

PROTECT THE ADIRONDACKS!

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and Counsel**

October 31, 2022

Hon. John L. Ernst
Chair
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

Barbara Rice
Executive Director
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

**RE: APA Project 2021-0248/ Large-Scale Subdivision
Tax Map Nos. 17.2-1-4, 17.2-1-5.1 & 17.2-1-20.111
Eric Stackman
Land Use Area: Low Intensity Use and Hamlet
Town of Jay, Essex County**

Dear Chairman Ernst and Ms. Rice:

Protect the Adirondacks (“PROTECT”) submits this letter to reiterate our request that the Adirondack Park Agency (“APA” or “Agency”) include, as part of its permit application review, an evaluation of the direct and upstream greenhouse gas (“GHG”) emissions associated with the large-scale subdivision proposed by Eric Stackman in the Town of Jay, Essex County (“the Project”). As discussed in detail below, the Climate Leadership and Community Protection Act (“CLCPA”) requires all state agencies, “[i]n considering and issuing permits, licenses, and other administrative approvals and decisions,” to determine whether such action “will be inconsistent with or will interfere with the attainment of the statewide [GHG] emission limits” established in Article 75 of the Environmental Conservation Law (“ECL”). Climate Leadership and Community Protection Act, Ch. 106, Laws of 2019, § 7(2).

To date, the applicant has failed to submit an analysis of the Project’s direct and upstream GHG emissions and, to our knowledge, the APA has failed to take any steps to evaluate the Project’s potential GHG emissions. PROTECT first requested that the Agency include a GHG emissions analysis as part of its review of the Project in its comment

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letter dated December 3, 2021. Ltr. from Peter Bauer, PROTECT Executive Director, to Devan Korn, Adirondack Park Agency (Dec. 3, 2021) at 2-3. The Agency subsequently issued two Notices of Incomplete Application, dated December 23, 2021 and August 23, 2022, neither of which requested any information concerning the Project's potential or projected direct and upstream GHG emissions. PROTECT urges the Agency either to request that the applicant provide an analysis of the Project's direct and upstream GHG emissions or confirm that the APA is conducting its own analysis of those emissions in order to evaluate compliance with the State's GHG emission limits.

The CLCPA Mandates a GHG Emissions Analysis for All Permit Applications

The CLCPA establishes economy-wide requirements to reduce Statewide GHG emissions. Article 75 of the ECL (enacted as part of the CLCPA) requires the Department of Environmental Conservation ("DEC") to promulgate regulations ensuring that Statewide GHG emissions be reduced to 40% below 1990 levels by 2030, and 85% below 1990 levels by 2050. ECL § 75-0107(1). As required by the CLCPA, DEC promulgated regulations translating the statutorily required statewide GHG emission percentage reduction limits into specific limits based on estimated 1990 GHG emission levels. *See* 6 NYCRR Part 496. The regulations establish Statewide GHG emissions limits for 2030 and 2050, respectively, of 245.87 and 61.47 million metric tons of carbon dioxide equivalents (measured on a 20- year Global Warming Potential basis). *Id.*

Section 7(2) of the CLCPA imposes a mandatory duty on all State agencies to consider the GHG emissions associated with the issuance of a permit or approval:

In considering and issuing permits, licenses, and other administrative approvals and decisions . . . all state agencies, offices, authorities and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide [GHG] emissions limits established in [ECL Article 75]. Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide [GHG] emissions limits, each agency, office, authority or division shall provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or [GHG] mitigation measures to be required where such project is located.

Ch. 106, Laws of 2019, § 7(2).

After enactment of the CLCPA and promulgation of the GHG emissions limits, DEC denied two permit applications based on section 7(2) of the CLCPA: the applications by Danskarmer Energy, LLC ("Danskarmer") and Astoria Gas Turbine Power, LLC ("Astoria") for Clean Air Act Title V permits associated with construction and repowering of natural gas-fired electric generating plants. In denying the applications, DEC stated:

Section 7(2) of the [CLCPA] has three elements. First . . . the Department must consider whether a Title V permit for the Project would be inconsistent with or interfere with the attainment of the Statewide GHG emission limits established in ECL Article 75. Second, if the issuance of a Title V permit for the Project would

be inconsistent with or would interfere with the Statewide GHG emission limits, then the Department must also provide a detailed statement of justification for the Project notwithstanding the inconsistency. Third, in the event a sufficient justification is available, the Department must also identify alternatives or GHG mitigation measures to be required for the Project.

DEC, Notice of Denial of Title V Air Permit (Oct. 27, 2021) at 6, available at https://www.dec.ny.gov/docs/permits_ej_operations_pdf/danskammerdecision102721.pdf.

Based on its review of the projected direct and upstream GHG emissions associated with the Danskammer project, DEC concluded that it could not issue the requested permit:

As described further below . . . the Project would be inconsistent with or would interfere with the attainment of the Statewide [GHG] emission limits established in Article 75 of the [ECL]. Moreover, Danskammer has not demonstrated that the Project is justified as it has failed to show either a short term or long term reliability need for the Project. Nor has Danskammer identified adequate alternatives or GHG mitigation measures. Accordingly, given that the Department is unable to satisfy these elements required by Section 7(2) of the [CLCPA] the Department is compelled to deny the Title V Application.

Id. at 2.

As explained by DEC, “[t]his determination of inconsistency is based primarily on the fact that the Project would be a new source of a substantial amount of GHG emissions, including both direct and upstream GHG emissions . . .” *Id.* at 7. Of particular importance is the fact that DEC based its denial on GHG emissions analyses prepared by Danskammer, including “the responses to DEC’s three separate [Notices of Incomplete Applications] as submitted by the Applicant.” *Id.*

DEC undertook a similar analysis in denying the Astoria application, concluding that denial of the application was required because the Department was unable to satisfy the elements required by Section 7(2) of the CLCPA. DEC, Notice of Denial of Title V Air Permit (Oct. 27, 2021), available at

https://www.dec.ny.gov/docs/permits_ej_operations_pdf/nrgastoriadecision102721.pdf.

DEC has also recently issued draft guidance for its air permitting program requiring evaluation of a project’s direct and upstream GHG emissions as part of the permit review process:

To determine whether a given project is consistent with the requirements of CLCPA, the applicant must provide an objective analysis of the GHG and CO₂e emissions from the project, that includes any upstream or downstream emissions known to be attributable to the project, including upstream emissions attributed to production, transmission, and use of fossil fuels or imported electricity. For projects that increase GHG emissions, the applicant should also provide a description of any proposed alternatives or GHG mitigation measures from the facility owner or operator. It is important to note that the CLCPA review is independent from other reviews . . . that may also be required for the permit action.

DEC, DAR-21 The Climate Leadership and Community Protection Act and Air Permit Applications (Dec. 8, 2021) available at https://www.dec.ny.gov/docs/air_pdf/dar21.pdf.

A legal challenge to DEC's denial of the Danskammer permit application was recently dismissed, with the Court concluding that "to give Section 7 [of the CLCPA] meaning, the Court finds that the plain language of the statute must be interpreted to grant the DEC the requisite authority to deny a permit when the grant of the permit would be inconsistent with or interfere with the attainment of the goals of the CLCPA, and the grant cannot otherwise be justified or the adverse effects mitigated." *Danskammer Energy, LLC v. Dep't. of Envtl. Conserv.*, 76 Misc.3d 196, 250 (Sup. Ct. Orange County, June 8, 2022).

The Project's GHG Emissions Must Be Evaluated by the Agency

It is beyond dispute that the Project will result in an increase of GHG emissions. As currently proposed, the Project will be comprised of 120 lots that will include up to 20 townhomes, each 1800 square feet in size; up to 60 villas, each 3500 square feet in size; up to 18 estates, each 6500 square feet in size; up to 6 mansions, each 10,000 square feet in size; and a hotel, restaurant and spa. As noted in PROTECT's previous comment letter, noted Adirondack scientist Jerry Jenkins calculated that construction of a single 2,060-square-foot house creates a four-ton carbon debt. Given the size and number of new homes proposed by the applicant, the Project's new home construction will likely create a carbon debt of hundreds of tons. In addition, Jenkins calculates that clearing one acre of forest creates a carbon debt of 257 tons. Given that a substantial amount of forest clearing is proposed by the applicant for the purpose of new home and road construction, this activity will result in additional hundreds of tons of carbon debt. Thus, the clearing of forest and construction of new homes will result in a total carbon debt of thousands of tons. Added to this are the increases in GHG emissions resulting from motor vehicle use during construction, increased motor vehicle traffic from homeowners, and motor vehicle traffic from the general public visiting the Project's hotel, restaurant and spa. The CLCPA is crystal clear in imposing a duty on the APA to evaluate the GHG emissions associated with the Project: the Act's requirement that consistency with the CLCPA's GHG emissions limits be evaluated applies to "*all state agencies*" when "*considering and issuing permits.*" CLCPA § 7(2); (emphasis added). Accordingly, PROTECT again urges the Agency to fulfill its obligation under the CLPA either by requesting the applicant to provide an analysis of the Project's direct and upstream GHG emissions or confirming that the APA is conducting its own analysis of those emissions.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Amato".

Christopher Amato
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Cc: APA Board Members
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