Next steps in NYCO land swap questioned

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RAY BROOK — The plan for NYCO Minerals to test mine on state land has been called into question by environmental groups.

Proposition 5, approved by voters statewide last November, allowed a constitutional amendment granting the Willsboro-based mining company access to wollastonite deposits on state land adjoining its mine in the Town of Lewis.

Proposition 5 also approved a swap of 1,500 acres of NYCO land for the 200-acre parcel of state land.

The next step in NYCO’s proposal is to dig test mines to see if enough of the mineral is on the property, called Lot 8.

But how that effort proceeds is the subject of a letter sent by Earthjustice to the State Department of Environmental Conservation.

The 13-page letter represents the concerns of several preservation groups, including Adirondack Wild, Protect the Adirondacks, the Sierra Club’s Atlantic Chapter and the Atlantic States Legal Foundation.

DEADLINE TO RESPOND

At Adirondack Wild, founding partner David Gibson said Earthjustice is an environmental law firm.

He did not say that legal posturing in the letter is precursory to a lawsuit.

“That’s not the subject of this letter,” Gibson said.

But the letter gives DEC 15 days to respond to numerous questions about how NYCO test mining would be brought into compliance with legal language in the Adirondack Park State Land Master Plan; with DEC’s Jay Wilderness Unit Management Plan; and with DEC’s Temporary Revocable Permits policy for state lands and easements.

The 15 days are not legally binding, Gibson said.
“That’s just businesslike. We could have given them 30 days; we just picked 15 days,” he said.

‘ONLY ONE LAYER’

The gist of the legal pursuit suggests, in the letter’s conclusion, that the passage of Proposition 5 “removed only one layer of legal protection for Lot 8 and only for expressly specified purposes.

“Because no enabling legislation has been passed to implement the amendment of (the Forever Wild constitutional clause), minerals sampling operations may not proceed on Lot 8, and Lot 8 may not be exchanged for other land, until, at a minimum, the Legislature passes new (laws).”

The letter from Earthjustice requests that DEC acknowledge “all of the foregoing legal prerequisites” and that the agency will comply with the laws.

TEMPORARY PERMIT

At a recent Forest Preserve Advisory Committee meeting, “DEC told us ... they believe they have legal authority under case law to issue NYCO a Temporary Revocable Permit to explore for minerals, which is what the constitutional amendment (Prop. 5) was all about,” Gibson said.

“Our point is ... that is the constitutional part of the law. There are several non-constitutional aspects of the law that need to be respected here.

“The constitutional amendment removed certain protections, but it does not remove, for example, the Wilderness guidelines that prevent new structures, new improvements or new roads on state land.

“Environmental Conservation Law prevents motorized activities in wilderness areas, so, think about all the things NYCO would have to do to explore (Lot 8),” Gibson said.

His group doesn’t think DEC can issue a Temporary Revocable Permit until certain laws are addressed.

Proposition 5 authorized NYCO to explore the site before the land exchange. And exploration requires the mining company to enter Lot 8 and build roads to test pads, Gibson said.

“The test pads are drilling pads. They’re going to have to drill vertically. The impacts are not insignificant.”

TRANSPARENT
Contacted about the letter, DEC spokesman Peter Constantakes said, “DEC will proceed with a transparent public process that will comply with all laws and regulations pertaining to this matter.”

NYCO spokesman John Brodt told the Press-Republican they were reviewing the letter “and have no comment at this time.”

Asked what they will do if DEC doesn’t respond in 15 days, Gibson said they haven’t crossed that line yet.

“We certainly will be calling them if we haven’t heard from them, and we will sit down with them.”