

THIS IS A REISSUANCE OF UNRECORDED APA ORDER REPLACING APA
ORDER 2011-19 ISSUED FEBRUARY 17, 2012
TWO-SIDED DOCUMENT

 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	<p>APA Order Granting Variance 2011-19</p>
<p>In the Matter of the Application of ELK LAKE LAND, INC.</p> <p>for a variance pursuant to §806 of the Adirondack Park Agency Act</p>	<p>Date Issued: March 6, 2012</p> <p>To the County Clerk: This order must be recorded on or before May 4, 2012. Please index this Order in the grantor index under the following names.</p> <p>1. Elk Lake Land, Inc.</p>

SUMMARY AND AUTHORIZATION

Elk Lake Land, Inc. is granted a 100 foot variance, on conditions, from the applicable 100 foot shoreline structure setback restriction pursuant to Sections 806(1)(a)(2) and 806(3) of the APA Act, authorizing a private bridge zero feet from the mean high water mark of The Branch in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of North Hudson, Essex County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the order is recorded. The Agency will consider the project in existence upon installation of the bridge authorized herein.

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

AGENCY JURISDICTION

The variance application seeks Agency approval for a variance of 100 feet from the applicable 100 foot shoreline structure setback restriction pursuant to §806(1)(a)(2) and §806(3) of the Adirondack

Park Agency Act (Executive Law, Article 27) to authorize placement of a 630 square foot logging bridge and abutments to span The Branch a designated Study river under the Wild, Scenic and Recreational Rivers Act. Section 806(1)(a)(2) and 9 NYCRR Part 575 require a minimum shoreline setback of 100 feet measured from the mean high water mark for greater-than-100 square foot structures. Section 806(3) and 9 NYCRR Part 576 authorize procedures whereby an applicant may apply for a variance from that restriction provided certain criteria cited in the statute and regulations are complied with, as further described below. The Agency did not determine whether The Branch is navigable as it was not a requirement for jurisdiction of the project.

VARIANCE SITE LOCATION AND DESCRIPTION

The variance site is a 12,113+-acre parcel of land located on County Route 84 (AKA the Blue Ridge Road), Town of North Hudson, Essex County, in an area classified Resource Management by the Adirondack Park Land Use and Development Plan Map. It is identified on Town of North Hudson Tax Map Section 92-3-8, 93-1, Parcels 3.1, 7.1, 7.2, Section 103-1-7, 8, 9, 11 and Section 112-3-2, Section 113-1-1, 113-2-7 and 113-3-1. The bridge is located on tax map Section 103, Block 1, Parcel 8. The variance site is described in a deed from John L. Ernst to Elk Lake Land, Inc. dated September 24, 1985 which was recorded October 24, 1985 in the Essex County Clerk's Office in Liber 843 of Deeds at Page 119 (Exhibit 7).

VARIANCE DESCRIPTION AS REQUESTED

The variance as requested involves the construction of a logging bridge across The Branch, a river designated to be studied as a wild, scenic or recreational river. The bridge will be 45 feet long and 14 feet wide with a driving surface of 12 feet. New concrete abutments and footers will be installed above the mean high water mark. The bridge will be no less than five feet above normal water levels. The crossing is the site of a previous bridge which was removed in 1968. The existing approach roads on both sides of the river will be utilized. Wetlands associated with the shoreline of The Branch will not be filled or impacted by the project as proposed. The bridge will provide access between Elk Lake Road on the east side of The Branch and a network of logging roads on the west side of The Branch.

The proposal is shown on several sheets of plans as follows:

- A survey map prepared by Christopher Hunt Leifheit, L.S. entitled, "Map Showing Topographic Survey for John Ernst" dated August 2, 2011, last revised October 7, 2011 and labeled as APA Project 2011-19, Exhibit # 8. Wetlands are depicted in their entirety on this survey.
- Four sheets of engineering plans prepared by Engineering Ventures, PC, dated August, 2011 and labeled as APA Project 2011-19, Exhibit # 9. Sheet C1.1 is entitled "Site Plan and

Profile"; Sheets S0.1, S1.0 and S2.0 are entitled "Bridge Design". Wetlands shown on these plans are incomplete.

- A site plan map prepared by LaFave, White & McGivern entitled, "Elk Lake, Branch River, Bridge Replacement", dated December 2010, Exhibit 4.

Reduced-scale copies of the Sheet C1.1 of the Engineering Venture plans and the LaFave site plan are attached as a part of this Order for reference. The original, full-scale maps and plans referenced in this Order are the official plans.

CONDITIONS

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

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the Order is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the order.
2. This project may not be undertaken, until this Order is recorded in the Essex County Clerk's Office. This Order shall be recorded on or before May 4, 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 variance site on the recordation date.
3. This Order is binding on the applicant, all present and future owners of the variance site and all contractors undertaking all or a portion of the project. Copies of this Order and all the approved maps and plans referred to herein shall be furnished by the applicant to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the variance site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this Order shall contain references to this Order as follows: "The lands conveyed are subject to Adirondack Park Agency Order 2011-19 re-issued March 6, 2012, 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 when possible.

Building Location and Size

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

Erosion and Sediment Control

6. All erosion control devices, including silt fence, shall be installed before any other ground disturbance takes place. Silt fence shall be properly installed parallel to the existing contours between the construction site and The Branch and wetlands. The silt fence shall be embedded into the earth a minimum of six inches and shall be a minimum of five feet from the shoreline and wetlands, wherever possible. The applicant, its agents, or its successors in interest shall inspect the fabric at least once a week and after every major storm event to ensure the fabric and supports are intact and to remove accumulated sediments so as to maintain the fence in a functional manner. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed soils are stabilized to prevent siltation of the water resources.
7. All disturbed areas shall either be temporarily mulched to eliminate impacts to water quality, or grass cover shall be immediately re-established. Under no condition shall any area exposed by clearing and grading be left in an unprotected condition longer than two days.
8. Straw mulch shall be used where necessary rather than hay to minimize the potential for invasive species introduction.

Shoreline Cutting

9. With regard to the shoreline of all water bodies on the variance site including The Branch, the following shoreline vegetative cutting restrictions apply:
 - a. Within 35 feet of the mean high water mark not more than thirty percent of the trees in excess of six inches diameter at breast height (4-1/2 feet above ground level) existing at any time may be cut over any ten-year period.

- b. Within six feet of the mean high water mark no existing vegetation of any kind may be removed, except that up to a maximum of thirty percent of the shorefront may be clear of vegetation on any individual lot. This requirement applies in addition to (a) above.

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

10. Except for the bridge and abutments approved by this Order, all structures, except docks and boathouses, 100 square feet in size or greater, including attached decks, shall be set back a minimum of 100 feet, measured horizontally, from the closest point of the mean high water mark of The Branch.

All distances specified in the shoreline restrictions are measured horizontally. Building setback restrictions are measured along the shortest line between any point of the structure and any point on the mean high water mark. Porches, decks and other structures physically attached to single family dwellings or other structures subject to the building setback restrictions are part of the structure for the purpose of applying building setback restrictions.

Review of Future Development

11. No expansion or alteration of the bridge and abutments authorized herein, except in-kind replacement, on the same footprint, shall be undertaken on the variance site within the shoreline setback of The Branch without first obtaining a jurisdictional determination and, if necessary, a new or amended order from the Agency.

FINDINGS OF FACT

This is a reissuance of Order P2011-19 issued on February 17, 2012 and which was not recorded. Minor corrections are contained in various locations throughout this Order.

1. The record in this matter consists of the variance request, hearing testimony, and hearing exhibits.

Background/Prior History

2. The variance site was not part of a larger parcel in 1973 and the 1973 landowner, Elk Lake Land, Inc., did not own any adjoining property as of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan. Certain adjoining lands are owned by Elk Lake Lodge Inc., a separate corporation from Elk Lake Land, Inc.

Existing Environmental Setting/Character of the Area

3. The variance site is a 12,113+-acre parcel of land located north of County Route 84, also known as the Blue Ridge Road or the Boreas Road, and is accessed by the 5-mile-long Elk Lake Road. The site has been managed for forestry and open space recreational uses for decades. A network of logging roads exists on the westerly side of The Branch. The Elk Lake Lodge, a pre-existing tourist accommodation on the southerly shoreline of Elk Lake, is located on an adjoining parcel under separate but related ownership.
4. The variance site is divided roughly in half by The Branch, a river being studied for possible inclusion in the NYS Wild, Scenic and Recreational River system (hereafter a "study river".) The Branch is the outlet of Elk Lake and flows south until it crosses under the Blue Ridge Road and empties into the Boreas River. Elk Lake Road runs north and south, parallel to and east of The Branch.
5. The variance site is bounded on the north and east by Lands of the State of New York classified as Wilderness and known as the Dix Mountain Wilderness Area, and on the west & south by lands of The Nature Conservancy who obtained it from Finch Paper, LLC.
6. Two public trails originate on the property - one leading to Dix Mountain Wilderness and one to the High Peaks Wilderness areas. A public trailhead parking lot is located approximately ½ mile south of Elk Lake Lodge. These trails cross the privately-owned lands of Elk Lake Lodge and Elk Lake Lands.
7. Access to the westerly side of The Branch is currently afforded by a small dirt driveway across the dam at the outlet of Elk Lake (Exhibit 37) and by two logging roads (Branch River Road and Gulf Brook Road) off The Blue Ridge Road that cross Nature Conservancy lands (Exhibit 32). The driveway across the dam is used to access Elk Lake Lodge guest cottages. It is a narrow, single-lane road with several sharp bends, suitable for passenger vehicles and pick-up trucks. Finch Paper, LLC granted permission to Elk Lake Land, Inc. to access their timberlands on the west side of The

Branch across Branch River Road and Gulf Brook Road. No legal right-of-way exists. In 2008, Finch sold this tract to The Nature Conservancy.

Visibility

8. The bridge site is located approximately 1,000 feet west of Elk Lake Road and more than ½ mile south of Elk Lake. It will not be visible from any public road, trail or vista as it will be screened by dense woodlands and topography.

Shorelines/Water Resources

9. The mean high water mark of The Branch, is shown on the project plans. Proper installation and maintenance of proposed silt fencing prior to and during construction, coupled with prompt and successful restoration of disturbed soil areas, will serve to protect the shoreline and water quality of The Branch from degradation.

Wetlands

10. There are wetlands located in close proximity to the proposed bridge as shown on the project plans. The wetlands are in four locations, along the shoreline on both sides of the river, at the base of the slope of the existing approach road. The wetlands are associated with the water of The Branch, are comprised of wet meadow and shrub coverts with a preliminary value rating of 3 pursuant to 9 NYCRR 578.
11. Provided the project is undertaken as proposed and conditioned herein, the proposed development will not impact wetlands.

Other Regulatory Permits and Approvals

12. The Agency was notified in a completed Local Government Notice Form that no approval is required for the project from the Town of North Hudson.
13. The project is subject to review by the NYS Department of Environmental Conservation under Article 15, Protection of Waters. The Department approved the project with a permit issued February 3, 2012. (DEC #5-1542-00013/00003).

Historic Sites or Structures

14. According to available mapping resources, there are no known historic or archaeological resources on the variance site. Accordingly, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing § 14.09 of the New York State Historic Preservation Act of 1980.

Economic/Fiscal Factors

15. The applicant anticipates that the continued timber management of the 3022± acres to be accessed from this bridge will help support the employment of six workers per year over a period of 10 years. The average forestry employee in Essex County earns \$36,487/year assisting to sustain a total payroll of \$2,189,220 during the 10 year timber management period.
16. Continued forest management of this land will help allow the applicant to maintain ownership of the entire parcel and continue public access to the trails on the variance site.

Public Notice and Comment

17. The Agency notified all landowners within 500 feet of the variance site and those parties as statutorily required by 9 NYCRR Part 576.5(d)(2). No comment letters were received.

Public Hearing

18. Agency staff conducted a public hearing on December 1, 2011 in the North Hudson Town Hall regarding the applicant's requested variance pursuant to 9 NYCRR § 576.6. The hearing was attended by Agency staff, the landowners, the manager of Elk Lake Lodge and the applicant's representative. No objections were made to the variance request during the hearing.

Alternatives

19. Several alternatives for the proposal which would not require a variance were considered, and were deemed not feasible by the applicant as follows:

- a. Utilizing the existing dirt drive across the Elk Lake Dam would not be feasible due to the narrowness of the road and the detrimental impacts to guests' safety and quiet enjoyment of Elk Lake Lodge;
- b. Utilizing the existing logging roads (Branch River Road and Gulf Brook Road) which cross lands of The Nature Conservancy (formerly Finch Paper) is not feasible because no legal easement exists, this road is in poor condition and presents continued maintenance problems, and it will not provide access to the timber to be harvested in future years;
- c. There are no other locations along The Branch's shoreline which are as suitable for the bridge location. This location already has approach roads on both sides of the river.

VARIANCE IMPACTS AND CRITERIA

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

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

20. The applicants have demonstrated that there are unique practical difficulties present on the site, as the bridge was removed in 1968 and a new bridge is necessary to connect the logging roads on both sides of The Branch. There is no practical environmentally sound way to cross The Branch without a bridge.

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

21. The public purposes served by the shoreline restrictions are protecting water quality of The Branch and the quality of the shoreline. Denial of the requested variance could threaten the viability of continued management of this large tract for forestry uses. Loss of the critical economic benefit generated by continued forestry management of the approximate 6,000 acres on the west side of the Branch could result. Having no bridge crossing could have a detrimental impact on public safety by limiting NYS Department of Environmental Conservation forest rangers and search and rescue crews quick access across The Branch and private lands to public lands. With adequate mitigation during construction as required by the conditions herein, the public purposes served by the shoreline restrictions will be protected, and the adverse consequences of denial would outweigh the public purpose of adhering to the statutory shoreline restrictions.

Whether the application requests the minimum relief necessary?

22. The variance requested is the minimum relief necessary to achieve the applicant's goals to provide a safe, functional river crossing for fully-loaded logging trucks. The 45-foot span allows the abutments to be placed outside of normal water levels; the width of the bridge is the minimum necessary for typical logging trucks to navigate. This will allow for the continuation of long-established forestry management of approximately one half of the landholding.

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

23. This structure is in a Resource Management land use area, in the interior of a very large private landholding and surrounded by dense woodlands. The bridge will not be visible from any public roads, adjoining landholdings, public trails or Elk Lake Road. Granting the variance will not change the use of the variance site, and will not degrade the resources of the area. Granting the variance will not create a substantial detriment to the adjoining or nearby landowners. The Agency has not received any negative public comment on this proposal.

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

24. Alternative methods of accessing the applicant's forest lands west of The Branch were analyzed and were found to be infeasible methods to accomplish the applicant's objectives of accessing those forest lands. This variance will provide economic, environmental and aesthetic benefits which would not be provided by the alternatives.

The manner in which the difficulty arose?

25. The bridge was last used in 1964 and removed in 1968 after which access to Elk Lake land on the west side of The Branch was afforded by permission across lands of Finch Paper, LLC on Branch River and Gulf Brook Roads. In 2008 ownership of those lands was conveyed by Finch to The Nature Conservancy. The applicant does not have an easement to continue to use those roads, and those roads do not provide access to the timber scheduled to be harvested in the next ten years.

Whether granting the variance will adversely affect existing resources?

26. The character of the existing shoreline will remain essentially unchanged. Because the approach roads on both sides of the river have not grown-in, very little vegetative cutting will occur to re-establish the crossing. Appropriate erosion and stormwater control measures will be put in place prior to and during construction to protect The Branch.

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

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

CONCLUSIONS OF LAW

1. There are practical difficulties in the way of carrying out the strict letter of the shoreline setback restriction set forth in § 806 of the Adirondack Park Agency Act and 9 NYCRR Part 575, in that:
- a. the application requests the minimum relief necessary;
 - b. there will be no substantial detriment to adjacent or nearby landowners;
 - c. the difficulty cannot be obviated by a feasible method other than the variance;
 - d. the difficulty arose due to the loss of the bridge in 1968, the Branch River dividing the landholding in half, and the configuration of adjoining landholdings prohibiting access to public roadways.
 - e. the granting of the variance will not adversely affect the natural and scenic resources of the shoreline and adjoining waterbody due to erosion, surface runoff, detrimental change in aesthetic character, or other impacts which would not otherwise occur;
 - f. the imposition of appropriate conditions will ameliorate any adverse effects; and,

- g. the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restrictions.
2. The variance, pursuant to § 806 of the Adirondack Park Agency Act and 9 NYCRR Part 576, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.
3. A variance of the terms of the APA Act is not personal and runs with the land. Recording of the variance order ensures notice to subsequent owners of the land.

ORDER issued this day
of , 2012.

ADIRONDACK PARK AGENCY

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

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

On the day of in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

REW:SBM:EAP:DFK:mlr