



NOTE: The attachments referred to herein are on file at the Agency and are on the Agency's website. Copies are also available for inspection on request.

DRAFT AGENCY MINUTES

MARCH 17-18, 2011

THURSDAY, MARCH 17, 2011

AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT

Curt Stiles, Chairman
Richard Booth, Member
Arthur Lussi, Member
Frank Mezzano, Member
William Thomas, Member
Leilani Ulrich, Member
F. William Valentino, Member
Cecil Wray, Member
James Fayle, Designee, NYS Department of Economic Development
Elizabeth Lowe, Designee, NYS Department of Environmental Conservation
Dierdre Scozzafava, Designee, NYS Department of State
Terry Martino, Executive Director
John Banta, Counsel

LOCAL GOVERNMENT REVIEW BOARD PRESENT

Fred Monroe, Executive Director

AGENCY STAFF PRESENT

Richard Weber, Deputy Director, Regulatory Programs
Holly Kneeshaw, Assistant Director, Regulatory Programs
Keith McKeever, Public Information Director
James Connolly, Deputy Director, Planning
Shaun LaLonde, Soil and Water Engineering Specialist
Brian Grisi, Local Planning Assistance Specialist
Daniel Spada, Supervisor, Natural Resource Analysis
Kathleen Regan, Associate Natural Resources Planner
Milt Adams, Environmental Program Specialist 1
Amy Hall, Calculations Clerk
Elaine Caldwell, Administrative Officer
Colleen Parker, Environmental Program Specialist 2
Mary Reardon, Secretary 1
Walt Linck, Associate Natural Resources Planner
Deborah Lester, Secretary to Executive Director

Chairman Stiles called the meeting to order at 9 a.m.

1. Moment of Silence

The Agency joined together in a moment of silence to honor the memory of Doug Schelleng, former Department of Economic Development Designee to the Agency who was tragically killed in a car accident last week. Mr. Schelling was a major contributor to the Agency Board, the Department of Economic Development and the State of New York.

Also memorialized was Howard Baker, who passed away earlier in the week. Mr. Baker was employed at the Agency for the past 11 years through the Green Thumb Environmental Beautification program. Amongst his life experiences, Mr. Baker worked for the Lake Placid Olympic Organizing Committee, chairing the housing and food services section.

2. Minutes

On motion of Mr. Wray, seconded by Mr. Booth, the Agency unanimously adopted the February 10, 2011 Draft Agency Minutes.

3. Executive Director's Report

Ms. Martino reported on planning of work priorities for 2011. Planning priorities for 2011 were identified at the manager's meeting in February. Among the priorities identified is the proposed update of the Delegation Resolution, which is before the Agency for discussion this month, and a comprehensive revision of "Development in the Adirondack Park," which will be ongoing this year. Another priority is the "Naming Convention," an approach to digitally name and organize all Agency files, which is currently being worked on with staff.

In planning for this year, Agency management staff discussed a continued priority to restructure processes within the Jurisdiction, Enforcement and Regulatory divisions to support dialogue, interaction and more direct decision making in the review of minor projects. Staff are focusing on better service and program coordination, more efficient use of existing regulatory tools, and improvement of those tools.

At this meeting, John Burth will highlight in his enforcement report the coordination that is now in place between the Jurisdictional Office and Enforcement, and how staff are responding to JIF inquiries when a violation has been identified. Mr. Burth's report will demonstrate how achieving efficiency can include walking down the hall to inform Enforcement of such a situation and looking at steps for

resolution. This approach has a benefit for the public and for the Agency in terms of streamlining a better use of staff resources and better delivery of services to the public.

Also, minor revisions were made to the Jurisdictional Inquiry Form, again with staff input.

Management staff also worked with a larger group of staff from Regulatory Programs, RASS and Legal to address when a jurisdictional determination concludes a minor permit is necessary. Staff have developed a letter that will go to the landowner who submitted the JIF and will include a JIF Supplement Minor Project Application. In this sense, the Agency will be asking for additional information that must be submitted by the landowner to commence the project review. The difference is that the Agency will not be sending the applicant a Minor Permit application as if this were the first contact with the applicant. The new approach acknowledges the fact that the JIF provides a basis of information that will need to be expanded upon if the landowner is interested in pursuing the permit.

The letter, which will be prepared in Legal and signed by the Deputy Director, Regulatory Programs, will respond to the jurisdictional inquiry and make the assignment to an Environmental Program Specialist (EPS). This process will again result in increased coordination between the divisions and efficiencies for the public. In 2010, 40 projects through the JIF office fell into this category. The Agency's approach to efficiency has included the goal of improving processes to benefit the working relations of the Agency, which is a better use of staff resources and interaction with the public. The next step in the process will be a revision for the Minor Permit Application.

The overall review of work has enabled staff to address how they engage with the public through the JIF office, through Enforcement, and through Regulatory Programs. Recognizing that each division utilizes different tools - the Jurisdictional Inquiry Form, the Settlement Agreement, and the Project Permit, staff have addressed ways in which the public is influenced by these different tools. The larger goal is to eliminate as much as possible, having multiple programs and multiple EPS's working on the same file, empowering the EPS to use the best tool, and to make sure that staff's review and tools are as focused as possible. This has also led to cross-training new staff members, Aaron Ziemann and Milt Adams, in both Enforcement and Regulatory Programs.

Ms. Martino expressed thanks to all of the staff who are working on these steps. She noted the efficiency discussion began in a

manager's meeting in response to staff changes in 2010 and the recognition that the Agency needs a different way of doing business. The interest in reengineering then expanded to include work groups with staff from the different divisions - Regulatory Programs, RASS, and Legal - and work products that can be used immediately. While it has been an exciting process, there is more work to do in this area.

Ms. Martino reviewed other priorities for 2011. Following Governor Cuomo's Executive Order 3, which required Ethics Training for Agency Heads, Counsel Banta, the Chairman and Executive Director individually completed the on-line training. Additionally, the Agency hosted a mandatory meeting for staff on March 16 with a representative from the NYS Commission on Public Integrity.

Another priority for the year is continued outreach to local government. Last week, staff participated in the Northern Adirondack Code Enforcement Officials 16th Annual Educational Conference in Lake Placid. The 4-day training was attended by 225 code enforcement officers (CEO), with another 75 fire and safety officials involved in specific program sessions. Nine Agency staff took turns staffing an informational display and responding to questions about the Agency. Staff had contact with 68 CEOs from 37 towns and villages. EPS Sue Parker had the most CEO contacts this year with 18. Thanks also go to Mark Rooks, Trevor Fravor, Mary O'Dell, John Burth, Tracy Darrah, Doug Miller and Robyn Burgess for helping out. Also, thanks to Brian Grisi for organizing the outreach to CEOs, which is an important factor especially in terms of the Agency's enforcement program.

In planning for 2011, management staff also discussed the Chairman's interest in having a forum as part of the Agency meeting. In discussions with the Chairman, staff identified three areas for forums in this year, to include both informational content and dialogue with the Board around key topics such as energy, economy, and land use planning. This is being seen as an approach to engage discussion on significant trends, opportunities, and policies which impact the Adirondack Park.

In a discussion about energy in the Park, the Agency will benefit from Frank Murray's presentation scheduled for later in this meeting, and hearing about the involvement of NYSERDA in providing programming, investment and research throughout the Park. Within this discussion, it should be noted that the Adirondack North Country Association is doing outreach in the Central Adirondacks for NYSERDA's Energy Smart Communities. As a continuation of energy as a forum topic, the Biomass Energy

Research Center (BERC) is tentatively planned for the July meeting agenda. Staff have learned from discussions with them and ANCA about a Biomass 101 workshop planned for April 19 to discuss community-scale thermal biomass in schools and municipal buildings.

With continued interest in economic development, in addition to the discussions that have taken place this year on broadband development and green tourism, the Agency will hear at this month's meeting about sustainable agriculture and marketing practices. The presentation by the Kimballs will reinforce successes in the Park in agriculture product development and marketing, in this instance through a community program known as "Community Sustainable Agriculture."

Also at this meeting, a staff presentation will focus on the Agency's historic use of mapping as a planning tool in land use and development. Seeing the evolution of mapping, from tissue paper overlays, to mylar, to GIS and potential for Google applications is a fascinating overview that provides an important foundation for future forums.

In other areas, the Agency is well positioned for Local Government Day, scheduled for Tuesday and Wednesday, March 22-23. The Tuesday afternoon session will be forum-style, moderated by Brian Towers from the AATV with input from a wide range of stakeholders including Garry Douglass talking about transition goals and economic development, DEC Commissioner Joe Martens, Chairman Stiles, and Dierdre Scozzafava providing a DOS perspective, amongst others. There will also be Wednesday questions and answers with State representatives, followed by a reception. The full program focuses on some important trends with topics such as transformational change and empowering communities for successful aging, a noteworthy discussion topic in the context of the demographic trend of the baby boomer generation entering their senior years.

In other activity, the Agency, with the assistance of Administrative Law Judge Dan O'Connell hosted two legislative sessions on March 16 in Tupper Lake for the Adirondack Club and Resort project as the first step in the recommencing of the hearing process. The sessions provided an opportunity for the public to comment on the project prior to commencing the adjudicatory hearing sessions scheduled for Tuesday, March 22. The schedule for the adjudicatory hearing is posted on the Agency website along with a pamphlet about the hearing process.

With the resumption of the public hearing on the Adirondack Club and Resort project, Ms. Martino clarified the very different and separate roles of Agency hearing staff and the Agency Board in

this proceeding. Agency hearing staff have participated in the review of the application and will participate in the adjudicatory hearing. Staff are not a formal party to the hearing, however, and as such they are not an advocate for or against the proposed project. As specified by Agency regulation, the role of staff in the hearing is to ensure that a full and complete hearing record is established. Staff will present testimony and evidence in the hearing and will also follow closely all of the testimony and evidence presented by other parties at the hearing.

At the conclusion of the adjudicatory hearing, Agency hearing staff will submit a closing brief for the record that may or may not contain a formal recommendation to the Agency Board. As is the case for all parties to the hearing, Agency hearing staff are prohibited from any communications with the Agency Board concerning the project outside of the formal hearing record.

At the conclusion of the adjudicatory hearing, the hearing transcript, exhibits and all briefs which form the full record for Agency Board consideration will be sent to the Agency by Judge O'Connell. Once the record is closed, Agency executive staff will assist the Agency Board in the review necessary to make a final determination. Ms. Martino emphasized the importance of rigorous adherence to the regulatory prohibition regarding any communication between parties, Agency, and hearing staff. She directed questions regarding this process or about ex-parte communications to Counsel John Banta or herself.

Regarding Camp Gabriels, Ms. Martino reported that the Office of General Services (OGS) has advised the Agency that a new auction date has been set for the former state prison facility for April 28 at the Harrietstown Hall. As outlined in the Agency's December 2010 correspondence to OGS, after the sale of the property the Agency can act on the technical correction of the map to reclassify the property to Moderate Intensity Use with a potential for 71 principal buildings under the Land Use and Development Plan. The Agency's December correspondence is being used in OGS's bidder packets.

A discussion ensued regarding the Adirondack Club and Resort hearing, including questions regarding the Agency hearing team and procedure for providing testimony and transmittal of the hearing record to the Agency Board.

Ms. Martino advised that certain project hearing staff have been identified for the purpose of providing testimony, as described in her previous communication to the Agency.

With regard to transmittal of the hearing record to the Board, Counsel Banta advised that while the transmittal process is not yet settled with the ALJ, it is expected that the record will be put before the Agency Board in video, electronic and paper format, and transmitted to the Board in an organized form with the possibility of segmentation of material as it becomes available. Counsel further noted that the record may or may not be accompanied by a staff recommendation.

Mr. Booth suggested it was unrealistic for the Board to deliberate on a project of such magnitude without a staff recommendation to focus on.

In response to a suggestion that recently appointed Agency Board members might find it helpful to review the previous documentary record for the project, Counsel stated that other than the Agency Order directing the matter to hearing, he would advise against engaging in the significant history attached to the project. He noted that at this point in time the hearing is intended to be organized and focused. He encouraged Members and Designees to observe the video of the March 16 legislative sessions held in Tupper Lake, which will provide a solid sense of the scope and purpose of the project, as well as background for the technical sessions that are to come.

Ms. Martino emphasized that she and Counsel Banta will be engaging the Board on process, but not on substantive issues. Regarding a timeline for decision on the project, Ms. Martino explained that the Agency has 60 days from receipt of the complete record, unless the applicant chooses to suspend the time clock. She noted that according to the schedule, the hearing is expected to continue into June.

In response to Mr. Valentino's request to walk the terrain, Counsel said he would discuss the matter with the ALJ.

Noting the likelihood that some arguments would go beyond the scope of the law, Mr. Monroe asked if the Agency's brief would outline the relevant laws and regulations applicable to the ACR project.

Counsel replied that he had no knowledge of what the staff brief would contain, but noted the hearing order provided some direction in terms of expectations from the ALJ and the hearing staff.

4. Recusals

Messrs. Lussi and Thomas noted their recusal regarding Project 2010-154 (New York RSA No. 2 Cellular Partnership d/b/a Verizon

Wireless) and Project 2007-139R3 (Tall Timbers at North Creek), respectively.

5. Motion for Executive Session

On motion of Mr. Wray, seconded by Ms. Lowe, the Agency voted unanimously to convene in executive session to discuss litigation involving *Matter of Spiegel*.

The session convened at 12:30 p.m., and Chairman Stiles reported prior to the close of the meeting that no action was taken.

6. Motion to Adjourn into Committees

On motion of Mr. Wray, seconded by Mr. Fayle, the Agency unanimously adjourned into committees at 9:40 a.m.

FRIDAY, MARCH 18, 2011

AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT

Curt Stiles, Chairman
Richard Booth, Member
Arthur Lussi, Member
Frank Mezzano, Member
William Thomas, Member
Leilani Ulrich, Member
F. William Valentino, Member
Cecil Wray, Member
James Fayle, Designee, NYS Department of Economic Development
Elizabeth Lowe, Designee, NYS Department of Environmental
Conservation
Dierdre Scozzafava, Designee, NYS Department of State
Terry Martino, Executive Director
John Banta, Counsel

LOCAL GOVERNMENT REVIEW BOARD PRESENT

Gerald Delaney, Sr., Chairman

AGENCY STAFF PRESENT

Richard Weber, Deputy Director, Regulatory Programs
Holly Kneeshaw, Assistant Director, Regulatory Programs
Keith McKeever, Public Information Director
James Connolly, Deputy Director, Planning
Daniel Spada, Supervisor, Natural Resource Analysis
Virginia Yamrick, Environmental Program Specialist 1
Milt Adams, Environmental Program Specialist 1
Ariel Diggory, Environmental Program Specialist 1
Thomas Saehrig, Environmental Program Specialist 2
Colleen Parker, Environmental Program Specialist 2
Deborah Lester, Secretary to Executive Director

Chairman Stiles called the meeting to order at 10:40 a.m.

1. Committee Reports

a. Regulatory Programs Committee

(1) 2010-70, Marion River Carry Railroad Company

The proposal is for a 5-lot subdivision involving wetlands on the shoreline of Utowana Lake in the Town of Indian Lake, Hamilton County.

Mrs. Ulrich noted the project was moved to the full Agency without a recommendation, with the Committee voting 2 - 2 on a motion to approve, the Committee divided between an adjudicatory hearing versus approval. She referred to minor changes to the draft project findings and order with regard to the total number of comment letters received.

Mrs. Ulrich then moved Agency approval of the revised draft findings and order. Mr. Mezzano seconded the motion, and clarified that the Committee motion to direct the project to public hearing did not receive a second.

Mr. Booth moved the Agency direct the project to public hearing, and Mr. Wray seconded the motion.

Prior to voting, Mrs. Ulrich questioned what the issues would be for a hearing.

Mr. Wray responded that the Agency is not obligated at this point in the process to identify the hearing issues. The regulations cite, among the first criteria for a public hearing, the degree of public interest, which is evident among the general public, government officials and private organizations.

Counsel Banta confirmed the hearing issues do not have to be specified at this time, although he recommended that should the motion carry, appropriate authority be delegated to the Deputy Director of Regulatory Programs, in consultation with the Committee Chairperson, Executive Director and Counsel.

Mr. Mezzano pointed out that the motion of the Committee was to direct the matter to hearing with the intention of disapproval.

Mrs. Ulrich pointed out that the source of the greatest amount of concern is the lot that is not being developed.

Mr. Lussi noted there were no controversial and/or environmental issues that merited a public hearing, and the public's continued use of the subject lot for a canoe carry would not be affected by the project.

Mr. Mezzano observed that some of the individuals and groups opposing the project wanted to maintain the status quo.

Mr. Delaney pointed out the 100-year use of the canoe carry in question. He added that if the project is approvable, the Agency should issue the permit, leaving any legal issues pertaining to the canoe carry for the courts to decide.

Mr. Booth made clear that his concern had to do with the particular subdivision configuration.

Chairman Stiles stated that the legal issues were well-articulated by Agency Counsel and that the order as written defined the situation well enough that any future new land use and development involving lot 5, which is closest to the carry, would require further Agency review. He questioned the additional value of an adjudicatory hearing.

Chairman Stiles then called the question on the motion to direct the project to public hearing, with the final hearing issues to be drafted in standard language by the Deputy Director of Regulatory Programs in concert with Committee Chair, Executive Director and Counsel.

The motion failed to carry by a 3 to 8 vote. (Messrs. Booth, Valentino and Wray voted in favor; Chairman Stiles, Messrs. Lussi, Mezzano and Thomas, Mrs. Ulrich, Mr. Fayle [Department of Economic Development], Ms. Lowe [Department of Environmental Conservation] and Ms. Scozzafava [Department of State] voted against.)

The Chairman then called the question on the motion to approve the draft project findings and order with minor changes as described. The motion passed by an 8 to 3 vote (Chairman Stiles, Messrs. Lussi, Mezzano and Thomas, Mrs. Ulrich, Mr. Fayle [Department of Economic Development], Ms. Lowe [Department of Environmental Conservation] and Ms. Scozzafava [Department of State] voted in favor; Messrs. Booth, Valentino and Wray voted against.) Copy of the order as approved by the Agency is attached to the official minutes.

Mrs. Ulrich noted that the project still requires Town of Indian Lake review of the subdivision plat. If there are no material changes, the Deputy Director of Regulatory Programs is authorized to issue the permit. Otherwise, the matter would require further Agency review.

(2) 2010-97, Marilyn and Lee Serino

The matter involves a request for a shoreline structure setback variance to allow for the vertical expansion of a single family dwelling in the Town of Dresden, Washington County.

Mrs. Ulrich noted the applicant's proposal is less intrusive than other, non-jurisdictional alternatives.

Mrs. Ulrich reported the Committee voted 3 to 1 in favor of the variance request, but because only 4 of the 5 committee members

were present, lacked the required majority plus one vote to advance a recommendation to the full Agency.

She then moved approval of the variance request and Mr. Mezzano seconded the motion.

Prior to voting, Mrs. Ulrich referred to new Condition 10 in the order, developed in consultation with the applicant, which requires all sawdust and other building debris to be contained, connected and disposed of in a DEC-approved waste disposal facility.

Based on a brief discussion, the draft condition was clarified to state "...minimum 8 foot tall impervious walls."

Mr. Booth noted the importance of recognizing this is an island, and he referred to a map amendment dating back to 1974 that classified islands as Resource Management.

Ms. Parker pointed out that the amendment applied only to islands less than 1 acre in size.

Mrs. Ulrich noted the island's location in an area that is already highly developed, and asked if the Agency's decision would set a precedent in other variance situations.

Mr. Banta responded it is not precedent-setting for any other shoreline lot except for a normal shoreline lot with a structure served by public sewer. He also noted the unique circumstances of this case associated with the difficulty of bedrock and environmental importance of existing shoreline vegetation.

Chairman Stiles stated the variance process is intended to recognize unique conditions and not to set a *de facto* standard to downzone an area. The proposal before the Agency meets the very simple and distinct set of criteria that sets it apart from other projects, the core issue being the off-site septic treatment.

Mr. Booth agreed that legal precedence is not an issue here, but said the Agency's message should be clear against variances on very small Resource Management islands.

Chairman Stiles called the question, which passed by a 9 to 2 vote (Chairman Stiles, Messrs. Lussi, Mezzano, Thomas and Valentino, Mrs. Ulrich, Mr. Fayle [Department of Economic Development], Ms. Lowe [Department of Environmental Conservation] and Ms. Scozzafava [Department of State] voted in favor; Messrs. Booth and Wray voted against.) A copy of the order as approved by the Agency is attached to the official minutes.

(3) 2010-154, New York RSA No. 2 Cellular Partnership, d/b/a Verizon Wireless

Mr. Lussi noted his recusal and left the room during Agency deliberation on the matter.

The project involves the installation of a telecommunication tower with antenna, including construction of gables for screening purposes on the roof of the Crowne Plaza in the Town of North Elba, Essex County.

Mrs. Ulrich referred to new draft permit findings describing the applicant's plans regarding construction phasing of the concealment structures in relation to the proposed tower structure and antennas, as well as concerns of the Town of North Elba/Village of Lake Placid Building and Planning Department regarding time lag between construction phases.

Mrs. Ulrich also noted revised language in Condition 5 stating that the plan for construction phasing would be included in final plans to be submitted to the Agency prior to the beginning of construction. Additionally, new Condition 6 addresses timeframes for installation of the roof gables and construction or installation of other ancillary equipment.

Mrs. Ulrich then moved Agency approval of the draft permit as presented to the Committee. She suggested the Agency act separately on the new and revised language.

Counsel reviewed the motion on the floor, which was to approve the draft permit as presented to the Committee.

Mr. Mezzano seconded the motion.

Prior to voting, Mr. Weber referred to new Findings 22 and 23 which provided an accurate description of staff discussions with representatives of Verizon and the Joint Review Board. He also reviewed the proposed revisions to Condition 5 and new Condition 6.

Discussion ensued as to whether Condition 5 as revised would provide the Joint Review Board with the final action. Mr. Weber noted the Agency's concern regarding the construction phasing and timing, which is the purpose of Agency consultation with the Joint Review Board. Counsel advised that legally the Town has the final word because construction cannot proceed without their approval.

Mr. Mezzano asked whether the Lake Placid Vacation Corporation (LPVC), who is responsible for constructing the gables, was consulted in the most recent discussions and if Condition 6 is acceptable to them.

Counsel noted staff's presumption that Verizon is working with LPVC, and that in view of the potential conflicts involved, staff has been working with Verizon, who has had opportunity to consult with LPVC. It is unknown to staff whether the condition is acceptable to LPVC.

Mrs. Ulrich expressed concern that the language in Condition 6 did not ensure that final action rested with the Town, and she suggested replacing the word "shall" with "should."

Mr. Fayle moved approval of the proposed revisions to Condition 5, new Condition 6 as further revised to replace "shall" with "should," and new Findings of Fact 22 and 23.

Ms. Lowe seconded the motion, which passed by a 9 to 1 vote. (Chairman Stiles, Messrs. Mezzano, Thomas, Valentino and Wray, Mrs. Ulrich, Mr. Fayle [Department of Economic Development], Ms. Lowe [Department of Environmental Conservation] and Ms. Scozzafava [Department of State] voted in favor; Mr. Booth voted against.) Mr. Lussi was not present.

Chairman Stiles called the question on the original motion to approve the project, which passed unanimously. Mr. Lussi was not present. A copy of the permit as approved by the Agency is attached to the official minutes.

Mrs. Ulrich further reported that the Committee also urged the Agency to revisit the towers policy as soon as possible.

(4) 2007-139R3, Tall Timbers at North Creek

Mr. Thomas noted his recusal and left the room during the discussion and deliberation on the project.

The matter involves a request for a third extension of a previously approved proposal for the development of a resort community in North Creek in the Town of Johnsbury, Warren County.

On motion of Mrs. Ulrich, seconded by Mr. Booth, the Agency unanimously authorized the Deputy Director of Regulatory Programs to issue a one-year extension. Mr. Thomas was not present. A copy of the Project Findings and Order as approved by the Agency is attached to the official minutes.

(5) General Permit 2011G-2

Mrs. Ulrich reported that the Committee discussed a draft general permit which would authorize application of herbicides for purposes of vegetation management near guide rail, signs and delineator posts that are adjacent to wetlands. The Committee unanimously recommended the Agency authorize staff to proceed to public notice.

She so moved and Mr. Wray seconded the motion, which passed unanimously.

b. Economic Affairs Committee

Mr. Lussi applauded the vibrant presentation by Kristin and Mark Kimball on their experience running the Essex Farm, and their creation of a successful farming operation to serve community markets. He referred to the Kimball farming operation as a perfect example of sustainable economic development in the Park, and expressed his hope that more entrepreneurial farmers like the Kimballs would find the Adirondack Park a good place to live and raise a family.

c. Administration Committee

Mr. Mezzano reported that the Committee reviewed and provided comments and suggestions on staff's proposed comprehensive update of the "Resolution of the Adirondack Park Agency on Delegating Certain Powers and Responsibilities" (Delegation Resolution). He asked for further comment to be directed to Mr. Connolly for further Agency consideration and possible action at the April meeting.

d. Local Government Services Committee

Mr. Thomas reported that the Committee considered a draft Memorandum of Understanding between Adirondack Park Agency and Adirondack Park Local Government Review Board. The MOU addresses the statutory requirements for consultation and the presentation of opportunities for communication between the Agency and the Review Board.

Mr. Thomas then moved the Agency adopt and authorize execution of the MOU. Mr. Mezzano seconded the motion, which passed unanimously. A copy of the MOU as approved by the Agency is attached to the official minutes.

2. Interim Reports

The Legal Affairs and Park Ecology Committees did not meet this month. Monthly program reports and/or stats were included in the Agency meeting mailing.

3. Member Comment

Mr. Valentino provided follow-up commentary on NYSERDA President and CEO Frank Murray's presentation on NYSERDA programs that are available statewide. He urged local government and community groups in the Park to bridge the gap with NYSERDA's substantial energy expertise and funding opportunities. He also noted that in a follow-up discussion with Mr. Murray, he requested an Adirondack Park champion in NYSERDA in helping to deliver energy and conservation assistance to the Adirondack Park.

Mr. Fayle commended the Essex Farm presentation. He then expressed his appreciation to Chairman Stiles for acknowledging Doug Schelleng. With his tragic death, many people lost a friend and colleague. Doug loved the Park and was a real advocate for economic development, exemplifying the delicate balance between the environment and economic development in the Park. The family is requesting that any donations be made to the Adirondack Mountain Club.

Ms. Scozzafava commented that the meeting was very informative and a lesson in learning and balancing. She recalled her past work with Doug Schelleng, confirming Mr. Schelleng's commitment to the Adirondack Park region.

Mr. Thomas thanked Messrs. Valentino and Lussi for their involvement in arranging for the presentations on NYSERDA programs and the Essex Farm.

Mr. Mezzano expressed his appreciation to Mr. Lussi for the presentations in February on the eco-friendly Golden Arrow and this month on the Essex Farm and community supported agriculture, as well as to Mr. Valentino for the NYSERDA presentation. He also noted his appreciation for Doug Schelleng and his accomplishments, and expressed his condolences to Mr. Schelleng's family.

Ms. Lowe called attention to Local Government Day on March 22-23, noting DEC Commissioner Martens would be present in his first official role in the North Country.

Mr. Lussi noted the value of the various opinions and breadth of experience among Agency members in coming to thoughtful conclusions. He expressed his appreciation to his colleagues for their contributions toward making Agency meetings successful.

Mrs. Ulrich referred to the NYSEERDA presentation and suggested a challenge to make progress in energy efficiency throughout the Park, with the idea of spotlighting those achievements at next year's Local Government Day. She also acknowledged the challenge by the Kimballs to "keep it simple."

Mr. Wray noted the highlight of the meeting was the Essex Farm. He also noted a personal interest in maps and commended John Barge's presentation on mapping and GIS services at the Agency.

Mr. Booth concurred with others regarding the Kimballs in Essex and their remarkable story. He noted it underscored the Keene broadband project heard about at a previous Agency meeting. In both cases, it took individuals to seize opportunity and have both the imagination and the drive to accomplish what they have. Mr. Booth then referred to the picture of Greenleaf "Greenie" Chase in the conference room. He noted the scale of Mr. Chase's accomplishments as well as his encyclopedic knowledge of the Adirondacks.

Ms. Martino followed up on Chairman Stiles's tribute to Howard Baker and Doug Schelleng. She described Mr. Baker as a great resource to the Agency through Green Thumb program, and Mr. Schelleng as a colleague who contributed substantially to the Adirondack North Country region. Referring to the Agency meeting, Ms. Martino stated Essex Farm was a refreshing presentation, with the Kimballs demonstrating clearly that they are reversing the trend as a young couple choosing to live in the Park, and with friends and colleagues also wanting to undertake farming operations here based on the soil quality. In that the region has an abundance of rainfall and grasslands, they, like others in the St. Lawrence and Champlain Valleys, can maintain an effective grazing operation that has economic benefits. Also, their use of the working landscape is inspiring.

Mr. Banta recalled his childhood years growing up on a farm and life afterwards on urban and Adirondack lots where the soil had become contaminated with coal dust. The Kimball story is a true inspiration connecting past to future. Turning to enforcement, he noted the Agency is approaching ten years since establishing the revised enforcement regulations and is now able to say that it is preventing violations, a remarkable step forward. This will be further strengthened due to Ms. Martino's efforts to broaden and reinforce the enforcement program. Mr. Banta then expressed admiration for John Barge and his impressive mapping and GIS capabilities. He also paid tribute to Howard Baker and Doug Schelleng.

Chairman Stiles recognized staff's work and expressed appreciation for their level of expertise and integrity. He noted in particular Ms. Martino's ability to manage efficiently and effectively, resulting in a timely, professional and accurate staff work product. The Chairman also noted the importance of broader discussions to more informed decisions. He also noted the impacts of globalization on the Adirondacks as well as the impact of time-urgent decisions. Referring to the Essex Farm presentation by the Kimballs, Chairman Stiles stated that it along with Mrs. Kimball's book helped to change one's perspective on the opportunities, and the talents and the resources that are available in the Park. With regard to the MOU between the Agency and the Local Government Review Board, the Chairman noted its importance in terms of providing a clear understanding of the procedures for mandatory consultation and for less formal communication between the two agencies. A clearer understanding leads to more productive dialogue and answers that are more moderate and reasonable. Finally, the Chairman thanked all for their hard work, dedication and diversity of thought.

4. Adjournment

The Agency unanimously adjourned at 11:45 a.m.

CFS:dal

Attachments: 2010-70, Marion River Carry Railroad Company
2010-97, Marilyn and Lee Serino
2010-154, New York RSA No. 2 Cellular Partnership,
d/b/a Verizon Wireless
2007-139R3, Tall Timbers at North Creek
APA-APLGRB MOU

Curtis F. Stiles, Chairman



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

**APA Project Findings
and Order
2010-70**

Date Issued: March 21, 2011

In the Matter of the Application of

MARION RIVER CARRY RAILROAD CO., INC.

for a permit pursuant to §809(9) of the Adirondack
Park Agency Act and 9 NYCRR Parts 577 and 578

ORDER OF PROJECT APPROVAL SUBJECT TO CONDITIONS

The Adirondack Park Agency hereby grants approval subject to conditions to Marion River Carry Railroad Co., Inc. for a five-lot subdivision involving wetlands within 1/4 mile of the Marion River, a designated Scenic River in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Indian Lake, Hamilton County.

The proposed project may not be undertaken until the conditions for permit issuance are satisfied and a permit has been issued by the Agency and has been timely recorded in the Hamilton County Clerk's Office in the names of the owners of the project site. The Deputy Director is authorized to issue a permit upon the applicant's satisfactory fulfillment of the specified conditions precedent. This order shall expire by operation of law on March 2, 2012 if a permit has not been issued on or before that date.

Nothing contained in this order or any Agency permit shall be construed to satisfy any legal obligations of the applicant to obtain any approval or permit from any governmental entity other than the Agency, whether Federal, State, regional or local.

AGENCY JURISDICTION

The project consists of a five-lot subdivision in a Resource Management land use area, involving wetlands, and within 1/4 mile of the Marion River, a designated Scenic River, in a Town that administers an Agency-approved local land use plan. The project is a Class A regional project requiring an Agency permit pursuant to §809(9), §810(1)(e)(1)(b), and §810(1)(e)(3) of the Adirondack Park Agency Act, and is a regulated activity requiring a wetlands permit pursuant to 9 NYCRR Sections 578.2 and 578.3(n)(1)(i), and is a rivers project requiring an Agency permit pursuant to 9 NYCRR Sections 577.4 (a) and 577.5.(b)(1)(vi) and (x).

PROJECT SITE DESCRIPTION

The Marion River Carry Railroad Co., Inc. owns approximately 575.8±-contiguous acres of which the project site is a portion. The acreage includes 115.5± acres (Tax Map Parcel 45-1-3) located in the Town of Arietta on the north and south sides of New York State Route 28, and 460.3± acres (Tax Map Parcel 45-2-2) located in the Town of Indian Lake, with 204± acres on the south side of New York State Route 28, and 256± acres on the north side of New York State Route 28.

The project site consists of the 256± acres located on the north side of New York State Route 28 on the shoreline of Utowana Lake, and is identified on the Town of Indian Lake Tax Map as Section 45.000, Block 2, as that portion of Parcel 2 on the northern side of New York State Route 28. The project site is described in a deed from Raquette Lake Navigation Co., Inc. to Marion River Carry Railroad Co., Inc. dated June 14, 2001 which was recorded July 9, 2001 in the Hamilton County Clerk's Office in Liber 224 of Deeds at Page 246.

PROJECT DESCRIPTION AS PROPOSED

The project as proposed and conditionally approved herein is summarized as follows: The applicants are seeking approval for a five-lot subdivision involving wetlands within 1/4 mile of the Marion River, a designated Scenic River, with the prospective construction of one new single-family dwelling with on-site water supply and on-site wastewater treatment systems on Lots 1 through 4. The proposed lots being created are Lot 1, a 5±-acre parcel with 584± feet of shoreline on Utowana Lake; Lot 2, a 8.53± acre parcel containing 437± feet of shoreline; Lot 3, an 8.66± acre parcel containing 685± feet of shoreline; Lot 4, a 6.30± acre parcel containing 282± feet of shoreline; and Lot 5, a 432± acre parcel (remaining lands located on both the north and south sides of NYS Route 28) containing 2400± feet of shoreline on Utowana Lake. No docks or boathouses are proposed on Lots 1 through 4. Lot 5 is improved by a pre-existing single-family dwelling with on-site water supply and on-site wastewater treatment

systems, an existing dock, and a commercial use consisting of a sand and gravel operation authorized in Agency Permit 2001-135A.

Access to the proposed lots will occur from an existing private access road that serves the sand and gravel operation on Lot 5. Access to Lots 3 and 4 will occur along a common driveway originating from the existing access road on Lot 5. Access to Lots 1 and 2 will occur through Lot 3 along a common driveway originating from the existing access road on Lot 5. Maintenance of the existing access road on Lot 5 serving the sand and gravel operation will remain the responsibility of the owner of Lot 5, and easements will be granted to the respective lot owners for access to the remaining subdivision lots. Maintenance of the shared access driveways to the lots will be the responsibility of the respective lot owners.

The proposed subdivision is shown on three plan sheets entitled "Overview Map of Proposed Subdivision of Lands of Dean Pohl, Utowana Lake & Marion River Carry"; "Map of Proposed Subdivision of Portion of Lands of Lands of Dean Pohl, Utowana Lake & Marion River Carry"; "One Foot Contours - Proposed Subdivision of Lands of Dean Pohl, Utowana Lake & Marion River Carry", all prepared by William D. Hollister, PLS, dated June 23, 2009 and revised June 11, 2010.

The proposed subdivision, access drive details, and on-site wastewater treatment systems to serve the dwellings on Lots 1 through 4 are shown on five plan sheets prepared by James E. Hutchins, PE, as follows:

Sheet 1: "Subdivision Plan - Dean Pohl", dated 7-23-09;
Sheet 2: "Site Plan - Lots 3 & 4", dated 7-23-09;
Sheet 3: "Site Plan - Lots 1 & 2", dated 7-23-09;
Sheet 4: "Drive and Site Details", dated 7-23-09; and
Sheet 5: "Wastewater Details", dated 7-23-09.

Reduced scale copies of the eight plan sheets are attached as a part of this order for easy reference. The original, full-scale maps and plans referenced in this order are the official plans for the project.

FINDINGS OF FACT

Local Land Use Program

1. The Town of Indian Lake administers a local land use plan approved by the Agency pursuant to Section 807 of the APA Act, effective December 31, 1977. As a result, the Agency must determine that the project meets all of the pertinent requirements and conditions of the approved program. These include the pertinent factors contained in the statutory development considerations and provided for in the approved

local program and addressed herein.

Background/Prior History

2. As of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan Map, the 256±-acre project site was part of a larger 575.8±-acre parcel, and includes 115± acres in the Town of Arietta, and 204± acres located in the Town of Indian Lake located on the south side of New York State Route 28.

3. The project site has been the subject of the following previous Agency action:

On July 9, 2001, the Marion River Railroad Carry Co., Inc. submitted an application for commencement of a sand and gravel operation (Agency Project 2001-135) on a portion of the project site described herein. On September 28, 2001, the Agency initiated enforcement action E2001-189 after discovering that a private access road through wetlands had been constructed without the required Agency permit. The violation was discovered during the course of project review for Project 2001-135. As part of the Settlement Agreement, in March of 2003 the Agency approved a wetlands mitigation plan involving the private access road through wetlands, and also required the applicant to seek after-the-fact approval for that road through wetlands. On June 22, 2004, the Agency initiated enforcement action E2001-189A for violation of the terms of the Settlement Agreement associated with E2001-189 involving the wetland mitigation plan. In January 2005, the Agency issued Permit 2001-135 for a new commercial sand and gravel extraction and, after-the-fact, construction of a road through wetlands to be used as the private access road for this activity.

In June 2005, the Agency's wetland biologist performed compliance review with the previously authorized mitigation plan for the extraction access road (W2005-125).

In August 2007, the Agency initiated enforcement action E2007-255 for violation of the terms of the Permit 2001-135 which stated the permit was to be recorded prior to March 16, 2005. As part of the Settlement, the applicant was required to record the Settlement and previously issued permit by October 31, 2008, and was required to submit a revised compensatory wetland mitigation plan for Agency review and approval.

In September 2007, the Agency's wetland biologist delineated wetlands along the northern shoreline of Utowana Lake (W2007-228).

In June 2008, the Agency's wetland biologist delineated wetlands and performed compliance review for the wetlands mitigation

associated with the extraction access road (W2008-100).

Agency pre-application File A2009-61, initiated in April 2009, involved a site visit with Agency staff for a seven-lot subdivision.

The application for Agency Project 2010-70 was received March 30, 2010, seeking a five-lot subdivision involving wetlands within 1/4 mile of the Marion River, a designated Scenic River. During the course of project review, it was determined that Agency Permit 2001-135 had not been recorded by October 2008 as required by Settlement Agreement E2007-255. Review of the project application was suspended as a result of the violation of the Settlement Agreement.

In June 2010, the Agency's wetland biologist conducted a compliance site visit to evaluate the establishment of the wetland mitigation area required in Agency Settlement Agreement E2007-255. The mitigation area required by the settlement agreement was not fully established. Agency staff will continue to follow-up with site visits and compliance monitoring.

In June 2010, the Agency received a request to amend Agency Permit 2001-135 to provide for re-issuance of the permit for recordation in the Hamilton County Clerk's Office. In addition, the applicant sought approval to update the mining plan associated with the sand and gravel extraction to more accurately reflect the quantity of materials removed since the issuance of Permit 2001-135 on January 14, 2005. Permit 2001-135A was issued on July 1, 2010, and was recorded in the Hamilton County Clerk's Office on July 20, 2010. As a result, project review for Agency Project 2010-70 was resumed in July 2010.

Existing Environmental Setting

4. The spillway (dam) located at the western end of the Utowana Lake is owned by the Town of Indian Lake, and is described in a deed dated July 23, 1987, which was recorded in the Hamilton County Clerk's Office on August 5, 1987 in Liber of Deeds 193 at Page 183
5. Proposed Lots 1, 2, 3, and 4 are vacant. Lot 5 is improved by a two-story, 32 foot tall, 2324± square foot pre-existing single-family dwelling constructed circa 1910. This structure was formerly known as the "Carry Inn". The dwelling is served by on-site water supply and on-site wastewater treatment systems. In addition to the dwelling, the site also contains a 22 foot tall, 432± square foot barn, construction date is unknown.

A seasonally removable 6± foot wide by 25± foot long dock is located on the southern shoreline of Utowana Lake outside the

limits of wetlands and within 100 feet of the Town of Indian Lake Dam. Lot 5 also contains the sand and gravel extraction operation authorized in Agency Permit 2001-135A.

6. Along the northern shoreline on Lot 5 on Utowana Lake in the vicinity of the existing dam are the remnants of a breakwater that was associated with an old steamboat landing. In 1889 W.W. Durant built the Raquette Lake railroad which connected Raquette Lake to part of the New York Central Rail System. He also operated steamboats on Raquette, Utowana, Eagle, and Blue Mountain Lakes, providing service to camps. The only gap in that water route was the carry along the Marion River which connected Raquette and Utowana Lakes where the river was not navigable. In order to connect the two lakes, W.W. Durant constructed the Marion River Carry Railroad which was 7/8 mile in length. It was the shortest standard-gauge railroad in the world, and provided service between the two steamboat docks (Raquette Lake and Utowana Lake) so vacationers would not have to walk or ride on wagons. The railroad operated until the fall of 1929. Remnants of the breakwater adjacent to the Marion River dam are shown on the site plan map.

7. Access to the project site for the proposed subdivision north of Utowana Lake and the Marion River occurs from New York State Route 28 along a private road. This road crosses the Marion River on a one-lane bridge and presently serves all of the existing development located on Lot 5, and will also serve the proposed subdivision. Access to the existing single-family dwelling on Lot 5, which is located south of the Marion River, occurs from an existing driveway that originates from New York State Route 28. The original bridge structure that served the project site consisted of a single lane wooden bridge, and was replaced in 2007 as part of the improvements to the access road serving the sand and gravel operation. In a letter report from Dillon Engineering dated 11-21-2010, James Dillon, PE, certified the one-lane replacement bridge spans approximately 40 feet over the Marion River, and is supported by earth-filled timber abutments. Four steel stringers support the 5" steel grating bridge deck. No safety rails are attached on the sides of the bridge. Pursuant to the report, the bridge more than adequately supports the minimum 16,000 pound wheel load (AASHTO HS-20 loading) associated with standard highway truck loading. The report concludes with the statement that the bridge as presently designed can support an additional 50% loading greater than the design load of 16,000 pounds. The access road also crosses the canoe carry trail adjacent to the bridge. The canoe carry trail is comprised of the bed of the former Marion River Railroad. That portion of the project site which includes the bridge and a portion of the canoe carry are located within 300 feet of the highway, and is a statutorily defined highway Critical

Environmental Area (CEA). No new land use or development is proposed for the woods road or bridge within the CEA.

8. The Marion River, a designated Scenic river in the New York State Wild, Scenic and Recreational Rivers System, is located on Lot 5, and flows through the project site. The designated river area begins at the spillway of the outlet of Utowana Lake and its boundary is determined as a line perpendicular to the river bank at the spillway. The river area extends $\frac{1}{4}$ mile from the river bank as it winds and turns. No new land use or development is proposed on Lot 5. Most of the Marion River is navigable and, along that portion that is non-navigable, there is a canoe carry that has been used by the public for many years, which follows the bed of the former Marion River Railroad. No formal easement or right-of-way for public use of this carry exists, with portage across the $\frac{7}{8}$ mile long carry allowed by the current landowner of the project site for recreational users/paddlers of the Marion River. According to the DEC trail register at Utowana Lake at the east end of the canoe carry, public use of the carry occurs seven days a week, generally between the months of April and November.

From Blue Mountain Lake 4.5± miles east of the project site to Raquette Lake 4.0± miles west of the project site, this 8.5± mile waterway is very popular as a scenic and recreational motor boating/paddling route. On that portion of the Marion River from the spillway on the project site to Raquette Lake, there are no docks or boathouses since the lands are owned by the State of New York. Eastward from the spillway to Blue Mountain Lake, the waterways consist of Utowana and Eagle Lakes and are comprised of a mix of State and privately owned lands. There are relatively few docks and boathouses on both Utowana and Eagle Lakes associated with the existing residential development.

9. Soils on the project site in the vicinity of proposed Lots 1 through 4 are mapped by the USDA Natural Resource Conservation Service's SSURGO program, and consist of soils in the Becket/Tunbridge soils series. Becket soils are comprised of very deep well-drained soils on drumlins and glaciated uplands, and consist of a fine sandy loam and a gravelly sandy loam. Tunbridge soils are comprised of moderately deep well-drained soils formed in loamy glacial till, and consist of a mix of fine sandy loam, loam, mica schist, and gneiss bedrock. Deep hole test pits were excavated on proposed Lots 1 through 4, and were evaluated by Agency staff with the following results:

Depth to seasonal high groundwater on Lot 1 was 24 inches; depth to bedrock greater than 60 inches; soils percolation rate was 5

minutes per inch; horizontal setbacks to wetlands was 190± feet; and horizontal setbacks to water bodies was approximately 200± feet.

Depth to seasonal high groundwater on Lot 2 was 26 inches; depth to bedrock greater than 60 inches; soils percolation rate was between 4-1/2 to 5 minutes per inch; horizontal setbacks to wetlands was 230± feet; and horizontal setbacks to water bodies was approximately 240± feet.

Depth to seasonal high groundwater on Lot 3 was 27 inches; depth to bedrock greater than 60 inches; soils percolation rate was 4 minutes per inch; horizontal setbacks to wetlands was 210± feet; and horizontal setbacks to water bodies was approximately 250± feet.

Depth to seasonal high groundwater on Lot 4 was 24 inches; depth to bedrock greater than 60 inches; soils percolation rate was 3-1/2 minutes per inch; horizontal setbacks to wetlands was 150± feet; and horizontal setbacks to water bodies was approximately 210± feet.

Based upon the results of the deep-hole test pits, the on-site wastewater treatment systems to serve the dwellings on Lots 1 through 4 will require shallow absorption trench on-site wastewater treatment systems, and installation under the supervision of a licensed design professional to meet the current Agency and DOH on-site sewage disposal system standards.

10. The project site is forested with a mix of northern hardwood and softwood trees comprised of a mix of hemlock, balsam, beech, sugar map, and white birch, and other tree species. Average tree height ranged between 60 and 70 feet. Other than the area associated with the existing development on Lot 5, proposed Lots 1 through 4, an area bounded by New York State Route 28 to the south and the shoreline of Utowana Lake to the north located on Lot 5, and the existing sand and gravel operation located in the northeastern corner of the project site on Lot 5, the remainder of the lands owned by the applicant are managed pursuant to a DEC approved Section 480A Forest Management Plan.
11. Slopes on the project site in the vicinity of the proposed development areas for the single-family dwellings on Lots 1 through 4 generally ranges from 8 to greater than 15 percent, with portions of the project site containing slopes greater than 25 percent. The existing sand and gravel access road, which will serve the proposed subdivision, contains slopes less than 11 percent.

The proposed driveway to serve Lots 1 and 2 (driveway profiles C and D) contains slopes that do not exceed 8 percent. The proposed driveway to serve Lots 3 and 4 (driveway profiles A and

B) contains slopes ranging from 4 to 7 percent with one area containing 12 percent slopes for a length of 350 feet.

12. Overhead utilities are present along New York State Route 28. As outlined in the application materials, when two or more lots are under contract and the buyers of those lots require utilities, the applicant will install underground electrical service along the edge of the private access roadway to its intersection with the driveway for the lots in question. It will then be the responsibility of the lot owner(s) to extend underground electrical service to the dwelling.
13. Extensive wetlands are present along the streams and Marion River in the northern and western portions of the project site. In addition, there are also wetlands located between the southern shoreline of Utowana Lake and New York State Route 28. These wetlands are predominantly located on Lot 5, and no new land use or development is proposed that will impact the wetlands along the southern shoreline of Utowana Lake, or to those wetlands in the northern and western portion of the project site. Further, the wetlands in the northern and western portion of the project site were not delineated due to its distance from the proposed development areas on Lots 1 through 4 for the project.

The NYS Natural Heritage Program has identified wetlands in the vicinity of the project site as a significant complex of three excellent quality wetland communities: spruce-fir swamp, northern white cedar swamp, and black spruce-tamarack bog. This complex forms one of the largest peatlands in the Adirondacks, and is in a large intact old-growth forest landscape.

A nearly continuous wetland fringe associated with the northern shoreline of Utowana Lake, is present on Lots 1 through 4, and along the shoreline of Lot 5 between the western limits of the Marion River dam and the western boundary of Lot 4. Of the 1,988 linear feet of shoreline across proposed lots 1 through 4 only 225 linear feet does not contain this wetland fringe. The limits of these wetlands were flagged by Agency staff and are shown on the survey/site plan incorporated herein by reference. The wetland consists of a mix of palustrine scrub/shrub broad leaved deciduous, aquatic bed floating vascular, and persistent emergent marsh wetland covertypes, and has a value rating of "2" pursuant to 9NYCRR Part 578.5 of the Agency's Rules and Regulations. No new land use or development is proposed along the shoreline of Utowana Lake.

14. The project site and the remaining lands owned by the applicant are located in a Resource Management land use area, and are surrounded in its entirety by lands of the State of New York. All of the lands surrounding the project site north of New York

State Route 28 are lands of the State of New York, and is classified as Wild Forest forming part of the Sargent Ponds Wild Forest Area. All of the lands surrounding the project site south of New York State Route 28 are lands of the State of New York, and is classified as Wilderness forming part of the Blue Ridge Wilderness Area.

Approximately 1/4 mile east of the project site are private lands separately owned by others containing residential development also classified as Resource Management. The Hamlet land use area of Blue Mountain Lake is approximately 5.7± miles east of the project site. The nearest privately owned lands west of the project site are 4± miles away and are a part of the first of three Hamlet land use areas associated with Raquette Lake. Golden Beach Campsite, which is comprised of lands of the State of New York that are classified as Intensive Use, is approximately 2.3± miles west of the project site.

15. The predominant land use in this area, including the project site, is comprised of high value private and public/open space forestlands. There are no public trails in the adjacent state land Wild Forest area. The previously authorized sand and gravel extraction is 1100± feet north of the proposed dwellings on Lots 1 and 2. The 13 miles of connected waters between the Hamlet of Raquette Lake and Blue Mountain Lake form part of a long used paddling route prized for its generally undeveloped character. A guidebook describing this route notes that "Eagle and Utowana lakes are long and narrow. They too have privately owned shores but with fewer camps and longer reaches of unbroken woods. Proceeding down the chain and into the Marion River, one has a growing sense of remoteness."

Public Notice and Comment

16. The Adirondack Park Agency notified all adjoining property landowners and those parties as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. The Agency received a total of 96 comment letters from citizens about this project. Two letters expressing concerns and opposition to the project were received during the comment period as provided for in Section 809(2)(d) of the APA Act. Of the remaining ~~92~~ **94** letters received later, one letter expressed support for the project, and the remaining 93 letters expressed concerns about or opposition to the proposed project. Concerns that were expressed include re-design of the subdivision, segmentation/master plan development; shoreline structures, cluster provisions, compliance with the Town of Indian Lake regulations and set-aside acreage, pollution, fire protection, fiscal liability, and potential adverse impacts to:

State lands, open space, aesthetics, wildlife, public recreation, shoreline impacts, scenic river impacts, water quality, wetlands, historic resources, and the Marion River canoe carry access. Potential positive impacts that could result from the project include an increase to the tax base resulting from real property taxes.

Local Government Comment

17. As provided in the Town's Agency-approved local land use program, the Adirondack Park Agency sent notice regarding the above permit application to the Town of Indian Lake Planning Board by letter dated September 15, 2010 seeking the advice of the Planning Board for this proposal. The Agency regulations governing subdivision approval in a Town with an approved local land use program, 9 NYCRR Part 572.13(d), direct the Agency "accept and adopt as its own" any recommendations made by the Planning Board. The Planning Board responded by letter dated February 9, 2011, incorporated herein and summarized as follows:

Item 1 - The Town Planning Board will advise the Agency regarding Class A regional projects. Further, as provided in the local land use program, the Planning Board will not assert any independent jurisdiction over the proposed subdivision application, nor will the Planning Board render any decision of its own with respect to the subdivision, except the Planning Board will determine whether to grant a request from the applicant for a waiver from the Town's road standards for the access road leading from New York State Route 28 to the proposed shared driveways.

Item 2 - The proposed subdivision and "building envelopes" on the individual lots meet the area and setback requirements of the Zoning Code as set forth in Table IV-8 and elsewhere in the Code. Although the lots are each smaller than the minimum 42.7-acre lot size required in this zoning district, the subdivision is proposed as a cluster subdivision, as provided under the Town's Subdivision Regulations. There is a sufficient "set-aside" or "reserve" acreage of 142.31 acres, in addition to the 28.49 acres for Lots 1 through 4 to meet the overall intensity minimum 170.8 acres required for Lots 1 through 4 by the subdivision and zoning regulations for a cluster subdivision.

The Planning Board will not require any area variance for the proposed subdivision.

Item 3 - The Town's maximum height limitation is 35 feet for structures in the RC zone in which the property is located.

Item 4 - The Planning Board finds that the proposed 142.31 acres of "set-aside" or "reserve" acreage for the subdivision is acceptable for a cluster subdivision. The Board believes the

areas of the existing sand and gravel mine (including areas to be mined in future phases) and the area of the existing dwelling on Lot 5 should not be included within the set-aside acreage. The Board recommends the set-aside acreage be specifically identified on a final subdivision map or plat, and that a note be prominently included in the Notes portion of the plat, and shown within the set-aside acreage clearly stating that the 142.31 acres are "set-aside" and restricted from development with additional principal buildings within this reserve acreage.

Item 5 - The Planning Board does not object to the inclusion of the wetland areas within the set-aside or reserve acreage or to appropriate forestry management practices, including logging, taking place on the set aside or reserve acreage.

Item 6 - The Board finds that the existing private access road from New York State Route 28 and bridge over the Marion River, together with the proposed shared private driveways, will provide adequate access to the proposed subdivision lots. In a letter to the Planning Board dated November 23, 2010, the Indian Lake Fire Chief states the road poses no problem for their equipment, with a turn-around located at each end of the road, and spaces for passing mid-length of the road. In addition, the project sponsor will keep the road clear of snow during the winter months.

The Board recommends a note prominently displayed on the final map or plat of the approved subdivision stating that: 1) The access road and driveways are privately owned, and are not owned by, or plowed, paved, patched, maintained or repaired in any way by the Town of Indian Lake, 2) The access road is not eligible for dedication to the Town of Indian Lake unless and until it is improved to the Town's road standards and requirements in effect at the time dedication is sought, 3) The Town is not obligated to accept the road for dedication to the Town even if such improvements are made, and 4) Anyone contemplating any improvements for purposes of dedicating the road to the Town should consult with the Town Board before undertaking any improvements.

The Board further recommends that the Agency require the applicant to prepare draft deeds for transfer of the proposed lots setting forth not only rights of ingress and egress for each lot via the private road and shared private driveways, but also detailing the applicant's responsibilities to maintain the private road and bridge, and the rights and share responsibilities of the lot owners (including establishment of an escrow and cost-sharing) to maintain the road and bridge if the applicant and/or his successor fails to do so. Signature lines should be provided in the deeds for lot purchasers to acknowledge the private nature of the road, bridge, driveways,

and their acceptance of the related limitations and responsibilities. The Board recommended the draft deeds be reviewed by the Agency as part of its review of the application. On February 2, 2011, the Board granted the applicant's request for a waiver from the Town's Road Standards for the access road leading from New York State Route 28 with the four conditions described above.

Item 7 - The Board does not foresee that lot owners will have a problem in locating a private well and septic system on Lots 1 through 4, and there is sufficient separation distance to comply with applicable Town requirements (septic drainage field at least 100 feet from any well, from the mean high water mark of any lake, pond, river, stream or wetland) and State Regulations.

Item 8 - The proposed plans to run the electrical and other utilities underground, at least to points where the road meets the shared driveways is acceptable to the Board.

Item 9 - As a result of the proposed development, it is anticipated that the proposed area of disturbance will exceed one acre. The Board presumes the applicant will submit a compliant Storm Water Pollution Prevention Plan (SWPPP) as a condition of final subdivision approval. The Board believes that acceptable stormwater drainage control can be achieved.

Item 10 - The Board finds that the sizes of the areas proposed for homes and garages on each of the lots is acceptable, and that the proposed locations of such areas are also acceptable.

Item 11 - With regard to the visual impacts of the proposed structures, the Board recommends that clearing and cutting of trees be selective and minimized in order to preserve existing trees to the greatest extent possible, thereby reducing the potential visibility of the homes and garages from Utowana Lake and elsewhere. Construction materials and colors should be in harmony with the forest surroundings and blend - preferably wood siding in neutral or earth tone colors; roofs should be dark in color. Light fixtures should be cast downward. Any accessory structures such as storage sheds should be similarly compatible in materials and color with the surrounding woods, and should be consistent with the related dwelling. If such measures are taken, the Board believes the proposed structures and lots will not be excessively visually obtrusive.

Item 12 - Regarding docks, boathouses, or other shoreline structures, the Board recommends the Agency retain permit jurisdiction over them and require the applicant to include a prominent note on the final map or plat of any approved subdivision stating that no boat docks, boathouses, or other shoreline structures are permitted without prior Agency review and approval of any such structure. The Board recommends the plan also state that Town Planning Board approval of such

structures may also be required. It would be advisable to place the notes in the appropriate area on the final map or plat so as to be readily apparent. The Board also requests that the Agency consult with the Board if any applications for such structures are received.

Item 13 - With regard to the numerous requests from the public for the imposition of a condition requiring the applicant to grant the public an easement for use of the Marion River Carry, the Board does not recommend such a condition. The Board's legal counsel advised the Board there does not appear to be a sufficiently close relationship between the Carry, and the proposed subdivision and its effects to provide an adequate legal justification to impose such a condition.

Item 14 - With regard whether the proposed subdivision and structures would comply with the restriction on development under the Wild, Scenic, and Recreational Rivers System Act (Rivers Act), the board reviewed a map provided by the Agency which indicates the area restricted from development by Part 577 of Agency regulations implementing the Rivers Act. The Marion River is designated as a Scenic River under the Rivers Act and development without an Agency permit is prohibited within 1/4 mile of the river as it winds and turns. The Board is in agreement with the Agency's interpretation that the dam at the westerly end of Utowana Lake constitutes the outlet of the lake and the beginning of the Marion River. It appeared to the Board that the applicant's proposed subdivision would result in one house being located within the restricted (river) area, but it would appear to meet the 250 foot minimum setback requirement for structures. The Board acknowledges the Agency's jurisdiction to implement the Rivers Act within the Adirondack Park and with respect to the Marion River. The Board asks that the Agency re-check its map, verify the extent of the river area, and the proposed locations, and confirm compliance with Part 577 of the Agency's Regulations, and the nature of the Agency permit need if any, under Part 577.

In summary of its advisory comments, the Town of Indian Lake stated the following: "Overall, if this Board was considering whether to approve the subdivision application under the Town's Subdivision Regulations, the unanimous consensus among the five Board members who participated in this review was to approve the application, but with the recommendations of Items 1 through 14 being required conditions of approval rather than mere advisory recommendations".

Pertinent Requirements and Conditions of Local Program

18. The project site is located within the RC zoning district, which requires a minimum of 42.7 acres per principal building or use.

The proposed subdivision and construction of a single-family dwelling on Lots 1 through 4 are permitted uses. The front yard setback is 50 feet from the edge of the right-of-way, the side and rear yard setbacks are 25 feet from the adjacent property line or R.O.W centerline. The maximum height of a structure is 35 feet or three stories, whichever is less. Minimum lot width is 200 feet and the minimum shoreline setback for buildings is 100 feet.

19. The Town of Indian Lake does not have a sanitary code and the New York State Department of Health acts as the Health District Office for the Town.
20. As outlined in the Town of Indian Lake's advisory comments, the Town would approve the proposed project under the Town's Subdivision Regulations, provided the advisory recommendations are implemented as part of the project. The project meets all of the front, side, and rear yard setbacks. In addition, the height of the proposed dwellings will not exceed 35 feet and the dwellings are located greater than 100 feet from the mean high water mark of Utowana Lake and greater than 250 from the mean high water mark of the Marion River.

PROJECT IMPACTS

Local Government Review

21. In order to comply with the Town of Indian Lake's Planning Board advisory comment letter, the project and supporting design plans should be revised and modified to incorporate the advisory letter comments contained in Items 1 through 14. Revision and modification of the design plans will provide for consistency with Town and Agency requirements, and will protect the natural resources on the project site.

Wetlands

22. Although the proposed project involves the subdivision of fringe wetlands along the northern shoreline of Utowana Lake on Lots 1 through 5, a statutorily designated Critical Environmental Area (CEA), no new land use or development is proposed in or proximate to wetlands, and the project will not involve substantial loss of any wetland acreage, function, or benefits derived therefrom, and as a result, adverse impacts to the value "2" rated wetlands will be avoided. Furthermore, the proposed project will not have adverse impacts to the large wetland complex associated with the Marion River in the northern and western portion of the project site, or to the wetland associated with the southern shoreline of Utowana Lake on Lot 5.

23. Because there are wetlands along all of the 437± feet of shoreline on Lot 2, along all but 225± feet of the 1551± feet of shoreline on Lots 1, 3, and 4, and 300 feet of the northern shoreline of Lot 5 contains wetlands and the canoe carry on Utowana Lake, and the depth of water adjacent to all lots tends to be shallow, installation of a dock or boathouse in one or multiple locations along that portion of the shoreline has the potential to adversely affect the integrity of the wetland and impact the water quality of Utowana Lake. Approximate wetland locations are shown on the Project plans submitted with the application. Any proposal involving installation of a dock or construction of a boathouse along that shoreline should be evaluated to determine whether a dock or boathouse would be consistent with the preservation of wetland functions and values and the objectives of the Wild Scenic and Recreational Rivers System Act.
24. Adverse impacts to wetlands, groundwater quality, surface waters, streams, intermittent streams, and the Marion River will be avoided provided installation of the wastewater treatment systems on Lots 1 through 4 complies with the plans referenced herein, complies with New York State Department of Health's "Wastewater Treatment Standards for Individual Household Systems" (10 NYCRR Appendix 75-A), and is installed in strict compliance with Department of Health and Agency standards.
25. Wetlands shown on the plans and/or described herein are intended to alert landowners and others that wetlands are present on the project site. However, this may not identify all wetlands on or adjacent to the project site.

Water Resources

26. Lot 5 contains existing residential development, and no new land use or development is proposed on that lot. Lots 1 through 4 can each support the future construction of one single family dwelling with on-site water supply and on-site wastewater treatment systems. The proposed dwelling footprint is proposed as 5000 square feet on each parcel, and includes the garage, attached porches, and decks. Suitable locations for the on-site wastewater treatment system have been identified on each of those parcels, with each system being sized for a dwelling with up to four bedrooms. On Lots 1 through 4, the existing soils are capable of supporting installation of a conventional shallow absorption trench on-site wastewater treatment system. If properly installed in the location depicted on the site plan and as designed, impacts to the Marion River, wetlands, surface and groundwater resources should be avoided.

Navigable Shorelines

27. Pursuant to Appendix Q-6 of the Agency's Rules and Regulations, the Marion River is a designated Scenic River, and begins at the outlet of Utowana Lake, with the river terminating at Raquette Lake. The outlet is located at the western end of Utowana Lake, and is defined as the spillway (dam). Remnants of old footers and breakwater are located on land immediately adjacent to the spillway with remnants of old cribbing located in the lake. The remnants are from a steamboat landing used in the early 1900's. From the spillway traveling westward, there is approximately 7/8 of a mile where the Marion River is non-navigable. Portage from the spillway at the western end of the lake to the navigable portion of the Marion River is accomplished by using the existing Marion River canoe carry, consisting of an old railroad bed. Once past this portage, the Marion River is navigable to Raquette Lake. The Marion River originates on Lot 5 and winds westward on the project site to Raquette Lake. The 1/4 mile river area extends onto Lots 3, 4, and 5, with no portion of the river located on Lots 3 and 4. Adverse impacts to the shoreline of the Marion River will be avoided since no new land use or development is proposed on Lot 5.
28. The wetland boundary along the northern shoreline of the lake is coincident with the mean high water mark of Utowana Lake, and is shown on the survey/site plan. All proposed development on Lots 1 through 4 is located greater than 100 feet from the mean high water mark of the lake. No new land use or development is proposed on Lot 5. Other than the remnants of the steamboat landing and portage area on Lot 5 near the spillway, the remainder of the shoreline associated with Utowana Lake on both the north and south shore contains undeveloped shoreline that is stabilized, and consists of existing shrubby, woody-stemmed, and forested vegetation. To maintain the integrity and stability of the shoreline, and to avoid adverse visual, wetland, and water quality impacts, new land use or development involving any vegetative cutting within 100 feet of the mean high water mark of Utowana Lake should require prior Agency review and approval in the form of a new or amended permit or determination of permit compliance.
29. In order to avoid adverse open space and aesthetic impacts on Lot 5, no vegetative cutting within 250 feet of the mean high water mark of the Marion River should occur without prior Agency review and approval or determination of permit compliance.

Land Resources

30. Portions of the project site contain slopes ranging from 15 to greater than 25 percent. New land use or development on any slopes greater than 15 percent should receive prior Agency

review and approval to minimize the potential for slope failure, erosion, sedimentation, water quality impacts, open space and aesthetic impacts.

Wildlife Resources

31. The wetland complex between New York State Route 28 and the southern shoreline of Utowana Lake and the much larger wetland complex located in the northern and western portions of Lot 5, and the fringe wetlands along the northern shoreline of Utowana Lake constitute high quality wetlands and provide habitat for wildlife. In order to preserve the integrity of that habitat, any new land use or development proposed within 100 feet of wetlands should receive prior Agency review and approval to avoid impacts to wetlands and wildlife.

Open Space/Aesthetics

32. Although development areas have been shown on Lots 1 through 4, requiring submission of final site development plans for prior Agency review and approval will allow Agency staff to assess the specific proposals for potential environmental impacts. Maintenance of a 100-foot no-cut vegetative buffer along the shoreline of Utowana Lake will help to ensure that limited visibility of the dwellings is maintained. Further, limiting vegetative cutting to only that which is necessary for construction of the dwelling and installation of the on-site wastewater treatment system will also limit the potential for adverse open space and visual impacts. New or additional vegetative cutting on the project site should receive prior Agency review and approval to evaluate the potential for adverse open space impacts and visual impacts to Utowana Lake, the Marion River, lands of the State of New York, and adjoining properties.
33. Provided the exterior of the dwellings use natural materials, are clad in earth-toned colors to blend with the existing surrounding vegetation, and are no greater than 35 feet in height, adverse visual and open space impacts will be avoided.
34. All exterior lighting for the development on the lots authorized herein should be placed on motion detector switches to temporarily light areas, should be fully shielded, and be directed downward to avoid adverse visual and open space impacts to the nighttime sky, Utowana Lake, the Marion River, adjoining and nearby State land, and to surrounding properties.

Public Recreation

35. Recreational users of the Marion River canoe carry have

historically been permitted use of the carry by the applicant on an informal basis. There is no written easement or right-of-way providing for this use. Use of the carry generally occurs from April to November. The proposed subdivision and development on Lot 4 is located greater than 250 feet east of the carry at its closest point. Provided the dwellings are constructed in the locations shown on the survey/site plan, no boathouses are permitted on the shoreline of Utowana Lake and vegetative cutting associated with the residential development is minimized, recreational users will still experience a remote wooded atmosphere for travel on the waterway.

Critical Environmental Area(s)

36. Since the proposed development on Lots 1 through 4 is located greater than 300 feet from the edge of the right-of-way of New York State Route 28, and no new land use or development is proposed in or proximate to wetlands, adverse impacts to the highway critical environmental area and wetlands will be avoided.

Historic Sites or Structures

37. Lot 5 contains a dwelling that is greater than 50 years old, and is within one mile of an area identified as containing potential archeological resources. In a letter dated August 17, 2010 from the New York State Office of Parks, Recreation, and Historic Preservation (SHPO), it was determined the proposed project will have "No Impact" upon cultural resources in or eligible for inclusion in the State and National Register of Historic Places. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

**THIS EXTENDS APA PROJECT FINDINGS AND
ORDER 2007-139 WHICH WAS ISSUED SEPTEMBER 18, 2008**

CONCLUSIONS OF LAW

1. The project will meet all of the pertinent requirements and conditions of the approved local land use program of the Town of Indian Lake upon submission of a revised subdivision plat meeting the terms of the Town's advice to the Agency pursuant to the Agency-approved local land use program and submission of proposed access easement language addressing utility location, driveway construction and maintenance and the private status of all access ways proposed for the project as outlined in Town advice.
2. The Agency will retain jurisdiction over any dock or boathouse proposed for these lots pursuant to jurisdiction over land uses and development related to subdivisions pursuant to §810(e)(3) of the Adirondack Park Agency Act (Executive Law, article 27).
3. The project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived therefrom.
4. The Agency has fully considered all statutory and regulatory criteria for project approval as set forth in §§809(9) and 805(4) of the Adirondack Park Agency Act (Executive Law, article 27) and implementing regulations (9 NYCRR Part 574), the pertinent requirements of the Town of Indian Lake local land use program, the pertinent requirements of §24-0801(2) of the NYS Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR Section 578.10; and implementing regulations (9 NYCRR 578[1][2]), §14.09 of the Historic Preservation Law (PRHPL article 14); and the pertinent requirements of §15-2709 of the NYS Wild, Scenic and Recreational Rivers System Act (ECL, Article 15, Title 27) and 9 NYCRR Section 577.8. The Agency hereby finds that project conforms to all pertinent criteria, provided it is undertaken and continued in accordance with the conditions herein and in Permit 2007-139.

**NOW, THEREFORE, UPON THE FOREGOING, THE DEPUTY DIRECTOR,
REGULATORY PROGRAMS IS AUTHORIZED AND DIRECTED TO ISSUE PERMIT
2010-70, UPON FULFILLMENT OF THE FOLLOWING CONDITIONS:**

1. Marion River Railroad Carry Co., Inc. shall prepare and submit final plans for on-site wastewater treatment systems

capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

REW:JSB:VY:BFG:mlr

THIS IS A TWO SIDED DOCUMENT



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

APA Order Granting
Variance **2010-097**

Date Issued: **March 21, 2010**

In the Matter of the Application of

MARILYN SERINO AND LEE SERINO

for a variance from the shoreline restrictions of Executive
Law § 806

To the County Clerk: This Order
must be recorded on or before
May 23, 2011. Please index this
Order in the grantor index under the
following names:

- 1. Marilyn Serino**
- 2. Lee Serino**

SUMMARY AND AUTHORIZATION

This Order, issued to Marilyn Serino and Lee Serino, grants a variance on conditions from the shoreline restrictions of Executive Law §806, authorizing the expansion of a single family dwelling within 100 feet of the mean high water mark of Lake George in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Dresden, Washington County.

Nothing contained in this Order shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

Pursuant to §806(1)(a)(2) of the Adirondack Park Agency Act (Executive Law, Article 27), all single family dwellings in a Resource Management land use area must be set back at least 100 feet from the mean high water mark of any lake. Pursuant to

§575.5(b) of Agency regulations implementing this provision (Title 9 of the New York Code of Rules and Regulations), a lawfully-existing single family dwelling within a shoreline setback area is limited to a minor expansion in height.

Pursuant to §806(3) of the Adirondack Park Agency Act, the Agency may vary this standard where there are practical difficulties or unnecessary hardships in the way of carrying out the restriction.

The applicants request a variance from §806(1)(a)(2) of the Adirondack Park Agency Act and §575.5(b) of Agency regulations to allow for the expansion by approximately 10 feet in height of a lawfully-existing existing single family dwelling located within 100 feet of Lake George in a Resource Management land use area.

VARIANCE DESCRIPTION AS PROPOSED

The variance site is an approximately 0.17-acre parcel of land located within Lake George in the Town of Dresden, Washington County, in an area classified Resource Management by the Adirondack Park Land Use and Development Plan Map. It is identified on Town of Dresden Tax Map Section 23.20, Block 2, as Parcel 1.

The variance site consists of a single island, accessible only by boat or footbridge, and owned entirely by the Serino family since 1985. A single family dwelling was constructed on the island in 1970. Because of the size and configuration of the site, all of this dwelling is located within the shoreline setback area, with the closest point to Lake George being a deck on the northwest side of the dwelling approximately 6 feet from the mean high water mark. The closest point of the foundation of the dwelling is approximately 12 feet from the mean high water mark. The dwelling sits on bedrock.

This single family dwelling currently measures 17 feet 10 inches in height, with a footprint of 864 square feet, and contains a single story with three bedrooms, one bathroom, a kitchen, a combined living room/dining area, and two attached decks. The applicants propose to add a second story by increasing the dwelling height to 26.5 feet. This proposal involves reconfiguring the interior of the dwelling so that one of the existing bedrooms becomes a stairway and closet, with three bedrooms and a bathroom constructed on the second floor, for a total of five bedrooms and two bathrooms in the dwelling. During the review process, the applicants removed a proposed screened porch, additional bathroom, balcony, and large bay

window from their plans. All materials for the proposed work will be brought to the island over the existing footbridge.

The applicants use their single family dwelling solely for residential purposes. Due to a lack of bedroom space, some family members visiting the dwelling currently sleep on couches or the floor. The proposal involves no change to the use of the dwelling; instead, the variance request was submitted to provide additional bedroom and bathroom space for the same number of visiting family members.

The project is shown on six sheets of plans entitled, "Designed for Ralph & Marilyn, Lee & Joann Serino", prepared by Williams & Williams Designers Incorporated, and last revised August 11, 2010. Reduced-scale copies of Plan Sheets are attached as a part of this Order for easy reference. The original, full-scale maps and plans referenced in this Order are the official plans for the project.

CONDITIONS

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed, and the Conditions noted herein. In the case of conflict, the Conditions control. Failure to comply with this Order is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Order.
2. This Order is binding on the applicants, all present and future owners of the variance site and all contractors undertaking all or a portion of the project. Copies of this Order and all the approved plans referred to herein shall be furnished by the applicants to all contractors prior to undertaking the activities authorized herein. All deeds conveying all or a portion of the lands subject to this Order shall contain references as follows: "The lands conveyed are subject to Adirondack Park Agency Order 2010-097, issued March 21, 2011, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
3. This project may not be undertaken until this Order is recorded in the Washington County Clerk's Office. This Order shall be recorded on or before May 23, 2011, in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the site on the recordation date.

4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.
5. This Order grants a variance for expansion of the existing single family dwelling on the variance site to the extent depicted on the plans referenced in the Variance Description as Proposed and as modified by the Conditions stated herein. There shall be no change to this single family dwelling, including the addition of any basement area, enclosure of any existing deck, construction of any new deck, or other expansion, other than as authorized herein.
6. All exterior surfaces of the expanded dwelling, including the roof, siding, and trim of the dwelling, shall be maintained in natural earth-tone colors that blend with the existing vegetation.
7. All new or replacement exterior lights on the variance site shall employ full cut-off fixtures that are shielded to direct light downward and away from Lake George and nearby shorelines.
8. Prior to undertaking any earthwork on the site, silt fence shall be properly installed parallel to the existing contours between the dwelling and Lake George. The silt fence shall be embedded into the earth a minimum of six inches. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed soils are stabilized. The fabric shall be inspected at least once a week and after every major storm event to ensure the fabric and supports are intact and to remove accumulated sediments so as to maintain the fence in a functional manner.
9. No trees or other vegetation may be cut, trimmed, removed, or otherwise disturbed on the variance site without prior written approval from the Agency. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard.
10. All sawdust and other building debris shall be contained, collected and disposed of in a DEC approved waste disposal facility. The means for containing the sawdust and other building debris with fine materials shall include

conducting construction activities within a completely contained portion of the existing building or constructing a completely contained area which includes an impervious bottom and minimum 8 foot tall impervious walls.

FINDINGS OF FACT

1. The record in this matter consists of the variance request, hearing testimony, and supporting materials.
2. A variance of the terms of the Adirondack Park Agency Act is not personal and runs with the land. Recording of this Order ensures notice to subsequent owners of the land.

Background/Site Configuration

3. The variance site is an approximately 0.17-acre pre-existing parcel, comprised of an island accessible by boat or footbridge. The single family dwelling on the island was constructed in 1970, and the entire site was purchased by the Serino family in 1985. Because of the size and configuration of the island, all of the dwelling is located on bedrock and within the shoreline setback area, with the closest point to Lake George being a deck on the northwest side of the dwelling approximately 6 feet from the mean high water mark. The closest point of the foundation of the dwelling is approximately 12 feet from the mean high water mark. Requiring that no changes occur to this dwelling other than as authorized herein will ensure that the bedrock underneath the dwelling is not disturbed, no additional foundation supports are added closer to the lake, and no adverse visual, stormwater runoff, erosion, or other impacts occur.

Existing Environmental Setting/Character of the Area

4. The shoreline surrounding the variance site is designated as Moderate Intensity Use, and is developed with a mixture of commercial, public, and residential uses and structures. A commercial marina, containing a boat gas station and boat rentals, is located adjacent to the site. A New York State Department of Environmental Conservation solid waste transfer station and a ranger building are also located in the immediate vicinity. The nearby shoreline is also developed with a number of single family dwellings, docks, and boathouses.

Visibility

5. The existing dwelling is partially screened from views from Lake George, with several trees and shrubs surrounding the structure. Retention of the existing vegetation, maintenance of the expanded dwelling in earth tones, and use of cut-off lighting will ensure that the expanded structure remains partially screened and does not adversely impact the natural, scenic, aesthetic, or open space resources of the surrounding area or its aesthetic character.

Alternatives

6. Some alternatives for expansion exist without a variance, but with significantly more environmental impacts outlined in the hearing record.

Public Notice and Comment

7. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations and published a Notice of Variance Application in the Environmental Notice Bulletin. One comment letter was received which requested that "the building be painted a color that blends with the landscape". No objections to the variance request have been received.

Public Hearing

8. On February 23, 2011, a public hearing on the variance request was held in the Town of Dresden. The hearing was attended by Agency staff, one of the applicants, and one member of the public. No objections were made to the proposal during the hearing.

Other Regulatory Permits and Approvals

9. Wastewater from the existing dwelling flows to Fredericks Point Sewer District #2, which was authorized in 2003 by Agency permit 2002-246. On July 4, 2010, The Town confirmed that this sewer district can accommodate the authorized dwelling expansion.
10. Washington County has issued a building permit for the authorized expansion.

Variance Factors

The following findings of fact evaluate the proposal against the variance factors set forth in 9 NYCRR §576.1.

Whether there are practical difficulties in carrying out the strict letter of the shoreline restrictions?

11. The applicants have demonstrated that there are unique practical difficulties present on the site based on the size and configuration of the island and the location of the pre-existing single family dwelling.

Whether adverse consequences from denial outweigh the public purpose served by the restrictions of 9 NYCRR Appendix Q-3?

12. Denial of the requested variance would significantly limit the applicants' ability to expand their pre-existing dwelling. Addition of bedrooms or bathrooms would instead be possible only through the construction of a basement beneath the dwelling and the enclosure of existing decks, which would risk disturbance to

the water quality of Lake George, removal of trees and other vegetation, and increased visibility of the dwelling from Lake George.

13. Under these unique facts, the applicants have demonstrated that the benefits to the applicants and the surrounding area from granting the variance are greater than the benefit to the public by strict adherence to the shoreline restrictions.

Whether the application requests the minimum relief necessary?

14. The proposed height expansion allows minimal relief for the comfortable accommodation of the applicants' family members. During the application process, the applicants eliminated a screened-in porch, an additional bathroom, a balcony, and a bay window from their proposal, to minimize the extent of the request.

Whether granting the variance will create a substantial detriment to adjoining or nearby landowners?

15. The area surrounding the variance site contains numerous uses and structures, including a commercial marina, a solid waste transfer station, a ranger building, large dwellings, boathouses, and docks. The applicants will retain the trees that currently screen their dwelling and maintain the expanded dwelling in earth tones. The Agency has not received any negative public comment on this proposal.

Whether the difficulty can be obviated by a feasible method other than a variance?

16. Alternatives intended to avoid the variance could cause significant environmental impacts and require removal of trees and other vegetation that currently screen the dwelling and help to protect the water quality of the lake.

The manner in which the difficulty arose?

17. The difficulty in this matter arose from the applicants' inability to expand their pre-existing dwelling laterally or in height without a variance from the Agency, because of the location of the dwelling and the configuration of the island on which the dwelling sits. The applicants seek to expand this dwelling to provide sufficient bedroom and bathroom space for the same number of family members who currently visit.

Whether granting the variance will adversely affect existing resources?

18. The applicants will expand their dwelling using only materials brought to the island over the existing footbridge. No blasting of bedrock or addition of foundation or other impervious surface will occur. The expansion will not cause any wastewater impacts, as the dwelling is connected to a municipal sewer district. Because there will be no increase in impervious surface on the site, there will be no added stormwater runoff. In addition, the applicants will maintain all of the existing vegetation on the island and paint the expanded dwelling in colors that match the natural surroundings.

Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above?

19. The conditions included in this Order will ameliorate any potential adverse effects.

CONCLUSIONS OF LAW

1. There are practical difficulties in the way of carrying out the strict letter of the shoreline restrictions.
2. The adverse consequences resulting from denial of this request are greater than the public purpose sought to be served by the restrictions.

3. The factors set forth in 9 NYCRR § 576.1(c) have been considered:
 - a. whether the application requests the minimum relief necessary;
 - b. whether there will be a substantial detriment to adjacent or nearby landowners;
 - c. whether the difficulty can be obviated by a feasible method other than the variance;
 - d. the manner in which the difficulty arose;
 - e. whether granting the variance will adversely affect the resources of the Park; and
 - f. whether the conditions noted herein will ameliorate any adverse effects.

4. The variance, pursuant to §806 of the Adirondack Park Agency Act and 9 NYCRR Part 576, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.

ORDER issued this day
of , 2011.

ADIRONDACK PARK AGENCY

BY: _____
Richard E. Weber III
Deputy Director (Regulatory Programs)

STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

On the day of in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public

REW:SHR:CCP:mlr

THIS IS A TWO-SIDED DOCUMENT



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

**APA Project Permit
2010-154 and 2005-52B**

Date Issued: March 21, 2011

In the Matter of the Application of

**NEW YORK RSA NO. 2 CELLULAR PARTNERSHIP
d/b/a VERIZON WIRELESS, LAKE PLACID
VACATION CORPORATION, and VERIZON NEW
YORK, INC.**

for a permit pursuant to §809 of
the Adirondack Park Agency Act

To the County Clerk: This permit
must be recorded on or before
May 23, 2011. Please index this
permit in the grantor index
under the following names:
**1. New York RSA No. 2 Cellular
Partnership d/b/a Verizon
Wireless
2. Lake Placid Vacation
Corporation
3. Verizon New York, Inc.**

SUMMARY AND AUTHORIZATION

New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless, Lake Placid Vacation Corporation, and Verizon New York, Inc. are granted a permit, on conditions, authorizing new structures in excess of 40 feet in height (i.e., a telecommunications antenna array and roof façade), in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Town of North Elba, Essex County.

This project may not be undertaken, and no transfer deed shall be recorded, until this permit is recorded in the Essex County Clerk's Office. This permit shall expire unless so recorded on or before May 23, 2011 in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when the antenna array, new roof gables, equipment shelter, and associated equipment have been installed on the project site.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

The project consists of new structures in excess of 40 feet in height (i.e., a telecommunications antenna array and roof facade), a Class A regional project requiring an Agency permit pursuant to §810(1)(a)(4) of the Adirondack Park Agency Act. Agency Permit 2005-52, which authorized renovations to the existing roof facade, is amended herein to account for changes in the design and height of the roof facade.

PROJECT LOCATION

The project site consists of three adjoining parcels totaling 8.94± acres and located on Olympic Drive in both the Village of Lake Placid and Town of North Elba, Essex County, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map. The 8.94±-acre site is designated as Tax Map Parcel 42.0GK-1-4.1 (8.44± acres owned by the Lake Placid Vacation Corporation) and Tax Map Parcels 42.0GK-1-2 and 42.041-1-20 (0.50± acres owned by Verizon New York, Inc.). The Lake Placid Vacation Corporation owns 12 adjoining tax parcels in the Town of North Elba/Village of Lake Placid on lands classified Hamlet, including the one that is part of the project site, which total 30.55± acres.

PROJECT DESCRIPTION AS PROPOSED

The project as proposed and conditionally approved herein involves the removal of two existing omni-directional antennas (whip antennas) currently mounted on the roof of the Lake Placid Crowne Plaza Resort & Golf Club and their replacement with a twelve-panel antenna array concealed behind radio-frequency transparent roof gables designed to blend with the building facade, similar to the gables approved in Agency Permit 2005-52. Any exposed antennas, cables, and appurtenances will be painted to blend with the building facade.

The project also involves the installation of a 10-foot by 20-foot equipment shelter at the ground level within an 18-foot by 28-foot leased parcel and the installation of a 45 KW generator on a 4.5-foot by 9-foot concrete pad within a separate 6-foot by 12-foot leased parcel. Both the equipment shelter and generator will be behind (to the west of) the hotel building. Easements

will provide for cable and utility connections between the antennas, equipment shelter, and generator.

The omni-directional antennas to be removed reach a height of 53 feet and 63.5 feet above the first floor (AFF). The panel antennas to be installed reach a height of 48 feet AFF behind the roof gable. The four gables to be constructed will each reach a height of 47 feet 10 inches AFF at their peak and will be built of radio-frequency transparent materials.

The project is shown on a set of:

- engineering plans (12 sheets) titled "Project# 2007267829, Lake Placid, 1 Olympic Drive/12946," prepared by Costich Engineering, with 10 sheets last dated January 21, 2011 and 2 sheets last dated March 1, 2011;
- conceptual architectural plans (3 sheets) titled "Lake Placid Crowne Plaza Parapet Façade," prepared by Edgecomb Design Group, and dated December 22, 2010.

A reduced scale copy of three plan sheets are attached as part of this permit for easy reference: Zoning Detailed Plan (Sheet CA101) and Zoning Elevations (CA103) from the engineering plans and Proposed Parapet (Sheet A4.1) from the conceptual architectural plans. The original, full-scale maps and plans referenced in this permit are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. This permit is binding on the applicants, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and the site plan maps and plans referred to herein shall be furnished by the applicant to all subsequent owners or lessees of the project site prior to sale or lease, and by the applicants and/or any subsequent

owner or lessee to all contractor(s) undertaking any construction activities pursuant to the proposed project.

All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2010-154 and P2005-52B issued March 21, 2011 the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."

3. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Visual/Open Space Impacts

4. The authorized antennas and support poles shall be concealed behind the radio-frequency transparent roof gables constructed in the location, of the dimensions, and of the conceptual design shown on the project plans. Any exposed antennas, cables, and appurtenances shall be painted to blend with the building and façade.
5. Prior to installation of the antennas, stub tower, support poles or roof gables, New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless, its successors or assigns, shall submit the final design plans and specifications for the roof gables and a plan for construction phasing to the Agency for its prior review and approval in the form of a letter of permit compliance. The Agency's review will include consultation with the Town of North Elba/Village of Lake Placid Joint Review Board.
6. The four roof gables should be installed prior to or within 30 days of the date that the stub tower, support poles, and antennas are installed. The steel base of the tower, equipment shelter, generator, and any cables or ancillary equipment may be installed as soon as this permit is recorded in the Essex County Clerk's Office.
7. There shall be no lighting of the antenna array or the roof gables without prior Agency review and approval in the form of a new or amended Agency permit.
8. If natural causes such as wind, ice, snow, fire, or another event beyond the control of the operator of the antennas authorized herein results in the complete loss or partial

damage to the roof gables that conceal the antennas, then New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless, its successors or assigns, shall restore the concealing structures within 6 months. Prior to any modification of the roof gables' location, dimensions, or design, a plan for such modification shall be submitted to the Agency for its prior review and approval in the

form of a letter of permit compliance, or a new or amended permit. This condition does not apply to regular maintenance or in-kind replacement of the antennas or roof gables, or any appurtenances related thereto, which may occur without prior Agency review and approval, including immediate or temporary replacement of the antennas to ensure continuity of service after the natural disaster.

Review of Future Development

9. Any future new land use and development on the 8.94±-acre project site involving the construction of any new radio-frequency transparent roof gables or the addition of any new antennas, parabolic dishes, or other communications equipment to the Crowne Plaza Resort, shall require prior Agency review and approval in the form of a new or amended Agency permit. Maintenance and/or "in kind" replacement of the roof gables, antennas, equipment building and other appurtenant facilities authorized herein may occur without prior Agency review and approval.

Co-Location

10. The Lake Placid Vacation Corporation and Verizon New York, Inc., their successors and assigns, shall make space available on the project site to other FCC-licensed carriers for their use in creating cellular telephone "cells" and to other entities to the extent that space is available at the then-current market rate customarily charged for such space leases. However, such further use shall require prior review and approval from the Adirondack Park Agency, and will be subject to the environmental impact analysis required by law and the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park." Should the carriers and/or owners be unable to agree on the terms of the lease for such co-location; they shall submit the dispute to mediation or arbitration pursuant to the guidelines of a nationally recognized dispute resolution organization.

Documentation of Construction

11. The Agency shall be provided with color photographs (print with a backup electronic copy) showing the completed antenna array, roof gables, and equipment compound within 30 days of project completion. Photographs shall be taken from the project site and from Main Street (October 2010/March 2011 Photo Station 1), Hillcrest Avenue (October 2010 Photo Station 5 and March 2011 Photo Station 2), and Mirror Lake Drive (October 2010 Photo Station 3). From the project site, photographs showing the entire completed project shall be provided. From the three photo stations, digital equivalent 55 mm and 85 mm lenses shall be employed. All photographs must clearly identify the date the picture was taken, the location of the photograph, and the lens length employed. Compliance photographs shall be taken on a clear day with little cloud cover.

Discontinuance of Use

12. If use of the antennas for the authorized cellular telephone, voice, data or other forms of wireless communications is discontinued for more than six months, New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless, its successors and assigns, shall remove the antennas from the site within the following year. Once the time frames for removal have expired according to this condition, replacement of the antennas on the resort roof for cellular telephone, voice, data or other forms of wireless communications shall be subject to review and approval by the Agency in the form of a new or amended permit. The landowners, their successors and assigns shall allow timely removal of the antenna array pursuant to this condition.

FINDINGS OF FACT

Deed Reference

1. The Lake Placid Vacation Corporation portion of the project site (Village of Lake Placid Tax Map Parcel 42.0GK-1-4.1) is described in a deed from New York Telephone Company to Lake Placid Vacation Corporation dated October 25, 1976 and recorded at the Essex County Clerk's Office on November 12, 1976 in Liber 625 of Deeds at page 7.
2. The Verizon New York, Inc. portion of the project site (Village of Lake Placid Tax Map Parcel 42.0GK-1-2 and Town of North Elba Tax Map Parcel 42.041-1-20) is described in a deed from Lake Placid Vacation Corporation to New York

Telephone Company dated October 27, 1976 and recorded at the Essex County Clerk's Office on November 12, 1976 in Liber 625 of Deeds at page 35.

3. The Lake Placid Vacation Corporation owns 12 contiguous tax parcels (totaling 30.55± acres) in the Town of North Elba/Village of Lake Placid on lands classified Hamlet on the Adirondack Park Land Use and Development Plan Map, including the 8.44±-acre parcel that is part of the project site. The Lake Placid Vacation Corporation owns two additional contiguous parcels (totaling 26.2± acres) that are west of the project site in the Town of North Elba and classified Moderate Intensity Use on the Adirondack Park Land Use and Development Plan Map.
4. Verizon New York, Inc. owns two contiguous parcels (totaling 0.5± acres) in the Town of North Elba/Village of Lake Placid on lands classified Hamlet on the Adirondack Park Land Use and Development Plan Map, both of which are part of the project site.

Applicant

5. New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless is a public utility and wireless telecommunications company licensed by the Federal Communications Commission (FCC) and authorized to do business in Essex County, New York.

Background/Prior History

6. The existing Lake Placid Crowne Plaza Resort & Golf Club, formerly known as the Holiday Inn, was constructed prior to the August 1, 1973 effective date of the Adirondack Park Land Use and Development Plan and pursuant to approval by the Village of Lake Placid.

Other Prior Agency Reviews and Determinations

7. The project site has been the subject of several previous Agency reviews and determinations. The following Agency determinations pertained to various expansions and renovations of the resort and its associated structures and infrastructure: Jurisdictional Determination J84-85 and Project Permits P86-14, P86-14A, P86-14B, P90-500, P2005-52, P2005-52A, and P2007-315. They are described in more detail in Agency Permit 2007-315. The following Agency determinations pertained to communications structures on the roof of the resort: Jurisdictional Determinations J94-418, J95-119, J95-589, and J2001-289, and Project Permits

P2002-42 and P2004-239. They are described in more detail in Agency Permit 2004-239.

8. There are several antennas and other communications equipment located on the roof of the Lake Placid Crowne Plaza Resort & Golf Club. Some were in place prior to the effective date of the Adirondack Park Land Use and Development Plan; others were the subject of prior Agency jurisdictional determinations and permits. A site plan titled "Holiday Inn Roof Inventory," prepared by Clough, Harbour & Associates for Independent Wireless One Leased Realty Corporation (both of Albany, New York), and dated May 22, 2002 identifies the existing antennas and satellite dishes that were in place as of that date. Subsequent Agency permits authorized additional antennas and related equipment. Agency Permit 2002-43, issued to Independent Wireless One Leased Realty Corporation on July 28, 2002, authorized the placement of an antenna array, GPS antenna, and equipment cabinets on the resort roof. Agency Permit 2004-239, issued to Nextel Partners, Inc. on January 18, 2005, authorized the installation of three flat panel antennas and the placement of an equipment shelter with attached GPS antenna on the resort roof.
9. As stated in Agency Permits 2002-43 and 2004-239, the circumstances surrounding the placement of communications equipment on the roof of the Crowne Plaza Resort, some placed after the May 22, 1973 enactment date of the Adirondack Park Agency Act, were reviewed by the Agency's Associate Counsel and Assistant Director of Regulatory Programs. Pursuant to staff's delegated authority, the Agency's Associate Counsel and Assistant Director determined that the Agency would not pursue, with the Lake Placid Vacation Corporation, any violations for existing communications equipment placed on the roof of the Crowne Plaza Resort after the date of the Act. This determination was based on the rationale that the existing communications equipment on the roof of the resort either 1) pre-existed the enactment date of the Act, 2) were placed there pursuant to a valid Agency non-jurisdictional determination, or 3) were placed there under the assumption, arguably encouraged by the non-jurisdictional determinations, that new structures lower than the pre-existing tower/antennas did not require Agency approval.

Amendment of Agency Permit 2005-52

10. Agency permit 2005-52, issued June 13, 2005, authorized expansion of the resort, which was undertaken, and renovation to the resort façade, which has not yet been

undertaken. The 2005-52 project is considered "in existence" and, therefore, the permit remains valid. The proposed project modifies the roofline portion of the façade design authorized in Agency Permit 2005-52, using a similar "alpine roof" style with peaked gables and "wooden" timbers, and is amended as described herein.

11. Condition 5 of Agency Permit 2005-52 addresses height and is amended as follows. The existing height of the roof's parapet (i.e., the horizontal roofline) is 37.5 feet above the first floor (AFF), equivalent to 2,008.5 feet above mean sea level (AMSL). The roofline design authorized by Agency Permit 2005-52 included four roof gables and six dormer windows (all on the east side of the roof), having a parapet height of 42.0 feet AFF and a gable-peak height of 44.0 feet AFF. The roofline design authorized and amended herein includes, instead, four roof gables (three on the east side of the roof, and one on the north side) and no dormer windows, having a parapet height equal to the existing parapet height (37.5 feet AFF) and a taller gable-peak height of 47 feet 10 inches AFF. The antenna array will be located behind the middle of the three east-roof gables and will reach a height of 48 feet AFF. Agency Permit 2005-52 also authorized changes to the building's exterior below the roofline.

That portion of the project, including modifying the existing brick pillars to resemble wooden timbers, is not amended herein and may still be undertaken as originally authorized.

12. Condition 6 of Agency Permit 2005-52 requires exterior building materials to be of warm earth tone colors, in shades of brown or green, and remains in effect. Pursuant to Condition 5 of this permit, Agency staff will review the final design of the current project, including exterior materials and colors.
13. Condition 7 of Agency Permit 2005-52 addresses lighting and remains in effect and is clarified as follows. Exterior lights authorized by Agency Permit 2005-52 may be installed, provided they are at or below the height of the existing parapet (37.5 AFF), fully-shielded, and directed downward. Pursuant to Condition 7 of this permit, there shall be no lighting of the proposed antenna array or any of the roof gables without prior Agency review and approval.

Project Alternatives

14. As part of its application to the Agency, New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless (Verizon) described the alternative locations it explored on the roof of the Crowne Plaza Resort, as well as alternative concealment options for the antennas proposed and authorized herein. The rooftop location was chosen, according to Verizon, based (i) on structural and radio-frequency requirements and (ii) the fact that several modifications to the existing resort structure eliminated the feasibility of several of their alternatives. Verizon did not explore alternative locations on other property as part of this project. However, Verizon maintains that even after replacing and sectorizing antennas at its other Lake Placid antenna locations, the replacement and sectorization of its existing omni-directional antennas on the rooftop of the Crowne Plaza Resort is still necessary for purposes of improving the overall coverage, capacity, and reliability of the service it provides to Lake Placid. Verizon initially proposed a set of five conceptual designs (i.e., no concealment, wrapping the antennas in radio-frequency transparent sheeting, and three different cupola designs), and initially focused on one of the cupola designs for their application to the Agency. After receiving feedback from the Town of North Elba/Village of Lake Placid Joint Review Board on the original cupola design, Verizon revised their proposal in February 2011 to instead conceal their antennas with a series of four radio-frequency transparent roof gables.

Existing Environmental Setting

15. The 8.44±-acre portion of the project site owned by the Lake Placid Vacation Corporation contains the Lake Placid Crowne Plaza Resort & Golf Club complex, including associated accessory structures, parking areas, and open space. The 0.50±-acre portion of the project site owned by Verizon New York, Inc. contains a one-story building.
16. There are no wetlands, streams, water bodies, or statutory "critical environmental areas" located on the project site.

Character of the Area

17. The project site and surrounding area is within the Village of Lake Placid, an intensively developed area with commercial, residential, and public uses. The Olympic Arena complex, a large structure, is located immediately below the site at the foot of Olympic Drive. Hillcrest Avenue to the east of the site is a developed residential area. Main Street in downtown Lake Placid has numerous

commercial uses built in close proximity to each other. All of this development contributes to the existing, substantially developed character of the area immediately surrounding the project site.

18. The project site is located on top of a hill and is visible from public use areas - primarily from Main Street, Mirror Lake, and portions of the public walkway around Mirror Lake.
19. The Crowne Plaza Resort may be seen from some High Peak mountains and hiking trails, as well as from the Olympic Ski Jumps. Such views, however, are very distant and in the context of the entire Village of Lake Placid. Therefore, the rooftop antennas and roof gables, as authorized herein, would not be easily discernable or contrast significantly from those vantage points.

Public Notice and Comment

20. The Agency twice notified all adjoining landowners and those parties as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin, once in November 2010 (for the original cupola design) and once in March 2011 (for the revised roof gable design). One comment was received from a Main Street business owner in support of the project.
21. The Agency held a public information meeting regarding the originally proposed project (the antenna array concealed by a cupola) on November 17, 2010 in the Village of Lake Placid, immediately following a regular meeting of the Town of North Elba/Village of Lake Placid Joint Review Board (JRB). No members of the public attended the public information meeting. Agency staff instead updated the JRB members on the project and received their comments. The JRB stated that they (a) have jurisdiction over the project, (b) were concerned over the size, shape, and location of the cupola, and (c) felt the prominent location of the Crowne Plaza warranted careful attention to the visual impacts of the project.
22. At the Agency's Regulatory Programs Committee meeting of March 17, 2011, the Committee Chair requested staff to clarify the Applicant's intended construction phasing of the concealment structures in relation to the proposed tower structure and antennas. Agency staff contacted Verizon representatives and officials of the Town of North Elba/Village of Lake Placid Building and Planning

Department on March 17, 2011 to seek this clarification. Verizon representatives indicated it will be more practical to install the stub tower and antennas before the installation of the concealment structures. Verizon also indicated concern for possible delay of the tower installation if it is dependent on the completion of the concealment design and installation by the landowner, factors they cannot directly control.

23. Officials of the Town of North Elba/Village of Lake Placid Building and Planning Department indicated that they are concerned about any time lag between construction phases which results in a temporarily unconcealed stub tower and antenna array. Town building staff may require further direction from the JRB on the matter before issuing the required building permit.

Other Regulatory Permits and Approvals

24. The proposed project is located in a "Planned Development District" for the Town of North Elba/Village of Lake Placid.
25. A Local Government Notice Form dated April 30, 2009 from the Village of Lake Placid initially advised the Agency that the proposed project did not require municipal review. However, on November 17, 2010 the JRB indicated that they would review the proposed project, because the antennas and related concealing structures constitute new construction on a building that the JRB permitted in the past. The JRB formally discussed the proposed project at their February 16, 2011 meeting. The JRB held a public hearing on the proposed project on March 16, 2011 and there were no comments from members of the public. The JRB voted unanimously to approve the project, with one condition allowing the JRB to require minor modification of the depth of the gables in the northeast corner if they deemed necessary. This determination would be made once the gables are built and the aesthetics of that corner are evaluated.
26. Federal Communications Commission (FCC) licensing requirements apply to the antenna replacement proposed as part of this project.

PROJECT IMPACTS

Visual Analysis

27. A visual analysis of the initially proposed antenna/cupola design titled "PhotoSimulation Report for Lake Placid Resort - Crowne Plaza" was prepared by Costich Engineering of Rochester, NY and dated October 2010. It included a photo log showing the locations of 6 viewpoints and 10 images from each viewpoint, showing existing conditions, simulations of an unconcealed antenna array, and simulations of the antenna/cupola design. The photos and simulations show that the cupola would be visible and skylit from all locations studied (i.e., Main Street, Mirror Lake Drive, Hillcrest Avenue, and the Crowne Plaza Roadway), but would also be in the context of substantial existing development and other antennas on the Crowne Plaza's roof.
28. A supplemental visual analysis of the revised antenna/gable design titled "PhotoSimulation Report for Lake Placid Resort - Crowne Plaza" was prepared by Costich Engineering of Rochester, NY and dated March 2011. The March 2011 report included a photo log showing the locations of 5 viewpoints and 1 to 2 images from each viewpoint, showing existing conditions and simulations of the antenna/roof gable design. The photos and simulations show that the roof gables would be visible and skylit from 2 locations (i.e., Main Street and Hillcrest Avenue) and not visible from 3 locations (Station Street, Mill Pond Drive, and the Town Hall on Main Street). While no supplemental photosimulation was provided from the north/rear side of the resort, Agency staff believes the antenna array (and the backside of the roof gables) will be visible from the resort's own driveway and parking area in this location.
29. As a result of Agency review of the project based upon the pertinent development considerations set forth in §805(4) of the Adirondack Park Agency Act and applicable regulations, it has been determined that the project will not result in any undue adverse impacts on the Park's visual and open space resources because the proposed antennas are co-located on a pre-existing structure, within a land use area classified as Hamlet on the Adirondack Park Land Use and Development Plan Map, are compatible with the context of an intensively developed area (i.e., the Village of Lake Placid), and the antennas will be concealed by radio-frequency transparent roof gables designed to complement the architecture of the building.

Towers Policy

30. On February 15, 2002, the Agency adopted a policy entitled "Policy on Agency Review of Proposals for New

Telecommunications Towers and Other Tall Structures in the Adirondack Park" (Towers Policy). This policy is intended to protect aesthetic, open space and other resources, while providing for telecommunications systems consistent with federal law.

31. The "Towers Policy" states that "substantial invisibility is considerably different in developed areas with the less restrictive Hamlet land use area classification when compared to areas classified Rural Use and Resource Management in light of the differing statutory purposes and policies for these areas set forth in the Land Use and Development Plan."
32. The "Towers Policy" also states that "consolidation of visual intrusions occurs when telecommunications equipment is attached to pre-existing tall structures, such as ... buildings. In developed areas, existing buildings ... may host telecommunication equipment and achieve substantial invisibility even when the telecommunication device is in plain view juxtaposed to the existing structure."
33. The proposed antennas are consistent with the Agency's "Towers Policy" because the antennas will be substantially invisible as seen from off-site public viewing points. Substantial invisibility is achieved, for this project, by consolidation of existing visual intrusions, placement of the proposed antennas on a pre-existing structure (i.e., the resort building), and by concealment of the antennas behind specially-designed radio-frequency transparent roof gables. Consolidation of existing visual intrusions is achieved because the antennas are in the context of substantial existing development within the Village of Lake Placid, in the context of other antennas on the same rooftop, blend with the visual setting, and will not significantly increase the overall visibility of the existing resort structure. Furthermore, the roof gables are designed to complement the existing architecture of the building. Co-locating the antennas on the existing resort building places the project within an intensively developed area classified as Hamlet on the Adirondack Park Land Use and Development Plan Map, where existing telephone and electric power is accessible, where no access road needs to be constructed, and minimizes impact to nearby lands uses.

Historic Resources

34. The NYS Office of Parks Recreation and Historic Preservation (OPRHP) has previously determined that other projects at this same site would not have an impact upon

cultural resources in or eligible for inclusion in the National Registers of Historic Places. As the proposed antennas and roof gables will be located on an existing roof, their construction will not require any soil disturbance. The proposed equipment shelter and generator are located immediately adjacent to existing buildings and parking areas on a significantly disturbed site. On November 12, 2010, the State Historic Preservation Office (SHPO) concurred with Verizon's finding that the antenna/cupola project would have no effect on any historic properties (File #0004448675). In a March 7, 2011 e-mail to the Agency, SHPO commented that the revised antenna/roof gable design was an improvement and would have no effect on any historic properties. Thus, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Part 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574. The Agency hereby finds that the project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.

PERMIT issued this day
of , 2011.

ADIRONDACK PARK AGENCY

BY: _____
Richard E. Weber, III
Deputy Director (Regulatory Programs)

STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

On the day of in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument

and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

REW:HEK:AAD:MJG:mlr



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

APA Project Findings
and Order
2007-139

Date Issued: March 22, 2011

In the Matter of the Application of

**TALL TIMBERS AT NORTH CREEK, LLC, Applicant
and NORTH CREEK AVIATION AT BENNETT'S
FIELD, LLC, Landowner and Co-applicant**

for a permit pursuant to §809(9)
of the Adirondack Park Agency Act
and 9 NYCRR Part 578

ORDER OF PROJECT APPROVAL SUBJECT TO CONDITIONS

The Adirondack Park Agency hereby grants approval on conditions and subject to conditions to Tall Timbers at North Creek, LLC and North Creek Aviation at Bennett's Field, LLC for a subdivision of land and new land use development in the form of a residential resort use, commercial use and a major public utility use on land classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Town of Johnsburg, Warren County.

The proposed project may not be undertaken until a permit therefore has been issued by the Agency and has been timely recorded in the Warren County Clerk's Office in the names of the owners of the project site. The Executive Director is authorized to issue a permit upon the applicant's demonstration of satisfactory fulfillment of the specified conditions precedent. This order shall expire by operation of law on March 22, 2012 if a permit has not been issued on or before that date.

Nothing contained in this order or any Agency permit shall be construed to satisfy any legal obligations of the applicant to

obtain any approval or permit from any governmental entity other than the Agency, whether Federal, State, regional or local.

PROJECT SITE

The project site encompasses 121.11± acres of land in the community of North Creek adjacent to Fairview Avenue and River Road, in the Town of Johnsbury, Warren County, in an area classified Hamlet on the Adirondack Park Land Use and Development Plan Map. It is identified on Town of Johnsbury Tax Map Section 66, Block 1 as Parcels 49.1 and 49.2. Tax parcel 49.1, a vacant 102.55 acre parcel, is described in a deed from Bennett Airport, Inc. to Tall Timbers at North Creek, LLC dated February 17, 2006 and recorded February 23, 2006 in the Warren County Clerk's Office in Liber 1495 of Deeds at Page 103. Tax Parcel 49.2, an 18.56 acre parcel improved with a 2,300-foot long grass air strip known locally as "Bennett Airfield," a private airport, is described in a deed from Tall Timbers at North Creek, LLC to North Creek Aviation at Bennett's Field, LLC, dated October 5, 2006 and recorded November 20, 2006 in Liber 3117 of Deeds at Page 284.

PROJECT DESCRIPTION AS PROPOSED

Summary

Project 2007-139 is a large-scale mixed-use residential and resort development proposed on land owned and to be acquired by Tall Timbers at North Creek, LLC (Tall Timbers). The project involves subdivisions of land and new land use and development which include several types of residential structures and ownership patterns, tourist accommodations, a restaurant, recreational amenities, and a major public utility use.

Subdivisions of Land

Land owned by North Creek Aviation at Bennett's Field, LLC (North Creek Aviation), which includes an existing private airport, will be subdivided in order to convey 0.32 acres to Tall Timbers. This small parcel will be encompassed within proposed Lot 1.

Land owned (and to be acquired) by Tall Timbers will be subdivided into a total 140 new lots. Seventy-three lots will be created for new dwelling units and 64 lots for residential garages. A total of 72.07 acres (including roads, a sewage system and open space) will be conveyed to a homeowners association. A total of 20.11 acres will be retained by the applicant for a building which will include residential and

tourist accommodation units and for parking spaces, open space, and a portion of a private road. A 0.76±-acre lot will be conveyed to the Town of Johnsburg.

New Land Use and Development

Single family dwellings - Seven lots will be offered for sale for development of seven single family dwellings (lots 134-135 and 137-140). These lots are between 0.65 and 2.81 acres in size and are configured to accommodate dwellings with footprints of 2,500 square feet, including attached garages. Each dwelling may have as many as three bedrooms and may be as tall as 35 feet as measured from the final floor elevation. When the topography of the lot allows, the lower level will contain a garage; otherwise, the garage will be located directly adjacent to the main structure.

Lots 138-140 will each be allowed to have an airplane hangar.

Townhouses and two-family dwelling - Sixteen townhouse structures (four units each) and one two-family dwelling* will result in a total of 66 new dwelling units. Each unit will be placed on an individually-owned lot which is congruent with the footprint of the unit (approximately 975 square feet). The townhouse structures will be approximately 30 feet tall as measured from final floor elevation, with approximately 1,530 square feet of interior floor space per dwelling unit.

In these buildings, the applicant proposes to use Energy Star-rated appliances, hot water heaters, heating and cooling systems, lighting, doors and windows. Exterior walls will be six inches deep with R21 insulation; ceilings will have R38 insulation.

Each townhouse building will have an associated garage building in a different location on a separate lot with one indoor and one outdoor parking space provided for each townhouse unit.

Lodge building - A 45,300±-square foot "Tall Timbers Lodge" will contain 22 dwelling units ("suites"), three tourist accommodation units, a 150-seat restaurant/banquet/conference room, a lounge, a fitness center, a swimming pool and several small retail shops. The restaurant will be open to the public.

* The two-family dwelling referred to herein is described in the application as a townhouse. This permit describes this structure as a two family dwelling for consistency with the Town of Johnsburg's approved local land use code.

The applicant proposes to use Energy Star rated appliances, hot water heaters, heating and cooling systems, and doors and windows. The exterior wall will include 6-inch framing with spray closed cell insulation and a 5-inch exterior log. High efficiency fluorescent or LED lighting is proposed. The applicant is exploring the feasibility of solar electric-generating and hot water heating systems.

Roads - Approximately 1.45 miles of new private roads will be constructed. The main access road (Timber Trail) will extend between two town roads (River Road at the north and East Holcomb Street at the southwest of the site), crossing the southern end of the Bennett Airfield safety zone. Two dead-end roads (Mountain View Drive and Lodge Road) will extend from Timber Trail to the east, allowing access to several townhouse structures and two single family dwellings.

Timber Trail extending east from East Holcomb Street will serve as a means of ingress and egress for the four single family dwellings in the southwest portion of the site (Lots 137-140). The section of Timber Trail between Lot 137 and the intersection with Lodge Road will be used for emergency and road maintenance vehicles only. Gates will be installed on both sides of the airfield safety zone within this road for safety purposes, to prevent regular traffic from interfering with the use of the safety zone.

Wastewater treatment - A private community wastewater treatment system on the site will serve the lodge building and all residential buildings. The applicant will prepare final engineering plans after obtaining project approval from the Agency.

Water supply - On Lot 2 a new on-site well field consisting of two wells and pumphouse will be conveyed to the Town of Johnsborg and become part of the municipal water system which will serve the project. The applicant will prepare final engineering plans after obtaining project approval from the Agency.

Stormwater management - The objectives of the stormwater management plan are (i) to attenuate runoff from new development to reduce flooding and flood damage; (ii) to avoid or minimize erosion; and (iii) to treat runoff to prevent water quality degradation in receiving streams and wetlands. The increased volume and rate of surface runoff caused by the development of buildings, roads, parking areas, and other impervious surfaces will be reduced to predevelopment levels by controlling surface water runoff. Runoff will be directed into catch basins and

roadside swales for pretreatment; these devices will carry the runoff to several stormwater management basins which will further treat the water to federal water quality standards and attenuate some flow. These basins will release the stormwater to on-site stream channels. Run-off from the lodge rooftop will be treated and infiltrated in filter strips around the building.

During construction stormwater and erosion will be controlled by the use of temporary sediment basins, silt fencing and check dams. These features are shown on the Erosion and Sediment Control Plan Sheets (EC-1 - EC-4).

Lighting plan - Full cut-off street lights will be no more than 20 feet in height. Townhouse, two-family dwelling and lodge lighting will be limited to soffitt and eave lighting or full cut off wall mounted sconces. Single family dwellings will utilize sharp cutoff lighting fixtures.

Landscaping Plan - Landscaping shall include a mix of nursery stock tree and shrub species native to the Adirondacks which are native the project site and surrounding area.

Utilities - All electric, telephone and cable television utilities will be buried.

Wetland mitigation - A compensatory wetland area of 0.46 acre will be created to offset the loss of 0.228-acre of wetland from filling for road construction. No deadline or sequence was described for completing this new wetland. The applicant proposes a two-year monitoring program to document the success of the mitigation.

Project construction phasing - Project construction is expected to occur over a two-year period. Construction during the first year will include the (i) entire length of Timber Trail and adjoining utilities and stormwater controls and five single family dwellings, the two-family dwelling and four townhouse structures and their associated garages along that road and (ii) Lodge Road and adjoining utilities and stormwater controls and the lodge building. Construction during the second year will include (i) completion of Lodge Road and adjoining utilities and stormwater controls and two single family dwellings and two townhouse structures along that road and (ii) construction of Mountain View Drive and adjoining utilities and stormwater controls and 10 townhouse structures and their associated garages along that road.

Project Maps/Plats and Plans

The project is shown on a set of plans entitled "Tall Timbers, Adirondack Park Agency Permit Application, Final Submission, June 7, 2007" prepared by The LA Group, Delaware Engineering, P.C., Creighton Manning Engineering, LLP, Bolster and Associates, and The Original Lincoln Logs, LTD and (hereafter referred to as the "project plans") and stamped received June 10, 2008. The original, full-scale plans referenced in this order are the official plans for the project. The project is also described in the following documents:

- May 2007 "Tall Timbers Resort at North Creek Conceptual Design Report, Water Supply and Distribution" prepared by Delaware Engineering, P.C.
- May 2007 "Tall Timbers Resort at North Creek Conceptual Design Report and Facilities Plan, Wastewater Collection, Treatment and Disposal" prepared by Delaware Engineering, P.C.
- November 13, 2007 "Tall Timbers Resort Wastewater Treatment Facility at North Creek, Conceptual Design Report - SPDES Application, Amendment #1" prepared by Delaware Operations, Inc.
- May 2007 "Engineering Report for Stormwater Management, Tall Timbers" prepared by The LA Group, P.C.
- June 1, 2007 (revised October 2, 2007) "Draft Stormwater Pollution Prevention Plan, Tall Timbers" prepared by The LA Group, P.C.

Additionally, the application includes several impact analyses prepared by the applicant's consultants:

- April 23, 2007 "Traffic Impact Study, Tall Timbers Resort" prepared by Creighton Manning Engineering, LLP.
- May 2007 "Economic and Fiscal Impact Analysis, Tall Timbers Resort at North Creek" prepared by The LA Group, P.C.
- "Visual Impact Assessment" prepared by The LA Group, P.C.

Property Ownership and Other Legal Arrangements

The applicant, Tall Timbers at North Creek, LLC, is a limited liability company with headquarters in New Jersey, registered to do business in the State of New York. The applicant, also identified as the sponsor in the draft offering plan, will undertake the project, constructing the townhouse buildings, the two family dwelling and the lodge building and the related infrastructure. Tall Timbers will own and manage the lodge

building and Lots 136A and 136B and will own and maintain the portion of Timber Trail within Lot 136B.

The single family lots will be individually owned in fee simple. Lots 138-140 will have deeded rights to use Bennett Airfield.

The townhouses, and congruent townhouse lots, garages and congruent garage lots and the two-family dwelling will be owned as quarter time-shares (fractional shares).

The 22 residential "suites" within the lodge building will also be owned as quarter time-shares (fractional shares) and, in addition, may be rented as tourist accommodations to the public. Tall Timbers will manage these rentals, sharing the income with the owners.

The Homeowners Association (HOA) formed pursuant to the Declaration of Covenants will own all common land (identified as Lot 1 on the subdivision plat) including a large portion of Timber Trail and the two other roads. It will be responsible for maintaining these roads and all stormwater facilities whether on common land or individual lots.

An easement will allow municipal personnel to access the water supply lot (Lot 2) for maintenance purposes.

An easement granted by Tall Timbers will allow project residents to use the section to Timber Trail owned by Tall Timbers.

An easement granted by North Creek Aviation will allow Timber Trail to cross south of the airstrip within the so-called safety zone.

Water supply infrastructure developed by Tall Timbers will be dedicated to the Town of Johnsbury to become part of the North Creek Water District. This includes the potable water wells, Lot 2, the well pumphouse, and water lines to be installed under project roads.

A sewage works transportation corporation will be formed pursuant to operate the community wastewater treatment system.

The Declaration of Covenants and Restrictions will allow the Homeowners Association access to single family dwelling lots in order to maintain components of the stormwater facilities on those lots.

The ownership pattern, deeded use rights and maintenance obligations and other legal arrangements for the project are described in application materials, including a draft Timeshare

Offering Plan, Tall Timbers Homes Association Inc, draft Declaration of Covenants and Restrictions and draft HOA by-laws.

Agreements Associated with the Project

Water supply - The Town of Johnsburg, the North Creek Water District, and Tall Timbers executed a Memorandum of Understanding (March 19, 2008) which addresses installation, dedication, and acceptance of the new water system infrastructure on the project site and future costs of service to the project site. Pursuant to this agreement, Tall Timbers will construct the well field and pumphouse in conformance with the requirements of the North Creek Water, the NYS Department of Health (DOH) and the NYS Department of Environmental Conservation (DEC). After the system has been tested by Tall Timbers and approved by the District Engineer, DOH and DEC, Tall Timbers will donate the well field and all other related infrastructure to the water district at no cost, along with necessary easements for access and a transfer title to Lot 2. Dedication will not occur until the entire extended system has been completed.

Additionally, pursuant to this agreement, Tall Timbers will extend the Town's water main with an 8-inch water main from Main Street to the intersection of River Road and the proposed Timber Trail and from the dead-end water lines at East Holcomb Street and Ridge Road Extension to the water system. The District will have no obligation to construct or extend water lines within the project. Tall Timbers will complete any necessary upgrades to the water district supply and distribution system necessary to service the project at no cost to the Town or the District.

In addition, Tall Timbers will compensate the District for the reasonable cost of design review, construction oversight, administrative and legal costs associated with the project water system. All warranties obtained by Tall Timbers for the system will be transferred to the District upon acceptance of the system, along with a two-year warranty from the date of acceptance. Tall Timbers will provide an adequate performance guarantee for the reasonable cost of maintenance and operation of the system for the two-year warranty period.

Tall Timbers will provide an estimate of operation and maintenance costs and will demonstrate how the project will cover its share of incremental operating costs of the District system. If the project does not adequately cover its share of incremental operating costs, the agreement allows the district to assess a charge to the Tall Timbers Homeowners Association.

Fire Services - A Memorandum of Understanding (March 25, 2008) signed by Tall Timbers, the Town of Johnsbury, the North Creek Fire District and the North Creek Volunteer Fire Co., Inc. addresses the issue of potential project impacts on the ability of the fire district and fire

company to provide essential services to the project without an adverse fiscal impact on other residents of the fire district. Pursuant to this agreement, Tall Timbers agrees that, if the Tall Timbers Lodge and Resort project "contributes toward a negative ISO rating adjustment" for the North Creek Fire District, Tall Timbers "will participate in its fair share of the funding of necessary fire apparatus and training of Fire Department personnel." The "express intention" of the agreement is that "the subject equipment, fire apparatus and training will come at no cost whatsoever to the Town, the North Creek Fire District, the Fire Department or the taxpaying citizens of the Fire District and the Town. . . ."

The agreement further provides that, if a future separate project within in the North Creek Fire District requires the same equipment, apparatus and training, "the Town will take reasonable efforts to require that party to share in the funding. . . ."

AGENCY PROJECT JURISDICTION

The entire project requires an Agency permit pursuant to Condition 7 of Permit 2006-167. It is also jurisdictional as a class A regional project pursuant to §810(1)(a)(4) being a subdivision into more than 100 residential lots, parcels, sites or residential units designed for permanent, seasonal or transient use. Additionally, a substantial portion of the project site is jurisdictional pursuant to §810(1)(a)(1) of the Adirondack Park Agency Act as a subdivision involving wetlands with related new development jurisdictional pursuant to 9 NYCRR 573.4(d). The Agency also has jurisdiction over the lodge, numerous residential structures, and related development pursuant to §810(1)(a)(4) as structures exceeding 40 feet in height. Finally, individual components of the project involve regulated activities in and adjacent to wetlands, requiring a wetlands permit pursuant to ECL s 24-0801 and 9 NYCRR 578.2 and 578.3(n)(1)(i), (iii) and (iv).

FINDINGS OF FACT

Background/Prior History

1. The project site has been the subject of prior Agency determinations. Agency Permit P77-252 (Project 77-291)

authorized a 1,100-foot expansion of a pre-existing 1,200 foot-long grass landing strip. Agency Permit P79-227 (Project 79-190) authorized a further expansion of the Bennett Field Airport to create 19 lots for individually owned airplane hangars. Pursuant to these permits, a new or amended Agency permit is required for any further airport expansion.

2. Agency Project 83-55 proposed improvements to the airport, but this application was withdrawn and no permit was ever issued.
3. Agency enforcement matter E2004-308 determined that the subdivision authorized by Permit P79-227 had not been undertaken in conformance with the permit. The Agency resolved the matter by a Settlement Agreement which allowed the subdivision but prohibited any further subdivision or new land use or development on the project site without a new or amended Agency permit.
4. Agency Permit 2006-167 authorized a three-lot subdivision whereby one lot was conveyed to an adjoining landowner for an airplane hangar and the airport development was separated from the remaining land improved only by an overhead electric power line. Amended Permit 2006-167A, which authorized the relocation of the airplane hangar, does not involve the project site.
5. Agency enforcement matter E2007-169 addressed the applicant's undertaking of the instant project (clearing for an access road and wetland filling) prior to obtaining an Agency permit. This matter was resolved by execution of a Settlement Agreement which required, in part, site stabilization and after-the-fact approval of the premature project activities.

Existing Environmental Setting

6. Areas adjoining the project site to the west and north are intensively developed, primarily with residences in the community of North Creek. The areas south and east of the site are generally undeveloped forestland.
7. Primary vehicular access to the project site is from River Road (at the northern boundary of the site) while unimproved vehicular access is also possible off East Holcomb Street (at the southwest boundary of the site).
8. Except for the 2,300-foot long grass "Bennett Airfield" and the electric power line which crosses the project site in generally

a north-south direction, the project site is forested with mixed deciduous and coniferous trees typically 30-50 feet tall.

9. Soils within the area proposed for new development are generally deep sands and loams. Soil types are shown on a Soil Survey map (Drawing S-1) included in the project plans.
10. Slopes within the area proposed for new development are generally in the 3 to 15 percent range although there are some areas (generally not intended for development) which exceed 15 percent. Site topography is shown on the project plans, including a Slope Map (Drawing SL-1).
11. Several streams and a man-made pond are located on the project site as shown on the project plans. Extensive coniferous swamp, shrub swamp and emergent marsh covertype wetlands, several of which are associated with surface waters, exist as shown on the Wetlands Delineation Map (Sheet WD-1). Wetlands, comprising approximately 20 acres of the project site, have an overall value rating of "2" pursuant to the criteria set out in 9 NYCRR 578.6.

Public Notice; Comments Received

12. The Adirondack Park Agency notified all adjoining property owners and other persons and published a Notice of Complete Permit Application in the Environmental Notice Bulletin as required by the Adirondack Park Agency Act. Seven letters from nearby landowners and The Adirondack Council expressed concern about the adequacy of local roads, site access, and the water supply; project size; traffic; potential impacts on wildlife and a plant community; and aircraft safety and noise.

Local Land Use Program

13. The Town of Johnsburg administers a local land use program approved by the Agency pursuant to §807 of the Adirondack Park Agency Act, effective on October 18, 2007. As a consequence, the Agency reviews class A regional projects within the town pursuant to §809(9) of the Act and, prior to approval of a project, must find that it will not have an undue adverse impact as statutorily defined and that it meets all pertinent terms and conditions (including zoning, subdivision and sewage treatment provisions) of the approved program.
14. The project site is zoned Hamlet Mixed Use (HX) by the Town of Johnsburg Zoning Map consistent with the Town's official comprehensive plan which allows and encourages new development

on lands classified Hamlet. In this zone, single family dwellings, two family dwellings, townhouses (townhouse developments), multiple family dwellings, tourist accommodations, and restaurants are all allowed uses (with approval from the Planning Board).

15. The minimum lot size in the HX zoning district is 22,500 square feet (with community water and sewer service), larger than the building lots proposed for dwelling units within the townhouses and the associated garage lots. However, the various dwelling units are approvable under the Town's approved local land use program as a "residential cluster development", a "multiple family dwelling" and/or a "townhouse development". There is no maximum average density (acres per principal building) applicable to development in the HX zone.
16. The maximum building height in the HX zone is 35 feet or two and one-half stories. The ZBA granted an area variance (#169-07) of this height limitation to allow the proposed "lodge", as originally designed at 52 feet, 20 single family, two-family dwelling, or townhouse structures and one garage to be built between 36 and 50 feet in height as measured from existing grade (before fill). Measured from final floor elevations, none of these structures will exceed 35 feet in height.

Additionally, for similar reasons, the ZBA granted an area variance (#174-08) of the current limitation on sign size (28 square feet) to allow the proposed 40-square foot for the project. Also, the ZBA granted area variances (#173-08) of the minimum number of parking spaces and minimum parking space size required for the proposed lodge building (147 spaces), allowing 107 smaller parking spaces.

17. The Town of Johnsbury Planning Board on January 28, 2008, approved the preliminary Tall Timbers subdivision plat (#185-07, depicting a total of 141 lots) "with the contingency that the APA approves the identical plan." At the same meeting, the board determined that the site plan (#131-07) depicting new development on the project site conforms to the criteria for preliminary approval; no conditions were specified in the official minutes. Prior to requesting final plat approval from the Planning Board, the applicant will revise the preliminary plat to show additional technical information requested by the board's engineering consultant, more detailed foundation planting plans for the lodge and townhouses, and construction phasing related to erosion controls.

18. In response to the Agency's request for consultation and advice, the Planning Board identified the following concerns by letter dated August 3, 2008: private road maintenance; potential damage to River Road from construction vehicles and equipment; conformance with local on-site parking, building height, sign, and road design standards and requirements; adequacy of the municipal water supply; landscaping, site-grading, drainage and stormwater management; water supply and wastewater treatment system conformance with New York State Department of Environmental Conservation and Department of Health requirements; an "environmentally sensitive area" in the eastern part of the project site which is not to be developed; continued access to Bennett Airfield and performance/financial guarantees for on-site improvements and damage to off-site town roads.

Other Regulatory Permits and Approvals

19. The project requires approvals from the NYS Department of Health for include the public water supply review and realty subdivision approval. The applicant has submitted preliminary information for these approvals and has been consulting with the DOH in this regard, but no permit or approval has been issued because final engineering plans have not yet been prepared or submitted.
20. Approvals required from the NYS Department of Environmental Conservation include a State Pollutant Discharge Elimination System (SPDES) permit for the wastewater treatment plant and its discharge, a Water Supply permit for the extension of municipal water supply facilities, a Streambank Disturbance permit for stream crossing(s), and the filing of a Notice of Intent for Stormwater Discharges under a SPDES general permit. The applicant has submitted preliminary information for these approvals and has been consulting with the DEC in this regard, but no permit or approval has been issued because final engineering plans have not yet been prepared or submitted.
21. Because a homeowners association is proposed to own and manage roads, infrastructure and open space, the applicant must submit an offering plan to the New York State Department of Law for approval pursuant to §352-e of the General Business Law. A draft Offering Plan, provided as part of the project application, is acceptable to the Agency but details (e.g., the description of the HOA lands, references to the final approved subdivision plat) must be finalized before submission to the Department of Law.
22. The project is subject to an Army Corps of Engineers General Permit for disturbance of wetlands.
23. The Federal Aviation Administration (FAA) has advised the Agency that the applicant needs to submit a "Notice of Proposed Construction or Alteration" for FAA review and determination. The Agency urges the applicant to include plans for additional hangars on the project site in addition to plans for all improvements related to the instant project as part of any submission to the FAA.

Project Impacts

Wetlands

24. This project will result in the loss of wetlands totaling 0.228 acre by filling at four locations for the construction of Timber Trail road. These regulated activities will cause a minimal destruction of wetlands and

their associated values and are the only alternative which reasonably can accomplish the applicant's project objective. Additionally, prompt and successful creation of the proposed 0.46-acre compensatory wetland area will offset the loss of wetland through filling activities and avoid overall adverse impact on the project site wetlands. A long-term monitoring period for the new wetland is warranted to insure its success. While a two-year monitoring period is proposed, five years is generally deemed necessary by the Agency in order to achieve the environmental objective.

25. Strict adherence to the grading plans, the limits of vegetation clearing depicted on the project plans, the stormwater management plan, the stormwater pollution prevention plan, and the erosion and sedimentation control plans will adequately protect wetlands from adverse impacts related to sedimentation and loss of riparian habitat.

Water Resources

26. This large-scale project has significant potential to adversely impact surface water quality by means of nutrient input, sedimentation and increased water temperature. These potential impacts can be avoided or significantly minimized by strict adherence to the grading plans, the proposed limits of vegetation clearing, the stormwater management plan, the stormwater pollution prevention plan, and the erosion and sedimentation control plans.
27. Installation and maintenance of the wastewater treatment plant and system in accordance with all applicable DEC and DOH standards, restrictions and guidelines will adequately protect surface water and groundwater quality.
28. Proper disposal of waste materials such as soils, rock, stumps, slash and other similar material generated by site clearing and grading and of other wastes generated by the project will avoid adverse impacts to water and wetland resources from contamination and soil erosion and sedimentation.

Water Supply

29. The North Creek Water District, owned and operated by the Town of Johnsbury, supplies the community of North Creek. Of its six wells, four are currently out-of-service or abandoned and only two are active. The active wells yield approximately 65 and 100 gallons per minute, respectively, or a combined total of 237,600 gallons per day (gpd). The

current maximum daily flow is approximately 180,000 gpd. New existing development, including Top Ridge and Peaceful Valley, will require an additional 40,000 gpd. Department of Health regulations require that a water system be capable of supplying the maximum needed daily flow with its largest well out-of-service. Taking the district's largest well out-of-service would not yield sufficient flow to supply even the current users. As a result, the current water supply system is not adequate to serve existing development, a situation recognized in the Town's comprehensive plan. Proposed improvements to the water district system, to serve the needs of the proposed (and approved) FrontStreet Mountain Development, LLC project (Agency Project 2006-123) will partially fulfill the water needs of existing users and new users generated by that project. The addition of the new well field on the Tall Timbers project site will allow the water district to fully meet the needs of existing users, the FrontStreet project, the instant Tall Timbers project, and some additional future demand.

Wastewater Treatment

30. There is no municipal wastewater treatment plant in the Town of Johnsbury which could serve the project site. The proposed private community wastewater treatment system to be installed on the project site has been designed to adequately serve the needs of the future occupants of this site.

Wildlife Resources

31. The project site does not contain any known populations of rare or endangered animal species or any wildlife habitat recognized as unusual or important. Retention of vegetative buffers along wetland and stream boundaries will protect riparian wildlife as shown on the Site Master Plan (Sheet MP1). While upland wildlife populations may be displaced in the areas of new development, the project will not adversely affect the wildlife resources of the Park since proposed development is concentrated (approximately 45% of the project site is to remain as undeveloped open space) and it is located in a Hamlet land use area at the edge of the community of North Creek which is well developed. Additionally, motorized use of the open space owned by the HOA will be prohibited off the roads.

Open Space/Aesthetics

32. The Visual Impact Assessment prepared for this project, generally consistent with the Agency's Visual Analysis Methodology, demonstrates that the project will not be readily visible from near-by public use areas and public roads due to intervening wooded areas and topography. However, portions of some of the proposed buildings will be visible from two locations at Gore Mountain Ski Area. Views of the project from these locations will be in the context of the adjacent developed areas of North Creek.
33. Building elevations for the lodge, townhouses and garages included in the project plans appear to show exterior walls that use logs, wooden shingles and other wood surfaces. However, exterior building colors are not specified on these plans. Exterior building colors which blend with the existing vegetation and retention of existing trees and vegetation outside of the clearing limits shown on the project plans will maintain the wooded character of portions of the project site which are to remain undeveloped and thereby mitigate any adverse impacts to open space and aesthetic resources.
34. Confining outdoor lighting to those locations where it is necessary within the project site, as proposed, will reduce light pollution on adjacent lands and mitigate adverse aesthetic impacts.

Noise

35. During construction of the project there will be traffic associated with construction vehicles, delivery of construction materials and construction workers entering and leaving the site. Noise associated with this traffic and other construction activities, however, will have a short term impact on nearby landowners.
36. Once the project site is occupied, residents, employees and patrons will access the site, deliveries of goods and services will be made, and lawn maintenance activities and recreational activities will occur and may be heard in the immediate area, off the project site. Noise generated by these activities will be heard by nearby landowners. Lawn maintenance activities results in a temporary, intermittent noise while residential activities will be heard in the context of a residential neighborhood. The addition of three additional aircraft will not significantly increase noise generated from use of Bennett Airfield.

Existing and Future Airport Use

37. The portion of Timber Trail road that will cross the southerly end of Bennett Airfield will be used only by emergency and road maintenance vehicles. Locked gates will be maintained on either side of the air strip to prevent other than emergency and maintenance access and will prevent any conflict with airstrip users.
38. General aviation aircraft takeoffs and landings are continuing activities at Bennett Airfield. Since only three additional dwellings will have deeded rights to use the airport, the project will not significantly increase airport use.

Local Roads, Traffic

39. Because the roads on the project site will be constructed to meet applicable Town road standards and will thereafter be maintained by the homeowners association and the applicant on their respective properties, they will be adequate to provide safe ingress and egress for new residents and for customers and employees of the lodge building as well as for emergency service vehicles.
40. East Holcomb Street, a paved town road, intersects with the southwestern boundary of the project site. Within the project site, this road continues as a gravel/dirt road. An extension to the north (Ridge Road Extension) for approximately 330 feet, owned by the applicant, provides access to four single family dwellings situate outside and adjacent to the project site. The portion of East Holcomb Street within the project site will be paved as part of this project and extended southward as Timber Trail to serve four new single family dwellings in the southwest portion of the project site. No improvements are proposed for Ridge Road Extension to the north. However, because the four adjacent landowners benefit from a right-of-way in common over the private portion of East Holcomb Street and Ridge Road Extension, they can continue to access their properties over the road.
41. River Road, a paved two-lane town road, will provide access to residents, customers and employees of the project site, except for the four single family dwellings in the southwest portion of the site. Its width is sufficient to allow two vehicles traveling in opposite directions to safely pass one another. The applicant has demonstrated through a traffic impact study that sight distances in both directions at the intersection of River Road and the new private road (Timber Trail) are adequate and that satisfactory level-of-service ratings will continue at

project build-out at this and other road intersections between the project site and New York State Route 28N. No critical accident locations on the River Road in the vicinity of this intersection justify mitigation measures such as traffic lights or road reconstruction.

42. River Road is sufficiently wide (at least 20 feet) to accommodate large construction vehicles. However, the applicant has not demonstrated that heavy construction equipment used for site preparation and construction will not adversely affect this Town road and require repairs at the Town's expense. The former Highway Superintendent indicated (letter dated June 2, 2008) that he was "comfortable with the project as proposed and the adequacy of River Road to serve the needs of the project", based on a meeting and telephone conversations. The Planning Board's advisory comments to the Agency (letter dated August 3, 2008) note that Tall Timbers "has offered to resurface River Road at the conclusion of the project", but articulate a concern about the need to maintain River Road in safe condition during the multi-year construction period.

In September of 2007 Tall Timbers offered to the Town Board to resurface River Road upon completion of the project. (In contrast to the fire protection equipment issue, the applicant did not execute a memorandum of understanding regarding that offer for River Road.) Tall Timbers represented that the consensus of a meeting with the then-Supervisor, the Supervisor-elect and the Town Attorney was that the matter would be further discussed if the Planning Board were to require off-site road improvements in its approval of the project.

More recently, the applicant repudiated that offer (letter to Agency dated August 15, 2008). The applicant has noted that the Planning Board failed to impose any conditions of reclamation, repair or resurfacing of River Road in its preliminary subdivision approval and sight distance waiver decision, that board has no legal authority to do so. The Agency, in contrast, has statutory authority to impose a permit condition which would require the applicant to post a performance guarantee, contribute money, or undertake the necessary repairs and/or resurfacing of an off-site road pursuant to §809(13)(a) of the Adirondack Park Agency Act.

Tall Timbers now intends only to photo-document the condition of River Road between the intersection with Timber Trail and Main Street "just prior to commencing" construction activity and to "continue to coordinate with

the Town Highway Superintendent as the project moves forward." To avoid any financial burden on the Town of Johnsbury, the applicant should be required to pay all costs of repairs necessary to keep the River Road in a safe and passable condition during the construction period and to resurface the road between the intersection at Timber Trail and Main Street to the extent it is responsible for such damage, at project completion

Economic/Fiscal Impacts

Market Basis

43. The applicant has stated that the project will meet an unmet need for moderately priced tourist accommodations and seasonal housing based on current winter demand from the State operated Gore Mountain Ski Area as well as broader seasonal demand created by proximity to close-in high amenity areas including Lake George.
44. The development program for the project including the product mix, unit pricing, and development schedule is based on an assessment of residential and resort lodging demand and local real estate market conditions made by the applicant and local realtors. The project is proposed to be developed over a 2-5 year period with the initial development being the 45,000±-square foot lodge which includes 22 dwelling units which will be sold in fractional shares and 3 tourist accommodation units. Townhouse units will also be sold as quarter time-shares (fractional shares) as market conditions allow. Owners of the dwelling units, including the owners of fractional shares, will have the option of allowing their units to be included in a rental pool thereby generating investment income. Exposure of visitors to the lodge, restaurant and associated amenities will be a factor in the sequential marketing of the residential units that are planned for the project. Allowing three lots to access the existing grass runway will take advantage of proximity to the airport for the marketing of those lots. Bennett Airfield does not provide any significant marketing advantage for the sale of the balance of the project's lots and units.
45. The applicant expects the market for unit sales at Tall Timbers to closely track the geographic areas which are home to skiers at Gore Mountain including Albany (20%), New York City/Long Island (20%), New Jersey (13%), and Central and Western New York (10%). Some additional sales may be derived from closer in areas including Saratoga/Glens Falls

which currently account for 18% of skier visits to Gore Mountain.

Finance

46. The projected total construction cost for the project, as proposed, is estimated to be \$24 million of which \$13.75 million will be in residential development and \$10.25 million will be in non-residential development. The capital cost of infrastructure, included in the total stated above, is estimated to be \$6 million.
47. All components of the project will be developed by the applicant and will be financed through a combination of equity investments and private loans. The applicant will fund, construct and market all of the residential components of the project, will manage the rental lodging pool, and will develop, own and manage the lodge.

Economic Impacts

48. Located entirely in the Hamlet of North Creek, the project will have a 150 seat restaurant and recreational amenities but no other significant commercial activities available to guests or the general public. The project, due largely to the expected turnover of guests through the lodging rental pool, is expected to provide support for off-site businesses involved in retail trade, food and beverage sales, and other supporting services, thereby assisting the economic revitalization of the core areas of the Hamlet of North Creek, a key goal of local economic improvement strategies, including the 1992 North Creek Action Plan.
49. Development of the project will create short-term employment in the construction trades and result in local and regional expenditures for construction related goods and services. Of the projected \$24 million project cost, \$14.5 million is projected to be for construction labor with \$9.5 million for materials. The proposed project is expected to result in the creation of an estimated 380 full-time equivalent (FTE) jobs on-site distributed over the projected 2-3 year development period. The actual number of workers on-site at any one time will vary depending on the types of construction and trades involved. The applicant has indicated that local and regional contractors and tradesmen will be employed with Glens Falls being the most distant location for involved contractors.

50. With the initial development and operation of the lodge there will be concurrent growth in long-term jobs in resort operations. The project will result in the creation of 34 FTE positions in operations, most of which will occur with the development of the lodge, the restaurant and banquet hall, and supporting amenities. Staffing of the restaurant and banquet hall will involve the greatest level of part-time employment. In these components, hours allocated to the employment of 40 workers overall are expected to result in 15 FTE jobs. Total estimated annual payroll in operations is expected to be \$733,000. Income for full time workers in operations is expected to range from \$17,900 to \$34,300 annually, not including tips.
51. The applicant has estimated that annual expenditures in the local area by unit owners and visitors to the project will be \$1.8 million annually at full build-out and operation. These expenditures would be for local retail shopping and service activities, including food and entertainment, as well as for owner-purchased supplies for individual units. There will be additional, but not estimated, local and regional expenditures made by the resort operators to support overall resort maintenance and operations as well as food and beverage sales for booked events including banquets and conferences.
52. Sales tax to be paid to the State of New York and Warren County on the monies spent by unit owners and visitors has been projected to be \$82,600 annually at current rates. Of this total, \$47,200 would be payable to the State of New York and \$35,400 would be payable to Warren County. Additional sales tax revenue would be generated from other expenditures as discussed above.

Induced Growth and Cumulative Impact

53. The development and operation of the project, along with other resort residential projects, will provide support for local businesses in the core area of North Creek. The annual infusion of visitor spending is anticipated to improve the profitability of some businesses and result in business expansion as well as new business development. It is anticipated that the combined effect of spending from the larger Ski Bowl Village at North Creek, this project and other resort residential projects will result in the reuse of vacant space, the "in-fill" development of open building lots, and the demolition and replacement of some buildings on Main Street. While development or re-development may be proposed for sites beyond the Hamlet, it is expected that development incentives available through

the State's Empire Zone program, will be a strong inducement for business development to occur within the Hamlet of North Creek, in the area designated as Empire Zone.

54. Earlier analyses which provided the basis for impact findings prepared for the FrontStreet Mountain Development, LLC project (Agency Project 2006-123) estimated that annual visitor spending beyond Gore Mountain, the FrontStreet site and other resort residential properties was expected to create demand for 65,000 square feet of existing vacant or new space for tourist-related retail and service activities. As a much smaller project whose impact was factored into these analyses, this project's contribution to this overall induced demand for retail and service space could be expected to be in the range of 2,000-5,000 square feet.

Affordable Housing

55. The applicant has stated its expectation that construction workers as well as workers in resort operations will be largely secured from the local area. However, in light of labor market conditions, it is most likely that workers will be attracted from southern Essex, eastern Hamilton, and Warren Counties, including the Glens Falls area. The proposed project does not include units that would be considered "workforce housing" in light of wages to be paid to construction and operational workers. Workers from outlying areas seeking to locate within the Town of Johnsbury to avoid extensive commuting will therefore need to compete in a real estate market with rental and purchase values in excess of what is affordable to many local workers.

It should be noted that the median household income in the Town of Johnsbury (2008) is \$42,792, which can support a monthly rental housing cost of \$1070 including rent, heat, utilities, and insurance. The Town of Warrensburg has a median household income of \$51,004 (2008) which can support a monthly rental housing cost of \$1275. The Town of Chester has a median household income of \$52,500 (2008) which can support a monthly rental housing cost of \$1300.

Median household income in Johnsbury will enable eligibility for a \$107,000 mortgage (exclusive of a down payment assumed from savings). Median household income in Warrensburg will enable eligibility for a \$127,504 mortgage (exclusive of down payment) and median household income in Chester will enable eligibility for a \$131,317 mortgage

(exclusive of down payment). Mortgage eligibility at these income levels assumes an excellent credit rating.

Fiscal Impacts/Public Services

56. Impact analyses indicate that the project, as proposed, will have a net positive impact on the Town and other local taxing jurisdictions due mainly to the significant level of privately financed and maintained infrastructure included in the project, the seasonal and transient nature of owners and visitors, and the value of the involved real estate.
57. The project's water supply and distribution system will be constructed using private funds and will be donated to the Town of Johnsbury for ongoing operation through a special service district. The maintenance and operation of the water system will be supported by levies on taxpayers within the water district, including the project site. The system is planned to have excess capacity beyond the needs of the project and will therefore assist the Johnsbury community in meeting future water supply needs.
58. The project's wastewater collection and treatment system will be privately owned and maintained with support from fees levied on the owners of real estate within the project.
59. The project's roads will be privately owned and maintained with support from fees levied on owners of real estate within the project. As stated earlier, there is potential financial burden on the Town of Johnsbury due to the expected need to repair damage to River Road from project construction. The applicant should be required to pay all costs of repairs necessary to keep the River Road in a safe and passable condition for the current level-of-service and to resurface the road between the intersection at Timber Trail and Main Street to the satisfaction of the Town Board and the Highway Superintendent once project construction has been completed. The cost of these repairs should be the subject of one or more performance guarantees with the Town of Johnsbury as beneficiary.
60. Solid waste will be collected by private contractors and transported outside the Adirondack Park for disposal.
61. It is estimated that approximately eight of the project's residential units could be occupied on a year-round basis, resulting in the possible generation of five school-aged children to be served by the Johnsbury Central School District. Officials of the School District have indicated

adequate current capacity to accommodate this relatively small impact.

62. The primary demand for local services by the project will be in the areas of police, fire safety, and emergency medical services.

Police Services

63. Police services are provided in the Town by the Warren County Sheriff and the New York State Police. There is adequate capacity to support the needs of the project.

Fire Safety Services

64. The project site is within the North Creek Fire District in which service is provided by the North Creek Volunteer Fire Company, Inc. (Fire Department) and mutual aid. The Fire Department is funded through *ad valorem* tax revenue from properties within the fire district.
65. After a review of preliminary project plans, fire officials have concluded that the Fire Department can adequately provide needed services to the project with existing staff and equipment. The plans were reviewed to ascertain hydrant locations, standpipe locations, the road design and layout, and building heights. The ability of the Fire Department to fight fires in structures taller than those proposed in preliminary plans would be limited without the addition of a ladder truck to its equipment inventory. Additionally, the lack of a ladder truck for taller buildings could result in increased fire insurance premiums for all residents of the fire district.

Emergency Medical Services

66. Emergency Medical Services (EMS), including transport, are provided by the Johnsburg Emergency Squad, Inc. (JES) with backup from a countywide mutual aid system coordinated by the Warren County Office of Emergency Services. The JES operates with volunteers and a paid staff, three ambulances, and a squad building housing its equipment and supplies. In response to growing call volume, the JES recently (2003) evolved from a strictly volunteer service and added a billing system for service (2004). The JES is funded primarily by fees for service, donations, and discretionary funding budgeted by the Town.

The applicant has estimated the project's potential demand for EMS services at an average 14 calls per year based on

current per capita demand data for Warren County. While this figure represents a minimal increase over current annual call volume for the JES, the JES has stated that it is uncertain of its service capacity over the long term to accommodate this and other resort residential projects. The JES is in the process of improving its efficiencies and is actively planning for the addition of new equipment, staffing, and a larger building to fully accommodate the needs of the community.

The Town has indicated that it will consider further public investments in the JES as service demands require and the Warren County Office of Emergency Services has advised the applicant, in writing, that it will ensure that mutual aid EMS services will be available to accommodate the project if needed.

Real Property Tax Assessments/Tax Base

67. Real property in the Town of Johnsburg is currently assessed at 2.11 percent of market value (based on comparables). The total assessed valuation for all real estate in the Town is currently \$11.06 million and the total taxable assessed valuation is \$9.71 million. If a real property tax assessment were based on the total cost of the project (\$24 million) minus the cost of infrastructure (\$6 million), the real property tax assessment would be \$379,800 factoring in the current equalization rate for the Town of Johnsburg. This figure, if used by the local assessor, would represent a four percent increase in taxable assessed valuation in the Town of Johnsburg. It should be noted that real property tax assessments for residential real estate are typically established based on the sales values rather than project costs. Since the full build-out value of the project cannot be accurately determined at this point, the real property assessment value of \$379,800 should be considered a very conservative estimate for the purpose of impact analysis.
68. The applicant has indicated no intention to seek any real property tax abatements for the proposed project. Real property tax generation to involved local jurisdictions would therefore be expected to be as follows based on an estimated real property tax assessment of \$379,800 and the application of current tax rates: Town of Johnsburg \$42,487; Warren County \$58,452; Johnsburg Central School District \$202,674; and, North Creek Fire District \$12,557. Cost-revenue analyses indicate that the addition of the real property tax assessments as projected for the project

will result in a revenue surplus for all involved taxing jurisdictions if current tax rates are applied.

Historic Resources

69. By letter dated July 6, 2007, the New York State Office of Parks, Recreation and Historic Preservation advised the Agency of the State Historic Preservation Office's recommendation that the project (designated as 07PR01771) "be determined to have No Effect on cultural resources listed or eligible for listing on the National Register of Historic Places." Therefore, the Agency can reasonably conclude that the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

Energy Use and Conservation

70. Climate change is occurring due in part to carbon emissions from burning fossil fuels for electrical power generation and to heat buildings and operate vehicles. There is limited electrical generating capacity and distribution within New York State and the Adirondack Park. Energy costs for residential and commercial uses are rising rapidly affecting public health, welfare, and safety and the economic viability of the region. It is imperative that new construction minimize greenhouse gas emissions, maximize energy conservation and efficiency, and encourage the use of clean and renewable energy resources.
71. This large-scale resort development will be operated on a year-round basis and will have significant energy and water demands and potential for adverse impacts. As such, to minimize its energy consumption and carbon footprint, the project must incorporate state-of-the-art energy, water and material efficiency techniques and sustainable building practices. If the project is designed, constructed and operated to the standards conditioned herein, the project should minimize energy and water use, greenhouse gas emissions, and operational costs.
72. The applicant is conducting a study regarding the feasibility of utilizing solar energy (photovoltaic and solar water heater systems) for the proposed lodge.
73. Compliance with the energy, water, and product related conditions contained in the project permit will be a

positive marketing feature for the applicant. The applicant may be eligible for energy conservation and efficiency grants and tax incentives and have lower operating and maintenance costs. Residential buyers may be able to get mortgage credits and have lower heating and utility costs.

74. Assuring energy efficiency and sustainability in the development of new or redeveloped resort complexes can take advantage of additional benefits from those assurances in the form of improved return on investment and profitability. When integrated into resort design and construction, modern energy efficiency and sustainability programs have proven that efficiency can improve the bottom line, making businesses more profitable and homes more affordable to own and operate.

ORDER EXTENSION

75. By letters dated February 11, 2009 and March 3, 2009, the applicant requested that Project Findings and Order No. 2007-139 be extended to allow the applicant additional time to secure financing and satisfy the conditions contained in Finding and Order. At its March 2009 meeting, the Agency authorized the Deputy Director of Regulatory Programs to issue a one-year extension to the Findings and Order.
76. By letters dated March 18 and 24, 2010, the applicant requested that Project Findings and Order No. 2007-139 be further extended to allow the applicant additional time to satisfy the conditions contained in Finding and Order. Since the March 23, 2009 issuance of the previous extension of Project Findings and Order No. 2007-139, the applicant claims to: (i) have attended approximately eight Town Planning Board meetings in an effort to obtain final subdivision approval (final Planning Board approval was granted on January 25, 2010), (ii) has been working with DEC and expected a stream crossing permit to be issued during the week of March 29, 2010, (iii) is continuing to work with DOH to obtain its approvals, (iv) has completed a draft offering plan to be submitted to the NYS Attorney General's Office, (v) has been in contact with several banks and smaller funding sources to obtain funding for the project, and (vi) is attempting to secure a Small Business Association loan for project construction. At its April 2010 meeting, the Agency authorized the Deputy Director of Regulatory Programs to issue a one-year extension to the Findings and Order.

77. By letter dated March 4, 2011, the applicant requested that Project Findings and Order No. 2007-139 be further extended to allow the applicant additional time to obtain the approvals set out in the order. At its March 2011 meeting, the Agency authorized the Deputy Director of Regulatory Programs to issue a one-year extension to the Findings and Order.

CONCLUSIONS OF LAW

1. The project meets all of the pertinent requirements and conditions of the approved local land use program of the Town of Johnsbury except for certain requirements pertaining to building height, number and size of parking spaces and maximum size of signs, all of which have been lawfully varied by the Zoning Board of Appeals, and a road intersection requirement, which has been lawfully waived by the Planning Board.
2. The project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, residential, and other benefits that will be derived therefrom.
3. The Agency has fully considered all statutory and regulatory criteria for project approval as set forth in §§809(9) and 805(4) of the Adirondack Park Agency Act (Executive Law, article 27) and implementing regulations (9 NYCRR Part 574), the pertinent requirements of the Town of Johnsbury local land use program, § 24-0801(2) of the NYS Freshwater Wetlands Act (ECL, article 24, title 8) and implementing regulations (9 NYCRR 578[1][2]), §14.09 of the Historic Preservation Law (PRHPL article 14) and the State Environmental Quality Review Act (ECL, article 8). The Agency hereby finds that project conforms to all pertinent criteria, provided it is undertaken and continued in accordance with the conditions herein and in Permit 2007-139.

NOW, THEREFORE, UPON THE FOREGOING, THE DEPUTY DIRECTOR, REGULATORY PROGRAMS IS AUTHORIZED AND DIRECTED TO ISSUE PERMIT 2007-139, ATTACHED, UPON FULFILLMENT OF THE FOLLOWING CONDITIONS:

1. Tall Timbers shall prepare and submit final plans to the NYS Department of Health for approval of the project as a realty subdivision and the proposed water supply system and

Notary Public

REW:HEK:TJD:mlr

**DRAFT MOU ON COMMUNICATION BETWEEN NYS ADIRONDACK PARK AGENCY
AND
ADIRONDACK PARK LOCAL GOVERNMENT REVIEW BOARD
3-9-11**

Whereas, the Adirondack Park Agency Act (the "Act"), in 1973, created the Adirondack Park Local Government Review Board (the "Review Board") "for the purpose of advising and assisting the Adirondack park agency [the "Agency"] in carrying out its functions, powers and duties...." (Section 803-a (1)); and

Whereas, the Act provides for notice and communication between the Agency and the Review Board with regard to planning, local government relations, permitting and rule-making; and

Whereas, the Review Board is a special purpose unit of government organized pursuant to Section 803-a of the Act; and

Whereas, the Agency and the Review Board agree that there is mutual benefit to a public understanding of the different ways the two organizations communicate to facilitate the effective opportunities for the Review Board to serve the purposes set out in the Act; and

Whereas, the Review Board and the Agency acknowledge that each is an independent entity organized under the Act and neither controls the communications or agenda of the other; and

Whereas, the Act provides a statutory responsibility to engage the Review Board in consultation on certain matters; and

Whereas, both organizations agree that communication, to include informal executive-level dialogue to more formal communication through representation by members of the respective boards of each, is a valuable means to explore areas of apparent difference and agreement regarding the Adirondack Park; and

Whereas, new avenues for such communication provide promise of distinguishing areas of agreement and subjects for further dialogue in a way likely to benefit Park communities and landowners affected by the public and private land plans administered by the Agency; and

Whereas, the Act establishes a framework for communication, consultation and reporting between the Agency and the Review Board pursuant to Section 803-a of the Act; and

Whereas, the mutual understanding of the two organizations is stated in the following terms and procedures as a Memorandum of Understanding (MOU) between the Agency and the Review Board,

to continue in effect until changed or abandoned according to the terms of this agreement.

Now, therefore, the Agency and Review Board agree:

1. The Act identifies specific obligations for consultation between the Review Board and the Agency: See *Attachment A* document to be reviewed and revised as needed.
 - Administration of the Adirondack Park Land Use and Development Plan Map pursuant to Section 805 of the Act.
 - Potential changes to the Adirondack Park Land Use and Development Plan ("the private land Plan").
 - Administration and enforcement of the private land Plan including:
 - Regional projects
 - Regulatory revision and reform pursuant to the State Administrative Procedures Act (SAPA)

2. The following discussion subjects from the Act are matters for ongoing communication between the Review Board and the Agency:
 - Issues that uniquely involve the entire Adirondack Park and the role of the Agency as a forum "for developing long-range park policy reflecting statewide concern..." (Act, Section 801)
 - To discuss the land use and development plan and to provide for the plan's maintenance, administration and enforcement in a continuing planning process that recognizes matters of local concern and those of regional and state concern, provides appropriate regulatory responsibilities for the Agency and the local governments of the Park, and seeks to achieve sound local land use planning throughout the Park.
 - To discuss the economic futures of communities in the Park and the specific development opportunities that are engaged by the Agency.
 - To discuss variances and guidance provided for Agency jurisdiction and administration.
 - Shoreline variances (Act, Section 806)
 - Guidance provided consistent with SAPA and posted on the Agency web site (SAPA)
 - Enforcement procedures and guidance pursuant to 9 NYCRR Part 581 (Act, Section 813)

- To discuss administration of local land use planning contemplated by Sections 801 and 807 of the Act.
 - To discuss implementation and review of the Adirondack Park State Land Master Plan.
3. The following meetings, notices and reports present additional opportunities for communication and further dialogue:
- Local Government Day, an open forum with an agenda developed in partnership with the Review Board, AATV, and other state agencies with responsibilities in the Park, designed to address Park issues of both local and state-wide concern.
 - Review Board participation in Adirondack Park Agency Board meetings, sitting as a non-voting participant at the table at the invitation of the Chairman and the Board.
 - Copies of formal notices required for changes to the Official Adirondack Park Land Use and Development Plan Map (the private land map) and for regional projects which require permits pursuant to Section 809 of the Act mailed to the Review Board Executive Director and county representative for the municipality involved in the matter before the Agency as well as town and county officials specified in the statute.
 - Copies of formal notices required for variances to Section 806 of the Act, provided as a courtesy even if no project is involved, but not required by statute.
 - Copies of variance correspondence with approved local land use program pursuant to Section 808-3.
 - Agency representation and participation at Review Board meetings, typically involving an Agency Board member and representative of its executive staff.
 - Exchange of annual or periodic reports required by the Act.
 - Informal inter-agency communication between executive staff of the Review Board and the Agency, typically initiated by the Review Board Executive Director and/or President and the Agency Chairman and/or Executive Director.

These modes of communication are intended to continue under this MOU. Electronic communication will be preferred by the Review Board and the Agency unless

Certified Mail is required or a specific request for printed material is made. Informal communication will be considered according to record-keeping and communication standards for inter-agency communication designed to foster frank and open dialogue about subjects of mutual interest. Draft materials may be developed for mutual consideration in furtherance of the statutory missions of both institutions.

4. The Review Board establishes an annual policy agenda in the form of resolutions used to communicate with legislators and the State Executive on issues of concern to the Adirondack Park. These give voice to the independent statutory mission of the Review Board. Both the Review Board and the Agency agree that neither will purport to speak for the other in such communications.
5. The Agency engages policy issues of regional concern ranging from acid precipitation and invasive species to the infrastructure needs and economic sustainability of local communities. In general, these issues become subjects of public dialogue at public meetings of the Board. Insofar as they involve communications with different constituencies or legislative or administrative decision-makers, copies will also be routinely provided to the Review Board through their Executive Director. However, there is no inherent right for either party to a place on the regular business agenda of the other. Such opportunities will be identified through informal communication as described above.
6. The Review Board is authorized to participate as a party in adjudicatory hearings for regional projects before the Agency. In such a case, the Review Board will participate in the proceeding with other parties and Agency hearing staff, and recuse from participation in related Board deliberations as provided in Agency Rules and Regulations regarding *ex parte* communication. The Agency acknowledges that it is the choice of the Review Board whether to participate as a party or to address the matter with the Agency Board. In the latter case, it should be clear that an Agency determination on a matter with an adjudicatory record is limited to the record, and any Review Board comment is restricted to pointing out facts or argument in the record before the Agency.
7. This agreement shall continue in effect until modified or revoked. Either party may propose modifications to

the other. In such a case, the other party shall respond within 60 days or the MOU will be deemed to be revoked. The MOU may be revoked by either party with 30 days notice to the other.

§ 802 Definitions

2. "**Adirondack Park local government review board**" or "**review board**" means the board established in section eight hundred three-a.

§ 803-a Adirondack Park Local Government Review Board

1. For the purpose of advising and assisting the Adirondack park agency in carrying out its functions, powers and duties, there is hereby established the Adirondack park local government review board. Such board shall consist of twelve members, each of whom shall be a resident of a county wholly or partly within the park. No more than one member shall be a resident of any single county. Each member shall be appointed by or in the manner determined by the legislative body of each such county.

2. The members of the review board shall serve for such terms as shall be determined by their respective appointing authorities. Any member of the board may, if authorized by his appointing authority, designate an alternate to serve in his absence.

3. The review board shall elect, for such term as it may determine, a chairman from among its membership and such other officers as it deems necessary.

4. The review board shall meet regularly at least four times each year. Special meetings may be called by the chairman and shall be called by him at the request of a majority of the review board.

5. No member of the review board shall be disqualified from holding any other office or employment by reason of his appointment hereunder, notwithstanding the provisions of any general, special or local law.

6. The members of the review board shall receive no compensation for their services but their respective appointing authorities may provide for payment of their actual and necessary expenses incurred in the performance of their duties hereunder.

7. In addition to any other functions or duties specifically required or authorized in this article, the review board shall monitor the administration and enforcement of the Adirondack park land use and development plan and periodically report thereon, and make recommendations in regard thereto, to the governor and the legislature, and to the county legislative body of each of the counties wholly or partly within the park.

§ 804 General powers and duties of the agency

10. To report periodically to the governor and the legislature on the conduct of its activities but not less than once a year, furnishing a copy of each such report to the clerk of the county legislative body of each county wholly or partly within the park and to the review board.

§ 805 Adirondack Park Land Use and Development Plan

1. Adoption; status report.

b. The agency shall, in consultation with the Adirondack park local government review board, continually review and evaluate the land use and development plan as an ongoing planning process in the light of changing needs and conditions. The agency shall consult and work closely with local governments and local, county and regional planning agencies in this ongoing planning process, particularly as it pertains to their respective territorial areas and jurisdictions. In February, nineteen hundred seventy-six, the agency shall submit a comprehensive report to the governor and the legislature, furnishing a copy thereof to the clerk of the county legislative body of each county wholly or partly within the park and to the review board concerning the status of this planning process and the administration and enforcement of the land use and development plan, as provided for herein, by the agency and local governments.

2. Official Adirondack park land use and development plan map.

b. Within twenty days after the enactment of this section, the agency shall file the official Adirondack park land use and development plan map, as approved by the agency on March third, nineteen hundred seventy-three, and filed in the capitol, at its headquarters and a certified copy thereof with the secretary of state and reasonable facsimiles thereof with the review board and the clerk of each county and local government wholly or partially within the Adirondack park. Within twenty days after any amendment to the plan map, whether by law or by the agency, except an amendment granting in part a request by the legislative body of a local government pursuant to subparagraph three of paragraph c of this subdivision, the agency shall enter such amendment on the plan map filed at its headquarters and file a certified copy thereof with the review board and each of the state and local officers with whom a copy of the plan map is on file hereunder. The agency shall enter and file amendments granting in part a request by the legislative body of a local government pursuant to subparagraph three of paragraph c of this subdivision no sooner than sixty days and no later than ninety days after making such amendments. Such state and local officers shall enter such amendment on the plan map on file with them upon receipt of such certified copy in accordance with procedures prescribed by the agency. Such amendments shall take effect upon conclusion of such twenty-day or ninety-day filing period.

d. The agency may, after consultation with the Adirondack park local government review board, recommend to the governor and legislature any other amendments to the plan map after public hearing thereon and upon an affirmative vote of a majority of its members.

e. Upon receipt of a request to amend the plan map or upon determining to amend the map on its own initiative, the agency shall provide notice of receipt of the request or notice of the determination and a brief description of the amendment requested or contemplated to the Adirondack park local government review board, the chairman of the county planning agency, if any, the chairman of the appropriate regional planning board, and to the chief elected officer, clerk and planning board chairman, if any, of the local government wherein the land is located, and shall invite their comments.

f. The public hearings required or authorized in this subdivision shall be held by the agency in each local government wherein such land is located after not less than fifteen days notice thereof by publication at least once in a newspaper of general circulation in such local government or local governments, by conspicuous posting of the land involved, and by individual notice served by certified mail upon each owner of such land to the extent discernible from the latest completed tax assessment roll and by mail upon the Adirondack park local government review board, the persons named in paragraph e of this subdivision, and the clerk of any local government within five hundred feet of the land involved.

3. Land use areas: character descriptions, and purposes, policies and objectives; overall intensity guidelines; classification of compatible uses lists.

b. The classification of compatible uses lists shall also include any additions thereto by agency amendment pursuant to this section, and the agency may, after consultation with the Adirondack park local government review board, recommend subtractions thereto to the governor and legislature upon an affirmative vote of a majority of its members and after public hearing thereon. The agency may amend the classification of compatible uses lists to make additions thereto after public hearing thereon and upon an affirmative vote of two-thirds of its members. A certified copy of the agency's resolution adopting such amendment shall, within twenty days after adoption thereof, be filed by the agency with the Adirondack park local government review board and the

same state and local officers with whom the plan map is required to be filed under paragraph b of subdivision two and with the legislature. Such amendments shall take effect upon conclusion of such twenty-day filing period. The public hearings authorized or required in this paragraph shall be held in any county wholly or partially within the Adirondack park after not less than fifteen days notice thereof by publication at least once in a newspaper of general circulation in each county wholly or partially within the park and in at least three metropolitan areas of the state, and individual notice served by mail upon:

(3) the Adirondack park local government review board.

§ 807 Local land use programs

6. The agency shall, in its review of local land use programs, consult with appropriate public agencies, and shall provide opportunity for the Adirondack park local government review board and the appropriate county and regional planning agencies to review and comment on such programs under review.

§ 808 Administration and enforcement of approved local land use programs

4. The agency, after consultation with the Adirondack park local government review board, shall have standing to institute a proceeding in any court of competent jurisdiction to revoke its approval of a local land use program and reassert its review jurisdiction over class B regional projects under section eight hundred nine whenever the agency determines by a two-thirds affirmative vote of its members that the local government body or officer having jurisdiction has repeatedly or frequently failed or refused, after due notice and requests from the agency, and with such body or officer having had full opportunity to be heard on all issues involved, to administer or enforce the approved local land use program to adequately carry out the policies, purposes and objectives of the approved program or of the land use and development plan. Not earlier than one year after any such successful reassertion by the agency, or such earlier time as may be mutually agreed to, the legislative body of the local government involved may submit its local land use program, or any amended version thereof, or a newly proposed program to the agency for approval as provided for in section eight hundred seven for the initial approval of a local land use program.

§ 809 Agency administration and enforcement of the land use and development plan

2. a. Any person proposing to undertake a class A regional project in any land use area, or a class B regional project in any land use area not governed by an approved and validly enacted or adopted local land use program, shall make application to the agency for approval of such project and receive an agency permit therefore prior to undertaking the project. Such application shall be filed in such form and manner as the agency may prescribe. The agency shall, upon receipt of such application, provide notice of receipt of the application and a brief description of the project to the Adirondack park local government review board, the chairman of the county planning board, if any, of the county wherein the project is proposed to be located, to the chairman of the appropriate regional planning board, and to the chief elected officer, clerk and planning board chairman, if any, of the local government wherein such project is proposed to be located. The agency shall, upon request, furnish or make a copy of the application available to the review board or to the officials listed in this paragraph.

d. Immediately upon determining that an application is complete, the agency shall, except in relation to minor projects, cause a notice of application to be published in the

next available environmental notice bulletin published by the department of environmental conservation pursuant to section 3-0306 of the environmental conservation law, which publication shall be not later than ten calendar days after the date of such notice. The time period for public comment on a permit application shall be stated in the notice of application. The agency shall at the same time mail a copy of the notice of application completion to the Adirondack park local government review board and to the persons named in paragraph a of subdivision two of this section, and invite their comments.

3. d. If the agency determines to hold a public hearing on an application for a permit, the agency shall notify the project sponsor of its determination by certified mail on or before sixty calendar days or, in the case of a minor project, forty-five calendar days after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section. The determination of whether or not to hold a public hearing on an application shall be based on whether the agency's evaluation or comments of the review board, local officials or the public on a project raise substantive and significant issues relating to any findings or determinations the agency is required to make pursuant to this section, including the reasonable likelihood that the project will be disapproved or can be approved only with major modifications because the project as proposed may not meet statutory or regulatory criteria or standards. The agency shall also consider the general level of public interest in a project. No project may be disapproved without a public hearing first being held thereon.

e. If the agency has notified the project sponsor of its determination to hold a public hearing, the sponsor shall not undertake the project during the time period specified in paragraph c of this subdivision. The notice of determination to hold a public hearing shall state that the project sponsor has the opportunity within fifteen days to withdraw his application or submit a new application. A public hearing shall commence on or before ninety calendar days, or in the case of a minor project, seventy-five days, after the agency notifies the project sponsor that the application is complete or after the application is deemed complete pursuant to the provisions of this section. In addition to notice of such hearing being mailed to the project sponsor, such notice shall also be given by publication at least once in the environmental notice bulletin and in a newspaper having general circulation in each local government wherein the project is proposed to be located, by conspicuous posting of the land involved, and by individual notice served by certified mail upon each owner of record of the land involved, and by mail upon: the Adirondack park local government review board, the persons named in paragraph a of subdivision two of this section, any adjoining landowner, to the extent reasonably discernible from the latest completed tax assessment roll, and the clerk of any local government within five hundred feet of the land involved. Public hearings held pursuant to this section shall be consolidated or held jointly with other state or local agencies whenever practicable.

4. The agency shall make provision in its rules and regulations adopted pursuant to subdivision fourteen of this section for the Adirondack park local government review board and county and regional planning agencies receiving notice under subdivision two to have opportunity to review and render advisory comments on the project under review by the agency.

14. c. Procedures to insure communication and discussion with any federal agency, including the Army Corps of engineers and the soil conservation service, in regard to any federal development proposals in the park.

Such agency rules and regulations, and amendments thereof, shall be adopted only after consultation with the Adirondack park local government review board and at least one public hearing thereon. Fifteen days notice of such hearing shall be made by publication at least once in a newspaper of general circulation in each county wholly or partially within the Adirondack Park and in at least three metropolitan areas of the state, and by individual notice served by mail upon the clerk of each county and each local government of the park, and the chairman of all local government, county and regional planning agencies having jurisdiction in the park. Such notice shall contain a statement describing the subject matter of the proposed rules and regulations, and the time and place of the hearing and where further information thereon may be obtained.