


**THIS IS A TWO SIDED DOCUMENT**

 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></p> <p>P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 www.apa.ny.gov</p>	<p>APA Order Granting Variance <b>2023-0218</b></p>
<p>In the Matter of the Application of</p> <p><b>NEW YORK STATE ELECTRIC &amp; GAS CORPORATION (NYSEG)</b></p> <p>for a variance pursuant to Executive Law § 806 and 9 NYCRR Part 577</p>	<p>Date Issued: March 26, 2024</p> <p>To the County Clerk: Please index this Order in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. New York State Electric &amp; Gas Corporation</b></li><li><b>2. NYSEG</b></li></ol>

**SUMMARY AND AUTHORIZATION**

NYSEG is granted a variance, as conditioned herein, from the applicable 75-foot shoreline structure setback required by Section 806(1)(a)(2) of the Executive Law (Adirondack Park Agency Act or APA Act) and 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 (New York State Wild, Scenic and Recreational Rivers System Act or Rivers Act), to allow for the construction of an OSHA-compliant metal grate staircase 60± feet from the mean high water mark of the Saranac River, in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Saranac, Clinton County.

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

**APPLICABLE LAWS**

Section 806(1)(a)(2) of the APA Act establishes a minimum shoreline setback of 75 feet from the mean high water mark of waterbody for all accessory structures and principal buildings greater than 100 square feet in size. Additionally, 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 Saranac River 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 structure setback requirement pursuant to § 806(3)(a) of the APA Act and 9 NYCRR § 577.10.

## **RELEVANT FACTS AND BACKGROUND**

### **Variance Site**

The variance site is a portion of a 406±-acre parcel of land located on Soper Road on the east side of the Soper Road bridge in the Town of Saranac, Clinton County, in an area classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map. The parcel also contains lands classified Resource Management and is identified as Tax Map Section 240, Block 2, Parcel 1. The property borders 1.8± miles of the Saranac River and is improved by the High Falls Electric Power Generation Facility Hydro Development constructed in 1948.

The variance site borders a section of the Saranac River designated as a recreational river area as specified in 9 NYCRR Appendix Q-6. The Saranac River is part of the Northern Forest Canoe Trail. The High Falls dam is located approximately ¾ miles upstream from the variance site. This ¾ mile reach upstream of the variance site is undeveloped with forested shorelines but is not routinely traversed by watercraft due to the presence of rapids. Immediately downstream of the Soper Road Bridge, NYS Route 3 abuts the shoreline of the Saranac River, providing un-screened views of nearby residential development. Further downstream the forested shorelines provide filtered views of residential development. The Soper Road Bridge was determined eligible for inclusion on the National Register by the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP), but it is the opinion of OPRHP that the project will have No Adverse Impact on historic resources.

The variance site is the existing footpath located on the northern slope of the Soper Road embankment and immediately downstream of the decommissioned Soper Road Bridge. The immediate slope along this footpath down from the top of the Soper Road embankment reaches 60%. The footpath is currently improved by two existing 32± square foot concrete slabs of unknown construction date. The southernmost concrete slab is located at the top of the Soper Road embankment at an approximate elevation of 800 feet. The northernmost concrete slab is at the bottom of the Soper Road embankment at an approximate elevation of 788 feet. The two slabs are approximately 12 feet apart vertically and 19.5 feet apart horizontally. The closest slab is approximately 60 feet from the mean high water mark of the Saranac River. Soil erosion can be observed on the steep slopes between the existing slabs.

This footpath serves as the primary access to a water level gauge within the Saranac River immediately downstream of the Soper Road Bridge, which is monitored and maintained by NYSEG employees and is associated with the operation of the High Falls Hydro Facility. The footpath is also utilized as a portage location around the High Falls Dam by members of the public on the Northern Forest Canoe Trail, and by anglers accessing the Saranac River. The closest other existing access to the river is the powerhouse parking area more than ¼ miles downstream.

The variance site between Soper Road and the Saranac River is fully vegetated with deciduous trees and understory shrubs, which will provide visual screening of the proposed structure from the Saranac River and NYS Route 3. Wetlands are present below the mean high water mark of the Saranac River downslope of this location. These wetlands will not be impacted by the proposed structure. Additional wetlands not described herein may be located on or adjacent to the project site.

## Variance Request

The variance request involves the construction of a 3-foot wide by 20-foot long pre-fabricated metal grate staircase between two existing 32± square foot concrete slabs within the 150-foot structure setback of the Saranac River Recreational River Area to provide Occupational Safety and Health Administration (OSHA)-compliant means of access to the water level gauge for NYSEG personnel. The closest slab is approximately 60 feet from the mean high water mark of the Saranac River. The variance request addresses an unresolved NYSEG safety concern regarding safe access for NYSEG employees to the water level gauge and members of the public portaging on the Northern Forest Canoe Trail. As the variance site is already the existing river access point for NYSEG employees and members of the public, no increase in foot traffic at the variance site is anticipated as a result of the proposal. No tree removal or ground disturbance is proposed by the applicant. The metal grate design allows for the passage of stormwater and will not result in an increase in impervious surface, therefore existing stormwater runoff patterns are not anticipated to change as a result of the proposal.

As part of the review process, the applicant considered alternatives involving re-location of the proposed staircase to a location outside of the 150-foot shoreline setback from the mean high water mark of the Saranac River. This would have required the removal of trees and new ground disturbance for the construction of foundations in undisturbed areas, and an increase in length of the access footpath. While NYSEG personnel could be directed to utilize the new access location, the existing unsafe access by members of the public would remain a concern. Walking upstream from the powerhouse parking area below the mean high water mark or on the bank from the existing powerhouse parking area may be as unsafe as using the existing hillside access.

The applicant also considered non-structural design alternatives (such as a footpath or ground-level treads constructed of natural materials) to provide access down the 60% slope of the existing footpath location. As the access is used in all weather conditions, these design alternatives were deemed dangerous by the applicant. Because the primary access is for work-related activities, the access must conform to OSHA standards for safe access (Standard #1910.22 Walking-Working Surfaces).

The dimensions of the staircase are dictated by existing site conditions and OSHA design standards. There are two existing concrete slabs that provide anchor points for the proposed staircase. Any change to the location of the anchor points or footprint would result in new ground disturbance on steep slopes. The proposed staircase location is traversing the section of the existing footpath with the greatest slope. The footprint railing dimensions of the staircase is required to meet OSHA standard for stairs and guardrails (Standard # 1910.25, 1910.29). The Staircase Plan depicts several potential staircase configurations, with the designated preferred option depicting the fewest stair treads and shortest stringer length.

The variance proposal is shown on the following maps and plans (Project Plans):

- A two-page set of maps titled “High Falls Staircase APA Variance Application, Soper Road, Town of Saranac, Clinton County, NY,” prepared by LaBella Associates, and dated October 30, 2023 (Site Plan); and
- Sheets 1 through 4 of a nine-page set of plans titled “High Falls/Cadyville/Kents Falls Hydroelectric Facilities Civil Design Projects,” prepared by Bergmann Associates, and dated June 6, 2023 (Staircase Plan).

A reduced-scale copy of the Sheets 2, 3, and 4 of the Staircase Plan is attached as a part of this Order for reference. The original, full-scale maps and plans described in this paragraph are the official plans for the variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

### **PROCEDURAL HISTORY**

Following receipt of the variance application, the Agency notified all parties as required by the Agency regulations. On February 14, 2024 the Agency held a remote public hearing on the variance request via teleconference. The hearing was attended by Agency staff and two representatives of the applicant. No public comments were received.

### **VARIANCE FACTORS**

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2) of the APA Act and 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.**

The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of the Saranac River.

Denial of the variance request would result in continued unsafe foot travel by NYSEG personnel and members of the public and potential liability for resulting injuries.

Construction of the staircase in accordance with the Project Plans will not alter existing stormwater runoff patterns and may result in decreased erosion as a result of the reduction of foot traffic on steep slopes. The construction of the staircase will not result in adverse impacts to the aesthetic character of the Saranac River.

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

The dimensions of the staircase are dictated by existing site conditions and OSHA design standards. There are two existing concrete slabs that provide anchor points for the proposed staircase. Any change to the location of the anchor points or footprint would result in new ground disturbance on steep slopes. The proposed staircase location is traversing the section of the existing footpath with the greatest slope. The footprint railing dimensions of the staircase is required to meet OSHA standard for stairs and guardrails (Standard # 1910.25, 1910.29). The Staircase Plan depicts several potential staircase configurations, with the designated preferred option depicting the fewest stair treads and shortest stringer length.

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

The staircase structure will be constructed in a location already serving as an access point for NYSEG personnel, Northern Forest Canoe Trail travelers, and anglers. The improvement is not anticipated to result in increased foot traffic. As conditioned below, the staircase will not result in visual detriment to nearby landowners on either side of the Saranac River, as the variance site is fully vegetated with deciduous trees and understory shrubs, which will provide visual screening of the proposed structure from the Saranac River and New York State Route 3.

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

As part of the review process, the applicant considered alternatives involving relocation of the proposed staircase to a location outside of the 150-foot setback. This would have required the removal of trees and new ground disturbance for the construction of foundations in undisturbed areas, and an increase in length of the access footpath. While NYSEG personnel could be directed to utilize a different path to access the water level gauge, the existing unsafe access may continue to be used by members of the public.

The nearest other existing access to the river is the powerhouse parking area more than ¼ miles downstream. Walking upstream from the powerhouse parking area below the mean high water mark or on the bank from the existing powerhouse parking area may be as unsafe as using the existing hillside access.

The applicant also considered non-structural design alternatives (such as a footpath or ground-level treads constructed of natural materials) to provide access down the 60% slope of the existing footpath location. As the access is used in all weather conditions, these design alternatives were deemed dangerous by the applicant. Because the primary access is for work-related activities, the access must conform to OSHA standards for safe access (Standard #1910.22).

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

The existing topography of the Soper Road embankment along the variance site results in steep slopes along the portion of the existing footpath within 150 feet of the mean high water mark of the Saranac River. The water level gauge immediately downstream of the Soper Road bridge is associated with the operation of a hydroelectric dam originally constructed in 1948. The variance request addresses an unresolved NYSEG safety concern regarding safe access for NYSEG employees to the water level gauge and members of the public accessing the Saranac River.

**§ 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.**

No tree removal or ground disturbance is required for the construction of the proposed staircase on the existing concrete slabs. The metal grate design allows for the passage of stormwater and

will not result in an increase in impervious surface. Construction of the staircase in accordance with the Project Plans will not alter existing stormwater runoff patterns and may result in a decrease in erosion as a result of the reduction of foot traffic on steep slopes.

Existing vegetation will screen the staircase when viewed from the Saranac River and NYS Route 3. Restrictions on vegetative cutting, structure color, and exterior lighting will protect against impacts to the aesthetic character of the shoreline of the Saranac River. It is the opinion of OPRHP that the staircase will have no adverse visual impact on the historic resource of the Soper Road bridge.

When brought from off-site, any equipment required to complete the project, including hand tools, has the potential to distribute propagules of invasive plant species to the development site, which may have adverse impacts on nearby aquatic and terrestrial ecosystems.

**§ 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 aesthetic character of the Saranac River will be ameliorated by compliance with the following conditions:


1. This authorization shall expire unless recorded in the Clinton County Clerk's Office within 60 days of the date of issuance.
2. This order is binding on the applicants, all present and future owners of the project site, and all persons undertaking all or a portion of the project.
3. The authorization to undertake the staircase construction shall expire five years from the date this order is recorded in the Clinton County Clerk's office, unless construction of the structure 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.
4. 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 structure shall require a new or amended Agency order or a letter of compliance.
5. Within 100 feet of the mean high water mark of the Saranac River, no trees, shrubs, or other woody stemmed vegetation may be cut or otherwise removed or disturbed on the variance site without prior written Agency authorization, except for: 1) the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard, and 2) the removal of vegetation growing through the surfaces of the staircase.
6. The railings and stringers of the staircase shall have a non-reflective matte finish or be colored a dark shade of green, grey, or brown.
7. Any new free-standing or structure-mounted outdoor lights associated with the staircase shall require prior written Agency authorization.





GENERAL SITE PLAN  
SCALE: 1" = 80'-0"




**Adirondack Park Agency**  
 RECEIVED  
 Date: November 8, 2023


**Adirondack Park Agency**  
 FINAL  
 P2024-0218


 NYSEG  
 NYS ENERGY SERVICES GROUP  
 CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION  
 Prepared by: BERGMANN, INC.

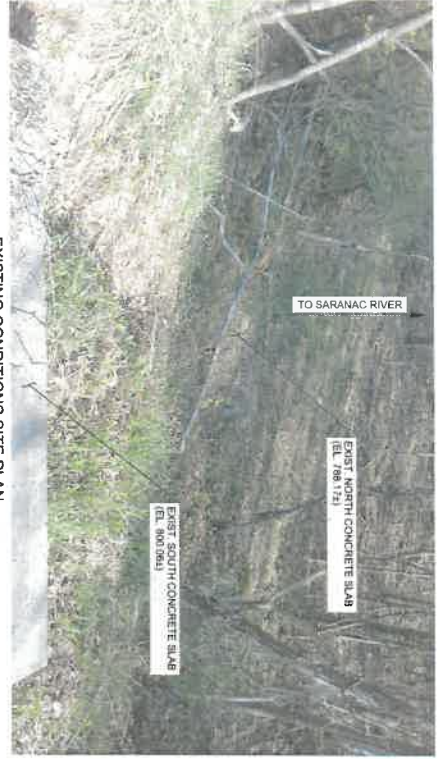
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A	08/20/23	TKM	PRELIMINARY ONLY FOR CLIENT REVIEW
		CTC	
		APP	

NOT FOR CONSTRUCTION


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 ARCHITECTS ENGINEERS PLANNERS  
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HIGH FALLS HYDRO FACILITY  
 GENERAL SITE PLAN  
 SHEET 2 OF 9  
 HIGH FALLS/CADYVILLE/KENTS FALLS MODS  
 DR. BERGMANN SCALE AS SHOWN I.A.E. CONSULTING INC. FOR NYSEG P.A. NY  
 DATE 08/20/23 CRM-HF-000-001





EXISTING CONDITIONS SITE PLAN  
(LOOKING NORTH)  
SCALE: NONE

- NOTES:
1. CONTRACTOR SHALL CLEAR AND GRUB EXISTING PROJECT SITE AREA PRIOR TO COMMENCING WORK.



EXISTING CONDITIONS SITE PLAN  
(LOOKING NORTH)  
SCALE: NONE

- NOTES:
1. LOCATION OF EXISTING CONCRETE SLABS SHALL BE VERIFIED IN FIELD PRIOR TO PROCUREMENT AND INSTALLATION OF STEEL STAIRCASE.

Who will verify in field?

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REV.	DATE	BY	DESCRIPTION	APP.
1	08/08/2023	TJA	PRELIMINARY DRAFT FOR CLIENT REVIEW	CRM
2	09/08/2023	TJA	REVISIONS FOR CLIENT REVIEW	CRM
3	09/08/2023	TJA	REVISIONS FOR CLIENT REVIEW	CRM
4	09/08/2023	TJA	REVISIONS FOR CLIENT REVIEW	CRM

AWARDED ENGINEERING PROFESSIONAL AND TORONTO REGISTER INFORMATION

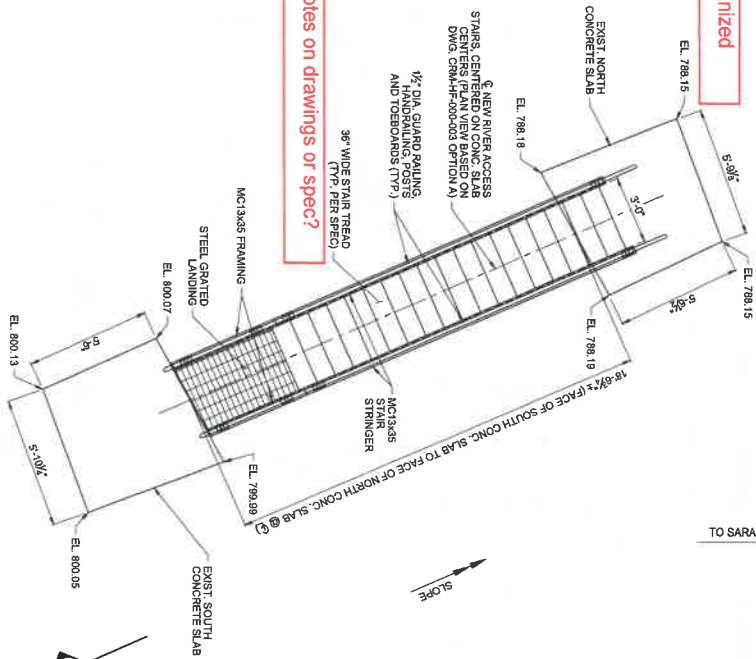
NYSEG

HIGH FALLS HYDRO FACILITY  
SITE PLAN - PROPOSED WORK  
SHEET 3 OF 3

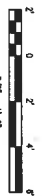
HIGH FALLS S/D CADYVILLE/ KENT'S FALLS MODS  
SCALE: AS SHOWN | THE CHAIRS/STAIRS/DOOR IS SET BY THE ARCHITECT  
DATE: 08/08/2023  
CRM-HF-000-002

Stairs shall be galvanized

Notes on drawings or spec?



1 PROPOSED SARANAC RIVER ACCESS STAIR PLAN  
SCALE: 3/8" = 1'-0"



**RECEIVED**  
 Adirondack Park Agency  
 Date: November 8, 2023

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 Adirondack Park Agency  
 P2024-0218

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 ARCHITECTS ENGINEERS PLANNERS

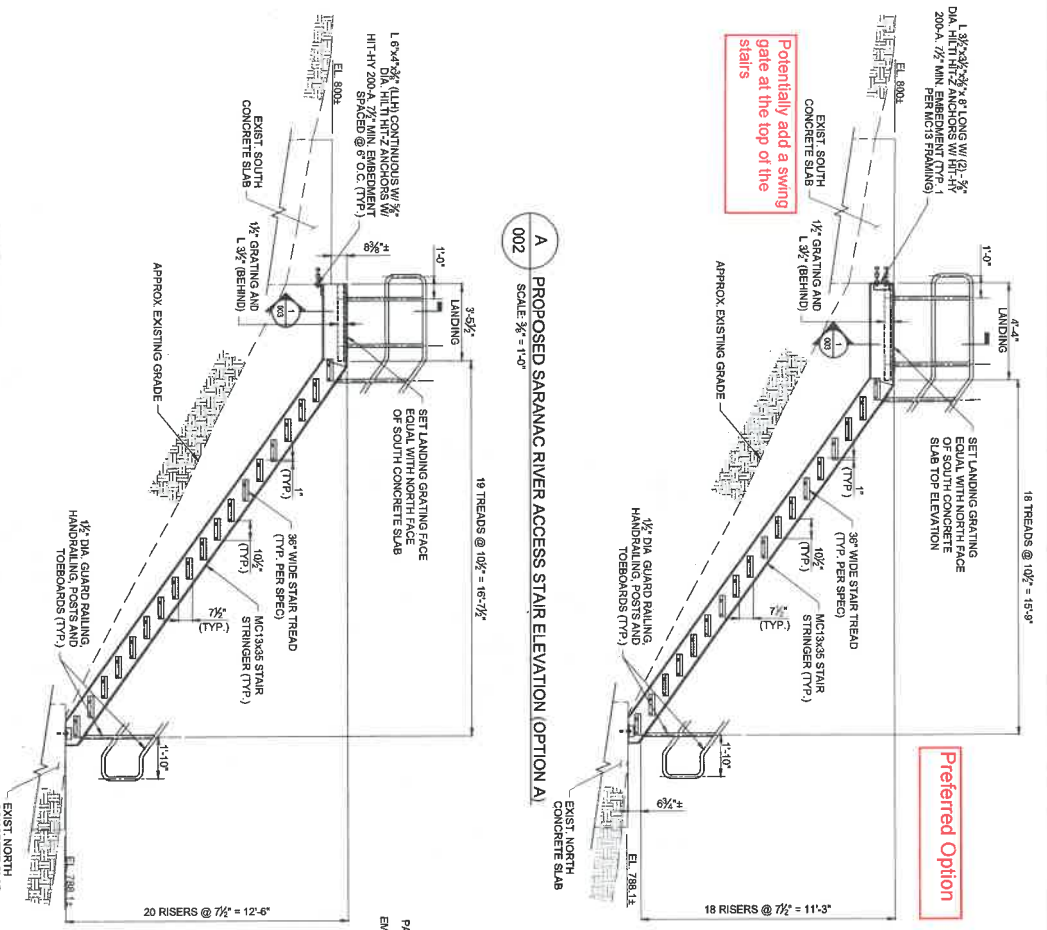
NOT FOR CONSTRUCTION

REV	DATE	BY	DESCRIPTION
A	09/02/23	TSA	REVISIONS FROM CLIENT REVIEW

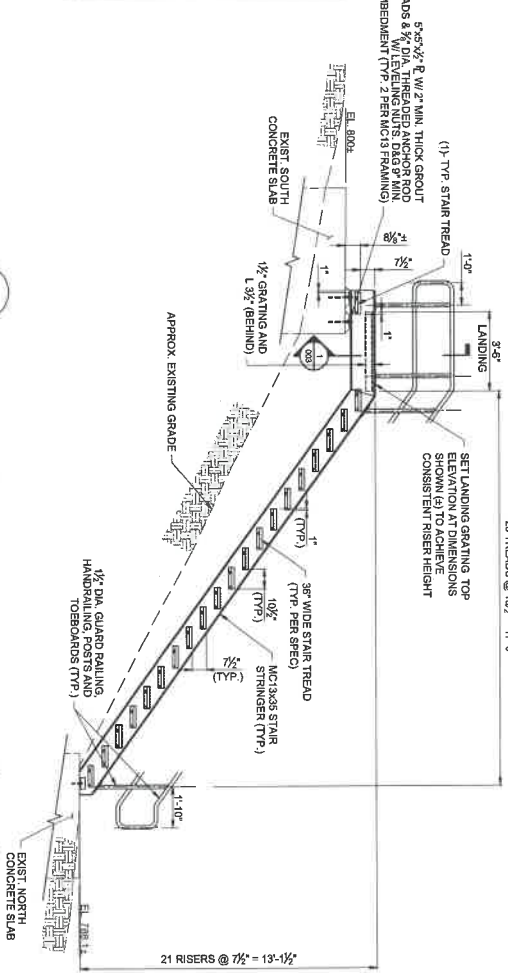
ADIRONDACK PARK AGENCY  
 HIGH FALLS HYDRO FACILITY  
 ELEVATION AND DETAILS - PROPOSED WORK  
 SHEET OF 8  
 HIGH FALLS/CADVILLE/EMMENT'S FALLS MOOS  
 PROJECT NO. 15-00001  
 CONTRACT NO. CRM-HF-000-003



**A** PROPOSED SARANAC RIVER ACCESS STAIR ELEVATION (OPTION A)  
 SCALE: 3/8" = 1'-0"



**B** PROPOSED SARANAC RIVER ACCESS STAIR ELEVATION (OPTION B)  
 SCALE: 3/8" = 1'-0"



**1** TYPICAL GUARD RAILING DETAIL  
 SCALE: 1" = 1'-0"

