

Department of Environmental Conservation

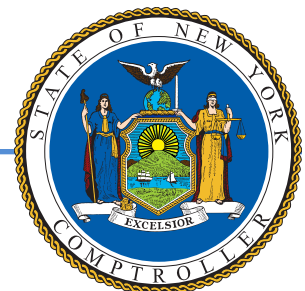
Oversight of New York State Forest Tax Programs

Report 2020-S-51 | April 2022

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

[View the Interactive Story Map \(2020-S-51\)](#)

Objective

To determine if the Department of Environmental Conservation (Department) is adequately monitoring the 480 and 480a private forest programs to ensure forest land is appropriately enrolled and landowners are adhering to requirements to assist in the protection of the environmental benefits of the State's forest resources. The audit covers properties that received tax exemptions under the 480 and 480a programs for the period January 2017 through December 2019 and observations and actions taken by the Department to monitor those properties through July 2021.

About the Program

New York State's land area of 30.2 million acres comprises almost 19 million acres of forest, which provide many public benefits, including clean air and water, carbon storage, forest products (e.g., timber), jobs, scenic beauty, and outdoor recreation opportunities. Of the 19 million acres, about 14 million acres (74%) are privately owned. To encourage the long-term management of privately owned woodlands to sustainably produce forest crops and increase the likelihood of both healthy forests and a stable forest economy, in 1974 New York enacted Real Property Tax Law 480a – a tax incentive program (480a Program) for qualifying private forest landowners. Forest land enrolled in the 480a Program receives an annual property tax exemption of up to 80%, which can result in significantly less local taxes (school, county, and municipal) for the landowner. In return, the landowner commits the land to the production of forest crops for the next succeeding 10 years. The 480a Program has an annual recommitment; each year a landowner receives a tax break, they must submit an annual commitment form recommitting their land for the next succeeding 10 years. While the local assessors and landowners play a part in the 480a Program, the Department has general oversight responsibility. To enroll in the 480a Program, landowners must apply to certify their land through the Department. Forest land is eligible if the tract is at least 50 contiguous (adjoining) acres exclusively devoted to and suitable for forest crop production (e.g., timber) and stocked with a stand of forest trees sufficient to produce a merchantable forest crop within 30 years from when it is certified by the Department. In addition, the landowner must submit a forest management plan, prepared by a qualified forester, for the Department's approval. The 480a Program is the second iteration of New York's forest tax program. The 480 Program, also known as the Fisher Forest Act, dates back to 1926 – and the land management goals and requirements reflected the needs of the time. When the current 480a Program took effect, enrollment into the 480 Program ended, but there currently remains land committed ("grandfathered") under the former program; these landowners have been benefiting from local tax reductions – and lesser qualifying standards – for over 45 years.

Key Findings

We identified weaknesses in several aspects of the Department's oversight of the 480a Program – namely, monitoring and enforcement – that undermine its ability to ensure 480a Program forest land continues to be protected and enhanced as an economic and environmental resource of major importance and that only eligible properties are receiving local tax exemptions. For example:

- For a sample of 135 properties (of 6,858) enrolled in the 480a Program, we found 45 (33%) that were not in compliance with program requirements and/or may have been improperly benefiting from the local tax exemption. The landowners of these 45 properties paid approximately \$525,745

less in local taxes for a 3-year period (2017–2019) because these properties received an annual reduction (\$6,150,842) on their land value (\$8,179,573). We also found weaknesses with monitoring and enforcement of the management plans and submission of annual commitments.

- Of the 45 properties we identified with issues, five belonged to a single landowner, who was also a developer. We found the Department failed to monitor this landowner’s compliance on multiple levels, which allowed the landowner to inappropriately take advantage of the 480a Program’s tax benefit for a period of years when the committed lands were being converted to a three-phase housing development.

Additionally, while there are gaps in the law regarding oversight responsibility under the 480 Program, there are 795 properties, spanning 260,669 acres, for which landowners have been benefiting from local tax reductions for over 45 years that go largely unmonitored by the Department or localities. In most cases, the Department is not aware which properties are enrolled in the program.

Key Recommendations

- Improve communication and partnerships with local assessors to ensure that properties are appropriately enrolled, eligible, and benefiting from the 480a and 480 Programs; and that management plans are followed, adequate records are maintained, enforcements are applied when violations occur, penalties are satisfied, and other administrative changes the Department deems necessary to improve the 480a and 480 Programs are made.
- Develop and maintain a centralized statewide database to improve oversight and administration of statewide forest tax programs, including compliance with management plans, work schedules, and annual commitments.



