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Fresh Assault on Sterling Forest; Developer Gets Wink from DEC

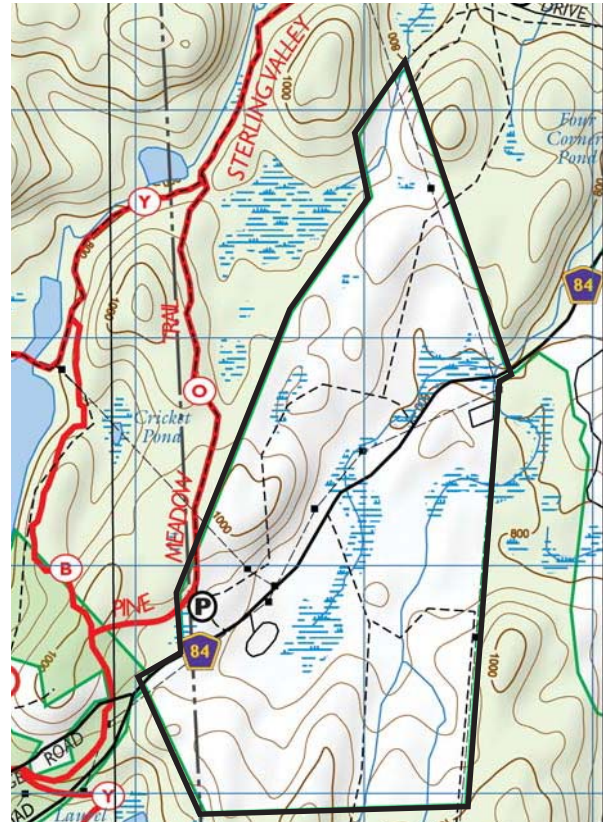
Sterling Forest LLC, the corporation that owns a 575-acre parcel inside Sterling Forest State Park, is floating a fresh plan to develop luxury homes on the property.

Last March the Corporation's plan for a golf course surrounded by luxury housing, called "Sterling Forge Estates," received a setback from the New York State Department of Environmental Conservation (DEC). The DEC advised that the golf course plan could not proceed under State environmental statutes because studies confirmed the site is an active area for the threatened Eastern Timber Rattlesnake.

On March 7, 2005 the Corporation submitted a revised environmental impact statement for Sterling Forge Estates to the Town of Tuxedo. The remodeled plan was informed by a study the Corporation commissioned from environmental engineering firm, Lawler, Matusky and Skelly (LMS). The LMS report recommended limiting development in the eastern region of the property. Accordingly, the Corporation scrapped the golf course and redlined an arbitrary buffer of undeveloped land hugging the eastern property boundary. Under the new plan, housing will spring up on both sides of Long Meadow Road (County Road 84).

The project revision will not require a fresh public review under New York environmental laws (the SEQRA process), as it would be considered a reduction of the initial plan, not a new proposal.

The Sterling Forest Corporation presented its revised plan to the DEC in late 2004 and received a wink of approval in the form of a letter from Alexander Ciesluk, the agency's deputy regional permit administrator, to the Board of the Town of Tuxedo (the lead agency and ultimate source of approval for the project). Ciesluk said the revised plan satisfies the recommendations the DEC made in March 2004, effectively giving the project tacit approval. Sterling Forest



**The Sterling Forge Estates project site,
traversed by County Route 84:
a dangerous gap in Sterling Forest State Park**

Partnership has closely followed these events and, unsatisfied with this resolution, hired Bill Brown, a highly respected expert on Timber rattlesnakes, and Chris Amato, an environmental lawyer, to review the science of the LMS report and the legality of the DEC finding. Bill Brown found that the revised development plan will not avoid a "take" of timber rattlesnakes (i.e., a substantial reduction in their numbers), in fact, a take is inevitable, since the timber rattlesnakes are likely to use the entire site over the course of time. Based on Amato's evaluation, the Sterling Forest Partnership feels the DEC is abdicating its responsibility to enforce the Endangered Species Act.

