STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
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In The Matter of the Petition of

The Forest Rangers, Local 1872, Security & Law Enforcement Employees, Council 82, AFSCME, AFL-CIO

DECLARATORY RULING

DEC #9-01

For A Declaratory Ruling

- X

Local 1872 of Council 82, the Security and Law Enforcement Employees of the American Federation of State, County and Municipal Employees AFL-CIO ("Council 82"), representing the Forest Rangers of the Department of Environmental Conservation ("Department"), petitions for a declaratory ruling pursuant to Section 204 of the State Administrative Procedure Act and 6 NYCRR Part 619, to clarify the applicability and scope of §3-0301(2)(g) and §9-1113 of the Environmental Conservation Law, ("ECL") consistent with the Fourth Amendment of the U. S. Constitution, to the operations of the Forest Rangers of the Department of Environmental Conservation enforcing their statutory forest fire control duties on the top lopping of evergreen trees. More specifically, Council 82 enquires whether Forest Rangers may enter private property pursuant to §3-0301(2)(g), in order to conduct inspections necessary to effectuate §9-1113.

Although this inquiry should and normally would be handled routinely, without recourse to a Declaratory Ruling, the circumstances leading to the instant petition weigh in favor of making this ruling. First, the issue raised in the instant petition has

been the subject of unresolved and divergent legal opinions about the Forest Rangers' authority rendered between 1981 and 1983, both by attorneys for Council 82 and within the DEC by an Assistant Counsel for Lands and Forests and by a Regional Attorney assigned to a Region including both Forest Preserve and other forest lands. Further, since the Forest Rangers often must exercise their duties on private property, it is essential that the scope of their authority to enter private land be clear in order to honor their statutory responsibilities while at the same time respecting the fundamental property rights of the owners. Moreover, the resolution of the questions regarding the Forest Rangers' obligations to enter private lands necessarily is governed by, and entails adherence to, the Fourth Amendment of the Constitution of the United States of America and the similar safeguards in Article I, §12, of the New York State Constitution; how the Department of Environmental Conservation employs its police powers under the Fourth Amendment presents public policy questions of the most fundamental nature. Finally, a ruling on a procedural motion by a nisi prius county court in an analogous situation has raised questions about how the Environmental Conservation Law is administered in order to conform to the Fourth Amendment, see People v. Hedges, 112 Misc. 2d 632, 447 NYS 2d 1007 (Dist. Ct., Suffolk Co., 1982).* There are, therefore, substantial public

*This ruling involved a search of a place of business and a seizure; although distinguishable on its facts from a routine inspection of open forests, with no seizure issue present, the expansive nature of the ruling's dicta and reach require its evaluation here.

policy considerations favoring consideration of the instant petition in order to assure that the Forest Rangers operate in compliance with the Fourth Amendment's requirements.

Accordingly, the petition is granted. For the reasons set forth herein, the Forest Rangers' inspections under §§3-0301(2)(g) and 9-1113, ECL, are consistent with the Fourth Amendment of the Federal Constitution and Article I, §12, of the New York State Constitution. The scope of inspections made by the Forest Rangers under §3-0301(2)(g) in order to enforce the tree top lopping requirement of §9-1113 is clarified in this Declaratory Ruling.

Two related provisions of the ECL require interpretation here. The first recites the Commissioner's general authority in ECL §3-0301(2)(g) to "enter and inspect any property or premises for the purpose of investigating actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or non-compliance with any law, rule or regulation" promulgated under the ECL. The second provision sets forth the authority vested in the Forest Rangers under Title 11 in Article 9 of the ECL regarding "Forest Fire Control", to require "every person" who fells evergreens to cut off the trees limbs up to the three inch diameter width as a fire safety measure. §9-1113, ECL. The timber practice required by this latter regulation is known as "top lopping."

While these statutory authorities are clear on their face, their exercise by the Forest Rangers has given rise to divergent legal opinions in light of the guiding search and seizure case law. A Department attorney for the Division of Lands and Forests would read a gloss onto these texts to the effect that a Forest Ranger may enter land only (1) with permission of the property owner, (2) upon observing a violation of the ECL from a location where the Ranger is authorized to be, or (3) with a search warrant executed by a police officer. This view of the law became the basis for a Memorandum dated September 23, 1981, from the Director of the Division of Lands and Forests directing Forest Rangers to comply with this interpretation. The Regional Attorney advising the Forest Rangers in DEC Region 6 thereafter disagreed with this construction of the applicable law, and the Department's chief legal officers prior to my appointment failed to resolve the conflict.

Council 82 as Petitioner now urges that the Lands and Forest Division Director's gloss is unduly restrictive and thwarts the Forest Rangers in the discharge of their statutory duty. A review of the statutory purposes served by ECL §3-0301(2)(g) and §9-1113, and a careful examination of the governing case law, support the conclusion urged by Council 82. Forest Rangers may, of course, enter private property in any of the three circumstances

set forth above; in addition, however, Forest Rangers may also enter all private forest lands, except those with a private home or curtilage or similar private place, for purposes of inspecting to ascertain compliance with the top lopping law or other forest fire prevention regulations. The reasons for this conclusion are as follows.

The constitutional sufficiency of searches such as authorized by ECL §3-0301 and §9-1113 is governed by the Fourth Amendment: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This right is binding on New York State and the Department by virtue of the due process clause of the Fourteenth Amendment to the U. S. Constitution. See Mapp v. Ohio, 367 U.S. 643, 655 (1961).

The principal objective of the Fourth Amendment is to protect a person and his or her privacy against "unreasonable" searches, and not to shield all privately held property from legitimate governmental inspection. As the U.S. Supreme Court has put it, the Fourth Amendment "protects people, not places. What a person knowingly exposes to the public, even in his own home or office,

is not a subject of Fourth Amendment protection....but what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." Katz v. U. S., 389 U.S. 347, 351-2 (1967).

As recently as the last year, the Supreme Court reiterated this basic theme. "The Fourth Amendment protects legitimate expectations of privacy rather than simply places. If the inspection by police does not intrude upon a legitimate expectation of privacy, there is no 'search' subject to the warrant clause." Illinois v. Andreas, 103 S. Ct. 3319, 3323 (1983). As noted in Marshall v. Barlow's, Inc., 436 U.S. 307, 321, "The reasonableness of a warrantless search ... will depend upon the specific enforcement needs and privacy guarantees of each statute."

Seen in this light, it is not dispositive to say that privately owned forest lands, even those posted with a "no trespass" sign, are a place where a Forest Ranger may enter only with search warrant or permission. The property owner must do more than assert his proprietorship of the woods; a Fourth Amendment claim "depends not on a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." Rakas v. Illinois, 439 U.S. 128, 143 (1978). The Fourth Amendment limitations on government activity attach when the private

individual's area is one "in which there was a reasonable expectation of freedom from governmental intrusion." Mancusi v. DeForte, 392 U.S. 364, 368 (1968).

In determining whether the area is one with a factually justifiable expectation of privacy, a three pronged test can be used, as stated in U.S. v. Lyons, 706 F. 2d 321 at 325-326 (D.C. Cir., 1983):

> "First, 'the Fourth Amendment protects people not places'....Thus, the question we must answer is not whether the room and closet were somehow 'private spaces' in the abstract, but whether [defendant] had a reasonable expectation of privacy there....Second, a private interest, in the constitutional lexicon, consists of a reasonable expectation that uninvited and unauthorized persons will not intrude into a particular area....Third, an expectation of privacy, strictly speaking, consists of a belief that uninvited persons will not intrude in a particular way."

Under the first test, unless the privately owned forest area is one where a person may reasonably expect privacy, the ECL grants the Forest Rangers the legal authority to inspect it without necessity of a search warrant. Whether the expectation of privacy is reasonable turns upon two factors: "The first is whether the individual, by his conduct, has 'exhibited an actual (subjective) expectation of privacy'.... The second question is whether the individual's subjective expectation of privacy is

'one that society is prepared to recognize as "reasonable"' ... whether ... the individual's expectation, viewed objectively, is 'justifiabl[e]' under the circumstances." Smith v. Maryland, 442 U.S. 735, 740 (1978).

Thus, a home is a place where a person expects privacy, while that person's activities exposed "to the 'plain view' of outsiders are not 'protected' because no intention to keep them to himself has been exhibited." Katz v. U.S., 389 U.S. 347, 361 (1967, Harlan J., concurring). Privately held forests may be kept in privacy, for instance, if the owner allows no logging or other activity regulated by the ECL, e.g. hunting, and if appropriate fencing exists and "no trespass" signs are posted.

Once an owner conducts timbering, however, he engages in conduct for which society has a long standing and justified interest in assuring that the owner will adhere to safe practices in order to avert forest fires and safeguard the forest ecology. Negligent lumbering conduct on one forest parcel jeopardizes and can harm the entire forest area; forest fires, of course, do not respect property lines and continue to this day to cause serious damage to life, property and natural resources such as wildlife or watershed which benefit the public generally. Inspections are necessary to avert this harm, and ECL §9-1103(6) reinforces the

authority of ECL §3-0301(2)(g): "...in connection with the control of fire, the department shall have the power to...appoint necessary employees to perform such duties as are required in this Title 11." Forest Rangers are so designated. 6 NYCRR Section 641.1.

The Forest Rangers' inspections are expressly limited as to where they may occur, only on the forest lands in the fire towns and fire districts specified by the Department. They are also limited as to their purpose, only as specified by the Forest Fire Control provisions in the ECL. The time and circumstances of these inspections are reasonable as required by the Fourth Amendment; they take place during the daylight, business hours, for the announced specific, limited purpose of ascertaining compliance with the forest fire controls in Title 11, ECL. Both the policy and practices of the Rangers dictate that the inspections be conducted during the day when the forest is well lit by sunlight; the inspections routinely take place between 9 a.m. and 5 p.m., the Rangers' working day. Where timbering operations are conducted, a property owner already has allowed the entry of loggers, truckers and other personnel onto the private forests over the roads and trails to the site of the tree cuttings; having thrown open such land, the owner can hardly suggest it is still a private place, especially when unsafe forestry practices endanger the public.

While such forest inspections are consistent with the Fourth Amendment, a person's dwelling house, even amidst a timbering operation, remains a place which society normally expects to be secure from governmental invasion. Similarly, the area immediately surrounding and closely related to the dwelling is a place usually entitled to Fourth Amendment protection. As one court put it, "in defining the surrounding area entitled to such protection, the courts historically have found helpful the common law concept of curtilage, meaning 'yard, courtyard or other piece of ground included within the fence surrounding a dwelling house." Fixel v. Wainwright, 492 F. 2d 480, 483 (5th Cir., 1974). The Forest Rangers are not authorized to enter homes or curtilage to enforce §9-1113, ECL.

In each case, the factual circumstances must be scrutinized to apply the Fourth Amendment test. "Although the expectations [of privacy] test has done away with outmoded property concepts no longer satisfactory for Fourth Amendment analysis...the distinction between open fields and curtilage is still helpful in determining the existence or not of reasonable privacy expectations." U.S. v. Williams, 581 F. 2d 451, at 453 (5th Cir., 1978), cert. den. 440 U.S. 972 (1979). As the U.S. Supreme Court explained, while property concepts may have some relevancy to

"the presence or absence of the privacy interest protected...even a property interest in premises may not be sufficient to establish a legitimate expectation of privacy with respect to particular items located on the premises or activity conducted thereon." Rakas v. Illinois, 439 U.S. 128 at 144, n. 12 (1978).

Beyond the home, and protected curtilage, is land unprotected by the Fourth Amendment, or open fields. "The differentiation between an immediately adjacent protected area and an unprotected open field has usually been analyzed as a problem of determining the extent of the 'curtilage.'" Wattenberg v. U.S., 388 F. 2d 853, 857 (9th Cir., 1968).* It is well established that the "special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields." Hester v. U.S., 265 U.S. 57, 59 (1924). Observations made in the open fields are not subject to the Fourth Amendment; an air pollution inspector, for instance, "may operate within or without the premises [of a factory] but in either case he is well within the 'open fields' exception to the Fourth Amendment." Air Pollution Variance Board v. Western Alfalfa, 416 U.S. 861, 865 (1974). The facts related to the

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* The buildings in close proximity to the dwelling are often encompassed with the curtilage. For instance, where a fence around a ranch house "was complete and intact...the barn in question was within the curtilage of the residence and was within the protective ambit of the Fourth Amendment." U.S. v. Dunn, 674 F. 2d 1093 at 1100 (5th Cir., 1982).

privacy expectations of each situation govern where the open fields are found. For instance, a search in the open fields one-half mile from farm buildings has been held to be clearly in the "open fields." McDowell v. U.S., 383 F. 2d 599, 603 (8th Cir. 1967). At the same time, the removal of a drum of chloroform to a spot just outside a cabin has been held to be an act as to which "no...expectation of privacy extended," and thus the drum entered the "open fields." U.S. v. Knotts, 103 S. Ct. 1081 (1983). Most forest lands normally would not be within the curtilage of a dwelling, cf. U.S. v. Berrong, 712 F. 2d 1370 (11th Cir., 1983); U.S. v. Lace, 669 F. 2d 46 at 50 (2d Cir., 1982), cert den. 103 S. Ct. 12), reh. den. 103 S. Ct. 480. Most timbering occurs well removed from any dwellings since the scars of timbered lands are not usually wanted near a person's home.

Thus, under normal operations the Forest Rangers' inspections of forest lands are reasonable as to the scope of the search, the place and the purpose. This is one of those carefully defined classes of cases in which a search of private property, without an owner's consent, is reasonable, in accordance with the U.S. Supreme Court's rulings that closely regulated enterprises with a long history of regulation can be inspected without a warrant. Here, the Forest Rangers' warrantless searches are necessary to further the regulatory scheme of "Forest Fire Control" and the

governmental regulatory presence is sufficiently comprehensive and defined "that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." Donovan v. Dewey, 452 U.S. 594, 600 (1981). Forest fire prevention inspections are among the necessary "responses to relatively unique circumstances" where an exception is made to the search warrant requirement of the Fourt Amendment. See, Marshall v. Barlow's, Inc., 436 U.S. 307, 313 (1977). See also, United States v. Biswell, 406 U.S. 311 (1972); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970).

New York's system of fire protection and prevention in forest lands has existed since colonial times; by 1880, the Legislature had enacted regulations for the Forest Commission, a predecessor to the Department of Environmental Conservation, which applied to private individuals and property owners. See generally G. Whipple, A History of Half a Century of the Management of the Natural Resources of the Empire State (1885-1935) 47-58 (1935). The statutory requirement providing for the lopping of tops of coniferous trees during timbering operations in the Adirondack and Catskill mountain regions pre-dates the enactment of the first codified Conservation Law in 1911. Id. at 52-53. See L. 1909, Ch. 474. The 1911 enactment continued the regulation

Then, as today, the top lopping requirement was a necessary and important means to avoid the accumulation of flammable slash created by logging operations. Whipple chronicles conditions at the turn of the century: "The cut-over lands were veritable fire-traps formed by piles of dead tree tops, limbs and brush which contributed largely to the extensive and tornadic movement of the fire." Id. at 51. Top-lopping prevented and controlled "those vast furnaces that used to follow in the wake of lumbermen." M. Longstreth The Catskills 291-292 (1918, reissued 1970). See also A. Brown and K. Davis Forest Fire: Control and Use 313 (1973).*

The Environmental Conservation Law's provisions on Forest Fire Control are derived from and continue the Conservation Law of 1911. Under this authority, the Department maintains comprehensive fire protection systems for preventing forest fires and extinguishing fires burning or threatening forests in designated

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*The prevention of forest fires "through the control of the quantity, arrangement, continuity, ignitability, or burning rate of forest fuels" is an essential element of sound contemporary forest land management. The removal of ignitable fuel is a cardinal principle of forest fire hazard reduction; as Brown and Davis put it, "Potentially, control of fuels means control of the size and difficulty of the entire fire-fighting job. Several principles are involved. First, the direct prevention of fires through hazard reduction means removal of fuels exposed to sources of high risk .... next comes an extention beyond the mere prevention of ignitions to that of preventing or limiting spread following ignition or of preventing the rapid buildup of heat energy. In terms of fire prevention, the objective becomes prevention of large or uncontrollable fires rather than simply a reduction in the total number of fires." Op. cit. at 300-301. Top-lopping serves both these principles. The tops and branches of cut evergreens, to which ECL §9-1113 applies, can last for many years as a source of fuel, both to feed the destructiveness of fires and as a place in which fires can start. They are an impediment to fire fighting. The top lopping requirement reduces this dangerous forest fire hazard.

fire towns and forest fire districts. ECL §9-1109, §9-1107. In these fire towns and fire districts the top lopping requirement is operative. ECL §9-1113. In light of New York's long-standing regulatory presence with respect to forest fire prevention and control, a person conducting logging operations in fire towns and fire districts cannot help but be aware that his forest land is subject to periodic inspections for specific fire prevention purposes such as compliance with the top lopping statute. Logging operations have such "a long tradition of close government supervision of which any person who chooses to enter such a business must already be aware" that "when an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation." Marshall v. Barlow's, Inc., 436 U.S. 307 at 313 (1978). Such a person has no reasonable expectation of privacy in these circumstances.

In order to enforce and thereby further the State's regulatory scheme for the control and prevention of forest fires, warrantless searches of forest lands, as authorized by ECL §3-0301(2)(g) for the purposes specified in ECL §9-1113, have been standard Department operations for decades. Effective fire prevention, in remote forest locations, necessitates routine inspections. The relatively few Forest Rangers perform the majority of their duties within

the vast acreage of the State's forest lands. Inspection efficiency and efficacy would be unduly hampered if each entry involved a trip to a courthouse and the services of a police officer to obtain and execute a search warrant for each inspection. The continuing need for such inspections, coupled with long history of State regulatory presence regarding logging in the forest lands, places the Forest Rangers' inspections performed pursuant to ECL §3-0301(2)(g) to enforce the top lopping requirement of ECL 9-1113, within a recognized exception to the Fourth Amendment's search warrant requirement, as noted above. See also Donovan v. Dewey, 452 U.S. 594, 600 (1981).

This conclusion is further buttressed by the minimal nature of the intrusion involved here. Where regulatory inspections further urgent governmental interests, to protect the public, and where the possibilities of abuse or the threat to privacy are not of impressive dimensions, the Supreme Court recognizes that an inspection may proceed without a warrant when specifically authorized by statute. U.S. v. Biswell, 406 U.S. 311, 317 (1972). Inspections of forest lands by Forest Rangers to determine compliance with the top lopping requirement are not personal in nature nor are they aimed at the discovery of evidence of crime. These searches, therefore, entail so very limited an incursion

into the forest landowner's privacy as to be nearly none at all. See, Camara v. Municipal Court, 387 U.S. 523, 537 (1966). Inspections invariably occur out of doors, in areas for which there is usually no reasonable expectation of privacy. Typically, these are areas which have been opened by cutting roads or paths for lumbering equipment. When the need to inspect the forest lands to enforce fire prevention statutes is balanced against the minimal invasion which the inspection entails, the reasonableness of searches performed pursuant to ECL §3-0301(2)(g) and §9-1113 is apparant.

The public has come to expect the State to provide effective forest fire controls. The importance of protection from such fires cannot be understated. The need for fire control was carefully articulated by the former State Conservation Commission in its 1916 Annual Report to the Legislature:

> "The future of our forest regions depends upon adequate protection from forest fire. There is no use investing money in such property, reforesting or taking other steps for the development of forests for the future, unless we can have such forest fire protection...We must now lay our plans on a firmer foundation and give attention to making our forest lands more fire proof. With the increase in the price of lumber, there is a tendency toward more intensive operation particularly in hardwood, and thereby the amount of fire slash upon the ground is increased. In some cases such fire hazards, when the weather conditions are favorable can easily result in conflagrations. In this increased danger the State is vitally interested, not alone because it is charged with forest fire protection on both State and private land, but also because it is the largest landowner in the region and its extended holdings are widely mixed with those of private owners. Steps should be taken to induce private owners to leave the lands which they are lumbering in a less dangerous fire condition." New York State Conservation Commission Annual Report to Legislature 37 (1916).

Forest Fire prevention remains just as important today. Brown and Davis summarize the seven primary damages caused by forest fires, Op. cit. at 615; these are as follows:

"1. Timber values. Marketable and young growth including regeneration, effect on stand composition, insect and disease damage directly resulting from fire, deterioration or improvement of the site for timber growth.

2. Watershed values. Flood erosion and sedimentation damage attributable to fire, reduction in groundwater reserves and in base streamflow.

3. Wildlife values. Loss of game birds and animals, effect on their environment.

4. Recreational values. Damage to established facilities and the effect on recreational use of forest land.

5. Grazing values. Effect of fire on range values and use.

6. Other property values. Loss of or damage to agricultural produce, farm buildings, fences, livestock, and other miscellaneous property.

7. Socioeconomic values. Effect of loss of growing timber or a deterioration of the environment on the social and economic pattern or the area."

New York expends substantial sums to enhance and maintain its timber, watershed, wildlife, and recreation resources. The routine forest fire control inspections, necessary to safeguard this investment and to avert loss to these resources, are as basic a component of the Department's responsibilities as any other.

Forest Ranger inspections to enforce the top lopping statute further a vital state interest. The possibilities of abuse, or any threat to privacy by these inspections, are minimal or non-existent. Accordingly, these warrantless inspections conform to constitutional requirements. The inspection scheme embodied in ECL §3-0301(2)(g) and §9-1113 is limited in time, place and scope, both by its concrete terms and by Department practice and practical exigencies; the Forest Rangers' inspections satisfy the test articulated in U.S. v. Biswell, 406 U.S. 311, 315-316 (1972).

In view of these leading Fourth Amendment decisions, the opinion in People v. Hedges, 447 NYS 2d 1007 (Dist. Ct., Suffolk Co., 1982), is a reference of unreliable authority, necessarily to be limited to its facts. People v. Hedges involved a criminal enforcement case in connection with the shellfishing industry, which has been subject to pervasive regulation for many years. See, e.g. State v. Mach, 594 P. 2d 1361 (Wash.), or State v. Westside Fish Co., 570 P. 2d 401 (Oregon). In People v. Hedges, the Court ruled on a pre-trial motions either to dismiss Informations alleging violations of untagged shellfish and unlawful possession of seed clams under ECL §13-0317 and §13-0325, or alternatively to supress evidence seized by the Suffolk County

police Department's Marine Bureau at the defendant's place of employment. The District Court scarcely examines the expectations of privacy involved, 447 N.Y. 2d at 1009, note 1, and the issue appears not to have been briefed or argued. The Judge never reached the facts before him and proceeded to supress the evidence on the ground that the Fourth Amendment was violated by ECL §3-0301(2)(g) and related shellfish provisions, on their face. The ruling never analyzes or even describes the factual circumstances of the search and seizure at issue. The court's failure to examine the facts as to the enforcement needs and privacy guarantees of the statutes fatally infects its conclusions about their constitutionality. A reading of the face of the statute is not dispositive; as the U. S. Court of Appeals for the Second Circuit ruled in upholding warrantless searches under the New York Public Health Law, §§3350 and 3390, a search can be lawful under a broad statutory authorization if, as a matter of fact, it is limited as to place, scope and time. U.S. ex rel. Terraciano v. Montanye, 493 F. 2d 682, 684-5 (2d Cir., 1974).

The circumstances of routine forest fire control inspections are sufficiently clear and distinct from the undescribed shellfish searches of presumably targeted individuals in their private place of business at issue in People v. Hedges, that no precedent

may be drawn from that case's evidentiary ruling. No compelling reasons were recited in the Hedges decision to depart from the "well established rule that a court of original jurisdiction should never declare a law unconstitutional unless such conclusion is inescapable." People v. Pace, 111 Misc. 2d 488, 444 N.Y.S. 2d 529 (1981). See generally the authorities collected in McKinney's Statutes §150.

For all these reasons, the Hedges decision cannot be dispositive of the question presented here. That opinion is not sound authority as a precedent. To the extent the unconsidered rationale of the Hedges decision may be viewed as contrary to the interpretation of this Declaratory Ruling, Hedges is not followed.

Accordingly, the Forest Ranger inspections pursuant to ECL §3-0301(2)(g) and §9-1113 comport with the requirements of the Fourth Amendment of the Federal Constitution and Article I, Section 12, of the New York Constitution. The Forest Rangers' routine top lopping inspections on private forest lands may be made without a search warrant under the authority of the statutes and cases set forth above.

DATED: Albany, New York
January 5, 1984

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