



NOTE: The attachments referred to herein are on file at the Agency and are on the Agency's website. Copies are also available for inspection on request.

DRAFT AGENCY MINUTES

SEPTEMBER 15, 2011

THURSDAY, SEPTEMBER 15, 2011

AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT

Richard Booth, Member
Arthur Lussi, Member
Frank Mezzano, Member
William Thomas, Member
F. William Valentino, Member
Cecil Wray, Member
Elizabeth Lowe, Designee, NYS Department of Environmental Conservation
Dierdre Scozzafava, Designee, NYS Department of State
Terry Martino, Executive Director
John Banta, Counsel

AGENCY MEMBERS AND DESIGNEES ABSENT

Leilani Ulrich, Member
James Fayle, Designee, NYS Department of Economic Development

LOCAL GOVERNMENT REVIEW BOARD PRESENT

Fred Monroe, Executive Director

AGENCY STAFF PRESENT

Richard Weber, Deputy Director, Regulatory Programs
James Connolly, Deputy Director, Planning
Holly Kneeshaw, Assistant Director, Regulatory Programs
Keith McKeever, Public Information Director
Colleen Parker, Environmental Program Specialist 2
Mary Reardon, Secretary 1
Deborah Lester, Secretary to Executive Director

Mr. Wray was the presiding member for the September 15, 2011 Agency meeting. Mr. Wray called the meeting to order at 9:05 a.m.

DRAFT AGENCY MINUTES

September 15, 2011

Page 2

1. Public Comment

There was no public comment.

2. Minutes

On motion of Mr. Thomas, seconded by Mr. Lussi, the Agency unanimously adopted the August 18, 2011 Draft Agency Minutes.

3. Executive Director's Report

Ms. Martino thanked Mr. Wray for convening the meeting, and provided highlights and activities over the past month. She called attention to two major transportation-related stories in the last month, both of which underscored the importance of the bridge and road infrastructure throughout the region.

First, the Champlain Bridge arch was put in place on August 26, the event attracting many observers who took video and photographs. She shared her observation of the new bridge as viewed from the ferry, and described it as spectacular. There had been some concern that delivery of the arches would be delayed due to low water levels, but the arches arrived on two barges only two days before the arrival of Hurricane Irene.

A second and major achievement was the re-opening of both lanes of State Route 73 on September 12, fifteen days after the devastating washouts from the storm. According to the Adirondack Daily Enterprise, DOT deployed 27 contractors, 2700 man hours, 150,000 tons of stone, three excavators and two loaders. Businesses and community leaders have commended Governor Cuomo for his response to this natural disaster. Another consequence of the Governor's presence in Keene Valley was the activation of the simulated tree cell tower, which had been inactive since its construction in April 2011. The tower, which was permitted by the Agency, was activated two days after the Governor's visit.

Ms. Martino said the destruction to the homes, businesses and communities made everyone take note of the force of water and the power of Mother Nature. It was inspiring to see people and communities come together in their response. Immediately after the hurricane, Governor Cuomo issued a press release regarding the Agency's suspension of its permitting regulations in the face of an imminent threat to life or safety. As stated in the release, Section 809(15) of the Act states "This section shall not apply to any emergency project which is immediately necessary for the protection of life or property as defined by

DRAFT AGENCY MINUTES

September 15, 2011

Page 3

the Agency by rule and regulation." Ms. Martino said the Agency recognized the need for emergency response and stated that in such instances community leaders and private landowners could directly respond to the need for waterfront, road and bridge stabilization, and emergency repairs. Also, public officials responsible for roads and bridges, or individual property owners were encouraged to take the urgent and immediate steps to stabilize and repair property, roads and bridges without need for consultation with the Agency. The Agency also offered to confirm emergency advice for officials or individuals in writing when requested.

In the case of work with stream beds and banks, the Agency recommended that public officials and property owners consult with DEC. In a September 13 e-mailing to Adirondack Park supervisors and mayors, the Executive Director addressed the recovery process and the recommendation that municipalities and private citizens consult with the Agency to clarify ongoing emergency activities. The e-mail also offered to provide communities with such services as wetland consultations, soil science and engineering advice, GPS and GIS mapping services.

