

STATE OF NEW YORK

1145

2021-2022 Regular Sessions

IN SENATE

January 7, 2021

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 cipal 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;

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

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

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

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

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

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

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

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

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

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

48 18. Nothing in this section shall be construed to authorize the agency
49 to require that any interest in land comprising part of a conservation
50 subdivision be conveyed to a public body or any other legal entity,
51 unless the applicant so proposes and the other legal entity agrees.

52 § 7. Subparagraph 3 of paragraph d of subdivision 1 of section 810 of
53 the executive law, as added by chapter 348 of the laws of 1973, is
54 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.