

Exhibit 49



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From: Julia Tighe
To: Michelle Milot; Steve Liss
Date: 6/7/2012 2:51 PM
Subject: Martens Letter to Brian Houseal Re: NYCO
Attachments: Houseal_NYCO_6_6_12.JM.ltr.pdf

Attached is a letter Commissioner Martens sent to The Adirondack Council in response to their letter on NYCO Minerals that we thought would be of interest. We also met with them, NYCO, Adirondack Mtn Club and Assm Sayward and Sen Little today to discuss the letter from the Adirondack Council and any questions either group might have on the need for the proposal. They have been asked to share the Commissioner's letter with their board and

Commissioner Martens is very hopeful that there is consideration of at least allowing first passage of this proposal, which would enable DEC and NYCO to begin discussions with the owners of potential swap properties for identification based on the \$1M floor (since we will not know if the value is higher than that until after the exploratory drilling is done for an accurate appraisal).

Please let me know if you have any questions or need additional information.
Thank you for your time and consideration.
Julie

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

JOE MARTENS
COMMISSIONER

June 6, 2012

Mr. Brian L. Houseal
Executive Director
Adirondack Council
103 Hand Avenue, Suite 3
P.O. Box D-2
Elizabethtown, NY 12932-0640

RE: Constitutional Amendment for the NYCO Mine, Town of Lewis

Dear Mr. Houseal: *Brian*

I was surprised and disappointed to receive your May 31, 2012 letter indicating that the Adirondack Council (Council) opposes the proposed constitutional amendment regarding the NYCO mine in the Town of Lewis. However, I appreciate your listing the reasons why the Council opposes the amendment because it gives me with an opportunity to provide the Council with the underlying substantial and compelling public interest which justifies the proposed legislation and constitutional amendment. I urge the Council to reconsider its position and have set forth below information that I believe addresses the Council's expressed concerns.

1. The amendment would set a bad precedent for the future conservation and use of the Forest Preserve by enabling mineral extraction by a private corporation.

Each constitutional amendment stands or falls on its own merit. Adoption of an amendment regarding a particular type of issue does not mean that subsequent amendments of the same type will be adopted. For instance, although an amendment was adopted in 1946 which authorized the construction of ski trails on Belleayre and Gore Mountains, a subsequent 1966 amendment to allow the construction of ski trails on the slopes of Hoffman, Blue Ridge and Peaked Hill Mountains in Essex County was resoundingly defeated by the voters by a nearly 3 to 1 margin.

Moreover, the NYCO amendment will not set precedent for future mineral extraction amendments because there are a number of facts that are unique to NYCO, including:

- The Lewis mine is an operating mine immediately abutting Forest Preserve land;
- The heart of the wollastonite vein extends onto Forest Preserve land;

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- The vein extending onto the Forest Preserve appears to have little overburden or interburden, making it economical to mine and process;
- The adjacent Forest Preserve land does not have any particularly attractive recreational or natural resource values and has poor public access; and
- Because of the value of wollastonite, the appraisal of Lot 8 will be considerably higher than a comparable parcel without such minerals. As a result, the State would receive considerably more acreage in the land exchange than would normally occur. The proposed constitutional amendment provides assurance that the state receives greater consideration by including a minimum value of \$1 million for the replacement land. Moreover, the land to be acquired will undoubtedly have far superior recreational, natural resource and public access values than Lot 8.

Given these unique facts, and the fact that each constitutional amendment stands or falls on its own merit, passage of this amendment would not set precedent for other amendments allowing the extraction of minerals from the Forest Preserve. Adoption of the NYCO amendment would not bind, in any way, the legislature, public at large, or environmental groups, such as the Council, to support any subsequent amendment.

2. Open pit mining is one of the most environmentally destructive forms of natural resource exploitation, and reclamation would require centuries to restore the ecological integrity of the site.

The proposed amendment would not allow the development of a new mine at a location where none now exists. Rather, NYCO currently mines wollastonite at the Lewis mine on a 260 acre tract of land that is situated immediately adjacent to the Forest Preserve land in question. The proposed constitutional amendment should be viewed in the context of an expansion of the existing mine, not the creation of a new mine. Although the land exchange would include the entire 200 acre lot 8 parcel, NYCO expects to mine less than half of the property. Thus, less than 100 acres of the parcel would be disturbed and require reclamation.

NYCO estimates that mining activity would cease at the site within thirteen to fifteen years. At the end of the mine's life, whether or not it is expanded onto Lot 8, NYCO is required to reclaim the mine, pursuant to and consistent with the New York State Mined Reclamation Law (ECL Article 23, Title 27) and implementing regulations (6 NYCRR Parts 420-425). DEC's Mined Land Reclamation permits, oversight of mining operations, and closure and reclamation requirements minimize impacts of mining on land. DEC's program prevents improper disposal of mining wastes, requires erosion and sediment control, and ensures that land impacted by mining is properly reclaimed and returned to productive use upon closure in accordance with an approved plan. Since NYCO would be required to convey Lot 8 back to the State for inclusion in the Forest Preserve after successful reclamation of the site, any proposed reclamation plan for the site would be geared towards reestablishing forest cover compatible with the surrounding forest and providing attractive public access where none currently exists.

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Lot 8 is located in an area that is classified as Wilderness by the Adirondack Park State Land Master Plan and, of course, all wooded properties have ecological value. However, DEC has not identified any critical ecological values on the property, nor does the property experience much, if any, recreational use. Lot 8 does not have easy public access and does not even contain a foot trail. While every parcel of Forest Preserve must be afforded the full protection conferred by the constitution, this land was not acquired by the State pursuant to the Open Space Plan, or through the use of funds from any of the several Bond Acts or the Environmental Protection Fund. Instead, the State acquired the property as a result of an 1885 tax sale, with Lot 8 being acquired from the Comptroller on June 14, 1890. In essence, Lot 8 was acquired by the State because the prior owner defaulted on its taxes and no one else wanted to acquire the property; it was not acquired because it had significant ecological or recreational values. Having been acquired at a tax sale in the late 1800's, it is highly probable that the land was also heavily lumbered prior to State acquisition; thus, it likely does not contain any old growth forests.

In contrast, the public would have a strong interest in securing the potential exchange parcels being considered which have considerable recreational and natural resource values and would enhance public access to underutilized areas of the Jay Mountain Wilderness. As indicated above, the proposal provides that any property exchanged for Lot 8 would be required to have values of at least \$1 million and the land swap would require subsequent legislative approval before it could take place. NYCO has already indicated to us that they would be interested in conveying to the State for inclusion in the Forest Preserve a parcel which NYCO owns to the south and west of Lot 8. Spruce Mill Brook runs through the parcel, and this land could provide hiker parking and access for a trail up Slip Mountain from the south—access that is sorely needed. We are also looking at having NYCO acquire, as additional substitute parcels, two parcels adjoining the Jay Wilderness on the north side. These parcels would provide needed access to the Jay Range from the north. Another parcel being looked at is 8,000 acres in size and would extend public ownership of the Jay Range and several smaller peaks that have great views. The acquisition of any of these parcels or portions thereof would enhance public recreation in an area of the Forest Preserve that is currently underutilized. The State and public's interest would be served by securing any combination of these parcels which would bring far greater recreational opportunities and natural resource values into the Forest Preserve than are currently provided by Lot 8.

3. The potential economic benefits of expanding this mine would be brief while environmental damage would be long-lasting.

This concern greatly understates the economic benefits of expanding the mine. NYCO's current estimate is that the land exchange would extend the life of the Lewis mine between 13 and 15 years. NYCO's mining operations would continue to provide an economically depressed area of the State with nearly 100 full time jobs and 50 part time jobs, with an annual payroll in excess of \$4.5 million. In addition, NYCO has 63 vendors within a 100 mile radius and spends \$2.3 million locally per year. It also pays \$260,000 annually in local taxes. Expenditures by NYCO's employees and the employees of NYCO's vendors support local businesses, such as restaurants, stores, and gas stations, and thus are an important economic engine to the area. These expenditures can determine whether these local businesses are able to stay in business.

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4. There are clear alternatives to expanding the mine site; NYCO owns other properties which it can mine.

Although NYCO does own other properties, mining them would be significantly more costly than mining the wollastonite on Lot 8 and could result in a shutdown of NYCO's operations. Expenses related to relocating mining operations to a new site alone would cost NYCO approximately \$4 million. Furthermore, wollastonite deposits on NYCO's other properties are deeper in the ground and contain more overburden and interburden as compared to the vein extending under the Forest Preserve on Lot 8. The more overburden and interburden requiring removal, the more the environmental damage, and the more expensive and less competitive the mining operation will be. This is evidenced by the fact that NYCO's Lewiston mine expenses during the last several years have tripled because, as NYCO has followed the wollastonite lens to the south on its property, it encountered increasing amounts of overburden and interburden.

NYCO's main competition comes from China, India, Finland, and elsewhere in the United States. Because labor costs are considerably cheaper elsewhere, particularly in China and India, NYCO will remain competitive only if its mining operations are more efficient than the operations in those countries. Consequently, increased extraction and mine relocation costs would reduce NYCO's competitiveness in the global market and could cause NYCO to either reduce the scale of its Essex County operations or shut down operations entirely.

5. The Adirondack Council's support of recent amendments regarding the Keene Cemetery, Raquette Lake Water Supply, and Route 56 power line were based on the fact that the amendments were needed to ensure public health and safety for the Park's communities.

I know that the Council would agree that the economic health of Adirondack communities is essential if the Park itself is to succeed in the long run. The loss or reduction in 150 jobs may not be significant to large metropolitan areas, but could be devastating to a small rural community with few alternative employment opportunities. Willsboro, the Town in which NYCO's processing plant is located, had a population of only 2,025 people in the 2010 census. The Town of Lewis, in which the Lewis mine is located, had a population of only 1,382 in the 2010 census. According to the census, there were only 1,278 households located in these towns in 2010. The loss of 150 full and part-time jobs to these small communities could impact one out of every 9 or 10 households in these towns and could devastate the local economy. The loss of so many jobs that are directly and indirectly tied to the mining operation as well as the substantial loss in tax revenue to such small communities could have a considerable adverse impact on the public health and safety in these communities.

As you know, a concurrent resolution authorizing a vote on a constitutional amendment must be passed by two separate legislatures before the amendment can be placed on the ballot at a general election. Since the legislature is currently in the second year of a two year cycle, failure by the legislature to approve the resolution in 2012 would mean that first passage would have to wait until the 2013-2014 session, with second passage waiting until the 2015-2016 session. As NYCO is so close to the end of the Lewis mine's


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pit life, a delay in first passage until the 2013-2014 session would likely kill the proposal and NYCO would be forced to either move its mine to its other property, at greater cost both to their operations and the environment, or close its Lewis/Willsboro operation. Precedent shows that first passage of an amendment does not ensure second passage. (For instance, a concurrent resolution to authorize the lease of a part of Hunter Mountain to a private corporation for construction of ski trails passed both the Senate and Assembly in 1960, but failed to get second passage.) In fact, the purpose of requiring second passage is to ensure that a newly seated legislature looks at a proposed amendment anew and ensures that any outstanding issues or concerns with a proposal at first passage have been adequately addressed.

For these reasons, I respectfully request that the Adirondack Council reconsider and withdraw its opposition to first passage. We are available to discuss these issues with you and your board.

Please let me know if you have any additional questions or if I can provide you with any additional information regarding this matter.

Sincerely,



Joseph J. Martens