

ADIRONDACK PARK AGENCY

August 12, 2008

PROPOSED RULE TEXT
2008 Rulemaking

Key: [bracketed] text proposed to be deleted;

new text proposed to be added

Subdivision (m) of Section 570.3 is proposed to be amended:

(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).

New subsection (o) of Section 570.3 will be added, and remaining sections renumbered:

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

(p) [(o)] *Land use and development plan* or *plan* means the Adirondack Park land use and development plan prepared by the agency and adopted in section 805(l) of the Adirondack Park Agency Act, including the

plan map; the provisions of the plan as contained in section 805(3) and section 805(4) of the Act and sometimes referred to as the provisions of the plan; and the shoreline restrictions contained in section 806 of the Act.

(q) [(p)] *Large-scale projects* means those projects which, because of (1) a substantial amount of land or number of lots, (2) a lengthy construction time, (3) technical complexities, or (4) any other reason, the requirement of furnishing all final detailed engineering and planning information and other detailed data necessary for the issuance of a permit for development of the project at any one time may be unduly burdensome.

(r) [(q)] *Local government* means any town or village whose boundaries lie wholly or partly within the Adirondack Park, except that such term shall not include that portion of a town within any incorporated village.

(s) [(r)] *Local land use program* means any comprehensive land use and development planning and control program undertaken by a local government that includes local land use controls, including zoning and subdivision regulations and a sanitary code, and governs land use and development and subdivision of land within the entire jurisdiction of the local government.

(t) [(s)] (1) *Major public utility* use means any electric power transmission or distribution line and associated equipment of a rating of more than 15 kilovolts which is one mile or more in length; any telephone inter-exchange or trunk cable or feeder cable which is one mile or more in length; any telephone distribution facility containing 25 or more pairs of wire and designed to provide initial telephone service for new structures; any television, cable television, radio, telephone or other communication transmission tower; any pipe or conduit or other appurtenance used for the transmission of gas, oil or other fuel which is one mile or more in length; any electric substation, generating facility or maintenance building and any water or sewage pipes or conduits, including any water storage tanks, designed to service 50 or more principal buildings.

(2) Any use which is subject to the jurisdiction of the Public Service Commission pursuant to article seven or eight of the Public Service Law or other prior approval by the Public Service Commission pursuant to the

Public Service Law is not a major public utility use for the purpose of these regulations except for the shoreline restrictions in which case the bodies having jurisdiction over such uses under such article or other provisions shall have the authority of the agency or a local government under these regulations.

(u) [(t)] *Marina* means any facility providing boat docks or moorings for a fee or other consideration and often offering supply, storage, repair and other services.

(v) [(u)] *Material detrimental reliance* means, for the purposes of applying 9 NYCRR 571.5, that the recipient of a jurisdictional determination has completed significant project components, or expended significant sums of money or otherwise taken significant actions in furtherance of the project, based upon a written formal jurisdictional determination issued by those Agency staff members identified in 9 NYCRR 571.5(b) and would experience a substantial adverse economic effect if the jurisdictional determination were reversed.

(2) Procedures for determining mean high water marks are set forth in section 571.3 of these regulations.

(w) [(v)] (1) *Multiple family dwelling* means an apartment, town house, condominium, cooperative or similar building, including the conversion of an existing single family dwelling, designed for occupancy in separate dwelling units therein by more than one family.

(2) *Multiple family dwelling* shall also include any such building containing two or more separate dwelling units used on a time-sharing, leased time or other similar basis whereby more than one person, group of persons or family has a legal right of occupancy at differing times.

(x) [(w)] (1) *Open space recreation* use means any recreation use particularly oriented to and utilizing the outdoor character of an area, including a snowmobile, trail bike, jeep or all-terrain vehicle trail; cross-country ski trail, hiking and backpacking trail; bicycle trail; horse trail; playground; picnic area, public park, public beach or similar use.

(2) A use involving filling of wetlands or substantial construction or land disturbance is not an open space recreation use.

(y) [(x)] *Overall intensity guidelines* means the following guidelines for development of the private land use areas of the park:

<i>Land use area</i>	<i>Approximate number of principal buildings per square mile</i>
Hamlet	No guideline
Moderate intensity use	500
Low intensity use	200
Rural use	75
Resource management	15
Industrial use	No guideline

(z) [(y)] *Preexisting land use or development or preexisting use* means any land use or development, including any structure, lawfully in existence prior to August 1, 1973. For the purposes of this definition, *lawfully* means in full compliance with all applicable laws, rules and regulations, including possession of and compliance with any permit or other approval required under the Public Health Law, the Environmental Conservation Law, or any local or other governmental regulation.

(aa) [(z)] *Preexisting subdivision of land or preexisting subdivision* means any subdivision or portion of a subdivision lawfully in existence prior to August 1, 1973. For the purposes of this definition, *lawfully* shall have the meaning set forth in subdivision (ll) of this section.

(ab) [(aa)] *Principal building* means any one of the following:

(l) a single family dwelling or mobile home constitutes one principal building;

(2) a tourist cabin or similar structure for rent or hire involving 300 square feet or more of floor space constitutes one principal building;

(3) each dwelling unit of a multiple family dwelling, including each separate dwelling unit used on a time-sharing, leased time or other similar basis whereby more than one person, group of persons or family has a legal right of occupancy at differing times, constitutes one principal building;

(4) each motel unit, hotel unit or similar tourist accommodation unit which is attached to a similar unit by a party wall, each accommodation unit of a tourist home or similar structure, and each tourist cabin or similar structure for rent or hire involving less than 300 square feet of floor space constitutes one tenth of a principal building;

(5) each commercial use structure and each industrial use structure in excess of 300 square feet constitutes one principal building, except that for a commercial use structure which involves the retail sale or rental or distribution of goods, services or commodities, each 11,000 square feet of floor space or portion thereof of such commercial use structure constitutes one principal building;

(6) all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as one principal building;

(7) any other structure which exceeds 1,250 square feet of floor space constitutes one principal building;

(8) a structure containing a commercial use which is also used as a single family dwelling constitutes one principal building.

An accessory structure does not constitute a principal building.

(ac) [(ab)] *Project sponsor* means any person having a legal interest in property, including a landowner, tenant, mortgagee, contract vendee, or optionee, and who makes application to the agency or a local government for the review of a project proposed on such property.

(ad) [(ac)] *Retaining wall* means a permanent structure of cribbing, wood, masonry, stone, concrete or other material that supports a mass of soil.

(ae) [(ad)] *Rivers project* means those new land uses, developments or subdivisions of land requiring a permit pursuant to section 577.5 of these regulations.

(af) [(ae)] *Shoreline restrictions* means those restrictions upon land use and development or subdivision of land contained in section 806 of the Adirondack Park Agency Act and Part 575 of these regulations.

New subsections (ag) and (ah) of Section 570.3 will be added, and remaining sections renumbered:

(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.

(ai) [(af)] *State Land Master Plan* means the master plan for the management of State lands referred to in section 816 of the Adirondack Park Agency Act.

(aj) [(ag)] (1) *Structure* means any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as buildings, sheds, single family dwellings, mobile homes, signs, tanks, fences and poles, and any fixtures, additions and alterations thereto.

(2) For the purpose of Part 577 of these regulations pertaining to wild, scenic and recreational rivers, "structure" is defined in section 577.2(u) thereof.

(ak) [(ah)] (1) *Subdivision of land* or *subdivision* means any division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division) by any person or by any other person controlled by, under common control with or controlling such person, or by any group or persons acting in concert as part of a common scheme or plan. Subdivision of land shall include any map, plat or other plan of the division of land, whether or not previously filed.

(2) *Subdivision* includes, but is not limited to:

(i) residential subdivisions, which may include surveyed lot lines, building sites, roads, utilities, water and sewerage facilities, and the like;

(ii) subdivisions where land is divided into sites by lease, license or separate occupancy without any formal conveyance of fee title or other interest in realty, such as the granting of permission for emplacement of a number of mobile homes, or the construction of a single family dwelling or mobile home on a lot already containing an existing single family dwelling or mobile home;

(iii) subdivisions consisting of land transfers for nonresidential purposes, such as large-scale bulk land sales;

(iv) subdivisions not pursuant to a filed plat, such as the division of a farm or forested tract into parcels of acreage larger than conventional homesite lots, whether or not construction is planned.

(3) The mere filing of maps, plats or plans required by statute, or entering into a contract of sale or other agreement where possession of or title to land is not actually or constructively transferred, shall not be considered the undertaking of a subdivision. *Undertake* is further defined in subdivision (fff) of this section.

(4) Subdivision of land shall not include the lease of land for hunting and fishing and other open space recreation uses.

(al) [(ai)] (1) *Undertake* means commencement of a material disturbance of land, including the commencement of road construction, grading, the installation of utilities, clearing of building sites, excavation (including excavation for the installation of foundations, footings and septic systems), or commencement of landscaping or any other material disturbance of land preparatory or incidental to a proposed land use or development or subdivision.

(2) *Undertake* also means in the case of a subdivision to execute and to deliver any contract, mortgage or conveyance which actually or constructively transfers possession of or title to land.

(3) Preliminary field survey work unaccompanied by more than minimal vegetative clearing necessary for such purposes, the digging of soil test pits, the performing of soil percolation tests and other minor site inspections, the staking of lots or the securing of other approvals or permits required by law, shall not be considered undertaking a project.

(am) [aj)] *Watershed management or flood control project* means any dam, impoundment, dike, riprap or other structure or channelization or dredging activity designed to alter or regulate the natural flow or condition of a river or permanent or intermittent stream or the natural level or condition of lake or pond. Any such project for which a permit or approval is required prior to commencement from the Department of Environmental Conservation is not a watershed management or flood control project or a use for the purpose of these regulations.

(an) [(ak)] (1) *Wetlands or freshwater wetlands* means any land annually subject to periodic or continual inundation by water and commonly referred to as a bog, swamp or marsh, which is (i) one acre or more in size, or (ii) located adjacent to a body of water, including a permanent stream, with which there is free interchange of water at the surface, in which case there is no size limitation.

(2) Open waters immediately adjacent to a wetland and lands entirely surrounded by a wetland will be considered part of the wetland if these areas are essential to the preservation of the wetland vegetation.

(3) The definition of *wetlands* is stated in technical terms in section 578.3(k) of these regulations. Lands will not be considered wetlands unless they also meet that definition.

(4) Procedures for determining the existence of wetlands are set forth in section 571.2 of these regulations.

(a0) [(al)] *Wetlands project* means those activities in freshwater wetlands or adjacent areas requiring a permit pursuant to section 578.2 of these regulations.

Subsection (a) of Section 573.3 is proposed to be amended and subsection (b) of Section 573.3 is proposed to be repealed:

[(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.]

Subdivision (b) of Section 573.4 is proposed to be removed and subsequent sections renumbered, and paragraph 7 of the new subdivision (e) of Section 573.4 is proposed to be amended:

(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.]

~~(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.

~~(c) [(d) Review of land use or development in subdivisions.~~ All land use or development proposed for lots, parcels or sites in a subdivision shall be subject to review as part of the subdivision.

~~(d) [(e) Subdivision by related persons and persons acting in concert, or as part of a common plan.~~ A subdivision shall be reviewed with regard to its final planned size regardless of whether different phases are undertaken by (1) different but related persons or legal entities at different times, such as the development of a large subdivision in smaller increments by subsidiaries or affiliates of a corporation, or (2) unrelated persons acting in concert as part of a common scheme or plan.

~~(e) [(f) Division of land by gift, devise or inheritance.~~ (1) Subject to the other provisions of this section, the mere division of land by bona fide gift, devise or inheritance, by and from natural persons is not subject to review by the agency.

(2) Each immediate family member of a person who has continuously owned a landholding since May 22, 1973 may receive one parcel from that landholding, provided that the parcel is conveyed by the landowner by bona fide gift, devise or inheritance. In such a case, so as to allow the construction of one-single family dwelling or mobile home on the gift lot, the overall intensity guidelines and minimum lot size requirements of

the Adirondack Park Agency Act shall not apply; however, the minimum shoreline lot width and setback requirements of these regulations shall apply.

(3) A permit is required for the division of land by bona fide gift, devise or inheritance by a person who has not owned the land continuously since May 22, 1973, if the resulting lots do not comply with the overall intensity guidelines and minimum lot size criteria of the Adirondack Park Agency Act and with the minimum shoreline lot width and setback requirements of these regulations.

(4) A permit is required for the construction of a single-family dwelling or mobile home on a lot, parcel or site even though created by gift, devise or inheritance if the gift, devise or inheritance is located in a resource management area, industrial use area or critical environmental area.

(5) The subdivision of a parcel of land owned in joint or common tenancy, tenancy by the entirety, or other joint ownership between or among the owners will not be considered to be by bona fide gift, even if no consideration passes among the parties. Such a subdivision requires an agency permit if a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

(6) A permit is required for the division of land through conveyance by gift, devise or inheritance of any lot, parcel or site located outside a hamlet or moderate intensity use area but within a designated river area.

(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.

(f) [(g)] Preexisting subdivisions. (1) No agency permit is required for the conveyance of a lot or lots in a lawfully preexisting subdivision, provided no individual lot is subdivided. The shoreline building and sewage disposal system setbacks and the vegetative cutting restrictions of section 806 of the Adirondack Park Agency

Act apply to all new land uses or developments on lots in preexisting subdivisions; the minimum shoreline lot width requirements apply to preexisting subdivisions which have not received Department of Health approval.

(2) A *preexisting subdivision* is one determined by the agency pursuant to paragraph (4) of this subdivision to have been substantially commenced prior to August 1, 1973 and involving substantial expenditures made for structures or improvements prior to such date.

(3) *Lawfully* means in full compliance with all applicable laws, rules and regulations, including, without limitation, possession of and compliance with any permit or other approval required under the Public Health Law, the Environmental Conservation Law and any local or other governmental regulations. (See also Real Property Law and Public Health Law requiring subdivision plats to be filed.)

(4) For the purpose of determining whether a subdivision or portion thereof was in existence as of August 1, 1973, the agency will consider, among other relevant factors, (i) the number of lots sold prior to such date relative to the total number of lots in the subdivision, (ii) the locations of such lots sold, (iii) the nature, extent and cost of structures and improvements directly related to the subdivision completed or commenced prior to such date, relative to all such necessary improvements related to the subdivision, (iv) the location of such completed or commenced improvements, and (v) demonstrated efforts to sell lots prior to such date.

(5) The agency may determine that all or only a portion or portions of a subdivision, or groups of such subdivision lots are preexisting, depending on the pattern of sale of lots and installed infrastructure.

(6) An agency permit is required for the construction of a single-family dwelling or mobile home on a lot in a preexisting subdivision which has not received New York State Department of Health approval if located in a resource management or industrial use area, or in a critical environmental area.

(g) [(h)] *Merger of lots acquired prior to May 22, 1973.* Adjoining lots owned by one landowner, each acquired prior to May 22, 1973, except lots in a preexisting subdivision or separately-owned preexisting vacant lots of record as described in section 811(l)(a) of the Adirondack Park Agency Act, shall be deemed to have

merged into one undivided lot as of that date, even if described in different deeds or acquired at various times. A sale of any such lot(s) while retaining adjoining land constitutes a subdivision which requires an agency permit if a class A or class B regional project as provided in section 810 of the Act.

(h) [(i)] *Preexisting vacant lots of record acquired subsequent to May 22, 1973.* No agency permit is required for the resale of a preexisting separately owned vacant lot of record as of May 22, 1973 (as described by section 811[1][a] of the Adirondack Park Agency Act) which is subsequently acquired by an owner of adjoining lands. An agency permit is required for any new land use or development on the lot which is a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

Paragraph 2 of subdivision (b) of Section 575.5 is proposed to be deleted and a new paragraph 2 of subdivision (b) of Section 575.5 will be added:

(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.

New subdivisions (c) and (d) of Section 575.7 are proposed to be added:

(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 and Appendix Q4 regulations 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 since May 22, 1973 in occupancy of the shoreline structure served, must meet all existing standards for such systems, including the shoreline setback requirements and Appendix Q4 of Agency regulations. Otherwise, a variance will be required for the system expansion.

Subparagraph (i) of paragraph (1) of subdivision (n) of Section 578.3 is proposed to be amended:

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

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

A new paragraph (3) of subdivision (n) of Section 578.3 is proposed to be added and the subsequent paragraphs renumbered:

(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 cluster” for each wetland.

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

(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.

(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 cluster. 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 cluster.

(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 cluster 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: