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September 22, 2009

Governor David Paterson
Executive Chamber
State Capitol
Albany, New York 12224

Re: Recommendation of the Adirondack Park Agency to classify a portion of Low's Lake as Wilderness

Dear Governor Paterson:

On behalf of the Adirondack Park Local Government Review Board, I urge you to reject the procedurally flawed and unwise recommendation of the Adirondack Park Agency (APA) to classify a portion of the waters of Lows Lake as Wilderness.

If approved the recommendation would establish the following bad precedents:

- It would mark the first time that all or any portion of a water body with privately owned shoreline is classified as Wilderness.
- It would mark the first time that a line drawn on a map of a water body would establish different classifications on either side of the line.
- It would mark the first time that an employee of the Governor's office voted on an action by the APA in place of a designee of Empire State Development, as required by Executive Law Section 803.
- It would establish a precedent for action on a major proposed classification, which was materially revised after public hearings, without a new public hearing on the revised proposed classification.
- It would establish a precedent for expansion of APA jurisdiction without legislative action by proximity of private lands to waters newly classified as Wilderness.

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Secretary Carol A. Monroe, carolmonroc@nycap.rr.com • P.O. Box 579, Chestertown, NY 12817 • (518) 494-3607 • Fax (518) 494-5472

*Alternate, **Community Liaison

The APA voted on September 11, 2009 to recommend that you classify approximately two-thirds of Lows Lake in Hamilton and St. Lawrence Counties as Wilderness. The vote on that action was 6 to 4. The deciding vote was cast by Chris Walsh. Mr. Walsh left his former employment at Empire State Development, and his position as the Designee of Empire State Development on the APA, in August 2009.

Executive Law Section 803 provides, in pertinent part as follows:

“There is hereby created in the executive department, the Adirondack park agency, which shall consist of the following members: the commissioner of environmental conservation, the secretary of state, the commissioner of commerce and eight members to be appointed by the governor by and with the advice and consent of the senate.”

“The commissioner of environmental conservation, and the commissioner of commerce and the secretary of state may, by official authority filed in their respective agencies, and with the Adirondack park agency, **designate a deputy or other officer** (emphasis added) to exercise his powers and perform his duties, including the right to vote, on the agency.”

The Commerce department is now Empire State Development. Mr. Walsh was an employee of the Governor’s office on September 11, 2009 when he cast a vote on behalf of Empire State Development. He was not a **deputy or other officer** of Empire State Development at that time as required by Executive Law Section 803. The vote cast by Mr. Walsh is not a valid vote because he was not a **deputy or other officer** of Empire State Development at the time he cast that vote.

Section 803 of the APA Act further provides that an “affirmative vote by a majority of the members of the agency, except as is otherwise specifically provided in this article, shall be required to exercise any power or function of the agency.”

There are eleven members of the agency. Six affirmative votes are required to exercise any power or function of the agency. Without the vote cast by Mr. Walsh on behalf of Empire State Development the vote to recommend classification of a portion of the waters of Lows Lake as Wilderness failed.

The classification of a portion of the waters of Lows lake as Wilderness would set a very bad precedent. Numerous water bodies in the Adirondacks have portions of their shorelines in private and public ownership and also have portions of their shoreline classified as Wilderness and portions classified as Wild Forest .

Motor boats and float planes are prohibited in Wilderness. Motor boats and float planes are permitted in Wild Forest. Drawing a line on a map of those water bodies classifying a portion as Wilderness and a portion as Wild Forest would create numerous practical, legal and enforcement problems.

Executive Law Section 810 provides the APA with jurisdiction over projects on private lands located within one-eighth mile of state lands classified as Wilderness. If the APA is allowed to classify waters in the Adirondacks as Wilderness, they will be authorized to vastly expand their jurisdiction over private lands without legislative action.

Four public hearing were held on the classification of the waters of Lows Lake as Wilderness. The proposal presented at each of the public hearings was to classify the entire lake as Wilderness. The proposal to classify only part of the Lows Lake was not presented at any of the public hearings. The proposal to classify only a portion of Lows Lake as Wilderness constituted a material change which required a new public hearing. A public hearing on the proposal to classify only a portion of the waters was not held.

On behalf of the Adirondack Park Local Government Review Board created by Executive Law Section 803-a, I urge you to reject this procedurally flawed and unwise recommendation.

Sincerely,

Frederick H. Monroe
Executive Director

cc: Curt Stiles, Chairman, APA
Valerie Grey, Director of State Operations
Cathy Calhoun, Deputy Secretary for Intergovernmental Affairs
Judith Enck, Deputy Secretary for the Environment
Clinton County
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