

# A Survey of Amendments to the New York State Constitution's Forever Wild Clause

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# Property:

- The law considers property to be a bundle of rights; it is defined by the various rights or interests that people have in it. Property is not considered to be the item itself.
- “The bundle of rights can be significant and spread among numerous people”.<sup>1</sup>

# Rights of Homeowners and Others

- Homeowner's rights:
- exclusive right to possess the property unless it is leased to someone else
- to bring a trespass action against a trespasser.
- someone with a life estate has the exclusive right to possession for his or her life, and a third person may have a future interest—the right to possession when the life tenant dies.
  
- Other's rights:
- the bank holding a mortgage:  
prevent waste and the right to take the property or sell it if the owner does not pay the mortgage.
- a creditor who prevails in a lawsuit against a property owner may have the right to have the property sold by a sheriff to obtain the amount of the judgment.
- cities and towns can sell private property to satisfy liens for overdue taxes. <sup>2</sup>

# The Impact of the New York State Constitution On New York State's Forest Preserve

- What are the rights to New York State's Forest Preserve?
- Here, the New York State Constitution controls. The Forest Preserve gained Constitutional protection when the "forever wild" clause was ratified for inclusion into [Article VII, Section 7](#) of the New York State Constitution in 1894. <sup>3</sup>
- This clause was later incorporated into the 1938 Constitution which now stands as the basis of the law of the State of New York. The 1938 Constitution represents a significantly modified version of the 1894 Constitution. The State of New York has adopted five Constitutions: 1777, 1821, 1846, 1894 and 1938. Additionally, three constitutional conventions have been held during the twentieth century; but the work of the 1915 and 1967 conventions was rejected by the electorate. <sup>4</sup>

# “Forever Wild”:

## McKinney's Const. Art. 14, § 1

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#### ARTICLE XIV

#### Conservation

**§1. Forest preserve to be forever kept wild; authorized uses and exceptions.**

**[Forest preserve to be forever kept wild; authorized uses and exceptions]**

**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....<sup>5</sup>**

*Therefore, a Constitutional amendment is required to complete projects such as establishing a cemetery, widening a ski trail and improving a roadway which have taken place on Forest Preserve land.*

# Constitutional Amendment Process

- The process to amend the State's Constitution begins with the amendment's introduction by sponsors in both the State Senate and Assembly. The amendment is assigned a bill number and it is forwarded to the appropriate committees in both the Senate and Assembly. The proposed amendment is also referred to the New York State Attorney General. The Attorney General prepares a written advisory opinion (within twenty days) to the Assembly and the Senate; this opinion outlines the effect the amendment will have on the state's Constitution. The Attorney General's opinion is a guide for the legislature; one or both houses may consider the amendment for a vote prior to receiving the Attorney General's document.
- Upon leaving the committees, the amendment proceeds to the floor of each house for a vote where identical versions of the amendment must pass. An amendment takes a different route than a regular piece of legislation, where upon the amendment's passing it is referred to the next regular two-year legislative session which follows each of the general election of the members of the Legislature. The amendment does not go to the Governor. The amendment, when passed again by the new Legislature, is then put on the ballot for a statewide voter referendum. If the amendment is approved by the voters, it is then incorporated into the NYS Constitution. The amendment often returns to the Legislature who then passes legislation to design the way in which the amendment will be implemented; such as requiring further environmental or procedural controls related to the project. <sup>6</sup>

