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PRESS ADVISORY

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Protect the Adirondacks! and the Sierra Club today filed a Reply in their lawsuit against the Adirondack Park Agency, the Department of Environmental Conservation and the developer challenging the APA's approval in January of the proposed Adirondack Club & Resort project on 6,000 acres in Tupper Lake. The Reply follows the filing of an Amendment in June 2012 to the original Petition filed in March 2012.

Protect the Adirondacks! has posted the new filings to its website www.protectadks.org. These new filings include:

1. Reply.
2. Copies of correspondence between the APA and ACR, recently obtained through a Freedom of Information Law request, which documents illegal negotiation between counsel to the developer and APA Counsel and Senior Staff, working out the final language of the APA's decision and permits to the satisfaction of the developer. Such "ex parte" communication (communication not disclosed to other parties to the hearing) is prohibited by the State Administrative Procedure Act.

The Reply addresses the legal issues raised by the initial and amended Petition:

- That the APA violated the law when it approved the creation of 80 residential lots on over 4,000 acres of lands classified Resource Management, which were neither on "substantial acreages" or in "small clusters on carefully selected and well designed sites" as the statute creating the APA Act requires.
- That the APA granted approval without the legally required substantial evidence that the project will not have an undue adverse impact upon the wildlife on the project site.
- That the APA's approval decision improperly allows wildlife impact studies and site design to be undertaken after-the-fact rather than submitted as part of the project application, illegally depriving interested persons and the public of the opportunity to participate fully in the project review as the APA Act requires.
- That the APA violated the APA Act in weighing and balancing economic benefits claimed by the developer against adverse environmental impacts from the project.
- That the APA approved disturbance of a class 2 wetland (Cranberry Pond) contrary to its own regulations, which require that a development avoid degradation of such a

wetland when a reasonable alternative is available.

- That the APA's decision lacks legally sufficient findings of fact to support its approval.
- That the APA illegally determined it would consider the nearly 700-unit project "vested," that is, allowed to be completely built out in accordance with the original 14 permits, provided the developer conveys just one lot, contrary to the APA Act and its own regulations, which require "substantial expenditures" to have been made for structures or improvement in order to "vest" a project.
- That, in deciding to approve the project, the APA illegally relied on information outside the official adjudicatory hearing record.
- That illegal ex parte communications took place between the APA Senior Staff advising Commissioners responsible for deliberating and deciding on the ACR application and representatives of the developer.

PROTECT believes that this lawsuit will decide important issues regarding the Adirondack Park Agency Act and APA regulations. The court must address the APA's new argument that language in the APA Act, which has long been cited as protecting Resource Management lands, is now somehow only "advisory" or "guidelines". The Court will also have to consider the new evidence of illegal communications between ACR and the APA Senior Staff, who advised the Commissioners in their deliberations and decision, assisted by the Associate Attorney on the hearing staff. In PROTECT's view, this evidence appears to demonstrate an unprecedented effort by some staff to collaborate with a developer and to assist the ACR project to a final approval.

PROTECT and its co-petitioners plan to request further discovery regarding the apparent improper ex parte communications between the APA and the applicant/developer. A motion, expected to be filed in August or September, will seek depositions from all persons believed to have been involved in and with knowledge of those communications. PROTECT has also appealed a recent denial of a Freedom of Information request to the APA (also posted).

At this time there is no schedule for further filings or oral argument. The lawsuit will be heard by the Appellate Division (3rd Department) of the State Supreme Court. The panel of five judges, which sits in Albany, will set the litigation schedule in the fall.

PROTECT is a privately funded not-for-profit organization dedicated to protecting the Adirondack Park through citizen advocacy, grassroots organizing, public education, legal action and research. More information about PROTECT's initiatives and programs is available on the organization's website at www.protectadks.org.

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