



# Adirondack Park Agency

**LEILANI CRAFTS ULRICH**  
Chairwoman

**TERRY MARTINO**  
Executive Director

Draft February 12, 2015-  
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Regulatory Programs Committee  
February 12, 2015 Agency  
Meeting: REW:mlr

## Regulatory Programs Committee February 12, 2015

Committee Members present: Sherman Craig, Chair, Designee Dede Scozzafava (Department of State), Art Lussi and Karen Feldman voting.

Other Agency Members and Designees present: Daniel Wilt, Robert Stegemann (Department of Environmental Conservation), Bradley Austin, (NYS Department of Economic Development), William Thomas.

Agency Staff present: Terry Martino, Executive Director and James Townsend Counsel.

Local Government Review Board Representative: Fred Monroe, Executive Director

Chairwoman Ulrich was not present at the February Agency meeting.

The Committee convened at 10:40 am.

1. Approval of January 2015 Draft Regulatory Programs Committee Minutes

Motion was made by Ms. Feldman and seconded by Mr. Booth to approve the January minutes. The Committee vote was unanimous in favor of the motion.

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

Mr. Weber reviewed the monthly statistics of applications received and permits issued. He discussed projects from the High Profile Report and welcomed questions from the Board.

Mr. Weber briefly discussed the status of two project applications being reviewed by staff, P2014-53, LS Marina and P2014-108, Lake Flower Lodging, LLC.

Mr. Weber discussed the status of the two General Permits GP2014G-1, "Terrestrial Invasive Plant Management", and GP2014G-2, "Utility Poles in Wetlands" and noted how they have made the application process more timely and efficient for staff and the applicants. He noted that both general permits are in effect for three years from the date of issuance unless modified or revoked by the Agency.

Mr. Weber recognized Regulatory Programs staff for their dedication and noted the diversity of projects being presented to the Board at today's meeting.

Mr. Weber stated that staff recognized the applicant's professionalism regarding Variance Order P2014-39. He stated that staff was very thorough in the review process and understands the recommendation of denial and the impact of such a recommendation on individual landowners.

(3) Project: (A. Lynch)

Franklin County (Department of 2014-140  
Emergency Services Town of Ellenburg, Clinton County  
Rural Use

Ms. Lynch stated that Franklin County is both the applicant and the landowner for the proposed project. Ms. Lynch introduced John MacArthur, the authorized representative. She discussed Agency Jurisdiction and listed the conclusions of law that the Agency needs to reach in order to approve this project. Ms. Lynch described the project location, the project site, land use area, and the character of the area as predominantly agricultural, with some rural residences and forested areas. Ms. Lynch stated there were three Noble Environmental Power industrial wind parks located just north of the Park boundary, outside the Park that together include 192 turbines each 390± feet tall and white in color.

She stated the project site is located within 1/8 mile of a designated scenic vista but noted the views from the vista are generally not in the direction of the proposed tower

Ms. Lynch discussed the existing tower and explained there is an existing 120±-foot-tall communications tower with an antenna as tall as 140 feet, northwest of the proposed tower and an existing 100-foot-tall communications tower 220± east of the proposed tower.

Ms. Lynch discussed the existing and the proposed tower, antennas and purpose. She noted the project if approved involves the removal of a 200-foot-tall guyed lattice tower and the construction of a 180 foot-tall self-supporting lattice tower. Ten Franklin County antennas, for emergency communications, will be mounted to the new tower at various heights.

Ms. Lynch stated no comments have been received at the Agency for this project. She described other regulatory requirements.

She stated this West Hill project is proposed by Franklin County's Department of Emergency Services to upgrade its Emergency Radio Communications System as part of a statewide initiative by the NYS Division of Homeland Security and Emergency Services to improve emergency service throughout the state. Ms. Lynch explained that seven towers will be replaced as part of the statewide initiative; two towers are within the Adirondack Park.

She stated a visual analysis of the tower and antennas was submitted as part of the permit application and included mapping showing areas of potential visibility within five miles of the tower site based on topography and vegetation. She showed several slides of both existing conditions and simulations of the proposed tower from various viewpoints.

Ms. Lynch discussed the visual analysis conclusions and stated that in context of other vertical structures such as other communication towers, wind turbines, utility poles, and farm silos, the new tower will be less visible than the existing tower.

Ms. Lynch discussed the project sponsor's alternatives such as co-location of antennas and an alternate tower design and they stated the proposed tower and antennas are set at the minimum heights needed.

Ms. Lynch stated that in conclusion, staff recommends approving the draft permit with conditions. Staff believes the draft permit is in compliance with the Towers Policy.

She briefly discussed the draft permit conditions. She also mentioned that staff suggests correcting the height of the tower throughout the permit from 180 feet to 180.5 feet, to account for the towers foundation.

Mr. Craig asked for a motion to move this draft permit for discussion. Ms. Scozzafava made the motion and Ms. Feldman seconded the motion.

Mr. Booth asked if there were no other towers outside the Park that were visible, would staff had easily supported this project?

He commented that the Agency is charged with protecting the resources of the Adirondacks and he does not believe the Agency wants to set a precedent that there is a different standard when structures outside the Park are visible. Mr. Booth suggested adding language that states this project is acceptable in terms of what can be seen within the Adirondack Park. He commented that the Board should not give the message that there is a lower standard when there are structures visible outside the Park (for example the wind turbines) from the project site.

Mr. Booth suggested language be added to the draft permit that states that this tower is viewed differently because it is an emergency tower and part of the decision making is based on the fact that this is an emergency communications tower. Ms. Lynch directed Mr. Booth to page 13, number 35 where there is language he is referring to.

A discussion continued and it was agreed with staff that language in the draft permit would be changed to state that the 180.5 foot-tall replacement tower is not necessarily less visible but it is acceptable due to the tower not having lights and will not be painted red and white because it is lower than the Federal Aviation Administration's jurisdictional threshold of 200 feet.

Mr. Booth reiterated his concern with the "Towers Policy" and the term "substantial invisibility." Mr. Booth stated this tower is not "substantially invisible" it is acceptable, but not "substantially invisible."

Mr. Craig called for a motion to move the proposed project to Full Agency for approval with revisions to language. The Regulatory Committee was unanimous in favor of the motion.

(4) Project (A. Ziemann)      Lyme Adirondack Timberlands, I, LLC  
2014-222                              Town of Long Lake, Hamilton County  
Resource Management

Mr. Ziemann reviewed the project proposal, discussed Agency jurisdiction, the project site, silvicultural treatments, review standards and public comment.

He described the proposal as a timber harvest on a 240 acre portion of a 6,161 acre parcel. Stand 1: involves the removal of unacceptable growing stock (diseased Beech) to establish a new stand of desirable species with better health and vigor and, Stand 2: involves a Shelterwood removal to release well-established understory. Lyme Timber is seeking the Agency permit so they have the flexibility to practice sound, sustainable forestry.

Mr. Ziemann showed slides describing the project site. He stated the Lyme's Adirondack forestlands consist of approximately 240,000 acres, located entirely within the Adirondack Park. All of these forests are certified to the Forest Stewardship Council and Sustainable Forestry Initiative forest management standards, and are subject to the conditions of a New York State Sustainable Forestry Conservation Easement. The project site is situated within the 6,100 acre "Robinwood" tract, south of the Sabattis Road between Tupper Lake and Long Lake.

Mr. Ziemann showed slides of the topography of the proposed project site and noted they were entirely non-residential lands with (primarily open-space uses) and some second homes and camps in surrounding areas.

Mr. Ziemann stated the proposed harvest area was last cut in 2002 by the previous owner. Area 1 was partially harvested, leaving behind stands of poor quality, undesirable stems, and Area 2 was harvested using a shelterwood establishment cut, which provided partial shade and seed for a now fully stocked understory of mixed Northern Hardwoods, ready to be released.

Mr. Ziemann noted this is a proposed winter harvest with frozen ground, frozen wetland, and frozen stream conditions using temporary bridging.

Mr. Ziemann discussed the review standards and a public comment letter from Protect the Adirondacks, which was not in favor of the proposed project. Mr. Ziemann commented that Agency staff anticipates the proposed treatments will result in improved forest quality, value and health.

Mr. Craig made the motion to approve the permit as drafted and it was seconded by Mr. Booth. Mr. Booth commented on the detailed letters received from the applicant in response to the "Protect the Adirondacks" letter. He suggested adding a cover memorandum over the public comment letters to bring them to the Board's attention.

Mr. Booth asked if there were any other silvicultural applications being reviewed by staff at this time or forthcoming within the 6,000 acre tract. Mr. Ziemann replied no not within this particular tract of land. Mr. Booth asked if Mr. Ziemann was comfortable that this is a stand-alone proposal and Mr. Ziemann replied yes.

Mr. Craig asked if the control of invasive species was included in the "Best Management Practices" and Mr. Ziemann answered no, "Best Management Practices," do not specifically identify species and it was not included in this draft permit. He said there are some intermittent stream crossings with temporary bridges being installed.

Ms. Feldman commented that the invasive species condition has been placed in other proposed permits, and Mr. Ziemann reminded the Board that this is a winter project with frozen conditions and he does not believe invasive species has been a condition in past forest management permits.

Mr. Booth asked if the new Beech trees will grow without the beech bark disease and Mr. Ziemann explained that the disease starts from an insect that damages the bark of the tree and then the damaged bark gets embedded with fungi and eventually kills the tree.

He explained that any new Beech sprout will be infected with the disease; the harvest plan attempts to create conditions whereby other species will grow to out compete the existing beech; thereby improving the stand. Mr. Stegmann added that the species that are being introduced will typically require a lot of sunlight to get started.

Mr. Craig commented there would be no chemicals used for this project but asked if that is an acceptable tactic for reducing beech saplings and Counsel Townsend answered yes however the application of herbicides can be expensive and is a regulated activity.

Mr. Craig asked for a Regulatory Committee vote on the pending motion to move the draft permit to Full Agency for its consideration. The Committee vote was unanimous in favor of the motion.

(5) Project (C. Parker)  
2013-252

DMK Development  
Town of North Elba: Essex County  
Moderate Intensity Use

Ms. Parker introduced Cindy Garso and Tim Northrup, North Woods Consulting, the authorized representatives for the applicant DMK Development, LLC.

Ms. Parker presented a slide show that depicted the project site location, land use areas, the proposed project description, and the nearby existing land uses. She stated that much of the nearby commercial and public use development was in place prior to the May 1973 enactment date of the Adirondack Park Land Use and Development Plan. She explained the type and scale of commercial and public uses that are surrounding the proposed project site are relevant to staff's recommendation to approve the project with conditions.

Ms. Parker described the background and prior history of the proposed project site. She discussed the existing access to the project site from NYS Route 86. Ms. Parker stated NYS Dept. of Transportation (DOT) approval is required for the proposed access drive. She said Agency staff coordinated with DOT staff in review of the proposed access. Ms. Parker stated there will be no additional access points onto NYS Route 86. The applicant has agreed that if any future development is proposed on the project site, an easement across the Tractor Supply Company lands will be used.

Ms. Parker discussed the "Lease Site Plan" which she describes as a lease subdivision of the project site into 2 lots. The 4.34±-acre lot will be leased by DMK Development, LLC to build the Tractor Supply Company (TSC). She said no new land use and development is currently proposed on the 2.94±-acre lot. The undeveloped lot will be granted an easement to share the TSC access to Route 86.

Ms. Parker showed several slides depicting the proposed project site and a brief discussion ensued regarding access to the 2.94±-acre lot in relation to the proposed stormwater infrastructure. Ms. Parker stated that if there were to be any new development on the 2.94±-acre a modified storm water plan would to be required.

Ms. Parker stated that the vegetated area between the parking lot and NYS Route 86 will remain undisturbed to minimize visual impacts. She noted that any vegetation removed on the project site or within the highway right-of-way will require plans for replacement plantings.

Mr. Booth asked how far the building will be from the road edge? Ms. Parker answered the building is proposed to be approximately 172 feet from the property line.

Ms. Parker showed simulations of the existing and proposed project site from various locations. Ms. Parker explained that DOT standards required the driveway entrance to be relocated further west and narrower than originally proposed.

Discussion continued regarding the width of the proposed driveway and safety requirements for tractor trailers to turn. It was noted that the Agency typically defers to DOT requirements. DOT has reviewed and approved the proposed width of the two-lane driveway entrance for the turning radius of tractor trailers. Ms. Parker said that DOT did determine there was no need for a turning lane on NYS Route 86 or a traffic light for the proposed project.

Mr. Booth asked if the three trees shown along Route 86 are located on private property. Ms. Parker explained the three trees are within the DOT right-of-way and will be removed for construction of the Tractor Supply Company access. .

Mr. Lussi asked if there have been any concerns regarding the existing power lines and Ms. Parker answered at this time the power lines will not be moved due to the revisions to the driveway entrance.

Ms. Parker stated the Town of North Elba Joint Review Board (JRB) discussed the proposal at several local meetings and held a public hearing on August 20, 2014. On October 1, 2014 the JRB approved the commercial use with conditions. Ms. Parker added that subsequent to that approval, the proposed site plan and access were modified as a result of review comments from NYSDOT and the Agency. She also explained that as a result of those modifications, the revised plans have recently been submitted to the Town of North Elba for further review.

Ms. Parker said that final DOT permits will not be issued until after all other regulatory approvals are issued. She also noted that the proposed project will require a New York State Department of Conservation State Pollution Discharge Elimination System (SPDES) permit for storm water.

Ms. Parker stated that no comment letters were received at the Agency for this project. Staff recommends approving the proposed project with conditions.

Ms. Scozzafava and Ms. Feldman made the motion to approve the permit as proposed.

Mr. Monroe commented that if this was just a subdivision it would be non-jurisdictional but the basis for Agency jurisdiction is the commercial use proposal and Ms. Parker agreed.

Mr. Booth suggested adding the acreage on page 7 condition 18, referencing future activities on the proposed project site.

Mr. Craig complimented the applicant and the staff on the architectural design of the TSC.

It was discussed that TSC would like to start construction in the Spring if all required approvals are received.

The Regulatory Committee vote was unanimous in favor of approving the permit and moving to full agency for its consideration and approval.

(6) Project (A. Lynch)  
2014-39

Raymond and Amy Butler  
Town of Northampton, Fulton County  
Rural Use

Ms. Lynch recognized the presence of Mr. Westbrook, ADK Compliance, as the Authorized Representative for the Butlers.

Ms. Lynch stated the purpose of the presentation is to provide an objective record to assist the Board in considering the variance factors set forth in the Agency regulations.. She said the staff team would be available to answer any questions the Board may have.

Ms. Lynch reviewed the items included in the variance record. Ms. Lynch stated staff recommends denial of the variance and emphasized the recommendation was not made quickly or taken lightly. It was made in staffs' best judgment based on the record and Agency Regulations. Ms. Lynch stated appreciation for the applicants' and the authorized representative's professionalism maintained throughout the review of this project.

Ms. Lynch explained the applicants' objectives to improve access to the property and increase the size of the current structure to have adequate space for living and storage to allow enjoyment of their vacation residence. She identified the applicants' request to obtain a 14 ft. variance to increase the existing 19 ft. high dwelling to 33 ft. in height. Ms. Lynch showed the location of the variance site on the Adirondack Park Land Use and Development Plan Map at various map scales. Ms. Lynch explained the existing site conditions by showing the survey map, dwelling floor plan, and photos of the site from various angles. Ms. Lynch discussed the history of the variance site leading to the variance request via a timeline presenting dates for dwelling construction (1970), parcel creation (1972), APA jurisdictional determinations (Aug 2012 & Dec. 2013), ZBA denial of an alternative for dwelling replacement (Sept 2012), applicants purchase of the property (January 2013), and APA receipt of the variance application (March 2014).

Mr. Booth asked about the Town of Northampton's Zoning Board of Appeals denial of a variance request for a replacement dwelling in a different location than considered by the Agency. The Zoning Board's denial was from the Town's front yard and roadside setbacks. Ms. Lynch explained that the Agency would not require a variance for the proposal denied by the Town because the replacement of the dwelling would have been constructed outside the Agency's shoreline setback.

Ms. Lynch continued to provide details of the variance request, including what would change (height, winterization of wastewater treatment system) and what would not (number of bedrooms and footprint). Ms. Lynch stated the replacement dwelling would be served by an updated on-site wastewater treatment system consisting of a 1,000 gallon septic tank and a 500 gallon pump station connected to a 1,000 gallon holding tank. Ms. Lynch showed and explained the wastewater treatment system plans, site plan, floor plan, dwelling elevations, planting plan, and simulations of the proposed dwelling from the lake.



Ms. Lynch showed maps illustrating that the variance site is a part of a ½ mile stretch of shoreline that consists of 25 small rural use parcels each less than ½ acre in size and located between the NYS Route 30 and the Great Sacandaga Lake.

She showed several photos taken from the lake and from across the lake, described the character of the shoreline, and showed where there would and would not be views of the dwelling.

Ms. Lynch showed a slide supplied by the applicant taken in February 2014. She discussed how the other dwellings nearby are often larger than the existing and proposed dwelling but are less visible from the lake because they appear further setback better screened by existing vegetation.

Ms. Lynch discussed the public hearing held in December 2014 and the 4 comment letters received with concerns about the variance proposal.

Ms. Lynch discussed, in detail, the variance factors for the variance proposal along with staffs' analysis of each factor.

Mr. Stegmann asked why other structures were permitted by the Town that are closer to the road and Counsel Townsend answered the Town would be the one to answer that question. The discussion continued with Mr. Lussi asking if staff knows if any of the other residences received Town variances and again Counsel Townsend answered that staff does not have the knowledge to answer that question.

Ms. Lynch discussed the staff analysis as to the manner in which the difficulty arose and the belief that the difficulty is self-created.

Ms. Lynch said that the applicants noted receiving the jurisdictional determination in 2012 but did not understand the significance of the advisory language regarding the height variance or realized that they even needed a height variance until after they purchased the property.

Ms. Lynch stated that according to NYS Department of Health regulations holding tanks are not acceptable for long term use on year-round residences due to their high maintenance costs and the need for continual operational attention. If not maintained and the tank fails, there is a significant risk of surface and ground water contamination from the discharge of sewage.

After detailing the staff analysis of the 6 variance factors, Ms. Lynch continued with 2 other relevant factors: First that granting the variance would undermine the integrity of the shoreline regulations and is therefore an undesirable precedent. Secondly, the requested variance is out of proportion to the applicants' 2,840 sq. ft. parcel, given the serious development constraints on the property.

After discussing staffs' analysis of the balancing test under Section 576.1(b). Ms. Lynch stated staff recommended that the Agency should consider denying the requested variance. She stated staff realizes that denial of the variance will prevent the applicants from fully achieving their objectives for access and a larger dwelling; however, staff believes the applicants can obtain reasonable use from their land through a lesser variance or without a variance. Staff therefore concluded that the adverse consequences to the applicants resulting from denial are less than the public service sought to be served by the shoreline restriction. Staff therefore recommends that the Agency deny the proposal for the variance.

Mr. Wilt asked if this were denied is there anything that could be done to possibly bring the present wastewater treatment system into compliance or more into compliance if possible? Mr. LaLonde responded that if it is denied, the owners will continue to use what they have which is believed to be a leaching facility and the Town will have jurisdiction over the wastewater system. Counsel Townsend added that there are at least two other Agencies with jurisdiction to bring it into compliance. Mr. LaLonde stated, it is his understanding, that any future proposal would include a holding tank.

Ms. Scozzafava commented that when we say that we could not effectively reduce the risk of wastewater failure, couldn't it be argued that they are actually handling the situation and there is less risk with putting in a new system? Mr. LaLonde said when staff states they cannot effectively reduce the risk – the risk of a holding tank for permanent use has to do with operation and maintenance of the holding tank and therefore is not typically recommended for year-round use. He added that cost can't be maintained over time and, as a result, the system turns into a leaching facility. He added the Agency has no mechanism for requiring monitoring that the tank be pumped out for the life of the property and cannot be effectively managed. Mr. LaLonde added that a holding tank is a last resort and is proposed because of site constraints. He noted the site is 2800 square feet and that a typical site with a leach field and on-site well has a minimum lot size of 20,000 square feet in order to meet applicable separation distances. He concluded that we can't change the site...it is what it is.

Mr. Stegman asked if a system that be placed at the top of the hill such as a mound system or is there not space available? Mr. LaLonde said staff asked for alternative designs in the course of review and this was the best solution provided to the Agency. Mr. LaLonde added that if a mound system is placed on top of the hill there would be a leaching facility in very close proximity to the on-site well and within 50 feet of the neighboring well and would not meet applicable standards. In addition, Mr. LaLonde stated that proposal would also require a variance for septic in addition to the structure.

Mr. Craig stated that in the response letter from the applicants there was an open question to an alternative wastewater proposal described as an "Incinulet." Mr. LaLonde responded that the systems were not proposed and therefore not evaluated. Ms. Lynch added that while this type of system may reduce the amount of waste there still needs to be a solution for other types of wastewater generated in the house.

Mr. Booth questioned the dollar amount figure of \$30,000 annually for pumping out the holding tank. Mr. LaLonde stated he thinks it is actually more than that figure assuming the usage is 330 gallons per day and a pump out every three days. Ms. Lynch stated the applicants testified that they do not believe they will utilize the home at maximum capacity but staff cannot anticipate it won't be used year-round in the future.

Mr. Booth referred to language currently in the draft variance order that refers to a "lesser variance." He said the Board is certainly not pre-judging a "lesser variance." He asked if language should be added to the draft variance order that indicates that the Board's position on whether a "lesser variance" would be granted or not be granted has not been determined.

Mr. Booth also suggested adding language such as "future variance applications in this and other locations" to the sentence at the top of page 13. He stated he would consider this to be a very negative precedent in this location and anywhere in the Park.

Mr. Craig commented that the variance review process balances all factors and would prefer to have the staff determine whether Mr. Booth's second request for language should be added or not to be added to the draft variance order.

Mr. Craig said he would have liked to have had more information on the Town's decision making process. He believes the height increase is significant and does not fit well in the variance site location. He stated the site is so small that it is very difficult for all involved to resolve this situation that meets all regulatory standards.

The discussion continued regarding Mr. Booth's suggestion to add language about how this type of variance sets a negative precedent for other locations in the Park. He stated the Board needs to recognize that this variance is not only an undesirable situation in this location but anything similar to this could be very problematic in other locations in the Park.

Counsel Townsend briefly explained the change in the shoreline regulations that occurred in 2008.

Mr. Monroe commented that in 2008 with the change in the shoreline regulations it was an attempt to satisfy the concern with property owners and the impact of the APA Act in the early 70's. That provision local government felt was to benefit the existing shoreline lot owners. If the regulations had not been changed the Board would not be here discussing this today.

Mr. Craig made a motion to support staff's recommendation to deny this variance order and move to Full Agency for denial and Mr. Booth seconded the motion.

In response to a question from Mr. Lussi about the possibility of expanding downward, with a foundation, Ms. Lynch briefly reviewed the alternative options discussed with the applicants.

Mr. Booth made the motion to add the language that a “lesser variance” would not necessarily be granted or not be granted to the draft variance order. Mr. Booth explained that in a number of places in the draft variance order, the language “lesser variance” is used and he believes that it is appropriate language but he would like to make clear that the Agency is not sending a message that any such variance would be or not be approved.

Mr. Booth reiterated his concern for his second request for language to be added that reflects his concern for this type of variance being approved in this location or in any location within the Park.

Mr. Thomas asked why the language on page 12 and 13 regarding “Undesirable precedent” is in the draft variance order.

Counsel Townsend replied that each variance should stand by itself and be analyzed on its own, but case law suggests that granting variances in this area could undermine the integrity of the shoreline restrictions. It could create future difficulties with neighboring project sites or adjoining landowners. Counsel Townsend stated that this is language that is needed in this draft variance order.

Mr. Booth stated he would withdraw his request for the added language to page 13. Mr. VanCott stated staff thoroughly discussed “lesser variance” and non-jurisdictional alternatives at the hearing. The alternatives suggested did not meet the applicants objectives and the applicants felt very strongly about having parking level access and not using the existing staircase. Anything but what is being proposed was considered off the table by the applicants.

The vote was unanimous in the support of the staff recommendation to deny the variance order, and to forward the matter to the Full Agency.

(6) Old Business: None

(7) New Business: None

Adjournment: The Regulatory Committee meeting adjourned at 4:30 adjourned.

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: