



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

APA Project Permit
and Order Granting
Variance 2004-31

Date Issued: **December 26, 2006**

In the Matter of the Application of

MARY JO AND JOHN E. HUTCHISON, JR.

for a permit pursuant to §809 of the Adirondack Park Agency Act and 9 NYCRR Parts 577 and 578 of the Agency's Rules and Regulations, and a variance pursuant to 9 NYCRR Part 577 of the Agency's Rules and Regulations

To the County Clerk: This permit must be recorded on or before February 26, 2007. Please index this permit in the grantor index under the following names:

1. **Mary Jo Hutchison**
2. **John E. Hutchison, Jr.**

SUMMARY AND AUTHORIZATION

Mary Jo and John E. Hutchison Jr. are granted a permit and variance, on conditions, authorizing a 21-lot subdivision, related residential development, and one boardwalk involving wetlands and within a designated river corridor in an area classified Rural Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Franklin, Franklin County.

This project may not be undertaken until this permit and order is recorded in the Franklin County Clerk's Office. This permit and order shall expire unless so recorded on or before February 26, 2007 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 when the new subdivision roads have been constructed, utility lines have been installed and at least 5 of the 18 new building lots have been conveyed.

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 a subdivision of 299± acres in a Rural Use land use area and within ¼ mile of a designated recreational river resulting in twenty or more lots, shoreline lots less than 80,000 square feet in size, a non-shoreline lot less than 320,000 square feet in size, involving wetlands and the installation of a boardwalk involving wetlands and within 150 feet of the mean high water mark (MHWM) of a designated recreational river, a Class A and B regional project requiring an Agency permit pursuant to §810(1)(d)(1)(b) and (3) and (2)(c)(a) and (b) of the Adirondack Park Agency Act and a regulated activity requiring a wetlands permit pursuant to 9 NYCRR Sections 578.2 and 578.3(n)(1)(iv) and a rivers project requiring an Agency permit and variance pursuant to 9 NYCRR Sections 577.4(a) and 577.5(c)(1) and 577.6(b)(3).

The variance application seeks Agency approval for a variance of 150 feet from the applicable 150-foot shoreline structure setback restriction pursuant to 9 NYCRR §577.6(b)(3) to authorize placement of an elevated boardwalk at and below the mean high water mark of Union Falls Pond/ the Saranac River. Agency Regulations in 9 NYCRR §577.10 authorizes 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 SITE

The project site is a 299± acre parcel of land located on or near Rock Street and with shoreline on Union Falls Pond. The project site is located in the Town of Franklin, Franklin County in an area designated as Rural Use on the Adirondack Park Land Use and Development Plan Map. The tax map numbers of the property site are: Section 356 Block 1 Parcels 6, 7, 10 & 12; Section 357 Block 1 Parcel 6; Section 371 Block 1 Parcel 10. The project site is described in a deed from Saranac River Resorts, LLC to Mary Jo and John E. Hutchison Jr. dated September 7, 2005 which was recorded March 28, 2006 in the Franklin County Clerk's Office in Liber 1484 of Deeds at Page 79.

PROJECT AND VARIANCE DESCRIPTION AS PROPOSED

The project as proposed is fully described and illustrated by numerous documents, maps and plans and is summarized as follows: A 21-lot subdivision of 299± acres involving wetlands and having 10,500± feet of shoreline on Union Falls Pond, an impounded portion of the Saranac River, a designated Recreational River under the NYS Wild, Scenic and Recreational Rivers Act. Building lots range in size from 3.11 to 20.1 acres with shoreline lot widths ranging from 227 feet to 1680 feet. Three non-building lots (# 5, 6 and 21) are designated as an open space preserve to be held in common by the Homeowner's

Association. A 100 square foot lean-to and dock will be constructed on Lot # 6 (foot access, only) and an old barn on Lot #5 will be restored and used for storage. A Homeowners' Association is proposed to hold and manage in common certain lands and infrastructure, regulate development and provide for an Architectural Review Board for all development. Provisions of the Stickney Point Homeowners' Association Inc. contained within "Covenants, Conditions, Reservations and Restrictions for the Stickney Point Development" will limit each building lot (with the exception of Lots 8 and 18) to one single family dwelling and one guest cottage having a combined maximum of 5 bedrooms and total building footprint of maximum 4,000 square feet, limit the height of any dwellings to 40 feet and the height of any accessory use structure to 25 feet. Lot 8 will have a maximum combined structure size of 8,000 square feet and 5 bedrooms, with a dwelling height of 40 feet and accessory use structure maximum of 35 feet, and on Lot 18 structures will be limited to a maximum of 4,000 square feet and 4 bedrooms. Further, any guest cottage will be no larger than 1,000 square feet in footprint and will contain no more than one bedroom. Boathouses are prohibited.

The Architectural Review Committee will have the authority to review plans for new structures and assess them for compliance with the covenants. The covenants include Article 5.4 "Architectural Requirements" which specify that, "...all new building on the premises shall be of a design compatible with the historic traditions of Adirondack architecture typical of this region of New York." Acceptable building materials listed include stone, rustic brick, logs, wood post and beam with log and twig detailing. Paints and stains should be earth tone colors such as forest greens, browns, greys, tans and dark red. Non-reflective glass is required for facades facing the Pond, and non-reflective roofing in black or dark earth tones are also required.

The dwellings and guest cottages will be served by new individual on-site well water supplies and conventional (in-ground or shallow absorption trench) wastewater treatment systems. Overhead and underground electrical utilities are also proposed. Access to the building sites will be served by four individual and shared driveways entering from Rock Street, a paved public highway.

Lot owners will be required to remove any existing structure within three years of lot purchase or upon completion of the single family dwelling, whichever comes first. Clearing on each lot will be limited to a maximum of 30,000 square feet and will extend no further than 20 feet from the foundation of the structures.

All existing 11 camps, five of which are located within 150 feet of the mean high water mark of Union Falls Pond, will be removed from the property and cleared areas within at least 100 feet will be partially revegetated. Article 5.7(1) of the Covenants specify "Areas where

'shoreline structures' were located shall be revegetated to a natural state." Article 5.17(2) ("shoreline cutting") allows for cutting for "filtered views" and maintenance of two paths up to 15 feet wide on each lot to the shoreline. Article 5.17(3) states "Lots with existing cleared shoreline frontage to a natural state within five (5) years of ownership."

