



# Empire State Forest Products Association

*The people behind New York's healthy forests and quality wood products*

*www.esfpa.org*

## **Empire State Forest Products Association Testimony on the SFY 2018-19 Executive Budget Proposal for TED**

Good afternoon, my name is John Bartow and I am the Executive Director of the Empire State Forest Products Association. Thank you for the opportunity to testify today and to share our views and suggestions on the SFY 2018-19 Budget. The Empire State Forest Products Association (ESFPA) represents the industries and landowners engaged in forest resource production and stewardship of New York's 19 million acres of forest. In total, \$22.9 billion dollars in statewide economic impact and nearly 100,000 jobs are attributable to operations of various industries and businesses within the forest related sectors. There are nearly 700,000 private forest landowners who also depend on sound forest and timber management and production to help them keep their forests as forests. Our vision for New York's forests and forest products economic sector is that our forests can provide economic, social and ecosystem benefits that support the State's rural economies while sustainably managing forests so their benefits are there for generations to come.

In our testimony today, we are focusing on those issues with the greatest potential impact – positive and negative - on the State's forests and forest based economy. As the budget review process continues over the coming weeks, I and many of our Members will be meeting with legislators on these and other issues related to the SFY 2018-19 State budget.

ESFPA's number one budget priority for SFY 2018-19 is the Empire Forest for the Future Initiative, referred to as EFFI, as outlined in the TED Article VII bill with modest appropriation requests for the two new grant programs included in the Environmental Protection Fund. Before I address EFFI, I will briefly address two other priorities in the TED Budget.

### **Environmental Conservation**

#### **Environmental Protection Fund:**

We support the Governor's Budget appropriation request of \$300 million to the Environmental Protection Fund (EPF). We are pleased to see the level funding requests for:

- Land Acquisition and our priority for Working Forest Conservation Easements.
- Urban Forestry as this is often the largest interaction of urban residents and communities with trees and forests.

- Biodiversity /Landowner Habitat Conservation Programs. Our private forests represent over 14 million acres of habitat and biodiversity and we hope to see some of this effort benefit private forest lands to encourage sustainable forestry and achieve these goals.
- Invasive Species in both our water and terrestrial forest environments.

## **AGRICULTURE**

We are very disappointed to see that the Governor’s budget proposal does not include an appropriation for the Wood Products Development Council (WPDC). The WPDC has undertaken numerous projects over the past three years to promote markets and support research on the forest products sector aimed to solve economic and environmental issues paging the industry and impacts on forest health. The Legislature has shown leadership in restoring funding at \$100,000 for each of the past three years. We would ask that the same level of funding be restored for SFY 2018-19 Budget.

## **EMPIRE FORESTS FOR THE FUTURE**

We are very excited to see the Governor’s proposal for the Empire Forest for the Future Initiative (EFFI) included in his Executive Budget. This initiative is very broad and comprehensive in how it supports private forest land owners, reduces the risk of conversion of forests to non-forest uses, and promotes sustainable forestry practices. This initiative ensures not only the economic benefits that our forests provide New Yorkers, but also the host of ecosystem benefits from our forests for carbon sequestration, water quality, air quality and wildlife.

The EFFI proposal is the result of over two years of hard work by more than 20 national, State and regional stakeholders representing environmental organizations, business and private landowners who recognize the value and public benefit of New York’s 19 million acres of forests, 75% or 14 million acres which are owned by nearly 700,000 landowners.

We believe that taken in its entirety, EFFI stands to be the most comprehensive forest stewardship package in over 100 years, and it’s Return on Investment (ROI) will have the largest positive landscape impact as well as economic impact with a very modest level of State financial commitment.

The Governor’s EFFI proposal includes 6 major provisions:

1. Amend the State’s existing forest property tax laws and establishes a new property tax incentive while at the same time fixing the property tax shift associated with both the current and proposed forest tax incentives where such taxing jurisdictions are impacted.
2. Amend the State’s Right-to-Practice-Forestry to strengthen the protection of forest practices on private lands from undue local regulation.
3. Enacts a Commercial Timber Harvest Notification law.
4. Creates a new grant program for community forests;
5. Creates a new grant program for private forest stewardship management projects. And,
6. Create a State procurement preference for New York Wood products.

Included in our testimony are 6 “*Position Papers*” on each of these major components of EFFI which provide significant detail as to our comments and concerns and I encourage you and your staffs to review those and contact me if you have any questions. For now I will just highlight our major points.

## 1. Forest Tax Law Reform

The Governor's proposal would amend sections 480 and 480-a of the Real Property Tax Law (RPTL) and creates a new section 480-b.

### RPTL Section 480

In regards to section 480, the proposal would:

- continue to grandfather all existing section 480 parcels;
- allow the tax assessment benefits to run with the land thru title transfers; and,
- allows landowners to switch to the new section 480-b at any time without any penalty.

ESFPA supports these provisions.

