



*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**

**JANUARY 13, 2011**

**THURSDAY, JANUARY 13, 2011**

**AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT**

Curt Stiles, Chairman  
Richard Booth, Member  
Arthur Lussi, Member  
Frank Mezzano, Member  
William Thomas, Member  
Leilani Ulrich, Member  
F. William Valentino, Member  
Cecil Wray, Member  
James Fayle, Designee, NYS Department of Economic Development  
Elizabeth Lowe, Designee, NYS Department of Environmental Conservation  
Riele Morgiewicz, Designee, NYS Department of State  
Terry Martino, Executive Director  
John Banta, Counsel

**LOCAL GOVERNMENT REVIEW BOARD PRESENT**

Fred Monroe, Executive Director

**AGENCY STAFF PRESENT**

Richard Weber, Deputy Director, Regulatory Programs  
Holly Kneeshaw, Assistant Director, Regulatory Programs  
Keith McKeever, Public Information Director  
James Connolly, Deputy Director, Planning  
Paul Van Cott, Associate Attorney  
Elizabeth Phillips, Senior Attorney  
Shaun LaLonde, Soil and Water Engineering Specialist  
Brian Grisi, Local Planning Assistance Specialist  
Virginia Yamrick, Environmental Program Specialist 1  
Robert Kreider, Information Technology Specialist 2  
Tracy Darrah, Environmental Program Specialist 1  
Colleen Parker, Environmental Program Specialist 2

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Daniel Spada, Supervisor, Natural Resource Analysis  
Kathleen Regan, Associate Natural Resources Planner  
Milt Adams, Environmental Program Specialist 1  
Amy Hall, Calculations Clerk  
Elaine Caldwell, Administrative Officer  
John Burth, Environmental Program Specialist 2  
Sarah Reynolds, Senior Attorney  
Mary Reardon, Secretary 1  
Deborah Lester, Secretary to Executive Director

Chairman Stiles called the meeting to order at 9:03 a.m.

### 1. Public Comment

John Davis, former Conservation Director of The Adirondack Council, noted his departure from the Council and introduced his successor Allison Buckley. He urged the Agency to apply precautionary principles in its decisions, to draw heavily from the teachings of conservation ecology and biology, and to remember that DEC and the Agency are the agencies chiefly responsible for protecting one of the most important parks in the world and whose decisions will largely shape the future of the park for generations to come.

William Farber of the Adirondack Association of Towns and Villages expressed cautious optimism regarding the recent nomination of Joe Martens as Commissioner of Environmental Conservation. He also noted that the Adirondack Partnership was a real opportunity for collaboration among not-for-profits, interest groups, local governments and State agencies. He invited the Agency to become the first State agency to join the Partnership.

Public comments are part of the Agency's web cast and may be viewed at [http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2).

### 2. Minutes

On motion of Mr. Lussi, seconded by Mr. Mezzano, the Agency unanimously adopted the November 18-19, 2010 Draft Agency Minutes, as amended by Mr. Booth and Chairman Stiles as follows:

Page 16: "Mr. Booth referred to the Chairman's request for legislative ideas, and stated that the problem of short utility corridors across State land needs to be resolved, ~~short of amending the Constitution~~ by amending the Constitution to create some type of land bank so that each corridor newly

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**located on the Forest Preserve does not require a separate constitutional amendment.**"

Page 11 (2010-218 ARISE): "The project involves a request to use the Big Tupper ski center for a second year and the addition of a third ~~trail~~ chair."

**3. Executive Director's Report**

Mrs. Martino wished all a happy new year. She described January as a time for fresh beginnings and new opportunities for partnerships. Mrs. Martino referred to the recent "Snow Dance" hosted by ARISE and its apparent success, with the snowfall that followed on Sunday and again on Wednesday.

She then highlighted the following events and activities:

- Many thanks to staff members Sue Streiff and Mary Palmer for helping the Agency to spread holiday cheer, as well as to the entire Agency staff for their generosity in contributing to the local gift-giving program, Holiday Helpers.
- 2010 concluded with Governor Paterson's approval of three State land classifications that had been before the Agency: Moose River Plains, Tahawus/Lyon Mountain, St. Regis and Hurricane Mountains. The Governor's approval also acknowledged the naming of the Little Moose Wilderness Area, a request that had been made by Town of Inlet Supervisor John Frey at the November Agency meeting.
- December 31, 2010 also saw the transfer of the Paul Smiths VIC to Paul Smith's College. This transfer, along with the July 1 transfer of the Newcomb VIC to SUNY ESF, followed on the budget directive in January, 2010.

On January 1 SUNY ESF assumed all programming and staffing at the VIC, and followed with a name change for the facility to the Adirondack Interpretive Center. Programming at the Center will include fly fishing training, philosopher's camps, and direct links with the Ecological Center and Huntington Lodge. Thanks go to College President Neil Murphy and his staff for the vision they brought to the programming and facility use and the benefits for the Newcomb community and well as Park residents and visitors.

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Similarly, the Agency spent the year working to complete the successful transfer of the Paul Smiths VIC to Paul Smith's College. College President John Mills and his staff are commended for their vision for use of the facility and their ongoing working relationship with the Adirondack Park Institute (API) and API's interest in the continuation of programming and services at the facility.

The trails at both facilities are open. The public has been receptive to the transfers and the continuation of the facilities. The Agency appreciates the assistance of the NYS Office of General Services, Office of State Comptroller and Attorney General's office in these transfers.

- In the latter part of December the Agency obtained a waiver to retain a VIC employee who was on an Agency Reduction Transfer List based on the cuts to the VIC budgets. Milt Adams was welcomed to the Agency's Ray Brook headquarters. Additionally, the Agency was able to retain Aaron Ziemann on an hourly basis. Both Milt and Aaron will be assisting the Legal and Regulatory Programs Divisions.
- Important activities and events that took place in 2010 will be summarized by division in the Agency's 2010 Annual Report. Additionally, the annual overview by managers, which also includes data of jurisdictional inquiries, permits and enforcement cases, is scheduled for the February Agency meeting.
- Over the past number of months, management staff have discussed a draft for an Agency-wide staff communication policy to establish Agency procedure for staff communications with the media, elected officials and special interest groups, with the recognition the Public Information Director is a point of contact for all media. Also, the guidance is a reminder that in communicating with media and stakeholders, staff are representatives of the Agency. The draft will be discussed at the staff meeting next week.
- Last week the people were reinvigorated by hearing Governor Cuomo's State of the State and his charge to "reorganize, reinvent, redesign." In 2011, the Agency will look at opportunities for innovation and streamlining delivery of services to the public and new discussions about efficiency, integration of work and responsiveness. The public will hear and see more about how this translates

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into efficiencies between Jurisdiction, Enforcement and Regulatory Programs. The new discussions will build on discussions which started last year, with the intent that staff can achieve conclusions for project sponsors in areas which require direct interaction, decision making and overlap with staff from different divisions. Staff are particularly interested in seeing how this effort can streamline minor permits for mobile homes, single family dwellings and two-lot subdivisions and have a direct impact on review of minor projects while ensuring staff coordination for major projects with regional impacts.

- The Agency has identified priorities for 2011 for staffing of the EPS II in the JIF office, Associate Counsel, Economic Advisor and other EPS positions.
- With the absence of the Economic Advisor position, Mrs. Martino thought it would be productive to have the Economic Affairs Committee convene to hear a presentation this month by Jim Herman and Dave Mason on the success of the broadband project in Keene. She noted a meeting which she and Mr. Lussi attended two months ago where IBM discussed their Small Cities program and their assessment of infrastructure use and capacity in relation to different variables as well as their interest in seeing a rural application of their work. There was also discussion about the region's need for increased broadband capacity and Mr. Mason's expressed interest in regional discussions after their success in Keene. Therefore, this is a timely opportunity for the Agency to hear from Messrs. Herman and Mason, particularly in follow up to the region not securing federal funding for the CBN Connect project, CBN's reorganization, and the federal stimulus funding for the Development of the North Country and their work in the region.
- In December Agency executive staff met with OGS staff to discuss how the Agency could assist in communications regarding the Camp Gabriels property as they prepare for a second bid process to return the prison facility to private ownership and following on the Department of Correctional Services retaining administrative jurisdiction over the Gabriels facility. Agency staff acknowledged it would be helpful if OGS had Agency correspondence which they could use in their second auction process. The Agency's correspondence outlined that upon sale of the Gabriels property, the land will revert to Moderate Intensity Use,

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reverting back to its previous land use classification prior to becoming a correctional facility. The process is similar to what the Agency followed when Camp Topridge was returned to private ownership. The Agency's correspondence to OGS describes it as an uncomplicated process that could be brought to the Agency board as a map amendment after the sale takes place. Also, as stated in previous discussions regarding re-use of the property, the Agency does not have any prohibition on future use of the property. The Town of Brighton shared a list which included ideas for a cultural center, brewery, senior housing, light manufacturing, all of which the Agency believes could be appropriate. The Agency looks at the development capacity of the land, and in this case Moderate Intensity will support development opportunities with the potential of 71 principal buildings under the Land Use and Development Plan. Deputy Director of Planning Jim Connolly is the point of contact at the Agency for OGS in their communication with bidders.

