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 <p style="margin-left: 150px;">NEW YORK STATE OF OPPORTUNITY.</p> <p style="margin-left: 150px;">Adirondack Park Agency</p> <p style="text-align: center;">P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 www.apa.ny.gov</p>	<p style="text-align: center;">DRAFT APA Order 2016-0029A</p>
<p>In the Matter of the Application of</p> <p>LS MARINA LLC Applicant</p> <p>for a variance pursuant to § 806 of the Adirondack Park Agency Act</p>	<p>Date Issued: XXXX</p> <p>To the County Clerk: Please index this order in the grantor index under the following names: 1. LS Marina LLC</p>

SUMMARY AND AUTHORIZATION

LS Marina LLC (applicant) is hereby granted a variance, as conditioned, authorizing the construction of new structures associated with a pre-existing marina in Crescent Bay, Lower Saranac Lake, on lands classified Hamlet on the Adirondack Park Land Use and Development Plan Map in the Town of Harrietstown, Franklin County.

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

APPLICABLE LAWS

Section 806(1)(a)(2) of the Adirondack Park Agency Act (APA Act) establishes a minimum shoreline setback of 50 feet from the mean high water mark within Hamlet for all accessory structures and principal buildings greater than 100 square feet in size. The applicants requested a variance from this structure setback requirement pursuant to § 806(3)(a) of the APA Act.

VARIANCE SITE

The variance site is improved by a pre-existing marina first established in 1924 and currently known as the “Saranac Lake Marina”. Saranac Lake Marina comprises two locations, the “Main Marina” and “Annex,” both in the Town of Harrietstown, Franklin County on lands classified Hamlet on the Adirondack Park Land Use and Development Plan Map.

Saranac Lake Marina is located to the west of the Village of Saranac Lake. Other existing marina facilities are located on Lower Saranac Lake and in the Village of Saranac Lake and the nearby Village of Lake Placid. The nearby marina facilities provide similar amenities to the Saranac Lake Marina, with some renting covered boat slips; these covered slip structures are considered lawfully non-conforming boathouses

by the Agency, as they were constructed prior to the 2010 update to the Agency's regulatory definition of the term "boathouse".

Main Marina Site

The first Saranac Lake Marina location includes a 12.3±-acre property located on NYS Route 3, identified as Tax Map Section 457, Block 3, Parcel 10, and Block 4, Parcel 10, and described as a portion of the lands included in a deed from Crescent Bay Holdings LLC to LS Marina, LLC, dated March 12, 2014, and recorded April 8, 2014, in the Franklin County Clerk's Office under Instrument Number 2014-1669. The first location also includes an 8.00±-acre property located entirely within Lower Saranac Lake, as described in a deed from Acme of Saranac, LLC to LS Marina, LLC, dated August 5, 2019, and recorded August 16, 2019, in the Franklin County Clerk's Office under Instrument Number 2019-3801. Together, these properties are referred to herein as the Main Marina site.

The Main Marina site contains 655± feet of shoreline along Crescent Bay in Lower Saranac Lake, with scattered areas of deepwater marsh wetlands with a value rating of "3". The lands under water in Crescent Bay are privately owned.

Pre-existing and Existing Structures and Related Development

The Main Marina site is currently improved by the following pre-existing structures: a mechanic shop, showroom, and storage building located along NYS Route 3; a single-family dwelling, cottage, and four cabins located between NYS Route 3 and the shoreline; and a main office building/shop, concrete pad, fuel pump, and parking area with a gravel boat ramp located at the shoreline. In addition, a pre-existing paddle sports building and two small sheds have been removed from the property but will be rebuilt in the same location. The exterior lighting for the pre-existing structures and the parking area consists of tall poles with no shielding against light pollution. There are currently no stormwater controls on the site.

In consultation with the Agency, the applicant removed 14,907± square feet of pre-existing structures from the shoreline of the Main Marina during the course of project review. 12,347± square feet of these structures consisted of five pre-existing, non-conforming boat storage buildings that lined the shoreline of the bay and were attached to each other and/or other shoreline structures. 2,560± square feet of the structures removed from the shoreline consisted of lawfully conforming docks. At least 1,260± square feet of the structures that were removed had been located in wetlands on the site.

In the spring of 2022, the applicant installed four docks at the Main Marina site, containing space for 177 boat slip rentals, as well as spaces for marina staff and customers of the shop and fuel pump. These docks were installed pursuant to a letter confirming that no Agency review was required, as the docks all constituted lawful new or replacement structures. These docks are illuminated for safety by small, downward-facing solar-powered lights located at the dock ends. These dock spaces were rented to members of the public through the summer of 2022 and are currently in use for the 2023 boating season.

The northwestern portion of the Main Marina site contains a large rock that is used for swimming by the public. The applicant allows the public to use the marina access

driveway from NYS Route 3 to enter the site; a spur off this marina access driveway then leads to the swimming rock.

The Main Marina site is served by a municipal water supply. Any on-site wastewater treatment systems serving the pre-existing buildings at the Main Marina site are of unknown components. Available evidence indicates that some of the wastewater treatment system absorption fields are located within 100 feet of the mean high water mark of the lake.

Adjoining and Nearby Landowners

Properties to the east and northeast of the Main Marina site are residential, improved by single family homes. A tourist accommodation is located across NYS Route 3 to the south of the Main Marina site. The Saranac Lakes Wild Forest adjoins the Main Marina site to the west; the Saranac Lake Islands campground, run by the New York State Department of Environmental Conservation (NYSDEC), is within this wild forest area. The Second Pond Boat Launch Intensive Use Area, which provides public motorboat access to Lower Saranac Lake and is also managed by the NYSDEC, is located approximately two miles to the southwest of the project site on NYS Route 3.

Annex site

The second Saranac Lake Marina location is a 5.09±-acre property located on Lake Street, identified as Tax Map Section 457, Block 2, Parcel 33.1, and described as a portion of the lands included in a deed from Crescent Bay Holdings LLC to LS Marina, LLC, dated March 12, 2014, and recorded April 8, 2014, in the Franklin County Clerk's Office under Instrument Number 2014-1669. This location is referred to herein as the Annex site.

The Annex site contains 1,335± feet of shoreline along Ampersand Bay in Lower Saranac Lake, including an artificial lagoon that was constructed in the 1950s. The lands under water in Ampersand Bay and the lagoon are privately owned. The site contains extensive deepwater marsh, shrub swamp, and emergent marsh wetlands with a value rating of "1".

Pre-existing and Existing Structures and Related Development

The Annex site is currently improved by a boat storage building constructed in 1989.

In consultation with the Agency, the applicant removed more than 14,871 square feet of pre-existing structures from the shoreline of the Annex site during the course of project review. 14,871± square feet of these structures consisted of four pre-existing, non-conforming boat storage buildings that were attached to each other and/or other shoreline structures and were entirely located in the wetlands on the site; two of these buildings lined the shoreline of Ampersand Bay, and two lined the shoreline of the lagoon. The remainder of the pre-existing structures that have been removed from the Annex consisted of decks, staircases, walkways, ramps, and other structures that generally provided access across the wetlands from the upland areas of the site to the non-conforming boat storage buildings.

In the spring of 2022, the applicant installed four docks at the Annex site, containing space for 100 boat slip rentals, as well as space for use by marina staff. These docks were

installed pursuant to a letter confirming that no Agency review was required, as the docks all constituted lawful new or replacement structures. These docks are illuminated for safety by small, downward-facing solar-powered lights located at the dock ends. These dock slips were rented to members of the public through the summer of 2022 and are currently in use for the 2023 boating season. Covers over 40 of the existing boat rental slips and an additional dock containing space for 14 boat slip rentals will be added to the Annex site; these additions will not require Agency review as they constitute lawful new or replacement structures.

The Annex site is served by a municipal water supply. There is no evidence of any pre-existing on-site wastewater treatment system at the Annex site.

There is no exterior lighting above the mean high water mark at the Annex site. There are also no existing stormwater controls at the site.

Adjoining and Nearby Landowners

Properties to the west, south, and southeast of the Annex site are residential, improved by single-family homes. A transfer and storage business is located across NYS Route 3 to the east of the Annex site. A tourist accommodation and a marina are located to the north of the site. The Ampersand Bay Boat Launch, which provides public canoe and kayak access to Lower Saranac Lake and is managed by the NYSDEC, is located to the northwest of the project site.

VARIANCE DESCRIPTION

Variance Request

The variance as conditionally approved herein involves the installation of new structures greater than 100 square feet in size within the shoreline setback of Lower Saranac Lake as part of the rehabilitation of the pre-existing marina at the Main Marina location. Specifically, the proposal involves the construction of 48,500± square feet of open-sided covers over 134 of the existing boat slips, as measured at the perimeter of the covers. These covers will be 14.5± feet in height, and will be located entirely below the mean high water mark in Crescent Bay. The covers will consist of green roofs supported by brown poles, and will be illuminated for use after dark by solar-powered downward-facing lights located underneath the roof structures. This proposal is 36,153± square feet greater in footprint than would be allowed without a variance, if the applicant instead reconstructed only the 12,347± square feet of pre-existing non-conforming buildings that have been removed from the shoreline.

