



***2008 Rule Making
Text as Approved by Agency
November 14, 2008***

Subject	Revised Regulation
"Involving Wetlands"	Revises regulatory definitions to make Adirondack Park Agency Act and Freshwater Wetlands Act jurisdiction identical; tailors wetland subdivision jurisdiction to potential for impacts (9 NYCRR 578.3, 570.3, 573.3).
Expansions of non-conforming shoreline structures	Modifies existing regulation which allows unlimited lateral and rear expansion of non-conforming shoreline structures (9 NYCRR 575.5). Companion change: allows improvements to non-conforming on-site wastewater treatment systems without variance in absence of expansion, and ensures expansions of non-conforming sanitary systems are subject to shoreline setback requirements (9 NYCRR 575.7).
Land division along roads or rights-of-way owned in fee	Removes existing regulation which allows divisions along roads without permit even though the overall intensity guidelines cannot be met (9 NYCRR 573.4) and companion change to remove provision which counts those areas as lots regardless of whether they are offered for sale for the purpose of determining jurisdiction (9NYCRR 573.4[c][2] and [3]).
"Floor Space"	Adds a regulatory definition which defines the "square feet of floor space" of a building and the "square footage" of any other structure (9 NYCRR 570.3).
"Hunting and Fishing Cabin"	Amends current definition to provide additional detail as to what constitutes a "hunting and fishing cabin" (9 NYCRR 570.3).

ADIRONDACK PARK AGENCY REGULATORY AMENDMENT

SUBJECT: “Floor Space”

SECTION: 570.3

STATUTORY AUTHORITY: Executive Law Article 27

NEW DEFINITION

Add to 570.3:

(ag) “*Square feet of floor space*” of a building shall be the area in square feet measured from the exterior walls of a structure, including the sum total of all floor areas, and including all attached covered porches and covered decks, and all other attached components with a roof or cover. The area shall also include any finished attic or basement. For the purpose of this definition, a finished basement or attic is one which contains walls, flooring, and ceiling suitable for use as a bedroom, living room, playroom or office area, or if a non-residential use, suitable for storage, work area, or office.

(ah) “*Square footage*” of a structure other than a building shall be the exterior area of the structure, measured in either the elevation (face) or plan (top) view, whichever is larger.

ADIRONDACK PARK AGENCY REGULATORY AMENDMENT

SUBJECT: “Hunting and Fishing Cabin”

SECTION: 570.3

STATUTORY AUTHORITY: Executive Law Article 27

REVISED DEFINITION

Change Section 570.3(m):

(m) *Hunting and fishing cabin* and *hunting and fishing and other private club structure* [shall mean] means a cabin, camp or lean-to or other similar structure designed and used only for occasional occupancy and primarily for hunting, fishing, [or] and similar purposes that (i) is a one-story structure but may include a sleeping loft; (ii) is built on posts or piers and does not have a permanent foundation; (iii) is served by a sanitary pit privy or chemical toilet and does not have a conventional, on-site wastewater treatment system; (iv) does not have pressurized or indoor plumbing (this prohibition does not preclude a kitchen sink with appropriate grey water leach pit); and (v) is not connected to any public utilities (such as electric, phone, cable, water or sewer systems).

ADIRONDACK PARK AGENCY REGULATORY AMENDMENT

SUBJECT: **“Involving wetlands”**

SECTION: 570.3, 573.3, and 578.3

STATUTORY AUTHORITY: Executive Law Article 27

REVISION

578.3(n)(1) *Regulated activity* means any of the following within the boundaries of a freshwater wetland:

(i) land use and development [or subdivision];

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578.3(n) (3) *Regulated activities for subdivision involving wetlands.*

(i) For subdivision, a *regulated activity* includes any proposed lot which contains wetlands (including the parcel proposed for the subdivision road) and any proposed lot adjoining such wetland lot, and all land use and development related to such lots. The lots referred to in this paragraph constitute the “wetland subdivision group” for each wetland.

(ii) If all lots in a “wetland subdivision group” meet the following criteria, that group will not be considered a regulated activity. If any lot does not meet the criteria, the subdivision of the entire group will remain a regulated activity. The criteria are:

(a) all proposed parcel boundaries for the wetland subdivision group must be located at least 200 feet from any wetland boundary at all points; and

(b) all subdivision roads which provide access for more than one lot must be located at least 50 feet from the wetland; and

(c) all non-wetland areas of each lot must be able to be reached by an access road which does not require a wetland crossing and which will not cause adverse wetland impacts, unless such non-wetland areas are designated by deed covenant to be non-development areas; and

(d) if any lot described in (i) above contains a lawfully existing principal building, the lot must meet this criteria: the on-site water supply and wastewater treatment systems for the principal building must be located on the lot containing that principal building and there must be identified on that lot an adequate replacement site for the on-site wastewater treatment system which site is located at least 100 feet from the wetland.

(iii) The landowner proposing the subdivision must obtain a written jurisdictional determination pursuant to section 571.1(a) to take advantage of the exception from wetland subdivision review provided by (ii), above.

(iv) The burden is on the landowner to demonstrate compliance with this section. A subdivision map must be submitted which identifies the proposed boundaries of lots for the entire subdivision, and for each lot in the wetland subdivision group. The map must also identify the location of all proposed subdivision roads and appropriate non-wetland access to all upland areas for all lots in the wetland subdivision group.

(v) The landowner shall provide all purchasers of lots with a copy of the jurisdictional determination and subdivision map which were authorized pursuant to this section.

(vi) The construction of a structure on any lot in a subdivision or wetland subdivision group may require a wetland permit pursuant to section 578.3(n)(1) or (2).

(vii) Nothing in this section affects Agency jurisdiction created by other sections of law or regulation.

(4) [(3)] Regulated activities do not include:

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Add as new 570.3(o) and renumber subsequent sections:

Involving wetlands means any activity which is a regulated activity as defined in section 578.3(n) of Agency regulations.

COMPANION CHANGES

Section 573.3 Projects located in critical environmental areas.

[(a)] Except in the case of a project involving wetlands, [R]review of a land use or development or subdivision which requires an Agency permit solely because it is located, in part, in a critical environmental area shall be confined to that portion of the land use or development actually located within the critical environmental area or, in the case of a subdivision, to those lots proposed to be sold which are located within or have situate upon them a critical environmental area.

[(b) A subdivision of land shall not be subject to agency review due to the involvement of a critical environmental area if the critical area is located wholly upon that portion of the subdivision being retained by the seller. However, an agency permit is required for new land use and development in the critical environmental area.]

Section 573.4 Subdivisions

(e) Division of land by gift, devise or inheritance.

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(7) A permit is required for the division of land through conveyance by gift, devise or inheritance of any lot, parcel, or site which is a regulated wetland activity as defined in section 578.3(n)(3) of Agency regulations. [involving wetlands including but not limited to instances where the division line intersects or crosses a wetland which is subject to agency jurisdiction.] However, a proposed gift lot may not require a permit if the requirements of section 578.3(n)(3) and this section are met.

ADIRONDACK PARK AGENCY REGULATORY AMENDMENT

SUBJECT: Expansion of non-conforming shoreline structures

SECTION: 575.5 and 575.7

STATUTORY AUTHORITY: Executive Law Article 27

REVISED REGULATION

Regulatory changes:

§ 575.5 Replacement and expansion of existing structures.

(a) Any existing structure lawfully in nonconformance with the building setback restrictions, or any such structure which was existing on August 1, 1973 and was thereafter removed or destroyed may be replaced in kind on the same foundation or location or in the same immediate vicinity, provided the previously existing setback non-conformance is not increased. A mobile home may be replaced by a single family dwelling, and a single family dwelling may be replaced by a mobile home.

(b) Expansions of existing structures in proximity to lakes, ponds, rivers or navigable streams shall be subject to the shoreline building setback restrictions according to the following rules:

(1) Expansions of existing structures which are in compliance with the building setback restrictions may not result in violation of such restrictions.

[(2) An existing single family dwelling or mobile home which is lawfully in noncompliance with the building setback restrictions may be expanded to the rear or laterally provided such expansion does not bring the structure any closer to the mean high-water mark, and provided the structure continues to be used as a single family residence. An existing structure other than a single family dwelling or mobile home may be expanded to the rear, but may not be expanded laterally within the applicable setback distance to a greater extent than 25 percent of the average width of the structure existing within the setback distance as of May 22, 1973.]

(2) 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.

(c) Expansions of existing structures may also be subject to agency permit jurisdiction, according to the rules set forth in section 573.5 of these regulations.

§ 575.7 Application of sewage system setback restrictions.

(a) Any seepage pit, drainage field or other leaching facility receiving any form of household effluent, regardless of whether it receives toilet wastes, is subject to the sewage disposal system setback restrictions.

(b) Any outhouse privy or other pit privy which is not a self-contained system is subject to the sewage disposal system setback restrictions.

(c) Any lawfully existing on-site wastewater treatment system which is in non-conformance with the Agency shoreline setback requirements, when proposed to be replaced, must be replaced in conformance with the setback requirements to the greatest extent possible, and in any case, no closer to the mean high water mark. No variance will be required for a replacement system which meets this requirement and which will also provide enhanced treatment over the lawfully existing system as determined by the Agency, provided such system is not also being expanded to meet an actual or potential occupancy increase.

(d) Any proposed expansion of a non-conforming on-site wastewater treatment system designed to service an actual or potential increase in occupancy of the shoreline structure served, must meet all existing standards for such systems, including the shoreline setback requirements. Otherwise, a variance will be required for the system expansion.

ADIRONDACK PARK AGENCY REGULATORY AMENDMENT

SUBJECT: Land division along roads or rights-of-way owned in fee

SECTION: 573.4

STATUTORY AUTHORITY: Executive Law Article 27

REVISED REGULATION

§ 573.4 Subdivisions.

(a) *Subdivisions along land use area boundaries.* A subdivision of land solely along a land use area boundary does not require an agency permit.

[(b) *Subdivisions along roads and other rights-of-way.* The sale of a landowner's entire ownership on one side of a public road, railroad, right-of-way owned in fee, or other intervening fee ownership, will not be considered a subdivision.]

(subsequent sections [c] through [j] will be re-numbered)

COMPANION CHANGE

Delete “lot counting provision” which counts these parcels as subdivision lots to determine jurisdiction (§573.4[c][2] and [3]):

(b) [(c)] *Counting lots.* For the purpose of determining agency jurisdiction based on the number of lots created from a parcel of land on or after August 1, 1973: (1) any lot to be retained by the subdivider, and (2) all lots in the same land use area which are part of one project and which would otherwise be adjoining but which are located on opposite sides of a public or private road, or railroad or right-of-way owned in fee, shall be counted, and (3) any parts of a lot which would otherwise be adjoining but which are located on opposite sides of a public or private road, railroad or right-of-way owned in fee, shall be counted as separate lots.