- Local Planning Assistance Specialist Brian Grisi is coordinating with the planning committee for the annual Local Government Day, which is scheduled for March 22-23. The final agenda is being organized. Upon writing a letter inviting Thomas Friedman, New York Times columnist and author of *Hot, Flat and Crowded*, to the event, Mrs. Martino learned that Mr. Friedman is writing a new book through April and does not schedule speaking engagements during this time. She left a request for Mr. Friedman to consider joining the Agency at some other time to talk about his views on how efficient building design, eco- and nature-based tourism, community design and product branding can be part of our efforts in building economic opportunities in the Adirondack Park. The Agency will be sending out registration packets at the end of the month for the Local Government Day program.
- Regarding the Adirondack Club and Resort project, Agency hearing staff are preparing to start the adjudicatory hearing and anticipate that the Administrative Law Judge (ALJ) will soon set a schedule. Since the October 20 pre-hearing conference, most of the discovery of documents that has occurred between the parties has been completed. Presently there are still two pending discovery challenges about documents requested from the applicant which the ALJ must rule upon. The parties are also seeking clarification of several of the hearing issues. To date, the judge has ruled on party status and is expected a list of witnesses

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by January 14. Staff continue to urge that the hearing commence as soon as possible and are prepared to start when he gives notice.

- Agency executive staff have continued a very productive dialogue with the Local Government Review Board and AATV. Since October, there have been four meetings with a record of constructive conversation that will evolve into a paper that will be representative of the discussion.

Mr. Booth referred to the Champlain-Hudson Power Express project, and he requested that staff provide updates with more detail on the status of the Public Service Commission proceeding.

Mrs. Martino advised that Agency Senior Attorney Beth Phillips has been working closely with involved agencies and represents the Agency in the matter.

Mr. Booth then referred to the disposition of the former Camp Gabriels and Lyon Mountain Correctional Facilities, and inquired as to any existing Forest Preserve constitutional issues.

Counsel Banta responded that the Lyon Mountain facility is located in the Town of Dannemora and raises no Article XIV issues. With regard to Camp Gabriels, Counsel noted that with the creation of the correctional facility there was also a division between lands considered appropriate for Forest Preserve and lands with developed facilities which were retained by DOCS. Counsel also noted that the Agency does not engage on the Forest Preserve aspect, but that it is being addressed by DOCS and OGS legal advisors.

Mr. Wray referred to the Adirondack Club and Resort project and expressed his concern as to whether the Board will have sufficient time in which to review the materials before having to make a decision on the project.

Mrs. Martino responded that the ALJ had yet to establish the hearing schedule, but staff anticipated the hearing process to occur over a period of time.

Counsel Banta added that the principal role of the Agency staff is to ensure a full record.

Mr. Booth asked how much time Agency Members would have from the time the hearing record is closed to the time for decision.

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Counsel Banta replied that a decision is due within 60 days from the receipt of the record. In past, the materials have been organized and provided to the Board as they become available after the hearing is closed. Hearing exhibits can be communicated to the Board in writing or set up in a room at the Agency, and made available for review. Although the Board cannot deliberate together on the exhibits, it is an opportunity for the Board to examine them.

Chairman Stiles noted that the project has taken many different forms and formats, and the Board should be reasonably informed about what that record looks like.

Mr. Booth asked if there could be presentations to the Board without deliberation.

Mrs. Ulrich pointed out changes in Board membership from 4 years ago when the Agency directed the project to hearing.

Counsel Banta responded that the outcome of the hearing is unknown at this point, but he assured the Board it would be a deliberate, forward-moving process with adequate time to examine and be fully informed of the record, and with no rush to judgment.

Mr. Mezzano shared Mr. Wray's concern and recalled the NYCO Minerals and Lake George sonar projects when the materials were distributed to Board members in large boxes. He agreed the materials should be provided as early as possible prior to the 60-day clock.

Mr. Booth then asked if the 60 days could be extended by the applicant, and Counsel replied in the affirmative.

Chairman Stiles pointed out that the actual hearing provided the opportunity for Agency Members to observe testimony, but not participate, in the hearing.

**4. Motion for Executive Session**

On motion of Mr. Wray, seconded by Mrs. Ulrich, the Agency voted unanimously to convene in executive session to discuss Matter of Blue Line Council.

The session convened at noon, and Chairman Stiles reported prior to the close of the meeting that no action was taken.

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**5. Motion to Adjourn into Committees**

On motion of Mr. Wray, seconded by Mr. Booth, the Agency unanimously adjourned into committees at 9:37 a.m.

***The Agency reconvened at 3:45 p.m. to receive committee reports and act on committee recommendations.***

**6. Committee Reports**

a. Regulatory Programs Committee

(1) 2010-273, Steven and Carolyn Lofgren

The matter involves a request for a variance from the sign standards contained in Appendix Q-3 of the Agency's regulations. The variance would allow for the placement of new car dealership signage in an area classified Rural Use in the Town of Warrensburg, Warren County.

On motion of Mrs. Ulrich, seconded by Mr. Wray, the Agency unanimously granted the variance request and related permit amendment with conditions.\* A copy of the amended permit as approved by the Agency is attached to the official minutes.

(2) 2010-189, Velez Marine, LLC

The matter involves a request for a total of 9 shoreline structure setback and shoreline cutting variances in a Hamlet-classified area in the Town of Moriah, Essex County.

Mrs. Ulrich reported that following a thorough staff presentation, the Committee unanimously recommended that the Agency grant the variance in accordance with the revised draft Order, amended to add the following language to a condition addressing "Outdoor Lighting":

This condition shall not apply to navigational or safety lighting required by State, Federal or local authorities.

On motion of Mrs. Ulrich, seconded by Mr. Wray, the Agency unanimously granted the variances with conditions.\* A copy of the order as approved by the Agency is attached to the official minutes.

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\* Mr. Booth was absent during the vote, but later requested the record reflect his vote in favor of the Lofgren and Velez Marine variances.

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### **7. Interim Reports**

The Legal Affairs and Local Government Services Committees did not meet this month. In addition to monthly program reports included in the Agency meeting mailing, the committees reported as follows:

#### **a. Legal Affairs Committee**

On motion of Mr. Booth, seconded by Ms. Morgiewicz, the Committee unanimously approved the draft November committee minutes. (Mr. Wray abstained from voting due to his absence from the November meeting.)

Mr. Mezzano referred to the Jurisdictional Program Report and asked when the response time for jurisdictional inquiries might improve.

Counsel Banta replied that the 2-3 week response time continues to be staff's target. He noted that since Rita Quinn's retirement, staff have been attempting to do triage for quick turnaround for simpler JIFs, leaving a 3-4 week turnaround for more complicated JIFs.

Mrs. Martino added that filling the vacant EPS 2 position remains an Agency priority.

Mr. Wray questioned Mrs. Martino's memo regarding ethics in State government and its reference to the Associate Counsel as the Agency's ethics officer.

Counsel Banta explained that with the Associate Counsel position vacant, he and Elaine Caldwell are the designated communication contacts with the Commission on Public Integrity. He added that the memo from Mrs. Martino was intended to be a refresher at the beginning of the year.

Mr. Booth noted his absence during the voting on the two variance matters, and he requested the record reflect his vote in support of both variance applications.

#### **b. Local Government Services Committee**

Mr. Thomas called attention to the Local Government Day conference scheduled for March 22-23, 2011 in Lake Placid. He reported a meeting was held earlier that morning with some members of the planning committee.

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On motion of Mr. Mezzano, seconded by Mr. Lussi, the Committee unanimously approved the draft November committee minutes.

### **c. Interpretive Programs and Administration Committees**

Chairman Stiles noted that both the Interpretive Programs and Administration Committees had been removed from the agenda this month, consistent with his conversations with the respective committee chairs, Ms. Lowe and Mr. Mezzano. The Chairman suggested that the Agency needs to revisit the Delegation Resolution some time in the future and should incorporate actions to be determined for those two committees at that time.

### **8. Public Comment**

Dan Plumley of Adirondack Wild announced a mid-winter concert to be held at Martha Gallagher's on January 21. A reception promoting local and organic foods and local restaurants will take place after the concert.

Public comments are part of the Agency's web cast and may be viewed at [http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2).

### **9. Local Government Review Board Comment**

Local Government Review Board (LGRB) Executive Director Fred Monroe referred to comment by John Davis earlier that day that the burden of proof for land use and development activities should be on the individual landowner. Mr. Monroe suggested that the history of the State Constitution does not support that view in that the United States was founded on the principle of the right to own, use and dispose of property, which is an important right that cannot be taken without due process or just compensation. He acknowledged that it can, however, be restricted by legislative police power, something which is already done.

With regard to the Camp Gabriels property, Mr. Monroe predicted that the threat of lawsuit over Forest Preserve issues would complicate the sale of the property. He encouraged the State to seek a legal judgment on this matter.

### **10. Member Comment**

Mr. Valentino called attention to a large Pennsylvania power plant that is being closed down. He noted this power plant produces more sulphur dioxide which ends up in the Adirondacks than all NYS power plants combined. Similar plants with 800 ft.

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stacks like those in the Midwest are also shutting down one by one, which is good news for the Adirondacks. Mr. Valentino then noted that the Keene broadband project is an example of good leadership. He suggested the Agency consider giving awards for environmentally responsive economic development and projects that have a higher probability for replication throughout the Adirondacks.

Chairman Stiles agreed with Mr. Valentino, and Counsel recalled the Agency giving out certain recognition awards in the past at Local Government Day as well as recognizing individuals on Earth Day.

Mr. Fayle applauded the Keene broadband project, which he hoped might be the springboard to future fiberoptic development in the Park.

Ms. Morgiewicz wished everyone a happy new year. She commended both the Keene broadband project as well as the Air National Guard presentation. Also, she referred to the Department of State website for further opportunities.

Mr. Thomas noted Mr. Monroe's ongoing advocacy for broadband in the Park, and noted it was one of a number of options which communities have.

Mr. Mezzano stated that the two variance projects, both of which involved commercial uses, were environmentally correct and captured the true spirit and intent of Section 801.

Ms. Lowe noted DEC's efforts to help local economies including working to get the snowmobile trails open, which includes getting TRP's in place so that the connector trails on Forest Preserve and the new snowmobile trails at the Scaroon Manor Campground can open. The Department has also been working with OGS on the Essex County Fish Hatchery, formerly owned by DEC, to help make it possible so they can sell the fish stock to pay for renovations needed at the hatchery.

Mr. Lussi voiced his support for TRP's for competitive events in the Park and in the wilderness, him having once participated in such a running event. He expressed hope that Big Tupper ski center would soon be able to open after the most recent snowfall. He also noted that while snowfall can be unwelcome to some people, at the same time it represents the livelihood of many in the Adirondacks. Finally, he commended the presentation by Dave Mason and Jim Herman on the town-wide broadband internet

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project in Keene and the well-deserved recognition given to them by the Agency Board. He urged people to share Messrs. Mason's and Herman's message with others in the Park and rural areas across the country. Mr. Lussi also concurred with Mr. Valentino's suggestion of an APA award for this kind of economic development for the Park.

Mrs. Ulrich gave kudos to staff for a well-prepared, one-day meeting.

Mr. Wray said he was happy to be back after some scheduled conflicts caused him to be absent from some meetings. He agreed with Mr. Mezzano regarding the two variance applications, noting both are classic cases which merit approval. With regard to agenda planning for Agency meetings, he suggested allocating more time to consideration of variances given the additional time needed to review the variance standards.

Mr. Booth wished a happy new year to all. He noted this is the first Agency meeting under the eighth governor that the Agency has served under. He also noted the variances and broadband project were positive signs of an economic uptick in the Adirondacks.

Mrs. Martino acknowledged Mr. Wray's suggestion regarding agenda planning for variances. She commended Jim Herman and Dave Mason for their demonstration that this region can move beyond what, on occasion, has been referred to as "rural digital divide." She noted in particular how they involved the school district and the families within the school, and how important it is for these youth to be educated to be competitive in the 21<sup>st</sup> century. Mrs. Martino also noted the importance of broadband technology to small businesses in the Park.

Chairman Stiles said he felt the variance process for this meeting was constructive and helped to prepare the Agency to be more efficient each time a variance comes before it. He also commended the presentation on the Keene broadband project and regarded it as one of the most exciting he has seen. The project is something that bears thinking about when looking for ways for the Park to be a better or more attractive place to live. The Chairman wished everyone a happy and exciting new year.

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**11. Adjournment**

The Agency unanimously adjourned at 4:40 p.m.

CFS:dal

Attachments: 2010-273 - Steven and Carolyn Lofgren  
2010-189 - Velez Marine, LLC

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Curtis F. Stiles, Chairman

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**THIS PERMIT AND ORDER AMENDS PERMIT 95-282A, ISSUED JUNE 4, 1996**  
**THIS IS A TWO SIDED DOCUMENT**

 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	<p><b>APA Permit 95-282C and Order Granting Variance 2010-273</b></p>
<p>In the Matter of the Application of</p> <p><b>STEVEN LOFGREN AND CAROLYN LOFGREN</b></p> <p>for a permit pursuant to §809 of the Adirondack Park Agency Act and a variance from the standards of 9 NYCRR Appendix Q-3</p>	<p>Date Issued: <b>January 13, 2011</b></p> <p>To the County Clerk: This Permit and Order must be recorded on or before <b>March 14, 2011</b>. Please index this Permit in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. Steven Lofgren</b></li><li><b>2. Carolyn Lofgren</b></li></ol>

**SUMMARY AND AUTHORIZATION**

This Permit and Order, issued to Steven Lofgren and Carolyn Lofgren, amends Agency Permit 95-282A to approve the placement of new signage for an existing automobile sales commercial use and grants a variance from the sign standards of 9 NYCRR Appendix Q-3.

This project may not be undertaken until this Permit and Order is recorded in the Warren County Clerk's Office. This Permit shall expire unless so recorded on or before March 14, 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.

The project shall not be further undertaken or continued unless the project authorized herein is in existence within four years from the date the Permit is recorded. The Agency will consider

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the project in existence when the signage authorized herein is placed on the project site and the existing signage is removed.

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**

Pursuant to §§ 809(8)(b) and 810(2)(c)(2)(b) and (2)(c)(16) of the Adirondack Park Agency Act (Executive Law, Article 27), on June 4, 1996, the Adirondack Park Agency issued Permit 95-282A to Carl Ferullo and Kathleen Ferullo, authorizing a two-lot subdivision and a new commercial automobile sales and service business on one of the properties. The applicants, Steven Lofgren and Carolyn Lofgren, purchased this property in April 2008 and established a dealership of Chrysler, Jeep, and Dodge automobiles.

The applicants currently propose to place new signage above the entrance to the showroom of their dealership and above the garage doors of the dealership service building. This proposal requires an amendment to Condition 9 of Permit 95-282A, which states that any new signs on the project site must receive advance approval from the Agency and must comply with the standards established in 9 NYCRR Appendix Q-3. Pursuant to 9 NYCRR §574.3, the proposal also requires a variance from the standards of 9 NYCRR Appendix Q-3, including the following provisions:

- (1) Sec. 5(f) No sign shall be erected or maintained upon the roof of any building or structure.
- (2) Sec. 5(h) No sign shall project more than 3 feet from the wall of any building, nor shall any sign project from the roof of any building ...

**PROJECT/VARIANCE DESCRIPTION AS PROPOSED**

The project site is an approximately 1.45±acre parcel of land located on New York State Route 9 in the Town of Warrensburg, Warren County, in an area classified Rural Use by the Adirondack Park Land Use and Development Plan Map. It is identified on Town of Warrensburg Tax Map Section 183.4, Block 1, as Parcel 6.2.

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The project as originally proposed is described in Permit 95-282A. The requested amendment, as conditionally approved herein, is for the placement of four new, non-illuminated signs on two portions of the exterior of an automobile dealership building on the project site, as shown on a set of 10 drawings entitled "Krystal Chrysler," drawn by Eric & Eric Drawing Service, and dated March 30, 2010. The first sign will contain the word "Krystal," at 25.5 square feet in size in black lettering on a gray arch over the entrance to the dealership showroom. The remaining three signs will be placed on a gray board extending 4.4 feet out from the eaves of the roof over the dealership service area: the first sign will contain the word "Chrysler" at 30 square feet in size in black lettering, as signage for the Chrysler dealership; the second sign will contain the word "Jeep" at 22.75 square feet in size in green lettering, as signage for the Jeep dealership; and the third sign will contain the Ram symbol at 8.5 square feet in size and the word "Dodge" at 13.5 square feet in size, both in red lettering, as signage for the Dodge dealership.

The applicants propose to remove the existing signage for the dealership, which consists of a 34 square foot sign located on an 84 square foot structure partially within the right-of-way of Route 9. This existing sign does not comply with the conditions of Permit 95-282A or with the standards of Appendix Q-3.

A reduced scale copy of Sheet A8 of the drawings is attached as a part of this permit and variance for easy reference. The original, full-scale maps and plans referenced in this Permit are the official plans for the project.

**CONDITIONS**

**BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT/VARIANCE FILE, THE PERMIT AND VARIANCE ARE APPROVED WITH THE FOLLOWING CONDITIONS:**

1. All conditions in Permit 95-282A remain in full force and effect unless specifically amended herein.
2. The project shall be undertaken as described in the completed application, the Project/Variance Description as Proposed, and the Conditions noted herein. In the case of conflict, the Conditions control. Failure to comply with this 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.

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3. This Permit and Order is binding on the applicants, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this Permit and Order and all the approved plans referred to herein shall be furnished by the applicants to all contractors prior to undertaking the activities authorized herein. All deeds conveying all or a portion of the lands subject to this Permit shall contain references to this Permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 95-282A issued June 4, 1996 and Permit 95-282C issued January 13, 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.
5. This Permit authorizes installation of the signs shown on the plans referenced in the Project/Variance Description as Proposed, and this Order grants a variance for the signage presented on these plans from any inconsistent provisions of Appendix Q-3. No sign besides those described and authorized herein shall be installed on the project site, and no change in lettering or symbols shall occur on these signs, without prior written Agency approval. In addition, external lighting of any signage on the project site shall require prior written Agency approval.
6. The signage variance granted by this order and permit amendment is authorized solely for use by the applicant for the operation of the Chrysler car dealership identified herein. The authorization does not run with the land. Within one year of cessation of the Chrysler car dealership, the applicant or owner of the car dealership shall notify the Agency of their closure or cessation and shall remove the roof mounted sign panels from the building within two months of such notification. The sign panels if stored on site shall be placed in a location that is not visible from the State highway.
7. The existing 34± square foot sign shall be removed from the project site and the Route 9 right of way within 10 days after installation of the new signage.

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8. Except as authorized herein, all signage on the project site shall comply with the standards established in 9 NYCRR Appendix Q-3.

**FINDINGS OF FACT**

1. The record in this matter consists of the permit amendment and variance request and supporting materials.

**Background/Prior History**

2. The project site has been the subject of previous Agency projects P73-36 (Permit 73-16), 73-51 (Permit 73-28), P86-43, 95-282, 95-282A and 95-282B. Permit 73-28 authorized a three-lot subdivision to create a 3 acre lot, a 4.4±-acre lot, and a 14±- acre lot. Permit 73-16 authorized the establishment of a commercial use mechanical and autobody shop, and Permit 86-43 authorized the establishment of a commercial use automobile salvage junkyard, both on the 3± acre lot created by Permit 73-28. Permit 95-282 then authorized expansion of the junkyard. Permit 95-282A authorized a two-lot subdivision of the 3±-acre lot created by Permit 73-28. This subdivision resulted in the creation of a 1.55±-acre lot containing the junkyard authorized by Permits 86-43 and 95-282, and the 1.45±-acre project site containing the mechanical and autobody shop authorized by Permit 73-16. Permit 95-282A also authorized new commercial use on the project site, through conversion of this mechanical and autobody shop to a new and used car dealership.

**Existing Environmental Setting/Character of the Area**

3. The intersection of Routes 28 and 9 in the Town of Warrensburg has historically been developed with both commercial and industrial uses. Currently, the neighboring development includes a merchandise retail store, a paint ball operation, a junkyard, two sawmills, a wood processing facility, a bed and breakfast, and a massage therapy office.
4. The area surrounding the project site is classified as Rural Use on the official Adirondack Park Land Use and Development Plan Map, except that the lands across and to the northwest of Route 9 are classified as Low Intensity Use. The Hamlet land use area of Warrensburg is located approximately 2.5 miles south of the project site.
5. Two neighboring commercial use signs are located within 40

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feet of the road bed. There are a number of NYS DOT signs along the highway.

**Franchise Information**

6. The standard sign package for Chrysler, Jeep, and Dodge dealerships includes 200 square feet of internally illuminated signage, consisting of: 1) the dealership name on an arch above the entrance; 2) the Chrysler logo, the words "Dodge", "Jeep", and "Ram", and the Ram logo on the outside wall above a glass enclosed showroom; and 3) the word "Service" on the outside wall above the service area. Steven and Carolyn Lofgren purchased the project site in April 2008, and signed a dealership contract with the Chrysler Corporation that required the building and signage on the project site to be upgraded to comply with the standard sign package within two years. In April 2010, the applicants were granted a one year extension of this timeframe. Chrysler Corporation has since agreed to allow for the more modest signage approved herein to serve as the sign package under the dealership contract with the applicants.

**Site Configuration**

7. The majority of the project site along Route 9 is paved as a parking area, with the southern area along the highway containing steep slopes and vegetation. There is limited space available for the placement of signage on the existing building, as it is only 11.5± feet tall and contains garage doors and windows that cover much of the front of the building. The pitch of the existing roof and requirements for snow removal from the roof necessitate placement of the board for the individual wall signs 4.4 feet out from the building.

**Visibility**

8. The dealership building is located approximately 60 feet from Route 9, and is screened to the south by existing trees and bordered on the north by a merchandise retail store. For cars traveling north on Route 9, the "zone of visibility" for the approved signage is very brief. For cars traveling south on Route 9, the building is visible for approximately 300 feet from the intersection of Route 9 and 28 to the project site. The signage will not be highly visible from the intersection because it is set back from the highway and will blend in with the dealership building. The signage will not be visible from the residential area

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located west of Route 9. The existing signage, which will be removed, is located partially within the highway right-of-way and is readily visible from the south for approximately 100 feet and from the north for approximately 300 feet.

**Alternatives**

9. During discussions with the Chrysler Corporation, the applicants considered increasing the height of the existing building. This alternative would not have been economically feasible for the applicants, and would increase visual impacts from the signs. In discussions with Agency staff, alternatives that were considered included placing signage on the ground and stretching the backboard signage on the building to the roof edge or archway, in an effort to blend more with the wall. No suitable alternative ground location could be found due to the extent of the existing paved area and the location of steep slopes on the unpaved portion of the property. It was determined that extension of the backboard would hamper snow removal and would not blend with the wall as well as the proposed backboard.

**Public Notice and Comment**

10. The Agency notified all adjoining landowners and additional parties as required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Variance Application in the Environmental Notice Bulletin. No comments have been received.

**Public Hearing**

11. On November 30, 2010, Agency staff conducted a public hearing regarding the request for a variance from the sign standards of 9 NYCRR Appendix Q-3. The parties in attendance at the hearing included Steven Lofgren, an adjoining landowner, and an Agency staff member. Agency staff read a prepared statement describing the variance proposal, the criteria for granting a variance, and the reason for the decision to recommend approval of the variance. No issues or concerns were raised and the hearing was adjourned.

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**Other Regulatory Permits and Approvals**

12. The Town of Warrensburg has review jurisdiction over the project as new land use and development and for the placement of new signs. Permits for both were issued by the Town on August 13, 2010.

**Economic/Fiscal Factors**

13. Pursuant to the dealership agreement with the Chrysler Corporation, the applicants are required to make changes to the signage on the project site. Failure to make the signage changes approved herein could result in termination of the agreement and economic hardship to the applicants. The dealership currently has 15 full-time year-round employees.

**Variance Factors**

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

Whether there are practical difficulties in carrying out the strict letter of the provisions of the Adirondack Park Land Use and Development Plan?

