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ADIRONDACK PARK AGENCY RULES AND REGULATIONS

IMPLEMENTING THE ADIRONDACK PARK AGENCY ACT (EXECUTIVE LAW, ARTICLE 27), WILD, SCENIC AND RECREATIONAL RIVER SYSTEM ACT (ENVIRONMENTAL CONSERVATION LAW, ARTICLE 15, TITLE 27), AND FRESHWATER WETLANDS ACT (ENVIRONMENTAL CONSERVATION LAW, ARTICLE 24).

SUBTITLE Q OF TITLE 9 OF THE OFFICIAL
COMPILATION OF CODES, RULES, AND REGULATIONS
OF THE STATE OF NEW YORK

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JANUARY 3, 2001 SUPPLEMENT: AMENDMENTS TO NEW YORK STATE ADIRONDACK PARK AGENCY RULES AND REGULATIONS, 9 NYCRR SUBTITLE Q, PARTS 572, 573, AND 588.

THE AMENDMENTS APPLY TO THE FOLLOWING ELEVEN SECTIONS:

C	Section 572.1	Procedures for review of projects; general rules
C	Section 572.3	Preliminary consultations and conceptual review
C	Section 572.4(b)	Permit application requirements generally
C	Section 572.20	Renewal of permits
C	Section 572.20(d)	Renewal of permits
C	Section 572.22(b)	Appeals and requests for reconsideration
C	Section 572.23	General permits
C	Section 573.4(c)	Subdivisions
C	Section 573.4(g)	Subdivisions
C	Section 573.4(h)	Subdivisions
C	Section 588.9	Cooperative Agreements

The amended text of these Sections is as follows:

Section 572.1. Procedures for review of projects; general rules. (a) All class A and class B regional projects, rivers projects and wetlands projects shall be reviewed according to the procedures of section 809 of the Adirondack Park Agency Act and this Part.

(b) State agency projects except those which are class A or class B regional projects shall be reviewed according to the procedures of section 814 of the Adirondack Park Agency Act and Part 579 of these regulations.

(c) The agency may enter into written agreements with other state agencies to enhance the exchange of information and to establish coordinated pre-application, application and review procedures.

(d) Any such agreements may provide that (unless in the opinion of the agency board a project sponsor establishes good cause to do otherwise) no application to the agency shall be deemed complete until all other state agencies, that are party to the agreement and have review and permitting jurisdiction over the same project site have, in the opinion of each, received sufficient application materials that they have, respectively, deemed the applications made to them to be complete.

Section 572.3. Preliminary consultations and preapplication conceptual review. (a) Any sponsor of a proposed large scale project may request preliminary consultations and an informal assessment of the proposed project and site by the agency staff. A general description of the proposed project and general information concerning the project site should be provided. A sponsor may also request written recommendations from agency staff.

(b)(1) Any project sponsor of a proposed large scale project may after preliminary consultations and informal assessment with staff as provided in subdivision (a) request preapplication conceptual review by the regulatory programs committee.

(2) Requests for preapplication conceptual review shall be submitted in writing to the director of regulatory programs. The request shall include identification of the project site and a statement of the goal(s) of the project, and any reasonable alternative preliminary project designs which also achieve the project goal(s). Should a project sponsor believe that no reasonable alternatives exist which achieve the project goal(s), the project sponsor may include a statement describing the reasons for such a conclusion. Upon receipt of a conceptual review request, agency staff may provide an individualized request for additional information regarding the project and any reasonable alternatives which would achieve the project goal(s). Agency staff shall also publish notice of the request for conceptual review in the Environmental Notice Bulletin.

(3) The staff shall, within 45 calendar days, review the materials once all the information agreed to has been submitted and formulate recommendations to the regulatory programs committee. The agency may solicit public comment on the project sponsor's materials and the recommendations of staff. The staff recommendations to the regulatory programs committee shall include consideration of the calculation of the overall intensity guidelines, the compatibility of the project with the land use area and

community, and potential impacts of any alternatives under consideration. The staff shall also recommend its preferred alternative, shall identify any issues that should be addressed in the permit application as can be identified in the information provided, suggest guidelines for the development of the final plan, and make any other recommendations relevant to impacts and approvability of the project or alternatives.

(4) Should staff conclude, within 45 calendar days, that a project sponsor has provided insufficient information as part of a request for conceptual review specified in Part 572.3(b)(2), staff shall recommend to the regulatory programs committee that the committee deny the applicant's request for conceptual review. The recommendation shall specify the deficiency of the information provided regarding the project site, goal(s) of the project, and/or reasonable alternative preliminary project designs.

(5) The request for preapplication conceptual review and the staff recommendation shall be presented to the regulatory programs committee, which shall consider the matter at a regularly scheduled meeting at which members of the general public are invited to be heard. The agency shall provide reasonable prior notice to the public of such meeting and of the opportunity to be heard. After the meeting, and the expiration of an additional 30-day period for public comment, the committee shall provide its recommendations in writing.

(6) The members of the committee shall endeavor, through the formulation of consensus recommendations, to provide the project sponsor as much guidance as possible in the design of the project to conform with pertinent approval criteria.

(7) The amount and value of guidance which can be expected in preliminary consultations and conceptual review is dependent on the quality of the information provided. In this respect such information (including when requested permission to enter upon the project site) will be critical to that guidance; and, thus should be provided as soon as reasonably practical.

(c) Plans and information provided by the sponsor shall not be binding upon the sponsor; nor shall findings or recommendations by the agency members or staff for purposes of this section constitute authorization to commence the project and shall not be binding upon the agency with respect to any subsequent permit application or other approval for the proposed project.

Section 572.4 Permit application requirements generally.

(b)(i) Applications may be submitted only by a "project sponsor" as defined by section 570.3 (oo) of these regulations, shall contain the signature of the owner of record of the land involved as co-applicant, and shall contain a description of the project in the form and manner required in the appropriate application form.

(ii) All applications for subdivisions shall be accompanied by a survey or deed plot prepared by an appropriately qualified person to so act in this State. For purposes of this section, the term "deed plot" shall mean a scaled sketch map depicting the property boundaries as set forth in the property deed.

(iii) All applications for subdivisions shall also be accompanied by a site plan map. In the case of subdivision projects involving five or more lots, parcels or sites, the site plan map shall be prepared by an appropriately qualified person to so act in this State.

(iv) In this section, "site plan map" means: The scaled development plan for one or more lots on which are shown the existing and proposed natural and man-made conditions of the lot in the vicinity of the proposed development. Conditions that should be shown if present on the site include water bodies, wetlands, floodplains, vegetation, roads, utilities, structures and buildings, water and sewage systems and other resources that may be impacted by a proposed development.

(v) The director of operations is authorized to grant an exception to any of the information requirements of paragraph (iv) in cases where such information is not necessary to determine adverse impact to site resources or compliance with law.

Section 572.20. Renewal of permits. (a) A permit for a project which is not in existence within the period specified in the permit shall expire and be void at the end of such specified period unless renewed by the agency pursuant to section 809(8)(b) of the Adirondack Park Agency Act and this section.

(b) A request for permit renewal shall be made prior to expiration of the permit. Any request thereafter shall be treated as an application for a new permit.

(c) A timely renewal request shall be reviewed as follows:

(1) The director of operations may issue a renewed permit for one additional period (not in excess of the length of the original period specified in the permit) in the case of renewal requests which

do not involve a material change in the project proposal, applicable law or environmental conditions or technology.

(2) Renewal requests which may involve such a material change shall be treated as an application for a new permit.

(3) Requests for renewal of permits which have previously been renewed shall be referred to the operations committee for initial review pursuant to section 572.12 of these regulations. In such a case, the agency may, following committee review, renew the permit, renew the permit with modifications, notify the project sponsor of its intent to hold a public hearing on the request, or deny the request without prejudice to submission of an application for a new permit.

Section 572.20 Renewal of Permits.

(d)(1) For the purpose of determining if a project (except a subdivision) was in existence within the period stipulated in the permit the agency will consider, among other factors occurring within the period, the nature, extent and cost of structures and improvements completed or commenced and necessary to the new land use and development authorized by the permit.

(2) For the purpose of determining if a subdivision (or portion thereof) was in existence within the period stipulated in the permit, the agency will consider, among other factors occurring within the period, (i) the location and number of lots sold relative to the total number of lots in the subdivision, (ii) the location, nature, extent and cost of necessary structures and improvements completed or commenced relative to all other necessary structures and improvements related to the subdivision, and (iii) demonstrated efforts to sell lots.

(3) Every project permit issued or renewed by the agency shall recite the provisions of paragraph (1) or (2) above; as applicable.

Section 572.22 Appeals and Requests for Reconsideration.

(b) Requests for reconsideration of actions by the full agency.

(1) Any project sponsor or variance applicant may request reconsideration of any action taken by the full agency on a project or variance. Six affirmative votes shall be required to grant reconsideration. If reconsideration is granted, eight affirmative votes shall be required to act with respect to the merits of the request.

(2) Reconsideration may be granted if the agency finds that the previous action was based on materially erroneous findings of fact or conclusions of law, or that a relevant policy or interpretation has changed since the previous action.

Section 572.23. General Permits. (a) The agency may approve a general permit for any class of projects in relation to which the agency makes the requisite statutory findings and determinations on a general basis in compliance with the following provisions.

(b) The agency may propose issuance of any general permit, by the adoption of a resolution in writing specifying with respect to each such permit: (i) the geographic area eligible for the permit; (ii) the time period for which the permit will be effective; (iii) the basis of jurisdiction under section 809 of the Adirondack Park Agency Act and/or articles 15 or 24 of the Environmental Conservation Law; (iv) the activity or activities authorized by the permit or permits, including their probable extent and frequency; (v) findings of fact, conclusions of law and mitigating conditions to address potential adverse environmental impacts and the statutory criteria for permit issuance; (vi) if appropriate, the procedure for issuance of a certificate pursuant to the general permit to any person proposing to undertake the specified jurisdictional activity.

(c) The agency shall provide notice of the proposal in accordance with 6 NYCRR Part 617 describing the six elements prescribed above with respect to each such permit: (i) in the Environmental Notice Bulletin; (ii) in not less than three newspapers of general circulation within the park and one such paper outside the park; and (iii) to the Adirondack Park Local Government Review Board.

(d) The issuance of a general permit by the agency shall constitute a Type I action, for purposes of Part 617 cited above.

(e) A draft final order setting out the elements established in subsection (b) above with respect to each such proposed permit, shall be provided for public review and comment not less than 30 days prior to agency board action. The board shall approve or disapprove the order after expiration of such period.

(f) As soon as practicable after the approval of a general permit pursuant to this section, notice of such approval shall be published in the same manner specified in (c) above, and the permit shall be recorded by the agency in the counties within which it is effective in the usual manner.

(g) In the event that use of a certificate is deemed appropriate, and upon application by any qualified person, the director of regulatory programs (or designee) shall issue to that person for the location specified, a certificate setting forth the terms and conditions of the general permit approved pursuant to this section. Failure to comply with the terms and conditions of the general permit or certificate automatically voids the authority granted thereunder.

(h) The general permit shall expire according to its terms and may be revoked at any time after 10 days notice otherwise given in the same manner specified in (c) above. Expiration or revocation of the general permit automatically voids any certificate issued under the permit unless an earlier expiration is provided in the certificate.

Section 573.4 Subdivisions.

(c) Counting lots. For the purpose of determining agency jurisdiction based on the number of lots created from a parcel of land on or after August 1, 1973: (1) any lot to be retained by the subdivider, and (2) all lots in the same land use area which are part of one project and which would otherwise be adjoining but which are located on opposite sides of a public or private road, or railroad or right-of-way owned in fee, shall be counted, and (3) any parts of a lot which would otherwise be adjoining but which are located on opposite sides of a public or private road, railroad or right-of-way owned in fee, shall be counted as separate lots.

Section 573.4 Subdivisions.

(g) Division of land by gift, devise or inheritance. (1) Subject to the other provisions of this section, the mere division of land by bona fide gift, devise or inheritance, by and from natural persons is not subject to review by the agency.

(2) Each immediate family member of a person who has continuously owned a landholding since May 22, 1973 may receive one parcel from that landholding, provided that the parcel is conveyed by the landowner by bona fide gift, devise or inheritance. In such a case, so as to allow the construction of one single family dwelling or mobile home on the gift lot, the overall intensity guidelines and minimum lot size requirements of the Adirondack Park Agency Act shall not apply; however, the minimum shoreline lot width and setback requirements of these regulations shall apply.

(3) A permit is required for the division of land by bona fide gift, devise or inheritance by a person who has not owned the land continuously since May 22, 1973, if the resulting lots do not comply with the overall intensity guidelines and minimum lot size criteria of the Adirondack Park Agency Act and with the minimum shoreline lot width and setback requirements of these regulations.

(4) A permit is required for the construction of a single family dwelling or mobile home on a lot, parcel or site even though created by gift, devise or inheritance if the gift, devise or inheritance is located in a resource management area, industrial use area or critical environmental area.

(5) The subdivision of a parcel of land owned in joint or common tenancy, tenancy by the entirety, or other joint ownership between or among the owners will not be considered to be by bona fide gift, even if no consideration passes among the parties. Such a subdivision requires an agency permit if a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

(6) A permit is required for the division of land through conveyance by gift, devise or inheritance of any lot, parcel or site located outside a hamlet or moderate intensity use area but within a designated river area.

(7) A permit is required for the division of land through conveyance by gift, devise or inheritance of any lot, parcel, or site involving wetlands including but not limited to instances where the division line intersects or crosses a wetland which is subject to agency jurisdiction.

Section 573.4 Subdivisions.

(h) Preexisting subdivisions. (1) No agency permit is required for the conveyance of a lot or lots in a lawfully preexisting subdivision, provided no individual lot is subdivided. The shoreline building and sewage disposal system setbacks and the vegetative cutting restrictions of section 806 of the Adirondack Park Agency Act apply to all new land uses or developments on lots in preexisting subdivisions; the minimum shoreline lot width requirements apply to preexisting subdivisions which have not received Department of Health approval.

(2) A preexisting subdivision is one determined by the agency pursuant to paragraph (4) below to have been substantially commenced prior to August 1, 1973 and involving substantial expenditures made for structures or improvements prior to such date.

(3) "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 and any local or other governmental regulation. (See also Real Property Law and Public Health Law requiring subdivision plats to be filed.)

(4) For the purpose of determining whether a subdivision or portion thereof was in existence as of August 1, 1973, the agency will consider, among other relevant factors, (i) the number of lots sold prior to such date relative to the total number of lots in the subdivision, (ii) the locations of such lots sold, (iii) the nature, extent and cost of structures and improvements directly related to the subdivision completed or commenced prior to such date, relative to all such necessary improvements related to the subdivision, (iv) the location of such completed or commenced improvements, and (v) demonstrated efforts to sell lots prior to such date.

(5) The agency may determine that all or only a portion or portions of a subdivision, or groups of such subdivision lots are preexisting, depending on the pattern of sale of lots and installed infrastructure.

(6) An agency permit is required for the construction of a single family dwelling or mobile home on a lot in a preexisting subdivision which has not received New York State Department of Health approval if located in a resource management or industrial use area, or in a critical environmental area.

Section 588.9. Cooperative agreements. The agency may enter and carry out written agreements with the federal government and/or with other state agencies in order to facilitate cooperation and joint action to be taken under any statute administered by the agency.

CHAPTER I. INTRODUCTION AND DEFINITIONS

PART 570

INTRODUCTION; DEFINITIONS USED IN THESE REGULATIONS

(Statutory authority: Executive Law, art. 27;
Environmental Conservation Law, art. 15, tit. 27; art. 24)

Sec.

570.1 Statutes administered by the agency

570.2 Organization of these regulations

570.3 Definitions used in these regulations

Section 570.1 Statutes administered by the agency. The agency administers the Adirondack Park Agency Act (Executive Law, article 27), the Freshwater Wetlands Act (Environmental Conservation Law, article 24) within the Adirondack Park and, for private lands within the Adirondack Park, the Wild, Scenic and Recreational Rivers System Act (Environmental Conservation Law, article 15, title 27).

Section 570.2 Organization of these regulations. (a) These regulations should be read in conjunction with the Adirondack Park Agency Act, the Freshwater Wetlands Act and the Wild, Scenic and Recreational Rivers System Act.

(b) The statutes are administered through (1) permit requirements and (2) restrictions applying whether or not a permit is required, which must be adhered to unless a variance is granted.

(c) The procedures for determining whether a permit and/or variance is required are set forth in Part 571 of these regulations.

(d) The procedures for the review of permit and variance applications are set forth in Part 572 of these regulations.

(e) The substantive permit and variance requirements of the Adirondack Park Agency Act are separately set forth in Parts 573-576 of these regulations.

(f) Special provisions relating to wild, scenic and recreational rivers and to freshwater wetlands are set forth in Parts 577 and 578 of these regulations, respectively.

(g) These regulations also contain provisions with respect to State agency projects (Part 579), hearing procedures (Part 580), enforcement (Part 581), local and regional land use planning (Parts 583 and 584), and the requirements of the State Environmental Quality Review Act, Freedom of Information Law, and Open Meetings Law (Part 586).

Section 570.3 Definitions used in these regulations. The definitions of section 802 of the Adirondack Park Agency Act, some of which are clarified in this section, and the additional definitions set forth in this section, shall apply to these regulations. Certain definitions which apply only to wild, scenic and recreational rivers and river areas or only to freshwater wetlands are set forth in sections 577.2 and 578.3 of these regulations respectively. Certain other definitions with limited applicability may be found in other Parts of these regulations.

(a)(1) *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.

(2) Guest cottages as accessory structures shall only be used for occasional occupancy by guests of the residents of the primary dwelling.

(b)(1) *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.

(2) Professional, commercial or artisan activities in residential structures or in accessory structures on the same premises shall be considered accessory uses if they (i) involve the employment at one time of not more than two persons not residing on the premises, (ii) will involve the use of not more than two signs, nonilluminated and not larger in the aggregate than five square feet in size, and (iii) otherwise meet the definition of accessory use.

(c) Agency member means an agency member or designee.

(d) *Approved local land use program means any local land use program approved by the agency pursuant to section 807 of the Adirondack Park Agency Act.

(e) Boathouse means a structure with direct access to a navigable body of water (1) which is used for the storage of boats and associated equipment and (2) which does not have bathroom or kitchen facilities and is not designed or used for lodging or residency.

(f)(1) Campground means any area designed and in fact used for transient occupancy by camping in tents, camp trailers, travel trailers, motor homes or similar facility designed for temporary shelter, without structural additions to or removal of wheels from vehicles admitted.

* Indicates verbatim statutory definitions of section 802 of the Adirondack Park Agency Act. In certain instances, secondary paragraphs clarify statutory definitions for the purpose of these regulations.

(2) For the purpose of this definition, "camp trailers, travel trailers, motor homes or similar facility designed for temporary shelter" shall not include any single vehicle exceeding eight feet in width or 35 feet in length or any combination of vehicles, including a trailer or semi-trailer, exceeding eight feet in width or a total of 55 feet in length, nor shall any campground permit structural additions to or removal of wheels from vehicles admitted or furnish all-weather water supply or sewage disposal connections at individual sites.

(g) Chief elected officer means a town supervisor or a village mayor.

(h) *Class A regional project and class B regional project mean the land uses and developments and subdivisions of land listed in section 810 of the Adirondack Park Agency Act.

(i) Clearcutting means any cutting of trees over six inches in diameter at breast height over any 10-year cutting cycle where the average residual basal area of such trees after such cutting is less than 30 square feet per acre, measured within the area harvested.

Provided, however, that where regeneration is assured by stand conditions such that after such cutting the average residual basal area of trees at least one inch in diameter at breast height is at least 30 square feet per acre, measured within the area harvested, a clearcut will not be deemed to have taken place unless the average residual basal area of trees over six inches in diameter at breast height is less than 10 square feet per acre, similarly measured.

Rules with respect to agency jurisdiction and review of clearcutting are set forth in section 573.7 of these regulations.

(j) *Commercial sand and gravel extraction means any extraction from the land of more than 50 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.

(k) 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 lists of primarily and secondarily compatible uses set forth in section 805(3) of the Adirondack Park Agency Act.

(l) Critical environmental area means:

(1) in a hamlet area, wetlands;

(2) in moderate intensity use, low intensity use, rural use and resource management areas: (i) wetlands, (ii) lands at elevations of 2,500 feet or more, (iii) lands within 1/8 mile of State lands classified wilderness, primitive or canoe by the State Land Master Plan, and (iv) lands within 1/4 mile of rivers navigable by canoe designated by section 15-2715 of the Environmental Conservation Law to be studied for inclusion in the wild, scenic and recreational rivers system. The rivers to be studied are listed in Appendix Q-6 of these regulations;

(3) in rural use areas, lands within 150 feet of, and in resource management areas lands within 300 feet of, the edge of the rights-of-way of State or federal highways, or such county highways as may be designated as major travel corridors by rule or regulation of the agency or in an approved local land use program.

(m) Development considerations means the list of factors relating to the potential for undue adverse impact upon the resources of the Adirondack Park contained in section 805(4) of the Adirondack Park Agency Act and section 574.5 of these regulations and considered by the agency in reviewing a class A or class B regional project. Certain of the development considerations are further defined for this purpose in section 574.5 of these regulations.

(n) *Existing land use or development or existing use means any land use or development in existence at any given time. (In existence is defined in Definition (s) of this section.)

(o) Freshwater wetland or wetland means wetlands as defined in Definition (aaa) of this section.

(p) *Group camp means any land or facility for seasonal housing and recreational, education 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.

Rules with respect to conversion of group camps pursuant to section 811(1)(b) of the Adirondack Park Agency Act are set forth in section 574.8 of these regulations.

(q) Hunting and fishing cabin and private club structure shall mean a cabin, camp or lean-to or other similar structure designed for occasional occupancy for hunting, fishing, or similar purposes.

(r) Immediate family means parents, children, brothers and sisters, grandparents, grandchildren and spouses. The term includes members of a family, whether by adoption or blood relation and includes half-blood members.

(s) *In existence means (1) with respect to any land use or development, including any structure, that such use or development has been substantially commenced or completed, and (2) 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.

(t) *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 does 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.

(u) Land use and development plan or plan means the Adirondack Park land use and development plan prepared by the agency and adopted in section 805(1) of the Adirondack Park Agency Act, including the plan map; the provisions of the plan as contained in section 805(3) and section 805(4) of the Act and sometimes referred to as the "provisions of the plan"; and the shoreline restrictions contained in section 806 of the Act.

(v) Land use areas means the six land use areas of the land use and development plan delineated on the plan map and described in section 805(3)(c)-(h) of the Adirondack Park Agency Act.

(w) Large-scale projects means those projects which, because of (1) a substantial amount of land or number of lots, (2) a lengthy construction time, (3) technical complexities, or (4) for any other reason, the requirement of furnishing all final detailed engineering and planning information and other detailed data necessary for the issuance of a permit for development of the project at one time may be unduly burdensome.

(x) Local government means any town or village whose boundaries lie wholly or partly within the Adirondack Park, except that such term shall not include that portion of a town within any incorporated village.

(y) 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, including 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.

(z) Major public utility use means any electric power transmission or distribution line and associated equipment of a rating of more than 15 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 25 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 50 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 pursuant to the Public Service Law is not a major public utility use for the purpose of these regulations 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 these regulations.

(aa)(1) *Mean high water mark means the average annual high water level.

(2) Procedures for determining mean high water marks are set forth in section 571.3 of these regulations.

(bb) 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 excavations, including the construction or alteration of mine roads, mine tailing piles or dumps and mine drainage.

(cc) *Mineral extraction structure means any mine hoist; ore reduction, concentrating, sintering or similar facilities and equipment; administrative building; garages or other main buildings or structures.

(dd) *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.

(ee) *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.

(ff)(1) Multiple family dwelling means an apartment, town house, condominium, cooperative 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.

(2) Multiple family dwelling shall also include any such building containing two or more separate dwelling units used on a time-sharing, leased time or other similar basis whereby more than one person, group of persons or family has a legal right of occupancy at differing times.

(gg) *New land use or development or new land use means any land use or development that is not a preexisting use.

(hh) *New subdivision of land or new subdivision means any subdivision of land that is not a preexisting subdivision.

(ii)(1) 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.

(2) A use involving filling of wetlands or substantial construction or land disturbance is not an open space recreation use.

(jj) Overall intensity guidelines means the following guidelines for development of the private land use areas of the park:

Land use area	Approximate number of principal buildings per square mile
Hamlet	No guideline
Moderate intensity use	500
Low intensity use	200
Rural use	75
Resource management	15
Industrial use	No guideline

(kk) *Person means any individual, corporation, partnership, association, trustee, municipality or other legal entity, but shall not include the State or any State agency.

(ll) Preexisting land use or development or preexisting use means any land use or development, including any structure, lawfully in existence prior to August 1, 1973. For the purposes of this definition, "lawfully" means in full compliance with all applicable laws, rules and regulations, including possession of and compliance with any permit or other approval required under the Public Health Law, the Environmental Conservation Law, or any local or other governmental regulation.

(mm) Preexisting subdivision of land or preexisting subdivision means any subdivision or portion of a subdivision lawfully in existence prior to August 1, 1973. For the purposes of this definition, "lawfully" shall have the meaning set forth in subdivision ll of this section.

(nn) Principal building means any one of the following:

(1) a single family dwelling or mobile home constitutes one principal building;

(2) a tourist cabin or similar structure for rent or hire involving 300 square feet or more of floor space constitutes one principal building;

(3) each dwelling unit of a multiple family dwelling, including each separate dwelling unit used on a time-sharing, leased time or other similar basis whereby more than one person, group of persons or family has a legal right of occupancy at differing times, constitutes one principal building;

(4) 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 300 square feet of floor space constitutes one tenth of a principal building;

(5) each commercial use structure and each industrial use structure in excess of 300 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 11,000 square feet of floor space or portion thereof of such commercial use structure constitutes one principal building;

(6) 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 one principal building;

(7) any other structure which exceeds 1250 square feet of floor space constitutes one principal building;

(8) 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.

(oo) Project sponsor means any person having a legal interest in property, including a landowner, tenant, mortgagee, contract vendee, or optionee, and who makes application to the agency or a local government for the review of a project proposed on such property.

(pp) Rivers project means those new land uses, developments or subdivisions of land requiring a permit pursuant to section 577.5 of these regulations.

(qq) *Shoreline means that line at which land adjoins the waters of lakes, ponds, rivers and streams within the Adirondack Park at mean high water.

(rr) Shoreline restrictions means those restrictions upon land use and development or subdivision of land contained in section 806 of the Adirondack Park Agency Act and Part 575 of these regulations.

(ss) *Single family dwelling means any detached building containing one dwelling unit, not including a mobile home.

(tt) *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.

(uu) State Land Master Plan means the master plan for the management of State lands referred to in section 816 of the Adirondack Park Agency Act.

(vv)(1) 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.

(2) For the purposes of applying the conversion provisions of section 811(1)(b) of the Adirondack Park Agency Act, "structure" is defined in section 574.8 of these regulations.

(3) For the purpose of Part 577 of these regulations pertaining to wild, scenic and recreational rivers, "structure" is defined in section 577.2(u) thereof.

(ww)(1) 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 or 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.

(2) Subdivision includes, but is not limited to:

(i) residential subdivisions, which may include surveyed lot lines, building sites, roads, utilities, water and sewerage facilities, and the like;

(ii) subdivisions where land is divided into sites by lease, license or separate occupancy without any formal conveyance of fee title or other interest in realty, such as the granting of permission for emplacement of a number of mobile homes, or the construction of a single family dwelling or mobile home on a lot already containing an existing single family dwelling or mobile home.

(iii) subdivisions consisting of land transfers for non-residential purposes, such as large-scale bulk land sales;

(iv) subdivisions not pursuant to a filed plat, such as the division of a farm or forested tract into parcels of acreage larger than conventional homesite lots, whether or not construction is planned.

(3) The mere filing of maps, plats or plans required by statute, or entering into a contract of sale or other agreement where possession of or title to land is not actually or constructively transferred, shall not be considered the undertaking of a subdivision. "Undertake" is further defined in subdivision (yy) of this section.

(4) Subdivision of land shall not include the lease of land for hunting and fishing and other open space recreation uses.

(xx) *Tourist accommodation means any hotel, motel, resort, tourist cabin or similar facility designed to house the general public.

(yy)(1) Undertake means commencement of a material disturbance of land, including the commencement of road construction, grading, the installation of utilities, clearing of building sites, excavation (including excavation for the installation of foundations, footings and septic systems), or commencement of landscaping or any other material disturbance of land preparatory or incidental to a proposed land use or development or subdivision.

(2) Undertake also means in the case of a subdivision to execute and to deliver any contract, mortgage or conveyance which actually or constructively transfers possession of or title to land.

(3) Preliminary field survey work unaccompanied by more than minimal vegetative clearing necessary for such purposes, the digging of soil test pits, the performing of soil percolation tests and other minor site inspections, the staking of lots, or the securing of other approvals or permits required by law shall not be considered undertaking a project.

(zz) 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 a river or permanent or intermittent stream or the natural level or condition of lake or pond. 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 purpose of these regulations.

(aaa)(1) Wetlands or freshwater wetlands means any land annually subject to periodic or continual inundation by water and commonly referred to as a bog, swamp or marsh, which is (i) one acre or more in size, or (ii) 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.

(2) Open waters immediately adjacent to a wetland and lands entirely surrounded by a wetland will be considered part of the wetland if these areas are essential to the preservation of the wetland vegetation.

(3) The definition of "wetlands" is stated in technical terms in section 578.3(k) of these regulations. Lands will not be considered wetlands unless they also meet that definition.

(4) Procedures for determining the existence of wetlands are set forth in section 571.2 of these regulations.

(bbb) Wetlands project means those activities in freshwater wetlands or adjacent areas requiring a permit pursuant to section 578.2 of these regulations.

CHAPTER II. REGULATION OF LAND USE AND DEVELOPMENT AND SUBDIVISION OF LAND

PART 571

DETERMINATION OF AGENCY PERMIT OR VARIANCE JURISDICTION

(Statutory authority: Executive Law, art. 27;
Environmental Conservation Law, art. 15, tit. 27; art. 24)

Sec.

- 571.1 Determination of agency permit or variance jurisdiction
- 571.2 Determination of the existence of a wetland
- 571.3 Determination of mean high water
- 571.4 Determination of navigability of river or stream
- 571.5 General rules for determinations made pursuant to this Part

Section 571.1. Determination of agency permit or variance jurisdiction. (a) The agency will, upon request of any person having a legal interest in property and contemplating land use or development or subdivision thereon, determine whether an agency permit is required, or whether a variance is required from the shoreline restrictions or other restrictions of these regulations.

(b) A request may be made by submitting a completed jurisdictional inquiry form to the agency at its headquarters in Ray Brook or at any of its district offices, or to any office of the Department of Environmental Conservation or the Department of Health listed in Appendix Q-1 of these regulations.

Section 571.2. Determination of the existence of a wetland. The agency will, upon request of any person having a legal interest in property and contemplating a land use or development or subdivision within the boundaries of wetlands thereon, determine whether wetlands are present, and the exact location of wetland boundaries.

Section 571.3 Determination of mean high water. (a) The agency will, upon request of any person having a legal interest in property and contemplating land use or development or subdivision thereon, determine the mean high water mark of any lake, pond, river, or stream at relevant points.

(b) Where recorded hydrological data allow, the agency will provide mean high water expressed as an elevation above mean sea level for the waterbody involved and will list it in Appendix Q-2 of these regulations.

(c) Where recorded hydrological data cannot be used, the agency will physically locate the mean high water mark upon the land in question, utilizing standard vegetative tests, water marks, soil characteristics and other means customarily employed in making such determinations.

(d) The agency will generally accept the written and certified determination of a professional land surveyor licensed by the State of New York of the mean high water mark on any particular lot.

(e) Except where it clearly appears, based upon inspection of the lot, that the original determination was inaccurate, the agency will generally accept any determination of mean high water set forth in a deed to the premises.

(f) Where the application of subdivision (b), (c), (d), or (e) of this section yields materially different results, the agency will reasonably fix the mean high water mark in the exercise of discretion.

Section 571.4 Determination of navigability of river or stream. The agency will, at the request of any person having a legal interest in property and contemplating land use or development or subdivision thereon subject to the shoreline restrictions, determine whether a given river or stream or portion thereof is navigable for the purposes of section 806 of the Adirondack Park Agency Act and these regulations.

Section 571.5 General rules for determinations made pursuant to this Part. (a) Requests pursuant to this Part may be made by any person having a legal interest in the property in question, including a landowner, tenant, mortgagee, contract vendee or optionee. The agency will endeavor to respond to all requests, in writing, within 15 days of receipt.

(b) The agency will be bound by any determination made pursuant to this Part when signed by its executive director, director of operations, project administrator or counsel, and when there has been material detrimental reliance thereon. No binding oral determinations can be made. The agency will not be bound in the case of misrepresentation or error in the facts or intentions stated in any inquiry made pursuant to this Part.

(c) A letter from the agency with respect to its permit or variance jurisdiction shall not excuse the responsible person from obtaining any other approvals or permits required by other governmental agencies such as the Department of Environmental Conservation, Department of Health, or local governments.

(d) A determination made pursuant to subdivision (b) of this section may be appealed to the agency by the person who requested it under the procedures set forth in section 588.2 of these regulations.

PART 572

PROCEDURES FOR THE REVIEW OF PROJECTS AND VARIANCES

(Statutory authority: Executive Law, art. 27;
Environmental Conservation Law, art. 15, tit. 27; art. 24)

Sec.

- 572.1 Procedures for review of projects; general rule
- 572.2 Project sponsor's options
- 572.3 Preliminary consultations and conceptual review
- 572.4 Permit application requirements generally
- 572.5 Expedited review of minor projects
- 572.6 General requirements for review of large scale projects
or other projects to be undertaken in sections
- 572.7 Notice of application incompleteness and additional information request
- 572.8 Notice of application completion and advisory comments
- 572.9 Site inspections by the agency
- 572.10 Projects which require variances
- 572.11 Director of operations authority to approve certain projects
- 572.12 Initial review of projects by operations committee
- 572.13 Review of class A regional projects in land use areas
governed by an approved local land use program
- 572.14 Public hearings on projects
- 572.15 Procedures for review of variances
- 572.16 Special procedures applicable to certain variance applications
- 572.17 Agency decision on variance applications
- 572.18 Initial review of variances by operations committee
- 572.19 Amendment of permits and variances
- 572.20 Renewal of permits
- 572.21 Recording, effect, and transfer of permits
- 572.22 Appeals and requests for reconsideration

Section 572.1 Procedures for review of projects; general rule. (a) All class A and class B regional projects, rivers projects, and wetlands projects shall be reviewed according to the procedures of section 809 of the Adirondack Park Agency Act and this Part.

(b) State agency projects except those which are class A or class B regional projects shall be reviewed according to the procedures of section 814 of the Adirondack Park Agency Act and Part 579 of these regulations.

Section 572.2. Project sponsor's options. (a) Pre-application procedures. Prior to applying for a permit, a project sponsor may seek preliminary consultations and/or conceptual review pursuant to section 572.3 of this Part.

(b) Application procedures. Whether or not he has sought preliminary consultations and/or conceptual review, a project sponsor may:

(1) apply for a permit pursuant to the general application procedures of section 572.4 of this Part, or

(2) if the project is a minor project (single family dwelling, mobile home or subdivision involving two lots, parcels or sites), apply for a permit pursuant to the expedited procedures of section 572.5 of this Part; or

(3) if the project is a large scale project, or other project to be undertaken in sections, apply for a permit pursuant to section 572.6 of this Part.

Section 572.3. Preliminary consultations and conceptual review. (a) Any project sponsor may request preliminary consultations and an informal assessment of the proposed project and site by the agency staff. A general description of the proposed project and general information concerning the project site should be provided. A sponsor who can meet certain minimum information requirements may also request written conceptual findings and recommendations from agency staff. The amount of guidance which can be offered in preliminary consultations and conceptual review is generally in direct proportion to the amount of information provided.

(b) Plans and information provided by the sponsor during preliminary consultations shall not be binding upon the sponsor; findings or recommendations by agency staff pursuant to this section shall not constitute authorization to commence the project and shall not be binding upon the agency in respect to any subsequent permit application for the proposed project.

Section 572.4. Permit application requirements generally. (a) Applications for permits shall be submitted to the agency at its headquarters in Ray Brook, or at any district office of the agency, or to any office of the Department of Environmental Conservation or the Department of Health listed in Appendix Q-1 of these regulations.

(b) Applications may be submitted only by a "project sponsor" as defined by section 570.3(pp) of these regulations, shall contain the signature of the owner of record of the land involved as co-applicant, and shall contain a description of the project in the form and manner required in the appropriate application form.

(c) Where agreed to by the local government involved, each application shall be accompanied by a form signed by an appropriate municipal official indicating (1) whether any permit or approval will be required by the local government, and, if so, whether such permit or approval has been granted or denied, and (2) whether the proposed project is a prohibited use under any local law or ordinance.

(d) The agency may request any additional information and data reasonably necessary to enable it to make the findings and determinations required by section 809 of the Adirondack Park Agency Act or by these regulations. Except in the case of minor projects, the additional information may include:

(1) an environmental impact statement containing some or all of the elements described in section 8-0109(2) of the Environmental Conservation Law, including information as to alternatives to the project;

(2) an analysis of the ability of the public to provide supporting facilities and services made necessary by the project;

- (3) a report on the benefits that might be derived from the project;
- (4) any plans the sponsor has for future development related to the project;
- (5) any relevant information describing the project sponsor, including financial capacity, and any professional advisors or consultants who participated in the preparation of the application;
- (6) information related to alternate sites, in the case of projects which are not site-specific, such as antennae, towers, utility lines or other facilities, public buildings and facilities, and in cases where the project sponsor has the power of eminent domain.
- (7) information related to reasonable alternative means of achieving project goals.

Section 572.5. Expedited review of minor projects. Single family dwellings, mobile homes or subdivisions of land involving two lots, parcels or sites shall be eligible for the expedited review procedures set forth in this section.

- (a) Special simplified application forms shall be used.
- (b) The agency shall, within approximately 15 business days after receipt of a completed application, review and approve all such projects which do not involve a variance to the shoreline restrictions or other provisions of these regulations, and concerning which no public hearing will be held.
- (c) The agency may issue a permit in lieu of a notice of application completion or incompleteness for such projects, in which case the permit shall be deemed to constitute a notice of completion, and a copy of the permit shall be sent to those persons who normally would have received the notice of completion.
- (d) In its review of projects pursuant to this section, the agency shall consult with appropriate local government officials and may make separate agreements for their timely involvement in the expedited review.

Section 572.6. General requirements for the review of large scale projects or other projects to be undertaken in sections. (a) Permits may be granted for the development of large scale projects or other projects to be undertaken in sections, subject to conditions relating to improvements and services for and completion of the total project that the agency deems reasonable and necessary.

(b) No application for a large scale project or other project to be undertaken in sections shall be deemed complete unless it contains sufficient information as to design of the entire project to allow the agency to assess the impact of the entire project pursuant to section 809(9) or 809(10)(e) of the Adirondack Park Agency Act. The agency may request additional information as to the entire project before determining complete the permit application for initial section(s).

(c) In addition to details as to final design of those sections of the project which the sponsor desires to develop first, an application for the review of a large scale project or other project to be undertaken in sections shall contain the following, unless demonstrated by the project sponsor not to be pertinent:

(1) Maps.

(i) A project site base map, at a scale appropriate to the project, showing ownership boundary lines, the boundary of the project (if not identical with the property boundaries), owners of inholdings, if any, adjoining and adjacent landowners, existing facilities, buildings and structures on the site, streams (including intermittent streams), rivers, ponds, lakes and existing roads.

(ii) A soils map, at the same scale as the project site base map, delineating all soil series at an appropriate level of detail.

(iii) A slope map, at the same scale as the project site base map, indicating contour elevations at intervals to be determined by the agency, and shaded to show slope categories of 0-3%, 3-8%, 8-15%, 15-25%, and 25%+.

(iv) A critical areas map, at the same scale as the project site base map, indicating:

(a) fragile lands such as shorelines and wetlands;

(b) rare or valuable ecosystems and geological formations;

(c) significant wildlife habitats;

(d) unique scenic or historic areas;

(e) natural hazard lands such as 100-year floodplains, areas frequently subject to weather disasters, and areas of unstable geological, ice or snow formations;

(f) renewable resource lands such as aquifers and aquifer recharge areas, mineral resource areas, significant agricultural lands, public watershed lands, areas presently visible from public roads or waterways, and areas that will become visible upon completion of the project.

(v) A generalized resource capability map, at the same scale as the project site base map, indicating, through the use of overlay shadings and a development limitation rating system, the cumulative limitations to development due to the above resource maps. This map should be done prior to any survey, engineering, site layout or design work.

(vi) A proposed general development map, at the same scale as the project site base map, showing generally areas of proposed development; the approximate number of lots and average size or other type of development in each general area; areas proposed to be retained as open space; the plan map land use area boundaries; the location of proposed facilities such as dams and impoundments, community water systems, storm drainage systems, community sewerage systems, industrial waste water discharges, and waste disposal areas; the proposed primary road network, and all areas to be disturbed by construction activities.

(2) Narrative and non-map data.. A project sponsor will be expected to describe the following, as well as the methodology used to develop, design or ascertain the existence of each item:

- (i) soil, slope, and critical resources data not presented on the base maps;
- (ii) terrestrial and aquatic flora and fauna;
- (iii) surface drainage patterns;
- (iv) aesthetics;
- (v) adjoining and nearby land uses
- (vi) existing on-site land uses;
- (vii) public transportation facilities;
- (viii) public water and sewage systems, other public utilities, storm drainage plans; erosion and sedimentation control measures, solid waste disposal methods; alterations to shorelines, wetlands and water bodies;
- (ix) natural materials to be used in construction;
- (x) proposed uses of pesticides and herbicides;
- (xi) sources of air and noise pollution;
- (xii) outdoor recreational facilities and open-space resources;
- (xiii) all legal instruments such as homeowners' association charters and agreements, proposed declarations of covenants, deeds and other documents and instruments of conveyance;
- (xiv) economic and governmental service considerations, such as existing governmental capabilities, burden or benefit of the project on local levels of employment, and the tax base, and
- (xv) plans to develop other lands in common with, in a group of, controlling, or controlled by others acting in concert with the sponsor or as part of a common scheme or plan.

The agency may require the submission of reasonable additional data, including information listed in section 572.4 of these regulations.

(d) An agency decision relating to a section of a project shall contain findings and conclusions with respect to the likely impact of the entire project and its compliance with section 809(9) or 809(10) of the Adirondack Park Agency Act.

Section 572.7. Notice of application incompleteness and additional information request. (a) Within 15 days after receipt of an application, the agency will advise the project sponsor by

certified mail whether or not the application is complete. If the application is incomplete, the agency will provide a concise statement of the additional information required.

(b) A project sponsor may appeal a determination that an application is incomplete, or the contents of a request for additional information, under the procedures specified in section 572.22 of these regulations.

Section 572.8. Notice of application completion and advisory comments. (a) Copies of notices of application completion required to be sent by section 809(2) of the Adirondack Park Agency Act shall also be sent, in the case of non-minor projects, to adjoining landowners to the extent reasonably discernible from the latest completed tax assessment roll.

(b) The mailing of a notice shall constitute an invitation to submit written advisory comments on the project. Advisory comments in response to a notice of application completion shall be submitted to the agency at its headquarters in Ray Brook, New York within 15 days of mailing of the notice of application completion, or any lesser time that is agreed upon by the board or official and the agency.

(c) Persons receiving copies of a notice of completion are encouraged to discuss any aspect of the project with the agency staff.

(d) The issuance of a notice of application completion shall mean that an application is in an approved form and is complete for the purpose of commencing review of the application. During the course of review, reasonable additional information may be required in order to enable the agency to make the findings and determinations required by the Adirondack Park Agency Act or these regulations.

Section 572.9. Site inspections by the agency. By submitting an application, a project sponsor shall be deemed to have consented to the agency conducting investigations on the project site, at reasonable times and with advance notice where possible, to verify information contained in the application and to determine compliance with the terms and conditions of any permit issued.

Section 572.10. Projects which require variances. (a) Where a project requires a variance from the shoreline restrictions or other provisions of these regulations, an application for a variance shall be submitted with the project application.

(b) The agency will hold a public hearing on any variance application. If a public hearing is also to be held on the project, Part 580 of these regulations shall govern the conduct of the consolidated hearing. A public hearing solely concerning the variance application shall be conducted pursuant to section 572.15 of this Part.

(c) The director of operations shall have authority to decide whether the public hearing to consider the variance shall also consider the project.

Section 572.11. Director of operations authority to approve certain projects. (a) The director of operations may review and approve, or approve subject to conditions, and issue permits for, all projects other than (1) class B regional projects in land use areas governed by an approved local land use program, (2) subdivisions involving 50 or more lots, and (3) projects

which have been the subject of a public hearing held pursuant to section 572.15 or Part 580 of these regulations.

(b) The director of operations shall report the exercise of such authority at each regular meeting of the agency.

(c) The director of operations shall have discretion to refer any project to the agency for review.

Section 572.12. Initial review of projects by operations committee.

(a) The chairman may appoint an operations committee consisting of a minimum of three agency members. A quorum of the committee shall be three of its members. A decision of the committee shall require an affirmative vote of a majority plus one of its members. If no decision is reached upon any matter considered pursuant to this section, it shall be considered by the agency at its next meeting.

(b) Initial review of projects. (1) A project before the agency for initial action (including those referred to the agency by the director of operations in the exercise of his discretion), or for action following a public hearing, shall be referred to the operations committee. Certain appeals and requests for reconsideration shall also be referred initially to the operations committee as set forth in section 572.22 of this Part.

(2) Following review the committee shall recommend a decision on each project. Where the committee has been unable to reach a decision, the agency shall take action as provided in the Adirondack Park Agency Act and these regulations.

(3) Any agency member may request that the agency schedule full discussion of any recommended decision.

(4) The agency may ratify, modify or reverse the committee recommendation.

Section 572.13. Review of class A regional projects in land use areas governed by an approved local land use program.

(a) The following additional procedures shall govern agency review of class A regional projects, other than minor projects, proposed to be located in a land use area governed by an approved local land use program, unless otherwise agreed to by the agency and the local government.

(b) The agency shall consult with the planning board of the town or village in which the project is proposed to be located, or with such other body or officer designated by the town or village board. The planning board or other designated body or officer may examine or receive a copy of the application, discuss the project with the agency staff, participate in meetings between the project sponsor or his representatives and the agency staff, and generally participate informally in the review of the project.

(c) The planning board or other designated body or officer shall have 30 days following issuance of the notice of application completion, or such shorter period which may have been

agreed upon in writing by the agency and the town or village, within which to advise the agency whether the project complies with the local land use program.

(d) The agency will accept and adopt as its own findings any recommendations made by the planning board or other designated body or officer as to compliance with the dimensional and other technical requirements of the local land use program, unless such recommendations are inconsistent with the express terms of the local program.

Section 572.14. Public hearings on projects. Public hearings on projects, except those hearings to be held solely to consider an associated variance application, shall be noticed and conducted in the manner specified in Part 580 of these regulations.

Section 572.15. Procedures for review of variances.

(a) General rule. All variance applications shall be reviewed according to the procedures set forth in this section.

(b) Application requirements. Applications for variances may be submitted only by a person having a legal interest in property and contemplating land use or development or subdivision thereon subject to the shoreline restrictions, shall contain the signature of the owner of record of the land involved as co-applicant, and shall be submitted to the agency at its headquarters in Ray Brook, New York or at any district office of the agency, or to the offices of the Department of Environmental Conservation or the Department of Health listed in Appendix Q-1 of these regulations. Applications shall contain a description of the property involved and the basis of the variance request. The agency may request any additional information reasonably necessary for its review of the variance application.

(c) Site inspections. By submitting an application, an applicant shall be deemed to have consented to the agency conducting investigations on the site, at reasonable times and with advance notice where possible, to verify information contained in the application and to determine compliance with the terms and conditions of any variance granted.

(d) Notice of public hearing. (1) The agency shall, within 15 days of the receipt of a variance application not associated with a project application and any additional information requested, schedule a public hearing to commence within 30 days of scheduling. Failure by the agency to comply with this time period shall not constitute the granting of a variance.

(2) Not less than 10 days notice of the hearing shall be sent (i) by certified mail to the applicant and the owner of record of the land involved, if other than the applicant, and (ii) by mail to any landowner within 500 feet of any border of the property (to the extent reasonably discernible from the latest completed tax assessment roll), the planning board chairman and town supervisor or village mayor and the Adirondack Park local government review board. Notice of any public hearing shall also be given at least 10 days in advance by publication in a newspaper having general circulation in the area.

(e) Public hearings on variances. (1) Any person or public agency entitled to individual notice pursuant to paragraph (d)(2) of this section, and, at the discretion of the agency or its hearing officer, any other persons or public agencies, may participate. Hearings shall be informal and legislative in nature. Testimony will consist principally of statements and the agency is not limited to the record of the hearing in its rendering of a decision; provided that the hearing officer

shall have authority to adopt such procedures as he deems necessary for the orderly conduct of the hearing, including the formal taking of testimony, cross-examination of witnesses and reasonable limitations on testimony.

(2) Public hearings on variances shall be held within the village or town in which the property is located.

(3) The burden of demonstrating compliance with the standards set forth in Part 576 of these regulations shall rest with the applicant.

Section 572.16. Special procedures applicable to certain variance applications. (a) When the director of operations believes that grounds for the variance clearly exist, the notice of hearing shall state that he intends to recommend to the agency that the variance be granted and shall state any conditions which he recommends be imposed.

(b) An agency staff member will appear at the hearing solely to receive objections to the granting of the variance. If significant issues are raised, an adjournment will be taken and another hearing will be scheduled.

Section 572.17. Agency decision on variance applications. The agency shall act upon all variance applications within 45 days of (i) the close of the hearing, if the hearing is tape-recorded, or (ii) the day upon which the stenographic transcript is received by the agency or the record as defined by paragraphs (a) through (e) of section 302 of the State Administrative Procedure Act is otherwise complete, whichever is later, or (iii) such other date as may be stipulated by the parties or determined by the hearing officer.

Section 572.18. Initial review of variances by operations committee. A variance application before the agency for formal action shall be referred to the operations committee which shall review it initially pursuant to the same procedures as those set forth for the projects in section 572.12(b) of this Part. Certain appeals and requests for reconsideration shall also be referred initially to the operations committee as set forth in section 572.22 of this Part.

Section 572.19. Amendment of permits and variances. (a) The holder of an agency variance or an agency permit which has not expired may file with the agency a written request for amendment. Such requests shall be governed by section 809(8)(b) of the Adirondack Park Agency Act and this section.

(b) The director of operations shall have authority to determine whether a request to amend a permit or variance involves a material change as defined in section 809(8)(b)(1) of the Act, and to issue an amended permit or variance for, or deny, those requests that do not involve a material change. The director of operations may require additional information pertaining to any amendment request, and the statutory 15-day decision period for non-material amendment requests shall not begin to run until such information has been provided.

(c) Any request to amend a permit or variance which may involve a material change shall be treated as an application for a new permit or variance pursuant to section 809(8)(b)(2) of the Act, except that a request to amend a condition of a permit or variance without any change in the project proposal, applicable law or environmental conditions or technology may be treated by the agency as an appeal and governed by section 572.22 of this Part. In the case of a request which is

treated as a new application, the parties to any public hearing previously held on the project or variance shall be notified of such request.

Section 572.20. Renewal of permits. (a) A permit for a project which is not in existence within two years of recording of the permit shall expire and be void at the end of such two-year period unless otherwise provided in the permit or unless renewed by the agency pursuant to section 809(8)(b) of the Adirondack Park Agency Act and this section.

(b) A request for permit renewal shall be made prior to expiration of the permit. Any request thereafter shall be treated as an application for a new permit.

(c) A timely renewal request shall be reviewed as follows:

(1) The director of operations may issue a renewed permit for one two-year period in the case of renewal requests which do not involve a material change in the project proposal, applicable law or environmental conditions or technology.

(2) Renewal requests which may involve such a material change shall be treated as an application for a new permit.

(3) Requests for renewal of permits which have previously been renewed shall be referred to the operations committee for initial review pursuant to section 572.12 of these regulations. In such a case, the agency may, following committee review, renew the permit, renew the permit with modifications, notify the project sponsor of its intent to hold a public hearing on the request, or deny the request without prejudice to submission of an application for a new permit.

Section 572.21. Recording, effect, and transfer of permits. (a) An agency permit shall expire within 60 days of the date of issuance, unless within such period it shall have been duly recorded in the name of the owner of record of the land involved in the office of the clerk of the county in which the project is to be located.

(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 the permit. The right shall extend to, and the terms and conditions of the permit shall be binding upon, the landowner and all subsequent grantees of the land area subject to the permit, except those conditions which are to be performed only by the project sponsor and except as may be otherwise provided in the permit.

(c) A subsequent grantee wishing to undertake a project pursuant to the permit shall first obtain a transfer of the permit. Permits may be transferred upon such reasonable conditions, including conditions concerning ability of the person requesting assumption of the permit to complete the project, as the agency may impose in the exercise of discretion.

Section 572.22. Appeals and Requests for Reconsideration. (a) Appeals of actions taken by the director of operations.

(1) Any project sponsor or variance applicant may appeal the following actions of the director of operations to the agency:

- (i) Determinations whether a project or variance application is complete, and the contents of requests for additional information;
 - (ii) Conditions precedent to the issuance of, and conditions imposed in, permits issued pursuant to the authority delegated in section 572.11 of these regulations;
 - (iii) Determinations pursuant to section 572.19(b) of this Part whether a request to amend a permit or variance involves a material change;
 - (iv) Denial or conditional approval of requests to amend permits or variances, or requests to renew permits;
 - (v) Any other action with respect to a project or a variance pursuant to delegated authority.
- (b) Requests for reconsideration of actions by the full agency.
- (1) Any project sponsor or variance applicant may request reconsideration of any action taken by the full agency on a project or variance. Eight affirmative votes shall be required to grant reconsideration, and if it is granted, to act with respect to the merits of the request.
 - (2) Reconsideration may be granted if the agency finds that the previous action was based on materially erroneous findings of fact or conclusions of law, or that a relevant policy or interpretation has changed since the previous action.
- (c) An appeal or request for reconsideration shall be in writing, and shall be filed with the agency not later than 30 days following the action in question. Upon request made within such 30 day period, and for good cause shown, the agency may allow an additional 30 days for filing.
- (d) At least 20 days prior to the date the appeal or request is to be considered, the agency shall give notice that it is pending to all persons who received a notice of application completion pursuant to section 809(2) of the Adirondack Park Agency Act and section 572.8 of this Part, and, in the case of variances, and projects subject of a public hearing, to all parties to the hearing, and invite a written response thereto.
- (e) New evidence may not be submitted upon any appeal or request for reconsideration. New evidence may be submitted as part of a request to amend a permit pursuant to section 572.19 of this Part, or, for variances or projects subject of a public hearing, by motion to reopen the hearing pursuant to sections 572.15(e) or 580.14(h) of these regulations.
- (f) The terms and conditions of any permit or variance shall be complied with while the appeal or request is pending.
- (g) An appeal or request shall be referred initially to the operations committee, which shall make an advisory recommendation to the agency.
- (h) The agency shall act on an appeal or request within 90 days of its filing. The statutory time periods in sections 806 and 809 of the Adirondack Park Agency Act shall not run during the time an appeal or request is pending. A decision upon appeal or reconsideration may consist of

any determination which the agency might make pursuant to sections 806 and 809 of the Adirondack Park Agency Act and these regulations.

PART 573

JURISDICTION OF PROJECTS PURSUANT
TO THE ADIRONDACK PARK AGENCY ACT

(Statutory authority: Executive Law, art. 27)

Sec.

573.1 General rule

573.2 Projects involving more than one land use area

573.3 Projects located in critical environmental areas

573.4 Subdivisions

573.5 Increase or expansion of certain land uses or developments

573.6 Rebuilding and replacement of existing land uses or developments

573.7 Jurisdiction and review of clearcutting

Section 573.1. General rule. No person shall undertake a class A regional project, or a class B regional project in a land use area not governed by an approved local land use program, without first obtaining an agency permit. Class A and class B regional projects are listed in section 810 of the Adirondack Park Agency Act.

Section 573.2. Projects involving more than one land use area. If a new land use or development or subdivision of land will be located in more than one land use area, determination of agency review jurisdiction shall be based upon the portion of the new land use or development or subdivision of land proposed for each land use area involved.

Section 573.3. Projects located in critical environmental areas. (a) Review of a land use or development or subdivision which requires an agency permit solely because it is located, in part, in a critical environmental area shall be confined to that portion of the land use or development actually located within the critical environmental area or, in the case of a subdivision, to those lots proposed to be sold which are located within or have situate upon them a critical environmental area.

(b) A subdivision of land shall not be subject to agency review due to the involvement of a critical environmental area if the critical area is located wholly upon that portion of the subdivision being retained by the seller. However, an agency permit is required for new land use and development in the critical environmental area.

Section 573.4. Subdivisions. (a) Subdivisions along land use area boundaries. A subdivision of land solely along a land use area boundary does not require an agency permit.

(b) Subdivisions along roads and other rights-of-way. The sale of a landowner's entire ownership on one side of a public road, railroad, right-of-way owned in fee, or other intervening fee ownership, will not be considered a subdivision.

(c) Counting lots. For the purpose of determining agency jurisdiction based upon number of lots (1) any lot to be retained by the subdivider, and (2) all lots in the same land use area which are part of one project and which would otherwise be adjoining but which are located on

opposite sides of a public or private road, or railroad or right-of-way owned in fee, shall be counted.

(d) Review of land use or development in subdivisions. All land use or development proposed for lots, parcels or sites in a subdivision shall be subject to review as part of the subdivision.

(e) Subdivision by related persons and persons acting in concert, or as part of a common plan. A subdivision shall be reviewed with regard to its final planned size regardless of whether different phases are undertaken by (1) different but related persons or legal entities at different times, such as the development of a large subdivision in smaller increments by subsidiaries or affiliates of a corporation, or (2) unrelated persons acting in concert as part of a common scheme or plan.

(f) Subdivision into sites. Whether or not a legal conveyance will take place, subdivision of land occurs (1) where more than one dwelling or other principal building is to be constructed on a vacant parcel of land, or (2) where one or more new dwelling or other principal building is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s).

(g) Division of land by gift. (1) The mere division of land by bona fide gift, devise or inheritance, by and between natural persons, except division by gift, devise or inheritance within river areas, is not subject to review by the agency. Subdivision of land by gift, devise or inheritance in a river area requires an agency permit if located outside a hamlet or moderate intensity use area.

(2) A permit is required for a single family dwelling or mobile home on a lot, parcel or site created by gift if located in a resource management area, industrial use area or critical environmental area.

(3) The subdivision of a parcel of land owned in joint or common tenancy, tenancy by the entirety, or other joint ownership between or among the owners will not be considered to be by bona fide gift, even if no money passes among the parties. Such a subdivision requires an agency permit if a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

(h) Preexisting subdivisions. (1) No agency permit is required for the conveyance of a lot or lots in a preexisting subdivision provided no individual lot is subdivided. The shoreline building and sewage disposal system setbacks and the vegetative cutting restrictions of section 806 of the Adirondack Park Agency Act apply to all new land uses or developments on lots in preexisting subdivisions; the minimum shoreline lot width requirements apply to preexisting subdivisions which have not received Department of Health approval.

(2) For the purpose of determining whether a subdivision or portion thereof was in existence as of August 1, 1973, the agency will consider, among other relevant factors, (i) the number of lots sold prior to such date relative to the total number of lots in the subdivision, (ii) the locations of such lots sold, (iii) the nature, extent and cost of structures and improvements directly related to the subdivision completed or commenced prior to such date, relative to all such

necessary improvements related to the subdivision, (iv) the location of such completed or commenced improvements, and (v) demonstrated efforts to sell lots prior to such date.

(3) An agency permit is required for the construction of a single family dwelling or mobile home on a lot in a preexisting subdivision which has not received New York State Department of Health approval if located in a resource management or industrial use area, or in a critical environmental area.

(i) Merger of lots acquired prior to May 22, 1973. Adjoining lots owned by one landowner, each acquired prior to May 22, 1973, except lots in a preexisting subdivision or separately-owned preexisting vacant lots of record as described in section 811(1)(a) of the Adirondack Park Agency Act, shall be deemed to have merged into one undivided lot as of that date, even if described in different deeds or acquired at various times. A sale of any such lot(s) while retaining adjoining land constitutes a subdivision which requires an agency permit if a class A or class B regional project as provided in section 810 of the Act.

(j) Preexisting vacant lots of record acquired subsequent to May 22, 1973. No agency permit is required for the resale of a preexisting separately owned vacant lot of record as of May 22, 1973 (as described by Section 811(1)(a) of the Adirondack Park Agency Act) which is subsequently acquired by an owner of adjoining lands. An agency permit is required for any new land use or development on the lot which is a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

Section 573.5. Increase or expansion of certain land uses or developments. (a) General rule. (1) No agency permit is required for the increase or expansion, whether in successive stages or at one time, of any lawfully existing land use or development by a total of up to 25 percent of its size or square footage as of May 22, 1973 or when originally built or undertaken, whichever is later. Increases or expansions thereafter require an agency permit if the land use, if new, is a class A or B regional project as provided in section 810 of the Adirondack Park Agency Act.

(2) A single family dwelling or mobile home may be expanded to any extent provided it continues to be used as such.

(3) All increases or expansions involving an existing nonconformance with the shoreline building setback restrictions shall be subject to section 575.5 of these regulations.

(b) Mobile home courts and campgrounds. Expansions of mobile home courts or campgrounds shall be measured in terms of the number of new sites in relation to existing sites.

(c) Hotels, motels, and tourist accommodations. Expansions of hotels, motels and tourist accommodation complexes (whether in one or more than one building) shall be measured in terms of either the increase in total accommodation units or in the amount of new square footage (excepting accessory structures). An increase by 25 percent or more in either total number of units or total square footage shall be considered a 25 percent expansion of the use.

(d) Group camps. Expansions of group camps shall be measured in terms of either the increase in capacity of the group camp or in total square footage (excepting accessory structures). An increase by 25 percent or more in either shall be considered a 25 percent expansion of the use.

(e) Public and semi-public buildings. An expansion by 25 percent or more of the existing floor space of a municipal building, or of any component building of a college, school, hospital, animal hospital, library, place of worship, museum, research center, rehabilitation center or similar facility, shall be deemed a 25 percent expansion of a public or semi-public building. An agency permit is required for the construction of any new component building, other than an accessory structure, which is a class A or class B regional project as provided in sections 810 and 811(5) of the Adirondack Park Agency Act.

(f) Ski centers; golf courses. Expansions of ski centers and golf courses shall be measured in terms of the increase in the ground surface area disturbed by the use.

(g) Commercial sand and gravel extractions. Expansions of commercial sand and gravel extractions shall be measured in terms of the increase in the total ground surface area disturbed by the use. Vertical and subsurface expansions will not be considered.

(h) Mineral extractions. Expansions of mineral extractions shall be measured in terms of the increase in the total ground surface area disturbed by all aspects of the mineral extraction operation. Vertical and subsurface expansions will not be considered, nor will increased productivity brought about by improved technology, increased manpower or different methods of extraction.

(i) Municipal roads. Lateral expansions of municipal roads shall be measured in terms of the amount of clearing (cutting of woody vegetation four inches or more in diameter at breast height), grading or other disturbance of land adjacent thereto. A municipal road consists of the roadway, shoulders, ditches and cut and fill areas. Any lineal extension of an existing road shall be considered a new road rather than an expansion.

Section 573.6. Rebuilding and replacement of existing land uses or developments.
Pursuant to section 811(5) of the Adirondack Park Agency Act:

(a) No agency permit is required for the rebuilding or replacement of any existing land use or development, including structures in existence August 1, 1973 being rebuilt or replaced on the same foundation or in the same location, provided subdivisions (c), (d), (e) and (f) of this section are adhered to. Existing uses not located in critical environmental areas may also be rebuilt or replaced in the same immediate vicinity subject to subdivisions (c), (d), (e) and (f).

(b) The rebuilding or replacement of a structure that was removed or destroyed prior to August 1, 1973 shall be considered new land use or development and requires an agency permit if a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

(c) No rebuilding, replacement or restoration pursuant to section 811(5) of the Adirondack Park Agency Act or this section shall increase any lawfully existing noncompliance with the shoreline restrictions, as described in section 575.5 of these regulations.

(d) No agency permit is required for the rebuilding, replacement or restoration of a structure originally more than 40 feet in height to the same height.

(e) No agency permit is required for the replacement of a mobile home by a single family dwelling, or a single family dwelling by a mobile home. Where the existing dwelling will not be

removed until after the new dwelling is emplaced or constructed, an agency permit is required for the "subdivision into sites" which would result if the subdivision is a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

(f) An agency permit is required for the recommencement of any existing land use or development, except a single family dwelling, which has been discontinued for a period exceeding five years, or under circumstances which indicate that such use has been abandoned, if the land use or development is a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

Section 573.7. Jurisdiction and Review of Clearcutting. (a) Definitions used in this section.

(1) "Clearcutting" means any cutting of trees over six inches in diameter at breast height over any 10-year cutting cycle where the average residual basal area of such trees after such cutting is less than 30 square feet per acre, measured within the area harvested.

Provided, however, that where regeneration is assured by stand conditions such that after such cutting the average residual basal area of trees at least one inch in diameter at breast height is at least 30 square feet per acre, measured within the area harvested, a clearcut will not be deemed to have taken place unless the average residual basal area of trees over six inches in diameter at breast height is less than 10 square feet per acre, similarly measured.

(2) "River area" means the wild, scenic, and recreational rivers and the private lands in their immediate environs as set forth in Appendix Q-6 of these regulations.

(3) "Wood road" means any dirt or other unimproved road designed and used solely for forest management purposes or related fish and game activities, not intended for use by the general public, and simply constructed by grading, filling and/or corduroying, without extensive finish or maintenance work.

(b) Agency jurisdiction over clearcutting.

(1) An agency permit is required for:

(i) clearcutting of more than 25 acres, except within industrial use areas and non-wetland areas within hamlet areas;

(ii) Effective May 1, 1983, clearcutting of more than three acres within a freshwater wetland.

Individual clearcut areas of eight acres or more will be aggregated in computing the 25 acre jurisdictional threshold prescribed in this subdivision if they are not separated from each other by an intervening uncut area at least 300 feet wide at all points.

(2) Clearcutting is not allowed in river areas except in accordance with sections 577.6(c) and 577.8 of these regulations.

(c) Application Requirements. In addition to the general requirements for applications in section 572.4 of these regulations, no application for a permit to clearcut shall be deemed complete unless it includes a draft harvest plan containing:

(1) A map or maps of the area to be clearcut and all lands within one-quarter mile thereof, at a scale of 1:24,000 or less, showing:

(i) Wetlands, unique natural and cultural features, areas with slopes in excess of 25 per cent, waterbodies, (including permanent streams) and public roads.

The agency will supply such a map on request.

(ii) Existing, and approximate location of proposed, wood roads, stream crossings and culverts.

(iii) Buffers proposed.

(iv) Significant areas of timber infestation or disease on the area to be clearcut, including beech bark disease, scleroderris canker, spruce budworm, and pine blister rust.

(v) Any areas where the general public is allowed access or use pursuant to a formal contract or conveyance to the state or a local government, such as public hiking or snowmobile trails, public fishing access, and the like.

(2) The name and address of the individual who prepared the draft plan, and his forestry qualifications.

(3) A description of the location and nature of any harvesting on the area to be clearcut or within one-quarter mile thereof within the prior 10 years.

(4) A description of harvest methods (including use of portable chippers), preharvest and postharvest techniques and harvest objectives.

(5) In the event pesticide or herbicide use is proposed, the name of the chemical and the applicator and the manner and rate of application.

(d) Standards for the review of clearcutting.

(1) The agency will not issue a permit to allow clearcutting subject to jurisdiction as a class A regional project, unless:

(i) The clearcutting is for a recognized silvicultural purpose;

(ii) There are adequate buffers on the shorelines of lakes, ponds, rivers or streams; along major travel corridors, and, if necessary, around dwellings on adjacent lands, so as to preserve water quality and visual quality and to control noise;

(iii) Habitats of rare and endangered species and other key wildlife habitats will be protected;

(iv) Regeneration of timber is assured;

(v) If proposed, and if allowed by the agency, any use of pesticides and herbicides will be strictly controlled;

(vi) Harvest will be controlled by qualified personnel by contract, marked stand, direct supervision, or other adequate means;

(vii) Wood roads and skid trails will be located, and equipment will be operated, so as to minimize erosion on slopes and elsewhere;

(viii) The storage, mixing, or bulk handling of fuel, chemicals, or other hazardous materials will be strictly controlled;

(ix) The "Timber Harvesting Guidelines for New York" (New York Section of the Society of American Foresters, June 1975) will be adhered to, at a minimum; and

(x) The agency is able to make the findings required by section 809(9) or section 809(10) of the Adirondack Park Agency Act and by Part 574 of these regulations.

(2) Effective May 1, 1983, Section 578.10 of these regulations shall in addition apply to clearcutting in freshwater wetlands.

e) Agency jurisdiction over other timber harvesting activities.

Certain timber harvesting other than clearcutting, and activities related thereto, also require agency permits or are otherwise regulated by the agency, as follows:

(1) Effective May 1, 1983, the construction of wood roads in freshwater wetlands, when such construction involves the placing of fill; any other filling or material disturbance of a wetland, and any other regulated activity, all as set forth in Part 578 of these regulations.

(2) In wild, scenic and recreational river areas, the activities set forth in sections 577.4(b) and 577.6 of these regulations.

(3) Sawmills, chipping mills, pallet mills and similar wood using facilities require agency permits except when proposed to be located in (a) non-wetland areas of hamlet areas or (b) non-wetland areas of industrial use areas governed by an agency-approved local land use program.

(4) Forestry use structures require agency permits in critical environmental areas and in resource management areas not governed by an agency-approved local land use program.

PART 574

STANDARDS FOR THE REVIEW OF PROJECTS PURSUANT
TO THE ADIRONDACK PARK AGENCY ACT

(Statutory authority: Executive Law, art. 27)

Sec.

574.1 General rule

574.2 Consultations with agency technical staff

574.3 Sign standards

574.4 Sewage disposal standards

574.5 Further definitions of the development considerations

574.6 Conformance with local land use controls

574.7 Application of the overall intensity guidelines

574.8 Conversion of resort hotels, rental cottages, and group camps

Section 574.1. General rule. Class A and class B regional projects subject to agency review shall be reviewed according to the standards set forth in section 809 of the Adirondack Park Agency Act and this Part. Projects which are also rivers projects or wetlands projects shall be subject, as applicable, to the additional standards in Parts 577 and 578 of these regulations.

Section 574.2. Consultations with agency technical staff. Consultations with the agency's technical staff and reference to the development considerations set forth in section 574.5 of this Part will assist in designing a project which avoids undue adverse impact upon the resources of the Adirondack Park and will facilitate its approval. The agency has also developed an advisory publication, Development in the Adirondack Park: Objectives and Guidelines for Planning and Review, to assist the project sponsor.

Section 574.3. Sign standards. Signs associated with projects subject to agency review shall comply with the sign standards set forth as Appendix Q-3 of these regulations.

Section 574.4. Sewage disposal standards. Unless otherwise provided in the permit, individual sewage disposal systems associated with a project shall be designed, installed and maintained in accordance with the standards of the Commissioner of Health set forth in the booklet "Waste Treatment-Individual Household Systems" filed by the Department of Health as Appendix 75-A to Volume 10 (Health (A)) of the Official Compilation of Codes, Rules and Regulations of the State of New York, and with the additional standards set forth in Appendix Q-4 of these regulations.

Section 574.5. Further definitions of the development considerations. Those development considerations of section 805(4) of the Adirondack Park Agency Act which are pertinent will be considered by the agency in its review of projects. A list of the development considerations containing certain further definitions is set forth below:

(a) Natural resource considerations.

(1) Water.

(i) Existing water quality.

(ii) Natural sedimentation or siltation.

(iii) Eutrophication, as considered by the agency in its review of projects means accelerated increases in the content of plant nutrients in a water body, caused by excess phosphorus and nitrogen, which typically result in murky water and nuisance algae blooms. If unchecked, this cultural enrichment will severely limit usage of surface waters for drinking, swimming and fishing, and will lead to the decline or disappearance of aquatic organisms and ultimately the death of the water body.

(iv) Existing drainage and runoff patterns.

(v) Existing flow characteristics.

(vi) Existing water table and rates of recharge means the seasonal high groundwater table and the aquifer recharge rate.

(a) The seasonal high groundwater table is the highest surface of a zone of saturated soil which is at least six inches thick and which persists during the average year for more than a week when the ground is free of frost.

(b) An aquifer is a permeable geologic formation which will yield significant quantities of potable water for water supply by such means as drilled or artesian wells, springs and stream recharge.

(c) An aquifer recharge area is a region of land surface supplying water to an aquifer, and is characterized by gently sloping (less than 8%) soils with a rapid permeability rate (generally greater than 6.3 inches per minute) or with moderate to highly fractured bedrock at or near the surface.

(2) Land.

(i) Existing topography.

(ii) Erosion and slippage.

(iii) Floodplain and flood hazard includes floodplains, floodways and floodway fringes, as determined by the highest level of flood that, on the average, is likely to be equalled or exceeded once every 100 years.

(a) A floodplain is a normally dry land area adjoining rivers, streams, ponds, lakes or wetlands which is susceptible to partial or complete inundation due to:

(1) overflow of inland waters;

(2) unusual or rapid accumulation or runoff of surface waters from any source, including spring snowmelt, severe rainfall, and/or oversaturation of the soil; or

(3) mudslides or mudflows proximately caused or precipitated by accumulations of water on or under the ground.

(b) Floodways are the part of the floodplain that must remain unrestricted in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point. They comprise the stream channel and immediately adjacent lands which are frequently flooded and which help carry the major portion of flood waters during extreme floods.

(c) Floodway fringes are the parts of the floodplain extending from the outer edge of the floodway to the outer limit of the 100-year floodplain. Water in floodway fringes is often shallow and slow moving, even during a major flood.

(iv) Mineral resources.

(v) Viable agricultural soils means those soils suited for commercial agricultural production. See Feuer and Maine, Soil Groups for Agriculture: A Report of Soils Occurring Primarily on Private Land Within the Blue Line of the Adirondack Park (New York State College of Agriculture and Life Science at Cornell University, 1972).

(vi) Forest resources.

(vii) Open space resources.

(viii) Vegetative cover.

(ix) The quality and availability of land for outdoor recreational purposes.

(3) Air.

(i) Air quality.

(4) Noise.

(i) Noise levels.

(5) Critical resource areas.

(i) Rivers and corridors of rivers designated to be studied as wild, scenic or recreational in accordance with section 15-2715 of the Environmental Conservation Law.

(ii) Rare plant communities means communities of native terrestrial plant species that occur at less than 30 recorded locations in New York State, as shown on the Listing of Rare and Endangered Plants prepared by the agency or as may be located on the Unique Natural and Cultural Feature Maps maintained by the agency.

(iii) Habitats of rare and endangered species and key wildlife habitats.

(a) Habitats of rare and endangered species means habitats and likely habitats of rare plant communities and of terrestrial wildlife listed in Rare and Endangered Wildlife within the Adirondack Park, Appendix D of the agency publication Development in the Adirondack Park.

(b) Key wildlife habitats means habitats required for the survival of wildlife species which are characteristic of the northern hardwood and coniferous forests of the Adirondack Park, many of which are unique, within New York, to the Adirondacks or rare or endangered within the State.

Key wildlife habitats include:

(1) deer wintering yards, which means areas having a distinctive combination of vegetation, topography and hydrological characteristics that offer protection and food for deer forced to seek shelter due to deep snow or severe weather conditions;

(2) waterfowl nesting, resting and feeding areas, which means areas vitally important to the maintenance of breeding and migrating waterfowl populations, especially shallow and deep water marshes contiguous to open water;

(3) ecotones, which means areas of major vegetation transition zones providing valuable food, shelter, water and rearing areas for a variety of wildlife species, some of which live primarily within the ecotones, and some of which depend on them during certain periods of their life cycle. Ecotones include borders of lakes, ponds, rivers and streams, borders between coniferous and hardwood vegetation, and the edges of open areas such as fields and plains which abut forested lands.

(iv) Alpine and subalpine life zones.

(v) Wetlands.

(vi) Unique features, including gorges, waterfalls, and geologic formations.

(6) Wildlife.

(i) Fish and wildlife.

(7) Aesthetics means harmonizing land use or development with the natural environment.

(i) Scenic vistas include distant views through or along an opening, especially views which frame or focus attention upon a scene of distinctive character and natural beauty such as a prominent landmark, mountain, river valley, plain, or historical monument. Scenic vistas include those designated on the official Adirondack Park land use and development plan map, and those locally designated.

(ii) Natural and man-made travel corridors include the land or water visible from natural and man-made transportation routes such as interstate, state, county and town highways, boating and canoe routes, and hiking and horse trails.

(b) Historic site considerations.

(1) Historic factors.

(i) Historic sites or structures.

(c) Site development considerations.

(1) Natural site factors.

(i) Geology.

(ii) Slopes.

(iii) Soil characteristics.

(iv) Depth to ground water and other hydrological factors.

(2) Other site factors

(i) Adjoining and nearby land uses.

(ii) Adequacy of site facilities.

(d) Governmental considerations.

(1) Governmental service and finance factors.

(i) Ability of government to provide facilities and services means the effect of a land use or development or subdivision of land upon the fiscal affairs of all local governments under a duty to provide services and facilities such as education, recreation, police and fire protection, public health, public sewer and water, sanitary landfills and transportation, assuming the current tax structure and tax rates are to be maintained.

(ii) Municipal, school or special district taxes or special district user charges.

(e) Governmental review considerations.

(1) Governmental control factors. (i) Conformance with other governmental controls includes conformance with local land use controls in accordance with section 574.6 of this Part.

Section 574.6. Conformance with local land use controls. The agency will not approve a project which has been denied a permit or which is a prohibited use under local zoning requirements and other local laws or ordinances. The agency will also recognize community goals expressed in a formally adopted master plan.

Section 574.7. Application of the overall intensity guidelines. In addition to the provisions of section 809(10)(c) of the Adirondack Park Agency Act and the applicable exemptions of section 811 of the Act, the following rules shall apply:

(a) The number of new principal buildings associated with a project shall be the net increase in principal buildings on a project site. A project that does not result in such a net

increase (such as tearing down an existing principal building and constructing a new principal building elsewhere on the project site) will not be considered to involve a new principal building for the purpose of applying the overall intensity guidelines.

(b) Where a purely mathematical application of the overall intensity guidelines to a given project site results in a fractional number of permissible principal buildings, that number shall be rounded to the nearest whole number, which shall be the arithmetically permissible number of principal buildings.

(c) As many as 10 percent greater number of principal buildings than are arithmetically permissible may be permitted where justified by natural resource and public considerations, such as where a common sewerage system is provided or where the project would be substantially invisible from travel corridors.

(d) The overall intensity guidelines shall apply to all principal buildings which are part of a project, except single family dwellings or mobile homes which are proposed to be located on (1) a preexisting vacant lot of record as described in section 811(1)(a) of the Adirondack Park Agency Act, (2) a lot located in a preexisting subdivision which has received New York State Department of Health approval, or (3) a lot created by bona fide gift, devise or inheritance where the donor or decedent continuously owned the property since prior to May 22, 1973 and the recipient was a member of his immediate family.

Section 574.8. Conversion of resort hotels, rental cottages and group camps. (a) As used in section 811(1)(b) of the Adirondack Park Agency Act, "structure" means a single or multiple family dwelling, dormitory, hotel, main lodge, cabin, cottage, bungalow, bunkhouse or other structure which is permanently affixed to the land and is suitable for conversion to single family residential use, taking into account its existing character, condition and facilities, and general site considerations.

(b) In the review of conversions pursuant to section 811(1)(b) of the Adirondack Park Agency Act, the agency will apply the following criteria:

(1) A structure shall be converted only at its existing location unless the agency determines that the purposes and policies of the Adirondack Park Agency Act would be better served by the removal of the structure to, or the replacement of the structure at, a different location on the project site.

(2) A single structure containing over 1,250 square feet of net interior floor space as of May 22, 1973 may be converted to more than one single family residential unit at the approximate rate of one unit for each 1,250 feet of floor space in the structure prior to conversion; however, there shall be no fixed square footage requirement for the resulting units.

(3) For the purpose of determining whether any additional principal buildings may be constructed on the project site, each single family residential unit resulting from the conversion shall be considered a new principal building, and the overall intensity guidelines will be applied pursuant to the Adirondack Park Agency Act and section 574.7 of this Part. All contiguous or adjacent lands associated with the prior use or in the same ownership shall be included in the area upon which the overall intensity guidelines will be applied.

(c) The agency will, upon request and after an application is complete, advise whether a conversion proposal meets the criteria of this section.

PART 575

SHORELINE RESTRICTIONS OF THE ADIRONDACK PARK AGENCY ACT

(Statutory authority: Executive Law, art. 27)

Sec.

575.1 General rule

575.2 Measuring distances

575.3 Variances of less than two feet

575.4 Structures subject to building setback restrictions

575.5 Replacement and expansion of existing structures

575.6 Application of lot width restrictions

575.7 Application of sewage system setback restrictions

Section 575.1. General rule. (a) No person shall engage in land use or development or subdivision that involves shoreline in the Adirondack Park, whether or not an agency permit is also required, except in accordance with the shoreline restrictions.

(b) The shoreline building setback, vegetative cutting and minimum lot width restrictions apply to lands in proximity to:

(1) lakes or ponds;

(2) rivers designated by section 15-2715 of the Environmental Conservation Law for possible inclusion in the wild, scenic and recreational rivers system and listed in Appendix Q-5 of these regulations;

(3) all other rivers and all streams which are navigable by boat, including canoe. Agency determinations of navigability may be obtained pursuant to section 571.4 of these regulations.

(c) The shoreline setback requirements for on-site sewage disposal systems applies to all lakes, ponds, rivers and streams, including an intermittent stream with a defined bed and banks, regardless of navigability.

(d) Additional restrictions, set forth in Part 577 of these regulations, apply to the shorelines of wild, scenic and recreational rivers.

(e) The shoreline restrictions are set forth in tabular form below:

(1) MINIMUM LOT WIDTHS AND BUILDING SETBACKS.

<u>Land use area</u>	Minimum lot width	Minimum building setback
Hamlet	50 ft.	50 ft.
Moderate intensity use	100 ft.	50 ft.
Low intensity use	125 ft.	75 ft.
Rural use	150 ft.	75 ft.
Resource management	200 ft.	100 ft.
Industrial use	--	--

(2) MINIMUM ON-SITE SEWAGE DISPOSAL SYSTEM SETBACKS.

All land use areas 100 ft.

(3) MINIMUM VEGETATIVE CUTTING RESTRICTIONS.

All land use areas

(i) Not more than 30 percent of the trees six inches or more in diameter at breast height within 35 feet of the mean high water mark may be cut over any 10-year period.

(ii) No cutting of any vegetation may take place within six feet of the mean high water mark, except that up to 30 percent of the shoreline may be cleared of vegetation on any individual lot.

(iii) These standards do not prevent the removal of diseased vegetation, or of rotten or damaged trees or of other vegetation presenting safety or health hazards. Any person having a legal interest in property and planning to cut shoreline trees or vegetation thereon may request an agency determination whether such trees or vegetation qualify for removal pursuant to this subparagraph.

(4) MINIMUM FRONTAGES FOR DEEDED OR CONTRACTUAL ACCESS TO WATER BODIES (by lots, parcels or sites or multiple family dwelling units not having separate and distinct shoreline ownership).

All land use areas

(i) Where 5-20 lots or units are involved, at least 100 feet.

(ii) Where 21-100 lots or units are involved, 100 feet and at least three feet for each lot or unit exceeding 20.

(iii) Where 101-150 lots or units are involved, 340 feet and at least two feet for each lot or unit exceeding 100.

(iv) Where more than 150 lots or units are involved, 440 feet and at least one foot for each lot or unit exceeding 150.

Section 575.2. Measuring distances. (a) All distances specified in the shoreline restrictions are measured horizontally. Shoreline lot widths are measured along the shoreline as it winds and turns at the mean high water mark.

(b) Building setback restrictions are measured along the shortest line between any point of the structure and any point on the mean high water mark.

(c) Sewage disposal system setbacks are measured along the shortest line between any point of the seepage pit, drainage field or other leaching facility and any point on the mean high water mark.

(d) In the case of the Great Sacandaga Lake, "mean high water mark" shall mean the spillway elevation contour of 771 feet above mean sea level.

Section 575.3. Variances of less than two feet. The agency will not require that a landowner in need of a shoreline building setback, on-site sewage disposal system setback, or minimum lot width variance of two feet or less submit an application for such variance, provided that the town or village involved is consulted and does not object to the proposed action.

Section 575.4. Structures subject to building setback restrictions.

(a) The shoreline building setback restrictions apply to all principal buildings and to all accessory structures exceeding 100 square feet in size, including garages, sheds, porches, decks, barns, gazebos, guest cottages, tennis courts and permanent swimming pools, but not including boathouses or docks.

(b) Porches, decks and other structures attached to single family dwellings or to other structures subject to the building setback restrictions shall be considered part of the structure for purposes of applying the setback restriction.

(c) "Boathouse" means a structure with direct access to a navigable body of water (1) which is used for the storage of boats and associated equipment and (2) which does not have bathroom or kitchen facilities and is not designed or used for lodging or residency.

(d) Decks or patios which are not attached to another structure are subject to the building setback restrictions if they exceed 100 square feet, unless flush with natural ground level without raised elements such as railings or walls.

Section 575.5. Replacement and expansion of existing structures. (a) Any existing structure lawfully in non-conformance with the building setback restrictions, or any such structure which was existing on August 1, 1973 and was thereafter removed or destroyed may be replaced in kind on the same foundation or location or in the same immediate vicinity, provided the previously existing setback non-conformance is not increased. A mobile home may be

replaced by a single family dwelling, and a single family dwelling may be replaced by a mobile home.

(b) Expansions of existing structures in proximity to lakes, ponds, rivers or navigable streams shall be subject to the shoreline building setback restrictions according to the following rules:

(1) Expansions of existing structures which are in compliance with the building setback restrictions may not result in violation of such restrictions.

(2) An existing single family dwelling or mobile home which is lawfully in noncompliance with the building setback restrictions may be expanded to the rear or laterally provided such expansion does not bring the structure any closer to the mean high water mark, and provided the structure continues to be used as a single family residence. An existing structure other than a single family dwelling or mobile home may be expanded to the rear, but may not be expanded laterally within the applicable setback distance to a greater extent than 25 percent of the average width of the structure existing within the setback distance as of May 22, 1973.

(c) Expansions of existing structures may also be subject to agency permit jurisdiction, according to the rules set forth in section 573.5 of these regulations.

Section 575.6. Application of lot width restrictions. (a) Except as provided in subdivision (c) of this section, the shoreline lot width restrictions apply to any lot, parcel or site which adjoins or includes a shoreline, or is located in whole or in part within the applicable building setback distance.

(b) The shoreline lot width restrictions apply to all new single family dwellings or mobile homes, including those to be located on lots created by a subdivision by gift, devise or inheritance, and on lots in preexisting subdivisions which have not received New York State Department of Health approval.

(c) The shoreline lot width restrictions shall not apply to subdivisions which do not involve the construction of any new single family residence or other new principal building, such as a subdivision solely involving existing buildings, or a subdivision of land for a boundary adjustment.

Section 575.7. Application of sewage system setback restrictions.

(a) Any seepage pit, drainage field or other leaching facility receiving any form of household effluent, regardless of whether it receives toilet wastes, is subject to the sewage disposal system setback restrictions.

(b) Any outhouse privy or other pit privy which is not a self-contained system is subject to the sewage disposal system setback restrictions.

PART 576

STANDARDS FOR THE REVIEW OF VARIANCES
PURSUANT TO THE ADIRONDACK PARK AGENCY ACT

(Statutory authority: Executive Law, art. 27)

Sec.

576.1 General rules

576.2 Significant economic injury

576.3 When proof of significant economic injury offered

576.4 Self-created difficulty or economic injury

Section 576.1. General rules. (a) Where there are practical difficulties in carrying out the strict letter of the shoreline restrictions, the agency may, after public hearing, vary or modify their application so that their spirit is observed, public safety and welfare secured and substantial justice done.

(b) A variance will be granted when the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction.

(c) In determining whether a variance shall be granted, the agency will consider, among other relevant factors:

(1) whether the application requests the minimum relief necessary;

(2) whether granting the variance will create a substantial detriment to adjoining or nearby landowners;

(3) whether the difficulty can be obviated by a feasible method other than a variance;

(4) the manner in which the difficulty arose;

(5) whether granting the variance will adversely affect the natural and scenic resources of the shoreline and adjoining waterbody due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or other impacts which would not otherwise occur; and

(6) whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) of this subdivision.

Section 576.2. Significant economic injury. (a) The applicant may seek to prove, by specific financial documentation and expert testimony, that the strict application of the relevant shoreline restrictions will result in significant economic injury.

(b) The testimony shall be limited to the effect of the shoreline restrictions upon the value of the property in question; whether the value would be enhanced were a variance granted shall not be relevant.

Section 576.3. When proof of significant economic injury offered. If, in the opinion of the hearing officer, the applicant has proven significant economic injury, the hearing officer may order that proof be taken as to whether the strict application of the restriction in question is reasonably related to the public health, safety and welfare and the purposes sought to be served by section 806 of the Adirondack Park Agency Act. The agency staff may also offer such proof on its own initiative.

Section 576.4. Self-created difficulty or economic injury. The agency will not deny a variance, or refuse to consider proof of significant economic injury, on the sole ground that the practical difficulty or alleged economic injury is self-created.

PART 577

SPECIAL PROVISIONS RELATING TO WILD,
SCENIC AND RECREATIONAL RIVERS

(Statutory authority: Environmental Conservation Law, 15-2709)

Sec.

577.1 Applicability of this Part

577.2 Definitions used in this Part

577.3 Boundaries of river areas; amendments of river area
boundaries; distance measurements within river areas

577.4 General rules

577.5 Rivers projects

577.6 Restrictions and standards in river areas

577.7 Existing uses

577.8 Standards for the review of river projects

577.9 Rivers system land management plans

577.10 Variances from the provisions of this Part

577.11 Access to private lands

Section 577.1. Applicability of this Part. This part applies to land use and development and subdivision of land on privately-owned lands within wild, scenic and recreational river areas located in the Adirondack Park. The wild, scenic and recreational rivers and river areas are set forth in Appendix Q-6 of these regulations.

Section 577.2. Definitions used in this Part. In addition to the definitions in section 15-2703 of the Environmental Conservation Law, the following words and terms shall have the following definitions:

(a) 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.

(b) 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.

(c) Basal area means the sum of the cross-sectional areas, measured at 4.5 feet above ground, of all vegetation within a given area.

(d) Forest management means forestry practices, including harvesting of a forest, woodland or plantation and other types of cuttings planned as part of a deliberate forest management program, the construction, alteration or maintenance of wood roads, skidways, landings and fences and related research and educational activities.

(e) Land management plan or rivers system land management plan means a plan for the management of a river area or areas pursuant to section 577.9 of this Part.

(f) Motor vehicle means a device for transporting people or material, incorporating a motor of any type for propulsion and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on or adjacent to land and water or through or over water.

(g) Motorized open space recreation use means any open space recreation use which customarily utilizes one or more motor vehicles.

(h) Person means any individual, corporation, partnership, joint venture, association, organization, government or any agency or political subdivision thereof (including the State or any State agency) or any other entity.

(i) Privately owned means owned by any person, but not by the State or any State agency.

(j) Private road means any road other than a wood road or a public road.

(k) Public road means any road over which the public has a right to travel.

(l) 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.

(m) Restrictions and standards means the provisions of section 577.6 of this Part.

(n) River means that portion of a flowing body of water, such as a river, stream or lake, to the mean high water mark thereof, which is designated as a wild, scenic or recreational river in Appendix Q-6 of these regulations but shall not include any tributary thereto unless expressly included in such designation.

(o) River area means the wild, scenic and recreational rivers and the private lands in their immediate environs as set forth in Appendix Q-6 of these regulations.

(p) River area utility use means any electric power transmission and distribution line, telephone trunk and feeder cable or distribution line, pipe or conduit for the transmission of gas, oil, and other fuels, and any water and sewage system pipe or conduit, whether or not such use is subject to the jurisdiction of the Public Service Commission.

(q) Rivers project means any new land use or development or subdivision of land set forth in section 577.5 of this Part.

(r) Road means any highway, hard-surfaced road, improved or dirt road, but not including any bridge.

(s) Shoreline lot means any lot (i) within or adjoining the mean high water mark of a wild, scenic or recreational river, or (ii) located within 100 feet of such mean high water mark or within any applicable setback distance of this Part, whichever is greater.

(t) Stream improvement structures for fishery management purposes means structures and improvements, including but not limited to fish barrier dams, fish passage structures, minor

diking, cribbing, bank stabilization and stream deflectors and other structures or improvements designed solely for fishery management purposes which do not materially alter the natural character of the waterway.

(u) 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, bridges, signs, tanks, fences and poles, outdoor lighting, trailers, travel trailers, campers or tents constructed, installed or placed on land (excepting trailers, campers or tents outside a campground and for a temporary period only), and any fixtures, additions or alterations, but does not mean signs of less than two square feet in area.

(v) Vegetation means trees and woody-stemmed plants, except agricultural crops.

(w) Wild, Scenic and Recreational Rivers System Act means title 27 of article 15 of the Environmental Conservation Law.

(x) Wood road means any dirt or other unimproved road designed and used solely for forest management purposes or related fish and game activities, not intended for use by the general public, and simply constructed by grading, filling and/or corduroying, without extensive finish or maintenance work.

Section 577.3. Boundaries of river areas; amendments of river area boundaries; distance measurements within river areas. (a) Description of river area boundaries. The boundaries of river areas described in Appendix Q-6 of these regulations as a uniform distance from a river bank shall themselves wind and turn as the river does. Terminal boundaries shall be lines perpendicular to the flow, extending through the terminal points in Appendix Q-6.

(b) Amendments of river area boundaries. The agency and the Commissioner of Environmental Conservation may, after public hearing, amend the boundaries of any river area located in the Adirondack Park. No public hearing is required in the case of boundary amendments occurring as part of approval of a local land use program or in connection with amendments clarifying or providing a more readily identifiable river area boundary and not materially affecting the river area.

(c) Distance measurements within river areas. Distances shall be measured horizontally from the mean high water mark of the river. Upon request of any person having a legal interest in property contemplating land use or development or subdivision thereon, the agency shall determine the river area boundary, or the mean high water mark at relevant points of the river involved pursuant to the procedures set forth in section 571.3 of these regulations.

Section 577.4. General rules. (a) No person shall undertake a rivers project without first obtaining an agency permit.

(b) The following may be undertaken without a permit if in compliance with the restrictions and standards set forth in section 577.6 of this Part:

(1) in all river areas, forest management except:

(i) wood roads within wild river areas, or bridges over wild rivers;

(ii) wood roads inside or within 100 feet of the mean high water mark of the river in scenic and recreational river areas;

(iii) vegetative cutting inside or within 100 feet of the mean high water mark of the river not exempted by section 577.6(c)(1) of this Part;
and

(iv) sand and gravel extractions for forest management purposes in wild river areas;

(2) in wild river areas, nonmotorized open space recreation uses, except bridges over wild rivers which do not require a permit from the Department of Environmental Conservation;

(3) in scenic and recreational river areas:

(i) all subdivisions of land, and all land use and development, within hamlet and moderate intensity use areas, except as provided in subdivisions (b) and (c) of section 577.5 of this Part;

(ii) agricultural uses, agricultural use structures, open space recreation uses, game preserves and private parks and accessory uses and structures to such uses or to any preexisting use, except bridges over scenic or recreational rivers which do not require a permit from the Department of Environmental Conservation, docks in scenic river areas and boathouses in scenic and recreational river areas;

(iii) bridges which are constructed pursuant to a permit from the Department of Environmental Conservation;

(iv) stream improvement structures for fishery management purposes constructed by or pursuant to a permit from the Department of Environmental Conservation;

(v) river area utility uses:

(a) subject to the review of the Public Service Commission pursuant to article seven or article eight of the Public Service Law; or

(b) which are not major public utility uses and which will not be located within the applicable building setback distance set forth in section 577.6(b) of this Part.

(c) Any other new land use or development or subdivision, except those permitted by subdivisions (a) and (b) of this section, is prohibited, unless undertaken pursuant to a rivers system land management plan approved pursuant to section 577.9 of this Part.

(d) To the extent applicable and unless in conflict with the Wild, Scenic and Recreational Rivers System Act or this Part, Part 573 and sections 575.2 through 575.7 of these regulations, which apply to agency jurisdiction pursuant to the Adirondack Park Agency Act, shall also apply to agency jurisdiction pursuant to this Part.

Section 577.5. Rivers projects. (a) In wild river areas:

(1) Subdivision of land.

(2) The harvesting, cutting, culling, removal, thinning, or other disturbance of timber or other vegetation inside the mean high water mark of the river or within one hundred feet of the mean high water mark other than cutting exempted by section 577.6(c)(1)(i) of this Part.

(3) Wood roads.

(4) Sand and gravel extractions for forest management purposes.

(5) Footbridges over wild rivers for nonmotorized open space recreation use which do not require a permit from the Department of Environmental Conservation.

(b) In scenic river areas:

(1) Outside hamlet and moderate intensity use areas:

(i) The harvesting, cutting, culling, removal, thinning or other disturbance of vegetation inside the mean high water mark of the river or within 100 feet of the mean high water mark, other than cutting exempted by section 577.6(c)(1) of this Part;

(ii) public or private roads;

(iii) wood roads inside the mean high water mark of the river or within 100 feet of the mean high water mark;

(iv) trails for motorized open space recreation use located inside the mean high water mark of the river or within 100 feet of the mean high water mark;

(v) hunting and fishing cabins, and hunting and fishing and other private club structures;

(vi) single family dwellings;

(vii) individual mobile homes;

(viii) docks;

(ix) river area utility uses not subject to review pursuant to article seven or article eight of the Public Service Law which (a) are major public utility uses, or which (b) cross the river, or are proposed to be located inside the mean high water mark of the river or within 250 feet of the mean high water mark;

(x) subdivision of land.

(2) Bridges over scenic rivers which do not require a permit from the Department of Environmental Conservation.

(3) Stream improvement structures for fishery management purposes, except those constructed by or pursuant to a permit from the Department of Environmental Conservation.

(c) In recreational river areas:

(1) Outside hamlet and moderate intensity use areas, all subdivisions of land and all land uses and developments classified compatible uses by the Adirondack Park land use and development plan.

(2) Stream improvement structures for fishery management purposes except those constructed by or pursuant to a permit from the Department of Environmental Conservation.

(3) Modifications or disturbances of the course, banks or bed of a recreational river which do not require a permit from the Department of Environmental Conservation pursuant to section 15-0501(2) of the Environmental Conservation Law.

(4) Excavation or the placement of fill in a recreational river which is not considered navigable pursuant to section 15-0505(1) of the Environmental Conservation Law.

Section 577.6. Restrictions and standards in river areas. (a) General rule. All land uses and developments in river areas, whether or not an agency permit is required, shall be subject to the restrictions and standards set forth in this section.

(b) Structures. (1) In wild river areas, no new structures shall be permitted, except foot bridges for non-motorized open space recreation use.

(2) In scenic river areas, new structures, except for fences, poles, lean-tos, docks, bridges and stream improvement structures for fishery management purposes, shall not be permitted inside the mean high water mark of the river or within 250 feet of the mean high water mark, except in hamlet and moderate intensity use areas.

(3) In recreational river areas, new structures, except for fences, poles, lean-tos, docks, boathouses, bridges and stream improvement structures for fishery management purposes, shall not be permitted inside the mean high water mark of the river or within 150 feet of the mean high water mark, except in hamlet and moderate intensity use areas.

(4) Within hamlet and moderate intensity use areas in scenic and recreational river areas, the building setback restrictions of section 806 of the Adirondack Park Agency Act and section 575.1 of these regulations shall apply.

(c) Forest management and vegetative cutting. In wild river areas and in scenic and recreational river areas outside hamlet and moderate intensity use areas, the following standards apply:

(1) Inside the mean high water mark of the river, or within 100 feet of the mean high water mark, no trees or other vegetation shall be harvested, cut, culled, removed, thinned or otherwise disturbed, other than:

(i) the cutting and removal of up to a maximum of five percent of the total basal area of timber or other vegetation per acre during any 10-year period for the purpose of clearing the river or a tributary thereof of fallen trees, or trees which pose a threat of bank undercutting or erosion, or for the undertaking of land use and development or subdivision listed in section 577.4(b) of this Part;

(ii) vegetative cutting upon lands directly associated with any structure lawfully in existence on April 19, 1976, to the extent necessary that any existing view of the river from such structure may be preserved;

(iii) the cutting of firewood by the resident of a dwelling within the river area for personal use in such dwelling, provided that alternative sites for the cutting of such firewood are not readily available to such resident; or

(iv) in accordance with the terms of an agency rivers project permit.

(2) Between 100 feet from the mean high water mark of the river and the exterior boundary of the river area:

(i) The cutting and removal of trees and other vegetation shall be permitted for the undertaking of rivers projects, land use and development or subdivision listed in section 577.4(b) of this Part, or activities pursuant to a rivers system land management plan.

(ii) Forest management shall conform to recognized silvicultural systems as defined in Terminology of Forest Science, Technology, Practice and Products (Washington: Society of American Foresters, 1971) appropriate to the site, and shall be in accordance with the terms of Timber Harvesting Guidelines for New York (New York Section of the Society of American Foresters, June 1975).

(iii) If an even-aged stand of commercial timber species is present, one recognized regeneration cutting that removes the main crown canopy of such stand shall be permitted upon not more than one-third of the total area of the stand within the river area during any 10-year period if undertaken as part of a plan to regenerate the stand.

(iv) In no event, however, shall more than 15 contiguous acres in the same ownership be clearcut, nor shall more than 50 percent of the basal area of timber in any tract of 30 contiguous acres in the same ownership be cut during any 10-year period.

(3) No trees shall be felled into or across the river where avoidable, and logging debris which may enter the river shall be removed. Any logging debris which may enter the area inside the mean high water mark of the river or within 100 feet of such mean high water mark shall be removed, or shall be lopped, for hardwoods, in such fashion that no such debris measures higher than four feet from ground level, and for conifers, in accordance with section 9-1113 of the Environmental Conservation Law.

(4) No new landings shall be established inside the mean high water mark of the river or within 200 feet of the mean high water mark. Adequate provisions shall be made after timber harvesting to stabilize soil on all landings, skid trails and wood roads in the river area.

(5) No new sand and gravel extractions associated with forest management shall be located inside the mean high water mark of the river or within 200 feet of the mean high water mark. Such extractions shall be invisible from the river.

(6) All timber harvesting operations shall be subject to article 15 (Water Resources) of the Environmental Conservation Law, governing, among other things, disturbances, modification, and crossing of rivers and streams. In addition, skidding of logs or trees across

rivers shall not be permitted, except where no feasible alternative exists and a permit therefor has been obtained pursuant to such article.

(7) Logging equipment shall not be stored within 100 feet of the river, or abandoned within the river area.

(8) Wood roads shall be located so as to be invisible from wild rivers and to minimize their visibility from scenic and recreational rivers.

(d) Bridges over wild, scenic and recreational rivers.

(1) No new bridges over wild rivers shall be permitted, except footbridges for nonmotorized open space recreation use constructed pursuant to a permit from the agency or the Department of Environmental Conservation.

(2) New bridges over scenic and recreational rivers shall be allowed subject to agency and Department of Environmental Conservation permit requirements.

(3) Bridges over wild, scenic or recreational rivers shall be constructed to the extent feasible of naturally occurring materials such as wood and stone and shall not interfere with the recreational use of the river.

(e) Stream improvement structures for fishery management purposes. Stream improvement structures for fishery management purposes in wild rivers are not permitted. In scenic and recreational rivers such structures shall be constructed principally of naturally occurring materials such as wood and stone, and shall be so designed and constructed as to avoid material alteration of the natural character of the waterway.

(f) River area utility uses. (1) In scenic and recreational river areas, river area utility uses subject to review pursuant to article seven or article eight of the Public Service Law shall be limited to locations where support structures, lines, cables, pipes, and other associated equipment and accessories will be substantially invisible from the river and, except for crossings, not inside the mean high water mark, and where visual impact on other parts of the river area can be minimized. River crossings, if any, shall be minimized, and in the case of a scenic river shall not be more frequent than once every two miles.

(2) Other river area utility uses shall be located and constructed as to minimize visibility from the river and the river area of support structures, lines, cables, pipes and other associated equipment and accessories.

(g) Water quality and natural flow. (1) No new direct discharge of any substance into a wild river shall be permitted.

(2) No new direct discharge of any substance into a scenic or recreational river shall be permitted unless consistent at a minimum with applicable water quality standards promulgated by the Department of Environmental Conservation.

(3) The existing water quality in each wild, scenic or recreational river shall be maintained or improved.

(4) The natural water flow of each wild, scenic or recreational river shall be maintained and there shall be no diversions. Limited water withdrawals from scenic or recreational rivers for agricultural, domestic or other lawful purposes which do not materially affect the natural flow of the river shall be permitted.

(h) Use of motor vehicles in wild river areas. The use of motor vehicles, including snowmobiles, shall only be permitted within wild river areas as necessary for forest management undertaken in accordance with the restrictions and standards set forth in subdivision (c) of this section.

(i) Operation of mechanically propelled vessels and aircraft on wild and scenic rivers. (1) Operation of mechanically propelled vessels and aircraft is prohibited on wild rivers, and on scenic rivers except for the following:

- (i) Marion River;
- (ii) Raquette River between Raquette Falls and Trombley Landing;
- (iii) The Elm Lake section of the Kunjamuk River;
- (iv) Bog River from the confluence with Round Lake outlet to Tupper Lake; and
- (v) all ponds and lakes which are a part of a river, which are accessible by road and which have a surface area exceeding 50 acres.

(2) Operation of mechanically propelled vessels not exceeding 7½ horsepower shall be permitted on the East Branch of the St. Regis River from the rapids approximately six miles downstream of the Route 30 crossing to one-half mile upstream of Everton Falls.

Section 577.7. Existing uses. (a) Existing uses in wild river areas. Land uses and development in wild river areas which shall have been lawfully in existence on April 19, 1976, including access by motor vehicle, may continue and be replaced in kind on the same foundation or in the same location, but may not be expanded.

(b) Existing uses in scenic and recreational river areas. (1) Land uses and development and subdivisions of land in scenic and recreational river areas which shall have been lawfully in existence on April 19, 1976, including access by motor vehicle, shall not be subject to agency review and may continue. Any structure in existence as of such date may be replaced in kind on the same foundation or in the same location. Any such existing use may be altered or expanded pursuant to section 811(5) of the Adirondack Park Agency Act, provided that in no case shall such alteration or expansion violate or increase non-compliance with any of the restrictions and standards contained in section 577.6 of this Part.

(2) One single family dwelling or mobile home may be constructed, without agency review, on any lot in a subdivision lawfully in existence on April 19, 1976 which has been approved by the State Department of Health. The restrictions and standards of section 577.6 of this Part shall apply.

(c) Conversions of certain existing uses within recreational river areas. Those structures in existence in recreational river areas on May 22, 1973 that are associated with resort hotels, rental cottages and group camps shall be allowed, pursuant to agency permit and in accordance with section 574.8 of these regulations, to be converted from their previous use to individual single family residence use, even if such structures, as converted, do not conform to the building setback, lot width, lot area or intensity regulations of this Part.

Section 577.8. Standards for the review of rivers projects. (a) General rule. Rivers projects shall be reviewed according to the standards set forth in this Part. Rivers projects which are class A or class B regional projects or wetlands projects shall also be subject to the standards in Parts 574 and 578 of these regulations.

(b) Standards applicable to all rivers projects. The agency shall not issue a permit for any rivers project unless it shall determine that:

(1) the project would be consistent with the purposes and policies of the Wild, Scenic and Recreational Rivers System Act;

(2) the project would comply with the applicable restrictions and standards of section 577.6 of this Part;

(3) the project would not cause an undue adverse impact upon the natural, scenic, aesthetic, ecological, botanical, fish and wildlife, historic, cultural, archeological, scientific, recreational or open space resources of the river area, taking into account the commercial, industrial, residential, recreational, or other benefits that might be derived from the project. In making this determination, the agency shall consider those factors contained in the development considerations of the land use and development plan which are pertinent to the project.

(c) Specific standards applicable to certain rivers projects. The agency shall not issue a rivers system permit for the following rivers projects unless it shall determine that the following specific criteria are met:

(1) The harvesting, cutting, culling, removal or other disturbance of timber or other vegetation inside the mean high water mark of the river or within 100 feet of the mean high water mark is:

(i) for compelling purposes as would be consistent with recognized sound forestry or agricultural practices; or

(ii) in recreational river areas, selected and dispersed cutting of vegetation to the extent necessary to create a view of the river from any new structure or from any lawfully existing structure lacking such a view.

(2) New public or private roads, wood roads, and trails for motorized open space recreation uses will be so located and constructed as to minimize visibility from the river, minimize alteration of the natural environment, will be reasonable and necessary, and will be effectively restricted to those uses specified by the applicant.

Within scenic river areas, public roads, or private roads open to the general public, shall be permitted if such road:

(i) affords access to a part of the river area which is at least two miles from an existing road open to the general public, and located on the same side of the river in the river area; and

(ii) will be substantially invisible from the river.

If there is no other vehicular access to a land use or development within a scenic river area, a new private road shall be permitted.

(3) New docks or boathouses will not impede the natural flow of the river, and will be so located and constructed as to minimize intrusion into the water body.

(4) New subdivisions in which the intended use of any resulting lot, parcel or site is a single family dwelling or individual mobile home, or which otherwise involves the construction of principal buildings, will

(i) meet the following applicable minimum lot widths, unless clustering is employed pursuant to paragraph (5) of this subdivision:

MINIMUM SHORELINE LOT WIDTHS (linear feet per principal building)

Land use area	Scenic river areas	Recreational river areas
Moderate intensity use	100*	100*
Low intensity use	150	150
Rural use	200	200
Resource management	750	300
Industrial use	No minimum*	No minimum*

*The same as those mandated by the land use and development plan.

(ii) be consistent with the overall intensity guidelines of the land use and development plan, applied pursuant to section 809(10)(c) of the Adirondack Park Agency Act and section 574.7 of these regulations, except that in scenic river areas lands otherwise includable in the calculation which are more than one-half mile distant from the river shall not be included in such calculation. This subparagraph shall not apply to subdivisions in scenic and recreational river areas effected by bona fide gift, devise or inheritance where the donor owned the land involved as of April 19, 1976 and the donee is a member of his immediate family. The minimum lot size of such subdivisions shall be: in low intensity use areas, 50,000 square feet; in rural use areas, 80,000 square feet; and in resource management areas, 160,000 square feet.

(5) New subdivisions involving shoreline clustering will have an average shoreline width of lots, parcels or sites equal to or exceeding the applicable minimum shoreline lot width requirement of paragraph (4) of this subdivision.

(6) New subdivisions in wild river areas are intended only for purposes of forest management or non-motorized open space recreation use.

(7) Modifications or disturbances of the course, bed or banks of recreational rivers, or excavation or placement of fill in recreational rivers will meet the applicable criteria of the Wild, Scenic and Recreational Rivers System Act and of article 15, title 5, of the Environmental Conservation Law.

Section 577.9. Rivers system land management plans.

(a) General rule. In a river area or portion thereof governed by a rivers system land management plan approved by the agency, the provisions of such plan shall apply to new land use activities in lieu of the provisions of this Part.

(b) Application for approval of land management plan. Any person or persons who own 500 or more acres of contiguous land within a river area, or a local government with respect to all of the acreage within its jurisdiction which falls within a river area or areas, may propose a land management plan for agency approval. A land management plan proposed by a local government may be part of a local land use program.

(c) Contents of land management plan. A land management plan shall include:

(1) a detailed program of land management covering a period of not less than 10 years, which identifies land management objectives and means proposed for achieving them;

(2) regulatory elements;

(3) river area boundary amendment requests, if any;

(4) topographic and natural resource inventory information, including detailed maps;

(5) in the case of a land management plan proposed by private owners, legal assurance of performance of the affirmative obligations imposed upon them.

(d) Procedure for approval of land management plan. (1) The agency may request reasonable additional information to enable it to evaluate the plan.

(2) The agency shall, except where a land management plan is submitted as part of a local land use program, hold a public hearing after not less than 10 days notice by publication at least twice in a newspaper of general circulation in such area, by conspicuous posting of the land involved, and by individual notice sent by mail to:

(i) the chief elected officer, chairman of the planning board, if any, and the clerk of each local government;

(ii) the chairman of the county planning agency, if any, and the clerk of each county where the land is located; and

(iii) the chairman of the regional planning agency, if any, within whose jurisdiction the land is located; and

(iv) the Adirondack Park local government review board.

(3) Within 90 days after a determination by the agency that it has sufficient information to evaluate the plan, the agency shall approve, approve subject to conditions, or disapprove the plan.

(4) Notice of agency approval of any land management plan shall be given by publication at least once, in a newspaper of general circulation in the area, and by individual notice sent by mail to the persons specified in paragraph (2) of this subdivision. The agency shall retain a copy of the approved land management plan and a descriptive map on file for public inspection at agency headquarters and district offices. A list of approved land management plans is set forth in Appendix Q-7 of these regulations.

(e) Scope of agency authority in approving land management plan. (1) The agency shall not approve a land management plan unless it finds that the plan is consistent with the purposes and policies of the Wild, Scenic and Recreational Rivers System Act and the Adirondack Park Agency Act and the applicable restrictions and standards of sections 577.6 and 577.8 of this Part.

(2) In approving a land management plan, the agency may vary or modify any of the provisions of this Part except those requirements specifically imposed by the Wild, Scenic and Recreational Rivers System Act.

(3) In approving a land management plan, the agency may impose any reasonable condition, limitation, or requirement necessary to satisfy the criteria set forth in this section.

(4) Prior to approving any river area boundary amendments, the agency shall consult and reach agreement with the Commissioner of Environmental Conservation.

(f) Review provisions. (1) The agency shall review every plan at least every five years to determine if it has been implemented according to its terms.

(2) If the agency shall conclude, either in connection with a review prescribed by paragraph (1) of this subdivision or otherwise, that a land management plan has not been implemented according to its terms, the agency may, after public hearing upon notice given as set forth in paragraph (d)(2) of this section, revoke its approval.

(3) Notice of revocation shall be given by publication at least twice in a newspaper having general circulation in the area wherein the land management plan had effect, and by individual notice sent by mail to the persons specified in paragraph (d)(2) of this section. On the date of such notice of revocation, the land management plan shall become null and void, any provisions of this Part varied or modified pursuant to the approval shall thereupon be in full force and effect, and land use and development and subdivision of land in the area formerly governed by the land management plan shall thereafter be governed by this Part.

Section 577.10. Variances from the provisions of this Part. (a) Where there are practical difficulties or unnecessary hardships in carrying out the restrictions and standards set forth in section 577.6 of this Part, or the terms and conditions of an approved land management plan, the agency may, after public hearing, vary or modify the application of such provisions so that the spirit of the provisions shall be observed, public safety and welfare secured and substantial justice done.

(b) The procedures governing the agency's review of applications for variances from the provisions of this Part, and public hearings thereon, shall be (1) for variance applications involving a rivers project, the same as those set forth in section 572.10 of these regulations, and (2) for variance applications not involving a rivers project, the same as those set forth in sections 572.15 through 572.19 of these regulations.

(c) A request for a variance to an approved land management plan administered by a local government shall be submitted to the local government, which shall apply in its decision the criteria set forth in this section for the consideration of variances by the agency.

(d) Upon receipt of an application for a variance from any provisions of an approved land management plan administered by a local government, the local government body or officer having jurisdiction shall give written notice to the agency. If such variance is granted, it shall not take effect for 30 days after it is granted. If, within such 30 day period, the agency determines that such variance was not based upon the appropriate basis of practical difficulties or unnecessary hardships, the agency may reverse the local determination.

Section 577.11. Access to private lands. Neither the Wild, Scenic and Recreational Rivers System Act nor this Part shall be construed to create or to confer upon any person any right of access, or of ingress and egress, over, upon or to any private lands, water or bodies of water.

PART 578

SPECIAL PROVISIONS RELATING TO FRESHWATER WETLANDS

(Statutory Authority: Environmental Conservation
Law, art. 24; Executive Law, 809(14), 810)

Sec.

- 578.1 Applicability of this Part
- 578.2 General rules
- 578.3 Definitions used in this Part
- 578.4 General values of wetlands
- 578.5 Values of particular wetlands
- 578.6 Method for determining overall wetland value
- 578.7 Advisory opinions as to wetland value ratings
- 578.8 Impacts of certain regulated activities
- 578.9 Benefits of activity proposed
- 578.10 Issuance of permits
- 578.11 Adjacent area regulation
- 578.12 Procedures for the readjustment of freshwater wetlands maps
- 578.13 Freshwater Wetlands Appeals Board
- 578.14 Effective date of this Part

Section 578.1. Applicability of this Part. (a) This part applies to the undertaking of regulated activities on private or State lands.

(b) This Part does not apply to any regulated activity in freshwater wetlands or any activity in adjacent areas listed in section 578.2(b) of this Part if undertaken pursuant to a permit issued prior to May 1, 1983 either by the agency, or by the Department of Environmental Conservation acting pursuant to section 15-0505 of the Environmental Conservation Law. The permit requirements of this Part apply, however, if the activity has not been substantially commenced within two years of the date of issuance of the permit or within any other time period specified therein.

(c) This Part does not apply to the replacement in kind or to the routine repair of structures, roads, or on-site sewage disposal systems lawfully existing in wetlands on May 1, 1983, provided there is no (1) draining, (2) filling, (3) substantial increase in erosion, siltation or sedimentation, (4) diversion of surface or subsurface drainage that adversely affects the natural hydrologic regime, or (5) other material alteration of the wetland.

(d) The Public Service Commission and the New York Board on Electric Generation Siting and the Environment shall apply the substantive provisions of this Part in determining whether to issue a certificate of environmental compatibility and public need pursuant to article seven or article eight of the Public Service Law.

Section 578.2. General rules. (a) No person shall undertake any regulated activity without first obtaining an agency permit.

(b) No person shall install any on-site sewage drainage field or seepage pit or any sewer outfall within the area adjacent to a freshwater wetland without first obtaining an agency permit pursuant to section 578.11 of this Part.

Section 578.3. Definitions used in this Part. In addition to the definitions in section 24-0107 of the Environmental Conservation Law, the following terms shall have the following definitions:

(a) Adjacent area means lands or waters within 100 feet, measured horizontally, of the boundaries of a freshwater wetland.

(b) Artificial mudflat means generally unvegetated mud bottoms exposed by human action, such as those exposed by reservoir drawdowns.

(c) Bog means a wetland where standing or slowly running water is at or near the surface during a normal growing season, and where the vegetation grows on an accumulation of largely undecomposed acidic organic debris which is saturated at or near the ground surface by standing or slowly flowing water throughout a normal growing season. The base of the vegetative community is typically a mat formed by peat moss (*Sphagnum* spp.) and which also contains some or all of the following species, many of which are specially adapted to saturated or acid soil conditions: leatherleaf (*Chamaedaphne calyculata*), sheep and swamp laurels (*Kalmia angustifolia*, *K. polifolia*), labrador tea (*Ledum groenlandicum*), bog rosemary (*Andromeda glaucophylla*), low-bush cranberries (*Vaccinium oxycoccus*, *V. macrocarpon*), rhodora (*Rhododendron canadense*), cottongrasses (*Eriophorum* spp.), sedges (*Carex* spp., *Cyperus* spp.), black spruce (*Picea mariana*), American larch or tamarack (*Larix laricina*), bog aster (*Aster nemoralis*), pitcher plant (*Sarracenia purpurea*), sundews (*Drosera* spp.), liverwort (*Cladopodiella fluitans*), and orchids (*Arethusa bulbosa*, *Pogonia ophioglossoides*, *Calopogon pulchellus*, *Habenaria* spp.). Other commonly associated species include sweet gale (*Myrica gale*), chokeberry (*Pyrus* spp.), northern white cedar (*Thuja occidentalis*), red maple (*Acer rubrum*), and white pine (*Pinus strobus*).

(d) Boundaries of a freshwater wetland or wetland boundaries means the outer limits of the vegetation referred to in clauses (1) and (2) of the definition of "freshwater wetlands" in this section and of the lands and waters referred to in clause (3) thereof. In any case where indicator species are present, seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over non-wetland species must also be present.

The agency will determine the exact location of wetland boundaries at the request of any person having a legal interest in property and contemplating thereon a regulated activity, or an activity in adjacent areas listed in section 578.2(b) of this Part.

(e) Classic or kettlehole bog means a wetland at least 250 feet in diameter within a closed drainage basin with a minimal or wholly subterranean inlet and a minimal or no outlet stream, composed of differing wetland vegetative cover types in substantially concentric zones, proceeding from (1) an outer edge of coniferous wooded wetlands growing on saturated organic deposits composed mainly of partially decayed sphagnum moss, inward towards (2) a floating mat of sphagnum mosses and shrubby heath plants to (3) an inner area of open water, known as the bog pond, which has an acidity of pH 5.00 or lower, and is typically anoxic and stained a dark brown in color from decaying vegetation.

(f) Coniferous swamp means a wetland or wetland coetype where a significant part of the vegetational community consists of live coniferous trees over 20 feet in height, usually growing on hummocky terrain or on deep organic soil deposits and with pockets of water and/or sphagnum moss between the hummocks. Coniferous swamps usually contain some or all of the following trees: black spruce (*Picea mariana*), American larch or tamarack (*Larix laricina*), hemlock (*Tsuga canadensis*), white cedar (*Thuja occidentalis*), red spruce (*Picea rubens*), balsam fir (*Abies balsamea*), and occasionally white pine (*Pinus strobus*).

(g) Coetype or wetland coetype means any of any of the groups of wetland vegetation set forth in the definitions of "artificial mudflat," "coniferous swamp," "deciduous swamp," "deep water marsh," "emergent marsh," "shrub swamp," and "wet meadow" in this section. Where technical and common, colloquial or local type names were inconsistent, the prevailing common usage is employed.

(h) Deciduous swamp means a wetland or wetland coetype where a significant part of the vegetational community consists of live deciduous trees over 20 feet in height, usually growing in hummocky terrain or on seasonally or permanently flooded areas. Deciduous swamps usually contain some or all of the following trees: American elm (*Ulmus americana*), silver, red or mountain maples (*Acer saccharinum*, *A. rubrum*, *A. spicatum*), black or green ashes (*Fraxinus nigra*, *F. pennsylvanica*), willows (*Salix* spp.), and (more commonly in lower elevations of the Lake Champlain and Hudson, Black, and St. Lawrence River valleys) swamp white oak (*Quercus bicolor*), witch hazel (*Hamamelis virginiana*), and American hornbeam/ironwood (*Carpinus caroliniana*).

(i) Deep water marsh means a wetland or wetland coetype where a significant part of the vegetational community consists of free floating vegetation, rooted vegetation with floating leaves, or submergent vegetation, usually containing some or all of the following plants: duckweed (*Lemna* spp.), water lilies (*Nymphaea* spp., *Nuphar* spp., *Nymphoides* spp.), coontail (*Ceratophyllum demersum*), water milfoil (*Myriophyllum* spp.), bladderwort (*Utricularia* spp.), pondweeds (*Potamogeton* spp.), watershield (*Braselia schreberi*), big duckweed (*Spirodela polyrhiza*), watermeal (*Wolffia* spp.), naiads (*Najas* spp.), wild celery (*Vallisneria americana*), muskgrass (*Chara* spp.), stonewort (*Nitella* spp.), waterweeds (*Elodea* spp.) and water smartweeds (*Polygonum* spp.).

(j) Emergent marsh means a wetland or wetland coetype where a significant part of the vegetational community consists of herbaceous plants encroaching on water areas and flooded with standing or running water much of the year. Emergent marshes usually contain some or all of the following plants: arums (*Peltandra* spp., *Calla* spp.), pickerel weeds (*Pontederia cordata*, *P. lanceolata*), water milfoils (*Myriophyllum* spp.), water starworts (*Callitriche* spp.), bladderworts (*Utricularia* spp.), water smartweeds (*Polygonum* spp.), water plantains (*Alisma* spp.), arrowheads (*Sagittaria* spp.), loosestrifes (*Lythrum* spp.), water willow/swamp loosestrife (*Decodon verticillatus*), rushes (*Juncus* spp.), burreeds (*Sparganium* spp.), cattails (*Typha latifolia*, *T. angustifolia*), horsetails (*Equisetum* spp.), pipeworts (*Eriocaulon* spp.), spikerushes (*Eleocharis* spp.), bulrushes (*Scirpus* spp.), sedges (*Carex* spp., *Cyperus* spp., *Dulichium arundinaceum*), burreed (*Phragmites communis*), wild rice (*Zizania aquatica*), blue flag (*Iris* spp.), hydrophilic grasses (*Phalaris arundinacea*, *Glyceria* spp., *Calamagrostis* spp., *Leersia* spp.), royal fern (*Osmunda regalis*), sweet gale (*Myrica gale*), and occasionally leatherleaf (*Chamaedaphne calyculata*).

(k) Freshwater wetlands or wetlands means

(1) lands and submerged lands, commonly called marshes, swamps, sloughs, vlys, bogs, and flats which are seasonally or permanently flooded or contain sufficiently water-logged soils to support and give a competitive advantage to the aquatic or semi-aquatic vegetation set forth by common name, genus and species in the individual definitions of "artificial mudflat," "bog," "coniferous swamp," "deciduous swamp," "deep water marsh," "emergent marsh," "shrub swamp," or "wet meadow" in this section;

(2) lands and submerged lands containing remnants of any non-aquatic or semi-aquatic vegetation that has died because of prolonged wet conditions not exceeding a maximum seasonal water depth of six feet and which, barring human intervention, can be expected to persist indefinitely;

(3) lands and open water substantially enclosed by the aquatic or semi-aquatic vegetation referred to in clause (1) or by the dead vegetation referred to in clause (2) of this definition, the regulation of which is necessary to protect and preserve the aquatic or semi-aquatic vegetation, and

(4) the waters overlying the lands referred to in clauses (1) and (2) and the lands underlying the open waters referred to in clause (3) of this definition.

The agency will determine whether wetlands are present, and delineate their boundaries, at the request of any person described in section 571.5(a) of these regulations contemplating a regulated activity, or an activity in adjacent areas listed in section 578.2(b) of this Part.

(l) Freshwater Wetlands Act means Article 24 of the Environmental Conservation Law.

(m) Person means any corporation, firm, partnership, association trust, estate, one or more individuals, and any unit of government or subdivision thereof, including the state and any state agency.

(n)(1) Regulated activity means any of the following within the boundaries of a freshwater wetland:

(i) land use and development or subdivision;

(ii) any form of draining, dredging, excavation, removal of soil, peat, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly;

(iii) any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly;

(iv) erecting any structures, constructing any roads, driving pilings, or placing of any other obstructions whether or not changing the pattern of flow or elevation of the water;

(v) clearcutting of more than three acres.

(2) Regulated activities also include, whether or not within wetland boundaries:

(i) any form of pollution, including installing a septic tank or sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland, or

(ii) any other activity which substantially impairs the functions served by or the benefits derived from freshwater wetlands set forth in section 24-0105 of the Freshwater Wetlands Act, including any diversion of surface or subsurface drainage that adversely affects the natural hydrological regime of, or substantially increases erosion of or siltation or sedimentation into, the wetland.

(3) Regulated activities do not include:

(i) deposition or removal of the natural products of freshwater wetlands by recreational or commercial fishing, ricing, berrying, shellfishing, aquaculture, hunting or trapping;

(ii) the activities of farmers or other landowners in:

(a) grazing and watering livestock;

(b) making reasonable use of water resources;

(c) harvesting natural products of the wetlands;

(d) selectively cutting timber and constructing and using skid trails for removal of such timber;

(e) draining land or wetlands for growing agricultural products; and

(f) otherwise engaging in the use of wetlands or other land for growing agricultural products.

The activities of farmers or other landowners listed in this subparagraph include the construction of structures required to be located in the wetland or adjacent area for enhancement or maintenance of the agricultural productivity of the land, but exclude any filling activities (including the construction of wood roads involving the placing of fill) or other material disturbance of a wetland; and

(iii) public health activities, orders and regulations of the Department of Health.

(o) Resident habitat means the habitat of year-round animal species or the breeding or wintering habitat of migratory species.

(p) Selective cutting of timber means any cutting of timber within the boundaries of a freshwater wetland (1) which is not "clearcutting" as defined in section 570.3(j) of these regulations, or (2) which results in a cut area less than three acres in size.

(q) Shrub swamp means a wetland or wetland coertype where a significant part of the vegetational community consists of woody vegetation less than 20 feet in height, often found in floodplains, in frost pockets and other depressions, on the edges of ponds, lakes and bogs, and in

hillside drainages. Shrub swamps usually contain some or all of the following shrubs: alders (*Alnus* spp.), willows (*Salix* spp.), viburnums (*Viburnum* spp.), dogwoods (*Cornus* spp.), chokeberries (*Pyrus* spp.), meadowsweet (*Spiraea* spp.), sweet gale (*Myrica* gale), buttonbush (*Cephalanthus occidentalis*), leatherleaf (*Chamaedaphne calyculata*), highbush and lowbush cranberries (*Vaccinium corymbosum*, *V. atrococcum*, *V. oxycoccus*, *V. macrocarpon*), sheep and swamp laurels (*Kalmia angustifolia*, *K. polifolia*), labrador tea (*Ledum groenlandicum*), bog rosemary (*Andromeda glaucophylla*), and mountain holly (*Nemopanthus mucronata*).

(r) Wetland associated with open water means a wetland bordering (1) lakes or ponds containing, throughout an average year, water too deep to support rooted aquatic vegetation over an area of one acre or larger, or (2) rivers or streams containing, throughout an average year, flowing water at the surface and having a surface water flow between the open water and the wetland at some time during an average year.

(s) Wetlands project means those activities in freshwater wetlands or adjacent areas requiring a permit pursuant to section 578.2 of this Part.

(t) Wet meadow means a wetland or wetland covertepe where a significant part of the vegetational community consists of sedges, rushes, and coarse grasses, most of which tend to grow in clumps or tussocks. Groundwater is at or near the surface for most of the year including a significant part of the growing season, creating saturated soils. Wet meadows are often found in lake and river annual flood plains and in abandoned beaver and dam flowages. In agricultural areas, they are often maintained but uncultivated parcels used for pasture and/or hayfields, which uses can alter their physical appearance or species composition. Under natural conditions, however, tussocks in wet meadows may support some or all of the following species: rushes (*Juncus* spp.), sedges (*Carex* spp. and *Cyperus* spp.), bluejoint grasses (*Calamagrostis* spp.), bulrushes (*Scirpus* spp.), spikerushes (*Eleocharis* spp.), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), blue flags (*Iris* spp.), sensitive fern (*Onoclea sensibilis*), marsh fern (*Dryopteris thelypteris*), vervains (*Verbena* spp.), thoroughwort (*Eupatorium* spp.), St. Johnsworts (*Hypericum* spp.), false loosestrifes (*Ludwigia* spp.), loosestrifes (*Lythrum* spp.), and smartweeds (*Polygonum* spp.). Cattails (*Typha latifolia*, *T. angustifolia*) may be present between tussocks.

(u) Wetland with unusual species abundance or diversity means a wetland that is one or more of the following:

- (1) an ecosystem with combinations or numbers of species not commonly encountered;
- (2) the site of large heron rookeries or other colonial nesting grounds;
- (3) used intensively by migrating birds; or
- (4) used by large numbers or a wide range of species of wildlife or fish.

(v) Wood road means any road used for forest management purposes or related fish and game activities, not intended for use by the general public, and simply constructed by grading, filling, and/or corduroying, without extensive finish or maintenance work.

Section 578.4. General values of wetlandss. (a) Flood damage and storm water control. Wetlands slow water runoff and temporarily store water, slowing movement of the crest downstream and lowering its elevation, thus helping to protect downstream areas from flooding and siltation or sedimentation. Public health and private property in one part of a watershed may be harmed if wetlands are destroyed or substantially altered in upstream parts of that watershed.

(b) Wildlife habitat. Wetlands are of unparalleled value as wildlife habitat. Many of the wetland bird species, such as ducks, geese, herons and the endangered bald eagle, are migratory. They must have nesting, migrating and wintering habitat. The destruction of one kind of habitat in one part of the State will reduce populations in other parts of the State or country and deprive bird-watchers, hunters and others of recreational opportunities. Where a specific wetland is the only known location of a key endangered species habitat, destruction of that wetland may threaten the survival of the species.

(c) Protection of water resources and valuable watersheds through pollution treatment or sediment control. The protection of surface and subsurface water resources afforded by wetlands benefits all potential users of those water resources. The cleansing action of wetlands, through sedimentation and oxidation or precipitation of pollutants, may provide water cleaner than would be the case if the wetlands were destroyed. The loss of wetlands may result in a decline in water quality downstream or in adjacent lakes.

(d) Recreation. Wetlands provide spawning and nursery grounds for several species of fish. The availability of these fish may be adversely affected by the loss of these or adjacent wetlands. Nutrients supplied by wetlands are often important to the fisheries food chains of adjacent waters. In addition to their importance to fishermen, many wetland areas provide important hunting, boating, hiking, birdwatching, photography, and other recreational opportunities.

(e) Other values. Wetlands provide opportunities for scientific research, visual variety and open space, and educational benefits.

Section 578.5. Values of particular wetlands. The following list describes several wetland covertypes and most other wetland characteristics and assigns one of four value ratings to each. Wetlands may have one or several of these characteristics. The value ratings indicate the overall worth of a given wetland, and in combination with the standards in sections 578.6 through 578.10 of this Part, will provide general guidance to applicants whether a permit will be issued pursuant to this Part.

Values of Particular Wetland Covertypes

	<u>Value Rating</u>
(a) Bogs are relatively specialized communities which often contain unusual plant or animal species, including many typical of boreal zones, and are usually very slow-growing.	2
(b) Classic or kettlehole bogs are very rare, support a limited community of plants highly specialized for life in bogs and are very sensitive to disruption and slow to recover.	1

(c) Emergent marsh is the most valuable individual covertype and one of the highest in productivity of all temperate ecosystems. The emergent vegetation provides nesting habitat, food and cover for many waterfowl and other wildlife, provides large annual increases in biomass, and cycles large quantities of nutrients into foodchains. Emergent marshes usually contrast with surrounding areas in physical structure and therefore provide habitat diversity and "edge." Where purple loosestrife (*Lythrum salicaria*) or reed (*Phragmites communis*), constitute approximately two-thirds or more of the wetland, however, the value assigned is lower (3) as these species are less productive and support much less wildlife use than other marsh species. 2

(d) Deciduous swamps are frequently used by nesting and migrating waterfowl. They are also heavily used by other birds and wildlife. Deciduous swamps are often intermittently flooded and dessicated. Their soils exhibit high fertility which promotes rapid plant growth and a wide variety of flora and fauna. Windthrow of the shallow rooted trees found in such swamps tends to create habitat variety. During the growing season, such swamps transpire and filter great quantities of water, contributing to the maintenance of water quality and the moderation of micro-climatic conditions. 2

(e) Deep water marsh may be an important food source for waterfowl and is frequently a valuable area for fish spawning and nurseries. When located adjacent to a larger waterbody it is valuable as well as a water storage area. 3

(f) Shrub swamps generally have variable values for fish and wildlife. Since they are likely to be of different vegetational structure than surrounding or adjoining areas, they often supply significant nesting and other wildlife habitat. Shrub swamps adjacent to permanent bodies of water are frequently flooded and provide additional water storage capacity to ameliorate downstream flooding. Shrub swamps may also be located in zones subject to scouring by ice or other waterborne debris. In these areas, shrub swamps, which contain species resistant to scouring damage, stabilize soil and prevent erosion and downstream sedimentation. 3

(g) Wetlands composed of two or more structural groups have greater value as fish or wildlife habitat. Three structural groups are recognized for determining this value: 2

(1) low types, found in wet meadows and emergent marshes;

(2) shrubs and trees, found in deciduous, coniferous and shrub swamps;

(3) flat or water, found in deep water marshes, open water and mudflats.

A group must comprise at least 10 percent of the wetland area to be counted as a separate structural group for the purposes of this subdivision.

(h) Coniferous swamps are capable of transpiring large quantities of water over a major portion of the year. This process may, during the summer, contribute to the maintenance of low soil and water temperatures critical to the survival of cold water fish in streams fed by or running through such swamps. 4

(i) Wet meadows, when associated with other cover-types, are valuable for wildlife, including nesting by wetland birds. When associated with open water and certain other wetland covertypes, wet meadows may also be valuable for fish spawning. When not associated with other wetland covertypes, however, wet meadow is likely to be of relatively lower value. 4

(j) Artificial mudflats usually have limited or no values for fish and wildlife due to the unpredictability and usually prolonged duration of exposure. 4

Wetlands Related to Surface Water Systems

(k) Wetlands associated with open water provide breeding and spawning areas as well as food and cover for wildlife and fish using the open water. They are an integral part of open water ecosystems and provide natural nutrient exchange. They purify water entering the open water and may improve its quality whether measured in rate of flow, dissolved oxygen content, clarity, or ionic content. They often provide temporary storm water storage and ameliorate downstream flooding. Wetlands over 20 acres in size or within the mean high water mark of lakes, ponds, rivers and streams are integral parts of those water bodies and can dramatically affect quality and flow in those waterbodies and are rated highest (1). Wetlands under two acres in size or not within the mean high water mark are of much less importance to the adjoining water body and are rated lower (3). 2

(l) Wetlands that are not part of permanent surface water systems have lower hydrological value and are less supportive of fish and waterfowl. 4

Wetlands with Values due to Productivity or Diversity

(m) Wetlands with unusual species abundance or diversity are unique ecosystems which may contain large heron rookeries, may be the site of other colonial nesting grounds, may be used intensively by migrating birds, or may contain some other abundance or diversity of wildlife or fish. They are relatively more valuable if they are unique or exemplary compared to other wetlands in the State, in the Adirondacks, or in the county in which they are located, and are rated highest (1). 2

(n) Wetlands with a total alkalinity of at least 50 ppm are valuable for fish and wildlife since their buffering capacity promotes conditions favorable to the growth of vegetation, providing good wildlife habitat. Alkalinity also indicates natural fertility of the underlying substrate, with potentially high productivity and nutrient turnover. 3

(o) Wetlands adjacent to fertile upland, indicated by the presence of growing crops or soils suitable for growing crops in the immediate vicinity, are valuable as fish and wildlife habitat due to higher levels of available plant nutrients and trace elements reaching the wetland. 3

Wetlands with Values due to Presence of Threatened or Endangered Species

(p) Wetlands with significant evidence of use as key habitat for endangered or threatened wildlife species contribute significantly to the survival prospects for that species. Wetlands providing resident habitat for a species considered endangered or threatened in New York State or the Adirondack Park are the most critical. Wetlands providing migratory habitat, while also essential for perpetuation of the species, are rated lower (2). 1

(q) Wetlands containing an endangered or threatened plant species similarly contribute to the prospects for survival of such species. If five or fewer sites are known where the plant occurs within New York State or the Adirondack Park, the wetland provides virtually irreplaceable habitat. Wetlands providing any habitat supporting plants endangered or threatened in New York State or the Adirondack Park are nevertheless valuable (2). 1

Wetlands with Values Due to Geological Features

(r) Wetlands containing, owing their existence to, or ecologically associated with high quality or "textbook examples" of geological features are generally of scientific and educational interest. 3

(s) Wetlands with slopes greater than one per cent have little hydrologic value due to decreased water retention. 4

Wetlands with Values due to Social Factors

(t) Wetlands located in towns where wetlands or wetlands of the same covertype are one percent or less of total acreage are valuable due to comparative rarity. 2

(u) Wetlands that are among the three largest in the town in which located are assigned high values due to comparative rarity. Wetlands among the three largest of the same covertype are valuable for the same reason (3). 2

(v) Wetlands with island(s) present within their boundaries provide nesting and refuge for wildlife, visual variety and interest, and an opportunity for recreational or educational activities. 3

(w) Wetlands of demonstrable historical, archeological or paleontological significance are generally of high value for scientists and laymen alike depending upon the specific historic event, archeological or paleontological feature involved. 3

(x) Wetlands that contribute significantly to open space or aesthetic values in a hamlet, moderate intensity or low intensity use area serve to preserve open space and aesthetic values in areas where most growth will and should occur according to the Adirondack Park land use and development plan map. They often provide welcome visual relief due to their natural character, and opportunities for wildlife viewing within built-up areas. 3

Section 578.6. Method for determining overall wetland value. Where a wetland contains multiple values based upon more than one factor listed in section 578.5 of this Part:

(a) The overall wetland value will be no lower than its highest associated value.

(b) Three or more medium value characteristics (3) will raise a wetland associated value to high (2).

(c) Three or more high value characteristics (2) will raise a wetland associated value to highest (1).

Section 578.7. Advisory opinions as to wetland value ratings. (a) The agency staff will, at the request of any person having a legal interest in property and contemplating a regulated activity thereon, provide an advisory opinion as to the value rating of any particular wetland. The opinion may be based on:

(1) the specific characteristics of the wetlands involved, such as:

- (i) proximity to streams, lakes, rivers, and aquifer recharge areas;
- (ii) covertime or types;
- (iii) historical, archaeological or geographical significance;
- (iv) location and size in relation to the drainage basin involved;
- (v) underlying soil types, and
- (vi) historical or traditional use;

(2) whether the wetland possesses any additional values not mentioned in the Freshwater Wetlands Act or this Part;

(3) whether preexisting degradation is present and, if so, if such degradation is irreversible or has diminished the original values of the wetland; and

(4) whether, due to any of these considerations, a value rating other than that derived from these general guidelines is recommended and the basis therefor.

(b) The advisory opinion shall not bind the agency in its review of wetlands projects pursuant to this Part.

Section 578.8. Impacts of certain regulated activities. Regulated activities will usually have the following impacts:

(a) Draining of wetlands lowers average water table elevations. It may increase downstream peak flows and, if normal flow channels are blocked, decrease water storage capacity and downstream base flows. Secondary impacts may occur, such as a successional change in wetland vegetative covertime toward drier types, increased water temperatures, and changes in fish and wildlife use. Complete draining can eliminate wetland vegetation or wetlands themselves.

(b) Dredging, excavating, or channelizing wetlands, or removing soil, mud, sand, shells, or other aggregate from wetlands may increase water depth and remove wetland plant species, altering the basic substrate characteristics. Wetlands may be eliminated by creating water levels too deep for wetland vegetation to survive. Fish and wildlife feeding or reproductive use may be altered. Water storage capacity may be increased while changes in covertime variability, turbidity, sediment deposition and substrate erosion may result.

(c) Filling, dumping, or construction of roads may decrease wetland area, hence decreasing the multiple benefits derived from wetlands. Impacts may extend beyond the boundaries of the filled area especially if surface or subsurface water movement is affected. For example, loss of storage capacity may result in increased sedimentation of adjacent waters. Ancillary use of the filled area could lead to runoff or leaching of noxious materials or chemicals. Extraneous material incompatible with the wetland (such as certain metals or waste oil and other chemicals) may adversely impact water quality and fish and wildlife use. Such activities may degrade the aesthetic character of the wetland. Ultimately, filling may eliminate a wetland entirely.

(d) Creation of impervious surfaces in wetlands, irrespective of other associated developmental activities, may increase surface runoff and thereby may increase turbidity, sedimentation and water flow through wetlands. Increased water flow through wetlands may increase erosion, interfere with natural biological and chemical processes, change covertype patterns, and alter temperatures. Decreases in the functional capacity of wetlands may result as may also introduction of incompatible materials or chemicals (such as trash or gasoline) from the impervious surface over wide areas of the wetland.

(e) Erecting structures in wetlands, irrespective of other associated developmental activities, may shade and thus alter wetland vegetation, obstruct or interfere with surface or subsurface water flow, and interfere with fish and wildlife use.

(f) Placing obstructions or driving piles in wetlands may interfere with surface or subsurface water flow, or increase water levels, thus affecting wetland water supply, flooding potential and vegetative patterns. The level of impact is related to the amount and location of obstruction. The placing of piles for support of other structures may be a reasonable alternative to placement of fill when water storage capacity or hydrologic absorption values are the primary benefits derived from the wetland, especially when such placement of piles will not create a hazardous obstruction to flowing water containing ice or other water-borne material.

(g) Introducing sewage treatment effluent or installing septic tanks or sewer outfalls in wetlands or adjacent areas may contaminate ground or surface water with undesirable nutrients or organisms. Excessive nutrient loads may alter the vegetative composition or fish and wildlife use, and/or affect the suitability of water for human use. Organisms introduced with sewage effluent may create a general health hazard. Effluent may increase successional rates through the introduction of excessive levels of nutrients or by warming ambient water temperatures. Abnormal levels of water may be created in wetlands. These impacts may interfere with fish and wildlife as well as human use of water resources.

(h) Construction of dams, dikes and other impoundments and control structures in wetlands or on water bodies running through them usually increases water levels or restricts water flow, altering or eliminating wetland vegetation, and may destroy whole wetlands.

(i) Other regulated activities may introduce or increase toxins, noise and other forms of pollution, remove or reduce vegetation or expose soil to erosion. Such activities include, for example, the operation of all-terrain vehicles and airboats, construction of utilities in existing or new corridors, either overhead or underground, disposal of chemicals, introduction or discharge of pollutants, application of pesticides and other chemicals, disposal of solid wastes, clearcutting or other timber harvesting practices, and construction or removal of groins, bulkheads, berms or levies.

Section 578.9. Benefits of activity proposed. In its review of wetlands projects pursuant to this Part the agency will consider the relative values of wetlands set forth in section 578.5 of this Part, as well as any economic, social or other benefits to be derived from the activity proposed. Such benefits may compel a departure from the general guidelines of this Part, in which case the agency shall document the specific benefits compelling such departure.

Section 578.10. Issuance of permits. (a) Unless the economic, social and other benefits to be derived from the activity proposed compel a departure from these guidelines, the agency shall not issue a permit for regulated activities in the following wetlands unless the findings set forth below are made.

(1) Wetlands rated 1. The proposed activity:

- (i) would be compatible with preservation of the entire wetland; and
- (ii) would not result in degradation or loss of any part of the wetland or its associated values.

(2) Wetlands rated 2. The proposed activity:

(i) would result in minimal degradation or destruction of the wetland or its associated values; and

(ii) is the only alternative which reasonably can accomplish the applicant's objectives; or

(iii) alternatively to subparagraph (ii), is the only alternative which provides an essential public benefit.

(3) Wetlands rated 3. The proposed activity:

(i) would result in the minimum possible degradation or destruction of any part of the wetland or its associated values;

(ii) is the only alternative which reasonably can accomplish the applicant's objectives; and

(iii) would, weighing the benefits of the activity against its cost and the wetland values lost, provide a net social and/or economic gain to the community.

(4) Wetlands rated 4. The proposed activity is the only alternative which reasonably can accomplish the applicant's objectives.

Section 578.11. Adjacent area regulation. (a) No person shall install any on-site sewage drainage field or seepage pit or any sewer outfall within the area adjacent to a freshwater wetland without first obtaining an agency permit.

(b) Where, in its review of an application made pursuant to this section, the agency finds that the activity proposed will not impinge upon or otherwise substantially affect the wetland, it

may treat the application as a request for determination of jurisdiction pursuant to sections 571.1 and 571.5 of these regulations and issue its determination that no permit is required.

Section 578.12. Procedures for the readjustment of freshwater wetlands maps. (a) Following promulgation by the Commissioner of Environmental Conservation pursuant to section 24-0301(5) of the Freshwater Wetlands Act of a freshwater wetlands map for any area within the Adirondack Park, the agency may upon application of any person, or upon its own initiative, readjust any such map to clarify the boundaries of the wetlands shown thereon, to correct any errors on the map, or to effect any additions, deletions or technical changes in the map, and to reflect changes as have occurred as a result of the granting of permits pursuant to section 24-0703 of the Freshwater Wetlands Act, section 809 of the Adirondack Park Agency Act or this Part, or natural changes which have occurred through erosion, accretion or otherwise.

(b) Notice of such readjustments shall be given by:

(1) filing a copy of the agency's order and relevant portion of the map in (i) the central office of the Department of Environmental Conservation, and (ii) each regional office of the Department of Environmental Conservation and the office of the clerk of each county, town or village in which the affected wetlands or parts thereof are located;

(2) mailing a copy of such order and portion of the map by certified mail to (i) each owner of the wetlands or portions thereof affected as shown on the latest completed tax assessment roll, and by mail to (ii) the chief administrative officer and clerk of each county, town or village in which the affected wetlands or parts thereof are located, and

(3) causing a copy of such order to be published in at least two newspapers of general circulation in the area where the affected wetlands or parts thereof are located.

Section 578.13. Freshwater Wetlands Appeals Board.

The Freshwater Wetlands Appeals Board is empowered to review the following agency actions:

(a) determinations pursuant to section 571.2 of these regulations as to the existence of wetlands and the locations of wetland boundaries;

(b) actions on wetlands projects jurisdictional solely pursuant to the Freshwater Wetlands Act;

(c) classification of wetlands, promulgation of minimum land use regulations for freshwater wetlands, approval or disapproval of proposed freshwater wetland land use regulations submitted by a local government and framing land use regulations in the event of disapproval, action on applications to change such land use regulations, and orders or regulations issued pursuant to section 582.2 of these regulations;

(d) determination of applications and determinations not to require a permit made pursuant to section 578.11 of this Part;

(e) determinations to regulate extended adjacent areas made pursuant to section 582.8(d) of these regulations;

(f) readjustment of freshwater wetlands maps pursuant to section 578.12 of this Part;

(g) any other order or decision made pursuant to this Part and reviewable pursuant to section 24-1103 of the Freshwater Wetlands Act.

The regulations of the board are set forth at 6 NYCRR Part 647.

Section 578.14. Effective date of this Part. This Part shall take effect May 1, 1983, except that it shall apply to State agencies immediately.

PART 579

SPECIAL PROVISIONS RELATING TO PROJECTS BY STATE AGENCIES

(Statutory authority: Executive Law, 814;
Environmental Conservation Law, 24-0801)

Sec.

579.1 General rules

579.2 Definitions

579.3 Procedures for review of State agency projects

579.4 State agency response to Agency determinations

Section 579.1. General rules. (a) Any State agency which intends to undertake new land use or development on State or private land within the Adirondack Park, other than the Department of Environmental Conservation, whose activities are governed by the State Land Master Plan and individual unit management plans adopted thereunder, shall

(1) give due regard to the provisions of the land use and development plan and the shoreline restrictions, and

(2) comply with section 814 of the Adirondack Park Agency Act and the provisions of this Part.

(b) A land use or development proposed to be undertaken on State land by any person shall be considered the project of the State agency having jurisdiction over the land and shall be subject to section 814 of the Act and the provisions of this Part.

(c) A class A or class B regional project proposed by a state agency, other than a rivers project or a wetlands project, shall be reviewed according to the procedures set forth in Part 572 of these regulations.

(d) Any State agency proposing a rivers project on private land shall obtain an agency permit pursuant to Part 577 of these regulations.

(e) Any State agency proposing a wetlands project on State or private land shall obtain an agency permit pursuant to section 578.3 of these regulations.

Section 579.2. Definitions. As used in this Part:

(a) Prior to the submission of a formal budget request shall mean prior to the submission of a request to the Division of the Budget for authorization to advertise for receipt of bids (bid authorization) as required by the Budget Policy and Reporting Manual, item E-010. In preparing such requests, State agencies should identify the fact that the location of the project is in the Adirondack Park and subject to section 814 of the Adirondack Park Agency Act.

(b) 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.

(c) State agency project means any new land use or development by a State agency, other than a class A or class B regional project, a rivers project or a wetlands project.

Section 579.3. Procedures for review of State agency projects. (a) Any State agency proposing a State agency project shall file a notice of intent with the agency which shall:

(1) consist of a completed agency notice of intent form or be labelled "Notice of Intent to Undertake Land Use or Development Within the Adirondack Park";

(2) be filed at the earliest time practicable in the planning of the project, and in any event prior to the submission of a formal budget request for the funding of the project;

(3) include all materials prepared by the State agency pursuant to the State Environmental Quality Review Act.

(b) Within 15 working days of the filing of a notice of intent, the agency shall determine whether the notice is complete. If the agency fails to make such determination within such 15-day period, the notice shall be deemed complete. If the agency determines the notice is incomplete, it shall provide the State agency a concise statement of the additional information that will be required. The submission of additional information shall commence a new 15-day period for agency determination of completeness.

(c) The notice of intent shall not be complete unless it contains the same information as would be required under Part 572 of these regulations for a project of the same nature and scope.

(d) Following an agency determination that the notice of intent is complete, the State agency shall not undertake the project for a period of 30 days. During this period, the agency shall make one of the following determinations:

(1) the project will not be inconsistent with the provisions of the Adirondack Park land use and development plan and the shoreline restrictions, and will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park, taking into account the economic and social benefits to be derived from the project;

(2) the project will not be inconsistent with the plan and will not have an undue adverse impact provided certain conditions are met; or

(3) the project might be inconsistent with the plan or may have an undue adverse impact.

In making the determination as to undue adverse impact, the agency shall apply the development considerations as further defined by section 574.5 of these regulations.

(e) The agency determination pursuant to subdivision (d) of this section shall be provided the State agency prior to the end of the 30-day period. Unless, within 15 days of its receipt of the determination, the State agency reports pursuant to section 579.4(a)(2)(i) of this Part that it will comply with the conditions set forth by the agency, an agency determination pursuant to paragraph (d)(2) of this section will convert to a paragraph (d)(3) determination.

(f) If the agency determines, pursuant to paragraph (d)(3) of this section, that the State agency project might be inconsistent with the provisions of the plan or may have an undue adverse resource impact, or if such a determination is reached pursuant to subdivision (e) of this section, it shall notify the State agency by mail that a public hearing will be commenced on the project within 30 days of the notice and, at the same time, shall issue an order not to undertake the project for up to 90 days following the commencement of the hearing.

(g) Public hearings on State agency projects shall be governed by the provisions of Part 580 of these regulations. The burden of proving that a project will not be inconsistent with the plan and will not have an undue adverse impact shall rest with the State agency.

(h) Within 90 days of the completion of a public hearing on a State agency project, the agency shall make one of the following determinations and transmit it to the State agency:

(1) the project will not be inconsistent with the provisions of the land use and development plan and the shoreline restrictions, and will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park, taking into account the economic and social benefits to be derived from the project;

(2) the project will not be inconsistent with the plan and will not have an undue adverse impact provided certain conditions are met; or

(3) the project will be inconsistent with the plan or will have an undue adverse impact.

Section 579.4. State agency response to agency determinations. (a) Within 15 days of receipt of an agency determination concerning a State agency project (except those pursuant to section 579.3[d][3] of this Part), the State agency shall make one of the following responses to the agency in writing:

(1) if the agency determined that the project will not be inconsistent with the plan and will not have an undue adverse impact upon the resources of the park, the State agency shall report that it will undertake the project in accordance with the findings of fact of the agency decision;

(2) if the agency determined that the project will not be inconsistent with the plan and will not have an undue adverse impact provided certain conditions are met, the State agency (i) shall report that it will comply with the conditions or (ii) if it proposes not to comply with the conditions, shall fully explain and justify why it will not comply;

(3) if the agency determined that the project will be inconsistent with the plan or will have an undue adverse impact, the State agency (i) shall report that it will not undertake the project or (ii) if it proposes to undertake the project, shall fully explain and justify such decision and describe the measures it will take to mitigate the inconsistency or adverse impacts.

(b) The State agency shall file its responses under this section with the office of the Governor and with the chief elected officer and planning board chairman of each county, town or village in which the project is proposed.

PART 580

HEARING PROCEDURES

(Statutory authority: Executive Law, 804[8],
809[14], 814[5]; Environmental Conservation Law,
15-2709[1],24-0801[2])

Sec.

- 580.1 Applicability of this Part
- 580.2 Determination to conduct public hearing
- 580.3 Limitation of issues
- 580.4 Notice of public hearing
- 580.5 Parties to the hearing
- 580.6 Duty of the agency staff
- 580.7 Intervention
- 580.8 Selection of hearing officer
- 580.9 Pre-hearing conferences
- 580.10 Appearances
- 580.11 Pleadings; motions
- 580.12 Adjournment
- 580.13 Consolidation, severance, and failure of notice
- 580.14 Conduct of the hearing
- 580.15 Evidence
- 580.16 Joint proceedings
- 580.17 Ex parte communications
- 580.18 Agency determination and order
- 580.19 Public hearings on draft environmental impact statements to be combined
- 580.20 Extension of time by consent

Section 580.1. Applicability of this Part. (a) Except as provided in subdivision (b) of this section, this Part applies to public hearings held on all projects.

(b) This Part does not apply to public hearings on variances where no agency permit is required, or to public hearings on projects requiring variances which are held solely to consider the variance request. Such hearings will be held in accordance with section 572.15(e) of these regulations.

(c) Except as required by article 3 of the State Administrative Procedure Act, the agency staff is authorized to waive any or all of the procedural provisions of this Part in the case of single family dwellings, mobile homes or subdivisions of land involving less than five lots, parcels or sites. Hearings on such projects shall be as informal as possible.

Section 580.2. Determination to conduct public hearing. (a) Criteria. The criteria employed in determining whether to conduct a public hearing include:

(1) the size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected;

(2) the degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations;

(3) the presence of significant issues relating to the criteria for approval of the project;

(4) the possibility that the project can only be approved if major modifications are made or substantial conditions are imposed;

(5) the possibility that information presented at a public hearing would be of assistance to the agency in its review;

(6) the extent of public involvement achieved by other means;

(7) whether an environmental impact statement will be prepared pursuant to the State Environmental Quality Review Act; and

(8) the statutory finding required by section 814(2) of the Adirondack Park Agency Act in the case of State agency projects reviewed thereunder.

(b) When determination made. The agency will make the determination not later than 60 calendar days (or, in the case of minor projects, 45 calendar days) following notification that the application is complete. A determination may be made prior to such notification with the agreement of the project sponsor.

(c) Delegation of determination. The agency may, in any particular case, delegate the authority to determine to hold a public hearing, or to cancel or not schedule a hearing and approve a project upon specified conditions, to the chairman, executive director or director of operations.

(d) Notification of determination; opportunity for submission of new application. The notification that a public hearing will be held shall state that the project sponsor may submit a new application. The hearing shall not be held or scheduled until the 15th day following the notification, unless such period is waived in writing by the project sponsor. If a new application is submitted, the agency shall reconsider its determination to hold a public hearing.

(e) Summary of procedures. If a hearing is to be held, a summary of hearing procedures shall be made available to the project sponsor and any other person on request.

Section 580.3. Limitation of issues. The agency may determine to limit the issues to be considered at the hearing, in which case it will advise the project sponsor of its determination and the notice of hearing will specify the issues to be considered.

Section 580.4. Notice of public hearing. (a) Contents. The notice of public hearing shall include:

(1) the time and place of the hearing;

(2) the authority pursuant to which the hearing is held;

(3) the name of the project sponsor;

(4) a brief description of the location, nature and scope of the project;

(5) if the project requires a variance from the shoreline restrictions of section 806 of the Adirondack Park Agency Act or of Part 577 of these regulations, the type and degree of variance required;

(6) unless the agency has limited the issues to be considered pursuant to section 580.3 of this Part, the major issues likely to be considered at the hearing;

(7) a statement that the application and supporting materials are available for the public inspection pursuant to Part 587 of these regulations.

(8) a statement that any person may speak or submit a written statement;

(9) a statement that any person (other than statutory parties) who desires to become a party to the hearing in order to present evidence and cross-examine witnesses must comply with the procedures set forth in section 580.7 of this Part.

(b) To whom sent. Notice of public hearing shall be given:

(1) by sending a copy of the notice, by certified mail, to the project sponsor;

(2) by sending a copy of the notice, by certified mail, to each owner of record of the land involved;

(3) by sending a copy of the notice, by mail, to

(i) the Adirondack Park local government review board;

(ii) the chairman of the county, town or village planning board or agency, if any; the clerk of the county, town or village; the supervisor of the town, and, if applicable, the mayor of the village wherein the project is proposed to be located;

(iii) the chairman of the appropriate regional planning board;

(iv) any landowners within 500 feet of any border of the property (to the extent reasonably discernible from the latest completed tax assessment roll);

(v) the clerk of any town or village within 500 feet of the land involved;

(4) by publication of a copy of the notice at least once in a newspaper having general circulation in the area;

(5) by conspicuous posting on the land involved of a notice of the time, date, place of the hearing;

(6) by sending a copy of the notice by mail to the environmental notice bulletin for publication therein, and to any person or State agency which has previously filed with the agency, in January of the current year, a written request for individual notice of the particular hearing, or

of hearings on particular types of projects, or those to be located in particular places or types of places, in accordance with the terms of the request;

(7) by sending a copy of the notice by mail to any person upon request and to such other persons as the agency determines.

(c) The notices referred to in paragraphs (b)(1), (2), (3) and (6) of this section shall be mailed at least 15 days in advance of the hearing. The publication and posting requirements of paragraphs (b)(4) and (5) shall be complied with at least 10 days in advance of the hearing.

Section 580.5. Parties to the hearing. In addition to the project sponsor and the persons named in section 809(3)(e) of the Adirondack Park Agency Act, the parties to the hearing shall be:

- (a) any State agency;
- (b) any person receiving individual notice pursuant to section 580.4(b)(3) of this Part;
- (c) persons granted intervention pursuant to section 580.7 of this Part.

Section 580.6. Duty of the agency staff. (a) The agency shall present evidence concerning the pertinent development considerations and the other required findings of section 809(9) or section 809(10) of the Adirondack Park Agency Act, the Wild, Scenic and Recreational Rivers System Act, the Freshwater Wetlands Act, section 814 of the Adirondack Park Agency Act, or other applicable provisions of these regulations. The agency staff, while not a party to the hearing, shall have the right to participate fully in the hearing and shall act as an advocate for a full and complete record upon which an informed decision can be made. The staff is not required to assume the project sponsor's burden of proof.

(b) The agency staff shall state at the outset of the hearing which of the development considerations and other required findings it considers pertinent to the project and shall briefly outline the evidence it intends to present.

(c) Upon a sufficient showing by any person or party made at any time during the hearing, or on his own motion, the hearing officer may order the agency staff to produce evidence with respect to any of the development considerations or other required findings.

(d) The agency staff shall assist any uncounselled sponsor of a minor project in entering his application and supporting evidence on the record.

(e) Any documents required to be served upon a party shall also be served upon the agency staff.

Section 580.7. Intervention. (a) Any person may seek to become a party in order to present evidence, cross-examine witnesses, and otherwise participate in a public hearing by filing a written petition with the executive director or, if he has been selected at the time of its filing, the hearing officer. The petition shall be filed prior to the commencement of the hearing and shall:

(1) if submitted by an organization, state the nature and purpose of the organization, number of members, organizational structure, history of formation and legal nature and include a copy of any charter, certificate of incorporation, bylaws, constitution or the like;

(2) demonstrate capacity to participate in administrative proceedings and to supply information or expertise relative to matters likely to be considered at the hearing;

(3) state whether the petitioner has participated in any previous legal or administrative proceedings similar to those conducted by the agency;

(4) state the petitioner's relationship to the matters involved, the nature of the evidence or argument he intends to present, and any other matter the petitioner believes relevant to granting the petition;

(5) demonstrate that the petitioner has a material social, economic or environmental interest which is likely to be affected by the agency decision concerning the project.

(b) The executive director or hearing officer may require additional information from the petitioner, including evidence in support of the petition and shall allow other parties to be heard with respect to the petition. He may conduct an inquiry into any issues arising from the petition, which will be made a part of the record of the hearing.

(c) The executive director or hearing officer shall grant or deny the petition within five business days of its receipt, or the receipt of such additional information or testimony as has been requested.

(d) The executive director or hearing officer shall grant the petition if he finds that the petitioner has an interest described in subdivision (a)(5) of this section;, or that granting party status to the petitioner is necessary to or would further the purpose of the hearing.

(e) In granting the petition the executive director or hearing officer may limit the participation of the petitioner to areas in which his expertise would prove beneficial or in which his interests may be affected.

(f)(1) Any decision of the executive director or the hearing officer to grant or deny intervention may, within five days of receipt, be appealed to the agency, which will decide the appeal at its next regular meeting. Other parties may submit briefs in support of or in opposition to the decision.

(2) Notice of such appeal and a copy of all materials submitted in support thereof shall be given the executive director or hearing officer and all parties to the hearing. Upon receipt of notice of such an appeal the hearing officer shall decide whether to adjourn the hearing, or to make such other order protecting the interests of the parties and the petitioner as justice requires, including an order that witnesses be recalled should the decision be reversed.

(g) The hearing officer may permit any person to petition for intervention at any time after the first day of the hearing and before the last day on which testimony is taken, if it is shown that reasonable cause exists for failure to file timely, that no party will be prejudiced, and that the participation of the petitioner is essential to an informed decision.

Section 580.8. Selection of hearing officer. (a) The agency shall select a hearing officer as early as possible following its determination to hold a hearing. The hearing officer shall make full disclosure as part of the record all information he deems relevant to the issue of bias or other disqualification.

(b) Any issue concerning the qualification of the hearing officer shall be resolved in a pre-hearing conference if possible. All parties shall be given sufficient opportunity to challenge his designation by filing the affidavit referred to in section 303 of the State Administrative Procedure Act with the executive director, on notice to the hearing officer and the other parties.

(c) Upon receipt of a copy of the affidavit, the hearing officer and the other parties to the hearing may submit responding similar affidavits concerning bias or disqualification. Failure to do so will be considered to mean that the selection of the hearing officer is acceptable to the party.

(d) The executive director shall decide the challenge within two business days of receipt of the affidavit and any responding affidavits. If he deems the challenging affidavit insufficient he may either allow the party filing it to submit further written evidence, or he may order that the proceedings continue.

Section 580.9. Pre-hearing conferences. The hearing officer may direct the parties to appear for a conference to simplify, define, limit or resolve issues. The hearing officer shall summarize for the record the action taken at the conference and any admissions, stipulations or agreements which were made by the parties.

Section 580.10. Appearances. (a) Any person representing a party may be required, on the motion of any party or on the hearing officer's own motion, to demonstrate his authority to act for and to bind the party.

(b) If any party fails to appear at the hearing, he shall be deemed to have waived the right to participate in the proceedings, except for good cause shown and in the discretion of the hearing officer.

(c) In the event that a party appears at a hearing and no other party appears, he may elect to present his evidence in the form of affidavits to be submitted at a future date or by oral testimony before the hearing officer.

(d) The hearing officer may relieve any party of the consequences of any default upon a showing of good cause.

Section 580.11. Pleadings; motions. (a) Notice of hearing. The notice of hearing and all documentary proof of notice, the application and all supporting documents shall be deemed admitted, subject to a motion to strike, made before the close of the hearing. Upon a motion to strike the notice of hearing or any documentary proof of notice, the hearing officer may direct the agency staff to present testimony concerning notice.

(b) Burden. The burden shall be on the project sponsor to present testimony concerning the matters alleged in the application.

(c) Motions. Applications to the hearing officer for rulings, orders or determinations, including requests to recommend that the application be approved, approved on stated conditions, or disapproved, may be made orally during the hearing or in writing. The hearing officer shall give all parties an opportunity to respond thereto.

Section 580.12. Adjournments. (a) An application for an adjournment made in advance of the first hearing day, or while the hearing is in recess, shall not be granted except for good cause shown and unless written request is presented therefor to the hearing officer on notice to the parties three business days in advance of the next scheduled hearing session.

(b) An application for an adjournment made during a hearing shall not be granted except for good cause shown.

(c) Hearings shall be adjourned to a time, day and place certain. No further formal notice need be given; however, the agency may give such notice of the reconvening of a hearing as it deems appropriate.

Section 580.13. Consolidation, severance and failure of notice. The hearing officer shall have power concerning consolidation, severance and failure of notice to make such order as justice requires. Upon his own motion and upon motion of any party, he may order a joint hearing of any or all matters in issue involving common questions of fact. He may, jointly with any other agency hearing officer, order consolidation of hearings, and may make any other orders as may tend to avoid delay. He may order a severance of the hearing and may order separate hearings in respect to any issue.

Section 580.14. Conduct of the hearing. (a) The hearing officer. (1) Any public hearing may be conducted by an agency member or employee or other person designated as a hearing officer by the agency. The designation of a hearing officer shall be in writing and made part of the record.

(2) A person may not serve as a hearing officer if he:

(i) has any financial interest, direct or indirect, in any matter involved in the proceedings;

(ii) is related by blood or marriage to any party;

(iii) has participated in any investigation with respect to the project or in the development or evidence to be introduced at the hearing; or

(iv) is otherwise disqualified.

(3) The hearing officer shall conduct the hearing in a fair and impartial manner and shall assure that a complete record is kept pursuant to paragraph (g)(2) of this section.

(4) The hearing officer shall have power to:

(i) direct the parties to appear and confer at any time prior to or during the course of the hearing to consider the simplification of issues by consent of the parties;

(ii) rule upon motions;

(iii) set the time and place of hearings beyond the initial hearing day, regulate the course of the hearing; adjourn the hearing from time to time, indicate the place of the adjourned hearing; and fix the time for the filing of briefs and other documents;

(iv) administer oaths and affirmations;

(v) in conformance with subdivision (d) of this section, sign and issue subpoenas in the name of the agency at the request of any party, requiring the attendance and testimony of witnesses and the production of books, papers, records, contracts and other documentary evidence; however, this clause shall not affect the authority of an attorney for a party to issue subpoenas under the Civil Practice Law and Rules;

(vi) summon and examine witnesses and receive evidence;

(vii) upon good cause shown by any party, order the production of specified documents for inspection and copying, and the use of written interrogatories, consistent with the general principles of article 31 of the Civil Practice Law and Rules:

(viii) provide for the taking of testimony by deposition;

(ix) admit or exclude evidence;

(x) hear and determine arguments of fact or law;

(xi) do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing.

(5) If requested to do so by the agency at the time of his designation, the hearing officer shall make findings of fact and conclusions of law based on the record and shall forward a report to the agency for acceptance, rejection or modification.

(6) Upon declination, failure to serve, death, resignation, removal or disqualification of the hearing officer, the agency may designate a successor who may continue the proceedings.

(b) Order of proceedings. (1) The hearing officer shall convene the hearing and shall present a brief summary of the hearing, the project involved, the applicable statutes and regulations, the possible consequences of the determination in the proceedings, and the procedures to be followed during the hearing.

(2) The appearance of each party shall be entered on the record.

(3) The hearing officer may order the project sponsor to make a brief, informal presentation of the project at the outset of the hearing and to answer questions from members of the public who are not parties. Such a proceeding shall not relieve the project sponsor of his burden to present competent evidence in support of the application, nor shall it deprive the other parties of the right to cross-examine witnesses.

(4) The hearing officer may determine the sequence of participation, taking into account the convenience of parties or witnesses, clarity of the record, and similar considerations. As a general rule, the project sponsor shall proceed first, followed by the agency staff, other governmental agencies, and other parties.

(5) All parties may make brief opening statements outlining their position regarding the project.

(6) Direct case. (i) In addition to proving the allegations of the application the project sponsor shall have the burden of demonstrating that the project will be in compliance with applicable statutory and regulatory requirements.

(ii) Each other party shall have the right to introduce testimony and other evidence.

(7) Cross-examination. (i) Each party shall be entitled to cross-examine the witnesses of every other party.

(ii) Generally, cross-examination shall take place immediately after direct examination.

(iii) The hearing officer shall assist unrepresented parties in cross-examination and may also conduct examination.

(iv) The hearing officer may allow redirect and recross-examination.

(v) The hearing officer may call or recall witnesses.

(8) Rebuttal. (i) Each party may offer rebuttal evidence to deny any material affirmative facts upon which evidence from any other party has been entered.

(ii) Rebuttal evidence shall be limited to evidence presented in the direct case of the parties.

(9) Closing statements and briefs. (i) After the testimony and evidence have been received, all parties may make brief closing statements summarizing their positions.

(ii) The hearing officer may request or allow the filing of hearing briefs, during the course or upon the conclusion of the hearing, relating to any issue of law, motions, rulings or positions taken.

(iii) Fifteen copies of final briefs shall be submitted to the agency and shall contain proposed findings of fact, with citations to the record as to where such finding finds support, and proposed conclusions of law relative to the required statutory and regulatory determinations. Final briefs may propose conditions to be imposed upon agency approval of the project.

(iv) The hearing officer shall establish the time for submission of hearing and final briefs.

(10) Hearings shall be adjourned on the final day by the hearing officer subject to any further action that may be taken by the agency.

(11) The hearing shall be officially closed upon the receipt of the stenographic transcript, the receipt of any additional documents agreed at the hearing to be made available after the hearing, or the submission of final briefs by the parties, whichever occurs later.

(c) Post-hearing motions. The hearing officer is authorized to rule upon all motions made prior to the last day of the hearing. The agency will rule upon all motions and requests submitted thereafter in the course of its determination on the project.

(d) Subpoenas. (1) A subpoena compelling the production of books or records shall only be issued by the hearing officer upon written showing of necessity. Such a subpoena shall designate specifically the documents required to be produced.

(2) The service of a subpoena is the responsibility of the party requesting it.

(3) If a witness fails to respond to subpoena, the record of the hearing shall note such default. If the hearing officer determines that the testimony of the witness is essential for the completion of a party's case, he shall adjourn the hearing until the party has a reasonable opportunity to attempt to obtain compliance with the subpoena.

(e) Stipulations. Stipulations may be incorporated into the stenographic record of the hearing or subscribed in writing and filed with the hearing officer.

(f) Prefiled testimony. (1) Wherever feasible, the hearing officer may request or require that testimony be reduced to writing and distributed to the parties sufficiently in advance of the hearing date to permit their review.

(2) Unless otherwise stipulated by the parties, prefiled testimony shall be attested to at the hearing and the witness shall be available to be cross-examined.

(g) Record of the hearing. (1) Testimony and other proceedings shall be transcribed verbatim; however, where the parties so stipulate, or in any hearing on a minor project, testimony may be recorded by electronic means and a summary thereof may be prepared by the agency staff, upon notice to the other parties and with an opportunity to file comments or argument as to its completeness.

(2) The official record of the hearing shall be filed with the agency and shall include:

(i) the application and all notices (including the notice of hearing and any notices of appearance) and motions;

(ii) any affidavit of publication of the notice of hearing;

(iii) the transcript of the testimony taken at the hearing, and the exhibits entered into evidence;

(iv) any letters, statements, petitions or comments;

(v) any admissions, agreements, or stipulations;

(vi) a statement of matters officially noticed;

(vii) offers of proof, objections thereto and rulings thereon;

(viii) proposed findings and exceptions, if any; and

(ix) the hearing officer's report to the agency, if any.

(3) The agency may use electronic recording devices and any other reasonable method of recording of the proceedings in lieu of a certified reporter. A copy of the transcript will be available at agency headquarters for review by the parties.

(h) Reopening of the hearing. (1) At any time prior to issuing its final determination, on its own motion or at the request of any party, the agency may direct that the hearing be re-opened to secure additional evidence. At the option of the project sponsor the hearing shall not be deemed closed until the re-opened proceedings are complete.

(2) Requests to the agency to reopen the hearing thereafter must be made within 30 days of the issuance of a final determination, may be made only by the project sponsor, and may be made only for good cause shown.

(i) Service of papers. Except where statute or these regulations otherwise provide, all notices and papers connected with a hearing and the order or final determination of the agency may be served by ordinary mail. Any party initiating motions, requests, briefs, or other written material in connection with the hearing shall serve such materials on the other parties.

Section 580.15. Evidence. (a) General. (1) The rules of evidence observed by courts shall not be strictly applied but all evidence must be competent, material and relevant. Hearsay evidence is admissible if a reasonable degree of reliability thereof is shown.

(2) The hearing officer shall preclude immaterial, irrelevant, or unduly repetitious evidence or cross-examination.

(3) No decision, determination or order shall be made except upon consideration of the record as a whole and as supported by and in accordance with substantial evidence.

(b) Official notice. (1) Official notice may be taken by the hearing officer or agency:

(i) of such facts which are so generally known or of such common notoriety that they cannot reasonably be the subject of dispute; or

(ii) of specific facts and propositions of generalized knowledge which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy; or

(iii) of generally recognized technical or scientific facts within the agency's specialized knowledge.

(2) Parties shall be notified of any facts as to which official notice is proposed to be taken and afforded an opportunity to dispute the facts or their materiality.

(c) Documentary and demonstrative evidence. (1) Documentary evidence may be offered but must be relevant, competent, and material.

(2) Where a part of a document is read into evidence, any party is entitled to have the whole of the document read or made a part of the record.

(3) Demonstrative evidence shall be allowed if competent, relevant and material and if a record of the demonstration can be preserved by testimony and exhibit.

(d) Witnesses. Each witness shall be sworn or make an affirmation.

(e) Unsworn testimony. Unsworn testimony will be considered arguments bearing on evidence otherwise entered.

Section 580.16. Joint proceedings. The agency may by agreement with any federal, State or local governmental body having concurrent jurisdiction over a project or related application, provide for joint notices and joint hearings. Joint hearings will be held whenever possible.

Section 580.17. Ex parte communications. (a) No party shall, directly or through a representative, communicate with the hearing officer designated for any particular hearing, in connection with any issue of fact or law involved in any pending application, except upon notice and opportunity for all parties to participate.

(b) Hearing officers requested to hear and report may have the aid and advice of agency staff other than the staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or a similar case.

(c) Section 587.3(d) of these regulations, concerning ex parte communications with the agency, shall also apply.

Section 580.18. Agency determination and order. (a) The agency staff may summarize the record of any hearing for the aid of the agency. The parties participating in the hearing shall be provided an opportunity to make written comment with respect to the completeness of the summary. Comments shall be directed to the record and shall not consist of argument or reference to matters outside the record.

(b) Agency members deliberating and voting on a project may communicate with other members of the agency and may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or litigating functions in connection with the review of the project or any factually related matters.

(c) The decision, determination or order shall be in writing or stated in the minutes required by section 587.2(e) of these regulations, and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. The making of findings of fact shall constitute a ruling upon each finding proposed by the parties.

(d) Unless otherwise ordered by the hearing officer or unless the parties stipulate to a longer period, the agency decision, determination, or order shall be mailed on or before 60

calendar days after receipt by the agency of a complete record, as defined in section 302(1)(a)-(e) of the State Administrative Procedure Act.

(e) A copy of the decision, determination or order shall be delivered or mailed to each party and to his attorney of record.

Section 580.19. Public hearings on draft environmental impact statements to be combined. Any hearing on a draft environmental impact statement prepared pursuant to the State Environmental Quality Review Act shall be consolidated with any hearing held pursuant to this Part to the maximum extent practicable.

Section 580.20. Extension of time by consent. Any time period specified in this Part may be extended for good cause by written mutual consent of the project sponsor and the agency staff.

PART 581

ENFORCEMENT

(Statutory authority: Executive Law, 813;
Environmental Conservation Law, 15-2723;
art. 71, titles 11 and 23)

Sec.

581.1 Authority and duties of enforcement committee

581.2 Notice of violation

581.3 Cessation of construction or other illegal land use or development or subdivision

581.4 Review of permit or variance applications involving violation

581.5 Resolution conferences; enforcement committee decisions; opportunity to appeal

Section 581.1. Authority and duties of enforcement committee. (a) An enforcement committee, consisting of two or more agency members to be appointed by the chairman, will act for the agency in matters involving the resolution of violations of the statutes and regulations administered by the agency.

(b) The committee shall consider alleged violations, determine in each case whether a violation has occurred and, if so, attempt to resolve the violation. The committee shall have authority to seek payment of a monetary penalty, the redress of environmental damage, or both, or to resolve violations in any other manner it sees fit.

(c) The chairman may at his discretion sit as a voting member of the committee. The agency may require that any particular matter be referred to it. The committee in its discretion may refer any particular matter to the full agency.

Section 581.2. Notice of violation. The agency will send the landowner and any other person who may be legally responsible for an apparent violation a "notice of apparent violation," stating the facts and provisions of law upon which the notice is based. Prior to the imposition of any penalty for the violation, the agency will invite the landowner and any other person responsible for the apparent violation to a settlement conference as described in section 581.5 of this Part and will furnish them a summary of agency enforcement procedures.

Section 581.3. Cessation of construction or other illegal land use or development or subdivision. (a) In the case of an apparent violation involving ongoing construction, land disturbance or subdivision, the landowner and all contractors, builders and other agents will be ordered, in writing, to cease and desist construction and other illegal land use or development or subdivision. When there is danger that the elements may cause irreparable harm to a partially completed use or structure, the chairman, executive director or deputy director may authorize measures to prevent such harm. Any further construction or other illegal land use activity after receipt of a notice of apparent violation is prohibited until a permit or variance is granted.

(b) Written cease-and-desist orders may be issued by agency staff, but shall expire 72 hours from issuance unless renewed by a written order of the chairman, executive director or deputy director.

(c) The supervisor of the town or mayor of the village within which the apparent violation is located shall be notified of the issuance of any cease-and-desist order.

(d) The chairman, executive director or deputy director may request the landowner or other person legally responsible to take reasonable steps to redress ongoing damage to the resources of the Adirondack Park.

(e) A landowner or other person legally responsible who upon receipt of a cease and desist order fails or refuses to cease construction or other illegal land use or development or subdivision, or, who upon request fails to take such reasonable steps as are prescribed by the chairman, executive director or deputy director to redress ongoing damage to the resources of the Park shall be immediately referred to the Attorney General for such legal action as is deemed appropriate.

Section 581.4. Review of permit or variance applications involving violations. (a) The agency shall notify the supervisor of the town or mayor of the village involved and the Adirondack Park local government review board of the receipt of an application for a permit or variance involving a violation.

(b) An application involving an unresolved violation shall not be processed and the time periods of section 809 of the Adirondack Park Agency Act shall not run until the decision of the enforcement committee or agency pursuant to section 581.5 of this Part is complied with and the permit or approval may otherwise be legally issued.

Section 581.5. Resolution conferences; enforcement committee decisions; opportunity to appeal. (a) Upon informing any person that he appears to be in violation of any of the statutes administered by the agency, of these regulations, or of the terms and conditions of any agency permit or variance, the agency shall advise him of the date and place the enforcement committee will consider the matter. He may appear before the committee either in person or by authorized representative, and be heard concerning any disputed matter of fact or law or with respect to the nature of any proposed resolution.

(b) Resolution conferences shall be informal in nature, unless the alleged violator requests formal proceedings, in which case a presiding officer (who may be a committee or agency member) shall be designated and a record shall be kept. If such a request is made, the committee may adjourn the matter to another date and need not be present on such date.

(c) Following the resolution conference or formal proceedings, or, in the case of adjourned formal proceedings, at the first regularly scheduled committee meeting at least seven days following receipt of the record, the committee will deliberate in private and reach a decision, including what terms, if any, it will offer to resolve a violation, and advise the alleged violator. After the alleged violator has been notified, the decision shall be a matter of public record.

(d) An alleged violator shall have the right to appeal any determination of the enforcement committee to the full agency, provided that any appeal alleging new matter will be treated as a request for reconsideration by the enforcement committee. Any permit, variance, or request pursuant to section 581.3(d) of this Part shall be complied with while the appeal is pending.

(e) If the alleged violator does not comply with the resolution proposed by the committee or the agency, the agency will refer the matter to the Attorney General, pursuant to section 63 of

the Executive Law and section 813 of the Adirondack Park Agency Act, or section 15-2723 or article 71 of the Environmental Conservation Law. Any negotiations thereafter shall be exclusively with the Attorney General, unless he otherwise agrees, and any resolution by the Attorney General shall be on consent of the agency.

CHAPTER III. LOCAL LAND USE PLANNING

PART 582

LOCAL LAND USE PROGRAMS

(Statutory authority: Executive Law, 801, 807, 808; Environmental Conservation Law, 15-2709[1], 24-0105[6], 24-0801, 24-0803, 24-0805).

Sec.

- 582.1 Local land use programs under the Adirondack Park Agency Act
- 582.2 Criteria for approval of local land use programs
- 582.3 Criteria for approval of local land use programs relative to a geographical portion of the local government
- 582.4 Criteria for approval of components of local land use programs
- 582.5 Amendments to approved local land use programs
- 582.6 Agency review of variances from approved local land use programs
- 582.7 Notification to the agency of class B regional project applications
- 582.8 Transfer to local governments of jurisdiction over certain freshwater wetlands
- 582.9 Submission of rivers system land management plans by local governments

Section 582.1. Local land use programs under the Adirondack Park Agency Act. (a) Agency approval and local enactment of a local land use program (1) transfers to local government agency review jurisdiction over class B regional projects and variances from the shoreline restrictions, and (2) requires the agency to apply certain of the standards and requirements of the local land use program in its review of class A regional projects.

(b) The agency has prepared model local land use controls to meet the criteria of section 807(2) of the Adirondack Park Agency Act and section 582.2 of this Part. Copies may be obtained from the agency.

Section 582.2. Criteria for approval of local land use programs. A local land use program will comply with section 807(2) of the Adirondack Park Agency Act if:

- (a)(1) it is based upon a current and comprehensive inventory and analysis of the natural resources of the lands and existing facilities within the local government; and
- (2) it contains statutes and regulations which guide land use and development throughout the local jurisdiction and establish boundaries of local land use districts which reflect all natural and manmade opportunities for and limitations to development.

The scope and intensity of the studies may differ from community to community in light of community resources, previous planning work, if any, and the data base essential for the review of class B regional projects.

(b) It contains local land use controls, including subdivision regulations, a zoning ordinance or local law, and a sanitary code, which:

- (1) conform with applicable provisions of State law;

(2) provide for land use control throughout the jurisdiction of the local government; and

(3) provide for the referral to the agency of any proposed amendments described in section 582.5 of this Part.

(c) It contains subdivision regulations which: (1) make appropriate provision for the review of subdivisions which are class B regional projects as provided in section 807(2)(f) of the Adirondack Park Agency Act;

(2) provide opportunity for clustering of new development;

(3) contain adequate standards relating to lot layout, road design and construction, public utility installation, erosion control and revegetation of disturbed areas, protection of shoreline and unique natural and cultural features, and provision of recreation areas and preservation of open space;

(4) provide for the review of all subdivisions of land of two or more lots except that, where local conditions warrant, a local land use program may utilize a different review threshold for subdivisions, to include no less than all divisions of land into five or more lots, parcels or sites, and all other divisions of land involving a new public or private road regardless of the number of lots involved.

Paragraphs (2) and (3) of this subdivision may be satisfied by other provisions in a local land use program including zoning and/or land use controls other than subdivisions regulations.

(d) It contains zoning regulations which: (1) provide for and encourage in each local land use district land uses and development that are compatible with the character description and objectives of that district as stated in the local comprehensive plan, and reasonably apply the compatible uses lists of the Adirondack Park land use and development plan;

(2) reasonably apply the overall intensity guidelines, through minimum lot area specifications or other appropriate means, and if a wild, scenic or recreational river is located within the local government, provide for a rivers system land management plan or for intensity controls in conformance with Part 577 of these regulations;

(3) include dimensional regulations in which the minimum shoreline lot widths and building setbacks comply with or exceed section 806 of the Adirondack Park Agency Act;

(4) include at a minimum the shoreline vegetative cutting restrictions, and restrictions concerning deeded or contractual access to shoreline of section 806 of the Adirondack Park Agency Act;

(5) incorporate, or make reference to, for purposes of determining regional project jurisdiction, the official Adirondack Park Land Use and Development Plan Map;

(6) make provision for the review of class B regional projects as provided in section 807(2)(f) of the Adirondack Park Agency Act;

(7) provide for sign and junkyard control, including local sign regulations in conformance, at a minimum, with Appendix Q-3 of these regulations;

(8) include provisions for notice to the agency of variance applications described in section 582.6 of this Part;

(9) provide for administration and enforcement of the zoning regulations.

(e) It contains a sanitary code, or incorporates by reference the regulations of a consolidated or county health district, which:

(1) provides for site review of all new on-site sewage disposal systems prior to issuance of building permits; and

(2) complies with the regulations of the Department of Health contained in 10 NYCRR Part 75, the standards set forth in the agency's model sanitary code, and, if required by the agency based upon local soil conditions, the additional standards set forth in Appendix Q-4 of these regulations.

(f) This section shall not be construed to prevent the development and submission of local land use programs which contain additional or supplemental provisions, or to restrain initiative on the part of local governments desiring to develop local land use programs in alternate formats as warranted by local conditions.

Section 582.3. Criteria for approval of local land use programs relative to a geographic portion of a local government. A local land use program submitted for approval relative to a significant geographical portion of a local government pursuant to section 807(4) of the Adirondack Park Agency Act shall be approved if the criteria of section 582.2 of this Part are met with respect to such portion. The transfer of jurisdiction referred to in section 582.1 shall occur only in those portions subject to such controls.

Section 582.4. Criteria for approval of components of local land use programs. A component of a local land use program submitted pursuant to section 807(3) of the Adirondack Park Agency Act shall satisfy the criteria of the following subdivisions of section 582.2 of this Part:

(a) if a zoning ordinance or law, subdivisions (b) and (d);

(b) if subdivision regulations, subdivisions (b) and (c);

(c) if a sanitary code, subdivisions (b) and (e);

(d) if any other component, the applicable criteria.

Section 582.5. Amendments to approved local land use programs. (a) The following classes of amendments to approved local land use programs, including local land use programs relative to a geographic portion of a local government, shall be subject to agency review pursuant to section 807 of the Adirondack Park Agency Act prior to enactment by the local government:

(1) creation of a new land use district or amendments to existing boundary lines of such districts outside hamlet areas on the official map;

(2) additions to the permitted use lists outside hamlet areas which would allow in any land use area on the official map a use not a primary or secondary compatible use for that area;

(3) amendments to the shoreline restrictions which would fall below the minimums established in section 806 of the Adirondack Park Agency Act;

(4) amendments to the substantive or procedural provisions relating to review of class B regional projects;

(5) amendments to provisions relating to administration and enforcement of the land use program;

(6) amendments to sign or automobile junkyard regulations;

(7) amendment to the sanitary code or sanitary control provisions;

(8) amendment to the subdivision regulations;

(9) amendments to controls governing intensity of development outside Hamlet areas, such as minimum lot areas;

(10) amendments which would repeal any provisions referred to in paragraphs (1) through (9) of this subdivision;

(11) any other amendments which involve the provisions of the land use and development plan.

(b) The agency shall approve, approve subject to conditions or disapprove such amendment(s) within 45 days of submission.

Section 582.6. Agency review of variances from approved local land use programs. (a) The following variances from approved local land use programs shall be subject to agency review, pursuant to section 808(3) of the Adirondack Park Agency Act, if outside hamlet areas:

(1) variances from local shoreline restrictions;

(2) variances from the local controls governing intensity of development, such as minimum lot areas;

(3) variances from use restrictions which would allow a use other than those on the classification of compatible use lists in the Adirondack Park Agency Act for the official map land use area in which it would be located; and

(4) any other variances which involve the provisions of the land use and development plan.

(b) A local government shall provide written notice to the agency of an application for any variance referred to in subdivision (a) of this section within 15 days of receipt or within such period as may be agreed upon. The agency may request additional pertinent information.

(c) Prior to local action on a variance application, the agency may, at the request of the local government, render an advisory opinion as to whether a variance may be granted.

(d) Written notice of the granting of a variance described by this section shall be given to the agency within 15 days thereof. The variance shall not take effect until the agency determines that it will not reverse or modify the variance. If the agency has made no determination within 30 calendar days after receipt of notice, the variance shall take effect at the end of such period.

Section 582.7. Notification to the agency of class B regional project applications. (a) A local government with an approved land use program shall notify the agency of an application to undertake a class B regional project within 15 days of receipt or within the period provided in the land use program, or as may be otherwise agreed between the agency and the local government.

(b) The agency may request additional information, which shall be furnished within 10 days and in any case no later than five days prior to any public hearing.

(c) Notice of any public hearing on a project shall be furnished to the agency at least 10 days prior to the date of the hearing.

Section 582.8. Transfer to local governments of jurisdiction over certain freshwater wetlands. (a) Any town or village which has, in a local land use program or otherwise, adopted and implemented a local freshwater wetlands protection law or ordinance may apply to the agency for approval of such law or ordinance and transfer to it of agency jurisdiction over freshwater wetlands as described in this section.

(b) The agency shall approve a local wetlands protection law or ordinance which:

(1) meets the criteria of section 24-0803(2) of the Freshwater Wetlands Act;

(2) contains a classification of wetlands within the municipality according to the values of particular types of wetlands. Agency staff may consult with and give technical assistance to local governments preparing such classifications.

(c) Upon approval of a local freshwater wetlands protection law or ordinance, the agency shall approve or modify the classification system, and may transfer any or all of its jurisdiction over regulated activities conducted upon, or land use and development or subdivision involving, those wetlands located upon private lands which are of lesser regional importance, and are appropriately to be administered by the local government.

(d) In classifying wetlands pursuant to an application to transfer jurisdiction to local government pursuant to this section, or in preparing or reviewing minimum land use regulations for freshwater wetlands pursuant to section 24-0903 of the Freshwater Wetlands Act, the agency may, after public hearing, determine to regulate adjacent areas to such distances greater than 100 feet from the boundaries of certain wetlands as are necessary to protect and preserve such wetlands. A list of wetlands for which a greater adjacent area is regulated shall be filed as an appendix to these regulations.

(e) The public hearing referred to in subdivision (d) of this section shall be held in the town or village in which the affected wetlands are located on not less than 15 days notice by certified mail to the persons named in section 578.12(b) of these regulations and to the owners of the affected adjacent areas, as shown on the latest completed tax assessment rolls, and by publishing a copy of the notice at least 15 days in advance in a newspaper of general circulation in the area.

(f) A copy of any order issued by the agency pursuant to subdivision (d) of this section and a map of the wetland and affected areas shall be mailed to the persons named in subdivision (e) of this section and published in the newspaper referred to therein.

Section 582.9. Submission of rivers system land management plans by local governments.

(a) Local governments are encouraged to submit a rivers system land management plan relative to river areas in their jurisdictions in accordance with section 577.9 of these regulations.

(b) Upon agency approval, a rivers system land management plan shall apply in lieu of agency jurisdiction over the river area involved pursuant to Part 577 of these regulations.

CHAPTER IV. REGIONAL PLANNING

PART 583

AMENDMENTS TO THE ADIRONDACK PARK LAND USE AND DEVELOPMENT PLAN MAP

(Statutory Authority: Executive Law, 805[2][c])

Sec.

583.1 Contents of amendment requests

583.2 Criteria employed

583.3 Nature of technical amendments

583.4 Notification required; time for agency action

583.5 Hearings on map amendment requests

583.6 Initial review of map amendment requests by regional planning committee

Section 583.1. Contents of amendment requests. (a) Requests for amendments to the official Adirondack Park Land Use and Development Plan Map shall be accompanied by maps of a sufficient scale to allow the agency to identify the boundaries of the requested amendment.

(b) Requests by landowners shall in addition include a copy of the instrument of title to the land involved.

(c) Requests by a town or village shall include a certified copy of a resolution of the town or village board requesting the amendment.

(d) All requests shall include the names and addresses of adjoining landowners, to the extent discernible from the latest completed tax assessment roll.

Section 583.2. Criteria employed. (a) In considering map amendment requests the agency will refer to the land use area classification determinants set out as Appendix Q-8 of these regulations and augmented by field inspection.

(b) The agency will not consider as relevant to its determination any private land development proposals or any enacted or proposed local land use controls.

Section 583.3. Nature of technical amendments. Amendments made to clarify boundaries, correct errors or effect technical changes pursuant to section 805(2)(c)(4) of the Adirondack Park Agency Act shall be limited to amendments for which no administrative discretion is called for, such as printing errors, illegibility of boundary lines, or the erroneous classification of State lands as private and vice versa.

Section 583.4. Notification required; time for agency action. (a) Upon receipt of a request to amend the plan map or upon determining to amend the map on its own initiative, the agency will 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 board, 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 invite their comments.

(b) The agency will act within 120 days of receipt of a request; however, if it determines to hold a public hearing on the request it shall schedule the hearing within 90 days of receipt of the request and shall act within 60 days of the close of the hearing. If a request is received when snow cover or ground conditions prevent field investigations or in the case of a request or series of related requests exceeding 500 acres, the time periods shall be extended an additional 90 days or until adequate field inspection is possible, whichever is sooner. Any time period may be waived or extended by written request of the applicant or the agency on consent of the other; provided, however, that the agency shall not act until Part 586 of these regulations has been complied with.

Section 583.5. Hearings on map amendment requests. (a) Notice of hearings on map amendment requests shall be given not less than 15 days prior to the hearing by:

(1) publication of a copy of the notice at least once in a newspaper of general circulation in the area;

(2) conspicuous posting on the land involved of a notice stating the time, place and statutory authority pursuant to which the hearing is held;

(3) sending a copy of the notice by certified mail to each owner of the land involved, to the extent discernible from the latest completed tax assessment roll;

(4) sending a copy of the notice by mail to:

(i) the chairman of the planning board, if any, and the clerk of each town and/or village wherein the land is located;

(ii) the chairman of the county planning agency, if any, and the clerk of each county wherein the land is located;

(iii) the chairman of the regional planning agency, if any, within whose jurisdiction the land is located;

(iv) the Adirondack Park local government review board; and

(v) the clerk of each town and/or village within 500 feet of the land involved; and

(vi) owners of adjoining land, owners of land separated from the land in question by a public or private road, railroad, utility right-of-way, river or stream, and, in the case of applications involving shoreline or islands, owners of nearby islands or mainland, to the extent discernible from the latest completed tax assessment roll.

(b) Hearings shall be legislative in nature, and any person or public agency entitled to individual notice pursuant to subdivision (a) of this section, as well as, at the discretion of the agency or its presiding officer, any other persons or public agencies, may participate.

(c) At the request of the applicant, or on its own initiative, the agency staff may present planning and natural resource information concerning the application of the land use area classification determinants to the land in question.

(d) The presiding officer shall have authority to prescribe the procedure for conducting the hearing.

Section 583.6. Initial review of map amendment requests by regional planning committee. A map amendment request before the agency for formal action shall be referred initially to the regional planning committee, consisting of at least three agency members appointed by the chairman, which shall have authority to review such requests initially pursuant to the same procedures as set forth for projects in section 572.12(b) of these regulations. Eight affirmative votes shall be required for the agency to grant any map amendment whenever a two-thirds vote is statutorily required.

PART 584

AMENDMENTS TO THE CLASSIFICATION OF COMPATIBLE USES LISTS

(Statutory authority: Executive Law, 805[3])

Sec.

584.1 Procedures for amendments to the classification of compatible uses lists

Section 584.1. Procedures for amendments to the classification of compatible uses lists.

(a) The agency may, on its own initiative and upon an affirmative vote of two-thirds of its members, amend the classification of compatible uses lists of the Adirondack Park land use and development plan to make additions thereto.

(b) Prior to making amendments, the agency shall consult with the Adirondack Park local government review board and shall hold a public hearing thereon within the Adirondack Park.

(c) Not less than 15 days notice of the public hearings shall be given 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 by individual notice by mail to the persons specified in section 805(3)(b) of the Adirondack Park Agency Act.

(d) The agency shall file a certified copy of its resolution adopting the amendment, within 20 days after adoption with the Adirondack Park local government review board, the Secretary of State, the clerks of each county and local government wholly or partially within the Adirondack Park and the Legislature. Amendments shall take effect upon the conclusion of such 20-day period.

(e) The Agency may, after consultation with the Adirondack Park local government review board, and upon an affirmative vote of a majority of its members, recommend subtractions from the compatible uses lists of the plan to the Governor and the Legislature. Prior to the time that the recommendation is made, the agency shall hold a public hearing within the Adirondack Park. Notice of the hearing shall be given by the agency in accordance with subdivision (c) of this section.

CHAPTER V. STATE LAND PLANNING

PART 585

[This Part is reserved for regulations implementing
the Master Plan for the Management of State Lands
(Adirondack Park Agency Act, Section 816)].

CHAPTER VI. RELATION OF AGENCY ACTIVITIES TO OTHER LAWS

PART 586

IMPLEMENTATION OF STATE ENVIRONMENTAL QUALITY REVIEW ACT

(Statutory authority: Environmental Conservation Law, art. 8)

Sec.

- 586.1 Purpose of this Part
- 586.2 Definitions
- 586.3 General rule
- 586.4 Certain agency and local actions exempt
- 586.5 Lists of actions
- 586.6 Information required of applicants
- 586.7 Threshold determination
- 586.8 Negative declarations
- 586.9 Positive declarations
- 586.10 Form and contents of draft and final environmental impact statements
- 586.11 Notice of completion of draft environmental impact statement
- 586.12 Public hearing
- 586.13 Final environmental impact statement
- 586.14 Approval or disapproval of action; required findings
- 586.15 Applicability of regulations of the Commissioner of Environmental Conservation

Section 586.1. Purpose of this Part. This Part implements the State Environmental Quality Review Act (SEQR) and establishes criteria for determining whether actions under consideration by the agency will have a significant effect on the environment.

Section 586.2. Definitions. The definitions contained in section 8-0105 of SEQR and 6 NYCRR 617.2 apply to this Part. The definitions in section 570.3 of these regulations also apply, except when in direct conflict with the definitions governing this Part.

Section 586.3. General rule. The agency will not carry out, fund, approve or issue a final decision on any action until there has been full compliance with SEQR, this Part, and 6 NYCRR Part 617.

Section 586.4. Certain agency and local actions exempt. An environmental impact statement is not required for review and action upon class A regional projects or class B regional projects by the agency or by local governments acting pursuant to an agency-approved local land use program.

Section 586.5. Lists of actions. (a) Type I. The following actions are likely to require preparation of environmental impact statements (EIS's) because they are likely to have a significant effect on the environment:

(1) Review and action upon requests to amend the official Adirondack Park Land Use and Development Plan Map which would permit the construction of 50 or more principal buildings than presently allow by the official map, or approval of any application or series of

related applications to amend the map where the amendments would cumulatively exceed such threshold, except amendments pursuant to section 805(2)(c)(4) of the Adirondack Park Agency Act. A generic statement has been prepared upon the process by which the agency amends the official map.

(2) Recommendations to the Governor and Legislature of amendments to the official Adirondack Park Land Use and Development Plan Map.

(3) Additions to the classification of compatible use lists, or recommendations to the Governor and Legislature of subtracting therefrom, pursuant to section 805(3)(b) of the Adirondack Park Agency Act.

(4) Approval of local land use programs.

(5) The approval of any rivers project which involves the construction of a boathouse, bridge, public road, trail for motorized open space recreational use, river area utility use that will be located within the applicable setback distance in section 577.6(b) of these regulations, or habitable structure (except a single family dwelling or mobile home), except:

(i) projects which are also subject to the jurisdiction of the agency or local government pursuant to sections 809 or 808 of the Adirondack Park Agency Act, respectively;

(ii) projects which require a certificate of environmental compatibility and public need under article seven or eight of the Public Service Law; or

(iii) subdivisions of less than five lots, parcels or sites.

(6) The preparation and submission to the Governor of proposed major amendments of the master plan for the management of State lands pursuant to section 816(2) of the Adirondack Park Agency Act, including:

(i) any proposed reclassification of land from a more restrictive to a less restrictive category;

(ii) the designation of a new travel corridor;

(iii) material changes in the guidelines applicable to each classification;

(iv) any periodic review of the entire plan, as called for therein.

A generic statement has been prepared on the process by which the agency proposes amendments to the plan.

(7) Preparation of minimum land use regulations, approval of local land use regulations, and framing of land use regulations pursuant to section 24-0805 of the Environmental Conservation Law.

(8) The transfer of agency jurisdiction over freshwater wetlands pursuant to section 24-0803 of the Environmental Conservation Law, including the determination of wetlands subject to the transfer.

(9) The approval of a land management plan pursuant to section 577.9 of these regulations.

(10) Revision to the rules and regulations of the agency which effects substantive changes in agency jurisdiction, or in the project review or map amendment functions, or in the local planning assistance program.

(b) Type II. The following actions do not have a significant effect on the environment and do not require an environmental impact statement:

(1) Contracting, including the contracting for or acceptance of professional and technical assistance or advice, or any funding or planning activities not in respect to type I actions listed in 6 NYCRR 617.12 or in subdivision (a) of this section.

(2) The preparation and submission to the Governor of any amendments to the master plan for the management of state land not listed as a type I action in paragraph (a)(6) of this section.

(3) The adoption, amendment or repeal of rules and regulations, except for a revision listed in paragraph (a)(10) of this section.

(4) The approval of any rivers project not listed as a type I action in paragraph (a)(5) of this section.

(5) The approval of any wetlands project not subject to the jurisdiction of the agency pursuant to section 809 of the Adirondack Park Agency Act.

(6) the preparation and distribution of any report required by section 804(10) of the Adirondack Park Agency Act.

(7) The granting of individual variances and shoreline clustering permits pursuant to section 806 of the Adirondack Park Agency Act, the reversal of variances pursuant to section 808(3) of the Act, and the granting of individual variances pursuant to Part 577 of these regulations.

(c) Pursuant to 6 NYCRR 617.4(i), any person may request the Commissioner of Environmental Conservation to review any action appearing on the type II list in subdivision (b) of this section to determine whether it meets the criteria for type II actions in 6 NYCRR 617.13.

Section 586.6. Information required of applicants. (a) The agency may require an applicant to include as a part of any application or other required filing such reasonable information, including a completed environmental assessment form, as is necessary to assist it in:

(1) determining whether an action is exempt or excluded;

(2) determining whether an action may have a significant effect on the environment;

(3) determining whether other agencies, including Federal agencies, have jurisdiction over the action or any portion of it; or

(4) preparation of an environmental impact statement, if required, and if prepared by the agency.

(b) No application or submission pursuant to section 814 of the Adirondack Park Agency Act, or any other statute or regulation, shall be considered complete until such information is submitted.

Section 586.7. Threshold determination. As early as possible in its formulation of an action it proposes to undertake, or upon receipt of any application, notice or filing which involves an action, the agency will determine whether the action:

(a) is subject to SEQRA pursuant to ECL 8-0111(2), ECL 8-0117 and 6 NYCRR 617.5;

(b) is an exempt or type II action, in which case it shall have no further obligation under SEQRA or 6 NYCRR Part 617;

(c) is an excluded action, in which case it will determine whether the Commissioner of Environmental Conservation will require that an EIS be prepared pursuant to ECL 8-0111(5) (a)(i);

(d) involves a Federal agency, in which case it shall act pursuant to ECL 8-0111(1) or (2) and 6 NYCRR 617.16;

(e) involves one or more other agencies, in which case it shall act pursuant to ECL 8-0111(6) and 6 NYCRR 617.6 or 617.7, whichever applies.

Section 586.8. Negative declarations. (a) If the agency determines that an action is a type I action or unlisted action subject to SEQRA and will not have a significant effect upon the environment, it shall prepare and file a notice of determination that an EIS will not be prepared ("negative declaration") and maintain written analyses and findings supporting such determination in accordance with 6 NYCRR 617.10(b) and 617.7 in the file referred to in subdivision (b) of this section.

(b) In order to afford the opportunity for public notice and response, the agency will keep a separate file, updated monthly, containing a brief description of determinations made pursuant to this section, and will incorporate reference to the negative declaration in other notices required by law in connection with the action.

Section 586.9. Positive declarations. (a) If the agency determines that a type I or unlisted action is subject to SEQRA and may have a significant effect on the environment, it shall prepare and file in the file concerning the action a notice of determination that an EIS will be prepared ("positive declaration") and maintain written analyses and findings supporting such determination in accordance with 6 NYCRR 617.10(c) in the file referred to in section 586.8(b) of this Part.

(b) In order to provide an opportunity for public notice and response, the agency will file positive declarations monthly in the file referred to in section 586.8(b) of this Part and will incorporate reference to the positive declaration in other notices required by law in connection with the action.

Section 586.10. Form and contents of draft and final environmental impact statements. Environmental impact statements shall conform to the requirements of 6 NYCRR 617.14 as to form and content.

Section 586.11. Notice of completion of draft environmental impact statement; filing of draft environmental impact statement. (a) Upon completion of a draft environmental impact statement, or upon acceptance of a draft environmental impact statement from an applicant pursuant to 6 NYCRR 617.8, the agency shall prepare and file a notice of completion in accordance with 6 NYCRR 617.10(d).

(b) In order to provide an opportunity for public response the agency shall, in addition to the filing required by 6 NYCRR 617.10(e), file its notices of completion and draft environmental impact statements in the file referred to in section 586.8(b) of this Part and will incorporate reference to them in notices required by law in connection with the action.

Section 586.12. Public Hearing. (a) Upon completion of the draft environmental impact statement, or upon acceptance of a draft environmental impact statement from an applicant pursuant to 6 NYCRR 617.8, the agency shall determine whether to conduct a public hearing thereon, based upon:

(1) the degree of interest shown by other persons in the action;

(2) the extent to which a public hearing can aid its decision-making process by providing a forum for, or an efficient method for the collection of, public comment; and

(3) the criteria set forth in section 580.2 of these regulations.

(b) Unless a different time period is provided by statute or regulation for the holding of a public hearing:

(1) the notice of hearing shall be published at least 14 calendar days in advance thereof, in a newspaper of general circulation in the area of potential impacts and effects of the action; and

(2) the hearing shall commence no less than 15 days nor more than 60 calendar days after the filing of the draft environmental impact statement.

(c) If the public hearing is one for which the agency otherwise has authority to conduct, the public hearing shall be conducted according to the procedures governing such hearing. If the public hearing is not otherwise authorized, it may be conducted in the manner provided in Part 580 of these regulations, or in such other manner as the agency shall direct.

Section 586.13. Final environmental impact statement. (a) The final environmental impact statement shall be prepared within 45 calendar days after the close of any hearing, or within 60 calendar days after the filing of the draft environmental impact statement, whichever occurs last; the last date for preparation may be extended pursuant to 6 NYCRR 617.8(e)(2).

(b) If the action has been withdrawn, or if, on the basis of the draft environmental impact statement or hearing, the agency determines that the action will not have a significant effect on

the environment, it will not prepare a final environmental impact statement but will prepare and file its determination in accordance with 6 NYCRR 617.8(e)(1).

(c) The filing of a notice of completion of a final environmental impact statement and the filing of the statement itself shall take place in the same manner as a draft environmental impact statement in accordance with 6 NYCRR 617.10(g) and (h). Final environmental impact statements and notices of completion shall also be filed in the file referred to in section 586.8(b) of this Part.

(d) The notice of completion shall conform to 6 NYCRR 617.10(g) in form and content.

Section 586.14. Approval or disapproval of action; required findings. (a) Agencies and the public shall be afforded a reasonable time period, not less than 10 calendar days, in which to consider the final environmental impact statement. A decision on an action involving an applicant shall be made within 30 calendar days following the filing of a final Federal or SEQR environmental impact statement. The time period for decision may be extended for good cause.

(b) No final decision whether to commence, engage in, fund, or approve an action shall be made until the specific written findings and statement required by 6 NYCRR 617.9(c) or (d) are prepared and filed in accordance with 6 NYCRR 617.10 and in the file referred to in section 586.8(b) of this Part.

Section 586.15. Applicability of regulations of the Commissioner of Environmental Conservation. The provision of 6 NYCRR Part 617 shall govern any matters not specifically addressed in this Part, and except in cases of direct conflict shall apply in addition to the provisions of this Part.

PART 587

ACCESS TO AGENCY RECORDS; OPEN MEETINGS; CONFLICTS OF INTEREST

(Statutory authority: Public Officers Law, 87(1)(b), 95, 104(3))

Sec.

587.1 Access to agency records

587.2 Open meetings

587.3 Conflicts of interest

Section 587.1. Access to agency records. (a) Purpose and scope. This section provides information concerning the availability of agency records for public inspection and copying pursuant to the Freedom of Information Law (Public Officers Law, article 6).

(b) General rule. The agency shall, in accordance with this section and the regulations of the Committee on Public Access to Records (21 NYCRR Part 140l), furnish to the public the information and records required by the Freedom of Information Law. This section does not limit or abridge any right to access to records granted by law.

(c) Definitions. As used in this section: (1) Record means any information kept, held, filed, produced or reproduced by, with or for the agency, in any physical form whatsoever, including but not limited to reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

(2) Statistical tabulation means a collection or orderly presentation of numerical data logically arranged in columns and rows or graphically. Opinions, policy options, and recommendations do not constitute statistical tabulations.

(3) Factual tabulation means a collection of statements of objective information logically arranged and reflecting objective reality, actual existence, or an actual occurrence. Opinions, policy opinions and recommendations do not constitute factual tabulations.

(d) Designation of records access officer. (1) The project administrator of the agency, or in his absence, any member of the agency legal staff except the counsel, shall be records access officers. The business address of the records access officer is P.O. Box 99, Ray Brook, New York 12977. It shall be his duty to respond to public requests for access to records.

The designation of the records access officer(s) shall not be construed to prohibit agency personnel who have in the past been authorized to make records or information available to the public from continuing to do so.

(2) The records access officer will assure that agency personnel:

(i) maintain the up-to-date subject matter list required by section 87(3) of the Public Officers Law;

(ii) assist the person inquiring in identifying requested records, if necessary;

(iii) upon locating the records, take one of the following actions pursuant to the procedures set forth in this section:

(a) make records available for inspection; or

(b) deny access to the records in whole or in part and explain in writing the reasons for such action pursuant to subdivision (i) of this section;

(iv) upon payment or offer to pay the fees set forth in subdivision (j) of this section:

(a) make a copy available; or

(b) permit the person inquiring to copy such records; and

(c) upon request, certify that a record is a true copy;

(v) upon failure to locate records, certify that:

(a) the agency is not the custodian for such records; or

(b) the records of which the agency is a custodian cannot be found after diligent search.

(e) Location. The location where records shall be available for public inspection and copying are: Agency Headquarters, Route 86, Ray Brook, New York 12977.

(f) Hours for public inspection. (1) Requests for public access to records shall be accepted during all hours the agency is regularly open for business. Except on State holidays, or during weather or other emergencies, these hours are 8:30 a.m. to 5 p.m., Monday through Friday.

(2) Records may be copied during regular business hours on all business days to the extent possible in view of priority copying requirements involving regular agency responsibilities. If necessary, copying may be relegated to the early evening hours or by appointment on weekends.

(g) Requests for public access to records. (1) Normally, records will be available upon oral request, but where necessary to the orderly conduct of business, the agency may require that a request be made in writing or upon a standard form.

(2) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(3) The agency shall respond to any written request reasonably describing the record or records sought within five business days after receipt.

(4) If the agency does not provide or deny access to the record sought within five business days after receipt of a written request, it shall furnish a written acknowledgement of receipt of the request and a statement of the approximate date when the request will be granted or

denied, including, where appropriate, a statement that access to the record will be determined in accordance with section 89(5) of the Public Officers Law relative to trade secrets. Failure of the agency to grant or deny access to records within 10 business days after the date of acknowledgement of receipt of a request may be construed as a denial of access and may be appealed as provided in subdivision (i) of this section.

(5) The records access officer, in his discretion, may waive compliance with any formality required by this section.

(h) Required records. The agency shall maintain:

(1) a record of the final vote of each member in every agency proceeding;

(2) a record setting forth the name, public office address, title and salary of every officer or employee of the agency;

(3) a current list by subject matter of all records in its possession, sufficiently detailed to permit identification of the category of the record sought, whether or not available pursuant to the Freedom of Information Law. This list shall be updated not less than twice per year.

(i) Denial of access to records. (1) The agency may deny access to records or portions thereof that:

(i) are exempted from disclosure by State or Federal statute or judicial decision;

(ii) if disclosed, would constitute an unwarranted invasion of personal privacy pursuant to section 89(2) of the Freedom of Information Law;

(iii) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(iv) are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or otherwise come within the exemptions of section 87(2)(e) of the Freedom of Information Law;

(v) are interagency or intra-agency materials which are not:

(a) statistical or factual tabulations or data;

(b) instructions to staff that affect the public; or

(c) final agency policy or determinations; or

(vi) are otherwise exempt pursuant to section 87(2) of the Freedom of Information Law.

(2) The agency counsel shall determine appeals regarding denial of access to records under the Freedom of Information Law.

(3) Denial of access shall be in writing, stating the reason for denial and advising of the right to appeal to the counsel.

(4) Failure of the agency to respond to a request within five business days after receipt, as required by subdivision (g) of this section, shall be deemed a denial of access by the agency.

(5) Except as provided in section 89(5) of the Public Officers Law relative to trade secrets, any person denied access to records may appeal within 30 days after receipt of notice of the denial. If the denial is by mail, the 30-day period shall commence to run on the fifth day following the mailing of notice of denial.

(6) The time for deciding an appeal shall commence upon receipt of a written appeal, identifying:

- (i) the date and location of a request for records;
- (ii) the records that were denied; and
- (iii) the name and return address of the appellant.

(7) The agency shall, upon receipt, transmit copies of all appeals to the Committee on Public Access to Records.

(8) Agency counsel shall inform the appellant and the Committee on Public Access to Records of his determination in writing within seven business days after receipt of an appeal. He shall either:

(i) fully explain the reasons for further denial and inform the person inquiring that the denial is subject to court review as provided for in article 78 of the Civil Practice Law and Rules; or

(ii) provide access to the record sought.

(j) Trade secrets. (1) A person who submits any information to the agency may, at the time of submission, request that the agency except such information from disclosure under section 87(2)(d) of the Freedom of Information Law. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(2) The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure.

(3) Information submitted pursuant to paragraph one of this subdivision shall be excepted from disclosure and be maintained by the agency's project administrator in a locked drawer, apart from all other records, until 15 days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(4) On the initiative of the agency at any time, or upon the request of any person for a record excepted from disclosure pursuant to this subdivision, the agency shall:

(i) inform the person who requested the exception of the agency's intention to determine whether such exception should be granted or continued;

(ii) permit the person who requested the exception, within 10 business days after receipt of notification from the agency, to submit a written statement of the necessity for the granting or continuation of such exception;

(iii) within seven business days after receipt of such written statement, or within seven business days after the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the Committee on Public Access to Records.

(5) A denial of an exception from disclosure under paragraph (4) of this subdivision may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting this record in accordance with this paragraph.

(i) Within seven business days after receipt of written notice denying the request, the person may file with the agency counsel a written appeal from the determination.

(ii) The agency counsel shall determine the appeal within 10 business days after receipt. Written notice of the determination containing the reasons therefor shall be served upon the person, if any, requesting the record, the person who requested the exception and the Committee on Public Access to Records.

(6) A proceeding to review an adverse determination pursuant to paragraph (5) of this subdivision may be commenced pursuant to article 78 of the Civil Practice Law and Rules, and must be commenced within 15 days after the service of the written notice containing the adverse determination.

(7) The person requesting an exception from disclosure pursuant to this subdivision shall in all proceedings have the burden of proving entitlement to the exception.

(8) Where the agency denies access to a record pursuant to this subdivision, the agency shall have the burden of proving that the record falls within the provisions of such exception.

(9) Nothing in this subdivision shall be construed to deny any person access, pursuant to this section or the Freedom of Information Law, to the record or part excepted from disclosure upon the written consent of the person who had requested the exception.

(k) Fees. (1) There shall be no fee charged for inspection of records, search for records, or any certification pursuant to this section.

(2)(i) The agency may provide copies of records without charging a fee; or

(ii) The agency will charge the following fee for copies of records:

(a) 25 cents per page for photocopies not exceeding 9 by 14 inches through the 10th page copied;

(b) 20 cents per page for the 11th through the 50th page copied; and

(c) 15 cents per page thereafter.

(3) In the case of records not capable of being copied on regular agency facilities, the agency may, at the option of the person inquiring:

(i) prepare a transcript, in which case there will be a charge for the clerical time involved, in addition to the fee set forth in this subdivision; or

(ii) reproduce the records using available commercial facilities, in which case the fee will be the cost to the agency.

(4) The fee for copies of records not covered by paragraphs (1) through (3) of this subdivision shall not exceed the actual reproduction cost, which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries.

(1) Public notice. The agency shall post in a conspicuous location:

(1) the location where records shall be made available for inspection and copying;

(2) the names, titles, business addresses and business telephone number of the records access officers designated in subdivision (d) of this section;

(3) the right to appeal, by any person denied access to a record, and the name and business address of the counsel, to whom an appeal is to be directed.

Section 587.2. Open meetings. (a) Definitions. As used in this section:

(1) Meeting means the official convening of the agency or any committee or other body consisting of agency members, or members of the general public formally created by the agency to advise it or conduct business on its behalf, for the purpose of conducting public business.

(2) Executive session means that portion of a meeting not open to the general public.

(b) General rules. (1) In compliance with the Open Meetings Law, every meeting shall be open to the general public, except that an executive session may be called and business conducted thereat in accordance with subdivision (d) of this section.

(2) The agency member or other person presiding over a meeting may permit public participation upon such terms as he shall deem just and proper.

(3) Use of sonic recording devices at agency meetings is permitted subject to reasonable conditions.

(c) Public notice. (1) Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in agency headquarters at least 72 hours before the meeting.

(2) Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in agency headquarters as soon as possible prior thereto.

(d) Executive sessions. (1) Upon a majority vote of the agency, or the members of the committee or other body thereof, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a meeting may be conducted as an executive session for the purposes specified in section 100(1) of the Open Meetings Law.

(2) The agency or the members of the subcommittee or other body may permit any person to attend an executive session.

(e) Minutes. (1) Minutes shall be taken at all open meetings, which shall consist, at a minimum, of a record or summary of all motions, proposals, resolutions and any other matters formally voted upon, and the votes thereon.

(2) Minutes shall be taken at executive sessions of any action taken by formal vote, which shall consist, at a minimum, of a record or summary of the final determination of such action, and the date and vote thereon. Such minutes need not include any matter not required to be made public by the Freedom of Information Law and section 587.1 of this Part.

(3) Minutes of meetings shall be available to the public in accordance with the Freedom of Information Law and section 587.1 of this Part within two weeks of the date of the meeting. Minutes taken at executive sessions shall be available to the public within one week from the date of the executive session.

(f) Exemptions. No provision of this Part shall extend to agency deliberations on projects or variances or to other quasi-judicial proceedings, or to any matter made confidential by Federal or State law.

Section 587.3. Conflicts of interest. (a) Purpose and scope. This section states agency policy for the avoidance of conflicts of interest by agency members and employees.

(b) Statutory rules. In addition to any other applicable statute or rule governing conflicts of interest, agency members and employees shall comply with the provisions of sections 73 and 74 of the Public Officers Law.

(c) Disclosure. In order to avoid any possible conflicts of interest, or appearance of conflicts, between the duties of the agency and the personal interests of its members, pecuniary or otherwise, each agency member:

(1) shall disclose to the full agency, either by writing filed at agency headquarters or by stating for recordation in the minutes of an agency meeting, any financial or other interest that he may have, directly or indirectly, which may appear to be in substantial conflict with the proper discharge of his public duties in any application for a permit, variance, amendment to the official map or any other matter coming before the agency;

(2) shall abstain from deliberating, discussing or voting with respect to matters in which he has such an interest; provided, however, that his presence shall be counted for the purposes of determining a quorum for the meeting;

(d) Ex parte communications in quasi-judicial proceedings. (1) No party or representative of a party shall communicate in any form with the agency or any member regarding any matter subject to quasi-judicial proceedings before the agency without serving copies of the communication on all other parties to the proceeding.

(2) In the exercise of quasi-judicial functions, no agency member or employee responsible for rendering a decision or making findings of fact and conclusions of law shall communicate in connection with any issue of fact, or issue of law, with any person, party or his representative, except upon notice and opportunity for all parties to participate; provided, however, that any agency member or employee:

(i) may communicate with other members of the agency; and

(ii) may have the aid and advice of agency staff which have not been engaged in the investigation or prosecuting functions in connection with the matter or proceeding or factually related matter or proceeding.

(3)(i) Any agency member with whom any oral communication is attempted concerning any quasi-judicial proceedings will decline to hear such communication before the agency. If he is unsuccessful in preventing the communication, he will make a written account thereof and deliver it to the agency for filing and for transmittal to other agency members and to all parties and so advise the communicator.

(ii) Any agency member who receives any written communication concerning any quasi-judicial proceedings which has not been sent to all other agency members and parties to the proceeding will decline to respond substantively thereto, but will explain that the matter is pending before the agency, and that he will deliver a copy of the communication and his response to the agency for filing and transmittal to other agency members and to all parties.

PART 588

RULE MAKING;
MISCELLANEOUS PROVISIONS

(Statutory authority: Executive Law, 809(14); 814(5)
816(3); Environmental Conservation Law, 8-0103(3);
State Administrative Procedure Act, 201, 204)

Sec.

- 588.1 Rule making procedure
- 588.2 Declaratory rulings
- 588.3 Judicial review of rules
- 588.4 Construction of rules
- 588.5 Designation of employees or officers
- 588.6 Suspension of rules
- 588.7 Computation and extension of time
- 588.8 Effective date of rules

Section 588.1. Rule making procedure. (a) Prior to the adoption, amendment, suspension or repeal of any rule, the agency shall:

- (1) consult with the Adirondack Park local government review board;
 - (2) give notice of public hearing, which shall contain the matters required by section 202(1)(c) of the State Administrative Procedure Act:
 - (i) 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, by publication in such trade, industry or professional publications as the agency may select and in the State Register authorized by section 146 of the Executive Law;
 - (ii) by mail to the clerk of each county and each local government wholly or partially within the park, to the chairmen of all local government county and regional planning agencies having jurisdiction in the park, and to any person or agency filing a written request to receive such notice, such request to be renewed yearly in December;
 - (iii) to such other persons and by such other procedures as may be required by law or as the agency in its discretion may choose to give;
 - (3) comply with the notice and filing requirements of section 101-a(2) and section 102(2) of the Executive Law and section 203 of the State Administrative Procedure Act.
- (b) Nothing in this section shall prevent the agency from immediate adoption, amendment, suspension or repeal of a rule as an emergency measure, as authorized by and in accordance with the procedures required by section 202(1)(d) or section 202(2)(c) of the State Administrative Procedure Act.

(c) For the convenience of the public, the agency may hold two or more hearings simultaneously.

(d) Upon the adoption, amendment, suspension or repeal of any rule, the agency shall publish notice of the action taken in the State Register pursuant to section 202(3) of the State Administrative Procedure Act.

Section 588.2. Declaratory rulings. (a) On petition of any person, submitted in accordance with this section, the agency may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it.

(b) The petition shall be submitted to the executive director of the agency at its headquarters in Ray Brook, New York, and shall

(1) state with particularity the pertinent facts bearing on the matter;

(2) demonstrate a sufficient interest in the need, or good cause for, the issuance of the declaratory ruling;

(3) state the names and addresses of any other persons whose interests are reasonably likely to be affected by the ruling.

(c) The petitioner may state his position with respect to the ruling desired, and may present statutory references and argument in respect thereto.

(d) The submission of a petition for a declaratory ruling by a landowner with respect to a statement of facts alleged to exist on his land shall be considered a consent to verification of the facts by agency staff, and to entrance upon said lands after reasonable notice for the purpose of undertaking such investigations, examination, survey or other activity necessary to determine the petition.

(e) The agency may refuse to issue a declaratory ruling if it is unable to obtain sufficient information to enable it to decide the issues presented.

(f) Declaratory rulings may be issued by the executive director, or may be referred by him to the operations, regional planning, legal affairs, or other agency committee, which may issue the ruling or may refer it to the full agency at its next scheduled meeting.

(g) A declaratory ruling shall be subject to review pursuant to article 78 of the Civil Practice Law and Rules.

Section 588.3. Judicial review of rules. Judicial review of these rules and regulations may be had pursuant to section 817 of the Adirondack Park Agency Act, if applicable, or pursuant to section 205 of the State Administrative Procedure Act, which requires the petitioner or plaintiff to first request that the agency pass the validity of the rule in question or to issue a declaratory ruling in respect to its applicability.

Section 588.4. Construction of rules. (a) These rules and regulations shall not be construed to extend or limit the jurisdiction of the agency as established by law.

(b) These rules and regulations shall be construed to secure the just, speedy and inexpensive determination of every matter before or within the jurisdiction of the agency.

(c) The language of these rules and regulations shall be construed according to its most obvious and commonly used sense. Where required, construction shall accord with the provisions of "Construction and Interpretation," Chapter 6, Statutes, book 1 of McKinney's Consolidated Laws of New York.

Section 588.5. Designation of employees or officers. Wherever these rules and regulations provide that a particular agency employee or officer designated by title is to perform certain duties, the agency may by resolution designate other or additional employee(s) or officer(s) to perform the duties ascribed to the employee or officer designated.

Section 588.6. Suspension of rules. Upon an express finding that it is necessary for the preservation of the public health, safety, or general welfare, the agency may suspend all or a part of the requirements or provisions of these rules, either in a particular case, on application of a party or on its motion, or in a general class or classes of cases or instances, and may order proceedings in accordance with its own direction.

Section 588.7. Computation and extension of time. In computing any time period prescribed in these rules, the last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday as defined in section 24 of the General Construction Law, or a day upon which the agency is closed for business due to weather conditions or other emergency, in which event the last day shall be the next day which is not such a day.

(b) Upon written application of a party, and for good cause shown, the agency may extend any time period except those it is not authorized by law to extend.

(c) Whenever a party is required or permitted to perform an act within a prescribed period of time, such as service of a document upon a party, and the act is performed by mail, five days shall be added to the prescribed period.

Section 588.8. Effective date of these rules. These rules and regulations, except Part 578, shall take effect April 1, 1979. Part 578 shall take effect May 1, 1983, except that it shall apply to State agencies immediately.