SUBPART 270-1. GENERAL PROVISIONS

Section 270-1.1. Purpose and intent.

The purpose of these regulations is to implement article 6 of the Public Lands Law to establish a set of regulations in accordance with the statutory amendments. In furtherance thereof, it is hereby declared to be the purpose and intent to manage the State's interest in its underwater lands, to regulate the projects and structures constructed in or over such underwater lands consistent with the public interest in navigation, commerce, public access, fishing, bathing, recreation, environmental and aesthetic protection, and to ensure the waterfront owners reasonable exercise of riparian rights and access to those underwater lands.

Section 270-1.2. Severability.

If any provision of Part 270 or 271 of this Title, or its application to any person or circumstance, is held invalid, it is hereby expressly declared to be the intent of the commissioner that the remainder of Part 270 and/or Part 271 of this Title and the application thereof to any person or circumstances shall not be affected thereby.

SUBPART 270-2. DEFINITIONS

Section 270-2.1. Definitions.

(a) When used in this Subpart:

(1) Boat. A generic term for watercraft of different sizes and types.

(2) Breakwater. A structure protecting a shore area, harbor, anchorage or basin from wave action, including wave attenuators.

(3) Commercial use. A use involving the sale, rental or distribution of facilities, goods, equipment, services or commodities, either retail or wholesale, or the provision of recreational facilities for a fee.

(4) Conversion grant. A conveyance by Letters Patent of the State's remaining right, title or interest or a part thereof in State-owned land underwater which was subject to a prior conveyance.

(5) Dock. A fixed or floating structure used solely as a landing place on water against which a boat may be berthed.

(6) Existing structure. A wharf, dock, pier, jetty, platform, breakwater, mooring or other structure which was constructed, erected, anchored, suspended, placed or substantially replaced, altered, modified, enlarged or expanded prior to June 17, 1992.
(7) Jetty. A structure which extends into a body of water to prevent material from filling in a shoreline or channel, or protects a shoreline or channel from wave action.

(8) Keyhole development. Means a residential development characterized by a number of dwelling units constructed on an upland tract or parcel associated with a relatively small shorefront area providing water access for all or a large portion of the residents of the upland tract or parcel.

(9) Marketable title. As used in the statute means the minimum interest or title that a person of reasonable prudence and intelligence would be willing to accept.

(10) Mean low water and mean high water. Means, respectively, the approximate average low-water level or high-water level for a given body of water at a given location, which distinguishes between predominantly aquatic and predominantly terrestrial habitat as determined in order of use by the following:

(i) available hydrologic data, calculations, and other relevant information concerning water levels (e.g., discharge, storage, tidal, and other recurrent water elevation data);

(ii) vegetative characteristics (e.g., location, presence, absence destruction of terrestrial or aquatic vegetation);

(iii) physical characteristics (e.g., clear natural line impressed on a bank, scouring, shelving or the presence of sediments, litter or debris); and

(iv) other appropriate means that consider the characteristics of the surrounding area.

(11) Mooring. Means a float, buoy, chain, cable, rope, pile, spar, dolphin or any other device or combination of devices which is anchored or fixed in State-owned lands underwater, to which a boat/vessel may be made fast.

(12) Mooring facility. Means a collection of 10 or more individual moorings located within a definable area of State-owned lands underwater and under single ownership or control or under a common scheme or plan.

(13) Net annual income. As used in the statute, income derived from earnings or rental of structures on State-owned lands underwater after deduction for associated operating and maintenance expenses and excluding earnings derived from operations not directly associated with the rental of such structures such as but not limited to the sale and repair of boats, the sale of gasoline.

(14) Noncommercial use. Means a use which does not involve the sale, rental or distribution of facilities, goods, equipment, services or commodities, either retail or wholesale, or the provision of recreational facilities for a fee.

(15) Original mean low water and original mean high water. Means the original average low-water level or high-water level for a given body of water at a given location prior to the placement of fill for the purpose of determining ownership of lands formerly underwater, as such level may be determined from prior survey, historical maps, photographs and similar sources.

(16) Perimeter. Means a boundary of a marina, mooring or structure(s) consisting of a series of connected imaginary lines on a planimetric map and which encompass all related structures such as docks, bulkheads, breakwaters, pilings, piers, platforms or moorings that function together to create a facility or area at which boats may be docked or moored.

(17) Pier. A nonfloating fixed platform usually extending out over the water from the shore.

(18) Residential use. Means a use of State-owned land underwater which is accessory to single or double family occupancy and does not include condominiums and cooperative forms of ownership, residential multi-lot subdivisions and keyhole developments.
(19) SEQRA. Means the State Environmental Quality Review Act, which is article 8 of the Environmental Conservation Law and regulations promulgated thereunder.

(20) Slip. A berthing space for a boat.

(21) Special use. Means the use of State-owned lands underwater associated with condominiums and cooperative forms of ownership, residential multi-lot subdivisions and keyhole developments.

(22) State-owned lands underwater. Means those lands now or formerly underwater or periodically subject to the ebb and flow of the tides, any right, title or interest to which is in the State of New York.

(23) Structure. Means anything constructed, erected, anchored, suspended, placed in, on or above State-owned lands underwater or any object constructed, erected, anchored, suspended or placed on those lands other than cables, conduits, pipelines and hydroelectric facilities.

(24) Substantially (replaced, altered, etc.). Means replacement, alteration, modification, enlargement or expansion in, on or above State-owned lands underwater that causes the wharf, dock, pier, jetty, platform, breakwater, mooring or other structure to exceed the thresholds set forth in section 75, subdivision 7(b) of the Public Lands Law.

(25) Water dependent activity. Means an activity which can only be conducted in, on, above or adjacent to a water body because such activity requires direct access to that water body and which involves, as an integral part of such activity, the use of the water.

(26) Wharf. Means a structure built or maintained for the purpose of providing a berthing place for vessels.

SUBPART 270-3. GENERAL PROHIBITION; APPLICATION FACTORS

Section 270-3.1. General prohibition of construction.

No wharf, dock, pier, jetty, platform, breakwater, mooring or other structure shall be constructed, erected, anchored, suspended or expanded or substantially replaced, altered, modified, enlarged or expanded in, on or above State-owned land underwater, nor shall any fill be placed on such land underwater unless a lease, easement, permit or other interest is obtained from the Commissioner of General Services in accordance with section 75(b) of the Public Lands Law and this Part; excepting therefrom easements for cables, conduits, pipelines and hydroelectric power which shall be subject to the provisions of section 3(2) of the Public Lands Law and Part 271 of this Title.

Section 270-3.2. Application factors: agency review.

(a) Prior to making any grant in fee, lease, easement, permit or lesser interest in lands underwater, the Commissioner of General Services shall ascertain the probable effect of the use, structure or facility on the public interest in State-owned lands underwater and in consultation with the Department of Environmental Conservation (DEC), Department of State (DOS) and Office of Parks, Recreation and Historic Preservation (OPR&HP) or such other agencies or authorities as required by law, shall examine the following factors:

(1) environmental impact of the project;

(2) values for natural resource management, public recreation and commerce;

(3) size, character and effects of the project in relation to neighboring uses;
(4) potential for interference with navigation, public uses of waterway and riparian/littoral rights;

(5) water dependent nature of use;

(6) adverse economic impact on existing commercial enterprises;

(7) effect of the project on the natural resource interests of the State in the lands; and

(8) consistency with the public interest for purposes of fishing, bathing and access to navigable waters and the need of the owners of private property to safeguard their property.

(b) The commissioner may require the applicant to submit an environmental assessment form, including marine project information, indicating the purpose, scope and potential impacts of the project. The commissioner shall solicit the written comments of DEC, DOS and OPR&HP in their respective areas of expertise and give due regard to incorporating those comments in the review of the application and any plan of the use, structure or facility and shall incorporate into any grant, lease, easement, permit or lesser interest those conditions deemed necessary by the Department of Environmental Conservation to adequately protect the affected environment or natural resource. If the environment or natural resource cannot be protected as determined in findings by the Commissioner of Environmental Conservation, the proposed application shall be denied. Failure of the agencies to respond to the solicitation of comments within 45 days of the receipt of said solicitation shall constitute a waiver of review under section 75(d)(i) of the Public Lands Law but shall not affect review authority of the solicited agency pursuant to any other applicable statute or regulation. The comment period may be extended by agreement between the commissioner and any of the reviewing agencies. In making any grant, lease, permit or other conveyance, the Commissioner of General Services shall, upon administrative findings, and to the extent practicable, reserve such interests or attach such conditions to preserve the public interest in use of State-owned lands underwater and waterways for navigation, commerce, fishing, bathing, recreation, environmental protection and access to the navigable waters of the State, with due regard for the need of affected owners of private property to safeguard their property.

(c) The commissioner will, to the extent practicable, coordinate the review of marine project applications with DEC, DOS and OPR&HP and integrate review of the listed application factors in the SEQRA process.

Section 270-3.3. Optional preapplication conference.

Any applicant may request a preapplication conference with appropriate agency staff as a means of clarifying application procedures. Such a request should be made at the earliest possible stage of the applicant's project planning. At the conference, the proposed or existing project will be informally discussed, permits required will be identified and the applicant will be provided with guidance in the mechanics of the application and review process based upon information provided by the applicant.

SUBPART 270-4. APPLICATION FOR A GRANT IN FEE SIMPLE OF LAND UNDERWATER

Section 270-4.1. Grants of land underwater; limitation; outline.

Grants of land underwater in fee simple, including conversion grants pursuant to section 75(11) of the Public Lands Law, shall be limited to exceptional circumstances and only to those conveyances which will not impair the public interest in the lands and waters remaining, based upon factors set forth in section 270-3.2 of this Part. Applicants shall be required to apply to the Office of General Services pursuant to the provisions of article 6 of the Public Lands Law and the following regulations, which are generally outlined as follows:

(a) Notice of intention. Preliminary notice advising the commissioner of the lands sought to be
conveyed.

(b) Preparation of maps. If lands can be conveyed, appropriate map and description are prepared according to regulatory specifications - payment of $500 fee; submission of deeds, abstract of title, for review.

(c) Notice of application. Upon approval of map and description, applicant proceeds with publication, posting of notice of application and service of notice on adjoining owners and municipality, as required.

(d) Submission of application. Applicant submits necessary affidavits and papers together with final application for formal approval and preparation of the instrument of conveyance.

Section 270-4.2. Notice of intention.

Any person, firm or corporation intending to apply for a grant of State-owned land underwater pursuant to section 75 of the Public Lands Law shall give written notice of such intention (forms available) to the Commissioner of General Services, Albany, NY, setting forth in said notice the complete name and address of the applicant, and if a corporation, the state of incorporation and, if an out-of-state corporation, whether licensed to do business in the State of New York. Said notice shall state the purpose for which the application is made and shall be accompanied by certified copies of the applicant's deeds to the lands adjacent to such lands underwater, together with certified copies of the deeds to the lands of others adjoining such lands of the applicants along the waterfront. Notices pursuant to the provisions of subdivision 11 of section 75 of said law (Conversion Grants), shall, in addition, set forth the name of the original grantee, the date of the Letters Patent and the purpose for which the grant was made. All notices shall state fully and in detail the contemplated use and the estimated cost of same, and shall limit the land to be surveyed and applied for to such area as is necessary for said use. The applicant shall also send a copy of the notice form to DEC, DOS and OPR&HP.

Section 270-4.3. Preparation of maps.

The application must include a map which shall be prepared by a New York State licensed land surveyor to show the land underwater applied for and the adjacent land owned by the applicant. The survey shall be referenced to the New York Plane Coordinate System. Said map shall be 24 by 36 inches in size. The working space on the tracing shall be 22 by 34 inches, except that sufficient space shall be reserved in the lower corner for the title, scale and date of preparation, and in the upper corner for a location map. The scale of said maps will be as set forth in this section:

(a) The scale of the map shall be 50 feet to an inch or such other scale as may be approved by the Office of General Services. It must show the owner's property boundaries on each side, together with the owners' names, deed references, tax map identification number and all docks, bulkheads or other improvements within the limits of the lands of such owners. In addition, it must show the mean low-water or mean high-water line or if directed to do so, the original mean high or original mean low-water line, (whichever is applicable); the boundaries of all previous grants within the limits of such map, and the bearings and distances of the boundaries of the lands applied for and the depth of the soundings of the lands applied for. The description of the lands applied for shall be placed on the map and, whenever possible, it will be in the upper right corner.

(b) The scale of the location map shall be 2,000 feet to an inch or such other scale as may be approved by the Office of General Services. It shall show the general course of the shoreline for a distance of one mile in each direction from the land applied for, as well as the particular course in the area of the land applied for. If the body of water be a river, or a body of water less than two miles wide, the width of such water or river shall be shown, together with an outline of each shore extending one mile above and below the land applied for.
Section 270-4.4. Fee: review of maps.

A certified check in the amount of $500 made payable to the New York State Commissioner of General Services shall accompany any notices of intention referred to in section 270-4.2 of this Subpart. Such check will be used to defray the cost of reviewing the survey map(s), title and description(s). A refund may be made in the event the application is withdrawn.

Section 270-4.5. Notice of application.

Any person, firm or corporation intending to apply for a grant of State-owned land underwater pursuant to section 75 of the Public Lands Law shall file with the Commissioner of General Services a notice of application. Such notice of application shall state the date on which an application will be made to such commissioner. It shall contain a description of the land underwater applied for as set forth on the official map(s) and directions that all objections to such grant shall be filed with the Division of Land Utilization on or before the date such application will be made and in all applications, except those made pursuant to the provisions of subdivision 11 of section 75 of the Public Lands Law, the names of adjacent landowners and the boundaries of said land, together with an explanation of how the applicant intends to use the lands applied for and specifying the exceptional circumstances necessitating a grant in fee. Service of the notice shall be in the manner hereinafter provided.

Section 270-4.6. Necessary affidavits and papers.

The following affidavits, maps and papers are to be filed with the Commissioner of General Services on or before the return date set forth in the application.

(a) An affidavit showing publication of the notice of application at least once a week for four weeks, successively, in a newspaper printed in the county or counties in which the land applied for is situated, the first publication of such notice to be at least 28 days before the date of application. This provision shall not apply if the application is made under the provisions of subdivisions 11 and 12 of section 75 of the Public Lands Law.

(b) An affidavit showing that a copy of said notice of application was posted at the courthouse in the county or counties in which the land applied for is situated. The said copy of such notice shall be posted on or before the first day of publication and for at least 28 days before the date of application. When an application is made under the provisions of subdivisions 11 and 12 of section 75 of said law, a copy of such notice need not be posted.

(c) An affidavit showing that a copy of said notice of application was served at least 20 days before the date of application upon the owners of waterfront land adjoining the upland of the applicant. Said notice shall be served on such owners personally, if such service can be made within this State. If the applicant is not able to cause said notice to be served personally within this State after making diligent efforts to do so, he may cause the same to be served by affixing the notice of application to the door of either the actual place of business, dwelling place or usual place of abode within the State of the person to be served and by either mailing the notice to such person at his last known residence or by mailing the notice to the person to be served at his actual place of business certified mail, return receipt requested. When an application is made under the provisions of subdivision 11 of section 75 of the Public Lands Law, an affidavit is required showing that a copy of the notice of application was served at least 20 days before date of the application on the owners of the land, if any, inshore of the land applied for, to and including the high water line. If such latter requirement is not practicable of performance, such fact will be made known to the Division of Land Utilization.

(d) In all applications for grants of land underwater within the city of New York, an affidavit of service of said notice of application and maps upon the corporation counsel of the city of New York.
(e) In cities having a population of one million or more inhabitants, an affidavit of personal service or by registered or certified mail of the notice of application upon all owners of waterfront land within 300 feet from the side boundaries of the upland of the applicant including the latest complete tax assessment roll to identify such owners.

(f) An affidavit of the applicant stating: that the land is necessary for one or more of the purposes set forth in subdivision 7 of section 75 of the Public Lands Law; that the applicant intends in good faith to use and maintain the land for such purpose; the amount of the assessed value of the upland owned by applicant on the current assessment roll of the city or town in which said land is situated; and the area of said upland including the equalization rate of the municipality and a copy of the applicable section of the tax map.

(g) When the land applied for is situated within the corporate limits of any city or incorporated village, an affidavit of the personal service of a copy of the notice upon the mayor or clerk of the common council of the city or upon the mayor or clerk of the village shall be submitted. If the land applied for is not within the limits of any city or incorporated village, an affidavit of personal service of a copy of the notice upon the supervisor or town clerk of the town in which said land is situated shall be submitted. Such service shall be made at least 20 days before the date of application.

(h) Except in cases where an application is made under the provisions of subdivision 11 of section 75 of the Public Lands Law, a search or an abstract of title of the land of the applicant covering a period of at least 30 years prior to the time of application shall be submitted. Liens and encumbrances, unpaid taxes, restrictive covenants and agreements need not be set forth unless relevant to the chain of title. A full description of such land shall be set forth in the abstract, but need not be repeated. Copies of maps referred to in the description or copies of portions thereof, diagrams, or other information, where any of these are necessary in order that the location or boundaries of the land may be understood, shall be furnished. The abstract shall be certified by a county clerk, title company or attorney. In the event title insurance and/or title certification includes the lands applied for, the requirement of an abstract of title may be waived or modified by the Commissioner of General Services.

(1) Where evidence of record title of the adjacent upland satisfactory to the commissioner cannot be submitted, and where the applicant relies on adverse possession to establish title to said adjacent upland, the claim of title shall be determined by Judgment in an action pursuant to article 15 of the Real Property Actions and Proceedings Law.

(2) When the application is made under the provisions of subdivision 11 of section 75 of the Public Lands Law, an abstract of title to the land applied for is required. The abstract shall begin with the date of the original grant from the People of the State of New York, and shall be in such form and manner as specified by the commissioner.

(i) The original tracing of the official map as described in section 270-4.3 of this Subpart.

(j) When the land applied for is under the waters of the St. Lawrence or Niagara rivers, an affidavit of service of a copy of the notice upon the Power Authority of the State of New York shall be submitted. Such service shall be made at least 20 days before the date of application.

(k) A duplicate copy of any permit issued by the U.S. Department of the Army, Corps of Engineers or any pending application.

(l) A completed environmental assessment form and/or marine project information, if necessary, or other completed pertinent SEQRA documentation.

(m) The commissioner may require additional submissions when such information is necessary for review of the application.
Section 270-4.7. Order of submission.

All affidavits shall be fastened together in the order listed above, preceded by a copy of the appropriate notice of application.

Section 270-4.8. Objections.

(a) All objections to the grant applied for shall be filed with the Division of Land Utilization in duplicate and a copy mailed to the applicant or his attorney by the objector prior to the date when such application is to be made, which date is shown on the notice of application served in accordance with section 270-4.6 of this Subpart.

(b) Where the commissioner determines that additional public notice and comment will assist in the review of the proposed project and application, the applicant may be required to publish additional public notice in newspaper of general circulation in the county in which the proposed project is to be located. The notice shall describe, in sufficient detail, the project and location thereof and direct that all public comment be filed with the Division of Land Utilization prior to the close of the public comment period, which shall not be later than 40 days after the last publication under this section.

Section 270-4.9. Hearing regarding objections.

The Commissioner of General Services will determine if a hearing on the objection(s) is to be held. If a hearing is scheduled, the Division of Land Utilization will advise the applicant, the objector and DEC, DOS and OPR&HP as to when and where such a hearing shall be held. If an objector does not appear at such hearing, the objection may be deemed withdrawn.

Section 270-4.10. Covenants to be contained in grants of land under the waters of the Niagara River.

All grants thereof of land under the waters of the Niagara River hereinafter made by the State shall contain the following provisions:

"The Patentee hereby covenants with The People of the State of New York, their successors and assigns, that the Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the lands hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the Niagara River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the Niagara River, and Patentee further covenants that Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them, for or on account of any cause of action, claim or demand of any kind whatsoever by reason of any such damages or loss.

The covenants herein contained shall run with the land herein granted.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or
loss to any adjoining land by reason of or arising from the control or regulation of the waters of the Niagara River."

Section 270-4.11. Covenants to be contained in grants of land under the waters of the St. Lawrence River.

All grants thereof of land under the waters of the St. Lawrence River hereafter made by the State shall contain the following provisions:

"The Patentee hereby covenants with The People of the State of New York, their successors and assigns, that the Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the lands hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the St. Lawrence River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the river or in the interest of public recreation and/or fish and wildlife resources and Patentee further covenants that Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them for or on account of any cause of action, claim or demand of any kind whatsoever by reason of any such damages or loss.

The covenants herein contained shall run with the land herein granted.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any adjoining land by reason of or arising from the control or regulation of the waters of the St. Lawrence River."

Subpart 270-5. Application for a Grant of Easement, Lease, Permit, Lesser Interest in Lands Underwater (Docks, Structures, etc.)

Section 270-5.1. Applications.

An application for a grant of an easement, lease, permit or lesser interest pursuant to subdivision 7 of section 75 of the Public Lands Law shall be made to the Commissioner of General Services and shall state the full name and address of the applicant (if a corporation, the state in which incorporated and the address of its principal office and place of business). It shall also describe the existing or proposed use, structures or facility located or to be located upon the land applied for and directions that all objections to such easement, lease, permit or lesser interest shall be filed with the Division of Land Utilization on or before the date such application will be made. Review of applications shall be in accordance with the factors set forth in section 270- 3.2 of this Part.

Section 270-5.2. Documents to be submitted.

The following documents shall be submitted with the notice of application for lease, easement, permit or lesser interest:

(a) certified copy of deed(s) of applicant's adjacent upland. (In applications for easement, permit or lesser interest, applicant shall submit a certified copy of deed[s] of applicant's adjacent upland or the consent of the owner of such adjacent upland together with a certified copy of deed(s) of such owner);
(b) a duplicate copy of any permit issued by the U.S. Department of the Army, Corps of Engineers or any pending application;

(c) a completed environmental assessment form together with marine project information, if necessary, or other pertinent SEQRA documentation;

(d) a plan or sketch showing the project;

(e) a reproducible map made by a licensed land surveyor showing the location of the structure(s), the upland property of the applicant and those of adjoining properties along the waterfront; the survey shall be referenced to the New York State Plane Coordinate System;

(f) a metes and bounds description of the lands applied for;

(g) for the purposes of the application, the commissioner may waive or modify the requirement that a survey be prepared in those instances where the location of the structures and the lands applied for can be satisfactorily determined from existing map(s) or survey(s); and

(h) the commissioner may require additional submissions, including but not limited to copies of tax maps, photographs and diagrams when such information is necessary for review of the application.

Section 270-5.3. Service of notice of application.

The applicant shall serve a notice of application to apply for such grant upon the city, town or village in which the land is situated and upon the owner of properties adjoining along the shorefront. Such notice of application shall state the date on which the application will be made to the Commissioner of General Services and shall contain a description of the land underwater applied for, the use of the land underwater applied for, and directions that all objections to such application shall be filed with the Division of Land Utilization on or before the date such application will be made. All such notices shall be served 20 days before the date such application will be made. Affidavits of service of such notice shall be attached to the notice of application.

Section 270-5.4. Objections.

(a) All objections to the grant applied for shall be filed with the Division of Land Utilization in duplicate and a copy mailed to the applicant or his attorney by the objector prior to the date when such application is to be made, which date is shown on the notice of application served in accordance with section 270-5.3 of this Subpart.

(b) Where the commissioner determines that additional public notice and comment will assist in the review of the proposed project and application, the applicant may be required to publish additional public notice in newspaper of general circulation in the county in which the proposed project is to be located. The notice shall describe, in sufficient detail, the project and location thereof and direct that all public comment be filed with the Division of Land Utilization prior to the close of the public comment period, which shall not be later than 40 days after the last publication under this section.

Section 270-5.5. Hearing regarding objections.

The Commissioner of General Services will determine if a hearing on the objection(s) is to be held. If a hearing is scheduled, the Division of Land Utilization will advise the applicant, the objector and DEC, DOS and OPR&HP as to when and where such a hearing shall be held. If an objector does not appear at such hearing, the objection may be deemed withdrawn.
Section 270-5.6. Covenants to be contained in grants of easements and leases in land under the waters of the Niagara River.

All grants of easements and leases in land under the waters of the Niagara River hereafter made by the State shall contain the following provisions:

"The Grantee hereby covenants with The People of the State of New York, their successors and assigns, that the Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the easement rights hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the Niagara River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the Niagara River, and Grantee further covenants that Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them, for or on account of any cause of action, claim or demand of any kind whatsoever by reason of any such damages or loss.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any adjoining land by reason of or arising from the control or regulation of the waters of the Niagara River."

Section 270-5.7. Covenants to be contained in grants of easements and leases in land under the waters of the St. Lawrence River.

All grants of easements and leases in land under the waters of the St. Lawrence River hereafter made by the State shall contain the following provisions:

"The Grantee hereby covenants with The People of the State of New York, their successors and assigns, that the Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the easement rights hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the St. Lawrence River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the river or in the interest of public recreation and of fish and wildlife resources and Grantee further covenants that Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them for on account of any cause or action, claim or demand of any kind whatsoever by reason of any such damage or loss.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any adjoining land by reason of or arising from the control or regulation of the waters of the St. Lawrence River."

Section 270-5.8. Bond, when required.

The commissioner may require, as a condition to a lease, easement, permit or lesser interest and prior to commencement of work, that the lessee, grantee or permittee post a bond of specified
amount with the commissioner. The bonds shall be required in an amount to ensure faithful compliance with the terms and conditions of the lease, easement, permit or lesser interest, and is used for the indemnification of the State for any costs which might result from failure to so comply. Such bond may also be utilized by the commissioner to implement performance of conditions upon the failure of a lessee, grantee or permittee to properly implement any such conditions. The bond shall remain in effect until the work is completed to the satisfaction of the commissioner.

**SUBPART 270-6. FEES, APPRAISAL, LIMITATIONS**

**Section 270-6.1. Fees, commercial structures.**

The consideration to be charged for each grant of easement, lease, permit or lesser interest in lands underwater shall be fixed by the Commissioner of General Services in accordance with article 6 of the Public Lands Law and the following guidelines.

(a) Commercial structures (not in existence on August 7, 1992) shall be charged the following: annual fee not to exceed two percent of net annual income.

(b) Commercial structures (in existence and commercial use on or before August 7, 1992) shall be charged the following: annual fee not to exceed following percentage of net annual income:

- Year 1 -.2 (two tenths) of one percent
- Year 2 -.4 (four tenths) of one percent
- Year 3 -.6 (six tenths) of one percent
- Year 4 -.8 (eight tenths) of one percent
- Year 5 and thereafter, one percent.

(c) The net annual income upon which the fee is based shall include income derived from the earnings or rental of structures on State-owned lands underwater after deduction for associated operating and maintenance expenses and shall exclude earnings derived from operation not directly associated with the rental of such structures, such as the sale and repair of boats and the sale of gasoline. The commissioner may request the applicant to provide financial statements for the preceding two-year period in order to calculate the net annual income.

(d) As an alternative to income based fees, the commissioner, in cooperation and consultation with the marine trades industry, may develop a regional fee schedule based upon a market analysis of annual fees charged by marina facilities for slip rental and classified by factors such as location, access and condition, with appropriate deduction for related operating expenses. The regional fee will be expressed in terms of "dollars per foot of slip length" and remain subject to the fee guidelines of this section. In the event the regional fee schedule is developed, any marina owner disputing the regional fee shall have the opportunity to object to the imposition of the regional fee, pursuant to the terms of section 270-6.6 of this Subpart.

(e) No increase in the value of the dollar shall be permitted during the initial five-year period. Adjustments after the initial five-year period shall be based upon the Consumer Price Index (CPI-W) as provided by the United States Bureau of Labor Statistics.

(f) In the event calculation of net annual income from the nonexempt structure(s) is not possible based upon type of structure involved or the financial information provided by the applicant, the commissioner may appraise the structure using either the cost or market approach to value, as appropriate.

(g) In the event an annual permit is issued for the structure, the fee to be charged shall be discounted 10 percent.
(h) Payment of fees shall be made annually on the anniversary date of the lease, easement, permit or lesser interest. The commissioner may, upon request of the owner or user of the adjacent upland, agree to provide for different periodic payments or a more flexible payment structure than the fee caps and fees set forth herein.

Section 270-6.2. Nonexempt residential use.

The annual fee to be charged for nonexempt residential use of structures shall be the lesser of $20 per slip or $100.

Section 270-6.3. Special uses.

Condominiums and cooperative forms of real property ownership, residential multi-lot subdivision and keyhole developments and their accompanying use of structures on State-owned lands underwater including those described in article 6 of the Public Lands Law shall be appraised based upon market analysis of comparable structures.

Section 270-6.4. Fee mitigation.

The Commissioner of General Services, in determining the fee to be charged, may negotiate a more flexible payment schedule and otherwise mitigate fees based upon factors such as public access, surrender of prior State grants pursuant to section 76 of the Public Lands Law, preservation of open space or other actual public benefits as determined by the commissioner with the approval of the State Comptroller.

Section 270-6.5. Municipal, not-for-profit, religious corporations.

Fees to be paid for placement of nonexempt structures set forth in Public Lands Law section 75(7)(b) by the following corporations shall be limited to an administrative fee upon satisfactory evidence of the following.

(a) Municipal corporation. Use of dock or structures for public, noncommercial uses offering services to the public either free or for nominal fees.

(b) Not-for-profit corporation. Corporate status as a "Type B" corporation pursuant to subdivision (b) of section 201 of the Not-For-Profit Corporation Law.

(c) Religious corporation. Corporate status as a religious corporation pursuant to the Religious Corporation Law or by special act of the Legislature.

Section 270-6.6. Dispute resolution: appraisal.

In the event an applicant for a lease, easement or other interest in real property shall dispute and request a reduction of the commissioner's determination of the value of the interest to be conveyed, the commissioner shall, upon the applicant's submission of an appraisal of the value of such property interest conducted in accord with standard and accepted appraisal methodology by an independent appraiser qualified as prescribed in this section and which appraisal varies in its conclusion as to value by 10 percent or more or the value previously established by the commissioner, and upon the applicant's agreement to be bound thereby, contract with a second independent appraiser, qualified as prescribed in this section, to render an appraisal of the value of the interest proposed to be conveyed, the results of which appraisal shall be binding upon both the applicant and the Commissioner of General Services. Such appraiser shall be selected by the Commissioner of General Services.
Services from among a group of at least three appraisers identified by the applicant all of whom must be qualified as prescribed in this section and each of whom must agree to employ standard appraisal methodology. For the purposes of this provision a qualified appraiser shall be certified by the Secretary of State to transact business as a real estate general appraiser and shall conduct a regular business of the appraisal of real property interest. In the event that the appraisal contracted for in such manner shall conclude that the value of the property interest in question is equal to the value previously determined by the commissioner plus or minus 10 percent, the entire cost of such appraisal shall be borne by the applicant, otherwise, the entire cost thereof shall be borne by the Commissioner of General Services.

Section 270-6.7. Administrative fee.

The commissioner may impose an administrative fee not to exceed $500, based upon the costs of processing the conveyance or interest, such costs to be in addition to any other fee or appraised value. The fee may be prorated and collected annually over the term of the conveyance or interest.

Section 270-6.8. Grants in fee simple or conversion: appraisal.

Grants in fee simple of State-owned lands underwater shall be appraised based upon the value of the adjacent upland developed from the income, cost or market approach to value, as appropriate, reduced by the value of the riparian or littoral interest of the adjacent upland owner. Grants converting prior conditional conveyances to fee conveyances shall be appraised based upon the value of the remaining interest in the State.

SUBPART 270-7. STATUTORY THRESHOLDS: EXEMPTIONS

Section 270-7.1. Exemption: criteria.

(a) Commercial structures constructed prior to June 17, 1992 of any size or use are not exempt under this Part, and must apply for a lease, easement, permit or lesser interest in State-owned lands underwater. However, the following structures shall be exempt from the requirements of this Part:

(1) existing noncommercial structure constructed by or on behalf of the owner prior to June 17, 1992, containing a surface area (outermost perimeter) less than 5,000 square feet or less and if a docking facility has a capacity of seven or fewer boats up to 30 feet in length;

(2) any water dependent structure constructed after June 17, 1992 containing a surface area (outermost perimeter) of less than 4,000 square feet and not exceeding 15 feet in height (above mean high water) and, if a docking facility, has the capacity for five or fewer boats up to 30 feet in length and if a mooring facility has a capacity of fewer than 10 boats up to 30 feet in length;

(3) the relocation or reconfiguration within the described perimeter of the dock, piles, ramps and like structures authorized by lease, easement, permit or lesser interest provided such relocation or reconfiguration does not interfere with the riparian or littoral rights of adjacent upland owners; and

(4) nothing in these regulations shall be construed to mean that structures below the thresholds constitute a valid and reasonable exercise of riparian or littoral rights.

(b) Structures failing to meet any applicable criteria shall be subject to the requirements of Public Lands Law section 75(7) and these regulations.
Section 270-7.2. Date of structure--proof required.

The Commissioner of General Services in determining qualifications for exemption from the statute may require proof of the date of construction including but not limited to regulatory permits, construction contracts and/or affidavits of the applicant detailing the age and date of construction of the structure.

Section 270-7.3. Fill--lands underwater--interest of the State.

The Commissioner of General Services shall not require the person or entity who was the upland owner on June 17, 1992 adjacent to filled State-owned lands underwater or formerly underwater, to make application for a lease, easement, permit or other interest pursuant to section 75 of the Public Lands Law. The exemption provided in this section does not in any way impair or diminish the title of the State of New York to the lands previously filled. Upland owners may apply for a grant of such lesser interest as may be required to allow conveyance of a marketable title of the adjacent upland or to resolve outstanding title questions. Fill placed in State-owned lands underwater after June 17, 1992 will require a grant, easement, lease, permit or lesser interest pursuant to section 75 of the Public Lands Law may be considered a trespass pursuant to section 8 of the Public Lands Law. The Commissioner of General Services may require upland owners not otherwise exempt to apply for conveyance of the interest of the State in such filled land upon application to the Office of General Services for a grant, lease, easement, permit or lesser interest of any parcel of State-owned land adjoining said filled area. The area of the fill on State-owned lands shall be established by a licensed surveyor.

Section 270-7.4. Lake George: coordination of programs.

Structures not exempted by this Part and located in, on or over State-owned lands underwater at Lake George and complying with Environmental Conservation Law article 43 and accompanying regulations shall be exempt from this Part, except in those cases where in the judgment of the commissioner and the Lake George Park Commission, a review of the structure pursuant to this Part will assist in the protection and preservation of Lake George Park and the State’s proprietary interest, then in such event the commissioner shall assist the Lake George Park Commission by providing services including but not limited to examination of title and/or issuance of an easement, lease, permit or lesser interest for a fee determined, pursuant to this Part with an appropriate credit for fees paid to the Lake George Park Commission.

SUBPART 270-8. CESSIONS OF JURISDICTION


The Commissioner of General Services may make cessions of jurisdiction involving the United States of America on State-owned lands underwater pursuant to the procedures set forth in section 75(8) of the Public Lands Law and article 3 of the State Law.

SUBPART 270-9. TRANSFERS OF JURISDICTION

Section 270-9.1. Application.

Pursuant to the provisions of section 3, subdivision 4 and section 75(7a) of the Public Lands Law, upon the application of any State department or a division, bureau or agency thereof, or upon the application of any State agency, the commissioner may transfer to such State department State-owned lands underwater to such agency for the purpose of protecting environmentally sensitive
lands underwater. The transfer of jurisdiction may be made even if the State agency is not the proprietor of the adjacent upland but shall be subject to the provisions of section 75(9) of the Public Lands Law. The agency requesting the transfer of jurisdiction shall submit a findings with its transfer application explaining the reasons why the subject lands require protection, describing the environmental sensitivity of the lands.

SUBPART 270-10. ENFORCEMENT PROCEDURE

Section 270-10.1. Applicability.

This Part shall apply in all civil administrative enforcement proceedings brought pursuant to Public Lands Law article 6 by the commissioner against an alleged violator of Public Lands Law article 6, or rules or regulations promulgated thereunder, or any determination or orders issued by the commissioner.

Section 270-10.2. Notice of violation and hearing.

(a) All civil enforcement proceedings shall be initiated by service upon the respondent of a written notice of violation and hearing. The notice of violation and hearing shall contain a statement of the legal authority and jurisdiction including the provisions of section 75(7)(g)(i) of the Public Lands Law, a description of the prohibited structure, occupation or area of fill, the amount of the penalty and any additional daily penalties imposed by said statute, and notice of hearing on the alleged violation.

(b) The notice of hearing shall specify the time and place of the hearing and shall set a date for a hearing not earlier than 20 days after service of notice of violation and hearing. In lieu of a hearing date, a notice of hearing may set a return date not less than seven days after service, at which time a hearing date will be set if the matter is not disposed of at that time.

(c) Service of a notice of violation and hearing shall be by certified mail and service shall be complete when the notice of violation and hearing is received by the respondent.

Section 270-10.3. Answer.

(a) Within 20 days of receipt of the notice of violation and hearing, but no later than five days before the date of the hearing, whichever is shorter, the respondent shall serve upon the commissioner an answer, signed by the respondent or his attorney.

(b) The respondent shall specify in the answer which allegations are admitted, which allegations are denied and which allegations the respondent lacks sufficient information upon which to form an opinion as to the allegation.

(c) The respondent's answer may contain affirmative defenses, in which event the answer shall contain a statement of any facts which constitute the grounds of the affirmative defense.

(d) The failure to file an answer or the failure by the respondent to appear on the return date or at the hearing shall constitute a default and a waiver of hearing upon proof of service of a notice of violation and hearing.

Section 270-10.4. Service of papers.

All notices, papers and intermediate process connected with a hearing, other than the notice of violation and hearing and the order containing the final determination of the commissioner, may be
served by ordinary mail. Except where otherwise specifically provided, service by ordinary mail shall be complete when mailed.

Section 270-10.5.* Discovery.

(a) Notice to produce. A party to a hearing under this Part, upon receipt of notice to produce documents and things from any other party, shall furnish all such requested items relevant to the proceeding within 10 days of receipt of such notice.

(b) Subpoenas. Consistent with the CPLR, any attorney of record in a proceeding under this Part, or any person designated by the commissioner for this purpose shall have the power to issue subpoenas. A party who is not represented by an attorney may request the hearing officer to issue a subpoena by submitting a petition stating the items or witnesses needed by the party to present its case.

Section 270-10.6. Stipulations and consent orders.

(a) At any time prior to the final determination by the commissioner, the director of the Division of Land Utilization, with the advise and consent of the counsel to the commissioner, may enter into a stipulation to resolve an issue of fact or law pending in a proceeding initiated by the commissioner.

(b) At any time, the commissioner may enter into a consent order with a respondent, whereby the latter agrees to discontinue the acts or practices which violate article 6 of the Public Lands Law or rules or regulations promulgated thereunder, or any determination or order issued by the commissioner, and provide such other and further relief to which the respondent may agree. Such consent order shall be admissible as evidence to provide the basis for a finding of fact in any subsequent proceeding brought by the commissioner against such respondent involving the same or similar violation(s).

Section 270-10.7. Hearing officer.

(a) The commissioner may appoint a hearing officer who shall preside over such hearing and report to the commissioner regarding the hearing.

(1) The hearing officer shall conduct the hearing in a fair and impartial manner.

(2) Subject to review by the commissioner upon receipt of the hearing officer's report, the hearing officer shall have power to:

(i) rule upon motions and requests;

(ii) set the time and place of hearing;

(iii) administer oaths and affirmations;
(iv) issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers and other evidence;

(v) summon and examine witnesses;

(vi) admit or exclude evidence;

(vii) hear argument on facts or law; and

(viii) do all acts and take all measures necessary for the maintenance of order and efficient conduct of the hearing.

(3) The designation of a hearing officer shall be in writing and filed with the commissioner.

(b) Appearances.

(1) A party may appear in person and/or by counsel. If an attorney represents a party, all service of papers not required by law to be served personally upon such party shall be made upon the party's attorney.

(2) Any person appearing on behalf of a party in a representative capacity may be required to show his authority to act in such capacity.

(3) If a party who answers the notice of violation and hearing fails to appear at the hearing, issues on which that party has the burden of proof shall be resolved against the nonappearing party. The party who is present may elect, subject to the discretion of the hearing officer, to present all or part of his evidence by affidavit rather than oral testimony.

(4) The hearing officer may open a default or relieve any party of the consequences of a default upon good cause shown.

(5) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the final determination and order, and to proceed otherwise in any manner prescribed by law.

(c) Evidence.

(1) Each witness shall, before testifying, be sworn or make affirmation.

(2) Prefiled, written testimony may be presented by any party with permission of and subject to the discretion of the hearing officer.

(3) The rules of evidence shall not be strictly applied; provided, however, the hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence and shall give effect to the rules of privilege recognized by law.

(4) Every party shall have the right to present evidence and cross-examine witnesses.

(5) The hearing officer may take official notice of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the commissioner.

(6) Oral argument may be permitted by the hearing officer within his discretion and shall be recorded.

(d) Adjournment. A request for an adjournment of the hearing shall be in writing and submitted to the hearing officer prior to the hearing.

(e) Record.
(1) Testimony given and other proceedings had at a hearing shall be recorded verbatim. For this purpose, and consistent with respondent’s rights, the commissioner may use whatever means he deems appropriate, including but not limited to the use of stenographic transcriptions or recording devices.

(2) The record of the hearing shall include: the notice of violation and hearing; the transcript or recording of the testimony taken at the hearing; exhibits submitted and filed therein; stipulations, if any; the hearing officer's report; and any briefs submitted in connection with the hearing.

(3) A copy of the stenographic transcript of the hearing or, if the hearing is recorded, a copy of the tape or a transcript of the recording, shall be available to any party upon request to the stenographer or the commissioner, as appropriate, and upon payment of the fees allowed by law.

Section 270-10.8. Report.

Following the close of the record, including receipt of the transcript, if any, the hearing officer shall prepare and submit to the commissioner a hearing report, which shall become part of the record.

Section 270-10.9. Final determination and order.

(a) After receipt of the hearing officer's report, the commissioner shall make a final determination based upon the record.

(b) The final determination shall be embodied in a final order which shall contain findings of fact and conclusions of law or reasons for the final determination, and which may provide for:

(1) the dismissal of charges;

(2) an assessment of penalties consistent with applicable provisions of article 6 of the Public Lands Law;

(3) a direction for abatement;

(4) a combination of any or all of the foregoing; or

(5) any determination deemed appropriate under the circumstances, consistent with applicable provisions of article 6 of the Public Lands Law, or the rules and regulations promulgated thereunder, or any determination or order issued by the commissioner.

(c) A copy of the final determination and order shall be served on the parties by certified mail.