacks

The Adirondacks on the other hand were not extensively settled until the mid-to-late 1800s. Due to the harsher weather of the Adirondack region, early attempts to settle the area for exploitation of its resources tended to be ill-fated, though a sizable population did begin to inhabit the area in the mid to late 1800's.²⁰ The most intensive settlement trend in the Adirondacks did not come until the late 1880's-early 1900's during the Gilded Age when the great robber barons built

²⁰ See Philip G. Terrie, *Contested Terrain: A New History of Nature and People in the Adirondacks*, 66-67 (2d ed. 2008).

palatial mansions in the Adirondack region for the same reasons why they escaped to the Catskills. But in the Adirondacks, they constructed their own slice of wilderness to separate themselves from the not as affluent who stayed at the public hotels in the region.²¹ “The grand camps look rather like millionaires’ pioneer villages, clusters of large and small log buildings set in a clearing carved out of the primeval Adirondack forest.”²² William West Durant designed and built many of the great camps from 1876 to 1901, with the intention to sell them to powerful and socially prominent figures, enhancing the image of the Adirondacks as a chic place to vacation.²³ Since then, the Adirondacks have been subject to increasing development to facilitate public access to the park and accommodate the municipalities with the technologies of modern life.

The historical significance and archaeological promise of these regions is peaked by their long term use, but still near pristine state and architectural significance, ensuring it as a locale replete with a history of settlement development and an area with many historic buildings. The policy of the State to demolish the last remaining vestiges of the rich historic history of the parks as being inconsistent with “forever wild” is a shame. The lack of enthusiasm on the part of the State for trying to find a way to pacify both interests is a lapse in

²¹ *See id.* at 71-73.

²² Michael deCourcy Hinds, *Adirondack Survivors: Rustic Grand Camps*, N.Y. TIMES, August 27, 1981, <http://query.nytimes.com/gst/fullpage.html?res=9904EFD7123BF934A1575BC0A967948260&pagewanted=1> (last visited Sept. 23, 2010).

²³ *See id.* (discussing the Great Camps in more detail).

judgment and a relinquishment of their fiduciary duties as stewards of the public interest. The only real exception to this assertion is the State's involvement for the preservation of the Great Sagamore Camp, discussed later in this paper, which required a constitutional amendment.

III. New York Statutory and Regulatory Authority on the Historic Preservation in the Wilderness

Through an analysis of New York State statutory and regulatory authority, it would seem that New York State has contradicted itself by prescribing conflicting interests to be protected by state officials. On the one hand the Constitution and the Legislature have constitutionally protected the Adirondack and Catskill parks to be kept "forever wild" and on the other the Legislature has statutorily made historic preservation a priority of New York State. The New York State Constitution also includes a provision to protect the historic sites of the state, albeit not within the Forest Preserve counties, but that is because the Legislature has perceived an inherent conflict.²⁴ As will be discussed later, in conjunction with the federal Wilderness Act²⁵ this does not necessarily have to be the case, but for now, it is important to note what New York State has done in an attempt to reconcile both of these supposed conflicting interests.

A. Article XIV and the New York State Historic Preservation Act of 1980

²⁴ N.Y. CONST. art. XIV, § 4.

²⁵ Wilderness Act, 16 U.S.C. §§ 1131-1134 (2006).

The State of New York passed its Historic Preservation Act in 1980.²⁶ The purpose of the legislation is explicit: “the historical, archeological, architectural and cultural heritage of the state is among the most important environmental assets of the state and that it should be preserved.”²⁷ In accordance with this provision, any project undertaken, or funded by a state agency must be discussed with the commissioner of the New York Division of Parks, Recreation, and Historic Preservation if “it appears that any aspect of the project may or will cause any change, beneficial or adverse, in the quality of any historic, architectural, archeological, or cultural property” that is listed or is determined to be eligible for either the national or state registers of historic places.²⁸ Since the acquisition of property within the Blue Line for State land would be a state project, and the designation as a part of the Forest Preserve would mean that any historic property thereon would have to be demolished to keep the land “forever wild,” there would be a conflict of interests in this regard. However, if both interests are deemed important for the State, surely there can be a way to satisfy both interests. Where there is a will, there is a way, but it seems as though there is no will, because New York State has tried to absolve itself of all responsibility, as will be discussed later.

B. Constitutional Amendment in 1983 for the Great Sagamore Camp

²⁶ N.Y. PARKS REC. & HIST. PRESERV. LAW, § 14 (2010).

²⁷ *Id.* § 14.01.

²⁸ *Id.* § 14.09.

A notable example of a legislative attempt at historic preservation within the forest preserve was the constitutional amendment exempting the Great Sagamore Camp from the restrictions of the “forever wild” provision. Camp Sagamore was built from 1885-1897 at Blue Mountain Lake.²⁹ Camp Sagamore is an amazing example of characteristic Durant touches: “log houses, artfully woven, with rough bark exteriors and paneled interiors; stonework, jigsaw-puzzle-perfect, in fireplaces and chimneys; walkways connecting many buildings, and the most up-to-date mechanical equipment then available.”³⁰ After construction was completed, Durant lived in the Camp from 1897-1901, when bankruptcy forced him to sell the property.³¹ Subsequently the Camp was bought by Alfred G. Vanderbilt for his family to use for recreation during the summer months.³² When Alfred died in 1915 while traveling aboard the R.M.S. *Lusitania*, his widow Margaret Emerson took up residence on the property until 1954, when she gave the Camp to Syracuse University.³³ In 1974, much of the vast acreage surrounding these camps was bought by the State of New York and added to the Adirondack Park, but it was not until 1983 that the actual structures were acquired by the State.³⁴

²⁹ Great Sagamore Camp, *History: The Rest of the History*, <http://greatcampsagamore.org/history/the-rest-of-the-history> (last visited Sept. 23, 2010).

