



Transition Guidance to the 2008 Rule Making

Agency Transition Guidance 2008 Rule Making

At its November meeting, the Agency adopted regulations, to be effective on December 31, 2008:

- (1) New definition for “Hunting and fishing cabin and private club structure”**
- (2) New definition for “Square feet of floor space” or “floor space”**
- (3) New rules for Agency jurisdiction over subdivisions “involving wetlands”**
- (4) Removed existing rule regarding lands divided by roads or rights-of-way owned in fee**
- (5) New rules for the expansion of non-conforming shoreline structures and on-site wastewater treatment systems**

The Agency has directed the regulations to be filed with a December 31, 2008 effective date to apply prospectively. This document describes the transition to the new terms and conditions for each of the proposed regulations. No regulatory change will affect the terms and conditions of any prior permit or enforcement settlement already issued by the Agency. Permit applications received by the Agency on or before the November 14 date of approval of the new regulations will be reviewed according to the rules in effect at the time of application receipt.

(1) New definition for “Hunting and fishing cabin and private club structure”

The new definition will apply prospectively, taking effect December 31, 2008. The new definition is more permissive than existing Agency practice, particularly with respect to sleeping lofts and decks without a roof, and, therefore, it may also benefit some existing hunting and fishing camps. Otherwise, existing structures will be evaluated under rules in existence when they were constructed.

(2) New definition for “Square feet of floor space” or “Floor space”

The new definition will apply prospectively, taking effect December 31, 2008, for jurisdictional inquiry, enforcement and other Agency determinations written after that date.

(3) New rules for Agency jurisdiction over subdivisions “involving wetlands”

- a. A subdivision plat lawfully filed with a county clerk's office prior to December 31, 2008 will be honored by the Agency under the prior regulations, provided that the proposed subdivision project does not require an Agency permit or variance under the laws in effect on December 30, 2008.
- b. If the landowner has received a non-jurisdictional determination requested prior to November 14 from the Agency, the subdivision may be undertaken according to the terms of the determination without regard to the new rules for subdivisions involving wetlands.
- c. If no subdivision plat is required to be filed in the county clerk's office, the subdivision is subject to the prior regulations if the deed(s) are recorded prior to December 31, 2008.

In either case a, b or c, however, new land use and development proposed on lots within the subdivision, including the construction of roads and structures, may be independently jurisdictional pursuant to the laws in effect on December 30, 2008. (For example, if any of the development activity might adversely impact a wetland, or if it is located within a shoreline setback area, a critical environmental area, or a Resource Management area, or if any other jurisdictional provision applies to the development, it would require an Agency permit unrelated to the subdivision action. This aspect of Agency jurisdiction remains unchanged.)

(4) Removed existing rule regarding lands divided by roads or rights of way owned in fee

- a. A subdivision plat lawfully filed with a county clerk's office prior to December 31, 2008 will be honored by the Agency under the prior regulation, provided that the proposed subdivision project does not require an Agency permit or variance under the laws in effect on December 30, 2008.
- b. If the landowner has received a non-jurisdictional determination requested prior to November 14 from the Agency, the subdivision may be undertaken according to the terms of the determination without regard to the new regulation for subdivisions involving wetlands or other predicates of Agency jurisdiction.
- c. If no subdivision plat is required to be filed in the county clerk's office, the subdivision is subject to the prior regulations if the deed(s) are recorded prior to December 31, 2008.

In either case a, b or c, however, new land use and development proposed within the subdivision, including the construction of roads and structures, may be independently jurisdictional pursuant to the laws in effect on December 30, 2008. (For example, if any of the development activity might adversely impact a wetland, or if it is located within a shoreline setback area, a critical environmental area, or a Resource Management area, or if

any other jurisdictional provision applies to the development, it would require an Agency permit unrelated to the subdivision action. This aspect of Agency jurisdiction remains unchanged.)

(5) New rules for the expansion of non-conforming shoreline structures and on-site wastewater treatment systems

If the landowner has obtained all required local permits and variances for the proposed structure expansion prior to December 31, 2008, and the foundation or framing for the expansion is complete by June 30, 2009, no variance will be required from the Agency pursuant to the new rules effective December 31, 2008, provided that the proposed expansion project does not require an Agency permit or variance under the laws in effect on December 30, 2008. In the event new bedrooms or occupancy are part of the expansion, a design report prepared by a licensed engineer must be provided to the Agency and confirm the adequacy of the existing on-site wastewater treatment system for the existing dwelling and the proposed addition, and that the system meets the shoreline setback requirements. The report shall include a scaled site plan confirming the distance from the mean high water mark to the closest point of the leaching component of the wastewater treatment system. If the system is non-conforming, then a variance is required for the building and the wastewater system under the Adirondack Park Agency Act.

For a proposed replacement of an on-site wastewater treatment system where there is no proposal to expand the structure it serves, a landowner may take advantage of new Section 575.7(c), with a design report prepared by a licensed engineer and provided to the Agency. The report must verify the design, capacity and location of the existing and proposed on-site wastewater treatment system. The report shall include a scaled site plan confirming the distances from the mean high water mark to the closest point of the leaching component of both the existing wastewater treatment system and the proposed wastewater treatment system. The Agency will review the design report as part of the required jurisdictional inquiry.