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By NYSCEF

September 4, 2026

Hon. Robert D. Mayberger
Clerk of the Court
Appellate Division, Third Department

Re: *Matter of Protect the Adirondacks! Inc. v. New York State Dep't of
Envtl. Conserv.*, No. CV-25-0656

Dear Mr. Mayberger:

Appellant Protect the Adirondacks ("PROTECT") has reviewed the September 1, 2026 letter submitted on behalf of Respondent New York State Department of Environmental Conservation ("DEC") by Assistant Solicitor General Frederick A. Brodie. PROTECT respectfully objects to the Court's consideration of that letter because it constitutes an improper attempt to supplement the administrative record on appeal with hearsay assertions by counsel, who does not claim to have firsthand knowledge of the matter described. *See Birch v. McGhee*, 79 AD3d 1296, 1297 (3d Dept. (affirming Supreme Court's refusal to consider affidavit that was not based on personal knowledge); *Heifets v. Lefkowitz*, 271 AD2d 490 (2d Dept. 2000) (attorney's affirmation together with inadmissible hearsay documents insufficient to warrant denial of motion for summary judgment).

As Respondents acknowledged in their opposing brief, "[a]s a general matter, this Court will not consider material that was not presented to Supreme Court. *See* Brief for Respondents at 36, citing *Matter of Amber B. v. Scott C.*, 207 A.D.3d 847, 849 n.2 (3d Dep't 2022); *Jackson v. Dow Chemical Co., Inc.*, 295 A.D.2d 855, 857 (3d Dep't 2002); *People v. Van Buren*, 200 A.D.2d 834, 834 (3d Dep't 1994), *lv. denied*, 83 N.Y.2d 877 (1994); *see also*, *Matter of Jorling v. Adirondack Park Agency*, 214 AD3d 98, 101-102 (3d Dept. 2023) ("It is well settled that this Court is limited to reviewing facts contained in the record and any arguments based thereon and we will therefore not consider arguments founded upon information outside the record."); *Matter of Jacobi v. Tax Appeals Tribunal of the State of N.Y.*, 156 AD3d 1154, 1155 (3d Dept. 2017) ("[w]e will not consider documents . . . that were not part of the administrative record."). DEC cites no legal authority that would permit the Court to disregard that well-established rule here.

Protect the Adirondacks

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Moreover, the additional information offered in the September 1 letter is wholly unsubstantiated hearsay. The letter asserts without documentary or other evidentiary support, that DEC “obtained authorization to access the \$1 million legislative appropriation for a carrying-capacity study on the Saranac Chain of Lakes.” This assertion is particularly striking given DEC’s prior position that the Court should not even consider that the Legislature, with Governor Hochul’s approval, has twice appropriated \$1 million for a carrying capacity study of the Saranac Chain of Lakes. *See* Brief for Respondents at 36-37 (claiming that Appellant’s request that the Court take judicial notice of the budget appropriation “impermissibly relies on evidence outside the record.”).

DEC now seeks to emphasize that it has “obtained authorization” to access that appropriation, yet the letter provides no explanation of what that statement means, no non-hearsay evidence substantiating the claim, and no evidence that DEC has committed to expend those funds to conduct the required study. The Court should not accept an unsupported assertion by counsel as evidence of DEC’s purported compliance with its legal obligations—particularly where DEC itself has argued that information outside the administrative record should be disregarded.

The letter also asserts that DEC “is presently in the process of retaining a consultant for the carrying-capacity study.” PROTECT has searched the State’s database of Requests for Proposals (“RFPs”) issued by State agencies and found no RFP for a carrying capacity study of the Saranac Chain of Lakes. PROTECT advised Assistant Solicitor Brodie of this fact by email dated September 2, 2026, but received no response. Thus, the record before the Court contains no apparent basis to support DEC’s assertion that it is presently in the process of hiring a consultant.

In sum, the September 1 letter is an eleventh hour attempt to supplement the administrative record with unsubstantiated hearsay assertions designed to persuade this Court that DEC is “in the process” of complying with its mandatory obligation under the Adirondack Park State Land Master Plan and the Saranac Lake Wild Forest Unit Management Plan to conduct a carrying capacity study of the Saranac Chain of Lakes.

PROTECT respectfully urges the Court to disregard DEC’s September 1 letter in its entirety as procedurally improper and unsupported by competent evidence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Charles Brodie', written in a cursive style.

Conservation Director and Counsel
Attorney for Appellant

Cc: Assistant Solicitor General Frederick A. Brodie (via NYSCEF)