³⁰ Hinds, *supra* note 22.

³¹ Great Sagamore Camp, *supra* note 29.

³² *See id.*

³³ *See id.*

³⁴ *See id.*

Recognizing the issue which would arise between the compatibility of the keeping the area “forever wild” and the interest to preserve the Sagamore Camp *in situ*, the Legislature turned to a constitutional amendment to preserve the Camp. On November 8, 1983, the voters of the State of New York voted to amend Article 14 §1 of the New York State Constitution to “facilitate the preservation of historic buildings listed on the national register of historic places...[by conveying] to Sagamore Institute, Inc., a not-for-profit educational organization, approximately ten acres of land and buildings thereon...located on Sagamore Road...within the Adirondack Park...”³⁵ The amendment was passed with a side note, “[n]otwithstanding the foregoing provisions”, in reference to the “forever wild” clause. In this way, the State of New York was able to circumvent what it thought as contradictory uses of preserving a historic building *in situ* within the Adirondack Park, despite the provision requiring it to remain “forever wild.” The Sagamore Institute of the Adirondacks, Inc. was incorporated under the Department of Education as a cultural institution.³⁶ The organization intends to have a dual purpose of educating the public about the Great Camp Sagamore, as well as properly interpreting the history of the site.³⁷ “Great Camp Sagamore’s mission is to be that place where broad and diverse audiences gather to

³⁵ N.Y. CONST. art XIV, § 1.

³⁶ See Great Sagamore Camp, *History: Mission*, <http://greatcampsagamore.org/history/Mission> (last visited Nov. 11, 2010).

³⁷ See *id.*

use these unique buildings and natural setting to explore and understand our Adirondack culture, environment, and relationship to both.”³⁸

Great Camp Sagamore is no doubt in good hands, the question is though, should such acrobatics really be necessary? Should the public have to vote for the preservation of a historic landmark? What if the amendment was defeated? Ironically, or rather, intuitively, the inherent issue with the situation was addressed by the Legislature the same year that the Camp was acquired by the State.

C. *Environmental Conservation Law § 9-0109: Acquisition of Land within the Parks*

In lieu of requiring a constitutional amendment for every state acquisition of historic properties within the Forest Preserve, “learning” from the Camp Sagamore conundrum, New York State enacted a statute to address the issue. In June of 1983, section 9-0109 of New York’s Environmental Conservation Law was to take effect, concerning the acquisition of lands within the Adirondack or Catskill parks. The law explicitly states that, “[u]nless deemed necessary...the state shall not acquire or accept fee simple ownership of structures or improvements in the...parks listed or eligible to be listed on the state register of historic places...”³⁹ Instead, “it shall be the responsibility of the state agency to which such offer is made...to search for a private

³⁸ *Id.*

³⁹ N.Y. ENVTL. CONSERV. LAW § 9-0109(1) (2010).

purchaser or donee who would preserve such structures or improvements...”⁴⁰ The Legislature found that in order for the two interests to not conflict, the easiest way of dealing with the problem of historic structures within the Forest Preserve was to pass off the responsibility of the preservation of such structures to private entities. As noted by the legislative findings on the passage of the section, “protection of the wild forest character...and protection of historic resources in the Adirondack and Catskill parks can be compatible goals through facilitating historic preservation in the private land areas of the parks.”⁴¹

Section 9-0109 basically places future historic site stewardship solely in the hands of private entities, with minimal help from the State. However, in the same breath, the section also allows the State to preserve historic sites on Forest Preserve land, the caveat being that the historic site be on land owned by the State, and existed prior to acquisition by the State, prior to the effective date of the section.⁴² It further stipulates that if the State Historic Preservation Officer finds that the structures can be maintained for “public enjoyment,” the State is entrusted with the responsibility of doing so “in a manner that will not disturb the existing degree of wild forest character of land on which pre-existing structures...are located or the wild forest land adjacent

⁴⁰ *Id.* § 9-0109(3).

⁴¹ Act of June 21, 1983, ch. 351, § 1, 1983 N.Y. Sess. Laws 585, 586 (West).

⁴² *See* N.Y. ENVTL. CONSERV. LAW § 9-0109(4) (2010)

thereto...”⁴³ So through section 9-0109, the State has established itself as curator of certain historic structures, but has relinquished all responsibility from others which would have been acquired by the State in the future. This is of questionable constitutionality, as will be discussed later, considering the State also has adopted a constitutional article asserting the State’s interest in protecting the historical resources of the State.⁴⁴

The question that remains in this regard is whether the State has upheld its responsibility in regard to historic structures by passing such legislation. As the New York Department of Conservation (DEC) regulations provide, “[t]o the fullest extent practicable, it is the responsibility for every State agency, consistent with other provisions of law, to avoid or mitigate adverse impacts to registered or eligible [historic] property.”⁴⁵ By passing section 9-0109, the State essentially tried to circumvent the “forever wild” clause by forcing private entities to take responsibility for historic structures as opposed to allowing their acquisition by the State. It is understandable that the State only wished to make its agencies’ job easier by shedding themselves of the responsibility of trying to make historic preservation compatible with “forever wild.” But it is not understandable how playing a game of “hot potato” to find a private entity to take on the responsibility for stewardship of a historic site, can legitimately be a proper mitigating

⁴³ *Id.* § 9-0109(4)(b).

⁴⁴ *See* N.Y. CONST. art. XIV, § 4.

