

New York State Department of Environmental Conservation

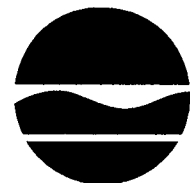
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Alexander B. Grannis
Commissioner

APR 24 2009

Glen A. LaFave
Executive Director
Hudson River-Black River Regulating District
737 Bunker Hill Road
Mayfield, New York 12117

Dear Mr. LaFave:

Pursuant to your request, the Department of Environmental Conservation (“the Department”) has reviewed the Hudson River-Black River Regulating District’s (“the District”) draft rulemaking on 6 NYCRR Part 606, Use, Operation, and Maintenance of Great Sacandaga Lake (Formerly the Sacandaga Reservoir). Department review of these regulations is mandated by Environmental Conservation Law § 15-2109(1), providing that the District’s rules and regulations are not effective until “approved by” the Department.

The proposed regulations would allow for the continuation of a long-standing permit program which allows those who own property either adjacent to or near State land surrounding the State-owned Lake to put docks in the water and build stairs and other structures on the State-owned upland area that facilitate access to the water. The permit program also allows permittees to put structures (e.g., port-o-johns, fireplaces, and canopies) on the State-owned upland areas that do not relate to access to the Lake.

If the permit program were to be entirely eliminated, the exiting public boat launch sites on the Lake would be completely overwhelmed by a resulting increase in public use, creating health and safety issues both at the boat launches and on adjacent public highways, including busy Route 30. The Department also recognizes that the permit program has been in place for many years and the State land at issue has not yet been classified under the Adirondack Park State Land Master Plan by the Adirondack Park Agency. Consequently, we understand the District’s desire to enable those who own property adjacent to or near State land to continue to access the Lake by crossing State land. However, we are especially concerned about the legality of provisions in the regulations which allow permittees to use this land for activities that are unrelated to Lake access and, in many ways, allow permittees to treat this land as if it is their own. Specifically, we are concerned about provisions which allow permittees to mow, cut significant amounts of trees and brush, and install various structures, such as fireplaces, canopies, and port-o-johns, on State land. Further, we are concerned about provisions which allow permittees to exclude the general public from this land.

The Department's comments are penciled in on the enclosed draft of the regulations. We believe that our proposed changes constitute substantial changes which, under State Administrative Procedures Act § 202(4-a), will require the District to publish a Notice of Revised Rule Making and hold an additional public comment period.

Also enclosed are suggested edits on the rule making's draft SAPA documents (Regulatory Impact Statement, Job Impact Statement, Regulatory Flexibility Analysis, and Rural Area Flexibility Analysis). We are not providing the District with comments on the draft Responsiveness Summary because the District will need to draft a new Responsiveness Summary after the additional public comment period.

After concluding the revised rulemaking process, please resubmit the rulemaking package for the Department's approval. Should you have any questions, please contact Ken Hamm, Esq. in my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison H. Crocker". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Alison H. Crocker
Deputy Commissioner
and General Counsel

Enclosures