



December 21, 2009

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**Re: APA Staff Comment on Draft Environmental Impact Statement
(Proposal to modify working forest Conservation Easements,
former Champion lands now owned by Heartwood Forestland
Fund III, LP)**

Dear Rob and Heather:

The purpose of this letter is to provide Adirondack Park Agency staff preliminary comment on the Draft Environmental Impact Statement referenced above, for which DEC is lead agency. The DEIS has been accepted by the Department as noticed in the November 11, 2009 Environmental Notice Bulletin, and we are submitting this letter at this time to ensure compliance with the extended December 28, 2009 DEIS comment deadline.

At the outset, Agency staff would like to express its thanks to DEC for hosting a pre-application meeting at DEC Warrensburg offices for DEC, APA and Heartwood Forestland Fund III, LP (HFF, III) staff and consultants to discuss the proposal to modify the three "working forest" Conservation Easements on the former Champion lands to allow retention of certain hunt club camps and structures as well as conveyance of a parcel of land in the vicinity of Deer River to the State. Agency staff appreciated the opportunity to discuss the proposal directly with DEC, HFF, III, The Forestland Group (TFG) and consultant staff and to review with those present the information needs of Agency staff with respect to HFF, III's proposal for the APA Settlement Agreement modification and permit amendment described below.

APA Comments on DEIS as Involved Agency

As an involved agency in the SEQRA process, APA seeks to ensure that the SEQRA record includes a description of Agency jurisdiction over the actions associated with the proposed retention of hunting camps and structures and further subdivision of the Heartwood Forestland Fund III, LP (HFF III) landholding (the proposal to convey a portion of HFF III's land inside the Adirondack Park to the State). We would respectfully request that this letter be referenced in and made an attachment to the Final Environmental Impact Statement.

Agency Enforcement Settlement Agreement E99-25

In 1999 the Agency entered into a lengthy Enforcement Settlement Agreement to resolve a number of apparent violations on the 139,000 landholding then owned by Champion International Corporation located within the Adirondack Park. The violations involved noncompliance with three state laws administered by APA, the APA Act (Executive Law, Article 27), the Freshwater Wetlands Act (lands within the Adirondack Park - ECL, Art. 24) and the Wild, Scenic and Recreational Rivers System Act (ECL, Art. 15, Title 27) and their implementing regulations (9 NYCRR Parts 570-88). Typical noncompliance found on the "Three Large Tracts" of Champion lands involved (i) post-August 1, 1973 construction of certain hunt club camp structures, sanitary privies and graywater leaching facilities closer to the mean high water mark of navigable waterbodies and courses than the shoreline setbacks required by §806(1)(a)(2) of the APA Act would allow; (ii) post-August 1, 1973 construction of 500 or more sq ft hunting and fishing cabins and other structures without an Agency permit; (iii) post-April 19, 1976 construction of certain camps and structures in designated river areas¹ without an Agency rivers permit and in noncompliance with river area shoreline setback restrictions; and (iv) construction of certain facilities without Agency wetland permits, among other matters.

The 1999 Settlement Agreement was signed by Champion International Corporation, Champion Realty Corporation, The Forestland Group, NYS Department of Environmental Conservation (DEC) and APA. The Agreement contains a number of provisions related to what was then described as "some 300-plus hunting and

¹ While it appears Easement Lands are located outside the designated river areas on the Santa Clara Tract, they appear to extend into certain designated river areas on the Tooley and Croghan Tracts.

fishing cabins and hunting club structures" located on the three large tracts then-owned by Champion (see, e.g., 8th Whereas clause, Findings of Fact 2, 5 and 7, and Settlement Terms 1, 4 and 18). The Agreement was premised in part on Champion's agreement to certain Conservation Easement terms which, among other things, required removal of most of the hunt club camps from both (i) the so-called "Fee Lands" proposed for conveyance to the State and (ii) the "Easement Lands" that were to be protected by an ECL Article 49 Conservation Easement administered by DEC based on 5- and 15-year deadlines, respectively. Accordingly, to implement the modifications now sought by HFF III and DEC to allow the camps to permanently remain, certain of the Settlement Agreement's provisions need to be amended by agreement of the current parties.

For example, the existing settlement terms of the 1999 Agreement excluded Champion and its successors from responsibility for the following violations associated with the camps and other structures:

1. Noncompliance with the minimum 100-foot shoreline building setback restriction pursuant to §806(1)(a)(2) of the APA Act;
2. Noncompliance with the permit requirement for single family dwellings pursuant to §810(2)(d)(1);
3. Noncompliance with the permit requirement for hunting and fishing cabins involving 500 or more square feet of floor space pursuant to §810(2)(d)(4); and
4. Noncompliance with shoreline cutting restrictions pursuant to §806(1)(a)(3).

Part of the rationale for excepting these violations from the requirement of immediate remediation was that since the cabins in question were to be removed from the property by 2015, thereby mooted or otherwise addressing noncompliance, it was agreed earlier remediation could be dispensed with.

However, since up to 220 of the hunt club cabins and other structures are now proposed to permanently remain on the Easement Land, one of the key facts upon which the Settlement Agreement was based has changed and it is thus necessary to address matters of noncompliance by reaching a new agreement as to remediation of these violations. As you know, violation

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remediation often consists of establishing deadlines for modifying or re-positioning non-complying structures, seeking after-the-fact approval where approval criteria can be met or taking other actions to bring structures and land use into compliance.

The Settlement Agreement also refers to the current fifteen year camp removal deadline recited in the three existing Conservation Easements restricting the so-called easement lands portion of the property; that language would need to be removed from the Agreement to conform to the terms of the proposed modifications.

No written request has been submitted by HFF III to date to commence the Settlement Agreement process. However, as mentioned above HFF III representatives met with APA and DEC staff on December 15, 2009 to discuss the proposed Conservation Easement modifications and the changes that will need to be made to the Settlement Agreement and Agency Permit 98-313. Since HFF III is now record owner of the property, it is staff's view that that entity (and possibly its corporate affiliate The Forestland Group, LLC), as well as DEC and APA would need sign the proposed Settlement Agreement amendment.

Agency Permit 98-313

Agency Permit 98-313 was issued on June 28, 1999 and it approved a large scale subdivision project including (i) multiple so-called "fee" parcels to be conveyed to the state, (ii) thirteen "timber management lots" (portions of the easement lands) that would each contain a five acre development site limited to two principal buildings and accessory structures, (iii) three log concentration yards (one on each of the three large tracts) and (iv) one sawmill. The permit also contains certain findings and conditions related to the existing cabins. For example, among other permit provisions, Findings of Fact 5, 7, 10, 13, 31 and 39 describe the Settlement Agreement terms, the Easement Lands and the proposal for removal of camps thereon by approximately 2015, while Condition 15 requires a waste disposal plan to be prepared for camp removal.

Permit Jurisdiction

The subdivision and other activities approved as part of Project 98-313 were subject to Agency permit jurisdiction as a Class A and B Regional, Wetlands and Rivers Project pursuant to §§810(1)(d)(1)(b) and (e), 810(1)(e)(1)(b) and (e), 810(1)(e)(3)

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and (9) and 810(2)(c)(16) and (d)(6) of the APA Act, Agency regulations implementing the Freshwater Wetlands Act within the Adirondack Park at 9 NYCRR 578.3(n)(1) and (2) and Agency regulations implementing the NYS Wild, Scenic and Recreational Rivers Act at 9 NYCRR 577.5.

Specifically, the subdivisions required Agency approval pursuant to §§810(1)(e)(3) of the APA Act, 9 NYCRR 578.3(n)(1)(i) and 9 NYCRR 577.5(b)(x) and (c)(1). The single family dwellings, private hunting and fishing club structures (if post-August 1, 1973 500 or more square feet in size) or group camps required an Agency permit pursuant to §§810(2)(d)(1) or (4) or 810(1)(e)(5) of the Act as Class A or B Regional Projects. The proposed concentration yards required an Agency permit pursuant to §§810(2)(c)(16) and (2)(d)(6) of the Act. The proposed sawmill required an Agency permit pursuant to §810(1)(e)(9) of the Act.

Project 98-313, as described in and approved by the permit, included the ultimate removal of most of the camps from the so-called fee and easement lands as well as compliance with other Settlement Agreement terms. Accordingly, to implement the current proposal involving retention of hunt club structures and the subdivision involving proposed conveyance of certain Deer River lands to the state, HFF III needs to apply for an amendment of Permit 98-313. The amendment would need to address Agency approval for a project including permanent retention of the camps, creation of the one acre "Camp Envelopes" and access to same, the subdivision of certain Deer River lands and the deadline for completion of any remediation or other compliance actions, among any other project components.

Again, no application for permit amendment has been submitted by the landowner to date, but HFF III, DEC and Agency staff met on December 15, 2009 to begin pre-application discussions.

Excluded Action Under SEQRA

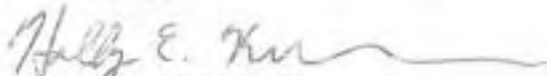
To the extent amendments to the Agency permit allowing the camps to remain permanently and approving any new subdivision would constitute Class A or B Regional projects subject to APA review, they would appear to constitute "excluded actions" for APA purposes pursuant to ECL §8-0111(5)(c). However, such activities would be subject to separate APA review pursuant to §809 of the APA Act to ensure there are no undue impacts to Park resources. Similarly the proposed modification of the APA Enforcement Settlement Agreement would appear to be a "Type II"

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action pursuant to SEQRA regulations at 6 NYCRR 617.5(c)(29). Though we do not foresee, at this juncture, likelihood of conflicting findings resulting from the current SEQRA process, it is our understanding that lead agency SEQRA findings would not limit APA jurisdiction and permit findings in the Agency's separate review of the excluded actions and modification of the settlement agreement, despite the Agency's participation as an involved agency in the current SEQRA review.

Agency staff looks forward to working with HFF III and DEC staff to coordinate Agency review once the settlement agreement modification process has been completed and the permit amendment request submitted. Please don't hesitate to contact me or the assigned staff Regulatory Programs staff (John Quinn) and legal staff (Rich Terry) if there are questions in the interim.

Sincerely,



Holly E. Kneeshaw
Acting Deputy Director, Regulatory Environmental Programs

HEK:JLQ:RRT:mp

cc: Heartwood Forestland Fund III, LP (c/o The Forestland
Group, LLC)
LandVest Inc.
Larry Denis
Frank Dunstan, DEC
Tom Martin, DEC
Terry Martino, APA
John Quinn, APA
Richard Terry, APA