14. The applicants have demonstrated that there are unique practical difficulties present on the site based on the size and configuration of the property and its location along New York State Route 9 that, absent a variance, will prevent the applicants from achieving their reasonable objective of advertising a modest, previously permitted commercial use.

Whether adverse consequences from denial outweigh the public purpose served by the restrictions of 9 NYCRR Appendix Q-3?

15. Denial of the requested variance would significantly limit available space for advertising the applicants' commercial business, and could jeopardize the applicants' existing franchise relationship with the Chrysler Corporation.
16. The existing signage is located partially within the Route 9 right-of-way and is readily visible from off-site locations. The proposed signage is designed as an integral element to blend with the proposed façade renovations to the existing building and will be less visible in the

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overall context of the existing development in the highway corridor.

17. Under these unique facts, the applicant has demonstrated that the benefit to the applicants and the community served by this automobile dealership are greater than the benefit to the public by strict adherence to the sign standards at issue.

Whether the application requests the minimum relief necessary?

18. The proposed signage is within the size limit for signs allowed under Appendix Q-3, will only protrude out from the roof the minimum distance necessary to allow effective snow removal, and will be located lower than maximum height allowed under Appendix Q-3. The signage authorized for the Krystal dealership will allow for approximately half of the sign area of a standard Chrysler sign package, and will also allow for only non-illuminated signs.

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

19. The visual impacts of the existing signage as well as signs located on neighboring properties are greater than the potential impacts of the proposed signage. The proposed signage will be set back 60 feet from the highway and will be integrated to blend with the façade renovations of the existing building. The Agency has not received any negative public comment in response to the public notices and public hearing.

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

20. There are limited areas for signage on the building due to the 11.5 foot height of the service building, which contains two garage doors, and the existing showroom façade, which contains large glass windows and a door. There are limited ground locations on the property for signage due to the size of the paved parking areas, the location of the building, and the location of steep slopes and vegetation on the unpaved areas.

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The manner in which the difficulty arose?

21. The 3+-acre project site was a portion of a 21+-acre parcel that has been historically utilized for commercial purposes, which at one time included a former new and used car dealership. In 1996, the Agency permitted creation of the project site in its current configuration specifically for use as a new and used car dealership. The Chrysler Corporation required a dealership agreement when the property was conveyed in 2008.

Whether granting the variance will adversely affect existing resources?

22. There will be no adverse visual impacts from the signage, as it will be located 60± feet from Route 9 and colored to blend with the façade renovation of the existing building. The project is compatible with the character of neighboring commercial and industrial uses within the highway corridor.

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

23. Requiring removal of the existing signage will reduce visual impacts to the highway corridor. Requiring approval by the Agency for any future signage changes on the project site will ensure there will be no additional adverse effects.

**CONCLUSIONS OF LAW**

**Permit Amendment Request**

The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(10) of the Adirondack Park Agency Act and 9 NYCRR Part 574. The Agency hereby finds that the project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.

**Variance Request**

1. There are practical difficulties in the way of carrying out the strict letter of the provisions of the Adirondack Park Land Use and Development Plan (9 NYCRR § 576.1(a)).

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2. The adverse consequences to the applicants resulting from denial are greater than the public purpose sought to be served by the restrictions (9 NYCRR § 576.1(b)).
3. The factors set forth in 9 NYCRR § 576.1(c) have been addressed:
  - a. the application requests the minimum relief necessary;
  - b. there will be no substantial detriment to adjacent or nearby landowners;
  - c. the difficulty cannot be obviated by a feasible method other than the variance;
  - d. the difficulty arose due to the creation by Agency permit of the project site in its current configuration for an automobile sales and service commercial use;
  - e. the granting of the variance will not unduly adversely affect the natural, scenic, and open space resources of the Park; and
  - f. the conditions noted herein will ameliorate any adverse effects.
4. The variance, pursuant to §809 of the Adirondack Park Agency Act and 9 NYCRR Parts 574, 576, and Appendix Q-3, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.



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 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	<p><b>APA Order Granting Variance 2010-189</b></p>
<p>In the Matter of the Application of <b>VELEZ MARINE, LLC</b></p> <p>for a variances pursuant to §806 of the Adirondack Park Agency Act</p>	<p>Date Issued: January 14, 2011</p> <p>To the County Clerk: This order must be recorded on or before <b>March 15, 2011</b>. Please index this Order in the grantor index under the following names. <b>1. Velez Marine, LLC</b> <b>2. Rick Dolliver</b></p>

**SUMMARY AND AUTHORIZATION**

Velez Marine, LLC is granted variances, on conditions, from the applicable shoreline restrictions pursuant to Section 806 of the APA Act, in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Village of Port Henry, Town of Moriah, Essex County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the order is recorded. The Agency will consider the project in existence upon completion of any two of the individual variance components authorized herein.

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.

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**PROJECT LOCATION AND SITE DESCRIPTION**

The project site is approximately 10± acres (including lands underwater) with approximately 1,255± feet of shoreline on Lake Champlain in the Village of Port Henry, Town of Moriah, Essex County, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map. It is identified on Town of Moriah Tax Map Section 97.56, Block 5 as Parcel 1.004. The project site is described in a deed from Robert Theirry and Cynthia Theirry to Velez Marina, LLC dated February 15, 2008 which was recorded in the Essex County Clerk's Office in Liber 1566 of Deeds at Page 102.

**AGENCY JURISDICTION**

The applicant's proposed rehabilitation and expansion of the commercial use marina operation is not a jurisdictional activity in the Hamlet land use area. The Agency's jurisdiction with regard to this project is limited to the §806 shoreline variances that are required.

The variance application seeks Agency approval for variances from the applicable 50 foot shoreline structure setback restriction pursuant to '806(1)(a)(2) and '806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize placement of structures larger than 100 square feet size (and which do not comply with the Agency regulatory definition of "dock" or "boathouse") within 50 feet of the mean high water mark of Lake Champlain. Section 806(1)(a)(2) and 9 NYCRR Part 575 requires a minimum shoreline setback of 50 feet measured from the mean high water mark for structures greater than 100 square feet in size which are not a "Dock" or "Boathouse" as such is defined in §570.3 of Agency regulations. Section 575.4(e) and (f) requires that a shoreline "retaining wall" larger than 200± square feet in size [as measured by the larger of either elevation (face) view or plan (top) view] is subject to the shoreline setback requirements.

The variance application also seeks Agency approval for a variance from the shoreline vegetative removal restrictions pursuant to '806(1)(a)(3)(a) and '806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) requesting approval to remove more than 30 percent of the trees larger than 6 inches diameter at breast height within 35 feet of the mean high water mark.

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Section 806(3) of the Act and 9 NYCRR Part 576 authorize procedures whereby an applicant may apply for a variance from that restriction provided certain criteria cited in the statute and regulations are complied with, as further described below.

**VARIANCE DESCRIPTION AS PROPOSED**

The project as proposed involves rehabilitating and expanding a pre-existing commercial use marina to include: approximately 94 boat-slips; ADA accessible facilities including one ADA compliant gangway and floats ("docks"); new and expanded breakwaters; a two-lane boat launching ramp; hauling and launching areas; a new replacement retaining wall; and connection to the municipal wastewater treatment system for bathroom and wastewater pump-out facilities.

Some of the proposed improvements require variances from the §806 shoreline restrictions. The variances as proposed and conditionally approved herein are summarized as follows.

1. Filling and expanding four sunken barges to create two new breakwaters which will measure (in footprint) approximately 7,249 square feet and 22,236 square feet. The northern peninsula of the existing marina was created in the 1960's by filling sunken barges. The present peninsula is at an approximate elevation of 99' above mean sea level. The elevation of the proposed new/expanded breakwaters will be approximately 104' above mean sea level, similar to the adjacent NYSDEC breakwater. (The mean high water mark of Lake Champlain is 99.8' above mean sea level).
2. Filling a 28' by 92' (2,576 sq.ft.) area (known as the "marine railway") to re-establish a consistent shoreline along the length of the new retaining wall. A portion of the existing road on the site will then be relocated to cross the filled area and resolve the road's current encroachment onto adjoining property.
3. Removing more than 30% of the trees 6 inches or larger in diameter at breast height (dbh) within 35 feet of the mean high water mark. There are currently 10 trees larger than 6 inches dbh within 35 feet of the mean high water mark. Six of these trees are to be removed; resulting in the removal of approximately 60% of the trees greater than 6 inches dbh within the 35 foot mean high water mark. Of the six trees to be removed, five are located on the northern peninsula and range from six to nine inches in diameter. The sixth tree to be removed is 24 inches in diameter and is growing

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into the side of the upland building towards the northern end of the property and needs to be removed to preserve the building. The six trees include three Silver Maple, one Cottonwood, one Honeylocust, and one Willow. The four remaining trees greater than six inch dbh which will not be removed are 23", 14", 9" and 20" dbh, and include two Honeylocust, one White Birch and one Black Walnut.

