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and Counsel*

October 31, 2022

Hon. John L. Ernst
Chair
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

Barbara Rice
Executive Director
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

RECEIVED
ADIRONDACK PARK AGENCY
NOV 02 2022

**RE: APA Project 2021-0248/ Large-Scale Subdivision
Tax Map Nos. 17.2-1-4, 17.2-1-5.1 & 17.2-1-20.111
Eric Stackman
Land Use Area: Low Intensity Use and Hamlet
Town of Jay, Essex County**

Dear Chairman Ernst and Ms. Rice:

Protect the Adirondacks (“PROTECT”) submits this letter to reiterate our request that the Adirondack Park Agency (“APA” or “Agency”) include, as part of its permit application review, an evaluation of the direct and upstream greenhouse gas (“GHG”) emissions associated with the large-scale subdivision proposed by Eric Stackman in the Town of Jay, Essex County (“the Project”). As discussed in detail below, the Climate Leadership and Community Protection Act (“CLCPA”) requires all state agencies, “[i]n considering and issuing permits, licenses, and other administrative approvals and decisions,” to determine whether such action “will be inconsistent with or will interfere with the attainment of the statewide [GHG] emission limits” established in Article 75 of the Environmental Conservation Law (“ECL”). Climate Leadership and Community Protection Act, Ch. 106, Laws of 2019, § 7(2).

To date, the applicant has failed to submit an analysis of the Project’s direct and upstream GHG emissions and, to our knowledge, the APA has failed to take any steps to evaluate the Project’s potential GHG emissions. PROTECT first requested that the Agency include a GHG emissions analysis as part of its review of the Project in its comment

letter dated December 3, 2021. Ltr. from Peter Bauer, PROTECT Executive Director, to Devan Korn, Adirondack Park Agency (Dec. 3, 2021) at 2-3. The Agency subsequently issued two Notices of Incomplete Application, dated December 23, 2021 and August 23, 2022, neither of which requested any information concerning the Project's potential or projected direct and upstream GHG emissions. PROTECT urges the Agency either to request that the applicant provide an analysis of the Project's direct and upstream GHG emissions or confirm that the APA is conducting its own analysis of those emissions in order to evaluate compliance with the State's GHG emission limits.

The CLCPA Mandates a GHG Emissions Analysis for All Permit Applications

The CLCPA establishes economy-wide requirements to reduce Statewide GHG emissions. Article 75 of the ECL (enacted as part of the CLCPA) requires the Department of Environmental Conservation ("DEC") to promulgate regulations ensuring that Statewide GHG emissions be reduced to 40% below 1990 levels by 2030, and 85% below 1990 levels by 2050. ECL § 75-0107(1). As required by the CLCPA, DEC promulgated regulations translating the statutorily required statewide GHG emission percentage reduction limits into specific limits based on estimated 1990 GHG emission levels. *See* 6 NYCRR Part 496. The regulations establish Statewide GHG emissions limits for 2030 and 2050, respectively, of 245.87 and 61.47 million metric tons of carbon dioxide equivalents (measured on a 20- year Global Warming Potential basis). *Id.*

Section 7(2) of the CLCPA imposes a mandatory duty on all State agencies to consider the GHG emissions associated with the issuance of a permit or approval:

In considering and issuing permits, licenses, and other administrative approvals and decisions . . . all state agencies, offices, authorities and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide [GHG] emissions limits established in [ECL Article 75]. Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide [GHG] emissions limits, each agency, office, authority or division shall provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or [GHG] mitigation measures to be required where such project is located.

Ch. 106, Laws of 2019, § 7(2).

After enactment of the CLCPA and promulgation of the GHG emissions limits, DEC denied two permit applications based on section 7(2) of the CLCPA: the applications by Danskammer Energy, LLC ("Danskammer") and Astoria Gas Turbine Power, LLC ("Astoria") for Clean Air Act Title V permits associated with construction and repowering of natural gas-fired electric generating plants. In denying the applications, DEC stated:

Section 7(2) of the [CLCPA] has three elements. First . . . the Department must consider whether a Title V permit for the Project would be inconsistent with or interfere with the attainment of the Statewide GHG emission limits established in ECL Article 75. Second, if the issuance of a Title V permit for the Project would

be inconsistent with or would interfere with the Statewide GHG emission limits, then the Department must also provide a detailed statement of justification for the Project notwithstanding the inconsistency. Third, in the event a sufficient justification is available, the Department must also identify alternatives or GHG mitigation measures to be required for the Project.

DEC, Notice of Denial of Title V Air Permit (Oct. 27, 2021) at 6, available at https://www.dec.ny.gov/docs/permits_ej_operations_pdf/danskammerdecision102721.pdf.

Based on its review of the projected direct and upstream GHG emissions associated with the Danskammer project, DEC concluded that it could not issue the requested permit:

As described further below . . . the Project would be inconsistent with or would interfere with the attainment of the Statewide [GHG] emission limits established in Article 75 of the [ECL]. Moreover, Danskammer has not demonstrated that the Project is justified as it has failed to show either a short term or long term reliability need for the Project. Nor has Danskammer identified adequate alternatives or GHG mitigation measures. Accordingly, given that the Department is unable to satisfy these elements required by Section 7(2) of the [CLCPA] the Department is compelled to deny the Title V Application.

Id. at 2.

As explained by DEC, “[t]his determination of inconsistency is based primarily on the fact that the Project would be a new source of a substantial amount of GHG emissions, including both direct and upstream GHG emissions” *Id.* at 7. Of particular importance is the fact that DEC based its denial on GHG emissions analyses prepared by Danskammer, including “the responses to DEC’s three separate [Notices of Incomplete Applications] as submitted by the Applicant.” *Id.*

DEC undertook a similar analysis in denying the Astoria application, concluding that denial of the application was required because the Department was unable to satisfy the elements required by Section 7(2) of the CLCPA. DEC, Notice of Denial of Title V Air Permit (Oct. 27, 2021), available at https://www.dec.ny.gov/docs/permits_ej_operations_pdf/nrgastoriadecision102721.pdf.

DEC has also recently issued draft guidance for its air permitting program requiring evaluation of a project’s direct and upstream GHG emissions as part of the permit review process:

To determine whether a given project is consistent with the requirements of CLCPA, the applicant must provide an objective analysis of the GHG and CO₂e emissions from the project, that includes any upstream or downstream emissions known to be attributable to the project, including upstream emissions attributed to production, transmission, and use of fossil fuels or imported electricity. For projects that increase GHG emissions, the applicant should also provide a description of any proposed alternatives or GHG mitigation measures from the facility owner or operator. It is important to note that the CLCPA review is independent from other reviews . . . that may also be required for the permit action.

DEC, DAR-21 The Climate Leadership and Community Protection Act and Air Permit Applications (Dec. 8, 2021) available at https://www.dec.ny.gov/docs/air_pdf/dar21.pdf.

A legal challenge to DEC's denial of the Danskammer permit application was recently dismissed, with the Court concluding that "to give Section 7 [of the CLCPA] meaning, the Court finds that the plain language of the statute must be interpreted to grant the DEC the requisite authority to deny a permit when the grant of the permit would be inconsistent with or interfere with the attainment of the goals of the CLCPA, and the grant cannot otherwise be justified or the adverse effects mitigated." *Danskammer Energy, LLC v. Dep't. of Env'tl. Conserv.*, 76 Misc.3d 196, 250 (Sup. Ct. Orange County, June 8, 2022).

The Project's GHG Emissions Must Be Evaluated by the Agency

It is beyond dispute that the Project will result in an increase of GHG emissions. As currently proposed, the Project will be comprised of 120 lots that will include up to 20 townhomes, each 1800 square feet in size; up to 60 villas, each 3500 square feet in size; up to 18 estates, each 6500 square feet in size; up to 6 mansions, each 10,000 square feet in size; and a hotel, restaurant and spa. As noted in PROTECT's previous comment letter, noted Adirondack scientist Jerry Jenkins calculated that construction of a single 2,060-square-foot house creates a four-ton carbon debt. Given the size and number of new homes proposed by the applicant, the Project's new home construction will likely create a carbon debt of hundreds of tons. In addition, Jenkins calculates that clearing one acre of forest creates a carbon debt of 257 tons. Given that a substantial amount of forest clearing is proposed by the applicant for the purpose of new home and road construction, this activity will result in additional hundreds of tons of carbon debt. Thus, the clearing of forest and construction of new homes will result in a total carbon debt of thousands of tons. Added to this are the increases in GHG emissions resulting from motor vehicle use during construction, increased motor vehicle traffic from homeowners, and motor vehicle traffic from the general public visiting the Project's hotel, restaurant and spa. The CLCPA is crystal clear in imposing a duty on the APA to evaluate the GHG emissions associated with the Project: the Act's requirement that consistency with the CLCPA's GHG emissions limits be evaluated applies to "*all state agencies*" when "*considering and issuing permits*." CLCPA § 7(2); (emphasis added). Accordingly, PROTECT again urges the Agency to fulfill its obligation under the CLPA either by requesting the applicant to provide an analysis of the Project's direct and upstream GHG emissions or confirming that the APA is conducting its own analysis of those emissions.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with the first name "Chris" and last name "Amato" clearly distinguishable.

Christopher Amato
Conservation Director and Counsel
Protect the Adirondacks! Inc.
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North Creek, NY 12853
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Cc: APA Board Members
Christopher Cooper, Esq.
Megan Phillips
John Burth ✓



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**Conservation Director
and Counsel**

April 25, 2023

Devan Korn
Project Review Officer
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

**RE: APA Project 2021-0248/ Large-Scale Subdivision
Tax Map Nos. 17.2-1-4, 17.2-1-5.1 & 17.2-1-20.111
Eric Stackman
Land Use Area: Low Intensity Use and Hamlet
Town of Jay, Essex County**

Dear Mr. Korn:

Protect the Adirondacks ("PROTECT") appreciates the opportunity to provide these comments on the additional information concerning the above proposed project submitted by the applicant under cover of letter dated April 6, 2023 in response to the Agency's Notice of Incomplete Application ("NIPA") dated September 22, 2022.

As discussed in detail below, the application remains inaccurate and insufficient in several key respects, and the applicant has failed to provide critical information requested by the Agency. Specifically, the applicant's submission (i) fails to include the on-site biological survey information requested by the Agency's NIPA; (ii) misrepresents the fragmentation and ecological impacts of the proposed project; (iii) fails to adequately cluster development to minimize or avoid impacts to the resources of the Adirondack Park; and (iv) fails to include information concerning the project-related greenhouse gas ("GHG") emissions impacts as required by the Climate Leadership and Community Protection Act ("CLCPA"). Consequently, PROTECT urges the Agency to reject the applicant's submission as insufficient and non-responsive to the NIPA.

Protect the Adirondacks

PO Box 48, North Creek, NY 12853 518.251.2700

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The Applicant Has Submitted an Inadequate and Non-Responsive Biological Survey

In its September 22, 2022 NIPA, the Agency specifically directed the applicant to provide:

A biological survey prepared by a qualified biologist and spanning multiple seasons will also be required. This biological survey will need to include a report detailing potential impacts to the mapped forest resources, unique natural communities, wetlands, fish/amphibians, and wildlife, and an assessment of how wildlife dependent on the forest blocks and unique communities will be impacted by the proposal, particularly area-sensitive and edge affected species such as interior forest birds, American marten, and wide-ranging mammals.

NIPA at 2.

In purported response to this information request, the applicant has submitted a “Natural Resources Inventory” prepared by B. Laing Associates dated December 22, 2022 (“Laing Inventory”), which consists of a number of maps and approximately two pages of text. The Laing Inventory is utterly deficient and non-responsive to the NIPA because it (i) fails to identify the name, educational background, professional credentials and experience of the person or persons who prepared the Inventory; (ii) fails to disclose the dates, if any, on which a biological field survey of the project site was conducted and what was observed on those dates; (iii) is not “a report detailing potential impacts to the mapped forest resources, unique natural communities, wetlands, fish/amphibians, and wildlife” as required by the NIPA and, in fact, fails to discuss any potential project impacts to these resources; and (iv) fails to include “an assessment of how wildlife dependent on the forest blocks and unique communities will be impacted by the proposal, particularly area-sensitive and edge-affected species such as interior forest birds, American marten and wide-ranging mammals” as required by the NIPA and, in fact, does not even identify—much less discuss potential impacts to—sensitive wildlife species.

