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**APA Order Granting  
Variance  
2014-51**

Date Issued:

In the Matter of the Application of

**JOHN LEASE, III  
AND THE TOWN OF WILLSBORO**

for a variance pursuant to 9 NYCRR Part 577

To the County Clerk: This order must be recorded on or before . Please index this Order in the grantor index under the following names.

- 1. John Lease, III**
- 2. Town of Willsboro**

**SUMMARY AND AUTHORIZATION**

John Lease, III and the Town of Willsboro are granted a variance, as described and in compliance with the conditions set forth herein, from the 150-foot shoreline structure setback required by Section 577.6(b)(3) of Agency regulations ("9 NYCRR") implementing Article 15, Title 27 of the Environmental Conservation Law (the New York State's Wild, Scenic and Recreational Rivers System Act, or "Rivers Act"), to allow for the placement of two logjam structures and a "rockery crib wall" within 150 feet of the mean high water mark of the Boquet River, in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Willsboro, Essex County.

The activities authorized herein may not be undertaken until this Order is recorded in the Essex County Clerk's Office. The 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.

This Order is binding on the applicant(s), all present and future owners of the variance site and all contractors undertaking all or a portion of the activities authorized herein. Copies of this Order and the plan sheets referred to herein shall be furnished to all contractors prior to undertaking the project.

Nothing contained in this Order shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Adirondack Park Agency, whether federal, State, regional or local. This Order does not convey any right to trespass upon the lands or interfere with the riparian rights of others, nor does it authorize the impairment of any easement, right, title, or interest in real or personal property.

#### **APPLICABLE LAWS**

Section 577.6(b)(3) of Agency regulations implementing the Rivers Act establishes a minimum shoreline setback of 150 feet from the mean high water mark of the Boquet River on the variance site for all structures other than fences, poles, signs of less than two square feet in area, lean-tos, docks, boathouses, bridges, and stream improvement structures for fishery management purposes. The applicants requested a variance from this requirement pursuant to 9 NYCRR §577.10.

#### **RELEVANT FACTS AND BACKGROUND**

##### **Variance Site**

The variance site is the Resource Management portion of a 78.72± acre parcel of land identified on Town of Willsboro Tax Map Section 31.9, Block 1, as Parcel 15.111, and described in a deed from Willsboro Industries, Inc. to John Lease, III, dated November 1, 2006, and recorded in the Essex County Clerk's Office on November 29, 2006, as Document No. 2006-00007509. The remainder of Parcel 15.111 is located in a Hamlet land use area. Together, the Resource Management and Hamlet portions of Parcel 15.111 contain 4,000± feet of shoreline along the Boquet River.

The variance site is entirely located within the designated Boquet River Recreational River Area, and contains approximately 3,000 feet of shoreline in Resource Management along the river. The river flows north toward the variance site, and then abruptly turns east and south at a meander along the shoreline of the site. The Boquet River is one of the steepest in New York State, dropping more than 3,500 feet in elevation over its 47-mile length. This change in elevation,

and the associated 240 square miles of watershed drainage, contributes to variable flow levels and substantial erosion along the meander on the site.

A falls with a large pool at its base are located in the Boquet River immediately south and upriver of the variance site. Salmon congregate at the base of the falls, which serves as a staging area for fish heading upstream seeking spawning habitat. A DEC easement allowing public fishing access runs the length of the site, but the steepness and erosion of the existing shoreline preclude access for anglers.

Soils on the variance site are highly erodible and lacking in organic material. There is little vegetation and few boulders or areas of bedrock to help with stabilization. The site was occupied by a paper mill during the early to mid-1900's, and that industrial use contributed to the poor soil conditions. Black ash, wollastonite tailings, old paper mill foundations, and other debris from the paper mill remain on the site. In addition, stormwater from topographically upgradient areas contributes to erosion of the steep banks along the shoreline of the site. Intense recent storms have further intensified erosion along the site.

Emergent marsh/shrubswamp wetlands with a value rating of 2 are located on the variance site.

Lands in the vicinity of the variance site are owned by the Town of Willsboro and several private landowners. The opposite shore of the Boquet River contains a fishing access area developed by the Department of Environmental Conservation and the Town of Willsboro. The fishing area consists of stairs, a log crib fishing platform, and extensive rock rip rap along the shoreline. The Town of Willsboro wastewater treatment plant is located downstream from the variance site. Lands to the west and south of the site, including the remainder of Parcel 15.111, the fishing area across the river, and the wastewater treatment plant site, are designated Hamlet on the Adirondack Park Land Use and Development Plan Map.

### **Variance Request**

On April 1, 2014, the applicants submitted a request for a variance to allow construction of two logjam structures and a "rockery crib wall" within the mean high water mark of the Boquet River on the variance site. Specifically, the applicants requested authorization to construct two 25-foot by 25-foot by 12-foot engineered logjam structures and approximately 136 linear feet of "rockery crib wall" to

help stabilize a highly eroded section of shoreline of the Boquet River along the site. The variance involves a total of 1,230 sq. ft. of structures within the 150-foot structure setback area.

Each engineered logjam will be constructed of tree root balls and trunks and will be placed into the bank and secured to the river's substrate by wood pilings. The logjams will deflect water toward the center of the river, to realign the thalweg (channel) and restore the river's ability to carry sediment while also creating new sediment deposition areas. The realigned thalweg will create deeper pools to provide new and diverse aquatic habitats.

The "rockery crib wall" will be benched, creating a floodplain and silt deposition zone. The sloped area immediately above the rockery crib benches will be planted with native grasses, trees, and local willow cuttings. These plantings will reduce erosion and create shade, flood resiliency, and riparian habitat.

The three variance structures comprise a portion of a larger shoreline plan that extends an additional 200 feet in Hamlet and also includes establishment of geo-grid brush layers and a bioengineered vegetated slope for stabilization, as well as an improved roadway, new parking area, wood crib, rock stairs, and crib path to provide improved access and amenities for anglers and recreational users. These elements of the larger shoreline plan are not subject to Agency approval.

As part of the variance proposal, the applicants provided stormwater management plans for the overall shoreline plan. Agency staff have confirmed that implementing the stormwater management plan as part of the overall shoreline plan will prevent impacts to wetlands.

The applicants discussed alternative shoreline stabilization plans with Agency staff, including a planting/bioengineered approach with no structures. As part of the variance proposal, the applicants also provided an alternatives analysis study that examined: 1) taking no action; 2) using only rip rap; and 3) installation of a single log crib.

The variance proposal is shown on 13 sheets of plans entitled "NYSDEC Contract # C304361 Bouquet River Non-Point Source Pollution Prevention Improvement Project, Willsboro, NY" prepared by ESPC, Civil and Environmental Engineering, all received by the Agency on May 5, 2014, and stamped as the final plans (the "plan sheets"):

- CV.1, Cover Sheet, March 2014
- EC.1, last revised April 29, 2014;
- EC.2, last revised April 29, 2014;
- EXS.1, last revised April 29, 2014;
- SP.1, last revised April 29, 2014;
- SP.2, last revised April 29, 2014;
- PXS.1, last revised April 29, 2014;
- ER.1, last revised April 29, 2014;
- D.1, last revised April 29, 2014;
- D.2, dated February 13, 2014;
- D.3, dated February 13, 2014;
- D.4, dated February 13, 2014;
- D.5, dated February 13, 2014.

A reduced-scale copy of Sheet SP.2 is attached as a part of this Order for reference. The original, full-scale plan sheets described in this paragraph are the official plans for the variance.

#### **PROCEDURAL HISTORY**

Following receipt of the variance application, the Agency notified all parties as required by the Agency regulations. On May 21, 2014, the Agency held a public hearing on the variance request in the Town of Willsboro. The hearing was attended by Agency staff, the applicants and a representative, and two members of the public. One comment letter was submitted during the hearing. No objections were made to the proposal.

The Town of Willsboro administers a Local Land Use Program approved by the Agency pursuant to the Adirondack Park Agency Act ("APA Act"), under which the Town implements the shoreline restrictions of §806 of the Act. On April 15, 2014, the Town of Willsboro Zoning Board of Appeals approved variances for both the Hamlet and Resource Management portions of the applicants' overall shoreline stabilization plan. The Agency reviewed these variances pursuant to §808(3) of the APA Act, and by letter dated May 12, 2014, declined to reverse the Town's determination.

#### **DISCUSSION**

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 577.6 of the Agency's regulations. The Agency has considered the standards and factors set forth in 9 NYCRR §576.1(b)-(c).

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

Adverse consequences to the applicants from denial of the variance proposal would include the need to continue maintaining the eroding shoreline. Adverse consequences from denial would be shared by the community as well, as the continued erosion of the shoreline leads to maintenance costs downstream, the loss of water quality, fishing habitat and public fishing access from the variance site, and the decline in aesthetic character of the Boquet River corridor.

The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of designated river corridors. In this instance, both purposes will be served by granting rather than denying the variance. Stabilizing the eroding shoreline will reduce the amount of sediment washing into the Boquet River, while simultaneously restoring the river's ability to carry naturally occurring sediment and creating sediment deposition areas along the river bottom. Deflecting the river water away from the shoreline will create pools that will provide fish habitat. Planting the shoreline will help with stabilization and will improve the aesthetics of the corridor. In addition, this work will improve flood resiliency, helping to limit on-site and downstream damage from future high water events.

**§576.1(c)(1): Whether the application requests the minimum relief necessary.**

The applicants' purposes for the variance request include long-term stabilization of the shoreline, enhancement of the fish habitat in the Boquet River adjacent to the site, and the provision of better shoreline access for anglers.

During the application process, the applicants examined two alternatives for the site that would not require a variance from the Agency. First, the applicants' alternatives analysis study included a no-action option, which would involve leaving the shoreline in its existing state. The study indicates that this option would not achieve any of the stated objectives, as the shoreline would continue to erode, which would continue to negatively impact the fish habitat, and the eroded shoreline would continue to prevent fishing access.

Second, the applicants discussed the option of a planting or bio-engineered approach with the Agency. The applicants and staff agreed that the site conditions would prevent either of these from serving as a long-term solution to the erosion problem, as the shoreline would continue to erode and the plantings would eventually wash away.

The applicants' alternatives analysis study also examined two options for stabilizing the shoreline with different types of structures. Although these alternative structure options would not significantly reduce the structural footprint within the setback area, they were examined to determine whether another method might better achieve the applicants' goals.

The first of these structural alternatives involves the placement of rip rap along the shoreline of the variance site. The alternatives analysis and Agency review indicate that, under this approach, rip rap would need to be placed several feet further into the river than the logjams and "rockery crib wall". In addition, review indicates that the rip rap would not meet the applicants' objective of long-term stabilization, as it would eventually wash away. Rip rap would also fail to realign the thalweg, limiting fish habitat enhancement, and would not improve shoreline access for anglers.

The second structural alternative presented by the applicants involves the installation of a single log crib along the shoreline of the variance site. Again, both the applicants' and the Agency's analysis indicate that while the footprint of this crib would be approximately the same as the footprint of the logjams and "rockery crib wall", the log crib would provide less protection against downstream erosion and washing out, less habitat enhancement, and less stable area for fishing access on the shore.

Through examination of these non-jurisdictional alternatives, as well as review of the structural rip rap and log crib alternatives, the Agency concludes that the two logjams and "rockery crib wall" constitute the minimum structures necessary to achieve the applicants' goals.

**§576.1(c)(2): Whether granting the variance will create a substantial detriment to adjoining or nearby landowners.**

The record in this variance demonstrates that installation of the logjams and "rockery crib wall" will cause no detriment to adjoining or nearby landowners. The applicants' ownership of 4,000± feet of shoreline along the Boquet River allowed for the creation of a

comprehensive shoreline plan covering both the variance site and the neighboring Hamlet lands. This overall plan is designed to deflect energy to the middle of the river, through the realigned thalweg, and away from shorelines, avoiding erosion and other impacts to neighboring landowners.

**§576.1(c)(3): Whether the difficulty can be obviated by a feasible method other than a variance.**

As part of their application, the applicants reviewed a no-action option and a planting/bio-engineered approach, neither of which would require a variance from the Agency. These options would not achieve the objectives of stabilizing the shoreline, improving water quality, enhancing fish habitat, and providing better access to anglers.

**§576.1(c)(4): The manner in which the difficulty arose.**

The shoreline of the variance site contains a meander where the flow of the Boquet River abruptly changes direction from north to east and south. Substantial shoreline erosion occurs where the river flows through this meander. The lack of organic material in the soils and the lack of vegetation and stabilizing bedrock have further contributed to erosion on the site. These problems were intensified in the past through industrial use of the site as a paper mill, which resulted in the black ash, wallastonite tailings, and other debris that remain. Stormwater runoff from upgradient lands, as well as intense recent storms, has also aggravated these erosion problems.

**§576.1(c)(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.**

Installation of the two logjams and "rockery crib wall" without the associated stormwater and erosion controls and the plantings included in the application would lead to adverse changes to the aesthetic character of the Boquet River corridor, and could cause additional erosion or surface runoff. Implementation of the proposed stormwater and erosion controls and plantings along with the structural activities will result in minor, if any, adverse impacts to the resources of the Park and adjoining water bodies.

Changes to the variance site over time could alter the potential for adverse effects from construction of the logjams and "rockery crib walls". In addition, advances in technology could further mitigate



impacts associated with the authorized construction. Imposition of the four year time limit on the requested variance will mitigate these potential impacts.

**§576.1(c)(6): Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above.**

The potential for adverse effects to the aesthetics and water quality of the Boquet River will be ameliorated by compliance with the following conditions:

1. The authorization to undertake construction of the two logjam structures and the "rockery crib wall" shall expire four years from the date this Order is recorded in the Essex County Clerk's office, unless construction of the structures has been completed in accordance with the plan sheets by that date or written authorization has been obtained from the Agency extending the deadline for construction.
2. The project shall be undertaken as depicted on the plan sheets referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the structures shall require a new or amended Agency Order or a letter of compliance.
3. Undertaking construction of any of the structures authorized herein shall require complete installation of the vegetated geogrids and brush layers and successful implementation of all plantings shown on the plan sheets.
4. Within 60 days of completion of the structures authorized herein, a qualified design professional shall provide written certification to the Agency that the structures were built in compliance with the approved plans.

**CONCLUSION**

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Parts 576 and 577. The Agency hereby finds that the applicants' variance request meets the approval criteria, provided the authorized activities are undertaken as described herein and in compliance with the conditions set forth above.

A variance of the terms of the Agency's regulations implementing the Wild, Scenic and Recreational Rivers System Act, 9 NYCRR part 577, is not personal and runs with the land. Recording of this Order is intended to provide notice to subsequent owners of the variance site.

ORDER issued this            day  
of                           , 2014.

ADIRONDACK PARK AGENCY

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

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

On the            day of            in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, III personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

REW:TES:MJG:SHR:PVC:mlr