



M E M O R A N D U M

To: Terry Martino, Executive Director
From: James Townsend, Counsel
Date: February 4, 2015
Re: Delegation of variance approval authority

For Agency consideration and possible action, please find attached language for inclusion in an possible amended "Resolution of the Adirondack Park Agency on Delegating Certain Powers and Responsibilities" (the "Delegation Resolution") to delegate limited variance approval authority to the Deputy Director Regulatory Programs ("DDRP"). The full text of the Delegation Resolution, including additional technical changes throughout the document, is on the CD included in the mailing to the Agency.

Both documents are the same as the ones provided to the Agency for its November, 2014 meeting, except for changes sought by the Agency in that meeting. Specifically, as requested by the Agency, this draft limits the delegation of variance approval authority to: (1) shoreline stabilization structures necessary for protection of life or property; (2) dam safety proposals under an order from the Department of Environmental Conservation pursuant to ECL § 15-0507(3); or (3) proposals with minor impacts, including impacts to adjoining uses. Municipally-sponsored requests and those in highly-developed Hamlet areas were removed as separate types subject to the delegation. Any such requests would need to fall under one or more of the remaining three types to qualify for delegation.

The draft resolution retains the Agency's discretion to hear all variances, even those that qualify as one of the above types. In addition, staff has the discretion to refer any variance subject to the delegation for decision.

Terry Martino, Executive Director

February 4, 2015

Page 2

The amended resolution should be referred to the Administration Committee for consideration consistent with the terms of the Delegation Resolution. If the draft is recommended by the Committee to the Agency for approval, it may be taken up by the Agency during the report of the Administration Committee.

JTT:PVC:mp

Attachment

**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) shoreline stabilization structures necessary for protection of life or property; (2) dam safety proposals under an order from the Department of Environmental Conservation pursuant to ECL § 15-0507(3); or (3) proposals with minor impacts, including impacts to adjoining uses. 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)