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Confronting Climate Change: Lessons from the Adirondacks

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The heavy pressures modern society imposes on land resources contribute significantly to the rising threats presented by climate change. Experts tell us that implementation of wise land use control measures can ameliorate the effects of climate change on our communities and, by protecting natural landscapes, help sequester gaseous emissions that exacerbate climate instability. This Article summarizes lessons derived from New York State's more than fifty years of experience in protecting the land resources of the Adirondack Park. These lessons may well prove important as the nation struggles to find effective measures that help offset the increasingly evident problems that climate change is already creating and is likely to raise to far higher levels of concern.

I. LAND USE PLANNING AND CLIMATE CHANGE

Numerous experts have long emphasized the clear connection between sound land use planning and the challenges generated by climate change. The following statements reflect the breadth and consistency of that consensus:

From the U.S. Environmental Protection Agency (2009):

> Climate change and land-use change are global drivers of environmental change. Impact assessments frequently show that interactions between climate and land-use changes can create serious challenges for aquatic ecosystems, water quality, and air quality. In many cases, it is impossible to determine the impact of climate change without consideration of land use and land cover dynamics. While land use can exacerbate climate impacts, land-use planning, policy, and management can also create important adaptation opportunities to increase the resilience of sensitive socioeconomic or ecological systems.[1]

From the Canadian Government (2012):

> Land use planning is one of the most effective processes to facilitate local adaptation to climate change. . . . Historically, local governments have used land use planning tools—official plans, zoning, development permits and others—to minimize risks to communities from floods, wildfires, landslides and other natural hazards. . . . As the climate changes, so will the frequency and magnitude of climate-related hazards, posing a challenge for community planners. A recent survey by the Canadian Institute of Planners confirmed that "planners gravitate to tools they know best and are looking for ways to adapt known tools when addressing climate change."[2]

From the U.S. National Oceanic and Atmospheric Administration (2017):

> Advocates for an increased emphasis on hazard mitigation in planning acknowledge that climate vulnerability and resilience are related to both how we build and where we build. Land-use policies and practices can have intended as well as unintended effects, and they require clear communications for communities to grasp the implications of specific development decisions.[3]

From the U.S. Department of Housing and Urban Development (2022):

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1. U.S. ENV'T PROT. AGENCY, EPA/600/R-08/076F, LAND-USE SCENARIOS: NATIONAL-SCALE HOUSING-DENSITY SCENARIOS CONSISTENT WITH CLIMATE CHANGE STORYLINES 1 (2009), https://assessments.epa.gov/gcx/document/&deid=203458.

2. GOV'T OF CAN., LAND USE PLANNING TOOLS FOR LOCAL ADAPTATION TO CLIMATE CHANGE 1 (2012), https://publications.gc.ca/collections/collection_2013/rncan-nrcan/M4-106-2012-eng.pdf.

3. *Planning and Land Use*, U.S. CLIMATE RESILIENCE TOOL KIT (2017), https://toolkit.climate.gov/topics/built-environment/planning-and-land-use.

> Land use reforms can reduce climate risks in two distinct ways: mitigation and adaptation. Mitigation focuses on changing practices that increase greenhouse gas emissions to reduce future damage to the environment. Mitigation efforts may involve building at greater density with mixed land uses and having effective transportation networks. Adaptation considers how to reduce the risks households face from current climate conditions, such as by developing and maintaining floodplains to protect populated areas from coastal flooding and providing sufficient green space to reduce the urban heat island effect.[4]

From New York State's Climate Action Council (2022):

> The way we use land, whether for development, conservation, or a mix of uses, directly affects the State's carbon emissions, sequestration, and storage. Smart growth land use patterns reduce transportation-based greenhouse gas (GHG) emissions by reducing automobile use and enhancing accessibility and effectiveness of public transit and pedestrian traffic, thus reducing vehicle miles traveled (VMT); sustainable land use planning and zoning can facilitate optimal siting of renewable energy; and protection of forests, cropland, and wetlands is critical for natural carbon sequestration and improves the resilience of communities. Decisions about where to conserve land, where to develop, and how to arrange and design that development constitute the critical first steps in addressing climate change in land use. These decisions directly impact the ability to achieve carbon mitigation, sequestration, and adaptation and resilience goals.[5]

Many of the discussions about the connection between land use and climate change have concentrated on community-level planning.[6]

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4. U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF POL'Y DEV. & RSCH., *Opportunities to Reduce Climate Risks Through Land Use Regulations*, EVIDENCE MATTERS (Summer 2022), https://archives.huduser.gov/portal/periodicals/em/summer22/highlight2.html.

5. N.Y. STATE CLIMATE ACTION COUNCIL, SCOPING PLAN—FULL REPORT 364 (2022), https://climate.ny.gov/Resources/Scoping-Plan.

6. *See*, *e.g.*, Sarah J. Adams-Schoen, *Sink or Swim: In Search of a Model for Coastal Climate City Resilience*, 40 COLUM. J. ENV'T L. 433 (2015); Sarah J. Adams-Schoen, *Beyond Localism: Harnessing State Adaptation Lawmaking to Facilitate Local Climate Resilience*, 8 MICH. J. ENV'T & ADMIN. L. 185 (2018); Timothy Beatley, *Resiliency to Disasters*, *in* MAKING HEALTHY PLACES: DESIGNING AND BUILDING FOR HEALTH, WELL-BEING, AND SUSTAINABILITY 244, 244-58 (Andrew L. Dannenberg et al. eds., 2011); Ethan Baer et al., *Local Solutions to the Global Crisis: A Guide to Climate-Resilient Development*, 52 ENV'T L. REP. 10,883 (2022); Michael Fine, *Climate Adaptation and the Need for a National Land Use Policy*, 103 B.U. L. REV. 1843 (2023); Marissa Fuentes, *Rising Sea Levels Will Become California's Greatest Land Use*

However, if we are open-minded and candid, we should recognize that achieving broad change through a patchwork of decisions made by individual local governments is difficult at best and very likely impossible. This Article focuses on what a state government can accomplish when it decides to address land use issues on a regional scale.

II. THE ADIRONDACK PARK IN BRIEF

New York State's (NYS) Adirondack Park is one of the country's most significant natural areas. Enlarged substantially since its initial establishment in the 1890s, today the Park contains approximately 6 million acres—i.e., about 9,000 square miles—roughly the size of Vermont. It is by far the largest park in the "lower 48." If pieced together to form one large park, Yellowstone, Glacier, Everglades, and Grand Canyon national parks would all fit inside the area of the Adirondack Park with room to spare. It is also a very different kind of park. More than forty-five percent of it (nearly 2.6 million acres) is owned by NYS. The remainder is mostly privately owned.

Challenge: How the State of California Must Take a Stronger Role in Requiring Local Governments to Adopt Adaptive Land Use Controls in Order to Prevent Economic and Environmental Destruction Resulting from Sea Level Rise, 44 U.C. DAVIS L. REV. ONLINE 85 (2020); Susannah E. Gill et al., *Adapting Cities for Climate Change: The Role of the Green Infrastructure*, *in* PLANNING FOR CLIMATE CHANGE: STRATEGIES FOR MITIGATION AND ADAPTATION FOR SPATIAL PLANNERS 195, 195-205 (Matthias Ruth ed., 2009) [hereinafter PLANNING FOR CLIMATE CHANGE]; Shelby D. Green, *Zoning Neighborhoods for Resilience: Drivers, Tools and Impacts*, 28 FORDHAM ENV'T L. REV. 41 (2016); Note, *State Preemption of Local Zoning Laws as Intersectional Climate Policy*, 135 HARV. L. REV. 1592 (2022); Elisabeth M. Hamin & Nicole Gurran, *Urban Form and Climate Change*, *in* PLANNING FOR CLIMATE CHANGE, at 332, 332-39; Alice Kaswan, *Climate Change Adaptation and Land Use: Exploring the Federal Role*, 47 J. MARSHALL L. REV. 509 (2013); Alice Kaswan, *Climate Adaptation and Land Use Governance: The Vertical Axis*, 39 COLUM. J. ENV'T L. 390 (2014); JOHN R. NOLON & PATRICIA E. SALKIN, CLIMATE CHANGE AND SUSTAINABILITY LAW IN A NUTSHELL (2011) 26-30, 40-48, 81-84, 171-90, 344-86, 391-424 (2011); John R. Nolon, *Managing Climate Change Through Biological Sequestration: Open Space Law Redux*, 31 STAN. Env't L.J. 195 (2012); John R. Nolon, *An Environmental Understanding of the Local Land Use System*, 45 ENV'T L. REP. 10,215 (2015); Jessica Owley et al., *Climate Challenges for Land Conservation: Rethinking Conservation Easements, Strategies, and Tools*, 95 DENV. L. REV. 727 (2018); David Rouse & Ignacio Bunster-Ossa, *Landscape Planning, Design, and Green Infrastructure*, *in* PLANNING FOR CLIMATE CHANGE, at 173, 173-83; Christopher Serkin & Kelsea Best, *Growth ≠ Density: Zoning Regulation and the Enduring Problem of Sprawl*, 50 PEPP. L. REV. 557 (2023); Christopher Serkin, *Climate Zoning*, 99 NOTRE DAME L. REV. 1093 (2024); Katherine C. Skinner, *Confronting Coastal Flood Risks Due to Climate Change in Portland, Maine*, 26 OCEAN & COASTAL L.J. 155 (2021); STEPHEN M. WHEELER, PLANNING FOR SUSTAINABILITY: CREATING LIVABLE, EQUITABLE, AND ECOLOGICAL COMMUNITIES 109-16, 136-62, 184-97, 253-334 (2d ed. 2013).

The state's lands are substantially intermingled with non-state lands. Approximately 120,000 residents live in the Park year-round, and its summer population is far larger. The Park's rugged terrain encompasses numerous small communities; large, forested areas on both state and non-state lands; habitat for a wide diversity of plant and animal species; many mountain peaks; more than 3,000 lakes and ponds; many thousands of acres of wetlands; hundreds of miles of free-flowing rivers; and the headwaters of a number of significant rivers. Located in the country's fourth most populous state and within a day's drive for many millions of Americans and Canadians, it is a national treasure.[7]

Relevant to the challenges generated by climate change, four major sets of legal mandates now protect the Park's resources. One was established in the nineteenth century: the "forever wild" standard set by Article XIV of the NYS Constitution regarding the Park's state-owned Forest Preserve lands (hereafter Article XIV).[8] Three were established in the 1970s: (1) the Adirondack Park Land Use and Development Plan and its implementing provisions regarding the Park's non-state lands (referred to collectively hereafter as LUDP or the Plan),[9] (2) the Adirondack Park State Land Master Plan (SLMP),[10] and (3) the Wild, Scenic, and

7. *See* N.Y. STATE: ADIRONDACK PARK AGENCY, *About the Adirondack Park*, https://apa.ny.gov/about/park.html (last visited Feb. 23, 2025); N.Y. TEMP. STUDY COMM'N ON THE FUTURE OF THE ADIRONDACK PARK, THE FUTURE OF THE ADIRONDACK PARK 8, 26-32 (1970) [hereinafter TSC REPORT] (highlighting that 626 property owners controlled a large portion of the Park's wild, open space lands); *see also* N.Y. COMM'N ON THE ADIRONDACKS IN THE TWENTY-FIRST CENTURY, THE ADIRONDACK PARK IN THE TWENTY-FIRST CENTURY 8-15, 45-49 (1990) [hereinafter 21ST CENTURY COMM'N REPORT]; Charles Canham, *Upland Forests in the Adirondacks*, *in* THE GREAT EXPERIMENT IN CONSERVATION: VOICES FROM THE ADIRONDACK PARK 60, 60-70 (William F. Porter et al. eds., 2009) [hereinafter GREAT EXPERIMENT]; Chris Cirmo, *The Unique Adirondack Aquascape*, *in* GREAT EXPERIMENT, at 33, 33-44; BRAD EDMONDSON, A WILD IDEA: HOW THE ENVIRONMENTAL MOVEMENT TAMED THE ADIRONDACKS 9-12 (2021) [hereinafter EDMONDSON]; RICHARD A. LIROFF & G. GORDON DAVIS, PROTECTING OPEN SPACE: LAND USE CONTROL IN THE ADIRONDACK PARK 2-10 (1981) [hereinafter Liroff & Davis]; James McLelland & Bruce Selleck, *Mining in the Adirondacks*, *in* GREAT EXPERIMENT, at 96, 96-101; BERNARD C. MELEWSKI, INSIDE THE GREEN LOBBY: THE FIGHT TO SAVE THE ADIRONDACK PARK 3-4 (2021) [hereinafter MELEWSKI]; William F. Porter, *Introduction*, *in* GREAT EXPERIMENT, at 5, 5-14; PAUL SCHNEIDER, THE ADIRONDACKS: A HISTORY OF AMERICA'S FIRST WILDERNESS 4-10 (1997) [hereinafter Schneider].

