



Adirondack Park Agency Permitting: Jurisdiction, Procedures, and Review Standards

APA Background

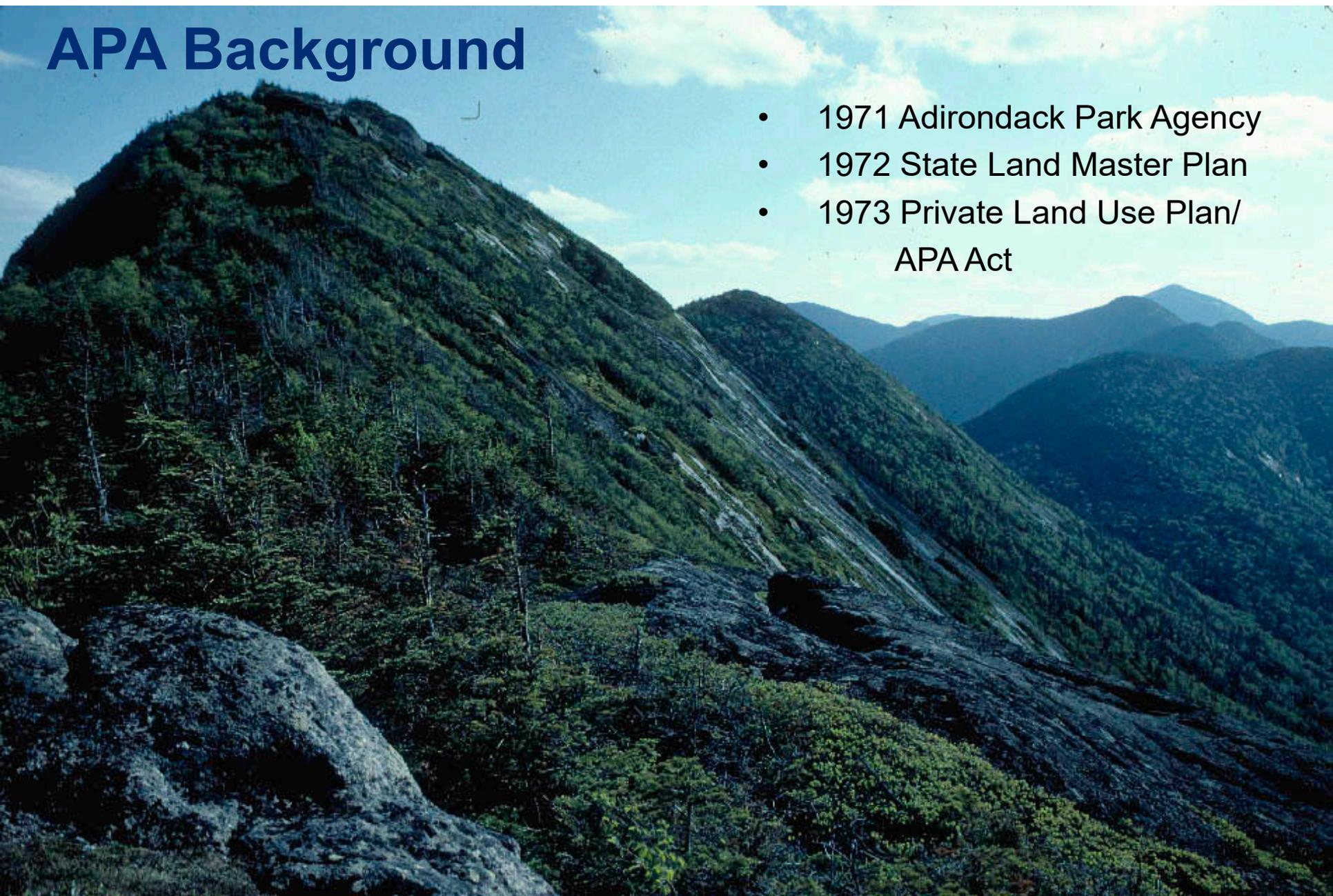
New York State Government

- Three branches:
 - 1) Legislative (makes laws)
 - 2) Executive (administers laws)
 - 3) Judicial (interprets laws)

- All agencies are in the Executive branch

APA Background

- 1971 Adirondack Park Agency
- 1972 State Land Master Plan
- 1973 Private Land Use Plan/
APA Act



APA Background

The Adirondack Park Agency Act

- Executive Law §§ 801 et seq.
- Agency regulations: 9 NYCRR Parts 570-576; 579-588
 - Effective starting 1974