### RPTL section 480-a

In regards to section 480-a, the proposal would:

- Grandfather all existing 480-a parcels and allow for new enrollments or expansions of existing parcels until March 1, 2019.
  - ESFPA supports the grandfathering of existing parcels and ending new enrollments or expansions until some date certain, but we believe that a hard date of March 1, 2019 is not attainable. Landowners should know the details of the new section 480-b prior to the end date so they can make an informed decision. We recommend that this be amended to time the ending of new or expanded 480-a parcels with the adoption of regulations for the new 480-b program.
- The Governor's proposal would limit the future sales of 480-a grandfathered parcels to family members of the original enrollee.
  - ESFPA believes that 480-a should be grandfathered the same as section 480 was in 1974 and that transactions for sales going forward should be the choice of the seller and buyer. If a future buyer wants to remain in 480-a they should be allowed to under any circumstance.

### New RPTL section 480-b

ESFPA supports the proposed new RPTL section 480-b as the proposal would accomplish many of the stated objectives of the administration. In particular, the new section 480-b would:

- Streamline the program's administration through two pathways of entry:
  - a 70% exemption for tracts enrolled in 3<sup>rd</sup> party forest certification programs; and,
  - a 40% exemption for tracts enrolled which undertake a qualified forest management practice.
- The new section 480-b would broaden the eligible enrollment of forest and forest related lands which recognize land owner stewardship objectives of eligible lands beyond timber production which include, but are not limited to carbon sequestration, invasive species, and water quality and wildlife management.

ESFPA supports the new section 480-b proposal and the new eligibility and forest management priorities it embraces.

### Property Tax Shift

The Governor's forest tax law proposal also remedies the impact of the property tax shift on local taxing jurisdictions which has been a major concern of local governments and the State Legislature. The result in property assessment exemptions from forest tax law is that there is a shift of tax burden from enrolled properties to non-enrolled properties in any taxing jurisdiction (e.g. town, county and school districts). The Governor's proposal would amend State Finance Law to establish a formula which would reimburse impacted taxing jurisdictions that experience a 1% or greater tax shift. ESFPA believes this formula will address any significant impact on affected taxing jurisdictions.

## **2. Amendment to the Right-To-Practice-Forestry Law**

The Governor's proposal would amend the Right-To-Practice-Forestry Law by requiring any local government who propose to adopt a local law or regulation to refer such proposed law of regulation to the Commissioner of Environmental Conservation prior to adoption. The Commissioner would have 45 days to review and comment, and if the Commissioner found that the proposal would unduly regulate forest practices, including timber harvest, the local government would have to take those comments into consideration. If the local governing body chooses to ignore or not accept the Commissioner's recommendations, they would have to adopt such law or regulation by a "super majority" vote.

ESFPA supports this proposal as it would make the provisions of the Right-To-Practice-Forestry law more prospective, rather than retrospective of the current Commissioner's review procedure and it would require a stronger local action to ignore or not accept the Commissioner's recommendation.

## **3. Commercial Timber Harvest Notification**

The Governor's proposal would also amend the Right-To-Practice-Forestry law to authorize the Department to promulgate regulations requiring forest land owners to notify the Department prior to undertaking a commercial timber harvest of 10 or more acres. The proposal would also pre-empt any local law or regulation governing timber harvest notification. The Department has indicated that this notification is for "informational purposes only" and in no way represents any State regulation of timber harvesting. Their rationale is that this information would provide valuable data which would enable them to have a better understanding of the condition of New York's forests and forest health.

ESFPA opposes this provision of the Governor's proposal because:

- DEC has not adequately articulated a compelling public need or benefit for harvest notification;
- DEC has not been able to articulate any benefit that harvest notification would have to private forest landowners, the forest products industry or the forest in general;
- DEC has not been able to demonstrate what, if any, egregious actions private forest landowners have done to the public's interest in forest management which would warrant such an intrusion on private property rights; and,
- DEC has not been able to ensure that this regulation is merely an "informational gathering exercise" and not potential regulatory mission creep.

ESFPA has offered detailed comments and an alternative approach to obtaining data on the state of forests in New York which we believe will provide the Department with statistically valid information for the purposes they seek. We hope we can work with the Governor, State Legislature and all stakeholders in advancing this or some alternative to new regulatory authority which can achieve mutually beneficial purposes.

#### **4. Community Forest Grant Program**

The Governor's proposal would establish a new Community Forest grant program and provides a \$500,000 appropriation under the EPF. ESFPA supports this program and would encourage the Department in developing program guidance to consider:

- That proposed community forests are required to have a forest stewardship plan prior to acquisition.
- That such stewardships plan do not have to permit but will not preclude timber harvesting.
- If a non-government entity undertakes the acquisition and stewardship of the community forest that they do so with the consent of the affected local government. And,
- That public access is afforded to the property.

#### **5. Empire Forest Incentive Program**

The Governor's proposal would establish a second matching grant program known as the "Empire Forest Incentive Program" which would create a cost share program also with a \$500,000 appropriation under the EPF. ESFPA strongly supports this program as it recognizes the cost burden that private forest landowners face in planning for and managing their forests.

With 75% or 14 million acres of New York's forests in private ownership it is not enough to just keep these forests as forests. If we want the benefits of these forest lands for important public benefits of not only the forest based economy but the environmental benefits of carbon and climate change, invasive species control, water quality, wildlife and storm resiliency, we must provide some assistance to these forest owners to manage a steward their forests to maximize these public benefits.

#### **6. State Agency Procurement Preference**

Finally, the Governor's EFFI proposal would amend the State Finance Law to increase the discretionary thresholds for State agencies to purchase wood products made from wood or fiber manufactured in New York State. We have seen the benefits this this type of procurement preference has had on markets for food products grown and processed in the State and we applaud the Governor for recognizing the market benefits this could have for our wood products and we encourage the Legislature to embrace this as well.

As I mentioned earlier in my testimony, we at ESFPA believe that the Empire Forest for the Future Initiative represents the most significant and broadest forest initiative in New York in over 100 years. We realize that this proposal is big and comprehensive and there may be a lot of questions and details to be worked out. We also believe that this proposal has an extremely modest cost to the people of the State of New York for a very large financial return on investment.

Thank you for the opportunity to present our comments on the pending budget and ESFPA stands ready to work with the Legislature and the broad group of stakeholders we have been partnering with for the past few years to bring this initiative to fruition. I am available now or at any time to answer any questions you may have or to provide additional information you may need.

**For more information please contact:**

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## **ESFPA Position Statement On EFFI Forest Property Tax Law Proposal**

### **Background**

Some form of tax exemption for privately owned forests and woodlots has been in effect in New York since 1912. Section 480 of the Real Property Tax Law (RPTL) became effective October 1, 1959 as an amended version of the Fisher Forest Tax Law of 1926. RPTL Section 480 was eligible to timberland owners of 15 acres or more and effectively froze assessments at the time of enrollment. The program was closed to new applicants in 1974. However, tracts certified prior to September of 1974 were allowed to continue to receive the tax benefits of Section 480.

Section 480-a of the Real Property Tax Law was enacted in 1974, and took effect in 1976. Under this program, owners of 50 or more contiguous acres of forest may apply for exemption, provided that the owner commits to managing the forest in accordance with an approved management plan for a ten-year period. The management plan must be prepared by a professional forester and meet certain standards. Once approved, the management plan must be adhered to, but amendments can be made through written request. Failure to follow the plan, or conversion of the committed land from continued forest crop production, results in the imposition of tax penalties

New York State's forest tax laws were put in place in recognition of the important public economic, recreational and natural values of long term forest management on private lands. From the outset of such legislation more than 90 years ago, it was understood that it takes many years to obtain a return on an investment in growing trees and that if lands are taxed at their development value, the accumulated taxes over the long term are likely to remove all profit for the landowner and, thus, the incentive to maintain and manage forest land. High property taxes may push land toward development and encourage destructive short term forest management practices.

Over the past few years the Empire State Forest Products Association (ESFPA) has been working with DEC and numerous stakeholders for revisions to New York's forest tax law. In many respects, New York State is a victim of its own enlightenment. By creating one of the first statutory schemes in the nation to incentivize forest ownership, the State was sailing in uncharted waters. As problems developed, New York was forced to replace RPTL 480 with a new RPTL 480-a law designed to address inadequacies of the previous law without full consideration of the probable effects on the program itself. This piece-meal approach to curing a statutory scheme has caused the New York forest incentive program to be the lowest subscribed program in the nation at seven (7%) percent!

The extremely low enrollment of forest land in the existing tax law program is the result of a number of factors including, but not limited to:

- excesses of the statute in regards to a singular focus on timber production;
- relatively stringent forest management planning requirements and prescription treatments;
- lack of the necessary personnel and resources in DEC to administer and oversee the program;
- lack of marketing of the program and landowner awareness of benefits and costs;
- evolving and diverse stewardship objectives of forest landowners and their willingness to sustainably manage their woodlots for certain objectives; and,
- the financial burden on the towns and other property taxing jurisdictions where land within the program is located.

As part of his 2019 Executive Budget proposal Governor Cuomo had introduced the Empire Forest for the Future Initiative (EFFI) which outlines a broad set of proposals for advancing sustainable forest management in New York. This is perhaps the most comprehensive set of proposals ever advanced for New York's forests, private forest landowners, the forest based economy and the public benefits derived from the State's 19 million acres of forest.

ESFPA has worked with DEC and a number of stakeholders over the past few years on a proposal to reform and expand forest property tax law which Governor Andrew Cuomo outlined in his 2019 Executive Budget as part of EFFI. ESFPA generally endorses and supports the Governor's EFFI tax proposal which:

- Lessens the administrative burdens of participating in the current 480-a tax reduction program while maintaining existing property tax benefits.
- Creates a new real property tax law section 480-b with two new simplified enrollment tracks for landowners independently certified as sustainable or undertaking ecologically sound forest management practices, while expanding eligibility to a 25-acre minimum parcel size from the current 50-acre minimum.
- Expands eligible land under one of the 480-b tracks beyond forests to include open space, better enabling the protection of important ecosystems and water resources.
- Provides financial relief to local governments that are significantly impacted by the existing 480-a program and proposed 480-b program, in which the tax breaks given to participating forest landowners are shifted to other property taxpayers.

### **ESFPA Comments/Concerns**

The following highlights comments or concerns that ESFPA has in regards to the proposals for forest tax changes being proposed.

#### **RPTL Section 480**

ESFPA supports the continuation of RPTL section 480 for those properties presently enrolled and the option for those enrolled properties to make application, at the forest land owners discretion, to the new RPTL Section 480-b without penalty. We also note that assessments under RPTL Section 480 will continue to run with the land and passes on to the owner's heirs and assigns in perpetuity.

#### **RPTL Section 480-a**

The proposed amendment to the definition of an "approved management plan" would be amended to state that the "plan must be prepared by or under the direction of a **"Department approved forester."**



ESFPA has concerns as to how and what standard will be applied to meet a Department approved forester. This would apply to foresters developing management plans under RPTL Section 480-a and the new RPTL Section 480-b. Our understanding is that this would be done under regulation, but we are concerned that this borders very closely on what may be “forester licensing”. We also have questions as to if a forester is not approved or is removed from approval, how will that forester have redress or due process for such action? ESFPA would be supportive of this recognition of foresters if it was part of the Department’s cooperating forester program pursuant to Commissioner’s Policy # 36.

ESFPA supports the proposed **repeal of the 6% severance (stumpage) tax** regarding the payment of stumpage value that is presently reimbursed to taxing jurisdictions. With the reimbursement of tax shift to those taxing jurisdictions where there is a 1% or greater tax shift, this would amount to excess revenue to such jurisdictions.

The proposal would **limit the sale or transfer of eligible RPTL 480-a property** to “one or more family members” may continue in 480a for such family owners who elect to remain in the 480-a program. ESFPA position is that 480-a enrollments should be grandfathered the same as 480 (Fisher Act) enrollments were after 480-a was enacted. There should be no limit on future transfers if the prospective owner wants to remain in 480-a. We do not oppose ending new enrollments in 480-a when a new 480-b program is operational, but do not support limiting transfers of prior enrolled 480-a properties. This should be a land owner choice and seems counter-productive to growing the program.

The proposal would **end the addition of new or expansion of existing tracts for 480-a certification under an approved management plan after March 1, 2019**. ESFPA supports and ending of enrollments under RPTL Section 480-a but is concerned about a hard date of March 1, 2019, if the new Section 480-b enrollments will not be operational prior to that date. We would prefer that the end to enrollments for RPTL 480-a be tied to the effective date of the new RPTL Section 480-b and the ability of forest property owners to enroll in the new program.

ESFPA does support a **one year opt out period** (i.e. March 1, 2019 – February 28, 2020) for the owners of a 480-a enrolled property without any penalty or obligation to follow the approved management plan for the remaining commitment term.

This proposal creates in State Finance Law a **formula for reimbursement to local taxing jurisdictions** (i.e. town, county and school districts) where a tax shift of greater than 1% may occur under RPTL Sections 480-a and 480-b. This formula addresses the concern of tax shift impacts and the financial burden on the towns and other taxing jurisdictions where land within the programs is located. The assurance of this provision is a make or break deal for those taxing jurisdictions potentially impacted. ESFPA has always anticipated this to be a formula amendment to Aid and Incentives for Municipalities (AIM) and not subject to separate appropriations.

#### **RPTL Section 480-b**

The proposal establishes a **new Section 480-b** under RPTL which defines eligible tracts (25 contiguous acres 50% of which must be “forest land”) and 2 paths to obtain property tax assessment reductions:

1. 70% exemption for tracts enrolled under a recognized forest certification program (including audited group certification).
2. 40% exemption enrolled under a forest management practice plan (practice must be completed within 2 years of enrollment).

ESFPA supports the overall concepts of this proposal and how it addresses:

- excesses of the statute in regards to a singular focus on timber production;
- relatively stringent forest management planning requirements and prescription treatments; and,
- lack of the necessary personnel and resources at the DEC to administer and oversee the program.

Regarding the exemption based on a recognized “**forest certification program**”, our understanding is that the international certifications of the Forest Sustainability Council (FSC) and Sustainable Forest Initiative (SFI) would automatically meet any regulatory standard DEC may develop. ESFPA also believes that the American Tree Farm certification program will meet this requirement. We also want to ensure that there could be other certification programs developed by forest land managers and related businesses which could qualify. We agree that all forest certifications must include acceptable audit provisions. We also believe that the exemption of 70% be changed to 80%. This is a minimal change with little financial impact and would eliminate any confusion with the 80% 480-a exemption.

The proposal defines “**forest management practice plan**” as a plan approved by the Department for one or more qualifying forest management practices to be **conducted on at least 10 acres of forest land** of an eligible tract. While we understand that this plan will be defined in regulation, we have envisioned this as simple and more like a memorandum and not a plan. ESFPA believes that the eligible forest management practices that qualify under 480-b should include, but not be limited to:

- a) forest stewardship planning projects;
- b) forest stand improvement projects;
- c) invasive species control projects;
- d) afforestation and reforestation projects for the purpose of timber or fiber production or carbon sequestration;
- e) water quality improvement projects;
- f) fish and wildlife improvement projects;
- g) forest health projects (excluding chemical or biological agents for control of forest pests);
- h) Wildfire and catastrophic event rehabilitation projects.

We also have concerns regarding the “10 acres of forest land” requirement. There are a lot of practices which may qualify for non-forested lands and some practices (e.g. invasive species treatments) which may be expensive to treat on 10 acres. We prefer that the legislation delete the requirement that the “forest management practice to be conducted on a combined total of at least ten acres of forest land of an eligible tract.”

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## **ESFPA Position Statement On EFFI Commercial Timber Harvest Notification Proposal**

### **Background**

More than 19 million acres (63%) of New York State are classified as forested land. The vast majority of this land (76%) is privately owned by more than one-half million individuals, families, and businesses. Although NYS has voluntary best management practices (BMPs) for timber harvesting, timber harvesting in the State is regulated by provisions of regional (e.g., the Adirondack Park Act, NYS Executive Law Art. 27), and several State laws including but not limited to Environmental Conservation Law Articles 24 (wetlands), and 15 (streams), 11 (endangered species). In addition, the federal Clean Water Act ([33 USC §§ 1251-1387) and Endangered Species Act (16 USC § 1531-1544) apply to activities that include timber harvesting.

In addition to State and federal regulation of timber harvesting, according to the most recent study by the College of Environmental Science and Forestry, in 2015 there were a total of 201 towns had either a timber harvesting or a tree-cutting laws or ordinances. That does not include those town regulations relating to site plan review or other land use controls which may directly or indirectly affect timber harvests.

The Empire for the Future Initiative (EFFI) legislation included in the Executive Budget proposal includes a potentially new State mandate requiring private forest landowners to notify the State (i.e. DEC) of any commercial timber harvest over 10 acres as defined in 6 NYCRR Part 199 e.

### **ESFPA Comments/ Concerns**

ESFPA has strong concerns over and we oppose any effort to enact a state wide **Commercial Timber Harvest Notification Law** enabling and legislatively delegating to Department of Environmental Conservation (DEC) the authority to promulgate regulations over a "commercial timber harvest" (i.e. timber harvest of 10 acres or larger). The present proposal potentially grants to DEC the equivalent of legislative power over the private lands and forests of the State with respect to the right to harvest timber and practice forestry in the context of historical private property expectations and stewardship.

ESFPA members have and continue to question the value of such regulations based on:

- DEC has not adequately articulated to ESFPA the "public benefit" and "need" for harvest notification.
- DEC has not been able to articulate any "benefit" that harvest notification would provide to private forest landowners, timber harvesters, the forest products industry or forests in general.
- DEC has not been able to ensure ESFPA that this is merely an "informational gathering exercise."
- ESFPA is concerned there is potential for mission creep at the state wide, region or staff level.

The integrated forest products industry from stump to final product is the most important economic stakeholder related to this regulation and DEC has not provided any justification to private forest landowners, or the industry acting on their lands, that they have done anything so egregious as to warrant such an encroachment on private property rights.

### **ESFPA Alternative Proposal**

If (as articulated by the DEC to date) the need for harvest notification is to garner more information about timber harvests and to generate data to better understand the health, sustainability and benefits of harvest on forest lands then ESFPA believes there are less intrusive and more efficient means of garnering such information. The Department has not exhausted existing informational sources which could give them statistically valid information concerning timber harvests throughout the State and there are potentially new sources of data which could bolster this information. As such, ESFPA could support a **Commercial Timber Harvest Reporting System** which includes the following:

- Continue existing Notice of “Commercial Cut” under RPTL section 480-a.
- Under a new RPTL section 480-b:
  - For 70% assessment reductions require submission of annual “Activity Reports” including information on timber harvests (among other information) which otherwise would be required as part of annual third party audits for individual or group certifications.
  - For 40% assessments implement a voluntary post-harvest reporting program in addition to required pre-harvest plans.
  - Commit the State resources necessary to promote and market the new 480-b program aimed at increasing enrollments and thus reporting.
- Enhance the current annual reporting through DEC’s Cooperating Forester Program. In fact, this program could be bolstered to meet what otherwise has been articulated as “Department approved foresters” for certain activities under EFFI.
- Commit the State resources necessary to support a robust aerial/satellite imagery program to inventory and monitor all forest lands (i.e. public and private). Better use of aerial/satellite digital imagery would help achieve timber harvest informational needs as well as information for forest land cover, forest health, etc.
- Commit the State resources necessary to double the number of plots surveyed every 5 years under the U.S. Forest Service, Forest Inventory Assessment (FIA).

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## **ESFPA Position Statement On EFFI Right-To-Practice Forestry Law Proposal**

### **Background**

Forest lands provide clean air, clean water, fish and wildlife habitat, recreational opportunities, wood products we use every day and important contributions to our rural economies. Yet while people are accustomed to seeing agricultural crops harvested each year, they are not accustomed to seeing timber harvests and often object when they learn one is planned. Some of these objections are of the “NIMBY” – not in my backyard – variety that one also hears when development is proposed near residents

New York State’s Right-To-Practice Forestry (RTPF) Law was adopted to address these issues and to place forestry on a par with agriculture in establishing a land owners right to harvest timber. The law took effect on March 1, 2004 and calls for the following:

- Provides a strong positive statement about the contributions of forestry to the State’s economy and environment.
- Upon petition by a forest landowner or the Department of Environmental Conservation (DEC), requires towns to send proposed new ordinances that restrict forestry to DEC for review. Towns may also initiate this process voluntarily.
- Provides a 45-day period while DEC reviews the proposal. This can help achieve a dialogue leading to constructive solutions to local problems or issues.
- Offers professional DEC advice to the municipality regarding ways to achieve local objectives without negatively impacting forestry. The town can accept or reject that advice without consequence.
- Requires local land use regulations to “facilitate the practice of forestry.”

The 2004 law also makes timber theft on public and private lands an automatic criminal offense and a Class A misdemeanor, with increased penalties and reparation provisions.

In a 2015 study conducted by the College of Environmental Science and Forestry, researchers found that there are over 200 towns in New York who directly or indirectly regulate forest practices, including timber harvests.

While its original intent was to bring the rights to practice forestry on par with the right to farm in the State, the RTPF Law is substantially less effective than the Right-to-Farm Law. RTPF does not have a post adoption review of local laws or regulations that Right-to-Farm has and it does not authorize the Commissioner of DEC to override undue regulation of forestry that is afforded to the Commissioner of Agriculture.

Nevertheless, the RTPF has slowed the growing adoption of local laws and regulations and the dialogue provided between DEC and local governments has tempered local regulation, when it has been triggered.

**ESFPA Comments/Concerns**

The Governor's proposal under EFFI to strengthen the RTPF in New York would amend the law requiring any municipality proposing an ordinance, regulation or permit requirement which may restrict the practice of forestry, including but not limited to, timber harvesting, other forest management practices, and temporary storage or transport of logs or other wood products from harvest sites, shall submit such proposals to the Department for review, comment and input, to ensure they do not adversely impact the landowners right to practice forestry.

At a minimum the municipality must submit the full text of the proposed local law or ordinance to the Commissioner. The Commissioner shall have 45 days to review such proposal and to provide comments. Should the Department recommend modifications or disapproval the referring municipal body may not act contrary to such recommendation except by a vote of a majority plus one.

The proposal would also pre-empt any local government from adopting a local law or ordinance which explicitly requires a landowner notification of a timber harvest.

ESFPA supports the proposal as a means of strengthening the RTPF law in New York yet we acknowledge it is still substantially less than the protection afforded agriculture under the Right-to-Farm law.

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## **ESFPA Position Statement On EFFI Community Forest Proposal**

### **Background**

The availability and quality of forest resources for recreation, timber production, renewable energy and wildlife enjoyment benefit the State's economy and ecosystems including cleaning air and water resources, carbon sequestration and storage, storm resiliency and wildlife habitat. These forests provide benefits and services that people have come to expect. Today, New York's total forest acreage is peaking at 19 million acres; that is 1 acre of forestland for each New York resident.

Public forest land owners hold 4.8 million acres, or 25% of New York's forest land (not including 790,000 acres of State owned easements on private land). Included in this are just over 3 million acres of forest land classified as "reserved from cutting or active management," in the forever wild Adirondack and Catskill Forest Preserve and State parks. The State also holds slightly over 1 million (20%) acres in State Reforestation Areas, Wildlife Management Areas and other State lands which may be managed for timber, recreation and wildlife. The federal government holds 156,000 acres (1%) in various agencies, including the Fish & Wildlife Service, Department of Defense and National Forests. Local governments hold just over 560,000 acres (3%) of the State's forest land.

"Community Forests" as defined by the U.S. Forest Service is "Forest land owned in fee-simple by an eligible (i.e. public) entity that provides public access and is managed to provide community benefits pursuant to a community forest plan." Under the New York Environmental Conservation Law<sup>1</sup>, "Community Forests" are defined as "A county, city, town, village, school district or any other political subdivision of the State, may acquire by purchase, or gift, or take over lands in its possession within the boundaries of the State and use the same for forestry purposes."

Community Forests in New York include, or should include, forests lands such as the 45,000+ acres of County Reforestation Lands as defined in County Law (found in 30 of 57 counties), town forests such as the Town of Webb, Herkimer County, 7,000 + acres (largest community forest east of the Mississippi River), Village of Camden, Oneida County, Forester Park. Municipalities have also bought thousands of acres for the protection of water quality near public water supply well heads, over aquifers and throughout watersheds. In addition, there are thousands of acres owned by non-governmental organizations that provide public access and community benefits such as the Rensselaer Plateau Alliance (350 acre Postenkill Community Forest) and The Nature Conservancy's (14,000+ Tug Hill Forest).



These community forests provide the full range of ecological, economic and community benefits as noted above and help to ensure the sustainability and protection of forest lands in New York State. Throughout New York and the Northeast there is a growing desire by communities to purchase and steward forest lands for benefits to their residents as well as all New Yorkers.

### **ESFPA Comments/Concerns**

ESFPA supports the provision in the Empire Forest for the Future (EFFI) proposal included in the Governor's 2019 Executive Budget for a new grant program for Community Forests. ESFPA also supports the appropriation request of \$500,000 in the Environmental Protection Fund Land Acquisition line to support this new grant program.

ESFPA realizes that this program will need program guidance for its implementation and offers the following suggested guidelines for consideration in developing them. The only comments we offer at this time is that any fee acquisition of a Community Forest be based on and include: a management plan; if a non-governmental organization (NGO) is proposing to purchase and/or manage such Community Forest they do so with the approval of the local town or village; and, that any Community Forest make provisions for some appropriate degree of public access and use.

### **ESFPA Suggested Community Forest Guidance and Definitions; including but not limited to:**

ESFPA developed these suggested guidelines and specifications based on federal and other state community forest programs.

*Community benefits.* One or more of the following:

1. Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;
2. Environmental benefits, including carbon sequestration, clean air, stormwater management, source water protection and wildlife habitat;
3. Benefits from forest-based experiential learning, including K-12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4-H, Boy or Girl Scouts, Master Gardeners, etc.;
4. Benefits from serving as replicable models of effective forest stewardship for private landowners; and,
5. Recreational benefits such as hiking, hunting and fishing secured with public access.

*Community forest.* Forest land owned in fee-simple by an eligible entity that provides public access and is managed to provide community benefits pursuant to a community forest plan.

*Community forest plan.* A plan that guides the management and use of a community forest, was developed with community involvement, and adopted by the governing municipal board, and includes the following components:

1. A description of the property, including acreage and county location, land use, forest type and vegetation cover;
2. Objectives for the community forest;
3. Community benefits to be achieved from the establishment of the community forest;
4. Mechanisms promoting community involvement in the development and implementation of the community forest plan;
5. Implementation strategies for achieving community forest plan objectives;
6. Plans for the management and stewardship of the community forests that achieve community benefits and for utilization or demolition of existing structures and proposed needs for further improvements;
7. Planned public access, including proposed limitations to protect cultural or natural resources, or public health and safety. In addition, local governments and qualified nonprofits need to provide a rationale for any proposed limitations; and
8. A description for the long-term use and management of the property.

*Eligible entity.* A local governmental entity or a qualified nonprofit organization that is qualified to acquire and manage land on behalf of a local government entity as agreed to by such local government entity.

*Eligible lands.* Private forest lands that:

1. Are threatened by conversion to non-forest uses or are gifted to an eligible entity;
2. Are important to the furtherance of community objectives for the protection of forest related economic, ecological, educational and recreational community benefits as described in the community forest plan adopted by the municipality.
3. If acquired by an eligible entity, can provide defined community benefits under the community forest plan and allows public access.

*Forest lands.* Lands that are at least twenty-five acres in size, suitable to sustain natural vegetation, and at least 50 percent forested. Forests are determined both by the presence of trees and the absence of non-forest uses.

*Non-forest uses.* Activities that threaten forest cover and are inconsistent with the community forest plan, and include the following:

1. Subdivision;
2. Residential development, except for a caretaker building;
3. Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as onsite use of gravel from existing gravel pits;
4. Industrial use, including the manufacturing of products;

5. Commercial use, except for sustainable timber or other renewable resources, and limited compatible commercial activities to support cultural, recreational and educational use of the community forest by the public; and
6. Structures and facilities, except for compatible recreational facilities, concession and educational facilities and kiosks, energy development for onsite use, facilities associated with appropriate forest management and parking areas; said structures, facilities and parking areas must have minimal impacts to forest and water resources.

*Qualified nonprofit organization.* Defined by the authorizing statute (ECL Article 9, §9-0717; an organization that is described in Section 170(h)(3) of the Internal Revenue Code of 1986 ( 26 U.S.C. 170(h)(3)) and operates in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of that Code ( 26 U.S.C. 170(h)(4)(A)). For the purposes of the community forest plan, a qualified nonprofit organization must meet the following requirements:

1. Consistent with regulations of the Internal Revenue Service at 26 CFR 1.170A-14(c)(1):
  - a. Have a commitment to protect in perpetuity the purposes for which the tract was acquired under the community forest plan on behalf of the municipal division; and
  - b. Demonstrate that it has the resources to enforce the protection of the property as a community forest as a condition of acquiring a tract under the community forest plan.
2. Operate primarily or substantially in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of I.R.S. code (26 U.S.C. 170(h)(4)(A)). Conservation purposes include:
  - a. The preservation of land areas for outdoor recreation by, or for the education of, the general public,
  - b. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
3. The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated state or local governmental conservation policy, and will yield a significant public benefit, or
4. The preservation of a historically important land area or a certified historic structure.

*Public access.* Access that is provided on a non-discriminatory basis at reasonable times and places, but may be limited to protect cultural and natural resources or public health and safety.

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# Empire State Forest Products Association

*The people behind New York's healthy forests and quality wood products*

[www.esfpa.org](http://www.esfpa.org)

## **ESFPA Position Statement On EFFI Empire Forest Incentive Program Proposal**

### **Background**

The availability and quality of forest resources for recreation, timber production, renewable energy, wildlife enjoyment benefit the State's economy and ecosystems including cleaning air and water resources, carbon sequestration and storage, storm resiliency and wildlife habitat. These forests provide benefits and services that people have come to expect. Today, New York's total forest acreage is peaking at 19 million acres. That is 1 acre of forestland for each New York resident.

Over 76% (about 15 million acres) of New York's forests are owned by private forest landowners. Only 4% of New York's forest owners are categorized as large (greater than 1,000 acres) "industrial forest landowners". Over 200,000 wood lot owners have forest acreage in the 25 to 500 acre range and represent those owners who have the greatest impact on forest health, diversity and the forest based economy.

The future of these forest lands is largely based on the stewardship objectives and capabilities of these 200,000+ wood lot owners. **Despite the tremendous perceived value, these privately owned forests are out of balance and putting both their economic as well as environmental contribution to New Yorkers at risk.**

- 19th century heavy clearing of forests set up a dynamic of abandonment and regrowth leaving most forests roughly the same age and composition.
- These forests, and the wildlife that depend on them, are at greater risk from droughts, insects, and a changing climate.
- Essentially our privately owned forests are "middle-aged;" there is a relative paucity of both younger forests and older forests, which both provide habitat qualities needed for the full array of wildlife in the State to thrive as well as the robust capacity of these forests to sequester and store carbon.

These private forest landowners are often characterized as "land rich and cash poor". From a socio-economic demographic perspective:

- 85% of forest owners in the State have an annual income less than \$100,000. One-half have income less than \$50K.
- Only 2% have an income greater than \$200,000.
- How they value, how they steward and what are their attitudes are key to the future of NY's forests

### ESFPA Comments/Concerns

ESFPA supports the provision in the Empire Forest for the Future (EFFI) proposal included in the Governor's 2019 Executive Budget for a new grant program aimed at encouraging private forest management and stewardship known as the Empire Forest Incentive Program. ESFPA also supports the appropriation request of \$500,000 in the Environmental Protection Fund Stewardship line line to support this new grant program.

ESFPA supports the diversity of stewardship projects that are offered under the proposed program which would include, but not be limited to:

- a) forest stewardship planning projects;
- b) forest stand improvement projects;
- c) invasive species control projects;
- d) afforestation and reforestation projects for the purpose of timber or fiber production or carbon sequestration;
- e) water quality improvement projects;
- f) fish and wildlife improvement projects;
- g) forest health projects (excluding chemical or biological agents for control of forest pests);
- h) Wildfire and catastrophic event rehabilitation projects.

This diversity of eligible projects will incenses forest landowners to seek professional and technical assistance which helps them meet their stewardship objectives while at the same time introducing them to continuous active stewardship and markets that can help them manage their forests long-term.

ESFPA also believes that these stewardship practices should qualify these land owners for the new RPTL section 480-b tax program which further helps them keep their forests as forests. We also support these stewardship projects for publicly owned Community Forests as outlined under the EFFI proposal.

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## **ESFPA Position Statement On EFFI State Procurement Preference Proposal**

### **Background**

The forest economy of New York generated **\$13.1 billion in direct output** with around 70% attributable to the production activities of the pulp and paper industry. In addition, the sector provides more than 41,000 direct employment and \$2.5 billion in direct labor income. This provides for an **average labor income per worker of \$61,526**. The forest sector's linkages to the state's economy generated an **additional \$9.8 billion in indirect and induced production activities for a total state wide economic impact of \$22.9 billion dollars**.

The forest products sector has recovered exceptionally well in recent years from the economic slowdown to the general economy. Recent data shows that the percentage growth in direct output, employment, and labor income from 2010-2014 (most current available). As a whole, the sector had a positive growth of almost 14% in output, 8% in employment, and 12% in labor income. Most of this growth occurred in solid wood products and pulp and paper. Employment also increased but labor income increased at a greater rate.

The relative stability and growth has everything to do with diverse and viable markets for the State's forest products. While every facet of our forest markets are not growing (e.g. low grade energy markets) it is important to do whatever we can to keep those markets viable. Clearly, the private sector markets are the largest part of forest products consumption, but the State agencies of New York also consume these products.

Over the past few years, New York has encouraged state agencies to purchase locally and New York produced goods and services, most notably in the agricultural and food products sectors. Extending this type of incentive to forest products could help in securing these markets.

### **ESFPA Comments/Concerns**

The Governor's proposal under EFFI amends the State Finance Law increasing the discretionary thresholds for purchasing and encouraging state agencies to purchase wood products made from wood and fiber, grown and manufactured in New York State. This together with the Governor's commitment to host a Forest and Wood Products Summit in 2018 bodes well for strengthening forest products purchased by public agencies.

ESFPA supports the proposal as a means of strengthening forest product markets in New York.

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