



Regulatory Programs Committee
February 14, 2013 Agency
Meeting
REW:mlr

DRAFT

**Regulatory Programs Committee
February 14, 2013**

Committee Members present: Committee Chairperson, Frank Mezzano, Member Richard Booth, Member Bill Valentino, Member Art Lussi, Designee Dede Scozzafava (Department of State). Other Members present: Agency Chairwoman, Leilani Crafts Ulrich, Member Cecil Wray, Designee Patrick Hooker (Department of Economic Development) Designee Robert Stegemann (Department of Environmental Conservation), Members William Thomas and Sherman Craig. Agency Staff present: Executive Director: Terry Martino and Counsel Jim Townsend

Local Government Review Board Member Present: Mr. Fred Monroe

The Committee convened at 10:00 am.

1. Approval of January Draft Regulatory Programs Committee Minutes

On motion of Mr. Lussi, seconded by Designee Scozzafava the Agency unanimously adopted the Draft Regulatory Committee Minutes of the January 2013 Agency meeting.

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

Mr. Weber reviewed the status and high profile reports for Regulatory Programs. He briefly discussed applications received and permits issued. Mr. Weber highlighted new preapplications received by the Agency in January 2013.

3. 2012-167 (T. Saehrig)
Stuart and Tracy Darrah/Town of St. Armand
Essex: St. Armand
Moderate Intensity Use

Mr. Mezzano stated it is Agency practice to have the Board review any project which involves a staff member as the applicant and/or landowner.

Mr. Saehrig used a power point presentation to discuss the proposed project and project site. He noted Agency jurisdiction.

Mr. Saehrig stated the waste to be disposed of at this site will be limited to recognizable uncontaminated concrete and concrete products. He noted all waste will be covered with 6 inches of soil and seeded with native grasses and mulched with straw within three days of final grading to establish and erosion resistant turf.

He described the existing environmental setting.

Mr. Saehrig stated all adjoining landowners and those parties statutorily required by Section 809 of the APA Act had been notified. He stated a Notice of Complete Application had been published in the Environmental Bulletin. One comment letter was received voicing concerns with the waste disposal site.

Mr. Saehrig noted the project will take place over a relatively short time period and truck traffic will be minimal. Mr. Lussi asked for clarification regarding whether the proposed parking area would be topsoiled, seeded and mulched. Mr. Saehrig explained that the parking area could have a gravel surface, but the side slopes would be topsoiled, seeded and mulched.

Mr. Mezzano commented that this project was a good solution for both the Town of St. Armand and the landowners.

Mr. Lussi made a motion to move the project to Full Agency for approval. The motion was seconded by Mr. Valentino. The Committee vote was unanimous in favor of the motion.

General Permit: GP2012G-1

Silvicultural Treatments for Sustainable Forestry in the Adirondack Park - Second Reading/No Action

Mr. Weber stated in order to provide the Agency with adequate time for input, the Chairwoman has tabled the vote on the proposed General Permit. He noted staff will continue with an informational presentation focused on the facts and science of sustainable forestry, forest management projects, and the need to develop a more streamlined permit process for certain appropriate projects.

Mr. Weber stated the Agency Act identifies forest management as an open space use and further identifies the need to protect, manage and enhance these forest resources as being of paramount importance. He noted developing procedures that allow forest management companies to manage these lands as traditional working forests, and thus serve as an important open space component in the larger Park plan, is an important objective.

Mr. Weber stated that Agency staff do believe the General Permit is a sound approach, and that he wanted to bring everyone up to date on what has been learned thus far. He discussed a recent stakeholder meeting which offered constructive commentary that identified areas of possible agreement and resulted in important changes to the draft general permit. Specifically, Agency staff made changes related to a three year sunset clause, public notification, and narrowed the use of the general permit to Forest Stewardship Council (FSC) and Sustainable Forestry Initiative certifications (SFI).

Mr. Weber noted that recently staff have learned that a number of third-party certified operators have indicated they intend to submit applications for projects subject to Agency jurisdiction, with or without the General Permit. The review process for these projects will involve using the current application materials (GIR and SIR), review procedures, and staff will bring these before the Board for consideration. This will continue to inform the process of project review, development of a general permit and potentially any future proposals for rule changes.

He stated the process of developing a general permit has never been about circumventing the need for a regulatory change. Instead the general permit has been seen as a step toward making potential changes to Part 573.7 at some point in the future. The process has been about developing a tool for the review of jurisdictional silvicultural treatments and about developing procedures for a predictable and timely review of certain accredited and eligible proposals. The industry has consistently indicated this would be important to them.

Mr. Weber noted the use of a general permit is not a change of rules. It is a change of review process. In the end the Agency is issuing an approval. It is important to recognize that the conclusions of law made in any general permit the Agency might develop must be identical to the conclusions made in any individual or full permit the Agency may issue upon its completion of appropriate review.

He described for the Board that the review process pertains to addressing: a) the 5 criteria for approval under Section 809(9) or (10); b) including an assessment of potential adverse impacts to the 37 development considerations provided in Section 805(4); and c) and applicable standards as further provided in Part 574 of Agency regulations.

Mr. Weber also noted that any review of a jurisdictional clearcut would require addressing 10 additional Agency regulatory standards as provided under Park 573.7(d). He stated that it is important to mention our obligation to review under a full or individual permit, Parts 577 and 578 where applicable.

Mr. Weber reiterated that small forest management activities of a scale and intensity that triggers the Agency's jurisdictional thresholds will require a permit and the approval criteria for the activity, whether in the form of an individual permit or as laid out in this draft general permit, are the same.

Mr. Weber noted staff have examined the Agency's regulatory standards and recognizes that a compliant and regularly audited Forest Stewardship Council or Sustainable Forestry Initiative Program following established standards do appear to meet or exceed the Agency's regulatory requirements. Submission of an FSC or FSI certified plan alone however will not guarantee eligibility and issuance of a certificate under the draft GP, or approval of a project reviewed under an individual permit. Other materials are required as part of the draft GP application and the Deputy Directory would maintain the discretion in determining whether any given application is eligible under the GP.

He also noted the Agency is aware of the challenge to the SEQRA review regarding the proposed GP. He assured the Board and the public that despite what has been stated about this aspect of the review, Agency staff did take a close look at all the factors and reached what staff believes to be a reasoned conclusion for a negative declaration.

He stated Aaron Ziemann's presentation will provide some of the detail of how Agency staff reviewed the Forest Stewardship Council and Sustainable Forestry Initiative standards in relation to the Agency's obligations under the APA Act.

Mr. Weber stated Agency staff have had and continues to have the necessary experience to work with the forest industry, particularly the Agency's RASS staff. Staff have reviewed permits and numerous salvage operations in response to blowdown, ice storm and pest infestations throughout the Park. Staff have experience assessing forest management activities and their potential impacts under Section 809, ranging from the site specific concerns of protection of waters, to regional aesthetic concerns, to landscape scale ecological considerations.

He reiterated a few big picture concerns, stating that the park plan identifies forest management as an open space use. The activity is a principal compatible use for Resource Management Use. Specifically, this section identifies a need to protect and enhance the forest resources as a matter of paramount importance.

He noted that time is important to the forest industry and their need to respond, sometimes quickly, to either natural or market forces. This should be taken into account where appropriate. He stated staff believe that developing the tools to support a timely and predictable review of a proposed silvicultural treatment with high management standards will, in part, help the industry remain viable and competitive. This in turn will allow the land to remain in the historical use as working forests and serve as an important open space component in the larger Park plan.

He concluded by stating that the Sustainable Forestry Initiative and Forest Stewardship Council stewardship certification programs are designed to work at the landscape level not as singular actions at the stand level. In the big picture, staff thinks everyone would agree this is where we should be headed

Mr. Weber introduced Aaron Ziemann of Agency staff to present a power point presentation on the proposed general permit.

Mr. Ziemann stated that Agency staff believe the General Permit may still be a useful tool for the Agency's review of forest management projects, and that staff is convinced that the framework of this General permit would support sustainable Adirondack timber harvests while maintaining rigorous environmental safeguards.

Mr. Ziemann stated the proposed general permit has never involved a proposed regulatory change, or any change in the way the Agency regulates forestry practices. This General Permit would provide for a more efficient application process for eligible parties. He stated whether staff use a general permit or the full standard project review, the Agency must make the same conclusions of law under Section 809 of the APA Act. The proposed general permit simply refines the set of the data in the form of the application materials we require to make that determination.

Mr. Ziemann used a power point presentation to discuss a brief chronology of the events leading up to this discussion today.

He provided background regarding the state of Adirondack Forestry today, as it is marked by significant developments which have encouraged sustainable silvicultural practices, which the Agency acknowledges, encourages and supports.

He discussed in detail Forestry Education, Timber Management Organizations, and Third Party Certification.

He stated that the standards of the Forest Stewardship Council and the Sustainable Forestry Initiative provide a substantial preliminary framework which provides a significant efficiency for Agency review, and that the Agency has never considered Forest Stewardship Council or Sustainable Forestry Initiative certification as a proxy for Agency review. The Agency will always conduct a complete review of any submitted application.

He stated that the Forest Stewardship Council and Sustainable Forestry Initiative certification standards provide a broad, landscape level review of forest management, rather than a review of individual proposed treatments in discrete locations.

Mr. Ziemann outlined specific requirements of the certification programs, and referenced a spreadsheet which provided a detailed look at how the certification programs address the Agency's review requirements.

He stated Agency objectives and he noted the Agency recognizes the need for a more effective, responsive review process in consideration of proposed projects. He said that time is a vital factor forest management.

He noted that although all certified lands have long term forest management plans, there are immediate treatment needs that become necessary during the course of operations that cannot be anticipated, and require flexibility to provide the right treatment at the right time. He said the general permit would allow the Agency to improve the review process to enable foresters to manage their lands in a timely, appropriate manner.

Mr. Ziemann explained that there is a need to provide flexibility for forest managers to practice legitimate, science based sustainable forestry practices such as Shelterwood and Seed Tree treatments, which may trigger APA jurisdiction for a clearcut permit even though these practices are designed for and encourage healthy regeneration of forests, and are not considered clearcuts by scientific definition.

He described Agency's staff's interest in incentivizing and promoting sustainable forestry practices such as those outlined within the Forest Stewardship Council and Sustainable Forestry Initiative Standards, to provide a degree of predictability in the Agency's review process, so that proposals which demonstrate the sustainable practices necessary for certification under these standards can reasonably expect timely issuance of a permit.

He explained group certification as an opportunity to significantly reduce the costs associated with forest management plan preparation, scheduled audits through third party auditing organizations and the cost of the certification itself. With group certification, these costs are spread out among the enrolled participants, making it a viable option for smaller landowners.

He explained that forestry industry representatives told staff that they routinely design their management plans in order to avoid the Agency's clearcutting jurisdiction.

Mr. Ziemann showed aerial photos of private, managed forest lands in the Adirondack Park. The photos demonstrated forest management practices undertaken without Agency jurisdiction. He noted it was clear to staff the forester in charge understood how to avoid Agency jurisdiction, and that if the Agency could provide adequate incentives to encourage landowners to become certified, and potentially come into Agency jurisdiction, potential impacts would be mitigated by permit condition.

He described forests as dynamic ecosystems, constantly responding to natural and human disturbances. Sound silvicultural practices involve harvesting trees, and managing for the forests' response to the disturbances of that harvest.

Mr. Ziemann explained shelterwood treatment and stated this is a standard, modern silvicultural practice, and is not a true clearcut by silvicultural definition.

Mr. Ziemann explained the eligibility framework of the General Permit. He stated the general permit would be a tool designed to increase the efficiency of Agency review only for those applicants who demonstrates eligibility. There are clear restrictions to applicability.

Mr. Ziemann stated the general permit being reviewed today has substantial changes from the previous draft.

He discussed numbers relating to total acreages currently enrolled in the FSC and SFI certification programs. He showed maps depicting geographically potentially eligible lands for the general permit consideration.

Mr. Ziemann explained that although there will not be a vote today on the proposed General Permit, staff considers this a viable option and useful tool in agency review of forest management projects. He noted that the revisions staff have made are a result of comments received and discussions staff have had over the past few months, which have lead to refinements in staffs understanding of this discussion and have strengthened the General Permit framework.

He thoroughly discussed several revisions to the proposed general permit, including measures to include public notification and commentary, limit the General Permit to Sustainable Forestry Initiative and Forest Stewardship council certifications, and implement a 3 year sunset clause.

Mr. Ziemann ended his presentation discussing public support comments in favor of and in opposition to the proposed General Permit.

Question was asked how many clearcut projects does the Agency receive and is there a process in place at the Agency for clearcut projects? Mr. Ziemann answered that not many have been received but staff are anticipating receiving applications in the future months. He added the review for a proposed clearcut is the standard "Class A" process.

Chairwoman Ulrich commented that the cost of certification may be a deterrent to the forestry industry and may prevent the forestry industry from submitting a "clear cut application."

Executive Director Martino clarified there is a difference between the certification process costs and the costs related to the Agency permit.

Mr. Wray questioned the comment on Page 12 of Mr. Ziemann's presentation referring to the Agency making final determinations based on specific aspects of any proposals received at the Agency, under Section 809 of the APA Act.

Mr. Weber commented the intent of the general permit for those applicants under one of the two Third Party Certifications is intended to be delegated to the Deputy Director but under very limited conditions. The General Permit would not be eligible for applicants not under the certification process.

Mr. Wray questioned the purpose of the general permit, when so little clear cut applications are received by the Agency.

Mr. Ziemann replied that after discussing these issues with the forestry industry that there are industry planners purposely designing their projects to avoid Agency jurisdiction, and that this General Permit framework is to encourage applicant's to apply for an Agency permit and to be involved in the certification process.

Executive Director Martino commented on Mr. Wray's suggestion to modify the "Class A" permitting process. She stated that with the proposed general permit vote being tabled and with the discussion today and information already received, staff will be able to review an application using the tools staff have received as a result of reviewing the FSC, SFI standards, the normal review of a Class A application, and utilizing public notice as a test on how all this information will come together and be applied to an application.

Mr. Wray commented that perhaps with some experience staff will be able to develop a general permit process but at this moment he does not feel a general permit is adequate.

Mr. Weber explained that information received by the forestry industry informs staff that projects are designed to avoid Agency jurisdiction with resultant impacts on forest health .

Mr. Monroe commented that Agency review process has discouraged projects in the past that are socially and economically beneficial. He stated if the goal of this general permit is to encourage a healthy forest, then the Board should offer alternatives to the current process if it discourages applicants from applying for an Agency permit. He also noted the Agency has a competent, talented staff and agrees that the Deputy Director should be able to determine eligibility under the General Permit.

If the Board approves the standards, Mr. Monroe encouraged the Board to trust the staff to adhere to follow those standards. He stated the Review Board applauds the use of General Permits and encourages the Agency to approve this General Permit.

Mr. Craig stated he appreciated the public response to the general permit. He stated the comment letters received improved the draft general permit and reminds staff and the Board how important this issue is. He noted he has some questions but is in favor of the general permit moving forward.

Mr. Craig noted his concern regarding the three-year window during which the general permit would be valid. He suggested staff provide more details regarding what staff expects to learn through the use of the general permit for this limited time. He questioned staff's process handling compliance as well as any non-compliance issues resulting from a clearcutting permit that has been issued.

Mr. Ziemann stated any alterations to the authorized permit conditions would result in an enforcement case at the Agency.

Mr. Booth stated this is a unique general permit, not close to any of the other general permits presently being utilized by the Agency. He agreed with Mr. Wray's comments regarding staff possibly developing a general permit for clearcutting in the future after reviewing some clearcut applications through the regular permitting process. Mr. Booth also commented on the status of the Environmental Assessment Form (Negative Declaration).

Mr. Booth questioned whether this general permit would be able to be used on New York State Conservation Easement Lands. Mr. Ziemann replied yes as long as they are certified by the FSC and the SFI certification programs.

Mr. Ziemann was asked to explain the language "flexibility for rapid response and use of legitimate silvicultural tools" used in his presentation for Agency Objectives.

Mr. Booth commented that there will always be projects poorly designed to avoid Agency jurisdiction. That is an ongoing problem with any environmental agency. He would prefer the Agency not to use that mechanism as a reason to create this general permit for clear cutting; he noted that the APA Regulations may need to be revised.

Mr. Booth suggested staff provide the Board with a map depicting the certified lands in the Adirondack Park. Mr. Ziemann replied that the map of Conservation Easements is a fair visual representation since so many of the lands are FSC and SFI certified.

Mr. Booth asked Mr. Ziemann to explain what staff meant by their response to a public comment regarding "duration limits are absent." Mr. Ziemann explained that project approvals under the General Permit could only be undertaken during the three year window during which the permit is valid. Additional treatments would require additional approvals.

Mr. Booth commented written standards by themselves are not the critical factor it is how the written standards apply to everyday real life.

Mr. Hooker noted that the general permit was very detailed and should be considering that it is designed to protect the forests in the Adirondack Park. He agrees with the extended time to allow him to review the information and congratulated Mr. Ziemann on his presentation.

Mr. Valentino commented that staff and the Board should always recognize the economic feasibility of the forest lands in the Adirondack Park. He noted his concern with the general permit being issued by the Deputy Director and not being reviewed by the Agency Members. Mr. Valentino stated he agrees with the third party certification process being compatible to the Agency's revised standards.

Designee Scozzafava agreed that the extension for review of the draft permit is appreciated and she asked about how the Agency will review public comments in the future.

Mr. Ziemann briefly explained that all comment letters become part of the project file. He explained staff would accept public comments regarding the proposal, and take the comments into consideration when determining if the proposed project meets the eligibility requirements as defined in the General Permit.

Mr. Weber explained the General Permit process is intended to move quicker so therefore the public comment period for the general permit has a smaller time frame than the normal Agency permit process. If the proposed project is deemed complete based on the criteria, the Agency has 10 days to issue the general permit. He explained that with the normal permit process public comments can be received at the time of completion, this does not occur with a general permit.

Designee Stegemann also agreed with the extended time frame for review of the general permit. He discussed the NYS Department of Environmental Conservation (DEC) experiences as constructive utilizing certified programs in the conservation easement programs acceptable standards, but also stated that DEC has the responsibility to be sure the standards are being followed. Compliance is an important factor that should be considered in this general permit process. He asked the public to consider the consequences of the existing conditions without some type of a long term conservation plan for the forest industry.

Counsel Townsend commented on the SEQR question specifically the EAF document and stated the findings in the EAF are very similar to all other general permits that the Board has adopted in the past few years. He stated the only reason the general permit is going through a SEQR process is because Agency regulations require it for the adoption of a general permit; which is different from the use of the general permit. Every other general permit has reached the same negative declaration conclusion based on similar provided information. He stated the importance of this analysis is that the EAF is a checklist and what staff has concluded is that they have analyzed all factors beyond what is in that checklist. Staff have considered all the environmental factors that the checklist requires. He referred to the chart that Mr. Ziemann included in his presentation which compared APA Clearcutting Review Standards with FSC and SFI certification standards and stated staff have concluded that the grant of the general permit does not have a negative declaration. Counsel Townsend also commented that when a clear cutting project is proposed to the Agency it will be a Class A project, that Class A project will be exempt from SEQR review partially because APA standards exceed the standards that SEQR would require and he said the general permit, if adopted using the certification programs, would meet those higher standards.

Chairwoman Ulrich thanked staff and the Board for their comments and thanked Mr. Ziemann for an informative presentation.

4. Old Business: NO

5. New Business: NO

Adjournment: The Regulatory Committee meeting adjourned at 12:30 pm.

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 of this meeting: