

# OPEN SPACE

A PUBLICATION OF THE OPEN SPACE INSTITUTE ♦ VOL. 4 SUMMER 2005

## PUTNAM COUNTY: *What Went Right*

OPEN SPACE NEWS  
GETTING SMART ABOUT SPRAWL  
AT RISK:  
OUR BEST LAND SAVING TOOL



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## FROM THE EDITORS

As we write from our offices at Herald Square — the concrete and steel canyon that abuts Times Square — we can't help but marvel at the short distance between the commerce of the city and the redemptive landscape of the Hudson Highlands.

About fifty miles lie between Manhattan and the eastern Hudson Highlands, just north of the Bear Mountain Bridge. In its 315-mile journey the Hudson River here is its narrowest and deepest, taking pronounced curves as it cuts through the Highlands. The high elevations on both sides of the Highlands, part of a mountain chain from Pennsylvania all the way to Connecticut, afford sweeping views north, south, east and west. During the Revolutionary War, these highpoints provided strategic advantage to both sides, each equally determined to wrest these rugged mountains from the other side.

One can venture into the Highlands via the Appalachian Trail and myriad other trails blazed and maintained by the New York-New Jersey Trail Conference. Through thickly wooded natural areas and over steep and rocky slopes, visitors will discover viewpoints that reveal miles and miles of the Hudson River as it curls through the Hudson Highlands and beyond.

The effort to revive the Hudson River and protect the surrounding Highlands scenery have compelled OSI for more than 15 years. As Ken Kostel points out in his feature article, the race to conserve this landscape in Putnam County has led us to many valued and varied partners. One of the challenges we've grappled with, and admittedly enjoyed, is the metamorphosis of private estates into community resources. OSI has turned several estate properties into public preserves and parks while adapting to new uses the buildings sited on them (*see page 4*). Charities that we have helped find homes for include Outward Bound, the Garrison Institute, the Hastings Center and the Glynwood Center. Helping other non-profits allows OSI to extend its community impact, creating community employment while pursuing a key element of the organization's mission: nurturing creative partnerships.

Central to our work along the Hudson River has been our use of conservation easements, a crucial tool for conservation,



*Kim Elliman and Joe Martens.*

and a way to leverage, privately, scarce public resources. Yet, at press time, the Congressional Joint Committee on Taxation had announced sweeping proposals that would severely limit the use of conservation easements. If the JCT's recommendation were to become law, it would severely handicap private landowners of the power to protect their properties permanently. See Robert Anderberg's dissection of

the issue on page 13. Meanwhile, a new voice has emerged — IRS commissioner Mark W. Everson — pledging to take action to correct abuses associated with donated conservation easements. Senator Charles Grassley, chair of the Senate Finance Committee, which is closely examining the use of conservation easements, told the Washington Post that Everson's analysis was "a seminal letter that rips off the rose-colored glasses with which we usually look at tax exempt organizations." The IRS is auditing 48 donors of conservation easements and a long list of tax-exempt organizations that hold easements. OSI will continue to monitor the situation and report back to you.

In these pages, we describe OSI's recent report about sprawl in the Capital District (*see page 10*) and a new study we've just completed about conservation challenges and opportunities in western Massachusetts. In March, OSI held a conference for land trust leaders in New Hampshire to discuss the future of the North Woods and assess shared progress to date. These efforts bring us closer to our historic roots and help foster dialogue about and craft creative solutions to complex issues.

Finally, we report on page 14 John Adams' recent announcement that in 2006 he will pass the torch of the Natural Resources Defense Council presidency. John will continue to have an active role as NRDC's founding director, focusing on issues he is deeply committed to, such as global warming and the protection of the Catskill and Appalachian regions. On behalf of the entire staff of OSI, we congratulate John for his successes at the helm of NRDC and look forward to his continuing leadership here at OSI.

As always, we thank you for your support and commitment to OSI. And we hope you're enjoying the first glimmers of summer as much as we are.

Best wishes,

Kim Elliman,  
Chief Executive Officer

Joe Martens,  
President

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BY KEN KOSTEL

# PUTNAM

## WHAT WENT RIGHT



*Constitution Marsh, above, is a sanctuary for breeding and migratory birds and a nursery for plants, fish and other wildlife.*

WHEN BILL MAZUCCA ATTENDED HIS FIRST MEETING AS A NEWLY ELECTED MEMBER OF THE TOWN BOARD IN PHILIPSTOWN, NEW YORK, HE EXPECTED STRONG DEBATES AND HEATED ARGUMENTS ABOUT WHAT'S BEST FOR THE TOWN, BUT WAS CAUGHT OFF GUARD, AND AMAZED, HE SAID, BY THE ANIMOSITY BETWEEN OTHER BOARD MEMBERS AND THE MANHATTAN-BASED OPEN SPACE INSTITUTE.

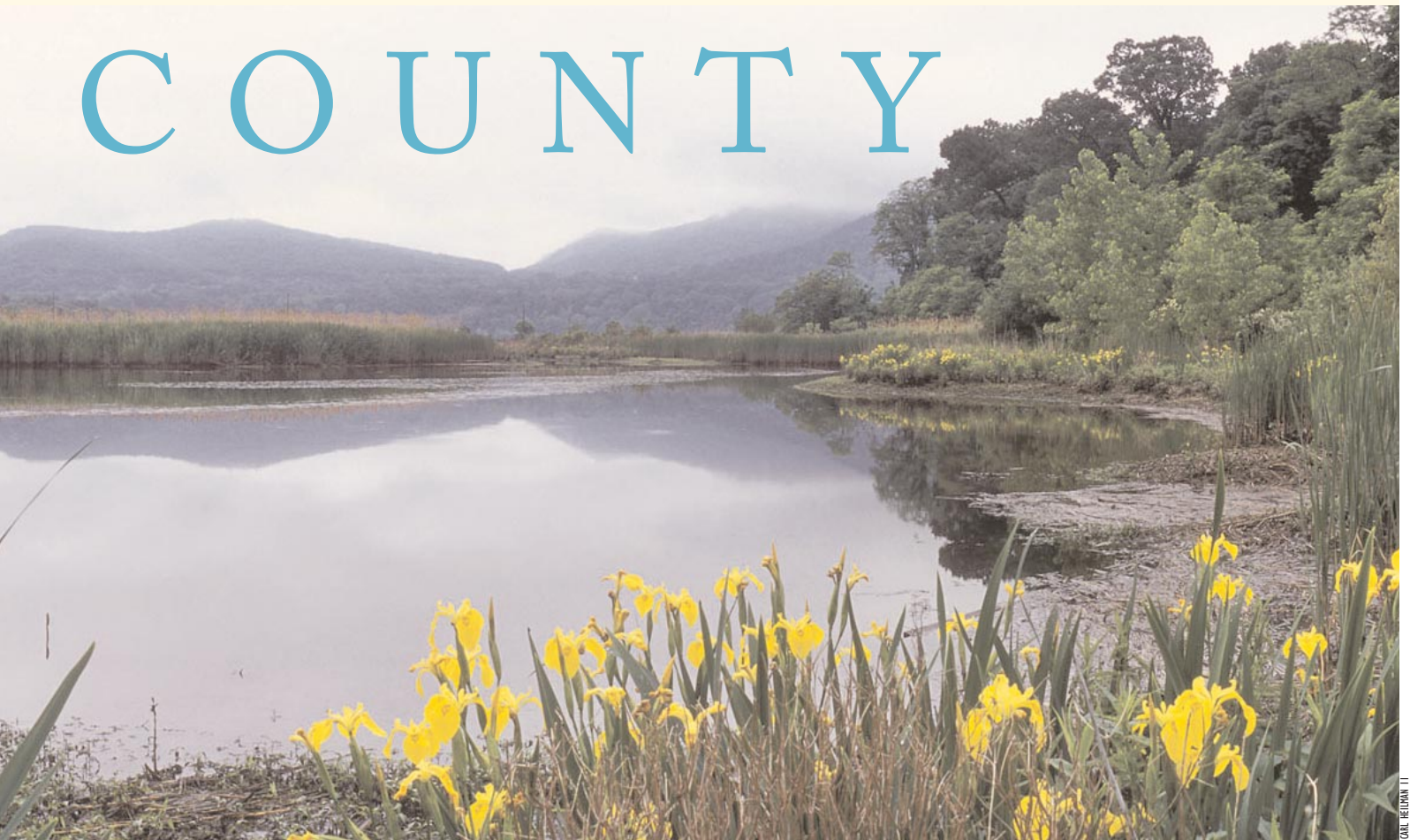
It was 1991, he recalled, and many local people welcomed the prospect of residential development and viewed conservationists as unwanted outsiders trying to tell Philipstown how to best manage its land. Despite being just an hour by train from Manhattan, the divide between city and country could not have been more stark.

Now the village supervisor, Mazucca has seen a complete turnaround since that first meeting, both in the way the town and OSI work

together and in residents' attitudes toward land conservation. The key to the burgeoning partnership, many say, has been OSI's willingness to help the town grow without adding residential development, while at the same time expanding the state's network of open space in a region hard-hit by urban sprawl. "Fifteen years ago, Philipstown opposed OSI coming in and buying land," observed Kim Elliman, chief executive officer of OSI. "Today they ask us to come

in and help. It's been a gratifying and welcome change. I think we always realized that the key to our shared progress was in the hearts and minds of the local community — our main stakeholder. Through time, the value of open space has really caught on." Over the course of fifteen years, in the villages incorporated in Philipstown, OSI has added seven parks and preserves — in total approximately 700 acres — while at the same time working with the

# COUNTY



*The Audubon Society of New York manages the refuge and operates an educational center built on land acquired by OSI.*

town to keep open space on the tax rolls. On a larger scale, OSI has also worked with the State of New York to create and expand state parks, adding 8,000 acres to Fahnestock and Hudson Highlands State Park, both in Putnam County.

## FINDING COMMON GROUND ALONG THE RIVER

In the late 1990s, a developer set his sights on the grounds of an historic former Capuchin monastery in the hamlet of Garrison. Plans for the site, known as Glenclyffe, called for a luxury hotel and retirement community with nearly 200 upscale housing units for West Point alumni who could enjoy views of the military academy directly across the river. With local opposition to the project running high, OSI stepped in and purchased the land. The property, however,

included the old monastery as well as a youth and family ministry building, which had the potential to divert OSI from its mission of landscape conservation to one of property manager.

Luckily, a solution was at hand. OSI sold the former monastery to a new non-profit, the Garrison Institute, created by Jonathan and Diana Rose. It then made the portion of the site that includes the ministry building available to Philipstown. The town, which encompasses Garrison, uses the building for a much-needed community center that today provides educational programs and recreational opportunities to residents.

“Like Glenclyffe, we see these spectacular landscapes all along the Hudson encumbered by potential white elephants,” said OSI president Joe Martens. “It’s a considerable challenge we face in preserving access to

the river, but luckily we’ve been able to work with communities to find uses for the buildings that give something back to residents and their local economy.”

In much the same way, OSI turned over to the town 25 acres from a 1995 purchase of the Malcolm Gordon School, a former boy’s academy overlooking the Hudson, to create the town’s first park and soccer fields. “Just protecting land is one way to give back to the town, and that’s great,” said Mazucca. “But putting in the first town park has been invaluable.”

