

# PROTECT THE ADIRONDACKS!

March 14, 2013

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Beth A. Magee  
NYSDEC  
Region 5  
232 Golf Course Road  
Warrensburg, New York 12885

**Re: Fromkin Property, Town of Edinburg, Saratoga County,  
Application No. 5-4130-00259/00001**

Dear Ms. Magee:

Protect the Adirondacks ("PROTECT") requests that the Department of Environmental Conservation (DEC) deny the applications for an Article 15 permit and a Clean Water Act Section 401 water quality certification for the construction of a stone retaining wall on Forest Preserve land in the Great Sacandaga Lake adjoining the above-referenced property.

In response to a recent inquiry by John Caffry, the Co-Chair of PROTECT's Conservation Advocacy Committee, about the location of the proposed wall, Region 5 Deputy Regional Permit Administrator Marc S. Migliore stated in a March 11, 2013 e-mail, that:

All lands of the Great Sacandaga Lake within the Taking Line (Reservoir Boundary) of 778 feet MSL, are Forest Preserve Lands. . . . The Fromkin application proposes a wall to be constructed at or around the mean high water line (high flow line) of 771 feet MSL with stones taken from within the Taking Line.

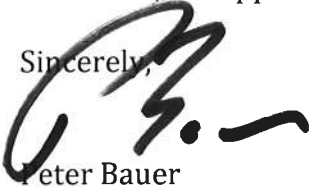
See also Moon v. Board of Hudson River – Black River Regulating District, Index No. 93409 (Sup. Ct., Fulton Co. April 12, 2010)(Aulisi, J.)(State land at Great Sacandaga Lake is part of the Forest Preserve).

New York Constitution Article 14, § 1 requires that Forest Preserve land "shall be forever kept as wild forest land". Because this project would be located on Forest Preserve land, DEC may not issue any permits for the proposed stone wall. See Moon, supra; Matter of Eugene F. Bartell, ALJ's Ruling, June 11, 2009, pp. 17-18,

www.dec.ny.gov/ hearings/55449.html; 2009 WL 2141498, \*1, \*13-\*14 (adjoining owner can not maintain private dock, staircase and bench on Forest Preserve land in Stillwater Reservoir); Matter of Walter W. French, Decision and Order of the Commissioner, July 20, 2007, pp. 6-7, www.dec.ny.gov/hearings/36563\..html; 2007 WL 3125218, \*4 (private individual may not maintain floating house on Forest Preserve land in Cranberry Lake) ; Opinion of the Attorney General No. 96-F2 (finding that State land under Raquette Lake and Big Moose Lake is part of the Forest Preserve and no permits may be issued for private power lines on such land). In addition, no rocks may be removed from the Forest Preserve for the construction of any such wall. 6 NYCRR § 190.8(g). See also 6 NYCRR § 190.3, § 190.5.

Therefore, the applications must be denied.

Sincerely,



Peter Bauer  
Executive Director

cc: Marc S. Migliore, DEC  
Kenneth R. Hamm, Esq.  
John W. Caffry, Esq.