Adirondack Council
Adirondack Mountain Club
Adirondack Wild: Friends of the Forest Preserve
Citizens Campaign for the Environment
Protect the Adirondacks
Sierra Club—Atlantic Chapter

April 10, 2013

Leilani Ulrich, Chair
Terry Martino, Executive Director
Aaron Ziemann, Project Review Officer
Adirondack Park Agency
P. O. Box 99, Route 86
Ray Brook, NY 12977

Dear Chairwoman Ulrich, Ms. Martino and Mr. Ziemann:

We, the undersigned organizations, wish to comment on the amended negative declaration for the proposed "General Permit 2012G-3 Silvicultural Treatments that Meet Jurisdictional Clearcutting Thresholds," which was listed in the March 13, 2013 Environmental Notice Bulletin. The comments that follow are divided into two sections. The comments on the amended negative declaration are first, followed by comments on the General Permit itself.

## THE AMENDED NEGATIVE DECLARATION

### The Agency Cannot Adopt General Permit 2012G-1 Without Complying with SEQRA

The proposed General Permit has been presented on the grounds that it will positively change silvicultural practices in the private Adirondack working forests in a significant way. The Agency's failure to factually document how the GP would result in those positive changes was the basis for a detailed letter of opposition sent to you in February by twelve regional, statewide and national organizations. Regardless of that big problem with the General Permit, if its adoption is intended to foster changes that will have significant and long lasting environmental impacts, then the APA must prepare an environmental impact statement before it acts on the proposal. An EIS is a prerequisite to any decision seeking to encourage responsible, sustainable and economically viable forestry in the Adirondack Park.

We believe the APA must treat the adoption of a General Permit which potentially impacts so much private land in the Park as a Type 1 major action under SEQRA, with a transparent process

that allows everyone from concerned citizens to environmental experts to pose questions and have them answered, in writing, in a public record.

**The SEQRA Process Applies**

Adopting the General Permit would be a Type 1 Action under the State Environmental Quality Review Act (SEQRA). A Type 1 Action is presumptively likely to have significant impacts on the environment.

When faced with a Type 1 Action, the APA as Lead Agency must (1) perform an environmental assessment and (2) make a determination of significance. When a Type 1 Action is determined to be significant, the Lead Agency may not act prior to preparing an Environmental Impact Statement (EIS) that, among other things, considers a range of alternatives to the proposal.

Here the Agency is preparing to act without performing an adequate environmental assessment. The staff prepared a document called "Amended Environmental Impact Assessment," which supplements an earlier Environmental Assessment Form (EAF), but neither contains a comprehensive compilation of potential impacts or an evaluation of the magnitude of such impacts.

The Record contains no determination of significance, although there is a staff document that uses the words "Negative Declaration" in several places without explanation or a reasoned elaboration, and a notice entitled "Amended Negative Declaration" was published in the March 13, 2013 Environmental Notice Bulletin, following an earlier notice with a "Negative Declaration" label.

The General Permit would approve a "class of projects" on 600,000 acres consisting of "clearcuts" (i.e. "any cutting of all or substantially all trees over six inches in diameter at breast height over any ten-year cutting cycle") on more than 25 acres of a single unit of land. It is implausible that such a blanket approval would not result in any significant impacts on the environment. The SEQRA process requires that an EIS be prepared prior to decision-making, and that the decision be supported by an evaluation of alternatives and specific SEQRA findings.

**Adoption of a General Permit is a Type I Action**

Under Section 572.23(d) of the Agency's Regulations, "the issuance of a general permit shall constitute a type 1 action, for the purposes of [DEC Regulations] Part 617."

Under Part 617, "the fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." (Section 617.4(a)(1)).

Given this, the Agency must prepare an EIS before a decision can be made on this general permit.

**The Environmental Assessment Fails to Do Any Assessing**

The prepared document, dated March 13, 2013, called "Amended Environmental Impact Assessment" starts off by mischaracterizing the proposed action as "the adoption of a procedural change." But the proposed action is the adoption of a General Permit under Section 572.23. This General Permit would authorize a "class of projects" (i.e., many individual projects that could be undertaken under the General Permit without a specific individual permit). Each project within the class of projects so permitted in advance would be a Class A Regional Project under Executive Law Section 810 (1) consisting of "clearcutting of any single unit of land of more than twenty-five acres."

Thus, the first thing wrong with the Amended Assessment and the EAF which it amends is that they do not adequately "consider the action as defined in subdivisions 617.2(b) and 617.3(g) of this Part [617]." Those sections require, among other things, that "the entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it." To describe the proposed action as a change in process, rather than the granting of a permit for a "class of projects" almost guarantees that what follows by way of evaluation will be inadequate.

The next thing wrong with the EAF and the Amended Assessment is that both documents gloss over most of the criteria in Section 617.7(c). Part 2 ("Project Impacts and Their Magnitude") of the EAF and Amended Assessment shows that of the 20 questions, all but one are answered "No." For example, when the EAF asks "Will the Proposed Action result in a physical change to the project site?" the question is answered "No." But how can you clear-cut a tract of more than 25 acres without physically changing the site? This lack of practical attention to detail is emblematic of the way in which the rest of the EAF was cursorily filled out. For further example, Part 3 ("Evaluation of the Importance of Impacts") of the EAF is ignored entirely and left blank.

Finally, and most importantly, the text that does exist in the Amended Assessment does not either "identify the relevant areas of environmental concern [or] thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment". (Section 617.7(b)(2) and (3)). Therefore, the EAF and Amended Assessment fail to perform for the Agency the function of giving it a Record upon which it can proceed to making a determination of significance.

**The Record Lacks a Determination of Significance**

Putting the words "Negative Declaration" on a document does not satisfy SEQRA's requirement that the Agency make a determination of significance before proceeding either to an EIS or a decision.

Under Part 617 the Agency must "set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation." (Section 617(7)(b)(4)).

No such writing exists in the Record before the Agency, and, as discussed above, the Record does not contain the basis upon which the Agency could even prepare one.

**It is Not Rational to Conclude that the Adoption of the General Permit Would Not Have Significant Environmental Impacts**

There is also a great disconnect in the Record before the Agency. The adoption of the General Permit is being presented as a positive development for the environment of the working forests and for the improved silvicultural practices in the Adirondack Park, inherently stating that there will be environmental impacts. However, the critical need to prepare an environmental impact statement was simultaneously dismissed, as evidenced by the checking of almost every box as "N/A" or "No" on the EAF. The Agency cannot have it both ways.

In addition, the Amended Assessment provides some numbers for analysis. Unfortunately, it requires the reader to work backwards to get the relevant facts. Nevertheless, the figures state that there are 600,000 acres of lands to which the General Permit would apply. It also appears from the Amended Assessment that the "average opening size" will be 120 acres, and there will be roads, skid trails, construction of drainage facilities, and uses of herbicides and pesticides both within and outside of the 120 acre openings spread over the 600,000 acres.

It is not necessary to go any further into the analysis of this proposal to question the rational basis for a conclusion that it will not have large and important impacts. The presumption in the Agency's regulations and Part 617 that this Type 1 project requires the preparation of an EIS, the consideration of alternatives, and SEQRA findings is not rebutted by the Record before the Agency. The plain facts and circumstances of what is proposed make it irrational to think that even a better prepared EAF could support a finding that the Agency can proceed without an EIS.

The Agency cannot act on the proposal without SEQRA compliance, including the preparation of an EIS. This should not be a burden on the Agency, but an aid to good decision-making. The way to make sure that there is responsible, sustainable and economically viable forestry in the Adirondack Park is to look before one leaps. That's the function of SEQRA, and failing to go through its steps carefully and fully for a clear-cut general permit is a mistaken shortcut.

## THE GENERAL PERMIT

While we appreciate the importance of FSC and SFI forest certification in the Adirondack Park, we continue to point out that certification is no substitute for rigorous Class A review of clear-cuts. We still believe that the General Permit as currently proposed is bad policy and presented without the careful deliberation that the issues involved clearly deserve. Among the many shortcomings that still exist in the General Permit there is a lack of research data to back up the silvicultural benefits claimed by the APA, lack of analysis, including a fundamentally flawed failure to analyze alternative actions, loopholes in the eligibility requirements, no maximum size of the clear-cuts to be allowed and limited ability for the staff to properly condition such projects.

As twelve organizations stressed in their February letter, the Agency should be forming an advisory committee of knowledgeable stakeholders to help APA review and revise its current clear-cutting regulations based in modern science that would reflect current conditions and better protect the environment of the Adirondack Park. A much more in-depth study of the issues is needed. We recognize and appreciate the Agency for taking our advice and bringing in several experts to speak about forests and forestry practice. However, to date your list of experts has not comprehensively addressed the many issues involved.

One clear alternative that the Agency has not yet publicly explored is to examine and as needed revise its application materials and special information requests for timber harvesting and clear-cutting to make the process of applying for a Class A Regional Permit less time consuming. Several organizations present at your stakeholder meeting in January committed to assist the Agency in this process.

We conclude by reiterating our concern that this General Permit does nothing to address the issues that the APA claims they are trying to fix, namely bad forestry practices of high-grading and clear-cuts that avoid jurisdiction by remaining under 25 acres in size. If the APA truly is seeking to reform its standards on clear-cutting, we applaud such an effort and will happily participate in such a process. However, the General Permit remains an inadequate option with many legal, scientific and policy flaws.

Sincerely,

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