



## Adirondack Park Agency

**LEILANI CRAFTS ULRICH**  
Chairwoman

**TERRY MARTINO**  
Executive Director

### **MEMORANDUM**

TO: Terry Martino, Executive Director

FROM: James Townsend, Counsel

DATE: May 6, 2015

RE: Proposed Rule Making - Emergency Projects

Please find attached a proposed rule making package, an assessment of public comment, and a draft resolution for consideration and recommended action by the Agency. This proposed rule would implement the Agency's authority under Executive Law § 809(15) to promulgate regulations to define land use and development that is an "emergency project."

As required by Section 202 of the State Administration Procedure Act (SAPA), the attached rule making package includes the text of the proposed rule, a Regulatory Impact Statement, a statement in lieu of Job Impact Statement, a statement in lieu of Regulatory Flexibility Analysis, and a statement in lieu of Rural Area Flexibility Analysis. Notice of the proposed rule making and the opportunity for public comment was provided as required by SAPA and Agency regulations, and two public hearings on the proposed rule were held. Staff do not recommend any changes to the proposed rule based on the public comment received.

If the Board approves the proposed resolution, the Agency chairwoman will certify the rule and staff will file a Notice of Adoption with the Secretary of State for publication in the State Register. Staff will provide additional notifications of the Agency's adoption of the rule to the legislature and executive chamber consistent with SAPA. The rule will be effective upon its publication in the State Register.

Staff recommends Agency approval of the attached, draft resolution adopting the proposed "emergency project" rule pursuant to SAPA § 202(5)(a).

JTT:mp

#### Attachments

cc: Jennifer Hubbard  
Paul Van Cott

A new section 572.15 is added to 9 NYCRR to read as follows:

Section 572.15 Emergency Projects.

(a) *General.* This section provides the procedural requirements for the issuance of an *emergency certification* or an *emergency recovery authorization* for a project undertaken to address an *emergency*. No other requirements of this Subtitle shall apply to an *emergency project*. It is within the Agency's discretion to determine whether a specific event or conditions constitutes an *emergency* and whether proposed land use or development is an *emergency project*.

(b) *Definitions used in this section.*

(1) *Emergency* means: (i) a specific event or condition that presents an immediate threat to life or property; or (ii) a specific storm event or natural calamity that has been declared to be an emergency by federal or state officials.

(2) *Emergency project* means land use or development that is immediately necessary for the protection of life or property and that would otherwise require a permit, order, or variance.

(3) *Emergency certification* means a written determination by the Agency that an *emergency* exists or has existed and that an *emergency project* may be undertaken or has been undertaken to prepare for or mitigate the *emergency*.

(4) *Emergency recovery authorization* means a written determination by the Agency authorizing an *emergency project* that is necessary for repair, remediation or recovery from an *emergency* as defined in subdivision (b)(1) of this section and that is not covered by an *emergency certification*.

(c) *Emergency Certification Procedures.* (1) To obtain an *emergency certification*, a project sponsor shall: (i) notify the Agency with sufficient information to allow for an Agency determination whether an emergency as defined in paragraphs (b)(1)(i) and (ii) of this section exists or existed and whether the project is an emergency project as defined in subdivision (b)(2) of this section; and (ii) obtain an emergency certification prior to undertaking an emergency project or as soon thereafter as practicable.

(2) The Agency shall issue an *emergency certification* upon a determination that: (i) an *emergency* exists or existed; and (ii) the *emergency project* is limited in scope to the land use and development necessary to prepare for or mitigate the *emergency*. The Agency shall have two business days from receipt of sufficient information to issue an *emergency certification*.

(3) The *emergency certification* shall include a description of the land use and development comprising the *emergency project*, and may include conditions to limit the timing and duration of the *emergency project* and its impact on any of the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An *emergency certification* may only be issued by the executive director, deputy director – regulatory programs and such other Agency staff as the executive director shall designate in writing.

(d) *Emergency Recovery Authorization Procedures.* (1) A project sponsor proposing an emergency project under this subdivision shall notify the Agency prior to undertaking the *emergency project* and provide the Agency with the following information:

(i) a brief statement identifying the *emergency*, as defined in paragraph(b)(1) of this section that created the need for the *emergency project*;

(ii) a description of the proposed land use and development and why it is necessary for repair, remediation or recovery from an *emergency*;

(iii) documentation of existing conditions;

(iv) a location map;

(v) actions proposed to be taken to minimize environmental impacts; and

(vi) any additional information requested by the Agency necessary for the issuance of an *emergency recovery authorization*.

(2) The Agency shall issue an *emergency recovery authorization* for an *emergency project* upon a determination that: (i) the *emergency project* is directly related to an *emergency* as defined in paragraph (b)(1) of this section; (ii) the *emergency project* is limited in scope to the land use and development necessary to repair, remediate or recovery from the *emergency*; and (iii) the *emergency project* will cause the least change, modification, disturbance, or damage to the environment as practicable. The Agency shall have 5 business days to respond to a request for an *emergency recovery authorization* upon receipt of sufficient information.

(3) The *emergency recovery authorization* shall include a description of the land use and development comprising the emergency project and may include conditions to limit the timing and duration of the *emergency project* and its impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An *emergency recovery authorization* may only be issued by the executive director, deputy director – regulatory programs and such other Agency staff as the executive director shall designate in writing.

(e) *Limitations.* (1) The Agency may modify or rescind an *emergency certification* or *emergency recovery authorization* if new information demonstrates that an *emergency* does not, or no longer, exists or that the *emergency project* is not, or no longer, necessary or appropriate.

(2) Any person who undertakes land use or development that otherwise would require a permit or variance from the Agency that is not described in an *emergency certification* or *emergency recovery authorization* issued to such person pursuant to this section may be subject to enforcement action.

Subdivision (a) of section 572.22 of 9 NYCRR is amended to read as follows:

(a) Appeals of actions taken by Agency staff [the deputy director – regulatory programs].

(1) Any project sponsor or variance applicant may appeal the following actions of the deputy director-regulatory programs to the [a]Agency:

(i) determinations whether a project or variance application is complete, and the contents of requests for additional information;

(ii) conditions precedent to the issuance of, and conditions imposed in, permits issued pursuant to the authority delegated in section 572.11 of this Part;

(iii) determinations pursuant to section 572.19(b) of this Part whether a request to amend a permit or variance involves a material change;

(iv) denial or conditional approval of requests to amend permits or variances, or requests to renew permits; or

(v) any other action with respect to a project or a variance pursuant to delegated authority.

(2) Any person may appeal any determination made pursuant to section 572.15 of this Part declining to issue an emergency certification or emergency recovery authorization.

## ADIRONDACK PARK AGENCY REGULATORY IMPACT STATEMENT

### **1. Statutory authority:**

The Adirondack Park Agency Act (APA Act), Executive Law Article 27, Section 804(9), authorizes the Agency "to adopt, amend and repeal...such rules and regulations...as it deems necessary to administer this article and to do any and all things necessary or convenient to carry out the purposes and policies of this article...." Similar authority to regulate wild, scenic and recreational rivers and freshwater wetlands in the Adirondack Park is found in the NYS Wild, Scenic and Recreational Rivers System Act (Rivers Act) (Environmental Conservation Law (ECL) Section 15-2705) and in the NYS Freshwater Wetlands Act (Wetlands Act) (ECL Article 24, Title 8. The Agency's statutory authority to adopt regulations to define whether land use or development is an "emergency project" is set forth in Executive Law Sections 806(4) with respect to shoreline restrictions, 809(14) and (15) with respect to land use and development on private lands, and 814(4) and (5) with respect to state agency projects. ECL Section 70-0107(3)(c) and (j) specify that the Rivers Act and the Wetlands Act, with respect to provisions administered by the Agency, are subject to the procedures of Executive Law Section 809.

### **2. Legislative objectives:**

During an emergency, it is often difficult to obtain regulatory approval before one must act to protect life or property. In addition, following the emergency, there continues to be additional work that must take place to recover from the emergency before the Agency's regular permitting or variance review processes can be completed. The primary objective of the proposed emergency project rule is to define when jurisdictional land use and development constitutes an

emergency project. Land use and development that is determined to be an “emergency project” is exempt from the Agency’s normal regulatory review procedures.

The APA Act provides for an exemption from the Agency’s jurisdiction and normal review procedures in sections 806(4), 809(15), and 814(4); each section contains a clause stating that the section does not apply to land use or development that is “immediately necessary for the protection of life or property.” This proposed rule is intended to provide more definition for this statutory exemption by clarifying what constitutes an emergency project and by establishing an expedited process for ensuring that land use or development that falls within the statutory exemption is directly related to the work necessary to address the ongoing emergency, thereby limiting any unrelated adverse environmental impacts. In addition, this rulemaking proposes an amendment to existing rules to allow administrative review of determinations made pursuant to the emergency project rule.

The public policy objective underlying the statutory exemption of emergency projects from Agency permit and variance jurisdiction is to allow the undertaking of measures immediately necessary for protection of life or property without the delay of regulatory procedures and review. It is important to note that the proposed emergency project rule follows the statutory exemption from normal regulatory procedures; however, it is a limited exemption and is only intended to provide an expedited process to document the measures undertaken as emergency projects without an Agency variance or permit. This documentation will be useful for landowners seeking reimbursement for emergency measures and as proof of the lawfulness of the measures undertaken by the landowner. The rule will also ensure that the measures undertaken are confined to those immediately necessary to protect life or property.



### **3. Needs and benefits:**

Since 2011, there have been numerous state declared emergency weather events, including the 2011 flooding, Hurricane Irene and Tropical Storm Lee. These weather events required prompt action both during the event itself and the remediation and recovery phase after the event. During and immediately after these events, the Agency primarily relied upon coordination with the NYS Department of Environmental Conservation (NYSDEC) for its regulatory response, because that agency had more staff in the field and was able to incorporate Agency review considerations into its immediate response actions. The proposed rule would provide a formal, responsive, and unified process, as well as better documentation of the Agency's regulatory involvement that would be useful to landowners and the public.

### **4. Costs:**

There are no costs associated with the proposed regulations. The proposed rule is intended to codify the Agency's existing practices, and to provide a consistent, formal process for the Agency's response to emergencies. Currently, during emergency situations, the Agency seeks substantially the same information from landowners as is requested in the proposed rule. Accordingly, the proposed rule simply formalizes the Agency's existing practice.

Also, recognizing the exigency of emergency situations, the information that the Agency is requesting is very basic information and the minimum amount of information required in order for the Agency to determine that a proposal is an emergency project. Recent experience has shown the need for public and private landowners to have complete documentation from the Agency of measures undertaken during emergencies, as well as for the Agency and the NYS Department of Environmental Conservation (NYSDEC) to have better coordination when responding to emergencies in the Adirondack Park. The proposed rule will enhance coordination

between the Agency and NYSDEC as the proposed rule better aligns the Agency's process with NYSDEC's and even relies upon information submitted to NYSDEC, which reduces the regulatory burden on applicants. The proposed rule will provide a more efficient process for the Agency and the applicant as well as a less costly overall process for responding to emergencies.

#### **5. Local government mandates:**

The proposed rules will not impose any responsibilities on local government entities, unless the local government is the project sponsor.

#### **6. Paperwork:**

The proposed rule provides a procedure for obtaining a determination from the Agency that land use or development is, in fact, an "emergency project." The Agency will issue either an Emergency Certification or an Emergency Recovery Authorization. In the event of an emergency, , the project sponsor may request the Agency to issue an Emergency Certification either before undertaking the emergency project or within 30 days of undertaking the emergency project. In order to issue an Emergency Certification, the Agency will require the project sponsor to provide the Agency with sufficient information to determine that an emergency is (or was) ongoing or occurred within the last 30 days and that the emergency project is (or was) limited in scope to that necessary to address the emergency. The Emergency Recovery Authorization is intended for the follow-up response to the emergency. The project sponsor will be required to obtain authorization from the Agency prior to undertaking the emergency project. In addition, the project sponsor will be required to submit sufficient information to the Agency through a standard application form that will allow the Agency to make a determination that the proposal satisfies the criteria for an Emergency Recovery Authorization.

Both the Certification and the Authorization provide the project sponsor with Agency documentation that land use or development does not (or did not) require a permit, order or variance. This is important as it provides landowners with documentation that work done during an emergency is lawful for Agency purposes. In addition, this documentation may facilitate emergency aid reimbursement.

#### **7. Duplication:**

The proposed regulations do not duplicate, overlap, or conflict with any other local, state, or federal requirements.

#### **8. Alternatives:**

The Agency does not currently have a regulatory definition to establish when land use and development is an “emergency project.” The proposed regulation would provide clear parameters for obtaining a determination from the Agency that land use or development is an “emergency project.” The alternative is to continue with existing practice and review each proposal on a case by case basis without a clear regulatory definition of what constitutes an “emergency project.” The Agency has deemed this as unacceptable and counterproductive to Agency efficiency and not in keeping with the Agency’s goal of providing clear and consistent responses to the public.

#### **9. Federal standards:**

The proposed regulations do not involve any federal statutory authority or standards.

#### **10. Compliance schedule:**

The proposed regulations would apply prospectively, effective immediately upon their adoption. It is anticipated that regulated persons would be able to comply with these regulations immediately.

## ADIRONDACK PARK AGENCY

### STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A job impact statement (JIS) is not submitted for these proposed rules because they are not expected to create any substantial adverse impact upon jobs and employment opportunities in the Adirondack Park.

The proposed rules would define “emergency project” and provide a procedure for obtaining a determination from the Agency that land use or development is an “emergency project,” and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an “emergency project,” it would be exempt from the Agency’s normal regulatory review procedures, and subject to streamlined procedures.

Section 201-a of SAPA defines job impact as a “change in the number of jobs and employment opportunities” attributable to the adoption of the rule. A “substantial adverse impact on jobs” is defined as “a decrease of more than 100 full-time annual jobs and employment opportunities.”

There will be no change in employment opportunities due to the proposed rules. Under the proposed rules, projects that do not qualify as “emergency projects” will be reviewed pursuant to the Agency’s normal review processes. The proposed rules simply provide an expedited regulatory response for “emergency projects.”

Accordingly, A JIS is not required for the proposed rules.

## ADIRONDACK PARK AGENCY

### STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS

The proposed rules would not impose additional reporting, record keeping or other compliance requirements on small businesses and local governments. Instead, they would provide an efficient process for relieving a regulatory burden on entities undertaking an “emergency project” as defined by the Adirondack Park Agency in the proposed rules. These entities may include small businesses or local governments.

The proposed rules would define “emergency project” and provide a procedure for obtaining a determination from the Agency that land use or development is an “emergency project,” and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an “emergency project,” it would be exempt from the Agency’s normal regulatory review procedures, and subject to streamlined procedures.

Accordingly, a Regulatory Flexibility Analysis is not required for the proposed rules.

## ADIRONDACK PARK AGENCY

### STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

The proposed rules, applicable throughout the Adirondack Park, would have the same effect whether the area is considered rural or not. The proposed rules impose no additional reporting, record keeping or other compliance requirements on small businesses, or on public or private entities in rural areas. Instead, they would provide an efficient process for relieving a regulatory burden on those entities undertaking an “emergency project” as defined by the Adirondack Park Agency in the proposed rules.

The proposed rules would define “emergency project” and provide a procedure for obtaining a determination from the Agency that land use or development is an “emergency project,” and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an “emergency project,” it would be exempt from the Agency’s normal regulatory review procedures, and subject to streamlined procedures.

Accordingly, a Rural Area Flexibility Analysis is not required for the proposed rules.



## **Assessment of Public Comment on Proposed Emergency Project Regulations**

**May 6, 2015**

### **Staff assessment of public comment**

Public comment on the proposed rule was limited to three commenters. The focus of the comments was primarily on how the proposed rule would be implemented by the Adirondack Park Agency (APA). Two municipal leaders from Essex County praised APA's coordination during past emergencies, and asked about how the proposed rule might affect that. The Adirondack Council supported the rule overall, but made suggestions to ensure that environmental concerns would be adequately taken into account, and asked how APA would address any abuses of the rule. Staff do not believe that the comments raise issues that require changes to the proposed rule. A summary of specific comments and staff's response follows.

### **Public hearing comments**

1. Randall Douglas, Chairman, Essex County Board of Supervisors and Supervisor, Town of Jay.

Mr. Douglas stated that one concern is that, in an emergency, the need to act is immediate and there may not be time to do more than reach out to APA by telephone prior to taking steps to protect our properties and people.

#### *Staff response:*

*Obtaining an emergency certification beforehand or providing telephone notice is recommended, but it is not required. The proposed rule does not require any prior notification to APA before a response action is taken to protect life or property. An emergency certification may be obtained before or after the response action is undertaken.*

Mr. Douglas asked what would happen if APA and the town differ as to the nature or scope of a response action taken by the town to protect life or property in an emergency?

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*Staff response:*

*The proposed rule does not alter APA's commitment to work closely with municipalities with respect to response actions taken during emergencies. APA recognizes the need for split-second decision-making by municipalities in emergencies, and the rule conforms to APA's goal of ensuring that response actions are what is reasonably necessary to address the emergency, and not substantially more than what is needed.*

Mr. Douglas noted that FEMA only reimburses costs incurred by municipalities, and that FEMA's processing of reimbursement requests takes a long time, placing a financial burden on municipalities. In connection with emergency recovery authorizations, he asked APA to work with municipalities to take into account the financial burden the FEMA process places on them when deciding how quickly recovery authorization work must be done.

*Staff response:*

*APA does and will continue to take into account all of the challenges faced by municipalities that are recovering from an emergency when working with municipalities with respect to recovery activities.*

Mr. Douglas also added that he appreciated APA working with the DEC and DOT to streamline the application for emergency projects so Towns do not have to duplicate everything to the different agencies.

2. William Ferebee, Vice Chairman, Essex County Board of Supervisors, and Supervisor, Town of Keene

Mr. Ferebee stated that in order for this process to work it is going to take education for them as supervisors, their DPW's and highway departments, to know what to do in case of emergencies.

Mr. Ferebee asked if it will take a declared state of emergency to apply for emergency certifications and emergency recovery authorizations?

*Staff response:*

*There are two types of emergencies that the rule applies to: (i) a specific event or condition that presents an immediate threat to life or property; or (ii) a specific storm event or natural calamity that has been declared to be an emergency by federal or state officials.*

Mr. Ferebee asked how the Agency will make the public aware of what they should do in the case of an emergency on their property and what will APA do if people take emergency actions and are unaware of APA's rule?

*Staff response:*



*Staff are developing a flyer describing the proposed rule that that can be shared with municipalities and property owners. In an emergency, staff will be prepared to advise property owners of the procedure and requirements to obtain an emergency certification and, if necessary, an emergency recovery authorization. Generally, property owners already call APA for advice if they believe an emergency exists and they need to take action. If time allows, that is the prudent course for property owners to take. The rule seeks to ensure that property owners do have a genuine emergency and that what is done in response is limited to what is needed to abate the emergency.*

Mr. Ferebee asked who makes the decision whether the town has exceeded what is allowed by the rule for emergency response actions?

*Staff response:*

*As noted above, APA is committed to working with municipalities with respect to response actions taken to address emergencies. Procedurally, the Deputy Director for Regulatory Programs makes that determination. His determination can be appealed to the Agency if the municipality disagrees with the determination that was made.*

Mr. Ferebee agreed with Mr. Douglas that streamlining the application for emergency projects would lessen the burden on local governments.

### **Written public comment**

The Agency received one public comment letter from the Adirondack Council (attached). Staff offer the following responses to the Council's specific comments:

1. Comment on "Emergency Certification" - The issuance of an emergency certification as defined in Section 572.15(c)(3) should be expanded to include some sort of notification by the APA when emergency project work has or will occur in highly sensitive areas that may need additional mitigation work or post-emergency remediation. If emergency projects will not require prior approval, applicants should be notified in some manner if those projects are occurring in areas that will clearly need additional post-response attention once lives and property are secured and safe.

*Staff response:*

*Response work under an emergency certification will likely involve shoreline and/or wetlands, so there will always be the potential that post-response remediation will be necessary and APA will make that point clear in the certification. APA will coordinate with other agencies and with the municipalities and/or property owners involved to obtain any necessary post-response remediation work. The proposed Emergency Recovery Authorization may be used for these purposes.*

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2. Comment on “Emergency Recovery Authorization Procedures”: As defined in 572.15(d)(v), should be expanded to include not only actions that need to be taken to minimize environmental impacts, but also post-response recommendation that address any large scale environmental impacts that occur as a result of the emergency work. These recommendations do not need to be binding but should serve at least as an educational component to the Authorization.

*Staff response:*

*One of the primary uses of emergency recovery authorizations will be to remediate environmental impacts related to an emergency action that was undertaken.*

*“Minimization of impacts” in 572.15(d)(1)(v) relates to limiting the impacts of any remediation work as it is undertaken.*

3. Comment on “Limitations”: Section 572.15(e)(2) needs to clarify what enforcement action would occur if work is conducted that would have otherwise needed a permit or variance or fails to meet the criteria as an approved emergency project. After-the-fact approval places a higher burden on the staff to ensure that work that would fall outside the emergency regulation definitions is appropriately handled.

*Staff response:*

*This section is intended to provide notice that abuses of the “emergency project” rule may be subject to enforcement action. As a practical matter, staff expect that most issues that arise involving an emergency will be resolved cooperatively. Whether and when enforcement action is appropriate will depend on the specific facts and circumstances of a given situation. Any exercise of enforcement authority will be consistent with existing APA enforcement guidelines and practice.*



*The mission of the ADIRONDACK COUNCIL is to ensure the ecological integrity and wild character of the ADIRONDACK PARK for current and future generations.*

**BOARD OF DIRECTORS**

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March 20, 2015

Ms. Jennifer McAleese,  
Senior Attorney  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977  
(Via Electronic Submission)

**RE: Proposed Rulemaking Addition of 572.15 and Amendment of Section 572.22 of Title 9 NYCRR- Emergency Project Regulations**

Dear Ms. McAleese,

On behalf of the Adirondack Council, I would like to offer the following comments on the *Proposed Rulemaking Addition of 572.15 and Amendment of Section 572.22 of Title 9 NYCRR- Emergency Project Regulations*. As recent events have shown, the ability of local communities to respond appropriately and effectively in the event of a disaster or emergency is critical for the protection of life and property. While the Council supports the general provisions within the proposed emergency regulations, we believe that there are additional elements that need to be addressed in order to make the proposed changes in regulatory review more effective and in keeping with the mandate of the Adirondack Park Agency (APA).

The Council agrees with APA staff that clarifying how an “emergency” and “emergency project” is defined and finding efficiencies to facilitate a rapid response when these events occur is critical to the health and well-being of our communities. Normal regulatory review under such circumstances is often not practical and the Agency should be commended for striving to create a system that enhances coordination and efficiencies with other agencies, and reduces the regulatory burden on applicants.

The challenge in creating a system that provides exemptions from the Agency’s jurisdictional and normal review procedures is balancing the immediate need to respond to extraordinary circumstances and the need to reduce long-term, unintended consequences that result from emergency response. This is particularly

**EXECUTIVE DIRECTOR**

WILLIAM C. JANEWAY



DEFENDING THE EAST’S GREATEST WILDERNESS

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SUSTAINABLE FORESTRY INITIATIVE

relevant because emergency response often occurs in areas, such as lakeshores, riparian corridors and wetlands, where normal APA review provides oversight against the negative impacts of poorly planned and implemented projects.

With regard to the specific proposed regulations, the Council offers the following comments:

1. Emergency Certification: The issuance of an emergency certification as defined in Section 572.15 (c)(3) should be expanded to include some form of notification by the APA when emergency project work has or will occur in highly sensitive areas that may need additional mitigation or post-emergency remediation. If emergency projects will not require prior approval, applicants should be notified in some manner if those projects are occurring in areas that will clearly need additional post-response attention once lives and property are secured and safe.
2. Emergency Recovery Authorization Procedures: As defined in 572.15 (d)(v), should be expanded to include not only the actions that need to be taken to minimize environmental impacts, but also post-response recommendations that address any large scale environmental impacts that occur as a result of the emergency work. These recommendations do not need to be binding but should serve at least as an educational component to the Authorization.
3. Limitations: Section 572.15 (e)(2) needs to clarify what enforcement action would occur if work is conducted that would have otherwise needed a permit or variance or fails to meet the criteria as an approved emergency project. After-the-fact approval places a higher burden on the staff to ensure that work that would fall outside the emergency regulation definitions is appropriately handled.

In closing, the Adirondack Council supports the proposed emergency regulation rulemaking but asks that greater attention be paid to the potential long term impacts that may result if post-response actions are not accounted for early in the process. As members of the greater Adirondack community who have shared in the hardships and sufferings of recent disasters to our towns and villages, we understand the need for nimble and flexible decision making when a crisis is imminent. We have also seen how actions made under duress can have far reaching and destabilizing effects on the landscape if the after-the-fact certification procedure is overly streamlined. The Council believes that balance can be struck between the need for action during emergencies and limiting the possible long term effects that often occur when hasty decisions are made under trying circumstances with no oversight. Thank you for accepting and reviewing our comments.

Respectfully,

Rocci Aguirre  
Conservation Director



## Adirondack Park Agency

**LEILANI CRAFTS ULRICH**  
Chairwoman

**TERRY MARTINO**  
Executive Director

### **RESOLUTION 2015-X**

#### **ADOPTION OF EMERGENCY PROJECT RULE**

May 15, 2015

**WHEREAS**, the Adirondack Park Agency (“Agency”) is authorized to adopt, amend and repeal rules and regulations pursuant to Executive Law §§ 804(9) and 809(14); and

**WHEREAS**, rule making undertaken by the Agency must be done in accordance with the State Administrative Procedure Act (“SAPA”); and

**WHEREAS**, the Agency has fulfilled the procedural requirements of SAPA and Executive Law § 809(14) for promulgating the attached emergency project rule, including providing notice of the rule and an opportunity for public comment, and holding two public hearings on the rule; and

**WHEREAS**, pursuant to SAPA § 202(5)(b), the Agency has completed an assessment of public comment on the rule, and no changes to the rule are necessary in response to the comments received; and

**WHEREAS**, adoption of the rule by the Agency is subject to the State Environmental Quality Review Act (SEQR) and is a Type II action that does not require further review under SEQR.

**NOW, THEREFORE, BE IT RESOLVED** that the Agency hereby adopts the attached emergency project rule pursuant to Executive Law § 809(14); and

**BE IT FURTHER RESOLVED** that the Agency’s Chairwoman is hereby authorized to certify the rule to the Secretary of State; and

**BE IT FINALLY RESOLVED** that the Agency directs staff to make the assessment of public comment available to the public, to file a Notice of Adoption of the rule with the Secretary of State for publication in the State Register, and to provide such additional notice of the Agency’s action as SAPA requires.

Resolution adopted on this date, May 15, 2015.

YAYS:

NAYS:

ABSTENTIONS:

ABSENT: