THE ADIRONDACK PARK AND THE NORTHERN FOREST: AN ESSAY ON PRESERVATION AND CONSERVATION

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INTRODUCTION

> "We can never have enough of Nature."[1]
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> "What is a correct interpretation of the migratory practices of the lumber industry historically? Simply stated, the market was reducing an overabundance of naturally endowed timber inventories."[2]

To begin, two quotes that give us the poles, I think, of the discourses of the natural world. First, we have Thoreau with, as ever, a simple statement that becomes more complex and difficult as one examines it. He is for us, as he must have been for his contemporaries, serene, confident, universalizing, vexing. "We can never have enough of nature." Does Thoreau mean that as humans we are incapable of freeing ourselves of an innate desire for possession, assimilation, and ownership that is alien to nature? Or does he imply nature is inadequate, and there is not enough of it? Or perhaps it is simply that "having" nature is not possible? At any rate, Thoreau appears to believe the human appetite for the natural world is hard to satisfy; consequently, our aim should be, above all, to preserve as much of the natural world as possible.

And at the opposite pole, a quote from the high point of the Reagan Revolution. When a revolution succeeds, its militants are convinced they have the hammer that makes the whole world a nail. No problem is so recalcitrant it cannot be solved with a

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1. HENRY DAVID THOREAU, WALDEN OR LIFE IN THE WOODS 281 (1910).

2. Barney Dowdle, *The Case for Privatizing Government Owned Timberlands, in* PRIVATE RIGHTS & PUBLIC LANDS 71, 74 (Philip N. Truluck ed., 1983).

couple of good hard bangs of the ideological mallet. Here then, a Reaganista market militant takes on the task of explaining environmental degradation of the North American continent as the destruction of old-growth forests moved westward through the nineteenth and twentieth century. Why were the forests consumed? Quite simple: there were too many of them. We can indeed have too much nature and the market will let us know just when. And of course, once the natural world is no longer, as it were, overabundant, "production [in this case, of second-growth forests] will be undertaken after the inventory correction has been made and timber prices have risen."[3] At the end of overabundance, at the point of scarcity, the market will force the move from depletion to conservation.

I. THE CONFLICT OVER THE NORTHERN FOREST

These are two opposing views of the natural world. First, that it is endlessly and unattainably desirable; second, that it is a resource to be consumed and renewed as the market dictates. The controversy over the fate of the Northern Forest appears as yet another chapter in the conflict between too much nature and not enough: conservation versus preservation; working woods versus wilderness; forestry[4] versus natural processes; Pinchot versus Muir.

For one moment, in 1988, both sides of the quarrel united against a new enemy—recreational development for the upper-middle-class able to afford vacation houses and in search of leisure within a day's drive.[5] The immediate threat provoking the creation of the National Forest Lands Study ("NFLS") was the fear that the North Woods of Maine, New Hampshire, Vermont, and New York could be lost forever if land held by wood products companies as "strategic reserves" of woodlot were to be sold to real estate developers. Until recently, it had seemed worthwhile for those companies to pay taxes on land as woodlot, as well as to invest in forest management and protection, against the

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3. *Id.* at 76.

4. In this paper, the term forestry is used to refer to the practice of forest management for sustainability of woodlot. A. B. RECKNAGEL, THE FORESTS OF NEW YORK STATE 69 (1923).

5. According to a real estate industry survey, one-third of all families making over $100,000 a year have second homes. Kirstin Downey, *Vacation Properties: Hot Spots in the '90s*, WASH. POST, Aug. 18, 1990, at E1.

possibility of the disappearance or prohibitively high price of lumber or pulpwood from other areas.[6] Holding land uncut and unused had been a wise strategy, but as the business environment of the eighties heated up, companies with "underutilized" assets and lagging "profit centers," become juicy takeover targets, because those assets could be used to finance the takeover attempt.[7] The hitherto untouched land was "in play."

In 1982, near the bottom of the market for timberlands, Diamond International, a large wood products company, was captured by English takeover artist Sir James Goldsmith.[8] Goldsmith sold off many of the assets of his prize: first the mills,[9] and then in 1987 and 1988, over one million wooded acres formerly owned by Diamond were put on the market.[10] Some land was marketed as real estate suitable for second home development,[11] raising the prospect that the deep woods would soon become "suburbanized" and the logging industry destroyed. New Hampshire, Vermont, and New York,[12] responding to citizen outcries, eventually bought substantial chunks of the former Diamond land within their borders at a price that gave its

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6. Robert H. Whitney, *Forces for Change in Forest Land Ownership and Use: The Large Landowners' Situation, in* CONSERVING THE NORTH WOODS: ISSUES IN PUBLIC AND PRIVATE OWNERSHIP OF FORESTED LANDS IN NORTHERN NEW ENGLAND AND NEW YORK 72, 76 (Clark S. Binkley and Perry R. Hagenstein eds., 1989) [hereinafter Whitney in B&H].

7. Such debt financing independently raises the possibility that the assets acquired, in this case, wooded land, will be liquidated quickly, in this case, by clearcutting. NORTHERN FOREST LANDS COUNCIL, *Findings and Options, in* Technical Appendix 4 (1993) [hereinafter *Findings and Options*].

8. After writing this description of Goldsmith as a "takeover artist," I came across an article bearing Goldsmith's byline and titled *The GATT in the Hat*, WASH. POST, Sept. 25, 1994, at C3. Goldsmith, identified as a member of the European Parliament for France, opposed GATT because of its terrible consequences. Among the parade of horribles Goldsmith invoked are the "loss of rural employment" and "destabilization of rural society" as agricultural jobs are lost and people migrate to cities. *Id.* Goldsmith fretted in print about falling wages and social disruption as the market forces abandonment of traditional pursuits, presumably including forestry.

9. NORTHERN FOREST LANDS COUNCIL, *Forum on Land Sales of Coburn Lands Trust and Farmer Diamond International Corporation, in* Technical Appendix 25 (1993) [hereinafter *Coburn Land*].

10. Whitney in B&H, *supra* note 6, at 75. It was not in fact Goldsmith who put the land up for sale, but Compagnie Générale Electricité ("CGE"), a European communications company, to whom Goldsmith had sold the companies he had created to hold a variety of Diamond assets. CGE was not interested in the timberland and quickly moved to sell it. *Coburn Land, supra* note 9, at 25.

11. *Coburn Land, supra* note 9, at 26.

12. Most of the Diamond land in Maine was bought up by other wood products companies. *Id.* at 27.

speculator-developers a substantial return.[13] State buy-out on such costly terms was not a long-term solution, but an emergency one.[14]

Thus, in 1989, the NFLS was commissioned by Congress and the governors of the four affected states to find a long-term answer to the question of how to keep the North Woods from being surrendered to overwhelming second home development.[15] To the extent that the study focused on this problem, it was conservationist, in that it did not seek to halt the land's current use as woodlot. Instead it sought to conserve it in that use, rather than allowing it to move to more profitable uses that the market would have assigned. In the course of the discussions that proceeded publication of the NFLS, the question of preservation was raised, making clear to the members of the study team that concern about the North Woods did not stop with the problem of corporate raiders.[16]

The majority of land in the northern forest is held by large landowners who are mostly wood products companies; environmentalists have never been happy with their forest practices.[17] From the environmentalist perspective, the

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13. *Id.* at 26. Among the potential developers was Claude Rancourt, the "Trailer Park King," whose action in acquiring options on almost 100,000 acres in northern New Hampshire, electrified public opinion there and led to the indispensable support of then-Senator Rudman for the creation of the National Forest Lands Study. Ted Williams, *Whose Woods are These?*, AUDUBON, May-June 1994, at 26, 27.

14. John Mitchell estimates that the cost to Vermont, New Hampshire, and New York of redeeming 100,000 acres, 10% of the land that Goldsmith had sold to developers, was about $25 million. JOHN G. MITCHELL, DISPATCHES FROM THE DEEP WOODS 271 (1991).

15. The United States Department of Agriculture Forest Service was directed to cooperate with the Governors' Task Force on Northern Forest Lands, created by the governors of the Northern Forest states earlier in 1988. NORTHERN FOREST UPDATE, Fall 1991, at 3.

16. *Findings and Options, supra* note 7, at 4. The Northern Forest Lands Council was created by Congress and the Governors' Task Force in 1990 as a follow-up to the NFLS. NORTHERN FOREST UPDATE, *supra* note 15, at 3.

17. Among the wood products companies in the region are Champion, Boise Cascade, Georgia Pacific, James River, Great Northern Paper, and International Paper. Champion, for example, owns about four percent of the total NFLS area and is the largest single landowner in Vermont and New Hampshire. Champion supports the concept of the "working forest," and is opposed to preservation set-asides. *Oversight on Forest Land Conservation and Related Economic Development within the Northern Forest Lands Study Area: Hearing Before the Senate Committee on Agriculture, Nutrition and Forestry of the Senate Committee on Agriculture, Nutrition, and Forestry*, 102D CONG., 1st Sess. 65-67 (July 15, 1991, Lyndonville, VT) (statement of Tom Hatranft, General Manager, Champion International Corporation). James River is an exception, holding very little land and purchasing raw materials from loggers. Whitney in B&H, *supra* note 6, at 74.

destruction of the North Woods was a possible consequence, not only of vacation home development, preceded by liquidation of timber,[18] but also of clearcutting followed by monocultural replanting that seemed on the agenda of the wood products companies using their northern forests for current needs, particularly in Maine.[19] A coalition of environmental groups formed the Northern Forest Alliance,[20] seeing a chance to raise this issue within the framework of the NFLS.

While both forest products companies and environmentalists agreed at the time of Goldsmith's wake-up call that they were opposed to converting the forest to vacation-home development, that threat eased when, with the recession of the early nineties, the takeover artists of the boom disappeared. This is not to say that they could not reemerge with an uptick in the business cycle, but for now, there is not a wild surplus of cash seeking ever more lucrative opportunities for speculative profits, nor tremendous

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18. See, e.g., *Oversight on Forest Land Conservation and Related Economic Development within the Northern Forest Lands Study Area: Hearings before the Senate Committee on Agriculture, Nutrition, and Forestry and the Subcommittee on Conservation and Forestry of the Senate Committee on Agriculture, Nutrition, and Forestry*, 102d CONG., 1st Sess. 264-65 (July 15, 1991, Bangor, ME) (statement of Jerry A. Bley) [hereinafter Bley Testimony]. Bley, a forester and member of the Northern Forest Lands Council from Maine, testified about the consequences of the sale of 10,000 acres at Grace Pond, Maine, a native wild trout pond. When the value of the land increased, according to Bley, "long-term investments in timberland became less attractive." The land was owned by the Coburn Lands Trust for the benefit of a family group. *Coburn Land, supra* note 9, at 1. The trust had owned the land for many generations, but in the mid-80's the land was sold to someone

> driven by the goal of short-term profit rather than long-term sustainability . . . . The new owner immediately accelerated and intensified timber harvesting activities . . . . After merchantable timber was removed, the new owner began dividing up the land and marketing second-home lots . . . . [T]he new owner received approval to build a 21-lot subdivision on the shores of Grace Pond. The development will forever change the character of this wild pond.

Bley Testimony, *supra*, at 265. The sale of Grace Pond by the Coburn Land Trust was, with the Diamond sale, one of the events precipitating the NFLS. *Findings and Options, supra* note 7, at 4.

19. For an account of such cutting from a preservationist point of view, *see* Williams, *supra* note 13, at 26-27.

20. Carl Reidel, *Forest Integrity: Endgame for the Northern Forest?*, AMERICAN FORESTS, Apr. 1993, at 56. Membership in the Alliance included the Association for the Protection of the Adirondacks, the Conservation Law Foundation, the National Audubon Society, the National Wildlife Federation, the Natural Resources Defense Council, the Sierra Club, and the Wilderness Society. *Id.*

growth in second home markets.[21] In other words, for the forest products industry of the Northeast, the threat that had led to creation of the NFLS passed quickly.[22] According to an investment analyst specializing in paper and forest products industry, "not a lot of change will occur in the next [ten to fifteen] years. Land peripheral to large holdings may be sold, but overall landownership will remain stable."[23]

Indeed, for the industry, the threat now is the environmentalist challenge to intensive logging. Environmentalists seek to keep forests intact by barring or limiting their use by wood products companies, at least in areas that are particularly sensitive ecologically. Indeed, their aim has been to make a park or preserve of much of the twenty-six million acres of the NFLS area.[24] Thus, the current controversy surrounding the NFLS and its successor, the Northern Forest Lands Council ("NFLC"),[25] is no longer whether the North Woods are to be saved, but whether they are to be saved as wilderness or as working forest.[26]

This question requires us to examine once again the poles of conservation and preservation. A natural spot to begin this examination is the Adirondack Park of New York State, which today includes most of the Northern Forest area held in public

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21. The demand for second homes is likely to pick up in the 1990's, according to Davis Chant, principal of the DRC Group of real estate and real estate research companies. NORTHERN FOREST LANDS COUNCIL, *Forum on National and International Influences on Land Ownership in the Northern Forest, in* Technical Appendix 3, 5 (1993) [hereinafter *National/International Forum*].

22. The Northern Forest Lands Council concluded that "[t]he major owner of forest land in the Northern Forest, the forest products industry, is viable." *Findings and Options, supra* note 7, at 13. According to the forum, it is the "[l]and of non-industrial owners [that] may be the most susceptible to forest land sales and conversion." *Id.*

23. *National/International Forum, supra* note 21, at 7.

24. *See, e.g.*, Phyllis Austin, *Who Owns the Wilderness in the Northern Forest? Public Ownership is Environmentalists' Tactic*, SACRAMENTO BEE, July 10, 1991, at B9.

25. The Council, a follow-on body to the Study, was created by the Governors of the four affected states. Reidel, *supra* note 20, at 55.

26. Clark S. Binkley and Perry R. Hagenstein similarly define the issues as conservation of forest land, provision for public recreation, and preservation of special-interest areas. Clark S. Binkley & Perry R. Hagenstein, *Policy Alternative for Conserving the North Woods in* CONSERVING THE NORTH WOODS: ISSUES IN PUBLIC AND PRIVATE OWNERSHIP OF FORESTED LANDS IN NORTHERN NEW ENGLAND AND NEW YORK 7, 30 (Clark S. Binkley & Perry R. Hagenstein, ed. 1989).

ownership,[27] as well as an equally large chunk of land that has been simultaneously held privately, though subject to land use controls that prohibit the over-population outcomes preservationists fear. Unique to the Adirondacks is a combination of preservation and conservation; for state lands were subject to preservation and left untouched, while private lands can be developed subject to land use controls. Neither of those outcomes could have been achieved without the other; that is, the preservation of state land would have been impossible unless conservation took place on private land and conservation would not have taken place on private land without preservation of state land.

New York saved its North Woods by addressing both the problems of destructive forestry practices and destructive market forces, protecting ecologically sensitive areas by government purchase and other areas by land use regulation. These are the methods adopted in the Adirondack Park, where forty percent of the park's six million acres is owned by the state and the other sixty percent governed by strict land use controls. But the cost of saving the woods was high in terms of morale and disaffection of local residents. Is the Adirondack solution adaptable to all of the twenty-six million acres of Northern Forest? Should it be adopted there? What lessons can the story of the preservation of the Adirondack forest, its 9,000 square miles including the largest wild area east of the Rockies and the largest park south of Alaska,[28] teach us about the Northern Forest as a whole?

II. A HISTORICAL CAVEAT

Like other historical outcomes, the preservation of the Adirondack forest was at one and the same time determined by vast social tides, consciously planned by individuals, and contingent. That is to say, powerful social forces tended toward that result, many individuals desired and worked for it, and some lucky strokes were necessary for it to occur. We historians can

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27. The NFLS area is about 26 million acres, of which four million are publicly owned. Two and one-half million acres of that public land is within the six million acre Adirondack Park and is owned by New York State. *See* STEPHEN C. HARPER ET AL., U.S. DEPT. OF AGRIC., THE NORTHERN FOREST LANDS STUDY OF NEW ENGLAND AND NEW YORK Table 1 (1990) [hereinafter NFLS].

28. MITCHELL, *supra* note 14, at 183.

tell stories about such events that make them seem inevitable, as well as stories that make them seem marvelous and unexpected. From neither story can one extrapolate past experience to the future—on the one hand, the apparent inevitability of a past outcome can defeat the attempt to determine how to achieve a very contested present one. On the other, one can hardly seek to achieve fortuitous outcomes, for luck is not a matter of determination. But because what I want to do is precisely an extrapolation from the past, drawing from the experience of Adirondack protection a hundred years ago lessons for protecting the North Woods today, I must treat the earlier experience as neither overdetermined and inevitable nor contingent and fortuitous. Rather, I ask which part of that experience drew upon social trends and which capitalized on strokes of luck, what was ordained and what was discovered. In an earlier paper, I gave an account of the events leading up to creation of the Adirondack Park in 1892 and the constitutionalization of the protection of the state lands within the park in 1894.[29] The next section is a condensed version of that account.

III. BEFORE ADIRONDACK CONSTITUTIONALIZATION

In 1885, the New York State legislature created the Forest Preserve, state land that would "be kept forever as wild forest lands."[30] Two years earlier, it had decided that three-quarters of a million acres of Adirondack land the state held almost accidentally as a consequence of the tax default of its owners should not be resold to loggers and land speculators, but instead retained.[31] This outcome was largely a consequence of concern on the part of scientists and business people that the destruction of the Adirondack forest could have an effect on rainfall and streamflow, and hence, on water transport on the Hudson River and Erie Canal, the lifeblood of New York's commerce.[32]

29. *See* Louise A. Halper, *A Rich Man's Paradise: Constitutional Preservation of New York State's Adirondack Forest, A Centenary Consideration*, 19 ECOLOGY L.Q. 193 (1992).

30. Act of May 15, 1885, ch. 283, 1885 N.Y. Laws 482.

31. Act of Feb. 6, 1883, ch. 13, 1883 N.Y. Laws 10.

32. Halper, *supra* note 29, at 215-22.

The question of the relationship between forests and rainfall was a troubled one and remained so for many years.[33] The early 1880's were probably the peak of the scientific conviction that there were strong local links between forests and water supply, a conviction that the continued affluence of the Mississippi River after the destruction of the Great Lakes forest and the failure of tree planting to increase rainfall on the Great Plains would weaken in coming decades.[34] The fear that watercourses would dry up or, contrarily, flood, was threatening to New York City merchants who relied upon rivers and canals both for transport itself, and to keep the price of railroad charges down. Thus, the legislature was persuaded to act on the basis of that conviction in order to preserve New York merchants' locational advantages in commerce by prohibiting resale of state lands, creating the Forest Preserve out of state-owned land in the Adirondacks.

The creation of the Forest Preserve was not contested for two reasons: the law was not understood to bar future logging and the land itself was not worth much at the time;[35] it had come into state hands stripped of its valuable crop in consequence of a common policy of lumberers of that era, "cut out and get out." Lumberers would buy wooded land, harvest the timber, and then default on their taxes, rather than holding the land and paying the taxes over the twenty-five or so years it would take for the land to regrow a valuable crop.[36] The tremendous growth in New York State logging immediately after the Civil War had brought much land into state hands through this process by the 1880's.

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33. At the time there was very little scientific justification for the theory that forests encouraged rainfall and that their destruction, conversely, limited it. In 1886, Bernhard Fernow, the first professionally trained forester in America and a strong proponent of the theory, told a researcher that it was "questionable whether anywhere such measurements have been made, which can form a reliable basis for deductions." ANDREW DENNY RODGERS, III & BERNHARD EDWARD FERNOW: A STORY OF NORTH AMERICAN FORESTRY 110 (1951). Twenty years later, Fernow found the situation not much better: "To tell the truth, while we know much of the general philosophy of the influence of forest cover on water flow, we are not so fully informed as to details of this influence as we might wish." *Id.* at 128.

34. MICHAEL WILLIAMS, AMERICANS AND THEIR FORESTS: A HISTORICAL GEOGRAPHY 384-86 (1989).

35. Halper, *supra* note 29, at 238-39.

36. WILLIAM E. SHANDS & ROBERT G. HEALY, THE LANDS NOBODY WANTED 30 (1977).

But, in the 1890's, the situation changed. Much land that had been cut was regrown; it became feasible to sell or lease state land for lumbering. It was becoming more difficult to insist that logging would affect streamflow, which in any case was less important to New York business people who had, in the main, made their peace with the railroads.[37] Thus, the issue of the state lands was harder to cast in the utilitarian terms used to justify creation of the Forest Preserve. Rather, the question was whether to preserve wilderness regardless of economic considerations, for the latter, from the point of view of taxpayers, were certainly on the side of sale or lease.[38]

Powerful and organized interest groups, made up of the very bankers, railroad magnates, and captains of industry who assured New York's status as the nation's preeminent city of commerce and finance, sought preservation of their leisure estates and summer camps in the Adirondacks.[39] Individuals representing the nation's industrial and financial elite were interested in the preservation of the Adirondacks as wilderness. The list of those who owned land for recreational purposes in the Adirondacks reads like a Who's Who of the Gilded Age: J.P. Morgan, Collis P. Huntington, Anson Phelps Stokes, Julius Bache, and E.H. Harriman.[40] The editors of the *New York Tribune* and the *New York Times*, Whitelaw Reid and John Agar, respectively, were both camp owners. Vanderbilts, Rockefellers, and Whitneys owned lavish camps and estates in the North Woods, as did nationally prominent politicians Senator Chauncey Depew, Governor John A. Dix, and Vice-President Levi P. Morton.[41] In the year before constitutionalization, these great estates and private preserves comprised almost one million of the three million acres within the Park's boundaries.[42]

For wealthy vacationers, forest protection was not a matter of economic urgency, but rather a question of retaining the values which had led them to the Adirondacks initially—its quiet and pristine beauty and its very naturalness. In a world rapidly

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37. Halper, *supra* note 29, at 259.

