

Mountain law : how to reconcile exceptional nature and human activity ?

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The mountains often make you dream, sometimes frightened. A space and ecosystem that is at once sumptuous, rugged and fragile, the mountain is as much inhabited, frequented as it is coveted by Man for its activities. However, there are significant socio-economic inequalities between "mountain" territories. That is why French law has been gradually adapted to promote the sustainable development of these territories. On the one hand, the regulations support the implementation of public policies adapted to the challenges and difficulties of mountain life. On the other hand, the law is written in order to preserve the environment, limit the dispersion of buildings or reduce conflicts of use relating to land use (leisure, agriculture, housing, etc.). Thus, what is known as "mountain law" has gradually emerged, the main reliefs of which are examined below through the prism of land and urban planning issues.

1. Why a specific regulation in the mountains?

1.1. origins

To obtain a complete arsenal of support for mountain life and the fight against the process of rural desertification, France, in an

original way and unlike most other countries, has adopted legislation dedicated to the **needs and particularities of the mountain**.

The notion of "mountain law" was thus born from this **tendency to create specific law** for mountains and on many subjects to establish positive territorial discrimination that allows the implementation of public policies **adapted to mountain life, generally more difficult than elsewhere**. However, this right is not isolated because **common law continues to apply** also in mountain areas (such as environmental law, public services law) even if its application by the judge or natural or legal persons is often influenced by the specificities of the mountain environment (**the climate or risks** for example). Such specific features are widely reported by the media when spectacular accidents occur in the mountains.

The history of mountain law is ancient. The mountain has been the subject of special attention by the legislator since the 19th century, aware that some disturbances affecting nature and resulting from human activity were detrimental to the entire country. At the end of the 19th century, the main aim was to reforest and re-grass the mountain in **order to protect the land** (laws of 28 July 1860 and 8 June 1864) and then to restore and conserve the land in the mountains (law of 4 April 1882). At that time, the Mountain Land Restoration Service (RTM) was created, it still exists (Read [Dams on torrents, why?](#)).

Thermalism and then skiing were then born without any particular legislative framework from the point of view of urban planning. The law in this area was to emerge under the **Vichy regime**. This regime wanted to bring about the emergence, in the wake of an educational moral [1], of **winter tourism resorts with international influence**. "Study missions" composed of urban planners, architects and engineers were launched in 1942-1944, with the aim of prefiguring the functional and urban plans of the future jewels of French skiing (at the time: Vars, Chamonix, Belleville, des Allues and Saint-Bon region, Val d'Isère - Tignes). In addition, Act No. 498 of 3 April 1942 gave legal status to winter sports and mountaineering resorts [2]. However, the planned stations were not "grounded" at the time.

Then came the time of the "**snow plans**" in the **1960s and 1970s**, further proof of the State's determination to develop the mountain tourism economy in the country's interest. The innovative ideas of the 1940s were implemented in particular with the **integrated resorts** (notions of snow front, reception capacity, connection of ski areas by cable car, etc.). The results are not immune to criticism, as the desire to create popular stations has been partly disappointed [3].

1.2. In search of a balance between development and protection of space

Environmental protection has been a **commitment** of governments since the early 1970s. Since then, the consideration of nature has only **increased** with, in particular, Act No. 76-629 of 10 July 1976 on the protection of nature, and much later, Constitutional Act No. 2005-205 of ¹ March 2005 on the Environmental Charter.



Figure 1. The development of mountain ski resorts: Avoriaz. [Source: By Look Sharp! [GFDL (<http://www.gnu.org/copyleft/fdl.html>) or CC BY-SA 3.0 (<https://creativecommons.org/licenses/by-sa/3.0/>)], from Wikimedia Commons]

The **management of urbanization at altitude and the development of ski resorts** consequently became a **public policy component** (Figure 1). In this respect, the speech of the President of the Republic, Valéry Giscard d'Estaing, in Vallouise on 23 August 1977, is particularly noteworthy. He advocated a real mountain policy. This position was reflected in the enactment of a **national planning directive on the protection and development of mountains**, approved by Decree No. 77-1281 of 22 November 1977. Its purpose was to **limit land competition**, avoid the dispersion of buildings and promote **planned tourism development**.

The search for a balance between development and protection of mountain areas was then enshrined in **Act No. 85-30 of 9 January 1985, known as the "Mountain Law"**. Voted unanimously, it wanted to deal with a **global approach to** a diversity of subjects to improve life in the mountains while taking into account local specificities and giving more powers to decentralized authorities to manage urban planning matters.

