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Interpreting Article XIV of the New York Constitution: The Legal Measures That Mandate Sustainable Economic Development and Maintenance of Forever-Wild Forest in the Adirondacks

Chih-Yao Sun

Introduction

The goal of this paper is to emphasize the importance of Article XIV of the New York Constitution, in particular, section 1:

> The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed…[1]

Article XIV is particularly important at this time, especially at the eve of the next regular legislative session commencing January 6th, 2011. Namely, there is a possibility that an amendment will be introduced by the legislature to weaken the protections of the Forever-Wild clause in Article XIV.

The New York Constitution offers two mechanisms to amend the Constitution; first, Section 1 of Article XIX states that if both chambers of the New York legislature agree to the proposed Constitution(s) or constitutional amendment(s), and the proposal is then referred to and approved by the majority of both chambers at the next regular legislative section, the proposal would be submitted to public voters for final approval. If a general statewide-vote approves the amendment by

[1] Constitution of the State of New York, as adopted in 1938, with amendments, McKinney's Consolidated Laws of the State of New York.

a simple majority vote, it becomes a part of the constitution in the coming year.

Second, Section 2 of Article XIX allows the amendment of the Constitution by direct public voters. It mandates that there should be a question of whether a people's convention to amend the Constitution should be held to appear on the ballot every twenty years, beginning 1957. This question will next appear on the 2017 ballot. If the majority of the general voters demands a constitutional convention and subsequently adopts the proposed constitution(s) or constitutional amendment(s), the changes will be written into the Constitution and become effective in the following year.

To support the position that the Forever-Wild clause should remain as is, this paper will reveal the long-ignored economic value provided by the Adirondacks Forest Preserve; it will propose plausible sustainable developments, and it will illustrate why state government has the duty (as such duty is implied in Article XIV in the Constitution and required by state statutes) to promote economic wellbeing in local communities.

For the newly elected governor, economic recession and climate change have brought the issue of preserving the Adirondacks to the forefront. New York State is facing a $9 billion deficit and has recently considered closing one correctional facility located in Moriah, Essex

County in the Adirondacks.[2] Essex County fiercely objected to this proposal because such a closure will cause more jobs to be lost in the already depressed Adirondacks community.[3]

Economic depression in the Adirondacks is one important issue that pressures the legislature to propose a weakening of the Forever Wild clause. This paper sheds light on the economic reasons for maintaining the strength of the Forever Wild Clause in Article XIV. The paper also outlines various sustainable developments that the government may adopt in order to promote the economic well-being of local communities in the Adirondacks.

It is a general misconception that conserving the environment hinders economic development. Despite the area's robust tourist industry, local communities in the park have suffered from unemployment, poverty, and the loss of young people to migration. These socioeconomic problems are partially due to the lack of effective economic policy in the park, and, in particular, to the lack of rigorous state effort in exploring feasible and sustainable developments in Adirondacks. The state government should take an active role in fully utilizing the value of clean water, biodiversity, and the forest carbon sink, it could feasibly generate millions of dollars annually, which could

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[2] Nathan Brown, Governor plans to close 3 more North Country prisons (2nd update), Adirondacks Daily Enterprise, Jan.19, 2010, http://www.adirondackdailyenterprise.com/page/content.detail/id/510781.html?nav=5017

[3] Town Board Meeting, March 22, 2010, Schroon Lake N.Y., http://www.schroon.net/Min%20March%2022%202010.htm

be further spent on developing sustainable industries in the local communities.

The duty to mitigate Adirondacks' socioeconomic problems is embedded in the State Environmental Quality Review Act (SEQRA), in the Environmental Conservation Law (ECL), and in the Adirondacks Park Agency Act (APAA). The legislature was fully aware that a lack of strong economic base in the Adirondacks community increases the difficulty to maintain the integrity of nature mandated by Article XIV. To preserve the environment in the Adirondacks, all three statutes emphasize the importance of harmony between people and nature in protected areas. However, state agencies simply neglect those provisions in the above-mentioned statute.

This paper starts with the current economic and social issues of the Adirondacks community, and suggests ways that government shall help in order to fulfill its legal obligation to all the New York residents.

I. Current Threat to Adirondacks Wilderness

a. An introduction

New York's Adirondack Park is "greater in size than Yellowstone, Everglades, Glacier, and Grand Canyon National Park combined."[4] It is estimated that over seventy million people are within a day's drive of

[4] New York State Adirondack Park Agency, About the Adirondack Park, http://www.apa.state.ny.us/about_park/index.html (last visited Dec. 1, 2010).

the Park. [5]

Adirondack Park was created by the legislature in 1892. Its boundary is known as the Blue Line. The land within the Blue Line is approximately 6 million acres. Sixty percent, or 3.5 million acres, is privately owned. Forty percent, or 2.5 million acres, is owned by the State. [6]

The state-owned land comprises the Forest Preserve and is required, according to Article XIV of the Constitution, to be "forever kept as wild forest lands." The private owned land is subject to stringent land regulation administered by the Adirondack Park Agency. [7] The complex combination of private and state-owned land in the park has ignited intense conflicts in land development and regulation throughout the park's history.

a. Conflicts in Land Use

The Adirondack Park Agency (APA) was created in 1971 with the enactment of Adirondack Park Act to regulate both private and state owned land in the Adirondacks. It was created to enforce the Forever Wild clause in Article XIV. APA developed a comprehensive plan that classified the Park into a dozen subdivisions, according to their

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[5] New York State Adirondack Park Agency, Citizen's Guide to Adirondacks Park Agency Land Use Regulations, 2001, at 3, http://www.apa.state.ny.us/Documents/Guidelines/CitizensGuide.pdf

[6] New York State Adirondack Park Agency, About the Adirondack Park, http://www.apa.state.ny.us/about_park/index.html (last visited Dec. 1, 2010).

