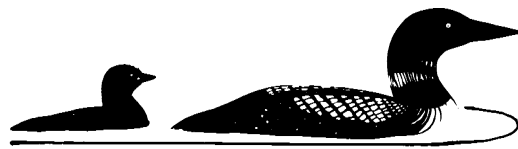


Falling Further Behind:

The Truth About Environmental Enforcement in the Adirondack Park

**A Progress Report on the
Adirondack Park Agency's
Enforcement Programs**



***The Adirondack Council
2001***

TABLE OF CONTENTS

Executive Summary	3
Falling Behind	4
A. Current Staffing is Woefully Inadequate	
B. APA Lacks Authority	
C. A Fundamental Provision of the APA Act Has Failed	
D. The Agency Has Failed to Address the Other Shortcomings of its Enforcement Program	
Recommendations & Recent Developments	9
1. Add New Enforcement Staff	
2. Revise Enforcement Laws and Regulation	
3. Restore State Funding for Local Planning Assistance	
4. The Attorney General Should Create an Adirondack Park Enforcement Team	
5. APA Commissioners Need to Make Enforcement a Priority	
6. Give the APA the Authority to Collect Fees and Fines	
Background: What's Supposed to Happen	11
I. What is the Adirondack Park?	
II. What is the Adirondack Park Agency?	
III. Which Laws Does the APA Enforce?	
IV. How do Landowners Find Out About the Rules?	
V. How do Violators Get Reported?	
VI. What is Supposed to Happen When There is a Violation?	
VII. The After-the-Fact Permit	
VIII. Why is Enforcement Important?	
Case Studies	15
A. Yanchitis	
B. Camp Gabriels	
C. Koller Gravel Pit	
D. O'Connell	
Table 1: 1999 and 2000 Enforcement Cases	5
References	Back Cover
Acknowledgments	Back Cover



EXECUTIVE SUMMARY

While the Governor, Adirondack Park Agency (APA) and Attorney General took some modest steps in 2000 toward improving enforcement at the APA, a great deal more still needs to be accomplished. Since the release of the Adirondack Council's previous report, *After the Fact: The Truth About Environmental Enforcement in the Adirondack Park*, awareness of the lack of enforcement has increased. However, the difficult task of correcting these problems still remains largely unresolved. APA commissioners have been slow to respond.

Sadly, the backlog of unresolved cases continues to grow. As the graph (below) indicates, much more needs to be done. Nearly twice as many enforcement cases were opened in 2000 than were closed, resolved or settled.

Consequently, the APA's enforcement problems continue to mount. Unintentional and purposeful violators alike are caught up in a cumbersome, ineffective process conducted by a diligent, professional staff that is overwhelmed. After-the-fact permits routinely sanction out-of-compliance construction. Thousands of backlogged cases go unresolved for lack of staff to move them through the process. Willful and skillful violators can, and do, take advantage of the APA's lack of resources.

With a tiny enforcement staff covering a park the size of the neighboring state Vermont, violations are not generally identified by enforcement staff as a product of their own investigations.

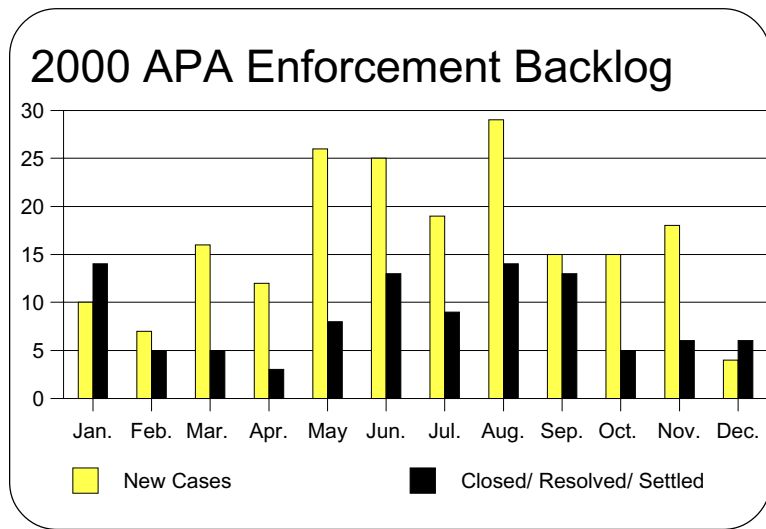
The largest source of information on violations is neighbors' complaints and the routine processing of applications for new permits that, when reviewed, reveal prior unreported violations. Simply put, the Adirondack Park Agency still has little or no idea of what violations of state law are occurring in the Adirondack Park, and lacks the resources to address these problems.

Local governments in the Park aren't in a position to offer much help. Research reveals that villages and towns have left the task of planning and land use to the Park Agency, leaving their communities vulnerable and the APA overworked.

This report provides policy makers and the public a glimpse into the reality of the oversight of development in the Adirondack Park. The report reveals the APA to be a besieged

and under-funded defender of the Adirondack Park and the laws that most New Yorkers thought were being enforced. In fact, the APA is still not meeting a broad set of enforcement goals it set for itself a decade ago.

The most significant assistance can only be secured in the state budget, with the leadership of the Governor. While the Governor has provided the APA with some additional resources, it still needs additional staffing, the restoration of local planning assistance and the ability to cover the costs -- now borne by taxpayers -- with fees from developers. The Attorney General should get his staff involved in reducing the enforcement backlog. And the APA's Commissioners need to focus their attention on enforcement by revising Agency policies and regulations.



FALLING BEHIND

The Adirondack Park Agency has a reputation as one of the toughest land-use boards in the nation. Is that reputation outdated? Is the Agency even able to do its job? Is the law being enforced? Is the Adirondack Park being protected? Our investigation yielded some disturbing and surprising answers.

A. CURRENT STAFFING IS WOEFULLY INADEQUATE

In 1993, then APA Chairman John Collins, in an effort to boost public confidence in the Adirondack Park Agency, announced that he was forming a citizens task force comprised of local government officials, practicing attorneys and other interested parties. They discussed ways to improve the Agency's efficiency and effectiveness, within the scope of its current statutory authority. The Agency had been under attack for years as being inconsistent, intimidating and incomprehensible.

After numerous meetings, the final report of the *Task Force on Expediting Adirondack Park Agency Operations and Simplifying its Procedures* was issued in May 1994. The report made dozens of recommendations, most of which the Agency has dutifully, but slowly, pursued. *The Citizens Task Force Report*, as it was called, found, "The Agency's present enforcement division is inadequately staffed to handle known violations." (p. 27) This same issue had been raised four years before by *The Adirondack Park in the Twenty First Century*, the report of a commission appointed by then Governor Mario Cuomo in 1989. Volume 2 of the technical reports that supported the findings and recommendations of the Commission observed:

"Agency monitoring and enforcement function is criticized as being completely overwhelmed by the volume of the activity in the Park...

"The effort to provide for a credible monitoring and enforcement program has repeatedly been frustrated by budgetary limitations. The result has been to respond only to reported violations. According to enforcement staff only a fraction of the reported (and subsequently field checked) violations result in enforcement action by the Agency's enforcement committee. Clearly, responding to reported violations takes valuable staff time from sys-

tematic review of specific areas and projects." (p. 202)

For the next five years, the recommendations of the Governor's Commission were hotly debated. The budget of the Adirondack Park Agency, however, remained relatively unchanged. Then, in 1996, Governor George Pataki proposed across-the-board cuts in staffing for most state agencies, including the Adirondack Park Agency. The cuts threatened to devastate the enforcement capability of the Agency. The move prompted four former chairmen of the APA to write to the Governor asking him to reverse his course of action:

"In your last State of the State message, you called for the implementation of the recommendations of the *Task Force on Expediting Agency Operations and Simplifying Its Procedures*. The Task Force Report called for an increase of eleven members of the staff of the Agency. The present budget calls for a decrease of thirteen. If the present cuts are allowed to stand, one enforcement officer of three will go, two attorneys of five will go..."

The cuts to the APA were restored in negotiations with the Legislature. Later in 1996, in its formal response to the recommendation by the *Citizen Task Force* that the Agency be given adequate funding for enforcement staff, the Agency responded:

"We agree wholeheartedly. We hope that this recommendation includes adequate resources for education and the prevention of violations. We have a pressing need now for one cartographic/paralegal position and at least one senior level enforcement officer, or the equivalent. We also need an additional attorney whose time will be devoted to enforcement."

B. INCREDIBLE BACKLOG

APA staff estimate that they have amassed a backlog of enforcement cases of at least 2,000 -- and perhaps as many as 3,000 -- unresolved violations.

APA Enforcement Cases 1999/2000

New vs. Closed*

1999			2000		
MONTH	NEW CASES	CLOSED*	MONTH	NEW CASES	CLOSED*
January	8	8	January	10	14
February	8	5	February	7	5
March	16	1	March	16	5
April	21	6	April	12	3
May	14	13	May	26	8
June	17	2	June	25	13
July/Aug.	11	7	July	19	9
Sept.	58	14	August	29	14
October	18	8	September	15	13
			October	15	5
Nov./Dec.	44	13	November	18	6
			December	4	6
TOTAL	215	77	TOTAL	196	101

**Includes cases closed, settled and resolved.*

From 1997 to 1999, the budget of the Agency remained unchanged, with vacancies filled as they occurred. In August 1999, in an update on the progress made by the Agency in its implementation of the recommendations of the *Citizens Task Force*, the Agency conceded that five years later, it still needs enforcement staff, "The Agency agrees that additional staff resources are an important priority for the enforcement program."

A review of enforcement staff reports submitted to the Commissioners of the Agency over the past two years is telling (see table above). Nearly every month, more new files are opened than old files closed. Many cases are worked on, but few are actually resolved. The buildup of the case backlog has been steady.

Unsettled cases linger and then are overshadowed by other more pressing cases. The Agency has no ability to direct a resolution of the matter on its own authority. Many cases that are simple to solve are pushed to the bottom of the pile because the Agency does not have the resources to settle cases even with people who are willing to

comply with the Agency's conditions.

Politically charged cases, like cream, rise to the top. Other cases stall somewhere along the process. Settlement agreements are not drafted. Cases are not moved up the chain. Not all unresolved cases are referred to the Attorney General for legal action.

Ten years after the Commission report first brought public attention to the fact that enforcement staffing was inadequate to do the job, the backlog of cases continues to increase.

C. APA LACKS AUTHORITY

There is no mystery to why there is a current backlog of at least a thousand cases. The Agency has no ability to direct a resolution of the matter on its own authority. Other agencies have been given explicit authority by the Legislature to impose an administrative penalty or remedy on a landowner, without the need to refer the case to the Attorney General for court action.

Even where the Agency does have legislative

authority to take direct action, it has failed to use it. The APA administers the Freshwater Wetlands Act and has the power, after a public hearing, to impose civil penalties or require remediation, or restoration. It has similar authority under the Wild, Scenic and Recreational Rivers Act, to seek an injunction or civil penalties.

While the power exists, the procedures do not. No appropriate regulations have been adopted by the agency and the staff has been reluctant to act without them.

The Agency's own procedures allow violators to simply ignore the APA's attempts to resolve the case and do nothing to remedy the violation for years.

When an alleged violator will not settle with the enforcement staff, the case can be referred to the Enforcement Committee. The Enforcement Committee, which includes members of the Agency, may initiate legal action through the state Attorney General, but routinely seeks a settlement, which is in itself a time-consuming process.

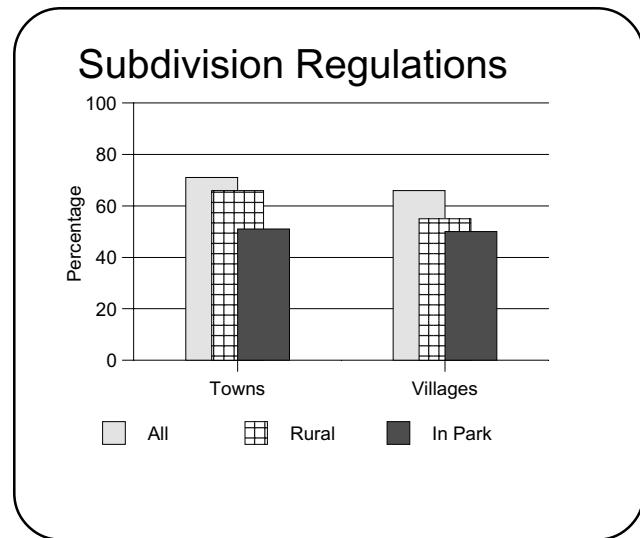
A landowner may request a hearing before the committee and may demand that the hearing be formal, with a written transcript. The assigned enforcement officer must suspend other work in order to attend the hearing. Despite all the effort at settlement, the hearings and all the time put in by the APA staff, the landowners may still decline to settle. Only violators who choose to settle do so.

In some ways, the Agency's own regulations perpetuate the settlement game. After the informal or formal hearing is held, the Enforcement Committee meets to compose an offer of settlement to be forwarded to the violator. The violator can then accept the offer of settlement, appeal the decision to the full Agency or simply not respond. In time, the Enforcement Committee can elect to shelve the case or refer the matter to the Attorney General.

D. A FUNDAMENTAL PROVISION OF THE APA ACT HAS FAILED

The Adirondack Council, using data from the Legislative Commission on Rural Resources, took a closer look at towns and villages located

within the Adirondack Park. We found that, on average, the rural towns and villages of the Park have even fewer zoning tools than rural communities elsewhere in the state. More than twenty-five years after the creation of the APA, only 15 of the Park's 105 towns and villages have APA approved local land use programs. This leaves communities vulnerable to poorly designed, poorly sited and incompatible develop-



ment that can harm the environment and adversely affect property values.

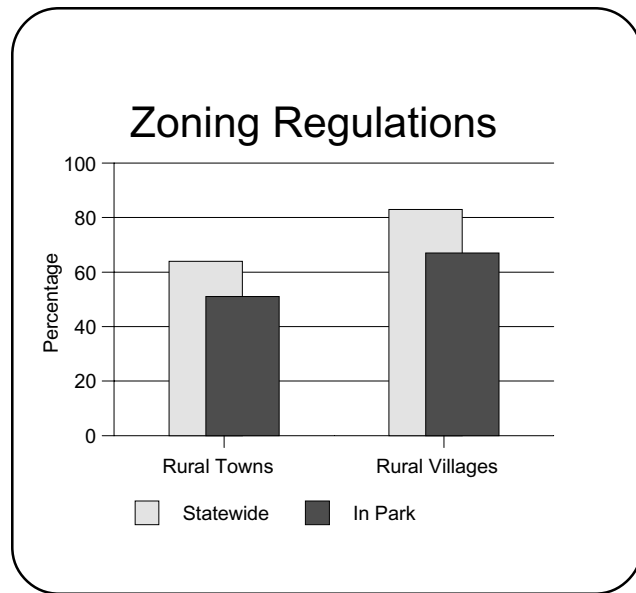
The sponsors of the Adirondack Park Agency Act never anticipated that more than 25 years later, hundreds of minor development projects would still be coming before the APA for review annually. The minor projects contribute to the volume of workload for the project review staff and attorneys, and to the backlog of the enforcement team. Local planning assistance is necessary for localities to effectively assume authority for minor projects in their communities and lift this burden from the Adirondack Park Agency.

The final report of the Task Force on Expediting Adirondack Park Agency Operations and Simplifying Its Procedures was issued in May 1994. Recommendation 99 was for the Agency to revive the "circuit rider" program. The Circuit Rider town planning program lost support in the State Legislature and its funding. In the few years it was in existence, the APA provided contractual

or direct technical and legal assistance by the APA staff to local government officials, planning boards, zoning boards of appeals and building inspectors.

In January 1996, the Agency responded to the task force recommendation by stating, “the Agency’s previous budget submission included a request for restoration of local planning assistance funds, including circuit riders. This recommendation will continue to be pursued in the context of future Agency budget proposals.” In August 1999, the Agency reported, “While the Agency supports this recommendation, funds have not been available to pursue it.”

Local planning assistance is not a luxury in the Adirondack Park. It is a necessity. Consider the findings of a report from the Legislative Commission on Rural Resources released in Septem-



ber 1999:

The bipartisan Legislative Commission on Rural Resources conducted a survey of Land Use Planning and Regulations in New York State Municipalities. The survey shows which municipalities are applying selected land use and community development planning tools and make note of variations among rural and metropolitan usage of specific tools.

The survey “illustrates the continuing difference and diversity among municipalities in the state in their capacity or desire to utilize planning and zoning tools. The higher density development in

cities, suburbs and villages -- and the more rapid change found in these places -- creates a climate more receptive to land use regulation than is found in many remote, rural towns.” (part 1, p. 3)

The data the Legislative Commission collected shows rural towns and villages throughout the state have established fewer zoning tools than many suburban and metropolitan areas.

The Legislative Commission surveyed whether zoning regulations exist in rural towns and villages statewide and found that 64% of rural towns and 83% of rural villages have zoning regulations. When the cumulative data on rural towns and villages is compared to that of rural towns and villages lying within the Adirondack Park, we find that 51% of the towns and 67% of villages inside the Park have existing zoning regulations.

The existence of subdivision regulations was also surveyed by the Legislative Commission. It found that 71% of towns and 66% of villages statewide have subdivision regulations while only 66% of rural towns and 55% of rural villages regulate subdivisions. Of the towns and villages located within the Adirondack Park, just 51% of towns and 50% of villages have subdivision regulations.

Towns and villages within the Adirondack Park still lack land management tools.

The State Legislature incorrectly assumed that local governments would be eager to take responsibility for smaller development projects in the Adirondack Park.

In the absence of local regulations, the State Legislature provided, in 1973, for the APA to monitor and review development on private lands in the Adirondack Park. The Legislature also created a mechanism for local governments to assume control of smaller projects proposed within their political boundaries. The APA Act provides for the review and approval of many projects to be returned to local decision makers when the town or village receives approval for a local land use program from the APA. An approved local program must contain certain land use regulatory elements, including subdivision and zoning regulations.

Since so few communities have bothered to develop APA approved local land use plans, the APA’s staff and Commissioners are still consumed

with the review and enforcement of hundreds of minor development projects throughout the Park each year.

E. THE AGENCY HAS YET TO EFFECTIVELY ADDRESS ITS OWN GOALS, OR THE SHORTCOMINGS OF ITS ENFORCEMENT PROGRAM

The current enforcement regulations for the Adirondack Park Agency were adopted in 1982. The six goals of the Agency's enforcement policy, adopted as guidelines in 1991 and unchanged since that time, are discussed below. As you will see, the agency must revise its own policies and practices if it hopes to achieve its goals:

Enforcement Goal 1: To provide due process to alleged violators.

Comment: In the name of due process, the APA developed a cumbersome process that serves the willful violator best. The refusal to acknowledge a "notice of possible violation" from the Agency is statistically the best response that a violator can make to avoid prosecution indefinitely.

Enforcement Goal 2: To prevent environmental harm and protect the public interest by helping landowners avoid violations.

Comment: This ought to be goal Number 1. With limited financial resources, the Agency has diligently attempted to inform interested landowners of their rights and obligations under the law. The myth of tough enforcement, ironically perpetuated by some of the APA's most fervent detractors, has served the Agency well, only because some violators believe they are in more trouble than they really are and tend to cooperate, at least initially.

Enforcement Goal 3: To remedy environmental harm and protect the public interest by requiring both immediate and long-term remediation actions.

Comment: The staff and members of the APA clearly identify ongoing and imminent harm to the environment as its highest remediation priority and have a positive record of accomplishment when such environmental harm is identified. However, as previously noted, some violations go unreported and unnoticed for years.

Enforcement Goal 4: To treat violations involving similar circumstances in a similar manner.

Comment: State Agency sponsored projects, illustrated best by the Gabriels Prison Case (see case studies), have consistently frustrated the APA. Its record feeds the public impression of a double standard. The adoption of Executive Order 150, which requires state agencies to behave before the APA as if they were private applicants, has not resulted in meaningful reform.

Enforcement Goal 5: To deter violations by the use of appropriate and significant civil penalties, and by the elimination of profit derived from the violation.

Comment: The Old Valcour and Snug Harbor Marinas project (see previous *After the Fact* report), resulted in the first large fine ever imposed by the APA. It was also innovative in that the civil penalty selected was based, in part, on the commercial profits reaped by the owner as a direct result of the violation. The 1991 guidelines also state that there shall be a civil penalty imposed in every case except in cases of extreme hardship, or where the violation was insignificant. The consistent use of a civil penalty (a fine) would be an important deterrent to potential violators, even if the fine is nominal. In practice, a review of enforcement reports over the last two years reveals that in the majority of cases, no fine was imposed at all.

Enforcement Goal 6: To maximize efficiency in the settlement of enforcement matters.

Comment: This goal will never be realized under present circumstances. Additions to staff and revisions to the Agency procedures, regulations, and legal authority are necessary for the Agency to implement an efficient approach to enforcement.

RECOMMENDATIONS AND RECENT DEVELOPMENTS

In our previous report, *After the Fact: The Truth About Environmental Enforcement in the Adirondack Park*, the Adirondack Council outlined six areas for improving the Adirondack Park Agency's enforcement program. Some changes have been realized, but the task is far from being accomplished. A summary of those recommendations, along with an update on their progress follows:

1. Add New Enforcement Staff

Recommendation: Double the number of enforcement officers from three to six in the APA's budget and increase attorneys from three to six.

UPDATE: Governor Pataki amended his 2000/01 Adirondack Park Agency budget proposal by \$188,000 for new staff in enforcement and other programs. This allowed the agency to hire two additional enforcement staff. By the end of 2000, an attorney had been hired and interviews were being held for an enforcement officer.

ACTION NEEDED: The APA still needs additional enforcement officers and attorneys. Gov. Pataki should propose, and the Legislature should approve, additional funding for enforcement personnel in the 2001/02 budget.

2. Revise Enforcement Laws And Regulations

Recommendation: The Agency should revise its cumbersome regulations to allow it to act swiftly and directly with violators.

UPDATE: Little progress has been made. A staff presentation to the commissioners on these issues has been postponed repeatedly in the past year.

ACTION NEEDED: Yes. And soon.

3. Restore State Funding for Local Planning Assistance

Recommendation: Only 15 of the 105 towns and villages within the Adirondack Park have approved local land use programs. The lack of plan-

ning assistance burdens the staff and Commissioners with minor development projects, and frustrates the intent of the law. Additional funding is necessary to enable every locality to develop its own land use program and relieve some of the burden from the APA.

UPDATE: No action had been taken on this recommendation as of the printing of the report.

ACTION NEEDED: Gov. Pataki should propose additional funding for local planning assistance, including the once-successful Circuit Rider program of the APA, which provided a state planner to localities on a rotating basis.

4. The Attorney General Should Create an Adirondack Park Enforcement Team

Recommendation: The NYS Attorney General should develop a team that would assist Adirondack Park Agency staff with the tremendous backlog of cases that have been amassing. This team would take action to speed the referral of cases to the Attorney General.

UPDATE: The Attorney General did not name a team to work on the backlog, but instead assigned a staff attorney to work as a liaison to the agency. Ironically, the attorney assigned as liaison applied for and received the job as the APA's new enforcement attorney. While this solved a problem for the APA staff, it left the APA liaison position open at the Attorney General's office.

ACTION NEEDED: The Attorney General should act promptly to hire or assign a new assistant attorney general as liaison to the APA.

5. APA Commissioners Need to Make Enforcement a Top Priority

Recommendation: APA commissioners must be the first to take on the problems with enforcement, and become the agency's chief lobbyists for reforms, or the enforcement program and the backlog of cases will only continue to worsen. After-the-fact permits should be a rarely used exception and violators should be

fined. In some cases, environmental benefit projects should be substituted for all or part of a fine if a violator agrees to perform some valuable service that will result in a direct benefit to the Park's environment.

UPDATE: Almost a year since our last report, the APA has hired one enforcement attorney and has yet to hire the enforcement officer authorized by the state budget. The commissioners have not yet met in public session to discuss enforcement policy.

Action is also stalled on a proposed environmental benefit policy, which would allow some civil penalties to be deferred in favor of funding for a project that would have direct benefit to the Park. The 1998 Annual Report of the

APA states, "The Agency is also reviewing and considering for adoption a policy to use environmental benefit projects in lieu of a portion of a civil penalty." As of the end of 2000, the staff had presented a draft policy, but the Board has not acted upon it.

ACTION NEEDED: The APA Commissioners need to make reform of the enforcement policy and regulations a priority for the coming year.

6. Give the APA the Authority to Collect Fees and Fines

Fees Recommendation: The Governor should propose and Legislature should approve legislation that would authorize the Adirondack Park Agency to collect fees from permit applicants. The cost of reviewing and acting upon applications for new projects within the Adirondack Park is borne solely by the taxpayers. Applicants pay nothing for the review of projects they may eventually profit from or even abandon.

The Adirondack Park Agency may be the only major regulatory agency in New York that does not charge a fee. Application fees are charged by local governments throughout the state and even within the Adirondack Park. Application fees can be based on the size and type of project, on a sliding scale to minimize fees for minor projects.

Projects sponsored by local governments should be exempt. Developers should bear the cost of legal notices, accommodations for public hearings and for stenographic hearing transcripts.

In fact, the revenue collected from major projects will defray the costs of minor project applicants, most of whom are residents of the Park. Minor project applicants readily receive

agency staff advice on filling out applications and are encouraged to seek consultations with staff. Major project developers usually employ teams of professionals to prepare their applications and can afford to pay a reasonable fee.

Fines Recommendation: In 1999, the New York State Assembly approved the establishment of a dedicated revenue fund to receive fines assessed against violators of the APA Act and to return these monies to the Agency directly, rather than to the general fund of the State. These funds, while not substantial, could be used to improve service to the general public. While this proposal was not taken up by the Senate and the Governor in final budget negotiations, it has merit and deserves to be adopted into law.

UPDATE: No action has been taken on these recommendations as of the printing of the report.

ACTION NEEDED: The Legislature should authorize the collection and retention of fees from developers in this legislative session.

'The Adirondack Park Agency may be the only major regulatory agency in New York that does not charge a fee ...

Developers should bear the cost of legal notices, accommodations for public hearings and for stenographic hearing transcripts ...

Revenue collected from major projects will defray the costs of minor project applicants, most of whom are residents of the Park'

BACKGROUND: WHAT'S SUPPOSED TO HAPPEN

I. What is the Adirondack Park?

The Adirondack Park is the largest park in the contiguous United States and the largest intact desiduous forest ecosystem in the world. It contains six million acres, covers one-fifth of New York State and is equal in size to neighboring Vermont. Few people realize that the Adirondack Park is nearly three times the size of Yellowstone National Park.

More than half of the Adirondack Park, 3.5 million acres, is private land, devoted principally to forestry, agriculture and open-space recreation. The Park is home to 130,000 permanent and 110,000 seasonal residents and hosts an estimated nine million visitors each year.

The remaining 45 percent of the Park is publicly owned Forest Preserve, protected as "Forever Wild" by the New York State Constitution since 1895. One million acres of these public lands are designated as Wilderness, where a wide range of non-mechanized recreation may be enjoyed in an incomparable, natural setting. The majority of the public land (more than 1.3 million acres) is classified as Wild Forest, where motorized uses are permitted on designated waters, roads, and trails.

Plants and wildlife abound in the Adirondack Park, many of them found nowhere else in New York State. Never-cut ancient forests cover more than 100,000 acres of public land.

The western and southern Adirondacks are a gentle landscape of hills, lakes, wetlands, ponds and streams. In the northeast are the High Peaks. Forty-three of them rise above 4,000 feet and 11 have alpine summits that rise above timberline.

Nothing characterizes the Adirondack Park like its waters. The Adirondacks include the headwaters of five major drainage basins. Lake Champlain and the Hudson, Black, St. Lawrence and Mohawk rivers all draw water from the Adirondack Park. Within the Park are more than 2,800

lakes and ponds, and more than 1,500 miles of rivers, fed by an estimated 30,000 miles of brooks and streams.

In the current century and beyond, the Adirondack Park must continue to offer vast areas of undisturbed open space as a sanctuary for native plant and animal species, and as a natural haven for human beings in need of spiritual and physical refreshment. It must also provide for sustainable, resource-based local economies and for the protection of community values in a park setting.

II. What is the Adirondack Park Agency?

The Adirondack Park Agency maintains a website on the Internet (www.northnet.org/adirondackparkagency) which provides this description of the Agency and its functions:

"The Adirondack Park Agency is an independent, bipartisan state agency responsible for developing long-range Park policy in a forum that balances statewide concerns and the interests of local governments in the Park. It was created by New York State law in 1971. The legislation defined the makeup and functions of the Agency and authorized the Agency to develop two plans for lands within the Adirondack Park. The approximately 2.5 million acres of public lands in the Park are managed according to the State Land Master Plan. The Adirondack Park Private Land Use and Development Plan regulates land use and development activities on the 3.5 million acres of privately owned lands.

"The Agency also administers the State's Wild, Scenic and Recreational Rivers System Act for private lands adjacent to designated rivers in the Park, and the State's Freshwater Wetlands Act within the Park. The Agency operates two visitor interpretive centers (VIC's) at Paul Smiths, Franklin County and at Newcomb, Essex County. These Centers are the Park's environmental edu-

cation and traveler orientation centers.

