

Exhibit 40



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From: Julia Tighe
To: Roger Downs
CC: Kenneth Hamm; Robert Davies
Date: 5/8/2013 6:28 PM
Subject: NYCO
Attachments: Land Swap Article.pdf

Roger -

Thanks again for your time today.

We appreciate the opportunity to discuss the two proposed constitutional amendments

Attached is the aye/nay counterpoint from the Adirondack Council's newsletter that we discussed.

We will provide a map shortly and follow up on the questions you asked.

Thank you-
Julie

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Should the State Constitution Be Amended to Allow a **Land Swap?**



NYCO plant. Courtesy of NYCO



View from Summit of Jay Mountain. Joanne Kennedy

Vote **AYE**

By Joe Martens



MOST MEMBERS of the Adirondack Mountain Club not only love the outdoors, but also recognize that the economic health of Adirondack communities is essential if the park itself is to succeed in the long run.

In 2012, the New York State Legislature approved a resolution to amend Article XIV of the State Constitution to allow NYCO Minerals, Inc., to expand its existing wollastonite mine in the Town of Lewis, Essex County, onto adjacent Forest Preserve land known as Lot 8. In exchange, the resolution prescribes that the state would receive "not less than the same number of acres of land, on condition that the legislature shall determine that the lands to be received by the state are equal to or greater

than the value of the land to be conveyed by the state and on condition that the assessed value of the land to be conveyed to the State total not less than one million dollars." If the resolution receives second passage this year, the voters will decide its fate in November's General Election.

NYCO plans to disturb only a quarter of the 200-acre Lot 8. At the end of the mine's twenty-year life, the constitutional amendment requires the land be reclaimed with native plant species and conveyed back to the state for inclusion in the Forest Preserve. The approximately fifty disturbed acres would once again take on a wild forest character.

Due to the potential value of wollastonite under Lot 8 and the amendment's one-million-dollar minimum value, the state would receive considerably more than 200 acres in any land exchange. The exact acreage to be received will depend on DEC's independent, thorough appraisals of both Lot 8 (which will factor in the value of wollastonite under the property) and the property to be provided to the state in the exchange, all of which also has to be approved by the state legislature. The state will likely receive well more than 1000 acres of land in any exchange.

Lot 8 was acquired by the state in the late 1800s at a tax sale and became part of the Forest Preserve as a result. Lot 8's current forested character has environmental value, although the Department of Environmental Conser-

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vation (DEC) has not identified any unique ecological or natural resource features on the property. Lot 8 has little recreational use: the parcel has no trails or campsites, and public access is limited.

The land to be exchanged must be in the vicinity of Lot 8 and provide greater natural resource, recreational, and environmental value than Lot 8. As the Adirondack Mountain Club has urged, the land should also improve access to the Forest Preserve in the area of the Jay Mountain Wilderness. DEC has begun to review land ownership in the area and has already identified parcels fitting these criteria. Much of this area is also identified in New York State's Open Space Plan. Similar to the 1979 constitutional amendment authorizing International Paper to exchange lands in Perkins Clearing, this proposal should better serve the public by improving access to underutilized lands.

For Essex County and the towns of Willsboro and Lewis, passage of the NYCO Amendment is critical to the health of these already distressed rural economies. NYCO employs approximately 150 local residents who have few alternative employment opportunities. It indicates that defeat of the amendment will cause it to either shift its mine to other Essex County property it owns or entirely shut down its New York State operations. Mining other NYCO property would result in significantly greater environmental disruption, involving more earthmoving and expensive extraction methods than would be required by mining Lot 8 because the wollastonite vein is deeper in the earth and interspersed with more rock. The constitutional amendment would avoid the economic disruption that would result from mining other property or

closing NYCO's mining operation and provide a significant addition to the Forest Preserve.

The proposed NYCO Amendment should be evaluated on its own merits. Each constitutional amendment undergoes three separate rigorous review processes: legislative approval by two different sessions of the legislature, and voter approval at a general election. Further, passage of the NYCO Amendment does not set a precedent for passage of similar future constitutional amendments. A look at prior amendment proposals reveals that passage of one amendment does not always mean similar subsequent amendments will be adopted. For instance, proposals to develop downhill ski areas on Forest Preserve lands on Belleayre, Whiteface, and Gore mountains have been approved, but subsequent similar proposals for Hunter, Hoffman, Blue Ridge, and Peaked Hill mountains were rejected. Moreover, history confirms the difficulty in securing any amendment to Article XIV, showing that the overwhelming majority of attempts to amend Article XIV have been unsuccessful.

The proposed constitutional amendment would substantially benefit people of the State of New York, the Forest Preserve, and communities and residents throughout Essex County which rely on NYCO.



Joe Martens has been commissioner of New York State's Department of Environmental Conservation since March 2011. He also co-chairs Governor Cuomo's Energy Highway Task Force. He was president of the Open Space Institute 1998 to 2010, and is an ex-officio member and former board chair of the Olympic Regional Development Authority (ORDA).

Vote **NAY**



By Bill Ingersoll

I AM A TEN-YEAR MEMBER of ADK's Conservation Committee, and was the sole opposing vote when a resolution supporting the NYCO amendment was approved in May 2012 (see the second paragraph of Joe Martens's comments for an explanation of the amendment). ADK erred when it chose to support this amendment; this deal is motivated too much by economics and too little by conservation principles. It is probably true that few people have ever visited Lot 8. I have never been there, but I have certainly seen it. It is the buffer of land between Slip Mountain, Bald Peak, and the existing NYCO wollastonite mine on Seventy Lane, and it keeps what is undeniably the most blatant eyesore in the neighborhood at a modest remove from the Jay Mountain Wilderness core. The company has mined right to the edge of Lot 8. Anyone who has bushwhacked to nearby Slip or Fay mountains can easily visualize the results of this amendment. Just look at the existing mine, and imagine what it



Wallstonite at NYCO's Lewis site

will look like if extended toward the foot of the Jays. This was an area devastated by fire a century ago, yes, but while the summits and ridges remain bare the forests of the lower slopes have made a significant comeback. Lot 8 and its environs are not some dismal pile of scrub, but a stand of second-growth hardwoods that if left alone will mature into something quite handsome.

Usually, constitutional amendments involve other public agencies as trading partners, and usually they are prompted by an administrative quandary. Either the land swap would resolve a state land management issue, or it would help a local municipality provide a needed service, for example. There should not only be a clear public benefit, but also a public need.

The current amendment, however, has been initiated by a Greek-owned corporation that has a desire to mine the land, the money to buy it, and the intent to profit from it. There is no problem with Lot 8 itself—no title dispute, no access issues. It is a perfectly valid part of the Forest Preserve, even if most members of the recreating public would consider it out of the way. There is therefore no public need for this amendment. Some people apparently desire an upgrade to something “sexier” than Lot 8, but this is not the same thing.

According to the provisions of the amendment, NYCO will spend a minimum of \$1 million on a land purchase wherever suitable acreage is available from a willing third-party seller, to offer in trade for Lot 8. We are supposed to be impressed that this dollar amount is ten times the assessed value. There are certainly some attractive mountains to the north of the Jays that would make a nice acquisition, but how much of a mountain can you buy for \$1 million? Is any of that land even for sale? So not only is there no public need; no one knows exactly what the public benefit will be, either.

Proponents of the deal point out that although we are ceding Lot 8 now, we will get it back when the mine has served its purpose. NYCO will need to remove the surface of Lot 8 to harvest the wollastonite, and once the mineral supply has been exhausted, state law will require them to backfill the pit and plant trees. A spokesperson assures us in a corporate statement that the land will be returned to the

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Jay range views. Joanne Kennedy

Forest Preserve “fully restored,” which is of course a euphemism for seedlings on top of a landfill.

How can this be defended as a benefit to the wilderness resource?

Proponents also argue that supporting the NYCO amendment cannot be considered a precedent for future amendments, because all changes to Article XIV must be considered on an ad hoc basis. Maybe, but that’s missing the point. A principled organization should know what its values and priorities are, and be able to consistently apply them from situation to situation. To suggest that ADK might react differently to a similar proposal from a different corporation—engaging in what is commonly called “preferential treatment”—raises questions of potential conflicts of interest and the need for financial disclosures. Who exactly stands to benefit if NYCO acquires Lot 8, and why should ADK care so fervently in this case but possibly less so in others?

A constitutional amendment is an extraordinary action, and when a private for-profit corporation with offshore ownership initiates the process to acquire public land, red flags should be raised. The Forest Preserve is not a cafeteria from which corporations and their subsidiaries may pick and choose what they want. Some people may think that the proposed ten-to-one exchange rate is a sweet deal, but this is the thinking of a capitalist. A conservationist would say that the value of the preserve is unaffordable in monetary terms, so don’t ask the price.

The fact that we even need to discuss what should be basic assumptions suggests that ADK’s influence has waned, and that politicians are now driving the club’s actions, rather than vice versa. If this amendment passes through the legislature and appears on ballots in November, I implore all conservation-minded New York residents to reject it by voting “no.”



Bill Ingersoll became a co-author (with Barbara McMartin) of the Discover the Adirondacks guidebook series in 2000 and is currently the series' publisher. He serves on ADK's Conservation Committee, and you will find him exploring the North Country with his dog Lexie in all four seasons, by trail, snowshoe, and canoe.

ADK Notes: ADK's support for passage of the NYCO amendment was approved by the ADK Conservation Committee, Executive Committee, and Board of Directors after full and lengthy discussion.

From: Robert Davies
To: jwtighe@gw.dec.state.ny.us <jwtighe@gw.dec.state.ny.us>; roger.downs@sie...
CC: krhamm@gw.dec.state.ny.us <krhamm@gw.dec.state.ny.us>
Date: 5/8/2013 7:22 PM
Subject: Re: NYCO

Thanks Julie and thanks Roger for meeting with us today.

>>> Julia Tighe 5/8/2013 6:28:01 PM >>>

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