# Amendments: a Survey of Ratified and Defeated Proposals

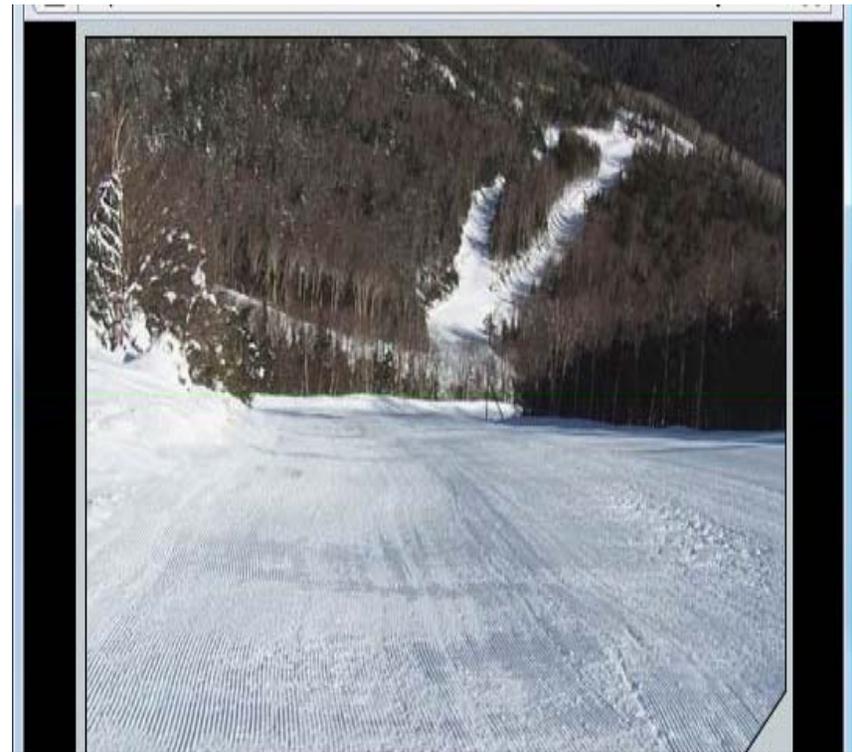


- A very early effort in 1895 involved a proposal for the sale and exchange of Forest Preserve land which would also permit for the lease of individual five-acre sites for private camps. This proposal had the support of the legislatures in 1895 and 1896. However, it was defeated by the voters by a 2-1 margin when it was put on the ballot. <sup>7</sup>

Photo by Colleen Kehoe-Robinson

# Whiteface Mountain Amendments

- In 1927, the amendment to build the Whiteface Memorial Highway was approved. Fourteen years later, in 1941, an amendment to construct ski slopes on Whiteface Mountain was passed (by a margin of only 10,000 votes!) While supporting the 1941 amendment, the New York State Department of Environmental Conservation purportedly said that since Whiteface had already been ruined by the highway, what more could a ski slope do? <sup>7</sup>

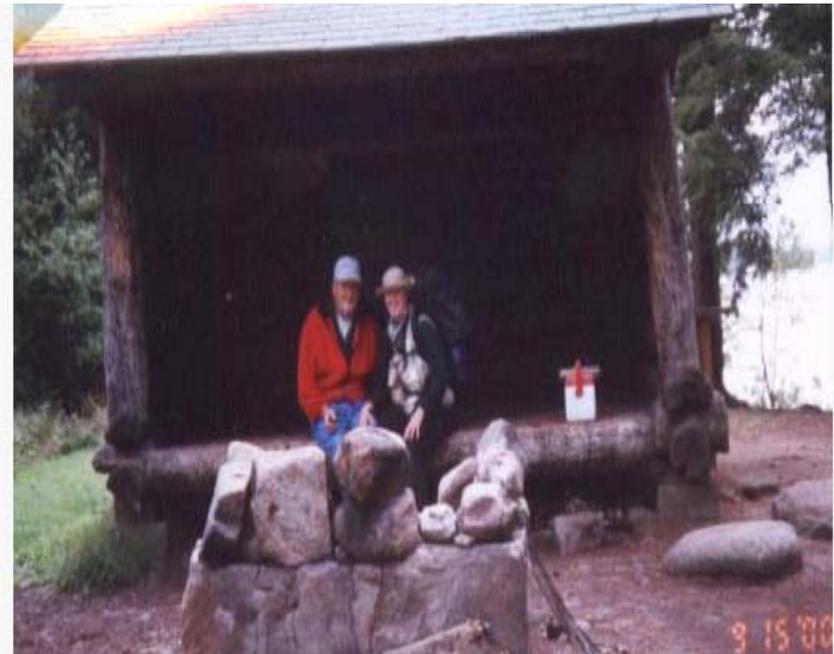


•Photo source:

[http://www.whiteface.com/newsite/multimedia/slideshows/0506season/early\\_march/slideshow.html](http://www.whiteface.com/newsite/multimedia/slideshows/0506season/early_march/slideshow.html)

# Closed-Cabin Amendment

- When placed on the ballot in 1932, New York's voters voted against the "Closed-Cabin amendment" which was a proposed amendment to permit the State to clear Forest Preserve land in order to construct a variety buildings. These buildings would be used primarily for recreation, and would be comprised of ski lodges, warming huts and anything else that was deemed appropriate. The proposal was defeated by a 2-1 margin by New York's voters, noteworthy for the efforts put forth by Adirondack preservation advocate John Apperson and the Association for the Preservation of the Adirondacks. <sup>7</sup>



# Skiing in the Catskills and the Adirondacks

- In Nov. 1947, another amendment ratified by New York State voters enabled the state to construct and maintain twenty miles of ski trails . These trails were to be twenty to eighty feet wide on the slopes of Belleayre Mountain in Ulster and Delaware counties. Additionally, thirty miles of ski trails would be constructed and maintained on the slopes of Gore, South and Pete Gay Mountains in Warren county.

Forty years later, on Nov. 3, 1987, another amendment permitted ski trails on Whiteface Mountain “to be increased from 20 to 25 miles and from 80 feet wide to 200 feet wide, provided that no more than 5 miles of trails be more than 120 feet wide; permitted ski trails on Belleayre Mountain to be increased from 20 to 25 miles and from 80 to 200 feet wide, provided no more than 2 miles of trails be more than 120 feet wide; and permitted ski trails on Gore and Pete Gay Mountains be increased from 30 to 40 miles and from 80 to 200 feet wide, provided no more than 8 miles of trails be more than 120 feet wide; and deleted reference to South Mountain in Warren County.<sup>5</sup>



# The Burd Amendment and its Consequences

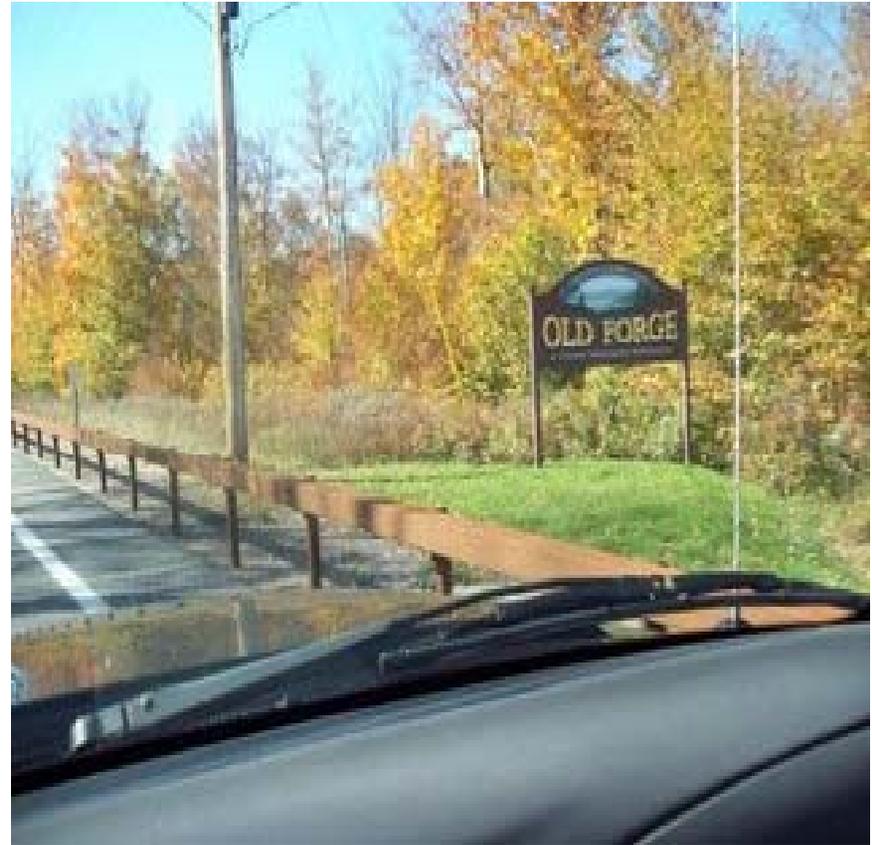
- The Burd Amendment was passed by New York State voters in 1913. This amendment permitted the flooding of 3% of the Forest Preserve for the purpose of creating reservoirs. Towards the mid 1940's the repercussions of this amendment were starting to be seen. Two very controversial projects involving dams (one at Higley Mountain, and the other at Panther Mountain, both on the South Branch of the Moose River) were protested by the Adirondack Moose River Committee which was formed to fight the dams. The group increased awareness and opposition to the plans among sportsmen's groups and the general public and the projects were dropped. In 1951, the Ostrander Amendment was introduced. Its purpose was to permanently reverse the Burd Amendment. It stated that no river regulating reservoir could be built on Forest Preserve land. Voters in 1953 passed the amendment. 1954 saw an amendment introduced to specifically allow the Panther Mountain dam to be built. While it passed two successive legislatures, voters defeated the amendment by a 3 to 1 margin.<sup>7</sup>



Photo by Colleen Kehoe-Robinson

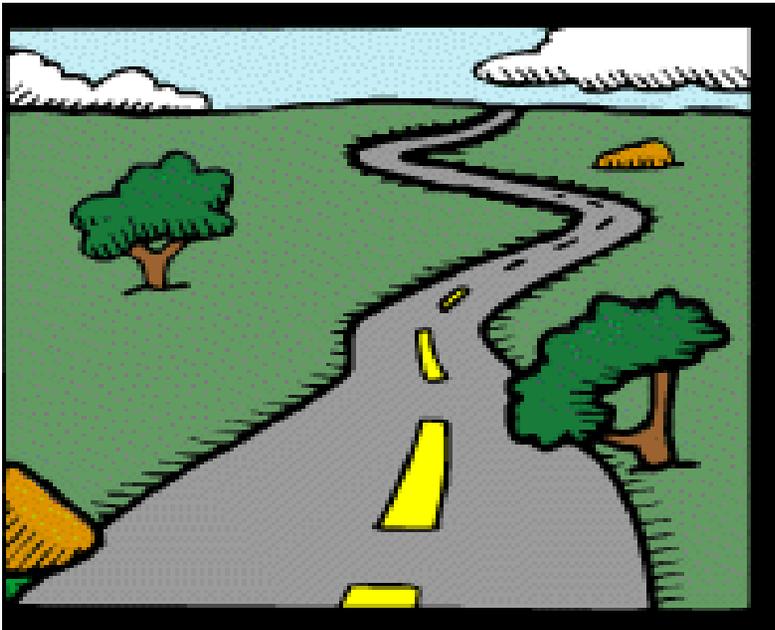
# 1957: Highways in the Forest Preserve

- The passage of the Nov. 5, 1957 amendment enabled the State to address and eliminate dangerous highway curves and grades. This would be accomplished by moving, rebuilding and maintaining no more than fifty miles of existing state highways in the forest preserve. The maximum amount of any single relocated portion of highway was limited to one mile in length, and no more than four hundred acres of forest preserve land would be involved. <sup>5</sup>



•Photo by Colleen Kehoe-Robinson

# The Northway: 1959



- The Northway which runs from Glens Falls to the vicinity of Keeseville and Plattsburgh was the focus of an Amendment passed on Nov. 3, 1959. This amendment allowed for up to three hundred acres of state forest preserve land to be used to create the Northway and enable its maintenance. <sup>5</sup>

# Trading Spaces...

- The village of Saranac Lake and the State of New York were able to exchange land in accordance with an amendment passed in November, 1963. The State conveyed to the village of Saranac Lake for public use, ten acres of forest preserve land that was situated next to the village. The ten acres was allotted for refuse disposal. In exchange for these ten acres, thirty acres of forest land that was owned by the village of Saranac Lake was conveyed by the village to the State. <sup>5</sup>

# Piseco Airport

- The town of Arietta was granted the ability to extend the Piseco airport runway 1965 when voters ratified this amendment. Here, twenty eight acres of forest preserve land was conveyed to the town for the airport 's extension of the runway and landing strip.

