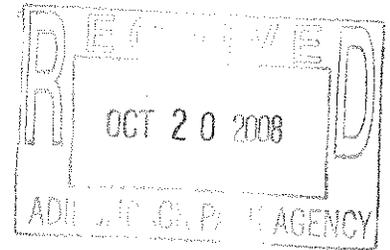


Appendix 1

Comment letters received.

John H. Merriman, Jr.  
4801 Butler Drive  
Cortland, NY 13045



October 15, 2008

Mr. John S. Banta, Counsel  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

Dear Mr. Banta:

I am writing in regards to the proposed revisions to Section 575.5, subsection 2, that would amend Agency regulations by prohibiting the expansion of pre-existing structures located within the shoreline setback area unless a variance is granted. Several points are noted below:

1. Please review the explicit wording found in section 811[5] of the APA Act:

"Any existing land use or development, including any structure being restored or rebuilt in whole or in part, being increased or expanded, whether in successive stages or at one time, to a total of less than twenty-five percent of its size or square footage at the date of enactment or when originally built or undertaken, whichever is later, shall not be subject to review by the agency. Any material increase or expansion thereafter shall constitute a reviewable land use or development if otherwise within the agency's review jurisdiction. In no case shall any increase or expansion violate, or increase non-compliance with, the minimum setback requirements of the shoreline restrictions. Notwithstanding the foregoing, a single family dwelling or mobile home may always be enlarged or rebuilt to any extent provided that it continues to be used as such, provided, however, that no such increase or expansion shall violate, or increase any non-compliance with, the minimum setback requirements of the shoreline restrictions."

A literal reading of this section clearly shows the intent of the law is to provide special accommodation for pre-existing structures that fall within the shoreline setback regulations with no reference to obtaining variances. The law is very explicit and the current Section 575.5, subsection 2, accurately reflects what the legislature intended.

2. Since the current Section 575.5, subsection 2, has been in effect for over thirty years and there have not been any legislative amendments to 811[5], the threshold for changing the existing regulation must be set very high. Normally, regulations are modified when the enabling legislation is amended or court cases provide more specific or contrary interpretations. None of this has occurred and therefore there is no legal justification to amend the existing Section 575.5, subsection 2, which correctly interpreted 811[5] over thirty years ago.

3. The proposed revisions to Section 575.5, subsection 2, would amend Agency regulations by prohibiting the expansion of pre-existing structures located within the shoreline setback area

unless a variance is granted. The problem with this approach is there is no statutory restriction that necessitates obtaining relief from. A variance should not have to be required for an action that is clearly statutorily protected under 811[5]. In essence, a universal pre-variance was granted in the law for pre-existing structures as long as they are expanded according to the limits set forth in 811[5].

4. The discussion found in the DSGEIS for this proposed revision contains tortured logic and unsubstantiated conclusions. For example it states:

“The existing regulation allows significant expansions of structures already located within the shoreline setback area, yet no expansion into the setback area is allowed for conforming structures. Thus, the existing rule creates an anomaly which allows a non-conforming structure to increase its non-conformance yet does not allow any non-conforming addition to a conforming structure.”

As stated previously, it is clear the law provides special provisions and rights for pre-existing non-conforming structures to expand. To say that it makes sense to eliminate this statutory accommodation via a new regulatory amendment that repeals the existing one simply because it is not fair that pre-existing conforming structures do not have the same expansion rights is ludicrous. Even in most municipal zoning regulations pre-existing non-conforming structures almost always have “rights” that a conforming or new structure would not be eligible for. Besides, pre-existing conforming structures and new structures can always apply to the Agency for a variance, as they should, according to the law and regulations.

5. The DSGEIS states:

“The Agency believes that this increase in non-conformance contravenes the statutory requirements. Moreover, the resulting anomalies are fundamentally unfair to the law abiding neighbors and the public and not protective of shoreline values.”

Fairness is a broad topic, often with several sides to it. It may seem unfair to an adjoining property owner that the owner of a pre-existing non-conforming structure can expand it as long as the expansion is not closer to mean high water. On the other hand, it is hardly fair to tell the owner of a pre-existing non-conforming structure that he no longer has an absolute right to expand it (subject to the restrictions contained in 811[5]) and now has to apply for a variance with an unknown chance of obtaining said permit being that it is clear from the statements in the DSGEIS that the intent of requiring a variance is so that “...expansions may not violate the shoreline requirements.” For some structures it would be impossible to expand even rearwards without still being in violation of the shoreline setback requirements.

6. The DSGEIS states:

“Consistent with the stated intent to protect shorelines, the Executive Law requirements should be read and implemented to prevent increasing non-compliance with statutory shoreline protection.

Section 811[5] of the Adirondack Park Agency Act provides that preexisting structures may be expanded by less than 25 percent without a permit, and that dwellings may be expanded to any size without a permit (unless a critical environmental area [CEA] or other jurisdictional threshold is met). However, the language is careful

to state: "provided, however, that no such increase or expansion shall violate, or increase any non-compliance with, the minimum setback requirements of the shoreline restrictions." In other words, the shoreline restrictions are more important than the general rule allowing preexisting structures to expand, and expansions may not violate the shoreline requirements."

The existing regulation, Section 575.5, subsection 2, has been in effect for over thirty years which the proposed amendment would essentially repeal. Are you saying the existing regulation has improperly interpreted the law, 811[5], for over thirty years? I think the burden of proof is extremely high when it is proposed to essentially reverse a regulation that has existed for over thirty years and there is no corresponding change in the law it implements. And no such supporting documentation or proof has been provided.

Summary:

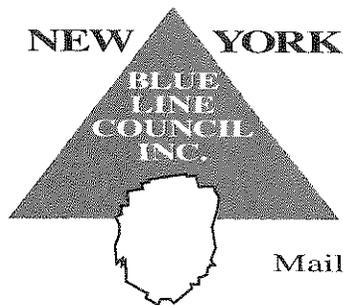
It is very clear the law, section 811[5] of the APA Act, is very specific that pre-existing non-conforming structures have explicit rights of expansion without requiring authorization from the Agency. Supporting that contention is the Agency's own current regulation, Section 575.5, subsection 2, that has been in effect for over 30 years. In the absence of an amendment to 811[5] or a redefining court case, the Agency has clearly not provided sufficient justification to make a radical reinterpretation of section 811[5] of the APA Act, or to reverse Section 575.5, subsection 2.

Having stated the forgoing, I am not unsympathetic to the issue of small lakeshore cottages being replaced by mansions within shoreline setback areas. However, the proper and legal procedure is to document the problem and propose to the Governor and Legislature an amendment to section 811[5] of the APA Act. One option would be to have the current grand-fathered expansion rights for pre-existing non-conforming structures expire at some future date, after which a variance from the APA would be necessary. Or, my preference would be to simply amend section 811[5] to add a reasonable percentage limit (50% or even 100% of the square footage as of 1973) that a pre-existing non-conforming single family structure may be expanded as long as it is no closer to mean high water. All proposed larger expansions would require a variance or permit from the APA.

Sincerely,



John H. Merriman, Jr



Mailing Address ▲ P.O. Box 204 ▲ Glens Falls, New York 12801

October 21, 2008

John S. Banta, Counsel  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

RE: Comments on October 2008 rulemaking

Dear Mr. Banta:

The Agency's own news release regarding the current round of rulemaking hearings states that purpose of the rulemaking is to aid in "clarifying the Agency's existing regulatory language" and "introducing more consistency, uniformity, and predictability...", goals the New York Blue Line Council has consistently supported since the beginning of the regulatory reform process. We believe, however, that some of the current set of proposed rules fails these critical tests and should not be allowed to go forward.

### **Square Feet of Floor Space**

**We support the adoption of this regulation.** It is clear, provides needed guidance, and is conveniently measurable.

### **Hunting & Fishing Cabins**

While we are agreed that some clarification of the "hunting and fishing cabin" definition is in order, the Agency's proposed changes do nothing to improve the existing definition. In the past, several words and phrases in the definition allowed for widely inconsistent interpretation and advice from Agency staff, and the current wording continues the tradition.