Recreational use of the proposed Open Space Lots (5, 6 and 21) is limited by the Covenants to the exclusive use of the lot owners and their guests. An old barn on Lot 5 will be restored and offered to lot owners for storage. Non-motorized activities such as hiking, cross country skiing and horseback riding will be allowed as well as limited use of snowmobiles. Off-road ATV and motorcycle use is prohibited.

The proposed lots are as follows:

- Lot 1, 20.10 acres
- Lot 2, 10.73 acres
- Lot 3, 10.70 acres
- Lot 4, 9.23 acres
- Lot 5, 4.44 acres, with no shoreline and designated only for Open Space Uses
- Lot 6, 13.87 acres, designated only for Open Space Uses
- Lot 7, 5.95 acres
- Lot 8, 11.65 acres
- Lot 9, 7.24 acres
- Lot 10, 7.36 acres
- Lot 11, 5.27 acres
- Lot 12, 5.11 acres
- Lot 13, 6.50 acres
- Lot 14, 3.33 acres
- Lot 15, 3.64 acres
- Lot 16, 3.11 acres
- Lot 17, 5.06 acres
- Lot 18, 5.08 acres
- Lot 19, 5.07 acres
- Lot 20, 19.01 acres
- Lot 21, 136.57 acres, designated only for Open Space Uses

The project is illustrated by a survey map and a set of site-specific site plan maps and engineering drawings as follows:

- A survey map prepared by Christopher Hunt Leifheit, L.S. entitled: "Map Showing Survey & Subdivision, Stickney Point on Union Falls Pond", dated March 7, 2006. This map shows the property boundaries, proposed lot lines, lot numbers and existing roads, structures and powerline easement.
- A survey map prepared by Christopher Hunt Leifheit, L.S. entitled: "Map Showing Wetlands Location of Stickney Point",

dated September 2, 2005. This map shows all of the above and includes topographic contours and wetlands as identified by Agency staff.

- An overall site plan map drawn at a scale of 1 inch equals 300 feet, prepared by Cindy Garso, P.E. of North Woods Engineering entitled: "Site Plan, Stickney Point, Union Falls Pond, Sheet S-1", dated February 27, 2006, last revised as "C" to show the cemetery.
- A Stormwater Pollution Prevention Plan prepared by Cindy Garso, P.E. of North Woods Engineering, dated February 27, 2006.
- Twelve sheets of site-specific site plans, prepared by Cindy Garso, P.E. of North Woods Engineering entitled, "Stickney Point, Union Falls Pond" Sheets S-2 through S-6 and D-1 through D-7 dated February 27, 2006.

Reduced-scale copies of the 2006 Leifheit survey map the Garso site plan map 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.

CONDITIONS

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE PROJECT AND VARIANCE 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 and 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.
2. This 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 2004-31 issued December 26, 2006, 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.

Projected Remaining Building Density

4. After the removal of the 11 existing camps and construction of one single family dwelling on each of Lots 1 through 4 and 7 through 20 as authorized herein, no additional principal buildings shall be allowed on the any of the 21-lots in the subdivision on the 299+ acre project site.

Building Locations, Footprints and Height

5. This permit authorizes the construction of one single family dwelling and associated development on each of Lots 1 through 4 and 7 through 20 in the locations shown on the project plans. With the exception of Lots 8 and 18, the footprint of all structures on each building lot shall not exceed a combined total of 4,000 square feet and the combined total number of bedrooms within the dwelling and the guest cottage shall not exceed five. Measurement of the "footprint" of any structure will include all attached decks, porches, and accessory structures (e.g., attached garages). The main dwelling shall not exceed 40 feet in height and accessory structures shall not exceed 25 feet in height. On Lot 8, there will be a maximum combined footprint of 8,000 square feet and 5 bedrooms (maximum residence of 4,000 square feet and maximum accessory-use structure of 4,000 square feet), with a maximum dwelling height of 40 feet and accessory use structure maximum height of 35 feet. The combined footprint of structures on Lot 18 shall be limited to a maximum of 4,000 square feet and 4 bedrooms. The height of all structures will be measured from the highest point on the structure, including any chimneys, to the lowest point of existing or finished grade, whichever is lower.

Guest Cottages

6. Not more than one guest cottage shall be allowed on each of Lots 1 through 4 and 7 through 20. Guest cottages may only be used on an occasional and transient basis by guests of the main dwelling, shall not be used for rent or hire, shall contain no more than one bedroom and shall not exceed 1,000 square feet in size,

including all attached decks, porches, or one half of the enclosed floor space of the associated dwelling, whichever is less.

In no case shall the guest cottage be constructed and occupied prior to construction and occupancy of the single family dwelling on any individual lot.

Removal of Existing Structures

7. The pre-existing camps on Lots 1,2,8,9,11,12,13,14,15,16 & 17 shall be demolished within three years of the sale of the lot or prior to undertaking construction of the single family dwelling, whichever comes first.

HOA Covenants/Article 5.7

8. Prior to filing the "Covenants, Conditions, Reservations and Restrictions for the Stickney Point Development", the first sentence of Article 5.7 (1) thereof shall be amended as follows: "The owner(s) of Lots 1,2,8,9,11,12,13,14,15,16 and 17 shall demolish the pre-existing camp within three years of purchase, or prior to commencement of construction of the new single family dwelling, which ever comes first."

Building Color

9. 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 such as a dark shade of green or brown or other earth tone colors that blend with the surrounding environment, as required by the HOA covenants. The Agency will, upon request, advise whether any particular proposal complies with this condition.

Outdoor Lighting and
Non-Reflective Glass

10. All outdoor lighting shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to provide safety and security and not to cast light toward Union Falls Pond, Rock Street or adjoining property. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow). Only non-glare, non-reflective glass facing the Pond shall be used on all structures.

Wastewater Treatment

11. The proposed on-site wastewater treatment systems shall be constructed in complete conformity with the locations and designs shown on the project plans referenced herein. The construction of each 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 its utilization, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans.
12. The permittees or their successors in interest shall provide each purchaser of a lot at the time of purchase with a legible reproduction of the approved wastewater treatment system plans and this permit and shall notify the purchaser of the necessity of installing such facilities in accordance with the approved plans.

