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BARBARA D. UNDERWOOD
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

September 7, 2018

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423



Re: *New York State Department of Environmental Conservation – Adverse
Abandonment – Saratoga and North Creek Railway in Town of
Johnsburg, NY*
STB Docket No. AB 1261

Dear Ms. Brown:

Regarding the above-referenced matter, enclosed for filing with the Board please find the original and 10 copies of the New York State Department of Environmental Conservation's application for adverse abandonment. The Department submitted a request for fee waiver to the Board on August 31, 2018, a copy of which is attached. Consequently, no filing fee is tendered with this application.

Sincerely,

Joshua M. Tallent
Assistant Attorney General
(518) 776-2401

Enclosures
See service list

FILING FEE WAIVED

FILED
September 10, 2018
**SURFACE
TRANSPORTATION BOARD**

*New York State Department of Environmental Conservation
Adverse Abandonment – Saratoga and North Creek Railway in
Town of Johnsburg, NY*

STB Docket No. AB 1261

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB 1261

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION – ADVERSE ABANDONMENT – SARATOGA AND NORTH
CREEK RAILWAY IN TOWN OF JOHNSBURG, NY**

APPLICATION FOR ADVERSE ABANDONMENT

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PRELIMINARY STATEMENT

Pursuant to 49 U.S.C. § 10903(a) and 49 C.F.R. § 1152.22, the New York State Department of Environmental Conservation (DEC) applies for a determination that the public convenience and necessity require or permit the abandonment by Saratoga and North Creek Railway (SNCR) of a 30-mile section of railroad commonly known as the Sanford Lake Branch or the Tahawus Line (the Line), between milepost NC 0.0 at North Creek, New York and the Line's terminus near the former Tahawus Mine at milepost NC 29.71. Maps of the Line are attached to this application as Exhibit A.¹

The Line, situated entirely within the six-million-acre Adirondack Park, cuts through the heart of New York's Forest Preserve—an ecologically-sensitive and constitutionally-protected wilderness held in trust by the State for the benefit of its residents. Having failed in its bid to establish common carrier operations on the long-inactive Line, SNCR—the owner of the railroad easement over the right-of-way since 2011—has resorted to using the right-of-way as a storage facility for obsolete railcars. As will be discussed in detail below, the public convenience and necessity permit abandonment here because there is no present or prospective need for freight service on the Line. The public convenience and necessity *require* abandonment of SNCR's

¹ From North Creek southwest to Saratoga Springs, New York, SNCR has been operating over tracks belonging to Warren County and the Town of Corinth under contracts with those municipalities. Warren County recently terminated its contract with SNCR for nonperformance. See Warren County Board of Supervisors meeting minutes (June 15, 2018), available at http://www.warrencountyny.gov/gov/min/2018/2018-06-15_r-06-29pdf.pdf. DEC does not seek abandonment of SNCR's authority to operate over the tracks from North Creek to Saratoga Springs.

common carrier authority because SNCR's plan to pack the Line with out-of-service railcars blights the protected Forest Preserve and is incompatible with the State's conservation and land use goals for the Adirondack Park.

* * *

During the Second World War, the United States government exercised its war powers to condemn a right-of-way running from a now-defunct titanium mine in Tahawus generally south over a mix of private lands and public Forest Preserve lands to an existing railhead at North Creek.² The purpose of the condemnation was to provide a rail link "for the transportation of strategic materials vital to the successful prosecution of the War."³ When New York protested the condemnation, the United States agreed to limit the duration of the right-of-way over State-owned lands to 15 years. The United States built the Line—a single track of railroad with occasional sidings—and leased it to the Tahawus Mine's owner, National Lead (NL).⁴ Before the easement over State lands could expire, the United States re-condemned the right-of-way for an additional 100-year term, to expire in 2062.⁵

NL mined ilmenite at the Tahawus Mine until 1982. Although the company continued for a time to haul material by rail, it stopped using the Line for freight no later than 1989. That year, rather than return the condemned right-of-way to the

² See *Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*, FD 35559 (STB served May 14, 2012).

³ Pet'n in Condemnation at 2 (attached hereto as Exhibit B).

⁴ For purposes of the present application, unless otherwise indicated, NL will refer globally to National Lead and/or any successor entity.

⁵ See *Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*, FD 35559 (STB served May 14, 2012); *United States v. 220 Acres of Land*, No. 8431 (N.D.N.Y. Dec. 10, 1962) (attached hereto as Exhibit C).

State of New York, the General Services Administration sold it and its appurtenances to NL as surplus property. In 2003, NL sold approximately 10,050 acres of its 11,250-acre Tahawus property, including its remaining ilmenite deposits.⁶ NL demolished the mill buildings in 2006. In 2011, NL sold the right-of-way and appurtenances to SNCR. Since obtaining federal authority to operate on the Line as a common carrier in 2012, SNCR has moved at most a few carloads of industrial garnet south from an enterprise known as Barton International in North River.⁷ In 2017, in the absence of freight traffic and apparently to generate much-needed revenue, SNCR began storing obsolete DOT-111 tank cars on the Line in the Forest Preserve.⁸ In the face of mounting public opposition and at the car-owner's behest,⁹ SNCR ultimately removed the cars from the Line. SNCR nevertheless continued to represent that it intended to store up to 2,000 railcars on the Line.¹⁰

⁶ Of the approximately 10,000 acres NL sold, 7,000 acres were eventually conveyed to the State and became part of the Forest Preserve; the remaining 3,000 acres were sold for private forestry purposes but were burdened by a conservation easement in favor of the State of New York. For present purposes, the import of the sale is that ilmenite ore will never be mined at Tahawus again. NL recently sold its remaining holdings at Tahawus to an entity known as Mitchell Stone Products, LLC.

⁷ In addition to the few carloads of industrial garnet, SNCR also moved some 80 carloads of waste rock from the former Tahawus Mine in late 2014 and early 2015. This rock was ballast purchased by SNCR for use by the railroad itself. To DEC's knowledge, no other freight has moved on the Line since SNCR purchased it in 2011.

⁸ See Paul Post, *Empty Rail Cars Roll into the Adirondacks, Stirring Controversy*, New York Times, Nov. 13, 2017, <https://www.nytimes.com/2017/11/13/nyregion/empty-rail-cars-roll-into-the-adirondacks-stirring-controversy.html>.

⁹ See Pat Bradley, *Berkshire Hathaway Agrees to Remove Stored Rail Cars from Adirondacks*, WAMC, Dec. 27, 2017, <http://www.wamc.org/post/berkshire-hathaway-agrees-remove-stored-rail-cars-adirondacks>.

¹⁰ SNCR's owner, Ed Ellis, has claimed that he will abandon his car storage plan only if the State and/or local municipalities pay him to do so. See Warren County Board of Supervisors, public works committee meeting minutes (Oct. 13, 2017), available at <http://www.warren-countyny.gov/gov/comm/Archive/2017/works/2017-10-139cRS8UdclbI.pdf>; see also Michaud

The Line was constructed as private industrial track on State-owned, constitutionally-protected wildlands to serve a mining concern that no longer exists and in response to wartime exigencies now long past. Despite repeated representations that it could do so, SNCR has failed to establish common carrier service on the formerly-private Line. To the contrary, SNCR has defaulted on agreements with local municipalities and businesses and failed to meet its tax obligations; is slowly removing its locomotives and other equipment from northern New York;¹¹ and may be attempting to sell the Line.¹²

Meanwhile, abandonment of the Line would serve New Yorkers' interest in protecting the ecologically-sensitive Forest Preserve by restoring the State's decisionmaking authority over its own public lands. In 1895, the people of the State of New York amended the state constitution to ensure that the lands then owned or later acquired by the State in the vast Adirondack Park would forever remain wild

letter (Jan. 5, 2018) (attached hereto as Exhibit D) (offering to cease storing railcars on the Line in exchange for a \$5,000,000 payment).

¹¹ See Don Lehman, *Landlord Shuts Railroad Out of Building Over Unpaid Rent*, The Post-Star, Sept. 18, 2017, https://poststar.com/news/local/landlord-shuts-railroad-out-of-building-over-unpaid-rent/article_63aa9870-ca30-50e9-a2f5-ffb0da0af25d.html; John Cropley, *End of the Line for Saratoga & North Creek Railway*, The Daily Gazette, May 9, 2018, <https://dailygazette.com/article/2018/05/09/end-of-the-line-for-saratoga-north-creek-railway>; Don Lehman, *SNCR Owner Has No Timetable for Equipment Removal*, The Post-Star, July 24, 2018, https://poststar.com/news/local/sncr-owner-has-no-timetable-for-equipment-removal/article_d1102020-0e8a-58bc-a00f-df3a35d62a86.html.

¹² Omnitrax, a short line holding company, has indicated that it may be interested in purchasing the Line. See Eric Anderson, *Denver Firm Wants to Buy, Operate Rail Line to Ta-hawus*, Times Union, Aug. 19, 2018, https://www.timesunion.com/business/article/Denver-firm-wants-to-buy-operate-rail-line-to-13166841.php?utm_campaign=email-desktop&utm_source=CMS%20Sharing%20Button&utm_medium=social. However, as of the date of this application, DEC is aware of no final agreement between SNCR and Omnitrax or any other potential purchaser. In any event, potential suitors' claims regarding the future economic viability of the Line are, at best, speculative.

forest lands.¹³ The Preserve now totals nearly three million acres of public land held in trust by the State for the benefit of all New Yorkers. While different areas of the Forest Preserve are amenable to different levels of public use, New York State's overriding management goal is to allow visitors to explore the Preserve in low-impact ways that will ensure its biological integrity for generations to come. SNCR's stated plan to store thousands of obsolete tank and/or other railcars on the single-tracked Line (notably rendering it useless for freight service) would not promote the efficient movement of freight in interstate commerce and is manifestly at odds with the State's constitutional duty to protect and defend the biological integrity of the Forest Preserve. Even if SNCR fails to make good on its car-storage threat, abandonment will advance the public interest by neutralizing a risk to the Forest Preserve while allowing the State and its municipalities the freedom to explore other potential uses for the Line.

Point I of this application outlines the legal standard for abandonment. Points II and III set forth DEC's case for abandonment. Specifically, Point II establishes that the Line is not currently in use for freight service and that it is not reasonably likely SNCR will move freight on the Line in the future. Point III establishes that abandonment would serve the public interest by preventing harm to the Forest Preserve while freeing the State and its municipalities to plan for the Line's future use. Point IV sets forth the remaining elements of this application as required under 49 C.F.R. § 1155.22.

¹³ See NY Constitution, article XIV, § 1.

ARGUMENT

I. Legal standard

“[T]he standard governing any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity . . . require or permit the proposed abandonment.”¹⁴ In adverse abandonment cases, the Board has “consider[ed] whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.”¹⁵ The Board must also consider “whether the abandonment . . . will have a serious, adverse impact on rural and community development.”¹⁶ Where, as here, the applicant is a non-carrier, the burden is on the applicant to establish that the public convenience and necessity require or permit abandonment.¹⁷

The public convenience and necessity test requires that the Board balance an array of competing interests.¹⁸ Where the application for abandonment is adverse, the Board must weigh the respective interests of the railroad, the owner of the line and/or the public, any affected shippers, and the interstate rail system and interstate commerce generally.¹⁹ “Whatever the precise nature of these conflicting needs, the

¹⁴ *Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, Ind.*, AB 290, at 3 (STB served April 17, 2012); see 49 U.S.C. § 10903(d); *City of Cherokee v. I.C.C.*, 727 F.2d 748, 751 (8th Cir. 1984).

¹⁵ *Id.*; see *City of Chicago, Ill. – Adverse Abandonment – Chicago Terminal R.R. in Chicago, Ill.*, AB 1036, at 3 (STB served June 16, 2010).

¹⁶ 49 U.S.C. § 10903(d).

¹⁷ *Salt Lake City Corporation – Adverse Abandonment – Salt Lake City, UT*, AB 33, at 4 (STB served March 8, 2002).

¹⁸ See *Colorado v. United States*, 271 U.S. 153, 168-169 (1926); *City of Cherokee*, 727 F.2d at 751.

¹⁹ See *New York Cross Harbor R.R. v. Surface Transportation Board*, 374 F.3d 1177, 1183 (D.C. Cir. 2004).

determination is made upon a balancing of the respective interests—the effort being to decide what fairness to all concerned demands.”²⁰

II. There is no need for freight service over the Line

Virtually no freight traffic has moved on the Line since 1989, and there is little reason to expect SNCR will succeed in moving freight in common carrier service on the Line in the future. SNCR’s prospects are hampered both by the dearth of potential shippers—there are only two—and by its limited ability to offer attractive routings or competitive rates for the shipment by rail of heavy, low-value commodities like construction aggregate and/or industrial garnet.²¹

A. There are no active shippers on the line

As noted above, the federal government built the Line during World War II to move ilmenite ore from NL’s now-defunct Tahawus Mine to an existing railhead in North Creek. From approximately 1944 until the cessation of mining activities in the early 1980s, the Line functioned as a private industrial track, allowing NL to move titanium from Tahawus to the nearest interconnection with the national rail system. NL ceased mining activities at Tahawus in or about 1982 and stopped using the Line no later than 1989. No freight traffic moved on the Line from 1989 until SNCR obtained Board authority to attempt to initiate common carrier freight service in 2012.²²

²⁰ *Colorado v. United States*, 271 U.S. at 169.

²¹ On June 8, 2018, pursuant to the Federal Rules of Civil Procedure and Board regulations, DEC served counsel for SNCR with a list of discovery demands. To date, SNCR has failed to respond to—or even acknowledge receipt of—DEC’s duly-served demands. A copy of DEC’s transmittal letter is attached hereto as Exhibit E.

²² See *Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*, FD 35631 (STB served June 1, 2012).

SNCR's involvement changed nothing. DEC believes that SNCR bought some 80 carloads of crushed stone from the mine site's current owner, Mitchell Stone Products, for use *by the railroad* as ballast.²³ SNCR has otherwise moved no freight to or from the Tahawus Mine for a paying customer. In a recent permit application, Mitchell Stone Products represented to DEC that it plans to continue to move waste rock from the former mine by truck.²⁴ This is so, Mitchell explained, because it is not currently profitable to ship waste rock by rail from Tahawus.²⁵

Barton International, the only other potential shipper on the Line, has similarly shown little interest in shipping freight by rail. Since SNCR acquired the Line, Barton has shipped only a few carloads of industrial garnet. Barton apparently lost interest in shipping its products by rail after Canadian Pacific Railway (with whom SNCR must interchange freight) took *31 days* to move one boxcar of garnet from New York to Louisiana. Canadian Pacific's tortured routing took the boxcar first to Montreal, then to Toronto, and eventually to Chicago, Detroit, and Memphis before delivering it to its ultimate destination on the Louisiana coast.²⁶

²³ See Mitchell Stone Products Mined Land Use Plan Supplement (attached hereto as Exhibit F).

²⁴ See *id.*

²⁵ See *id.* Mitchell's representation is unsurprising. Mitchell crushed and sold waste rock at the mine site under contract with NL for several years before ultimately purchasing NL's remaining Tahawus property. SNCR's singular purchase aside, at no point during its tenure at the mine site did Mitchell transport stone by rail to its customers.

²⁶ See *Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, FD 35873 (filed Jan. 20, 2015).

B. SNCR has no reasonable prospect for developing future freight service on the Line

There is no indication that SNCR's long-standing inability to establish freight service on the Line will resolve in the future. There are only two potential shippers on the Line—Mitchell Stone Products and Barton International—and neither has expressed a concrete interest in contracting with SNCR to ship freight by rail.

As an initial matter, it bears noting that the universe of potential shippers on the Line is and will continue to be extremely limited. As discussed above, the Line was constructed in a very remote area as a private industrial track to serve one specific facility: the now-defunct titanium mine at Tahawus. Almost the entirety of the Line passes through State-owned, constitutionally-protected Forest Preserve lands and/or lies within privately- or publicly-owned riverbank areas protected under New York's Wild, Scenic and Recreational Rivers System Act.²⁷ Simply as a function of the Line's location, the creation of adjacent new industrial uses is highly improbable.²⁸ SNCR obtained Board authority in 2012 to attempt to develop common carrier service where none previously existed (an endeavor that, as discussed above, has so

²⁷ New York's Wild, Scenic, and Recreational Rivers System Act (Rivers Act) protects valuable, ecologically sensitive rivers across the state by imposing strict limits on the use of lands proximate to designated watercourses. See ECL 15-2701 *et seq.* Where designated rivers cross State-owned lands, the Rivers Act strictly limits land uses within up to one-half mile of the riverbanks. See ECL 15-2711; 6 N.Y.C.R.R. §§ 666.3(yy); 666.6(f). On privately-held lands, the Rivers Act controls and limits land uses within up to one-quarter mile of the riverbanks. See 9 N.Y.C.R.R. § 577.2(o); 9 N.Y.C.R.R. subtit. Q, app. 6. With the exception of one small portion of the right-of-way near Newcomb, the entire Line lies within jurisdictional range—that is, within one-half mile for public lands or one-quarter mile for private lands—of a classified wild, scenic, or recreational river and is thus subject to strict, generally-applicable use limits designed to preserve the primitive and undeveloped nature of the nearby watercourse.

²⁸ See Point III.A, *infra* (discussing limits on land use in the Forest Preserve imposed by the New York constitution).

far proved futile)—but there is no opportunity for SNCR to develop new business or recruit new shippers along the Line. Rather, any future freight traffic must originate or terminate with either Mitchell Stone Products or Barton International. Under current circumstances however, neither entity appears reasonably likely to contract with SNCR to begin shipping freight on the Line.

Mitchell Stone Products is engaged in the business of reclaiming waste rock and other materials from the Tahawus Mine for resale as construction aggregate.²⁹ In materials submitted to DEC in connection with a recent application for a permit under New York’s Mined Land Reclamation Law, Mitchell represented to the State that it was not presently economically feasible to move crushed stone products by rail and that it would continue—as it has for years—to remove rock from the mine by truck.³⁰ Accordingly, the prospect that Mitchell will begin shipping heavy, low-value rock by rail from the Tahawus Mine appears remote.

Barton likewise does not appear to be interested in moving freight on the Line. In February 2018—after DEC filed its petition for waivers and exemptions in this proceeding—an SNCR employee told the Warren County Board of Supervisors’ public works committee that SNCR planned to move garnet from the Barton International facility in North River to Saratoga Springs, where the freight would presumably be

²⁹ See Mined Land Use Plan for the Mitchell Stone Products, LLC Tahawus Operation 9 (Sept. 19, 2017) (attached hereto as Exhibit G).

³⁰ See Mitchell Stone Products Mined Land Use Plan Supplement (attached hereto as Exhibit F). DEC recognizes that Mitchell Stone Products recently sent a letter to the Board indicating its interest in maintaining access to freight service as a “potential option for expanding [its] market reach.” However, Mitchell’s letter does not indicate that the company has any concrete plan to ship aggregate by rail in the foreseeable future.

interchanged with Canadian Pacific.³¹ SCNR's representative described the project as a "special move" that would terminate in August 2019, but refused to describe the timing of the shipment or shipments or the number of carloads to be moved.³² More recently however, Ed Ellis, the president of SNCR's parent corporation Iowa Pacific Holdings, publicly denied the existence of a contract with Barton.³³ In any event, and despite DEC's discovery demands requesting such information, SNCR has provided no evidence that a contract with Barton exists.

Barton's reticence to ship garnet by rail is unsurprising. Any traffic originating or terminating on the Line must be interchanged in Saratoga Springs, New York at the Saratoga Yard. While Norfolk Southern Railway (NSR) has trackage rights at the Yard, NSR is contractually prohibited from interchanging traffic there with any other carrier. Accordingly, SNCR may only interchange traffic in Saratoga Springs with Canadian Pacific. But as noted above, Canadian Pacific's routing options have proven entirely unsuitable to Barton.³⁴ In SNCR's own words, "the traffic that [it] has been developing will not support three-line hauls . . . and do[es] not fit with [Canadian Pacific's] long-haul business model."³⁵

³¹ The Barton facility in North River, New York is approximately five miles from the southern end of the Line at North Creek.

³² See Warren County Board of Supervisors, public works committee meeting minutes (Feb. 27, 2018), available at <http://www.warrencountyny.gov/gov/comm/Archive/2018/works/2018-02-27ILV-UpI9uMQ.pdf>.

³³ See Warren County Board of Supervisors, public works committee meeting minutes (March 29, 2018), available at <http://www.warrencountyny.gov/gov/comm/Archive/2018/works/2018-03-29gyt9RRlkvvc.pdf>.

³⁴ See *supra*, Point II.A.

³⁵ *Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, FD 35873 (filed Jan. 20, 2015).

C. SNCR appears to be in the process of vacating the Line

SNCR's recent statements and actions strongly indicate that it is in the process of vacating the Line. In late March, Ed Ellis told the Warren County Board of Supervisors that SNCR could not continue to operate its passenger excursion service between Saratoga Springs and North Creek unless the County or the State agreed to purchase the Line for five million dollars.³⁶ Ellis also told the Board that SNCR would not pay the approximately \$30,000 in revenue-sharing payments it currently owes Warren County.³⁷ In subsequent appearances before the Board, SNCR agents represented that the railroad was removing its equipment from North Creek and that the SNCR-employed crossing signal inspector was no longer being paid.³⁸ In April 2018, the Internal Revenue Service filed a \$1.3 million federal tax lien against SNCR in Warren County for failure to pay federal income taxes from 2013 to 2015.³⁹ SNCR also owes back property taxes in Essex and Warren Counties totaling over \$100,000.⁴⁰ In sum, SNCR's precarious financial situation and manifest disinclination to continue rail service in northern New York in any form indicate that it will offer no common carrier service on the Line in the future.

³⁶ See Warren County Board of Supervisors, public works committee meeting minutes (March 29, 2018), available at <http://www.warrencountyny.gov/gov/comm/Archive/2018/works/2018-03-29gyt9RRlkvvc.pdf>.

³⁷ See *id.*

³⁸ See Warren County Board of Supervisors, public works committee meeting minutes (April 23, 2018), available at <http://www.warrencountyny.gov/gov/comm/Archive/2018/works/2018-04-23MEV9p7tkk4g.pdf>.

³⁹ See Don Lehman, *IRS Hits Saratoga & North Creek Railway, Iowa Pacific Holdings LLC with \$1.3 Million Tax Lien*, The Post-Star, May 4, 2018, https://poststar.com/news/local/irs-hits-saratoga-north-creek-railway-iowa-pacific-holdings-llc/article_0706e902-3416-511a-873e-680212d316d4.html.

⁴⁰ See *id.*

III. The public interest favors abandonment

Whether to grant DEC's application requires the Board to weigh the need for current or future freight service on the Line—a need that is, as discussed above, presently nonexistent—against New York State's sovereign interest in safeguarding the ecologically-significant Forest Preserve and managing uses on public lands. Abandonment will restore to New York the ability to make land use decisions that are appropriate to the Line's geographical setting and consonant with the State's constitutional obligation to maintain the Forest Preserve in its natural state for the benefit of all New Yorkers. To the extent SNCR plans to use the Line not to transport freight for paying shippers—there are none—but to store thousands of outdated oil tank and/or other railcars, abandonment will prevent the railroad from blighting sensitive Forest Preserve lands by using them as an indefinite repository for surplus and potentially contaminated rail equipment—a use the State vehemently opposes.

A. The Line crosses lands New York has protected by constitutional amendment

Over a century ago, dismayed by rampant despoliation of the vast northern forests and fearful that their ecological value was being squandered, the people of New York amended the state constitution to permanently protect public lands in New York's six-million-acre Adirondack Park. Crafted at the constitutional convention of 1894 and ratified the following year, the constitution's Forever Wild Clause provides, now as then, that “[t]he lands of the State, now owned or hereafter acquired, constituting the [F]orest [P]reserve as now fixed by law, *shall be forever kept as wild forest lands*. They shall not be leased, sold or exchanged, or be taken by any corporation,

public or private, nor shall the timber thereon be sold, removed or destroyed.”⁴¹ The mountainous Forest Preserve—listed as a National Historic Landmark in 1963—now totals almost three million acres of carefully-conserved wildlands and includes the headwaters of many of New York’s major river systems.⁴²

While portions of the Line cross privately-owned parcels, approximately half the Line’s trackage lies on publicly-owned Forest Preserve land.⁴³ For these lands, the Forever Wild Clause prohibits, among other things, condemnation of land or destruction of forest. But for the overriding federal war-time condemnation, these public lands, long held by the State in trust for the continued benefit and enjoyment of its residents, would never have been subject to appropriation for industrial use. Indeed, New York’s high court has read the Forever Wild Clause to explicitly bar railroad corporations from exercising the power of eminent domain to construct rail lines in the Forest Preserve.⁴⁴ Equally, the Forever Wild Clause would almost surely have barred the large-scale destruction of forest necessary to build the Line. In *Association for Protection of the Adirondacks v. MacDonald* for example, the New York Court of

⁴¹ See NY Constitution, article XIV, § 1 (emphasis added); see also *Association for Protection of Adirondacks v. MacDonald*, 253 N.Y. 234, 237-239 (1930);

⁴² See National Park Service, Listing of National Historic Landmarks by State, <https://www.nps.gov/nhl/find/statelists/ny/NY.pdf>.

⁴³ See Map, Exhibit A (identifying publicly- and privately-owned lands in the vicinity of the Line).

⁴⁴ See *People v. Adirondack Ry. Co.*, 160 N.Y. 225, 248 (1899) (“The command of the Constitution, that the lands of the forest preserve cannot be ‘taken by any corporation, public or private,’ shows an unmistakable intention to keep railroads out of the Adirondack [P]ark.”), *affd sub nom.* 176 U.S. 335 (1900).

Appeals annulled as unconstitutional a plan to build a significantly less invasive bobsled run on Forest Preserve land in advance of the 1932 Lake Placid Olympic winter games.⁴⁵

To be sure, *some* uses are permitted on Forest Preserve lands. The Adirondack Park Agency (APA) is the New York State executive branch agency generally charged with regulating land use on public and private land within the Adirondack Park.⁴⁶ As required under its enabling legislation, the APA has created a State Land Master Plan (Master Plan) classifying State-owned lands within the Park—that is, Forest Preserve lands—“according to their characteristics and capacity to withstand use.”⁴⁷ Within the limits set forth in the state constitution, the Master Plan classifications determine the uses to which various areas of the Forest Preserve may be put.⁴⁸ Large portions of the Line lie within the Vanderwhacker Mountain Wild Forest. Like other similarly-classified areas in the Preserve, Vanderwhacker Mountain accommodates forms of low-impact *recreational* use—principally hiking, camping, canoeing, horseback-riding, and bicycling—carefully calibrated to “afford public enjoyment without impairing the wild forest atmosphere.”⁴⁹ In the absence of any present or reasonably-foreseeable likelihood that SNCR will provide freight service on the Line, the State and its municipalities should be free to plan for future uses of the Line that are consonant with or complementary to the sorts of uses envisioned under the Master Plan.

⁴⁵ *Association for Protection of Adirondacks*, 253 N.Y. at 236-238.

⁴⁶ See Executive Law § 805.

⁴⁷ *Id.* former § 807(1); see also *id.* § 816.

⁴⁸ See Adirondack Park Agency, State Land Master Plan 14-16, https://www.apa.ny.gov/Documents/Laws_Regs/APSLMP.pdf.

⁴⁹ *Id.* at 35.

B. Abandonment will advance New York's longstanding conservation objectives

Long ago New Yorkers realized the superlative value of the Forest Preserve, both as a venue for physical and spiritual rejuvenation and as a provisioner of critical ecosystem services.⁵⁰ So serious was the people's conviction that they memorialized it in constitutional text. While the Forever Wild Clause surely allows for respectful, non-invasive land uses in the Preserve, it just as surely bars uses that harm or have the potential to harm the Preserve's delicate ecology. Given that the Line no longer serves the purpose for which it was constructed (or indeed any other purpose related to the movement of freight in interstate commerce), abandonment at the State's request is appropriate.

Abandonment is also in the public interest because it would permit the State to bar SNCR from using the Line as a repository for thousands of surplus and/or outdated tank or other railcars. There is no interpretation of the Forever Wild Clause that would permit SNCR or any actor, public or private, to construct what would be tantamount to a 30-mile rusting steel wall through the heart of the Adirondack Park. Not only would such a use render the single-tracked Line utterly useless for freight transportation, it would be anathema to the conservation purposes for which the Forest Preserve was established. Abandonment is appropriate because it would prevent

⁵⁰ See Record, New York State Constitutional Convention of 1894, 130-133 (attached hereto as Exhibit H); see also *People v. Adirondack Ry. Co.*, 160 N.Y. at 248.

SNCR from blighting the Forest Preserve while allowing the State and its municipalities to investigate lawful uses for the Line that are in keeping with the State's overarching conservation, land use, and economic goals.

C. Abandonment will not adversely impact rural or community development

Finally, under the circumstances presented here, abandonment will not negatively impact rural or community development. As noted above, Mitchell Stone Products has hauled and will continue to haul rock from Tahawus by truck.⁵¹ Whether SNCR retains its authorization to operate as a freight carrier on the Line will likely have no effect on Mitchell's business plan and/or staffing levels. Likewise, Barton's minimal historical use of the Line implies that abandonment will not adversely impact its business potential and/or staffing levels.

On the other hand, and in keeping with general economic development trends in the Adirondack region, abandonment would allow the State and its municipalities to investigate future uses for the Line, including as a means to provide public access to the Forest Preserve. For some time, New York has been working to meet conservation goals and enhance recreational opportunities in the Adirondack Park both by adding new tracts of land to the Forest Preserve and by providing economic development assistance to communities and businesses in the Park. Since 2012, the State has purchased and added nearly 70,000 acres of wildlands to the Forest Preserve; some of the newly-purchased tracts either lie along or would be accessible from the

⁵¹ See *supra*, Point II.B.

Line.⁵² As such, the Line could represent an unparalleled opportunity to provide public access to some of the Adirondack Park's most beautiful wild spaces, including the spectacular High Peaks Wilderness Area. With increased public access to the Forest Preserve will come valuable economic development opportunities for communities on or near the Line, including North Creek and North River. In sum, and in the absence of a future viable operator, abandonment has the very real potential to help New York leverage its conservation activities in the Forest Preserve by boosting ecotourism in the Adirondack region as a whole.

IV. Additional materials

A. General (49 C.F.R. § 1152.22[a])

(1) Exact name of applicant

The applicant's name is the New York State Department of Environmental Conservation (DEC).

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. subtitle IV, chapter 105.

DEC is not a common carrier by railroad.

(3) Relief sought

DEC is seeking the adverse abandonment of the authority of SNCR to operate over a 30-mile section of railroad commonly known as the Sanford Lake Branch or the Tahawus Line (the Line), between milepost NC 0.0 at North Creek, New York and the Line's terminus near the former Tahawus Mine at milepost NC 29.71. The

⁵² See DEC, Former Finch-Pruyn Lands Map, <https://www.dec.ny.gov/lands/42077.html> (map of recently-acquired Forest Preserve lands).

Line, approximately 29.71 miles long, passes through Warren, Hamilton, and Essex Counties.

(4) *Detailed map of the subject line.*

A map of the Line meeting the requirements of 49 C.F.R. § 1152.22(a)(4) is attached hereto as Exhibit A.

(5) *System diagram map information*

All requirements in 49 C.F.R. § 1152.22(a)(5) have been waived by order of the Board.⁵³

(6) *Detailed statement of reasons for filing application.*

A detailed explanation of DEC's reasons for filing the present application has been set forth in Points II and III, *supra*.

(7) *Name, title, and address of representative of applicant.*

Any correspondence, comments, or protests relating to this application should be forwarded to the following representative of DEC:

Joshua M. Tallent
New York State Office of the Attorney General
Environmental Protection Bureau
The Capitol
Albany, NY 12224-0341
(518) 776-2456
Joshua.Tallent@ag.ny.gov

⁵³ See *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsbury, N.Y.*, AB 1261, at 4 (STB served Feb. 27, 2018).

- (8) *List of all United States Postal Service ZIP codes that the line proposed for abandonment traverses.*

The Line is located in the following Postal Service ZIP codes: 12843, 12842, 12857, 12853, 12851, and 12852.

B. Condition of properties (49 C.F.R. § 1152.22[b])

All requirements in 49 C.F.R. § 1152.22(b) have been waived by order of the Board.

C. Service provided (49 C.F.R. § 1152.22[c])

All requirements in 49 C.F.R. § 1152.22(c) have been waived by order of the Board.

D. Revenue and cost data (49 C.F.R. § 1152.22[d])

All requirements in 49 C.F.R. § 1152.22(d) have been waived by order of the Board.

E. Rural and community impact (49 C.F.R. § 1152.22[e])

All requirements in 49 C.F.R. § 1152.22(e) have been waived by order of the Board.

F. Environmental impact (49 C.F.R. § 1152.22[f])

A combined environmental and historic report was submitted to the Board on July 23, 2018. A copy of same is attached hereto as Exhibit I.

G. Passenger service (49 C.F.R. § 1152.22[g])

No passenger service is provided over the Line.

H. Additional information (49 C.F.R. § 1152.22[h])

The Board has not required DEC to submit additional information, and none is submitted.

I. Draft Federal Register notice (49 C.F.R. § 1152.22[i])

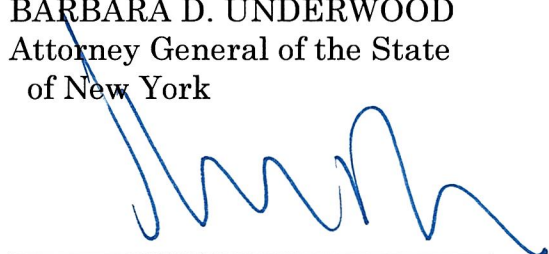
A draft Federal Register notice, modified as authorized by order of the Board,
is attached hereto as Exhibit J.

J. Verification (49 C.F.R. § 1152.22[j])

The required executed verification is attached hereto as Exhibit K.

Respectfully submitted,

BARBARA D. UNDERWOOD
Attorney General of the State
of New York

By: 

Susan L. Taylor
Loretta Simon
Joshua M. Tallent
Assistant Attorneys General
New York State Office of the
Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518) 776-2456
Joshua.Tallent@ag.ny.gov

CERTIFICATE OF SERVICE

I certify that on September 7, 2018, I caused the foregoing Application for Adverse Abandonment to be served by first class mail on the following, in accordance with 49 C.F.R. § 1152.24(c):

New York State Department of Transportation
Attn: Janice McLachlan, Acting Assistant Commissioner and General Counsel
50 Wolf Road
Albany, NY 12232

New York State Department of Public Service
Attn: John J. Sipos, Deputy General Counsel
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350

I further certify that on September 7, 2018, I caused a copy of the Application for Adverse Abandonment to be served by first class mail on SNCR and all parties of record in this proceeding.



Joshua M. Tallent
Assistant Attorney General

**AFFIRMATION ATTESTING TO COMPLIANCE WITH
NOTICE REQUIREMENT**

I affirm that the New York State Department of Environmental Conservation has complied with the notice requirement set forth at 49 C.F.R. § 1152.20. On August 9, 2018, the Department served its Notice of Intent upon all entities as required by 49 C.F.R. § 1152.20(2).

The posting requirement set forth at 49 C.F.R. § 1152.20(a)(3) was waived by order of the Board.

The Notice of Intent was published in the print versions of the Glens Falls Post-Star, Hamilton County Express, the Press Republican, and the Adirondack Daily Enterprise for three consecutive weeks, appearing on August 9, August 16, and August 23, 2018.



Joshua M. Tallent
Assistant Attorney General

EXHIBIT LIST

Exhibit A	Maps (4)
Exhibit B	Petition in Condemnation
Exhibit C	Final Judgment in Condemnation
Exhibit D	Letter dated January 5, 2018 from D. Michaud to DEC
Exhibit E	NYSDEC Request for Production of Documents dated June 8, 2018
Exhibit F	Mitchell Stone Products, LLC's supplement to the Mined Law Reclamation Law application
Exhibit G	Mined Land Use Plan for the Mitchell Stone Products, LLC (maps and exhibits omitted)
Exhibit H	Revised Record of Constitutional Convention, May 18, 1894
Exhibit I	Environmental and Historical Report with exhibits
Exhibit J	Draft Federal Register notice
Exhibit K	Verification

EXHIBIT A



Tahawus Branch Railroad Corridor

Key

Wild, Scenic, and Recreational Rivers
Source: DEC

Railroad
Source: DEC, Bureau of Real Property

Mile Posts
Source: DEC, Bureau of Real Property

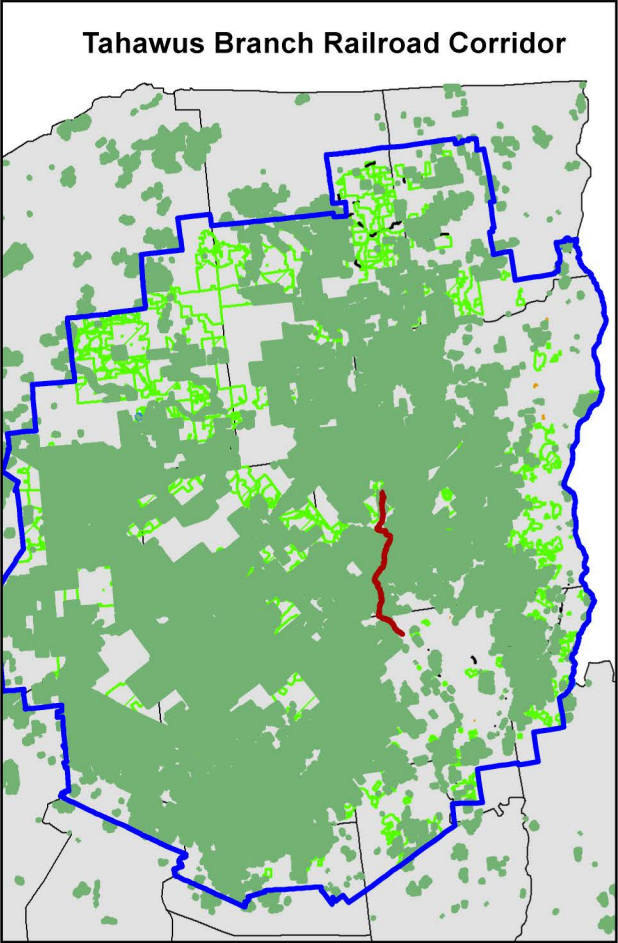
Private Land Classification

- Hamlet
- Moderate Intensity Use
- Low Intensity Use
- Rural Use
- Resource Management
- Industrial Use

State Land Classification

- Wilderness
- Primitive
- Wild Forest
- Intensive Use
- State Administrative

Source: Adirondack Park Agency, 2018 Land Use and Development Plan Map



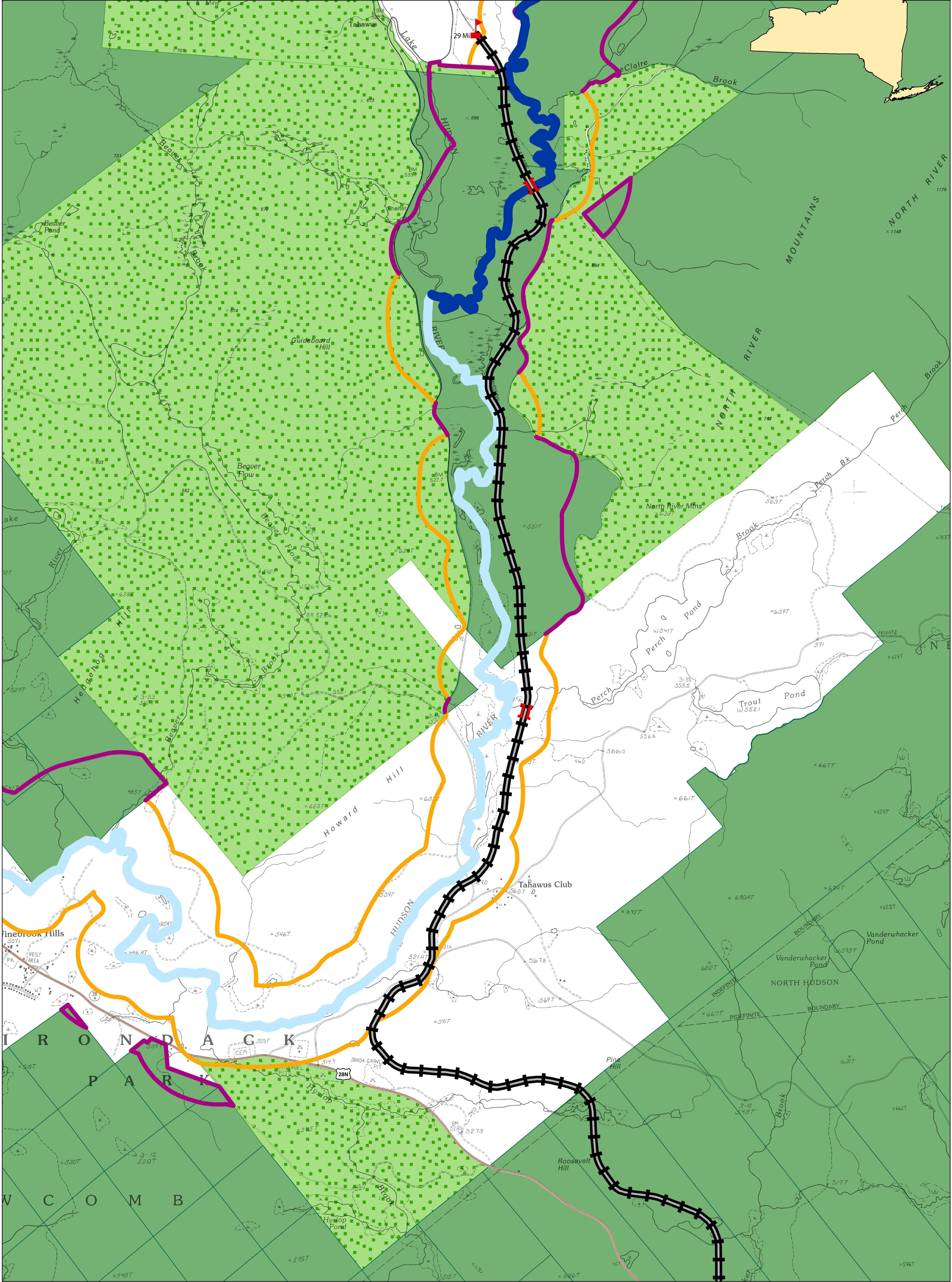
NEW YORK
STATE OF OPPORTUNITY

Department of Environmental Conservation

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/24/2018



Tahawus Branch Railroad Corridor Map 1



Key

- Bridges
- Railroad
- Half Mile Buffer
- Quarter Mile Buffer
- Highway
- Adirondack Forest Easement
- Adirondack Forest Preserve
- Private Parcels
- Scenic River
- Recreational River
- Wild River
- DOT Planimetric Images
- Mile Posts

Bridge Source: NYS DEC,
Railroad Source: NYS DEC Bureau of Real Property,
Half Mile Buffer Source: NYS DEC Bureau of Real Property,
Quarter Mile Buffer Source: NYS DEC Bureau of Real Property,
Adirondack Forest Easement Source: NYS DEC Bureau of Real Property,
Adirondack Forest Preserve Source: NYS DEC Bureau of Real Property,
Private Parcels Source: Essex, Hamilton, and Warren County,
Wild, Scenic, and Recreational Rivers Source: NYS DEC Bureau of Real Property,
Highways Source: NYS GIS Program Office,
DOT Planimetric Images Source: NYS DOT,
and Mile Posts: NYS DOT

Map 1

Map 2

Map 3

NEW YORK
STATE OF OPPORTUNITY

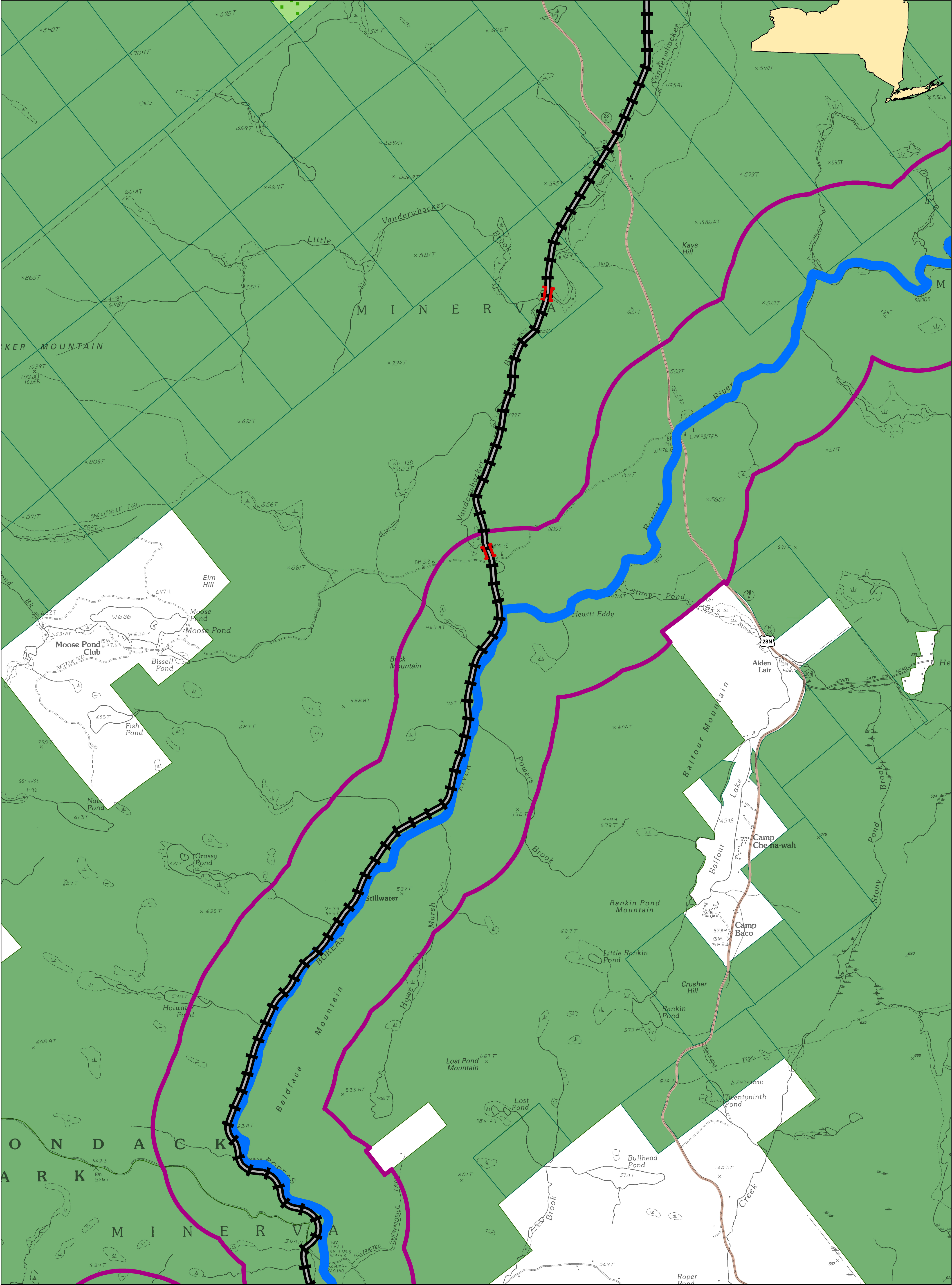
**Department of
Environmental
Conservation**

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Miles

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/25/2018

Tahawus Branch Railroad Corridor Map 2



Key

Bridges

Railroad

Half Mile Buffer

Quarter Mile Buffer

Highway

Adirondack Forest Easement

Adirondack Forest Preserve

Private Parcels

Scenic River

Recreational River

Wild River

DOT Planimetric Images

Mile Posts

Bridge Source: NYS DEC,
Railroad Source: NYS DEC Bureau of Real Property,
Half Mile Buffer Source: NYS DEC Bureau of Real Property,
Quarter Mile Buffer Source: NYS DEC Bureau of Real Property,
Adirondack Forest Easement Source: NYS DEC Bureau of Real Property,
Adirondack Forest Preserve Source: NYS DEC Bureau of Real Property,
Private Parcels Source: Essex, Hamilton, and Warren County,
Wild, Scenic, and Recreational Rivers Source: NYS DEC Bureau of Real Property,
Highways Source: NYS GIS Program Office,
DOT Planimetric Images Source: NYS DOT,
and Mile Posts: NYS DOT

Map 1

Map 2

Map 3

N

NEW YORK

STATE OF OPPORTUNITY

Department of
Environmental
Conservation

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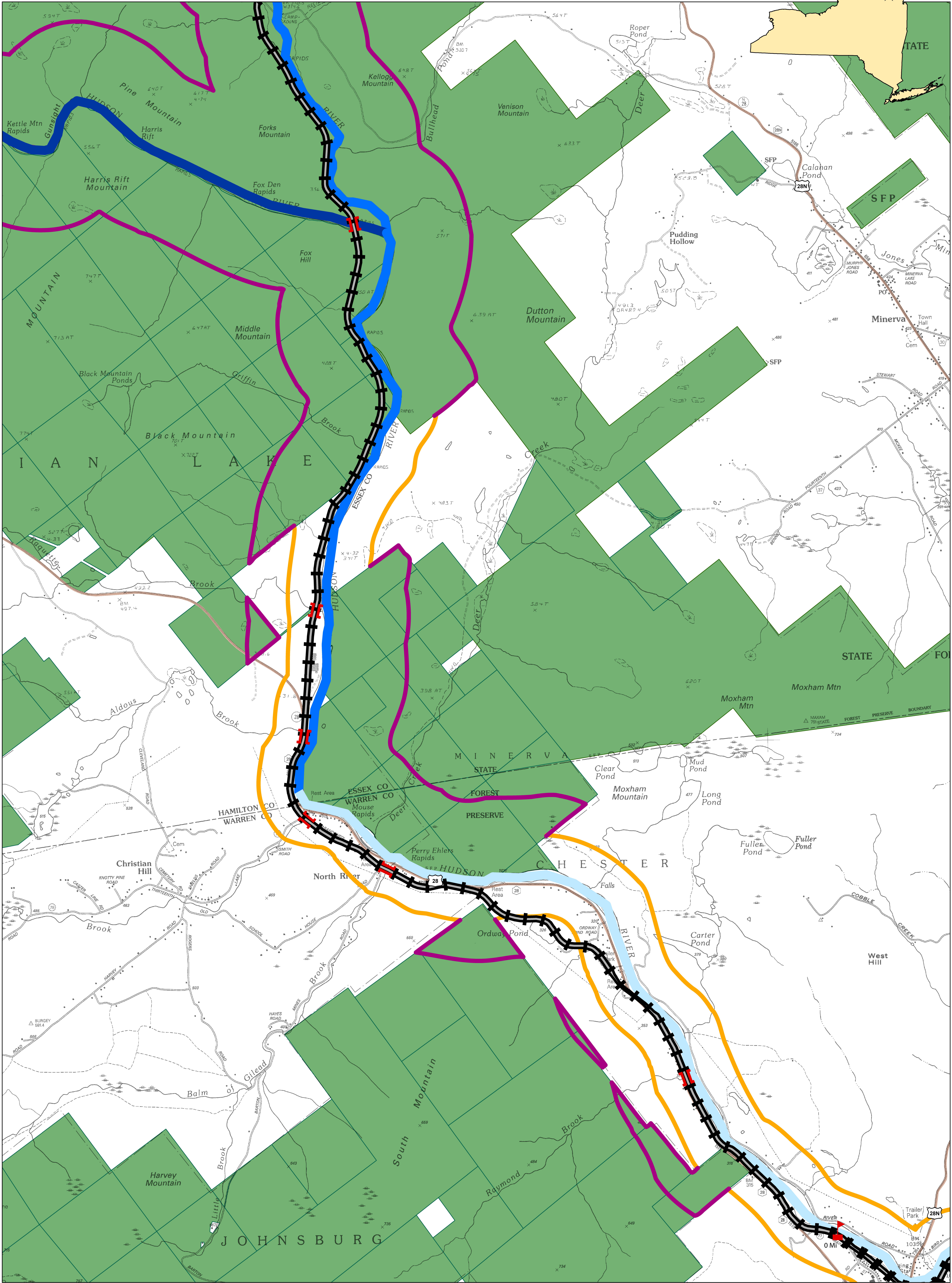
1/2

1

Miles

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/25/2018

Tahawus Branch Railroad Corridor Map 3



Key

Bridges

Railroad

Half Mile Buffer

Quarter Mile Buffer

Highway

Adirondack Forest Easement

Adirondack Forest Preserve

Private Parcels

Scenic River

Recreational River

Wild River

DOT Planimetric Images

Mile Posts

Bridge Source: NYS DEC,
Railroad Source: NYS DEC Bureau of Real Property,
Half Mile Buffer Source: NYS DEC Bureau of Real Property,
Quarter Mile Buffer Source: NYS DEC Bureau of Real Property,
Adirondack Forest Easement Source: NYS DEC Bureau of Real Property,
Adirondack Forest Preserve Source: NYS DEC Bureau of Real Property,
Private Parcels Source: Essex, Hamilton, and Warren County,
Wild, Scenic, and Recreational Rivers Source: NYS DEC Bureau of Real Property,
Highways Source: NYS GIS Program Office,
DOT Planimetric Images Source: NYS DOT,
and Mile Posts: NYS DOT

Map 1

Map 2

Map 3

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/25/2018

Department of Environmental Conservation

EXHIBIT B

EX.#1

U. S. District Court

Northern Dist. of N. Y.

Civil #1148

United States of America

Petitioner

- vs -

Certain easement rights in 229.13 Acres
of land in Essex & Hamilton Counties,
State of N. Y., David McIlwhee, et. al.

Defendants

Petition in Condemnation

The petition of the United States of America, a sovereign, brought by Ralph L. Emmons, U. S. attorney for the Northern Dist. of New York, acting under the instructions of the Attorney General of the United States of America & at the request of the Secretary of War complains & alleges:

1. That this is a suit of a civil nature, brought by the above-named petitioner under the authority of and pursuant to the provisions of an Act of Congress approved August 1, 1898 (35 Stat. 557), and Acts amendatory thereof; the Act of Congress approved August 18, 1898 (35 Stat. 516), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) & April 11, 1918 (40 Stat. 518; 50 U. S. C. Sec. 171) & March 27, 1942, (Public Law 507 - 77th Congress) which acts authorize the acquisition of land, or interests therein for military purposes.

2. That in accordance with said acts, the Secretary of War of the U. S. has found that certain rights & perpetual and/or limited easements in land & appurtenances more particularly described herein are necessary & advantageous in the interest of the U. S. for use in connection with the construction of the North Creek-Sanford Lake, New York, Railroad connection, & has selected for acquisition by the U. S. of America the interests & rights in

* the land hereinafter described & has designated that such interests & rights are suitable & necessary for the purposes of the U. S. & that said selection & designation & determination have been made & are now in full force & effect, & has certified that the interests in said land are required for use in connection with the construction of a railroad from North Creek to Lake Sanford, N. Y., for the transportation of strategic materials vital to the successful prosecution of the War, & it is desirable to exercise the utmost haste in the execution of said project, & an order for the immediate possession, use & improvement of said lands for such purposes is necessary.

3. That there are sufficient funds now available with which the petitioner can & is authorized to pay just compensation for the interests in land as sought to be taken & condemned herein, in whatever sum may ultimately be awarded & adjudged in this proceeding as just compensation, together with damages, if any, incident to the taking & condemnation.

4. That the purposes for which the petitioner is taking the easements & rights in said land & the appurtenances thereto are necessary & constitute a public use, & the use to which said property & interests is to be applied is a use authorized by law, & that its acquisition by the petitioner is and will be of the greatest public benefit & it is vital to the successful prosecution of the War that this project be expedited with the utmost haste & that the U. S. be given the immediate right to the possession & use of the said land, to the extent of the interests being acquired therein.

5. That the estate or interest in or to said land hereinafter described which the petitioner intends & seeks to take, acquire, condemn, hold, & own by this proceeding is the perpetual right & easement to construct, operate & maintain a railroad track in, on and across certain lands, aggregating approximately

↑
private

8.15 acres in Essex & Hamilton Counties, N. Y., more particularly described in Exhibit "B" hereto annexed; & the temporary right & easement to construct, operate & maintain a railroad track in, on & across the lands of the State of N. Y. described & designated "Exhibit C" hereto annexed, being approximately 200 acres (228) in Essex & Hamilton Counties, State of N. Y. for the duration of the existing emergency & for 15 years after the termination of the existing emergency either by Act of Congress or by Executive Order; being the land described in the letter of the Secretary of War dated Oct. 30, 1942 & designated on a map called Exhibit "A" hereto annexed.

6. That the petitioner is informed & believes &, therefore, alleges that the following individuals have or may have or claim to have some interest in the land:

* David McElwee, Boston, Mass.

* Finch, Pruyn & Co., Glens Falls, N. Y.

State of N. Y., Albany, N. Y.

Counties of Essex & Hamilton, N. Y., & Towns of Indian

Lake, Hamilton Co., N. Y., & Minerva, Essex County,

N. Y., may be interested in any highways or roads,

if any, crossed by the proposed railroad.

7. That your petitioner shows that it has attempted to set forth the interest or estates of all persons & corporations in the lands herein mentioned as far as the petitioner has been able to ascertain the same, but notwithstanding such statement, all persons or corporations owning, in possession, or having any legal right or interest therein, are made parties to this proceeding generally to the end that all their rights, title interest & estate, whatever it may be, to all & singular the said easements & rights sought to be acquired in the premises above mentioned may be reached & vested out of them & vested in your petitioner.

8. That the purposes for which the petitioner is taking the interests & rights in said land & appurtenances thereto are necessary & suited to the public use & that the use to which said property is to be applied is authorized by law & is necessary to be so taken.

9. That it is the intention of your petitioner, in faith, to complete the work or improvement for which said property is condemned, & that all the preliminary steps required by law have been taken to entitle your petitioner to institute such proceedings.

10. That, upon information & belief, none of the owners of the real property sought to be condemned herein is an infant, idiot, lunatic or habitual drunkard.

Wherefore, the premises considered & to the end that all & singular the interests & rights in said lands described in this petition & sought to be taken may be acquired by the U. S. of America by condemnation in accordance with the several statutes & Acts of Congress in such cases made & provided, as hereinbefore set forth, petitioner prays this Honorable Court.

1. To make an order granting the petitioner the immediate possession, occupancy, improvement & use of the said lands described & all separate parts & parcels thereof to the extent of the interests being acquired therein, for military purposes, as provided in Section 171, Title 50, U. S. C., said application being made in time of War, & provide for the manner of service thereof.

2. To cite & give notice to the owners & other persons interested in the lands described in this petition as provided by law, to appear in this Court at a time to be fixed to answer this petition:

3. To appoint if deemed necessary & expedient 3 qualified & disinterested freeholders to appraise the value of the easements & interests in said property in accordance with the law & statutes

in such cases made & provided & make assessment & award of damages for each parcel hereinabove described, & interest therein which should be paid by the petitioner as just compensation for the taking thereof, & to fix a time & place for their first meeting.

4. To take such action & pass such Orders, Decrees & Judgments as may be necessary or proper fully to effect the objects for which the aforesaid Acts of Congress were passed & to cause the interests in said lands described in this petition to be condemned & taken by the U. S. of America, as hereinbefore set forth, to vest in the U. S. of America.

5. To determine & make proper distribution & payment of said award to and among the interested parties entitled thereto:

6. To grant such other & further relief as the nature of the case may require.

The United States of America

by Ralph L. Emmons

United States Attorney in & for
the Northern Dist. of N. Y.

EXHIBIT C

State of New York
United States District Court
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

vs.

220 ACRES OF LAND, MORE OR LESS,
SITUATE IN ESSEX AND HAMILTON
COUNTIES, STATE OF NEW YORK AND
THE STATE OF NEW YORK, et al,

Defendants

COPY

FINAL JUDGMENT IN
CONDEMNATION

JUSTIN J. MAHONEY
U. S. Attorney,

Syracuse, N. Y.

RECEIVED
This is a copy of

12-12-62

W. A. [Signature]

CLERK OF COURT

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

CIVIL No. 8431

VS

220 ACRES OF LAND, MORE OR LESS,
SITUATE IN ESSEX AND HAMILTON
COUNTIES, STATE OF NEW YORK AND
THE STATE OF NEW YORK, et al,

Defendants

FINAL JUDGMENT
IN CONDEMNATION
FILED

SEP 19 1962
AT CLERK
W. A. DWYER, Clerk

It appearing that on the 17th day of October, 1962, a Judgment, based upon a stipulation between Plaintiff, United States of America and defendant The People of the State of New York, was made and entered herein adjudging the sum of Six Thousand Three Hundred Fifty (\$6,350.00) Dollars, including interest, as the just compensation to be paid by plaintiff to defendant for the acquisition of an easement for a period of 100 years for the location, relocation, construction, maintenance, operation and removal of railroad facilities in, over, upon and across certain lands in the Counties of Essex and Hamilton, New York, owned by the defendant, all as more particularly described in the Complaint herein, and it further appearing that, as directed by said Judgment, plaintiff deposited the sum of \$6,350.00 in the Registry of the Court on the 16th day of November, 1962 following which payment thereof was made to defendant by Registry Check No. 4747 dated November 19, 1962, receipt for which, dated November 30, 1962, and executed by William D. Mulholland, Assistant Commissioner of Lands and Forests of the State of New York, is attached hereto, and it appearing that, pursuant to said Judgment, the aforesaid easement shall become effective on the date of the entry of a final Judgment herein and shall then supersede an existing

temporary easement for the same purposes and over the same lands as are the subject of this action.

NOW THEREFORE, it is

ORDERED, ADJUDGED AND DECREED:

1. That upon entry of this judgment Plaintiff United States of America is vested with:

An easement for a period of 100 years for the location, relocation, construction, maintenance, operation and removal of railroad facilities in, over, upon and across certain land in the Counties of Essex and Hamilton, New York, which lands are more particularly described in Schedule "A" attached to and made a part of the Complaint herein.

2. That said easement shall supersede an existing temporary easement now held by the United States of America for the same purposes and over the same lands as those herein involved.

3. That said easement is acquired for the public use.

4. That upon the expiration of said easement the lands burdened therewith shall revert to The People of the State of New York free and clear of all claims of the United States of America or anyone claiming through or under the United States of America.

ENTER:

Dated this 10th day of December, 1902.

Stephen W. Brennan
UNITED STATES DISTRICT JUDGE

Entered and docketed this 10th day of
December, 1902.

W. Arthur Dwyer
W. ARTHUR DWYER, Clerk



STATE OF NEW YORK
DEPARTMENT OF LAW

December 14, 1962

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

ADDRESS REPLY TO:

REAL PROPERTY BUREAU
103 WASHINGTON AVENUE
ALBANY 10, N. Y.

Phone: GR 4-2817
Attn. Emil Woldar

Re: Civil No. 8431
U. S. v. 220 acres of land
Essex and Hamilton Counties

Mr. William D. Mulholland
Assistant Commissioner
Division of Lands and Forests
Conservation Department
State Campus
Albany, New York

Dear Mr. Mulholland:

Enclosed is certified copy of stipulation and order fixing compensation and final judgment in the above proceeding.

Under the terms of the judgment, the temporary easement held by the United States is superseded by the new 100-year easement which became effective on the entry and docketing of the final judgment. That was December 10, 1962.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By *Edward R. Amend*

EDWARD R. AMEND
Assistant Attorney General

Enclosure

NORTHERN DISTRICT OF NEW YORK
STATE OF NEW YORK
COUNTY OF ONONDAGA

} ss:

, being duly sworn, deposes and says that he has read the foregoing and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters stated to be alleged upon information and belief and as to those matters he believes it to be true.

That the reason this affidavit is made by deponent and not by the plaintiff is that the plaintiff is a corporation sovereign and acts through its officers and agents, and that deponent is such officer, to wit, the United States Attorney in and for the Northern District of New York. That the sources of deponent's knowledge and the grounds of his belief as to matters alleged upon information and belief are communications of the proper officers and agents of the Government in the hands of deponent.

Sworn to before me

this day of

, 19

Notary Public.

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

VS

220 ACRES OF LAND, MORE OR LESS,
SITUATE IN THE COUNTIES OF ESSEX
AND HAMILTON, STATE OF NEW YORK
AND THE STATE OF NEW YORK, et al.

Defendants

UNITED STATES DISTRICT COURT
N. D. OF N. Y.
FILED

OCT 17 1962

AT _____ O'CLOCK _____ M
W. A. DWYER, Clerk

Upon the annexed stipulation between the UNITED STATES OF AMERICA, Plaintiff herein, by Justin J. Mahoney, United States Attorney in and for the Northern District of New York and, THE PEOPLE OF THE STATE OF NEW YORK, defendant herein, Louis J. Lefkowitz, Attorney General of the State of New York by Edward R. Amend, Assistant Attorney General, The People of the State of New York being the owners of the lands which are the subject of this proceeding as the same are more particularly described in the Complaint in Condemnation duly filed herein January 18, 1961, it is

ORDERED, ADJUDGED AND DECREED:

1. That the People of the State of New York are made party defendant in this proceeding.
2. That the sum of Six Thousand, Three Hundred Fifty (\$6,350.00) Dollars, including interest, represents the just compensation which should be paid by the United States of America for the acquisition of an easement for a period of 100 years for the location, relocation, construction, maintenance, operation and removal of railroad facilities in, over, upon and across certain lands situate in the Counties of Essex and Hamilton, New York owned by the defendant The People of the State of New York, which said lands are more particularly described in the Complaint referred to above.

1. That said sum of Six Thousand, Three Hundred Fifty (\$6,350.00) Dollars shall be deposited in the Registry of this Court by the Plaintiff, United States of America and after such deposit shall have been made the Clerk of this Court is ORDERED and DIRECTED to issue his check as follows:

TO: The People of the State of New York, check in the sum of\$6,350.00

and shall transmit the same to Hon. Justin J. Mahoney, United States Attorney in and for the Northern District of New York for still further transmittal to The People of the State of New York.

2. That said sum of \$6,350.00 shall be considered to be and shall be accepted in full payment and satisfaction of any and all claims against the United States of America which The People of the State of New York have or may have for, by reason of, or arising out of the acquisition by the United States of America of the easement as above set forth.

3. That the easement sought to be acquired herein shall supersede an existing temporary easement over the same lands as are the subject of this action and for the same purposes, which temporary easement expires April 29, 1967 with the easement sought herein becoming effective on the date of the entry of the final judgment in this proceeding.

6. That upon the expiration of the 100 year easement sought to be acquired herein the lands in question shall revert to the People of the State of New York free and clear of all claims of the United States of America or anyone claiming thru or under the United States of America.

Dated this 17th day of October, 1962.

Stephen W. Brown
UNITED STATES DISTRICT JUDGE

United States District Court

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

vs.

220 ACRES OF LAND, MORE OR LESS,
SITUATE IN THE COUNTIES OF ESSEX
AND HAMILTON, STATE OF NEW YORK
AND THE STATE OF NEW YORK, et al,

~~Defendants~~

COPY

STIPULATION AND JUDGMENT

JUSTIN J. MAHONEY

U. S. Attorney,

Syracuse, N. Y.

Orig. filed:

Oct. 17, 1962

"I certify that
this is a true copy
W. A. Dwyer, Clerk"

12-12-62

W. A. Dwyer

U. S. District Court

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

CIVIL No. 8431

VS

STIPULATION

220 ACRES OF LAND, MORE OR LESS,
SITUATE IN THE COUNTIES OF ESSEX AND
HAMILTON, STATE OF NEW YORK AND
THE STATE OF NEW YORK, et al,

Defendants

WHEREAS, this action was brought by the Plaintiff, United States of America at the request of the Administrator of the General Services Administration who, pursuant to the authority conferred upon him by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, determined that an easement for a period of 100 years was necessary for the location, relocation, construction, maintenance, operation and removal of railroad facilities in, over, upon and across certain lands situate in the Counties of Essex and Hamilton, New York, owned by the defendant The People of the State of New York, said lands being more particularly described in the Complaint in Condemnation hereinafter referred to; and

WHEREAS, under the authority of the Act of Congress of August 1, 1888 (25 Stat. 377, c. 728) as amended, The Federal Property and Administrative Services Act of 1949, approved June 30, 1949 (63 Stat. 377) as amended, and the Independent Offices Appropriation Act, 1961, approved July 12 1960 (74 Stat. 425), this action was commenced by the filing of a Complaint in Condemnation in the office of the Clerk of this Court on January 18, 1961, whereby plaintiff seeks to acquire the aforesaid easement for the term set forth; and

WHEREAS, The People of the State of New York having been duly served herein with a notice of the filing of the Complaint in Condemnation and the Attorney General of the Sta

of New York having duly filed his Notice of Appearance in the action on October 17, 1961; and

WHEREAS, the public use for which said lands are sought to be acquired is to adequately provide for a railroad line over which strategic materials necessary to the United States may be transported; and

WHEREAS, Plaintiff in 1942, acquired a temporary easement over the said lands, together with other lands, for the same purpose as above set forth, which temporary easement expires April 29, 1967, and since 1942 has used said lands for such purposes and continues to so use them; and

WHEREAS, the easement for 100 years herein sought to be acquired is intended to supersede the unexpired term of the existing easement effective on the date of the entry of the final Order and Judgment in this proceeding; and

WHEREAS, the authority of the United States of America to condemn the aforesaid lands for the stated term and purposes is conceded; and

WHEREAS, the matter of compensation to be paid by the United States of America to The People of the State of New York is unsettled; and

WHEREAS, no one other than The People of the State of New York has any interest in the lands which are the subject of this proceeding.

NOW THEREFORE, it is hereby STIPULATED and AGREED by and between the Plaintiff, UNITED STATES OF AMERICA by Justin J. Mahoney, United States Attorney in and for the Northern District of New York and THE PEOPLE OF THE STATE OF NEW YORK by Hon. Louis J. Lefkowitz, Attorney General of the State of New York, as follows:

1. That The People of the State of New York voluntarily appear herein and consent to be made the party defendant herein.

2. That the sum of \$6,350.00 represents the just compensation which should be paid by the United States of America to The People of the State of New York for an easement for a period of 100 years for the location, relocation, construction, maintenance, operation and removal of railroad facilities in, over, upon and across certain lands situate in the counties of Essex and Hamilton, New York owned by the defendant The People of the State of New York, said lands being more particularly described in Exhibit "A" attached hereto and made a part hereof.

3. That an Order may be made and entered herein without further notice, fixing the compensation for the acquisition of the aforesaid easement in the amount of \$6,350. which sum shall be deposited by the Plaintiff United States of America in the Registry of the Court, and, after such deposit shall have been made, directing the Clerk of the Court to issue his check as follows:

TO: The People of the State of New
York, check in the sum of\$6,350.00

which sum shall be considered to be and shall be accepted in full payment and satisfaction of any and all claims against the United States of America which The People of the State of New York have or may have for, by reason of, or arising out of this condemnation action and the acquisition by the United States of America of the easement above set forth.

4. That said Order shall further provide that at the expiration of the easement period herein provided for the premises in question shall revert to The People of the State of New York free from all claims of the United States of America or anyone claiming thru or under the United States of America

5. That the said check be delivered to
Hon. Justin J. Mahoney, United States Attorney in and
for the Northern District of New York, Box 1258,
Syracuse 1, New York for transmission to said defendant.

Dated this 15th day of October, 1962.

UNITED STATES OF AMERICA

BY: Justin J. Mahoney
UNITED STATES ATTORNEY in and for
the Northern District of New York
for Plaintiff

THE PEOPLE OF THE STATE OF NEW YORK
LOUIS J. LEFKOWITZ
Attorney General, State of New York
Defendant

BY: Edward R. Amend
EDWARD R. AMEND, Assistant
Attorney General

EXHIBIT "A"

LANDS OVER WHICH EASEMENT IS TO BE ACQUIRED
FROM THE STATE OF NEW YORK

All this tract or parcel of land situated in the Counties of Essex and Hamilton, Towns of Minerva and Indian Lake, State of New York bounded and described as follows:

Beginning at Station 351 / 201 $\frac{1}{2}$, being the intersection of the located center line of the North Creek-Sanford Lake Railroad Connection with the southerly line of Lots Nos. 16 and No. 33 of the lands of the State of New York, being a parcel of land bounded by lines parallel to the located center line of the Railroad Connection and to the widths either side of said center line as given in the following tabulation, and further shown on file drawing 617-37533 entitled "R. O. W. Station 350 / 77 $\frac{1}{2}$ to Station 1083 / 12 $\frac{1}{2}$."

Alignment of Center Line				Width of R.O.W.	
:	:	:	:	West of	East of
:	:	:	:	center	Center
:	Station	Distance	:	line	Line
:	:	:	:	:	:
Tangent	351 / 201 $\frac{1}{2}$	171'			
Curve 2° L	PC 352 / 91	500'		50'	50'
Tangent	PT 357 / 91	1450'		50'	50'
Curve 2°30' L	PC 372 / 41	1500'		50'	50'
Curve 3°45' L	POC 387 / 41	500'		50'	50'
Tangent	PT 392 / 41	340.64'		50'	50'
Curve 3°30' R	PC 395 / 81.64	323.71'		50'	50'
Tangent	PT 399 / 05.35	207.83'		50'	50'
Curve 6° 00' L	PC 401 / 13.18	313.88'		50'	50'

		Alignment of Center line		Width of R. O. W.	
				West of	East of
		Station	Ft. Distance	Center Line Ft.	Center Line Ft.
Tangent		PT 404 / 27.06	102.94	50'	50'
Curve	8°00' R	PC 405 / 30	300'	50'	50'
Tangent		PT 408 / 30	170'	50'	50;
Curve	7°45' R	PC 410 / 00	400	50'	50'
Tangent		PT 414 / 00	1400	50'	50'
		428 / 00		50'	50'
		428 / 00	219.80	400	50
Curve	6°00' L	PC 430 / 19.80	447.50	400	50
Tangent		PT 434 / 67.30	332.70	400	50
		438 / 00		400	50
		438 / 00	726.90	100	100
Curve	10°00' L	PC 445 / 26.90		100	100
			340'		
Tangent		(PT 448 / 66.90 So. PT 448 / 69.53 No.	742.95	100	100
Curve	10°00' R	PC 456 / 12.48	387.52	100	100
		460 / 00		100	100
		460 / 00	112.48	50	50
Tangent		PT 461 / 12.48	1218.17	50	50

Alinement of Center Line				Width of R. O. W.	
		Station	Pt. Distance	West of Center Line Ft	East of Center Line Ft.
Curve	6°00' L	PC 473 1/2 30.65		50	50
			660.28		
Tangent		PC 479 1/2 90.93	1358.16	50	50
Curve	5°00' R	PC 493 1/2 49.09	300	50	50
Tangent		PT 496 1/2 49.09	440.54	50	50
Curve	5°00' L	PC 500 1/2 89.63	220	50	50
Tangent		PT 503 1/2 09.63	1165.37	50	50
Curve	5°00' R	PC 514 1/2 75	440.	50	50
Tangent		PT 519 1/2 15	85	50	50
		520 1/2 00		50	50
		520 1/2 00	450	100	50
Curve	10°00' R	PC 524 1/2 50	550	100	50
		530 1/2 00		100	50
		530 1/2 00	35	75	75
Tangent		PT 530 1/2 35	150	75	75
Curve	10°00' L	PC 531 1/2 85	865	75	75
	8°00' L	POC 540 1/2 50	556.25	75	75
Tangent		PT 546 1/2 06.25	177.25	75	75
Curve	10°00' R	PC 547 1/2 83.50	316.50	75	75

		Alinement of Center Line	Width of R. O. W.	
		Distance	West of Center Line	East of Center Line
	Station	Ft.	Ft.	Ft.
	551 / 00		75	75
	551 / 00		100	200
		396.00		
Tangent	PT 554 / 96.00		100	200
	554 / 96.00		100	100
		178		
Curve	8°00' L PC 556 / 86.50		100	100
		912.50		
Tangent	PT 565 / 86.50		100	100
		227.50		
Curve	10°00' R PC 569 / 14		100	100
		186.00		
	570 / 00		100	100
	570 / 00		100	200
		589.00		
Tangent	PT 575 / 89		100	200
Tangent	PT 575 / 89		100	100
		227		
Curve	10°00' L PC 578 / 16		100	100
		292.50		
Tangent	PT 581 / 08.50		100	100
		91.50		
	582 / 00		100	100
	582 / 00		100	200
		77		
Curve	10°00' R PC 582 / 77		100	200
		423		
	587 / 00		100	200
	587 / 00		100	100
		167		
Tangent	PT 588 / 67		100	100
		233		
	591 / 00		100	100
	591 / 00		50	50

: Alinement of Center Line				: Width of R. O. W.	
:				: West of	: East of
:				: Center	: Center
: Station				: Line Ft.	: Line Ft.
:				:	:
Curve	1°00' L	PC 597 / 32 /	632	50	50
Tangent		(PT 597 / 98.67 So. PT 598 / 97.94 No.)	66.67	50	50
			460.23		
Curve	3°00' L	PC 603 / 58.17	233.33	50	50
Tangent		PT 605 / 91.50	1108.50	50	50
Curve	5°00' R	PC 617 / 00	200	50	50
Tangent		PT 619 / 00	1108.52	50	50
Curve	4°00' R	PC 630 / 08.52	575	50	50
Tangent		(PT 635 / 83.52 So. PT 636 / 83.52 No.)	59.26	50	50
Curve	4°00' L	PC 637 / 42.78	557.50	50	50
Tangent		PT 643 / 00.28	229.72	50	50
Curve	4°00' R	PC 645 / 30	670	50	50
Tangent		PT 652 / 00	200	50	50
Curve	4°00' L	PC 654 / 00	500	50	50
Tangent		PT 659 /	981.26	50	50
Curve	2°00' R	PC 668 / 81.26	320	50	50
Tangent		PT 672 / 01.26	246.11	50	50
Curve	4°00' L	PC 674 / 47.37	500	50	50
Tangent		PT 679 / 47.37	301.17	50	50
Curve	3°00' R	PC 682 / 48.54	500	50	50
Tangent		PT 687 / 48.54	1183.78	50	50
Curve	4° 00' R	PC 699 / 32.32	644.17	50	50
Tangent		PT 705 / 76.49	1373.51	50	50
Curve	8°00' L	PC 719 / 50		50	50

		Alinement of Center Line	Width of R. O. W.		
		Station	Distance Ft.	West of Center Line Ft.	East of Center Line Ft.
Tangent		PT 725 / 50	600	50	50
Curve	3°00' R	PC 733 / 32.88	782.88	50	50
Tangent		PT 735 / 66.21	333.33	50	50
Curve	3°00' L	PC 738 / 32.88	166.67	50	50
Tangent		PT 741 / 66.21	333.33	50	50
Curve	4° 00' L	PC 748 / 47.38	581.17	50	50
Tangent		PT 753 / 47.38	500	50	50
Curve	4°00' R	PC 754 / 47.37	99.99	50	50
Tangent		PT 759 / 47.37	500	50	50
Curve	4°00' R	PC 768 / 42.78	895.41	50	50
Tangent		PT 775 / 42.78	700	50	50
		777 / 00	157.22	50	50
		777 / 00		200	50
Curve	3°00' L	PC 778 / 19.63	119.63	200	50
Tangent		PT 783 / 42.96	523.33	200	50
Curve	10°00' L	{ PC 784 / 14.63 So. = PC 786 / 29.05 No. PC 786 / 29.05 No.	71.67	200	50
Tangent		PT 788 / 29.05	200	50	50
Curve	4°00' L	PC 788 / 92.35	63.30	50	50
Tangent		PT 789 / 98.18	105.83	50	50
Curve	10°00' L	PC 791 / 52.47	154.29	50	50
Tangent		PT 792 / 95.64	143.17	50	50
Curve	3°00' R	PC 798 / 41	545.36	50	50
		PC 798 / 41		50	100
Tangent		PT 801 / 83.22	342.22	50	100
		804 / 00	216.78	50	100
		804 / 00		50	50
Curve	4°00' L	PC 806 / 00	200	50	50
Tangent		PT 810 / 92.92	492.92	50	50
Curve	8°00' R	PC 813 / 50	257.08	50	50
Tangent		PT 816 / 00	250	50	50

: Alinement of Center line:			Width of R. O. C.		
: Station			: Distance:	: West of	: East of
:			: Ft.	: Center	: Center
:			:	: Line Ft.	: Line Ft.
Curve	4°00' L	PC 817 / 91.76	191.76	50	50
Tangent		Pt 821 / 25.93	334.17	50	50
Curve	8°00' R	PC 827 / 50	624.07	50	50
Tangent		PT 833 / 50	600	50	50
Curve	6° 00' L	PC 834 / 50	100	50	50
Tangent		PT 837 / 00	250	50	50
Curve	3°00' R	PC 838 / 89.67	189.67	50	50
Tangent		PT 841 / 08.56	218.89	50	50
Curve	2°00' L	PC 843 / 93.36	284.80	50	50
Tangent		PT 845 / 43.36	150	50	50
Curve	3°00' L	PC 851 / 73.84	630.48	50	50
Tangent		PT 855 / 90.51	416.67	50	50
		857 / 00	109.49	50	50
		857 / 00		100	50
Curve	2°00' R	PC 858 / 21.66	121.66	100	50
		860 / 00	178.34	100	50
		860 / 00		50	50
Tangent		PT 861 / 21.66	121.66	50	50
Curve	3°00' R	PC 861 / 99.25	77.59	50	50
Tangent		PT 865 / 99.25	400	50	50
Curve	5°30' L	PC 867 / 09.33	110.08	50	50
		870 / 00	290.67	50	50
		870 / 00		100	50
Tangent		PT 871 / 45.69	145.69	100	50
		872 / 00	54.31	100	50
		872 / 00		50	50
Curve	4°00' R	PC 874 / 19.39	219.39	50	50
Tangent		PT 879 / 00.64	481.25	50	50
Curve	2° 00' R	PC 879 / 56.65	56	50	50
Tangent		PT 882 / 19.14	262.50	50	50
Curve	8°00' R	PC 883 / 60.26	141.12	50	50
Tangent		PT 887 / 00.89	340.63	50	50

Alinement of Center Line				Width of R. O. W.	
		Station	Ft. Distance	West of Center Line Ft.	East of Center Line Ft.
		PT 887 / 00/89		100	50
Curve	8°00' L	PC 888 / 32.55	131.66	100	50
			176.45		
West line of Lot No. 38 - Finch Pruyn Property		890 / 09 / (STOP) (BEGIN)		100	50
East line of Lot No. 38 - Finch Pruyn Property		POC 923 / 43 / on 5° curve to right	257	50	50
Tangent	Azimuth 36° 10' referred to true meridian	PT 926 / 00		50	50
Curve	2°00' L	PC 928 / 33.30	233.30	50	50
Tangent		PT 930 / 16.63	183.33	50	50
		960 / 00	2983.37	50	50
		960 / 00		100	100
Curve	3°00' L	PC 962 / 10.42	210.42	100	100
Tangent		PT 964 / 63.20	252.78	100	100
Curve	5°00' L	PC 983 / 49.01	1885.81	100	100
Tangent		PT 988 / 11.68	462.67	100	100
Curve	4°30' L	PC 1007 / 92.70	1981.02	100	100
Tangent		PT 1023 / 21.96	1529.26	100	100
Curve	2°00' L	PC 1033 / 41.24	1019.28	100	100
Tangent		PT 1040 / 41.24	700	100	100
Curve	8°00' R	PC 1046 / 80	638.76	100	100
Tangent		PT 1052 / 91.25	611.25	100	100
Curve	4°00' R	PC 1059 / 00	608.75	100	100
Tangent		PT 1066 / 65.42	765.42	100	100
Curve	6°00' L	PC 1078 / 00	1134.58	100	100
		1083 / 12. /	512.40 /	100	100

Division line between Township No. 30 and No. 46

Legend - L - Left
R - Right
PC - Point of Curve
PT - Point of tangent
POC - Point on curve
being and containing 220 acres more or less.

NORTHERN DISTRICT OF NEW YORK
STATE OF NEW YORK
COUNTY OF ONONDAGA

ss:

, being duly sworn, deposes and says that he
has read the foregoing and knows the contents thereof;
that the same is true to the knowledge of deponent except as to the
matters stated to be alleged upon information and belief and as
to those matters he believes it to be true.

That the reason this affidavit is made by deponent and not by the
plaintiff is that the plaintiff is a corporation sovereign and acts
through its officers and agents, and that deponent is such officer,
to wit, the United States Attorney in and for the Northern District
of New York. That the sources of deponent's knowledge and the grounds
of his belief as to matters alleged upon information and belief are
communications of the proper officers and agents of the Government in
the hands of deponent.

Sworn to before me
this day of
 , 19

Notary Public.

EXHIBIT D



January 5, 2018

Thomas S. Berkman
Deputy Commissioner and General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1010

RE: Petition for Partial Waiver of Abandonment Regulations and for Exemption; NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION - ADVERSE ABANDONMENT - SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, NY

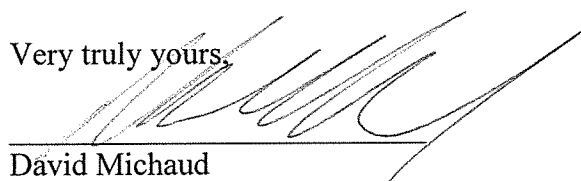
Dear Mr. Berkman,

I am in receipt of your Petition for Partial Waiver of Abandonment Regulations and for Exemption in the above-referenced matter, which was submitted to Cynthia T. Brown on December 19, 2017. I have reviewed the petition with our outside counsel and discussed the merits of the anticipated adverse abandonment application. Upon review, and as I indicated in my December 27, 2017 letter to you, we do not believe there is any merit to any abandonment action, especially given that the storage of rail cars on the Tahawus branch is essential to the continued freight and passenger operations on the rest of the track over which Saratoga and North Creek Railway ("SNCR") operates. SNCR is fully prepared to oppose any action brought by your agency, or anyone else, which would seek abandonment of the line at issue.

Nevertheless, in the interest of seeking to resolve our disputes amicably, SNCR is prepared to immediately cease storing rail cars on the line, and permanently end the future possibility of storing rail cars on the line, contingent on an agreement with your agency to purchase the permanent easement owned by SNCR. SNCR is willing to sell its interest for \$5,000,000.00, which is a figure derived at by the initial purchase price paid and the future revenue that SNCR would be foregoing.

I am available at your convenience to discuss this matter further.

Very truly yours,



David Michaud
General Counsel for Iowa Pacific Holdings, LLC; and
Counsel to Saratoga & North Creek Railway, LLC

EXHIBIT E



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

BARBARA D. UNDERWOOD
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

June 8, 2018

David Michaud, Esq.
General Counsel
Iowa Pacific Holdings, LLC
118 South Clinton St. Suite 400
Chicago, IL 60661

Re: *New York State Department of Environmental Conservation-
Adverse Abandonment-Saratoga and North Creek Railway in
Town of Johnsbury, NY
STB Docket No. AB 1261*

Dear Mr. Michaud:

Enclosed please find NYSDEC's Request for the Production of Documents and Electronically-Stored Information in the above-referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua M. Tallent".

Joshua M. Tallent
Assistant Attorney General
(518) 776-2401

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB 1261

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION – ADVERSE ABANDONMENT – SARATOGA AND NORTH
CREEK RAILWAY IN TOWN OF JOHNSBURG, NY**

**REQUEST FOR THE PRODUCTION OF DOCUMENTS AND
ELECTRONICALLY-STORED INFORMATION**

Under the authority of 49 U.S.C. § 10903 and 49 C.F.R. part 1152, the New York State Department of Environmental Conservation (DEC) will file an application for adverse abandonment of the authority of the Saratoga and North Creek Railway (SNCR) to operate over a rail line commonly known as the Sanford Lake Branch or the Tahawus Line (the Line), between milepost NC 0.0 at North Creek, New York and the Line's terminus near the Tahawus Mine at milepost NC 29.71.

Pursuant to Fed. R. Civ. P. 26(b) and 34 and 49 C.F.R. § 1114.21, DEC requests that the materials demanded be served on undersigned counsel within 30 days of the date of service of this demand.

DEFINITIONS

1. As used herein, the term “communication” shall mean the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), and shall include any and all written or electronic communications and any transcript, note, or other written record of any oral communications.

2. The term “document” shall mean writings, drawings, graphs, charts, photographs, paper or electronic records, or other compilations of data from which information may be obtained, including original documents and any drafts or copies thereof. As herein defined, the term “document” shall include, without limitation: correspondence, communications, letters, calendars, appointment books or entries, diaries, journals, memoranda, messages, faxes, studies, stenographic or handwritten notes, working papers and/or drafts, invoices, vouchers, checks, statements, maps, diagrams, tables, indexes, transcripts, minutes, pictures or photographs, recordings, videotapes, audiotapes, reports, computer files, or electronic mail (e-mail), whether available in hard copy or stored electronically; data available on any computer or computer disk or any other tangible object upon which or within which information is recorded or encoded; and copies or reproductions of any of the above that differ in any respect from the original. For purposes of this demand, drafts and non-identical copies are to be considered separate documents. E-mail documents shall include all e-mail whether retained as a hard copy or existing in any other medium or format.

3. The terms “person” or “persons” shall mean any and all natural persons or any business, legal, or governmental entities or associations.

4. The phrase “relating to” shall mean either directly or indirectly, in whole or in part: identifying, constituting, showing, recording, substantiating, describing, analyzing, summarizing, reflecting, arising from, connected with, commenting on, responding to, or in any way having a logical or factual connection with the matter at issue.

5. “SNCR” shall mean the Saratoga and North Creek Railway and its present or former parents or affiliates, including without limitation Iowa Pacific Holdings and Permian Basin Railways, as well as all directors, managers, members, principals, predecessors, successors, employees, agents, attorneys, accountants, representatives, professional advisors, or other persons acting by SNCR’s authority or on its behalf.

6. The terms “you” and “your” shall mean SNCR and each of its present or former parents, affiliates, directors, managers, members, principals, predecessors, successors, employees, agents, attorneys, accountants, representatives, professional advisors, or other persons acting by SNCR’s authority or on its behalf.

7. The term “Line” shall mean that stretch of railroad track—including all associated yards and sidings—situated between milepost NC 0.0 at North Creek, New York and the terminus near the Tahawus Mine at milepost NC 29.71.

8. As used herein, the singular form of a noun or pronoun shall include within its meaning the plural form of the noun or pronoun so used, and vice versa; the use of the masculine form of a pronoun shall include the feminine form of the pronoun so used, and vice versa; the use of any tense of any verb shall include all other tenses of the verb so used; and the word “and” shall also include the word “or,” and vice versa.

INSTRUCTIONS

1. All documents must be produced in a form that renders them ready for copying.

2. Each document should be segregated and identified by the request to which it is primarily responsive, or produced as it is kept in the usual course of business.

3. A request for a document shall be deemed to include a request for any and all file folders within which the document was contained, and also transmittal sheets, cover letters, exhibits, enclosures, the file label of the folder in which the document was stored, and attachments to the document in addition to the document itself.

4. In identifying documents and electronically-stored information ("ESI") responsive to the requests below, you should search for all such documents and ESI regardless of the form in which the document or ESI exists, the ownership of the device in which the ESI resides, or the location of the device in which the ESI is stored. Among other places, you should search for ESI on all servers, networks, hard drives, desktop computers, notebook and laptop computers, cell phones, personal digital assistants, USB or flash drives, voice mail, unifying messaging services, Web-based networking media such as Twitter, Facebook, LinkedIn, listservs, and instant messaging services.

5. Each individual request shall be construed individually and in isolation. No request shall be construed by reference to any other request in order to limit the response to such request.

6. The requests below apply to all documents in the possession, custody, or control of you or any of your present or former officers, accountants, employees, agents, attorneys, investigators, consultants, contractors, experts, or representatives;

and any other persons directly or indirectly employed or retained by you; or anyone else acting on your behalf, purporting to act on your behalf, or otherwise subject to your control, wherever located.

7. If you object to or otherwise decline to respond to any portion of any request, provide all documents called for by that portion of the request to which you do not object or to which you do not decline to respond. For those portions of any request to which you object or otherwise decline to respond, state in detail the reason for such objection or declination.

8. If you withhold any document, or portion thereof, on the basis of any claim of privilege or for any other reason, specify the following as to each document: (a) the type of document withheld; (b) its date, if any; (c) its possessor; (d) its author(s) and addressee(s); (e) its general subject matter; and (f) the ground(s) upon which it is being withheld.

9. Where anything has been deleted or redacted from a document produced in response to a document request, specify: (a) the nature of the material deleted or redacted; and (b) the reason for the deletion or redaction.

10. If responsive documents existed but have been destroyed or are no longer in your possession or control or subject to your custody or control, state: (a) the date and circumstances of the destruction of the document(s), if applicable; (b) the reason the document(s) are no longer in your possession; (c) the identity (including without limitation the name, address and phone number) of the person(s) in whose possession the responsive documents can be found, if applicable; and (d) a description of the responsive documents, including the name and title of the author, the name

and title of each person to whom the document was addressed, the name and title of each person to whom a copy of the document was sent, directed, circulated, or distributed, the date of the document, the number of pages, and a brief description of the nature and subject matter of the document.

11. In accordance with Fed. R. Civ. P. 26(e), these requests are continuing in nature. Supplemental answers may be served from time to time, but no later than 30 days after responsive information is received.

12. DEC reserves the right to serve further document and/or other discovery requests as necessary.

DOCUMENTS REQUESTED

1. Any deeds or instruments, including any attachments or appendices, by which SNCR acquired a property interest in the easement and/or appurtenances comprising the Line.

2. Any title insurance policy related to SNCR's acquisition of a property interest in the Line.

3. Any surveys of the Line or any portion of the Line, whether conducted on SNCR's behalf or not.

4. Any appraisals of the Line, whether conducted on SNCR's behalf, on behalf of a lender, or for any other purpose.

5. All records indicating what freight traffic, if any, moved on or over the Line since SNCR received Surface Transportation Board authority to operate as a common carrier on the Line.

6. All documents identifying the name of any entity that shipped freight over the Line since SNCR acquired its operating authority.

7. All documents identifying the type and/or amount of freight shipped over the Line since SNCR acquired its operating authority.

8. All documents identifying the type and/or number of rail cars required to perform the shipments identified in response to document requests 5–7 , *supra*.

9. Any contract or other written agreement for past shipment of freight on the Line since SNCR acquired its operating authority.

10. Any contract or other written agreement for future shipment of freight on the Line.

11. Any SNCR business or operating plan, whether annual or otherwise, from 2011 to date.

12. Any agreement between SNCR and Canadian Pacific Railway (CP) pertaining to the interchange of freight traffic at the Saratoga Yard in Saratoga Springs, New York.

13. Any communication to or from CP regarding rates or terms for the interchange of freight traffic at the Saratoga Yard.

14. Any SNCR documents intended to market freight service on the Line.

15. Any communications from SNCR to potential freight customers offering freight service on the Line and/or attempting to solicit freight business for the Line.

16. Any communications responding to the communications referenced in the document request 15, *supra*.

17. Any document and/or communication relating to an unsolicited request for information regarding freight shipment on the Line received by SNCR from potential freight shippers.

18. Any contract or other written agreement giving another entity a legal right to store rail cars on the Line.

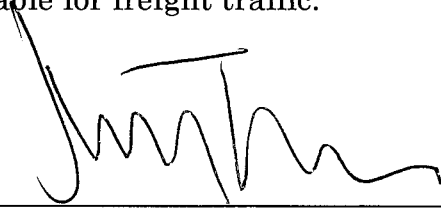
19. Any Federal Railroad Administration (FRA) notice of violation issued to SNCR for violations relating to the Line.

20. Any FRA inspection reports in SNCR's possession relating to the Line.

21. Any mortgages or related instruments encumbering SNCR's property interest in the Line.

22. Any documents relating to repairs and/or upgrades performed by SNCR in order to render the Line safe and operable and suitable for freight traffic.

Dated: June 8, 2018
Albany, New York

By: 

Susan L. Taylor
Joshua M. Tallent
Assistant Attorneys General
New York State Office of the
Attorney General
The Capitol
Albany, NY 12224-0341
(518) 776-2456
Joshua.Tallent@ag.ny.gov

EXHIBIT F

Davies, Sarah B (DEC)

From: Jeff Slade <jslade@continentalplacer.com>
Sent: Thursday, March 15, 2018 4:49 PM
To: Davies, Sarah B (DEC)
Subject: RE: Tahawus site
Attachments: Tahawus Rail Narrative.pdf

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Sarah,

Please take a look at the attached narrative regarding rail shipping of stone from the Tahawus operation.

Jeff Slade, Senior Geologist
jslade@continentalplacer.com
2 Winners Circle • Albany, New York 12205
(518) 458-9203 Ext. 304
(518) 369-3386 Cell
www.continentalplacer.com

From: Davies, Sarah B (DEC) [<mailto:sarah.davies@dec.ny.gov>]
Sent: Thursday, March 8, 2018 1:54 PM
To: Jeff Slade
Subject: Tahawus site

Hi Jeff,
I need more information from you regarding the transportation of material from the Mitchell Stone site. The application I have in front of me states that the material will be removed by trucks. Can you please send me a letter to that effect. If that is not the case we will have to process the change in transportation. Please let me know if you have any questions.
Thanks,
Sarah

Sarah Davies

Environmental Analyst 1, Division of Environmental Permits

New York State Department of Environmental Conservation
232 Golf Course Road, Warrensburg, NY 12885
P: (518) 623-1281 | F: (518) 623-3603 | sarah.davies@dec.ny.gov
www.dec.ny.gov |  | 

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Rail Transportation and the Tahawus Aggregate Operation

The Tahawus mine property has been classified by the Adirondack Park Agency for Industrial use and is one of the largest industrially zoned parcels in the Adirondack Park. The property is located at the northern terminus of the Saratoga and North Creek railroad which currently provides freight rail service to the site. The Delaware and Hudson Railroad constructed and serviced the rail line from 1943 until 1989. Three rail sidings remain on the property from when NL Industries shipped 60 to 100 rail cars a day of sintered ilmenite (titanium) by rail from the mine. The rail siding and potential to ship by rail from the Tahawus property adds value to this industrial site. Over the last 10 years a number of companies have investigated the potential for processing the mine tailings piles for construction aggregates and moving the product to the New York City market by rail. Although the potential for this type of venture appears promising the reality is that the logistics and cost of rail shipment from Tahawus is not economically feasible with the current market conditions.

Crushed stone is a bulk material that is very heavy and is a low dollar per ton commodity. The cost of handling and transport to the market can significantly impact the price of the stone. In the upstate New York market the average price per ton for NYSDOT approved stone is \$12 to \$14. In contrast, the same crushed stone price per ton in the New York City market averages \$28 to \$30 a ton and is approaching \$38 to \$40 on Long Island. Current rail rates, with no materials handling charges, average \$0.130 per ton mile for Class 1 railroads in the northeast. Freight rates will also be impacted by the number and type of cars used, frequency of cycle, annual volume, shipment seasonality, and number of rail carriers involved. The rail distance from Tahawus to New York City is approximately 240 miles, this indicates a minimum (ball-park) cost per ton to ship by rail would be approximately \$31 a ton. This simple transportation cost assessment shows why it is currently not profitable to ship by rail from Tahawus to New York City.

Rail shipment of crushed stone from Tahawus in the last several years has been limited to approximately 80 cars of railroad ballast purchased by the Iowa Pacific Railroad (current owner of the Saratoga and North Creek) and used internally by the railroad. The future of shipping construction aggregates by rail from Tahawus is dependent upon a number of variable but the most significant item is that the price per ton of crushed stone, in the market, must be several dollars per ton, more than the transportation cost. Truck transportation to the local upstate market (within 50 to 60 miles) is the primary mode of transportation of the crushed stone from the Tahawus site and has been noted as such in the pending mine permit application.

EXHIBIT G



CONTINENTAL PLACER INC.

11 Winners Circle • Albany, New York 12205
(518) 458-9203 *fax* (518) 458-9206
www.continentalplacer.com

MINED LAND USE PLAN FOR THE MITCHELL STONE PRODUCTS, LLC TAHAWUS OPERATION

TOWN OF NEWCOMB ESSEX COUNTY, NEW YORK

Prepared For:

**Mr. Paul Mitchell
Mitchell Stone Products, LLC
Saranac Lake, New York**

Prepared By:

**Jeffrey Slade
Senior Geologist
Continental Placer Inc.**

September 19, 2017

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**NYSDC 10-01.5
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- Form 1: Organizational Report
- Form 2: Mining Permit Application
- Form 3: Environmental Assessment Form (EAF)

APPENDIX

- Appendix A: NL Industries Site Mining History
- Appendix B: Site Soils Descriptions
- Appendix C: Site Stream Classification/Wetland Map
- Appendix D: Mining Plan Map
- Appendix E: Reclamation Plan Map and Sections

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1.0 INTRODUCTION

This report sets forth the operational aspect and reclamation plans of the Mitchell Stone Products, LLC (Mitchell) to reclaim and process stockpiled stone and mine tailings from the old NL Industries Tahawus Mine, in the Town of Newcomb, Essex County, New York (to be known as the Tahawus operation). The information presented in this document is submitted in compliance with the application requirements contained in Article 23, Title 27, of the New York State Environmental Conservation Law and known as the Mined Land Reclamation Law.

This report was prepared by Continental Placer Inc. (CPI) in August, 2017. Information was provided Mitchell personnel and from site work conducted by CPI. Data pertaining to wetlands, cultural resources, soils, threatened and endangered species, and regulated waters for the project site were derived from web based GIS applications maintained by the NYSDEC, Soil conservation Service, Adirondack Park Agency, and NYSHPO. Quenzer Environmental completed a wetland assessment for the property in early September of 2017 and provided the findings from their field study.

The text and appended maps follow the general sequence presented in NYSDEC Regulations and Mined Land Reclamation Law.

2.0 MINING PLAN

2.1 Location

The Mitchell Tahawus operation is located in the Town of Newcomb, Essex County, New York, approximately 8± miles northeast of the center of Newcomb. The project area is located in the center of the old NL Industries titanium mine at Tahawus. A Location map for the site has been included on the following page as figure 1. A Topographic Quadrangle map (Santononi Peak) of the area surrounding the site has also been included for reference and is located in the map section in the back of the report. Access to the Tahawus Operation is best reached by traveling 5.6 miles north from the intersection of County Highway 84 (Blue Ridge Road) on the Tahawus Road. The existing entrance roadway, into the site, is located on the east side of the Tahawus Road (after passing across the bridge for the Hudson River). The area to be permitted, is located approximately 1.4 northeast of the site entrance. The property and mineral rights are controlled by the applicant and comprise approximately 1,155 contiguous acres. Based on the Essex County, New York Real Property Tax Map information the project site is located on is tax parcel number 90-1-3.110 in the Town of Newcomb.

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2.2 Current Land Use of the Area

The area is characterized by previous mining activities, conducted at one of the world's largest titanium and magnetite mines for over 80 years, by NL Industries and its predecessors. The current land use classification of the property by the Adirondack Park Agency is Industrial. The area surrounding the property is rural forest lands and the closest town being Newcomb, about eight miles to the southwest. The nearest residential parcels are scattered along Blue Ridge and Lower Works Roads over 6 miles South of the Tahawus operation.

2.3 Existing Conditions of the Land

2.3.1 Mining History and Land Use

The area to be permitted lies in the center of the now inactive NL Industries Tahawus Mine. Included in Appendix A is a copy of a publication, produced by National Lead Company that provides information on the mining history of the property. It is estimated that from 1941 to 1989 over 100 million tons of rock was mined, at Tahawus, to produce 40 million of titanium. The remains from the mining activity dominate the landscape around the two, now water filled, open pit surface mines, located on the property. Many acres, containing piles of waste rock, crushed stone, and process tailing remain from the previous mining activities. The network of mining roads, mining office shop, scales, processing areas, and rail sidings are all still intact and useable. In recent years, crushed stone has been produced at the site and sold to the local towns.

2.3.2 Soils

Based on the U.S.D.A. Natural Resource Conservation Service (NRCS), Web Soil Survey (WSS), soils map indicates that the entire 23.0 acre Life of Mine (LOM) area, to be permitted, is underlain by undifferentiated mine spoils (UmF) with no other soil cover noted. Most of the area surrounding the proposed LOM is also noted as either UmF or the water filled mines. Figure 2 shows the soil type distribution for site (U.S.D.A. NRCS. Essex County, NY. WSS). The detailed descriptions of the various soils types found in the general vicinity of the project site have been included in Appendix B for reference.

2.3.3 Vegetation

The majority of the vegetative cover has been removed from the proposed LOM and adjacent property by previous mining activities. Large areas, previously affected by mining activity, which include the tailing area, stone stockpile, processing areas and roadways were never reclaimed and remain with no vegetation.

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Map Unit Legend

Essex County, New York (NY031)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
BkD	Becket-Tunbridge complex, 15 to 35 percent slopes, rocky, very bouldery	1.5	0.3%
HrF	Hogback-Knob Lock complex, 35 to 60 percent slopes, very rocky, very bouldery	5.1	1.1%
MkC	Monadnock fine sandy loam, 8 to 15 percent slopes, very bouldery	1.1	0.2%
MnC	Monadnock-Tunbridge complex, 8 to 15 percent slopes, rocky, very bouldery	0.9	0.2%
MnD	Monadnock-Tunbridge complex, 15 to 35 percent slopes, rocky, very bouldery	2.1	0.4%
Pc	Pits, quarry	20.0	4.3%
RaF	Rawsonville-Hogback complex, 35 to 60 percent slopes, very rocky, very bouldery	0.7	0.2%
TuD	Tunbridge-Lyman complex, 15 to 35 percent slopes, very rocky, very bouldery	7.4	1.6%
UmF	Udorthents, mine spoil, nearly level through very steep	293.5	63.5%
W	Water	129.6	28.1%
Totals for Area of Interest		461.8	100.0%

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2.3.4 Topography

Topography of the proposed LOM area and the area surrounding the site is shown on the Mining Plan Map and the Location Map (Figure 1). Based on a review of the Santononi Peak, U.S.G.S. 7.5 Minute Topographic Quadrangle, the property ranges in elevation from approximately 1,740 feet to 2,280 feet above mean sea level. In general, the regional topography at and in the immediate vicinity of the proposed mine slopes from the northeast towards the southwest. The area to be used for processing is relative flat lying with an approximate elevation of 1,760 feet. The large crushed stone pile rises 140 feet above the processing area to an elevation of 1,900 feet. The tailings area topography has a slight downward grade to the north, from 1,790 to 1,760 feet in elevation.

CPI completed a fixed wing UAV flight, in July of 2017, (Sensefly Ebee Plus) covering approximately 180 acres of the proposed LOM and adjacent property. Trimble GPS survey equipment was utilized to establish horizontal and vertical ground control points for the UAV flight data. Horizontal and vertical survey control was established based on the New York State coordinate system of 1983 (eastern zone) and the National Geodetic Vertical Datum of 2008, respectively. A digital topographic model, 3D point cloud, color ortho-photograph, and new 2 foot contours for the site were generated. The new data was used as the base mapping for the mining and reclamation plans.

2.3.5 Drainage

There are no developed surficial drainage features or classified streams within the footprint of the proposed action. Storm water that collects within the proposed LOM either infiltrates into the ground onsite, or sheet flows a short distance to either of the two surface mines now filled with water. Based on the site topography it can be observed that the majority of storm water run-off currently flows to the south into the lake formed from the southern extension surface mine.

The project site is located within the upper reach of the Hudson River drainage. The Hudson River is located approximately 1,200 feet west of the proposed LOM. The Hudson River is not classified as a wild and scenic river in this location. The Opalescent River is classified by the APA as a wild river and the buffer zone is located approximately 2,500 feet east of the proposed action. All storm water drainage will be retained within the area of the project site and will not create any adverse impacts to either of the river systems noted.

2.3.6 Wetlands

Based on a review of the GIS wetland data from the NYSDEC environmental resource mapper there are no NYSDEC regulated state wetland located on or in the immediate vicinity of the proposed action.

Digital Adirondack Park Agency (APA) Freshwater Wetland Maps were obtained from the APA's Geographic Information System (GIS) database. APA designated freshwater wetlands are present on the property and surrounding area and are shown on the Stream Classification / Wetland Map also included in Appendix C. The tailing sand area is delineated on the APA mapping as regulated wetland. The area delineated is clearly in error as shown on the GIS mapping. This location was utilized as the tailings area, for the by-product sand slurry, during the processing of titanium by NL Industries from 1942 to 1989. It is estimated that 4-5 million tons of tailing sand are present in this area. CPI contacted the APA wetland specialist to point out this issue and it was acknowledged that the only possible wetlands were located at the extreme

northern end of the tailings area. Quenzer Environmental LLC completed a wetland assessment of the tailings area on September 7, 2017 and the findings of from the site visit are included in Appendix C.

2.3.7 Groundwater

There will be no mining or excavation of materials from below the ground water table. There will be no wet processing of construction aggregates with the proposed operation. The proposed action will have no impact to groundwater.

2.3.8 Man-Made Features

There are no man-made features on the project site except for the existing access roads, pre-existing stone piles, and truck scale.

2.3.9 Wildlife

The property affords habitat for typical regional upland species such as deer, fox, raccoon, turkeys and the like: Due to the nature of the site and previous use a detailed site inventory of species has not been completed. A review of the NYSDEC online environmental mapper indicates no threatened or endangered species occur on the site.

2.3.10 Cultural and Historic Resources

A review of the available CHRIS data, and previous land use for the site, indicates that no potential exists for pre-contact and or historical archeological resources. A map showing the historical and archeological sensitive areas ("circles and squares") and National Register Historic Buildings in the immediate vicinity of the proposed action has been included as Figure 3. The map was prepared using the New York State Parks, Recreation and Historic Preservation CRIS Internet Application. The LOM boundary and a 1000 foot buffer circle have been added to the map for reference.

2.3.11 Unique Geologic Features

The NYSDEC environmental resource mapper indicates that the Cheney Pond quarry and related deposits are located approximately 1.3 miles west of the site. The Cheney Pond quarry is a recognized as containing unique geologic features. There will be no impacts to Cheney Pond Quarry from this action.

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2.4 Description of Mineral and Mining Method

2.4.1 Type

Mitchell is proposing to remove and reclaim, by processing, the existing stockpiled crushed stone, oversized rock and tailings materials from the old NL Industries Tahawus titanium mine. The primary products that will be produced by reclaiming material in the old piles are crushed stone and sand. The majority of the stockpiled rock to be reclaimed by re-processing is classified as anorthosite.

2.4.2 Mining Sequence and Method

The Mining Plan Map details the areas to be mined and the various elements of activity within the Life of Mine boundary (LOM). Within the 23.0 acre LOM are proposed two processing areas consisting of 12.4 acres, a 2.3 acre tailing sand excavation area, crushed stone will be removed from the existing 6.5 acre pile, and stone will be removed from the existing 1.8 acre oversized stone pile. The rate at which material will be reclaimed from the existing piles, processed into saleable construction aggregate products, and sold, will be determined by the local market demand of the products.

The focus of the Tahawus operation will be to remove material, utilizing a front-end loader, from the large pile of crushed stone in the central portion of the proposed LOM (6.5 acre pile). This pile is composed of over half a million tons of crushed stone left by previous mining and processing activity. This material is composed of crushed rock that ranges from 4 inches to sand size particles. In order to reclaim and produce saleable construction aggregate products this material will require screening and crushing. A portable screening and crushing plant will be employed, adjacent to the existing pile, to produce the various aggregate products needed.

2.4.3 Grading and Setbacks

General DEC setback requirements will be met or exceeded during mining. Due to large size of the property and the remote location of the site, the mining setbacks from the property lines far exceed the DEC required grading and setback requirements. The closest point the LOM boundary will be in relation to the property line is over 1000 feet.

2.4.4 Processing

The applicant will utilize a portable crushing and screening plant to produce crushed stone for on-site road work.

2.4.5 Access

Access to the mine site will be off of the Tahawus Road (County Road 25), then the pre-existing paved entrance road. It should be noted, that all the internal roadways, are pre-existing with all stream crossing points already in-place. These roads have been utilized in the past by loaded log and stone trucks and the existing stream crossing points (i.e. culverts and bridges) were more than adequate to handle the heavy loads associated with this activity. All the truck traffic leaving the site will be heading south on the Tahawus Road.

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2.4.6 Disposition and Storage of Materials

Vegetation

The majority of the proposed LOM contains no vegetation and this can be seen by referencing the aerial image provided with the Mine Plan Map. A small area consisting of low scrub-shrub vegetation and mixed forest trees is present on the oversized stone pile. Any trees present will be cut, with the trunks used for lumber, firewood, and the limbs, and low scrub-shrub may be stripped and incorporated into overburden to provide organic matter.

Overburden

The area where the proposed operation has been located has no soil cover. If any unconsolidated overburden is encountered it will be stripped and stockpiled. It needs to be emphasized that no topsoil is present at this site for future reclamation.

Refuse

Trash, etc. will be removed from the site and landfilled pursuant to DEC regulations.

2.5 Dust, Noise, Erosion and Visual Control

Dust (air resources)

The primary impact affecting air resources is the generation of dust created by mining activities. The EPA and DEC recognize that non-point source, or fugitive dust emissions may be generated from activities such as materials handling, and truck traffic on unpaved surfaces. Dust is also potentially generated by the processing of the stone.

This issue has been similarly raised concerning the hundreds of stone operations throughout New York. Studies have found that particulate matter rapidly decreases by normal atmospheric dispersion and due to gravity settling. Taking into account a prevailing west to east wind direction and the extreme rural nature of the property, there are no receptors downwind of the project for miles. Notwithstanding this, the impact of dust will be attenuated by following a dust control plan for the operation. A proper dust control plan will maintain the facility in compliance with State and Federal regulations as well as mitigate any potential impacts to the air resources.

A good dust control plan will involve a combination of good operating practices and engineered control devices on equipment and on the land. The proposed operation will employ a number of these techniques to control dust, which are listed as follows:

Good Operating Practice

- * Careful loading of trucks.
- * Shut down idle and unloaded equipment.
- * Monitor travel speed of vehicles on any unpaved haulage and access roads.
- * Maintain equipment through daily inspections and repairs when needed.
- * Clean-up spillage.

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Engineered Controls

- * Using water to reduce dust on any unpaved travel surfaces.
- * Using water to reduce dust generated on dry days.
- * Using berms and vegetation where possible to reduce wind erosion.
- * Trucks leaving the site will be required to comply with the State Tarp Laws (New York State Vehicle & Traffic Law § 380-a).
- * Every effort to remove loose debris from trucks will be made before they leave the mining operation.

Noise Control

Noise will mainly be generated by loading and processing of the stone. Mitigation measures which should effectively reduce noise impacts to surrounding receptors are:

- * Normal hours of operation will primarily occur during regular business hours.
- * Sound mufflers on engine drive equipment.
- * Distance to receptors.
- * Retention of perimeter vegetation.

Erosion

The likelihood of a surficial flow of water creating sedimentation and erosion is low. In addition, a considerable undisturbed buffer area will be retained between mining activity and property lines. Erosion control devices such as hay bales and silt fences will be used as necessary, if conditions develop which pose an environmental impact beyond the limits of the LOM boundary. There will be no point discharge off-site.

Visual

The Tahawus property already contains views created by over 80 years of historic mining. The site is distant from adjacent landowners, public right-of-ways, and residential areas and existing vegetation screens the proposed LOM area from direct view. The mine is located approximately 5 miles north of the nearest existing residence and approximately 1,200 feet to the nearest property line. The entrance to the site is gated, and will be locked when not in operation.

2.6 Blasting

No blasting will occur at the operation.

3.0 RECLAMATION PLAN

3.1 Land Use Objective

The site will be reclaimed primarily by grading, removal of the large stone pile, and limited revegetation, where possible. The reclamation objective will be to maintain the industrial use of the property and create more useable property.

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Based on the APA Land Use and Development Plan map the site is designated (zoned) for industrial use and mineral extraction and processing is noted as an acceptable land use by the APA. Based on a review of the Adirondack Park Agency Act with regard to the proposed action, the owner is confident that the reclamation objective of the proposed operation will be compatible with the continued industrial land use.

3.2 Reclamation Method

3.2.1 Grading and Slopes

The area of LOM will be smooth graded to blend with surrounding topography and the edge of the oversized stone pile will be retained in a stabilized position. Access into the LOM area will be retained via the access road leading into the property. The appended Reclamation Plan Map illustrates the post operation grading of the site.

3.2.2 Disposition of Material

Upon termination of the operation, the material processing and all stockpile areas will be graded for future industrial use. All remaining stockpiles of stone products will be removed, and refuse (if any) will be taken to a landfill pursuant to DEC regulations. If available, stockpiled overburden materials, will be redistributed over peripheral areas to be revegetated. The truck scale will be removed from the site as well as all temporary structures and processing equipment.

3.2.3 Treatment of Access Road

The access road leading into the site will be retained as well as the existing haul roads.

3.2.4 Revegetation

There is no topsoil occurring on site, what little overburden being found within the LOM boundary will be saved and utilized for reclamation. The existing site conditions and lack of any soil mean that revegetation of the site will be very limited.

3.3 Reclamation Schedule

The estimated life of the operation is projected to be 75± years, this is obviously speculative at this time. Since all of the 23 acres LOM will be utilized it will not be possible to complete any reclamation until the cessation of the operations. However, reclamation will be completed within two years of termination of all mining activity.

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NORTH ADIRONDACK
NATURAL RESOURCES

EXHIBITS OMITTED

EXHIBIT H

REVISED RECORD
OF THE
CONSTITUTIONAL CONVENTION
OF THE
STATE OF NEW YORK

May 8, 1894, to September 29, 1894

REVISED BY
HON. WILLIAM H. STEELE,
VICE-PRESIDENT OF THE CONSTITUTIONAL CONVENTION OF 1894,
Pursuant to Chap. 21, Laws of 1898.

PUBLISHED UNDER DIRECTION OF
HON. CHARLES E. FITCH, L. H. D.,
SECRETARY OF THE CONSTITUTIONAL CONVENTION OF 1894,
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1900.



Mr. Root — Mr. President, I call for the reading of the special order.

The President — The next order is the forestry order.

Mr. McClure — I move that we go into Committee of the Whole on that.

The President put the question on the motion of Mr. McClure, and it was determined in the affirmative.

The President — Mr. Roche will please take the chair.

Mr. Roche took the chair and the House resolved itself into Committee of the Whole on general order No. 92.

The Chairman — The House is now in Committee of the Whole for the consideration of general order No. 92 (introductory No. 393). The limit of time upon this general order has been fixed at two hours.

Mr. McClure — Mr. Chairman, I make the customary motion to strike out the first section.

The Chairman — The Clerk will please read the proposed amendment.

The Clerk read the the amendment as follows:

Proposed constitutional amendment to amend the Constitution relative to the forest preserve.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

ARTICLE —.

"Section —. All lands of the State now owned, or hereafter acquired, constituting the forest preserves shall be forever kept as wild forest lands; they shall not, nor shall the timber thereon, be sold."

Mr. McClure — Before proceeding to make any remarks upon this amendment generally, I desire as the unanimous act of the committee to offer an amendment by inserting in the third line after the words "forest preserves," the words "as now fixed by law;" and in the fourth line after the word "not," the words "be sold or exchanged or be taken by any corporation, public or private." So that as so amended the whole shall read:

"The lands of the State now owned, or hereafter acquired, constituting the forest preserves, as now fixed by law, shall be forever kept as wild forest lands; they shall not be sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold."

I hope the members of the Convention understand the force and effect of the amendment proposed. If I may be allowed to say preliminarily, by way of explanation, it is intended by the amendment to at first define what is meant by the words "forest preserves." The Legislature, by the act of 1893, constituted what was called in that act "The Forest Preserves." That act provided that State lands in certain counties should be and thereafter remain the forest preserves, together with lands thereafter acquired in those counties. The object of inserting in here the first amendment as now fixed by law is to prevent the Legislature from at any time limiting the extent of the forest preserves by providing that in a certain county which by the laws of the State is now a part of the forest preserves there should not be included within it, or in any way excepting, any part of the lands within that county. It was thought by the committee desirable to fix it so that as the law now constitutes the forest preserves it shall be so understood to be referred to in the Constitution. The second amendment suggested by the committee adds to the amendment as originally reported a prohibition against the exchange of the lands and a prohibition against the taking of the lands by any corporation, public or private, and the amendment as a whole, as it now stands, first fixes the fact that those lands as now constituted the forest preserves and as shall hereafter become the forest preserves within the limits fixed by law, shall be thereafter held as wild forest lands. And that no part of them shall be sold, no part of them shall be exchanged, no part of them shall be taken by any corporation, public or private, and no part of the timber which is upon those lands shall be sold. The committee, in its report, as the Convention will remember, also referred to a provision which it had been thought desirable by some should be incorporated in the report, and that was the providing for the purchase of lands, much as it was suggested that the Canal Committee should provide for the improvement of the canals; but the gentlemen of the Convention will remember that the Special Committee on Forestry, while approving of the proposition, suggested that it seemed to the committee to be more within the province of the Legislature to provide for the acquisition of additional lands than to incorporate it in an amendment to the Constitution, and, therefore, they left that part of it to the consideration of the Legislature. Therefore, the matter before the Convention is an important amendment simply providing, and insisting upon it, that the lands of the State now owned, and hereafter to be acquired, within the lines of the forest preserves, shall be and remain wild forest lands, not to be sold or exchanged,

and not to be taken by any corporation, public or private, and the timber thereon not to be sold.

The Convention here adjourned to Saturday, September 8, 1894, at ten o'clock A. M.

Saturday Morning, September 8, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., on the 8th day of September, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

On motion of Mr. Acker, the reading of the Journal of yesterday was dispensed with.

Mr. I. S. Johnson — Some days ago I asked and received from this Convention leave of absence for to-day for the purpose of attending a reunion of my regiment, which meets at my place. I have come to the conclusion that my duty requires me to remain here, and although it would be a great gratification to me to attend the reunion of a regiment which is —

Mr. Veeder — I rise to a point of order.

The President — The point of order is not well taken.

Mr. Veeder — I think you had better try a man before you hang him.

Mr. I. S. Johnson — I say, it would be a great gratification for me to join in the reunion with my regiment in Atlanta, but I feel that a greater duty requires me to remain here, and I shall, therefore, remain, asking to have my leave of absence canceled.

Granted.

Mr. Veeder — I wish to ask leave of absence for Mr. Phipps, of Queens, until he shall have recovered from his recent illness. He informed me last night he was under the care of the doctor, who had forbidden him to come to this chamber for a day or two. He is quite ill.

Granted.

Mr. Francis — Mr. President, I am suffering from a very bad cold. I ask for leave of absence during the sessions of to-day.

Granted.

Mr. Veeder — Mr. President, may I be excused from the session this afternoon?

Granted.

Mr. Parmenter — Mr. President, I desire to be excused from this afternoon's session.

Granted.

Mr. Platzek — On behalf of Mr. Eugene Durnin, I ask that he be excused to-day on account of illness.

Granted.

Mr. Holls — Mr. President, I move that the afternoon session to-day be from two to four, instead of from three to five.

The President put the motion, and it was determined in the affirmative.

The President — Mr. Roche will please resume the chair.

The Convention then went into Committee of the Whole, Mr. Roche being in the chair.

The Chairman — The Convention is now in Committee of the Whole for the further consideration of general order No. 72, relating to the forest preserves. Mr. McClure, of New York, had the floor when the recess was taken last evening and is now entitled to it. I will state further that the time limit of debate upon this proposition is two hours, and that five minutes of that time were consumed last evening.

Mr. McClure — Mr. Chairman, my somewhat accidental connection with this forest preservation matter, and its introduction at a very late day in the Convention, at first induced the idea of a lack of importance in the subject. But I have been wonderfully impressed, Mr. Chairman, by the importance, the magnitude of this question, and excepting a very recent interval of time when a matter to me of most solemn and imposing moment distracted me, the existence of which this Convention so gracefully recognized, and for which the members have my gratitude, I have given the subject the closest attention. It has surprised me with an ever-increasing surprise that this matter of all the questions affecting the people of the State should have been left to so late a day and be the subject of almost accidental action at last. As I look at it now, Mr. Chairman, it seems to be almost the only great and important subject, which at the inception of this Convention demanded prompt relief and action in the interests of the people of this State. So far as the State government was concerned, it seemed that the State was rolling on in magnificent greatness, out of debt, with immense special revenues that preclude the necessity of general taxation, with everything within its borders peaceable and quiet, riot and disorder shown to be unprofitable, and the State gradually increasing in wealth and

power. It seemed that the method of securing proper representation of the people in the State government was nearly correct, because a great party which benefited by an apportionment made only two years ago was easily succeeded in supremacy by the other great party. Our courts, Mr. Chairman, judging by the action of this Convention, in their regard, did not seem to require that any action of importance should be taken; looking at the subject-matter as fairly as I can and allowing for all existing conditions, in the failure of relief, as to the Court of Appeals, I fail to see that any great measure of relief to the people has been granted, so far as the courts are concerned; the officers of the militia of our State, perfectly ready and able at the command of the chief executive of the State to suppress disorders, were not in need of action by the Convention. Our cities have grown great and magnificent under the provisions of the Constitution in force and effect when this body convened on the eighth of May last, great not only in material prosperity, not only in the lack of oppression in the taxation of their citizens—great in public and private buildings, but magnificent in everything that should appertain to the cities of our great State. Our educational matters were and are the wonder and the admiration of the world, our public school system, grand and to be forever perpetuated, and our private educational system unrivaled. Our charities were immense, intelligent and widespread, and the pride of all of our people. We stood here on the eighth day of May feeling that the people of this State were convinced that they were living under a fairly good Constitution and did not need any actual, positive or sweeping change. And yet, one great matter affecting, not the success temporary or permanent of any party, not affecting any corporations or individuals in their own selfish interest, but vitally affecting the great people of the State and their great necessity, stood crying for relief at the hands of this Convention. "The hills, rock-ribbed and ancient as the sun—the venerable woods—rivers that moved in majesty—and the complaining brooks that make the meadows green," these for years had been neglected by the people of the State and the great men of our State, the men of public spirit generally, had forgotten that it was necessary for the life, the health, the safety, and the comfort not to speak of the luxury of the people of this State, that our forests should be preserved. (Applause.)

What are these forest lands, Mr. Chairman? In a report of the Forestry Commission, which has in charge the forest reserve of the State, it is stated that there are in the great forests of northern New York 3,588,803 acres of forest lands; that of these lands the State

owns 710,450 acres; that this Forestry Commission has, in these great northern forests of New York, laid out the lines of what is designated as the Adirondack Park. For the better elucidation of the subject the committee has taken the liberty of producing in this chamber a map made by the Forestry Commission, which shows upon it all of the lands within those lines, with the lands owned by the State, specially colored. You will see, gentlemen of the Convention, that those lands owned by the State, within the arbitrary blue line which marks the Adirondack Park, are very much scattered, and that on the outside and even in the extreme northeast corner of the State there are lands belonging to the State which are valuable forest lands.

Mr. Chairman, this State owns, besides the land in northern New York or the Adirondacks, in the Catskill preserve 49,332 acres, and the whole forest preserve there, as reported by the Forestry Commission, consists of 2,200,000 acres of contiguous forest lands. Now, Mr. Chairman and gentlemen, the question naturally suggests itself at this point; what do these lands consist of and what are they available for? How are they made up? What is their nature? And as in some of these matters I have had occasion to draw from the experience and take advantage of the labors of others, I will call your attention briefly to a very lucid and valuable explanation as to the condition of these lands given in a speech made a few years ago by the Hon. George W. Smith, of Herkimer, N. Y., in the State Assembly. He says:

"The State owns a vast expanse of forest, part of what is known as the Adirondack region, comprising from 3,000 to 5,000 square miles. Of this area 2,000 to 3,000 square miles are so elevated that its lakes and rivers are from 1,500 to 2,000 feet above the sea level, and some of its mountains exceed an altitude of 5,000 feet, Tahawus (Mount Marcy) cleaving the clouds at a height of 5,344 feet. This general elevation repels from its borders all profitable agriculture, with a barrier of frost. All attempts at farming at these heights have proved unsuccessful and ruinous. A belt of abandoned clearings bearing the relics of the homes of early and misguided settlers surrounds the basis of the 'foot hills' of this elevation, and marks the limit of successful cultivation. Even the lumbering enterprises that have penetrated far into these wilds have generally brought those engaged in them into bankruptcy. This territory is vastly more valuable to the people of the State in its present condition than it can be by any change.

"Now, as from the time when those rocky peaks—the first-born

of continents — rose from a surrounding chaos to meet the primeval sun at his coming, they still hold the fountains that supply an important if not the chief river system of this State. There are found the sources of the Hudson, the Saranac, the Salmon, the Racket, the Grasse, the Oswegatchie, the Indian, the Black, the East and the West Canada, and many others, a great distribution of waters upon which the future prosperity and welfare of the State very largely depends, and vast interests can be preserved only by preventing, now and forever, the encroachments and waste that are destroying our great northern forests.

"Science informs us by what slow processes that primeval rock came to be clothed with vegetation — first, by the minute growth of mosses, by their providing a slight vegetable deposit, in which forms of vegetation found a root-hold, and finally, after the lapse of ages, the soil became adequate to the support of trees and the beginning of a forest. What has been forming during the lapse of uncounted ages can be swept away in a few years by the acts of the lumbermen and the fires that follow in his path.

"At this time, in those chasms and in those lakes and streams, protected by evergreen woods, are great natural reservoirs, useful to far distant parts of the State. There, ever since forests began to grow, has been woven a mantle that covers the hills and mountain slopes, a vast spongy mass of vegetable matter made up of leaves, the needles and cones of the pine, the spruce, the hemlock, the balsam, and other growths which, in that air and temperature, are compressed, without decaying to humus or soil, into what may be fitly called a stratum of vegetable felt, or sponge, from a foot to several feet in thickness. This, lying in the deep shades of these wide-spread evergreen woods, receives and holds suspended the waters coming from the melting snows in the spring and the frequent rains that fall from the clouds that are arrested and condensed on these heights. This capacious cistern, extending over this region, is more useful in storing up the water from snows and rainfall than the lakes themselves. It thus prevents sudden floods in spring, and during summer slowly feeds from its hidden but unfailing sources, the fountains and rivulets, and fills the chasms and lakes with a gradual and constant supply."

He declares in another place that there are no natural springs of any consequence in the Adirondacks, and that all of the waters which flow from the hills of that region are the gatherings of the rainfalls, stored in the manner described by him. Now, it may be important to notice a fact which is probably well known to all of you; that in the mountains and by the trees on the mountains the

rains are gathered to an extent that, set forth in figures, may be somewhat surprising. The Hon. Verplanck Colvin, State Surveyor of this State for many years, in an address delivered in the city of New York in 1885, made this statement:

"Five years since, in my annual report to the Legislature for 1880, I called especial attention to the remarkable facts which the rainfall observations of the Adirondack Survey had revealed. The increase of the rainfall, with the increase of altitude, was shown to be very remarkable. Along the borders of Lake Champlain, at 100 feet above the sea, a rainfall of twenty-three inches was found. At an elevation of 1,000 feet, a few miles back in the Adirondacks, the average rainfall of a number of years has been found to be about thirty inches, and at an elevation of 2,000 feet, at Edmund's Ponds, in Essex county, one year's observations give a rainfall of forty-six inches.

"These results indicate that the conditions which govern the rainfall in our mountains are similar to those controlling the rainfall of Europe, and with the data obtained by the Adirondack Survey, and the known laws of rainfall, we may arrive at just conclusions as to the exact commercial value of the actually available hydraulic power of the Adirondack region."

Now, Mr. Chairman, I have presented an explanation, rather brief, but clear, of the secretive powers of this created, not natural, soil in the Adirondack region, and the great reservoir which did and to a certain extent still does exist there from and by which the streams and the rivers are fed. What is the value of these woods and why should we try to preserve them intact? First of all, because they are the woods — and in passing let me say, this State, strange as it may appear, has a very small proportion of its area in forest lands. Only eighteen per cent of all of its lands is in forests, while Germany, that crowded country where the people live much from the product of the soil, are, like the people of this State, largely engaged in mercantile pursuits and in other ways than by cultivating the soil, has twenty-nine per cent. The soil in these Adirondack mountains is unfit for cultivation. No man, no matter how industrious and hard-working he may be, can secure a livelihood from the soil in the Adirondacks. It has been tried and it has been to many a heart-breaking failure. The lands are fit for none other than public and general uses.

And what are these? First, as a great resort for the people of this State. When tired of the trials, tribulations and annoyances of business and every-day life in the man-made town, they offer to man a place of retirement. There, if he is possessed of great vener-

ation, he may find some consolation in communing with that great Father of all, whose "hand hath reared those columns and who filleth their solitude." For man and for woman thoroughly tired out, desiring peace and quiet, these woods are inestimable in value. My friend, the distinguished President, suggests that when a great question was before the body involving the stability, the dignity, the purity of family life, one distinguished member of this body, to prepare himself for the enunciation of the sentiments that should flow upon such an occasion, retreated to the fastnesses of these woods, and, sir, the result, eloquent and convincing, appears in the records of this Convention. It is priceless as a place for seeking, finding and preserving health. Any of you, if any there are, who have had relatives or friends whose lives have been prolonged in those mountains by the balmy air and soft breezes which fill the place, know how invaluable these woods are for such purpose.

And then, again, Mr. Chairman, for the wants, the actual physical wants of the people in general, we need the waters of those mountain streams and lakes, and of the rivers that are fed by them. We cannot have navigation of our rivers if we do not have the water, and railroad monopoly prevails to an extent that is grinding when there is not competition. You will not have your steamboats patrolling the rivers, not even the majestic Hudson, very long, if you do not preserve the watersheds. At this day, as my neighbor from Troy tells me, it is at times impossible for the large steamboats to reach their wharves and load at them at the city of Troy, and I am told by a delegate from Glens Falls that the great Hudson at that point, which used to be even in midsummer almost impassable, was so reduced that he could walk across it on the day upon which this Convention met without wetting his shoes. Bars have risen in the Hudson on account of the washing down from these mountains, from which trees have been taken, and everywhere we have seen the falling of the waters to an extent that has been dangerous. Lake Champlain has fallen, as testified by one of the residents of that section, to an extent that, whereas the head of navigation was at Whitehall some years ago, it is now some thirty or forty miles to the north, and the lake has visibly decreased in quantity. Lake George is one foot lower than it was a few years ago, and the dire effects proceed directly from the denuding of the Adirondack forests of the trees that were the protection of this great reservoir.

We will one day need that water stored in the Adirondacks to drink in the city of New York. That city, growing as it is immensely every day, not only in general greatness, in wealth and

prosperity, in refinement, in charity, but growing in numbers and growing steadily to the north — what is to happen when it shall include Yonkers and the places above that city, as it will within your time, Mr. Chairman, and mine, and where will the people get their water supply? The Croton Vally now is barely able to meet the wants of the people. That water, which is necessary, which is not only luxury, but which is life, will have to be taken from the Great Lakes, from Lake Champlain and the other lakes in the Adirondack mountains. This is not my idea alone. Mr. Chairman; and allow me for a moment upon this subject to quote from the language of a writer well known to the members of this Convention, the Rev. W. H. H. Murray, known as Adirondack Murray. Speaking of the increase of population of New York city and its future, he says:

"England and Wales have 26,000,000 of population. Out of this mass London has arisen, with over 4,000,000 of inhabitants. Can any intelligent person doubt that within a century, or two centuries at the latest, New York will equal, if not exceed, London in point of citizenship? Are not the same forces which created London in operation here, and even more potentially? Where will New York get her water supply then? That such a densely populated city must have water in plenty and of the purest goes without saying. Where can she find it? To this there is but one answer: she must go to the Adirondacks. There, amid the mountains and woods, adequate as to elevations, perfect as to quality for human uses, inexhaustible in supply, God, as ~~it~~ in providential foresight of coming need, has benignantly stored ample provision for all coming time. Never before did a city have such reservoirs of health and blessing, filled, without cost to her, to the brim and held in everlasting reserve. Heretofore the Adirondacks have stood as a symbol of sport, of recreation and pleasure-seeking, but the time will come when every man, woman and child in this great city, as they quench their thirst with the soft, pure water that has come to them fresh and cool from the lakes and rills of the far-away woods, will recognize the higher uses of the great wilderness, and thank God for it as His choicest gift to them." (Applause.)

And then, Mr. Chairman, as a protection against fire! Science has not yet devised or discovered the means of quenching great fires except by water, and I believe that the gentlemen of this Convention will be amazed when they are given the aggregate amount of property insured against loss by fire in the great city of New York alone. I have had furnished to me by the chairman of the Board of Underwriters a statement which shows that the amount of policies

now written covering property in the city of New York alone, not regarding the territory north of it or in any way connected with it, but in itself, as being two thousand millions of dollars. And where shall we get the water for the safety of our property when we shall have drained the Croton Valley dry, unless we protect our interests in these woods and take the waters from them? (Applause.)

Now, Mr. Chairman, these are some few suggestions as to the value of these woods, the influence of the protection of these watersheds. What has been the experience of and what has been the action in other States and countries in the matters of the destruction and protection of the watersheds of those countries, and what have they suffered from their effects? In a petition which was sent here, there is recounted the terrible disasters that fell upon the people of the old world as well as of the new. This petition states:

"Of the regions bordering on the Mediterranean sea, there is none, perhaps, that presents a more forcible example of the evils that follow forest-extirpation than that of Africa. During the centuries just preceding the introduction of Christianity, the country extending from the Straits of Gibraltar to the Nile bore witness to a high state of ancient civilization — the Carthaginian and afterward that of Imperial Rome. In the seventh century the period marking the rise of the Mohammedan power, the section now known as Tripoli supported a population estimated at about the same number as New York State at present, of which but one per cent is left. A similar fate has befallen almost all of these provinces, formerly the sites of flourishing commercial and agricultural communities, and possessing a climate resembling that of our eastern border States. With the clearing of their woodlands that protected them from the encroachments of the one and modified the heat of the other, they have been surrendered to the sands of the sea and the furnace breath of the Sahara Desert.

"From Syria, where the land that once 'flowing with milk and honey' has become 'the abomination of desolation,' this death-line of vegetation continues onward to the Persian Gulf in a broader path. The former greatness of the population of this region and the richness of its soil compared to the sparseness now of the inhabitants and its present sterility may be somewhat realized when it is considered that it was over this highway of the nations that so many of the earlier conquerors led their huge armies to and fro to conquest, from which they were drawn, and upon whose fertility they subsisted. Not less apparent are the effects of forest extirpation upon the healthfulness and productivity of Ceylon, Mauritius, and the Island of Cyprus, so celebrated for its commerce and the sylvan

attractions that nature had lavished upon it. The deserts of South Africa, without rain for months, testify to the same terrible blight. The repeated epidemics that have decimated the Cape Verde and other islands, the famines and droughts in India and China, the decrease in population of inland and seaboard cities with the decay of their wealth, enterprise and importance, can be traced to deforestation.

"In Europe at the present time some of its many evils are realized in the inconveniences to navigation, proceeding from a decrease in the volume of water in many of the larger streams. In fifty years the Elbe and Oder have fallen seventeen inches; the Vistula, twenty-six; the Rhine, twenty-eight, and the Danube, fifty-five, while the partial clearing of the Valley of the Volga of its forests has had a perceptible effect upon the immense area of the Caspian sea."

Gentlemen, I trouble you with these facts because they are important, because there is no way of providing for the future, except by benefiting by the experience of the past of all of the peoples. I am now recounting to you some of the experiences of the old world.

Translated into measurements for some of our own great lakes, it would mean that a fall of one foot of water in the Caspian sea would be equivalent to a fall of about six feet in Lake Superior, about eight in Lakes Michigan and Huron, eighteen in Lake Erie and twenty-seven in Lake Ontario.

Nor are these evils confined to her waters alone. Some of her most fertile sections, overwhelmed by torrents and avalanches of snow, mud, gravel and rock, have been deserted by their inhabitants. Blanqui, the eminent political economist, in a memoir read before the Academy of Moral and Political Science, thus expresses himself: 'The Alps or Provence present a terrible aspect. In the more equable climate of northern France one can form no conception of those parched mountain gorges, where not even a bush can be found to shelter a bird; where, at most, the wanderer sees in summer here and there a withered lavender, where all the springs are dried up, and where a dead silence, hardly broken by even the hum of an insect, prevails; but if a storm bursts forth, masses of water suddenly shoot from the mountain heights into the shattered gulfs, waste without irrigating, deluge without refreshing, the soil, they overflow in their swift descent, and leave it more seared than it was for want of moisture. Man at last retires from the fearful desert, and I have, the present season, found not a living soul in districts where I remember to have enjoyed hospitality thirty years ago.'

"Warned by the magnitude and the deplorable consequences of

such disasters, the French government has adopted the policy of reclothing the denuded slopes with tree growths and sods in seventeen departments impoverished and depopulated by the washing of the soil, the torrential action of the rivers, and the repeated floods. In those departments the population had diminished from ten to twenty per cent within less than twenty years, and fertile fields had been covered up for more than 100 miles from the source of the soil with the debris brought from the mountains by the rushing torrents. During the last thirty years the government has expended over \$35,000,000 for the restoration of these mountains, and expects to expend more than the same amount in addition before the damage is repaired."

Germany is also spending untold millions endeavoring to restore the forests; but in the two countries of France and Germany, the authorities take such care of the trees that an individual owner is not allowed to cut a tree unless a forest expert has marked it and declared that it might properly be cut down, having regard to what remained; and the requirement is that for every belt of trees cut another belt shall be planted; and those are countries where there is the natural rich soil in which the trees grow and flourish with rapidity, not like the soil in the Adirondack and in the Catskill mountains.

In our own country great suffering has resulted from deforestation. The commerce of the Connecticut river has been to a large extent destroyed by the destruction of the trees along its banks and in the watersheds and the steamers are not able now to go as high, by miles, on the river, as they were some years ago. The Ohio river is not navigable near some of its large cities in the summer time for the same reason; and everywhere we find the result following the evil of the great destruction of these forest trees. Why, the government of the United States has seen fit to take care of its forests away off in the Yellowstone region and to employ some of its small army to guard the forests from the inroads of those who would produce devastation among them. And yet, in the State of New York men have sat still during all of these years while our forests have been swept of their trees, the people deprived of the life-giving waters which would have flowed thereunder, and our commerce allowed to suffer. No Legislature has given relief and no Constitutional Convention has deemed the subject worthy of an infringement upon the time to be given to matters of what seemed to be of more material importance.

Mr. Chairman, we must recognize the loss we are suffering. Not only do we lose the water itself, but as every one will agree when you

denude the mountain top of its trees you reduce the acquisition of the water on those mountain tops, you make the water which falls there, in the quantities it does fall, a flood — that flow sweeps down the mountains and tears away whatever of soil may have accumulated, which goes scudding down the streams and from the streams into the rivers, injuring them and destroying our commerce.

I said that no action had been taken on this subject to any great extent. No positive action has been taken by the citizens or by the people generally assembled in great bodies. No political convention of either party has sought to evidence to the people of the State its great interest in the people's interests by providing that that party when in power should give relief in the protection of these forests. Yet the subject has had official action as far back as when De Witt Clinton was Governor of this State. In a message to the Legislature he used these words with reference to the preservation of the forests:

"Gentlemen, the vast interests of the cities of the seaboard, the interests of commerce and manufacture, the interests of agriculture and health, demand at your hands this session the enactment of stringent laws that shall effectually remedy the evils here complained of."

At that time, gentlemen of the Convention, he was regarding with that far-seeing power that was his, with that genius which insured the immortality of his name in this State, what would be in the future the interests of the seaboard. Horatio Seymour sought some means not only to preserve the forests, but, where they had been cut down, to have trees planted, and, surveyor and engineer as he was, sought a means to accomplish that end. But the soil even in the valleys does not warrant it. It is not a soil that will readily grow to be trees. Governor Hill, in 1890, in a message to the Legislature, called emphatically to its attention the importance of this matter, and that action resulted in the formation and organization of the Forestry Commission. Governor Flower, by repeated, not only annual, but special messages, has called the attention of the Legislature to the necessity not only of saving the forests themselves by protection and the non-sale of lands, but to the necessity of preserving even the timber upon the lands for the protection of the interests of the State. They were only doing what has been done in the old days. As far back as Edward IV, I find there were laws in effect to preserve the forests.

Mr. Chairman, we have lost some of our lands. These lands came to us for nothing upon sales for non-payment of taxes. They cost the State nothing, and yet will you believe it, gentlemen of the

Convention, this imperial State, with no debt, opening the year 1894 with an actual surplus in its treasury, derived during the last year by extraordinary means of taxation, such as collateral inheritance tax, three million of dollars and upwards, and for taxes upon corporations, an extraordinary tax, nearly two millions of dollars, the exact figures being \$1,967,000, will you believe it, that this State has seen fit to peddle out some of those glorious lands, with their trees on them, and even to sell, or contemplate the sale, of the trees themselves for a paltry sum a trunk? Why, the Comptroller of the State, in his report on the first of January, 1894, said:

"The tax rate for 1892-1893 was the lowest, with the exception of 1890-1891, in thirty-six years. The tax levied for the year 1893-1894, deducting extraordinary appropriations for the purchase of Fire Island, and the expenses incurred by reason of the threatened invasion of cholera, the appropriation for the New York State exhibit at the World's Fair, the payment of troops called out during the Buffalo strikes, and the appropriation to pay the balance of the State debt recommended by this department to the Legislature of 1893, was less than for the year 1892-1893.

* * * * *

"If, at the close of the past fiscal year, all the unexpended appropriations in force were paid, and the revenues from all sources due the State were received, the balance in the treasury to the credit of the State would amount to the sum of \$1,600,000. By the increased valuation of the taxable property of the State, about \$500,000 more in taxes will be realized next year, based upon the same tax rate as this year. By the sale of Ward's Island by the State to the city of New York \$500,000 will be received. These items, together with the estimated increase of \$1,000,000 in the corporation and inheritance taxes, amount to \$3,600,000.

"There will be collected and paid into the State treasury for taxes upon corporations and transfers of property during the fiscal year ending September 30, 1894, at least \$6,000,000.

"It will thus be seen that the next tax levy can be safely reduced by at least \$3,000,000, in addition to the \$1,000,000 of extraordinary expenditure that appropriations were made to cover by the Legislature of 1893.

"The people can, therefore, be assured of an exceedingly low tax rate for the ensuing year."

In 1893 three millions were raised by taxation of dead men's estates and nearly two millions by taxation of corporations. By these extraordinary means, in part, this State is in this grand financial condition.

And how does it spend its money, gentlemen? Twenty millions have been lavished upon this pile, in which at eleven o'clock in the morning it is necessary that the electric light shall be turned on, so that we may see each other's faces, and more millions to go into it before it will be completed; six or eight hundred thousand dollars expended for the transient glory of a State representation at the World's Fair, which passed away in a month or two; nearly two millions for a sentiment in buying the Niagara Falls Reservation as a park. The State has gone on spending untold millions each year, and will you believe, Mr. Chairman, that last year the Legislature which sat here, coming specially to represent the people, refused to give to the Forestry Commission for the preservation by wardens of the forests more than a paltry sum? And the Forestry Commission, hampered by want of funds, has been actually obliged to attempt to sell the timber on the land to obtain the money with which to pay the salaries of the foresters who are supposed to be looking after the interests of the State in the woods. What is the relief?

What shall we do, Mr. Chairman? For every wrong there should be a remedy. For every position not wise or safe there should be some relief. First of all, we should not permit the sale of one acre of land. We should keep all we have. We should not exchange our lands — in an exchange the State is in danger of obtaining the most of the taxing — and there is no necessity why we should part with any of our land. We should not sell a tree or a branch of one. Some people may think in the wisdom of their scientific investigations that you can make the forests better by thinning out and selling to lumbermen some of the trees, regardless of the devastation, the burnings and the stealings that follow in the lumberman's track. But I say to you, gentlemen, no man has yet found it possible to improve upon the ways of nature. In the primeval forest when the tree falls it is practically dead, and when it falls it is a protection to the other trees; it takes in the moisture through its bark, and rottenness, and diffuses it down and into the soil. I do not like the notion of the lumbermen cutting the woods and taking out the best trees and destroying, with every tree he takes, fifty in addition. The plan may work in France, where it is looked after by government officials, where every twig is gathered up and carted away by the poor people to be burned; not left as in the Adirondacks to feed and induce the forest fires. What more should be done? We should prevent the lands being taken by corporations. Corporations generally have little regard for the pleasure, the safety, the wants of the people. Every man in a corporation is willing to shoulder upon his fellow the responsibility when it affects the rights or the interests of

the people. Corporations have destroyed more property in the forest trees than can ever be restored. We do not actually need them in the woods. There ought to be no business there that would require them to be there; and, as a matter of fact, I find from the reports that there is not a railroad in those woods able to pay scarcely more than its operating expenses.

Mr. Choate — Will Mr. McClure allow me to ask him a question?

Mr. McClure — Certainly.

Mr. Choate — Whether the scope of the amendment as it stands is that in no event could the Legislature authorize a railroad or highway to be built through these forests while the amendments lasts?

Mr. McClure — I think so, sir. I would say, Mr. Chairman, in answer to the question that the scope of the matter, as it is amended, is to prevent its being taken by any corporation, public or private.

Mr. Choate — In the case of necessity?

Mr. McClure — In the case of necessity. If our action here is practically unanimous, as I believe it will be, it will probably be followed by action on the part of the Legislature looking to the purchase of more forest lands. We can buy these lands for a trifle. Many of the clubs owning large tracts are willing to put them into the forest preserves so far as preserving the lands as wild lands. Mr. Chairman, our lands should not be sold or exchanged; our timber should not be sold. Finally, the Legislature should purchase all of the forest lands, both in the Adirondacks and the Catskills, not now owned by the State, and should preserve them, even though it costs millions of dollars to do it. The millions so invested will be well spent. Mr. Chairman, the action of this Convention in this regard will prove to the people that it has had the people's interests at heart in sitting here; the action of this body in the adoption of this amendment will be appreciated by all of the people, its benefits will be beyond our most enthusiastic expectations, and the services of the men who accomplish the giving such benefits will be sung by "millions yet to be."

The Chairman — The Chair desires to make this suggestion: there are quite a number of gentlemen who are desirous of speaking upon this subject, and there is but one hour of time left. If each one of them should occupy only five minutes, more than the allotted time would be required. I make this suggestion, so that the gentlemen will govern themselves accordingly, and an effort will be made to accommodate all who desire to speak upon the subject.

Mr. Goodelle — Mr. Chairman, I desire to offer an amendment.

Mr. A. H. Green — Will the Chairman allow me to ask a question of Mr. McClure?

Mr. Goodelle — I give way.

Mr. A. H. Green — By the courtesy of the gentleman from Onondaga (Mr. Goodelle), I am permitted to ask Mr. McClure a question. Will the chairman of the Forestry Committee kindly inform me whether there is anything in this provision which would prevent a private individual or company not incorporated to do the things which you wish to prevent the corporation, public or private, from doing?

Mr. McClure — It provides that they shall not be sold. That is the only way a private individual can take the lands. That applies to every individual. As to corporations it provides that they cannot be taken by eminent domain. I do not know as we can go any further. The proposed amendment provides that the lands of the State now owned or hereafter acquired, constituting the forest preserves, as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold or removed.

Mr. Goodelle — Mr. Chairman, I offer the following substitute.

The Chairman — The Secretary will read the substitute.

The Secretary read the substitute, as follows:

Amend the substitute by adding at the end thereof the words "or destroyed," so that it shall read, "nor shall the timber thereon be sold, removed or destroyed."

Mr. Goodelle — Mr. Chairman, I agree in every detail with the eloquent remarks of the distinguished gentleman from New York (Mr. McClure), and I wish it were in my power, or in the power of language, to impress more strongly, if possible, upon the members of this Convention the importance of this question. I am not going to even allude to the discussion that has been taken up and so well carried on by the able gentleman who has just taken his seat, except to say that while it is true that Germany and Spain and northern and southern Africa, Arizona and New Mexico have furnished to us impressive lessons of the great importance of preserving our forests, and while they present to us strongly all the results which will necessarily follow when the great forests of this country, or of this State, shall have been destroyed, yet I appeal to every delegate in this Convention, if they will set their minds to work, they will

have no trouble in finding within their own experience some stream or some river that has become dried and has become extinct from the destruction of forests from which they sprung. Therefore, I say that I concur in every particular with the eloquent remarks which have been made by my distinguished friend, but I would go further.

Now, I may not be considered biased upon this question, but I am somewhat familiar with the Adirondacks and their great forests. I have received the benefits that are derived from them, and I appreciate the great reservoir which is there constructed by nature, which feeds and supplies the great Hudson, one of the great wonders and beauties of this State to-day, and I understand full well what will be the result when that reservoir is extinguished and, instead of the benefits now derived, there will be lack of water that will cause destruction rather than benefits, I say that I would go further. I would not only prevent this State from selling, but I would prevent it from destroying the timber within this preserve. I would not only do that, but I would inhibit them from the purposes of the destruction of our forests.

To illustrate what I mean, and it is all that I desire to say, in order to emphasize and show the importance of the amendment which I have made to the substitute in this case—I refer to that system which has been for some years carried on by our State in destroying our forest, in piling up great burdens upon the State for that purpose, by reason of building the dams and reservoirs which they have constructed in certain regions of the Adirondacks. I call the attention of the Convention to what is known as the Beaver river chain. The river itself, one of the finest in its primitive condition that I ever looked upon, has given inspiration to every lover of nature. What has been done by the State in reference to that? Within several years past a dam has been put across that river at a point above number four, and the result is that the water has been set back upon thousands and thousands of acres of the forest of those mountains, the spruce, the pine, the balsam. The result is that they stand there to-day by thousands and thousands of acres, a ruined scene to look upon. The trees have all died; the beautiful river is wiped out and is gone, and we have there a vast pond or a vast sea, with those dead trees standing upright in the water, or else the foundation given away and they are jumbled in together. Now, if you stopped there it would perhaps be of little consequence. But does it stop there? What is the object of this? I speak, Mr. Chairman, mainly from personal knowledge. It was claimed that certain mills in the city of Watertown desired to have this water stored up

in order to feed their mills. The measure was put through by one of the Forest Commissioners then in office. When they came to build the dam this same Forest Commissioner had the contract, and built the dam at a large expense to the State. That same contractor, that same Forest Commissioner, then purchased below that dam the western third of what is known as township five in John Brown's tract. There he has his lumber camp, and there the logs are put into the river, and when the gates are lifted, the logs are shoved down to his saw-mill. That is the only substantial benefit that has come from that dam, the expense of which was incurred by the State.

Now, Mr. Chairman, further than that, my friend from New York has eloquently argued upon the value from a financial and material standpoint of preserving these great forests. I want to say to you, Mr. Chairman, that the Adirondacks furnish a vast sanitarium, not only for the people of this State, but from all over the country. They go there by the thousands to have their health restored and to have their vigor renewed and to have their constitutions built up, and if the members of this Convention could look upon the influx into that region, as they come from the far west, clear beyond the Rocky Mountains, and the east to get the benefits of the Adirondacks, they would understand how, outside of this State, at least, the sanitary effects of these great forests are appreciated. Not only that, but what is the result? When these vast acres have been overflowed, as thousands and thousands have, they cause a great decay of vegetable matter, or rather become foul, putrid and unfit for use. The waters of the Adirondacks flow into the Hudson and contaminate the waters which are used at some places for drinking purposes. That is not the worst of it. As these waters are drawn down in the depressions which are so numerous in that country, they stand there as stagnant pools, and acres and acres of water become foul and putrid, and instead of that region being one of the greatest sanitariums, it is a source or cause of malaria, of disease, and of death. I would suggest, therefore, that in destroying these forests, it not only cuts down and destroys the water supply, but it converts what was a sanitarium into the cause of sickness and death. Not only that, Mr. Chairman, but I want to go a step further. They have done this at the expense of the people of this State (that dam has cost the people of the State up to this time over \$75,000). I see upon the calendar of the next session of the Board of Claims to be tried for the damage caused therefrom, a claim in the case of William Seward Webb against the State of New York, where he claims \$189,000 on account of the construction of that reservoir.

No man has received a dollar of benefit from the dam except the man who brought it about; the man who floats his logs and lumber.

I would, therefore, in conclusion say, Mr. Chairman, that the amendment which I have offered prohibits the State from doing things of that kind, which they have been doing for years past, constructing reservoirs to the destruction of the woods and forest as well as the sanitary condition of that country, to the detriment of the State.

Mr. Floyd — Mr. Chairman, may I ask if an amendment is in order.

The Chairman — An amendment is in order, but we cannot very well allow more than five minutes for any speaker.

Mr. Floyd — I offer the following amendment which, with the permission of the Chair, I will read.

Amend by inserting after word "exchange" the words "except that lands without the lines of the Adirondack park as now determined by the Forest Commission may be exchanged for lands within such lines."

And add at the end thereof, "except that fuel may be sold to State lessees or residents within such park."

So that the whole shall read as follows:

"The lands of the State now owned or hereafter acquired constituting the forest preserve as now fixed by law shall be kept as wild forest lands. They shall not be sold or exchanged, except that lands without the lines of the Adirondack park may be exchanged for lands within such lines, or be taken by any corporation, public or private, nor shall the timber thereon be sold or destroyed except that fuel may be sold to the lessees of the State or residents within such park.

If the gentlemen will cast their eyes on the map suspended on the side of the chamber they will notice the tracts owned by the State. The Adirondack park is altogether a different matter from the Adirondack preserve. The Adirondack park is determined by two lines on the map there. The State does not own all the lands within the Adirondack park, and within it there are two million eight hundred acres. Of this the State owns but five hundred and fifty thousand acres leaving the rest to be acquired in some way. It is held by individual owners. It is for sale. Without the line of the Adirondack the State owns lands in detached portions, which have come to it by tax sale, but they are detached and separate parcels. These can never be united in one solid tract. All the State can do is to solidify the Adirondack park. It seems to me

that where it can be advantageously done the lands outside of the park should be exchanged for lands inside of the park. That seems to me to be a simple business proposition to exchange the lands without for the lands within. Moreover, the Forest Commission are able to exchange the lands outside of the park for three or four times the area within the park.

Now, one word more in vindication of the present Forest Commission. The members of that commission are serving the State faithfully and well, and without pay. What has been said by the gentleman from Onondaga (Mr. Goodelle), was in reference to the Beaver dam, that was concocted before the Forest Commission was organized and by a man who subsequently became connected with the Forest Commission. He now has nothing to do with it. We all want to preserve the forest. Within this are the Adirondack park lessees of the State who are found camping upon these lakes and it has been impossible for them to secure fuel. It is desired that the Forest Commission should have the power to sell such timber as may be necessary for fuel to these lessees. These two considerations are the objects of my amendment.

Mr. Forbes — Mr. Chairman, I have an amendment which I will read. I wish to add this section:

"Sec. —. The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests in the State and may provide for rebates of taxes on agricultural lands where forests are preserved or maintained in connection therewith."

Mr. Chairman — In order to bring myself within the time allowed me, I must condense my argument, and I request the earnest attention of every gentleman of the committee.

In the first place the section added is not antagonistic to the first section proposed by the committee. The first section prohibits the sale of timber and provides that the lands shall be kept as wild forest lands. That requires protection and preservation, and that is all that my amendment prescribes. But it prescribes that that protection and preservation shall extend throughout the whole State. The committee are proposing to build an impassable mountain, as it were, in a corner of the State. What interest is that to those in the western part of the State? What interest is that to a great majority of the State? If the amendment is carried out to the extent of having the whole of the forests in the State preserved, instead of one little park, it will bring about a long-desired and long-needed reform. Every argument that has been so far made in favor

of preserving forests has been made in favor of my amendment for the protection of the whole of the forests of the State. These arguments which apply to the Adirondack forests solely, may be opposed. For example, it has been said that it is necessary for the protection of the Hudson river that the Adirondack forest should be preserved; but it was stated this very week in an Albany paper that the tides rise and fall as far up as Troy, and, therefore, that the Adirondacks are unnecessary to the preservation of the Hudson river.

In the second place, the section added makes it the special duty of the State to protect the people of the State in a matter in which they cannot individually protect themselves. For example, it is prescribed in section 7 of article 1 of the Constitution that private roads may be opened in the manner prescribed by law. Further, private property may be taken for public use. Again, it is provided in cities, for the general good, that buildings shall be of a certain height and shall be on a certain portion of a lot.

The next point is — and it has been already amplified by others — the forests of the State are necessary to the material growth of the State, to protect the health of the people, and to insure the fertility of its lands. Upon the forests depends the very existence of our water power and our waterways; also of our watersheds which supply our great cities. Take, for example, the watershed of the Croton. We need the forests in that watershed for conserving the waters used by the city of New York. Again, we need the forests of the Catskills for the recuperation of the people of the city of New York, who cannot afford to go so far as the Adirondacks, the sanitarium of the rich.

A clause of the added section is permissive to the Legislature to encourage the preservation of forests in connection with agricultural lands by a remission of taxes. It is not just to the farmer to ask him to preserve forests in connection with his agricultural lands without compensation therefor. I am very sorry that the time allotted does not allow a further consideration of this clause.

Lastly, it has been the custom of the framers of our various constitutions to put into them restrictions on the Legislature similar in kind to those proposed by this amendment. This State has gone in advance of all the other States in matters of this kind. We have always, in this State, put into our Constitution, matters material to the whole people. Let us not stop at one little corner of the State, no matter how advantageous that may be, but let us put into the Constitution a broad provision that shall affect every hamlet and every farm in the State as well. Wealthy people can go to, and

spend their money in, a pleasure ground where the poor and the common people cannot go. Let us apply this amendment to the whole State; and let us set an example to the rest of the people of the United States.

Mr. Mereness — Mr. Chairman, Mr. McClure, the chairman of our committee, has covered the question so thoroughly that I shall necessarily say what I have to say in a very few words. Having been born and reared within sight of the western Adirondacks, and having resided all my life, except about three years, so near to them that a two-hours' drive enables me to enter the forest known as the great North Woods, I have an exalted opinion as to the vast importance of our forest preserve as a health resort, and, what is of far greater importance, its incalculable value to the commercial and material interests of the State as a natural reservoir of pure water. If I should ever be tempted to make an effort at oratory, I am sure my subject would be: "The preservation of the forest lands within the State of New York." It is a subject worthy of the best efforts of an Edward Everett or a Wendell Phillips. But I am admonished that our time here is limited; that the subjects yet demanding attention are of such a character, that necessarily only a reference can be made to this important subject.

I have traversed this great forest in true aboriginal style, with my boatman and skiff, and a pack on my back from Long Lake and Blue Mountain on the southeast to Paul Smith's on Lake St. Regis on the north; from the Fulton chain on the southwest to the lower Saranac on the north, and have visited a large number of the beautiful lakes and ponds in that region, of which there are not less than one thousand. I have stood on the highest mountain peaks and admired the beauty of the green leafage stretching out as far as the eye could reach, and where none of the ravages of man were discernible, and have frequented the places inhabited for centuries, and until recently by the denizens of the forest; where the deer, the moose, the black bear, the beaver and many smaller animals flourished, notwithstanding the presence of panthers and wolves. The moose and the beaver are gone, never to return, I fear, and I suppose the brutal instincts of man will not be satisfied until the last deer is shot, and the last speckled beauty caught.

The screech of the locomotives, introduced into that lovely section by Doctor Webb and others, can now be heard, and the time is fast approaching when the whole region will be made desolate and barren, unless the hand of the despoiler is stayed. We have already waited too long, but I implore you, do not longer hesitate to take measures to stop this outrage.

If the money that has been wasted on the huge pile in which we are now assembled, in Assembly Chamber ceilings, for shoveling snow, for building artificial reservoirs for the benefit of the canals and many other purposes, had been used for the preservation of the great natural reservoir built by God, we would not now be at the pass to which we have arrived. But it is useless to spend our time finding fault with what has been done or winnowing a harvest of vain regrets. "It is a condition, and not a theory, which confronts us."

I need not spend time to demonstrate, to the representatives in this body of the great cities located where the noble Hudson enters the ocean, the immense value of this great pure-water section, for you all know that competent judges are of the opinion that it will not be long before your cities will be obliged to look farther north than the Croton Valley for a sufficient supply of wholesome water, and that the section I am speaking of is the only one to which you can go. Nor to the representatives of the whole valley of the river to which I have alluded, nor to those of the Champlain section, nor to my nearer neighbors who are here from those parts of the State through which the Grass river, the Racket, the Oswegatchie, the Black river and the Mohawk, find their way toward the sea, nor to the many representatives here that must necessarily feel a special interest in the canals. It is as a twice-told tale — well known to you all.

As I have intimated, we cannot do much, but I exhort you to do your utmost. Let us recommend to the people that they put into the organic law the declaration that our forest preserve and the timber thereon shall be inviolate forever.

If the time ever comes that timber culture in this State shall be a live issue — I am sure it will not be within the next twenty years — and it is not worth while at this juncture to consider the question of the great State of New York going into the business of selling logs and trees; we can cross that bridge when we get to it. We are not yet within fifty years of it.

I have already taken too much time, but let me ask you, if it is possible that this great Empire State that has spent more than twenty millions for a Capitol building, that has invested untold millions on its great waterways, that has assessed property within its borders valued at \$4,199,882,058 for the purposes of taxation, and probably worth double that sum, that exempts from taxation property of the value of \$581,178,701, cannot and will not from time to time, in the immediate future, appropriate from its vast resources

sufficient moneys to the end that the State may acquire and forever hold our yet beautiful forests for the benefit of all our people?

I trust, sir, that this much may be done, and that we shall do all we can to preserve what is left of our great natural reservoirs as nearly as possible as they were designated and constructed by the Almighty, for the benefit of the generations yet unborn that are to inhabit these peaceful shores, and to the honor, glory and perpetuity of the greatest of all the States, our own grand Empire, New York. (Applause.)

Mr. McIntyre — Mr. Chairman, just a word I wish to say upon this subject, and in what I have to say I want to take a very practical and financial view. The necessity of preserving this park seems to me to be beyond any question and I think every gentleman here knows that to be a fact. I think as a financial matter to the State, it is the thing to do. Now, within my memory those lands have been sold time and time again for the taxes, and now they have so increased in value that they are worth anywhere from five to ten dollars an acre, and upon some of the lovely ponds a very much larger sum. So, if the State of New York takes these lands and holds them now it will be for the benefit of the State.

Now, I am not in favor of exchanging any of the wild lands outside of the forest preserve for lands within. We want to keep all the land that the State has preserved and all that we may hereafter acquire. We want to feel as though we started with a foundation and then look forward to having the whole of that territory as a large park. No one man, sir, objects to the simple proposition that the wild lands owned by the State, or hereafter owned by it, must be preserved, and I am decidedly opposed to exchanging these lands or selling any timber or allowing anybody to get control of these lands for any purpose whatever. I come from the northern part of this wilderness, and I know the amount of money that the Legislature has appropriated for building dams and improving the navigation of Racket river. Why, the river has a fall of four hundred feet, and it is impossible to make that stream navigable. You cannot make it navigable for canoes. Notwithstanding that fact the State has appropriated money time and time again for the improvement of the Racket river. Make it navigable for what? To float saw logs down it; make it navigable for lumbermen living in Potsdam. I think the time has come when we should hold what we have got and get all we can.

Mr. Crosby — Mr. Chairman, I offer the following amendment: After the word "preserves," in line 4, insert the following: "Except

all such lands within the limits of any incorporated village or city, and except all such lands, not wild lands, as have been, or may be, acquired by the State of New York upon or by foreclosure of, or sale pursuant to, any mortgage upon lands made to the commissioners for loaning certain moneys of the United States, usually called the United States deposit fund."

This has been suggested, Mr. Chairman, by the gentlemen sitting here that that is the law now, and that is why I desire to preserve it in this proposed amendment of the Constitution if it is adopted.

The Chairman — Are you aware of the fact that Mr. McClure has put into the amendment here after the word "preserves," "as now fixed by law?"

Mr. Crosby — Mr. Chairman, I desire to make it specific, so there will be no misunderstanding, so that we will not have to refer to the statute law to know what the Constitution is. I desire to call attention to what is the boundary of the forest preserve, because by referring to chapter 8 of the Laws of 1890 a description of what comprises the forest preserve may be found: "All the lands now owned or which may hereafter be acquired by the State of New York, within the counties of Clinton, except in the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan, shall be kept forever as wild forest lands, and shall constitute and be known as the forest preserve."

So that every village, every city, including the city of Kingston, in the forest preserve, which is defined by the boundaries of the counties mentioned, if the State acquires title by tax sale hereafter, if the State acquires title by a sale under the United States deposit fund, a mortgage which is but little known in a large portion of the State, but a large portion of the acres in a number of those counties partially improved and partially forest is held under the mortgages peculiar to that fund, so, I say, if the State acquires title to any of those lands, it can never sell any of them if this provision is adopted. I simply suggest that it be incorporated in the proposed amendment, so that there may be no misunderstanding, and that it may not be necessary to look through the statute books. I have copied verbatim the section which I have read. I have incorporated the provision of section 7, word for word, so that there will be no misunderstanding hereafter. I trust it will be accepted without opposition.

Mr. McArthur — Mr. Chairman, after wandering through the barren fields of home rule, and along the thorny path of sectarian

appropriations, and under the burning sun of reapportionment, how refreshing it is to come to the cool and quiet forest, where we may rest, as it were, for a time and consider our summer's work.

Now, I came here, Mr. Chairman, not intending to make a speech in this Convention at all, but a subject has been reached, at last, through the instrumentality of the gentleman from New York (Mr. McClure), that I am very much interested in, and I trust that the committee will pardon me for taking five minutes' time in talking about this, because it will be my first and last speech in this Convention.

Now, I live in the suburbs of the Adirondack forest. I think I know something about them. I have been through them many times. I have watched the destruction of the woods, and I have also watched the diminution of the flow of water in the summer months in the rivers that have their sources in that forest, and in the limited time that I have, all that I can do is, in a sort of Methodist way, relate some experiences.

Now, I was at Lake George the day before yesterday, and by actual observation on my part I know that the present level of the water in Lake George is three rods further out in the lake than the oldest inhabitant ever knew it to be. I was brought up on the banks of Lake Champlain, and I spent the first twenty years of my life there. I know that the head of navigation in Lake Champlain, within my recollection, has moved northward to Fort Ticonderoga, a distance of twenty-five miles, and that the bed of that lake which below that point is more nearly a creek, has filled up to such an extent that within the last three years there have been two and, I think, three dredges trying to dredge out the accumulation of sand and dirt. I know, within my experience, since I was twenty years of age, that on the bank of the Hudson, there are only two months of the year when the magnificent power of the Hudson at Glens Falls, where I live, is available for manufacturing purposes, and only this summer one of the largest concerns we have in that place, the Morgan Lumber Company, owning a large amount of these woods, have abandoned water power in their saw-mills and have introduced steam power in them. I made a remark before the committee, and some people thought that in my zeal for this movement I overstretched the bounds of reason and good faith, when I said that at Fort Edward where the Delaware and Hudson crosses the Hudson river, I could walk across that river and not wet my feet. I am here to reiterate that statement. I came down across the Hudson river the day before yesterday and I walked across the river at Fort Edward and did not wet my feet. I could

do the same thing to-day. Now what is the cause of all this? Mr. McClure has shown the absolute importance of preserving all the forests of the State. I do not speak particularly of the Adirondacks, because I wish to include the Catskill region just as well, because, while the Adirondacks are the source of a great many rivers, the Catskills are also the source of some rivers. These forests are one vast sponge. To illustrate, you turn a tumbler of water quickly on to a sponge. It will retain but one-tenth part of the water in the tumbler. Now, if you turn that water on to the sponge very carefully and gradually, that sponge will retain every particle of that tumbler full of water. Now, that is the importance of the Adirondack region. It is one immense sponge. As everybody knows when you are caught in a storm you rush for a tree. If you will stay under the tree long enough you will get wet, but you will get wet gradually. The rain works its way down gradually. Now, every man knows that in the forest we never have what is called a wash-out. Why? Because the water comes down slowly in the trees and gradually works its way out into the rivers. Now, if you wish to preserve the waters of this State, if you wish to preserve the waters of the Hudson river, and if there are any friends of the canal system of this State in this Convention, if they wish to preserve the canals, it seems to me they must vote for this amendment which may eternally preserve the Adirondacks.

But the amendment does not thoroughly suit me. It is not the amendment I would propose if I had control of the question; but it is a step, a long step in the right direction, and I hope there is not a man in this Convention that will vote against this proposition which will certainly do some good. (Applause.)

Mr. C. B. McLaughlin—Mr. Chairman, I have no desire to enter upon a discussion of the merits of this bill at this time further than to say that I am heartily in favor of the adoption of it in the original form in which it was introduced. I am opposed to every amendment which has been offered here except the one offered by the gentleman from Onondaga (Mr. Goodelle). In reference to the amendment of Mr. Crosby, I desire to say that it seems to me that it would destroy to a large extent the very purpose which this amendment has sought to accomplish. Now, I have had some experience in the Adirondacks. I have spent some two months each year for the past ten years there. In every section of it you will see some parts of this immense forest destroyed. The moment you put in any provision that anybody can cut timber there, then you destroy the effect of the whole amendment. Now, I say that I am heartily in favor of the proposed amendment, and I hope that

every amendment proposed here should be voted down except the amendment offered by the gentleman from Syracuse (Mr. Goodelle).

Mr. Durfee—Mr. Chairman, I do not intend to consume the time of this committee in repeating the arguments that the State should take these lands, but I desire to call the attention of the committee to the amendment proposed by Mr. Forbes. With him I desire to go further than the proposition introduced by the committee does, which relates to the State lands only. I think we have come to the point where it is wise for the State to take such measures as will make it to the interest of the individual owners of forest to preserve the forest lands.

That, I believe, is the intent of the amendment of Mr. Forbes. In my own personal experience I have had occasion to observe the baneful effects of the destruction of the primeval forest. It has caused the droughts of summer in a good many instances. The destruction of the wind-brakes has permitted storms to sweep over the farms and orchards. Cyclones and hail-storms have become vastly more numerous of late years than they were formerly. It seems to me to be of the greatest importance that every man that owns a few acres of woodland in connection with his farm should have it made to his interest to retain "the forest primeval, the murmuring pines and the hemlocks." The object to be accomplished, if the amendment proposed by Mr. Forbes is adopted, seems to be in line with the welfare of this State, and that is what we are all here seeking to subserve. I hope, Mr. Chairman, that the amendment of Mr. Forbes will not be lost, and that it will receive the favorable consideration of the Convention.

Mr. Vedder—Mr. Chairman, I was extremely pained this morning to hear the genial chairman of this committee, the gentleman from New York (Mr. McClure), drag in by the hair of the head, as it were, a matter entirely foreign to the orderly and logical consideration of this question. Why the gentleman should have traveled so far for the express and only purpose apparently of striking my favorite legislative child is more than I can understand. Although the honor, if it be one, has been attempted to be filched from me by the senior Senator of the State of New York, I am the author of the collateral inheritance bill and the direct inheritance bill, having drafted every word of those acts, and introduced them at different periods into the Legislature, and they had twice been passed by majorities of one hundred and sixty members of the Senate and Assembly, elected from all parts of the State, mostly for their intelligence and patriotism, and I wish now to defend that act

against the attacks of the gentleman, brought in, as they have been, disconnected from this subject entirely. The collateral inheritance law does not tax, as he says, the property in a double sense. It neither taxes those who earned that property, nor does it tax those who have any interest whatever in saving the property which is taxed. It taxes those, as it suggests—the collateral, and it is a tax imposed because it is just. Formerly that property, when a man died, went to the State, and the State, in its benevolence, says it may go to the persons whom the testator directs, or where the law says the testator shall make a disposition of it. That is what the law says. The direct tax is a tax upon personal property where the property exceeds \$10,000, and I pretend to say this in that behalf, that you can find on the tax rolls of every rural county of this State widows and aged men, whose whole estate does not exceed more than twenty-five thousand dollars, who pay each year more tax upon personal property than the score of millionaires of the city of New York. Taxation and protection are co-relative terms, and these men with their millions receive protection and give to the State no equivalent whatever for it. It is not a double taxation. It is not at all like the infamous income tax which his party friends in the Congress of the United States has imposed as an additional burden upon the people of the State, and stands upon the statute books as a lasting dishonor to the party which passed it.

Mr. Osborn — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Osborn — My point of order is that the gentleman's remarks are not pertinent to the question at issue.

The Chairman — The Chair is of the opinion that the gentleman's remarks are not entirely in order.

Mr. McClure — Consider me, Mr. Vedder, as withdrawing all reference to it. I was not aware that you were responsible for those measures.

Mr. Vedder — Very well, if he withdraws it, I have nothing more to say, because, if his was an argument in reference to this bill, mine is germane in answering it. If he withdraws it, and on his sober second thought believes that I am right in what I say, I am satisfied.

Mr. E. A. Brown — Mr. Chairman, I would like to ask the gentleman a question. I would like to ask whether or not the amendment in his opinion includes all the forest lands owned by the State, whether located within or outside of the forest preserves?

Mr. McClure — I will answer the gentleman by saying yes.

Mr. Brown — I see the proposed amendment reads, "Lands of the State now owned or hereafter acquired constituting the forest preserves." Now, the State owns hundreds, and I may say thousands of acres of forest lands that are not technically within the confines of the forest preserves. If the gentleman will accept an amendment so as to include all those lands without question, I think the measure will be in better shape than it is now; and from a familiarity with the Adirondack forest which goes back for over forty years of my life, I desire to say to the gentlemen of this Convention that I believe then, and in that case, that of all the amendments now proposed upon the floor of the House, the amendment offered by the chairman of the committee is the best. I do not believe, sir, in hampering it with any insignificant provisions about giving away fire wood to lessees of the State within the Adirondack forests. That, sir, will simply open the door, or keep open the door that is already open, for the incursions of thieves and destroyers upon the magnificent domain of the State. I do not believe, sir, in any provision that will give to any person whatever the privilege to enter upon the forest preserves and destroy all that remains to the State of that magnificent domain. Why, sir, on one of the oldest maps of the State of New York and of that territory, of which only a fraction remains to us, is inscribed this significant statement: "These lands have not yet been seized by the land harpies." Now, sir, to-day they have nearly all been seized by the land harpies, and it is within only a few years past that a certain large lumbering corporation of this State built a railroad into the heart of the Adirondacks, and cut down all the valuable timber within such a distance upon each side of its railroad, as was profitable for its uses, and conveyed the logs to its mills. The State, through its Forestry Commission, brought an action to recover for the land, and they were charged with stealing over two hundred and twenty-five thousand dollars worth of State timber, and despoiling the forests to that extent. Then, out of sympathy, fearing that this great corporate thief would be crushed and ruined, this claim was settled for the paltry sum of ten thousand dollars. Only a few days ago before the committee of this Convention, in the Assembly parlor, one of the Forest Commissioners of the State of New York told us that it is necessary to peddle out, to sell, the timber now standing and growing on the forest preserve, in order to pay the expenses of the Forestry Commission of the great State of New York. I say, sir, that it is necessary that something be done; I say, sir, it is necessary to close the door

unless you want this great water supply, this great sanitarium, this great health resort of our State that is known from ocean to ocean, and from land to land, destroyed, that you must shut the door, and you must close it tight, and close it right away; and not only that, you must keep it closed for twenty years. This is not an individual matter with me, sir, I am not interested to the extent of one dollar in the forest lands of this State, but when I see the great number of pleasure seekers, the great number of invalids that annually visit that territory, not only in summer, but also in winter, it appears to me that we here, now and to-day, should do something to protect that great and magnificent forest from further spoilation. In and out of the forest preserve, every dollar's worth of land that is now owned by the State of New York should be enjoyed by the people of the State of New York, should be as free as air, as free as the God-given sunlight of heaven.

Again, sir, more should be done, which is not proposed by this amendment. More should be done, in that the State should own all the lands within this great forest preserve. It should be so, sir, that the poor man as well as the rich man might enjoy its benefits. It should be so that no great corporation, no wealthy individual, or association of individuals, should be able to select out the choicest, most beautiful spots of this domain, and set up in front of them a forbiddance, a sign of "no trespassing." I say, sir, it is our duty to the people whom we represent — and I thank God there is no politics in this — to give a sufficient, a proper and adequate protection, so that when the foresters tell us that within twenty years a forest will recuperate, within the time in which another Constitutional Convention will assemble within the walls of this magnificent pile, we shall have a forest domain that will be of some satisfaction, that will be a credit, as this great building is a credit, to the great, the magnificent Empire, the State of New York. (Applause.)

Mr. McClure — Mr. Chairman, I would like to ask Mr. Brown whether the lands which he refers to are not within the limits of the counties named in the act of 1893? If they are, they are within the forest preserve, whether they are now owned by the State or will be hereafter acquired.

I have only a word to say with reference to each of the amendments proper. First, with reference to that of Mr. Forbes. It is a very good measure, and I would favor it if it were a separate one, but you will see, Mr. Chairman, it is a discrimination in favor of an individual, if he owns land, by way of taxation; that is, there is to be a rebate of taxes if he saves his trees. I think that it is not germane to the question. This is the great, broad question relating

to State lands. I do not think that it might affect our amendment added to it; and with a great deal of regret I have to announce on behalf of the committee that we cannot agree to it.

With reference to Mr. Floyd's proposition, we think it would be exceedingly dangerous to allow the commission to sell timber for camp-fires. Any campers that cannot pick up something on the shores, that will not be timber, to warm themselves with, would better either carry in their fuel or stay out. It would be opening the door to a great danger.

And as to the exchanging of our lands, the State, as I said before, has always got the worst of it on the exchange. We do not need to exchange our lands to get others. We will buy inside of our park lands the lands we want, and we will keep this land outside of the park lands.

Now, with reference to Mr. Goodelle's amendment as to the destroying of the timber, of that we will accept, and I will in the amendment offer one or two little verbal amendments which will include that. I do not think there is any other amendment which has been suggested to which I need make any response; and if the Chair thinks it better to take a vote on the amendments proper, I think that will be the better way myself; then I will offer one or two little verbal amendments.

If you will permit me, I did not say a word about Mr. Crosby's amendment. But this constitutional amendment refers to the forest preserve as now fixed by law. The law is contained in the statute of 1893, which excepts from the forest preserve, towns and villages, and lands bought by the State on foreclosures of mortgages, so that those lands are not taken in. Now, I ask for a vote on the several amendments. I will ask the Secretary to note my amendment because I have it a little roughly. You have before you the amendment as it will read when completed.

The Secretary — Your substitute?

Mr. McClure — Yes, sir.

The Secretary — Yes.

Mr. E. R. Brown — May I ask the chairman of the Committee on Forestry a question?

Mr. McClure — I will be glad to answer it, Mr. Chairman.

Mr. Brown — Do you think that under the language of this proposed amendment you will have prevented the Legislature reducing the limits of the present forest preserves in the future?

Mr. McClure — We do, sir. We carefully considered that. The

act provides that "the lands of the State, now owned or hereafter acquired," within certain counties.

Mr. Brown — If I may be allowed, Mr. Chairman, as it seems to me, this is a very vital point. I would like to say one word more upon it. "Lands of the State now owned or hereafter acquired, constituting the forest preserve." That does not say that the forest preserve shall remain, shall never be less than it is now, or that it shall cover —

Mr. McClure — My friend was absent when the amendment was handed up.

Mr. Brown — I beg pardon.

Mr. McClure — Let me first offer my amendment, if the Chair please.

Mr. I. S. Johnson — I would like to inquire, Mr. Chairman, whether amendments are now in order, under the claim as made by gentlemen on the other side the other day? I only want to know whether they desire to take their own medicine?

Mr. McClure — I do not think there will be any medicine in this, except for the people who oppose it.

Before the word "sold" — that is, in the sentence beginning "they shall not be sold" — the committee suggests an amendment by way of the word "leased." "They shall not be leased, sold or exchanged," and after the word "sold" at the end of the whole amendment, add the words "removed or destroyed." That relates to timber. So that the whole amendment will read, if I may be allowed to read it, as follows:

"The lands of the State now owned or hereafter acquired, constituting the forest preserves as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

Now, I move —

Mr. I. S. Johnson — I desire to raise the point of order that the amendment is not now in order, the time having past at which a vote was to be taken. (Laughter.)

The Chairman — We are clearly within the time still, there being one minute more.

Mr. McClure — I now call for a vote on the amendments.

The Chairman — I think Mr. Crosby's is the first amendment which will be submitted to the committee.

The Secretary read the amendment offered by Mr. Crosby, in the language following:

After the word "preserves" in line 4, insert the following: "Except all such lands within the limits of any incorporated village or city, and except all such lands, not wild lands, as have been or may be acquired by the State of New York upon or by foreclosure of or sale pursuant to any mortgage upon lands made to the commissioners for loaning certain moneys of the United State, usually called the United States deposit fund."

The Chairman put the question on agreeing to the amendment offered by Mr. Crosby, and it was determined in the negative.

Mr. Durfee — Mr. Chairman, I desire to offer an amendment, which, I understand, is acceptable to Mr. Forbes, to his amendment, which I ask the Secretary to read.

Mr. Forbes — I accept the amendment.

The Chairman — This can only be received now by unanimous consent. Is there any objection to receiving this proposed amendment of Mr. Durfee's to the amendment of Mr. Forbes?

Mr. Goodelle — I object, Mr. Chairman.

The Chairman — If not, it will be received. It is received.

The Secretary read the amendment offered by Mr. Durfee, in the language following:

"The Legislature may provide for the remission of taxes on forest lands in this State owned by private individuals or corporations."

The Chairman put the question on agreeing to the amendment offered by Mr. Durfee, and it was determined in the negative.

The Chairman — The committee will now vote on Mr. Forbes's amendment.

Mr. Mereness — I rise to a point of order. My point is that Mr. Forbes accepted Mr. Durfee's amendment and that has already been voted on and lost, and embraces Mr. Forbes's amendment.

The Chairman — The Chair holds the point to be not well taken. The Chair did not hear Mr. Forbes accept Mr. Durfee's amendment. The committee will vote on Mr. Forbes's amendment.

The Secretary read the amendment offered by Mr. Forbes, in the language following:

"The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests of the State,

and may provide for rebates of taxes of agricultural lands where forests are preserved or maintained in connection therewith."

Mr. Forbes — Mr. Chairman, this is a question in which there are two propositions contained. Now, I desire that they be voted on separately, that the first part of that amendment be voted upon by itself.

The Chairman — The gentlemen has the right to call for a division of the question.

The Secretary again read the first clause of the amendment, to and including the word "State."

The President put the question on agreeing to this clause of the amendment, and it was determined in the negative.

The Secretary then read the remaining clause of the amendment.

The Chairman put the question on agreeing to this clause of the amendment, and it was also determined in the negative.

The Chairman — The question now arises on the amendment offered by Mr. Floyd.

The Secretary read the amendment offered by Mr. Floyd, in the language following:

Amend by inserting after the word "exchange" so that the whole shall read as follows: "The lands of the State now owned or hereafter acquired, constituting the forest preserve, as now fixed by law, shall be kept as wild forest lands. They shall not be sold or exchanged, except that lands without the limits of the lines of the Adirondack Park may be exchanged for lands within such lines, or be taken by any corporation, public or private, nor shall the timber thereon be sold or destroyed, except that fuel may be sold to lessees of the State or residents within such park."

The Chairman put the question on agreeing to the amendment of Mr. Floyd, and it was determined in the negative.

The Chairman — Mr. Goodelle's amendment is next in order, but I understand that has now been accepted by the committee.

Mr. Goodelle — Inasmuch as Mr. McClure has incorporated that in his amendment, I will withdraw that amendment.

The Chairman — The amendment is withdrawn. The question now is on the main proposition. The Secretary will read the substitute.

The Secretary read the substitute of the committee, in the language following:

"The lands of the State now owned or hereafter acquired, con-

stituting the forest preserves, as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

Mr. Floyd — How does the word "leased" come into the substitute?

The Chairman — It was read a short time since.

Mr. Floyd — Then was it not an amendment that should have been passed on?

The Chairman put the question on agreeing to the substitute, as read, and it was determined in the affirmative.

Mr. McClure — Mr. Chairman, I move that the committee do now rise, report this amendment to the Convention and recommend its adoption.

The Chairman put the question on the adoption of the motion of Mr. McClure, and it was determined in the affirmative.

President Choate resumed the chair.

The Chairman — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 452), entitled, to amend the Constitution, relative to the forest preserves, have gone through with the same, have made an amendment thereto, and instructed the chairman to report the same to the Convention and recommend its passage.

The President put the question on agreeing with the report of the Committee of the Whole.

Mr. Durfee — Mr. President, I move to disagree with the report of the Committee of the Whole; that the measure be recommitted to the special committee, I think it is, from which it was reported, with instructions to add thereto as follows:

"The Legislature may provide for the remission of taxes on forest lands in this State owned by private individuals or corporations," and to report forthwith.

Mr. McClure — On that, Mr. President, I move the previous question.

The President — The gentleman still has the floor.

Mr. McClure — I beg pardon. I did not know he wished to say anything upon it.

Mr. Durfee — Only one word. This amendment which I propose, Mr. President, is in line with the few remarks which I had

the honor to submit in the Committee of the Whole. If more time were at our disposal, I should feel very much inclined to urge at length upon this Convention the importance of giving the Legislature power of this character; but considering the amount of work we have to do and the limited time we have in which to do it, I trust that the Convention will act favorably upon my motion without any extended speech. It seems to me that it is a subject which ought to command the approval of the entire Convention—simply giving the Legislature power, not requiring them to take action, but putting it in their power to take action in that regard so that something may be done in the future; the exigency having already arisen, and being likely to continue and to increase, that something may be done to preserve in this State what remains, at least, of the forests which have so eloquently been said upon this floor, and, particularly, in Committee of the Whole, to subserve such great and useful purposes for all its citizens.

Mr. C. B. McLaughlin—Mr. President, I want to say just one word upon that amendment. I believe it to be most pernicious in principle. We have now in this State corporations, individuals, who have bought large tracts of land, and it seems to me that they should not be exempted from taxation. It creates a class distinction between the citizens of this State, those that are subject to taxation, and those that are not. Now, it seems to me that this proposition should go through as the committee has proposed it, and to tack on this, it seems, would be, in effect, to kill it. Now, I hope this motion, as made by Mr. Durfee will not prevail. I know that in the Adirondacks there are large tracts, thousands of acres, that have been bought for a mere song, and, if they can be exempted from taxation for years to come, it will be simply increasing their property in value when the time shall come that they can sell and dispose of it.

Mr. E. A. Brown—Mr. President, I am decidedly opposed to any provision being tacked to this proposed amendment releasing any property from taxation whatever. I believe, as Mr. McLaughlin has said, that it is pernicious in principle. It opens the door to all sorts of fraud, and, I think, it is unjust to the poor laboring man, as well as to the rich millionaire that we should say, "this man shall be exempt from taxation, and this man shall bear all the burdens of taxation."

Mr. Mereness—Mr. President, just a moment. It seems to me entirely unworthy that this great subject should be lumbered up with a proposition providing that because a farmer sees fit

to keep a small sugar bush or a little piece of woods for his own accommodation for fire-wood, that we should have a matter of pure legislation fastened on to the tail end of this great question upon which an amendment has been perfected in the Committee of the Whole. I think that the motion should be voted down.

Mr. McClure—Mr. President, I move the previous question on the amendment of Mr. Durfee.

The President put the question "Shall the main question now be put upon the motion made by Mr. Durfee?" and it was determined in the affirmative.

The President put the question on the adoption of Mr. Durfee's amendment, and it was determined in the negative.

The President—The question now recurs upon agreeing with the report of the Committee of the Whole.

Mr. Forbes—Mr. President, I make the same motion as Mr. Durfee in regard to this clause. "The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests of the State."

Mr. McClure—I rise to a point of order, Mr. President. I understood the previous question was not only on Mr. Durfee's amendment, but that it applied to the whole matter.

The President—The point of order is well taken. Mr. Forbes's motion cannot be put. The question now is upon agreeing to the report of the committee.

Mr. Forbes—Mr. President, I rise to a point of order, that the previous question was on the motion of Mr. Durfee. A vote has been taken upon that motion.

I move that this report be referred back to the committee, with directions to report the proposed amendment which I have offered.

The President—The proposition of Mr. Durfee was the main question of disagreeing with the report of the committee, with some qualifications, and the Chair is of the opinion that the previous question upon that went to the bottom, and the question must be put upon agreeing with the report of the committee.

The President put the question upon agreeing with the report of the Committee of the Whole, and it was determined in the affirmative; the amendment referred to the Committee on Revision, to be printed, and put upon the order of third reading.

Mr. Cookinham—Mr. President, I have just received a telegram from Mr. Kellogg, to the effect that he is sick and not able

be extended for two or three hours to enable him to finish. (Laughter.)

Mr. Burr — I propose to do so, Mr. President.

Now, Mr. President, is there no merit in the amendment of my friend, Mr. Gilbert —

Mr. Abbott — Mr. President, may I ask the gentleman a question? When are we expected to answer these conundrums?

Mr. Burr — You want to get away from answering them by adjourning. Mr. Gilbert's proposition is that the Legislature shall, by general laws, provide for the establishment of Boards of Arbitration, with powers to investigate, consider and determine matters of controversy between employers and employes which affect public interests. Isn't that an important matter for the working classes of this State? Why not stay here and consider it? I want to say now, gentlemen, that I am willing to sit here until twelve o'clock to-night, and willing to sit here all night. I am willing to stay here all night to-morrow night, and all night the next night, to finish the business that is before this Convention, that the needs of the people cry out to have passed upon.

The President — Will Mr. Burr be kind enough now to move an extension of the session?

Mr. Burr — Mr. President, I now move that the session of this Convention this evening be extended until twelve o'clock.

Mr. Root — Mr. President, I move as a substitute, that the session be extended until half-past eleven.

Mr. Burr — I second the motion.

The President put the question on extending the session until eleven-thirty, and it was determined in the affirmative.

The President — Mr. Burr will proceed with his remarks.

Mr. Burr — I think, Mr. President, I have sufficiently called the attention of the Convention to the fact that there is some other business before it. I think I have stated, and that was the reason why I went into the matter so much in detail by reading these amendments, the character of the business before us. Now, if the gentlemen will move any one of these matters for consideration, I am prepared to go on with it. Why not take up this matter of trusts — this matter which I had the honor to offer on the twenty-ninth day of May last?

The President — The Chair will remind Mr. Burr that the forestry matter is next in order, and will be proceeded with as soon as this discussion is closed.

Mr. Burr — I am perfectly willing, Mr. President, to allow the forestry matter to proceed.

Mr. Root — Mr. President, I move the previous question upon Mr. Hedges's motion.

Mr. Veeder — Mr. President, I call the President's attention to the fact that the Chair declared that if Mr. Burr would take his seat the forestry matter would immediately proceed.

The President — The question is, shall the main question now be taken on Mr. Hedges's motion?

The President put the question as stated, and it was determined in the affirmative.

The President — The question is now on the motion of Mr. Hedges. The Secretary will read the resolution of Mr. Hedges.

The Secretary read the resolution referred to (No. 211).

The President put the question on the adoption of Mr. Hedges's resolution, and it was determined in the affirmative.

The President — The forestry matter is now upon the order of third reading, and the Secretary will read it.

The Secretary read the proposed amendment as follows (O., I. No. 392, P. No. 452):

"Proposed constitutional amendment to amend the Constitution relative to the forest preserve.

"The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

"ARTICLE —.

"Section —. The lands of the State, now owned or hereafter acquired, constituting the forest preserve, as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

Mr. Jenks — Mr. President, I move that the Convention do now adjourn.

The President put the question on the motion of Mr. Jenks, and it was determined in the negative.

The President — Mr. McClure has the floor.

Mr. McClure — Mr. President, at this late hour, in view of the fact that this matter has already been thoroughly explained, I do not think it necessary that anything further should be said. I do

not know whether there are any other amendments to be offered, but I understood that my friend, Mr. Floyd, had one, which I will oppose immediately upon its being offered.

Second Vice-President Steele took the chair.

Mr. Floyd — Mr. President, I offer the following amendment:

The Secretary read the amendment as follows:

Insert after the word "leased," in line 4, the words "otherwise than is now provided by law, or."

Mr. Floyd — Mr. President, I desire to call the attention of the Convention to the fact that in our anxiety to protect our forest preserves against the devastating dollar hunter, we have proceeded, perhaps, with a little too much precipitation. We have prevented any leasing whatever. This amendment suggests that we should allow such leases to be made as are now prescribed by law. The Forestry Commission is allowed at the present time to lease under certain restrictions, and they are quite severe; they can rent only for five years, they can rent only in plots of five acres, and the lessees must enter into covenants both as to the occupation and as to the subletting, and as to the preservation of the timber. No leases have as yet been granted, but there are in the hands of the Forestry Commission some thirty-nine applications, and the amount which is charged for these plots of five acres ranges from fifty to two hundred and fifty dollars. If these were granted there would be an income to the Forestry Commission for the purpose of buying other lands of between five and six thousand dollars per year.

But it is not the revenue that seems to me to be of any importance. I suppose the frequenters of the North Woods, the lovers of the woods are of two classes: first, those who go there for pleasure, the robust and active men and women who use it as a pleasure ground, and with their guides and boats can traverse it from one end to the other. But aside from this class of people, who look to the North Woods for pleasure and health, there is the other class, and, it seems to me, they are to be as much regarded in our arguments, perhaps more so, than the other: they are the sick who go there for health. It has been for years a well-known resort for persons afflicted with pulmonary diseases, and has proved to them a great blessing. If we prevent any leasing we shut out from the North Woods that class of frequenters, for it is impossible that they should go there and occupy the same tents and camps which campers use. They must put up some small structure of boards or logs, or something to afford shelter. It is in the interests of

this class of people, to whom we ought not to deny this health-giving, life-giving region of the North Woods. It is in their interest, I submit, and there is no danger of detriment to the State from the fact that the law hedges about in the leasing in the matter I have described. It is for that reason that I desire to have this clause incorporated in the amendment, that it may be leased in the way now prescribed by law.

Mr. McIntyre — Mr. President, we might as well not have any law whatever as to have this one. I simply want to say this: if you should put in a clause there to lease lots, you might as well not have any amendment whatever, because by the leasing of it, in a very few years every desirable place will be taken up and the public will have no place whatever to go to. We all know enough about this land to know that you cannot get water there; you must have a pond or a lake or a running stream for fishing and hunting, and for the place where you would go to camp, and these would soon be taken up, and most of the forests would be taken from the public.

Mr. Forbes — Mr. President, I desire to offer an amendment, in the way of an additional section.

The President — The Chair must hold that additional sections would not properly be amendments to the amendment offered by Mr. Floyd.

Mr. McClure — Mr. President, it having been shown that Mr. Floyd's amendment would be an unwise thing to adopt, I move the previous question upon the amendment.

The President put the question on whether the main question shall now be put, and it was determined in the affirmative.

The President put the question on the adoption of Mr. Floyd's amendment, and it was determined in the negative.

The Secretary read Mr. Forbes's amendment, as follows:

"Sec. —. The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests of the State, and may provide for rebates of taxes on agricultural lands where forests are preserved or maintained in connection therewith."

Mr. Forbes — Mr. President, I have said already, in Committee of the Whole, all that I care to say upon this subject, although it was in a very brief and condensed form. I think the members will recollect what was said at that time, and I will not detain them now to repeat it; but it is a subject which should receive the careful consideration of every gentleman present. We should extend ques-

tions of this kind to the whole State, rather than limit them to some small portion or section of the State, benefiting only a small section and not the whole of the State. This was the case with the Niagara Falls proposition that we have had up to-day; it was because that was a sectional matter that it was voted down, I believe, and we should have treated that question as we treat this, and I hope that during the recess which we shall have that the committee which has the matter of the waters of the State in charge will devise something that will apply to the whole State, and not to any particular section of it.

Mr. Goodelle — Mr. President, I move the previous question upon this amendment.

The President — Does any other gentleman desire to make any further amendment? If there are no other amendments, the previous question is not necessary.

The President put the question on the adoption of Mr. Forbes's amendment, and it was determined in the negative.

Mr. McClure — Mr. President, if no other gentleman desires to speak, I move that the debate be now closed.

The President — If there is no objection, the debate is closed, and the Secretary will read the amendment through.

The Secretary read the amendment, and proceeded to call the roll.

Mr. Forbes — Mr. President, I think it is necessary for me to explain my vote. Some gentlemen who are here seem to think that their own personal convenience is of more importance than this great question that we have before us to-night. We have divided up a great question and made it a little one. We have taken one small section of the State and said that we will do something for that, and will not do anything for the rest of the State. I would like to have voted for this measure as it should have come before this Convention. The whole subject should have been taken up by the Convention, and should have been treated in a noble and in a proper spirit, commensurate with the dignity of this great State. But in view of the fact that the Convention thinks it can only give protection to a small part of the State, and that it must always keep it as it is at the present time without any culture, without any care, but yet, because we have made a commencement, as it were, I vote aye.

The amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Allaben, Arnold, Baker, Banks,

Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Davenport, Davies, Davis, Deady, Dean, Deyo, Doty, Durfee, Durin, Emmet, Faber, Floyd, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Goeller, Goodelle, Green, A. H., Green, J. L., Hamlin, Hawley, Hedges, Herzberg, Hill, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Manley, Mantanye, Marks, Marshall, McArthur, McClure, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McLaughlin, J. W., McMillan, Moore, Morton, Mulqueen, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Pashley, Peabody, Peck, Phipps, Platzek, Pool, Powell, Pratt, Putnam, Redman, Root, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Towns, Truax, C. H., Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 122.

Mr. Cookinham — Mr. President, I move that we adjourn.

The President put the question on the motion of Mr. Cookinham, and it was determined in the affirmative, whereupon the Convention adjourned until Friday morning at ten o'clock.

Friday Morning, September 14, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, at Albany, N. Y., Friday morning, September 14, 1894.

President Choate called the Convention to order at ten o'clock.

The Rev. A. Kennedy Duff offered prayer.

On motion of Mr. A. H. Green, the reading of the Journal of yesterday was dispensed with.

Mr. I. S. Johnson — Mr. President, I rise to a question of privilege.

The President — Mr. Johnson will state his question of privilege.

Mr. Johnson — Mr. President, last night during the session myself and a large number of other members of this Convention were seriously attacked and charged with abandoning our work, or an effort to abandon our work in this Convention. I desire, Mr. Chairman, to call attention to a little history of this Convention

EXHIBIT I

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB 1261

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION – ADVERSE ABANDONMENT – SARATOGA AND NORTH
CREEK RAILWAY IN TOWN OF JOHNSBURG, NY**

ENVIRONMENTAL AND HISTORIC REPORT

Pursuant to 49 C.F.R. §§ 1105.7 and 1105.8, the New York State Department of Environmental Conservation (DEC) hereby submits this combined Environmental and Historic Report. So far as applicable to the present proceeding, this document contains the information required by 49 C.F.R. §§ 1105.7(e) and 1105.8(d) and is organized to track the language of those regulations.

I. Environmental Report

As required by 49 C.F.R. § 1105.7(e), DEC submits the following:

(1) Proposed action and alternatives

Under the authority of 49 U.S.C. § 10903 and 49 C.F.R. part 1152, DEC will file an application for adverse abandonment of the authority of the Saratoga and North Creek Railway (SNCR) to operate over a rail line commonly known as the Sanford Lake Branch or the Tahawus Line (the Line), between milepost NC 0.0 at

North Creek, New York and the Line's terminus near the Tahawus Mine at milepost NC 29.71.¹ A map of the Line is attached hereto as Exhibit A.

Under the circumstances presented here, the public convenience and necessity permit abandonment because there is no present or future need for freight service over the Line. The public convenience and necessity *require* abandonment because the little-used Line—situated wholly within the six-million-acre Adirondack Park—cuts through the heart of New York's constitutionally-protected Forest Preserve, frustrating the State's constitutional obligation to preserve the forest in its natural state for the benefit and enjoyment of all New Yorkers.

During the Second World War, the United States government exercised its war powers to condemn a right-of-way from the Tahawus Mine generally south over both private lands and public Forest Preserve lands to a railhead at North Creek.² The purpose of the condemnation was to provide a rail link “for the transportation of strategic materials”—to wit, ilmenite ore—“vital to the successful prosecution of the War.”³ When New York protested the condemnation, the United States agreed to limit the duration of the right-of-way over State-owned lands to 15 years. The United States built the Line and leased it to the Tahawus Mine's owner, National Lead (NL).⁴

¹ From North Creek southwest to Saratoga Springs, SNCR operates over tracks belonging to Warren County and the Town of Corinth under contract with those municipalities. DEC does not seek abandonment of SNCR's authority to operate on the tracks from North Creek south to Saratoga.

² See *Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*, FD 35559 (STB served May 14, 2012).

³ Pet'n in Condemnation at 2 (attached hereto as Exhibit B).

⁴ For purposes of this Report, unless otherwise indicated, NL will refer globally to National Lead and/or any successor entity.

Before the easement over State lands could expire, the United States re-condemned the right-of-way for an additional 100-year term, to expire in 2062.

NL mined ilmenite at the Tahawus Mine until 1982. From 1987 to 1989, NL used the Line to transport waste rock from the mine. NL ceased hauling rock and stopped using the Line in 1989. The same year, rather than return the condemned land to the State of New York, the General Services Administration sold the right-of-way and all railroad appurtenances to NL as surplus property. In 2003, NL sold 10,050 acres of its 11,250-acre Tahawus property, including its remaining ilmenite deposits.⁵ NL demolished the mill buildings in 2006. In 2011, NL sold the right-of-way and all rail appurtenances to SNCR. Since obtaining federal authority to operate on the Line as a common carrier in 2012, SNCR has moved a few carloads of garnet south from the Barton International facility in North River.⁶ In 2017, in the absence of freight customers and apparently to generate much-needed revenue, SNCR began storing obsolete DOT-111 tank cars and other rail cars on the Line in the Forest Preserve.

The Line was constructed on State-owned, constitutionally-protected lands to serve a mining concern that no longer exists and in response to wartime exigencies

⁵ Of the approximately 10,000 acres NL sold, 7,000 acres were eventually conveyed to the State and became part of the Forest Preserve; the remaining 3,000 acres were sold for private forestry purposes but were burdened by a conservation easement in favor of the State of New York. For present purposes, the import of the sale is that ilmenite ore will never be mined at Tahawus again. DEC believes that NL recently sold its remaining holdings at Tahawus to an entity known as Mitchell Stone Products, LLC.

⁶ In addition to the few carloads of industrial garnet, SNCR also moved some 80 carloads of waste rock from the former Tahawus Mine in late 2014 and early 2015. This rock was ballast purchased by SNCR for use on the Line itself. No other freight has moved on the Line since SNCR purchased it in 2011.

now long past. Despite repeated representations that it could economically transport waste rock from the Tahawus Mine, SNCR has never contracted to do so and there is no indication that it will sign such a contract in the future. Indeed, to the extent SNCR has publicly stated that it intends to store thousands of obsolete tank cars on the Line to supplement its meager income, its own actions belie any future intent or ability to use the Line for viable freight service.

Meanwhile, abandonment of the Line would serve all New Yorkers' interest in protecting the ecologically sensitive Forest Preserve. In 1895, the citizens of the State of New York amended the State Constitution to ensure that the lands then owned or later acquired by the State in the vast Adirondack Park would forever remain wild forest lands.⁷ The Forest Preserve now totals over 2.9 million acres of public land held in trust and managed by the State for the benefit of all New Yorkers.⁸ While different areas of the Forest Preserve are amenable to different levels of recreational use, New York State's overriding management goal is to allow visitors to explore the Forest Preserve in a way that will ensure its biological integrity for generations to come. SNCR's plan to store thousands of obsolete tank cars on the moribund Line will not promote the efficient movement of goods in interstate commerce and is clearly at odds with the State's constitutional duty to defend and preserve the biological integrity of the Forest Preserve for the benefit of its citizenry. Abandonment of the

⁷ See NY Constitution, article XIV, § 1. The full text of clause reads: "The lands of the [S]tate, now owned or hereafter acquired, constituting the [F]orest [P]reserve as now fixed by law, *shall be forever kept as wild forest lands*. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed" (emphasis added).

⁸ See *Association for Protection of Adirondacks v. MacDonald*, 253 N.Y. 234, 239 (1930).

Line will advance the public interest by neutralizing a threat to the Preserve without harming the national rail network.

(2) Transportation system

Abandonment of the Tahawus Line should have no effect on regional or local transportation systems or patterns. The Line was constructed in the 1940s through protected wilderness to privately serve one shipper: the Tahawus Mine. NL shipped its last carloads of stone from the mine in 1989. In the intervening decades, NL or its contractors have shipped small quantities of waste rock from the mine *by truck*; this activity is expected to continue.⁹ SNCR never successfully contracted with NL to move heavy, low-value waste rock from the Tahawus Mine property by rail and it is unlikely to succeed in doing so in the future.

(3) Land use

(i) Conformity with local land use controls

Abandonment of the Line is wholly consistent with existing land use plans. Much of the Line passes through constitutionally-protected Forest Preserve lands and/or lies within protected river corridors; these lands would simply never have been subject to heavy industrial use in the absence of the federal condemnation proceeding described above.

In New York State, the Adirondack Park Agency (APA) is the executive branch agency generally charged with regulating land use on both public and private land

⁹ The Tahawus Mine's new owner, Mitchell Stone Products, has applied to DEC for a permit to continue crushing and removing waste rock from the mine property for sale as construction aggregate. According to Mitchell's application, the company plans to remove waste rock from the property by truck only.

within the Adirondack Park.¹⁰ As required under its enabling legislation, the APA has created a State Land Master Plan (Master Plan) classifying State-owned lands within the Park “according to their characteristics and capacity to withstand use.”¹¹ Within the limits set forth in the State Constitution, the Master Plan classifications determine the uses to which various areas of the Forest Preserve may be put.¹² Large portions of the Line lie within the Vanderwhacker Mountain Wild Forest. Like other similarly-classified areas in the Preserve, Vanderwhacker Mountain accommodates forms of *recreational* use carefully calibrated to “afford public enjoyment without impairing the wild forest atmosphere.”¹³ No industrial use is allowed in wild forest areas (or indeed on Forest Preserve lands generally).

Further, the New York State Wild, Scenic, and Recreational Rivers System Act (Rivers Act) imposes strict limits on the use of lands proximate to designated rivers throughout the state.¹⁴ Where designated rivers cross State-owned lands, the Rivers Act creates what amounts to a zoning overlay controlling land uses within one-half mile of the rivers’ banks.¹⁵ On private lands, the Rivers Act strictly limits land use within one-quarter mile of the riverbanks.¹⁶ With the exception of one small portion of the right-of-way near Newcomb, the entire Line lies within jurisdictional range of

¹⁰ See Executive Law § 805.

¹¹ *Id.* former § 807(1); *see also id.* § 816.

¹² See Master Plan at 14-16, *available at* https://www.apa.ny.gov/Documents/Laws_Regs/APSLMP.pdf.

¹³ *Id.* at 35.

¹⁴ See Wild, Scenic, and Recreational Rivers System Act (Rivers Act), Environmental Conservation Law (ECL) § 15-2701 *et seq.*

¹⁵ See ECL § 15-2711; 6 N.Y.C.R.R. §§ 666.3(yy); 666.6(f).

¹⁶ See 9 N.Y.C.R.R. § 577.2(o); 9 N.Y.C.R.R. subtit. Q, app. 6.

a classified wild, scenic, or recreational river and is thus subject to strict, generally-applicable use limits designed to preserve the primitive and undeveloped nature of the nearby watercourse. Abandonment will only further the preservation goals set forth in the Rivers Act.

(ii) Effect on prime agricultural lands

The proposed abandonment will have no impact on prime agricultural land. Farming is generally prohibited in the Forest Preserve,¹⁷ and in any event the Line does not cross prime agricultural lands. On March 30, 2018, DEC sent a letter to the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) informing it of DEC's proposed application for abandonment and inquiring whether such abandonment is likely to affect prime agricultural land.¹⁸ On April 5, 2018, NRCS responded that "the project is unlikely to result in significant impacts to farmland of national, state[,] or local importance."¹⁹

(iii) Coastal zone

The proposed abandonment will have no effect on land or water uses within a designated coastal zone because the Line does not lie within such a zone.

¹⁷ See ECL § 9-0303(3) ("No person shall use any portion of the forest preserve for agricultural purposes, nor shall cattle or domestic animals of any kind be permitted to graze thereon").

¹⁸ See DEC letter to NRCS (March 30, 2018), attached hereto as Exhibit C.

¹⁹ See NRCS response letter (April 5, 2018), attached hereto as Exhibit D.

(iv) Public use conditions

DEC has sought and the Board has granted an exemption from 49 U.S.C. § 10905.²⁰ The Board has likewise granted DEC's request for waiver of the Board's rules pertaining to public use conditions set forth at 49 C.F.R. § 1152.28.

(4) Energy

(i) Transportation of energy resources

The proposed abandonment will have no effect on the transportation of energy resources because little to no freight of any sort currently moves over the Line. In any case, the Line has never carried energy commodities and will not carry energy commodities in the future.

(ii) Recyclable commodities

The proposed abandonment will not affect the transportation of recyclable commodities because little to no freight currently moves over the Line. To the extent the sale of waste rock from the Tahawus Mine property can be considered recycling, small quantities of waste rock have been removed from the mine site by truck. SNCR has been unable to negotiate a contract to transport waste rock from Tahawus by rail for the last seven years and it is unlikely to succeed in negotiating such a contract in the future.

²⁰ See *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsburg, NY*, AB 1261 (STB served Feb. 27, 2018).

(iii) Energy efficiency

The proposed abandonment will not result in an increase or decrease in energy efficiency. The Line carries little or no traffic; minimal traffic increases, decreases, or diversions can be expected to result from the abandonment.

(iv) Diversions

Because the Line carries little or no traffic, no diversion of traffic from rail to motor carriage will result from the abandonment.

(5) Air

(i) Anticipated effect on air emissions

Because the Line carries little or no traffic, the proposed abandonment will not increase rail traffic or yard activity, nor will it increase truck traffic. Accordingly, the proposed action will not have an effect on air emissions.

(ii) Clean Air Act; state implementation plan

The Line is located in part in Essex County, in part in Warren County, and in part in Hamilton County; these counties are in attainment under the Clean Air Act for all criteria pollutants.²¹

(iii) Ozone-depleting materials

The proposed abandonment will not involve transportation of ozone-depleting materials.

²¹ See United States Environmental Protection Agency Green Book, *available at* <https://www3.epa.gov/airquality/greenbook/ancl.html#NY>.

(6) Noise

None of the thresholds set forth at 49 C.F.R. § 1105.7(e)(5)(i) will be surpassed as a result of the proposed abandonment.

(7) Safety

(i) Effects on public health and safety

The proposed abandonment will not adversely affect public health or safety. The Line currently carries little or no traffic, and will carry none once abandonment is consummated. Likewise, vehicle delay time at at-grade crossings will be reduced to zero in the wake of the abandonment. Indeed, in light of recent accidents involving SNCR, the proposed abandonment could have the effect of *improving* public health and safety.²²

(ii) Hazardous materials

No hazardous materials will be transported on the Line as a result of DEC's proposed abandonment. Indeed, because the abandonment would likely lead to the cessation of oil car storage on the Line, the risk of release of any hazardous material would be reduced.

²² In February 2018, a SNCR locomotive derailed attempting to clear ice and snow from a section of track between North Creek and Saratoga Springs. Unable to re-rail the locomotive, SNCR left the machine idling near an at-grade crossing. SNCR posted no warning sign or otherwise alerted passing motorists to the presence of the locomotive. Caught by surprise, a passing motorist attempted to stop short of the at-grade crossing and lost control of his truck, ultimately sustaining injury and causing property damage. See Don Lehman, *Derailed Train Blamed for Truck Accident, Injury*, Glens Falls Post Star, Feb. 13, 2018, http://poststar.com/news/local/derailed-train-blamed-for-truck-accident-injury/article_ce9d7671-dd4e-58d8-99aa-ef3504481dc7.html.

(iii) Known hazardous waste sites

DEC is the state agency responsible for administering New York's hazardous waste laws.²³ DEC is not aware of any hazardous waste site on the right-of-way or of any spill of hazardous materials along the right-of-way.

(8) Biological resources

(i) Endangered or threatened species

The proposed abandonment is not likely to adversely affect endangered or threatened species or areas designated as critical habitat. On April 9, 2018, DEC sent a letter to the United States Department of the Interior, Fish and Wildlife Service (FWS) to inquire whether the proposed abandonment could adversely affect endangered or threatened species or any area designated as critical habitat.²⁴ FWS replied that it anticipated no such adverse effect.²⁵

To the contrary, the proposed abandonment will likely have a salutary effect on endangered and/or threatened species and critical wildlife habitat. SNCR has stated publicly that it plans to store up to 2,000 obsolete tank cars on the Line. Such tank car storage would in essence create a miles-long steel fence in the middle of the Forest Preserve. Because the proposed abandonment would thwart SNCR's storage plan, it would eliminate what would likely be a barrier to animal movement within the Preserve.

²³ See ECL § 27-0911.

²⁴ See DEC letter to FWS (April 9, 2018), attached hereto as Exhibit E.

²⁵ See Letter from FWS to DEC (May 2, 2018), attached hereto as Exhibit F.

(ii) Effect on protected parklands

The entirety of the Line is located within New York's Adirondack Park, the largest publicly-protected area in the contiguous United States. Of the approximately six million acres comprising the Park, some 2.9 million acres belong to the State of New York and constitute the Forest Preserve, a National Historic Landmark.²⁶ The State holds these lands in trust for all its citizens and is constitutionally obligated to maintain them in a forever-wild state.²⁷ While recreational activities are welcome in the Forest Preserve, industrial pursuits are not. Because the State Constitution bars the sale, removal, or destruction of timber in the Forest Preserve and requires that the Preserve be forever maintained in its wild forest state, the Line would never have been constructed but for the federal condemnation proceeding.²⁸ To the extent the proposed abandonment will put an end to a use that is anathema to the purposes for which the Forest Preserve was established, it will have a salutary effect on protected parklands.

(9) Water

(i) Consistency with water quality standards

As the New York State agency statutorily charged with enforcing water quality standards,²⁹ DEC represents that the proposed abandonment will be consistent with applicable federal, state, and local water quality standards.

²⁶ See National Park Service, Listing of National Historic Landmarks by State, <https://www.nps.gov/nhl/find/statelists/ny/NY.pdf>.

²⁷ See NY Constitution, article XIV, § 1; see also *Association for Protection of Adirondacks v. MacDonald*, 253 N.Y. 234, 237-239 (1930).

²⁸ See NY Constitution, article XIV, § 1.

²⁹ See ECL § 17-0301.

(ii) Clean Water Act § 404 permit

DEC does not believe that the proposed abandonment will require a permit under section 404 of the Clean Water Act. On March 30, 2018, DEC sent a letter to the United States Army Corps of Engineers (Corps) inquiring whether the proposed action would require a section 404 permit or affect any wetland or 100-year flood plain.³⁰ The Corps responded that, while the Line crosses a number of jurisdictional rivers and streams, “abandonment in itself shouldn’t have an immediate impact on jurisdictional resources.”³¹

(iii) Clean Water Act § 402 permit

As the state agency responsible for issuing pollution discharge permits under a state-law program approved by the United States Environmental Protection Agency (EPA),³² DEC does not believe the proposed abandonment would require a state-issued wastewater discharge permit.

(10) Proposed mitigation

Because the proposed abandonment would engender no adverse environmental effect, mitigation measures are unnecessary.

(11) Additional information for rail constructions

Because the proposed abandonment would not involve rail construction, this provision is not applicable.

³⁰ See DEC letter to the Corps (March 30, 2018), attached hereto as Exhibit G.

³¹ See Corps response email (April 13, 2018), attached hereto as Exhibit H.

³² See ECL § 17-0803.

II. Historic Report

As required by 49 C.F.R. § 1105.8(d), DEC submits the following information:

(1) Topographic map

The requisite topographic map is attached hereto as Exhibit I.

(2) Description of the right-of-way

The Line, consisting of only one set of rails, originates in the hamlet of North Creek in the Town of Johnsburg, Warren County, New York and follows the Hudson River in a northwesterly direction for approximately five miles to the hamlet of North River. At North River, the Line turns generally northward and enters public Forest Preserve land, largely following the protected Hudson and Boreas Rivers through the Vanderwhacker Mountain Wild Forest area. After crossing a series of private parcels, the Line re-enters Forest Preserve lands and crosses the protected Opalescent River before arriving at the Tahawus Mine property near Sanford Lake. Much of the Line passes through isolated forest areas and follows protected rivers, including on Forest Preserve lands.

Although the historic depot in the hamlet of North Creek is currently listed on the National Register of Historic Places, the depot does not belong to SNCR and is not a part of the Line.³³ DEC is not aware of any station or other building on the Line. The Line does include a number of bridges, all of which DEC believes were built in the early 1940s, contemporaneously with construction of the Line.

³³ See <http://www.northcreekdepotmuseum.com/about-us/> (noting that the Canadian Pacific Railway acquired the North Creek train depot in 1991 and sold it to its current owner, a not-for-profit entity, in 1993).

(3) Photographic record

Attached hereto as Exhibit J are photographs of the Line and surrounding areas. Because the Line stretches for nearly 30 miles through large tracts of dense forest, these publicly-available photos are meant to be representative only.

(4) Dates of construction

DEC does not possess direct information regarding construction of the Line. DEC believes the Line was built in or about 1942, during or following condemnation of the right-of-way by the United States under the Second War Powers Act of 1942. The Line was placed in service in or about 1944.

(5) Carrier operations on the Line

Following construction of the Line in or about 1942, the United States leased the Line to NL. NL in turn contracted with the Delaware and Hudson Railway (D&H) to haul ilmenite ore from the Tahawus Mine south 30 miles to North Creek. D&H began to move ore on the Line in or about 1944 and continued to do so until the early 1980s. D&H considered the line an industrial siding; all freight was billed from North Creek. NL stopped using the Line in or about 1989.

Also in 1989, NL purchased the easement and rail appurtenances from the United States. In 2011, NL sold the right-of-way and appurtenances to SNCR. In 2012, SNCR obtained Board authority to operate as a common carrier over the Line.³⁴ SNCR has failed, however, to establish regular freight service.

³⁴ *Saratoga and North Creek Ry., LLC – Operation Exemption – Tahawus Line*, FD 35631 (STB served June 1, 2012).

Because the proposed action is an abandonment, further freight service would not be offered.

(6) Documents relevant to historic analysis

DEC does not possess documents responsive to 49 C.F.R. § 1105.8(d)(6).

(7) National Register listing criteria

The criteria for listing on the National Register of Historic Places are set forth in the regulations of the United States Department of the Interior's National Park Service at 36 C.F.R. § 60.4. DEC does not believe that the Line satisfies the conditions for listing. The Line is not associated with significant historical events or figures, nor does it possess characteristic architectural features or represent the work of a master artist or otherwise possess high artistic value.³⁵ The Line has not yielded and is not likely to yield information important to prehistory or history.³⁶

DEC has consulted with the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) regarding the possibility either that the Line is itself of some historic value or that it contains or is proximate to archeological resources or other previously unknown historic properties.³⁷ OPRHP is not of the opinion that the Line is historically significant.³⁸

(8) Prior ground disturbance

DEC has no knowledge of any subsurface disturbance or fill or other natural or manmade environmental condition in the vicinity of the Line that might affect the

³⁵ See 36 C.F.R. § 60.4(a)–(c).

³⁶ See *id.* § 60.4(d).

³⁷ See DEC letter to OPRHP (March 30, 2018), attached hereto as Exhibit K.

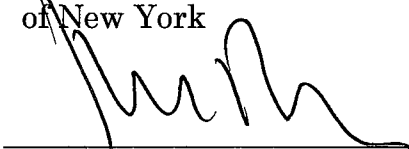
³⁸ See OPRHP letter to DEC (June 6, 2018), attached hereto as Exhibit L.

archeological recovery of historic resources. Much of the terrain surrounding the Line is mountainous and/or heavily forested.

Dated: June 11, 2018
Albany, New York

Respectfully submitted,

BARBARA D. UNDERWOOD
Attorney General of the State
of New York

By: 

Susan L. Taylor
Joshua M. Tallent
Assistant Attorneys General
New York State Office of the
Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518) 776-2456
Susan.Taylor@ag.ny.gov
Joshua.Tallent@ag.ny.gov

CERTIFICATE OF SERVICE

I certify that on June 11, 2018, I caused the foregoing Environmental and Historic Report to be served by first class mail on the following entities, within the timeframes specified in 49 C.F.R. §§ 1105.7 and 1105.8:

U.S. Department of Agriculture, Natural Resources Conservation Service
1400 Independence Avenue SW, Room 5105-A
Washington, DC 20250
Attn: Leonard Jordan, Acting Chief

U.S. Department of Agriculture, Natural Resources Conservation Service
441 S. Salina Street, Suite 354
Syracuse, NY 13202
Attn: Angela VanDyke, Acting Public Affairs Specialist

U.S. Department of the Interior, Fish and Wildlife Service
Office of Public Affairs
5275 Leesburg Pike
Falls Church, VA 22041-3803
Attn: Gavin Shire, Chief

U.S. Department of the Interior, Fish and Wildlife Service
Northeast Region
300 Westgate Center Dr.
Hadley, MA 01035
Attn: Wendi Weber, Regional Director

U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000
Attn: Legal Department

U.S. Army Corps of Engineers
North Atlantic Division
302 General Lee Avenue
Brooklyn, NY 11252
Attn: Department of Public Affairs

New York State Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, NY 12207
Attn: Commissioner Rose Harvey

New York State Department of Transportation
50 Wolf Road
Albany, NY 12232
Attn: Janice McLachlan, Acting Assistant Commissioner and General Counsel

U.S. Environmental Protection Agency, Region 2
Ted Weiss Federal Building
290 Broadway
New York, NY 10007-1866
Attn: Peter D. Lopez, Regional Administrator

Ronald F. Conover
Chairman of the Warren County Board of Supervisors
Warren County Municipal Center
1340 State Route 9
Lake George, NY 12845

Randy Preston
Chairman of the Essex County Board of Supervisors
7551 Court Street
P.O. Box 217
Elizabethtown, NY 12932

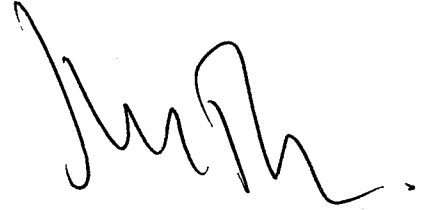
William G. Farber
Chairman of the Hamilton County Board of Supervisors
102 County View Drive
P.O. Box 205
Lake Pleasant, NY 12108

U.S. Department of the Interior, National Park Service
1849 C Street NW
Washington, DC 20240
Attn: Dan Smith, Deputy Director

U.S. Department of the Interior, National Park Service
U.S. Custom House
200 Chestnut Street, Fifth Floor
Philadelphia, PA 19106
Attn: Gay Vietzke, Northeast Regional Director

U.S. Department of Commerce, National Geodetic Survey
Communications and Outreach Branch, NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East-West Highway
Silver Spring, MD 20910-3282

I further certify that DEC consulted with all appropriate agencies in preparing
the foregoing environmental and historic report.



Joshua M. Tallent
Assistant Attorney General
New York State Office of the
Attorney General
The Capitol
Albany, New York 12224
(518) 776-2456
Joshua.Tallent@ag.ny.gov

STB Docket No. AB 1261

ENVIRONMENTAL AND HISTORIC REPORT

EXHIBIT LIST

Exhibit A	Map of the Tahawus Line
Exhibit B	Petition in Condemnation
Exhibit C	Letter from DEC to NRCS dated March 30, 2018
Exhibit D	Letter from NRCS to DEC dated April 5, 2018
Exhibit E	Letter from DEC to FWS dated April 9, 2018
Exhibit F	Letter from FWS to DEC dated May 2, 2018
Exhibit G	Letter from DEC to the Army Corps of Engineers dated March 30, 2018
Exhibit H	Letter from the Army Corps of Engineers to DEC dated April 13, 2018
Exhibit I	Topographic maps
Exhibit J	Photographs of the Tahawus Line and surrounding areas
Exhibit K	Letter from DEC to OPRHP dated March 30, 2018
Exhibit L	Letter from OPRHP to DEC dated June 6, 2018

EXHIBIT A



Tahawus Branch Railroad Corridor

Key

- Wild, Scenic, and Recreational Rivers
- Source: DEC
- Railroad
- Source: DEC, Bureau of Real Property
- Mile Posts
- Source: DEC, Bureau of Real Property

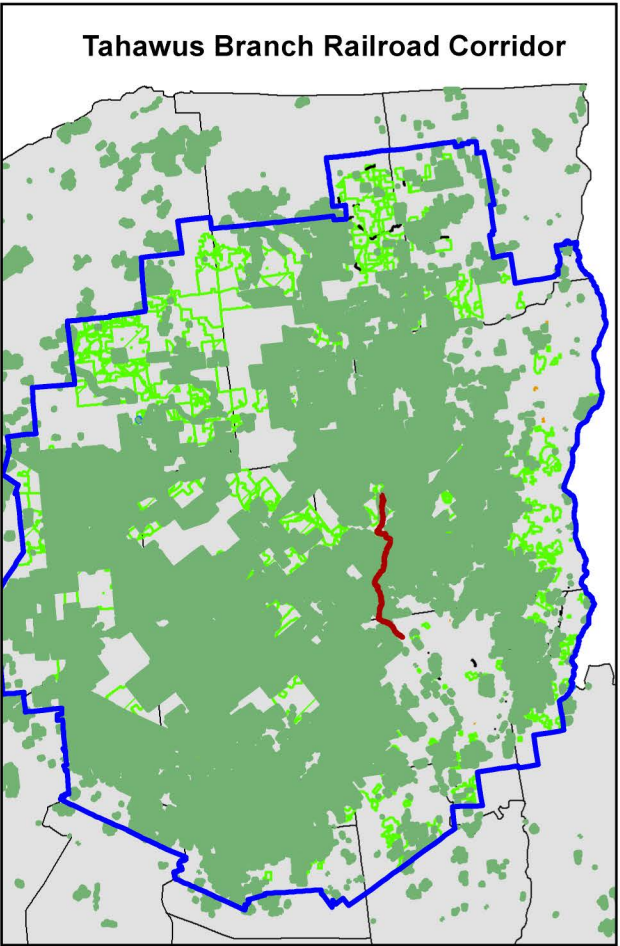
Private Land Classification

- Hamlet
- Moderate Intensity Use
- Low Intensity Use
- Rural Use
- Resource Management
- Industrial Use

State Land Classification

- Wilderness
- Primitive
- Wild Forest
- Intensive Use
- State Administrative

Source: Adirondack Park Agency, 2018 Land Use and Development Plan Map



NEW YORK
STATE OF OPPORTUNITY

Department of Environmental Conservation

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/24/2018



EXHIBIT B

EX.#1

U. S. District Court

Northern Dist. of N. Y.

Civil #1143

United States of America

Petitioner

- vs -

Certain easement rights in 223.13 Acres
of land in Essex & Hamilton Counties,
State of N. Y., David McIlwhee, et. al.

Defendants

Petition in Condemnation

The petition of the United States of America, a sovereign, brought by Ralph L. Emmons, U. S. attorney for the Northern Dist. of New York, acting under the instructions of the Attorney General of the United States of America & at the request of the Secretary of War complains & alleges:

1. That this is a suit of a civil nature, brought by the above-named petitioner under the authority of and pursuant to the provisions of an Act of Congress approved August 1, 1898 (25 Stat. 357), and Acts amendatory thereof; the Act of Congress approved August 18, 1898 (25 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) & April 11, 1918 (40 Stat. 518; 50 U. S. C. Sec. 171) & March 27, 1942, (Public Law 507 - 77th Congress) which acts authorize the acquisition of land, or interests therein for military purposes.

2. That in accordance with said acts, the Secretary of War of the U. S. has found that certain rights & perpetual and/or limited easements in land & appurtenances more particularly described herein are necessary & advantageous in the interest of the U. S. for use in connection with the construction of the North Creek-Sanford Lake, New York, Railroad connection, & has selected for acquisition by the U. S. of America the interests & rights in

* the land hereinafter described & has designated that such interests & rights are suitable & necessary for the purposes of the U. S. & that said selection & designation & determination have been made & are now in full force & effect, & has certified that the interests in said land are required for use in connection with the construction of a railroad from North Creek to Lake Sanford, N. Y., for the transportation of strategic materials vital to the successful prosecution of the War, & it is desirable to exercise the utmost haste in the execution of said project, & an order for the immediate possession, use & improvement of said lands for such purposes is necessary.

3. That there are sufficient funds now available with which the petitioner can & is authorized to pay just compensation for the interests in land as sought to be taken & condemned herein, in whatever sum may ultimately be awarded & adjudged in this proceeding as just compensation, together with damages, if any, incident to the taking & condemnation.

4. That the purposes for which the petitioner is taking the easements & rights in said land & the appurtenances thereto are necessary & constitute a public use, & the use to which said property & interests is to be applied is a use authorized by law, & that its acquisition by the petitioner is and will be of the greatest public benefit & it is vital to the successful prosecution of the War that this project be expedited with the utmost haste & that the U. S. be given the immediate right to the possession & use of the said land, to the extent of the interests being acquired therein.

5. That the estate or interest in or to said land hereinafter described which the petitioner intends & seeks to take, acquire, condemn, hold, & own by this proceeding is the perpetual right & easement to construct, operate & maintain a railroad track in, on and across certain lands, aggregating approximately

↑
private

8.15 acres in Essex & Hamilton Counties, N. Y., more particularly described in Exhibit "B" hereto annexed; & the temporary right & easement to construct, operate & maintain a railroad track in, on & across the lands of the State of N. Y. described & designated "Exhibit C" hereto annexed, being approximately 200 acres (228) in Essex & Hamilton Counties, State of N. Y. for the duration of the existing emergency & for 15 years after the termination of the existing emergency either by Act of Congress or by Executive Order; being the land described in the letter of the Secretary of War dated Oct. 30, 1942 & designated on a map called Exhibit "A" hereto annexed.

6. That the petitioner is informed & believes &, therefore, alleges that the following individuals have or may have or claim to have some interest in the land:

* David McElwee, Boston, Mass.

* Finch, Pruyn & Co., Glens Falls, N. Y.

State of N. Y., Albany, N. Y.

Counties of Essex & Hamilton, N. Y., & Towns of Indian

Lake, Hamilton Co., N. Y., & Minerva, Essex County,

N. Y., may be interested in any highways or roads,

if any, crossed by the proposed railroad.

7. That your petitioner shows that it has attempted to set forth the interest or estates of all persons & corporations in the lands herein mentioned as far as the petitioner has been able to ascertain the same, but notwithstanding such statement, all persons or corporations owning, in possession, or having any legal right or interest therein, are made parties to this proceeding generally to the end that all their rights, title interest & estate, whatever it may be, to all & singular the said easements & rights sought to be acquired in the premises above mentioned may be reached & vested out of them & vested in your petitioner.

8. That the purposes for which the petitioner is taking the interests & rights in said land & appurtenances thereto are necessary & suited to the public use & that the use to which said property is to be applied is authorized by law & is necessary to be so taken.

9. That it is the intention of your petitioner, in faith, to complete the work or improvement for which said property is condemned, & that all the preliminary steps required by law have been taken to entitle your petitioner to institute such proceedings.

10. That, upon information & belief, none of the owners of the real property sought to be condemned herein is an infant, idiot, lunatic or habitual drunkard.

Wherefore, the premises considered & to the end that all & singular the interests & rights in said lands described in this petition & sought to be taken may be acquired by the U. S. of America by condemnation in accordance with the several statutes & Acts of Congress in such cases made & provided, as hereinbefore set forth, petitioner prays this Honorable Court.

1. To make an order granting the petitioner the immediate possession, occupancy, improvement & use of the said lands described & all separate parts & parcels thereof to the extent of the interests being acquired therein, for military purposes, as provided in Section 171, Title 50, U. S. C., said application being made in time of War, & provide for the manner of service thereof.

2. To cite & give notice to the owners & other persons interested in the lands described in this petition as provided by law, to appear in this Court at a time to be fixed to answer this petition.

3. To appoint if deemed necessary & expedient 3 qualified & disinterested freeholders to appraise the value of the easements & interests in said property in accordance with the law & statutes

in such cases made & provided & make assessment & award of damages for each parcel hereinabove described, & interest therein which should be paid by the petitioner as just compensation for the taking thereof, & to fix a time & place for their first meeting.

4. To take such action & pass such Orders, Decrees & Judgments as may be necessary or proper fully to effect the objects for which the aforesaid Acts of Congress were passed & to cause the interests in said lands described in this petition to be condemned & taken by the U. S. of America, as hereinbefore set forth, to vest in the U. S. of America.

5. To determine & make proper distribution & payment of said award to and among the interested parties entitled thereto:

6. To grant such other & further relief as the nature of the case may require.

The United States of America

by Ralph L. Emmons

United States Attorney in & for
the Northern Dist. of N. Y.

EXHIBIT C



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

March 30, 2018

Angela VanDyke, Acting Public Affairs Specialist
United States Department of Agriculture
Natural Resources Conservation Service
441 S. Salina Street, Suite 354
Syracuse, NY 13202

Re: STB Docket No. AB 1261; *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsburg, NY*

Dear Ms. VanDyke:

The purpose of this letter is to advise you that the New York State Department of Environmental Conservation (DEC) plans to file an application with the Surface Transportation Board (STB) seeking abandonment of the authority of the Saratoga and North Creek Railway (SNCR) to operate over a line of railroad known as the Sanford Lake Branch or the Tahawus Line (Line). The Line originates in the hamlet of North Creek, New York and continues approximately 30 miles north to its terminus at the site of the former Tahawus Mine. A map of the Line is attached to this letter.

DEC believes the Line should be abandoned because it currently carries no freight and is unlikely to carry freight in the future, and also because the Line—the right-of-way for which was taken by a federal exercise of eminent domain in the 1940s—cuts through and adversely affects constitutionally-protected forest lands in New York's Adirondack Park.

Abandonment of rail operations on the Line requires approval from the STB. STB regulations require consultation with certain governmental entities regarding the potential for environmental impacts stemming from the proposed abandonment. While DEC does not believe the proposed abandonment will result in any adverse environmental impact, we would appreciate your views on this issue. In particular, we request any comment you may have on the following issue:

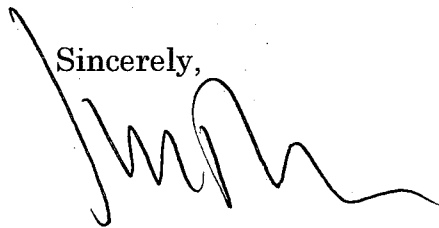
- Describe the effect of the proposed abandonment on prime agricultural land, if any (see 49 C.F.R. § 1105.7e[3][ii]).

DEC will provide you with a copy of its environmental and historic report in the coming weeks. The report will outline the scope of the proposed abandonment and will include reference to any comments you submit. We can send the report to you either by mail or electronically; if you wish to receive the report electronically, please let me know.

Please send your reply by mail to Joshua M. Tallent, New York State Office of the Attorney General, Environmental Protection Bureau, The Capitol, Albany, NY, 12224. Alternatively, feel free to email your response to me at Joshua.Tallent@ag.ny.gov.

Thank you for your assistance in this matter. If you have any questions or concerns, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua M. Tallent', with a stylized, flowing script.

Joshua M. Tallent
Assistant Attorney General
Joshua.Tallent@ag.ny.gov
(518) 776-2456

encl.

EXHIBIT D

From: [Strause, Karl - NRCS, Syracuse, NY](#)
To: [Tallent, Joshua](#)
Cc: [Duncan, Kathryn - NRCS, Syracuse, NY](#); [Henry, Edward - NRCS, Syracuse, NY](#)
Subject: STB Docket NO AB 1261
Date: Thursday, April 05, 2018 4:59:54 PM
Attachments: [Saratoga_NCreek Railway.pdf](#)

Mr. Tallent:

I'm responding to your letter dated March 30, 2018 (attached) seeking NRCS comment on the NYSDEC's application to seek abandonment of the Saratoga and North Creek Railway line.

Based upon the information in your letter NRCS has determined that the project is unlikely to result in significant impacts to farmland of national, state or local importance located in the vicinity of this project.

The Farmland Protection Policy Act (FPPA) of 1981 requires the NRCS to provide project site review of Federal agency actions (including locally led projects financed either wholly or in-part with Federal Funds) that may adversely impact prime and unique farmlands. Based upon the information in your letter it appears that the abandonment action for the railway is not a recipient of federal financing, management or technical assistance and does not fall within the scope of farmland conversion projects the NRCS is obligated to review under administration of the FPPA.

If the railway is developed for other purposes in the future and the project receives Federal funding, the NRCS will be available to complete the necessary review for potential impacts to agricultural lands as required by the FPPA.

Feel free to contact me if you have any additional questions.

Karl Strause

*Karl D. Strause, Ph.D.
Resource Conservationist
CRP Program Manager
Vice Chair, Civil Rights Advisory Committee*

Natural Resources Conservation Service
441 S. Salina St. Syracuse, NY 13202
Ph: (315) 477-6507 Fax: (855) 477-8518
Email: karl.strause@ny.usda.gov

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EXHIBIT E



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

April 9, 2018

Meagan Racey, Public Affairs Officer
U.S. Fish & Wildlife Service
Northeast Region
300 Westgate Center Dr.
Hadley, MA 01035

Re: STB Docket No. AB 1261; *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsburg, NY*

Dear Ms. Racey:

The purpose of this letter is to advise you that the New York State Department of Environmental Conservation (DEC) plans to file an application with the Surface Transportation Board (STB) seeking abandonment of the authority of the Saratoga and North Creek Railway (SNCR) to operate over a line of railroad known as the Sanford Lake Branch or the Tahawus Line (Line). The Line originates in the hamlet of North Creek, New York and continues approximately 30 miles north to its terminus at the site of the former Tahawus Mine. A map of the Line is attached to this letter.

DEC believes the Line should be abandoned because it currently carries no freight and is unlikely to carry freight in the future, and also because the Line—the right-of-way for which was taken by a federal exercise of eminent domain in the 1940s—cuts through and adversely affects constitutionally-protected forest lands in New York's Adirondack Park.

Abandonment of rail operations on the Line requires approval from the STB. STB regulations require consultation with certain governmental entities regarding the potential for environmental impacts stemming from the proposed abandonment. While DEC does not believe the proposed abandonment will result in any adverse environmental impact, we would appreciate your views on this issue. In particular, we request any comment you may have on the following issue:

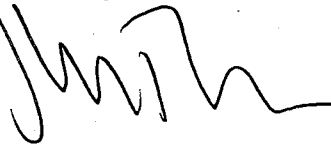
- State whether the proposed abandonment is likely to adversely affect endangered or threatened species or areas designated as a critical habitat and, if so, describe the effects (*see* 49 C.F.R. § 1105.7e[8][i]).

DEC will provide you with a copy of its environmental and historic report in the coming weeks. The report will outline the scope of the proposed abandonment and will include reference to any comments you submit. We can send the report to you either by mail or electronically; if you wish to receive the report electronically, please let me know.

Please send your reply by mail to Joshua M. Tallent, New York State Office of the Attorney General, Environmental Protection Bureau, The Capitol, Albany, NY, 12224. Alternatively, feel free to email your response to me at Joshua.Tallent@ag.ny.gov.

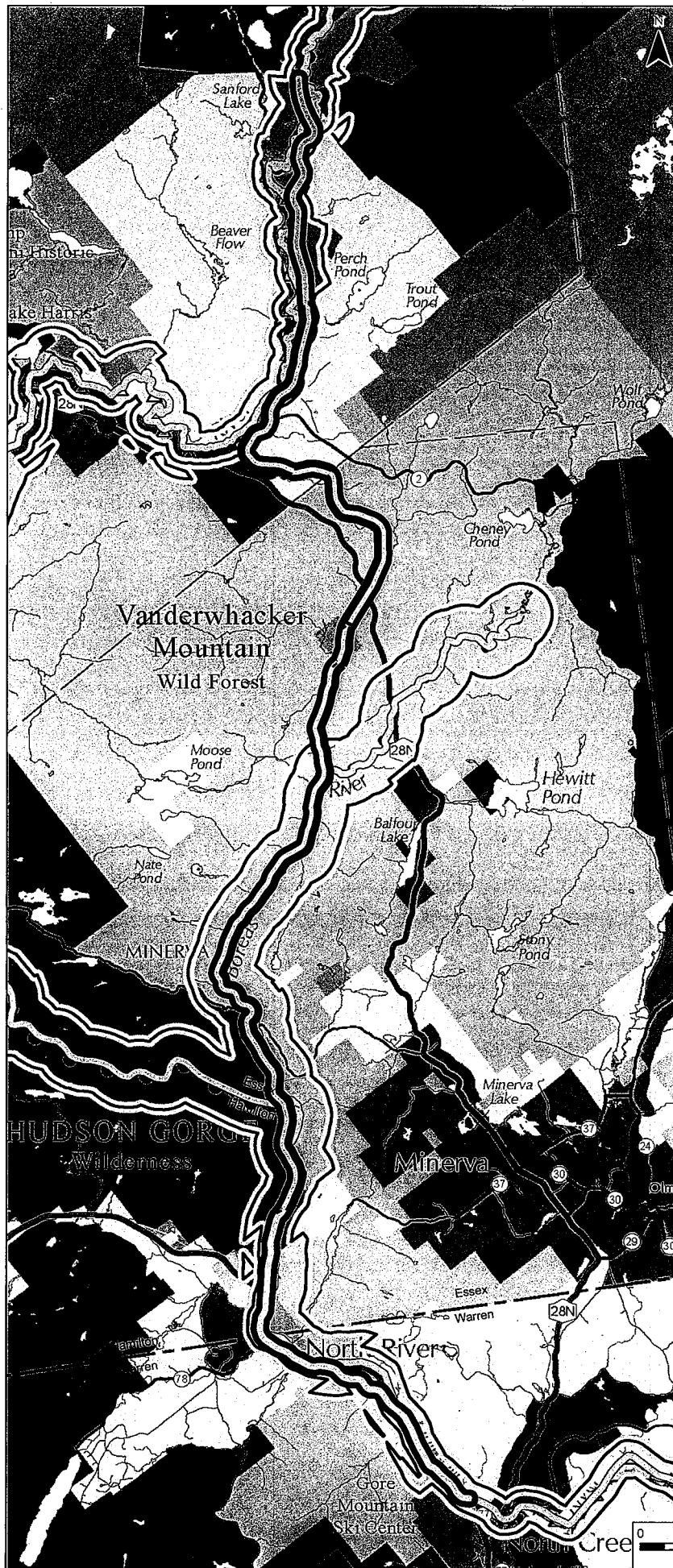
Thank you for your assistance in this matter. If you have any questions or concerns, please contact me at your convenience.

Sincerely,



Joshua M. Tallent
Assistant Attorney General
Joshua.Tallent@ag.ny.gov
(518) 776-2456

encl.



Railroad Corridor Overview

Key

Railroad
Source: DEC, Bureau of Real Property

River Buffer
Source: DEC

Wild, Scenic, and Recreational Rivers
Source: DEC

Basemap
Source: Adirondack Park Agency

ADIRONDACK PARK LAND USE AND DEVELOPMENT PLAN MAP AND STATE LAND MAP 2017

STATE OF NEW YORK
ADIRONDACK PARK AGENCY

Andrew H. Cuomo, Governor Thomas C. Coughlin, Chairman Tom Manton, Executive Director

Private Land Classification	State Land Classification
Hardwood	Wilderness
Moderate Intensity Use	Canoe Area
Low Intensity Use	Forest
Rural Use	Wild Forest
Resource Management	Intensive Use
Industrial Use	Historic
Park Boundary	State Administrative
	Pending Classification
	Scenic Use
	Study

ADIRONDACK PORTION OF THE NEW YORK STATE
WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM

Wild
 Scenic
 Recreational
 Study



This is not a survey. This Map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forests Bureau of Real Property. Compiled on 3/29/2018 by jldibias

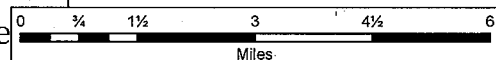


EXHIBIT F



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New York Field Office

3817 Luker Road

Cortland, NY 13045

Phone: (607) 753-9334 Fax: (607) 753-9699

<http://www.fws.gov/northeast/nyfo>



To: Joshua Tallent

Date: May 2, 2018

USFWS File No: 18TA1728

Regarding your: ☒ Letter ☐ Fax ☐ Email

Dated: April 9, 2018

For project: Saratoga and North Creek Railway Abandonment

Located: _____

In Town/County: Town of Johnsburg / Warren and Essex Counties

Pursuant to the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service:

☒ Acknowledges receipt of your "no effect" and/or no impact determination. No further ESA coordination or consultation is required.

☐ Acknowledges receipt of your determination. Please provide a copy of your determination and supporting materials to any involved Federal agency for their final ESA determination.

☐ Is taking no action pursuant to ESA or any legislation at this time, but would like to be kept informed of project developments.

As a reminder, until the proposed project is complete, we recommend that you check our website (<http://www.fws.gov/northeast/nyfo/es/section7.htm>) every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project is current. Should project plans change or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered.

USFWS Contact(s): Tim Sullivan

Supervisor: Anned. Secord Date: 5/2/18

EXHIBIT G



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

March 30, 2018

U.S. Army Corps of Engineers
North Atlantic Division
302 General Lee Avenue
Brooklyn, NY 11252
ATTN: Department of Public Affairs

Re: STB Docket No. AB 1261; *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsbury, NY*

Greetings:

The purpose of this letter is to advise you that the New York State Department of Environmental Conservation (DEC) plans to file an application with the Surface Transportation Board (STB) seeking abandonment of the authority of the Saratoga and North Creek Railway (SNCR) to operate over a line of railroad known as the Sanford Lake Branch or the Tahawus Line (Line). The Line originates in the hamlet of North Creek, New York and continues approximately 30 miles north to its terminus at the site of the former Tahawus Mine. A map of the Line is attached to this letter.

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Abandonment of rail operations on the Line requires approval from the STB. STB regulations require consultation with certain governmental entities regarding the potential for environmental impacts stemming from the proposed abandonment. While DEC does not believe the proposed abandonment will result in any adverse environmental impact, we would appreciate your views on this issue. In particular, we request any comment you may have on the following issue:

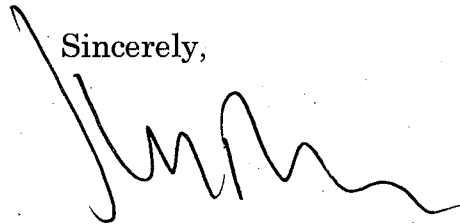
- State whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. If so, please describe the effects (*see see* 49 C.F.R. § 1105.7e[9][ii]).

DEC will provide you with a copy of its environmental and historic report in the coming weeks. The report will outline the scope of the proposed abandonment and will include reference to any comments you submit. We can send the report to you either by mail or electronically; if you wish to receive the report electronically, please let me know.

Please send your reply by mail to Joshua M. Tallent, New York State Office of the Attorney General, Environmental Protection Bureau, The Capitol, Albany, NY, 12224. Alternatively, feel free to email your response to me at Joshua.Tallent@ag.ny.gov.

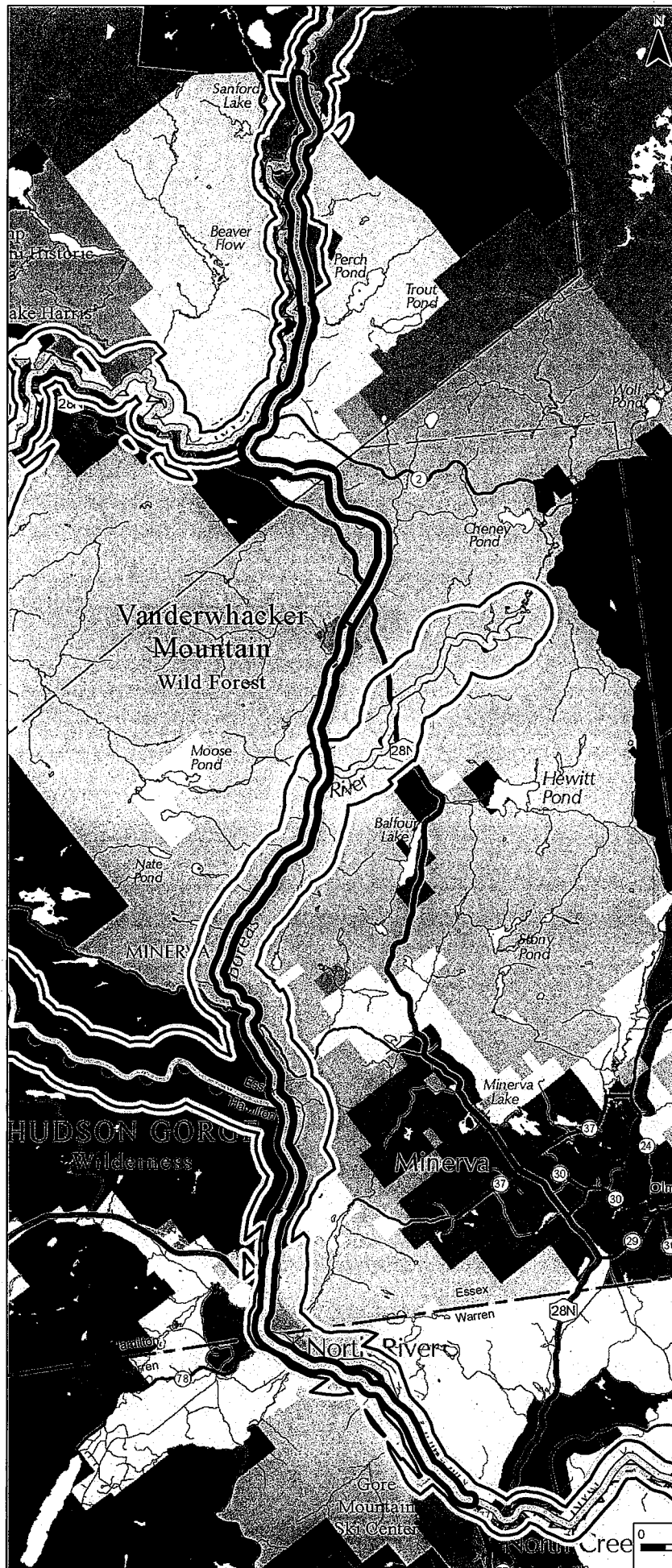
Thank you for your assistance in this matter. If you have any questions or concerns, please contact me at your convenience.

Sincerely,



Joshua M. Tallent
Assistant Attorney General
Joshua.Tallent@ag.ny.gov
(518) 776-2456

encl.



Railroad Corridor Overview

Key

Railroad

Source: DEC, Bureau of Real Property

River Buffer

Source: DEC

Wild, Scenic, and Recreational Rivers

Source: DEC

Basemap

Source: Adirondack Park Agency

ADIRONDACK PARK LAND USE AND DEVELOPMENT PLAN MAP AND STATE LAND MAP

2017
STATE OF NEW YORK
ADIRONDACK PARK AGENCY

Andrew M. Cuomo, Governor Thomas C. Cray, Chairman Tom Harkin, Senator & Director

Private Land Classification	State Land Classification
Hardwood	Wilderness
Moderate Intensity Use	Canoe Area
Low Intensity Use	Primitive
Rural Use	Wild Forest
Resource Management	Intensive Use
Industrial Use	Wetland
Park Boundary	State Administrative
	Pending Classification
	Science Use

ADIRONDACK PORTION OF THE NEW YORK STATE
WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM

0 1/4 1/2 3 4 6
Miles



This is not a survey. This Map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forests Bureau of Real Property. Compiled on 3/29/2018 by jldibias

0 1/4 1/2 3 4 6
Miles

EXHIBIT H

From: [Gitchell, Amy L CIV USARMY CENAN \(US\)](#)
To: [Tallent, Joshua](#)
Subject: FW: NY Dept. of Envir. Conservation: abandonment of Sanford Lake Branch/Tahawus Line
Date: Friday, April 13, 2018 12:06:09 PM
Attachments: [scannedDoc.pdf](#)

Good Morning Mr. Tallent:

I was forwarded the attached letter regarding your solicitation of comments from the U.S. Army Corps of Engineers regarding the abandonment of the Sanford Lake Branch/Tahawus Line. I am a Section Chief in the Upstate Regulatory Field Office located in Watervliet. Here are my comments based on the limited information that has been provided to us at this time:

- the Saratoga & North Creek Railway (SNCR) crosses many jurisdictional wetlands and streams
- SNCR also appears located within the 100-year floodplain at least in portions of the corridor (I didn't check the entire line but briefly reviewed the North Creek location of the railroad on FEMA firm maps at <https://msc.fema.gov/> and it appeared to be in for portions of the line at this location)
- abandonment in itself shouldn't have an immediate impact on jurisdictional resources if abandonment means just walking away from the existing rail bed, but if SNCR has been maintaining culverts and crossings under the railroad that currently keeps tributaries connected to streams, lack of maintenance after abandonment, may result in culvert and crossing failures over time which may also lead to detrimental impacts wetlands and streams both upstream and downstream from the failure site. The letter makes reference to getting an environmental and historic report in a few weeks that will "outline the scope of the proposed abandonment". It would be helpful to make better comments, if we had at least a bit more detail on what the abandonment entails and information on the history of the maintenance of the tributary and wetland crossings associated with the current railroad line. It's not clear to me if there are any decommissioning requirements for abandonment that require removal of the line
- If there are plans for removal of the railroad or conversion of the railroad to trails, similar projects have required Corps Regulatory permits for the discharge of fill material within jurisdictional areas for work associated with widening of the trails or with equipment and material access (even if only temporary) to and from the railroad line and/or staging areas, but this comment may be pre-emptive if none of these plans are within the current scope of the proposed abandonment.

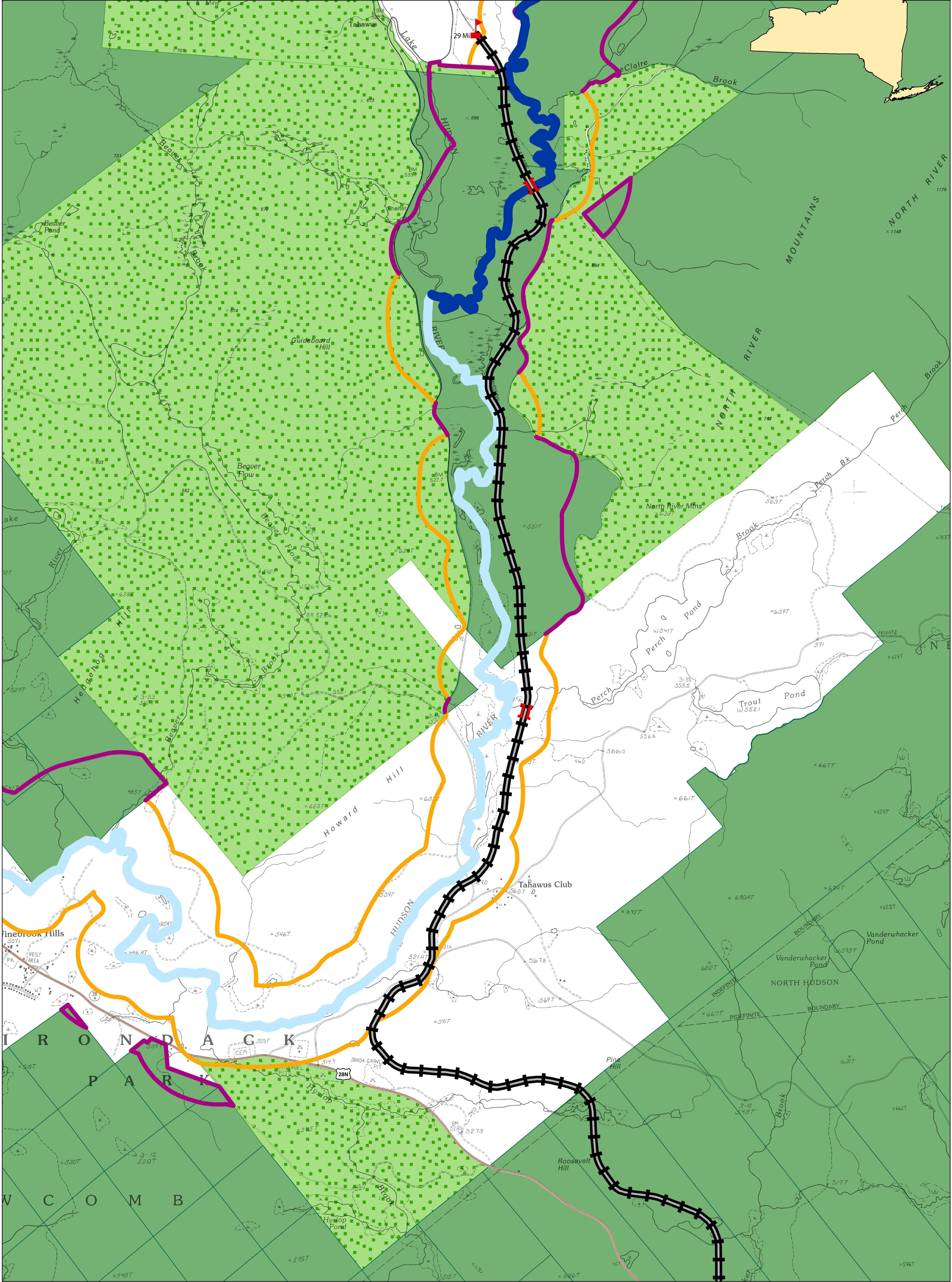
I hope these preliminary comments are helpful. If you have any follow-up questions, let me know. I'm on travel this week but I'll be back in my office on Monday, April 16, if you wish to discuss this further.

Sincerely,

Amy L. Gitchell
Chief, Upstate Regulatory Field Office
U.S. Army Corps of Engineers, ATTN: CENAN-OP-RU
1 Buffington Street, Bldg 10, 3rd Fl. North
Watervliet, New York 12189-4000
(518) 266-6364

EXHIBIT I

Tahawus Branch Railroad Corridor Map 1



Key

- Bridges
- Railroad
- Half Mile Buffer
- Quarter Mile Buffer
- Highway
- Adirondack Forest Easement
- Adirondack Forest Preserve
- Private Parcels
- Scenic River
- Recreational River
- Wild River
- DOT Planimetric Images
- Mile Posts

Bridge Source: NYS DEC,
Railroad Source: NYS DEC Bureau of Real Property,
Half Mile Buffer Source: NYS DEC Bureau of Real Property,
Quarter Mile Buffer Source: NYS DEC Bureau of Real Property,
Adirondack Forest Easement Source: NYS DEC Bureau of Real Property,
Adirondack Forest Preserve Source: NYS DEC Bureau of Real Property,
Private Parcels Source: Essex, Hamilton, and Warren County,
Wild, Scenic, and Recreational Rivers Source: NYS DEC Bureau of Real Property,
Highways Source: NYS GIS Program Office,
DOT Planimetric Images Source: NYS DOT,
and Mile Posts: NYS DOT

Map 1

Map 2

Map 3

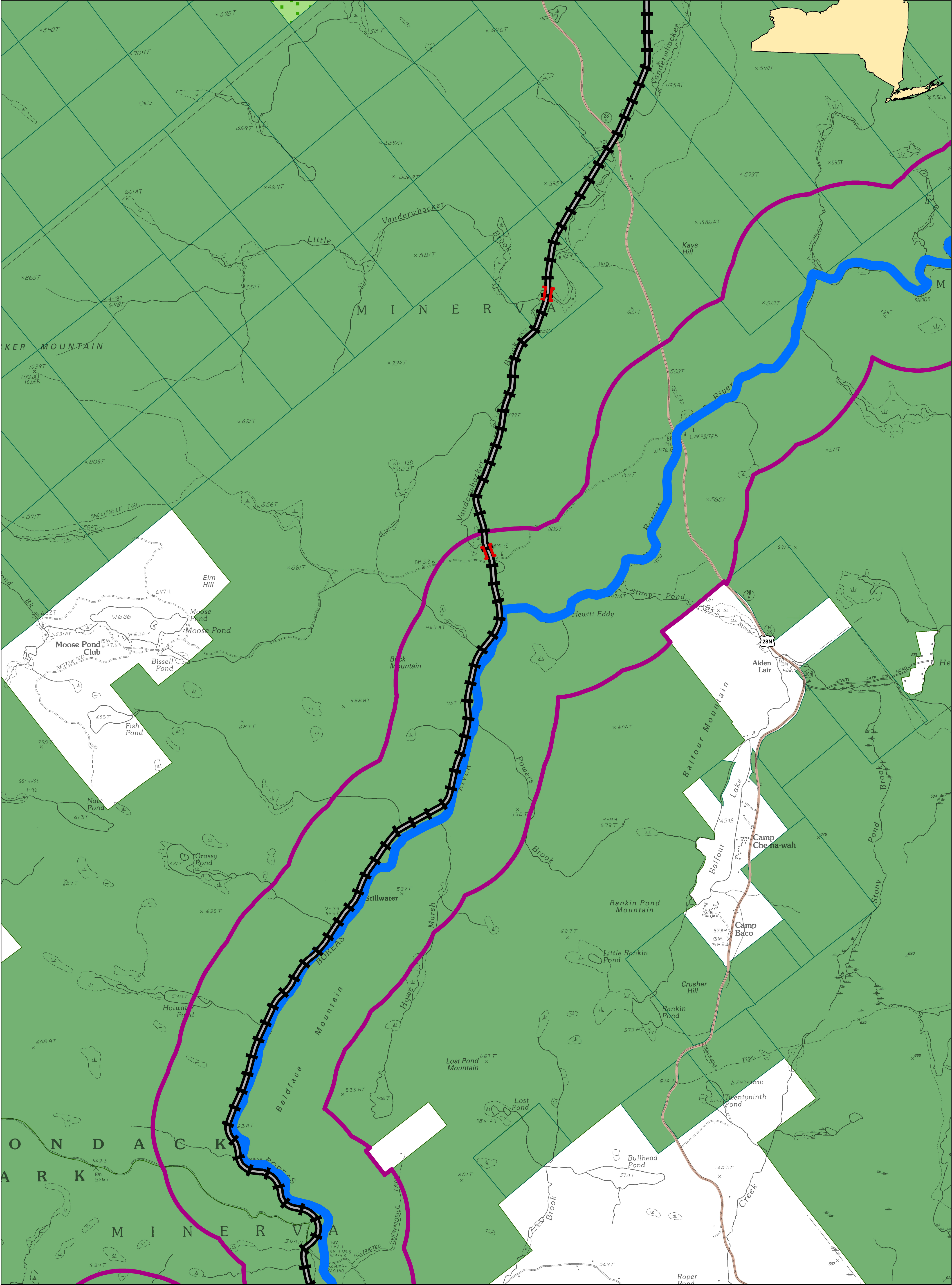
Department of Environmental Conservation

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Miles

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/25/2018

Tahawus Branch Railroad Corridor Map 2



Key

Bridges

Railroad

Half Mile Buffer

Quarter Mile Buffer

Highway

Adirondack Forest Easement

Adirondack Forest Preserve

Private Parcels

Scenic River

Recreational River

Wild River

DOT Planimetric Images

Mile Posts

Bridge Source: NYS DEC,
Railroad Source: NYS DEC Bureau of Real Property,
Half Mile Buffer Source: NYS DEC Bureau of Real Property,
Quarter Mile Buffer Source: NYS DEC Bureau of Real Property,
Adirondack Forest Easement Source: NYS DEC Bureau of Real Property,
Adirondack Forest Preserve Source: NYS DEC Bureau of Real Property,
Private Parcels Source: Essex, Hamilton, and Warren County,
Wild, Scenic, and Recreational Rivers Source: NYS DEC Bureau of Real Property,
Highways Source: NYS GIS Program Office,
DOT Planimetric Images Source: NYS DOT,
and Mile Posts: NYS DOT

Map 1

Map 2

Map 3

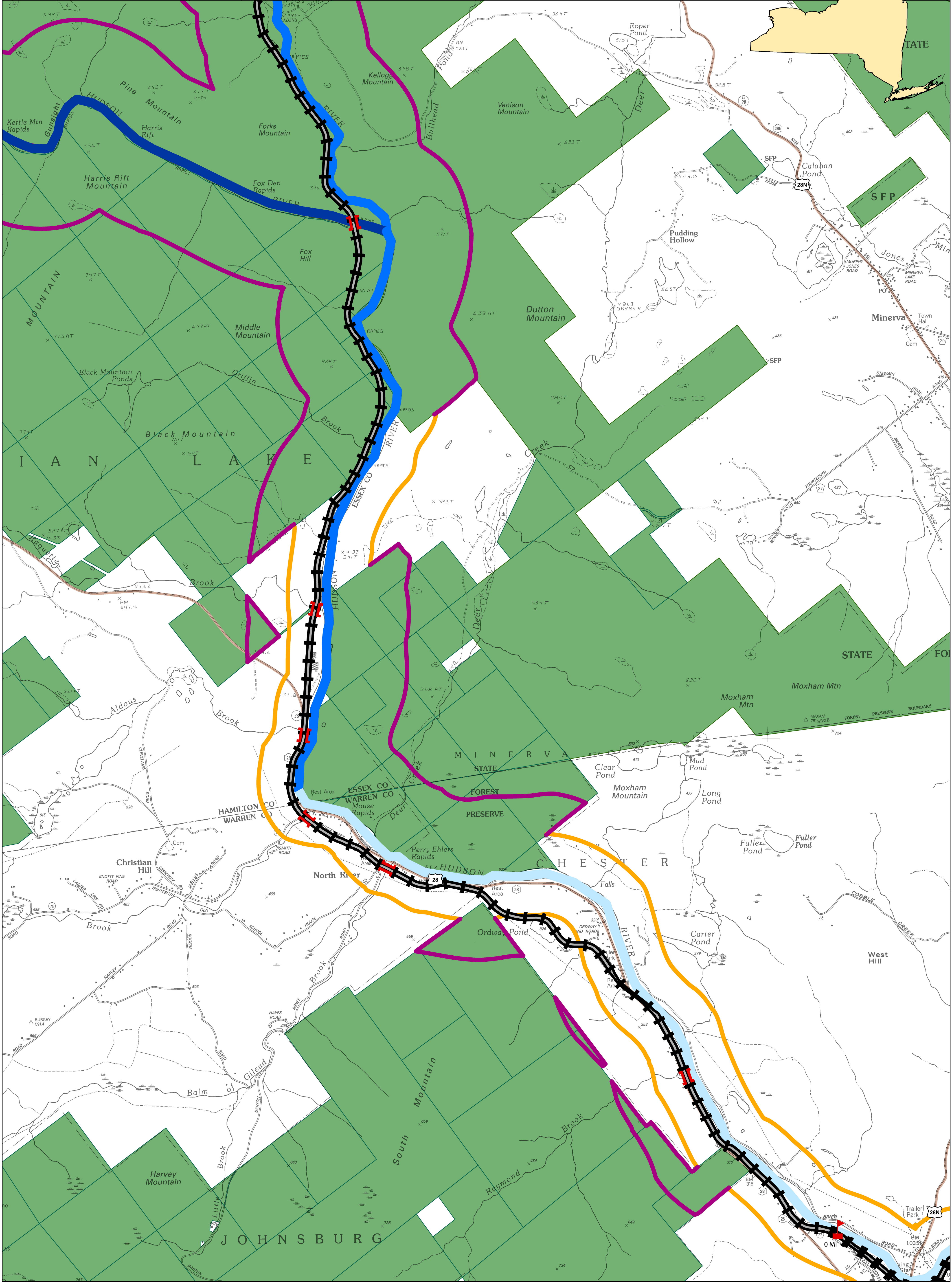
Department of Environmental Conservation

0 1/4 1/2 1

Miles

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/25/2018

Tahawus Branch Railroad Corridor Map 3



Key

Bridges

Railroad

Half Mile Buffer

Quarter Mile Buffer

Highway

Adirondack Forest Easement

Adirondack Forest Preserve

Private Parcels

Scenic River

Recreational River

Wild River

DOT Planimetric Images

Mile Posts

Bridge Source: NYS DEC,
Railroad Source: NYS DEC Bureau of Real Property,
Half Mile Buffer Source: NYS DEC Bureau of Real Property,
Quarter Mile Buffer Source: NYS DEC Bureau of Real Property,
Adirondack Forest Easement Source: NYS DEC Bureau of Real Property,
Adirondack Forest Preserve Source: NYS DEC Bureau of Real Property,
Private Parcels Source: Essex, Hamilton, and Warren County,
Wild, Scenic, and Recreational Rivers Source: NYS DEC Bureau of Real Property,
Highways Source: NYS GIS Program Office,
DOT Planimetric Images Source: NYS DOT,
and Mile Posts: NYS DOT

Map 1

Map 2

Map 3

Department of Environmental Conservation

01/41/21

Miles

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/25/2018

EXHIBIT J

















Balm of Gilead Brook, Johnsburg, Warren County,
NC 2.4



13th Lake Brook, Indian Lake, Hamilton County, NC 4.52



Aldous Brook (Roaring Brook), Indian Lake, Hamilton County NC 5.10



Raquette Brook, Indian Lake, Hamilton County, NC 5.89



Hudson River at junction with Boreas River,
Indian Lake, Hamilton County, NC 8.49



Vanderwacker Brook, Minerva, Essex County NC 15.3



Stillwater Brook, Minerva, Essex County, NC-171



Perch Brook, Newcomb, Essex County, NC 24.42



Opalescent River , Newcomb, Essex County NC 27.96

Exhibit K



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

March 30, 2018

Commissioner Rose Harvey
NYS Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, NY 12207

Re: STB Docket No. AB 1261; *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsbury, NY*

Dear Commissioner Harvey:

The purpose of this letter is to advise you that the New York State Department of Environmental Conservation (DEC) plans to file an application with the Surface Transportation Board (STB) seeking abandonment of the authority of the Saratoga and North Creek Railway (SNCR) to operate over a line of railroad known as the Sanford Lake Branch or the Tahawus Line (Line). The Line originates in the hamlet of North Creek, New York and continues approximately 30 miles north to its terminus at the site of the former Tahawus Mine. A map of the Line is attached to this letter.

DEC believes the Line should be abandoned because it currently carries no freight and is unlikely to carry freight in the future, and also because the Line—the right-of-way for which was taken by a federal exercise of eminent domain in the 1940s—cuts through and adversely affects constitutionally-protected forest lands in New York's Adirondack Park.

Abandonment of rail operations on the Line requires approval from the STB. STB regulations require consultation with certain governmental entities regarding the potential for environmental impacts stemming from the proposed abandonment. While DEC does not believe the proposed abandonment will result in any adverse environmental impact, we would appreciate your views on this issue. In particular, we request any comment you may have on the following issues:

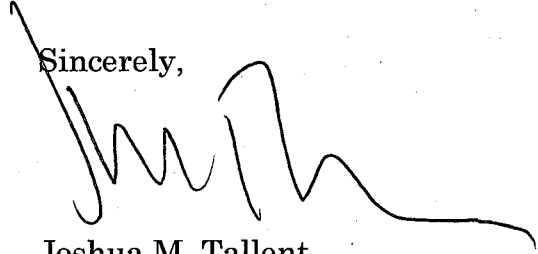
- Whether the Line and/or structures on the Line meet the criteria for listing on the State and National Registers of Historic Places (*see* 49 C.F.R. § 1105.8[d][7]). Please note that the historic North Creek rail station (which is already listed on the State and National Registers) is not part of the Line and will not be affected by the proposed abandonment.
- Whether there is a likelihood that there are archeological resources or other previously unknown historic properties in the project area (*see id.*).

DEC will provide you with a copy of its environmental and historic report in the coming weeks. The report will outline the scope of the proposed abandonment and will include reference to any comments you submit. We can send the report to you either by mail or electronically; if you wish to receive the report electronically, please let me know.

Please send your reply by mail to Joshua M. Tallent, New York State Office of the Attorney General, Environmental Protection Bureau, The Capitol, Albany, NY, 12224. Alternatively, feel free to email your response to me at Joshua.Tallent@ag.ny.gov.

Thank you for your assistance in this matter. If you have any questions or concerns, please contact me at your convenience.

Sincerely,



Joshua M. Tallent
Assistant Attorney General
Joshua.Tallent@ag.ny.gov
(518) 776-2456

encl.

EXHIBIT L



Parks, Recreation and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

June 6, 2018

Joshua Tallent
Assistant Attorney General
New York State Office of the Attorney General
The Capitol
Albany, New York 12224
(via email)

Re: Saratoga and North Creek Railroad/Tahawus Mine/NL Industries Rail Spur
North Creek (Johnsburg), Warren County

Dear Mr. Tallent:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation's Division for Historic Preservation. I have reviewed the material that you submitted regarding the National Register eligibility status of the former NL Industries rail spur.

Based on this review, the Division concurs with recommendations found in the Draft Environmental and Historic Report (2018) prepared for the adverse abandonment of the Saratoga and North Creek Railroad in Johnsburg, Warren County. We agree that the industrial rail spur (active 1941-1989) that once serviced the former Tahawus Mine/NL Industries complex (demolished 2006) does not meet the criteria for inclusion in the New York State or National Registers of Historic Places.

If I can be of any further assistance I can be reached at john.bonafide@parks.ny.gov or (518) 268-2166.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bonafide".

John A. Bonafide
Director,
Technical Preservation Services Bureau
Agency Historic Preservation Officer

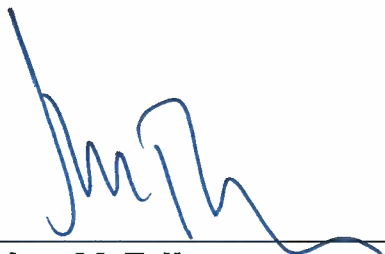
cc: Charles E. Vandrei, DEC (via email)

CERTIFICATE OF SERVICE

I certify that on July 23, 2018, I caused a paper copy of this Environmental and Historic Report to be served by first class mail upon all parties of record in this proceeding.

I further certify that, although no counsel has appeared in this proceeding on behalf of Saratoga and North Creek Railway, on June 11, 2018 I caused a paper copy of this Environmental and Historic Report to be served by first class mail upon counsel for Saratoga and North Creek Railway at the following address:

David Michaud, Esq.
General Counsel
Iowa Pacific Holdings, LLC
118 South Clinton St. Suite 400
Chicago, IL 60661



Joshua M. Tallent
Assistant Attorney General
New York State Office of the
Attorney General
The Capitol
Albany, NY 12224
(518) 776-2456
Joshua.Tallent@ag.ny.gov

EXHIBIT J

APPENDIX C
DRAFT FEDERAL REGISTER NOTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION –
ADVERSE ABANDONMENT – SARATOGA AND NORTH CREEK RAILWAY IN
TOWN OF JOHNSNBURG, NY

DRAFT FEDERAL REGISTER NOTICE

The New York State Department of Environmental Conservation ("Applicant") gives notice that on December XX, 2017, it filed with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of the Saratoga and North Creek Railway, LLC ("SNCR") to operate over the rail line originating at MP NC 0.0 at North Creek, New York and proceeding north a distance of approximately 29.71 miles into Essex and Hamilton Counties to a terminus at MP NC 29.71 near the Tahawus Mine (the "Tahawus Branch" or "Line"). The affected railroad Line is situated in U.S. Postal Zip Codes XXXX. The Line does not have stations.

There is no documentation in the Applicant's possession that indicates that the Line contains federally granted rights-of-way. Any such documentation relating to this abandonment in the Applicant's possession will be made available promptly to those requesting it. The application can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. The Applicant's case for abandonment was filed with the application.

The interest of railroad employees will be protected by (same reference to labor protection provisions as in NOI.)

Any interested person may file with the Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days after the application is filed. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by

appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide: (i) Recommended provisions for protection of the interests of employees; (ii) A request for a public use condition under 49 U.S.C. 10905; and (iii) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 6 U.S.C. § 1247(d) and 49 U.S.C. §1152.29.

Persons seeking information concerning the filing of protests should refer to 49 C.F.R. §1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB-1258 and should be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, D.C. 20423. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant: name and address, phone; fax; email. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service.

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, et seq. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

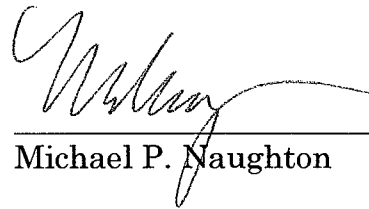
An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the section of Environmental Analysis will be served upon all parties of record and. upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

EXHIBIT K

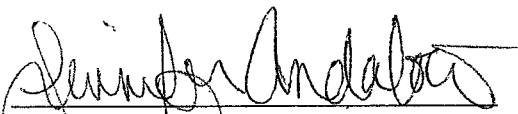
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF ALBANY) ss.:

I, Michael P. Naughton, make oath and say that I am an attorney in the employ of the New York State Department of Environmental Conservation (DEC), the applicant herein; that I have been authorized by DEC to verify and file with the Surface Transportation Board the foregoing application in STB AB-1261; that I have carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that I have knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of my knowledge, information, and belief.


Michael P. Naughton

Sworn before me this 6th
day of September, 2018.


Notary Public
JENNIFER ANDALORO
Notary Public, State of New York
No. 02AN6098246
Qualified in Albany County
Commission Expires January 14, 2020