



Adirondack Park Agency Act Procedural Modifications

Modifies Adirondack Park Agency deadlines; transfer of development rights; denial of permit applications without a hearing

Assembly Bill No.: AXXX

Assembly Sponsors: XXXX

Senate Bill No.: S3361

Senate Sponsors: *Carl Kruger, D-Brooklyn*

Purpose:

The purpose of this bill is to address problems related to the regional project permit process established in the Adirondack Park Agency (APA) Act, Executive Law (EL) Article 27, Section 809.

This bill would extend time clocks for initial review to determine project completeness, modify ten-day requirement for publication notice for major projects in the Environmental Notice Bulletin, establish a uniform 90-day timeframe for both project hearing and approvability determinations, allow the APA to deny a project without a hearing while still retaining a project sponsor's right to a hearing, clarify the status of an unrecorded permit when the project has been undertaken, and establish flexibility for transfer of development rights from a more restrictive to a less restrictive APA land use classification within the same municipality.

Background:

Initial Review timeframe - A 15-day time clock currently governs the initial completeness review for minor and major project applications. This timeframe repeats each time the APA requests additional information. The current period does not allow sufficient time for a site visit. Lack of a site visit often results in a generalized request for additional information.

A 30-day extension for major projects will allow staff the opportunity to first conduct a site visit which in turn will result in more focused requests for additional

information. This should create a less burdensome process for the applicant and concentrate attention on relevant subject issues sooner.

Environmental Notice Bulletin - The 10-day requirement for major project notice publication in the ENB is impractical under the existing ENB publication procedures and is unnecessary because of the Agency's additional existing statutory requirement that publication occur "in the next available ENB." This later requirement will ensure prompt public notification of APA major projects.

Project Hearing Determination - The Agency must determine if a major project warrants a public hearing 60 days after the application is deemed complete. This requirement forces staff to complete its review of the project and to recommend to the Agency Board either project approval or a formal adjudicatory hearing within the 60-day time period.

Adopting the 90-day timeframe for both hearing and project approvability determinations will allow for thorough review of complex projects, and will help avoid unnecessary public hearing expenses and delays to the application process which may result if determinations are hastened due to unreasonable time constraints.

This bill also provides the APA with the option to deny a project without first holding an adjudicatory public hearing, but preserves the project sponsor's absolute right to request the hearing after an initial denial, with another Agency determination based solely on the hearing record. In many cases, the facts of the situation are not at issue and not in need of adjudication; what the sponsor needs is the opinion of the Agency Board on the merits of the proposal. In such circumstances, the denial up front with clearly articulated reasons allows the sponsor to make an informed decision whether to request a hearing.

Permits not recorded, for which the project is undertaken - The revision binds the project sponsor to the permit terms, even though not recorded, if the project has been undertaken.

Permit Amendments/Modifications - The proposed language addresses the problem of requests to amend a permit. Where the requested amendment involves no change in the proposed project, and no change in the applicable law, environmental

conditions or technology, the bill allows the Agency to deny the request without a hearing. However, the existing rule regarding "non-material" amendments remains: if the request is non-material, the Agency may grant it promptly without public notices or hearing.

Permit Conditions Appeals - This section moves into the statute the existing regulatory process and voting requirements for appeals of the terms of permits issued. It also helps provide symmetry with the statutory provisions that address permit amendments. By regulation, a permit holder has 30 days to appeal the terms and conditions of a permit plus an additional 30 days on good cause shown, and a two-thirds vote of Agency members is required to modify a prior permit determination issued by APA Board members. These rights will now be provided by the statute.

Transfer of Development Rights - Currently, the transfer of development potential is only available from the Agency within the same APA land use area. This bill would expand the opportunity for transfer of development rights. It proposes the option of transfer of development rights from a more restrictive land use area to a less restrictive land use area within the same municipality. This option is allowed regardless of whether there is an APA approved local land use program. An APA permit would be required in order to execute such transfer of development rights. The permit would include conditions and terms to ensure "no adverse environmental impact" occurs and adherence to other permit criteria.

Transferring development potential from more restrictive APA land use areas into less restrictive areas can balance protection of the Park's unique natural resources with the growing demand for increased development opportunities especially for Community Housing on land capable of sustaining higher density development.

Bill Provisions:

- Extends time period for initial review of a major project application from 15 calendar days to 30 calendar days;
- Eliminates 10-day requirement for publication of major project notices in the Environmental Notice Bulletin in favor of publication in the "next available ENB."

- Extends time period from 60 to 90 days for mailing hearing notices for major projects;
- Binds project sponsor to permit conditions if a project is undertaken without recording the permit;
- Changes timing and procedures for public hearings applicable to project denials; APA can deny project without first holding a public hearing, but the right to a hearing and a determination based on the record is retained;
- Clarifies procedures relating to permit amendment or modification; allows Agency to uphold a prior permit determination after the time to appeal has run and there are no changes in circumstances, without a hearing;
- Provides a statutory guarantee of a 30 day time period for an appeal of an Agency permit decision; an additional 30-days may be granted on good cause shown. It also provides a requirement for a two-thirds majority vote for all appeals to the Agency of a prior Agency Board determination; and
- Modifies provision relating to the application of the APA Act's intensity guidelines to allow greater opportunity for transfer of development rights.

Budget Implications:

This bill will have no significant fiscal impact to the State. It may reduce APA costs and project sponsor costs by improving efficiency of project review and approval.

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