For example, we have witnessed Agency Commissioners fail to reach consensus on what "designed and used only for occasional occupancy" means after lengthy discussion in public meetings. Yet that phrase is still part of a draft rule despite the commissioners, staff and public having no idea what is intended. The addition of "and used only" to the offending phrase does nothing to improve on the confusion caused by a total lack of clarity about what constitutes "occasional occupancy." **The New York Blue Line Council suggests that the whole phrase "designed and used only for occasional**

**occupancy” should be discarded since the inclusion of other new language requiring a cabin to have primitive structural characteristics should sufficiently limit the audience to occasional users.**

In addition, “similar purposes” suffers from a similar defect. In a case involving recreational cabins, Agency legal staff gave Commissioners the advice that skeet shooting is similar to hunting while hiking is not. Certainly that is true if the measure of “similar” is defined as activities requiring a gun. But skeet shooting also requires a well developed facility in a treeless setting, not a forest. Hunting often involves hiking, and fishing doesn’t require a gun. If one considers recreational activities that take place in a natural setting, hiking most certainly qualifies as a “similar purpose.” In fact the Temporary Study Commission’s recreation report that preceded and in part formed the basis for the APA Act spoke to the diverse nature of the recreation taking place on private lands in the Adirondacks, and clearly the term “hunting and fishing cabins” as used in the APA Act was intended to convey only the general nature of the building, not define the only allowed activities. **Some time ago the New York Blue Line Council suggested that the non-controversial, already defined term “open space recreation use” be substituted for “similar purposes.”** This would allow the activities contemplated in a non-jurisdictional hunting and fishing cabin to coincide with those allowed on a non-jurisdictional passive recreational lease as currently defined under Agency law and rules. Since the majority of hunting and fishing cabins are on recreational leases, this would provide clarity and consistency.

Both the “similar purposes” and “occasional occupancy” features of the proposed regulation are not only vague and subject to widely various interpretation, they are also extremely difficult and costly to enforce. Hunting and fishing cabin occupants would likely have to submit log books of occupancy and activity data which Agency staff could then audit and verify to assure that the arbitrary standards were being “met.” Clearly this would be a waste of taxpayer’s money. If the intent is to avoid enforcing these provisions of the regulation to avoid these costs, why then include them?

### **Regulated Activities for Subdivisions Involving Wetlands**

The “Regulatory Impact Statement” (August 12, 2008) says that “With regard to government costs, the new non-jurisdictional and general permit options may result in fewer jurisdictional projects.” However, the purpose of rewriting these regulations is to avoid developers “gerrymandering” lot lines and to make subdivisions involving impacts to wetlands jurisdictional where there is no current jurisdiction. In addition, requiring that lot lines avoid wetlands by 200 feet and limiting road location by adding buffers and slope limitations will have the effect of making additional projects jurisdictional. We think it highly unlikely that costs to the APA will be reduced. We also think it highly unlikely that costs to those seeking subdivisions will be reduced.

When queried at public hearing, Agency staff responded that the “science” behind the use of a 200 foot setback or buffer number was internally developed by Agency’s Resource Analysis staff. There was no attempt made to offer peer reviewed scientific literature that supported the notion that a 200 foot buffer would better protect wetlands

that a 100 foot buffer or a 50 foot buffer. This is a “scientific” fox guarding the henhouse situation.

When Agency Staff was asked about the increased costs or size of the audience for this proposed regulation, they responded that it was difficult or impossible to gauge the overall costs since some subdividers might save while others might incur additional costs.

Thus we have a very flawed cost-benefit analysis. The APA’s staff cannot accurately identify or substantiate the benefits provided by increased jurisdiction and increased buffers, while at the same time they cannot, by admission, identify or quantify any of the costs. **The New York Blue Line Council recommends that this regulation must not go forward until such time as the Agency produces a satisfactory cost/benefit analysis.**

We hope our comments will encourage the Agency to improve on these definitions and rules in a way that more fully complies with the directive to make the Agency’s regulations more consistent, uniform, and predictable.

Sincerely,

A handwritten signature in black ink, appearing to read "Pieter Litchfield". The signature is written in a cursive, flowing style.

Pieter Litchfield, President

Cc: GORR  
Curt Stiles, APA Chair

ELIZABETH O'C. LITTLE  
SENATOR, 45TH DISTRICT

ROOM 903  
LEGISLATIVE OFFICE BLDG.  
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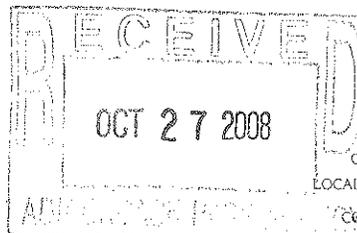
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THE SENATE  
STATE OF NEW YORK



CHAIRMAN  
LOCAL GOVERNMENT  
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TOURISM, RECREATION &  
SPORTS DEVELOPMENT

October 23, 2008

Chairman Curt Stiles  
Adirondack Park Agency Board  
P.O. Box 99  
Ray Brook, New York 12977

Dear Chairman Stiles:

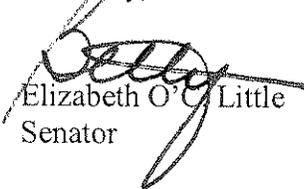
I am writing to express my concerns with the recent proposed expansion of jurisdictional authority of the Adirondack Park Agency. These actions will most certainly have a negative impact on the lives of those who work and live in the Adirondacks.

As a member of the New York State Legislature, I am deeply disturbed by the proposed expansion of the agency's jurisdiction into additional areas that clearly lie within the purview of the Legislature. It was the Legislature that created the APA, its role, responsibilities, and regulatory authority and expressly defined its jurisdiction. Therefore it should be the Legislature, not the agency, which makes any amendments to the act with respect to jurisdictional matters.

A constitutional amendment passed the Senate this year that allows the Legislature by majority vote of both houses to invalidate regulations not consistent with the legislative intent or which are likely to have a substantial unanticipated fiscal impact on the state or local governments. Clearly, your proposals are not consistent with the Legislature's intent when it created the APA.

I would appreciate your consideration of my concerns and those concerns of the people who live and attempt to make a living in the Park and rescind the adoption of these proposed "revisions".

Sincerely,

  
Elizabeth O'C. Little  
Senator

EOL/rmm

cc: Members of the Adirondack Park Agency Board  
Judith Enck

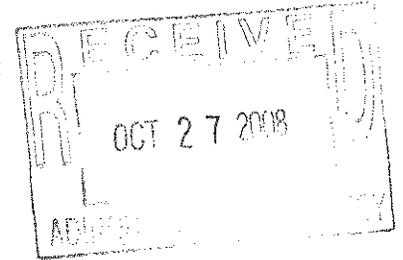


Executive Director  
**FREDERICK H. MONROE**  
P.O. Box 579, Chestertown, NY 12817  
Tel: (518) 494-3607 Fax: (518) 494-5472  
[fmonroe@adkreviewboard.com](mailto:fmonroe@adkreviewboard.com)

Chairman  
**GEORGE CANON**  
5639 Rt 28N, Newcomb, N.Y. 12852  
(518)5826-3131  
[adksupv@aol.com](mailto:adksupv@aol.com)

Counsel  
**JOHN MCDONALD**  
P.O. Box 39  
Ticonderoga, NY 12883  
(518) 585-2631

October 24, 2008



Chairman Curt Stiles  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, New York 12977

Dear Chairman Stiles:

Enclosed are the Review Board's comments on the 2008 Adirondack Park Agency proposed revised regulations. The Review Board is extremely concerned that the proposed regulations are an expansion of Agency jurisdiction by rule making, rather than legislative action.

If the Agency wishes to expand its jurisdiction it should propose a program bill for consideration by the New York State Legislature..

Sincerely,

Frederick H. Monroe  
Executive Director

**MEMBERS**

**Clinton County:** John Maye, Howard Aubin\* • **Essex County:** George Canon, Cathy Moses, John Paradis\* • **Franklin County:** Tim Burpoe, Jim Frenette\*  
**Fulton County:** Linda Kemper, David Howard\*, Sylvia Parker\*\* • **Hamilton County:** Ermina Pincombe\*, Brian Towers\*  
**Herkimer County:** Henry Eyselhoff, Linda Eyselhoff\* • **Lewis County:** L. Kelley Dickinson • **St. Lawrence County:** Laura J. Perry, Carleen Dowling\*  
**Saratoga County:** Bruce Brownell, Jean Raymond\* • **Warren County:** Ralph Bentley, Kevin Geraghty\* • **Washington County:** John LaPoinne, Robert Banks\*  
Secretary Carol A. Monroe, [cmmonroe@adkreviewboard.com](mailto:cmmonroe@adkreviewboard.com) • P.O. Box 579, Chestertown, NY 12817 • (518) 494-3607 • Fax (518) 494-5472

\*Alternate, \*\*Community Liaison

## REVIEW BOARD COMMENTS ON 2008 ADIRONDACK PARK AGENCY PROPOSED REVISED REGULATIONS

The Review Board has reviewed the proposed revisions to the Adirondack Park Agency regulations and offers the following comments. As written, the proposed revisions would create or substantially expand Agency jurisdiction. However, the jurisdiction of New York administrative agencies is created by the New York State Legislature and as such, the creation of new agency jurisdiction and the expansion of agency jurisdiction is properly a matter for the legislature.

The Adirondack Park Agency should not create new jurisdiction or expand the jurisdiction given to it by the legislature without legislative action. Specifically, the proposed regulations would create new or expand existing jurisdiction in the following ways:

- The proposed revisions relating to subdivisions “involving wetlands” would create new jurisdiction over otherwise non-jurisdictional subdivisions in which the landowner retains a lot containing wetlands and substantially expand jurisdiction over lots with boundaries within 200 feet of wetlands.
- The proposed revisions relating to expansion of non-conforming structures and wastewater treatment systems within shoreline setback areas would create new variance jurisdiction over those expansions. (This provision also seems to be inconsistent with APA Act Section 811 (5) which provides that “... a single family dwelling or mobile home may always be enlarged or rebuilt to any extent provided that it continues to be used as such, provided, however, that no such increase or expansion shall violate, or increase any non-compliance with, the minimum setback requirements of the shoreline restrictions.” The Review Board believes that the intent of that section of the statute is to prohibit further encroachment into the shoreline setback, rather than to prohibit expansion to the rear or lateral expansions.)
- The proposed revisions relating to land division along roads or rights-of-way owned in fee create new jurisdiction over lots physically in existence by being separated from other lands in the same ownership by a road or right-of-way owned in fee.
- The proposed revisions relating to the method of measuring floor space create new jurisdiction over hunting and fishing cabins by providing jurisdiction over cabins with less than 500 square feet of floor area excluding the footprint of exterior and interior walls, but with greater than 500 square feet of floor space measured from the outside of exterior walls and including the footprint of interior walls.

### MEMBERS

**Clinton County:** John Maye, Howard Aubin\* • **Essex County:** George Canon, Cathy Moses, John Paradis\* • **Franklin County:** Tim Burpoe, Jim Frenette\*  
**Fulton County:** Linda Kemper, David Howard\*, Sylvia Parker\*\* • **Hamilton County:** Ermina Pincombe\*, Brian Towers\*  
**Herkimer County:** Henry Eykelhoff, Linda Eykelhoff\* • **Lewis County:** L. Kelley Dickinson • **St. Lawrence County:** Laura J. Perry, Carleen Dowling\*  
**Saratoga County:** Bruce Brownell, Jean Raymond\* • **Warren County:** Ralph Bentley, Kevin Geraghty\* • **Washington County:** John LaPointe, Robert Banks\*  
Secretary Carol A. Monroe, [cmonroe@adkreviewboard.com](mailto:cmonroe@adkreviewboard.com) • P.O. Box 579, Chestertown, NY 12817 • (518) 494-3607 • Fax (518) 494-5472

\*Alternate, \*\*Community Liaison

The Review Board offers the following comments on the specific proposals.

***Jurisdiction over subdivisions involving wetlands:***

**Current regulation:** The current regulation provides that a jurisdictional “regulated activity” includes subdivisions within the boundary of a freshwater wetland. This provision allows gerrymandering of lot lines in an otherwise non-jurisdictional subdivision to create a lot containing wetlands to be retained by the landowner and thereby retain the non-jurisdictional status of the subdivision because the wetland has not been divided. *See Section 578.3(n)(1)*

**Proposed regulation:** The proposed revision would add a new subsection which would create new jurisdiction over “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 cluster’ for each wetland.”

The proposed revision would also create an exemption if all lots in a “wetland subdivision cluster” meet the following criteria:

“(a) all proposed parcel boundaries for the wetland subdivision cluster 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 on slopes less than 15 percent; 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.”

The revision also requires the landowner to obtain a written jurisdictional determination to take advantage of the exception based upon a subdivision map which identifies the proposed boundaries for the entire subdivision and for each lot in the “wetland subdivision cluster”.

***Review Board Position:***

***The Review Board opposes this proposed regulation because it creates new APA jurisdiction over subdivisions without legislative action. The legislature created APA jurisdiction in the Adirondack Park Agency Act and the legislature should make all determinations regarding modification of APA jurisdiction.***

***Expansion of non-conforming shoreline structures.***

**Current regulation:** Current APA regulations regarding expansion of structures within the shoreline setback provide that: “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 that 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 with the setback distance as of May 22, 1973.” *Section 575.5.*

Current APA regulations regarding sewage system shoreline setback restrictions do not require a variance for the expansion of a non-conforming wastewater treatment system. *Section 575.7.*

**Proposed regulation:** “It is proposed that Section 575.5, subsection 2, of Agency regulations be amended to prohibit the expansion of pre-existing structures within the shoreline setback area unless a variance is granted. This removes an exemption which gave non-conforming structures more opportunity to expand than existing structures. A companion Section 575.7, dealing with the shoreline setbacks for on-site wastewater treatment systems is also proposed to be amended. A new subsection (c) will require that when a pre-existing non-conforming on-site wastewater treatment system is being replaced, it must be located to meet the shoreline setback requirements to the greatest extent possible. Also, a new subsection (d) is added to require a variance for the expansion of a non-conforming wastewater treatment system in conjunction with an actual or potential proposed increase in occupancy of the associated structure.” *SUMMARY OF PROPOSED RULE TEXT - 2008 Rulemaking, August 12, 2008.*

***Review Board Position:***

***The Review Board opposes this proposed regulation [other than subsection (c)] primarily because it creates new APA variance jurisdiction over expansions of pre-existing structures and wastewater treatment systems without legislative action. The legislature created APA jurisdiction in the Adirondack Park Agency Act and the legislature should make all determinations regarding modification of APA jurisdiction.***

***Local governments do not have confidence that variance criteria will be fairly applied by the Agency. It is likely that no commissioners voting on the variance application will be***

*residents of the directly affected town or village. Five of the eleven commissioners are not currently residents of the Adirondacks and will not be directly affected by the economic impacts of refusal to grant a reasonable variance request. Variance issues are best decided by residents of the affected community who will be held to a standard of reasonableness by their neighbors and who will be concerned with the economic impacts of their decisions.*

*A large number of second home owners have converted small cabins on shorelines to substantial year round homes. The investments in these new homes increase assessed value and local governments' real property tax base. They also create jobs in the construction and service industries.*

*Local governments may decide to amend their land use plans to set reasonable restrictions on the square footage of expanded structures within the shoreline setback, based upon lot size, to discourage the construction of "mini-mansions" on small shoreline lots. The determination of whether or not that should be done should be left to local government, as it is elsewhere in New York State.*

### ***Land Division Along Roads or rights of way owned in fee:***

**Current regulation:** Current APA regulations provide that: "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. *Section 573.4(b).*

**Proposed regulation:** Section 573.4(b) is proposed to be removed. This will eliminate the automatic creation of separate parcels (available for sale without permit) due to the bisection of one large parcel by roads or rights-of-way owned in fee, which division of lands often violated the overall intensity guidelines. *SUMMARY OF PROPOSED RULE TEXT - 2008 Rulemaking, August 12, 2008.*

### ***Review Board Position:***

*The Review Board opposes this proposed regulation because it creates new APA jurisdiction, without legislative action, over lots physically in existence by virtue of being separated from the remainder of a landowner's ownership by a road or right-of-way. The legislature created APA jurisdiction in the Adirondack Park Agency Act and the legislature should make all determinations regarding modification of APA jurisdiction.*

### ***Measuring floor space:***

**Current regulations:** Current APA regulations do not specify the method of measuring floor space of a building or a structure other than a building. However, the Agency has gone on record on this issue in the past in the form of a letter from former Executive Director Bob Glennon to Andrew Halloran which stated that floor space in a hunting camp is measured from the inside of

exterior walls and excludes the footprint of exterior and interior partitions. This is important because the Agency does not now have jurisdiction over hunting and fishing cabins under 500 square feet.

**Proposed regulation:** “Square footage 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 are, or if a non-residential use, suitable for storage, work area, or office.” *Section 570.3(Ag).*

“Square footage of a structure other than a building shall be the exterior area of the structure, measured in either elevation (face) or plan(top) view, whichever is larger.” *Section 570.3(ah).*

***Review Board Position:***

*The Review Board opposes this proposed regulation because it creates new APA jurisdiction over hunting and fishing cabins with less than 500 square feet of interior floor space excluding the footprint of exterior and interior walls without legislative action. It also would also create new jurisdiction over conversions of structures when the square footage of finished basements or attics increase the allowed square footage above the conversion limits. The legislature created APA jurisdiction in the Adirondack Park Agency Act and the legislature should make all determinations regarding modification of APA jurisdiction.*

***Hunting and Fishing Cabin:***

**Current regulation:** “Hunting and fishing cabin and private club structure shall mean a cabin, camp or lean-to or other similar structure designed for occasional occupancy for hunting, fishing, or similar purposes.”

**Proposed regulation:** “Hunting and fishing cabin and hunting and fishing and other private club structure means a cabin, camp or lean-to or other similar structure designed and used only for occasional occupancy and primarily for hunting, fishing, and similar purposes that (I) is a one-story structure but may include a sleeping loft; (ii) is built on 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).”

***Review Board Position:***

***The Review Board does not oppose this proposed revision because the practically unenforceable draft provision that the cabin be “used only for hunting and fishing and similar purposes” has been replaced with “used only for occasional occupancy and primarily for hunting, fishing and similar purposes”.***



Town Supervisor's Office

Town Office Building, P.O. Box 307, Long Lake, NY 12847-0307  
GREGG E. WALLACE, Town Supervisor

(518) 624-3001  
Fax (518) 624-2010

FAX TRANSMITTAL

Attention: John Banta

Date: 10/28/08

Destination Fax: 891-3938

Destination Agency/Firm: APA

Sender's Name: Cynthia

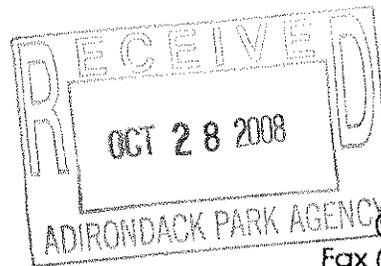
Number of pages being transmitting, including transmittal sheet: 2

Comments: Re: (9 NYCRR 570.3)





Gregg E. Wallace, Town Supervisor  
1130 Deerland Road, PO Box 307  
Long Lake, NY 12847



(518) 624-3001  
Fax (518) 624-2010  
llsuper@telenet.net

October 28, 2008

John S. Banta, Counsel  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

Re: Floor Space, NYCRR 570.3

Dear Mr. Banta:

I would like to offer a suggestion in determining square footage determinations. I do not believe your current *definition* is adequate: I feel the wording is much too broad and allows yet another interpretation of regulation.

As a 30 year contractor, I deal with 3 different types of square footage:

Primary - which refers to areas supported by the foundation: these are heated, habitable and walkable.

Secondary - describing covered porches, covered decks and the portion of over piers that are not heated.

Incidental - which basically covers those used mainly for storage/utility function. These are basements, attics and auxiliary spaces, all of which are not used for daily activity.

I believe the Agency needs to take into account what each structure's usage will be as it pertains to the design and footprint. If a home/camp has a second level, but the living room area has a cathedral ceiling, the open ceiling area is not usable square footage; it simply has a tall ceiling. A foundation is exactly that: a foundation. It should not be counted into total square footage. If the owner incorporates bathrooms and living quarters into the foundation, then this area could be given different consideration.

The other area of concern I have is how you *measure* square footage. Elevation (face) is not how you measure square footage: I do not agree with the statement "whichever is larger". There is no reason to include the concept of elevation in measuring "area". Square footage of a home is the footprint as measured from top elevation. Other than the height of a structure, there is absolutely no reason to reference "area".

I look forward to a reply on my concern and suggestions.

Sincerely,

Gregg Wallace  
Town Supervisor

cc. Long Lake Town Board,  
Adirondack Association of Towns and Villages,  
Adirondack Park Local Government Review Board,  
NY Senator O'C. Little,  
NY Assemblywoman Sayward

October 28, 2008

Chairman Curt Stiles  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

Dear Chairman Stiles,

What happened to all of the recent lip service by the Adirondack Park Agency to the concept of sustainable communities in the Adirondacks? After 35 years since the enactment of the APA Act, it seemed as if the Agency finally realized that the Adirondack communities had been left behind.

Then why is the APA now trying to push through significant changes to the APA Act that drastically expand the Agency's jurisdiction at the expense of private property owners? Furthermore, since the NY State Legislature created the APA, shouldn't any proposed changes be approved by the Legislature?

The APA's original dual mandates were to provide prudent land use regulations and help bolster the depressed economy of the Adirondacks. It is often said that the Adirondacks are too poor in order to enjoy a recession! Adirondack communities must deal with many critical problems such as affordable housing, lack of living wage jobs, unfunded mandates, weak economies, reduced student populations in schools and high taxes. The current economic recession and energy crisis further exacerbates the situation.

The following far reaching proposals not only transfer more authority to the APA, but they also have direct negative impacts on the Adirondack economy, property values and the residents of the Adirondacks.

These far reaching proposals include:

Land division along roads or rights of ways owned in fee: This proposal eliminates the automatic creation of a separate lot that is physically divided by a road or right of way from another parcel owned by the same owner. This is a blatant "taking" and also further affects the affordable housing situation in the Adirondacks.

Measuring floor space: This proposal changes how buildings are measured. According to the APA's new measuring standards attics, basements, porches and decks would be included in square footage. Why create a new standard when there are already guidelines for measuring gross living area.

Jurisdiction over subdivisions involving wetlands: It is understood that freshwater wetlands should not be interfered with. However this proposal is an

undeniable grab for further APA jurisdiction with obvious negative impacts on property owners.

Expansion of non-conforming shoreline structures: The structures in question are not only non-conforming but more importantly pre-existing. This issue should be left to home rule of the individual municipality.

Hunting and fishing cabin: This proposal, while defining such structures as designed and used for occasional occupancy, also adds that it can not be connected to public utilities such as electric. How far do they really want to go?

The APA does not need to further increase its jurisdiction in order to justify its existence. This is not the first time that drastic changes to the Act have been proposed in which the NY State Legislature was not going to be involved in the process and the proposals were flying below the radar leaving most Adirondackers completely in the dark.

These proposals drastically add significant jurisdiction to the Adirondack Park Agency. At this point in time the crisis in the Adirondacks is not one of land use regulations, but the very existence of many Adirondack communities. Now is time for the APA to develop a comprehensive economic development master plan for the Adirondacks in order to balance their agenda. Or is this too much to ask for?

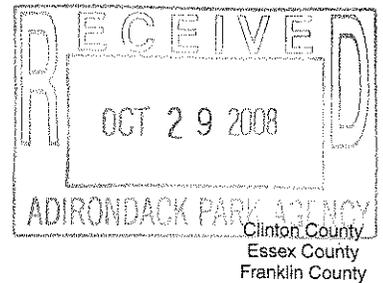
Sincerely,

Roger Friedman  
Schroon Lake  
518-532-7400



JANET L. DUPREY  
Assemblywoman 114<sup>TH</sup> District

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY



October 28, 2008

Commissioner Curt Stiles  
Adirondack Park Agency  
PO Box 99  
1133 NYS Route 86  
Ray Brook, NY 12977

Dear Commissioner Stiles,

I am writing to express my concern regarding proposed revisions of the regulation governing shoreline setbacks for single family dwellings.

As the Adirondack Park Agency Local Government Review Board has pointed out, this proposal is well beyond the scope of an Agency revision of regulations. This proposal is a material change in jurisdiction that most definitely is the responsibility of the New York State Legislature not the Adirondack Park Agency.

I respectfully request the Agency cease all discussion on these proposed revisions and work through the Legislature as directed by statute.

Please feel free to contact me if you wish to discuss my concern.

Sincerely,

Janet L. Duprey  
Member of Assembly

JLD: cak

cc: Governor David Paterson



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

MINORITY CONFERENCE SECRETARY

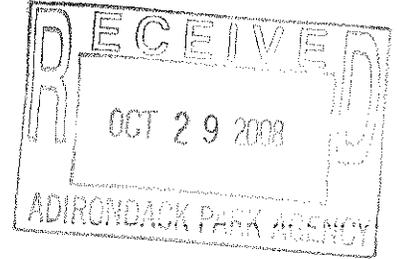
RANKING MINORITY MEMBER  
Environmental Conservation Committee

COMMITTEES  
Children and Families  
Corrections  
Education  
Tourism, Arts and Sports Development

Teresa R. Sayward  
Assemblywoman 113<sup>th</sup> District  
Essex, Hamilton, Saratoga and  
Warren Counties

October 23, 2008

Commissioner Curt Stiles  
Adirondack Park Agency  
P.O. Box 99  
1133 NYS Route 86  
Ray Brook, New York 12977



Dear Commissioner Stiles:

This letter is to provide comment regarding the proposed regulations put forth by the Adirondack Park Agency. The proposed revisions would allow the Agency to create new jurisdiction and/or expand its existing jurisdiction without legislative action. I believe any expansion of existing jurisdiction is the responsibility of the New York State Legislature.

Enacting the proposed regulations will only create an additional layer of governmental bureaucracy that our North Country communities do not need or welcome.

Many of my constituents have expressed concern regarding how these proposed changes will affect their ability to have quiet enjoyment of their properties.

The Adirondack Park Agency Review Board was put in place to be the eyes and ears of the people of the Adirondacks. I fully support and agree with the objections the Board of Review submitted regarding the proposed revisions. The revisions include the following: jurisdiction over subdivisions involving wetlands; expansion of non-conforming shoreline structures; land division along roads or rights of way owned in fee; measuring floor space and hunting and fishing cabins. Please record my comments as identical to the Board of Reviews comments.

Any changes to the jurisdictional powers of the Adirondack Park Agency should be completely vetted and subject to legislative approvals.

Please feel free to contact my office to further discuss this concern.

Sincerely,

Teresa R. Sayward  
Assemblywoman, 113<sup>th</sup> AD  
Hamilton, Essex, Saratoga and Warren Counties

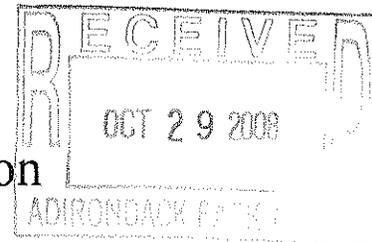
cc: Governor Paterson  
Judith Enke



# Empire State Forest Products Association

*The people behind New York's healthy forests and quality wood products*

47 Van Alstyne Drive, Rensselaer, NY 12144 • 518-463-1297 • Fax 518-426-9502 • [esfpa@esfpa.org](mailto:esfpa@esfpa.org) • [www.esfpa.org](http://www.esfpa.org)



October 24, 2008

John S. Banta, Counsel  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

RE: *2008 Proposed Regulatory Revisions*

Dear Mr. Banta:

These comments are in follow-up on our testimony offered at the October 20 public hearing in Albany regarding the Agency's 2008 proposed regulatory revisions.

We would like to comment on three of the five proposed changes that impact the management of these lands: "land division along roads or rights-of-way owned in fee", "floor space", and "hunting and fishing cabin".

## Floor Space

We view these changes as largely positive. They focus on an external measurement and the footprint of the building while avoid past conflicts concerning interior floorspace and external appendages such as a wood pallet used to knock mud off to enter a cabin.

The measurement of "floor space" is important in establishing the size for a "hunting and fishing cabin" (500 sq ft). These changes should improve the understanding between the Agency and those owners of hunting and fishing cabins regarding how to measure.

## Land Division along Roads

We are greatly concerned that this new rule will add cost and delays to subdivisions that have long been understood to be permissible. The "natural subdivision" of a parcel allows for convenience for many forest owners to separate a parcel for sale or exchange. Given that many of the large forest ownerships within the Park are already under conservation easement APA review for development rights would be a cost without purpose.

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Kenneth L. Williams & Associates

Kevin S. King  
President & CEO

## Hunting and Fishing Camps

The Association, its members, APA staff and Commissioners have long discussed this change. In fact, it's been nearly a decade that there have been discussions regarding the Agency's interest in modifying this definition. The goal of those discussions was summed up by a former APA Commissioner as "if it walks like a duck... it must be a duck". Others have discussed this goal in terms of a bright line for jurisdictional determination that would allow the practice of recreational leasing to continue with associated camp development but without the threat of converting these camps into "second homes".

There general idea of our discussions was to focus on design of the camp. We agreed and recognized that predictability depended on something that could be measured and commonly understood and that design standards were the best way of achieving this while assuring for transient use of these structures.

The result was not perfect but certainly moved us in the right direction. That result is embodied by the five roman numerals of the proposed definition that speak to the type of construction used.

Unfortunately, that effort is now undermined by the addition of language that speaks not to the design of the building but rather to the duration of the use of the building and the type of use of the building. Who is to say when the period "occasional" has been reached? How are we to determine that "hunting and fishing and similar purposes" was achieved in the visit? Perhaps there was a period that a fishing pole or gun was not in use by the occupants of the camp. Is this now inconsistent with the use provisions of the proposed definition and who will decide if so?

This language does not satisfy the "bright line" test, nor does it help us to decide if it "walks like a duck". We find this language even more vague and ambiguous than prior wording.

It also needs to be said that after years of honest and open discussion it is exceptionally frustrating to see this proposal. Leasing is a North Country tradition – one that has been enjoyed by generations of sportsmen. It provides a revenue stream for forest landowners and has provided a source of memories for thousands of New Yorkers. This proposal creates additional uncertainty and limitations. It is counter-productive to the interests of our forest landowners who would be better served by the status quo than this change.

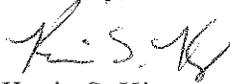
We again offer the following as a definition that is clear, relies on objective design standards and is consistent with traditional hunting camps:

"Hunting and fishing cabin and private club structure means a cabin, camp or lean-to other similar structure designed for occasional occupancy for hunting, fishing or 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, chemical or composting toilet and 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).”

We sincerely hope that the Agency will make these changes or consider alternative language that is clear, unambiguous, and supporting or the traditional uses of the Adirondack forests.

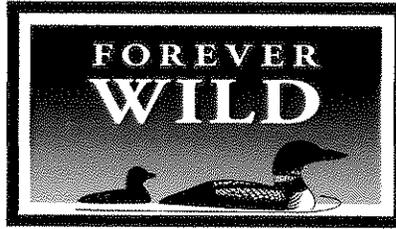
Sincerely,



Kevin S. King  
President & CEO

*About the Empire State Forest Products Association*

*The Association represents forest landowners and forest industry. The forest products industry is a \$5 billion industry employing some 50,000 New Yorkers. In the Adirondacks it's the third largest employer after government and tourism. Members own roughly 1.8 million acres of family and working forest land. Most of this is in the 12 Northern NY counties.*



**ADIRONDACK COUNCIL**  
*Defending the East's Greatest Wilderness*

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October 28 , 2008

John S. Banta, Counsel  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY 12977

**Re: Proposed Revisions to Rule Text 9 NYCRR 570.3, 573.3 and 4, and 578.3 of the Executive Law Article 27**

Dear Mr. Banta:

The Adirondack Council, a member based, not-for-profit organization dedicated to ensuring the ecological integrity and wild character of the Adirondack Park, thanks the Adirondack Park Agency (APA) for the opportunity to comment on the proposed revisions to NYCRR 570.3 and 4, and 578.3 of the Executive Law Article 27. We consider the proposed 2008 revisions to be positive changes, by and large, toward more effective regulation and better protection of the private lands of the Adirondack Park.

The Adirondack Council is generally pleased with the APA's proposed amendments to the definition of a "hunting or fishing cabin and other private club structure". However, the Council believes that the square footage of the property should include all attached enclosed space, covered and uncovered porches and decks, and second story sleeping lofts.

Additionally the "square feet of floor space" of a building, by definition, should also pertain to hunting and fishing cabins and should encompass both covered and *uncovered* porches and decks.

We are pleased with the definition of "square footage of a structure." The footprint on the ground and the space taken in the air are the environmentally and aesthetically meaningful measures.

The mission of the ADIRONDACK COUNCIL is to ensure the ecological integrity and wild character of the ADIRONDACK PARK.

The proposed change "Involving Wetlands" seems basically sound. The APA Act should, at a minimum, uphold the Freshwater Wetlands Act. Indeed, we urge the Agency to make sure its required setback from wetlands constitutes at least as broad a buffer as recommended by the latest findings in conservation biology. Science has shown some amphibian and reptile species to seasonally travel major distances from wetlands and water bodies. Broad buffers are also important to prevent the invasion of exotic species into wetlands. Even more space is required to protect biodiversity than is required to protect water quality.

The modification in the existing regulation on non-conforming shoreline structures is obviously needed, to disallow unlimited expansions of non-conforming shoreline structures. It is also prudent to require improvements to non-conforming on-site waste-water treatment systems where possible and ensure that shoreline set-back requirements are upheld in the process.

Land division along roads or rights-of-way should not be exempt from permit requirements. APA's elimination of this loophole is overdue.

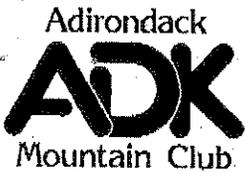
In closing, the Adirondack Council applauds the Adirondack Park Agency's ongoing efforts to make APA Act rules and regulations more coherent, rational, and environmentally beneficial. The Council supports the general direction of APA's 2008 proposed revisions and urges that they be strengthened where possible.

Thank you for your consideration of our comments. We look forward to a continued partnership to improve the efficiency of the APA.

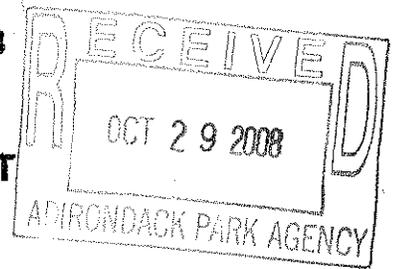
Sincerely,

A handwritten signature in cursive script that reads "John Davis".

John Davis  
Conservation Director



ADIRONDACK MOUNTAIN CLUB



FACSIMILE TRANSMITTAL SHEET

Conservation

Education

Recreation

Since 1922

DATE: 10/29/08

TO: John S. Banta

FAX NUMBER: (518) 891-3938

FROM: ALLISON BEALS

FAX NUMBER: (518)449-3875

PHONE NUMBER: (518)449-3870

NUMBER OF PAGES, INCLUDING FAX COVER SHEET

3

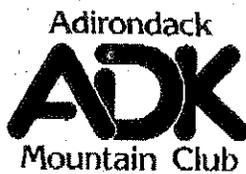
COMMENTS

Please find attached:  
-ADK's testimony on APA's  
proposed rulemaking regarding  
the definition of "hunting &  
fishing cabins".  
Thank you.

North Country Operations  
P.O. Box 867  
Lake Placid, NY  
12946-0867  
Reservations: 518-523-3441  
Office: 518-523-3480  
Fax: 518-523-3518

Albany Office  
301 Hamilton Street  
Albany, NY  
12210-1738  
Phone: 518-449-3870  
Fax: 518-449-3875





October 29, 2008

Conservation

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John S. Banta  
Counsel  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY 12977

**Re: APA 2008 Rule Making; ID No. APA-35-08-00021-P**

Dear Mr. Banta:

Headquarters  
814 Goggins Rd.  
Lake George, NY  
12845-4117  
Phone: 518-668-4447  
Fax: 518-668-3746  
e-mail: adkinfo@adk.org  
Web site: www.adk.org

The Adirondack Mountain Club (ADK) thanks the Adirondack Park Agency (APA) for the opportunity to submit written comments regarding the new definition of hunting camps in the APA proposed rulemaking.

ADK commends the APA for its attempts to prevent potential development in many environmentally sensitive areas in the Adirondacks. The definition specifies criteria that will ensure that the rustic character of the Adirondack experience is maintained.

North Country Operations  
P.O. Box 867  
Lake Placid, NY  
12946-0867  
Reservations: 518-523-3441  
Office: 518-523-3480  
Fax: 518-523-3518

ADK fears that as the demand for second homes in the Adirondacks increases and the land available to provide those types of structures decreases, these areas where hunting and fishing cabins are allowed will be converted into family vacation homes. Hunting and fishing are recreational activities that provide a traditional rustic Adirondack experience. It is ADK's opinion that lands that were intended to contain hunting or fishing cabins should be kept as such. By clarifying the definition of the hunting cabin, as the APA proposes to do so, the heritage of the Adirondack Park that is so important to residents and visitors will be preserved.

Albany Office  
301 Hamilton Street  
Albany, NY  
12210-1738  
Phone: 518-449-3870  
Fax: 518-449-3875

The market for second homes also threatens the natural character of the Adirondack forestlands. Development and construction of residential and seasonal dwellings in the Adirondacks would severely strain environmentally sensitive areas because of the need to cut trees, disturb the geography, and increase energy consumption.

We are also concerned that converting uses of these cabins would result in new roads and water and electric transmission lines on valued forest lands. This natural experience is highly desired by our members and valuable to New York as tourism opportunities. Disruption of natural lands and creation of temporary roads for trucks attracts many "thrillcraft" riders, such as ATV and dirt bike enthusiasts, who are seeking challenging and muddy terrain. ADK



fears that increased ATV use can lead to trespass on State lands and scenic hiking trail systems.

ATVs and other thrillcraft have the potential to be extremely destructive to the geography and ecology of forest lands if not properly mitigated. As ATV and other thrillcraft use becomes more of a family pastime, the desire to find places to ride creates user conflicts among other visitors who desire a quiet and serene experience, including hunters. Converting hunting camps in the Adirondacks into dwellings that are more comfortable for families to visit increases the threat of disruptive activity, such as the illegal use of thrillcraft.

Fragmentation is another effect of development that reduces habitat connectivity in the Adirondacks. Many tourists and ADK members value a hiking or canoeing experience that includes a wildlife encounter. Many of these people engage in these activities with the sole purpose of seeing many of the Adirondack Mountain range's unique species in their natural habitat. Threatening the habitat of these species diminishes the experience for many tourists who visit and explore the park.

ADK supports the APA's suggested definition of "hunting and fishing camps" in the proposed rulemaking. ADK understands the economic hardships facing New York State but stresses that we must not allow our unique historic and natural environment to be sacrificed to the growing desire for seasonal dwellings in inappropriate places.

Thank you for the opportunity to express our concerns and opinions.

Respectfully Submitted,

Allison Beals  
Director of Government Relations and Conservation  
Adirondack Mountain Club

**The Adirondack Mountain Club is dedicated to conservation, education, outdoor recreation and protection of New York's Forest Preserve, parks, wild lands and waters. ADK represents over 30,000 hikers, paddlers, skiers and backpackers.**

**From:** Keith McKeever  
**To:** Banta, John  
**Date:** 10/29/2008 3:30 PM  
**Subject:** Fwd: Proposed revisions to APA regulations  
**Attachments:** Review Board Comments on 2008 APA Proposed Revised Regulations.pdf

see enclosed

>>> "Cindy Mead" <[cmead3@nycap.rr.com](mailto:cmead3@nycap.rr.com)> 10/28/2008 7:35 PM >>>

Dear Mr. McKeever,

I agree with the Adirondack Park Local Government Review Board's Comments (attached) regarding proposed changes in the Adirondack Park Agency Regulations. Changes that are being projected would greatly impact the value of lakefront properties and private land ownership in our area, and I, too, feel that the legislature should make all determinations regarding modification of APA jurisdiction. Current development follows the guidelines of the Park Agency and Local Governments, and to implement more stringent rules and regulations would create a financial hardship for property owners that would be affected by these new regulations.

Thank you for your consideration in this matter.

Sincerely,  
Cindy Mead

**Cindy Mead**  
Broker/Owner  
**Gallo Realty**  
6129 State Rte 8  
P.O. Box 188  
Chestertown, NY 12817 (  
<http://maps.yahoo.com/py/maps.py?Pyt=Tmap&addr=6129+State+Rte+8&csz=Chestertown%2C+NY+12817&country=us> )

[cmead3@nycap.rr.com](mailto:cmead3@nycap.rr.com)  
[www.gallorealty.com](http://www.gallorealty.com) ( <http://www.gallorealty.com/> )

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518-494-4600 ( [http://beta.plaxo.com/click\\_to\\_call?lang=en&src=jj\\_signature&To=518%2D494%2D4600&Email=cmead3@nycap.rr.com](http://beta.plaxo.com/click_to_call?lang=en&src=jj_signature&To=518%2D494%2D4600&Email=cmead3@nycap.rr.com) )  
518-494-3016 ( [http://beta.plaxo.com/click\\_to\\_call?lang=en&src=jj\\_signature&To=518%2D494%2D3016&Email=cmead3@nycap.rr.com](http://beta.plaxo.com/click_to_call?lang=en&src=jj_signature&To=518%2D494%2D3016&Email=cmead3@nycap.rr.com) )  
518-494-2089

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( [http://beta.plaxo.com/signature?src=client\\_sig\\_212\\_1\\_card\\_sig&lang=en](http://beta.plaxo.com/signature?src=client_sig_212_1_card_sig&lang=en) )

**McPHILLIPS, FITZGERALD & CULLUM L.L.P.**

DENNIS J. PHILLIPS  
 WILLIAM E. FITZGERALD  
 JAMES E. CULLUM  
 DANIEL J. HOGAN  
 W. BRADLEY KRAUSE  
 JOHN E. FITZGERALD, JR.\*  
 TIMOTHY S. SHULER  
 MELISSA DWYER LESCAULT  
 DENNIS J. O'CONNOR\*

\*ALSO ADMITTED IN FLORIDA

ATTORNEYS AT LAW  
 288 GLEN STREET  
 P.O. BOX 299  
 GLENS FALLS, NY 12801-0299  
 PHONE: (518) 792-1174  
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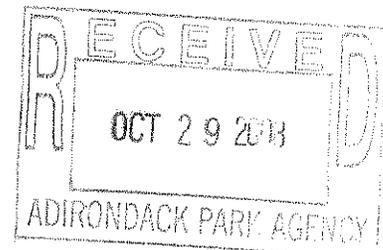
BERNARD F. McPHILLIPS  
 (1915-2001)  
 COUNSEL  
 LAWRENCE E. CORBETT, JR.

FLORIDA OFFICE  
 9165 PARK DRIVE  
 MIAMI SHORES, FL 33138  
 PHONE: (305) 751-8556  
 TOLL FREE: (877) 899-4334

October 29, 2008

**VIA FAX: 891-3938/REGULAR MAIL**

John S. Banta, Esq.  
 General Counsel  
 Adirondack Park Agency  
 1133 State Route 86  
 P.O. Box 99  
 Ray Brook, NY 12977



- Re: APA 2008 Rule Making
- A. Effective Repeals.
    - (1) §811(1)(a) Single Family Dwelling Entitlement on Existing Vacant Lot and Regulation 573.4(b) Historical Understanding and Interpretation of Entitlement (35 Years).
    - (2) §811(5) Single Family Dwelling Shoreline Modification Entitlement and Regulation 575.5(b)(2) Historical Understanding, Interpretation and Application of Entitlement.
  - B. Amendments and Expansions of Jurisdiction With Respect to Class A Projects Relating to Wetlands
    - (1) §810(1)(b-e)(1)(b) Limiting "Involving Wetlands" to Projects IN Critical Environmental Areas (i.e. Wetlands).
    - (2) Regulation 573.3 in Accord With §810, Recognizing that the §810 Class A Regional Project Jurisdiction is Expressly Limited to Activities IN Wetlands.
  - C. New Legislation
    - (1) Definition and Restrictions Relating to Hunting and Fishing Cabins

Dear Mr. Banta:

McPhillips, Fitzgerald & Cullum L.L.P. is a Glens Falls law firm established in 1911, and since the adoption of the Adirondack Park Agency Act (the "Act") and the Adirondack Park Land Use and Development Plan in 1973, the firm has advised a great variety of landowners and businesses on the application of the Act to their property rights. As a legislative act in derogation of the common law with respect to private property rights, the firm has interpreted the Act most favorably to landowners, particularly those provisions of the Act that relate to vested property rights and those provisions of the regulations that preserve some sort of landowner entitlements. As the APA 2008 rule making appears to take more control of the private land in the Park from

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the landowners, and further erodes vested private property rights, we have been asked to provide our comments.

### A. EFFECTIVE REPEALS

1. NATURAL SUBDIVISION RULE OF REGULATION 573.4(b). The APA 2008 Rule Making proposes to repeal and abolish the natural subdivision rule of Regulation 573.4(b), which under current law and regulation allows the sale of a landowners entire ownership on one side of a public road, railroad, right-of-way owned in fee, or other intervening fee ownership without the need of a subdivision permit from the APA.

We submit that the proposed repeal and abolishment of this natural subdivision regulation is contrary to 35 years of established jurisprudence in the Park where landowner decisions have been made in reliance on the rule; is contrary to the on-the-ground fact that roads and intervening ownerships, as a matter of law and fact, create separate legal lots; and, most importantly, is contrary to the vested entitlement set forth in Act §811(1)(a) that is the statutory basis and reason for the current rule. For the benefit of those who will also read this letter, the entitlement of §811(1)(a) states as follows:

"One single family dwelling or mobile home shall be allowed to be built on any vacant lot which was on record on the date that this Act shall become a law regardless of the overall intensity guidelines [emphasis supplied], or the minimum lot width provisions of the shoreline restrictions. For the purposes of this exemption [emphasis supplied], such a lot must not adjoin [emphasis supplied] other lots in the same ownership, provided however, that all such lots in the same ownership may be treated together as one lot."

In the context of the above, it is submitted that the natural subdivision rule of Regulation 573.4(b) clarified for landowners that their land did not "adjoin" if they owned on both sides of a road or intervening fee ownership, as the road or intervening fee ownership provided a "break" in ownership, either legally or on-the-ground by a swath of dirt, concrete or macadam, and the break was a reality that led to the conclusion that a landowner had a §811(1)(a) vacant lot of record that was exempt from the overall intensity guidelines.

If it is true that the Pataki administration preserved 1,000,000 acres of land in the Adirondacks, which possibly extinguished at least 23,474 development rights in the process, and with no clear and present danger of a development crisis on the horizon, it makes no sense to administratively repeal and abolish a well-established and time honored rule with deep statutory roots. We submit that the natural subdivision rule of Regulation 573.4(b) is the proper and reasonable interpretation of the word "adjoin" and should remain in place.

2. SHORELINE STRUCTURE EXPANSION ENTITLEMENT OF §811(2) AND §811(5) AND REGULATION 575.5. REPLACEMENT AND EXPANSION ENTITLEMENT. Regulation 575.5 as written is consistent with Act §811(2) and Act §811(5) in that both sections

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"grandfather" any pre-existing land use and development (§811[2]) and specifically entitle a landowner to restore, rebuild, enlarge, increase or expand a structure within a shoreline setback, so long as the increase or expansion does not violate or increase any non-compliance with the minimum setback requirements of the shoreline restrictions (§811[5]). It is submitted that the statute and Regulation 575.5 allow for existing shoreline development to be dynamic and free of Agency jurisdiction and intervention (i.e. not frozen in time or place), for the main thrust of the Act was aimed at new land uses or development or subdivisions of land that fell within the definition of Class A and Class B regional projects (Act §810).

Contrary to the original intent and grandfathering entitlements contained in Act §811(2)(5), as clarified and developed by Regulation 575.5, and as understood in a time-honored manner by individual property owners with investment-backed expectations, as well as by the legal, business and banking sectors, the proposed repeal and abolishment of Regulation 575.5(b)(2) and the substitution of a new paragraph 2 with an undefined variance word is a reversal of the law and a direct assault on vested property rights. The economic implications of such a change for landowners and municipalities are beyond the scope of this letter (landowners from a investment and value perspective and municipalities from a tax perspective) but I can only imagine that the consequences could be staggering and unexpected. I would suggest that the proposed changes would not pass an economic impact test.

And the variance language is unacceptable, for it is generally thought by most private sector attorneys versed in planning and zoning that the variance authority contained in Act §809(11) is completely outdated in terms of modern statutory codification and Court of Appeals interpretation of the term "practical difficulty." Indeed, a definition of practical difficulty was derived from the proliferation of cases on the subject and was codified under the Town law effective July 1, 1992, and the Court of Appeals affirmed the codification of practical difficulty in the case of Sasso v. Osgood, 86 NY2nd 374. It is absurd for the Agency to take a position that its practical difficulty is different from that now codified in town law, but until such time as there is a reconciliation and agreement as to what constitutes "practical difficulty," there should be no additional variance jurisdiction created by the Agency.

In the area of vested private property rights, the protections granted by the legislature should not be taken lightly and it is recommended that §575.5 stand as currently written in order to continue the "grandfathering" extended by the New York State legislature upon enactment of the Adirondack Park Agency Act and the Adirondack Park Land Use and Development Plan.

**B. AMENDMENTS AND EXPANSION OF JURISDICTION  
 WITH RESPECT TO CLASS A REGIONAL PROJECTS  
 RELATING TO WETLANDS.**

Under Act §810(1) relating to Class A regional projects, the term "involving wetlands" in moderate intensity, low intensity, rural and resource management use areas is a subset of land use and development located "IN" the wetland critical environmental area, but such a term does not have any independent status in terms of its ability to trigger APA jurisdiction. In the

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Adirondack Park there are three kinds of wetlands, namely: freshwater wetlands as defined by Article 24 of the Environmental Conservation Law (usually mapped and at least 12.4 acres in size); Adirondack Park Agency Act one acre or more in size wetlands (Act §802[68][a]); and Adirondack Park Agency Act wetlands of any size where there is a free interchange of water at the surface with a body of water including a permanent stream (Act §802[68][b]).

It is submitted that the APA 2008 Rule Making does not factor in the differences among and between the different sizes and classifications of wetlands and explodes the limited jurisdictional meaning of "involving wetlands" into a brand new area of Agency jurisdiction, something that only the legislature should do. Taken together, the APA 2008 Rule Making proposals for new §570.3(o), §573.3(a), and §578.3(n) constitute a legislative reworking of wetlands jurisdiction under the Adirondack Park Agency Act.

With respect to the new proposed paragraph 3 of §578.3(n)(3), the language incorporates setbacks that historically are within the province of the legislature, and performance standards that are more in the nature of guidance than in law. Considering that wetlands legislation, rules and regulations, including classifications that make permitting very difficult, could be viewed by private landowners as a quasi-regulatory taking of landowner rights, any expansion of wetlands jurisdiction should be highly suspect and should stay in the hands of the legislature. The compounding effect of additional wetlands regulation, soils performance standards, slope performance standards, and local zoning and planning should be studied in great detail before any new jurisdiction with respect to wetlands is created by the Adirondack Park Agency.

### C. NEW LEGISLATION

Under the Adirondack Park Land Use and Development Plan and the provisions of the Plan as contained in Act §805(3) hunting and fishing cabins and hunting and fishing and other private club structures (hereinafter the "Cabins") are on the classification of compatible uses list as either primary or secondary uses as follows:

<u>LAND USE AREA</u>	<u>PRIMARY</u>	<u>SECONDARY</u>
Moderate Intensity (red)	Yes	No
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Rural (yellow)	Yes	No
Resource Management (green)	Yes (<500 sq. ft.)	Yes (>500 sq. ft.)

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In the context of the above scheme, the legislature did apply the overall intensity guidelines to the cabins when it said in Act §805(3)(a) that those uses on the compatible list were either generally considered compatible or generally compatible so long as they were in keeping and in conformity with the overall intensity guidelines for such land use area. Considering the generality of Act §805(3)(a) as it applies to primary and secondary uses on the compatible uses list, an argument can be made that the cabins are constrained by the overall intensity guidelines, particularly in light of the definition of "principal building" under §802(50) where a principal building can be as small as 300 square feet.

It is submitted that both the current regulatory definition and the proposed regulatory definition for the cabins has no basis in law or legislative intent. Indeed, the Adirondack Park Agency Act is totally silent on restrictions with respect to the cabins and there is no rational basis for the Agency to infer that the proposed restrictions were somewhere hidden inside of the legislative intent. To the contrary, the proposed restrictions are the opposite of what ordinarily would serve the public health, safety and welfare with respect to building construction. For example, a building with footings and a foundation is generally considered to be more permanent and secure than a building constructed on posts and piers. With respect to public health, it seems that a self-contained wastewater treatment system would reduce the risk of spread of disease and offer better treatment for the affluent. Likewise, if utilities are available, why keep the cabin dwellers at the frontier level of civilization?

If the Agency wants to crack down on the cabins, all it has to do is clarify the issue by interpreting Act §805(3)(a) to mean that the cabins are subject to the overall intensity guidelines and consume mathematical development rights, regardless of whether the cabins are jurisdictional. But, for the Agency to become a building architect based on its fear of permanent construction in the Back Country and elsewhere, and create a design without any empirical study as a foundation that is inferior under modern construction and health standards is something that cannot be inferred from the silence of the legislature. Considering the particularity and specificity of the new design standards for the cabins, it is submitted that this is not regulation but legislation.

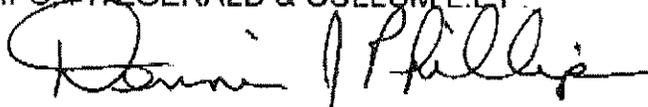
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will have a negative economic and/or emotional impact on some unsuspecting landowner and will reduce the options historically associated with land ownership in the State of New York.

Sincerely,

McPHILLIPS, FITZGERALD & CULLUM L.L.P.



Dennis J. Phillips

DJP:mdh

cc: The Hon. Elizabeth O'C. Little  
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Glens Falls, NY 12801

The Hon. Theresa Sayward  
140 Glen Street  
Glens Falls, NY 12801

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Chestertown, NY 12817

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October 29, 2008

VIA FAX: 891-3938/REGULAR MAIL

John S. Banta, Esq.  
General Counsel  
Adirondack Park Agency  
1133 State Route 86  
P.O. Box 99  
Ray Brook, NY 12977



- Re: APA 2008 Rule Making
- A. Effective Repeals.
    - (1) §811(1)(a) Single Family Dwelling Entitlement on Existing Vacant Lot and Regulation 573.4(b) Historical Understanding and Interpretation of Entitlement (35 Years).
    - (2) §811(5) Single Family Dwelling Shoreline Modification Entitlement and Regulation 575.5(b)(2) Historical Understanding, Interpretation and Application of Entitlement.
  - B. Amendments and Expansions of Jurisdiction With Respect to Class A Projects Relating to Wetlands
    - (1) §810(1)(b-e)(1)(b) Limiting "Involving Wetlands" to Projects **IN** Critical Environmental Areas (i.e. Wetlands).
    - (2) Regulation 573.3 in Accord With §810, Recognizing that the §810 Class A Regional Project Jurisdiction is Expressly Limited to Activities **IN** Wetlands.
  - C. New Legislation
    - (1) Definition and Restrictions Relating to Hunting and Fishing Cabins

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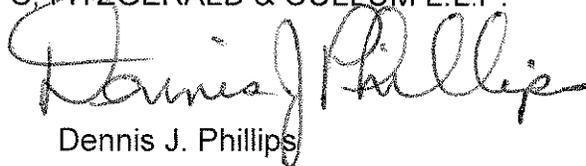
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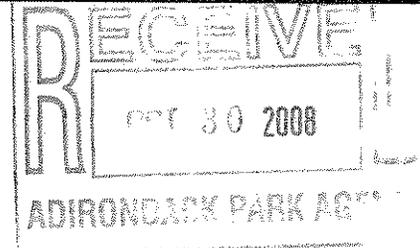
Kevin S. King, President & CEO  
Empire State Forest Products Association  
The New York Forestry Resource Center  
47 Van Alstyne Drive  
Rensselaer, NY 12144-8465



Gregg E. Wallace, Town Supervisor  
1130 Deerland Road, PO Box 307  
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Fax (518) 624-2010  
llsuper@telenet.net

October 28, 2008



John S. Banta, Counsel  
Adirondack Park Agency  
PO Box 99  
Ray Brook, NY 12977

Re: Floor Space, NYCRR 570.3

Dear Mr. Banta:

I would like to offer a suggestion in determining square footage determinations. I do not believe your current *definition* is adequate: I feel the wording is much too broad and allows yet another interpretation of regulation.

As a 30 year contractor, I deal with 3 different types of square footage:

Primary - which refers to areas supported by the foundation: these are heated, habitable and walkable.

Secondary - describing covered porches, covered decks and the portion of over piers that are not heated.

Incidental - which basically covers those used mainly for storage/utility function. These are basements, attics and auxiliary spaces, all of which are not used for daily activity.

I believe the Agency needs to take into account what each structure's usage will be as it pertains to the design and footprint. If a home/camp has a second level, but the living room area has a cathedral ceiling, the open ceiling area is not usable square footage; it simply has a tall ceiling. A foundation is exactly that: a foundation. It should not be counted into total square footage. If the owner incorporates bathrooms and living quarters into the foundation, then this area could be given different consideration.

The other area of concern I have is how you *measure* square footage. Elevation (face) is not how you measure square footage: I do not agree with the statement "whichever is larger". There is no reason to include the concept of elevation in measuring "area". Square footage of a home is the footprint as measured from top elevation. Other than the height of a structure, there is absolutely no reason to reference "area".

I look forward to a reply on my concern and suggestions.

Sincerely,

Gregg Wallace  
Town Supervisor

cc. Long Lake Town Board,  
Adirondack Association of Towns and Villages,  
Adirondack Park Local Government Review Board,  
NY Senator O'C. Little,  
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