



Memorandum of Support

A.5451 “AN ACT to amend the executive law, in relation to preserving ecological integrity, wildlife and open space in the Adirondack park”

Protect the Adirondacks strongly supports A.5451 “AN ACT to amend the executive law, in relation to preserving ecological integrity, wildlife and open space in the Adirondack park”, and urges its timely passage. The bill would strengthen the Adirondack Park Land Use and Development Plan, originally adopted as part of the Adirondack Park Agency Act in 1973, by incorporating modern conservation design principles to curtail widely scattered exurban development, or “rural sprawl” in the Adirondack Park.

Background

When originally adopted, the Land Use and Development Plan represented an historic application of natural resource-based land use control. During forty years of administration of the Plan, conservation design principles have not been applied by the Adirondack Park Agency. The vast proportion of large subdivisions approved by the Agency have been typical grid layouts, resulting in undesirable consequences unbecoming the magnificent Adirondack Park which the People of the State have sought to preserve since 1892.

One of the more egregious decisions occurred in January 2012, when the Agency voted 10-1 to approve a 700-unit resort development on a 6,158 acre tract in the Town of Tupper Lake, Franklin County, including Mt. Morris. This decision allowed for the site fragmentation into 35 large lots and 45 small lots of 4,740 acres of land classified Resource Management by the Land Use and Development Plan. Those lands are where “the need to protect, manage and enhance forest, agricultural, recreational and open space resources is of paramount importance because of overriding natural resource and public considerations.” Identified development constraints include shallow soils, severe slopes, wetlands, critical wildlife habitats and habitats of rare and endangered plant and animal species. The Act also states that the “basic purposes and objectives” of Resource Management lands 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.” The Agency’s decision on this project certainly ignores these objectives.

Another damaging Agency decision occurred in January 2015, when, despite strong opposition by major Adirondack preservation groups and the science-based objections of the Wildlife Conservation Society, the Agency refused to apply conservation design principles to the subdivision of a former Boy Scout camp comprising over 1,100 acres of Resource Management lands in the Town of Bleecker, Fulton County. The site contained two waterbodies and adjoined Forest Preserve lands. The Agency approved its total fragmentation into 24 large lots.

In the past 40 years, 96 projects would have been subject to Conservation Subdivision Design with more than 1,800 lots (Low Intensity: 19 permits totaling 561 lots; Rural Use: 44 permits totaling 766 lots; Resource Management: 33 permits totaling 477 lots). These are the largest projects that have greatest environmental impacts. It’s important for the future of the Adirondack Park that the largest project are designed and approved with conservation design standards and practices.

Conservation science has advanced to the point of recognizing that the spatial pattern of development is fully as ecologically important as its density. Widely scattered exurban development, or “rural sprawl,” impairs ecosystem function, decreases biotic integrity, alters species behavior and composition, increases human-wildlife conflicts, undermines the open space character of the Park, and threatens its healthy timber industry.

Studies have shown that siting residential development so that ecological effect zones overlap results in a substantially lower total disturbance and concomitant benefit to the conservation of biodiversity. Conservation design yields more than ecological benefits. Confining development to a portion of a tract requires less infrastructure to be provided by the developer and to be maintained by the local jurisdiction. Lastly, conservation design helps preserve large forested tracts, insuring the continuation of a healthy Adirondack forest products industry.

Description of A 5451

The bill establishes comprehensive definitions of “conservation subdivision” and “ecological preservation and forest stewardship plan”, to enhance and improve project development and review.

A “conservation subdivision” is any tract of undeveloped or substantially undeveloped land

(a) to be developed into a residential subdivision of twenty-five or more lots, parcels or sites in Low Intensity Use areas, ten or more in Rural Use areas, and five or more in Resource Management areas,

(b) which has been designed in accordance with an “ecological preservation and forest stewardship plan” prepared by qualified experts and approved by the Agency, and

(c) which plan provides for the preservation of at least 75% of the tract in contiguous and intact open space by deed restriction, restrictive covenant or other similar legal means.

The ecological preservation and forest stewardship plan must address eight specific areas: terrestrial and aquatic wildlife; connectivity for wildlife passage; vegetative buffers for lakes, ponds, rivers and streams; protection and preservation of vernal pools; preservation of large intact forest tracts while allowing sustainable forestry, if desired; the need to minimize edges between forested tracts and open areas; the need to preserve other valuable ecological resources of the site, and spatial design so as to promote maximum overlap of the “ecological impact zones” of individual dwellings.

Further, the bill would strengthen the Act by providing that the Land Use and Development Plan “determine” land use planning and development on the private lands of the Park, rather than providing that the Plan simply “serve to guide” it. The amendment will nullify a 2014 ruling by the Appellate Division, Third Department (Protect the Adirondacks, Inc. v Adirondack Park Agency, 121 AD3d 631v den 24 NY3d 1065) that the Plan is a wholly advisory guide for the exercise of administrative discretion.

The Agency would be required to enact regulations with respect to the design of conservation subdivisions and preparation of ecological preservation and forest stewardship plans within 180 days of the effective date.

The list of “Class A regional projects” requiring an agency permit would be amended to reflect the new subdivision lot number thresholds in Low Intensity Use and Rural Use areas. The list of “Class B regional projects” requiring a permit either from the Agency or an Agency-approved local government land use program is amended to reflect the amendments as well.

The bill specifies that nothing in the act 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 other legal entity, ensuring that no ‘regulatory taking’ can occur.

Finally, the bill would take effect 180 days after it shall become a law, and apply to (a) applications received thereafter, and (b) any permitted residential subdivisions not “in existence” (i.e. subdivisions or portions of subdivision substantially commenced and for which substantial expenditures have been made for structures or improvements), ensuring that the act will apply to “paper subdivisions.”

Protect the Adirondacks urges the passage of Assembly Bill A.5451.

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