4. Replacing a pre-existing stone/concrete retaining wall with a new 12,986± sq. ft. stone retaining wall which is approximately 2 feet higher than the existing wall as measured in elevation (face) view. The existing rip-rap/rubble shoreline interface is in disrepair, and measures approximately ±13,706 sq ft. The proposed variance will result in approximately ±12,986 sq feet of rehabilitated shoreline interface. The new replacement wall will be smaller in plan view than the existing retaining wall, but larger in elevation view.
5. Installing a 16' X 200' "Wave Attenuator". The wave attenuator will extend approximately 6 feet down into the water and will have a 16 foot wide float ("dock") on top with five, 4 foot wide finger docks (35' to 40' in length) extending from it. The wave attenuator will either be a concrete pontoon or a baffle system.
6. Replacing a pre-existing 1,278 square foot single-lane boat ramp with a 1,758 square foot two-lane boat ramp. The existing boat ramp is approximately 18 feet wide, and is wide enough for one lane only. The applicant states that the pre-cast concrete units manufactured specifically for launching ramps measure 12.5± feet wide, and are indicative of the typical size of a launching ramp. The widening to two lanes and increase in surface area by 480 feet, or approximately 38%, would allow the applicant to use the pre-fabricated units and would increase the capacity of the boat launch.
7. Constructing an ADA compliant 80' by 4' (320 square foot) gangway and accompanying 14' by 12' (168 square foot) ADA compliant float ("dock"). The total combined structure will be 488 square feet. The gangway is designed to provide access for persons with disabilities to the southern portion of the marina.
8. Constructing a (4' by 24') gangway/ (6' by 6') deck structure approximately 132 square feet in total combined size, and accompanying 9' by 38±' long (342± square foot)

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float ("dock"). The gangway will land on the nine-foot wide float "dock". The proposed gangway will be parallel to the shoreline directing marina patrons away from the hauling and launching area and onto the 9-foot wide float. The applicant states that the float must be of a sufficient size to allow for safe passage of travel and hold the gangway in place.

9. Constructing two floats ("docks") wider than 8 feet and larger than 100 square in size, including a 12' by 43' (516 sq.ft.) float ("dock") at the "Hauling & Launching Area" and a 9' by 35' (315 sq.ft.) float ("dock") at northern end of marina. Gangways measuring approximately 4' By 24' (22.5' + 18" transition plate) will be connected to each of these floats. The aggregate size of these attached gangways will be 612 sq.ft. and 401 sq.ft. respectively.

The project is shown on 13 sheets of plans entitled "Velez Marine" prepared by Lemond and Associates and Daniel S. Natchez and Associates, Inc. (hereinafter "Project Plans"). Sheets A-01 through A-06 are dated 7/30/2010, and Sheets A-02, A-03, A-04 last revised 9/20/2010. Sheets A-07 through A-11 are dated 9/20/2010, and Sheets A-07, A-10, A-11 last revised 11/18/2010. Sheet P-01 is dated 10/7/2010. Reduced-scale copies of Plan Sheets A-03 and A-07 are 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**

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE VARIANCE IS APPROVED SUBJECT TO THE FOLLOWING 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 Essex County Clerk's Office. This Order shall be recorded on or before March 15, 2011 in the names of all persons listed on the first page hereof and in the names of all owners of

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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 project 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 applicant(s) 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 2010-189 issued January 14, 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.

**Structure Location and Sizes**

5. This Order authorizes the new structures and filling activities to be undertaken in the locations shown and to the dimensions described on the project plans referenced herein. Any changes to the locations, sizes, or dimensions will require a new or amended Agency Order. Within 60 days of completing each individual variance component authorized herein, a qualified design professional shall provide written certification to the Agency that the component was built/undertaken in compliance with the approved plans.

**Shoreline Cutting**

6. Other than removal of the six trees authorized herein, no additional trees in excess of 6 inches dbh shall be removed within 35 feet of the mean high water mark over any 10 year period.

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.

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**Planting Plan**

7. The vegetative plantings shall be undertaken as shown on Project Plan Sheet P-01 referenced herein. The approved plan shall be implemented in the spring or fall, whichever comes first, immediately following the construction of the new retaining wall and rip-rap authorized herein. Any plants which do not survive or become diseased shall be replaced annually until such time as all of the trees have been established in a healthy growing condition.

**Wave Attenuator**

8. The dimensions and location of the wave attenuator shall be in complete accordance with the project plans authorized herein. Prior to construction/installation of the wave attenuator, final design details for the structure, including type of construction materials shall be submitted to the Agency for review and approval in the form of a letter of compliance. The wave attenuator shall not be installed until the letter of compliance is issued.

**Shoreline Setbacks**

9. Other than those approved by the variances contained herein, all new structures 100 square feet in size or larger, (except docks and boathouses), shall be set back a minimum of 50 feet, measured horizontally, from the closest point of the mean high water mark of Lake Champlain.

**Boathouses**

10. No new boathouses are proposed or authorized as part of this project.

**Docks**

11. Other than the floats ("docks") approved by the variances contained herein, docks shall be no wider than eight feet in width or in the case of interconnected structures intended to accommodate multiple watercraft or other authorized use, each element shall not be more than eight feet in width. The dock shall only be used for the purposes of securing and loading or unloading watercraft and for swimming or water recreation. Docks may extend into or over the lake from only that portion of the immediate shoreline necessary to attach the floating or fixed structure to the shoreline.

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**Erosion and Turbidity Controls**

12. Silt fencing shall be installed on the downslope edge of any disturbed upland area prior to site disturbance. The silt fence is to be maintained in a functional condition until all disturbed land is heavily vegetated.
13. Turbidity curtains shall be installed prior to commencing operations within the Lake or any operation which may create turbid lake water. The turbidity curtains shall consist of an impermeable vinyl material which will have a weighted bottom and flotation at the top to keep the curtain extended vertically in the water column. The turbidity curtain shall remain in place and in a functional condition until turbidity inside the curtain no longer exceeds ambient levels.
14. All stone fill utilized in construction of the breakwaters and retaining wall shall be as specified in the plans referenced herein and shall be free of sediment prior to placement in or adjacent to the Lake.

**Outdoor Lighting**

15. All new outdoor lighting shall employ full cut-off fixtures, that is, they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward Lake Champlain or adjoining property. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow). This condition shall not apply to navigational or safety lighting required by State, Federal or local authorities.

**Signage**

16. All new signage on the site shall conform with the Agency's "Standards for Signs Associated with Projects" (9 NYCRR Part 570, Appendix Q-3).

**Review of Future Development**

17. No further land use and development, including but not limited to the disposal of waste materials, shall occur on the property without first obtaining a jurisdictional determination and, if necessary, a permit or Order from the Agency.

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**FINDINGS OF FACT**

1. A variance of the terms of the APA Act is not personal and runs with the land. Recording of the variance order ensures notice to subsequent owners of the land.

**Background/Prior History**

2. The subject 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. New York State conveyed the property, including lands under Lake Champlain, to the Port Henry Furnace Company in 1856. A marina/boatyard has existed at the project site for more than 70 years. The facility was originally created to transport iron ore from the local mines and later became a marina / boat storage facility in the 1940's. It has deteriorated through neglect over the past several decades, and suffers from deferred maintenance.

**Existing Environmental Setting/Character of the Area**

3. The project site is located in a Hamlet land use area on the Adirondack Park Land Use and Development Plan Map and includes approximately 1,255 feet of shoreline on Lake Champlain (mean high water mark elevation 99.8 feet above mean sea level). There are no wetlands on the site. The site encompasses approximately 10± acres, which includes land under water owned by the applicant pursuant to land grants originally issued in 1856. Preexisting structures on the project site include a concrete/stone retaining wall, docks, a single lane asphalt boat launch, a marina office, bathrooms, a two-story residential/marina building, and sunken barges.
4. Land uses in the vicinity of the project site include: a NYS DEC boat launch south of and adjacent to the site; railroad tracks in use for freight and passenger trains west of and adjacent to the site, and a retail store and two residences beyond the railroad tracks.

