

12 February 2016

Jim Sessions, Forester
Conservation Easements Program
Division of Lands and Forests
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ConservationEasements@dec.ny.gov

Conservation

✱

Education

✱

Recreation

Since 1922

RE: Proposed 6 NYCRR Part 592

Dear Mr. Sessions,

The Adirondack Mountain Club (ADK) appreciates the opportunity to comment on the proposed 6 NYCRR Part 592 regulations for Conservation Easements (CE).

The Adirondack Mountain Club (ADK) is dedicated to the conservation, preservation, and responsible recreational use of the New York State Forest Preserve and other parks, wild lands, and waters vital to our members and chapters. ADK represents over 28,000 members who enjoy hiking, canoeing, kayaking, cross-country skiing, camping, backpacking, biking, mountaineering, snowshoeing, and other "muscle-powered" outdoor activities in New York. We sponsor programs that range from teaching people to hike and paddle safely to repairing our state's peerless hiking trail network. We are advocates for responsible recreation and protection of the Forest Preserve, state parks and other wild lands.

ADK appreciates the steps the Department of Environmental Conservation (DEC) is taking to define the process through which a DEC Conservation Easement (CE) can be modified or extinguished. ADK believes that if DEC finds a need for an expedient process to make de minimis changes to CEs such as minor boundary changes or changes to forestry management because of threat or impact by invasive species, then such changes and process must be defined if substantively different than what is currently proposed in Part 592. The proposed Part 592 is well drafted, however we are concerned with how the *net loss or gain of benefits* is currently

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presented and calculated in the proposed regulation. Please consider the following changes:

In section 592.3 (a) 4, ~~“The proposed modification of a DEC conservation easement shall not result in any net loss of benefits to the state, as determined by the department in its sole discretion, including:~~ The proposed modification of a DEC conservation easement shall not result in a net loss of benefits to the state, which must be calculated and considered within the spatial confines of the conservation easement in question or in the surrounding contiguous and adjoining lands, as determined by the department with consideration of stakeholder parties input, including: consideration of any change in the level of public recreational opportunities or any change to the limitations or restrictions on the development, management or use of the property, or any other real property owned by or under the control of the grantor, for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the area where the property is located in a manner consistent with the public policy and purpose set forth in ECL section 49-0301.”

ADK does not support a process that would allow a net benefit analysis to extend beyond the conservation easement in question or its contiguous and adjoining lands. If benefits or costs are not spatially correlated to the easement they should not be considered. DEC should also provide additional discussion and explanation for the term “net benefit”. In order to have a robust and full net benefit/loss analysis DEC should involve stakeholder groups and consider input from outside the department. Further, a Recreation Management Plan (RMP) must be completed before DEC conducts a net benefit analysis. This will help ensure that commitments and actions on behalf of the public values inherent in the easement will be included in any major modification of the Conservation Easement. DEC must ensure that the standards by which DEC judges a modification are not a lower standard than the statute itself. The proposed regulation must be protective of the original purpose of the easement in terms of both public recreation and natural resource protection. ADK does not feel that the proposed regulation in its current form accomplishes this. The proposed

regulation must also ensure that SEQR-mandated alternatives are fully considered.

The proposed regulation must be crafted to ensure that there is not a repeat of the Heartland Forest Land Fund CE Modification which allowed 220 camps to remain on the CE lands, a substantive change from the original easement which called for the removal of the camps. The modification deal involved an exchange 2,797 acres of non-contiguous, non-adjacent land.¹ Although the CE lands remained open to the public with the exception of one acre lots around each of the camps, there was a substantive change to perception of public and the ability of the general public to enjoy the lands under the original intent of the CE which was to protect river corridors and natural values.

Please also consider the following addition to proposed section 592.3 (b),

“The standard for the modification of the purpose(s) or the extinguishment of a DEC conservation easement shall require a finding by the department that the DEC conservation easement can no longer substantially accomplish its original purpose(s) or any of the purposes set forth in the ECL section 49-0301 which include conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological, including old-growth forest, character, and the preservation of areas which are significant because of their historical archaeological, architectural or cultural amenities, and the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.

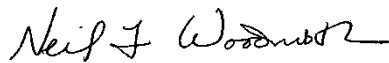
Further, in reaching a Finding, and in considering whether an amendment results in a positive or neutral conservation outcome, the commissioner should be required to:

- re-state the original purpose of the easement;
- explain how an amendment will result in either a positive or not less than neutral conservation outcome;
- explain how the original purpose can no longer be accomplished without the amendment;
- take into account conservation variables and criteria including but not limited to proposed changes in the number and location of built structures, the spatial distribution of those structures and roads and extent of “conservation design” planning, a change in mileage of motorized roads and uses, change in the number and location of stream crossing, change in public recreational uses and opportunities, and more. These are offered as examples.

Finally, the proposed regulations must not in any way undermine the authority or level of protection provided by ECL Title 3, Article 49.

Thank you for your consideration these concerns,

Sincerely,



Neil F. Woodworth
Executive Director and Counsel
Adirondack Mountain Club, Inc.

¹ <http://www.dec.ny.gov/lands/104636.html>