PRESS RELEASE September 18, 2012

# PROTECT and Sierra Club file new motion in APA-ACR lawsuit for discovery on ex parte contacts issue

*APA has denied Freedom of Information requests from PROTECT and Sierra Club and withheld numerous documents about communications on ACR permit; motion seeks access to withheld documents and permission to depose witnesses.*

*APA has disclosed that the Governor's Office was heavily involved in the review and approval of the ACR project; PROTECT and Sierra Club believe this violates ex parte contact rules and seeks permission to review all relevant documents.*

For more information:
Peter Bauer, Protect the Adirondacks, (518) 796-0112
Roger Downs, Sierra Club Atlantic Chapter, (518) 426-9144
John Caffry, Caffry & Flower, (518) 792-1582

LAKE GEORGE - Protect the Adirondacks and the Sierra Club have filed a motion with a state appellate court for leave to conduct discovery around their allegations about improper ex parte communications during the review and approval by the Adirondack Park Agency of the 6,000-acre Adirondack Club & Resort (ACR) project in Tupper Lake. Based on information provided to PROTECT and Sierra Club through a Freedom of Information request and in a recent denial by the APA of a request for further information, PROTECT and Sierra Club believe that there were extensive ex parte communications on the ACR permit between senior staff and commissioners of the Adirondack Park Agency, the applicant, and members of Governor Cuomo's staff; see attached.

"PROTECT and the Sierra Club have submitted a motion to the court for leave to conduct discovery to gather additional information around the very important issue of ex parte communications during the APA's review and decision-making on the ACR application. The petitioners seek the opportunity to review communications that the APA claims are shielded by attorney-client privilege as well as the opportunity to depose witnesses who were involved in these communications" said John Caffry, attorney for PROTECT and the Sierra Club.

In July, PROTECT published on its website numerous emails and memoranda that it believes showed extensive ex parte communications by APA's staff during the public hearing and final deliberations on approval for the ACR project. The ACR project was subject to a formal APA adjudicatory hearing, administered by a DEC Administrative Law Judge, which is subject to rules that limit the ex parte communications of APA hearing staff, APA senior staff, and the APA Commissioners with the applicant, all parties, and the general public.

Ex parte contact rules are designed to protect the integrity of the public hearing process, the purpose of which is to develop an official hearing record that should be the sole basis for a decision by the APA Commissioners. Ex parte contact rules bar any outside the record information, advocacy, or political influence on the APA senior staff or Commissioners, so that the APA's final decision is based purely on the facts established in the hearing record.

Ex parte contact rules are supposed to inoculate the APA from improper influence by enforcing a system where all hearing parties share information and communications during the entire hearing process. The APA did not do this. Extensive communications appear to have occurred between the applicant and senior staff and possibly Commissioners at the APA. The new discovery motion by PROTECT is intended in part to determine the extent of the improper communications between the applicant and the APA.

The motion for discovery by PROTECT and Sierra Club is also intended in part to determine the level of political interference in the approval of the ACR project. The APA Act was designed to bar political interference in its decisions. The APA is supposed to be governed independently by 11 Commissioners, eight of which serve 4-year (staggered) terms upon gubernatorial appointment and three that represent state agencies. No more than five commissioners of one political party may be on the APA at one time. The appointment process with staggered terms is supposed to provide continuity and independence. There was a deliberate legislative decision in 1971 to make the APA an independent agency with important responsibility for land use planning and regulation over the public and private lands within the Adirondack Park, managed by an independent citizen board of regulators. It is not an agency, like the Department of Environmental Conservation, that is headed by a single commissioner who serves at the pleasure of the Governor and makes unilateral administrative decisions.

The APA claims attorney-client privilege attaches to communications between APA staff and the Governor's staff attorneys. PROTECT and Sierra Club reject this assertion. They believe that outside of APA legal staff the only other attorney-client privilege is between the Attorney General and the APA during times of litigation, as the AG is statutorily required and authorized to represent the APA in court.

Based on information provided by the APA it is clear that the Governor's staff engaged in as many as 18 substantial lines of communications involving the ACR decision during the public hearing and final decision. This information is provided in the APA's July 24, 2012 denial of an appeal under the Freedom of Information Act by PROTECT (see attached).

