

January 21, 2020

Senator Todd Kaminsky
Legislative Office Building
Room 307
Albany, NY 12247

Dear Senator Kaminsky,

I am writing on behalf of the Adirondack Landowners Association with respect to the Bill (A 8123-a-S6484) (the “Bill”) which proposes changes in the Adirondack Park Agency Act intended to promote the principles of conservation design in the review by the agency of large-lot sub-divisions in the Adirondack Park.

The ALA is dedicated to wise stewardship of the private lands in the Park. We accept that the principles of conservation design, if wisely administered, would benefit the Park and its stakeholders. The ALA participated in the extended efforts last year to improve the original version of the Bill so that it would merit consideration by the legislature and support by the ALA. I am sorry to report that the current version of the Bill falls well short of those goals.

We perceive several major objections in principle to the Bill, which are the subject of this letter. In addition, the Bill is badly undermined by numerous technical and other more serious flaws, some of which are detailed in the attached Notes. Please note that addressing those problems would not overcome the more important objections, discussed below, to consideration of the Bill at this time.

First is that any version of the Bill brought forward so far is way too rigid and inflexible. The Bill itself proclaims that each property is unique, but then goes on to create detailed rules for conservation subdivisions as if one size fits all. Immediately, the variations in the conditions applying to any project site will make some of the proposed legislated restrictions non-sensical and interfere with constructive conservation-oriented solutions to problems presented by specific sites.

Legislation is not the appropriate means to be laying down these kinds of detailed rules. The wise course, for the most devoted apostle of conservation design would be to advocate a law that endorses the principles of conservation design, and mandates the APA to put in place procedures applicable to the review of major projects that take into account those principles. The mandate could be backed up by proposed density bonuses. The detailed implementation of the mandate should be delegated to the Agency and its experienced staff. That staff and the board of the Agency have the background knowledge of the principles involved, know the science underlying the thrust of conservation design, and possess many years of experience with the details of the APA Act that will allow them to fine tune their procedures to achieve the optimal results. Unlike a legislated act, which is unlikely to be revisited in the foreseeable future, the

Agency could be relied on to monitor the progress of their changes regularly and make necessary mid-course corrections.

The second point that flows immediately from the first is that the Agency, being alert to the increasing consensus surrounding conservation design, has already promulgated major revisions to their procedures governing large subdivisions. Given the serious handicaps that hamper the legislature's ability to deal with many of the complexities, it makes eminent sense to see if the new APA rules, as they may be easily refined by the Agency in light of experience, will not secure the desired results.

A final point is that the Bill violates one of the principles the Adirondack Council put out early in the process, which is that any legislation should not, by using vague and undefined terms, promote needless litigation. The Bill falls well short of complying with that stricture.

For these reasons, I respectfully request that you exercise your authority to avoid premature legislation to change the APA Act in the manner proposed by the Bill.

Sincerely yours,

E. Wilbur Rice
On behalf of the Adirondack Landowners Association

Attachment: Notes

cc: The Honorable Andrew M. Cuomo
Senator Betty Little
Senator Phil Boyle
Assemblyman Steve Englebright
Assemblyman Billy Jones
Assemblyman Robert Smullen
Assemblyman Dan Stec
Amanda Lefton, 1st Assistant Secretary for Energy & Environment
Terry Martino, Executive Director, NYS Adirondack Park Agency



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NOTES RE NYS ASSEMBLY BILL 8123-a

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Line 31 - Does “road and trails associated with ...open space recreation” include ATV and snowmobile trails, or should they be explicitly excluded??

Line 34 - Is the effect that each road creates a 1370 foot wide corridor (allowing for a 50 foot ROW and 660 feet on either side)? If the cluster is on the far side of a project site, how much of the site will be eaten up by such a corridor?

Line 36 - The phrase “and any contiguous developed site” has no apparent meaning. Regardless, should the word be “development”, not “developed”??

Lines 39,39 - Who determines what is “important” or “adjacent”, and using what standards?? The vagueness of those terms would seem to invite prolonged litigation.

It should be made clear that the word “important’ modifies all three nouns following it

Line 39 - Must the systems be both on and adjacent to the project site, or should “and” be ”or”? And how far into the adjacent site? What if the “adjacent site” is a neighbor with hundreds or thousands of acres? What if the adjacent land is Forest Preserve? See comment on page 3, line 33 below.

Line 40 – Is the “protection” referred to the same as the “permanent legal protection” referred to in line 43? If so, those words should be included.

Line 42 - Is there a reason for the obvious overlap in the two sentences in Section 43-a?

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Line 31 - Delete the punctuation between subdivision and “a”

Line 32 - Should the analysis not deal only with important (however defined) natural resources?

Line 33 – If the adjacent land is a very large parcel or Forest Preserve, must all of its natural resources be included in the applicant’s study/

Line 36 - Who/what defines what “important” means in regards to ecological areas?

Lines 40,43 - “Minimizing” without qualification, and overlapping “as much as possible” requires the introduction of some rule of reason, like “to the extent reasonably practicable”

Line 52 - Is it intended that the agency cannot require additional input re adjacent land?

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Lines 15, 16 - Should “is” not be “are” in both places?

Line 40 - Asking for open space to mitigate climate change seems a wild stretch, and a requirement without any knowable boundary. It should be taken out.

Line 43 - Minimizing is too absolute a standard. Should there be a comma after “areas” in line 44?

Line 49 - “to the greatest extent possible” is an impossible standard. It needs to be qualified with something like “to the extent reasonably practicable”.

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Line 6 - The word in the middle of the line should be “then”

Line 10 - What does “it” refer to?

Line 28 - What does “directly contiguous” mean as opposed to “contiguous”?

Line 30 - Does it need to be made clear that siting additional principal bonus buildings within the project site will involve altering the development envelope, and possibly affect the extent of the open space??