



Adirondack Park Agency

KAREN FELDMAN
Acting Chair

TERRY MARTINO
Executive Director

MEMORANDUM

TO: Terry Martino, Executive Director

FROM: Paul Van Cott, Associate Attorney

DATE: March 6, 2019

RE: Proposed Amendment to Delegation Resolution

For consideration by the Agency Board, please find attached a proposed amendment to the "Resolution of the Adirondack Park Agency on Delegating Certain Powers and Responsibilities" (Delegation Resolution), in legislative format, which would amend the delegation of authority to the Deputy Director - Regulatory Programs (DDRP) to allow staff in designated positions to issue permits and notices of completion and incompleteness in certain circumstances. This memorandum explains staff's proposal and how it supports the following strategic goal for 2019:

"Timely and efficient regulatory determinations that continue to provide necessary resource protection."

Agency authority to delegate

Executive Law § 803 empowers the Agency to delegate its authority to issue permits and notices to the DDRP:

"The Agency may delegate to one or more of its members, officers, agents and employees, such powers and duties as it sees fit."

The Agency has undertaken this delegation of its authority through its rules and the Delegation Resolution. The proposed amendment to the Delegation Resolution is equally supported by the Agency's statutory authority to delegate.

Executive Law § 803 does not limit the Agency's authority to delegate, nor does it specify how the delegation must be made like some other statutes do. See, e.g., Transportation Law § 16 and footnote 2 below. In any event, whether the Agency's delegation is made by rule or through the Delegation Resolution, it is made through a public process and the final product is posted on the Agency's website.¹

¹ Additional support for Agency delegation of duties to staff through the Delegation Memorandum is also found in the State Administrative Procedure Act (SAPA), which excludes from the definition of "rule"

The scope of the “powers and duties” the Agency may delegate was the subject of litigation in Bolton v. Adirondack Park Agency, 128 Misc.2d 59 (1985). In Bolton, the petitioners challenged the Agency’s delegation of authority to the DDRP to grant permits. The petitioners asserted that the Agency only had the authority to delegate ministerial, not discretionary, powers and duties. Supreme Court confirmed that the statute allowed the Agency to make such a delegation of its discretionary powers and rejected the petitioners’ attempt to place limits on which “powers and duties” the Agency could delegate to “one or more of its members, officers, agents and employees.”

The decision in Bolton is entirely consistent with the principle allowing New York’s administrative agencies to delegate administrative powers and duties to their staff to the extent provided by the statutes that give such powers and duties to the agencies. The Appellate Division, Third Department, upheld such a delegation by the Department of Transportation’s commissioner in Pelham v. White, 166 A.D.2d 824, 825, 563 N.Y.S.2d 171, 172-173 (1990). There, the statute allowed the commissioner to “delegate any of his powers or duties to any” of his deputies.²

Amendment of Delegation Resolution

The proposed amendment to the Delegation Resolution would authorize the DDRP³, with the consent of the Executive Director and under the supervision of the DDRP, to designate staff in certain supervisory titles to issue permits and notices as follows:

- Environmental Program Specialist (EPS) 3 staff, who could issue general permits, permits for minor projects, and notices of completion and incompleteness;
- EPS 3 staff, who could issue permits for other projects consistent with 9 NYCRR Part 572 in the event of the absence or unavailability of the DDRP and the Executive Director; and
- EPS 2 staff, who could issue notices of completion and incompleteness in the absence or unavailability of the DDRP, Executive Director, and EPS 3 staff.

Rationale for proposed amendment to the Delegation Resolution

Under existing authority delegated by the Agency Board, the DDRP reviews and signs all permits and notices unless he or she is absent or unavailable. This means that the DDRP is responsible for reviewing and signing the daily work product of up to fourteen Environmental Program Specialists in the Regulatory Programs division, all of which is subject to the statutory time clocks of the Adirondack Park Agency Act. The proposed

subject to SAPA rulemaking matters involving the “internal management of the agency which do not directly and significantly affect the rights of or procedures or practices available to the public.”

² Transportation Law § 16 allows such delegations to be made “by official order filed with the department of transportation.” Staff believe the Agency’s Delegation Resolution provides a similar level of formality to any delegation.

³ The Delegation Resolution authorizes the Executive Director to exercise any or all of the authority granted to staff by the Agency’s rules or the Delegation Resolution.

amendment to the Delegation Resolution will promote timely and efficient permit and notice determinations by allowing the DDRP to share a substantial portion of those responsibilities with designated staff acting under his or her direction.

This proposed amendment is particularly critical for minor projects, defined as 2-lot subdivisions and single family dwellings, for which Executive Law § 809 and Agency rules contemplate expedited procedures. Minor projects comprise approximately 50% of the projects reviewed by Agency staff each year.

Under the proposal, an EPS 3 could be assigned responsibility for issuing notices and permits for minor projects, greatly reducing the workload of the DDRP and speeding up the issuance of minor project permits. Delegation to an EPS 3 of the issuance of general permits, which account for approximately 10% of projects reviewed by staff each year, would similarly expedite the issuance of those straight-forward approvals.

The other proposed amendments to the Delegation Resolution simply clarify, make position-specific, and continue existing delegations to the DDRP and authorized staff, including the delegation made by the Agency Board at the February 2019 meeting.

Any delegations made by the DDRP pursuant to this proposed amendment to the Delegation Resolution would occur with the consent of the Executive Director and by memorandum to designated staff. The DDRP would remain responsible for all permits and notices delegated to Agency staff, and would provide continuous, appropriate supervisory direction to ensure the review and issuance of consistent, quality work products under any delegation.

Conclusion

If the Agency decides to move forward with this proposed amendment to the Delegation Resolution, the following procedural steps are required:

- (1) approval of a Regulatory Programs Committee motion recommending the proposal to the Agency Board; and
- (2) approval of an Agency Board motion authorizing the proposed amendment.

PVC:mp
Attachment

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.
- C.** To determine whether State agency projects are subject to Agency review jurisdiction pursuant to Section 814 of the Adirondack Park Agency Act, and to determine either (a) that the project would not be inconsistent with the Adirondack Park Land Use and Development Plan and the shoreline restrictions and would not have an undue adverse impact as described in that section, or (b) that the project should be reviewed by the full Agency.
- D.** To schedule public hearings on projects where the Uniform Procedures Act time limitation for doing so would expire prior to the next regularly scheduled Agency meeting.
- E.** To schedule public hearings on variance applications and to issue a notice of intent to hold, and to schedule, a hearing to consider both the variance and the project, in the case of any project application involving a variance. The Deputy Director Regulatory Programs shall report the exercise of the power granted by paragraphs A, B, C and D at or prior to each regularly scheduled meeting of the Agency.
- F.** To direct and supervise the Regulatory Programs Staff in the conduct of consultation with project sponsors, both with respect to preliminary and informal plans for proposed projects, and with respect to the rendering of staff recommendations in regard to such proposals; in the receipt and processing of applications for project permits and

variances; in the determination of the completeness of applications, and the notification of applicants; in site inspections necessary to the performance of Agency responsibilities; in the staff review of applications and the formulation of final staff recommendations to the Agency.

- G. To develop, review and monitor programs and projects established to evaluate compliance with Agency permit and variance conditions, and to make appropriate referrals to the Agency's enforcement program for any actions determined to be potential violations.
- H. To determine questions involving compliance by project sponsors with conditions imposed in a notification of determination precedent to, and subsequent to the issuance of a permit, and to issue project permits following compliance.
- I. With the consent of the Executive Director [, to authorize members of the staff to sign and issue notices of completion and incompleteness in the absence of the Executive Director and Deputy Director Regulatory Programs.] and subject to 9 NYCRR Part 572 and supervisory direction from the Deputy Director Regulatory Programs, to authorize:
 - 1. Staff in the title of Environmental Program Specialist 3 to sign and issue notices of completion and incompleteness, general permits, and permits for minor projects;
 - 2. Staff in the title of Environmental Program Specialist 3 to sign and issue permits for other projects in the event of the absence or unavailability of the Executive Director and the Deputy Director - Regulatory Programs; and
 - 3. Staff in the title of Environmental Program Specialist 2 to sign and issue notices of completion and incompleteness in the event of the absence or unavailability of the Executive Director, Deputy Director - Regulatory Programs, and Regulatory Programs staff in the position of Environmental Program Specialist 3.

In the event of the absence or incapacitation of the Executive Director, the Deputy Director Regulatory Programs, as the Deputy Director of the Agency, shall, under the supervision of the Agency Chairperson, have the authority to exercise those powers delegated to the Executive Director.