STATE OF NEW YORK

5451

2017-2018 Regular Sessions

IN ASSEMBLY

February 9, 2017

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the executive law, in relation to preserving ecological integrity, wildlife and open space in the Adirondack park

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and statement of purpose. When enacted in nineteen hundred seventy-three, the Adirondack park land use and development plan represented an historic application of natural resource-based land use control. For over forty years, the plan has sought to insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of this cherished area.

Conservation science and land use planning techniques have advanced since the enactment of the plan. It is now recognized that the spatial pattern of development is fully, if not more, ecologically important as its overall density.

Subdivision of land into large residential lots, or rural sprawl, impairs ecosystem function, decreases biotic integrity, alters species behavior and composition, increases human-wildlife conflicts, fragments ownership, impairs cohesive land management, undermines the open space character of the park, and threatens its healthy timber industry.

The purpose of this act is to strengthen the land use and development plan and its administration by incorporating modern conservation design principles therein and to curtail rural sprawl.

§ 2. Section 802 of the executive law is amended by adding four new subdivisions 17-b, 18-a, 52-a and 63-a to read as follows:

17-b. "Conservation subdivision" means the subdivision of any tract of undeveloped or substantially undeveloped land into a residential subdivision of twenty-five or more lots, parcels or sites in low intensity

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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use areas, ten or more lots, parcels or sites in rural use areas, and five or more lots, parcels or sites in resource management areas which:

a. has been designed in accordance with an ecological preservation and forest stewardship plan prepared by qualified experts including, but not limited to experts in terrestrial and aquatic ecology, which is approved by the agency; and

b. provides for the preservation by a deed restriction, restrictive covenant, conservation easement pursuant to title three of article forty-nine of the environmental conservation law or other permanent legal means of at least seventy-five percent of the tract in contiguous and intact open space not part of any residential lot, parcel or site in accordance with the plan.

18-a. "Ecological preservation and forest stewardship plan" means a detailed plan for the design and development of a conservation subdivision which:

a. has been prepared by qualified experts in the subject areas covered by the plan;

b. is based on a thorough, specific and detailed study of the project site, performed prior to the preparation of site plans or other design of the project; and

c. determines the size, configuration and allowable uses for conservation, open space recreation and, if desired, forestry, of the area of the project site to be preserved by permanent legal means, taking into account, but not limited to, the following:

(1) the terrestrial and aquatic wildlife inhabiting, breeding on, migrating across, traversing or otherwise using the project site;

(2) corridors, including ridgelines and riparian zones, providing means by which wildlife may travel to adjacent or contiguous areas providing habitat, breeding or spawning areas, or meeting other needs;

(3) vegetative buffers on the shorelines of lakes, ponds, rivers and streams, and protection and preservation of vernal pools and riparian areas;

(4) the need to preserve large intact forest tracts for protection of wildlife habitat and biodiversity, especially for protection of species native to or otherwise requiring such tracts: for watershed preservation, and for mitigation of climate change, while at the same time allowing sustainable forestry if desired;

(5) the need to minimize the creation of edges between forested tracts and roads and other open areas;

(6) the need to minimize roads and driveways;

(7) the need to preserve other valuable ecological resources of the site, including but not limited to wetlands, floodplains, natural drainage ways, snags and fallen woody debris, and steep areas; and

(8) subdivision and spatial design which minimizes the area of the project subject to ecological disturbance through maximum overlap of the ecological impact zones of individual dwellings.

52-a. "Project site" means the land included in a project upon which the applicable overall intensity guideline is calculated pursuant to paragraph c of subdivision ten of section eight hundred nine of this article.

63-a. "Substantially undeveloped land" means land in agricultural or forestry use, group camps, campgrounds and land used for similar purposes.

§ 3. Paragraph a of subdivision 1 of section 805 of the executive law, as amended by chapter 348 of the laws of 1973, is amended to read as follows:

a. The Adirondack park land use and development plan is hereby adopted and shall hereafter [~~serve to guide~~] **determine** land use planning and development throughout the entire area of the Adirondack park, except for those lands owned by the state.

§ 4. Subparagraph 1 of paragraph e of subdivision 3 of section 805 of the executive law, as amended by chapter 348 of the laws of 1973, is amended to read as follows:

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

§ 5. Subparagraph 2 of paragraph f of subdivision 3 of section 805 of the executive law, as amended by chapter 348 of the laws of 1973, is amended to read as follows:

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

Residential [~~development~~] **subdivision of ten or more lots, parcels or sites,** and related development and uses [~~should~~] **shall** occur [~~on large lots or~~] in relatively small clusters on carefully selected [~~and well designed~~] sites **determined through the application of conservation subdivision design**. This will provide for **both ecological preservation and** further diversity in residential and related development opportunities in the park.

§ 6. Subparagraph 2 of paragraph g of subdivision 3 of section 805 of the executive law, as amended by chapter 348 of the laws of 1973, is amended to read as follows:

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

Finally, resource management areas will allow for residential [~~development on substantial acreages or~~] **subdivision of five or more lots, parcels or sites only** in small clusters on carefully selected [~~and well designed~~] sites **determined through the application of conservation design principles**.

§ 7. Paragraph b of subdivision 10 of section 809 of the executive law, as added by chapter 348 of the laws of 1973, is amended to read as follows:

b. The project would be compatible with the character description and purposes, policies and objectives of the land use area wherein it is proposed to be located. If the project is on the classification of compatible uses list for the land use area involved, there shall be a presumption of compatibility with the character description, purposes, policies and objectives of such land use area. **Provided, however, if the project is a residential subdivision of (1) twenty-five or more lots, parcels or sites in a low intensity use area, (2) ten or more lots, parcels or sites in a rural use area, or (3) five or more lots, parcels or sites in a resource management area, it may not be presumed compatible unless it is a conservation subdivision.** If the project is a class B regional project because, as provided in section eight hundred ten, it is not listed as either a primary use or a secondary use on the classification of compatible uses list for the land use area wherein it is proposed to be located, there shall be a presumption that such project would not be compatible with the character description, purposes, policies and objectives of such land use area and the burden shall be on the project sponsor to demonstrate such compatibility to the satisfaction of the agency.

§ 8. Subdivision 14 of section 809 of the executive law is amended by adding a new paragraph d to read as follows:

d. Procedures governing the design of conservation subdivisions, defined in subdivision seventeen-b of section eight hundred two of this article, and the preparation of ecological preservation and forest stewardship plans, defined in subdivision eighteen-a of section eight hundred two of this article, including but not limited to: (1) the types of expertise to be required of those preparing such plans; (2) the scope, content and level of detail to be required in the project site study upon which such plans are to be based; (3) the uses to be allowed in the open space portion of such subdivisions, and (4) if sustainable forestry is to be practiced in such open space portion, the scope, content and level of detail to be required in a forest management plan.

§ 9. Subparagraph 3 of paragraph d of subdivision 1 of section 810 of the executive law, as added by chapter 348 of the laws of 1973, is amended to read as follows:

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

§ 10. Subparagraph 3 of paragraph c of subdivision 1 of section 810 of the executive law, as added by chapter 348 of the laws of 1973, is amended to read as follows:

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

§ 11. Subparagraph 1 of paragraph b and subparagraph 1 of paragraph c of subdivision 2 of section 810 of the executive law, as added by chapter 348 of the laws of 1973, are amended to read as follows:

(1) Subdivisions of land (and all land uses and development related thereto) involving ten or more but less than [~~thirty-five~~] **twenty-five** lots, parcels or sites, other than subdivisions of land involving mobile homes.

(1) Subdivisions of land (and all land uses and development related thereto) involving five or more but less than [~~twenty~~] ten lots, parcels or sites, other than subdivisions of land involving mobile homes.

§ 12. Nothing in this act shall be deemed to prevent the Adirondack park agency from requiring any subdivision requiring a permit from it pursuant to section 810 of the executive law, but not meeting the definition of conservation subdivision, as defined in subdivision 17-b of section 802 of the executive law, to be designed and developed in accordance with an ecological preservation and forest stewardship plan, as defined in subdivision 18-a of section 802 of the executive law, and to provide for the preservation of a portion of the tract in contiguous and intact open space by a conservation easement pursuant to title 3 of article 49 of the environmental conservation law or other permanent legal means of protection.

§ 13. The Adirondack park agency shall, within 180 days of the effective date of this act, promulgate the rules and regulations referred to in paragraph d of subdivision 14 of section 809 of the executive law, as added by section eight of this act.

§ 14. Nothing in this act shall be construed to authorize the Adirondack park agency to require that any interest in land comprising part of a conservation subdivision be conveyed to a public body or any other legal entity.

§ 15. This act shall take effect on the one hundred eightieth day after it shall have become a law, and shall apply to applications received by the Adirondack park agency after that date, and to any residential subdivisions which have received a permit from such agency but which are not then "in existence" as defined in subdivision 25 of section 802 of the executive law.