



October 22, 2009

Majority Leader
New York State Senate
909 Legislative Office Building
Albany, New York 12247

Director
Administrative Regulations Review Commission
New York State Senate
Albany, New York 12247

Administrative Regulations Review Commission
New York State Assembly
Albany, New York 12248

Counsel
Governor's Office of Regulatory Reform
1 Empire State Plaza
PO Box 2107
Albany, New York 12220

Dear Colleagues:

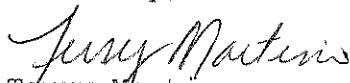
Re: Adirondack Park Agency Notice of Proposed Rule Making

Pursuant to the New York State Administrative Procedure Act and the Executive Law, enclosed please find the Adirondack Park Agency's Notice of Proposed Rule Making and related attachments.

The issues addressed in this rule making package are the definitions of "boathouse" and "dock."

Please do not hesitate to call Agency Counsel John S. Banta if you have any questions.

Sincerely,


Terry Martino
Executive Director

TM:dal
Enclosures

cc: John S. Banta, Counsel

David A. Paterson
GOVERNOR



Amelia F. Stern
Acting Director and
Counsel

October 8, 2009

Curtis F. Stiles, Chairman
Adirondack Park Agency
PO Box 99, Route 86
Ray Brook, NY 12977

Dear Chairman Stiles:

The Governor's Office of Regulatory Reform hereby authorizes the Adirondack Park Agency, based on its request received on May 7, 2009 and revised on July 15, 2009, to amend 9 NYCRR Part 570.3(c) and (j), Boathouse and Dock Definitions.

Please include a copy of this authorization letter when you submit your rule making to the Department of State for publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Amelia F. Stern", with a long horizontal line extending to the right.

Amelia F. Stern

AFS/JR/saf

cc: Lorraine Cortes-Vazquez, Secretary of State
The Honorable John L. Sampson
The Honorable Michael N. Gianaris
John S. Banta, Esq.

Governor's Office of Regulatory Reform
Empire State Plaza, Agency Bldg. 1, P.O. Box 2107, Albany, New York 12220-0107
Phone: 518-473-8197 Fax: 518-486-9860
www.gorr.state.ny.us
astern@gorr.state.ny.us

Notice of Proposed Rule Making

Adirondack Park Agency
(SUBMITTING AGENCY)

- Approval has been granted by GORR to propose this rule making.
- This rule making does not require GORR approval.

TEXT/SUBSTANCE AND ATTACHMENTS SUBMITTED: E-MAIL (nysregister@dos.state.ny.us)
 DISK

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms and nonscannable text attachments will be cause for rejection of this notice.

1. A. Proposed action:			
Amendment of	570.3(c)	Title 9	NYCRR
Amendment of	570.3(j)	Title 9	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR

- B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under I.D. No. [REDACTED]. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. Statutory authority under which the rule is proposed:
 Adirondack Park Agency Act, Executive Law, Article 27; State Administrative Procedure Act (SAPA Section 207).

3. Subject of the rule:
 Boathouse and Dock definitions.

4. Purpose of the rule:
 To provide clarity and better environmental protection.

5. Public hearings (check box and complete as applicable):
- A public hearing is not scheduled. (SKIP TO ITEM 8)
 - A public hearing is required by law and is scheduled below. (Note: first hearing date must be at least 45 days after publication of this notice unless a different time is specified in statute.)
 - A public hearing is not required by law, but is scheduled below.

Time:	Date:	Location:
06:00 PM	01/05/2010	NYS APA, Ray Brook
06:00 PM	01/06/2010	Webb Community Center, Old Forge
11:00 AM	01/07/2010	NYS DEC, 625 Broadway, Rm. 129B, Albany
06:00 PM	01/07/2010	Lake George Town Hall, Lake George

6. *Interpreter services* (check only if a public hearing is scheduled):

- Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. *Accessibility* (check appropriate box only if a public hearing is scheduled):

- All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
- Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):

- A. The full text of the rule is attached since it is under 2,000 words.
- B. A summary of the rule is attached since the full text of the rule is over 2,000 words.
 - Full text is posted at the following State website: _____
 - Full text is not posted on a State website.
 - Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102 (2)(a)(ii).
- C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].

9. *The text of the rule and any required statements and analyses may be obtained from:*

Agency contact John S. Banta, Counsel

Agency Name NYS Adirondack Park Agency

Office address PO Box 99
Ray Brook, NY 12977

Telephone (518) 891-4050 E-mail: jsbanta@gw.dec.state.ny.us

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact _____

Agency name _____

Office address _____

Telephone _____ E-mail: _____

11. Public comment will be received until:

- 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it is under 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- Other: (specify) _____.

12. A prior emergency rule making for this action was previously published in the _____ issue of the Register, I.D. No. _____.

13. Expiration date (check only if applicable):

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

14. Additional matter required by statute:

- Yes (include below material required by statute).

- No additional material required by statute.

15. Regulatory Agenda (The Division of Housing and Community Renewal; Workers' Compensation Board; and the departments of Agriculture and Markets, Banking, Education, Environmental Conservation, Family Assistance, Health, Insurance, Labor, Motor Vehicles and State and other department specified by the Governor or his designee must complete this item. If your agency has an optional agenda published, that should also be indicated below):

- This action was a Regulatory Agenda item in the first January issue of the _____ (year) Register.
- This action was a Regulatory Agenda item in the last June issue of the _____ (year) Register.
- This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the Register.
- Not applicable.

16. 5-Year Review of Existing Rules (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

- Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a decision of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.
- Attached is an assessment of public comments received by the agency in response to the listing of the rule in the regulatory agenda.
- An assessment of public comments is not attached because no comments were received.
Not applicable.

17. Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:

 The full text of the RIS. A summary of the RIS. A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.B. A RIS is **not attached**, because this rule is: subject to a consolidated RIS printed in the *Register* under I.D. No.: _____ ;
issue date: _____ exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. exempt, as defined in SAPA §102(11) [Consensus Rule Making].C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).**18. Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:

 The full text of the RFA. A summary of the RFA. A consolidated RFA, because this rule is one of a series of closely related rules.B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.C. A RFA is **not attached**, because this rule: is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____ ;
issue date: _____ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is exempt, as defined in SAPA §102(11) [Consensus Rule Making].**19. Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:

 The full text of the RAFA. A summary of the RAFA. A consolidated RAFA, because this rule is one of a series of closely related rules.B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.C. A RAFA is **not attached**, because this rule: is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____ ;
issue date: _____ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. Job Impact Statement (JIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

The full text of the JIS.

A summary of the JIS.

A consolidated JIS, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____ issue date: _____

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

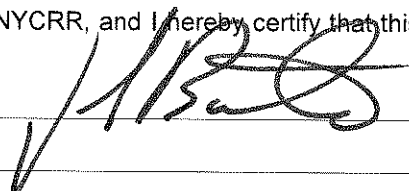
is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name John S. Banta, Counsel

Signature 

Address NYS Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977

Telephone (518) 891-4050

E-Mail jsbanta@gw.dec.state.ny.us

Date 10/20/2009

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. **Collate the original notice and attachments** as: (1) form; (2) text or summary of rule; and, **if any**, (3) regulatory impact statement, (4) regulatory flexibility analysis for small businesses and local governments, (5) rural area flexibility analysis, (6) job impact statement. Submit the originals, as collated and **ONE copy of that collated set**.
3. **Mail or hand deliver hard copy of rule making package to:** Department of State, Division of Administrative Rules, 41 State Street, Suite 330, Albany, NY 12231-0001.
4. **E-mail text/substance and attachments to:** nysregister@dos.state.ny.us or attach a disk containing the text/substance and required material.

ADIRONDACK PARK AGENCY

July 15, 2009

PROPOSED RULE TEXT
2009 Rulemaking
GORR #0905080

Key: [bracketed] text proposed to be deleted;

new text proposed to be added

Subsection (c) of Section 570.3 is proposed to be amended:

Boathouse means a covered structure with direct access to a navigable body of water which (1) is used only for the storage of boats and associated equipment; (2) does not contain bathroom facilities, sanitary plumbing, or sanitary drains of any kind; (3) does not contain kitchen facilities of any kind; (4) does not contain a heating system of any kind; (5) does not contain beds or sleeping quarters of any kind; and (6) [does not exceed a single story] has a footprint of 900 square feet or less measured at the exterior walls, a height of fifteen feet or less, and a minimum pitch of four on twelve for all rigid roof surfaces. Height shall be measured from the surface of the floor serving the boat berths to the highest point of the structure.

Subsection (j) of Section 570.3 is proposed to be amended:

Dock means a floating or fixed structure that: 1) extends horizontally (parallel with the water surface) into or over a lake, pond or navigable river or stream from only that portion of the immediate shoreline or boathouse necessary to attach the floating or fixed structure to the shoreline or boathouse; 2) is no more than eight feet in width, or in the case of interconnected structures intended to accommodate multiple watercraft or

other authorized use, each element of which is no more than eight feet in width; and 3) is built or used for the purposes of securing and/or loading or unloading water craft and/or for swimming or water recreation. A structure which is designed to be suspended above water level for storage by means of a hoist or other mechanical device is not a dock.

ADIRONDACK PARK AGENCY

July 15, 2009

REGULATORY IMPACT STATEMENT 2009 Rulemaking GORR #0905080

1. Statutory authority:

The Adirondack Park Agency Act (APA Act), Executive Law Article 27, Section 804(9), authorizes the Agency "to adopt, amend and repeal...such rules and regulations...as it deems necessary to administer this article and to do any and all things necessary or convenient to carry out the purposes and policies of this article...." Similar authority is also found in the NYS Wild, Scenic and Recreational Rivers System Act (ECL Section 15-2709) and in the NYS Freshwater Wetlands Act (ECL Section 24-0801). The statutory and regulatory language addressed in the proposed regulations are: Executive Law Article 27, Section 806(1)(a)(2) which addresses both docks and boathouses; 9 NYCRR Section 570.3(c) boathouse definition and 570.3(j) dock definition; 9 NYCRR Section 577.4(b)(3)(ii) which regulates construction of docks and boathouses within areas designated under the NYS Wild, Scenic and Recreational Rivers System Act. In addition, SAPA Section 207 requires an agency to review on five-year intervals any regulation passed since 1997. The existing boathouse and dock regulations are in that category and the proposed regulations are intended to fulfill that requirement.

2. Legislative objectives:

The broad legislative objectives are framed in Section 801 of the APA Act which refers to the Park's unique and special values, the constitutional safeguards over the public lands within the Park and the obligation on the part of the State, through the Adirondack Park Agency, "...to insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park...." The Adirondack Park Agency seeks to accomplish these objectives through the administration of its statutory authority and the adoption of appropriate

regulations to accomplish protection of the open space character of the Park, its natural resources and vigorous settlements.

Also essential are the shoreline restrictions in Section 806 of the APA Act, which impose special protections on the shorelines of all Adirondack lakes and ponds and navigable rivers and streams. Section 806 identifies the importance of water quality and the natural quality of the shorelines, and imposes minimum requirements which apply whether or not a permit is required. A variance is required to deviate from these requirements, which is indicative of their importance. The scientific literature clearly supports the need for minimum shoreline development and the preservation of natural, undeveloped buffers between development and the water.¹ The APA Act statutory structure setback requirements only exclude very small structures, and docks and boathouses which of necessity must be on the shoreline.

In 1993, Governor Cuomo asked the Agency to establish a task force to provide recommendations for speeding its regulatory processes, simplifying its regulatory procedures, and providing additional guidance to applicants. In May, 1994, the Task Force on Expediting Adirondack Park Agency Operations and Simplifying its Procedures (Task Force) issued its findings and recommendations and in January 1996, after two years of review and discussion in its public sessions, the Agency issued its response. The Task Force recommended, and the Agency agreed, that a major revision of its regulations should be undertaken to make them clearer and their application more predictable.

In 1996, the Agency initiated a multi-phase, multi-year public process to comprehensively revise its regulations. The main focus has been to (1) clarify existing regulatory language; (2) expedite delivery of services to the public; (3) introduce improved consistency, uniformity, and predictability into Agency administration and decision making consistent with governing statutes; and (4) otherwise improve the Agency's

¹ The Agency has relied in part on a document entitled "Regulatory and Educational Opportunities for Shoreland Protection in the Adirondack Park," dated June 2003, by Sean Conin, PhD., the Agency's former Freshwater Analyst. This comprehensive research paper discusses in detail the scientific evidence for the protection of natural vegetated buffers along shorelines.

regulatory, advisory, and educational functions. All processes have been extensive, involving public comment and multiple public discussions by the Agency. To date, regulatory revisions have been completed, resulting in changes effective January 3, 2001, May 1, 2002, January 29, 2003, September 15, 2005 and December 31, 2008.

The proposed regulations were agreed upon after a lengthy process involving staff, the public and the members of the Technical Advisory List (TAL). The TAL is a multi-disciplinary and multi-interest volunteer group which includes all the Task Force members, and representatives of fifteen groups having special and diverse interests in the Adirondacks. It was created in 1996 to assist the Agency in reviewing proposed regulations and has been consulted in all the revisions to date. The proposed regulations implement the legislative intent, improve clarity and consistency of Agency practices, and ensure better environmental protections. The proposed regulations mitigate unintended consequences of definitions established effective May 1, 2002.

3. Needs and benefits:

The Agency's regulatory revision program is grounded in the initial analysis undertaken by the Task Force in its 1994 report, which recommended revisions. The revision process has proceeded in phases and has been regularly reviewed through consultation with the TAL, Agency Legal Affairs Committee deliberations, and the Agency's assessment of public comment. The Adirondack Park Agency website, which now generates an average of 8,000 visits or 25,000 page views per week, also has been a primary vehicle for communication about potentials and priorities for regulatory revision.

The restrictions and limitations set forth in Section 806 of the APA Act protect the quality and the character of Adirondack shorelines by imposing minimum setbacks from the shoreline for structures larger than 100 square feet in size and wastewater treatment systems, limiting the amount of vegetation which can be removed from within 35 feet of the mean high water mark and the use of shoreline parcels for deeded or

contractual access provided to those who don't otherwise own shoreline property. The statute also prescribes a minimum lot width which must be associated with each single-family dwelling. Any proposal which cannot comply with the limits set forth in Section 806 requires issuance of a variance, with an associated standard of review in Section 806 independent from the permit authority granted the Agency in Sections 809 and 810 of the APA Act.

The Agency has more recently considered a technical document entitled "Regulatory and Educational Opportunities for Shoreland Protection in the Adirondack Park," dated June 2003, by Sean Conin, Ph.D., the Agency's former Freshwater Analyst. This comprehensive research paper discussed in detail the scientific evidence for the protection of natural vegetated buffers along shorelines. The natural vegetation greatly slows water runoff and filters sediments and other pollutants, far more so than vegetation in manipulated or landscaped areas. In addition, the natural buffers play an important role for wildlife habitat. The closer the land to the shoreline, the more important the role it has in providing the benefits of a buffer. Stated in another way, within the area near a shoreline, any structure creating an impervious surface, or the conversion of natural vegetation to lawn or other non-native vegetation, creates increased runoff, and water quality, and wildlife habitat impacts. The compiled research indicates the range of buffers which are necessary to protect water quality and wildlife habitat, and the paper discusses that research and also compares the regulations adopted by other states to protect their shorelines.² In any case, the construction of *any* structure located within the shoreline setback area or in the water causes an adverse impact to water quality and wildlife habitat, and may also create impacts to the aesthetics of the natural shoreline character, also a matter of importance under the APA Act. Hence, for all these reasons, the Agency has determined that the setback requirements must be strictly followed.

² A fair reading of the compiled research indicates that the various shoreline requirements of Executive Law 806 are inadequate.

The APA Act contains a significant exemption from the structure setback requirements for “dock” and “boathouse.”³ Thus, it is critical to clearly and specifically define those types of structures. Distinguishing these excepted structures from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock. Over the years, many multi-purpose structures have been constructed on the shoreline. Structures purporting to be boathouses have been constructed with second stories dedicated to rooms for sleeping and/or general recreation, and including decks. Plus, some structures purporting to be docks are in reality decks due their size and location. Since a guest cottage, a recreation room, or a greater-than-100-square-foot deck would each be subject to the setback requirements, such structures should not be allowed as part of a boathouse without a variance; that undermines the purposes of the shoreline restrictions and the values they protect.

a) The analysis of what constitutes a “boathouse” has consumed an inordinate amount of Agency staff time. The first definition was adopted in the Agency’s 1982 regulations. That definition required that the structure be used for the storage of boats and boating equipment, prohibited kitchens and baths, and provided it could not be “designed and used for lodging or residency.” Unfortunately, except for the specific prohibition for kitchens and baths, the regulation was impossible to administer due to the lack of clarity in the terms used. Many of the submitted “boathouse” designs included large second story rooms with beautiful finishing and fenestration, which room the landowner insisted was just for the storage of boating equipment. Staff have spent large amounts of time analyzing boathouse plans to assess whether such structures were “designed or used for lodging or residency,” and often significant design changes were required before the plans were acceptable.

The current definition, which took effect on May 1, 2002, limits a boathouse to use *only* for the storage of boats and boating equipment, and also to a “single story.” The use limitation was an essential component of

³ The setback requirement for structures in excess of 100 square feet in size ranges from 50 to 100 feet, depending on the classification of the applicable property on the Adirondack Park Land Use and Development Plan Map. (Note that larger setback requirements apply to the shorelines of rivers designated under the New York State Wild, Scenic and Recreational Rivers System Act.)

the definition; it furthers the intent of the shoreline restrictions and ensures that shoreline structures will not be built and used for anything other than what is necessary to be located at the shoreline: the shelter for boats and related equipment. The “single story” limitation was supposed to eliminate the creation of a second story which could be used for a sleeping or recreation room. When drafted, the 2002 definition was based on the New York State Uniform Building Code, which confirms that an attic is not a “story.” Thus, the intent was that a boathouse could have storage space above the “ceiling” joists and under the roof rafters, but that space cannot be used for anything other than the storage of boats and associated equipment.

However, the definition did not provide the desired result or the clarity needed. Staff is still required to analyze architectural elements to confirm whether a structure contains only a “single story,” based on inclusion of windows, dormers, flooring, doors and stairs associated with the area in the structure above the first floor ceiling joists. Following the May 1, 2002 implementation of the revised definition, guidance regarding application of the “single story” requirement was issued by Agency Counsel and widely distributed to code enforcement officers, building inspectors and any members of the public who requested it, and it was also posted on the Agency’s website (see Exhibit A, attached to this RIS). The guidance is also complex to administer and it did not eliminate the creation of large, multi-use structures on the shoreline. Moreover, it remains impossible for staff to investigate the actual use of the “attic” area.

The process used to determine whether a structure constitutes a “boathouse” remains unwieldy and unnecessarily complex. The proposed regulation will eliminate the “single story” requirement and will instead provide for a size and height limit, both of which are measurable from the exterior and hence easy to administer. The size limits are necessary to ensure that a second story recreational space is not created. After 35 years of administration of the APA Act, the Agency has concluded that no such space shall be allowed without a variance; the design parameters ensure that the structure is in fact only a boathouse. Note, also, that the size limitation is generally reasonable for most shoreline parcels. The shoreline cutting requirements limit the

amount of shoreline vegetation that can be removed. Most shoreline parcels are 100 feet in width and can accommodate at best a 30-foot-wide shoreline structure under the cutting limitations.

The proposed regulation also eliminates the potential for construction of a flat roof on a boathouse.⁴ A flat roof has been permissible under the prior regulatory boathouse definitions. With the 2002 elimination of the potential for construction of a second story, many boathouses were being designed with a large elevated deck with surrounding “safety” railing (or glass enclosures); sometimes with a stone fireplace serving the deck. The elevated deck often significantly exceeds 100 square feet in size; in fact, in some cases they have been well over 1,000 square feet in size. Construction of a deck in excess of 100 square feet in size within the shoreline setback area or over the water would require a variance from the shoreline setback requirements. Construction of a deck to serve as the roof a boathouse evades the setback requirement for the deck and subverts its purpose.⁵ The proposed regulation will limit the potential for use of the roof as a deck for recreational purposes, as such deck was not intended by the statute to be associated with a boathouse and exempt from the shoreline requirements.

This proposed regulation creates guidelines readily measurable and understood by designers and builders. This reduces the potential for violations associated with construction of a structure that a landowner might allege is a “boathouse,” but which does not comply with the Agency definition. The current definition and related Agency guidance has failed to achieve the desired result, and the evaluation of multiple permutations of boathouse designs has continued to occupy an inordinate amount of staff resources. The proposed regulation will clearly delineate the acceptable structural components for a boathouse with the intent that the sole purpose is for boat storage.

b) For many years, staff guidance relative to docks has provided that such a structure cannot exceed eight feet in width; that practice was codified in the regulatory revision which took effect on May 1, 2002 (prior

⁴ The proposed definition requires rigid roof structures to meet the slope requirement. This is to allow for fabric or plastic roofed structures which may not meet to slope requirement because they are arched in design.

⁵ There are also noise and lighting issues associated with shoreline decks.

to which time, no definition of “dock” was contained in either the APA Act or its implementing regulations). This action implemented the Task Force recommendation that the Agency codify existing practices.

Since May 1, 2002, the Agency has received inquiries regarding structures which serve as seasonal docks with hoists which allow for suspension of the structure over the water/ice for winter storage. The hoist mechanism uses a tall pole and hydraulics to raise the structure (or its framework) and suspend it at an angle above the water level. The purpose is to eliminate the need for removal and storage of the structure in a different location away from the water to protect it from potential ice damage. The Agency has consistently taken the position that these structures are not “docks” when suspended above water level and, if they exceed 100 square feet in size, an Agency variance is required for their installation. A large structure as hoisted is highly visible, potentially dangerous, and simply does not serve as a “dock” in that position. Aesthetics is one of the values protected by the shoreline restrictions and that value is impacted by these large structures. The proposed regulation would effectuate this application of the shoreline setback requirements. However, the Agency intends this proposed dock regulation to be prospective only, except that landowners must comply with any outstanding formal jurisdictional determination which provided similar parameters.

4. Costs:

There are no costs associated with the proposed regulations. The construction of a boathouse or a dock is entirely discretionary and a matter of choice. If a landowner chooses to build either structure, he or she must meet the regulatory definition. Both proposed regulations impose size limitations on the structure which could reduce its cost. Moreover, both proposed regulations provide specific performance criteria which will clarify design options. This is an improvement over the repeated submissions to the Agency which have become the pattern due to the lack of definitive standards in the current definitions. Some landowners will argue that the hoist system for a dock is the only alternative for their shoreline situation. However, the proposed regulation does not preclude the use of a hoist; it just requires that the structure hoisted be no larger than 100 square feet in

size or that a variance be obtained for it. A 25-foot by 4-foot dock would meet the 100-square-foot requirement.

5. Paperwork:

The proposed regulations should reduce the current pattern of multiple filings with the Agency in order to reach a determination that a boathouse or dock project is non-jurisdictional. This is because of the greater clarity of design requirements in the proposed regulations. In addition, the proposed regulations will not create any new filings or forms.

6. Local government mandates:

The proposed regulations will not impose any responsibility on local government entities.

7. Duplication:

The proposed regulations do not duplicate requirements administered by state or local government.

8. Alternatives:

As discussed above, the definition of boathouse has long been a difficult issue for the Agency administration of the shoreline setback requirements. The two previous definitions have been difficult to enforce and take a great deal of administrative effort. Moreover, the regulations have not succeeded in limiting the shoreline structures built to ones which are solely for the storage of boats and boating equipment, or in the case of docks, solely for the berthing of boats or as a swimming platform. The proposed regulation for the definition of "boathouse" has its roots in the unanticipated consequences of the definition adopted in 2002. The limit on use of the structure "solely for the storage of boats and boating equipment" has proved ineffective without specific size limitations; people persist in building second story areas ("attics" or decks) which they use for general recreation.

Before adoption of the 2002 amendments, the Agency seriously discussed various size and height limitations. It noted that many municipal laws have height limitations for boathouses. These specific

limitations were rejected in favor of the “single story” language. Since the 2002 revision, the Legal Affairs Committee has discussed the issues that have arisen with the new definition, and the Agency determined that the only option to ensure that shoreline structures would be limited to the single purpose of the storage of boats and boating equipment was via size and height limitations. To the extent structures of significant size have been allowed under the old definitions, portions of such structures have generally been converted and used for purposes other than boat and boat equipment storage.

In addition to the public meetings of the Agency Board, these proposed regulations also were referred to the TAL (which includes the Executive Director of the Adirondack Park Local Government Review Board as a member) as a sounding board during the fall of 2008. The TAL met November 17, 2008 to comment on these proposed regulations which had been circulated to all members. This broad-based group provided valuable advice and their comments have been taken into consideration when drafting these regulations. For the boathouse definition, the only significant comment was that the proposed measurement methodology would not work; this prompted a minor change to the proposal. Alternatives reviewed in the course of this dialogue have included different size and height limits and roof pitches. A larger height limit would allow steeper roof pitches, but would also reintroduce the “attic” vs. living space issue.

The proposed regulation should provide clear parameters that can be readily evaluated based on external observations of the resulting structure. Some have argued that a larger footprint size should be allowed for those with significant length of shoreline, to accommodate larger boats, and/or for situations where large estates or shared facilities would require storage of many boats. The Agency has determined that the proposed solution to the historic problem of administering the boathouse definition should prevail. The proposed regulation would accommodate a one- to three-stall boathouse typical of those found on many Adirondack lakes. Special situations requiring larger boathouses can be accommodated through the variance process. This would provide a permit-style review and approval process where circumstances justify a variance. The

proposed regulation would end the practice of allowing flat roofs that can be used as entertainment decks unrelated to the storage of boats.

For docks, the proposed regulation is narrowly tailored to address the specific problem of hoisted structures. There is no alternative solution to the problem other than to specify that these hoisted structures do not conform to the Agency's determination of what qualifies as a "dock."

Of course, another alternative would be to continue with the existing definitions and practice. The Agency has deemed that as unacceptable, for either definition, due to the environmental impacts of no action.

9. Federal standards:

The proposed regulations do not involve any federal statutory authority or standards.

10. Compliance schedule:

The proposed regulations will apply prospectively, effective immediately upon approval and filing.

ADIRONDACK PARK AGENCY

July 15, 2009

REGULATORY IMPACT STATEMENT SUMMARY 2009 Rulemaking GORR #0905080

The Adirondack Park Agency proposes to revise definitions of "boathouse," 9 NYCRR 570.3(c), and "dock," 9 NYCRR 570.3(j). The Regulatory Impact Statement is summarized below.

1. Statutory authority:

The Adirondack Park Agency Act (APA Act), Executive Law Article 27, Section 804(9), authorizes the Agency "to adopt, amend and repeal...such rules and regulations...as it deems necessary to administer this article and to do any and all things necessary or convenient to carry out the purposes and policies of this article...." Similar authority is also found in the NYS Wild, Scenic and Recreational Rivers System Act (ECL Section 15-2709) and in the NYS Freshwater Wetlands Act (ECL Section 24-0801). The statutory and regulatory language addressed in the proposed regulations are: Executive Law Article 27, Section 806(1)(a)(2) which addresses both docks and boathouses; 9 NYCRR Section 570.3(c) boathouse definition and 570.3(j) dock definition; 9 NYCRR Section 577.4(b)(3)(ii) which regulates construction of docks and boathouses within areas designated under the NYS Wild, Scenic and Recreational Rivers System Act. In addition, SAPA Section 207 requires an agency to review on five-year intervals any regulation passed since 1997. The existing boathouse and dock regulations are in that category and the proposed regulations are intended to fulfill that requirement.

2. Legislative objectives:

The shoreline restrictions in Section 806 of the APA Act impose special protections on the shorelines of all Adirondack lakes and ponds and navigable rivers and streams. Section 806 shoreline structure setback requirements only exclude very small structures and "docks" and "boathouses" which of necessity must be on the shoreline. A variance is required to deviate from these requirements. The scientific literature clearly

supports the need to minimize shoreline development and preserve natural, undeveloped buffers between development and the water.¹ The proposed regulations mitigate unintended consequences of definitions established effective May 1, 2002.

3. Needs and benefits:

The construction of *any* structure located within the shoreline setback area or in the water causes an adverse impact to water quality and wildlife habitat, and may also create impacts to the aesthetics of the natural shoreline character, also a matter of importance under the APA Act. Hence, for these reasons, the Agency has determined that the setback requirements must be strictly followed.

The APA Act contains a significant exemption from the structure setback requirements for “dock” and “boathouse.”² Thus, it is critical to clearly and specifically define those types of structures. Distinguishing these excepted structures from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock. The proposed boathouse regulation will substitute fixed exterior measurements for the term “single story” to improve consistency and simplify administration of that provision. The proposed regulation also eliminates the potential for construction of a flat roof on a boathouse.³ With the 2002 elimination of the potential for construction of a second story, many boathouses are being designed with a large elevated deck with surrounding “safety” railing (or glass enclosure); sometimes with entertainment amenities like a stone fireplace serving the

¹ The Agency has relied in part on a document entitled Regulatory and Educational Opportunities for Shoreland Protection in the Adirondack Park, dated June 2003, by Sean Conin, PhD., the Agency’s former Freshwater Analyst. This comprehensive research paper discusses in detail the scientific evidence for the protection of natural vegetated buffers along shorelines.

² The setback requirement for structures in excess of 100 square feet in size ranges from 50 to 100 feet, depending on the classification of the applicable property on the Adirondack Park Land Use and Development Plan Map. (Note that larger setback requirements apply to the shorelines of rivers designated under the NYS Wild, Scenic and Recreational Rivers System Act.)

³ The proposed definition requires rigid roof structures to meet the slope requirement. This is to allow for fabric or plastic roofed structures which may not meet to slope requirement because they are arched in design.

deck. Construction of a deck to serve as the roof of a boathouse evades the setback requirement and subverts its purpose.⁴

The proposed dock regulation addresses large metal-framed structures which serve as a dock in the summer, but are hoisted into the air and suspended at an angle over the water for winter storage. These structures are prohibited unless they are 100 square feet in size or less, or if a variance is obtained. Lawfully existing dock structures may remain.

4. Costs:

There are no costs associated with the proposed regulations. The construction of a boathouse or a dock is entirely discretionary and a matter of choice. If a landowner chooses to build either structure, he or she must meet the regulatory definition. Both proposed regulations impose size limitations on the structure which could reduce its cost. Moreover, both provide specific performance criteria which will clarify design options. This is an improvement over the repeated submissions which have become the pattern due to the lack of definitive standards in the current definitions. Some landowners will argue that the hoist system for a dock is the only alternative for their shoreline situation. However, this proposed regulation does not preclude the use of a hoist; it just requires that the structure hoisted be no larger than 100 square feet in size, or that a variance be obtained. A 25-foot by 4-foot dock would meet this requirement without a variance.

5. Paperwork:

The proposed regulations should reduce the current pattern of multiple filings with the Agency in order to reach a determination that a boathouse or dock project is non-jurisdictional. This is because of the greater clarity of design requirements in the proposed regulations. In addition, the proposed regulations will not create any new filings or forms.

6. Local government mandates:

⁴ There are also noise and lighting issues associated with shoreline decks.

The proposed regulations will not impose any new responsibilities on local government entities.

7. Duplication:

The proposed regulations do not duplicate requirements administered by state or local government.

8. Alternatives:

Before adoption of the 2002 amendments, the Agency seriously discussed various size and height limitations. It noted that many municipal laws have height limitations for boathouses. These specific limitations were rejected in favor of the “single story” language. Since the 2002 revision, the Legal Affairs Committee has discussed the issues that have arisen with that new definition, and the Agency determined that the only option to ensure that shoreline structures would be limited to the single purpose of the storage of boats and boating equipment was via size and height limitations. To the extent structures of significant size have been allowed under the old definitions, portions of such structures have routinely been converted and used for purposes other than boat and boat equipment storage.

The Technical Advisory List (TAL) is a multi-disciplinary and multi-interest volunteer group consisting of members of the Task Force on Expediting Adirondack Park Agency Operations and Simplifying its Procedures and representatives of fifteen groups having special and diverse interests in the Adirondacks. The TAL met with the Agency on November 17, 2008 to comment on the proposed regulations which had been circulated to all its members. This broad-based group provided valuable advice and their comments have been taken into consideration when drafting the proposed regulations. For the proposed boathouse regulation, the only significant comment was that the proposed measurement methodology would not work; this prompted a minor change to the proposed regulation. Alternatives reviewed in the course of this dialogue have included different size and height limits and roof pitches. A larger height limit would allow steeper roof pitches, but would also reintroduce the “attic” vs. living space issue.

The proposed regulation should provide clear parameters that can be readily evaluated based on external observations of the resulting structure. Some have argued that a larger footprint size should be allowed for those with significant length of shoreline, to accommodate larger boats, and/or for situations where large estates or shared facilities would require storage of many boats. The proposed regulation would accommodate a one-to three-stall boathouse typical of those found on many Adirondack lakes. Special situations requiring larger boathouses can be accommodated through the variance process. This would provide a permit-style review and approval process where circumstances justify a variance. The proposed regulation would end the practice of allowing flat roofs that can be used as entertainment decks unrelated to the storage of boats. For docks, the proposed regulation is narrowly tailored to address the specific problem of hoisted structures.

9. Federal standards:

The proposed regulations do not involve any federal statutory authority or standards.

10. Compliance schedule:

The proposed regulations will apply prospectively, effective immediately upon approval and filing.

ADIRONDACK PARK AGENCY

July 15, 2009

REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESS AND LOCAL GOVERNMENT
2009 Rulemaking
GORR #0905080

The APA has determined that the proposed regulatory amendments will not impose reporting, record keeping or other compliance requirements on anyone, including small businesses and local governments.¹ A Regulatory Flexibility Analysis is not required pursuant to SAPA Section 202-b(3).

The proposed regulations provide revised requirements for the construction of new boathouses and docks in the Adirondack Park.

As discussed in the RIS, people with shoreline property will continue to build boathouses and docks unabated, even as they comply with the new requirements. The professional services required today to build a boathouse or dock will continue to be needed under the new requirements, but not to any greater degree. The only exception is the potential need for legal counsel if a landowner elects to pursue a request for a variance, but that is an elective choice, and not imposed by the regulation. There are no initial, capital or annual costs imposed by these proposed rules. As discussed in the RIS, the proposed amendments will not have any impact on job opportunities.

The new rules are designed to address regulatory problems that were not solved in the past by outcome or performance standards; it has become necessary to create specific design standards to accomplish the purposes of the shoreline requirements of the APA Act.

¹ Those who wish to replace a lawfully non-conforming structure will have to document the lawful existence of such structure, but that has always been the case since the inception of the APA Act in 1973, and has no relationship to the design requirements for new construction, addressed by the proposed regulations.

ADIRONDACK PARK AGENCY

July 15, 2009

RURAL AREA FLEXIBILITY ANALYSIS 2009 Rulemaking GORR #0905080

The proposed regulations, applicable throughout the Adirondack Park, have the same effect whether the area is considered rural or not, and will create no additional burden for rural areas. (Arguably, the whole of the Park is a rural area.) The proposed regulations impose no reporting, record keeping or other compliance requirements on anyone.¹ Therefore, the Adirondack Park Agency has determined that the proposed regulatory amendments will also not impose any reporting, record keeping or other compliance requirements on small businesses, rural areas, or on public or private entities in rural areas, and a Rural Area Flexibility Analysis is not required pursuant to SAPA Section 202-bb(4).

The proposed regulations provide revised requirements for the construction of new boathouses and docks in the Adirondack Park. As discussed in the RIS, people with shoreline property will continue to build boathouses and docks unabated, even as they comply with the new requirements. The professional services required today to build a boathouse or dock will continue to be needed under the new requirements, but not to any greater degree. The only exception is the potential need for legal counsel if a landowner elects to pursue a request for a variance, but that is an elective choice, and not imposed by the regulation. There are no initial, capital or annual costs imposed by these proposed rules. As discussed in the RIS, the proposed amendments will not have any impact on job opportunities.

¹ Those who wish to replace a lawfully non-conforming structure will have to document the lawful existence of such structure, but that has always been the case since the inception of the Adirondack Park Agency Act in 1973, and has no relationship to the design requirements for new construction, addressed by the proposed regulations.

The new rules are designed to address regulatory problems that were not solved in the past by outcome or performance standards; it has become necessary to create specific design standards to accomplish the purposes of the shoreline requirements of the Adirondack Park Agency Act.

ADIRONDACK PARK AGENCY

July 15, 2009

STATEMENT IN LIEU OF JOB IMPACT
2009 Rulemaking
GORR #0905080

A formal job impact analysis is not submitted for these proposed regulatory amendments to the APA regulations because these amendments are not expected to create any substantial adverse impact upon jobs and employment opportunities in the Park. These amendments do not make significant changes to the existing regulations, and will not impact employment opportunities in the Park, as explained below.

The first proposal changes the definition of "boathouse" by adding a specific height requirement instead of limiting the structure to a "single story." In addition, the regulation imposes a maximum square footage for the structure, and a minimum roof pitch. While the existing definition does not impose a square footage requirement, other regulations limiting shoreline cutting in effect pose a limitation on boathouse size. This regulation does not preclude the replacement "in kind" of lawfully existing boathouses, and it allows larger structures via the granting of a variance. The size requirement is in line with the size of the vast majority of boathouses constructed, with potential for housing 2-3 motor boats. The regulation is permissive in nature, not prohibitory in that it does not require a landowner to do anything, but rather provides requirements should a landowner choose to pursue a particular development project.

Section 201-a of SAPA defines job impact as a "change in the number of jobs and employment opportunities" attributable to the adoption of the rule. A "substantial adverse impact on jobs" is defined as "a decrease of more than 100 full-time annual jobs and employment opportunities."

Clearly, there will be no change in employment opportunities of a scale that meets the "substantial adverse impact" test. The changes to the boathouse definition do not preclude the construction of boathouses, but rather only affect their design parameters. Because of the high value of shoreline properties, the demand for

boathouse structures will continue unaffected by and in compliance with the regulation, and employment for such construction will continue unabated. The need for architectural and engineering expertise will also remain unaffected, since these experts have generally been necessary for these special structures built to withstand the forces of flowing water and ice, and they will remain necessary. To the extent variances are required for a particular structure, that may increase the employment opportunities for legal counsel.

The change to the definition of “dock” is similar. It does not preclude the construction of docks, but rather affects the method of storage of such structures in the winter. Docks will continue to be built. Replacements “in kind” of lawfully existing structures will continue. Hoisted docking structures will still be allowed, provided the structure does not exceed 100 square feet in size. If there is no other alternative for a particular location, a variance can be granted for a larger hoisted structure.

ADIRONDACK PARK AGENCY

October 20, 2009

SAPA Section 207 Justification
2009 Rulemaking
GORR #0905080

The proposed regulations mitigate unintended consequences of definitions for the term “boathouse” and “dock” established effective May 1, 2002.

The APA Act contains a significant exemption from the structure setback requirements for “dock” and “boathouse.”¹ Thus, it is critical to clearly and specifically define those types of structures. Distinguishing these excepted structures from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock. Over the years, many multi-purpose structures have been constructed on the shoreline. Structures purporting to be boathouses have been constructed with second stories dedicated to rooms for sleeping and/or general recreation, and including decks. Plus, some structures purporting to be docks are in reality decks due their size and location. Since a guest cottage, a recreation room, or a greater-than-100-square-foot deck would each be subject to the setback requirements, such structures should not be allowed as part of a boathouse without a variance; that undermines the purposes of the shoreline restrictions and the values they protect.

a) The analysis of what constitutes a “boathouse” has consumed an inordinate amount of Agency staff time. The first definition was adopted in the Agency’s 1982 regulations. That definition required that the structure be used for the storage of boats and boating equipment, prohibited kitchens and baths, and provided it could not be “designed and used for lodging or residency.” Unfortunately, except for the specific prohibition for kitchens and baths, the regulation was impossible to administer due to the lack of clarity in the terms used.

¹ The setback requirement for structures in excess of 100 square feet in size ranges from 50 to 100 feet, depending on the classification of the applicable property on the Adirondack Park Land Use and Development Plan Map. (Note that larger setback requirements apply to the shorelines of rivers designated under the New York State Wild, Scenic and Recreational Rivers System Act.)

Many of the submitted “boathouse” designs included large second story rooms with beautiful finishing and fenestration, which room the landowner insisted was just for the storage of boating equipment. Staff have spent large amounts of time analyzing boathouse plans to assess whether such structures were “designed or used for lodging or residency,” and often significant design changes were required before the plans were acceptable.

The current definition, which took effect on May 1, 2002, limits a boathouse to use *only* for the storage of boats and boating equipment, and also to a “single story.” The use limitation was an essential component of the definition; it furthers the intent of the shoreline restrictions and ensures that shoreline structures will not be built and used for anything other than what is necessary to be located at the shoreline: the shelter for boats and related equipment. The “single story” limitation was supposed to eliminate the creation of a second story which could be used for a sleeping or recreation room. When drafted, the 2002 definition was based on the New York State Uniform Building Code, which confirms that an attic is not a “story.” Thus, the intent was that a boathouse could have storage space above the “ceiling” joists and under the roof rafters, but that space cannot be used for anything other than the storage of boats and associated equipment.

However, the definition did not provide the desired result or the clarity needed. Staff is still required to analyze architectural elements to confirm whether a structure contains only a “single story,” based on inclusion of windows, dormers, flooring, doors and stairs associated with the area in the structure above the first floor ceiling joists. Following the May 1, 2002 implementation of the revised definition, guidance regarding application of the “single story” requirement was issued by Agency Counsel and widely distributed to code enforcement officers, building inspectors and any members of the public who requested it, and it was also posted on the Agency’s website. The guidance is also complex to administer and it did not eliminate the creation of large, multi-use structures on the shoreline. Moreover, it remains impossible for staff to investigate the actual use of the “attic” area.

The process used to determine whether a structure constitutes a “boathouse” remains unwieldy and unnecessarily complex. The proposed regulation will eliminate the “single story” requirement and will instead provide for a size and height limit, both of which are measurable from the exterior and hence easy to administer. The size limits are necessary to ensure that a second story recreational space is not created. After 35 years of administration of the APA Act, the Agency has concluded that no such space shall be allowed without a variance; the design parameters ensure that the structure is in fact only a boathouse. Note, also, that the size limitation is generally reasonable for most shoreline parcels. The shoreline cutting requirements limit the amount of shoreline vegetation that can be removed. Most shoreline parcels are 100 feet in width and can accommodate at best a 30-foot-wide shoreline structure under the cutting limitations.

The proposed regulation also eliminates the potential for construction of a flat roof on a boathouse.² A flat roof has been allowed under the prior regulatory boathouse definitions. With the 2002 elimination of the potential for construction of a second story, many boathouses were being designed with a large elevated deck with surrounding “safety” railing (or glass enclosures); sometimes with a stone fireplace serving the deck. The elevated deck often significantly exceeds 100 square feet in size; in fact, in some cases they have been well over 1,000 square feet in size. Construction of a deck in excess of 100 square feet in size within the shoreline setback area or over the water would require a variance from the shoreline setback requirements. Construction of a deck to serve as the roof a boathouse evades the setback requirement for the deck and subverts its purpose.³ The proposed regulation will limit the potential for use of the roof as a deck for recreational purposes, as such deck was not intended by the statute to be associated with a boathouse and exempt from the shoreline requirements.

This proposed regulation creates guidelines readily measurable and understood by designers and builders. This reduces the potential for violations associated with construction of a structure that a landowner

² The proposed definition requires rigid roof structures to meet the slope requirement. This is to allow for fabric or plastic roofed structures which may not meet to slope requirement because they are arched in design.

³ There are also noise and lighting issues associated with shoreline decks.

might allege is a “boathouse,” but which does not comply with the Agency definition. The current definition and related Agency guidance has failed to achieve the desired result, and the evaluation of multiple permutations of boathouse designs has continued to occupy an inordinate amount of staff resources. The proposed regulation will clearly delineate the acceptable structural components for a boathouse with the intent that the sole purpose is for boat storage.

b) For many years, staff guidance relative to docks has provided that such a structure cannot exceed eight feet in width; that practice was codified in the regulatory revision which took effect on May 1, 2002 (prior to which time, no definition of “dock” was contained in either the APA Act or its implementing regulations). This action implemented the Task Force recommendation that the Agency codify existing practices.

Since May 1, 2002, the Agency has received inquiries regarding structures which serve as seasonal docks with hoists which allow for suspension of the structure over the water/ice for winter storage. The hoist mechanism uses a tall pole and hydraulics to raise the structure (or its framework) and suspend it at an angle above the water level. The purpose is to eliminate the need for removal and storage of the structure in a different location away from the water to protect it from potential ice damage. The Agency has consistently taken the position that these structures are not “docks” when suspended above water level and, if they exceed 100 square feet in size, an Agency variance is required for their installation. A large structure as hoisted is highly visible, potentially dangerous, and simply does not serve as a “dock” in that position. Aesthetics is one of the values protected by the shoreline restrictions and that value is impacted by these large structures. The proposed regulation would effectuate this application of the shoreline setback requirements. However, the Agency intends this proposed dock regulation to be prospective only, except that landowners must comply with any outstanding formal jurisdictional determination which provided similar parameters.

John H. Zurlo
Clinton County Clerk
County Government Center
137 Margaret Street
Plattsburgh, NY 12901

Sylvia M. Rowan
Herkimer County Clerk
109 Mary Street, Suite 1111
Herkimer, NY 13350

Kathleen Marchione
Saratoga County Clerk
40 McMaster Street
Ballston Spa, NY 12020

Deborah Beahan
Washington County Clerk
383 Broadway, Bldg. A
Fort Edward, NY 12828

William E. Eschler
Fulton County Clerk
County Office Building
223 West Main Street
Johnstown, NY 12095-0485

Douglas Hanno
Lewis County Clerk
Lewis County Court House
PO Box 232
Lowville, NY 13367

Patricia A. Ritchie
St. Lawrence County Clerk
48 Court Street
Canton, NY 13617-1194

Joseph A. Provoncha
Essex County Clerk
7559 Court St., PO Box 247
Elizabethtown, NY 12932

Jane S. Zarecki
Hamilton County Clerk
PO Box 204
Lake Pleasant, NY 12108

Richard D. Allen
Oneida County Clerk
Oneida County Office Bldg.
800 Park Avenue
Utica, NY 13501

Pamela J. Vogel
Warren County Clerk
1340 SR 9
Lake George, NY 12845-9803

Wanda Murtagh
Franklin County Clerk
355 W. Main St., Ste. 248
Malone, NY 12953-1871

10/22/09

