



**Board of Directors**

April 15, 2021

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**Chair**

Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

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**Vice-Chairs**

**RE: Proposed Hinckley Reservoir Campground and Compliance with the State Constitution**

Barbara Rottier  
**Secretary**

Dear APA Members:

David Quinn  
**Treasurer**

Upon review of proposed final EIS and Unit Management Plan (UMP) for the Hinckley Reservoir Intensive Area, which includes scores of new campsites, parking spaces and buildings, miles of new trails, and over 2.8 miles of new paved roads in the current Hinckley Reservoir Day Use Area, to build a new full-scale state campground, Protect the Adirondacks has concerns over its constitutionality, including the level of tree cutting proposed by the Department of Environmental Conservation (DEC).

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The proposed Hinckley Reservoir Intensive Area Unit Management Plan states "All tree cutting will be done in accordance with DEC's policy on Tree Cutting on Forest Preserve Lands (LF-91-2), which requires a work plan including a tree count by species and size class of all trees that are 3" dbh or more to be cut, removed, or destroyed." While there are no tree counts in the UMP for the number of trees that will be destroyed, we anticipate that the number will be in the thousands, if not tens of thousands, in order to undertake the activities in the UMP.

Peter Bauer  
**Executive Director**

Tree cutting on the public Forest Preserve is strictly limited by Article 14, Section 1, of the NYS Constitution. Article 14 reads: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. 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." This wording has not changed since its adoption by the Constitutional Convention of 1894.

Historically, limited tree cutting on the Forest Preserve has been undertaken by state agencies to facilitate various public recreational programs. Court cases from 1930 and 1993 have ruled that tree cutting is allowable on the Forest Preserve for management activities so long as it does not exceed a "material degree" or occur to a "substantial extent."

**Protect the Adirondacks**

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In 1930, in *The Association for the Protection of the Adirondacks v MacDonald*, the courts found that the state's plans to cut 2,500 "large and small" trees on 4.5 acres of the Forest Preserve to build a bobsled run would violate Article 14, Section 1. In 1993, the *Balsam Lake Anglers Club v. NYS Department of Environmental Conservation* case followed that precedent.

The July 3, 2019 Appellate Division, Third Department, decision in *Protect the Adirondacks v. DEC and APA* found the cutting of 25,000 trees of 1" DBH or greater, and 952 trees per mile, to build Class II snowmobile trails to be unconstitutional. This decision also upheld the standards from the previous Article 14 court decisions from 1930 and 1993 that found that tree cutting is allowable on the Forest Preserve for management activities only so long as it does not exceed a "material degree" or occur to a "substantial extent." The Appellate Division's decision expanded upon a lower court decision that, in part, recognized all trees on the Forest Preserve as "timber" for purposes of Article 14, including trees under 3" DBH.

As we assume you know, an appeal in this case was recently argued at the New York Court of Appeals and a decision is likely to be issued this spring.

We note that there are no tree cutting estimates for the new Hinckley Reservoir Campground. Given the extensive clearing involved it could be many acres and thousands of trees, if not tens of thousands. We do not see how this project can be undertaken without violating Article 14, Section 1, of the State Constitution.

We also question whether building a campground of this type is consistent with the mandate of Article 14, Section 1 that requires that the lands of the forest preserve "shall be forever kept as wild forest lands."

We hope that the APA will take up the following questions at its April 16, 2021 State Lands Committee meeting: "Why are we rushing to vote on something that may turn out to be unconstitutional, when we will have a decision from the Court of Appeals very soon, which might make the entire plan unconstitutional? Shouldn't we just table it until we see what happens in the court case?"

We suggest that this action be tabled until a thorough review of its constitutionality can be undertaken, based on the upcoming decision by the Court of Appeals.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to bring this matter to your attention.

Sincerely,



Peter Bauer  
Executive Director

CC: NYSDEC