APA approves Jay Wilderness mining plan

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Adirondack Daily Enterprise

June 14, 2014

RAY BROOK - The state Adirondack Park Agency has approved a controversial proposal that will allow NYCO Minerals to conduct exploratory drilling on state Forest Preserve land.

The unanimous decision to amend the unit management plan for the Jay Mountain Wilderness took place Friday at the agency’s monthly meeting in Ray Brook. It was opposed by environmental groups who questioned the legality of the proposal and may continue the fight by taking the APA to court.

The move to amend the Jay Wilderness UMP comes after November’s approval, by voters statewide, of a constitutional amendment that authorized a land swap between the state and NYCO. The company plans to conduct test drilling for wollastonite on a 200-acre parcel of state land,
known as Lot 8, next to its existing mine in the town of Lewis. The drilling will determine the quantity and quality of wollastonite on the parcel so the state can accurately appraise its value as part of a swap for other Forest Preserve lands.

Brian Shutts, a geologic technician with NYCO Minerals, holds up a rock embedded with wollastonite, a rare, white mineral used in paint ceramics, automotive brakes and clutches, at the site of NYCO’s wollastonite mine in Lewis in June 2013. (Enterprise photo — Chris Knight)

During Thursday’s APA State Land Committee meeting, planner Kathy Regan said the agency received more than 3,800 comment letters about the UMP amendment, most of them form letters emailed by advocacy groups.

Environmentalists have said 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. They've argued that there was nothing in the constitutional amendment that exempted the SLMP or other state laws from the process and that the SLMP would have be amended for the test drilling to go forward.

Regan said Thursday that passage of the constitutional amendment "overrides the Adirondack Park State Land Master Plan guidelines for wilderness, which would otherwise prohibit mineral exploration on Lot 8."

"The requirement of the case law is that the constitutional amendment does abrogate or nullify or overrule inconsistent provisions of the statute," said APA counsel James Townsend. "It has been overridden but not completely. It only needs to be overridden to the extent that it's necessary to carry out the intent of the constitutional amendment, which is to permit the exploratory activity."

APA State Land Committee Chairman Richard Booth noted that Townsend went into further detail on the agency's position in a June 4 memo to board members. Townsend said the memo was confidential, consists of "counsel's advice" and is not a public document.

Commissioner Sherman Craig said he felt obligated to share his thoughts, given the number of people who submitted comments.

"I understood many of the comments were looking at case law, sort of parsing a word here and there and saying, 'It could be interpreted differently,'" Craig said. "I don't disagree with that, and I'm not a lawyer, but I do believe that the intent of the constitutional amendment was very clear. ... I'm comfortable that these are appropriate responses to the voters' request."

"Obviously this is controversial," Booth said. "My reading of this is it seems to make sense to me, the strategy DEC's lawyers and Jim Townsend have come up with. This may well get litigated, and that's not a surprise. But I
think, given the vote of the public, this is what the public anticipated would happen."

Environmentalists had also argued that the APA and state Department of Environmental Conservation failed to adequately inventory the natural resources on Lot 8.

Regan said the plan crafted by DEC through a temporary permit it would issue to NYCO "avoids sensitive resources including wetlands and vernal pools." She also said the New York Natural Heritage Program conducted an inventory of the property last summer and found the trees on Lot 8 do not qualify as an old-growth forest.

"They meet some of the criteria, but not all of the criteria necessary for the definition of old growth," Regan said.

In a separate presentation to the board, DEC's Peter Frank said the department tried to minimize the impacts of the drilling, which would take about six to eight months to complete. He said 1,200 trees would be cut in phases, but only 7 of the 200 acres would be disturbed. No work would take place within 100 feet of Lot 8's boundaries with the rest of the Jay Wilderness, and the drilling could only happen after July 16 to avoid impacts to migrating birds that may nest on the property, Frank said.

David Gibson of Adirondack Wild: Friends of the Forest Preserve said he believes the APA and DEC were under pressure from the governor's office to approve the UMP amendment.

"I think it's been very clear that this is going to be fast-tracked, coming right from the top," he said.

Gibson said he doesn't think as many voters would have supported the constitutional amendment if they knew "that all other laws were rescinded by their vote.

"The creative way legally the agencies are looking at this boggles my mind," he said. "You have all sorts of layers of law that are being cast aside here. By what standard is the agency going to determine this amendment conforms with the State Land Master Plan if you rescind the wilderness guidelines? What other standard is there? Their legal foundation for making these determinations has been swept away."

Adirondack Wild is one of several environmental groups that joined together to voice concerns about the proposal. Asked if they'll continue the battle in court, Gibson said, "We don't know at this point. We'll obviously review our options."