



M E M O R A N D U M

To: Terry Martino, Executive Director  
From: James Townsend, Counsel  
Re: Consensus Rule - Draft Resolution  
Date: June 5, 2013

Please find attached a draft resolution for consideration and action by the Agency that would authorize staff to undertake rule making for a *consensus rule* as defined in the State Administrative Procedure Act ("SAPA"). A technical summary of the proposed *consensus rule* is attached to the draft resolution.

Pursuant to the resolution, Agency staff would provide formal notice of the proposed rule making, and afford the public an opportunity to comment on the proposed *consensus rule*, in accordance with SAPA. The resolution would further authorize staff to file the *consensus rule* with the Secretary of State and provide required notice of adoption of the new rule as required by SAPA, provided that no objections from the public to adoption of the rule are submitted during the comment period.

The proposed *consensus rule* would update citations, make technical corrections, and clarify language in existing rules set forth in 9 NYCRR, Subtitle Q. It would also repeal obsolete rules. Since the proposal was shared with the Agency at the May meeting, additional changes of the same type have been added. The updated version of the proposed rule has been posted on the Agency's website since the May meeting, and only two minor comments have been received. Those two comments have been incorporated into the proposed *consensus rule*.

I recommend that the Agency approve the attached, draft resolution.

JTT:mp  
Attachment

cc: Paul Van Cott



**WHEREAS**, the Adirondack Park Agency (“Agency”) is authorized to adopt, amend and repeal rules and regulations pursuant to Executive Law § 804(9) and Environmental Conservation Law §§ 15-2709 and 24-0801; and

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

**WHEREAS**, pursuant to SAPA § 202(a), prior to the adoption of a rule the Agency is required to submit a notice of proposed rule making to the Secretary of State for publication in the State Register and to afford the public an opportunity to comment on the proposed rule; and

**WHEREAS**, as detailed in the attached summary, the Agency seeks to undertake a rule making for a *consensus rule*, as defined in SAPA § 102(11), that will update citations, make technical corrections, clarify language, and repeal obsolete language in its existing rules set forth in 9 NYCRR, Subtitle Q; and

**WHEREAS**, pursuant to SAPA § 201-a(2)(a), the proposed *consensus rule* will not have any measureable impact on jobs and employment opportunities because it does place any new or increased regulatory burden on any person; and

**WHEREAS**, SAPA § 202(1)(b)(i) authorizes the Agency to undertake a more expedited rule making process for a *consensus rule* and to file and adopt it pursuant to SAPA § 202(5) after the expiration of the public comment period so long as there has been no objection to adoption of the proposed rule.

**NOW, THEREFORE, BE IT RESOLVED** that:

- I. Pursuant to SAPA § 202(a), Agency staff shall submit a notice of proposed rule making for the *consensus rule* to the Secretary of State for publication in the State Register and afford the public a 45-day period to submit comments on the proposed rule.
- II. If no objections to the adoption of the *consensus rule* are received during the public comment period, Agency staff shall file the *consensus rule* with the Secretary of State and submit a notice of adoption to the Secretary of State for publication in the State Register pursuant to SAPA § 202(5). In addition, Agency staff shall provide copies of the proposed *consensus rule* package to designated parties in accordance with SAPA §§ 201-a and 202(6-a).

Resolved and adopted by the Agency on this 13<sup>th</sup> day of June, 2013.

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Leilani Crafts Ulrich  
Chairwoman

## SUMMARY OF PROPOSED CONSENSUS RULE

The proposed rule would:

Amend 570.2(d) and (g) to add a reference to Part 576 in subdivision (d) and to update citations and make other technical corrections to subdivision (g);

Amend the definitions in 570.3 (b)[Bed and Breakfast], (d)(1)[Campground],(f)[Clearcutting], (g)(2)[Critical Environmental Area], (k)[Freshwater wetlands], (l)[Guest cottage], (m)[Hunting and fishing cabin], (t)(1)[Major public utility use], (v)[Material detrimental reliance], (x)[Multiple-family dwelling], (y)(1)[Open space recreation use], (ab)[Preexisting subdivision of land],(ac)(1),(3),(6) and (8)[Principal building], (ak)(1)[Structure], (al)(1),(2)(ii),(3) and (4) [Subdivision of land], and (am)[Undertake] to make technical corrections, update citations, clarify existing language and delete non-definitional language;

Add a new definition of *Wastewater* as 570.3(an), renumber existing 570.3(an) [Watershed management] as subdivision (ao), and renumber existing 570.3(ao)[Wetlands] as subdivision (ap) and make technical corrections to the subdivision and delete non-definitional language;

Amend 571.1 to make a technical correction;

Amend 572.3(b)(2) to make technical corrections;

Amend 572.3(c) to make technical corrections;

Amend 572.4(a)(1) to update a citation;

Amend 572.4(c)(4),(6) to make technical corrections;

Amend 572.10(b) to update a citation and to make technical corrections;

Amend 572.11(a)(3) to delete obsolete reference to 572.15 for variance hearings;

Add a new 572.11(a)(4) to properly reference citation for variance hearings as 576.5;

Amend 572.22(e) to update a citation and clarify existing language;

Amend 572.23(d),(g) to clarify existing language and to make technical corrections;

Amend 573.4(e)(2),(4),(f)(6),(h),(i)(1),(3) and (4) to make technical corrections and clarify existing language;

Amend 573.5(e) to make technical corrections;

Amend 573.6(e),(f) to make technical corrections;

Amend 573.7(b)(1)(ii) to make technical corrections;

Repeal and replace 573.7(d)(1)(ix) to update referenced guidance;

Amend 573.8(b) to make technical corrections;

Amend 574.4 to make technical corrections and to clarify existing language;

Amend 574.8(a) to make technical corrections;

Amend 575.1(e)(2),(3) to make technical corrections;

Amend 575.2 to make technical corrections and to clarify existing language;

Amend 575.4(c),(f) to update a citation; and to make a technical correction;

Amend 575.7(c),(d) to make technical corrections;

Amend 577.2(s) to make technical corrections;

Repeal and replace 577.6(c)(2)(ii) to update referenced guidance;

Amend 577.9(b) to make technical corrections;

Amend 577.10(b) to update a citation;

Amend 578.1(c) to clarify existing language and make a technical correction;

Amend 578.2(a), (b) to clarify existing language and make a technical correction;

Amend 578.3(n)(1)(iv) to make technical corrections;

Amend 578.3(c),(e),(f),(g),(i),(j),(p),(q) and (t) to make technical corrections and to update a citation;

Amend 578.3(n)(3)(ii)(d) to make technical corrections;

Amend 578.5(c),(d),(k),(w), and (x) to make technical corrections and to clarify existing language;

Amend 578.8(g) to make technical corrections;

Amend 578.11(a) to make technical corrections;

Amend 580.1(b),(c) to make technical corrections and to update a citation;

Amend 580.4(a)(8),(b)(6) to make technical corrections;

Amend 580.5(b) to make technical corrections;

Amend 580.10(b) to make technical corrections;

Amend 580.14(d)(3) to make technical corrections;

Amend 580.17(c) to update a citation and make technical corrections;

Amend 581-1.2(i) to make technical corrections;

Amend 581-2.6(a) to make technical corrections;

Amend 581-2.7(a) to make technical corrections;

Amend 581-2.8 to make technical corrections;

Amend 581-3.1(c) to make technical corrections;

Amend 581-3.2(b) to make technical corrections;

Amend 581-4.3(a)(3) to make technical corrections;

Amend 581-4.5(b) to make technical corrections;

Amend 581-4.9(e)(2) to make technical corrections;

Amend 581-4.16 to make technical corrections;

Amend 582.2(e)(1) to make technical corrections;

Amend 583.5(a)(4)(iii) to make technical corrections;

Amend 586.5(b)(1) to update citations;

Repeal 586.5(c) as obsolete;

Amend 586.7 to make technical corrections and to update citations;

Amend 586.8(a) to update citations;

Amend 586.9(a) to update citations;

Amend 586.10 to update citations;

Amend 586.11 to update citations;

Amend 586.12(a) to update citations;

Amend 586.13 to update citations;

Amend 586.14(b) to update citations and clarify existing language;

Amend 587.1(j)(5) to make technical corrections;  
Add a new 588.4(d) as a rule of construction;  
Repeal and replace 588.8 with simplified language;  
Amend Appendix Q-4 to clarify existing language;  
Amend Appendix Q-6 to make technical corrections; and  
Amend Appendix Q-8 to make technical corrections.