



Board of Directors

October 19, 2018

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Fred Munk, Supervisor of Natural Resources
DEC Region 6 Headquarters
Dulles State Office Building
317 Washington St
Watertown, NY 13601

James McMartin Long

Secretary

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RE: Public comment on proposed modification to 18,950-acre Long Pond Conservation Easement in St. Lawrence County

Dear Fred Munk,

Nancy Bernstein

Richard Booth

John Caffry

Andy Coney

Dean Cook

James C. Dawson

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Robert Glennon

Roger Gray

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Peter Hornbeck

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Peter O'Shea

Barbara Rottier

Philip Terrie

Please accept these comments as part of the official record of public comments on the proposed modifications of the 18,950-acre Long Pond Conservation Easement in St. Lawrence County. In January 1999, the State of New York purchased this conservation easement over 18,950 acres that included broad public recreation rights. Under the terms of the easement, six long established buildings were designated and allowed to remain in perpetuity on the tract. In addition to these six building there were around three dozen other primitive leased hunting and fishing camps spread across the property. Some of these camps were grandfathered for a period of 15 years, which was supposed to end in 2014. At that time, full public recreation rights were to be realized as all structures were to be removed with only the six designated private buildings remaining.

Peter Bauer

Executive Director

Juliana Carattini

Director of Development

The Department of Environmental Conservation (DEC) is now seeking to change the Long Pond Conservation Easement to allow 15 hunting and fishing residential structures to remain on the property in perpetuity. These 15 structures would be in addition to the six permanent buildings to bring the total number of residential buildings to 21. Protect the Adirondacks strenuously opposes this change to the Long Pond Conservation Easement (LPCE). We believe that the proposed change will degrade the environmental resources and public recreational rights to the tract. Environmental protection and

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public recreation were the key public benefits in this conservation easement and should be upheld by the DEC and not squandered.

Protect the Adirondacks opposes the proposed changes to the LPCE. The reasons are listed below.

DEC Fails to Justify Modifications for Long Pond Conservation Easement

In 1999, the State of New York, through the DEC, purchased the LPCE. The original purposes for the LPCE are clearly stated in the original easement. When reviewing the DEC's proposal to change the LPCE, it's important to look at the original stated purposes of this easement.

The original easement includes a resolution on page 1, which establishes the purposes and importance of the LPCE. These are:

WHEREAS, the Protected Property in its present natural condition has substantial and significant natural resources value by reason of the fact that it has historically been managed for silvicultural purposes and for the production of timber, and that it has not been subject to any extensive development or exploitation; and

WHEREAS, in view of the foregoing and pursuant to the provisions of the aforementioned Article 49 of the Environmental Conservation Law, the Grantee has determined it to be desirable and beneficial and has requested the Grantor, for itself and its successors and assigns, to grant a Conservation Easement to the Grantee in order to limit the future development of the Protected Property while permitting compatible uses thereof;

These two clauses make clear that the State accorded great importance to the Long Pond tract due to the fact that these lands had been managed for timber and had not been subject to development. The clause also states that the purpose of the easement is to "limit future development."

Additionally, in the "Affirmative Rights" section, the easement states that the State was purchasing "the right of public access to the protected property for recreational purposes." (p 2)

To accomplish the stated purposes, the state limited in the LPCE future development on the tract to six permanent residential buildings. The limitation of buildings to just six was deliberate. It was designed to protect the open space resources and to maintain the Long Pond area lands without ~~to~~ any further development and exploitation. The limitation to the six permanent buildings on the tract directly relates to the purpose of the easement to "limit future development."

The DEC provides a new rationale for the LPCE in the modified easement that was provided to the public. In the modification, the DEC states that it is changing the easement because the new underlying fee landowner, Danzer Foresland, Inc., which

purchased the easement in 2005, requested to keep the hunting camps. Here is the DEC language in the modified easement:

WHEREAS, pursuant to 6 NYCRR Part 592.3(4), the proposed modification of a DEC conservation easement shall result in a net conservation benefit to the People of the State of New York; and

WHEREAS, Grantor desires to re-establish their right to have more than six (6) camps to use as hunting, fishing and recreational camps (as “Hunting and Fishing Cabin” as defined by the Adirondack Park Agency); and

WHEREAS, in exchange for the modification of the conservation easement, the Grantor has provided consideration which will result in a net conservation benefit to the People of the State of New York.

It’s important to note that Danzer purchased the conservation easement as a willing buyer with full knowledge about the terms of the easement. In 2005, it was plainly understood that all but six hunting camps on the Long Pond tract were to be disbanded at the end of 2014. Danzer’s effort to change the LPCE is purely financial, an effort to retain the lease income from these 15 camps in perpetuity.

The DEC alleges that the proposed addition of 300 acres of new State forest at Whiskey Flats will provide a “net conservation benefit” to offset the diminishment of public recreational rights and environmental degradation on the tract caused by allowing fifteen residential structures and their associated uses to remain on the lands permanently.

The DEC has failed to justify the need to modify the LPCE. The loss of considerable public recreation rights through the retention of 15 camps permanently spread far and wide through the lands and the damaging permanent residential development on these lands exact a high public cost just so Danzer Forestland can continue to maximize leaseholder income.

Proposed “Net Conservation Benefit” is Inadequate

State regulations require any change to a conservation easement to include a “net conservation benefit”. As previously noted, under the DEC proposal to modify the LPCE, 300 acres of land will be added to the Whiskey Flats State Forest as a “net conservation benefit.” This is intended to offset the loss of public recreational and the long-term environmental degradation from the 15 buildings remaining in perpetuity. The relevant part of the DEC regulations (section of 6 NYCRR Part 592) to change state conservation easements states:

4. The proposed modification of a DEC conservation easement shall result in a net conservation benefit to the state, which must be calculated and considered within the spatial confines of the conservation easement in question or in the surrounding contiguous and adjoining lands, as determined by the department, after public comment, including

consideration of any change in the level of public recreational opportunities or any change to the limitations or restrictions on the development, management or use of the property, or any other real property owned by or under the control of the grantor, for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the area where the property is located in a manner consistent with the public policy and purpose set forth in ECL section 49-0301.

As stated above the "net conservation benefit" lands are supposed to be "calculated and considered within the spatial confines of the ... easement ... or in the surrounding contiguous and adjoining lands" of the conservation easement. The proposed benefit lands near the Whiskey Flats State Forest are more than ten miles away and outside the boundary of the Adirondack Park. The Whiskey Flat lands are neither "contiguous" or "adjoining" and fail as a matter of law to meet the quoted regulatory criteria. Moreover, the exchange of 300 acres outside the Adirondack Park for significant impairment of use for almost 19,000 acres within the Park is not a "net conservation benefit." Not least in importance, the regulation clearly required a specific accounting, "calculated and considered" to demonstrate the benefit. There is no "calculation" here; there is merely a conclusory statement that there is a benefit.

Proposed Changes to Long Pond Conservation Easement Violate Official State Procedures for Modifying an Easement

The proposed changes to the LPCE broadly violate DEC's current rules for making changes to easements. DEC recently created formal rules for making changes to conservation easement lands. The new "Procedure for the Modification or Extinguishment of a Conservation Easement" (6 NYCRR Part 592) outlines criteria and standards that must be met. The proposed changes to the LPCE fail on a number of counts.

Section 592.3 Standards states: "1. A modification of a DEC conservation easement, other than a modification to the stated purpose(s) as set forth in a DEC conservation easement, must not alter, and must be consistent with, the stated purpose(s) of the DEC conservation easement; and 2. A modification of a DEC conservation easement must not affect the perpetual nature of the DEC conservation easement."

The proposed changes to the LPCE do not meet these standards. They degrade the environment on these lands by retaining residential structures, which in turn adversely impacts both the natural character of the land but also its wildlife. There is much research on the negative impacts of any form of residential development within forestlands. Moreover, the additional, perpetual private use curtails and conflicts with public recreational rights. Similarly, the proposed change also violates the original purposes of the conservation easement and its "perpetual nature" because 15 additional buildings will be widely distributed throughout the tract and

lead to sprawl and environmental harm. When 15 camps are proposed to be allowed to remain in perpetuity, this seriously changes the perpetual nature of the public's recreational rights.

The DEC regulations are also instructive regarding the rationale for changing the purposes of a conservation easement. The official rules describe what the State must analyze and answer in a proposal to change a conservation easement:

(b) The standard for the modification of the purpose(s) or the extinguishment of a DEC conservation easement shall require a finding by the department that: the proposed new or modified purpose(s) enhance the original purpose(s) of the DEC conservation easement; or the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in the ECL section 49-0301 which include conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological character, including old-growth forest, character, and the preservation of areas which are significant because of their historical archaeological, architectural or cultural amenities, and the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state. (6 NYCRR 592.3 [b])

DEC fails to adhere to the rules above in its reasoning for why the LPCE needs to be changed. Here's what the state provided to justify changing the conservation easement:

WHEREAS, pursuant to 6 NYCRR Part 592.3(4), the proposed modification of a DEC conservation easement shall result in a net conservation benefit to the People of the State of New York; and

WHEREAS, Grantor desires to re-establish their right to have more than six (6) camps to use as hunting, fishing and recreational camps (as "Hunting and Fishing Cabin" as defined by the Adirondack Park Agency); and

WHEREAS, in exchange for the modification of the conservation easement, the Grantor has provided consideration which will result in a net conservation benefit to the People of the State of New York.

Nowhere in the DEC's proposed modification justification does it provide a Department finding that the proposed new or modified purpose enhances the original purpose of the DEC conservation easement.

Nowhere in the DEC's proposed modification justification does it provide a

Department finding that “the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in the ECL section 49-0301 which include conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological character, including old-growth forest, character, and the preservation of areas which are significant because of their historical archaeological, architectural or cultural amenities, and the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.”

The changes to the LPCE are not improvements but a great step backwards that will environmentally and recreationally degrade these lands and only serve the economic benefit of the new owner.

