



## Shoreline Restrictions - Criteria for “Minor Expansion” of Dams

This legal guidance addresses the shoreline structure expansion regulation [9 NYCRR 575.5(b)(2)] relative to replacement or repair of dams resulting in an expansion. The regulation, which took effect on December 31, 2008, states:

“An existing structure located within the shoreline setback area may not be expanded in any direction within the shoreline setback area, including an increase of structure height, without a variance; provided, however, no such variance shall be required for a minor rearward expansion or a minor height expansion specified in an agency letter to the property owner.”

At the time of enactment of this regulation, the Agency authorized specific guidance regarding “minor” expansion of structures located within the shoreline setback area. Subsequently, Counsel advised that the guidance issued for minor expansions does not apply to accessory or other non-dwelling structures and that there can be no expansion of stairs, sheds, or similar accessory structures within the applicable Section 806 shoreline setback area without first obtaining a variance for the resulting structure if it would exceed 100 square feet in size.

Prior to the effective date of this regulation, an Agency variance was required for replacement or repair of a dam that resulted in an expansion by more than 25% of its size, measured in the larger of plan or face view. With the elimination of the 25% reference in 9 NYCRR 575.5(b)(2), the question arises as to how the “minor” expansion exception will be applied to a dam structure.

Expansion of a dam structure will be considered to be a “minor” expansion if plans and a certification by the engineer for the project sponsor support the following conclusions:

- 1) The design adjustments will result in the same “normal pool elevation”<sup>1</sup> for the impoundment; and
- 2) The modified dam has been designed in accord with the engineering criteria for New York State Department of Environmental Conservation (DEC) dam safety.<sup>2</sup>

Advice relative to a dam repair, replacement and/or expansion project will be provided in the form of a jurisdictional determination upon submission of a Jurisdictional Inquiry Form and appropriate stamped engineering plans and analysis.

Any new or expanded structure proposed for construction at the same time as the dam modification which is not necessary for the safety of the dam under DEC criteria is not part of a “minor” expansion of the dam, but rather is an accessory structure subject to the 100 square foot limitation set forth in Section 806 of the Adirondack Park Agency Act and to the shoreline setback restrictions established under the Wild, Scenic, and Recreational Rivers System Act (as applicable). For example, new or expanded fences, walls, walkways or other structures not required for compliance with DEC dam safety criteria will require a variance.

This guidance does not change Agency jurisdiction over new, expanded, or replacement dams or associated reservoirs based upon the potential for impact to wetlands. Analysis of wetland involvement will be done upon receipt of an appropriate jurisdictional inquiry as part of the issuance of the jurisdictional determination which is required prior to undertaking any minor expansion.

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<sup>1</sup> “Normal pool elevation” will be further defined in consultation with the Agency Resource Analysis and Scientific Services staff. Historic information about the impoundment size and water elevations will be required.

<sup>2</sup> It is intended that the DEC dam safety criteria apply whether or not a particular dam is subject to DEC dam safety jurisdiction. (*Guidelines for Design of Dams*, last revised January 1989 or current version thereof.)