8. N.Y. Const. art. XIV, § 1. Note that Article XIV also applies to Forest Preserve lands in the Catskills.

9. Adirondack Park Agency Act, N.Y. EXEC. LAW art. 27 (2014) [hereinafter APA Act].

10. N.Y. ADIRONDACK PARK AGENCY, ADIRONDACK PARK STATE LAND MASTER PLAN (2019), https://apa.ny.gov/files/laws/APSLMP.pdf [hereinafter SLMP]; APA Act, *supra* note 9, § 816.

Recreational Rivers System Act (WSRA).[11] That statute applies statewide, but the Park contains the vast majority of the river segments it protects.[12] A host of agency regulations supplement these mandates: i.e., Adirondack Park Agency (APA or Agency) regulations regarding the LUDP and the WSRA;[13] and NYS Department of Environmental Conservation (DEC, the state's primary environmental protection agency) regulations regarding Article XIV, the SLMP, and the WSRA.[14]

A fifth, non-regulatory initiative has also been important. NYS's conservation easement statute, initially adopted in 1983, has substantially enhanced the state's efforts to protect the Park's resources.[15] Like WSRA it also applies statewide, but most of the lands it covers lie within the Park. DEC regulations supplement that statute.[16]

New York State's accomplishments in protecting the Park have not come easily. Substantial controversy has long been an Adirondack

11. Wild, Scenic and Recreational Rivers System Act, N.Y. ENV'T CONSERV. LAW art. 15, tit. 27 (2014) [hereinafter WSRA].

12. WSRA, *supra* note 11, §§ 15-2713, 15-2714.

13. *See generally* N.Y. COMP. CODES R. & REGS. tit. 9, pts. 570-588, 577, app. Q-6.

14. S*ee generally* N.Y. COMP. CODES R. & REGS. tit. 6, pts. 190, 196 (2021) (referencing Chapters I-X, specifically pts. 190, 196, and Chapter X, Article 1, Part 666). The Freshwater Wetlands Act (FWA), N.Y. ENV'T CONSERV. LAW art. 24 (2014), also applies statewide, supplementing other mandates like the APA Act and associated regulations. Although the FWA provides separate wetland definitions for the Park and assigns regulatory authority there to the APA, *see, e.g.*, N.Y. ENV'T CONSERV. LAW §§ 24-0107, 24-0801 to 24-0805 (2014), its protections largely overlap with existing APA regulations, except for certain state agency projects. *See* N.Y. EXEC. LAW §§ 802(68), 810(1) (defining relevant terms and outlining APA land use controls); N.Y. COMP. CODES R. & REGS. tit. 6, Pt. 663 (2021); N.Y. COMP. CODES R. & REGS. tit. 9, pt. 578 (APA regulations implementing FWA and APA Act requirements for wetlands). Additionally, two more recent state initiatives are relevant: (1) the Climate Leadership and Community Protection Act (CLCPA), setting greenhouse gas emission reduction goals (*see* 2019 N.Y. LAWS CH. 106 (§ 1 amending ENV'T CONSERV. LAW art. 75); N.Y. ENV'T CONSERV. LAW art. 75 (codifying the CLCPA); N.Y. PUB. SERV. LAW § 66-p (2023) (establishing the Renewable Energy Program); N.Y. STATE DEP'T OF ENV'T CONSERV., *Climate Change Statutes, Regulations, and Policies*, https://dec.ny.gov/environmental-protection/climate-change/statutes-regulations-policies; *see also* N.Y. STATE CLIMATE ACTION COUNCIL, *supra* note 5), and (2) the state's "thirty by thirty" conservation goal adopted in 2022, *see* N.Y. ENV'T CONSERV. LAW § 9-0113 (establishing the goal to conserve thirty percent of lands and waters by 2030). However, the author considers these latter two initiatives largely aspirational with limited concrete impact on the Adirondack Park currently.

15. N.Y. ENV'T CONSERV. LAW art. 49 (2021).

16. N.Y. COMP. CODES R. & REGS. tit. 6, pt. 592; N.Y. State Dep't of Env't Conserv., *Conservation Easements*, https://dec.ny.gov/nature/forests-trees/conservation-easements; SLMP, *supra* note 10, app. II, at 135-36; E-mail from Richard Booth to N.Y. State Dep't of Env't Conserv. & Adirondack Wild (Sept. 6, 2024) (on file with author).

hallmark.[17] For generations the Adirondack economy has been fragile, and making a living there is generally difficult. Many of the Park's permanent residents and possibly all of its local governments wish to see far more development in the Adirondacks. They and others have consistently and strongly criticized many of the state's actions that were designed to protect the Park's resources.[18]

The legal measures the state has adopted to protect the Adirondack environment have been generally successful but admittedly not entirely so. The environmental community has long argued that the LUDP's controls on development of non-state lands and the SLMP's provisions for protecting state land resources were not strong enough when initially adopted in the 1970s. Environmentalists have also frequently argued that the state is improperly implementing the LUDP and/or the SLMP. A major initiative culminating in 1990 to strengthen the legal framework for protecting the Park (and undertaking numerous additional initiatives there) eventually failed due to a lack of political support from Albany's

17. *See generally* 21st Century Comm'n, *supra* note 7; JONATHAN ANZALONE, BATTLES OF THE NORTH COUNTRY: WILDERNESS POLITICS AND RECREATIONAL DEVELOPMENT IN THE ADIRONDACK STATE PARK, 1920-1980, at 105-208 (2018) [hereinafter Anzalone]; EDMONDSON, *supra* note 7, at 1-7, 45-55, 144-268; FRANK GRAHAM JR., THE ADIRONDACK PARK: A POLITICAL HISTORY 126-32, 184-207, 230-63 (1978) [hereinafter Graham]; CATHERINE KNOTT, LIVING WITH THE ADIRONDACK FOREST: LOCAL PERSPECTIVES ON LAND-USE CONFLICTS 13-16, 19-29, 39-41, 50-51, 69-74, 89-90, 153-57, 175-78, 195-205, 216-59, 268-69, 272-74 (1998) [hereinafter Knott]; LIROFF & DAVIS, *supra* note 7, at 14-30, 122-55; BARBARA MCMARTIN, PERSPECTIVES ON THE ADIRONDACKS: A THIRTY YEAR STRUGGLE BY PEOPLE PROTECTING THEIR TREASURE 23-26, 32-53, 58-59, 77-92, 103-61, 171-82, 249-59 (2002) [hereinafter McMartin]; MELEWSKI, *supra* note 7; SCHNEIDER, *supra* note 7, at 219-29, 287-311; PETER SISKIND, ENLIGHTENED SYSTEM OR REGULATORY NIGHTMARE?: NEW YORK'S ADIRONDACK MOUNTAINS AND THE CONFLICTED POLITICS OF ENVIRONMENTAL LAND-USE REFORM DURING THE 1970S (2019) [hereinafter Siskind]; PHILIP G. TERRIE, CONTESTED TERRAIN: A NEW HISTORY OF NATURE AND PEOPLE IN THE ADIRONDACKS 83-133, 159-83 (2d ed. 2008) [hereinafter Terrie].

18. TSC REPORT, *supra* note 7, at 67-70; 21st Century Comm'n, *supra* note 7, at 29-39; ANZALONE, *supra* note 17, at 129-30, 150-52, 163-65, 203-08; EDMONDSON, *supra* note 7, at 141-43, 267-68; Robert Glennon, *A Land Not Saved*, *in* GREAT EXPERIMENT, *supra* note 7, at 265, 269-70 (explaining that in 1977 the State Senate voted to abolish the Agency, but the State Assembly did not support that effort); GRAHAM JR., *supra* note 17, at 231-34, 269-71; KNOTT, *supra* note 17, at 97-106, 110-13, 120-36, 166-81, 188-92, 272-74; LIROFF & DAVIS, *supra* note 7, at 122-24, 138-53, 153-55, 178-81; MCMARTIN, *supra* note 17, at 281-84, 333-35; Porter, *supra* note 7, at 14-18; William F. Porter, *Forestry in the Adirondacks*, *in* GREAT EXPERIMENT, *supra* note 7, at 102-13; William F. Porter & Ross Whaley, *Public and Private Land-Use Regulation of the Adirondack Park*, *in* GREAT EXPERIMENT, *supra* note 7, at 227-42 (William F. Porter et al. eds., 2009); SISKIND, *supra* note 17, at 4, 15-25; TERRIE, *supra* note 17, at 173-76; Tim Rowland, *Economic Disruption that Hit the North Country in the Post-WWII Era Can Still Be Seen Today*, ADIRONDACK EXPLORER (July 22, 2024), https://www.adirondackexplorer.org/stories/rise-and-fall-of-industry-in-the-adirondacks.

leaders.[19] Moreover, the state agencies involved in Adirondack decision-making have frequently made mediocre decisions, and sometimes they have failed to meet that standard by a considerable margin. For example, the APA's 2012 approval of a large resort project near Tupper Lake[20] and recent DEC actions in expanding snowmobile trails in parts of the Forest Preserve generated particularly vociferous criticism and significant litigation.[21]

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19. *See generally* 21st Century Comm'n, *supra* note 7; ANZALONE, *supra* note 17, at 181-96, 203-04; Richard S. Booth, *New York's Adirondack Park Agency*, *in* MANAGING LAND USE CONFLICTS: CASE STUDIES IN SPECIAL AREA MANAGEMENT 167, 168-72, 181-84 (David J. Brower & Daniel S. Carol eds., 1987); EDMONDSON, *supra* note 7, at 264; KNOTT, *supra* note 17, at 158-69, 186, 192; MCMARTIN, *supra* note 17, at 103-84; MELEWSKI, *supra* note 7, at 1-41; SCHNEIDER, *supra* note 7, at 300-01, 305-19; SISKIND, *supra* note 17, at 4-5, 14-15, 15-25, 24-26; TERRIE, *supra* note 17, at 176-78; *see also* MELEWSKI, *supra* note 7, at 37-41 (explaining the political and environmental community's reaction to the failure to implement the 21st Century Commission's recommendations, including a failed proposal to merge the APA into the DEC).

