

## **Title 1: General Provisions and Public Policy**

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### **Declaration of policy.**

It is declared to be the public policy of the state to preserve, protect and conserve forests in the Catskill, Delaware and Croton Watersheds and the benefits derived therefrom, to prevent the despoliation and destruction of those forests, and to regulate development to secure the natural benefits of those forests, consistent with the general welfare and beneficial economic, social and agricultural development of the state.

### **Statement of findings.**

1. The forests in the Catskill, Delaware and Croton Watersheds of the state of New York cover 75% of the watershed (960,000 acres). An estimated 75% of watershed forests are owned by approximately 20,000 private owners. Approximately 615,000 of those acres are not in forestry management or otherwise protected.
2. The watershed forests are invaluable resources for flood protection, wildlife habitat, open space and drinking water protection, and air quality protection.
3. Considerable acreage of the watershed forests has been lost despoiled or impaired by unregulated cutting, building, pollution or other acts inconsistent with the natural uses of such areas.
4. Excessive erosion resulting from tree loss can lead to upland nutrient loss, lowered water quality and degraded aquatic habitat as a result of increased turbidity and eutrophication.
5. Forest conservation is a matter of state concern since the quality of the drinking water supply of nine million New Yorkers is closely tied to the integrity of the watershed forests.
6. Watershed forests overlap many localities. While some local governments individually have enacted steep slope or other ordinances that marginally protect some forests, effective watershed forest management requires uniformity in laws to eliminate inconsistent or conflicting local laws. One locality alone lacks adequate jurisdiction to protect itself from misuse or neglect of adjacent localities.
7. Loss of watershed forests deprives New Yorkers of some or all of the many and multiple benefits to be derived therefrom, to wit:
  - (a) Flood and storm control by the hydrologic absorption and storage capacity of forests;
  - (b) Wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species such as the bald eagle and osprey;
  - (c) Protection of subsurface water resources and provision for valuable watersheds and recharging ground water supplies;

- (d) Recreation by providing areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses;
- (e) Pollution treatment and removal by serving as biological and chemical oxidation filters;
- (f) Erosion control by serving as filtering basins, preventing transport of silt and organic matter and protecting downgradient water channels from erosion;
- (g) Education and scientific research by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources; and
- (h) Sources of nutrients that foster forest regrowth and nursery grounds and sanctuaries for endangered, threatened and rare flora and fauna.
- (i) Absorption of greenhouse gases and reduction in global warming.

### **Definitions.**

**DISTURBANCE or ACTIVITY:** The removal of vegetation, excavation, regrading, filling, removal of soil, rock or retaining structures in areas of steep slope, or any combination thereof, whether by manual labor, machine, or explosive, and shall include the conditions resulting from any excavation or fill. The condition of disturbance will be deemed to continue until the area of disturbance is revegetated and/or permanently stabilized.

**FOREST:** The entire assemblage of organisms (trees, shrubs, herbs, bacteria, fungi, and animals) together with their environmental substrate (the surrounding air, soil, water, organic debris, and rocks), interacting inside a defined boundary, with a minimum area of land of 0.05-1.0 hectares with tree crown cover of more than 10-30 per cent with trees with the potential to reach a minimum height of 2-5 metres at maturity in situ.<sup>1</sup>

**FRAGMENTATION:** The conversion of areas of contiguous native forest to other types of vegetation and /or land use leaving remnant patches of forest that vary in size and isolation.

**HEADWATER STREAM:** Headwater streams are the small swales, creeks and streams that are the origins of most rivers. These streams join together to form larger streams and rivers or run directly into larger streams and lakes. Headwater streams generally have a watershed of less than one square mile.

**HIGHLY ERODIBLE SOILS:** An erodibility factor (K) greater than 0.35 would indicate a highly erodible soil. Erodibility factors (K-factors) can be obtained from local Natural Resources Conservation Service offices.

**PUBLIC NEED:** Public need can be shown by the development of a necessary public institution such as a school or hospital.

**STEEP SLOPE:** Any geographical area proposed for disturbance, whether on a single lot or not, having a topographical gradient of 15% or greater (ratio of vertical distance to horizontal distance), with a minimum area of 200 square feet and a minimum horizontal dimension of 10 feet.

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<sup>1</sup> UNFCCC, 2001 UN Framework Convention for Climate Change.

SUB-WATERSHED: The topographic perimeter of the catchment area of a stream tributary.

**Permit Application.**

1. There shall be no cutting of trees
  - on steep slopes,
  - within 200 feet of any headwater streams, main streams and rivers, wetlands and reservoirs,
  - on highly erodible soils,
  - greater than 10% of the number on any 1 acre site,
  - that cause fragmentation of adjoining forested areas,
  - that negatively affect endangered or threatened species, or
  - that reduce carbon sequestration by more than 5%.
  - In any sub-watershed, up to 10% of the trees may be cut provided trees are replanted within the same sub-watershed by a 2:1 ratio.
  
2. Any person desiring to disturb such forested areas including any form of cutting, excavation, removal of trees, either directly or indirectly; erecting any structures or roads shall file an application to obtain a permit with the Department of Environmental Conservation (department). Review of the application shall be made by the commissioner of the department in accordance with applicable law and such rules hereunder as may be adopted by the commissioner. Such application shall include a detailed description of the proposed activity and a map showing the area of watershed forest to be disturbed, with the location of the proposed activity thereon. The commissioner shall cause notice of such application to be mailed to all local governments where the proposed activity or any part of it is located.
  
3. The department shall hold a public hearing on the application in the Town where the disturbance is proposed where the proposed tree clearing exceeds one acre. All owners of record of the adjacent land and the local governments where the proposed activity is located shall be notified by certified mail of the hearing not less than fifteen days prior to the date set for such hearing. The department shall cause notice of such hearing to be published in two newspapers having a general circulation in the area where the affected forest is located. All applications and maps and documents relating thereto shall be open for public inspection at the office of the clerk of the local government in which the watershed forest is situated, on the municipality's website, and in the local library.
  
4. In addition to the provisions of article 70 [Uniform Procedures] of this chapter and rules and regulations adopted thereunder, the rules and regulations adopted by the department pursuant to this article to implement its processing of permit applications, renewals, modifications, suspensions and revocations shall govern permit administration by the department under this article, provided however, that after the department has given notice to an applicant that an application is complete, or the application is deemed complete, the applicant shall cause a notice of application to be published in a newspaper of general circulation in the affected area as provided in rules and regulations of the department.

5. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the policies and provisions of this article. To the greatest extent practicable, such hearing shall be incorporated with any public hearing required by the town, village, general city, general municipal or environmental conservation laws in connection with approvals or permits otherwise required before commencement of regulated activities on lands containing such watershed forests.

6. No person shall conduct, or cause to be conducted, any activity for which a permit is required under this article on any watershed forest unless he has obtained a permit from the commissioner under this section.

### **Granting permits.**

1. In granting, denying or limiting any permit, the commissioner shall consider the effect of the proposed activity with reference to the public health and welfare and protection or enhancement of the several functions of the watershed forests and the benefits derived therefrom which are set forth in this article. The effects of the proposed activity shall be considered by the department.

2. Duly filed notice in writing that the state or any agency or subdivision thereof is in the process of acquiring any watershed forests by negotiation or condemnation shall be sufficient basis for denial of any permit.

3. No permit shall be granted under this section unless it is shown by clear and convincing evidence that

- The activity is consistent with the purposes of this Article.
- Will not result in any further phosphorus or nitrogen deposition downstream using a predevelopment phosphorus runoff level of 0.05 kgs/ha/yr.
- The only exception shall be to satisfy a clear public need.

4. In granting a permit, the commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state or local government, as the case may be, compliance with the conditions and limitations set forth in the permit. The local government may suspend or revoke a permit if it finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the activity as set forth in the application. The local government may suspend the permit if the applicant fails to comply with the terms and conditions set forth in the application. Department suspension and revocation proceedings shall be governed by the provisions of article 70 of this chapter and rules and regulations adopted thereunder and by the provisions of rules and regulations adopted by the department as provided in this article.

5. The local government or the commissioner shall state upon the record findings and reasons for all actions taken pursuant to this section.

6. Review of the determination of the commissioner shall be, within a period of thirty days after the filing thereof, pursuant to article seventy-eight of the civil practice law and

rules. Any owner of the forest affected and any resident or citizen of the local government shall be deemed to have the requisite standing to seek review.

7. In the event that the court finds the action reviewed constitutes a taking without just compensation, and the land so regulated merits protection under this article, the court may, at the election of the commissioner, either (i) set aside the order or (ii) require the commissioner to proceed under the condemnation law to acquire the watershed forest or such less than fee rights therein as have been taken.

### **Exemptions**

1. Any forested areas included in the Watershed Forestry program administered by the Watershed Advisory Council are exempt from this law.
2. This law does not apply to emergency actions required to protect health and safety.

### **Fiscal Implications**

Unknown

The law shall take effect immediately.