Wetlands

13. 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, 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.
14. The elevated boardwalk on Lot 20 shall be no more than 3 feet wide and 50 feet long and its deck shall be no less than 18 inches above the mean high water mark of Union Falls Pond and otherwise constructed as shown on the project plans described herein.
15. Cutting of chemically treated lumber shall occur a minimum of 25 feet from wetlands, in an upland area, over a tarp which will contain the sawdust and wood chips. All chemically treated lumber waste shall be removed from the site and shall be disposed of in a NYS Department of Environmental Conservation approved landfill.
16. Prior to undertaking earthwork on each individual lot, all erosion control and stormwater pollution prevention structures shall be installed as proposed. Silt fence shall be properly installed parallel to the existing contours between the

construction site and the pond and its outlet. The silt fence shall be embedded into the earth a minimum of four inches and shall be a minimum of ten (10) feet from the water resources wherever possible. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed soils are stabilized and mulched to prevent siltation of the water resources. The silt fence shall be inspected at least once a week and after every major storm event to ensure the fabric and supports are intact and to remove accumulated sediments so as to maintain the fence in a functional condition.

Vegetative Clearing and Replanting for Visual/Open Space Protection

17. Vegetative clearing on each lot shall be limited to that which is necessary to construct the authorized single family dwelling and accessory structures, the wastewater treatment system, the driveway, the footpaths to the shoreline and for a filtered view. Vegetative clearing around each structure shall not extend more than 20 feet from the footprint of the structures. Clearing for the driveway shall not exceed 25 feet in width. In no case shall the total square footage of vegetative clearing exceed 30,000 square feet without prior review and approval from the Agency. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard.
18. For each residential lot, a maximum of two access footpaths to the shoreline may be constructed. One footpath will lead to the dock and shall not exceed eight feet in width. The second footpath shall not exceed six feet in width. All footpaths shall be flush with the existing ground surface and no above ground elements such as stairs, landings or railings shall be allowed without prior Agency approval. In no event shall any footpath to the shoreline be converted to a road or driveway, and automobiles or trucks shall not be used on them. Golf carts may be permitted for handicap access and seasonal maintenance of docks. The footpaths shall be located, to the greatest extent practicable, within existing non-treed areas on the proposed lots. The footpaths shall be curved or angled so that there is not a straight view up the footpaths from the pond to the structures.
19. For each residential lot, a filtered view not to exceed twenty feet in width may be created from each dwelling. A "filtered view" means that each dwelling will have a partial, limited view from the ground floor to the pond that is framed by the trunks and branches of existing trees and shrubs. The intent is that buildings remain highly screened as viewed from the pond. Trimming and limbing of canopy branches of existing trees shall be the primary means to achieve such filtered views. Selective

removal of individual trees may be approved. Tree trimming shall be performed so as to maintain the overall natural shape of the trees. Topping of trees, removal of branches predominantly on one side of a tree and removal of all lower branches so that less than 1/3 of the tree crown remains shall not be allowed. To the extent practicable, the filtered view corridor should overlap or follow the clearing associated with one or both of the footpaths and/or the existing clearing of the existing camps.

20. On each of Lots 1,2,8,9,11,12,13,14,15,16 & 17, within 18 months of demolition of the existing camp(s), the cleared areas associated with the camp(s) (including any open areas between the camp and shoreline) shall be replanted except for areas associated with the footpaths or filtered view corridor. Article 5.17(3) of the covenants shall be amended to read "Unless part of, and in compliance with the terms of, a "filtered view" or pathways under Article 5.17(2), lots with existing cleared shoreline frontage must revegetate to a natural state within five(5) years of ownership." Within two weeks of completion of the planting, the Agency shall be provided with a color photograph showing the completed planting. The photograph shall be labeled as to permit and lot number.
21. Prior to any earth disturbance or vegetative cutting on any purchased lot, the lot owner(s) shall submit a Cutting and Planting Plan (the Plan) for their lot to the Agency for review and approval. Approval will be given in the form of an amended permit or Letter of Permit Compliance. The Plan shall be developed in conformance with Conditions stated above. A copy of the Agency's approval document and the approved Plan shall be filed with the Homeowners Association.

The Plan shall be a scaled site plan of the entire lot showing the final footprint of the proposed dwelling, accessory structures, wastewater treatment system and driveway; the proposed location and width of the two proposed footpaths; and the filtered view corridor. The Plan shall show the limits of clearing associated with the dwelling, any accessory structures, the driveway and the wastewater treatment system. It shall list the size in diameter at breast height (dbh) and the species of any tree greater than four inches dbh to be removed for the footpaths and filtered view corridor. The Plan shall also list the species and size of all trees and shrubs to be planted in the cleared areas resulting from the removal of the twelve camps identified herein. All planted vegetation shall be of native species to the Adirondacks.

HOA Covenants

22. Prior to filing the "Covenants, Conditions, Reservations and Restrictions for the Stickney Point Development," Article 5.7(1) and 5.17(2) and (3) shall be amended to reflect the cutting limits and revegetation requirements as set forth in this permit and order.

The "Covenants" shall be further amended to include a new section containing provisions for the preservation and maintenance of the identified cemetery. Such provisions shall include; description of public access from Rock Street, annual clearing of vegetation and debris by hand, prohibition of the removal of any grave markers or headstones, fencing the cemetery after the extent of the site is known and strict adherence to a minimum 50 foot undisturbed buffer area around the cemetery.

By no later than 90 days after filing of this permit and order, and prior to filing with the Department of Law, the draft revised covenants shall be provided to the Agency for review and approval in the form of a letter of compliance.

Within 30 days of filing with the County Clerk, a complete copy of the revised and recorded "Covenants, Conditions, Reservations and Restrictions for the Stickney Point Development" shall be provided to the Agency.

Shoreline Setbacks

23. Except for the boardwalk on Lot 20 as authorized herein, all new buildings, decks and other structures (except for fences, poles, lean-tos, docks, bridges, and stream improvement structures for fishery management purposes) shall be set back a minimum of 150 feet from the mean high water mark of Union Falls Pond.

Boathouses

24. There shall be no boathouses constructed on the 299± acre project site.

Docks

25. This permit authorizes the installation of one dock on each shoreline lot as described in the Homeowner's Association documents. The dock may extend into or over Union Falls Pond from only that portion of the immediate shoreline necessary to attach the floating or fixed structure to the shoreline. The dock shall be no greater 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 eight 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.

Agency Review of Future Subdivision and Development

26. Beyond that specifically authorized by the permit and order, there shall be no further subdivision or new land use and development without a new or amended Agency permit.

FINDINGS OF FACT

Site Location

1. The project site is located in the Town and County of Franklin in an area classified as Rural Use. Access to the western shoreline of Union Falls Pond, including the project site is provided by Rock Street, a paved, public highway. There is no public road access to the eastern shore of Union Falls Pond.