Ms. Martino noted that Deputy Director of Regulatory Programs Rick Weber would be presenting photos and impacts of the hurricane and discussing the Agency's emergency response as part of this report to the Regulatory Programs Committee.

Ms. Martino also commented on the "Labor for Your Neighbor" recovery work organized by Governor Cuomo over the Labor Day weekend. Agency staff and family members participated in the volunteer campaign in Keene and Jay. The event provided a venue for hundreds to assist in the North Country and thousands around the state. The effort was well organized and involved public/private coordination, with Essex County buses being used from a staging area in Elizabethtown to the community sites, National Guard assistance, and private donations of food and supplies from WalMart. Staff members including Keith McKeever, Kathy Regan, Amy Hall and Susan Carey and their families also provided ongoing assistance in response to the devastation in their communities.

Additionally, Ms. Martino reported that in a recent conversation with Jim Herman from Keene about his work with Dave Mason in the scenario-building forum scheduled for later in September, Mr. Herman reported that a recovery fund established with the Adirondack Community Housing Trust following the hurricane has generated considerable contributions. The first check was to be awarded on September 12, twelve days following the event.

DRAFT AGENCY MINUTES

September 15, 2011

Page 4

She said Mr. Herman's work in disaster recovery shows community response and building. His work in planning and scenario building is another area where community response and engagement is a way to define the future of the Park. After the successful building of a broadband network in Keene by Mr. Herman and his colleague David Mason, it is inspiring to see them working on a regional scale with their scenario-building workshops which are two-day events planned to engage participants. It was featured at the July meeting of the Common Ground Alliance and the scenario that was selected was "The Sustainable Community." Agency Public Information Director Keith McKeever will represent the Agency at a scenario-building session on September 27 at Paul Smith's College. Other sessions are planned for the end of November, and again in January. The Agency hopes to engage at the staff level with DEC in a scenario-building workshop to be scheduled in May, 2012.

Ms. Martino then reported on other highlights in the past month, as follows:

- The Executive Director attended the August 19 and September 12 North Country Regional Economic Development Council meetings in Potsdam. At this month's Agency meeting, the Agency will hear from Garry Douglas, co-chair of the North Country Council, and Bill Farber, a Council member who chairs the Adirondack Park working group. The working group will be meeting with the important task of doing a SWOT analysis of strengths, weaknesses, opportunities and threats. Each working group will be using the same format. Many details are now available on the Council's work and Messrs. Douglas and Farber will report on some of their work to date.

- Another interesting topic at this month's Agency meeting will be a staff overview of the Agency permit issued to the Town of North Elba, Village of Lake Placid and Department of Transportation for the Recreational pathway project. The Agency recognizes considerable community dialogue about the project with differing views of the potential for a Rails-to-Trail or Rails-with-Trail corridor. Both types of trails represent different types of recreational corridors active throughout the country. The Agency permit (2007-148) provides for a Rails-with-Trail recreational corridor and addresses Phase I of the project from Lake Placid to Ray Brook. The intent in discussing the permit is to follow on the Board's request to hear status reports on projects that it has permitted.

DRAFT AGENCY MINUTES

September 15, 2011

Page 5

- Administrative staff continue to prepare for the Agency's Phase I participation in the planned transition to the State Financial Management System (SFS). The target date for "go live," which had been October 2011, is now delayed to January 1, 2012. This will reorganize and computerize all of the Agency travel requests and vouchers.

- On September 13, the Executive Director testified before the Assembly Environmental Conservation Committee on Invasive Species. This was a welcomed opportunity for the Agency to express appreciation for the invasive species line in the Environmental Protection Fund. It was also an opportunity to talk about the leadership the Agency has shown since the 1990's as a founding member of the national award-winning Adirondack Park Invasive Plant Program (APIPP), which has been recognized by the State as the Adirondack Partnership for Regional Invasive Species Management, or PRISM. The Agency has also been an active member of the NYS Invasive Species Task Force and is currently an active member of the NYS Invasive Species Council. In discussing the threats to the Adirondacks, the Executive Director talked about the municipal, state agency, lake association and NGO partnerships that have been formed to address invasives. Ms. Martino also stated that the invasion of Asian clams in the South Basin of Lake George has already involved hundreds of thousands of dollars and the full response will require more than a million dollars. In that example, she noted that municipalities have responded to the initial challenge but believe the overall eradication costs will exceed available resources.

In preparation for the hearing, Agency staff talked with DEC about their involvement with the administration of EPF funding and promotional campaigns to educate the public about the threat of invasives. The Executive Director left behind copies of the new brochure prepared by ANCA in consultation with APIPP earlier this summer.

Ms. Martino reported that she also expressed Agency interest in the 4-tier bill which will establish a system to classify species of concern by regulated, prohibited and unregulated categories, and a procedure for the review of unlisted, non-native species. The bill would provide a method to evaluate and prioritize invasive species and provide a clearer indication to all citizens which species should be avoided. Additionally, she expressed Agency support for an aquatic invasive species transport bill, or the "Boat Bill." She noted the towns in the Park that have moved ahead, such as Harrietstown, Lake Pleasant and Speculator, and how local governments will benefit from a comprehensive state framework.

DRAFT AGENCY MINUTES

September 15, 2011

Page 6

- Regarding the Adirondack Club and Resort project, as previously reported the Agency received the briefing schedule and filing procedures from Judge O'Connell which outlined September 23 as the due date for the closing statement briefs and October 24 for the due date for the reply briefs. Also, as previously noted the receipt and distribution of the October 24 reply briefs will conclude the record for the hearing and enable Judge O'Connell to certify the record for distribution to the Agency Board. Based on this schedule, the Agency anticipates that the first of the 3-meeting sequence agreed to by the Board in July can begin in November, followed by discussion of the project in December and potential decision in January.

- The Agency has seen some personnel changes in the past few months, including the appointment of four employees in the Planning Division from provisional to permanent full-time employees: Kevin Prickett, Kathy Regan, Matt Kendall and Walt Linck. Also, Sarah Reynolds was appointed Associate Counsel with an effective date of August 30, 2011. Ms. Reynolds obtained her Juris Doctor from the Georgetown University Law School, Master's from the University of California, and Bachelor's from Dartmouth. She joined the Agency in February 2006 as a Senior Attorney. Prior to that, she interned at law firms in the Washington, DC area. The Agency looks forward to Sarah's continued contributions and success.

Mr. Valentino referred to the ACR schedule, and asked if the 3-meeting sequence would involve 3-day meetings for November through January.

Ms. Martino responded that the actual meeting schedule is still being addressed, but she did not anticipate a 3-day meeting each month. She acknowledged concerns expressed previously by some Agency Members about Wednesday meetings, and noted that staff are considering full-day meetings on Thursday and Friday, with the primary focus being on ACR. Outside commentary on various topics will not be invited during the November through January period, she noted.

Mr. Wray pointed out that a tentative schedule would be helpful to the Board for planning and travel purposes. He referred to a possible field trip to the project site being planned for October 14, and noted a scheduling conflict for him on that date.

Ms. Martino responded that the Thursday and Friday of the monthly meetings from November through January will be obligated to ACR business. The typical pattern of ending by noon on Friday will be extended to later in the day.

DRAFT AGENCY MINUTES

September 15, 2011

Page 7

Mr. Booth noted his suggestion to Counsel to provide a map or other visual aid to Agency Members to help them visualize the project.

Mr. Mezzano said he appreciated the efficiency of the DVD's, but pointed out the poor sound quality of certain recordings. Also, referring to the storm recovery effort, he asked the extent to which the Agency was asked for information or technical assistance.

Ms. Martino responded that staff was not approached for technical assistance immediately following the emergency, but are now seeing such requests after some passage of time. Referring to Mr. Mezzano's issue concerning the sound quality of some of the ACR recordings, she suggested the use of earbuds.

Mr. Wray referred to his experience with Hurricane Irene while in Keene and the remarkable community support that followed.

4. Executive Session

On motion of Mr. Booth, seconded by Mr. Thomas, the Agency voted unanimously to meet in executive session during the lunch period to discuss Matter of Adirondack Mountain Club, et al. (Lows Lake) and a personnel issue.

5. Motion to Adjourn into Committees

On motion of Mr. Thomas, seconded by Ms. Scozzafava, the Agency unanimously adjourned into committees at 9:35 a.m.

6. Committee Reports

The Agency Board reconvened at 4:15 p.m.

a. Regulatory Programs Committee

(1) 2010-246, Camp Tuller, LLC

The matter involves a variance request to replace an existing pre-1973 on-site wastewater treatment system closer to the stream than the existing system, in an area classified Low Intensity Use in the Town of Webb, Herkimer County.

On motion of Mr. Booth, seconded by Mr. Lussi, the Agency unanimously approved the order granting the variance. A copy of the order as approved by the Agency is attached to the official minutes.

DRAFT AGENCY MINUTES

September 15, 2011

Page 8

b. Economic Affairs Committee

Mr. Lussi commended the presentation on the North Country Regional Economic Development Council by Garry Douglas and Bill Farber, including subsequent dialogue between himself and Mr. Douglas regarding the Adirondack Railroad.

c. Local Government Services Committee

Mr. Thomas noted a presentation by staff on towns that have stricter shoreline protections than what is provided in the Agency statute.

d. Legal Affairs Committee

Mr. Wray referred to the monthly jurisdictional/FOIL statistics enclosed with the mailing, and noted an update provided by jurisdictional program staff on the implementation of the recently enacted Community Housing Bill.

e. State Land Committee

Mr. Booth reported the Committee received a report by DEC staff on recent storm damage and clean-up in the backcountry. He also referred to a joint presentation to the Regulatory Programs Committee by Planning and Regulatory Programs staff on highway utility issues and aesthetic impacts.

f. Park Policy and Planning Committee

The Committee heard an analysis by staff of the 2010 Census population of towns within the Park.

7. Interim Reports

a. Enforcement Committee

Consistent with past Agency practice in violations involving Agency Board members, Agency enforcement staff reported on an enforcement case and settlement agreement involving Agency Member Leilani Ulrich. Enforcement File E2008-370 involves two shoreline structure setback violations on property owned by James and Leilani Ulrich containing shoreline on the Middle Branch of the Moose River, in an area classified Hamlet in the Town of Webb, Herkimer County. The structures, which are in violation of Section 806 of the APA Act, include a set of stairs and landing on the shoreline side of a preexisting single family dwelling, constructed between 1998 and 2003, and a series of stairs and decks leading down to the river. Consistent with

DRAFT AGENCY MINUTES

September 15, 2011

Page 9

Agency civil penalty guidelines, no civil penalty was assessed as the violations were self-reported and the Ulrichs have agreed to appropriate remediation. The settlement agreement requires the Ulrichs to bring the structures into compliance by October 1, 2011.

b. Public Awareness and Communications Committee

Mr. Valentino reported on a recent meeting he had with the Executive Director and Public Information Director to review current policy of the recently established Committee. He advised he would follow up with a memorandum to the Committee and then to the Board stating existing practice along with a recommendation for proposed practice.

8. Report on Executive Session

Mr. Wray reported that no business was concluded nor votes taken during the executive session.

9. Local Government Review Board Comment

Local Government Review Board Executive Director Fred Monroe referred to the Adirondack Park population analysis, and reported that AATV's analysis of the Census population data substantially agrees with Agency staff's analysis. He pointed out that the AATV's analysis went further and looked at the student population trends. The results were alarming, and showed that in the last three years the student population in the Park has declined by about 1200 students, an average of about 400 per year.

He then referred to the Lows Lake litigation and urged the Agency to appeal the recent court decision reversing the Agency determination. He expressed concern over the jurisdictional implications of the ruling, noting the creation of new jurisdiction by an administrative agency without legislative input has long been an issue of concern for Local Government.

10. Member Comment

Mr. Valentino commended staff's presentation on 2010 Census population data for the Park.

Ms. Scozzafava stated that at a time when it seems like many levels of government and public participation are defined by deep divisions, it was especially enlightening and gratifying experience to see so many people come together in response to the recent tropical storm. She also expressed her appreciation

DRAFT AGENCY MINUTES

September 15, 2011

Page 10

of Garry Douglas and Bill Farber's presentation, and said the North Country Regional Economic Development Council exemplifies good things happening in the North Country through great effort by many people.

Mr. Mezzano praised the various Agency meeting presentations. He also said he appreciated the opportunity to see firsthand the tremendous clean-up efforts in Keene and Keene Valley, and commended the work of everyone involved.

Ms. Lowe reported on DEC's outreach to municipalities in the Park through the emergency authorization and availability of a general permit, which will also help towards securing FEMA reimbursements. She noted DEC's manpower response to the storm, with over 200 people in the field. She also expressed her appreciation for the overwhelming show of collaboration and support.

Mr. Lussi described his own experience with Tropical Storm Irene in his pursuit to make his way home from New Hampshire to Lake Placid during the storm. He praised New York government and municipal agencies for their superior organization during this time, and expressed appreciation for their attention to public safety. Mr. Lussi then called attention to a new recycling program called "Zero Sort Recycling," a process which eliminates sorting and allows people to recycle paper with paper clips and staples and cereal boxes mixed together. The new process separates material by way of a wind tunnel, and has seen a tremendous increase in efforts to recycle.

Mr. Booth commended staff's presentation on highway aesthetics and noted its value in preparing the Agency to think about such issues before being faced with a specific decision. Referring to his recent travel in Spain and Greece last month, he expressed his appreciation for the abundance of green vegetation and water in upstate New York. He remarked on the different needs in areas throughout the world, some desperate for water while others seek relief from too much water.

Ms. Martino thanked staff for delivering quality presentations to the Agency, and for compiling a collection of 35 Park-related planning documents on DVD for use by the North Country Regional Economic Development Council. She also acknowledged the enormity of the clean-up efforts in Keene and Jay, and she commended the resourcefulness of the people. Ms. Martino then referred to public meetings held on September 12 in Plattsburgh and on September 14 in Tupper Lake which were organized by the North Country Regional Economic Development Council to provide

DRAFT AGENCY MINUTES

September 15, 2011

Page 11

an overview of the Council's work and to receive public commentary. Approximately 80 people attended the meetings.

Mr. Wray referred to the volunteer effort organized in response to Irene and noted participation by Deputy Secretary of State Scozzafava as well as Agency Public Information Director Keith McKeever's volunteer work through the Keene Valley Fire Department. He expressed appreciation for the courtesies and civilities shown by everyone involved.

11. Adjournment

On motion of Mr. Valentino, second by Mr. Thomas, the Agency unanimously adjourned at 4:35 p.m.

CW:dal

Attachment: 2010-246, Camp Tuller, LLC

Cecil Wray, Member

THIS IS A TWO-SIDED DOCUMENT

 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	<p>APA Order Granting Variance 2010-246</p>
<p>In the Matter of the Application of CAMP TULLER, LLC for a variance from the shoreline restrictions of Executive Law § 806 and 9 NYCRR Part 575</p>	<p>Date Issued: September 19, 2011</p> <p>To the County Clerk: This Order must be recorded on or before November 18, 2011. Please index this Order in the grantor index under the following name: 1. Camp Tuller, LLC</p>

SUMMARY AND AUTHORIZATION

This Order, issued to Camp Tuller, LLC, grants a variance on conditions from the shoreline restrictions of Executive Law § 806, authorizing the placement of the leaching facility for an on-site wastewater treatment system within 100 feet of the mean high water mark of a stream in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Webb, Herkimer 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.

AGENCY JURISDICTION

Pursuant to § 806(1)(b) of the Adirondack Park Agency Act (Executive Law, Article 27), all new leaching components for an on-site wastewater treatment system must be set back at least 100 feet from the mean high water mark of all lakes, ponds, rivers and streams. Pursuant to § 575.7(c) of Agency

DRAFT AGENCY MINUTES

September 15, 2011

Page 13

regulations implementing this provision (Title 9 of the New York Code of Rules and Regulations), a lawfully-existing leaching facility located within 100 feet of the mean high water mark of a lake, pond, river or stream may be replaced in the same location, but the replacement facility may not be located any closer to the mean high water mark. Pursuant to § 806(3) of the Adirondack Park Agency Act, the Agency may vary this standard where there are practical difficulties or unnecessary hardships in the way of carrying out the restriction.

The applicant requests a variance from § 806(1)(b) of the Adirondack Park Agency Act and § 575.7(c) of Agency regulations to allow for the replacement of a lawfully pre-existing wastewater leaching facility located 60 feet from the mean high water mark of an unnamed stream with a new leaching facility located 30 feet from the stream.

VARIANCE DESCRIPTION AS PROPOSED

The variance site is an approximately 0.47-acre parcel of land located on Okara Road West and the shoreline of Lake Easka in the Town of Webb, Herkimer County, in an area classified Low Intensity Use by the Adirondack Park Land Use and Development Plan Map. An unnamed intermittent stream crosses the easterly side of the property. The property is identified on Town of Webb Tax Map Section 44.28, Block 1, as Parcel 37. The property is described in a deed from Robert M. Tuller to Camp Tuller, LLC which was recorded November 13, 2002 in the Herkimer County Clerk's Office in Liber 916 of Deeds at Page 4.

The variance site is currently improved by a preexisting (circa 1960) wastewater cesspool which serves a three bedroom single family dwelling with a detached single bedroom accessory bunkhouse. The current single family dwelling (circa 2010) replaced in-kind a preexisting three bedroom single family dwelling (mobile home with attachments) which had existed on the property since 1960. Agency jurisdictional determination J2010-289B determined that replacement of the preexisting dwelling with the new dwelling did not require an Agency permit.

The preexisting wastewater cesspool is located approximately 140 feet north of the mean high water mark of Lake Easka, approximately 55 feet north of wetlands on the site, and approximately 60 feet west of an unnamed stream. A portion of the cesspool may also encroach onto adjacent property to the west. The applicant proposes to replace this preexisting cesspool with an enhanced wastewater treatment system, consisting of a "Clarus Fusion 600" advanced treatment unit and 216 feet of infiltrator high capacity traffic rated absorption

DRAFT AGENCY MINUTES

September 15, 2011

Page 14

trenches. The applicant has proposed to construct the new system using traffic rated chambers thereby allowing the system to be safely located under the driveway and maximize the distance from the stream. In addition, measures such as tree plantings or other barriers will be utilized to limit traffic after construction of the system.

The new system will contain a larger leaching area than the existing cesspool. The new leaching area will be located 150 feet north of the mean high water mark of Lake Easka, and 65 feet north of wetlands on the site; thus farther from Lake Easka and wetlands than is the preexisting leaching area. The new leaching area, however, will be located closer to the stream, as it will be located 30 feet west of the stream at its closest point.

The applicant is therefore requesting a variance to install the new leaching area 30 feet closer to the stream than the preexisting leaching area which is located 60 feet from the stream.

The applicant plans to replace the preexisting well on the property with a new well located more than 100 feet from the proposed new leaching area. The new leaching area will also be located farther from wells on adjacent property than is the preexisting cesspool.

The proposal is shown on a plan entitled "Camp Tuller - Onsite Wastewater Treatment System - Figure No. 2" prepared by Onsite Engineering, PLLC, and dated June 15, 2011. A reduced-scale copy of this plan is attached as a part of this Order for easy reference. The original, full-scale maps and plans referenced in this Order are the official plans for the project.

CONDITIONS

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the Order is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Order.
2. This project may not be undertaken, and no transfer deed shall be recorded, until this Order is recorded in the Herkimer County Clerk's Office. This Order shall be recorded on or before November 18, 2011 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 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 project. Copies of this 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 Order shall contain references to this Order as follows: "The lands conveyed are subject to Adirondack Park Agency Order 2010-246 issued September 15, 2011, 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.

Wastewater Treatment System

5. The proposed on-site wastewater treatment system shall be constructed in complete conformity with the location and design shown on the plans referenced herein. Installation of the 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 utilization, the design professional shall provide the Agency with as-built plans that the system was built in compliance with the approved plans and accurately depicts the mean high water mark and traffic barriers installed around the wastewater treatment system absorption field.
6. No increase in the number of bedrooms the on-site wastewater treatment system is designed to serve shall occur. Therefore, no additional bedrooms shall be added to the single family dwelling or bunkhouse, or otherwise constructed on the property and in no case shall the wastewater treatment system serve more than four bedrooms.

Wetlands

7. 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, any activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values. As such, erosion control measures must be employed to ensure that there is no runoff into the wetlands and ensure that no soil, debris, or other materials enter the wetlands.

Erosion Controls

8. Prior to undertaking any earthwork on the site, silt fence shall be properly installed parallel to the existing contours. The silt fence shall be installed as shown on the project plans and also extended from that shown on the plans to the edge of the road pavement, so as to create a continuous erosion control barrier between the proposed leachfield construction site and the stream and wetlands. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed soils are stabilized. The landowner and/or their contractor shall inspect the fabric at least once a week and after every major storm event to ensure the fabric and supports are intact and to remove accumulated sediments so as to maintain the fence in a functional manner.

FINDINGS OF FACT

1. The record in this matter consists of the variance request, hearing testimony, and supporting materials.
2. A variance of the terms of the Adirondack Park Agency Act is not personal and runs with the land. Recording of this Order ensures notice to subsequent owners of the land.

Background/Site Configuration

3. The variance site is an approximately 0.47-acres pre-existing lot of record, in that the property was not part of a larger parcel in 1973 and the landowner at that time did not own any adjoining property as of the May 22, 1973 enactment date of the Adirondack Park Land use and Development Plan. The site was owned by Robert Fuller from 1960 until 2002, when it passed to Camp Tuller, LLC, which is managed by Mr. Fuller's three daughters. The property

DRAFT AGENCY MINUTES

September 15, 2011

Page 17

is bounded to the north by Okara Road West, to the south by Lake Easka, and to the east and west by adjacent residential properties.

Existing Environmental Setting

4. The property is classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map. The parcel contains approximately 54.45 feet of shoreline on Lake Easka. A small, non-navigable, intermittent unnamed stream crosses the parcel, running south from a culvert under Okara Road approximately 100 feet along the east side of the parcel and then bends to the west to cross onto a neighboring lot before running into the lake. Wetlands are located in the southern portion of the property, near the shoreline. The wetland boundaries as identified and flagged by Agency staff are depicted on the project plans referenced herein; the wetlands are Emergent Persistent and Forested Broad-Leaved Deciduous with a preliminary value rating of "2".
5. There is significant development surrounding Lake Easka and land uses in the surrounding area are primarily seasonal residences.
6. The variance site is currently improved by a preexisting (circa 1960) wastewater cesspool which serves a three bedroom single family dwelling with a detached single room accessory bunkhouse. The current single family dwelling (circa 2010) replaced in-kind a preexisting three bedroom single family dwelling (mobile home with attachments) which had existed on the property since 1960. Agency jurisdictional determination J2010-289B determined that replacement of the preexisting dwelling with the new dwelling did not require an Agency permit. Construction of the accessory 12' X 20' single-room bunkhouse in 1998 did not require an Agency permit, as it was built as an accessory structure to a preexisting single family dwelling and located more than 75 feet from the mean high water mark of Lake Easka and outside of the wetlands.

The preexisting wastewater cesspool is located approximately 140 feet north of the mean high water mark of Lake Easka, approximately 55 feet north of wetlands on the site, and approximately 60 feet west of an unnamed stream. The exact limits of the cesspool are undetermined; however, it appears that the cesspool may in part be located under the dwelling and/or in part encroach onto adjacent property

DRAFT AGENCY MINUTES

September 15, 2011

Page 18

to the west. The applicant proposes to replace this preexisting cesspool with an enhanced wastewater treatment system, consisting of a "Clarus Fusion 600" advanced treatment unit and 216 feet of high capacity traffic rated Infiltrator absorption trenches. The new leaching area will be located 150 feet north of the mean high water mark of Lake Easka, and 65 feet north of wetlands on the site; thus farther from Lake Easka and wetlands than is the preexisting leaching area. The new leaching area however, will be located closer to the stream, as it will be located 30 feet west of the stream at its closest point.

Public Notice and Comment

7. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations and published a Notice of Variance Application in the Environmental Notice Bulletin. On November 3, 2010, the Agency received a comment letter from owners of an adjoining property expressing support for the proposal. No objections to the variance request have been received.

Public Hearing

8. On August 24, 2011, a public hearing on the variance request was held in the Town of Webb. Advance notice of the hearing was published in the local newspaper as required by Agency regulations and sent to adjoining landowners. The hearing was attended by Agency staff, two family members representing Camp Tuller, LLC, the Engineer for the applicant, and two members of the public, including the local Code Enforcement Officer. No objections were made to the proposal during the hearing.

Other Regulatory Permits and Approvals

9. On September 2, 2010, the Town of Webb issued a Septic Permit for replacement of the existing cesspool.

On October 18, 2010 Herkimer County Planning Board issued a determination that no significant Countywide or regional impacts have been identified with the proposal.

10. On October 1, 2010, the NYS Department of Health issued a non-jurisdictional determination for replacement of the existing cesspool.

Variance Factors

The following findings of fact evaluate the proposal against the variance factors set forth in 9 NYCRR §576.1.

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

11. The applicant has demonstrated that there are unique practical difficulties based on the size and configuration of the pre-existing property and the environmental constraints of the property. There is no area on the applicant's property where a new on-site wastewater treatment system could be installed in compliance with all required setbacks from water bodies.

Whether adverse consequences from denial outweigh the public purpose served by the Adirondack Park Agency Act shoreline restrictions?

12. Denial of the requested variance would prohibit the applicant from replacing an aging cesspool with a new enhanced on-site wastewater treatment system. The enhanced treatment system will substantially reduce potential impacts to nearby surface water and groundwater resources. Under these unique facts, the applicant has demonstrated that the benefits to the applicant, the adjacent land uses, and the public from granting the variance are greater than the benefit to the public from strict adherence to the shoreline restrictions.

Whether the application requests the minimum relief necessary?

13. Working with Agency staff, the applicant has designed the replacement wastewater treatment system so that it will be located the maximum distance possible from wetlands, water bodies, the stream and neighboring wells. The proposed on-site wastewater treatment system is setback farther from the mean high water mark of Lake Easka and wetlands than is the old system it is replacing. Although located closer to the stream, the new leaching area has been designed and configured to be located as far from the stream as possible. There is no other location on the applicant's property where a new upgraded leach area could be located farther from the stream. So as to locate the new system as far as possible from the stream and minimize the variance being requested, portions of the new system will have to be located under the existing driveway. The applicant has proposed to construct the new system using high capacity

DRAFT AGENCY MINUTES

September 15, 2011

Page 20

traffic rated absorption trenches thereby allowing the system to be safely located under the driveway and maximize the distance from the stream.

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

14. The enhanced wastewater treatment system will improve treatment of effluent from the dwelling on the site, and thereby reduce potential impacts to water resources and reduce potential detriments to adjoining landowners. The Agency has not received any negative public comment or opposition to this proposal. Further, the Town has issued approval of the new system. Not granting a variance to replace the aging, inefficient cesspool would potentially cause greater detriment to adjoining landowners than will the granting of this variance.

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

15. There is no area on the property where a new replacement on-site wastewater treatment system could be installed without the need for a variance. At the suggestion of Agency staff, the applicant contacted an adjacent landowner to determine if an easement could be obtained to locate the new system on the neighboring parcel, but the request was denied. The applicant then worked with Agency staff to develop the proposal authorized herein, which allows for the new leaching facility to be located closer to the stream than the cesspool, but maximizes setbacks from the wetlands, Lake Easka, and on-site wells, and provides for enhanced treatment of effluent.

The applicant could continue to use the pre-existing cesspool without Agency review. However, this alternative would result in poor effluent treatment and continued risk of adverse impacts to water quality and water resources.

The manner in which the difficulty arose?

16. The difficulty in this matter is caused by the small size of the pre-existing variance site and the proximity of wetlands and waterbodies on the site, as well as the age and poor condition of old cesspool. It would be impossible for the applicant to replace or upgrade the pre-existing wastewater leaching facility on the site without a variance.

DRAFT AGENCY MINUTES

September 15, 2011

Page 21

Whether granting the variance will adversely affect existing resources?

17. Even though the new system will require placement of a leaching facility closer to a waterbody, water quality on and off the variance site will be improved by replacement of the aging cesspool with the enhanced treatment system. Potential impacts to existing resources will be reduced by replacement and upgrade of the old system. Thus, not granting the variance could potentially have more adverse results than granting of the variance.

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

18. The conditions included in this Order will ensure that installation and maintenance of the new on-site wastewater treatment system creates no new adverse effects and further ensures protection of wetlands, shoreline, and groundwater and surface water resources.

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. whether the application requests the minimum relief necessary;
 - b. whether there will be a substantial detriment to adjacent or nearby landowners;
 - c. whether the difficulty can be obviated by a feasible method other than the variance;
 - d. the manner in which the difficulty arose;
 - e. whether granting the variance will adversely affect the resources of the Park; and
 - f. whether the conditions noted herein will ameliorate any adverse effects.