**Office of the New York State Comptroller
Division of State Government Accountability**

April 20, 2022

Basil Seggos
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Dear Commissioner Seggos:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of New York State Forest Tax Programs*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
480 Program	1926 Real Property Tax Law 480 Program (aka Fisher Forest Act)	<i>Key Term</i>
480a Program	1974 Real Property Tax Law 480a Program	<i>Key Term</i>
Assessor	Local government official who calculates and applies exemptions to the landowner's land value for tax purposes	<i>Key Term</i>
Certificate	Certificate of approval	<i>Key Term</i>
Committed land	Land enrolled in the 480 and 480a Programs	<i>Key Term</i>
Department	Department of Environmental Conservation	<i>Auditee</i>
GIS	Geographic Information System	<i>Software</i>
Parcel data	New York State parcel data provided by the Department of Taxation and Finance	<i>Key Term</i>

Background

New York State's land area of 30.2 million acres comprises almost 19 million acres of forest, which provide many public benefits, including clean air and water, carbon storage, forest products (e.g., timber), jobs, scenic beauty, and outdoor recreation opportunities. Of the 19 million acres, about 14 million acres (74%) are privately owned. To encourage the long-term management of privately owned woodlands to sustainably produce forest crops and increase the likelihood of both healthy forests and a stable forest economy, in 1974, New York enacted Real Property Tax Law 480a – a tax incentive program (480a Program) for qualifying private forest landowners.

Forest land enrolled in the 480a Program receives an annual property valuation exemption of up to 80%, which can result in significantly less local taxes (school, county, and municipal) for the landowner. In return, the landowner commits the land to the production of forest crops for the next succeeding 10 years. The 480a Program has an annual recommitment; each year a landowner receives a tax break, they must submit an annual commitment form recommitting their land for the next succeeding 10 years.

The Department of Environmental Conservation (Department) has general oversight responsibility for the 480a Program, which is executed by its Central Office and 23 satellite sub-regional offices in seven of its nine regions. To enroll in the 480a Program, landowners must apply to certify their land through the Department. Forest land is eligible if the tract is at least 50 contiguous (adjoining) acres exclusively devoted to and suitable for forest crop production (e.g., timber) and stocked with a stand of forest trees sufficient to produce a merchantable forest crop within 30 years from when it is certified by the Department. In addition, the landowner must submit a forest management plan, prepared by a qualified forester, for the Department's approval. The forest management plan must include the following:



Forest tract in Clinton County

- Requirements and standards to ensure the continuing production of a merchantable forest crop (e.g., forest stocking, cutting).
- Provisions to accommodate endangered and threatened animals and plants.
- A map clearly identifying boundary lines and acreage of eligible forest land, ineligible land, and land not to be committed, as well as all physical features, such as buildings, roads, open fields, and streams or lakes.
- A 15-year work schedule of all work to be done each year, including all planned commercial and non-commercial forest harvests or thinnings, road construction, and other management practices required for certification. The

work schedule must be updated every 5 years thereafter and must be followed for the next 10 consecutive years after obtaining the annual exemption.

Once all the requirements are met, the Department issues the landowner a certificate of approval (certificate), which specifies key information from the forest management plan, such as the acreage of the eligible forest land, ineligible land, and non-committed land; the location of the forest land; and the work schedule. Department approval is required for any changes to certificates, including the work schedule. To receive the exemption, the landowner submits an exemption application to the local assessor, as well as a copy of the certificate and the map from the management plan. The assessor uses this information to determine the value of the exemption.

Landowners are required to follow the approved forest management plan for the duration of the commitment. Furthermore, because merchantable forest crop is subject to a tax upon cutting (stumpage tax), pursuant to the Real Property Tax Law, landowners are also required to submit a Notice of Commercial Cutting to the Department not less than 30 days prior to a scheduled cutting. Where landowners fail to comply with their forest management plan (e.g., conversion of committed land for other use) or the Notice of Commercial Cutting requirement, the Department can issue notices of violation.

If a landowner decides to withdraw their property from the program, penalties may apply:

- The landowner can stop filing the annual commitment form, thus losing eligibility for tax benefits, but still adhere to the management plan for the remainder of the commitment period and incur no penalty.
- The landowner can request to withdraw the land immediately. The penalty for full removal of all the committed land is 2½ times the tax savings received in up to 10 prior years, including compound interest over the period.
- The landowner can convert only a portion of the committed land to another use (e.g., commercial or residential). The penalty is 5 times the tax savings on the portion plus interest. The Department will revoke the certificate upon proof that penalties, stumpage taxes, and interest have been fully paid or satisfied. If only a portion of the certified forest land was converted, the revocation applies only to that portion; the rest of land on the certificate, if still eligible, remains committed.



Forest tract in Clinton County

According to the Department, enrollment into the 480a Program has increased by 30% since 2011 and continues to steadily increase. In 2019, the 480a Program had 1,326,144 acres of forest land committed and certified by the Department – a 5%

increase since 2017. These forest acres are contained within 1,439,729 acres of 6,858 properties; and landowners benefited from an approximate local tax reduction of \$62 million between calendar years 2017 and 2019.

The 480a Program is the second iteration of New York's forest tax program. The 480 Program, also known as the Fisher Forest Act, dates back to 1926 – and the land management goals and requirements reflected the needs of the time. According to New York statewide parcel data, 795 properties, totaling 260,669 acres, remain committed (“grandfathered”) under the former program; these landowners have been benefiting from local tax reductions – and lesser qualifying standards – for over 45 years. For example, the 480 Program did not require approval of management plans or annual commitment forms and had a lower acreage requirement – a minimum of 15 acres – for eligibility. While the requirements are less stringent, the former program required some Department oversight of the committed land. For these properties, thinning of forests to improve forest growth is allowed, but only with the Department's approval. Under certain circumstances, the Department can direct the landowners to cut timber according to the principles of practical forest management. Forest land remains in the 480 Program (classified as eligible forested or reforested land) if the landowner continues to manage the forest land in the manner that was prescribed by the Department at the time.