Tired, despite the ambitions of the law, the search for balance has remained rather ineffective because urban sprawl and influence have continued to increase in mountain departments^[4]. Amended and consolidated by **Act No. 2016-1888 of 28 December 2016 on the modernization, development and protection of mountain territories known as the "Mountain 2"** Act, the 1985 Act is still based on an anthropocentric and pragmatic approach designed to produce maximum benefits for life in the mountains from a **sustainable development perspective**^[5].

Despite some progress, however, the "Mountain 2" law did not have the innovative character of the 1985 law and did not carry out an exhaustive legal *aggiornamento*, the [Alpine Protection Convention](#), to which France is nevertheless subject, still inspiring public policies too little, for example, while in international law mountains are first considered as a space to be protected. In fact, the 2016 law did not meet with unanimous approval. The consensual guiding principle of the desire to revitalize the mountain in 1985 was followed by a **variety of aspirations**, ranging from regulating - or even limiting - its use to diversifying tourism and maintaining the international competitiveness of the ski economy (mountain "nature-resourcing" versus mountain "amusement park"). The model centred around skiing is no longer a consensus.

1.3. What is a mountain area within the meaning of the law ?

Contrary to appearances, the **mountain area** is not easy to define. Instinctively, the mountain evokes altitude, relief, climate and a particular human life^[6]. However, the law does not provide a clear definition of the mountain. **It simply refers to "mountain areas" in the sense of this or that text.** And this designation of the "legal" mountain will lead to the application of various legal regimes such as agricultural aid or urban planning.

Within the meaning of the Mountain Law, mountain areas are characterised by **significant handicaps** leading to more difficult living conditions and restricting the exercise of certain economic activities (Article 3 of the Law). Mountain areas are then classified by inter-ministerial decrees based on criteria: **altitude and climate** on the one hand, **the existence of steep slopes** on the other.

However, this notion of mountain area does not include all forms of mountains. Moreover, for the intervention of the emergency services, the mountain area is even more vague because the circular of 6 June 2011 specifies that mountain areas must be understood "according to their current meaning".

In any case, the number of classified municipalities increased from 3854 in the early 1960s to **6158** in 2017 (6092 in metropolitan France and 66 in overseas France)^[7].



Figure 2. Map of the French massifs [Source: CGGET - Observatoire des Territoires]

It should be noted that, in addition to mountain areas qualified as such in the administrative sense, there are also "massifs" which are recognised in law. They even have a specific body with the "committees of massifs" whose missions to promote sustainable development are multiple: drafting of an inter-regional plan for the planning and development of the massif, opinions given during tourist development operations) [8]. Delimited by decree, the massif is a larger area that includes mountain areas but also areas that are immediately adjacent to them: foothills or plains (Figure 2). According to article 5 of the Mountain Law, the massifs are: Alps, Corsica, Massif Central, Jura Massif, Pyrenees, Vosges Massif.

2. The city in the mountains: what principles should guide development and construction?

Various legal principles apply only in mountain areas. The most emblematic are the following.

2.1. Construction as a continuation of existing urbanization

This is one of the **most important** principles of the French urban planning code. It consists of a **general prohibition of isolated urbanization** since "*urbanization is carried out in continuity with villages, villages, hamlets, groups of traditional constructions or existing dwellings (...)*" [9]. The principle is thus supposed to fight against the "**sprawl**" of mountain constructions incompatible with the preservation of the environment, agricultural land or the limitation of natural risks.

However, this principle has been **relaxed** since its definition in 1985 in the "Montagne" law. As the amendments have been made, it has lost its effect - even its meaning - because **many exceptions or derogations** are possible, whether they are provided for by law, such as the construction of annexes to buildings or the construction of new tourist units or made possible by local urban planning documents.

How to assess continuity? The notion of "continuity" is not precisely defined by the urban planning code, for example in terms of minimum distances between buildings. However, the law specifies that continuity is assessed on the basis of **three criteria** [10]:

the local characteristics of the traditional habitat,

the constructions installed,

and the existence of routes and networks.

In practice, it is essentially up to the administrative judge, on a local and case-by-case basis, often with maps and photos to

support it, to decide whether an urbanization is taking place and then to decide whether or not the continuity of the construction project to that urbanization is respected. The notion of continuity can be related to absolute contiguity or to a small distance between existing buildings and the project.

Example: continuity necessarily implies proximity. This is not the case for an area located several kilometres from the town and village, hundreds of metres from a locality with a few buildings, even if the land is located in an urban area - and therefore potentially constructible - of the local urban development plan [11].

2.2. The preservation of agricultural land



Figure 3. Lachaup Plain, Ancelle and Piolit (Highlands) [Source : By Fr. Latreille[Source : By Fr. Latreille[GFDL (<http://www.gnu.org/copyleft/fdl.html>) or CC BY-SA 3.0 (<https://creativecommons.org/licenses/by-sa/3.0/>)], from Wikimedia Commons]

In the mountains, the urban planning code requires that the **land necessary for the maintenance and development of agricultural, pastoral and forestry activities**, particularly the land located in the valley bottoms, be preserved (Figure 3). The need to preserve these lands is assessed in the light of their role and place in local farming systems. Their situation in relation to the location of the farm, their relief, their slope and their exposure are also taken into account [12].

What are the "good" lands to preserve? The administrative judge had the opportunity to specify that the agricultural land to be protected as a **priority** in the mountains is **flat or slightly sloping land (low gradient) and therefore mechanizable** (often hay meadows complementary to a livestock activity) [13].

How can these lands be preserved? It is essentially up to the urban planning documents to do so in accordance with the other interests at the local level (housing, tourism). In any case, the **carrying capacity** of areas intended for urbanisation must be **compatible with** the preservation of natural and agricultural areas [14].

However, the town planning code provides for various exceptions [15]: may be **authorised in agricultural areas or land to be preserved**:

buildings necessary for agricultural, pastoral and forestry activities,

sports equipment related in particular to skiing and hiking,

alpine chalets and summer buildings (Focus # 3).

2.3. Protection of the banks of water bodies



Figure 4. Gaube Lake (Cauterets Valley, Pyrenees) View of the lake in summer with the Vignemale at the bottom. [Source: Creative Commons Attribution 2.5 Generic Licence; Wikimedia commons]

In the mountains, **the natural parts of the banks of natural or artificial water bodies** with an area of **less than 1,000 hectares** [16] **are protected over a distance of 300 metres** from the shore (Figure 4). All new constructions, installations and roads are **prohibited**, as well as all extraction and scouring [17]. However, a large number of **exceptions or derogations** allow construction under restrictive conditions (in particular refuges, stopovers, natural camping areas, reception and safety equipment necessary for swimming, water sports, walking or hiking) [18].

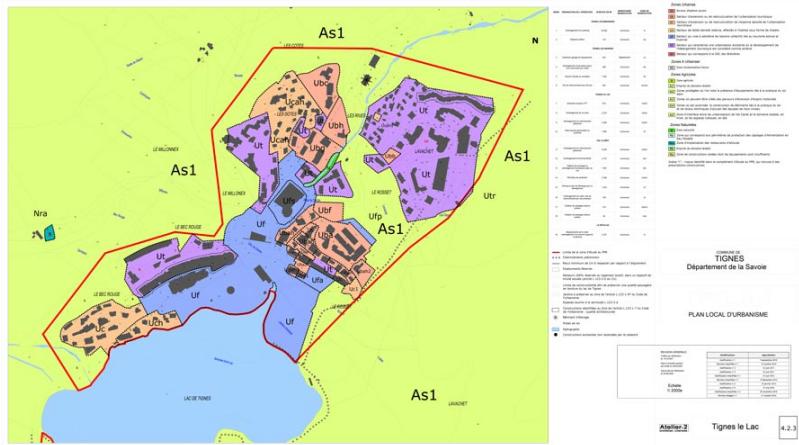


Figure 5. Lake of Tignes. Zoning of the local urban planning programme (approved on 3 September 2008, plan 4.2.3). [Source: Public document, available at: www.mairie-tignes.fr]

How to appreciate the "natural" character of the banks? This is the result of the concrete analysis of the premises (Figure 5), under the sovereign control of the administrative judge in the event of a dispute. Naturalness is not compromised by earthworks for the installation of ski lifts, but it no longer exists if the space has been used for the exploitation of a large quarry or if it is bordered by a national road and an abandoned railway line [19].

2.4. The "balances" of tourism development

In mountain areas, **tourism development** and, in particular, the creation or extension of **new tourist units** (see Focus 2.) must take into account several criteria to give operations a **balanced character** [20].

Any development or equipment project must first take into account the **communities of interest of the local authorities concerned** (including foreign border municipalities).

It must then take into account the **vulnerability of the mountain area to climate change**. Despite the ambiguity of the words,

this welcome innovation in the 2016 "Montagne 2" law can be analysed as a **principle of prudence** imposed on developers in order to properly measure the effects of projects - and therefore their relevance - in terms of their impact on water resources, agricultural land or energy consumption.

It must also contribute to the **balance between economic and leisure activities**, in particular by promoting the diversification of tourist activities and the rational use of existing built heritage and rental management formulas for new buildings.

Finally, the location, design and construction of a new tourist unit must respect the **quality of the sites and the major natural balances**. The administrative judge exercises extensive control to ensure that these principles are properly applied [21]. For example, it has cancelled prefectoral decrees approving projects to create or extend ski resorts, such as in Vaujany or Ampus (irreversible damage to landscapes, flora and fauna, exposure to natural risks, etc.) [22].

3. Can we build despite the natural risks?

In people's minds, the mountain is often perceived as a **space conducive to accidents** (Figure 6). As such, it is closely associated with the notion of danger or risk, even if a part of fantasy accompanies reality. The question of taking natural risks into account is all the more serious and topical as global warming has the consequence of making mountains both more accessible (in particular, they can be built at higher altitudes) and more dangerous (soil instability, etc., see [the "Natural Risks" section of the Encyclopedia of the Environment](#)).



Figure 6. Edouard Whymper's engraving "Une canonnade dans le Cervin" from Edward Whymper's book "Escalades dans les Alpes de 1860 à 1869" (p. 135); Paris: Hachette, 1873. Collection: Chambéry Municipal Library.

In France, public authorities have long been content to **react to** accidents caused by natural events. Thus, in the face of "fatality", the State first improved the emergency services in order to be able to intervene quickly in the event of an accident (emergency organisation plans, plans for organising civil protection responses [23]). It then strengthened compensation for victims and made it easier for victims to receive compensation when natural disaster orders are issued [24].

This **passive** action has not helped to develop a **culture of risk prevention**. Faced with the accumulation of tragedies, the State then placed prevention among its priorities by adopting a global system consisting of public information measures and procedures to improve soil control and even expropriate properties that were too exposed to risks [25]. In short, the public action extended **from the reaction to the event to its avoidance**.

3.1. avoiding risk: preventing accidents to property and people

Many legal tools have been created to prevent natural risks and keep buildings away from hazards. For example, and in the first instance, the mayor or prefect may refuse to authorize construction projects on grounds of public safety [26]. Then, the local urban planning plan can prohibit construction in areas at risk and classify the parcels concerned as natural areas.



Figure 7. Landslide of Chamonix, August 2016. [Source: By Otourly [GFDL (<http://www.gnu.org/copyleft/fdl.html>) or CC BY-SA 4.0 (<https://creativecommons.org/licenses/by-sa/4.0/>)], from Wikimedia Commons]

Finally, the State is competent to draw up **Prevention Plans for Preventable Natural Risks** (PPRNP). Following numerous tragedies such as the Val d'Isère avalanche in 1970 which destroyed a UCPA chalet killing 39 people, the disaster of the campsite swept by the flood of the Borne au Grand-Bornand in 1987 causing 23 deaths or the avalanche in the hamlet of Montroc near Chamonix which destroyed 14 cottages and caused 12 deaths in 1999, the State has considerably increased the elaboration of these plans (floods, avalanches, torrents, ground movements) [27].

The PPRNP delineates areas that are "exposed to risks" and areas that are "not directly exposed to risks". It then defines the preventive, protective and safeguarding measures that must be taken, both by public authorities (Figure 7) and individuals. These measures, which are called **public utility easements** in law, are binding. For example, they can prevent the restoration of a building destroyed by an avalanche even if the local urban plan does not oppose it [28]. As at 31 December 2016, 10913 French municipalities had an approved PPRN [29].

3.2. Assume the risk: protect against the consequences of accidents



Figure 8. Security work carried out by the RTM service in the Mongie national forest (near the Pic du Midi de Bigorre). [Source: © Nathalie Petrel, ONF]

Despite the voluntarism, the pressure for development being such, we must also resolve to "**learn to live" with the natural risk**". Thus, when prevention seems economically or socially out of reach, the consequences or effects of accidents should be limited by measures to **protect** property and people. It will be a question of **assuming the risk**. Where prevention is intended to prevent accidents from occurring, protection includes this possibility.

In addition to the respect of building standards adapted to mountain risk areas, the requirement to carry out protection work often results from **plans to prevent foreseeable natural risks**. In practice, these plans may set out measures for the development, use or exploitation of existing assets to reduce their vulnerability and ensure the safety of persons or limit damage to them. These easements or "**obligations to do**" are binding for public authorities (construction of protections, nets, drainage, cleaning of streams, etc.) as well as for private owners (works to adapt constructions, drainage, adaptation of facades to flows, elevation of buildings, shelter level, ground anchoring of certain equipment, watering of electrical circuits, etc...).

In addition to their recreational function, wood production or ecosystem preservation, **forests** also have a function of protecting people and property from natural hazards. They are therefore used as physical barriers against the risks of rock falls, avalanches, etc., by creating physical barriers or by stabilising the soil or snow cover. To become effective **natural ramparts**, however, they must be **developed** (tree cutting and pruning, arrangement of trunks across the slope, creation of paravalanche systems, management planning for tree renewal). These **so-called "protection" forests** are classified by the State and subject to a special legal regime [30]. On the one hand, this classification **prohibits** any type of land use likely to compromise the conservation or protection of afforestation. On the other hand, easements are enforceable against applications for land use permits. Moreover, the **work** necessary for soil consolidation, protection against avalanches, etc., can be carried out by the **State** (Service de Restauration des Terrains en Montagne - RTM) (Figure 8).

4. How can we regulate access to an ever more frequented mountain for leisure activities?

The challenge of regulating mountain use for leisure activities is now important. Environmental law tries to answer this question. For example, article L. 362-1 of the Environmental Code **prohibits the circulation of motor vehicles outside roads classified in the public road domain of the State**, departments and municipalities, rural roads and private roads open to public circulation by motor vehicles. In addition, article L. 363-1 of the same code prohibits passenger drop-offs for leisure purposes by aircraft (in other words, the **drop-off of skiers by helicopter**) outside aerodromes in the mountains.



Figure 9. Snowmobile. [Source: Pixabay, Royalty-free]

Snowmobiles are considered **motor vehicles** [31] and therefore, in theory, their circulation is very restricted (Figure 9). However, the increasing use of these devices for the benefit of tourists has led the legislator to build a regime that allows their use in the natural environment while limiting, if possible, their impact on the environment, public tranquility or safety. It **prohibits the creation of itineraries in natural environments, even marked out**, for the practice of sports or motorized leisure activities. On the other hand, they can be used on **land specially designed for their use**. If the area exceeds 4 hectares, these lands are also subject to the UTN procedure (Focus # 2). It is absolutely essential to be in the presence of a "land" and not a "route", otherwise the project is illegal [32].

It should be noted, however, that a **derogation** has existed since 2016. In **ski resorts**, the operator of an high-altitude tourist establishment offering on-site catering services may benefit from an authorization from the mayor or the prefect allowing him to **transport his customers** using the ski area, when the lifts close, with motorized equipment designed for progression on snow [33].

5. What to do with tourist wastelands in low altitude resorts without snow?



Figure 10. Ghost ski resort of Saint Honoré 1500. At the end of the 1980s, the station's project was launched to revive the local economy after the closure of the La Mure mines. Houses and ski lifts were created. But financial malpractice stopped the real estate project with a judicial liquidation in 1995. As the snow cover of the area is increasingly lacking, the ski resort will be closed in 2004. The lifts will then be dismantled and resold. Next to inhabited buildings, abandoned buildings are still for some time the realm of graffiti artists. [Source : Photo © Jacques Joyard]

There will be no snow and low altitude stations will be the first to suffer the effects of climate change [34]. Skiing leisure activities were conceived as eternal leisure activities and until the law of 28 December 2016, no French text required the **dismantling of** obsolete mechanical fallout [35]. While ski lifts can be used outside of snowy periods for other leisure activities (downhill mountain biking, hiking) with a view to more year-round tourism, many installations will still have to be dismantled due to a lack of viable economic activity, unless they alter mountain landscapes and allow wastelands to flourish. The town planning code now **requires** that the authorization to carry out work on the ski lifts be accompanied by an **obligation to dismantle and restore the sites** within **three years** of the final closure of the lifts [36].

Even if the legal regime of this obligation remains to be clarified (the question of financing dismantling is not regulated by law to date), this progress reveals an **awareness of** the risk of creating wastelands in the event of anachronistic investments in terms of tourist aspirations or global warming. It is also a way of finally considering the **reversibility of the installations** if their use ceases and of returning the space to nature (Figure 10).

6. Messages to remember

The mountain is a specific environment governed by a particular and adapted law, seeking a balance between economic development and the protection of natural environments.

This mountain law is characterised by the desire to control urbanisation and manage natural risks.

These regulations must also address new challenges such as the intensification of recreational activities and the abandonment of low altitude resorts due to climate change.

References and notes

Cover image. Gondola - photo by Stella Caraman. [Source: Unsplash, royalty-free image.]

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