



Adirondack Park Agency

SHERMAN CRAIG
Chairman

TERRY MARTINO
Executive Director

MEMORANDUM

TO: Terry Martino, Executive Director

FROM: James Townsend, Counsel

DATE: June 1, 2017

RE: Compliance with Executive Order #131 (1989), as continued by Governor Andrew M. Cuomo in Executive Order #2 (2011)

APA is required by Executive Order #131 (1989), as continued by Governor Cuomo in Executive Order #2 (2011), to maintain a plan for how it conducts administrative adjudicatory hearings. The Agency's existing plan was adopted by the Agency Board in December, 1989. Staff provided an updated plan to the Agency Board at its May, 2017 meeting and the Board directed staff to seek public comment on the updated draft. No comments have been received, and staff recommend the attached, draft plan for Agency Board approval.

The State Administrative Procedure Act and the Executive Orders on hearing plans also require agencies to prepare plain language summaries of their adjudicatory hearing processes, and to make the summaries available to the public. Updated summaries for APA, project, enforcement and permit modification adjudicatory hearings are being finalized by the Legal Division so that they can be posted on the Agency's website and made available to the public.

Please let me know if you have any questions.

Attachment



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AMENDED ADMINISTRATIVE ADJUDICATION PLAN

[Issued pursuant to Executive Order No. 2 of Governor Andrew M. Cuomo (9 NYCRR § 8.2), Executive Order No. 9 of Governor David A. Paterson (9 NYCRR § 7.9), Executive Order No. 5 of Governor Eliot Spitzer (9 NYCRR § 6.5), Executive Order No. 3 of Governor George E. Pataki (9 NYCRR § 5.3) and Executive Order No. 131 of Governor Mario M. Cuomo (9 NYCRR § 4.131)]

The Adirondack Park Agency (Agency), adhering to the core principles of due process and the appearance of fairness in its administrative public hearings, hereby adopts an amended administrative adjudication plan (Plan) as follows:

APPLICABILITY

This Plan shall apply to quasi-judicial public hearings conducted pursuant to Executive Law § 809 and 9 NYCRR Parts 580 and 581.

HEARING OFFICERS

The Agency receives the services of administrative law judges from the Department of Environmental Conservation's Office of Hearings and Mediation Services to conduct hearings to which this Plan applies. Hearing officers are appointed by the Agency's executive director to conduct hearings pursuant to 9 NYCRR §§ 580.8 and 581-4.7.

CONDUCT OF HEARINGS

Hearing officers are expected to conduct hearings to which this Plan applies in a fair and impartial manner pursuant to 9 NYCRR §§ 580.14 and 581-4.14. At the conclusion of a hearing, the hearing officers provide and certify a record to the Agency that includes all relevant hearing materials and, if requested, findings of fact consistent with 9 NYCRR §§ 580.14, 581-4.14, and the Executive Director's appointment letter.

IMPARTIALITY OF HEARING OFFICERS

Agency rules direct hearing officers to conduct hearings in an impartial manner. Parties may challenge the appointment of a hearing officer by the Executive Director for grounds including bias pursuant to 9 NYCRR §§ 580.8 and 581-4.7. *Ex parte* contacts with hearing officers are prohibited by 9 NYCRR §§ 580.17, 581-4.12 and 587.4.

TRAINING OF HEARING OFFICERS

The administrative law judges the Agency uses for its hearings receive their training from the other agencies. The Executive Director's appointment letter provides specific guidance for hearing officers. The Agency's Counsel, who is not engaged in the prosecution of the adjudicatory proceedings to which this Plan applies, is made available to hearing officers for consultation during the hearing process.

SHARING OF RESOURCES

The Agency uses administrative law judges from other agencies for the hearings to which this Plan applies. Agency conference room and technology facilities are available to other agencies to use for public hearings.

TIMELY DISPOSITION

The Agency does not conduct more than 50 adjudicatory hearings a year and therefore is not subject to the requirement of a management system "intended to effect the timely disposition" of proceedings. The Executive Director's appointment letter and Agency rules support the goal of timely dispositions in all hearings to which this Plan applies.

ENFORCEMENT PROCEEDINGS

The Agency amended its enforcement process rules in 2003 to provide rules for the adjudication of alleged violations under the Freshwater Wetlands Act (ECL Article 24), or, upon the request of a permit holder, for the adjudication of Agency proposals to modify, suspend or revoke Agency permits.

CHANGES TO EXISTING ADJUDICATORY PROCEDURES

The Agency periodically reviews its rules governing adjudicatory procedures to ensure consistency with Executive Order No. 131 of Governor Mario M. Cuomo as continued by Executive Order No. 2 of Governor Andrew M. Cuomo. Summaries of the Agency's adjudicatory procedures are available to the public and posted on the Agency's website.

ATTESTATION

On behalf of the Adirondack Park Agency, I attest that the above Amended Administrative Adjudication Plan adheres to the principles of administrative adjudication set forth in section two of Executive Order No. 131 of Governor Mario M. Cuomo as continued by Executive Order No. 2 of Governor Andrew M. Cuomo.

Dated:

Sherman Craig
Chairman