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Christopher Amato, Esq.
*Conservation Director
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Peter Bauer
Membership Coordinator

Via Email

September 28, 2026

FOIL Appeals Officer
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500

Re: Appeal of Denials of FOIL Records Requests Nos. W170861-081926 and W170862-081926.

Dear Sir or Madam:

Protect the Adirondacks ("PROTECT") respectfully appeals the Department of Environmental Conservation's ("DEC's") denial of two requests pursuant to the New York Freedom of Information Law ("FOIL"), Public Officers Law §§ 85-90, seeking records concerning or relating to communications between DEC and the Adirondack Park Agency ("APA") regarding two proposed clearcutting projects on lands in the Adirondack Park subject to State-owned conservation easements.

DEC denied both requests on the sole ground that the responsive records constitute inter-agency communications purportedly exempt from disclosure pursuant to POL § 87.2(g). Copies of DEC's denials, together with the underlying FOIL requests, of the requests are annexed hereto as **Exhibit A**. As discussed below, however, the exemption invoked by DEC expressly excludes records constituting "final agency policy or determinations." *See* POL § 87.2(g)(iii). Accordingly, to the extent the requested records include DEC's final determinations as to whether the proposed clearcutting projects comply with the terms and conditions of the applicable State-owned Conservation Easements, those records are not exempt and must be disclosed.

Background

The requested records pertain to two proposed clearcutting projects in the Adirondack Park: (1) the Cedar River project, a 502-acre clearcutting project on lands located along the Cedar River in the Town of Indian Lake, Hamilton County; and (2) the Bernhardt Mountain project, an approximately 409-acre

Protect the Adirondacks

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clearcutting project on lands in the Town of Mayfield, Fulton County. Both projects are located on lands that are subject to State-owned Conservation Easements and contain a variety of sensitive and ecologically significant resources.

Both projects were subject to APA permitting jurisdiction because they involved clearcutting in excess of 25 acres. PROTECT submitted detailed comments to APA concerning each project, identifying significant deficiencies in the applications and explaining why the proposed projects fail to comply with the terms of the applicable Conservation Easements. PROTECT also noted that the APA administrative record included no evidence that APA had consulted with DEC as to whether the proposed clearcutting projects were consistent with the terms of the applicable Conservation Easements. APA subsequently approved both the Cedar River and Bernhardt Mountain projects.

On August 19, 2026, PROTECT submitted two FOIL requests for all records concerning or relating to communications between APA and DEC regarding (i) the Cedar River Project and (ii) the Bernhardt Mountain Project. *See* Ex. A. By emails dated August 27 and September 8, 2026, DEC denied both requests. *See id.*

DEC provided the following sole basis for its denials:

Be advised that your request has been denied in accordance with one or more provisions of the Public Officers Law (POL).

POL 87.2.g. Inter-agency or intra-agency materials

See Ex. A.

DEC provided no further explanation identifying the particular responsive records withheld or explaining why those records fall within the claimed exemption.

Legal Argument

FOIL was enacted "[t]o promote open government and public accountability" and "imposes a broad duty on government to make its records available to the public." *Matter of Gould v. New York City Police Dept.*, 89 NY2d 267, 274 (1996). Accordingly, government records are presumptively available for public inspection unless they fall within one of the specific exemptions set forth in POL § 87(2). The exemptions "are to be narrowly interpreted so that the public is granted maximum access to the records of government." *Matter of Data Tree, LLC v. Romaine*, 9 NY3d 454, 462 (2007).

Here, DEC's reliance on POL § 87(2)(g) is misplaced because the exemption itself excludes records constituting "final agency policy or determinations." POL § 87.2(g)(iii). Thus, even if communications between APA and DEC concerning the Cedar River and Bernhardt Mountain projects otherwise fall within the category of inter-agency materials, any records reflecting a final DEC determination concerning whether either proposed clearcut complies with the terms and conditions of the applicable Conservation Easement are not exempt from disclosure. *See Miller v.*

N.Y. State DOT, 58 AD3d 981, 984 (3d Dept. 2009) (holding that the interagency and interagency exemption applies only to records that are not final policies or determinations).