20. Protect the Adirondacks! Inc. v. Adirondack Park Agency, 121 A.D.3d 63 (N.Y. App. Div. 2014), *lv. dismissed*, 24 N.Y.3d 1065 (2014); Press Release, Adirondack Park Agency, Adirondack Park Agency Approves the Adirondack Club and Resort (Jan. 20, 2012); ANZALONE, *supra* note 17, at 1-2, 204; Phil Brown, *APA Approves Tupper Lake Resort*, ADIRONDACK EXPLORER (Jan. 20, 2012), https://www.adirondackexplorer.org/outtakes/apa-approves-tupper-lake-resort; Phil Brown, *Adirondack Club & Resort Wins Court Approval*, ADIRONDACK EXPLORER (July 3, 2014), https://www.adirondackexplorer.org/outtakes/adirondack-club-resort-wins-court-approval; Phil Brown, *Groups Say ACR Permits Expired*, ADIRONDACK EXPLORER (Sept. 10, 2012), https://www.adirondackexplorer.org/outtakes/groups-says-acr-permits-expired; Phil Brown, *Plaintiffs in Tupper Lake Resort Suit Lose Final Appeal,* ADIRONDACK ALMANACK (Dec. 17, 2014), https://www.adirondackalmanack.com/2014/12/opponents-of-tupper-development-lose-final-appeal.html; *Breaking: Tupper Lake Resort Approval Headed to Court; Protect, Sierra Club, Local Landowners Sue APA over Resort*, ADIRONDACK ALMANACK (Mar. 20, 2012), https://www.adirondackalmanack.com/2012/03/breaking-tupper-lake-resort-approval-headed-to-courtprotect-sierra-club-local-landowners-sue-apa-over-resort.html; Kim Dedham, *Tupper Lake Resort Approved 10-1,* PLATTSBURGH PRESS-REPUBLICAN (Jan. 20, 2012), https://www.pressrepublican.com/news/local_news/tupper-lake-resort-approved-10-1/article_99db25cf-7fe3-56d1-8fb9-dbc0082f607a.html; Paul Heintz, *A Massive Tupper Lake Development Gets the Green Light*, SEVEN DAYS (July 16, 2014), https://www.sevendaysvt.com/news/a-massive-tupper-lake-development-gets-the-green-light-2401960; Kim Martineau, *Designing the Park: Updating APA Regulations*, ADIRONDACK ALMANACK (Mar. 11, 2013), https://www.adirondackalmanack.com/2013/03/designing-the-park-updating-apa-regulations.html; Sierra Club Atl. Chapter, *Help Keep the Adirondacks Wild—Stop 6,000 Acre Mega-Resort* (Jan. 31, 2013), https://www.sierraclub.org/atlantic/blog/2013/01/help-keep-adirondacks-wild-stop-6000-acre-mega-resort.

21. Protect the Adirondacks! Inc. v. N.Y. State Dep't of Env't Conserv., 37 N.Y.3d 73 (2021) (explaining the determination that DEC snowmobile trails violated Article XIV of the State Constitution); Peter Bauer, *Why PROTECT Is Going to Court over Connector Trail*, ADIRONDACK ALMANACK (Feb. 25, 2013), https://www.adirondackalmanack.com/2013/02/why-protect-is-going-to-court-over-connector-trail.html; David Gibson, *The Roots of the Conflict over Snowmobile Connectors*, ADIRONDACK ALMANACK (Aug. 26, 2019), https://www.adirondackalmanack.com/2019/08/the-roots-of-the-conflict-over-snowmobile-connectors.html; Georgie Silvarole, *Plan for Snowmobile Trails Through Adirondack Park Ruled Unconstitutional. Here's*

While very real, those limitations and difficulties in fact underscore what New York has actually accomplished in the Adirondacks. For decades it has substantially protected the Park's natural resources. In combination, Article XIV, the SLMP, the LUDP, and the WSRA, supplemented by New York's conservation easement statute, constitute the strongest set of regional-scale land use controls applicable to both public and private lands ever adopted in the United States.

Lastly, a word about nomenclature. The vast majority of the Park's non-state lands are privately owned. However, local governments own some acreage. Public dialogue in the Adirondacks typically refers to private lands and local government lands as "private lands" because the LUDP treats the two types of land in the same way. Wherever the following discussion refers to the Park's "non-state lands," the phrase encompasses both privately owned lands and those owned by local governments.

III. LESSONS NEEDED

Commentary about the threats posed by climate change and about possible measures for confronting this crisis is substantial and growing.[22] However, despite so much discussion, the federal government and state governments have made only marginal progress in recent decades in confronting land use issues as part of broader efforts to deal with the climate change crisis. Taking significant steps to face this crisis is controversial and therefore politically difficult. Taking significant steps in order to protect and manage land resources, particularly privately owned lands, is especially problematic for political leaders.

As already mentioned, NYS has taken a number of major steps to protect Adirondack resources. Compared to what is happening to many other large landscapes across the country, the natural resource qualities so markedly evident across the Adirondacks make clear the magnitude of what the state has achieved. Protection of land resources in other significant NYS regions falls far below the standard the state has set in the Park. Long Island and the Catskill region spring quickly to mind. Presumably there are important regions in many other states (perhaps all)

Why, ROCHESTER DEMOCRAT & CHRON. (May 4, 2021), https://www.democratandchronicle.com/story/news/2021/05/04/ny-court-deems-states-adirondack-snowmobile-plan-unconstitutional/4936977001/.

22. *See supra* notes 1-6. It is important to note that the materials cited in those notes deal primarily with climate change issues in the context of how we use land resources; the entire spectrum of discussions regarding climate change extends far beyond the boundaries of this Article.

where land resources have been poorly protected and managed. As a result, development activities continue to consume a great deal of land across the nation as a whole.[23]

Clearly NYS's government was not thinking about climate change when it decided to protect the Park in the early 1970s. At that time climate issues received either no attention at all, or virtually no attention, from government or the public at large. During that period, however, there was a fairly broad national discussion underway regarding land use issues. Various state governments in addition to NYS were then pursuing important land use initiatives. They included, among others, Vermont, New Jersey, Hawaii, California, and Florida. Moreover, there was also a serious discussion of potential federal land use legislation, a discussion that largely ended after President Richard Nixon resigned from office.[24]

Obviously, the Adirondack Park differs in numerous ways from other regions across the country. As previously noted, a little less than half of it is publicly owned. Furthermore, NYS's very strong constitutional protection of the Park's state lands does not exist in any other state or at the federal level.

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23. U.S. FOREST SERV., *Open Space Conservation: Loss of Open Space*, https://www.fs.usda.gov/openspace/loss_space.html; Leon Kolankiewicz et al., *From Sea to Sprawling Sea: Quantifying the Loss of Open Space in America,* NUMBERSUSA (2022), https://sprawlusa.com/wp-content/uploads/2022/03/NatlSprawl.pdf; Ann Sorensen et al., *Farms Under Threat: The State of the States,* AM. FARMLAND TR. (2020), https://farmlandinfo.org/wp-content/uploads/sites/2/2020/ 05/ AFT_FUT_SAF_2020final.pdf; David Masur et al., *Preserving America's Natural Heritage: Lessons from States' Efforts to Fund Open Space Protection,* ENV'T AM. RSCH. & POL'Y CTR. (2008), https://publicinterestnetwork.org/wp-content/uploads/2011/12/Preserving-Americas-Natural-Heritage.pdf; K. Bozhinova, *Farmland Trust Warns About Vanishing U.S. Farmland*, FOOD TANK (Sept. 2024), https://foodtank.com/news/2018/07/american-farmland-trust-decreasing-farmland/; Leon Kolankiewicz, *America's Wildlands and Open Space Continue to Vanish at Alarming Rates*, REWILDING INST. (Apr. 11, 2022), https://rewilding.org/americas-wildlands-and-open-space-continue-to-vanish-at-alarming-rates/; Zach Levitt & Jess Eng, *Where America's Developed Areas Are Growing: 'Way off into the Horizon'*, WASH. POST (Aug. 11, 2021), https://www.washingtonpost.com/nation/interactive/2021/land-development-urban-growth-maps/; Robbie Sequeria, *EARTH DAY | America's Open Spaces Are Vanishing; NY Has Lost 344 Square Miles Since 2002*, BRONX TIMES (Apr. 22, 2022), https://www.bxtimes.com/americas-open-spaces-vanishing/.

24. FRED BOSSELMAN & DAVID CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROL (1971) (prepared for the Council on Environmental Quality); DAVID J. BROWER & DANIEL S. CAROL (EDS.)., MANAGING LAND USE CONFLICTS: CASE STUDIES IN SPECIAL AREA MANAGEMENT (1987); EDMONDSON, *supra* note 7, at 261-63; ROBERT G. HEALY & JOHN S. ROSENBERG, LAND USE AND THE STATES (2d ed. 1979); SISKIND, *supra* note 17, at 3-4. It is important to note that NYS's major land use efforts in the 1970s also included the Freshwater Wetlands Act, N.Y. ENV'T CONSERV. LAW art. 24 (1984), and the Tidal Wetlands Act, N.Y. ENV'T CONSERV. LAW art. 25 (1984).

Given those differences, as well as the fact NYS was not addressing climate change issues in the 1970s, how can the Adirondack experience be particularly relevant elsewhere? Consideration of two important factors helps answer that question. First, we can be reasonably certain that dealing with land use issues relevant to climate change problems will require making decisions on a far larger scale than the areas encompassed within the boundaries of individual local governments. Second, the essence of land use decision-making in the face of climate change problems will almost certainly require permitting natural systems to function without substantial human interference across large areas.

Both factors have been fundamentally important in shaping what has happened in the Adirondacks over the past half century. Therefore, the lessons flowing from NYS's efforts to protect and manage the Park's resources may well prove very helpful elsewhere. That is particularly so regarding large areas with especially important resource values, including (but not limited to) coastal areas, important river corridors, and areas containing the headwaters of multiple rivers.

The lessons below are divided into two parts. The first reflects broad institutional choices NYS has made regarding the Adirondacks. The second focuses on the particular resource protection mechanisms NYS has created to protect the Park's environment. While additional lessons relevant to the climate change crisis can be drawn from New York's Adirondack experience, these are the most important.

A. Institutional Choices

NYS has made a number of important choices regarding the Adirondack Park that are best labeled "institutional." The lessons highlighted in this section flow from decisions made in the 1970s. They built on earlier state decisions regarding the Park, dating back into the nineteenth century.[25]

1. State Responsibility for Regional Land Use and Natural Resource Management

The state government should assume primary responsibility for dealing with land use issues across a large region that contains important natural resource values. Of the numerous decisions NYS made in the 1970s about the Adirondacks, deciding that the state government would

25. SLMP, *supra* note 10, at 4-6; TSC REPORT, *supra* note 7, at 39-40; GRAHAM JR., *supra* note 17, at 126-32, 150-57; KNOTT, *supra* note 17, at 62-63; LIROFF & DAVIS, *supra* note 7, at 7-10; SCHNEIDER, *supra* note 7, at 220-29, 289-91; TERRIE, *supra* note 17, at 83-127.

become the primary land use decision-maker in the Park was clearly the most important. The Park contains part or all of more than 100 towns and villages. Local governments—i.e., cities, towns, and villages—deal with most land use issues in New York State. (For all practical purposes, New York county governments do not have land use control authority.) In the early 1970s the vast majority of the Park's towns did not have comprehensive land use controls (and many do not have them today). It was clear that Adirondack local governments were not able to adopt and implement land use control measures that could adequately protect the Park's resources. Furthermore, local politics made it virtually impossible for many Adirondack towns to adopt zoning ordinances and other controls that would adequately protect the environment. Moreover, confronting a huge landscape with very little land use regulation, developers then contemplated several very large vacation home projects in the Adirondacks.[26] If the Adirondack Park were to be protected, the state would have to act, and it did so.[27]

2. State Regulatory Authority over Non-State Lands

The state government should use regulatory authority as the primary method of controlling the use of non-state lands across the region. Both the LUDP and the WSRA rely heavily on the state's authority to control development of non-state lands—again, most of those lands are privately owned. Some non-regulatory measures have also been important to the Park's protection, including land purchases to enlarge the Forest Preserve and the state's acquisition of conservation easements.[28] However, the state's approach for dealing with problems created by land development on the Park's non-state lands has been largely regulatory.

As do all other American states, NYS has very broad police power authority, i.e., authority to do whatever is necessary to protect the public health, safety, morals, and general welfare. This broad power underlies all land use regulations adopted by state and local governments across the

26. N.Y. EXEC. LAW § 801 (2014); *see also* Wambat Realty Corp. v. State, 41 N.Y.2d 490 (1977) (upholding the APA Act against a home rule challenge involving a large project in the Town of Black Brook); TSC REPORT, *supra* note 7, at 26-32; ANZALONE, *supra* note 17, at 135-70; GRAHAM JR., *supra* note 17, at 248-49; LIROFF & DAVIS, *supra* note 7, at 24-26, 113-16, 168-70; MCMARTIN, *supra* note 17, at 28-35; MELEWSKI, *supra* note 7, at 4, 13, 32; SCHNEIDER, *supra* note 7, at 299; SISKIND, *supra* note 17, at 2, 11-12; TERRIE, *supra* note 17, *at* 167-70.

27. TSC REPORT, *supra* note 7, at 25-32; 1971 N.Y. LAWS 1853 (providing for the establishment and funding of the Temporary Study Commission).

28. MCMARTIN, *supra* note 17, at 215-20; MELEWSKI, *supra* note 7, at 68-95; *see infra* text accompanying notes 99-105.

country. Provided the exercise of that power remains within constitutional limits, governmental authority to control the use of private land is broad and deep.[29]

Two major considerations justify the state's heavy reliance on the use of regulations to control the use of non-state lands within the Park. First, state-adopted regulatory controls could be put in place relatively quickly. As a highly influential 1970 report prepared by the Temporary Study Commission on the Future of the Adirondacks made clear, delaying the imposition of land use controls would have led to significant damage to the Park's resources.[30] Second, the state does not have to pay landowners for the limits it places on private property as long as its regulations do not effect an unconstitutional "taking" of private property rights.[31] The controls NYS has imposed on the Park's private lands appear to fit well within the limits imposed by the federal and state constitutions regarding permissible limitations on landowners' property rights.[32] Possibly several property owners in the Park will eventually win "taking"

29. For a general discussion of the police power, see JULIAN C. JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW § 3.5 (2d ed. 2007) [hereinafter Juergensmeyer & Roberts]; John Martinez et al., Local Government Law §§ 14.01-14.45 (3d ed. 2005); KENNETH H. YOUNG & ALAN WEINSTEIN, ANDERSON'S AMERICAN LAW OF ZONING §§ 1.02, 2.01-2.02, 3.06 (4th ed. 1996) [hereinafter Young & Weinstein]; NORMAN WILLIAMS JR. & JOHN M. TAYLOR, 1 AMERICAN LAND PLANNING LAW §§ 8.1-8.7 (rev. ed. 2003) [hereinafter Williams & Taylor]; *see generally* 7 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §§ 24.1 to .746 (3d ed. 2008 rev. vol.); 1 Emmet C. Yokley, ZONING LAW AND PRACTICE §§ 3-1 to -24 (4th ed. 2010).

30. TSC REPORT, *supra* note 7, at 25-32; EDMONDSON, *supra* note 7, at 137-210; GRAHAM JR., *supra* note 17, at 238-53; LIROFF & DAVIS, *supra* note 7, at 18-30, 161-62, 168-70; MCMARTIN, *supra* note 17, at 28-35; SCHNEIDER, *supra* note 7, at 296-99; TERRIE, *supra* note 17, at 167-70.

31. For a discussion of the regulatory takings issue, *see generally* FRED BOSSELMAN ET AL., THE TAKING ISSUE: A STUDY OF THE CONSTITUTIONAL LIMITS OF GOVERNMENTAL AUTHORITY TO REGULATE THE USE OF PRIVATELY-OWNED LAND WITHOUT PAYING COMPENSATION TO THE OWNERS (1973) (prepared for the Council on Environmental Quality); ROBERT MELTZ ET AL., THE TAKINGS ISSUE: CONSTITUTIONAL LIMITS ON LAND-USE CONTROL AND ENVIRONMENTAL REGULATION (1999); Robert H. Freilich, *The Taking Issue: Where Are We Going?, in* Land Use Institute: Planning, Regulation, Litigation, Eminent Domain, and Compensation, at 1069 (ALI-ABA Comm. on Cont. Pro. Educ., Course of Study Materials, Aug. 22-24, 2002). Judicial rulings illustrate the complexity of the takings issue, *see, e.g.*, Palazzolo v. Rhode Island, 533 U.S. 606 (2001) (tidal wetlands development); Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992) (beachfront development); Penn Cent. Transp. Co. v. New York City, 438 U.S. 104 (1978) (historic landmark preservation). An internal APA memo from 1976 discussed the regulation versus purchase issue. *See* McMartin, *supra* note 17, at 48-49 (discussing memo).

32. Horizon Adirondack Corp. v. State, 88 Misc. 2d 619 (N.Y. Ct. Cl. 1976) (rejecting a claim that the LUDP constituted a compensable taking); LIROFF & DAVIS, *supra* note 7, at 156-75; Robert Malmsheimer, *Legal Structure and Defense in the Adirondack Park, in* GREAT EXPERIMENT, at 218, 218-26.

cases against NYS. Almost certainly those decisions will not alter this general conclusion but instead reflect particular circumstances pertaining to individual properties.[33]

3. Delegation of Land Use Authority to State Agencies

To protect and properly manage the region's natural resources, the state should assign one or more state agencies primary responsibility for land use decision-making. Pursuant to the LUDP and the WSRA, the APA exercises substantial authority over new development on the Park's non-state lands.[34] Two other state agencies also exercise considerable authority regarding use of those lands (as well as non-state lands throughout the rest of the state): the DEC under the state's Environmental Conservation Law (ECL)[35] and the NYS Department of Health (DOH) under the state's Public Health Law.[36]

Regarding the Park's state-owned lands, the DEC and APA share authority. The ECL, the APA Act, and the SLMP assign DEC responsibility for managing the vast majority of the Park's state lands.[37] The Agency has authority to approve/disapprove the management plans the DEC prepares regarding the Park's Forest Preserve lands. In addition, the Agency has authority to propose potential SLMP amendments to the governor for his or her decision.

Land use decision-making in the Adirondacks by these several state agencies has not been problem free. Clearly the APA, DEC, and DOH could have done a better job than they have done in protecting the Park's resources, and conflicts among the agencies have sometimes been counterproductive.[38] Nevertheless, these agencies are able to focus considerable professional expertise on relevant issues. Their accomplishments have far exceeded what local governments could have

33. *See infra* text following note 64.

34. *See generally* APA Act; N.Y. ENV'T CONSERV. LAW art. 15, tit. 27 (1997) (WSRA).

35. *See generally* N.Y. ENV'T CONSERV. LAW arts. 9, 11, 15, 17, 19, 23, 24, 25, 27, 29, 33, 37.

36. *See generally* N.Y. PUB. HEALTH LAW arts. 11, 13, 15, 16.

37. N.Y. ENV'T CONSERV. LAW § 9-0105 (2021); N.Y. EXEC. LAW § 816(1)-(2); SLMP, *supra* note 10, at 1-6.

38. 21st Century Comm'n, *supra* note 7, at 17-25; Stuart Buchanan, *The Evolution of the Department of Environmental Conservation, in* GREAT EXPERIMENT, *supra* note 7, at 253-64; George Davis, *The Early Years of the Adirondack Park Agency*, *in* GREAT EXPERIMENT, *supra* note 7, at 243-52; David Gibson, *So Much for Interagency Coordination*, ADIRONDACK ALMANACK (June 6, 2024), https://www.adirondackalmanack.com/2024/06/so-much-for-interagency-coordination.html; LIROFF & DAVIS, *supra* note 7, at 45, 89-98, 102-04, 107-12; SISKIND, *supra* note 17, at 422-23.

achieved had NYS left primary land use decision-making authority for the Park in their hands.

4. Multiple Viewpoints Reflected in State Agencies that Regulate Use of Private Lands

The state agency(ies) responsible for major decisions regarding private lands in the region should reflect multiple viewpoints. While the APA makes the primary decisions regulating non-state lands pursuant to both the LUDP and the WSRA, numerous voices contribute to those decisions. The Agency consists of eleven members. Three are the heads of state agencies. The other eight members are nominated by the governor and confirmed by the New York State Senate. None of those eight may be a state officer or employee, and no more than five may come from the same political party. In addition, five of those eight private citizen members must be full-time residents of the Adirondack Park, and three must live outside the Park.[39] It is highly likely that no one is fully satisfied with the regulatory decisions the APA makes, but a diversity of constituencies contributes to every one of them.

5. State Regulation as a Supplement to Local Land Use Controls

The state's regulatory controls regarding private lands in the region should supplement locally adopted land use controls, not replace them. With one exception, the controls NYS established in the 1970s for the Park's non-state lands do not remove land use control authority from Adirondack local governments. Acting pursuant to state enabling legislation, Adirondack towns and villages may adopt and enforce whatever constitutionally permissible zoning provisions, subdivision controls, and other regulatory measures they choose to create.[40] The exception pertains to shorelines. Any controls Adirondack local governments adopt respecting development along lakes, ponds, rivers, and streams may be no less restrictive than the LUDP's shoreline provisions.[41]

The existence of both state and local land use controls has ramifications. Individuals wishing to develop Adirondack properties often need to satisfy the standards of both state and local land use control mechanisms. While those burdens are important, they have not been excessive. Significantly, a number of Adirondack local governments have

39. N.Y. EXEC. LAW § 803.
40. *Id.* §§ 802(32) (defining "local land use program"), 806(1), 806(3), 807, 808.
41. *Id.* § 807(2)(e).

chosen to adopt and enforce local land use controls, notwithstanding the regulatory overlap.[42]

6. Timely Establishment of Legal Frameworks for Resource Protection

Once the state government determines a region's resources should be protected, it should act reasonably quickly to establish the necessary legal framework(s). The LUDP and the WSRA reflect the assertion of substantial state authority with respect to decisions traditionally left to local governments (and in the rest of NYS, still left predominantly to local governments). In addition, the SLMP reflects the significant change in the manner in which NYS managed its Forest Preserve lands for decades prior to the 1970s. There was substantial public discussion before those legal frameworks were established, but Albany's leaders permitted that dialogue to continue for only a limited period before acting.

While governmental entities often do not act quickly when significant problems are identified, in the Adirondacks they did. The APA came into existence in June 1971. Its first staff person arrived at its log cabin headquarters in Ray Brook in September.[43] The SLMP, prepared by the Agency and sent to Governor Nelson Rockefeller for his approval, took effect the next summer. The LUDP, proposed by the APA in March 1973, took effect in August of that year, about two months after the WSRA became law.[44] Of course some argued strongly that the state was acting far too quickly. A combination of allies in the State Legislature nearly forced a substantial delay in adoption of the LUDP, but they failed.[45] Once it was clear important decisions regarding the Park were necessary, rapid political action became the order of the day.

Land use decision-making by local governments across the country typically features lengthy debates about what should or should not be done about controlling land development. Those debates often result in very incremental decision-making. Even had Adirondack local

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42. *See* Adirondack Park Agency, *Towns with Agency Approved Local Land Use Programs* (2007) (map), https://apa.ny.gov/Local_Government/LGS/ALLUPs_Map_2007.pdf.

43. EDMONDSON, *supra* note 7, at 168-90; GRAHAM JR., *supra* note 17, at 244-50.

44. SLMP, *supra* note 10, at 1; N.Y. ENV'T CONSERV. LAW art. 15, tit. 27 (1997) (WSRA); 1973 N.Y. LAWS 1479 (enacting WSRA, effective June 5, 1973); APA Act; 1973 N.Y. LAWS 1222, ch. 348 (enacting the Land Use and Development Plan within the APA Act, approved May 22, 1973, effective Aug. 1, 1973); EDMONDSON, *supra* note 7, at 261; GRAHAM JR., *supra* note 17, at 246-53; MCMARTIN, *supra* note 17, at 5-6, 23-26; SCHNEIDER, *supra* note 7, at 297-99; TERRIE, *supra* note 17, at 167-70.

45. ANZALONE, *supra* note 17, at 139-52; EDMONDSON, *supra* note 7, at 253-59; GRAHAM JR., *supra* note 17, at 250-53; LIROFF & DAVIS, *supra* note 7, at 26-30.

governments in the 1970s been willing and able to adopt land use controls that would adequately protect resources on private lands in the Adirondacks, their decision-making processes would have taken years at a minimum and very likely decades. NYS's decision to act quickly was essential to the protection and proper management of the resources of the Adirondack Park.[46]

B. Environmental Protection Mechanisms

NYS has created a number of important mechanisms to protect the Park's natural resources. Implementation of these mechanisms has not been problem free. However, collectively, they have worked reasonably well.

1. Strong Protection of Natural Resources on State Lands

The state should protect the resources on state-owned lands in the region as strongly as possible. A state government can protect resources on lands it owns more comprehensively and effectively than it can protect resources on private lands. In the Adirondacks, by far the most stringent controls apply to the Park's state lands.

Article XIV of the NYS constitution provides that the state's Forest Preserve lands in the Adirondacks (as well as in the Catskills) ". . . 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."[47] As its title suggests, the state's Forest Preserve is generally heavily forested. The "forever wild" language constitutes the strongest protection of public lands ever established in the US. That mandate was established by the new state constitution that took effect in 1895. Of all the decisions NYS has made about the Adirondack Park over more than 125 years, establishing very strong protection for the Forest Preserve has been the most important.

Article XIV governs about 99% of the Park's state lands. (The remaining 1% are non-Forest Preserve lands dedicated to such uses as highways and correctional facilities). The immense power of the "forever wild" language stems from the fact that it is a constitutional provision.

46. The rapid enactment of the LUDP remains controversial. The public hearing draft was released in late December 1972; hearings occurred in January 1973; the plan went to the Legislature in March, was signed May 22, and took effect August 1, 1973. *See* ANZALONE, *supra* note 17, at 139-52; EDMONDSON, *supra* note 7, at 243-59; GRAHAM JR., *supra* note 17, at 242-53; LIROFF & DAVIS, *supra* note 7, at 26-30, 161-62, 168-70; SISKIND, *supra* note 17, at 407; TERRIE, *supra* note 17, at 167-70.

47. N.Y. Const. art. XIV, § 1.

While constitutions may be amended, New York's amendment process is long and difficult, requiring action by two separately elected legislatures and a public referendum (or, much more rarely, a state constitutional convention followed by a public referendum).[48] For more than a century, New Yorkers have carefully protected the central mandate of the Constitution's "forever wild" clause. A number of constitutional amendments since 1895 have allowed limited activities in specific places. Considered collectively, they have not seriously diminished protection of the Park's Forest Preserve lands. In addition, two major rulings by New York's Court of Appeals (the state's highest court) more than nine decades apart make clear the enduring power of the Constitution's "forever wild" language.[49]

2. Classification of State Lands by Resource Capacity and Use

The state should assess resources on the region's state lands, classify those lands into suitable land use categories, and determine what uses are appropriate in them in light of the capacity of each category's resources to withstand human impact. The SLMP classifies the Park's state lands into several categories and identifies allowable uses for each of them (again, nearly all of those lands are governed by Article XIV). In initially preparing those classifications, the APA assessed the Park's state lands in light of a wide range of factors: e.g., elevation; severity of slopes; soil depth; presence of subalpine and alpine zones, wetlands, lakes, ponds, rivers, and streams; important wildlife habitat; ruggedness of the terrain; degree of wildness; suitability of lakes and ponds for motorized or non-motorized watercraft; proximity to highways; and the presence of other existing infrastructure (e.g., NYS campgrounds).

The resulting classification system permits many different types of uses. Far less than one percent of those lands are classified as "state administrative;" this category covers non-Forest Preserve uses including, for example, state office buildings, several correctional facilities, and state highways. The SLMP's "intensive use" classification covers a little less than one percent of the Park's state lands. It permits uses of the land to create spaces such as campgrounds, day use areas, and a number of

48. N.Y. Const. art. IX.

49. N.Y. Const. art. XIV, § 1; ANZALONE, *supra* note 17, at 22-31; GRAHAM JR., *supra* note 17, at 143-44, 150-58, 164-72, 184-87, 197-218; SCHNEIDER, *supra* note 7, at 289-96; TERRIE, *supra* note 17, at 114-16, 131-33, 145-50, 161-62; *see also* Ass'n for Prot. of Adirondacks v. MacDonald, 253 N.Y. 234 (1930) (invalidating construction of a bobsled run on Forest Preserve lands); Protect the Adirondacks! Inc. v. N.Y. State Dep't of Env't Conserv., 37 N.Y.3d 73 (2021) (finding certain snowmobile trails violated Article XIV).

recreational facilities (including state-owned ski areas). Covering just over half of the Park's state lands (about 1.3 million acres), "wild forest" constitutes the largest state land category. More than 1 million acres of the Forest Preserve are designated as "wilderness;" these areas contain the Park's wildest and most nearly primeval state lands. Both wild forest and wilderness areas contribute immensely to the generally wild character of the Park's landscape, but use restrictions are quite a bit stricter in wilderness than in wild forest. For example, snowmobiles are prohibited in wilderness but may be used on designated wild forest trails.[50]

3. Expansion of Public Conservation Lands

When possible, the state should increase the acreage of public lands in the region that are devoted to conservation purposes. When the SLMP was adopted in 1972, the state-owned Forest Preserve in the Park covered approximately 2.3 million acres. Now it covers about 2.6 million acres. Over the past half century, a number of privately owned Adirondack tracts that possess important resource values came up for sale. The state was willing and able to purchase a number of them. These acquisitions have substantially enhanced the state's efforts to protect the Park's natural resources.[51]

The remaining environmental protection mechanisms discussed here relate to NYS controls on the use of the Park's non-state lands. Again, the vast majority of those lands are privately owned.

4. Zoning of Non-State Lands to Limit Development

The state should assess resources on the region's non-state lands, divide those lands into a number of different land use areas, and set development limits for each one. Both the LUDP and the WSRA reflect NYS's decision to respect the relative capacity and incapacity of land resources to bear the burdens imposed by development activities.

50. *See generally* SLMP, *supra* note 10, at 41 (providing acreages for land classifications); APA, *Adirondack Park Land Use Classification Statistics* (2018), https://apa.ny.gov/gis/stats/colc201803.htm [hereinafter APA Statistics].

51. State expansion of the Forest Preserve by purchasing large tracts has been a major success. *See* APA, Adirondack Park State Land Master Plan 1 (1972) (providing 1972 Forest Preserve statistics); APA Statistics, *supra* note 50 (providing 2018 statistics); *see also* MELEWSKI, *supra* note 7, at 7-95 (discussing major acquisitions); Philip G. Terrie, *Compromise, Continuity, and Crisis in the Adirondack Park*, *in* GREAT EXPERIMENT, at 354, 359-60 [hereinafter Terrie II]. Forest Preserve expansion began long before the 1970s, growing from approx. 681,000 Adirondack acres in 1885 to over 2.1 million by 1950. *See* GRAHAM JR., *supra* note 17, at 150-51; TERRIE, *supra* note 17, at 93-97, 142-43.

Significantly, the LUDP resulted from an expanded application of the land planning approach developed by noted landscape architecture professor and practitioner Ian McHarg, i.e., letting the land itself inform us about its capability (or lack thereof) to withstand human-created impacts without substantial damage to natural resources.[52] The APA's WSRA regulations governing the use of non-state lands that adjoin designated rivers flowed in large part from the analysis underlying the LUDP.

In developing the LUDP, the APA prepared large numbers of overlay maps that captured an immense amount of detail regarding the Park's non-state lands, e.g. location of water resources, soil depth, the capacity of soils to absorb and drain water, land ownership patterns, existing development and already existing infrastructure such as roads and public sewer systems, the land's slopes and elevations, and significant wildlife habitat. The overlay maps were then assessed in terms of where resources were more or less able to withstand new development. For example, areas containing steep slopes and/or shallow soils were generally deemed less favorable for development than areas that had gentle slopes and deep soils. The LUDP that emerged reflects that wide-ranging analysis. It divides all the Park's non-state lands into categories ranging from settled community centers to large, remote, resource-fragile areas and sets land use restrictions for each category.[53]

As shown on the LUDP map, the Park's non-state lands are divided into six land use areas. The Plan's text sets controls on development for each of the land use areas. In general, three factors appear to be most important in setting the specific land use area boundaries shown on the map: (1) the relative capacity or incapacity of the area's natural resources to withstand development, (2) already existing development patterns and the presence of existing infrastructure to support that development (e.g., roads and public sewers), and (3) the feasibility of expanding existing

52. Ian L. McHarg, DESIGN WITH NATURE (paperback ed. 1971) [hereinafter McHarg]; George Davis, *The Early Years of the Adirondack Park Agency*, *in* GREAT EXPERIMENT, *supra* note 7, at 243, 243-52; EDMONDSON, *supra* note 7, at 22-23, 171-72, 184-87, 227; LIROFF & DAVIS, *supra* note 7, at 28, 68; MCMARTIN, *supra* note 17, at 37-38; SISKIND, *supra* note 17, at 410.

53. N.Y. EXEC. LAW § 805; EDMONDSON, *supra* note 7, at 171-73, 226-32, 239-43; GRAHAM JR., *supra* note 17, at 250-53; LIROFF & DAVIS, *supra* note 7, at 26-39, 68-73; MCMARTIN, *supra* note 17, at 36-39; TERRIE, *supra* note 17, at 168-70; *see generally* Richard S. Booth, *Developing Institutions for Regional Land Use Planning and Control: The Adirondack Experience,* 28 BUFF. L. REV. 645 (1979); Booth, *supra* note 19, at 152-72 (discussing LUDP elements).

infrastructure in particular places to support development without seriously impacting natural resources.[54]

5. Concentrating Development in Resilient Areas

The state should permit the concentration of new development in the region in the areas most capable of supporting it without significant damage to natural resources and substantially limit development in areas where resources are most fragile and susceptible to damage. The LUDP creates a sliding scale in terms of where development should be located. At one end of the scale, it encourages substantial development to occur in "hamlets" where intense development is appropriate. These are the Park's community centers, and they cover about 53,000 acres. The Plan sets no limits on the intensity of development in hamlets and imposes only modest restrictions on shoreline development in them. In addition, the Park's "industrial use" (IU) areas (covering about 12,000 acres) are, for the most part, places that by 1973 had already been committed to large-scale industrial activity. The LUDP imposes only marginal limits on development in IU areas.[55]

As their titles suggest, the other four land use areas—"moderate intensity use" (MIU), "low intensity use" (LIU), "rural use" (RU), and "resource management" (RM)—permit decreasing levels of development. The restrictions for MIU and LIU areas (which together total just over 370,000 acres) are somewhat similar to land use restrictions in many suburban and rural towns across the country. RU and RM areas together account for a great deal of the Park's open space. Only quite limited development is appropriate in RU areas (a little more than 1 million acres), so restrictions there are substantial. RM areas (almost 1.6 million acres) are generally fragile and/or remote from the Park's settled areas, and restrictions there are very strict.[56] Of particular significance, RM areas *"*. . . are those lands where the need to protect, manage and enhance forest, agricultural, recreational and open space resources is of paramount importance because of overriding natural resource and public considerations. Open space uses, including forest management,

54. N.Y. EXEC. LAW § 805; *see generally* APA, Adirondack Park Land Use and Development Plan and Recommendations for Implementation 2-18 (Mar. 6, 1973); N.Y. COMP. CODES R. & REGS. tit. 9, § 583.2, app. Q-8 ("Land Use Area Classification Determinants"); EDMONDSON, *supra* note 7, at 168-90; LIROFF & DAVIS, *supra* note 7, at 26-37, 68-73, 98-102, 134-37.

55. N.Y. EXEC. LAW §§ 805, 806, 809, 810; LIROFF & DAVIS, *supra* note 7, at 31-37; *see also* APA Statistics, *supra* note 50 (providing acreages for land use areas).

56. APA Statistics, *supra* note 50.

agriculture and recreational activities, are found throughout these areas.*"*[57]

6. Permit Requirements for High-Impact Development

The state should require landowners to acquire development permits for all new land use activities that could substantially impact the region's natural resources. The LUDP creates a sliding scale in terms of where development should be located. The LUDP identifies regional projects for each of the six land use areas. Landowners must obtain permits before commencing any of those activities.[58] Significantly, regional projects include both activities that will actually alter the land *and* the legal subdivision of property even if the land is not being developed.[59] The APA reviews most proposed regional project permits. If their local land use programs satisfy APA standards, local governments may receive authority to review a subset of those projects.[60]

The regional project review system reflects a sliding scale of state concern regarding how much development occurs in particular places. There are far fewer regional projects specified in hamlets and IU areas than in RM areas, with gradations in MIU, LIU, and RU areas. For example, in a hamlet, a proposed 100-unit residential subdivision requires a regional permit, but a residential development consisting of ninety-nine or fewer units does not unless it involves a wetland. In sharp contrast, both a two-lot subdivision and a single family house in a RM area require regional permits.[61]

A permit may not be issued for a regional project unless it satisfies a number of specified standards. These include the LUDP's density control restrictions[62] and its shoreline restrictions.[63] In addition, regional projects must satisfy the Plan's vitally important "no undue adverse impact" standard. That standard requires a determination that a proposed project will not unreasonably impact the Park's resources or the capacity of government to provide supporting services (e.g., roads, schools, and public sewers), considering the project's anticipated social and economic

57. N.Y. EXEC. LAW § 805(3)(g)(1); EDMONDSON, *supra* note 7, at 187-88, 248-49.
58. N.Y. EXEC. LAW § 810; LIROFF & DAVIS, *supra* note 7, at 33-36, 73-89.
59. N.Y. EXEC. LAW §§ 802(28), (63), 810(1)-(2).
60. N.Y. EXEC. LAW §§ 807-810; LIROFF & DAVIS, *supra* note 7, at 37-39, 113-21.
61. N.Y. EXEC. LAW §§ 810(1)(a)(3), (1)(e)(3), (2)(d)(1).
62. N.Y. EXEC. LAW § 809(9), (10)(c).
63. *Id.* § 809(9), (10)(d).

benefits.[64] The application of these standards to each regional project accomplishes two very important things. First, it helps ground the LUDP's broad regional principles in each permitted project. Second, it helps protect the Plan from broadscale legal challenges because most potential claims by a plaintiff will necessarily be shaped by the individual circumstances involved in a specific permit application that deals with a particular piece of property and by an administrative decision regarding that application.

Significantly, the LUDP does not require regional permits for certain resource management activities. Agricultural production is not a reviewable land use activity. Similarly, most forest management activities do not require permits under the Plan, but a permit is needed for timber harvesting that involves clear-cutting more than twenty-five acres.[65] In 1973 APA members and the state's political leaders decided that most agricultural and forest management activities were compatible with protection of the Park's resources.

Consequently, except for the shoreline cutting restrictions, the LUDP's regulatory provisions do not generally apply to the vast bulk of either of those two types of activities. Pursuant to the WSRA, some controls are imposed on a limited number of forest management and agricultural activities in river corridors, but generally those activities are seen as being consistent with efforts to protect those areas' natural resource qualities. With agricultural activities in the Park significantly limited by a number of natural factors (including but not limited to long winters), the agricultural exemption from the LUDP's regional project review requirements has not been generally problematic or controversial. On the other hand, there has been considerable debate regarding the exemption for most forest management activities from regulation. However, large-scale clear-cutting is not common in the Park. Furthermore, it is clear that the management of privately owned forest resources has generally contributed to maintaining the Park's open space character.[66]

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64. *Id.* § 809(9), (10)(e); *see also* LIROFF & DAVIS, *supra* note 7, at 73-89 (discussing APA review of regional projects).

65. N.Y. EXEC. LAW § 810, *esp.* § 810(1)(a)(1), (1)(b)(1), (1)(c)(1), (1)(d)(1), (1)(e)(1); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, §§ 577.2, 577.4-.6, 577.8 (regulating certain forestry and agricultural activities in designated river corridors).

66. TSC REPORT, *supra* note 7, at 57-58; 21st Century Comm'n, *supra* note 7, at 7, 11-12, 30-31, 49-52, 56-62, 71-73, 76; Peter Bauer, *Criticism of the APA's Clearcutting General Permit*, ADIRONDACK ALMANACK (Feb. 11, 2013); David Gibson, *General Permit Fails to Address Today's Forest Challenges*, ADIRONDACK ALMANACK (Feb. 19, 2013); EDMONDSON, *supra* note 7, at 187-88, 248-49; GRAHAM JR., *supra* note 17, at 271; MCMARTIN, *supra* note 17,

7. Prioritizing Density Controls over Use Restrictions

In limiting land development across the region, the state should focus primarily on controlling the density of development rather than the types of development that occur in different places. The LUDP only marginally limits the types of uses permitted in the six land use areas.[67] This stands in sharp contrast to most land use controls in the U.S. Those controls typically focus heavily on controlling the types of uses in different land use areas, such as permitting only single and two-family dwellings in some areas and only specified commercial uses in other areas.[68] Even in RM areas the LUDP is quite lenient in terms of the types of new land uses that may be developed there.[69] While this feature of the LUDP can be fairly criticized,[70] it focuses strongly, and most importantly, on the magnitude of the burdens human activities place on the land.

8. Calibrating Development Intensity to Site Sensitivity

The state's limits on development intensity across the region should permit more development in areas where resources can sustain it and far less development in areas where natural resources are fragile and/or remote from already developed areas. For four of the six land use areas the LUDP sets "overall intensity guidelines" (OIGs, a defined term). The OIGs are expressed in terms of allowable "principal buildings" (pb, a defined term) per square mile (i.e., pb/sq. mi.; a square mile consists of 640 acres regardless of a parcel's shape). They are applied to the contiguous land owned by each individual. Consequently, one landowner may not use another's permissible development. Essentially the OIGs

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at 38-39; SCHNEIDER, *supra* note 7, at 235-39. Concerns persist regarding the cumulative impacts of permitted and unpermitted clear-cutting versus the economic viability of forestry. *See, e.g.*, Robert Dziengeleski, *A Perspective from the Forest-Products Industry*, *in* GREAT EXPERIMENT, at 298-320; KNOTT, *supra* note 17, at 110-13, 169-70, 205-15, 272-74; MCMARTIN, *supra* note 17, at 93-95, 281-84; William F. Porter, *Forestry in the Adirondacks*, *in* GREAT EXPERIMENT, at 102, 102-13; SCHNEIDER, *supra* note 7, at 235-39. Changes to the 1970s decision to allow most forestry without LUDP permits seem unlikely in the near future.

67. N.Y. EXEC. LAW § 805 (listing "[c]lassification of compatible uses" lists for each land use area).

68. For discussion of use zoning, see JUERGENSMEYER & ROBERTS, *supra* note 29, §§ 4.2-4.11; Daniel R. Mandelker, Land Use Law §§ 1.04, ch. 5 (5th ed. 2003); WILLIAMS & TAYLOR, *supra* note 29, §§ 17.8-.9, chs. 18, 35, 39-60, 79-86, 101-113; YOUNG & WEINSTEIN, *supra* note 29, §§ 7.18, 9.24-.47, 14.01-.15, 15.01-.19, 17.01-.79, 32.06-.16, 33.01-.69.

69. N.Y. EXEC. LAW § 805(3)(g)(4).

70. 21st Century Comm'n, *supra* note 7, at 13-14, 69-73; Claudia Braymer, Remarks, *in Is It Time to Revisit the Adirondack Park Agency Act?*, N.Y. ENV'T L., Spring/Summer 2023, at 31, 31-36.

encourage clustering permissible development in appropriate places and limiting significant development where resources are not capable of supporting it. While the OIGs have been the most controversial aspect of the LUDP, they have done the most to control harmful development across the Park.[71]

In decreasing levels of permitted development, the OIGs are as follows: 500 pb/sq. mi. in MIU, 200 pb/sq. mi. in LIU, 75 pb/sq. mi. in RU, and 15 pb/sq. mi. in RM. Therefore, medium-density development is permitted in MIU areas, with a significantly lower level permitted in LIU areas. Far lower levels of development are permitted in RU areas and very little development in RM areas. The OIGs apply to all activities identified by the LUDP as regional projects; activities that are not regional projects are not required to satisfy them. Significantly, a number of smaller subdivisions are largely exempt from the OIGs.[72]

The OIGs do not establish minimum lot size requirements, although many parties state the pb/sq. mi. figures in terms of "average" lot sizes.[73] They are designed to permit allowable development to be concentrated in areas where natural resources and existing infrastructure indicate it is appropriate and to discourage development in areas where resources are more susceptible to damage. For example, an individual who proposes to develop 330 acres (i.e., approximately 0.5 square miles) in a RU area generally should be able to build about thirty-eight homes on that property (depending on the environmental conditions that exist on it). Instead of being spread across the property on seven- to nine-acre lots, they could be constructed on approximately 0.5 to 1.0 acre lots, allowing the remaining 300 acres or so to remain undeveloped. They could also be clustered in multi-family dwellings, leaving even more of a given property

71. N.Y. EXEC. LAW § 805 (referencing "[g]uidelines for overall intensity of development" throughout section); *id.* § 809(10)(c); *id.* § 802(46), (50) (defining "overall intensity guidelines" and "principal building"); EDMONDSON, *supra* note 7, at 235-42, 252-53, 264-66; GRAHAM JR., *supra* note 17, at 252-53; LIROFF & DAVIS, *supra* note 7, at 32-33, 35-36, 72-73, 98-102, 107-12, 152-53, 168-70, 180-81; MCMARTIN, *supra* note 17, at 36-40.