Investigation also revealed that the Corporation may have withheld an additional consultant's report on the timber rattlesnakes. This additional report, prepared by another recognized timber rattlesnake expert, reportedly concludes that timber rattlesnakes will use the entire site, which would require the DEC to require an Endangered Species Act permit prior to building.



Public/Private Partnership to Save Sterling Forest Reconvenes

In light of these events, the coalition of environmental advocates that successfully helped to create Sterling Forest State Park has reconvened at the behest of the Sterling Forest Partnership. The Public/Private Partnership to Save Sterling Forest consists of representatives of the Sterling Forest Partnership, the Nature Conservancy, the Adirondack Mountain Club, the Appalachian Mountain Club, Audubon New York, Environmental Advocates, Environmental Defense, The Highlands Coalition, The New York-New Jersey Trail Conference, The Orange County Land Trust, Orange Environment, The Ramapo River Committee, The Regional Plan Association, and Scenic Hudson.

This coalition has appealed to law, science, and ethics in order to persuade Governor Pataki, and the commissioners of DEC and the Parks Department to protect Sterling Forest State Park.



The Law Protects the Forest

The PPP pointed out that law warrants action by the State under both SEQRA and the State's Public Trust Doctrine. It is particularly significant that Sterling Forest State Park has been legally designated as a park preserve under Article 20 of the Office of Parks, Recreation and Historic Preservation (OPRHP) Law. Under the Public Trust Doctrine, Section 4 of Article 4 of the State Constitution, and especially Section 20.02 of the OPRHP Law, the Parks department has the responsibility to "maintain the integrity of park land, flora, fauna and scenic vistas; ... restore and maintain historical and archeological sites; and provide for the management of all unique, rare, threatened and

endangered species of flora and fauna within designated park preserves and park preservation areas." (Section 20.02).

Moreover, Section 20.03 gives OPRHP the power and duty to call upon any other state agency, including the DEC, to carry out its legal responsibilities to protect and preserve the land. The Public/Private Partnership has informed Governor George Pataki and Parks Commissioner Bernadette Castro that the State of New York has the responsibility and the authority to protect Sterling Forest State Park and to stop the irresponsible development of the 575-acre inholding. The State must assure that building, infrastructure and recreational amenities do not detract in any way from the remarkable natural resources of Sterling Forest State Park and the public investment that created it.



Public/Private Partnership Scientists Review Impact of Sterling Forge on Biodiversity

In the NY-NJ Highlands and lower Hudson Valley, forest fragmentation is a serious concern. Sterling Forest carries particular importance as a relatively intact core forest that supports source populations for many species of birds, reptiles and mammals.

The Public/Private Partnership to Save Sterling Forest convened a group of scientists from academic and conservation organizations to review and summarize the potential impact of the Sterling Forge Estates development plan on biodiversity in Sterling Forest. In February 2005, the work group produced a "white paper" providing background, and a summary of concerns. The paper cites Sterling Forest's setting in the matrix of the forested Highlands as a critical feature of the landscape. "Largely natural forested and wetland areas well buffered from any form of residential or commercial development constitute vital habitats for many wildlife species," the paper declares.

Fragmentation leads to mortality. Increased traffic endangers reptiles like the threatened timber rattlesnake. Pollutants from lawns alter wetlands and the natural community of plants and animals. Pets kill ground nesting birds and other wildlife. Removing trees from wetlands or mowing close to wetland borders cuts a "reduced wildlife" zone into the forest.

The paper singles out three species for special concern: the Golden-winged warbler, the Eastern timber rattlesnake, and the Indiana bat.

Sterling Forest State Park hosts one of the very few stable populations of Golden-winged warblers in the United States. Studies show that altering the Sterling Forge site wetlands will devalue the Golden-winged warbler habitat, inviting invasive species that have precipitated the decline.

The six dens of threatened Eastern Timber rattlesnakes at the periphery of the Sterling Forge inholding is one of the largest and most concentrated populations in the state. Snake activity in the path of densest development raises questions about the lawfulness of the Sterling Forge plan in light of the Endangered Species Act.