The Wild, Scenic and Recreational Rivers System Act

- Environmental Conservation Law §§ 15-2701 et seq.
- Agency regulations: 9 NYCRR Part 577
 - Effective starting 1976

The Freshwater Wetlands Act

- Environmental Conservation Law §§ 24-0101 et seq.
- Agency regulations: 9 NYCRR Part 578
 - Effective starting 1983

APA Act – Purpose and APLUDP Map

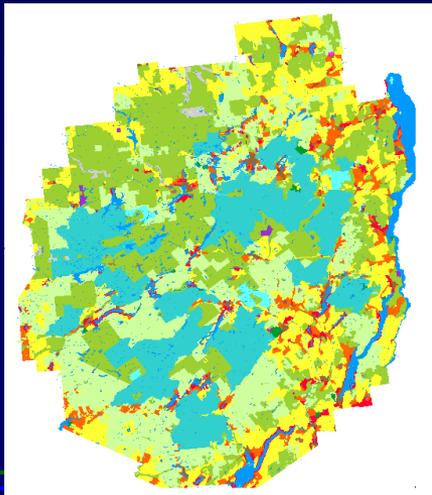
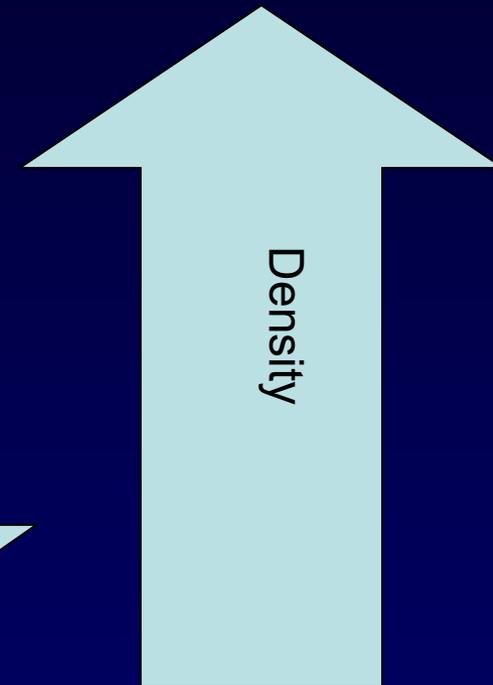
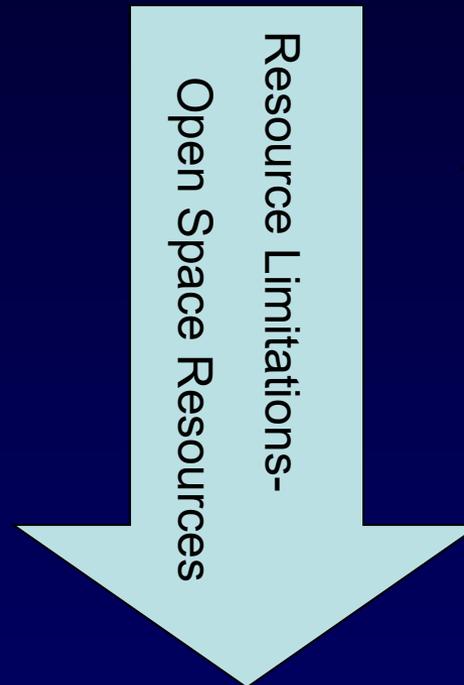
APA – Basic Purpose

“To insure optimum overall **conservation, protection, preservation, development and use** of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological, and natural resources of the Adirondack Park.”

- APA Act § 801

Existing Population Centers
Public Water and/or Sewer
Soils Suitable for Development

- Hamlet
- Moderate Intensity Use
- Low Intensity Use
- Rural Use
- Resource Management



Wetlands
Severe Slopes
Agriculture

APA Act – Permitting Jurisdiction

APA Act – Private Land Use Plan

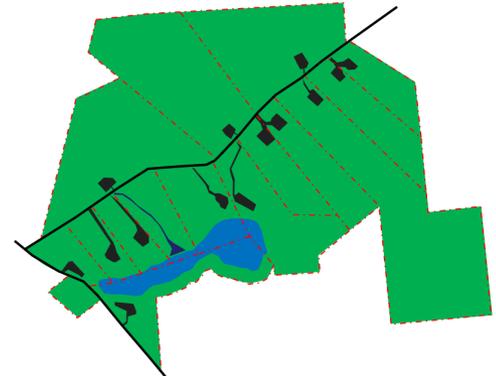
Two-tiered system:

- 1) Permits required for certain types of “subdivision” or “new land use or development”
- 2) Prohibition on certain activities impacting shorelines

APA Act – Permitting Background

“Subdivision” definition:

- Any division of land
- Involving two or more lots, parcels, or sites,
- Whether adjoining or not,
- For the purpose of sale, lease, license, or any form of separate ownership or occupancy



“Land use or development” definition:

- Any construction or other activity which materially changes
 - The use or appearance of land or a structure or
 - The intensity of the use of land or a structure



APA Act – Permitting Background

- “Any person proposing to undertake a ... **regional project** ... shall ... receive an agency permit therefore prior to undertaking the project.”
 - “Undertake means commencement of a material disturbance of land ... preparatory or incidental to a proposed land use or development or subdivision.”

APA Act – Permitting Background

APA Act § 810 lists all regional projects

- Permits for Class A regional projects are always issued by the APA
- Permits for Class B regional projects are issued by the APA or by individual towns pursuant to APA-approved local land use programs

APA Act Regional Projects – Subdivisions

Examples:

- A permit is required for any subdivision creating a non-shoreline lot smaller than

– Hamlet	no permit needed
– Moderate Intensity Use	0.92 acres
– Low Intensity Use	2.75 acres
– Rural Use	7.35 acres

Or any shoreline lot smaller than

– Hamlet	no permit needed
– Moderate Intensity Use	0.57 acres
– Low Intensity Use	1.15 acres
– Rural Use	1.84 acres

- A permit is required for any subdivision in a Resource Management area

APA Act Regional Projects – Land Use and Development

Example:

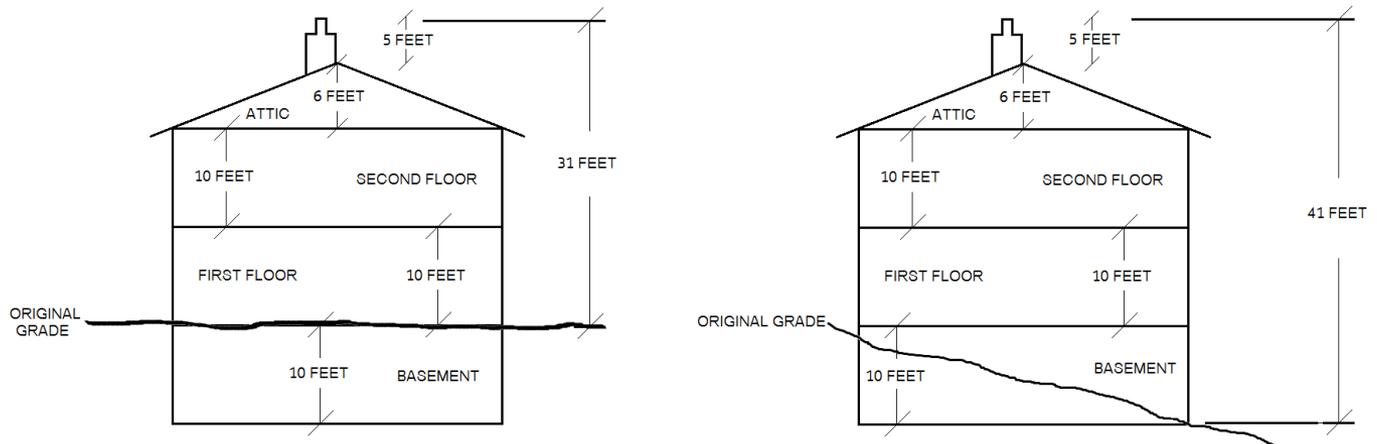
- Except in Hamlet areas, a permit is required for any new business (the provision of goods, services, activities, etc. for a fee)
 - Default term: commercial use
 - Certain businesses are not considered commercial uses
 - Exs: agricultural service uses, marinas, cemeteries, golf courses, campgrounds, group camps, airports, commercial sand and gravel extractions, mineral extractions, sawmills, tourist accommodations, tourist attractions, ski centers, junkyards, waste disposal areas, major public utility uses, industrial uses...

