



M E M O R A N D U M

To: James Townsend, Counsel
From: Paul Van Cott, Associate Attorney
Date: October 1, 2014
Re: Delegation Resolution

For consideration by the Agency, please find attached: (1) proposed changes to the Agency's Delegation Resolution which would delegate limited variance approval authority to the Deputy Director Regulatory Programs (DDRP); and (2) a proposed consensus rule. A complete copy of the proposal for an amended Delegation Resolution, which includes additional, non-material amendments to the document in a legislative format, is on the CD mailed to the Agency and the Agency's website.

Amendment of Delegation Resolution

The proposed limited delegation of variance approval authority to the DDRP follows the presentation given by staff at the September meeting. The proposed amendments to the Delegation Resolution are in three sections of the document:

- (1) Powers reserved to the Agency;
- (2) Authority delegated to the DDRP; and
- (3) Responsibilities of the Regulatory Programs Committee.

The proposed amendments are intended to be consistent with existing language and formatting in the document, and specifically draw from language used for the delegation of permit issuing authority to the DDRP.

The specific types of variance requests proposed to be delegated to the DDRP include:

- (1) Municipally-sponsored projects;
- (2) Dam safety projects under the jurisdiction of the Department of Environmental Conservation;
- (3) Shoreline stabilization projects necessary for the protection of life or property;

- (4) Projects with minor impacts, including impacts to adjoining uses;
- (5) Projects in highly-developed portions of Hamlets with local planning and zoning boards.

Staff provided descriptions and examples of each of these types of variance requests at the September Agency meeting. At Agency Member Booth's suggestion, staff have added to the proposal variance requests in highly-developed portions of Hamlets that have local planning and zoning boards. Staff have also expanded the shoreline stabilization type of variance request to take into account the possibility that shoreline stabilization may only require an Agency variance and not any DEC approval.

If the proposed delegation of variance approval authority is made to the DDRP, the staff review process would remain the same, and the same variance standards would be applied to all variance requests, thus ensuring consistent decision-making for all variances. Even for the delegated variance requests, the DDRP would have the discretion to refer them to the Agency for review, or an Agency Member could request their review.

Consensus Rule

The proposed consensus rule would modify the delegation of permit issuance authority provided to the DDRP in 9 NYCRR § 572.11 to allow for the issuance of a permit by the DDRP which also requires a variance. As currently written, this regulation does not allow the DDRP to issue, for example, a sign variance where a commercial use permit is also required, or a structure variance for a boardwalk that also requires a wetlands permit. The proposed rule would only restrict the DDRP from issuing permits when the Agency will be reviewing the variance request.

Conclusion

If the Agency decides to move forward with an amendment to the Delegation Resolution and the proposed consensus rule, staff will seek public comment on the attached documents and prepare them for formal consideration at the November Agency meeting. Staff will post the documents on the Agency's website and reach out to the Local Government Review Board and other involved stakeholders as part of the process of seeking public comment.

**Proposed Substantive Amendments to Delegation
Resolution for Delegation of Variance Approval
Authority to Deputy Director Regulatory Programs**

(Title page and Table of Contents omitted)

WHEREAS, in addition to those procedures set forth in, and delegations made by rule and regulation, the Agency desires to establish certain additional procedures and delegate certain additional responsibilities in order to conduct business in an efficient manner.

NOW, THEREFORE, BE IT RESOLVED, pursuant to Sections 803, 804 and 809(14) of the Adirondack Park Agency Act, Section 15-2709 of the Wild, Scenic and Recreational Rivers System Act, and Section 24-0801 of the Freshwater Wetlands Act, the Agency delegates the responsibilities and establishes the procedures that follow:

I. POWERS RESERVED TO THE AGENCY

The Agency reserves to itself all lawful authority not delegated by 9 NYCRR Subtitle Q (the "Agency Rules and Regulations") or this resolution, including but not limited to the following:

- A. To review and approve, to approve subject to conditions, to grant permits with respect to, and to determine whether to hold a public hearing with respect to, all projects subject to Agency jurisdiction other than those with respect to which authority to act has been delegated by the Agency Rules and Regulations or this resolution.
- B. To exercise exclusive authority to disapprove projects after public hearings.
- C. To review and take final action concerning all requests for variances **other than those with respect to which authority to act has been delegated by this resolution.**

(Subdivisions D-K of Section I, and Sections II and III omitted)

IV. AUTHORITY OF THE DEPUTY DIRECTOR REGULATORY PROGRAMS

The Deputy Director Regulatory Programs, under the supervision of the Executive Director, shall have authority to exercise the following powers on behalf of the Agency:

- A. To approve projects in accordance with Section 809 of the Adirondack Park Agency Act, and as specified in Section 572.11 of the Agency Rules and Regulations, and to approve determinations with respect to projects by State agencies called for in Section 579.3(d) of the Agency Rules and Regulations.
- B. To approve variances in accordance with Part 576 of the Agency Rules and Regulations for variance applications involving: (1) municipally-sponsored projects; (2) dam safety projects under the jurisdiction of the Department of Environmental Conservation; (3) shoreline stabilization projects necessary for protection of life or property; (4) projects with minor impacts, including impacts to adjoining uses; or (5) highly-developed portions of Hamlets with local planning and zoning boards. The Deputy Director Regulatory Programs shall have discretion to refer any such application to the Agency for review.

(Subdivisions C-I of Section IV and Sections VI and VII omitted)

VIII. COMMITTEES OF THE AGENCY

(Subdivisions A and B omitted)

- C. STANDING COMMITTEES OF THE AGENCY - FUNCTIONS AND RESPONSIBILITIES

Agency committees shall meet in combined session on matters of joint interest, as determined appropriate by the Agency Chairperson in consultation with the Committee chairpersons. The following Standing Committees have been established with membership to be reviewed periodically and determined by the

Agency Chairperson in consultation with Agency Members:

(Paragraph 1 of Subdivision C omitted)

2. REGULATORY PROGRAMS COMMITTEE

The Regulatory Programs Committee, established by Section 572.12 of the Agency Rules and Regulations, shall:

- (a) Monitor staff review of applications for project permits or other determinations submitted to the Agency under Sections 809 and 814 of the Adirondack Park Agency Act; the Wild, Scenic and Recreational Rivers System Act; and the Freshwater Wetlands Act. The Committee will act on those applications directed to the Agency for decision by Section 572.11 of the Agency Rules and Regulations and this resolution, and by the Deputy Director Regulatory Programs or at the request of one or more Agency Members.
- (b) Monitor staff review of applications for variances of the provisions of Section 806 of the Adirondack Park Agency Act, the Wild, Scenic and Recreational Rivers System Act and the Agency Rules and Regulations. *The Committee will act on those applications directed to the Agency for decision by this resolution, and by the Deputy Director Regulatory Programs or at the request of one or more Agency Members.*

(Subparagraphs c-i, the remainder of Paragraph 2, and Paragraphs 3-9 of Subdivision C, and Sections IX-XI omitted)

Paragraph (4) of subdivision (a) of section 572.11 is amended to read as follows:

(4) projects requiring variances [which have been the subject of a public hearing held pursuant to section 576.5 of this Title] to be reviewed by the Agency.

Subdivisions (5) and (6) of Appendix Q-5 are repealed and subdivisions (7), (8), (9), and (10) are renumbered subdivisions (5), (6), (7), and (8).

Subdivision (b) of section 575.4 is amended to read as follows:

(b) Porches, decks and other structures attached to single family dwellings, or to other structures subject to the building setback restrictions, shall be considered part of the structure for purposes of applying the setback restriction.

Appendix Q-2 is amended to read as follows:

9. Piseco Lake

1662.65 feet above mean sea level