A recent directive from the Army Corps of Engineers requests a review of possible habitats for federally endangered Indiana bats. In reviewing the habitat requirements for Indiana bats it appears that Sterling Forge Estates site has ideal conditions.

The abandoned open-shaft mines of the Sterling Forest region (and there are several in the Sterling Forge parcel), in the presence of forested wetland near open water, provide typical hibernation sites. Incomplete field surveys of the Sterling Forest State Park mine shafts are underway to determine the species of bats present. The paper notes that sealing the mines by blasting, which the developer is considering, would destroy any habitat for the Indiana bat or for any other species of bat.

Clearly there continue to be issues of biodiversity that we feel have not been addressed. The Sterling Forest Partnership will continue to pursue these issues with the State.



The Story Thus Far

Sterling Forest State Park's setting is almost miraculous. Not 40 miles from Central Park, it offers clean water and low-impact recreation to tens of millions of people, yet it is a deep, unbroken forest that supports a remarkable wealth of plants and animals.

For the last half of the 20th century, the Sterling Forest Corporation (a proprietary holding

company, swallowed in turn by a series of several larger firms) kept the land in store for large-scale housing and commercial development. A few pilot projects went up in fits and starts, but the grand development never materialized.

In the late 1990s, a coalition of public and private advocates, the Federal government, and the states of New York and New Jersey rallied to raise the first \$55 million to acquire the land from the Corporation and to establish the State Park. The Corporation, however, refused the sale of a 575-acre parcel, now completely surrounded by the State Park.

Since then, the Corporation has been pushing a plan, known as "Sterling Forge Estates," to develop this inholding, causing significant remodeling of the landscape.



The Rattlesnake's Estate: How the Corporation Blurred the Data

The latest plan for the Sterling Forge Estates is based on a study produced for the Sterling Forest Corporation by the firm of Lawler, Matusky and Skelly Engineers LLP, released to the DEC on 29 September 2004. At issue is the activity of the timber rattlesnake, classified a threatened species under New York's Endangered Species Act.

By the provisions of this Act, the prospect of a reduction or "take" of the rattlesnake population as a result of development would require a special permit process prior to building. The permit would strictly limit the scope and impact of development. The LMS report appears to give a green light to the Sterling Forge plan, but how good is the science?

A careful examination of the LMS report by William S. Brown, Associate Professor Emeritus of Biology at Skidmore College, revealed several important flaws. The LMS report promotes the assumption that the rattlesnakes do not utilize the portion of the project site north and west of County Road 84 (Long Meadow Road. Brown's report shows "substantial likelihood" that the species is active there.

Brown submitted his report to the New York State Department of Environmental Conservation at the end of January.

The mapping of snake activity in the LMS report is based on data tracked from radio transmitters affixed to a number of tagged snakes. In his paper, Brown contends that the LMS survey relied on an insufficient number of tagged snakes, and that the snakes were monitored for an insufficient duration. Thus the report of insignificant snake activity north and west of Route 84 is misinformed. Had more snakes been tracked for longer, "snakes would almost certainly have been recorded in the NW sector," Brown wrote. The conclusion "simply reflects inadequate survey work and cannot form the basis for concluding that rattlesnakes do not use the area."

and he indicates other evidence, including documented sightings of adult snakes crossing Route 84 from west to east, that the LMS report failed to mention. "In fact," he writes, "data collected by LMS shows that rattlesnakes do use the area north of Route 84. Consequently, the question is not whether the rattlesnakes utilize the project area ..., but, rather, the nature and extent of such use." Brown concludes that the modified plan for Sterling Forge will result in a take of the species. He contends that development will upset the snake's behavior patterns, destroy habitat, and lead to direct mortality on the highway and home sites.

Brown points out that the LMS report's own data shows snake activity north and west of Route 84,

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The Sterling Forest Partnership, Inc. is a not-for-profit organization dedicated to the preservation of Sterling Forest as an open space. Contributions to the Sterling Forest Partnership are tax deductible to the full extent of the law.		

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Rodger Friedman, Editor • William S. Brown, Ph.D. • JoAnn Dolan • Katharine Dolan • Mary Yrizarry

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