Character of the Area

2. The surrounding area is characterized by large tracts of forested lands in both private and public ownership and under conservation easement. The project site and surrounding areas have been managed for forestry uses for many years. The large majority of structures that dot the shoreline of Union Falls Pond are modest-sized seasonal-use camps, many of which are rented annually or subject to long-term lease. The lands surrounding Union Falls Pond are classified primarily as Rural Use, Low Intensity Use and Wild Forest, with a small portion of land in the southern part of the Pond being Resource Management. The Wild Forest lands are within the Taylor Pond Management Unit.

Background/Prior History

3. The project site had formerly been a part of a very large tract of lands owned by Franklin Falls Timber Company, which included lands under water of Union Falls Pond. In 1990, the State of NY acquired large portions, including the lands underwater leaving the 299± acre project site, and other lands in the adjoining Low Intensity Use land use area isolated and in private ownership. The Agency investigated this matter as described in enforcement case E2001-95. The settlement agreement with Mr. and Mrs. Hutchison authorized the 299± acre project site as a lawful lot, after-the-fact. The applicants had previously submitted a proposal for a 14-lot residential subdivision of the same project

site (P2002-184) under the corporate name of "Saranac River Resorts". That application was withdrawn prior to submittal of the current application.

Existing Camps

4. The project site is developed by eleven pre-existing camps for rent/lease which are on proposed Lots 1,2,8,9,11,12,13,14,15,16 & 17. Five of these camps are within 150 feet of the mean high water mark of Union Falls Pond. They range in size from 350 to more than 1,000 square feet and some are two stories tall. Although most are rustic and suitable for seasonal use only, there have been changes in use and an incremental increase of amenities including out-buildings, indoor plumbing, satellite TV dishes, etc., many of which may be in non-compliance with Agency regulations. All 11 camps will be removed as part of this project.

Old Cemetery

5. In mid-November, 2006, Agency staff were made aware of an old cemetery located on the project site. The cemetery is the site of several graves of the Stickney family whose farmstead occupied the area more than 100 years ago and has been documented by the Town of Franklin Historian. It was the subject of an article in the Plattsburgh Press Republican published November 18, 2006. The cemetery is located on proposed Lot 13. All known gravesites are at least 50 feet from all access roads and more than 80 feet from the nearest proposed structure.

Illegal Dump Site

6. In 2001, Agency staff investigated a complaint of dumping on the project site (Enforcement case E2001-175). An area on proposed Lot #21 immediately adjacent to Rock Street was being used for illegal dumping by the public. Household trash, appliances and other debris had been thrown over an embankment in this location for decades and was on-going. APA staff coordinated with NYS Department of Environmental Conservation staff who ultimately took the lead in the matter after it was determined the Agency did not have jurisdiction over the waste disposal. The Agency's enforcement case was closed administratively on March 3, 2004. In May 2002, Town Highway Department workers assisted Mr. Hutchison in removing as much trash as could be reasonably accessed and barricading the location to prevent further dumping.

As evidenced by a letter dated December 7, 2006 to John Hutchison from Dale A. Becker of the NYS Department of Environmental Conservation, additional complaints have been recently filed with

the Department prompting a review of the 2002 cleanup and current conditions. The Department now seeks additional clean-up of the site by May 31, 2007. In a letter dated December 11, 2006 to the Agency, the Hutchisons have agreed to the additional clean-up as required by the Department.

Existing Environmental Setting
Union Falls Pond and the Saranac River

7. Union Falls Pond is an impoundment of the Saranac River, a designated Recreational River under the NYS Wild, Scenic and Recreational Rivers Act and part of the newly-designated Northern Forest Canoe Trail. The dam is located at the north end of the Pond, approximately 1-3/4 miles from the project site and is actively maintained by National Grid for generation of electricity. It was constructed in 1909 by the Paul Smith's Electric Light, Power and Railroad Company. The Pond is roughly 1,650 acres in surface area, roughly 5 miles long with 18.3 miles of shoreline. It is a shallow water body littered with tree stumps near the surface. The mean high water mark of Union Falls Pond is 1408.53 feet in elevation above mean sea level. This elevation is depicted on the project maps and plans. The pond has 18.3 miles of shoreline. Approximately 4.8 miles is privately owned and occupied, 7.1 miles is under easement to the State of NY, and 6.5 miles is within the State Forest Preserve. There is one boat launch located immediately adjacent to the outlet/dam on the north end of Union Falls Pond, a popular fishing spot. Launches are limited to cartop and very small trailered motor boats and a sign notifies the public of a posted limit of 10 horsepower motors.

Other Water Features and Wetlands

8. Three small permanent streams flow across the project site from Rock Street to Union Falls Pond; one forms the southerly boundary, the second is located in the approximate center of the project site and the third forms the boundary between Lots 20 and 21 in the northern portion of the project site.
9. Five separate areas of wetlands comprising a total of approximately 10 acres exist on the project site. With the exception of the elevated boardwalk on Lot 20, no new land use or development authorized herein will involve or disturb any wetlands.
10. Lot 20 has 226 feet of shoreline on Union Falls Pond, all of which consists of a wetland. The width of the wetland (between open water in Union Falls Pond and the upland area) varies from 100 feet to approximately 45 feet at the narrowest. An elevated

wooden boardwalk two feet wide is proposed to cross the wetland at its narrowest point to provide access to a dock on Union Falls Pond.

Wildlife Habitat

11. Union Falls Pond and Franklin Falls Pond, adjoining to the south, have known past nesting sites for Bald Eagles, a listed "Threatened" species under New York State and Federal Law. A report entitled "Bald Eagle Impact Assessment for the Stickney Point Subdivision" dated August 1, 2005, was prepared by Ralph S. Charles, III in response to a request from the Agency for information about the potential impact of this project on this species. The report includes an inventory of potential nest trees along the entire 18.3 mile shoreline of Union Falls Pond, including such trees that exist on the project site. The report concludes that the nearest known nest is approximately ½ mile from the project site and that of the 695 potential nest trees found along the shoreline of Union Falls Pond, 24 exist on the project site. Of the 695 potential nest trees, 15 were described as "high quality"; none of these are located on the project site.

