#### THIS IS A TWO-SIDED DOCUMENT



## Adirondack Park Agency

P.O. Box 99 Ray Brook, New York 12977 Tel: (518) 891-4050 Fax: (518) 891-3938 www.apa.ny.gov

# APA Project Permit **2014-181**

Date Issued: December 11, 2015

In the Matter of the Application of

MICHAEL HOPKINS and
MGH ESTATES LLC
Permittee

for a permit pursuant to §809 of the Adirondack Park Agency Act and 9 NYCRR Part 578

To the County Clerk: This permit must be recorded on or before **February 9, 2016** Please index this permit in the grantor index under the following names:

1. MGH Estates LLC

#### **SUMMARY AND AUTHORIZATION**

This permit authorizes an 11-lot subdivision involving wetlands and construction of 10 single family dwellings in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map in the Town of Northampton, Fulton County and the Town of Edinburg, Saratoga County.

This permit shall expire unless recorded in the both Saratoga and Fulton County Clerks' Offices on or before February 9, 2016 in the names of all persons listed above and in the names of all owners of record of any portion of the project site on the recordation date.

The project shall not be undertaken or continued unless the project authorized herein is in existence within two years from the date the permit is recorded. The Agency will consider the project in existence when one authorized lot has been conveyed to an outside party.

The project shall be undertaken in compliance with all conditions stated herein. Failure to comply with this permit is a violation and may subject the permittee, successors, and assigns to civil penalties and other legal proceedings.

This permit does not convey any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project, nor does it authorize the impairment of any easement, right, title or interest in real or personal property. Nothing contained in this permit shall be construed to satisfy any legal obligations of the permittee to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

## **PROJECT SITE**

The project site is a 181.85 acre vacant parcel of land located on White Birch Road and Elmer Brown Road, classified Rural Use on the Adirondack Park Land Use and Development Plan Map, identified on the Town of Northampton, Fulton County tax maps as Section 61.1 Block 1 Parcel 3, 5.2 and 7 and on the Town of Edinburg, Saratoga County tax maps as Section 93 Block 1 Parcel 34.111, and described in a deed from Larry Joe Chaplinski to MGH Estates, LLC, dated December 6, 2013, and recorded December 12, 2013 in the Fulton County Clerk's Office as Instrument Number 2013-1357 and recorded January 29, 2014 in the Saratoga County Clerk's Office as Instrument Number 2014002890. The project site also includes a 2,000 foot wide area of lands owned by the State of New York, administered by the Hudson River Black River Regulating District (HRBRRD) as a portion of Tract 385, and located between the Great Sacandaga Lake and subdivision lots 1-7.

## PROJECT DESCRIPTION

The project as conditionally approved herein involves a subdivision of 181.85 acres containing wetlands into 11 lots and the construction of 10 single family dwellings. Lots range in size from 2± acres to 144.09± acres. Each dwelling will be served by an individual driveway, on-site wastewater treatment system, and well water supply.

Lots 1 and 6 will have footpaths between the dwellings and the lakeshore. All other lots will access the lake through the Regulating District lands adjoining Lot 7, which will be developed by a parking area and a 6-foot wide footpath.

Clearing and grading is limited to those areas necessary for development of the dwelling, driveway and wastewater treatment system as shown on the plans.

Each dwelling will be no more than 38 feet in height, with a footprint of 3,825 square feet or less (including all attached porches, decks, garages and stairs), and contain no more than five (5) bedrooms. One accessory-use shed no greater than 240 square feet in size is also proposed on each of the ten building lots.

The project is shown on the following maps and plans:

- Four sheets of plans prepared by Charles R. Ackerbauer, L.S. and P.E. dated February 10, 2015, last revised November 21, 2015. Sheet one is entitled, "Proposed Subdivision, MGH Estates LLC"; Sheets 2 and 3 are entitled, "Proposed Subdivision, APA Project 2014-181, MGH Estates LLC"; Sheet 4 is entitled, "Sewage Disposal Details For MGH Estates Subdivision".
- An "Erosion and Sediment Control Plan" prepared by Charles A. Ackerbauer dated August 9, 2015, last revised November 22, 2015.

The MGH Estates Property Owners Association, Inc. will own and maintain non-building Lot 7.

A reduced-scale copy of Sheets 2 and 3 of the project plans are attached as a part of this permit for easy reference. The original, full-scale maps and plans described in this paragraph are the official plans for the project, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

## **AGENCY JURISDICTION**

The project requires an Agency permit pursuant to §§ 809(2)(a) and 810(1)(d)(1) (b), and § 810(2)(c)(1) and (2)(a) and (b) of the Adirondack Park Agency Act [Executive Law, Article 27], because there are wetlands on the project site, the subdivision results in creation of more than five but less than 20 lots, and results in creation of lots not involving shoreline which are less than 320,000 square feet in size on Rural Use lands. The project is a regulated activity requiring a wetlands permit pursuant to § 578.2 and § 578.3(n)(3)(i) of Agency regulations implementing the Freshwater Wetlands Act [Article 24 of the Environmental Conservation Law], because Lots 1 through 11 contain wetlands and/or are adjoining those lots which contain wetlands.

#### CONDITIONS

## THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- The project shall not be undertaken until this permit has been recorded in the Fulton County Clerk's Office and in the Saratoga County Clerk's Office.
- 2. This permit is binding on the permittee, all present and future owners or lessees of the project site, and all persons undertaking all or a portion of the project.

Copies of this permit and the project plans shall be furnished by the permittee to all subsequent owners or lessees of the project site prior to sale or lease, and by the permittee and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.

3. In addition to complying with all terms and conditions of this permit, all future activities on the project site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act, and the Adirondack Park Agency's implementing regulations [9 NYCRR §§ 570-588].

#### Deeds

#### Recordation

4. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2014-181, issued December 11, 2015, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."

#### Subdivision

5. Subject to the conditions stated herein, this permit authorizes an 11-lot subdivision as depicted on the project plans. Any subdivision of the project site not depicted on the project plans shall require a new or amended permit.

#### Development

#### **Construction Location and Size**

6. Subject to the conditions stated herein, this permit authorizes the construction of one single family dwelling with attached garage and one accessory-use storage shed within the limits of clearing shown on the project plans on Lots 1 through 6 and 8 through 11. Each dwelling shall be no more than 38 feet in height measured from the highest point of the structure to the lower of either existing or finished grade, shall have a footprint of no more than 3,825 square feet including all attached porches, decks, garages and stairs, and shall contain no more than five (5) bedrooms. Each accessory-use shed shall be no greater than 240 square feet in footprint. Any change to the location or increase in the footprint, height, or number of bedrooms of any authorized structure shall require prior written Agency authorization.

- 7. Construction of any guest cottage on the project site shall require prior written Agency approval. Due to site constraints, the Agency makes no assurances that any proposed guest cottage could be approved. No guest cottage shall be constructed on Lot 7.
- 8. There shall be no docks, boardwalks, decks or other structures located on the State Lands under Regulating District jurisdiction associated with lots 2, 3, 4 and 5. However, lots 1, 6 and 7 may utilize docks or other structures as permitted by a HRBRD Access Permit and Work Permit provided that no structures or fill are placed in wetlands, as depicted on the project plans.
- 9. The construction of any structure or the undertaking of any new land use or development or any activity involving wetlands not specifically authorized by this permit shall require a new or amended permit.

## **Outdoor Lighting**

10. Any new free-standing or building-mounted outdoor lights shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Great Sacandaga Lake, the public highways or adjoining property.

## **Building Color**

11. All exterior building materials, including roof, siding and trim, of any structure on the project site shall be a dark shade of green, grey, or brown.

## Tree Cutting/Vegetation Removal

12. Outside of the limits of clearing shown on the project plans no trees or other vegetation may be cut, culled, trimmed, pruned, or otherwise removed or disturbed on the project site without prior written Agency authorization, except for the removal of: 1) an area up to 20 feet in width for driveway construction and utility installations; and 2) dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard. In addition, firewood may be cut on the non-shoreline portions of Lot 1, and a footpath up to 6 feet wide providing access to the lakeshore may be created on Lots 1, 6 and 7.

#### Invasive Species Control/Sanitizing Equipment

13. When brought from off-site, all equipment, including but not limited to trucks, excavators, tractors, etc., and hand excavation tools such as shovels, rakes, and picks, to be used on the project site shall be clean and free of soil, mud, or other similar material. If washed on the project site, equipment shall be washed in one location to prevent the distribution of propagules among different wash sites.

## Density

14. There shall be no principal buildings located on Lot 7. There shall be no more than one principal building located on each of Lots 2 through 6 and Lots 8 through 11. On Lot 1, there shall be no more than 12 principal buildings. The Agency makes no assurances that the maximum development mathematically allowed can be approved.

## Infrastructure

#### Wastewater

15. Any on-site wastewater treatment systems on the project site installed within five years of the date of issuance of this permit shall be constructed in conformance with the location and design shown on the project plans. Construction of the system shall be supervised by a design professional (licensed Professional Engineer, Registered Architect, or exempt Licensed Surveyor). Within 30 days of complete system installation and prior to its utilization, the design professional shall provide written certification to the Agency that the system was built in compliance with the approved plans.

No on-site wastewater treatment system shall be installed on the project site more than five years after the date of issuance of this permit except pursuant to written authorization from the Agency.

16. No on-site wastewater treatment system shall be constructed on Lot 7.

#### **Stormwater Management**

- 17. Prior to any land disturbance on the project site, the applicant shall submit a Stormwater Management Plan prepared by a design professional for review and approval by the Agency. The Stormwater Management Plan shall include water quality volume treatment of runoff from all proposed impervious areas and addresses impacts to nearby wetlands both during construction and post-construction, including grading, utilizing green infrastructure and standard practices. The Stormwater Management practices included in the Plan, shall be designed in accordance with New York State Department of Environmental Conservation's "2015 Stormwater Management Design Manual" or current version thereof.
- 18. Installation of the approved plans shall be under the supervision of a licensed design professional. Within 30 days of complete stormwater practices installation and prior to utilization, the design professional shall provide the Agency with written certification that the stormwater practices were built in compliance with the approved plans.

#### **Erosion and Sediment Control**

19. The project shall be undertaken in compliance with the Erosion and Sediment Control Plan.

#### Infrastructure Construction

20. Prior to the conveyance of any lot authorized herein, the parking area and footpath authorized for Lot 7 shall be completed according to the project plans.

#### Infrastructure Maintenance

21. Maintenance of Lot 7 other than by the MGH Estates Property Owners' Association, Inc. shall require prior written Agency authorization.

#### Reports

22. At the request of the Agency, the permittee or the permittee's successor shall report in writing the status of the project, including details of compliance with any terms and conditions of this permit.

## **FINDINGS OF FACT**

## Background/Prior History

 APA Project 92-46 proposed an 11-lot subdivision of a 35.61 acre portion of the project site. A complete application was never received and no permit was issued.

#### **Project Site**

#### Water Resources

2. Great Sacandaga Lake is a navigable water body with a mean high water mark of 771 feet above mean sea level. A 2,000 foot wide portion of lands owned by the State of New York and administered by the HRBRRD separates the lands currently owned by MGH Estates, LLC from the lake. Use of these state lands is granted by an annual "Access Permit," which provides exclusive access rights. The applicant holds a current Access Permit which expires March 15, 2016 (No. 9528) and, on August 6, 2015, was granted a Work Permit to dispose of fallen trees and to construct a T shaped dock with connected 6 foot wide boardwalk which expires December 31, 2015.

3. Lots 2 and 3 are located, in part, within 75 feet of the mean high water mark of the Great Sacandaga Lake. The development authorized herein will be located a minimum of 75 feet from the mean high water mark.

#### Wetlands

4. Wetlands extend for several hundred feet parallel to the westerly property lines of Lots 2, 3, 4 and 5. These wetlands are shown on the project plans and consist of deciduous and coniferous forested, emergent marsh and scrub shrub covertypes, having a value rating of 2 pursuant to 9 NYCCR 578.5. The wetland is located in a sheltered cove on the shoreline of Great Sacandaga Lake. It is seasonally flooded and has direct hydrologic interchange with the lake. It has high plant diversity and a complex structure with herbs, shrubs and living and dead trees. This wetland provides habitat in the form of food, cover and nesting sites for fish and wildlife. The vegetation within the wetland functions to prevent erosion of the shoreline, helps to modulate water temperatures, and provides food, cover and nesting sites for wildlife. Preserving the vegetation preserves these functions. The portion of Lot 1 east of Elmer Brown Road and south of White Birch Road also has extensive areas of wetlands. No determination of the existence of wetlands was made for that portion of Lot 1 located north of White Birch Road.

## Vegetation

The project site is wooded with a variety of mature deciduous and coniferous trees and shrubs. Tree species include hemlock, white pine, beech, maple, and balsam fir. Some areas of the site have very sparse understory vegetation. Recent logging has occurred on the portion of Lot 1 located north of White Birch Road.

#### Soils

6. Numerous deep hole soils test pits were observed across the project site. Soils throughout the site are comprised of fine sandy loams in the Charlton and Woodbridge soils series. Many of the test pits revealed soils conditions that do not meet Agency standards and guidance for installation of on-site wastewater treatment systems to serve residential dwellings. Those areas involved slopes in excess of 8% or 15% and/or evidence of the seasonal high water table at less than 24 inches below grade and/or insufficient horizontal separation distance to wetlands. Soils found to be acceptable for installation of residential on-site wastewater treatment systems are generally comprised of fine sandy loams with a seasonal high groundwater table between 24 and greater than 48 inches below grade with percolation rates of 4 to 10 minutes per inch.

#### Slopes

7. The site has gently rolling terrain with slopes ranging from 0% to 8% across most of the authorized development, with limited areas having slopes in excess of 15%.

#### **Historic Sites or Structures**

8. The project site is located within an archeologically sensitive area as mapped by the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP). The project was referred OPRHP for review and comment. By letter dated July 28, 2015, OPRHP determined that the project will have no impact upon the cultural resources in or eligible for inclusion in the State and National Registers of Historic Places.

## **Nearby Land Uses**

9. The project site is located in an area characterized by year round and seasonal residential and recreational uses. Many of the lots along the shoreline are less than 1 acre in size, with the non-shoreline lots being 5 to 10 acres in size, on average. The project site is one of the largest remaining undeveloped parcels in the immediate area.

## <u>Access</u>

10. Existing access to the project site is from White Birch Road and Elmer Brown Road, paved town highways. Sight distances in this area are generally good.

#### Infrastructure

### Wastewater

11. Based on depth of 24 to 30 inches to the seasonal high groundwater table at the absorption field locations authorized for Lots 1, 2, 3, 4, 6, 8, 10 and 11, shallow absorption systems are required. On-site wastewater treatment systems constructed as located and depicted on the project plans will comply with all applicable New York State Department of Health and Agency standards.

## Stormwater Management

12. The proposed development on Lots 1 through 6 are in close proximity and immediately upgradient from wetlands and the Great Sacandaga Lake, requiring a stormwater management plan to prevent any potential impacts.

#### **Erosion and Sediment Control**

13. An erosion and sediment control plan is necessary to prevent potential impacts from development to nearby wetlands and the Great Sacandaga Lake.

#### Infrastructure Maintenance

14. The MGH Estates Property Owners Association, Inc. will be created to own and maintain Lot 7 for shared lake access for the owners of Lots 2 through 5 and Lots 8 through 11. All lot owners will be members of the HOA.

## **Public Notice and Comment**

15. The Agency notified all adjoining landowners and other parties and published a Notice of Complete Permit Application in the Environmental Notice Bulletin, as required by the Adirondack Park Agency Act. Comments were submitted by an adjoining landowner who expressed concerns about possible drainage that might flow to lands off Seven Hills Road as a result of development of the project site.

## Town of Edinburg Local Land Use Program

16. The Town of Edinburg administers a local land use program approved by the Agency pursuant to Section 807 of the APA Act. While a portion of the project site is located within the Town, no subdivision or new land use or development is proposed or authorized for those lands, as they will remain vacant and be retained by the developer as a portion of Lot 1.

## Describe other permits; ex: DOH Realty Subdivision

17. The proposal requires a Realty Subdivision permit from the NYS Department of Health because it involves creation of five or more lots, each less than five acres in size. Agency staff have coordinated its review of the project with the Department.

The proposal does not require a State Pollution Discharge Elimination System (SPDES) permit from the NYS Department of Environmental Conservation.

## **PROJECT IMPACTS**

#### Visual

- 18. Retention of the existing vegetation along White Birch and Elmer Brown Roads will provide screening of the new dwellings from the highway corridor and neighboring uses. Limiting vegetative clearing and requiring all structures to be finished in dark shades of green, gray or brown will also assure that the structures blend in with the surrounding vegetation and are adequately screened as viewed from the lake.
- 19. Requiring new outdoor lights to employ full cut-off fixtures will reduce nighttime light pollution (glare, light trespass and sky glow) and minimize the light cast toward Great Sacandaga Lake, the public highways or adjoining property.

## Habitat/Wetlands

- 20. Provided the development authorized herein is undertaken as depicted on the project plans and in accordance with the conditions of the permit, all wetlands on the site will be preserved, without any impacts or loss of values.
- 21. Requiring written authorization prior to any change in the authorized location of development and requiring a new or amended permit for any future construction on the project site will allow the Agency to ensure that the location and manner of construction will not adversely impact wetlands. In addition, prohibiting the construction of structures within 75 feet of the mean high water mark of Great
  - Sacandaga Lake, limiting the cutting of vegetation, and allowing for establishment of a footpath only on Lots 1, 6, and 7 will ensure protection of the wetlands located parallel to the westerly property lines of Lots 2, 3, 4, and 5. Constructing boardwalks in this wetland would degrade its value as wildlife habitat by introducing noise and disturbance and thus interfering with usage of the wetland by fish and wildlife.
- 22. A new or amended permit will be required for any future activity that involves wetlands pursuant to 9 NYCRR § 578.
- 23. Siting of all new land use and development on relatively small lots will result in preservation of the large majority of the forested project site. As authorized, the subdivision will not inhibit future forestry uses of Lot 1 and will provide continued habitat for a wide variety of species.

## Soils/Surface Waters/Groundwater

- 24. Restricting development activities and vegetation removal near the lake and wetlands as conditioned herein will serve to reduce stormwater runoff volumes, assist in treatment of runoff, and protect soil and water resources.
- 25. Installation of the driveways in the locations depicted and in accordance with the details included on the project plans will serve to protect soil, groundwater, and surface water resources.
- 26. Installation and maintenance of silt fencing and prompt and successful restoration of all disturbed soils areas will serve to protect wetlands and surface waters from filling due to erosion and sedimentation.
- 27. Construction of new on-site wastewater treatment systems in accordance with the project plans will protect groundwater and surface water resources.
- 28. Requiring prior Agency review and written approval of any guest cottage will ensure appropriate treatment of wastewater and protection of groundwater and surface water resources.

## **Invasive Species**

29. Requiring inspection and cleaning of construction vehicles and tools prior to use on the project site or after use in an area with invasive plant species will reduce the likelihood of spreading invasive plants to the project site and adjoining properties.

## <u>Historic Sites or Structures</u>

30. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR §426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

#### **Nearby Land Uses**

31. Construction of three new homes within 100 feet of White Birch Road and Elmer Brown Road with seven of the authorized homes located more than 100 feet from the public highways is consistent with the existing development pattern in the surrounding area. Requiring exterior lighting to be shielded from off-site viewpoints will prevent fugitive light pollution.

## **CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval set forth in the Adirondack Park Agency Act, the Freshwater Wetlands Act and 9 NYCRR Part 578, and 9 NYCRR Part 574. The Agency hereby finds that the subdivision authorized as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the Rural Use land use area;
- c. will be consistent with the overall intensity guidelines for the Rural Use land use area;
- d. will comply with the shoreline restrictions of § 806 of the Adirondack Park Agency Act; and
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project
- f. will secure the natural benefits of wetlands associated with the project, consistent with the general welfare and beneficial economic, social, and agricultural development of the state; and
- g. will result in minimal degradation or destruction of the wetland or its associated values, and is the only alternative which reasonably can accomplish the applicant's objectives.

PERMIT issued this \ day of December 2015.

ADIRONDACK PARK-AGENCY

Richard E. Weber, 111 Deputy Director

(Regulatory Programs)

STATE OF NEW YORK)

) ss.:

COUNTY OF ESSEX )

On the May of Tin the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

REW:SBM:AJP:SHR:MJG:mlr

MARY L. REARDON
Notary Public - State of New York
Qualified in Franklin County
No. 01RE6114798
Commission Expires, August 23, 20