“The Agency Board is composed of 11 members, eight of whom are New York State residents appointed by the Governor and approved by the State Senate. Five of the appointed members must reside within the boundaries of the Park. In addition to the eight appointed members, three members serve in an ex-officio capacity. These are the Commissioners of the Departments of Environmental Conservation and Economic Development, and the Secretary of State. Each member from within the Park must represent a different county and no more than five members can be from one political party.

“The Agency’s headquarters are located in Ray Brook, halfway between the villages of Lake Placid and Saranac Lake. The Agency board meets monthly to act on Park policy issues and permit applications.

“The Agency is currently conducting a comprehensive review and revision of its rules and regulations.”

Editor’s Note: There is presently one vacancy for a Park resident on the board and two other members are serving on expired terms, meaning they can be removed or renominated by the Governor at any time. In 2000, the Adirondack Park Agency had a total budget of \$3,995,700 dollars with a full time (equivalent) staff of 64 people.

III. Which Laws Does the APA Enforce?

The Adirondack Park Agency is entrusted by the State Legislature with the protection of the natural resources of the Adirondack Park and, toward that end, with the enforcement of state laws on private lands that are located throughout the six million acre Park, as described in the Adirondack Park Agency Act. As previously mentioned, the APA administers the Wild, Scenic and Recreational Rivers System Act and the Freshwater Wetlands Act. The authority to enforce the provisions of the APA Act are clearly spelled out in the state statutes and reproduced as an appendix to this report. Also reproduced are the regulations which the APA adopted to carry out the mandate given it by the State Legislature.

In general terms, the Adirondack Park Agency Act provides the Agency and its staff with two options in dealing with violators. First, the staff attempts to negotiate with the landowner to bring the site into compliance with the law. State law anticipates that the Agency would levy civil fines against violators as part of a settlement. If settlement is not an option, the Agency is then authorized to refer the case to the Attorney General of the State of New York to pursue through legal channels.

The regulations of the Agency, which were adopted to implement the APA Act, ensure that a landowner believed to be in violation of the law has an opportunity to be heard. If negotiations with enforcement staff fail, the landowner can request a hearing before the Agency’s Enforcement Committee, which includes several of its Commissioners. While normally informal, at the request of the landowner these hearings can be formal, with a transcript prepared.

IV. How do Landowners Learn About the Rules and Regulations?

Most small developers or individual landowners seeking information on the laws that apply in the Park contact the Adirondack Park Agency directly. Thousands of New Yorkers, residents, landowners, developers and tourists write, call or stop in at the APA every year.

Some applicants applying to the Agency for larger projects hire an attorney to shepherd their project through the process. Some attorneys specialize in representing clients before the Agency. Developers with larger projects often hire engineering firms and landscape architects to develop proposals and to ensure compliance with the requirements of the APA for the approval of major projects.

In addition, the Agency provides information through several means, including publications, community outreach, and answering direct questions:

Publications

A Citizen’s Guide to the Adirondack Park Agency Land Use Regulations published by the

APA provides guidelines to citizens regarding the need for permits and the application process. The Agency also provides copies of the laws and regulations that govern the Agency and its functions free of charge.

Outreach

To its credit, the APA staff and Commissioners have been aggressive in getting out to various locations in the Adirondack Park, at public hearings or informal meetings with local officials, giving local residents an opportunity to see the Agency at work and to talk directly to its leadership. The Agency sponsors an annual Local Government Day with workshops on issues of interest to town officials and the public alike.

Citizens Contact the APA

The APA receives thousands of phone calls every year from citizens asking for information about the Park and the role of the Agency. From landowners, the simple question is often “Do I need a permit?”

These “jurisdictional inquiries” are often more complex than they may seem. The answer often depends on the date a house was constructed or on research on past deeds or subdivision approvals conducted by the landowner or the Agency’s staff. It also depends on the level of information provided by the inquirer and its accuracy. According to the *Adirondack Park Agency 1999 Annual Report*, the Agency received 5158 phone calls, 682 letters and 318 office visits relating to jurisdictional inquiries for that year.

V. How do Violations Get Reported?

Contrary to local legend, the Agency does not have any staff or policy to actively seek out violators. There are only three enforcement officers who must cover the entire six million acre Park. The Agency most frequently learns about violations from sources outside of the Agency. Here are the most common methods:

1. Violators may acknowledge their own violation. For example, a family may wish to settle an estate, or a second owner discovers a previous violation while preparing for a new

project.

2. Neighbors notify the Agency of violations occurring around them.

3. Banks often require a permit or written verification from landowners that the APA has no legal jurisdiction, and no approvals are required, before approving a loan or mortgage.

4. In towns and villages that have building permits or other zoning tools, local officials may notice potential violations during their own reviews.

VI. What is Supposed to Happen When There is a Violation?

When a violation is reported to the Agency one of the three enforcement officers is assigned to the case. If there are allegations that there is ongoing harm to the environment or the potential for immediate harm, the enforcement officer conducts a site visit as soon as possible. The officer will travel to the site and seek permission from the landowner to gain access.

The officer will ask the violator to stop and, if necessary, issue a “cease and desist” order.

Enforcement officers are authorized by the Agency to issue such orders on their authority for a duration of 72 hours. If necessary, a second “cease and desist” order can be issued by the Executive Director and will be in force indefinitely.

In all cases, the enforcement officer must make a preliminary determination as to whether a violation has occurred, what options exist to remedy any damage and what steps are needed to resolve the violation.

Preliminary determinations are based not only on the professional judgement of the officer but also on the results of a site visit, and background research for relevant maps, tax and deed history. Enforcement officers often consult with technical, legal and project review staff at the Agency.

If the enforcement officer determines that there is a violation, the officer brings the matter to an interdisciplinary enforcement team, which evaluates the case. The enforcement team determines the appropriate terms for settlement of the case and then the officer and the assigned attorney

pursue negotiations with the party in violation. If no settlement is reached, the staff team then determines whether to refer the matter (not all cases are referred) to the Enforcement Committee of the Agency, which is comprised of several of the appointed Commissioners. The Enforcement Committee has been delegated the authority to act on the Agency's behalf. If these efforts do not lead to a settlement, the matter will most likely be referred to the Attorney General for legal action.

The primary objective of the enforcement staff is to reach an appropriate settlement with the landowner. This can be relatively simple or a time-consuming and arduous task. In most cases, the motivation of the violator determines whether a quick settlement can be reached.

Settlement negotiations themselves can involve many parties. A settlement can include the need for transfer of lands between adjacent landowners, replacement of septic systems, relocation of roads, removal of fill from wetlands and the nagging details of who will do what and when. It may require hundreds of hours of staff time to resolve just one dispute when multiple landowners are affected.

VII. The After-the-Fact Permit

The after-the-fact permit, or ATF, is a frequently used tool of the enforcement team. A settlement agreement with a landowner may often include a provision that the violator will seek an after-the-fact permit from the Agency. In the opinion of the enforcement team, the ATF is often the only option when structures have already been constructed on a parcel without the benefit of a permit from the Agency.

The ATF permit provides several advantages to the enforcement staff. It ensures that the violator of the regulations is subjected to the same process that other applicants, who have followed the law, have been required to pursue. The ATF permit process may also yield additional information about the site and useful documents that the APA staff would not otherwise be able to obtain or develop on its own.

The enforcement process itself is a negotiation. The Agency has little or no ability to de-

mand information from the violator under its regulations. If, however, the violator agrees to seek an ATF permit, the Agency routinely demands additional information from an applicant to ensure adequate review of the permit application. At times, the additional information, such as an engineering design report, could yield critical data that will help the Agency staff assess the adverse impact of the proposed project on the environment and to mitigate those impacts. The ATF permit also allows the Agency to impose conditions, such as the recording of the permit in county records, that can prevent future purchasers from unknowingly violating Agency standards in the Park.

VIII. Why is Enforcement Important?

It is not uncommon for a visitor to the Adirondack Park on a "windshield tour" to observe some development or structure along the roadside and comment, "Why would *they* allow that to happen? *We* expect that there are responsible people who are looking out for *our* Park."

The damage to the Adirondack Park from violations of the law go well beyond the poorly sited building next to the roadway. Every year, wetlands that are critical for water quality, wildlife and flood control are illegally filled. Septic systems that are placed too close to water bodies degrade their purity. Vegetation along the shorelines that filters and slows the flow of polluting runoff from lawns and construction is cut down. Illegal clear cutting destroys wildlife habitat.

Each of these events individually may take place only on an acre or two of the 3.5 million acres of private land in the Park. By themselves, they may seem to be insignificant. But in the aggregate and over time, the cumulative effect on the natural resources of the Adirondack Park can be substantial and irreversible. The result has been described as "death by a thousand cuts."



CASE STUDIES

A. Yanchitis

Sometimes, even when the APA has issued a valid, well-reasoned subdivision permit, buyers begin building without a site plan and do significant damage to the environment. Often the Agency has no idea the permit has been violated. The Agency is forced to haggle with the landowner -- sometimes for years -- over the details of the remediation settlement.

The Adirondack Park & Northeastern United States



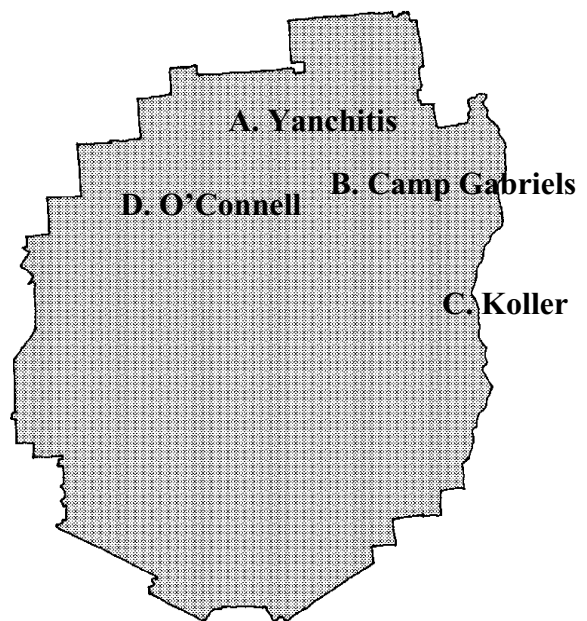
The property is a 2.21 acre vacant lot located in the Town of Santa Clara, Franklin County, on the shoreline of Upper Saranac Lake. In 1987, the APA issued permits to Deerwood Associates for the purpose of subdividing, which created "Lot 10." Found on this lot were two natural berms that protected nearby wetlands. The berms served to stabilize the shoreline, protect water quality and create a diverse micro-habitat of flora and fauna. The original APA permits explicitly prohibited any land disturbance without a detailed site plan approved by the Agency. In addition, the permits also explicitly prohibited any activity in the wetlands.

In the summer of 1997 the owners, through one or more agents, cleared extensive areas of vegetation and trees at the shoreline, on the berms and in wetlands. They also graded about 7,300 square feet within the shoreline wetlands, destroying parts of the berms and wetlands. Other activities included filling the wetlands with soil from the berms, excavating and filling to create driveways and building a lean-to larger than 100 square feet, approximately 15 feet from the mean high water mark and within the wetlands.

A Cease & Desist Order was issued on October 7, 1997. But it took until February, 2000, for the parties to reach a settlement agreement, and only after "three revisions of the settlement agreement, an Enforcement Committee resolution conference, numerous site visits, telephone calls, letters and meetings. A restoration plan was implemented in an effort to regrade the site, replant the trees and vegetation, and recreate the berm and micro-habitats. A copy of the settlement was filed at the Franklin County Clerk's Office and a civil penalty of \$7,000 was imposed.

Enforcement E97-144

Location of Case Studies





Gary A. Randorf

B. New York State Department of Correctional Services, Camp Gabriels

Despite an executive order from two consecutive Governors that state agencies must comply with the rules for private developers in the Adirondack Park, the APA is powerless to deal with repeated violations by other state agencies -- and often unaware when repeated violations occur.

In March of 1982, the APA objected to the DOCS plan to construct the minimum-security state prison in the tiny hamlet of Gabriels, between Saranac Lake and Paul Smiths. A month later, DOCS informed the APA that it intended to construct the facility anyway, opening the facility for the first 153 inmates in the same year.

DOCS's decision to ignore the APA would later result in Executive Order 150 by Gov. Mario M. Cuomo, ordering all state agencies to comply with the same rules private developers must follow. That order was reissued by Gov. George E. Pataki. But the order did little to stop DOCS from violating the law. And APA's lack of staff and resources prevented it from discovering the illegal activity before it was too late.

Over the years, the facility increased in size to the point where its inmate population has more than doubled, and it now has more than 155 employees. However, for 13 years, DOCS had not come to the Adirondack Park Agency for permission to construct new buildings on the site.

From 1983 to 1996, a total of 26 new buildings were constructed illegally at Camp Gabriels. The Adirondack Park Agency had jurisdiction over every one, but was never even informed that they were being built. The prison is less than 15 miles from APA's headquarters, but is secluded and invisible from the public highway.

The APA finally learned of the violations in 1996, when DOCS came to ask permission for still more construction on the site. The commissioners approved the illegal construction through an after-the-fact permit and then agreed to a conditional approval for future construction and expansion as well. No civil penalty was issued.

(Project 97-112)

C. Koller Gravel Pit

This case demonstrates how businesses can and do disregard the warnings of the APA and act in violation of an existing permit.

On May 25, 1999, the Agency issued an **after-the-fact** Permit 98-248 to John Koller for an illegal greater-than-25-percent expansion of a commercial sand and gravel extraction site. Less than a year after the first violation was resolved, on April 25, 2000, APA staff met with the pit operator about the possibility of expanding the mining area by 2 acres and temporarily increasing production by an additional 50,000 cubic yards.

The APA received written requests to amend the after-the-fact permit within days of the meeting. By June, another written request indicated the owners wanted to increase production by 80,000 to 100,000 cubic yards, not 50,000.

In response, the APA warned that the mining operation must meet the requirements of the existing 1999 permit until the APA made a formal ruling on their 2000 amendment request.

However, during a site inspection on June 15, APA staff noted that the pit had already been expanded beyond the 12 acres allowed by the permit, and evidence indicated that 42,000 cubic yards of material had been excavated, processed and stockpiled on site.

In order to resolve the violation, the APA agreed to incorporate the new violations into a new, amended permit.

The owners agreed to not remove any additional materials from the site until the completion of the settlement, and agreed that no additional excavating would be allowed until an amended permit was issued by the APA. Finally, civil penalties were levied totaling \$13,000.

(Enforcement E 2000-085)

D. O'Connell

The Agency's inability to say no can create its own enforcement dilemma.

In July 1978, the Agency issued a permit (P78-162) that allowed a two-lot subdivision of a 1.46-acre vacant shoreline parcel on Cranberry Lake. One of the two lots required a 10-foot variance from the 50-foot setback (V78-11, granted after a public hearing), and the septic system was

to be a sewage holding tank. In December 1986, Maurice O'Connell purchased the lot. By 1990, the NYS Department of Health (NYSDOH) had discouraged the use of holding tanks, so O'Connell applied for renewal of a previously issued permit to construct a single family dwelling with an on-site sewage disposal system. The Agency issued P90-466 with language that the new sewage system must comply with standards of the NYSDOH and Agency regulations.

By December of 1993, Mr. O'Connell had constructed a camp on the lot. He then applied for a variance (93-384) to construct an on-site sewage treatment system closer than the 100-foot setback from the lake. The system would discharge to a subsurface raised absorption field only 19 feet from the lake. Alternative systems were deemed too complex and difficult to maintain. The variance was rejected, after a public hearing. The Agency determined that steep slopes on the opposite side of the road were rock-strewn and thinly soiled and that other options, such as a waiver from the state Health Department, had not been explored.

In August 1995, NYSDOH denied the waiver request for holding tank.

Later that year, a plan was submitted for a shallow absorption system on steep slopes, on the opposite side of the road (95-362). NYSDOH approved the plan in June 1997. The Agency, after much debate, approved the permit in July 1998, with the conditions that erosion control measures be properly installed, inspected and maintained. Also, "due to slopes, all construction shall be by hand or light, hand-operated machinery."

In August 1999, Mr. O'Connell's contractor used a large, multi-ton John Deere tracked excavator with operator cab on the steep slopes and failed to install erosion control measures in several locations.

In the Spring of 2000, the Agency's staff agreed to settle the violations of the permit with a civil penalty of \$2,000. Mr. O'Connell did not agree. Staff then issued a "Notice of Apparent Violation" and sent the case to the Agency Enforcement Committee. The Committee increased the penalty to \$10,000 and then agreed to decrease it to \$7,500. The settlement was signed.

ACKNOWLEDGMENTS

This report is the latest in a series of public policy studies on the Adirondack Park issued by the Adirondack Council. The Adirondack Council is an 18,000-member, privately funded, not-for-profit organization dedicated to protecting and enhancing the natural character and human communities of the Adirondack Park through research, education, advocacy and legal action.

Research and Analysis

Scott Lorey
Joseph Moore

Charts/Graphs

Scott Lorey

Project Director

Bernard C. Melewski

Editing and Layout

John F. Sheehan

Executive Director

Timothy J. Burke

REFERENCES

The information compiled for this report was taken from a variety of sources including the monthly APA agendas and enforcement committee reports; A *Citizen's Guide to Adirondack Park Agency Land Use Regulations* by the APA; the APA website; Annual APA reports; *The Adirondack Park in the Twenty-First Century*; and interviews with present and former staff and Commissioners of the Adirondack Park Agency.

Copyright

February 2001

The Adirondack Council

All rights reserved.

P. O. Box D-2

Two Church Street

Elizabethtown, NY 12932

518-873-2240

www.adirondackcouncil.org