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DEC gains prominent land-use lawyer as deputy commissioner

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RAY BROOK — Environmental attorney Marc S. Gerstman is now executive deputy commissioner for the Department of Environmental Conservation.

The selection was made by Gov. Andrew Cuomo's office, according to DEC spokeswoman Emily DeSantis.

It marks a return to the department for the attorney who has been involved in private-sector cases involving DEC.

NAVIGATION ISSUES

Based in the Albany area, Gerstman previously spent 13 years as deputy commissioner and general council for DEC.

He also served as the DEC director of legal affairs before opening his own law practice, according to a press release.

While at DEC in 1991, Gerstman issued key guidance on the public right for boaters and paddlers on navigable waters. Fourteen years later, he co-authored a research paper exploring case law on navigation rights for the former Association for the Protection of the Adirondacks.

And he has led legal challenges to several high-profile development projects in the Adirondack and Catskill Parks.

ROAD ISSUE

In private practice, Gerstman represented the Adirondack Council in calling for clarification on former DEC Commissioner Pete Grannis's determination that the towns of North Elba and Keene maintain legal ownership of Old Mountain Road.

The case centered on DEC violations issued to Lake Placid Snowmobile Club President Jim McCulley for operating motor vehicles along the roadbed. McCulley won the case after years of court battles, but legal questions remain.

IN THE NEWS

Gerstman represented the Adirondack Council in ordering litigation against the Village of Saranac Lake in June 2009, when the environmental group pressed for containment of the village

salt and sand storage area beside Lake Colby. No lawsuit was ever brought, and the village has since built a new facility.

The new DEC executive deputy commissioner was counsel of record for the Adirondack Council when adjudication proceedings for the Adirondack Club and Resort project began in Tupper Lake in 2007.

'VAST EXPERIENCE'

DEC Commissioner Joe Martens welcomed the addition to the state conservation's leadership team.

"Marc's vast experience handling environmental and regulatory issues makes him a natural fit for DEC," Martens said in a statement.

"The agency will benefit from Marc's background working with business interests, the environmental community and municipalities."

BELLEAYRE TIES

Timing of the appointment comes as the state is looking to shift operations at the DEC-run Belleayre Ski Center to the Olympic Regional Development Authority.

Martens chaired the ORDA Board for several years before becoming DEC commissioner and while he was president of the Open Space Institute.

Gerstman spearheaded the legal challenge aimed against large resort development on land adjoining the state's Belleayre Ski Center property as lead attorney for the Catskill Preserve Coalition, a group of 12 environmental groups, which challenged development of the \$400 million Belleayre Resort.

That project went to adjudication in 2005 and met with compromise, fostered by former Gov. Eliot Spitzer, two years later.

LEFT COUNCIL JOB

John Sheehan, spokesman for the Adirondack Council, said Gerstman is no longer their lawyer.

"Marc stepped aside as our attorney shortly after Joe Martens was confirmed as (DEC) commissioner," Sheehan said in an email.

"They knew each other well, both having been environmental advisers to the Mario Cuomo administration, Joe as deputy secretary to the governor and Marc as general counsel at DEC.

"This new job is more prominent, as he is now the No. 2 person at DEC, right behind Joe."

The environmental preservation group considers the appointment an excellent fit for DEC.

"He is very bright, knows the issues inside and out and can explain complicated environmental and scientific issues in plain English. Martens made a great choice," Sheehan said.

CHOICE CRITICIZED

But not everyone involved in local land-use concerns believes the decision was wise.

"This is DEC's continued intellectual nepotism," said McCulley.

"It's almost criminal. Quite frankly, how can he possibly have objectivity for any other group but for radical greens (preservation groups)?"

DEC confirmed the new deputy commissioner closed his private practice.

"Marc Gerstman no longer represents any clients and has not for months," DeSantis said in an email response to questions.

"Marc will recuse himself should any matters come before the (DEC) that he was previously involved with in the private sector."