



M E M O R A N D U M

TO: James Townsend, Counsel

FROM: Sarah Reynolds, Associate Counsel

RE: Summary of Legal Guidance, October 2013 - January 2014

DATE: February 5, 2014

Please find attached summaries of the legal guidance given to staff between October 2013 and January 2014. I have included a list summarizing the guidance that codifies existing Agency law and practice, as well as a list summarizing new practices and interpretations.

As possible, all legal guidance information is incorporated into public flyers. The official versions of these flyers are maintained on the Agency's website; I have also attached copies to this memo. Please note that while minor updates to these flyers occur regularly, the Boathouse and Gift Exemption flyers received substantial attention this past fall.

Summaries of Existing Law/Agency Practice

Applicant Signatures:

- Before the Agency can process a permit application, signatures must be obtained from the fee owners of all lands that will be subject to the terms of the permit.

Wetlands Jurisdiction:

- If an application for a wetlands project is redesigned so that the activity as proposed will no longer "involve wetlands," the proposal has become non-jurisdictional and no permit is necessary.

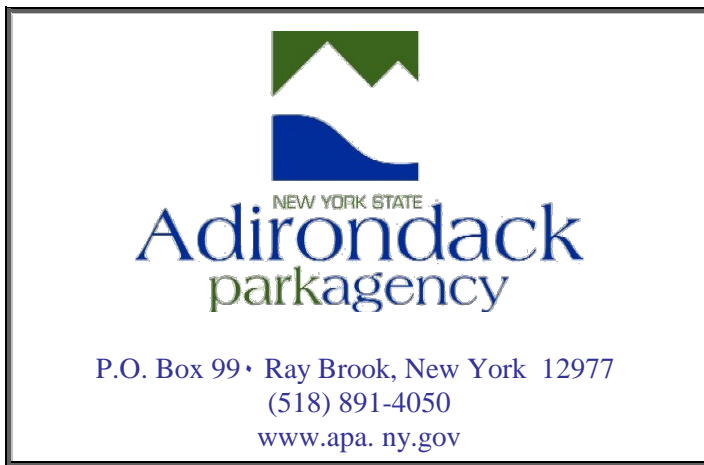
Summaries of New Guidance

Letters of Permit Compliance:

- Except as part of a follow-up condition, a letter of permit compliance may only be issued where: 1) the request does not involve a material change as defined in §809(8)(b); 2) approval of the request does not require the addition of any new Condition; and 3) approval of the request does not require any change to an existing or addition of a new Finding of Fact. If not approvable by letter of permit compliance, a requested change to a permit condition requires a new or amended permit.

Measuring Boathouses with Roof Overhangs:

- When a boathouse has a flat roof that extends beyond its walls, the structure is considered to be without exterior walls, and the footprint measurement is taken at the roof perimeter. When a boathouse has a reasonably pitched roof that extends four feet or less beyond its walls, the footprint measurement is taken at the perimeter of the walls. When a boathouse has a reasonably pitched roof that extends more than four feet beyond its walls, the structure may be considered to be without exterior walls, with the footprint measurement taken at the roof perimeter.



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Adirondack Park Agency regulations.**

BOATHOUSES

Section 806 of the Adirondack Park Agency Act establishes shoreline setback restrictions that apply regardless of whether an Agency permit is required¹ for a new land use or development or subdivision.² However, a structure that constitutes a boathouse as described in this flyer is not subject to these setback requirements.³

Boathouse Definition

As defined under §570.3(c) of Agency regulations, a boathouse is generally *a covered structure with direct access to a body of water that is used only for the storage of boats and associated equipment, does not contain sanitary plumbing of any kind, does not exceed a single story in that the roof rafters rest on the top plate of the first floor wall, and has a footprint of 1200 square feet or less and a height of fifteen feet or less.*

A covered dock or wharf permitted by the Lake George Park Commission for berthing boats within the Lake George Park is subject instead to the dimensional requirements of the Commission.

Measuring Footprint and Height

The footprint of a boathouse with exterior walls is measured at the perimeter of the walls. The footprint of a boathouse without exterior walls is measured at the perimeter of the roof. A boathouse with flat eaves that extend beyond the structure's walls is measured at the perimeter of the roof, while a boathouse with pitched eaves that extend beyond the structure's walls is usually measured at the perimeter of the walls. The footprint of a boathouse can be expanded beyond 1,200 square feet through the addition of up to a total of 100 square feet of decks and porches attached to the structure.

¹ Permitting requirements may apply for the construction of boathouses involving wetlands, within designated Recreational River areas, or for other reasons.

² The shoreline restrictions of APA Act §806 are incorporated in the Agency-approved local zoning program for the Towns of Arietta, Bolton, Caroga, Chester, Chesterfield, Colton, Day, Edinburg, Hague, Horicon, Indian Lake, Johnsbury, Newcomb, Queensbury, Westport, and Willsboro, and the Town and Village of Lake George. Advice on requirements and variance procedures may be obtained from the local code enforcement officer.

³ Boathouses may not be constructed in designated Wild or Scenic river corridors under the Wild, Scenic and Recreational Rivers System Act.

The height of a boathouse is measured from the surface of the floor serving the boat berths to the highest point of the structure.

Direct Access

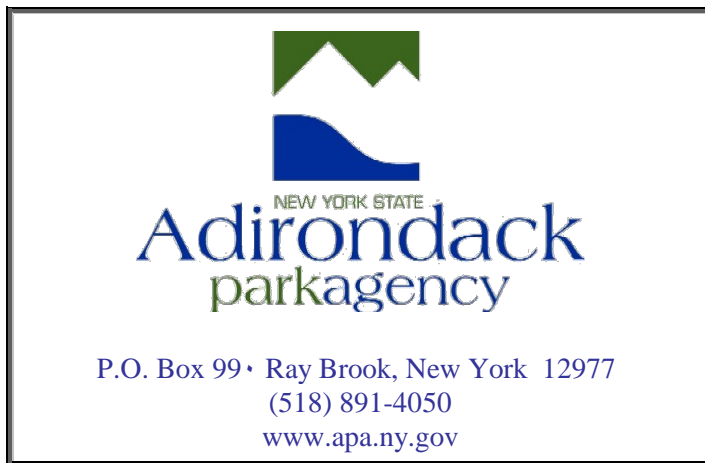
A boathouse must have direct access to a body of water, meaning that boats can be driven into it from the water. A structure into which canoes, kayaks, or small sailboats can be lifted or pulled may also constitute a boathouse if the structure immediately adjoins the shoreline. A storage shed, garage, or other structure that does not immediately adjoin a shoreline is not a boathouse, even if used only for the storage of boats.

Replacement and Expansion

A boathouse that lawfully existed before September 21, 2010, may be replaced in the same location or immediate vicinity. The dimensions of a boathouse that lawfully existed before September 21, 2010, may also be expanded, provided the expanded structure conforms with the parameters established in §570.3(c) of Agency regulations.

This flyer is intended to provide general information regarding Agency jurisdiction. Other provisions or restrictions may apply if an Agency permit or variance is required or if the property has previously been subject to Agency review.

Please contact the Agency with any questions at 518-891-4050. For a binding written response as to whether a specific proposal requires Agency review, please submit a Jurisdictional Inquiry Form (JIF). The JIF form is available on the Agency website at www.apa.ny.gov/Forms/jiform.pdf.



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GIFT EXEMPTION

Pursuant to Sections 809 and 810 of the Adirondack Park Agency Act, certain subdivisions of land within the Adirondack Park require a permit from the Agency. However, §811(1)(c) of the APA Act and §573.4(e) of Agency regulations establish an exemption from these permitting requirements for any subdivision undertaken in compliance with all of the following:

- The conveyance is by bona fide gift, devise, or inheritance, meaning there is no exchange of money, goods, services, or other consideration (and the conveyance is not part of a common scheme or plan to convey the lot to a party not entitled to an exemption);
- The giver of the lot is a natural person (human being);
- The receiver of the lot does not have joint or any other ownership interest in the property prior to the conveyance;
- If the lot does not contain the minimum lot size for the land use area as set forth in §810(2) of the APA Act:
 - The giver of the lot has continuously owned the land since May 22, 1973,
 - The receiver of the lot is a spouse, parent, child, sibling, grandparent, or grandchild of the giver, and
 - There has been no prior conveyance exempted from Agency permitting under these provisions to the receiver of the lot from the same 1973 landholding;
- The lot is not located on Low Intensity Use, Rural Use, or Resource Management lands within a designated Wild, Scenic, or Recreational river area as defined in Appendix Q-6 to Agency regulations; and
- The lot does not contain wetlands and does not adjoin any other subdivision lot that contains wetlands, unless all of the lots being created as part of the same subdivision meet the standards set forth in §578.3(n)(3)(ii) of Agency regulations.

The creation of a gifted lot by subdivision pursuant to this exemption does not change the Agency's jurisdiction over development activities on the property. Accordingly, a permit must be obtained for all land uses and development listed under §810 of the APA Act, including the construction of a single family dwelling or mobile home within a Resource Management, Industrial Use, or critical environmental area. In addition, a permit must be obtained for all rivers projects as defined under Part 577 of Agency regulations implementing the Wild, Scenic, and Recreational Rivers System Act and all regulated activities as defined under Part 578 of Agency regulations implementing the Freshwater Wetlands Act. In addition, all land use and

development on subdivision lots created pursuant to this exemption must comply with the standards set forth in §806 of the APA Act and §577.6 of Agency regulations implementing the Rivers Act.

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