開發權承購於國家公園土地取得問題之可行性研究

—以陽明山國家公園爲例（Ⅱ）

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簡　目

引言

國際自然暨自然資源保育聯盟(IUCN)在1980年發表的世界保育策略(The World Conservation Strategy)中明定“保育”的目的在於有效利用自然資源，爲人類創造最大福利，並同時維護自然環境的永續生存。由這項宣言可以得知，保育和經濟發展並不是相互排斥的。人類在保存自然環境的同時，仍然可以追求更高的經濟利益。

臺灣地狹人稠，人口密度高居全世界前幾名。過去數十年來，由於全民的努力，早以經濟奇蹟聞名於世界。在生活水準日益提高的今天，國內的保育意識日漸高漲。自民國七十年代起，各類保護區及國家公園陸續成立。至目前爲止，保育土地面積約佔全省面積百分之十一（農委會，民國八十一年）。此百分比與英國相當接近。由此可見，我國不僅在經濟建設上領先世界各國，在保育工作的努力亦可與世界各國並駕其驅。

然而，由於我國環境特殊，國家公園的設立必須排除相當多困難。陽明山國家公園在我國國家公園中面積最小，但卻必須負擔大量遊客壓力。更由於地理位置的關係，園區內公、私有土地並存，園區內之聚落、人口亦多。如何在保育自然環境的大前提之下有效管理土地利用，增進當地居民福祉，遂成爲一個重要的課題。

綜觀世界各國的保育工作史，美國堪稱開始最早，規

模最大，執行系統最完整，其經驗及做法早已被沿用至世界各地。本研究擬擷取三個個案，針對其特殊之土地利用管制辦法進行分析比較。以期對陽明山國家公園土地利用之管理提供參考。此三個案各有其重要性，鱈魚角國家海岸特定區以購買私有土地爲主要方式，佐以地方政府訂立單行法規。其購買土地之經驗尤具參考價值。紐澤西松樹保留區(New Jersey Pinelands)爲聯合國國際文教組織評定之優良自然保留區，其土地管理辦法以使用分區管制爲主，並配合其他政策，其經營特色在於各級政府密切合作，相互支援。其中以地方政府爲主要保育政策執行單位的做法十分值得借鏡。紐約州立Adirondack公園的面積遼闊，但大部份爲私有土地。其私有土地之經營爲一套十分嚴格的土地使用分區管制。其管制分區使用辦法與陽明山國家公園十分相似。施行二十年的成效評估必能對陽明山國家公園之經營提供助益。

本研究除針對美國的保育工作進行研究之外，亦探討英國的保育工作成效。就自然環境而言，我國與英國十分類似。除了均爲島嶼地形之外，人爲開發的程度亦十分雷同。其次英國國家公園區域內之土地大部份爲私有。如何有效管理私有土地利用亦爲一主要問題。英國保育經驗的另一特色在於將人文景觀視爲自然環境的一部份。由於英國人爲開發歷史悠久，能眞正符合世界保育組織認定的“國家公園”標準的保留區已不可得。儘管如此，其特殊的自然與人文景觀融爲一體的概念實具啓發作用。

本報告的另一重點在於探討我國目前的土地利用及保育法規之相關問題。

近代法律思想基本上是對於尊重個人的自由主義，予以適度之限制，因此土地權利之行使，本於國家發展之需並非不得加以限制，故本報告首先針對我國現行土地利用限制之法制現況予以分析檢討，而發現其間似有輕重失衡之現象，此外，對於土地予以限制利用卻往往未予適度補償，對此本報告認爲有加以改善之必要。

惟應如何加以改善，有種種不同策略，最根本之方法當然是制定一般性之「公用徵收法」，惟在法律未制定前，短程目標則可考慮先制定單行法乃至單行法規。

基於上述觀點爲基礎，本報告進一步嘗試針對國家公園內就土地利用限制時應經由如何程序予以補償提出一套架構，裨一旦政策上決定要針對國家公園區內土地利用限制予以適度補償時之參考。

開發權承購制度在英、美等國運用有其國情之背景及法制發展之歷史沿革，驟然移植於國內容或有相當之困難，惟其基本精神及部分設計則頗有可供參考採擇之處，本報告即係本於此一觀點並考量學理上之要求與實務之可行性提出予以適度補償之構想與作法，希望能有助於國家公園區內土地利用規劃之更順利展開。

貳、外國法制部分

一、美國之鱈魚角國家海岸特定區(Cape Cod National Seashore)

(一)簡介

鱈魚角國家海岸特定區位於美國東北部麻塞諸塞州東南角。此特定區成立於1961年，面積有一萬七千六百公頃左右，約有百分之三十八爲潮帶。此一特定區南北延伸六十四公里，平均寬約三公里。該區緊鄰人口稠密之都會區，爲一主要觀光地點。

鱈魚角在美國國家公園演進的歷史上有重要的意義，因爲它是第一個位於人口稠密地區之公園，也是第一個包含公有及私有地之公園。同時它也是第一個以遊憩與保育並重爲目標之公園。

(二)私有土地之管理

全園區一萬七千六百公頃中有七千四百公頃爲私有土地。約佔全區內非潮帶土地之百分之六十八。其間計有六百多處住宅及十九處商業地區。

園方對於私有土地之管理有三項方案即購買土地，規定地方政府訂定土地利用單行法規及咨詢委員會(Advisory Commission)。以下便對此三方案逐一說明：

1.購買

購買土地分爲兩階段進行，第一階段爲1961年至1968年，第二階段爲 1970年至 1975年，另有少部份土地是在1975年至1984年之間購得。至1984年爲止，總計花費達四千三百萬美元，共購得四千四百公頃之土地，平均每公頃爲新台幣二十五萬一千元。

2.單行法規(Bylaws)

除購買土地之外，園區內之土地亦受使用分區之限制。特定區管理處並不制定分區使用管理辦法，而是由五個位於園區內之鎮(Town)根據內政部訂定之標準自行制定單行法規，並由園方核定實施。若違反此類法令者，則園方可依內政部之授權沒入違法者之建築物及土地使用權。

此方案之立意除在限制園區內之人爲開發之外，最主要之用意在於減低與區內各鎮對土地利用管轄權之重疊。學者評論此一方案認爲並非適當之保育政策，實爲一政治運作下之妥協方案。

3.咨詢委員會(Advisory Commission)

此委員會設立之根據已明定於鱈魚角海岸特定區法之中，共設委員10人，由園內各市鎮代表，郡政府，州政府及聯邦政府指派人員擔任。委員爲無給職，唯執行公務之費用由園方支付，此委員會純屬咨詢性質，只對園方政策提出建議而不具決策權。雖然法令限制使咨詢委員會之功能有所限制，但在實際運作上，此

委員會卻有極大影響力。由於此委員會在地方上逐漸累積政治力量，園方官員皆視此委員會爲與地方溝通之重要管道。

咨詢委員會之另一重要功能爲排除政策執行上之障礙。自1961年成立以來，此委員會曾多次公開爲園方政策辯護，消除地方之反對力量。由於鱈魚角長久以來即爲一重要遊憩區，休閒設施之擴大在所難免。這種趨勢實與此特定區保育之目標相違背，因而園方與地方之意見不合時有所聞。正因爲咨詢委員會成員以保育爲重者居多，園方之保育政策因而獲得支持。委員們常運用在地方上之影響力使保育政策得以順利執行，甚至曾因而促使州政府立法保護全州之海岸線。

(三)檢討

1.購買土地

園區內收購土地前後歷時22年(1961年-1984年).所費金額由原核定之一千六百萬美元增爲四千三百萬美元。學者檢討其原因，皆認爲歷時過長，更由於是以市價(Fair Market Value) 計算，22年間之漲幅達106%，更使費用大幅膨脹，此一現象經研究發現，若收購時間能縮短至10年，則費用可減低一半以上。

2.單行法規

此方案最爲研究者批評之缺點爲約束力不足。批評者認爲園方未具備足夠財力執行沒入財產。其次，在預

算足夠之情形下，沒入時國方依法應以市價補償地主。此規定使地主對違反土地利用將受之懲罰不重視。再者，由於內政部頒佈之標準過於籠統，各鎮雖然依據此標準訂立土地利用管制辦法，但在執行上卻一再發生地主利用法律不週延之處違反規定而國方和地方政府皆無法取締之情況。

3.咨詢委員會

大體而言，學者皆認爲鱈魚角之咨詢委員會最大之功能在於確保保育政策之得以實施以及擔任國方與地方民眾間之溝通管道。此一經驗顯示民間之參與可使保育政策之更爲順暢。

二、美國之紐澤西松樹保留區(New Jersey Pinelands)

(一)簡介

紐澤西松樹保留區位於人口稠密之紐澤西州東南部，其位置正好在紐約和費城二大城市間交通繁忙，人口密集之地區。其面積達四十八萬六千公頃，約佔全州面積三分之一。此保留區最重要之功能除保護松樹之外，另一功能在於確保地下之水源。本地區之地下水源不僅是動植物生長之重要資源，也擔負保護美國東岸各大都會區水源之重責。自1950年代以來即有學者提議設立保護區，其中經過幾次重大變革後，終於在1979年成立紐澤西松樹保留區委員會(New Jersey Pinelands Commission) 負責統籌該地區保育相關事宜。該委員會根據綜合管理計劃(Comprehensive Management Plan)對該地區土地進行使用限制。由於保育成效良好，該保留區在1983年被聯合國國際文教組織評定爲世界上最優良之自然保留區之一。

(二)設立經過

人爲開發本地區起源相當早，目前此地區已有相當規模的農業和聚落存在。同時，此地區亦有大量的觀光人口。與紐約州Adirondack公園的保育方式極不同的是紐澤西的由地方政府主導保育的傳統。該地區包含七個郡(County)的聯邦政府管轄區和州政府管轄區。

此地區在1959年曾被規劃爲機場預定地（註一），準備建設一個全世界最大的機場，以聯絡紐約及費城兩大城市。另外在機場東北方還要建立一個二十五萬人口的“新城市”。新高速公路及原有道路的拓寬亦列入計畫之中。此計畫一提出立即引起許多當地居民的強烈反對，認爲機場將嚴重破壞當地自然資源。另一方面幾個郡的官員卻十分贊成此一計畫，認爲可以促進地方繁榮。此機場及新城市計畫前後延宕三位州長，並成爲選舉時候選人之重要訴求。一般相信在1969年州長選舉時，共和黨候選人當選的原因之一，在於他強烈反對原任州長一再想在議會推動的機場建設方案（註二）。

民間保育人士針對此機場及都市計畫紛紛組成各種組織以尋求對策。他們向聯邦及州政府進行強力遊說，阻止該計畫。經過幾十年的辯論及遊說，該計畫終於在1969年州長選舉之後正式取消。

機場及新城市計畫帶給紐澤西各級政府及人民的最大啓示在於體認區域計畫(Regional Planning)的重要性，他們發現過去由地方政府主導的保育政策必須改變。這項體認對後來保留區委員會的成立有重大的影響（註三）。

到了1970年代，隨著機場及新城市計畫逐漸被人淡忘，該地區的土地開發業者，大地主農民及地方政府官員漸漸對於“保育至上”的策略產生懷疑。也們認爲保育和開發是可以並存的（註四）。1972年州議會決議設立一個委員會以通盤檢討松樹保留區之整體發展（註五），並撥款

十萬美元爲研究及行政費用。此委員會主要由企業界人士及地主組成。至1975年報告完成後，卻被保育團體及保育官員認爲是“全然不可行”(Wholly unsuitable)（註六）。此後四年內，該委員會數次與保育人士及保育官員針鋒相對，辯論開發當地的必要性。至1979年，此傾向開發主張的委員會終因各種原因而解散。

保育人士在1972年～1979年間的論戰中，曾多次尋找聯邦政府的支持。1976年4月間聯邦政府指派的研究人員發表了一份肯定紐澤西松樹保留區保育重要性的報告，並強調該保留區必須以一個完整的生態系爲單位加以保留，任何分散性的保育都不能成功（註七）。這份報告同時指出保育的主要責任應由州政府擔任。

對於聯邦政府的此一決定，紐澤西政府表示歡迎之意。當時的州長Brendan Byrne召開了一連串的會議以討論松樹保留區的保育工作，並成立一個由地方政府官員、保育人士、營造業者及農民組成的委員會著手籌備一個整體保育策略。

聯邦政府及紐澤西州政府分別在1978年11月及1979年5月通過松樹保留區設立法案。兩個法案所設定範圍部份重疊，保育方針亦大致相同。然而，聯邦法案中並未規定專責管理機構，而僅規定內政部應協助州政府執行保育工作。相對於聯邦政府的指導角色，紐澤西州州政府將實際保育職責歸於兩個單位：環保局(Department of Environmental Protection)負責技術諮詢、土地取得、海岸地區

開發管制及管理州政府所有土地。新成立的保留區委員會則會同地方政府執行土地使用分區管制及其他人為開發審核。

紐澤西松樹保留區委員會由15名委員組成，保留區內七個郡各指派一人參加，州政府指派七名委員，餘下一席則由內政部指派。這樣的組合代表了地方、州及聯邦三級政府。

(三)保育組織與政策

本地區之保育組織為一相當特殊之機構，因松樹保留區係由各級政府設立之保護區組成，其中大部份為聯邦政府管轄區，州政府及地方政府亦分別成立一小部份保留地。此外，由於本保留區鄰近原已設立之海岸保護區及其他受聯邦及州政府特殊法令保護之地區，其負責機構之組成為因應此特殊情況，亦採由各相關機關聯合組成之委員會執行。即前述委員會分別由地方、州及中央所組成，而委員會主席則由紐澤西州長指派。如此架構使得整個松樹保留區之管理方針得以收到跨越各級政府間合作之效。

該地區除松林保育外，尚有各項保育計劃實施中。約四分之一的松樹保育區亦包含在紐澤西州的海岸管理計劃(Costal Management Program)。另外一個重要的州政府級計劃是位於大西洋城(Atlantic City)的賭場開發計劃(Casino Control Commission)。此外，紐澤西州的水源保護計劃(New Jersey Water Supply Master Plan)亦與

松樹保留區部份重疊。由於各項計劃相互重疊，紐澤西松樹保留區委員會的重要工作之一即爲協調各項計劃實施之進度。加上法令規定當地所有人爲開發行爲受到所有相關計劃之管制，該委員會亦負責協助民眾辦理開發申請。

紐澤西松樹保留區綜合管理計劃首先揭櫫五大目標：

第一、自然保育

第二、史蹟保存

第三、促進農業與保育之和諧發展

第四、維持地方經濟繁榮

第五、提供大眾遊憩場所

並進一步分成三大土地使用管理辦法爲：一、土地使用分區(Zoning System)。二、土地開發計畫審核辦法(Project Performance Standards)。三、計點開發計畫(Development Credit Program)。

土地使用分區係將全區共分爲以下七個分區：

1.保育區 (Preservation Area District) ：約佔全區28% 。爲最嚴格限制人爲開發之地區，有限度開放農業、林業及住宅使用。

2.農業生產區(Agricultural Production Area)：約佔7%，紐澤西之農業爲該州重要產業，其每平方英哩蔬菜產值爲全美第一，每平方英哩水果產值爲全美第七，位於松樹保留區內之農地亦爲重要產區之一，唯受到嚴格之監督，尤其在農藥使用方面有詳細規定。

3.森林區(Forest Area)：約佔35%，此區多爲原始林，

與保育區同為最嚴格保護之地區，亦有限度開放農業、林業及住宅使用。

4.鄉村地區(Rural Development Area)：約佔 11%，允許中度開發。為未來發展之預定地兼具緩衝區(Buffer Zone)之功能。

5.地方發展區(Regional Growth Area) ：約佔10%，開放中重度使用。為緊鄰已開發地區之第二緩衝區。

6.軍事及聯邦政府用地(Military and Federal Installation Area)：約佔3%，其中包括軍事基地，機場及研究機構。

7.城鎮(Pinelands Villages and Towns)：約佔6%。為現存城市，委員會授權當地政府自行規劃土地利用。

其次在土地開發計畫審核辦法列舉各項自然要件，如水質、野生動物、空氣品質、植物相等及人文要件如考古價值、歷史價值等。每一要件均有明確標準規定之。任何土地開發案，不論位於任何使用分區，均須符合規定標準。以此達到調和經濟發展及自然保育之目標。

至於計點開發計劃(Development Credit Program)，此計劃為開發權移轉(Transfer of Development Rights)之具體實現。其用意在於將嚴格限制開發地區之開發權透過市場交易之方式移轉至允許開發之地區。保育區和農業區之地主若願意保留其土地於未開發狀態，保留區委員會便依個案核發一定〞點數〞。地主便可在地方發展區及鄉村地區出售其擁有之〞點數〞，購得者便可依此點數進行

一定程度之開發。

其開發點數(Pinelands Development Credits) 的計算，依土地使用分區而不同。保育區內之土地每39英畝高地爲 1點，每39英畝溼地爲0.2 點。農業生產區內每39英畝高地，或現有種植草莓、藍莓之農地爲2 點，農業生產區內的溼地亦爲每39英畝爲2 點。這些點數在售出後，營造業者可依每一購得點數建造四户住宅(Housing Unit)。

另一土地管理辦法爲開發權承購。其主要財源來自聯邦松樹保留區法 (Federal Pinelands Legislature)聯邦土地及水資源保育基金(Federal Land and Water Program)，州政府之保育債券(Green Acres Bond Program)。該地區所實施之開發權承購多半爲非永久性，且多半以減稅方式進行。地主不直接獲得金錢補償。承購金額則直接撥入地方及州政府以彌補賦稅損失。

在綜合管理計畫中的土地取得始於1977年。州政府於當年自保育基金(Green Acres Fund)中撥出一千萬美元供土地取得專用。翌年又撥下一千三百七十五萬美元，同年聯邦土地及水資源保育基金亦撥出同額款項。另外一筆爲數二千三百萬美金的專款亦自聯邦政府撥下。綜合管理計畫中預定取得的土地約爲十萬英畝（約四萬公頃），預估金額爲八千萬美元。其中列爲優先的有六萬七千英畝（約二萬七千公頃）。至1985年底，已購入四萬二千英畝（約一萬七千公頃），正進行價購者有二萬五千畝（約一萬公頃）。總計購地費用計四千三百三十萬美元（註八）。

(四)檢討

學者研究該保留區保育成效卓著之原因如下：

1.各級政府行事皆以綜合管理計劃爲藍本，相互支援。

2.區內各城鎮之區域計劃皆依綜合管理計劃修訂，使全區之土地分區使用規定得以貫徹。

3.區內其他相關計劃執行單位皆配合綜合管理計劃，使保育工作步調一致，減少重複規定，雙重標準之現象。

4.開發權移轉及開發權承購使得土地區分管制之成本得以分散至全區，不至使開發限制嚴格地區之地主獨自負擔，因而減輕地方反對分區使用之阻力，進而使分區使用管制得以順利實施。

註 釋

1.Cam Cavanaugh, 1978. "Saving the Great Swamp", Columbia Publishing Company, Inc., Frenchtown N.J..

2."Questionaires for Candidates", The Pitch Pine, September 1969, P.3.

3.見西文參考文獻十，P.44。

4.同註三。

5.紐澤西州議會記錄13:18-8，1972年1月。

6.同註三，P.46。

7."New Jersey Pine Barrens: Concepts for Preservation" (Report of the U.S. Dept. of Interior, Bureau of Outdoor Recreation, Washington, D.C. 1976).

8.同註三，PP.218-219。

三、美國紐約州 Adirondack 公園

(一)簡介

Adirondack州立公園位於紐約州北部。雖然爲州立公園，但其面積之廣大猶勝於許多知名度極高之國家公園。此公園總面積爲二百四十三萬公頃，佔全州總面積之百之十二。比黃石公園(Yellowstone)，優勝美地 (Yosemite)，大峽谷 (Grand Canyon)，冰河 (Glacier) 和奧林匹克 (Olympic) 等五大國家公園之面積總和多出四十萬五千公頃。

園區內自然景觀豐富且嚴格限制人爲開發。區內有二千三百處湖泊，主要河流綿延近二千公里。次要之溪流流域更達四萬八千公里，區內並有數十座海拔一千二百公尺以上之高山。

紐約州爲全美開發最早地區之一，向來爲主要經濟活動之所在。早在十九世紀南北戰爭時，紐約州便已成爲全美最大之工商重鎮。當時紐約一州之工商產值即超過南方各州之總和。直到今日，紐約州仍在許多工商活動中執全美之牛耳。然而，在此一人口密集工商興盛，開發逾兩百年之地區竟然存有如Adirondack公園之廣大自然保護區，實有其歷史背景。

Adirondack地區原爲印第安人活動範圍，至十八世紀中爲英國探險家發現，並被劃入殖民地管轄，但由於幅員過於遼闊，因此僅有少部份地區被開發，十九世紀中葉之

後，由於鄰近都市之快速發展（紐約、波士頓、魁北克、蒙特婁），伐木業逐漸進入此地區，到了十九世紀末，美東地區之巨商富賈開始在此建立別墅，旅遊業隨之興起，鐵路及水運亦發展起來。在都市人口視Adirondack地區爲休閒去處而大量湧入之際，當地之所得水準也因而提高。旅遊人口和當地居民漸漸對伐木業之濫伐感到不滿，並在1885年促成立法成立保護區。該法案中規定近二萬八千公頃之國有土地爲〝永遠不得開發〞(forever wild)。隨後又有六次主要園區範圍之擴大。紐約州政府於在1971年立法設立專責管理機構Adirondack公園管理處（Adirondack Park Agency，簡稱APA)並負予極大之權責。

(二)管理處的設立過程

1967年的一份研究報告（註一）曾建議將此一地區劃爲國家公園，總面積約爲一百七十萬英畝，其中一百一十萬英畝爲州政府管轄之土地，另外六十萬英畝爲私有。此報告建議設立國家公園之主要理由在於藉由國家公園署的行政力量及管理體系執行有效的保育政策。這是對於該地區公有及私有土地並存的現象所提出的第一個保育對策。

該報告提出之後，受到紐約州居民的大力反對。他們認爲在州憲法中“永遠不得開發”的規定比將該地交由聯邦政府管理更能有效執行保育工作。設立國家公園的提議遭受各方攻訐之餘，當時的紐約州長洛克菲勒（Nelson Rockefeller)遂指派另一委員會對該地區的保育政策進行

評估。

此委員會的成員包含企業主、保育人士及政府官員。其主要任務在研究洛克菲勒州長提出的七個問題。這七個問題中有六個是關於公有土地的管理。然而，對Adirondacks 地區造成最大影響的當屬唯一關於私有土地管理的建議。州長指定此委員會研究私有土地的開發如何才能配合該地區的長期發展，並不破壞自然景觀。該委員會提出以下七點結論（註二）。

1. Adirondack地區受人為開發的壓力極大，若不限制開發，則該地區的自然景觀將不復存。
2. 紐約州必須立即採取有效管理私有及公有土地之行動，以保證Adirondack地區的永續發展。
3. 公有土地及私有土地過去和諧共存的狀況已因遊憩人口的增加而惡化。
4. 園區內私有土地雖然大部份由626 名大地主掌握，但整個地區的發展亦需由其餘數千名小地主共同決定。
5. 園區內大規模土地使用分區重劃的可能性已引起企業界及私有地主的注意。
6. 園區內的地方政府無法有效執行土地管理政策。
7. 目前園區內的私有土地之開發利用幾乎無現行法規加以管理。

這份報告後來成為Adirondack州立公園管理處法(Adirondack Park Agency Act. 1971)的重要藍本。

一般大眾對這份報告的反應呈兩極化。保育人士認為

這是前所未見最有效的保育措施；地方居民則認爲此辦法一旦通過，則他們應有的權利必遭受重大的損失（註三）。雙方曾爲此進行辯論。然而，由於獲得州長的支持，保育團體終於在爭議聲中促使州議會通過這部土地利用管制空前嚴格的Adirondack州立公園管理處法。這部法令的通過也造成了往後十數年間管理處和當地居民相處不睦的主要原因。

(三)私有土地之管理

Adirondack公園不僅在自然景觀方面有特出之處，其經營管理之方式亦十分獨特。其中最值得注意者，爲其土地利用之限制。全園區二百四十三萬公頃之土地有百分之六十一爲私有地，公有土地僅佔百分之三十九。

Adirondack州立公園管理處法中認定保育和人爲開發是無法並存的，若要達成其中一項目標，則必須犧牲另一項（註四）。基於這樣的理念，園區內的私有土地之開發遂受到嚴格限制。

針對區內之私有地，APA 依法有制定使用限制規定之權力，Adirondack公園土地使用及發展計劃 (Adirondack Park Land Use and Development Plan and Map) 在1973年正式通過州議會討論，並由州長公佈實施。值得注意的是，在1971年APA 開始規劃與1973年正式實施之間， APA曾與地方政府合作，對原始計劃進行評估，總計修正達500次（註五）。雖然如此，但至今當地人民(約11萬人)仍對

APA 不具好感。

這項土地使用計劃將園區內私有地分爲六類，任何開發行爲都必須獲得許可。此計劃之分類極爲嚴格，有百分之八十七之私有地被劃爲限制最嚴之二類分區。六項分區如下：

1.聚落(Hamlet)地區：佔總私有地之百分之二。包括園方管理設施及部份已開發地區。

2.中度使用(Moderate-intensity Use)地區：佔私有地之百分之三爲聚落地區外圍，預計將來爲住宅用者。建築密度規定爲每一平方英里(259.2公頃)500棟建築。

3.低度使用(Low intensity Use)地區：佔私有地總面積之百分之八，建築密度規定爲每一平方英里 200棟建築。

4.鄉野(Rural use)地區：佔私有地之百分之三十四。規定每平方英里75棟建築。

5.資源管理(Resource Management) 地區：佔私有地之百分之五十三，每平方英哩允許15棟建築物，此地區包括許多重要景觀及野生動物棲息地。

6.工業使用(Industrial Use)：不到私有地總面積之百分之一。爲現存之工業用地。

前面提到園區內所有人爲開發必須獲得APA 同意。以下簡介此許可制辦法。

所有開發申請案件依個案分爲 A 級案件 (Class A

regional projects)及B級案件(Class B regional projects)。A級案件係開發地點爲限制嚴格地區或開發規模較大者，此類案件須由 APA核發許可。B類案件則爲對自然環境影響較小者，地方政府在APA 核定該行政區土地使用規定後可核發此類許可。在1973 至1977 年之間，計有1733件申請案，其中A類705件，B類1028件。

APA 對於這麼多的申請案件投入相當多時間審核。管理處的承辦人員爲使申請案及時核定，時常辦公至深夜。於1973年至1977年之間的所有申請案約有百分之九十三獲核准。儘管如此，當地居民仍對管理處頗有微詞，這樣的反應來自下列幾個原因：第一，當地居民心中根深蒂固的觀念，認定管理處保育和開發無法並存的基本理念必使他們的權利受損。第二，當地居民認爲管理處人員全部都是保育人士。第三，雖然百分之九十三的申請案獲核准，但其中大部份都有附帶條件。這些附帶條件被申請者視爲變相阻撓申請案順利進行的手段。第四，申請人認爲審查過程中管理處人員常在細節上吹毛求疵，使申請人難以應付。

(四)管理處與當地居民、地方政府

在Adirondack公園內計有 92 個鎮 (town) 和15個村(Village).這些地方政府與 APA的合作態度對全園區土地管理之成敗具有關鍵性之影響。Liroff 及Davis(1977)，曾針對當地政府與APA之關係進行研究，主要結果如下：

1.地方政府最希望發展輕工業以繁榮地方，但由於地理環境等因素，工業並未在此發展。 APA固然使工業無法興盛，但自然因素卻佔絕大原因。

2.79.6% 之受訪官員並不認爲在私有土地上發展住宅區會損及自然環境。換言之，地方政府並不贊同APA 私有土地分區之劃分。

3.地方政府對 APA法案及相關規定並不瞭解。受訪官員中只有6.7%全部答對訪問提出的三個有關APA 的問題。其中20.9%三題全部答錯。

公眾的參予在APA的經營中扮演重要的角色，APA亦了解此一重要性。因此，在制定私有土地使用管制各項規定時，地方政府亦參與其過程，APA 亦舉辦多次公聽會。在1973年APA 法案中即明定設立地方政府咨詢委員會(Local Government Review Board)，由Adirondack園內區內12個郡 (County) 各指派一人擔任委員。此會之功能在於監督及協調 APA執行土地利用管理辦法。全體委員皆爲無給職。此委員會與APA 之間的關係並非十分融洽。委員們認爲 APA人員來自外地，且不尊重本地人之意見。 APA人員則認爲咨詢委員干預園方決策。有許多保育人士更指責咨詢委員會是開發者的代言人。然而，不可否認的是，咨詢委員會積極參與 APA各項法案的制定，並發揮了重要的影響。

當地人民除了透過咨詢委員會表達意見之外，亦組成了許多團體。這些團體時常批評 APA之政策，主要的不滿

在於他們認爲 APA不瞭解當地的需求，不關心地區性的小規模計劃，而且過於僵化。另外兩項值得注意的是他們認爲當地的發展受到雙重標準的不公平待遇及未受到適當的補償。當地人民認爲APA 對保育標準訂定過嚴，甚至高於紐約州環保局(Department of Environment Conservation)的標準，使他們蒙受不必要的損失。其次，他們認爲公園的設立限制私有土地的利用，但他們未得到應有的補償。爲此，當地人民與 APA之間已訟訴經年，但法院在不同案例曾分別判決雙方勝訴，而以判決園方勝訴者較多，原因在於私有地主認爲園方對私有土地的限制嚴格，根本就是徵收(Taking)的另一種形式，地主應受法律保障而得到補償。法院在判決園方勝訴之最大理由在於認爲APA 相關土地法規中之規定並不構成視同徵收之要件。

(五)檢討

學者研究APA 在保育方面得以如此徹底執行，可大致歸納以下幾個原因：（註六）

第一、預算獨立，不受當地政府的控制。

第二、法律賦予的開發程度管轄權。

第三、民意機關的大力支持。

第四、紐約州居民長期對自然保育工作的共識。

第五、APA主管人員對保育工作的認眞執行。

這些因素使 APA成爲一個保育成效卓著的執行單位。然而，在保育成功的背後，卻仍有許多人批評這是犧牲當

地居民權益的結果。對於此一問題，學界尚未達成定論。唯多份研究報告（註七）均未找到土地使用管制造成地價下跌的現象。

Adirondack公園對園區內私有土地之管理方式與陽明山國家公園極爲類似，均爲分區使用管制，且管理處執行政策之權責亦十分相似。在此列舉幾點Adirondack公園之經驗以供參考：

1.公眾及地方政府之參與：此爲與陽明山國家公園不同之處。陽明山未設地方政府咨詢委員會。Adirondack公園的經驗並未突顯此委員會之功能，是否有必要設立類似機構實須進一步探討。

2.對補償問題之對策同。陽明山國家公園亦有類似問題，唯本質上不盡相同。Adirondack公園之私有地主認爲嚴格之土地利用限制已構成實質上的徵收，而向法院要求補償。至目前爲止，陽明山並未發生此類要求法院認定分區管制爲徵收之訴訟，但Adirondack公園之經驗值得記取。

3.與保育團體之聯繫。保育團體在Adirondack公園立法過程及往後多次政策制定過程中，對於園方十分支持，並在立法過程中發生極大影響力。國內的保育團體雖未形成嚴密組織，並對民意機關發生影響，但如何使支持保育之人士形成國家公園的有力支持者，亦爲將來之重要課題。

註 釋

註一：“A report on a Proposed Adirondack Mountains National Park”, July 27, 1967.

註二：Temporary Study Commission on the Future of the Adirondacks, “The Future of the Adirondack Park”, Blue Mountain Lake, N.Y.: Adirondack Museum reprint, 1971.

註三：Little, Charles E, “A Special Place: An Account of State-Level Land-Use Controls in New York's Adirondcak Mountains” (typescript, 1974). PP.16-17.

註四：見西文參考文獻十二，P.31。

註五：Brook, Ray. 1973, "Adirondack Park Land Use and Development Plan and Recommendations for Implementation" Adirondack Park Agency P.2.

註六：見參考文獻十二，P.177。

註七：見參考文獻十二，PP.147-148。

四、英國國家公園之經營管理

探討英國的國家公園之土地利用政策，不僅對吾人有十分重要之價值，同時亦可對美國之國家公園土地經營進行比較，擷取雙方之優點以供未來我國保育政策之參考。

英國之行政區域分爲英格蘭、威爾斯、蘇格蘭及北愛爾蘭四大部份。各區在保育政策方面皆有相當獨立之管理權。舉例而言，全英國開發程度最低，自然景觀保持最完整者當屬蘇格蘭。但是在蘇格蘭地區並無任何國家公園，主要原因在於當地地主及利益團體之反對。雖然蘇格蘭地區有類似國家公園之保育地區，由於其經營之目標及方式之不同，本報告將不包含該地區。此外，北愛爾蘭地區因範圍較小，同時在保育政策方面與英格蘭地區類似，也將不列入研究範圍。因此，當下文提到「英國」一詞時，實指英格蘭及威爾斯兩地。

由人類文明之演進看來，英國保育工作所面臨之問題較美國更與我國類似。人爲開發英國之土地可溯及數千年前。長期人類文明發展之結果不僅使原始自然景觀逐漸消失，大部份之土地亦成爲私有。在此一情況之下，在英國要找出一個合乎國際公認標準之「國家公園」乃成爲一困難之課題。（國際保育聯盟（IUCN）所認定之「國家公園」必須符合至少下列兩項條件：人爲開發程度低及大部份土地爲公有或爲政府管理。）然而，經過多次調查及研究之結果，英國在二次大戰之後逐漸發展出了一個獨特的「國家公園」之系統及經營理念。以下就概念，組織及管理三方面逐一探討：

(一)英國「國家公園」之概念

相對於美國國家公園之嚴格限制人爲開發，以保持自然風貌，英國之國家公園特重園區內之人文特質及遊憩功能。1945年John Dower提出一份奠定英國國家公園角色之重要調查報告，在這份報告中，他認爲英國之國家公園應該具有下列重要功能：

1.嚴密保存特有景觀之美。

2.提供公眾户外活動之場所。

3.保育野生動植物及保護具有歷史意義及建築美學之房舍及地區。

4.有效維持現有農業。

於1950年代之十年之間，英國根據Dower及另一Hobhouse 委員會之調查報告，一共設立10個國家公園。（表一）

名稱	設立日期	面積(公頃)*
Peak District	1951	140,400
Lake District	1951	224,300
Snowdonia	1951	217,100
Dartmoor	1951	94,500
Pembrokeshire Coast	1952	58,300
North York Moor	1952	143,200
Yorkshire Dales	1954	176,400
Exmoor	1954	68,600
Northumberland	1956	103,100
Brecon Beacons	1957	134,400

資料來源：Allin, 1990. The International Handbook of National Parks and Nature Reserves.

* 原資料面積以平方公里計

表一、英國之國家公園

這些國家公園之共同特點爲自然景觀與農業用地共存。十個國家公園園區土地平均約有半數左右爲農業用地。對英國民眾來說、田園牧場之風光亦爲應受保護景觀之一。事實上，有許多草原皆爲低度放牧之區域。這些區域若完全排除人爲利用，則將很快回復原始狀態。

對於園區內必須特別限制人爲開發之地區，則由不同單位劃定「特定科學研究地區」(Sites of Special Scientific Interest, SSSI)，「國家自然保留區」(National Nature Reserves)和「地方自然保留區」(Local Nature Reserve) 三類。其管制近於我國國家公園土地使用管制分區中之生態保護區。此三類地區之主管機關、經營方式及管理目標與「國家公園」十分不同，其特殊之處詳見下文。

(二)英國國家公園之組織

英國國家公園之組織可說是完全爲因應園區內大量土地爲私有之狀況而產生。其最主要之功能在於一方面管制人爲開發，另一方面則增進對公眾有利之土地管理政策。其組織可分爲兩部份，景觀保護方面及自然保育方面。就景觀保護方面而言，依據1949年之國家公園及鄉間利用法(National Parks and Access to Countryside Act 1949)設立了兩類保護區：國家公園及特別自然景觀地區(Areas of Outstanding National Beauty)。國家公園之功能前文已記述。特別自然景觀地區之定義則爲小規模但與國家

公園具同等重要性之區域。

就自然保育之功能分，前述之特定科學研究地區、國家自然保留區及地方自然保留區爲三大分類。特定科學研究地區定義爲因特殊動植物或特殊地質地形而具有科學研究價值之地區。國家自然保留區及地方自然保留區則專指土地因其全國或地方性之需要而加以保護之地區。事實上，特定科學研究地區爲國家或地方自然保留區中限制最嚴格之部份。

除地方政府級之管理機關之外，中央政府之層級有兩個單位分別負責景觀保護及自然保育之統籌工作。鄉野委員會(Countryside Commission)執行景觀保護之工作，而自然保育委員會(Nature Conservancy Council)則負責自然保育。此二委員會皆負責保護區之選定但經營之方式卻十分不同。

英國國家公園之組織雖然複雜，但具有下列幾項優點可供吾人借鏡：第一、延展性。可使保育工作於現存法律及政策之下成長，避免修法之困擾。第二、地區性。將保育工作之責任分配給居住及使用鄉間之民眾。第三、彈性。能快速調整政策以配合大環境之改變。

(三)英國國家公園之管理

英國國家公園管理之大特色在於地方政府扮演最重要之角色。各國家公園之實際經營管理由各國家公園理事會(Board) 負責執行。各理事會之大小依各公園之需要決定

。理事會之成員由各級政府聯合組成，但地方政府人員佔多數。以Peak District 公園爲例，該公園理事會共有成員33人，其中22人是由園區內六個縣(County)政府派任，其餘11人則由中央政府指派。

中央級之鄉野委員會(Countryside Commission)並不實際執行國家公園之經營管理。其最主要職責在於提供政策方向及各項重要規定，而地方政府依個別狀況運用。

在自然保育方面，中央政府層級之自然保育委員會(Nature Conservancy Council)具有相當大之權力，負責實際經營特定科學研究地區及國家自然保留區。此機構並向民間以收購方式取得位於區內之私有地。

雖然國家公園之經營管理以地方爲中心，其經費來源仍以中央政府爲主，但地方政府所提供之經費亦不少（表二）。

	總預算（百萬英鎊）	中央政府(%)	地方(%)	自籌(%)
Brecon Beacons	0.7	75	25	0
Dartmoor	1.39	59	33	8
Exmoor	0.98	75	25	0
Lake District	2.62	49	16	35
Northumberland	0.57	72	11	17
North York Moors	0.99	75	25	0
Peak District	3.71	58	19	23
Pembrokeshire Coast	1.49	67	17	12
Snowdonia	1.75	75	13	12
Yorkshire Dales	1.47	60	20	20

表二、英國國家公園的經費來源

資料來源：Poore & Poore, 1987, Protected Landscapes — The United Kingdom Experience

各國家公園經費使用之狀況如下：

公園名稱	遊客服務 (%)	保育 (%)	行政 (%)	城鄉建設 (%)	回饋當地 (%)
Peak District	43	30	17	7	3
Lake District	58	12	18	10	2
Snowdonia	61	11	18	10	0
Yorkshire Dales	55	18	18	9	0
North York Moors	51	17	22	10	0
Dartmoor	50	20	20	8	2
Pembrokeshire Coast	52	18	17	10	3
Exmoor	40	30	18	9	3
Brecon Beacons	50	15	20	10	5
Northumberland	57	20	20	3	0

表三　英國國家公園經費使用狀況

資料來源：摘自MacEwen & MacEwen, 1987, Greenprints for the Countryside? Allen & Unwin

由表三可看出國家公園之經費以遊客服務之支出最多，保育次之。此數據顯示英國國家公園最重要之功能在於提供民眾遊憩之場所。保育功能則由特定科學研究地區和國家及地方自然保留區擔任。

(四)小結

綜合美國保育政策及英國保育政策，對陽明山國家公園未來發展之建議如下：

第一，就自然環境及人爲土地利用之狀況而言，我國較接近英國。但就國家公園之概念及經營管理則極接近美國之方式。爲配合客觀環境以增進國家公園之功能，未來國家公園經營策略宜參考英國之方式。

第二，於我國現行之國家公園組織體系中，宜增設諮詢委員會或類似機構。一方面可收廣徵民意之效，另一方面亦可做爲管理處與民眾間溝通之橋樑。

參、國內法制部分

一、我國現行土地利用限制制度之現況與檢討

(一)前言

開發權之觀念背面其實即表示土地使用之限制，蓋土地權利人一旦其「開發權」被購買，即不再擁有「開發權」時，其土地利用顯而易見是受到限制，並且以承購價金作爲其補償，因此在評估是否引入土地開發權制度前，以下將先就現行法令體系下各種土地利用限制之樣態類型及有無補償予介紹、分類，以明瞭法令實態，並進而加以評估檢討，裨供引入土地開發權或類似制度之參考。

(二)現行土地限制利用制度之內容與分類

在我國土地利用限制之法律最高根據應是憲法第二十三條，即「以上各條列舉之自由權利，除爲防止妨礙他人自由，避免緊急危難、維持社會秩序或增進公共利益所必要者外，不得以法律限制之」。而土地如歸私有，其利用自屬財產權之行使，依憲法上開規定，即非不得限制之。以下即就限制土地利用法律之性質、限制程度、有無補償或賠償等救濟制度三方面予以介紹。

1.首先如依法律性質觀之，限制土地利用之法律大抵可分屬六類：

(1)軍事、國防法令：此部分包含國家安全法、軍事徵用法、國家總動員法、及戒嚴法等。

(2)地政、營建法令：此部分包含土地法、都市計畫法、區域計畫法、及建築法等。

(3)交通法令：此部分包含民用航空法、鐵路法、公路法、大眾捷運法、電信法、郵政法（後二者也有列爲後述公用事業法令者）

(4)經濟法令：此部分有森林法、礦業法

(5)公用事業法令：此部分包含電業法、自來水法、水利法、下水道法

(6)保育法令：此部分有文化資產保存法及野生動物保育法

由以上可知，限制土地利用之法律普遍存在不同法律領域之中。

2.其次如進一步就土地利用限制之樣態加以檢討，則依其限制之嚴重程度及方法又可作以下區分：

(1)完全排除法律上地位者，如①徵收（土地法第208條以下、建築法第52條、電信法第22條、民用航空法第33條）

(2)雖非完全排除法律上地位，但實質上接近者，如①改造（國家總動員法第24條）、②破壞（戒嚴法第11條）

(3)建築利用之限制：包括①禁建、限建（國家安全法第 5條、公路法第59條）、②禁建（建築法第47條

）、③禁止、限制（電信法第25條、民用航空法第31條、鐵路法第61條）、④不得增建改建（都市計畫法第41條）、⑤限制建造（文化資產保存法第36條）

(4)修改、拆除、變更使用、遷移：此部分大多係針對既有建物等不符規定或便於測量、勘查而設，包括：①遷移（都市計畫法第29條、第41條）、②拆除（建築法第59條、區域計畫法第17條、自來水法第12條、鐵路法第61條、公路法第59條）、③拆遷（民用航空法第32條）、④變更使用、改變使用（區域計畫法第17條、都市計畫法第41條、自來水法第12條）、⑤改善（自來水法第12條）、⑥修改（鐵路法第61條、公路法第59條）等

(5)課予土地權利人一定不作為義務：通常是忍受一定之負擔，如①容許通過、容許使用（電業法第50條、第51條、自來水法第51條、第52條、鐵路法第61條、大眾捷運法第19條、第20條、第21條、電信法第23條、第27條、礦業法第61條、郵政法第20條、都市計畫法第29條、下水道法第14條、第16條）、②限制使用（文化資產保存法第36條）、③禁止改變或破壞原有狀態（文化資產保存法第52條）、④不變更使用收益方法、限制或禁止使用收益（森林法第30條、野生動物保育法第13條）

(6)負一定作為義務：此有別於(5)乃是積極課予權利

人爲一定作爲義務：①砍伐、修剪（電業法第52條、鐵路法第61條）、②裝置障礙燈及標幟（民用航空法第32條）、③遵循指定之經營及保護方法（森林法第30條）、④賦予相當之限制（文化資產保存法第37條）、⑤依公告之方法提供野生動物生育環境（野生動物保育法第13條）

3.此外，並可依有無救濟途徑再作區分：

基本上對土地利用限制加以救濟之常見方式係規定爲「補償」，惟間有使用「賠償」者，如軍事徵用法第29條，惟一般而言所謂賠償多用於私法上侵權行爲之際，稱之「損害『賠償』」，至於因公權力行使要求特定對象特別犧牲者，對之稱之爲「損失『補償』」，故軍事徵用法上之賠償，其本質上仍應將之視爲補償。

又，除是否補償之外，國安法第 5 條上對實施限建、禁建者雖未規定補償，但規定有「土地之稅捐應予減免」，爲較罕見者。

以下，即就有無救濟途徑加以介紹：

(1)在徵收、徵用、改造破壞之情形下，均規定有補償或賠償（國家總動員法、檢討如前述）

(2)在禁建、限建、不得增建、改建之情形下，除國安法第 5條規定之稅捐減免之外，均無補償之規定，此包括公路法第59條、建築法第47條、鐵路法第61條、電信法第25條、民用航空法第31條、都市計畫

法第41條、文化資產保存法第36條、第52條。

(3)在修改、拆除、變更使用、遷移之限制規定下，一般均附隨有補償規定，如都市計畫法第29條、第41條、建築法第59條、區域計畫法第17條、鐵路法第61條、公路法第59條、自來水法第12條、民用航空法第32條等。

(4)在課予土地權利人忍受特定義務之情形下，絕大多數的限制規定均伴隨有補償規定，如電業法第53條、自來水法第53條，鐵路法第61條、大眾捷運法第19條、第20條、第21條、電信法第23條、第27條、礦業法第61條、森林法第31條、野生動物保育法第13條、都市計畫法第29條、下水道法第14條、第16條。但亦有未規定補償者，如郵政法第20條，但此係情形爲較輕微者。

(5)負一定作爲義務的情形下，絕大多數均有補償規定，如鐵路法第61條、電業法第53條、森林法第31條、野生動物保育法第13條均規定有補償，僅在民用航空法第32條之1 未有規定補償。

(三)小結

從以上所分類來看，關於土地限制利用，有規定補償者爲徵收型、忍受負擔型、既得權保障之拆遷型，而在禁建、限建、不得增建型則均無補償。國家公園法下特定區域限制使用、開發類型與禁建、限建、不得增建型相近，

也未規定補償等救濟途徑。就此種未有規定補償的規定，我們從以下數點觀之相當不合理：

1.違反公平原理

就此種限制人民權益，限制人民土地利用，有規定補償，有不規定補償，在沒有合理的正當理由下，不應有差別待遇，否則即違反平等原則。再者，在有給予補償中，忍受負擔型，其對於人民權利限制爲較輕微，如容許通過、容許使用，均規定必須補償人民的損失，但在已致使權利空洞化之禁建、限建、不得增建型卻未規定補償，就其衡量上，顯有輕重失衡的情形。

2.對憲法所保障之基本權利有影響

憲法第十五條規定保障人民之財產權，此亦爲現代民主國家憲法所明文規定。雖然在憲法第二十三條明文規定可基於防止妨礙他人自由、避免緊急危難、維持社會秩序或增進公共利益所必要而加以限制，即財產權並非絕對，爲一種相對而可限制的基本權利，換言之，財產權必須負一種社會職務，財產權爲行使社會職務之基礎，爲使各個人盡其社會一分子之職務，故承認其財產權。但財產權的相對限制亦有一定的範圍，如超過此種範圍，即爲侵害財產權，必須予以補償始符合憲法明示的平等原則；就此種限建、禁建、不得增建型，其已使得權利空洞化，而且國家公園的限制原因又全然係爲公益，並非如同都市計畫著眼於未

來整體發展，所以此種限制已造成土地所有人的特別犧牲，基於憲法平等原則，應給予補償。如全然不予補償則顯然違反憲法保障財產權之要求，有違憲的嫌疑，並非一個法治國家所應爲。

3.相類似法規規定之比較

(1)森林法第31條

森林法第31條規定禁止砍伐竹、木之保安林，其土地所有人或竹木所有人，以所受之直接損害爲限，得請求補償金。此種對保安林之禁止使用收益，和對於禁建、限建、不得增建型的限制，其本質並無不同，均爲對財產權爲持續性限制，而在森林法已明文必須給予補償，則國家公園法似亦應明文規定補償。

(2)國家安全法第五條

國安法第五條第四項規定「前項限建或禁建之稅捐，應予減免」。稅捐減免爲一種租稅優惠，在財政學上稱爲稅式支出，爲實際國家支付金錢外的一種補償。納稅爲人民之義務，爲對人民財產權之剝奪，稅捐減免即使得人民財產消極的不減少，對於人民之財產究其實際而言爲增加，可說是另外一種形式的補償。（註）

目前在行政院院會通過之自來水法第十二之一條文修正草案，水源特定區得視限制程度，減免土地增值稅、贈與稅及遺產稅。也可見在法政策下有意擴大利用租稅優惠

來補償人民因土地利用受限制所受的損失。

註：此種租稅優惠雖對於人民有所補償，但是因禁建、限建，人民所受的特別犧牲程度重大，單純減稅並不能完全彌補人民損失，見楊金順，爲管制區禁建限建補償制度催生，人與地第一九九期，第二頁。

二、採取必要（救濟）措施之理論基礎

(一)損失補償理論之依據

損失補償如上所述有調和私有財產制與公共利益之功能，但其理論上之依據爲何，學說尚不一致，一般有下列數說：（註一）

1.既得權說

人民之既得權應予絕對保障，縱因公益而受損，亦應補償，以保障人民之既得權。

2.恩惠說

此說強調國家統治權與團體利益之優越性，主張絕對的國家權力、法律萬能及公益至上。因此認爲個人並無與國家相對抗之理由，甚至完全否認國家對私人有提供損失補償之必要，國家侵害個人權利倘給予補償，則是出於國家之恩惠。

3.社會職務說

此說摒棄權利天賦的觀念，認爲國家欲使各人盡其社會一分子之責任，遂承認其權利；故權利的本質具有義務性，乃爲實現社會職務之手段，人民之財產被徵用徵收之後，爲恐妨礙其社會職務的履行，故宜酌予補償，使其社會職務得以繼續。

4.特別犧牲說

此說係基自然法上公平正義的觀念，認爲國家的適法行政行爲，對人民權益所造成的損失，並非課予一般

人民的負擔，而是使無義務之特定人對國家所作之特別犧牲，此種特別犧牲應由全體人民分擔而對之補償，乃能符合公平正義的精神。

就上列四說，既得權說係以自然法之思想爲基礎，其理論固不免失於陳舊，且對於既得權以外之侵害，何以亦予補償亦無法說明。恩惠說猶具專制時代之色彩，其不足說明現代損失補償制度，尤爲明顯。社會職務說，對於現代權利相對化的觀念，頗相符合，惟就法制化觀點，特別犧牲理論，較具法制上的說服力，且在實際上易被接受，爲多數學者所採用，此說以自然法公平正義的觀念爲基礎，對於特定人所受之特別犧牲，由全體分擔給予補償；即國家行使公權力致使個人受到特別損失時，其損失應由共同的經費來負擔。而以租稅形式分配給全國人民分擔之，因此一個人的特別負擔，轉化成全體的分擔，可望謀求特別負擔者與其他人間的均衡。

至於判斷何爲特別犧牲，理論上有三說：1.形式說：應以侵權行爲爲一般之侵害或個別之侵害爲斷。若侵害爲個別之侵害，對特定人或特定之少數人爲之者，始爲特別犧牲。侵害之範圍如爲一般，對不特定人或物爲之，則不構成特別犧牲，不予補償，此說與行政上之損失補償本旨不符，甚少人採之。2.實質說：依侵害行爲之輕重與範圍，即侵害行爲之本質與程度爲斷，必須對財產本體（排他之支配權）之侵害，且超過財產權應受社會制約之範圍者，始爲特別犧牲。依此說，則對一般人所爲之侵害仍應爲

補償，與損失補償之本旨不相合。3.折衷說：應兼顧形式要素與實質要素，不僅侵害須爲個別侵害，且其侵害必須係對財產權本體，爲超過社會制約之侵害，始爲特別犧牲。就現代權利觀點，以折衷說較恰當。

(二)法無明文時在我國運用可能性

1.直接由憲法推導出：

損失補償在理論基礎建立之後，在實務其是否一定要有成文法依據呢？則學者間有爭議，我國憲法第十五條有明文保障財產權，但對於公用徵收的補償則隻字未提，只在各個法規有提到公用徵收補償，但是並非所有法規均很完備的在應給予補償時即有給予補償的規定，對於這種未規定的情形，應如何解決呢？學者林紀東氏認爲：祇須合於損失補償的事實，即應酌予補償，不問有無成文法或習慣法上之根據，就我國現行法言之，行政上之損失補償，實有成文法之一般根據，蓋我國除土地法（第二百零八條）、國家總動員法（第二十八條）、戒嚴法（第十一條）、軍事徵用法（第二十九條）等法律，就行政上之損失補償設有明文外，憲法第十五條：「人民之生存權工作權及財產權應予保障」之規定，尤可視爲成文法之一般根據，不必另俟個別法之規定（註二）。即其認爲憲法第十五條即足爲成文法的一般依據。學者如古登美、管歐、涂懷瑩等亦同之，故以我國憲法第十五條作法源

之依據當爲可行之道。

2.日本判例法之借鏡

日本基於法治主義原則，公用徵收須有法律的依據。所以依其憲法第二十九條第三項之規定，以法律規定公用徵收時，應一併規定損失補償。但是如果法律對於損失補償欠缺規定時，對於上述憲法規定，應有如何的效果，學說則有三種主張：

(1)立法指針說：認爲憲法之規定，僅止於立法上之指針，則法律未有明示的規定，不發生損失補償請求權。即公法上損失補償，在有特別法規明示損失補償的義務，國家始負有義務（註三）。

(2)違憲無效說：法律欠缺損失補償規定，即爲違憲無效。認爲對於因行政權而侵害私有財產，不予適當補償，固屬違憲；但此種情形，被害人不得請求法律未規定的損失補償，被害人只得請求撤銷此類行政作用（註四）。

(3)直接請求權發生說：認爲即使法律未有規定，在公用徵收範圍內，得直接基於憲法，請求損失補償。即憲法之保障，具有實定法之效力，所以私人對於損失補償額有爭執，應許其爲增額之請求；法律欠缺損失補償之規定，應認爲得直接以憲法爲根據，請求補償（註五）。

就此三說，立法指針說，其理論意旨不明確，而且就現代日本憲法來看，此說亦失其重要性。第二說、第三說

爲大多數學者所支持，近來由於法院實務之運作，請求權發生說已形成爲通說。在最高裁昭和四十三年十一月二十七日大法廷判決認爲：「就其損失在具體的主張證明下，直接以憲法第二十九條第三項爲根據，爲補償請求並非全然沒有餘地」，在以這一判決爲契機下，日本實務已肯定直接請求說，近來在一連串的預防接種事故的第一審判決，均肯定得基於憲法第二十九條第三項直接請求國家補償（註六）。所以目前日本學者及判例均認爲在因公用徵收，造成特別犧牲，基於平等原則得直接基於憲法第廿九條第三項請求國家補償，即直接以憲法爲實定法的依據。

(三)小結

由以上論述，可從理論上直接由憲法推論損失補償，並且人民可直接請求。但是限於我國目前行政訴訟只有撤銷之訴，並無給付之訴，所以無法從訴訟來請求。人民既得依法請求，則行政機關自得主動以行政命令方式來規定補償，對於人民利益並不會受損，而且就我國目前立法院議事效率，要求其立法修法爲遙不可及，故在目前情況下，以行政立法方式來補償，應屬可行，且爲對人民最有利，最快速的救濟方法。惟長遠之計，仍是修正行政訴訟法時增加給付之訴及在法律中明文規定予補償，使人民財產保障明確化。

註　解

註一：參考林紀東著行政法第 407頁，張家洋著行政法，第819頁。

註二：林紀東著行政法，第409頁。

註三：主張此說學者有須貝修一、美濃部達吉、杉村章三郎。

註四：主張此說學者有田中二郎、田上穰治、磯崎辰五郎、渡邊宗太郎。

註五：今村成和著國家補償法，頁72～頁73。

註六：東京地判昭和59年5月18日，大阪地判昭和62年9月30日、福岡地判平成元年 4月18日均認爲可直接基於憲法29條第3 項請求，名古屋地判雖否定可直接基於第29條第 3項，但認爲可基於憲法第25條直接請求。

三、建立救濟制度之策略與方法

(一)長程而言應建立完整救濟法制

如前所述，就長遠之發展，應建立一套完整的救濟體系，來解決現行法制下損失補償有關規定殘缺不全之種種問題。

1.憲法第十五條之修正

我國憲法於第七條、第十五條明文揭櫫了平等原則與財產權保障，與一般民主國家相同，公用徵收補償依此二原則已可直接導引出，但是如能在憲法第十五條明文規定公用徵收補償原則，則對於人民保障可說是更高一層。學者葉百修即主張我國憲法第十五條應修正為：（註）

「人民之生存權及工作權，應予保障」

「人民之財產權，應予保障」

「前項財產權之內容與限制，以法律定之，其行使並應顧及公共利益」

「國家為公共利益之需要，對於財產權得為公用徵收，並在衡量公益與私益下，應予公平補償」

如憲法能依此明文徵收補償，將可使得財產權保障更為徹底。

2.制定一般性之「公用徵收法」

我國目前公用徵收散見於各個法規，土地法第五篇有規定關於徵收之規定，其他如都市計畫法第四章第四

十八條以下，民用航空法第二十三條。此種分散各處的規定，導致各個規定不一致且混淆。如公用徵收之內涵是否包含財產權限制，理論上學者或有不同意見，但就現代意義，公用徵收包含對於財產限制（如限建、禁建）。由於此等關於公用徵收法規的歧異，實有必要通盤考量予以統一規定之必要。再就土地法第五篇土地徵收之規定，可說是關於土地之公用徵收最完整之規定，但就土地法之立法目的來看，土地法應是規定地權內容、全國土地的管理、土地的使用與限制、土地之規劃與稅捐，關於土地之公用徵收實不適宜規定在土地法，宜另訂專門法規，並連同其他各個法規有關公用徵收規定訂立一個原則性、總則性的「公用徵收法」。此一公用徵收法之內容應規定得爲公用徵收之原因、徵收之主體、徵收之形式（包含對財產權爲限制或課予負擔），並明定補償內容、徵收程序、救濟管道等。惟經由此一「公用徵收法」之規定，則始能有效並完善落實憲法保障私有財產權。

3.個別法律分別規定

就公用徵收之一般性規定，吾人希望能有一個統一性的法規，但一個新的法規其立法並非如此容易，且公用徵收法又涉及相當多的法規，其整合更形困難，所以就目前的國家公園法做法規個別修正，也是一個可行的方案。

國家公園法在民國六十一年公布時，僅於第十四條以下規定在國家公園內某些行爲須申請許可後，始得爲

之，並未規定申請不許可應給予何等之補償。故似可修正國家公園法相關之規定，增列申請不許可之補償。在特別景觀區及史蹟保存區、生態保育區因禁止所生之損害應予補償。第十六條關史蹟保存區行為之限制，亦應給予適當之補償。在關於國家公園區域內所需用之土地，在第九條第二項僅言及可予以徵收，但未言及補償，此為立法上一大疏漏，應在修法時明文規定徵收私人土地應予補償。此種補償應為合理補償，即原則上應為全額補償，例外可權衡人民之損失程度與公權力行使之目的，作公正權衡後決定，此種權衡應類於行政裁量受到禁止恣意與不可濫用之拘束；並受比例原則拘束；但在此種衡量中，國庫之負擔能力應不列入主要考量因素，如此方能符合補償人民之特別犧牲之法理要求。

另外對於限制較輕微，影響不大者可考慮予以租稅減免，因此等受限制者其土地使用受影響，則其應繳納之租稅亦應降低。此種規定依國安法第五條下之「海岸、山地及重要軍事設施管制區禁建、限建範圍劃定、公告及管制作業規定」在禁建、限建土地應減免地價稅或田賦。依據內政部自來水法草案第十二條之一亦規定在水源特定區內之土地得視限制程度，減免土地增值稅、贈與稅及遺產稅。所以未來在國家公園法內明文規定為租稅減免應屬可行。

註：葉百修，從財產權保障觀點論公用徵收制度，P.67。

(二)短程目標可先制定單行法規

如同前所述，學者見解及日本法院之見解，均可直接以憲法爲實定法的依據來給予人民補償。而就此種給予人民補償，其並非增加人民權利之限制或負擔，受到法律保留限制較小，由行政機關直接以行政命令規定此種財產權限制應給予補償，並無違法之虞。

四、建立救濟制度之對象

(一)補償之樣態：

相對於限制的多樣化，補償樣態亦可區分成多種，就其類型可區分如下：

(1)指定補償：在土地爲特定地域地區指定或指定規制某一事項，補償因爲此種指定所生的損失補償。

(2)不許可補償：對於依法非經許可不得從事的行爲，提出申請後未能取得許可致受有損失者，其通常所受之損失應予補償。

(3)附款補償：對於依法非經許可不得從事之行爲，提出申請後取得附加附款之許可致受有損失者，其通常所生之損失應予補償。

(4)命令補償：在普通地域內之行爲受到禁止、限制或被命採取必要措施致受有損失，其通常所生之損失應予補償。(5)忍受補償（入內補償）：因行政機關的調查，而進入私有土地從事實地調查或勘測等致受有損失者，應給予補償。

(二)如何補償應視限制方式而定

國家公園在劃定各種區域時，其各種區域指定對權利行使之限制，此時應給予補償，不過此種補償應落實於不許可補償，因此種指定補償，對於實際會發生多少損失並無法確定，所以在申請許可而被駁回時，其損失始告確定

。在爲國家公園法第十四條所列舉之行爲，必須申請許可始可爲之。如人民依第十四條爲申請時，被駁回時，其權利具體被限制，此時所給予之補償，即不許可補償，換言之，並非所有被劃入管制區之民眾均得享有補償請求權。

償請求，不許可決定送達後，行政處分相對人尚可向管理處上級機關訴願，對於訴願決定不服，可再提起行政訴訟，在上級機關或行政法院仍爲不許可時，再提出補償請求。

補償請求的申請應以書面爲之，並向管理處提出，不許可補償的申請，應在不許可處分確定後，二個月內爲之。管理處在受理申請後，應於一個月內就該不許可決定對於人民造成的損失進行調查，並將調查結果連同申請書一併轉送諮詢委員會，由諮詢委員會進行評估，決定是否補償，如果補償的話應給予多少金額之補償。諮詢委員會對於提出之申請所評估之意見應送請管理處做最後決定。管理處保有最後決定，但管理處應尊重諮詢委員會的意見，除非有其他正當事由，否則對於諮詢委員會的意見應爲採納。管理處做成決定後，應即將此一決定通知當事人，當事人對此一決定內容即補償與否，補償金額多寡如有不服，可向上級機關提出訴願，對於訴願不服可提再訴願，對於再訴願不服可提起行政訴訟。此外，因管理處之決定爲行政處分，其處分內容必須做到教示義務，即告知人民如果不服要如何救濟。

(二)週邊措施

1.建立諮詢委員會

之地位相當重要，其代表著民主性、專業性，諮詢委員會必須具有相當之公信力，所以其組成分子的構成

五、補償程序

(一)補償程序之建立

程序的適正進行可使得決定爲適法與正當，即由程序保障決定之合法性，此爲行政程序的功能。行政程序的功能在目前愈來愈被重視，其重要性可從目前各國陸續制定行政程序法而得知。而我國目前除了行政院經濟建設委員會所屬經社法規小組委託台灣大學法律研究所所提出之「行政程序法草案」外，另外法務部亦於八十二年底提出「行政程序法草案」，亦可看出我國也積極進行「行政程序法」的法制化。凡此均可顯示行政程序依法而爲之重要性，且縱使尚無「行政程序法」可依，然行政程序仍應依一般法理、原則而爲。

補償程序的進行除了確保補償決定的合法性，同時必須注意民主原則，即必須給予民眾參與的管道，經由民眾參與，除了使行政機關對於認定事實更加正確外，更使得民眾經由參與程序，而信服補償決定，進而減少紛爭。

補償程序因人民之申請而開始。在人民申請許可時，管理處爲許可時，人民不生任何損害，所以毋庸補償，人民也不可申請補償。程序之開始，必是經由人民申請許可時，行政機關爲駁回之決定，人民因而受到損失，所以向管理處請求補償。此處必須注意的是許可與否當然是行政處分，對於行政處分不服可提起訴願、行政訴訟救濟，所以並非管理處不許可時，即無其他救濟而必須馬上提出補

必須包含專家學者、民眾、管理處人員。專家學者必須包含有經濟學、法學、地政、農牧專家，才能從各方面提供專業知識。

民眾的參與，代表程序的民主，委員會當中應三分之一爲民眾，民眾的構成分子應以當地的民眾爲主，此外，民間保育團體之代表亦可適度納入。

管理處代表國家公園，其有必要提出自己的見解與未來國家公園整體規劃做爲參考。

2.應速制定發布行政命令，揭示國家公園對於此等申請不許可處分的補償程序、如何提出申請及管理處的處理程序。管理處應速制定「陽明山國家公園一般管制區開發不許可補償辦法」，具體規定程序如何進行（詳參考後述八、附錄）。

六、建立救濟制度與開發權承購制度之關係

(一)形式截然不同，但理念上不乏相近

建立損失補償救濟制度，是爲了對於土地受到限制而全部或部分不能利用的土地所有者，就其受到此種特別犧牲爲補償的制度。開發權承購制度，目的是由國家向土地所有者承購其開發權，使得人民因開發權被承購，而必須忍受開發權受限制。所以二者在理念上均是對土地的使用收益爲對象的制度，均是以調整此等土地所有者與國家自然保育事業整體發展的利益衝突爲目的之制度。形式上二者或許完全不相同，一爲事後，一爲事前；一爲行政上的損失補償，一爲類似私法的買賣契約，但其實質上如前所述，其所具有的功能相近，且理念可謂爲一致。

(二)開發權承購制度與損失補償制度下並非表示一有限制即應予救濟

開發權承購制度並非美國惟一用來規制土地開發的方法，其仍然贊同財產權必須負有一定社會任務，其土地仍可因保育之目的而限制其開發，此部分不適用開發權承購，如同不許可補償，並非必然的不許可即給予補償，如此種不許可係在土地的社會性限制下，仍然可不給予補償。所以此二制度其不同性在於美國之開發權承購，人民可選擇是否賣出開發權。但在我國之損失補償，則開發權應歸國家，國家可決定如何開發、是否開發。不過二者均承認

財產有其社會任務，在不超過其社會任務範圍內，國家可限制其開發，對於超過部份則美國採用開發權承購，而我國在制度上則可採用損失補償。

(三)相較開發權出售有自主性，損失補償之前提並非自願，更有補償必要

在開發權之出售，其為土地所有者基於其自由意志而決定是否為開發權出售。然不許可補償，則為土地所有者完全無選擇權，為了配合國家整體國土開發計畫，其必須配合所有開發計畫，我們如將此種補償視為開發權之價金，則補償這種出於不自願的開發權出售，應比開發權承購制度更應給予補償，否則土地所有者豈非受到二層的限制，其已因開發權之不行使受到強制，而基於此種強制又不給予應有的補償，則土地所有者將會受到雙重的犧牲，其不公平之程度，由此可見。

(四)小結

此二者在理念上為相當，其所欲達成之效果亦相近。從經濟的角度來看，建立一套新的觀念、新的制度其所花費的時間與金錢是可觀的，而這種新制度是否可被接受又存著未知數，就此種情形看來，似無庸再行建立全新的開發權承購制度，只須在舊有架構下，再補強就可達到開發權承購制度的效果，所以就此二者的取捨上，以建立一完整的損失補償救濟制度較為可行。

七、制度優點——代結論

(一)簡易可行

建立損失補償制度，可暫時無庸修法，面對目前的立法的效率，無庸修法是相當重要，經由管理處自行訂定辦法，以現行法制爲基礎，再修正其不合理之部分，無庸引入全新的制度，則就其可接受性較高，同時其所必須花費的成本又最低。

(二)民衆參與

民眾參與爲民主國原則的實現，利用諮詢委員會中民眾的參與，可強化管理處營運時其民意基礎，則其政策的推行將受到最少的阻礙，促進政策進行。國家公園爲國家保育制度的一大重點，生態環境的破壞對整個環境的影響非常大，爲了保持生態環境的永續發展，使民眾有保育觀念是相當重要，在給與民眾適當補償後，則其將更有保育的情感，在這種情況下，民眾不因爲保育而受到損失，則將更樂意爲保育。

(三)無庸徵收

國家不需爲全部的徵收，可減輕政府財政負擔，尤其是目前國家財政負擔沈重，未來六年國建的完成，全民健保的施行均要花費大量經費，如能減少支出，爲最有利。同時全部徵收所需的經費遠較限制補償來得高，在目前有

限的經費下，爲限制徵收，將使有限經費做最大之投資。

(四)保障人民財產權益

此種因限制人民財產權而給予補償，可落實憲法保障人民財產權的理想。

八、附錄

「陽明山國家公園一般管制區開發不許可補償辦法」草案

第 一 條：陽明山國家公園一般管制區開發不許可之補償除另有規定外依本辦法行之。

第 二 條：前條所稱之不許可補償應待行政救濟程序確定後仍不許可始可請求，並應於不許可處份確定後二個月內爲之。

第 三 條：補償請求應檢具不許可處分書以書面行之。

前項書面應載受不許可處分後受有如何損害，即權利行使受影響之大小及程度，並應表明請求補償之金額及計算依據。

第 四 條：管理處接獲前條請求，如同意其主張並認請求金額合理，應即爲許可之處分。

第 五 條：管理處接獲第三條請求，如不同意其損害已達應予補償之程度，或不同意其主張之金額，應於一個月內連同不同意之理由書或另行決定之金額之理由書提送「陽明山國家公園一般管制區開發不許可補償諮詢委員會」表示意見。

第 六 條：前條諮詢委員會設委員十五人，由地方民眾五人、環保團體代表二人、地方政府代表二人、學者專家四人、管理處代表二人所組成；除民眾代表外，其餘代表人數可酌予調整。

第 七 條：諮詢委員會接獲管理處提送之請求後應於三個

月內，表示具體意見供管理處參考。

諮詢委員會爲表示具體意見必要時可召開公聽會聽取申請民眾、管理處及各界之看法。

第 八 條：管理處接獲諮詢委員會意見後非有正當理由，應予採納，如不採納並應於最終處分書上載明不予採納之理由。

第 九 條：補償請求未獲許可或補償金額較請求者爲少而不服者得循行政救濟程序請求救濟。

第 十 條：本辦法如有未盡事宜，得由陽明山國家公園管理處報請內政部核准後增刪修訂之。

第十一條：本辦法自公布後開始施行。

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(三)資料

1. ADIRONDACK PARK

ARTICLE 27 [1]—ADIRONDACK PARK AGENCY

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[1] Another Article 27 is set out post.

1973 Amendment. Schedule of sections. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "purposes" for "purpose" in section 801, "General powers and duties" for "Powers" in section 804, "Adirondack park land" for "Land" in section 805, "Shoreline restrictions" for "Interim development controls" in section 806, "Local land use programs" for "Master plan for management of state lands" in section 807, "Administrative and enforcement of approved local land use programs" for "Judicial review" in section 808, "Agency administration and enforcement of the land use and development plan" for "Applicability" in section 809, "Class A and class B regional projects" for "Severability" in section 810, and added sections 803-a and 811 to 819.

§ 800.[1] Short title

This article shall be known as the "Adirondack Park Agency Act." As amended L.1973, c. 348, § 1.

[1] Another section 800 is set out in another article 27, post.

1973 Amendment. L.1973, c. 348, § 1, eff. Aug. 1, 1973, reenacted section without change.

1. Constitutionality

The comprehensive plan contained in this article enacted for benefit of all citizens, is not unconstitutional as "spot zoning." Adirondack Park Agency v. Ton-Da-Lay Associates, 1978, 61 A.D.2d 107, 401 N.Y.S.2d 903, appeal dismissed 45 N.Y.2d 834, 409 N.Y.S.2d 214, 381 N.E.2d 612.

This article is not constitutionally beyond powers of legislature. Id.

Claim that standards in this article are so vague and indefinite as to constitute an unconstitutional delegation of powers is belied by broad statement of legislative findings and purposes in the Act and detailed guidelines established for administration and enforcement. Id.

§ 801.[1] Statement of legislative findings and purposes

The Adirondack park is abundant in natural resources and open space unique to New York and the eastern United States. The wild forest, water, wildlife and aesthetic resources of the park, and its open

space character, provide an outdoor recreational experience of national and international significance. Growing population, advancing technology and an expanding economy are focusing ever-increasing pressures on these priceless resources.

Our forefathers saw fit nearly a century ago to provide rigid constitutional safeguards for the public lands in the Adirondack park. Today forest preserve lands constitute approximately forty percent of the six million acres of land in the park. The people of the state of New York have consistently reiterated their support for this time-honored institution.

Continuing public concern, coupled with the vast acreages of forest preserve holdings, clearly establishes a substantial state interest in the preservation and development of the park area. The state of New York has an obligation to insure that contemporary and projected future pressures on the park resources are provided for within a land use control framework which recognizes not only matters of local concern but also those of regional and state concern.

In the past the Adirondack environment has been enhanced by the intermingling of public and private land. A unique pattern of private land use has developed which has not only complemented the forest preserve holdings but also has provided an outlet for development of supporting facilities necessary to the proper use and enjoyment of the unique wild forest atmosphere of the park. This fruitful relationship is now jeopardized by the threat of unregulated development on such private lands. Local governments in the Adirondack park find it increasingly difficult to cope with the unrelenting pressures for development being brought to bear on the area, and to exercise their discretionary powers to create an effective land use and development control framework.

The basic purpose of this article is 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.

A further purpose of this article is to focus the responsibility for developing long-range park policy in a forum reflecting statewide concern. This policy shall recognize the major state interest in the conservation, use and development of the park's resources and the preservation of its open space character, and at the same time, provide a continuing role for local government.

The Adirondack park land use and development plan set forth in this article recognizes the complementary needs of all the people of the state for the preservation of the park's resources and open space character and of the park's permanent, seasonal and transient populations for growth and service areas, employment, and a strong economic base, as well. In support of the essential interdependence of these needs, the plan represents a sensibly balanced apportionment of land to each. Adoption of the land use and development plan and authorization for its administration and enforcement will complement and assist in the administration of the Adirondack park master plan for management of state land. Together, they are essential to the achievement of the policies and purposes of this article and will benefit all of the people of the state.

Accordingly, it is the further purpose of this article to adopt and implement the land use and development plan and to provide for the plan's maintenance, administration and enforcement in a continuing planning process that recognizes matters of local concern and those of regional and state concern, provides appropriate regulatory responsibilities for the agency and the local governments of the park and seeks to achieve sound local land use planning throughout the park.

As amended L.1973, c. 348, § 1.

[1] Another section 801 is set out in another article 27, post.

1973 Amendment. Catchline. L. 1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "purposes" for "purpose."

L.1973, c. 348, § 1, eff. Aug. 1, 1973, inserted "and open space" and "and its open space character," in par. beginning "The Adirondack park is abundant in natural resources", inserted "aesthetic, wildlife, recreational, open space," in par. beginning "The basic purpose of this article", substituted "A further purpose" for "The further purpose" and inserted "and the preservation of its open space character," in the par. beginning "A further purpose of this article", and added pars. beginning "The Adirondack park land" and "Accordingly, it is the further purpose."

Law Review Commentaries

Land use control and environmental protection in the Adirondacks, 47 N.Y.S.B.J. 189 (1975).

Index to Notes

1. Generally

Courts must take the Adirondack Park agency provisions contained in the Executive Law and the provisions of the State Environmental Quality Review Act, ECL § 8-0101 to 8-0115, at face value and must interpret them and extract from them the Legislature's full intent. Franklin County of Connelie, 1978, 95 Misc.2d 189, 408 N.Y.S.2d 174, reversed on other grounds 68 A.D.2d 1000, 415 N.Y.S.2d 110.

Although objectives of Adirondack Park Agency Act are desirable and necessary, where state agencies have such power, exercise thereof should not only be in a fair and equitable manner, but also based on a definite, readily ascertainable and official standard. Tyler v. Board of Members of Adirondack Park Agency, 1978, 92 Misc.2d 754, 402 N.Y.S.2d 513.

Accomplishment of stated purpose of this article to protect and enhance the State's forest preserve lands within the park, which lands account for approximately 40% of total park area, does not cause this article to be an appropriative article, notwithstanding that nearness to such tracts is one of the bases for classification of a proposed development as a "regional project," since protection or enhancement of state lands is only one of the several valid policies, purposes and objectives of this article; even if such were an impermissible objective, it would be ground for declaring the article invalid as an improper exercise of police powers, not a taking. Horizon Adirondack Corp. v. State, 1976, 88 Misc.2d 619, 388 N.Y.S.2d 235.

Adirondack Park Agency Act is a general law whose reach exceeds the scope of local government matters and is not violative of constitutional interdiction of legislation in relation to affairs of local government otherwise than by general law or in conflict with constitutional and statutory rights of towns to adopt, amend and repeal zoning regulations and perform comprehensive or other planning work relating to its jurisdiction and thus did not have to be adopted in accordance with procedures for adopting a statute diminishing power conferred upon local governments. Wambat Realty Corp. v. State, 1975, 85 Misc.2d 489, 378 N.Y.S. 912, affirmed 41 N.Y.2d 490, 393 N.Y.S.2d 949, 362 N.E.2d 581.

A prime concern of Adirondack Park Agency Act was to preserve aesthetic and scenic value of park. McCormick v. Lawrence, 1975, 83 Misc.2d 64, 372 N.Y.S.2d 156, affirmed 54 A.D.2d 123, 387 N.Y.S.2d 919.

Basic function and concern of Adirondack Park Agency is with use and development of private lands within Park. Helms v. Diamond, 1973, 76 Misc.2d 253, 349 N.Y.S.2d 917.

2. De facto appropriation

Comprehensive and extensive system of land use controls applicable to privately owned land within Adirondack Park is not tantamount to a de facto appropriation for which just compensation must be awarded; although land use restrictions constituted a direct legal restraint on economic use of plaintiffs' property it was not the kind of restraint which could be equated with appropriations followed by just compensation. Horizon Adirondack Corp. v. State, 1976, 88 Misc.2d 619, 388 N.Y.S.2d 235.

§ 802.[1] Definitions

As used in this article, unless the context otherwise requires, the following words and terms shall have the meaning ascribed to them.

1. "Adirondack park" or "park" means land lying within the area described in subdivision one of section 9-0101 of the environmental conservation law including any future amendments thereto.

2. "Adirondack park local government review board" or "review board" means the board established in section eight hundred three-a.

3. "Agency" means the Adirondack park agency created by section eight hundred three of this article.

4. "Accessory use" means any use of a structure, lot or portion thereof that is customarily incidental and subordinate to and does not change the character of a principal land use or development, including in the case of residential structures, professional, commercial and artisan activities carried on by the residents of such structures.

5. "Accessory structure" means any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling.

6. "Agricultural service use" means any milk processing plant, feed storage supply facility, farm machinery or equipment sales and service facility; storage and processing facility for fruits, vegetables and other agricultural products or similar use directly and customarily related to the supply and service of an agricultural use.

7. "Agricultural use" means any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; horticulture or orchards; including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds.

8. "Agricultural use structure" means any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use.

9. "Approved local land use program" means any local land use program approved by the agency under section eight hundred seven.

10. "Campground" means any area designed for transient occupancy by camping in tents, camp trailers, travel trailers, motor homes or similar facility designed for temporary shelter.

11. "Character description, policies, purposes and objectives of a land use area" means those land use are[2] character descriptions, policies, purposes and objectives of the land use and development plan contained in subdivision three of section eight hundred five.

12. "Chief elected officer" means in the case of a city, the mayor thereof; in the case of a town, the supervisor thereof; and in the case of a village, the mayor thereof.

13. "Class A regional project" and "class B regional project" means the land use and development and subdivisions of land listed and so characterized in section eight hundred ten.

14. "Classification of compatible uses lists" means the land use and development plan's lists of primary uses and secondary uses for the land use area contained in subdivision three of section eight hundred five.

15. "Clearcutting" means any cutting of all or substantially all trees over six inches in diameter at breast height over any ten-year cutting cycle.

16. "Commercial sand and gravel extraction" means any extraction from the land of more than fifty cubic yards in any two year period of sand, gravel or topsoil (1) for the purpose of sale or use by persons other than the owner of the land or (2) for the purpose of use by any municipality.

17. "Commercial use" means any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee other than any such uses specifically listed on any of the classification of compatible uses lists.

18. "Development considerations" means the development considerations of the land use and development plan contained in subdivision four of section eight hundred five.

19. "Existing land use or development" or "existing use" means any land use or development in existence at any given time.

20. "Existing subdivision of land" or "existing subdivision" means any subdivision in existence at any given time.

21. "Forestry use" means any management, including logging, of a forest, woodland or plantation and related research and educational activities, including the construction, alteration or maintenance of woodroads, skidways, landings, fences and forest drainage systems.

22. "Forestry use structure" means any barn, shed, garage, research, educational or administrative building or cabin directly and customarily associated with forestry use.

23. "Group camp" means any land or facility for seasonal housing and recreational, educational or business related use by private groups or semi-public groups, such as a boy scout camp, fraternal lodge or university or college conference center.

24. "Industrial use" means any manufacturing, production or assembly of goods or material, including any on site waste disposal area directly associated with an industrial use. This term does not include mineral extractions, private and commercial sand and gravel extractions, sawmills, chipping mills, pallet mills and similar wood using facilities.

25. "In existence" means (a) with respect to any land use or development, including any structure, that such use or development has been substantially commenced or completed, and (b) with respect to any subdivision or portion of a subdivision, that such subdivision or portion has been substantially commenced and that substantial expenditures have been made for structures or improvements directly related thereto.

26. "Junkyard" means any open lot or area for the dismantling, storage or sale, as parts, scrap or salvage, of used or wrecked motor vehicles, machinery, scrap metals, waste papers, rags, used or salvaged building materials or other discarded material.

27. "Land" means the earth, on or below the surface of the ground, including water and air above, the flora and fauna.

28. "Land use or development" or "use" means any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of the use of land or a structure. Land use and development shall not include any landscaping or grading which is not intended to be used in connection with another land use, or ordinary repairs or maintenance or interior alterations to existing structures or uses.

29. "Land use and development plan" or "plan" means the Adirondack park land use and development plan prepared by the Adirondack park agency as directed by law, approved by the agency on March three, nineteen hundred seventy-three, adopted in subdivision one of section eight hundred five, including the plan map, and any amendments thereto, the provisions of the plan as contained in subdivisions three and four of section eight hundred five and sometimes referred to as the "provisions of the plan", and any amendments thereto, and the shoreline restrictions contained in section eight hundred six, and any amendments thereto.

30. "Land use areas" means the six types of land use areas of the land use and development plan delineated on the plan map and provided for in subdivision three of section eight hundred five.

31. "Local government" means any city, town or village whose boundaries lie wholly or partly within the Adirondack park, except

that such term shall not include in the case of a town that portion thereof within any incorporated village.

32. "Local land use program" means any comprehensive land use and development planning and control program undertaken by a local government that includes local land use controls, such as zoning and subdivision regulations and a sanitary code, and governs land use and development and subdivision of land within the entire jurisdiction of the local government.

33. "Major public utility use" means any electric power transmission or distribution line and associated equipment of a rating of more than fifteen kilovolts which is one mile or more in length; any telephone inter-exchange or trunk cable or feeder cable which is one mile or more in length; any telephone distribution facility containing twenty-five or more pairs of wire and designed to provide initial telephone service for new structures; any television, cable television, radio, telephone or other communication transmission tower; any pipe or conduit or other appurtenance used for the transmission of gas, oil or other fuel which is one mile or more in length; any electric substation, generating facility or maintenance building and any water or sewage pipes or conduits, including any water storage tanks, designed to service fifty or more principal buildings. Any use which is subject to the jurisdiction of the public service commission pursuant to article seven or article eight of the public service law or other prior approval by the public service commission under the provisions of the public service law is not a major public utility use or a use for the purposes of this article except for the shoreline restrictions in which case the bodies having jurisdiction over such uses under such article or other provisions shall have the authority of the agency or a local government under this article.

34. "Master plan for management of state lands" means the master plan for management of state lands referred to in section eight hundred sixteen.

35. "Mineral extraction" means any extraction, other than specimens or samples, from the land of stone, coal, salt, ore, talc, granite, petroleum products or other materials, except for commercial sand, gravel or topsoil extractions; including the construction, alteration or maintenance of mine roads, mine tailing piles or dumps and mine drainage.

36. "Mineral extraction structure" means any mine hoist; ore reduction, concentrating, sintering or similar facilities and equipment; administrative buildings; garages or other main buildings or structures.

37. "Mobile home" means any self-contained dwelling unit that is designed to be transported on its own wheels or those of another vehicle, may contain the same water supply, sewage disposal and electric system as immobile housing and is used for either permanent or seasonal occupancy. A dwelling unit that is constructed in sections and transported to and assembled on the site is not considered a mobile home.

37-a. "Mean high water mark" means the average annual high water level.

38. "Mobile home court" means a parcel of land under single ownership which is designed and improved for the placement of two or more mobile homes upon units thereof.

39. "Multiple family dwelling" means any apartment, town house, condominium or similar building, including the conversion of an existing single family dwelling, designed for occupancy in separate dwelling units therein by more than one family.

40. "Municipality" means any municipal corporation, district corporation or public benefit corporation as such terms are defined in section three of the general corporation law, and any agency or instrumentality of the foregoing, except that the term public benefit cor-

poration shall not include any such corporation any member of which is appointed by the governor.

41. "New land use or development" or "new land use" means any land use or development that is not a preexisting use.

42. "New subdivision of land" or "new subdivision" means any subdivision of land that is not a preexisting subdivision.

43. "Official Adirondack park land use and development plan map" or "plan map" means the map portion of the land use and development plan on file at the headquarters of the Adirondack park agency as required in subdivision one of section eight hundred five.

44. "Open space recreation use" means any recreation use particularly oriented to and utilizing the outdoor character of an area; including a snowmobile, trail bike, jeep or all-terrain vehicle trail; cross-country ski trail; hiking and backpacking trail; bicycle trail; horse trail; playground, picnic area, public park, public beach or similar use.

45. "Optional shoreline clustering provisions" means those provisions set forth as an alternative to the shoreline restrictions in section eight hundred six.

46. "Overall intensity guidelines" means the overall intensity guidelines for development for the various land use areas of the land use and development plan as contained in subdivision three of section eight hundred five.

47. "Person" means any individual, corporation, partnership, association, trustee, municipality or other legal entity, but shall not include the state or any state agency.

48. "Preexisting land use or development" or "preexisting use" means any land use or development, including any structure, lawfully in existence prior to August one, nineteen hundred seventy-three, provided, however, that with respect to any land use or development exempt from the agency's interim project review powers under subdivision thirteen of section eight hundred fifteen until June one, nineteen hundred seventy-three, such date shall be substituted herein for August one, nineteen hundred seventy-three. For the purposes hereof, "lawfully" means in full compliance with all applicable laws, rules and regulations, including, without limitation, possession of and compliance with any permit or other approval required under the public health law, the environmental conservation law, any local or other governmental regulation.

49. "Preexisting subdivision of land" or "preexisting subdivision" means any subdivision or portion of a subdivision lawfully in existence prior to August one, nineteen hundred seventy-three, provided, however, that with respect to any subdivision or portion of a subdivision exempt from the agency's interim project review powers under subdivision thirteen of section eight hundred fifteen until June one, nineteen hundred seventy-three, such date shall be substituted herein for August one, nineteen hundred seventy-three. For the purposes hereof, "lawfully" means in full compliance with all applicable laws, rules and regulations, including, without limitation, possession of and compliance with any permit or other approval required under the public health law, the environmental conservation law, any local or other governmental regulation.

50. "Principal building" means any one of the following:

a. a single family dwelling constitutes one principal building;

b. a mobile home constitutes one principal building;

c. a tourist cabin or similar structure for rent or hire involving three hundred square feet or more of floor space constitutes one principal building;

d. each dwelling unit of a multiple family dwelling constitutes one principal building;

e. each motel unit, hotel unit or similar tourist accommodation unit which is attached to a similar unit by a party wall, each accommodation unit of a tourist home or similar structure, and each tourist cabin or similar structure for rent or hire involving less than three hundred feet of floor space, constitutes one-tenth of a principal building;

f. each commercial use structure and each industrial use structure in excess of three hundred square feet constitutes one principal building, except that for a commercial use structure which involves the retail sale or rental or distribution of goods, services or commodities, each eleven thousand square feet of floor space, or portion thereof, of such commercial use structures constitutes one principal building;

g. all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building;

h. any other structure which exceeds twelve hundred fifty feet of floor space constitutes one principal building;

i. a structure containing a commercial use which is also used as a single family dwelling constitutes one principal building.

An accessory structure does not constitute a principal building.

51. "Private sand, gravel or topsoil extraction" means any extraction from the land of sand, gravel or topsoil for the purpose of use, but not sale, by the owner of the land or any extraction for the purpose of sale of less than fifty cubic yards in any two year period.

52. "Project" means any new land use and development or subdivision of land that is subject to the review jurisdiction of either the agency or local government under this article.

53. "Project sponsor" means any person making application to the agency, or a local government for the review of a project.

54. "Public or semi-public building" means any component building of a college, school, hospital, animal hospital, library, place of worship, museum, research center, rehabilitation center or similar facility, or a municipal building.

55. "Public utility use" means any public utility use, equipment or structure which is not a "major public utility use." A public utility use does not include any use which is subject to the jurisdiction of the public service commission pursuant to article seven or article eight of the public service law.

56. "Shoreline" means that line at which land adjoins the waters of lakes, ponds, rivers and streams within the Adirondack park at mean high water.

57. "Shoreline restrictions" means those restrictions upon land use and development or subdivisions of land as contained in section eight hundred six.

58. "Single family dwelling" means any detached building containing one dwelling unit, not including a mobile home.

59. "Ski center" means any trail or slope for alpine skiing; including lifts, terminals, base lodges, warming huts, sheds, garages and maintenance facilities, parking lots and other buildings and structures directly and customarily related thereto.

60. "State" means the state of New York.

61. "State agency" means any department, bureau, commission, board or other agency of the state, including any public benefit corporation any member of which is appointed by the governor.

62. "Structure" means any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such

as buildings, sheds, single family dwellings, mobile homes, signs, tanks, fences and poles, and any fixtures, additions and alterations thereto.

63. "Subdivision of land" or "subdivision" means any division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division) by any person or by any other person controlled by, under common control with or controlling such person or by any group of persons acting in concert as part of a common scheme or plan. Subdivision of land shall include any map, plat or other plan of the division of land, whether or not previously filed. Subdivision of land shall not include the lease of land for hunting and fishing and other open space recreation uses.

64. "Tourist accommodation" means any hotel, motel, resort, tourist cabin or similar facility designed to house the general public.

65. "Tourist attraction" means any man-made or natural place of interest open to the general public and for which an admittance fee is usually charged, including but not limited to animal farms, amusement parks, replicas of real or fictional places, things or people and natural geological formations.

66. "Waste disposal area" means any area for the disposal of garbage, refuse and other wastes, including sanitary landfills and dumps, other than an on-site disposal area directly associated with an industrial use.

67. "Watershed management or flood control project" means any dam, impoundment, dike, rip rap or other structure or channelization or dredging activity designed to alter or regulate the natural flow or condition of rivers or streams or the natural level or condition of lakes or ponds. Any such project for which a permit or approval is required prior to commencement from the department of environmental conservation is not a watershed management or flood control project or a use for the purposes of this article.

68. "Wetlands" means any land which is annually subject to periodic or continual inundation by water and commonly referred to as a bog, swamp or marsh which are either (a) one acre or more in size or (b) located adjacent to a body of water, including a permanent stream, with which there is free interchange of water at the surface, in which case there is no size limitation.

As amended L.1973, c. 348, § 1; L.1974, c. 679, §§ 1, 2; L.1976, c. 899, §§ 1-3.

[1] Another section 802 is set out in another article 27, post.

[2] So in original. Probably should be "area."

1976 Amendment. Subd. 4. L.1976, c. 899, § 1, eff. July 27, 1976, substituted "a principal land use or development, including," for "the principal use of the structure or lot as well as".

Subd. 5. L.1976, c. 899, § 1, eff. July 27, 1976, substituted "customarily incidental and subordinate to a principal land use or development" for "located in the same premises and incidental and subordinate to the main structure", and "principal land use or development", for "main structure."

Subd. 32. L.1976, c. 899, § 1, eff. July 27, 1976, included a sanitary code in program.

Subd. 33. L.1976, c. 899, § 1, eff. July 27, 1976, substituted "provide initial telephone service for new structures" for "service a new residential subdivision" and inserted "including any water storage tanks."

Subd. 37-a. L.1976, c. 899, § 2, eff. July 27, 1976, added subd. 37-a.

Subd. 39. L.1976, c. 899, § 1, eff. July 27, 1976, substituted "dwelling units therein" for "living quarters".

Subd. 50. L.1976, c. 899, § 1, eff. July 27, 1976, amended subdivision generally, and among other changes, designated existing provisions as pars. a to i, included commercial and industrial use structures and provided that any other structure which ex-

ceeds 150 feet of floor space shall constitute one principal building.

Subd. 54. L.1976, c. 899, § 1, eff. July 27, 1976, included any component building or facility.

Subd. 68. L.1976, c. 899, § 3, eff. July 27, 1976, inserted provisions relating to size and location in clauses (a) and (b).

1974 Amendment. Subd. 16. L.1974, c. 679, § 2, eff. May 30, 1974, substituted "more than fifty cubic yards in any two year period of sand, gravel or topsoil" for "sand or gravel."

Subd. 32. L.1974, c. 679, § 1, eff. May 30, 1974, deleted "and building codes" following "subdivision regulations."

Subd. 35. L.1974, c. 679, § 2, eff. May 30, 1974, included topsoil extractions.

Subd. 36. L.1974, c. 679, § 2, eff. May 30, 1974, limited the definition to "main" buildings or structures.

Subd. 51. L.1974, c. 679, § 2, eff. May 30, 1974, included topsoil extraction, and extractions for sale of less than 50 cubic yards in any two year period.

1973 Amendment. Subd. 1. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "'Adirondack park' or 'park'" for "'Adirondack park'" and "subdivision one of section 9–0101 of the environmental conservation law" for "subdivision twelve of section 3–0121 of the conservation law" and designated such definition as thus amended as subd. 1.

Subd. 2. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subd. 2.

Subd. 3. L.1973, c. 348, § 1, eff. Aug. 1, 1973, designated existing definition of "Agency" as subd. 3.

Subd. 4. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted definition of "Accessory use" for definitions of "Development" and "Governmental agency" and designated such definition as subd. 4.

Subds. 5 to 26. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subds. 5 to 26.

Subd. 27. L.1973, c. 348, § 1, eff. Aug. 1, 1973, designated existing definition of "Land" as subd. 27.

Subd. 28. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted definition of "Land use or development" or "use" for definitions of "Land use" and "Local controls" and designated such definition as subd. 28.

Subds. 29, 30. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subds. 29 and 30.

Subd. 31. L.1973, c. 348, § 1, eff. Aug. 1, 1973, struck out reference to "county," and inserted ", except that such term shall not include in the case of a town that portion thereof within any incorporated village" in the definition of "Local government" and designated such definition as thus amended as subd. 31.

Subds. 32 to 46. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subds. 32 to 46.

Subd. 47. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "any individual, corporation, partnership, association, trustee, municipality or other legal entity, but shall not include the state or any state agency" for "individual, corporation, partnership, association, trustee or other legal entity" in the definition of "Person" and designated such definition as thus amended as subd. 47.

Subds. 48 to 59. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subds. 48 to 59.

Subd. 60. L.1973, c. 348, § 1, eff. Aug. 1, 1973, designated existing definition of "State" as subd. 60.

Subd. 61. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subd. 61.

Subd. 62. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "placed on land to facilitate land use and development or subdivision of land, such as buildings, sheds, single family dwellings, mobile homes, signs, tanks, fences and poles, and" for "parked on land to facilitate land use, such as buildings, shed, mobile homes, signs, tanks and" in the definition of "Structure" and designed such definition as thus amended as subd. 62.

Subds. 63 to 68. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subds. 63 to 68.

§ 803. Adirondack park agency

There is hereby created in the executive department, the Adirondack park agency, which shall consist of the following members: the commissioner of environmental conservation, the secretary of state, the commissioner of commerce and eight members to be appointed by the governor by and with the advice and consent of the senate. The governor shall designate a chairman from among the members appointed to the agency, who shall serve at the governor's pleasure. None of the members appointed by the governor shall be officers or employees of any state department or agency.

Five members appointed by the governor shall be full-time residents within the Adirondack park provided, however, that no two such members shall be residents of the same county except for such members initially appointed before January first, nineteen hundred seventy-three, who may be reappointed for additional successive terms. Three members appointed by the governor shall be residents of the state outside the Adirondack park. Not more than five appointed members shall be of the same political party.

All appointments shall be made for terms of four years; provided that the first member appointed by the governor pursuant to the increase of members from seven to eight shall be appointed for a term expiring on the thirtieth day of June, nineteen hundred seventy-six. Each of such appointed members of the agency shall hold office for the term for which he was appointed and until his successor shall have been appointed and qualified or until he shall resign or be removed in the manner provided by law. In the case of any vacancy other than one arising by expiration of term, an appointment to fill the vacancy shall be made for the remainder of the unexpired term.

The members of the agency, except those who serve ex officio, shall receive one hundred dollars per diem, not to exceed five thousand dollars per annum compensation for their services as members of the agency, and each of them, except those who serve ex officio, shall be allowed the necessary and actual expenses which he shall incur in the performance of his duties under this article.

A majority of the members of the agency shall constitute a quorum for the transaction of any business or the exercise of any power or function of the agency and affirmative vote by a majority of the members of the agency, except as is otherwise specifically provided in this article, shall be required to exercise any power or function of the agency. Votes of any member shall be cast in person and not by proxy. The agency may delegate to one or more of its members, officers, agents and employees, such powers and duties as it deems proper.

The commissioner of environmental conservation and the commissioner of commerce and the secretary of state may, by official authority filed in their respective agencies, and with the Adirondack park agency, designate a deputy or other officer to exercise his powers and perform his duties, including the right to vote, on the agency.

As amended L.1973, c. 348, § 1; L.1975, c. 464, § 17.

1975 Amendment. L.1975, c. 464, § 17, substituted in first par. "secretary of state" for "director of the office of planning services", deleted from third par. "appointed by him" following "increase of members", inserted in fourth par. ", except those who serve ex officio," preceding "shall be allowed", and in sixth par. substituted "and" for "," preceding "the commissioner of commerce" and "secretary of state" for "director of the office of planning services" and deleted "of his agency" following "other officer".

1973 Amendment. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added the commissioner of commerce to the membership of the Adirondack park agency, increased from seven to eight the number of members appointed to the agency by the governor with the advice and consent of the senate, increased from four to five the number of appointees who must be full-time residents within the Adirondack park, added provision that no two of the five full-time resident appointees shall be residents of the same county except for such members initially appointed before Jan. 1, 1973, which appointees may be reappointed for additional successive terms, increased from four to five the number of appointees who may be of the same political party, substituted provisions covering the appointment for a term expiring on June 30, 1976, of the first member appointed by the governor pursuant to the increase from seven to eight of the number of members appointed by the governor for provisions covering the staggered terms of the original appointees, added provisions for the allowance of specific exceptions to the majority rule policy of the agency, and added provision for the appointment of deputies to exercise powers and du-

ties if the commissioners of environmental conservation and commerce and the director of the office of planning services in the agency.

Effective Date of 1975 Amendment; Retroactive Application. Amendment by L.1975, c. 464, eff. July 24, 1975, retroactive in certain instances to Apr. 1, 1975, see section 57 of L.1975, c. 464, set out as a note under section 150 of the Executive Law.

Transfer of Functions; Preservation of Rights; Pending Matters; Rules and Regulations; Appropriations; Separability. See note under section 152.

§ 803-a. Adirondack park local government review board

1. For the purpose of advising and assisting the Adirondack park agency in carrying out its functions, powers and duties, there is hereby established the Adirondack park local government review board. Such board shall consist of twelve members, each of whom shall be a resident of a county wholly or partly within the park. No more than one member shall be a resident of any single county. Each member shall be appointed by or in the manner determined by the legislative body of each such county.

2. The members of the review board shall serve for such terms as shall be determined by their respective appointing authorities. Any member of the board may, if authorized by his appointing authority, designate an alternate to serve in his absence.

3. The review board shall elect, for such term as it may determine, a chairman from among its membership and such other officers as it deems necessary.

4. The review board shall meet regularly at least four times each year. Special meetings may be called by the chairman and shall be called by him at the request of a majority of the review board.

5. No member of the review board shall be disqualified from holding any other office or employment by reason of his appointment hereunder, notwithstanding the provisions of any general, special or local law.

6. The members of the review board shall receive no compensation for their services but their respective appointing authorities may provide for payment of their actual and necessary expenses incurred in the performance of their duties hereunder.

7. In addition to any other functions or duties specifically required or authorized in this article, the review board shall monitor the administration and enforcement of the Adirondack park land use and development plan and periodically report thereon, and make recommendations in regard thereto, to the governor and the legislature, and to the county legislative body of each of the counties wholly or partly within the park.

Added L.1973, c. 348, § 1.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

§ 804. General powers and duties of the agency

The agency shall have the power:

1. To sue and be sued;

2. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article;

3. To establish and maintain such facilities as may be necessary for the transacting of its business;

4. To appoint an executive officer, officers, agents, employees, and prescribe their duties and qualifications and fix their compensation;

5. To utilize to the extent feasible the staff and facilities of existing state agencies, pursuant to an allocation to be made by the director of the budget;

6. To hold hearings and subpoena witnesses in the exercise of its powers, functions and duties provided for by this article;

7. To contract for professional and technical assistance and advice;

8. To contract for and to accept any assistance, including but not limited to gifts, grants or loans of funds or of property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the approval of the director of the budget;

9. To adopt, amend and repeal, after public hearing (except in the case of rules and regulations that relate to the organization or internal management of the agency), such rules and regulations, consistent with this article, as it deems necessary to administer this article, and to do any and all things necessary or convenient to carry out the purposes and policies of this article and exercise powers granted by law; and

10. To report periodically to the governor and the legislature on the conduct of its activities but not less than once a year, furnishing a copy of each such report to the clerk of the county legislative body of each county wholly or partly within the park and to the review board. As amended L.1973, c. 348, § 1.

1973 Amendment. Catchline. L. 1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "General powers and duties" for "Powers."

Subd. 6. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "its powers" for "powers."

Subd. 9. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted provisions allowing for the adoption, amendment, and repeal of rules and regulations by the agency for provisions calling for encouragement and assistance to public and private agencies to acquire interests in real property and redesignated as the second part of subd. 9 provisions formerly set out in subd. 10 directing the doing of any and all things necessary or convenient to carry out the purposes and policies of this article and exercise of powers granted by law.

Subd. 10. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subd. 10. Provisions of former subd. 10 transferred into subd. 9 to form that part of subd 9 directing the doing of any and all things necessary or convenient to carry out the purposes and policies of this article and exercise of powers granted by law.

§ 805. Adirondack park land use and development plan

1. Adoption; status report. a. The Adirondack park land use and development plan is hereby adopted and shall hereafter serve to guide land use planning and development throughout the entire area of the Adirondack park, except for those lands owned by the state.

b. The agency shall, in consultation with the Adirondack park local government review board, continually review and evaluate the land use and development plan as an ongoing planning process in the light of changing needs and conditions. The agency shall consult and work closely with local governments and local, county and regional planning agencies in this ongoing planning process, particularly as it pertains to their respective territorial areas and jurisdictions. In February, nineteen hundred seventy-six, the agency shall submit a comprehensive report to the governor and the legislature, furnishing a copy thereof to the clerk of the county legislative body of each county wholly or partly within the park and to the review board concerning the status of this planning process and the administration and enforcement of the land use and development plan, as provided for herein, by the agency and local governments.

2. Official Adirondack park land use and development plan map. a. The official Adirondack park land use and development plan map shall have the land use planning and regulatory effect authorized under this article.

b. Within twenty days after the enactment of this section, the agency shall file the Official Adirondack park land use and development plan map, as approved by the agency on March third, nineteen hundred seventy-three, and filed in the capitol, at its headquarters and a certified copy thereof with the secretary of state and reasonable facsimiles thereof with the review board and the clerk of each county and local government wholly or partially within the Adirondack park. Within twenty days after any amendment to the plan map, whether by law or by the agency, except an amendment granting in part a request by the legislative body of a local government pursuant to subparagraph three of paragraph c of this subdivision, the agency shall enter such amendment on the plan map filed at its headquarters and file a certified copy thereof with the review board and each of the state and local officers with whom a copy of the plan map is on file hereunder. The agency shall enter and file amendments granting in part a request by the legislative body of a local government pursuant to subparagraph three of paragraph c of this subdivision no sooner than sixty days and no later than ninety days after making such amendments. Such state and local officers shall enter such amendment on the plan map on file with them upon receipt of such certified copy in accordance with procedures prescribed by the agency. Such amendments shall take effect upon conclusion of such twenty-day or ninety-day filing period.

c. The agency may make the following amendments to the plan map in the following manner:

(1) Any amendment to reclassify land from any land use area to any other land use area or areas, if the land involved is less than twenty-five hundred acres, after public hearing thereon and upon an affirmative vote of two-thirds of its members, at the request of any owner of record of the land involved or at the request of the legislative body of a local government.

(2) Any amendment to reclassify land from any land use area to any other land use area or areas for which a greater intensity of development is allowed under the overall intensity guidelines if the land involved is less than twenty-five hundred acres, after public hearing thereon and upon an affirmative vote of two-thirds of its members, on its own initiative.

(3) Any amendment to reclassify land from any land use area to any other land use area or areas, if the reclassification effects a comprehensive review and evaluation of the plan map, at the request of the legislative body of a local government which has (a) completed and submitted to the agency a current and comprehensive inventory and analysis of the natural resource, open space, public, economic and other land use factors as may reflect the relative development amenability and limitations of the lands within its entire jurisdiction, and (b) formally adopted after public hearing a comprehensive master plan prepared pursuant to section two hundred seventy-two-a of the town law or section 7-722 of the village law, after public hearing thereon and upon an affirmative vote of a majority of its members. If the agency grants the amendment request in part, it shall not enter or file the amendment or amendments for a period of sixty days thereafter, during which time the legislative body of the local government may withdraw its request.

(4) Any amendment to clarify the boundaries of the land use areas as shown on the plan map, to correct any errors on the map or effect other technical changes on the map, upon an affirmative vote of a majority of its members and without a public hearing thereon, unless the agency determines that a public hearing is appropriate, on its own motion or at the request of the legislative body of a local government or at the request of any owner of record of the land involved.

(5) Before making any plan map amendment, except pursuant to subparagraph four of this paragraph, the agency must find that the reclassification would accurately reflect the legislative findings and pur-

poses of section eight hundred one of this article and would be consistent with the land use and development plan, including the character description and purposes, policies and objectives of the land use area to which reclassification is proposed, taking into account such existing natural resource, open space, public, economic and other land use factors and any comprehensive master plans adopted pursuant to the town or village law, as may reflect the relative development amenability and limitations of the land in question. The agency's determination shall be consistent with and reflect the regional nature of the land use and development plan and the regional scale and approach used in its preparation.

d. The agency may, after consultation with the Adirondack park local government review board, recommend to the governor and legislature any other amendments to the plan map after public hearing thereon and upon an affirmative vote of a majority of its members.

e. Upon receipt of a request to amend the plan map or upon determining to amend the map on its own initiative, the agency shall provide notice of receipt of the request or notice of the determination and a brief description of the amendment requested or contemplated to the Adirondack park local government review board, the chairman of the county planning agency, if any, the chairman of the appropriate regional planning board, and to the chief elected officer, clerk and planning board chairman, if any, of the local government wherein the land is located, and shall invite their comments.

f. The public hearings required or authorized in this subdivision shall be held by the agency in each local government wherein such land is located after not less than fifteen days notice thereof by publication at least once in a newspaper of general circulation in such local government or local governments, by conspicuous posting of the land involved, and by individual notice served by certified mail upon each owner of such land to the extent discernible from the latest completed tax assessment roll and by mail upon the Adirondack park local government review board, the persons named in paragraph e of this subdivision, and the clerk of any local government within five hundred feet of the land involved.

g. The agency shall act upon requests for amendments to the plan map within one hundred twenty days of receipt of a request in such form and manner as it shall prescribe; provided, however, that in the case of requests concerning which it determines to hold a public hearing, it shall, within ninety days of receipt of the request, schedule the hearing and shall act within sixty days of the close of the hearing. In the case of a request received when snow cover or ground conditions prevent such field investigations as is necessary to act with respect to the request, or in the case of a request or series of related requests exceeding five hundred acres, the time periods herein provided shall be extended an additional ninety days or until adequate field inspection is possible, whichever is the lesser period. Any of the time periods specified in this paragraph may be waived or extended for good cause by written request of the applicant and consent of the agency or by written request of the agency and consent by the applicant.

3. Land use areas: character descriptions, and purposes, policies and objectives; overall intensity guidelines; classification of compatible uses lists. a. The primary uses on the classification of compatible uses list for each land use area except hamlet areas, as set forth in this subdivision, are those uses 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 for such area. The secondary uses on such list are those which are generally compatible with such area depending upon their particular location and impact upon nearby uses and conformity with the overall intensity guideline for such area.

b. The classification of compatible uses lists shall also include any additions thereto by agency amendment pursuant to this section, and

the agency may, after consultation with the Adirondack park local government review board, recommend subtractions thereto to the governor and legislature upon an affirmative vote of a majority of its members and after public hearing thereon. The agency may amend the classification of compatible uses lists to make additions thereto after public hearing thereon and upon an affirmative vote of two-thirds of its members. A certified copy of the agency's resolution adopting such amendment shall, within twenty days after adoption thereof, be filed by the agency with the Adirondack park local government review board and the same state and local officers with whom the plan map is required to be filed under paragraph b of subdivision two and with the legislature. Such amendments shall take effect upon conclusion of such twenty-day filing period. The public hearings authorized or required in this paragraph shall be held in any county wholly or partially within the Adirondack park after not less than fifteen days notice thereof by publication at least once in a newspaper of general circulation in each county wholly or partially within the park and in at least three metropolitan areas of the state, and individual notice served by mail upon:

(1) the chairman of the planning board, if any, and the clerk of each local government, and the chairman of the county planning agency, if any, and the clerk of each county, wholly or partially within the park;

(2) the chairman of each regional planning agency whose jurisdiction is wholly or partially within the park; and

(3) the Adirondack park local government review board.

c. Hamlet areas. (1) Character description. Hamlet areas, delineated in brown on the plan map, range from large, varied communities that contain a sizeable permanent, seasonal and transient populations with a great diversity of residential, commercial, tourist and industrial development and a high level of public services and facilities, to smaller, less varied communities with a lesser degree and diversity of development and a generally lower level of public services and facilities.

(2) Purposes, policies and objectives. Hamlet areas will serve as the service and growth centers in the park. They are intended to accommodate a large portion of the necessary and natural expansion of the park's housing, commercial and industrial activities. In these areas, a wide variety of housing, commercial, recreational, social and professional needs of the park's permanent, seasonal and transient populations will be met. The building intensities that may occur in such areas will allow a high and desirable level of public and institutional services to be economically feasible. Because a hamlet is concentrated in character and located in areas where existing development patterns indicate the demand for and viability of service and growth centers, these areas will discourage the haphazard location and dispersion of intense building development in the park's open space areas. These areas will continue to provide services to park residents and visitors and, in conjunction with other land use areas and activities on both private and public land, will provide a diversity of land uses that will satisfy the needs of a wide variety of people.

The delineation of hamlet areas on the plan map is designed to provide reasonable expansion areas for the existing hamlets, where the surrounding resources permit such expansion. Local government should take the initiative in suggesting appropriate expansions of the presently delineated hamlet boundaries, both prior to and at the time of enactment of local land use programs.

(3) All land uses and development are considered compatible with the character, purposes and objectives of hamlet areas.

(4) No overall intensity guideline is applicable to hamlet areas.

d. Moderate intensity use areas. (1) Character description. Moderate intensity use areas, delineated in red on the plan map, are those areas where the capability of the natural resources and the anticipated need for future development indicate that relatively intense development, primarily residential in character, is possible, desirable and suitable.

These areas are primarily located near or adjacent to hamlets to provide for residential expansion. They are also located along highways or accessible shorelines where existing development has established the character of the area.

Those areas identified as moderate intensity use where relatively intense development does not already exist are generally characterized by deep soils on moderate slopes and are readily accessible to existing hamlets.

(2) Purposes, policies and objectives. Moderate intensity use areas will provide for development opportunities in areas where development will not significantly harm the relatively tolerant physical and biological resources. These areas are designed to provide for residential expansion and growth and to accommodate uses related to residential uses in the vicinity of hamlets where community services can most readily and economically be provided. Such growth and the services related to it will generally be at less intense levels than in hamlet areas.

(3) Guidelines for overall intensity of development. The overall intensity of development for land located in any moderate intensity use area should not exceed approximately five hundred principal buildings per square mile.

(4) Classification of compatible uses:

Primary uses in moderate intensity use areas:

1. Single family dwellings.
2. Individual mobile homes.
3. Open space recreation uses.
4. Agricultural uses.
5. Agricultural use structures.
6. Forestry uses.
7. Forestry use structures.
8. Hunting and fishing cabins and hunting and fishing and other private club structures.
9. Game preserves and private parks.
10. Cemeteries.
11. Private roads.
12. Private sand and gravel extractions.
13. Public utility uses.
14. Accessory uses and structures to any use classified as a compatible use.

Secondary uses in moderate intensity use areas:

1. Multiple family dwellings.
2. Mobile home courts.
3. Public and semi-public buildings.
4. Municipal roads.
5. Agricultural service uses.
6. Commercial uses.
7. Tourist accommodations.
8. Tourist attractions.
9. Marinas, boatyards and boat launching sites.
10. Campgrounds.
11. Group camps.
12. Golf courses.
13. Ski centers.
14. Commercial seaplane bases.
15. Commercial or private airports.
16. Sawmills, chipping mills, pallet mills and similar wood using facilities.
17. Commercial sand and gravel extractions.
18. Mineral extractions.
19. Mineral extraction structures.
20. Watershed management and flood control projects.
21. Sewage treatment plants.

22. Major public utility uses.
23. Industrial uses.

e. Low intensity use areas. (1) Character description. Low intensity use areas, delineated in orange on the plan map, are those readily accessible areas, normally within reasonable proximity to a hamlet, where the physical and biological resources are fairly tolerant and can withstand development at an intensity somewhat lower than found in hamlets and moderate intensity use areas. While these areas often exhibit wide variability in the land's capability to support development, they are generally areas with fairly deep soils, moderate slopes and no large acreages of critical biological importance. Where these areas are adjacent to or near hamlets, clustering homes on the most developable portions of these areas makes possible a relatively high level of residential units and local services.

(2) Purposes, policies and objectives. The purpose of low intensity use areas is to provide for development opportunities at levels that will protect the physical and biological resources, while still providing for orderly growth and development of the park. It is anticipated that these areas will primarily be used to provide housing development opportunities not only for park residents but also for the growing seasonal home market. In addition, services and uses related to residential uses may be located at a lower intensity than in hamlets or moderate intensity use areas.

(3) Guidelines for overall intensity of development. The overall intensity of development for land located in any low intensity use area should not exceed approximately two hundred principal buildings per square mile.

(4) Classification of compatible uses:

Primary uses in low intensity use areas:

1. Single family dwellings.
2. Individual mobile homes.
3. Open space recreation uses.
4. Agricultural uses.
5. Agricultural use structures.
6. Forestry uses.
7. Forestry use structures.
8. Hunting and fishing cabins and hunting and fishing and other private club structures.
9. Game preserves and private parks.
10. Private roads.
11. Cemeteries.
12. Private sand and gravel extractions.
13. Public utility uses.
14. Accessory uses and structures to any use classified as a compatible use.

Secondary uses in low intensity use areas:

1. Multiple family dwellings.
2. Mobile home courts.
3. Public and semi-public buildings.
4. Municipal roads.
5. Agricultural service uses.
6. Commercial uses.
7. Tourist accommodations.
8. Tourist attractions.
9. Marinas, boatyards and boat launching sites.
10. Golf courses.
11. Campgrounds.
12. Group camps.
13. Ski centers.
14. Commercial seaplane bases.
15. Commercial or private airports.

16. Sawmills, chipping mills, pallet mills and similar wood using facilities.
17. Commercial sand and gravel extractions.
18. Mineral extractions.
19. Mineral extraction structures.
20. Watershed management and flood control projects.
21. Sewage treatment plants.
22. Waste disposal areas.
23. Junkyards.
24. Major public utility uses.
25. Industrial uses.

f. Rural use areas. (1) Character description. Rural use areas, delineated in yellow on the plan map, are those areas where natural resource limitations and public considerations necessitate fairly stringent development constraints. These areas are characterized by substantial acreages of one or more of the following: fairly shallow soils, relatively severe slopes, significant ecotones, critical wildlife habitats, proximity to scenic vistas or key public lands. In addition, these areas are frequently remote from existing hamlet areas or are not readily accessible.

Consequently, these areas are characterized by a low level of development and variety of rural uses that are generally compatible with the protection of the relatively intolerant natural resources and the preservation of open space. These areas and the resource management areas provide the essential open space atmosphere that characterizes the park.

(2) Purposes, policies and objectives. The basic purpose and objective of rural use areas is to provide for and encourage those rural land uses that are consistent and compatible with the relatively low tolerance of the areas' natural resources and the preservation of the open spaces that are essential and basic to the unique character of the park. Another objective of rural use areas is to prevent strip development along major travel corridors in order to enhance the aesthetic and economic benefit derived from a park atmosphere along these corridors.

Residential development and related development and uses should occur on large lots or in relatively small clusters on carefully selected and well designed sites. This will provide for further diversity in residential and related development opportunities in the park.

(3) Guideline for overall intensity of development. The overall intensity of development for land located in any rural use area should not exceed approximately seventy-five principal buildings per square mile.

(4) Classification of compatible uses.

Primary uses in rural use areas:

1. Single family dwellings.
2. Individual mobile homes.
3. Open space recreation uses.
4. Agricultural uses.
5. Agricultural use structures.
6. Forestry uses.
7. Forestry use structures.
8. Hunting and fishing cabins and hunting and fishing and other private club structures.
9. Game preserves and private parks.
10. Cemeteries.
11. Private roads.
12. Private sand and gravel extractions.
13. Public utility uses.
14. Accessory uses and structures to any use classified as a compatible use.

Secondary uses in rural use areas:

1. Multiple family dwellings.
2. Mobile home courts.
3. Public and semi-public buildings.
4. Municipal roads.
5. Agricultural service uses.
6. Commercial uses.
7. Tourist accommodations.
8. Marinas, boatyards and boat launching sites.
9. Golf courses.
10. Campgrounds.
11. Group camps.
12. Ski centers.
13. Commercial seaplane bases.
14. Commercial or private airports.
15. Sawmills, chipping mills, pallet mills and similar wood using facilities.
16. Commercial sand and gravel extractions.
17. Mineral extractions.
18. Mineral extraction structures.
19. Watershed management and flood control projects.
20. Sewage treatment plants.
21. Waste disposal areas.
22. Junkyards.
23. Major public utility uses.
24. Industrial uses.

g. Resource management areas. (1) Character description. Resource management areas, delineated in green on the plan map, are those lands where the need to protect, manage and enhance forest, agricultural, recreational and open space resources is of paramount importance because of overriding natural resource and public considerations. Open space uses, including forest management, agriculture and recreational activities, are found throughout these areas.

Many resource management areas are characterized by substantial acreages of one or more of the following: shallow soils, severe slopes, elevations of over twenty-five hundred feet, flood plains, proximity to designated or proposed wild or scenic rivers, wetlands, critical wildlife habitats or habitats of rare and endangered plant and animal species.

Other resource management areas include extensive tracts under active forest management that are vital to the wood using industry and necessary to insure its raw material needs.

Important and viable agricultural areas are included in resource management areas, with many farms exhibiting a high level of capital investment for agricultural buildings and equipment. These agricultural areas are of considerable economic importance to segments of the park and provide for a type of open space which is compatible with the park's character.

(2) Purposes, policies and objectives. The basic purposes and objectives of resource management areas are to protect the delicate physical and biological resources, encourage proper and economic management of forest, agricultural and recreational resources and preserve the open spaces that are essential and basic to the unique character of the park. Another objective of these areas is to prevent strip development along major travel corridors in order to enhance the aesthetic and economic benefits derived from a park atmosphere along these corridors.

Finally, resource management areas will allow for residential development on substantial acreages or in small clusters on carefully selected and well designed sites.

(3) Guidelines for overall intensity of development. The overall intensity of development for land located in any resource management

area should not exceed approximately fifteen principal buildings per square mile.

(4) Classification of compatible uses.

Primary uses in resource management areas:

1. Agricultural uses.
2. Agricultural use structures.
3. Open space recreation uses.
4. Forestry uses.
5. Forestry use structures.
6. Game preserves and private parks.
7. Private roads.
8. Private sand and gravel extractions.
9. Public utility uses.
10. Hunting and fishing cabins and hunting and fishing and other private club structures involving less than five hundred square feet of floor space.
11. Accessory uses and structures to any use classified as a compatible use.

Secondary uses in resource management areas:

1. Single family dwellings.
2. Individual mobile homes.
3. Hunting and fishing cabins and hunting and fishing and other private club structures involving five hundred square feet or more of floor space.
4. Campgrounds.
5. Group camps.
6. Ski centers and related tourist accommodations.
7. Agricultural service uses.
8. Sawmills, chipping mills, pallet mills and similar wood using facilities.
9. Commercial sand and gravel extractions.
10. Mineral extractions.
11. Mineral extraction structures.
12. Watershed management and flood control projects.
13. Sewage treatment plants.
14. Major public utility uses.
15. Municipal roads.
16. Golf courses.

h. Industrial use areas. (1) Character description. Industrial use areas, delineated in purple on the plan map, include those areas that are substantial in size and located outside of hamlet areas and are areas (1) where existing land uses are predominantly of an industrial or mineral extraction nature or (2) identified by local and state officials as having potential for new industrial development.

(2) Purposes, policies and objectives. Industrial use areas will encourage the continued operation of major existing industrial and mineral extraction uses important to the economy of the Adirondack region and will provide suitable locations for new industrial and mineral extraction activities that may contribute to the economic growth of the park without detracting from its character. Land uses that might conflict with existing or potential industrial or mineral extraction uses are discouraged in industrial use areas.

(3) Classification of compatible uses.

Primary uses in industrial use areas:

1. Industrial uses.
2. Mineral extractions.
3. Mineral extraction structures.
4. Private sand and gravel extractions.
5. Commercial sand and gravel extractions.
6. Sawmills, chipping mills, pallet mills and similar wood using facilities.

7. Forestry uses.
8. Forestry use structures.
9. Agricultural uses.
10. Agricultural use structures.
11. Private roads.
12. Open space recreation uses.
13. Hunting and fishing cabins and hunting and fishing and other private club structures.
14. Public utility uses.
15. Major public utility uses.
16. Accessory uses and structures to any use classified as a compatible use.

Secondary uses in industrial use areas:

1. Commercial uses.
2. Agricultural service uses.
3. Public and semi-public buildings.
4. Municipal roads.
5. Sewage treatment plants.
6. Waste disposal areas.
7. Junkyards.

(4) No overall intensity guideline is applicable to industrial use areas.

4. Development considerations. The following are those factors which relate to potential for adverse impact upon the park's natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources and which shall be considered, as provided in this article, before any significant new land use or development or subdivision of land is undertaken in the park. Any burden on the public in providing facilities and services made necessary by such land use and development or subdivision of land shall also be taken into account, as well as any commercial, industrial, residential, recreational or other benefits which might be derived therefrom:

a. Natural resource considerations.

(1) Water
- (a) Existing water quality.
- (b) Natural sedimentation of siltation.
- (c) Eutrophication.
- (d) Existing drainage and runoff patterns.
- (e) Existing flow characteristics.
- (f) Existing water table and rates of recharge.

(2) Land
- (a) Existing topography.
- (b) Erosion and slippage.
- (c) Floodplain and flood hazard.
- (d) Mineral resources.
- (e) Viable agricultural soils.
- (f) Forest resources.
- (g) Open space resources.
- (h) Vegetative cover.
- (i) The quality and availability of land for outdoor recreational purposes.

(3) Air
- (a) Air quality.

(4) Noise
- (a) Noise levels.

(5) Critical resource areas
- (a) Rivers and corridors of rivers designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law.
- (b) Rare plant communities.
- (c) Habitats of rare and endangered species and key wildlife habitats.

(d) Alpine and subalpine life zones.
(e) Wetlands.
(f) Elevations of twenty-five hundred feet or more.
(g) Unique features, including gorges, waterfalls, and geologic formations.
(6) Wildlife
(a) Fish and wildlife.
(7) Aesthetics
(a) Scenic vistas.
(b) Natural and man-made travel corridors.
b. Historic site considerations.
(1) Historic factors
(a) Historic sites or structures.
c. Site development considerations.
(1) Natural site factors
(a) Geology.
(b) Slopes.
(c) Soil characteristics.
(d) Depth to ground water and other hydrological factors.
(2) Other site factors
(a) Adjoining and nearby land uses.
(b) Adequacy of site facilities.
d. Governmental considerations.
(1) Governmental service and finance factors
(a) Ability of government to provide facilities and services.
(b) Municipal, school or special district taxes or special district user charges.
e. Governmental review considerations.
(1) Governmental control factors
(a) Conformance with other governmental controls.

As amended L.1973, c. 348, § 1; L.1974, c. 579, §§ 3, 4; L.1976, c. 899, §§ 4, 5; L.1979, c. 428, §§ 1–3; L.1980, c. 801, §§ 1–3.

1980 Amendment. Subd. 2, par. b. L.1980, c. 801, § 1, eff. June 30, 1980, in sentence beginning "Within twenty days after any amendment" inserted "except an amendment granting in part a request by the legislative body of a local government pursuant to subparagraph three of paragraph c of this subdivision.", added sentence beginning "The agency shall", and in sentence beginning "Such state" inserted "or ninety-day".

Subd. 2, par. c. L.1980, c. 801, §§ 2, 3, eff. June 30, 1980, in subpar. (1) inserted "or at the request of the legislative body of a local government", in subpar. (2) deleted "or at the request of the legislative body of a local government" following "initiative", and in subpar. (3), sentence beginning "Any amendment" substituted "any land" for "one land", deleted "the land involved is twenty-five hundred acres or more and" following "if" and "results from the initial approval by the agency of a local land use program" following "reclassification", inserted "effects a comprehensive review and evaluation of the plan map, at the request of the legislative body of a local government which has (a) completed and submitted to the agency a current and comprehensive inventory and analysis of the natural resource, open space, public economic and other land use factors as may reflect the development amenability and limitations of the lands within its entire jurisdiction, and (b) formally adopted after public hearing a comprehensive master plan prepared pursuant to section two hundred seventy-two-a of the town law or section 7-722 of the village law", and substituted "a majority" for "two-thirds"; added sentence beginning "If the agency grants"; renumbered former subpar. (5) as (4), repealed former subpar. (4) which related to amendment to reclassify land from any land use area to any other land use areas if land involves less than 2500 acres, and renumbered subpar. (6) as (5) and therein substituted "four" for "five", inserted "economic" and "and any comprehensive master plans adopted pursuant to the town or village law,".

1979 Amendment. Subd. 2, par. c. L.1979, c. 428, § 1, eff. on the 60th day after July 5, 1979, in subpar. (4) inserted "provided the amendments have been the subject of a hearing held by the local government".

Subd. 2, par. e. L.1979, c. 428, § 3, eff. on the 60th day after July 5,

1979, added par. e. Former par. e was redesignated f.

Subd. 2, par. f. L.1979, c. 428, § 2, eff. on the 60th day after July 5, 1979, redesignated former par. (e) as (f) and therein substituted "the Adirondack park local government review board, the persons named in paragraph e of this subdivision, and the clerk of any local government within five hundred feet of the land involved" for subpars. (1) to (5) which related to service of notice on certain specified boards, agencies, and local governments.

Subd. 2, par. g. L.1979, c. 428, § 3, eff. on the 60th day after July 5, 1979, added par. g.

1976 Amendment. Subd. 2, par. c, subpar. (6). L.1976, c. 899, § 4, eff. July 27, 1976, added subpar. (6).

Subd. 2, par. e. L.1976, c. 899, § 5, eff. July 27, 1976, among other changes, redesignated former subpars. (1) to (6) as (1) to (5).

Subd. 3, par. b. L.1976, c. 899, § 5, eff. July 27, 1976, permitted individual notice to be served by mail, in lieu of certified mail.

1974 Amendment. Subd. 2, par. b. L.1974, c. 679, § 3, eff. May 30, 1974, provided the amendments shall take effect upon conclusion of the period and not 30 days after such period.

Subd. 2, par. e. L.1974, c. 679, § 3, eff. May 30, 1974, in cl. (1), deleted "of record" preceding "of such land and inserted "to the extent discernible from the latest completed tax assessment roll"; added cl. (6).

Subd. 3, par. b. L.1974, c. 679, § 4, eff. May 30, 1974, provided the amendments shall take effect upon conclusion of the period and not 30 days after such period.

1973 Amendment. Catchline. L. 1973, c. 348, § 1, eff. Aug. 1, 1973, substituted "Adirondack park land" for "Land."

Subd. 1. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted provisions covering the Adirondack park land and development plan and the status report to be submitted in February, 1976, for provisions calling for the development and submission on or before Jan. 1, 1973, of a land use and development plan applicable to the entire area of the Adirondack park.

Subd. 2. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted provisions covering the official Adirondack park land use and development plan map and the methods of amending such map for provisions directing that the land use and development plan divide the Adirondack park lands by map into areas and by accompanying text establish the intensity of the land use and development permissible within each area.

Subd. 3. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted provisions covering land use areas, the character descriptions, purposes, policies, and objectives of such land use areas, overall intensity guidelines, classification of compatible uses lists, and the six types of land use areas, i. e. hamlet areas, moderate intensity use areas, low intensity use areas, rural use areas, resource management areas, and industrial use areas for provisions setting out the requisite recommendations for implementation of the plan to carry out the plan's objectives.

Subd. 4. L.1973, c. 348, § 1, eff. Aug. 1, 1973, substituted provisions enumerating the factors to be considered before significant new land use or development or land subdivision is undertaken, i. e. natural resource considerations, historic development considerations, site development considerations, governmental considerations, and governmental review considerations for provisions requiring that the agency hold public hearings prior to the submission of the land use and development plan and recommendations for implementation.

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1. Filing of map

Assertion that this article imposes a "total freeze" on private development is refuted by fact that there are a great number of permissible uses for each land classification within the Adirondack Park. Adirondack Park Agency v. Ton-Da-Lay Associates, 1978, 61 A.D.2d 107, 401 N.Y.S.2d 903, appeal dismissed 45 N.Y.2d 834, 409 N.Y.S.2d 214, 381 N.E.2d 612.

Fact that comprehensive and extensive system of land use controls applicable to privately owned land within Adirondack Park require filing of official map in various state and local governmental offices was not evidence of a compensable "taking" by the State; filing of land use maps is a common feature of zoning law. Horizon Adirondack Corp. v. State, 1976, 88 Misc.2d 619, 388 N.Y.S.2d 235.

The restrictions as to the filing of maps in the office of a county clerk by a person or corporation subdividing real property into lots for the purpose of offering some for sale to

the public as provided by Real Property Law § 334, do not apply to the filing by the state agency known as the Adirondack park agency of its official Adirondack park land use and development plan map with the clerk of each county and local government wholly or partially within the Adirondack park, as required by this section. 1973, Op.Atty.Gen. (Inf.) 140.

2. Constitutionality

Requirement that Agency consider aesthetics of scenic vistas and natural and man-made travel corridors before approving project or granting permit was not unconstitutional delegation of power to Agency. McCormic v. Lawrence, 1976, 54 A.D.2d 123, 387 N.Y.S.2d 919.

2a. Generally

Both inverse condemnation and zoning cases consider the various public policy implications of governmental actions; paramount among those is the balancing of equities that is required when private individuals or entities are called on to suffer restrictions on the use and enjoyment of their property for the benefit of the greater community. Horizon Adirondack Corp. v. State, 1976, 88 Misc.2d 619, 388 N.Y.S.2d 235.

3. Restraints on economic use

Fact that land use controls imposed by the State on private property in Adirondack Park were so restrictive that it had become infeasible for property owner to develop its property as planned or, in fact, to put it to any reasonable economic use were not the type of governmental acts that would constitute a "taking" as that term is used in appropriation law. Horizon Adirondack Corp. v. State, 1976, 88 Misc.2d 619, 388 N.Y.S.2d 235.

Although restraints on economic use of property, as adopted pursuant to exercise of the police power, are not a compensable taking, the particular government action involved must be given careful scrutiny. Id.

4. Aesthetic considerations

Aesthetics is valid subject of legislative concern and legislation aimed at promoting governmental interest in preserving appearance of area is permissible exercise of police power. McCormick v. Lawrence, 1976, 54 A.D.2d 123, 387 N.Y.S.2d 919.

Aesthetic, open space and environmental considerations are valid bases for imposing land use controls on privately owned land within Adirondack Park; since only by state regulation would interest of citizens of other areas of the state, not represented by the local governments within the Park, be given a notice, burden of the act on local owners was to be balanced against the broader interests of the region and the State in considering the fairness of the restrictions. Horizon Adirondack Corp. v. State, 1976, 88 Misc.2d 619, 388 N.Y.S.2d 235.

5. Incidents of ownership

Increases and decreases in the value of private property brought about by governmental actions, such as land use regulations, are incidents of ownership and will not constitute a compensable taking, in the absence of specific source of acts that constitute a "taking." Horizon Adirondack Corp. v. State, 1976, 88 Misc. 2d 619, 388 N.Y.S.2d 235.

§ 806. Shoreline restrictions

1. In order to provide adequate protection of the quality of the lakes, ponds, rivers and streams of the park and the qualities of their shorelines, no person shall undertake any new land use or development or subdivision of land that involves any shoreline within the park, except in compliance, at a minimum, with the following restrictions. In addition, compliance with these restrictions shall be required by the agency in its review of any project under section eight hundred nine and, at a minimum, by any local government in the adoption and enforcement of a local land use program. All distances contained in these restrictions shall be measured horizontally. For the purpose of this section, any lot, parcel or site that adjoins a shoreline, includes a shoreline or, in whole or in part, is located at or within the minimum set back requirement as provided in subparagraph two of paragraph a of this subdivision, and any land use or development on such a lot, parcel or site, shall be deemed to involve that shoreline.

a. In the case of the shorelines of all lakes and ponds and the shorelines of any river designated to be studied as a wild, scenic or recreational river in accordance with the environmental conservation law or any river or stream navigable by boat, including canoe, the following restrictions shall apply:

(1) The minimum lot width measured along the shoreline for each one family residential structure shall be fifty feet in hamlet areas, one hundred feet in moderate intensity use areas, one hundred twenty-five feet in low intensity use areas, one hundred fifty feet in rural use areas, and two hundred feet in resource management areas; provided that the minimum lot width for a lot not adjoining or including shoreline which is deemed to involve shoreline for the purposes of this section may be measured lateral to the shoreline at any point on the lot. Nothing herein shall be deemed to preclude the application of appropriate shoreline restrictions to new uses other than one family residential structures subject to project review by the agency or to an approved local land use program.

(2) The minimum setback of all principal buildings and accessory structures in excess of one hundred square feet, other than docks or boathouses, from the mean high-water mark shall be fifty feet in hamlet areas and moderate intensity use areas, seventy-five feet in low intensity and rural use areas, and one hundred feet in resource management areas.

(3) The removal of vegetation, including trees, shall be permitted on shorefront lots provided the following standards are met:

(a) Within thirty-five feet of the mean high-water mark not more than thirty percent of the trees in excess of six inches diameter at breast height existing at any time may be cut over any ten-year period.

(b) Within six feet of the mean high-water mark no vegetation may be removed, except that up to a maximum of thirty percent of the shorefront may be cleared of vegetation on any individual lot. This provision shall be adhered to in addition to (a) above.

(c) The above cutting standards shall not be deemed to prevent the removal of diseased vegetation or of rotten or damaged trees or of other vegetation that present safety or health hazards.

(4) The following minimum shoreline frontages shall be required in all land use areas for deeded or contractual access to all such lakes, ponds, rivers or streams for five or more lots, parcels or sites or multiple family dwelling units not having separate and distinct ownership of shore frontage:

(a) Where five to twenty lots or multiple family dwelling units are involved, a total of not less than one hundred feet.

(b) Where more than twenty and not more than one hundred lots or multiple dwelling units are involved, a minimum of three feet for each additional lot or multiple dwelling unit in excess of twenty.

(c) Where more than one hundred and not more than one hundred fifty lots or multiple dwelling units are involved, a minimum of two feet for each additional lot or multiple dwelling vnit in excess of one hundred.

(d) Where more than one hundred fifty lots or multiple dwelling units are involved, a minimum of one foot for each additional lot or multiple dwelling unit in excess of one hundred fifty.

b. In the case of all lakes, ponds, rivers and streams, the minimum setback of any on-site sewage drainage field or seepage pit shall be one hundred feet from the mean high-water mark in all land use areas.

2. In all of the above restrictions, the term "mean high-water mark" shall mean the spillway elevation contour, which is at seven hundred seventy-one feet elevation above mean sea level, whenever the Great Sacandaga Lake is involved.

3. a. Any person seeking a variance from the strict letter of the shoreline restrictions in connection with any new land use or development or subdivision of land proposed to be located in a land use area governed by an approved local land use program shall make application therefor to the local government as provided in such approved local land use program. If a person is seeking such a variance in a land use area not governed by an approved local land use program, he shall make application therefor to the agency whether or not the agency has project review jurisdiction over the new land use or development or subdivision of

land involved. Upon such application, and after public hearing thereon, the local government or the agency shall, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the restrictions, have authority to vary or modify the application of such restrictions relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of such restrictions shall be observed, public safety and welfare secured and substantial justice done.

b. The local government shall act upon any application to it within the time provided for in its local land use program. The agency shall act upon any application to it which is associated with a project subject to its review jurisdiction within the period provided in section eight hundred nine. In the case of any other application, the agency shall schedule a public hearing within fifteen days of receipt of an application in such form and manner as it shall prescribe. The public hearing shall be commenced within thirty days of the date it is scheduled. The agency shall act upon a variance application within forty-five days of the receipt by the agency of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.

4. The shoreline restrictions shall not apply to any emergency land use or development which is immediately necessary for the protection of life or property as defined by the agency in its rules and regulations governing its procedures to review projects as authorized in section eight hundred nine.

5. In order to encourage clustering of buildings and the maintenance of undeveloped shorelines, as an alternative to minimum lot widths of the shoreline restriction, shoreline development may take place in the following land use areas upon the following approximate overall intensities of principal buildings (other than boathouses) per linear mile of shoreline or proportionate fraction thereof:

Land Use Areas	Principal Buildings Per Linear Mile
Hamlet	106
Moderate Intensity	53
Low Intensity	42
Rural Use	36
Resource Management	26

This alternative method of cluster shoreline development shall only be employed where a single ownership or a group of two or more owners acting in concert is involved. In addition, approval of this method of development must carry with it provisions, whether by deed restriction, restrictive covenant or other similar appropriate means, to insure the retention in open space of the undeveloped portions of shoreline developed on a cluster basis. The agency, within its project review jurisdiction, or a local government under an approved local land use program, may apply these optional shoreline clustering provisions. Any person proposing to undertake new land use or development or subdivision of land in a land use area not governed by an approved local land use program and that is not subject to the agency's project review jurisdiction, may apply to the agency for a permit to employ such alternative method and the agency shall have authority to grant such a permit if the above required terms and conditions are met. The agency shall act upon such application within thirty days after receipt thereof.

Added L.1973, c. 348, § 1; amended L.1974, c. 679, § 5; L.1976, c. 899, § 6; L.1979, c. 428, § 4.

1979 Amendment. Subd. 3, par. a. L.1979, c. 428, § 4, eff. on the 60th day after July 5, 1979, designated part of existing provisions as par. a, substituted "shall make application" for "may make application" in two instances, and in sentence beginning "Upon such application" deleted ", as the case may be," following "or the agency".

1976 Amendment. Subd. 1. L.1976, c. 899, § 6, eff. July 27, 1976, omitted reference to visual qualities, added sentence beginning "For the purpose of this section", and in subpar. a. (1), inserted proviso clause.

Subd. 2. L.1976, c. 899, § 6, eff. July 27, 1976, omitted the term "flood stage elevation" as a substitute for "mean high-water mark" and added "shall mean the spillway elevation contour, which is at 771 feet elevation above mean sea level."

1974 Amendment. Subd. 3. L.1974, c. 679, § 5, eff. May 30, 1974, provided the agency shall act within 45 days, in lieu of 30 days, of an application involving new land use or development or subdivision of land outside its project review jurisdiction.

Former Section 806. Renumbered 815.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

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1. Local government controls

Where the town of Schroon adopted a zoning ordinance and subdivision regulation prior to July 1, 1971 but the 10-day period for the effective date of such ordinance after publication did not expire on or before July 1, 1971, such ordinance was ineffectual for the purpose of exempting the town of Schroon from interim development controls as provided for in subd. 13 of this section. 1972, Op. Atty.Gen. (Inf.) Nov. 9.

2. Boathouses

That boathouses are not subject to setback restrictions does not mean that they may not be prohibited in Adirondack Park. McCormick v. Lawrence, 1975, 83 Mis.2d 64, 372 N.Y.S.2d 156, affirmed 54 A.D.2d 123, 387 N.Y.S.2d 919.

Action of Adirondack Park Agency in prohibiting boathouses on lakeshore was not unlawful and unreasonable restriction in use and enjoyment of property. Id.

Decision by Adirondack Park Agency prohibiting construction of boathouses on peninsula on Oseetah Lake, on basis of aesthetic, scenic, and visual considerations, was not arbitrary or unreasonable. Id.

3. Hearing

This section required holding of public hearing before board of members of park agency could deny application for shoreline variance. Tyler v. Board of Members of Adirondack Park Agency, 1977, 58 A.D.2d 718, 396 N.Y.S.2d 285, on remand 92 Misc.2d 754, 402 N.Y.S.2d 513.

Adirondack Park Agency, which, without affording a hearing, had denied application for variance from Adirondack Park Agency Act's 50-foot setback restrictions with regard to certain lake, would be ordered to conduct hearing on application, in view of fact that neither state nor Agency had established an official mean high water mark for such lake and that aerial survey indicated that cabins, which were replaced by applicant's new structure, were 26½ to 28 feet from shoreline, rather than the 33 feet as found by such Agency which had determined that new structure was closer to lake than the cabins had been. Tyler v. Board of Members of Adirondack Park Agency, 1976, 86 Misc.2d 818, 382 N.Y.S.2d 259, affirmed 58 A.D.2d 718, 396 N.Y.S.2d 285.

This section pertaining to obtaining of variances from shoreline setback restrictions mandates that hearing be afforded on all variance applications, including instances in which the applications are denied. Id.

4. Mean high water mark

Failure of Adirondack Park Agency or state to establish precise "mean high water line" or "average annual high water level" of lake was defect fatal to Agency's motion for summary judgment on its counterclaim against petitioner property owner for injunctive relief to require petitioner to remove portions of his buildings which were closer than 28½ feet to mean high-water mark or line of lake. Tyler v. Board of Members of Adirondack Park Agency, 1978, 92 Misc.2d 754, 402 N.Y.S.2d 513.

§ 807. Local land use programs

1. The agency is authorized to review and approve any local land use program proposed by a local government and formally submitted by the legislative body of the local government to the agency for approval. Within a period of ninety days after such submission, or such longer period as may be agreed upon in writing by the agency and the local government, the agency shall review the local land use program and ap-

prove or disapprove it, or approve it subject to conditions. The agency shall approve the local land use program if the agency determines that such program meets all of the criteria set forth in subdivision two. If the agency fails to take final action on the local land use program within such ninety-day or longer period agreed upon by the agency and local government, the local land use program shall be deemed approved by the agency and the agency shall, upon the request of the legislative body of the local government, issue a certification to such effect to such chief elected official. Amendments to an approved local land use program that do not relate or pertain to the criteria for approval of a local land use program set forth in subdivision two of section eight hundred seven shall not be subject to approval by the agency. All amendments to an approved local land use program that do relate to such criteria shall be subject to approval by the agency as set forth in subdivision two of section eight hundred seven for approval of an initial local land use program.

2. The agency shall approve a local land use program if the agency determines that such program meets all of the following criteria: a. It is in furtherance and supportive of the land use and development plan.

b. It is compatible with the character descriptions and purposes, policies and objectives of the land use areas and, in regard to its map, compatible with the plan map.

c. It reasonably applies the overall intensity guidelines for the land use areas in the light of the particular needs and conditions of the local government. In applying the overall intensity guideline for a given land use area, the local land use program may provide for both greater and lesser intensity of development within such area provided that the overall intensity shall not exceed such guideline. In no event, however, shall bodies of water, such as lakes or ponds, located in a land use area be taken into account in the application of the overall intensity guideline for such area. The local land use program may disregard principal buildings in existence on August one, nineteen hundred seventy-three in applying the overall intensity guidelines for a land use area. If it does so, the land directly related to such principal buildings shall not be used in the computation of the total land area available for new principal buildings. The local land use program may be more restrictive than the overall intensity guidelines.

d. It reasonably applies the classification of compatible uses lists in the light of the needs and conditions of the local government. Accordingly, the local land use program may include uses not on these lists or exclude those that are on them, reclassify those classified on such lists as primary uses to secondary uses and those classified on such lists as secondary uses to primary uses, or prohibit any of the uses on such lists.

e. It incorporates at a minimum the shoreline restrictions as they relate to any shoreline within the local government. As an alternative to minimum lot sizes on shorelines, the optional shoreline clustering provisions contained in subdivision five of section eight hundred six may be employed in regard to all or specified portions of a shoreline in single ownerships or in situations involving a group of two or more owners acting in concert.

f. It requires review of class B regional projects and provides that any such project shall not be approved unless the local government body or officer having jurisdiction under the program determines that the undertaking or continuance of such project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, as to the impact of the project upon the

resources of the park, the local government body or officer having jurisdiction shall be required under the local land use program to apply the development considerations. The local land use program may expand upon the development considerations, but shall not eliminate any of them. The local land use program shall include a provision to insure that no class B regional project shall be disapproved except after public hearing thereon.

g. It contains adequate authority and provision for its administration and enforcement, including, at the option of the legislative body of the local government, authority to regulate any pre-existing land use or development, or any prefiled subdivision plat. The source of such authority shall be the municipal home rule law or any other applicable state enabling law. Notwithstanding any general or special law to the contrary, a local government may provide in its local land use program, if such program is approved by the agency, for planning board action without public hearings on subdivision plats of less than five lots, parcels or sites, provided that no such provision may authorize the planning board to disapprove any subdivision plat without having first conducted a public hearing, as required by law. In addition, the legislative body of a local government may include in its local land use program, if such program is approved by the agency, and to the extent permissible within the proper exercise of the police power, such procedures as may be necessary and appropriate for the review of class B regional projects as required in paragraph f of this subdivision, and, in connection with the granting of a permit for such projects: (1) authority to require restriction of land against further development of principal buildings, whether by deed restriction, restrictive covenant or other similar appropriate means, to ensure that the overall intensity guidelines as applied in the local land use program shall be respected; and

(2) authority, to the extent otherwise authorized by law, to impose reasonable requirements and conditions to insure that an approved class B regional project will be adequately supported by services and improvements made necessary by such project and to insure that such a project shall be completed in accordance with the terms and conditions of the approval.

3. The agency may separately review and approve, disapprove, or approve subject to conditions, significant components of a local land use program which relate or pertain to the entire territorial jurisdiction of a local government, if proposed by the local government and formally submitted by its legislative body. The agency shall approve such components if the agency determines that such criteria of subdivision two of this section as shall be relevant to each such component are met. Provided, however, that the separately approved components of a local land use program shall not be deemed an approved local land use program for the purposes of this section, section eight hundred eight or section eight hundred nine of this article, unless and until all of the components of the local land use program shall have been approved pursuant to the terms of this subdivision or subdivision four of this section. Each such component shall be reviewed and acted upon in accordance with the procedures and within the time periods specified in subdivision one of this section relative to review of local land use programs.

4. The agency may review and approve, disapprove or approve subject to conditions, a local land use program insofar as it relates or pertains to one or more land use areas within the territorial jurisdiction of the local government which in the aggregate is a significant geographical portion of the territorial jurisdiction of the local government, if proposed by the local government and formally submitted by its legislative body. The agency shall approve such program if the agency determines that all criteria of subdivision two of this section are met with respect to such geographical portion. If approved, or approved subject to conditions by the agency, such validly enacted or adopted program,

insofar as it pertains to such geographical portion, shall be deemed an approved local land use program with respect to such geographical portion in accordance with the terms and conditions of such approval, for the purposes of this section, section eight hundred eight and section eight hundred nine of this article. Provided, that nothing contained in this subdivision shall supercede or be construed in derogation of the provisions and requirements of the town law and village law otherwise applicable to the valid enactment or adoption of such program. The program, insofar as it pertains to such geographical portion, shall be reviewed and acted upon in accordance with the procedures and within the time periods specified in subdivision one of this section relative to review of local land use programs.

5. The agency shall, in its review of local land use programs, consult with appropriate public agencies, and shall provide opportunity for the Adirondack park local government review board and the appropriate county and regional planning agencies to review and comment on such programs under review.

6. The agency shall encourage and assist local governments in the preparation of local land use programs, including the provision of data, technical assistance and model provisions. Such model provisions shall be made available by the agency as soon as possible after the effective date of the adoption of the land use and development plan.

Added L.1973, c. 348, § 1; amended L.1974, c. 679, §§ 6, 7; L.1976, c. 899, §§ 7–9.

1976 Amendment. Subd. 2, par. g. L.1976, c. 899, § 7, eff. July 27, 1976, inserted sentence beginning "Notwithstanding any general".

Subds. 3, 4. L.1976, c. 899, §§ 8, 9, eff. July 27, 1976, added subds. 3 and 4. Former subds. 3 and 4, renumbered 5 and 6.

Subds. 5, 6. L.1976, c. 899, § 8, eff. July 27, 1976, renumbered former subds. 3 and 4, as 5 and 6.

1974 Amendment. Subd. 1. L.1974, c. 679, § 6, eff. May 30, 1974, provided that amendments that do not relate to criteria for approval of a local land use program set out in § 807, subd. 2, shall not be subject to agency approval, and amendments that do so relate shall be so subject.

Subd. 2, par. d. L.1974, c. 679, § 7, eff. May 30, 1974, substituted "primary" for "principal" in two instances.

Former Section 807. Renumbered 816.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

§ 808. Administration and enforcement of approved local land use programs

1. Local land use programs that have been approved by the agency and validly enacted or adopted shall be administered and enforced as provided for in such approved programs.

2. Upon receipt of an application to undertake any class B regional project that is permissible under an approved local land use program, the local government body or officer having jurisdiction thereof shall give written notice thereof to the agency together with such pertinent information as the agency may deem necessary. The agency shall have standing to participate as a party in the local review of such project, including any public hearing thereon, and to have the issuance of a permit therefor by such body or officer reviewed under article seventy-eight of the civil practice law and rules and to bring proceedings in any court of competent jurisdiction to have any undertaking pursuant to such permit restrained, enjoined, corrected or abated.

3. Upon receipt of an application for a variance from any provision of an approved local land use program involving land in any land use area other than a hamlet, including any shoreline restriction, the local government body or officer having jurisdiction thereof shall give written notice thereof to the agency together with such pertinent information as the agency may deem necessary. If such variance is granted, it shall

not take effect for thirty days after the granting thereof. If, within such thirty day period, the agency determines that such variance involves the provisions of the land use and development plan as approved in the local land use program including any shoreline restriction and was not based upon the appropriate statutory basis of practical difficulties or unnecessary hardships, the agency may reverse the local determination to permit the variance. If the agency so acts, the appropriate local government officer or body, as well as any other person aggrieved by such action, shall have standing to have such action reviewed under article seventy-eight of the civil practice law and rules.

4. The agency, after consultation with the Adirondack park local government review board, shall have standing to institute a proceeding in any court of competent jurisdiction to revoke its approval of a local land use program and reassert its review jurisdiction over class B regional projects under section eight hundred nine whenever the agency determines by a two-thirds affirmative vote of its members that the local government body or officer having jurisdiction has repeatedly or frequently failed or refused, after due notice and requests from the agency, and with such body or officer having had full opportunity to be heard on all issues involved, to administer or enforce the approved local land use program to adequately carry out the policies, purposes and objectives of the approved program or of the land use and development plan. Not earlier than one year after any such successful reassertion by the agency, or such earlier time as may be mutually agreed to, the legislative body of the local government involved may submit its local land use program, or any amended version thereof, or a newly proposed program to the agency for approval as provided for in section eight hundred seven for the initial approval of a local land use program.

5. The agency shall be a party who shall be joined, pursuant to the terms of subdivision a of section one thousand one of the civil practice law and rules, in any action initiated by or against a local government, or an instrumentality, agent or employee thereof, in which the issues to be adjudicated relate or pertain to the criteria for approval of a local land use program set forth in subdivision two of section eight hundred seven of this article. In any other action initiated by or against a local government, or an instrumentality, agent or employee thereof, joinder of the agency shall be governed by the terms of section one thousand two of the civil practice law and rules.

6. In any action where the agency is a party pursuant to the first sentence of subdivision five of this section, the attorney general shall, at the request of the local government and without cost to local government, also represent the local government as to those issues which are common to both the agency and the local government, and as to which both seek the same or substantially similar determination.

Added L.1973, c. 348, § 1; amended L.1976, c. 899, § 10.

1976 Amendment. Subds. 5 and 6. L.1976, c. 899, § 10, eff. July 27, 1976, added subds. 5 and 6.

Former Section 808. Renumbered 817.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

§ 809. Agency administration and enforcement of the land use and development plan

1. The agency shall have jurisdiction to review and approve all class A regional projects, including those proposed to be located in a land use area governed by an approved local land use program and, all class B regional projects in any land use area not governed by an approved and validly enacted or adopted local land use program.

All projects shall be reviewed and acted upon as expeditiously as practical. In particular, to facilitate the review of minor project applications, the agency shall develop simplified application forms to deal with

such projects, and will comply with the special procedures for such projects set forth in this section. For the purposes of this section, "minor project" shall mean any individual single family dwelling or mobile home or any subdivision involving two lots, parcels or sites.

2. a. Any person proposing to undertake a class A regional project in any land use area, or a class B regional project in any land use area not governed by an approved and validly enacted or adopted local land use program, shall make application to the agency for approval of such project and receive an agency permit therefor prior to undertaking the project. Such application shall be filed in such form and manner as the agency may prescribe. The agency shall, upon receipt of such application, provide notice of receipt of the application and a brief description of the project to the Adirondack park local government review board, the chairman of the county planning board, if any, of the county wherein the project is proposed to be located, to the chairman of the appropriate regional planning board, and to the chief elected officer, clerk and planning board chairman, if any, of the local government wherein such project is proposed to be located. The agency shall, upon request, furnish or make a copy of the application available to the review board or to the officials listed in this paragraph.

b. On or before fifteen calendar days after the receipt of such application the agency shall notify the project sponsor by certified mail whether or not the application is complete. For the purposes of this section, a "complete application" shall mean an application for a permit which is in an approved form and is determined by the agency to be complete for the purpose of commencing review of the application but which may need to be supplemented during the course of review as to matters contained in the application in order to enable the agency to make the findings and determinations required by this section. If the agency fails to mail such notice within such fifteen-day period, the application shall be deemed complete. If the agency determines the application is not complete, the notice shall include a concise statement of the respects in which the application is incomplete. The submission by the project sponsor of the requested additional information shall commence a new fifteen calendar day period for agency review of the additional information for the purposes of determining completeness. If the agency determines the application is complete, the notice shall so state.

A notice of application completion shall not be required in the case of applications for minor projects which the agency determines to be complete when filed. Such applications shall be deemed complete for the purposes of this section upon the date of receipt.

c. The project sponsor shall not undertake the project for a period of ninety days, or in the case of a minor project, forty-five days, following the date of such notice of application completion, or the date the application is deemed complete pursuant to the provisions of this section, unless a permit is issued prior to the expiration of such periods.

d. Immediately upon determining that an application is complete, the agency shall, except in relation to minor projects, cause a notice of application to be published in the next available environmental notice bulletin published by the department of environmental conservation pursuant to section 3-0306 of the environmental conservation law, which publication shall be not later than ten calendar days after the date of such notice. The time period for public comment on a permit application shall be stated in the notice of application. The agency shall at the same time mail a copy of the notice of application completion to the Adirondack park local government review board and to the persons named in paragraph a of subdivision two of this section, and invite their comments.

3. a. Within the time periods specified in paragraphs b and c of this subdivision, the agency shall make a decision on a permit application by notifying the project sponsor by certified mail of its decision to approve the project, approve the project subject to conditions or disapprove the project.

b. In the case of an application for a permit for which no public hearing has been held, the agency decision shall be mailed on or before ninety calendar days or, in the case of a minor project, forty-five calendar days, after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section.

c. In the case of an application for a permit for which a public hearing has been held, the agency decision shall be mailed on or before sixty calendar days after receipt by the agency of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.

d. If the agency determines to hold a public hearing on an application for a permit, the agency shall notify the project sponsor of its determination by certified mail on or before sixty calendar days or, in the case of a minor project, forty-five calendar days after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section. 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.

e. If the agency has notified the project sponsor of its determination to hold a public hearing, the sponsor shall not undertake the project during the time period specified in paragraph c of this subdivision. The notice of determination to hold a public hearing shall state that the project sponsor has the opportunity within fifteen days to withdraw his application or submit a new application. A public hearing shall commence on or before ninety calendar days, or in the case of a minor project, seventy-five days, after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section. In addition to notice of such hearing being mailed to the project sponsor, such notice shall also be given by publication at least once in the environmental notice bulletin and in a newspaper having general circulation in each local government wherein the project is proposed to be located, by conspicuous posting of the land involved, and by individual notice served by certified mail upon each owner of record of the land involved, and by mail upon: the Adirondack park local government review board, the persons named in paragraph a of subdivision two of this section, any adjoining landowner, to the extent reasonably discernible from the latest completed tax assessment roll, and the clerk of any local government within five hundred feet of the land involved. Public hearings held pursuant to this section shall be consolidated or held jointly with other state or local agencies whenever practicable.

4. The agency shall make provision in its rules and regulations adopted pursuant to subdivision fourteen of this section for the Adirondack park local government review board and county and regional planning agencies receiving notice under subdivision two to have opportunity to review and render advisory comments on the project under review by the agency.

5. Notice of an agency decision shall be given by mail to those entitled to individual notice of application under subdivision two and notice of hearing under subdivision three, if a hearing is held. If the decision is approval, the agency shall within ten days of issuance of its notification of approval grant a permit to the project sponsor to undertake the project. If the decision is approval subject to conditions, the

agency shall grant a permit only upon satisfactory fulfillment of such conditions. Approval subject to conditions shall expire six months from the date of such approval, or such longer time as is specified in the notification or approval, unless a permit has been granted. An agency permit shall serve as authorization for the project sponsor to undertake the project in accordance with the terms and conditions thereof.

6. a. If the agency fails to mail a decision on an application for a permit within the time periods specified in paragraphs b and c of subdivision three of this section, the project sponsor may cause notice of such failure to be made to the agency by means of certified mail, return receipt requested, addressed to the agency at its headquarters office. If, within five working days after the receipt of such notice the agency fails to mail a decision, the application shall be deemed approved and a permit deemed granted subject to any standard terms or conditions applicable to such a permit and the agency shall provide the project sponsor with a written certification to this effect.

b. Any time period specified in this section may be waived and extended for good cause by written request of the project sponsor and consent of the agency, or by written request of the agency and consent of the project sponsor.

c. At any time during the review of an application for a permit or a request by a permit holder for the renewal, reissuance, or modification of an existing permit pursuant to subdivision eight of this section, the agency may request additional information from the project sponsor or permit holder with regard to any matter contained in the application or request when such additional information is necessary for the agency to make any findings or determinations required by law. Such a request shall not extend any time period for agency action contained in this section. Failure by the project sponsor or permit holder to provide such information may be grounds for denial by the agency of the application or request.

7. a. A permit or certificate issued by the agency pursuant to subdivision five or six of this section shall expire within sixty days from the date thereof unless within such sixty-day period such permit or certificate shall have been duly recorded in the name of the landowner in the office of the clerk of the county wherein the project is proposed to be located. Where a permit involves action in concert by two or more landowners as described by paragraph c of subdivision ten of this section, the permit shall be recorded in the name of each landowner.

b. A permit when properly recorded shall operate and be construed as actual notice of the right to undertake the project and of the terms and conditions imposed by such permit. Such right shall extend to and such terms and conditions shall be binding upon all subsequent grantees of the land area subject to the permit, except those conditions which by their nature or wording are to be performed by the original project sponsor and except as may be otherwise provided by the terms of such permit.

c. If a project for which a permit has been granted, or a certificate issued, is not in existence within two years after the recording of such permit or certificate, unless the terms of the permit provides for a longer period of time, the project may not thereafter be undertaken or continued unless an application for a new permit therefor has been applied for and granted in the same manner and subject to all conditions governing the application for and granting of a permit as provided in this section. In determining whether to provide a longer period of time by when the project must be in existence, the agency shall give due consideration to the potential of the land related to the project to remain suitable for the use allowed by the permit and to the economic considerations attending the project.

8. a. Upon the provision of notice stating the grounds for its action and giving an opportunity for hearing to the permit holder, the agency may modify, suspend or revoke a permit.

b. A permit holder may make written request to the agency for the renewal, reissuance, or modification of an existing permit. Such a request shall be accompanied by sufficient information supporting the request for the agency action sought.

(1) In the case of a request which does not involve a material change in permit conditions, the applicable law, environmental conditions or technology since the date of issuance of the existing permit, the agency shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder of its decision on the request. If the decision is to deny the request, the permit holder shall be afforded an opportunity for hearing and notice of such decision shall be given by the agency in the next available issue of the environmental notice bulletin.

(2) In the case of a request which may involve a material change as described in subparagraph one of this paragraph, the agency shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder that the request shall be treated as an application for a new permit.

If pursuant to subparagraph one or two of this paragraph, the agency fails to mail a written determination to the permit holder within such fifteen calendar day period, the provisions of subdivision six of this section shall apply.

9. The agency shall not approve any class A regional project proposed to be located in a land use area governed by an approved local land use program, or grant a permit therefor, unless it first determines that such project meets all of the pertinent requirements and conditions of such approved local land use program and that 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 or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, as to the impact of the project upon such resources of the park, the agency shall consider those pertinent factors contained in the development considerations and provided for in such approved local land use program. The agency shall, in connection with its review of a project under this subdivision, make provision in its rules and regulations adopted under subdivision fourteen for the early involvement of the local government wherein such project is proposed to be located in the review of such project on an informal basis. Such local government shall have standing as a party in any public hearing on such project held by the agency.

10. The agency shall not approve any project proposed to be located in any land use area not governed by an approved local land use program, or grant a permit therefor, unless it first determines that such project meets the following criteria:

a. The project would be consistent with the land use and development plan.

b. The project would be compatible with the character description and purposes, policies and objectives of the land use area wherein it is proposed to be located. If the project is on the classification of compatible uses list for the land use area involved, there shall be a presumption of compatibility with the character description, purposes, policies and objectives of such land use area. If the project is a class B regional project because, as provided in section eight hundred ten, it is not listed as either a primary use or a secondary use on the classification of compatible uses list for the land use area wherein it is proposed to be located, there shall be a presumption that such project would not be compatible with the character description, purposes, policies and objectives of such land use area and the burden shall be on the project sponsor to demonstrate such compatibility to the satisfaction of the agency.

c. The project would be consistent with the overall intensity guideline for the land use area involved. A landowner shall not be allowed to construct, either directly or as a result of a proposed subdivision, more principal buildings on the land included within the project than the overall intensity guideline for the given land use area in which the project is located. In determining the land area upon which the intensity guideline is calculated and which is included within a project, the landowner shall only include land under his ownership and may include all adjacent land which he owns within that land use area irrespective of such dividing lines as lot lines, roads, rights of way, or streams and, in the absence of local land use programs governing the intensity of land use and development, irrespective of local government boundaries. Principal buildings in existence within the area included within a project, as such area is defined by the landowner, shall be counted in applying the intensity guidelines. As between two or more separate landowners in a given land use area the principal buildings on one landowner's property shall not be counted in applying the intensity guidelines to another landowner's project, except that two or more landowners whose lands are directly contiguous and located in the same general tax district or special levy or assessment district may, when acting in concert in submitting a project, aggregate such lands for purposes of applying the intensity guidelines to their lands thus aggregated. The area upon which the intensity guideline is calculated shall not include (a) bodies of water, such as lakes and ponds, (b) any land in the same ownership that is directly related to any principal building in existence on August first, nineteen hundred seventy-three, which land is not included in the project, and (c), in the case of any principal building constructed after August first, nineteen hundred seventy-three, any land in the same or any other ownership that was included within the area of any previous project in order to comply with the overall intensity guideline.

d. The project would comply with the shoreline restrictions if applicable. The agency may require a greater setback of any on-site sewage drainage field or seepage pit than required under the shoreline restrictions if it determines that soils or other pertinent conditions require such greater setback to reasonably protect the water quality of the water body involved.

e. 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 or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, as to the impact of the project upon such resources of the park, the agency shall consider those factors contained in the development considerations of the plan which are pertinent to the project under review.

11. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of the plan or the shoreline restrictions, the agency shall have authority in connection with a project under its review to vary or modify, after public hearing thereon, the application of any of such provisions or restrictions relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the provisions or restrictions shall be observed, public safety and welfare secured and substantial justice done.

12. The agency may conduct such investigations, examinations tests and site evaluations as it deems necessary to verify information contained in an application for a development permit, and the project sponsor, or owner of the land upon which the project is proposed, shall grant the agency or its agents permission to enter upon his land for these purposes.

13. The agency shall have authority to impose such requirements and conditions with its granting of a permit as are allowable within the proper exercise of the police power. The agency shall have specific authority in connection with its project review jurisdiction: a. To impose reasonable conditions and requirements, including the posting of performance bonds in favor of the local government as obligee, to ensure that any project for which a permit is granted will be adequately supported by basic services and improvements made necessary by the project. The cost of any such services or improvements may be imposed by requiring that the project sponsor provide the service or improvement or reserve land, or any interest therein, or contribute money in lieu thereof to the local government wherein the project is proposed to be located if such local government consents thereto. In the exercise of the authority contained in this provision, the agency shall consult with the affected municipalities and give due consideration to their views.

b. To impose reasonable conditions and requirements to ensure that a project for which a permit is granted by the agency, when undertaken or continued, will be completed in accordance with the terms and conditions of the permit, and that the project sponsor furnish appropriate guarantees of completion or otherwise demonstrate financial capacity to complete the project or any material part thereof and furnish appropriate guarantees or otherwise demonstrate that the project will be managed and maintained once completed in accordance with the terms of the permit.

c. To impose reasonable conditions and requirements to ensure that upon approval of a project the applicable overall intensity guideline for the land use area involved will be respected. Such requirement may include the restriction of land against further development of principal buildings, whether by deed restriction, restrictive covenant or other similar appropriate means.

d. To allow, upon request of a project sponsor, projects to be reviewed conceptually, and thereafter or simultaneously therewith to be divided into and reviewed by sections, and to grant or deny permits for such sections. Conceptual determinations may be made, and sectional permits may be granted subject to the provision of those requirements and conditions for improvements and services for, and for completion of the total project as the agency deems reasonable and necessary. Conceptual review shall focus upon the existing environmental setting and the likely impacts which would result from the project, including all proposed phases or segments thereof, but shall not result in a binding approval or disapproval. The agency shall in rules and regulations establish criteria, guidelines, and procedures for the conceptual and sectional review of proposed projects. Except to the extent, and only for such period of time as otherwise specifically stated in the agency's decision upon an application for a sectional permit, the granting of any sectional permit shall not constitute a finding, or be binding upon the agency, with respect to any portion of the total project not included in the section for which the permit is granted.

e. To issue a general permit for any class of projects concerning which the agency determines it may make the requisite statutory findings on a general basis.

14. The agency may, after public hearing, adopt, and have authority to amend or repeal, rules and regulations, consistent with the provisions of this section, to govern its project review procedures and to provide further guidance to potential project sponsors through further definition of the development considerations as they would apply to specific classes of projects in specific physical and biological conditions. Such rules and regulations may include but not be limited to:

a. Procedures prior to formal application to the agency for a permit for the informal discussion of preliminary plans for a proposed project and for preliminary approval or recommendations in regard to the proj-

ect. Such informal discussion shall be optional with the project sponsor and no such preliminary approval or recommendations shall relieve the sponsor from complying with the provisions governing submission of a project for review and obtaining a permit therefor as provided in this section.

b. Procedures for cooperation and joint action, including joint hearings, insofar as practical, with other state agencies having review or regulatory jurisdiction which relates with that of the agency's so as to avoid unnecessary costs and burdens both to the state and to project sponsors and landowners.

c. Procedures to insure communication and discussion with any federal agency, including the Army Corps of engineers and the soil conservation service, in regard to any federal development proposals in the park.

Such agency rules and regulations, and any amendments thereof, shall be adopted only after consultation with the Adirondack park local government review board and at least one public hearing thereon. Fifteen days notice of such hearing shall be made by publication at least once in a newspaper of general circulation in each county wholly or partially within the Adirondack park and in at least three metropolitan areas of the state, and by individual notice served by mail upon the clerk of each county and each local government of the park, and the chairman of all local government, county and regional planning agencies having jurisdiction in the park. Such notice shall contain a statement describing the subject matter of the proposed rules and regulations, and the time and place of the hearing and where further information thereon may be obtained.

15. This section shall not apply to any emergency project which is immediately necessary for the protection of life or property as defined by the agency by rule and regulation adopted under subdivision fourteen.

Added L.1973, c. 348, § 1; amended L.1974, c. 679, §§ 8–13; L.1976, c. 899, § 11; L.1979, c. 428, §§ 5–8; L.1979, c. 578, § 1.

1979 Amendments. Subd. 1. L. 1979, c. 428, § 5, eff. on the 60th day after July 5, 1979, in sentence beginning "The agency shall" substituted ", and all class B regional projects" for ". In addition, the agency shall have authority to review and approve class B regional projects", in sentence beginning "All projects" substituted "shall" for "will", in sentence beginning "In particular, to" substituted "minor project" for "single family dwelling", "shall develop simplified application forms to deal with such projects" for "will establish special procedures and develop simplified application forms to deal with these projects", and inserted "and will comply with the special procedures for such projects set forth in this section" and added sentence beginning "For the purposes".

Subd. 1, par. d. L.1979, c. 428, § 5, eff. on the 60th day after July 5, 1979, added par. d.

Subd. 2, par. a. L.1979, c. 428, § 5, eff. on the 60th day after July 5, 1979, designated existing provisions as par. a and in sentence beginning "Any person proposing" inserted "prior to undertaking the project."; in sentence beginning "Such application shall" substituted "filed" for "submitted" and deleted provision that the application contain a description of the project and additional information needed to make the findings required by this section; in sentence beginning "The agency shall" substituted ", upon receipt" for "within fifteen working days from receipt" and ", provide notice of receipt of the application and a brief description of the project" for "notify the project sponsor by certified mail whether or not the application and such additional information as the agency may have reasonably required is complete. At the same time, if the notice specifies that the application is complete, the agency shall, by mail, provide a copy of such notice of application completion" and "the chief elected officer, clerk and planning board chairman if any" for "the clerk"; deleted sentence prohibiting the project sponsor from undertaking or continuing the project either for 90 days or for an agreed period of time following notice of application completion, and added sentence beginning "The agency shall, upon request".

Subd. 2, par. b. L.1979, c. 428, § 5, eff. on the 60th day after July 5, 1979, added subd. b.

Subd. 2, par. c. L.1979, c. 428, § 5, eff. on the 60th day after July 5, 1979, added par. c.

Subd. 3, pars. a to e. L.1979, c. 428, § 5, eff. on the 60th day after July 5, 1979, added pars. a to e and omitted former provisions of subd. 3 which related to agency review and approval of the project during the 90 day or other period, holding a public hearing before approving or disapproving the project, the methods of serving notice of such hearing, and the agencies, officials, and persons to be served with such notice.

Subd. 5. L.1979, c. 428, § 5, eff. on the 60th day after July 5, 1978, substituted "Notice of agency decision shall be given" for "Upon conclusion of the review period under subdivision three or within ninety days after completion of public hearing, if held, the agency shall give the project sponsor notice by certified mail of the agency's decision on the project, and shall give such notice of decision" and deleted "completion" following "notice of application"; in first sentence beginning "If the decision" inserted "within ten days of issuance of its notification of approval" and substituted "to undertake the project" for ", along with its notification of approval, to undertake or continue the project"; and in sentence beginning "Approval subject to" inserted "or such longer time as is specified in the notification or approval".

Subd. 6, pars. a to c. L.1979, c. 428, § 6, eff. on the 60th day after July 5, 1979, added pars. a to c and omitted the former provisions of subd. 6 which provided that the project was to be deemed approved if the agency failed to render its decision within the time periods prescribed within this section and that the agency was to provide the sponsor with written certification of approval within 30 days after such period.

Subd. 7. L.1979, c. 578, § 1, eff. July 10, 1979, without incorporating changes made by L.1979, c. 428, § 6, in sentence beginning "A permit or" inserted "of this section" and substituted "in the name of the landowner" for "by the project sponsor" and added sentence beginning "Where a permit".

Subd. 7, par. a. L.1979, c. 428, § 6, eff. on the 60th day after July 5, 1979, designated existing provisions as par. a and substituted "in the name of the landowner" for "by the project sponsor".

Subd. 7, par. b. L.1979, c. 428, § 6, eff. on the 60th day after July 5, 1979, added par. b.

Subd. 7, par. c. L.1979, c. 428, § 7, eff. on the 60th day after July 5, 1979, redesignated the former provisions of subd. 8 as par. c of subd. 7.

Subd. 8. L.1979, c. 428, § 7, eff. on the 60th day after July 5, 1979, added pars. a and b. The former provisions of subd. 8 were redesignated as par. c of subd. 7.

Subd. 10, par. c. L.1979, c. 578, § 1, eff. July 10, 1979, in sentence beginning "As between two" inserted exception that landowners of directly contiguous lands located in the same tax, special levy, or assessment district may aggregate such lands in applying the intensity guidelines when submitting a project in concert.

Subd. 13, par. d. L.1979, c. 428, § 8, eff. on the 60th day after July 5, 1979, in sentence beginning "To allow" substituted "upon request of a project sponsor, projects to be reviewed conceptually, and thereafter or simultaneously therewith" for "large scale projects, as such projects may be defined in the agency's rules and regulations adopted under subdivision fourteen"; in sentence beginning "Conceptual determinations may" substituted "Conceptual determinations may be made, and sectional permits" for "Such permits"; deleted sentence which provided that an application for a permit was not to be deemed complete unless it included information concerning the conceptual design of the overall project, and inserted sentences beginning "Conceptual review shall" and "The agency shall".

Subd. 13, par. e. L.1979, c. 428, § 8, eff. on the 60th day after July 5, 1979, added par. e.

1976 Amendment. Subd. 1. L.1976, c. 899, § 11, eff. July 27, 1976, added sentence beginning "All projects will".

Subd. 2. L.1976, c. 899, § 11, eff. July 27, 1976, provided that notice of application be by regular mail, in lieu of certified mail.

Subd. 3. L.1976, c. 899, § 11, eff. July 27, 1976, provided for notice by regular mail upon certain public officials.

Subd. 5. L.1976, c. 899, § 11, eff. July 27, 1976, provided that the agency shall give project sponsor notice by certified mail of its decision on the project, and notice by regular mail to others entitled to individual notice.

Subd. 9. L.1976, c. 899, § 11, eff. July 27, 1976, amended subdivision without substantive change.

Subd. 14. L.1976, c. 899, § 11, eff. July 27, 1976, in par. c., provided that individual notice be served by regular mail in lieu of certified mail.

1974 Amendment. Subd. 2. L.1974, c. 679, § 8, eff. May 30, 1974, substituted "may reasonably require" for "deems sufficient", and deleted "if the application is for a class A regional project" preceding "to the clerk of the local government."

Subd. 3. L.1974, c. 679, § 8, eff. May 30, 1974, provided that notice must be given to any adjoining land owner, to the extent discernible from the latest tax assessment roll, and the clerk of any local government within 500 feet of the land involved.

Subd. 6. L.1974, c. 679, § 9, eff. May 30, 1974, deleted provisions which would have the agency provide the sponsor with a written certification only upon his request.

Subd. 7. L.1974, c. 679, § 10, eff. May 30, 1974, extended period of the permit or certificate from 30 to 60 days, and deleted "filed or" preceding "recorded", "or register" preceding "of the county", and "and local government" preceding "wherein the project."

Subd. 8. L.1974, c. 679, § 10, eff. May 30, 1974, included certificates; substituted "recording" for "filing"; provided the agency must give consideration to the land's potential to remain suitable for the use allowed by the permit and to economic considerations, in determining whether to provide a longer period of time by when the project must be in existence.

Subd. 10, pars. c, d. L.1974, c. 679, § 11, eff. May 30, 1974, in par. c, inserted "as such area is defined by the landowner", and in par. d, substituted "any on-site sewage drainage field or seepage pit" for "septic tanks and drainage fields."

Subd. 13, par. a. L.1974, c. 679, § 12, eff. May 30, 1974, provided that the agency shall consult with affected municipalities and give consideration to their views.

Subd. 13, par. d. L.1974, c. 679, § 12, eff. May 30, 1974, amended paragraph generally by inserting all provisions relating to sectional permits.

Subd. 13, par. e. L.1974, c. 679, § 12, eff. May 30, 1974, omitted par. e which authorized the agency to allow, for large scale projects, a longer period for filing than under subd. 7.

Subd. 14, opening par. L.1974, c. 679, § 13, eff. May 30, 1974, inserted "after public hearing."

Subd. 14, par. a. L.1974, c. 679, § 13, eff. May 30, 1974, inserted "prior to formal application to the agency for a permit."

Former Section 809. Renumbered 818.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

Rules and Regulations; Earliest Effective Date. Section 13 of L.1973, c. 348, provided in part that the authority of the Adirondack park agency to adopt rules and regulations under this section takes effect on May 22, 1973, but that no such rule or regulation is effective prior to Aug. 1, 1973.

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1. Constitutionality

Requirement that Agency consider aesthetics of scenic vistas and natural and man-made travel corridors before approving project or granting permit was not unconstitutional delegation of power to Agency. McCormick v. Lawrence, 1976, 54 A.D.2d 123, 387 N.Y.S.2d 919.

2. Zoning

Adirondack Park Agency had authority to bar boathouses on agency-administered private property. McCormick v. Lawrence, 1976, 54 A.D. 2d 123, 387 N.Y.S.2d 919.

Aesthetics is valid subject of legislative concern and legislation aimed at promoting governmental interest in preserving appearance of area is permissible exercise of police power. Id.

§ 810. Class A and class B regional projects

All references in this article to class A regional projects or to class B regional projects shall mean, for the land use areas indicated, the following new land uses or development or subdivisions of land: 1. Class A regional projects.

a. Hamlet areas. (1) All land uses and development and all subdivisions of land involving wetlands except for forestry uses (other than timber harvesting that includes a proposed clear cutting of any single unit

of land of more than twenty-five acres), agricultural uses, public utility uses, and accessory uses or structures (other than signs) to any such use or to any pre-existing use.

(2) Any class of land use or development or subdivision of land that by agreement between a local government and the agency, either prior to or at the time a local land use program is approved by the agency, is to be reviewed by the agency; provided, however, that any class of projects so agreed upon must be designated by and its review authorized in a local ordinance or local law.

(3) All land uses and development and all subdivisions of land involving one hundred or more residential lots, parcels or sites or residential units, whether designed for permanent, seasonal or transient use.

(4) All structures in excess of forty feet in height, except agricultural use structures and residential radio and television antennas.

(5) Commercial or private airports.

(6) Watershed management and flood control projects.

(7) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

b. Moderate intensity use areas. (1) All land uses and development and all subdivisions of land located in the following critical environmental areas: (a) within one-quarter mile of rivers navigable by boat designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law during the period of such designation; (b) involving wetlands; (c) at elevations of twenty-five hundred feet or more; (d) within one-eighth mile of tracks of forest preserve land or water now or hereafter classified as wilderness, primitive or canoe in the master plan for management of state lands, except for an individual single family dwelling and accessory uses or structures thereto. Provided, however, that the above shall not include forestry uses (other than clear-cutting as specified in number nine below), agricultural uses, open space recreation uses, public utility uses, and accessory uses or structures (other than signs) to any such use or to any pre-existing use.

(2) Any class of land use or development or subdivision of land that by agreement between a local government and the agency, either prior to or at the time a local land use program is approved by the agency, is to be reviewed by the agency; provided, however, that any class of projects so agreed upon must be designated by and its review authorized in a local ordinance or local law.

(3) All land uses and development and all subdivisions of land involving seventy-five or more residential lots, parcels or sites or residential units, whether designed for permanent, seasonal or transient use.

(4) Commercial or agricultural service uses involving ten thousand or more square feet of floor space.

(5) All structures in excess of forty feet in height, except agricultural use structures and residential radio and television antennas.

(6) Tourist attractions.

(7) Ski centers.

(8) Commercial or private airports.

(9) Timber harvesting that includes a proposed clearcutting of any single unit of land of more than twenty-five acres.

(10) Sawmills, chipping mills, pallet mills and similar wood using facilities.

(11) Mineral extractions.

(12) Mineral extraction structures.

(13) Watershed management and flood control projects.

(14) Sewage treatment plants.

(15) Major public utility uses.

(16) Industrial uses.

(17) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

c. Low intensity use areas. (1) All land uses and development and all subdivisions of land located in the following critical environmental areas: (a) within one-quarter mile of rivers navigable by boat designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law during the period of such designation; (b) involving wetlands; (c) at elevations of twenty-five hundred feet or more; (d) within one-eighth mile of tracts of forest preserve land now or hereafter classified as wilderness, primitive or canoe in the master plan for management of state lands, except for an individual single family dwelling and accessory uses or structures thereto. Provided, however, that the above shall not include forestry uses (other than clear-cutting as specified in number nine below), agricultural uses, open space recreation uses, public utility uses, and accessory uses or structures (other than signs) to any such use or to any pre-existing use.

(2) Any class of land use or development or subdivision of land that by agreement between a local government and the agency, either prior to or at the time a local land use program is approved by the agency, is to be reviewed by the agency; provided, however, that any class of projects so agreed upon must be designated by and its review authorized in a local ordinance or local law.

(3) All land uses and development and all subdivisions of land involving thirty-five or more residential lots, parcels or sites or residential units, whether designed for permanent, seasonal or transient use.

(4) Commercial or agricultural service uses involving five thousand or more square feet of floor space.

(5) All structures in excess of forty feet in height, except agricultural use structures and residential radio and television antennas.

(6) Tourist attractions.

(7) Ski centers.

(8) Commercial or private airports.

(9) Timber harvesting that includes a proposed clearcutting of any single unit of land of more than twenty-five acres.

(10) Sawmills, chipping mills, pallet mills and similar wood using facilities.

(11) Mineral extractions.

(12) Mineral extraction structures.

(13) Watershed management and flood control projects.

(14) Sewage treatment plants.

(15) Waste disposal areas.

(16) Junkyards.

(17) Major public utility uses.

(18) Industrial uses.

(19) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

d. Rural use areas. (1) All land uses and development and all subdivisions of land located in the following critical environmental areas: (a) within one-quarter mile of rivers navigable by boat designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law during the period of such designation; (b) involving wetlands; (c) at elevations of twenty-five hundred feet or more; (d) within one-eighth mile of tracts of forest preserve land or water now or hereafter classified as wilderness, primitive or canoe in the master plan for management of state lands, except for an individual single family dwelling and accessory uses or structures there-

to; (e) within one hundred fifty feet of the edge of the right of way of federal or state highways, except for an individual single family dwelling and accessory uses or structures thereto; (f) within one hundred fifty feet of the edge of the right of way of county highways designated by rule or regulation of the agency adopted pursuant to subdivision fourteen of section eight hundred nine or in an approved local land use program, as major travel corridors by the agency or local government, except for an individual single family dwelling and accessory uses or structures thereto. Provided, however, that the above shall not include forestry uses (other than clear-cutting as specified in number ten below and sand and gravel pits associated with such uses located within one hundred fifty feet of the edge of the right of way of the above described travel corridors), agricultural uses (other than sand and gravel pits associated with such uses located within one hundred fifty feet of the edge of the right of way of the above described travel corridors), open space recreation uses, public utility uses, and accessory uses or structures (other than signs) to any such uses or to any preexisting use.

(2) Any class of land use or development or subdivision of land that by agreement between a local government and the agency, either prior to or at the time a local land use program is approved by the agency, is to be reviewed by the agency; provided, however, that any class of projects so agreed upon must be designated by and its review authorized in a local ordinance or local law.

(3) All land uses and development and all subdivisions of land involving twenty or more residential lots, parcels or sites or residential units, whether designed for permanent, seasonal or transient use.

(4) Commercial and agricultural service uses involving twenty-five hundred or more square feet of floor space.

(5) All structures in excess of forty feet in height, except agricultural use structures and residential radio and television antennas.

(6) Tourist accommodations.

(7) Ski centers.

(8) Commercial seaplane bases.

(9) Commercial or private airports.

(10) Timber harvesting that includes a proposed clearcutting of any single unit of land of more than twenty-five acres.

(11) Sawmills, chipping mills, pallet mills and similar wood using facilities.

(12) Mineral extractions.

(13) Mineral extraction structures.

(14) Watershed management and flood control projects.

(15) Sewage treatment plants.

(16) Waste disposal areas.

(17) Junkyards.

(18) Major public utility uses.

(19) Industrial use.

(20) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

e. Resource management areas. (1) All land uses and development and all subdivisions of land located in the following critical environmental areas: (a) within one-quarter mile of rivers navigable by boat designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law during the period of such designation; (b) involving wetlands; (c) at elevations of twenty-five hundred feet or more; (d) within one-eighth mile of tracts of forest preserve land or water now or hereafter classified as wilderness, primitive or canoe in the master plan for management of state lands, except

for an individual single family dwelling and accessory uses or structures thereto; (e) within three hundred feet of the edge of the right of way of federal or state highways, except for an individual single family dwelling and accessory uses or structures thereto; (f) within three hundred feet of the edge of the right of way of county highways designated as major travel corridors by rule or regulation of the agency adopted pursuant to subdivision fourteen of section eight hundred nine or in an approved local land use program, except for an individual single family dwelling and accessory uses or structures thereto. Provided, however, that the above shall not include forestry uses (other than clearcutting as specified in number eleven below and sand and gravel pits associated with such uses located within three hundred feet of the edge of the right of way of the above described travel corridors), agricultural uses (other than sand and gravel pits associated with such uses located within three hundred feet of the edge of the right of way of the above described travel corridors), open space recreation uses, public utility uses, and accessory uses or structures (other than signs) to any such uses or to any pre-existing use.

(2) Any class of land use or development or subdivision of land that by agreement between a local government and the agency, either prior to or at the time a local land use program is approved by the agency, is to be reviewed by the agency; provided, however, that any class of projects so agreed upon must be designated by and its review authorized in a local ordinance or local law.

(3) All subdivisions of land (and all land uses and development related thereto) involving two or more lots, parcels or sites.

(4) Campgrounds involving fifty or more sites.

(5) Group camps.

(6) Ski centers and related tourist accommodations.

(7) Agricultural service uses.

(8) All structures in excess of forty feet in height, except agricultural use structures and residential radio and television antennas.

(9) Sawmills, chipping mills and pallet mills and similar wood using facilities.

(10) Commercial sand and gravel extractions.

(11) Timber harvesting that includes a proposed clearcutting of any single unit of land of more than twenty-five acres.

(12) Mineral extractions.

(13) Mineral extraction structures.

(14) Watershed management and flood control projects.

(15) Sewage treatment plants.

(16) Major public utility uses.

(17) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

f. Industrial use areas.

(1) Mineral extractions.

(2) Mineral extraction structures.

(3) Commercial sand and gravel extractions.

(4) Major public utility uses.

(5) Sewage treatment plants.

(6) Waste disposal areas.

(7) Junkyards.

(8) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

2. Class B regional projects. a. Moderate intensity use areas. (1) Subdivisions of land (and all land uses and development related

thereto) involving fifteen or more but less than seventy-five lots, parcels or sites, other than subdivisions of land involving mobile homes.

(2) Subdivisions of land (and all land uses and development related thereto) involving less than fifteen lots, parcels or sites, other than subdivisions of land involving mobile homes, which do not meet the following criteria: (a) In the case of such subdivisions involving land having shoreline, each lot, parcel or site is at least twenty-five thousand square feet in size and complies with all of the provisions of the shoreline restrictions.

(b) In the case of such subdivisions not involving land having shoreline, each lot, parcel or site is at least forty thousand square feet in size.

Any subdivision or subsequent subdivision of such land, either by the original owner or subsequent owners, shall be subject to review as a class B regional project where the total number of lots, parcels or sites resulting from such subdivision and any prior subdivision or subdivisions exceeds fourteen.

(3) Multiple family dwellings.

(4) Mobile home courts.

(5) Subdivisions of land involving mobile homes (and all land uses and development related thereto) and involving two or more lots, parcels or sites.

(6) Public and semi-public buildings.

(7) Municipal roads.

(8) Commercial or agricultural service uses involving less than ten thousand square feet of floor space.

(9) Tourist accommodations.

(10) Marinas, boatyards and boat launching sites.

(11) Golf courses.

(12) Campgrounds.

(13) Group camps.

(14) Commercial seaplane bases.

(15) Commercial sand and gravel extractions.

(16) Land use or development or subdivisions of land involving the clustering of buildings on land having shoreline on the basis of a specified number of principal buildings per linear mile or proportionate fraction thereof, as provided for in the shoreline restrictions.

(17) Any land use or development not now or hereafter included on either the list of primary uses or the list of secondary uses for moderate intensity use areas.

(18) An individual single family dwelling within one-eighth mile of tracts of forest preserve land or water now or hereafter classified as wilderness primitive or canoe in the master plan for management of state lands.

(19) All land uses and development and all subdivisions of land within one-quarter mile of rivers designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law, other than those navigable by boat, during the period of such designation.

(20) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

b. Low intensity use areas. (1) Subdivisions of land (and all land uses and development related thereto) involving ten or more but less than thirty-five lots, parcels or sites, other than subdivisions of land involving mobile homes.

(2) Subdivisions of land (and all land uses and development related thereto) involving less than ten lots, parcels or sites which do not

meet the following criteria: (a) In the case of such subdivisions involving land having shoreline, each lot, parcel or site is at least fifty thousand square feet in size and complies with all of the provisions of the shoreline restrictions.

(b) In the case of such subdivisions not involving land having shoreline, each lot, parcel or site is at least one hundred twenty thousand square feet in size.

Any subdivision or subsequent subdivision of such land, either by the original owner or subsequent owners, shall be subject to review as a class B regional project where the total number of lots, parcels or sites resulting from such subdivision and any prior subdivision or subdivisions exceeds nine.

(3) Multiple family dwellings.

(4) Mobile home courts.

(5) Mobile home subdivisions (and all land uses and development related thereto) involving two or more lots, parcels or sites.

(6) Public and semi-public buildings.

(7) Municipal roads.

(8) Commercial or agricultural service uses involving less than five thousand square feet of floor space.

(9) Tourist accommodations.

(10) Marinas, boatyards and boat launching sites.

(11) Golf courses.

(12) Campgrounds.

(13) Group camps.

(14) Commercial seaplane bases.

(15) Commercial sand and gravel extractions.

(16) Land use or development or subdivision of land involving the clustering of buildings on land having shoreline on the basis of a specified number of principal buildings per linear mile or proportionate fraction thereof, as provided for in the shoreline restrictions.

(17) Any land use or development not now or hereafter included on either the list of primary uses or the list of secondary uses for low intensity use areas.

(18) An individual single family dwelling within one-eighth mile of tracts of forest preserve land or water now or hereafter classified as wilderness, primitive or canoe in the master plan for management of state lands.

(19) All land uses and development and all subdivisions of land within one-quarter mile of rivers designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law, other than those navigable by boat, during the period of such designation.

(20) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

c. Rural use areas. (1) Subdivisions of land (and all land uses and development related thereto) involving five or more but less than twenty lots, parcels or sites, other than subdivisions of land involving mobile homes.

(2) Subdivisions of land (and all land uses and development related thereto) involving less than five lots, parcels or sites which do not meet the following criteria: (a) In the case of such subdivisions involving land having shoreline, each lot, parcel or site is at least eighty thousand square feet in size and complies with all of the provisions of the shoreline restrictions of the plan.

(b) In the case of such subdivisions not involving land having shoreline, each lot, parcel or site is at least three hundred twenty thousand square feet in size.

Any subdivision or subsequent subdivision of such land, either by the original owner or subsequent owners, shall be subject to review as a class B regional project where the total number of lots, parcels or sites resulting from such subdivision and any prior subdivision or subdivisions exceeds four.

(3) Multiple family dwellings.

(4) Mobile home courts.

(5) Mobile home subdivisions (and all land uses and development related thereto) involving two or more lots, parcels or sites.

(6) Public and semi-public buildings.

(7) Municipal roads.

(8) Marinas, boatyards and boat launching sites.

(9) Golf courses.

(10) Campgrounds.

(11) Group camps.

(12) Commercial sand and gravel extractions.

(13) Land use or development or subdivision of land involving the clustering of buildings on land having shoreline on the basis of a specified number of principal buildings per linear mile or proportionate fraction thereof, as provided for in the shoreline restrictions.

(14) All land uses and development and all subdivisions of land within one quarter mile of rivers designated to be studied as wild, scenic or recreational in accordance with the environmental conservation law, other than those navigable by boat, during the period of such designation.

(15) Any land use or development not now or hereafter included on either the list of primary uses or the list of secondary uses for rural use areas.

(16) Commercial and agricultural service uses involving less than twenty-five hundred square feet.

(17) An individual single family dwelling within one-eighth mile of tracts of forest preserve land or water described in item (d) of clause (1) of paragraph d of subdivision one or within one hundred fifty feet of a travel corridor described in such paragraph.

(18) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

d. Resource management areas. (1) Single family dwellings.

(2) Individual mobile homes.

(3) Forestry use structures.

(4) Hunting and fishing cabins and hunting and fishing and other private club structures involving five hundred or more square feet of floor space.

(5) Land use or development or subdivision of land involving the clustering of buildings on land having shoreline on the basis of a specified number of principal buildings per linear mile or proportionate fraction thereof, as provided in the shoreline restrictions.

(6) Any land use or development not now or hereafter included on either the list of primary uses or the list of secondary uses for resource management areas.

(7) Municipal roads.

(8) Golf courses.

(9) An individual single family dwelling within one-eighth mile of tracts of forest preserve land or waters described in item (d) of clause (1) of paragraph d of subdivision one or within three hundred feet of a travel corridor described in such paragraph.

(10) Campgrounds involving fewer than fifty sites.

(11) All land uses and development and all subdivisions of land within one-quarter mile of rivers designated to be studied as wild, scenic

and recreational in accordance with the environmental conservation law, other than those navigable by boat, during the period of such designation.

(12) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

e. Industrial use areas. (1) Sawmills, chipping mills, pallet mills and similar wood using facilities.

(2) Industrial uses.

(3) Commercial uses.

(4) Agricultural service uses.

(5) Public and semi-public buildings.

(6) Municipal roads.

(7) Any land use or development not now or hereafter included on either the list of primary uses or the list of secondary uses for industrial use areas.

(8) Any material increase or expansion of an existing land use or structure included on this list that is twenty-five percent or more of the original size of such existing use or twenty-five percent or more of the original square footage of such structure.

Added L.1973, c. 348, § 1; amended L.1974, c. 679, §§ 14, 15; L.1976, c. 899, §§ 12–17.

1976 Amendment. Subd. 1, par. a. L.1976, c. 899, § 12, eff. July 27, 1976, in subpar. (4), excepted agricultural use structures.

Subd. 1, par. b. L.1976, c. 899, § 13, eff. July 27, 1976, in subpar. (5), excepted agricultural use structures.

Subd. 1, par. c. L.1976, c. 899, § 14, eff. July 27, 1976, in subpar. (5), excepted agricultural use structures.

Subd. 1, par. d. L.1976, c. 899, § 15, eff. July 27, 1976, in subpar. (5), excepted agricultural use structures.

Subd. 1, par. e. L.1976, c. 899, § 16, eff. July 27, 1976, in subpar. (8), excepted agricultural use structures.

Subd. 2, par. a. L.1976, c. 899, § 17, eff. July 27, 1976, in subpar. (19), substituted ¼ mile for ½ mile.

Subd. 2, par. b. L.1976, c. 899, § 17, eff. July 27, 1976, in subpar. (19), substituted ¼ mile for ½ mile.

Subd. 2, par. c. L.1976, c. 899, § 17, eff. July 27, 1976, in subpar. (14), substituted ¼ mile for ½ mile.

1974 Amendment. Subd. 1. L.1974, c. 679, § 14, eff. May 30, 1974, in par. a, subpar. (1), excepted forestry uses other than clear-cutting of more than 25 acres, agricultural uses, public utility uses, and accessory uses or structures other than signs to any such use or to any pre-existing use; and in cl. (a) of subpar. (1) of each of pars. b, c, d, and e, substituted "one-quarter" for "one-half" preceding "mile of rivers navigable."

Subd. 2. L.1974, c. 679, § 15, eff. May 30, 1974, in par. d, subpar. (11), substituted "one-quarter" for "one-half."

Former Section 810. Renumbered 819.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

§ 811.[1] Special provisions relating to agency project review jurisdiction and the shoreline restrictions

1. Notwithstanding any other provision of this article, including the provisions of the land use and development plan and the shoreline restrictions, the following provisions shall apply in connection with the project review jurisdiction of the agency under section eight hundred nine and application of the shoreline restrictions either by the agency in the review of a project or by operation of section eight hundred six.

a. Single family dwelling on existing vacant lot. One single family dwelling or mobile home shall be allowed to be built on any vacant lot which was on record on the date that this act shall become a law regardless of the overall intensity guidelines, or the minimum lot width

provisions of the shoreline restrictions. For the purposes of this exemption, such a lot must not adjoin other lots in the same ownership, provided however, that all such lots in the same ownership may be treated together as one lot. In addition to the foregoing exemption, where the agency has jurisdiction, for a reason other than its location in a critical environmental area, of a single family dwelling or mobile home on a lot described in this paragraph which is owned by an individual who has continually owned such lot since May twenty-second, nineteen hundred seventy-three, it may not disapprove the project on any of the grounds specified in paragraph e of subdivision ten of section eight hundred nine, but may impose such reasonable conditions on the type and manner of placement of any individual on-site sewage disposal facilities as are in furtherance of the purposes of this article and in compliance with applicable standards of the department of health.

b. Conversions of certain existing uses. Those structures in existence on the date that this act shall become a law that are associated with resort hotels, rental cottages and group camps shall be allowed to be converted from their previous use to individual single family residence use, notwithstanding the fact that such structures, as converted, do not conform to the overall intensity guidelines or the shoreline restrictions.

c. Gifts, devises and inheritances. The mere division of land resulting from bona fide gift, devise or inheritance by and from natural persons shall not be subject to review by the agency. New land use or development on lots, parcels or sites conveyed by individuals, who on the date that this act shall become law own such land, to members of their immediate families by bona fide gift, devise or inheritance, shall be exempt from the overall intensity guidelines and the minimum lot size criteria specified in the class B regional project lists for the purpose of constructing one single family dwelling or mobile home on any such lot, parcel or site.

2. Any pre-existing land use and development shall not be subject to review by the agency.

3. Any (a) pre-existing subdivision of land, (b) any subdivision or portion of a subdivision that involves seventy-five or fewer lots, parcels or sites for the completion of which any or all permits and other approvals required by or pursuant to law were obtained after July first, nineteen hundred seventy-one and for which all such required permits were in full force and effect on July thirty-first, nineteen hundred seventy-three, or (c) individual single family dwelling or mobile home, erected or placed on any lot, parcel or site in any subdivision referred to in clauses (a) and (b) hereof which has been approved by the state department of health, shall not be subject to review by the agency, provided, however, that a subdivision or portion of a subdivision described in clause (b) hereof shall become subject to review by the agency on August first, nineteen hundred seventy-four if such subdivision or portion is not in existence on said date. Any individual single family dwelling or mobile home referred to in clause (c) of this subdivision hereof shall not be subject to the minimum lot width provisions of the shoreline restrictions.

4. With respect to any land use or development or subdivision of land or portion thereof approved by the agency under its interim project review authority, in section eight hundred fifteen, such land use or development or subdivision or portion thereof may proceed in accordance with the terms of the approval and shall not be subject to further review by the agency so long as such land use or development or subdivision or portion thereof is substantially commenced and/or material expenditures and financial obligations have been incurred with regard to such land use or development or subdivision or portion thereof within two years of such approval.

5. Any existing land use or development, including any structure being restored or rebuilt in whole or in part, being increased or expanded, whether in successive stages or at one time, to a total of less than twenty-five percent of its size or square footage at the date of enactment or when originally built or undertaken, whichever is later, shall not be subject to review by the agency. Any material increase or expansion thereafter shall constitute a reviewable land use or development if otherwise within the agency's review jurisdiction. In no case shall any increase or expansion violate, or increase non-compliance with, the minimum setback requirements of the shoreline restrictions. Notwithstanding the foregoing, a single family dwelling or mobile home may always be enlarged or rebuilt to any extent provided that it continues to be used as such, provided, however, that no such increase or expansion shall violate, or increase any non-compliance with, the minimum setback requirements of the shoreline restrictions.

Added L.1973, c. 348, § 1; amended L.1974, c. 679, § 16; L.1976, c. 899, § 18; L.1976, c. 900, § 1.

[1] Another section 811 is set out in article 28, post.

1976 Amendments. Subd. 1, par. a. L.1976, c. 900, § 1, eff. July 27, 1976, substituted "article and in compliance with applicable standards of the department of health" for "section."

L.1976, c. 899, § 18, eff. July 27, 1976, added sentence beginning "In addition to".

Subd. 3. L.1976, c. 899, § 18, eff. July 27, 1976, added sentence beginning "Any individual single family".

Subd. 5. L.1976, c. 899, § 18, eff. July 27, 1976, provided for structure being increased or expanded, whether in successive stages or at one time, to a total of less than 25% of its size at the date of enactment or when originally built or undertaken, whichever is later.

1974 Amendment. Subd. 3. L.1974, c. 679, § 16, eff. May 30, 1974, added cl. (c) relating to individual single family dwellings or mobile homes.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

1. Adverse possession

It is impossible for individuals to acquire vested rights in forest preserve by means of adverse possession, long use, or prescriptive right. Helms v. Diamond, 1973, 76 Misc.2d 253, 349 N.Y.S.2d 917.

§ 812.[1] Public hearings

1. Public hearings authorized or required by section eight hundred nine to be held by the agency in connection with the review of projects shall be conducted as provided in this section, the applicable project review rules and regulations of the agency adopted under subdivision fourteen of such section, and the state administrative procedure act.

2. Notice of such public hearings shall be given as required in section eight hundred nine. Individual notices of hearing required under such section shall be served by mail in the manner required by section eight hundred nine of this article to the last known address of such individuals. Individual notice of hearing shall also be so served on any other person or agency, public or private, as may be required under the agency's project review rules and regulations.

3. Parties to a public hearing shall be the project sponsor and any person or agency entitled to individual notice and any other person or agency as may be authorized under the agency's project review rules and regulations.

4. The public hearing may, if authorized by the agency's project review rules and regulations, be conducted by any member or designee of the agency, but any findings, decision, order, permit or certificate of the agency shall be adopted by the agency, all members voting having familiarized themselves with the record.

5. The agency, or member or designee thereof presiding at the hearing shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant docu-

ments and papers, including witnesses and documents requested by the parties.

6. The parties shall be afforded the opportunity to present evidence and argument and, in the case of the project sponsor, any person or agency entitled by law to individual notice and any other public agency, to cross-examine witnesses on all relevant issues, but the member or designee presiding may impose reasonable limitations as to time and number of persons heard.

7. The agency shall keep a verbatim record of the proceedings and certified copies shall be made available, and for such reasonable charges, as may be provided by rule or regulation of the agency.

Added L.1973, c. 348, § 1; amended L.1976, c. 899, § 19; L.1979, c. 428, § 9.

[1] Another section 812 is set out in article 28, post.

1979 Amendment. Subd. 1. L.1979, c. 428, § 9, eff. on the 60th day after July 5, 1979, substituted "conducted as provided in" for "held in accordance with" and inserted "and the state administrative procedure act".

1976 Amendment. Subd. 2. L.1976, c. 899, § 19, eff. July 27, 1976, provided that notice be served by regular mail, in lieu of certified mail in manner required by section 809.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

§ 813.[1] Penalties and enforcement

1. Any person who violates any provision of this article or any rule or regulation promulgated by the agency, or the terms or conditions of any order or permit issued by the agency pursuant to this article shall be liable to a civil penalty of not more than five hundred dollars for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the agency by the attorney general on his own initiative or at the request of the agency.

2. Alternatively or in addition to an action to recover the civil penalties provided by subdivision one of this section, the attorney general may institute in the name of the agency any appropriate action or proceeding to prevent, restrain, enjoin, correct or abate any violation of, or to enforce, any provision of this article or any rule or regulation promulgated by the agency, or the terms or conditions of any order or permit issued by the agency pursuant to this article. The court in which the action or proceeding is brought may order the joinder of appropriate persons as parties and may order the appropriate person or the person responsible for the violation to take such affirmative measures as are properly within its equitable powers to correct or ameliorate the violation, having regard to the purposes of this article and the determinations required by subdivision ten of section eight hundred nine.

3. Such civil penalty may be released or compromised by the agency before the matter has been referred to the attorney general, and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action or cause of action commenced to recover the same may be settled or discontinued by the attorney general with the consent of the agency.

Added L.1976, c. 898, § 1.

[1] Another section 813 is set out in article 28, post.

Derivation. Former section 813, added L.1973, c. 348, § 1, and repealed by L.1976, c. 898, § 2.

Effective Date. Section effective on the 30th day after July 27, 1976 pursuant to L.1976, c. 898, § 2.

§ 814.[1] State agency projects

1. Any state agency which intends to undertake any new land use or development within the Adirondack park, other than land use or development by the department of environmental conservation pursuant

to the master plan for management of state lands, irrespective of whether the land use area wherein the project is proposed to be located is governed by an approved local land use program shall give due regard to the provisions of the plan and the shoreline restrictions and shall file a notice of such intent thereof with the agency. Such notice shall be filed at the earliest time practicable in the planning of such project, and in no event later than the submission of a formal budget request for the funding of such project or any part thereof. Such notice shall contain a description of the proposed project, together with such additional information relating thereto as the agency may determine necessary and appropriate for the purposes of this section. The state agency shall not undertake such project for a period of thirty days, or such earlier time as the agency may specify, following the filing of the notice of intent.

2. During such thirty-day period, the agency may review the project to determine whether it: a. might be inconsistent with the provisions of the plan and shoreline restrictions, or

b. may 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 economic and social benefits to be derived from such project. In making such determination, the agency shall apply the development considerations.

3. If, on or before the conclusion of such thirty-day period, the agency determines that the project will not be inconsistent with such provisions or restrictions and will not have an undue adverse impact upon such resources, it shall report its findings to the state agency. If the agency determines, at or before the conclusion of such period, that the project might be inconsistent with such provisions or restrictions, or might have such an undue adverse impact upon such resources, it shall notify the state agency by mail, that the agency will hold public hearing on the project within thirty days of such notice and, at the same time, issue an order to the state agency not to undertake the project for up to ninety days following the commencement of such public hearing. During such ninety-day or lesser period, the agency shall further review the project and determine whether or not it will be inconsistent with such provisions or restrictions or have such undue adverse impact. On or before the conclusion of such ninety-day period, the agency shall report its findings in the manner provided above.

4. This section shall not apply to any emergency project which is immediately necessary for the protection of life or property as defined by the agency by rule and regulation.

5. The agency may adopt, and have authority to amend or repeal, rules and regulations, consistent with this section, to govern its procedures for the reviews authorized by this section.

Added L.1973, c. 348, § 1; amended L.1976, c. 899, § 20.

[1] Another section 814 is set out in article 28, post.

1976 Amendment. Subd. 3. L.1976, c. 899, § 20, eff. July 27, 1976, provided for notice to agency by regular mail, in lieu of certified mail.

Effective Date. Section 13 of L. 1973, c. 348, provided that this section is effective Aug. 1, 1973.

Rules and Regulations; Earliest Effective Date. Section 13 of L.1973, c. 348, provided in part that the authority of the Adirondack park agency to adopt rules and regulations under this section takes effect on May 22, 1973, but that no such rule or regulation is effective prior to Aug. 1, 1973.

1. Generally

Assuming for the sake of argument that Franklin County, as county from which state police troop headquarters were to be removed for relocation to Essex County, had standing to bring suit for a determination whether there was an illegal failure to comply fully with the State Environmental Quality Review Act, ECL 8-0101 et seq., and this section proceedings conducted by the Adirondack Park Agency in connection with its advisory review of the relocation project were sufficient. Franklin County v. Connelie, 1979, 68 A.D.2d 1000, 415 N.Y.S.2d 110.

§ 815.[1] Interim development controls

1. The legislature hereby finds that development is taking place in the Adirondack park which threatens the accomplishment of the basic purpose of this article to insure optimum overall conservation, protection, preservation, development and use of the park's unique scenic, historic, ecological and natural resources. Such development presents an imminent danger to the integrity of an area of the state which has always been considered a priceless possession of the people of this state. If such development is left uncontrolled until the land use and development plan is effective and its implementation is underway, the purposes of this article may be irreparably and irreversibly compromised. It would, therefore, be prejudicial to the interests of the people of the state to delay regulatory action until the land use and development plan becomes effective as adopted in this article. Accordingly, the agency is authorized until August one, nineteen hundred seventy-three to exercise the powers set forth in this section.

2. The agency shall, after public hearing, adopt, and may from time to time amend, rules and regulations to carry out the purposes of this section for the review of any proposed development in the Adirondack park which might have an adverse effect upon the park's unique scenic, historic, ecological and natural resources, hereinafter referred to as a project, including criteria by which such project shall be evaluated by the agency. Such review shall not include review of projects on state lands within the park. The rules and regulations of the agency currently in force and effect shall remain in force to the extent consistent with this section and unless and until otherwise amended.

3. Before adopting or amending such rules and regulations, the agency shall submit them to the department of environmental conservation for comments and recommendation.

4. Such rules and regulations may exclude projects in specified areas or specified kinds of projects and shall exclude (a) bona fide management, including logging, of forests, woodlands or plantations or the construction or maintenance of woodroads, landings or temporary structures, directly associated with such management, (b) bona fide management of land for agriculture, livestock raising, horticulture and orchards and (c) any project involving less than five acres and fewer than five lots, from review under this section.

5. Such rules and regulations shall set forth a procedure for the informal discussion of preliminary and informal plans for a project and for preliminary approval or recommendations by the agency with respect to the project. Such informal discussion shall be optional with the project sponsor, and no such preliminary approval or recommendations by the agency shall relieve any agency or person from complying with any provision of this section.

6. This section shall not apply to any emergency project which is immediately necessary for the protection of life or property as defined by the agency by rule and regulation.

7. A public or private agency or person proposing to undertake a project subject to review under this section or the rules and regulations adopted hereunder, shall submit to the agency a description thereof, in such form and manner as shall be sufficient to enable the agency to make the findings and determinations required by this section. For a period of ninety days following the submission of such description to the agency, or until such earlier time as the agency may specify, such agency or person shall not undertake or continue such project. The agency shall review such description to determine the effect of the proposed project upon the scenic, historic, ecological and natural resources of the park, and to assess the commercial, industrial, residential, recreational or other benefits of the project.

8. If, on or before the conclusion of such ninety-day period and after a public hearing is held on the project in accordance with subdivi-

sion nine the agency finds that the proposed project (1) is not in substantial conformity with the policies of this article and (2) would have a substantial and lasting adverse impact upon such resources of the park, it may issue an order upon the project sponsor prohibiting the commencement or continuation of the project until August first, nineteen hundred seventy-three. The findings and order of the agency shall be in writing and notice of the findings and order shall be mailed to persons to whom it is directed at their last known address.

9. Notice of a formal hearing shall be given by conspicuous posting of the land which is or will be subject to the agency action in question and by publication at least once in a newspaper of general circulation in the county or counties wherein such land is situated. In addition, individual notice shall be given by depositing the same in the mails addressed at the last known address to: (1) The owner or owners of the land which is or will be subject to the agency order; (2) the public or private agency or person proposing to undertake the project; and (3) the local government or local governments exercising jurisdiction over the land which is or will be subject to the agency order.

Notices shall be given at least seven days in advance of the hearing and shall contain a statement describing the matters to be considered at the hearing, the time and place where further details may be obtained, and the time and place of the hearing.

10. Any review and determination made pursuant to this section shall take into account existing local controls.

11. All orders made by the agency shall be enforceable by appropriate proceedings at law or in equity and any person who violates any provision of this section or rules, regulations and orders adopted pursuant thereto may be fined for not more than five hundred dollars or imprisoned not more than thirty days, or both. Each day the violation continues is hereby deemed to be a separate offense for purposes of determining the amount of such fines and length of imprisonment.

12. A project which has been approved by the agency shall also be subject to approval by local government if such approval is required by law.

13. In regard to a project with respect to which the ninety-day period specified in subdivision seven hereof has been commenced on or before July thirty-first, nineteen hundred seventy-three, unless the agency approves said project in accordance with the provisions of this section, the project sponsor may not undertake said project if it is of a type subject to the agency's project review jurisdiction under section eight hundred nine until the sponsor has obtained a permit therefor as required therein.

14. If the agency approves a project reviewed under this section, the project sponsor may request, within ten days thereafter, and the agency shall issue within ten days after receipt of such request, a certificate to the effect that the project is approved and may be undertaken or continued, and that permit therefor as called for in section eight hundred nine is not required for such project so long as the project is completed within two years after issuance of such certificate. Irrespective of whether a certificate is issued pursuant to this section, a permit shall be required for the undertaking or continuation of a project approved under this section if such project is not completed within two years after its approval.

15. For the purposes of this section, the term "development" shall mean any activity which materially affects the existing conditions, use or appearance of any land, structure or improvement including the division of any land into parcels or units but shall not include the division of any land resulting from devise, inheritance, gift or operation of law.

Formerly § 806, added L.1971, c. 706, § 1; renumbered 815 and amended L.1973, c. 348, § 1.

[1] Other sections 815 are set out in articles 27-A and 28, post.

1973 Amendment. Subd. 1. L.1973, c. 348, § 1, eff. June 1, 1973, substituted "development plan is effective" for "development plan referred to in section eight hundred five is adopted" in sentence beginning "If such development", substituted "the land use and development plan becomes effective as adopted in this article" for "a land use and development plan is prepared and adopted to control development in the park" in sentence beginning "It would, therefore," and substituted "until August one, nineteen hundred seventy-three" for "until such time as a plan is adopted by the legislature and the governor, or until June one, nineteen hundred seventy three, whichever occurs earlier," in sentence beginning "Accordingly."

Subd. 2. L.1973, c. 348, § 1, eff. June 1, 1973, added sentence beginning "The rules and regulations of the agency."

Subd. 8. L.1973, c. 348, § 1, eff. June 1, 1973, substituted "August" for "June."

Subd. 11. L.1973, c. 348, § 1, eff. June 1, 1973, substituted "article" for "section."

Subd. 13. L.1973, c. 348, § 1, eff. June 1, 1973, substituted provisions prohibiting the undertaking of a project by the project sponsor until the sponsor has obtained a permit therefor if the project is of a type subject to the agency's project review jurisdiction under section eight hundred nine and if the project is one on which the 90-day period specified in subd. 7 has been commenced on or before July 31, 1973, for provisions rendering this section inapplicable to any local government which had zoning ordinances and subdivision regulations which provided that the agency determine such ordinances and regulations to be consistent with the objectives, policies, and standards of this section.

Subds. 14, 15. L.1973, c. 348, § 1, eff. June 1, 1973, added subds. 14 and 15.

§ 816.[1] Master plan for management of state lands

1. The department of environmental conservation is hereby authorized and directed to develop, in consultation with the agency, individual management plans for units of land classified in the master plan for management of state lands heretofore prepared by the agency in consultation with the department of environmental conservation and approved by the governor. Such management plans shall conform to the general guidelines and criteria set forth in the master plan. Until amended, the master plan for management of state lands and the individual management plans shall guide the development and management of state lands in the Adirondack park.

2. The master plan and the individual management plans shall be reviewed periodically and may be amended from time to time, and when so amended shall as amended henceforth guide the development and management of state lands in the Adirondack park. Amendments to the master plan shall be prepared by the agency, in consultation with the department of environmental conservation, and submitted after public hearing to the governor for his approval.

3. The agency and department are hereby authorized to develop rules and regulations necessary, convenient or desirable to effectuate the purposes of this section.

Formerly § 807, added L.1971, c. 706, § 1; renumbered 816 and amended L.1973, c. 348, § 1.

[1] Another section 816 is set out in article 28, post.

1973 Amendment. Subd. 1. L.1973, c. 348, § 1, eff. Aug. 1, 1973, redesignated former subd. 2 as subd. 1 and in subd. 1 as so redesignated substituted "The department" for "Upon arrival of such plan by the governor, the department" and "master plan for management of state lands heretofore prepared by the agency in consultation with the department of environmental conservation and approved by the governor. Such management" for "master plan and such management." Former subd. 1, calling

for the preparation and submission of a master plan by June 1, 1972, was stricken.

Subd. 2. L.1973, c. 348, § 1, eff. Aug. 1, 1973, redesignated former subd. 3 as subd. 2 and in such subd. 2 as so redesignated struck out "in the same manner as initially adopted" following "amended from time to time" and added sentence beginning "Amendments to the master plan." Former subd. 2 redesignated as subd. 1 and amended.

Subd. 3. L.1973, c. 348, § 1, eff. Aug. 1, 1973, redesignated former subd. 4 as subd. 3. Former subd. 3 redesignated as subd. 2 and amended.

Subd. 4. L.1973, c. 348, § 1, eff. Aug. 1, 1973, redesignated former subd. 4 as subd. 3.

§ 817.[1] Judicial review

1. Any act, omission, or order of the agency or of any officer or employee thereof, pursuant to or within the scope of this article, may be reviewed at the instance of any aggrieved person in accordance with article seventy-eight of the civil practice law and rules, but application for such review must be made not later than sixty days from the effective date of the order or the date when the act or omission occurred.

2. Any local government which appears as a party in any proceeding before the agency, shall have standing to have the agency's decision on such project reviewed pursuant to article seventy-eight of the civil practice law and rules.

Formerly § 808, added L.1971, c. 706, § 1; renumbered 817 and amended L.1973, c. 348, § 1; L.1974, c. 679, § 17.

[1] Another section 817 is set out in article 28, post.

1974 Amendment. Subd. 2. L.1974, c. 679, § 17, eff. May 30, 1974, substituted "appears as a party in any proceeding before the agency" for "becomes a party as authorized in subdivision nine of section eight hundred nine in the agency's review of a project pursuant to such section."

1973 Amendment. L.1973, c. 348, § 1, eff. Aug. 1, 1973, designated existing provisions as subd. 1 and added subd. 2.

1. Jurisdiction of Court of Claims

Court of Claims had jurisdiction of action by owner of land within Adirondack Park seeking compensation from the State on theory that comprehensive and extensive system of land use controls applicable to privately owned land within the Park constituted a "taking" of its property; however, had landowners been challenging constitutionality of the regulatory scheme the Court of Claims would not have had subject matter jurisdiction and landowners would have had to seek a declaration by a court of general jurisdiction. Horizon Adirondack Corp. v. State, 1976, 88 Misc.2d 619, 388 N.Y.S.2d 235.

§ 818.[1] Applicability

1. No provision of this article shall be construed to prohibit any local government from adopting and enforcing land use and development controls for lands, other than those owned by the state.

2. Any local land use program which has been validly enacted or adopted by a municipality shall be valid and enforceable notwithstanding its not having been approved by the agency, and any new land use or development or subdivision of land shall be subject to the provisions of such local land use program and to the shoreline restrictions contained in section eight hundred six. If the agency has project review jurisdiction over any such land use or development or subdivision of land under section eight hundred nine, such land use, development or subdivision shall, in addition to its being subject to the provisions of any such local land use program, be subject to such agency jurisdiction. The project sponsor may not undertake or continue such land use, development or subdivision, however, or any part thereof, notwithstanding the granting of a permit therefor by the agency, unless such undertaking or continuance is also permitted by the municipality under and in accordance with the provisions of its local land use program.

3. No provision of this article shall be deemed to prohibit any land use and development or subdivision of land existing prior to the effective

date of this article, including those uses and development and subdivisions of land expressly not subject to agency review as provided in section eight hundred eleven.

4. Nothing in this article shall be construed to empower the agency to acquire any interest in real property by purchase or condemnation. No right of first refusal or first option to purchase in favor of the agency, the department of environmental conservation or any other state agency shall in any way be created by this article or the land use and development plan.

5. Nothing in this article shall be construed to supersede or replace or diminish in any way any regulatory or review authority of any other state agency.

Formerly § 809, added L.1971, c. 706, § 1; renumbered 818 and amended L.1973, c. 348, § 1.

[1] Another section 818 is set out in article 28, post.

1973 Amendment. Subd. 1. L.1973, c. 348, § 1, eff. Aug. 1, 1973, struck out ", which are more restrictive than those contained in this article or adopted by rule and regulation of the agency or department pursuant to this article" following "owned by the state."

Subd. 2. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subd. 2. Former subd. 2 redesignated as subd. 3 and amended.

Subd. 3. L.1973, c. 348, § 1, eff. Aug. 1, 1973, redesignated former subd. 2 as subd. 3 and in subd. 3 as so redesignated substituted "prohibit any land use and development or subdivision of land existing prior to the effective date of this article, including those uses and developments and subdivisions of land expressly not subject to agency review as provided in section eight hundred eleven" for "prohibit nonconforming uses of land existing prior to the effective date of this article."

Subds. 4, 5. L.1973, c. 348, § 1, eff. Aug. 1, 1973, added subds. 4 and 5.

1. Generally

Creation of Adirondack Park Agency did not diminish or dilute power of commissioner of Environmental Conservation to make rules and regulations for use of forest preserve. Helms v. Diamond, 1973, 76 Misc.2d 253, 349 N.Y.S.2d 917.

§ 819.[1] Severability

If any section of this article or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of the article are hereby declared to be severable.

Formerly § 810, added L.1971, c. 706, § 1; renumbered 819, L.1973, c. 348, § 1.

[1] Another section 819 is set out in article 28, post.

2. Cape Code National Seashore

Public Law 87-126
87th Congress, S. 857
August 7, 1961

An Act

75 STAT. 284.

To provide for the establishment of Cape Cod National Seashore.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the area comprising that portion of the land and waters located in the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham in the Commonwealth of Massachusetts, and described in subsection (b), is designated for establishment as Cape Cod National Seashore (hereinafter referred to as "the seashore").

Cape Cod National Seashore, Mass. Establishment.

(b) The area referred to in subsection (a) is described as follows:

Beginning at a point in the Atlantic Ocean one-quarter of a mile due west of the mean low-water line of the Atlantic Ocean on Cape Cod at the westernmost extremity of Race Point, Provincetown, Massachusetts;

thence from the point of beginning along a line a quarter of a mile offshore of and parallel to the mean low-water line of the Atlantic Ocean, Cape Cod Bay, and Provincetown Harbor in generally southerly, easterly, and northerly directions rounding Long Point and then southwesterly to a point a quarter of a mile offshore of the mean low-water line on the harbor side of the dike depicted on the United States Geological Survey Provincetown quadrangle sheet (1949) crossing an arm of the Provincetown Harbor;

thence northerly, along a line a quarter of a mile offshore of and parallel to the low-water line at the dike to a point easterly of the point of intersection of the said dike with the boundary of the Province Lands Reservation as depicted on the said Provincetown quadrangle sheet;

thence westerly to the said point of intersection of the dike and the Province Lands Reservation boundary;

thence along the boundaries of the Province Lands Reservation northwesterly, northeasterly, northerly, and easterly to the easternmost corner of the reservation being near United States Route 6;

thence leaving the said easternmost corner along an extension of the southerly reservation boundary line easterly to the northerly right-of-way line of United States Route 6;

thence along the northerly right-of-way line of United States Route 6 in a general easterly direction crossing the Truro-Provincetown line and continuing in the town of Truro in a generally southeasterly direction to a point four-tenths of a mile southeasterly of the southerly right-of-way line of Highland Road;

thence easterly five-tenths of a mile to a point;

thence turning and running in a southeasterly direction paralleling the general alinement of United States Route 6 and generally distant therefrom five-tenths of a mile to a point approximately 700 feet northwesterly of Long Nook Road;

thence southwesterly along a ridge generally paralleling the alinement of Long Nook Road and distant approximately 700 feet therefrom to a point two-tenths of a mile northeasterly of the northerly right-of-way line of United States Route 6;

thence southeasterly paralleling the general alinement of United States Route 6 and generally distant two-tenths of a mile northeasterly thereof to a point 300 feet south of the southerly right-of-way line of Higgins Hollow Road;

thence in a general easterly direction paralleling the southerly alinement of Higgins Hollow Road and 300 feet distant southerly therefrom to a point five-tenths of a mile east of the easterly right-of-way line of said Route 6;

thence turning and running in a southeasterly and southerly direction paralleling the general alinement of United States Route 6 and distant five-tenths of a mile easterly therefrom to a point 300 feet north of the northerly right-of-way line of North Pamet Road;

thence in a generally southwesterly direction paralleling the general alinement of North Pamet Road and generally distant 300 feet northerly therefrom to a point approximately two-tenths of a mile east of the easterly right-of-way line of United States Route 6;

thence in a southerly direction paralleling the alinement of United States Route 6 and generally distant two-tenths of a mile easterly therefrom to a point three-tenths of a mile south of South Pamet Road;

thence west to the intersection of Old County Road and Mill Pond Road;

thence following the easterly right-of-way line of Old County Road southward to a point opposite the southerly right-of-way line of Ryder Beach Road at its intersection with Old County Road;

thence eastward to a point 300 feet east of the easterly right-of-way line of said Old County Road;

thence in a southerly direction paralleling Old County Road at a distance of 300 feet to the east of the easterly right-of-way line of said road to a point 600 feet south of the southerly right-of-way line of Prince Valley Road;

thence in a generally westerly direction, crossing Old County Road and the New York, New Haven, and Hartford Railroad right-of-way to the southern extremity of the town landing and beach in the Ryder Beach area, and continuing to a point in Cape Cod Bay a quarter of a mile offshore from the mean low-water line of Cape Cod Bay;

thence turning and running along a line a quarter of a mile offshore of and parallel to the mean low-water line of Cape Cod Bay in a general southerly and easterly direction rounding Jeremy Point and thence in a general northerly direction along a line a quarter of a mile offshore of and parallel to the mean low-water line on the westerly side of Wellfleet Harbor, to a point one quarter of a mile due north of the mean low-water line at the eastern tip of Great Island as depicted on the United States Geological Survey Wellfleet quadrangle sheet (1958);

thence north to the mean high-water line on the north shore of the Herring River estuary in the vicinity of its confluence with Wellfleet Harbor;

thence following the mean high-water line southwesterly, northwesterly, and northeasterly to the easterly right-of-way line of Chequesset Neck Road at its crossing of Herring River;

thence following the course of Herring River along the 20-foot contour line of the southeasterly shore thereof to a point near Mill Creek;

thence crossing Mill Creek in a northeasterly direction to the 20-foot contour level near to and northeast of the confluence of Mill Creek and Herring River;

thence following generally northerly and easterly along the easterly edge of the Herring River marshes on the 20-foot contour

to a point north of which the easterly right-of-way line of a medium duty road, as depicted on said Wellfleet quadrangle sheet, crosses northward across a marshy stream near the juncture of said medium duty road with Bound Brook Island Road;

thence crossing said marshy stream along said easterly right-of-way line of said medium duty road, and continuing in a northerly direction to the 20-foot contour level on the north side of said marshy stream;

thence following the 20-foot contour line westward approximately 1,000 feet to its intersection with an unimproved dirt road, as depicted on said Wellfleet quadrangle sheet, leading from a point near the juncture of Bound Brook Island Road and the said medium duty road;

thence following said unimproved dirt road northwesterly for approximately 1,600 feet to the 20-foot contour line bordering the southerly edge of the Herring River marshes;

thence following said 20-foot contour line in an easterly direction to Route 6;

thence crossing Route 6 and continuing to a point on the easterly right-of-way line of a power transmission line as depicted on said Wellfleet quadrangle sheet;

thence in a general southerly direction along the said easterly right-of-way line of a power transmission line to the Eastham-Wellfleet town line;

thence southeasterly for a distance of approximately 5,200 feet to a point due north of the intersection of the easterly right-of-way line of Nauset Road with the northerly right-of-way line of Cable Road;

thence due south to the intersection of the said easterly right-of-way line of Nauset Road and the said northerly right-of-way line of Cable Road;

thence in a general southerly direction crossing Cable Road and along said easterly right-of-way line of Nauset Road to a point 500 feet north of the northerly right-of-way line of Doane Road and its intersection with Nauset Road;

thence west to a point 500 feet west of the westerly right-of-way line of Nauset Road;

thence southerly and westerly 500 feet from and parallel to the said right-of-way line of Nauset Road to the easterly right-of-way line of Salt Pond Road;

thence southerly along the easterly right-of-way line of said Salt Pond Road to its intersection with the southerly right-of-way line of Nauset Road;

thence westerly along the southerly right-of-way line of Nauset Road to its intersection with the easterly right-of-way line of United States Route 6;

thence southerly along the easterly right-of-way line of said Route 6 a distance of about four-tenths of a mile to the northerly boundary of the Eastham town hall property;

thence easterly to a point one-tenth of a mile from United States Route 6;

thence turning and running in a generally southerly direction paralleling the general alinement of United States Route 6 and generally distant therefrom one-tenth of a mile to a small stream approximately one-tenth of a mile beyond Governor Prence Road extended;

thence southeasterly along the said stream to the Orleans-Eastham town line;

thence along the Orleans-Eastham town line to the southerly tip of Stony Island;

thence generally southeasterly in the town of Orleans by Nauset Harbor Channel to a point due north of the northerly tip of Nauset Heights as depicted on United States Geological Survey Orleans quadrangle sheet (1946);

thence due south to the 20-foot contour line in Nauset Heights as delineated on the said Orleans quadrangle sheet;

thence generally southerly along the said 20-foot contour to a point about one-tenth of a mile northerly of Beach Road;

thence southwesterly along a line intersecting Beach Road at a point two-tenths of a mile easterly of the so-called Nauset Road leading northerly to Nauset Heights;

thence southerly to a head of a tributary to Little Pleasant Bay at the northerly tip of Pochet Neck as depicted on the said Orleans quadrangle sheet;

thence generally southerly along the thread of channel of the said tributary passing westerly and southwesterly around Pochet Island and thence southwesterly into Little Pleasant Bay passing to westerly of the northerly tip of Sampson Island, the westerly tip of Money Head, and the southwesterly tip of Hog Island following in general the centerline of Little Pleasant Bay to Pleasant Bay;

thence generally southeasterly in Pleasant Bay along a line passing midway between Sipson Island and Nauset Beach to a point on the Chatham-Orleans town line one-quarter of a mile westerly of the mean low-water line of Pleasant Bay on the westerly shore of Nauset Beach;

thence generally southerly in Pleasant Bay in the town of Chatham along a line a quarter of a mile offshore of and parallel to the said mean low-water line of Pleasant Bay on the westerly shore of Nauset Beach to a point a quarter of a mile south of the mean low-water line of the southern tip of Nauset Beach;

thence easterly rounding the southern tip of Nauset Beach along a line a quarter of a mile offshore of and parallel thereto;

thence generally northerly and northwesterly, and westerly along a line a quarter of a mile offshore of and parallel to the mean low-water line of the Atlantic Ocean on the easterly shore of Nauset Beach and on to the outer cape to the point of beginning.

Acquisition of land, etc. Authority.

SEC. 2. (a) The Secretary of the Interior (hereinafter referred to as "Secretary") is authorized to acquire by purchase, gift, condemnation, transfer from any Federal agency, exchange, or otherwise, the land, waters, and other property, and improvements thereon and any interest therein, within the area which is described in section 1 of this Act or which lies within the boundaries of the seashore as described pursuant to section 3 of this Act (both together hereinafter in this Act referred to as "such area"). Any property, or interest therein, owned by the Commonwealth of Massachusetts, by any of the towns referred to in section 1 of this Act, or by any other political subdivision of said Commonwealth may be acquired only with the concurrence of such owner. Notwithstanding any other provision of law, any Federal property located within such area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the provisions of this Act.

Funds.

(b) The Secretary is authorized (1) to use donated and appropriated funds in making acquisitions under this Act, and (2) to pay

therefor not more than the fair market value of any acquisitions which he makes by purchase under this Act.

(c) In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within such area. The properties so exchanged shall be approximately equal in fair market value: *Provided*, That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

Report to Congress.

The Secretary shall report to the Congress on every exchange carried out under authority of this Act within thirty days from its consummation, and each such report shall include a statement of the fair market values of the properties involved and of any cash equalization payment made or received.

"Fair market value."

(d) As used in this Act the term "fair market value" shall mean the fair market value as determined by the Secretary, who may in his discretion base his determination on an independent appraisal obtained by him.

Notice. Publication in F. R.

SEC. 3. (a) As soon as practicable after the date of enactment of this Act and following the acquisition by the Secretary of an acreage in the area described in section 1 of this Act that is in the opinion of the Secretary efficiently administrable to carry out the purposes of this Act, the Secretary shall establish Cape Cod National Seashore by the publication of notice thereof in the Federal Register.

(b) Such notice referred to in subsection (a) of this section shall contain a detailed description of the boundaries of the seashore which shall encompass an area as nearly as practicable identical to the area described in section 1 of this Act. The Secretary shall forthwith after the date of publication of such notice in the Federal Register (1) send a copy of such notice, together with a map showing such boundaries, by registered or certified mail to the Governor of the Commonwealth of Massachusetts and to the board of selectmen of each of the towns referred to in section 1 of this Act; (2) cause a copy of such notice and map to be published in one or more newspapers which circulate in each of such towns; and (3) cause a certified copy of such notice, a copy of such map, and a copy of this Act to be recorded at the registry of deeds for Barnstable County, Massachusetts.

Acquisition by condemnation. Provisions.

SEC. 4. (a) (1) The beneficial owner or owners, not being a corporation, of a freehold interest in improved property which the Secretary acquires by condemnation may elect, as a condition to such acquisition, to retain the right of use and occupancy of the said property for noncommercial residential purposes for a term of twenty-five years, or for such lesser time as the said owner or owners may elect at the time of such acquisition.

(2) The beneficial owner or owners, not being a corporation, of a freehold estate in improved property which property the Secretary acquires by condemnation, who held, on September 1, 1959, with respect to such property, an estate of the same nature and quality, may elect, as an alternative and not in addition to whatever right of election he or they might have under paragraph (1) of this subsection, to retain the right of use and occupancy of the said property for noncommercial residential purposes (i) for a term limited by the nature and quality of his or their said estate, if his or their said estate is a life estate or an estate pur auter vie, or (ii) for a term ending at the death of such owner or owners, or at the death of the survivor of them, if his or their said estate is an estate of fee simple.

(3) Where such property is held by a natural person or persons for his or their own life or lives or for the life or lives of another

"The life tenant."

or others (such person or persons being hereinafter called "the life tenant"), with remainder in another or others, any right of election provided for in paragraph (2) of this subsection shall be exercised by the life tenant, and any right of election provided for in paragraph (1) of this subsection shall be exercised by the concurrence of the life tenant and the remainderman or remaindermen.

(4) The beneficial owner or owners of a term of years in improved property which the Secretary acquires by condemnation may elect, as a condition to such acquisition, to retain the right of use and occupancy of the said property for noncommercial residential purposes for a term not to exceed the remainder of his or their said term of years, or a term of twenty-five years, whichever shall be the lesser. The owner or owners of the freehold estate or estates in such property may, subject to the right provided for in the preceding sentence, exercise such right or rights of election as remain to them under paragraphs (1) and (2) of this subsection.

(5) No right of election accorded by paragraphs (1), (2), or (4) of this subsection shall be exercised to impair substantially the interests of holders of encumbrances, liens, assessments, or other charges upon or against the property.

(6) Any right or rights of use and occupancy retained pursuant to paragraphs (1), (2), and (4) of this subsection shall be held to run with the land, and may be freely transferred and assigned.

(7) In any case where a right of use and occupancy for life or for a fixed term of years is retained as provided in paragraph (1), (2), or (4) of this subsection, the compensation paid by the Secretary for the property shall not exceed the fair market value of the property on the date of its acquisition by the Secretary, less the fair market value on such date of the said right retained.

Violation of regulations.

(8) The Secretary shall have authority to terminate any right of use and occupancy of property, retained as provided in paragraph (1), (2), or (4) of this subsection, at any time after the date when any use occurs with respect to such property which fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in regulations issued pursuant to section 5 of this Act and in effect on said date: *Provided*, That no use which is in conformity with the provisions of a zoning bylaw approved in accordance with said section 5 which is in force and applicable to such property shall be held to fail to conform or be opposed to or inconsistent with any such standard. In the event that the Secretary exercises the authority conferred by this paragraph, he shall pay to the owner of the right so terminated an amount equal to the fair market value of the portion of said right which remained on the date of termination.

Suspension of authority.

(b) (1) The Secretary's authority to acquire property by condemnation shall be suspended with respect to all improved property located within such area in all of the towns referred to in section 1 of this Act for one year following the date of its enactment.

(2) Thereafter such authority shall be suspended with respect to all improved property located within such area in any one of such towns during all times when such town shall have in force and applicable to such property a duly adopted, valid zoning bylaw approved by the Secretary in accordance with the provisions of section 5 of this Act.

(c) The Secretary's authority to acquire property by condemnation shall be suspended with respect to any particular property which is used for commercial or industrial purposes during any periods when such use is permitted by the Secretary and during the pendency of the first application for such permission made to the Secretary after

the date of enactment of this Act provided such application is made not later than the date of establishment of the seashore.

"Improved property."

(d) The term "improved property," wherever used in this Act, shall mean a detached, one-family dwelling the construction of which was begun before September 1, 1959 (hereinafter referred to as "dwelling"), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated. The amount of the land so designated shall in every case be at least three acres in area, or all of such lesser amount as may be held in the same ownership as the dwelling, and in making such designation the Secretary shall take into account the manner of noncommercial residential use in which the dwelling and land have customarily been enjoyed: *Provided, however*, That the Secretary may exclude from the land so designated any beach or waters, together with so much of the land adjoining such beach or waters as the Secretary may deem necessary for public access thereto.

(e) Nothing in this section or elsewhere in this Act shall be construed to prohibit the use of condemnation as a means of acquiring a clear and marketable title, free of any and all encumbrances.

Issuance of regulations.

SEC. 5. (a) As soon after the enactment of this Act as may be practicable, the Secretary shall issue regulations specifying standards for approval by him of zoning bylaws for purposes of section 4 of this Act. The Secretary may issue amended regulations specifying standards for approval by him of zoning bylaws whenever he shall consider such amended regulations to be desirable due to changed or unforeseen conditions.

Submission to Congress.

All regulations and amended regulations proposed to be issued under authority of the two preceding sentences of this subsection shall be submitted to the Congress and to the towns named in section 1 of this Act at least ninety calendar days (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) before they become effective and the Secretary shall, before promulgating any such proposed regulations or amended regulations in final form, take due account of any suggestions for their modification which he may receive during said ninety-day period. All such regulations and amended regulations shall, both in their proposed form and in their final form, be published in the Federal Register.

Publication in F. R.

Zoning bylaws. Approval.

The Secretary shall approve any zoning bylaw and any amendment to any approved zoning bylaws submitted to him which conforms to the standards contained in the regulations in effect at the time of the adoption by the town of such bylaw or such amendment unless before the time of adoption he has submitted to the Congress and the towns and published in the Federal Register as aforesaid proposed amended regulations with which the bylaw or amendment would not be in conformity, in which case he may withhold his approval pending completion of the review and final publication provided for in this subsection and shall thereafter approve the bylaw or amendment only if it is in conformity with the amended regulations in their final form. Such approval shall not be withdrawn or revoked, nor shall its effect be altered for purposes of section 4 of this Act by issuance of any such amended regulations after the date of such approval, so long as such bylaw or such amendment remains in effect as approved.

Special provisions.

(b) The standards specified in such regulations and amended regulations for approval of any zoning bylaw or zoning bylaw amendment shall contribute to the effect of (1) prohibiting the commercial and industrial use, other than any commercial or industrial use which is permitted by the Secretary, of all property within the boundaries of the seashore which is situated within the town adopting such bylaw; and (2) promoting the preservation and development, in accordance with the purposes of this Act, of the area comprising the seashore, by means of acreage, frontage, and setback requirements and other provisions which may be required by such regulations to be included in a zoning bylaw consistent with the laws of Massachusetts.

(c) No zoning bylaw or amendment of a zoning bylaw shall be approved by the Secretary which (1) contains any provision which he may consider adverse to the preservation and development, in accordance with the purposes of this Act, of the area comprising the seashore, or (2) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under and any exception made to the application of such bylaw or amendment.

(d) If any improved property with respect to which the Secretary's authority to acquire by condemnation has been suspended by reason of the adoption and approval, in accordance with the foregoing provisions of this section, of a zoning bylaw applicable to such property (hereinafter referred to as "such bylaw")—

(1) is made the subject of a variance under or an exception to such bylaw, which variance or exception fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in the regulations issued pursuant to this section and in effect at the time of the passage of such bylaw, or

(2) is property upon or with respect to which there occurs any use, commencing after the date of the publication by the Secretary of such regulations, which fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in such regulations (but no use which is in conformity with the provisions of such bylaw shall be held to fail to conform or be opposed to or inconsistent with any such standard),

the Secretary may, at any time and in his discretion, terminate the suspension of his authority to acquire such improved property by condemnation: *Provided, however*, That the Secretary may agree with the owner or owners of such property to refrain from the exercise of the said authority during such time and upon such terms and conditions as the Secretary may deem to be in the best interests of the development and preservation of the seashore.

Certificate.

SEC. 6. The Secretary shall furnish to any party in interest requesting the same, a certificate indicating, with respect to any property located within the seashore as to which the Secretary's authority to acquire such property by condemnation has been suspended in accordance with the provisions of this Act, that such authority has been so suspended and the reasons therefor.

Administration.

SEC. 7. (a) Except as otherwise provided in this Act, the property acquired by the Secretary under this Act shall be administered by the Secretary subject to the provisions of the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535), as amended and supplemented, and in accordance with laws of general application relating to the national park system as defined by the Act of August 8, 1953 (67 Stat. 496); except that authority otherwise available to the Secretary for the conservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of this Act.

16 USC 1-4.

16 USC 1b-1d.

(b)(1) In order that the seashore shall be permanently preserved in its present state, no development or plan for the convenience of visitors shall be undertaken therein which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing or with the preservation of such historic sites and structures as the Secretary may designate: *Provided*, That the Secretary may provide for the public enjoyment and understanding of the unique natural, historic, and scientific features of Cape Cod within the seashore by establishing such trails, observation points, and exhibits and providing such services as he may deem desirable for such public enjoyment and understanding: *Provided further*, That the Secretary may develop for appropriate public uses such portions of the seashore as he deems especially adaptable for camping, swimming, boating, sailing, hunting, fishing, the appreciation of historic sites and structures and natural features of Cape Cod, and other activities of similar nature. Protection and development.

(2) In developing the seashore the Secretary shall provide public use areas in such places and manner as he determines will not diminish for its owners or occupants the value or enjoyment of any improved property located within the seashore.

(c) The Secretary may permit hunting and fishing, including shellfishing, on lands and waters under his jurisdiction within the seashore in such areas and under such regulations as he may prescribe during open seasons prescribed by applicable local, State and Federal law. The Secretary shall consult with officials of the Commonwealth of Massachusetts and any political subdivision thereof who have jurisdiction of hunting and fishing, including shellfishing, prior to the issuance of any such regulations, and the Secretary is authorized to enter into cooperative arrangements with such officials regarding such hunting and fishing, including shellfishing, as he may deem desirable, except that the Secretary shall leave all aspects of the propagation and taking of shellfish to the towns referred to in section 4 of this Act. Hunting and fishing. Regulations.

The Secretary shall not interfere with navigation of waters within the boundaries of the Cape Cod National Seashore by such means and in such areas as is now customary. Navigation.

SEC. 8. (a) There is hereby established a Cape Cod National Seashore Advisory Commission (hereinafter referred to as the "Commission"). Said Commission shall terminate ten years after the date the seashore is established under section 3 of this Act. Cape Cod National Seashore Advisory Commission.

(b) The Commission shall be composed of ten members each appointed for a term of two years by the Secretary as follows: Membership.

(1) Six members to be appointed from recommendations made by each of the boards of selectmen of the towns referred to in the first section of this Act, one member from the recommendations made by each such board;

(2) One member to be appointed from recommendations of the county commissioners of Barnstable County, Commonwealth of Massachusetts;

(3) Two members to be appointed from recommendations of the Governor of the Commonwealth of Massachusetts; and

(4) One member to be designated by the Secretary.

(c) The Secretary shall designate one member to be Chairman. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(d) A member of the Commission shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the Commission in carrying out its responsibilities under this Act upon vouchers signed by the Chairman. Compensation.

Duties.

(e) The Commission established by this section shall act and advise by affirmative vote of a majority of the members thereof.

(f) The Secretary or his designee shall, from time to time, consult with the members of the Commission with respect to matters relating to the development of Cape Cod National Seashore and shall consult with the members with respect to carrying out the provisions of sections 4 and 5 of this Act.

(g) No permit for the commercial or industrial use of property located within the seashore shall be issued by the Secretary, nor shall any public use area for recreational activity be established by the Secretary within the seashore, without the advice of the Commission, if such advice is submitted within a reasonable time after it is sought.

Exemptions.

(h)(1) Any member of the Advisory Commission appointed under this Act shall be exempted, with respect to such appointment, from the operation of sections 281, 283, 284, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99) except as otherwise specified in subsection (2) of this section.

62 Stat. 697, 793.

(2) The exemption granted by subsection (1) of this section shall not extend—

(i) to the receipt or payment of salary in connection with the appointee's Government service from any sources other than the private employer of the appointee at the time of his appointment; or

(ii) during the period of such appointment, and the further period of two years after the termination thereof, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter concerning which the appointee had any responsibility arising out of his appointment during the period of such appointment.

Appropriation.

SEC. 9. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act; except that no more than $16,000,000 shall be appropriated for the acquisition of land and waters and improvements thereon, and interests therein, and incidental costs relating thereto, in accordance with the provisions of this Act.

Separability.

SEC. 10. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Approved August 7, 1961, 12:00 a.m.

Cape Cod National Seashore
Use Guidelines for Private Property*

In administering, preserving, and developing the Cape Cod National Seashore (hereinafter referred to as Seashore), the Secretary of the Interior (hereinafter referred to as the Secretary), is required to be guided by the provisions of the Act of August 7, 1961, 16 U.S.C. § 2459 b. et seq., (75 Stat. 284), and applicable provisions of the laws relating to the National Park System. The Secretary, further, may utilize other statutory authority available to him for the conservation and management of natural resources as he deems appropriate to carry out purposes of the said Act.

The Secretary may not acquire without the consent of the owner any "improved property" or interests therein within the boundaries of the Seashore so long as the towns comprising the Seashore shall have in force and applicable to such property a duly adopted, valid zoning ordinance that is approved by the Secretary. The Secretary is authorized to withdraw the suspension of his authority to acquire by Condemnation, "improved property" that is made the subject of a variance or exception which, in his opinion fails to conform or is in any manner opposed to or inconsistent with preservation and development of the Seashore as contemplated in the said Act. Regulations adopted by the Secretary are consistent with the objectives and purposes of the Act so that the scenic, scientific and cultural values of the area will be protected, undeveloped areas will be preserved in a natural condition, and the distinctive Cape Cod character of the existing residential structures will be maintained. (Title 36, Code of Federal Regulations, Chapter 1, Part 27 - Cape Cod National Seashore; Zoning Standards.)

Whenever used in these guidelines, the following terms shall have the following meanings ascribed to them:

Accessory Building or use - A building or use customarily incidental to and located on the same lot with the principal building or use, except that it shall no longer be considered accessory when it is contained within the primary structure and represents more than 30% of the floor area; or 50% of the floor area, where the accessory use is contained in a detached structure. Detached accessory structures will include shelters, garages, boathouses, wellhouses, sheds, barns and outhouses. A structure used as a studio, office, or for appropriate small scale home occupations, may be considered an accessory structure.

Cottage Colony - A group of detached structures traditionally used as guest houses and rented to visitors forming a part of a colony centered around an improved property in existence prior to September 1, 1959.

Detached, one-family dwelling - A structure, ordinarily thought of as a house, usually consisting of a central living, dining, and single cooking area with adjacent sleeping quarters so that the occupants live as a single housekeeping unit.

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* Source: United States Department of the Interior/ National Park Service. Cape Cod National Seashore-Land Protection Plan (1985)(see bibl. for ref.), Appendix B.

Expansion Limitation - Expansion is limited to 50 per cent increase of the liveable area as it existed on September 1, 1959.

Floor Area, Liveable - The sum of the gross horizontal area of the floors of a dwelling used or intended to be used for living, sleeping, cooking or eating purposes excluding roofed porches, roofed terraces, cellar and basement areas as it existed on September 1, 1959.

"Improved Property" - A detached, one-family dwelling, the construction of which was begun before September 1, 1959, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of non-commercial residential use, together with any structure accessory to the dwellings which are situated on the land so designated.

The eligibility for a Certificate of Suspension of Condemnation of Improved Property may be jeopardized if existing properties are used in such a manner as determined to be inconsistent with the purposes of the Act.

The following are examples of compatible activities:

Normal maintenance and upkeep of private property with similar materials; repairs and reconstruction to comply with safety, building or sanitation codes; minor modifications to existing structures and outbuildings; replacement of roofing or siding; shoring up structures threatened by subsidence of soil; repair or replacement of utility lines.

The following are examples of incompatible activities:

1. Subdivision, including splits in ownership or sell off of portions of the land; timbering, initiation of new uses affecting park resources, or intensification of current uses which may be detrimental to the Seashore purposes.

2. Alterations to existing structures or new construction having one or more of these characteristics:

   New separate residences or new residences physically linked to the existing structure.

   Replacement of a major structure with one that is larger than its predecessor by more than 50%.

   Impairment of historical integrity of an identified historic structure.

3. Expansion of existing uses to a point where they cause damage to the scenic, cultural or natural resources of the area.

4. Conversion of non-commercial property to commercial uses.

5. Damage to natural, scientific, or cultural resources including topographic changes or disruptions of natural drainage patterns, or disturbance of natural vegetation or wildlife.

6. Creation of hazards that endanger the safety of park visitors.

7. Major increase in commercial use or traffic at access or crossing points on interior park roads which could result in hazardous conditions that may endanger the safety of park visitors.

Conditions that may affect the eligibility of a developed property for a Certificate of Suspension of Condemnation follow:

Alteration of Existing Structure(s)

1. Any reconstruction, alteration, or enlargement of an existing detached, one-family dwelling that would result in less than a 50-foot setback from all streets measured at right angle with the street line or a 25-foot distance from the abutter's property lines (or less than such lesser setback or distance requirements already in existence for such dwelling) or that would result in an increase of more than 50 per cent of the existing livable area of the dwelling shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

2. Any conversion, reconstruction, alteration, or enlargement of an existing accessory structure that would result in the use of such structure for residential purposes will create an additional one-family dwelling and shall be the basis for terminating the status of the entire property as improved property. However, guest houses included in a cottage colony which were constructed prior to September 1, 1959, are consistent with the definition of improved property.

Moving of Existing Structure(s)

1. If an existing detached, one-family dwelling is moved to another site on the same tract and its new location results in less than 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

2. If, in the process of moving an existing residential building to another site on the same tract, any reconstruction, alteration or enlargement is undertaken that would result in less than a 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines or that would result in an increase of more than 50 per cent of the existing livable area of the dwelling, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by owner.

Destruction of Structure(s) and Construction of New Structure(s)

1. If a detached, one-family dwelling is deliberately razed, destroyed or abandoned (other than by causes beyond the control of the owner

such as a fire, windstorm, or ocean overwash) and a replacement dwelling is constructed, either on the same site or on the same tract, such action shall be the basis for terminating the status of the property as improved property.

2. If a detached, one-family dwelling is destroyed by causes beyond the control of the owner, such as windstorm or ocean overwash, and a replacement dwelling is constructed, either on the same site or another site on the same tract that would result in less than a 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines or that would result in an increase of more than 50 per cent of the previously enclosed livable area of the former dwelling, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

3. If a detached single-family residence is determined to be in sound structural condition and is rebuilt, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

Expansion Determination

The base for determining the limits for allowable expansion to existing dwellings is the livable area of the single-family residence that existed as of September 1, 1959. Any increase in livable area constructed since September 1, 1959 will be deducted from the apportioned livable area to determine the remaining area for expansion.

Construction of Accessory Structure(s)

The construction of any new accessory structure that would result in the use of such structure for residential purposes will create an additional one-family residential dwelling and shall be the basis for terminating the status of the entire property as improved property. The total floor area for all accessory structures attached or detached, shall not exceed 50 per cent of the enclosed livable area of the single-family residence.

Commercial and Industrial Property

The Act requires that no permits for commercial or industrial uses be issued without the advice of the Cape Cod National Seashore Advisory Commission. Part III (1), Commercial Properties, outlines the guidelines relating to the acquisition or continuation of these properties within the Seashore. The Certificate of Suspension of Condemnation for commercial and industrial property is valid for a prescribed term which is usually five years. Longer terms up to 10 years may be established to provide for the return of capital on large investments which are recommended by the Seashore Advisory Commission as an expansion of nonconforming use within the Seashore.

Hardship

All of the three following conditions must be met to establish substantial hardship:

1. Literal enforcement of the guidelines would involve substantial financial or other loss to the owner.

2. The circumstance is caused by peculiar soil conditions, shape of topography of such land or structural deterioration.

3. Desirable relief may be granted without either

   a. substantial detriment to the general public.

   b. nullifying or substantially derogating the purposes and intent for which Cape Cod National Seashore was established.