The town then conveyed thirty acres to New York State in return. Later, another amendment provided for the town of Arietta to have conveyed from the State of New York fifty acres of forest preserve land within the town for public use; again enabling the extension of the runway and landing strip of the Piseco airport. It also facilitated the maintenance of a clear zone around the runway. In return, the town of Arietta transferred fifty-three acres of true forest land to the State. <sup>5</sup>



# Land Holdings Management: 1979

- To enable the State to more successfully manage its land holdings, this amendment permitted the State to consolidate its land holdings through a conveyance to International Paper Company . Approximately eight thousand five hundred acres of forest preserve land contained in townships two and three of Totten and Crossfield's Purchase and township nine of the Moose River Tract, Hamilton county was transferred to International Paper, while they were to convey approximately the same number of acres of land to the State on the condition that the State Legislature found the exchanged acreage from International Paper Company to be at least equal in value to that conveyed to the Company from New York State. The land obtained from International Paper would then be incorporated into the forest preserve within Hamilton County. <sup>5</sup>

# The Sagamore Institute

- In 1983, New York's voters ratified an amendment that provided for an exchange between the State and the Sagamore Institute Inc., a not-for-profit educational organization. The Sagamore Institute received from the State approximately ten acres of land and buildings adjoining the real property of the Sagamore Institute, Inc. on Sagamore Road, near Racquette Lake Village, in the Town of Long Lake, Hamilton County. This amendment enabled the preservation of historic buildings that are listed on the national register of historic places by putting the historic grouping of buildings under unitary ownership and stewardship of the Sagamore Institute.
- In exchange, the Sagamore Institute, Inc. conveyed to the State two hundred acres of wild forest land located within the Adirondack Park which would then become part of the Forest Preserve. This was done conditionally:
  - the legislature finds the lands to be exchanged by the Sagamore are at least equal in value to the lands and buildings to be conveyed to the Sagamore by the State
  - the natural and historic character of the lands and buildings given by the State will be secured by appropriate covenants and restrictions
  - the agreement between the Sagamore Institute, Inc. and the State is adhered to in that the lands and buildings exchanged by the state will reasonably be available for public visits. <sup>5</sup>

# A “Keene” Cemetery...

- In 1995, New Yorkers ratified an amendment for the transfer of land between the town of Keene, Essex County and New York State for the purposes of a public cemetery. The town of Keene received approximately twelve acres of land from the State for the cemetery. In exchange, the State received approximately one hundred forty-four acres of land from the town. This deal included an easement over town-owned land with an adjacent riverbed that would be incorporated into the Forest Preserve so that there would be limitations on the further development of said land. <sup>5</sup>



•Photo by Colleen Kehoe-Robinson

# 2007: Raquette Lake Water Supply

- Most recently, New Yorkers approved an amendment which permitted the State to transfer one acre of Forest Preserve land to the town of Long Lake. The purpose was to enable the hamlet of Raquette Lake to use this land to provide safe drinking water for Raquette Lake. The Raquette Lake reservoir was no longer in compliance with federal health regulations. The added complication of the lack of either municipal or private land upon which wells could be placed led to the need to place wells on Forest Preserve land. The town of Long Lake ,in exchange, conveyed to the State at least twelve acres of land that was of at least equal value that would be added to the Forest Preserve.<sup>8</sup>

# Notes

<sup>1</sup> Brown, Gordon and Scott Myers. Administration of Wills, Trusts and Estates. Clifton Park, NY : Delmar/Cengage, 2009.

<sup>2</sup> Brown, Gordon. Administration of Wills, Trusts and Estates. Clifton Park, NY : Thomson/Delmar Learning, 2003.

<sup>3</sup> Smith, Greg. (2000, April 12). *New York State's Adirondack Mountains*. Retrieved October 7, 2008 from <http://www.adirondack-park.net/>

<sup>4</sup> Albany Law School. (2008). *Materials on the New York State Constitution in the Schaffer Law Library*. Retrieved October 5, 2008 from [http://www.albanylaw.edu/sub.php?navigation\\_id=840](http://www.albanylaw.edu/sub.php?navigation_id=840)

<sup>5</sup> McKinney's Const. Art. 14, § 1

<sup>6</sup> Adirondack Council. (2008). *Constitutional Amendments*. Retrieved October 11, 2008 from <http://www.adirondackcouncil.org/constamendments2.html>

<sup>7</sup> Smith, Greg. (2000, April 12). *A Political History of the Adirondack Park and Forest Preserve: Threats to Forever Wild*. Retrieved October 11, 2008 from <http://www.adirondack-park.net/history/political/threats.html>

<sup>8</sup> Adirondack Council. (2007).. *Raquette Lake Well Usage Approved By State Voters* Retrieved October 20, 2008 from <http://www.adirondackcouncil.org/Raquette%20Lake%20well%20usage%20approved%20by%20state%20voters.pdf>