§ 809. Agency administration and enforcement of the land use and development plan. 1. The agency shall have jurisdiction to review and approve all class A regional projects, including those proposed to be located in a land use area governed by an approved local land use program, and all class B regional projects in any land use area not governed by an approved and validly enacted or adopted local land use program.

All projects shall be reviewed and acted upon as expeditiously as practical. In particular, to facilitate the review of minor project applications, the agency shall develop simplified application forms to deal with such projects, and will comply with the special procedures for such projects set forth in this section. For the purposes of this section, "minor project" shall mean any individual single family dwelling or mobile home or any subdivision involving two lots, parcels or sites.

2. a. Any person proposing to undertake a class A regional project in any land use area, or a class B regional project in any land use area not governed by an approved and validly enacted or adopted local land use program, shall make application to the agency for approval of such project and receive an agency permit therefor prior to undertaking the project. Such application shall be filed in such form and manner as the agency may prescribe. The agency shall, upon receipt of such application, provide notice of receipt of the application and a brief description of the project to the Adirondack park local government review board, the chairman of the county planning board, if any, of the county wherein the project is proposed to be located, to 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 such project is proposed to be located. The agency shall, upon request, furnish or make a copy of the application available to the review board or to the officials listed in this paragraph.

b. On or before fifteen calendar days after the receipt of such application the agency shall notify the project sponsor by certified mail whether or not the application is complete. For the purposes of

this section, a "complete application" shall mean an application for a permit which is in an approved form and is determined by the agency to be complete for the purpose of commencing review of the application but which may need to be supplemented during the course of review as to matters contained in the application in order to enable the agency to make the findings and determinations required by this section. If the agency fails to mail such notice within such fifteen-day period, the application shall be deemed complete. If the agency determines the application is not complete, the notice shall include a concise statement of the respects in which the application is incomplete. The submission by the project sponsor of the requested additional information shall commence a new fifteen calendar day period for agency review of the additional information for the purposes of determining completeness. If the agency determines the application is complete, the notice shall so state.

A notice of application completion shall not be required in the case of applications for minor projects which the agency determines to be complete when filed. Such applications shall be deemed complete for the purposes of this section upon the date of receipt.

c. The project sponsor shall not undertake the project for a period of ninety days, or in the case of a minor project, forty-five days, following the date of such notice of application completion, or the date the application is deemed complete pursuant to the provisions of this section, unless a permit is issued prior to the expiration of such periods.

d. Immediately upon determining that an application is complete, the agency shall, except in relation to minor projects, cause a notice of application to be published in the next available environmental notice bulletin published by the department of environmental conservation pursuant to section 3-0306 of the environmental conservation law, which publication shall be not later than ten calendar days after the date of such notice. The time period for public comment on a permit application shall be stated in the notice of application. The agency shall at the same time mail a copy of the notice of application completion to the

Adirondack park local government review board and to the persons named in paragraph a of subdivision two of this section, and invite their comments.

3. a. Within the time periods specified in paragraphs b and c of this subdivision, the agency shall make a decision on a permit application by notifying the project sponsor by certified mail of its decision to approve the project, approve the project subject to conditions or disapprove the project.

b. In the case of an application for a permit for which no public hearing has been held, the agency decision shall be mailed on or before ninety calendar days or, in the case of a minor project, forty-five calendar days, after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section.

c. In the case of an application for a permit for which a public hearing has been held, the agency decision shall be mailed on or before sixty calendar days after receipt by the agency of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.

d. If the agency determines to hold a public hearing on an application for a permit, the agency shall notify the project sponsor of its determination by certified mail on or before sixty calendar days or, in the case of a minor project, forty-five calendar days after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section. The determination of whether or not to hold a public hearing on an application shall be based on whether the agency's evaluation or comments of the review board, local officials or the public on a project raise substantive and significant issues relating to any findings or determinations the agency is required to make pursuant to this section, including the reasonable likelihood that the project will be disapproved or can be approved only with major modifications because the project as proposed may not meet statutory or regulatory criteria or standards. The

agency shall also consider the general level of public interest in a project. No project may be disapproved without a public hearing first being held thereon.

e. If the agency has notified the project sponsor of its determination to hold a public hearing, the sponsor shall not undertake the project during the time period specified in paragraph c of this subdivision. The notice of determination to hold a public hearing shall state that the project sponsor has the opportunity within fifteen days to withdraw his application or submit a new application. A public hearing shall commence on or before ninety calendar days, or in the case of a minor project, seventy-five days, after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section. In addition to notice of such hearing being mailed to the project sponsor, such notice shall also be given by publication at least once in the environmental notice bulletin and in a newspaper having general circulation in each local government wherein the project is proposed to be located, by conspicuous posting of the land involved, and by individual notice served by certified mail upon each owner of record of the land involved, and by mail upon: the Adirondack park local government review board, the persons named in paragraph a of subdivision two of this section, any adjoining landowner, to the extent reasonably discernible from the latest completed tax assessment roll, and the clerk of any local government within five hundred feet of the land involved. Public hearings held pursuant to this section shall be consolidated or held jointly with other state or local agencies whenever practicable.

4. The agency shall make provision in its rules and regulations adopted pursuant to subdivision fourteen of this section for the Adirondack park local government review board and county and regional planning agencies receiving notice under subdivision two to have opportunity to review and render advisory comments on the project under review by the agency.

5. Notice of an agency decision shall be given by mail to those entitled to individual notice of application under subdivision two and

notice of hearing under subdivision three, if a hearing is held. If the decision is approval, the agency shall within ten days of issuance of its notification of approval grant a permit to the project sponsor to undertake the project. If the decision is approval subject to conditions, the agency shall grant a permit only upon satisfactory fulfillment of such conditions. Approval subject to conditions shall expire six months from the date of such approval, or such longer time as is specified in the notification or approval, unless a permit has been granted. An agency permit shall serve as authorization for the project sponsor to undertake the project in accordance with the terms and conditions thereof.

6. a. If the agency fails to mail a decision on an application for a permit within the time periods specified in paragraphs b and c of subdivision three of this section, the project sponsor may cause notice of such failure to be made to the agency by means of certified mail, return receipt requested, addressed to the agency at its headquarters office. If, within five working days after the receipt of such notice the agency fails to mail a decision, the application shall be deemed approved and a permit deemed granted subject to any standard terms or conditions applicable to such a permit and the agency shall provide the project sponsor with a written certification to this effect.

b. Any time period specified in this section may be waived and extended for good cause by written request of the project sponsor and consent of the agency, or by written request of the agency and consent of the project sponsor.

c. At any time during the review of an application for a permit or a request by a permit holder for the renewal, reissuance, or modification of an existing permit pursuant to subdivision eight of this section, the agency may request additional information from the project sponsor or permit holder with regard to any matter contained in the application or request when such additional information is necessary for the agency to make any findings or determinations required by law. Such a request shall not extend any time period for agency action contained in this section. Failure by the project sponsor or permit holder to provide such

information may be grounds for denial by the agency of the application or request.

7. a. A permit or certificate issued by the agency pursuant to subdivision five or six of this section shall expire within sixty days from the date thereof unless within such sixty-day period such permit or certificate shall have been duly recorded in the name of the landowner in the office of the clerk of the county wherein the project is proposed to be located. Where a permit involves action in concert by two or more landowners as described by paragraph c of subdivision ten of this section, the permit shall be recorded in the name of each landowner.

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 such permit. Such right shall extend to and such terms and conditions shall be binding upon all subsequent grantees of the land area subject to the permit, except those conditions which by their nature or wording are to be performed by the original project sponsor and except as may be otherwise provided by the terms of such permit.

c. If a project for which a permit has been granted, or a certificate issued, is not in existence within two years after the recording of such permit or certificate, unless the terms of the permit provides for a longer period of time, the project may not thereafter be undertaken or continued unless an application for a new permit therefor has been applied for and granted in the same manner and subject to all conditions governing the application for and granting of a permit as provided in this section. In determining whether to provide a longer period of time by when the project must be in existence, the agency shall give due consideration to the potential of the land related to the project to remain suitable for the use allowed by the permit and to the economic considerations attending the project.

8. a. Upon the provision of notice stating the grounds for its action and giving an opportunity for hearing to the permit holder, the agency may modify, suspend or revoke a permit.

b. A permit holder may make written request to the agency for the renewal, reissuance, or modification of an existing permit. Such a request shall be accompanied by sufficient information supporting the request for the agency action sought.

(1) In the case of a request which does not involve a material change in permit conditions, the applicable law, environmental conditions or technology since the date of issuance of the existing permit, the agency shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder of its decision on the request. If the decision is to deny the request, the permit holder shall be afforded an opportunity for hearing and notice of such decision shall be given by the agency in the next available issue of the environmental notice bulletin.

(2) In the case of a request which may involve a material change as described in subparagraph one of this paragraph, the agency shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder that the request shall be treated as an application for a new permit.

If pursuant to subparagraph one or two of this paragraph, the agency fails to mail a written determination to the permit holder within such fifteen calendar day period, the provisions of subdivision six of this section shall apply.

9. The agency shall not approve any class A regional project proposed to be located in a land use area governed by an approved local land use program, or grant a permit therefor, unless it first determines that such project meets all of the pertinent requirements and conditions of such approved local land use program and that the project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, as to the impact of the project upon such resources of the park, the agency

shall consider those pertinent factors contained in the development considerations and provided for in such approved local land use program. The agency shall, in connection with its review of a project under this subdivision, make provision in its rules and regulations adopted under subdivision fourteen for the early involvement of the local government wherein such project is proposed to be located in the review of such project on an informal basis. Such local government shall have standing as a party in any public hearing on such project held by the agency.

10. The agency shall not approve any project proposed to be located in any land use area not governed by an approved local land use program, or grant a permit therefor, unless it first determines that such project meets the following criteria:

a. The project would be consistent with the land use and development plan.

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. 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.

c. The project would be consistent with the overall intensity guideline for the land use area involved. A landowner shall not be allowed to construct, either directly or as a result of a proposed subdivision, more principal buildings on the land included within the project than the overall intensity guideline for the given land use area

in which the project is located. In determining the land area upon which the intensity guideline is calculated and which is included within a project, the landowner shall only include land under his ownership and may include all adjacent land which he owns within that land use area irrespective of such dividing lines as lot lines, roads, rights of way, or streams and, in the absence of local land use programs governing the intensity of land use and development, irrespective of local government boundaries. Principal buildings in existence within the area included within a project, as such area is defined by the landowner, shall be counted in applying the intensity guidelines. As between two or more separate landowners in a given land use area the principal buildings on one landowner's property shall not be counted in applying the intensity guidelines to another landowner's project, except that two or more landowners whose lands are directly contiguous and located in the same general tax district or special levy or assessment district may, when acting, in concert in submitting a project, aggregate such lands for purposes of applying the intensity guidelines to their lands thus aggregated. The area upon which the intensity guideline is calculated shall not include (a) bodies of water, such as lakes and ponds, (b) any land in the same ownership that is directly related to any principal building in existence on August first, nineteen hundred seventy-three, which land is not included in the project, and (c), in the case of any principal building constructed after August first, nineteen hundred seventy-three, any land in the same or any other ownership that was included within the area of any previous project in order to comply with the overall intensity guideline.

d. The project would comply with the shoreline restrictions if applicable. The agency may require a greater setback of any on-site sewage drainage field or seepage pit than required under the shoreline restrictions if it determines that soils or other pertinent conditions require such greater setback to reasonably protect the water quality of the water body involved.

e. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park or upon the ability of the public to

provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. In making this determination, as to the impact of the project upon such resources of the park, the agency shall consider those factors contained in the development considerations of the plan which are pertinent to the project under review.

11. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of the plan or the shoreline restrictions, the agency shall have authority in connection with a project under its review to vary or modify, after public hearing thereon, the application of any of such provisions or restrictions relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the provisions or restrictions shall be observed, public safety and welfare secured and substantial justice done.

12. The agency may conduct such investigations, examinations tests and site evaluations as it deems necessary to verify information contained in an application for a development permit, and the project sponsor, or owner of the land upon which the project is proposed, shall grant the agency or its agents permission to enter upon his land for these purposes.

13. The agency shall have authority to impose such requirements and conditions with its granting of a permit as are allowable within the proper exercise of the police power. The agency shall have specific authority in connection with its project review jurisdiction: a. To impose reasonable conditions and requirements, including the posting of performance bonds in favor of the local government as obligee, to ensure that any project for which a permit is granted will be adequately supported by basic services and improvements made necessary by the project. The cost of any such services or improvements may be imposed by requiring that the project sponsor provide the service or improvement or reserve land, or any interest therein, or contribute money in lieu thereof to the local government wherein the project is proposed to be

located if such local government consents thereto. In the exercise of the authority contained in this provision, the agency shall consult with the affected municipalities and give due consideration to their views.

b. To impose reasonable conditions and requirements to ensure that a project for which a permit is granted by the agency, when undertaken or continued, will be completed in accordance with the terms and conditions of the permit, and that the project sponsor furnish appropriate guarantees of completion or otherwise demonstrate financial capacity to complete the project or any material part thereof and furnish appropriate guarantees or otherwise demonstrate that the project will be managed and maintained once completed in accordance with the terms of the permit.

c. To impose reasonable conditions and requirements to ensure that upon approval of a project the applicable overall intensity guideline for the land use area involved will be respected. Such requirement may include the restriction of land against further development of principal buildings, whether by deed restriction, restrictive covenant or other similar appropriate means.

d. To allow, upon request of a project sponsor, projects to be reviewed conceptually, and thereafter or simultaneously therewith to be divided into and reviewed by sections, and to grant or deny permits for such sections. Conceptual determinations may be made, and sectional permits may be granted subject to the provision of those requirements and conditions for improvements and services for, and for completion of the total project as the agency deems reasonable and necessary. Conceptual review shall focus upon the existing environmental setting and the likely impacts which would result from the project, including all proposed phases or segments thereof, but shall not result in a binding approval or disapproval. The agency shall in rules and regulations establish criteria, guidelines, and procedures for the conceptual and sectional review of proposed projects. Except to the extent, and only for such period of time as otherwise specifically stated in the agency's decision upon an application for a sectional permit, the granting of any sectional permit shall not constitute a

finding, or be binding upon the agency, with respect to any portion of the total project not included in the section for which the permit is granted.

e. To issue a general permit for any class of projects concerning which the agency determines it may make the requisite statutory findings on a general basis.

14. The agency may, after public hearing, adopt, and have authority to amend or repeal, rules and regulations, consistent with the provisions of this section, to govern its project review procedures and to provide further guidance to potential project sponsors through further definition of the development considerations as they would apply to specific classes of projects in specific physical and biological conditions. Such rules and regulations may include but not be limited to:

a. Procedures prior to formal application to the agency for a permit for the informal discussion of preliminary plans for a proposed project and for preliminary approval or recommendations in regard to the project. Such informal discussion shall be optional with the project sponsor and no such preliminary approval or recommendations shall relieve the sponsor from complying with the provisions governing submission of a project for review and obtaining a permit therefor as provided in this section.

b. Procedures for cooperation and joint action, including joint hearings, insofar as practical, with other state agencies having review or regulatory jurisdiction which relates with that of the agency's so as to avoid unnecessary costs and burdens both to the state and to project sponsors and landowners.

c. Procedures to insure communication and discussion with any federal agency, including the Army Corps of engineers and the soil conservation service, in regard to any federal development proposals in the park.

Such agency rules and regulations, and any amendments thereof, shall

be adopted only after consultation with the Adirondack park local government review board and at least one public hearing thereon. Fifteen days notice of such hearing shall be made by publication at least once in a newspaper of general circulation in each county wholly or partially within the Adirondack park and in a least three metropolitan areas of the state, and by individual notice served by mail upon the clerk of each county and each local government of the park, and the chairman of all local government, county and regional planning agencies having jurisdiction in the park. Such notice shall contain a statement describing the subject matter of the proposed rules and regulations, and the time and place of the hearing and where further information thereon may be obtained.

15. This section shall not apply to any emergency project which is immediately necessary for the protection of life or property as defined by the agency by rule and regulation adopted under subdivision fourteen.