The variance also involves the addition of 577± square feet of structure above the mean high water mark for the establishment of an upgraded boat launch in the location of the existing concrete pad. The existing gravel boat launch will be removed, and the area stabilized and planted.

The variance request includes a proposed restriction against reconstruction of the 29,778+ square feet of pre-existing structures that have been removed from the shoreline at both the Main Marina and Annex sites. In addition, the proposal includes the implementation of buoy plans to protect re-vegetating areas along the shoreline in

both bays, the use of only solar-powered downward-facing and/or “Dek-Dot” style lights on all of the existing docks, and the continued implementation of previously-approved invasive species control plans in both bays.

The variance request also involves the proposed implementation by the applicant of the following environmental benefit projects above the mean high water mark of Lower Saranac Lake at the Main Marina site:

- Establishment of stormwater controls, including plantings, for the existing development;
- Establishment of erosion and sediment controls;
- Replacement of any existing on-site wastewater treatment system associated with the marina with a conventional on-site wastewater treatment system that meets all Agency, NYSDEC, and NYS Department of Health (NYSDOH) standards for use by marina staff;
- Installation of non-leaching toilets for use by marina customers; and
- Replacement of the pre-existing upland lighting with lights that are shielded and downward-facing.

The variance proposal also involves the implementation by the applicant of the following environmental benefit projects above the mean high water mark of Lower Saranac Lake at the Annex site:

- Establishment of stormwater controls, including permeable gravel, for the existing development;
- Establishment of erosion and sediment controls;
- Implementation of a planting plan to partially screen the existing boat storage building;
- Installation of non-leaching toilets for use by staff and marina customers; and
- A prohibition on exterior lighting.

The variance application states that adding the proposed open-sided covers over the existing boat docks will help to protect customers’ boats from the weather, which may also help to limit fluids and debris from being washed off boats and into the lake. The covers will also help to protect the dock surface from the weather and to limit slippery conditions for customers and employees. In addition, the application states that adding covers will make the overall docking systems structurally stronger.

The application references the nearby competitive facilities that have covered boat slips, and states that “the proposed covered floating docks are environmentally friendly floating systems that accommodate modern marinas and provide what customers desire.”

Review and Minimization of Impacts

During the review process, Agency staff, the NYSDEC, and nearby landowners suggested that the applicant consider numerous alternative plans that would minimize or eliminate the need for a variance.

To minimize the variance request at the Main Marina site, the applicant eliminated retaining walls, walkways, and expansions of the pre-existing cabins from the proposal to avoid the need for a variance for any structure above the mean high water mark other than the upgraded boat launch. The applicant also limited the length of two of the docks installed in 2022 to reduce visibility from the Saranac Lakes Wild Forest.

Finally, the applicant eliminated a portion of the proposed boat slip covers below the mean high water mark, reducing the footprint of the proposed variance structures by 27,977± square feet, from more than 77,054 square feet to 49,077± square feet.

To minimize the variance request at the Annex site, the applicant eliminated retaining walls and walkways from the proposal to avoid the need for a variance for any structure above the mean high water mark. The applicant also eliminated a portion of the proposed boat slip covers below the mean high water mark, reducing the footprint of the proposed variance structures from more than 38,206 square feet to zero, and eliminating the need for a variance at the Annex site.

During the review process, the applicant also minimized the potential for impacts to water quality and wetlands. To minimize the potential for impacts at the Main Marina site, the applicant reduced the footprint of proposed structures over wetlands by 1,550± square feet, with the final proposal resulting in a 272±-square-foot decrease in structures over wetlands compared to pre-existing conditions. To minimize the potential for impacts at the Annex site, the applicant reduced the footprint of proposed structures over wetlands by 18,042± square feet, with the final proposal resulting in a 231±-square-foot decrease in structures over wetlands compared to pre-existing conditions. In addition, all of the existing and proposed structures over wetlands are floating, supported by small posts, with the pre-existing buildings' footers removed. The proposal involves fewer overall boat slips in wetlands, and all covered boat slips are located in deeper water and further from the shoreline compared to pre-existing conditions. These minimization efforts eliminated the need for any Agency permit for activities involving wetlands.

Review by the Town and Other Agencies

In 2015, the Town of Harrietstown issued a Resolution Granting Site Plan Approval for the proposal, which at the time included covers over all boat slips; in 2023, the Town confirmed that no additional approvals would be required for the proposed reduction in boat slip covers. The NYS Office of Parks, Recreation and Historic Preservation issued a Letter of No Impact for the proposal in 2014. In 2020, the NYSDEC issued permits for the proposal authorized by Permit and Order 2016-0029; a modification to the Docking Facility and Excavation and Fill permit is required for the current request. A pre-construction notification from the Army Corps of Engineers for the proposal authorized by Permit and Order 2016-0029 has expired; an updated pre-construction notification is required for the current request.

Final Maps, Plans, and Reports

The project is shown on the following maps, plans, and reports:

- A set of 28 plan sheets titled, "LS Marina, LLC, Saranac Lake Marina," prepared by North Woods Engineering, LLC, dated May 1, 2020, and updated March 30, 2023, with Sheets C32 and C40 last updated May 2, 2023 (collectively the Project Plans).
- A report titled, "Stormwater Pollution and Prevention Plan (SWPPP)," prepared by North Woods Engineering, LLC, and dated May 21, 2020 (SWPPP).

- A report titled, “Stormwater Report for the Annex Parcel,” prepared by The LA Group, P.C., dated March 21, 2017 (Annex Stormwater Report).
- Plans titled, “LS Marina, LLC – AIS Management Overview” and “Saranac Lake Marina Invasive Species Plan,” both received by the Agency on September 14, 2021 (Invasive Species Management Plans).

A reduced-scale copy of Sheet C10 of the Project Plans is attached as a part of this order for easy reference. The original, full-scale maps and plans described herein are the official plans for the project, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

PROCEDURAL HISTORY

In 2013, the applicant submitted a Jurisdictional Inquiry Form and, subsequently, a request for a Declaratory Ruling regarding the proposed construction of covered boat berths at the Main Marina site. The Agency determined that a variance would be required for the proposal, as it involved new or expanded structures larger than 100 square feet in size that would not comply with the Agency’s definition of a dock or boathouse.

In 2014, the applicant submitted an application for a variance for the construction of more than 115,260 square feet of covered boat berths below the mean high water mark and numerous retaining walls, walkways, and expansions of pre-existing structures above the mean high water mark at both the Main Marina and Annex sites.

In 2015, following consultations with Agency staff, the applicant removed 9 pre-existing non-conforming boat storage buildings from the Main Marina and Annex sites. As described in the Variance Site section above, these 9 buildings comprised a total of 27,218± square feet and lined the shoreline of both bays, with 16,131± square feet of the structures located in wetlands. The applicant also removed a number of other decks, staircases, walkways, ramps, and other structures from within the shoreline setback areas.

In 2016, following confirmation from Agency staff that the structures proposed in the variance application would also require a wetlands permit because the proposal involved the construction of structures over more wetland areas than under pre-existing conditions, the applicant submitted a permit application for the portions of the project that would involve wetlands. A wetlands permit was also required for proposed dredging of road sediment from wetlands in the lagoon at the Annex site.

In 2016, as part of a third request for additional information related to the variance and permit applications, Agency staff cited the need for authorization of the application from the underlying landowner of the lands below the mean high water mark in both Crescent Bay and Ampersand Bay.

In 2016, the NYSDEC submitted a letter to the Agency granting permission, “as owner and manager of the lands underwater in Ampersand Bay in Saranac Lake,” for the applicant to request any necessary approvals for the proposal from the Agency.

In 2016, the applicant appealed portions of Agency staff's third request for additional information for the variance and permit applications. The applicant and Agency staff presented written and oral arguments before the Agency board in November 2016, and the board affirmed the need for the requested information.

In 2017, the applicant sued the Agency challenging the Agency's assertion of variance jurisdiction over the project. The case was dismissed by Supreme Court, Essex County, in 2017.

In 2019, following a lawsuit by the applicant claiming ownership through adverse possession of the underwater lands at the Main Marina site, the applicant obtained the deed for the 8.00±-acre property described in the Variance Site section above.

In 2020, the applicant submitted a response to the Agency's third request for additional information. This response included a substantial reduction in the size of the proposal, as well as additional mitigating measures and information.

In 2020, Agency staff presented the final variance request and permit application to the Agency board for review. The board authorized the proposal in Agency Permit and Order 2016-0029.

In 2020, a landowner in Ampersand Bay sued the applicant, the APA, and the NYSDEC over the Agency's and Department's approvals of the project.

In 2021, NYSDEC determined that the lands underwater in Ampersand Bay are not state-owned. The petitioner withdrew his claims against NYSDEC.

In 2021, the applicant submitted to the Agency a proposal for the construction of docks at both the Main Marina and Annex sites. As these proposed docks constituted lawful new or replacement structures, the Agency confirmed that the docks could be constructed without any new or amended permit or variance.

In 2021, as required by Permit and Order 2016-0029, the applicant submitted to the Agency a proposed plan for the management of invasive species at both the Main Marina and Annex sites. Following additional consultations between the applicant and staff, the Agency approved this plan. The plan was implemented beginning in 2021 and remains ongoing.

In 2023, on appeal from a decision in favor of the Agency by Supreme Court, Essex County, the NYS Appellate Division, 3rd Department, determined that the Agency had improperly assigned a value rating of "2" rather than "1" to the wetlands at the Annex site, and annulled Permit and Order 2016-0029.

In 2023, the applicant submitted to the Agency a proposal for the construction of covers over a portion of the existing docks at both the Main Marina and Annex sites. No wetlands permit is required for this proposal, and no variance is required for this proposal at the Annex site. A variance is required for the proposal in Crescent Bay, as the proposed covers will not be lawful new or replacement structures at the Main Marina site.

Following receipt of the variance application, the Agency notified all parties as required by Agency regulations. On June 5, 2023, the Agency held a public hearing on the variance request by videoconference. The hearing was attended by Agency staff, the applicant and its authorized representative, and members of the public. 13 members of the public provided verbal comment. 11 commenters spoke in favor of the proposal, all local landowners. Two commenters spoke against the proposal, the landowner in Ampersand Bay who filed the lawsuit in 2020 and his attorney.

The verbal commenters in favor of the proposal generally noted the long history of the marina and the applicant's efforts to rebuild and modernize the business and environmental and visual benefits that have been observed since, with some commenters stating that the site aesthetics will be further improved by the proposed boat slip covers; the lack of any need for a carrying capacity study for the proposal; the lack of overcrowding of Lower Saranac Lake by boaters; the fact that the Agency already granted a variance for a larger proposal on the site; the potential for environmental harm from requiring all non-shorefront owners to trailer boats into the lake for each use; the employment opportunities offered to the community by the marina; the lake accessibility for non-shorefront owners offered to the community by the marina; the safety benefits of the newly installed dock structures and the additional safety benefits that would be provided by covers; the need for covers over some of the docks to allow for protection of the boats themselves; and the lack of invasive species control programs in Lower Saranac Lake and the associated need for the marina's continuing management actions.

The verbal commenters opposed to the proposal generally noted concerns with the proposal under the regulatory variance factors, particularly whether the proposal constituted the minimum necessary and the manner in which the need for a variance arose, as the applicant could instead rebuild the pre-existing structures without a variance, and disagreement with the Agency's review process.

The Agency also accepted written public comments on the proposal. 50 written comments were received. 31 written comments supported the proposal, including multiple comments submitted by individual landowners. 18 written comments opposed the proposal, including comments by advocacy groups and multiple comments submitted by individual landowners. 1 comment submitted by an advocacy group partially supported and partially opposed the proposal.

The written commenters in favor of the proposal generally noted the long history of the marina and the applicant's efforts to rebuild and modernize the business and environmental and visual benefits that have been observed since, with some commenters stating that the site aesthetics will be further improved by the proposed boat slip covers; the lack of any need for a carrying capacity study for the proposal; the lack of overcrowding of Lower Saranac Lake by boaters; the potential for environmental harm from requiring all non-shorefront owners to trailer boats into the lake for each use; the employment opportunities offered to the community by the marina; the lake accessibility for non-shorefront owners offered to the community by the marina; the safety benefits of the newly installed dock structures and the additional safety benefits that would be provided by covers; the need for covers over some of the docks to allow for protection of the boats themselves; and the lack of invasive species control programs in Lower Saranac Lake and the associated need for the marina's continuing management actions.

The written commenters opposed to the proposal generally noted disagreement with the Agency's review process and the lack of need for a carrying capacity study for review of the proposal; misunderstanding of land ownership issues within Ampersand Bay; concerns over potential impacts to wetlands at the Annex site; and confusion about Agency jurisdiction. Some commenters also requested an adjudicatory hearing on the matter.

DISCUSSION

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2) of the APA Act. The Agency has considered the standards and factors set forth in 9 NYCRR § 576.1(b)-(c).

§ 576.1(b): Whether the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction.

The adverse consequence to the applicant from denial of the variance would be that the proposed roofs could not be placed over the existing docks and the improved boat launch could not be constructed. The application states that, without the proposed boat slip roofs, customers' boats will be less protected from the weather, rain and wind will be more likely to wash fluids and debris off boats and into the lake, the dock surfaces will be less protected from the weather and may be more slippery for customers, and the overall docking systems will have less structural support. The application also states that, without the boat slip covers, Saranac Lake Marina will not be able to compete with other nearby marinas for customers seeking covered slips.

The public purposes of the shoreline restrictions are to protect water quality and the qualities of Adirondack shorelines.

The water quality of Lower Saranac Lake has been improved since 2015 by the removal of the 27,218± square feet of pre-existing non-conforming buildings along the shoreline of the project site, as these structures served as barriers to wildlife movement between the littoral zone of the lake and the riparian area adjacent to the lake. Removal of the pre-existing buildings has also allowed for the re-growth of wetland vegetation along the shoreline, which has helped to stabilize the shoreline and to prevent erosion and sedimentation into the lake.

While there is a large footprint of proposed structures requiring a variance below the mean high water mark, there is no additional impact to water quality resulting from stormwater runoff from covered boat slips than from the existing docks. Therefore, the proposed covers will not adversely impact water quality.

To the contrary, because the existing gravel boat launch will be removed and the area stabilized and planted and the variance plans have been designed to treat additional upland surface runoff in both bays where there are currently no stormwater controls, the water quality of Lower Saranac Lake will be enhanced by the proposal. Water quality will also be enhanced through the replacement of unknown wastewater treatment systems, some of which are likely located within 100 feet of the mean high water mark,

with non-leaching toilets for use by the public and a new on-site conventional wastewater treatment system for marina staff that meets all Agency, NYSDEC, and NYSDOH standards. Water quality will be further enhanced through the continued implementation of the Invasive Species Management Plans. Finally, water quality may be enhanced by the boat slips covers preventing the washing of fluids and debris off boats and into the lake.

The quality of the shoreline of Crescent Bay on Lower Saranac Lake will be impacted by the installation of roofs over the existing docks. The roofs will be visible from within and across the bay. From some angles, the structures may provide an aesthetic benefit compared to the existing collection of uncovered boats. Maintenance of the structures in green and brown colors, the stabilizing and planting of the existing gravel boat launch, and the revegetation of additional areas of the shoreline will help to ameliorate the visual impacts from the proposal.

If the variance were denied, the applicant or a future owner could reconstruct the 27,218± square feet of pre-existing non-conforming buildings along the shoreline that have been removed from both Crescent Bay and Ampersand Bay since 2015. As described above, replacement of these structures would increase negative impacts to the littoral zone and associated wetlands and to water quality. Replacement of these structures would also involve the re-establishment of the building footers along the shoreline, increase the number of boat slips in wetlands at the Annex site, and result in boat slips again being located in the shallow water closer to the shoreline, increasing turbidity and disturbance within wetlands in both bays. In addition, an unlimited number of new docks could be constructed at both marina locations without the need for any Agency permit or variance.

Although the variance request involves the construction of roof structures totaling 49,077± square feet within the shoreline setback area, both water quality and the quality of the shoreline of Lower Saranac Lake would be adversely affected more from denial of the variance and the resulting lack of stormwater and erosion and sediment controls, plantings, shielded and downward-facing lighting, and navigational buoys, and from the continued use of the existing gravel boat launch and unknown wastewater facilities near the shoreline, than from the granting of the variance. In addition, the lake could be further impacted by reconstruction of the 27,218± square feet of non-conforming buildings that previously lined the shorelines of both Crescent Bay and Ampersand Bay and/or by the construction of an unlimited number of additional dock slips.

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

The applicant minimized the variance request significantly between the original proposal in 2014 and the Agency-approved proposal in 2020. The applicant further minimized the proposal after the 2023 decision by the Appellate Division, 3rd Department.

During the course of Agency review of the request at the Main Marina site, the applicant eliminated retaining walls, walkways, and expansions of the pre-existing cabins from the proposal to avoid the need for a variance for any structure above the mean high water mark other than the upgraded boat launch. The applicant also limited the length of two of the docks installed in 2022 to reduce visibility from the Saranac Lakes Wild Forest. Finally, the

applicant eliminated a portion of the proposed boat slip covers below the mean high water mark, reducing the footprint of the proposed variance structures by 27,977± square feet.