Soils and Slopes

12. The high point of land on the project site is 1,585 feet in elevation above mean sea level and is located on Lot 5, at Rock Street. The site drops down to the mean high water mark elevation of Union Falls Pond at 1408.53 feet above mean sea level, a change in elevation of almost 180 feet across the site. The property is generally rolling terrain with some small flat areas contained between steep slopes. A large plateau at approximately 1,500 feet elevation above mean sea level is largely contained within the proposed 136 acre open space lot. Much of the southerly portions of the property have very steep slopes, some areas in excess of 25%. Slopes within the proposed building locations are less than 25% overall, and generally less than 15%. Slopes in the locations of all shallow absorption trench on-site wastewater treatment systems were confirmed in the field to be 8% or less.
13. Extensive site analysis of soils was conducted by Agency staff and contracting engineers and soils scientists. Soils of the Becket, Berkshire, Monadnock and Adams series were identified. Within areas identified as potential building sites, soils conditions vary widely with some areas having exposed bedrock, shallow soils to bedrock and a perched water table and other areas having deep deposits of loamy sands and gravels. Evidence of the seasonal high water table range from 28 inches to more than 38 inches below grade. Percolation rates ranged from 4 to

25 minutes per inch of infiltration. Suitable locations for shallow conventional wastewater treatment systems were found for each residential lot.

14. The property is predominately wooded with an uneven aged stand of white pine, fir, maple, beech, paper and yellow birch and poplar. Some large white pines, in excess of 60 feet tall, are located on the property.

Public Notice and Comment

15. The Agency notified all adjoining landowners and those parties as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. There are seven privately-owned parcels which adjoin the project site, other than those owned by the applicants. Comments were received in 2004 from Bud Ziolkowski and from adjoiners Hugh and Marie Law and Timothy E. Law. After the notice of application completion was issued in October, 2006, a total of 67 letters from 44 authors were received, including adjoining landowners Hugh and Marie Law, Sylvia Hough and Harrison Ewing and 9 from Advocacy Groups. Four letters from Town of Franklin Supervisor, Mary Ellen Keith were submitted; she calls for a public hearing. At least 20 of the letter writers live outside the Town of Franklin or outside the Park. Many of the writers raise concerns that the project could have impacts to wildlife, including the Bald Eagle population, songbirds, fox, black bear and a variety of other animals which inhabit the property and surroundings. Another issue raised was the potential for water quality impacts that could result from septic systems, roads and construction near drainageways and on steep slopes and potential safety concerns during storms and power outages and when the small rural roads are closed off due to blow-down. Additional comments include requests for a public hearing, cited impacts to the character of the neighborhood, real property tax assessments in the Town of Franklin, and impacts on viewsheds.

Public Hearing on the Variance

16. A mini-hearing pursuant to 9 NYCRR §576.6 on the matter of the proposed elevated boardwalk on Lot 20 was held at the Town of Franklin Town Hall on Thursday November 2, 2006. The hearing commenced at 9:00 a.m., and other than Agency staff, three other individuals were present. The hearing was closed at 10:00 a.m. There were no comments submitted on the variance.

Other Regulatory Permits and Approvals

17. The Town of Franklin has no review jurisdiction over the proposed subdivision. Construction of the dwellings will be subject to Town permits under the NYS Uniform Building fire and safety code.
18. The project as authorized herein is not subject to review by the NYS Department of Health under their Realty Subdivision Regulations.
19. A permit (GP-02-01) from the NYS Department of Environmental Conservation will be required for stormwater management under the State Pollutant Discharge Elimination System (SPDES). A Notice of Intent has been completed and will be filed with the Department upon Agency approval. The Notice cites a total of 18 acres of impervious surface will result from this project.

Alternative Lot Layout

20. Agency staff asked the applicants to consider an alternative subdivision plan, including one which would have clustered all building lots away from the shoreline in the general area now identified as Lot 21, with the areas of steep slopes and the Union Pond shoreline being held in common as open space preserve by the HOA. This alternative plan was not acceptable to the applicant who, citing economic hardships and reduced lot values under such a scenario, stated that in their opinion the project, as proposed, was most responsive to the existing residential market in the area and would produce a higher return on the sale of individual lots. In late November, staff were apprised of an alternative plan that had been considered, but rejected, by the applicants in the early project planning stages. The plan called for 35 single family dwellings, with 14 building lots occupying 9,100 feet of the shoreline and 21 non-shoreline lots. It also involved two open-space lots having 1,400 feet of shoreline, a common beach and dock area with a bathhouse and bathrooms, picnic pavilion, boat ramp and 4200 feet more access roads than currently proposed.

PROJECT IMPACTS

Variance Impacts and Criteria

21. The proposed location for the boardwalk at the mean high water mark of Union Falls Pond / the Saranac River is the minimum variance necessary from the applicable 150-foot setback from the mean high water mark of the River. This location is the narrowest section of the wetland on Lot 20. There are practical

difficulties and unnecessary hardships in carrying out the strict letter of the setback restrictions in 9 NYCRR §577.6(b)(3) of the Adirondack Park Agency Rules and Regulations because the wetlands are associated with the entire shoreline of Lot 20 there is no other available alternative for reasonable foot access to the shoreline of the lot.

Recreational Use of Union Falls Pond

22. The project will result in a slight increase of recreational use of Union Falls Pond. The 18 new single family dwellings represent a net increase of 7 residences on the project site and a very small percentage of existing development on the waterbody as a whole.

Potential Visual Impacts

23. The proposal involves removal of 11 existing camps, 5 of which are located within 150 feet of the shoreline. Areas surrounding these camps which are cleared of vegetation are proposed to be partially revegetated except for two 6 and 8 foot wide paths to the shoreline and cutting for a filtered view from the structures. The proposed 15 foot paths are wider than necessary to provide adequate foot access to the shoreline, including that necessary to launch a canoe or other cartop boat and should be in a curved alignment so as to reduce views of the structures from the Pond. Except for one dock on each lot and the boardwalk on Lot 20, the proposed structures on the 18 new building lots will not be significantly visible from Union Falls Pond because the new dwellings and guest cottages will be setback at least 150 feet within cleared areas no greater than 30,000 square feet in size, existing shoreline vegetation will be retained and planting of new vegetation where existing structures are to be removed will serve to assure that the buildings are well screened from the Pond. Boathouses are already prohibited by the Covenants. Furthermore, visibility of the structures from the Pond will be limited by the size and height of structures, the exterior color of structures and roofing materials, and the use of non-reflective glass. All new buildings will be subject to review by an architectural review committee of the HOA.

Water Quality

24. Agency staff reviewed the proposed development to assess the potential impact of the project on the water quality of Union Falls Pond. Agency staff have concluded that the proposed project will not have an undue adverse impact on the water quality of Union Falls Pond because of the strict limits to vegetative clearing on each lot, the elimination of the older

camps close to the shoreline and revegetation of open areas, the careful design of the proposed wastewater treatment systems in compliance with Agency guidelines, setbacks of structures, and limitations of earth disturbances near the shoreline, wetlands and streams.