**Public Notice and Comment**

5. The Agency notified all landowners within 500 feet of the project site and those parties as statutorily required by '809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental

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Notice Bulletin. Three comments letters have been received, all of which support the project and encourage the Agency to approve it.

**Public Hearing**

6. On Tuesday, November 30, 2010 at 11:30 am at the Moriah Town Office, Agency Staff conducted a hearing pursuant to APA Act § 806 and 9 NYCRR 576.5. Daniel S. Natchez and Greg Wilson, of Daniel S. Natchez and Associates, Inc., authorized representatives for the applicant, made a presentation and provided testimony on behalf of the applicant. In addition to the applicant, Agency staff and hearing participants, 15 members of the public attended the hearing. Five people, including Town of Moriah Supervisor and Village of Port Henry Mayor offered comments; all of the public comments were in favor of approval of these variances.

The points made included:

- This marina expansion is key to lakefront development and future development for the Town of Moriah.
- The proposal is a step in the right direction for the Town, Village and the entire area.
- The Village of Port Henry was originally a port where iron ore was loaded on boats and barges.
- The project site is not a natural or pristine shoreline, it was and still is an old industrial site.
- Trains still run right by the site, an oil and gas company is 100 yards away, and the State of New York has built a boat launch nearby.
- Most of the land at the site is composed of mining tailings and spoils.

**Other Regulatory Permits and Approvals**

7. On December 22, 2010 New York State Department of Environmental Conservation (DEC) issued a permit conditionally approving the proposed project.
8. The project does not require local approvals from the Village or Town. The Village of Port Henry and Town of Moriah have issued statements supporting the proposal.
9. Approval from the Army Corps of Engineers is also required and applications have been submitted. Public Notice was issued by Army Corps of Engineers on January 7, 2011.

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**Economic/Fiscal Factors**

10. The Town of Moriah and the Village of Port Henry have issued statements indicating the rehabilitation of the Marina as proposed by the applicant is an important project that will provide vital economic benefits to their area. The Town of Moriah Supervisor stated at the hearing that this marina is key to lakefront development and future development for the Town of Moriah. Richard Dolliver, President of Velez Marine, LLC is credited with bringing a manufacturing facility to Mineville, a nearby hamlet in the Park, which provides local jobs. It is anticipated that the marina will provide local jobs and will also stimulate other economic activity in Port Henry.

**VARIANCE IMPACTS AND CRITERIA**

1. Whether adverse consequences from denial outweigh the public purpose of statutory shoreline restriction - Denial of any one of the variances may result in the applicant not being able to undertake the marina rehabilitation/expansion to the extent necessary for it to be an economically viable and safe project and function as a modern marine facility. The adverse consequences of denying these variances would be that the marina rehabilitation may not be undertaken. If marina rehabilitation were to occur without undertaking the activities/actions proposed by the requested variances, then improvements to the marina would be subject to adverse weather and wave action and public safety could be jeopardized in as much as the marina is intended to be open to the public. The construction could adversely impact the water quality in the lake, absent conditions to prevent or mitigate impacts. With adequate mitigation during construction, as required by the conditions herein, the purpose of the shoreline restrictions could be protected and would be outweighed by the adverse consequences of denial.
2. Whether the application requests the minimum relief necessary -
  - a. Filling and expanding 4 sunken barges to create new/expanded breakwaters - The filling of the barges represents the minimum relief necessary because the base of the breakwater must expand beyond the footprint of the sunken barges to allow for breakwater side slopes to prevent failure of the barge walls. Portions of the existing barges will be encapsulated

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by the breakwaters, while the exposed portions will be removed, eliminating navigational hazards. A lesser variance would leave the marina more vulnerable in storm conditions. Also, the elevation of the proposed breakwaters will be the same as the adjacent NYSDEC breakwater, approximately 104' above mean sea level which have proven to be effective at accommodating anticipated wave action.

- b. Filling a 28' by 92' (2,576 sqft) area (known as the "marine railway") - The request for filling the marine railway is the minimum relief necessary to allow for the north/south access road to be brought fully onto the property and resolve encroachment issues on the adjacent railroad property. The northern section of the site includes a proposed hauling and launching area for sailboats with keels and larger, heavier sail and power boats. The entire railway would need to be filled to allow adequate access to the hauling and launching equipment. Filling the entire 2,576 sqft area is also the minimum necessary to bring the shorefront in this area consistent with the contour of the rest of the shoreline on the site.
- c. Removing more than 30% of the trees six inches or larger in diameter at breast height (dbh) within 35 feet of the mean high water mark - These trees would not likely survive the filling of the breakwater; thus this variance is linked to the first variance and denial of this variance would effectively deny the first variance to fill the Northern barges and crate the northern breakwaters. If the Agency is granting the first variance, to create the breakwaters, then the removal of the all of trees on the peninsula would be necessary.
- d. Replacing a pre-existing stone/concrete retaining wall with a new 12,986± sq ft stone retaining wall - Raising the height of the existing shoreline interface by two feet (above the Mean High Water) represents the minimum relief necessary because it offers the minimum reasonable protection of the upland in normal storm events, taking into account the new breakwater and floating wave attenuator. With the two-foot increase, there will still be episodic storms that will overtop the breakwaters and shoreline interface. The height increase will not have any significant adverse visual

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impact but will have a major impact on the structural integrity of the wall.

- e. Installing a 16' X 200' "Wave Attenuator - The wave attenuator will also be functioning as a dock, and arguably would not require a variance if it were eight feet wide (or less). According to the applicant, a width of 16 feet is the minimum suggested width for an effective attenuator for this site. From a structural standpoint, two 8-foot wide floating docks adjacent to each other might not be strong enough to withstand and break the wave energies and with a smaller attenuator, waves could actually reform on the shore side of the attenuator and increase in intensity. Further, a smaller structure would not be effective as a multiple-use ADA accessible dock.
- f. Replacing a preexisting 1,278 square foot single-lane boat ramp with a 1,758 square foot two-lane boat ramp - The existing ramp is adequate for one boat to use the hauling/launching lane but not large enough for two lanes to be used at the same time. The proposed variance would be the minimum for a two-lane boat launch.
- g. Constructing an ADA compliant 80' by 4' (320 square foot) gangway and accompanying 14' by 12' (168 square foot) ADA compliant float "dock" - The size of the gangway, (80 feet x 4 feet), meets the minimum standards for gangways under the Department of Justice design standards. 2010 ADA Standards for Accessible Design, Department of Justice, September 15, 2010, Standards 405.2; 1003.2.1. The dimensions of the 14' by 12' landing float are the minimum size necessary because of ADA requirements, because the float is at the confluence of four paths of travel, and because this float provides structural support as a landing for the 80 foot-long gangway.
- h. Constructing a (4' by 24') gangway/ (6' by 6') deck structure approximately 132 square feet in total combined size, and accompanying 9' by 38±' long (342± square foot) float ("dock") - The proposed deck is the minimum size necessary to safely access the gangway because it will allow the gangway to be attached at grade level and parallel to the stone wall while still maintaining a safe distance from the edge of the landing float at the bottom. Also, the six foot deck

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would provide patrons with enough room to make a 90° turn while carrying supplies to their boats.

- i. Constructing two floats ("docks") wider than 8 feet and larger than 100 square in size - The gangway which leads to the 12-foot wide landing is not designed to ADA standards, but is intended to be as accessible as possible given the space limitations. There is also a dock connecting the proposed ADA-compliant gangway (Variance # 7) to this proposed landing float. In addition to the proposed four-foot wide gangway landing on this float, this proposal allows for an additional five feet of width on one side of the gangway, (which makes it an ADA-compliant path of travel) and three feet on the other side for employee access to the hauling and launching area. This is a reasonable minimum variance to allow safe and accessible access for multiple users of the marina.

The size of the northern 9-foot wide landing float allows an approximately one foot buffer from the side of the gangway to the edge of the float, the 4-foot width of the gangway, and 4 feet for a path of travel. The 9-foot width is a reasonable minimum variance to allow for safe passage of travel and hold the gangway in place.

