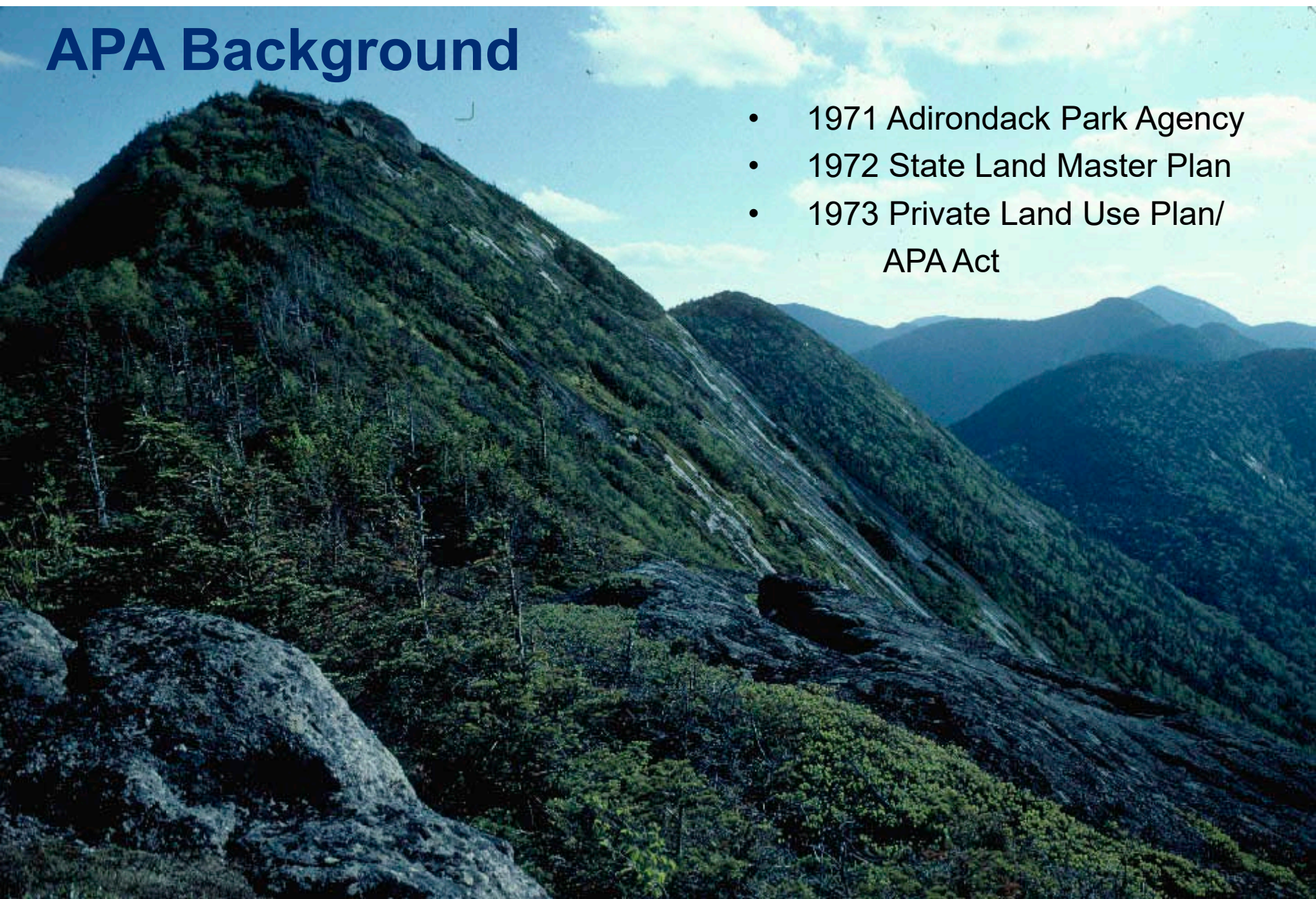




An Overview of Adirondack Park Agency Private Land Jurisdiction

APA Background

- 1971 Adirondack Park Agency
- 1972 State Land Master Plan
- 1973 Private Land Use Plan/
APA Act



APA Background

New York State Government

- Three branches:
 - 1) Legislative (makes laws)
 - 2) Executive (administers laws)
 - 3) Judicial (interprets laws)

- All agencies are in the Executive branch

APA Background

- The Adirondack Park Agency Act (**APA Act**)
 - Executive Law §§ 801 et seq.
 - Agency regulations: 9 NYCRR Parts 570-576; 579-588
- The Wild, Scenic and Recreational River System Act (**Rivers Act**)
 - Environmental Conservation Law §§ 15-2701 et seq.
 - Agency regulations: 9 NYCRR Part 577
- The Freshwater Wetlands Act (**Wetlands Act**)
 - Environmental Conservation Law §§ 24-0101 et seq.
 - Agency regulations: 9 NYCRR Part 578

APA Act

APA Act – Basic Purpose

“To insure optimum overall **conservation, protection, preservation, development and use** of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological, and natural resources of the Adirondack Park.”

- APA Act § 801

**Private Land Use
Classifications:**

Hamlet

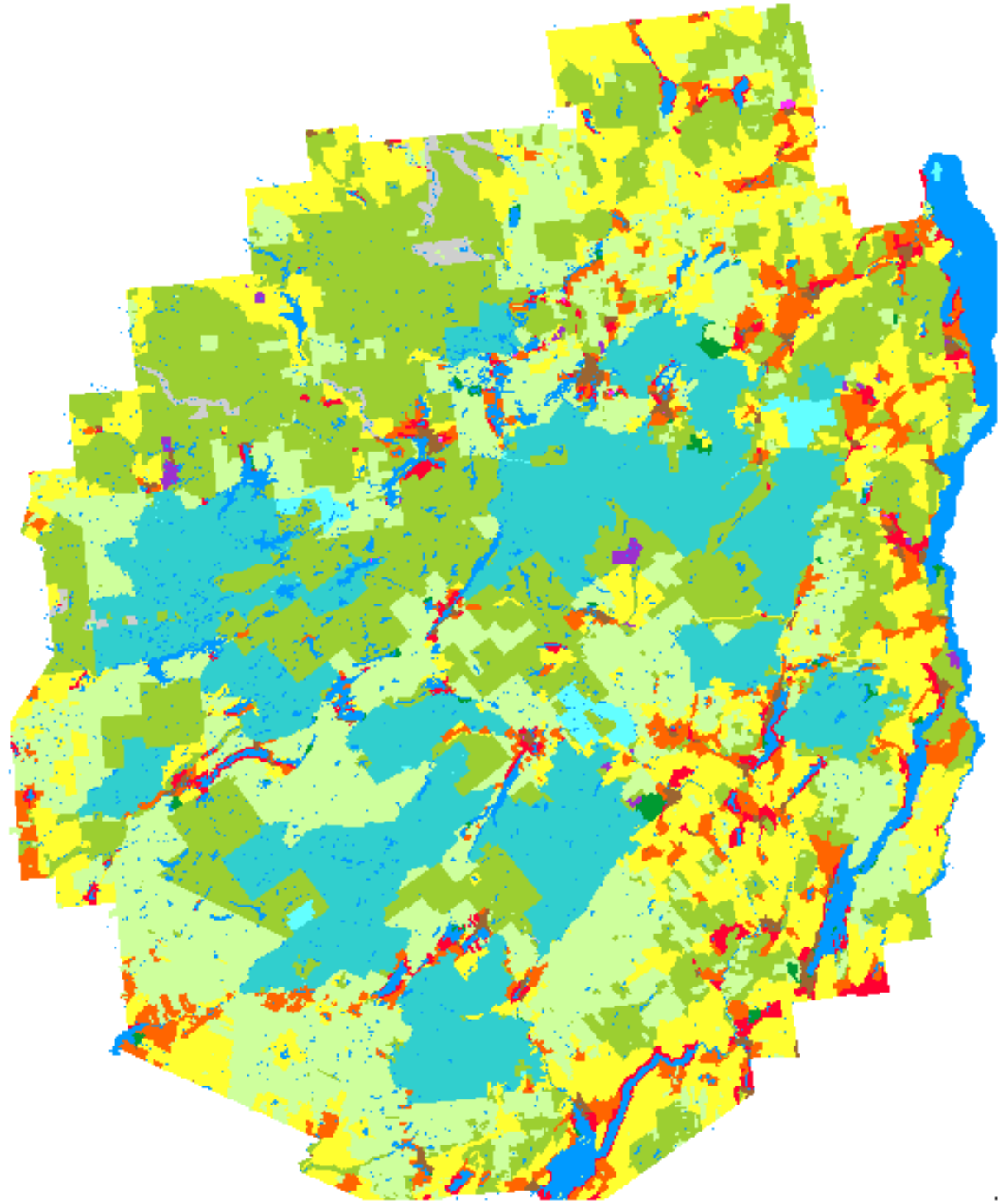
Moderate Intensity

Low Intensity

Rural Use

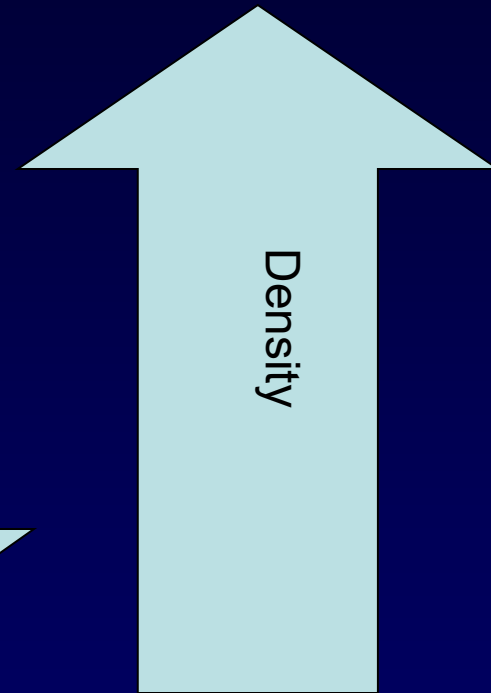
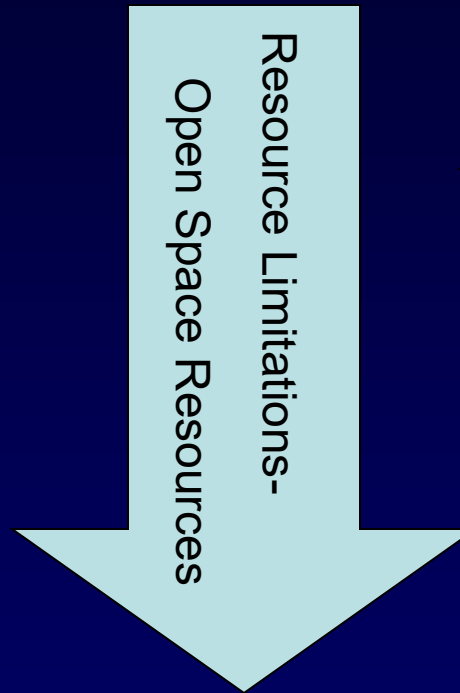
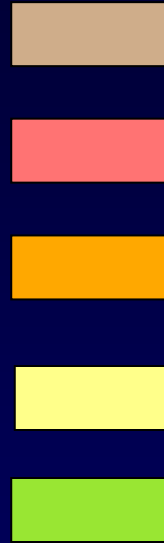
Resource Management

Industrial Use



Existing Population Centers
Public Water and/or Sewer
Soils Suitable for Development

- Hamlet
- Moderate Intensity Use
- Low Intensity Use
- Rural Use
- Resource Management



Wetlands
Severe Slopes
Agriculture



APA Act – Basic Requirements

Two-tiered system:

- 1) Permits required for certain types of “subdivision” or “new land use or development”
- 2) Prohibition on certain activities impacting shorelines
 - If a landowner cannot comply with these prohibitions, a variance is required

APA Act – Permitting Requirements

APA Act – Permitting Background

- “Any person proposing to undertake a ... **regional project** ... shall ... receive an agency permit therefore prior to undertaking the project.”

APA Act § 809(2)(a)

- “**Undertake** means commencement of a material disturbance of land ... preparatory or incidental to a proposed land use or development or subdivision.” 9 NYCRR § 570.3(am)

APA Act – Permitting Background

APA Act § 810 lists all regional projects

- Permits for Class A regional projects are always issued by the APA
- Permits for Class B regional projects are issued by the APA or by individual towns pursuant to APA-approved local land use programs

*** The Agency applies the same review standards regardless of whether a project is listed as Class A or Class B ***

APA Act – Subdivision Permitting

(Minimum Lot Size)

- Permit required for any subdivision creating a non-shoreline lot smaller than:
 - Hamlet no permit needed
 - Moderate Intensity Use 0.92 acres
 - Low Intensity Use 2.75 acres
 - Rural Use 7.35 acres
- Permit required for any subdivision creating a shoreline lot smaller than:
 - Hamlet no permit needed
 - Moderate Intensity Use 0.57 acres
 - Low Intensity Use 1.15 acres
 - Rural Use 1.84 acres
- Permit required for any subdivision in a Resource Management area

APA Act – Subdivision Permitting (Lot Counting)

A permit is required for any subdivision where the total number of parcels to be created from the property as it existed on May 22, 1973 is equal to or greater than:

– Hamlet	100
– Moderate Intensity Use	15
– Low Intensity Use	10
– Rural Use	5
– Resource Management	2

APA Act Regional Projects – Land Use and Development

Except in Hamlet areas, a permit is required for any new **business** (the provision of goods, services, activities, etc. for a fee)

- Default term: commercial use
- Certain businesses are not considered commercial uses
 - Exs: agricultural service uses, marinas, cemeteries, golf courses, campgrounds, group camps, airports, commercial sand and gravel extractions, mineral extractions, sawmills, tourist accommodations, tourist attractions, ski centers, junkyards, waste disposal areas, major public utility uses, industrial uses...

*** In practice, defining which type of business an applicant is proposing usually matters only for calculating the maximum allowable number of principal buildings on the project site. There are stricter density standards for tourist accommodations, industrial uses, and default commercial uses than for any other use listed above. ***

APA Act – Land Use and Development Permitting

A permit is required for any **clear-cut** of a single unit of land of more than 25 acres

- Except in Hamlet and Industrial Use



APA Act – Land Use and Development Permitting

A permit is required for the construction of any **structure over 40 feet in height**

- Exceptions:
 - Agricultural use structures
 - Residential radio and television antennas
- Height is measured from the highest point of the structure to the lower of either original or finished grade
 - Measuring standard has been in place since 1978

APA Act – Land Use and Development Permitting



APA Act – Shoreline Prohibitions

APA Act – New Shoreline Structures

Other than docks and boathouses, all new accessory structures and principal buildings greater than 100 square feet in size must be set back from the mean high water mark of lakes, ponds, study rivers, and other navigable rivers and streams a distance of:

Hamlet:	50 feet
Moderate Intensity Use:	50 feet
Low Intensity Use:	75 feet
Rural Use:	75 feet
Resource Management:	100 feet

Section 806(1)(a)(2)

APA Act – New Shoreline Structures

What is subject to the structure setback?

- **Accessory structures** and **principal buildings**

(Examples: dwellings, restaurants, sheds, stairs, decks, fences, walls...)

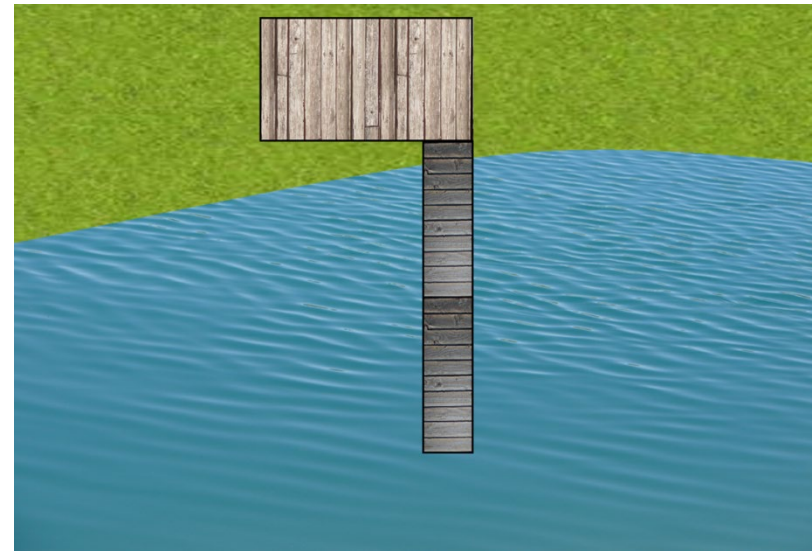
- Exemptions:
 - Boathouses
 - Docks
 - Certain retaining walls
 - Certain vehicles



APA Act – Shoreline Structure Exceptions

Dock exemption:

- A floating or fixed structure
- That **extends horizontally** (parallel with the water surface) into or over a lake, pond, or navigable river or stream
- **From only that portion of the immediate shoreline or boathouse necessary** to attach the floating or fixed structure to the shoreline or boathouse,
- Is **no more than eight feet in width**, or in the case of interconnected structures intended to accommodate multiple watercraft or other authorized use, each element of which is no more than eight feet in width, and
- Is built or used for the **purposes of securing and/or unloading water craft and/or for swimming or water recreation**



APA Act – Shoreline Structure Exceptions

Boathouse exemption:

- A **covered** structure
- with **direct access** to a body of water
- that is used only for the **storage of boats** and associated equipment,
- **does not contain sanitary plumbing** of any kind,
- does not exceed a **single story** in that the roof rafters rest on the top plate of the first floor wall,
- and has a **footprint of 1200 square feet or less** and
- a **height of 15 feet or less**

APA Act – Other Shoreline Prohibitions

- All new **wastewater treatment system** leaching components must be set back 100 feet from the mean high water mark of all waterbodies, regardless of navigability
- **Vegetative cutting** must comply with the following:
 - No more than 30 percent of trees in excess of six inches in diameter at breast height may be removed from within 35 feet of the mean high water mark on any lot
 - No more than 30 percent of any type of vegetation may be removed from within six feet of the mean high water mark on any lot

APA Act – Other Shoreline Prohibitions



Wild, Scenic, and Recreational Rivers System Act

Rivers Act – Basic Requirements

As a general rule, any subdivision or land use and development requires a permit within a designated river area

- Caveats:
 - Low Intensity Use, Rural Use, and Resource Management lands only
 - Exceptions apply
 - Certain uses are prohibited



Rivers Act – New Shoreline Structures

All new structures must be set back from the mean high water mark of the river a distance of:

Recreational river:	150 feet
Scenic river:	250 feet

9 NYCRR 577.6(b)



- Exceptions: fences, poles, signs < 2 ft², docks, boathouses (recreational only), bridges, stream improvement structures for fishery management purposes

Freshwater Wetlands Act

Wetlands Act – Basic Requirements

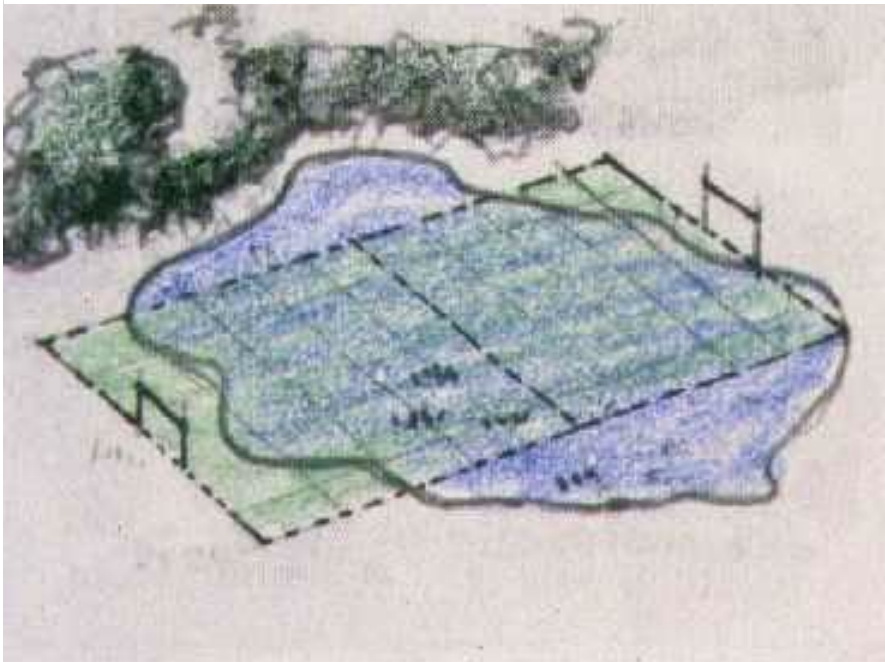
Definition

- Any land that is annually subject to periodic or continual inundation by water, commonly referred to as a bog, swamp or marsh, and either:

One acre or more in size

OR

Adjacent to a body of water with free interchange at the surface



Wetlands Act – Basic Requirements

Most subdivision and development activities within wetlands require a permit, even in Hamlet areas

Includes:

- Draining
- Dredging
- Excavating
- Dumping
- Filling
- Placing obstructions
- Clearcutting > 3 acres
- Constructing roads
- Constructing structures in or over



Jurisdictional Inquiries

Jurisdictional Inquiry Process

- Administration under APA laws
 - 9 NYCRR § 571.5
 - Available to anyone with a “legal interest in property”
 - Agency legally bound by written response signed by certain designated staff
- First stop for landowners/contractors/anyone planning a project
 - Non-binding advice available to public by telephone through the “JIF” office

Permitting

Permitting Process

- **Time clocks:** The APA has 15 calendar days after receipt of an application to determine whether the application is complete
 - **Complete application:**
 - The APA must notify the applicant of a complete application for major projects
 - The APA need not notify the applicant of a complete application for a minor project; the time clock for review of minor project applications starts instead on the date of receipt of the application
 - **Incomplete application:**
 - The APA must notify the applicant of “a concise statement of the respects in which the application is incomplete”; submission by the applicant of additional information starts a new 15-day clock

Exec. Law § 809(2)

Permitting Process – Adjudicatory Hearings

- APA has no authority to order any hearing that is not adjudicatory (trial-like)
 - Public information meetings for public comment and discussion of a project are sometimes held at the request of/with the consent of an applicant

*“The determination of whether or not to hold a public hearing on an application shall be based on **whether the agency's evaluation or comments of the review board, local officials or the public on a project raise substantive and significant issues relating to any findings or determinations the agency is required to make pursuant to this section, including the reasonable likelihood that the project will be disapproved or can be approved only with major modifications because the project as proposed may not meet statutory or regulatory criteria or standards. The agency shall also consider the general level of public interest in a project. No project may be disapproved without a public hearing first being held thereon.**”*

Permitting Process – Adjudicatory Hearings

Hearing process (slide 1 – sending to hearing):

- Determination to hold a hearing must occur within
 - 45 days of completion for minor projects
 - 60 days of completion for major projects
- Majority of Agency (6 votes) required to send a project to a hearing
- Hearing officer is assigned “as early as possible”
 - Must have in-depth knowledge of NYS Administrative Procedures Act, rules of evidence, ability to oversee trial-like proceeding → in practice, Agency requests Administrative Law Judge from DEC
- Notice is, at a minimum:
 - Sent to applicant, LGRB, municipal government, and landowners within 500 feet
 - Posted in a regional newspaper and the Environmental Notice Bulletin
 - Posted on the project site

Permitting Process – Adjudicatory Hearings

Hearing process (slide 2 – parties):

- Applicant, LGRB, other agencies, municipal governments, landowners within 500 feet are parties-of-right
- Executive Director or ALJ determines party status of other groups/landowners
 - Party status may be granted upon a showing of capacity to supply relevant information/expertise and a demonstration of a “material social, economic or environmental interest which is likely to be affected by the agency decision”

Permitting Process – Adjudicatory Hearings

Hearing process (slide 3 – hearing conduct):

- “Wherever feasible,” pre-filed testimony is submitted in writing “and distributed to the parties sufficiently in advance of the hearing date to permit their review”

- At the hearing, all parties have the right to:
 - Make opening statements
 - Cross-examine the witnesses who filed pre-filed testimony
 - Introduce new sworn testimony and other evidence
 - Cross-examine the witnesses of every other party
 - Offer rebuttal evidence
 - Make closing statements
 - File motions and briefs
 - Provide written comment on any summary of the hearing created by Agency staff

Permitting Process – Adjudicatory Hearings

Hearing process (slide 4 – record and decision):

- ALJ closes hearing after all final briefs, documents, transcripts, etc have been received
- ALJ compiles official record, which must include:
 - Application documents
 - Exhibits
 - Transcripts
 - Testimony
 - Briefs, letters, statements, comments, admissions, stipulations, etc
 - Proposed findings and a final report, if requested by the Agency
- Agency must vote for or against the project within 60 days of receipt of the hearing record
- In reviewing the hearing record, the Agency may have the aid and advice of staff who were not previously involved with the project or the hearing

Permitting Process – Adjudicatory Hearings

Hearings must be held when:

- Unclear facts prohibit the Agency from determining whether a project is approvable
- Before an application can be denied

*** Staff discuss with applicant prior to completion if necessary facts are missing or if staff believe they will recommend denial of the project ***

- Additional factors (9 NYCRR § 580.2(a)):

1. The size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected;
2. The degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations;
3. The presence of significant issues relating to the criteria for approval of the project;
4. The possibility that the project can only be approved if major modifications are made or substantial conditions are imposed;
5. The possibility that information presented at a public hearing would be of assistance to the agency in its review;
6. The extent of public involvement achieved by other means;
7. Whether an environmental impact statement will be prepared pursuant to the State Environmental Quality Review Act; and
8. The statutory finding required by section 814(2) of the Adirondack Park Agency Act in the case of State agency projects reviewed thereunder.

Permitting Process

- Decisions:
 - **Minor Projects** (single family dwellings and 2-lot subdivisions):
 - If no public hearing is held, the APA must make a decision on a complete application within 45 days
 - **Major projects:**
 - Once complete, the APA must publish in the ENB within 10 days, stating a period of time for public comment
 - If no public hearing is held, the APA must make a decision on a complete application within 90 days

Exec. Law § 809(3)

Permitting Requirements (APA Act)

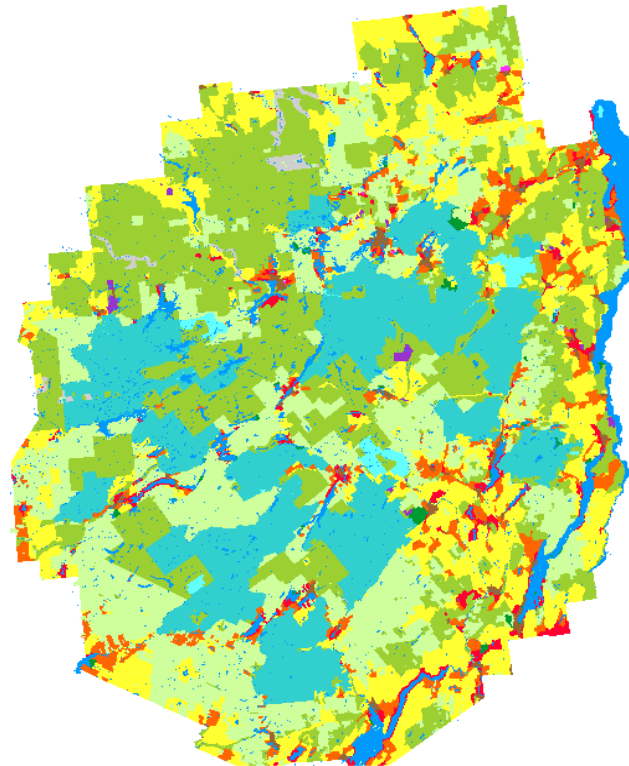
- The APA must determine that a project meets five criteria before issuing a permit:
 - 1) The project would be consistent with the land use and development plan
 - 2) The project would be compatible with the character description, purposes, policies, and objectives for the land use area
 - 3) The project would be consistent with the overall intensity guidelines for the land use area.
 - 4) The project would comply with the shoreline restrictions.
 - 5) The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park ... taking into account the commercial, industrial, residential, recreational, or other benefits that might be derived from the project.
- Must consider 37 development considerations.



Permitting Review – Approval Criteria #1

The project must be **consistent with the land use and development plan**

- The Agency has long held that this requirement is automatically met upon a finding of the remaining four criteria



Permitting Review – Approval Criteria #2

The project must be **compatible with the character description, purposes, policies, and objectives** for the land use area

– Descriptions and compatible use lists found in § 805(3)

- Primary compatible uses are “generally considered compatible with the character, purposes, policies and objectives of such land use area, so long as they are in keeping with the overall intensity guideline”
- Secondary compatible uses are “generally compatible with such area **depending upon their particular location and impact upon nearby uses** and conformity with the overall intensity guideline”

*** Both primary and secondary compatible uses are reviewed by staff under the secondary standard ***

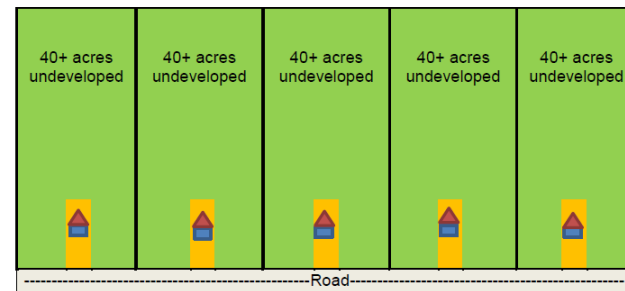
(A proposed activity that is on the primary or secondary list for another land use area but not for the land use area involved is presumed to “not be compatible with the character description, purposes, policies and objectives of such land use area,” with the burden on the applicant to demonstrate compatibility.)

Permitting Review – Approval Criteria #3

The project must be consistent with the **overall intensity guidelines** for the land use area.

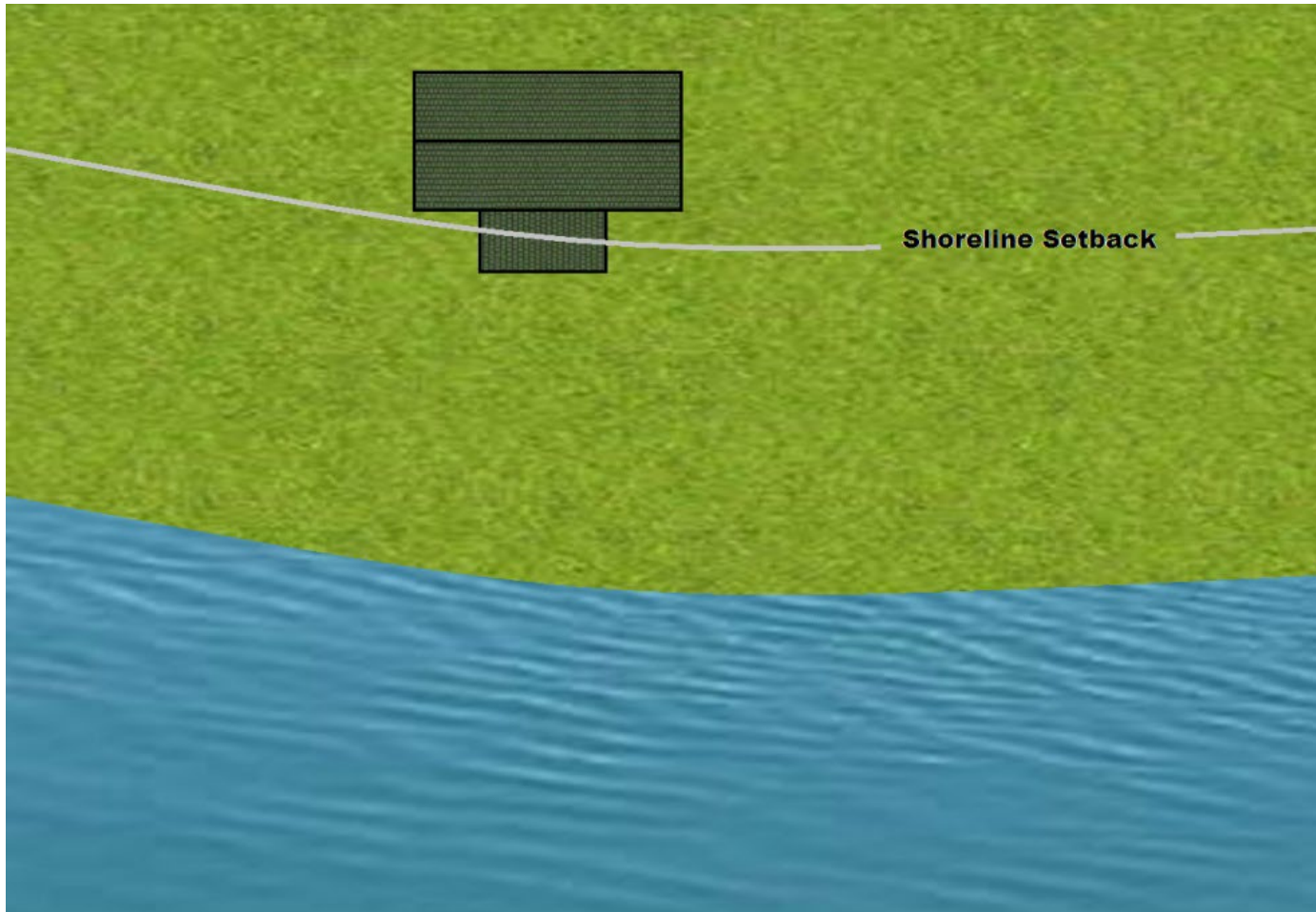
Moderate Intensity Use:	1.3-acres for each principal building
Low Intensity Use:	3.2-acres for each principal building
Rural Use:	8.5-acres for each principal building
Resource Management:	42.7-acres for each principal building

*** The density guideline isn't concerned with the size of proposed lots, but with the amount of development (and potential impacts) proposed on a site ***



Permitting Review – Approval Criteria #4

The project must comply with the shoreline restrictions.



Permitting Review – Approval Criteria #5

The project must not have an **undue adverse impact** upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park

- When making this finding, the Agency must take into account the **development considerations** of APA Act § 805(4)

The undue adverse impact finding may be made “taking into account the commercial, industrial, residential, recreational, or other benefits that might be derived from the project.” However, the Agency almost always makes the undue adverse impact finding without needing to rely on the benefits analysis.

Permitting Review – Approval Criteria #5

Development considerations include...

- *Visual impacts*
- *Stormwater management*
- *Wastewater treatment*
- *Invasive species management*
- *Agricultural uses*
- *Forest management*
- *Wetland delineation and impact assessment*
- *Habitat fragmentation*
- *Sustainable development principles*
- *Lighting*
- *Traffic, parking*
- *Access, roads*
- *Coordinated review with other agencies...*



Questions?

