MEMORANDUM

To: Regulatory Programs Committee

From: Richard Weber

Re: Highland Farms, LLP (P2010-0269)

Date: August 8, 2012

The Highlands Farmers, LLP project is referred to you with a staff recommendation for approval with conditions, as provided in the attached draft permit. However, staff note the project sponsor has objected to Condition 17 and portions of Findings of Fact 10 and 12 in the draft permit concerning the protection of open space as set forth in the applicant's enclosed August 7, 2012 letter (and proposed revisions to the draft permit). I write to transmit the project sponsor's objections and to explain the basis for staff's inclusion of Condition 17 and the supporting findings of fact in the recommended permit.

One of the statutory findings that the Agency must make in any approval of this proposed project is that it is "compatible with the character description and purposes, policies and objectives of the land use area wherein it is proposed to be located." Executive Law Section 809(10)(b). The proposed project, which involves subdivision and single family development on Resource Management lands, is presumed to be compatible since it is on the secondary use list. 809(3)(g)(4)(1). As a secondary use, it is considered to be "generally" compatible in Resource Management depending on location, impact on nearby uses, and conformance with the density requirements.

The statutory purposes and objectives relevant to Condition 17 are the need to "protect the physical and biological resources" and to "preserve the open spaces that are essential and basic to the unique character of the park." 805(3)(g)(2). Staff believe

that there are portions of the approximately 788.6 acres that comprise proposed Lots 10 and 12 that should be evaluated and if appropriate permanently protected from development in order to support a finding of compatibility with the purposes and objective of preserving open space and protecting aesthetics, critical environmental area, wildlife, and historic resources.

The project sponsor plans no further development on the project site in the "foreseeable future." However, twenty-one principal building opportunities could potentially be allocated to Lots 10 and 12 for development in the future. The project sponsor contends that a permit condition requiring further Agency review of future land use and development on the project site is sufficient to provide the protections sought by staff. Staff believes that any future application for new land use or development on lots 10 or 12 must include an evaluation of open space resources and mechanisms for ensuring permanent protection of resources. Condition 17 of Staff's draft permit requires the applicant and/or subsequent landowners to provide such a plan as part of any future application, without prejudicing the outcome of any future open space plan.

Staff's recommendation for approval of the proposed project reflects a belief that the current design, including the current proposal for no development on any portion of Lots 10 and 12, is compatible with the purposes and objectives for Resource Management lands. Staff also acknowledge that the family that owns the project site are good stewards of their land. However, for staff, there are portions of these lots that should be further evaluated and if appropriate, permanently protected in order to support a compatibility finding and to avoid cumulative impacts from future proposals for new land use and development.

Throughout the project review process, Agency staff sought a proposal from the project sponsor for the protection of the retained open space on the project site. The project sponsor has consistently declined. Copies of relevant correspondence are enclosed for your information.

In an acknowledgement of the project sponsor's position that no development is contemplated on those lands for the "foreseeable future," staff ultimately completed the application and focused on developing a condition that would ensure the permanent protection of habitat and open space prior to any future land use or development. This alternative is reflected in Condition 17 of the attached draft permit, and also includes staff's effort to refine the language in the condition to address specific concerns identified by the project sponsor in a July discussion.

The Agency has the authority to impose conditions for the protection of resources and open space pursuant to Executive Law Section 809(13). Moreover, staff's recommended Condition 17 is consistent with Agency guidance found in Development in the Adirondack Park ("DAP") for Open Space. The relevant excerpt from DAP is attached.

Generally, where staff believe that permanent protection of lands or resources is appropriate in order to support the statutory findings required by Executive Law 809(10), project sponsors often voluntarily propose such measures in order to avoid or mitigate impacts of their proposed project, or to ensure its compatibility with the policies and purposes of the land use area involved. For certain projects in Resource Management, particularly where large acreages are retained that may be the subject of future development proposals, the goals of permanently protecting resources and preserving open space are essential to a determination of compatibility.

cc: Terry Martino
Sarah Reynolds
Colleen Parker
Paul Van Cott