Indeed, the only information provided in the Laing Inventory regarding wildlife species present on the project is from a single secondary source, the New York Natural Heritage Program, and no reference is made to field observations. Thus, despite the statement in the project sponsor’s cover letter that “field investigations were carried out this fall and early winter,” there is no indication in the Laing Inventory that the required on-site biological survey was conducted. Letter from Eric Stackman, Project Sponsor to John M. Burth, Environmental Program Specialist, Adirondack Park Agency (April 6, 2023) (“Stackman Letter”) at 3. If an on-site biological survey was conducted, the wildlife data gathered is not provided in the Laing Inventory.

Because the applicant has apparently failed to have a qualified biologist conduct an on-site biological survey and has failed to submit a report detailing the project’s potential impacts to wildlife, the Agency should reject the applicant’s non-responsive submission. Moreover, the Agency cannot make the findings required by APA Act §809(10) in the absence of the requested information on wildlife impacts.

The Applicant's Submission Makes Unsupported and Incorrect Statements Concerning the Project's Fragmentation and Ecological Impacts

The project sponsor, Eric Stackman, makes a number of sweeping statements concerning the purported lack of environmental and resource impacts of the proposed large-scale subdivision. These statements are unsupported by any ecological analysis and are demonstrably incorrect. For example, he states the following:

While there is minor, localized segmentation of the woods, the proposed development was designed to be as clustered as possible- in the overall scheme of things. Further, the proposed footprint represents less than 10% of the overall acreage, leaving over 345 acres undisturbed and protected for future generations.

Stackman Letter at 4.

Mr. Stackman provides no engineering or other support for his claim that the proposed development has been “designed to be clustered as possible.” Nor does he explain what he means by the qualifier, “in the overall scheme of things.” In fact, the three concept maps included with the applicant’s submission contradict this claim by showing that the system of roads, houses, cabins, clubhouse and restaurant and other project components are spread over a large area of the project site, intruding well into areas that are distant from the Route 9N and will fragment the landscape at the project site.

Mr. Stackman’s additional claim that “the proposed [project] footprint represents less than 10% of the overall acreage, leaving over 345 acres undisturbed” is simply wrong and grossly mischaracterizes the project’s impacts. Notably, this claim is not supported by any ecological analysis. In fact, the scientific literature makes clear that a project’s zone of ecological impacts extends far beyond the construction footprint. *See* Glennon, M. J. and H. E. Kretser, Size of the ecological effect zone associated with exurban development in the Adirondack park, 112 *Landscape and Urban Planning* 10 (April 2013) (concluding that the ecological impact zone of a single exurban home in the Adirondack Park can extend up to 200 meters beyond the building footprint). Applying this science-based standard to the proposed large-scale subdivision, the applicant’s three conceptual project designs create ecological impact zones of, respectively, 223 acres (Concept #1), 220 acres (Concept #2) and 269 acres (Concept #3). *See* Signell, S., Stackman project ecological impact zone assessment (April 2023), annexed to this letter as Exhibit A, illustrating the 200-meter ecological impact zones for the three conceptual designs. This represents ecological disturbance of from 62% to 76% of the total project site acreage—vastly more than the incorrect and misleading 10% project site disturbance claimed by the project sponsor.

The applicant’s sprawling, intrusive and fragmentation-inducing project design fails to comport with the basic principles of conservation design as required by the Agency’s large-scale subdivision application. Notwithstanding the project sponsor’s self-serving and misleading characterization of the proposed project’s impacts (which is unsupported by any scientific analysis), all three of the conceptual designs for the Stackman project will have ecological impacts on nearly three-quarters of the 355-acre project site. *See* Ex. A. Thus, the proposed

submission falls far short of the Agency’s application completeness requirements for large-scale subdivisions and cannot form the basis for a rational finding pursuant to APA Act § 809(10).

