



## **2013 LEGAL DIVISION ANNUAL REPORT**

The Legal Division consists of four major components: the Office of Counsel including the Legal Services Unit, the Jurisdictional Inquiry Unit, and the Enforcement Unit. The Counsel and Associate Counsel advise all Agency divisions and the Agency Board. Legal Services attorneys review significant permitting, planning, enforcement, and other documents, assist the Attorney General with litigation, manage adjudicatory hearings, and provide other legal services as necessary.

The Jurisdictional Inquiry Unit provides advice to landowners and potential project sponsors regarding Agency jurisdiction, including informal phone advice and written jurisdictional determinations.

The Enforcement Unit seeks to resolve violations of the laws the Agency is charged to administer.

### **OFFICE OF COUNSEL AND LEGAL SERVICES**

Key Legal Division accomplishments for 2013 included dismissal by stipulation of a federal court challenge relating to an Agency wetlands enforcement action in Clinton County. A state court challenge relating to enforcement of the Agency's shoreline restrictions was also discontinued by stipulation.

Ongoing litigation includes two challenges related to the Agency's approval of the Adirondack Club and Resort development project, and a challenge to APA and DEC State Land Master Plan guidance regarding snowmobile trail location and maintenance provisions.

In addition, the Legal Division undertook a consensus rulemaking to make minor corrections to existing regulations. Staff also updated 13 public information flyers, and continued procedures to streamline internal legal review and guidance for non-legal staff and the public.

Legal staff also reviewed major permits prior to issuance, provided legal advice on jurisdictional inquiries and helped resolve enforcement matters.

Provided legal guidance to state Lands on classification of recently acquired Essex Chain Lakes, Indian River and Ok Slip Falls Tract.

In January the Agency welcomed James Townsend to the position of Counsel.

Finally, in June, the Agency recognized the retirement of Board Member Cecil Wray. Mr. Wray served on the Board from 1999 to 2013, and was Chair of both the Legal Affairs and Enforcement Committees.

**JURISDICTIONAL INQUIRY UNIT**

The public's first point of contact with the Agency is often a letter or a phone call handled by the Jurisdictional Inquiry Unit. Staff within this Unit provide advice to landowners and others regarding Agency jurisdiction. Staff help members of the public determine if an Agency permit or variance is required for proposed land use and development or the subdivision of land within the Park. Determinations often require a full deed history and other legal and factual research. This is the Agency's initial and most common point of contact with the public; hence, a high priority is placed on prompt responses. The Jurisdictional Inquiry Unit also handles referrals from other agencies, telephone calls and walk-in members of the public. The Jurisdictional Unit includes the Agency's Records Access Officer.

In 2013 the Agency received a total of 837 jurisdictional inquiry forms (JIFs). The following table summarizes the Jurisdictional Inquiry Unit responses:

JIF's Received	837
JIF's Responded To	833
Non-Jurisdictional	588
Jurisdictional	147
Requiring a Variance	29
General Information	48
Potential Violations	21
Average Response Time (in days)	16
Telephone Calls	3,716
Walk-Ins	187
Write Ins/Site Visits	57
Referrals from other Agencies	263
FOIL Requests Received	187

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	2013 TOTAL	DEC 2012	2012 TOTAL
<b>JIFs RECEIVED</b>	48	64	66	74	77	84	99	84	82	63	57	39	8	37	789
<b>JIFs RESPONDED TO</b>	53	46	69	67	72	82	79	83	92	80	52	58	8	28	785
<b>Non-Jurisdictional</b>	44	29	50	47	56	53	48	58	66	58	34	45	5	15	550
<b>Jurisdictional</b>	3	12	15	11	9	17	21	19	13	13	10	4	1	15	151
<b>Variance</b>	2	2	1	3	3	3	2	5	3	2	1	2	29	7	24
<b>General Information</b>	3	0	2	4	3	7	5	0	8	5	4	7	48	0	45
<b>Potential Violation</b>	1	3	1	2	1	2	3	1	2	2	3	0	21	5	15
<b>AVERAGE RESPONSE TIME (in days)</b>	14	10	12	14	12	13	17	17	23	19	20	21	16	9	18

<b>TELEPHONE CALLS</b>	245	268	245	327	369	312	410	438	345	331	253	173	371	20	3927
<b>WALK-INS</b>	6	13	11	17	18	18	28	21	22	13	12	8	18	6	157
<b>WRITE INS/SITE VISITS</b>	4	5	5	6	2	7	5	6	7	4	3	3	57	3	41
<b>OTHER AGENCIES</b>	27	21	21	32	26	16	21	19	25	20	21	14	26	9	322
<b>FOIL REQUESTS RECEIVED</b>	16	9	16	14	15	15	18	19	20	18	21	6	18	10	178

## **ENFORCEMENT UNIT**

In 2013, Enforcement Officers continued to promptly address violations when identified and to actively work with local officials to prevent or quickly discover new violations. These efforts help to achieve amicable resolutions that avoid undue adverse impacts to resources and burdensome financial expenditures.

Staff started 2013 with 149 unresolved cases and opened 209 new cases during the year. Staff successfully closed a total of 237 cases and prepared 86 settlement agreements. 54 settlement agreements were executed through consent with landowners in 2013. 71 violations were resolved through voluntary compliance on the part of the landowner as a result of prompt responses to alleged violations and proactive enforcement efforts. Staff conducted 207 site visits for enforcement matters and determined 112 enforcement cases were not violations.

The Enforcement Unit continues to see significant compliance for new subdivisions inside the Park. Staff closely monitors new subdivision activity through the use of New York State Office of Real Property's SalesWeb application. In 2013, 6 new potential subdivision violations were identified out of 120 subdivisions undertaken within the Park. 63% of new subdivisions were issued an Agency jurisdictional determination or permit. In addition to use of the SalesWeb application to track subdivisions, Enforcement staff rely on air photos, digital photographs of Adirondack lakeshores and prompt responses to alleged violations to efficiently undertake investigations.

As part of Agency-wide efforts to become more efficient, Enforcement staff have been cross-training with the Regulatory Program Division and completing various duties in addition to undertaking enforcement investigations. In 2013, this work included 50 jurisdictional determinations issued from enforcement, 33 site visits for review of permit applications and to confirm permit compliance, 23 permits issued with enforcement staff as the assigned project review officer, and 184 permit compliance letters were sent.

Finally, in September the Enforcement Unit welcomed Devon Korn to the position of Environmental Program Specialist 1.

**2013 Enforcement Program Report**

1. This table depicts the number of open cases at the beginning of the reporting period, how many cases were opened or closed during the period, and the number of open cases at the end of the reporting period.

<b>Open Cases</b>	<b>2013 December</b>	<b>2013 Totals</b>	<b>2012</b>	<b>2011</b>
<b>At Beginning of Period</b>	130	149	225	371
<b>Cases Opened</b>	15	209	258	305
<b>Cases Closed</b>	24	237	334	419
<b>At End of Period</b>	121	121	149	225

2. This table provides a detailed description of enforcement program activity during the reporting period.

	<b>December 2013</b>	<b>2013 Total</b>	<b>2012 Total</b>
<b>New Cases Opened</b>	15	209	258
<b>Site Visits</b>	9	207	249
<b>Settlement Agreements Sent</b>	4	86	103
<b>Settlement Agreements Signed*</b>	1	54	53
<b>Notice of Violation or Hearing Sent</b>	0	1	0
<b>Cases Referred to AG</b>	0	0	0
<b>Cases Referred to the EC</b>	0	0	0
<b>Cases Closed: Compliance w/o SA**</b>	10	71	67
<b>Cases Closed No Violation</b>	13	112	132

3. Breakdown of New Cases:

Type of Violation	December 2013	2013 Total	2012 Total	Outcome of Closed 2013 Cases (Violation or No Violation)
Subdivision Creating Substandard Lots	1	21	35	V-6 NV-4
Subdivision due to number of lots	0	5	9	V-3 NV-2
Subdivision in Resource Management	1	9	9	V-2 NV-0
Wetland Subdivision	0	11	9	V-3 NV-3
Wetland Disturbance	5	61	59	V-5 NV-15
Rivers Project	2	13	4	V-3 NV-0
Permit Violation	2	27	31	V-7 NV-11
SFD in CEA	0	3	3	V-2 NV-0
Hunting/Fishing cabin >500 sq ft	0	0	1	V-0 NV-0
Structure >40' height	0	0	2	V-0 NV-0
Clearcut >25%	0	4	7	V-0 NV-4
Commercial Use	0	5	8	V-2 NV-1
Junkyards	0	2	1	V-0 NV-1
Campgrounds	0	1	2	V-0 NV-0
Mobile Home Court	0	1	0	V-0 NV-0
Shoreline Setback	2	25	53	V-4 NV-7
Waste Disposal Area	0	7	16	V-3 NV-2
Septic Setback	1	10		V-2 NV-3
Sand and Gravel Excavation	1	4	3	V-0 NV-3
Multiple Family Dwelling	0	3	2	V-1 NV-2
Tourist Accommodation	0	0	2	V-0 NV-0

#### 4. Salesweb Monitoring 2013:

Month	# Subdivisions in Park	# Cases Opened	# Subdivisions Related to Previous JIF or Permit
January	5	0	4
February	12	0	9
March	8	0	5
April	5	0	3
May	8	0	5
June	9	2	5
July	3	0	2
August	14	1	11
September	5	0	3
October	34	2	24
November	5	1	2
December	12	0	2
TOTAL	120	6	75

Note: In 2013, Salesweb monitoring found six potential violations out of 120 subdivisions that occurred in the Park and 63% of all subdivisions were related to a previous JIF or permit. Of the six potential violations, 3 were found to be no violation after further review and 3 are currently under investigation. In 2012, Salesweb monitoring found three potential violations out of 91 subdivisions undertaken in the Park.

5. Inter-Division Coordination

This table provides a description of coordination activities between enforcement staff and other programs within the Agency.

	December 2013	2013 Total
Jurisdictional Determinations Issued from Enforcement	5	50
Project Pre-applications Assigned to Enforcement Staff	3	20
Permit Applications Assigned to Enforcement Staff	3	36
Site Visits by Enforcement Staff for Review of Project Applications	2	29
Permits Issued With Enforcement Staff as Assigned Project Review Officer	3	23
Permit Compliance Letters Sent	35	184 letters (for 65 permits issued)
Permit Compliance Site Visits	0	4
Shoreline Photo Inventories	0	12