There is substantial reason to believe that responsive, non-exempt records exist. At the September 25, 2026 meeting of the Forest Preserve Advisory Committee, DEC staff publicly stated that the Department reviews every clearcutting project proposed for Conservation Easement lands to whether it complies with the terms and conditions of the applicable Conservation Easement. *See* Affirmation of Claudia K. Braymer, Esq., sworn to on September 28, 2026 (“Braymer Aff.”), annexed hereto as **Exhibit B**, ¶ 8. APA staff have also publicly referenced DEC’s process for determining compliance of proposed clearcutting projects on Conservation Easement lands. Braymer Aff. ¶¶ 5-7.

These statements strongly suggest that DEC reviews proposed clearcutting projects on Conservation Easement lands and makes determinations concerning their compliance with the applicable easement terms. Records reflecting those determinations—including records exchanged between DEC and APA concerning whether the Cedar River and Bernhardt Mountain projects comply with their respective conservation easements—therefore cannot properly be withheld in their entirety under the inter-agency materials exemption.

At a minimum, DEC must review the responsive records and disclose all records, or portions thereof, that constitute final agency determinations and therefore fall outside the scope of POL § 87(2)(g). DEC’s categorical denial, based solely on the assertion that the requested records constitute “inter-agency or intra-agency materials,” does not adequately account for the statutory exclusion for final agency determinations.

Conclusion

For the foregoing reasons, PROTECT respectfully requests that this appeal be granted and that DEC produce the responsive records that are not exempt from disclosure under FOIL, including records reflecting any final DEC determination concerning whether the Cedar River and Bernhardt Mountain projects comply with the terms and conditions of the applicable State-owned conservation easements.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris [unclear]", written in a cursive style.

Conservation Director and Counsel

EXHIBIT A

From: New York DEC FOIL Center newyorkdec@govqa.us
Subject: Freedom of Information Law Request :: W170861-081926
Date: August 27, 2026 at 9:50 AM
To: conservationdirector@protectadks.org



--- Please respond above this line ---



Region 5 - Ray Brook
P: 518-897-1227 | F: 518 897-1245
www.dec.ny.gov

RE: PUBLIC RECORDS REQUEST of 8/19/2026, Reference # W170861-081926

Date: 08/27/2026

This message is for Christopher Amato

Protect the Adirondacks

In response to your 8/19/2026 Freedom of Information Law (FOIL) request, seeking:

All records concerning or relating to communications between the Department of Environmental Conservation and the Adirondack Park Agency regarding the following timber harvest project:

*LandVest Clearcutting Application (Eastwood Climate Smart Forestry Fund/Northway Forests, LLC)
Cedar River Road, Town of Indian Lake, Hamilton County
Tax Parcel 64.-1-1.100
APA Project No.: 2025-0104*

Be advised that responsive records are exempt from disclosure due to the following provision(s) of the Public Officers Law (POL).

POL 87.2.g. Inter-agency or intra-agency materials

If you believe you have been unlawfully denied access to records, you have the right to appeal. Any such appeal must be submitted in writing and within thirty (30) days of the date of this email. Appeals must be directed to:

FOIL Appeals Officer
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500

Your FOIL request is now closed. Please reference FOIL #W170861-081926 in all future correspondence concerning this request. Thank you.