[7] Id.

ownership, the degree of human intrusion in each, and to regulate them in general. [8]

The birth of APA reflects a lack of enforcement within the Blue Line, despite the straightforward protection offered in Article XIV. A bill was introduced to the state legislature in the early 1970s that created APA for the purpose of administering and regulating land use in the park. The local community, conservationists, and the State were initially at odds over the bill. For example, opponents of APA's expensive regulatory power perceived the bill to be invalid because it took away significant rights of property owners to control their land, while proponents backed the bill as an adequate exercise of state police power.

Although the bill was approved in 1971, the conflicts between local and state government regarding land use have not ceased. APA left local municipalities minimal authority to directly regulate private land.[9] A rally was recently organized by some local residents to gain support for a class-action lawsuit against the agency. One resident describes the APA as "terrorists", because "They don't use guns. They

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[8] A Political History of the Adirondack Park and Forest Preserve, The Adirondack Park Agency and Beyond, http://www.adirondack-park.net/history/political/apa.html

[9] A Political History of the Adirondack Park and Forest Preserve, The Adirondack Park Agency and Beyond, http://www.adirondack-park.net/history/political/apa.html

don't shoot people, but they run people's lives."[10] The word " terrorists" used by this resident reflects the intense conflicts between the agency and some local communities.

APA's action and regulation in protecting the Park often clashes with the local community because APA strips away the community's power to regulate land. This conflict deepens the mistrust between the government and the local community, and it minimizes the opportunity for local residents to work with the government in achieving a balanced allocation of resources and rights in the Forest Preserve.

b. Poverty in the Region

A transformation from the manufacturing to the tourist industry has played a significant role in causing poverty within the Adirondacks. Adirondack communities are the poorest in New York, with the lowest per-capita income; in another words, the Adirondacks house the highest percentage of people living below the poverty line.[11]

Despite the state government spending millions of dollars each year to in lieu of tax, and despite tourist spending of 1.1 billion [12], poverty permeates the region. The following section discusses the most

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[10] Bob Bennett, Adirondackers rally against APA, Press Republican, Sep. 13, 2010, http://pressrepublican.com/new_today/x600170757/Adirondackers-rally-against-APA

[11] Jon D. Erickson, Sustainable Development and the Adirondack Experience, p. 29, 1998, www.uvm.edu/~jdericks/pubs/AJES.pdf

[12] *Tourism Impact in the Adirondacks, Adirondacks Base Camp, http://www.adirondackbasecamp.com/2008/09/tourism-impact-adirondacks/*

prevalent factors responsible for a depressed the local economy in Adirondacks.

c. Downside of the Tourist industry: low wage and unstable employment

Tourism to local Adirondack communities is as water to fish. Roughly one in six people depends on the tourism industry [13] Despite the economic recession, the 1.1 billion tourist industry has been growing steadily and seasonal jobs that tailor to the tourist industry are more than the local population can support. Tourism has been the engine that drives the local economy; it spurs job growth and creates business opportunities. However, the tourist industry alone has not resolved the unemployment problem and the poverty endemic to the region.

The downside of the tourist industry is that it provides mainly low-wage, temporary employment. As early as 1961, the Federal government declared one of the biggest tourist towns in Essex County as an economically depressed area.[14] Very little appears to have changed in this area, despite the above, seemingly favorable statistics on the tourist-based economy.

c. Loss of Manufacturing Industry

The seasonal unemployment problem is partially caused by the loss of the manufacturing industry in the Park. In October 2008, the

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[13] Id.
[14] Graham, Frank "The Adirondack Park: a political history" (New York, Knopf, 1978) at p. 231.

governments of New York, Maine, New Hampshire and Vermont, and various non-profit organizations and universities, collectively conducted a report called "The Northern Forest Sustainable Economy Initiative" (SEI), which illustrates that the decline of the traditional manufacturing industry plays a major role in the unemployment problem in this northern region, which includes in the Adirondacks.

Until the mid-1970s, employment in the manufacturing industry ranked first in the region, accounting for about 33% of total employment. However, by 2000, the manufacturing sector had lost 35,000 jobs and provided only 15% of total employment. The manufacturing employment decline has been significantly more pronounced in this northern region than in the United States as a whole. [15]

As mentioned above, although the increases in service and retail jobs in the growing tourist industry has off-set declines in manufacturing employment, real earnings per job in the tourist industry are significantly lower than earnings per job in manufacturing industry. [16]

The decline of the manufacturing industry and the rise of the tourist industry have brought several problems in the Adirondacks. First, while the tourist industry helps to decrease the overall unemployment rate, most jobs are seasonal. Accordingly off-season

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[15] *Sustainable Energy Initiative,* A Strategy for Regional Economic Resurgence, p. 12, Oct. 2008, http://www.northernforest.org
[16] Id.

unemployment problem creates a major burden in the local community. Second, the tourist industry provides lower wages and mostly seasonal employment compared to the traditional manufacturing industry.

e. Loss of Labor Force

A lack of a working young adult population, owing to out-migration, also contributes to the socioeconomic problem in the region. Taking the northern forest region as a whole, between 1990 and 2005, the percent of the population aged 20 to 34 declined by 22.2%, as compared to the national average of just 11%. It is apparent that the northern forest region is having difficulties retaining a young, college-educated population.[17]

The lack of a significant population of young adults increases the difficulty in developing sustainable industries, such as sustainable energy, high-tech, agriculture, and public transportation sectors. Moreover, without the existence of such industries, there is little to attract said population from moving into the region. It takes collective efforts, such as between state agencies and the private sector in the local community and elsewhere to keep such a population from moving out and to encourage people not originally from the region to move into it for employment.

f. Climate Change's Threat to Tourism

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[17] *Sustainable Energy Initiative,* A Strategy for Regional Economic Resurgence, p. 18, Oct. 2008, http://www.northernforest.org

Climate change plays a substantial role in the Adirondacks' future. Winter sports such as skiing, snowshoeing, ice fishing, and snowmobiling are the major tourist activities that draw sustainable income to the Adirondacks. A study based on hotel occupancy shows that 30 percent of Essex County tourism takes place between December and March.[18]

However, if winters continue to warm, the Adirondacks will lose its tourism base. This potential problem is indicated in a 2005 study conducted by the Regional Office of Sustainable Tourism in Adirondacks. Owing to warm winters, the New York state ice fishing championships on Lake Champlain was cancelled two years in a row because the ice was not thick enough.[19] This resulted in significant economic losses for the towns of Willsboro and Ticonderoga.

Because seasonal unemployment is already a problem, decreases in winter activities will only further devastate the already depressed local economy.

g. Second-Home Development

The privately owned lands comprising 3.5 million acres of the park are home to 130,000 permanent residents in 105 towns and villages; they also host 75,000 seasonal occupants.[20]

Like the tourist industry, second-home development also shows

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[18] Mike Lynch, Climate change could devastate winter tourism, speakers warn, The Adirondack Daily Enterprise, Nov. 13, 2010, http://www.adirondackdailyenterprise.com/page/content.detail/id/521478.html
[19] Id.
[20] Jon D. Erickson, Sustainable Development and the Adirondack Experience

growth in the Adirondacks. The number of second homes as a percentage of total housing units was much higher in 2000 in the northern forest region than in the U.S. as a whole.[21] Second-home development has stimulated local economic growth through construction and renovation projects, thereby attracting new part-time residents, even though the year-round population is declining.

However, increasing second-home development threatens to strain local services, to raise property values and taxes well above affordable levels, and to stretch energy and natural resource supplies to their limits.[22] While this development does create new jobs and economic growth, it also results in land fragmentation and loss of productive capacity from the land. Therefore, development in this sector must be carefully thought through.

II. Misconception of Economic Worth in the Adirondacks Wilderness

This paper aims to shed light on the importance of the Adirondacks from an economic perspective. The goal is to challenge the prevalent belief that preserving the environment would inevitability hinder economic growth. This belief manifests itself especially in the conflict between exploiting and preserving the Park. The Park improves the quality of life for people in New York State because of its fresh air, clean water, and its majestic natural scenery. However,

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[21] *Sustainable Energy Initiative,* A Strategy for Regional Economic Resurgence, p. 18, Oct. 2008, http://www.northernforest.org
[22] Id.

tangible and intangible benefits are easily ignored or taken for granted because the current GDP system does not take eco-services into account when assessing socioeconomic benefits. Ironically, the quality of our life depends significantly on what nature offers.

According to the U.S. Census Bureau of 2010, the world population is projected to grow from six billion in 1999 to nine billion by 2044, an increase of fifty percent within forty-five years.[23] The creators of the GDP system, Simon Kuznets and Richard Stone, designed the economic measures of well-being shortly after the great depression, when the world population barely hit three billion. It is unlikely that they factored in this explosive population growth when designing the GDP model.

In 2008, the impact of the global economic recession and the heightened awareness of climate change gave world leaders a chance to re-consider the sustainability of our current economic model. French President Nicolas Sarkozy formed a panel including two Nobel economists, Joseph E. Stiglitz of Columbia University and Amartya Sen of Harvard University to re-examine the viability of current the GDP model, which they concluded "was insufficient and that measures of sustainability and human well-being should be included."[24]

The new economic measurement they proposed would take

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[23] http://www.census.gov/ipc/www/idb/worldpopgraph.php
[24] David Jolly, G.D.P. Seen as Inadequate Measure of Economic Health, N.Y.Times, Sep. 14, 2009, http://www.nytimes.com/2009/09/15/business/global/15gdp.html

greater account of quality of life and the environment to accurately reflect overall economic well-being; therefore, this model can better prepare us when the next recession wave hits. [25] The founding of this report supports the importance of preserving the environment, especially in the Adirondack context.

Alternatively, while a school of thought has pushed the idea of including quality of life and the environment in the new economic system, another school of thought has helped convert tangible and intangible eco-services into monetary value. If we can fully explore and utilize the monetary value conferred by the Adirondacks, it will further the argument that preserving the Adirondacks does not equate to hindering economic development.

The following section discusses various eco-services conferred by the Adirondacks that could potentially strength the region's economic prosperity and motivate the community to preserve rather than exploit Adirondack resources.

b. Value of Water Service provided by the Adirondacks and Catskills

Water was the main reason that the legislature passed the Forever Wild clause in 2894. New York City drinking water is world-renowned for its quality; the city obtains its water from 19 reservoirs located in the Catskills mountains and the upstate New York

[25] *Joseph E. Stiglitz*, Amartya Sen, Jean-Paul Fitoussi, *Mismeasuring* Our Lives: Why *GDP* Doesn't Add Up, The New Press, (2009).

watershed; [26] together, they provide over 1.2 billion gallons per day of high-quality drinking water to more than eight million city residents and to another one million users in four upstate counties. [27] Such water provision provides the foundation of the initial idea that eco-services in the region have a monetary value.

Beginning in 1990s, New York City has been paying for water services provided by rendered by the above region, in particular by the rural Catskill watershed. Using tools such as conservation easements, riparian restoration, and outright land purchase, the city has protected about 35% of the watershed around the Catskill. The cost to date of such protective measures is approximately $1 billion. The estimated cost of building an alternative water provision system, involving water treatment facilities for water obtained from a different, less pure source, ranges between 6 and 8 billion dollars. [28]

The beneficiaries of this conservation approach are the eight million New York City residents.[29] Theoretically, the Catskill region could bargain for a better price for its water service because it has helped New York save billions.

A study conducted by Ecosystem Marketplace calculates and

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[26] The Official Home Page of The NYC Municipal Water Finance http://www.nyc.gov/html/nyw/html/aboutus.html (Last visited Nov. 25, 2010)
[27] Id.
[28] Anthony DePalma, New York's Water Supply May Need Filtering, N.Y.Times, July 20, 2006 http://www.nytimes.com/2006/07/20/nyregion/20water.html?pagewanted=all
[29] New York City, Department of City Planning, http://www.nyc.gov/html/dcp/html/census/popcur.shtml (Last Visited Nov. 25, 2010)

summarizes the use of Payment for Watershed Service across the world connected to the amount of money being transacted.[30] The report shows that the total transaction value from all programs actively engaged in 2008 is estimated at $9.3 billion. Over the entire time span of recorded activity, total transaction value is estimated approximately $50 billion. [31]

The above report reiterates the importance of water and the potential monetary value of water in the Adirondacks and Catskills. I propose that New York City should pay more for water services in order to improve the economic growth and stability of the northern part of the state and to increase the awareness of how important it is to preserve the environment of the Adirondacks and Catskills.

c. Value of the Adirondacks' Biodiversity

The biodiversity market aims to incentivize and compensate landowners who actively protect biodiversity.[32] It forces developers to choose to pay either for the cost to mitigate the impact or to develop somewhere else. It generates capital from developments that take place in the critical and protected ecosystem environment. The United States

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[30] Forest Trends, Ecosystem Market, State of Watershed Payments: An Emerging Market Place, P, 7~11 (June 2010) ,
http://www.foreconinc.com/ecomarket/conservationmarketservices.asp
http://www.ecosystemmarketplace.com/pages/dynamic/resources.library.page.php?page_id=7599&section=water_market&eod=1

[31] Id.

[32] Ecosystem Marketplace, State of Biodiversity Markets, p. 27, 2010
http://www.foreconinc.com/ecomarket/conservationmarketservices.asp
http://www.ecosystemmarketplace.com/pages/dynamic/resources.library.page.php?page_id=7491&section=biodiversity_market&eod=1

has seven active programs that deploy this market mechanism to help save diversity. The national annual payment total ranges from 1.5 to 2.4 billion.[33]

Some biodiversity programs are supported by Federal laws. For example, under the Endangered Species Act (ESA), the U.S. Fish and Wildlife Service provides habitat or species credits in exchange for permanently protecting lands and waters. Land owners can sell these credits to developers who need to compensate for projects that affect the survival of endangered species.[34]

This market also has been developed globally. Research conducted by Ecosystem Marketplace on the global biodiversity market indicates that there are 39 existing biodiversity programs around the world, and another 25 are under development. The global annul market is 1.8 to 2.9 billion, at minimum.[35]

This market mechanism is particular suitable in the Adirondacks because of the area's rich diversity . According to the New York State Environmental Conservation Law, there are a list of State recognized endangered species, which are expected to be found in the Adirondacks.[36] Following the establishment of biodiversity market in

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[33] Id.
[34] Ecosystem Marketplace, State of Biodiversity Markets, p. 12, 2010 http://www.foreconinc.com/ecomarket/conservationmarketservices.asp http://www.ecosystemmarketplace.com/pages/dynamic/resources.library.page.php?page_id=7491&section=biodiversity_market&eod=1
[35] Id.
[36] Department of Environmental Conservation, List of Endangered, Threatened and Special Concern Fish & Wildlife Species of New York State, http://www.dec.ny.gov/animals/7494.html (Last Visited Nov. 27, 2010).

the Federal level, the state should utilize the resources in the Adirondacks and implement a state version of the biodiversity market to help promote the economic prosperity and to incentivize the local community to deter harmful developments.

d.Value of Forest Carbon Sink

Forests sequester and store carbon dioxide in order to mitigate climate change. The main carbon pools in tropical forest ecosystems are the living biomass of trees and understory vegetation, and the dead mass of litter, woody debris and organic soil matter. The carbon stored in the above-ground living biomass is typically the largest pool.[37] When forests are cleared or degraded, their stored carbon is released into the atmosphere as carbon dioxide. Tropical deforestation is estimated to have released 1 to 2 billion tones of carbon per year during the 1990s, roughly fifteen to twenty-five percent of annual global greenhouse gas emissions.[38]

Public concerns for global warming have sparked the development of many initiatives to attempt to decrease carbon dioxide emissions. New York Sate has implemented the Regional Greenhouse Gas Initiative (RGGI) to further the effort to decrease carbon emissions. RGGI is a cooperative effort among ten northeast states. These states aim to reduce 10% of the power sector's carbon dioxide emissions by

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[37] Holly K Gibbs, Sandra Brown, John O Niles and Jonathan A Foley, Monitoring and estimating tropical forest carbon stocks: making REDD a reality, p. 11, Aug. 2007, http://iopscience.iop.org/1748-9326/2/4/045023
[38] Id.

2018.[39]

RGGI is based on the market driven cap-and-trade system. It allows the regional government to issue a number of carbon dioxide emission allowances (credits) on a quarterly basis and it requires fossil fuel-fired electric power plants to auction the allowance.[40]

In March 2010, the states participating in RGGI announced that after the completion of their seventh quarterly auction, the auctions have generated $583 million in proceeds dispensed to state energy programs to date.[41] The proceeds help to fund the development and deployment of clean energy technologies and of energy efficiency programs, which benefit consumers by reducing energy bills and creating jobs.[42]

RGGI is only an initial effort to reduce carbon dioxide emissions. It is foreseeable that New York will take advantage of the largest carbon sink in the northern region, in particular in the Adirondack forest, to offset carbon emissions and to make profits from cap-and-trade. As markets for cap-and-trade further develop, the state government should apply the forest carbon sink function into the current cap-and-trade market more creatively, in order to fully utilize the eco-services offered by the Adirondacks.

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[39] Regional Greenhouse Gas Initiative, http://www.rggi.org/design (Last visited Nov. 28, 2010)
[40] Id.
[41] *Sean Pool, The Proof Is in the Pudding, March 2010,* http://www.americanprogress.org/issues/2010/03/rggi_roadmap.html
[42] *Sean Pool, The Proof Is in the Pudding, March 2010,* http://www.americanprogress.org/issues/2010/03/rggi_roadmap.html

It is self-evident that the eco-services provided by Adirondacks are crucial to the people of New York. If we underestimate the economic benefit produced by the wilderness in the Adirondacks, we will most likely make wrong socio-economic decisions, which would critically endanger the forever-wild forest.

III. Article XIV mandates State and governmental agencies to promote economic activity in the Adirondacks

a. The Birth of the Forever Wild clause

New York State Constitution Article XIV

> Section 1. The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed…

Much of the history that relates to the birth of Adirondacks Park, its forest preserve and Forever Wild clause, center around economic development.

Starting in early 19th century, lumbermen dominated the Adirondacks forest, cutting into the great primal forest.[43] They bought cheap land from the landowners, logged it, and paid taxes to the State to compensate for the clear-cuts left behind. By 1850, there were more than 7,000 sawmills in New York State, making it the largest lumber

[43] Graham, Frank "The Adirondack Park: a political history" P. 15

producing state in the nation.[44] The lumber industry was the earliest economic development to ruthlessly exploit the Adirondacks.

In 1869, William H.H. Murray published a book called "Adventures in the Wilderness." The book promotes the idea that the Adirondacks is a place of refreshment for the body as well as the spirit – especially for people who are affected by disease. His admiration of the Adirondacks drew large numbers of tourists and gave birth to the tourist industry there. At the same time, his condemnation of the ruthless exploitation of the lumber industry furthered the movement to protect the Adirondacks wilderness.[45]

Meanwhile, the destruction of the Adirondacks forest generated a growing fear in the public that the continuing exploitation of the forest would deplete the water in New York's canal system, as well as the amount of water available for downstate cities' drinking water.[46]

In 1871, in a report written by Verplank Colvin illustrated that unlimited exploitation in the forest could worsen the already depleted water resources to the public: *"The Adirondack Wilderness contains the springs which are the sources of our principal rivers, and the feeders of the canals. Each summer the water supply for these rivers and canals is*