72. N.Y. EXEC. LAW § 805(3)(d)(3), (3)(e)(3), (3)(f)(3), (3)(g)(3) (setting overall intensity guidelines (OIGs) for moderate intensity use, low intensity use, rural use, and resource management areas, respectively); *id.* § 810(2)(a)(2), (2)(b)(2), (2)(c)(2) (partially exempting certain small subdivisions in MIU, LIU, and RU areas from OIGs).

73. N.Y. EXEC. LAW § 805; APA, Adirondack Park Land Use and Development Plan and Recommendations for Implementation 15-16 (Mar. 6, 1973); APA, *Citizen's Guide to Adirondack Park Agency Land Use Regulations*, (listing approximate average lot sizes implied by guidelines: MIU—1.3 acres; LIU—3.2 acres; RU—8.5 acres; RM—42.7 acres); APA, *Land Use Area Classifications*; EDMONDSON, *supra* note 7, at 265; GRAHAM JR., *supra* note 17, at 252-53; LIROFF & DAVIS, *supra* note 7, at 32-33; MCMARTIN, *supra* note 17, at 36-37; TERRIE, *supra* note 17, at 168-70.

undeveloped. Similarly, a RM landowner whose property covers 1300 acres (about two square miles) generally should be able to develop about thirty new homes there. All those homes could be clustered on twenty to forty acres (or less), leaving nearly all of the property in a natural state.[74]

Life is frequently less than ideal. The previous paragraph illustrates how the OIGs could be applied (and many would argue this is how they *should* be applied) as regional projects are reviewed and permits issued. Unfortunately, the APA has not typically insisted that a project sponsor cluster development on small lots within the part(s) of a project site best suited to support it. This has resulted in considerable acreage on numerous project sites being disturbed by roads, buildings, and other development activity. Consequently, there has been considerable criticism of how the APA applies the OIGs.[75] Efforts in recent years to convince the State Legislature to amend the LUDP so that APA must apply conservation development standards when it reviews regional projects, including mandatory clustering in many cases, have failed up to this point.[76] Despite their substantially less-than-perfect application, the OIGs remain one of the LUDP's most important and effective measures.

9. Protection of Free-Flowing Rivers

The state should protect the free-flowing character of as many of the region's rivers as possible. In a free-flowing river natural systems function without substantial human interference. Consequently, the existence of free-flowing rivers constitutes an important benchmark for assessing

74. APA, Adirondack Park Land Use and Development Plan and Recommendations for Implementation 15-16 (Mar. 6, 1973); Booth, *supra* note 53, at 153-54.

75. 21st Century Comm'n, *supra* note 7, at 49-51, 56-57, 69-71; Peter Bauer, *Backcountry Sprawl at Woodworth Lake*, ADIRONDACK ALMANACK (Nov. 25, 2014); Richard Beamish, *Vanquishing Rural Sprawl in the Adirondack Park*, ADIRONDACK ALMANACK (Nov. 28, 2017); David Gibson, *Developer Shows Why New APA Legislation Is Necessary*, ADIRONDACK ALMANACK (Dec. 23, 2020); David Gibson, *Another Large Resort Subdivision. Still No Conservation Design*, ADIRONDACK ALMANACK (Sept. 23, 2022); Kim Martineau, *Designing the Park: Updating APA Regulations*, ADIRONDACK ALMANACK (Mar. 11, 2013); SCHNEIDER, *supra* note 7, at 305-11. Criticisms include application permitting "death by a thousand cuts," *see* Glennon, *supra* note 18, at 275-76; SCHNEIDER, *supra* note 7, at 304-08, and failure to readily address cumulative impacts over time, *see* Adirondack Wild, *The Adirondack Park at a Crossroad: A Road Map for Action* 6 (2015), https://adirondackwild.org/wp-content/uploads/2021/12/crossroads-part-1.pdf; Booth, *supra* note 53, at 171-72; Terrie II, *supra* note 51, at 356-58.

76. *Major Adirondack Conservation Reform Bill Falls Short*, ADIRONDACK COUNCIL (June 27, 2019), https://www.adirondackcouncil.org/page/press-releases-16/news/major-adirondack-conservation-reform-bill-falls-short-1214.html; Richard Beamish, *Save the Adirondack Park Agency*, ADIRONDACK ALMANACK (Aug. 18, 2019).

environmental quality. New York's Adirondack experience underscores the vital significance of that benchmark.

With very limited exceptions, the WSRA prohibits the placement of any dam or other impoundment that affects the natural flow in any river segment the statute designates as wild, scenic, or recreational.[77] A total of approximately 1,300 miles of river segments are designated across the state, with the vast majority of them inside the Park.[78] While many cover shorter stretches, major Adirondack river segments include, for example, 18.5 miles of the main branch of the Oswegatchie River, designated as a "wild river"; 35.2 miles of the south branch of the Grasse River, designated as a "scenic river"; and 66.7 miles of the Schroon River, designated as a "recreational river."[79] Portions of the same river may have different designations. For example, Adirondack segments of the Hudson River have the following designations: wild (10.5 miles), scenic (4 and 9 miles), and recreational (12.7 and 45.9 miles).[80] In addition, the LUDP treats as "critical environmental areas" land corridors abutting "study river" segments that may eventually be protected by WSRA in MIU, LIU, RU, and RM areas.[81]

10. Protection of Shorelines

The state should establish restrictions that protect the region's shorelines from substantial development activity. With some 3,000 lakes and ponds and 30,000 miles of rivers and streams, shorelines are among the Park's most important environmental resources.[82] Consequently, the LUDP establishes specific restrictions for development near shorelines. These restrictions apply to all activities in the Park, including actions not defined as regional projects. Minimum shoreline lot width and minimum building setback requirements apply in hamlet, MIU, LIU, RU, and RM areas, with lower restrictions in the first three and more protective provisions in RU and RM areas. Building setback requirements, for

77. N.Y. ENV'T CONSERV. LAW § 15-2709(2).

78. *Id.* §§ 15-2713, 15-2714.

79. *Id.* § 15-2714.

80. *Id.* §§ 15-2713, 15-2714.

81. N.Y. EXEC. LAW § 810(1)(b)(1), (1)(c)(1), (1)(d)(1), (1)(e)(1).

82. ADIRONDACK PARK AGENCY, *About the Adirondack Park*, https://apa.ny.gov/about/park.html. A famous paragraph captures the magic of many Adirondack shorelines: William Chapman White, *Adirondack Country* (Duell, Sloan & Pearce 1954) ("As a man tramps the woods to the lake he knows he will find pines and lilies, blue herons and golden shiners, shadows on the rocks and the glint of light on the wavelets, just as they were in the summer of 1354, as they will be in 2054 and beyond. He can stand on a rock by the shore and be in a past he could not have known, in a future he will never see. He can be a part of time that was and time yet to come.").

example, range from fifty feet along hamlet shorelines to one hundred feet for RM shorelines. In addition, in all six land use areas there are restrictions on cutting vegetation near shorelines and a minimum 100-foot setback for on-site sewage facilities.[83]

Unfortunately, the LUDP's shoreline restrictions are far less protective of the environment than they should be. Easily the weakest part of the Plan, they have generated considerable discussion and criticism.[84] Most serious are the restrictions' quite minimal limitations on removing shoreline vegetation. In addition, while the Plan's building setback restrictions would possibly be appropriate in much of suburban America, in many cases they do not sufficiently protect Adirondack shorelines.[85]

The overall weakness of the shoreline restrictions resulted from political considerations surrounding the LUDP's adoption in 1973. The fact that many of the Park's privately owned shorelines were already very valuable substantially influenced Agency members, local leaders in the Park, and state leaders in Albany. Consequently, the restrictions proposed by the APA to the Legislature were weaker than they should have been, and the Legislature further weakened them.[86] In addition, those weaknesses are exacerbated by the substantial exemption from the OIGs of certain small shoreline subdivisions.[87] Notwithstanding the significance of these limitations, the shoreline restrictions remain an important piece of the state's efforts to protect the Park. They reflect a critical reality: Protecting resources along shorelines needs to be a central focus of environmentally sensitive land use restrictions.[88]

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83. N.Y. EXEC. LAW § 806.

84. 21st Century Comm'n, *supra* note 7, at 69, 81-83; EDMONDSON, *supra* note 7, at 267; LIROFF & DAVIS, *supra* note 7, at 29-30; Martineau, *supra* note 74; MCMARTIN, *supra* note 17, at 38-40; SISKIND, *supra* note 17, at 13, 25-26; Philip Terrie, *Historian Philip Terrie on Fixing the APA*, ADIRONDACK ALMANACK (Apr. 29, 2013) [hereinafter Terrie III].

85. N.Y. EXEC. LAW § 806(1)(a)(1), (2), (3); SISKIND, *supra* note 17, at 25-26; Terrie II, *supra* note 51, at 354-58.

86. Glennon, *supra* note 18, at 265-67; LIROFF & DAVIS, *supra* note 7, at 29-30; Martineau, *supra* note 75; MCMARTIN, *supra* note 17, at 38-40; SISKIND, *supra* note 17, at 13, 25-26; Terrie III, *supra* note 84.

87. *See supra* note 72.

88. *See* Robyn de Vries, *"Ribbons of Life" Are Tied to Long-Term Environmental Health*, FRESH OUTLOOK FOUND. (Apr. 16, 2024), https://freshoutlookfoundation.org/protecting-riparian-zones/; MCHARG, *supra* note 52, at 56-59, 62, 86-93, 104-15; Mich. Sea Grant & Mich. Dep't of Env't Quality, *Natural Shorelines for Inland Lakes*, https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/Inland-Lakes-and-Streams/natural-shorelines-inland-lakes.pdf?rev=e282651f847241ea9e094fcb16ae8b45; Minn. Nat. Shoreline P'ship, *Minnesota's Vanishing Natural Shorelines* (July 2023), https://mnlakesandrivers.org/wp-content/uploads/2023/10/MN-Natural-Shoreline-Partnership-Report_2023_final.pdf; N.Y. STATE DEP'T OF ENV'T CONSERV., *Shoreline Habitats,* https://dec.ny.gov/nature/waterbodies/oceans-estuaries/hudson-

11. Protection of Other Sensitive Environmental Areas

In addition to protecting shorelines, the state should strictly regulate new development in other particularly sensitive areas in the region that contain important natural resource values. The LUDP and the WSRA protect several additional types of resource areas. The LUDP identifies "critical environmental areas" (CEAs) in all of the Park's land use other than IU. Wetlands are CEAs in all five of those land use areas.[89] In MIU, LIU, RU, and RM areas, CEAs also include places at or above 2,500 feet in elevation, areas near the categories of state lands most strongly protected by the SLMP, and land corridors along rivers being studied for possible designation under the WSRA.[90] In addition, land corridors that adjoin a number of highways in RU and RM areas are also deemed CEAs.[91]

The LUDP protects those areas by requiring regional project permits for most land altering activities, as well as nearly all land subdivisions, proposed to be located in them.[92] This scheme parallels other aspects of the Park's land use controls; NYS has greater interest in carefully controlling development activity in places where resources are generally fragile and/or remote from already settled areas. For example, there are many more CEAs in RU and RM areas than in hamlets.

Significantly, agricultural production and most timber harvesting (i.e., harvesting that does not involve clear-cutting more than twenty-five acres) are exempt from the LUDP's regional project review provisions when they occur in CEAs.[93] As discussed previously, in 1973 these activities were deemed generally compatible with the Park's natural character. Accordingly, except for the shoreline cutting restrictions, the Plan's regulatory provisions generally do not apply to them.[94]

Non-state lands that adjoin Adirondack river segments designated as wild, scenic, or recreational by the WSRA are also specially protected. That statute establishes broad guidelines regarding uses that will be

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river-estuary-program/aquatic-habitats/shoreline; Wis. Dep't of Nat. Res., *Protecting Our Living Shores* (2003), https://dnr.wisconsin.gov/sites/default/files/topic/ShorelandZoning/WT-764.pdf.

89. N.Y. EXEC. LAW § 810(1)(a), (1)(b)(1), (1)(c)(1), (1)(d)(1), (1)(e)(1).

90. N.Y. EXEC. LAW § 810(1)(b)(1), (2)(a)(18)-(19) (moderate intensity use); *id.* § 810(1)(c)(1), (2)(b)(18)-(19) (low intensity use); *id.* § 810(1)(d)(1), (2)(c)(14), (17) (rural use); *id.* § 810(1)(e)(1), (2)(d)(9), (11) (resource management).

91. N.Y. EXEC. LAW § 810(1)(d)(1), (2)(c)(17) (rural use); *id.* § 810(1)(e)(1), (2)(d)(9) (resource management).

92. APA Act, *supra* note 9, section 810.

93. *Id.*

94. *See supra* notes 65-66.

permitted near these rivers.[95] Pursuant to the statute, APA regulations govern 0.5 mile-wide land corridors (i.e., with 0.25 miles on each side of the river) where designated river segments adjoin non-state lands.[96] Except in hamlet and MIU areas, these regulations generally impose significantly greater limitations on new development than those contained in the LUDP's shoreline restrictions.[97]

Interestingly, floodplains in the Park are not regulated as particularly sensitive environmental resource areas. However, the LUDP and the WSRA's combined focus on shorelines, wetlands, and river corridors means most Adirondack floodplains are substantially protected from inappropriate development. In particular, the LUDP requires that the presence of a floodplain (and/or flood hazard conditions) on a project site must be considered during the review of any regional project. In addition, Article XIV and the SLMP strongly protect all shorelines (including all associated floodplains) located on the Park's Forest Preserve lands.[98]

12. Supporting Conservation Easements

State law should facilitate the creation and judicial enforcement of conservation easements. A conservation easement (CE) flows from a property owner's decision to protect his/her land from development in the future by separating the right to own the land from the right to develop it. CEs constitute an immensely flexible tool that can be adapted to many different circumstances.[99] Advocates have long urged that CEs (or "scenic easements" as they were often called) be used in order to protect natural

95. N.Y. ENV'T CONSERV. LAW §§ 15-2707, 15-2709.

96. N.Y. COMP. CODES R. & REGS. tit. 9, pt. 577; *id.* app. Q-6.

97. N.Y. COMP. CODES R. & REGS. tit. 9, §§ 577.4-577.8; *see also* N.Y. COMP. CODES R. & REGS. tit. 6, pt. 666 (DEC regulations for designated river corridors on state land).

98. N.Y. EXEC. LAW §§ 805(4)(a)2)(c), 809(9), 809(10)(e); N.Y. Const. art. XIV, § 1; SLMP, *supra* note 10.

99. *See, e.g.*, Zachary Bray, *Reconciling Development and Natural Beauty: The Promise and Dilemma of Conservation Easements*, 34 HARV. ENV'T L. REV. 119 (2010); Daniel P. Harvey, *Conservation Easements and the Doctrine of Changed Conditions*, 18 BUFF. ENV'T L.J. 267 (2011); Nancy A. McLaughlin, *Enforcing Conservation Easements: The Through Line*, 34 GEO. ENV'T L. REV. 167 (2022); Jessica Owley, *Conservation Easements at the Climate Change Crossroads*, 74 LAW & CONTEMP. PROBS. 199 (Fall 2011); James T. Partigan, Note, *New York's Conservation Easement Statute: The Property Interest and Its Real Property and Federal Income Tax Consequences*, 49 ALB. L. REV. 430 (1985); Jeff Richardson & Anna C. Bernard, *Zoning for Conservation Easements*, 74 LAW & CONTEMP. PROBS. 83 (Fall 2011); Adena R. Vinson, Comment, *Re-Allocating the Conservation Landscape: Conservation Easements and Regulation Working in Concert*, 18 FORDHAM ENV'T L. REV. 273 (2007); NAT'L AGRIC. L. CTR., *Conservation Easements: An Introductory Review for Arkansas Landowners*, https://nationalaglawcenter.org/wp-content/uploads/assets/bibarticles/partigan_easement.pdf.

resources.[100] However, in NYS, as in many other states, common law principles dealing with property ownership have historically made it very difficult to enforce that type of easement in court.[101]

In 1983 NYS addressed these difficulties by adding a conservation easement statute to the state's Environmental Conservation Law.[102] Modifying centuries of property law principles created under the state's common law, the statute makes conservation easements clearly enforceable in court.[103] Over the past four decades, these easements have become an attractive alternative for property owners throughout the state who wish to ensure that their properties will retain their natural character in perpetuity (or a shorter period if so stated in the easement). Owners have considerable flexibility in designing CEs to fit their individual circumstances, and depending on how CEs are established, they may realize substantial economic benefits from their creation.[104] Today NYS holds CEs on nearly 800,000 acres in the Park. The state's energetic implementation of its conservation easement statute has tremendously benefitted its efforts to protect the Park's resources.[105]

None of these environmental protection mechanisms, operating in conjunction with the institutional choices discussed previously, has worked flawlessly or without controversy. Considerable development has occurred in the Adirondack Park since the LUDP's adoption in 1973. Much of it has been reasonably well designed and developed, but some of it certainly has not been.[106] Nevertheless, these control measures have

100. William H. Whyte, *Securing Open Space for Urban America: Conservation Easements*, URB. LAND INST., TECH. BULL. No. 36, 1959, https://babel.hathitrust.org/cgi/pt?id=inu.30000121181147&seq=1; TSC REPORT, *supra* note 7, at 33–34; LIROFF & DAVIS, *supra* note 7, at 182-83.

101. Robert W. Bowmar, *Easements, Covenants and Servitudes*, *in* TSC REPORT, vol. A, at 23, 23-34 (1970); Jan Z. Krasnowiecki, *Appurtenancy Statute*, *in* TSC REPORT, vol. A, at 35, 35-36 (1970); Peter B. Eveleth, Comment, *An Appraisal of Techniques to Preserve Open Space*, 9 VILL. L. REV. 559 (1964).

102. N.Y. ENV'T CONSERV. LAW art. 49, tit. 3.

103. *Id.* §§ 49-0303(1), 49-0305.

104. John Caffry et al., *Introduction to Conservation Easements in New York*, *in* Real Property Law Section Summer Meeting 2019 Panel 7 (N.Y. State Bar Ass'n 2019); MELEWSKI, *supra* note 7, at 97-102.

105. Email from N.Y. State Dep't of Env't Conserv. to author (Sept. 6, 2024) (on file with author); email from N.Y. State Dep't of Env't Conserv. to Adirondack Wild (Aug. 6, 2024) (on file with author); SLMP, *supra* note 10, app. II (listing state-held conservation easements); Terrie II, *supra* note 51, at 359; 21st Century Comm'n, *supra* note 7, at 57-59.

106. 21st Century Comm'n, *supra* note 7, at 3, 7-9, 11-15, 45-49, 69-83; ANZALONE, *supra* note 17, at 203-08; Peter Bauer, *Development Rates and Patterns, in* GREAT EXPERIMENT, *supra* note 7, at 157-68; EDMONDSON, *supra* note 7, at 265-67; Glennon, *supra* note 18; JERRY LONG & PETER BAUER, PROTECT THE ADIRONDACKS!, THE ADIRONDACK PARK AND RURAL AMERICA:

worked well enough for more than half a century to ensure that the Park remains a stunningly vibrant, largely wild natural area.

Some argue NYS has gone much too far in trying to protect the Adirondack Park's resources. Some argue the state has not gone nearly far enough. Both groups should consider a telling question: What would have happened to the Adirondack Park over the past half-century if NYS's controls had not been enacted? That question inevitably leads to a second one: Over the next half century and beyond, what will likely happen to the Park if these mechanisms did not already exist?

IV. CONCLUSION

Climate change poses a fundamental threat to society's future everywhere around the globe. Successfully confronting this crisis will require modern society to alter many long-held norms. Almost certainly, significantly altering how land is utilized will be an important part of whatever strategies are eventually pursued. We will have to learn to treat a great deal of land gently, paying close attention to what it tells us about what it can and cannot reasonably bear. Doing so will likely be difficult. Much related to climate change will likely be very difficult.

The current state of science makes it impossible to prove that New York State's efforts to protect the Adirondack Park have reduced the threats created by climate change. Nevertheless, two things are very clear. First, protection of the natural resources across this huge region means much more in today's far more crowded, technology-driven world than it did in the 1970s. Second, what New York has achieved in the Adirondacks makes clear what state governments can accomplish in managing land resources across large regions. The Adirondack landscape supports a wide range of human activities. Reasonable constraints on those activities, now in place for a half century (and far longer for the state's Forest Preserve lands), ensure that the Park's natural systems can function in a largely unbounded manner. The lessons drawn from the Adirondack experience are highly relevant to initiatives to protect and manage land in other places in order to reduce the threats climate change now presents and which it will greatly expand.

Because these Adirondack lessons focus heavily on a state government taking the lead in decision-making regarding land use issues

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ECONOMIC AND POPULATION TRENDS 1970-2010, at 1-13, 36-37, 66-68 (2d ed. 2019); MCMARTIN, *supra* note 17, at 39-40; RESIDENTS' COMM. TO PROTECT THE ADIRONDACKS, GROWTH IN THE ADIRONDACK PARK: ANALYSIS OF RATES AND PATTERNS OF DEVELOPMENT (2001); SISKIND, *supra* note 17, at 25-26; Terrie II, *supra* note 51, at 356-58.

and asserting substantial regulatory authority regarding the use of private property, many may strongly oppose them. Despite the anticipated opposition, a crisis confronts us, and all feasible measures to deal with it merit careful attention. Certainly, many of the details embodied in NYS's steps to protect the Adirondacks will not fit everywhere. However, its efforts there illustrate what state governments can accomplish if they are serious about managing land resources.

In summary, NYS's efforts to protect and manage the Park suggest several overarching lessons:

- Assign primary land use decision-making to the state government in order to protect and manage land resources across an important region.
- Very stringently protect public lands in the region that are held for conservation purposes.
- Where appropriate, increase the acreage of public lands in the region devoted to conservation purposes.
- Maintain as much forest cover as possible on the region's public and private lands.
- Protect the free-flowing character of as many of the region's rivers as possible on both public and private lands.
- Permit significant new development on the region's private lands in only those places where resources and existing infrastructure (or new or appropriately expanded infrastructure) can reasonably support intense human activity.
- Substantially limit new development activity on the region's private lands that are remote from already established community centers.
- Severely limit new development activity on the region's private lands wherever land resources are especially fragile, including but not limited to shorelines, wetlands, and other areas of special environmental concern.

Pursuing these lessons (together with the more specific lessons previously discussed) in other places may presently seem politically impossible. However, what has happened in the Adirondacks demonstrates that all these lessons are grounded in reality. That reality came to life because NYS's leaders chose to act. Crises demand action, and climate change constitutes a crisis of the first order. Finally, therefore, the Adirondack experience strongly underscores an additional lesson for

facing this crisis: Take bold, aggressive steps to protect a region's land resources. In the face of climate change that lesson may matter most.