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

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[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

August 18, 2010

ASSESSMENT OF PUBLIC COMMENT

General Comments

Generally, people understood and supported the need for definitions for the terms "boathouse" and "dock," both of which are the only structures exempt from the shoreline setback requirements of Executive Law § 806. Public commentary acknowledged the general desire of landowners to have structures which provide recreational space unrelated to boating immediately on the shoreline.

Boathouse

1. Square feet size limit

There were numerous comments that suggested the proposed 900 square foot size limitation was too confining and that either no limit or a larger limit would be more appropriate. Specific letters suggested 1000, 1200 and 1500 square feet and supported imposition of a specific limit, though larger. Other letters simply opposed any size limit.

There was also substantial comment regarding the manner in which the Lake George Park Commission size limit for covered docks is calculated and imposed. It involves a limit on the square feet of dock surface area, generally 700 square feet absent extensive shoreline. Some or all of the dock space can be covered with a roof or deck, but there is a height limit of 16 feet above the mean high water (MHW) level. The Lake George Park Commission criteria equate to a boathouse which, at a maximum, can be approximately 1200-1500 square feet in size depending on the configuration of the dock.

Comment also suggested that small size limits lead to shoreline clutter (small paddle craft and other water recreation gear scattered on the shoreline or the proliferation of small shoreline racks or shoreline sheds). The argument is that this equipment would be better accommodated inside a boathouse structure.

The final rule increases the size limitation from 900 square feet (as originally proposed) to 1200 square feet. This small increase addresses public comments. It will avoid the need for variance proceedings for typical two and three stall boathouse structures, and provide more opportunity for inside storage space for boating accessories, the two most prevalent objections to the proposed 900 square foot limit.

It is essential to maintain a square foot limitation in the definition to avoid pressure to design for multi-use "attic" space. The area of the “attic” is a function of the square footage of the first floor and the allowable height. In the alternative, the height limit could be lowered to prevent any useable space with headroom above the first floor, but that would severely curtail architectural designs and reasonable roof pitch to shed snow load.

2. Height limit

There was relatively little comment on the proposed 15 foot height limit. It was noted that the measurement from the dock surface of the boat berth area was a practical method to measure the height, and it equates to 16-18 feet above the MHW depending on design and circumstances. Some of the comment on roof pitch also suggested that the height limit is both confining and may not be practical where a roof is intended to shed particularly heavy snow loads which are part of building specifications in some areas of the Park.

The height limit for the boathouse structure remains critical, along with structure size and roof pitch, to ensure that unlawful multi-use structures are not constructed in the shoreline setback area. No Agency definition of boathouse to date, even with limitations on the internal components of the structure, has prevented large multi-use structures on Adirondack shorelines contrary to the direction of Section 806. These structures, standing alone, are not allowed in the shoreline setback area unless a variance is granted. The Agency has found consistent implementation very difficult under any of the definitions for the term “boathouse” to date.

Adirondack snow load can be accommodated within a 15 foot height limit with the use of appropriately sized structural materials.

3. Roof pitch requirement

Some comments reiterated points raised in the 2002 rule making, that a specific roof pitch and height limit constrain design, both related to engineering for snow load and also to architectural interest. However, the roof pitch requirement does not preclude steeper roofs; it is a minimum pitch requirement.

Within the Lake George basin, comments in the hearing record were that different forms of flat roofs are the prevalent design for boathouses, due to the Lake George Park Commission regulations which impose limits on dock area and the height of any dock cover. Moreover, within the Lake George Park, other agencies such as the Department of Environmental Conservation, the Office of General Services and the Army Corps of Engineers, may also have jurisdiction over such structures. Public comments suggested that the many regulations cause confusion and significant complexity and delays.

The final rule responds to these public comments. It does not differ significantly from the Lake George Park Commission regulations, and automatically qualifies covered docks which are permitted by the Lake George Park Commission as “boathouses” in compliance with Section 806 of the APA Act.

Another common comment was that a flat roof has no more environmental impact than a pitched roof. With regard to impacts due to runoff, the Agency agrees. It was also argued that the ability to use the roof as a deck allows for the retention of shoreline vegetation that might otherwise be removed to create sun space on the shoreline. Since the preservation of shoreline vegetation is crucial to the protection of water quality and the natural character of the shoreline, the Agency concludes that it should not preclude flat roofs on a boathouse. However, the size limit for the square footage of the structure will moderate secondary impacts from use. Accordingly, while the final rule retains the roof pitch requirement, it allows a flat roof on a single-story boathouse in the situation where the entire roof of the structure is flat.

4. Economic impacts

There were many comments that alleged non-specific, adverse economic consequences from Agency regulations. At the Ray Brook hearing, more specific concerns were voiced by contractors and architects who said that the size and roof pitch restrictions would affect the resulting designs and innovation, and restrict their potential business. In the Lake George hearing and related comment letters, there were specific assertions that a prohibition of flat roof decks would affect property values. One business active in building docks and boathouses in Lake George indicated that roof pitch requirements prohibiting new flat roofs would make recent investments in models and marketing materials specific to the Lake George area worthless.

The final rule is narrowly circumscribed to address the issue of large structures designed to accommodate multi-use spaces. It does not prohibit boathouses or flat roofs on bathouses. It provides a 1200 square foot space for three large boat berths and significant storage area. It does not prohibit more than one boathouse (although some municipalities do so), and variances may be granted where appropriate. Hence, the Agency concludes that there will be no economic impact from the revised proposal. Moreover, the adjustments to the boathouse definition in 2002, which provided a significant definitional change, had no discernible impact on the number of boathouse construction and repair projects undertaken in the Park.

Comments from builders recounting recent experience with the current economic downturn did not indicate any specific correlation with the regulations proposed in this rule making.

The Agency's deference to permits issued by the Lake George Park Commission for boat berthing structures addresses the comments relating to Lake George.

5. Comments about specific towns, lakes or circumstances like water-access-only lots

a. Boat access lots have special needs.

Several comment letters made a point that the proposed rule was too confining when a camp is exclusively accessible by water, without specific alternatives suggested. The now-proposed larger size would accommodate additional dock and boathouse access for such situations.

b. Towns with approved local land use programs have an Agency-approved definition already.

Several responses suggested that the proposal is potentially inconsistent with existing definitions in approved local land use programs, particularly in the Lake George region and in Warren County. The Agency will work with approved local land use programs to conform to the updated standards where appropriate. Several of these programs are more restrictive than the current proposed rule.

c. The Lake George Park Commission provides a definition and a permit process for "dock" and covered boat storage ("boathouse") in State regulation for Lake George.

The Lake George Park Commission recommended incorporating a reference that would accept structures meeting its requirements for docks and covered docks as meeting the APA Act requirements, as an alternative to the structural specifications in the proposed revisions. The Agency has accepted this suggestion in its final rule.

d. "Great Camps" confer special character to Adirondack lakes with boathouses that, if built now, would be prohibited by the rule; the variance process is a punishing procedure for authorization of a non-compliant boathouse structure. These comments essentially disagree with the underlying and long-standing regulatory assumption that a boathouse should be exclusively for the storage of boats, pointing out the special character added by large multi-use boathouses on some Adirondack lakes. It is true that the enactment of the APA Act does foreclose the unfettered development options available before the Act.

Dock

All but one of the comments on the proposed dock definition revision were focused on the Lake George basin. The rule is intended to prohibit “articulating” docks which can be winter-stored by angled suspension without any structure in the water to be affected by ice movement.

Many comments pointed out that the removal or suspension of docks above the water surface is the only practical mechanism for areas in Lake George where wind-driven ice destroys any in-lake structures during the winter. Moreover, in some cases, creation of an on-shore storage area would involve significant destruction of vegetation and environmental manipulation. Other Lake George comments suggested that the inability to remove or suspend structures above the water encourages use of bubblers that have other environmental impacts and safety consequences for winter recreation on the ice. These comments expressed a preference for the suspension system in certain circumstances.

One comment also pointed out that the definition appears to prohibit canoe/kayak launch ramps sloping down, not horizontal to the water, and otherwise meeting Agency “dock” criteria. These are a common component of a boathouse, providing direct access for small watercraft. They would be an acceptable independent component of a dock if less than 100 square feet in size.

The final rule retains the prohibition of new structures which are suspended in an angled position over the water, which is important to minimize the environmental impacts of such structures. However, in response to public comment the final definition allows the suspension of dock structures, as long as they remain horizontal with the water. The final rule also clarifies that the in-ground structures necessary for suspension are not part of the dock, cannot exceed 100 square feet, and that multiple structures will be aggregated. This is necessary to minimize the impermeable surfaces within the shoreline setback area, an important component for shoreline protection and water quality.

The final rule will have few impacts on prospective activities and no impact on existing dock structures.