

Adirondack Park Agency Policy, Procedures & Guidance System	AGENCY - 5
Topic: Review of Proposed Amendments to Agency-Approved Local Land Use Programs	
<hr/> Richard H. Lefebvre, Chairman	Date: December 13, 2001

I. Purpose

The purpose of this policy is to provide guidelines to the Agency and its staff for the review of proposed amendments to Agency-approved local land use programs, to make available informal Agency advice, to encourage consultation by local governments prior to their formal requests for Agency approval of amendments, and to provide guidance to local governments which implement approved local land use programs.

II. Background

At the municipal level, the enactment of amendments to existing land use regulations is accomplished through a local law or ordinance, a process governed by provisions of Town Law or Village Law, the General Municipal Law, the Municipal Home Rule Law, the State Environmental Quality Review Act (SEQR) and any applicable local laws or ordinances. The various laws set out requirements for, among other things, publication of legal notices, distribution of individual notices, public hearings, and the formal filing of local laws with the Secretary of State. When a local land use program has been approved by the Agency pursuant to Section 807(1) of the Adirondack Park Agency Act (APA Act) and adopted by the local government, amendments to that program (*e.g.*, changes to the official zoning map, zoning text, subdivision regulations, junkyard standards) may require Agency approval in addition to county planning board review and local enactment.

Agency approval is required for any program amendments that relate to the statutory criteria for the Agency’s initial approval of a local land use program. Agency regulations identify the classes of amendments which require such approval. Agency approval is to be obtained prior to final enactment by the local government.

The APA Act authorizes the Agency to review and approve a local land use program proposed and formally submitted by the legislative body of the local government to the Agency for approval. By long-standing practice, the Agency requires that “formal submission” include a resolution of the town board or village board.

While the Act does not set out a time-line for Agency action on requests for approval of program amendments, Agency regulations establish 45 days for a determination on such requests. The time-line applicable to Agency review and final determination, however, is also governed by the provisions of SEQR and the SEQR regulations; under SEQR, the “clock” would not start prior to the Agency’s Determination of No Significant Adverse Impact (a “Neg Dec”) or a DEIS being accepted. In any event, the Agency will act as expeditiously as possible.

Proposed program amendments that do not relate or pertain to the criteria in the Act do not require Agency approval. However, a standard provision in the zoning ordinance/law of each approved local land use program provides that local governments send proposed program amendments to the Agency so that a determination of Agency “reviewability” (*i.e.*, Agency jurisdiction) can be made. This process provides for an early decision on Agency jurisdiction.

III. “Informal Review” of Proposed Program Amendments

The Agency encourages a process of early informal review of proposed amendments to approved local land use programs; Agency staff should receive notice of proposed amendments and text for informal review at the onset of local government discussions, and prior to local hearings. Staff’s role is to assist local governments, to the extent possible within the constraints of staff size and other responsibilities, by advising on the applicable criteria and Agency review procedures, SEQR and other laws, and by providing technical information (maps, resource inventories, model and sample laws, examples from other Adirondack programs, etc.).

The Supervisor or Mayor, Code Enforcement Officer, Clerk, Planning Board or Zoning Board Chairperson, or any other designated representative of a local government may request informal consultation on possible amendments to a local land use program.

The process of informal review will provide opportunities to discuss the purpose or situation addressed by a proposal, alternatives and examples from other localities and thereby develop better understanding of the purposes and objectives of particular program amendments.

IV. Agency Review of Requests Formally Submitted for Approval of Proposed Program Amendments

A. Components of a request for Agency approval of proposed program amendment(s)

Formal requests for proposed program amendments shall be submitted to the Agency’s Local Government Services Unit. Agency Staff shall acknowledge, as soon as possible after receiving a formal request for Agency approval of a proposed amendment (or amendments), its receipt and any essential element that may be missing.

The essential elements of a formal submission are:

- (1) A copy of the resolution by the Town Board/Village Board agreeing to submit a formal request for Agency approval of the particular proposed program amendment (or amendments).
- (2) A copy of the proposed amendment(s) providing sufficient text of the current local law/ordinance and proposed amendment so the extent of the proposed changes can be understood. Proposed amendments in typed “legislative” format (*i.e.*, old text to be deleted shown in ~~strike-out~~ or [within brackets], new text shown as underlined), or side-by-side comparisons of language that provide the same information will facilitate review and presentation to the Agency.
- (3) Part I of the SEQR Environmental Assessment form completed and signed by a designated representative of the local government.

In many cases, it will also be important to provide a brief explanation of the intent or objective to be achieved by enactment of each proposed amendment, any reports or recommendations issued in regard to the proposal in study documents, the minutes of any meetings where amendments were discussed, and/or the Comprehensive Plan when appropriate. These materials will facilitate the analysis and presentation to the Agency.

B. State Environmental Quality Review Act

For reviewable program amendments, the Agency is an “involved agency” with an independent legal obligation to comply with SEQR. If the local government fails to notify the Agency of its desire to act as “lead agency” or to commence coordinated review, and the action is an “unlisted” action, the Agency will deem the process to be “uncoordinated” review.

When the town proceeds using the “coordinated review” provisions of the SEQR regulations, the Agency will generally support local “lead agency” status unless the amendment (i) would involve amending the Adirondack Park Land Use and Development Plan Map, (ii) would increase the intensity of development for any land use area outside of Hamlet or Industrial Use, (iii) would allow any use not included on the “compatible uses” list for any land use area, or (iv) would involve significant provisions of the Land Use and Development Plan.

When a local government acts as “lead agency”, the Agency should make every effort to participate actively in the coordinated review of the proposed amendments by participating in any “scoping” session, preparing and submitting comments on the proposal and assessing any issues posed by SEQR and the APA Act. The Director of Planning shall ensure and direct staff efforts.

Consultation regarding “lead agency” status and Agency participation in coordinated review shall be under the direction of the Director of Planning, except that the Executive Director retains delegated authority to make determinations of significance under SEQR and to file draft Environmental Impact Statements.

C. Determinations regarding Agency jurisdiction over proposed program amendments

Amendments to Agency-approved local land use programs which “relate to” the statutory criteria set forth in Section 807 of the APA Act are subject to Agency approval. Upon receipt by the Agency of any request, the Director of Planning shall advise appropriate Legal staff. Staff shall make a timely determination as to whether a proposed amendment requires Agency approval and shall respond to the local government in writing to that effect.

A local government may contest any reviewability determination through the Agency’s declaratory ruling procedures.

D. Agency decisions on formal requests for program amendment approval

In addition to the activities described above, the Local Government Services staff, under supervision of the Director of Planning and in consultation with the Agency’s Legal staff, shall review each formal submission for conformance with Section 807(1) of the Act and 9 NYCRR 582.5 and SEQR and shall prepare an assessment and recommendation(s) for action by Agency Members.

Prior to placing any local government request on the Agency’s agenda, staff will provide a copy of their assessment and recommendation(s) to the local government for opportunity to respond to the staff’s assessment/recommendation(s).

After review of any proposed program amendment, the Agency may approve the proposed amendment(s), approve it(them) subject to conditions requiring modifications, or deny the proposed amendment(s).

Any approval subject to conditions shall clearly specify any required procedure or the modifications which must be made. The Agency should also specify a date (generally within one year) by which the local government must take final action to enact the approved amendment(s). The local government should also be requested to provide a copy of the amendment(s) upon their final enactment and/or filing (for local laws) with the Secretary of State so that Agency local land use program records will be complete and accurate.

V. Legal Effect

This policy is not intended to set forth a fixed, general principle to be rigidly applied to proposals for local land use program amendments except for the requirements imposed by SEQR. Rather, its tenets are to be utilized as guidance and should be applied after taking into account the specific facts and circumstances of each particular instance.

The Agency adopted this Policy on Review of Proposed Amendments to Approved Local Land Use Programs effective December 13, 2001.

ADIRONDACK PARK AGENCY

By:

Richard H. Lefebvre
Chairman