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[44] Id.
[45] Id. p.27
[46] A Political History of the Adirondack Park and Forest Preserve, The Adirondack Park Agency and Beyond, http://www.adirondack-park.net/history/political/pre-const.html

lessened, and ***commerce*** *has suffered...The interests of* ***commerce*** *and navigation demand that these forests should be* ***preserved****..."* [47]

Colvin's report connected the previously missing link between nature and the commerce. His passage not only presumptively inspired the words 'forest preserve' in Article XIV but also utilized the importance of nature to commerce so as to motivate the public to protect the Adirondacks. Article XIV was passed because the need to protect the Adirondacks for the purpose of clean drinking water and for the affluent flow of water needed to support commercial activities.[48] It is obvious that, together, the need of clean drinking water and commerce gave birth to Article XIV. It is doubtful that the Forever Wild clause will still be worded so strongly in Article XIV, if one of the needs were absent.

Therefore, a latent massage exists in Article XIV to protect commerce in order to motivate people to better preserve the Adirondacks. State legislature has recognized this and has promoted the importance of commerce/economy in the context of environmental protection in the plain language in three state statutes, which are related to Article XIV: Adirondack Park Agency Act, State Environment Quality Review Act, and Environmental Conservation Law.

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[47] A Political History of the Adirondack Park and Forest Preserve, The Adirondack Park Agency and Beyond, http://www.adirondack-park.net/history/political/pre-const.html

[48] Id.

All three statutes reveal the idea of creating a balance between human use of the area and natural preservation, and all three stress the importance of economic well-being in relation to environmental preservation. The legislature is fully aware that if a law does not serve people's end, it will be ineffective or impossible to enforce it. The following section examines the language in the statutes that serves to facilitate the goal of the Forever Wild clause in Article XIV through promoting the balance between people and nature.

b. Adirondacks Park Agency Act strongly promotes local economic activities

The Constitution gives the power to legislature to enact laws to facilitate the needs of people as a foundation of democracy. State legislature enacts statutes in order to further facilitate the Constitution. New York State legislature enacted the Adirondacks Park Agency Act (the Act) in 1971 to enforce the provisions in Article XIV because without an effective enforcement agency, Article XIV has no teeth when it comes to protecting the park.

State legislature created the Act in order to protect both the Adirondacks and its local communities, as seen in Section 801 of the Adirondacks Park Agency Act:

"The Adirondack park land use and development plan set forth in this article recognizes the complementary **needs of all the people of the state** for the preservation of the park's resources and open space character and of the park's permanent, seasonal and transient populations for **growth and service areas, employment**, **and a**

strong economic base, as well. In support of the essential interdependence of these needs, the plan represents a sensibly **balanced** apportionment of land to each."[49]

The plain language in Section 801 of the Act indicates APA agency's obligation to balance the need of preserving the Park with the need for growth of a strong economic base in order to further facilitate the goal of Article XIV.

e. SEQRA requires all agencies to strengthen economy in the Park

The APA Act applies only to the APA agency. The State Environmental Quality Review Act (SEQRA) applies to all state agencies and their actions. For example, Section 617.1 states:

(b) In adopting SEQR, it was the Legislature's intention that **all agencies** conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.[50]

It further states that:

(d) It was the intention of the Legislature that the protection and enhancement of the environment, human and community resources should be given appropriate weight with **social and economic considerations** in determining public policy, and that those factors be considered together in reaching decisions on proposed activities. Accordingly, it is the intention of this Part that **a suitable balance of social, economic and environmental factors** be

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[49] Section 801, Article 27, New York State Executive Law (Jan. 2001)
[50] Section 617.1, Article 8, Environmental Conservation Law of State of New York, (Jan. 2010).

incorporated into the planning and decision-making processes of state, regional and local agencies. It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.[51]

SEQRA clearly mandates all state agencies to make efforts to create a harmonious environment between human activities and nature; in other words, if prospering local economic activism will create harmony between people and nature, then state agencies are required to promote economic development in the Adirondacks that is consistent with Article XIV – because the statutes must be construed consistently with the state's constitution.

SEQRA applies to all state agencies and requires all state agencies, including the Adirondacks Park Agency, Department of Environmental Conservation, Department of Industry, Department of Public Transportation to do their share in promoting economic well-being within the park, in order to produce the "enjoyable harmony between man and his environment".

f. Environmental Conservation Law requires DEC to promote economy in Adirondacks

The Department of Environmental Conservation is responsible for administering Environmental Conservation Law (ECL). Section 1-0101 of the ECL states:

[51] Id.

"The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared to be the policy of the State of New York to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and **their overall economic and social well being.**" [52]

It further states that:

" It shall further be the policy of the state to foster, promote, create and maintain conditions under which **man and nature can thrive in harmony** with each other, and achieve social, **economic** and technological progress for **present and future generations by**…**promoting patterns of development** and technology which minimize adverse impact on the environment; **Preserving the unique qualities** of special resources such as the **Adirondack** and **Catskill** forest preserves...[53]

Like its counterparts, such as SEQRA and APA Act, ECL also mandates state agency, in this case, the Department of Environmental Protection to create a harmonious environment between people and nature by both preserving the unique qualities of the Adirondacks and promoting economic development.

The best way to promote such balance is to promote sustainable development that motivates local communities to protect the their immediate environment.

IV. How should the State Government help?

a. Local communities play a key role in preserving the Park

[52] Section 1-0101, Environmental Conservation Law of the State of New York, (Jan. 2010)
[53] Id.

A new and creative way to preserve the wilderness has been adopted in Kenya.

In the 1970s, the numbers of black rhino in Kenya dropped from an estimated 20,000 to fewer than 300. After all rescuing approaches had failed, government agencies and conservation organizations turned to private landowners, non-profit organizations and indigenous communities to protect the remaining rhinos.

In 1983, to respond to this crisis, Ian Craig and his partners set aside 5,000 acres of their ranch to track, capture, and relocate the remaining 300 black rhinos in northern Kenya for breeding and safekeeping. This refuge later became Lewa Wile life Conservancy (Lewa).[54]

Today, Lewa supports over 440 species of birds and more than 70 different mammals. Its rhino population has grown steadily, not only restoring local numbers but also reintroducing black rhino in regions where they had long been absent.[55]

The key to Lewa's success was the local community. With limited resources to begin with, Lewa relied on local residents' cooperation to protect black rhinos. Ian Craig set up a slaughterhouse in the community so the tribesmen can fatten and slaughter their cattle and sell the beef at premium prices to the market in Nairobi. In return,

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[54] Lewa Wild Life Conservancy, http://www.lewa.org/all-about-lewa/lewa-history/ (Last visited Nov.29, 2010).
[55] Id.

the tribesmen do the conservation work by protecting wildlife, planting trees, and maintaining water holes for wild animals.[56]

Craig provided employment and alternative livelihoods for the local tribesmen; he also respected and incorporated local people's knowledge and suggestions in a participatory approach to development. By cooperating with the local communities, Lewa cuts back on financial expenditures associated with enforcement, thereby allowing it to run more effectively and to apply funds to further expand the conservancy.

The spirit of cooperation between the state government and the local community seems lacking in the Adirondacks. As mentioned above, the APA often clashes with communities because of APA's goal to protect the integrity of the environment in the Adirondacks. However, conflict should never have existed if the APA were to have abided by the Act, which requires the APA to work with the community to enact policy that both protects the park and promotes the local economy.

The obligation in the above Act applies to all state agencies, which should work with the community and with one another to resolve the related issues of unemployment, loss of a young adult workforce people, and poverty. It is self-evident that by working together, each department can utilize its specialty and the collective resources to develop sustainable industries in the park. A trusting relationship

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[56]*Goma, LAIKIPIA, Selinda and TSWALU,* Horns, claws and the bottom line, The Economist, Sep. 2nd, 2010, http://www.economist.com/node/16941705

between the government and the local community will only make the preservation of the park more efficient and effective.

b. The Government's role in Sustainable Development

The success of the Lewa Wildlife Conservancy shows the importance of engaging the local community to protect the wilderness by providing sustainable alternatives to development. The remaining question is: How does the state government get involved in providing stable employment in sustainable industries, which can attract a younger and more educated population in Adirondacks?

b-1 Smart Growth in Land Use Law

APA developed two comprehensive plans to regulate private and state owned land: the State Land Master Plan, which was to cover use of the lands comprising the Forest Preserve, and the Adirondack Park Land Use and Development Plan, which was to regulate development on private land within the park.[57]

The Adirondacks Park Land Use Development Plan governs approximately 3.5 million acres of privately owned land in the Park. It classifies the Park's private lands into six categories by intended uses and according to their ability to withstand development without significant adverse environmental impacts. [58] These uses are

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[57] A Political History of the Adirondack Park and Forest Preserve, The Adirondack Park Agency and Beyond, http://www.adirondack-park.net/history/political/apa.html
[58] Id. p. 2

industrial, which was the least restrictive; hamlet; moderate intensity use; low intensity use; rural use; and resource management, which was the most restrictive.[59]

While the essence of traditional zoning is to divide the community into different districts by different land uses, smart growth technique allows the government to aggregate development in more cost-effective arrangements, so that is it more cost and energy efficient, more affordable and more environmentally sound.[60]

One of the smart growth land use techniques that APA can adopt is Transfer of Development Rights (TDR). It allows the developers who own land in less sensitive area to buy TDR credits from landowners who own land in more restricted and sensitive areas. Under this approach, APA can help the private owner in more restrictive areas in to generate income and prevent adverse development in that same area.

b-2 Opportunities in Green Market

In June, 2007, Maine LL Bean declined to renew its long-term contract with Verso Paper because LL Bean wants the paper used in its 250 million catalogs it ships each year to be from certified sustainable forestry practices.

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[59] A Political History of the Adirondack Park and Forest Preserve, The Adirondack Park Agency and Beyond, http://www.adirondack-park.net/history/political/apa.html

[60] John Nolon, Patricia E. Salkin, Morton Gitelman, Land Use and Community Development, p. 677, West Group (7th Edition 2007).

The Adirondacks have a great opportunity to be a leader in the popular green market. As mentioned above, there are possibilities in biodiversity market development, and in the cap-and-trade market for sequestering carbon dioxide, and in for the government to further explore. In order to stay in the race as regards the quickly evolving green market, government must respond in kind, by moving the Adirondacks swiftly in the right direction. This will hinge on making new policies and offering grants to incentivize investor and entrepreneurs. Department of Industry ought to help Adirondacks to participate in the lucrative green market.

b-3 Opportunities in Public Transportation

It is estimated that over seventy million people are within one day's drive of Adirondack Park.[61] The park's only highway, highway 87, has done its part in transporting park visitors throughout the years. However, it is foreseeable that highway 87 would no longer be able to accommodate the increased traffic that would inevitably come in winter time when climate change makes the Adirondack mountains the only remaining ski resort in New York State.[62] Climate change will bring a paradox to Adirondacks tourism; on the one hand, it will diminish winter activities in the park; on the other hand, it will make the Adirondacks the only place in the state for skiing. State agencies, such

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[61]N.Y. STATE ADIRONDACK PARK AGENCY, CITIZEN'S GUIDE TO ADIRONDACK PARK AGENCY LAND USE REGULATIONS, available at http://www.apa.state.ny.us/Documents/Guidelines/CitizensGuide.pdf

[62] Nicholas A. Robinson, Forever Wild: New York's Constitutional Mandate to Enhance the Forest Preserve, p. 29, 2007.

as Department of Transportation (DOT), should take the lead by conducting a study on future transportation needs. In fact, in order to abide by Article XIV, in the case of Adirondacks, DOT should be developing or at least be planning to develop a strategy for the future.

Building public transportation from near-by metropolitan areas can be a resolution to accommodate the foreseeable tourist traffic to the park in keeping with Article XIV. In addition, public transportation will not only reduce vehicle carbon emissions but also help to increase employment opportunities in the park.

b-4 Opportunities in Alternative Energy

The Adirondack economy is sensitive to high costs and to demand for fossil fuels because of its need for heating, power, and transportation. 50-60% of Adirondack households rely primarily on fuel oil compared to the NYS average of just 33.5%.[63]

The Energy Smart Park Initiative estimates that annual per capita residential and commercial energy costs are at approximately $2,000 and rising very rapidly, putting the total annual energy bill for the park at about $260 million. Saving as little as 10% of the energy used in the park would generate about $26 million per year, an amount of money which over time could help build economic strength, encourage energy independence and enhance the quality of life for local

[63] Green Economy & Local Government Strategies, The Adirondack Model: Using Climate Change Solutions to Restore a Rural American Economy, p. 5, Nov. 2008.

communities.[64]

Therefore, the DEC and the New York State Energy Research and Development Authority (NYSERDA) should actively explore the feasibility of developing renewable energy, especially on the development of bio-fuel, given that every year, one million tons of green energy decomposes on the Adirondack forest floor.[65] In 2007, DEC secured a grant of $64,000 for a one-year research project from the U.S. Forest Service to explore the feasibility of converting leftover wood from logging operations into a fuel source.[66] However, three years has passed, and no results have been produced.

New York is known for its progressive approach in developing renewable energy resources, as it adopted an aggressive goal of obtaining 30 percent of its electricity from renewable sources by 2015.[67] To achieve this goal, New York State should fully explore the possibility of woody bio-fuel because this renewable energy will help New York to achieve its 2015 goal, and, most importantly, it will help generate wealth and sustainable energy development in the Adirondacks.

VII. Conclusion

a. Leaving Article XIV the way it is

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[64] The Adirondack Model: Using Climate Change Solutions to Restore a Rural American Economy Working Memorandum Green Economy & Local Government Strategies

[65] Department of Environmental Conservation, Oct. 2007 issue, http://www.dec.ny.gov/environmentdec/38208.html

[66] Id.

[67] http://www.nyserda.org/rps/index.asp (This project is known as the Renewable Portfolio Standard, a policy that seeks to increase the proportion of renewable electricity used by retail customers.)

The legislature that enacted the Forever Wild clause aimed to protect drinking water and commerce. The language of the Forever Wild clause, "[t]he lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands," has offered a perpetual and strong protection that serves the purpose of people of New York State. Any addition or subtraction will only weaken the Article.

In addition, leaving Article XIV at it is will act as an example to resist the pressure from various political and economic forces in government and interest groups in a time when the global recession and climate change have put the Adirondacks in the spot light.

On the other hand, if the voice of the public so strongly supports the Constitutional amendment in order to strength Article XIV, I propose to add the words "to protect present and future generations" at the end of the first sentence of Article XIV, so that it reads: The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands **to protect present and future generations**.

b. Amend the state statues to better facilitate the Forever Wild clause

I believe the best way to further the protection of Adirondack Park is to amend the relating state statutes and to keep the exact wording of Forever Wild clause in Article

XIV. For example, the APA Act should include clear guidelines in order to help the agency actively cooperate with local communities when regulating privately owned lands. SEQRA should include a provision that requires all state agencies to work together in preserving the Adirondacks and in promoting the local economy. An additional provision should be added in ECL that demands DEC to actively seek feasible sustainable developments in the Adirondacks so as to motivate local communities to preserve their immediate environment.