38. The state paid taxes to the political entities in which its lands were found and continues to do so today. *Id.* at 197.

39. *Id.* at 221-28.

40. *Id.* at 223.

41. *Id.*

42. BARBARA MCMARTIN, THE GREAT FORESTS OF THE ADIRONDACKS 149 (1994).

becoming more industrialized, "wilderness" was no longer the starting point for the exploitation of natural resources, but the most precious commodity a rich man could possess.

Thus, the question posed in the Adirondacks at the time of the agitation for constitutional protection of state-owned lands was *not* the same as the issue in today's Northern Forest. It was not whether or how to restrain private owners of Adirondack land from its exploitation or use, but rather, what could or should the state do with its land? Would the state's land be allowed to regrow, then sold once again, as local loggers wanted? Would the state hold the land and itself harvest the regrown timber or lease the harvest to those who would use the newly emerging methods of scientific forestry, as scientists and technical experts suggested? Might the state's land be held fallow, protected from both logging and fire, unused for any purpose but protecting the land and views of neighbors, as wealthy vacationers wished?

The latter solution prevailed, though never supported by executive or legislature, as were the other options. It prevailed because its proponents put the issue into the only forum in which it could be successful in the 1890's—the constitutional referendum, statewide and unidistrict, in which downstate voters uniquely held the advantage by their great weight of numbers, an advantage they held nowhere else in a time of overweighted rural districts and malapportioned legislatures.[43] When protection of state land in the Adirondacks was constitutionalized, it became inaccessible to a legislature dominated by upstate interests, including loggers, and could only be changed by a referendum similar to the one that established it. Any such referendum would continue to be dominated by downstate voters.

How did the lumber industry in New York, once the nation's leading lumber producer, come to suffer such a defeat? By the 1890's, logging, though central in many localities around the state, was no longer an industry of major importance to the economy of New York as a whole. New York City's financial and entrepreneurial success assured that capital for its enterprises need no longer be raised by maximum exploitation of native raw material. Although lumbering would produce capital, New York, unlike other wood producing areas of the period, was not dependent upon its natural resources for capital. Though wood

43. Halper, *supra* note 29, at 257-62.

products companies retained their vitality in the state as processors of lumber, their raw material came from outside New York's boundaries, transported by canal, lake, rail, and river from the Midwest and Canada (and soon the South) to the mills at Glens Falls, Albany, the Tonawandas, and Buffalo.[44]

In the 1890's, New York was seventh in the nation in the amount of lumber cut. Forty years earlier it had been first, thirty years earlier second, twenty years earlier third.[45] Just ten years earlier it had been fourth.[46] The absolute quantity of wood produced in New York had not fallen; rather, the scale of lumbering nationally had increased as the center of the lumber industry had moved west and south. West to Minnesota, Wisconsin, and Michigan, soon to the Pacific Northwest, and south to the pinewoods of Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Florida.[47] New York's wood processing industries flourished nonetheless, using raw materials from these new regions.[48] New York's many sawmills used logs brought from the South, the Midwest, and Canada, while New York trees were now cut for pulp, rather than for board lumber.

Pulp-cutting is clear-cutting;[49] there are virtually no requirements of length, diameter or species, for virtually every kind of wood can be pulped. As forest historian Michael Williams wrote, "[e]ven the poorest grades of lumber could be marketed [as pulpwood] if transport was cheap enough."[50] But, given the hilly geography of the Adirondack region, cutting of those areas that had not yet been logged off was limited by the ability to transport

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44. THOMAS COX, THIS WELL-WOODED LAND 157 (1985).

45. The last year that New York's production of wood equalled its consumption was 1870. RECKNAGEL, *supra* note 4, at 28-29.

46. COX, *supra* note 44, at 156. Within 15 years of constitutionalization, New York was to rank 22d in lumbering. RECKNAGEL, *supra* note 4, at 28.

47. Large-scale lumbering moved to the Midwest soon after the Civil War; the boom there lasted about 30 years, peaking in 1892 and declining precipitously thereafter. WILLIAMS, *supra* note 34, at 222-28. "By 1900 all the merchantable pineries in Minnesota and Wisconsin had been exploited; those in Michigan had long since gone." *Id.* at 228. Southern production began to take off in the 1880's, and by the turn of the century, the South replaced the Great Lake States as the leading producer of lumber. *Id.* at 244.

48. As late as 1923, Recknagel wrote that "New York leads all other states in the importance and value of its wood-using industries." RECKNAGEL, *supra* note 4, at 42.

49. *Id.* at 35.

50. WILLIAMS, *supra* note 34, at 203.

timber to mills.[51] While log-driving and river transport had served in mid-century to move the more accessible timber, the question in the 1890's was whether railroads would be built on a large scale to reach areas yet unlogged or whether parts of the Adirondack region would remain relatively inaccessible.

With pulpcutting, which would make all standing softwood harvestable,[52] and with the construction of railroads through the hills and valleys, it would have been possible for virtually the entire territory now within the Adirondack Park to be cut. Indeed, it would have been inevitable because as Adirondack historian Barbara McMartin points out, "railroads encourage clearcutting."[53] That outcome was thwarted by the constitutional bar against state sale of its land or timber in the region, for the state component of Adirondack land and timber was so substantial as to thwart the profitability of many attempts to build railroads and clearcut remaining woodlot.

While much pulpwood remained in the Adirondacks, extracting it all would require the building of railroads through the region. The experience of Great Lakes foresters with railroads in the 1870's and 1880's gave impetus to the notion that construction of more logging railroads could lead to a further harvest of Adirondack woodlot.[54] But, the profits to be realized from cutting the Adirondacks would not match those from lumbering first growth in the flatter, more accessible regions of the south, midwest and northwest. Thus, the capital investment necessary for railroad construction was not forthcoming.[55]

By the end of the nineteenth century, large-scale logging called for large-scale capital investment. An investment that large was secure only with vertical integration—common

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51. As late as 1970, the road system in the area was so sparse that only 13% of Forest Preserve land was considered accessible. THE FUTURE OF THE ADIRONDACK PARK, TEMPORARY STUDY COMMISSION ON THE FUTURE OF THE ADIRONDACKS, Technical Report #3 at 14 (1970) [hereinafter TSCFA].

52. Hardwoods were not taken out of the Adirondacks for pulp until the 1950's. MCMARTIN, *supra* note 42, at 167-68.

53. *Id.* at 163.

54. WILLIAMS, *supra* note 34, at 211-12.

55. Only one railroad ever crossed the Adirondacks, the Adirondack and St. Lawrence, built by William Webb for sale to the New York Central. MCMARTIN, *supra* note 42, at 132-33.

ownership of stumpage, logging railroad, and mill.[56] With the state's land removed from the market, those conditions could not be met. It was not worthwhile to build logging railroads through territory that could not be thoroughly logged,[57] nor was it economically sound to gear up for clearcutting relatively small areas. Thus, once the state lands were protected constitutionally, the danger that the Adirondacks would be entirely consumed as the Great Lakes forest had been was not really present. Wood, after all, was plentiful at the end of the nineteenth century; indeed, in 1893-95, the years surrounding constitutionalization, the lifting of the tariff on Canadian lumber, together with an economic depression, left large-scale lumberers not particularly eager to bring new areas into production.

