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

MAY 12, 2011

THURSDAY, MAY 12, 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
Elizabeth Lowe, Designee, NYS Department of Environmental Conservation
Dierdre Scozzafava, Designee, NYS Department of State
Terry Martino, Executive Director
John Banta, Counsel

AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF ABSENT

James Fayle, Designee, NYS Department of Economic Development

LOCAL GOVERNMENT REVIEW BOARD PRESENT

Gerald Delaney, Chairman

AGENCY STAFF PRESENT

Richard Weber, Deputy Director, Regulatory Programs
James Connolly, Deputy Director, Planning
Holly Kneeshaw, Assistant Director, Regulatory Programs
Keith McKeever, Public Information Director
Susan Parker, Environmental Program Specialist 1
Virginia Yamrick, Environmental Program Specialist 1
John Burth, Environmental Program Specialist 2
Sarah Reynolds, Senior Attorney
Paul Van Cott, Associate Attorney
Matthew Kendall, Senior Natural Resources Planner
Robyn Burgess, Environmental Program Specialist 1
John Barge, Mapping Technologist 3

Ariel Diggory, Environmental Program Specialist 2
Doug Miller, Environmental Program Specialist 2
Elizabeth Phillips, Senior Attorney
Elaine Caldwell, Administrative Officer
Kathleen Regan, Associate Natural Resources Planner
Colleen Parker, Environmental Program Specialist 2
Tracy Darrah, Environmental Program Specialist 1
Mary Reardon, Secretary 1
Deborah Lester, Secretary to Executive Director

Chairman Stiles called the meeting to order at 9:02 a.m.

1. Announcements

The Chairman noted Mr. Fayle's absence from this meeting. He also noted Gerald Delaney's presence on behalf of the Local Government Review Board.

Chairman Stiles then announced a tree planting ceremony scheduled for 11:45 a.m. to honor Adirondack legend Clarence Petty. He noted Mr. Petty's son Ed would be in attendance for the ceremony.

2. Minutes

Counsel advised the Board of a correction that was made to the draft minutes involving the recorded vote in the Town of Moriah project (2009-153). The corrected draft minutes reflects affirmative votes by Messrs. Booth and Thomas, both of whom were out of the room at the time of the vote on the project, but later indicated their vote in favor of the project. The corrected draft minutes are posted on the Agency website.

On motion of Mr. Wray, seconded by Mr. Booth, the Agency unanimously adopted the April 14-15, 2011 Agency Minutes, as corrected. (Mr. Lussi and Mrs. Ulrich abstained from voting, citing their absence from the April meeting.)

3. Executive Director's Report

Ms. Martino thanked Mr. Connolly for serving as Acting Executive Director on her behalf at the April Agency meeting, and for presenting the resolution recognizing the International Year of Forests and Earth Day. She noted her own experience of the tropical rainforest in Costa Rica where the owner had purchased pastureland and began reforestation of 800 acres. The people of

Costa Rica are enthusiastic in terms of their tree canopy, which serve as travel corridors for monkeys and are also a platform for zip lines, an adventure sport in Costa Rica.

Ms. Martino also thanked Mr. Weber for his work as Acting Executive Director while she was away.

She then noted that in appreciation of forestlands and in recognition of Arbor Day on April 29, a tree will be planted in memory of Clarence Petty, an extraordinary environmentalist who defines the best of the Adirondacks. The tree will memorialize Mr. Petty and his iconic work as a pilot, conservationist and forest ranger, as well as his love of the forests of the Adirondack Park and his considerable contributions to the Forest Preserve and identification of wilderness lands and scenic rivers. Mr. Petty was also one of the first staff members to join the Agency.

Ms. Martino described a conversation she had with someone from an educational facility in New Hampshire about the Park and its public and private lands, as well as the similarities, economic challenges and opportunities across the Northern Forest region. When the person asked her if the Adirondack Park had experienced a reduction in revenue from ticket sales/entrance fees, she explained to him that there are no entrance gates or admission fees to the Park. Ms. Martino noted that it demonstrated how, even with facts, people so easily talk past each other. It also points to the continual challenge for those who live and work in the Park and for those who are invested in its past, present and future, to be ambassadors in the ongoing effort to address use and environmental protection. Some of this will be demonstrated in a staff presentation later in the day on Agency use of GIS describing how complex data can be generated and used within the Agency and how the data can be reviewed with other regional data from sources such as APRAP and the US Census.

Ms. Martino reported on her attendance at the Northern Forest Summit on May 4 and 5 in Whitefield, New Hampshire. More than 135 attended, representing NGO’s, state and federal agencies, businesses and education interests. She noted her participation in the Public Policy Work Group whose objective is to frame a coordinated public policy agenda for the Northern Forest. The session addressed the Strategic Economy Initiative and its successes and impact in the four-state Northern Forest region of New York, Vermont, New Hampshire and Maine, since completion of the report in 2008. Group participants identified those areas where the region can communicate economic and community development, investment and programming needs. Much has changed since the SEI was released in the context of fiscal restraints experienced by the four state governments and restraints in the

availability of federal funding. Particular emphasis was placed on the proposed federal Farm Bill scheduled for reauthorization in 2012. Discussion focused on the need to address innovative programming and delivery of services through projects that will be targeted for funding in the bill. Suggested ideas were discussed such as the identification of funding mechanisms in the Department of Energy available for biothermal projects in the region. Other breakout discussions were presented in the areas of Community Forests, Ecosystem Services, Tourism, Finance and Investment, and Higher Education.

Also at the Summit, Sandy Blitz, federal co-chair of the Northern Border Commission, who participated in the Public Policy Work Group, noted actual $3 million first year funding of an authorized $30 million, with second year funding of $1.5 million. He requested a commitment from the group to seek increased funding.

Ms. Martino then commented on her drive across the Northern Forest and the damage caused by the unprecedented amount of rainfall in April combined with snowmelt, resulting in damage throughout the Park, Northern New York and Vermont, and Lake Champlain at 3 feet above flood stage.

Referring to the Regulatory Programs agenda, Ms. Martino called attention to an overview to be provided by Mr. Weber of the Agency’s response to flood and other damages requiring emergency measures to save property and address safety concerns. She noted the Agency coordinates its response closely with DEC and DOT to ensure timely response.

In other highlights, Ms. Martino reported that the Agency received a no-cost extension on the EPA award through March, 2012. Additionally, the Agency will allocate funds toward technology conversion and upgrade of the MAD system with linkages to GIS work.

Ms. Martino also reported on the Agency's involvement in the second round of DEC Smart Growth funding. Agency executive staff have joined a DEC team in the review of project applications in three categories: Local, Regional and Parkwide. $500,000 will be awarded in this second round, which follows on the 2008 awards of $1 million.

Ms. Martino then referred to the recently released "I♥NY New York State Travel Guide 2011" which identifies the Adirondacks as a "top Green destination." The 2011 Guide features a section on "Green Heart NY," which spotlights green travel and tourism including eco-certified hotels (which the Agency heard about

earlier in the year from Jen Holderied of The Golden Arrow), restaurants and other travel sites.

Regarding the Adirondack Club and Resort (ACR) project, Ms. Martino reported that the adjudicatory hearing for the project remains on schedule and a preliminary schedule for the receipt of the record could be available as early as the June Agency meeting. Agency Counsel and Executive Director will then consult with the Administrative Law Judge to facilitate the transmittal of the record for Board review.

Agency staff continue to look at possible content for Board forums for this year. In June the Board will hear from two businessmen providing aquatic invasives management services in the Park. The business is representative of the integration of resource management and invasive species control with business opportunities. A presentation is also being considered on biomass energy. The forum is intended to include both informational content and dialogue with the Board, engaging discussion on significant trends, opportunities, and policies which impact the Adirondack Park.

Ms. Martino reported on Governor Cuomo's development of Regional Economic Development Councils throughout the state. Agency executive staff have provided information about the Agency that will be used in program material. Staffing is also being addressed for the regional agencies. On behalf of the Agency, she will provide staff support for the North Country, Jim Connolly the Mohawk Valley, and Brian Grisi the Capital-Saratoga regions, working with Chairman Stiles as this initiative moves forward.

Ms. Martino then announced two staff promotions to Environmental Program Specialist 2 positions: Doug Miller in the Legal Division's Jurisdictional Inquiry Office and Ariel Diggory in Regulatory Programs. Mr. Miller, who assumed his new position on April 26, 2011, has been working with the State of New York since 1989, when he began working at DEC where he was involved in the management of the Adirondack Fish Hatchery. Doug joined the Agency in 2005 as an Environmental Program Specialist 1 in the Enforcement Division. He comes to the position with a B.S. in Biology and Environmental Science from St. Lawrence University. Ariel Diggory assumed her new position on May 3, 2011. She began working with the Agency in 2002 as a Naturalist at the Paul Smiths VIC and in 2005 moved to the Ray Brook office into the position of Wetland Researcher and Modeler on a contractual basis pursuant to USEPA grant funding. Ariel returned to college to obtain her master’s degree and returned to the Agency in 2007 as an Environmental Program Specialist 1 in the Regulatory Programs Division. She comes to the EPS-2

position with a Master’s in Conservation Biology from SUNY ESF and Bachelor’s in Environmental Studies from Middlebury College.

In their new positions, Ariel and Doug will be engaged in a structured management effort, which will also include John Burth in Enforcement, to continue with the implementation of processes within the Jurisdiction, Enforcement and Regulatory programs to improve efficiency. Ariel and Doug will be tracking when a jurisdictional determination concludes that a minor permit is necessary, in which case a template letter will be sent to the landowner along with a JIF Supplement Minor Project Application. (In 2010, 40 projects through the JIF office fell into this category.) The new process is designed to coordinate efforts and eliminate as much as possible multiple programs and EPS’s working on the same file. This approach will support dialogue, interaction and more direct decision making in the review of minor projects. Additionally, this new, streamlined process will benefit the minor project applicant and ensure efficient use of division tools in the jurisdictional inquiry/response, the settlement agreement and the project permit. Staff continue the process of revising the Minor Permit Application.

The ability to transition to achieve efficiency objectives is built on the input from staff throughout the Agency. There is more work to do and everyone has a part in achieving objectives for environmental protection while streamlining public communications, outreach and processes. Through these efforts, the Agency will focus on better service and program coordination, more efficient use of its regulatory tools, and improvement of those tools.

Mr. Wray requested an updated copy of the Agency organizational chart reflecting the restructured organization.

Ms. Martino promised to provide the Board with an updated chart in the near future.

Mrs. Ulrich requested further clarification regarding the Park's coverage under the Regional Economic Development Councils.

Ms. Martino explained that the regional councils will be aligned with Empire State Development's regional service areas, with the Adirondack Park covered through the North Country, Mohawk Valley and Capital regions.

4. <u>Motion for Executive Session</u>

On motion of Mr. Wray, seconded by Mr. Valentino, the Agency unanimously voted to meet in executive session, at a time to be determined, to discuss litigation.

5. Motion to Adjourn into Committees

On motion of Mr. Wray, seconded by Mr. Lussi, the Agency unanimously adjourned into committees at 9:25 a.m.

The Agency Board reconvened at 2:30 p.m. for the Community Spotlight presentation.

6. Community Spotlight: Town of Chesterfield, Essex County

Town of Chesterfield Supervisor Gerald Morrow showcased the Town's successes, challenges and goals for the future.

Town of Chesterfield Supervisor Gerald Morrow showcased the Town in a presentation and PowerPoint which highlighted successes, challenges and goals for the future.

Supervisor Morrow has served as Chesterfield Town Supervisor for 18 years, since 1994. At the time, the Town had subdivision regulations which appeared to be inactive. While campaigning in 1993, he reserved comment on his position on local zoning until after the election. After taking office and doing some research, Supervisor Morrow took the position that zoning regulations should not hinder landowners, but rather they should facilitate appropriate development for the community as well as protect homeowners against de-valuation of their property. With the assistance of a hired attorney, the Town developed and adopted a zoning law and sought class B jurisdiction in 1997. The Town's APA-approved local land use program went into effect in August 2001.

The Town's plan is based on a mix of residential, commercial and agricultural uses. Supervisor Morrow referred to a slide showing the family-owned Champlain Valley Specialty on Thompson Road in Keeseville is a commercial business that processes and ships locally grown apples throughout New York, New England and Virginia. The business is a re-use of an agricultural structure. After renovating an old barn, the business started operating in 2004 with about 7 employees and has since grown to about 80 employees.

The plan also allowed for a new commerce park on Thompson Road. Chesterfield Commerce Park was planned because the existing Keeseville Industrial Park – one of the success stories for the Town – was filled. The park is accessed from Route 9, and although a second access point would have been allowed, the Town declined the opportunity while keeping a promise to the residents of Thompson Road. The 102-acre commerce park is part of a larger 241-acre parcel that will also be used for a youth

recreation park and senior housing. The commerce park was certified as shovel-ready in the fall of 2004, with 4 lots pre-permitted for construction of up to a 40,000 sq. ft. building. A business can be in there within 30 days. The park is in competition with Plattsburgh and is the same or perhaps better, even though it is located within the Adirondack Park. The commerce park is serviced by municipal water and sewer, as well as underground utilities, broadband and paved roads, with housing located behind it.

The Town also has concurred with easement-protected agricultural fields.

On 1.75 acres that were donated to the Town in 1831, a community park was constructed in 2002 with the help of a grant from the NYS Office of Parks, Recreation and Historic Preservation. Watson Square Park in Port Kent features basketball and tennis courts, a pavilion overlooking the lake and a children's playground.

Port Kent is also home to a golf course that has recently seen some improvements, including its re-design from a 9-hole to 18-hole course. Future development plans include a 70-lot subdivision/housing development adjacent to the course to be serviced by a new water district.

In terms of the relationship between the Town and the Agency, Supervisor Morrow recalled both good and bad communications over his years as Supervisor. At present, he described it as the best it has ever been, and commended staff's assistance with their water project.

In 1999-2000 the Town used grant funding to construct a pavilion-style depot at the train station. More recently, again with the help of grant funding, the former caretaker's home at Ausable Chasm has been renovated into a welcome center with exhibits. Ausable Chasm donated the building and the property, which the Town used as part of its match for the grant application. The ribbon cutting will take place on Saturday, May 14.

Supervisor Morrow also noted other businesses, services and attractions of importance to the community including Lake Champlain, the Ausable River, Ausable Chasm, the Port Douglas boat launch, the ferry in Port Kent, and Pepsi Cola.

Throughout his presentation, the Supervisor showed a number of photo slides related to businesses and locations mentioned in his presentation, as well as the devastation of the recent

flooding on private homes, the Port Douglas boat launch site, and the Port Kent ferry dock and snack bar.

In terms of the future, Supervisor Morrow noted the importance of maintaining a good line of communication between the Town and the Agency. He encouraged consultation with the Agency prior to undertaking any projects, noting he had the APA on speed dial. The Supervisor said he has observed a marked difference in the Agency since 1976-77 when he was a builder. He also said that he feels the Agency has listened to the Town and is not a hindrance, he hopes for continued improvement in dialogue.

Mr. Lussi asked how the Agency had improved over the years since the 1970's.

Supervisor Morrow recalled an unpleasant experience with the Agency in 1977 when he purchased an 8-acre lot within an Agency-approved subdivision of farmland on the Thompson Road. The Supervisor said that on the day of the closing he met with an Agency staff person who refused to approve his proposed building site, which led to a dispute between him and the staff person as to a purported road versus cow path. He asked only that the Agency work with property owners. He also recalled an instance in the past when the Agency required substantial paperwork for a spoils permit, whereas another time the Agency issued a permit in 3 days.

The Supervisor also recalled the creation of the first water district in 1996, making the community eligible for grants. Since then, new fire hydrants have been installed using grant funding, and all of the main lines have been completed. The water filtration plant and intake from Lake Champlain is now under construction.

Mr. Thomas inquired about the new commerce park, how the Town acquired the land and built the infrastructure.

Supervisor Morrow advised that the 241-acre farm was purchased from a doctor from Schenectady. With the Keeseville Industrial Park filled, the Town agreed to Supervisor Morrow's recommendation to pursue purchase of the farmland. Negotiating on behalf of the Town, Supervisor Morrow made an offer to the landowner for the assessed value of the property, which was a difference of $100,000 less. The Town Board approved a resolution to purchase the 241 acres for recreational use, with plans for a recreational park with baseball diamonds and a niche for senior housing. The proposal met with some resistance from some residents who were concerned about the tax consequences, and they presented a petition to the Board. Following a meeting with concerned citizens, the Town purchased the property for

youth recreational and senior housing use, with 102 acres earmarked for a commerce park. Supervisor Morrow noted that while the Town owns the property, the Essex County Industrial Development Agency is the sole marketer for the park. The Town financed the purchase, and with the cooperation of the village, obtained $2 million in grant funding which was used to develop the roads, water and sewer, including upgrading the village sewer plant which was under violation notice from DEC.

When asked about his history as a politician, Supervisor Morrow responded that he was once a manager for Grand Union and then he retired and became a contractor, building houses from Cumberland Head to Keene. Neither he or his family had ever been involved in politics, he said. In 1985, he ran for Town Councilman and in 1993 for Town Supervisor.

Chairman Stiles commended Supervisor Morrow's accomplishments throughout his political career, and presented Supervisor Morrow with an APA lapel pin.

The Agency temporarily adjourned into committee at 3:20 p.m., and then reconvened at 4:07 p.m. to hear committee reports and to act on committee recommendations.

7. Report on Executive Session

Chairman Stiles reported that the Board took no action while in executive session. He reported the discussion involved Matter of Adirondack Council v APA.

8. Committee Reports

a. Regulatory Programs Committee

Mrs. Ulrich noted updates provided by the Deputy Director of Regulatory Programs regarding the Champlain Bridge, emergency flood response, and telecommunications projects.

(1) 2010-138, Village of Lake Placid

The matter involves an application by the Village of Lake Placid for a variance from the shoreline structure setback restrictions of Section 806 of the APA Act. The Village proposes to replace the existing bandshell in the village park in the Town of North Elba, Essex County. The structure is located entirely within the 50-foot setback at 6 feet from the mean high water mark of Mirror Lake.

Mrs. Ulrich invited Environmental Program Specialist Susan Parker to provide clarification in response to a question by Mr. Booth regarding setback distances of adjoining buildings.

Ms. Parker advised that the existing bandshell is 6 ft. back and is proposed to be replaced 8 ft. back. The EMS building, provided this project's plans are correct for the façade of that building, is 17 ft. back from the property corner. The house on the other adjacent lot is actually 50 ft. back, although there is a large fence in between that property and the park, and EMS has a deck that brings it closer to the shoreline.

Mrs. Ulrich then referred to revised language in #16, "Alternatives" on Page 9 of 13.

Mr. Lussi noted that the owner of the EMS building appeared at the public hearing and spoke in favor of the project, even though the new bandshell would be closer to the EMS building than the existing bandshell.

Mrs. Ulrich moved approval of the draft Variance Order with modifications to Page 9 of 13. Mr. Wray seconded the motion, which passed unanimously. A copy of the Variance Order as approved by the Agency is attached to the official minutes.

(2) <u>2002-8R2, James and Suzanne Schmidt</u>

The matter involves a second permit renewal authorizing construction of a single family home on an 18-acre site on Woodhull Lake in the Town of Webb, Herkimer County. The property is accessible by water only. In addition to the home construction, the permit authorizes several accessory structures including a wood/tool shed, boathouse, dock, boat slip and a "monorail/hoistway" at the shoreline to move building materials and supplies up a steep slope to the building area.

On motion of Mrs. Ulrich, seconded by Mr. Wray, the Agency unanimously approved the renewal request in accordance with the draft permit renewal. A copy of the renewal permit as approved by the Agency is attached to the official minutes.

(3) <u>General Permit 2011G-2</u>

General Permit 2011G-2 authorizes NYS DOT to control or eliminate vegetation through the use of non-restricted herbicides under guide rails and sign and delineator posts. The Chairman noted that the general permit will reduce costly labor-intensive control techniques while using materials and application techniques that are environmentally safe, provide one-season control to a broad spectrum of plants, and will

facilitate improved safety conditions for inspection and maintenance of guide rails by improving visibility and drainage.

Mrs. Ulrich noted minor revisions to Page 1 of 8 of the draft General Permit.

On motion of Mrs. Ulrich, seconded by Mr. Valentino, the Agency unanimously approved the General Permit. A copy of the General Permit as approved by the Agency is attached to the official minutes.

(4) Status of Approved Projects

Mrs. Ulrich noted a brief discussion by the Committee regarding future presentations on Agency-approved projects that have been carried out, including projects that were controversial or approved without unanimous support.

b. Park Policy and Planning Committee

Mr. Booth commended staff's presentation on GIS capabilities, particularly as a tool for local planning. He suggested a future presentation illustrating some of the limitations to using GIS.

c. Enforcement Committee

(1) Civil Penalty Guidelines

Mr. Wray reported that the Committee unanimously approved the revised draft Civil Penalty Guidelines.

Counsel advised that Agency ratification of the guidelines is not required pursuant to Part 581-2.1(b) of the Agency's regulations, which provides that the Enforcement Committee shall provide guidance to the Executive Director and make recommendations regarding enforcement policies, operations of the enforcement program, and rules and regulations related to enforcement.

(2) Older Subdivision Violations

Mr. Wray reported that the Committee heard a presentation by staff on a new strategy for more effectively and efficiently treating older subdivision violations.

c. Legal Affairs Committee

Mr. Wray noted the Committee's review of updated guidance and flyers related to recreational vehicles at private campgrounds,

shoreline expansion and replacement including guidance for measuring, and calculation of principal buildings in group camps. The guidance is intended for use by the public during the 2011 building season and will be posted to the Agency website.

9. Interim Reports

a. Administration Committee

On motion of Mr. Mezzano, seconded by Chairman Stiles, the Committee unanimously approved the Draft April 2011 Committee Minutes.

Chairman Stiles expressed his appreciation to Mr. Mezzano for his years of service as the Committee Chair.

b. Local Government Services Committee

Mr. Thomas referred to page 3 of the Draft April 2011 Committee Minutes and noted a correction from "Committee Chair Stiles" to "Agency Chair Stiles."

On motion of Mr. Thomas, seconded by Ms. Lowe, the Committee unanimously approved the Draft April 2011 Committee Minutes as corrected.

10. Public Comment

There was no public comment.

11. Local Government Review Board Comment

Mr. Delaney reported that he had signed the MOU between the Review Board and the Agency.

12. Member Comment

Mr. Valentino referred to the continuing hydrofracking controversy, and as a point of disclosure he reported that under his leadership NYSERDA initiated research projects in the gas industry to locate and fix large quantities of natural gas in the Marcellus Shale, including hydrofracking. Mr. Valentino expressed hope that the federal regulatory agencies as well as DEC will develop new regulations that will facilitate the extraction and use of natural gas in an environmentally responsible manner. Although it does not involve the Adirondack Park, Mr. Valentino said he felt he should disclose his role while at NYSERDA in putting the research in place. Mr. Valentino then referred to broadband internet as the single most

important element for the future viability of Adirondack communities. Like the US Postal Service, which was founded during the American Revolution to help unify the country to assure access to postal service in the most remote areas, Mr. Valentino maintained that broadband is the postal need of the 21st century and is critical to attracting young people and businesses to the Adirondacks. He noted the urgency of doing more than simply identifying the need, but to make it a priority of the Governor, who in turn must press the service providers.

Mr. Thomas noted his attendance at a recent meeting of the Lake George Watershed Coalition, where Brian Grisi was missed. He expressed best wishes to Mr. Grisi for a speedy recovery.

Mr. Mezzano concurred with Mr. Valentino and noted as well the Rural Electrification Act which brought electricity to the remote areas of the country. He then referred to the ongoing effort to improve efficiency at the Agency. He recalled when the Jurisdictional Inquiry Form was streamlined several years ago to make it easier for the applicant, and he suggested that staff revisit the form and make recommendations for improvements. Mr. Mezzano expressed get well wishes for Brian Grisi.

Ms. Lowe welcomed the sunny weather and the receding waters after the historic rainfall that has occurred in the North Country region in the past few weeks. She described it as another chapter in Adirondack natural history, the likes of which has not been seen in this century. Ms. Lowe expressed her best wishes for those people and communities impacted by the storm to recover.

Mr. Lussi commented on his recent travel to Spain, where he noted a number of tourist-driven communities while driving along the east coast to the southern tip. Closer to the southernmost point it became more rural. He also noted proud signs declaring certain areas as state park land, national park land and shoreline for public use. The biggest impression made was the gargantuan 300 ft. tall windmills, which were displayed prominently across the ridge lines, leaving it clearly in the eye of the beholder as to whether they are majestic or a visual blight on the landscape. Mr. Lussi referred to a claim made by windmill detractors that large windmills are unable to handle excessive wind speeds for substantial periods of time, a claim which he refuted based on his own observation of the large windmills in Spain which ran without fail in wind speeds of 60 knots for 3 straight days. Mr. Lussi noted that while he did not advocate windmills along ridge lines, he observed windmills in rural areas along the coastline where animals grazed beneath. Much of the energy being generated is exported 15 miles beneath

the Strait of Gibraltar to Morocco. Mr. Lussi noted the similarities of the Spanish model to the Adirondack Park in that the government saw fit to protect their park lands, but allowed campgrounds and hotels and small businesses to remain within their park and along the shoreline. Mr. Lussi then called attention to the upcoming Adirondack Research Consortium conference to be held May 18-19 at the High Peaks Resort. DEC Commissioner Martens is the scheduled luncheon speaker on May 18. Finally, he thanked Ms. Lowe for her assistance in arranging a presentation for the June Agency meeting by the co-founders of Aquatic Invasive Management, LLC, both of whom are graduates of Paul Smith's College.

Mrs. Ulrich referred to Mr. Lussi's comment regarding windmills, noting her recent experience in the Tug Hill and the St. Lawrence. She said she found the windmills in the Tug Hill to be acceptable, but not so in the St. Lawrence. Mrs. Ulrich also called attention to the upcoming Adirondack Research Consortium which will feature a session on connecting Finnish and Adirondack communities. The delegation from Finland will be visiting the Agency on May 16 for an introduction to the Agency. She noted that she and RASS supervisor Dan Spada will be traveling to Finland in the fall as part of the U.S. delegation for the same project. Mrs. Ulrich then suggested an "Adirondack Passport" to challenge how many of the 103 towns and villages people can individually visit.

Mr. Wray added to Mr. Valentino's comment regarding the importance of broadband throughout the Park. He noted the postal service in Keene Valley had been discontinued and residents were required to make a 10-mile round trip to Keene to pick up their mail and receive postal services. Most recently, however, it has been reported that the USPS may also close the Keene Post Office. In the case of Keene Valley, the lease on the building housing the Post Office has expired, and in the case of Keene the building that houses the Post Office is owned by the Adirondack Medical Center which has indicated they plan to expand their clinic. The USPS has expressed no interest in providing a Post Office in Keene Valley or in Keene, which is a potential disaster for both communities. Town officials are communicating with their legislators without any apparent success and the USPS appears to be taking a high-handed approach to the situation. The only potential salvation on the horizon is a CPU (contract postal unit) where a private person or business can contract with the USPS to provide basic postal service. While the USPS has agreed to accept proposals from individuals or businesses to operate a CPU, the extremely narrow time frame for submitting proposals is unreasonable.

Mr. Booth noted that the cavalier attitude of the USPS closing Post Offices in many cities does not offer a great deal of hope for Keene/Keene Valley. Referring to the Community Spotlight presentations by Town Supervisors, he expressed appreciation for the quality of the discussion as well as the different personalities involved. Mr. Booth also referred to Mr. Connolly's comments about the renewed efforts of the Champlain Valley National Heritage Partnership, and noted his long-held belief that the national significance of the Lake Champlain corridor has never been fully recognized for the critical development of this country. Finally, he said he would remember this day at the Agency because a tree was planted honoring Clarence Petty.

Ms. Martino noted a similar experience in the early 1990's in her community in terms of lack of communication by the USPS. She noted that residents in her community received a post card from the USPS providing residents about two weeks notice to install a rural box if they wished to continue receiving mail. Ms. Martino commended Supervisor Morrow's presentation and noted with appreciation that APA is on his speed dial. She referred to the Arbor Day tree planting honoring Clarence Petty and his contributions to both the Park and the Agency. She noted that it has been a busy time at the Agency and she thanked staff for their efforts to stay at the forefront of the work that needs to be done. At the same time the Agency continues to assess internal efficiencies. Ms. Martino also noted it was striking to see how a small country such as Costa Rica can define a marketing message and transform itself by selling nature as a key component of community and economic development.

Ms. Scozzafava recalled last month's Public Comment during which Mr. Brummel requested his letter be distributed to the Board. She noted that she is sensitive when someone is frustrated that their voice is not being heard, and took this opportunity to assure Mr. Brummel that Board members were in fact sent copies of his statement.

Chairman Stiles added that he had received a follow-up letter from Mr. Brummel expressing his appreciation for being given the opportunity to make a statement and for distributing his written comments to the full Board.

Mr. Banta paid compliments to Supervisor Morrow for his presentation and his "glass half full" perspective. He said the Supervisor's presentation underscored the importance of infrastructure to succeed at the local government level, with sewer and water infrastructure among his remarkable successes. Mr. Banta then referred to the unusually heavy rainfall and snowmelt that has resulted in flooding in the Tri-Lakes and

Essex County, the consequences of which will significantly complicate what is a crisis for many local governments in terms of road, water and sewer infrastructure. For example, although the Village of Saranac Lake re-built their concrete dam, the lake came up so far that it went through the park and adjacent earth started to wash out. In addition to the crisis of the moment, there are financial consequences as well. Hopefully these emergency situations throughout the North Country will muster the attention of the State and federal emergency resources.

Chairman Stiles added a note of appreciation for Supervisor Morrow's presentation. In terms of his sense of commitment to his town and the Adirondacks, Supervisor Morrow is in good company with 98-99 percent of the Park's Supervisors throughout the Park who approach their work with the intent of doing a good job and helping others. It is important for the Agency to listen to these local leaders to gain understanding and to relate to this complex mosaic which is the Adirondack Park. Each community is different, and their uniqueness is what makes the Park what it is. The Chairman then referred to Clarence Petty, a unique individual whom he had the privilege of knowing. He described the tree planting in Mr. Petty's memory as a significant step and he encouraged the Agency in planning its grounds to give thought to heroes who have made the Park a better place. The Chairman said he took great exception to the notion of a "Great Experiment," noting the Park is not an experiment but rather a vision that was created almost 125 years ago. He further defined it as a "work-in-progress" which takes time, and asked the question "What does the Agency contribute to that progress?" He expressed occasional frustration over the lack of time at Agency meetings to discuss meaningful topics. He thanked the Board members for their accomplishments within this condensed one-day meeting.

13. <u>Adjournment</u>

The Agency unanimously adjourned at 4:52 p.m.

CFS:dal
Attachments: Variance Order 2010-138, Village of Lake Placid
Permit 2002-8R2, James and Suzanne Schmidt
General Permit 2011G-2

_____
Curtis F. Stiles, Chairman

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

APA Order Granting Variance
2010-138

Date Issued: May 13, 2011

In the Matter of the Application of

LAKE PLACID VILLAGE

for a variance pursuant to §806
of the Adirondack Park Agency Act

To the County Clerk: This order must be recorded on or before July 13, 2011. Please index this Order in the grantor index under the following names.

1. Lake Placid Village

SUMMARY AND AUTHORIZATION

Lake Placid Village is granted a 42 foot variance, on conditions, from the applicable 50 foot shoreline structure setback restriction pursuant to Sections 806(1)(a)(2) and 806(3) of the APA Act, authorizing placement of a bandshell structure and attached walkway 8 feet from the mean high water mark of Mirror Lake 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 shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the order is recorded. The Agency will consider the project in existence upon installation of the bandshell and walkway authorized herein.

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

The variance application seeks Agency approval for a variance of 42 feet from the applicable 50 foot shoreline structure setback restriction pursuant to § 806(1)(a)(2) and §806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize placement of a 560 square foot bandshell with an attached 100 square foot raised walkway to be located 8 feet from the mean high water mark of Mirror Lake. Section 806(1)(a)(2) and 9 NYCRR Part 575 require a minimum shoreline setback of 50 feet measured from the mean high water mark for greater-than-100 square foot structures. Section 806(3) and 9 NYCRR Part 576 authorize procedures whereby an applicant may apply for a variance from that restriction provided certain criteria cited in the statute and regulations are complied with, as further described below.

PROJECT LOCATION AND SITE DESCRIPTION

The project site is a 0.5±-acre parcel of land located on Main Street in the Village of Lake Placid, Town of North Elba, Essex County, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map. It is identified on Village of Lake Placid Tax Map Section 42.0EL, Block 1 as Parcel 13. The project site is described in a deed from M. Goodman Kelleher to Lake Placid Village dated September 15, 1941 which was recorded September 23, 1941 in the Essex County Clerk's Office in Liber 229 of Deeds at Page 413.

VARIANCE DESCRIPTION AS REQUESTED

The variance as requested involves the construction of a 560 square foot bandshell, 24 feet 8 inches in height above finished grade, to be located 8 feet from the mean high water mark (mhwm) of Mirror Lake, with stairs and an attached walkway and ramp accessible to persons with disabilities to connect to existing park infrastructure. Approximately 100 square feet of the walkway will be located within the setback area. The new bandshell will replace an existing 470 square foot bandshell, 15 feet 6 inches in height above existing grade, which is located 6 feet from the mhwm of the lake and has no attached walkways or stairs.

Re-grading of a portion of the park will be undertaken to facilitate connection of the new structure to existing park infrastructure and provide a more level lawn area for seating. Installation of a rain garden behind the new bandshell will provide stormwater collection and treatment. The bandshell will be a timber post and beam structure with an asphalt shingle roof covering, operable safety glass panels, and granite veneer to match existing park walls covering the foundation.

The proposal is shown on plans titled “Proposed Bandshell Reconstruction,” sheets E-1 (Existing Conditions Plan), E-2 (Proposed Site Plan), and E-3 (Phasing Plans and Construction Details) drawn by Ivan Zdrahal Associates, PLLC, and dated May, 2010, with revisions dated February 2, 2011, herein collectively referred to as the Site Plan. Sheet E-2 incorrectly depicts a “seating wall” which is 40 feet by 3 feet (120 square feet) in size, however Sheet E-3 correctly depicts the stone seating wall detail with a 2 foot seating surface.

The applicant proposes a seating wall 40 feet by 2 feet (80 square feet) in size, which is an integral element of the grading plan. The new bandshell structure is shown on plan sheets labeled “Village Bandshell Materials” and “Proposed”, dated April 15, 2010, and “Comparison of Existing Bandshell and Proposed Bandshell”, dated February 5, 2010, all prepared by Andrew Chary, architect.

Reduced-scale copies of Sheets E-2 and E-3 of the Site Plan 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

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

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the 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 project may not be undertaken, and no transfer deed shall be recorded, until this order is recorded in the Essex County Clerk’s Office. This Order shall be recorded on or before July 13, 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 project site on the recordation date.

3. This order is binding on the applicant, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this order and all the approved maps and plans referred to herein shall be furnished by the applicant to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this order shall contain

references to this order as follows: “The lands conveyed are subject to Adirondack Park Agency Order 2010-138 issued May 13, 2011, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees.”

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.

Building Location and Size

5. This Order grants a variance for the construction of a bandshell structure with attached walkway on the variance site located, sized, and designed as shown on the project plans referenced in the Variance Description as Requested and as modified by the Conditions stated herein.

Building Color

6. All exterior building materials, including roof, siding and trim, used to surface the exterior of the bandshell authorized herein on the project site shall be shall be of a warm, earth tone; a dark shade of brown or green; a warm gray color; and/or shall be of natural wood and stone materials, as described in the application.

Outdoor Lighting

7. All exterior building-mounted outdoor lights and free-standing lights directly associated with the bandshell and walkway shall employ full cut-off fixtures; they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward Mirror Lake, Main Street, or neighboring properties, and shall be installed at a height no greater than 10 feet above finished grade or walkway surfaces.

Erosion and Sediment Control

8. All erosion control devices, including silt fence, shall be installed before any other ground disturbance, such as clearing, grading, and removal of the existing bandshell takes place. Silt fence shall be properly installed parallel to the existing contours between the construction site and Mirror Lake. The silt fence shall be embedded into the earth a minimum of six inches and shall be a minimum of five feet from the shoreline, wherever possible. The applicant, its agents, or its successors

in interest shall inspect the fabric 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. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed soils are stabilized to prevent siltation of the water resources.

9. All disturbed areas shall either be temporarily mulched to eliminate impacts to water quality, or turf shall be immediately re-established. Under no condition shall any area exposed by clearing and grading be left in an unprotected condition longer than two days.

10. Straw mulch shall be used where necessary rather than hay to minimize the potential for invasive species introduction.

Shoreline Cutting

11. Within 35 feet of the mean high water mark of Mirror Lake, no woody vegetation shall be cut or culled without prior Agency review and approval, except for removal of two flowering crabapple trees less than 6 inches diameter at breast height located as shown on the project plans. Existing mowed lawn may be maintained and/or replaced. 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.

Shoreline Setbacks

12. Except for the structures approved by the variance contained herein, all structures, except docks and boathouses, 100 square feet in size or greater, including attached decks, shall be set back a minimum of 50 feet, measured horizontally, from the closest point of the mean high water mark of Mirror Lake.

Planting Plan

13. At least 60 days prior to installation of plants to populate the rain garden feature of the project, a species-specific plant list shall be provided to the Agency for review and approval in the form of a letter of compliance. Plants used shall be species native to the Adirondack Park.

Review of Future Development

14. No expansion or alteration of the bandshell and walkway authorized herein, except in-kind replacement, on the same footprint, shall be undertaken on the project site within the shoreline setback of Mirror Lake without first obtaining a jurisdictional determination and, if necessary, an additional or amended order from the Agency.

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 APA Act is not personal and runs with the land. Recording of the variance order ensures notice to subsequent owners of the land.

Background/Prior History

3. As of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan Map, the project site was not part of a larger parcel of land, nor did the owners on that date own any adjoining property, and the site has not been the subject of any prior Agency determinations.

4. The original bandshell was constructed on the project site in 1976, with use for summer concerts by the Lake Placid Sinfonietta commencing in 1977. Additional uses have included awards and opening ceremonies sponsored by the Olympic Regional Development Authority, the “Songs at Mirror Lake” concerts, and other municipal/public events sponsored by the Village of Lake Placid. The bandshell was replaced in-kind in 1995. A search of Agency and municipal records indicates no prior agency approval was sought for construction of the bandshell, which should have required a variance in 1976. By issuance of this Order, the Agency finds that the lawful status is resolved.

Existing Environmental Setting/Character of the Area

5. The project site is a public park containing the existing village bandshell and 168± feet of shoreline on Mirror Lake. Commercial and residential uses surround the park along Main Street, the main thoroughfare and commercial center for the Village of Lake Placid. Adjoining properties house retail businesses, restaurants, professional office space, a house of worship, and apartments/tourist accommodations. A major redevelopment of the park in 2005 resulted in expanded, paved sidewalks, retaining walls, and viewing platforms outside the 50 foot setback area.

6. There are no wetlands on the project site. Most of the unpaved portion of the park is vegetated with grass which is seasonally mowed, extending from the edge of the expanded sidewalks along Main Street to the shoreline of Mirror Lake which is lined with boulders. A dense clump of cedar trees is located in the southeast corner of the lot, two elm trees are located in the northeast corner of the lot, and landscape plantings exist along the north and south property lines, as well as along some of the park developments.

Visibility

7. The existing bandshell is fully visible from the sidewalk along Main Street and most locations on Mirror Lake. It is partially screened from view across the lake and at the north and south ends by intervening structures and vegetation between Mirror Lake Drive and the east shore of the lake. The proposed structure will be additionally screened by existing vegetation, and will moved into lesser-used space while creating more open space in front of the bandshell.

Navigable Shorelines/Water Resources

8. The mean high water mark of Mirror Lake, a B(T) classified waterbody, is 1855.7 feet above mean sea level. No land disturbance will take place within 5 feet of the mean high water mark. Proper installation and maintenance of proposed silt fence, sedimentation/erosion controls and stormwater management systems prior to and during demolition and construction, coupled with prompt and successful restoration of disturbed soil areas, in particular as shown on sheet E-3 of the project plans and as described herein, will serve to adequately protect the shoreline and water quality of Mirror Lake from degradation. Use of native plant species to populate the rain garden will eliminate potential invasive species impacts.

Wetlands

9. The proposed development will not impact wetlands, as no wetlands are located on or within 200 feet of the project site.

Other Regulatory Permits and Approvals

10. The Agency was notified in a completed Local Government Notice Form that no approval is required for the project from the Town of North Elba.

11. The Village Board of Lake Placid Village, Inc. passed a motion on March 1, 2010 authorizing the Mayor to sign the APA application on behalf of the Village of Lake Placid as owner of Mid’s Park, which application was to be submitted for approval of the plans for the new bandshell structure.

Historic Sites or Structures

12. By letter dated March 23, 2011, the New York State Office of Parks, Recreation and Historic Preservation determined that the project as proposed will have no impact upon the cultural resources in or eligible for inclusion in the State and National Registers of Historic Places. Accordingly, 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.

Economic/Fiscal Factors

13. The applicant has stated that denial of the requested variance will result in continued deterioration of the existing bandshell and ultimately damage to the local economy. The bandshell cannot be replaced in-kind and meet accessibility requirements of the Americans with Disabilities Act (ADA), thus it would require removal due to safety and liability concerns. The programs made possible by the existence of the bandshell could no longer be held in this park, eliminating the types of events that have become a tradition for area residents and tourists, and an economic benefit to Lake Placid’s commercial center.

Public Notice and Comment

14. The Agency notified all landowners within 500 feet of the project site and those parties as statutorily required by 9 NYCRR Part 576.5(d)(2). Eight comments letters were received, all either specifically in favor of the proposed bandshell variance, or expressing no concerns with the proposal. One letter raised a specific concern with regard

to the general landscape of the park, with a request that the large boulder located in front of the existing bandshell be preserved.

Public Hearing

15. Agency staff conducted a public hearing March 30, 2011 in the North Elba Town Hall in the Village of Lake Placid regarding the applicant's requested variance pursuant to 9 NYCRR § 576.6. The hearing was attended by Agency staff, the applicant's representative, and eleven members of the public. No objections were made to the variance request during the hearing.

Alternatives

16. Several alternatives for the proposal which would not require a variance were considered, and were deemed not feasible by the applicant as follows:
    a. Replacing the bandshell outside the setback area would not be feasible with respect to the park's existing improvements, and the advantage of the existing sloped terrain which provides for an "amphitheater" effect would be lost. The natural amphitheater design of the park, which will be accentuated by the current proposal, allows the public to view concerts from the lawn, lake, and recently expanded sidewalks.
    b. Moving the bandshell to a different site would alter community traditions, damage the economic benefits of attracting residents and tourists to this commercial center for scheduled events, and could result in additional costs for land acquisition, redesign, relocation, and/or re-zoning;
    c. Using temporary structures at this location for events is would not be cost-effective or visually appealing;
    d. Replacing the bandshell in-kind would not provide the needed space for performers and it would not be accessible by persons with disabilities; and
    e. Eliminating the bandshell would have effects similar to relocating it elsewhere.

VARIANCE IMPACTS AND CRITERIA

The following findings of fact evaluate the proposal in light of the criteria and factors set forth in 9 NYCRR § 576.1.

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

17. The applicants have demonstrated that there are unique practical difficulties present on the site which eliminate from consideration the alternatives which could comply with the shoreline restrictions.

Whether adverse consequences from denial outweigh the public purpose served by the restrictions of APA Act § 806?

18. The public purposes served by the shoreline restrictions are protecting water quality in the lake and the quality of the shoreline. Denial of the requested variance could result in cessation of a critical economic benefit generated by public gatherings to attend the various concerts and activities held at the park using the bandshell. A denial could affect the viability of holding free public concerts during the summer tourist season, as this is the primary concert platform, generating tourism and support of local businesses. Moving the bandshell location beyond the setback area would increase the visibility of the structure from the lake and street levels, while interfering with views of the lake and mountains from Main Street. With adequate mitigation during construction as required by the conditions herein, the public purposes served by the shoreline restrictions would be protected, and the adverse consequences of denial would outweigh the public purpose of adhering to the statutory shoreline restrictions.

Whether the application requests the minimum relief necessary?

19. The variance requested is the minimum relief necessary to achieve the applicant’s goals to provide a weather-protected, aesthetically appealing setting for the traditional and expected users of the bandshell which will be accessible by persons with disabilities and the public. This will allow for the continuation of long-established functions of the bandshell. The increased size of the bandshell is necessary to accommodate the Sinfonietta, one of the long-standing users of the structure. The walkway is necessary to provide access to persons with disabilities. While a lesser variance could be granted, it would not adequately serve applicant’s stated objectives and meet the community’s needs.

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

20. This structure is in a hamlet land use area, in the midst of a commercial center. Granting the variance will not

change the use of the bandshell, and will not degrade the resources of the area. Granting the variance will not create a substantial detriment to the adjoining or nearby landowners, and may benefit nearby commercial vendors with a more attractive structure allowing continuation of scheduled park concerts which bring visitors to the site and surrounding area. To the extent that noise from concerts may be a concern, the size of the structure is unlikely to increase the noise level, and the applicant provided a copy of the Lake Placid noise ordinance (Local Law No. 6 of 2008), which requires a permit for any event using sound-amplifying equipment after 9:30 pm. 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?

21. Alternatives intended to avoid the variance were not found to be feasible methods to accomplish the applicant's objectives of maintaining the economic, cultural, and aesthetic benefits of having a bandshell on this site, as well as providing access to persons with disabilities.

The manner in which the difficulty arose?

22. The bandshell structure has deteriorated over time, and the number of members of the primary group of users, the Lake Placid Sinfonietta, has increased. In order to rebuild the bandshell, ADA regulations require the applicant, as a public entity, to make the structure accessible to persons with disabilities. Also, the primary users group, the Sinfonietta, needs more room to safely accommodate the current number of members.

Whether granting the variance will adversely affect existing resources?

23. The character of the existing shoreline will remain essentially unchanged, and may be improved since the new bandshell structure will be moved 2 feet further from the shoreline and will have additional screening by its siting behind existing cedar trees. There will be no change in use of the structure which could affect existing resources. Improved stormwater management features incorporated into the design of the new structure will maintain or improve water quality. Appropriate erosion and stormwater control measures will be put in place prior to and during construction to protect Mirror Lake.

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

26. 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 setback restriction set forth in § 806 of the Adirondack Park Agency Act and 9 NYCRR Part 575, in that:

    a. the application requests the minimum relief necessary;

    b. there will be no substantial detriment to adjacent or nearby landowners;

    c. the difficulty cannot be obviated by a feasible method other than the variance;

    d. the difficulty arose due to the proximity of the existing building to the mean high water mark;

    e. the granting of the variance will not adversely affect the natural and scenic resources of the shoreline and adjoining waterbody due to erosion, surface runoff, detrimental change in aesthetic character, or other impacts which would not otherwise occur;

    f. the imposition of appropriate conditions will ameliorate any adverse effects; and,

    g. the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restrictions.

2. 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 which the individual acted, executed the instrument.

_____
Notary Public

REW:EAP:SHP:mlr

THIS PERMIT AND ORDER GRANTING VARIANCE RENEWS PERMIT AND ORDER GRANTING VARIANCE 2002-8R ISSUED JULY 2, 2007
THIS IS A TWO SIDED DOCUMENT

Adirondack parkagency P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050	APA Project Permit And Order Granting Variance 2002-8R2 Date Issued: May 13, 2011
In the Matter of the Application of **JAMES R. SCHMIDT AND SUZANNE T. SCHMIDT** for a permit and variance pursuant to §§809 and 806 of the Adirondack Park Agency Act and 9 NYCRR Part 575	To the County Clerk: This permit must be recorded on or before **July 13, 2011..** Please index this permit in the grantor index under the following names: **1. James R. Schmidt** **2. Suzanne T. Schmidt**

SUMMARY AND AUTHORIZATION

James R. and Suzanne T. Schmidt are granted (i) a second renewed permit, on conditions, authorizing construction of a single family dwelling and accessory use structures, and (ii) a 100 foot variance, on conditions, to the applicable 100 foot shoreline structure setback restriction, pursuant to Section 806(2) of the APA Act, authorizing construction of a monorail and hoistway beginning inside the mean high water mark of Woodhull Lake in an area classified Resource Management by the Adirondack Park Land Use and Development Plan Map in the Town of Webb, Herkimer County.

The project may not be continued until this renewed permit is recorded at the Herkimer County Clerk's Office. This permit shall expire unless so recorded on or before July 13, 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 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 this permit is recorded. The Agency will consider the project to be “in existence" when the monorail and hoistway has been installed and the single family dwelling foundation has been constructed.

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 and variance consist of the construction of a single family dwelling in a Resource Management land use area, a Class B regional project requiring an Agency permit pursuant to Section 810(2)(d)(1) of the Adirondack Park Agency Act; a structure in excess of 40 feet in height a Class A regional project pursuant to Section 810(1)(e)(8); and a variance to the shoreline setback restrictions of Section 806 of the Act and 9 NYCRR Part 575 for the construction of the monorail and hoistway within 100 feet of the mean high water mark of Woodhull Lake.

PROJECT LOCATION

The project and variance site is an 18.49±-acre parcel of property located on the north shoreline of Woodhull Lake in the Town of Webb, Herkimer County, in an area classified Resource Management on the Adirondack Park Land Use and Development Plan Map. It is identified on Tax Map No. 49-1-76.

PROJECT DESCRIPTION

The project and variance involve the construction of a 30 ft. x 65 ft. single family dwelling and accessory use structures on an 18.49±-acre parcel. The dwelling will be serviced by on-site water supply and wastewater treatment systems. The building area is a 120 ft. x 200 ft. bench located about 160 feet from and about 100 feet above the lake. Access to the site is by boat across Woodhull Lake from a landing at the east end of the lake. The proposed accessory structures include a 12 ft. x 25 ft. wood/tool shed, a 14 ft. x 20 ft. one-story boathouse, a dock, boat slip, monorail and hoistway. The monorail is proposed to move building materials and supplies from a boat to the hoistway. The hoistway is proposed to move building materials and supplies up a steep slope to the building area. Access to the building location from the lake will be by a foot path.

The applicants propose to construct the dwelling 130± feet from the lake. The proposed building location extends about 26 feet over the crest of the slope. The dwelling is proposed at this location so that rock outcrops located near the crest of the slope can be used as part of the foundation for the dwelling. The height of the proposed dwelling from the lowest point of the foundation to the peak of the roof will be about 45± feet in height.

The monorail will be located at the shoreline of the lake. It will be about 24 feet long and supported by a post set in a large boulder that is within the mean high water mark of the lake and a support structure built at the base of the hoistway. The hoistway will be constructed on the steep slope between the shoreline and the building location. The hoistway consists of a 160 foot long double rail line, a small cart, a cable winch and an unloading structure at the top. The rail line portion of the hoistway will have two 4 in. x 6 in. rails connected by 2½ inch pipe crossbars. A small cart will sit on the rails and will be pulled to the unloading structure by an 8,000 lb. capacity cable winch. The unloading structure will be 12 ft. x 16 ft. and built on a concrete block foundation. It will contain the electric cable winch and will be immediately adjacent to an unloading platform. The unloading platform and walkway will be 8 feet wide and about 40 feet long. Because the monorail and hoistway are structures greater than 100 sq. ft. in size and because they are located within 100 feet of the mean high water mark of the lake, a shoreline setback variance is required for their construction.

The applicants propose to have a water pump near the lake and run a water line from the lake to the dwelling along the route of the proposed hoistway. The proposed wastewater treatment system will consist of a 1,000 gallon fiberglass septic tank, a polyethylene distribution box and shallow absorption leach field.

The project site is shown on a survey map dated November 4, 2000, revised November 10, 2000 and labeled: "Survey Map Showing Lands of James & Suzanne Schmidt Great Lot 96 - Moose River Tract Woodhull Lake Town of Webb, Herkimer County State of New York." The survey map was prepared by Duane C. Frymire, L.S. of Woodgate, New York.

The project is shown on a set of plans (17 sheets) labeled: "Construction Design Drawings for Proposed Single Family Dwelling on North Shore Woodhull Lake, New York State Adirondack Park Agency Project No. 2002-8." Said plans were prepared by the applicant, James R. Schmidt, P.E. of Chelmsford, Massachusetts. Sheets 1 - 4 are cross sections and elevations of the proposed dwelling. Sheet 5 is a field dimensions sheet and Sheet 6 is the proposed site plan. Sheet 7 is the boathouse plan and elevations and Sheet 8 is

the tool/woodshed plan and elevations. Sheet 9 is the monorail and hoistway plan and elevations. Sheet 10 is details for the monorail jib support. Sheets 11 and 12 are plans and details for the wastewater treatment system. Sheet 13 is a contour map of the building location and surrounding area. Sheet 14 is a title sheet for the drawings. Sheet 15 is a USGS topography map. Sheet 16 is a survey of the project site. Sheet 17 is an alternative site plan. A reduced-scale copy of Sheet 6 (the Project Site Development Plan) is attached as a part of this permit.

CONDITIONS

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

1. The renewed project and variance shall be undertaken as described in the completed application, the Project Description 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 second renewed permit and order are 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 all the approved maps and plans referred to herein shall be furnished by the applicants to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. 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 and Order 2002-8 issued February 18, 2003, and renewed Permit and Order 2002-8R issued July 2, 2007, and second renewal of Permit and Order 2002-0008R2 issued May 13, 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.

Principal Buildings

4. After construction of the single family dwelling authorized herein, no additional principal buildings shall be allowed on the 18.49±-acre project/variance site.

Monitoring

5. Construction of the single family dwelling, tool/woodshed, boathouse, dock and monorail/hoistway shall be undertaken as authorized and conditioned herein and shall be directly supervised by a professional engineer (P.E.) licensed in the State of New York.

Wastewater Treatment

6. The wastewater treatment system shall be installed according to the plans (sheets 11 & 12) referenced in the project description.

Visual/Open Space Protection

7. Within 125 feet of the mean high water mark of Woodhull Lake, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed except for an area not to exceed 20 feet in width for installation of the proposed monorail and hoistway; and for foot paths, not to exceed 6 feet in width along the shoreline from the monorail to the boathouse and from the boathouse to the building area. West of the proposed monorail, no trees, shrubs or other woody stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed within 125 feet of the mean high water mark of the lake. 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.

8. All exterior materials, including roof, siding and trim, used to surface the exterior of the dwelling authorized herein and all accessory use structures on the project site

shall be earth-tone in color such as dark brown, green, grey or other color which blends with the existing vegetation. The roof shall not be of reflective material. The Agency will, upon request, advise whether any particular proposal complies with this condition.

Shoreline Development

9. Other than the monorail, hoistway, dock, boathouse, boat slip, and footpath, no structures or other new land use and development shall occur on the site within 125 feet of the mean high water mark of Woodhull Lake. Upon completing construction of the dwelling, or upon issuance of a certificate of occupancy by the Town of Webb for the dwelling, or within five years of the date this renewed permit is recorded at the Herkimer County Clerk's Office, whichever comes first, the applicants or their successors in interest shall remove the monorail (as shown on site plan Sheet 9) from the shoreline of the project site. Additionally, no building materials and supplies shall be kept or otherwise stored on the site within 125 feet of the mean high water mark of the lake. All building materials and supplies brought to the site shall be immediately moved to the building area and stored there for future use. All temporary structures or building materials, supplies and equipment (i.e. tent platform, wooden framework, sand and gravel, etc.) located on the site within the mean high water mark of the lake or within 120 feet of the lake shall be removed and/or relocated to the building area immediately upon construction of the monorail and hoistway.

Boathouse/Dock

10. The proposed 14 ft. x 20 ft. one-story boathouse, associated dock and boat slip shall be constructed as shown on Sheet 6 and 7 of the plans referenced in the "Project Description as Proposed" above. The proposed dock shall be no wider than 6 feet, and the boathouse shall only be used for the storage of boats and associated equipment, shall not exceed one story, shall not have bathroom, kitchen facilities, or any plumbing or sanitary drains, shall not contain a heating system and shall not contain beds or sleeping quarters of any kind.

Review of Future Development

11. Other than the single family dwelling, accessory use structures, monorail and hoistway, and foot paths as described and conditioned herein, no additional new land use and development shall be undertaken on the project/variance site without prior Agency approval in the form of a new or amended permit.

FINDINGS OF FACT

Deed Reference

1. The 18.49±acre site is described in a deed from Janet Duncan Turnbull to James R. Schmidt and Suzanne T. Schmidt pursuant to a deed dated October 1, 1979 recorded at the Herkimer County Clerk's Office in Liber 667 of Deeds at Page 603.

Background/Property History

2. The 18.49±-acre site was the subject of Agency Project and Permit 81-55 which authorized the construction of a single family dwelling on the 18.49±-acre site; however, the construction of a dwelling on the site was never undertaken and the permit expired.

3. Review of Agency Project 93-57 generated Enforcement Case E93-140, which found that the project site was part of a larger parcel of property owned by Janet Duncan Turnbull on the May 22, 1973 enactment date of the Adirondack Park Agency Act. In 1974, Janet Turnbull conveyed 19.2± acres to Everett Hussey resulting in a two-lot subdivision of the original property. The remainder of the property was conveyed to James and Suzanne Schmidt in 1979 and in 1981 a permit was issued for construction of a single family dwelling on the Schmidt parcel. By letter dated June 30, 1993, the Agency determined that the 1974 subdivision was a violation of the Adirondack Park Agency Act. The violation was reviewed by Agency staff and the Agency's Executive Director and was resolved without civil penalty pursuant to staff's delegated authority. Due to extenuating circumstances, it was also determined that each of the lots (Town of Webb Tax Map Nos. 49-1-75 and 49-1-76) would be entitled to one principal building for the purposes of constructing a single family dwelling. In 1997 the Agency issued Permit 93-239 again authorizing construction of a single family dwelling on the 18.49±-acre parcel owned by

the Schmidts. Permit 93-239 required a surveyed site plan and engineering details prior to construction of the authorized dwelling. Once again the permit expired before the project was undertaken, hence the new application. This permit and order honors the 1993 resolution of the violation.

Existing Environmental Setting

4. The 18.49±-acre project site is located on the north shore of Woodhull Lake in the Town of Webb, Herkimer County. Woodhull Lake has a dam, and the bed of the lake is controlled by the NYS Canal Corporation. The property is located in a Resource Management land use area on the Official Adirondack Park Land Use and Development Plan Map. The site is about 475 ft. wide and 1,700 ft. deep. It has about 480 ft. of shoreline on Woodhull Lake. Other than Woodhull Lake, there are no wetlands or other water features on the project site. The property boundary line between the project site and the lands of the State of New York under water managed by the New York State Thruway Authority was established by settlement and boundary line agreement dated May 25, 2001 and recorded at the Herkimer County Clerk's Office on June 29, 2001. The boundary is located at 1873.2 msl. Said agreement resolved a CPLR Article 78 action in Herkimer County Supreme Court, Index #71778 RJI #21-97-086.

5. The site rises steeply from the lake with slopes on the site being much greater than 25 percent except for a small bench located about 160 feet from the lake. The bench is about 120 feet wide and about 200 feet long. Slopes on the bench are in the 0 to 8 percent range. Soils on the site, as designated by the Herkimer County Meso Soils Maps, are in the Canaan Rock Outcrop Association. Soils on the bench are a bouldery glacial till with a seasonal high groundwater table that is at least 2 ft. below the surface. Vegetation on the site is a mixture of mature deciduous and coniferous trees about 60 feet in height.

6. Access to the site is by boat from a landing at the northeast end of Woodhull Lake on Adirondack League Club property. Access to the boat landing is via dirt roads that extend through the League Club to the landing. The Adirondack League Club allows owners of property on Woodhull Lake access to the boat landing. Access to the bench is up a steep slope (35 to 50 percent) that rises sharply from the shoreline. The bench is about 100 ft. higher in elevation than the lake.

Character of the Area

7. The project site is located on the north shore of Woodhull Lake. Woodhull Lake is located in the southwest portion of the Park. The surrounding privately owned lands along the north and south shoreline of the eastern portion of the lake are classified Resource Management. The private lands on the south side of the lake are undeveloped lands owned by the Adirondack League Club. The private lands along the north shore of the lake are owned by a number of individuals as well as the Adirondack League Club. There are 15± existing camps (i.e. single family dwellings) along the north shore of Woodhull Lake, many of which are visible from the shoreline. The west end of the lake is surrounded by forest preserve lands classified Wild Forest. Public access to the lake is by a dirt road about six miles long that connects with NYS Route 28 in McKeever.

Public Notice and Comment

8. The Agency notified all landowners within 500 feet of the boundaries of the project/variance site and those parties as statutorily required by Section 809 of the Adirondack Park Agency Act. No comments have been received.

Public Hearing

9. On January 22, 2003 the Agency held a public hearing, pursuant to 9 NYCRR §572.16, on the proposed variance to the shoreline setback restrictions of Section 806 of the Adirondack Park Agency Act. Agency staff appeared at the hearing to receive any objections to the staff recommendation that the proposed variance be granted. Besides Agency staff, in attendance at the hearing were the applicants, James and Suzanne Schmidt, the applicant's daughter Tara Schmidt and Jill Van Slyke Brownsell an adjoining landowner. The plans for the monorail and hoistway, as well as the project plans were reviewed with the adjoining landowner. No objections were raised at the hearing to the staff recommendation that the variance for the monorail and hoistway be granted.

Other Regulatory Permits and Approvals

10. On August 24, 1993, the Town of Webb Planning Board approved a Conditional Use Permit authorizing the construction of a dwelling on the project site. The approval was contingent on receiving plans for the

residence and septic system and issuance of a building permit. On May 22, 2002, the Town issued Building and Zoning Permit No. 6317 S-129 authorizing a residence, boathouse and septic system on the project site.

11. On August 21, 2002, the NYS Canal Corporation issued a letter indicating that they reviewed the applicants' plans for the proposed boathouse/docking facility and found that they were compatible with operation of the reservoir. The letter indicated that a Canal Work Permit would be required for the proposed boathouse and docking facility. On September 26, 2002, the applicants submitted an application to the NYS Canal Corporation for the boathouse, dock, boat slip and that portion of the monorail on Canal Corporation property.

12. A permit has been received from the NYS Department of Environmental Conservation (DEC) for an Article 15 Title 5 Permit for the boathouse and dock. (DEC Permit # 6-2154-00763/00001 issued February 6, 2003.)

PROJECT IMPACTS

Principal Buildings

13. Because there is only one suitable area for construction of a single family dwelling on the site and because there is only one building right associated with the property, no additional principal buildings may be allowed on the project site regardless of any future changes to the land use area classification for the property or any changes to the Town of Webb's zoning for the property.

Construction Oversight

14. The site has steep slopes and a very limited building area, and therefore, the proposal involves detailed plans for the development of the site. The plans for the project must be carefully followed in order to ensure impacts to the site are minimized. Therefore, the development on the project site should be directly monitored by an engineer licensed in the State of New York.

Wastewater Treatment

15. The proposed building area is the only location on the site with slopes and soils suitable for an on-site wastewater treatment system. Because detailed plans for the system were developed by a licensed professional engineer and

because the soils require installation of a shallow absorption trench leach field, the system must be installed at the location shown on the plans and as designed by the engineer. Installation of the system should be supervised by a licensed engineer.

Open Space/Aesthetics

16. Because of the steep slopes between the building area and the lake and because of the potential visibility of the dwelling from the lake, vegetative cutting between the building area and the lake should be limited to only that necessary for construction of the proposed monorail and hoistway (not more than 20 ft. wide), construction of the boathouse/docking facility and for a narrow foot path, not more than 6 feet in width along the shoreline from the proposed monorail to the boathouse and from the boathouse to the building area. Vegetative cutting for a filtered view of the lake from the proposed dwelling might be acceptable, with prior review and approval from the Agency to be undertaken only after the dwelling is constructed. Vegetative cutting should be prohibited within 125 feet of the lake (i.e. the area between the building area and the lake) except for the paths and structures noted above. Vegetative cutting west of the proposed monorail and hoistway is not necessary to undertake the proposed project. Vegetation within 125 feet of the shoreline is necessary to protect the existing character of the shoreline.

17. The proposed monorail and the lower portion of the hoistway will be visible from the lake and should be painted black or a dark grey with a matt or flat finish so that it blends with the existing background making it less visible from the lake. The monorail is necessary to unload heavy building materials, but once the dwelling is constructed, the monorail should be removed because it is highly visible from the shoreline and will no longer be needed to bring supplies to the site.

Alternative Site

18. The alternative building location shown on Sheet 17 of the plans referenced in the project description above moves the proposed dwelling about 30 feet further from the lake and puts it beyond the crest of the slope. The applicant believes that using the existing bedrock outcrops as part of the foundation of the camp will ensure a solid foundation in an area with potentially severe weather

conditions (i.e. high winds and heavy snowfall) and will minimize the ground disturbance necessary for constructing the dwelling. In this case, staff concurs that locating the dwelling as proposed will not create any significant disturbance of the steep slope and will not make the dwelling any more visible from the Lake. Therefore, moving the dwelling 30 feet back behind the crest of the slope would not create any additional environmental impacts or provide any additional environmental protection.

Future Development

19. The site has steep slopes and a very limited building area. The proposed development involves detailed plans prepared by a licensed engineer; the plans are necessary to ensure minimal impacts to the site. Therefore, any new land use or development on the project/variance site, other than what is authorized herein, should require prior Agency review and approval in the form of a new or amended permit.

Historic Sites or Structures

20. Because there are no existing structures or other identified historic resources on the project/variance site, 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 Section 14.09 of the New York State Historic Preservation Act of 1980.

Economics/Fiscal Factors

21. The applicants have owned the project site for nearly 24 years. The Agency has issued permits for the construction of a dwelling on the site twice before reinforcing a long held expectation that the property is suitable for construction of a single principal building. In light of site conditions, the continued use of the hoistway will allow an economic use of the property by the applicants.

Renewal Request

22. By letter dated March 22, 2011, a request was made for a second renewal to Adirondack Park Agency Permit and Order Granting Variance 2002-008R issued on July 2, 2007, and recorded in the Herkimer County Clerk’s Office on August 10, 2007 as Instrument #2007-138107 in Book 1235 at Page 131.

23. By letter dated December 15, 2006, a request was made to renew Adirondack Park Agency Permit 2002-8 authorizing the construction of a 30 ft. x 65 ft. single family dwelling and accessory use structures on an 18.49±-acre parcel. Permit 2002-8 was issued February 18, 2003 and recorded March 21, 2003 at the Herkimer County Clerk's Office in Book 4 of APA Permits at page 638.

    Permit 2002-8 also included an Order granting a 100 foot variance, on conditions, to the applicable 100 foot shoreline structure setback restriction for a monorail and hoistway.

CONCLUSIONS OF LAW

1. The Agency has considered all statutory and regulatory criteria for project approval as set forth in Section 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, except with respect to the shoreline restrictions discussed below, provided it is undertaken in compliance with the conditions herein.

2. There are practical difficulties in the way of carrying out the strict letter of the shoreline setback restriction set forth in Section 806 of the Adirondack Park Agency Act and 9 NYCRR Part 575,in that:

    a. the application requests the minimum relief necessary;

    b. there will be no substantial detriment to adjacent or nearby landowners;

    c. the difficulty cannot be obviated by a feasible method other than the variance;

    d. the granting of the variance will not adversely affect the natural and scenic resources of the shoreline and adjoining lake due to erosion, surface runoff, subsurface sewage effluent, detrimental change in aesthetic character, or other impacts which would not otherwise occur;

    e. the imposition of appropriate conditions will ameliorate any adverse effects; and,

    f. the adverse consequences to the applicant resulting

from denial are greater than the public purpose sought to be served by the restrictions.

3. The variance, pursuant to Section 806 of the Adirondack Park Agency Act, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.

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:VY:SHR:mlr

Adirondack parkagency P.O. Box 99 ·Ray Brook, New	**APA General Permit 2011G-2**	Effective Date: May 13, 011
	In the Matter of the Issuance of a General Permit for the **New York State Department of Transportation Herbicide Vegetation Management for Guide Rail and Sign and Delineator Posts Adjacent to Wetlands in the Adirondack Park**	

SUMMARY AND AUTHORIZATION

The New York State Department of Transportation is granted a general permit on conditions authorizing a vegetative management program allowing certain herbicides to be applied within 100 feet of wetlands. This General Permit is applicable to the area under guide rails and around delineator and sign posts within the state highway rights-of-way in areas classified Travel Corridor on the Official Adirondack Park Land Use and Development Plan Map in the Adirondack Park.

This General Permit is issued pursuant to Environmental Conservation Law Article 24 and 9 NYCRR Parts 572 and 578.

This General Permit may not be used until recorded in the names of “New York State” and “New York State Department of Transportation” in the Office of the County Clerk for the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, St. Lawrence, Saratoga, Warren, and Washington.

This General Permit shall be effective from the date of issuance until modified or revoked by the Agency.

JURISDICTION

Herbicide use in close proximity to wetlands is a regulated activity requiring an Agency permit pursuant to 9 NYCRR 578.3(n)(2), as the use of herbicides may substantially impair the functions served by or the benefits derived from freshwater wetlands.

GUIDE RAIL VEGETATION MANAGEMENT PLAN AS PROPOSED

The New York State Department of Transportation ("DOT") proposes a Vegetation Management Plan involving the use of herbicides to control or eliminate vegetation in areas that cannot be machine mowed for financial reasons, including under the line of guide rail and immediately adjacent to the base of individual sign and delineator posts. The objectives include: reducing costly labor intensive control techniques for grass, weeds, vines, brush and woody plant growth along guide rails and sign and delineator posts; using materials and application techniques that are environmentally safe and provide one season control to a broad spectrum of plants; and developing a program that will facilitate improved safety conditions for inspection and maintenance of guide rails by improving better visibility and drainage.

More specifically:

1. The DOT proposes to apply herbicides to an area 3 feet or less in width under the line of guide rails and to the area immediately at the base of sign and delineator posts generally during the months May through August to control and limit the growth of grass, weeds, vines, brush and woody plants.

2. The DOT will maintain a minimum 5 foot no-herbicide spray buffer from all wetlands.

3. The following herbicides (or similar equivalents) are proposed for application to ensure control of a wide range of plants. They will be applied within recommended label rates but at a conservative dosage as noted below:

Product	EPA Reg No.	Rate Per Acre This Project	Recommended Label Rates
Roundup Original Max	524-539	2.0 quarts	1-3.3 qts./Ac
Oust XP	352-601	3.0 ounces	1-8 ozs./Acre
Escort XP	352-439	1.0 ounce	1-2 ozs./Acre
Krenite S	352-395	2.0 gallons	1.5-6 gal./Acre
Garlon 4 Ultra	62719-527	2 qts./Acre (or less – Poison Ivy control)	1-8 qts./Acre

4. These herbicides will be applied to guide rail as a mix by boom sprayer equipped with spray nozzles appropriate for the application conditions. The sprayer configuration may vary from DOT Region to Region, but generally is equipped with calibrated nozzles, computer and drip reduction valves to control drift and accurately apply the herbicides at the prescribed rates. The boom height will also be kept low to control drift. For applications around sign and delineator posts, the herbicide will be applied by either 1) a hose attached to the truck's spray system equipped with appropriate spray nozzle for the application, or 2) a back pack sprayer equipped with the appropriate spray nozzle for the application.

5. No application will take place when wind speed is sufficient to cause off-target drift. No application will take place when rain is predicted within 12 hours of application or within the rain-fast period specified in the product label of the herbicides(s) and adjuvant(s) being used. Spray operations will be immediately shut down when unacceptable off-target drift is observed or is a probable occurrence under existing conditions.

6. During all applications, a NYS Department of Environmental Conservation ("DEC") Commercially Certified Pesticide Applicator or Technician, certified for applications in Category 6A – Rights-of-Way and/or the DOT Regional Maintenance Environmental Contact ("MEC") will be present. If the MEC is not present, all spray operators will be wetland-recognition-trained. The DOT Regional Spray Crew Supervisor will monitor all spray operations. No products will be stored within the Adirondack Park except under lock and key in the contractor's on-site pesticide vehicles or at a NYSDOT Maintenance Residency equipped with proper storage facilities.

7. No application of herbicides except RoundUp Original Max (or equivalent) or RoundUp Original Max + Oust (or equivalent) will take place within 100 feet of known public or private water supplies.

8. Wetlands and surface drainage features will be field identified by DOT Maintenance Environmental Staff in consultation with the DOT Regional Spray Crew Supervisor (and will be subject to review with Agency staff) to insure that the 5 foot no-herbicide spray areas are maintained. Within the 5-foot buffer areas, vegetation will be controlled by manual methods as needed.

After-spray monitoring will include visual inspection for damage to non-target areas. If adverse impact is found, DOT will determine way(s) to prevent reoccurrence.

9. Monitoring results and continued research on impacts and alternatives will be used to continue to update or amend the vegetative management plan, including consideration of integrated pest management principles, reduced quantity and frequency of herbicide applications, and use of developing alternative technologies for vegetation control.

CONDITIONS

1. All projects authorized by this General Permit shall be undertaken as described in the Guide Rail Vegetation Management Plan as Proposed and in compliance with the Conditions stated herein. Any change in the herbicide product, method of application, rate of application, or width of treatment zones, as well as any other changes to the Guide Rail Vegetation Management Plan, shall require consultation with Agency staff, and may require permit amendment.

2. No project authorized by this General Permit may be undertaken until this General Permit has been recorded in the Office of the County Clerk for the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, St. Lawrence, Saratoga, Warren, and Washington.

3. This General Permit is binding on the DOT and all contractors or other New York State agencies undertaking all or a portion of any project authorized by this General Permit.

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. DOT shall arrange transportation for Agency staff to undertake such evaluations of the condition of vegetation along the highway corridor.

5. Pre-treatment reviews of highway corridors shall be conducted each year, to evaluate the need for and scope of treatments, to identify specific locations where spot herbicide treatments would be sufficient, and to apply

integrated plant management practices to minimize the total volume and frequency of treatments.

Prior to any herbicide treatments, the DOT shall also evaluate 1) adjacent surface and ground water levels and 2) current and predicted weather conditions.

6. The herbicides described herein shall be applied in strict compliance with all the measures described herein, the Environmental Protection Agency and DEC approved product labels, and standard application practices according to DEC Commercially Certified Pesticide Applicator standards.

7. Records detailing all herbicide treatments authorized by this General Permit shall be timely prepared and maintained in accord with EPA and DEC requirements.

8. Following treatment each year and at the same time it is submitted to the DEC, the MEC shall submit to the Agency the annual applicator's report listing the location (by county, state highway number, and mile marker) of all guide rail herbicide applications conducted during the year and the name(s) of the herbicide(s) used in each maintenance project.

   All observed non-target adverse impacts, spills or public complaints shall be investigated by DOT staff and described in the report. The report shall include an evaluation of the actions which caused any non-target impacts, the nature and degree of the impact, and measures to be implemented to correct or avoid reoccurrence.

   The report shall include an update of research on alternative methods of vegetation control to reduce the total herbicides used, as well as any further research on the impacts of inerts and surfactants used in the products.

   The report shall include information on any other items of interest encountered during that year's vegetation management activities, including observations and details of compliance with any terms and conditions of this General Permit.

9. If at any time the DOT or any other state agency or contractor suspects herbicide material is getting into any wetlands, stream or water body, treatment shall cease at once. Treatment shall not recommence unless and until the treatment problem is identified, the treatment method amended to correct the problem, and DOT environmental staff

have determined that the amended treatment method will prevent any additional herbicide material to enter wetlands or any stream or water body. Materials for containing and absorbing any spills and field communication equipment with appropriate phone numbers to immediately report any emergencies (DEC Spill Hotline 800-457-7362) shall be available on treatment vehicles at all times.

10. No disposal of equipment wash water or herbicide containers shall occur in the Adirondack Park.

FINDINGS OF FACT

1. Freshwater wetland covertypes potentially affected by activities involving the management of terrestrial invasive plant species include all those found in the NYS Freshwater Wetlands Act (ECL Article 24): wetland trees, wetland shrubs, emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, wet meadow vegetation, bog mat vegetation, and submergent vegetation. These covertypes form the wetlands defined in Agency Rules and Regulations as deciduous swamp, coniferous swamp, shrub swamp, emergent marsh, deep water marsh, wet meadows and bog.

2. The wetlands potentially affected by use of herbicides along guide rail provide important benefits valued by society such as flood and storm control and abatement, wildlife habitat, surface and subsurface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics and nutrient cycling.

3. Implementation of the guide rail herbicide vegetation management program in accordance with the Conditions of this General Permit will not result in undue adverse impacts on Park resources, will not substantially impair the functions served by or the benefits derived from wetlands, and will provide economic and social benefits to the affected municipalities.

4. The non-target herbicide toxicity of the herbicides approved for use under this General Permit range from slightly toxic to practically nontoxic. Toxicological studies providing these results have been conducted with mammals, wildlife, birds, fish and invertebrates such as soil fungi and bacteria. Acute toxicological studies have measured toxicity from ingestion, inhalation, and skin and eye exposure. Chronic toxicological studies have looked at

mutagenicity, teratogenicity (reproductive) and oncogenicity (tumors) effects.

5. None of the herbicides approved for use in this General Permit are “restricted use” herbicides. Restricted use herbicides are generally more potent and more toxic when compared to non-restricted use herbicides. Restricted use herbicides require a pesticide applicators license to purchase and apply while non-restricted use herbicides are available to the public for purchase and use (similar to over-the-counter medicine).

6. Potential impact to both the environment and to wetlands and water bodies caused by the activities authorized herein will be minimized through the combination of low herbicide toxicity, medium to low herbicide mobility, and conservative application techniques, and proper handling and storage of the herbicides.

7. The success of this project depends on having:
   - wetlands properly recognized;
   - the availability of MEC and crew controls; and,
   - following the Vegetation Management Plan.

8. 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 §426.2 for the purpose 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 Environmental Conservation Law §§ 24-0103 and 24-0105 and 9 NYCRR Part 578. The Agency hereby finds that this general permit 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, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

May 2011