

 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	APA Permit and Order Granting Variance 2012-21
	Date Issued:
In the Matter of the Application of THE TOWN OF WEBB for a permit pursuant to §809 of the Adirondack Park Agency Act and 9 NYCRR Part 578 and a variance from the shoreline restrictions of Executive Law §806 and 9 NYCRR Part 575	To the County Clerk: This Permit and Order must be recorded on or before _____ . Please index this Permit and Order in the grantor index under the following names. 1. Town of Webb

SUMMARY AND AUTHORIZATION

The Town of Webb is granted (i) a permit, on conditions, authorizing the reconstruction of bridge abutments involving wetlands and (ii) a 50 foot variance, on conditions, from the applicable 50 foot shoreline setback restrictions pursuant to New York State Executive Law Section 806 authorizing installation of a pedestrian/bicycle/cross country ski bridge, wooden railings along the side of the TOBIE Trail, and paving of the TOBIE Trail within the former railroad corridor within 50 feet of the mean high water mark of the Middle Branch of the Moose River, in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Town of Webb, Herkimer County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date this Permit and Order is recorded. This Permit and Order shall expire unless so recorded on or before _____ 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. The Agency will consider the project in existence upon installation of the pedestrian bridge authorized herein.

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

AGENCY JURISDICTION

The jurisdictional portion of the project consists of the construction of bridge abutments involving wetlands, a wetlands project requiring an Agency permit pursuant to 9 NYCRR Sections 578.2 and 578.3(n)(iii) and (iv).

The variance application seeks Agency approval for a variance of 50 feet from the applicable 50 foot shoreline structure setback restriction pursuant to Section 806(1)(a)(2) and Section 806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize placement of a 115 foot long, 12 foot wide pedestrian/bicycle/cross country ski bridge and bridge abutments, installation of wooden railings along the side of the TOBIE Trail leading up to the bridge and paving of the TOBIE Trail within 50 feet of the mean high water mark of the Middle Branch of the Moose River. In a Hamlet land use area, Section 806(1)(a)(2) requires a minimum shoreline setback of 50 feet measured from the mean high water mark for structures greater than 100 square feet in size.

Section 806(3) authorizes procedures whereby an applicant may apply for a variance from the shoreline restrictions provided certain criteria cited in the statute and regulations are complied with, as further described below.

SITE DESCRIPTION

The variance site includes portions of a 0.19±-acre parcel and a 19±-acre parcel of land, both of which are located within a former railroad corridor in the Town of Webb, Herkimer County, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map, containing 100 feet in width on the east side of the Middle Branch of the Moose River and approximately 32 feet in width on the west side of the Middle Branch of the Moose River. The Town owns additional adjoining property on both the east and west sides of the River that is not part of the variance site. The variance site is described in the following two deeds:

- The 19±-acre parcel is described in a deed from Old Forge Electric Company to Town of Webb dated December 5, 1938 which was recorded January 12, 1939 in the Herkimer County Clerk's Office in Liber 331 of Deeds at Page 100.

- The 0.19+-acre parcel is described in a deed from Phillip Pepper and Caroline Barbo-Pepper to Town of Webb dated September 3, 1999 which was recorded September 20, 1999 in the Herkimer County Clerk's Office in Liber 868 at Page 153.

PROJECT AND VARIANCE DESCRIPTION AS REQUESTED

The variance as requested involves the construction of a pedestrian/bicycle/cross country ski bridge across the Middle Branch of the Moose River, a river designated as a recreational river under the New York State Wild, Scenic and Recreational Rivers System Act. The bridge will be no less than 13 feet above normal water levels. The crossing is the site of a previous railroad bridge which was removed sometime between 1901 and 1954. The bridge will provide pedestrian and bicycle/cross country ski access across the Moose River from Spruce Drive/Hemlock Lane to Railroad Avenue as part of Phase II of the TOBIE trail bike path which extends from Thendara to Inlet. Since the bridge site is located in a Hamlet land use area, this is not a rivers project, and only the shoreline restrictions set forth in §806 of the Adirondack Park Agency Act apply. The bridge will be a prefabricated steel truss structure 115 feet long and 12 feet wide rail to rail with a timber deck. For scour protection, the existing stone abutments will be reinforced with concrete wingwalls and footings above the mean high water mark and heavy stone fill will be placed mostly below the mean high water mark adjacent to the wingwalls and abutments.

The existing former railroad corridor approach will be improved by an eight foot wide paved trail with two-foot wide grass shoulders. Since the existing embankment slopes near the bridge site are 2 on 1, for safety, a four-foot tall, three-rail wooden fence is proposed to be located along both sides of the trail extending east and west from the bridge approximately 100 feet in each direction to a point where the side slopes adjacent to the trail flatten. No lighting is proposed on the bridge structure. Disturbed areas adjacent to the bridge site and trail will be seeded and revegetated and shrubs or live stakes will be placed within the heavy stone fill as part of the proposed landscape plan. Approximately 240 square feet of wetlands associated with the shoreline of the Moose River will be impacted by the project as proposed.

PROJECT AND VARIANCE PLANS

The project and variance is shown on and described in the following documents and plans which were submitted as part of the permit application:

- Three plan sheets entitled Figure 1A "Site Location Map," Figure 2A "Topographic Site Map," and Figure 3A "APA Wetlands," drawn by Barton & Loguidice, P.C., and dated October 20, 2009.
- Ten sheets of drawings drawn by Barton & Loguidice, P.C., and dated January 2012 and May 2012 further described as follows: Drawing PL-13 "Plan and Profile," Drawing PL-14 "Plan and Profile," Drawing ST-1 "Bridge Plan Elevation," Drawing ST-2 "Excavation Sections," Drawing ST-3 "West and East Abutment Plan and Elevation," Drawing ST-4 "Abutment Sections," Drawing TS-3 "Typical Sections-3," Drawing WD-1 "Wood Fence Details," Drawing WL-3 "Existing Wetland" and WL-4 "Wetland Impact."
- Report entitled "Stormwater Pollution Prevention Plan (SWPPP) TOBIE Trail Phase 2 TEP" prepared by Barton & Loguidice, P.C., dated February 2012.
- Report entitled "Final Design Report P.I.N. 2650.19 TOBIE Trail Phase 2 TEP" prepared by Barton & Loguidice, P.C. for the New York State Department of Transportation, dated June 2011, last revised September 9, 2011.

Reduced-scale copies of Drawing PL-13 "Plan and Profile" dated May 2012, Drawing PL-14 "Plan and Profile" dated January 2012 and Drawing ST-1, "Bridge Plan and Elevation," dated January 2012, all drawn by Barton & Loguidice, P.C., are attached as a part of this Permit and Order for easy reference. The original, full-scale maps and plans referenced in this Permit and Order are the official plans for the project.

CONDITIONS

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

1. The project shall be undertaken as described in the completed application, the Project and Variance Description as Proposed, and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the 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 and Order.

2. This project may not be undertaken, and no transfer deed shall be recorded, until this Permit and Order is recorded in the Herkimer County Clerk's Office. This Permit and Order shall be recorded on or before _____ in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.
3. This Permit and 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 Permit and Order and all the approved maps and plans referred to herein shall be furnished by the applicant to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this Permit and Order shall contain references to this Permit and Order as follows: "The lands conveyed are subject to Adirondack Park Agency Permit and Order 2012-21 issued _____, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Structure Location and Size

5. This Permit and Order authorizes the construction of a pedestrian/bicycle/cross country ski bridge, supporting abutments, wood railing and pavement on the variance site located, sized, and designed as shown on the project plans referenced in the Project and Variance Description as Requested and as modified by the Conditions stated herein.

Special Variance Conditions

Wetlands

6. 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.

Erosion and Sediment Control/Stormwater Management

7. All erosion control devices and stormwater pollution prevention devices including silt fence, turbidity curtains, and cofferdams shall be installed and maintained as described in the Stormwater Pollution Prevention Plan referenced in Project and Variance Plans herein.

Proposed Landscape Plan

8. After the installation of the bridge, rehabilitation of the bridge abutments, installation of the railings and pavement within the former railroad corridor, contact Agency staff for a site visit to determine whether a more comprehensive vegetative planting plan to reseed the disturbed areas and/or a more comprehensive landscape plan for the proposed live stakes and shrubs to be planted to screen the heavy stone fill area will be required. If so required, the permittees or successors shall submit a detailed planting plan for Agency approval that will serve to partially screen the bridge, abutments and railing from off-site locations. If approvable, Agency approval will be given in the form of a letter of permit compliance.

Construction Staging Areas and Field Offices

9. At least 21 days prior to the start of construction, the contractor shall prepare and submit to the Agency, for review and approval, a staging plan showing the proposed location of mobile offices, equipment, and supplies for the project. The staging area site plans shall be reviewed by DOT's Engineer-in-Charge and environmental/landscape architectural staff prior to submission to the Agency. The plans shall show the location of all existing and proposed structures and storage areas, property and right-of-way lines, a reclamation plan for the site and location of wetlands if they are located within 50 feet of the area proposed to be used. The owner of the lands wherein the proposed staging area will be located must be a co-applicant for the staging area approval. Agency approval of the staging area plans may be in the form of a Letter of Permit Compliance or an amended permit, as determined by the Agency.

Shoreline Cutting

10. With regard to the shoreline of all navigable water bodies on the variance site including the Middle Branch of the Moose River, 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

11. Except for the bridge, abutments, wooden railing and 8-foot wide paved pathway approved by this Permit and 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 Middle Branch of the Moose River.

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.

Legal Interests of Others

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

Review of Future Development

13. No expansion or alteration of the bridge, abutments and railings within 50 feet of the shoreline authorized herein, except in-kind replacement, on the same footprint, shall be undertaken on the variance site within the shoreline setback

of the Middle Branch of the Moose River without first obtaining a jurisdictional determination and, if necessary, a new or amended permit and order from the Agency.

FINDINGS OF FACT

1. The variance record for the variance portion of the application consists of the variance request, hearing record, hearing exhibits, and supporting materials.

Background/Prior History

2. The project and variance site contains lands acquired separately by the Town of Webb on the east and west side of the Middle Branch of the Moose River. The lands located east of the Middle Branch of the Moose River were acquired in 1938 from Old Forge Electric Company as described in the deed referenced herein in the Site Description consisting of 19± acres including a 100 foot wide strip of land extending from the center of the Middle Branch of the Moose River to the east within which the former railroad bridge was located and are subject to rights and privileges for continued maintenance of the electric lines located on the property. The lands located west of the River were acquired by the Town of Webb in 1999 from Caroline Pepper and Phillip Pepper as described in the deed referenced herein in the Site Description consisting of 0.19± acres of land including the former railroad bridge abutment on the west side of the river. The project and variance site was the subject of Agency Jurisdictional Determination J1999-541 which stated the proposed pedestrian bridge over the Moose River would require a variance. Additional lands were acquired in separate deeds by the Town of Webb in 1999 from Caroline Pepper and Phillip Pepper, but those lands are not part of the project and variance site.

Existing Environmental Setting/Character of the Area

3. The project and variance site is located in a Hamlet land use area on the Adirondack Park Land Use and Development Plan Map. The project site contains shoreline on the east and west sides of the Middle Branch of the Moose River, a designated recreational river under the New York State Wild, Scenic and Recreational Rivers System Act. Other than jurisdictional wetlands, there are no statutory "critical environmental areas" on the property.

4. The property contains an abandoned railroad corridor which, when approaching the river, is elevated above the adjacent natural grade up to six feet in some locations and is overgrown with grasses, shrubs and small trees. The former railroad bridge abutments are in place, although in need of repair with eroding soil conditions behind each abutment. There are steep slopes down to existing grade located on both sides of the elevated railroad corridor.
5. Nearby land uses include year-round and seasonal residential uses, an overhead electric transmission line, the Town of Webb Department of Public Works and Town sewer plant facilities and commercial uses including restaurants, tourist accommodations, gas stations, retail stores. The existing signed bike path which is part of Phase I of the TOBIE Trail is located east of the proposed bridge site. The NYS Route 28 bridge crossing the Middle Branch of the Moose River is located north of the proposed bridge site. Moose River Trail Road is located south of the proposed bridge site. Spruce Drive/Hemlock Lane and the Thendara Train Station are located west of the proposed site. NYS Route 28 in this location contains extensive development including commercial uses and residential uses. The Thendara Golf Course is located just northwest of NYS Route 28 in this location. Nicks Lake State Campground and the McCauley Mountain Ski Center are located approximately two miles southeast of the site.

Visibility

6. The bridge site is located approximately 800 feet south of NYS Route 28 and 450 feet north of Moose River Trail Road. The navigable portion of the river in this location is approximately 100 feet wide, but includes adjacent associated wetland areas up to 400 feet wide. Although the bridge is located on a sharp bend in the river, it will be visible from both of these roads, from those navigating the Middle Branch of the Moose River and from some nearby and adjacent residential uses due to the width of the low growing wetland species. Requiring a site visit by Agency staff after the bridge is in place to determine whether a more comprehensive vegetative planting plan to reseed the disturbed areas will be required will serve to limit impacts to adjoining and nearby uses.

Outdoor Lighting

7. There shall be no lighting installed on the bridge or within 50 feet of the bridge on the Town property without prior agency review and approval in the form of an amended permit or letter of permit compliance.

Navigable Shorelines/Water Resources

8. The mean high water mark of the Middle Branch of the Moose River, a navigable watercourse, is shown on the project plans. Proper installation and maintenance of proposed silt fencing and turbidity curtains 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 Middle Branch of the Moose River from degradation.

Wetlands

9. There are wetlands on the site 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 railroad corridor. The wetlands are associated with the water of the Middle Branch of the Moose River, are a deciduous shrub-scrub and persistent emergent wetland with a preliminary value rating of 2 pursuant to 9 NYCRR 578. Wetlands shown on the plans and/or described herein are intended to alert landowners and others that wetlands are present on the project site. However, this may not identify all wetlands on or adjacent to the project site. The project and variance will impact approximately 240 square feet of wetlands for the installation of the wingwalls and heavy stone fill scour protection. This loss is the only reasonable alternative while ensuring safety and reliability of the support structures for the proposed bridge. Minor permanent fill of less than 300 square foot in this location will not result in undue adverse impacts on resources, will not substantially impair the functions served by or the benefits derived from said wetlands, and will provide social and economic benefits from the activity. The potential impacts to wetlands have been minimized as much as is feasible; therefore, no wetland mitigation is required for the proposed activity.
10. Beyond the project as proposed, other new land use or development in or proximate to wetlands on the project site should be avoided and, if unavoidable, should first be reviewed and approved by the Agency so that adverse impacts to wetlands can be properly assessed and avoided or mitigated.

Operational Issues Affecting Nearby Land Uses

11. The Hamlets of Old Forge and Thendara experience seasonal temporary increases in population and visitation. During these peak times, the portion of the TOBIE Trail serving these communities is likely to see increased activity. There are no designated parking areas in close proximity to the bridge site, the bridge is proposed to be non-motorized and is not proposed to contain any lighting. The railroad corridor has been utilized by the public to gain access to the river for a number of years. Given these factors, any increase in noise levels from users of the bridge site should be minimal.

Other Regulatory Permits and Approvals

12. The Town of Webb held a Public Information Meeting on May 26, 2010 in the Town Hall and accepted public comment. The Town initiated the SEQRA process at the January 11, 2011 Town of Webb Planning Board Meeting. The Town passed a resolution establishing itself as lead agency for the Project and issued a Negative Declaration at the June 14, 2011 Town Planning Board meeting.
13. The TOBIE Trail project is a Federally Funded project that is being administered by the New York State Department of Transportation (NYSDOT). As such, NYSDOT has review and approval authority over the project and coordination with NYSDOT has been underway since project inception. A NYSDOT Highway Work Permit will be required for work to be performed within the NYS Route 28 highway right-of-way.
14. A Joint Application for Permit was provided to the United States Army Corps of Engineers (USACE) and the New York State Department of Environmental Conservation (NYSDEC). The NYSDEC issued a permit on March 1, 2012 for the proposed project pursuant to General Permit Number GP-6-08-006. The USACE nationwide permit was issued on June 13, 2012.

Historic Sites or Structures

15. A letter dated October 19, 2010 was received from the New York State Office of Parks, Recreation and Historic Preservation stating that the project will have No Adverse Effect on the National Register of Historic Places with a condition that site plans showing the limits of ground disturbance at specific areas for filling or grading be submitted for prior review. 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

16. The TOBIE Path Project is designed to link communities located in both the Town of Webb and the Town of Inlet, and to encourage additional tourism development throughout these communities. 32% of residents within these two municipalities are employed in industries reliant upon tourism.

The Project expands and links existing pedestrian/bicycle/cross country ski trails and facilities with existing water transportation on lakes and rivers, popular NYSDEC trailheads, and the Adirondack Scenic Railroad helping to bolster the cumulative impacts of these individual recreation activities.

The Project will help connect the 18,000 yearly riders of the Adirondack Scenic Railroad (ASR), who arrive carless in the western end of the Thendara Hamlet, to the commercial centers of Thendara, Old Forge, Big Moose, Eagle Bay and Inlet. The ASR permits travelers to bring bicycles on the trains.

Public Notice and Comment

17. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. Three comment letters were received expressing concerns about specific elements of the proposal including vegetative cutting, impacts to wildlife, increase use of the area, retaining the wild nature of the area. Public comments at the hearing included four comments in support of the proposal and four comments expressing concerns and/or asking questions. Concerns expressed included potential use of the bridge by snowmobiles, increased use of area by the public, the potential for trespassing on adjoining private property, and retaining vegetation and natural environment of the area.

Public Hearing

18. On June 22, 2012, a public hearing on the variance request was held in the Town of Webb. The hearing was attended by Agency staff, the Town of Webb Town Supervisor Theodore Rielhe and Todd Phillips and Charles White of Barton & Loguidice, the authorized representative, and 12 members of the public.

Alternatives

19. Two alternatives at other locations for the proposal which may not require a variance were considered, and were deemed not feasible by the applicant as follows:
- a. Continuing to utilize the existing NYS Route 28 vehicular bridge to fill the gap for pedestrian/bicycle/cross country ski traffic would not be feasible for safety reasons due to the narrowness of the existing bridge, the undersized sidewalk located on one side of the bridge only, and the lack of separation between the sidewalk and the adjacent travel lane;
 - b. Utilizing the Green Street vehicular bridge for pedestrian/bicycle/cross country ski traffic is not be feasible for safety reasons due to the narrowness of the existing bridge and lack of any sidewalks or shoulders on this bridge;
 - c. Expanding and/or replacing either the NYS Route 28 or the Green Street bridge to accommodate both vehicular traffic and pedestrian/bicycle/cross country ski traffic is cost prohibitive, may also require a variance and/or permit and may have greater environmental impact to the Moose River and associated wetlands.

There are no other locations along the Middle Branch of the Moose River shoreline which are as suitable for the bridge location. This location already has approach corridors and bridge abutments on both sides of the river.

VARIANCE IMPACTS AND CRITERIA

20. The following findings evaluate the variance proposal pursuant to the standards and criteria set forth in 9 NYCRR 576.1.

(a) Whether there are practical difficulties in carrying out the strict letter of the shoreline restrictions

There is no practical environmentally sound way for pedestrians, cross country skiers and cyclists to continue on the TOBIE Trail and cross the River at this point without

a new bridge, which cannot be approved without a 50 foot variance. The applicants have demonstrated that there are unique practical difficulties present on the site, as the railroad bridge was removed sometime between 1901 and 1954 and a new bridge is necessary to provide a pedestrian/bicycle/cross country ski crossing of the Middle Branch of the Moose River at this location. The existing bridges on NYS Route 28 and Green Bridge Road carry vehicular traffic and are not wide enough to accommodate pedestrian/bicycle/cross country ski traffic safely.

(b) Whether the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction.

The public purposes served by the shoreline restrictions are protecting water quality of the Middle Branch of the Moose River and the quality of the shoreline. Denial of the requested variance will prevent the Town of Webb from completing the upgrading of this portion of the TOBIE Trail pedestrian/bike path and facilities to provide access to existing water transportation on lakes and rivers, popular NYSDEC trailheads, and the Adirondack Scenic Railroad, thus helping to bolster the cumulative impacts of these individual recreation activities. Less economic benefit generated by this 14 mile trail could result. Having no non-motorized pedestrian/bicycle/cross country ski bridge crossing could have a detrimental impact on public safety and the quality of the recreational experience by forcing such use to occur within the narrow roadways and/or less than standard sized shoulders of the existing vehicular bridges. With adequate mitigation during construction, as required by the conditions herein, the public purposes served by the shoreline restrictions will be protected, and since water quality will not be adversely impacted and visual impacts would be minimized, the adverse consequences of denial would outweigh the public purpose of adhering to the statutory shoreline restrictions.

(c) In determining whether a variance shall be granted, the agency will consider, among other relevant factors:

(1) Whether the application requests the minimum relief necessary;

The variance requested is the minimum relief necessary to achieve the applicant's goals to provide a safe, functional river crossing for pedestrians, cross country skiers and bicycles at this location without interference by motor vehicles. The bridge reuses the existing former

railroad embankment and bridge abutments, thereby eliminating the need to construct these features at a more inaccessible location on the River, or using unsafe or questionable bridges. The width of the proposed wingwalls ties into the existing stone abutments and provides room to install the approach railing, which is needed to create a safe environment for patrons on the TOBIE Trail. The 115 foot span allows the bridge to be placed on the existing abutments; the 12 foot width of the bridge is the minimum necessary to allow multiple types of users to utilize the crossing at the same time and pass each other safely.

(2) Whether granting the variance will create a substantial detriment to adjoining or nearby landowners;

Although there are no public access facilities on the shoreline, the existing former railroad approach is currently utilized by the public as a recreational access point to the Middle Branch of the Moose River. The River in this location is heavily utilized by kayakers and canoeists. The installation of the pedestrian/bicycle/cross country ski crossing will increase the use of the TOBIE Trail and river in this location. Nearby and adjoining landowners along the shoreline of the River are already bordered by residential, municipal and commercial areas and public vehicular roads. An existing overhead utility line crosses the River at the bridge site. Because of the prohibition of motorized vehicles, the addition of pedestrians, cross country skiers and bicyclists utilizing the crossing should not create a substantial detriment or undue noise impacts to adjoining or nearby landowners. The bridge will be designed to blend with the natural environment and will be back dropped by existing vegetation and additional planting if necessary.

(3) Whether the difficulty can be obviated by a feasible method other than a variance;

A crossing by the TOBIE Trail of the River at this point requires a bridge, which requires a variance. Alternative methods of providing a safe pedestrian/bicycle/cross country ski crossing of the Middle Branch of the Moose River were analyzed and were found to be infeasible methods to accomplish the applicant's objectives.

(4) The manner in which the difficulty arose;

The Middle Branch of the Moose River divides the communities of Thendara and Old Forge. Completion of the TOBIE Trail between the railroad station across the proposed bridge and to Railroad Avenue provides a safer and improved recreational experience for residents and tourists in the area. The existing TOBIE Trail across the NYS Route 28 vehicle bridge does not contain sidewalks along both edges and does not have wide shoulders to accommodate a safe pedestrian/bicycle/cross country ski crossing.

(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

The bridge site is located within a Hamlet land use area. The lands surrounding the Middle Branch of the Moose River in this Hamlet location are already developed with a number of structures including the NYS Route 28 bridge, residential structures, Town of Webb facilities (sewage treatment plant and highway garage), an overhead utility line, Town roads and commercial uses adjacent to NYS Route 28. Many of these structures and uses can already be viewed from the shoreline or while utilizing the River for recreational purposes. Uncontrolled construction activity may create erosion and surface runoff. Some visual impacts to users and landowners will occur from the design of the new bridge, but have been softened by blending it into the environments and reusing the abutments. Minor wetland impacts will occur. Since the former railroad corridor has been abandoned for a long time, there will be a need to remove some of the shrubs and low lying vegetation within the trail approach and immediately adjacent to the bridge abutments.

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

Appropriate erosion and stormwater control measures will be put in place prior to and during construction to protect the Middle Branch of the Moose River and the associated wetlands. Any adjacent disturbed areas will be revegetated. Additional plantings may be necessary and required in the future. The bridge is designed to blend into the location and soften any visual impacts and minimize impacts on wetlands. The conditions included in this Permit and 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 restrictions.
2. The adverse consequences resulting from denial of this request are greater than the public purpose sought to be served by the restrictions.
3. The factors set forth in 9 NYCRR § 576.1(c) have been considered:
 - 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 because the original railroad bridge was removed prior to 1973, and connecting the two non-motorized segments of the TOBIE Trail at this point requires a bridge;
 - e. granting the variance will not adversely affect the resources of the Park; and
 - f. the conditions noted herein will ameliorate any adverse effects.

REW:TJD:MJG:mlr