*** In practice, defining which type of business an applicant is proposing usually matters only for calculating the maximum allowable number of principal buildings on the project site. There are stricter density standards for tourist accommodations, industrial uses, and default commercial uses than for any other use listed above. ***

APA Act Regional Projects – Land Use and Development

Example:

- Except in Industrial Use areas, a permit is required for the construction of any structure over 40 feet in height
 - Exceptions: agricultural use structures, residential antennas
 - Height is measured from the highest point of the structure to the lower of either original or finished grade
 - Measuring standard has been in place since 1978



Wild, Scenic, and Recreational Rivers System Act

Rivers Act – Basic Requirements

As a general rule, any subdivision or land use and development requires a permit within a designated river area

- Caveats:
 - Low Intensity Use, Rural Use, and Resource Management lands only
 - Exceptions apply
 - Certain uses are prohibited



Freshwater Wetlands Act

Wetlands Act – Basic Requirements

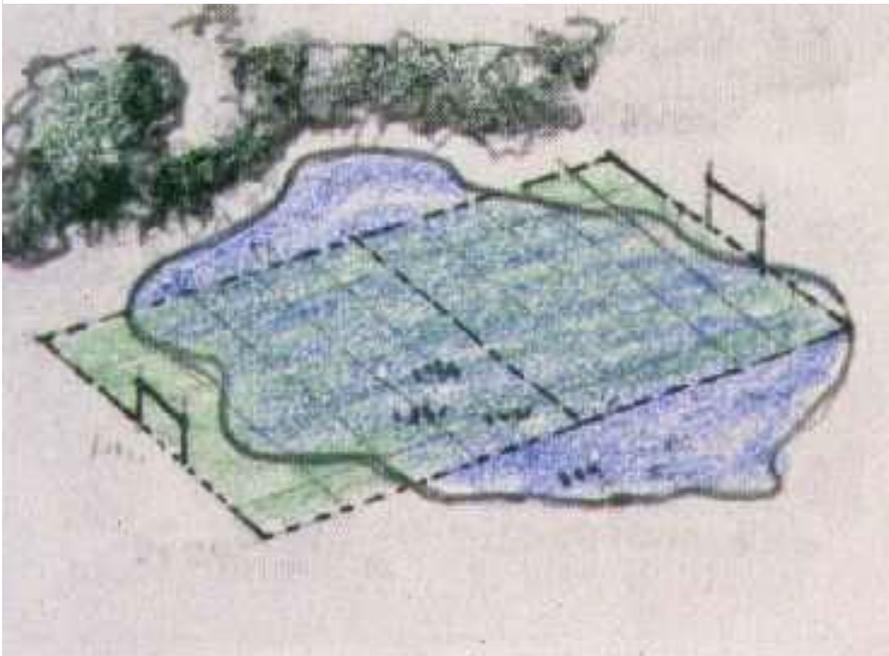
Definition

- Any land that is annually subject to periodic or continual inundation by water, commonly referred to as a bog, swamp or marsh, and either:

One acre or more in size

OR

Adjacent to a body of water with free interchange at the surface



Wetlands Act – Basic Requirements

Most subdivision and development activities within wetlands require a permit, even in Hamlet areas

Includes:

- Draining
- Dredging
- Excavating
- Dumping
- Filling
- Placing obstructions
- Clearcutting > 3 acres
- Constructing roads
- Constructing structures in or over



Permitting – Process

Permitting Process

- Administration under the APA Act
 - Exec. Law § 809
 - 9 NYCRR Part 572
- Administration under the Freshwater Wetlands Act
 - ECL §§ 24-0703, 24-0705, and 24-0801
 - 9 NYCRR Part 578
- Administration under the Wild, Scenic and Recreational Rivers System Act
 - 9 NYCRR Part 577
- Pursuant to 9 NYCRR § 572.1(a), applications for permits under all three laws are reviewed according to the procedures of Exec. Law § 809 and 9 NYCRR Part 572.

Permitting Process – Completion and Review

The APA has 15 calendar days after receipt of an application to determine whether the application is complete

Incomplete application:

- The APA must notify the applicant of “a concise statement of the respects in which the application is incomplete”; submission by the applicant of additional information starts a new 15-day clock

Complete application:

- Minor Projects:
 - single family dwellings and 2-lot subdivisions
 - If no hearing is held, decision must be made within 45 days
- Major projects:
 - Notice must be published in the ENB within 10 days, stating a period of time for public comment
 - If no hearing is held, decision must be made within 90 days



Permitting Process – Adjudicatory Hearings

*“The determination of whether or not to hold a public hearing on an application shall be based on **whether the agency's evaluation or comments** of the review board, local officials or the public on a project **raise substantive and significant issues relating to any findings or determinations the agency is required to make** pursuant to this section, including the reasonable likelihood that the project will be disapproved or can be approved only with major modifications because the project as proposed may not meet statutory or regulatory criteria or standards. The agency shall also consider the general level of public interest in a project. **No project may be disapproved without a public hearing first being held thereon.**”*

- APA Act § 809(3)



Permitting Process – Adjudicatory Hearings

Hearings must be held when:

- Unclear facts prohibit the Agency from determining whether a project is approvable, and
 - Before an application can be denied
- **Additional factors (9 NYCRR § 580.2(a)):**
 1. The size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected;
 2. The degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations;
 3. The presence of significant issues relating to the criteria for approval of the project;
 4. The possibility that the project can only be approved if major modifications are made or substantial conditions are imposed;
 5. The possibility that information presented at a public hearing would be of assistance to the agency in its review;
 6. The extent of public involvement achieved by other means;
 7. Whether an environmental impact statement will be prepared pursuant to the State Environmental Quality Review Act; and
 8. The statutory finding required by section 814(2) of the Adirondack Park Agency Act in the case of State agency projects reviewed thereunder.

Permitting Process – Adjudicatory Hearings

Determination to hold a hearing must occur within:

- 45 days of completion for minor projects
- 60 days of completion for major projects
(pre-completion hearings can only occur with the consent of the applicant)

Hearings must begin within:

- 75 days of completion for minor projects
- 90 days of completion for major projects
(in both instances, hearings cannot begin fewer than 15 days from the determination to send to hearing)

*** Public information meetings for public comment and discussion of a project are sometimes held at the request of/with the consent of an applicant ***

Permitting Process – Adjudicatory Hearings

Hearing process (slide 1 – sending to hearing):

- Majority of Agency (6 votes) required to send a project to a hearing
 - Agency should state the issues to be adjudicated
 - Protects the Agency’s decision
 - Otherwise, this burden falls to staff and the hearing officer at the beginning of the hearing
- Hearing officer is assigned “as early as possible”
 - Must have in-depth knowledge of NYS Administrative Procedures Act, rules of evidence, ability to oversee trial-like proceeding → in practice, Agency requests Administrative Law Judge from DEC
- Notice is, at a minimum:
 - Sent to applicant, LGRB, municipal government, and landowners within 500 feet
 - Posted in a regional newspaper and the Environmental Notice Bulletin
 - Posted on the project site

Permitting Process – Adjudicatory Hearings

Hearing process (slide 2 – parties):

- Applicant, LGRB, other agencies, municipal governments, landowners within 500 feet are parties-of-right
 - APA staff are not a party, but are required to participate and present evidence

- Executive Director or ALJ determines party status of other groups/landowners
 - Party status may be granted upon a showing of capacity to supply relevant information/expertise and a demonstration of a “material social, economic or environmental interest which is likely to be affected by the agency decision”

Permitting Process – Adjudicatory Hearings

Hearing process (slide 3 – hearing conduct):

- Burden is on project sponsor to demonstrate “the project will be in compliance with applicable statutory and regulatory requirements”
- “Wherever feasible,” pre-filed testimony is submitted in writing “and distributed to the parties sufficiently in advance of the hearing date to permit their review”
- At the hearing, all parties have the right to:
 - Make opening statements
 - Cross-examine the witnesses who filed pre-filed testimony
 - Introduce new sworn testimony and other evidence
 - Cross-examine the witnesses of every other party
 - Offer rebuttal evidence
 - Make closing statements
 - File motions and briefs
 - Provide written comment on any summary of the hearing created by Agency staff

Permitting Process – Adjudicatory Hearings

Hearing process (slide 4 – record and decision):

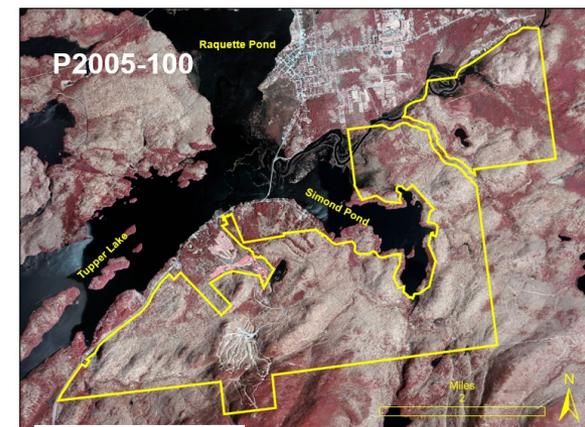
- ALJ closes hearing after all final briefs, documents, transcripts, etc have been received
- ALJ compiles official record, which must include, inter alia:
 - Application documents
 - Exhibits
 - Transcripts
 - Testimony
 - Briefs, letters, statements, comments, admissions, stipulations, etc
 - Proposed findings and a final report, if requested by the Agency
- Agency must vote for or against the project within 60 days of receipt of the hearing record
- In reviewing the hearing record, the Agency may have the aid and advice of staff who were not previously involved with the project or the hearing

Permitting Process – Adjudicatory Hearings

Most recent hearing: Adirondack Club & Resort

- Application completed by Agency on December 20, 2006
 - Significant factual gaps and approvability concerns were identified by staff at the time of completion
- Agency voted to send to public hearing on February 7, 2007
 - Hearing Order identified 12 issues to be adjudicated; as the project moved forward, this list was reduced to 10
- Hearing involved 36+ parties, multiple rounds of pre-filed testimony and briefing by the parties, 19 days of in-person testimony and cross-examination

*** Staff no longer deem applications complete when they believe necessary factual information is missing ***



Permitting Process – Adjudicatory Hearings

Hearings must be held when:

- Unclear facts prohibit the Agency from determining whether a project is approvable
- Before an application can be denied

*** Staff discuss with applicant prior to completion if necessary facts are missing or if staff believe they will recommend denial of the project ***

- Additional factors (9 NYCRR § 580.2(a)):

1. The size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected;
2. The degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations;
3. The presence of significant issues relating to the criteria for approval of the project;
4. The possibility that the project can only be approved if major modifications are made or substantial conditions are imposed;
5. The possibility that information presented at a public hearing would be of assistance to the agency in its review;
6. The extent of public involvement achieved by other means;
7. Whether an environmental impact statement will be prepared pursuant to the State Environmental Quality Review Act; and
8. The statutory finding required by section 814(2) of the Adirondack Park Agency Act in the case of State agency projects reviewed thereunder.

Permitting Process

Filing and Undertaking of projects

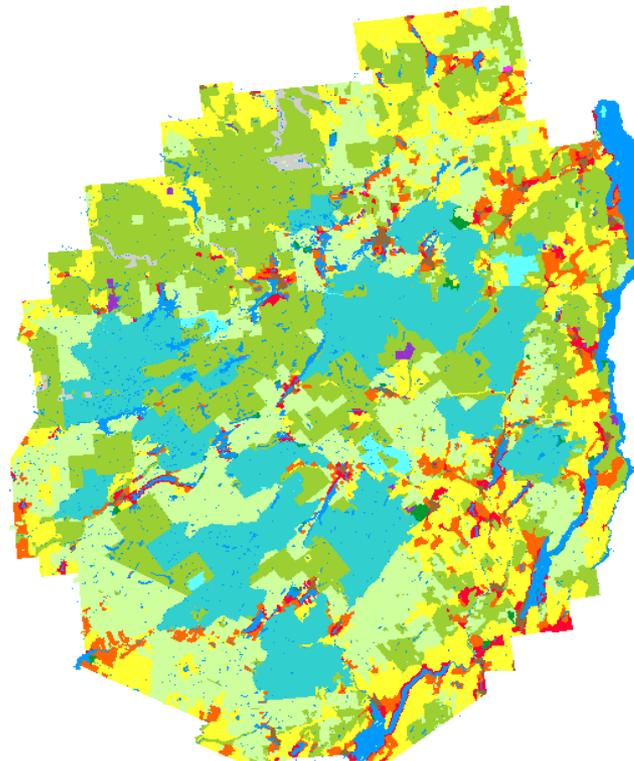
- Permits expire within 60 days of issuance unless recorded in the county clerk's office
- Filing of a permit constitutes actual notice of the permit and its conditions to current and future owners of the project site
- Permits may not be undertaken or continued unless “in existence” within two years of the date of issuance
 - Time frame generally extended in individual permits

Permitting – Review Standards (APA Act)

Permitting Review – Approval Criteria #1

The project must be consistent with the land use and development plan

- The Agency has long held that this requirement is automatically met upon a finding of the remaining four criteria



Permitting Review – Approval Criteria #2

The project must be **compatible with the character description, purposes, policies, and objectives** for the land use area

– Descriptions and compatible use lists found in § 805(3)

- Primary compatible uses are “generally considered compatible with the character, purposes, policies and objectives of such land use area, so long as they are in keeping with the overall intensity guideline”
- Secondary compatible uses are “generally compatible with such area **depending upon their particular location and impact upon nearby uses** and conformity with the overall intensity guideline”

*** Both primary and secondary compatible uses are reviewed by staff under the secondary standard ***

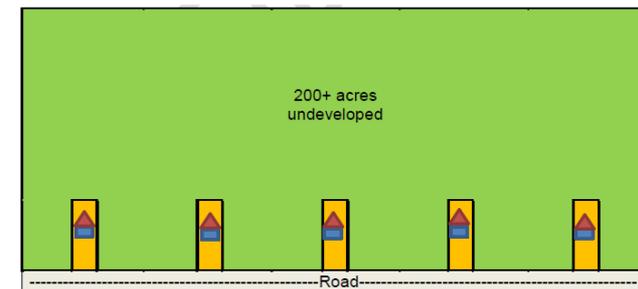
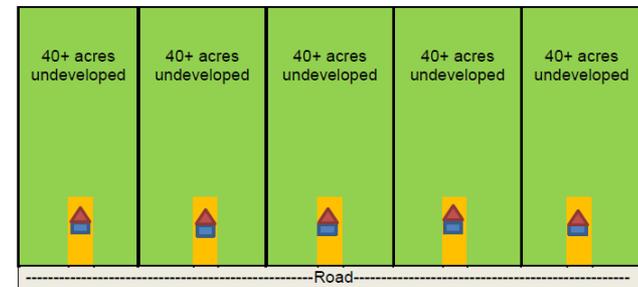
(A proposed activity that is on the primary or secondary list for another land use area but not for the land use area involved is presumed to “not be compatible with the character description, purposes, policies and objectives of such land use area,” with the burden on the applicant to demonstrate compatibility.)

Permitting Review – Approval Criteria #3

The project must be consistent with the **overall intensity guidelines** for the land use area.

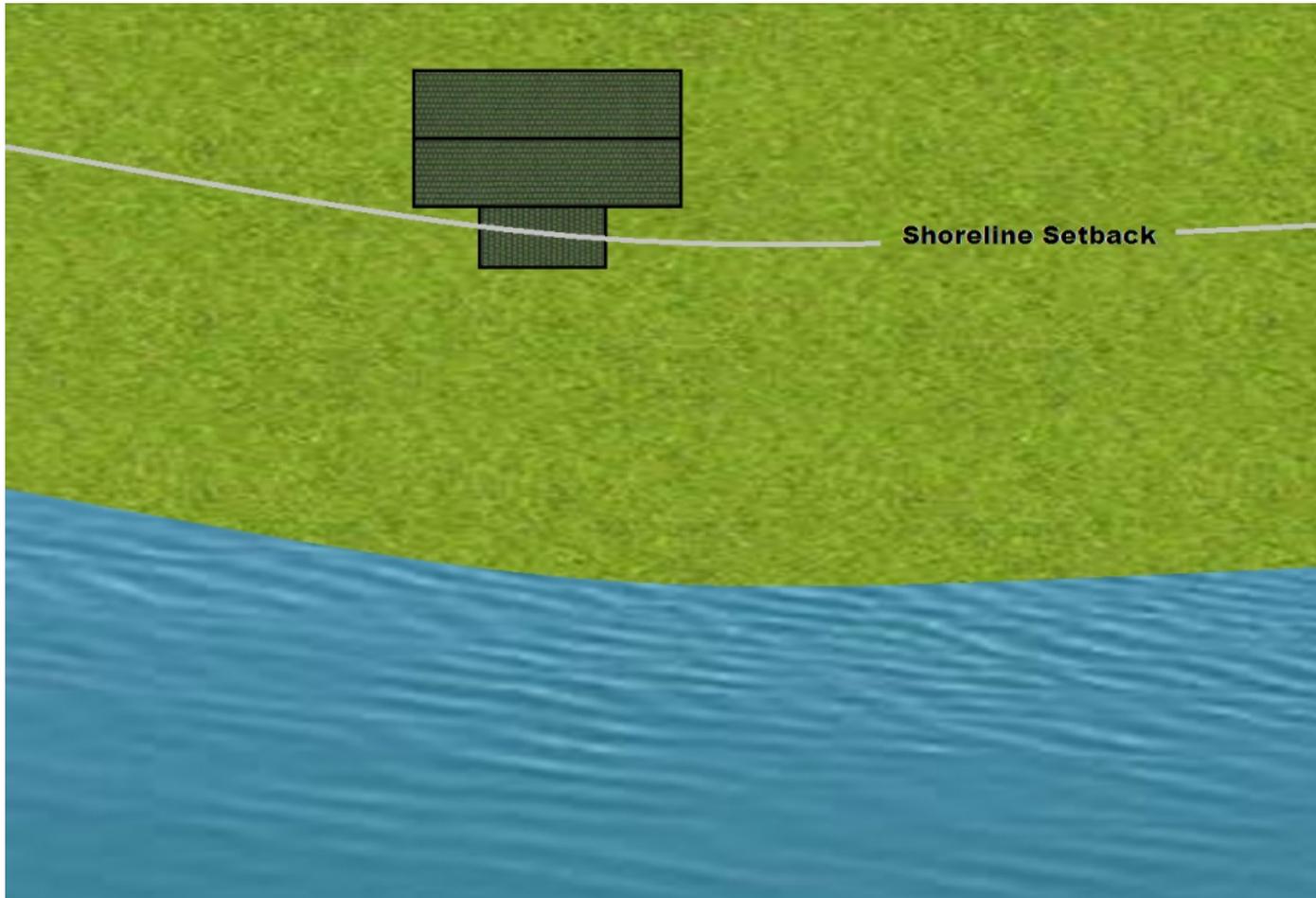
Moderate Intensity Use:	1.3-acres for each principal building
Low Intensity Use:	3.2-acres for each principal building
Rural Use:	8.5-acres for each principal building
Resource Management:	42.7-acres for each principal building

*** The density guideline isn't concerned with the size of proposed lots, but with the amount of development (and potential impacts) proposed on a site ***



Permitting Review – Approval Criteria #4

The project must comply with the shoreline restrictions.



Permitting Review – Approval Criteria #5

The project must not have an **undue adverse impact** upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park

- When making this finding, the Agency must take into account the **development considerations** of APA Act § 805(4)

The undue adverse impact finding may be made “taking into account the commercial, industrial, residential, recreational, or other benefits that might be derived from the project.” However, for the past decade or more, the Agency has made the undue adverse impact finding without needing to rely on the benefits analysis.

Permitting Review – Approval Criteria #5

Development considerations (slide 1):

- Water
 - Water quality, sedimentation and siltation, eutrophication, drainage and runoff, flow, water table and recharge rates
 - *Stormwater management, wastewater treatment, invasive species management...*
- Land
 - Topography, erosion and slippage, floodplains, mineral resources, agricultural soils, forests, open spaces, vegetative cover, potential for outdoor recreation
 - *Agricultural uses, forest management, visual impacts...*
- Air
 - Air quality

Permitting Review – Approval Criteria #5

Development considerations (slide 2):

- Noise
 - Noise levels
- Critical resource areas
 - Study rivers, rare plant communities, rare/endangered species and key wildlife habitats, alpine/sub-alpine zones, wetlands, elevations above 2,500 feet, other unique features
 - *Wetland delineation and impact assessment, habitat fragmentation, sustainable development principles...*
- Wildlife
 - Fish and wildlife
 - *Habitat fragmentation, sustainable development principles...*



Permitting Review – Approval Criteria #5

Development considerations (slide 3):

- Aesthetics
 - Scenic vistas, travel corridors
 - *Visual impacts...*
- Historic factors
 - Historic sites and structures
- Natural site factors
 - Geology, slopes, soils, depth to groundwater/other hydrologic factors
 - *Stormwater management, wastewater treatment, depth to seasonal high groundwater/bedrock (deep hole test pits), site development assessment...*



Permitting Review – Approval Criteria #5

Development considerations (slide 4):

- Other site factors
 - Adjoining and nearby land uses, adequacy of site facilities
 - *Traffic, parking, access, lighting, visual impacts, wastewater, water supply...*
- Governmental service and finance factors
 - Ability of government to provide facilities and services, taxes and user charges
 - *Water supply, sewage collection, solid waste, roads, traffic, parking...*
- Governmental control factors
 - Conformance with other governmental controls
 - *Simultaneous coordinated review with other agencies...*

Permitting Review – Approval Criteria

The APA must determine that a project meets five criteria before issuing a permit:

- 1) The project would be consistent with the land use and development plan
- 2) The project would be compatible with the character description, purposes, policies, and objectives for the land use area
- 3) The project would be consistent with the overall intensity guidelines for the land use area.
- 4) The project would comply with the shoreline restrictions.
- 5) The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park
 - Must consider 37 development considerations.

Questions?

