Bibliography of Legal Materials on the Adirondack Park

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0503, Protection of water bodies; permit.

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15-2705 - Jurisdiction of the commissioner and the Adirondack park agency.
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**Environmental Conservation Law Article 24**
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  43-0112 - Stormwater management and stream corridor management.
  43-0113 - Appropriations by municipalities in certain counties.
  43-0115 - Restrictions on use of signs and advertising devices.
  43-0117 - Operation of ferries and certain other boats, barges and vessels restricted.
  43-0119 - Land use restrictions within Lake George park.
  43-0121 - Compliance with sewage disposal requirements.
  43-0123 - Environmental review.
  43-0125 - Regulatory and user fees.

Public Lands Law, Article 2
  §24, Sale or exchange of certain detached parcels of forest preserve lands.

New York Agency Regulations
Adirondack Park Agency
http://www.apa.state.ny.us/Documents/Laws_Regs/RulesRegs200510_2.pdf

Department of Environmental Conservation
http://www.dec.state.ny.us/website/regs/index.html
Chapter I - Fish and Wildlife Parts 1-189
Chapter II - Lands and Forests Parts 190-199
Chapter III- Air Resources Parts 200-317
Chapter IV- Quality Services Parts 320-486
Chapter V - Resource Management Services Parts 500-614
Chapter VI - General Regulations Parts 615-624
Chapter VII - State Aid Parts 625-637
Chapter VIII- Law Enforcement Parts 640-642
Chapter IX - Independent Agencies within the Department Parts 645-648
Chapter X - Division of Water Resources Parts 649-941
New York Case Law

Forest preserve lands
"Wild forest lands," might include lands owned by the state adjoining such "wild forest lands," it does not include other lands located at a distance from any forest. Long Sault Development Co v. Kennedy, State Treasurer People ex rel. Ball (3 Dept. 1913) 158 A.D. 398, 143 N.Y.S. 454, affirmed 212 N.Y. 1, 105 N.E. 849, error dismissed 37 S.Ct. 79, 242 U.S. 272, 61 L.Ed. 294.

Lease, sale or exchange of preserve lands

If a stipulation in an action of ejectment attempted to dispose of lands belonging to the forest preserve was prohibited. People v. Witherbee (3 Dept. 1917) 178 A.D. 368, 164 N.Y.S. 915, reversed 179 A.D. 964, 166 N.Y.S. 1108, affirmed 228 N.Y. 535, 126 N.E. 918.

Agreement to manage ski center was lawful, where the agreement did not constitute the lease, sale, or exchange of lands and pertinent facilities. Slutzky v. Cuomo, 1985, 128 Misc.2d 365, 490 N.Y.S.2d 427.

When title to premises within the forest preserve was once acquired by the people, no act of any officer or agency of the state or no judgment of any court could divest the state of ownership therein. Hazkate Holding Corporation v. People, 1927, 130 Misc. 409, 224 N.Y.S. 22.

Corporate acquisition
Lands which had once become a part of the forest may not be acquired by any corporation, private or public. People v. Adirondack Ry. Co., 1899, 160 N.Y. 225, 54 N.E. 689, affirmed 20 S.Ct. 460, 176 U.S. 335, 44 L.Ed. 492. See, also, Adirondack R. Co. v. Indian River Co., 1898, 27 A.D. 326, 50 N.Y.S. 245.

Timber removal
The Constitution reserves to the people the title to the lands and timber within the forest preserve, and prohibits the legislature and state officers and departments from disposing of them. People v. Santa Clara Lumber Co., 1914, 213 N.Y. 61, 106 N.E. 927. See, also, People v. Kelsey, 1904, 180 N.Y. 24, 72 N.E. 524; People v. Pulver, 1929, 226 A.D. 416, 235 N.Y.S. 655.


A deed to the state in settlement of the action which reserved to defendants the right to enter upon the land and remove certain timber within ten years was not a violation of former section 7 of Article 7. People v. Finch, Pruyn & Co. (3 Dept. 1923) 207 A.D. 76, 202 N.Y.S. 582, affirmed 238 N.Y. 584, 144 N.E. 902.

Trees standing upon the forest preserve were property within the meaning of Penal Law governing larceny. People v. Gaylord (4 Dept. 1910) 139 A.D. 814, 124 N.Y.S. 517.

No fish and game protector and forester, or the chief game protector of the state of New York, has authority to sell timber and logs from the forest preserve and the purchaser would not acquire title that would enable him to maintain an action for conversion. Pashley v. Bennett (3 Dept. 1905) 108 A.D. 102, 95 N.Y.S. 384.

Insubstantial and immaterial cutting of timber-sized trees in state forest preserve was constitutionally authorized in order to facilitate public use of forest preserve, so long as such use was consistent with wild forest lands. Balsam Lake Anglers Club v. Department of Environmental Conservation, 1991, 153 Misc.2d 606, 583 N.Y.S.2d 119, affirmed in part, reversed in part on other grounds 199 A.D.2d 852, 605 N.Y.S.2d 795, appeal withdrawn 83 N.Y.2d 907, 614 N.Y.S.2d 389, 637 N.E.2d 280.

Highways, timber removal
The removal of reasonable amount of growing timber for the construction of a state highway was proper exercise of authority by State Department of Public Works. D'Angelo v. State, 1951, 200 Misc. 657, 106 N.Y.S.2d 350.

Recreational purposes, timber removal
Chapter 417 of the Laws of 1929, which authorized the Conservation Commissioner to construct and maintain a bobsleigh run or slide on state lands in the Forest Preserve in the town of North Elba, and necessitated the removal of a substantial number of trees from the land set was unconstitutional. Adirondacks, Association for Protection of v. MacDonald, 1930, 253 N.Y. 234, 170 N.E. 902.
**Roads and trails, highways**

Construction of new trails in state forest preserve did not violate provision of State Constitution requiring that forest preserve lands be forever kept as wild forest lands by increasing human activity; framers of State Constitution intended not to prevent or hinder public use of forest, but to allow forested areas to revert to their natural or wild state without human interference with natural succession of different types of trees, selective cutting or thinning to improve timber, or harvesting of any mature timber. Balsam Lake Anglers Club v. Department of Environmental Conservation, 1991, 153 Misc.2d 606, 583 N.Y.S.2d 119, affirmed in part, reversed in part on other grounds 199 A.D.2d 852, 605 N.Y.S.2d 795, appeal withdrawn 83 N.Y.2d 907, 614 N.Y.S.2d 389, 637 N.E.2d 280.

**Ski trails**

Agreement to operate ski trails on lands owned by the state which are part of Adirondack Park forest preserve was not a lease of forest preserve lands in violation of article of the Constitution. Slutzky v. Cuomo (3 Dept. 1986) 114 A.D.2d 116, 498 N.Y.S.2d 550, appeal dismissed 68 N.Y.2d 663, 505 N.Y.S.2d 1027, 496 N.E.2d 240.

**Adverse possession**

The lands of the Forest Preserve created by Laws 1885, c. 283, and former section 7 of Article 7 were held by the state in her sovereign capacity in trust for a public purpose and could not be acquired by adverse possession. People v. Baldwin (3 Dept. 1921) 197 A.D. 285, 188 N.Y.S. 542, affirmed 233 N.Y. 672, 135 N.E. 964. See, also, People v. Douglass, 1926, 217 A.D. 328, 216 N.Y.S. 785.

**Eminent domain**

Where the special condemnation proceedings instituted under the Adirondack Park Act of 1897, Laws 1897, c. 220, by the forest preserve board against lands of a private owner within the territory of the Adirondack park, were fully completed by service of the certificate of condemnation on the owner before the Adirondack Railway Company, which had previously filed a map and profile for an extension of its road through the same lands, commenced condemnation proceedings on its part, the land became a part of the forest preserve, and thereupon former section 7 of Article 7 intervened against the railway company. People v. Adirondack Ry. Co., 1899, 160 N.Y. 225, 54 N.E. 689, affirmed 20 S.Ct. 460, 176 U.S. 335, 44 L.Ed. 492.

When state takes property through eminent domain, it takes in fee simple absolute and extinguishes all easements. Thomas Gang, Inc. v. State (3 Dept. 2005) 19 A.D.3d 861, 797 N.Y.S.2d 583.

Owner of land that was inaccessible by motor vehicle was not entitled to easement over state’s lot. Thomas Gang, Inc. v. State (3 Dept. 2005) 19 A.D.3d 861, 797 N.Y.S.2d 583.
Forever wild forest land applied only to the lands of the state "now owned or hereafter acquired," and a regulation of the use of the land after acquisition did not affect either the right of a public service corporation or of the state to acquire it. Ramapo Mountains Water, Power & Service Co. v. Commissioners of Palisades Interstate Park (2 Dept. 1917) 177 A.D. 700, 164 N.Y.S. 430.

A railroad could not acquire the right to operate through the forest preserve, hence, it followed as a fair deduction that the state should not take land for the forest preserve which was already subject to the rights of a railroad. Adirondack Ry. Co. v. Indian River Co. (3 Dept. 1898) 27 A.D. 326, 50 N.Y.S. 245.

**Attorney General Opinions**

**Forest preserve lands**
Forest land in a Forest Preserve county, acquired by the State for the specific uses and purposes of the New York State College of Forestry at Syracuse University, does not become part of the Forest Preserve since it is acquired for uses and purposes wholly inconsistent with its preservation as wild forest. 1957, Op.Atty.Gen. 299.


**Revocable permits**
The Conservation Department may grant a revocable permit to use an abandoned cement mine on forest preserve lands for food storage experiments. 1954, Op.Atty.Gen. 156.

**Timber removal**
Selective cutting of those few scattered trees necessary to maintain trails and to lesson soil compaction, erosion and destruction of vegetation does not violate the "forever wild" provisions of the state constitution, if done in strict conformance with a management plan. Op.Atty.Gen. 86-F3.

The cutting of browse in the forest preserve by the Conservation Department for the purpose of feeding wild deer does not constitute a violation of the constitutional prohibition of the removal or destruction of timber. 1948, Op.Atty.Gen. 159.


The conservation commission had no power to authorize the cutting and removal of living trees to be used in the repair or reconstruction of dams on streams in the forest preserve. 1921, Op.Atty.Gen., 26 St.Dept.Rep. 281.
The prohibition of former section 7 of Article 7 would be presumed to be limited to the exploitation of timber for commercial or manufacturing, and was not intended to prevent such incidental cutting and removal of trees as might be deemed necessary in establishing roads or paths or in promoting the pleasure and convenience of visitors. 1919, Op.Atty.Gen., 21 St.Dept.Rep. 412.


**Fire protection, timber removal**

Trees in the forest preserve destroyed by a hurricane may be removed for the purpose of eliminating the fire hazard created thereby, but sale or other disposition of the salvaged trees cannot be made without legislative authority. See L.1951, c. 6. 1950, Op.Atty.Gen. 154.

It was not only the right but the duty of the Conservation Department to remove dead stubs in the Forest Preserve when they were a menace to safety and life. 1935, Op.Atty.Gen. 308.

Reasonable cutting and removal of timber for the building of a road necessary for the protection of the Forest Preserve from fire was not a violation of former section 7 of Article 7, and might be done when such destruction was not to any material degree. 1933, Op.Atty.Gen. 369.

**Highways**

In the construction of a memorial highway authorized by former section 7 of Article 7 through the Forest Preserve, the construction of toll facilities at one portion of the highway was within the scope of the authorized highway. 1933, Op.Atty.Gen. 382.

Under the provisions of Laws 1924, c. 275, the state commissioner of highways might occupy state-owned lands in the forest preserve for the reconstruction of state and county highways which had been heretofore improved or which might hereafter be designated by law for improvement by the state, without violating former section 7 of Article 7. 1931, Op.Atty.Gen. 142.
Former section 7 of Article 7 did not by implication deprive the legislature of power to authorize the state commission of highways to construct highways on rights of way dedicated for that purpose over forest preserve land by chapter 330 of the Laws of 1908; nor did that section of the Constitution deprive the legislature of power to authorize the use of stone, sand and gravel, to be taken from forest preserve land, in the construction of said highways and the use of land for spoil banks, to the end that the cost of construction might thereby be properly reduced. 1921, Op.Atty.Gen. 130.

Former section 7 of Article 7 was never intended to prevent the state from constructing a needed highway across its own land. Op.Conservation Commission, 1918, 17 St.Dept.Rep. 567.

**Sand and gravel removal, highways**
Taking sand and gravel from land in forest preserve for maintaining State highway within such preserve was permissible provided such taking did not impair the preservation of its character as a "wild forest" area. 1936, Op.Atty.Gen. 251.

The provisions of former section 7 of Article 7 prohibited the Conservation Commission from allowing contractors improving highway routes through parts of the State Forest Preserve, to take rock and stone from said preserve adjacent to said highways for the construction thereof, but as the land within the limits of said highways was not a part of the Forest Preserve, it was not subject to this prohibition. 1920 Op.Atty.Gen., 22 St.Dept.Rep. 689.

**Highways, timber removal**
The Conservation Department may not permit the cutting of 5,000 trees in the forest preserve for the purpose of relocating or reconstructing an existing State highway therein. 1954, Op.Atty.Gen. 157.

Under the provisions of this section, Laws 1921, c. 401, as amended by Laws 1924, c. 275, Laws 1937, c. 488, is ineffective to authorize the State Superintendent of Public Works to occupy a right of way for relocation of highway, if such relocation involves the removal or destruction of a considerable number of trees. 1948, Op.Atty.Gen. 166.

Laws 1924, c. 275 did not confer authority upon the Conservation Department and the State Department of Public Works to construct the Saranac Lake-Raybrook and Lake Placid-Raybrook highways in Essex County over State Forest Preserve land, causing the removal in the former case of approximately four thousand trees and in the latter of about two thousand seven hundred trees. 1933, Op.Atty.Gen. 395.

The state highway department could not, under the limitations contained in former section 7 of Article 7, deviate or change the route of a highway in the forest preserve, if such change necessitated the cutting and removal of any of the standing timber outside of the limits of an old established highway. 1915, Op.Atty.Gen. 190.

**Roads and trails, highways**

Roads constructed or improved through the forest preserve for fire protection purposes do not become highways, but the Conservation Department had authority to grant permits for the temporary use for private purposes of such a road, provided the same would not damage the road, interfere with its use by the Department for the purposes for which it was constructed, or tend to a substantial extent to destroy the wild forest character of the preserve. 1955, Op.Atty.Gen. 185.

A truck trail, constructed by the Conservation Department on forest preserve lands, may not be used by the owners of adjacent private lands for vehicular traffic. 1947, Op.Atty.Gen. 179.

Where the owner of private lands in one of the Forest Preserve counties has heretofore been permitted to use an unimproved tote-road passing over state lands, by the employment thereupon of horse-drawn vehicles, for the purpose of transporting hardwood timber cut by him on his own lands, the Conservation Department may in its discretion permit the improvement by him of such road to the extent of making it usable by motor vehicles throughout the year, under certain conditions. 1947, Op.Atty.Gen. 174.

The Conservation Commissioner had the authority to construct dirt roads or truck trails in the forest preserve for the purpose of aiding and protecting it from fire hazards, but such roads were not public highways and public use thereof was not allowable. 1935, Op.Atty.Gen. 300.