⁴⁵ 9 N.Y. COMP. CODES R. & REGS. tit. 9 § 428.1 (2010).

measure for abating the need to demolish the historic site to keep the area “forever wild.”

D. New York Constitution Article XIV § 4: Preservation of Lands as State Nature and Historic Preserve

Despite the supposed delegation of stewardship authority to private entities, it can be argued that the delegation should not have occurred, based on Article XIV, § 4 of the New York State Constitution. The provision states that “[t]he legislature shall...provide for the acquisition of lands and waters...which because of their...historical significance, shall be preserved and administered for the use and enjoyment of the people.”⁴⁶ The issue is that section four also includes the words, “outside the forest preserve counties,” as if the importance of historic preservation extended only so far as the Blue Lines. If anything, this section of Article XIV seems like an overt anomaly. Section four professes an intimate concern with the preservation of sites of historic significance, and then concurrently determines that those historic resources within the Forest Preserve are not worthy of being preserved. In fact, the historic properties within the Forest Preserve are of a heightened importance as remnants of the settlement of one of the last great frontiers of the Nation – for example the remaining fire towers, discussed later on – which is ironically in the backyard of one of the most industrialized areas in the Nation.

⁴⁶ N.Y. CONST. art. XIV, § 4.

This section of Article XIV only supports the theory that rather than try and find a way to meld the two interests, the State of New York just tried to find the easiest way to not have to deal with the synthesis. There is a constitutionally mandated importance for historic preservation, but the Legislature has perceived a conflict with another constitutionally mandated importance of “forever wild”. Accordingly, they have shied away from their duty, taking the easy way out.

IV. The Wilderness Act: A Federal Equivalent of “Forever Wild”?

Article XIV of the New York State Constitution is by no means the only provision in the Nation which highlights the importance of the preservation of wilderness lands for the public. An examination of the federal Wilderness Act is useful for showing that there can be a possible consistent use of keeping the land as wilderness while still allowing for the preservation of historic sites within those wilderness areas. After all, the structures which are intended to be preserved have a connection with the wilderness area itself, they are fixtures of a time which once was and has now passed, they are a sign of how the appearance of the wilderness before a government had to designate it wilderness. The importance of wilderness does not inherently require the history of the wilderness to be forgotten, in reality, the historic sites are wilderness.

A. The Wilderness Act

On the federal level, though not by constitutional provision, the Wilderness Act⁴⁷ acts like New York's Article XIV preserving public land as wilderness. The Wilderness Act states clearly, "it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness."⁴⁸ The Act continues on to create the National Wilderness Preservation System, composed of "wilderness areas" designated by Congress, which "shall be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness."⁴⁹ These words are reminiscent of those found in Article XIV, but they have a bit more detail; considering the Act went into effect in 1964, it should have been able to better explain the idea of wilderness protection. The Act even goes further to define "wilderness," for clarification of humankind's place therein, "as an area where the earth and its community of life are untrammelled by man, *where man himself is a visitor who does not remain.*"⁵⁰ As such, it is easy to imagine why the same conflict of interests may arise concerning historic preservation in federal wilderness areas.

B. The Wilderness Act and Historic Preservation

⁴⁷ Wilderness Act, 16 U.S.C. §§ 1131-1134 (2010).

⁴⁸ 16 U.S.C. § 1131(a).

⁴⁹ *Id.*

⁵⁰ *Id.* § 1131(c) (emphasis added).

One recent example of the interplay of the Wilderness Act and historic preservation interests materialized in the case of *Olympic Park Associates v. Mainella*.⁵¹ Olympic Park Associates brought an action against the National Park Service (NPS) for what it believed was a violation of the Wilderness Act. When the Wilderness Act was enacted, in 1974, NPS proposed that Congress designate the Olympic Wilderness Area within the parameters of the Olympic National Park, designated by Congress in 1938. As part of its responsibilities under the National Historic Preservation Act (NHPA),⁵² NPS began preparing an environmental impact statement (EIS) under National Environmental Policy Act (NEPA)⁵³ and evaluated the appropriateness of allowing historic shelters on lands to be designated as wilderness.⁵⁴ Consequently, the EIS called for the removal of many of the shelters, but a few were retained for health and safety purposes, including the ones subject to this litigation, Home Sweet Home and Low Divide.⁵⁵ However, in 1984 when NPS was compiling a list of historic shelters for the National Register of Historic Places, the two listed above were not eligible because they were not yet 50 years old, as promulgated by the

⁵¹ No. C04-5732FDB, 2005 WL 1871114, at *1 (W.D. Wash. August 1, 2005).

⁵² See 16 U.S.C. § 470(f) (2010) (requiring the effects of federal undertakings on historic properties to be taken into account).

⁵³ See 42 U.S.C. § 4332(C) (2010) (explaining when an EIS is necessary).

⁵⁴ See *Olympic Park Associates*, at *1.

⁵⁵ See *id.*; see also 16 U.S.C. § 1133(c).

NPS under the authority of the NHPA⁵⁶ in the Code of Federal Regulations.⁵⁷

The National Register for Historic Places, created under the NHPA,⁵⁸ is the official list of the Nation's historic places deemed worthy of preservation. Properties listed on the National Register include districts, sites, buildings, and objects that are significant in American history, architecture, archaeology, engineering and culture, on a National, State, Tribal, or community scale. The National Register helps preserve these significant historic places by recognizing their irreplaceable heritage, bolstering efforts by private citizens and local officials to preserve a site which is of importance.