During the course of Agency review of the request at the Annex site, the applicant eliminated retaining walls and walkways from the proposal to avoid the need for a variance for any structure above the mean high water mark. The applicant also eliminated a portion of the proposed boat slip covers below the mean high water mark, reducing the footprint of the proposed variance structures from 38,206± square feet to zero, and eliminating the need for a variance at the Annex site.

The applicant also minimized the potential for impacts to water quality and wetlands during the course of Agency review. To minimize the potential for impacts at the Main Marina site, the applicant reduced the footprint of proposed structures over wetlands by 1,550± square feet, with the final proposal resulting in a 272±-square-foot decrease in structures over wetlands compared to pre-existing conditions. To minimize the potential for impacts at the Annex site, the applicant reduced the footprint of proposed structures over wetlands by 18,042± square feet, with the final proposal resulting in a 231±-square-foot decrease in structures over wetlands compared to pre-existing conditions. In addition, the final proposal involves fewer overall boat slips in wetlands, with all covered boat slips located in deeper water and further from the shoreline than under pre-existing conditions.

Further minimization of the variance request could limit the applicant's ability to compete with the nearby marinas that offer covered slips, and would potentially result in the need for additional docks or other development to compensate for the resulting reduced revenue.

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

The project site is located in a Hamlet land use area, which is designated under the APA Act as being "intended to accommodate a large portion of the necessary and natural expansion of the Park's housing, commercial, and industrial activities."

Views of the shoreline of Crescent Bay Lake will be impacted by the installation of the roofs over the existing docks. The roofs will be visible from within and across the bay. From some angles, the structures may provide an aesthetic benefit compared to the existing collection of uncovered boats. Maintenance of the structures in green and brown colors, the stabilizing and planting of the existing gravel boat launch, and the revegetation of additional areas of the shoreline will help to ameliorate the visual impacts from the proposal.

While there is a large footprint of proposed structures requiring a variance below the mean high water mark, there is no additional impact to water quality resulting from stormwater runoff from covered boat slips than from the existing docks. Instead, because the existing gravel boat launch will be removed and the area stabilized and planted and the variance plans have been designed to treat additional upland surface runoff in both bays where there are currently no stormwater controls, the water quality of Lower Saranac Lake will be enhanced by the proposal. Water quality will also be enhanced through the replacement of unknown wastewater treatment systems, some of which are likely located within 100 feet of the mean high water mark, with non-leaching toilets for use by the public and a new on-site conventional wastewater treatment

system for marina staff that meets all Agency, NYSDEC, and NYSDOH standards. Water quality will be further enhanced through the continued implementation of the Invasive Species Management Plans. Finally, water quality may be enhanced by the boat slips covers preventing the washing of fluids and debris off boats and into the lake.

The water quality of Lower Saranac Lake has been improved since 2015 by the removal of the 27,218± square feet of pre-existing non-conforming buildings along the shoreline of the project site, as these structures served as barriers to wildlife movement between the littoral zone of the lake and the riparian area adjacent to the lake. Removal of the pre-existing buildings has also allowed for the re-growth of wetland vegetation along the shoreline, which has helped to stabilize the shoreline and to prevent erosion and sedimentation into the lake. Granting the variance would ensure that these structures are not rebuilt, and the benefits of their removal remain.

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

No variance would be required if the applicant reconstructed the 27,218± square feet of pre-existing non-conforming buildings that have been removed from the shorelines of both bays. The applicant could also add more boat berths to the existing docking systems without the need for any Agency permit or variance. However, both of these alternatives would result in greater negative impacts to water quality, wetlands, and the quality of the shoreline of Lower Saranac Lake than the proposal.

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

The difficulty is self-created as, rather than seeking a variance, the applicant could reconstruct the pre-existing structures along the shoreline. Prior to purchasing the property, the applicant received written notification from the Agency that the construction of new covered shoreline structures would require a variance from the Agency.

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

As noted above, implementation of the proposed Project Plans along with the SWPPP, Annex Stormwater Report, and Invasive Species Management Plans, which involve restrictions and environmental benefits above and below the shoreline of both Crescent Bay and Ampersand Bay, will result in fewer impacts to Lower Saranac Lake and the resources of the Park than maintaining the variance site in its current state, adding additional docks without Agency review, or reconstructing the pre-existing marina structures.

§ 576.1(c)(6): Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above.

The potential for adverse effects to Lower Saranac Lake will be ameliorated by compliance with the conditions listed below.

