

A new Subpart 646-5 is added to read:

SUBPART 646-5
Article A
Stream Corridor Management Regulations for the Lake George Park

(Statutory Authority: Environmental Conservation Law 43-0112(5).)

Sec.

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Section 646-5.1 Purpose and Intent.

The purpose of this Subpart is to establish permit requirements and standards for the protection of stream corridors within the Lake George Park; to preserve the water quality of Lake George and its tributaries; to protect the riparian and aquatic ecosystems of streams within the Lake George Park; and to provide for the environmentally sound use of the Lake George Park's land resources.

Section 646-5.2 Definitions.

(a) Terms used in this Article shall have the meaning set forth in 6 NYCRR 645-2 and 6 NYCRR 646-4.4 except the following terms, as used in this Subpart, shall mean:

(1) *Designated stream corridor* means the stream bed and the area extending thirty-five (35) feet from the high water mark on each side of a stream.

(2) *Existing development* means buildings, structures, impervious areas, landscaped areas, utilities, and accessory structures present on the effective date of this Subpart.

(3) *High Water Mark (HWM) of a stream* means a line along the banks of a stream that is the approximate seasonal peak water level as indicated by the cut of the bank and the demarcation between terrestrial and aquatic vegetation. For the purpose of determining the high water mark, ponds of one acre or less within the stream shall be included.

(4) *Landscaped area* means an area of vegetation which has been actively maintained as a lawn, garden, hedge, or planting bed.

(5) *Stream* means a AA-special perennial stream designated or mapped by the Department.

(6) *Stream bed* means the flow area of a stream at and below the high-water mark of a stream.

Section 646-5.3 Prohibitions.

(a) No person shall undertake development, land disturbance, or land clearing in a designated stream corridor without first receiving a permit pursuant to this Subpart.

(b) No person shall disturb the stream bed of any stream without first receiving a permit pursuant to this Subpart.

(c) No person shall discharge, throw, or abandon any foul, noxious or deleterious substance into a stream or designated stream corridor.

(d) No person shall fail to conform to any permit issued pursuant to this Subpart.

(e) No person or owner of real property located within the Lake George Park shall create or maintain a condition on such property, which due to a human disturbance of land or vegetative cover, or soil, results in the erosion of soil into any water body or designated stream corridor. Such condition shall be a violation of this Article with an additional violation for each day the condition continues.

Section 646-5.4 Exemptions.

(a) The permit requirements in 646-5.3 shall not apply to any of the following:

(1) Emergency actions necessary to protect the public health, safety or welfare or to prevent damage to private property for which notice is provided to the Commission within 72 hours after the emergency action.

(2) Any project that received required approvals prior to the effective date of this Subpart.

(3) Projects located entirely outside the Lake George watershed.

- (4) Maintenance of structures, utility rights-of-way, impervious areas and landscaped areas existing on the effective date of this Subpart, which do not increase the footprint of existing development, do not involve stream crossings, and do not require disturbance to the stream bed.
- (5) Removal of storm damaged trees that are a hazard to people or buildings.
- (6) Construction of a fence.
- (7) Agricultural and silviculture activities exempted by Section 646-4.6 and 646-5.5 of this Part, respectively. Note, though permit requirements are waived, any activity in a stream corridor must comply with all design standards of 646-5.7 and 646-5.8, except as noted in 646-5.5 below.
- (8) Any activities that conform with the standards of 646-5.8 to the maximum extent practicable, and for which a permit or authorization has been issued by the Department pursuant to the processes, procedures, and standards set forth in 6 NYCRR 608 shall be exempt from 646-5.3(b) above."

Section 646-5.5 Provisions Relating to Silviculture Activity.

- (a) The permit requirements in 646-5.3 shall not apply to silviculture activity provided all of the following are met:
 - (1) the project qualifies for exemption from stormwater regulations at 646-4.6, and the property owner, their agents or assigns, provides a completed *notice of intent to harvest timber checklist* to the Commission a minimum of fifteen (15) days in advance of starting land disturbance or vegetation removal, and posts a copy of the *notice of intent to harvest timber checklist* in a conspicuous location at the access to the property to be harvested,
 - (2) the project complies with the Standards for the Protection of Designated Stream Corridors at 646-5.7(a) of this Subpart,
 - (3) any stream crossings are authorized by the Department's General Permit for Temporary Bridges/Culverts for Logging Activities. The conditions of the Department's General Permit for Temporary Bridges/Culverts for Logging Activities shall control over standards for Stream Crossings and Stream Bed Disturbances at 646-5.8.
 - (4) except as necessary for stream crossings, there shall be no wood roads, skid trails, or log landings within designated stream corridors
 - (5) the number of crossings per site shall not exceed one per 1,000 feet of stream

(6) the project is in accordance with the *New York State Forestry Voluntary Best Management Practices for Water Quality: BMP Field Guide 2018 Edition* (nysbmpguidelines.com).

(b) The *notice of intent to harvest timber checklist* shall be submitted on forms made available by the Commission. A *notice of intent to harvest timber checklist* may cover a period of up to three years.

(c) If the Commission determines that the scope of vegetation removal, road construction, excavation, land clearing or land disturbance proposed or undertaken under a permit exemption for silvicultural activity constitutes development or otherwise poses a threat to the natural resources of the Park, it shall give written notice to the property owner that a permit is required pursuant to this Subpart. After such notice, failure by any person to obtain a permit or conform to the permit requirements shall constitute a violation of this Subpart.

(d) No person shall undertake silviculture activity or vegetative removal in a designated stream corridor except in accordance with *New York State Forestry Best Management Practices for Water Quality*. Whenever the Commission determines that timber harvesting or vegetative removal is occurring or has occurred in a manner not in accordance with the *New York State Forestry Best Management Practices for Water Quality*, it shall give notice to the property owner setting forth a reasonable period of time to undertake specific corrective action. Failure to undertake the specific corrective action prescribed in the notice within the period of time shall constitute a violation of this Article. Each day the property owner fails to undertake the specific corrective action after the period of time shall be a separate violation.

Section 646-5.6 Project Classification.

Minor and Major project classifications established in Section 646-4.7 of this Part shall apply to any project that requires a permit pursuant to this Article.

Section 646-5.7 Standards for the Protection of Designated Stream Corridors.

(a) The following standards shall apply to all development, land disturbance, and land clearing within a designated stream corridor:

(1) within 6 feet of the high water mark of a stream no vegetation may be removed, except that a contiguous clear-cut opening may be created. The opening shall not exceed 30% of the stream length on a site or a maximum of 75 linear feet, whichever is less.

(2) between 6 feet and 35 feet from the highwater mark of a stream no woody vegetation greater than one inch in diameter at 4.5 feet above ground elevation may be removed, except that a contiguous clear-cut opening may be created. The opening shall

not exceed 30% of the stream length on a site or a maximum of 75 linear feet, whichever is less.

(3) a maximum of 100 square feet of new impervious area or 400 square feet of porous pavement (i.e. porous pavers) may be created on a site.

(4) where development exists within a designated stream corridor prior to the effective date of this Subpart, these areas are to be considered in aggregate with any proposed development, land disturbance, and land clearing such that the total development within a designated stream corridor complies with the standards above. If development within a designated stream corridor exists prior to the effective date of this Article and exceeds the standards above, it may be maintained in perpetuity.

(b) Prior to the issuance of a permit pursuant to this Subpart, the Commission shall ascertain the probable effect of the project on the water quality of the stream and the Lake and on the natural resources of the Park including the flora and fauna. When it is determined that the 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, the permit shall be denied.

Section 646-5.8 Standards for Stream Crossings and Stream Bed Disturbances.

(a) The following criteria shall apply to all stream crossings and stream bed disturbances.

(1) Stream crossing, channelization, or piping is allowed only for utility crossings, logging roads, public roads (including subdivision roads to be accepted), approved private roads, and driveways to access private real property.

(2) Separate road and utility crossings shall not be approved when the consolidation of the proposed crossings is feasible.

(3) When separate road and utility crossings are necessary, the preferred methodology for utility establishment shall be by directional boring under the stream bed.

(4) The number of crossings shall be limited to one per site per stream.

(5) When culverts or arches are used, they shall be used so as to maintain the natural course and bed of the stream.

(6) Culverts and arches must be sized and designed in accordance with standard design practices, including allowing for safe passage for wildlife and floodplain flows.

- (7) All stream crossings shall be designed to safely pass the fifty (50)-year, peak storm event. The Commission may require additional design features it determines necessary to prevent a hazard to downstream property and natural resources.
- (8) Stream crossings shall not impound water during the 10-year storm event
- (9) Stream crossing structures shall be designed to span one and one-fourth (1.25) times the stream bed width.
- (10) Culverts shall be embedded twenty-percent (20%) along their entire linear length.
- (11) Any stream bed disturbance shall promote the natural shape, slope, and substrate of a stream.
- (12) Any stream bed disturbance shall be limited to the minimum disturbance necessary.
- (13) Creation of land disturbance and impervious areas for driveways and roads shall be limited to a maximum width of twenty (20) feet and thirty (30) feet, respectively. If this standard conflicts with standards at 646-5.7(a) (1-3), this provision shall control.
- (14) Crossings that convey wastewater shall be depicted on a survey map prepared and stamped by a professional surveyor licensed to operate in New York State. The survey map shall be filed with the Office of the County Clerk in the county where the property is located.
- (15) No permit shall be issued pursuant to this Subpart unless the Commission first determines that 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 Lake George Park.

Section 646-5.9 Plan Requirements.

- (a) Project plans shall be required to include information the Commission determines is reasonably necessary to complete its review and generally shall 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. Designated stream corridors shall be depicted on subdivision plats submitted for approval.
- (b) Plans may include proposed restoration, plantings, and conservation areas to demonstrate compliance with the standards at 646-5.7

Section 646-5.10 Administration.

(a) A variance to any standard in this Subpart shall be processed in accordance with the requirements of 6 NYCRR 646-4.13.

(b) Whenever the permit requirements of this Subpart apply in conjunction with the requirements of the stormwater management regulations at 6 NYCRR 646-4, a single application form, fee, and permit processing shall be required.

(c) The fee for permits required pursuant to the Subpart shall be those established for minor stormwater projects pursuant to 6 NYCRR 645-5. Whenever the permit requirements of this subpart apply independent of the requirements of the stormwater regulations, the Stream Corridor application fee shall be \$50.

(d) In addition to or as an alternative to any penalty provided herein or by law, any person that violates this regulation may be required to restore land to its undisturbed condition.

(e) The Commission may enter into agreements with municipalities, the Department, APA, and county soil and water conservation districts for administration of designated stream corridor management programs that are consistent with the intent, purpose and standards of this Article. Such agreements may provide for administration of permits and enforcement of this Article. However, the agreements shall not limit the Commission from taking enforcement action if it determines that a violation of this Article or of any permit issued pursuant to this Article endangers the health, safety and welfare of the public or results in damage to the natural resources of the Park.

(f) The Commission may enter in agreements with highway departments, conservation districts or other entities to authorize a number of similar projects or activities. Agreements shall not limit the Commission from taking enforcement action if it determines that a violation of this Article or of any permit issued pursuant to this Article endangers the health, safety and welfare of the public or results in damage to the natural resources of the Park.