Continuation of 15 Hunting Camps in Perpetuity will Cause Negative Environmental Impact

There is a great deal of information used in planning and zoning today about how residential structures in forest settings change the forest composition, wildlife patterns and species, bird nesting locations, and associated nearby plant and shrub communities. One residential structure can impact the ecological integrity of the greater forest area up to one-third of a mile or more.

These camps are not clustered, but will be far flung throughout the total 19,850 acres. In this way their impacts will be even greater and far more damaging to the environmental health of the Long Pond tract. Development on conservation easement lands should be minimized. The proposed change to allow 15 camps to remain permanently on these lands poses a long-term threat to the environmental health and ecological integrity of these forestlands. The LPCE was purchased for environmental protection purposes and the decision to change the terms of the easement to allow 15 additional buildings in perpetuity undermines the goals of environmental protection.

Continuation of 15 Hunting Camps in Perpetuity will Cause Negative Public Recreation Impact

The 15 leased camps have scores of total members who will maintain these leased camps as de facto private residential inholdings. These buildings are used year-round and will only serve to alienate the public from these lands as they will create a 2-tiered system: people with exclusive private recreational rights on public lands and those in the general public with limited actual recreational rights. This is contrary to the purposes of the LPCE, which was purchased to protect the environment and expand public recreation opportunities.

The members of the hunting camps utilize a range of motor vehicles, which alienates

or discourages other forms of recreation, such as hiking, biking, or primitive camping. The recreational impact from the motor vehicle use of club members is much more intensive and has greater environmental impacts than non-motorized public uses.

Recreation Management Plan

The LPCE makes reference to the creation of a Unit Management Plan (UMP) for this tract. In recent years, the DEC has chosen to develop Recreation Management Plans (RMPs) for conservation easement lands. To date, there is no RMP for the Long Pond Tract. It does not seem appropriate that major changes should be considered for a conservation easement tract where there is no completed RMP.

Applicability of the State Environmental Quality Review Act

Under SEQR, in major actions, such as the proposed changes to the LPCE, the policies, statutes and regulations of the State of New York are to be interpreted and administered in accordance with SEQR "to the fullest extent possible" (ECL 8-0103[6]). In such matters, state agencies are to "use all practicable means to realize the policies and goals set forth in [SEQR]" (ECL 8-0109[1]).

Under SEQR, a "modification" is an action. DEC's SEQR regulations, applicable to all state agencies, provide at 6 NYCRR 617.2(b)(1) that "actions" include "activities that may affect the environment by changing the use, appearance or condition of any natural resources or structures...that [iii] require one or more new or modified approvals from an agency...".

PROTECT believes that the adverse impacts of allowing the 15 camps to remain in place perpetually would be significant and that a positive declaration and EIS are required. (6 NYCRR 617.7[c])

The Proposed Modifications Would Violate the Public Trust Doctrine

The LPCE is subject to the Public Trust Doctrine, which applies to property interests such as conservation easements. Long Island Pine Barrens Society, Inc. v. Suffolk County Legislature, 159 A.D.3d 805, 807 (2d Dept. 2018)(holding that development rights in agricultural land purchased by county were protected by the doctrine). Property rights subject to this doctrine may not be alienated without the approval of the State Legislature. Friends of Van Cortlandt Park v. City of New York, 95 N.Y.2d 623, 630 (2001). Allowing the 15 camps to perpetually remain on the LPCE property would be a substantial intrusion on the rights of the public to use these lands. Id. Therefore, the proposed modification can only be made if it is approved by the Legislature.

The Proposed Modifications Would Violate the ECL

ECL section 49-0307(3)(d) permits DEC to modify a conservation easement on land in the Adirondack Park only when the commissioner determines “that the easement can no longer substantially accomplish its original purposes or any of the purposes set forth in section 49-0301 of this title.” (emphasis added) The record here would not support any such finding. The LPCE will still be able to accomplish its original purposes, as well as one or more of the statutory purposes, without these modifications.

Impact on Forest Rangers

The Forest Rangers have primary responsibility for DEC'S care, custody and control of five million acres of State-owned land and conservation easements across New York, the vast majority of which is in the Adirondack Park. Today the average Forest Ranger is responsible for patrolling 53,752 acres. In 1970, it was 28,516 acres. There has been a major increase in public use, and the number of search and rescue missions has increased twofold.

Given the shortage of Forest Rangers we question whether this has been considered in the DEC proposal to retain the 15 residential structures on the LPCE. Under the DEC proposal, there will now be 15 more "recreation camp envelopes" which will be posted to exclude the public, with all that implies for user conflicts and demands upon Ranger time, time which would be far better spent saving lives and rescuing users of the Adirondack Forest Preserve.

There are also a number of other elements in the terms of the conservation easement that will fall to the Rangers to enforce. We suggest the effect upon State Forest Rangers should be a legitimate consideration in the final decision on the changes to the LPCE.

On behalf of the Board of Directors of Protect the Adirondacks, please accept my gratitude for the opportunity to provide these comments 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

CC. Gov. Andrew Cuomo
V. Lannon
B. Seggos
R. Davies
J. Sessions
J. Drabicky