Instead, large companies came to manage their land for sustained growth or to hold Adirondack land as strategic reserves for a time when the higher cost of timber might justify the logging of that land. The tradition of Adirondack recreation was such that land held as strategic reserves could at the same time be leased to hunting and fishing clubs, providing an income that at the least paid property taxes. Holding uncut land was no drain on profitability for the large companies, but rather a sound investment in the future.

This is not to say that there was no logging for pulpwood in the Adirondacks after constitutionalization. In fact, the amount of wood cut in New York increased, reaching a peak in 1905.[58] State land, however, was spared and although pulpcutting on private land proceeded apace, the deforestation of an entire region did not take place. Thus, where Wisconsin lost virtually all its wooded land to logging for lumber and pulp, despite the quite explicit warnings of scientists and foresters that the woods would not regrow,[59] New York's similarly concerned scientists and

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56. The experience of exploitation of both the Northeast and the Lake Forests had taught the industry that "the greatest profits in lumbering were made if the stumpage [wooded land] and the mill were owned by the same person." WILLIAMS, *supra* note 34, at 240.

57. A look at a map of the Park and Forest Preserve reveals the crazy-quilt mix of parcels held in state and private ownership. *See, e.g.*, NFLS, *supra* note 27, at Table 1.

58. MCMARTIN, *supra* note 42, at 118 (Fig. 34).

59. In 1867, three Wisconsin state commissioners had warned against deforestation in a report to the legislature. Increase G. Lapham, *Report on the Disastrous Effects of the Destruction of Forest Trees, Now Going on So Rapidly in the State of Wisconsin* (1867) (cited in COX, *supra* note 44, at 146). The Wisconsin report with its recommendation of conservation was made six years before a similar commission made similar

foresters found support from super-rich vacationers, a group absent in Wisconsin, and so succeeded in protecting the forest.

Only the relatively small-scale loggers, lumberers, and mills had a strong interest in thoroughly logging the Adirondacks. Those who wanted to continue cutting in the Adirondacks had some political force, because they were supported by local voters who wanted to retain lumber related jobs and businesses in their area. Due to a malapportioned legislature, they could make their presence felt on the political scene. The lumberers, however, were unable to project their presence much beyond the legislature. New York's remaining lumberers were relatively small-scale entrepreneurs in an industry rapidly becoming both national and large-scale.[60] Their legislative majority was undone by the preservationists' use of the electoral technique of statewide, unidistrict referendum, giving voice to millions of downstate voters persuaded that the preservation of an unseen wilderness was a worthwhile use of state power.

IV. AFTER ADIRONDACK CONSTITUTIONALIZATION

In 1894, a new state constitution provided, in its seventh amendment, famous as Article VII, section 7, that state-owned land in the Adirondacks would be "forever kept as wild forest lands."[61] Not a single acre within the boundary of the Adirondack Park changed ownership either as a result of the Park's 1892 creation or the 1894 constitutionalization. Although the struggle for constitutional protection had focussed on abusive logging and sloppy railroad practices that caused fire and destruction,[62] its outcome in fact barred neither logging nor railroad construction on private land. No controls were placed on

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recommendations to the New York State Legislature. Comm'rs of State Parks of N.Y., First Annual Report of the Commissioners of State Parks of New York, N.Y.S. Doc. No. 102 (May 15, 1873).

60. As Williams points out, the large-scale lumbering in the South and Great Lakes states was led by lumberers moving on from New York and New England where large-scale logging was finished for the time being. WILLIAMS, *supra* note 34, at 201. Furthermore, Williams says, "[t]he whole system as it evolved with increasing production, long hauls to market, and more expensive stumpage favored the large-scale operator with a secure financial position, and it weeded out the little man." *Id.* at 220.

61. N.Y. CONST. of 1894, art. VII, §7.

62. Halper, *supra* note 29, at 249-50, 258.

landowners, railroads, or on any other private individuals or entities, for almost eighty years.

Rather, potential buyers of state land and woods were hurt most by constitutionalization. They were likely to be the smaller-scale loggers, and for them constitutionalization raised the price of available land by decreasing supply.[63] Theirs was a profit structure that depended upon purchasing land relatively cheaply and paying no taxes after the first year or two. Once state land was off the market and the value of neighboring privately owned land had increased, small-scale loggers and mills were priced out of the market, providing an impetus for the concentration of the wood products industry in New York.

Small-scale loggers became the backbone of attempts to reverse constitutionalization or, at least, to interpret it as implying conservation, rather than preservation, on state lands. Their rear guard action was possible because, while constitutionalization of the state-owned forest preserve was a victory for preservationist forces, what would happen to the Adirondack wilderness over the long run was not at all clear. Did the "forever wild" provision intend the preservation of every tree on state land, or was it was a mandate for management of woods that would never be developed for any use other than forestry? The proper interpretation would be argued for years to come.

No governor or legislature had ever approved forever wild, and many believed that the amendment was a temporary barrier constructed to assure that any future logging of state land would be in conformity with a plan of scientific sustainable forestry. Thus, numerous attempts were made to modify the rigors of forever wild. In 1896, the Senate and Assembly voted to place on the ballot a proposal to amend the constitution to allow leasing, sale, or exchange of some land within the Forest Preserve.[64] Although the State Forest Commission recommended approval, the amendment was defeated in a statewide referendum, 710,000 to 320,000.[65]

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63. McMartin, *supra* note 42, at 114 (Fig. 30).

64. Halper, *supra* note 29, at 260.

65. *Id.* In New York, the process of constitutional amendment was, and continues to be, difficult. Proposed amendments that are not the product of a state constitutional convention must pass both houses in two successive legislative sessions, separated by a general election in order then to be put on a ballot for statewide public referendum. N.Y. CONST. of 1894, art. XIX, §1.

In 1897, the legislature voted funds to acquire more Adirondack land within the Park, but subject to the seller's right to remove timber over the next fifteen years.[66] In 1898, a forestry college was established at Cornell University. Governor Alonzo Black said the college was needed because the constitutional "prohibition will some time be changed . . . . The time will come when the State will sell timber to the lumbermen, spruce to the pulp mills, reap a large revenue for itself, and still retain the woods."[67] He asked that the State lease 25,000 acres of forest preserve land to Cornell for an experimental station and this proposal passed the legislature.[68] Two years later, as the century changed, the Forestry Commission asked Gifford Pinchot's Division of Forestry within the United States Department of Agriculture to draw up a plan for scientific forestry in one selected Adirondack township,[69] recommending that the constitution be amended "to provide for the practice of conservative forestry on State lands."[70] As the authors of the federal forestry plan for Township 40 said:

> It is understood that the main object of the Commission . . . in making the request for the cooperation of the Department of Agriculture in the study of the Adirondack Preserve was to set before the people of the State the reasons why the above clause in the Constitution should be so modified that the forest might be properly utilized and administered.[71]

Clearly then, the actual meaning of the forever wild provision remained contested. It was precisely this debate which led, in 1901, to the creation of the Association for the Protection of the Adirondacks ("APA") which remains the primary organizational support for the strictest possible interpretation of forever wild. If, as Adirondack historian Philip G. Terrie has said, "the

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66. Ch. 220, L. 1897.

