

# Caffry & Flower

ATTORNEYS AT LAW

100 BAY STREET  
GLENS FALLS, NEW YORK 12801  
(518) 792-1582 • FAX: 793-0541

JOHN W. CAFFRY

KRISTINE K. FLOWER

CLAUDIA K. BRAYMER

\_\_\_\_\_  
MELISSA L. BAKER, Paralegal

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,



John W. Caffry  
jcaffry@caffrylawoffice.com

JWC/ljs

cc: Lawrence A. Rappoport, Esq.  
Paul T. Van Cott, Esq.  
Sarah H. Reynolds, Esq.  
Robert L. Sweeney, Esq.  
Thomas A. Ulasewicz, Esq.  
Robert C. Glennon, Esq.  
Ellen Egan George, Esq.  
Terry Martino  
Clients