Environmentalists question legality of Jay mining plan

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Brett Lawson, superintendent at NYCO Minerals' Lewis mine, points in June 2013 toward a 200-acre parcel of state-owned land, above and behind the rock wall, where the company wants to mine wollastonite. Also pictured, from left, are NYCO employees Dawn Revette and Brian Shutts. (Enterprise photo — Chris Knight)

Environmentalists are crying foul over the state's plan to override Adirondack Park wilderness protections to allow exploratory mining in part of the Jay Mountain Wilderness.

The state Adirondack Park Agency contends that the voters of the state of New York gave it the authority to do so.

Over the past month, the APA has received more than 3,800 comments from the public on a draft amendment to the Jay Mountain Wilderness Unit Management Plan. The proposal is scheduled to come up for a vote at next week's APA board meeting.

APA spokesman Keith McKeever said Friday that the vast majority of the comments were form letters emailed to the agency by members of environmental organizations opposed to the plan.

"They were basically concerned with making sure we're meeting all environmental regulations, which we will," McKeever said.

The amendment is designed ensure that the Jay Wilderness plan is consistent
with a constitutional amendment New York voters approved in November, letting NYCO Minerals conduct exploratory drilling for wollastonite on a 200-acre parcel of Forest Preserve land in the town of Lewis. The drilling is meant to determine the quantity and quality of wollastonite on the parcel, known as Lot 8, so the state can accurately appraise the property's value as part of land swap for other Forest Preserve lands.

The APA says the constitutional amendment repeals wilderness guidelines that would otherwise prohibit NYCO's drilling operations, but a coalition of environmental groups is urging the APA to drop the proposed amendment.

Adirondack Wild, Protect the Adirondacks, the Atlantic Chapter of the Sierra Club and the Atlantic States Legal Foundation, in a joint letter to the agency, argue that the cutting of corridors for machinery, road building, drilling and use of motor vehicles in the wilderness violates the Adirondack Park State Land Master Plan.

"There was nothing in the constitutional amendment that was approved about subjugating or somehow exempting the State Land Master Plan or other state environmental laws from the process," Peter Bauer, executive director of Protect the Adirondacks, told the Enterprise Friday.

Bauer said there was no enabling legislation accompanying the constitutional amendment that spelled out what its implementation process would be.

"Our worst fears were realized when the state came out and said, 'Look, we really don't have to adhere to a number of existing laws because of this constitutional amendment,'" Bauer said. "We fundamentally disagree with that, and there's a lot of legal analysts around the state who disagree with that as well."

"Basically, what we are saying to DEC (state Department of Environmental Conservation) and APA is follow the law," Dan Plumley of Adirondack Wild said in a press release. "DEC cannot issue even a temporary revocable permit to allow mineral exploration unless and until the full range of laws protecting our wilderness areas from commercial exploitation and industrial uses are amended."

Even the Adirondack Council, which had pushed for approval of the constitutional amendment, has questioned the state's argument that the approved amendment supersedes the State Land Master Plan. In a May 30 letter to APA Chairwoman Lani Ulrich, Council Deputy Director Diane Fish said the legal documentation to back up the agency's conclusion is "sorely lacking.

"Citing limited case law and relying on a staunch conviction that basic constitutional law affords the amendment to move forward unhindered is not enough, particularly when legitimate concerns and issues have been raised by the public," Fish wrote.

These questions were raised in many of the public comment letters submitted
to the agency. Agency staff, in a summary of public comment included in the agenda for next week's meeting, issued a two-sentence response that says New York voters approved "a constitutional amendment that will allow for this action to occur.

"The constitutional amendment overrides the (State Land Master Plan) guidelines for wilderness," staff wrote.

Asked to back up that statement further Friday, McKeever said staff would go into more detail at next week's meeting.

"We just disagree with (the environmental groups') position," McKeever said Friday.

Others feel the constitutional amendment allows the state's wilderness guidelines to be set aside. Fred Monroe, executive director of the Adirondack Park Local Government Review Board, said the Constitution is "the supreme law of the state." He believes it trumps any other regulations, including the State Land Master Plan.

"When a constitutional amendment is approved by the majority of the people who voted on it in the state, I think they expect to see it carried out," he said. "And I think it's quite clear that this can't be carried out without the exploratory drilling. To me, it's not a valid argument to say that regulations trump a constitutional amendment."

Monroe agreed that it would have been better to have enabling legislation spelling out this process, "but I don't think it's a fatal flaw."

The legality of the proposed UMP amendment isn't the only thing environmentalists are concerned about. They also argue that the APA and DEC have failed to adequately inventory the natural resources on Lot 8. The same contention was also made in the run-up to the November vote.

"This is a forest system that has been unimpacted, unimpaired by human activities since the 1890s," Bauer said. "The DEC conducted an incomplete assessment to say, 'Oh, this is not old growth,' but they didn't look at the total spectrum of criteria for an old-growth forest. We do not feel the environmental baseline information the state has gathered and put forth is adequate."

In response to similar comments, APA staff said an inventory of natural resources was included in the wilderness area's 2010 unit management plan, as required by the State Land Master Plan.

"This requirement does not direct either the department or the agency to conduct the inventory, but to use the best available information," staff wrote.

The agency also said that the New York Natural Heritage Program conducted an inventory of Lot 8 last summer that found its forests "do not meet all of the criteria necessary for the definition of old growth."
The draft amendment is scheduled to come before the APA's State Land Committee, which meets at 1:45 p.m. Thursday at the agency's headquarters in Ray Brook.

If the amendment is approved, Bauer said his group and others may have to go to court to fight it.