



*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**

**OCTOBER 13, 2011**

**THURSDAY, OCTOBER 13, 2011**

**AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT**

Richard Booth, Member  
Arthur Lussi, Member  
Frank Mezzano, Member  
William Thomas, Member  
Leilani Ulrich, Member  
F. William Valentino, Member  
Elizabeth Lowe, Designee, NYS Department of Environmental Conservation  
Jen McCormick, Designee, NYS Department of Economic Development  
Dierdre Scozzafava, Designee, NYS Department of State  
Terry Martino, Executive Director  
John Banta, Counsel

**AGENCY MEMBERS AND DESIGNEES ABSENT**

Cecil Wray, Member

**LOCAL GOVERNMENT REVIEW BOARD PRESENT**

Fred Monroe, Executive Director

**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  
Virginia Yamrick, Environmental Program Specialist 1  
Robyn Burgess, Environmental Program Specialist 1  
Mary Reardon, Secretary 1  
Deborah Lester, Secretary to Executive Director

As the presiding member for the October 13, 2011 Agency meeting, Mrs. Ulrich called the meeting to order at 9:03 a.m. She introduced and welcomed Ms. Jen McCormick, Vice President of Policy and Research and Deputy Commissioner of Business Advocacy at Empire State Development, who has been designated as ESD's

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new designee on the Agency Board. Ms. McCormick replaces Jim Fayle, who has been transferred to ESD's regional office in Syracuse where he will focus his efforts on the Regional Economic Development Council. Mrs. Ulrich noted that Ms. McCormick's work involves finding ways to increase economic prosperity for New Yorkers by focusing on identifying and building on regional assets that lead to sustainable growth. Her division at ESD produces the demographic and economic analysis that contributes to the development and implementation of the State's economic development agenda. Ms. McCormick has worked at the Office of the State Comptroller, the Senate Finance Committee, the State Department of Taxation and Finance, and the Fiscal Policy Institute. She has a BA in Social Justice from SUNY Empire State College and an MPA in Public Finance from the Rockefeller College of Public Affairs and Policy.

### **1. Public Comment**

William Farber, a member of the North Country Regional Economic Development Council Member and Chair of the Council's Adirondack Park Work Group, commended Ms. Martino's efforts on behalf of the Regional Council and the perspective that she brings to their work.

Lorraine Duvall, a resident of Keene and member of the Ausable River Association, urged collaboration among the Agency, DEC, DOT and the Towns of Keene and Jay in the reconstruction of the Ausable River in an ecologically and environmentally sound manner.

The full comments of Mr. Farber and Ms. Duvall are available in the webcast of this meeting.

[http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2)

### **2. Minutes**

On motion of Mr. Booth, seconded by Mr. Valentino, the Agency unanimously adopted the September 15, 2011 Draft Agency Minutes. (Mrs. Ulrich abstained due to her absence from the September meeting.)

### **3. Motion for Executive Session**

On motion of Mr. Lussi, seconded by Mr. Thomas, the Agency unanimously voted to convene in executive session at 12:45 p.m. to discuss two litigation matters regarding the Jessup River UMP and Lows Lake classification as well as personnel issues.

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**4. Executive Director's Report**

Ms. Martino thanked Mrs. Ulrich for convening the meeting. She also welcomed Ms. McCormick from ESD to the Agency Board, who will bring perspective on ways to increase economic prosperity in New York and whose engagement will benefit the Adirondack Park.

Ms. Martino noted the recent weather in peak season provided a much-needed economic boost for retailers after the impacts of Irene. The opening of Route 73 along with backcountry access, and the message of the Adirondacks being open, together played an important part in the past holiday weekend.

Ms. Martino then provided highlights and activities over the past month, as follows:

- The Agency continues to coordinate efforts with DEC in follow up to the Irene storm emergency authorization and DEC's use of the General Permit for emergency-related work. The Executive Director provided a statement in a DEC press release of how the Agency will coordinate its authority with DEC in their issuance of the General Permit for wetland and designated river projects resulting from the storm event. The Agency also provided information for a footnote to be included in a planned mailing addressing how the Agency administers Environmental Conservation Law Article 24 to protect freshwater wetlands within the Park and the State Wild, Scenic and Recreational Rivers System Act which has additional statutory considerations for stream-course restoration or modifications. The fact sheet will be distributed throughout Region 5. Agency staff will continue to coordinate with DEC and DOT in the identification of project sites impacted by work done under the emergency authorization and general permits that have already been issued, as well as the need for additional restoration or remediation and best management practices. The coordinated efforts by the Agency and DEC will be the subject of an overview of the post-storm response to be provided at this month's meeting by Agency and DEC staff. Additionally, in follow-up to a September 13 e-mailing to Adirondack Park local government officials, the Agency has been in communication with the Town of Franklin regarding their interest in conducting a GPS identification of their town culverts with the Agency providing mapping assistance. Agency staff continue to await further input from the Town about their interest in starting the work.

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- On September 27, Ms. Martino attended Governor Cuomo's "Open for Business Forum" in Albany where the Governor outlined a new state approach to economic growth. The Governor announced a \$4.4 billion investment in New York State with leading international companies, IBM, Global Foundries, Intel, TSMBC and Samsung, committed to the creation of the next generation of computer chip technology in New York. Governor Cuomo discussed this historic commitment of private investment including the job creation and retention of 6,900 jobs, the vital partnerships with educational institutions and the important message that New York State is open for business. Also, Ron Isana of CNBC moderated a panel discussion and noted how New York is being looked at for its changes in the way of doing business. President Bill Clinton was the keynote speaker and he discussed the importance of the grassroots dialogue in the State's Regional Economic Development Councils as part of the framework for economic development in New York State.

- Ms. Martino attended the September 30 North Country Regional Economic Development Council meeting in Potsdam. November 14 is the target date for submission of the Strategic Plan. Agency staff have assisted with their development of a public participation plan which targets public engagement following the development of the plan, as well as website use, social media, a speaker's bureau, and ongoing public meetings. In addition, Agency staff participated in a teleconference webinar with ESD Regional Directors which provided the latest information of development of review procedures for the consolidated funding application process. The application will be a consolidated approach to access Council funding. ESD staff provided background about on line scoring procedures and the responsibilities of Regional Council members in the application review and scoring process and how the consolidated approach will work. Agency staff also attended the workshop for potential applicants. Council members have been working to identify priority projects and criteria across the range of business development interests they have identified. The website [www.northcountryopenforbusiness.com](http://www.northcountryopenforbusiness.com) provides more information about their activities and the project criteria. The Council has four additional public forums scheduled for October 17 in Potsdam, October 18 in Elizabethtown, October 19 in Indian Lake, and October 26 in Lowville.

- The Agency was notified by the US Environmental Protection Agency (EPA) on October 7, 2011 that it has been awarded a Wetland Protection Program Development grant in the amount of \$227,005. The grant is the 14<sup>th</sup> such grant received by the Agency since 1993, bringing the total in EPA grant funding to \$2.9 million dollars. The grant project, titled "Building a

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Monitoring Framework for Detecting Wetlands Response to Climate Change in the Adirondack Park," involves the design and initiation of a network of long-term monitoring sites for analysis of wetland responses to climate change. The project will identify wetlands in the Adirondack Park at risk from climate change; develop protocols and criteria for detecting and monitoring climate change effects; develop training modules for citizen science volunteers; and develop a web-based geographic information systems (GIS) database to analyze, interpret, and disseminate information on wetland and watershed conditions. The Agency will undertake this project in partnership with the SUNY ESF Adirondack Ecological Center, Paul Smith's College Center for Adirondack Biodiversity, and the NY Natural Heritage Program.

- On October 12 Agency executive staff continued discussions with Adirondack Park Local Government Review Board and Adirondack Association of Towns and Villages representatives. The ongoing discussion addressed permitting of commercial projects and a potential for streamlining the Agency's request for general and supplemental information into one permit format. Also discussed was how to work with the public to support small commercial activity. Other topics included the Agency's use of the industrial permit, public use, and a general permit for commercial re-use. The Agency recognizes the importance of ongoing discussions and looks forward to continuing them in the new year with agenda topics to include formatting of the Agency's website to improve usability and consideration of types of commercial projects.

- Agency staff and Board member Ulrich attended the October 5 panel discussions regarding the future of Adirondack communities, arranged by *Adirondack Life* magazine in Lake Placid. This was the second forum of the series which began on September 30 in Newcomb, with panelists presenting ideas for moving toward "Adirondacks 3.0, New Visions for Sustainable Communities." The Agency is very interested in these discussions as they unfold and the attention that is paid to outlining a new view for the Park.

- Agency staff participated in a two-day scenario building workshop for the Adirondack Park where the ideas for a sustainable life were further explored. The Agency is pleased to see this hybrid of public and private interest in a way that will continue to define the future of the Park.

- Regarding the Adirondack Club and Resort project, after the receipt of the reply briefs by the parties that are due by October 24, the record for the adjudicatory hearing will be

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concluded. As noted previously, Judge O'Connell will then be able to certify the record for distribution to the Board. With this schedule, the first of the three-meeting sequence will begin at the November 17-18 Agency meeting, followed by the December 15-16 and January 19-20 meetings. The November 17-18 meeting will start at 9 a.m. on Thursday through 5 p.m., and then from 9 a.m. through 3 p.m. on Friday. The November meeting will include presentations by the Agency Executive Team for the project to familiarize the Board with the complete record, including the application, testimony, exhibits and briefs.

The October 14 tour of the project site has been publicly noticed. Judge O'Connell will join the Board and Executive Team staff and will supervise the tour. Participants are asked to gather at 8:45 a.m. at the Tupper lake Municipal Park on Route 3 across from the shopping plaza. The tour is expected to be completed by 1:00 p.m.

It has been made clear in communication about the tour that ex parte requirements prohibit dialogue between Agency Board members and members of the media or public regarding the project. Everyone is encouraged to dress for the weather. Also, high-clearance vehicles will be necessary on sections of the tour.

Mrs. Ulrich requested members of the public wishing to join the tour to register with the Executive Director's office.

Ms. Martino encouraged carpooling and noted the Agency would have four vehicles to transport Board members, staff and ALJ.

Ms. Lussi expressed an interest in carpooling from the Agency offices.

Mr. Mezzano offered his congratulations on the EPA wetlands grant and asked if it would be primarily for personal services.

Ms. Martino responded that the grant requires matching funds/services and will be used for contractual services. Also, the Agency will be working with partner organizations throughout the study.

Mr. Booth expressed skepticism about New York being open for business, and as a former city official noted the problem of the pressures that localities are facing from the immense property tax burdens and the failure of government to address the problem. Local governments

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cannot live within the current structure as established by the State. The message to the State's decision makers must be clear that change in the real property tax is essential to progress in New York State.

Mr. Monroe echoed Mr. Booth's comments, adding that unfunded State mandates must be addressed as part of the State's economic development initiative.

Mrs. Ulrich commended Ms. Martino on finding a way to share staff expertise in a support role to the Councils. She referred to positive comments she had heard in recent weeks as to the sharing of the intellectual resources within the Agency.

Ms. Martino noted two informational presentations on the agenda: one on international forests and the work of Richard Donovan, and the other by Agency RASS supervisor Dan Spada and his work with the Finland exchange. She noted these would be the last scheduled informational presentations for the next three months due to the review and decision process for the Adirondack Club and Resort project.

**5. Motion to Adjourn into Committees**

On motion of Mr. Thomas, seconded by Ms. Scozzafava, the Agency unanimously adjourned into committees at 9:35 a.m.

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

**6. Report on Executive Session**

Mrs. Ulrich reported that the Board took no action while in executive session. She noted discussion of personnel issues as well as litigation involving Jessup River and Lows Lake.

**7. Committee Reports**

a. Regulatory Programs Committee

(1) 2003-80, Craig Alesse

The matter involves a variance request to construct a single family dwelling within one-eighth mile of a Wilderness critical environmental area, and an on-site wastewater treatment system

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within 100 feet of a navigable water, in an area classified Moderate Intensity Use in the Town of Fine, St. Lawrence County.

Mrs. Ulrich noted two changes to the draft permit and order involving the removal of a sentence regarding the projected remaining building density and a correction to the designated critical environmental area. She also noted there is no further possibility of construction on the subject property.

On motion of Mrs. Ulrich, seconded by Ms. Scozzafava, the Agency approved the revised draft permit and order granting the variance request by a vote of 8 to 1. (Lussi, Mezzano, Thomas, Valentino, Ulrich, Lowe [DEC], Scozzafava [DOS], and McCormick [DED] voted in favor; Booth voted against.) A copy of the permit and order as approved by the Agency is attached to the official minutes.

(2) 2010-205, Sacandaga Hudson Advisory Council/NYS Office of General Services

The matter involves a variance request to construct a whitewater recreational park on Sacandaga River, in areas classified Low and Moderate Intensity Use, Resource Management, and Hamlet in the Town of Hadley, Saratoga County.

Mrs. Ulrich noted minor changes to the draft permit and order, including the addition of a reference to the General Obligations Law.

On motion of Mrs. Ulrich, seconded by Mr. Booth, the Agency unanimously approved the revised draft permit and order granting the variance request. (Booth, Lussi, Mezzano, Thomas, Valentino, Ulrich, Lowe [DEC], Scozzafava [DOS], and McCormick [DED] voted in favor.) A copy of the permit and order as approved by the Agency is attached to the official minutes.

(3) Updates

Mrs. Ulrich reported that the Committee received updates regarding APA/DEC coordinated emergency response to Tropical Storm Irene, the Ski Bowl Village at Gore Mountain project, and telecommunications projects in the Park.

b. Park Ecology Committee

Mrs. Ulrich reported that the Committee heard a presentation on the Rainforest Alliance based in Vermont, as well as a presentation on the Wild Center/Heureka Science Exchange and a

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recent trip to Finland in which she and Agency RASS supervisor Dan Spada participated.

c. State Land Committee

On motion of Mr. Booth, seconded by Mr. Mezzano, the Agency unanimously endorsed updates to the Area Descriptions in the Adirondack Park State Land Master Plan for electronic publication in a 2011 edition.

Mr. Booth also commended the State Land Master Plan's new cover picture.

**8. Interim Reports**

a. Local Government Services Committee

On motion of Mr. Mezzano, seconded by Ms. Lowe, the Committee unanimously adopted the draft minutes of its September 2011 meeting.

Mr. Thomas advised he would follow up with staff regarding planning for Local Government Day 2012.

b. Park Policy and Planning Committee

On motion of Mr. Thomas, seconded by Mrs. Ulrich, the Committee unanimously adopted the draft minutes of its September 2011 meeting.

c. Economic Affairs Committee

On motion of Mr. Mezzano, seconded by Mr. Thomas, the Committee unanimously adopted the draft minutes of its September 2011 meeting.

d. Legal Affairs Committee

On motion of Mr. Booth, seconded by Mr. Mezzano, the Committee unanimously adopted the draft minutes of its September 2011 meeting.

e. Enforcement Committee

Mrs. Ulrich noted the monthly program activity report included in the mailing. She referred questions to Executive Director Martino.

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**9. Public Comment**

Dan Plumley of Adirondack Wild and a resident of Keene commended the presentations on the Wild Center/Heureka Science Exchange Finland trip and the Rainforest Alliance. Also, Mr. Plumley referred to a petition presented to the Agency, DEC, DOT and the Governor, appealing for a halt to the destruction of rivers and streams in the name of post-Irene remediation work.

Mr. Plumley's full comments are available in the webcast of this meeting. [http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2)

**10. Local Government Review Board Comment**

Local Government Review Board Executive Director Fred Monroe advised that the Review Board is in the process of preparing comments and recommendations to the Regional Economic Development Councils for the Adirondack, Capital and Mohawk regions. Among the recommendations is to fill the economic specialist position at the Agency, and to create an Adirondack local planning grant to be funded by the Environmental Protection Fund. He noted the concept for a fund originated in an APA program bill, but it had been resisted by Senator Little because it was proposed to be funded with fines and fees.

Mr. Monroe then referred to the staff presentation on cell towers and he commented on the apparent decline in the number of towers that are collocated. He said the inconsistency in policy between substantial invisibility and potential for collocation has long been an issue and that the likelihood that collocation diminishes when the tower is shorter should be a consideration of the Agency.

Mr. Monroe also commended the presentation on the Finland exchange. He suggested that Adirondack local government would likely support the creation of an organization such as the Finnish forestry service enterprise Metsahallitus, and he noted the potential economic benefits of such an endeavor in the Park.

**11. Member Comment**

Mr. Mezzano commended this month's program content as well as Mrs. Ulrich's management of the meeting.

Ms. Lowe echoed Mr. Mezzano's comment. Referring to the International Year of the Forest, she noted the Wild Center passed a resolution like the Agency did last fall recognizing the International Year of the Forest and the Lake Champlain Basin Plan Steering Committee.

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Mr. Lussi welcomed Ms. McCormick and expressed his appreciation of much-needed support from the economic sector. Referring to the remnants of Hurricane Irene and the devastation it has caused in the region, Mr. Lussi noted a recent driving trip to Hanover, New Hampshire, during which he witnessed substantial damage in neighboring states. Whereas the eastern Adirondacks lost sections of roads, neighboring states lost miles of roads. He noted the collaborative efforts of so many people and groups in the aftermath of the natural disaster, and agreed that along with that is a need for guidance on the reconstruction of riverbeds and streams. Mr. Lussi then referred to Agency downsizing and expressed the importance of retaining experienced staff with scientific expertise. Finally, he applauded the Agency's unanimous approval of the Sacandaga Hudson Advisory Council project, and noted the project represented a good economic/environmental balance. He suggested that such recreational opportunities would help to attract the younger 25-40 year age group to the Park.

Mr. Booth congratulated Mrs. Ulrich on a well run meeting, and welcomed Ms. McCormick as ESD's new designee on the Board. He said he shared Mr. Lussi's support for the Sacandaga whitewater project but felt the approval of the shoreline variance in the Town of Fine sent the wrong message which the Agency would come to regret. With regard to post-Irene emergency work, he agreed that doing work beyond what is necessary was unacceptable. He also requested further clarification from staff in terms of the Agency's involvement and obligations.

Mr. Valentino complimented the new cover of the SLMP, saying it served as a reminder of the importance of planning for future generations. He also applauded the new EPA grant, and he welcomed Ms. McCormick to the Board. He pointed out the importance of recognizing the capability of DED in terms of validating certain Agency actions in terms of protecting the environment while at the same time factoring in economic concerns. Mr. Valentino also thanked Mrs. Ulrich for convening the meeting.

Ms. McCormick expressed thanks for the warm welcome. She said she was excited about the Finland connection, and that she looked forward to working with the Agency to balance competing interests and to provide good for the people now and in the future. She reported on DED's development of a work plan with the US Department of Commerce's Economic Development Administration. The \$250,000 grant in non-matching funds will be used to do an economic impact assessment of Hurricane Irene. Ms. McCormick expressed her regret in not being able to

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participate in the ACR tour, but said she looked forward to participating in the November meeting.

Ms. Scozzafava expressed her appreciation for Mr. Fayle's service, and also welcomed Ms. McCormick to the Board. She referred to the presentations on the Rainforest Alliance and the Finland trip as examples of crossing borders, which is enlightening in terms of seeing how people do things differently and reflecting on our own way of doing things.

Mr. Thomas echoed Mr. Lussi's comments regarding the need for the Agency to retain scientific expertise. He thanked Mr. Spada for his presentation and his efforts on behalf of the Agency, and he also paid compliment to the new SLMP cover. Referring to Local Government Day, Mr. Thomas gave assurance that he and Ms. Scozzafava would begin work on the 2012 program and report back to the Agency in the coming months. He also thanked Mrs. Ulrich for convening the meeting.

Counsel Banta expressed his regret at missing part of the Rainforest Alliance presentation. He said that some things about the Adirondacks that sound like hyperbole are part of the truth that we are fortunate to live with. The Park is the largest area of protected temperate deciduous forest in the world.

Ms. Martino added her thanks for Mrs. Ulrich's convening the meeting. She welcomed Ms. McCormick to the Agency and also wished Mr. Fayle the best in his work in the central region of the state. She also noted ESD's economic impact assessment of Hurricane Irene would be beneficial to the North Country. Ms. Martino remarked on the Rainforest Alliance presentation by Mr. Donovan and their work internationally with communities, the economic benefit and the value of stewardship. Noting her own learning experiences through her daughter's international work, she stressed the importance of global involvement and initiatives, and helping people to understand and link the values of both the land and the products they are involved in. This is further demonstrated through staff's global experiences, as reported this month by Mr. Spada regarding his recent trip to Finland. Ms. Martino also called attention to the presentation on ongoing coordination by DEC and APA, and noted the emergency response to Irene has also proved to be a learning experience in terms of working with communities, engaging services, communications and coordination. She said the Agency looks forward to participating in some important next steps including a tree planting, river walk and community meeting in Jay. Finally, Ms. Martino reminded people of the Adirondack Club and Resort project and the site visit scheduled for Friday morning.

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Mrs. Ulrich expressed her thanks to Jim Fayle for his continued work on behalf of New Yorkers, and at the same time she welcomed Jen McCormick to the Agency Board. She acknowledged Mr. Plumley's comments about teaching the world, and recalled words from a teacher years ago to the effect that people do not fully understand until they leave the country how very big the United States truly is, the impact it has on the rest of the world, and how it could change the world if each and every high school student experienced another country. Mrs. Ulrich then referred to a recent Adirondack Life discussion in Newcomb about the Agency and the future of the Park. The meeting attracted a large number of college students, who were asked whether they might want to live in the Park. While a number of the students showed interest in visiting, only about 7 or 8 of about 20 students indicated an interest in making the Park their home. Many of them associated the character of the Park with the forest character of Newcomb, having had no other sense or frame of reference of what the Park has to offer. Others criticized the lack of outreach to colleges and major communities. Finally, Mrs. Ulrich also expressed her thanks to staff for their assistance.

**12. Adjournment**

The Agency unanimously adjourned at 5:00 p.m.

LCU:dal

Attachments:

2003-80, Craig Alesse

2010-205, Sacandaga Hudson Advisory Council/NYS OGS

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Leilani Ulrich, Member

	<p><b>APA Permit and Order Granting Variance 2003-80</b></p>
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P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050	Date Issued: November 10, 2011
In the Matter of the Application of  <b>CRAIG ALESSE</b>  for a permit pursuant to §809 of the Adirondack Park Agency Act and a variance from the shoreline restrictions of Executive Law §806 and 9NYCRR Part 575	To the County Clerk: This Permit and Order must be recorded on or before January 9, 2012. Please index this Permit and Order in the grantor index under the following name: <b>1. Craig Alesse</b>

**SUMMARY AND AUTHORIZATION**

Craig Alesse is granted (i) a permit, on conditions, authorizing the construction of one new single-family dwelling within 1/8 mile of lands of the State of New York designated Wilderness, a statutorily designated Critical Environmental Area (CEA), and (ii) a 38 foot variance, authorizing the placement of the leaching facility for an on-site wastewater treatment system within 100 feet of the mean high water mark of the Oswegatchie River, in an area classified Moderate Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Fine, St. Lawrence County.

This project may not be undertaken until this permit is recorded in the St. Lawrence County Clerk's Office. This permit and order shall expire unless so recorded on or before January 9, 2012 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 the permit is recorded. The Agency will consider the project in existence upon completion of the single-family dwelling authorized herein.

Nothing contained in this permit and 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 project consists of the construction of a single-family dwelling within 1/8 mile of lands of the State of New York

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designated Wilderness, a statutorily designated Wilderness CEA, a Class B regional project requiring an Agency permit pursuant to §810(2)(a)(18) of the Adirondack Park Agency Act.

Additionally, pursuant to §806(1)(b) of the Adirondack Park Agency Act (Executive Law, Article 27), all new leaching components for an on-site wastewater treatment system must be set back at least 100 feet from the mean high water mark of all lakes, ponds, rivers and streams. The applicant requests a variance of 38 feet from the applicable 100 foot minimum shoreline setback restriction pursuant to §806(1)(b) for installation of the leaching portion of the proposed on-site wastewater treatment system 62 feet from the mean high water mark of the Oswegatchie River. Section 806(3) and 9NYCRR 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 AND VARIANCE SITE DESCRIPTION AS PROPOSED**

The project and variance site is an approximately 0.32± acre parcel of land located between South Shore Road and the Oswegatchie River in the Town of Fine, St. Lawrence County, in an area classified Moderate Intensity Use by the Adirondack Park Land Use and Development Plan Map. The property is identified on Town of Fine Tax Map as Section 265.065, Block 2, as Parcel 16. The property is described in a deed from William R. Sawyer to Craig Alesse which was recorded September 25, 2003 in the St. Lawrence County Clerk's Office as Document #2003-00017541.

**PROJECT AND VARIANCE DESCRIPTION AS PROPOSED**

The project site is a vacant pre-existing lot of record that is improved by two less-than 100 square-foot tent platforms located approximately 10± feet from the mean high water mark of the Oswegatchie River.

The proposed project involves the construction of one new 25 foot by 28 foot, single story (with loft), two-bedroom single-family dwelling constructed on piers greater than 50 feet from the mean high water mark of the Oswegatchie River within 1/8 mile of lands of the State of

New York designated Wilderness that are part of the Five Ponds Wilderness Area. Attached to the dwelling are two enclosed 14 foot by 14 foot porches, one on the east and one on the west side of the dwelling each with exterior stairs leading to the existing natural ground surface, and an attached 5 foot by 28

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foot deck on the north side of the dwelling. The footprint of the proposed dwelling is 1310 square feet, and will utilize an on-site water supply and on-site wastewater treatment systems. Access to the dwelling will occur along a new driveway which originates from the edge of South Shore Road, and will traverse the southern face of the dwelling. No new accessory use structures (i.e., garage, shed) are proposed as part of the project.

The project proposal also includes an 8 foot wide by 40 foot long permanently installed dock in the northwestern corner of the project site along the shoreline of the river. The proposed dock will consist of four 8 foot wide by 10 foot long dock "sections" that will be attached to 2 inch by 8 inch framing. The dock will be attached to 20 foot long by 4 inch diameter galvanized steel poles that will be installed non-mechanically (hand-driven) into the ground (to an appropriate depth) to provide access to the Oswegatchie River. The dock will be affixed to only that portion of the shoreline necessary to provide access to the river, and no vegetation will be removed for installation of the dock. No boathouse is proposed as part of this project.

As part of the applicant's proposal, the proposed on-site wastewater treatment system involves installation of a shallow absorption trench Eljen system whereby the leaching portion (absorption field) of the system is located only 62 feet from the mean high water mark of the Oswegatchie River. A variance is required from the Agency's minimum 100 foot separation distance for the leaching portion of the system from a navigable water body, with the applicant seeking a 38 foot variance.

The NYSDOH has already granted a waiver for installation of the Eljen shallow absorption trench system less than 100 feet from the Oswegatchie River due to enhanced treatment provided by the White Knight microbial inoculator design components involving an aeration unit placed within the septic tank, and addition of enzymes into the septic tank. The location of the proposed on-site wastewater treatment system is in the southwestern corner of the project site and cannot meet the minimum required separation distance.

The proposed project is shown on two separate sets of plans; the first set of development plans were prepared by Timothy J. Westbrook, Adirondack Compliance, and are comprised of the following nine plan sheets:

Sheet SP1 - Site Plan                      scale 1" = 20 feet    dated August  
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Sheet D2 - Dock Detail	scale 1" = 10 feet	dated July 2011
Sheet A1 - 1 <sup>st</sup> Floor Plan	scale 1" = 8 feet	dated April 2011
Sheet A2 - 2 <sup>nd</sup> Floor Plan	scale 1" = 8 feet	dated April 2011
Sheet A3 - Roof Plan	scale 1" = 8 feet	dated April 2011
Sheet A4 - North Elevation	scale 1" = 8 feet	dated April 2011
Sheet A5 - South Elevation	scale 1" = 8 feet	dated April 2011
Sheet A6 - East Elevation	scale 1" = 8 feet	dated April 2011
Sheet A7 - West Elevation	scale 1" = 8 feet	dated April 2011

The second set of development plans, with the scales as noted on each respective plan sheet, depicts the proposed on-site wastewater treatment system, was prepared by Gymo Engineering, is dated August 2, 2011, and is comprised of four plan sheets depicting the following:

Sheet 1 - Title Page "Alesse - Subsurface Disposal System Plans"  
Sheet 2 - C001 - General Information and Notes  
Sheet 3 - C101 - Site Plan  
Sheet 4 - C501 - Site Details

Reduced-scale copies of Sheet C101 (Site Plan) from GYMO, and Sheets SP1 (Site Plan) and D2 (Dock Detail) from ADK Compliance are attached as a part of this Permit and Order for easy reference. The original, full-scale maps and plans referenced in this Order are the official plans for the project.

**CONDITIONS**

1. The project shall be undertaken as described in the completed application, the Project and 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 Permit and Order.
2. This project may not be undertaken, and no transfer deed shall be recorded, until this Permit and Order is recorded in the St. Lawrence County Clerk's Office. This Permit and Order shall be recorded on or before January 9, 2012 in the names of

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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 Permit and Order is binding on the applicant(s), all present and future owners of the project and variance site, and all contractors undertaking all or a portion of the project. Copies of this Permit and Order 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 and Order shall contain references to this Permit and Order as follows: "The lands conveyed are subject to Adirondack Park Agency Permit and Order 2003-80 issued November 10, 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.

**Projected Remaining Building Density**

5. After the construction of the single-family dwelling authorized herein, no additional principal building shall be allowed on Town of Fine Tax Map Parcel 265.065-2-16. This restriction shall apply unless the overall intensity guidelines of the Adirondack Park Agency Act or the Park Plan Map are amended or, pursuant to the adoption of an Agency-approved local land use program, refined so as to permit additional principal building(s).

**Building Location and Size**

6. This permit authorizes the construction of one new single-family dwelling on piers in the location shown on the project plans. The authorized single-family dwelling shall not exceed a footprint of 1310 square feet including all covered and uncovered attached porches, decks, and exterior stairs. The dwelling shall not exceed 32 feet in height. The height shall be measured from the highest point on the structure, including the chimney, to the lowest point of existing grade or finished grade, whichever is lower.

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7. No change in the size or configuration of the footprint of the dwelling, or construction of a partial or full foundation beneath the dwelling authorized herein shall occur without prior Agency review and approval in the form of a new or amended permit.
8. Installation of all utilities to serve the dwelling authorized herein shall be underground.

**Accessory Uses and Structures**

9. One accessory structure, such as a woodshed, shall be permitted without a permit amendment, provided it is located within 25 feet of the single family dwelling, is greater than 50 feet from the mean high water mark of the Oswegatchie River, and is located on slopes less than 15 percent. In no case shall an accessory structure exceed 120 square feet in footprint or 15 feet in height.

**Building Color**

10. All exterior building 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 of a color which blends with the existing vegetation. The Agency will, upon request, advise whether any particular proposal complies with this condition.

**Outdoor Lighting**

11. Any new free-standing or building-mounted outdoor lights shall employ full cut-off fixtures; that is, 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 South Shore Road, the Oswegatchie River, lands of the State of New York, or adjoining properties. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow).

**Wetlands**

12. Beyond that authorized herein, no "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, new land use or development in, subdivision of,

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clearcutting more than three acres within, or dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

**Erosion Controls**

13. Prior to undertaking any earthwork on the site, silt fence shall be properly installed parallel to the existing contours. The silt fence shall be installed as shown on the project plans and also extended from that shown on the plans to the edge of the road pavement, so as to create a continuous erosion control barrier between the proposed development area, adjoining properties, and the Oswegatchie River. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed soils are stabilized. The landowner and/or their contractor 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.

**Water Supply**

14. No change in the location of the well on the project site shall occur without prior Agency review and approval in the form of a new or amended permit from the Agency.
15. The proposed well shall be installed in strict compliance with all terms and conditions contained within the DOH waiver, including all maintenance requirements.

**Wastewater Treatment**

16. The proposed on-site wastewater treatment system authorized herein shall be constructed in complete conformity with the location and design shown on the plans referenced herein. Installation of the system shall be under the supervision of a licensed design professional (licensed Professional Engineer, Registered Architect, or exempt Licensed Surveyor). Within 30 days of complete system installation and prior to utilization, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans.
17. No change in the size, type of design, or location of the on-site wastewater treatment system shall occur without prior Agency review and approval in the form of a new or amended variance from the Agency.

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18. No increase in the number of total number of bedrooms (two) involving the design of the on-site wastewater treatment system to serve the dwelling authorized herein shall occur without prior Agency review and approval in the form of a new or amended permit. As a result, no additional bedrooms shall be added to the single-family dwelling, and no guest cottage, bunkhouse or additional accessory structures shall be constructed on the property that will increase the loading on the on-site wastewater treatment system authorized herein.

**Visual/Open Space Protection**

19. Vegetative clearing shall be limited to that depicted on the site plan for the development area associated with the proposed dwelling and related development. No additional vegetation may be removed without prior Agency review and approval in the form of a new or amended permit.
20. No vegetation may be cut, and no new land use or development shall occur on slopes exceeding 15 percent without prior Agency review and approval in the form of a new or amended permit. These conditions 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.

**Visual Resource Mitigation**

21. Upon completion of the project, the applicant or designee shall contact the Agency and a site investigation shall be conducted to determine whether additional vegetation should be planted in the vicinity of completed dwelling to mitigate visual impacts created by the removal of the existing forested vegetation. If deemed necessary by Agency staff, a landscaping plan shall be submitted to the Agency for review and approval within 60 days of the site investigation. Any landscaping plan shall be planted the first growing season after approval. All vegetation that is part of the landscaping plan for this project that does not survive shall be re-planted until successfully established in a healthy growing condition.

**Shoreline Cutting**

22. With regard to the shoreline of the Oswegatchie River, the following shoreline vegetative cutting restrictions shall apply: Other than minimal removal of vegetation for

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installation of a 4 foot wide footpath to serve the dock authorized herein, no vegetation within 50 feet of the mean high water mark of the Oswegatchie River shall be removed without prior Agency review and approval in the form of a new or amended permit.

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**

23. All structures, except for docks and boathouses, in excess of 100 square feet, 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 the Oswegatchie River.

**Docks and Boathouses**

24. This permit authorizes the installation of one permanent dock to be located and constructed as shown on the project plans described herein. The dock may extend into or over the Oswegatchie River from only that portion of the immediate shoreline necessary to attach the floating or fixed structure to the shoreline. The dock shall be no wider than eight feet in width or in the case of interconnected structures intended to accommodate multiple watercraft or other authorized use, each element shall not be more than 8 feet in width. The dock shall only be used for the purposes of securing and loading or unloading watercraft and for swimming or water recreation.
25. There shall be no boathouse on the project site without prior Agency review and approval in the form of a new or amended permit.

**Legal Interests of Others**

26. This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project or subdivision, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

**Agency Review of Future Subdivision and Development**

27. There shall be no further subdivision or new land use and

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development without a new or amended Agency permit or without a variance (if applicable).

**FINDINGS OF FACT**

1. The variance record for the variance portion of the application consists of the variance request, hearing record, hearing exhibits, and supporting materials.
2. A variance from the terms of the Adirondack Park Agency Act is not personal and runs with the land. Recording of this Order ensures notice to subsequent owners of the land.
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.
4. The project site has been the subject of previous Agency action. Jurisdictional Determination J2003-48 advised that a permit from the Agency was required for the construction of a single-family dwelling on the project site, and that a variance may be required for installation of an on-site wastewater treatment system. This Permit and Order is a result of that inquiry.
5. On November 3, 2011, the applicant's authorized representative contacted the Agency to advise staff that there were two factual errors contained in the Permit and Order, and requested that the project description be modified to more accurately represent the project proposal. The first factual error involved the size of the footprint of the single-family dwelling. The 1250 square foot footprint for the dwelling did not account for the exterior stairs leading from the porches to the natural ground surface. This will result in an additional 60 square feet of footprint for the dwelling, resulting in a maximum total footprint of 1310 square feet for the single-family dwelling. The second factual error involved the proposed dock. The project proposal stated the dock would be seasonally removable, but instead, the applicant is proposing a permanent installation of the dock. There is no change in the construction materials, location, or design of the dock, and these two changes do not materially change the project authorized herein.

**Existing Environmental Setting**

6. There are no wetlands on the project site.

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7. Soils in the vicinity of the proposed on-site wastewater treatment system were evaluated by GYMO engineering, and included excavation of a six foot deep-hole soils test pit. The soils encountered consisted of a 0 to 12 inch layer of topsoil and a 12 to 60 inch layer of silt loam comprised of a mix of silt, sand and clay. No evidence of bedrock was encountered to a depth of 72 inches.
8. Slopes on the project site vary, and range from 8 to 12 percent along the shoreline of the Oswegatchie River, with slopes ranging from 15 to greater than 25 percent in the southeastern corner of the property, and slopes ranging from 8 to greater than 15 percent in the southwestern corner of the property.
9. The entire site contains a mix of coniferous and some deciduous forested vegetation approximately 40± feet in height. The vegetation is a mix of maple, balsam and hemlock trees. The proposed dwelling will be mostly screened from the Oswegatchie River because the applicant is not proposing to cut any of the existing forested vegetation within the 50 foot structure setback (from the mean high water mark of the Oswegatchie River) other than minimal clearing for a 4 foot wide footpath that will provide access to the proposed dock along shoreline.
10. Overhead utilities are present along South Shore Road, and will be run underground to the proposed dwelling.
11. Lands of the State of New York which are classified as Wilderness that are part of the Five Ponds Wilderness Area are located south of South Shore Road across from the project site. The nearest access to hiking trails in the vicinity of the project site is approximately 0.80 miles west, with the hiking trail meandering in a southerly direction away from the proposed dwelling to Dead Creek Flow and the southwestern portion of Cranberry Lake.
12. The area surrounding the project site can be characterized as containing significant residential development along South Shore road, and along both shorelines of the Oswegatchie River. Land use consists of seasonal and year-round single-family dwellings. The SUNY-ESF Ranger School is in approximately 0.35± miles northeast of the project site.

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**Public Notice and Comment**

13. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations and published a Notice of Variance Application in the Environmental Notice Bulletin. One comment letter was received from an adjoining landowner stating concerns about the White Knight enhanced on-site wastewater treatment system involving the effectiveness of the system in sub-zero temperatures, and the enzyme additives.

**Public Hearing**

14. On September 19, 2011, a public hearing on the variance request was held in the Town of Fine. Advance notice of the hearing was published in the local newspapers as required by Agency regulations and sent to adjoining landowners. The hearing was attended by Agency staff, the authorized representative and his partner from Adk Compliance, and two members of the public. One comment letter was received during the hearing, stating support for the variance.

**Other Regulatory Permits and Approvals**

15. Pursuant to the Local Government Notice Form submitted by the applicant's authorized representative, the applicant will require municipal approval. Approvals required include a Building and Septic Permit, and will also require Site Plan Review from the Town.
16. In a letter dated May 26, 2011, the Town of Fine advised the applicant that the driveway proposed herein, and depicted as on the project plans, may be partially constructed within the Town Road right-of-way of South Shore Road provided the following two conditions are complied with:
- The first 5 feet of driveway (as it leaves South Shore Road) will remain in its present condition without any gravel or excavation of the existing shoulder.
  - Beyond the initial 5 feet, excavation shall be permitted if required to lower the level of the driveway as long as the excavated area does not exceed a slope of 1:2.
17. In an approval letter dated June 2, 2011, the New York State Department of Health granted an Individual Household Wastewater Treatment System Waiver for installation of the leaching portion of the on-site wastewater treatment system

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less than 100 feet from the Oswegatchie River. The waiver was granted pursuant to the following conditions:

- Construction and installation of the system be supervised by the design engineer. Upon completion of the system, the design engineer shall certify the construction and installation was done in accordance with the approved plans.
- A maintenance contract between the distributor, supplier, installer, or reputable service company for the White Knight treatment system and the property owner be in place at all times.
- A minimum of 12 inches of sand or pea gravel be installed beneath the distribution box.
- If the proposed well is less than 100 feet from the closest part of the absorption field, a specific waiver for the construction of the well must be obtained from DOH.

18. In an approval letter dated August 22, 2011, the New York State Department of Health granted an Individual Water Supply Specific Waiver for installation of an on-site water supply less than 100 feet from the leaching portion of the on-site wastewater treatment on the project site. The waiver was granted pursuant to the following conditions:

- A minimum of 20 feet of casing shall be installed on the well, and the annular space between the casing and borehole shall be grouted according to Table 2 in Appendix 5-B.
- Upon completion of drilling, a copy of the well completion report shall be provided to DOH, Town of Fine Code Enforcement Office, and New York State Department of Environmental Conservation.
- The area immediately surrounding the well casing shall be graded to direct surface water away from the well.
- Upon completion of drilling, the well shall be properly disinfected and a water sample collected for coliform bacteria analysis. A copy of the results shall be sent to DOH.
- 30 days after the first coliform sample is analyzed, a second sample shall be collected and analyzed, and once a year thereafter.
- Water samples should be collected and analyzed at a certified laboratory in accordance with Recommended Residential Water Quality Testing. Additional treatment of the water supply should be considered depending upon water sample results.

19. In a letter dated September 1, 2011, the New York State Department of Environmental Conservation advised the applicant that the dock proposed herein is non-jurisdictional to that Agency.

**PROJECT IMPACTS**

**Wetlands**

20. There are no wetlands on the project site. However, this finding makes no representation as to the presence of

wetlands adjacent to the project site.

**Water Resources**

21. The on-site water supply is located less than 100 feet from the leaching portion of the on-site wastewater treatment system authorized herein. As such, the water supply required a waiver for its installation; DOH has granted the waiver. Installation of the well, provided it meets all conditions in the waiver, will adequately mitigate the potential for adverse impacts to potable water quality. Furthermore, the well is upgradient from the absorption field of the on-site wastewater treatment system on the project site; and meets the minimum 100 foot separation distance from the adjoining on-site wastewater treatment system located on the adjoining property to the east, and is located upgradient and greater than 100 feet from the pit privy on the adjoining property to the west.

**Navigable Shorelines**

22. The mean high water mark of the Oswegatchie River, as depicted on the site plan, was flagged by Agency staff. Adverse impacts to the shoreline of the project site will be minimized to the greatest extent possible since the applicant is proposing no vegetative cutting within 50 feet of the mean high water mark of the river, except for minimal vegetative cutting for installation of a four foot wide footpath to provide access to the proposed dock on the shoreline. Any additional vegetative cutting other than that associated with the proposed footpath should receive prior Agency review and approval to evaluate the potential for adverse impacts to the shoreline on the project site.

**Land Resources**

23. Slopes on portions of the project site range from 15 to greater than 30 percent. Any new land use or development on slopes greater than 15 percent should receive prior Agency review and approval to minimize the potential for erosion, sedimentation, slope failure, and adverse open space impacts.

**Open Space/Aesthetics**

24. Adverse open space impacts to the Oswegatchie River will be avoided provided the existing vegetation remains uncut between the dwelling and the river as proposed by the applicant, and the exterior of the dwelling is clad in

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earth-toned colors to blend with the existing surrounding vegetation.

25. Adverse visual and open space impacts will be avoided provided vegetative cutting is limited to clearing limits shown on the site plan map for the proposed dwelling and related development. Additional vegetative cutting on the project site, particularly vegetative cutting on slopes greater than 15 percent, should receive prior Agency review and approval to evaluate the potential for adverse open space impacts.
  
26. Provided that all exterior lighting for the dwelling authorized herein is placed on motion detector switches to temporarily light areas, and are fully shielded, adverse open space and visual impacts to Oswegatchie River, lands of the State of New York, the nighttime sky, and surrounding properties will be avoided.

**Critical Environmental Area(s)**

27. The area within 1/8 mile of lands of the State of New York designated Wilderness is a statutorily designated Wilderness Critical Environmental Area (CEA). Although the proposed dwelling and related development is within the CEA, there is a significant amount of residential development along South Shore Road (along the shoreline) in the vicinity of the project site. The proposed dwelling will fit in with the existing character of the neighborhood, and is of a size, height, and configuration on the lot that is not excessively visible to the adjoining properties east and west of the proposed dwellings. As a result of the vegetation being removed on the southern one-half of the lot for the proposed dwelling and related development, vegetative planting as proposed by the applicant (and shown on the site plan) will provide some visual screening of the dwelling authorized herein. Additionally, the dwelling and proposed development is located greater than 1/2 mile east of the trailhead through State lands and will not be visible as seen from that location.
  
28. In order to minimize open space and aesthetic impacts to the river corridor and adjoining properties, installation of utilities to serve the dwelling herein should be run underground.

**Historic Sites or Structures**

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29. The project site is vacant, and does not contain any structures or sites as shown on the New York State Archeological Sensitivity Map. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

**Variance Factors**

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

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

30. The applicant has demonstrated that there are unique practical difficulties based on the small size and configuration of the pre-existing lot of record and the environmental constraints of the property. There is no area on the applicant's property where an on-site wastewater treatment system could be installed in compliance with all required setbacks from water bodies.

**Whether adverse consequences from denial outweigh the public purpose served by the Adirondack Park Agency Act shoreline restrictions?**

31. The purpose of the 100 foot minimum shoreline setback restriction for the leaching portion of the on-site wastewater treatment system is to protect the water quality of groundwater, surface waters, wetlands, and navigable water bodies. Installation of the on-site wastewater treatment system with the White Knight enhanced treatment design components will mitigate the potential for adverse impacts to water resources as a result of the system being installed less than 100 feet from the mean high water mark of the Oswegatchie River. Denial of the variance would outweigh any such impacts because it would substantially limit the ability of the applicant to construct a single-family dwelling on the lot and allow for reasonable use of the pre-existing lot. Recreation and summer tourism are vital to the local economy of the Town of Fine. To deny the variance, which would increase the local tax base as a result of new residential development, would not serve the public purpose served by the Adirondack Park Agency Act shoreline restrictions. Under these unique facts, the applicant has demonstrated that the benefits to the applicant, the adjacent land uses, and the public from granting the

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variance are greater than the benefit to the public from strict adherence to the shoreline restrictions.

Whether the application requests the minimum relief necessary?

32. The physical configuration of the lot depicted on the project plans reveals that the 0.32 acre project site has a depth of 97± feet on the west side of the lot, and a depth of 107± feet on the east side. The natural shoreline winds and turns in such a manner that it does not allow for installation of an on-site wastewater treatment system which can meet the 100 foot minimum setback anywhere on the lot. Installation of the system has been located in the extreme southwestern corner of the lot - as far back from the mean high water mark of the Oswegatchie River as possible, and the project plans demonstrate that the applicant is requesting the minimum relief necessary.

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

33. The enhanced wastewater treatment system will provide enhanced treatment of effluent associated with the dwelling on the site, and thereby reduces the potential for impacts to water resources. As a result, this will also reduce potential detriments to adjoining landowners. The Agency has received only one comment letter stating concerns about the effectiveness of the proposed on-site wastewater treatment system during the winter months. Further, DOH has already granted a specific waiver for installation of the on-site wastewater treatment system on the lot.

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

34. There is no area on the property where an on-site wastewater treatment system could be installed without the need for a variance. The applicant worked with his engineer (GYMO), Agency staff, and DOH to develop the proposal presented and authorized herein. Each of the lots on either side of the project/variance site contain existing residential development, and due to the relatively small size of these lots and most of the other lots along South Shore Road, the adjoining parcels are not large enough to accommodate a second absorption area on a lot already containing an on-site wastewater treatment system or pit privy. Further, the applicant was precluded from using lands south of South Shore Road since those lands are owned by the State of New York.

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The manner in which the difficulty arose?

35. The difficulty in this matter is caused by the small size of the pre-existing variance site and the proximity of the shoreline of the Oswegatchie River. It would be impossible for the applicant to install a wastewater leaching facility on the site without a variance.

Whether granting the variance will adversely affect existing resources?

36. Even though installation of an on-site wastewater treatment system will require placement of a leaching facility less than 100 feet from the mean high water mark of the Oswegatchie River, the potential for adverse water quality impacts both on and off the variance site will be mitigated by installation of the proposed enhanced treatment system.

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

37. The conditions included in this Permit and Order will ensure that installation and maintenance of the new on-site wastewater treatment system creates no new adverse effects and further ensures protection of wetlands, shoreline, groundwater, and surface water resources.

**CONCLUSIONS OF LAW**

1. The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574. The Agency hereby finds that the project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.
2. There are practical difficulties in the way of carrying out the strict letter of the shoreline setback restriction set forth in §806 of the APA Act (9 NYCRR § 576.1[a]).
3. Granting the variance pursuant to §806 of the APA Act and 9 NYCRR Part 576 observes the spirit of the Act, secures public safety and welfare, and does substantial justice.
4. The adverse consequences to the applicants resulting from denial are greater than the public purpose sought to be

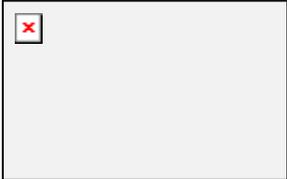




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 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	<p><b>APA Order Granting Variance, Permit and 814 Order 2010-205</b></p>
<p>In the Matter of the Application of</p> <p><b>SACANDAGA HUDSON ADVISORY COUNCIL, NYS OFFICE OF GENERAL SERVICES, TOWN OF HADLEY AND BROOKFIELD RENEWABLE POWER</b></p> <p>for a variance pursuant to §806 of the Adirondack Park Agency Act and 9NYCRR Part 576, a permit pursuant to §809 and an order pursuant to §814 of the Adirondack Park Agency Act and 9 NYCRR Section 4.150</p>	<p>Date Issued: October 17, 2011</p> <p>To the County Clerk: This permit must be recorded on or before <b>December 19, 2011</b>. Please index this permit in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. Sacandaga Hudson Advisory Council</b></li><li><b>2. NYS Office of General Services</b></li><li><b>3. Town of Hadley</b></li><li><b>4. Brookfield Renewable Power</b></li></ol>

**SUMMARY AND AUTHORIZATION**

The Sacandaga Hudson Advisory Council, NYS Office of General Services, Town of Hadley and Brookfield Renewable Power are granted a variance, permit and order, on conditions, authorizing three whitewater features and a put-in in areas classified Hamlet, Low Intensity, Resource Management and unclassified State lands by the Official Adirondack Park Land Use and Development Plan Map in the Town of Hadley, Saratoga County.

This project may not be undertaken until this permit and order is recorded at the Saratoga County Clerk's Office. This variance, permit and order shall expire unless so recorded on or before December 19, 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.

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This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when one of the three whitewater features has been constructed.

Nothing contained in this permit and 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**

A permit, variance and order are required from the Agency for the project proposed.

The bed of the Sacandaga River is owned by New York State and is under the jurisdiction of the New York State Office of General Services. The proposed installation of whitewater features on the river bed constitutes "new land use or development" as defined in §802 of the Adirondack Park Agency Act. Pursuant to §814 of the Act, 9 NYCRR Section 579.1(b), and 9 NYCRR Section 4.150 (Executive Order 150) new land use or development on State land requires Agency review.

The portions of the project on private lands are located in four different land classifications according to the Adirondack Park Land Use and Development Plan Map. At the proposed Bow Bridge site, the property north and south of the river is classified Hamlet on the Map. The proposed put-in at the Town of Hadley Town Park is within a Low Intensity Use land use area on the Map. At the Stewarts Bridge site, the property south of the river is classified Resource Management and north of the river the property is classified Low Intensity Use. Finally, the bed of the Sacandaga River is unclassified State Lands.

The project involves the construction of three "wave feature" structures and one "put-in" structure. Where the wave feature structures and the "put-in" are located on private property at the shoreline the portion of the structure on private property greater than 100 square feet in size requires a variance from §806 of the Adirondack Park Agency Act and is subject to 9 NYCRR Part 576.

Pursuant to §810 of the Act, any new land use or development not specifically identified on the list of compatible uses set forth in §805 constitutes a Class B regional project. Due to the extent and nature of the proposed construction, the project

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cannot be considered an "open space recreation use" and thus is not listed as a compatible use; therefore, it constitutes a Class B regional project and requires an Agency permit pursuant to §§810(2)(a)(17), 810(2)(b)(17) and 810(2)(d)(6) of the Adirondack Park Agency Act. The project is also a State agency project requiring review pursuant to Section 814 of the Adirondack Park Agency Act.

Agency Regulations provide that the different elements of the project be reviewed using the procedures specified in Part 572 of the Regulations, and one consolidated authorization will be issued to include the required permit, variance and order for the State land and private/municipal elements together.

**PROJECT SITE**

The site is a 3.0±-mile section of shoreline on the Sacandaga River located on North Shore Road between Stewarts Bridge Dam and the confluence of the Hudson and Sacandaga Rivers in the Town of Hadley, Saratoga County, consisting of lands classified Hamlet, Low Intensity and Resource Management and unclassified state land on the Adirondack Park Land Use and Development Plan Map in the Town of Hadley, Saratoga County.

Because of scheduled releases of water from the hydro dam, the project site has been used historically for whitewater rafting, canoeing and kayaking over a very long period of time. There are presently three commercial rafting companies that transport rafts and people to a commercial put-in site on the south shoreline of the river near Stewarts Bridge Dam. Additionally, there is a commercial take-out on the north side of the river at the confluence of the Hudson and Sacandaga Rivers. There is a separate put-in on the north side of the river near Stewarts Bridge Dam for private individuals to use the river and they are allowed to use the same take out as the commercial rafters. Private individuals have used the river for rafting, canoeing and kayaking for years.

Due to the existing water recreational use the Federal Energy Regulatory Commission (FERC) contemplated whitewater enhancement and improvement structures to this section of the river as part of the 2002 FERC Settlement agreement.

**DESCRIPTION OF THE PROJECT AS PROPOSED**

The project involves the construction of three wave features within the mean high water mark of the Sacandaga River to enhance recreational opportunities for whitewater paddle sports

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along a 3.0± mile section of the river. The project also involves a put-in structure at the Town of Hadley Park. The variance request involves the shoreline anchoring portions of the structures located on private property within the shoreline structure setback area described in §806 of the Adirondack Park Agency Act.

The wave features will be constructed across the width of the river at three locations, including the old Stewarts Bridge site, downstream from the Town of Hadley Whitewater Park and at the Bow Bridge site.

Construction access will be provided at two locations. Access to Whitewater Park, the Middle Wave, and Lower Wave will be through the southern portion of Whitewater Park where there is a natural, gradual slope. Access to the river for the construction of the Upper Wave will be on a road owned by Brookfield Renewable Power.

The proposed wave features have been designed and will be constructed with grouted boulders to provide adequate subsurface flow cutoff and a deep energy dissipation pool downstream. This construction method will reduce the potential for structural failure and increase hydraulic performance of the feature.

The objective of the project is to build a whitewater park that will attract kayakers to the area and result in economic and recreational benefits to the local municipalities.

It is anticipated that if the whitewater features are completed and become well known that there may be annual special events, whitewater rodeos or festivals that will attract large groups of kayakers. During such special events the organizers of the events will have to make arrangements for traffic, parking, crowd control, public services, garbage disposal, trespassing and other issues associated with large public special events.

The variance request involves the shoreline portion of three wave features. The following is a description of each proposed wave feature:

**STEWARTS BRIDGE - UPPER WAVE**

The Stewarts Bridge site has been singled out as a location for a grade control drop structure due to the bridge abutment in the middle of the channel which provides an ideal anchor point. There will be a recreational wave feature installed across the entire width of the river, anchored at its midpoint by an old bridge pier. Each half of the sill has a low point which is

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intended to form a play wave. The Sacandaga river is nearly 400 feet wide at this site. By tying the structure into the bridge abutment two distinct waves can be designed on either side giving paddlers diverse whitewater at one location and enhancing structural stability by creating an island around the bridge abutment. In addition, the island structure creates an eddy shadow for both features. Each side of the structure will have a control channel capable of handling approximately 2,000 cubic feet per second (cfs) of water and will be set at an elevation at or below the existing channel invert to prevent impacting the 100-year floodplain.

To prevent the impediment of flood flows, the wings and island portions of the structure will be set at an elevation so that they will be overtopped at flows exceeding 4,000 cfs.

### WHITEWATER PARK

Access improvements are proposed at the water's edge at the Town of Hadley Whitewater Park including removal of the chain link fence and two current deflectors to create a calm-water put-in. The plan calls for a limited amount of shore armoring only as it relates to the single canoe/kayak put-in at the downstream east end of the park. The plan does not call for creation of whitewater features at this location; rather it provides an access point for the whitewater waves which lie a short distance downstream.

### MIDDLE WAVE - EAST OF WHITEWATER PARK

There will be mid stream rocks at this location which will create the waves. These rocks will be augmented with others in a mid stream rock pod at about the same elevation and location to create a larger wave. Deflectors on both sides of the river will focus power and flow depth on the midstream rock pod to create a powerful wave. They will also create eddies on both sides of the river. No localized bank stabilization is planned for this location.

### BOW BRIDGE SITE - LOWER WAVE

The existing Bow Bridge whitewater feature at this location is deficient because it is too low to have the intended effect. This wave feature will be located just below the railroad bridge to reduce backwater impacts from the Hudson River. A double sill bisected by an island will be located at the existing rail bridge and will have two low points which form waves and holes.

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The top elevation of the island structure will be set at an elevation where flows exceeding 4,000 cfs over-top the structure in order to prevent a reduction in the channel's flood flow capacity. Localized bank stabilization will only occur at the site of the single bank jetty just upstream of the Lower Wave, and the two bank jetties just downstream of the site.

In addition, the replacement wave feature has been designed and will be constructed with grouted boulders, adequate subsurface flow cutoff, and a deep energy dissipation pool downstream. Using these methods of construction will reduce the potential for structural failure, reduce the potential for failure due to flow through the structure or from downstream scour, and increase hydraulic performance of the feature.

**ROCKWORK-BOULDER PLACEMENT**

Rock boulders from the site shall be placed as shown on the project plans without any gaps, so that each boulder touches the next one. Boulders shall be individually placed in a manner to avoid displacing underlying materials or placing undue impact force on the underlying materials. The layered grouted boulder or confined boulder method leaves boulders on the surface while providing a solid sub-grade for them to resist flood flows. Each stone will be placed to the final position by the use of suitable equipment for handling material and, if necessary, the stone shall be picked up and repositioned.

**RIVER ACCESS FOR CONSTRUCTION PHASE**

Construction access will be provided at two locations. Access to Whitewater Park, the Middle Wave, and Lower Wave will be through the southern portion of Whitewater Park where there is a natural gradual slope. Access for construction to the Upper Wave will be through the north side put-in via the road owned by Brookfield Renewable Power.

The proposed project is shown on seven sheets of drawings labeled "Sacandaga River Recreation Improvements," prepared by McLaughlin Whitewater Design Group and dated August 2009. Reduced-scale copies of sheets C-1, "Bow Bridge and Middle Wave Site Plan" and C-4, "Stewarts Bridge Site Plan, Profile and Elevation," are attached as a part of this permit for easy reference. The original, full-scale maps and plans referenced in this permit are the official plans for the project.

**Size of Variance Structures on Private Property**

1. Middle Wave south shoreline approximately 380 square feet.

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2. Middle Wave north shoreline approximately 300 square feet.
3. Bow Bridge Wave south shoreline approximately 260 square feet.
4. Bow Bridge Wave north shoreline approximately 380 square feet.
5. Stewarts Bridge Wave south shoreline approximately 395 square feet.
6. Whitewater Park Put-in; Chip Seal Landing; 4.75 feet by 30.79 feet, approximately 150 square feet.

**CONDITIONS**

**BASED UPON THE FINDINGS BELOW, THE PROJECT IS APPROVED WITH THE FOLLOWING CONDITIONS:**

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. This variance, permit and order is binding on the applicants, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and order 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 2010-205 issued October 17, 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.
4. Prior to undertaking any activities related to construction of each of the structures authorized herein, Final Detailed

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Plans of the structure to be constructed shall be submitted to the Agency for final review and approval. Approval will be granted in the form of a new or amended permit or a letter of permit compliance. The applicants or their authorized representatives for the construction project shall monitor the project during construction to ensure all erosion control measures are installed and maintained properly during construction. The Agency shall be contacted in writing at least 20 days prior to commencement of construction of each structure.

5. The structures authorized herein shall only be constructed during low flows of the river. No construction shall occur during the scheduled 4,000 cfs releases. If necessary, erosion controls and/or turbidity curtains shall be installed within the mean high water mark of the river during construction to divert the river flows away from the work area.
6. All large boulders and rocks imported to the project site for use in the structures shall be clean of sediments to protect the water quality of the river.
7. All grouting activities shall be undertaken in the dry. No grouting shall occur during high water flows and every precaution necessary shall be taken to avoid water contact with the grout as it is placed and sets up.
8. Machinery used to construct the structures shall not remain within the mean high water mark of the river overnight or during high flows of the river. All refueling of machinery shall be undertaken a minimum of 100 feet from the mean high water mark of the river and all precautions necessary shall be undertaken to avoid spilling fuel.
9. Any temporary stone access roads installed for this project shall be removed from the river as the work is completed and no temporary access roads shall be allowed to remain in the river once the project is completed.
10. All straw bales and silt fences referenced on the plans and described in the Description of the Project as Proposed above, shall be installed prior to undertaking any land disturbing activities associated with the installation of the whitewater recreational park. Silt fences within active work areas shall be inspected weekly and after storm events of  $\frac{1}{2}$  inch of rainfall or greater and repaired as necessary to ensure their effectiveness in preventing erosion into streams and/or wetlands. Upon completing

installation of the three modified whitewater channels, the excavated areas shall be stabilized in accordance with the erosion and sedimentation control plan. After disturbed areas have been permanently stabilized, (i.e. re-vegetated) the silt fences shall be removed.

**Visual/Open Space Protection and Shoreline Cutting**

11. Cutting of shoreline vegetation shall be limited to the trees, shrubs and herbaceous plants located within the footprint of the proposed whitewater feature and put-in structures. No other shoreline vegetation within 100 feet of the whitewater feature structure shall be cut, culled, trimmed or pruned without prior Agency review and approval. 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.

Access to the river for construction of the structures authorized herein shall only be at existing access points where there are existing areas cleared of vegetation. There shall not be any additional clearing of shoreline vegetation to access the river for construction or recreational activities.

**Shoreline Setbacks**

12. Except for the whitewater feature and put-in structures approved by this Variance, Permit and Order, all structures on the site, except docks and boathouses, in excess of 100 square feet in size, including attached decks, shall be set back the minimum shoreline structure setback distance described in §806 of the Adirondack Park Agency Act as measured from the closest point of the structure to the MHWM of the Sacandaga River absent an Agency variance.

**Special Events**

13. If within one year after the commencement of any special events on the project site the Agency receives *bona fide* complaints from nearby residents, it will evaluate the impacts to nearby residents. In consideration of the economic benefits of the project, if the Agency determines there are apparent undue adverse impacts, the applicants will be required to submit an abatement plan addressing the complaints for Agency approval within 45 days of written notification by the Agency. The abatement plan shall include measures proposed to address traffic, parking,

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crowd control, public services, garbage disposal, trespassing and other issues associated with large public special events, if applicable and determined necessary. The Agency reserves the right to conduct a public hearing, and the applicant may request a hearing, prior to implementation of the plan. The final approved abatement plan must be implemented by the applicants within the time specified in the Agency approval of the plan.

If the Towns of Hadley or Lake Luzerne voice legitimate concerns regarding the special events, the applicant shall undertake measures to address the concerns.

**Demolition and Construction Debris**

14. All demolition and construction waste materials resulting from the undertaking of this Variance, Permit and Order shall be disposed of at a NYSDEC-approved solid waste management facility or an Agency and DEC approved waste disposal site.

**Sanitizing Equipment**

15. All equipment used for rock or earth-moving, grading or excavating on the site shall be washed with high pressure hoses and hot water, or other similar methods approved by Agency staff, prior to being brought on the site. The intent of this condition is to ensure that all equipment utilized for the project is clean and free of all soil, mud or other similar material that may contain invasive plant materials, seed or other propagules. If washed on the project site, equipment shall be washed in one location to prevent the distribution of propagules among different wash sites. The contractor shall make every effort to prevent invasive plant species from being introduced to the construction site.

**Agency Review of Future Subdivision and Development**

16. Beyond that authorized herein, no new land use and development shall occur on the project site without first obtaining a jurisdictional determination and, if necessary, a permit from the Agency.

**Legal Interests of Others**

17. This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian

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rights of others in order to undertake the authorized project or subdivision, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

**FINDINGS OF FACT**

1. The record in this matter consists of the application and supporting materials, Agency staff's powerpoint presentations, a staff memorandum summarizing the legislative public hearing, and public comment letters received concerning this Variance/Project.
2. A variance of the terms of the APA Act is not personal and runs with the land. Recording of the Order and Permit ensures notice to subsequent owners of the land.
3. The project site is a combination of private lands classified Hamlet, Low Intensity and Resource Management by the Official Adirondack Park Land Use and Development Plan Map and unclassified State lands under the jurisdiction of NYS Office of General Services (OGS).

**Background/Prior History**

4. The project was proposed during the Federal Energy Regulating Commission (FERC) relicensing of the Stewarts Bridge Dam hydro-electric facility which is located upstream of the proposed feature at Stewarts Bridge. The FERC license has a forty year life and was issued on September 25th, 2002. The hydro facility provides regulated water flows of approximately 4,000 cubic feet per second (cfs) to the Sacandaga River which are utilized for recreational uses on the river. The FERC Offer to Settle includes language that supports enhanced recreational opportunities on the river, including whitewater features.

The FERC license agreement provides for "guaranteed recreation releases" throughout the year. Approximately 4,000 cfs of water shall be released every day from 9am to 5pm seven days per week from the third Saturday in June to Labor Day. Additionally, from Memorial Day to the third Saturday in June, 4000 cfs is released during the weekends. In reality there is much more water released. It is not uncommon to have boaters on the Sacandaga 300 days per year. Releases are usually seven days per week for durations of 5 to 8 hours.

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5. The project was included in the First Wilderness Heritage Corridor Plan, prepared by Saratoga Associates for the Warren County Planning Department with funding from New York State Department of State which recognized the unique characteristics of the river and flows generated by releases at Stewarts Bridge Dam.
6. The project was also acknowledged in the 2002 Town of Hadley Master Plan for Development which looked into the feasibility of developing an Olympic grade whitewater course to prepare for trials and competition relating to the 2012 Olympics (which might be held in New York City). It also promoted the development of a regional recreational plan that recognizes the historic, cultural, environmental and recreational relationship among communities in the lower Adirondack area.
7. The project site was the subject of Agency Preapplication File A2010-1 and Jurisdictional Determination J2009-800, which were both for the project described and approved herein.

### **Existing Environmental Setting**

8. The section of the Sacandaga River where the whitewater features are proposed is a section of the river that was evaluated for fisheries and other resources during the FERC licensing of the Stewarts Bridge Hydro facility. It was determined this section of the river is a relatively sterile and barren ecosystem that is used as a conduit for the 4,000 cubic feet per second (cfs) regular releases associated with the hydro project. Consequently, this section of the river is not a fisheries resource and its best use is for recreational sports associated with the 4,000 cfs releases.
9. The portion of the Sacandaga River where the whitewater features are proposed and the put-ins, take-outs and parking areas are currently located are shown on the project plans. There are also aerial photograph maps that show the existing commercial and private put-ins and take outs and parking areas along the river.
10. There are two put-ins at the top of the whitewater area at Stewarts Bridge Dam. There is a put in on the north shoreline of the river for private launching of water craft and there is a put-in on the south shoreline of the river for commercial launching of water craft. There are two

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parking areas for private put-ins and one large parking area for the commercial put-ins. No new or expanded put-ins, take-outs or parking areas are proposed as part of this project.

11. A wave feature is proposed downriver from the Stewarts Bridge Dam site at a location where the original Stewarts Bridge was located. The bridge has not been in place for a long time. The Town road leading to the former bridge site is a dead end road. The only remnants of the former bridge consist of an abutment on the north shoreline, the former roadbed on the south shoreline and a dilapidated pier in the center of the river. The shoreline is well vegetated with the exception of the abutment and old roadbed. The old bridge pier in the middle of the river will remain and be utilized in the middle of the whitewater feature. No put-in or parking area is proposed at for this feature site. However, the public has parked on the dead end road in the past.
12. The shoreline at the Town of Hadley Park in the vicinity of the proposed put-in is sparsely vegetated and very minimal, if any, shoreline vegetative cutting will be required to construct the proposed gravel handicapped access path, seating areas, put-in structure and rock jetty at this location.
13. The shoreline at the proposed Middle Wave is vegetated with a mix of deciduous and coniferous trees. Minor shoreline vegetative clearing will be required to install the whitewater feature where it connects to the shoreline on the north and south sides of the river.
14. The shoreline at the Bow Bridge Wave is vegetated with a mix of coniferous and deciduous vegetation. The Bow Bridge whitewater feature will be located immediately east of an existing railroad bridge which is a very large structure with abutments on both shorelines of the river. The Bow Bridge, which is a one lane traffic bridge over the river, is located immediately downriver of the proposed whitewater feature. There is a small Town park on the north shoreline of the river at the Bow Bridge which has a small gazebo overlooking the river. There is also a small parking area that can accommodate approximately 5 cars.
15. There are two take-out areas at the confluence of the Sacandaga and Hudson Rivers where the commercial rafting companies and the public can remove their watercraft from the river. The north shore take-out is owned by Brookfield

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Power and operated by Sacandaga Outfitters. Access to the take-out and parking area is off the Town road that crosses the Bow Bridge. This site is currently used by commercial outfitters and the public.

The second take out area is the former Town of Hadley Park and the take-out area has not been improved and its use has not been finalized to date. The FERC Offer to Settle contemplates this take-out area being conveyed to the State of New York and used for a take-out area for private users of the river. However, that conveyance and necessary site improvements have not taken place to date. Therefore, it is not an approved or designated take-out area and there is no organized parking area at the site. That is why the public is using the north shore take-out area along with the commercial rafting companies at this time.

**Public Notice and Comment**

16. The Agency notified all landowners of the requested variance for a shoreline structure setback variance as described herein within 500 feet of the site and those parties as statutorily required by § 809 of the Adirondack Park Agency Act and published a Notice of Complete Permit and Variance Application in the Environmental Notice Bulletin and a local newspaper. In addition to comments received during the public hearing, 1 comment letter in support of the project and 5 letters in opposition to the project were received.
  
17. The Agency conducted a public hearing for the proposed Variance on August 25, 2011 at the Town of Hadley Town Hall. There were approximately 48 people in attendance and approximately 17 people made public statements regarding their opinion of the project. There were 10 individuals who voiced support for the project, 4 individuals who opposed the project and 3 individuals who raised questions.

The comments in opposition to the project included concerns for increased noise and litter from users of the river, financial concerns, safety, increased traffic, fisheries, and change in the recreational uses of the river. A petition stating that the 54 individuals who signed the petition "wish to formally register our opposition to the proposed addition of wave features to the Sacandaga River" was submitted to the Agency during the hearing, but did not specify reasons.

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There were positive statements made in support of the project voicing the social, economic and recreational benefits the project would have on the communities of Hadley and Luzerne. Specific benefits included the following: increased visitors to the area, improved kayaking facilities, people would not have to travel great distances to other whitewater parks, improved and potential new businesses, great economic benefit project, improved whitewater rescue training for fire fighters across the state, continued clean businesses in the area, and that the project will encourage healthy sports for young adults.

**Local Government Support**

18. No permits or approvals are required for the project from the Town of Hadley Planning Board.
19. The Towns of Hadley and Lake Luzerne adopted resolutions in support of the proposed whitewater feature project.
20. Saratoga County Department of Economic Development voiced support for the project.

**Other Regulatory Permits and Approvals**

21. An Article 15 Protection of Waters Permit for the stream disturbance and for excavation and fill in navigable waters and Section 401 Water Quality Certification was issued on March 31, 2005 for the project by the NYS Department of Environmental Conservation. The permit expired on October 1, 2010 and it is anticipated that DEC will reissue the permit.
22. By letter dated March 30, 2011, the U.S. Army Corps of Engineers stated that an individual permit is not required for the project and the project can be accomplished under Department of the Army Nationwide General Permit Numbers 13, 27 and 33.
23. A draft license for use of the stream bed has been prepared by NYS OGS Bureau of Land Management.

**Economic/Fiscal Factors**

24. An Economic Impact Analysis dated May 15, 2008 regarding the proposed Whitewater Park was developed by Crane Associates Inc. of Burlington, Vermont for the Sacandaga Hudson Advisory Council for this project. The total lower bound estimates predict approximately 17,600 boaters over

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the season whose spending patterns will have a total economic impact of 1.7 million dollars, supporting 24 full or part time jobs, and generating \$626,000 of income for local employees and business owners. The upper bound estimates predicts approximately 25,000 boaters creating a total economic impact of 2.6 million dollars that supports 37 jobs, and generating \$981,000 of income.

The report summarized the economic benefit of this project can be conservatively estimated to return over 1 million dollars of private sector economic activity to the local economy each year during the life of the project. Warren and Saratoga Counties also collect 3% from retail sales generated in their respective county. Purchases are assumed to be divided 70:30 (Warren: Saratoga). County sales tax revenue was calculated based on the projected spending of the three boater groups. The Sacandaga Whitewater Park was assumed to be completed in 2010 and the tax revenue was projected out 15 years. The total 15 year, inflation adjusted revenue projections show the Counties receiving a combined total of \$1.02 million dollars in sales tax revenue.

**Budget Estimate and Finding**

- 25. A conceptual level estimate was prepared for each in-river wave feature site, and is summarized in the table below. These were prepared with the assistance of Staley Construction, the firm that constructed the Bow Bridge renovation and the first iteration of the Bow Bridge wave. Additional funds should be allocated for permit revisions/extensions, engineering design and project management. Also the budget is contingent upon work in near dry conditions during the annual spring shut down period. Because the water-off period each year is limited, the construction should be phased over several years (one or two sites per year).

The following is a cost estimate for the construction of each structure including a 25% contingency:

Stewart's Bridge	\$750,000.00
Middle Wave	\$600,000.00
Bow Bridge	\$600,000.00

The following pre-development work has been completed for this project:

- surveying

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- engineering
- economic impact study
- regulatory permitting services

Funding for pre-development has been provided through the Town of Hadley and Sacandaga Hudson Advisory Council. Annual funding streams, grants, and loans are being pursued to construct the project. Funds at \$3.50 per ticket are collected from commercial rafters using the river which generates between \$10,000-\$30,000 per year. Brookfield Renewable Power provides an annual \$15,000 per year to the Sacandaga Hudson Advisory Council through the life of the FERC Agreement. The pursuit of state grants will be sought again this year likely through the NYSDOS Waterfront Revitalization Program and NYSOPRHP Parks Program. Often funds are obtained through the local economic development council.

In this case, the Saratoga Economic Development Corporation is in dialogue with the River Manager about potential funding for the project.

**Users**

There are two types of recreational users on the Sacandaga River between Stewarts Dam and the Hudson River:

26. Individuals that purchase tickets through Sacandaga Outdoor Center or one of the other three permitted commercial operators. The River Manager program is an independent, self-supporting private enterprise which coordinates and manages all commercial whitewater rafting activities in this portion of the Sacandaga River. The River Manager operates the south side Put-In and North Side Take-Out points of river access. There are several references in the FERC License that apply to this project. All participants who access the river through commercial outfitters agree to a "Release of Liability and Assumption of Risk Agreement."
27. Individuals that do not utilize a commercial vendor use the north side put-in public access point just below Stewarts Bridge Dam and across the river from the commercial access point. These people generally park in the lot created by Saratoga County and walk down to the access point. There is significant signage posted in the vicinity of the public access point which have been posted by Brookfield warning of the risks of tubing and whitewater rafting on the river.

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28. The question of liability is managed through the individual release of liability, waiver of claims, assumption of risks, and indemnity agreement for each person using the river through a commercial operator. The high level of oversight and quality control that is exercised on the Sacandaga River through SHAC offers some of the best protection against liability. The River Manager will continue to employ best management practices including an education plan, appropriate regulation, and rules enforcement for whitewater kayaking. This includes the mandatory use of life jackets and instruction, and the operation of the boats with highly trained instructors.

New York State also has a long standing recreational use statute (General Obligations Law Section 9-103) that was enacted to encourage land owners to make their properties available free of charge (or for only a nominal fee) to the public for recreational uses. The encouragement takes the form of protecting the land owner from legal liability for any accidents that may happen when the user is on the property for recreational purposes. The only exceptions are for intentional harm and for gross negligence.

**Maintenance**

29. According to Condition 3 of draft NYS Office of General Services license: "The licensee agrees to be responsible for any and all repairs and maintenance in connection with the use hereby licensed". Additionally, according to statements by the applicant maintenance of the structures will be the responsibility of the Sacandaga Hudson Advisory Council and it will also be their responsibility should the structures have to be removed from the river.

**Variance Factors**

Since some of the proposed shoreline anchor structures are in excess of 100 square feet and will exist above the mean high water mark (MHWM) a variance from the shoreline setback restrictions is required for the following project elements: Stewarts Bridge (Resource Management - Setback 100 feet); Middle Wave (Hamlet/Low Intensity - Setback 50/75 feet respectively); Whitewater Park (Low Intensity - Setback 75 feet); Bow Bridge (Hamlet -Setback 50 feet).

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

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30. There is no alternative that will meet the needs of the applicant since all the whitewater structures will need to be in a whitewater zone, and then anchored to the shoreline above the MHWM for long term stability of the structures. This project can only be built in a river that has sufficient gradients and flow to produce whitewater. River structures constructed in the river must be large enough to withstand the water forces of the Sacandaga. The project therefore represents a practical difficulty since the structures are primarily in the river and must be connected to the shoreline to:

- Anchor the structure into the riverbank and lessen shoreline erosion;
- Move the focus of the river's flow to the center of the channel to increase the whitewater intensity and experience for rafters and paddlers;
- Create creating eddy pools or slack water along the banks resting areas;
- Create water entry areas and places for viewing whitewater events.

The need for the amount of construction above the MHWM is minimal to meet the conditions of the river and shoreline as well as protect the riverbank from erosion.

Whether adverse consequences from denial outweigh the public purpose of statutory shoreline restriction?

31. Additionally, this project represents an economic development initiative that is unique on the Sacandaga River. It is designed to get maximum recreational benefit out of the river while creating minimum impacts on the environment. The Sacandaga River has more potential for drawing recreational rafters, kayakers, and tubers than nearly anywhere else in the country as described in the Economic Impact study described herein.

Denial of the requested variance would significantly limit future opportunity and access for participants in the whitewater rafting sport and would prevent future potential economic benefits to the Towns of Hadley and Luzerne and their citizens.

Whether the application requests the minimum relief necessary?

32. The variance will represent the minimum relief necessary from the setback restrictions by minimizing the size of the structures that anchor each feature to the shoreline and by

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using natural boulders that blend into the existing shoreline. The project was designed using the river as its guide. This 3.0± mile stretch of the river contains areas where the elevation is an advantage for creating whitewater enhancements and features, and areas where there is flat-water that cannot be utilized for this purpose. Also the engineers created spectator viewing areas where there are existing or natural areas.

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

33. The project will have virtually no effect on neighboring property. All adjacent lands are either parks or highly vegetated with no visibility to the river. The potentially impacted adjacent landowners to the three project areas are Saratoga County, the Town of Hadley, and National Grid. These entities worked together on behalf of river recreation as part of the FERC licensing agreement and on promoting economic development activities that are consistent with recreational tourism.

There are a few land owners who live close to the river and have voiced concern regarding noise impacts. The project should not involve the creation of additional noise impacts. In general, noise on the river is associated with rafting activities not kayak activities and this project is not designed to increase rafting on the river.

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

34. Since the project requires construction in the river and attachment to the shoreline, it is virtually impossible to avoid the need for a variance. Building features that are too small will not be able to withstand the forces of the river. The sizes of the deflectors jetties have been engineered to respond to the velocity and character of the river during its highest volumes at dam releases. Creating structures with smaller areas or lower in the river could potentially compromise the integrity of the project.

The size and placement of the jetties is based on the river's hydrology. McLaughlin Whitewater Design is an engineering firm that has been designing whitewater parks for over 30 years and the features were located in steeper areas were selected so that the upstream impacts would be minimized. The Bow Bridge feature was sited as far upstream as possible to minimize the influence of backwater from the

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Hudson River confluence simplify the process of dewatering and isolating the construction site. The three selected sites will deliver the highest and safest benefit for paddlers and rafters while creating the most minimal impact on the natural environment. These positive impacts cannot be duplicated in any other location on the river.

Although it is not ideal, there is the possibility that some of the deflectors could be placed slightly lower in the river at a point that would be below the mean high water mark therefore avoiding variances at those locations. However, under the preferred plan, the deflectors have been carefully sited to increase structural integrity and adjust the water flow under high water conditions and to provide a visual indicator to paddlers and rafters.

*The manner in which the difficulty arose?*

35. The project was proposed during the FERC licensing of the hydro dam at Stewarts Bridge. The difficulty arose when the projects engineering firm was ask to design structures that will last and minimize shoreline erosion along the banks of the river. Whitewater structures designed to create whitewater features must be located within and adjacent to the mean high water mark of the water body.

*Whether granting the variance will adversely affect existing resources?*

36. The shoreline of the Sacandaga River is primarily vegetated with trees and shrubs down to the mean high water mark of the riverbank on both sides of the river. The visual character of the shoreline will remain unchanged. This area has long eroded to an exposed large cobble boulder stream bank. This stable environment will be modified slightly to create the necessary whitewater features. The project involves only natural materials (rock boulders) which is entirely consistent with the river bottom and shoreline. All three sets of structures will be placed in areas where manmade activities have altered the river landscape: Bow Bridge and vicinity; Town of Hadley Park; and the Stewarts Bridge site located just below Stewarts Dam. Since the structures are made entirely of boulders, there will be no substantial change to the shoreline in any of the three project areas.

The project will also have no short or long term impact on water quality. Each phase of construction will take place over approximately 30 days when river water is withheld at

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the dam to build up the water supply in the Sacandaga Reservoir. Once the river is held back at the dam, an estimated 50 cfs of seepage flow will be diverted through a simple channel. However, a temporary coffer dam may be necessary during construction depending on river conditions at that time. Turbidity will be monitored daily. A steel track excavator will be used during construction. For the lowest possible impact, a rubber tire front loader will be used to move rock around to the desired area. A concrete pump truck will be used to provide the needed concrete material. Concrete will be utilized to permanently fix the rock materials. This work is done in dry areas and the concrete will be completely cured before the Sacandaga River is released after the project is complete. Concrete becomes inert when it is cured and therefore will have no impact on water quality.

NYSDEC has reviewed the project and has determined that in their opinion there will not be any impacts to the existing marginal fisheries in the Sacandaga River as a result of the project.

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

- 37. The conditions imposed by this Order on construction activity and vegetative cutting will ameliorate the impacts resulting from the approved variance. Requiring final detailed plans to be submitted to the Agency for final approval and requiring the applicant to monitor the project while it is being constructed will avoid impacts.

**PROJECT IMPACTS**

**Wetlands**

- 38. There are no wetlands in the area of the project site.

**Water Resources**

- 39. In order to protect the Sacandaga River and its tributaries, all silt fences and turbidity curtains necessary should be installed as required by the plans and described herein prior to undertaking any land disturbing activities associated with the proposed project. All silt fences and other erosion control measures should be inspected and maintained in proper working condition until the adjoining disturbed areas have been permanently stabilized. After all disturbed areas have been

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permanently stabilized the silt fences should be removed from the project site.

**Historic Sites or Structures**

40. The NYS Department of Parks, Recreation and Historic Preservation determined by letter dated January 11, 2011 that the project will have no effect on cultural resources in or eligible for inclusion in the National Register of Historic Places. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Part 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

**CONCLUSIONS OF LAW**

**Variance Request**

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 APA Act (9 NYCRR § 576.1[a])
2. The adverse consequences to the applicants resulting from denial are greater than the public purpose sought to be served by the restrictions (9 NYCRR Part 576.1[b]).
3. The factors set forth in 9 NYCRR § 576.1(c) have been addressed:
  - 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 need to site the modified whitewater structures within the mean high water mark;
  - e. the granting of the variance will not unduly adversely affect the natural and scenic resources of the shoreline and adjoining waterbody given the existing structure and uses; and
  - f. the imposition of appropriate conditions will