3. Whether granting the variance will create a substantial detriment to adjoining or nearby landowners - The adjoining and nearby landowners include the State of New York, the D&H Railway, Essex County, Village of Port Henry, Griffith Energy, National Grid, Port Henry Oil Corp, and several private landowners. The variance site is already a hardened shoreline, developed with marina facilities. The proposed new breakwaters will be visually similar to the DEC breakwater immediately to the south, and the rehabilitated shoreline interface will be more aesthetically pleasing to nearby landowners. With adequate mitigation during construction as required by the conditions herein and restrictions on lighting fixtures, there will be no substantial detriment to adjoining or nearby landowners.
4. Whether the difficulty can be obviated by a feasible method other than a variance -
  - a. Filling and expanding 4 sunken barges to create new/expanded breakwaters - The applicant originally proposed filling the existing barges, without raising

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the elevation or footprint, an action which may not have required a variance. The sunken barges are composed of wood and have been in place for almost fifty years. The applicant's representative determined that some side slope filling outside the footprint of the existing barges is required to protect the breakwater from weather, ice and waves and counteract future failure of the barge walls. In addition, raising the height of the barges, particularly the northern barges which are often submerged, would increase the effectiveness of these structures as breakwaters, and be consistent with the NYSDEC breakwater to the south.

- b. Filling a 28' by 92' (2,576 sqft) area (know as the "marine railway") - Given the physical constraints of the site and the proximity of the railroad, there is no feasible alternative to allow for ground access to the northern end of the site, which provides for large hauling, launching equipment and boats.
- c. Removing more than 30% of the trees six inches or larger in diameter at breast height (dbh) within 35 feet of the mean high water mark - Section 806 of the APA Act would allow for removal of three of the ten trees within the shoreline setback without a variance. This variance will allow the applicant to remove six trees, which are in unsustainable locations. The alternative would be to leave the trees on the peninsula formed by the northern breakwater, leaving them surrounded by approximately ±5 feet of stone. This is not a feasible alternative.
- d. Replacing a preexisting stone/concrete retaining wall with a new 12,986± sqft stone retaining wall - The existing shoreline interface is at or below the mean high water level. In order to rehabilitate the shoreline interface and have it provide reasonable protection of the upland in normal storm events, a variance is required to raise the height approximately ±2 feet above the Mean High Water Mark.
- e. Installing a 16' X 200' "Wave Attenuator - An eight-foot wide attenuator could arguably be considered a dock not requiring a variance under APA Act §806. An 8 foot width would not be sufficient to effectively quell wave action in the northern basin of the marina. The only alternative offered by the applicant involves the extension of the northern breakwater towards the south, in an area where no barges exist. This alternative

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would require a more substantial variance from the APA, and disturb a greater area of lake bottom.

- f. Replacing a preexisting 1,278 square foot single-lane boat ramp with a 1,758 square foot two-lane boat ramp - Rehabilitating the existing launching ramp as a one lane ramp would not meet the applicant's goals of providing greater public access to Lake Champlain and a more functional marina.
- g. Constructing an ADA compliant 80' by 4' (320 square foot) gangway and accompanying 14' by 12' (168 square foot) ADA compliant float ("dock") - The applicant has established that a gangway 100 square feet or less would not meet the Department of Justice ADA Standards for Accessible Design. The only other alternative which would not require a variance would be to design a separate 6 foot wide float for the gangway and an 8 foot wide float for the mains to converge. In doing so, the cross slope of the 6 foot float could exceed 1:48, which would violate ADA accessibility standards.
- h. Constructing a (4' by 24') gangway/ (6' by 6') deck structure approximately 132 square feet in total combined size, and accompanying 9' by 38±' long (342± square foot) float ("dock") - An alternative would be to attach the gangway directly to the land and perpendicular to the wall, which would eliminate the deck. However, the gangway would need a landing float with access on either side to the hauling and launching area and the northern portion of the marina respectively, and would still require a variance. If the float itself was 8 feet wide, it would comply with the APA definition of a dock and would not require a variance. The extra foot is proposed for safety, to provide a foot of space beyond the edge of the gangway.
- i. Constructing two floats ("docks") wider than 8 feet and larger than 100 square in size - The proposed design has the 4-foot wide gangway landing in the middle of the 12-foot wide landing float, with a five foot wide path for patrons, including those in wheelchairs, on the lake side of the ramp and a 3-foot wide path for workers on the shore side. A single 8-foot wide dock, which would not require a variance, will not allow a separate access for persons with disabilities. As to the 9-foot wide landing float at the northern end of marina, an 8-foot wide float would comply with the APA definition of a

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dock, and thus not need a variance. This float also involves a 4-foot gangway landing on it to allow 4 feet for a path of travel on the lake side of the gangway and one foot beyond the gangway for safety and stability. No apparent alternative exists to provide this additional one foot without requiring a variance.

5. The manner in which the difficulty arose - The applicant purchased the site after the pre-existing marina structures had deteriorated from years of neglect and deferred maintenance and had reached the point of no longer being viable without substantial rehabilitation and replacement. The difficulty arose due to the applicant's need as a matter of function and safety to have commercial marina structures located at and within the mean high water mark, and to have structures of a size/width (larger than those exempt from the shoreline setback requirements) in order to function as a modern marine facility.
6. Whether granting the variance will adversely affect existing resources - These requested variances would not adversely affect the natural and scenic resources of the shoreline and the adjoining water body or otherwise result in undue adverse environmental impacts as long as conditions are included to provide for erosion control, vegetative planting, lighting restrictions, and use of clean, sediment-free fill for the breakwaters and shoreline interface.
7. Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above - Compliance with the conditions herein will avoid any potential adverse impacts resulting from construction and operation of the activities authorized herein.

**Shoreline Character**

8. Prior to 1973, the site had been developed and operating as a commercial use marina. The existing character of the shoreline at the project site is not a natural undisturbed shoreline. The shoreline is developed and hardened with asphalt and concrete retaining walls, boat launches, sunken barges, docks, and pre-existing structures at the mean high water mark. The proposed re-development of a new marina at the site is in character with the historic use of the property and adjacent land uses. Requiring that any new structures, other than those authorized herein, comply with the shoreline setback requirements and the Agency

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regulatory definitions of "dock" and "boathouse", will avoid adverse impacts. Further, limiting the removal of any trees other than the six being removed to undertake the project and requiring the proposed plantings to be maintained in a healthy growing condition will avoid adverse impacts and result in a more vegetated shoreline than currently exists on that site.

**Operational Issues Affecting Nearby Land Uses**

9. The project site is located in a Hamlet area, the land use area most compatible to commercial development pursuant to the Adirondack Park Land Use and Development Plan. Further, the marina operation has existed on the project site prior to May 22, 1973 enactment date of the Adirondack Park Land use and Development Plan. With regard to minimizing environmental impacts and impacts to adjacent land uses, redeveloping an existing disturbed site, is a more suitable than developing a natural undisturbed shoreline. Although the proposed marina will be a larger operation than that which formerly existed at the site, no concerns or objections about the project have been presented to the Agency, and only support of the project has been voiced to the Agency following public notices and a public hearing. The proposed commercial marina operation also is consistent with commercial and public uses adjacent to the project site. No on-site wastewater treatment system is proposed on the site as the marina will connect to the municipal Village sewer system, as confirmed by a letter from the Village of Port Henry Mayor dated September 27, 2010.

**Historic Sites or Structures**

10. The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) issued a letter dated September 16, 2010 which determined the proposed project would have "No Effect" upon cultural resources in or eligible for inclusion in the National Registers of Historic Places. Thus, 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.

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**CONCLUSIONS OF LAW**

1. There are practical difficulties carrying out the strict letter of the shoreline setback restriction set forth in '806 of the Adirondack Park Agency Act and 9 NYCRR Part 575, in that:
  - a. the application requests the minimum relief necessary;
  - b. there will be no substantial detriment to adjacent or nearby landowners;
  - c. the difficulty cannot be obviated by a feasible method other than the variance;
  - d. the difficulty arose due to the applicant's need as a matter of function and safety to have commercial marina structures located at and within the mean high water mark and to have structures of a larger size/width than those exempt from the shoreline setback requirements;
  - e. the granting of the variance will not adversely affect the natural and scenic resources of the shoreline and adjoining waterbody due to erosion, surface runoff, subsurface sewage effluent, detrimental change in aesthetic character, or other impacts which would not otherwise occur;
  - f. the imposition of appropriate conditions will ameliorate any adverse effects; and,
  - g. the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restrictions.
2. The variance, pursuant to '806 of the Adirondack Park Agency Act, 9 NYCRR Part 576 observes the spirit of the Act, secures public safety and welfare, and does substantial justice.

