

August 25, 2021

Rebecca Isacowitz  
Deputy Secretary for Energy & the Environment  
New York State Executive Chamber  
NYS Capitol  
Albany, NY 12224

Dear Ms. Isacowitz,

We the undersigned write to oppose the Adirondack Park Agency's (APA) recent issuance of a permit amendment (1987-0074E; June 18, 2021) and letter of permit compliance (May 27, 2021) to allow on-site septic and other development on Lot 9 in the Deerwood Subdivision located in the Town of Santa Clara. The original 1988 permit for the 12-lot Deerwood Subdivision was issued with strict development standards for Lot 9 and other lots to protect on-site and adjacent natural resources, including a 25-acre wetland complex and Upper Saranac Lake's water quality.

Given the procedural and ecological impacts of the APA-sanctioned development approvals outlined in this letter, we ask that the Agency rescind the permit amendment and letter of compliance for Lot 9. From there, APA can default to and uphold the original permit conditions, or it can initiate a comprehensive major project review process to allow the full APA Board of Commissioners and the public and opportunity to review the proposed development.

#### Minor vs. Major Project

According to the APA Act, a written request may be made to the Agency for the "renewal, reissuance, or modification of an existing permit." §809(b). From there, the Agency is tasked with determining if the request constitutes a material or nonmaterial change to the permit. In the case of 1987-0074E, it was determined that modifying the permit to allow for an on-site septic system and reducing the septic system wetland setback from the originally required 200-feet to 100-feet did not represent a material change to the permit. We disagree.

Section 809(b)(1) of the APA Act details that any requested permit modification that "does not involve a material change in permit conditions, the applicable law, environmental conditions or technology since the date of issuance of the existing permit" is a nonmaterial change, which warrants a less rigorous public review process. Since the original permit was approved more than 30 years ago, technology – both for ecological monitoring and mapping, and septic systems – has changed and improved significantly, and should be treated as material changes.

In addition, the environmental conditions of the area are believed to have changed with the presence of bald eagles, a listed New York threatened species, several nesting loons, and the presence of rare plants, including orchids, in the wetlands. These also constitute material changes. Therefore, a major project application and review process is legally warranted.

#### Environmental Concerns

In addition to procedural issues, there are several environmental concerns associated with the development of Lot 9, including the following:

1. Study Not Completed: Under the original 1988 permit, Lot 9 was required to undergo a wetland and environmental study given the presence of extensive sensitive ecological characteristics, like the wetland complex. The Agency ignored written requests to undertake this study or require it from the applicant. Local property owners, using their own funds, completed this study which documented several extremely rare plant and animal habitats.

In addition, in the 1988 permit's finding of facts (#22), the 25-acre wetland complex was given a rating of 2 pursuant to 9 NYCRR 578.5. However, critically, the ecological study conducted yielded findings indicating that a value 1 wetland, the most unique and sensitive in the Park, is the most appropriate rating.

The original permit was crafted around ecological assessment capabilities of the '80s. There are new understandings of the hydrological connectivity of the wetland complex that were not known when the permit was drafted, including the presence of an inter-digitized stream network below the bog mats. The permit amendment does not reflect this current knowledge or science. It is our understanding that Agency staff assessed the original wetland delineations when reviewing the property for this proposal, but no new or updated vegetation inventory, included in the 1988 permit, was conducted.

Given these considerations, the Agency's decision to decrease the wetland setback from 200 feet to 100 feet to allow for on-site septic appears to be based in outdated information that could cause significant degradation to the wetland. In addition, new septic system technology does not guarantee that contamination of water resources will not occur. The 200' setback should be maintained.

2. Tree Removal Would Ruin Wetland: The removal of a substantial number of trees from this forested wetland setting to create a view of the lake would destroy habitat for plants and animals, allow for sun warming of the water flowing from underground springs and streams due to the loss of tree cover, and destroy the wetlands surrounding the trees, thereby removing the ability to filter runoff of nutrient and other waste into Upper Saranac Lake, which is already subject to algae blooms in this sensitive shallow basin.
3. APA Policy Ignored: APA staff has neglected its own multi-jurisdictional policy, along with that of the NY Department of Health, and the Town of Santa Clara pertaining to installation of onsite septic systems. Paragraph 2 of Appendix Q-4 of the New York Compilation of Codes, "Additional Standards for the Installation of Onsite Wastewater Treatment Systems" specifies that no residential septic systems shall be placed within 200 feet of the shoreline of a lake, pond, river or stream, when the untreated soil has a percolation rate of 0-3 minutes per inch. The existence of a mapped stream inside this 200 foot limit is not disputed and the applicant's own engineering study reported that the test pits on the site for the proposed septic field were less than 1 minute per inch and the maximum percolation was 1 minute and 25 seconds per inch.

4. Soils, Stream Make Site Inappropriate: The existing stream within such close proximity to a site with soils that were not suitable should have led the APA to determine that the property was not appropriate for an onsite septic system. The applicant does have an alternative option for placing the septic field in deeded property over 1,000 feet safely upland from the Saranac Lake and the valuable wetlands.

#### Segmentation

We are deeply concerned with the APA's decision to segment its regulatory review process, an approach that is not common practice for the Agency. We note that the Agency's actions are subject to SEQR requirements. The anticipated development on Lot 9 should have been considered at one time to understand the cumulative impacts the development will have on the natural resources of the property and surrounding area. Unsurprisingly, this segmented process failed to provide for a comprehensive review of the proposed development and its impacts, nor did it allow for transparent and robust public review.

The culmination of these errors in process, review and information resulted in a permit decision and amendment that is not in the interest of a sensitive and unique Adirondack Park wetland environment, detrimental to the highly sensitive shallow north basin of the Upper Saranac Lake and a decision that is not supported under current legal precedent for permit amendments of individual property within a subdivision permit.

In closing, the Agency has incorrectly treated the development of Lot 9 as a minor project application. With the accelerated purchase and development of building lots in the Adirondack Park, the decision to amend an existing subdivision permit in a segmented process has set forth a dangerous precedent for private land resources. The Agency should rescind the permit amendment and letter of permit compliance for Lot 9 in the Deerwood Subdivision in order to alleviate this harmful precedent setting action and prevent eroding development permits that were crafted to protect the sensitive ecosystems of the Adirondack Park.

Sincerely,

Jackie Bowen, Associate Conservation Director  
Adirondack Council

David Gibson, Managing Partner  
Adirondack Wild: Friends of the Forest Preserve

Peter Bauer, Executive Director  
Protect the Adirondacks

Guy Middleton, Lake Manager  
Upper Saranac Foundation

CC:

Rajiv Shah, Assistant Counsel to the Governor for Energy and the Environment, New York State  
Executive Chamber

Katelyn O’Leary, Senior Policy Advisor for Energy & the Environment, New York State Executive Chamber

Terry Martino, Executive Director, Adirondack Park Agency

Bradley Austin, Board Member, Adirondack Park Agency

John Ernst, Board Member, Adirondack Park Agency

Arthur Lussi, Board Member, Adirondack Park Agency

Daniel Wilt, Board Member, Adirondack Park Agency

Zoe Smith, Board Member, Adirondack Park Agency

Andrea Hogan, Board Member, Adirondack Park Agency

Mark Hall, Board Member, Adirondack Park Agency

Kenneth Lynch, Board Member, Adirondack Park Agency

Matthew Tebo, Board Member, Adirondack Park Agency

Joe Zalewski, Board Member, Adirondack Park Agency