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March 6, 2024

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**Re: Comments on Proposed Wetland General Permit for Certain Minor Regulated Activities in Jurisdictional Wetlands
APA Project ID: GP2024G-1**

Dear Mr. Plante and Mr. Amos:

Protect the Adirondacks! Inc. ("PROTECT") is pleased to submit these comments on the proposal by the Adirondack Park Agency ("APA") to revoke APA General Permit GP2002G-3AAR and issue a new General Permit/Order 2024G-1 ("General Permit") concerning certain minor regulated activities in jurisdictional freshwater wetlands.

Background

According to the APA, the new General Permit will: (i) be available for use throughout the Adirondack Park; (ii) be effective from the date of issuance unless otherwise modified or revoked by the Agency; (iii) authorize jurisdictional activities involving wetlands pursuant to the Freshwater Wetlands Act (Environmental Conservation Law Article 24), the Adirondack Park Agency Act (Executive Law §§ 809(2)(a) and 810(1)) and the Agency's wetland regulations (9 NYCRR § 578.2(a)); (iv) allow for certain minor regulated activities in a freshwater wetland that involve no permanent wetland fills or involve minor fills with compensatory wetland mitigation; and (v) include relevant mitigating conditions and conclusions of law, as specified in the general permit.

Staff

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APA's proposal further states that each project certification issued pursuant to the General Permit will include standard conditions related to compliance with the approved project plans, documentation of site restoration, erosion and sediment control, invasive species spread prevention, and vegetative cutting. The certification will also include project-specific conditions regarding compensatory wetland mitigation and conditions related to wetland protections for the eligible regulated activities. APA will issue a signed certification approving the project within 10 business days of the site visit or when the application is deemed complete, whichever is later, for a project that meets the General Permit eligibility criteria.

PROTECT's comments are organized under the headings and in the order as they appear in the proposed General Permit.

Comments

Summary and Authorization

1. PROTECT supports the clarifications added to this section relating to applicability of terms and conditions of certificates issued pursuant to the General Permit and that the General Permit does not satisfy legal obligations of the applicant to comply with other federal, state and local laws and regulations.
2. In the current General Permit GP2002G-3AAR, this section includes a statement that the General Permit does not apply if the proposed project is subject to APA jurisdiction as a subdivision or new land use or development under APA Act sections 810 or 814; the project constitutes a "rivers project" under the New York Wild, Scenic and Recreational Rivers System Act; the project site is subject to the State Land Master Plan or a Unit Management Plan; the proposed activity is prohibited by a prior APA determination or permit; or the project requires a variance from the shoreline restrictions in section 806 of the APA Act. These exclusions from the General Permit applicability are not included in the proposed General Permit. PROTECT believes it is important to have these exclusions prominently stated in the first section of the General Permit and requests that APA retain this language from the existing General Permit. This section should also clearly state that a project that does not meet the Eligibility criteria below cannot apply for a certificate pursuant to the General Permit.
3. It is unclear what is meant by the statement in the last paragraph in this section that the General Permit "is in effect once recorded." We suggest changing this to state that the General Permit is in effect "upon approval by the Agency."

Jurisdiction

4. This section recites some of the criteria for regulated activities in wetlands requiring a permit under Section 809 of the APA Act and Part 578 of the APA regulations, including filling, excavating or draining a wetland and any activity that "substantially impairs" the functions or benefits of wetlands. However, this section is incomplete because it omits important categories of regulated activities as defined in Part 578 and fails to include

jurisdictional wetland activities under Section 810 of the APA Act, which requires a permit for any activity that “involves” wetlands. *See, e.g.*, Executive Law §§ 810(a)(1), 810(b)(1)(b), 810(c)(1)(b), 810(d)(1)(b), 810(e)(1)(b). This section must be modified to include all regulatory and statutory jurisdictional language or, in the alternative, specifically reference the applicable statutory provisions and the definition of “regulated activity” set forth in the regulations. 9 NYCRR § 578.3(n).

Eligibility

5. PROTECT supports the clarification in paragraph 3 in this section that the General Permit cannot be used for new installation of culverts in wetlands.
6. PROTECT suggest modifying paragraph 4 to by adding the following italicized language: “This general permit shall not be used for activities which *may potentially* result in adverse impacts to cultural, historic or archaeological resources, or to rare, threated or endangered species *or species of special concern or to the occupied habitat of such species.*” These modifications are necessary to exclude projects which may potentially result in adverse impacts to the named resources even though it has not been definitively shown that such impacts are certain to occur; to include species of special concern, which are also protected by law; and to include occupied habitat which is also protected by law. *See* 6 NYCRR §§ 182.2(b), 182.2(p), 182.2(v).

Regulated Activities Subject to this General Permit

7. In paragraph 1, PROTECT suggests that the first part of the third sentence be modified as follows: “Authorized utility lines include: pipes or pipelines for the transportation of gaseous, liquid or slurry substances *that are not fossil fuels or greenhouse gases;*” PROTECT believes that pipes and pipelines used to transport substances contributing to climate change should not be exempted from full regulatory review and cannot be exempted under section 7 of the Climate Leadership and Community Protection Act.
8. PROTECT supports the specification in paragraphs 2 (relating to installation of work pads, access or detour drives, or water control structures) and 7 (relating to access for survey and exploratory activities) that “temporary” means “lasting less than one year.”
9. PROTECT opposes the inclusion of paragraphs 5 and 6 to the extent that these allow for new projects (*e.g.*, “new culvert installations” and infrastructure widening and improvements to roads, bridges, driveways and trails) that create permanent wetland impacts. New activities that create permanent wetland impacts should not be allowed to proceed under a General Permit and instead should be subject to full APA permit review. Further, as described below, the language about “compensatory wetland mitigation” is inadequate.
10. The phrase “where compensatory wetland mitigation is addressed, as appropriate” is used in paragraphs 3 (relating to installation, replacement or repair of water control structures); 4 (relating to installation, replacement or repair of beaver control structures); and 5

(relating to culverts); 6 (relating to widening or minor improvements to lawfully existing roadways, bridges, driveways or trails). This phrase is vague and unclear. PROTECT suggests changing it to, “where compensatory wetland mitigation is completed as required by the applicable project-specific conditions in the certification.”

11. The term “wetland complex” is used in paragraphs 5 (relating to culvert removals, repairs, replacements and extensions) and 6 (relating to widening or minor improvements to lawfully existing roadways, bridges, driveways or trails). Specifically, paragraphs 5 and 6 allow these activities if they involve less than 300 square feet of permanent wetland excavation or fill “per wetland complex.” Because “wetland complex” is not defined in the General Permit or in statute or regulation, PROTECT suggests deleting the phrase “per wetland complex” and replacing it with “in a wetland.”
12. Paragraph 9 extends the General Permit to “installation of new fords involving less than 300 square feet of permanent wetland fill which do not involve a perennial stream on active farms for purposes of crossings by farm equipment or animals.” PROTECT opposes the addition of this new class of wetland fill activities to the General Permit without requiring compensatory wetland mitigation.

Application Review Process

13. The proposed General Permit eliminates the Eligibility Criteria set forth in paragraph 5 of the section entitled, “Procedures” in the existing General Permit. PROTECT opposes elimination of those criteria because they include specific determinations that must be made by APA staff prior to issuing a certification under the General Permit. Those criteria should be included in paragraph 3 of this section.

Findings of Fact

14. PROTECT has no comments on this section.

Conclusions of Law

15. Paragraph c of the Conclusions of Law should be modified to reflect the regulatory language and that APA has concluded in the General Permit that these regulated activities “will be consistent with the guidelines of 9 NYCRR 578.10 and are compatible with preservation of the entire wetland and not result in degradation or loss of any part of the wetland or its associated values.” APA should use the criteria applicable to the most protected class of wetlands (wetlands with a value rating of 1) since APA is not conducting an evaluation of each of the individual wetlands that will be impacted by these regulated activities. If an activity cannot satisfy the criteria applicable to value 1 wetlands, then it should not be eligible for permitting through the General Permit.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with the first name "Chris" and last name "Amato" clearly distinguishable.

