

ATTACHMENT

**to the Agency staff November 2, 2016 Memorandum re
L.S. Marina, LLC's appeal of
The Agency's August 16, 2016
Third Notice of Incomplete Permit Application/
Variance Information Request**

This document was prepared using the "proposed, revised" information request included by L.S. Marina, LLC as Exhibit 1 to the appeal. Highlights reflect the portions of the information request that were appealed.

**Prepared by Agency staff
Agency applications 2014-53 and 2016-29**



Adirondack Park Agency

Via Certified Mail
Tracking No.: 70051160000478639639

THIRD NOTICE OF INCOMPLETE PERMIT APPLICATION AND THIRD VARIANCE INFORMATION REQUEST

APA Variance No.: 2014-53 and APA Project No.: 2016-29

Project Sponsor: L.S. Marina, LLC c/o Mike Damp 2210 Saranac Ave. Lake Placid, NY 12946	Authorized Representative: Thomas Ulasewicz, Esq. Fitzgerald, Morris, Baker, Firth. PC 16 Pearl St. Glens Falls, NY 12801
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Dates Permit Applications Received: February 4, 2016 and March 9, 2016

Date Variance Application Received: April 15, 2014

Type of Project: Rehabilitation and expansion involving wetlands of the former "Crescent Bay Marina"

Type of Variance: Covered shoreline structures requiring a variance to the structure setback requirements

Location of Project/Variance: Town of Harrietstown, Franklin County

Land Use Area: Hamlet, State Lands under the jurisdiction of the DEC, and other unspecified lands

Known Tax Map Nos.: 457-3-10 and 457-2-33.1

Dear Messrs. Damp and Ulasewicz:

Thank you for your submittal received on August 1, 2016 in response to the Agency's Second Notice of Incomplete Permit Application and Second Variance Information Request dated March 24, 2016.

As outlined below, initial evaluation by Agency staff indicates that additional information is necessary to review the permit application. Additional information also needs to be provided in order to support the variance application and allow the Agency to make the determinations required for issuance of a variance.


The time period established by law for Agency action on your proposal will not begin until the Agency has received all necessary information, at which point you will be mailed a Notice of Complete Permit Application. Please remember that review of the variance application will require a public hearing, to be scheduled at a future date. Under Part 572.10 of Agency Regulations, if a public hearing is also held on the permit application, the hearings may be consolidated.

The proposal may not be undertaken unless and until the Agency has issued a permit and approval order. "Undertake" means any commencement of a material disturbance of land preparatory or incidental to the proposed project.

Thomas Ulasewicz, Esq.
August 16, 2016
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Please note that staff review of the proposal indicates the potential for significant impacts to wetlands and other resources. Please contact EPS Suzanne McSherry if you would like to arrange a meeting to discuss staff concerns and/or the information requested in this Third Notice of Incomplete Application/Variance Information Request.

8/16/16
Date


Richard E. Weber III
Deputy Director, Regulatory Programs

Attachments: List of Requested Information

cc: Kevin Franke, The LA Group
Edwin Randig, CEO, Town of Harrietstown
John M. Sweeney, Manager, Village Saranac Lake
Erin Burns, NYS DEC
Kris Alberga, NYS DEC
John Connell, US ACOE

REQUESTED INFORMATION

APA Variance No.: 2014-53 and APA Project No.: 2016-29

Unless otherwise indicated, please provide three paper copies of requested materials as required by the original applications. Please also provide a digital copy (CD) of the materials.

1. Section 572.4(a)(1) of Agency regulations states that permit applications "shall contain the signatures of the owners of record of the land involved," and that "the agency will not commence review clocks or other processing without" these signatures. Similarly, Section 576.5(b) of Agency regulations states that variance applications "may be submitted only by a person having a legal interest in property and... shall contain the signature of the owner of record of the land involved." Given these requirements, it is necessary for the Agency to receive signatures from the owners of record of all lands on which structures are proposed for construction.

- **Annex Site**

In your response to Question 1 from the Agency's March 24, 2016 Request, you note that the Department of Environmental Conservation (DEC) has determined that a Temporary Revocable Permit will be issued for the proposal at the Annex site. Agency staff have contacted staff at the DEC to confirm that the Agency must receive a letter, permit, or other signed statement stating that the three docking structures shown on Sheet L-6.0, the "Annex Marina Overall Site Plan," can be constructed and maintained as depicted on the Forest Preserve lands. The Agency has not yet received this information.

- Main Marina site

In your response to Question 1 from the Agency's March 24, 2016 Request, you also note that DEC has determined that a Temporary Revocable Permit is not needed for the proposal at the Main Marina site, as the lands on which the structures are proposed for construction are not Forest Preserve. Agency staff contacted the New York State Office of General Services, and learned that the lands are also not considered Sovereign lands under OGS jurisdiction.

The "Map of Property Belonging to Lucille G. Bonar situated on lower Saranac Lake", filed October 8, 1936, and provided in your application materials on February 4, 2016, appears to indicate that the lands underwater east of your property boundary were owned at the time of the map (1936) by Lucille G. Bonar. Please confirm whether these lands remain privately owned. Note that the current deed and a signature of the landowner of record for all lands on which structures are proposed at the Main Marina site will be required before the Agency can deem the application complete.

2. Please continue to simultaneously provide application materials to DEC, United States Army Corps of Engineers (USACOE), the Agency, and all other involved agencies, to allow for a coordinated review. In addition, please provide any comments received to date from all involved agencies.
3. Thank you for the clarifications and/or revisions provided in your response to Question 4 from the Agency's March 24, 2016 Request. The clarifications and/or revisions eliminate the need for additional variances other than the covered shoreline structures described below.

Agency analysis of the information submitted on August 1, 2016, indicates that the variance proposal involves the following:

- A 50-foot variance from the shoreline setback requirements at the Main Marina to allow for the expansion of an existing structure through the addition of four attached covered shoreline structures with a total variance footprint of approximately 60,907 square feet and a total height of approximately 14.5 feet.
- A 50-foot variance from the shoreline setback requirements at the Annex site to allow for the construction of five covered shoreline structures. The total height for each covered shoreline structure is approximately 14.5 feet. The total variance footprint at the Annex site is approximately 31,551 square feet:
 - "Annex Dock #1" - approximately 8,295 square feet
 - "Annex Dock #2" - approximately 9,191 square feet
 - "Annex Dock #3" - approximately 8,675 square feet
 - "Annex Dock #4" - approximately 1,551 square feet
 - "Annex Dock #5" - approximately 3,839 square feet

Given these numbers, the variance proposal involves a total of approximately 92,458 square feet in footprint of covered shoreline structures, with a height of approximately 14.5 feet.

It should be noted that, when measuring a structure footprint for variance purposes, only areas outside of a lawfully existing covered footprint are included in the calculation. In some instances, the "variance length" depicted on Drawing Nos. L-1.A and L-5A, submitted on August 1, 2016, differs from length of structure outside of an existing covered footprint. Please modify the variance statistics and "variance lengths" on these sheets to reflect the calculations noted above.

Please also note the following in relation to the variance footprint calculations: the response to Question 5 from the Agency's March 24, 2016 Request states that the only proposed uncovered slips are located at the ends of the Main Marina and Annex structures. For purposes of calculating the variance request, the Agency assumed the portion of Marina Dock #2 adjacent to the "Ex. Fuel Dock" on Drawing No. L-1.A that measures approximately 98'L x 28' W in size is covered. Is this assumption correct? If not, please depict the covered and uncovered portions. In addition, please include a legend label on Drawing Nos. L-1.A and L-5A that clearly depicts the proposed footprint of covered structures, including any overhang.

4. Agency analysis of the information submitted on August 1, 2016, indicates that the wetland permit proposal involves the following:

- The construction of covered structures at the Main Marina site resulting in the shading of approximately 2,415 square feet of wetland area.
- The construction of covered structures at the Annex site resulting in the shading of approximately 34,056 square feet. As the pre-existing structures covered approximately 14,932 square feet of wetland area, this proposal would result in the shading of approximately 19,124 square feet more wetland area than was previously shaded.
- The placement of approximately five square feet of fill in wetlands to allow for the construction of the covered structures at the Annex and Main Marina sites.
- The dredging of approximately 4,750 square feet of wetland area within the lagoon at the Annex site.
- Additional impacts from the expansion of navigation routes through wetlands at the Annex site.

Taking into account the pre-existing structures within and impacting wetlands, as well as mitigation that will occur through the expansion of wetlands into areas that were previously impacted, the proposal involves a total of 19,124 square feet of new wetland impacts through shading of wetlands at the Annex site and 2,415 square feet of new wetland impacts through shading of wetlands at the Main Marina site, as well as additional impacts from dredging and the expansion of navigation routes.

Please note that the hatched areas depicting areas where submerged aquatic vegetation (SAV) was absent (2014), shown on Drawing No. L-5A, do not correspond with Agency staff observations or the information provided in the report titled "Aquatic Plant Communities at Two Locations on Lower Saranac Lake Town of Harrietstown, Franklin County, New York, dated August 2014 (Revised September 2014)". According to the report, within the area depicted as unvegetated on Drawing No. L-5A, sampling points AI12, AI11, AI3, and AI8 were found to have medium density aquatic vegetation, and sampling point AI2 was shown to have sparse density vegetation. Please revise the plans to show the unvegetated areas as only the areas within the footprints of the pre-existing boathouses and the area in the immediate vicinity of the boat ramp. The unvegetated area shown on the drawing from proposed Annex Dock #3 to the west does not need revision. Please add a note to Sheet L-5A to indicate that the remainder of the area within the 7 foot contour line of Lower Saranac Lake is wetland. Note that these areas were considered as wetland for purposes of the calculations described above.

Please also revise the plans for the Main Marina site to include wetland areas labeled #1, #2, #4, and #5 as shown on the LA Group's figure 1, entitled "Crescent Bay Submerged Aquatic Vegetation Coverage Diagram" and dated March 1, 2016. It is noted that wetland area #3 does not contain the density of hydrophytic vegetation required for consideration by the Agency as a functional wetland within a water body, and is therefore not subject to Agency wetlands jurisdiction.

5. As noted in the variance application, the Requests for Additional Information, and in meetings with Agency staff, the Agency's variance review criteria requires an analysis of alternatives that obviate the need for the variance as well as an evaluation of alternatives that seek the minimum relief necessary. The Agency's requirements for issuing a permit for activities involving wetlands also require consideration of alternatives that avoid and minimize impacts to wetlands. Finally, please note that the Agency's Compensatory Wetland Mitigation Guidelines require review of efforts to avoid and minimize impacts to wetlands before considering the details and extent of wetland compensation.

In your response to Question 19 from the Agency's March 24, 2016 Request, you state that certain alternative proposals to avoid or minimize the variance requests and area of wetland impacts are not viable for a number of reasons. Specifically, you refer to your Business Plan as demonstrating the need for the number of slips proposed, including the 28 slips in the lagoon area, and for covering the majority of the slips. You also cite the Business Plan, as well as environmental factors, as justification for not offering a quick-launch facility to reduce the number of slips in the water. Finally, you state that an alternative of moving the Annex slips to the west is "not worth considering" because it would result in slips being located closer to an adjoining residential lot with limited wetland benefit.

Please describe any additional efforts made to avoid or minimize the need for variances and for a wetlands permit, and any justification for why these alternatives are not proposed.

o Variance Avoidance and Minimization

In relation to the variance request, is there any additional reason other than the economic justification explained in the Business Plan for needing a roof over the majority of the proposed slips? Covered boat slips could be made available within the footprint of the pre-existing covered slips at both the Main Marina and Annex sites. Please remember that removing the roofs from all areas that were not previously covered would obviate the need for a variance.

Given the range of prices and level of demand outlined in the Business Plan, please explain why a plan for fewer slips, charging more per slip, would not be feasible.

In 2013, the Agency received a jurisdictional request from Crescent Bay Holdings, LLC for a smaller proposal, which would have reduced the square footage of the variance request by more than 70,000 square feet. Please provide any additional justification for why this or a similar alternative is no longer proposed.

o Wetlands Avoidance and Minimization

Is there any reason the slips in the lagoon at the Annex site could not be replaced to the same size as the pre-existing structures? This would allow for smaller boats to use the lagoon facilities without increasing footprint or shading impacts to wetlands, and without increasing impacts from boat navigation. Similarly, the 28 slips proposed for Dock 3 as labeled on Sheet L-6.0, the Annex Marina Overall Site Plan, could be instead added to the ends of Dock 1 and Dock 2. As also referenced in the Notice of Incomplete Application issued by the DEC on June 3, 2016, this alternative has potential navigation and visual impacts within Ampersand Bay. However, if the slips in the lagoon were replaced to the same size as the pre-existing structures and the 28 slips from Dock 3 were added instead to the ends of Dock 1 and Dock 2, the impacts caused by the shading of wetlands would be reduced from 19,124± to 4,580± square feet, and six more boat slips would be available than currently proposed. Note that the square footage of impacts to wetlands caused by shading at the Annex would be further reduced to 2,276± square feet if Dock 5 were eliminated within the lagoon.

The removal of all or a majority of the proposed boat slip coverings, a decrease in the number of proposed slips, and minimization of wetland impacts as described above would significantly reduce both the variance request and the wetland impacts.

Please comment on these and any other alternatives for avoidance or minimization of the need for shoreline variances or a wetlands permit. Please also provide a visual assessment, including a simulation as seen from Viewpoints 1 and 5, for removal of the roofs from the proposed structures and for any other reconfiguration proposed. Finally, please explore alternative configurations for the proposal at the Main Marina site to avoid and minimize the 2,415 square feet of new wetland impacts.

6. Please explain your assertion that uncovered slips 1) would "potentially require the installation of bubbler system" when covered slips will not, and 2) would result in "higher long term repair and maintenance costs" than covered slips.
7. Please provide expected costs and per boat income projections associated with a quick launch system, using existing facilities and/or for expanded facilities.
8. As referenced above, the Agency's Compensatory Wetland Mitigation Guidelines state that "compensatory mitigation is only used when it can offset project impacts that cannot be avoided entirely or reduced any further." In addition, "caution should be used when permitting wetland alteration on the expectation that losses can be fully compensated. Priority must be placed on avoiding impacts given the uncertainties associated with compensation." Given these requirements, it is critical that alternative configurations to avoid and minimize the amount of structure in the wetlands be evaluated. Until these alternatives have been considered, it is premature for the Agency to consider the details and extent of wetland mitigation. However, preliminary comments on the mitigation proposal are provided as follows.

The current mitigation proposal is not large enough to compensate for the impacts proposed. The lowest possible wetland mitigation ratio allowed by the guidelines is 1.5 to 1. The proposed mitigation area does not compensate for the 19,124 square feet of new wetland impacts through shading of wetlands at the Annex, nor does the proposal address the impacts to wetlands at the Main Marina.

The assertion that there are no uncertainties associated with this particular mitigation proposal is unfounded. The mitigation area proposed is separated from the lake by a proposed dredge area and proposed structures, making the full replacement of functions and values provided by the impacted wetland difficult. Establishment of a new wetland in an area that was upland always comes with unknowns, including plant predation and the effects of weather on wetland establishment.

The current mitigation proposal also lacks sufficient detail to be fully reviewed. After all alternatives have been considered and wetland impacts are avoided and minimized to the maximum extent practicable, further details regarding the wetland mitigation proposal will need to be supplied, including but not limited to soil amendments, specific performance standards (in percent coverage and shoot density relative to the established wetland), construction and monitoring schedules, additional details regarding erosion and sedimentation controls,

analysis of wetland persistence (including hydrologic connectivity in extreme low water events), dewatering details and maintenance required, all in accordance with the Agency's Compensatory Wetland Mitigation Guidelines. The Agency may also require test holes to assure that the area proposed for wetland mitigation is suitable for excavation (for example, to ensure that spoils piles are not underlain by bedrock). Please also note that excavation of the mitigation area as proposed will result in alteration of the mean high water mark.

9. Sheet L-6.1 lists three plants which are not found in the New York Flora Atlas database nor the USDA NRCS Plants database: *Anemone sylvestris*, *Chelone obliqua* and *Chasmanthium latifolium*. Sheet L-2.0 lists *Prunus subhirtella*, which is non-native according to the New York Flora Atlas; *Prunus sargentii*, *Forthergilla gardenia*, *Rhododendron catawbiense*, *Anemone sylvestris*, *Chasmanthium latifolium*, *Chelone obliqua*, and *Eragostis spectabilis*, which are not found in the New York Flora Atlas database nor the USDA NRCS Plants database; and *Hemerocallis* 'Happy Returns' which is listed in the NRCS database as an introduced species. Please replace these with species that are native to the region.

10. The response states a final on-site wastewater treatment system Engineering Report and plans stamped by a licensed professional engineer were included with the submission received by the Agency on August 1, 2016. However, no sealed report or plans were included with the paper submission. It appears a sealed Engineering Report was included with the CD but no sealed plan sheets were provided on the CD.

Please provide a final Engineering Report and appropriate plan sheets for the on-site wastewater treatment system which are sealed by a New York State licensed professional engineer. Please note in order to accurately review the project, all paper submissions must match the electronic versions.

11. Thank you for clarifying the dredging volumes required for dewatering. The response states that an alternative to the use of the identified dewatering area is to remove the dredge material concurrent with the earthwork activities performed to create the wetland mitigation area. Please note that additional dewatering details may be required pending final review of any wetland mitigation plan.
12. Thank you for providing a copy of the Draft SWPPP dated July 24, 2014, submitted previously to the Town of Harriestown Planning Board. Please address the following:

- a. The SWPPP only addresses the Main Marina. A stormwater management plan has been previously approved for the Existing Storage Building to remain at the Annex site. Please provide an update as to the status of implementing the approved plan. Given the potential for upland runoff to impact wetlands, including the proposed mitigation area, please provide a stormwater management plan for the Annex site. At a minimum, the plan must include treatment of the water quality volume associated with new

- parking areas prior to discharge into wetlands. For purposes of design assume gravel areas are impervious.
- b. Given the proposed site disturbance associated with the shoreline mitigation area, please confirm with DEC whether or not a Stormwater SPDES permit is required at the Annex site. If so, please provide a full SWPPP prepared in accordance with the 2015 stormwater standards and the 2016 erosion and sediment control standards for Agency review.
 - c. The PREFACE in the SWPPP included the following statements: "This is a draft Stormwater Pollution Prevention Plan (SWPPP) prepared for site plan review by the local planning board. A completed Notice of Intent (NOI) and other technical components listed in the table of contents may not be included in this draft. A final SWPPP that incorporates potential adjustments resulting from the review process will be prepared prior to construction in accordance with DEC requirements for coverage under the General Permit. A complete NOI and all technical components will be included in the final SWPPP." Please provide a final SWPPP not marked Draft for Agency review. Include a summary of any changes that have resulted since the July 24, 2014 preparation date.
 - d. Page 1 of the SWPPP references 2005 Erosion and Sediment Control standards and the 2010 Stormwater Management Design Manual. The *New York State Standards and Specifications for Erosion and Sediment Control* were updated in July 2016. The *New York State Stormwater Management Design Manual* was updated in January 2015. Please confirm with DEC whether or not the updated erosion control and stormwater management standards must be used in the SWPPP. If so, include any revisions in the final SWPPP provided to the Agency.
 - e. The grading and drainage plan included on Drawing Number L-3.0 includes disturbance to a wetland that may be jurisdictional to USACOE. Please provide an update as to the status of USACOE review. If any changes are required to the plans resulting from their review, please provide updated plan sheets and, if necessary, a revised SWPPP.

REW:SBM:lb