67. NORMAN VANVALKENBURGH, THE ADIRONDACK FOREST PRESERVE: A NARRATIVE OF THE EVOLUTION OF THE ADIRONDACK FOREST PRESERVE OF NEW YORK STATE 72 (1979).

68. Ch. 122, L. 1898.

69. GIFFORD PINCHOT, BREAKING NEW GROUND 182-85 (1947).

70. VANVALKENBURGH, *supra* note 67, at 78.

71. *Id.* at 81.

Adirondack Park . . . is really a twentieth-century invention,"[72] it is the Association for the Protection of the Adirondacks that invented it.

The APA initially represented recreational owners and lessees who hoped their state neighbor would never use its land, nor sell to those who would. Regardless of the private commitment of many APA stalwarts to forestry, the organization wanted the state to bar any lumbering, no matter how conservationist, on its own land. In short, what preservationists wanted and got from constitutionalization was control of state behavior; that is removal of state land and lumber from the market, rather than private land use control or control of the wood products industry.

The consistent aim of preservationists was to persuade the state to keep its land, but not to use it. Obviously, it was difficult to achieve such a goal which resulted in higher taxes, lower revenues and benefits to a small circumscribed group. But the very nature of the group, its small size and large resources, gave it an advantage over more diffuse interest groups.[73] In the language of public choice, state ownership and non-use of land generated positive externalities benefitting nearby private owners, who were able to organize and police a relatively small membership to retain those distributed cost/concentrated benefit measures.[74]

V. PRESERVATION/CONSERVATION

Preservation, as the APA and similar organizations understood it, was not about conserving woods for sustained use, but rather maintaining the experience of wilderness for those with the money and leisure to assure access to it. The proponents of Adirondack preservation were motivated not by the logic of

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72. Philip G. Terrie, *'One Grand Unbroken Domain': Ambiguities and Lessons in the Origins of the Adirondack Park*, ASS'N FOR THE PROTECTION OF THE ADIRONDACKS, Dec. 1988, at 15 (Special Report).

73. Mancur Olson has famously described the advantage small-membership shared interest groups have over the diffuse and unorganized public in obtaining benefits. MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS 15-16 (1965).

74. *See* William Eskridge, *Politics Without Romance: Implications of Public Choice Theory for Statutory Interpretation*, 74 VA. L. REV. 275, 323-25 (1988). According to Eskridge, there are four kinds of statutes: (1) distributed benefit/distributed cost; (2) distributed benefit/concentrated cost; (3) concentrated benefit/distributed cost; and (4) concentrated benefit/concentrated cost. *Id.* at 325.

market profitability, but by the aesthetic and spiritual concerns typical of the current wilderness movement. The driving force was Thoreauvian; it aimed at preserving as much of the natural world as possible and did not come from the technocratic thinking typical of conservation.[75]

Conservation was not about the aesthetic or spiritual experience of wilderness. As Bernhard Fernow, the first professional forester in the United States, said, "[f]orests grow and are grown to be cut."[76] He rejected the view that woodlands were a source of important unquantifiable goods. "[T]he main service, the principal object of the forest has nothing to do with beauty or pleasure. It is not, except incidentally, an object of aesthetics, but an object of economics."[77]

This conservationist argument for utilizing woodland as a sustainable resource supplanted the earlier utilitarianism of the notion that forests were a barrier to be eliminated before land could be put to its natural agricultural use. In the form of scientific forestry, conservation drew on technological and scientific advances to move the wood products industry from primitive forms of lumbering to methods designed to guarantee a strong timber market in the future. Conservation aimed at making lumbering sustainable, avoiding the catastrophe of the destruction of the Great Lakes forest of Michigan, Wisconsin, and Minnesota. In that forest, once thought inexhaustible,[78] white pine had been cut off and that important crop had never regrown. The experience of the rapid depletion of the Great Lakes Forest, the subsequent rapacious attack on the Southern woods, and the beginning of Pacific Northwest logging, led many scientists and some far-sighted business people to recognize that it was indeed possible to deforest the entire continent and that preventive measures should be taken, not for aesthetic or environmental reasons, but in order to maintain a stable supply of wood products to American markets. As Michael Williams says, "the loggers themselves were frightened by the diminishing supply of timber

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75. SAMUEL P. HAYS, CONSERVATION AND THE GOSPEL OF EFFICIENCY: THE PROGRESSIVE CONSERVATION MOVEMENT, 189-98 (1959).

76. RODGERS, *supra* note 33, at 90.

77. *Letter to the Editor*, *in* GIFFORD PINCHOT, THE ADIRONDACK SPRUCE: A STUDY OF THE FOREST IN NE-HA-SA-NE PARK (1898).

78. The Lakes forest, said a Member of Congress, was "sufficient to supply all the wants of the citizens . . . for all time to come." WILLIAMS, *supra* note 34, at 193 (quoting Representative Ben Eastman from the Congressional Globe).

and . . . were aware by 1899 that moving from forested region to forested region across the continent had almost come to an end . . . and that the only answer from now on was the wise use and management of the forest that remained."[79] Conservation began to be a force in the market with the accelerated exploitation of woodlands in the Pacific Northwest, the last timber frontier in the United States. Although this was the same historical moment in which preservationism in the Adirondacks was mobilizing, the two movements were not the same.

While preservationists and conservationists were, in the main, united in opposition to the "cut out and get out" operating style of the most rapacious loggers, they did not share an understanding as to the alternative. As Gifford Pinchot, a forester, said of Morris Jesup, a wealthy backer of Adirondack preservation, "[Jesup] held a position very common in those days—strong for what he called Forestry, but equally strong against cutting any trees."[80] Jesup's kind of "forestry" was Thoreauvian, rather than utilitarian and market-oriented. Today, we would call most of the modern environmental movement preservationist, and describe the wood products industry as conservationist, at least to the extent that it has been motivated by the aim of maintaining itself over the long-term, rather than focusing on short-term profits.

VI. PRIVATE LAND USE CONTROL IN THE ADIRONDACKS

Just as preservationists and conservationists could not agree on an alternative to the cut and run logging both opposed at the turn of the century, they cannot agree today on an alternative to the second home development that both oppose. In the Adirondacks, the opposition to second home development has taken the form of intense land use controls developed some eighty years after constitutionalization. Although preservation was mandated for the state's Adirondack lands, they of course accounted for only a small part of the total amount of land within the Park; privately held land was unaffected by the constitutional

79. WILLIAMS, *supra* note 34, at 416.

80. PINCHOT, *supra* note 69, at 33. Jesup was a founder of the New York State Forestry Association and was active in the APA.

amendment which kept state lands unlogged.[81] Had that private land been in the hands of those determined to log, clearcut, or even subdivide it for half-acre residential development, none of the steps taken by the state, not the creation of the Forest Preserve, not the founding of the Park, not constitutionalization of state-owned forest land, could have barred those decisions. Owners of private land were free to take whatever action they wanted on their own land because they were subject to virtually no restraints beyond very minimal or even non-existent local zoning ordinances for another eighty years.[82]

Large-scale control of private land use came to the Adirondacks in response to the threat of real estate development. In the 1960's, as highway construction made the area more accessible, there was fear that the kind of recreational and second home development then occurring in Vermont, might come to the Adirondack Park.[83] Forever wild was no defense against this threat, because it had no mandatory impact on private land use. State ownership had previously barred the economies of scale that would have encouraged investment in logging and railroad infrastructure, but, with respect to vacationers, that same state ownership, and consequent preservation of natural beauty, made the area more attractive for development. The struggle for preservation required new methods.

In 1966, Laurance Rockefeller, chairman of the state council of parks and brother of then-Governor Nelson Rockefeller, created a commission to consider the future of the region.[84] The commission suggested federalization of the Park.[85] Widespread negative reaction to the proposal led Governor Rockefeller to create, in 1968, the Temporary Study Commission for the Future of the Adirondacks ("TSCFA"), headed by Harold Hochschild.[86]

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81. As of 1897, three years after constitutionalization, the state owned about one million of the three million acres within the Blue Line that defined the Park. MCMARTIN, *supra* note 42, at 104 (Fig. 27).

82. A 1924 law gave the Conservation Commission authority to regulate billboard advertising throughout the park. N.Y. ENVTL. CONSERV. LAW §9-0305 (McKinney 1984).

83. RICHARD LIROFF & G. GORDON DAVIS, PROTECTING OPEN SPACE: LAND USE CONTROL IN THE ADIRONDACK PARK 14, 24 (1981).

84. *Id.* at 14-17.

85. *Id.* at 17.

86. *Id.* at 10. Hochschild was the founder of American Metals Climax (now AMAX), a multinational extractive corporation, the owner of Eagle's Nest, one of the last great camps to be built in the Adirondacks, and an amateur historian of the region. Halper, *supra* note 29, at 224. Neither Hochschild nor any of the other 14 members of Temporary

TSCFA, under Hochschild's leadership, concluded that the region was indeed in danger from over-development that could not be controlled through local zoning.[87]

Tasked with deciding, inter alia, "[w]hat measures can be taken to assure that development on private land is appropriate and consistent with the long-range well-being of the area,"[88] TSCFA answered:

> This [private] land, now generally free of restraint, poses a grave and growing threat to the entire Park. It is imperative, if the Adirondacks are to be saved, that the state develop an overall, long-range plan for all the public and private land in the park and exercise a degree of control over the uses to which these lands may be put.[89]

This was the provenance of the Adirondack Park Agency, created in 1971,[90] and of the Adirondack Park Land Use and Development Plan in 1973.[91] TSCFA had suggested creation of "a strong regional agency and a strict regional plan, with little responsibility left to local governments,"[92] to regulate and limit development. Thus, in the early 1970's the state for the first time imposed upon private landowners in the Adirondacks a stringent and uncompensated set of land use controls and permitting requirements.[93]

The Adirondack Park Agency was given very broad powers to regulate proposed land use using four criteria: compatibility with existing uses; building density; shoreline restrictions; and undue adverse impact on natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources. The latter

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Study Commission on the Future of the Adirondacks were considered representatives of the full-time residents of the area. LIROFF & DAVIS, *supra* note 83, at 21.

87. TSCFA, *supra* note 51, at 25-30.

88. LIROFF & DAVIS, *supra* note 83, at 19.

89. *Id.* at 20.

90. N.Y. EXEC. LAW § 800 (McKinney 1982).

91. *Id.* § 805.

92. LIROFF & DAVIS, *supra* note 83, at 179.

93. It is interesting to note that, although TSCFA did an exhaustive job of assessing what it saw as the legal pros and cons of its proposed scheme, including reports on the plan in the context of the New York State Constitution, its proposals for use of easements, covenants, and servitudes, and the prior interpretive history of the constitutional provision, there was simply no discussion of the plan's fit with the United States Constitution and no discussion of the takings clause.

criterion, in particular, gave the agency "power to add its own regulatory provisions to the statute . . . [and] cover matters that rarely or never before have been subject to regulation."[94]

The land use plan the agency proposed and the legislature adopted placed all privately owned land within the park into one of six use categories: hamlet, moderate intensity use, low intensity use, rural use, resource management, or industrial use. Only in hamlets and industrial areas are the number of buildings per acre unrestricted. Restrictions exist in each of the other categories; for example, one building is allowed per forty-three acres in resource management areas, and one per 1.3 acres in moderate intensity use areas. Resource management areas are the largest single category of use, representing over half of all privately owned land. These are lands whose open space character is to be carefully preserved. Allowable uses in these areas include agriculture, forestry, and outdoor recreation. There are also use subcategories, such as critical environmental areas, in which special permits are required for most development activities and subdivisions.[95]

In the short run, the result of this intense private land use control was successful maintenance of the Adirondack wilderness.[96] In the long run, however, its consequences may have been disastrous. As the Commission on the Adirondacks in the Twenty-First Century says politely of the period after the inception of the Adirondack Park Agency, "the expected mutual cooperation between state agencies and local governments did not materialize to any great degree."[97] In fact, the agency was perceived by local residents as high-handed and unconcerned with their well-being, instead devoted to a downstate constituency of

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94. Comment, *Preserving Scenic Areas: The Adirondack Land Use Program*, 84 YALE L. J. 1705, 1711-12 (1975).

95. N.Y. EXEC. LAW § 805.

96. It is worth noting, at least parenthetically, that despite the impression left by so-called "wise use" proponents that land-use controls have effectively halted development in the Adirondacks, the data indicate that subdivision filings have increased since the plan was put into operation in 1973. Subdivision filings tripled between 1984 and 1989. Letter of Peter A.A. Berle, Chairman, Comm'n on the Adirondacks in the Twenty-First Century, to Governor Mario Cuomo, Apr. 1, 1990, THE ADIRONDACK PARK IN THE TWENTY-FIRST CENTURY 3 [hereinafter 21ST CENTURY REPORT]. Indeed, filings in 1987 and 1988 exceeded those of any previous year for which records were kept. NFLS Technical Appendix at 15, Table 12. One would expect to find some decrease since then due to the recession.

97. 21ST CENTURY REPORT, *supra* note 96, at 18.

wealthy vacationers and their house environmentalists.[98] The agency for its part viewed local interests as potentially adverse to those of the state as a whole.[99] The local response (in addition to an attempt to torch APA headquarters)[100] was support for so-called "wise use" groups. In fact, the fate of private land within Park boundaries is widely used as a cautionary example to illustrate what would happen if the Northern Forest area were subjected to some form of regional land use controls or green-line status.[101] Opponents of North Woods preservation draw on the Adirondack experience to argue that the cure for the threat of second home development is worse than the disease.

VII. COMPARING THE PARK AND THE FOREST

If Adirondack land use controls have had an impact on public thinking about appropriate measures to be taken in the Northern Forest Lands Study area as a whole, it is worth looking at other respects in which the Adirondack and non-Adirondack portions of the area may be compared. In some respects, the characteristics of land tenure and use are comparable, but there are significant differences that bar the application of the Adirondack solution of mixed conservation and preservation to the rest of the area.

