

DRAFT



Regulatory Programs Committee  
November 15, 2012  
Agency Meeting  
REW:mlr

Regulatory Programs Committee  
November 15, 2012

**AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT**

Leilani Crafts Ulrich, Chairwoman  
Richard Booth, Member  
Sherman Craig, Member  
Arthur Lussi, Member  
Frank Mezzano, Member  
William Thomas, Member  
William Valentino, Member  
Dierdre Scozzafava, Designee, NYS Department of State  
Robert Stegemann, Designee, NYS Department of Environmental  
Conservation  
Terry Martino, Executive Director  
Acting Counsel Sarah Reynolds  
Fred Monroe, Local Government Review Board

Mr. Lussi stated he would recuse himself from project 2012-158.

Cecil Wray, Member and Designee Patrick Hooker, NYS Department of Economic Development were not present at the Agency meeting.

The Committee convened at 9:25 am.

1. Approval of October Draft Regulatory Programs Committee Minutes

On motion of Mr. Booth seconded by Mr. Lussi the Agency unanimously adopted the Draft Agency Minutes of the October 2012 Agency meeting with a minor edit.

2. Deputy Director (Regulatory Programs) Report (R. Weber)

Mr. Weber reviewed the status report for Regulatory Programs and highlighted projects on the High Profile Report and the Workload Summary Report.

3. 2012-153 (T. Darrah)  
Town of Harrietstown  
Franklin County, North Elba (Village of Saranac Lake)  
Hamlet

Ms. Darrah introduced Cindy Garso, Authorized Representative and Mr. Jim Mahar, Mr. Ed Randing, and Mr. Barry Defuria, representing the proposed project.

Ms. Darrah discussed the background and prior history of the variance site and the existing environmental setting and character of the area.

Ms. Darrah presented a power point overview of the proposed project, project site and location. She explained that the variance application seeks Agency approval to replace and expand an existing retaining wall within 50 feet of the mean high water mark of the Saranac River. She noted the new retaining wall will be approximately 3 to 4 feet taller than the existing retaining wall to provide a 42 inch tall guard along the top of the wall. This increased height will allow the retaining wall to meet current building code requirements and will serve to minimize the potential for future flood waters breaching the wall.

She discussed Agency jurisdiction pursuant to Section 806(1)(a)(2) and Section 806(3) of the Adirondack Park Agency Act (APA).

She showed slides of the existing project site comparing the existing wall with the proposed wall dimensions and characteristics.

On September 24, 2012 a public hearing on the variance request was held in the Town of Harrietstown. No objections were made to the proposal.

Ms. Darrah discussed the variance impacts and factors.

Mr. Mezzano asked the Regulatory Committee for a motion to move this project to Full Agency for approval.

Mr. Valentino made the motion seconded by Mr. Booth to move proposed project to Full Agency for approval.

The Committee vote was unanimous in favor of the motion.

Mr. Lussi recused himself from the Committee meeting in anticipation of the Committee's discussions of Project 2012-158.

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2012-158 (A. Lynch)

New Cingular Wireless, PCS, LLC (AT&T)

Essex County, North Elba (Village of Lake Placid)

Hamlet

Ms. Lynch stated the General Permit amendment is being presented to the Board as a practice because it involves a Board Member who has a legal interest in the Project. In this case, Commissioner Lussi is one of the owners of the Lake Placid Corporation, the landowners for the project.

Ms. Lynch presented a slide show presentation describing the proposed project and location of the project site.

She noted this general permit certificate authorizes the removal of two existing omni-directional antennas and supporting structure mounted on the roof of the Lake Placid Crowne Plaza Resort and replacing them with a nine-panel antenna array concealed behind roof gables designed as part of the building façade.

Ms. Lynch noted this project mirrors General Permit P2010-154 issued March 2011 with conditions previously authorized for Verizon Wireless. She noted the Town/Village, applicant and landowner have expressed no objections.

Several photo simulations from various locations were shown depicting both AT&T and Verizon proposed improvements.

Mr. Booth made a motion to move the general permit to Full Agency for approval. The motion was seconded by Mr. Valentino.

A brief discussion ensued regarding language which currently exists in Agency permits that requires Agency staff to review amendments for projects in Hamlet areas.

Acting Counsel Reynolds explained that staff is increasingly tailoring language to address amendment proposals in all land use areas. Mr. Mezzano concurred.

The Committee vote was unanimous in favor of the motion.

Mr. Lussi returned to the Committee meeting.

4. General Permits

General Permit 2012G-1 - Silvicultural Treatments That Meet Jurisdictional Clearcutting Thresholds - Staff seek authorization to release draft general permit for public comment. (D. Spada)

Mr. Spada discussed Agency history with clear cutting permits. He noted Agency staff reviewed APA Regulations, talked with forestry professionals and realized APA Rules and Regulations and the law may not comport with modern silvicultural practices. Mr. Spada discussed how "clearcut" is defined in the APA Act and Regulations and compared that term with the definition of "Shelter wood cuts."

Mr. Spada presented a slide show and discussed changes to the forestry industry such as the improvements to forestry education, timber investment management organizations and third-party certification.

He described third party certification and noted eligibility for this general permit is based upon third-party certification. He discussed the importance of third party certification and what it provides to the forestry industry.

Mr. Stegeman commented that the forestry industry is market driven and that many markets demand the third-party certification to market products. He stated instead of clashing with the market force it is in alignment with the market.

Mr. Spada compared the process and timelines for the draft general permit with an individual permit. He stated the timeline for this draft general permit if authorized would be approximately 40 working days as compared to 5 months or more for an individual permit.

Using the power point presentation, Mr. Spada described the 13-month timeline for review of project P2008-112, Rayonier Forest Resources. A brief discussion ensued regarding concern of the length of time being simplified by the general permit.

Executive Director Martino commented that third party certification and the use of the draft general permit provides predictability to the forest industry in terms of what is expected of an applicant coming to the Agency.

Mr. Stegeman commented that third-party certification programs are scientifically rigorous to achieve and maintain. He noted in some recent conservation easements the state has utilized third party certification programs as the standard for good forestry where in the past the Department required approval of a management plan.

Mr. Booth stated he will vote to move this draft general permit forward to the Full Agency but noted his concern regarding language in the first paragraph in the draft general permit.

Mr. Monroe suggested amending the regulations to separately define "shelter wood cuts" and "clear cuts".

Mr. Mezzano asked for a motion directing staff to move the proposed general permit to public comment pursuant to APA Regulations Section 572.23. Mr. Valentino made the motion and the motion was seconded by Mr. Lussi.

The Regulatory Committee vote was unanimous in favor of the motion.

General Permit 2008G-1B - Management of Aquatic Invasive Species Using Benthic Barriers and Hand Harvesting Techniques - Staff seek authorization to release draft general permit for public comment. (E. Snizek).

Mr. Snizek discussed Agency jurisdiction with freshwater wetlands and noted how the use of benthic barriers can have significant impacts to wetland resources.

He discussed the history and the goals of GP 2008G-1 and GP2008G-1A.

Mr. Snizek used a power point presentation to describe the draft GP2008G-1B amendment goals. He stated this draft general permit amendment applies to aquatic invasive species and would now apply to Asian Clams. He noted it would provide predictable and timely permit review for the Asian Clam management effort in Lake George.

He noted this draft general permit will be a more efficient process for the applicant. It allows for lake wide management under one permit and allows for quick response to new locations and spot treatments. Additionally the general permit reduces the requirements for the aquatic vegetation survey.

Mr. Snizek explained the rationale for restricting benthic barriers to 3 acres or less and the importance of gathering data for the two-year time period proposed for the use of the general permit.

Mr. Snizek noted that special conditions could be added to the permit if warranted citing the occasional site specific requirements by OPRHP for the protection of cultural resources as an example.

He discussed the general permit process to move the draft GP2008G-1B amendment forward to public comment.

Mr. Monroe questioned the no objection letter from NYSOGS required in the draft general permit application and asked if NYSOGS has ever opposed such a request. Mr. Snizek replied NYSOGS has given a blanket approval in the past for Asian Clam control.

A brief discussion ensued regarding specific aquatic vegetation surveys vs. whole lake surveys. Mr. Snizek stated staff has some flexibility with what survey would be required for the general permit.

Mr. Mezzano asked for a motion directing staff to move the proposed general permit to public comment pursuant to APA Regulations Section 572.23. Mr. Valentino made the motion and the motion was seconded by Mr. Booth.

The Regulatory Committee vote was unanimous in favor of the motion.

4. Old Business: NO

5. New Business: NO

**Adjournment:** The Regulatory Committee meeting adjourned at 12:00 am.

Note: The power point presentations referred to herein are on file at the Agency. Copies are also available for inspection on request and can be viewed at [http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2) of this meeting: