

# STATE OF NEW YORK

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1145

2021-2022 Regular Sessions

## IN SENATE

January 7, 2021

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Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Legislative findings and statement of purpose. When enacted  
2 in nineteen hundred seventy-three, the Adirondack park land use and  
3 development plan represented an historic application of natural  
4 resource-based land use control and economic opportunity for the park's  
5 residents and communities. For over forty years, the plan has sought to  
6 insure optimum overall conservation, protection, preservation, develop-  
7 ment and use of the unique scenic, aesthetic, wildlife, recreational,  
8 open space, historic, ecological and natural resources of this cherished  
9 area and the essential interdependence of economic and community needs  
10 through balanced apportionment of land use within the park.

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

15 Subdivision of land into large residential lots, or rural sprawl,  
16 impairs ecosystem function, decreases biotic integrity, alters species  
17 behavior and composition, increases human-wildlife conflicts, fragments  
18 ownership, impairs cohesive land management, undermines the open space  
19 character of the park, and threatens its agricultural and forestry work-  
20 ing landscapes.

21 Conservation development is an approach to the design, construction  
22 and stewardship of development that achieves functional protection of  
23 natural resources, while providing social and economic benefits to human  
24 communities. It requires a process that ensures thorough analysis of  
25 ecological systems and environmental conditions before the developer

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

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1 actually designs the project. This saves the preparation of detailed  
2 subdivision plans, the most expensive part of design, to the end of the  
3 planning process. The process provides for smaller initial costs and  
4 allows for agency and public input before design funds are exhausted and  
5 ensures that the developer is not committed to a design that is not  
6 supported by ecological and environmental conditions.

7 The purpose of this act is to strengthen the land use and development  
8 plan and its administration by incorporating modern conservation design  
9 principles therein and to curtail rural sprawl. It is acknowledged that  
10 each property is unique and that subdivision should be pursued in  
11 accordance with ecologically-sound principles including appropriate  
12 dedication and preservation of substantial open space areas in further-  
13 ance of environmental protection goals and working landscapes.

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

16 17-b. "Conservation subdivision" means the division of any tract of  
17 land into a residential subdivision of twenty-five or more lots, parcels  
18 or sites in low intensity use areas, ten or more lots, parcels or sites  
19 in rural use areas, and five or more lots, parcels or sites in resource  
20 management areas. A subdivision involving solely lawfully existing prin-  
21 icipal buildings and associated infrastructure shall not be deemed a  
22 conservation subdivision. A subdivision created pursuant to paragraph c  
23 of subdivision one of section eight hundred eleven of this article is  
24 not a conservation subdivision.

25 18-a. "Development envelope" means the area of land within a residen-  
26 tial lot, parcel or site within which all principal buildings, guest  
27 cottages, roads, driveways, and other structures and infrastructure must  
28 be located. Roads and trails associated with forestry, agriculture and  
29 open space recreation are allowed outside of the development envelope  
30 pursuant to the open space management and stewardship plan.

31 18-b. "Ecological impact zone" means that area of a project site  
32 extending six hundred sixty feet beyond the development envelope for  
33 each development site and any contiguous developed sites.

34 18-c. "Ecological site analysis" means an analysis of a project site  
35 that identifies important ecological systems, natural resources and  
36 habitat on and adjacent to the project site and identifies areas deserv-  
37 ing protection and potential development areas for house lots, roads and  
38 associated infrastructure.

39 43-a. "Open space management and stewardship plan" means a plan for  
40 the ownership, configuration, permanent legal protection, forestry,  
41 agriculture and recreational open space uses, and management of desig-  
42 nated open spaces. Open space management and stewardship plan also  
43 means a plan for the ownership, configuration and management of open  
44 spaces providing permanent legal protection of open spaces while allow-  
45 ing for forestry, agriculture and recreation open spaces.

46 52-a. "Project site" means the land included in a project upon which  
47 the applicable overall intensity guideline is calculated pursuant to  
48 paragraph c of subdivision ten of section eight hundred nine of this  
49 article.