In both the Adirondack Park and the NFLS area as a whole, ownership of private forestland is concentrated. Fewer than 600 individual and corporations own over two-thirds of the three million acres of privately owned land in the region.[102] In fact, ten landowners, including seven forest products companies, hold about twenty-five percent of all privately owned Adirondack land.[103] This ownership structure is in essence repeated in the NFLS area as a whole, where a majority of the privately owned

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98. An academic study concludes that "neither the inevitability of local opposition nor resource constraints excuse the agency's failure to communicate better with the public . . . ." LIROFF & DAVIS, *supra* note 83, at 178-79.

99. TSCFA, *supra* note 51, at 30.

100. THE ADIRONDACK GUIDE 37 (Kirschenbaum, et als, eds. 1983).

101. Whitney in B&H, *supra* note 6, at 74. The situation in the Blue Line is a model of what to avoid.

102. 21ST CENTURY REPORT, *supra* note 96, at 8. This represented something of an increase in concentration from 25 years before when over 600 owners held less than two million acres. *Id.* at 46.

103. *Id.*

land is held by about forty-five companies and families.[104] In Maine, the state that accounts for over half the Northern Forest acreage, there are 14.2 million acres of private woodlands, 7.7 million are held by large wood products corporations and the other 6.5 million by nonindustrial landowners, most of that by thirteen trusts and families.[105]

There are several related factors, however, that make concentration of ownership different in the Adirondacks. One is that, for over a century, it has been common in the Adirondacks for individuals and corporations to post their land against public access.[106] While this initially aroused a good deal of hostility in a region in which hunting, trapping, and fishing had always been available to all regardless of property lines, it eventually came to be accepted as normal.[107] The contrast between the Adirondacks and other parts of the NFLS region is stark in this respect. As of about a decade ago, almost two-thirds of all privately owned land in the Adirondacks was posted;[108] in Maine, on the other hand, over eighty percent of privately owned land was unposted.[109] Moreover, a quarter of all privately owned Adirondack acreage was held by landowners who reported that they held their land solely for recreational use or aesthetic enjoyment;[110] only six percent of Northern Forest acreage in Maine was similarly described.[111] The twin Adirondack traditions of foreclosing public access and enjoying private recreational uses mean that even land held by forest products companies as strategic reserve need not be held at a current loss since its recreational uses can be leased privately. Owners of currently unused woodlot can obtain an income from it by leasing

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104. NFLS, *supra* note 27, at 4.

105. John G. Mitchell, *Love and War in the Backwoods*, WILDERNESS, Spring 1992, at 11, 12.

106. MCMARTIN, *supra* note 42, at 149.

107. B. Parnes, Trespass: A History of Land Use Policy in the Adirondack Forest Region of Northern New York State, 1789-1905, 245 (1989) (Unpublished Ph.D. Thesis, on file with New York University).

108. THOMAS BIRCH, FOREST-LAND OWNERS OF NEW YORK 79, Table 48 (1983) [hereinafter BIRCH, NY].

109. THOMAS W. BIRCH, FOREST-LAND OWNERS OF MAINE 79, Table 47 (1982) [hereinafter BIRCH, MAINE].

110. BIRCH, NY, *supra* note 108, at 51, Table 20. Many Adirondack landowners both harvest timber and hold land for aesthetic and recreational purposes and they are not included in the 27% figure.

111. BIRCH, MAINE, *supra* note 109, at 51, Table 17.

hunting and fishing rights to private clubs and organizations. Standing timberland is thus a profit center for a number of wood products companies that hold Adirondack land.[112] These traditions mean the presence of a powerful Thoreauvian constituency among Adirondack landowners that supports preservation of the Adirondack area as wilderness, rather than as a profit center. And, because uncut forestlands can be profitable, or at least not a drain on profits, Adirondack wood products companies can afford to respect the sensibilities of this Thoreauvian constituency.

For wood products companies in the non-Adirondack region, this source of revenue, an alternative to cutting, is simply unavailable. Hence, they have no concrete motivation for a preservationist perspective. And, unlike the Adirondacks, the tradition of public access to private land for hunting, fishing, camping, and trapping remains intact in that area. Indeed, it is so strong that forest products companies are loathe to upset their neighbors by attempts to post land in order to obtain income from recreational access.[113] Moreover, while Thoreauvian preservationists doubtless abound in the NFLS area as a whole, they are not the sort of large-scale recreational landowners who sought peace in the Adirondack Park and lack the clout it took to afford constitutional protection to a significant portion of the Adirondack Park.

CONCLUSION

In such circumstances, the strategy of environmentalists seeking to preserve the Northern Forest cannot be the same as that of Gilded Age proto-environmentalists. Those turn-of-the-century robber barons who sought to preserve a wilderness experience were able to impose their wishes on small-scale

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112. As of 1971, St. Regis Paper, Diamond International, Litchfield Park, Georgia Pacific, International Paper, and Finch-Pruyn, then the largest wood products companies in the Adirondacks, each leased out from 20,000 to over 100,000 acres of Adirondack Park woodland for a variety of recreational uses. TSCFA, *supra* note 51, Technical Report #3 at 33-36. A total of almost 400,000 acres was let by paper companies to sporting clubs, and an additional 220,000 acres were open to public hunting. Another 150,000 acres were let by other large corporate owners or open for hunting. A total of 750,000 acres, roughly a fifth of all privately-owned land in the Park was put to these recreational uses. Of that, almost 600,000 acres was completely unavailable for public use. *Id.*, Technical Report #5 at 41.

113. NFLS, *supra* note 27, at 118.

lumberers and loggers. Subsequently, however, it was the alliance of preservationists and conservationists, vacationers and wood products companies, that succeeded in holding off the threat of second home development in the Adirondacks. It is that alliance that would have been a good model for the NFLS area. For modern environmentalists to succeed in turning back the threat of second home development, they must find common ground with the forest products companies who prefer to retain their current enterprise, rather than sell land to corporate developers.

But it appears that environmentalists have not read Adirondack history as teaching the lesson of coexistence between preservation and conservation. NFLS-area environmentalists have, on the whole, rejected the opportunity to make common cause with NFLS forest products companies; instead, they have sought to preserve the whole of the NFLS area as a park.[114] This, I think, has been an error. While the goal of preservation is a worthy one, the means by which it was achieved in the Adirondacks are simply not available in the NFLS area today. In the Adirondack situation, the forces of preservation were strong and well funded, while the forest products industry was not heavily invested in ongoing lumbering in the region and was financially able to hold woodland without cutting it. Lacking both the political strength of Adirondack environmentalists and the traditions that allow Adirondack forest products to keep a substantial portion of its land as a long-term reserve without economic hardship, environmentalists in the non-Adirondack portion of the NFLS area can hardly succeed in making parkland out of woodlot.

A wise strategy for the environmental movement in the NFLS area would have been to realize whatever gain was possible from the unusual situation in which the wood products industry for a short time perceived a community of interests with environmentalists. Such gains might have included expanded conservation easements, tax breaks, and other incentives for woodland owners to keep their land forested rather than selling to developers, as well as enhanced regional planning.

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114. *See, e.g., Williams, supra* note 13, at 32 (quoting the comments of Dave Miller, National Audubon Society Vice President for New England and New York: "Look what we did in the Adirondacks. We can do the same for the Maine woods, Vermont's North East Kingdom, and northern New Hampshire.").

Unfortunately, perhaps even tragically, the environmental community attempted a gain that was simply beyond its reach, given the relative weight of the opposing parties. What the Adirondack lesson could have taught—that conservation and preservation need not always be in conflict—has been ignored.