Wastewater Treatment Systems

25. It is important that each wastewater treatment systems installed on the new building lots be located and constructed specifically as shown on the plans. Supervision of the construction and certification of compliance with the plans should be done by a licensed professional engineer. The location of each system was carefully field selected to comply with the Agency's guidelines including slope, depth to seasonal high groundwater and bedrock, and horizontal setbacks from water features. Each system will be a shallow system because the depths to the seasonal high groundwater table at each location are between 24 and 40 inches below the surface. Therefore, the HOA should provide each lot purchaser with a copy of the approved site plan showing the location for the leaching facility and the approved wastewater treatment system plans. Prior to occupancy of the authorized dwellings on each lot, the design engineer should certify to the Agency that the system was located as shown on the plans and installed according to the approved plans.

Erosion and Sedimentation

26. Provided the proposed sedimentation and erosion control measures to be utilized during construction of the new subdivision roads and structures pursuant to the approved plans are implemented, and because of restrictions on vegetative cutting and setbacks of development from Union Falls Pond, wetlands and streams, the project will not result in any significant erosion or sedimentation impacts to the water resources of the Park.

Wildlife Resources

27. One concern raised during review of the project is the impact the project might have on the Bald Eagle. Over the past two decades, nesting eagles have been identified by NYS Department of Environmental Conservation in two locations on the shoreline of Union Falls Pond. These nest sites were destroyed by natural weather events in the past 3-4 years and no other active nest sites have been identified. The inventory of potential nest sites identified a total of 695 potential nest trees on the shoreline of Union Falls Pond, 24 of which are on the project site. Such trees are large white pines in close proximity to the shoreline. Because the development along the shoreline of the

project site will be limited to one dock per lot, vegetative cutting within 100 feet of the Pond will be limited to two narrow paths and a filtered view corridor, and the development on each of the 20 shoreline lots will be setback more than 150 feet from the Lake, the bald eagle habitat should not be adversely impacted.

28. Based on review and comment by the Endangered Species Unit (ESU) of the NYS Department of Environmental Conservation, there will be no impact to the existing bald eagle population on Union Falls Pond. There are three major factors that help determine the viability of a water body as eagle habitat:
1. Adequate prey availability.
 2. Access to that prey (is human disturbance too extreme to allow the eagles suitable and regular access to the food they need to live).
 3. Availability of suitable nesting substrates.

The first two relate to whether bald eagles will utilize a water body at all, and the third relates to use of the habitat for nesting. Union Falls Pond provides all three criteria and the bald eagle population appears to be healthy and unthreatened. The ESU indicates that the shoreline setbacks, removal of the old shoreline camps that now exist and rehabilitation of the shoreline, and the territorial use by these eagles of the east side of Union Falls Pond will result in no impact to resident eagles. Other factors such as inshore use of jet skis or canoeists/kayakers directly approaching perched eagles or eagle nests is more disruptive but is beyond the purview of this permit. ESU also noted that the most important factor negatively affecting eagles on Union Falls Pond is the loss or discarding of fishing monofilament and tackle. Direct mortality to eagle chicks due to entanglement with monofilament line in the nest has been documented.

Because the development along the shoreline of the project site will be limited to one dock per lot, vegetative cutting within 100 feet of the Pond will be limited to two narrow paths and a filtered view corridor, and the development on each of the 20 shoreline lots will be setback more than 150 feet from the Lake, the bald eagle habitat should not be adversely impacted.

Open Space/Aesthetics

29. The proposed project will result in the increased fragmentation by separate ownership of the site's 10,500 foot shoreline in a Rural Use land use area. However, the project site's shoreline is currently developed by 11 camps, five of which are located

within 150 feet of the MHWL of Union Falls Pond in extensive cleared areas making them highly visible. The proposal includes removal of all existing camps and revegetating those cleared areas within 100 feet of the shoreline, thus restoring a vegetated shoreline and decreasing the visual impacts as seen from Union Falls Pond and the state lands.

30. Agency river regulations in 9 NYCRR §577.8 (c)(1)(ii) allow limited cutting and trimming of trees for a filtered view provided such cutting is selective, disperse and necessary to provide a view of the river from any new structure or from a lawfully existing structure that lacks such a view. There may be some limited views of the proposed development from the Pond during leaf-off conditions. However, the requirements for development on the new building lots (i.e., size, color and height of structures and vegetative cutting limits) will make any views of the proposed development very limited.

Wetlands

31. With the exception of the elevated boardwalk on Lot 20, no new land use or development authorized herein will involve or disturb any of the approximately 10 acres of wetlands.
32. This project will involve insignificant impact to the wetlands on Lot 20 having a value rating of "2". Minimal loss of acreage, function or benefits derived therefrom will result, and therefore, no mitigation or compensation is required in accordance with the Agency's Compensatory Wetland Mitigation Guidelines.

Land Resources

33. New development including roads, on-site wastewater treatment systems and buildings have been carefully sited to avoid steep slopes and shallow soils.

Operational Issues Affecting Nearby Land Uses

34. The proposal is for residential development and occupancy. Demolition of the pre-existing camps and construction of new structures will occur over a period of years as lots are sold and developed by individuals. Demolition and construction-phase activities will temporarily result in increased heavy-equipment traffic on Rock Street and other surrounding roads which are very rural and quiet in character. Long-term residential occupancy of the property will result in greater year-round traffic by residents as the current use is generally limited to seasonal occupancy.

Economic/Fiscal Factors

35. The project sponsor planned The Stickney Point Subdivision to appeal to a market, including retirees, who are interested in living in a rural community with the added amenity of lake access. The 18 building lots planned for the 299± acre site have been projected by the project sponsor to be sold and developed over a period of 10-20 years (an estimated absorption rate of 1-2 lots/principal buildings per year).
36. The project site, improved with the existing 11 seasonal camps, had a 2005 real property tax assessment of \$707,400. The applicant expects the real estate value of each initial development within the subdivision to be approximately \$500,000 (value of lot and structures). This added value on the project site is expected to result in the incremental expansion of the Town of Franklin's tax base during the projected 10-20 year build-out of the project. With its requirement of minimal public services from the Town of Franklin, the project is expected to have a substantially positive fiscal impact on the Town.