Several of OSI’s land acquisitions in Philipstown included buildings that had the potential to become white elephants hindering other conservation work. But one by one, OSI has found new uses for these

*Continued on page 6*



*Benedict Arnold's escape route traverses OSI's 93-acre Glenclyffe property in Garrison, N.Y. A publicly accessible trail traces Arnold's flight to the Hudson River.*

#### PUTNAM COUNTY *continued from page 5*

structures and, in nine out of ten cases, found occupants with charitable missions. The end result: local businesses that employ in total more than eighty-five full time employees. The Malcolm Gordon School is now the home of the Hastings Center, a bioethics think-tank. From Mystery Point near Bear Mountain Bridge and the "South Gate" to the Hudson Highlands, where Outward Bound has its headquarters, to the "North Gate" of the Highlands near Dockside, a future municipal park in the village of Cold Spring, OSI has purchased more than 700 acres of what was once private property in an effort to ensure public access to the riverfront and preserve the rural, small-town character of the region.

"We're not an industrial town and we never will be," said Mazucca. "You're not going to see a Wal-Mart or a Gap or a McDonald's here. We always thought most of our growth would be residential. Now we think we've found a fine balance between development and preservation."

#### **HOLDING BACK SPRAWL**

The partnerships that have helped preserve the character of Philipstown and improve the town's quality of life

have also been instrumental in expanding the state's network of open space in the Hudson Highlands. The Highlands — a narrow line of granite hills — stretches from northwestern Connecticut through New York and New Jersey and into Pennsylvania. The billion year-old rocks of the Highlands force the Hudson into a series of narrow bends near Philipstown that helped inspire the Hudson River School, the first homegrown school of American art, and ushered in the country's romance with broad landscapes.

The natural beauty of the region continues to attract people, many of them from the New York metropolitan area, and made Putnam and Dutchess Counties two of the fastest growing counties in the state. "The scenery is a risk factor," said Martens. "Our biggest challenge is to prevent mushrooming development and bring an element of organization and planning to the process," said Martens. "We realize that people need homes and we're not against that, per se, but sprawl not only threatens communities with a loss of open space and recreational resources,



ROBERT GLENN KETCHUM

**"WE'RE NOT AN INDUSTRIAL TOWN AND WE NEVER WILL BE. YOU'RE NOT GOING TO SEE A WAL-MART OR A GAP OR A McDONALD'S HERE."**

— BILL MAZUCCA, PHILIPSTOWN TOWN BOARD





it also degrades those natural resources that help protect human health.”

OSI is not alone in its emphasis on public access and the interplay between people and the natural world. “We have to learn that when we're talking about protecting plants and animals and recreational activities, we're also taking about protecting human activities,” said Michael Klemens, a conservation scientist with the Wildlife Conservation Society. “Ultimately, it's our own lives that rely on the ecosystem.”

OSI's interest in publicly accessible landscapes is most evident at Clarence Fahnestock Memorial State Park, one of the state's five largest parks. In the late 1980s and early 90s, with the state unable to finance new purchases of open space in the region to balance New York City's growing suburbs, OSI entered the scene as a partner to the State of

*Continued on page 8*

## CONSERVATION ALONG THE BANKS OF THE HUDSON RIVER

IN AN ONGOING EFFORT TO PROTECT THE SCENERY ALONG THE SHORES OF THE HUDSON RIVER AND ENHANCE PUBLIC ACCESS TO A HEALTHIER, REVITALIZED RIVERFRONT, OSI'S LAND ACQUISITION AFFILIATE, THE OPEN SPACE CONSERVANCY, HAS ACQUIRED A SERIES OF HISTORIC PROPERTIES IN THE HUDSON HIGHLANDS.



GARY RANDOLF

### DOCKSIDE

In Cold Spring, OSI acquired the Dockside property in 1999. In close proximity to the Cold Spring Train Station and the Village of Cold Spring, this riverfront property provides river access and clear views of Storm King Mountain and the surrounding Hudson Highlands. Breakneck Mountain and Storm King Mountain form what is known as the “North Gate” into the Hudson Highlands. The “South Gate” is near Bear Mountain Bridge.



TILDT LA FARGE

### HASTINGS CENTER AND PHILIPSTOWN TOWN PARK

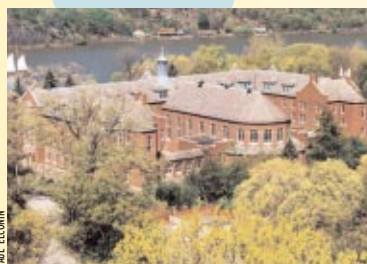
Also in Garrison, in 1994 OSI acquired the former Malcolm Gordon School for Boys, which occupied a former residence built in 1855 and designed by Richard Upjohn. When OSI acquired the property, it split up the parcel, creating Philipstown's first town park and leasing the remaining acreage with the Upjohn building to the Hastings Center, a bio ethics think-tank.



PETER BONNELLI

### ARDEN POINT AND GRIST MILL

In 1999, OSI acquired 70 acres in Garrison and later conveyed a portion of the property to the State of New York, creating Arden Point State Park, which includes a rocky promontory on the river. Just east of the park entrance, located at the Garrison Train Station, lies an 18th Century grist mill that is believed to be one of the oldest in the county (see sidebar about OSI's recent renovation on page 8).



PAUL ELCONIN

### GLENCLYFFE

OSI acquired the “Glenclyffe” property in Garrison in 1999. The property was for many years a Capuchin monastery and once the home of Hamilton Fish, former governor of New York. During the Revolutionary War, Benedict Arnold used a carriage road through the property as his escape route. Local volunteers have blazed a publicly accessible trail that traces Arnold's route.



TILDT LA FARGE

### MANITOU POINT PRESERVE

Just north of the Bear Mountain Bridge, OSI and Scenic Hudson created the 137-acre Manitou Point Preserve on the river's edge in 1990. The preserve includes an extensive tidal wetland and further upland, a wooded area with views of the river. Upon acquiring the property, once the home of the prominent Livingston family, OSI and Scenic Hudson found a new use for the Livingston's Georgian mansion, which is now the national headquarters of Outward Bound.

*“People look at what we’ve been able to accom*

PUTNAM COUNTY *continued from page 7*

New York. “We had two distinct advantages at the time: full support of the Wallace Fund and a real estate market that was depressed,” said Elliman.

In 1991, OSI purchased more than 2,000 acres of the former Hubbard estate in the hills above the village of Cold Spring that had been scheduled for a 700-house development. That same year, OSI completed the first of three transactions to purchase and preserve another large estate nearby, this one from the Perkins family. Both ultimately added nearly 4,500 acres to Fahnestock State Park. Those early acquisitions also set the stage for subsequent smaller purchases, including three during the past two years, totaling nearly 1,900 acres.

In all, OSI’s acquisitions in partnership with the state have permanently protected 8,600 acres in the Hudson Highlands and more

than doubled the size of Fahnestock, just fifty miles north of Manhattan. “Fahnestock is a stunning recreational resource that makes up a large part of the local Fishkill Creek watershed, which supplies water to Putnam and Dutchess Counties,” said Martens. “It’s a nice complement to the acquisition program by the New York City Department of Environmental Protection, which is buying key lands to protect water resources threatened by sprawl.”

### IDEAS TAKING ROOT

OSI’s partnership with the State of New York has been a point of pride for the organization and the state. “We are indebted to Governor Pataki and his vision for open space and parkland for New Yorkers,” said Martens.

Ken Lutters, a senior landscape architect with the New York State Office of Parks, Recreation and

Historic Preservation, has been involved in open space conservation for much of the past 30 years agrees. “I never thought the park could have grown the way it has without our partners,” said Lutters. “People look at what we’ve been able to accomplish in the last six to eight years and say ‘We want more of that.’”

Finalizing negotiations for the core piece of the Perkins estate posed a particular challenge, however, because it included a family farm, which the surviving heirs wanted preserved and put to some charitable use related to conservation. The result was the formation of the Glynwood Center, an institution that focuses on community-based conservation and regional agriculture around the world. Glynwood Center leases the land from OSI and continues to operate the farm as part of its program. One of the lessons Glynwood tries to impart on visitors from inside and outside the U.S. is that new partnerships can have some unexpected and fruitful results.

“When people from other countries come to Glynwood, they invariably ask which government institution owns it,” said Judy LaBelle, executive director of the Glynwood Center. “The answer is ‘None. OSI does.’ We use the creation of Glynwood as an example of what this kind of public-private partnership can accomplish. We think it’s planted the seeds for some wonderful new ideas to take root.” 🌱



## OSI RESTORES HISTORIC GRIST MILL

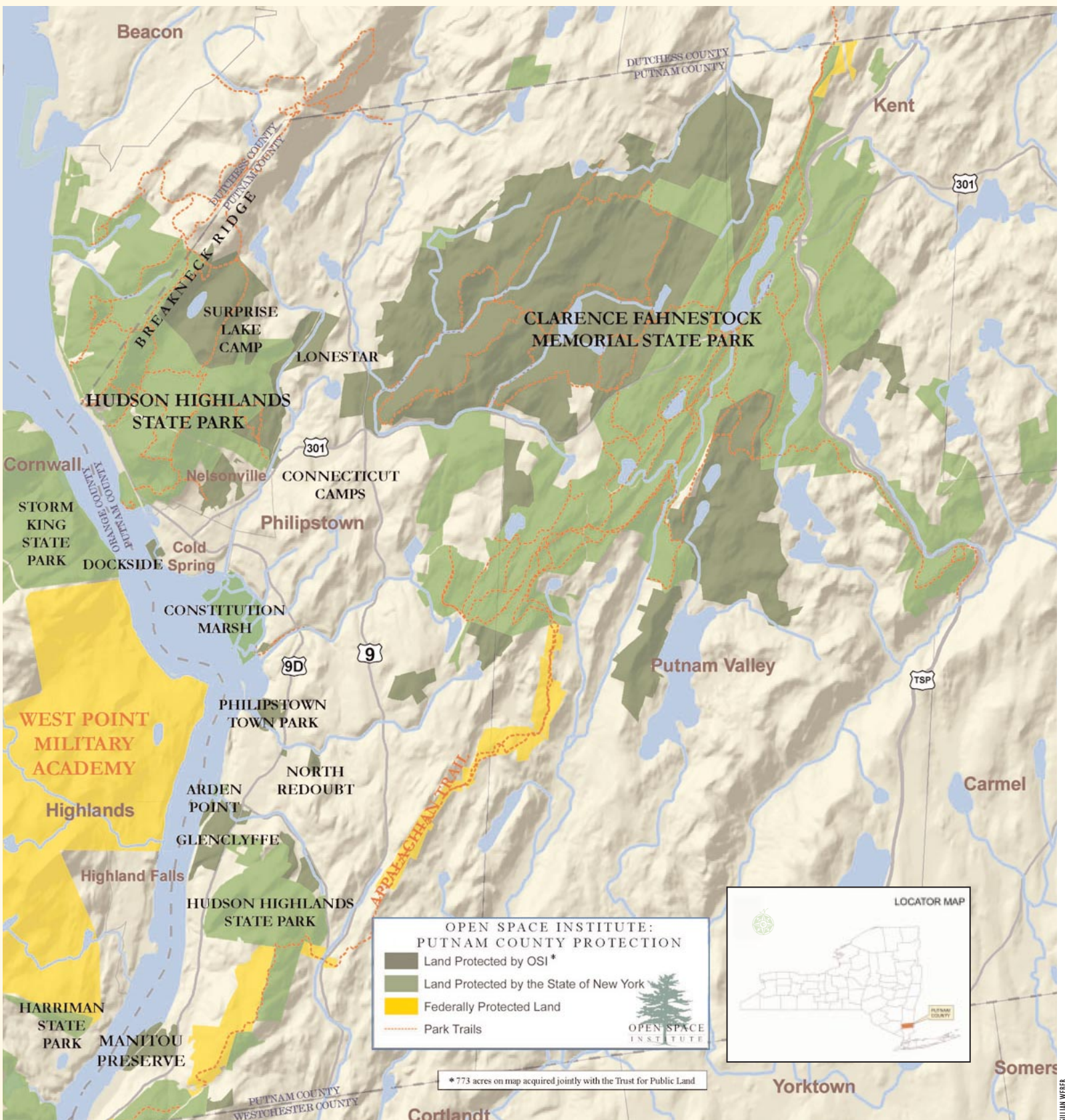
OSI recently completed renovations of an 18th Century Grist Mill near Garrison Landing, directly across the river from West Point. The New York State Department of Parks, Recreation and Historic Preservation has awarded OSI a grant for the restoration. The mill’s location accommodated area farmers and afforded easy transportation of grain across the river to the military academy. The surrounding area was farmed by Jacob Mandeville who frequently hosted George Washington at his home.

*Ken Kostel is a freelance science writer based in New York City who specializes in the environment. He grew up on the southern tip of Lake Michigan in the Indiana Dunes, a place threatened by sprawl from nearby Chicago, and holds masters degrees in environmental science and journalism from Columbia University.*



*publish in the last six to eight years and say 'We want more of that.' ”*

-- KEN LUTTERS, NYS OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION



# SPRAWL IN THE CAPITAL DISTRICT:

## *Results of the Open Space Institute Study*

BY MOLLY MAEVE EAGAN

FOR FIVE GENERATIONS, CHARLES HANEHAN'S FAMILY HAS BEEN DAIRY FARMING IN THE CAPITAL DISTRICT'S NORTHERN SARATOGA COUNTY. BUT THE CREEPING TREND OF SUBURBAN SPRAWL, DEADLY TO OPEN SPACE, IS CHANGING THIS WAY OF LIFE. SOMETIMES IT HAPPENS SO SLOWLY THAT COMMUNITIES DON'T REALIZE WHAT'S HAPPENING UNTIL IT IS TOO LATE. BUT HANEHAN SAYS THE DIFFERENCE IS ALREADY PALPABLE. OSI'S NEW REPORT, *OPEN SPACE FOR TOMORROW*, ADDRESSES THIS THREAT TO THE CAPITAL REGION, WHICH ENCOMPASSES THE FOUR COUNTIES OF SARATOGA, RENSSELAER, ALBANY AND SCHENECTADY.

It's not just farmers who are losing what they came to the Capital District to find. As more people flock from cities to the country, what draws them there — clear horizons, a quick commute, and the sound of birds instead of cars — is slowly receding. While overall population has grown very little, OSI President Joe Martens calls it an exodus because overall movement has shifted, or sprawled, over farms, wetlands, and open spaces.

"If these trends continue," he says, "the loss in quality of life will be immeasurable."

However Martens emphasizes, all is not yet lost — there are resources to change the course of planning and development, and communities are starting to use them. *Open Space for Tomorrow*, the culmination of two years of research on 79 municipalities, was written to sound the alarm before it's too late. The Capital Region has received several proposals from major tech companies attracted to the region's thriving arts, government, technology, and natural resources.



*The tradition of farming is going strong in the Hanehan family, which operates a 5th generation dairy farm in Saratoga County.*

"The region is drawing increasing interest from around the country as an attractive place to live and do business," Martens says.

"We need to prepare for it in a way that promotes healthy growth instead of sprawl. We need good planning."



The proposed Luther Forest Technology Campus in the town of Malta may soon draw up to 12,000 new employees to the region. Whether the surrounding communities are ready is another matter. As a largely agricultural county, Saratoga has already experienced the highest growth rate in the region, and as a result, the value of open space has escalated. Even before a group of mini-mansions were built a half-mile from Hanehan's farm in the town of Saratoga a few years ago, OSI helped purchase permanent conservation rights to 100 acres of his land through a New York State Department of Agriculture and Markets program that assists with the purchase of development rights, known as PDR. The state contributes 75 percent of the cost of the development rights, requiring the locality to raise the rest. In Hanehan's case, the remainder of the cost was split between OSI and the town of Saratoga. But that only constitutes about ten percent of what he owns, and Hanehan says he understands the pressures to sell that property owners face.

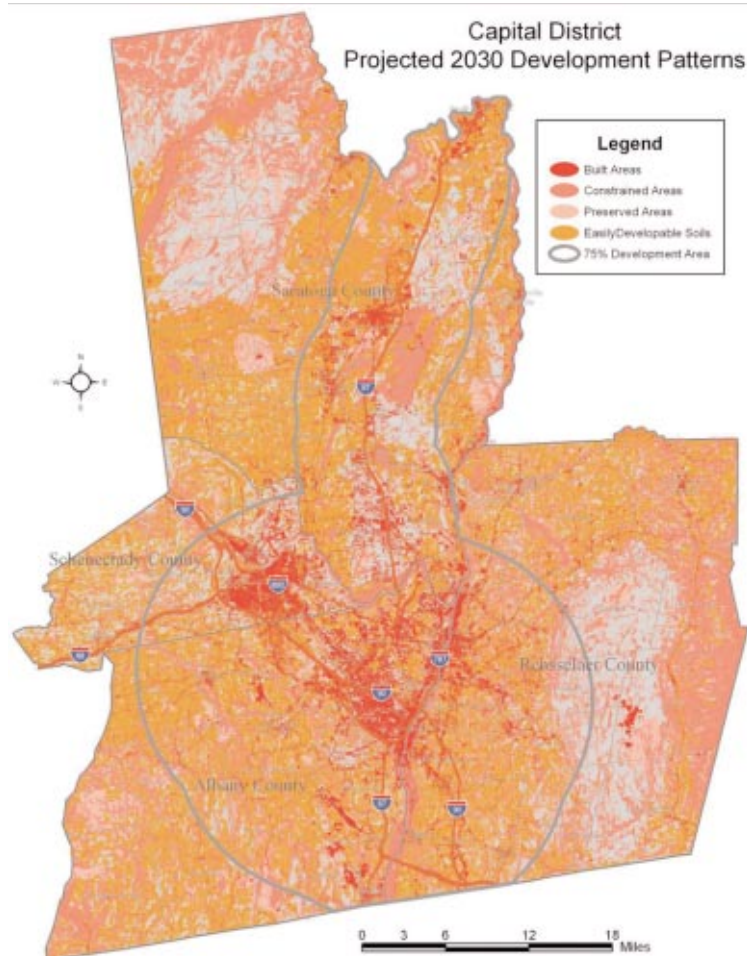
"I hope not to have to sell, but it's getting to the point where the neighborhood has become hostile to larger farming operations," Hanehan says.

The town of Saratoga is now considering a moratorium on major developments until zoning codes can be updated. Saratoga is only one of many communities facing these issues throughout the region.

While regional planning resources exist, they can only advise and have no authoritative power. According to the OSI report, New York State has the strongest home rule laws in the country, meaning that municipalities (cities, towns, and villages) by law have virtually total control over their own land use and, as a result, most communities practice isolated planning. Rocco Ferraro, executive director of the Capital District Regional Planning Commission, says most municipalities depend on property taxes as their primary source of revenue, and in rural areas that are already financially strapped, spending money on planning and conservation is a hard sell. Without realizing it, many communities end up subsidizing sprawl through publicly funded infrastructure, like water and sewer, in an effort to stimulate growth.

"In the long run, this is not a prudent use of limited local funds," Martens says.

For example, the report points out that new residential growth can cost as much as \$1.30 for every dollar paid in property taxes. The drain of new growth on a per person basis differs depending on the town and a whole suite of variables, but the financial reality of unplanned growth is serving as a wake up call. However, the sense of urgency



*The open space character of the Capital District may soon disappear as unplanned growth and development continue unchecked into the countryside. The map above represents an educated estimate of projected development patterns.*

may not be improving the public's understanding of possible solutions, like better planning and coordination. "Unfortunately there is a slower public acceptance of the alternative, which is smart growth," notes Ferraro.

Many call the OSI report integral to beginning a dialogue and making accessible the resources available to individual communities. "The question is," Martens asks, "will communities react quickly enough before it's too late?" 🌱

For an electronic copy of *Open Space For Tomorrow*, log on to [www.osiny.org](http://www.osiny.org) and click on "press room."

*Molly Maeve Eagan is an award-winning investigative journalist and freelance writer living in the Hudson Valley. She recently completed her first novel for young adults.*

TO PROTECT OPEN SPACE, CONSERVATIONISTS HAVE HISTORICALLY EMPLOYED THREE TOOLS: LAND USE REGULATION AND ZONING; LAND ACQUISITION (EITHER DIRECTLY OR IN CONJUNCTION WITH ENVIRONMENTAL GROUPS); AND, INCENTIVES SUCH AS TAX DEDUCTIONS OR ZONING POINTS FOR DONATIONS OF LAND.

IN THESE PAGES, GEORGETOWN PROFESSOR JOHN ECHEVERRIA AND OSI GENERAL COUNSEL BOB ANDERBERG BRING TO LIGHT TWO OF THESE TOOLS — GOVERNMENT REGULATION AND CONSERVATION EASEMENTS — AND CHALLENGES THAT COULD CONSIDERABLY CURTAIL THEIR IMPACT.

# *When Does a Regulation Become a Taking?*

BY JOHN D. ECHEVERRIA

As communities across the United States attempt to protect their scenic vistas and natural resources through zoning and other regulatory schemes, the battle cry is often heard that such regulation is a “taking” of real property by the government. Defining a “taking” — as opposed to protection of land through regulation — is a matter of constitutional law. The line between when government can protect land through regulation and when it must proceed through acquisition is defined by the Takings Clause of the Fifth Amendment, which provides that private property shall not be “taken” for public use except upon payment of just compensation.

While the clause was originally understood to apply only to physical invasions or outright expropriations of private property, it has been clear for nearly a century that certain severely restrictive regulations can constitute takings as well.

The precise location of this line has been a matter of continuing debate by the courts and commentators. In its landmark 1978 takings decision involving Grand Central terminal, the U.S. Supreme Court appeared to chart a moderate course on the issue, granting governments relatively broad latitude to regulate uses of land.

In the 1990's, an increasingly conservative Supreme Court seemed to signal its intent to expand the doctrine of regulatory takings. In a series of decisions, including the celebrated takings contest between David Lucas and the South Carolina Coastal Council, the Court took a series of incremental steps to broaden the circumstances in which takings may be found.

However, the bark of the property rights movement has turned out to be more significant than its bite. The very latest Supreme Court takings decisions have all upheld the government's attempt at regulation, including one rejecting a takings challenge to a multi-years planning moratorium designed to protect Lake Tahoe from over-development. This year, the Supreme Court is hearing a total of three takings cases and the early prognostications are that all of the cases may end up in the government win column.

One explanation is that the current Supreme Court, the composition of which has remained unchanged for a remarkably long time, may have reached the limits of its revisionist impulses on the takings issue. Absent a further rightward change in the ideological complexion of the Court (a prospect not beyond the realm of possibility), we may have reached the limits on expansion of the regulatory takings doctrine.

The courts are not, of course, the only forum for takings debates. Last November, the voters of Oregon approved Measure 37, a sweeping property rights measure that has blown gaping holes in Oregon's vaunted state-wide regulatory program. It remains to be seen whether Oregon voters come to rue their approval of this measure, and whether it will serve as a model for other similar ballot initiatives in other states.

In any event, the challenging task of drawing the line between permissible regulation and compensable takings will rage on.

*John D. Echeverria is the executive director of the Georgetown Environmental Law and Policy Institute ([www.gelpi.org](http://www.gelpi.org)).*



# Taking The Bite Out of Conservation Easements

BY ROBERT K. ANDERBERG

Since 1977, the land trust community has benefited from a generous federal tax policy, which has encouraged donations of conservation easements. Congress might change all of this.

Conservation easements have been one of the great conservation success stories of the past three decades, providing a flexible yet enduring tool for protecting open space of all types: ranches, farms, mountains, working forests, streams and estuaries. Conservation easements protect land cost-effectively and without impairing the local tax base. In the United States, more than 1,500 local land trusts and numerous national and regional conservation organizations have collectively protected 30 million acres in the United States. Here in New York, the Open Space Institute holds more than 220 conservation easements preserving more than 20,000 acres of land, from the northern Adirondacks peaks to Westchester County.

Donations of conservation easements are now under attack. An influential congressional joint committee — the Joint Committee on Taxation (JCT) recommended the following on January 26:

- ✦ *Eliminating deductions for conservation easements on properties used by taxpayers as their personal residence.*
- ✦ *Limiting all other conservation easement deductions to no more than 33% of the easement's appraised value.*
- ✦ *Limiting deductions for donations of real property (other than conservation easements), to the taxpayer's tax basis (that is, the investment in the property), rather than fair market value.*

These proposals are not yet law. However, past recommendations by the congressional JCT — including post-Enron corporate reforms — have been adopted wholesale by Congress.

This is bad news for the conservation community. Absent tax incentives, many private landowners will not donate conservation easements or conservation land. OSI, for example, holds a donated conservation easement on a 1,400-acre ranch in the Adirondacks, which protects expansive views of the High Peaks Wilderness Region. Under the tax proposal, the donation of this conservation easement — which would cost millions if it had to be purchased by OSI — would be non-deductible.

In short, the JCT recommendation would cripple this private, volunteer-based initiative, despite its proven, time tested success across the nation.

Many land trust and governmental units simply do not have funding to purchase conservation easements preserving large landscapes. This is particularly true now, as real estate prices have escalated dramatically, often in areas of singular natural beauty and outdoor recreation.

At a time when many treasured landscapes across America are threatened with development, the tax proposal will eliminate one of the most successful tools for land conservation, and entirely cripple the land trust community.

Legitimate questions have been asked over the last year about tax abuses involving conservation easements. Some landowners have inflated appraisals in order to justify tax deductions for easements with little or no conservation value, including easements used to finance the development of subdivisions and golf courses. However, the proposals by the Joint Committee on Taxation would throw the baby out with the bath water, and place in jeopardy one of the most successful conservation programs in use today.

There have been several proposals that address perceived abuses with conservation easements. One suggested by the Bush Administration would impose significant penalties on land trusts that fail to enforce conservation easements. And a panel of non-profit experts convened at the request of the Senate Finance Committee has recommended other steps, which include more rigorous appraisal requirements and enhanced penalties for abusive conservation easements. Both of these proposals deal with perceived problems, rather than closing the door on conservation easements, and deserve further examination.

OPEN SPACE will continue to use these pages to inform readers about congressional actions that could impact us all.

*Robert K. Anderberg is the V.P. and general counsel of the Open Space Institute and oversees the organization's Shawangunk Ridge Greenway Program.*

## LAS VEGAS East

More than a century of conservation in the Catskills by public and private entities could soon be eclipsed by the construction of as many as five casinos in Sullivan County.

As OPEN SPACE was going to press, Governor Pataki, reacting to a recent Supreme Court ruling, withdrew legislation proposing five casinos in the Catskills and announced that for now he will propose just one casino. However, Pataki signaled that he is still committed to settling historic Native American land claims, which would generate considerable revenue — possibly as much as \$1 billion a year — and help alleviate New York State's burgeoning deficit.

Casino construction would require state and federal (Department of Interior) approvals and to date, no comprehensive impact studies have been completed. The Catskills watershed, which provides 90% of New York City's water supply, along with the historic trout streams that lace the region, are potentially the most vulnerable natural resources.

OSI envisions an investment of more than \$12 million over the next three years to acquire land in the Catskills. Stay tuned for the next issue of OPEN SPACE featuring the casino proposal and impacts on natural resources, crime, traffic, community life and scenic open space.

## Cul De Sacs Coming to Maine's Legendary North Woods

There's word that the Seattle based Plum Creek Timber Company — one of the nation's largest land developers — has set its site on Maine's North Woods. The Seattle based company is seeking state approval to build up to 1,000 houses and two resorts in the remote Moosehead Lake region. Cathy Johnson with the Natural Resources Council of Maine told the Boston Globe that the primitive North Woods is at a tipping point: "We've never seen anything like this before," said Johnson.

## Conservation Opportunities in Western Massachusetts

The Open Space Institute recently concluded a one-year study of Western Massachusetts. The greatest threats to the landscape, which encompasses 2 million acres from Worcester to the New York border, arise from fragmentation of natural areas and wildlife habitat associated with intense development pressure. Copies of the report, "Western Massachusetts: Assessing the Conservation Opportunity" are available upon request.

## Historic Adirondacks Acquisition

In an historic acquisition, The Nature Conservancy and Lyme Timber, a private timber investment company, acquired a 104,000-acre tract of forestland in the Northern Adirondacks from Domtar Industries, Inc. The State of New York will acquire working forest easements encumbering the property. The easements will require sustainable forest management and timber harvesting under principles of the Forest Stewardship Council; prohibit residential development and restrict subdivision; and, enhance public recreational access. OSI's Northern Forest Protection Fund supported the transaction through \$2.5 million in loans and grants to TNC.

## Leading Force For American Environment Will Pass Torch In 2006

John Adams, OSI's chairman of the board for thirty years, recently announced that in 2006 he will pass the torch of presidency of the Natural Resources Defense Council, which he co-founded in 1970. Under Adams' leadership, NRDC has become one of the world's most effective advocacy organizations, with more than 1 million members and activists. His tenure with the organization encompasses the creation of pioneering laws like the Clean Air and Clean Water Acts, as well as more recent battles over global warming and energy security. Frances Beinecke, NRDC's executive director, has been chosen as Adams' successor. Adams will continue to have an active role as NRDC's founding director, focusing on issues he is deeply committed to, such as global warming and the protection of the Catskill and Appalachian regions.



## World Ocean Observatory

The Open Space Institute is sponsoring the newly launched World Ocean Observatory ([www.theW20.net](http://www.theW20.net)), a virtual educational initiative and forum for ocean affairs. The Observatory will use the world wide-web to communicate globally about the ocean — the last great wilderness — where, as W2O director Peter Neill points out, there is no better illustration of the "critical shift from abundance to scarcity and from accommodation to conflict."



# RECOMMENDED READING

## Images of America: PUTNAM COUNTY

(Arcadia)

By Guy Cheli

An interesting glimpse into the history of Putnam County through rare archival photographs culled by local writer, Guy Cheli. Cheli begins the book, appropriately, with an illustration of the man for whom eight U.S. counties have been named. Israel Putnam, a major during the Revolutionary War, was famous for the admonition he repeated to soldiers: "Don't fire until you see the whites of their eyes." Cheli captures Putnam County's role in the American Revolution and the Civil War along with a bounty of photographs depicting a countryside dotted with rambling farms, a way of life that has come and gone.

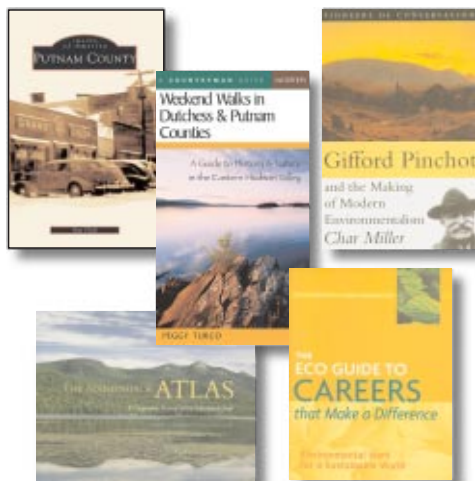
## ADIRONDACK ATLAS:

### A Geographic Portrait of the Adirondack Park

(Syracuse University Press)

By Jerry Jenkins with Andy Keal

In a detailed geographic assessment of the six-million-acre Adirondack Park, the authors cover 130 topics from the history of the park, to cancer rates, to the challenges of a constantly changing environment. If you have a question about the Adirondacks, this book has the answer. Well illustrated with 450 color maps and 250 figures, graphs, tables and charts.



## WEEKEND WALKS IN DUTCHESS & PUTNAM COUNTIES

### A Guide to History & Nature in the Eastern Hudson Valley – Second Edition

(Countryman Press)

By Peggy Turco

Naturalist Peggy Turco recommends more than 35 walks throughout the Eastern Hudson Valley, providing an informative narrative for visitors to Hudson Highlands State Park, Fahnestock State Park, and other scenic areas. This second edition has up-to-date listings and descriptions of new and historic areas to walk and explore, including OSI's Three Lakes hike in Fahnestock State Park, approximately fifty miles north of New York City. Turco has compiled a useful guide with access directions, maps, mileage, trail directions, natural highlights and regional history.

## GIFFORD PINCHOT AND THE MAKING OF MODERN ENVIRONMENTALISM

(Island Press)

By Char Miller

As part of Island Press's continuing series, "Pioneers of Conservation," Char Miller examines the life of Gifford Pinchot, first chief of the U.S. Forest Service. Pinchot's philosophy that conservation should "produce the greatest good, for the greatest number, for the longest run" earned him the label "utilitarian conservationist" and led to a falling out with his old friend John Muir. The same opposition to conservation that Pinchot faced 100 years ago still lingers today, suggests the author.

## THE ECO GUIDE TO CAREERS THAT MAKE A DIFFERENCE: Environmental Work for a Sustainable World

(Island Press)

By the Environmental Careers Organization

Some good news for idealists out there: You don't have to choose between making a living and making a difference. This guide by the Environmental Careers Organization goes beyond traditional environmental and conservation careers and takes a look at new careers in professions such as investment banking, insurance, tax law and entrepreneurship. With useful guidance and practical insights, the authors point to less obvious ways to have an impact.

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# OPEN SPACE

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