The Proposed Project Fails to Address the Affordable Housing Crisis

The proposed large-scale subdivision does nothing to address the affordable housing challenge facing Adirondack Park communities. Indeed, the project will exacerbate the Park’s housing difficulties because it consists exclusively of expensive town homes, villas, estates and mansions, most if not all of which will be marketed and sold as vacation homes for the wealthy. This style of up-market housing is simply out of the financial reach of full-time Park residents. And despite the fact that the proposed project includes a clubhouse, restaurant, hotel and spa, there is no work force housing included in the project.

The Applicant Has Failed to Provide, and the Agency Has Failed to Require, an Analysis of the Project’s GHG Impacts as Required by the CLCPA

PROTECT reiterates its request that the Agency require the applicant to provide an evaluation of the direct and upstream GHG emissions associated with the proposed large-scale subdivision. The CLCPA requires all state agencies, “[i]n considering and issuing permits, licenses, and other administrative approvals and decisions,” to determine whether such action “will be inconsistent with or will interfere with the attainment of the statewide [GHG] emission limits” established in Article 75 of the Environmental Conservation Law (“ECL”). Climate Leadership and Community Protection Act, Ch. 106, Laws of 2019, § 7(2).

To date, the applicant has failed to submit an analysis of the Project’s direct and upstream GHG emissions and, to our knowledge, the APA has failed to take any steps to evaluate the Project’s potential GHG emissions. PROTECT first requested that the Agency include a GHG emissions analysis as part of its review of the Project in its comment letter dated December 3, 2021. Ltr. from Peter Bauer, PROTECT Executive Director, to Devan Korn, Adirondack Park Agency (Dec. 3, 2021) at 2-3. The Agency subsequently issued two Notices of Incomplete Application, dated December 23, 2021 and September 22, 2022, neither of which requested any information concerning the Project’s potential or projected direct and upstream GHG emissions. PROTECT sent a third letter, dated October 31, 2022, again urging the Agency to either to request that the applicant provide an analysis of the Project’s GHG emissions or confirm that the APA is conducting its own analysis of those emissions. To date, neither has occurred to our knowledge.

There is no question that the Project will result in an increase of GHG emissions. As currently proposed, the Project will be comprised of 120 lots that will include up to 20 townhomes, each 1800 square feet in size; up to 60 villas, each 3500 square feet in size; up to 18 estates, each 6500 square feet in size; up to 6 mansions, each 10,000 square feet in size; and a hotel, restaurant and spa. As noted in PROTECT’s previous comment letters, it is estimated that construction of a single 2,060-square-foot house creates a four-ton carbon debt. Given the size and number of new homes proposed by the applicant, the Project’s new home construction will likely create a carbon debt of hundreds of tons. In addition, the forest clearing proposed by the applicant for the purpose of new home and road construction will result in additional hundreds of tons of carbon debt. Added to this are the increases in GHG emissions resulting from motor vehicle use during

construction, increased motor vehicle traffic from homeowners, and motor vehicle traffic from the general public visiting the Project's hotel, restaurant and spa.

The CLCPA is crystal clear in imposing a duty on the APA to evaluate the GHG emissions associated with the Project: the Act's requirement that consistency with the CLCPA's GHG emissions limits be evaluated applies to "*all state agencies*" when "*considering and issuing permits.*" CLCPA § 7(2); (emphasis added). Accordingly, PROTECT again urges the Agency to fulfill its obligation under the CLPA during review of this large-scale subdivision proposal by requesting the applicant to provide an analysis of the Project's direct and upstream GHG emissions or confirming that the APA is conducting its own analysis of those emissions.

Conclusion

The applicant has failed to adequately respond to the Agency's NIPA, thereby depriving the Agency of critical baseline information concerning the proposed project's potential impacts on forest resources, unique natural communities, wetlands, fish, amphibians, and wildlife. In addition, the project sponsor—who is not a scientist—has made grossly inaccurate and misleading representations concerning the ecological impacts of the proposed project. The applicant's failure to provide basic biological and ecological information and analysis for its proposed 355-acre development undermines the purpose of the large-scale subdivision application process "to encourage the development of projects in compliance with the Agency's review criteria, including protection of open space, wildlife, and habitat resources, and in accordance with the objectives of conservation design."

Moreover, it appears that neither the applicant nor the Agency are complying with the CLCPA's mandate that the GHG emissions of proposed projects subject to agency permits or approvals must be evaluated.

For the foregoing reasons, the applicant's April submission should be rejected as incomplete.

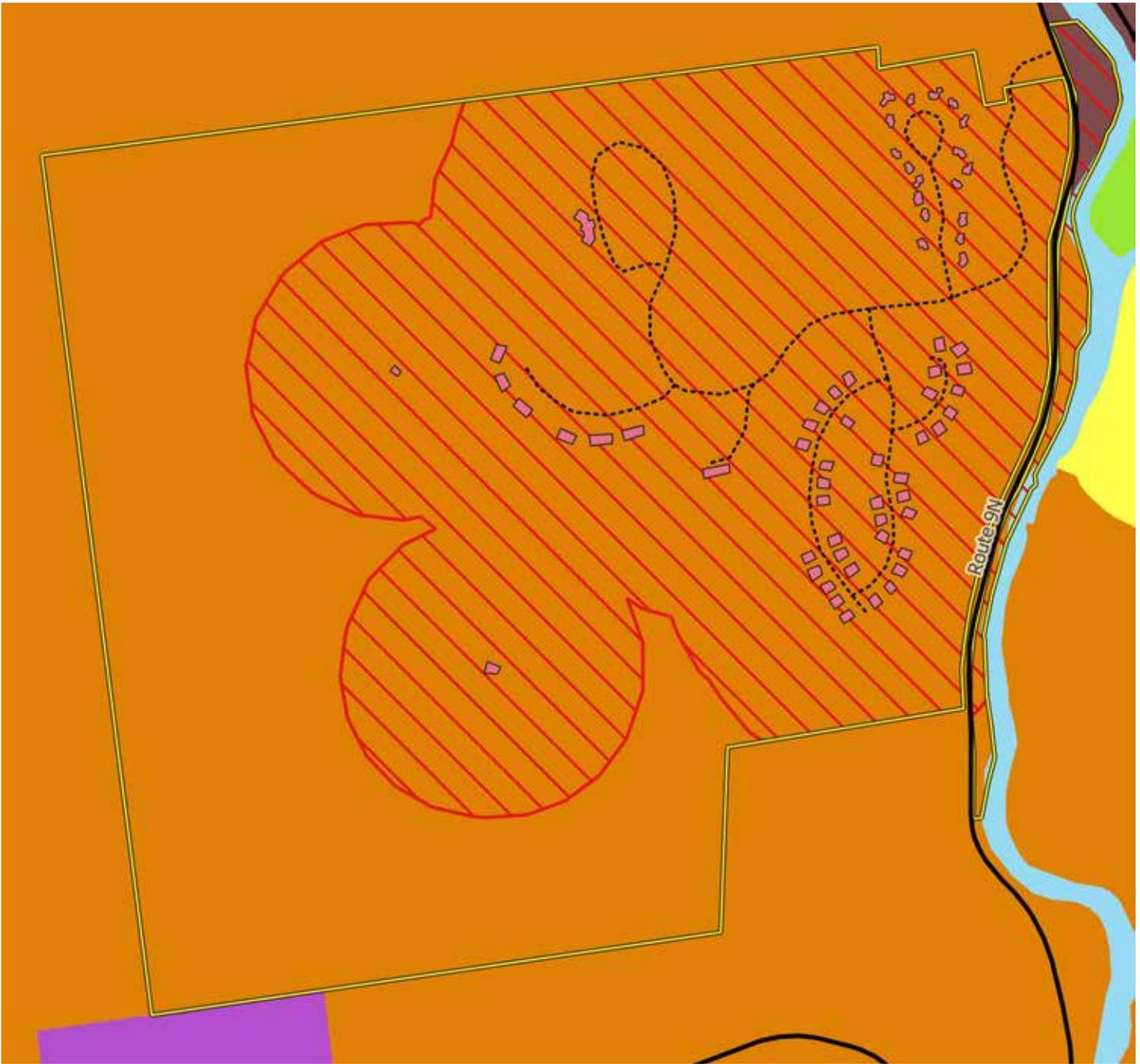
On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

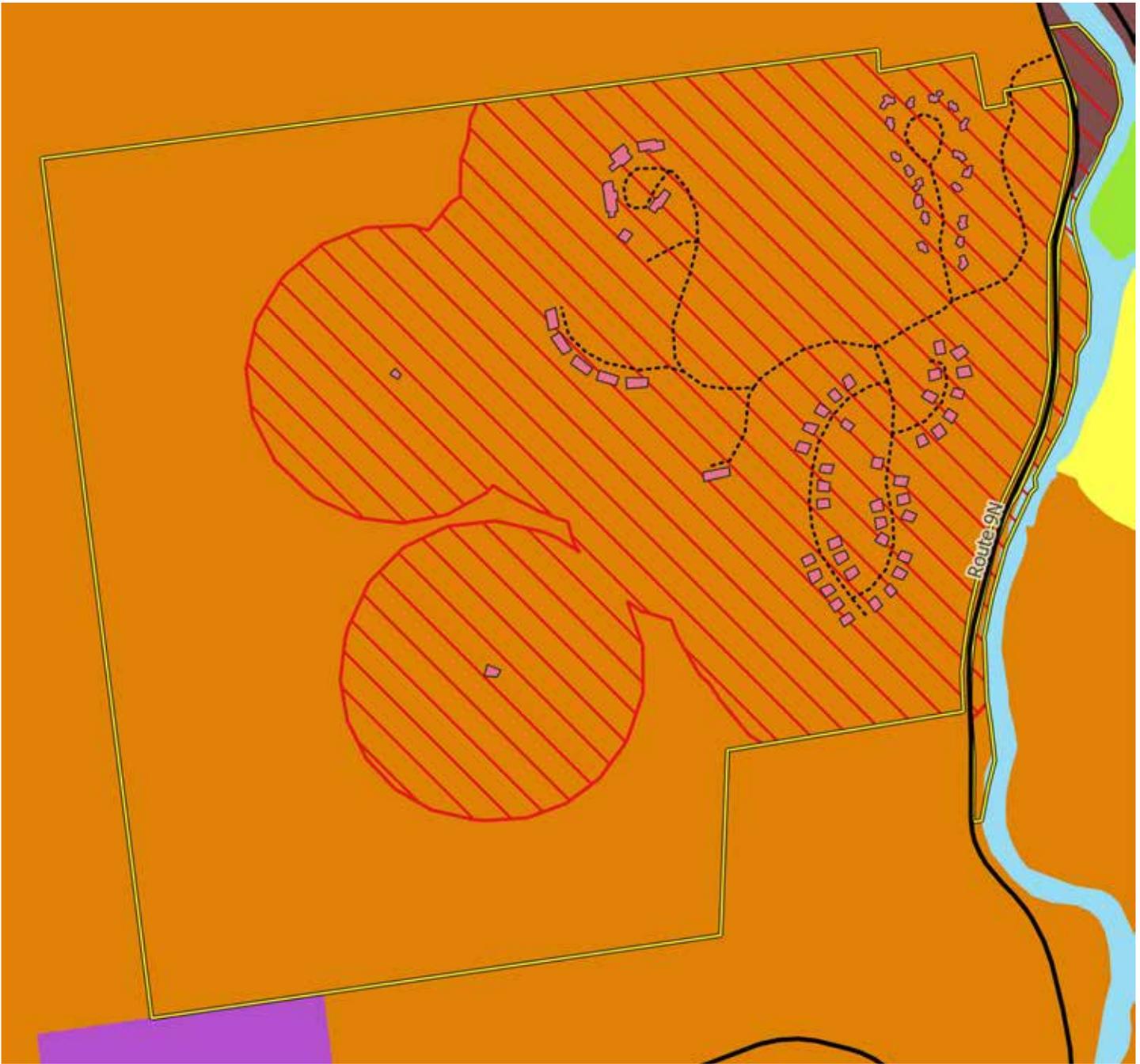
A handwritten signature in black ink, appearing to read "Chris Amato", written in a cursive style.

Christopher Amato
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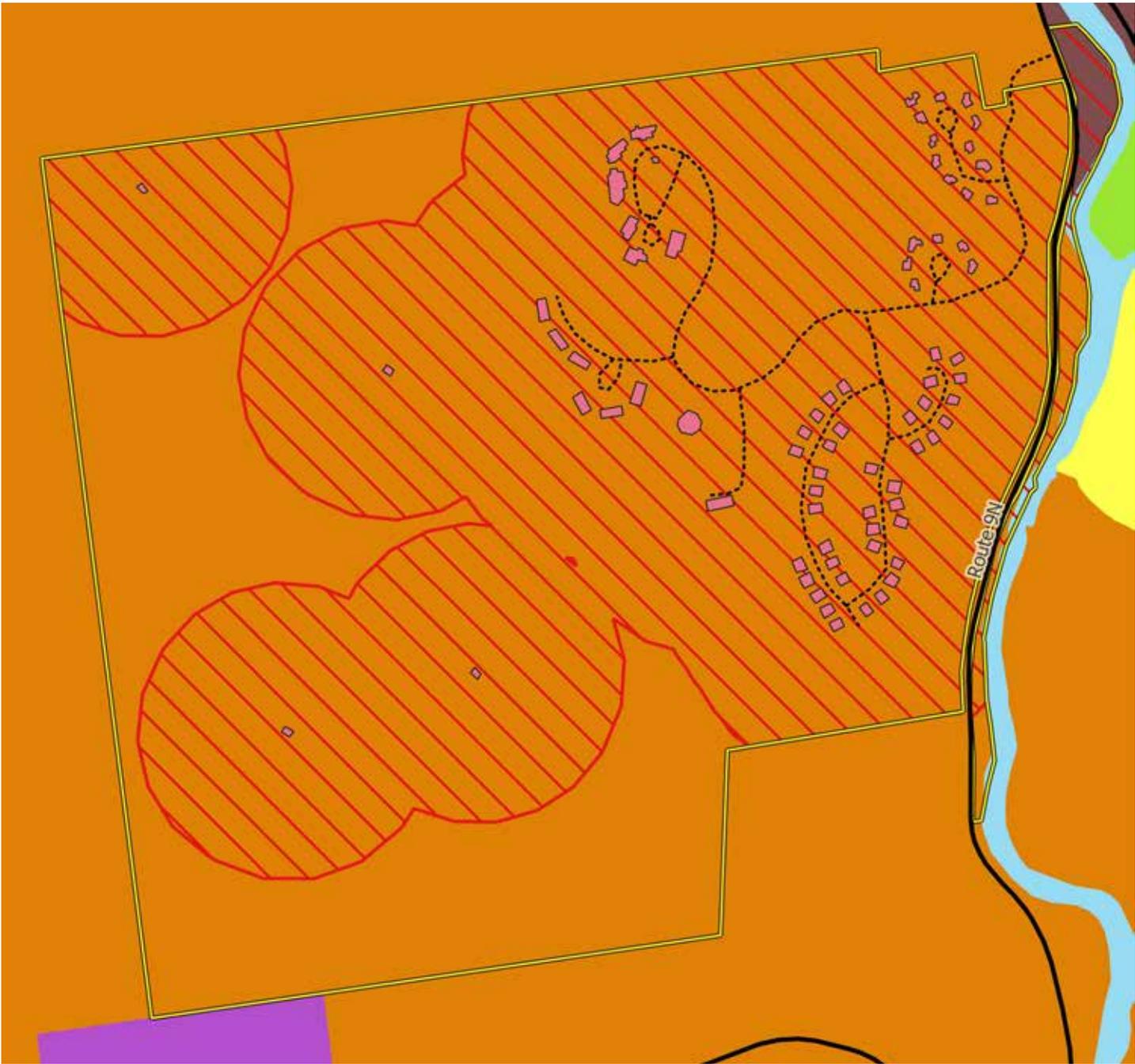
Exhibit A



Environmental impact zone assessment of Concept 1 submitted for the Stackman project (APA Project 2021-248). The ecological impact zone for Concept 1 is 223 acres out of 355 acres or 63% of the total project site acreage.



Environmental impact zone assessment of Concept 2 submitted for the Stackman project (APA Project 2021-248). The ecological impact zone for Concept 2 is 220 acres out of 355 acres or 62% of the total project site acreage.



Environmental impact zone assessment of Concept 3 submitted for the Stackman project (APA Project 2021-248). The ecological impact zone for Concept 3 is 269 acres out of 355 acres or 76% of the total project site acreage.