



M E M O R A N D U M

TO: Richard E. Weber, Deputy Director
Regulatory Programs

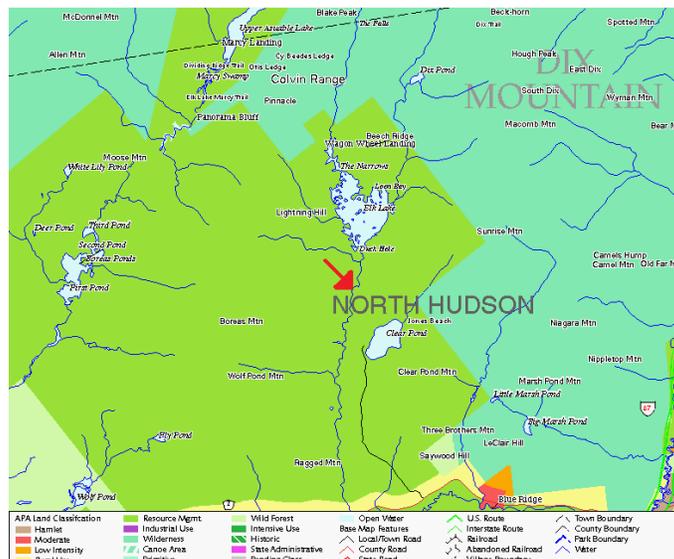
FROM: Beth Phillips, Senior Attorney

DATE: February 6, 2012

RE: Elk Lake Lands, Inc. Request for Variance
P2011-19

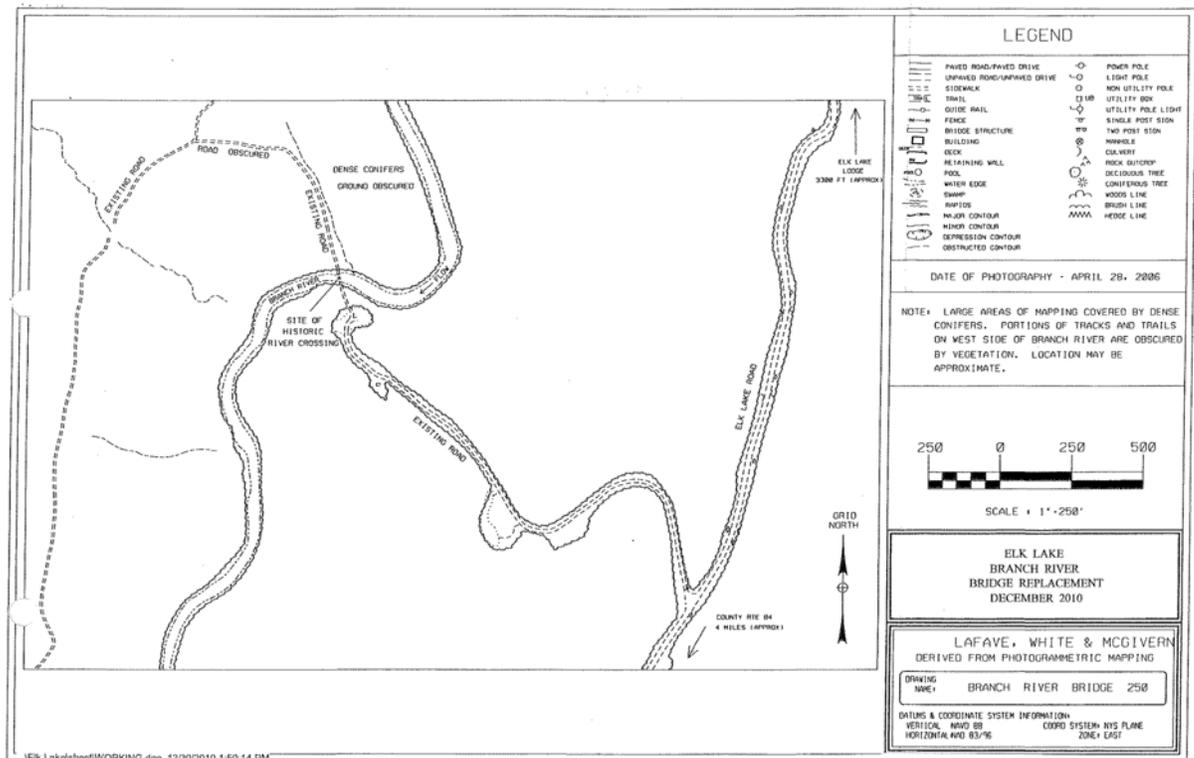
INTRODUCTION

The applicant, Elk Lake Land, Inc., submitted a variance application and general information request (GIR) on January 31, 2011 (Exhibits 1, 2, &3). The applicant submitted additional information on September 27, 2011, October 18, 2011, and at the hearing held in the North Hudson Town Hall on December 1, 2011. The applicant seeks to construct a one-lane logging bridge over the Branch, a river designated for study under the Wild, Scenic and Recreational Rivers Act. The proposed bridge will be located at the site of the previous bridge which was removed in 1968. The bridge site is located in the town of North Hudson, Essex County, on a 12,113-acre property in an area designated as Resource Management on the Adirondack Park Land Use and Development Plan Map, west of Elk Lake Road. The tax map number of the property is section 103, Block 1, Parcel 8. The location of the variance is shown below:



A aerial view of the area (Exhibit 31) is attached as Attachment A. Elk Lake Road is depicted in red, and the land owned by the applicant (including land owned by Elk Lake Lodge, Inc, a separate corporation which is also owned by John and Margo Ernst) is outlined in white. The bridge replacement location is identified, as are several hiking trails which are available to the public to access lands owned by the State of New York. The bridge will be west of Elk Lake Road, connecting an old logging road from Elk Lake road to a logging road on the west side of The Branch. Wagon Wheel Landing, the site of future timber harvesting operations, is marked with the letters "WWL" in red.

Below is page one of Exhibit 4, which shows the location of the bridge in relation to Elk Lake Road and the orientation of the proposed bridge to The Branch.

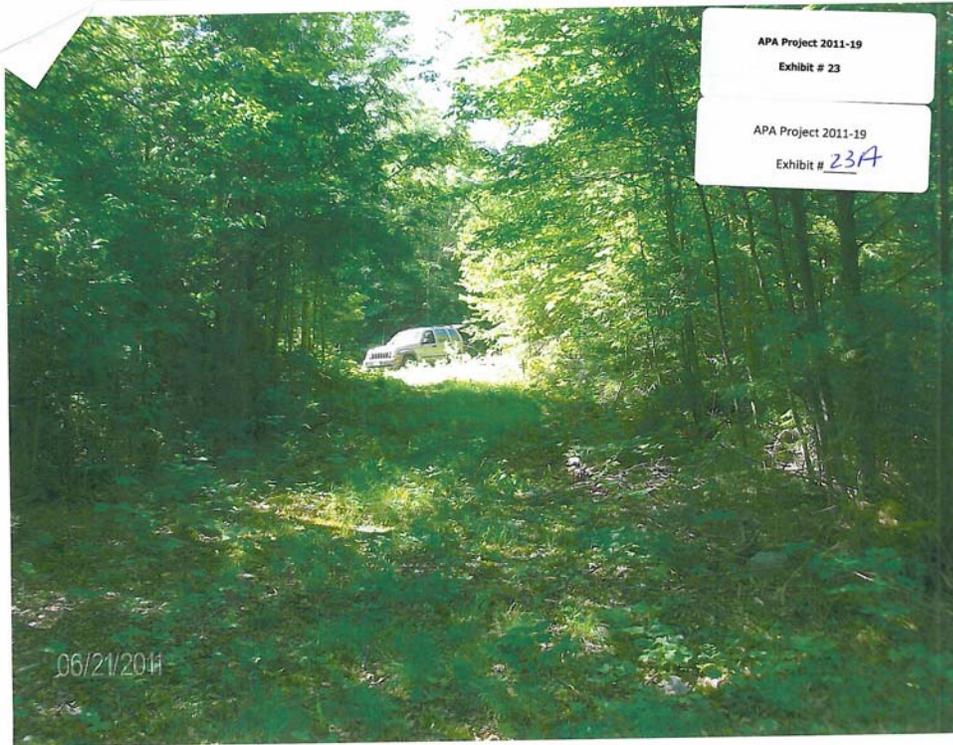


PUBLIC HEARING

On Tuesday, December 1, 2011 at 10:00 am at the North Hudson Town Hall, State Route 9, North Hudson NY, APA Hearing Officer Keith McKeever conducted a hearing pursuant to APA Act § 806 and 9 NYCRR 576.5. Vincent McClelland, authorized representative for the applicant, presented written testimony on behalf of the applicant (Exhibit 30). Mr. McClelland also offered verbal testimony, as did Michael Sheridan, manager of Elk Lake Lodge. Also present at the hearing were John and Margo Ernst, owners of Elk Lake Lands, Inc. and Elk Lake Lodge, Inc., Environmental Program Specialist Suzanne McSherry, and Senior Attorney Elizabeth Phillips. The hearing was noticed in the Times of Ti and in The Valley News on November 19, 2011.

Vincent McClelland testified as to the lack of a feasible alternative to reach the timber lands owned by Elk Lake Lands, Inc. west of The Branch. Finch Paper LLC has managed the logging operations for Elk Lake Lands, Inc, and had been using access roads (Gulf Brook Road and Branch River Road) over lands previously owned by Finch Paper and now owned by The Nature Conservancy. Mr. McClelland testified that the Branch River Road was in very rough shape, traversed wetlands and was "subject to constant erosion, flooding and maintenance issues," with steep grades in excess of 15%. He provided a letter from Leonard Cronin, Adirondack Forest manager for Finch Paper, LLC, stating that after the 2011-2012 winter "timber harvest is completed, this will bring us to the limit of access for this portion of the property from the Branch River truck road." (Exhibit 32). Mr. Cronin wrote that the timber operations would be moving north to Wagon Wheel Landing, which Mr. Sheridan explained is north of Elk Lake, and is depicted on the attached aerial photo and map (Exhibit 31).

Suzanne McSherry testified regarding her review of this application and the site visit conducted on June 21, 2011 by herself, APA wetlands biologist Mary O'Dell and APA engineer Greg Bendell. Present at the site visit for the applicant were Vincent McClelland, Michael Sheridan, and Peter Gibbs, the applicant's engineer. Ms. McSherry provided photos of the variance site (Exhibits 23A-32F) which show the approach road on the east side of The Branch, which was suitable for driving to the edge of The Branch, as shown on the next page:



These photos also depict the existing approach road on the west side of the Branch and old abutments from the pre-1968 bridge:



Ms. McSherry identified the wetlands which Mary O'Dell had flagged on that date, which had been marked on a map prepared by the applicant (Exhibit 8). Ms. McSherry testified that the erosion control fence and related protective methods will protect the wetlands from any potential impacts from the construction.

Ms. McSherry also testified regarding an alternative vehicle bridge crossing The Branch, over a dam where The Branch flows out of Elk Lake, approximately one half-mile north of the proposed variance site. She testified that the road on the west side of this bridge was narrow, with sharp curves, steep embankments on both sides, and steep slopes. This road is part of the Elk Lake Lodge property and runs within twenty feet of cottages rented by Elk Lake Lodge. Photos of this portion of the road are Exhibits 23G-23K and one is set out below:



There were no members of the public attending the hearing and no public comments were received. The applicant agreed to an extension of time until the February 2012 Agency meeting for the Agency to consider this variance request.

DESCRIPTION OF THE REQUESTED VARIANCE

The applicant seeks a variance from the shoreline restrictions of APA Act § 806 in order to construct a logging bridge across The Branch. A bridge at the same location was removed in 1968. Because the bridge was not in place in 1973, when the APA Act was passed, reconstruction is not considered "replacement" of a pre-existing structure. The private road extending from Elk Lake Road west to the Branch still exists and is passable. On the west side of The Branch, the road continues to the lands west of the Branch. The concrete abutments from the previous bridge are still present and visible. The applicant wishes to reconstruct the bridge to allow access to timber on forest lands west and north of the proposed bridge location. New concrete abutments and footers will be installed above the mean high water mark.

APPLICABLE LAW

Executive Law § 806 requires that all principal buildings and accessory structures in excess of one hundred square feet in a Resource Management area be set back at least one hundred feet from the shoreline of a river designated for study under the Wild, Scenic and Recreational Rivers Act. This restriction applies to private bridges, and by Declaratory Ruling J2009-121A dated December 31, 2009, the Agency determined that this proposed bridge would require a variance from the shoreline restrictions of APA Act § 806 (Exhibit 26).

The Adirondack Park Agency may vary the restrictions if the applicant establishes that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the restrictions. Here, the applicants' objective is to access timber lands west of The Branch with a bridge suitable for logging trucks. The practical difficulty associated with this objective is The Branch itself bisecting the applicant's lands and the infeasibility of alternative routes of access.

In determining whether a variance is appropriate under these circumstances, the Agency must consider whether the adverse consequences from denial of this request would outweigh the protection of the shoreline and water quality. In balancing these two considerations and determining whether to vary the restrictions, the Agency must consider the following factors:

- (1) whether the application requests the minimum relief necessary;
- (2) whether the variance will create a substantial detriment to adjoining or nearby landowners;
- (3) whether the difficulty can be obviated by a feasible method other than a variance;
- (4) the manner in which the difficulty arose;
- (5) whether granting the variance will adversely affect the natural, scenic, and open space resources of the Park and any adjoining water body, due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur; and
- (6) whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

9 NYCRR 576.1(c). Each of these factors is discussed below.

1. Whether the application requests the minimum relief necessary

The proposed bridge will be 45 feet long and 14 feet wide with a driving surface of 12 feet, and will be no less than five feet above normal water levels. Vincent McClelland's written testimony, (Exhibit 30 at p. 2), and his verbal testimony at the hearing indicated that this one-lane bridge is the minimum size necessary to allow for logging trucks to access the forest lands to the west of Elk Lake Road. This assessment was based on work performed by the applicant's engineer Peter Gibbs.

2. Whether the variance will create a substantial detriment to adjoining or nearby landowners.

The nearest landowner is The Nature Conservancy (TNC) to the west and south of the proposed bridge. TNC received notice of the hearing, and did not appear or express any concerns with the bridge. TNC did provide a letter for the applicant stating that it would not be granting a permanent right-of

way to the applicant for alternative access, which is discussed below.

The State of New York also owns land to the north of the variance location, comprising the Dix Mountain Wilderness, and to the northwest, the High Peaks Wilderness. Captain John C. Streif, DEC Region 5 Regional Forest Ranger, wrote in support of the variance, stating:

In speaking from a back country emergency response perspective, I believe that a rebuilt bridge across this river would serve to assist us in the frequent incidents of search and rescue as well as the occurrence of wildland fire suppression that our Forest Rangers respond to in your area.

(Exhibit 35) This variance will not create a detriment to TNC or to the State and may provide a benefit to the State, providing emergency access to state-owned lands.

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

There were two alternative means of accessing the lands west of The Branch discussed at the hearing. One was continuing use of the historical access from County Route 84 (aka Route 2, Boreas Road or Blue Ridge Road) over lands previously owned by Finch Paper, LLC and currently owned by TNC. Michael Carr, executive director of TNC, submitted a letter (Exhibit 34) explaining that the applicant currently has access from County Route 84 to the southern boundary of its forest lands by permission from TNC, but that TNC does not intend to grant the applicant a right-of-way over its lands. The access road, referred to during the hearing as The Branch River Road, is a 2.6 mile long rough road with steep slopes. Finch Paper LLC had been managing the logging of Elk Lake Lands, Inc. timber lands south of the proposed variance site and had used the Branch River Road to access those lands. According to a letter from Leonard Cronin, Adirondack Forest manager for Finch Paper, after this winter's "timber harvest is completed, this will bring us to the limit of access for this portion of the property from the Branch River truck road." (Exhibit 32) The testimony of Vincent McClelland and Michael Sheridan, manager of Elk Lake Lodge, also demonstrated that the logging operations were moving north of

Elk Lake, which would not be accessible from The Branch River Road without further road building. Even if TNC continues to grant permission to use The Branch River Road, that road would not access logging operations north of Elk Lake.

Another alternative explored at the hearing was the bridge and dam at the outflow of Elk Lake, approximately 1/2 mile north of the proposed variance site. This is a small bridge which was recently rebuilt to accommodate access to cottages west of The Branch, which are part of the Elk Lake Lodge complex. That bridge replacement was deemed to be a nonjurisdictional replacement by agency staff (J2010-179), in part because the bridge was rebuilt to approximately the same dimensions as the previous bridge. It was not designed for logging truck traffic. In addition to the limitations of the bridge itself, the road approaching the bridge curves sharply with a 270 degree turn. The road west of the bridge is narrow and traverses steep slopes estimated at over 25% (photos of that section of the road are set out above and included in the hearing record as Exhibits 23G-23K). Mr. McClelland pointed out that this road runs close to the cottages, and logging truck traffic would be disruptive and not compatible with visitors' use and enjoyment of rental cottages at a wilderness lodge. Also, although the principals owning Elk Lake Lodge, Inc. and Elk Lake Lands, Inc. are the same, the corporations owning the Lodge and seeking the variance are separate entities.

4. The manner in which the difficulty arose.

The prior bridge was removed in the 1960s, prior to passage of the APA Act. Had it been removed more recently, the applicant may have been able to replace it without a variance. The applicant has not needed to replace the bridge since 1968, because of the alternate access to the forest lands from the south across lands owned by Finch Paper LLC and now TNC. However, TNC is not granting the applicant a right of way, and the logging operations are moving further north, making the southern access impractical.

5. Whether granting the variance will adversely affect the natural, scenic, and open space resources of the Park and any adjoining water body, due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur.

There is currently a road leading up to the site and concrete abutments at the site, so the character of the shoreline will not be adversely impacted, provided that erosion control and vegetative cutting conditions are incorporated into the Variance Order.

The bridge is on private land, connecting a private logging road system on both sides of The Branch and is approximately one-half mile from Elk Lake Road, the nearest public road. Although the bridge should not adversely affect the aesthetic character of the site, it is worthwhile to note that the bridge is also not visible to the public from a public road or public lands. It will be briefly visible to boaters on The Branch.

There are wetlands adjacent to the proposed bridge in four locations, along the shoreline on both sides of the river, and at the base of the slope of the existing approach road. These wetlands will be protected by the use of silt fencing and mulching during construction and other conditions described below and in the proposed order.

6. Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

The project as proposed is designed to avoid impacts to the adjacent wetlands, and the draft proposed order includes conditions regarding the use and maintenance of silt fences and mulching during construction and restrictions on vegetative cutting, which will mitigate any possible impacts on wetlands and the shoreline and water quality of The Branch.

Memorandum to Richard E. Weber
P2011-019
February 6, 2012
Page 11

CONCLUSION

Staff believes that the factors enumerated in 9 NYCRR 576.1(c) weigh in favor of granting this variance. The application requests the minimum relief necessary; the variance will not create a substantial detriment to adjoining or nearby landowners; the difficulty cannot be obviated by a feasible method other than a variance; the manner in which the difficulty arose is not due to the landowner; and the requested variance would not adversely affect the natural and scenic resources of the shoreline and the adjoining water body or otherwise result in undue adverse environmental impacts as long as conditions are included to provide for erosion control and control of vegetative cutting.