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

53 (2) Purposes, policies and objectives. The basic purpose and objective  
54 of rural use areas is to provide for and encourage those rural land uses  
55 that are consistent and compatible with the relatively low tolerance of  
56 the areas' natural resources and the preservation of the open spaces

1 that are essential and basic to the unique character of the park. Another  
2 objective of rural use areas is to prevent strip development along  
3 major travel corridors in order to enhance the aesthetic and economic  
4 benefit derived from a park atmosphere along these corridors.

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

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

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

20 ~~[Finally, resource management areas will allow for residential]~~ Resi-  
21 dential development ~~[on substantial acreages or]~~ and related development  
22 and uses should occur in relatively small clusters on carefully selected  
23 and well designed sites.

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

26 11-a. All conservation subdivisions shall be reviewed pursuant to this  
27 subdivision. a. (1) The applicant shall submit to the agency:

28 (i) an initial ecological site analysis reviewing the natural  
29 resources of the project site and adjacent lands, utilizing current  
30 local and regional data and research conclusions, including identifica-  
31 tion and mapping of important ecological areas;

32 (ii) preliminary on-site analysis to identify important ecological  
33 areas and other site features relevant to the development consider-  
34 ations; and

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

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

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

47 (4) The agency shall specify to the applicant any additional study of  
48 the project site necessary to complete a final ecological site analysis  
49 and specify any other information requirements relevant to the develop-  
50 ment considerations. The ecological site analysis, as detailed in para-  
51 graph b of this subdivision, shall be submitted to the agency for  
52 approval.

53 (5) The applicant shall thereafter prepare the subdivision plan, which  
54 shall include parcel boundaries and development envelopes, location of  
55 open space and the draft open space management and stewardship plan. All  
56 plans shall be based upon the approved ecological site analysis and

1 other site resources relevant to the development considerations. Upon  
2 submission of these plans, as accepted by the agency, the application  
3 review process governed by subdivisions two, three, four, five and six  
4 of this section shall commence. The agency may request additional infor-  
5 mation regarding the proposed subdivision plan and the open space  
6 management and stewardship plan and may require revisions to the plans  
7 before deeming the application complete.

8 (6) No conservation subdivision shall be approved unless (i) the find-  
9 ings required by subdivision ten of this section are made, and (ii)  
10 ownership, configuration, protection, compatible uses and management of  
11 the designated open space is based on the ecological site analysis, and  
12 is included in the open space management and stewardship plan and incor-  
13 porated in permit conditions.

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

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

21 b. The ecological site analysis shall address the following consider-  
22 ations:

23 (1) identification of important ecological and sensitive areas of the  
24 project site including, but not limited to, habitat, wetlands, flood-  
25 plains, natural drainage ways and steep slope areas;

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

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

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

34 (5) large intact forest tracts for protection of wildlife habitat and  
35 biodiversity, especially for protection of species native to or other-  
36 wise requiring such tracts; for watershed preservation and for miti-  
37 gation of climate change, while allowing forestry, agriculture and  
38 recreation uses;

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

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

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

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

49 (2) configured applying these design factors:

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

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

54 (iii) not be divided by subdivision roads, driveways or other perma-  
55 nent 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:

1 (3) All land uses and development and all subdivisions of land involv-  
2 ing [~~twenty~~] ten or more residential lots, parcels or sites or residen-  
3 tial units, whether designed for permanent, seasonal or transient use.

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

7 (3) All land uses and development and all subdivisions of land involv-  
8 ing [~~thirty-five~~] twenty-five or more residential lots, parcels or sites  
9 or residential units, whether designed for permanent, seasonal or tran-  
10 sient use.

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

14 (1) Subdivisions of land (and all land uses and development related  
15 thereto) involving [~~ten~~] five or more but less than [~~thirty-five~~] twen-  
16 ty-five lots, parcels or sites, other than subdivisions of land involv-  
17 ing mobile homes.

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

21 § 10. Nothing in this act shall be construed to authorize the Adiron-  
22 dack park agency to require that any interest in land comprising part of  
23 a conservation subdivision be conveyed to a public body or any other  
24 legal entity.

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