STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of Section 480-a of the Real Property Tax Law and Part 199 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York,

ORDER

NYSDEC Case No. R7-20090526-46

-by-

RAYMOND HANSEN SR. and DEBORAH HANSEN,

Respondents.

On April 9, 2009, staff of the New York State Department of Environmental Conservation ("DEC" or "Department") served a notice of intent to file a notice of violation on respondents as a result of timber-cutting activities on a 96-acre tract of land that respondents Raymond Hansen Sr. and Deborah Hansen own in the Town of German, Chenango County, New York. By letter dated May 4, 2009, respondent Deborah Hansen requested a hearing pursuant to section 199.10 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). On June 30, 2009, Department staff served respondents with a notice of hearing and complaint that detailed Department staff's allegations. Mrs. Hansen sent an undated letter in response that was received in the DEC Region 7 offices on July 29, 2009.

In April 2000, respondents submitted an application for a certificate of approval with their management plan to DEC pledging to commit 96 acres of parcel # 129-1-14.4 to continued forest crop production to qualify this acreage for the forest land tax exemption pursuant to Real Property Tax Law ("RPTL") § 480-a. In that same month, Department staff issued the certificate of approval. In January 2003, respondents submitted a five-year update to their management plan that established a work schedule from 2004–2019. On December 11, 2003, Department staff issued a certificate of approval for the five-year update to the management plan.

In its complaint, Department staff alleges that respondents violated:

1) 6 NYCRR 199.10(c)(2), by failing to provide the Department with notice of a proposed cutting on the certified eligible tract and failing to pay the appropriate tax on the stumpage value of the merchantable forest crop; and

2) 6 NYCRR 199.10(c)(3), by failing to comply with the forest management plan for the certified eligible tract.

Accordingly, Department staff requested that a notice of violation be issued to respondents finding that the 96 acres owned by respondents that were previously certified by the Department as eligible for the forest land tax exemption were no longer eligible for that exemption.

This matter was referred to the Office of Hearings and Mediation Services and assigned to Administrative Law Judge ("ALJ") Helene G. Goldberger. After conducting an adjudicatory hearing in accordance with the procedures of the State Administrative Procedure Act and 6 NYCRR Part 622 (see 6 NYCRR 199.10[b]), ALJ Goldberger prepared the attached hearing report. The ALJ recommended that respondents be found to have violated 6 NYCRR 199.10(c)(2) and (3) and RPTL § 480-a(5) and that a notice of violation be issued.[1]

I adopt the ALJ's hearing report as my decision in this matter, subject to my comments below. Department staff bears the burden of proof on the charges that it affirmatively asserts in its complaint (see 6 NYCRR 622.11[b][1]). Based upon the hearing record, Department staff carried its burden by a preponderance of the evidence (see 6 NYCRR 622.11[c]).

Respondents violated the applicable legal requirements by performing a commercial cut without providing notice to the Department, by failing to pay the stumpage tax on that harvest, and by failing to perform the culls required by their management plan.[2] Furthermore, I concur with the ALJ that the defenses that respondents raised are meritless. In particular, respondents, in engaging a logging company, had a duty to ensure that the logging was performed pursuant to their management plan and in accordance with the applicable legal requirements.

I hereby direct Department staff to issue a notice of violation to respondents in accordance with RPTL § 480-a(7) and 6 NYCRR 199.10. The RPTL provides that, in addition to the owner, the Department shall send a copy of the notice of violation to the county treasurer of the county in which such tract is located (see RPTL § 480-a[7][f]). The applicable regulations further provide that notice be given to the appropriate assessor (see 6 NYCRR 199.10[e]). Accordingly, Department staff is directed to send a copy of the notice of violation, together with a copy of this order, to the County Treasurer of the County of Chenango, and the Assessor of the Town of German.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

I. Respondents Raymond Hansen Sr. and Deborah Hansen are adjudged to have violated:

A. 6 NYCRR 199.10(c)(2) and RPTL § 480-a(5), for failing to provide the Department with notice of a proposed cutting on a certified eligible tract and failing to pay the appropriate tax on the stumpage value of the merchantable forest crop; and

B. 6 NYCRR 199.10(c)(3), for failing to comply with the management plan for the certified eligible tract.

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[1] The language of the regulations is taken directly from the authorizing statute (see RPTL § 480-a[7][a][ii] and [iii]).

[2] The factual record is sufficient to establish respondents' liability. Although the hearing report draws inferences regarding respondents' motivations, I do not adopt that portion of the hearing report.

II. Department staff is directed to issue a notice of violation to respondents and shall transmit copies of such notice, together with a copy of this order, to the County Treasurer of the County of Chenango, and to the Assessor of the Town of German.

III. All communications from respondents to the Department concerning this order shall be made to Margaret A. Sheen, Esq., Assistant Regional Attorney, NYSDEC Region 7, 615 Erie Boulevard West, Syracuse, New York 13204-2440.

IV. The provisions, terms, and conditions of this order shall bind respondents Raymond Hansen Sr. and Deborah Hansen, their heirs, successors and assigns, in any and all capacities.

For the New York State Department of Environmental Conservation

/s/

By: _____

Alexander B. Grannis
Commissioner

Dated: December 22, 2009
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

- of –

Alleged Violations of Section 480-a of the Real Property Tax Law and Part 199 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York by:

RAYMOND HANSEN SR. & DEBORAH HANSEN,

Respondents.

DEC Case No. R7-20090526-46

HEARING REPORT

- by -

_____

Helene G. Goldberger
Administrative Law Judge

Proceedings

Pursuant to § 480-a of the Real Property Tax Law (RPTL) and Parts 199 and 622 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), an administrative enforcement hearing was held before Administrative Law Judge (ALJ) Helene G. Goldberger, New York State Department of Environmental Conservation (Department or DEC), Office of Hearings and Mediation Services (OHMS) on October 26, 2009, in the Department's Region 7 office, Syracuse, New York.

Along with a cover letter dated April 9, 2009, staff of the Department's Region 7 office sent a notice of intent to issue a notice of violation to Raymond Hansen Jr., Raymond Hansen Sr., and Deborah Hansen. This notice concerned the Hansen property in the Town of German, Chenango County that may no longer be eligible for tax exempt status under the 480-a program of the RPTL based upon a) a failure to give notice to DEC of a proposed cutting on such tract; b) failure to comply with the management plan approved by the Department; c) failure to amend the work schedule so that it is at least as long as the commitment period of the tract; and d) failure to maintain at least 50 acres unaffected by unauthorized cutting.[1] By letter dated May 4, 2009, Deborah Hansen wrote to the Department requesting a hearing pursuant to 6 NYCRR § 199.10, thereby commencing this proceeding. On June 30, 2009, by certified mail, the Department staff served the respondents Raymond Hansen Sr. and Deborah Hansen with the notice of hearing and complaint. By an undated letter received by the Region 7 office on July 29, 2009, Ms. Hansen submitted a response.

After this matter was referred to the OHMS, the ALJ convened a conference call on July 30, 2009 in which Assistant Regional Attorney Margaret Sheen explained in response to Mrs. Hansen's request for leniency that the Department did not make a penalty determination; rather, DEC's sole jurisdiction was over the forest program. Ms. Sheen stated that the Chenango County Treasurer would make the penalty determination and I suggested that Mrs. Hansen contact that office to discuss those issues. On August 27, 2009, in a second conference call, Mrs. Hansen reported that she had difficulties in retaining legal counsel. She also expressed her understanding that DEC had discretion as to how many years of back taxes would have to be paid. Again, Ms. Sheen and I stated that DEC's sole role was to determine if there was a violation and if so, this notice would be sent to the county treasurer for the penalty assessment. In a letter dated August 27, 2009 to the parties in which I summarized our discussion in the conference call, I also cited the RPTL provisions that contain defenses to allegations of violation -- RPTL §§ 480-a(7)(b) and 480-a(8)(d). Mrs. Hansen requested additional time to obtain counsel and to decide whether she wished to proceed to hearing. We agreed to convene another conference call on September 3, 2009. During the September 3rd call, Mrs. Hansen confirmed the respondents' wish to proceed to a hearing and we selected October 26, 2009 for this purpose. Mrs. Hansen reported that she had retained counsel but was not able to provide the contact information at that time.

[1] The staff has named only Raymond Hansen Sr. and Deborah Hansen as the respondents in the complaint. Various documents have Raymond Hansen Jr. named as well. From the testimony given by Raymond Hansen Jr., it appears that he assists his parents, Raymond Hansen Sr. and Deborah Hansen, and all three of them are named on the 2000 application for certificate of approval. Exhibit A to Complaint, Hearing Exhibit 1; transcript page 74.

By letters dated October 19, 2009, James F. Taylor, Esq. and Ms. Sheen provided their witness lists to the ALJ.

Department staff appeared at the hearing by Margaret A. Sheen, Esq. Region 7, Syracuse, New York. To support its case, Department staff presented two witnesses: Supervising Forester Robert Slavicek and Forester Paul Romanenko.

Repondents appeared at the hearing by James F. Taylor, Esq., Taylor & Mavady, Sherburne, New York. Respondents presented one witness: Raymond Hansen Jr.

The transcript was received by the OHMS on November 18, 2009. The ALJ sent the parties an *errata* sheet on December 2, 2009 and gave the parties until December 11, 2009 to provide additional corrections to the transcript. Because the parties made closing statements at the conclusion of the hearing, the record closed on December 14, 2009, the due date for the parties' transcription corrections.[2] My office received the Department staff's additional corrections on December 14, 2009. Mr. Taylor faxed a letter to me on December 11, 2009 in which he gave his concurrence with the corrections I had made. Mr. Taylor did not make any objections to staff's corrections and I have adopted them.

Department Staff's Charges and Relief Sought

Based upon a staff inspection in April 2009, the Department alleged that the respondents had performed a commercial cutting in violation of the management plan; failed to provide notice of the cutting to DEC; failed to timely pay the appropriate tax on the stumpage value of the forest crop; and failed to successfully cut or girdle trees that were marked for pre-commercial cutting pursuant to the management plan. Complaint, Hearing Exhibit (Ex.) 1.[3]

Department staff seeks an order issuing a notice of violation to the respondents, the Town of German Assessor's Office, and the Chenango County Treasurer finding that the 96 acres owned by the respondents and previously certified by the Department as eligible for the forest land tax exemption is no longer eligible for the forest land tax exemption, and for such other further relief as may be just and proper. *Id.*

Ms. Sheen closed the Department's case by stating that the only issues in the proceeding were whether the respondents failed to give notice of the commercial cutting; failed to pay the tax on the timber harvested; and failed to comply with the program. Hearing transcript, page (TR) 101-102. She emphasized that the defense provided in RPTL § 480-a(7)(b) that permits the Department to determine that a violation has not occurred despite the failure to adhere to the management plan is based upon circumstances beyond the control of the owner and a finding that the failure can be corrected forthwith without significant effect on the purpose of the plan. TR 102-104. Ms. Sheen stated that even if it could be found that the respondents' actions were beyond their control, the logging performed was so extensive that the program could no longer apply due to the lack of the required minimum acreage of 50 acres. TR 103-104. She argued

[2] In error, I gave the parties until Sunday, December 13, 2009 to send transcript corrections to the OHMS. Because December 14th was the next working day, that is the date the record closed.

[3] A list of hearing exhibits is annexed to this report.

that the respondents failed to follow through on their commitments and chose to rely on a bad contract. TR 103.

According to Department staff, in the event the Department issues a notice of violation, pursuant to RPTL §§ 480-a(7)(c), (d), and (e), a penalty may be imposed upon respondents by the treasurer of the county in which the 480-a tract is located and computed for each of the municipal corporations in which the tract is located. RPTL § 480-a(7).

Respondents' Position

The respondents did not submit a formal answer pursuant to 6 NYCRR § 622.4. Instead, Mrs. Hansen sent a letter to DEC that was received on July 29, 2009 in which she indicates that she and the family had made mistakes and would like to be able to stay in the program in order to afford to retain the property. Ex. 2. At the hearing, Raymond Hansen Jr., the son of the respondents, testified that their neighbor Dave Fox approached them to take logs and that Mr. Fox and the alleged forester that was retained, Bob Davis, represented that they would arrange for the amendment of the Hansens' 480-a commitment. TR 77-79. The respondents presented the contract that they entered into with Mr. Fox as a hearing exhibit. Ex. 7. Mr. Hansen maintained that because they believed they had retained professionals to take care of everything associated with the logging operation, including any issues with the 480-a program, it was not their responsibility to go to the land to check on the logging operation or contact DEC to ensure that the plan had been amended to reflect these activities. TR 92-95. Mr. Hansen explained that their home and workplace were distant from the forest tract and therefore, it was a burden to go there. TR 92. Mr. Hansen stated that although the respondents have not met some of the requirements of the plan with respect to culling of trees, they would like the opportunity to fulfill those requirements. TR 86-87, 97. When asked by Ms. Sheen on cross-examination why the respondents did not retain the services of Forecon, Inc., the forestry company that had prepared the respondents' management plan, Mr. Hansen stated that he did not agree with Forecon's "programs". TR 91.

Mr. Hansen stressed that the respondents cared much for this property and wanted the Department to give them the opportunity to continue in the program. TR 86-87. He emphasized that they did not understand the technicalities of the program and he testified that he did not know how large a tax exemption the family was receiving in return for the commitment to the program. TR 77, 93-94, 96.

Mr. Taylor argued in his closing statement that the respondents did not commit a willful violation of the law and in the interests of justice they should be permitted to stay in the program. TR 99-101.

FINDINGS OF FACT

Introduction

1. In November 1993, Forecon, Inc. submitted a forest management plan to DEC pursuant to the 480-a program on behalf of landowner Edwin J. Scannell for property

located in the Town of German, Chenango County, New York. The parcel was identified as 129-1-14.4 and contained a total of 105 acres. Of this acreage, Mr. Scannell dedicated 92 acres to the plan. Ex. 3.

2. In 2000, the new landowners, Raymond R. Hansen Jr., Raymond R. Hansen Sr., and Deborah A. Hansen submitted an application to DEC for a certificate of approval for 96 out of the 105 acres to be committed to the requirements of the 480-a program. Ex. 3.

3. For each of the years that the respondent have committed to the 480-a program (2001-2009), they have completed and executed a commitment of land to continued forest crop production. Ex. 6. This commitment provided that it must be filed with the assessor and regional forester each year; that the respondents commit to a ten-year work schedule listed on the certificate of approval; that a conversion of any part of the eligible tract would result in a penalty as set forth in 480-a(7); and that they had adhered to all prior commitments. After receipt of the commitments each year, the Department staff sent the respondents a notice of certificate of approval that calls for specific work projects to be completed in the subsequent tax year. Ex. 6. In each of these notices, it is stated that in the event an approved treatment activity calls for a commercial treatment ". . . a Notice of 'Commercial Harvest' must be submitted 30 days prior to beginning the activity, except for the allowance of removal of ten full cords of fuelwood allowed for the landowner's <u>own</u> personal use." [emphasis included in original.] *Id.*

4. In January 2003, Forecon, Inc. submitted to DEC a five-year update to the management plan on behalf of Ray Hansen Jr. Ex. 3. In this update, Forecon, Inc. described the various stands of trees and indicates what actions needed to be taken in each stand. *Id.* Particularly, the prescriptions called for culling of a certain percentage of beech, red maple, and hemlock to reduce overcrowding in stands 1 and 3 and to encourage the growth of the more desirable trees – cherry, hard maple, and birch. *Id.*, TR 19-21. On December 11, 2003, the Department issued the respondents a certificate of approval for the 5-year update. Ex. 3. This certificate contained a work schedule to follow over a course of 15 years. *Id.* Overall, the objective of the plan was to ensure "even age management" so that the last standing trees would be replaced by the same species growing up. TR 17.

<u>Commercial Cutting and Defenses</u>

5. On December 18, 2006, respondents Raymond R. Hansen Sr., Deborah A. Hansen and Raymond R. Hansen Jr. entered into a written contract with Foxes Logging of Mallory, New York in which the Hansens agreed to sell Foxes all standing timber which was at least sixteen inches through breast height marked in blue paint. Ex. 7. In this contract, the Hansens guaranteed that there were no encumbrances that would prevent the sale or removal of the timber. *Id.* The Hansens were paid $15,000 for the timber. *Id.*; TR 92. The contract also noted that an "additional contract will be

completed by forester Bob Davis in relation to this contract" but does not specify what this additional contract would accomplish. Ex. 7.

6. The Hansens relied upon the Foxes and Mr. Davis to make whatever necessary arrangements were necessary with respect to the forest management plan to go ahead with this timber sale. TR 79-80, 94-95. The Hansens never performed any on-site inspection of the logging project, they elected not to consult with Forecon, Inc., the company that had submitted the forest management plan update on their behalf; and they did not contact DEC to determine whether the timber sale arrangements were in compliance with their commitments pursuant to the 480-a program. TR 81, 90-93.

7. On March 2, 2009, DEC forester Paul A. Romanenko wrote to the Hansens noting that their five-year management plan update that was due to be submitted during the 2008-2009 tax law year had not been submitted. In the letter, Mr. Romanenko explained that the Hansens were required to contact the DEC Supervising Forester Robert Slavicek to discuss this matter in order to avoid a notice of violation. Ex. 4. By letter dated March 18, 2009, Mr. Romanenko submitted an agreement to the Hansens for their signature to resolve the potential violation for failure to timely submit the updated management plan. Raymond Hansen Jr. signed the agreement on March 23, 2009 and it was received by the DEC Sherburne office on March 25, 2009.

8. By letter dated April 7, 2009, Forecon Inc. Regional Office Manager Jeff Denkenberger wrote to Raymond Hansen (letter doesn't specify which Raymond Hansen) pursuant to Mr. Hansen's request that Forecon, Inc. perform the five-year update on the 480-a management plan that was due on May 15, 2009. Ex. 4. Mr. Denkenberger reported that Forecon, Inc. inspected the property on April 1, 2009 and found that the required cull removal in stands 4 and 4a had not been completed. *Id.* In addition, in stand 1 (comprised of 64 acres) and to a degree into stand 4, the Forecon, Inc. staff found that a commercial harvest had taken place. *Id.* This commercial harvest did not comport with the management plan requirements that had instead called for a cull of lower value trees. *Id.*; TR 41. Mr. Denkenberger reminded Mr. Hansen in his letter that Forecon, Inc. had written to the respondents on March 1, 2005, July 6, 2006, December 21, 2007, August 8, 2008, and March 4, 2009 to remind them of their obligations pursuant to the management plan and the potential for violations if the work was not done in a compliant fashion. Ex. 4. As a result of the commercial cut, Mr. Denkenberger concluded that it did not make sense to go forward with the five-year update. *Id.*

9. By letter dated April 7, 2009, Mr. Denkenberger informed Dave Sinclair, Regional Forester, of the problems encountered at the Hansen property that halted the update. Ex. 4, TR 41.

10. Department staff members Slavicek and Romanenko visited the Hansens' property on April 9, 2009 and September 25, 2009. During these site visits, the foresters confirmed that a commercial high grade cut had been performed on stand 1 of the Hansen property contrary to the management plan. TR 42-52; Exs. 5a-aa. They

observed that valuable species such as sugar maple and black cherry had been removed – these trees were of the size to be a timber product. Exs. 5f, g, h, j, k, p, q; TR 20-21. The DEC foresters also observed that dozens of less valuable trees had been marked to indicate that they were to be culled consistent with the management plan but had not been cut. Exs. 5a, b, c, d, , e, l, m, n, p, q, r; TR 20-21, 41-43.

11. Because the valuable hardwood trees had been removed prior to a time when there were sufficient saplings to replace them, the objective of the management plan had been destroyed by the commercial logging operation. TR 21-23, 33.

12. By letter dated April 9, 2009, Department staff notified the respondents of its intent to file a notice of violation and offered the respondents an opportunity to meet with DEC representatives and discuss the alleged violations. By letter dated May 4, 2009, the respondents requested a hearing.

DISCUSSION

Jurisdiction and authority to initiate this administrative proceeding is based upon RPTL § 480-a. In RPTL § 480-a, the Legislature created a program to encourage conservation of viable forest lands by giving private woodland owners a real property tax exemption in exchange for a commitment to manage identified tracts pursuant to a Department-approved plan.

Forest lands eligible for this program are privately owned tracts of at least fifty contiguous acres devoted to production of forest crops. RPTL § 480-a(1)(e). An owner of eligible property must submit an application to DEC for certification of the lands, including a proposed management plan. RPTL§§ 480-a(1)(a), (2)(a). Prior to granting an application for certification, the Department must ensure that the proposed tract is eligible and approve the management plan. RPTL § 480-a(1)(a). This plan must contain requirements and standards to ensure the continuing production of a merchantable forest crop selected by the owner. *Id.* The plan must be prepared by or under the supervision of a forester. *Id.* Once these requirements have been met, the Department will forward to the owner a certificate of approval, the approved management plan, and a copy of a commitment certified by the Department for the eligible tract. RPTL §§ 480-a(1)(a), (b), (2)(a). The landowner may then file the certificate of approval with the county clerk which shall give notice that the tract is subject to the provisions of 480-a as well as file an application with the appropriate assessor. RPTL § 480-a(3)(a).

The respondents own a tract of forest land in the Town of German, County of Chenango, New York, for which they received a forest land tax exemption provided for by RPTL § 480-a and 6 NYCRR Part 199. In April 2000, the respondents submitted to DEC an application for a certificate of approval and their management plan pledging to commit 96 acres of parcel # 129-1-14.4 to continued forest crop production to qualify this acreage for the forest land tax exemption. Ex. 3. In that same month, DEC staff issued the certificate of approval. Ex. B to complaint. However, as brought forth by the testimony of all the witnesses including Mr. Hansen, the respondents allowed a commercial cut of a significant portion of the land dedicated to the forestry program in violation of their commitment. The respondents do not dispute that the cut took place, nor do they contest the Department staff's testimony that they had not acted in

conformity with the management plan. Instead, they contend that it was not their fault because they relied upon "professionals" to ensure that the work done on the property would not violate the 480-a program.

It is clear that the respondents were swayed by the lure of a substantial sum of money and rather than ensure that their actions were in conformity with their 480-a commitments, they decided to hope for the best. The very contract that they entered into with the logging company provides that there were no encumbrances on the property to prevent the logging operation. Ex. 7. Yet, the respondents had repeatedly committed to certain actions on their lands in order to obtain a significant tax exemption. Ex. 6. Surely, if they had honest doubts about the commercial contract and logging operation, they would have contacted the forestry company – Forecon, Inc. - that had advised them on their 480-a program. They chose not to seemingly because they would have received an answer that would not have been favorable to the quick economic returns of the logging operation. Nor did they attempt to contact the DEC Region 7 office to get advice and/or to make sure that Mr. Davis had indeed "amended" their plan to allow the cutting.

Section 480-a(7)(b) provides:

> Nothwithstanding the finding of an occurrence described by subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision, the department, upon prior notice to the appropriate assessor, may determine that a violation has not occurred if the failure to comply was due to reasons beyond the control of the owner and such failure can be corrected forthwith without significant effect on the overall purpose of the plan.

It would appear that the respondents are seeking a finding by the Department that they meet the abovementioned defenses.[4] I do not find that they do.

First, their actions in retaining the logging company were not beyond their control. They voluntarily made the determination to sell the logs and not to consult with DEC or their own forestry consultant to ensure that such action complied with their management plan. To say they relied upon others to do this work for them without any proof that it had been performed amounts to a failure of responsibility that cannot be justified or condoned. Choosing to bury one's head in the sand or turn the other way rather than ensure that the logging operations were appropriate is not a valid defense. As ALJ Casutto found in *Matter of Williams and Mariano, Inc.*, 2009 N.Y. Env Lexis 23 (decided 4/29/09) the respondents had a duty to inspect and insure that the logging was performed appropriately and pursuant to their management plan.

Even if one could find that these landowners were misled by the logging company's promises and therefore the failure to comply with the program was outside their control, the second part of the defense cannot be met. The DEC witnesses testified that because most of the valuable hardwood had been removed, there was less than 50 acres of woodland that would be

[4] Section 480-a(8)(d) provides that the owner of a certified tract shall not be subject to a penalty that would otherwise apply if the forest crop through no fault of the owner is destroyed by an act of God, natural disaster, trespass or war. However, the respondents made no such claim nor was there any evidence of such *force majeure.*

available and thus, there was insufficient forest to meet the "eligible tract" requirements of the 480-a program. TR 21, 52; RPTL § 480-a(1)(e). The respondents asked to be allowed to complete their obligations under the management plan by performing the culls that they were required to do. TR 85-87. However, this culling would no longer serve to open up areas and light for the valuable trees that were now gone. TR 33. Because there had been insufficient time prior to the commercial logging for the young replacement trees to grow, such a culling would serve little purpose. TR 21-22. Thus, the damage that has been done could not be "corrected forthwith without significant effect on the overall purpose of the plan."

Respondents' counsel has asked that the Department act in the interest of justice to allow his clients to continue in the program. However, the Legislature in enacting the 480-a program to provide a substantial real property tax exemption for landowners that are willing to commit to manage their woodlands in a manner that would foster a viable forest has appropriately limited the defenses to violations of the applicable program. The equities under the program are that landowners who are not in the program must pay their full property taxes and those who are in the program and adhere to its requirements obtain a tax benefit. It would not be equitable or legal to allow the respondents to remain in the program despite their violations of it. As noted by Governor Carey in his 1976 memorandum accompanying his approval to amendments to the law, the amendments were important in order to prevent abuses by "developers, real estate speculators, rod and gun clubs and large estate owners and not just timber producers [that] would result in large shifts in tax burdens among property owners in various localities." *See*, Memorandum filed with Senate Bill 9602, A.R. 30046 (July 20, 1976) attached hereto. The Legislature modified the law specifically to ensure that the tax benefits contained in § 480-a would only benefit those who met the purposes of the Act – to support viable timber production.

Amendments to the law in 1987 that provided for the defenses claimed by the respondents did not detract from the purpose of the law to protect the economic and environmental purposes of the law – supporting a viable forestry that provides economic incentives as well as enhancement of clean air, recreational opportunities, wildlife habitat and natural beauty. The Legislature understood that for the State to gain these benefits, incentives must be given to the landowners who had the power to steward these forests appropriately. *See*, *Senate Memorandum in Support of S-1948* (Chapter 428, Laws of 1987) attached hereto. However, these incentives were only meant to benefit those that ". . . accept[ed] the responsibility of good forest management on such favored lands." *Id.*

Accordingly, I agree with Department staff that the respondents' defenses are not legally applicable and the Hansens must be held accountable for their acts and omissions as well as those of their agents/independent contractors in this proceeding.

CONCLUSION

The respondents acted in violation of their commitments pursuant to the 480-a program by: a) performing a commercial cut on the tract without providing notification to the Department in violation of 6 NYCRR §§ 199.10(c)(2) and 199.10(c)(3) and RPTL § 480-a(5); b) by failing to pay the stumpage tax on that harvest in violation of RPTL §§ 480-a(5); and c) by failing to perform the culls required by their management plan pursuant to 6 NYCRR § 199.10(c)(3).

Pursuant to RPTL §§ 480-a(7)(a)(i), (ii), (iii), and (iv), I recommend that the Commissioner direct the Department staff to issue a Notice of Violation and transmit copies of such notice, together with a copy of the Commissioner's order, to the County Treasurer of the County of Chenango, and to the Assessor of the Town of German.

Albany, New York
December 17, 2009