



**LEILANI CRAFTS ULRICH**  
Chairwoman

**TERRY MARTINO**  
Executive Director

Draft 2/2/2016

November Agency Meeting  
Regulatory Programs Committee  
December 10, 2015  
REW:mlr

**MINUTES OF THE REGULATORY PROGRAMS COMMITTEE MEETING  
December 10, 2015**

The Committee meeting convened at approximately 1:30 pm.

**Regulatory Programs Committee Members Present**

Sherman Craig, Chair, Richard Booth, Dierdre Scozzafava, Dan Wilt and Karen Feldman.

**Other Members and Designees Present**

Robert Stegemann, Bradley Austin, Art Lussi, Dan Wilt

**Local Government Review Board**

Fred Monroe

**Agency Staff Present**

Terry Martino, James Townsend, Richard Weber, Suzanne McSherry, Sarah Reynolds, Mary O'Dell and Colleen Parker

1. **Approval of October 2015 Draft Regulatory Programs Committee Minutes**

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

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

Mr. Weber reported on the monthly activity in the Regulatory Program Division and briefly discussed the High Profile Report and asked if the Board had any questions. Receiving none Mr. Weber discussed the workshop he attended organized by the Wildlife Conservation Society (WCS) with the support of the North Atlantic Conservation Cooperative (NALCC).

He said the purpose of the workshop was to begin to draft a set of model ordinances for municipalities to consider as they review and update their land use codes. He said the Agency's ongoing efforts to update sections of the Development Adirondack Park (DAP).

Mr. Weber said staff recently updated the on-site waste water treatment system section in DAP. Mr. Weber noted there has been no substantive changes to the wastewater guidelines but it explains more clearly the practice Agency staff uses when reviewing projects.

Mr. Weber discussed Agency Variance P2014-90, Kailyn Realty II, LLC. He briefly discussed the nature of the variance request and the Agency's review process. He noted that on November 23, 2015 the applicants withdrew their variance request. As a result, the file has been closed by Agency staff and no further action will be required.

Mr. Weber discussed Agency Project 2015-181, Lyme Adirondack Timberlands II, LLC., located in the Towns of Corinth and Greenfield, Saratoga County. The proposed project is a timber harvest on a 255 acre portion of Lyme's 9,643 acre Corinth Tract and is jurisdictional under the Agency's timber harvesting regulations. He said five treatment types are proposed which are very similar to previous timber harvest projects reviewed and authorized by the Board. Mr. Weber stated the timber harvest is proposed to be completed in the winter months to minimize impacts to wetlands. He noted no impacts to natural heritage species or habitat or other resources were identified and the potential visual impact is not considered to be significant. Mr. Weber said the operations will be performed in conformance with the New York State Department of Environmental Conservation (DEC) Best Management Practices.

Mr. Weber stated he attended a site visit with Aaron Ziemann on November 20. The application was deemed complete November 24 with the comment period ending December 24, 2015 and the 60-day clock extending to January 23, 2016. Mr. Weber explained with no Agency meeting scheduled in January, the applicants were contemplating modifying their proposal to become non-jurisdictional so that they could proceed with the winter harvest on a predictable schedule. The applicants acknowledged that a nonjurisdictional harvest plan would not be the desirable long term management approach for this particular tract. Mr. Weber recommended projects of this type be delegated to the Deputy Director of Regulatory Programs for review and issuance of a permit. Mr. Weber noted to date no public comment letters have been received on the proposed project. He said that if any significant issues surfaced during the review of this project, as with any project, the project would be brought to the Board for review.

Mr. Craig thanked Mr. Weber for his thorough report and agreed that the applications in the past from industrial foresters, who are subject to rigorous standards, are well prepared when received at the Agency. Mr. Craig requested the Board to consider allowing the Deputy Director to use his existing authority to issue permits for projects of a similar scale and by timber companies which maintain a current Forest Stewardship Council or Sustainable Forestry Initiative Certification.

He also stated the professional forester shall ensure that the permittee and all contractors undertake the project in accordance with the Forest Management Plan, the timber harvest plan, and where applicable the standards contained within the "New York State Forestry Best Management Practices for Water Quality. Mr. Craig stated that at any time the Board could request the proposed timber project be reviewed by the Agency. Mr. Craig asked the Committee if there were any concerns regarding the request to delegate timber projects of this type to the Deputy Director for review and issuance.

Mr. Booth commented that he considers the request to allow the Deputy Director to review and issue these type of timber projects a reasonable request with large responsible company. However, Mr. Booth suggested the Board continue to review projects by smaller organizations with little or no experience with the Agency. There were no objections by the Committee and Counsel Townsend stated the Committee has provided the guidance for staff to move forward with these type of timber projects.

Mr. Lussi asked how the Board will be informed of future timber projects. Mr. Weber answered all timber project applications will be listed in the monthly reports. Mr. Weber stated the staff practice to bring any project to the Board's attention for guidance when significant review concerns or issues are encountered.

3. P2014-181 (Suzanne McSherry)      MGH Estates: Michael Hopkins  
Town of Northampton: Fulton and Saratoga County  
Rural Use

Ms. McSherry introduced the applicant Michael Hopkins present at the meeting. Ms. McSherry provided a presentation on P2014-181, which included an overview of the project description, site location and Agency jurisdiction.

Ms. McSherry reviewed the project site plans and stated the project renewal is an 11 lot subdivision of 181.85 acres for 10 single family dwellings and 1 non-building lot for shared lake access. She stated there are adjacent State lands administered by the Hudson River Black River Regulating District-2000 feet along Great Sacandaga Lake.

Ms. McSherry described the proposed project and showed several slides of the project site with existing development on Elmer Brown Road. She stated each dwelling will be served by an individual driveway, on-site wastewater treatment system, and well water supply. Lots 1 and 6 will have footpaths between the dwellings and the lakeshore. All other lots will access the lake through the Regulating District lands adjoining Lot 7, which will be developed by a parking area and a 6-foot wide footpath. Ms. McSherry said the MGH Estates Property Owners Association, Inc. will be created to own and maintain Lot 7 for shared lake access for the owners of Lots 2 through 5 and Lots 8 through 11. All lot owners will be members of the HOA.

Ms. McSherry described the Sacandaga Lake water levels. She said the Lake level fluctuates throughout the year as a result of snow melt, rain events, Conkingville Dam releases, and evaporation. She stated depending on the topography, the water's edge may be hundreds of feet away from private property adjoining Hudson River Black River Regulating District (HRBRRD) lands, even during the summer recreation season. Ms. McSherry explained access permits allow use of these State lands located between private lands and the lake.

Ms. McSherry described the wetlands that extend for several hundred feet parallel to the westerly property lines of lots 2, 3, 4 and 5. These wetlands consist of deciduous and coniferous forested, emergent marsh and scrub shrub covertypes, having a value rating of 2 pursuant to 9 NYCCR 578.5. The wetland is located in a sheltered cove on the shoreline of Great Sacandaga Lake.

Ms. McSherry discussed lake access and wetlands. She said access permits are issued to individual landowners allowing exclusive access to the lake across a portion of HRBRRD administered State Lands. Ms. McSherry restated that Lot 7 owned by the MGH Estates Property Owners Association will provide lake access for lots 2-5 and 8-11. There is individual lake access across HRBRRD lands authorized for lots 1 and 6, only.

Mr. Monroe asked if the HRBRRD issued lake access permits to lots 2-5 and 8-11 they would be permitted according to the District. Ms. McSherry agreed and said the District should be referring applicants to the Agency if there are wetlands identified on properties when applying for the access permits. Mr. Monroe asked if communication between the agencies have been documented historically. Ms. McSherry deferred the answer to Mr. Weber.

Mr. Weber answered that access is granted, whether it is developed access is the question. If it is developed access, the HRBRRD is obligated to be sure that the developed access is in compliance with Agency review. Mr. Weber stated coordination is on-going with HRBRRD in particular to wetland related questions if they arise. Mr. Stegemann made the comment that for structures and dock footings Article 15 permits may be required from the DEC so coordination with DEC is important as well.

Mary O'Dell from the Agency's RASS Division described the wetland located adjacent to the project site. She stated the wetland is situated in a shallow cove on a very large lake and it provides refuge for fish and wildlife from the larger lake. Shelter on this lake, particularly areas that include complex habitat features and are not developed with boardwalks and docks, are uncommon and important for wildlife.

A sheltered forested wetland is very valuable to both resident and migratory animals. Ms. Feldman asked Ms. O'Dell if the size of the wetland was known. Mr. Weber replied that the size of the wetland is approximately 5 acres.

Mr. Wilt asked Ms. McSherry if Lot 7 can be accessed by a golf cart or is it intended to be a footpath only. Ms. McSherry answered that the current proposal is to provide a footpath but the project sponsor could request an amendment to the permit.

Ms. McSherry explained the principal building rights associated with the proposed project site. She explained that there shall be no principal buildings located on Lot 7 and no more than one principal building located on each of Lots 2 through 6 and Lots 8 through 11. On Lot 1, there shall be no more than 12 principal buildings. Ms. McSherry explained that the permit being reviewed will permit 11 dwellings. The future development of the 12 principal building rights associated only Lot 1 would still need to be reviewed by the Agency.

Mr. Monroe asked Ms. McSherry to explain the purpose of Lot 7. Ms. McSherry said Lot 7 in part provides lake access via an alternative route in order to protect the wetlands located near lots 2,3,4 and 5. Ms. McSherry stated that there may be times of the year when pedestrian access to the lake through the wetlands would be possible. The project as proposed will avoid the development of boardwalks and docks in wetlands.

Mr. Monroe stated this condition seems to be out of the ordinary for access to Sacandaga Lake. He said most of the lot owners may obtain a permit for access to the lake from the HRBRRD in front of their lot. Ms. McSherry replied that as Ms. O'Dell stated this wetland is fairly unique and as described previously the wetland is located in a sheltered cove on the shoreline of Great Sacandaga Lake. It is seasonally flooded and has direct hydrologic interchange with the lake. It has high plant diversity and a complex structure. This wetland provides habitat in the form of food, cover and nesting site for fish and wildlife. The vegetation within the wetland functions to prevent erosion of the shoreline, helps to modulate water temperatures, and provides food, cover and nesting sites for wildlife. Preserving the wetland vegetation will preserve these functions.

Mr. Austin asked Ms. McSherry to explain the staff response to a comment letter received from an adjoining landowner who had a concern regarding drainage. Ms. McSherry answered the landowner's parcel is located up gradient of Lot 7 and the proposed development will not interfere with the drainage on their property. Ms. McSherry also noted staff is requiring a stormwater management plan which will prevent any additional runoff to the adjoining landowners.

Mr. Monroe asked Ms. McSherry if boardwalks have been permitted previously by the Agency through wetlands in order to access docks. Ms. McSherry said there probably are circumstances where this has been approved. In this case, the Agency is reviewing a subdivision proposal to create new lots and is therefore obligated to seek viable alternatives that will avoid anticipated impacts to the wetlands.

Mr. Monroe said if the HRBRRD authorized access permits to lots 2 through 6 and 8 through 11, would the Agency prevent the landowners from accessing the lake with the permits. Ms. McSherry answered yes in order to protect the wetlands under Agency regulations.

Counsel Reynolds stated that the boardwalks authorized previously by the Agency allowing access through wetlands to the waterbodies are usually with lawfully existing lots with riparian rights and that is not the case in this proposed project.

Mr. Booth made the motion to move the permit to full Agency for approval, seconded by Mr. Wilt.

Mr. Wilt noted his concern regarding lake access for lots 2, 3, 4 and 5.

Mr. Monroe stated that the Local Government Review Board has discussed lake access at several meetings and has concluded that lake access to the lots should be a HRBRRD decision and not an Agency restriction.

Mr. Craig complimented staff and the applicant for their review of this project and for preventing impacts to the wetlands located on the proposed project site.

The Committee vote was unanimous in favor of the motion.

4. Old Business: None

5. New Business: None

Adjournment: The Regulatory Committee meeting adjourned at 2:45 pm.

Note: The PowerPoint 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)