With few exceptions, the local costs associated with the tax exemptions from both the 480a and 480 Programs are borne by owners of taxable property in the jurisdictions where the certified lands are located. The degree to which a municipality's tax base is reduced depends on the number of non-exempt tracts and the extent of other property types in the community. Municipalities that have primarily forest land typically have narrow tax bases and comparatively high levels of tax levy absorption by non-exempt tracts.

Audit Findings and Recommendations

We identified weaknesses in several aspects of the Department's oversight of the 480a Program – namely, monitoring and enforcement – that undermine its ability to ensure that 480a Program forest land continues to be protected and enhanced as an economic and environmental resource of major importance and that only eligible properties are receiving local tax exemptions.

For a sample of 135 properties (of 6,858) enrolled in the 480a Program, we found 45 (33%) that were not in compliance with program requirements and/or may have been improperly benefiting from the local tax exemption. Also, our sample properties were included as entirely or part of committed land for 100 certificates for which we found weaknesses with monitoring and enforcement of the management plans and submission of annual commitments. Issues we identified included:

- Property owners who earned exemptions for land not enrolled in the Program, for ineligible land on an enrolled property, and for land that did not meet the acreage requirements or that has been developed;
- Landowners receiving an annual exemption without an annual commitment form on file;
- Landowners without the required work schedule updates for their enrolled land on file; and
- Landowners not in compliance with their forest management plans.

The landowners of these 45 properties paid approximately \$525,745 less in local taxes for a 3-year period (2017–2019) because these properties received an annual reduction (\$6,150,842) on their land value (\$8,179,573).

Notably, of the 45 properties we identified with issues, five belonged to a single landowner, who was also a developer. We found the Department failed to monitor this landowner's compliance on multiple levels, which allowed the landowner to inappropriately take advantage of the program's tax benefit for a period of years when the committed lands were also being converted to a three-phase housing development.

While local assessors are ultimately responsible for ensuring that only eligible acres receive tax benefits, the success of the 480a Program overall hinges on the efforts of both the localities and the Department. Both possess information that could assist the other in overseeing their respective responsibilities, but their limited communication is a roadblock to knowledge-sharing. Improved communication and partnerships between the assessors and the Department and a modernized data collection and monitoring system could enhance the integrity of the 480a Program.

Certain aspects of landowners' management plans can only be monitored via visual inspection, such as re-marked committed forest boundary lines or timber stand improvements. However, according to Department officials, staffing shortages within the Department preclude this level of monitoring. Therefore, the Department has no assurance that the correct committed forest land is appropriately being maintained.

The Department also lacks a centralized statewide system to track and monitor the committed forest land enrolled in the programs. As a result, staff in the Department's 23 sub-regional offices maintain the 480a Program information inconsistently. A centralized database would ease some of the administrative inefficiencies and allow resources to be allocated to other areas needing attention.

Additionally, although there are gaps in the law regarding oversight responsibility under the grandfathered 480 Program, there are still 795 properties, with 260,669 acres, for which landowners have been benefiting from local tax reductions for over 45 years that go largely unmonitored by the Department or localities. In most cases, the Department is not even aware which properties are enrolled in the program. While we recognize there are gaps in the law assigning specific oversight responsibilities of areas of the 480 Program, we found there are existing issues, such as properties that lack records or that no longer meet eligibility requirements, that should be addressed administratively or through partnerships with localities. The Department should communicate and seek partnerships with the local assessors to remedy the issues surrounding eligibility as practicable.

480a Program

Eligibility and Enforcement

Our review of 135 properties identified 45 (33%) with questionable eligibility, including:

- Land not committed into the 480a Program but receiving an exemption (eight properties);
- Property with committed land inappropriately receiving an exemption on ineligible land (25 properties);
- Enrolled land that included partial uncommitted acreage and otherwise would not have met the size criteria (less than 50 contiguous acres) (two properties);
- Land inappropriately enrolled into the 480a Program without an approved management plan (five properties); and
- Inaccurate or insufficient documentation provided to be able to determine what land is committed/ineligible (five properties).

Using Geographic Information System (GIS) software and orthoimagery and/or, for some of these properties, physical observations from public roads, we further confirmed our findings. Examples of these are illustrated in Figures 1–3.



Figure 1 – Chemung County: Two properties with ineligible land benefiting from 408a Program enrollment. The ineligible land includes fields (*top left*), a Christmas tree farm (*top right*), and homestead land (*bottom right*). The combined properties' land is valued at \$116,757 and receives a \$93,405 exemption (80% reduction).



Figure 2 – Sullivan County: Ineligible homestead land benefiting from the 480a Program. The property's land is valued at \$176,024 and receives a \$140,819 exemption (80% reduction).

Figure 3 – Fulton County: Two properties had no land committed into the 480a Program. These two properties total 180 acres and are contained within the shapes of the green boundaries shown in the photo. All this land, including ineligible land (land containing water, fields, and structures), is receiving a 115% reduction – 35% more than the full 480a Program benefits. The land is valued at \$96,665 and receives a \$111,552 exemption. As a result, the landowner is not paying any local taxes on this land and is receiving an additional savings on the value of any structures on the property.



We also surveyed the local assessors and found additional issues with the 45 properties. For 12 properties, the assessors did not have or were not able to provide certificates. For 10 properties, the acreage on the certificate the assessor provided differed from the acreage on the certificate the Department provided.

Department officials stated that several of the exceptions identified are an error on the assessor's part and the Department has no authority to oversee their actions. We recognize that the assessors are ultimately responsible for ensuring that only eligible acres receive tax benefits and that some of these issues were not directly attributed to the Department. However, both the State and localities have a vested interest in the success of the 480a Program – the State to encourage the long-term management of woodlands to produce forest crops and thereby increase the likelihood of a more stable forest economy and the localities to ensure only eligible landowners receive exemptions as the tax reduction applied to these landowners is a cost that is distributed to other, non-exempt properties in the locality. Currently, the Department and assessors both possess information that could assist each other in overseeing the program but have limited communication with each other regarding the program. Improved communication and partnerships between the assessors and the Department could enhance the success of the 480a Program.

For example, the certificates issued by the Department to landowners, which the landowners then submit to assessors, do not always contain information that would assist the assessors in determining which land is committed or non-committed and should receive an exemption. This is because certificates with land contiguous across multiple properties are not always broken down by property or parcel; they may only denote a total number of eligible acreages. Because assessors apply exemptions based on parcels, it is difficult to use the information on the certificate to assess the correct exemption. Additionally, the process for transmitting approved certificates and management plans – from the Department to landowners to assessors, without a direct line of communication between the Department and assessors – introduces the risk that landowners may alter the information, which could affect the tax exemption (e.g., total eligible acreages). Although the

landowner has ultimate responsibility to provide this information to the assessor unaltered, providing this information to both the landowner and the assessor would help to reduce potential errors as well as program abuse. Officials agreed that better cooperation and communication between the Department and assessors would benefit both parties and result in a greater degree of program compliance. Department officials stated they intend to reach out to the New York State Assessors' Association to open a dialogue on this topic and suggest appropriate actions.

While some of the issues we found may fall to the assessors to correct, others originated with the Department due to poor monitoring, as demonstrated in the following example:

Of the 45 properties we identified with issues, five belonged to a single landowner, a developer. In 2001, the landowner applied to enroll land in the program but failed to submit the required forest management plan; the Department nevertheless approved a single certificate for approximately 250 acres of committed land. In 2012, the landowner, who intended to develop the land in three separate phases, requested the certificate be split into three certificates, effectively dividing the acreage into three parts comprised of multiple subdivided properties. The Department rejected this request because the landowner, again, did not provide the required information, including management plans. However, less than 4 months later, despite still having not received the required information, the Department approved the three certificates separating the land based on the three phases of the landowner's residential development outlined in the map provided to the Department (see Figure 4).

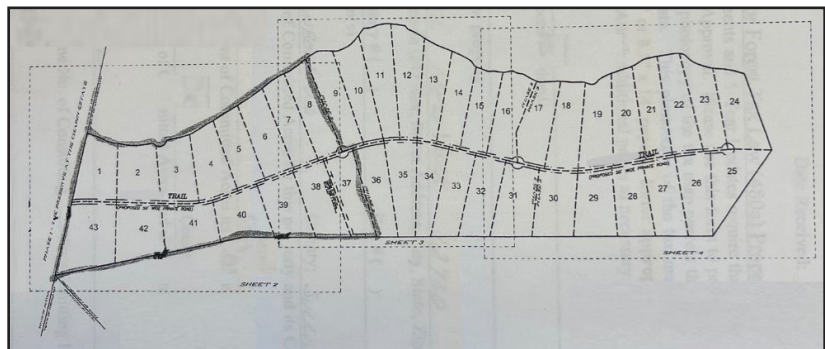


Figure 4 – Landowner's residential development map supplied to the Department.

With the land now divided into three separate certificates, the landowner was able to avoid paying higher penalties for withdrawing one certificate, with the multiple properties, as they phased in development. Department officials could not explain why the initial certificate was approved without a management plan or why the subsequent three certificates were approved, again without required documents, stating only that the employees involved have since retired and the documentation available provided no explanation.

Within 10 days of the Department issuing the three separate certificates in 2012, the landowner requested to withdraw one of them. The Department issued a violation based on the voluntary withdrawal of all acres on the certificate. The certificate was officially revoked, and the land removed from the 480a Program in 2015, after the Department was satisfied that all penalties, stumpage taxes, and interest had been fully paid. However, the landowner had already sold six of the subdivided properties and completed four homes prior to 2015 – before the land was removed from the

480a Program and therefore still committed. It is not clear whether the Department knew the development was occurring while the land was still committed – but there is no evidence that it was monitoring the activity on these properties.

The landowner also created other partial conversions on the two remaining committed tracts. For instance, a 3-mile road, developed for a future home development, was constructed through the original committed forest land, including the two remaining certificates, potentially impacting endangered or threatened animals, such as bald eagles, which were found to be nesting within a half mile. The Department issued a violation of a partial conversion for which the landowner should have been assessed a penalty of five times the local annual tax savings. However, the county treasurer issued an incorrect penalty of only half that (\$10,644).

Given the history of irregularities involved with these lands, it would have been prudent for the Department to monitor them more closely. We found that, as early as 2013, the developer created other partial land conversions on the forest land that was committed under the “second phase” certificate. Again, there is no indication of any monitoring as the Department never issued a violation, nor did it assess any penalty on approximately 6 acres that were sold in 2013 for \$650,000. A home was built on the property the same year – on land that is still committed under the remaining 480a Program certificate. The combined value of the land and the home is approximately \$1.6 million. Department officials stated they will review relevant files to ascertain the status of the land and determine what action is necessary.



Currently, all the land under these certificates is within a gated residential community.

In response, Department officials acknowledged they should not have issued certificates without approved management plans, and stated they are taking steps to resolve this and prevent it from happening again. If a forest management plan had been submitted and approved as required, it would have included information on how the landowner would ensure the land was devoted to forest crop production and plans for the continuing production of a merchantable forest crop for at least the next 10 years. While the intended future use of land may not matter in all instances, in this case it may have – in so much as the Department would generally not approve a management plan that does not contain this information (and possibly could not have approved it based on the landowner’s intended use), and therefore may not have issued certificates for these properties.

Compliance With Management Plans and Annual Commitments

The Department needs to improve monitoring to ensure that landowners are complying with 480a Program requirements and seek the resources needed to do

so, including: following management plans, appropriately maintaining and treating committed lands, updating work schedules timely, committing to the harvests on submitted schedules, and filing annual commitment forms.

We reviewed 100 certificates associated with 122 of the 135 properties in our initial sample to determine whether, between March 2010 and February 2020, the Department ensured that landowners were following their management plans, adhering to work schedules, and annually declaring their committed land for forest crop production for the succeeding 10 years. The 100 certificates covered the initially selected 122 properties plus an additional 593 properties and 72,498 total acres, of which 62,099 acres were committed to the 480a Program. We could not review information on 13 of the properties in our initial sample because the Department lacked records for eight and lacked management plans for five.

During the 10-year period, the Department should have received 138 updates to the management plans' work schedules for these 100 certificates. However, we found eight (6%) were missing and 34 (25%) were not updated within 5 years as required. Further, according to the management plans, landowners should have performed 120 commercial cuttings on their forest lands. However, the Department only received a timely Notice of Commercial Cutting for 79 (66%); 30 notices (25%) were missing and 11 (9%) were late. We also found that a Notice of Commercial Cutting for one certificate had an unscheduled and an incomplete cutting and for another certificate an unscheduled cutting.

The Department stated that they have limited staffing resources assigned to the 480a Program. As of October 2020, there were 28 field foresters assigned part-time to the direct day-to-day oversight of the 480a Program. One Regional Office is responsible for approximately 450,000 committed acres (34% of all acres in the 480a Program) and has one part-time field forester assigned. In many cases, certain aspects of the management plan require work that can only be confirmed by visual inspection by Department personnel, such as re-marking committed forest boundary lines or timber stand improvements. Officials stated that, due to staffing shortages, the Department is generally not monitoring these aspects of the management plan, although they are important to ensure the correct committed forest land is being maintained and treated. However, the Department also lacks certain information systems that could help maximize its limited resources and improve oversight of the program.

The Department does not have a centralized statewide information system to track and monitor the committed forest land enrolled in the programs. Rather, the Department's 23 sub-regional offices, within five of its seven regions, maintain the 480a Program information inconsistently (generally through various paper filing systems), which makes it difficult to track and utilize information about enrolled land. A centralized database would ease some of the administrative inefficiencies and allow the Department's limited resources to be allocated to other areas of priority.

Annual commitment forms, while not part of the management plan, are an important requirement of the 480a Program because they inform the Department about which lands will continue to be committed, and should be monitored, for the next

succeeding 10 years. A landowner's failure to file an annual commitment form can signal concerns with the property's continued eligibility in the program. Between calendar years 2017 and 2019, for the 100 certificates in our sample, landowners should have filed 272 annual commitment forms with the Department. We found 31 (11%) were not on file with the Department. For 10 of the 31, we confirmed with the local assessors that they also did not have a commitment form on file. All of the landowners have continued to benefit from the tax exemption and, as demonstrated in the prior example, the Department has no assurance that they are managing their lands in compliance with 480a Program requirements.

Officials at the three Regional Offices we visited stated that following up on missing commitment forms was a low priority. Central Office officials agreed that the properties lacking commitment forms should not receive tax exemptions but stated that they do not have the authority to monitor whether the assessors are removing the exemption. As noted with other aspects of the 480a Program, improved communication between the Department and the local assessors may help; currently, their communication is ad hoc, as issues arise.

Department officials agreed that the absence of a comprehensive up-to-date database, administrative inefficiencies, and insufficient staffing are significant factors contributing to the issues we identified. They stated that they are in the process of designing a centralized database that will greatly enhance their ability to track management plan updates and annual commitments as a means of monitoring program compliance, among other administrative functions. The Department previously posed various actions to the Executive that would have addressed some of the issues we identified with the 480a Program, but these efforts were unsuccessful. According to Department officials, they have refocused their efforts and developed regulations intended in part to reduce administrative workloads and expect to release them for public comment in the near future.

480 Program

Compared with the 480a Program, the 480 Program had significantly fewer prescribed requirements. The 795 properties, accounting for 260,669 acres, that remain in the former program maintain their previously granted exemptions and are not required to follow the requirements of the 480a Program. While the Department does have some responsibilities under the 480 Program, related to thinning and cutting for practical forest management, the law is silent on which function of government – the local assessors or the Department – has ultimate responsibility for program oversight. Therefore, Department officials stated they have limited responsibility for monitoring these properties.

Department officials also stated the age of the program and the enrolled properties makes them difficult to account for. The Fisher Forest Act dates back to 1926, and the 795 properties could have eligibility dating back almost 100 years. The Department has made multiple attempts at legislative changes to increase its ability to monitor the 480 Program, but the proposed changes have not been enacted.

While we agree the oversight responsibilities under the 480 Program are not entirely clear, as with the 480a Program and in the absence of legislative change, it is in the best interest of the State for the Department and localities to work as partners in overseeing these properties to the best of their ability to ensure the success of the program, leveraging both the subject matter expertise of the Department in forest management and the authority and proximity of local assessors.

Using parcel data, we determined that, between 2017 and 2019, landowners of the 795 properties received local tax breaks of about \$8.4 million. Our analysis of these properties identified issues that may render some of these properties ineligible under the 480 Program.

For 52 of the 795 properties, the committed parcels were smaller than the 480 Program requirement of 15 acres. These exemptions resulted in a total estimated local tax reduction of \$91,356 from 2017 to 2019. While it is possible that these properties originally met the size requirement and later were subdivided, they may no longer qualify for the exemption.

Of a sample of 25 properties, accounting for 1,065 acres, the Department had no record for 12 (48%). Officials acknowledged that they do not generally monitor the properties, and in many cases do not know where the properties are located. The records for the remaining 13 properties lacked sufficient detail to determine what lands were included in the 480 Program. Similarly, the local assessors were unable to provide records for 17 (68%) of the sample properties. Without these records, it is difficult to determine whether the property should remain in the 480 Program or whether it was improperly converted to non-forest land.

Using GIS software to analyze orthoimagery, combined with physical observation from public roads, we identified additional factors that indicate these properties may no longer be eligible for the program. For example:

- A 480 Program property in Hamilton County has a 6,000 ft² house and a boat house (see Figure 5). According to county records, the house was built in 1998 – nearly 25 years after the 480 Program ended. The local assessor did not have any record for this property. The Department’s record was not clear about what forest land was included in the program; therefore, it is difficult to determine if the forest land was improperly converted. The 131-acre property, valued at \$1.3 million, receives a \$1 million (80%) annual reduction in land value, which resulted in a total estimated 3-year (2017–2019) local tax reduction of \$37,597 for the landowner.
- In Warren County, a 480 Program property contains multiple buildings, open land, and



Figure 5 – Hamilton County: 131-acre 480 Program property with 6,000 ft² house and boat house.

multiple boat docks (see Figure 6). Neither the Department nor the local assessor had any program records for this property; therefore, it is difficult to determine if the forest land was improperly converted. The 16-acre property, valued at \$2.8 million, receives a \$2.5 million (90%) annual reduction in land value, which resulted in an estimated 3-year (2017–2019) local tax reduction of \$94,393 for the landowner.



Figure 6 – Warren County: 480 Program property with open land and multiple buildings and boat docks. (*Top left*) Entire property enrolled in 480 Program; (*top right*) enlarged southern part of property showing concerned area; (*bottom left*) Street view of concerned area.

Again, while we recognize gaps in the law assigning specific oversight responsibilities for areas of the 480 Program, as our findings show, issues exist that should be addressed. The Department should communicate and seek partnerships with the local assessors to remedy the problems as practicable to ensure that the 480a and 480 Programs are achieving their goal to protect forest land as an economic and environmental resource and that only eligible properties are receiving local tax exemptions.

Recommendations

1. Improve communication and partnerships with local assessors to ensure that properties are appropriately enrolled, eligible, and benefiting from the 480a and 480 Programs; and that management plans are followed, adequate records are maintained, enforcements are applied when violations occur,

penalties are satisfied, and other administrative changes the Department deems necessary to improve the 480a and 480 Programs are made.

2. Develop and maintain a centralized statewide database to improve oversight and administration of statewide forest tax programs, including compliance with management plans, work schedules, and annual commitments.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if the Department is adequately monitoring the 480 and 480a Programs to ensure forest land is appropriately enrolled and landowners are adhering to requirements to assist in the protection of the environmental benefits of the State's forest resources. The audit covers properties that received tax exemptions under the 480 and 480a programs for the period January 2017 through December 2019 and observations and actions taken by the Department to monitor those properties through July 2021.

To accomplish our objective, we examined the Department's internal controls and assessed their adequacy as they related to our audit objective. We reviewed applicable policies, procedures, laws, and regulations, and interviewed Department staff responsible for managing the 480a and 480 Programs. We visited Department offices in the three regions, interviewed regional staff, reviewed program documents (certificates of approval and management plans), and observed accessible program properties to complete our assessment of our samples.

We used parcel data for 2017 through 2019. We performed data reliability testing on the data and found it to be sufficiently reliable for the purposes of our audit. According to the data, landowners of 6,858 properties received a 480a Program exemption and landowners of 795 properties received a 480 Program exemption on their land in 2019. These properties contain over 1.7 million acres that include forest lands committed to the programs. We judgmentally sampled 135 (26,499 acres) of the 6,858 properties in the 480a Program and 25 (1,065 acres) of the 795 properties in the 480 Program for further review. We selected these properties based on several factors, including: regional locations that provided geographic spread across the State; properties identified with compliance and monitoring risks; properties identified as receiving exemptions but not found in the Department's data; ineligibility identified through GIS analysis of orthoimagery available through the New York State GIS Program Office; and Esri's high-resolution satellite and aerial imagery of New York State. The samples selected cannot be nor were they intended to be projected across the population as a whole.

As part of our audit procedures, we used GIS software for geographic analysis. As part of the geographic analysis, we developed visualizations, both within this report and as part of an external interactive map. Portions of the visualizations and map contain intellectual property of Esri and its licensors and are used under license. Copyright © 1987 – 2020 Esri and its licensors. All rights reserved.

Statutory Requirements

Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department's oversight of the 480a and 480 Programs.

Reporting Requirements

A draft copy of the report was provided to Department officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. In general, officials agreed with our recommendations and noted steps they will take to implement them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Environmental Conservation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments

OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation
625 Broadway, 14th Floor, Albany, New York 12233-1010
P: (518) 402-8545 | F: (518) 402-8541
www.dec.ny.gov

APR -1 2022

Mrs. Nadine Morrell
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Dear Mrs. Morrell:

The Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's Draft Audit Report entitled *Oversight of New York State Forest Tax Programs*. DEC's comments with respect to this report are contained in the enclosed document. Please contact Andrew Fischler, Director of Internal Audit, at (518) 402-9761 if you have any questions.

Sincerely,



Basil Seggos
Commissioner



**Department of Environmental Conservation
Oversight of New York State Forest Tax Programs
2020-S-51
Response to OSC Draft Report**

The Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's (OSC) February 2022 draft audit report of DEC's oversight of New York State's Forest Tax Programs. New York has 13.6 million acres of private forestland, which accounts for 74 percent of the total forest area in the State. Since 1946, our Division of Lands and Forests (DLF) has supported forest landowners to sustainably manage their woodlands by providing sound forestry advice, direct assistance, and financial incentives. The 480a Tax Law Program (Program) has successfully incentivized forest landowners to produce forest crops under the direction of a professional forester and has helped support a stable forest economy for nearly 50 years. During those years, DLF's implementation of the Program has benefitted New Yorkers, communities, and industries by protecting and enhancing our forests. The Program superseded the 480 Tax Law Program, which had less stringent requirements and DEC oversight, and was focused on incentivizing forestland ownership rather than forest production.

Currently, field staff in seven DEC regions shoulder most of the responsibility for administering the Program. Twenty-nine foresters oversee 1.5 million enrolled acres and over 4,000 certifications across seven upstate regions, two-thirds of which are located in three of those regions. Staffing has impacted the Program and caused a fundamental shift in forester acreage and certification oversight responsibilities and their ability to inspect enrolled properties. DEC has been actively developing solutions to mitigate these conditions and is pursuing regulatory changes to modernize the Program, which will reduce administrative burdens and improve forestry outcomes. When adopted, the changes will aid in the Program's success and implementation of OSC's recommendations.

DEC generally agrees with OSC's findings and will take appropriate action to implement recommendations cited in the report. The following is our response to the report's findings and recommendations.

Findings

1. For a sample of 135 properties enrolled in the 480a Program, we found 45 may have been improperly benefiting from the local tax exemption.

DEC Response:

- Local tax exemptions are granted by a locality's tax assessor, not DEC. If a landowner does not file an annual commitment form with the local assessor, the local assessor must discontinue the benefit. Additionally, if a landowner files an annual commitment form solely with the local assessor, DEC will have no record of them receiving the tax exemption. Moving forward, DEC will work with local assessors in an attempt to improve the exchange of information, which will allow us to better ensure enrolled properties are receiving Program benefits for which they are entitled and use annual commitment forms as a tool for DEC staff to manage the Program more effectively. Moreover, DEC will

encourage local assessors to contact us regarding parcels that may be improperly receiving 480 or 480a Program benefits.

2. We reviewed 100 certificates associated with 122 of the 135 properties in our initial sample to determine whether, between March 2010 and February 2020, DEC ensured that landowners were following their management plans adhering to work schedules, and annually declaring their committed land for forest crop production for the succeeding 10 years. During the 10-year period, the DEC should have received 138 updates to the management plans' work schedules for these 100 certificates. However, we found eight (6%) were missing and 34 (25%) were not updated within 5 years as required. Further, according to the management plans, landowners should have performed 120 commercial cuttings on their forest lands. However, DEC only received a timely Notice of Commercial Cutting for 79 (66%); 30 notices (25%) were missing and 11 (9%) were late.

DEC Response:

- The Program currently lacks effective statutory enforcement tools with appropriate penalties commensurate with the level of infraction. DEC will explore alternate enforcement mechanisms for reducing non-compliance issues. Staff resources is a significant factor for preventing, discovering, and resolving compliance issues. The ability to physically inspect more properties per year results in increased identification of programmatic non-compliance in the short term, but in the long-term programmatic non-compliance is reduced. Current regulatory reform efforts aim to address and alleviate some of the issues associated with Program compliance. In addition, DEC will begin the process of developing a statewide, centralized database to help regional staff effectively manage the Program.
3. The Department issued a violation of a partial conversion for which the landowner should have been assessed a penalty of five times the local annual tax savings. However, the county treasurer issued an incorrect penalty of only half that.

DEC Response:

- DEC educates local officials on the proper application of penalties for full and partial revocations but does not aid in the application of those penalties. Moreover, in accordance with Program Law, the County treasurer is responsible for applying penalties:
 - RPL §480a(7)(f) A notice of violation issued under this subdivision shall be given by the department to the owner and to the county treasurer of the county or counties in which such tract is located, and the penalty and interest charges shall be computed for each of the municipal corporations in which such tract is located by such county treasurer. Upon completion of the computation of the penalty and interest, the county treasurer shall give notice to the owner of the amount of the penalty and interest, and the amount shall be entered on the next completed tax roll of such county or counties.
- The Department does not have oversight responsibility for county treasurers and cannot direct local officials to apply penalties accurately. DEC will, however, attempt to improve communication and education efforts with the counties.

-
4. Between calendar years 2017 and 2019, for the 100 certificates in our sample, landowners should have filed 272 annual commitment forms with the Department. We found 31 (11%) were not on file with the Department. For 10 of the 31, we confirmed with the local assessors that they also had not received a commitment form. All the landowners have continued to benefit from the tax exemption and, as demonstrated in the prior example, the Department has no assurance that they are managing their lands in compliance with 480a Program requirements.

DEC Response:

- DEC has managed its workload by focusing inspections on newly enrolled properties, five-year updates or amendments, and timber stand improvement and harvesting activities. Regions with smaller workloads may select a random sample of annual commitment forms to inspect. DEC will work to communicate with the local assessors.
5. Of a sample of 25 480 Program properties, the Department had no record for 12. The records for the remaining 13 properties lacked sufficient detail to determine what lands were included in the 480 Program.

DEC Response:

- DEC has no oversight responsibilities regarding the 480 Program other than confirming initial eligibility of enrolled forest lands. We will work with the regions to catalog 480 properties into a centralized database and provide the information to the local assessors.
6. For 52 of the 795 properties, the committed parcels were smaller than the 480 Program requirement of 15 acres. These exemptions resulted in a total estimated local tax reduction of \$91,356 from 2017 to 2019. While it is possible that these properties originally met the size requirement and later were subdivided, they may no longer qualify for the exemption.

DEC Response:

- According to RPL §480, it is the local assessor's responsibility to remove the exemption from ineligible properties. DEC does not have authority to issue violations or withdraw an enrolled property from the 480 Program due to eligibility issues.
 - RPL §480(7) An owner may withdraw his tract from such classification at any time by payment of the tax of six per centum of the value of the standing timber. If an owner desires to withdraw his tract from classification, he may agree with the assessors and supervisor as to the stumpage value of the forest growth. In case of dispute as to the stumpage value of wood or timber so classified and withdrawn from classification, the six per centum value of the standing timber so withdrawn, shall be assessed by the assessors within thirty days from the time they are required so to do by the owner. Such assessment and tax shall be treated in all respects the same as an assessment and tax on the land, except as otherwise herein provided. The supervisor of the town may maintain an action in any court of competent jurisdiction against the owner of the land for the recovery of any tax due and unpaid under this section.

Recommendations

1. Improve communication and partnerships with local assessors to ensure that properties are appropriately enrolled, eligible, and benefiting from the 480a and 480 Programs; and that management plans are followed, adequate records are maintained, enforcements are applied when violations occur, penalties are satisfied, and other administrative changes the Department deems necessary to improve the 480a and 480 Programs are made.

DEC Response:

- DEC will take steps to improve communication with local assessors and county treasury offices to develop a quality control process, which may include desk reviews, attending and presenting at local assessor meetings, and revising guidance materials and administrative procedures.
 - DEC staff will catalog records for the 480 Program and remove properties from the program when the assessor or landowner informs DEC of a withdrawal.
 - DEC will continue its pursuit of administrative and regulatory remedies that will allow the Program to be more effective.
 - DEC will begin to update the procedure handbook in anticipation of revised regulations being adopted.
2. Develop and maintain a centralized statewide database to improve oversight and administration of statewide forest tax programs, including compliance with management plans, work schedules, and annual commitments.

DEC Response:

- DEC has a programmatic need for a statewide database to help administer the Program and will continue to pursue various options for creating and deploying a database.

Contributors to Report

Executive Team

Andrea C. Miller - *Executive Deputy Comptroller*

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Nadine Morrell, CIA, CISM - *Audit Director*

Heather Pratt, CFE - *Audit Manager*

Amanda Eveleth, CFE - *Audit Supervisor*

Andre Spar, MBA - *Examiner-in-Charge*

Kevin Lance - *Senior Examiner*

Mark Womeldorph - *Senior Examiner*

Italyia Circelli - *Mapping Analyst*

Mary McCoy - *Supervising Editor*

Contact Information

(518) 474-3271

StateGovernmentAccountability@osc.ny.gov

Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236



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