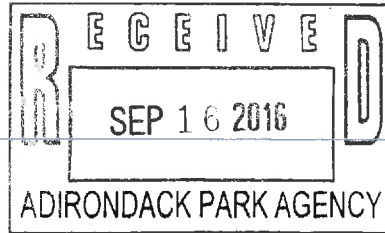




FitzGerald Morris
Baker Firth



Thomas A. Ulasewicz
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September 15, 2016

Via Hand Delivery

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Re: LS Marina, LLC
APA Variance No. 2014-53
APA Project 2016-29

Dear Gentle People:

Please find enclosed an Appeal of the “Third Variance Information Request” and “Third Notice of Incomplete Permit Application” concerning the above referenced project.

Sincerely,

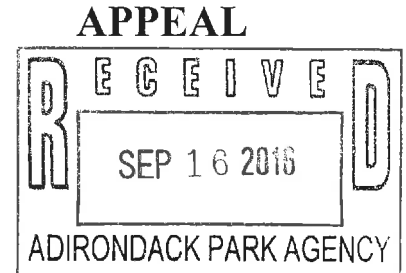
Thomas A. Ulasewicz
TAU/v
enc.

cc: Erin Burns, Deputy Regional Permit Administrator NYSDEC (reg. mail)

STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter of
LS MARINA, LLC (“Appellant”)
Town of Harrietstown, Franklin County
APA Variance No. 2014-53
APA Project 2016-29

**THIRD VARIANCE INFORMATION REQUEST
THIRD NOTICE OF INCOMPLETE PERMIT APPLICATION**



PLEASE TAKE NOTICE that this appeal of the above captioned actions taken by the Deputy Director - Regulatory Programs is brought pursuant to Adirondack Park Agency (“APA” or “Agency”) rules and regulations at 9NYCRR §572.22; and

PLEASE TAKE FURTHER NOTICE that this appeal is being filed by the Law Firm of FitzGerald Morris Baker Firth P.C. (Thomas A. Ulasewicz, Esq., Of Counsel) with offices at 16 Pearl Street (P.O. Box 2017), Glens Falls, New York 12801 on behalf of LS Marina, LLC (“Appellant”); and

PLEASE TAKE FURTHER NOTICE that this appeal seeks:

1. That certain staff information “comments” be withdrawn as already answered in earlier submissions (including the record compiled over 14+ months before the Town of Harrietstown Planning Board), lacking relevancy to attaining a determination of application completion, quantitatively in error, and/or staff are illegally exceeding its powers in violation of rules, policies and/or guidelines, and
2. That certain information “comments” be withdrawn because staff are illegally designing the project, a design in which the project sponsor/landowner has no intention of undertaking, and
3. Instructing staff that it is an abuse of process and applicant’s rights in not clearly assisting an applicant in understanding staff’s information requests in furtherance of application completion AND seeking additional information that could have, and should have been, requested in earlier Notices.

I. FACTS

1. Crescent Bay marina was constructed on Lower Saranac Lake by the Duso family in the mid-1920's and is currently still in operation as a commercial marina.
2. In 2013, the corporate entity holding title to Crescent Bay marina was Crescent Bay Holdings LLC who acquired the property as a result of a deed in lieu of foreclosure.
3. At that time (2013), CB Marina LLC was the holder of a purchase agreement for the marina property and was committed to expanding commercial marina operations in order to make this historic commercial facility once more economically viable for local residents and visitors to the area.

Variance Jurisdiction Inquiry

4. On August 28, 2013, CB marina LLC filed a conceptual Jurisdictional Inquiry Form with staff for this commercial marina expansion.
5. The "Project Description" section of this August 28, 2013 jurisdictional inquiry also provided the following information:
 - a. For the purpose of this jurisdictional inquiry, no changes are proposed to any of the existing marina structures and no new structures are proposed on the existing commercial marina property.
 - b. For the purpose of this jurisdictional inquiry, no subdivision of land is proposed.
 - c. For the purpose of this jurisdictional inquiry, no shoreline vegetation at the existing commercial marina would be affected.
 - d. For the purpose of this jurisdictional inquiry, it is assumed that no jurisdictional wetlands would be impacted by the new docking facility."
6. By letter dated September 10, 2013 and signed by APA staff Project Administrator Douglas W. Miller, staff determined that: "A variance is required from the Agency for the project as proposed" and then simply quoted the definition of the term "boathouse".

This September 10, 2013 jurisdictional determination by staff:

- a. provided no comprehensive analysis - in fact, no analysis at all - as to why this project proposal was deemed a boathouse; and
- b. provided no analysis at all as to why the proposed project did not constitute a commercial marina - which is how it was identified in the Jurisdictional Inquiry Form.

7. On September 19, 2013, CB Marina LLC filed a Petition for Declaratory Ruling seeking “a distinction between the terms ‘boathouse’ as defined at 9NYCRR §570.3(c) and a ‘commercial marina’ [‘commercial use’ being defined in the APA Act at §802.17 and ‘marina’ being defined at 9NYCRR§570.3(u)] and the applicability of one of those terms to what is being proposed by Petitioner in its jurisdictional inquiry.”
8. The “Conclusion” to that September 19, 2013 Petition for Declaratory Ruling reads as follows:

“By definition and usage, the project proposed by CB Marina in its August 28, 2013 jurisdictional inquiry is a commercial marina expansion of an on-going, pre-existing commercial marina use. This proposal is consistent with the definition of ‘commercial use’ in the APA Act and the definition of ‘marina’ in the APA regulations. This proposal is not the least bit consistent with the definition of ‘boathouse’ in the APA regulations. The determination by staff that this proposal is a boathouse undermines the Legislative intent for commercial marina usage in the Park. The determination by staff that this proposal is a boathouse rather than a commercial marina defies logic and the most basic tenets of statutory construction. The determination by staff that this proposal is a boathouse rather than a commercial marina illegally goes well beyond the intentions and purposes shared with the general public by the Agency in its 2009 rulemaking effort that eventually changed the definition of a "boathouse". Staffs determination that this proposal is a boathouse requiring a variance from the 1200 square foot or less footprint must be reversed.” (A copy of this Petition is attached hereto as **ATTACHMENT A.**)
9. By letter dated October 4, 2014, Executive Director Martino rejected all of Petitioner’s arguments and reaffirmed that a variance would be required for the proposal. Agency staff have since referred to this variance type as: “Covered shoreline structures requiring a variance to the structure setback requirements” with no further mention of the term “boathouse”.
10. It has been, and continues to be, the position of the Applicant that its proposal to cover slips in its marina expansion involves a pre-existing commercial marina (circa. 1924) in a Hamlet area under the Adirondack Park Land Use and Development Plan Map, therefore obviating the need for a variance. The Applicant's position has been rejected by staff who now have determined that the covered docks constitute a "structure" (seemingly dropping the use of the term “boathouse”) which triggers shoreline setback provisions even though these docks are all lakeward from the mean high water mark. It is also staff’s position that uncovered docks would not require a variance.
11. CB Marina LLC closed on Crescent Bay marina properties on March 13, 2014, and shortly thereafter transferred the properties to LS Marina, LLC.

The Variance application

12. LS Marina, LLC. prepared plans for a marina expansion with covered slips and submitted a variance application to the Agency on April 15, 2014 (2 years and 5 months ago) - - APA Project No. 2014-53.
13. The marina proposal being proposed by LS Marina, LLC. would replace a pre-existing marina facility (locally known as Duso's Marina or Crescent Bay Marina) which has two locations on Lower Saranac Lake: the Annex at Ampersand Bay and the Main Marina at Crescent Bay.
14. The Main Marina at Crescent Bay ("Main Marina") is accessed from NYS Route 3. Its street address is 4901 State Route 3, Harrietstown, N.Y. This site consists of 14.31 acres North of NYS Route 3 including 2.98 acres under water and 3.020 acres South of NYS Route 3.
15. The existing Main Marina facility includes 82 boats (70 slips and 12 moorings), and the proposed facility includes 178 boats (170 covered dock slips with roofs only, no walls, and 8 uncovered dock slips).
16. The existing Annex parcel is approximately 5.95 acres in size, located off of Lake Street on Ampersand Bay.
17. The existing Annex facility includes 80 boats (75 covered dock slips in boathouses, and 5 uncovered), and the proposed facility includes 114 boats (108 covered dock slips with roofs only, no walls, and 6 uncovered).
18. The project proposes to maintain the current Marina use with covered slips for seasonal rental and off season boat storage in an existing building at the Annex and the Main Marina. There is an existing boat launch at the Annex that will be maintained and strictly controlled for private use only. The existing launch at the Main Marina will be relocated and remain in private use. A boatwashing area is proposed at the Main Marina. The project sponsor has contracted with Aquatic Invasive Management (AIM) to develop a formal Plan to remove invasive submerged plants in its marina areas which are largely eurasion milfoil beds.
19. This marina facility (Main marina and Annex) is located in a Hamlet land use area under the Adirondack Park Land Use and Development Plan map and within the B-3 zoning district under the Town's zoning ordinance, in which commercial marinas are a permitted use.
20. On May 2, 2014 (over 2 years and 4 months from the date of this Appeal), Staff issued its initial "Request For Additional Information". A copy of this document with transmittal letter is attached hereto as **ATTACHMENT B**.

21. On July 30, 2014, before applicant had responded to the May 2, 2014 request, staff issued a “Supplemental Request For Additional Information”. This “Supplemental Request For Additional Information” is attached hereto as **ATTACHMENT C**. This document states at page two in relevant part: “Once we have received all of the information requested herein and in the May 2, 2014 request, a public hearing on your variance application will be scheduled pursuant to 9NYCRR§576.5 ... The Agency’s decision will be based on the record of the hearing, including the information submitted in response to this request.” (This was 2 years, 1 ½ months ago from the date of this Appeal).
22. Applicant’s responses to both of these information requests were submitted on February 3, 2016. A copy of the transmittal letter is attached hereto as **ATTACHMENT D**. The wetlands application for the Annex was part of this February 3, 2016 submission. The wetlands application for the Main Marina was filed on March 9, 2016 under protest (see ¶39, infra.). The 1 ½ years that lapsed between these two information requests and applicant’s responses are set forth in the subsequent paragraphs 23 through 37, herein.

Planning Board Review

23. On April 17, 2013, the project site owner’s consultant, The LA Group, first met with staff in a preliminary pre-application meeting. (3 years and 5 months ago from the date of this Appeal).
24. On October 4, 2013 the project site owner and its consultants met with the Agency’s General Counsel and Deputy Director of Regulatory Programs to largely discuss why a variance was needed for a pre-existing, commercial marina and how does one go about calculating a measurement to determine the amount of variance needed. [There is still confusion as to how one calculates this measurement as evidenced by the latest Notice of Incomplete Permit Application (NIPA)] However, there was also discussion about local government approvals and fairly strong urging that the site owner go through that process first in order to gauge what local officials and local residents favored for this historic recreational facility.
25. As a result of this advice, in January, 2014, LS Marina, LLC applied to the Town of Harrietstown Planning Board for site plan review which included the full gambit of procedures, findings of fact, and impact analysis and assessment mandated by New York State’s Environmental Quality Review Act (“SEQRA”; ECL Article 8). The Planning Board assumed lead agency responsibilities with the consent of all other permitting agencies.
26. This local review process took nearly 15 months to complete. Ten (10) monthly meetings were held between June, 2014 and April, 2015 to discuss the project resulting in changes and modifications to the proposal. A public hearing was held over two consecutive monthly meetings only to be reopened at the behest of a handful of project opponents. The Planning Board at the very outset hired outside special legal counsel and an engineering firm to assist it in its review and to be paid by LS Marina, LLC.

Scuttlebutt among local officials and residents, as well, is that this was likely one of the most, if not the most, rigorous reviews by the Planning Board of a project proposal. Ultimately, the project as amended was approved supported by a comprehensive, 8 page Negative Declaration pursuant to “SEQRA.” (Attached hereto as **ATTACHMENT E** is the Planning Board’s “Notice of Decision” letter dated April 3, 2015, Negative Declaration and “Resolution Granting Site Plan Approval”) Upon information and belief, this entire record has been filed with APA staff and forms part of the application materials currently comprising APA Variance No. 2014-53 and APA Project No. 2016-29.

27. LS Marina, LLC was also required to appear before the Town of Harriestown Zoning Board of Appeals (“ZBA”) for a Special Use permit. This application was filed on July 24, 2014. LS Marina, LLC first met with the ZBA in May of 2015 (after the Planning Board had completed the SEQRA process) when the public hearing was opened. Written comments as part of the public hearing remained opened until June 16, 2015. The ZBA approved the Special Use Permit on June 23, 2015. The same handful of opponents raised the same objections that they had identified before the Planning Board. The Negative Declaration adopted by the Planning Board pursuant to SEQRA was endorsed by the ZBA.

Wetlands Value Rating

28. In a “Supplemental Request For Additional Information” concerning the Variance application dated July 30, 2014 (see ¶ 21, supra.), staff first advised the Applicant that:

“On July 10, 2014 Agency staff visited the Crescent Bay Main Marina and the Annex with the applicant and the applicant's consultant for the purposes of determining the character and extent of the wetlands on the project sites. Agency staff confirmed that the proposal does involve wetlands and an Agency permit is required, in addition to the shoreline setback variance.

*Based upon the July 10th field visit, and a prior field visit by the Agency and NYSDEC staff on July 8, 2014, it has been determined that the project at Crescent Bay will involve a deep water marsh which has a preliminary value rating of `3`, **while the project at the Annex will involve an emergent and deep water marsh which has a preliminary value rating of `2`.**” (emphasis added)*

29. By letter dated December 22, 2014 signed by Richard E. Weber as “Deputy Director, Regulatory Programs – Project Administrator”, he states among other things:

“Agency staff have determined the wetlands in the vicinity of the Annex proposal have an overall value rating of “1” pursuant to 9NYCRR §§578.5 and 578.6 of Agency regulations. This determination updates the preliminary

value rating in the Agency's July 30, 2014 Supplemental Request for Additional Information. This determination is based on an analysis of information obtained from our office review including relevant maps and aerial photography and a series of field visits on July 8, 2014, July 10, 2014 and September 8, 2014. The public record for the Town of Harrietstown Planning Board review also contained materials from your consultants and the public that have contributed to this determination. Specifically, these documents included surveys performed by NYSDEC Fisheries staff and the aquatic plant survey, bathymetry and mapping of wetlands prepared by the LA Group, PC and submitted to the Town for their review."

Mr. Weber goes on to say:

"According to 9 NYCRR §578.6, if a condition exists where three or more value "2" characteristics are determined to exist in a wetland complex, the value rating of the wetland will become value "1". In this case the three characteristics that contribute to our value "1" rating of the wetland complex are:

a) Emergent marsh covertype (§578.5(c)) of between 0.4 and 1.4 acres. Agency staff did not distinguish between floating leaved and emergent vegetation in all cases. 0.4 acres of emergent vegetation was observed in the field. Additional emergent vegetation is located within the 1 acre area identified on the map as Floating/Emergent;

b) Wetlands composed of two or more structural groups (§578.5(g)). This wetland complex has two of the structural groups mentioned in this section: shrubs and trees (10.7 acres) and flat or water (at least 4.4 acres); and

c) Wetlands with unusual species abundance or diversity (§578.5(m)). Staff have determined the Annex wetland complex is used by a large number of fish based on the assessment of the fish survey conducted by the New York State Department of Environmental Conservation in 2005. In addition, the data indicates that a large number and wide range of fish species are found to be present at the Annex."(emphasis added; this December 22, 2014 letter is attached hereto as ATTACHMENT F)

30. In striking contrast, however, according to NYSDEC's records, the stated purpose of the 2005 electrofishing sampling of Lower Saranac was "sampling for walleye stocked from 1998-2001." (See NYSDEC's Statewide Fisheries Database Version 50) The purpose of this study was not to evaluate the "unusual" nature of the species abundance or diversity of the fisheries resources that occur in the wetlands in and around the Annex. Furthermore, the 2005 NYSDEC electrofishing sampling was not designed to assess the characteristics of the fisheries resource at the Annex in comparison to the fisheries resources in other deepwater marsh wetlands on Lower Saranac Lake.

Finally, in reviewing DEC's Lower Saranac Lake Electrofishing June, 2005 Field Notes (NYSDEC Survey #505005) as found in the Department's Statewide Fisheries Database Version 50, this walleye sampling survey documents the absence of deep water marsh wetlands at the majority of sites sampled in 2005.

All of this was brought to Staff's attention and never refuted.

31. LS Marina LLC, filed a Petition for Declaratory Ruling challenging this Value 1 rating of deep water marsh wetlands at the Annex dated April 2, 2015. A Ruling on that original Petition was issued on May 8, 2015 by Executive Director Martino which concluded:

"I decline to reverse the determination by Agency staff that the wetland complex in the vicinity of the Annex proposal contains unusual species abundance or diversity as that term is referred to in §578.3(u) of Agency regulations. 9NYCRR §578.5(m) states that a wetland with this characteristic received a value "2" wetland rating. Therefore, this wetland contains at least three value "2" characteristics: emergent marsh coverytype, a wetland composed of two or more structural groups, and a wetland that contains unusual species abundance or diversity. Accordingly, the wetland in the vicinity of the Annex is raised to a value "1" wetland pursuant to 9NYCRR §578.6."

32. As a result of this Ruling and strong disagreement with its conclusion supported by professionals in this field of work, LS Marina, LLC contracted with Stantec Consulting Services Inc. (hereinafter "Stantec") to conduct an independent electrofishing survey of deep water marsh wetlands in Lower Saranac Lake. This survey was conducted on August 26, 2015. A survey Report (hereinafter "Report") was completed on October 15, 2015. At or about the same time this Report was issued, the LA Group, consultant for LS Marina, LLC., authored a "white paper" as to why the survey by Stantec was undertaken and an overall summary of the findings of the Stantec Report, in order to give the Stantec Report complete objectivity.
33. This Stantec Report and LA Group "white paper" offered entirely new, site specific information and evidence on fish species abundance and diversity for Lower Saranac Lake. The sampling design employed for this 2015 survey was, and still is, the first to target deep water marsh wetlands on Lower Saranac Lake. Therefore, to the best of LS Marina, LLC's and its consultants' knowledge, this 2015 study with its collective results is the only conclusive study to assess whether or not the deep water marsh wetlands at the Annex are wetlands that support, or do not support, an unusual abundance or diversity of fish.
34. With regard to Stantec's independent electrofishing survey of deep water marsh wetlands on Lower Saranac Lake:
 - a. All survey methods were based on NSYDEC protocols, American Fisheries Society's Standard Methods for Sampling North American Freshwater Fishes and available literature.
 - b. The 2015 sampling plan was presented to NYSDEC fisheries personnel in a conference call on Monday, August 17th, 2015. This involvement in the Plan was

voluntary on the part of DEC staff and independent of its review of Stantec's application for a scientific collection permit. The three NYSDEC personnel participating in that conference call were Region 5 senior fisheries personnel (2) and permitting personnel (1). This discussion centered around (i) the acceptability of the methodologies being proposed to implement the Plan (daytime sampling, using same sampling methods at all sites, boat maneuvering, water temperatures/time of year, different locations being sampled at different times during the day, etc.), and (ii) whether the Study Plan conformed, as much as practicable, with the NYSDEC's standard operating procedures for electrofishing surveying. This conference call did not result in NYSDEC suggesting any improvements to the Study Plan and all participants in that call agreed that the sampling plan and proposed methods were appropriate for the study objectives. NYSDEC issued a License to Scientifically Collect Fish to Stantec effective August 23, 2015.

- c. On the other hand, however, consultants for LS Marina, LLC requested a meeting with APA staff to review the draft plan for this fish survey on two separate occasions. **APA staff declined to have such a meeting on both requests.** In its last correspondence dated June 26, 2015, APA staff stated for a second time: **“the Agency has no advice regarding whether your client should pursue a new fish survey and a meeting therefore to discuss such a plan would not be appropriate.”**
35. As a result of this Stantec Report and LA Group white paper, LS Marina, LLC filed a “Supplemental Petition For Declaratory Ruling with Agency staff on October 26, 2015. The “Conclusion” to this Supplemental Petition reads:

“Fishery survey data was independently collected in Lower Saranac Lake in 2015 to specifically examine if the Annex supports unusual fish species abundance or diversity. The collection of this data was necessitated by the APA utilizing a 2005 NYSDEC survey, whose sole purpose was sampling for walleye stocked from 1998 – 2001, to determine that the deep water marsh wetlands at the Annex supports unusual fish species abundance and diversity thereby deducing a wetland value rating of “1” in that location. This determination by the APA was further exacerbated by its failure to recognize that 5 and likely 6 sites surveyed by NYSDEC in 2005 were not deep water marsh wetland. This 2015 survey, upon information and belief, the first of its kind for Lower Saranac Lake, produced data from 10 deep water marsh wetlands (including the Annex) on Lower Saranac Lake which clearly demonstrate that there is nothing “unusual” about the fish community at the Annex when compared to fish communities at other deep water marsh wetlands. This scientific reality can only lead to one conclusion: wetlands at the Annex must revert back to a Value Rating of “2”.

36. An “Afterward” titled “Invasive Plant Species” to this Supplemental Petition reads:

“Although the following subject matter is somewhat removed from the overall objective of this Petition, namely, establishing whether the Annex area of Lower Saranac Lake has an ‘unusual’ abundance or diversity of fish species, Petitioner offers it as likely helpful in executive staff’s thought processes in reaching its Ruling.

The Annex site is **dominated** by Eurasian watermilfoil and variable -leaf watermilfoil, both of which are non-native aquatic plant species and considered aquatic nuisance species in the State of New York. (see Attachment C, Stantec Report at ‘4.0 Discussion,’ page 11) The APA recently approved general permits 2015G-1 and 2015G-1A that authorize qualified invasive species management organizations to remove these species from the water without seeking a permit from the APA. This recent APA authorization is consistent with the recent escalation of efforts to control aquatic invasive species throughout New York State, and in the Adirondack region in particular. [see Attachment D, LA Group White Paper at “Basis for APA wetland Value Rating ‘1’ for the Annex,” pg. 1 AND NYS DEC publication entitled ‘Common Aquatic Invasive Species of NY’ attached hereto as ATTACHMENT E].”

“However, it appears obvious that the APA is taking inconsistent, if not downright opposite, positions when it comes to eradication of invasive aquatic species such as milfoil and its dealings with SAV (*submerged aquatic vegetation*) at the Annex. One cannot help but muse over the irony of the APA allowing SAV in wetlands to be harvested/removed because they are invasive, yet these same invasive species are being protected (perhaps, even proliferated¹) by the APA at the Annex wetlands because Petitioner wants to upgrade a pre-existing marina in a hamlet use area under the Adirondack Park Land Use and Development Plan which is zoned locally as a permitted commercial use. This befuddling contradiction arises out of APA staff erroneously using a 2005 DEC walleye sampling survey to establish that the wetlands in and around the Annex have an “unusual” abundance and diversity of fish species; an objective which was never the intent of the 2005 DEC survey.” [Footnote 1 reads: “It was established at the meetings and hearings before the Town of Harrietstown Planning Board, and mentioned in LS Marina, LLC’s site plan approval, that LS Marina, LLC intends to contract with AIM to hand harvest appropriately 2 acres of milfoil at the Annex next Spring and manage milfoil removal on an annual basis, or as needed, at the Annex and Main marina. This will be done in conjunction with the installation of a portable boat washing station to clean marina boats before entering and after leaving, Lower Saranac Lake.”]

37. This time Petitioner prevailed and in a December 18, 2015 Ruling, Executive Director Martino reversed staff’s December 22, 2014 value rating of wetlands at the Annex (nearly a year later and tens of thousands of dollars spent) and reinstated a value rating of “2”.

Back to Wetland and Variance Applications – Incompletions – Current Status

38. LS Marina, LLC filed its applications for deep water marsh wetlands permits on February 4, 2016 (Annex – Ampersand Bay site) and March 9, 2016 (Main Marina – Crescent Bay site).
39. With regard to the Crescent Bay site, the applicant continues to disagree with staff's conclusion that there are jurisdictional wetlands at the Crescent Bay site. There are five, non-contiguous areas of deep water marsh that total 0.23 acres. Thus, the minimum 1-acre size for a wetland to fall under APA jurisdiction does not apply. To say, as staff has done, that "the wetlands at the Crescent Bay site include areas of deep water marsh that are located adjacent to and have free interchange of water at the surface with Lower Saranac Lake" is inconsistent with the Legislative intent behind establishing jurisdiction under this "adjacent to and having free interchange of water at the surface" especially with regard to deep water marshes, aka, submerged aquatic vegetation (SAV). The Legislative intent, as well as how this has been historically implemented by the Agency, is that this language is intended to apply to areas of terrestrial wetland that have a surface water connection (i.e. an ephemeral channel, stream or similar conveyance) with a waterbody. Staff's interpretation results in all SAV, in general, being jurisdictional regardless of size. If the Legislature intended this result, they would have stated it that way. Furthermore, SAV does not exist in an environment that brings it either adjacent to a body of water or into contact with surface water; it is within the water.
40. A "Second Notice of Incomplete Permit Application" and "Second Variance Information Request" was issued by staff on March 24, 2016. A copy of this Notice is attached hereto as **ATTACHMENT G**.
41. What was particularly disturbing about this Second Notice was staff's refusal to provide guidance, despite repeated requests from the applicant and its consultants, on several comments being made by them. Most glaringly was comment no. 19 (see Attachment G at page 7) which states in pertinent part.

"Your application indicates that there 'will not be a loss of wetlands or wetlands values' as a result of your proposal. However, preliminary calculations by staff indicate that the project may result in significant wetlands loss due to filling, shading, boat traffic, and other factors. Accordingly, describe the steps that will be taken to avoid and minimize wetlands impacts at the project site."

Even though this position by staff was a major, identified concern of the Applicant and its consultants requiring considerable dialogue to understand exactly what was being requested here so that accurate data, reporting and other materials could be adequately provided, staff met with the Applicant's representatives on April 12, 2016 where it was disclosed for the first time that wetland staff people were all unavailable. That subject never got substantively discussed at that meeting. Next, a phone conference was held specifically to flush out what it is that wetland staff were looking for regarding wetland impact assessment. Essentially, the Applicant and its consultants were told, over-and-over again, that staff could not provide guidance, that the Applicant was to submit all

that it was able to provide on the subject and staff would give it an in-depth review. Upon information and belief, not one wetlands staff member spoke up throughout that entire conference call. How does one achieve a complete application when the very people who will make that decision refuse to clarify and hone in on precisely what it is they are looking for in this so-called wetland impact assessment? Staff have a legal obligation to do just that and they failed to meet that legal obligation.

42. Another major concern for the Applicant with this Second Notice was a requirement to provide simulations of views into the proposed project from private properties to evaluate potential visual impacts (see Attachment G, comment no. 8 at page 5). Applicant and its consultants are hard pressed to identify any legal basis for this. The Agency's own "Visual Analysis Methodology" guideline in its opening sentences states that impacts are to be assessed from "public use areas" where "public use is evident." The Applicant has also provided staff with documentation wherein the Town of Harrietstown Planning Board, as lead agency for this project, determined during the course of 14+ months review, including two public hearings pursuant to SEQRA, that there are no potentially significant visual impacts associated with this project. (see Attachment E – "Negative Declaration" at page 6, paragraphs numbered 9 & 10)
43. Despite these unfortunate actions/requirements, or non-actions, by staff, the Applicant responded to these Second Notices by cover letter dated July 28, 2016. This submission consisted of 493 pages of text, plus 29 Plan sheets. (The first NIPA response consisted of 271 pages of text and 26 Plan sheets. The variance application itself consists of 208 pages of text plus 5 plan sheets. The applicant also provided staff with copies of its two application submissions to NYSDEC which together total 227 pages of text and 56 Plan sheets. Add to all of this the enormous Record compiled by the Town of Harrietstown Planning Board over the course of 14+ months which has been filed with staff.) Thus, Agency Staff have received 1,199 pages of text (1,426 pages when adding DEC application materials) and 116 varietal Plan Sheets (172 Plan Sheets when adding DEC application materials). These figures do not include the APA wetlands application submission nor the Town of Harrietstown Planning Board Hearing Record.
44. On August 16, 2016, Applicant received a "Third Notice of Incomplete Permit Application" and "Third Variance Information Request". A copy of these Notices are attached hereto as **ATTACHMENT H**.

II. ANALYSIS

Those portions of this section labelled "Comment" are taken directly from staff's "Third Variance Information Request" and "Third Notice of Incomplete Permit Application." (Attachment H). The "Responses" that follow these comments are intended to provide a justification for that comment elimination.

- A. **Attachment I, Comment No. 4 (pages 4 & 5)**: "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.”

Response: *This comment does not include the removal of the extensive inshore boathouses at the Main Marina. As per the table on Figure 1 in the March 4, 2016 submittal, there will be a **NET DECREASE** of 3,177 sq. ft. of covered inshore area at the Main Marina.*

- “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.”

Response: *This comment ignores the fact that the support members of the original boathouses occupied a much larger area than what is proposed, including extensive cribbing, posts, piles and poles.*

- “The dredging of approximately 4,750 square feet of wetland area within the lagoon at the Annex site.”

Response: *Dredging the delta of accumulated sediment from the mouth of an existing culvert discharging into a manmade lagoon is not viewed by the Applicant as a wetland impact. Instead, it is viewed as an improvement since it will restore water depths that will again allow for growth of SAV and possibly emergent wetland vegetation. Much of the delta is currently unvegetated mud that sits above the water level. The dredging is seen as beneficial as the accumulated sediment will be removed and the previous depths will be reestablished allowing wetland vegetation to become re-established at this currently impacted location.*

- “Additional impacts from the expansion of navigation routes through wetlands at the Annex site.”

Response: *The Figure in Attachment 23 of the February 2016 submission demonstrates how there will be a **NET DECREASE** in the area of navigation of 0.07 acres (3,049 square feet)*

- **Comment:** “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.

Response: *For the reasons stated above, these figures put together by staff are incorrect.*

- **Comment:** “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.”

Response: *The first version of this diagram was provided to staff in February, 2016. In April, 2016, a second version was provided to staff adding docks and additional statistics. “Wetlands areas” remained unchanged. Why wasn't this request made in previous NIPA's? Also, now, in addition to struggling to define what is a wetland at the Main Marina (see paragraph no. 39, supra.), staff is now using plant density to exclude an area of SAV as qualifying as wetland. The Applicant and its consultants are unaware of any methodology used to delineate wetlands that includes plant density as an index.*

B. Attachment I, Comment No. 5 (pages 5-6-7):

- **Comment:** “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.”

Response: *The applicant provided staff with an evaluation of alternatives in its July 28, 2016 submission and its reasons for rejecting those alternatives. The applicant provided a quick launch alternative analysis in its February 3, 2016 submission, as well. The applicant's preferred alternative remains unchanged. This is one example of staff over-reaching its bounds and attempting to design the Applicant's project.*

- **“Variance Avoidance and Minimization”**

(i) **Comment:** “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.”

Response: *Staff are repeating comments that the Applicant has already addressed in earlier submissions. Applicant has nothing to add to these earlier responses. Once again, it is respectfully submitted that staff is attempting to design the Applicant’s project.*

(ii) **Comment:** 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.”

Response: *The Business plan speaks clearly on this point. The applicant has selected a price point that is fair to its customers for a reasonable return on its investment over time.*

(iii) **Comment:** “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.”

Response: *This comment is borderline insulting and dishonest. Staff knows full-well that this jurisdiction inquiry was a simplistic, hypothetical plan intended to show a single covered dock that was submitted in order to get in writing how staff would handle a “structure” of this nature pursuant to its regulations regarding variances As stated in this Appeal, there is still disagreement on application of variance criteria to this commercial marina proposal (see ¶10, supra.). In addition, the Business Plan clearly demonstrates why this type of proposal would be a financial disaster, particularly given the history of this pre-existing facility.*

- **“Wetlands Avoidance and Minimization”**

(i) **Comment:** “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?”

Response: *This question has been asked and answered in previous submissions. Early answers to this question, in fact, were quite compelling from both an economic and environmental perspective. This is yet another example of staff attempting to design this project.*

(ii) **Comment:** “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.”

Response: *As has been stated in the past, the current proposal has balanced design to minimize all potential impacts, both wetlands and variance related. Staff may disagree, but that is the Applicant’s position.*

(iii) **Comment:** “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.”

Response: *This would increase the amount of variance needed by an addition 100± feet. The applicant views this as not minimizing the amount of variance needed, in addition to attempting to achieve a balanced design. Once again, it is respectfully submitted that staff is attempting to design the project.*

(iv) **Comment:** “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.”

Response: *This is clearly contrary to the Business Plan and a blatant effort on the part of staff to design the project. From an economic perspective, this makes no sense and the impacts to that area of the Annex will be improved over what has occurred for decades.*

- **Comment:** “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.”

Response: *All of the above responses to this Comment No. 5 are repeated in response to this statement by staff.*

- **Comments:** “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.”

Response: *Removal of the roofs is not an option for the Applicant and that has been made abundantly clear in both earlier submissions to staff and the Business Plan. This request for additional simulations is misplaced. Why does staff continue to ask for simulations with each new NIPA? This is clearly something that should be asked for in a comprehensive manner, one time.*

As to the alternative configurations at the Main Marina to reduce wetland impacts to 2,415 sq. ft. of SAV, which represents 0.055 (1/20) of an acre, SAV diagrams overlaid with docks were provided to staff in the March, 2016 amended wetlands application. (see also ¶39, supra.)

C. **Attachment I, Comment No. 7 (page 7):**

- **Comment:** “Please provide expected costs and per boat income projections associated with a quick launch system, using existing facilities and/or for expanded facilities.”

Response: *A quick launch system is not an option for the Applicant and that has been made abundantly clear in its February 3, 2016 submission, along with its Business Plan. (see 1st Response to Comment No. 5 at page 14, supra.)*

D. **Attachment I, Comment No. 8 (page 7):**

- **Comment:** “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.”

Response: *Applicant and its consultants disagree with staff’s numerical evaluation of wetland impacts. Applicant’s submissions show a 1.28:1 ratio for compensatory mitigation. “Guidelines” are just that. The type*

and degree of mitigation being offered by the Applicant has a higher success probability than other types of mitigation.

Staff speaks of “these alternatives” in their comment. “These alternatives” are quick launch, total impact avoidance at the Main marina, dock reconfiguration, uncovering docks and dock reductions. All of these alternatives were assessed and eliminated in the Applicant’s July 28, 2016 submission.

If this position by staff is allowed to prevail, NIPA’s become subjective and potentially unlimited. Staff would, in essence, be determining the fate of a project before it ever is enabled to go through the statutory review process.

E. Attachment I, Comment No. 12 (pages 8-9):

1. **Comment:** “Given the potential for upland runoff to impact wetlands, including the proposed mitigation area, please provide a stormwater management plan for the Annex site.”

Response: *The stormwater management plan for the existing building at the Annex has been addressed in a Consent Order dated August 12, 2015. Essentially, the intent of this Consent Order was that this stormwater management plan would occur concurrently with dock installation after permit issuance. Documents evidencing this transaction are attached hereto as ATTACHMENT I.*

The Applicant’s demonstrated limit of disturbance does not exceed the threshold for requiring coverage under the NYSDEC General Permit for stormwater discharges, and therefore does not require post-construction stormwater management controls. [As an aside, NYDEC Division of Water Staff commented on the potential need for a SWPPP/Stormwater Management Plan at the Annex as part of their review and Applicant provided a response in its July, 2016 submission stating it was not needed and why. NYSDEC subsequently issued a response letter in August, 2016 requesting more information regarding the application but did not ask for any additional stormwater information at the Annex.]

Once again, why wasn’t this request made in an earlier NIPA?

- c. **Comment:** “Please provide a final SWPPP not marked Draft for Agency Review”

Response: *The LA Group has never provided a final SWPPP until after permitting is done. Final SWPPPs are based on construction drawings and construction specifications, not permit level plans. The LA Group has*

always provided the Agency a draft SWPPP for review and comment ever since SWPPPs were first required under NYSDEC's 1993 General Permit GP-93-06. A SWPPP is not "final" until the Notice of Issuance (NOI) is filed and acknowledged by NYSDEC and that cannot happen until an APA permit is issued.

III. CONCLUSION

For the reasons stated above, LS Marina, LLC respectfully requests that the Agency eliminate all of the itemized "Comments" discussed in the "Analysis" portion of this Appeal for the reasons stated therein. To assist the Agency in its deliberations, the applicant has attached, hereto, a proposed, revised "Third Notice of Incomplete Permit Application" and "Third Variance Information Request" as **EXHIBIT 1**.

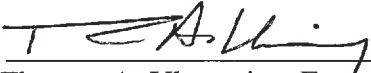
In addition, LS Marina, LLC respectfully requests that Agency members instruct staff to clearly, and unequivocally, assist this applicant, and any applicants, and its consultants in understanding staff's information requests and comments in furtherance of application completion. This assistance should include providing comprehensive, additional information requests in a timely manner to avoid multiple NIPAs that are costly and time consuming, both of which could be devastating to a project such as LS Marina where operations are struggling to continue against seriously deteriorating facilities.

Finally the Applicant respectfully requests Agency members to examine the following, although acknowledging that this is somewhat foreign to Appeal criteria under 9NYCRR §572.22:

1. Does a pre-existing commercial marina in a Hamlet land use area, even where expansion of said facility is being prepared and a canopy will cover almost all of the slips, trigger variance jurisdiction – the shoreline setback provisions of §806 of the APA Act – when all of these docks are lakeward from the mean high water mark?
2. That simulations from private properties are not an appropriate task to burden an applicant with. Such a requirement can lead to all kinds of abuses. If a private landowner (or staff, for that matter) has a concern with visual impacts, the burden should be on that entity to prove unwarranted adverse impacts. The Agency should limit its simulations to "public use areas" where "public use is evident."
3. Whether or not the SAV at the Main marina is jurisdictional wetlands? There are five, non-contiguous areas of deep water marsh that total 0.23 acres. Thus, it is respectfully submitted that the minimum 1-acre size for a wetland to fall under APA jurisdiction does not apply (see ¶39, supra. at page 10).
4. Giving high recognition, and deference, to the findings and decision-making for a Type 1 action pursuant to SEQRA where issues overlap and coordinated review was implemented among "involved" and "interested" agencies.

DATED: September 15, 2016

Respectfully submitted,
The Law Firm of
FitzGerald Morris Baker Firth P.C.

By: 
Thomas A. Ulasewicz, Esq.
On behalf of L.S. Marina, LLC.

TO: Chairman Sherman Craig
Art Lussi, Chair - Committee on Regulatory Programs
Terry Martino, Executive Director
James Townsend, Esq., General Counsel
Richard Weber, Deputy Director for Regulatory Programs
Erin Burns, Deputy Regional Permit Administrator, NYSDEC - (Via Regular Mail)

ATTACHMENT A

NEW YORK STATE
ADIRONDACK PARK AGENCY

In the Matter of

CB MARINA LLC

& its Jurisdictional Inquiry

**PETITION
for
DECLARATORY RULING**

PLEASE TAKE NOTICE that this Petition for Declaratory Ruling is brought pursuant to Adirondack Park Agency (“APA” or “Agency”) rules and regulations at 9NYCRR §588.2; and

PLEASE TAKE FURTHER NOTICE that this Petition for Declaratory Ruling is being filed by the law firm of FitzGerald Morris Baker Firth PC (Thomas A. Ulasewicz, Esq., Of Counsel) with offices at 16 Pearl Street (P.O. Box 2017), Glens Falls, New York 12801 on behalf of CB MARINA LLC (also “Petitioner”); and

PLEASE TAKE FURTHER NOTICE that this Petition for Declaratory Ruling seeks a distinction between the terms “boathouse” as defined at 9NYCRR §570.3(c) and a “commercial marina” [“commercial use” being defined in the APA Act at §802.17 and “marina” being defined at 9NYCRR§570.3(u)] and the applicability of one of those terms to what is being proposed by Petitioner in its jurisdictional inquiry; and

PLEASE TAKE FURTHER NOTICE that in ruling on this Petition, CB Marina LLC seeks a determination invalidating a written correspondence from Agency staff dated September 10, 2013 stating that Petitioner’s project proposal as set forth in its jurisdictional inquiry is a “boathouse” in excess of 1200 square feet and therefore requires a variance.

FACTS

1. Crescent Bay marina was constructed on Lower Saranac Lake by the Duso family in the mid-1920's and is currently still in operation as a commercial marina. The corporate entity holding title to the subject property is Crescent Bay Holdings LLC. Crescent Bay Holdings LLC acquired the property as a result of a deed in lieu of foreclosure. The facility is located in Crescent Bay and is accessed from NYS Route 3. Its street address is 4899 State Route 3, Harrietstown, NY 12983. It is designated as tax map parcel 457.3-10.
2. The existing site is 4.85± acres and located entirely in the Hamlet area under the Adirondack Park Land Use and Development Plan Map.
3. CB Marina LLC (hereinafter "CB Marina") is the holder of a purchase agreement for the marina property and at the present time is considering expanding commercial marina operations through the installation of a 316 feet long by 52 feet wide covered (aka canopied or roofed) docking facility that would encompass 26 double slips that could accommodate 52 boats. As illustrated on the conceptual plan drawings that accompanied the August 28, 2013 jurisdictional inquiry (attached as **EXHIBIT A**), the main dock would be six (6) feet in width and the fingers extending off the main dock and forming the slips would be four (4) feet in width. Drawings included in the jurisdictional inquiry provided the following docking facility dimensions: total dock area of 4,472 square feet; perimeter of 1932 linear feet; and roof area of 17,064 feet. The proposed roof is pitched.
4. The "Project Description" section of the August 28, 2013 jurisdictional inquiry also provided the following information (see Exhibit A at first page):
 - a. For the purpose of this jurisdictional inquiry, no changes are proposed to any of the existing marina structures and no new structures are proposed on the existing commercial marina property.

- b. For the purpose of this jurisdictional inquiry, no subdivision of land is proposed.
 - c. For the purpose of this jurisdictional inquiry, no shoreline vegetation at the existing commercial marina would be affected.
 - d. For the purpose of this jurisdictional inquiry, it is assumed that no jurisdictional wetlands would be impacted by the new docking facility.
5. By letter dated September 10, 2013 and signed by APA staff Project Administrator Douglas W. Miller (attached as **EXHIBIT B**), staff determined that: “A variance is required from the Agency for the project as proposed” and then simply quoted the definition of the term “boathouse”.
6. This September 10, 2013 jurisdictional determination by staff:
- a. provides no comprehensive analysis – in fact, no analysis at all – as to why this project proposal is deemed a boathouse; and
 - b. provides no analysis at all as to why the proposed project does not constitute a commercial marina – which is how it was identified in the jurisdictional inquiry form;

LEGAL ANALYSIS

Definitions

“**Commercial use**” is defined in the APA Act at §802.17 as:

“any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee other than any such uses specifically listed on any of the classification of compatible uses lists.”

“**Marina**” is defined in the APA regulations at 9NYCRR §570.3(u) as:

“any facility providing boat docks or moorings [f]or (sic.) a fee or other consideration and often offering supply, storage, repair and other services.”

“**Boathouse**” is defined in the APA regulations at 9NYCRR §570.3(c) as:

“a covered structure with direct access to a navigable body of water which:

- (1) is used for the storage of boats and associated equipment;
- (2) does not contain bathroom facilities, sanitary drains of any kind;
- (3) does not contain kitchen facilities of any kind;
- (4) does not contain a heating system of any kind;
- (5) does not contain beds or sleeping quarters of any kind;
- (6) does not exceed a single story in that the roof rafters rest on the top plate of the first floor wall, and all rigid roof surfaces have a minimum pitch of 4 on 12, or, alternatively, 1 flat roof covers the entire structure; and
- (7) has a footprint of 1,200 square feet or less measured at the exterior walls (or in the absence of exterior walls, at the perimeter of the roof), and a height of 15 feet or less. For the purpose of this definition, the height of a boathouse shall be measured from the surface of the floor serving the boat berths to the highest point of the structure. The dimensional requirements specified herein shall not apply to a covered structure for berthing boats located within the Lake George Park, provided the structure is built or modified in accordance with a permit from the Lake George Park Commission and is located fully lakeward of the mean high water mark of Lake George.”

The proposed marina addition will provide boat docks (slips) for 52 boats all of which will be required to pay a fee for such usage. This fee and accompanying usage is a “service” which, in addition, will provide “recreational facilities” and “recreational activities”. CB Marina’s proposal clearly fits with the statutory definition of “commercial use” and the regulatory definition of “marina”.¹ No portion of the proposed marina will be enclosed; there

¹ As stated earlier, the proposed commercial marina is in the Hamlet area. All land uses and development are considered compatible with the character, purposes and objectives of Hamlet areas. [APA Act §805.3.c (3)] For purposes of APA Act §809 project permit review, commercial marinas are not listed as a Class A regional project and are therefore non-jurisdictional (albeit, there could be other predicates of jurisdiction depending on a particular site specific proposal).

will be no walls, no vertical partitions. Staff's September 10, 2013 jurisdictional determination ignores all of this information.

Instead, one can only interpret staff's jurisdictional determination, i.e. the need for a variance, as concluding that a commercial, unenclosed structure 4,472 square feet in size with a pitched canopy and intended to berth 52 boats is a boathouse and not a marina. First, one has to ask oneself, how many boathouses exist in the Park with the capability of berthing 52 boats?

"Boathouse" vs. "marina"

In examining the definition of boathouse and staff's assertion that CB Marina's expansion project in its jurisdictional inquiry fits within the Agency's regulatory definition of boathouse, one would have to conclude, among other things:

- a. that CB Marina's proposed structure could be capable of containing a bathroom which could include sanitary plumbing or sanitary drains of any kind (when staff know that no portion of this proposed structure will be enclosed); and/or
- b. that CB Marina's proposed structure could be capable of containing kitchen facilities (when staff know that no portion of this proposed structure will be enclosed); and/or
- c. that CB Marina's proposed structure could be capable of containing a heating system (when staff know that no portion of this proposed structure will be enclosed); and/or
- d. that CB Marina's proposed structure could be capable of containing beds or sleeping quarters (when staff know that no portion of this proposed structure will be enclosed).

Under the rules of statutory construction alone, CB Marina's project proposal is a bona fide marina and not even remotely close to being a boathouse.

Statutory Construction

“Marina” is a defined usage in the APA Act. In fact, it is a secondary compatible use in moderate intensity, low intensity and rural land use areas. [see APA Act §§805.3.d (4) 9; 805.3.e (4)9; and 805.3.f (4)8, respectively; as mentioned earlier, a marina is a non-jurisdictional activity in the Hamlet area since it is not listed as a Class A regional project under §810.1.a of the APA Act (see footnote 1, *supra*.) Furthermore, marinas are Class B regional projects under the APA Act in moderate intensity, low intensity and rural land use areas [see APA Act §§ 810.2.a.(10); 810.2.b.(10); and 810.2.c.(8), respectively.]

“Commercial uses” is both defined, and an acknowledged usage, in the APA Act.

“Commercial uses” are secondary compatible uses in moderate intensity, low intensity and rural land use areas. [see APA Act at §§805.3.d(4)6; 805.3.e(4) 6; and 805.3.f.(4) 6, respectively]

It is clear from these provisions of the APA Act that commercial marinas enjoy a presumption of compatibility in four land use areas. The Legislature not only clearly intended this usage to be an available service in the Park, but also clearly distinguished this usage from a boathouse. There is no indication anywhere in the APA enabling legislation to suggest that placing a canopy over a marina somehow converts that marina to a boathouse. Commercial marinas are consistently larger than 1200 square feet. To use the definition of “boathouse” as applicable to marinas who incorporate a “cover” or “canopy” or “roof” into its design is to circumvent the law with regard to this usage. The Legislature recognized the need for marinas in the Park and their commercial use value by targeting this usage as Class B regional projects and the presumption of compatibility as a “secondary use” In *Cohen v. Rattigan*, 157 N.Y.S. 1003, the Court held: “It is the duty of the courts to place the construction upon a statute, even when it is susceptible of two constructions, which more nearly carries out what appears to be the general

legislative design on the subject.” [see also, *Hernandez v. Barrios-Paoli*, 93 N.Y. 2d 781 where the Court of Appeals of New York held: “Statutory interpretation requires courts to first look to the plain meaning of the words of a statute; next, the courts look at the spirit and purpose of the statute and the objectives sought to be accomplished by the Legislature.” “... a court’s role is not to delve into the minds of legislatures, but rather to effectuate the statute by carrying out the purpose of the statute as it is embodied in the words chosen by the Legislature.” Citing to *Braschi v. Stahl Assocs. Co.*, 74 N.Y. 2d 201] Staff’s jurisdictional determination that CB Marina’s project proposal constitutes a boathouse not only is in violation of the basic tenets of statutory construction, but also it illegally goes well beyond the intentions and purposes behind the Agency’s changes to the definition of “boathouse” back in its 2009 rulemaking effort as expressed in the Agency’s public documents underscoring that rulemaking effort.

Intent of the Agency’s 2009 Rulemaking

The following excerpts are taken from the Agency’s July 15, 2009 “Regulatory Impact Statement Summary – 2009 Rulemaking (Gorr #0905080)” [attached as **EXHIBIT C**]:

“Distinguishing these excepted structures [*“boathouses” and “docks”*] from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock... **The proposed regulation also eliminates the potential for construction of a flat roof on a boathouse.** With the 2002 elimination of the potential for construction of a second story, many boathouses are being designed with a large elevated deck with surrounding “safety” railing (or glass enclosure); sometimes with entertainment amenities like a stone fireplace serving the deck. Construction of a deck to serve as the roof of a boathouse evades the setback requirement and subverts its purpose.” (emphasis added)

AND

“The proposed regulation should provide clear parameters that can be readily evaluated **based on external observations of the resulting structure.** Some have argued that a larger footprint size should be allowed for those with significant length of shoreline, to accommodate larger boats, and/or for situations where large estates or shared facilities would require storage of many boats. **The proposed regulation would accommodate a**

one- to three-stall boathouse typical of those found on many Adirondack lakes...
The proposed regulation would end the practice of allowing flat roofs that can be used as entertainment decks unrelated to the storage of boats.” (emphasis added)

The following excerpts are taken from the Agency’s July 15, 2009 “Regulatory Impact Statement 2009 Rulemaking (GORR #0905080)” [attached as **EXHIBIT D**]:

“The APA Act contains a significant exemption from the structure setback requirements for “dock” and “boathouse.” Thus, it is critical to clearly and specifically define those types of structures. Distinguishing these excepted structures from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock. Over the years, many **multi-purpose structures** have been constructed on the shoreline. Structures purporting to be boathouses have been constructed with second stories dedicated to rooms for sleeping and/or general recreation, and including decks. Plus, some structures purporting to be docks are in reality decks due their size and location. **Since a guest cottage, a recreation room, or a greater-than-100-square-foot deck would each be subject to the setback requirements, such structures should not be allowed as part of a boathouse without a variance; that undermines the purposes of the shoreline restrictions and the values they protect.**

a) ... Many of the submitted “boathouse” designs included large second story rooms with beautiful finishing and fenestration, which room the landowner insisted was just for the storage of boating equipment. Staff have spent large amounts of time analyzing boathouse plans to assess whether such structures were ‘designed or used for lodging or residency,’ and often significant design changes were required before the plans were acceptable.” (emphasis added)

AND

“The process used to determine whether a structure constitutes a ‘boathouse’ remains unwieldy and unnecessarily complex. **The proposed regulation will eliminate the ‘single story’ requirement and will instead provide for a size and height limit, both of which are measurable from the exterior and hence easy to administer. The size limits are necessary to ensure that a second story recreational space is not created. After 35 years of administration of the APA Act, the Agency has concluded that no such space shall be allowed without a variance; the design parameters ensure that the structure is in fact only a boathouse. Note, also, that the size limitation is generally reasonable for most shoreline parcels. The shoreline cutting requirements limit the amount of shoreline vegetation that can be removed. Most shoreline parcels are 100 feet in width and can accommodate at best a 30-foot-wide shoreline structure under the cutting limitations.**” (emphasis added)

Clearly, the definition of “boathouse” was changed to prevent recreational activities in a boathouse structure out, over the water and accessory to a residence by eliminating flat roofs and second story buildings. Furthermore, the definition of boathouse was changed to prevent multi-purpose structures being built on the shoreline to contravene setback requirements. In addition, the purpose of adding the “roof” restriction into the definition of “boathouse” was never intended to make marinas into boathouses, but rather to assure compliance with the one-story requirement and eliminate attics which could be used for purposes other than the storage of boat equipment. As a matter of fact, the word “marina” does not appear anywhere in the Agency’s “Regulatory Impact Statement” for its 2009 Rulemaking. Finally, it is quite obvious that the usage associated with this proposed marina expansion “can be readily evaluated based on external observations of the structure”; as can, in all likelihood, any other marina.

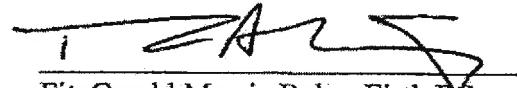
CONCLUSION

By definition and usage, the project proposed by CB Marina in its August 28, 2013 jurisdictional inquiry is a commercial marina expansion of an on-going, pre-existing commercial marina use. This proposal is consistent with the definition of “commercial use” in the APA Act and the definition of “marina” in the APA regulations. This proposal is not the least bit consistent with the definition of “boathouse” in the APA regulations. The determination by staff that this proposal is a boathouse undermines the Legislative intent for commercial marina usage in the Park. The determination by staff that this proposal is a boathouse rather than a commercial marina defies logic and the most basic tenets of statutory construction. The determination by staff that this proposal is a boathouse rather than a commercial marina illegally goes well beyond the intentions and purposes shared with the general public by the Agency in its 2009 rulemaking effort that eventually changed the definition of a “boathouse”. Staff’s determination that this

proposal is a boathouse requiring a variance from the 1200 square foot or less footprint must be reversed.

DATED: September 19, 2013

Submitted On behalf of CB Marina LLC



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ATTACHMENT B



NEW YORK STATE
Adirondack
parkagency

May 2, 2014

Thomas Ulasewicz, Esq.
Fitzgerald, Morris, Baker, Firth. PC
16 Pearl St.
Glens Falls, NY 12801

Re: Project 2014-53

Dear Mr. Ulasewicz:

Staff received your request for a variance from the Agency's shoreline restrictions which would otherwise prohibit construction of covered shoreline structures. Staff have reviewed the application and identified additional information that will be necessary for the Agency to make the determinations required under Part 576 of the Agency's regulations for the issuance of a variance. Enclosed please find a Request for Additional Information.

Review of the application is restricted to your request to vary the shoreline structure setbacks for the proposed covered shoreline structures. Any other land use and development, including any proposed boat launches or activities involving wetlands, may also require an Agency variance or permit. In addition, please be aware that any of the following changes to the dimensions of a lawfully existing structure within the setback area require a variance, whether the changes occur through expansion or replacement: the location of the structure closer to the mean high water mark; an increase in height; an increase in footprint; or any increase in width.

Please also note that review of the plans submitted with the variance application indicates the 9,000 square foot boat storage building at the Annex is located less than fifty feet from the mean high water mark of Lower Saranac Lake and may have been constructed without the necessary Agency approval. John Burth, Agency Enforcement Program Supervisor, will be contacting you to discuss this matter.

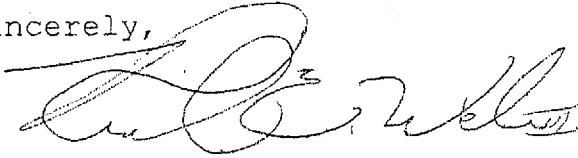
Thomas Ulasewicz, Esq.

May 2, 2014

Page 2 of 2

Please do not hesitate to contact me with any questions or concerns and I will direct your question to the appropriate review staff member.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Weber, III". The signature is fluid and cursive, with a large initial "R" and "W".

Richard E. Weber, III
Deputy Director, Regulatory Programs

REW:JLM:JTT:TDM:mlr

cc: John Burth



Via Certified Mail

NEW YORK STATE
Adirondack
parkagency

REQUEST FOR ADDITIONAL INFORMATION

APA Project No. 2014-53

Tracking No. 7011 1090 0000 0316 2234

Applicant: 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
--	---

Date Variance Application Received: April 15, 2014

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

Location of Variance:

Franklin County: Town of Harrietstown

Land Use Area: Hamlet

Tax Map No.: Section: 457 Block: 3 Parcel: 10
and Section: 457 Block: 2 Parcel: 33.1

Dear Messrs. Damp and Ulasewicz:

We received your recent variance application which provided important information regarding your proposed project. After reviewing this information, we request that you provide additional information to support your variance application. Attached is a list of requested information necessary to enable the Agency to make the determinations required to meet the applicable criteria for issuance of a variance and to make the determinations required by law and listed in Part 576 of the Agency's regulations ("9 NYCRR") for issuance of a variance.

Once we have received all of the requested information, a public hearing on your variance application will be scheduled pursuant to 9 NYCRR § 576.5. A public hearing is required by Section 806 of the Adirondack Park Agency Act before the Agency can render a decision on your variance application. The Agency's decision will be based on the record of the hearing, including the information submitted in response to this request. A summary of the Agency's variance process is attached for your information.

Also, preliminary assessment by staff indicates there are wetlands on the site. Agency staff will need to conduct a site visit to further determine the character and extent of these wetlands in order to evaluate the variance factors listed in 9 NYCRR §576.1. In addition, an Agency permit will be required under both the

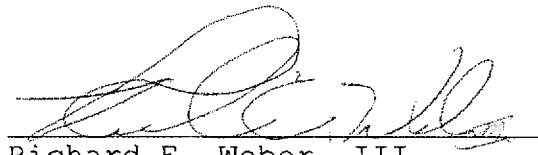
Thomas Ulasewicz, Esq.
May 2, 2014
Page 2 of 8

Adirondack Park Agency Act and §578.3 of Agency Rules and Regulations if it is determined that your proposal will involve wetlands.

Please Mark Rooks and/or Leigh Walrath to arrange a site visit for the purpose of evaluating the wetlands on the site. Please note that wetlands below the mean high water mark cannot be confirmed until the summer. For your convenience, enclosed with this notice you will find a General Information Request (GIR) and Supplemental Information Request (SIR) for Activities Involving Wetlands.

*This Notice is issued pursuant to Sections 806(3) of the Adirondack Park Agency Act and Sections 576.5 and 572.7 of the Adirondack Park Agency Rules and Regulations.

5/2/14
Date



Richard E. Weber, III
Deputy Director, Regulatory Programs

Attachments:

List of Requested Information
Summary of Variance Process flyer
GIR and SIR - for Activities Involving Wetlands

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
NYS Office of General Services

REQUESTED INFORMATION

APA Project No. 2014-53

In determining whether to grant a variance, the Agency considers the factors set forth in 9 NYCRR § 576.1(c). These factors include:

- (1) Whether the application requests the minimum relief necessary;
- (2) Whether granting the variance will create a substantial detriment to adjoining or nearby landowners;

Thomas Ulasewicz, Esq.

May 2, 2014

Page 3 of 8

(3) Whether the difficulty can be obviated by a feasible method other than a variance;

(4) The manner in which the difficulty arose;

(5) Whether granting the variance will adversely affect the natural, scenic, and open space resources of the park and any adjoining water body, due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur.

The information requested below is intended to address these factors and make the findings required under 9 NYCRR §§576.1. If you have any questions regarding this Request For Additional Information or the variance review process, **please contact APA Environmental Program Specialist 2 (EPS) Suzanne McSherry who is assigned to review your project.** If the EPS has not yet been to the project site, please contact the EPS and arrange for a site visit. Site visits should be scheduled well in advance.

Please be advised that if you substantially change the proposal at any time, the application may be deemed a "new application," a new review period will begin, and other information may be required.

If you decide to withdraw the variance application or postpone it for more than six months, please inform the Agency in writing so Agency records can be kept current and our attention can be focused on active projects.

Missing Information

The following information required by the application forms was not submitted or was not fully answered and must be provided for a complete application:

1. You provided the following survey maps as part of your application:
 - A survey map of the area including and surrounding the "main marina" property identified as being prepared by F. Ives Turner in 1936 and filed on October 8, 1936 in the Franklin County Clerk's Office as Map #460.
 - A survey of the annex property entitled, "Map Showing Land of Crescent Bay Marina, Inc." dated June 7, 2001 and prepared by John H. Martino, L.S..

- A survey of the "main marina" property entitled, "Map Showing Land of Crescent Bay Marina, Inc." prepared by John H. Martino, L.S. (date is illegible).

Please provide a complete copy of the above three survey maps at the original scale drawn. The reduced-scale copies submitted are either not complete and/or are illegible.

2. **Application Item 10** - Item 10 seeks a detailed, to-scale site plan map. The maps and plans submitted do not show all features and details required by the application:

- c. An "ordinary high water mark" elevation of 1533.61 is depicted on the plan sheets. Please clarify how this elevation was derived and its relation to the Agency's "mean high water mark," which refers to the average annual high water level. It may be necessary for Agency staff to determine the mean high water mark elevation during a field visit and require revised plans.
- f. Please ensure that all structures are depicted on the Site Plan, including:
 - Any proposed petroleum bulk storage structures (i.e., storage tanks, piping and pumps);
 - The proposed solar panels;
 - Any de-icing equipment;
 - Any potable water or wash stations;
 - Any sewage pump out facilities;
 - Any onsite wastewater treatment systems; and
 - Any additional amenities.
- n. Please describe and depict on the plan sheets any shoreline vegetation removal proposed within 6 feet and within 35 feet of the mean high water mark of Lower Saranac Lake.
- o. Please provide a copy of the shoreline planting plan. Consideration should be given to planting a variety of shallow and deep-rooted native shrubs and trees along the shore. Other non-structural or bioengineering approaches could also be considered to soften the appearance and stabilize the shoreline.

Thomas Ulasewicz, Esq.

May 2, 2014

Page 5 of 8

Please also submit revised plans that include additional details for sub-items h through m and sub-item p.

1. **Application Item 13** - You have informed us that you contacted the NYS Historic Preservation Office directly. Please provide their determination or recommendations, if any.
2. **Application Item 16** - It appears that multiple permits are required from the NYS DEC and permits may be required from the US Army Corps of Engineers, NYS Department of Health, NYS Office of Parks and Recreation, and NYS Office of General Services. Please provide the Agency copies of all determinations or permits issued by these Agencies.

Additional Information

Based on the application materials submitted to date, we request the following additional information to further clarify your proposal and to enable the Agency to make the required findings and determinations under 9 NYCRR §576.1:

1. Please provide an Erosion and Sediment Control Plan, prepared in accordance with the 2005 *New York State Standards and Specifications for Erosion and Sediment Control*, for the land disturbance that will be caused by demolition and construction activities along the shoreline.
2. In response to Item 8(b) of the variance application, the project sponsor states: "The main marina site consists of 17.63 acres and 655 feet of shoreline. The annex marina consists of 5.95 acres and 1,335 feet of shoreline. Given these figures, this site mathematically has a much larger carrying capacity in slip numbers than the 300 being proposed." Please explain how this statement relates to whether the variance application requests the minimum relief necessary from the Agency's shoreline restrictions.
3. Please provide a color scheme for the covered shoreline structures. What efforts, if any, will be made to reduce or eliminate glare and reflection from the metal roofs?
4. Do you propose to remove, (hand or mechanical harvest, etc.) any wetland vegetation? If so, please describe in detail.

Thomas Ulasewicz, Esq.

May 2, 2014

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5. How many anchor posts will be driven into the lake bottom?
How many of those will be located on NYS lands?

6. In "Attachment D: Variance Justification" Section "a." the Project Sponsor indicates that "...to operate profitably, the applicant has determined that 300 slips (286 covered and 14 uncovered) are necessary for the project..." Please provide a business plan, including anticipated construction costs, lease rates, financing methods, and cash flow projections, supporting this assertion. Additionally, in section "a.", the Project Sponsor states that "covered dock slips are needed to be competitive with existing facilities and to have a successful business." Within the business plan, please provide a market analysis leading to the anticipated rents (found in the business plan) for both covered slips and non-covered slips. The market analysis should include, but is not limited to: an analysis of marinas in the Lake Placid-Saranac Lake trade area, the number of covered and non-covered slips at these marinas, the prices of both covered and non-covered slips at each of the marinas, and the existence of any wait lists at the marinas. The business plan should include an analysis of the economic feasibility of a non-covered slip system.

7. What alternatives have been considered such as a quick-launch system for example, that could eliminate or reduce the size of the proposed covered dock structures.

8. The Project Sponsor projects to employ 15-20 jobs in a combination of seasonal, full-time, and part-time roles. Please indicate the anticipated number of people employed seasonally, the number of people employed full-time, and the number of people employed part-time. In addition, please provide information as to how many of the 15-20 jobs will be directly related to the proposal for covered shoreline structures.

9. Revise sheets prepared by the LA Group and entitled "L-1.A" and "L-5.A" and sheets prepared by Floating Docks Mfg. Co. and entitled "Crescent Bay Overall Layout Sheet 1-A" and "Annex Parcel Overall Layout, Sheet 1-A" to include the limits of aquatic vegetation (as determined by mid-summer growth), sediment type (i.e. area of sand, silt, etc.), and lake bathymetry (0.5 meter intervals as measured from the mean high water mark).

Thomas Ulasewicz, Esq.

May 2, 2014

Page 7 of 8

10. A site specific water resource impact review will be required to identify potential impacts to the aquatic ecosystem from the proposed covered shoreline structures. The specifics of this review will need to be determined by the Agency's Freshwater Analyst upon completion of a site inspection. The site visit should be scheduled shortly after the start of the aquatic vegetative growing season (mid-May to early June).
11. Describe and depict on the site plans all existing and proposed lights (location, type, wattage) on the site. Identify the wavelength and intensity of each fixture that projects light, directly or indirectly, onto the lake surface, and state how and when these lights will operate.
12. Will moorings for sail boats be provided? If so, show all moorings on the appropriate site plans and provide details which show the mooring anchor system.
13. Please provide details regarding any proposed de-icing equipment and specify when de-icing operations will occur.
14. You have indicated that you are developing a detailed invasive species eradication plan for the site. Please provide this plan.
15. Provide details regarding the proposed boat wash station(s). Include the type of wash station you are proposing to use, and the location(s) where wash station will be located. In addition, describe what steps will be taken to prevent invasive species from entering the lake and associated wetlands from the wash station (including those which may be introduced from wash overspray and wash station waste water).
16. Will any steps be taken to keep the lake bottom free of trash and other debris that may result from increased use of the shoreline?
17. Provide details regarding how the covered shoreline structures will be constructed and installed, whether construction and/or assembly will occur on land and/or in the water, and how materials or assembled components will be moved from land to the water.

Thomas Ulasewicz, Esq.
May 2, 2014
Page 8 of 8

18. Will any dredging occur as part of the project? If so provide details.
19. Please add to the project plans all existing docks, moorings, boathouses, swimming areas, other shoreline improvements, and normal navigational routes that currently exist within 200 feet of the proposed covered shoreline structures.
20. Please describe how boat traffic will flow when navigating within and around the proposed shoreline structures. Please include travel paths, turning radius, and other important factors.
21. Provide an analysis of how the generation of boat traffic on Lower Saranac Lake may impact the lake and adjoining and interconnected water bodies due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts. Please also provide a complete copy of the "L.S. Marina-Boat Traffic Assessment" report prepared by the L.A. Group and submitted to the Town of Harrietstown on January 23, 2014.
22. Please confirm that all proposed sewage effluent on the Annex Marina and Main Marina sites will be connected to the municipal wastewater collection and treatment system. If not, please provide on-site wastewater treatment system plans prepared by a New York State licensed design professional for each marina site.
23. Please provide a waste disposal plan for all wastes generated from demolition activities.

REW:TDM:JTT:SBM:SEL:LRW:WMR:JLM:SHR:mlr

ATTACHMENT C



Via Certified Mail

NEW YORK STATE
Adirondack
parkagency

SUPPLEMENTAL REQUEST FOR ADDITIONAL INFORMATION

APA Project No. 2014-53

Tracking No. 7013 1090 0000 0316 3644

Applicant: 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
--	---

Date Variance Application Received: April 15, 2014

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

Location of Variance:

Franklin County: Town of Harrietstown

Land Use Area: Hamlet

Tax Map No.: Section: 457 Block: 3 Parcel: 10
and Section: 457 Block: 2 Parcel: 33.1

Dear Messrs. Damp and Ulasewicz:

On July 10, 2014 Agency staff visited the Crescent Bay Main Marina and the Annex with the applicant and the applicant's consultant for the purposes of determining the character and extent of the wetlands on the project sites. Agency staff confirmed that the proposal does involve wetlands and an Agency permit is required, in addition to the shoreline setback variance.

Based upon the July 10th field visit, and a prior field visit by the Agency and NYSDEC staff on July 8, 2014, it has been determined that the project at Crescent Bay will involve a deep water marsh which has a preliminary value rating of "3", while the project at the Annex will involve an emergent and deep water marsh which has a preliminary value rating of "2". As currently proposed, it appears the project will result in significant impacts to or loss of a minimum of 25,000 square feet of wetlands at the Annex site.

With respect to the shoreline setback variance, pursuant to the Agency's May 2, 2014 Request for Additional Information Item #10, staff has the following questions based upon the July 10, 2014 site visit. Two additional questions and an amendment to

Thomas Ulasewicz, Esq.
July 30, 2014
Page 2 of 6

Item #9 from the May 2, 2014 Request are also included below, based on observations during the site visit. Once we have received all of the information requested herein and in the May 2, 2014 request, a public hearing on your variance application will be scheduled pursuant to 9 NYCRR § 576.5. A public hearing is required by Section 806 of the Adirondack Park Agency Act before the Agency can render a decision on your variance application. The Agency's decision will be based on the record of the hearing, including the information submitted in response to this request.

If you have any questions regarding this Supplemental Request For Additional Information or the variance review process, please contact APA Environmental Program Specialist 2 (EPS) Suzanne McSherry who is assigned to review your project.

*This Notice is issued pursuant to Sections 806(3) of the Adirondack Park Agency Act and Sections 576.5 and 572.7 of the Adirondack Park Agency Rules and Regulations.

Date



Richard E. Weber, III
Deputy Director, Regulatory Programs

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
NYS Office of General Services

Supplemental Additional Information
APA Project No. 2014-53

Additional Questions Identified During the July 10, 2014 Survey:

1. Agency staff observed rock/cobbles at the surface along the easterly end of the Crescent Bay site and there is exposed bedrock located on the point along the westerly side of this site. Please confirm that there is sufficient depth to bedrock to drive piles and describe how you propose to drive piles into the rocky substrate located at the easterly end of the site. In addition, please provide details of any proposed alternative installation methods

Thomas Ulasewicz, Esq.

July 30, 2014

Page 3 of 6

2. Based upon the initial review it appears that little to no additional wetland vegetation will be impacted at the Crescent Bay site. However, it appears that there will be extensive impacts to wetlands at the Annex site. Please provide details regarding any steps that will be taken to avoid and minimize wetland impacts. Also, please include any proposed plans for wetland compensatory mitigation. These plans, if proposed, should follow the Agency's June, 1995 Compensatory Wetland Mitigation Guidelines.

Item 9 of the Agency's May 2, 2014 Request for Additional Information

Item 9 of the Agency's May 2, 2014 Request for Additional Information stated:

Revise sheets prepared by the LA Group and entitled "L-1.A" and "L-5.A" and sheets prepared by Floating Docks Mfg. Co. and entitled "Crescent Bay Overall Layout Sheet 1-A" and "Annex Parcel Overall Layout, Sheet 1-A" to include the limits of aquatic vegetation (as determined by mid-summer growth), sediment type (i.e. area of sand, silt, etc.), and lake bathymetry (0.5 meter intervals as measured from the mean high water mark).

3. The request in Item #9 is amended in that sediment classification at the Crescent Bay site need only be identified at the location of the sample point. A map showing limits of each sediment type is not necessary. The same will be sufficient for the Annex site provided that there is no variation in sediment type at this site. If sediment types vary at the Annex site the limits of each sediment type should be shown on a resource map.

Item 10 of the Agency's May 2, 2014 Request for Additional Information

Item 10 of the Agency's May 2, 2014 Request for Additional Information stated:

A site specific water resource impact review will be required to identify potential impacts to the aquatic ecosystem from the proposed covered shoreline structures. The specifics of this review will need to be determined by the Agency's Freshwater Analyst upon completion of a site inspection. The site visit should be scheduled shortly after the start of the aquatic vegetative growing season (mid-May to early June).

Thomas Ulasewicz, Esq.

July 30, 2014

Page 4 of 6

4. Based upon the results of the July 10, 2014 survey, a bathymetric map for the Crescent Bay site is necessary. The map should include contours in increments of 0.5 meter intervals to a depth of 3 meters, after which 1 meter increments should be identified. At the Annex site, 0.5 meter increments are necessary for the entire project site. The bathymetry survey should include those areas within all existing marina structures. The survey should occur in mid-to late summer, and at least three days after little or no rain within the watershed. In addition, the survey should include a narrative which provides the date of survey, recent (i.e. prior 5 days) rainfall, and an overview of current lake level in relation to mid-summer low water levels.
5. **Aquatic Plant Survey** - An aquatic plant survey should be completed for each site. The study must be prepared by an aquatic biologist, certified lake manager, or environmental consulting firm with experience conducting such studies. The survey and report should include the following elements:
 - a. A survey of macrophyte species composition for the entire littoral zone at each project site. The survey should occur between mid-summer and September 15 and should use either the Point Intercept Rake Toss Method (Relative Abundance Method) or Transect survey Method (Line Intercept Method), with the following as guidance:
 - 1) *Crescent Bay Marina Rake Toss Method-*
 - i. There should be no fewer than 8 sample sites at the site. The rake tosses must occur over the entire vegetative area and provide an adequate representation of varying depth or sediment types;
 - 2) *Annex Site Rake Toss Method-*
 - i. There should be no fewer than 12 sample sites within the open water area of the Annex site, no fewer than 12 sample sites in the back channel area of the Annex site, and no fewer than 3 sites in the deep water marsh and emergent wetland area located behind the Ampersand Bay Resort boathouse/condominium structure and northerly of the

Annex parcel. At all locations the rake tosses must occur over the entire vegetative area and provide an adequate representation of varying depth or sediment types;

3) *Crescent Bay Marina Transect Method-*

- i. Establish permanent transects which are representative of the plant communities, and include at least one transect which parallels the shoreline at the Crescent Bay site;

4) *Annex Site Transect Method-*

- i. Establish permanent transects which are representative of the plant communities. Include at least four transects which are perpendicular to the shoreline at the open water area of the Annex site, at least two transects which run the length of the back channel area of the Annex site, and at least one transect which surveys the deep water marsh and emergent wetland area located behind the Ampersand Bay Resort boathouse/condominium structure and northerly of the Annex parcel.
- b. For each site or transect indicate the abundance of each species according to the Cornell/US Army Corps Abundance Scale;
 - c. Please provide an overview map showing all sample locations at each site. This map should include a line which identifies the limits of all vegetation where overall plant density is equal to or greater than Trace on the Cornell/US Army Corps Abundance Scale. In addition, please label each wetland by size (area in sq.ft.);
 - d. Identify all plants by species and provide a separate distribution map for each species. The report should also include high quality photographs of each species;
 - e. Indicate all invasive species as well as NYS protected species in the report. Should any NYS protected plants be identified, additional distribution and abundance information may be necessary.

Thomas Ulasewicz, Esq.

July 30, 2014

Page 6 of 6

6. Based upon the Agency staff site inspection of the Annex's dead end channel and an ongoing review of published literature regarding water quality impacts associated with increased turbidity and total suspended solids, please be aware that staff is concerned that the expansion within the dead end channel will increase the amount of bottom sediment which will be re-suspended during operation. This re-suspension has the potential to negatively impact water quality and aquatic vegetation/primary productivity, in addition to fish and wildlife. Please describe how you propose to mitigate these impacts. This should include a discussion of:

- a. existing and proposed bathymetry;
- b. impacts associated with the easterly expansion of the facility;
- c. boat traffic (historic maximum use, present use which takes into consideration the structurally unsound slips, and proposed maximum development); and
- d. relocation of the primary navigation channel to the north to account for northerly expansion of the marina structures and modern boats which are larger and wider than those used when the facility was originally constructed.

REW:SBM:LRW:WMR:JLM:SHR:mlr

ATTACHMENT D



February 3, 2016

Richard Weber, Deputy Director of Regulatory Affairs
NYS Adirondack Park Agency
1133 NYS Route 86
P.O. Box 99
Ray Brook, New York 12977

Re: LS Marina, LLC
Variance Application 2014-53

Dear Deputy Director Weber:

Please find enclosed 4 copies of the following with regard to the above referenced:

1. Application for Major Projects – General Information Request for the Annex marina facility;
2. Application for Activities Involving Wetlands – Supplemental Information Request for the Annex marina facility;
3. Part A – Responses to May 2, 2014 Notice of Incomplete Permit Application;
4. Part B – Responses to July 30, 2014 Notice of Incomplete Permit Application;
5. Part C – 27 Attachments (which includes the GIR & SIR referenced above at Attachment 19); and
6. The Plan Set of Drawings.

I have temporarily withheld Attachment 9 in Part C – “Business Plan”, while I work out arrangements with Agency staff to assure confidentiality to this document both with regard to trade secrets and the need to protect corporate competitiveness.

Should you have any questions, please do not hesitate to contact me or Kevin Franke of the LA Group as Authorized Representatives to the Project Sponsor.

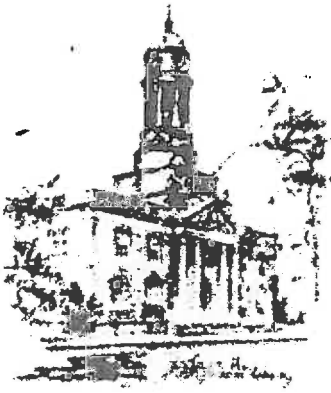
Sincerely,

Thomas A. Ulasewicz

TAU:v

cc: Mike Damp (without enclosures)
Kevin Frank "
Mark Taber "

ATTACHMENT E



TOWN OF HARRIETSTOWN

FRANKLIN COUNTY, NEW YORK
39 MAIN STREET
SARANAC LAKE, NEW YORK 12983

(518) 891-1470
FAX (518) 891-6265
WWW.HARRIETSTOWN.ORG

SUPERVISOR
MICHAEL P. KILROY

COUNCIL
RONALD B. KEOUGH
NICHOLE MEYETTE
HOWARD J. RILEY
EDWARD GOETZ, JR.

TOWN CLERK AND RECEIVER OF TAXES
PATRICIA A. GILLMETT

SUPERINTENDENT OF HIGHWAYS
CRAIG DONALDSON

CODE ENFORCEMENT OFFICER
EDWIN K. RANDIG

SOLE ASSESSOR
DOUG TICHENOR

AIRPORT MANAGER
COREY HURWITZ

April 3rd, 2015

Via: Regular Mail

L.S. Marina, LLC
Michael Damp, Member
2210 Saranac Ave.
Lake Placid, NY 12946

Re: **Notice of Decision – SEQRA Determination and Site Plan Approval**

L.S. Marina, LLC – Proposed Boathouse Demolition and Dock Expansion Project
Main Marina at 4899 NYS Route 3 (two parcels) and “Annex” facility at 498
Lake St. (one parcel) – Saranac Lake, NY
Tax Map Numbers: 457.-3-10, 457.-4-11.100 and 457.-2-33.100

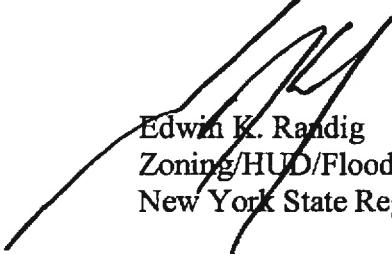
Dear Mr. Damp,

The Town of Harrietstown Planning Board (“Board”) held a public meeting on Thursday April 2, 2015 regarding the above-referenced project. After completing a careful review under the State Environmental Quality Review Act (SEQRA), a review which also extended over the course of several previous public meetings, the Board issued a Negative Declaration – Notice of Determination of Non-Significance for the proposed project. The Board then carefully considered whether the proposed project would satisfy the Site Plan review criteria in Article VIII of the Town’s Zoning Code. The Board determined that the proposed project would satisfy all applicable review criteria. The Board adopted a Resolution approving the Site Plan application for the above-referenced project. Copies of the Negative Declaration – Notice of Determination of Non-Significance and the Resolution Granting Site Plan Approval are attached.

If you have any questions about the enclosed, please contact our office at 518-891-0202 or by electronic correspondence at ceo@harrietstown.org

*Received
Catherine
Deputy Town Clerk
4/6/15*

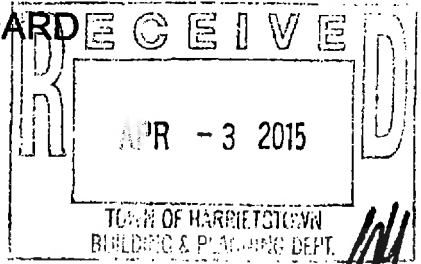
Very truly yours;



Edwin K. Randig
Zoning/HUD/Flood Administrator/ Code Enforcement Officer
New York State Registry # 0597-7257B

Cc: Patty Gillmett, Town Clerk, Via, Hand Delivery w/ enclosures ✓
Angela Sirriani-Lucey, Secretary of the Planning Board. Hand Delivery w/ enclosures ✓
Michael Hill, Esq., Via Electronic Correspondence w/ enclosures ✓
James E. Maher, Esq. Via, Electronic Correspondence w/ enclosures ✓
Tom Ulasewicz, Esq., Via Electronic Correspondence w/ enclosures ✓

TOWN OF HARRIETSTOWN PLANNING BOARD



STATE ENVIRONMENTAL QUALITY REVIEW ACT

NEGATIVE DECLARATION
Notice of Determination of Non-Significance

This Notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Harrietstown Planning Board ("Board"), as Lead Agency under SEQRA, has determined that the proposed action described below will not have a significant adverse effect on the environment and an Environmental Impact Statement will not be prepared.

Name of Action: LS Marina LLC – Demolition of Boathouses; Installation of Docks

SEQRA Status: Type I

Conditioned Negative Declaration: No

Description of Action: LS Marina LLC (the "Applicant") has proposed to renovate, remove and replace portions of the existing marina operation currently known as "Crescent Bay" or "Duso's" (the "Project") on Lower Saranac Lake. The Project would include the removal of existing dilapidated boathouses, replacement of 162 existing docks with 292 covered boat slips. Some uses previously active at the site would be discontinued while launch facilities for use by paying marina patrons would remain. Existing marina parking would be redeveloped and some new parking areas would be created. Boat wash facilities would be added to help prevent the spread of invasive species to the Lake. Existing municipal water service would continue to be utilized and composting toilets would be installed for use by marina customers. The Project site is located within the B-3 zoning district in which commercial marinas are a permitted use. Site Plan approval is required from the Planning Board.

Location: The Project site is located on three (3) parcels of land adjacent to Lower Saranac Lake consisting of the "Main Marina" at 4899 NYS Route 3 (two parcels) and the "Annex" facility at 498 Lake Street, Saranac Lake, designated in the Town's records by Tax Map numbers 457.-3-10, 457.-4-11.100, and 457.-2-33.100.

TOWN OF HARRIETSTOWN
BUILDING & PLANNING DEPT.
39 MAIN STREET
SARANAC LAKE, NY 12983

*Received
Call sent to
Deputy town clerk
4/6/15*

Reasons Supporting this Determination.

In January, 2014, the Applicant submitted a Site Plan Review Application together with Part 1 of a SEQRA Full Environmental Assessment Form ("EAF") and supplemental information discussing potential impacts of the proposed Project prepared by the LA Group ("LA Group"). Part 1 of the EAF identified the Town Zoning Board of Appeals, the Adirondack Park Agency, the New York State Department of Environmental Conservation and the United States Army Corps of Engineers as other governmental entities from which approvals would be required and which are therefore Involved Agencies under SEQRA (each an "Involved Agency" and, together, the "Involved Agencies"). Involved Agencies were contacted by the Board and either consented to the Planning Board serving as Lead Agency or failed to respond within the 30-day period provided by the SEQRA Regulations.

As discussed below, the original submission was subsequently supplemented and revised so that the complete EAF submission includes, among other information, the following:

- (a) Site Plan Review Application;
- (b) Project Description
- (c) Boat Traffic Assessment
- (d) completed Part 1 of the EAF form;
- (e) Project plans and amendments;
- (f) draft Stormwater Pollution Prevention Plan (SWPPP);
- (g) visual simulations of views of the proposed Project from different locations;
and
- (h) advisory Parts 2 and 3 of the EAF form;

Over a period of approximately 14 months, the Lead Agency has conducted a review and analysis of the information provided and the potential adverse environmental impacts of the proposed Project. The Lead Agency was assisted in its review by The Chazen Companies ("Chazen"). In connection with the application, the Lead Agency conducted a Public Hearing which commenced October 8, 2014 and either remained open or was re-opened to include two meetings, and received extensive verbal and written comments from the public. No comments on the Project were addressed to the Lead Agency by the other Involved Agencies either in writing or at the Public Hearing meetings.

The review by the Lead Agency and the public produced a number of questions and concerns regarding the materials submitted and the extent of potential environmental impacts of the Project. In response to these comments, changes were

made to the Project and the EAF and supporting documentation initially submitted were supplemented and revised with specific responses provided to concerns expressed at the Public Hearing. The additional information supplied by the Applicant and the public has provided an adequate base of information acceptable to the Lead Agency.

Based upon its careful and thorough independent review of all of the information provided for the proposed Project and public discussion of the potential environmental impacts of the Project, the Lead Agency completed Part 2 of the EAF and identified no moderate to large potential impacts. The Lead Agency determined that the potential impacts noted would not have a significant adverse effect on the environment and, therefore, preparation of an Environmental Impact Statement ("EIS") is not required.

Set forth below is a summary of the Lead Agency's analysis of the specific areas of environmental concern which supports its conclusion that the proposed Project will not result in a significant adverse environmental impact. The order in which these considerations are presented is the same as the criteria for determination of significance set forth at 6 NYCRR 617.7(c) and is not intended to indicate any priority of consideration.

1. AIR QUALITY – The proposed Project is not expected to have a significant adverse impact on air quality and impacts resulting from the Project do not meet any of the thresholds listed in Part 2 of the EAF. Therefore, the Lead Agency has determined that the Project will not result in a substantial adverse change in existing air quality.

2. TRAFFIC – Automobile/vehicle traffic impacts resulting from the Project do not meet any of the thresholds listed in Part 2 of the EAF. Although the additional docking slips will likely generate additional automobile traffic, other uses previously active and generating traffic at the Project site will be discontinued. Therefore, the Lead Agency has determined that there will not be a substantial adverse change in existing traffic as a result of the Project.

The Applicant revised its Boat Traffic Assessment in response to comments provided by the Lead Agency's engineering consultant. The consultant reviewed the Updated Boat Traffic Assessment for the Saranac Lake Marina and advised the Planning Board that the updated document made a reasonable worst case estimate of the impacts of the proposed marina on boat traffic on Lower Saranac Lake and the conclusion that the marina will not result in exceedance of the safe carrying capacity of Lower Saranac Lake during time of peak use is reasonable and justified. The consultant also noted that during non-peak time periods, which are the vast majority of the time, the impacts will be significantly less. Therefore, the Lead Agency has determined that there will not be a substantial adverse change in existing boat traffic as a result of the Project.

3. NOISE Although there is likely to be some increase in noise as a result of additional boat traffic, the floating docking system itself is not expected to produce noise under windy conditions. Noise impacts resulting from the Project do not meet any of the thresholds listed in Part 2 of the EAF. Therefore, the Lead Agency has determined that there will not be a substantial adverse change in existing noise levels as a result of the Project.

4. GROUND AND SURFACE WATER QUALITY AND QUANTITY (Erosion, Flooding, Leaching and Drainage) – The property would continue to utilize the municipal water supply, and there would be no increase in demand for water. The existing on-site wastewater disposal system would continue to be used by staff members, and composting toilet facilities will be added for use by marina patrons. No impact from these facilities is anticipated if the leach field continues to function properly. The Project would continue storage of marine fuel on-site. This activity is currently permitted and has been professionally installed and inspected by all applicable agencies and required leak detection and alarm system are in place. Although there is always the potential for an accidental spill when there is petroleum storage and distribution in close proximity to a body of water, this is considered unlikely.

An approximately 0.4 acre portion of the Annex parcel is within the 100 year floodplain, but no impacts are anticipated. Minor impacts on surface water due to construction within or adjoining a wetland or in the bed of a water body are possible due to the Project's location. However, the geographic scope would be limited to the areas of Ampersand and Crescent Bays and the activities required for demolition of the existing docks and installation of the new ones would have only small, temporary impacts. Therefore, this would not constitute a significant impact.

The draft Stormwater Pollution Prevention Plan (SWPPP) for the Project describes adequate stormwater management practices for both the construction and operation phases of the Project. The SWPPP has been revised to address concerns of the Planning Board's consulting engineers and has been reviewed by, and is acceptable to, the consulting engineers. The SWPPP must be approved by the NYS DEC as meeting the requirements of a General SPDES Permit for Stormwater Discharges from Construction Activities.

Based on its review of all of the information submitted relative to the Project's water supply system, wastewater treatment system and stormwater management, the Lead Agency has determined that there will not be a substantial adverse change in existing ground or surface water quality or quantity or a substantial increase in potential for erosion, flooding, leaching or drainage problems as a result of the Project.

5. SOLID WASTE PRODUCTION – Solid waste impacts resulting from the Project do not meet any of the thresholds listed in Part 2 of the EAF. Therefore, there will not be a substantial increase in solid waste production as a result of the Project.

6. NATURAL RESOURCES/CRITICAL ENVIRONMENTAL AREAS – Concerns were raised that the significant expansion of the Annex dock area could create additional shaded areas and boat traffic which could interfere with spawning behavior of several fish species. Conflicting expert opinions of the likelihood, extent and severity of this impact were provided by competent sources. The Project will replace covered boathouses and pontoon boats previously situated along the shoreline in the area of shallower water with a covered dock system extending out into deeper areas of the Lake. Elimination of beaching boats along the undeveloped shoreline will reduce impacts to plants and fish in shallow underwater areas from turbidity and shading. The area has historically been the site of boat traffic while still providing fish habitat, which is likely to continue. Additional spawning habitat appears to be available at other locations in the Lake so that only a small portion of the total spawning habitat will be affected. Therefore, this was determined to be only a small impact.

The question of whether the action might result in a reduction in the quality of the resource or characteristic which was the basis for designation of the underwater wetland CEA was focused on the wetlands themselves rather than fish within the wetlands. The area of wetland affected was determined to be small with few people affected and would not constitute a significant impact. Boat washing facilities will be operated on-shore to prevent the spread of invasive species. Additionally, aquatic invasive plant species such as milfoil will be removed and managed to the greatest extent practicable in the areas of the docks. Together, the boat washing and removal and management to the greatest extent practicable of invasive underwater plant species should have a beneficial effect with regard to native underwater plants.

7. TOWN'S PLANS AND GOALS – The Project Site is located within the B-3 zoning district in which commercial marinas are a permitted use and is, therefore, consistent with adopted land use plans. Accordingly, the Lead Agency determined that the Project would not create a material conflict with the Town's current plans and goals.

8. HISTORICAL, ARCHEOLOGICAL AND ARCHITECTURAL RESOURCES - The Project site is not substantially contiguous to, and does not contain, a building site or district listed on the State or National Registers of Historic Places or Register of National Natural Landmarks. The New York State Office of Parks, Recreation and Historic Preservation has confirmed that the Project will have no impact upon cultural resources in, or eligible for inclusion in, the State or National Registers of Historic Places. Therefore, the Lead Agency has determined that the Project will not result in the impairment of the character or quality of important historical, archeological or architectural resources.

9. AESTHETIC RESOURCES – The Project only have a small impact on aesthetic resources due to its visibility from publicly accessible vantage points year-round during both routine travel and during recreational or tourism-based activities and would be a major commercial facility replacing a smaller operation. However, changes to the original Project design, including a reduction in size, use of hip roof design and brown coloration of the dock system/roof support posts, have reduced this impact. In addition, only a small number of people would be affected even in the immediate vicinity of the Project and the impact would be further diminished at a distance. Therefore, this would not constitute a significant impact.

Other aesthetic impacts of the Project on neighboring property owners and those using lands nearby as a result of the length, size, number and placement of the docks were determined to be small in scope due to the limited number of people involved but of high importance to those affected. The Project area is visible from only a relatively small portion of the Lake due to the configuration of the shoreline. Because of the limited scope, this would not constitute a significant impact. Therefore, the Lead Agency has determined that the Project will not result in a significant impairment of the aesthetics of the area.

10. EXISTING COMMUNITY OR NEIGHBORHOOD CHARACTER – The existing deteriorating and dilapidated boathouses and docks would be removed, improving the appearance of the sites. The colors of the new dock roof supports and covers will blend in with the surroundings. Boats would be in the boat slips seasonally. The applicant does not propose winter storage of boats within the boat slips or suspended above the slips. In response to concerns that the scale and material of the floating dock system originally proposed were inconsistent with the scale and character of structures used for similar purposes in this area, the applicant proposed painting or powder coating the support posts brown rather than leaving the unfinished galvanized metal color originally proposed, and also proposed a change in the roof configuration to a hip roof style to eliminate the open ends which afforded potential views of the roof trusses and lighting fixtures. In addition, the Project design has been modified by eliminating slips on the outer two docks at the Main Marina, which would shorten each of the outer docks by 41' to reduce visual impacts on Swim Rock and to neighboring properties. One slip was then added to both of the two middle docks to partially compensate for the slips lost on the outer docks. This resulted in a net reduction in dock length of 60 linear feet and a total reduction of eight slips. With these changes, the Lead Agency determined that the Project is not significantly inconsistent with the predominant architectural scale and character of the community and will not result in significant impairment of the existing character of the community.

11. QUANTITY OR TYPE OF ENERGY USED – The proposed Project is not expected to have a significant adverse impact on the quantity or type or energy used and impacts resulting from the Project do not meet any of the thresholds listed in Part 2

of the EAF. Therefore the Lead Agency has determined that the Project will not result in a major change in the quantity or type of energy used.

12. HUMAN HEALTH – Although the Project meets one of the thresholds listed in Part 2 of the EAF due to a previous fuel tank leak which resulted in a cleanup supervised by DEC, the remediation has been completed and no further impact is anticipated.

13. CHANGE IN USE OR INTENSITY OF USE OF LAND – The proposed Project is a continuation of a portion of the existing use of the Project site. Although increasing the number of boat slips may increase the intensity of the use of the Project site, this increase will likely be balanced by elimination of some other historical uses. The site is not used as an open space or recreation area and does not include scenic views known to be important to the community. In addition, the site is not located in an agricultural district. The site is located in an area zoned for commercial marinas and several existing land uses and the zoning classifications in the surrounding area are similar to and compatible with the Project.

14. ATTRACTION OF PEOPLE TO THE SITE – Although the Project will likely attract more people to the site for boating purposes, this will be only for short-term recreational purposes rather than inducing people to relocate to the area or even spend a significant amount of time there.

15. MATERIAL DEMAND FOR OTHER ACTIONS – Unlike residential development which frequently stimulates a need for commercial development to serve the needs of the new residents, the Project will not cause a material demand for other actions that would result in any of the above consequences.

16. CHANGES IN TWO OR MORE ELEMENTS OF THE ENVIRONMENT – The Lead Agency has considered whether the Project will result in multiple changes to the environment which may have a cumulative adverse impact. As discussed above, the potential impacts of the Project will be sufficiently avoided or minimized so that the Project will not result in several changes to the environment, none of which would individually have a significant impact on the environment but, when considered together, would result in a substantial adverse impact on the environment.

17. RELATED ACTIONS – Although other development is expected to occur in the general area of the Project simply due to the area's location and zoning for commercial use, the type and extent of this future development is entirely speculative at this time and the Lead Agency is not aware of any long-range plan for such actions which includes the Project, actions that are likely to be undertaken as a result of the Project or actions that are related to or dependent on the Project. Therefore, the Project does not constitute two or more related actions approved by an agency, none of

which has or would have a significant impact on the environment but, when considered cumulatively, would meet one or more of the criteria for determination of significance.

CONCLUSION – The Lead Agency has identified areas of potential environmental concern and completed a careful and thorough review of the potential impacts of the Project, including consideration of substantial input from the public in writing and at a lengthy public hearing extending over several meeting dates which resulted in responsive changes to the original Project design. Based on this extensive review and a comparison of the impacts that may be reasonably expected to result from the proposed Project against the criteria set forth in 6 NYCRR 617.7(c), and governed by the rule of reasonableness, the Lead Agency has concluded that the proposed Project will not have a significant adverse impact on the environment and that the particular facts and circumstances of the proposed Project do not require preparation of an Environmental Impact Statement. Therefore, the preparation of this "Negative Declaration - Notice of Declaration of Non-Significance" is warranted.

For Further Information:

Contact Person: Dean Baker, Chairman
Address: Harrietstown Planning Board
Harrietstown Town Hall
39 Main Street
Saranac Lake, New York 12983
Telephone: (518) 891-0202

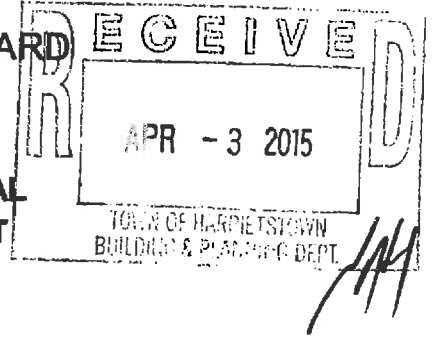
For Type I Actions and Conditioned Negative Declarations, a Copy of this Notice sent to:

Chief Executive Officer of the political subdivision in which the action will be principally located
Lead Agency
All involved agencies
Any person who has requested a copy
The applicant (if any)
Environmental Notice Bulletin

TOWN OF HARRIETSTOWN PLANNING BOARD

RESOLUTION NUMBER 2015-LSM-SPR-001

RESOLUTION GRANTING SITE PLAN APPROVAL
FOR LS MARINA DOCK EXPANSION PROJECT



WHEREAS, LS Marina LLC (the "Applicant") has submitted an application to the Planning Board for Site Plan approval pursuant to Article VIII of the Town Zoning Law for renovation, removal and replacement of portions of the existing marina operation currently known as "Crescent Bay" or "Duso's" and installation of new docks (the "Project"). The Project site is located on three (3) parcels of land adjacent to Lower Saranac Lake consisting of the "Main Marina" at 4899 NYS Route 3 (two parcels) and the "Annex" facility at 498 Lake Street, Saranac Lake (together, the "Project Site"); and

WHEREAS, the Planning Board was duly designated as Lead Agency for purposes of reviewing the potential environmental impacts of the proposed Project pursuant to the State Environmental Quality Review Act (SEQRA), and adopted a detailed SEQRA Negative Declaration – Determination of Non-Significance for the Project; and

WHEREAS, the Planning Board conducted a Public Hearing which commenced October 8, 2014 and either remained open or was re-opened to include two meetings, and received extensive verbal and written comments from the public which resulted in responsive changes to the original Project design by the Applicant; and

WHEREAS, The Planning Board was assisted in its review by its consulting engineers, The Chazen Companies ("Chazen"); and

WHEREAS, the Planning Board has reviewed the application materials submitted by the Applicant, information provided by the Town's consultant and all comments made at the Public Hearing and submitted in writing through and including February 25, 2015;

TOWN OF HARRIETSTOWN
BUILDING & PLANNING DEPT.
39 MAIN STREET
SARANAC LAKE, NY 12983

*Received
C. Cole, Mayor
Asst. Town Clerk
4/6/15*

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

A. The Planning Board determines that the application complies with the general considerations set forth in Section 106-46[A] of Article VIII of the Zoning Law for Site Plan approval as further discussed below:

- (1) *The adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, structures and traffic controls.*

Vehicular/automobile traffic is not expected to increase significantly above the levels associated with the prior uses of the site. Although the additional docking slips will likely generate some additional vehicular traffic, other uses previously active and generating traffic at the Project site will be discontinued. Pavement surfaces of existing parking areas will be improved as a part of the Project and new parking areas will utilize porous gravel surfaces where appropriate to minimize impervious areas.

Similarly, based upon the report provided by the applicant, which was amended in accordance with the recommendations of the Planning Board's consulting engineer, boat traffic is not expected to increase significantly above prior levels. Boats will have adequate area for movement and maneuvering at the docks.

- (2) *The adequacy and arrangement of pedestrian traffic access and circulation, walkways, control of intersections with vehicular traffic and overall pedestrian convenience.*

Concerns related to pedestrian access to the satellite parking area originally proposed on the southeast side of Route 3 have been resolved by elimination of the satellite parking area in the Applicant's May 22, 2014 project amendment. Parking areas have been situated to provide adequate capacity near the marina facilities which will minimize pedestrian movements. *Due to its distance from the Village and the generally sparse population density in the immediate vicinity of the Project, no significant degree of pedestrian traffic from the Village area to the Project site is anticipated.*

- (3) *The location, arrangement, appearance and sufficiency of off-street parking and loading.*

The 105 existing parking spaces will be increased by approximately 72 spaces with the reconfiguration of existing parking areas and creation of some new parking areas. Parking areas have been situated to provide adequate capacity

near the marina facilities. Although the Town's Zoning Law does not prescribe parking requirements specifically for a marina use, a ratio of one parking space for every two boat slips has been used by another municipality and is endorsed by the International Marina Institute as a reasonable standard. Some uses originally proposed by the Applicant have been eliminated, thereby reducing originally anticipated demand. Based on the formula utilized for marina parking, the total of 177 spaces should be more than sufficient for patrons using the proposed 292 boat slips as well as approximately 15 employees.

(4) *The location, arrangement, size, design and general site compatibility of principal and accessory buildings, lighting and signage.*

No new on-shore structures will be constructed as part of the Project but some existing buildings will be removed. Removal of dilapidated buildings will improve the appearance of the property. The existing lighting at the Main Marina will be replaced by minimal lighting using current technology at the main parking area, at the Marina entrance and within the covered docks. Lighting in the parking area will utilize cutoff fixtures to minimize light migration. Lighting within the covered docks at both the Main Marina and the Annex will be low wattage, ceiling mounted lights that will also minimize light migration. The "dock dot" marker lights proposed to be spaced along the perimeter of the docks for safety purposes will be of relatively low-output and not visually intrusive or detrimental. There will be no lighting in the parking area of the Annex and any existing building lights will be replaced to minimize light migration. The existing sign at the Main Marina will be retained and updated, with possible down-lighting added. The proposed location of the new freestanding sign at the Annex facility has been moved to conform with the Town Code, so the Project's signs will be in compliance with the Town's requirements.

(5) *The adequacy of stormwater and drainage facilities.*

There is currently no stormwater management on the Project site. Stormwater typically is either collected in a series of diversion ditches and directed to the Lake without treatment or attenuation, or drainage "sheet flows" across the site and parking areas directly into the Lake. The applicant provided a draft Stormwater Pollution Prevention Plan (SWPPP) which was revised to address concerns raised by the Planning Board's consulting engineer. The consulting engineer has indicated that its technical comments have been addressed to its satisfaction. The draft SWPPP describes adequate stormwater management practices for both the construction and operation phases of the Project.

(6) *The adequacy of water supply and sewage disposal facilities.*

The municipal water supply for the Project will be the same as for the previous use of the marina facility. Water use is not expected to increase above the previous use. The existing on-site wastewater disposal system will be updated with a new leach field as reviewed and accepted by the Planning Board's consulting engineers and will continue to be used by staff members, and composting toilet facilities will be added for use by marina patrons. These facilities are expected to be adequate for the proposed uses and anticipated number of patrons.

- (7) *The adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise-detering buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.*

The proposed action will take place primarily on areas that have already been developed as part of the existing marina facility. Existing undeveloped areas of the site will remain undeveloped. As there will be minimal site disturbance, most of the existing vegetation will remain and some additional plantings will be installed along the shoreline. This is determined to be adequate by the Planning Board.

- (8) *In the case of an apartment complex or other multiple dwelling, the adequacy of usable open space for play areas and informal recreation.*

N/A

- (9) *Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.*

It is anticipated that there will not be a significant increase in noise above the levels associated with the previous marina use of the property. As discussed in paragraph (4) above, lighting fixtures will be positioned and shielded to minimize glare and migration onto adjacent properties. The Project design has been modified by eliminating slips on the outer two docks at the Main Marina, which would shorten each of the outer docks by 41' to reduce visual impacts on Swim Rock and to neighboring properties. One slip was then added to both of the two middle docks to partially compensate for the slips lost on the outer docks. This resulted in a net dock reduction in length of 60 linear feet and a total reduction of eight slips. The Project design has also been modified to use a hip roof design on the ends of the dock roofs to eliminate the open ends which afforded potential views of the roof trusses and lighting fixtures and to paint or otherwise color the

dock posts/roof supports a dark brown color. The Board is satisfied that these modifications have addressed concerns about the visual impact of the Project.

- (10) *The adequacy of fire lanes and other emergency zones and water supply for fire emergencies.*

Concerns regarding adequacy of roadways for fire apparatus have been resolved with the Fire Department and Code Enforcement Officer. The concern regarding adequacy of the water supply for fire emergencies has been resolved by the addition of a dry hydrant to the Project plans. The Board's consulting engineer is satisfied with the provisions for fire protection.

- (11) *Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.*

As noted above in item #5, there is currently no stormwater management on the Project site and stormwater typically is either collected in a series of diversion ditches and directed to the Lake with no treatment or attenuation or "sheet flows" across the site and parking areas directly into the Lake. The applicant has provided a draft Stormwater Pollution Prevention Plan (SWPPP) for the Project which describes stormwater management practices for both the construction and operation phases of the Project. The SWPPP has been revised to address concerns of the Planning Board's consulting engineers and has been reviewed by, and is acceptable to, the consulting engineers.

- (12) *The compatibility of building design with the existing characteristics of the neighborhood.*

The Project is located in the B-3 zoning district in which commercial marinas are a permitted use, and is a continuation of an existing marina operation currently known as "Crescent Bay" or "Duso's". As noted above, modification of the Project design by eliminating slips on the outer docks at the Main Marina, using a hip roof design on the ends of the dock roofs and painting or otherwise coloring the dock posts/roof supports a dark brown color has addressed concerns about the visual impact of the Project on neighboring properties. The Board is satisfied that the design of the project, incorporating the revisions proposed by the applicant, is compatible and acceptable.

2. The Planning Board therefore grants Site Plan approval for the proposed Project, conditioned upon the following:

- A. Approved Special Use Permit from the Town's Zoning Board of Appeals.
- B. Any required Adirondack Park Agency variance and/or wetlands permits/approvals, and/or other required APA permits or approvals.
- C. Any required Department of Environmental Conservation permits/approvals, and any other approvals or permits required by any other State agencies or departments.
- D. Any required permit or approval from the U.S. Army Corps of Engineers.
- E. At no time shall there be any storage or suspension of boats above any boat slips or anywhere on or above the boat docks, or on or above the decks or walkways leading to boat slips or docks. No boats shall be berthed in boat slips from December 1st until ice-out in the Spring of the following year. No "bubblers" or other devices shall be used to prevent the formation of ice around the docks or dock supports.
- F. There shall be no beaching, berthing or docking of boats or watercraft of any type along the shoreline except for hand-launched, non-motorized watercraft. Docking and berthing shall be limited to the slips and docks shown on the approved plans.
- G. In addition to the proposed on-shore boat washing, there shall be ongoing measures to remove and manage to the greatest extent practicable milfoil and other aquatic invasive species in the area of the proposed docks at both the Main Marina and the Annex.
- H. Placement of buoys at the Main Marina and the Annex indicating maximum boat speed of five (5) miles per hour and "No Wake Zone".

The Resolution was approved by the following vote:

AYES: Dean Baker, William Ross, Peter Wilson

NOES:

ABSENT: Edward Grant

ATTACHMENT F



Tracking No. 7014 0510 0000 8300 7532

December 22, 2014

Mr. Thomas Ulasewicz
Fitzgerald, Morris, Baker, Firth, P.C.
16 Pearl Street, PO Box 2017
Glens Falls, NY 12801

Mr. Michael Damp, LS Marina
2210 Saranac Ave.
Lake Placid, NY 12946

**RE: APA Project 2014-53; LS Marina LLC, Town of Harrietstown,
Franklin County**

Dear Messrs. Ulasewicz and Damp:

Agency staff have determined the wetlands in the vicinity of the Annex proposal have an overall value rating of "1" pursuant to 9 NYCRR §§578.5 and 578.6 of Agency regulations. This determination updates the preliminary value rating in the Agency's July 30, 2014 Supplemental Request for Additional Information.

This determination is based on an analysis of information obtained from our office review including relevant maps and aerial photography and a series of field visits on July 8, 2014, July 10, 2014 and September 8, 2014. The public record for the Town of Harrietstown Planning Board review also contained materials from your consultants and the public that have contributed to this determination. Specifically, these documents included surveys performed by NYSDEC Fisheries staff and the aquatic plant survey, bathymetry and mapping of wetlands prepared by the LA Group, PC and submitted to the Town for their review.

Staff assessment indicates the wetland complex downstream and southwest of Edgewood Road is 16.4 acres in size, with 10.4 acres within the mean high water of Lower Saranac Lake. It consists of a complex of deep water marsh, emergent marsh, shrub swamp and coniferous forested swamp. The attached map prepared

by Agency staff delineates the wetlands in the Annex area and is based on aerial photo interpretation and field verification.

According to 9 NYCRR §578.6, if a condition exists where three or more value "2" characteristics are determined to exist in a wetland complex, the value rating of the wetland will become value "1". In this case the three characteristics that contribute to our value "1" rating of the wetland complex are:

- a) Emergent marsh coevtype (§578.5(c)) of between 0.4 and 1.4 acres. Agency staff did not distinguish between floating leaved and emergent vegetation in all cases. 0.4 acres of emergent vegetation was observed in the field. Additional emergent vegetation is located within the 1 acre area identified on the map as Floating/Emergent;
- b) Wetlands composed of two or more structural groups (§578.5(g)). This wetland complex has two of the structural groups mentioned in this section: shrubs and trees (10.7 acres) and flat or water (at least 4.4 acres); and
- c) Wetlands with unusual species abundance or diversity (§578.5(m)). Staff have determined the Annex wetland complex is used by a large number of fish based on the assessment of the fish survey conducted by the New York State Department of Environmental Conservation in 2005. In addition, the data indicates that a large number and wide range of fish species are found to be present at the Annex.

Staff estimates the current proposal could result in the loss or degradation of the wetland complex having a value rating of "1". The Agency's July 30, 2014 Supplemental Request for Additional Information determined that your proposal does involve wetlands and an Agency permit is required. To date, no permit application has been submitted.¹ In preparing this application, we urge you to consider alternative proposals which would avoid wetland loss and degradation at the Annex site.

¹ As you are aware, once a project application has been submitted the relevant review standards will be applied. Pursuant to 9 NYCRR § 578.10(a)(1) for activities involving Value "1" wetlands, the proposed activity must be found to be compatible with the preservation of the entire wetland and, not result in degradation or loss of any part of the wetland or its associated values unless the economic, social and other benefits derived from the activity compel a departure from these guidelines.

Ulasewicz and Damp

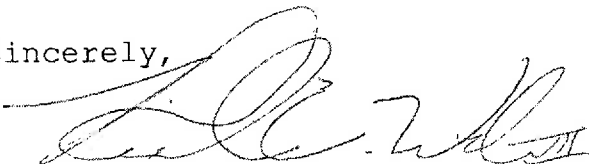
December 22, 2014

Page 3 of 3

I wanted to inform you of the change from the preliminary rating of "2" to the final rating of "1" as soon as possible so that you had an opportunity to evaluate the potential impact of this determination on the project design in the area of the Annex. Please note that this is a determination of variance jurisdiction. Should you choose to, 9 NYCRR § 588.2 sets forth the process for challenging this determination.

If you have any questions or wish to discuss this determination, please do not hesitate to contact me.

Sincerely,

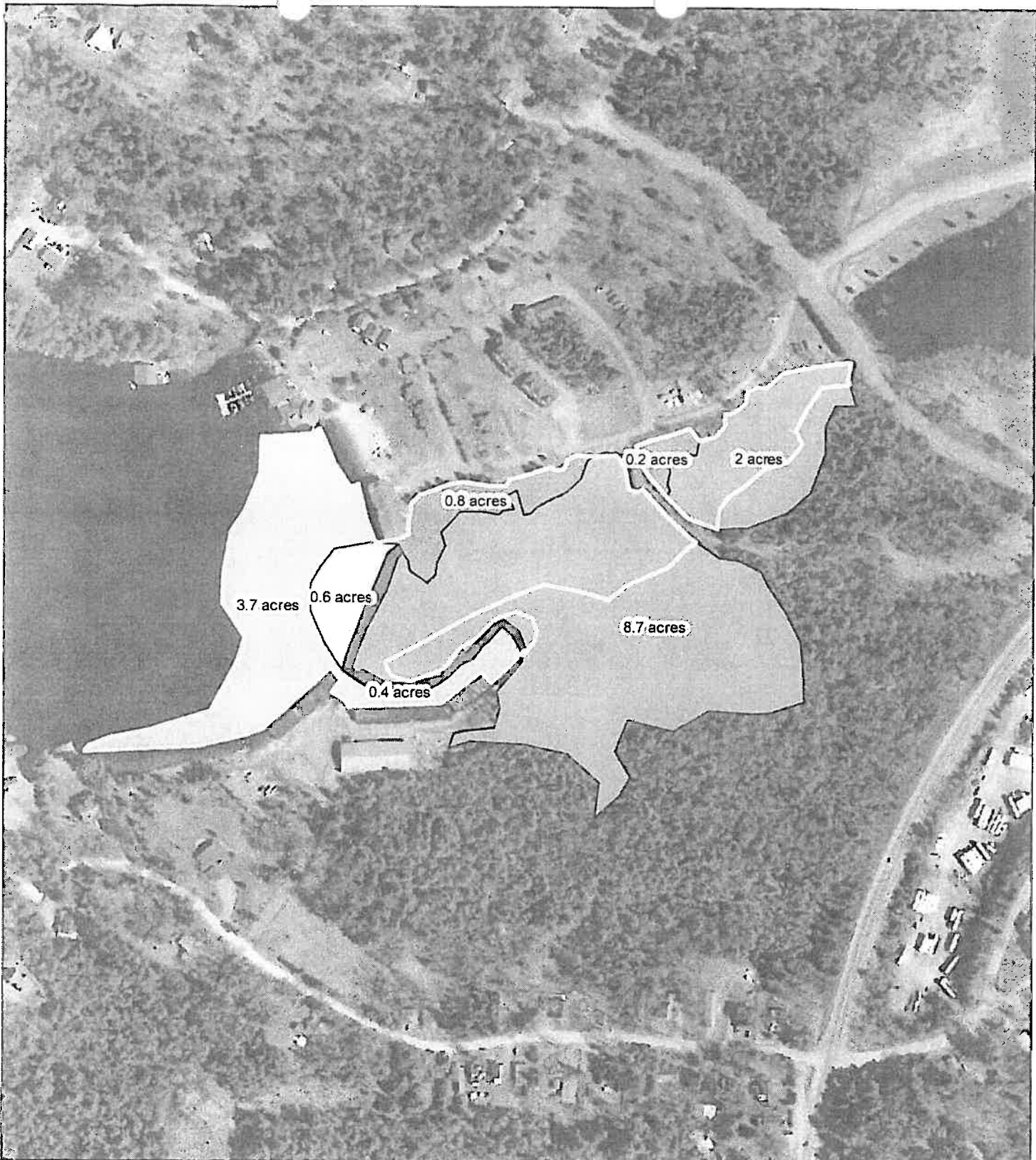


Richard E. Weber III
Deputy Director, Regulatory Programs
Project Administrator

REW:SBM:slp

cc: Mark Taber, The LA Group
Kevin Franke, The LA Group
Edwin Randig, CEO, Town of Harrietstown
Terry Martino, APA
Suzanne McSherry, APA
Michael Hill, Town Counsel

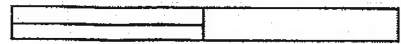
Enc: Wetland map



P2014-0053 Annex Wetlands



Feet
0 300 600



Prepared by M. Roofs 12/4/14.



Emergent*



Floating-leaved/Emergent**



Floating-leaved*



Shrubs/Trees**



Submerged aquatic*

Within mean high water**

*Field verified.

**From air photo interpretation.

ATTACHMENT G



Via Certified Mail
Tracking No.: 70150640000561381474

SECOND NOTICE OF INCOMPLETE PERMIT APPLICATION
AND
SECOND 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
--	--

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 Harriestown, Franklin County

Land Use Area: Hamlet and State Lands under the jurisdiction of the NYSDEC

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

Dear Messrs. Damp and Ulasewicz:

Thank you for your wetlands permit application, received by the Agency on February 4, 2016 and March 9, 2016. The permit application will be reviewed in conjunction with P2014-53, a variance application for this proposal received by the Agency on April 15, 2014 and subject to a May 2, 2014 Request for Additional Information and a July 30, 2014 Supplemental Request for Additional Information. The information received on February 4, 2016 also included responses to these two requests.

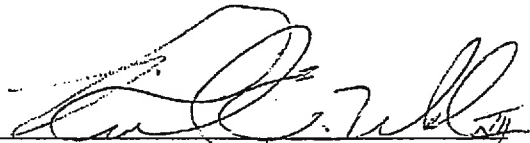
As outlined below, initial evaluation by Agency staff indicates that additional information is necessary to review the permit application. Additional information also needs to be provided in order to support the variance application and allow the Agency to make the determinations required for issuance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

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 Second Notice of Incomplete Application/Variance Information Request.

3/24/16
Date



Richard E. Weber III
Deputy Director, Regulatory Programs

Attachments: List of Requested Information
Copies of returned mail

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
NYS Office of General Services

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. **Permit Application, required signatures:** A significant portion of the proposal involves the placement of structures on lands owned by the State of New York and under the jurisdiction of the Department of Environmental Conservation (DEC). Please provide a letter, permit, or other written authorization stating that the DEC will allow construction and maintenance of the proposed structures on these state lands.
2. **Request for Additional Information, dated May 2, 2014 (RFAI) Item 2 (Application Item 16); General Information Request (GIR) Item 13:** Please submit the necessary permit applications to the NYSDEC, USACOE, and all other involved agencies so that a coordinated review of the proposal may be undertaken. Provide the Agency with copies of applications submitted to and determinations made by these entities.

3. **RFAI Item 2; RFAI Item 9; Supplemental Request for Additional Information, dated July 30, 2014 (Supplemental RFAI) Item 4; Supplemental Information Request (SIR) Item 5:**

Please resubmit plan sheet L-5A, "Annex Marina Shoreline Setback Diagram," and Figure X, "Anticipated Navigation Routes and Buoy Plan," both received by the Agency on February 4, 2016, to address the following:

- Depict and label elevation contour 1533.61 (the mean high water mark).
- Depict and label the mean low water mark. It will be necessary for the Agency to confirm that this label accurately depicts the mean low water mark.
- Depict and label the elevation at two meters below the low mean water mark. Again, it will be necessary for the Agency to confirm this elevation. Please note that the wetland boundary for Agency jurisdictional purposes extends to two meters below the mean low water mark.
- Depict and label the elevation of the water level at the time of the bathymetric survey.
- Depict and label each depth sounding taken to create the bathymetric contours.
- Depict the bathymetric contours based on the mean low water mark.
- Depict the limits of aquatic vegetation by shading those areas where vegetation is absent, including those areas under existing/recently razed marina structures.

4. **RFAI Item 2; GIR Item 12; SIR Item 5:**

Drawing L-1.3 depicts shoreline structures at the Main Marina that will be removed and replaced "in-kind." Drawing L-2.0 includes a proposed boat launch, retaining walls, concrete sidewalks and other structures located at the Main Marina within the shoreline setback area. Drawing L-6.0 depicts a proposed boat launch and potentially other structures greater than 100 square feet in the shoreline setback area.

New structures greater than 100 square feet within the shoreline setback area will require a variance. In addition, expansion or replacement of existing structures, including attached structures, may also require a variance.

- Please describe whether any renovations to or replacements of structures located within 50 feet of the mean high water mark of Lower Saranac Lake will result in any of the following:
 - (i) the location of the structure closer to the mean high water mark;
 - (ii) an increase in height;
 - (iii) an increase in footprint; or
 - (iv) an increase in width.
- If so, please describe and depict the existing and proposed structure footprint on plan sheets and include architectural drawings depicting the existing and proposed height for each.

5. **RFAI Item 2:** Identify the location of the 14 uncovered slips on revised plan sheets.

6. **RFAI Item 2; GIR Item 12; SIR Item 5:** Provide a plan and elevation detail for the proposed boat launches at both the Annex and the Main Marina site. Include in these details existing and proposed contours, areas of proposed excavation and fill (including within the mean high water), and all existing and proposed development in the immediate vicinity of each launch. Modify all site plans as necessary to show modifications in grading which may be required, and locations of turbidity curtains as may be required.

7. **RFAI Item 2; GIR Item 12:**
On-site Wastewater Treatment Plan Sheets L-4, L-7.3, L-7.4 and L-7.5 include on-site wastewater treatment system details. In addition, Attachment 3 includes a report titled *Engineering Report Water and Sanitary Sewer* prepared by the LA Group last revised February 2, 2016. Please address or note the following:
 - The proposed on-site wastewater treatment systems (OSWTS's) at the Main Marina and the Annex utilize Clivus Multrum M54W composting toilets. It appears the Multrum units do not require any in-ground leachate discharge. Please confirm. If leachate must be discharged/treated in-ground then please provide details for treatment.
 - The basis of design for the Multrum units included in the *Engineering Report* and on Drawing No. L-7.5 includes 186 boat slips at the Main Marina and 114 boat slips at the Annex. As noted in the Application received by the Agency March 9, 2016, the total number of slips proposed at the Main Marina is 178. Please clarify and modify the plan set and/or *Engineering Report* accordingly.
 - The proposed conventional shallow absorption treatment system at the Main Marina depicted and detailed on the plan sheets includes a shared system that would serve the proposed office, four-bedroom residence and existing mechanic shop. The OSWTS design included in the *Engineering Report* only addresses the proposed office and four-bedroom residence. Please clarify and modify the plan set and/or *Engineering Report* accordingly.
 - It does not appear that the four existing cabins to remain, paddle sports structure, main marina building and the existing showroom at the Main Marina depicted on the plan sheets will be connected to the proposed OSWTS. Do the cabins and the showroom have existing OSWTS's? If so, please depict the components (septic tank, absorption field) on the plan sheets. If existing OSWTS's will be utilized then please provide details including date of installation, basis of design, deep-hole test and percolation rate data and sizing calculations. In addition, please depict a suitable 100 percent replacement area for each absorption field to remain.
 - Please provide a final *Engineering Report* and set of plans for the OSWTS sealed by a New York State licensed professional engineer.

8. **RFAI Item 2; RFAI Item 3:** The visual simulations provided in Section 7 of the materials received at the Agency on February 4, 2016 were prepared in 2014 for the Town of Harriestown. For the purpose of Agency review, please also provide the following, keyed to a revised "Photo Viewpoint Diagram":
- Photos and visual simulations of the Annex site as seen from a location similar to the highest balcony of the multiple-story building on the shoreline of the adjacent property to the north/east of the Annex site.
 - Photos and visual simulations of the Main Marina site as seen from a location similar to the highest deck level of the boathouse on the adjacent property to the east of the Main Marina.
 - Photos and visual simulations of the Main Marina site as seen from the public trail on Mount Baker.
 - Photos and visual simulations from viewpoint 7; these were not provided with the materials submitted.

Please also respond to the following:

- In many of the simulations most of the slips are depicted as being empty, without boats. In addition, most of the boats that are depicted in the simulations are shown with minimal freeboard and do not have canopies, which can be colorful and visible. Please revise the simulations to more accurately depict the boats that would be berthed in the proposed structures.
 - Simulation 6 depicts the decking as a light tan color. Would the decking in these areas be in the shadow of the roof during most times? If so, please revise accordingly.
 - Will the roof supports ("square tube roofleg") have knee braces? If so, please revise the simulations accordingly.
 - Will the edge of the roofing (fascia) be the same green color as the roof surface?
9. **RFAI Item 2; SIR Item 3:** The petroleum bulk storage fueling facility is depicted on the plan sheets. Please include size of the tanks(s) and details for secondary containment and spill and overfill prevention equipment. The response states the tank and pumps were installed in 2014 in accordance with New York State requirements. Please provide a copy of the current NYSDEC Petroleum Bulk Storage Registration Certificate.
10. **RFAI Item 11; SIR Item 3:** With regard to the proposed lighting on the covered slip structures, please respond to the following:
- Please specify whether you are proposing 20 lumen or 70 lumen Dek Dot lights on the proposed shoreline structures.
 - Provide the lens color and light setting (steady state or flashing) proposed for the Solar Marine Lite lights and provide manufacturers specifications regarding the lumen output of the fixture you are proposing.
 - Describe where the Solar Marine Lite fixtures will be located on each structure.

- Describe whether the Dek Dots will be installed on the walkways between slips.
- Describe all efforts to minimize the light intensity and/or duration of illumination through the use of shields, motion sensors, timers, or dimmers.

11. **RFAI Item 14; SIR Item 11:** The harvesting plan prepared by Aquatic Invasive Management, LLC (AIM) includes two proposals. Please indicate which option you intend to pursue, and also include:

- A map or detailed statement describing the specific geographic area at each site where invasive species management will occur;
- A statement regarding the level of control which you consider acceptable and an indication regarding who will be responsible for determining whether that level of control is attained; and
- A statement regarding who will be responsible for determining and approving future management efforts.

The AIM proposal indicates that control is for Eurasian watermilfoil only. However, variable-leaf milfoil is also present at the Annex site. Please confirm how you propose to manage variable-leaf milfoil and any other aquatic invasive species which may colonize the project site.

12. **RFAI Item 15; GIR Item 12:** Please provide a detail on the plan sheets for the boat wash station proposed to the west of the existing Showroom building. Include sizing calculations utilized in the design.

13. **RFAI Item 18; GIR Item 12; SIR Item 3:** An approximately 7,000 square foot area is proposed to be dredged at the Annex site. Please provide the estimated amount of dredged material in units of cubic yards.

14. **RFAI Item 18; GIR Item 12; SIR Item 3:** It appears a 30' X 30' area adjacent to the existing storage building and approximately 50 feet from the Lake is proposed for "dewatering and stabilization". The area does not appear large enough for adequate dewatering. Please provide a narrative and appropriate details for dewatering activities. Please also include final disposal locations for all dredging spoils. If it is adjacent to the storage building then include depth of material over the area depicted.

15. **RFAI Item 18; GIR Item 12; SIR Item 3:** Your response indicates that the sediment which you are proposing to dredge has formed at the outlet of a culvert. What is the source of this sediment, if known, and what steps have been taken or are you proposing to take to prevent future sedimentation from occurring?

16. **RFAI Item 20; SIR Item 3:** Please describe the methods that will be employed to prevent boats from beaching, docking, or mooring in locations other than the proposed 292 slips.

17. **RFAI Item 20; Supplemental RFAI Item 6; SIR Item 3:** The application states that the navigational buoys within the lagoon, as shown on Sheet L-6.0, are placed to direct traffic away from emergent wetlands. Based on publicly available aerial photographs taken during the summer, the buoys, as proposed, would be located within the emergent/floating leaved marsh area. There is approximately 20 feet of open water for boat navigation between the edge of wetlands and the end of the proposed slips, which is half the distance allowed for navigation between the slips in other areas. Please address how boats will navigate in and out of the slips without disturbing the wetland.
18. **RFAI Item 21; SIR Item 3:** Will rental motorboats be berthed in the proposed slips? If not, how many motorboats will be stored in other locations?
19. **Supplemental RFAI Item 2; GIR Item 12; SIR Item 3:** Your application indicates that there "will not be a loss of wetlands or wetlands values" as a result of your proposal. However, preliminary calculations by staff indicate that the project may result in significant wetland loss due to filling, shading, boat traffic, and other factors. Accordingly, describe the steps that will be taken to avoid and minimize wetland impacts at the project site. For example, the impacts to wetlands could be reduced by converting the existing 9,000 square foot building into a quick-launch boat-storage facility, eliminating the proposed structures in the lagoon, and/or reconfiguring other slip structures to avoid wetlands. Also, please include plans for compensatory wetland mitigation. These plans should follow the Agency's June 1995 Compensatory Wetland Mitigation Guidelines.
20. **Supplemental RFAI Item 2; SIR Item 3:** How many boats are stored in each of the two existing boat storage facilities on the project site? Please provide photos of the interiors of each of those structures, or contact Agency staff to take the photos.
21. **Supplemental RFAI Item 2; SIR Item 3:** Please describe how the boat storage buildings are utilized during the summer boating season.
22. **Supplemental RFAI Item 2; SIR Item 3:** In your response you have stated that "...the project will not negatively impact the fishery in Lower Saranac Lake...it may in fact enhance the fishery", and "... there is more scientific information to make the argument that the marina would augment the fishery then (sic) exists to suggest it would harm it." Please note that the Agency will defer to the NYSDEC Bureau of Fisheries to conclude what the impacts from the proposed development will be on the fishery, and whether those impacts are considered an improvement to the fishery.
23. **Supplemental RFAI Item 4:** The submission indicates that the Annex site was surveyed on August 11, 2014, and the Main Marina site was surveyed on August 19, 2014. Please confirm the dates of these surveys.
24. **Supplemental RFAI Item 6:** Provide a complete, unabbreviated bibliography and full text for all literature cited in Part B and Appendix 26.

25. **Supplemental RFAI Item 6; SIR Item 5:** Please modify Attachment 23 to include the locations where the seven boats identified in your response to this item have been docked or moored in the lagoon, and provide documentation that these areas were used as of the August 1, 1973 effective date of the Adirondack Park Agency Act.
26. **SIR Item 3:** The plan for signage is provided on sheet L-7.2 and L-2.1. Please provide the dimensions of the existing "Crescent Bay Marina" sign at the RT 3 entrance of the Main Marina site, as well as any other existing signs on the site.
27. **SIR Item 3:** The application materials received by the Agency March 9, 2016 indicate a draft Stormwater Pollution Prevention Plan (SWPPP) has been prepared. Please provide a copy of the SWPPP for Agency review including sizing calculations and design details for any proposed stormwater management practice for the project.
28. **SIR Item 5:** Attachment 22 of the February 4, 2016 survey indicates that you believe the wetland in Ampersand Bay may extend beyond the area delineated by the Agency's wetland biologist. Provide a basis for how you identified the adjacent areas as likely areas of additional wetland and provide a scaled map which delineates the boundaries and areas of these "additional" wetlands.
29. **GIR Item 12:** How will boats be stored during the months when the marina is not in operation? Please depict and label the location(s) of any storage area(s) on revised plan sheets.
30. **GIR Attachment B:** Please find enclosed copies of six envelopes containing the "Project Notice Form" for P2016-29, issued February 18, 2016. These items were returned to the Agency as "undeliverable". Please provide the Agency with corrected or updated landowner(s)' name(s) and/or addresses for each.

REW:SBM:mlr

ATTACHMENT H



Adirondack Park Agency

Via Certified Mail
Tracking No.: 70051160000478539639

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
--	--

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
Page 2 of 9

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 Harriestown
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.

- 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.

- 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 Harrietstown 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

ATTACHMENT I

June 2, 2015

VIA EMAIL AND US MAIL

Mr. John Burth, Environmental Program Specialist 2
Adirondack Park Agency
NYS Route 86
Ray Brook, NY 12977

Re: Saranac Lake Marina – Enforcement File E2014-0035

Dear John:

As a follow up to our initial submission in November 2014 and subsequent conversations with you and Shaun LaLonde, enclosed please find a revised plan for "The Annex Parcel" that modifies the stormwater planter detail as discussed.

Given the current pre-application status of the project proposal before the APA with regard to the value rating of wetlands at the Annex, implementation of the remediation plan will occur as part of the dock installation construction project which is likely to be very dependent on the Agency's final permitting decision on both of the project sponsor's wetland and variance applications. This final outcome should occur prior to the 2016 construction season.

We are hopeful this information addresses any outstanding items. If you have any questions, please feel free to contact me at 587-8100.

Sincerely,



Mark Taber, RLA
Senior Associate/Landscape Architect
mtaber@thelagroup.com

Enc.

cc (via e-mail only) Shaun Lalonde
Mike Damp
Tom Ulasewicz



**Adirondack
Park Agency**

LEILANI CRAFTS ULRICH
Chairwoman

TERRY MARTINO
Executive Director

July 20, 2015

Thomas A. Ulasewicz, Esq.
Fitzgerald, Morris, Baker, Firth, PC
P.O. Box 2017
Glens Falls, NY 12801

RE: Enforcement File: E2014-0035
LS Marina, LLC
Tax Map Parcel 457-2-33.1
Town of Harrietstown, Franklin County

Dear Mr. Ulasewicz:

Please find enclosed a proposed Settlement Agreement intended to resolve this matter. If this agreement is acceptable to your client, please have both copies signed before a notary public and return them to the Agency by August 14, 2015. Agency staff will then execute the two original agreements and send you one to file in the Franklin County Clerk's Office.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J M B".

John M. Burth
Environmental Program Specialist 2

JMB:ap
Enclosures

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the apparent violation of Section 806 of the Adirondack Park Agency Act on lands owned by:

SETTLEMENT AGREEMENT
Agency File E2014-0035

LS MARINA, LLC

Respondent, on property located in the Town of Harrietstown, Franklin County (Tax Map Parcel 457.-2-33.100) LUA: Hamlet

RECEIVED
ADIRONDACK PARK AGENCY

AUG 12 2015

-----X
WHEREAS:

1. Pursuant to Section 806 of the Adirondack Park Agency Act, a variance is required from the Adirondack Park Agency prior to the construction of any structure greater than 100 square feet in size within 50 feet of the mean high water mark of any lake on Hamlet lands in the Adirondack Park.
2. Tax Map Parcel 457.-2-33.100 (Lot 33.100) is an approximately 5.09 acre property located on Hamlet lands and containing shoreline on Lower Saranac Lake. Lot 33.100 is improved by accessory structures associated with a pre-existing marina use.
3. Respondents are the current owners of Lot 33.100, as described in a deed recorded in Book 2014, Page 1669, in the Franklin County Clerk's Office.
4. Agency investigation reveals that, in 1989, a prior owner constructed a 9,000 square foot accessory storage building on Lot 33.100 that is located approximately 42 feet from the mean high water mark of Lower Saranac Lake at its closest point.

No variance was obtained from the Agency prior to the construction of this structure.
5. Agency staff have received from Respondent the following proposed plans for resolving the violation cited in Paragraph 4 above: a letter and attachment prepared by the LA Group and dated November 14, 2014, and a plan sheet titled *Annex Parcel-Remediation Plan*, prepared by the LA Group and last revised on May 27, 2015.

6. Respondent desires to resolve this matter and agrees to be bound by the terms of this Settlement Agreement.

NOW, THEREFORE, THE AGENCY AND RESPONDENT AGREE AS FOLLOWS:

1. By October 1, 2016, Respondent shall implement the plans described in Paragraph 5 above. Respondent shall notify the Agency Enforcement Program upon completion of the work required by this Paragraph 1 so that a compliance inspection may be undertaken.
2. This settlement, including the plans referenced in Paragraph 5 above, is binding on Respondent and all future owners of Lot 33.100. Lot 33.100 shall be maintained in accordance with these plans, which are available upon request from the Agency.
3. All deeds conveying all or a portion of the lands subject to this settlement shall contain references to this Settlement Agreement.
4. By October 1, 2015, Respondent shall file an original copy of this Settlement Agreement under its name in the Franklin County Clerk's Office in the same manner as an Agency permit and shall provide proof of such filing to the Agency.
5. This matter shall be deemed to be finally resolved upon the full execution of this Settlement Agreement.

EXHIBIT 1

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

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 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.

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.

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.

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*, *Fothergilla 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.

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- 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.