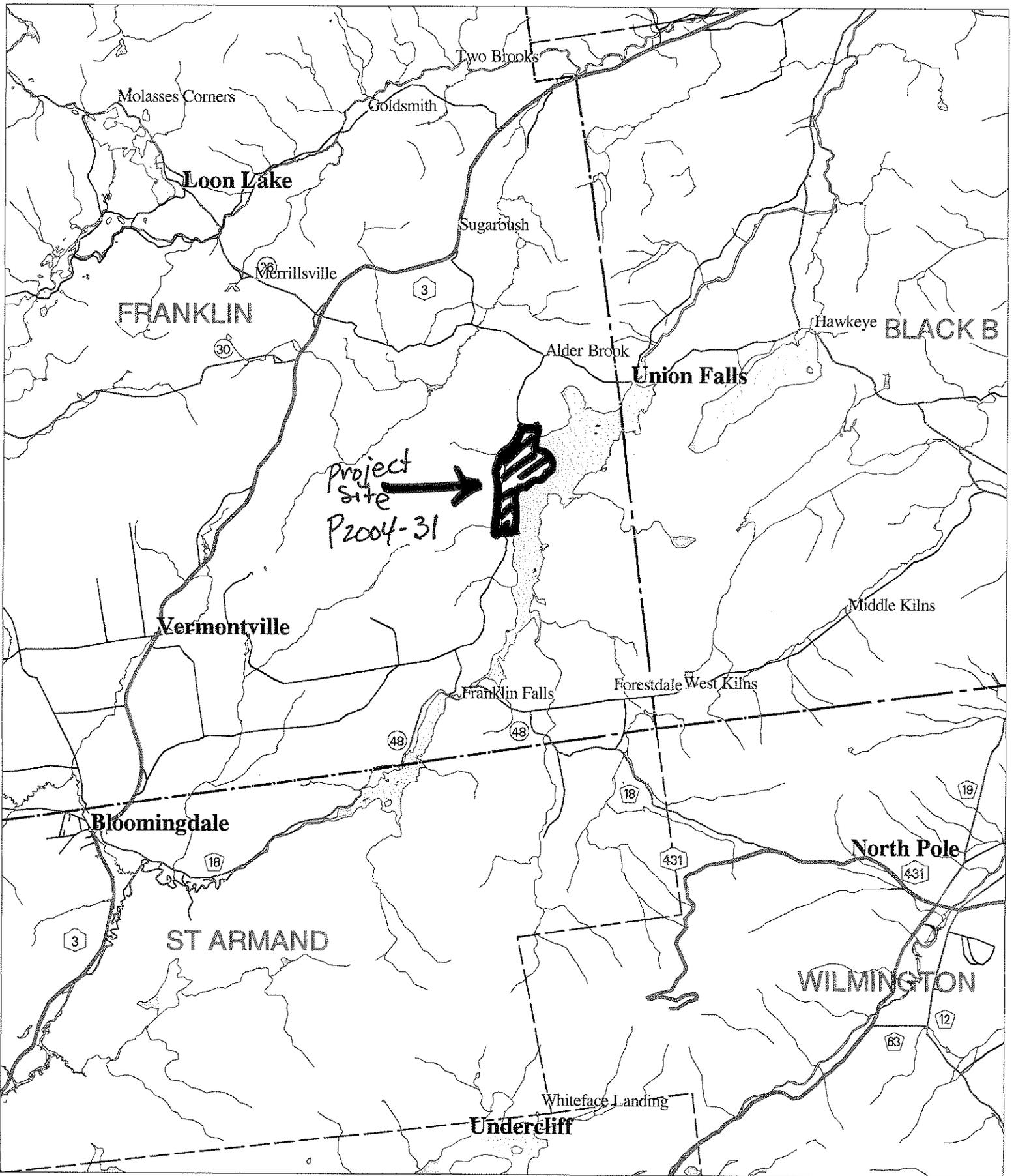
Historic Sites or Structures

37. The NYS Office of Parks, Recreation and Historic Resources ("SHPO") issued a letter of "No Impact" for the project on July 9, 2005. On November 29, 2006, staff received a telephone call from SHPO advising that they had been notified of the existence of a cemetery plot on the project site. SHPO staff advised that since the cemetery was at least 50 feet from the new land use and development, it appeared protection of the site could be assured through the addition of certain provisions in the Homeowner's Covenants. The site should be clearly shown on the subdivision plan map, annual maintenance should be provided for, any road improvements should be no closer to the cemetery and the site should not be fenced until such time as the full extent of the burial site is known. 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.

CONCLUSIONS OF LAW

If undertaken in compliance with the conditions herein:

1. The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(9) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574; §24-0801(2) of the NYS Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR §578.10; §15-2709 of the NYS Wild, Scenic and Recreational Rivers System Act (ECL, Article 15, Title 27) and 9 NYCRR §577.8. The Agency hereby finds that the project is approvable and complies with the above criteria, except with respect to the shoreline restrictions discussed below, provided it is undertaken in compliance with the conditions herein.
2. There are practical difficulties in the way of carrying out the strict letter of the shoreline setback restriction on Lot 20 set forth in 9 NYCRR §577.6(b)(3), 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 wetlands covering the entire shoreline of Lot 20;
 - e. the granting of the variance will not adversely affect the natural and scenic resources of the shoreline and adjoining waterbody or create erosion, surface runoff, subsurface sewage effluent, 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.
3. The variance, pursuant to 9 NYCRR §577.10, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.

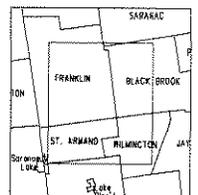
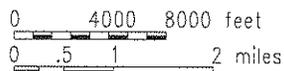


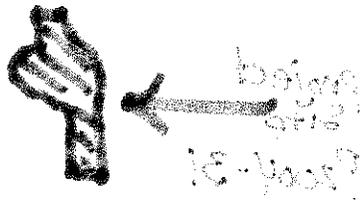
New York State
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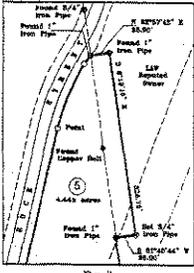
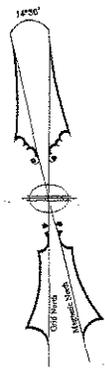


NOTES:

Title for the subject premises can be found in Liber 750 Page 600.
 Unauthorized alteration of, or addition to a survey map bearing the seal of a Licensed Land Surveyor is a violation of Section 7200, subdivision 2, of the New York State Education Law.

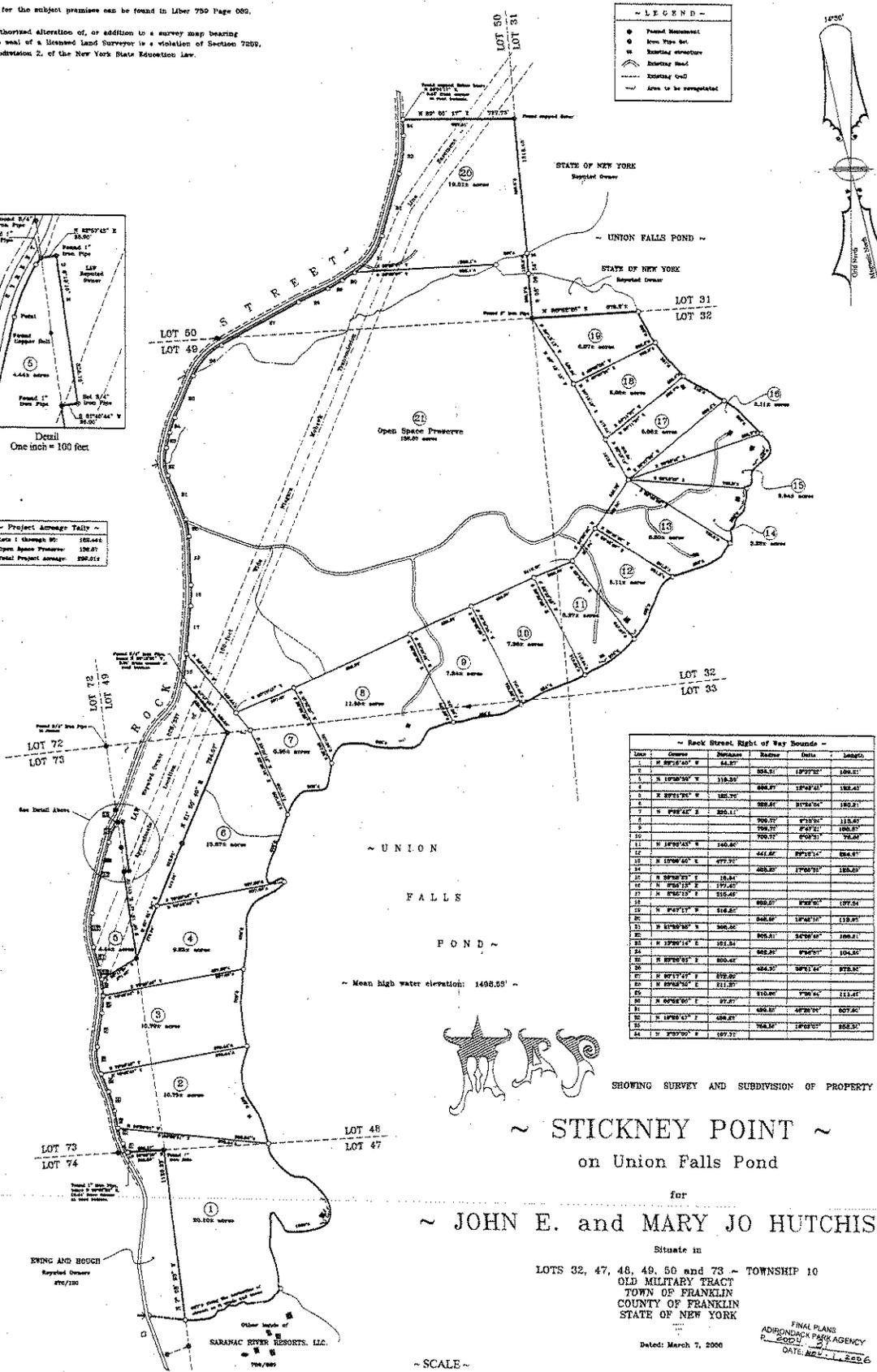
- LEGEND -

- Found Monument
- Iron Pipe Set
- ▭ Existing structure
- ▬ Existing road
- ▬ Existing trail
- ▬ Area to be resurveyed



- Project Acreage Tally -

Area 1 through 10	126.04
Open Space Preserve	126.07
Total Project acreage	252.11



- Rock Street Right of Way Bounds -

Line	Course	Distance	Bearing	Area	Remarks
1	N 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
2	N 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
3	S 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
4	S 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
5	N 89°14'45" E	44.87	89°14'45"	1,077.21	108.21
6	N 10°30'55" E	118.23	10°30'55"	1,077.21	108.21
7	S 89°14'45" E	44.87	89°14'45"	1,077.21	108.21
8	S 10°30'55" E	118.23	10°30'55"	1,077.21	108.21
9	N 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
10	N 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
11	S 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
12	S 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
13	N 89°14'45" E	44.87	89°14'45"	1,077.21	108.21
14	N 10°30'55" E	118.23	10°30'55"	1,077.21	108.21
15	S 89°14'45" E	44.87	89°14'45"	1,077.21	108.21
16	S 10°30'55" E	118.23	10°30'55"	1,077.21	108.21
17	N 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
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25	N 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
26	N 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
27	S 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
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33	N 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
34	N 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
35	S 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
36	S 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
37	N 89°14'45" E	44.87	89°14'45"	1,077.21	108.21
38	N 10°30'55" E	118.23	10°30'55"	1,077.21	108.21
39	S 89°14'45" E	44.87	89°14'45"	1,077.21	108.21
40	S 10°30'55" E	118.23	10°30'55"	1,077.21	108.21
41	N 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
42	N 10°30'55" W	118.23	10°30'55"	1,077.21	108.21
43	S 89°14'45" W	44.87	89°14'45"	1,077.21	108.21
44	S 10°30'55" W	118.23	10°30'55"	1,077.21	108.21



SHOWING SURVEY AND SUBDIVISION OF PROPERTY

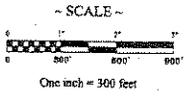
~ STICKNEY POINT ~
 on Union Falls Pond

for
~ JOHN E. and MARY JO HUTCHISON ~

Situate in
 LOTS 32, 47, 48, 49, 50 and 73 ~ TOWNSHIP 10
 OLD MILITARY TRACT
 TOWN OF FRANKLIN
 COUNTY OF FRANKLIN
 STATE OF NEW YORK

Dated: March 7, 2006

FINAL PLANS
 ADIRONDACK PARK AGENCY
 DATE: APR 11, 2006



CHRISTOPHER HUNT LEIPHERT
 Licensed Land Surveyor, Reg. no. 49699
 Paul Smiths - Gabriels, New York