The ex parte contact prohibitions in the State Administrative Procedure Act (SAPA) govern all "adjudicatory proceedings" and clearly prohibit communications "directly or indirectly" between APA Commissioners and "any person or party" relating to any issue of fact and between Commissioners and "any party or his representative" relating to any issue of law, without notice to other parties and an opportunity for all parties to participate. APA regulations are similar.

"PROTECT believes that direct involvement in the decision-making process with the APA senior staff and Commissioners by the Governor or his staff, and perhaps other governmental officials, in a project subject to an official adjudicatory public hearing is a violation of the ex parte contact rules. PROTECT believes that elected officials are certainly encompassed within the 'any person' definition in SAPA not only as regards the APA but any other state agency that holds adjudicatory hearings. The issue of Governor's Office involvement, or that of any other elected official, in an official adjudicatory hearing outside of formal participation as a party is of broad significance" said Peter Bauer, Executive Director of PROTECT.

"The new motion for discovery around the ex parte contact issue will provide us with an opportunity to establish the full extent of outside involvement and influence in the APA's final discussions and decision on the ACR project. Ex parte contact rules are clear about what process should be followed. Information gleaned from this motion will allow the public to fully understand who the APA was consulting as it prepared to make a final decision on the biggest development ever approved by the APA" said Roger Downs, Conservation Director of the Sierra Club Atlantic Chapter.

A copy of the motion and supporting materials has been posted to the Protect the Adirondacks website (www.protectadks.org). The motion will be returnable in the Supreme Court, Appellate Division, Third Judicial Department, in Albany on October 9, 2012. There is no oral argument scheduled.

In March 2012 PROTECT and the Sierra Club commenced a lawsuit against the APA on 29 different counts for its issuance of a permit for the ACR project. PROTECT and the Sierra Club 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 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 Agency Counsel, who advised the Members in their deliberations and decision, assisted by the Associate Attorney on the hearing staff. In PROTECT and Sierra Club'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 obtain a final approval.

See attached:

1. APA denial of PROTECT-Sierra Club FOIL Request.
2. PROTECT-Sierra Club Motion.
3. ACR Attorney Memo.

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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NEW YORK STATE
Adirondack
parkagency



July 24, 2012

John W. Caffry, Esq.
Caffry & Flower
100 Bay Street
Glens Falls, NY 12801

Dear Mr. Caffry:

**RE: Freedom of Information Request Appeal re P2005-100**

This letter responds to your letter, dated July 12, 2012, and received on July 13, 2012, appealing the Agency's response to a request made under the Freedom of Information Law ("FOIL") for certain records associated with Agency file P2005-100. Please note that the initial request was made by you personally, not on behalf of any parties, while the appeal appears to have been filed on behalf of Protect! the Adirondacks and the Sierra Club. We are responding to your July 12th letter pursuant to 9 NYCRR § 587.1(i), on the assumption that your reference to the two organizations was made inadvertently and that the appeal, like the initial FOIL request, is being filed by you personally. Please contact us if you disagree with this assumption.

Background

On March 23, 2012, the Agency received a request from you for records associated with Agency file P2005-100. That request sought, among other things, documents related to the "Guidelines for Biological Survey" undertaken in connection with the Adirondack Club and Resort ("ACR") application, all calendars maintained by the Agency related to such application, and all communications related to such application between the Agency, other governmental employees and elected officials, and representatives of ACR. On July 6, 2012, the Agency responded to your request with the release of 149 pages of responsive material. Materials withheld by the Agency at that time included records exempted from disclosure pursuant to Public Officers Law ("POL") §87(2) and records already provided to you as representative for a party to the adjudicatory hearing on this matter. We also wish to note that a portion of the records

initially withheld are protected from disclosure under attorney-client privilege and as attorney work product. *See POL* §87(2)(a); CPLR §§ 4503(a)(1), 3101(c).

Response to Appeal

Under POL §87(2), the Agency may release documents otherwise exempt from disclosure. *See* Matter of Capital Newspapers Div. of Hearst Corp. v. Burns, 67 N.Y.2d 562, 567 (1986) ("while an agency is permitted to restrict access to those records falling within the statutory exemptions, the language of the exemption provision contains permissive rather than mandatory language, and it is within the agency's discretion to disclose such records, with or without identifying details, if it so chooses"). Given the nature of your request and the fact that the Agency's approval of the ACR project is being challenged in court under CPLR Article 78, the Agency chooses not to assert the exemptions from disclosure for non-privileged records subject to your request. Accordingly, in response to your appeal, please find enclosed all documents that are responsive to your request and not subject to a privilege. These additional documents total 946 pages, including pages redacted for the reasons specified below.

The documents considered responsive under this FOIL appeal were created between the dates at issue in the initial FOIL request – January 1, 2010 and March 23, 2012. A description of all of the documents being withheld or redacted is as follows:

1) Nine email threads between Agency attorneys (or other Agency employees acting pursuant to attorneys) and attorneys within the Executive Chamber, which are being withheld pursuant to POL §87(2)(a). These documents are subject to the attorney-client privilege and are attorney work product.
2) Three legal updates exchanged between Agency attorneys and attorneys within the Executive Chamber, which are being withheld pursuant to POL §87(2)(a). These documents are subject to the attorney-client privilege and are attorney work product.
3) Six email threads between Agency employees and employees within the Executive Chamber, which are being withheld as inter-agency documents pursuant to POL §87(2)(g). These documents are also subject to the deliberative process privilege.

4) Five draft Agency meeting agendas, which are being withheld as inter-agency documents pursuant to POL §87(2)(g). These documents are also subject to the deliberative process privilege.
5) All redacted materials are either (i) not responsive to your request or (ii) withheld pursuant to POL §87(2)(a) or (g) and subject to one or more of the attorney-client, deliberative process, and official information privileges.

The Agency waives any costs for the attached documents.

This letter is the final determination with respect to your appeal. You have the right to seek review of this determination pursuant to CPLR Article 78 and POL §89(4)(b).

Sincerely,

Sarah Reynolds
Acting Counsel

SHR:mp
Enclosures

cc: Robert Freeman, Committee on Open Government

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

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In the Matter of the Application of

PROTECT THE ADIRONDACKS! INC., SIERRA CLUB, PHYLLIS THOMPSON, ROBERT HARRISON, and LESLIE HARRISON,

Petitioners,

**ALBANY COUNTY**
**INDEX NO. 1682-12**

for a Judgment Pursuant to CPLR Article 78

-against-

ADIRONDACK PARK AGENCY, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, PRESERVE ASSOCIATES, LLC, BIG TUPPER, LLC, TUPPER LAKE BOAT CLUB, LLC, OVAL WOOD DISH LIQUIDATING TRUST and NANCY HULL GODSHALL, as Trustee of OVAL WOOD DISH LIQUIDATING TRUST,

Respondents.

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# PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION

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September 6, 2012

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## SUMMARY OF THE ARGUMENT

This motion is made on the following grounds:

A. Petitioners should be granted leave pursuant to CPLR § 408 to conduct disclosure because it is necessary to prosecute the proceeding;

B. The Adirondack Park Agency ("APA") engaged in prohibited *ex parte* communications that demonstrate the need for disclosure, and are a basis for annulment of the agency's decision; and

C. The State should be required to produce a full record of the APA proceedings under consideration by providing a transcript of the APA's meetings in which the relevant deliberations were conducted.

POINT I:
DISCLOSURE IS NEEDED
TO PROSECUTE THE PROCEEDING

"Leave of court shall be required for disclosure" in an Article 78 proceeding. CPLR § 408. The court has "broad discretion" to permit "any discovery that is relevant to the controversy at issue." Matter of Town of Pleasant Val. v. New York State Bd. of Real Prop. Servs., 253 A.D.2d 8, 16 (2d Dept. 1999). Under CPLR § 408, the court should grant a request for leave to conduct disclosure where the disclosure "sought [is] likely to be material and necessary to the prosecution or defense of [the] proceeding." Stapleton Studios v. City of New York, 7 A.D.3d 273, 275 (1st Dept. 2004); see Allen v. Crowell-Collier Publ. Co., 21 N.Y.2d 403, 406-407 (1968).