CONDITIONS

1. This authorization shall expire unless recorded in the Franklin County Clerk's Office within 60 days of the date of issuance.
2. The variance authorized herein shall expire five years from the date this order is recorded in the Franklin County Clerk's office, unless one of the roof structures authorized herein has been installed by that date or written authorization has been obtained from the Agency extending the deadline for the project.
3. This order is binding on the applicant, all present and future owners or lessees of the variance site, and all persons undertaking all or a portion of the project, for as long as the authorized structures remain on the site. Copies of this order and the Project Plans shall be furnished by the applicant to all subsequent owners or lessees of the project site prior to sale or lease, and by the applicant and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.
4. All deeds conveying all or a portion of the lands subject to this order shall contain references to the order as follows: "The lands conveyed are subject to Adirondack Park Agency Order 2016-0029A, issued **XXXX**, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
5. This order authorizes the construction of 48,500± square feet of open-sided boat slip covers and 577± square feet of boat ramp upgrades in the locations shown and as depicted on the Project Plans. Any change to the location, dimensions, or other aspect of these structures shall require prior written Agency authorization. Prior written Agency authorization shall also be required for the addition of any new boat slips for rent on the variance site except as shown on the Project Plans, including any areas for beaching or mooring boats. There shall be no reconstruction of any portion of the 27,218± square feet of non-conforming boat storage buildings that have been removed from the Main Marina and Annex sites as described above.
6. Within one year of construction of any structure authorized herein, the on-site wastewater treatment system designed for the Main Marina office building shall be constructed in conformance with the Project Plans. Construction of this system shall be supervised by a New York State design professional (licensed engineer or registered architect). Within 30 days of complete system installation and prior to its utilization, the design professional shall provide written certification to the Agency that the system was built in compliance with the approved plans.

There shall be no on-site wastewater treatment system at either the Main Marina or Annex site other than as described and depicted on the Project Plans without prior written Agency authorization. Non-leaching toilets may be used at either location without additional Agency review.

7. Within one year of construction of any structure authorized herein, the permeable parking area at the Annex site shall be constructed as described in the Annex Stormwater Report.
8. Within one year of construction of the upgraded boat ramp authorized herein, the existing gravel boat launch at the Main Marina site shall be removed and the area stabilized and planted as depicted and described in the Project Plans.
9. The project shall be undertaken in compliance with the SWPPP. Any changes to the SWPPP shall require prior written Agency authorization.
10. All trees and shrubs depicted on Sheet C22 of the Project Plans, the “Annex Marina Planting Plan,” shall be planted no later than the first spring or fall planting season after construction of the permeable parking area at the Annex site as described in the Annex Stormwater Report. Trees and shrubs that do not survive shall be replaced annually until established in a healthy growing condition.
11. Prior to construction of any authorized roof structure, all buoys and other markers shall be installed as depicted and described on the Project Plans for both the Main Marina and Annex sites.
12. The roofs of all boat slip covers authorized herein shall be maintained in a dark green color, and the support poles shall be maintained in a brown color.
13. Upon construction of any authorized structure, there shall be no lighting below the mean high water mark at the Main Marina and Annex sites other than solar-powered downward facing and/or “Dek-Dot” style lights on the docking surfaces and downward facing lights beneath the roofs. All exterior lighting above the mean high water mark at the Main Marina site shall comply with the locations and descriptions shown on the Project Plans. There shall be no exterior lighting above the mean high water mark at the Annex site.

Any change to these lighting specifications shall require prior written authorization from the Agency.
14. When brought from off-site, all equipment, including but not limited to trucks, excavators, tractors, etc., and hand excavation tools such as shovels, rakes, and picks, to be used on the project site shall be clean and free of soil, mud, or other similar material. If washed on the project site, equipment shall be washed in one location to prevent the distribution of propagules among different wash sites. All construction equipment and vehicles operating in areas that may contain existing invasive species shall be thoroughly cleaned prior to moving to other areas.
15. The Invasive Species Management Plans shall be implemented as depicted and described in the Plans.
16. Within 50 feet of the mean high water mark of Lower Saranac Lake, no trees or shrubs may be cut or removed on the project site, except for the removal of dead

or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.

CONCLUSION

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Parts 576. The Agency hereby finds that the applicant's variance request meets the approval criteria, provided the authorized activities are undertaken as described herein and in compliance with the conditions set forth above.

ORDER issued this day
of , 2023.

ADIRONDACK PARK AGENCY

BY: _____
David J. Plante, AICP CEP
Deputy Director, Regulatory Programs

STATE OF NEW YORK
COUNTY OF ESSEX

On the day of in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared David J. Plante, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public