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December 10, 2012

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NYS Adirondack Park Agency  
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Ray Brook, NY 12977

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RE: Draft General Permit "Application and Certification for Silvicultural Treatments That Meet Jurisdictional Clearcutting Thresholds" (2012G-1) Listed in ENB on November 28, 2012

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Dear Mr. Spada,

The Adirondack Park Agency (APA) selected a Negative Declaration under the State Environmental Quality Review Act (SEQRA) stating no impact for its proposed new draft General Permit "Application and Certification for Silvicultural Treatments That Meet Jurisdictional Clearcutting Thresholds" (2012G-1) and as such is not formally conducting a public hearing on this proposed new policy. Protect the Adirondacks encourages the APA to reject this new draft General Permit.

It appears to PROTECT that the decision to pursue a General Permit for this issue is an abdication of the APA's regulatory responsibility. PROTECT believes that there are a number of things about this issue that the APA has failed to consider. PROTECT finds that the APA has failed to justify or demonstrate the need for this important change in policy and that necessary data has not been gathered and analyzed.

The essence of the Adirondack Park is that it's a landscape of continuous high forest canopy. As one moves across the Adirondack Park from Forest Preserve to conservation easement lands to large private landholdings, the Park is defined by continuous, largely unbroken high forests. PROTECT believes that a decision by the APA to significantly loosen clearcutting rules will have wide ranging implications for long-term forest management in the Adirondack Park as well as seriously undermine public support for the state Conservation Easement program, among other negative consequences.

Peter Bauer  
**Executive Director**

Please read below for PROTECT's full list the concerns on this important policy change.

## **APA has Managed an Anecdote-Driven Process to Propose Policy, Not a Fact-Based and Data-Driven Process**

1. APA information provided as one justification for this policy change is largely built on the reported experiences of one applicant for a clearcut permit that took one year to complete. No data was presented about other applications. By basing the draft General Permit on one application, the APA has accepted an anecdote-driven process as the factual basis for this change.

The APA has not engaged in a thorough data-driven process for fully analyze the need for this change in policy. APA has not provided a justification for the need to make this change in policy.

2. APA has stated that the absence of this General Permit has led to forest “high-grading,” which is a poor long-term management practice. Yet, the APA has provided no examples of large landowners who have been somehow forced to high-grade their forests due to current APA law and regulations.
3. APA staff stated that current APA law and regulations have led to widespread 24-acre clearcuts across the Adirondacks. These have been undertaken to both implement clearcuts as a forestry management technique, but at the same time avoid APA jurisdiction. No data has been provided about the prevalence of 24-acre clearcuts in the Adirondack Park.
4. No data has been presented on the success of clearcuts as a sound forest management practice in the Adirondacks. It is PROTECT’s understanding that clearcuts attempted north of Long Lake in the 1980s failed to control tree species regeneration. As such these clearcuts failed their express purpose of changing forest composition. It is also our understanding Finch Paper’s efforts to increase the percentage of hemlock on its lands through the use of shelterwood cuts has not been successful. PROTECT is concerned that forest liquidations will be performed through use of this General Permit under the guise of attempting to change long-term forest composition.

The discussion around this General Permit should include an assessment of the efficacy of clearcuts as a forest management technique in the Adirondack Park.

PROTECT does not believe that the APA has persuasively provided a justification for this change in policy. We do not believe that the APA has adequately researched this issue. For all of these reasons listed above, PROTECT urges the APA to hold off on action to adopt this new General Permit for clearcutting. A major decision such as this should be fact-based and data-driven and this process has been purely anecdote-driven.

## **Sustainable Forestry Certification Programs are Not a Substitute for 39 Development Considerations in Section 805 of APA Act**

To be eligible for the new clearcutting General Permit a landowner must have their forest lands certified in one of the various “third-party” sustainable forestry certification programs, such as FSC (Forest Stewardship Council) or SFI (Sustainable Forestry

Initiative). State Article 49 conservation easement lands and some Real Property Tax Law programs

(480a) are also eligible. Certification is based on forest management plans that may incorporate use of clearcuts to change forest composition over the long-term in order to grow a higher percentage of high value northern hardwood trees.

PROTECT is not convinced that an FSC, SFI or Article 49 Conservation Easements lands management plan meets the criteria for a permit as specified by the consideration and review of the 39 development considerations in Section 805 of the APA Act. PROTECT calls upon the APA to compare a typical FSC forest management plan from an industrial forestland owner in the Adirondack Park with the requirements in Section 805.

### **Revision of Outdated APA Rules Part 573.7 “Jurisdiction and Review of Clearcutting” is the More Appropriate Tool than a General Permit**

The APA provides no information to compare the benefits of revising and updating its Rules and Regulations Part 573.7 “Jurisdiction and Review of Clearcutting” versus creating a new General Permit. While current APA rules and regulations are outdated, as they reference “Timber Harvesting Guidelines for New York” published by the Society of American Foresters in 1975, creation of a new General Permit is the wrong tool to update and improve the APA’s review of clearcutting.

### **Clearcutting Forestlands is a Controversial Public Issue**

Clearcutting of private forestlands remains a controversial practice for the general public. To a large degree, the Adirondack Park has been spared the prolonged and combative public debates over clearcutting that have raged over federal management of National Forest lands in the western U.S., private lands in the State of Maine, and led to comprehensive state legislation in Vermont after widespread public outcry and abuse. To loosen regulations so as to expand opportunities for large-scale clearcutting in the Adirondack Park is a step backwards for the APA and the Adirondack Park.

### **Other Issues**

In addition to the four major issues detailed above, PROTECT has a number of other concerns about this proposal.

- Forest management is but one issue impacted by the decision to undertake a clearcut. PROTECT is concerned about short-term visual impacts and wildlife impacts. PROTECT is also concerned about the long-term impacts from methods, such as spraying, to try and control forest regeneration after the clearcut.
- PROTECT is concerned that allowing easier clearcutting will weaken public support for the state’s purchase of conservation easements. Much of the 770,000 acres of conservation easement lands are owned by Timber Investment Management Organizations (TIMOs) and Real Estate Investment Trusts (REITs). If these companies engage in largescale clearcuts, PROTECT believes this will weaken public support for land protection through conservation easements, which is a program that has enjoyed strong support from a diverse body of stakeholders in the Adirondacks. Conservation easements should be tools to ensure sustainable forestry. Clearcutting will likely erode public support for conservation easements.

- The draft General Permit is largely predicated on the belief that various “third-party” sustainable forestry certification programs provide long-term forest management plans that may incorporate use of clearcuts to change forest composition over the long-term in order to grow a higher percentage of high value northern hardwood trees. The draft General Permit references lands that have “forest management certification programs” such as FSC, SFI, and Article 49 Conservation Easements lands as automatically eligible for the General Permit. Additionally, some RPTL 480a lands, among other programs, may be eligible too. While PROTECT sees the success of these programs in promoting greater long-term sustainable forestry management in general, it’s important to note that these programs are voluntary. While conservation easements are binding, FSC, SFI and RPTL 480a are not, though there are tax penalties for early withdrawal from RPTL 480a. FSC or SFI certified lands, where a clearcut was undertaken through this General Permit, could subsequently quickly change ownership and the new landowner could chose not to continue with these certification programs.
- PROTECT is concerned that an easing of the APA’s clearcutting review process, as proposed in the new General Permit, could lead to liquidation of private forestlands as landowners cut property harder under the terms of the new General Permit during periods of high market values for various tree species.
- PROTECT is concerned that no upper limit for a maximum amount of land for a clearcut is included in the draft General Permit.
- PROTECT is concerned that the draft General Permit fails to specify necessary setbacks from wetlands and all riparian corridors or deer wintering yards. Such setbacks vary within the different third-party certifications and should be standardized by the APA.
- PROTECT does not believe that RPTL 480-a lands, Article 49 Conservation Easement lands, and American Tree Farm lands are subject to the same level of scrutiny and independent assessment and oversight as FSC and SFI certified lands, so they should not be eligible for this General Permit.
- A General Permit does not provide an opportunity for public comment. One of the strengths of the APA Act is that all jurisdictional projects can be reviewed and commented upon. This will not be the case with a clearcut under the new General Permit. This is especially troublesome on the 750,000 acres of state conservation easement lands where public funds were used to purchase the development rights and protections for wildlife, water quality, public recreation, and aesthetics in many cases. Clearcutting can often have wider impact than just decimating the standing trees.

PROTECT does not believe that the APA has adequately justified its case for why this policy change is needed. We do not believe that a General Permit is the right remedy for this problem, if there is an actual problem. We believe that APA action to loosen the rules for clearcutting in the Adirondack Park will jeopardize the state’s strong and popular Article 49 Conservation Easements program.

For these reasons, and all others stated in this letter, PROTECT urges to APA reject approval of this draft General Permit to dramatically ease clearcutting policy in the Adirondack Park.

PROTECT has also submitted a Freedom of Information Request to review all APA clearcutting applica-

tions and permits from the last 10 years. We have been notified that these materials will not be available until January. We would have liked the opportunity to examine the length of time for the most recent clearcutting permit as well as others for an independent examination of problems with the current application and permit approval process. While we will not have this data available for public comment, we hope to have it available before the APA meets and makes a decision in January 2013.

On behalf of the Board of Directors of Protect the Adirondacks, please accept my gratitude for the opportunity to present our concerns on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Bauer".

Peter Bauer  
Executive Director