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and Counsel*

February 14, 2024

Via Email

John 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: Failure by the Adirondack Park Agency to Comply With the
Climate Leadership and Community Protection Act**

Dear Mr. Ernst and Ms. Rice:

Protect the Adirondacks! Inc. ("PROTECT") strongly supports the continuing efforts by New York State to address the adverse effects of climate change, including the provisions of the groundbreaking Climate Leadership and Community Protect Act ("CLCPA"). The Adirondack Park is already experiencing significant adverse effects of climate change, including shorter winters, less snowfall, more severe storm events, warming waters, infestations of non-native species, and changing forest composition. It is therefore particularly disappointing that the Adirondack Park Agency ("APA"), charged by statute with protecting the natural resources of the Adirondack Park, is failing to comply with the CLCPA's mandate that all State agencies require and consider an analysis of greenhouse gas ("GHG") emissions associated with a proposed project prior to issuing a permit or approval. The Agency's lack of compliance with this critical statutory mandate is difficult to understand given PROTECT's repeated written requests to the APA that it comply with the CLCPA, and the fact that the regulatory tools for conducting the requisite GHG emissions analyses are readily available.

Protect the Adirondacks

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The purpose and goal of the CLCPA is to achieve economy-wide reductions in Statewide GHG emissions. Article 75 of the Environmental Conservation Law (“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). DEC promulgated those regulations that translate the statutorily required statewide GHG emission percentage reduction limits into specific limits based on estimated 1990 GHG emission levels. *See* 6 NYCRR Part 496.

As part of the strategy to achieve the necessary reduction in GHG emissions, 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); (emphasis added).

Although the CLCPA does not exempt any agency permit or approval from the GHG emissions requirement, APA should at a minimum require a GHG emissions analysis for major projects subject to the Agency’s permit jurisdiction. PROTECT has previously requested that the APA fulfill its climate protection obligations under the CLCPA by requiring applicants for particular major projects to conduct the GHG analysis mandated by section 7(2) of the Act. Specifically, by letters dated October 31, 2022, and September 13, 2023, PROTECT requested the APA to require the GHG emissions analysis mandated by the CLCPA for, respectively, the Stackman major subdivision project in the Town of Jay, Essex County and the Barton Mines expansion project in the Town of Johnsbury, Warren County. APA did not respond to either letter and has so far failed to require a GHG emissions analysis for both projects.

In contrast to APA’s failure to require GHG emissions in its review process, DEC recently issued a Notice of Incomplete Application (“NIPA”) for the Barton Mines project that, among other things, required the applicant to comply with the GHG emissions analysis requirements of the CLCPA:

Please submit a GHG emission analyses that quantifies the increase in upstream and direct GHG emissions resulting from all proposed modifications including the increase in hours for quarry mining, the increase in greenhouse gas emissions from truck traffic as described in the traffic impact assessment, and the increase in hours of operation for supplier vehicles. Please also confirm that all other GHG emissions from the site will remain the same except those explicitly described.

All estimated greenhouse gas emissions calculations should be provided in metric tons per year and in units of carbon dioxide equivalent (CO₂e) using the 20-year global warming potentials found in 6 NYCRR Part 496. These estimates should be inclusive of the full scope of applicable GHG emissions defined in 6 NYCRR Part 496. For upstream GHG emissions calculations, refer to the 2023 Statewide GHG Emissions Report Appendix: CLCPA Emission Factors available at <https://dec.ny.gov/environmental-protection/climatechange/greenhouse-gas-emissions-report#Report>.

DEC Notice of Incomplete Application and Technical Comments (Jan. 26, 2024) at 7.

Unfortunately, the APA's NIPA for the Barton Mines project, issued on January 12, 2024, included no requirement for compliance with the CLCPA's GHG emissions analysis requirement. APA staff has indicated that the APA's failure to include that requirement in its NIPA was not due to DEC's inclusion of the requirement in the DEC NIPA.

The CLCPA's mandate could hardly be more plain and, as the DEC NIPA makes clear, the regulatory tools for compliance with the CLCPA's GHG emissions analysis requirements are readily available. We therefore once again call upon the APA to comply with its obligations under the CLCPA by requiring a GHG emissions analysis for all major projects in which APA is "issuing permits, licenses, and other administrative approvals and decisions." Ch. 106, Laws of 2019, § 7(2).

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato", written in a cursive style.

Christopher Amato
Conservation Director and Counsel
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