



Empire State Forest Products Association

The people behind New York's healthy forests and quality wood products
www.esfpa.org

47 Van Alstyne Drive / Rensselaer, New York 12144 / p: 518-463-1297 / f: 518-426-9502

Memorandum of Opposition

A 3841/S 2831

Chairperson
Jennifer DeFrancesco
B & B Forest Products, LTD

Vice Chair
VACANT

Treasurer
Michael W. Hanlon
Cotton-Hanlon, Inc.

Secretary
Christopher Truso
Farm Credit East

Immediate Past Chair –
Michael J. McLarty
Finch Paper, LLC

Executive Director
John K. Bartow, Jr.

Honorable Deborah Glick
Member of Assembly
621 LOB
Albany, NY 12248

Honorable Neil Breslin
Senator
430 Capital
Albany, NY 12247

February 22, 2023

Sarah R. Bogdanovitch
Natural Resources Consultant

Sarah Boggess
ReEnergy Holdings LLC

Pat Buff
B&B Lumber Co.

Jeff Denkenberger
Molpus Woodlands Group, LLC.

Renè H. Gernain, Ph.D.
SUNY ESF

Thomas E. Gerow, CF
Wagner Lumber Company

Doug Handy
A&H Forest Management, Inc.

Damon Hartman
Prentiss & Carlisle

Craig Jochum
Craig Jochum Logging

Susan Keister
Susan Keister, LLC

Elizabeth Lesnikoski
Burlington Electric

Larry Richards
Richards Logging, LLC

Sean Ross
Lyme Timber Company

Jack Santamour
LandVest, Inc.

Tim Stocker
Sylvamo

Tony Woods
Lignetics of New England

Kevin Brown
W.J. Cox Associates, Inc

John Zemanick
Gutchess Lumber Company

Dear Assemblywoman Glick and Senator Breslin:

The Empire State Forest Products Association has a number of concerns with **A. 3841/S. 2831** relating to preparation of forest management plans subject to the approval of the Department of Environmental Conservation; and, to amend the Executive Law, in relation to increasing the jurisdiction of the Adirondack Park Agency (APA) over clear-cutting. With the number of concerns and the regulatory mission creep proposed in this bill, the Empire State Forest Products Association cannot support this legislation as drafted.

The Empire State Forest Products Association (ESFPA) represents over 350 member businesses, industries and landowners engaged in forest resource production and stewardship of New York's 19 million acres of forest. In total, \$22.9 billion dollars in annual industry economic output and nearly 100,000 jobs are attributable to operations of various industries within the forest related sectors. There are over 200,000 private forest landowners who also depend on sound forest and timber management and production to help them keep their forests as forests.

These bills would require an Adirondack Park Agency (APA) permit for clear-cutting on any tract of land which is five (5) acres or more (current threshold is 25 acres) and is located within the Adirondack Park. The bill would require the applicant of a clear-cutting permit to submit a forest management plan, which would include an environmental assessment and other requirements consistent with the practice of sustainable forestry. The bill would also direct the Department of Environmental Conservation (DEC) to require a forest management plan based on the same principles for commercial timber harvesting on lands on which the State has purchased a conservation easement. Finally, the bill would remove the APA's ability to establish a general permit for clear-cutting as well as the board's ability to delegate clear-cutting permits to the Executive Director.

Counsel
Dennis J. Phillips, Esq.
McPhillips, Fitzgerald & Cullum

For over 20 years ESFPA and its member organizations have worked with the State of New York on the stewardship and sustainable management of over 902,000 acres of “conservation easements”, including over 780,000 acres of “working forest conservation easements” within the Adirondack Park making New York a leader in forest conservation and stewardship. This legislation ignores the significant contribution that these land managers have accomplished, the billions of dollars of private investment, the natural resource benefits to all New Yorkers provided by this unique partnership, and the economic stability which this partnership has provided to the forest products industry, Adirondack communities, and quality of life within the Adirondack Park and elsewhere. Conservation easements have become an invaluable component of New York’s Open Space Conservation Plan (last updated in 2016) and in many instances are a preferred open space conservation tool to fee acquisition when the desire is to ensure both environmental and economic benefits to New Yorkers.

This legislation goes contrary to discussions we have had with several stakeholders within and outside the Adirondack Park regarding sustainable forest management and how New York can encourage better stewardship of private forest lands. In conversations with involved agencies, landowner organizations and a number of environmental organizations we have found considerable surprise in seeing this proposal put forth and concern as to how effective the proposals would be in sustaining the future of both our forest ecosystems and our forest-based economy. It appears that a small subset of interests has garnered support for this proposal and many important stakeholders have been left out of the process.

These bills are also targeted 100% at ESFPA land management businesses/associations; of the 31 permits issued by the APA since 2013, 29 of them were applied for (and lawfully granted to) our Members. Over 95% of acres subject to these permits, 9,541 acres are owned by our Members. These permits are for ownerships totaling over 550,000 acres, permits only cover 2% of the managed lands. This is not only an affront on the stewardship provided by these private forest landowners, but on our Association which has worked diligently with New York State and many stakeholders on high quality forest stewardship and supporting a forest economy which supports families and communities throughout the State.

ESFPA has a number of very technical and legal concerns of this legislation, and we would be happy to detail these with you, other members of the New York State Legislature and staff, but for now we base our opposition on seven foundational and broader concerns in reaction to the rationale provided in the bill memorandum supporting A. 3841/S. 2831. Any one of which warrants this legislation to not be acted upon in its present form.

First, the premise of this legislation is that “clear-cutting” is inherently bad and not scientifically rationalized. There are very real, science based factors which lead to any forest management prescription including clear-cutting. Clear-cutting is a scientifically acceptable silvicultural treatment for forests in the Northeast. If done properly this management treatment has several benefits for long term forest health, the ecosystem and wildlife. There is no inherent reason to regulate this forest treatment versus any other treatment if being applied as a part of sustainable forest management and not being used in the pretext of exploitive land development.

Second, the bill memorandum is factually inaccurate in stating that “the total acreage of clear-cutting that has been approved surpasses 5,000 acres.” The 31 permits approved by the APA for these parcels account for 9,541 acres and attached is an acreage breakdown for every permit our Members have received. As can be seen, of the 9,541 acres of permitted acreage only 997 acres were actually clear-cut. Thinning and over-story removal of stands are far more frequent practices account for the largest amount of acreage and in all instances forests are fully regenerating. Such an egregious miss-representation of facts ignores the value of sustainable forest practices, while inciting fear among ill-informed interests which can only lead to poor public policy.

Third, the bill memorandum states – “While the approved permits follow current Best Management Practices, the Agency currently has no framework or regulatory mechanism for reviewing the cumulative impacts that clear-cuts have on Park aesthetics, wildlife, and water quality.” Of the 31 permits issued to our Members, 30 are managed under either the internationally recognized Forest Stewardship Council (FSC) or Sustainable Forest Initiative (SFI) third party certification standards. The management planning framework and harvest strategy within both FSC and SFI include cumulative impact assessments and are part of the forest management plans provided to and filed with the APA and the DEC. The one other permitted property has been sustainably managing its property for over 100 years and is often cited as a model of forest management on private lands within the Park.

Fourth, the supporting memorandum purports that – “In 2012, the Adirondack Park Agency proposed a clear-cut general permit, which would have allowed the Agency to approve clear-cuts without a discussion in a public forum at the monthly Agency meeting. That effort was rescinded, following public outcry.” A multi stakeholder group headed by the APA made up of landowners, foresters, state and local government officials, environmental groups, and ESFPA was formed in 2012 and worked together for multiple years to find a solution that would support sustainable forest management. This discussion was tabled after Lyme Timber (applicant of 26 of the referenced permits) offered to go through the process of obtaining permits as a way to help educate everyone involved. Lyme Timber, as well as others legally seeking permits, have been very transparent, hosted multiple tours of their property pre and post-harvests, and continue to offer to do so. The degree of transparency and engagement of stakeholders is unprecedented for most any project within the Park.

Fifth, the memorandum alleges that – “Now, the Adirondack Park Agency delegates clear-cutting permit approvals to the Agency's Executive Director, meaning these permits do not need to be considered at the monthly public meeting.” The APA has at times has delegated approvals to the Director and at times had them presented to the full board at monthly meetings. The public comment period is the same regardless. Other than at the first few permit reviews by the Agency in 2013-14, we are not aware of any substantive public comment expressing concerns since the first couple permits were applied for.

Sixth, according to the memo, “What is most concerning about this emerging clear-cutting trend, is that all but one of the clear-cut permits have been approved on lands in which New York State owns a Conservation Easement, purchased in order to provide the benefits of climate change mitigation and resiliency, clean water, and public recreation.” These concerns are exactly why the fee owners and forest managers are managing our forest in this manner. Landowners working forest conservation easements are FSC and SFI certified. The easements and these certifications require landowners to implement landscape level planning including active management to deal with species, age class, and wildlife habitat diversity. These certification programs require a comprehensive assessment of the forest and the surrounding landscape. The New York State Wildlife Action plan also considers landscape level concerns and was the foundation of management plans’ goal of creating 5-10% young forest across ownership of many of these lands. What is most concerning is the utter lack of understanding this legislation purports regarding the sustainable forest management that this combination of easements and private forest land ownership provides.

Finally, there are a number of scientific and silviculture practice reasons why this legislation should not go forward as presented and at this time. Of particular note is that the bill does not help to define “sustainable forestry” or describe what would be required for a “forest management plan and environmental assessment and other items necessary for sustainable forestry”. Such an unbridled delegation of authority is tantamount to legislative delegation to administrative agencies. In addition, limiting the intent and described scope of this legislation to “clear-cuts” is likely to generate consequences of regulatory avoidance which will far outweigh any perceived gains in the management of private forest lands as has been witnessed in every northeastern state

which has attempted to regulate clear-cuts. As noted above, we would welcome the opportunity to present these and other technical and scientific reasons to you or your staff at any convenient time or location.

For the above reasons, the Empire State Forest Products Association cannot support this legislation.

cc: Senate Environmental Conservation Committee Members
Assembly Environmental Conservation Committee Members

For More Information Contact:

John K. Bartow, Jr.
Executive Director
Empire State Forest Products Association
47 VanAlstyne Drive
Rensselaer, NY 12144
Tel (518)463-1297
Cell (518) 573-1441
jbartow@esfpa.org

APA Harvest Permit Tracking 2023, includes permits from ownerships totaling well over 550,000 acres, permits cover less than 2% of the managed acres

Harvest Plan Name	Tract	Thinning	Acres by Treatment Type							Total	Permit Number	
			Shelterwood establishment	Overstory Removal	Liberation	Salvage	Clearcut	Seed Tree	Reserve			
1 Birch Creek OSR	Big Moose	-	-	42							42	2013-239
2 Haymeadow Pond Salvage	Altamont West	150	-	233		259					642	2014-100
3 East Charley Pond 2015	Robinwood			128				112			240	2014-222
4 Plateau Timber	Yorkshire			470							470	2015-124
5 Beartown Road	Luzerne	61	33	20				6			120	2015-130
6 Miami River Flats	Perkins Clearing							42			42	2015-146
7 Mulleville Pond South	Corinth	67	55					133			255	2015-181
8 Black Ridge Road	Colton_Piercefield	31	28	408				75	7		549	2015-28
9 Carriage Road Timber Sale	NIMO			459							459	2015-76
10 Jessup River Bridge	Perkins Clearing		212								212	2015-82
11 Cherry Pickings	John Brown			53							65	2015-87
12 Combs Brook	Northern Tract	44	118	90						12	252	2016-0132
13 Jessup River Road Shelterwoods	Perkins Clearing		51								51	2016-109
14 Potash Mtn Spur	Perkins Clearing		145	17							162	2016-126
15 Doe Pond	Big Moose			419		50					469	2016-137
16 Pelkey	Black Brook	136		44				115			295	2016-186
17 Mullan's Road Red Pine	Kushquaga			192							192	2016-37
18 Mt. Gilligan	Iron Ore	229	32	70				97			428	2016-65
19 Bear Heaven	Robinwood					446					446	2016-82
20 Mountain Spring Road	Iron Ore	209	66	91							366	2017-0070
21 Little Diamond Pond	Big Moose			260							260	2017-0133
22 Gordon Creek Clearcut	Gordons Creek							140			140	2018-0086
23 Easy Street 2019	Altamont East	180		463							643	2018-0153
24 Ball Diamond	Farrell Farm			132							132	2019-0065
25 MSR_CC	Iron Ore	41						58			99	2019-0123
26 Camp 10	Perkins Clearing	134		509							643	2019-0196
27 Greenfield Clearing	Farrell Farm		17	88		34					139	2020-0075
28 Whiskey River Hedgehog	Colton_Piercefield			430							430	2020-0196
29 Bart's Birch Berries	Corinth			255				149			404	2021-0089
30 Molly Burrs B	Iron Ore							70			70	2021-0286
31 Mud Lake OSR	Perkins Clearing	103		721							824	2022-0163
TOTAL ACRES TREATED		1,385	757	5,594	530	259	997	7	12		9,541	
% of total by treatment		14.5%	7.9%	58.6%	5.6%	2.7%	10.4%	0.1%	0.1%		9,541	