

DRAFT

 P.O. Box 99 • Ray Brook, New York	General Permit 2012 G-1	Effective Date: _____, 2012
	In the Matter of the Issuance of a General Permit for: Silvicultural Treatments That Meet Jurisdictional Clearcutting Thresholds	

SUMMARY AND AUTHORIZATION

The Adirondack Park Agency recognizes that 9 NYCRR §573.7 strictly defines clearcutting in relation to the remaining basal area amount of thirty square feet per acre. Correspondingly, other legitimate silvicultural cutting prescriptions, such as shelterwood removal cuts, can also be defined as clearcuts because they lower the residual basal area below the threshold referenced in the Agency regulation. The strict definition of all silvicultural prescriptions as clearcuts based solely on a basal area threshold provides no incentive to complete other legitimate silvicultural prescriptions, including shelterwood cuts. The disincentive leads to “high grading”, dominance by undesirable species, reduction in biodiversity and unhealthy forest conditions.

This General Permit is issued pursuant to the Adirondack Park Agency Act (Executive Law Article 27) and 9 NYCRR Part 573 authorizing a simplified Agency approval process for implementing silvicultural treatments that meet jurisdictional clearcutting thresholds as part of a forest management plan.

The projects authorized by this General Permit shall be undertaken and completed only as described in the forest management plan and in accordance with the terms and conditions of this General Permit and a separate General Permit Certificate to be obtained for each project from the Agency.

This General Permit shall be recorded by the Agency in the Office of the County Clerk for the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, St. Lawrence, Saratoga, Warren, and Washington.

This General Permit applies throughout the Adirondack Park and shall be effective unless otherwise revoked or modified by the Agency.

ADIRONDACK PARK AGENCY JURISDICTION

A silvicultural treatment that involves a clearcut of more than 25 acres of a single unit of land is a Class A regional project requiring an Agency permit pursuant to Executive Law §§ 809(2)(a) and 810(1). The term “clearcut” is defined in Executive Law § 802 as “any cutting of all or substantially all trees over six inches in diameter at breast height over any ten-year cutting cycle,” and is further defined in 9 NYCRR §573.7.

DRAFT

ELIGIBILITY FOR APPLICATION

In order to be eligible for a Certification issued pursuant to this General Permit, all of the following must apply.

- (1) There can be no other active basis of Agency jurisdiction on the project site, including location within a designated Wild, Scenic, or Recreational River area, or undertaking of a regulated activity under the Freshwater Wetlands Act (except construction of a woods road involving class 3 or 4 wetlands). In addition there can be no current (active) jurisdictional subdivision on the project site.
- (2) The lands proposed for treatment that meet jurisdictional clearcutting thresholds must have forest management certification under the Forest Stewardship Council or the Sustainable Forestry Initiative certification programs as demonstrated by the certification certificate or Article 49 Conservation Easements that includes language for stewardship requirements equivalent to FSC or SFI certification. Lands subject to American Tree Farm System certification or other conservation easements or that are enrolled in the RPTL 480a program may meet eligibility criteria if their management plans are part of a broader management scheme that includes principles, objectives, criteria, and performance measures equivalent to accepted third party certification systems. The proposed treatment shall be in compliance with the terms of the certification.
- (3) The Project Sponsor must submit a complete application.
- (4) The application must contain all of the required attachments including a narrative and graphic description of timber harvesting on the project site, including size of the site, harvest history, integration with previous forest management actions, maps, and photos, as well as documentation that the proposed clearcut is prescribed for regeneration within the approved forest management plan and a detailed implementation schedule of project components.
- (5) If Agency staff determines that the project has to be referred to OPRHP, the Agency must receive documentation from OPRHP that the project will not have an impact on historic or archeological resources or their recommendations for studies or surveys to be done and their recommendations for mitigation of any impacts to historic or archeological resources must be provided.

PROCEDURES

- (1) To commence Agency review of a proposed project pursuant to this General Permit, a project sponsor must complete the application and submit the application and all required attachments to:

Adirondack Park Agency
Deputy Director, Regulatory Programs
P.O. Box 99
Ray Brook, New York 12977

DRAFT

- (2) Upon receipt of an application and within 30 working days, Agency staff will confirm jurisdiction, determine whether the proposed project meets the eligibility criteria, and review the application for completeness. Agency staff will contact the applicant to arrange a meeting at the project site, if necessary. If the application is incomplete, Agency staff will inform the project sponsor by mail indicating what information is missing at which time the 30 working day clock will be suspended. A new 30 work day clock will start upon receipt of the requested information.
- (3) Based on analysis and possible field review by Agency staff, the Agency's Deputy Director, Regulatory Programs, will determine whether the project as proposed conforms to the eligibility criteria cited herein. Where an application is determined to be ineligible for processing under this General Permit, the Agency will send a letter explaining why the project is ineligible and stating that the activity will be reviewed again upon receipt of a major project permit application.
- (4) Within ten working days that the application is deemed complete and a determination by the Agency's Deputy Director, Regulatory Programs, that the proposal is eligible for authorization under General Permit 2012G-1 the Agency will issue a signed Certification approving the project which will remain effective so long as eligibility criteria are maintained and there is no change to the proposed treatment.
- (5) The review time periods established in Executive Law § 809 shall not apply to Agency review of an application pursuant to the General Permit, except that if the Agency does not issue a certification within ten days of determining that a proposed project is eligible for authorization under General Permit 2012G-1 the procedures established in Executive Law § 809(6)(a) shall apply.
- (6) By signing the application, a Project Sponsor:
 - a. confirms that the information contained in the application is true, accurate and complete;
 - b. agrees to undertake and complete the project in full compliance with the terms and conditions of a General Permit Certification issued by the Agency; and
 - c. agrees to allow Agency staff, on reasonable notice, to access the project site in order to review the proposed project.

GENERAL CONDITIONS

- (1) The Certification shall be applicable to the project sponsor, his or her successors and assigns, and to any subsequent owner of or contractor working on all or a portion of the project site.
- (2) The project shall be undertaken and completed only as shown on the approved project site plans and in compliance with the conditions in the Certification issued, including any site specific conditions.
- (3) The project sponsor and his or her successors and assigns shall provide all current and subsequent owners of the lot subject to the Certification with a copy of the Certification, and shall advise all subsequent owners in writing that the project may only be undertaken within the parameters of the Certification; and

DRAFT

- (4) The project sponsor and his or her successors and assigns, or the current or subsequent owner(s) of the lot subject to the Certification, shall seek an amendment for any failure to comply with the forest management certification program as indicated by annual audit or for any proposed alteration to the forest management plan approved in the conservation easement.

FINDINGS OF FACT

- (1) The Agency recognizes that compliance with the accepted forest management certification programs and forest management plans requires land owners to meet strict standards for forest management that include economic, social and environmental resource considerations, and that these considerations are comparable to the findings the Agency must make in accordance with Executive Law §809 to be able to issue a permit. Accordingly, for a treatment to be determined eligible for a Certification under this General Permit, the property upon which the treatment will take place must be enrolled in and in compliance with an accepted forest management certification program, as demonstrated by a valid and up to date certificate of certification.
- (2) 9 NYCRR §573.7 strictly defines clearcutting in relation to the remaining basal area amount of thirty square feet per acre. Correspondingly, other legitimate silvicultural cutting prescriptions, such as shelterwood removal cuts, can also be defined as clearcuts because they lower the residual basal area below the threshold referenced in the Agency regulation. The strict definition of all silvicultural prescriptions as clearcuts based solely on a basal area threshold provides is no incentive to complete other legitimate silvicultural prescriptions, including shelterwood cuts. The disincentive leads to “high grading,” dominance by undesirable species, reduction in biodiversity and unhealthy forest conditions.
- (3) The projects subject to this general permit will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

The Agency has considered all the statutory and regulatory criteria for project approval as set forth in Section 809 of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Parts 573 and 574. The Agency hereby finds that clearcutting described herein is approvable provided it is undertaken in compliance with the approved permit certification and attachments and the terms and conditions therein.

DRAFT

Issued this day of , 2012

ADIRONDACK PARK AGENCY

Richard E. Weber, III
Deputy Director (Regulatory Programs)

STATE OF NEW YORK)

) ss.:

COUNTY OF ESSEX)

On the day of in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

DMS:REW:lmb:mlr
November 7, 2012