In 1996, the status of the two was reconsidered, and on January 11, 2001 the Washington State Office of Archaeology and Historic Preservation found the shelters to be eligible for the National Register.⁵⁹ The issue was, however, that the Olympic Wilderness was designated in 1988 and the two shelters had collapsed under snow loads from winter storms in 1998.⁶⁰ Still, they were deemed eligible because, “the shelter[s] (prior to [collapse]) contributed to the important historic pattern of shelter construction and recreational use. This location, the setting, association, and feeling are significant aspects of

⁵⁶ See 16 U.S.C. § 470(a)(7)(A).

⁵⁷ See 36 C.F.R. § 60.4 (2010).

⁵⁸ See 16 U.S.C. § 470(a)(1)(A).

⁵⁹ See *Olympic Park Associates*, at *1-2.

⁶⁰ See *id.*

historic use within the park...”⁶¹ Therefore, the Park applied to the State Historic Preservation Office, in charge of local historic resources, for a plan to rebuild the shelters “to maintain the historic feeling and appearance of portions of the park trail system.”⁶² Once rebuilt and after public comment, the Park decided to transport the shelters by helicopter to their respective historic sites, so as to infringe the least on the wilderness.⁶³ The utilitarian purpose of the shelters was also highlighted, as they “would aid in reducing risk to visitor health and safety by providing shelter in times of emergency.”⁶⁴ The District Court, however, did not see it this way.

After a cursory analysis of the Wilderness Act and its straightforward intent, to keep man as “a visitor...without permanent improvements or human habitation,”⁶⁵ the court turned to the record of the Park’s discussion on the shelter proposal to use a helicopter.⁶⁶ The discussion recognized the change in values of the shelters after the Olympic Park Wilderness was designated:

The Wilderness Act and current NPS Management Policies encourage wilderness users to prepare for, and encounter the wilderness on its own terms...complete with the risks that arise from wildlife, weather conditions, etc. NPS wilderness management policies do not support the provision of

⁶¹ *Id.* at *2 (quotation changes in original).

⁶² *Id.*

⁶³ *See id.*

⁶⁴ *Id.*

⁶⁵ 16 U.S.C. § 1131(c).

⁶⁶ *Olympic Park Associates*, at *4.

facilities in wilderness specifically to eliminate these risks.⁶⁷

Looking at this language in relation to the fact that in creating the Olympic Park Wilderness, no provision was made to allow the NPS to upgrade maintain and replace such structures, the court determined that the NPS's argument was contrary to the agency's own logic and statutory authority.⁶⁸ Though usually, for a certain minimum administration of the area, temporary roads, use of motor vehicles, structures or installation, etc. within any such area are allowed for "emergencies involving the health and safety of persons within the area."⁶⁹ The situation proposed here is that that which would be argued for shelter from such an emergency. However, the court determined that no "emergencies involving the health and safety"⁷⁰ argument could be made under the Wilderness Act, because as the NPS suggested that users "encounter the wilderness on its own terms."⁷¹ Citing the Eleventh Circuit, the district court reasoned that though the Wilderness Act mentions "historical use" as one of the uses of the wilderness, "the only reasonable reading of 'historical use' in the Wilderness Act refers to natural, rather than man-made features."⁷²

⁶⁷ *Id.*

⁶⁸ *Id.* at *5.

⁶⁹ 16 U.S.C. § 1133.

⁷⁰ *Id.*

⁷¹ *Olympic Park Associates*, at *4

⁷² *Id.* at *6 (quoting *Wilderness Watch and Public Employees for Environmental Responsibility v. Mainella*, 375 F.3d 1085, 1091-1092 (11th Cir. 2004) (finding that the NPS had no affirmative duty under the Wilderness Act to preserve historic sites and therefore could not argue that motorized vehicle access was necessary for their maintenance or to allow access to the sites)).

The court did seem to leave open the possibility for existing structures to just be rehabilitated, though. “While the former structures may have been found to have met the requirements for historic preservation, that conclusion is one that is applied to a man-made shelter in the context of the history of their original construction and use in the Olympic National Park.”⁷³ This remark alludes to the idea that if the structures had been adequately preserved so as to not have collapsed during the winter storm, the NPS could have continued “rehabilitation, restoration, stabilization, [and] maintenance”⁷⁴ of the structures as historic sites within the wilderness under the NHPA and the Wilderness Act. This line of reasoning is extremely useful in determining what should be allowed in the context of the forest preserve under the “forever wild” clause, that historic structures can be maintained in a wilderness, though not replaced, without violating the wilderness provision.

V. New York Attorney General Opinions Concerning Actions within the Forest Preserve

In many instances, the New York Attorney General has published opinions as to what actions are allowed in the Forest Preserve land, and in turn, the courts cite such opinions to support their legal theories.⁷⁵ Concerning camps and camp sites, there a quite

⁷³ *Olympic Park Associates*, at *6.

⁷⁴ 16 U.S.C. § 470(w)(8).

⁷⁵ See *Helms v. Reid*, 90 Misc.2d 583, 593 (N.Y. Sup. 1997) (discussing reference to Attorney General opinions for guidance that nothing more than minimal tree cutting has been allowed in the Forest Preserve).

few Attorney General Opinions which may be applicable to historic preservation within the Forest Preserve, though they tend to be conflicting. For instance, one opinion stated that “[t]he authority of [the] Conservation Commissioner to grant permits for temporary use of [F]orest [P]reserve and use and maintenance of buildings thereon is limited by the provisions of this section, and no authority exists for permitting a private organization to continue to use buildings on land acquired for forest preserve for the operation of a Boys’ camp.”⁷⁶ This would seem to preclude the maintenance of a structure on the land for the purposes of operation as a recreational destination. In contrast, another opinion stated that “[l]and acquired by the State in a Forest Preserve county to be improved and developed as a park and campsite for the use of the public, with monies appropriated for that purpose, in a section not wild and forest lands as the same is generally understood, does not come within the constitutional provisions relating to the forest preserve.”⁷⁷ This opinion further shows that while such activities can be done outside the forest preserve, it is not likely to be the case inside the forest preserve.

Finally, another opinion stated that, “[t]he right of the State Conservation Department to build shelters and furnish food for the cost of operation in remote sections of the forest preserve was of doubtful

⁷⁶ 1941 OP. N.Y. ATT’Y. GEN. 280.

⁷⁷ 1940 OP. N.Y. ATT’Y. GEN. 313.

constitutionality.”⁷⁸ This opinion is particularly questionable, since the use of the preserved historic structures within the park as a sort of state owned lodge for hikers and travelers seems appropriate. The only caveat which may still keep this suggestion alive is that the Opinion only refers to the future “build[ing]”⁷⁹ not to the possibility of the maintenance of an existing structure for such a purpose.

Conversely, another Attorney General Opinion alluded to the potential validity of granting of a revocable permit for the purpose of using the land as a historic site, outside the parameters of the “forever wild” clause. The opinion stated, “[t]he Conservation Department may grant a revocable permit to use an abandoned cement mine on forest preserve lands for food storage experiments.”⁸⁰ Using this same logic, DEC would possibly be able to grant a “revocable permit,” with an understanding that it would never be revoked, for allowing the site to be preserved and maintained *in situ*. Even if not for historic buildings preservation, then perhaps this Opinion would be useful for the allowance of archaeological projects. As the Opinion suggests, if abandoned cement mines can be used for the purpose of food storage experiments, which would likely be temporary in nature, then perhaps a similar argument can be made that a site can be used for an archaeological dig. Either way, considering there would be no real adverse effect on the surrounding area for maintenance of a historic

⁷⁸ 1934 OP. N.Y. ATT’Y. GEN. 279.

⁷⁹ *Id.*

⁸⁰ 1954 OP. N.Y. ATT’Y. GEN. 156.

site or an archaeological dig thereon – since no timber would have to be removed – it would seem that the maintenance of a historic resource could be consistent with the “forever wild” ideal, in contrast to many other recreational uses.

VI. Implications for a Constitutional Commission and Convention

Through an analysis of New York State legislative, administrative, and executive materials, as well as, legislative and judicial materials concerning the federal Wilderness Act, it is clear that there can be ways of reconciling the needs of historic preservation and keeping the Forest Preserve “forever wild.” The main issue is whether the State wishes to assume responsibility, as it should, as the primary historic preservation entity in the Forest Preserve. It seems that through the analysis conducted in this paper that the State has tried to find a way to absolve itself of responsibility of future historic preservation projects within the Forest Preserve,⁸¹ despite the recognition of the Legislature of the importance of historic preservation to the state.⁸²

A. Leave Article XIV “As Is”

Leaving Article XIV as it now stands would be beneficial in one regard, that it forces private entities to take up stewardship of historic

⁸¹ See N.Y. ENVTL. CONSERV. LAW § 9-0109; *see also* N.Y. CONST. art. XIV, § 4 (emphasizing the importance of historic preservation but essentially ignoring such importance within the Forest Preserve).

⁸² See Act of June 21, 1983, ch. 351, § 1, 1983 N.Y. Sess. Laws 585, 586 (West).

properties throughout the Forest Preserve, outside the wilderness. Though mentioned before as a major drawback, since no State funds would be given in this regard, private stewardship can allow for the preservation of many important historic structures which would have to be torn down if they were situated on public land. One perfect example of such a situation involved the Open Space Institute's (OSI) acquisition of the Tahawus Property. In 2003, OSI bought the 10,000-acre tract after more than a decade of negotiations with a Houston-based mining corporation. The reason for such an unyielding attempt to acquire the property is because the property sits at the southern gateway to the High Peaks Wilderness Area in the central Adirondacks and "contains numerous lakes, streams, wetlands, mountainous peaks and spectacular vistas."⁸³ The more pertinent attribute for the instant discussion is that the property is also the site of one of the first attempts to exploit the iron ore deposits in the Adirondacks.

In 1827, the tract was acquired by three partners, David Henderson, Duncan McMartin and Archibald McIntyre, for iron ore exploitation.⁸⁴ Just two years later a settlement was established to house the iron workers and their families along Henderson Lake by the Adirondack Iron and Steel Company.⁸⁵ Originally known as the Village of McIntyre, and later renamed Adirondac, the settlement included, a

⁸³ Open Space Institute, *Historic Preservation Efforts at Tahawus*, http://www.osiny.org/site/PageServer?pagename=Feature_History_Tahawus (last visited October 25, 2010).

⁸⁴ *See id.*

⁸⁵ *See id.*

sawmill, forge, a puddling furnace, and several dwellings, most notably MacNaughton Cottage, one of the original structures at the site, built around 1834.⁸⁶ By 1846 the population of the village had reached 85.⁸⁷ The Adirondack Iron and Steel Company did everything in their power to keep the iron production going, constructing a larger hot air “New” Blast Furnace, completed in 1854.⁸⁸ However, the furnace only operated for one or two years as “low production, the difficulty of transporting the iron from the remote location of the works, and the lack of financial viability of the entire venture” slowly brought operations to a halt, closing around 1857.⁸⁹

Since then, the Village of Adirondac has changed hands a number of times. From 1876 to 1947 the Tahawus Tract were leased to sportsmen’s clubs, one of which had Theodore Roosevelt as a member.⁹⁰ As Vice President Roosevelt, in 1901, he has visited the area with his family and stayed in MacNaughten Cottage.⁹¹ It was at this time that President William McKinley had been shot and messengers had to trek up a mountain to find Roosevelt so that he could be rushed to Buffalo, New York, where McKinley had been shot, by horse and carriage and train.⁹² President McKinley died while Roosevelt was on the way.⁹³

⁸⁶ *See id.*

⁸⁷ *See id.*

⁸⁸ *See id.*

⁸⁹ *Id.*

⁹⁰ *See id.*

⁹¹ *See id.*

⁹² *See id.*

⁹³ *See id.*

The Tahawus Tract was next acquired by the National Lead Company, later to become NL Industries, Inc., in 1941, with the intent to resume mining, but instead of iron they sought titanium dioxide.⁹⁴ For the most part, the structures from the old town had remained untouched and were allowed to deteriorate, where many collapsed.⁹⁵ Despite this fact, in 1976 New York State and federal government officials worked out a deal, adding about 800-acres of the site, including its historic structures, to the State and Federal Registers of Historic Places.⁹⁶

When OSI acquired the property in 2003, it made it its responsibility to hinder the further deterioration of the historic properties, most importantly including the “MacNaughton Cottage, the ‘New’ Blast Furnace, a remote hunting cabin on Upper Preston Pond, and [an] abandoned fire tower at the top of the property’s highest peak, Mt. Adams.”⁹⁷ The issue was that the Tahawus Tract was an awkward puzzle piece carved out of the Adirondack Park; if given to the State the entire historic village would have to be leveled to keep in accordance with “forever wild.” To address the problem, OSI came up with a plan to give the northern part of the tract, surrounded by Forest Preserve, to the State and the southern part of the tract to a timber company with a conservation easement, because the southern part was surrounded by

⁹⁴ *See id.*

⁹⁵ *See id.*

⁹⁶ *See id.*

⁹⁷ *Id.*

the lumber company's holdings. To preserve the historic structures, OSI proposed to the Adirondack Park Agency (APA), from whom it needed a permit, to create a seven lot subdivision and designate the land for historic preservation. The APA did so and now there are small carvings of historic property within the Adirondack Park, which as per ECL § 9-0109, have to be maintained by a private entity, namely OSI.

OSI, with the help of many other conservation groups, has renovated and restored many of the significant historic buildings to their former splendor. The importance of the work that OSI has done as a private entity to save an important piece of American history, particularly that within the Adirondacks cannot be overstated:

For the first time since the iron mine closed in 1857, the Tahawus tract's historic resources have been the focus of an intensive effort...to catalogue those resources, stabilize and restore the most significant structures, develop an overall disposition plan for the site with the help of local, regional and state resources and develop an interpretive plan to promote an understanding and appreciation for this nationally significant site.⁹⁸

Even without changing a single line in Article XIV, some private organizations have shown a real capability to preserve and rehabilitate historic buildings on private property.

Though the example from OSI's Tahawus Tract acquisition is indicative of the positive aspect of keeping the "forever wild" clause as

⁹⁸ *Id.*

it is – namely that privately funded projects can help to support the preservation – it is also indicative of how forcing the stewardship on a private entity, under ECL § 9-0109, is extremely onerous and may not be the best route to preserve the historic sites in the parks. To the point, in the case of Tahawus, supposedly the State had pledged \$500,000 to help with the preservation and rehabilitation, but OSI has not received a dime. This is the issue with Article XIV as it stands. It places too much of a burden on private entities to maintain properties within the Forest Preserve which should be managed by the State. For a state which recognizes that “[i]t has long been a policy of the state to foster and assist in preservation of the state’s historic resources,”⁹⁹ it seems counterintuitive for the State to then not want to take responsibility for the preservation of sites within the Forest Preserve.

B. Amend Article XIV to Resolve the Conflict between Historic Preservation and Wilderness

Courts have previously held that environmental and historic resources are interwoven and should not be separated, particularly in terms of an EIS analysis.¹⁰⁰ With this in mind, it is clear why an amendment would require more of an amendment of the mind than of one in text. Though some amending of text would be required, it would not be that of Article XIV § 1, it would be of Article XIV § 4, as well as all other statutes which mandate the exclusion of the Forest Preserve from the historic preservation laws of the State of New York. The

⁹⁹ Act of June 21, 1983, ch. 351, § 1, 1983 N.Y. Sess. Laws 585, 586 (West).

¹⁰⁰ See *Corridor-H Alternatives v. Slater*, 166 F.3d 368, 370-371 (D.C. Cir. 1999).

reason for this is that if New Yorkers, like the court in *Corridor-H Alternatives*,¹⁰¹ were to view environmental and historic resources in conjunction, therefore no such issue need be addressed. The protection of both environmental and historic resources requires the same effort in conservation; both require the preservation of the area and context around the site. Moreover, the demolition of historic sites within the Forest Preserve, is if anything more invasive than their preservation. So in essence, if we can understand that in fact the preservation of the wilderness and the preservation of historic sites serve the same purpose of greater contextual and conservational values to protect the viewshed as it stands, no amendment would be necessary to the “forever wild” clause as it stands.

If the idea of congruence between the values of environmental and historic resources eludes us, then a simple amendment to the New York State Constitution in Article XIV could be easily drafted. The wording would be similar to that for all of the current amendments to the Article that allowed for its violation for a particular purpose. Perhaps something to the effect of:

Notwithstanding the foregoing provisions and subject to the approval of the tracts and titles to be transferred, nothing shall prevent the state, in order to facilitate the preservation of historic sites on the national and state registers for historic places, from acquiring historic sites and whatever surrounding land is necessary for the preservation of

¹⁰¹ *See id.*

the site therein, within the forest
preserve, for enjoyment by the public.

If such language were adopted, it can be assured that only historic sites of note, those placed on either the national or state Register of Historic Places would be preserved and not just any site which may have some historic value. This amendment would only require as much land as *necessary* to achieve the goal of site preservation, for example, only a half acre tract for the preservation of fire tower.¹⁰² Additionally, it would allow for the property to be transferred to the State, without the necessity of an emergency, so that the State may preserve the property and not have to demolish the historic site, as it presumably has to do otherwise. In this way, the Forest Preserve would be able to stay intact and only what land is necessary for the preservation of *notable* historic sites would be altered, so that they need not be demolished.

The main problem with the proposal of an amendment is that it needs ratification by the voters of the State of New York. Though in 1983, a similar amendment was passed to preserve Great Camp Sagamore, it is not certain that contemporary society cares that much about the preservation of historic sites within the wilderness. For an amendment to be incorporated into the New York State Constitution, the proposal must first be agreed upon twice by a majority of both the State Senate and the State Assembly, then it must be “approve[d] and

¹⁰² *Infra* note 109.

ratified]” by a majority of the electorate.¹⁰³ It is uncertain what the chances of such an amendment would have if taken to a vote, but at least for now it seems that the electorate would be occupied with other more pressing matters.

Another downside to this option is that the wilderness would not be complete. There would be historic sites within the wilderness that a person would come upon while hiking in the wilderness. In considering a structure’s detrimental effect on aesthetics, it is also important to consider the effect of demolishing a building within the wilderness. Surely the demolition of a building requiring either its burning or deconstruction is more invasive than the existence of the structure itself. The argument against this argument is that although it may affect the actual wilderness feeling, the structures themselves are a part of the wilderness.

C. Weaken Article XIV in Various Possible Ways

The obvious benefit of weakening Article XIV is evident in reference to the decision in *Helms v. Reid*, where the court held that the “forever wild” clause did not act as a complete prohibition of the reasonable “use and enjoyment of the areas by the people of the state.”¹⁰⁴ Ergo, the use of the Forest Preserve land for historic preservation would not be in violation of such “reasonable use,” especially considering the activity’s invasiveness is not nearly as bad as

¹⁰³ N.Y. CONST. art XIX, § 1.

¹⁰⁴ *Helms v. Reid*, 90 Misc.2d 583, 596 (1977).

the removal of timber. It merely requires the preservation of a site *in situ*, with nothing more. So long as the reasonableness of an activity is associated with the invasiveness and the amount of timber needed to be removed in the process, historic preservation need not be considered as in conflict with “forever wild.”

The obvious problem with weakening the provisions of Article XIV is that, though the changes may have the pure purpose of historic preservation, the weakening would no doubt serve as a loophole for those who wish to develop within the park. For instance, the court in *Helms* also held that reasonable uses, including the cutting of some timber, were not violative of the intent of the “forever wild” clause.¹⁰⁵ However, despite this reasoning, this is in clear contrast to the explicit intent of the clause: “nor shall the timber thereon be sold, removed or destroyed.”¹⁰⁶ It is because of this slippery slope, that currently the Adirondack Park Agency is disregarding the “forever wild” clause and allowing for uses completely inconsistent with the intent of keeping the Forest Preserve as wilderness through the Adirondack Park Master Plan. The Master Plan creates other uses for Forest Preserve land other than simply wilderness, because of this, the wilderness aspects of many areas of the Forest Preserve are fleeting. The main objective is the protection of the land as wilderness, that is the predominant use. If it is possible to carve out a caveat for multiple uses in line with this

¹⁰⁵ *Helms*, 90 Misc.2d at 598.

¹⁰⁶ N.Y. CONST. Art. XIV, § 1.

intent, then it is all the better. However, such a caveat should not be to the detriment of the intended purpose, which is what the Adirondack Park Agency's stewardship has done. Its existence has been the most detrimental caveat to the "forever wild" clause, and thanks to its efforts, there may not be a wilderness for future generations.

VII. Forest Preserve Fire Towers: A Case Study on Future Application

A. Adirondack Fire Towers

A current issue concerning historic preservation in the Adirondack Park concerns the fire towers which were strategically placed throughout the park to help spot and respond to fires within the great wilderness. Once an extremely important feature in the protection of the Park, these towers have become obsolete with the development of helicopters and airplanes, which can easily fly over the Park in search of fires. Because of the "forever wild" provision in the State Constitution, the Adirondack Park Agency has interpreted that these structures within the park should either be allowed to deteriorate or be dismantled when no longer necessary. Despite this general interpretation, many local Adirondack residents have shown public support for saving the fire towers for their historic significance.¹⁰⁷ The APA's State Lands Committee decided on the 17th of October, 2010 to

¹⁰⁷ See Mike Lynch, *Fire Towers Are in Flux*, ADIRONDACK DAILY ENTERPRISE, September 18, 2010, <http://www.adirondackdailyenterprise.com/page/content.detail/id/515453.html?nav=5008> (last visited September 23, 2010).

recommend the dismantling of the fire towers on St. Regis and Hurricane Mountain and the land surrounding them to be designated as “primitive land.” This designation would mean that the towers could not be restored and would ultimately have to be removed if they are determined to be unsafe. As APA Deputy Director Jim Connolly stated, “it’s an attempt to balance the concept of wilderness with historic preservation.” According to the State Land Master Plan there is recourse for preserving the towers as historic, with little change needed to the actual plan, simply a mere reclassification of the area as historic.¹⁰⁸ Many alternatives to the proposed plan by the APA exist, including funding by local residents to restore the fire towers, or removal of the fire towers for display in local towns. However, as of now they are regarded as inconsistent with the State Land Master Plan by the DEC.

On October 14, 2010, at a public hearing, the APA’s Board of Commissioners voted to classify the land beneath fire towers on St. Regis and Hurricane mountains as historic.¹⁰⁹ The decision was made just hours after the APA’s State Lands Committee gave the plan the go-ahead and allowed the structures to remain and be restored. Though there were opposition groups displeased with the decision, as being antithetical to the intent of the Forest Preserve to be kept as

¹⁰⁸ See N.Y. EXEC. LAW, art. 27, § 816 (2010).

¹⁰⁹ See Mike Lynch, *Fire Towers Get Historic Designation*, ADIRONDACK DAILY ENTERPRISE, October 15, 2010, <http://www.adirondackdailyenterprise.com/page/content.detail/id/520896/Fire-towers-get-historic-designation--update-.html> (last visited October 26, 2010).

wilderness, one resident summed up the argument in favor of the decision quite nicely, that the fire towers, “were put up in order to protect the Forest Preserve, and now they are a symbol of that effort to protect the Preserve.”¹¹⁰ In essence, that is the argument for historic preservation in the Forest Preserve, that the historic property has had some significance in the creation of the wilderness as it stands today, and therefore has become a part of the wilderness.

B. Catskill Fire Towers

The Catskills have also historically been home to fire towers atop many of their peaks, one of the most prominent of which, and New York State’s highest, is situated atop Hunter Mountain at an elevation of 4,040 feet.¹¹¹ The original Hunter Mountain Fire Tower was built in 1909, using three trees on level ground with an open platform on top, by the state’s Forest, Fish and Game Commission, the predecessor to the DEC.¹¹² The irony is that though the intent was to construct the Tower at the Mountain’s highest point, its original location was not the actual peak of the mountain.¹¹³ Eight years later, in 1917, the facilities were updated and replaced with a more permanent steel 60-foot tower, along with an observer’s cabin, by what was then the Conservation

¹¹⁰ *Id.*

¹¹¹ See The Catskill Center for Conservation and Development, *The Catskills Fire Tower Project: Hunter Mountain Fire Tower*, <http://www.catskillcenter.org/towers/towers.html> (last accessed November 15, 2010).

¹¹² *See id.*

¹¹³ *See id.*

Commission.¹¹⁴ In 1953, the structures were moved a thousand feet along the ridge to its current location at the Mountain's true summit; though the original footings are still visible where the original structure stood.¹¹⁵

Though with the rise of the airplane age the Tower became obsolete for its original purpose, “[one of] the last fire tower[s] staffed in the Catskills,”¹¹⁶ it continued to be utilized by hikers for panoramic views of the region.¹¹⁷ This came to an end in 1989, when the Tower was closed by the State because “the tower and its observers’ cabin ha[d] deteriorated in condition, and were in need of repair.”¹¹⁸

The DEC originally intended to remove the structure to comport the area with “forever wild.”¹¹⁹ But after vigorous lobbying by the local community, the DEC decided that instead of tearing it down, it would match funds raised from the nearby communities to renovate and reopen it, to enhance public historical understanding of the Forest Preserve.¹²⁰ The Tower was further protected when it was added to the

¹¹⁴ *See id.*

¹¹⁵ *See* Martin Podskosch, *FIRE TOWERS OF THE CATSKILLS: THEIR HISTORY AND LORE* 31 (Purple Mountain Press 2000).

¹¹⁶ The Catskill Center for Conservation and Development, *supra* note 109.

¹¹⁷ *See id.*

¹¹⁸ *Id.*

¹¹⁹ Hubert Herring, *Phoenicia Journal; Great Views, and a Peek Into the Past*, N.Y. TIMES, Nov. 5, 2000, <http://query.nytimes.com/gst/fullpage.html?res=9902EEDB1539F936A35752C1A9669C8B63> (last visited Nov. 15, 2010).

¹²⁰ *Id.*

National Historic Lookout Register on July 15, 1995¹²¹ and added to the National Register for Historic Places on May 30, 1997.¹²² Finally, on October 7, 2000, after renovations were completed, the Tower was reopened for the enjoyment of the public.¹²³

VII. Conclusion

In conclusion, from the analysis of this paper stands it is clear that there can be no comprehensive plan to protect the Forest Preserve and historic resources under the New York State Constitution, unless there is a shift in thought. The State of New York has a responsibility in keeping the Forest Preserve “forever wild,” and a responsibility in preserving sites of “historical significance,” both under Article XIV of the State Constitution, though different sections. The only hindrance is the perception of the Legislature and the administrative agencies that the two interests cannot somehow be compatible. Historic resources are always considered alongside environmental resources when issues of conservation and preservation arise, because the two arise from the same interest and work towards the same goal of sustainability. If the State Legislature is willing to pull out the words which exclude those historic structures within the Forest Preserve from the States fiduciary duty to preserve historic resources, no further legislation would be

¹²¹ National Historic Lookout Register, *Hunter Mountain Lookout*, http://www.nhlf.org/Lookouts/each_lookout.aspx?which_lookout=131 (last visited Nov. 15, 2010).

¹²² National Park Service, National Register of Historic Places Database: Hunter Mountain Fire Tower, <http://nrhp.focus.nps.gov/natregsearchresult.do?fullresult=true&recordid=0> (last visited Nov. 15, 2010).

¹²³ The Catskill Center for Conservation and Development, *supra* note 111.

required. The State has a duty to preserve both interests and those interests need not conflict if the Legislature realizes that historic structures are part of the environment, they help to create the context of the wilderness and a picture of a time now past and almost forgotten.