**Ski trails**

This section was intended and must be interpreted to authorize a ski trail development in the fullest sense. 1957, Op.Atty.Gen. 197.

The Conservation Department, under L.1948, c. 468, must confine itself to such study of the proposed ski development in Warren county as may be conducted without clearing, grading and basic improvement, and may not proceed to construct experimental ski trails for the purpose of observing effect of sun and wind thereupon. 1948, Op.Atty.Gen. 169.

Additional legislation is necessary in order to implement the constitutional amendment of 1947, providing authority to construct and maintain ski trails and appurtenances on certain mountains in the forest preserve and to impose charges in connection therewith. 1948, Op.Atty.Gen. 166.
If and when the proposed "ski amendment" to this section is approved at the 1947 general election such trails and appurtenances as are located on forest preserve lands must be constructed by a state agency; it is immaterial whether such construction is auxiliary to a main development now existing on private land; under existing law the Catskill portion of such proposed development may not be so operated that the people are charged a fee for the use thereof; neither the Adirondack nor the Catskill development may be operated by others, except as agents of the state; and it seems that this section after the proposed amendment will not authorize the construction on forest preserve lands of such facilities, if they are intended primarily to supplement or complement essentially private enterprises of the same nature located on adjacent private lands. 1947, Op. Att'y Gen. 171.

The Conservation Commissioner may authorize construction of ski trails in the Forest Preserve with a minimum of timber removal, where such trails will increase the use of said lands for their true purpose without affecting their true natural character. 1934, Op. Att'y Gen. 268.

**Mineral, gas, and oil extraction**
This article prohibits the searching for and the taking of gas and oil within the forest preserve, and the Conservation Department has no power or authority to permit the same. 1954, Op. Att'y Gen. 170.

The Commissioners of Allegany State Park have no present statutory authority to make a lease of state lands in such park under which the lessee would be empowered to withdraw therefrom underlying deposits of oil and gas. 1943, Op. Att'y Gen. 428.

The Conservation Department had no authority to issue a permit for the mining of gold on forest preserve land, and the fact that no trees would be cut or destroyed did not alter the situation. 1934, Op. Att'y Gen. 282.

**Pipe lines**
The laying of a water supply pipe line without removal of timber or in any manner affecting the character of the forest preserve as "wild forest land" was permissible. 1936, Op. Att'y Gen. 251.

The Department of Conservation had power to grant revocable permission for the laying and maintenance of a gas pipe line across certain state owned lands under its control. 1936, Op. Att'y Gen. 248.

There was no power in conservation commission to authorize the laying of a pipe across forest preserve land for piping water. 1925, Op. Att'y Gen., 35 St. Dept. Rep. 353.
Power and telephone lines
Where permission for the occupation and use of forest preserve lands adjoining an old highway has been granted by the Conservation Department to the Department of Public Works without transfer of jurisdiction, consent of both departments is required for the construction and maintenance of electric power transmission line thereon. 1950, Op.Atty.Gen. 153.

Where the construction of an additional transmission line along a public highway which would entail the present removal from Forest Preserve lands of approximately ninety trees within a distance of approximately two miles, the trimming of many other trees and additional removals in the future, a revocable permit for such construction will be denied. 1950, Op.Atty.Gen. 149.

The Conservation Department may grant a revocable permit for the erection and maintenance of an electric power line and a telephone line crossing forest preserve lands, if it determines that the wild forest character of the forest preserve will not be thereby impaired. 1949, Op.Atty.Gen. 132.

The State Conservation Commissioner has authority to grant a revocable permit for the installation of an aerial or an underground electric transmission line across forest preserve lands used as a public camp site if upon a survey of the physical situation it appears that the installation would not impair the character of wilderness of the forest preserve. 1945, Op.Atty.Gen. 168.

Camps and campsites
The authority of Conservation Commissioner to grant permits for temporary use of forest preserve 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. 1941, Op.Atty.Gen. 280.

There is no bar in this section to the exaction of a reasonable fee for the use of the public campsites in the forest preserve. 1940, Op.Atty.Gen. 315.

Land 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. 1940, Op.Atty.Gen. 313.

The maintenance of CCC camps in the Forest Preserve, of a temporary character and with no destruction of trees or lands, when necessary for the protection of the forests, was not a violation of former section 7 of Article 7. 1935, Op.Atty.Gen. 325.
The 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 constitutionality. 1934, Op.Atty.Gen. 279.

**Easements**
An essential element of a right of way by necessity is unity of title between the dominant and servient estates, so that the mere fact that a privately-owned parcel of land is enclosed on three of its four sides by forest preserve land does not necessarily mean that there exists a right of way by necessity over the State-owned land. 1955, Op.Atty.Gen. 185.

The Conservation Department has authority to grant right of way occupation over forest preserve lands to the Department of Public Works. 1946, Op.Atty.Gen. 175.

Where first easement to Adirondack Mountain Club failed because club neglected to improve right of way into a roadway, with the fee passing to the state in grant for forest preserve prior to expiration of period in which condition subsequent could be performed, and the right of re-entry being established by the state because of special facts, the state could not impose a second easement on the land because of limitations of this section. 1941, Op.Atty.Gen. 280.

**Residence within preserve**
A right reserved by the state's grantor of forest preserve lands to maintain, use, control and operate a dam at the outlet of a lake on the lands conveyed and to enter upon such lands for the purpose of constructing, repairing, maintaining and operating the dam does not entitle the gate tender of the dam to live upon the lands conveyed or to cut fire wood thereon or cultivate a portion thereof. 1949, Op.Atty.Gen. 128.

**Top soil**
Authority to remove top soil and trees from open field to another portion of Forest Preserve may be granted by the Department of Conservation, if such removal does not impair the "wild forest" character. 1937, Op.Atty.Gen. 242.

**Articles**


Books

Adirondack Park Agency


Conferences


**Economics**


Maturi, Donna G. **Current Threats to Open Space in the Adirondack Park: Private Forest Lands and the Real Property Tax.** (Dissertation), 1979.


**General**


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**Historical Documents**


Wagstaff, Thomas H. and New York (State), Legislature, Assembly, Special Committee Appointed to Conduct an Investigation as to What Lands Should be Acquired Within the Forest Preserve, in Order to Protect the Watershed. REPORT OF THE SPECIAL COMMITTEE OF THE ASSEMBLY APPOINTED TO CONDUCT AN INVESTIGATION AS TO WHAT LANDS SHOULD BE ACQUIRED WITHIN THE FOREST PRESERVE, IN ORDER TO PROTECT THE WATERSHED. Albany, NY: Wynkoop Hallenbeck Crawford, 1897.

History


Land Use

Booth, Richard S. DEVELOPING INSTITUTIONS FOR REGIONAL LAND USE PLANNING AND CONTROL: THE ADIRONDACK EXPERIENCE. Ithaca, NY: Dept. of City and Regional Planning in conjunction with the Program in Urban and Regional Studies, Cornell University, 1980.


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Planning


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Recreation


Resources


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Web Sites

Adirondack Council
http://www.adirondackcouncil.org/index.html
Adirondack Park Agency
http://www.apa.state.ny.us/
Adirondack Park Agency Act
http://www.apa.state.ny.us/Documents/Laws_Regs/APAACT.PDF
Adirondack Park Agency Rules & Regulations
http://www.apa.state.ny.us/Documents/Laws_Regs/RulesRegs200510_2.pdf
New York Department of Environmental Conservation
http://www.dec.state.ny.us/
New York Department of Environmental Conservation Administrative Decisions regarding The Adirondack Park Agency
http://www.dec.state.ny.us/website/ohms/decis/indexapa.htm
New York State Legislature – Laws of New York
http://public.leginfo.state.ny.us/menugetf.cgi
New York State Register
http://www.dos.state.ny.us/info/register.htm