



NEW YORK STATE
Adirondack
parkagency

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In the matter of the alleged violation of
9 NYCRR Part 578 by:

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

NOTICE OF MOTION
FOR AGENCY ORDER
WITHOUT HEARING

Agency File: E2007-047

Respondents.
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PLEASE TAKE NOTICE THAT upon Agency staff's August 13, 2007 Notice of Hearing and Complaint pursuant to 9 NYCRR § 581-4.3, and the January 24, 2008 affidavit and appended exhibits of Mark Rooks, and the January 25, 2008 affirmation and appended exhibit of Paul Van Cott, and the accompanying Memorandum of Law, Agency staff will move for an order in this matter from the Agency pursuant to 9 NYCRR § 581-4.9 at the Agency's headquarters on March 13, 2008 at 9:00 a.m., or as soon thereafter as counsel may be heard. Agency staff request permission for oral argument by the parties based on the record in this matter.

Agency staff respectfully request that the Agency, based on appropriate findings of fact and law, issue an order pursuant to 9 NYCRR § 581-4.16 that the alleged violation of 9 NYCRR Part 578 has occurred and is continuing to occur. In addition, Agency staff request that the Agency issue an order as follows:

- (I) Finding Respondents in violation of 9 NYCRR §§ 578.2(a) and 578.3(n)(1)(i);
- (II) Requiring Respondents to undertake and complete restoration of all wetlands filled on the subject property since 2003 by a date certain and in accordance with a restoration plan, developed by a wetlands professional, to be approved by the Agency;
- (III) Imposing civil penalties against each of the Respondents for their violation pursuant to ECL § 71-2303(1) of \$3,000 and pursuant to Executive Law § 813 of up to \$500 per day since at least October 2, 2006; and

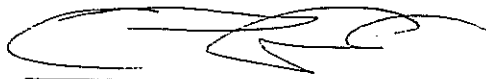
(IV) Such other and further relief as the Agency deems just and proper.

Answering affidavits, if any, must be served on the undersigned within 30 days of the date of this Motion for an Agency Order without Hearing.

DATED: Ray Brook, New York
January 25, 2008

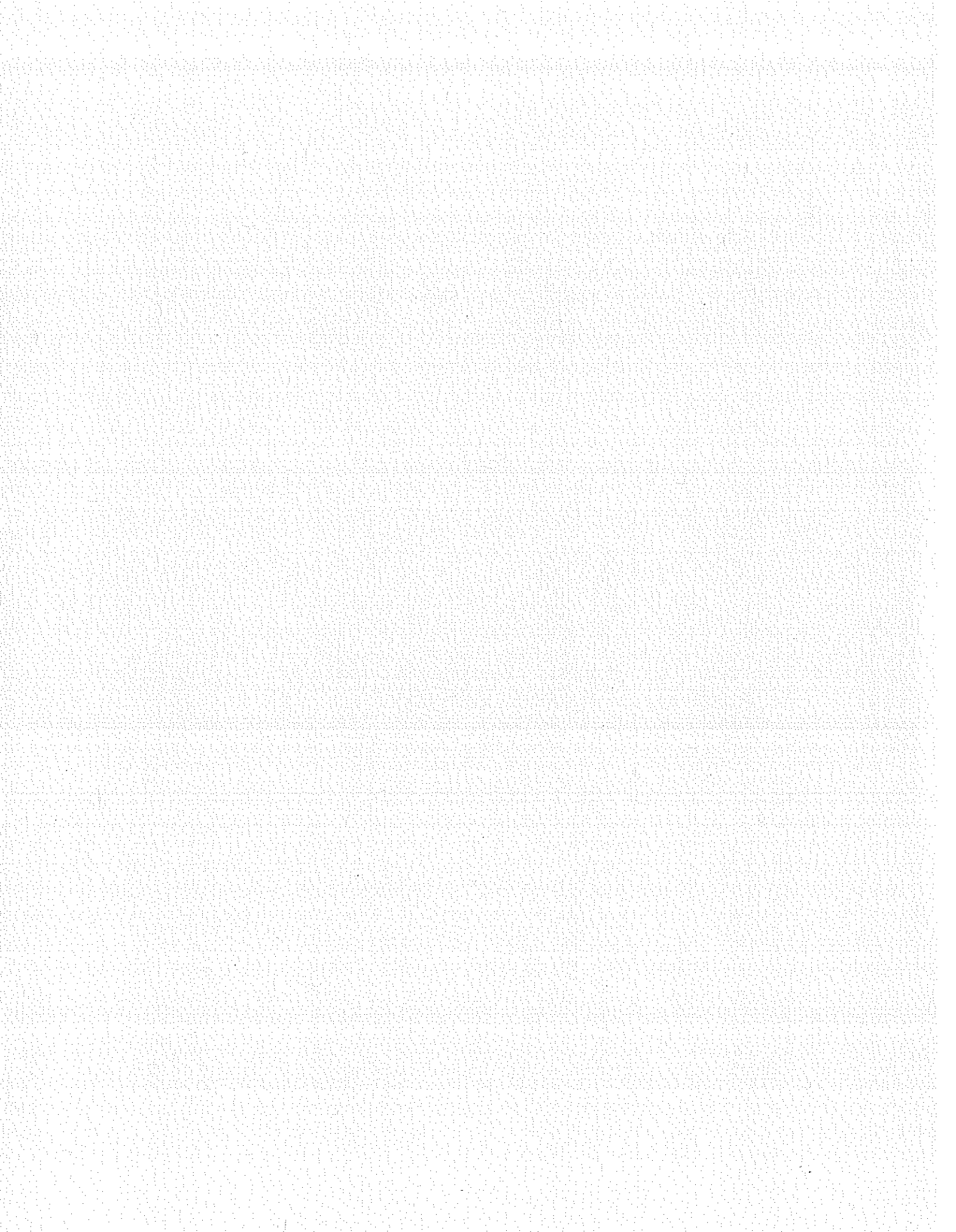
ADIRONDACK PARK AGENCY

BY:



Paul Van Cott
Associate Attorney

To: J. Michael Naughton, Counsel for Respondents



STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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In the matter of the alleged violation of
9 NYCRR Part 578 by:

AFFIDAVIT

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

Agency File: E2007-047

Respondents.
-----X

Mark Rooks, having been duly sworn, deposes and says:

1. I am the Associate Adirondack Park Project Analyst, Biological Resources, for the Adirondack Park Agency, a position that I have held since March 2005. Before that, from October 2000 to February 2005, I was the Agency wetland delineator, with the title of Biologist 1 (Ecology). In the capacity of my current position, I serve as the Agency expert for biological resources within the Adirondack Park, conduct wetland delineations and other wetland analysis, assess and analyze biological resources and supporting protection efforts as the in-house expert on the subject of Terrestrial Biological Analysis, assist with the Invasive Species Program within the Agency and assist with oversight and administration of several United States Environmental Protection Agency grants. I recommend remediations of wetland violations throughout the Adirondack Park, including the Town of Black Brook, Clinton County.

2. I am familiar with facts of this matter and make this

affidavit in support of Agency staff's Motion for an Order without Hearing.

3. The subject property, owned by Respondent, The Douglas Corporation of Silver Lake, is described as Tax Map Parcel 308-2-1 in the Town of Black Brook, Clinton County and is designated Low Intensity Use. I have made several site visits to the subject property to inspect wetlands on the property for jurisdictional and enforcement purposes.

4. The wetland is part of a 0.95 acre coniferous swamp wetland which drains into Silver Lake. A portion of the wetland has free exchange of surface water with Silver Lake. The functions and values associated with this wetland include flood mitigation and spring run-off retention, water quality improvement, run-off water quality amelioration and important wildlife habitat. Since the coniferous swamp on the subject property has open water interspersed with wetland vegetation, it should have been obvious to Respondents that the subject property contained wetlands that were potentially subject to the Agency's jurisdiction.

5. Pursuant to 9 NYCRR §§ 578.5(k) and 578.6, I have determined this wetland to have a value rating of "4." A value rating of "4" means that the wetland should be afforded protection from all activities except in the case where the proposed activity is the only alternative which reasonably can

accomplish the applicant's objectives (9 NYCRR § 578.10(a)(4)). In all cases such activities require a permit.

6. On October 2, 2006, during the course of a site inspection with Leroy Douglas, I found that a road had been constructed through the wetland on Respondent's property that is shown on the survey map dated November 20, 2006 attached hereto as Exhibit A. Mr. Douglas advised me that the road was pre-existing and pointed out a rusted culvert which he had allegedly replaced under the road through the wetland. At that time, he acknowledged that he had done some recent construction work on the road that had resulted in the widening of the road and additional wetland impacts. The results of this October 2 site visit were summarized in a memo to Paul Van Cott, attached hereto as Exhibit B.

7. In order to remediate those wetland impacts, Agency staff sent proposed Settlement Agreement E2005-200 to Respondents, which was executed on November 9, 2006. A copy of that Settlement Agreement is attached hereto as Exhibit C.

8. On November 20, 2006, I conducted a site visit to ascertain whether Respondents were complying with the requirements of Settlement Agreement E2005-200. I determined that they had not done all of the work required by the settlement, and that the work that they had done was not as required by the settlement. The results of this November 20 site

visit were summarized in a memo to Doug Miller, attached hereto as Exhibit D.

9. Based on my site visit, Agency staff opened Agency enforcement file E2007-047 in March, 2007 to address Respondents' noncompliance with Agency Settlement Agreement E2005-200.

10. Subsequently, the Agency received new information alleging that the entire road had been constructed since 2003. Based on those allegations, I reviewed aerial photographs and found that, in fact, the road had not existed in 2003. Furthermore, my review of aerial photographs revealed that additional areas of wetlands adjacent to the road had been filled since 2003.

11. In making the above determination I took the following steps:

- I examined stereo pairs of 1968 and 1978 black and white aerial photographs. I scanned one of the 1978 photos, georeferenced and orthorectified it and imported it into a GIS map along with the Clinton County tax map boundaries (Exhibit E).
- I then examined stereo pairs of 1995 color infrared transparencies. These photos are available to the public in the form of orthophotos. I brought one of these photos into a comparable GIS map (Exhibit F).
- I examined digital color infrared orthophotos taken in

2003 and prepared a comparable GIS map (Exhibit G).

- I scanned and georeferenced the survey map referenced above as Exhibit A. I used this scanned image to make GIS shape files showing the road and the wetlands as field delineated by me on October 26, 2006.
- I conducted an air photo interpretation of additional wetlands as they existed in 2003 (but had been subsequently filled) and included this and the previously mentioned shape files in a GIS map (Exhibit H).
- I used GIS software to calculate the area, in acres, of the existing wetlands and the wetland area that had been filled (Exhibit I).

Based on those steps, I concluded that approximately 3,049 square feet of wetland was filled in order to construct the road and an additional 5,227 square feet of wetland had been filled since 2003. The results of my air photo interpretation and GIS analysis were summarized in a memo to Paul Van Cott, attached hereto as Exhibit J.

12. The filling of these wetlands has destroyed the wetland under the fill and impacts the wetlands functions and values mentioned in paragraph 4 above. No Agency permit was issued authorizing this wetland filling.

13. It appears that that the road through the wetland is

not the only alternative that can serve the landowner's needs. There is an existing wetland crossing which accesses the northern portions of the lot.

14. If a permit application had come before the Agency, I would not have recommended issuance of the permit. Agency permits for wetland impacts are issued subject to a hierarchical sequence of criteria summarized by the terms avoid, minimize, mitigate. Wetland impacts must first be avoided. If they can't be avoided the impact must be minimized. After these first two criteria are met wetland loss must be mitigated for by construction of wetlands.

In this case, as indicated in paragraph 13 above, there are alternatives that would avoid wetland impact. If it were determined that the project was necessary, the road width has not been minimized. There has been no provision for compensatory mitigation.

15. In order to restore the wetland's functions and values, it is necessary for Respondents to remove the wetland fill and to revegetate the wetland. Given Respondents' failure to comply with Settlement Agreement E2005-200, the work should be designed and undertaken by qualified wetland restoration professionals to ensure that is undertaken properly.

16. A remediation plan should be prepared by the Respondent's consultant and should contain the following

elements:

- Grading plan
- Planting plan
- Invasive species control
- Monitoring and reporting schedule.

17. On September 6, 2007, I visited the subject property with Agency enforcement officer Douglas Miller in response to a complaint that Respondents were constructing another road through wetlands on the property. In the course of that site visit, I observed Leroy Douglas poke Mr. Miller in the neck and threaten him with bodily harm. Mr. Miller had done nothing to provoke Mr. Douglas's attack.

Mark Rooks

MARK ROOKS

Sworn to before me this
24 day of January 2008

Jill Lawrence

Notary Public

JILL LAWRENCE
Notary Public - State of New York
Qualified in Franklin County
No. 01LA6175330
Commission Expires Oct. 9, 2011

THIS EXHIBIT IS OMITTED.

The Exhibit A to Mark Rooks' Affidavit and as part of Exhibit D to the Verified Complaint is a Map showing subdivision of a portion of lands of the Douglas Corporation of Silver Lake. The map was unable to be scanned in .pdf format.



MEMORANDUM

TO: Paul VanCott

FROM: Mark Rooks

DATE: October 2, 2006

RE: W2006-0072, E2005-200, Douglas, Town of Black Brook

I met with Mr. Douglas today as a follow-up to our meeting of May 18, 2006. He gave me a survey map, which I am attaching for reference. In May I noted a wetland fill violation on the 53 foot wide right-of-way between Lots 1 and 2. The purpose of my visit today was to discuss remediation of this violation, but today I noted an additional wetland fill violation, on the 20 foot wide right-of-way on lots 2 and 3. This was done after my May 18 visit. I am also attaching photos of these violations.

This second violation involved widening an existing road through a wetland and replacing a 20 foot culvert. I saw the old culvert that had been replaced.

Mr. Douglas expressed a desire to resolve these violations, so I told him that we would send him a settlement agreement. I offer the following settlement agreement elements, which I discussed with Mr. Douglas:

- Remove the fill from the two areas on Lot 2 and the 53 foot right-of-way between Lots 1 and 2, as marked by Mark Rooks on his site visit of October 2, 2006.
- In the portion of the road marked by Mr. Rooks on his October 2, 2006 site visit, remove excess fill deposited in the wetland in such a way that the driving surface is reduced to 12 feet and the slope of the shoulders of the road is 2:1 (run:rise). The height of the road is not to be increased.
- Ease the slopes of other fill next to streams to a minimum of 2:1.
- Install silt fence at the toe of the resulting slopes, seed with annual/perennial grass seed mix and mulch with straw.

Memorandum to Paul vanCott

October 2, 2006

Page 2

- Arrange for surveyor John Martino to meet with Mr. Rooks on the site in order to delineate and survey all wetlands on the parcel.
- Apply to the Agency for a permit or a letter of non-jurisdiction for any further land use and development, including sub-division, additional grading, excavation or road-building in or near wetlands.
- The remediation should be completed no later than December 1, 2006. When complete, notify Mark Rooks for a compliance check.

Please see me with any questions. I would be happy to review the settlement agreement before it goes out.

C: Daniel M. Spada
Doug Miller
Rita Quinn (J2006-0696)

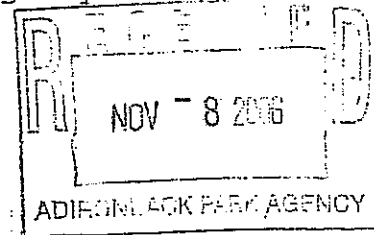
STATE OF NEW YORK: ADIRONDACK PARK AGENCY

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In the matter of the apparent
violations of Article 24 of the
Environmental Conservation Law by:

DOUGLAS CORPORATION

Respondent, on property located in the
Town of Black Brook, Clinton County
(Tax Map Parcel 308-2-1)
LUA: Low Intensity Use

SETTLEMENT AGREEMENT
Agency File #E2005-200



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WHEREAS:

1. The subject parcel contains wetlands and is located in an area classified as Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map.
2. Section 24-0703 of the Environmental Conservation Law requires a permit from the Agency prior to the deposit of any fill in a wetland area in the Adirondack Park.
3. Agency investigation reveals that fill has been deposited in an approximately 53 foot wide right-of-way in a wetland area between lots 1 and 2 on the subject property, as these lots are designated on a survey map dated August 12, 2005, revised July 6, 2006, and provided by Respondent to Agency staff ("Survey Map" attached hereto as Exhibit A). No permit was obtained from the Agency prior to the deposit of this fill.
4. Agency investigation reveals that fill has been deposited in an approximately 20 foot wide right-of-way in a wetland area that crosses lots 2 and 3 on the subject property, as these lots are designated on the survey map. This fill was used to widen an existing road and replace a culvert. No permit was obtained from the Agency prior to the deposit of this fill.
5. Respondent desires to resolve this matter by settlement and agrees to be bound by the terms of this Settlement Agreement as set forth below.

NOW, THEREFORE, THE AGENCY AND RESPONDENT AGREE AS FOLLOWS:

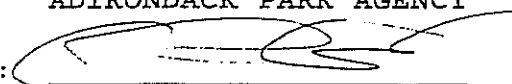
2. By December 1, 2006, Respondent shall restore the wetland areas on the subject property by:

- Removing the fill from the 53 foot wide right-of-way between lots 1 and 2 and from the 20 foot wide right-of-way that crosses lots 2 and 3 as marked by Agency Biologist Mark Rooks during his visit to the subject property on October 2, 2006;
 - Removing all excess fill deposited in the road and marked by Mark Rooks during his visit to the subject property on October 2, 2006. This fill shall be removed so that the driving surface of the road is reduced to 12 feet in width, the slope of the shoulders of the road is 2:1 (run:rise), and the height of the road is not increased;
 - Easing the slope of fill areas next to streams to a minimum of 2:1 (run:rise);
 - Installing silt fence at the toe of the resulting slopes, seeding the area with perennial/annual grass seed mix, and mulching the seeded area with straw.
2. Respondent shall notify Agency Biologist Mark Rooks upon completion of the work required under Paragraph 1 above so that a compliance inspection may be undertaken.
 3. By November 10, 2006, Respondent shall arrange for a date when Respondent's surveyor may meet with Mark Rooks to delineate and survey all wetlands on the subject property.
 4. Respondent, its successors and assigns shall not undertake any new land use or development on the subject parcel, including any subdivision or any additional grading, excavation, or road-building in or near wetlands, without first obtaining an Agency jurisdictional determination and, if required, an Agency permit or variance.
 5. By November 30, 2006, Respondent shall record this settlement in the Clinton County Clerk's Office in the same manner as an Agency permit and shall provide proof of such filing to the Agency.
 6. This matter shall be deemed to be finally resolved upon the full execution of this Settlement Agreement.

Dated: 11/7, 2006
 Ray Brook, New York

ADIRONDACK PARK AGENCY

By:


 Paul Van Cott
 Enforcement Attorney

STATE OF New York)
) SS:
COUNTY OF Essex)

On this 9th day of November in the year 2006, before me, the undersigned, a Notary Public in and for said State personally appeared Paul Van Cott, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Mary L. Reardon
Notary Public

MARY L. REARDON
Notary Public - State of New York
Qualified in Essex County
No. 01RE6114798
Commission Expires Aug. 23, 20 08

AGREEMENT

Respondent agrees to the terms set forth in this Settlement Agreement to resolve the matter of Adirondack Park Agency File E2005-200.

By:

Robert Douglas
Douglas Corporation

STATE OF New York)
) SS:
COUNTY OF Essex)

On this 30th day of October in the year 2006, before me, the undersigned, a Notary Public in and for said State personally appeared Terney Douglas, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Pamela A. Shambo
Notary Public

PAMELA A. SHAMBO
Notary Public, State of New York
No. 01SH6031369
Qualified in Clinton County
Commission Expires Sept. 27, 2007

October 26, 2006 Settlement Agreement



NEW YORK STATE
Adirondack
parkagency

MEMORANDUM

TO: Doug Miller

FROM: Mark Rooks *MR*

DATE: November 20, 2006

RE: W2006-0072, E2005-200, Douglas, Town of Black Brook

I met with Mr. Douglas again today. He requested that I inspect the results of his wetland restoration efforts as required by the signed settlement agreement. Unfortunately, there has been a great deal of misunderstanding or lack of understanding on Mr. Douglas' part. He claims that he did exactly as I requested in our previous meeting of October 2, 2006. It looks to me like he did nothing correctly.

The fill has not been removed from the wetland and the road has not been narrowed where it crosses the wetland. Slopes around the stream have not been reduced to 2:1 and the slope where the road crosses the wetland is either vertical (too steep) or about 4:1 (not steep enough). He put down some grass seed but not over enough area to stabilize the soil. He also put down a small amount of hay (not straw). The silt fence is installed incorrectly and ineffectually, mostly at the tops of the banks instead of the toe of the slopes and not "dug in."

It is unlikely that he will be able to comply with the settlement agreement by December 1, as specified. He apparently is unable to understand what is required and the time is too short to find a competent contractor. I explained again what should be done but I am not confident that he understood.

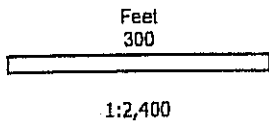
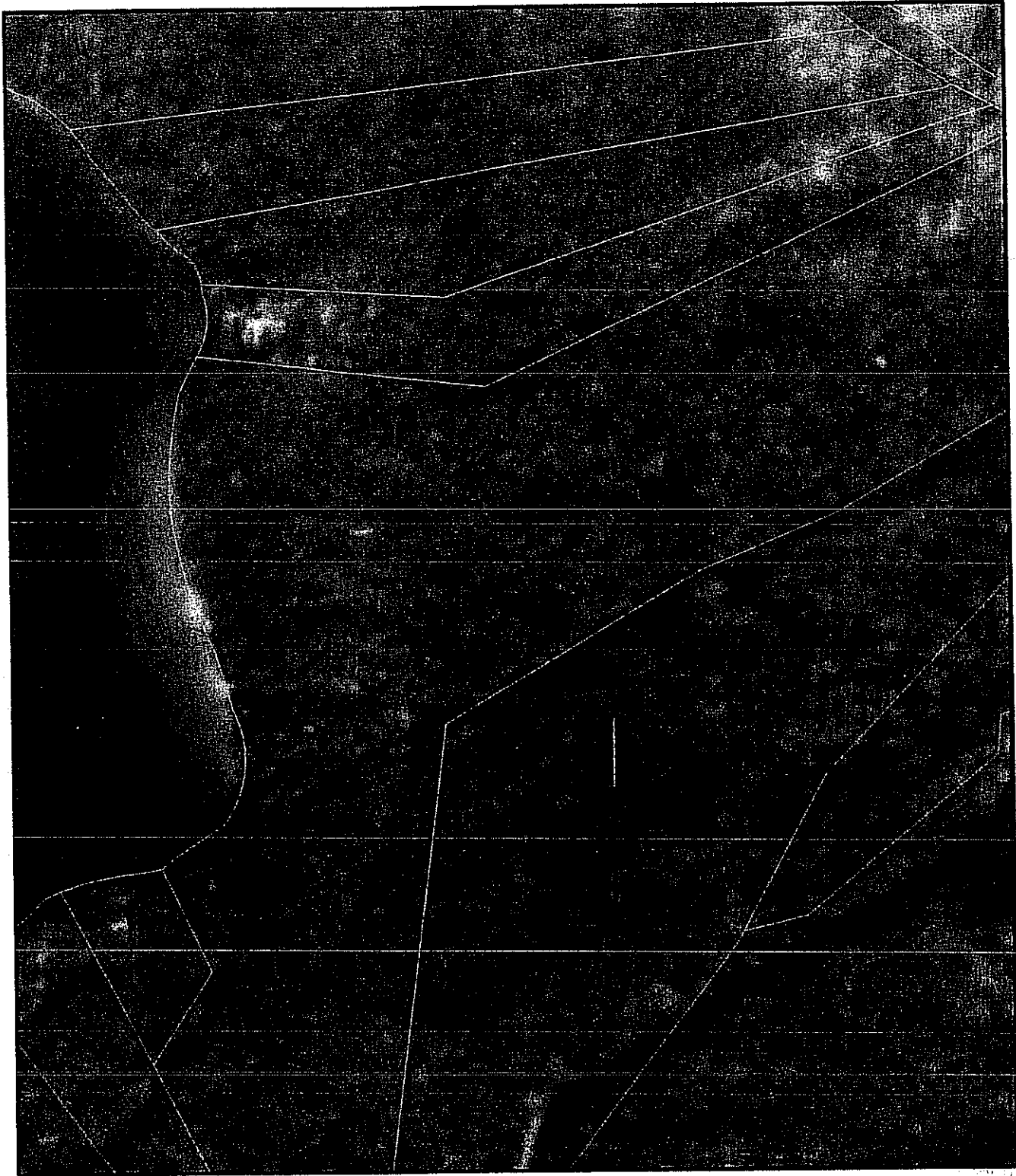
Memorandum to Doug Miller

November 20, 2006

Page 2

If we make another attempt at a different settlement agreement, we should require that he hire an engineer or other design professional to prepare a plan for the road where it crosses the wetland as well as an erosion control plan for the entire excavated area. The road plan should include both plan and elevation views. The erosion control plan should include a grading plan as well as locations for erosion control devices. If we have such a plan there can be no misunderstanding about what a settlement agreement asks for or what I said in the field. The plan should be prepared and meet our approval by March 1, 2007 and the plan should be implemented by June 30, 2007. I will be happy to work with the engineer as he or she is developing the plan.

C: Daniel M. Spada
Paul Van Cott
Sarah Reynolds



1978

 Adirondack
Park Agency

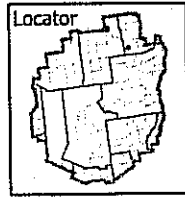
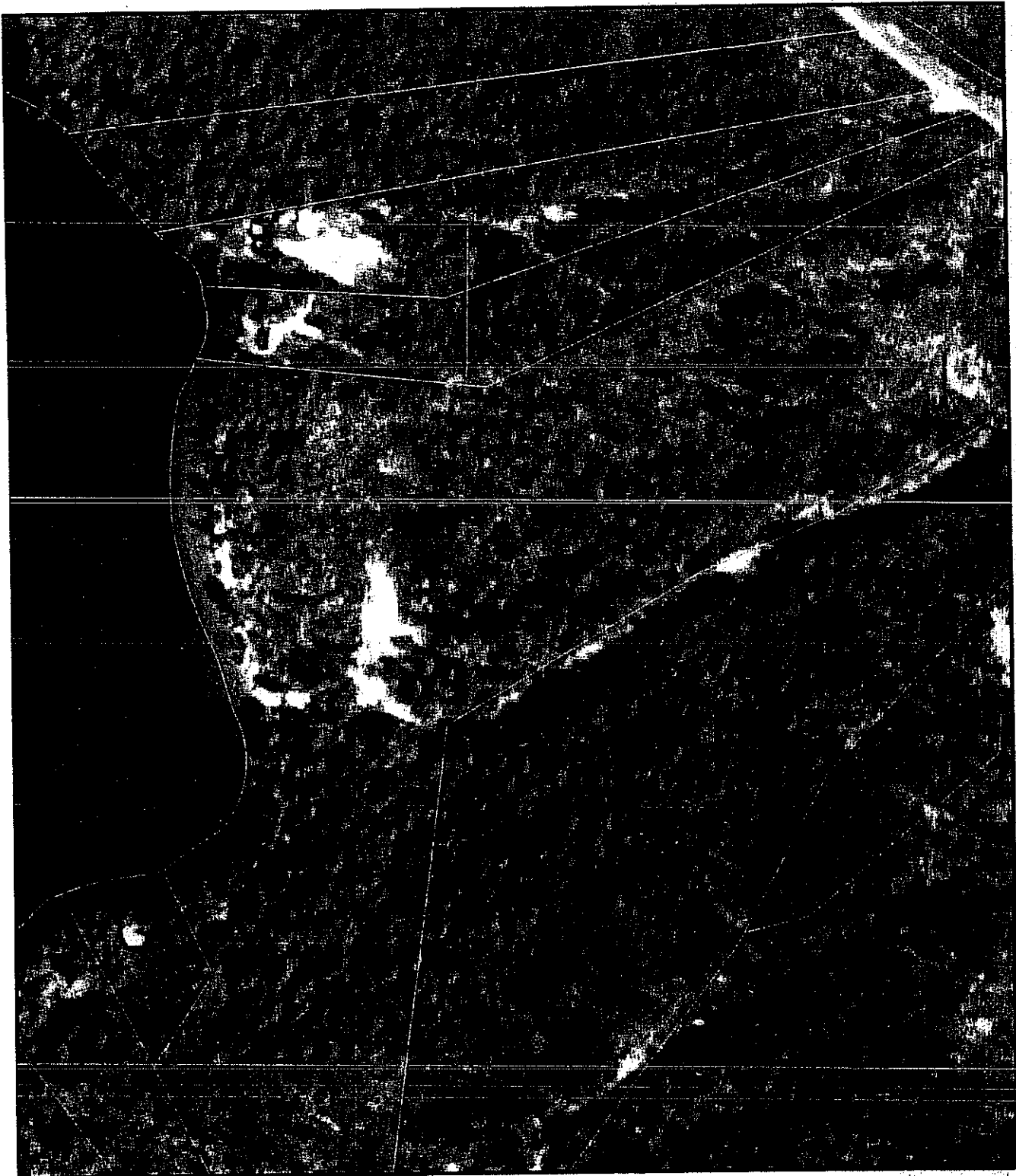


Exhibit F


EXHIBIT F

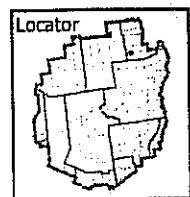
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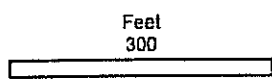
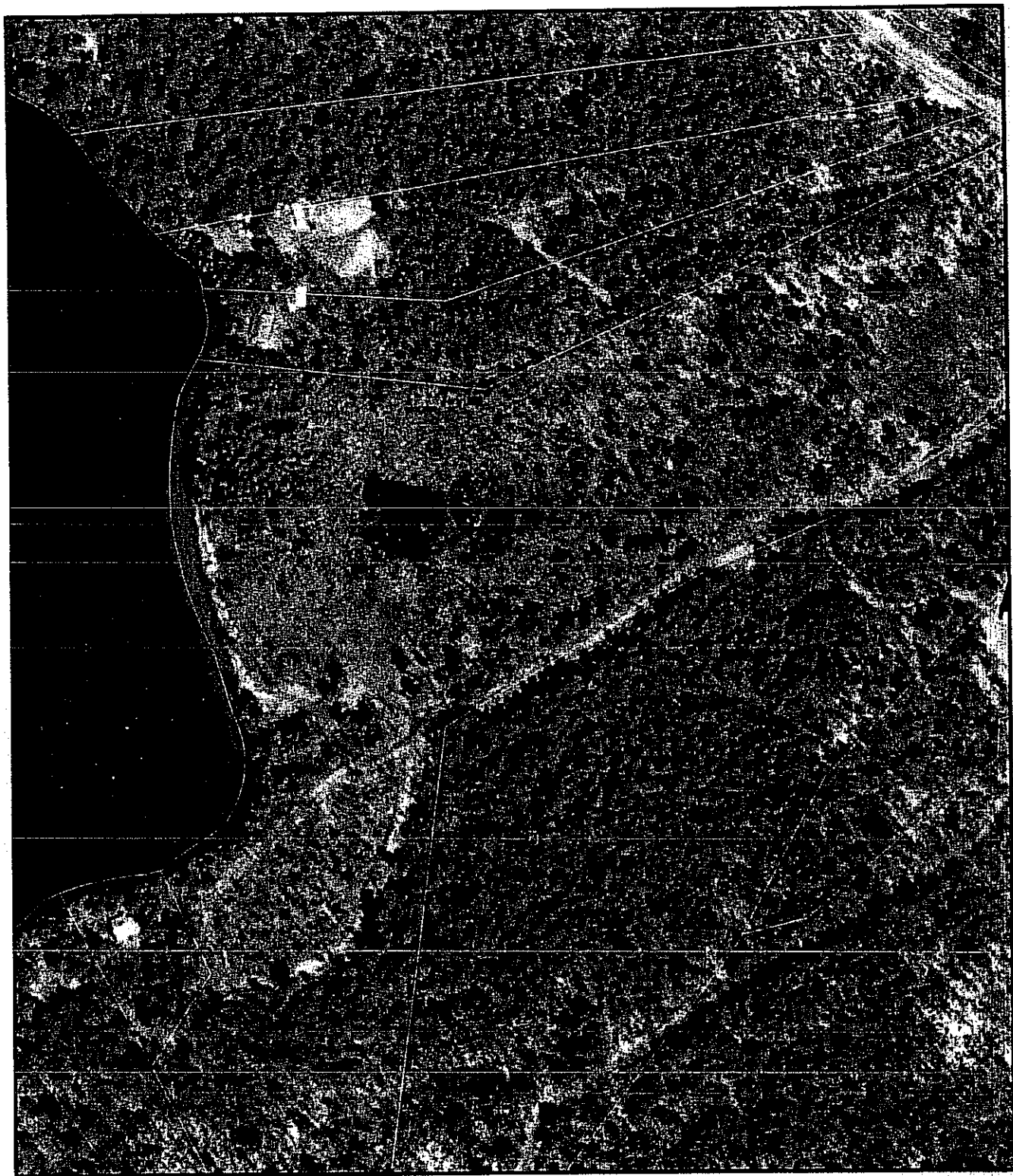


Feet
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1995


 Adirondack
Park Agency

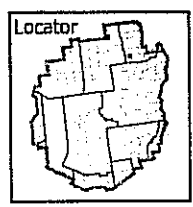


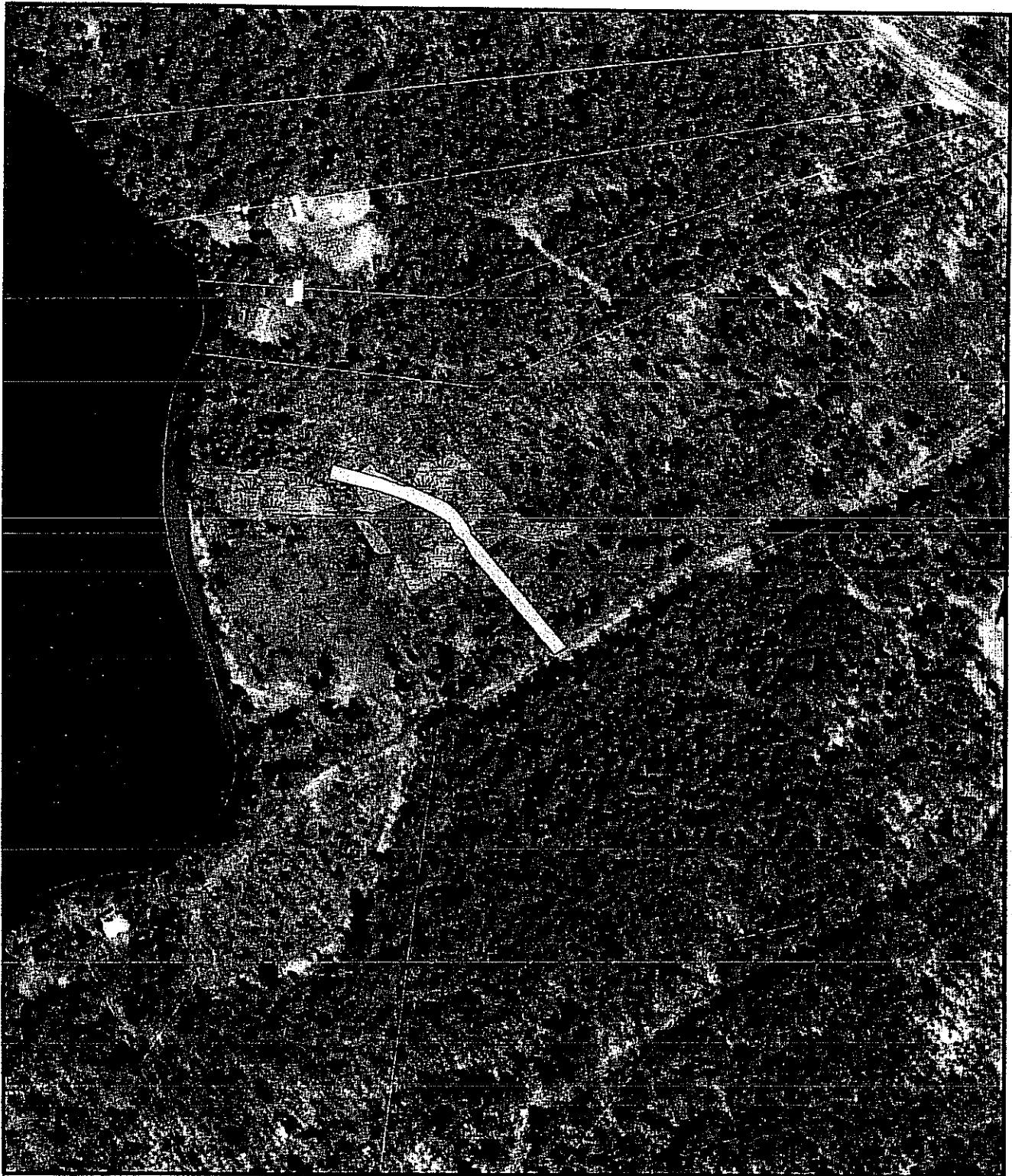


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2003

 Adirondack
Park Agency








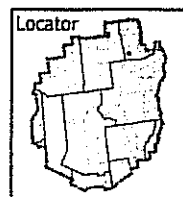
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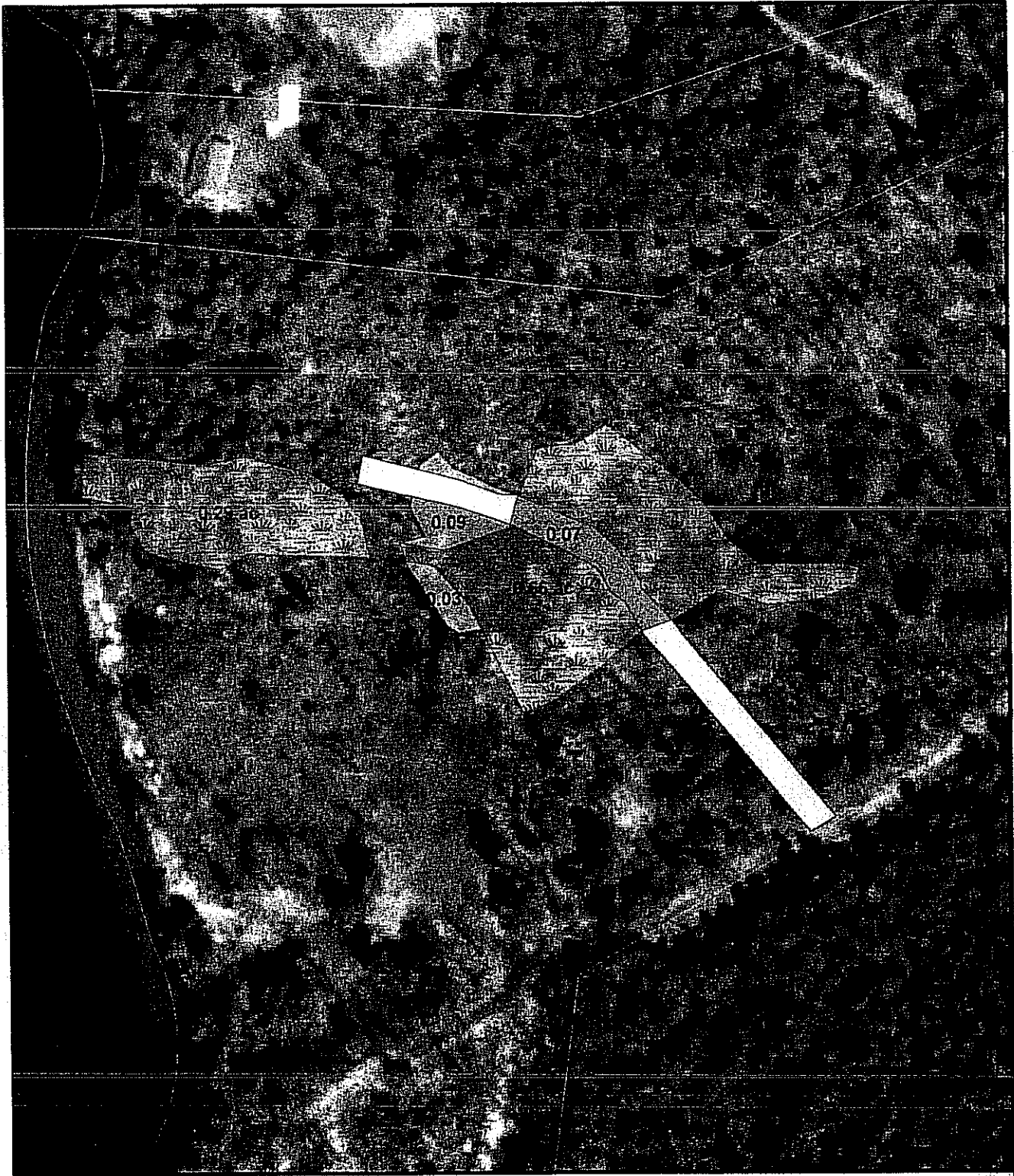
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-  2003 Wetland (filled)
-  2006 Wetland (field delineated)
-  2006 Gravel Road (surveyed)

 Adirondack
Park Agency



Prepared by M. Rooks 5/22/07



Feet
200



1:1,200



2003 Wetland (filled)



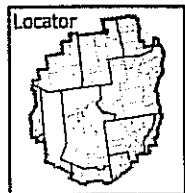
2006 Wetland (field delineated)



2006 Gravel Road (surveyed)



Adirondack
Park Agency



Prepared by M. Rooks 5/22/07



NEW YORK STATE
Adirondack
parkagency

MEMORANDUM

TO: Paul VanCott

FROM: Mark Rooks *MR*

DATE: May 25, 2007

RE: E2005-200, Douglas, Town of Black Brook

As you requested, I performed air photo interpretation to establish if LeRoy Douglas' new road was pre-existing. I am attaching five GIS maps which illustrate the results of the interpretation.

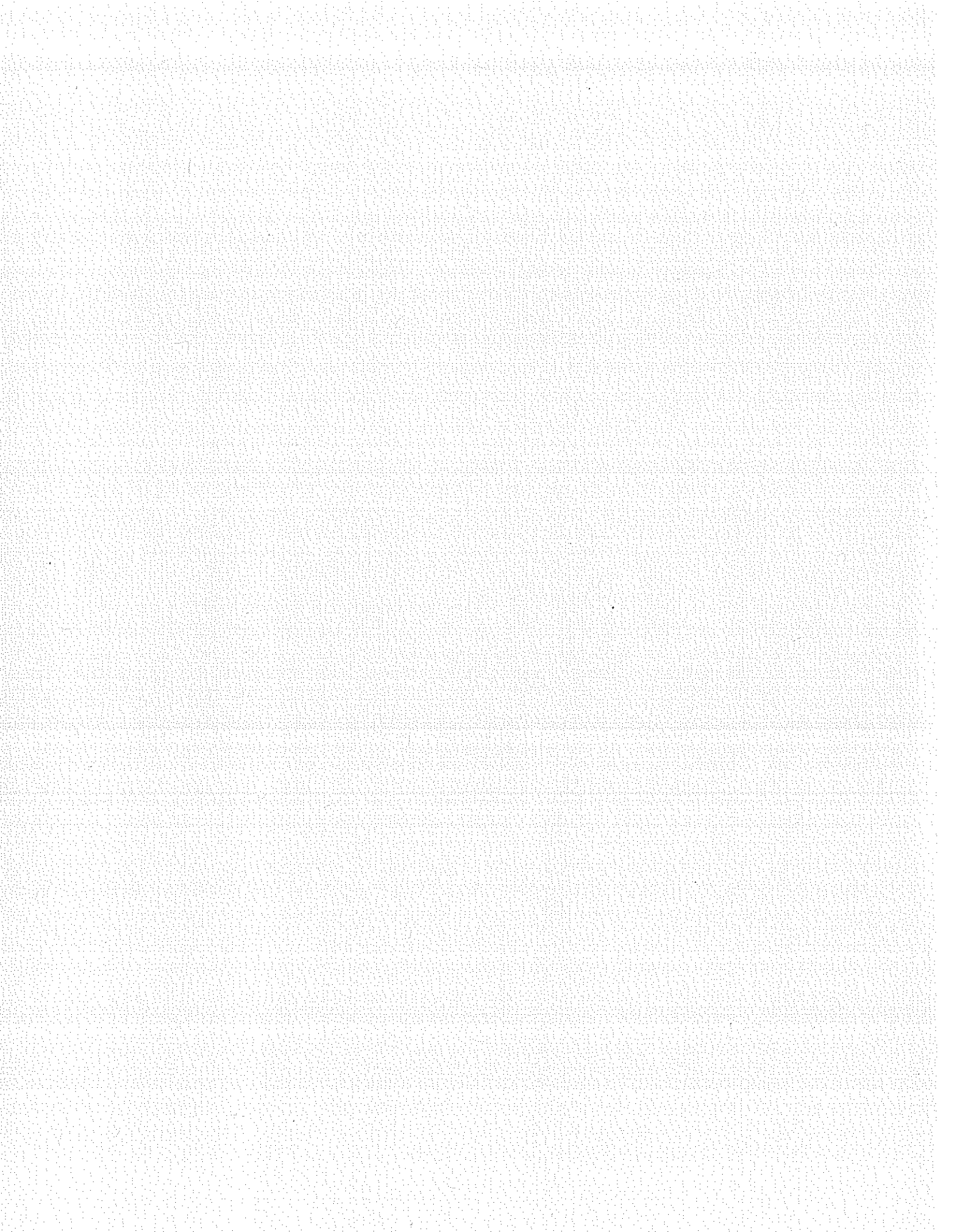
John Martino's 2006 survey map shows the location of the road and the wetland that I delineated in the field. I have brought that data into the GIS project.

The 2003 air photo does not show a road in that location. In other parts of the photo you can see roads, driveways and even skidder ruts. If the road was overgrown it should appear in earlier air photos. A road is not visible in its current location in photos taken in 1968 and 1978. This road was put in between my two site visits of May 18 and October 2, 2006.

Comparison of the wetland shown on John Martino's 2006 survey and my interpretation of the 2003 air photo shows that, in addition to the road through the wetland, 5,227 square feet of wetland was filled. The road fill constitutes 3049 square feet of wetland fill for a total of 8,276 square feet.

C: Daniel M. Spada
Doug Miller

Attachments (5)



STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the alleged violation of
9 NYCRR Part 578 by:

AFFIRMATION

Agency File: E2007-047

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

Respondents.
-----X

STATE OF NEW YORK)
) ss:
COUNTY OF ESSEX)

PAUL VAN COTT, an attorney licensed to practice law in the
courts of the State of New York, affirms under penalty of
perjury:

1. I am an Associate Attorney for the Adirondack Park
Agency (the "Agency") and have served as the Agency's
Enforcement Attorney since 2001. I supervise the
Agency's enforcement program, including a Senior
Attorney and six enforcement officers. In this role,
I am responsible for administrative enforcement of the
Agency's laws and regulations, including in the Town of
Black Brook, Clinton County.
2. I am familiar with the file in this matter and make
this affirmation in support of Agency staff's request
for an order without hearing by the Agency.

3. As provided by 9 NYCRR § 581-4.3, Agency staff initiated this proceeding by serving a Notice of Hearing and Complaint on Respondents attached hereto as Exhibit A. Respondents have not submitted an Answer as required by 9 NYCRR § 581-4.4.
4. I have reviewed past Agency enforcement files involving Respondents, including Agency Files E94-007 and E2003-181. I am also familiar with the circumstances involving Agency staff's September 6, 2007 site visit to Respondents' property. From the Agency's files and my discussions with the former and present enforcement officers involved in those investigations, all of Agency staff's actions were prompted by credible public complaints alleging violations by Respondents on the subject property. Upon information and belief, none of these complaints came from present or former Town of Black employees. Furthermore, based on consistent Agency practice and my discussions with the enforcement officers, in all cases Agency staff conducted their investigations in a professional manner and were at all times respectful to Respondents.

5. From my review of Agency File E2003-181, former enforcement officer Susan Parker spoke with Mr. Douglas by telephone on October 2, 2003. In the course of that conversation, Ms. Parker sought permission to undertake a site visit to the property that is the subject of this proceeding. According to the file, Mr. Douglas advised Ms. Parker to get a warrant or a court order and that he would "shoot anyone who comes on his property".
6. Subsequently, with the assistance of Respondents' attorney, site visits were arranged to investigate and resolve Agency File E2003-181. Through those site visits, in August of 2004 and on July 20, 2005, former Agency forester Brian Grisi documented a shoreline cutting violation on the subject property and Mr. Douglas agreed to plant, and subsequently planted, trees to resolve that violation. During the July 20, 2005 site visit, the Agency's file indicates that Mr. Grisi advised Respondent Leroy Douglas of the presence of wetlands on the subject property.

7. Agency File E94-007 involved an allegation of a shoreline cutting violation. According to notes in the file, during the course of Agency's staff's site visit with Mr. Douglas, a small wetland fill was discovered on the subject property and Mr. Douglas was asked to voluntarily remove the fill. There is no indication that Agency staff ever conducted a follow-up site visit to confirm removal of the fill. There is also no indication that Mr. Douglas was uncooperative.

8. On September 6, 2007, Agency enforcement officer Douglas Miller and Agency biologist Mark Rooks responded to a new complaint of an on-going wetland fill violation (separate from the road and adjacent fill that is the subject of this enforcement action) on the subject property after attempting to contact Mr. Douglas and his attorney by telephone. Shortly after staff arrived at the subject property, Mr. Douglas drove up to meet them. Upon being introduced to Mr. Miller, it is my understanding that Mr. Douglas threatened him with bodily injury and, at one point, poked him in the throat. Mr. Rooks has confirmed these facts in his affidavit. No new wetlands violation was found during this site visit.

9. After this incident, I accompanied Mr. Miller to the State Police's office, where he swore to a complaint alleging the facts as stated above. Subsequently, based on my discussion with Mr. Douglas's attorney, Agency staff agreed to adjourn the criminal proceeding in contemplation of its dismissal so long as Mr. Douglas refrained from further violent behavior.
10. In the seven years that I have worked for the Agency, Agency staff have received several complaints about alleged violations by Respondents on the subject property. It has long been apparent to Agency staff that Mr. Douglas and his use of the subject property are controversial in Black Brook, and that this controversy has led to many of the complaints. For this reason, since 2004 when I assumed responsibility for supervision of the enforcement program, we have carefully evaluated complaints that we have received involving Respondents before even contacting them about an alleged violation. In some cases, we decided that the allegations were not justified and did not pursue them. In our interactions with Mr. Douglas

I have asked staff to make every effort to work cooperatively with him, despite his volatility and frustration over the continuing complaints against him. I am confident that staff have followed this direction. We have also provided Mr. Douglas with jurisdictional advice to help him avoid a violation involving the subdivision of wetlands on the subject property. Despite the September 6, 2007 incident, I am also confident that Agency will continue to make every effort to cooperate with Mr. Douglas in the future.

11. Since discovery of the alleged wetland filling violation in this matter, Respondents have refused to restore the wetland as recommended by Agency staff.

DATED: Ray Brook, New York
January 25, 2008



Paul Van Cott, Esq.

)



NEW YORK STATE
Adirondack
parkagency

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 13, 2007

Leroy Douglas
18 Douglas Lane
Au Sable Forks, New York 12912

The Douglas Corporation
of Silver Lake
18 Douglas Lane
Au Sable Forks, New York 12912

RE: Enforcement File Number: E2007-047

Dear Mr. Douglas:

Please find the attached formal Notice of Hearing and Complaint in the above-referenced matter. The Agency remains willing to continue to discuss settlement of this matter until the day of the scheduled hearing. Short of settlement, it is our view that the hearing process is the most effective way to learn of all the facts and resolve this matter.

I will be representing the Agency in this matter, so please direct your answer to the Notice of Hearing and Complaint, or any other questions you may have, to my attention.

Your cooperation is most appreciated.

Sincerely,

Paul Van Cott
Enforcement Attorney

PVC:mlr

Enclosures

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the alleged violation
of 9 NYCRR Part 578 by:

NOTICE OF HEARING
Agency File: E2007-047

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

Respondents.
-----X

PLEASE TAKE NOTICE THAT pursuant to Article 3 of Title 6 of the State Administrative Procedure Act and 9 NYCRR Part 581, a formal administrative enforcement process has been initiated pursuant to 9 NYCRR Subpart 581-4 to obtain an Agency determination and order with respect to an alleged violation by you of 9 NYCRR Part 578, as more specifically described in the Complaint attached hereto.

PLEASE ALSO TAKE NOTICE THAT within 30 days following the date of this Notice of Hearing and the attached Complaint, you must serve upon the Agency an answer to the Complaint at the address below. Any affirmative defenses, including exemptions to permit requirements, must be raised in the Answer.

PLEASE ALSO TAKE NOTICE THAT motions pursuant to 9 NYCRR § 581-4.9 for an Agency determination and order without a hearing may be made at any time prior to a hearing, and shall be decided by the Agency unless a hearing officer has been assigned.

PLEASE ALSO TAKE NOTICE THAT in the event this matter is not resolved by agreement or through a motion, a hearing will be

convened at the offices of the Adirondack Park Agency (the "Agency") on Route 86 in Ray Brook, Essex County, State of New York, to consider this matter. A hearing officer will set a date for the hearing and will notify all parties thereto of the time, date and place of the hearing.

PLEASE ALSO TAKE NOTICE THAT you may appear at the hearing in person or by counsel; you may authorize a person other than an attorney to speak on your behalf at the hearing so long as you also appear at the hearing; witnesses will testify under oath; a record of the proceeding will be made; you may produce witnesses and evidence in your behalf; you may request issuance of subpoenas to compel attendance of witnesses and production of records relating to this matter; and you may cross-examine witnesses and examine witnesses produced against you.

PLEASE ALSO TAKE NOTICE THAT interpreter services shall be made available to deaf persons, at no charge, pursuant to Section 301 of the State Administrative Procedure Act. Request for interpreter services should be made within a reasonable time before the date of the hearing.

PLEASE ALSO TAKE NOTICE THAT the above hearing location is reasonably accessible to persons with a mobility impairment.

PLEASE ALSO TAKE NOTICE THAT whether or not you appear, the hearing will convene at the stated time and place, and that your non-attendance shall not prevent the Agency from finding you in

violation of 9 NYCRR Part 578, issuing an order requiring restoration and imposing penalties pursuant to ECL § 71-2303 and/or Executive Law § 813, and ordering such other and further relief as may be appropriate and authorized by law.

DATED: Ray Brook, New York
August 13, 2007

ADIRONDACK PARK AGENCY

BY: Mark Sengenberger
Mark Sengenberger
Acting Executive Director
Adirondack Park Agency
P.O. Box 99, Route 86
Ray Brook, New York

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the alleged violation
of 9 NYCRR Part 578 by:

COMPLAINT

Agency File: E2007-047

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE

Respondents.
-----X

The Adirondack Park Agency ("Agency"), by its Acting
Executive Director Mark Sengenberger, complains and alleges as
follows:

Preliminary Statement

1. This complaint is made pursuant to 9 NYCRR Parts 578
and 581 and the Freshwater Wetlands Act, Environmental
Conservation Law Articles 24 ("Wetlands Act") and 71, as well as
Executive Law Sections 809 and 813, alleging a violation by
Respondents. Specifically, Respondents or their agents filled
wetlands on Respondent The Douglas Corporation of Silver Lake's
property in the Town of Black Brook, Clinton County, in violation
of 9 NYCRR Part 578.

2. The Agency seeks injunctive relief requiring
Respondents to remove the fill from the wetland and to restore
the wetland to its original condition. The Agency also seeks
civil penalties for Respondents' violation.

Parties

3. The Agency is a duly constituted agency within the Executive Department of the State of New York, with headquarters in Ray Brook, Essex County, New York.

4. Respondent The Douglas Corporation of Silver Lake owns the subject property, Respondent Leroy Douglas is the chairman or chief executive officer of The Douglas Corporation of Silver Lake, and Respondents or their agents are responsible for the placement of fill in wetlands on the subject property.

Statutory and Regulatory Framework

A. Wetlands Act

5. The Wetlands Act was enacted to implement a public policy "to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoilation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state." ECL § 24-0103.

6. Freshwater wetlands located within the boundaries of the Adirondack Park are subject to the jurisdiction of the Agency, and regulated activities affecting such wetlands cannot be undertaken without an Agency permit. ECL § 24-0801(2).

7. The Agency implements the Wetlands Act in the Adirondack Park through regulations promulgated at 9 NYCRR 578. Pursuant to those regulations, any person who wishes to undertake a "regulated activity" in a wetland must first obtain a wetlands permit from the Agency. 9 NYCRR §578.2(a). "Regulated activities" are defined in the Agency's regulations to include, inter alia:

"any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly" (9 NYCRR § 578.3(n)(1)(i))

8. Any person who violates any provision of the Wetlands Act, or any rule, regulation, order or permit issued pursuant thereto may be ordered to "cease his violation of the [Wetlands] act and . . . restore the affected freshwater wetland to its condition prior to the violation . . ." ECL § 71-2303(1). In addition, the violator is subject to liability for a civil penalty not to exceed \$3,000 for every such violation.

B. Adirondack Park Agency Act

9. The Adirondack Park Agency Act ("APA Act") was enacted with the basic purpose of insuring "optimum overall conservation, protection, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park." Executive Law § 801.

10. To implement the basic purpose of the APA Act, any person who wishes to undertake any of the "Class A regional projects" identified by the Act must first obtain an Agency permit. Executive Law § 809(2)(a). "Class A regional projects" in Low Intensity Use areas are defined by the APA Act to include all land uses and development involving wetlands. Executive Law § 810(1)(c)(1).

11. "Land use or development" is defined by the APA Act to mean "any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of the use of land or a structure." Executive Law § 812(28).

12. Prior to issuing a permit for a Class A regional project on Low Intensity Use lands within the Adirondack Park, the Agency must, in addition to reviewing the permit application in accordance with the policies and standards set forth in the Adirondack Park Agency Act, determine that the project "would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park... taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project," Executive Law § 809(10)(e).

13. The Agency implements its authority to regulate land use or development in wetlands pursuant to regulations set forth in 9 NYCRR Part 578.

14. Any person who violates any provision of the Adirondack Park Agency Act or any rule or regulation promulgated thereunder by the Adirondack Park Agency is subject to liability for a civil penalty not to exceed \$500 for each day or part thereof during which the violation continues. Executive Law § 813(1).

Factual Allegations

15. The subject property, owned by Respondent The Douglas Corporation of Silver Lake, is described as Tax Map Parcel 308-2-1 in the Town of Black Brook, Clinton County and is designated Low Intensity Use.

16. Since 2003, Respondents have filled wetlands subject to the Agency's jurisdiction on the subject property without first obtaining a permit from the Agency.

17. The wetlands that Respondents have filled lie under portions of a gravel road for a proposed subdivision on the subject property and areas adjacent to the northwestern portion of such gravel road.

18. By Settlement Agreement E2005-200, Respondent The Douglas Corporation of Silver Lake acknowledged some wetland filling related to construction of the road claiming, however, that the road was pre-existing.

19. Under the terms of Settlement Agreement E2005-200, executed on November 9, 2006, Respondent The Douglas Corporation

of Silver Lake agreed, among other things, to narrow the road by removing fill from the wetland.

20. The Douglas Corporation of Silver Lake failed to complete the required restoration work properly and did not respond to Agency staff requests for the hiring of a qualified contractor to do the work.

21. While preparing for enforcement of the terms of Settlement Agreement E2005-200, Agency staff undertook additional investigation and discovered that Respondents or their agents had constructed the entire gravel road, including all of the portions of the road through wetlands, since 2003. Furthermore, staff discovered that Respondents or their agents had placed fill in wetlands adjacent to the northwestern portion of the gravel road since 2003.

Cause of Action

22. 9 NYCRR §§ 578.2(a) and 578.3(n)(1)(iii) require an Agency permit prior to any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly, into freshwater wetlands.

23. Respondents violated 9 NYCRR §§ 578.2(a) and 578.3(n)(1)(iii), on their own or through their agent, by filling freshwater wetlands on the subject property without an Agency permit.

WHEREFORE, Agency staff respectfully request that the Agency issue a determination and order pursuant to 9 NYCRR 581-4.16, Environmental Conservation Law § 71-2303, and Executive Law § 813 as follows:

A. Finding Respondents in violation of 9 NYCRR §§ 578.2(a) and 578.3(n) (1) (iii);

B. Requiring Respondents to undertake and complete remediation and restoration of all wetlands filled on the subject property since 2003 by a date certain and in accordance with a remediation and restoration plan, developed by a wetlands professional, to be approved by the Agency.

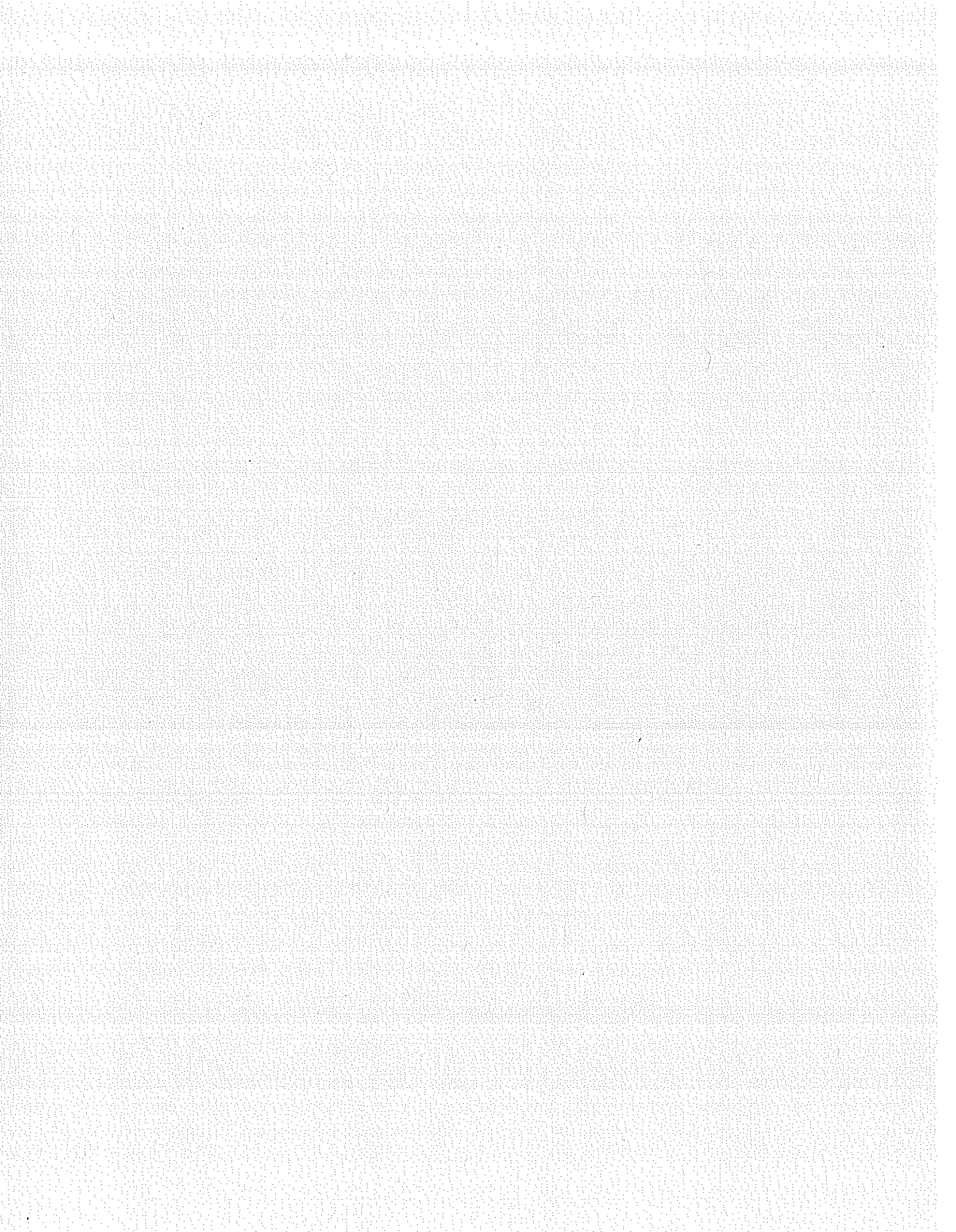
C. Imposing civil penalties against each of the Respondents for their violation pursuant to ECL 71-2303(1) of \$3,000 and pursuant to Executive Law § 813 of up to \$500 per day since at least October 2, 2006; and

D. Such other and further relief as the Agency deems just and proper.

Dated: Ray Brook, New York
August 13, 2007

ADIRONDACK PARK AGENCY

BY: Mark Sengenberger
Mark Sengenberger
Acting Executive Director
Adirondack Park Agency
P.O. Box 99, Route 86
Ray Brook, New York 12977





NEW YORK STATE
Adirondack
parkagency

-----X
In the matter of the alleged violation of
9 NYCRR Part 578 by:

Agency File: E2007-047

LEROY DOUGLAS and
THE DOUGLAS CORPORATION OF SILVER LAKE,
Respondents.

-----X
MEMORANDUM OF LAW IN SUPPORT OF AGENCY STAFF'S
MOTION FOR AN AGENCY ORDER WITHOUT HEARING
PURSUANT TO 9 NYCRR 581-4.16

Respectfully submitted by:

Paul Van Cott, Associate Attorney
Adirondack Park Agency Staff

January 25, 2008

PRELIMINARY STATEMENT

This administrative enforcement proceeding is brought by Adirondack Park Agency ("Agency") staff to address a violation by Respondents of the Freshwater Wetlands Act. Respondents have illegally filled over 8,000 square feet of wetlands on their property in the Town of Black Brook, Clinton County.

Based on Agency staff's Notice of Hearing and Complaint, and the affidavits and exhibits attached to Agency staff's Motion for an Order without Hearing, there are no material facts in dispute in this matter. Accordingly, Agency staff seek an order:

A. Finding Respondents in violation of 9 NYCRR §§ 578.2(a) and 578.3(n)(1)(i);

B. Requiring Respondents to undertake and complete restoration of all wetlands filled on the subject property since 2003 by a date certain and in accordance with a restoration plan, developed by a wetlands professional, to be approved by the Agency.

C. Imposing civil penalties against each of the Respondents for their violation pursuant to ECL 71-2303(1) of \$3,000 and pursuant to Executive Law § 813 of up to \$500 per day since at least October 26, 2006; and

D. Such other and further relief as the Agency deems just and proper.

FACTS

History of the Violation

The subject property, owned by Respondent The Douglas Corporation of Silver Lake, is described as Tax Map Parcel 308-2-1 in the Town of Black Brook, Clinton County and is designated Low Intensity Use. Affidavit of Mark Rooks, dated January 24, 2008 ("Rooks"), ¶ 3.

Since 2003, Respondents have filled wetlands subject to the Agency's jurisdiction on the subject property without first obtaining a permit from the Agency. Id., ¶¶ 10, 11. The wetlands that Respondents have filled lie under portions of a gravel road for a proposed subdivision on the subject property and areas adjacent to the northwestern portion of the gravel road. Id.

By Settlement Agreement E2005-200, Respondent The Douglas Corporation of Silver Lake acknowledged some wetland filling related to construction of the road claiming, however, that the road itself was pre-existing. Id., ¶ 6, Exhibit B. Under the terms of Settlement Agreement E2005-200, executed on November 9, 2006, Respondent The Douglas Corporation of Silver Lake agreed,

among other things, to narrow the road by removing fill from the wetland. Id., ¶ 7, Exhibit C.

The Douglas Corporation of Silver Lake failed to complete the required restoration work properly and did not respond to Agency staff requests for the hiring of a qualified contractor to do the work. Id., ¶¶ 8,9, Exhibit D. While preparing for enforcement of the terms of Settlement Agreement E2005-200, Agency staff undertook additional investigation based on new information and discovered that Respondents or their agents had constructed the entire gravel road, including all of the portions of the road through wetlands, since 2003. Id., ¶¶ 10, 11. Furthermore, staff discovered that Respondents or their agents had placed fill in wetlands adjacent to the northwestern portion of the gravel road since 2003. Id. Approximately 3,049 square feet of wetlands was filled to construct the road and an additional 5,227 square feet of wetland was filled adjacent to the northwestern portion of the gravel road. Id., ¶ 11.

Impacts to Wetlands

The wetland is part of a coniferous swamp wetland which drains into Silver Lake. Id., ¶ 4. A portion of the wetland has free exchange of surface water with Silver Lake. Id. The functions and values associated with this

wetland include flood mitigation and spring run-off retention, water quality improvement, run-off water quality amelioration and important wildlife habitat. Id.

Pursuant to 9 NYCRR §§ 578.5(k) and 578.6, Agency staff biologist Mark Rooks determined this wetland to have a value rating of "4." Id., ¶ 5. A value rating of "4" means that the wetland should be afforded protection from all regulated activities, including filling, except in the case where the proposed activity is the only alternative which reasonably can accomplish the applicant's objectives (9 NYCRR § 578.10(a)(4)). Id. In all cases such regulated activities require a permit. Id.

The unlawful activities undertaken by Respondents have impaired the functions and values of the wetland on Respondents' property by destroying the wetland under the fill. Id., ¶ 12. If Respondents had sought a permit for the fill, Agency staff would have recommended against its issuance. Id., ¶ 14. Agency permits for wetland impacts are issued subject to a hierarchical sequence of criteria summarized by the terms avoid, minimize, mitigate. Id. Wetland impacts must first be avoided. Id. If they can't be avoided, the impact must be minimized. Id. Any permitted wetland loss must be mitigated for by construction of wetlands to offset the loss. Id.

