

Lake George Park Commission  
6 NYCRR Subpart 646-5

DESCRIPTION OF THE SUBJECT, PURPOSE AND SUBSTANCE OF THE RULE

The Lake George Park Commission (“Commission”) is directed and empowered by the Legislature to adopt rules and regulations for the preparation of Stormwater Management Plans and Stormwater Regulatory Programs pursuant to Environmental Conservation Law section 43-0112 as amended by Chapter 617 of the Laws of 1987. The adopted rules, contained in 6 NYCRR Subpart 646-4.2 through 646-4.18 regulate Stormwater Management Plans and Stormwater Regulatory Programs for Lake George Park (“Park”). The Commission now proposes adoption of 6 NYCRR Subpart 646-5, which would establish protected stream corridors along designated water courses that are tributary to Lake George for the purpose of protecting the water quality and environmental characteristics of those tributaries and the Lake.

Section 646-5 sets forth the general purpose and intent of the regulations. It provides that the purpose of the regulations is to establish permit requirements and standards for protection of stream corridors within the Park; to preserve water quality of Lake George and its tributaries; to protect the riparian and aquatic ecosystems of streams within the Park; and to provide for the environmentally sound use of the Park’s land resources.

Section 646-5 utilizes definitions consistent with other areas of Commission regulation at 6 NYCRR 645-2 and 646-4.4, and the regulations at 646-5 introduce new terms and definitions which are to be used in applying the regulations, including, among others, designated stream corridor, stream, and high water mark. Designated stream corridor is defined as the stream bed and the area 35 feet from the high water mark (“HWM”) on each side. Stream means a AA-special perennial stream designated or mapped by the Department.

Section 646-5.3 sets forth the prohibitions contained within the regulations. The regulations prohibit any person from undertaking development, land disturbance or land clearing in a designated stream corridor without first receiving a permit. Further, no person shall disturb the bed or banks of any stream without first receiving a permit and no person shall discharge,

throw, or abandon any foul, noxious or deleterious substance into a stream or designated stream corridor. Finally, no owner of real property located within the Park shall maintain a condition that results in the erosion of soil into any stream or water body.

Section 646-5.4 sets forth the permit requirement exemptions. The permit requirements do not apply to emergency actions necessary for public health, safety, or welfare or the prevention of damage to private property upon proper notice to the Commission. An exemption is also provided to any project that has prior approval, projects located entirely outside the land drainage basin, and for maintenance of structures, utility rights-of-ways, impervious areas and landscaped areas existing on the effective date which do not increase the development footprint or require disturbance to the stream bed. An exemption is also provided for the removal of storm damaged trees, construction of a fence and agricultural activities determined to be in accordance with exemptions of stormwater management regulations at 646-4.6.

Section 646-5.5 contains the provisions relating to silviculture activity. The prohibition against the undertaking of development, land disturbance or land clearing shall not apply to silviculture activity provided that a notice of intent to harvest timber checklist is completed by the property owner, provided to the Commission fifteen days in advance of starting the land disturbance and posted conspicuously at the access to the property. Silviculture activity is not exempted from permit requirements if it involves construction of a stream crossing, or if it results in a wood road, skid trail, or log landing in a designated stream corridor. Nor is silviculture exempt if it is in non-compliance with section 646-5.7, which restricts the removal of any vegetation within 6' of a stream and the removal of vegetation greater than one inch in diameter at 4.5 feet above ground within 35' of a stream, except that a contiguous clear cut opening may be created within 6' and 35' of a stream provided the area does not exceed 30% of the stream length on a site or a maximum of 75 linear feet, whichever is less. The harvesting must be completed in accordance with the New York State Forestry Best Management Practices for Water Quality, which is expressly incorporated into the regulations.

Section 646-5.5 also provides that upon the Commission's determination that the scope of the silviculture activity proposed or undertaken under a permit exemption constitutes development or poses a threat to the natural resources of the Park, the property owner shall be notified that a permit is required under the regulations. The failure to obtain a permit after such notice and a reasonable time period to comply will constitute a violation. Further, upon the Commission's determination that harvesting has occurred or is occurring in a manner not in accordance with the Best Management Practices, notice shall be given to the property owner giving a reasonable time period to undertake specific corrective action. Failure to undertake the specific corrective action necessary to protect water quality may result in a violation of the regulations, as well.

Section 646-5.6 provides that the Minor and Major project classifications established in the Commission stormwater regulations at 646-4 apply to any project requiring a permit under the stream corridor regulations. A minor project involves the disturbance of less than 15,000 square feet of land and a two, three or four lot subdivision where land disturbance for the subdivision road and on each individual lot is limited to less than 15,000 square feet.

Section 646-5.7 sets forth the standards for the protection of designated stream corridors. This section restricts all development, land disturbance, and land clearing such that no vegetation may be removed within 6' of a stream and no vegetation greater than one inch in diameter at 4.5 feet above ground may be removed within 35' of a stream, except that a contiguous clear cut opening may be created within 6' and 35' of a stream provided the area does not exceed 30% of the stream length on a site or a maximum of 75 linear feet, whichever is less. The stream corridor protections also limit the creation of new impervious area to 100 square feet in size, and limit the creation of new porous pavement (ie. porous pavers) to 400 square feet in size. Section 646-5.7 also recognizes the potential for existing development within stream corridors, and clarifies that this development may be maintained in perpetuity, however these areas are to be considered in aggregate with any proposed development such that legally existing non-compliance shall not be exacerbated.

Section 646-5.7 further provides that prior to the issuance of a permit, the Commission shall ascertain the probable effect on the water quality of the stream, the Lake, and the natural resources of the Park. A permit shall be denied upon a determination that a proposed activity will endanger the health, safety or welfare of the public or lead to unnecessary, uncontrolled or undue impacts to water quality, to the natural resources of the Park or to the physical or ecological integrity of a designated stream corridor.

Section 646-5.8 contains the criteria for stream crossings and stream bed disturbances. Stream crossing, channelization, or piping is allowed only for utility crossings, logging roads, public roads, approved private roads and driveways to access private real property. Separate road and utility crossings shall not be approved when consolidation of the proposed crossings is feasible and when necessary, the preferred methodology for utility establishment shall be by directional boring under the stream bed. Crossings shall be limited to one per site per stream. Any culvert or arch shall be used so as to maintain the natural course of the bed or stream and must be sized and designed in accordance with standard design practices. All stream crossings shall be designed to safely pass the fifty-year peak storm event and may require additional design features to prevent a hazard to down stream property. Stream crossings shall not impound water during the ten-year storm event or result in a barrier to fish passage. Any stream crossing structure shall be designed with a minimum width of one and one-fourth times the width of the stream bed. Culverts shall be embedded twenty percent along their entire length. Any stream bed disturbance shall promote the natural shape, slope, and substrate of the stream, and shall be limited to the minimum disturbance necessary. Disturbance for driveways and roads shall be limited to a maximum width of twenty feet and thirty feet, respectively. Authorized stream crossings for driveways and roads are exempt from the standards at 646-5.7(a)(1-3) limiting vegetation removal and the creation of new impervious area. Crossings that convey wastewater shall be depicted on a certified survey filed with the County Clerk in the county where the

property is located. No permit shall be issued unless the Commission determines the activity is reasonable and necessary, will not endanger the health, safety or welfare of the public and will not cause damage to downstream properties or the natural resources of the Park.

Section 646-5.9 provides that project plans shall be required to include information determined reasonably necessary for the Commission to complete its review and shall generally include plan views of proposed and existing buildings and impervious areas, grading plans, temporary erosion and sedimentation controls, limits of clearing, areas of selective cutting, location of trees to be removed, soil tests, slopes, landscape and plantings and buffer areas to be protected, and the designated stream corridors on the subdivision plats submitted for approval. The Commission may require that an approved subdivision plat, survey or permit be filed with the county clerk and/or the designated stream corridor be protected by deed reference.

Section 646-5.10 sets forth provisions for the administration of the regulations. A variance to any standard shall be processed in accordance with standards provided in Commission stormwater regulations. The fee for stream permits shall be consistent with the established fees for minor and major stormwater projects. When a project requires a permit pursuant to both the stream corridor and stormwater management regulations, a single application form, fee, and permit process shall be applied. The Commission may enter into agreements with municipalities for administration of the designated stream corridor management programs but shall not limit the Commission from taking enforcement action. The Commission may also enter into agreements with the Department of Environmental Conservation, the Adirondack Park Agency, and county soil and water conservation districts for administration.

Section 646-5.10 further establishes that the Commission may issue general permits to highway departments, conservation districts or other entities to authorize a number of similar projects.