

Land Use and Conservation Law

The Adirondack Example

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Lecture 17
Environmental Politics and Law
March 30, 2010*

Land Use and Conservation...Central Questions

1. Property Rights: Private or Public?
2. Level of Government?
3. Participation in Decision making?
4. Intensity of Regulation?
5. Legitimacy of Public Value?
6. Property Value Rise Following Park Designation?
7. Density Restrictions?
8. Land Use Segregation?
9. Aesthetics: Legitimacy of Regulation?
10. Following New Regulation, Compensate?



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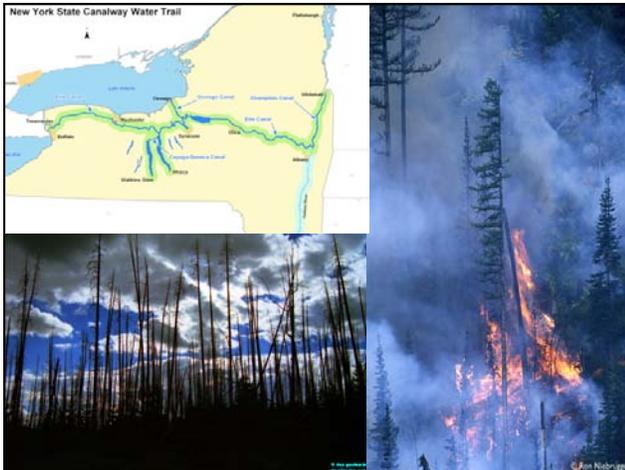
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Adirondack Park



BRIEF HISTORY

- 1864: YOSEMITE DEEDED TO CALIFORNIA
- 1872: YELLOWSTONE NATIONAL PARK
- 1885: ADIRONDACK FOREST RESERVE CREATED
- 1892: ADIRONDACK PARK CREATED
- 1895: FOREST PRESERVE CREATED
- 1964: WILDERNESS ACT
- 1968: ADIRONDACK NATIONAL PARK?
- 1971: ADIRONDACK PARK AGENCY
- 1973: APA LAND USE PLAN & REGULATION

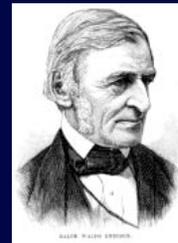


TRANSCENDENTALISM:

Coleridge, Shelly, Keats, Wordsworth
Emerson, Whitman, Thoreau

EMERSON: ESSAY ON NATURE

- BUT AN ORGANISM
- SYMBOL OF THE MIND
- MORAL EDUCATOR
- SOURCE OF SPIRITUAL TRUTH
- RESOURCE FOR THE IMAGINATION



1803-1882

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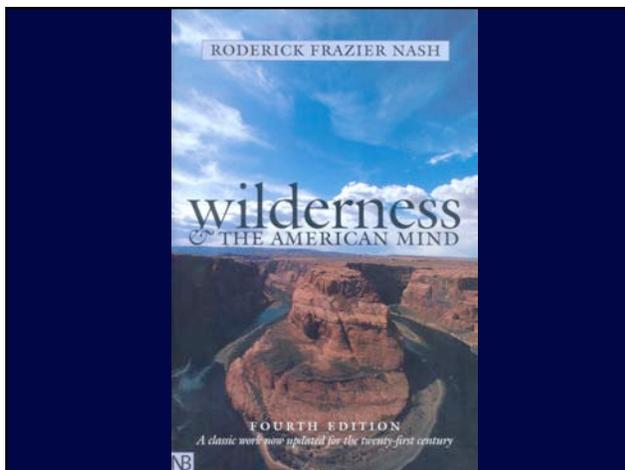
George Perkins Marsh 1864: *Man and Nature*

Destruction of forests can lead to the decline of civilizations causing--
“a condition of impoverished productiveness, of shattered surface, of climatic excess, as to threaten deprivation, barbarism, and even extinction of species.”

TARGETS OF TRANSCENDENTALISTS

CHRISTIAN VIEWS

- HUMAN ROLE IS TO DOMINATE NATURE
- BE FRUITFUL, MULTIPLY, REPLENISH THE EARTH...SUBDUE IT
- DENIES SOULS TO NON HUMAN SPECIES



HUDSON RIVER SCHOOL OF LANDSCAPE ART

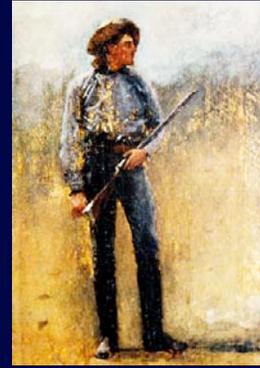
Thomas Cole,
Albert Bierstadt,
Winslow Homer,
Frederick Church

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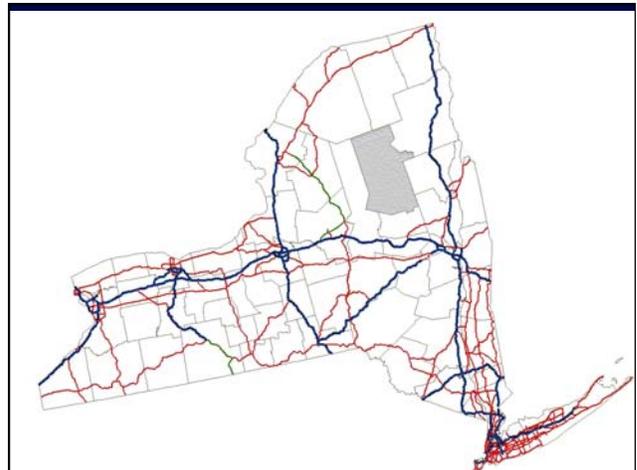
Winslow Homer: Two Guides 1875
Timber, Fire and Water



Homer. 1876. Adirondack Guide



Waiting for a Bite: 1874



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The Problem: Ineffective Local Control
Adirondack Park Agency Act 1973

“Local governments in the Adirondack park find it increasingly difficult to cope with the unrelenting pressures for development being brought to bear on the area, and to exercise their discretionary powers to create an effective land use and development control framework.”

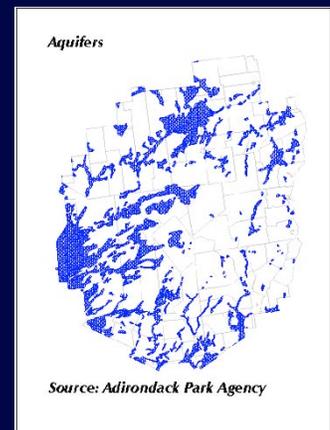
Adirondack Park Agency Act:
Mission Statement

“The basic purpose of this article is to insure optimum overall conservation, protection, preservation, **development and use** of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack park.”

INNOVATIVE REQUIREMENTS IN APA STATUTE:

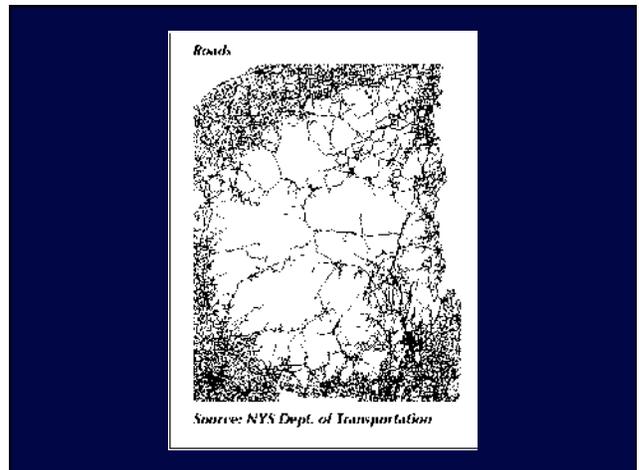
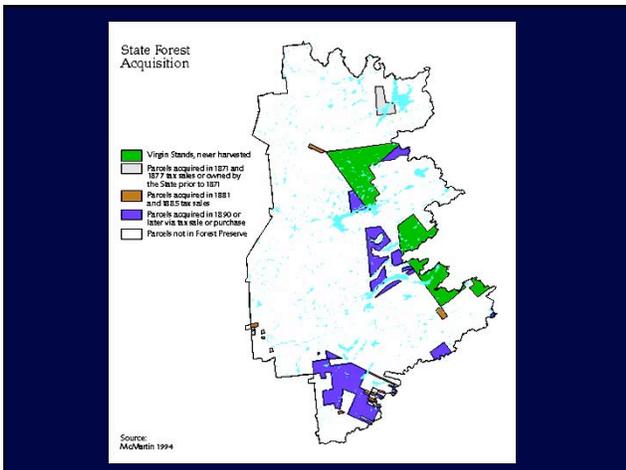
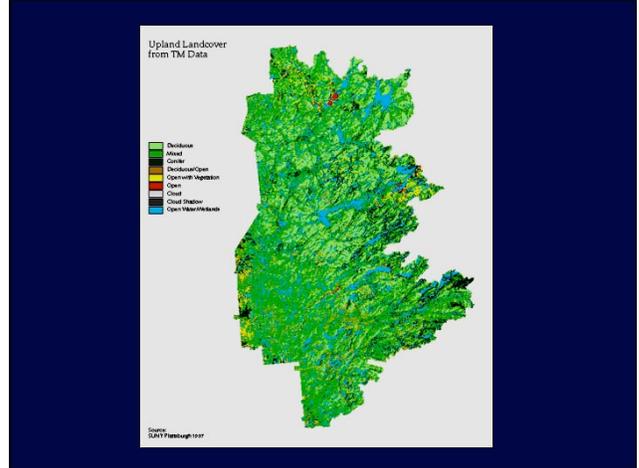
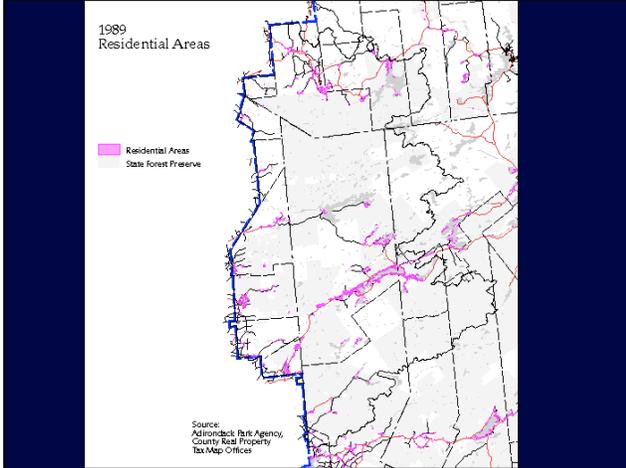
- ECOLOGICAL ANALYSIS UNDERLYING DENSITY
- DENSITY REGULATIONS: CLUSTERING CONCEPT
- SETBACK REQUIREMENTS
- WILD-URBAN CONTINUUM (OPEN SPACE-CLUSTER DEV)
- PROTECTIONS OF AGRICULTURAL LANDS
- VISTA PRESERVATION
- WETLANDS & WILD, SCENIC & REC RIVER PROTECTION
- LOCAL VS. STATE ROLE (CLASS A V. CLASS B PROJECTS)

**Ecological
Constraints
For Land and
Resource
Development**



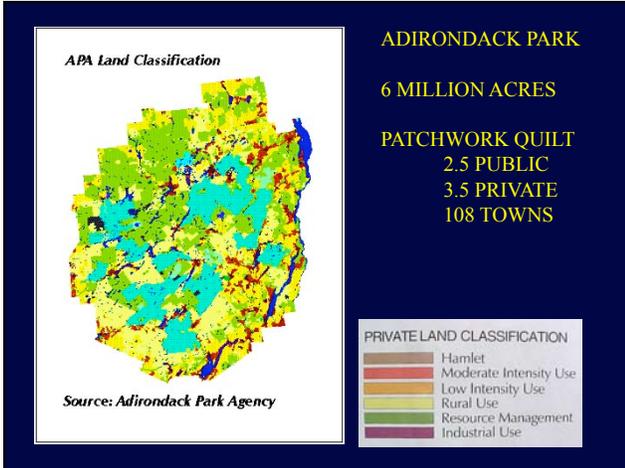
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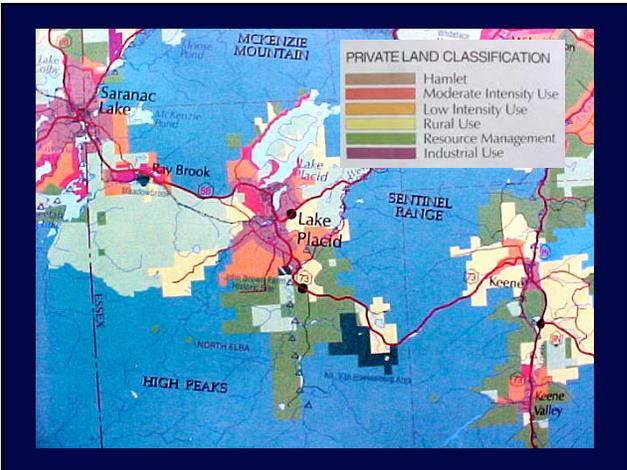


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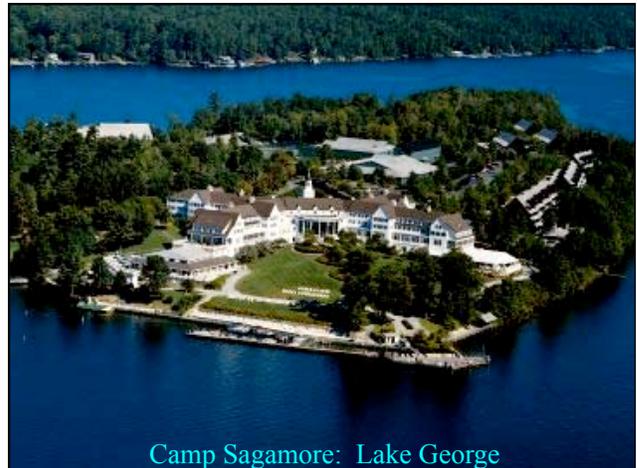
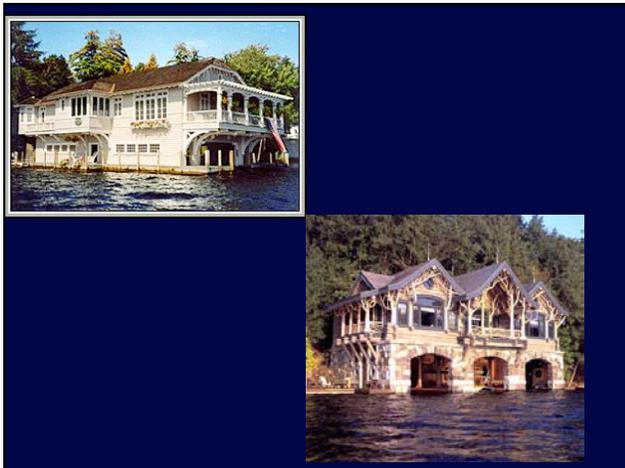
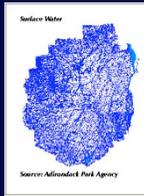
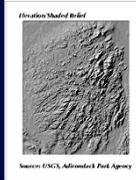
- ZONING DISTRICTS:**
- HAMLET:** NO DENSITY RESTRICTION
 - MODERATE:** 1.2 ACRES
 - LOW:** 3.2 ACRES
 - RURAL:** 8.5 ACRES
 - RESOURCE MGT:** 42.6 ACRES
 - INDUSTRIAL:** NO DENSITY RESTRICTIONS



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Battlegrounds...



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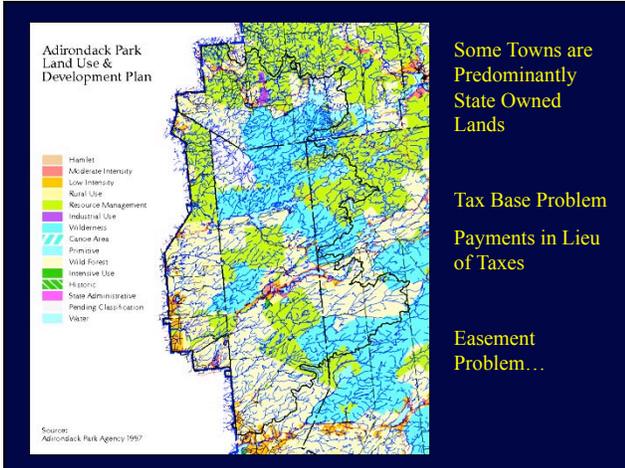


IDEOLOGY & LAND

- LIBERTARIAN
- AUTHORITARIAN
- UTILITARIAN
- PRESERVATIONIST

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Some Towns are
Predominantly
State Owned
Lands

Tax Base Problem
Payments in Lieu
of Taxes

Easement
Problem...



- ### STAKEHOLDERS: WHO ARE THEY?
- CONSERVATIONISTS
 - ENVIRONMENTALISTS
 - RECREATIONAL GROUPS
 - REAL ESTATE DEVELOPERS
 - TIMBER COMPANIES
 - TOURISM INDUSTRY
 - SEASONAL VS. PERMANENT RESIDENTS
 - GOVERNMENT AGENCIES
 - NATIVE AMERICANS

Perceived Legitimacy of Regulation

Influential Factors?

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5th Amendment of the US Constitution

“Private property shall not be taken for public use without just compensation”

When Should Compensation Be Required?



Definition of Wilderness: Wilderness Act 1964

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.

William Cronon:

The Trouble With Wilderness

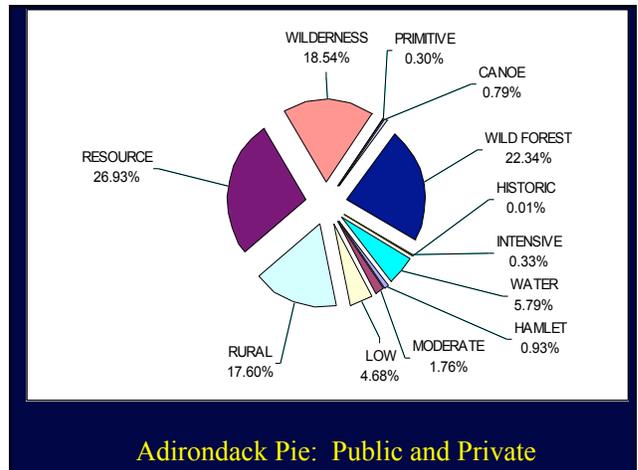
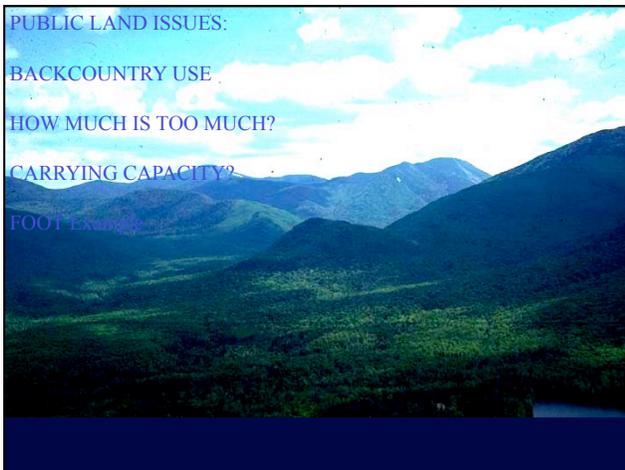
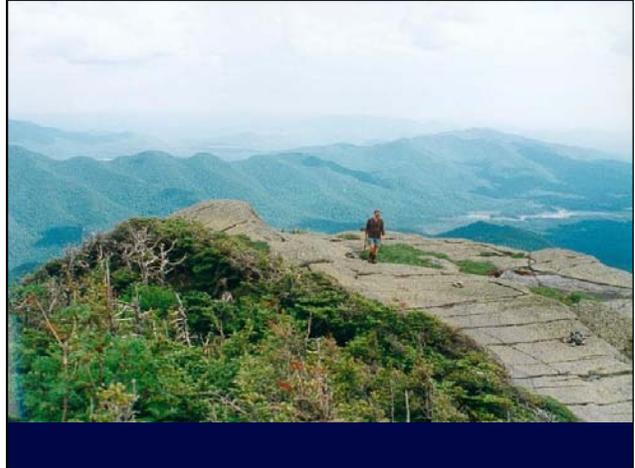
“If we allow ourselves to believe that nature, to be true, must also be wild, then our very presence in nature represents its fall.”

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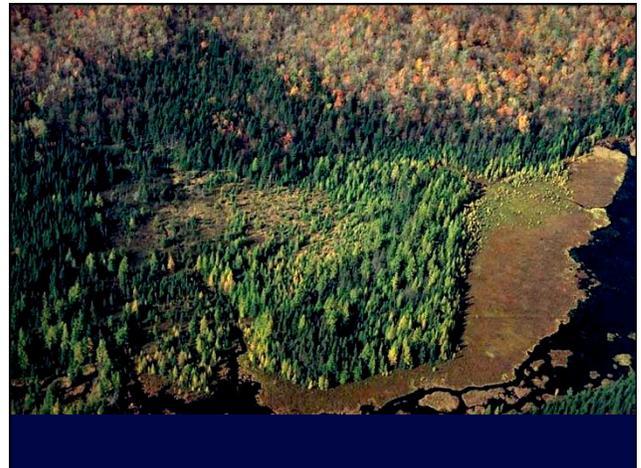
PARADOX OF WILDERNESS....

- CULTURAL CONSTRUCTION
- ASSOCIATION WITH LIBERTY
- ONCE TAMED...WHAT'S LEFT?
- ...IT BECAME A COMMODITY
- TO KNOW IT IS TO LOSE IT?
- PLAYGROUND FOR RISKY BEHAVIOR
- REGULATED WILDERNESS?



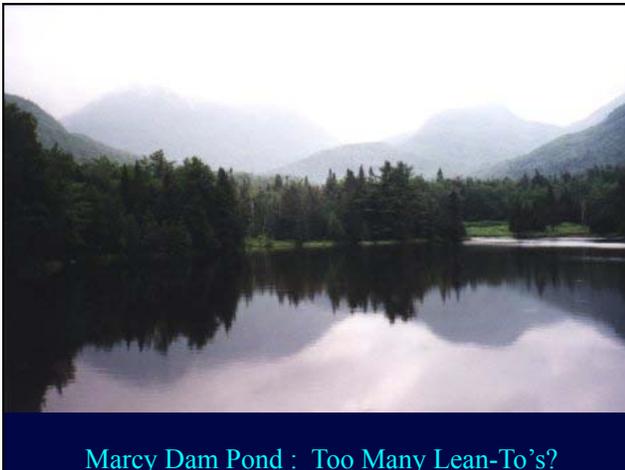
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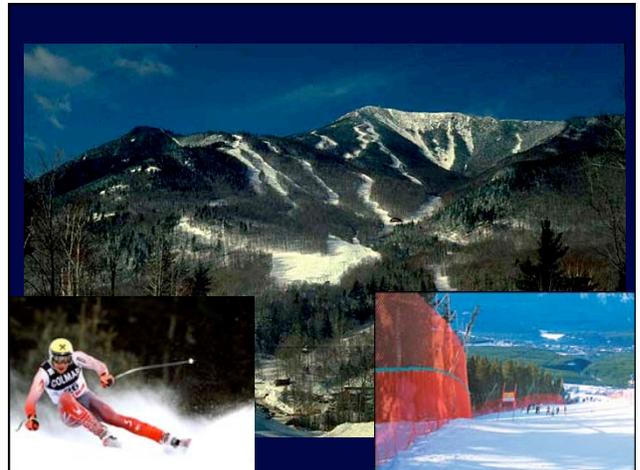


Marcy Dam Pond : Too Many Lean-To's?



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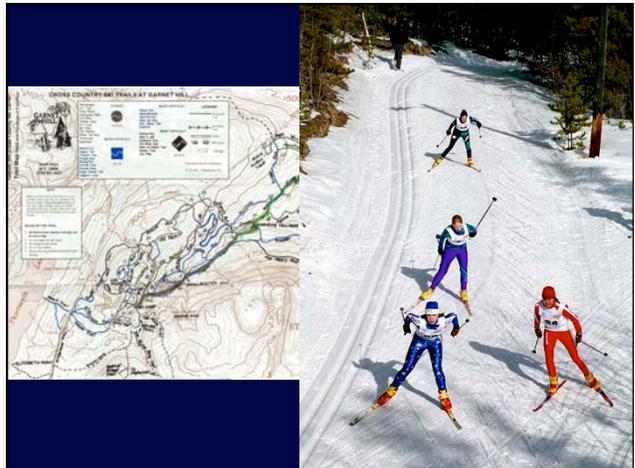
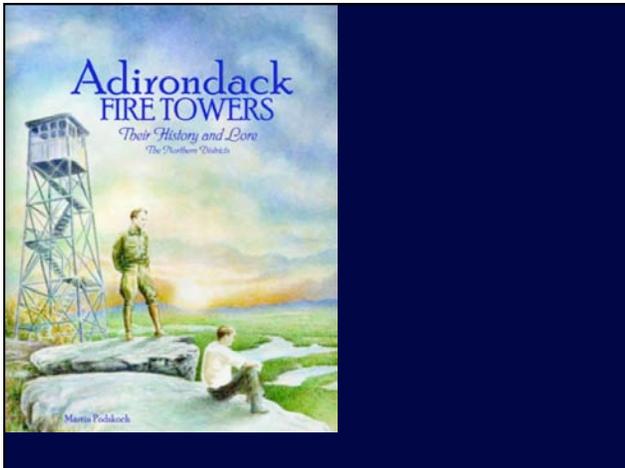


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US: 1 Million Sold Each Year



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Land Use and Conservation...Central Questions:

1. Public vs. Private Land
2. Level of Government?
3. Participation in Decision making?
4. Intensity of Regulation?
5. Legitimacy of Public Value? (Biosphere Reserve Status)
6. Property Value Rise Following Park Designation?
7. Density Restrictions?
8. Aesthetics: Legitimacy of Regulation?
9. Land Use Segregation?
10. When Should Compensation be Given?