It appears that that the road that Respondents constructed through the wetland is not the only alternative that can serve the landowner's needs. Id. There is an existing wetland crossing which accesses the northern portions of the lot. Id., ¶ 13. As such, there are alternatives that would have avoided the wetland impacts. Id., ¶ 14. Furthermore, even if no alternative existed, the road width has not been minimized and no compensatory mitigation has occurred. Id.

PROCEDURAL BASIS FOR MOTION

This enforcement proceeding is brought pursuant to 9 NYCRR Subpart 581-4. As provided by 9 NYCRR § 581-4.3, Agency staff initiated this proceeding by serving a Notice of Hearing and Complaint on Respondents. Affirmation of Paul Van Cott, dated January 25, 2008 ("Van Cott"), ¶ 3, Exhibit A. Respondents have not submitted an Answer as required by 9 NYCRR § 581-4.4. Id.

9 NYCRR § 581-4.9 authorizes motions in proceedings brought pursuant to 9 NYCRR Subpart 581-4. Agency staff advised Respondents in the Notice of Hearing that a motion for an order without a hearing might be sought if no material issues of fact existed. Id., Exhibit A. Based on the Complaint, supplemented by the Agency staff affidavits and their Exhibits accompanying this motion, there are no

material facts in dispute in this matter that require a hearing. Accordingly, Agency staff request an order by the Agency in this matter pursuant to 9 NYCRR § 581-4.16.

ARGUMENT

Respondents are violating 9 NYCRR Part 578.

Respondents are violating 9 NYCRR Part 578 by filling wetlands on the subject property without first obtaining an Agency permit. 9 NYCRR §§ 578.2(a) and 578.3(n)(1)(i) require an Agency permit prior to any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly, into freshwater wetlands.

Respondents violated NYCRR §§ 578.2(a) and 578.3(n)(1)(i), on their own or through their agent, by filling freshwater wetlands on the subject property without an Agency permit. Rooks, ¶¶ 10, 11.

Proposed Injunctive Relief

In order to restore the wetland's functions and values, it is necessary for Respondents to remove the wetland fill and to revegetate the wetland. *Id.*, ¶ 15. Given Respondents' failure to comply with Settlement Agreement E2005-200, the work should be designed and undertaken by qualified wetland restoration professionals to ensure that is undertaken properly. *Id.*

A remediation plan should be prepared by the Respondent's consultant and should contain the following elements:

- Grading plan
- Planting plan
- Invasive species control

Monitoring and reporting schedule. Id., ¶ 16.

Proposed Penalty

Agency staff recommend that the Enforcement Committee determine an appropriate penalty in this matter based on consideration of the following relevant factors from the Enforcement Committee's General Penalty Guidelines:

1. Statutory Maximum:

The starting point for determining an appropriate penalty requires an understanding of the maximum penalty allowed by law. Taking into account the fact that Executive Law § 813 allows the Agency to determine a penalty of up to \$500 for each day that a violation of the Executive Law continues and Environmental Conservation Law § 71-2303 authorizes penalties of up to \$3,000 for each violation of the Freshwater Wetlands Act, the following table summarizes the potential penalty liability of Respondents for the apparent violation set forth in the Complaint:

Violation of 9 NYCRR Part 578	Beginning Date	Ending Date	Total Days	Maximum Per Day Penalty	Total Maximum Penalty
Pursuant to Executive Law § 813	10/2/06	1/10/08	514	\$500	\$257,000
Pursuant to ECL § 71-2303	10/2/06	1/10/08	N/A	N/A	\$3,000

Based upon these calculations, as of the date of the Agency's consideration of this matter, the maximum statutory penalty that could be imposed upon Respondents for their violation is \$260,000.

2. Potential Harm and Actual Damage

This factor focuses on the extent to which the violator's conduct resulted in or could potentially result in harm to the environment or human health. The penalty should be proportional to potential or actual harm. Here, the Respondents illegally filled approximately 8,276 square feet of wetlands, effectively destroying the filled wetlands and its ability to provide functions and values including flood mitigation and spring run-off retention, water quality improvement, run-off water quality amelioration and important wildlife habitat. Rooks, ¶¶ 4, 10-12.

The longer a violation continues without remediation, the greater is the potential or actual harm to the affected natural resource. For example, the loss of the functions and values of the wetland is cumulative for every year that it remains filled. Here, Respondents filled the wetland sometime prior to October 2, 2006. Rooks, ¶ 6.

3. Culpability

The violator's culpability is relevant in assessing the amount of a penalty, and a higher penalty is appropriate proportionate to the culpability of the violator. In assessing the degree of culpability, staff recommend consideration of the following: (i) how much control Respondents had over the events constituting the violation; and (ii) the foreseeability of the violation.

In this case, Respondents undertook the illegal wetland filling on the subject property themselves. Rooks, ¶¶ 3,6,11. Since the wetland they filled is a coniferous swamp with open water interspersed with wetland vegetation, it should have been obvious to Respondents that they were undertaking work in a wetland that might require an Agency permit. Id., ¶ 4. In addition, Agency staff had previously advised Respondents concerning the presence of wetlands on the subject property. Van Cott, ¶ 5.

4. History of Non-Compliance

A history of violations subsequent to Agency enforcement actions is usually evidence that the violator has not been deterred by the previous enforcement response. Unless violations are caused by factors entirely out of the control of the violator, penalties in subsequent enforcement actions should generally be more severe.

Agency File E2003-181 involved a shoreline cutting violation by Respondents on the subject property. Van Cott, ¶ 5. This violation was resolved in 2005 by Respondents planting trees along the shoreline. Id., ¶ 5. In the course of investigating Agency File E94-007, which also alleged a shoreline cutting violation by Respondents, Agency staff discovered a small wetland fill on the subject property. Id., ¶ 6. Agency staff asked Respondents to remove the fill, but no follow-up was done to ensure compliance. Id., ¶ 6. On September 6, 2007, Agency staff responded to a complaint that Respondents were undertaking new wetland filling on the subject property (separate from the filling that is the subject of this proceeding). Id., ¶ 8; Rooks, ¶ 17. No new violation was found in the course of that site visit. Van Cott, ¶ 8.

In all of these cases, Agency staff have responded to complaints from the public and conducted their investigations in a professional and respectful manner. Id, ¶ 4. Respondent Leroy Douglas's response to Agency staff's efforts to investigate and resolve Agency File E2003-181 and the September 6, 2007 complaint included direct and indirect threats of violence and actual physical assault on Agency staff. Van Cott, ¶¶ 5,8. This conduct suggests that Respondents may not have been deterred from future violations by past enforcement interactions with the Agency.

5. Violator Cooperation

The cooperation of the violator in remedying the violation and the self-reporting of a violation may be mitigating factors in determining an appropriate penalty. for Agency staff to consider in determining an appropriate penalty. Those factors do not apply in this case.

During staff's October 2, 2006 investigation of Agency File E2005-200, Respondents acknowledged some limited wetland filling but claimed that the road through the wetland was pre-existing. Rooks, ¶ 6. Since Agency staff's discovery of the full extent of the illegal wetland filling (Id., ¶ 10), Respondents have refused to remedy the alleged violations. Van Cott, ¶ 11.

6. Extent of Compliance Required

In this case, full compliance will be achieved if Respondents are required to restore the wetland as recommended by Agency staff. If Respondents are required to hire wetland restoration professionals to undertake the work, the costs will be substantial. It is appropriate for the Committee to take this cost to Respondents into consideration in determining an appropriate penalty.

7. Economic Benefit

If Respondents are required to restore the wetland as recommended by Agency staff, it will deprive Respondents of any economic benefit that they have gained or may gain related to their illegal filling of the wetland on the subject property.

8. Importance to the Regulatory Scheme

This factor focuses on the importance of the violated requirement in achieving the goal of the underlying statute. This factor also takes into account the likelihood that the activity would have been approved had a permit, amended permit or variance been sought.

The Freshwater Wetlands Act was enacted to implement a public policy "to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoilation and destruction of freshwater wetlands, and to

regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state." ECL § 24-0103.

The Adirondack Park Agency Act ("APA Act") was enacted with the basic purpose of insuring "optimum overall conservation, protection, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park." Executive Law § 801.

To implement the basic purpose of the APA Act, any person who wishes to undertake any of the "Class A regional projects" identified by the Act must first obtain an Agency permit. Executive Law § 809(2)(a). "Class A regional projects" in Low Intensity Use areas are defined by the APA Act to include all land uses and development involving wetlands. Executive Law § 810(1)(c)(1).

Prior to issuing a permit for a Class A regional project on Low Intensity Use lands within the Adirondack Park, the Agency must, in addition to reviewing the permit application in accordance with the policies and standards set forth in the Adirondack Park Agency Act, determine that the project "would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife,

historic, recreational or open space resources of the park... taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project," Executive Law § 809(10)(e).

In this case, Respondents' illegal wetland filling has resulted in the very impacts that the Freshwater Wetlands Act and the APA Act, through 9 NYCRR Part 578, seek to avoid. The functions and values associated with this wetland include flood mitigation and spring run-off retention, water quality improvement, run-off water quality amelioration and important wildlife habitat. Rooks, ¶ 4. The unlawful activities undertaken by Respondents have impaired these functions and values by destroying the wetland under the fill. Id., ¶ 12. If Respondents had sought a permit for the fill, Agency staff would have recommended against its issuance since there are alternatives that would have avoided the wetland impacts. Id., ¶ 14.

CONCLUSION

Based on Agency staff's Complaint and the affidavits and exhibits in support of Agency staff's Motion for an Order without Hearing, there are no material facts in dispute in this matter. Accordingly, Agency staff request an order by the Agency pursuant to 9 NYCRR § 581-4.16 that

the apparent violation alleged in the Notice of Apparent Violation has occurred and is continuing to occur. Agency staff further request that the Agency order appropriate injunctive relief and penalties against Respondents as authorized by 9 NYCRR § 581-4.16 and consistent with Agency staff's recommendations herein.

