



PRESS RELEASE

September 10, 2012

PROTECT and Sierra Club Find That the ACR Permits have Expired

APA issued Findings and Order on January 31st that made approvals for permits “subject to conditions.” Project sponsor has not fulfilled the various conditions within the required 6-month period. Permits expired at the end of July.

For more information:

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LAKE GEORGE - Protect the Adirondacks and the Sierra Club have submitted a letter to the Adirondack Park Agency (APA) that contends that the APA’s Project Findings and Order for 14 permits for the Adirondack Club & Resort (ACR) in Tupper Lake, which was signed on January 31, 2012, has expired; see attached letter. Under the APA Act, the project sponsor has six months to fulfill requirements for an approved project that is “subject to conditions.” ACR’s 6-month deadline expired on July 31, 2012.

The ACR’s Order of Approval included numerous conditions requiring the project sponsor to complete various studies and revised plans, none of which have been completed. A total of 14 draft permits were prepared for the ACR project, but none of them have been issued yet. In response to a Freedom of Information Law request from PROTECT and Sierra Club, the APA replied that no final permits have been issued, no extensions or modifications have been sought, and no filings of additional information have been made by the ACR. “The APA Act seems clear that when a Project Findings and Order is issued that is ‘subject to conditions’ the project sponsor has six months to fulfill these conditions. It appears that the ACR sponsors have not met these conditions. Hence the Project Findings and Order expired on July 31st and no final permits can be issued” said Peter Bauer, Executive Director of PROTECT.

“A formal request was submitted to the APA this week urging the agency to inform the ACR sponsors that the conditions of the Project Findings and Order were not fulfilled, that the Findings and Order has expired, and that no final permits can be issued as a result. The APA Act is clear that recipients of approvals that are subject to conditions must satisfy these conditions within six months of the approvals being issued. In order for the ACR to move

forward, the project sponsors will have to begin the application process all over again. We await the APA's response," said John Caffry, attorney for PROTECT and the Sierra Club.

The relevant Section 809(5) of the APA Act states: "If the decision is approval subject to conditions, the agency shall grant a permit only upon satisfactory fulfillment of such conditions. Approval subject to conditions shall expire six months from the date of such approval, or such longer time as is specified in the notification or approval, unless a permit has been granted."

The APA's Project Findings and Order for the ACR project contained no such grant of a longer time period to the applicant.

"Since the conditions of the APA's Project Findings and Order was not fulfilled and since it appears that the project sponsor has made no attempt to honor and fulfill the conditions of the Order or seek any modifications or extensions, then the clock has simply run out" said Roger Downs, Conservation Director of the Sierra Club Atlantic Chapter.

A copy of the attorney's letter has been posted to the Protect the Adirondacks website (www.protectadks.org).

In March 2012 PROTECT and the Sierra Club commenced a lawsuit against the APA on 29 different counts for its issuance of the approval for the ACR project. PROTECT and the Sierra Club believe 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 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 Counsel, who advised the APA Members in their deliberations and decision, assisted by the APA Associate Attorney on the hearing staff. In PROTECT/Sierra Clubs's view, this evidence appears to demonstrate an unprecedented effort by some APA staff to collaborate with a developer and to assist the ACR project in obtaining final approval.

More information about PROTECT's initiatives and programs is available on the organization's website at www.protectadks.org. For more information about the Sierra Club Atlantic Chapter see the organization's website at <http://newyork.sierraclub.org/>

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September 5, 2012

Leilani Crafts Ulrich, Chair
Adirondack Park Agency
P.O. Box 99
Ray Brook, New York 12977

Re: Application of Preserve Associates, LLC
APA No. 2005-100

Dear Ms. Ulrich:

We represent Protect the Adirondacks! Inc., Sierra Club, and others, in connection with the above-referenced project. It is our understanding that, to date, none of the 14 permits for the various portions of the project have been issued, and no modifications or amendments have been applied for, or approved, for the Project Findings & Order which you signed on January 31, 2012 ("Order"), or for any of the 14 permits authorized by that Order.

APA Act § 809(5) provides, in pertinent part, that:

If the decision is approval subject to conditions, the agency shall grant a permit only upon satisfactory fulfillment of such conditions. Approval subject to conditions shall expire six months from the date of such approval, or such longer time as is specified in the notification or approval, unless a permit has been granted.

The Order is clearly an "approval subject to conditions". See Order, pp. 36-38; APA Project Permits 2005-100.1 to 2005-100.14, p. 1 ("is granted a permit, on conditions"). Therefore the Order is subject to the part of § 809(5) that is quoted above. In the Order no "such longer time as is specified in the notification or approval" was granted to the Project Sponsor. It is also our understanding that "six months from the date of such approval" expired on July 31, 2012.

Therefore, it is our position that because no permits have been issued for the ACR project, and no extensions of the 6 month period set forth in APA Act § 809(5) have been applied for or granted, the Order has expired by operation of law. It is also our position that, because the Order has already expired, any application for an extension of time or other modification of the Order would be untimely pursuant to APA Act § 809(8) and 9 NYCRR §§ 572.19 and 572.20.

In conclusion, it is our position that the Order has expired and there is no longer an operative approval for the ACR project. If the Project Sponsor wishes to proceed with the Project, it will have to begin the application process again. See 9 NYCRR § 572.20(b).

We request that APA promptly notify the Project Sponsor that the approval of its project has expired by operation of law due to its failure to comply with the laws and regulations cited above. This should be a ministerial act that requires no vote by the Agency Members.

Sincerely,



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JWC/ljs

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