Sincerely,

Region 5 FOIL Coordinator

From: New York DEC FOIL Center newyorkdec@govqa.us
Subject: Freedom of Information Law Request :: W170862-081926
Date: September 8, 2026 at 9:08 AM
To: conservationdirector@protectadks.org



--- Please respond above this line ---



Region 5 - Ray Brook
P: 518-897-1227 | F: 518 897-1245
www.dec.ny.gov

RE: PUBLIC RECORDS REQUEST of 8/19/2026, Reference # W170862-081926

Date: 09/08/2026

This message is for Christopher Amato

Protect the Adirondacks

In response to your 8/19/2026 Freedom of Information Law (FOIL) request, seeking:

All records concerning or relating to communications between the Department of Environmental Conservation and the Adirondack Park Agency regarding the following timber harvest project:

*LandVest Clearcutting Application (Eastwood Climate Smart Forestry Fund/Northway Forests, LLC
Jackson Summit Tract, Town of Mayfield, Fulton County
APA Project No.: 2026-0041*

Be advised that your request has been denied in accordance with one or more provisions of the Public Officers Law (POL).

POL 87.2.g. Inter-agency or intra-agency materials

If you believe you have been unlawfully denied access to records, you have the right to appeal. Any such appeal must be submitted in writing and within thirty (30) days of the date of this email. Appeals must be directed to:

FOIL Appeals Officer
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500

Your FOIL request is now closed. For further assistance, if you have any questions, please

Your FOIL request is now closed. For further assistance, if you have any questions, please reply to this email and reference FOIL W170862-081926. Thank you.

Sincerely,

Region 5 FOIL Coordinator

EXHIBIT B

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Appeal of
PROTECT THE ADIRONDACKS! INC.,
a New York Not-for-Profit Corporation,

**AFFIRMATION IN
SUPPORT OF FOIL APPEAL**

For Request for Records
Pursuant to FOIL §§ 85-90

CLAUDIA K. BRAYMER hereby affirms under penalties of perjury that:

1. I am the Executive Director of Protect the Adirondacks! Inc. (hereinafter “PROTECT”).
2. I submit this affirmation in support of the appeal by PROTECT for the release of records pursuant to New York Freedom of Information Law (“FOIL”) Public Officers Law §§ 85-90, for records concerning or relating to communications between the Department of Environmental Conservation (“DEC”) and the Adirondack Park Agency (“APA”) regarding two clearcutting projects on lands in the Adirondack Park subject to State-owned Conservation Easements.
3. DEC is responsible for the oversight of State-owned Conservation Easements purchased with State funds.
4. APA is responsible for implementing the Adirondack Park Agency Act and its implementing regulations, including regulations governing clearcutting on private lands in the Adirondack Park.
5. Upon information and belief, DEC and APA have engaged and continue to engage in communications concerning clearcutting applications submitted to APA that involve private lands in the Adirondack Park subject to State-owned Conservation Easements. My belief

is based upon statements made by APA staff during the APA meeting held on August 13, 2026, when the APA Board reviewed a clearcutting proposal by Lyme Timber.

6. APA staff stated to the Board during that meeting that “We received documentation from DEC that they [Lyme] are in compliance with the Conservation Easement”. A link to the meeting video is available online at: <https://apa.ny.gov/meeting/index.html>. The statement can be heard at 6:08:01 of the meeting video.

7. APA staff also stated that “DEC has conservation easement oversight” for applications involving State-owned Conservation Easements. That statement can be heard at 6:12:15 of the meeting video. When asked by an APA Board member the status of the review of the Conservation Easement by DEC, the staff responded that “I’m not exactly sure. . . but the audits are undertaken regularly”. That statement can be heard at 6:12:52 of the meeting video.

8. In addition, at a meeting of DEC’s Forest Preserve Advisory Committee that I attended on September 25, 2026, DEC staff stated that they are reviewing clearcutting applications submitted to APA for compliance with the terms of State-owned Conservation Easements. DEC staff also stated at that meeting that DEC and APA confer about clearcutting applications submitted to APA that involve State-owned Conservation Easements.

I affirm this 28th day of September, 2026, under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to

matters alleged on information and belief and as to those matters I believe them to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

Claudia K. Braymer

Claudia K. Braymer