One of the critical claims of the Amended Petition[1] in this Article 78 proceeding is that the Adirondack Park Agency ("APA"), the agency which was responsible for the environmental review of the Adirondack Club & Resort ("ACR") project,[2] failed to follow the law, and its own regulations, when it engaged in improper *ex parte* communications with the Project Sponsors and others, after the adjudicatory hearing record had been closed. Amended

[1] Petitioners' Amended Petition verified June 18, 2012 ("Amended Petition").

[2] See Matter of Association for the Protection of the Adirondacks, Inc. v. Town Bd. of Town of Tupper Lake, 64 A.D.3d 825 (3d Dept. 2009).

Petition, Twenty-Eighth Cause of Action; Affidavit of John W. Caffry, sworn to on September 7, 2012 ("Caffry Aff."), ¶¶ 19-31. This allegation arose from a January 17, 2012 broadcast of a radio interview of the Mayor of the Village of Tupper Lake (a strong supporter of the ACR project) who stated that there had "been ongoing talks" between the Project Sponsors and individuals at APA, who were likely covered by rules prohibiting *ex parte* communications. Amended Petition ¶610; see Caffry Aff. ¶20.

At the time, that small revelation by the Mayor may have been "insufficient to warrant deferral of judgment pending discovery." Price v. New York City Bd. Of Educ., 51 A.D.3d 277, 293 (1st Dept. 2008). However, the administrative record of the APA's deliberations provided further support that there were ongoing communications between the project sponsor and the APA staff. Reply[3] ¶398; see Caffry Aff. Ex. G. The Mayor's affidavit, annexed to the State's Answer[4] to the Article 78 Petition, also confirmed that there were secret negotiations between the Project Sponsors and an APA attorney. Reply ¶399; see Caffry Aff. ¶¶ 22-23.

Additionally, pursuant to the Freedom of Information Law, Public Officers Law Article 6 ("FOIL"), the Petitioners have since obtained additional documentation confirming that there

[3] Petitioners' Reply dated July 15, 2012 ("Reply").

[4] State's Amended Answer dated July 9, 2012 ("State's Answer").

were prohibited *ex parte* communications between the Project Sponsors and the APA staff, and quite likely, the voting Members of the APA. Reply ¶396; Caffry Aff. ¶¶ 25-27, 30-31. Also, according to a letter dated July 24, 2012 from the Agency's Acting Counsel, there are 15 e-mail threads, and three other documents responsive to the Petitioners' FOIL request, which the Agency is withholding from disclosure under FOIL. Caffry Aff. ¶30. The description of the withheld documents indicates that there may have been additional *ex parte* communications between APA and the Executive Chamber. Caffry Aff. ¶30.

While the Agency's Acting Counsel asserts that these documents are not subject to release under FOIL, there is no valid basis under FOIL, or the disclosure rules, for withholding the documents. See Matter of Miller v. New York State Dept. of Transp., 58 A.D.3d 981, 984-985 (3d Dept. 2009), lv denied 12 N.Y.3d 712 (2009). In any event, any privilege dispute will have to be resolved as part of the normal course of disclosure.

Since the APA's decision was made following a formal adjudicatory hearing (Caffry Aff. ¶5), subject to strict *ex parte* contact rules, the communications to the Agency by the Project Sponsors and the Executive Chamber cannot be characterized as merely "legitimate advocacy" efforts, which might not warrant disclosure under CPLR § 408. Matter of London Terrace Assoc., L.P. v. New York State Div. of Hous. & Community Renewal, 35 M.3d

525, 537 (Sup. Ct. New York Co. 2012). Moreover, none of the other adjudicatory hearing parties were ever notified of these communications. Amended Petition ¶627. Compare id.

As set forth in Point II below, these communications were prohibited, and, if the Twenty-Eighth Cause of Action is proven to the satisfaction of the Court, they will be a basis for annulling the APA's decision approving the ACR project. Disclosure, including depositions, is necessary to obtain additional evidence on this issue because "there [is] no other way" that the Petitioners can determine the full substance, extent, or impact of the prohibited communications. Matter of Chapman v. 2 King St. Apts. Corp., 8 M.3d 1026(A), *12 (Sup. Ct. New York Co. 2005); see generally Matter of Boisson v. 4 E. Hous. Corp., 129 A.D.2d 523 (1st Dept. 1987). The communications are solely within the knowledge of the individuals, both party and non-party witnesses, who took part in the conversations. See Plaza Operating Partners v. IRM (U.S.A.) Inc., 143 M.2d 22, 24 (Civil Ct. City of New York 1989).

Therefore, full disclosure regarding these communications is "material and necessary to the prosecution" of the Petitioners' petition, and should be granted. Stapleton Studios v. City of New York, 7 A.D.3d at 275; see Matter of Freidus v. Guggenheimer, 57 A.D.2d 760 (1st Dept. 1977).

POINT II:
THE *EX PARTE* COMMUNICATIONS WERE PROHIBITED

State Administrative Procedure Act ("SAPA") § 307(2) states:

> Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate.

In addition, APA's regulations prohibit *ex parte* communications regarding any matter that is the subject of an adjudicatory proceeding. See 9 NYCRR § 587.4(b).

The evidence already gathered by the Petitioners indicates that, after the adjudicatory hearing was closed, APA Staff, and potentially at least one APA Member, communicated with the Project Sponsors regarding the language of the proposed order and permits that APA approved. Reply ¶¶ 395-417; Caffry Aff. ¶¶ 19-31. For example, a memorandum written by Thomas A. Ulasewicz (an attorney for the Project Sponsors), dated just one week before APA's final vote on the Project, states, in part:

> [APA Staff Attorney Paul] Van Cott called me this morning. The Final Order and draft Permits are posted on the Agency's website. The language in these documents are [sic] what the Agency members got Wednesday evening and do not reflect a number of changes, he, I and [APA General Counsel John] Banta agreed to. ... I told him this is unacceptable...
>
> Van Cott called me back at 11AM to tell me that a second posting of Permits will go on the website today (he thought before 2PM when a phone conference is to

> take place between Agency members and Martino). All of the changes he, I and Banta had agreed to along with putting paragraph #30 back to its original language will be reflected in this new posting. He asked that we review those permits intended to be implemented early on and get back to him today with concerns. He offered to meet with me on Sunday if we had our comments together on the whole package so that he could bring them to the attention of Banta and [APA] Chairwoman [Lani] Ulrich first thing Monday morning. I told him I would see what I could coordinate. I have his cell phone number and we arranged to talk again this afternoon (probably after the conference call). Reply ¶407(d); Caffry Aff. ¶¶ 26-27, Ex. H (I).

The other parties, including Petitioners, were not served copies of these communications, nor were they given an opportunity to participate in the negotiations. Amended Petition ¶627. See 9 NYCRR § 587.4(c)(1),(2).

The fact that the communications involved the specific language of the approved order and permits, particularly the language regarding the deed restrictions and the time frame for the project to be "in existence" (Reply ¶¶ 407, 441-445), "hardly permits characterizing" the communications as not "substantive" (Reply ¶402). Matter of Goldfinger v. Lisker, 68 N.Y.2d 225, 232 (1986).

While the Respondents may argue "that petitioner[s] [were] in no way prejudiced by this procedure, the fact remains that this method of drafting final determinations not only plainly violates [SAPA] § 307(2) but, further, creates the appearance of impropriety." Matter of Kaiser v. McCall, 262 A.D.2d 920, 921 (3d Dept. 1999). Indeed, "[s]uch contacts are in violation of

administrative procedural due process and mandate an annulment of the [agency's] determination." Matter of Signet Constr. Corp. v. Goldin, 99 A.D.2d 431, 432 (1st Dept. 1984); see Matter of Rivera v. Espada, 3 A.D.3d 398, 398-399 (1st Dept. 2004) (annulling determination "tainted by the *ex parte* communication" with an attorney who participated in the hearing on behalf of a party). Even an appearance of impropriety is sufficient to "warrant an annulment of the determination" by APA to approve the ACR Project. Matter of LePore v. McCall, 262 A.D.2d 919, 920 (3d Dept. 1999).

Petitioners' diligence with respect to the *ex parte* communications claim has revealed evidence, such as the Ulasewicz memorandum quoted above, that there was, at the very least, an "appearance of impropriety" in APA's decision-making process. Matter of Kaiser v. McCall, 262 A.D.2d at 921. Therefore, APA's decision approving the ACR project should be annulled. See Matter of LePore v. McCall, 262 A.D.2d at 920. Because of the obvious merit of these claims, leave to conduct disclosure should be granted to allow Petitioners to explore the extent of prohibited communications. Point I, supra.

POINT III:
THE STATE SHOULD PROVIDE THE COMPLETE RECORD

In an Article 78 proceeding, "[t]he body or officer shall file with the answer a certified transcript of the record of the proceedings under consideration . . . ." CPLR § 7804(e). The State's Answer (¶645) alleges that it has served the Return in this matter. However, despite Petitioners' multiple requests, the State has refused, in violation of CPLR § 7804(e), to provide a transcript of the APA's deliberations on the ACR project during its meetings in November and December 2011, and January 2012. Caffry Aff. ¶39. Instead, APA's deliberations, which are crucial to the Court's analysis of the Causes of Action in the Amended Petition, have been provided in an electronic format, as copies of the webcasts of the meetings. Caffry Aff. ¶40.

Whether APA's decision was arbitrary and capricious and affected by error of law rests heavily on the APA Members' deliberations. Amended Petition, *passim*. The Petitioners, the State, and the Project Sponsors rely upon what was said during the meetings to support their various positions. Reply ¶452; Caffry Aff. ¶41.

While the Petitioners have transcribed select portions of the recorded webcasts (Reply ¶453), a full transcript is necessary for the Court to properly review the APA's action. See Matter of Captain Kidd's v. New York State Liq. Auth., 248 A.D.2d

791, 792 (3d Dept. 1998)(holding that submission of an audio tape is not in compliance with CPLR § 7804(e)). The State should be directed to produce a transcript of the relevant meetings. See id. Petitioners are "cognizant that it will be a lengthy and costly process to transcribe" the APA's meetings. Matter of Lydon v. New York State Div. of Hous. & Community Renewal, 158 A.D.2d 291, 291-292 (1st Dept. 1990). Nonetheless, under CPLR § 7804(e), the State is required to provide the transcript at its expense. See id.

In the alternative, APA's decision approving the ACR Project should be annulled, and the matter should be remanded to APA for a *de novo* determination. See Matter of Arnot-Ogden Mem. Hosp. v. Axelrod, 95 A.D.2d 947, 948-949 (3d Dept. 1983); Matter of Gittens v. Sullivan, 151 A.D.2d 481 (2d Dept. 1989).

## CONCLUSION

Petitioners should be granted leave pursuant to CPLR § 408 to conduct disclosure in order to prosecute the proceeding. In addition, the State should be directed to prepare and file a transcript of the APA's deliberations on the ACR project that took place during the November and December 2011, and the January 2012 APA meetings. Accordingly, filing and service of the Record, Appendix and the Petitioners' Brief should be stayed until 60 days after the completion of discovery and the

completion and filing of the transcript by APA, whichever comes later.

Dated: September 7, 2012

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Memo

Via E-mail

To: Mike Foxman, Tom Lawson, Bob Sweeney, Jeff Anthony, Kevin Franke
From: Thomas A. Ulasewicz
Date: 1-13-12
Re: AC&R

Van Cott called me this morning. The Final Order and draft Permits are posted on the Agency's website. The language in these documents are what the Agency members got Wednesday evening and do not reflect a number of changes, he, I and Banta agreed to. He specifically mentioned paragraph # 30 in the 8 Large Eastern GCL Permit where deed restrictions are to be in place "prior to conveyance" instead of our agreement that it would be "prior to undertaking". Also, this same paragraph says this provision "will only be enforced by the Agency and The Town of Tupper Lake" – he could not explain to me why executive staff put in the Town. I told him this is unacceptable and the Town has more than enough "control" through the plat process (and IDA funding).

VanCott called me back at 11AM to tell me that a second posting of Permits will go on the website today (he thought before 2PM when a phone conference is to take place between Agency members and Martino). All of the changes he, I and Banta had agreed to along with putting paragraph # 30 back to its original language will be reflected in this new posting. He asked that we review those permits intended to be implemented early on and get back to him today with concerns. He offered to meet with me on Sunday if we had our comments together on the whole package so that he could bring them to the attention of Banta and Chairwoman Ulrich first thing Monday morning. I told him I would see what I could coordinate. I have his cell phone number and we arranged to talk again this afternoon (probably after the conference call).