Christopher Amato
Conservation Director and Counsel
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David Plante, AICP CEP, Deputy Director for Regulatory Programs
NYS Adirondack Park Agency
PO Box 99, 1133 NYS Route 86
Ray Brook, NY 12977
(via electronic transmission)

Re: General Permit 2024G-1

Dear Deputy Director for Regulatory Programs David Plante,

Thank you for the opportunity to comment on the proposed revisions to wetlands general permit (GP) 2002G-3AAR regarding minor regulated activities within wetlands in the form of the proposed GP 2024G-1. Changes to wetlands regulations are of utmost importance, even if the purpose is primarily changes of a ministerial nature. While this GP is designed for projects that are less than 300 square feet, as the Agency notes, wetlands are hydrologically connected and impacts extend beyond the square footprint of a project.

The Council offers the following comments:

Value Ratings: The newly proposed permit makes no mention of wetland value rating as described at 9 CRR-NY Part 578. The value rating is the foundation of how the Agency reviews projects involving wetlands and should be referenced within the 2024G-1 documents. 9 NYCRR Part 578 regulates that projects may not “substantially impair” the functions or benefits of wetlands, and therefore an analysis of these functions and benefits via the wetland value is critical.

Wetlands of Unusual Importance: The rulemaking for the Freshwater Wetlands Act (ECL Article 24) will be updated to address wetlands of unusual importance, including vernal pools, which is not addressed in the APA rules and regulations. Incorporation of ECL Article 24 into the permit is both prescient and important as many amphibians and reptiles, such as the blue-spotted salamander (*Ambystoma laterale*), Jefferson salamander (*Ambystoma jeffersonianum*), and Blanding’s turtle (*Emydoidea blandingii*) are reliant on vernal pools for their lifecycles.

Involving Culverts: The Council appreciates the expansion of conditions regarding projects involving culverts and that the permit does not cover new culvert construction. The specifics of round culvert embedment and promotion of native substrate are important components of aquatic organism passage when open bottom structures are not feasible. Additional details concerning

skew, scouring, bankful width, etc. should be incorporated to ensure right-sized, ecologically-responsive infrastructure. Pre-construction conditions may have been undersized or poorly positioned, making this an important consideration given the increasing risk of extreme flooding due to climate change.

Compensatory Wetlands: Projects requiring permanent impacts to wetlands are subject to the APA's *Compensatory Wetland Mitigation Guidelines* (CWMG), which require 1.5:1 or higher wetland replacement, both "in-kind" for function and on-site, ratios. However, functions lost by developed wetlands are not required to be described. In addition, newly planted trees and shrubs often are subjected to increased herbivory and therefore not all may survive. It is recommended to describe practices to ensure the most successful establishment of replacement species for restoration of pre-construction conditions to occur and remain as true to the replacement ratios as possible.

Unfortunately, the ratios are not binding as the CWMG admits that "These are guidelines, not rules. Failure to meet them will not automatically result disapproval of an application." Other mitigation factors that the applicant may take are weighed, yet if this is the case, the CWMG recommends that public hearing be held though this is also at staff discretion. This leaves a serious vulnerability in review of projects involving compensatory wetlands, which already must be a last resort for loss of habitat, carbon, and hydrological functions. 2024G-1 must address these concerns to best protect the natural resources of the Park and to better inform applicants of the implications of resorting to compensatory mitigation.

Species of Greatest Conservation Need: Regarding eligibility item number 4 of the draft permit, general permits must not be applicable if adverse impacts to species of greatest conservation need (SPGN) and their habitat, as listed by the State Wildlife Action Plan (SWAP), are anticipated.

Enforcement and Monitoring: The permit elaborates that it is only applicable when construction disturbance will be less than one year before *complete* restoration, two welcomed distinctions from the prior general permit. The supporting documents for 2024G-1 make reference to multiple deadlines for implementation such as removal of temporary access facilities, silt fences, turbidity curtains and other sediment controls once the site has been stabilized. In addition, all restoration actions, including compensatory wetland mitigation, must be completed within three days of project completion. The applicant is required to provide color photographs to the Agency for proof of wetland mitigation, but this does not extend to other required elements nor does it assess implementation spatially. The applicant should also provide satellite imagery with elements labeled and area provided as appropriate, though on-site field observations have been shown to more successfully determine presence of hydrophytic vegetation, hydric soils, and wetland hydrology.

Furthermore, a condition in GP2002-3AAR regarding the Agency's right to "conduct on-site investigations, examinations and evaluations as it deems necessary to ensure compliance with the terms and conditions of this permit," has been removed. This condition should be restored and exercised. Sites should also be monitored by the applicant at least one year after restoration implementation is complete to review establishment of native plants and shrubs and to remove invasive species that may colonize the disturbed site while native species are not yet reestablished.

General Permit Revisions: The timing of the revisions to the general permit falls before major updates to the Freshwater Wetlands Act, the State Wildlife Action Plan, and the Open Space Conservation Plan. The Council finds the timing incongruous with these external revisions that will have ramifications on general permits. At minimum, it is recommended to acknowledge these changes and to review the general

permit for consistency though the preferable option is to delay adoption of GP 2024G-1 until a notice of proposed rulemaking for the Freshwater Wetlands Act and the two plans are released to ensure consistency across state agencies.

The Council appreciates the updating and revising of the general permit regarding minor regulated activities within wetlands. Wetlands, regardless of size, play a vital role within our natural ecosystems in the Adirondack Park and merit the highest degree of consideration in the permitting process.

Sincerely,



Jackie Bowen
Director of Conservation



Jess Grant
Conservation Associate

From: paulvancott@gmail.com
To: [APA Regulatory Programs Comments](#)
Subject: General Permit 2024-G1
Date: Thursday, March 7, 2024 6:58:21 AM

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This general permit should not be used for Value 1 wetlands. All wetland activities involving Value 1 wetlands should require individual APA review and determinations by the APA Board based on 578.10 and 578.9. Historically, APA has only ever authorized activities in wetlands serving a public purpose. This general permit should not allow a workaround for minor activities in Value 1 wetlands, where APA regulations prohibit any impacts absent findings by the APA Board that other considerations compel a departure from that prohibition. Thank you for considering my comments. Paul Van Cott, Saranac Lake

Sent from my iPhone



March 11, 2024

David Plante

Deputy Director for Regulatory Programs

NYS Adirondack Park Agency

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Re. General Permit for Certain Minor Regulated Activities in Wetlands, GP 2024 G-1

Dear Mr. Plante,

This General Permit for minor activities in wetlands replaces a very similar one that has been in place for over 20 years. It should be helpful to Agency Members and to the general public if Agency staff would better summarize in writing this track record, meaning the results of that 2002 General Permit (2002G-3AAR), and characterize its 20 years of use and levels of success in achieving goals with minimum alteration of wetlands impacted, and with success, or lack thereof, in wetland compensation mitigation.

Also missing at the present time are clear written paragraph(s) by a member of the Resource Analysis and Scientific Services staff addressing the improvements of this wetlands General Permit, and why Agency RASS staff believe it necessary and important to substitute it now for the 2002 General Permit. Comparing the two General Permits, one can discern several potential improvements made. However, Agency RASS staff should be asked to comprehensively address and submit this question in writing.

Even activities in wetlands that the Agency staff, via this General Permit, deem minor with minimal, temporary impacts requiring full wetland restoration or, in certain instances, wetland mitigation can and do conflict with the clarity of the APA's Freshwater Wetland Act responsibilities under Part 578 of Agency regulations.

Part 578.10 of the Agency regulations provide such clarity. Wetlands rated 1, or Value 1 wetlands are under Part 578.10 those special wetlands where activity must "be compatible with preservation of the entire wetland; and would not result in degradation

or loss of any part of the wetland and its associated values.” To quote APA’s website, the Agency has “stricter standards for activities in high value wetlands . . . development is generally prohibited in wetlands with a value rating of ‘1.’”

Given that stricter standard, this General Permit, GP 2024 G-1, should not apply to minor activities, however temporary, in Value 1 wetlands because APA regulations so strictly prohibit any impacts that would result in the loss of any part of these rare and most important wetlands.

Thank you for considering our comments.

Sincerely,



David Gibson
Managing Partner

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