STATE OF NEW YORK

8123--A

2019-2020 Regular Sessions

IN ASSEMBLY

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Introduced by M. of A. ENGLEBRIGHT, D'URSO, L. ROSENTHAL, ORTIZ, THIELE -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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 and economic opportunity for the park's residents and communities. 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 and the essential interdependence of economic and community needs through balanced apportionment of land use within the park.

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, as 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 agricultural and forestry working landscapes.

Conservation development is an approach to the design, construction and stewardship of development that achieves functional protection of

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

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natural resources, while providing social and economic benefits to human communities. It requires a process that ensures thorough analysis of ecological systems and environmental conditions before the developer actually designs the project. This saves the preparation of detailed subdivision plans, the most expensive part of design, to the end of the planning process. The process provides for smaller initial costs and allows for agency and public input before design funds are exhausted and ensures that the developer is not committed to a design that is not supported by ecological and environmental conditions.

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. It is acknowledged that each property is unique and that subdivision should be pursued in accordance with ecologically-sound principles including appropriate dedication and preservation of substantial open space areas in furtherance of environmental protection goals and working landscapes.

§ 2. Section 802 of the executive law is amended by adding six new subdivisions 17-b, 18-a, 18-b, 18-c, 43-a and 52-a to read as follows:

17-b. "Conservation subdivision" means the division of any tract of land into a residential subdivision of twenty-five or more lots, parcels or sites in low intensity 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. A subdivision involving solely lawfully existing principal buildings and associated infrastructure shall not be deemed a conservation subdivision. A subdivision created pursuant to paragraph c of subdivision one of section eight hundred eleven of this article is not a conservation subdivision.

18-a. "Development envelope" means the area of land within a residential lot, parcel or site within which all principal buildings, guest cottages, roads, driveways, and other structures and infrastructure must be located. Roads and trails associated with forestry, agriculture and open space recreation are allowed outside of the development envelope pursuant to the open space management and stewardship plan.

18-b. "Ecological impact zone" means that area of a project site extending six hundred sixty feet beyond the development envelope for each development site and any contiguous developed sites.

18-c. "Ecological site analysis" means an analysis of a project site that identifies important ecological systems, natural resources and habitat on and adjacent to the project site and identifies areas deserving protection and potential development areas for house lots, roads and associated infrastructure.

43-a. "Open space management and stewardship plan" means a plan for the ownership, configuration, permanent legal protection, forestry, agriculture and recreational open space uses, and management of designated open spaces. Open space management and stewardship plan also means a plan for the ownership, configuration and management of open spaces providing permanent legal protection of open spaces while allowing for forestry, agriculture and recreation open spaces.

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.

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

§ 4. 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~~] **Residential** development [~~on substantial acreages or~~] **and related development and uses should occur** in **relatively** small clusters on carefully selected and well designed sites.

§ 5. Section 809 of the executive law is amended by adding a new subdivision 11-a to read as follows:

11-a. All conservation subdivisions shall be reviewed pursuant to this subdivision. a. (1) The applicant shall submit to the agency:

(i) an initial ecological site analysis reviewing the natural resources of the project site and adjacent lands, utilizing current local and regional data and research conclusions, including identification and mapping of important ecological areas;

(ii) preliminary on-site analysis to identify important ecological areas and other site features relevant to the development considerations; and

(iii) a concept plan for the project, based on the data specified in clauses (i) and (ii) of this subparagraph that minimizes the area of the project subject to ecological disturbance, protects important ecological areas, promotes clustering such that ecological impact zones are overlapped as much as possible, takes into account existing open space and ecological impact zones on adjacent properties and identifies areas for development that have appropriate soils and slopes.

(2) The agency shall undertake an initial site visit to access natural resources and site features.

(3) The agency shall provide for a public comment period and hold a public meeting on public notice, regarding the initial data and concept plan.

(4) The agency shall specify to the applicant any additional study of the project site necessary to complete a final ecological site analysis and specify any other information requirements relevant to the development considerations. The ecological site analysis, as detailed in paragraph b of this subdivision, shall be submitted to the agency for approval.

(5) The applicant shall thereafter prepare the subdivision plan, which shall include parcel boundaries and development envelopes, location of open space and the draft open space management and stewardship plan. All plans shall be based upon the approved ecological site analysis and other site resources relevant to the development considerations. Upon submission of these plans, as accepted by the agency, the application review process governed by subdivisions two, three, four, five and six of this section shall commence. The agency may request additional information regarding the proposed subdivision plan and the open space management and stewardship plan and may require revisions to the plans before deeming the application complete.

(6) No conservation subdivision shall be approved unless (i) the findings required by subdivision ten of this section are made, and (ii) ownership, configuration, protection, compatible uses and management of the designated open space is based on the ecological site analysis, and is included in the open space management and stewardship plan and incorporated in permit conditions.

(7) The agency may provide by regulation for a variance from specific conservation development requirements if it determines that such requirements would cause an undue economic hardship and are not required to protect the ecological resources of the project site.

(8) The agency shall have a standing to enforce by appropriate civil action any permit condition, deed restriction, covenant, easement or other permanent means of protecting open space.

b. The ecological site analysis shall address the following considerations:

(1) identification of important ecological and sensitive areas of the project site including, but not limited to, habitat, wetlands, floodplains, natural drainage ways and steep slope areas;

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

(3) 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;

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

(5) 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 allowing forestry, agriculture and recreation uses;

(6) minimizing the creation of man-made and hardened edges between forested tracts, roads and other open areas and the length of roads and driveways;

(7) the size, configuration and proposed uses of the project site to be preserved by permanent legal means, while allowing for recreation, forestry and agriculture uses on dedicated open spaces.

c. Designated open space shall be, to the greatest extent possible:

(1) located outside the boundaries of all lots, parcels or sites for the development and designed to protect the ecology and open space of the park; and

(2) configured applying these design factors:

(i) include the important ecological areas of the property, based on the approved ecological site analysis;

(ii) provide connectivity to any neighboring areas of open space, other protected areas, working forests and agriculture;

(iii) not be divided by subdivision roads, driveways or other permanent man-made fragmenting features;

(iv) create one large, contiguous area rather than many small areas. If large areas are not feasible, than a few smaller, important ecological areas of the site may be protected if connected by corridors comprised of natural landcover with widths of no less than three hundred thirty feet; and

(v) minimize edge-to-area ratio of the open space and make it as uniform as possible.

d. (1) The minimum open space required in a conservation subdivision is:

(i) in low intensity use areas, forty percent of the project site. If the open space design reaches sixty percent, there may be allowed a ten percent density bonus. If it reaches seventy percent, there may be allowed a twenty percent density bonus.

(ii) in rural use areas, fifty-five percent of the project site. If the open space design reaches seventy percent, there may be allowed a ten percent density bonus. If it reaches eighty percent, there may be allowed a twenty percent density bonus.

(iii) in resource management areas, seventy-five percent of the project site. If the open space design reaches eighty-five percent, there may be allowed a ten percent density bonus. If it reaches ninety percent, there may be allowed a twenty percent density bonus.

(2) Utilization of the calculated density bonus is not guaranteed and is subject to agency review. The additional principal buildings may be situated on the project site, or within the same directly contiguous land use area, pursuant to paragraph c of subdivision ten of this section. The additional principal buildings may be allowed for use in the same, but non-contiguous land use area, if within the same town. This density bonus cannot be utilized in any manner except by agency permit and only if all the required findings of subdivision ten of this section are made for the placement of the buildings and other infrastructure.

§ 6. Section 809 of the executive law is amended by adding three new subdivisions 16, 17 and 18 to read as follows:

16. Nothing in this section shall be deemed to prevent the agency from requiring any jurisdictional project pursuant to section eight hundred ten of this article to be designed in accordance with an ecological site analysis and developed pursuant to an ecological preservation and stewardship plan and to provide for the preservation of a portion of the project site in open space by deed restriction, easement or other legal means.

17. In determining whether a conservation subdivision permit is required pursuant to this article, the agency shall not consider any lots lawfully created prior to the effective date of this subdivision. Nothing in this subdivision shall affect the ability of the agency, by permit or by any extension thereof, to determine a period of time by which a permitted subdivision shall be deemed "in existence" as defined in subdivision twenty-five of section eight hundred two of this article.

18. Nothing in this section shall be construed to authorize the 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, unless the applicant so proposes and the other legal entity agrees.

§ 7. 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~~] ten or more residential lots, parcels or sites or residential units, whether designed for permanent, seasonal or transient use.

§ 8. 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.

§ 9. 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~~] five 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.

§ 10. 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.

§ 11. This act shall take effect on the one hundred eightieth day after it shall have become a law.